



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

Prepared by Galadari Advocates & Legal Consultants with ChatGPT

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

## About Galadari

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

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

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

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

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

## Galadari's International Arbitration Practice

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

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

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

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

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

## Galadari's International Arbitration Team



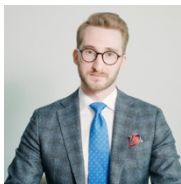
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## Editors' Preface

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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ARBITRATION RULES OF THE SCC ARBITRATION INSTITUTE<sup>1</sup>

## THE SCC ARBITRATION INSTITUTE

## Article 1 About the SCC

The SCC Arbitration Institute (the “SCC”) administers disputes in accordance with the Arbitration Rules of the SCC (the “Arbitration Rules”), the Rules for Expedited Arbitrations of the SCC (the “Rules for Expedited Arbitrations”) and other rules and procedures adopted by the Stockholm Chamber of Commerce (together, the “SCC Rules”). The SCC is composed of a board of directors (the “Board”) and a secretariat (the “Secretariat”). Under the Arbitration Rules, an arbitral tribunal consisting of one or more arbitrators (the “Arbitral Tribunal”) resolves the dispute. Detailed provisions regarding the organisation of the SCC are set out in Appendix I.

Article 1 of the SCC Arbitration Rules 2023 outlines the fundamental aspects of the arbitration process administered by the SCC Arbitration Institute. Here is an analysis of the key points in this article:

1. **SCC Arbitration Institute and Rules:** The article introduces the SCC Arbitration Institute, also referred to as the “SCC”, which is responsible for managing disputes through arbitration. The disputes are administered based on the Arbitration Rules of the SCC, which provide the framework for conducting the arbitration proceedings. This indicates that the SCC is a specialised organisation that facilitates arbitration proceedings according to established rules.
2. **Rules for Expedited Arbitrations:** In addition to the main Arbitration Rules, the article mentions the existence of the “Rules for Expedited Arbitrations”. These rules likely provide a streamlined process for resolving disputes in an expedited manner, making arbitration quicker and more efficient in cases where parties agree or circumstances dictate such an approach.
3. **SCC Rules and Procedures:** The reference to “other rules and procedures adopted by the Stockholm Chamber of Commerce” indicates that the SCC has a broader set of rules and practices beyond just the Arbitration Rules. These additional rules may cover matters such as administrative aspects, ethical considerations, and specific procedural guidelines for different types of cases.
4. **SCC Composition:** The SCC is described as being composed of two main bodies: the board of directors (the “Board”) and the secretariat (the “Secretariat”). The Board likely plays a role in overseeing the general operations and policies of the SCC, while the Secretariat is responsible for the day-to-day administration of arbitration cases. This dual structure emphasises the professionalism and organisation of the SCC.
5. **Arbitral Tribunal:** The Arbitration Rules provide for the establishment of an “Arbitral Tribunal”. This tribunal is responsible for resolving the disputes submitted to arbitration. The composition of the tribunal can involve one or more arbitrators, depending on the nature and complexity of the dispute. This flexibility allows for tailored solutions based on the specifics of each case.

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<sup>1</sup> Source: [https://sccarbitrationinstitute.se/sites/default/files/2023-03/1.-scc\\_arbitration\\_rules\\_2023.pdf](https://sccarbitrationinstitute.se/sites/default/files/2023-03/1.-scc_arbitration_rules_2023.pdf).

6. Appendix I: The article refers to “Appendix I” as containing detailed provisions about the organisation of the SCC. While the content of Appendix I is not provided in this excerpt, it likely delves into matters such as the appointment and selection of arbitrators, administrative procedures, fees, and other practical aspects of the arbitration process. This emphasises the importance of comprehensive guidelines for effectively managing the arbitration proceedings.

In summary, Article 1 of the SCC Arbitration Rules 2023 introduces the SCC Arbitration Institute as the entity responsible for administering arbitration proceedings according to the SCC Rules. It highlights the existence of various rules, including the Arbitration Rules and the Rules for Expedited Arbitrations, and emphasises the composition of the SCC, the role of the Arbitral Tribunal, and the availability of detailed organisational provisions in Appendix I.

## GENERAL RULES

**Article 2 General conduct of the participants to the arbitration****(1) Throughout the proceedings, the SCC, the Arbitral Tribunal and the parties shall act in an efficient and expeditious manner.**

Article 2(1) of the SCC Arbitration Rules 2023 sets out a principle that governs the conduct of various stakeholders in the arbitration process. Here is an analysis of this provision:

1. **Efficient and Expeditious Proceedings:** The key directive of Article 2(1) is to ensure that all participants in the arbitration proceedings—namely, the SCC, the Arbitral Tribunal, and the parties involved—conduct themselves in a manner that prioritises efficiency and expeditiousness. This means that the proceedings should be managed in a way that avoids unnecessary delays and ensures a timely resolution of the dispute.
2. **Emphasis on Timeliness:** The provision underscores the importance of ensuring that the arbitration process moves forward promptly and without undue delays. This is significant because arbitration is often chosen as an alternative dispute resolution mechanism to avoid the lengthy and complex court processes. By highlighting the need for efficiency, the provision aligns with the goals of arbitration as a swift and effective means of resolving disputes.
3. **Responsibility of All Stakeholders:** The article places this responsibility not only on the SCC and the Arbitral Tribunal but also on the parties involved in the dispute. This implies that all participants are expected to cooperate and actively contribute to maintaining a pace that ensures a timely resolution. The efficiency of the proceedings depends on the collective efforts of all parties.
4. **Balancing Efficiency and Due Process:** While efficiency and expeditiousness are important, they should not compromise the principles of due process, fairness, and the parties' right to present their cases adequately. This article does not suggest that speed should come at the expense of procedural fairness or the parties' opportunity to be heard and provide evidence.
5. **Preventing Tactical Delays:** By explicitly requiring the parties to act in an efficient manner, the provision can serve as a deterrent against tactics aimed at delaying or obstructing the arbitration process for strategic reasons. This aligns with the broader objective of maintaining the integrity of the arbitration process and preventing abuses.
6. **Enforcement and Consequences:** While Article 2(1) sets the expectation for efficient and expeditious proceedings, the rules may include mechanisms for addressing instances where this principle is not adhered to. This could involve measures to address undue delays or non-cooperation, such as adjustments to timelines, cost implications, or even potentially impacting the final award.

In summary, Article 2(1) of the SCC Arbitration Rules 2023 emphasises the need for efficiency and expeditiousness in the conduct of arbitration proceedings. It highlights the responsibilities of the SCC, the Arbitral Tribunal, and the parties to work collectively to ensure a timely resolution of disputes, while maintaining the balance between efficiency and the parties' right to a fair and thorough process.

**(2) In all matters not expressly provided for in the Arbitration Rules, the SCC, the Arbitral Tribunal, and the parties shall act in the spirit of the Arbitration Rules and shall make every reasonable effort to ensure that any award is legally enforceable.**

Article 2(2) of the SCC Arbitration Rules 2023 outlines a guiding principle that applies in situations where specific provisions are not explicitly addressed within the Arbitration Rules. Here is an analysis of this provision:

1. **Gap-Filling Provision:** Article 2(2) acknowledges the possibility that there might be certain situations or matters that are not covered by the detailed provisions of the Arbitration Rules. In such cases, the provision serves as a gap-filling mechanism, providing direction on how the SCC, the Arbitral Tribunal, and the parties should proceed.
2. **Spirit of the Arbitration Rules:** The provision emphasises that in situations not explicitly covered by the rules, the parties and all involved entities should act in accordance with the “spirit” of the Arbitration Rules. This means that the overarching principles, objectives, and intentions of the rules should guide their actions. The intention is to maintain consistency with the overall framework and values of the arbitration process.
3. **Reasonable Efforts for Enforceable Awards:** Another key aspect of Article 2(2) is the requirement that the parties and the tribunal should make “every reasonable effort” to ensure that any resulting arbitration award is legally enforceable. This underscores the importance of not only obtaining a favourable outcome through arbitration but also ensuring that the award can be effectively enforced and implemented.
4. **Flexibility and Adaptability:** The provision recognises that arbitration can encompass a wide range of disputes with varying complexities. By requiring adherence to the spirit of the rules, it allows for flexibility and adaptability in addressing unique situations that may arise during the arbitration process.
5. **Balancing Flexibility and Predictability:** While flexibility is important, it is also crucial to maintain a degree of predictability and consistency in arbitration proceedings. The provision seeks to strike a balance by providing a guiding principle without overly constraining the process with rigid requirements.
6. **Promotion of Efficiency and Enforceability:** The requirement to ensure legal enforceability of awards aligns with the broader goals of arbitration as an effective dispute resolution mechanism. It encourages parties and arbitrators to consider the practical implications of their decisions and to avoid unnecessary complications that could hinder the enforceability of the final award.
7. **Dispute Resolution Culture:** Article 2(2) also contributes to fostering a culture of cooperation and efficiency within the arbitration process. It encourages parties to collaborate in resolving procedural matters that may not be explicitly covered by the rules, rather than creating unnecessary conflicts.

In summary, Article 2(2) of the SCC Arbitration Rules 2023 provides guidance on how to address matters not covered by the rules. It encourages adherence to the spirit of the Arbitration Rules,

emphasises the importance of enforceability, and promotes flexibility while maintaining the essential principles of arbitration.

### Article 3 Confidentiality

**Unless otherwise agreed by the parties, the SCC, the Arbitral Tribunal and any administrative secretary of the Arbitral Tribunal shall maintain the confidentiality of the arbitration and the award.**

Article 3 of the SCC Arbitration Rules 2023 addresses the issue of confidentiality in arbitration proceedings conducted under the auspices of the SCC. This article emphasises the importance of maintaining confidentiality throughout the arbitration process, unless the parties agree otherwise. Let us break down the key components of this article:

1. **Confidentiality Requirement:** The article begins by stating that confidentiality is a fundamental principle of arbitration proceedings conducted under the SCC Arbitration Rules. This means that the parties involved in the arbitration, the arbitral tribunal (the panel of arbitrators), and any administrative secretary appointed by the tribunal are obligated to maintain the confidentiality of various aspects of the arbitration process.
2. **Scope of Confidentiality:** The confidentiality requirement extends to two main aspects: the arbitration itself and the award. This encompasses all discussions, submissions, evidence, hearings, deliberations, and any other information or documents related to the arbitration. Additionally, it covers the final arbitration award that is rendered by the tribunal at the conclusion of the proceedings.
3. **Exceptions Based on Party Agreement:** One notable feature of this article is the flexibility it allows regarding confidentiality. The article explicitly states that the parties can agree to deviate from the general confidentiality requirement. This means that if the parties wish to make certain information or aspects of the arbitration public, they have the freedom to do so by mutual agreement.
4. **Responsibility for Confidentiality:** The responsibility for maintaining confidentiality is shared among three parties:
  - a. **SCC:** The Stockholm Chamber of Commerce, the institution administering the arbitration, is obligated to uphold the confidentiality of the proceedings and the award.
  - b. **Arbitral Tribunal:** The panel of arbitrators chosen to preside over the dispute must also ensure the confidentiality of the arbitration and the award.
  - c. **Administrative Secretary:** If appointed by the tribunal, an administrative secretary (usually assisting with administrative matters) is also bound by the confidentiality obligation.
5. **Importance of Confidentiality:** Confidentiality in arbitration is valued for several reasons:
6. **Protecting Sensitive Information:** Arbitration often involves sensitive commercial or proprietary information that parties may not want to be publicly disclosed.

7. Preserving Reputation: Parties may want to avoid negative impacts on their reputation that could arise from publicising disputes.
8. Encouraging Open Communication: Confidentiality can foster open communication during proceedings, as parties may be more willing to share information knowing it will remain private.
9. Enabling Settlement: Parties might be more inclined to explore settlement options if they know the details of the dispute will not be made public.

In summary, Article 3 of the SCC Arbitration Rules 2023 underscores the significance of confidentiality in arbitration proceedings while allowing parties the flexibility to agree on exceptions. It establishes the responsibilities of the SCC, the arbitral tribunal, and any administrative secretary regarding the confidentiality obligation. This provision reflects the delicate balance between maintaining confidentiality and accommodating parties' specific needs and preferences in arbitration.

#### Article 4 Time periods

**The Board may, on application by either party or on its own motion, extend any time period set by the SCC for a party to comply with a particular direction.**

Article 4 of the SCC Arbitration Rules 2023 addresses the issue of time limits and extensions within the context of arbitration proceedings administered by the Arbitration Institute of the SCC. Let us break down and analyse the key provisions of this article:

1. Authority to Extend Time Periods: The article begins by stating that the "Board", which likely refers to the administrative body responsible for overseeing the arbitration process at the SCC, has the authority to extend any time period that has been set by the SCC for a party to fulfil a specific direction. This means that if a party is given a certain amount of time to take a particular action (such as submitting documents, making arguments, or responding to a request), the Board has the power to grant an extension if a valid application is made or if it deems it necessary even without a party's request.
2. Application by Either Party or Own Motion: The Board's authority to grant an extension can be invoked through two avenues:
  - a. Application by Either Party: Either of the parties involved in the arbitration can formally request an extension of a time period. This could be due to various reasons, such as unexpected developments, the need for additional time, or exceptional circumstances that hinder the party's ability to meet the original deadline.
  - b. Own Motion: The Board can also, without receiving a formal application from either party, decide on its own to extend a time period if it believes that doing so is justifiable and fair in the given circumstances. This recognises the Board's role in maintaining the integrity and efficiency of the arbitration process.
3. Flexibility and Equitable Approach: The provision underscores the SCC's commitment to maintaining flexibility and ensuring fairness in the arbitration process. By granting the

Board the authority to extend time periods, the SCC recognises that circumstances can change, unexpected events can occur, and the parties involved may sometimes require additional time to comply with directions or submit necessary materials.

4. **Balance of Interests:** This provision acknowledges that there might be legitimate reasons for parties to request extensions or for the Board to grant them without a request. Balancing the interests of both parties is crucial, as granting an extension might impact the procedural efficiency of the arbitration while also ensuring that each party has a reasonable opportunity to present their case and comply with procedural requirements.
5. **Preserving the Arbitration's Efficiency:** While the provision grants the Board the discretion to extend time periods, it is likely that such extensions are meant to be granted judiciously. This is to prevent undue delays that could hinder the overall efficiency of the arbitration process, which is a key consideration in maintaining the credibility and attractiveness of arbitration as a dispute resolution mechanism.

In summary, Article 4 of the SCC Arbitration Rules 2023 provides a mechanism for parties to seek extensions for compliance with time periods set by the SCC, and it also allows the Board to extend these time periods on its own motion. This provision reflects a balance between providing flexibility to the parties and maintaining the overall efficiency of the arbitration process.

## Article 5 Notices and other communications

**(1) Any notice or other communication from the Secretariat or the Board shall be delivered to the last known address of the addressee.**

This provision pertains to the delivery of notices and communications within the context of arbitration proceedings under the administration of the Arbitration Institute of the SCC. Here is a breakdown of the key aspects of this provision:

1. **Notice and Communication:** The article applies to “notice or other communication” originating specifically from two entities within the SCC: the Secretariat and the Board. These entities play crucial roles in overseeing and managing the administrative aspects of the arbitration process. The purpose of such notices and communications can vary widely, including providing directions, sharing procedural updates, requesting submissions, or addressing any administrative matters that may arise during the course of the arbitration.
2. **Recipient (Addressee):** The provision establishes that these notices and communications must be delivered to the “last known address of the addressee”. The addressee refers to the party or parties intended to receive the communication. This recognises that parties involved in arbitration may have different locations, addresses, or contact details, and it is important to ensure that the communication reaches the intended recipients accurately.
3. **Last Known Address:** The requirement to use the “last known address” acknowledges the possibility that parties’ contact information can change over time. This approach reflects the practical nature of arbitration, recognising that parties may relocate or update their contact information during the course of the proceedings. Therefore, the SCC aims to use the most recent contact information available to ensure effective communication.



4. Implications:

- a. **Communication Reliability:** By delivering notices and communications to the “last known address”, the SCC underscores the importance of reliable communication between the administrative bodies and the parties. This helps in maintaining transparency, ensuring procedural fairness, and enabling parties to stay informed about the progress of the arbitration.
- b. **Timeliness:** Parties have a responsibility to promptly update their contact information with the SCC to ensure they receive communications in a timely manner. This is crucial to avoid any undue delays or misunderstandings that may arise if notices are sent to outdated addresses.
- c. **Equity:** Ensuring that parties receive important communications at their last known address contributes to the equitable treatment of all parties. No party should be disadvantaged due to a failure to receive a notice simply because their contact information had changed.

In conclusion, Article 5(1) of the SCC Arbitration Rules 2023 emphasises the importance of effective communication within arbitration proceedings by requiring that notices and communications from the Secretariat or the Board be delivered to the last known address of the addressee. This provision promotes transparency, fairness, and timely exchange of information between the administrative bodies and the parties involved in the arbitration process.

**(2) Any notice or other communication shall be delivered by courier or registered mail, e-mail or any other means that records the sending of the communication.**

This provision elaborates on the methods through which notices and communications must be delivered within the context of arbitration proceedings administered by the Arbitration Institute of the SCC. Here is a breakdown of the key aspects of this provision:

1. **Approved Methods of Delivery:** The article outlines the permissible methods for delivering notices and communications:
  - a. **Courier or Registered Mail:** Traditional methods of physical delivery, involving the use of established courier services or registered mail. These methods offer a reliable and tangible record of the communication’s dispatch and receipt.
  - b. **Email:** The provision acknowledges the contemporary practice of electronic communication. Email has become a widely used and efficient means of delivering messages, documents, and notifications in various contexts, including legal and arbitration proceedings.
  - c. **Any Other Means with Recording:** The provision allows for the use of “any other means that records the sending of the communication”. This flexible language accommodates emerging technologies or methods that may provide a verifiable record of sending, similar to how registered mail or email record transmissions.

2. **Ensuring Communication Accountability:** The requirement that the chosen means of communication “records the sending of the communication” is significant. It ensures that there is evidence of the communication being dispatched. This record is important to establish a verifiable timeline for when the communication was sent, which is crucial for determining compliance with deadlines and understanding the sequence of events in the arbitration process.
3. **Embracing Modern Technology:** By allowing various methods of communication, including email and other means that record transmission, the SCC embraces modern technology while maintaining the integrity of communication practices. This reflects the need to adapt to evolving methods of communication that can enhance efficiency and reduce administrative burdens.
4. **Practicality and Accessibility:** The provision recognises the practicality of different methods of communication and accommodates parties’ diverse preferences and accessibility to technology. Parties may choose the method that suits their circumstances while adhering to the requirement that the chosen method records the sending of the communication.
5. **Communication Transparency:** The provision aligns with the SCC’s objective of maintaining transparency and efficiency in the arbitration process. Using methods that record the sending of communication helps ensure that parties are aware of the timing and content of notices and communications, which in turn contributes to a fair and well-informed arbitration process.

In conclusion, Article 5(2) of the SCC Arbitration Rules 2023 specifies the approved methods for delivering notices and communications within arbitration proceedings. By allowing traditional physical methods, email, and other means with recording, the SCC accommodates modern communication practices while maintaining accountability and transparency in the arbitration process.

**(3) A notice or communication sent in accordance with paragraph (2) shall be deemed to have been received by the addressee on the date it would normally have been received given the means of communication used.**

This provision deals with the timing of when a notice or communication is considered received by the intended recipient within the context of arbitration proceedings administered by the Arbitration Institute of the SCC. Here is an analysis of the key aspects of this provision:

1. **Timing of Deemed Receipt:** The article establishes a principle regarding the timing of when a notice or communication is legally considered received. According to this provision, if a notice or communication is sent in accordance with the approved methods outlined in paragraph (2) of Article 5, it is “deemed to have been received by the addressee on the date it would normally have been received given the means of communication used”. In other words, the date of deemed receipt is determined based on the typical delivery timeframe associated with the chosen method of communication.
2. **Principle of Normal Receipt:** The provision is rooted in the concept of normalcy or regularity. It takes into account the usual timeframe that is associated with each method of communication. For example:

- a. For courier or registered mail, the deemed receipt would be the date the mail is delivered to the recipient's address.
  - b. For email, the deemed receipt would likely be the date and time the email enters the recipient's inbox.
3. **Clarity and Predictability:** This principle contributes to clarity and predictability in the arbitration process. Parties can have a reasonable expectation of when a communication is legally considered received, based on established and well-understood norms associated with the chosen method of communication.
  4. **Importance of Recorded Sending:** The requirement that the communication must be sent in accordance with the approved methods (as outlined in paragraph 2) ensures that there is a recorded record of the sending. This is essential for confirming that the communication was indeed dispatched on a certain date, which is relevant in establishing the date of deemed receipt.
  5. **Fairness and Consistency:** By establishing a clear framework for when a communication is deemed received, this provision promotes fairness and consistency. It ensures that all parties are treated equitably and that there is a standardised approach to determining the timing of important communications.
  6. **Technology-Neutral Approach:** This provision's language is flexible enough to apply across a range of communication methods, including both traditional and modern approaches. It recognises that different methods have different delivery speeds, and it adapts to these variations.

In conclusion, Article 5(3) of the SCC Arbitration Rules 2023 provides a rule for determining the date of deemed receipt of notices and communications sent through approved methods. By considering the normal delivery timeframe associated with the chosen method, this provision adds predictability and fairness to the arbitration process, while accommodating various modes of communication.

**(4) This article shall apply equally to any communications from the Arbitral Tribunal.**

This provision addresses the application of the rules outlined in Article 5, specifically related to the delivery of notices and communications, to communications originating from the Arbitral Tribunal within the context of arbitration proceedings administered by the Arbitration Institute of the SCC. Here is an analysis of the key aspects of this provision:

1. **Extension of Rules to Arbitral Tribunal:** The provision clarifies that the rules and principles set forth in Article 5, which pertain to the delivery of notices and communications, are equally applicable to any communications originating from the Arbitral Tribunal. This means that the same procedures, methods, and principles regarding delivery and timing of communication are extended to the Tribunal's communications.
2. **Consistency and Uniformity:** By making the rules applicable to both administrative bodies (Secretariat and Board) and the Arbitral Tribunal, this provision ensures consistency and uniformity throughout the arbitration process. It promotes an equitable and fair

treatment of parties by subjecting all parties' communications to the same set of rules, regardless of their source within the arbitration process.

3. Streamlined Communication Process: Applying the same rules to communications from the Arbitral Tribunal helps streamline the communication process. Parties can rely on a consistent set of procedures for receiving and responding to communications, whether they originate from the administrative bodies or the Tribunal.
4. Simplified Compliance: Parties do not need to navigate different sets of rules for different sources of communication. Having a single set of rules for all communications ensures that parties can follow a uniform process for responding to notices and communications from either the administrative bodies or the Tribunal.
5. Ensuring Due Process: By extending the rules to the Arbitral Tribunal's communications, this provision upholds the principles of due process and procedural fairness. All parties are subject to the same standards, which helps maintain a balanced and just arbitration process.
6. Technological Neutrality: The provision's application to both traditional and modern methods of communication demonstrates a technology-neutral approach. It accommodates various methods of communication that the Arbitral Tribunal might use, while ensuring that the timing and delivery procedures are consistent.

In conclusion, Article 5(4) of the SCC Arbitration Rules 2023 ensures that the rules for delivering notices and communications outlined in Article 5 are equally applicable to communications originating from the Arbitral Tribunal. This provision maintains consistency, fairness, and a streamlined communication process throughout the arbitration proceedings, regardless of the source of communication.

## COMMENCEMENT OF PROCEEDINGS

### Article 6 Request for arbitration

A request for arbitration shall include:

- (i) the names, addresses, telephone numbers and e-mail addresses of the parties and their counsel;**
- (ii) a summary of the dispute;**
- (iii) a preliminary statement of the relief sought by the claimant, including an estimate of the monetary value of the claims;**
- (iv) a copy or description of the arbitration agreement or clause under which the dispute is to be settled;**
- (v) where claims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each claim is made;**
- (vi) comments on the number of arbitrators and the seat of arbitration; and**
- (vii) if applicable, the name, address, telephone number and e-mail address of the arbitrator appointed by the claimant.**

Article 6 of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 outlines the necessary components that must be included in a formal request for arbitration. This article sets forth the specific information that the claiming party must provide in order to initiate the arbitration process under the SCC's arbitration rules. Let us break down the key elements of Article 6:

1. **Names and Contact Information:** The requesting party must provide the names, addresses, telephone numbers, and email addresses of both the parties involved in the dispute and their respective legal counsel. This information is crucial for communication and coordination during the arbitration proceedings.
2. **Summary of the Dispute:** A concise summary of the dispute must be included. This summary should offer a clear overview of the issues and matters in contention between the parties. While it need not be overly detailed, it should give the other party and potential arbitrators a preliminary understanding of the nature of the conflict.
3. **Preliminary Relief Sought:** The requesting party is required to outline the relief sought from the respondent party. This includes a preliminary statement of the specific remedies or outcomes the claimant is seeking through arbitration. It also involves providing an estimate of the monetary value associated with the claims being made. This information helps the respondent and the arbitration tribunal understand the scope and potential financial implications of the dispute.
4. **Arbitration Agreement Details:** The request should include a copy or description of the arbitration agreement or clause that forms the basis for the dispute to be resolved through arbitration. This demonstrates that the dispute falls under the agreed-upon terms of arbitration, providing a legal foundation for the arbitration process.

5. **Multiple Arbitration Agreements:** If the claims are being made under multiple arbitration agreements, the requesting party must indicate which arbitration agreement pertains to each claim. This ensures clarity and helps the arbitration tribunal properly allocate and address each claim within the appropriate legal context.
6. **Arbitrator Selection:** The requesting party is expected to express their thoughts on the number of arbitrators that should be appointed for the case. Additionally, the “seat of arbitration”, which refers to the physical location where the arbitration proceedings will be primarily conducted, should be indicated. This information helps in the administrative aspects of forming the arbitration tribunal.
7. **Appointed Arbitrator Details:** If the claimant party has already appointed an arbitrator at the time of submitting the request, the relevant information about that arbitrator, including their name, address, telephone number, and email address, should be provided. This allows for transparency and communication between the arbitration parties and the appointed arbitrators.

Overall, Article 6 of the SCC Arbitration Rules 2023 ensures that a formal request for arbitration is comprehensive and informative, setting the groundwork for a fair and effective arbitration process by providing essential details to all parties involved and facilitating the administration of the proceedings.

#### Article 7 Registration fee

**(1) Upon filing the request for arbitration, the claimant shall pay a registration fee. The amount of the registration fee shall be determined in accordance with the schedule of costs (Appendix IV) in force on the date the request for arbitration is filed.**

Article 7(1) of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 pertains to the requirement for the claimant to pay a registration fee upon submitting a request for arbitration. This article outlines the specifics of this fee, including its calculation and timing. Let us analyse the key elements of Article 7(1):

1. **Request for Arbitration:** The article applies when the claimant initiates the arbitration process by submitting a formal request for arbitration to the SCC. This is the first step in commencing an arbitration case under the SCC Arbitration Rules.
2. **Registration Fee Requirement:** According to Article 7(1), upon filing the request for arbitration, the claimant is obligated to pay a registration fee. This fee is a mandatory financial obligation that the claimant must fulfil as part of the process of initiating the arbitration proceedings.
3. **Amount of Registration Fee:** The registration fee’s monetary amount is determined based on a predefined schedule of costs. This schedule is provided in Appendix IV of the SCC Arbitration Rules 2023. The specific fee payable by the claimant is calculated in accordance with this schedule in force at the time when the request for arbitration is formally submitted.
4. **Calculation of Fee:** The registration fee is not a fixed amount, but rather is calculated based on the scale provided in the schedule of costs. The amount may vary depending on

factors such as the monetary value of the claims being made, the complexity of the case, and the administrative costs associated with initiating the arbitration proceedings.

5. **Timing of Payment:** The claimant is required to pay the registration fee at the same time as submitting the request for arbitration. This means that the fee should accompany the formal request when it is filed with the SCC. This simultaneous payment and submission ensure that the claimant fulfils the financial obligation necessary to initiate the arbitration process.

Overall, Article 7(1) of the SCC Arbitration Rules 2023 establishes the requirement for the claimant to pay a registration fee upon submitting a request for arbitration. The fee's amount is determined by a schedule of costs, and its payment is an integral part of the process of commencing arbitration proceedings under the SCC's rules. This financial requirement helps cover administrative costs associated with the initiation of the arbitration and contributes to the overall functioning of the arbitration institution.

**(2) If the registration fee is not paid upon filing the request for arbitration, the Secretariat shall set a time period within which the claimant shall pay the registration fee. If the registration fee is not paid within this time period, the Secretariat shall dismiss the request for arbitration.**

Article 7(2) of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 addresses the consequences of non-payment of the registration fee by the claimant in the arbitration process. This article outlines the steps and timeline that follow if the claimant fails to pay the required registration fee. Let us analyse the key elements of Article 7(2):

1. **Non-Payment of Registration Fee:** This provision is triggered when the claimant, who has filed a request for arbitration under Article 7(1), fails to pay the required registration fee at the time of filing the request.
2. **Setting a Time Period:** If the registration fee is not paid upon filing the request for arbitration, the SCC's Secretariat (administrative body responsible for managing the arbitration proceedings) steps in. The Secretariat is authorised to set a specific time period within which the claimant must pay the registration fee. This time period serves as a secondary opportunity for the claimant to fulfil the financial requirement that is essential for the initiation of the arbitration process.
3. **Dismissal of Request:** If the claimant does not pay the registration fee within the designated time period set by the Secretariat, the consequence is that the Secretariat shall dismiss the request for arbitration. In other words, the arbitration proceedings will not move forward, and the claimant's request will not be considered or processed any further by the SCC.

Overall, Article 7(2) of the SCC Arbitration Rules 2023 underscores the importance of the registration fee in the arbitration process. It establishes a clear procedure for addressing situations where the claimant does not fulfil their financial obligation by failing to pay the registration fee. The article ensures that the administrative process is streamlined and efficient by allowing the Secretariat to dismiss requests for arbitration in cases of non-payment, thereby avoiding delays in cases where one party does not meet the necessary financial prerequisites. This provision contributes to maintaining the integrity and effectiveness of the arbitration process conducted under the SCC Arbitration Rules.

## Article 8 Commencement of arbitration

**Arbitration shall be deemed to commence on the date the Secretariat receives the request for arbitration.**

Article 8 of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 defines the commencement date of arbitration proceedings. This article outlines a crucial aspect of the arbitration process, specifying when the arbitration is considered officially initiated. Let us analyse the key element of Article 8:

**Commencement of Arbitration:** Article 8 states that arbitration proceedings shall be deemed to commence on the date the SCC's Secretariat receives the request for arbitration. In other words, the official start of the arbitration process is determined by the moment the Secretariat formally receives the claimant's request for arbitration, along with any accompanying documents and the required registration fee. This provision has a few important implications:

1. **Legal Effect:** The moment the Secretariat receives the request for arbitration, the arbitration process is considered to be officially initiated from a legal standpoint. This has consequences for various procedural and jurisdictional matters related to the arbitration case.
2. **Time Calculation:** Many aspects of the arbitration process, such as time limits for submitting statements, documents, and procedural steps, are often calculated based on the commencement date. This ensures that all parties have a clear and consistent reference point for the timing of their actions and submissions during the arbitration.
3. **Trigger for Procedural Steps:** Certain procedural steps, such as the appointment of arbitrators, setting up the arbitration tribunal, and sending notifications to the parties, are often triggered by the commencement of arbitration. This article provides a clear and unambiguous starting point for these actions.
4. **Jurisdictional Aspects:** The commencement date can be relevant for determining the jurisdiction of the arbitration tribunal, especially in cases where there might be disputes about the validity of the arbitration agreement or jurisdictional issues.

Overall, Article 8 of the SCC Arbitration Rules 2023 serves to establish a specific and consistent reference point for the commencement of arbitration proceedings. It ensures clarity in calculating time limits, initiating procedural steps, and addressing jurisdictional matters within the arbitration process. By defining a clear starting date for arbitration, this article contributes to the orderly and effective conduct of arbitration cases under the SCC's rules.



## Article 9 Answer

**(1) The Secretariat shall send a copy of the request for arbitration and any attached documents to the respondent. The Secretariat shall set a time period within which the respondent shall submit an answer to the SCC.**

**The answer shall include:**

**(i) any objections concerning the existence, validity or applicability of the arbitration agreement; however, failure to object shall not preclude the respondent from raising such objections at any time up to and including the submission of the statement of defence;**

**(ii) an admission or denial of the relief sought in the request for arbitration;**

**(iii) a preliminary statement of any counterclaims or set-offs, including an estimate of the monetary value thereof;**

**(iv) where counterclaims or set-offs are made under more than one arbitration agreement, a specification of the arbitration agreement under which each counterclaim or set-off is made;**

**(v) comments on the number of arbitrators and the seat of arbitration; and (vi) if applicable, the name, address, telephone number and e-mail address of the arbitrator appointed by the respondent.**

Article 9(1) of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 outlines the requirements and process for the respondent's submission of an answer in response to a claimant's request for arbitration. This article specifies the content that should be included in the respondent's answer and sets forth certain procedural aspects. Let us analyse the key elements of Article 9(1):

1. **Sending Documents and Setting Time Period:** The Secretariat is responsible for sending a copy of the claimant's request for arbitration, along with any attached documents, to the respondent. Additionally, the Secretariat establishes a specific time period within which the respondent is required to submit an answer to the SCC. This establishes a structured timeline for the respondent's response to the arbitration request.
2. **Content of the Answer:** The respondent's answer must include several specific components, as outlined in the article:
3. **Objections to Arbitration Agreement:** The respondent has the opportunity to raise any objections related to the existence, validity, or applicability of the arbitration agreement. Importantly, the article clarifies that the failure to raise such objections at this stage does not prevent the respondent from raising them later, up to and including the submission of the statement of defence.
4. **Admission or Denial of Relief Sought:** The respondent must indicate whether they admit or deny the relief sought in the claimant's request for arbitration. This clarifies the respondent's position on the substance of the dispute.
5. **Counterclaims or Set-offs:** If the respondent has any counterclaims or set-offs, they are required to provide a preliminary statement of these claims, including an estimate of their

monetary value. This helps provide a comprehensive view of the respondent's assertions and potential financial implications.

6. **Specification of Multiple Arbitration Agreements:** If the counterclaims or set-offs are made under multiple arbitration agreements, the respondent must specify which arbitration agreement pertains to each claim. This ensures clarity in allocating counterclaims or set-offs to the relevant legal context.
7. **Comments on Arbitrator Selection and Seat:** The respondent is expected to provide their input on the number of arbitrators and the seat of arbitration. This information contributes to administrative considerations for the composition of the arbitration tribunal and the logistical arrangements for the proceedings.
8. **Appointed Arbitrator Details (if applicable):** If the respondent has already appointed an arbitrator at the time of submitting the answer, the relevant information about that arbitrator should be provided. This fosters transparency and communication between the parties and the appointed arbitrators.

Overall, Article 9(1) of the SCC Arbitration Rules 2023 outlines the expectations for the respondent's answer to a request for arbitration. The article ensures that the respondent's submission covers important elements such as objections, admissions or denials, counterclaims or set-offs, arbitrator selection, and procedural considerations. This structured approach helps maintain consistency and clarity in the arbitration proceedings.

**(2) The Secretariat shall send a copy of the answer to the claimant. The claimant may be given an opportunity to submit comments on the answer, having regard to the circumstances of the case.**

Article 9(2) of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 addresses the procedure after the respondent submits their answer in an arbitration case. This article outlines the role of the Secretariat in transmitting the respondent's answer to the claimant and introduces the possibility for the claimant to submit comments on the answer. Let us analyse the key elements of Article 9(2):

**Transmission of Respondent's Answer:** As per Article 9(2), the Secretariat is responsible for sending a copy of the respondent's answer to the claimant. This step ensures that both parties are informed about each other's positions and arguments, promoting transparency and an understanding of the issues in dispute.

**Claimant's Opportunity to Submit Comments:** The article introduces the concept that the claimant may be given an opportunity to submit comments on the respondent's answer. This opportunity is not automatic and depends on the circumstances of the case. It signifies that the SCC Arbitration Rules allow for flexibility to accommodate specific case dynamics.

**Case-Specific Consideration:** The phrase "having regard to the circumstances of the case" indicates that the SCC and the Secretariat can consider the unique aspects of each arbitration case when deciding whether the claimant should be allowed to submit comments on the respondent's answer.

**Purpose of Comments:** The provision allows the claimant to provide additional insights or responses to the issues raised in the respondent's answer. It can be used as a way for the claimant to address specific points made by the respondent, clarify misunderstandings, or present further arguments or evidence.

**Ensuring Fairness:** Allowing the claimant to submit comments ensures fairness and an opportunity for both parties to engage in a balanced exchange of arguments and information. This contributes to the overall fairness and effectiveness of the arbitration process.

Overall, Article 9(2) of the SCC Arbitration Rules 2023 emphasises communication and fairness in the arbitration proceedings. By transmitting the respondent's answer to the claimant and potentially allowing the claimant to submit comments, the article promotes transparency, informed decision-making, and an opportunity for each party to respond to the other's positions. This contributes to a more comprehensive and balanced arbitration process under the SCC's rules.

### **(3) Failure by the respondent to submit an answer shall not prevent the arbitration from proceeding.**

Article 9(3) of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 addresses the scenario in which the respondent fails to submit an answer in response to the claimant's request for arbitration. This article clarifies the consequences of such a failure and its impact on the arbitration process. Let us analyse the key element of Article 9(3):

1. **Continuation of Arbitration:** Article 9(3) stipulates that if the respondent does not submit an answer within the prescribed time period, the failure to do so shall not prevent the arbitration from proceeding. In other words, the arbitration process will continue regardless of the respondent's lack of response.
2. **Unimpeded Arbitration:** This provision emphasises the principle that the arbitration process should not be unduly hindered by the non-participation or non-submission of documents by one of the parties. The claimant's request for arbitration and associated documentation still serve as the basis for the arbitration to move forward.
3. **Balancing Party Engagement:** The article helps prevent one party's non-participation from stalling the arbitration process. It ensures that the claimant's case can still be considered, even if the respondent has not formally responded.
4. **Impact on Decision-Making:** The respondent's failure to submit an answer might result in the arbitration tribunal making its decisions based solely on the information provided by the claimant in their request for arbitration and any attached documents. This underscores the importance of thoroughness on the part of the claimant in presenting their case.
5. **Applicability to Different Stages:** The article's language does not specify at which stage of the arbitration process the respondent's failure to submit an answer would occur. However, the intent seems to be to ensure that the arbitration can proceed despite non-participation by the respondent, regardless of the specific stage of the proceedings.

Overall, Article 9(3) of the SCC Arbitration Rules 2023 reinforces the principle of continuity in the arbitration process. It ensures that the lack of an answer from the respondent does not halt or obstruct

the proceedings, and the arbitration tribunal can make decisions based on the information available, as submitted by the claimant. This provision contributes to maintaining a fair and efficient arbitration process under the SCC's rules.

### **Article 10 Request for further details**

#### **(1) The Board may request further details from either party regarding any of their written submissions to the SCC.**

Article 10(1) of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 addresses the authority of the Board (the administrative body overseeing the arbitration process) to seek additional information from the parties involved in an arbitration case. This article outlines the circumstances under which the Board can request further details related to the written submissions made by the parties. Let us analyse the key element of Article 10(1):

1. **Authority to Request Further Details:** According to Article 10(1), the Board of the SCC has the discretion to request additional details from either party with regard to their written submissions that have been made to the SCC as part of the arbitration process.
2. **Written Submissions:** Written submissions refer to the documents and arguments that the parties present to the SCC as part of the arbitration proceedings. This can include the initial request for arbitration, answers, statements of defence, counterclaims, evidence, and any other written materials submitted by the parties.
3. **Purpose and Scope of Requests:** The article does not specify the specific situations in which the Board may request further details, nor does it elaborate on the exact nature of the details that may be sought. However, the provision suggests that the Board has the authority to seek clarification, additional information, or elaboration on the written submissions to enhance its understanding of the case.
4. **Ensuring Fairness and Clarity:** The ability to request further details is aimed at ensuring fairness in the arbitration proceedings and maintaining clarity in the information presented by the parties. By seeking additional information, the Board can address potential ambiguities, gaps, or complexities in the parties' submissions, leading to a more informed decision-making process.
5. **Promoting Efficiency and Effectiveness:** This provision also contributes to the efficiency and effectiveness of the arbitration process. If the Board identifies areas where more information is needed, it can proactively address these issues without unnecessary delays.

Overall, Article 10(1) of the SCC Arbitration Rules 2023 grants the Board the power to request additional details from the parties regarding their written submissions. This discretionary authority helps ensure that the arbitration process is fair, thorough, and well-informed, while also promoting efficiency in addressing any ambiguities or gaps in the parties' presentations.

**(2) If the claimant fails to comply with a request for further details, the Board may dismiss the case.**

Article 10(2) of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 addresses the consequences when the claimant does not comply with a request from the Board for further details regarding their written submissions in an arbitration case. This article outlines the potential action the Board can take in response to non-compliance. Let us analyse the key element of Article 10(2):

1. **Failure to Comply with Request:** Article 10(2) stipulates that if the claimant does not comply with a request from the Board to provide further details related to their written submissions, the Board has the authority to take action.
2. **Potential Dismissal of the Case:** The article states that one potential action the Board can take is to dismiss the case. This means that the arbitration proceedings can be terminated or halted if the claimant fails to provide the requested additional details.
3. **Consequences of Dismissal:** If the Board decides to dismiss the case, it essentially ends the arbitration process for that particular case. The parties will not proceed to a final hearing, and any claims or disputes raised by the claimant in their request for arbitration will not be resolved through the arbitration process.
4. **Encouragement of Compliance:** The provision serves as an incentive for the claimant to comply with the Board's request for further details. By potentially facing the dismissal of the case, the claimant is encouraged to provide the requested information, which ensures transparency and a more complete understanding of the case for all parties involved.
5. **Balance of Interests:** While the article emphasises compliance, it also acknowledges that non-compliance might not necessarily preclude the claimant from addressing the issue at a later stage of the proceedings. The claimant might still be able to present additional information and arguments up to and including the statement of defence.

Overall, Article 10(2) of the SCC Arbitration Rules 2023 underlines the importance of cooperation and compliance in the arbitration process. It highlights that failing to comply with a request for further details may lead to the Board taking action to potentially dismiss the case. This provision ensures that parties engage actively in providing relevant information to maintain the integrity and effectiveness of the arbitration proceedings.

**(3) If the respondent fails to comply with a request for further details regarding its counterclaim or set-off, the Board may dismiss the counterclaim or set-off.**

Article 10(3) of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 addresses the consequences when the respondent does not comply with a request from the Board for further details regarding their counterclaim or set-off in an arbitration case. This article outlines the potential action the Board can take in response to non-compliance. Let us analyse the key element of Article 10(3):

1. **Failure to Comply with Request:** Article 10(3) states that if the respondent does not comply with a request from the Board to provide further details related to their counterclaim or set-off, the Board has the authority to take action.

2. **Potential Dismissal of Counterclaim or Set-off:** The article specifies that one potential action the Board can take is to dismiss the counterclaim or set-off. This means that if the respondent fails to provide the requested additional details, the counterclaim or set-off might be removed from the arbitration proceedings.
3. **Impact of Dismissal:** If the Board decides to dismiss the counterclaim or set-off, it means that the respondent's additional claims or assertions will not be considered as part of the arbitration process. The focus of the proceedings will likely revert solely to the original claims made by the claimant.
4. **Encouragement of Compliance:** Similar to the purpose of Article 10(2), this provision serves as an incentive for the respondent to comply with the Board's request for further details. By potentially facing the dismissal of their counterclaim or set-off, the respondent is encouraged to provide the requested information, which ensures transparency and a complete understanding of the case for all parties involved.
5. **Balancing Interests:** The article recognises that non-compliance may not entirely preclude the respondent from raising the issue at a later stage, specifically up to and including the statement of defence. This acknowledges that the respondent might still have opportunities to present additional information and arguments even if they initially fail to provide the requested details.

Overall, Article 10(3) of the SCC Arbitration Rules 2023 emphasises the importance of cooperation and compliance in the arbitration process. It highlights that failing to comply with a request for further details regarding a counterclaim or set-off may lead to the Board considering dismissal of those additional claims or assertions. This provision encourages parties to actively engage in providing relevant information to maintain the fairness and effectiveness of the arbitration proceedings.

**(4) Failure by the respondent to otherwise comply with a request for further details shall not prevent the arbitration from proceeding.**

Article 10(4) of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 addresses the consequences when the respondent fails to comply with a request from the Board for further details in situations other than those related to counterclaims or set-offs. This article outlines the potential impact of non-compliance on the arbitration process. Let us analyse the key element of Article 10(4):

1. **Failure to Comply with Request:** Article 10(4) stipulates that if the respondent fails to comply with a request from the Board for further details in situations other than counterclaims or set-offs, there are specific consequences outlined.
2. **Proceeding with Arbitration:** The article clarifies that despite the respondent's failure to provide requested additional details, the arbitration proceedings will not be prevented from continuing. This means that the arbitration process will not be automatically halted or obstructed due to the respondent's non-compliance with the request for further details.
3. **Differentiating from Counterclaims and Set-offs:** This provision underscores the distinction between the treatment of counterclaims or set-offs (as discussed in Articles 10(2) and 10(3)) and other types of requests for further details. While non-compliance

with a request for details related to counterclaims or set-offs might lead to potential dismissal of those specific claims, non-compliance with other types of requests for further details does not have the same automatic consequence.

4. **Balancing Interests:** The article seems to reflect a balanced approach that acknowledges the importance of information exchange in the arbitration process while also recognising that the lack of compliance in certain instances might not warrant the same level of consequence as it does in cases involving counterclaims or set-offs.

Overall, Article 10(4) of the SCC Arbitration Rules 2023 emphasises the continuation of the arbitration process even if the respondent fails to provide requested further details in situations other than counterclaims or set-offs. This provision reflects a balanced approach that maintains the proceedings while ensuring that parties engage actively in the information exchange, especially when it pertains to counterclaims or set-offs that may impact the outcome of the case.

### **Article 11 Decisions by the Board**

**The Board takes decisions as provided under the Arbitration Rules, including deciding:**

- (i) whether the SCC manifestly lacks jurisdiction over the dispute pursuant to Article 12 (i);**
- (ii) whether to grant a request for joinder pursuant to Article 13;**
- (iii) whether claims made under multiple contracts shall proceed in a single arbitration pursuant to Article 14;**
- (iv) whether to consolidate cases pursuant to Article 15;**
- (v) on the number of arbitrators pursuant to Article 16;**
- (vi) on any appointment of arbitrators pursuant to Article 17;**
- (vii) on any challenge to an arbitrator pursuant to Article 19;**
- (viii) on the seat of arbitration pursuant to Article 25; and**
- (ix) on the advance on costs pursuant to Article 51.**

Article 11 of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 outlines the decision-making authority of the Board (administrative body overseeing the arbitration process) in various aspects of the arbitration proceedings. This article specifies the matters on which the Board has the power to make decisions under the SCC Arbitration Rules. Let us analyse the key elements of Article 11:

1. **Decision-Making Authority of the Board:** Article 11 establishes that the Board is empowered to make decisions as provided under the SCC Arbitration Rules. This means that the Board plays a significant role in determining certain critical aspects of the arbitration process based on the guidelines and provisions laid out in the rules.

2. Specific Decisions Outlined: The article enumerates several specific matters on which the Board is authorised to make decisions:
  - a. Jurisdiction: The Board decides whether the SCC manifestly lacks jurisdiction over the dispute, as per the provisions of Article 12(i). This addresses situations where it is clear that the SCC does not have the authority to hear the case.
  - b. Joinder Request: The Board decides whether to grant a request for joinder, as outlined in Article 13. Joinder involves the addition of additional parties to the ongoing arbitration proceedings.
  - c. Consolidation of Claims: The Board decides whether claims made under multiple contracts shall proceed in a single arbitration, in accordance with Article 14. This involves the consolidation of claims from different contracts into a single arbitration proceeding.
  - d. Consolidation of Cases: The Board has the authority to decide whether to consolidate multiple arbitration cases, as per Article 15. Consolidation here refers to combining separate arbitration cases into one.
  - e. Number of Arbitrators: The Board determines the number of arbitrators in a case, following the guidelines of Article 16.
  - f. Appointment of Arbitrators: The Board makes decisions regarding the appointment of arbitrators, as stipulated in Article 17.
  - g. Challenge to Arbitrators: The Board decides on challenges to arbitrators, addressing issues presented in Article 19 regarding the removal or replacement of an arbitrator.
  - h. Seat of Arbitration: The Board has the power to determine the seat of arbitration, as provided in Article 25. The seat of arbitration refers to the geographical location where the arbitration proceedings are primarily conducted.
  - i. Advance on Costs: The Board decides on the advance on costs, which involves the initial payment by parties to cover arbitration expenses, following the provisions of Article 51.
3. Significance of Board's Role: The article underscores the central role played by the Board in the administration of the arbitration process. The Board's decisions on these crucial matters help shape the proceedings, ensure fairness, and manage various procedural aspects effectively.

Overall, Article 11 of the SCC Arbitration Rules 2023 outlines the broad scope of decision-making authority vested in the Board. It highlights the importance of the Board's role in guiding and administering the arbitration proceedings according to the rules, ensuring that key matters are addressed in a consistent and organised manner.



## Article 12 Dismissal

The Board shall dismiss a case, in whole or in part, if:

- (i) the SCC manifestly lacks jurisdiction over the dispute; or
- (ii) the advance on costs is not paid pursuant to Article 51.

Article 12 of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 outlines the circumstances under which the Board (administrative body overseeing the arbitration process) has the authority to dismiss a case, either entirely or partially. The article specifies two distinct scenarios that can lead to the dismissal of a case. Let us analyse the key elements of Article 12:

1. Dismissal Scenarios:
  - a. Lack of Jurisdiction: The first scenario is when the SCC manifestly lacks jurisdiction over the dispute. This means that if it is unequivocally clear that the SCC does not have the authority to hear the case or resolve the dispute, the Board is empowered to dismiss the case based on lack of jurisdiction.
  - b. Non-Payment of Advance on Costs: The second scenario pertains to the advance on costs. If a party fails to pay the required advance on costs as outlined in Article 51 of the SCC Arbitration Rules, the Board has the authority to dismiss the case, either in its entirety or with respect to the part of the proceedings for which the advance on costs has not been paid.
2. Manifestly Lacks Jurisdiction: The term “manifestly” implies that the lack of jurisdiction is clear, obvious, and not subject to reasonable doubt. The Board’s authority to dismiss the case based on jurisdiction ensures that cases that fall outside the scope of the SCC’s jurisdiction are resolved promptly and efficiently.
3. Advance on Costs: The requirement to pay an advance on costs is a fundamental aspect of the arbitration process, as it ensures that parties contribute to covering the expenses associated with conducting the proceedings. Non-payment of the advance on costs might indicate a lack of commitment to the arbitration process or could impede the proceedings.
4. Partial Dismissal: The article allows for the possibility of dismissing a case partially, which means that only specific claims or issues might be dismissed while others continue. This flexibility reflects the intent to address situations fairly and proportionately.
5. Impact on Proceedings: Dismissal of a case is a significant outcome that essentially terminates the arbitration process for the dismissed claims or issues. It indicates the Board’s responsibility in upholding the integrity of the arbitration process and maintaining compliance with the rules.

Overall, Article 12 of the SCC Arbitration Rules 2023 provides a mechanism for the Board to take decisive action when faced with certain circumstances that could impact the integrity, jurisdiction, or financial aspects of the arbitration process. The article demonstrates the SCC’s commitment to maintaining a fair and efficient arbitration process by addressing potential challenges promptly.

## Article 13 Joinder of additional parties

### **(1) A party to the arbitration may request that the Board join one or more additional parties to the arbitration.**

Article 13(1) of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 addresses the procedure by which a party involved in an arbitration can request the joinder of additional parties to the ongoing arbitration proceedings. Let us analyse the key elements of Article 13(1):

1. **Joinder Request:** The article stipulates that a party to the arbitration has the right to request the joinder of one or more additional parties to the ongoing arbitration proceedings. Joinder refers to the process of adding new parties to an existing arbitration case.
2. **Scope of Joinder:** The article does not provide specific limitations on the types of parties that can be joined. It is generally understood that joinder can involve adding new claimants, respondents, or other relevant parties who have a legitimate interest in the dispute.
3. **Party's Right:** The article emphasises that the right to request joinder belongs to a "party to the arbitration". This means that the parties directly involved in the dispute have the authority to initiate the joinder process.
4. **Board's Role:** The joinder request is submitted to the Board, which is the administrative body overseeing the arbitration process. The Board's authority includes considering and deciding on joinder requests, as further specified in the subsequent provisions of the SCC Arbitration Rules.
5. **Flexibility in Adding Parties:** The provision highlights the SCC's recognition of the importance of allowing parties to involve relevant additional parties in the arbitration process when necessary. Joinder can be particularly relevant in complex disputes where various entities may have interconnected interests.
6. **Efficiency and Consolidation:** Allowing joinder requests can contribute to the efficiency of the proceedings, as it enables multiple related disputes to be resolved in a single arbitration. This is in line with the broader goal of promoting cost-effective and streamlined arbitration processes.
7. **Consent and Due Process:** While the article does not explicitly state the requirement for the consent of the parties being joined, the principles of due process and fairness would generally imply that parties being joined should have the opportunity to present their views on the joinder request.

Overall, Article 13(1) of the SCC Arbitration Rules 2023 establishes the right of a party to request the joinder of additional parties to an ongoing arbitration proceeding. This provision reflects the SCC's commitment to flexibility and efficiency in addressing complex disputes and allowing parties to involve relevant entities in the arbitration process as needed.

**(2) The request for joinder shall be made as early as possible. A request for joinder made after the submission of the answer will not be considered unless the Board decides otherwise. Articles 6 and 7 shall apply mutatis mutandis to the request for joinder.**

Article 13(2) of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 provides additional details and requirements regarding the timing and process of making a request for joinder of additional parties to an ongoing arbitration. Let us analyse the key elements of Article 13(2):

1. **Timely Joinder Request:** The article emphasises that a request for joinder should be made “as early as possible”. This encourages parties to initiate the joinder process promptly when it becomes apparent that additional parties should be included in the arbitration proceedings.
2. **Late Joinder Requests:** The article sets a limitation on the consideration of late joinder requests. If a request for joinder is made after the submission of the respondent’s answer, it will not be automatically considered unless the Board decides otherwise. This provision reflects the SCC’s concern for maintaining the efficiency and continuity of the arbitration process.
3. **Board’s Discretion:** The article grants the Board the discretion to decide whether to consider a late request for joinder that is made after the submission of the answer. This means that there might be exceptional cases where the Board finds it appropriate to allow late joinder requests, but it is not guaranteed.
4. **Application of Articles 6 and 7:** The article states that Articles 6 and 7 of the SCC Arbitration Rules shall apply “mutatis mutandis” to the request for joinder. This Latin phrase means “with necessary changes” or “by adapting what needs to be adapted”. It indicates that the procedural requirements outlined in Articles 6 and 7, which pertain to the request for arbitration and the payment of the registration fee, respectively, will also apply to the request for joinder.
5. **Promotion of Efficiency and Fairness:** By requiring timely joinder requests and potentially limiting late requests, the SCC aims to maintain the efficiency and fairness of the arbitration process. Timely initiation of the joinder process ensures that all relevant parties are identified and included early on, minimising disruptions to the proceedings.
6. **Balancing Party Interests:** The provision recognises the need to balance the interests of parties seeking to involve additional parties and the need to avoid unnecessary delays and complications in the arbitration proceedings.

Overall, Article 13(2) of the SCC Arbitration Rules 2023 outlines the timing requirements for making a request for joinder and highlights the SCC’s commitment to maintaining an effective and efficient arbitration process. It allows for discretion in considering late joinder requests while ensuring that the procedural framework outlined in the rules is applied to the joinder process.

**(3) Arbitration against the additional party shall be deemed to commence on the date the SCC receives the request for joinder.**

Article 13(3) of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 establishes a significant procedural aspect related to the commencement of arbitration proceedings against an additional party who has been joined to an ongoing arbitration case. Let us analyse the key elements of Article 13(3):

1. **Commencement of Arbitration:** The article specifies that when an additional party is joined to an ongoing arbitration case through a request for joinder, the arbitration proceedings against the newly joined party shall be deemed to commence on the date the SCC receives the request for joinder.
2. **Defining the Starting Point:** This provision establishes a clear starting point for the arbitration process involving the additional party. It clarifies that the timeline for the arbitration against the newly joined party begins when the request for joinder is formally received by the SCC.
3. **Coordination of Proceedings:** The provision contributes to the coordination and organisation of the arbitration proceedings, ensuring that the proceedings involving the original parties and the newly joined party are synchronised and follow a consistent timeline.
4. **Practical Implementation:** The stipulation in Article 13(3) helps avoid potential disputes or ambiguities regarding the starting date of arbitration for the additional party. It facilitates the determination of various procedural deadlines and milestones related to the newly joined party's involvement.
5. **Ensuring Fairness and Consistency:** By establishing a clear commencement date for the arbitration against the additional party, the SCC aims to ensure fairness and consistency in the treatment of all parties involved in the case.
6. **Transparent Process:** This provision aligns with the SCC's goal of maintaining a transparent and well-structured arbitration process. It aids in preventing confusion and supports efficient case management.

Overall, Article 13(3) of the SCC Arbitration Rules 2023 clarifies the beginning of the arbitration process for additional parties that are joined to an ongoing arbitration case through a request for joinder. This provision contributes to the coherence and organisation of the proceedings while ensuring that all parties are treated fairly and consistently throughout the arbitration process.

**(4) The Secretariat shall set a time period within which the additional party shall submit an answer to the request for joinder. Article 9 shall apply mutatis mutandis to the answer to the request for joinder.**

Article 13(4) of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 outlines the procedural requirements for the additional party that has been joined to an ongoing arbitration case through a request for joinder. Let us analyse the key elements of Article 13(4):

1. **Time Period for Answer:** The article mandates that the Secretariat (the administrative arm of the SCC) shall establish a specific time period within which the additional party must submit an answer to the request for joinder. This time frame provides clarity on when the newly joined party is expected to respond to the joinder request.
2. **Correlation with Article 9:** Article 9 of the SCC Arbitration Rules pertains to the respondent's answer to the claimant's request for arbitration. Article 13(4) draws a parallel between the answer to the request for joinder and the respondent's answer to the claimant's request for arbitration.
3. **Mutatis Mutandis Application:** The article specifies that Article 9 shall apply "mutatis mutandis" to the answer to the request for joinder. This means that the procedural principles and guidelines outlined in Article 9 for the respondent's answer will be adapted to the context of the answer to the request for joinder.
4. **Ensuring Due Process:** By applying the principles of Article 9 to the answer to the request for joinder, the SCC aims to ensure that due process and fairness are upheld for the newly joined party. This includes the opportunity to respond to the request and present their position on the joinder.
5. **Consistency in Procedure:** This provision contributes to maintaining procedural consistency within the arbitration process. It aligns the response to the request for joinder with the general structure and principles of responding to arbitration requests under the SCC rules.
6. **Efficiency and Management:** Setting a specific time period for the answer to the request for joinder ensures that the process remains efficient and well-organised, avoiding unnecessary delays.

Overall, Article 13(4) of the SCC Arbitration Rules 2023 outlines the timeline and procedural requirements for the additional party's response to the request for joinder. By referencing Article 9 and applying its principles "mutatis mutandis", the article ensures that the process is fair, consistent, and aligned with established arbitration procedures under the SCC rules.

**(5) The Board may decide to join one or more additional parties provided that the SCC does not manifestly lack jurisdiction over the dispute between the parties, including any additional party requested to be joined to the arbitration, pursuant to Article 12 (i).**

Article 13(5) of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 addresses the authority of the Board (administrative body overseeing the arbitration process) to decide whether to join additional parties to an ongoing arbitration proceeding. This article outlines the conditions under which the Board can make such a decision. Let us analyse the key elements of Article 13(5):

1. **Authority to Join Additional Parties:** The article grants the Board the authority to make a decision regarding the joinder of one or more additional parties to an ongoing arbitration case. This decision-making power allows the Board to determine whether the additional parties should be included in the arbitration proceedings.

2. **Limitations and Conditions:** The article outlines the limitations and conditions that must be met for the Board to decide on the joinder of additional parties:
3. **Jurisdictional Requirement:** The SCC must not “manifestly lack jurisdiction” over the dispute involving the parties, including any additional party requested to be joined. This condition ensures that the SCC has the necessary authority to hear and resolve the dispute, including any newly joined parties.
4. **Reference to Article 12(i):** The provision cites Article 12(i) of the SCC Arbitration Rules. This reference underscores the importance of the jurisdictional aspect and how the lack of jurisdiction can lead to the dismissal of a case.
5. **Balancing Jurisdiction and Joinder:** The article demonstrates a balance between the authority of the Board to decide on joining additional parties and the jurisdictional scope of the SCC over the dispute. It ensures that the parties are joined only if the SCC has jurisdiction over the entire dispute, including any newly added parties.
6. **Ensuring a Valid Arbitration Process:** The jurisdictional requirement in Article 13(5) ensures that the arbitration process remains legally valid and consistent with the SCC’s authority. By adhering to jurisdictional constraints, the SCC avoids potential issues that could arise from involving parties over which it lacks jurisdiction.
7. **Promotion of Fairness and Efficiency:** The provision reflects the SCC’s commitment to promoting fairness and efficiency in the arbitration process. The Board’s decision to join additional parties is subject to the jurisdictional criterion, which supports a balanced and effective resolution of disputes.

Overall, Article 13(5) of the SCC Arbitration Rules 2023 defines the conditions under which the Board can make a decision to join additional parties to an ongoing arbitration. By emphasising jurisdictional constraints and the SCC’s authority, this provision maintains a fair and efficient arbitration process while ensuring that parties are involved only when the SCC has the appropriate jurisdiction to resolve their disputes.

**(6) In deciding whether to grant the request for joinder where claims are made under more than one arbitration agreement, the Board shall consult with the parties and shall have regard to Article 14 (3) (i)-(iv).**

Article 13(6) of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 addresses the process by which the Board (administrative body overseeing the arbitration process) decides whether to grant a request for joinder in cases where claims are made under multiple arbitration agreements. This article outlines the consultation and considerations involved in such situations. Let us analyse the key elements of Article 13(6):

1. **Consultation and Consideration:** The article specifies that when deciding whether to grant a request for joinder in cases involving claims made under more than one arbitration agreement, the Board is required to consult with the parties and take certain factors into account.

2. **Claims Under Multiple Arbitration Agreements:** The provision focuses on situations where the dispute involves multiple arbitration agreements. This can occur when parties have entered into multiple contracts that each contain arbitration clauses, and the dispute arises under those different agreements.
3. **Consultation with Parties:** The article emphasises that the Board is obligated to consult with the parties involved in the arbitration process before making a decision on the joinder request. This consultation allows the Board to gather insights, perspectives, and information from the parties that can contribute to making an informed decision.
4. **Reference to Article 14(3) (i)-(iv):** The article points to specific provisions in Article 14(3) (i)-(iv) of the SCC Arbitration Rules. These provisions likely contain guidelines and criteria that the Board should consider when making decisions related to the consolidation of claims made under multiple arbitration agreements.
5. **Balancing Interests:** The consultation requirement and reference to Article 14(3) indicate that the Board’s decision-making process involves a balance between the interests of the parties, the efficiency of the proceedings, and the relevant provisions in the SCC rules.
6. **Complexity of Multicontract Disputes:** Cases involving claims under multiple arbitration agreements can be complex due to the potential differences in the terms, subject matter, and governing law of each contract. The Board’s consultation with the parties and consideration of relevant provisions aim to address these complexities effectively.
7. **Promotion of Transparency:** By consulting with the parties and considering specific provisions, the SCC reinforces its commitment to transparency and fairness in the decision-making process, particularly in cases that involve unique challenges.

Overall, Article 13(6) of the SCC Arbitration Rules 2023 underscores the importance of consultation and consideration when deciding whether to grant a request for joinder in cases involving claims made under multiple arbitration agreements. This provision demonstrates the SCC’s commitment to making well-informed decisions that account for the complexities and interests involved in multicontract disputes.

**(7) In all cases where the Board decides to grant the request for joinder, any decision as to the Arbitral Tribunal’s jurisdiction over any party joined to the arbitration shall be made by the Arbitral Tribunal.**

Article 13(7) of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 addresses a key procedural aspect related to the outcome of granting a request for joinder in an ongoing arbitration case. This article outlines the authority and responsibility of the Arbitral Tribunal when it comes to making decisions regarding the jurisdiction over parties that have been joined to the arbitration proceedings. Let us analyse the key elements of Article 13(7):

1. **Decision on Jurisdiction:** The article states that when the Board decides to grant a request for joinder, the decision regarding the Arbitral Tribunal’s jurisdiction over any party joined to the arbitration will be made by the Arbitral Tribunal itself.

2. **Arbitral Tribunal's Role:** The Arbitral Tribunal is the panel of arbitrators appointed to adjudicate the dispute between the parties. Article 13(7) assigns the responsibility to the Arbitral Tribunal to determine its jurisdiction over the newly joined parties.
3. **Maintaining Consistency:** By entrusting the Arbitral Tribunal with the decision on jurisdiction, the SCC aims to ensure consistency in the process. Since the Arbitral Tribunal is already familiar with the case, its jurisdiction, and the parties involved, it is well-suited to make these determinations.
4. **Jurisdictional Assessment:** The jurisdictional assessment is a critical component of arbitration, as it involves determining whether the Arbitral Tribunal has the authority to hear and resolve the dispute involving the newly joined parties. This assessment is based on factors such as the arbitration agreement, the scope of the dispute, and the parties' consent.
5. **Efficiency and Expertise:** Entrusting the Arbitral Tribunal with jurisdictional decisions for newly joined parties streamlines the process. The Arbitral Tribunal possesses the expertise and familiarity with the case, which can contribute to more efficient and informed decisions.
6. **Maintaining Neutrality and Fairness:** Having the Arbitral Tribunal decide on jurisdiction over the newly joined parties preserves the neutrality and impartiality of the arbitration process. It ensures that the jurisdictional determination is made by the tribunal rather than a party or administrative body.
7. **Reflecting Arbitration Principles:** Article 13(7) aligns with the principles of arbitration, where the Arbitral Tribunal has the authority to resolve all disputes related to jurisdiction, substantive matters, and procedural issues.

Overall, Article 13(7) of the SCC Arbitration Rules 2023 clarifies the role of the Arbitral Tribunal in determining its jurisdiction over parties that have been joined to the arbitration proceedings. This provision underscores the importance of maintaining procedural consistency, efficiency, and fairness while upholding the core principles of arbitration.

**(8) Where the Board decides to grant the request for joinder and the additional party does not agree to any arbitrator already appointed, the Board may release the arbitrators and appoint the entire Arbitral Tribunal, unless all parties, including the additional party, agree on a different procedure for the appointment of the Arbitral Tribunal.**

Article 13(8) of the SCC (Stockholm Chamber of Commerce) Arbitration Rules 2023 addresses the scenario where an additional party has been joined to an ongoing arbitration case through a request for joinder, but the newly joined party does not agree to any of the arbitrators already appointed. This provision outlines the steps that can be taken by the Board (administrative body overseeing the arbitration process) in such circumstances. Let us analyse the key elements of Article 13(8):

1. **Appointment of Arbitrators:** The article revolves around the appointment of arbitrators, which is crucial to the composition of the Arbitral Tribunal responsible for adjudicating the dispute.



2. **Lack of Agreement on Arbitrators:** The provision pertains to situations where the additional party that has been joined to the arbitration does not agree to any of the arbitrators who have already been appointed in the case. This lack of agreement can arise due to concerns about impartiality, expertise, or other factors.
3. **Releasing and Appointing the Tribunal:** In cases where the additional party does not agree to any appointed arbitrator, the Board is given the authority to release the arbitrators that have been appointed and subsequently appoint the entire Arbitral Tribunal. This means that all arbitrators will be newly appointed, potentially addressing the concerns raised by the additional party.
4. **Alternative Procedure Agreed Upon:** The article allows for flexibility in the process if all parties, including the newly joined party, agree on a different procedure for the appointment of the Arbitral Tribunal. This reflects the SCC's recognition of the importance of accommodating parties' preferences and agreements.
5. **Balancing Interests:** Article 13(8) illustrates a balance between the need for a fair and impartial tribunal and the practical necessity of ensuring the arbitration process proceeds efficiently.
6. **Ensuring Neutrality:** Releasing the arbitrators and appointing a new Arbitral Tribunal can help address concerns about the perception of bias or lack of neutrality, particularly when a newly joined party expresses reservations about the existing arbitrators.
7. **Collaborative Approach:** The article also emphasises the collaborative nature of arbitration, where parties are given the opportunity to agree on an alternative procedure if they see fit. This promotes a level of control and cooperation within the arbitration process.
8. **Efficient Resolution:** If the scenario described in the article arises, the procedure of releasing and appointing the entire Arbitral Tribunal could help in avoiding potential delays in the arbitration proceedings.

Overall, Article 13(8) of the SCC Arbitration Rules 2023 outlines a mechanism for addressing situations where an additional party joined through a joinder request does not agree to any appointed arbitrator. This provision maintains a balance between addressing parties' concerns and ensuring a fair, efficient, and impartial arbitration process.

## **Article 14 Multiple contracts in a single arbitration**

### **(1) Parties may make claims arising out of or in connection with more than one contract in a single arbitration.**

Article 14(1) of the SCC Arbitration Rules 2023 addresses the consolidation of claims arising out of or in connection with more than one contract into a single arbitration proceeding. This provision reflects the growing trend in international arbitration to increase efficiency and streamline the dispute resolution process by allowing parties to bring related claims together in a unified arbitration proceeding. Let us break down and analyse this provision:

1. **Consolidation of Claims:** The provision allows parties to consolidate claims that arise from multiple contracts into a single arbitration proceeding. This is beneficial because parties involved in multiple related contracts can avoid the inefficiencies and potential inconsistencies of separate arbitration proceedings for each contract. By consolidating claims, the arbitration process becomes more coherent and less time-consuming.
2. **Scope of Claims:** The provision is broad in its language, allowing for claims “arising out of or in connection with” multiple contracts. This indicates that not only direct claims under the contracts, but also claims that have a connection to or are closely related to the contracts, can be brought together. This flexibility accommodates situations where disputes may span across different contracts or involve related legal issues.
3. **Efficiency and Cost-Effectiveness:** Consolidating claims can lead to greater efficiency and cost-effectiveness. Parties can save time and resources by avoiding duplication of efforts, such as presenting the same evidence or arguments in separate arbitrations. Additionally, there are potential savings in terms of administrative fees and legal costs associated with holding multiple arbitration proceedings.
4. **Avoiding Inconsistent Decisions:** When related claims are brought in separate arbitrations, there is a risk of receiving conflicting decisions, which can create confusion and undermine the finality of the arbitration process. By consolidating claims, parties can ensure that a single arbitral tribunal addresses all related issues, leading to a more coherent and consistent outcome.
5. **Complex Disputes:** This provision is particularly useful for complex disputes involving multiple parties and contracts. It can help prevent “jurisdictional jockeying”, where parties attempt to initiate separate arbitrations to gain strategic advantages. Consolidation provides a mechanism to prevent such tactics and promotes a fair and equitable resolution.
6. **Arbitral Tribunal’s Role:** The provision does not explicitly outline the process for consolidation, as it likely leaves the procedural details to the arbitral tribunal or the institution administering the arbitration. This allows flexibility for adapting the consolidation process to the specifics of each case.

In summary, Article 14(1) of the SCC Arbitration Rules 2023 is a significant provision that empowers parties to bring claims arising from multiple contracts into a single arbitration proceeding. This reflects the growing need for efficiency, cost-effectiveness, and consistency in resolving complex and related disputes. Parties considering arbitration under these rules should carefully consider the potential benefits and implications of consolidating their claims.

**(2) If any party raises any objections as to whether all of the claims made against it may be determined in a single arbitration, the claims may proceed in a single arbitration provided that the SCC does not manifestly lack jurisdiction over the dispute between the parties pursuant to Article 12 (i).**

Article 14(2) of the SCC Arbitration Rules 2023 addresses the situation where a party raises objections about whether all the claims made against it can be determined in a single arbitration proceeding. This

provision sets out conditions under which the claims may proceed in a single arbitration. Let us analyse the key points of this provision:

1. **Objections and Consolidation:** This provision recognises that a party may raise objections to the consolidation of claims, likely based on concerns about the scope, complexity, or procedural fairness of addressing all claims in a single arbitration. The objections might relate to the arbitrability of certain claims, the compatibility of the claims, or other factors.
2. **Presumption in Favour of Consolidation:** The provision implies a presumption in favour of consolidating claims. It states that “the claims may proceed in a single arbitration”, indicating that the default option is to proceed with consolidation if there are no compelling reasons against it.
3. **Jurisdictional Review:** The SCC (Stockholm Chamber of Commerce) plays a role in determining whether the claims can be consolidated. However, the SCC’s jurisdiction is limited to ensuring it “does not manifestly lack jurisdiction over the dispute”. This refers to whether the SCC has the authority to oversee the arbitration, ensuring it falls within the scope of the SCC Arbitration Rules.
4. **Reference to Article 12 (i):** The provision refers to Article 12 (i) of the SCC Arbitration Rules, which likely outlines the criteria for determining the SCC’s jurisdiction. Unfortunately, the specific details of Article 12 (i) are not provided in the text you have provided, but it is crucial in assessing whether the SCC has the authority to proceed with the arbitration.
5. **Balancing Jurisdiction and Consolidation:** The provision combines the concepts of jurisdiction and consolidation. It highlights that even if a party raises objections to consolidation, the SCC’s jurisdiction must not be manifestly lacking. This suggests a balancing act between ensuring proper jurisdiction and addressing efficiency concerns through consolidation.
6. **Implications of Objections:** It is worth noting that while the provision acknowledges the right of a party to raise objections, it does not explicitly state what happens if objections are raised and the SCC does not manifestly lack jurisdiction. The presumption appears to be that consolidation will proceed unless there are substantial reasons against it.

In summary, Article 14(2) of the SCC Arbitration Rules 2023 deals with objections raised by parties regarding the consolidation of claims into a single arbitration. It indicates a preference for consolidation while placing a jurisdictional threshold on the SCC’s authority to oversee the arbitration. The provision aims to strike a balance between accommodating objections and promoting efficient and coherent dispute resolution. The full understanding of this provision would require a thorough examination of Article 12 (i) to grasp the criteria for the SCC’s jurisdiction.

**(3) In deciding whether the claims shall proceed in a single arbitration, the Board shall consult with the parties and shall have regard to:**

- (i) whether the arbitration agreements under which the claims are made are compatible;**
- (ii) whether the relief sought arises out of the same transaction or series of transactions;**
- (iii) the efficiency and expeditiousness of the proceedings; and**
- (iv) any other relevant circumstances.**

Article 14(3) of the SCC Arbitration Rules 2023 outlines the factors and considerations that the Board should take into account when deciding whether claims shall proceed in a single arbitration. This provision emphasises the principles and criteria that guide the decision-making process for consolidating claims. Let us analyse the key components of this provision:

1. **Board Decision and Consultation:** The provision mandates that the decision regarding the consolidation of claims is within the purview of the Board. The Board is required to consult with the parties before making this decision, emphasising transparency and fairness in the process. This consultation allows parties to present their perspectives and arguments, contributing to a balanced decision-making process.
2. **Compatibility of Arbitration Agreements (i):** One of the primary considerations for consolidation is whether the arbitration agreements that give rise to the claims are compatible. This implies that the arbitration agreements should not contradict or conflict with each other, and they should facilitate the joint resolution of claims. Compatible arbitration agreements are essential for a cohesive and effective arbitration process.
3. **Same Transaction or Series of Transactions (ii):** The provision highlights the importance of claims arising out of the same transaction or series of transactions. Claims that have a close factual and legal connection are more likely to be consolidated because they share common elements and context. This criterion ensures that related claims are addressed together, enhancing efficiency and coherence.
4. **Efficiency and Expeditiousness (iii):** The provision emphasises the goal of achieving efficiency and expeditiousness in the arbitration proceedings. Consolidating related claims can prevent duplication of efforts, reduce costs, and streamline the process. This factor aligns with the broader trend in international arbitration to enhance the speed and cost-effectiveness of dispute resolution.
5. **Other Relevant Circumstances (iv):** The provision acknowledges that there might be additional circumstances that could influence the decision on consolidation. This open-ended criterion allows the Board to consider various contextual factors that might not be explicitly listed but could still impact the overall fairness and effectiveness of the arbitration process.

In summary, Article 14(3) of the SCC Arbitration Rules 2023 provides a comprehensive framework for the Board's decision on whether claims should proceed in a single arbitration. The listed criteria ensure that consolidation decisions are based on principles of compatibility, relatedness, efficiency, and fairness. The provision underscores the importance of consultation with parties and the flexibility to consider specific circumstances that may arise in complex arbitration cases.

**(4) In all cases where the Board decides that the claims may proceed in a single arbitration, any decision as to the Arbitral Tribunal’s jurisdiction over the claims shall be made by the Arbitral Tribunal.**

Article 14(4) of the SCC Arbitration Rules 2023 addresses the allocation of authority between the Board and the Arbitral Tribunal when it comes to deciding the jurisdiction of the Arbitral Tribunal in cases where the Board has determined that claims may proceed in a single arbitration. Let us analyse the key elements of this provision:

1. **Board’s Decision on Consolidation:** The provision presupposes that the Board has already decided that the claims may proceed in a single arbitration, based on the factors and considerations outlined in the previous sections of Article 14. This indicates that the threshold for consolidation has been met, and the decision to consolidate the claims has been made.
2. **Jurisdiction of the Arbitral Tribunal:** Once the Board has determined that consolidation is appropriate, the provision states that the Arbitral Tribunal will make decisions regarding its jurisdiction over the consolidated claims. This jurisdictional decision pertains to whether the Arbitral Tribunal has the authority to hear and decide the specific claims that have been consolidated.
3. **Separation of Powers:** The provision establishes a clear separation of powers between the Board and the Arbitral Tribunal. The Board’s role involves determining whether consolidation is warranted based on various criteria, while the Arbitral Tribunal’s role is to assess its jurisdiction over the specific consolidated claims. This division of responsibilities helps maintain procedural fairness and allows each entity to fulfil its respective functions.
4. **Jurisdictional Challenges:** The decision on the Arbitral Tribunal’s jurisdiction is crucial, as parties might raise challenges about whether the Tribunal has the authority to adjudicate certain claims. This could involve questions about the scope of the arbitration agreements, the applicability of certain claims to the chosen arbitration forum, or related matters.
- 5.
6. **Efficiency and Procedural Continuity:** By assigning the jurisdictional decision to the Arbitral Tribunal, the SCC Arbitration Rules aim to ensure procedural continuity. Since the Arbitral Tribunal has been selected to handle the consolidated claims, it is best positioned to determine its own jurisdiction to avoid procedural delays and promote efficiency.

In summary, Article 14(4) of the SCC Arbitration Rules 2023 outlines the procedural steps that follow the Board’s decision to consolidate claims. After the Board has decided that claims may proceed in a single arbitration, the responsibility for deciding the Arbitral Tribunal’s jurisdiction over those consolidated claims shifts to the Tribunal itself. This provision maintains a clear division of roles, promotes procedural efficiency, and allows the Tribunal to assess its own jurisdiction based on the specific consolidated claims before it.

## Article 15 Consolidation of arbitrations

**(1) At the request of a party, the Board may decide to consolidate a newly commenced arbitration with a pending arbitration, if:**

**(i) the parties agree to consolidate;**

**(ii) all the claims are made under the same arbitration agreement; or**

**(iii) where the claims are made under more than one arbitration agreement, the relief sought arises out of the same transaction or series of transactions and the Board considers the arbitration agreements to be compatible.**

Article 15(1) of the SCC Arbitration Rules 2023 addresses the consolidation of a newly commenced arbitration with a pending arbitration upon the request of a party. This provision outlines the conditions under which such consolidation can occur. Let us break down and analyse the key elements of this provision:

1. **Consolidation Upon Request:** The provision enables a party to request the consolidation of a newly initiated arbitration with an ongoing arbitration. This mechanism aims to enhance procedural efficiency by addressing related disputes together, rather than conducting separate proceedings.
2. **Conditions for Consolidation:** The conditions for consolidation are outlined in the subsequent sub-points:
  - a. **Agreement to Consolidate (i):** Consolidation is permissible if all parties involved in both arbitrations agree to the consolidation. This reflects the importance of party autonomy and mutual consent in shaping the arbitration process.
  - b. **Single Arbitration Agreement (ii):** If all claims in both arbitrations are made under a single arbitration agreement, consolidation is possible. This indicates a close legal relationship between the claims and underscores the unity of the dispute resolution process.
  - c. **Multiple Arbitration Agreements (iii):** When claims are made under multiple arbitration agreements, consolidation can occur if the relief sought arises out of the same transaction or series of transactions. Additionally, the arbitration agreements themselves must be deemed compatible by the Board. This recognises that related claims can be consolidated when there is a substantial factual connection and the arbitration agreements are harmonious.
3. **Balancing Efficiency and Consent:** The provision strikes a balance between procedural efficiency and party autonomy. While it allows for consolidation even without unanimous consent (when certain conditions are met), it still respects the importance of parties agreeing to the consolidation process.
4. **Unity of Transaction or Series of Transactions:** The requirement for the relief sought to arise out of the same transaction or series of transactions is significant. This ensures that the claims are closely related and share a factual and legal connection, justifying their consolidation for efficient resolution.

5. **Board’s Discretion:** The Board’s decision-making authority is evident throughout this provision. The Board has the power to evaluate whether the consolidation conditions are met and to decide whether consolidation is appropriate in a given case.

In summary, Article 15(1) of the SCC Arbitration Rules 2023 provides a mechanism for consolidating a newly commenced arbitration with a pending arbitration. It outlines specific conditions that must be met for consolidation to occur, ranging from party agreement to the compatibility of arbitration agreements and the unity of the relief sought. This provision balances efficiency, party autonomy, and the need for a coherent and streamlined arbitration process.

**(2) In deciding whether to consolidate, the Board shall consult with the parties and the Arbitral Tribunal and shall have regard to:**

- (i) the stage of the pending arbitration;**
- (ii) the efficiency and expeditiousness of the proceedings; and**
- (iii) any other relevant circumstances.**

Article 15(2) of the SCC Arbitration Rules 2023 addresses the considerations and factors that the Board should take into account when deciding whether to consolidate a newly commenced arbitration with a pending arbitration. This provision emphasises the principles and criteria that guide the decision-making process for consolidation. Let us analyse the key components of this provision:

1. **Consultation Requirement:** The provision mandates that the Board consult with both the parties and the Arbitral Tribunal when considering whether to consolidate the arbitrations. This consultation process promotes transparency, fairness, and inclusivity in the decision-making process, ensuring that all relevant stakeholders have an opportunity to present their perspectives.
2. **Stage of the Pending Arbitration (i):** This factor highlights the importance of assessing the stage of the pending arbitration when deciding on consolidation. The provision suggests that the procedural progress of the existing arbitration can influence the decision. For instance, if the pending arbitration is well-advanced, consolidation might impact the proceedings differently than if the arbitration is at an early stage.
3. **Efficiency and Expeditiousness (ii):** The principle of efficiency and expeditiousness is again emphasised in this context. The Board must consider how consolidation might impact the overall efficiency of the proceedings. Consolidation can lead to time and cost savings, but this factor also acknowledges that consolidating arbitrations might sometimes lead to potential delays.
4. **Relevant Circumstances (iii):** Similar to other provisions in the SCC Arbitration Rules, this provision includes a catch-all criterion for “any other relevant circumstances”. This flexible language recognises that each case may have unique elements that could impact the decision on consolidation. The Board’s ability to consider such circumstances ensures a case-specific approach to consolidation.

5. **Balancing Considerations:** The listed factors indicate a clear balance between the need for efficiency, the progress of the existing arbitration, and the specific circumstances of the cases involved. The consultation process with the parties and the Arbitral Tribunal contributes to informed decision-making that respects the intricacies of each case.

In summary, Article 15(2) of the SCC Arbitration Rules 2023 provides a framework for the Board’s decision on whether to consolidate a newly commenced arbitration with a pending arbitration. The provision reflects the principles of transparency, efficiency, and case-specific considerations. The factors outlined in the provision help ensure that consolidation decisions are made in a balanced manner, taking into account the stage of the pending arbitration, the efficiency of proceedings, and other relevant circumstances.

**(3) Where the Board decides to consolidate, the Board may release any arbitrator already appointed.**

**Consolidation Decision:** Similar to what was mentioned before, this provision presupposes that the Board has already decided to consolidate the arbitrations based on the conditions and factors mentioned in the previous sections of Article 15.

1. **Release of Appointed Arbitrator:** This provision empowers the Board with the authority to release any arbitrator who has already been appointed for one of the individual arbitrations that are being consolidated.
2. **Adjustments for Consolidation:** Consolidating multiple arbitrations into a single proceeding often involves changes in the composition of the Arbitral Tribunal. Releasing an arbitrator from one of the individual arbitrations can be necessary to ensure that the new, consolidated tribunal is impartial, balanced, and well-suited to handle the broader scope of the consolidated claims.
3. **Maintaining Fairness:** The release of an arbitrator might be essential to maintain the fairness and impartiality of the proceedings, particularly when the consolidation brings together claims from different parties and contracts.
4. **Board’s Discretion:** The use of the term “may” indicates that the Board has the discretion to decide whether releasing an arbitrator is appropriate in the context of consolidation. This discretionary power allows the Board to tailor the composition of the Arbitral Tribunal to the needs of the consolidated case.
5. **Practical Considerations:** Releasing an arbitrator could also be practical in terms of logistics. If multiple arbitrators were initially appointed across separate arbitrations, it might be more efficient to release one or more of them to create a new panel for the consolidated arbitration.

In summary, Article 15(3) of the SCC Arbitration Rules 2023 addresses the potential release of an arbitrator when the Board decides to consolidate arbitrations. This provision reflects the flexibility of the arbitration process, allowing for adjustments to the composition of the Arbitral Tribunal to suit the requirements of the consolidated case. It emphasises the Board’s discretionary authority to ensure the effectiveness and fairness of the consolidated proceedings.



## COMPOSITION OF THE ARBITRAL TRIBUNAL

### Article 16 Number of arbitrators

#### (1) The parties may agree on the number of arbitrators.

Article 16(1) of the SCC Arbitration Rules 2023 addresses the issue of determining the number of arbitrators in an arbitration proceeding. This provision highlights the importance of party autonomy and allows the parties involved in the arbitration to agree on the composition of the arbitral tribunal. Let us analyse the key points of this provision:

1. **Party Autonomy:** This provision reflects the principle of party autonomy in arbitration. Party autonomy means that the parties involved have significant control and freedom to shape various aspects of the arbitration process, including the number of arbitrators who will adjudicate their dispute.
2. **Number of Arbitrators:** The provision specifically pertains to the determination of the number of arbitrators on the arbitral tribunal. This number can vary, with some cases opting for a single arbitrator and others choosing a panel of three or more arbitrators, depending on the complexity and scope of the dispute.
3. **Flexibility:** By allowing the parties to agree on the number of arbitrators, the provision provides flexibility to cater to the specific needs of each case. This flexibility can be particularly useful in tailoring the arbitration process to the nature of the dispute and the preferences of the parties.
4. **Efficiency and Costs:** The decision on the number of arbitrators can impact the efficiency and costs of the arbitration. A sole arbitrator might lead to a faster and more cost-effective process, while a larger panel might provide diverse perspectives but might also lead to increased costs and potential delays.
5. **Consensus Building:** Deciding on the number of arbitrators is often an important initial step in the arbitration process. The parties' agreement on this matter can set the tone for cooperation and consensus building as the arbitration unfolds.
6. **Potential Implications:** While the provision allows the parties to agree on the number of arbitrators, it is important to note that the choice might have implications for the appointment process, decision-making, and procedural matters. These considerations should be carefully weighed by the parties.

In summary, Article 16(1) of the SCC Arbitration Rules 2023 underscores the principle of party autonomy in arbitration by allowing the parties to agree on the number of arbitrators. This provision provides flexibility and recognises that the number of arbitrators can impact the arbitration process, efficiency, and costs. It highlights the importance of tailoring the arbitration procedure to the specific needs and preferences of the parties involved.

**(2) Where the parties have not agreed on the number of arbitrators, the Board shall decide whether the Arbitral Tribunal shall consist of a sole arbitrator or three arbitrators, having regard to the complexity of the case, the amount in dispute and any other relevant circumstances.**

Article 16(2) of the SCC Arbitration Rules 2023 addresses the situation where the parties have not agreed on the number of arbitrators for an arbitration proceeding. This provision outlines the process by which the number of arbitrators will be determined, taking into account various factors. Let us analyse the key elements of this provision:

1. **Absence of Agreement:** This provision comes into play when the parties involved in the arbitration have not reached an agreement on the number of arbitrators. In such cases, the Board steps in to make this determination.
2. **Number of Arbitrators:** The provision specifically deals with the decision between having a sole arbitrator or a panel of three arbitrators on the arbitral tribunal. This decision has significant implications for the arbitration process, including its efficiency and cost.
3. **Board's Role:** The Board, as mentioned in the provision, takes on the responsibility of making this decision. The Board's involvement ensures a neutral and objective determination, avoiding potential biases that could arise if one of the parties were solely responsible for choosing the number of arbitrators.
4. **Factors for Consideration:** The provision outlines specific factors that the Board should take into account when deciding the number of arbitrators:
  - a. **Complexity of the Case:** More complex cases might benefit from the perspectives and expertise of multiple arbitrators. This could lead to a fairer and more informed decision-making process.
  - b. **Amount in Dispute:** The monetary value involved in the dispute can also influence the decision. Larger amounts might warrant a panel of three arbitrators to ensure thorough consideration.
  - c. **Other Relevant Circumstances:** The provision allows the Board to consider additional relevant circumstances that might impact the arbitration process. This flexible criterion ensures that various contextual factors are considered.
5. **Balancing Factors:** The provision reflects a balance between efficiency and fairness. A sole arbitrator might lead to a quicker and more cost-effective process, while three arbitrators could bring diverse perspectives but could also lead to increased costs and potential delays.
6. **Objective Decision-Making:** The provision ensures an objective and informed decision by mandating that the Board considers specific criteria. This prevents arbitrary determinations and supports a just and equitable arbitration process.

In summary, Article 16(2) of the SCC Arbitration Rules 2023 outlines the process for determining the number of arbitrators when the parties have not agreed on it. The Board's role in this process ensures an impartial decision that takes into account factors such as the case's complexity, the amount in dispute, and other relevant circumstances. This provision aims to strike a balance between efficiency and fairness in the arbitration proceedings.

## Article 17 Appointment of arbitrators

### (1) The parties may agree on a procedure for appointment of the Arbitral Tribunal.

Article 17(1) of the SCC Arbitration Rules 2023 addresses the issue of appointing the Arbitral Tribunal in an arbitration proceeding. This provision emphasises the importance of party autonomy and allows the parties involved in the arbitration to agree on a specific procedure for appointing the members of the tribunal. Let us analyse the key points of this provision:

1. **Party Autonomy:** This provision reaffirms the principle of party autonomy in arbitration. Party autonomy means that the parties have the freedom to shape various aspects of the arbitration process according to their preferences and needs, including the procedure for appointing the arbitrators.
2. **Appointment Procedure:** The provision is concerned with the method or process by which the Arbitral Tribunal will be appointed. Different arbitration institutions and rules offer various procedures for selecting arbitrators, and this provision allows the parties to tailor the appointment procedure to their satisfaction.
3. **Flexibility:** By enabling the parties to agree on the appointment procedure, the provision provides flexibility to accommodate the unique circumstances and preferences of each case. Different cases might benefit from different appointment procedures based on factors such as the number of arbitrators, the complexity of the dispute, and the parties' trust in specific institutions or mechanisms.
4. **Parties' Agreement:** The provision requires the parties to reach an agreement on the appointment procedure. This underscores the importance of consensus and cooperation in shaping the arbitration process.
5. **Institutional and Ad Hoc Arbitration:** Depending on the arbitration rules chosen, the parties can opt for institutional arbitration, where an established institution assists with the appointment process, or ad hoc arbitration, where the parties manage the appointment process themselves.
6. **Tailoring the Process:** The parties' ability to agree on the appointment procedure allows them to ensure that the process is efficient, transparent, and consistent with their expectations. They can select a process that aligns with their level of involvement and their trust in the chosen arbitrators.
7. **Potential Implications:** While the provision grants the parties the freedom to agree on the appointment procedure, they should be mindful of the potential implications on the efficiency, impartiality, and neutrality of the arbitration process. Certain procedures might introduce delays or complexities, while others could ensure a smoother appointment process.

In summary, Article 17(1) of the SCC Arbitration Rules 2023 emphasises party autonomy in arbitration by allowing the parties to agree on a procedure for appointing the Arbitral Tribunal. This provision provides flexibility and recognises that the appointment procedure can impact the arbitration

process's fairness and efficiency. It highlights the importance of tailoring the appointment process to the specific needs and preferences of the parties involved.

**(2) Where the parties have not agreed on a procedure, or if the Arbitral Tribunal has not been appointed within the time period agreed by the parties or, where the parties have not agreed on a time period, within the time period set by the Board, the appointment shall be made pursuant to paragraphs (3)–(7).**

Article 17(2) of the SCC Arbitration Rules 2023 addresses the situation where the parties have not agreed on a procedure for appointing the Arbitral Tribunal, or if the tribunal has not been appointed within the stipulated timeframes. This provision outlines the default mechanism for appointing arbitrators in such cases. Let us analyse the key elements of this provision:

1. **Absence of Agreement or Delay:** This provision applies in two scenarios: when the parties have not agreed on a procedure for appointing arbitrators, and when the appointed Arbitral Tribunal has not been established within the specified timeframe agreed upon by the parties or set by the Board.
2. **Default Mechanism:** In the absence of an agreed-upon procedure or in cases of delay, the default procedure outlined in paragraphs (3) to (7) will come into effect. These paragraphs will specify the steps for appointing the arbitrators.
3. **Ensuring Progress:** This provision is designed to ensure that arbitration proceedings do not get stuck due to a lack of agreement on the appointment procedure or delays in constituting the tribunal. It ensures that the arbitration process can proceed without undue hindrances.
4. **Timeframes:** The provision acknowledges the importance of setting timeframes for appointing the Arbitral Tribunal. If the parties have not agreed on a timeframe, the Board will determine the appropriate time period for the appointment.
5. **Paragraphs (3)–(7):** The reference to paragraphs (3) to (7) indicates that the specific steps for the appointment process will be outlined in those subsequent paragraphs. These steps are likely to include the involvement of the Board, the selection of arbitrators, and the process for filling vacancies, if any.
6. **Fairness and Impartiality:** While the provision outlines a default mechanism, it is important to ensure that the process for appointing arbitrators remains fair, impartial, and transparent, even in the absence of an agreed-upon procedure.
7. **Efficiency and Progress:** The provision reflects a desire to keep the arbitration process moving forward, even when there are uncertainties or delays in the appointment of arbitrators.

In summary, Article 17(2) of the SCC Arbitration Rules 2023 addresses the scenario where there is no agreed-upon procedure for appointing the Arbitral Tribunal or when the tribunal has not been appointed within the specified timeframes. This provision establishes a default mechanism for making appointments, emphasising the importance of procedural progress and the role of the Board in ensuring that the arbitration process can proceed smoothly.

**(3) Where the Arbitral Tribunal is to consist of a sole arbitrator, the parties shall be given ten days to jointly appoint the arbitrator. If the parties fail to appoint the arbitrator within this time, the Board shall make the appointment.**

Article 17(3) of the SCC Arbitration Rules 2023 outlines the procedure for appointing a sole arbitrator when the parties have not agreed on a specific procedure or when the parties fail to make the appointment within a designated timeframe. Let us analyse the key elements of this provision:

1. **Sole Arbitrator Scenario:** This provision applies specifically when the arbitration is intended to be presided over by a sole arbitrator, as opposed to a panel of multiple arbitrators.
2. **Joint Appointment Period:** The provision stipulates that the parties have a period of ten days to jointly appoint the sole arbitrator. During this time, the parties are expected to reach an agreement on the choice of the arbitrator.
3. **Default Procedure:** The provision establishes a default timeframe for the parties to agree on the appointment. If the parties are unable to agree on an arbitrator within these ten days, the default procedure outlined in the provision comes into effect.
4. **Board's Role in Default Scenario:** If the parties do not make the appointment within the ten-day period, the responsibility shifts to the Board to make the appointment. This ensures that the arbitration process continues without undue delay, even if the parties are unable to agree on an arbitrator themselves.
5. **Efficiency and Timeliness:** The provision emphasises efficiency and timeliness in the arbitration process. By setting a specific timeframe for the parties to make the appointment, the provision encourages swift decision-making.
6. **Balancing Party Autonomy and Procedural Progress:** While the provision allows the parties to initially decide on the arbitrator, it also recognises that procedural progress should not be stalled due to disagreements. The involvement of the Board ensures that the arbitration process moves forward, even when parties cannot agree.
7. **Balance of Power:** The provision strikes a balance between allowing the parties to exercise their autonomy and ensuring that the arbitration process can proceed smoothly. It avoids a scenario where the arbitration process is disrupted by disputes over the appointment.

In summary, Article 17(3) of the SCC Arbitration Rules 2023 outlines the procedure for appointing a sole arbitrator when the parties have not agreed on a specific procedure or when the parties fail to appoint an arbitrator within the stipulated ten-day period. This provision emphasises the importance of efficiency, timeliness, and the role of the Board in ensuring the progression of the arbitration process.

**(4) Where the Arbitral Tribunal is to consist of more than one arbitrator, each party shall appoint an equal number of arbitrators and the Board shall appoint the chairperson. Where a party fails to appoint any arbitrator within the stipulated time period, the Board shall make the appointment.**

Article 17(4) of the SCC Arbitration Rules 2023 outlines the procedure for appointing an Arbitral Tribunal consisting of multiple arbitrators. This provision focuses on the allocation of appointments among the parties and the role of the Board in ensuring the process runs smoothly. Let us analyse the key elements of this provision:

1. **Multi-Arbitrator Tribunal:** This provision applies when the arbitration tribunal is composed of more than one arbitrator, creating a panel of arbitrators to handle the case.
2. **Equal Appointment by Parties:** The provision establishes a mechanism where each party is responsible for appointing an equal number of arbitrators to the tribunal. This ensures that the tribunal remains balanced and impartial by reflecting the parties' interests.
3. **Board's Role in Chairperson Appointment:** While the parties appoint their respective arbitrators, the Board's role comes into play when appointing the chairperson of the Arbitral Tribunal. This centralises the process for choosing the chairperson, which can have significant implications for the tribunal's proceedings.
4. **Default Appointment by Board:** If a party fails to appoint any arbitrator within the designated time period, the Board steps in to make the appointment. This mechanism prevents any party from delaying the process through non-cooperation.
5. **Balancing Power and Impartiality:** The provision seeks to strike a balance between the parties' autonomy to appoint arbitrators and the need to ensure the arbitration process is not disrupted due to a failure to appoint. It also aims to maintain the impartiality and fairness of the tribunal.
6. **Efficiency and Timeliness:** The provision emphasises the efficiency and timeliness of the appointment process. By setting a specific timeframe and default mechanism, the provision encourages parties to act promptly and avoid delays.
7. **Implications for Tribunal Dynamics:** The provision acknowledges that the selection of the chairperson can influence the dynamics of the tribunal. The Board's role in this appointment ensures an objective and impartial process.

In summary, Article 17(4) of the SCC Arbitration Rules 2023 outlines the procedure for appointing an Arbitral Tribunal comprising multiple arbitrators. It emphasises the equal distribution of appointments among the parties and the central role of the Board in appointing the chairperson. The provision ensures that the arbitration process remains balanced, impartial, efficient, and continues even in cases of a party's failure to appoint an arbitrator within the stipulated time period.

**(5) Where there are multiple claimants or respondents and the Arbitral Tribunal is to consist of more than one arbitrator, the multiple claimants, jointly, and the multiple respondents, jointly, shall**

**appoint an equal number of arbitrators. If either side fails to make such joint appointment, the Board may appoint the entire Arbitral Tribunal.**

Article 17(5) of the SCC Arbitration Rules 2023 addresses the appointment procedure for cases involving multiple claimants or respondents in an arbitration where the tribunal is composed of more than one arbitrator. This provision outlines the process for jointly appointing arbitrators by the multiple claimants or respondents and involves the Board if there is a failure to reach a joint appointment. Let us analyse the key elements of this provision:

1. **Multiple Parties Scenario:** This provision applies when there are multiple claimants or respondents involved in the arbitration. Such a scenario often arises in complex disputes involving various parties with distinct interests.
2. **Equal Appointment by Multiple Claimants and Respondents:** The provision requires joint action from multiple parties. In cases where there are multiple claimants, they must jointly appoint a certain number of arbitrators. Similarly, multiple respondents must also jointly appoint an equal number of arbitrators.
3. **Balance and Impartiality:** The joint appointment requirement ensures that both sides of the dispute have an equal say in appointing arbitrators. This contributes to a balanced and impartial composition of the Arbitral Tribunal.
4. **Default Mechanism:** If either side (claimants or respondents) fails to make the required joint appointment within the stipulated timeframe, the Board may step in to make the appointments. This default mechanism prevents one side from delaying the process through non-cooperation.
5. **Efficiency and Progress:** The provision underscores the importance of procedural efficiency and timely progress in the arbitration process. By setting a mechanism for joint appointments and a default provision, the arbitration process can move forward even in the absence of full cooperation.
6. **Board's Role:** The Board's authority to appoint the entire Arbitral Tribunal in case of a failure to make joint appointments reflects the institution's commitment to ensuring that the arbitration process remains fair and impartial.
7. **Complex Disputes:** This provision is particularly relevant in complex disputes involving multiple parties with potentially conflicting interests. It provides a structured framework for appointment that acknowledges the realities of multi-party disputes.

In summary, Article 17(5) of the SCC Arbitration Rules 2023 outlines the appointment procedure for cases involving multiple claimants or respondents in arbitrations with more than one arbitrator. The provision emphasises the importance of joint appointments by the multiple parties and introduces a default mechanism through the Board's involvement if parties fail to reach joint appointments. This ensures a balanced, efficient, and timely arbitration process even in complex disputes involving multiple parties.

**(6) If the parties are of different nationalities, the sole arbitrator or the chairperson of the Arbitral Tribunal shall be of a different nationality than the parties, unless the parties have agreed otherwise, or the Board otherwise deems it appropriate.**

Article 17(6) of the SCC Arbitration Rules 2023 addresses the nationality of the sole arbitrator or the chairperson of the Arbitral Tribunal in cases where the parties are of different nationalities. This provision ensures diversity and impartiality in the composition of the tribunal. Let us analyse the key elements of this provision:

1. **Diversity in Nationality:** This provision emphasises the importance of diversity in the nationality of arbitrators in cases where the parties involved are of different nationalities. The goal is to ensure impartiality and avoid any appearance of bias based on nationality.
2. **Sole Arbitrator or Chairperson:** The provision applies to both scenarios: when there is a sole arbitrator presiding over the case and when there is a panel of arbitrators with a chairperson. In both cases, the nationality requirement applies to the sole arbitrator or the chairperson, who often plays a significant role in guiding the proceedings.
3. **Nationality of Parties:** The requirement is triggered when the parties themselves are of different nationalities. This acknowledges that parties from different countries might have distinct perspectives and interests, and having an arbitrator of a different nationality can help ensure a balanced approach.
4. **Exceptions:** The provision allows for exceptions when the parties have agreed otherwise or when the Board determines that a departure from the nationality requirement is appropriate. This flexibility accounts for cases where parties might have specific reasons to opt for an arbitrator of a particular nationality or where exceptional circumstances warrant a deviation.
5. **Impartiality and Appearance of Bias:** By mandating that the arbitrator or chairperson should be of a different nationality than the parties, the provision aims to enhance the perception of impartiality and reduce concerns about any potential bias.
6. **Board's Discretion:** The provision gives the Board the authority to determine whether a departure from the nationality requirement is appropriate. This discretionary power ensures that the Board can consider unique circumstances and make informed decisions.
7. **Complex International Cases:** This provision is particularly relevant in international arbitration cases involving parties from different countries. It helps maintain confidence in the arbitration process by ensuring diverse representation.

In summary, Article 17(6) of the SCC Arbitration Rules 2023 emphasises the importance of having an arbitrator or chairperson of a different nationality than the parties in cases where the parties are of different nationalities. This provision promotes diversity, impartiality, and fairness in the composition of the Arbitral Tribunal. The provision also acknowledges the need for flexibility by allowing exceptions based on parties' agreements or the Board's judgment.



**(7) When appointing arbitrators, the Board shall consider the nature and circumstances of the dispute, the applicable law, the seat and language of the arbitration and the nationality of the parties.**

Article 17(7) of the SCC Arbitration Rules 2023 outlines the factors that the Board should consider when appointing arbitrators. This provision emphasises the importance of ensuring a well-balanced and appropriate composition of the Arbitral Tribunal based on various relevant factors. Let us analyse the key elements of this provision:

1. **Balanced Composition:** This provision reflects the principle of appointing a balanced and impartial tribunal by ensuring that various relevant factors are taken into account.
2. **Nature and Circumstances of the Dispute:** The nature of the dispute, including its complexity and subject matter, can influence the selection of arbitrators. Certain disputes might require specific expertise or experience that aligns with the nature of the case.
3. **Applicable Law:** The legal framework that governs the dispute can influence the selection of arbitrators who are knowledgeable about the relevant laws and regulations. This can lead to more informed and accurate decisions.
4. **Seat and Language of the Arbitration:** The location of the arbitration (seat) and the language in which proceedings will be conducted can impact the choice of arbitrators. Familiarity with local laws and language can contribute to the efficiency and effectiveness of the arbitration process.
5. **Nationality of the Parties:** This provision reiterates the significance of considering the nationality of the parties to ensure diversity and mitigate potential bias.
6. **Tailored Decision:** The provision reflects the importance of tailoring the appointment of arbitrators to the specific circumstances of each case. Different cases might require different expertise, linguistic abilities, and cultural sensitivities.
7. **Enhancing Impartiality:** By mandating that the Board considers these factors, the provision enhances the perception of impartiality and fairness in the arbitration process.
8. **Guidance for the Board:** The provision provides clear guidance to the Board on the relevant criteria to consider during the appointment process. This ensures that the appointment decisions are well-informed and aligned with the specific case.

In summary, Article 17(7) of the SCC Arbitration Rules 2023 outlines the factors that the Board should consider when appointing arbitrators. This provision aims to ensure the appointment of a well-balanced and impartial Arbitral Tribunal by taking into account the nature of the dispute, the applicable law, the seat and language of the arbitration, and the nationality of the parties. The provision reflects the goal of tailoring the appointment process to the unique circumstances of each arbitration case.

## Article 18 Impartiality, independence, and availability

### (1) Every arbitrator must be impartial and independent.

Article 18(1) of the SCC Arbitration Rules 2023 emphasises the fundamental principles of impartiality and independence that every arbitrator must adhere to during the arbitration process. Let us analyse the key elements of this provision:

1. **Impartiality:** Impartiality refers to the arbitrator's ability to approach the case without any bias or prejudice in favour of any party. An impartial arbitrator ensures that all parties are treated fairly and that their arguments and evidence are considered objectively.
2. **Independence:** Independence signifies that arbitrators must not be influenced by any external factors, interests, or relationships that could compromise their ability to render an unbiased decision. It ensures that arbitrators are free from undue pressures or conflicts of interest.
3. **Foundational Principle:** Impartiality and independence are foundational principles of arbitration. They safeguard the integrity of the arbitration process and the legitimacy of the decisions rendered.
4. **Avoiding Conflicts of Interest:** Arbitrators must avoid situations where their personal, financial, or professional interests could potentially compromise their ability to act independently. This includes disclosing any potential conflicts of interest to the parties involved.
5. **Maintaining Trust:** Impartial and independent arbitrators inspire trust in the arbitration process. Parties are more likely to have confidence in the proceedings and the outcome when they believe the arbitrators are unbiased and free from any external influence.
6. **Ethical Obligations:** Impartiality and independence are not only legal requirements but also ethical obligations for arbitrators. These principles are enshrined in various international arbitration rules and conventions.
7. **Challenges and Disqualification:** If doubts arise regarding an arbitrator's impartiality or independence, parties have the right to challenge the arbitrator's appointment or request their disqualification. This mechanism ensures a fair and transparent process.
8. **Preservation of Integrity:** Upholding the principles of impartiality and independence contributes to the legitimacy of the arbitration system. It prevents outcomes that could be tainted by bias or external influences.

In summary, Article 18(1) of the SCC Arbitration Rules 2023 underlines the pivotal importance of every arbitrator being impartial and independent. These principles are integral to maintaining the credibility, fairness, and integrity of the arbitration process. Impartial and independent arbitrators are essential for building trust among parties and ensuring that arbitration decisions are based on objective evaluation and judgment.

**(2) Before being appointed, a prospective arbitrator shall disclose any circumstances that may give rise to justifiable doubts as to the prospective arbitrator’s impartiality or independence.**

Article 18(2) of the SCC Arbitration Rules 2023 outlines the obligation of prospective arbitrators to disclose any circumstances that could potentially raise concerns about their impartiality or independence before their appointment. Let us analyse the key elements of this provision:

1. **Transparency and Disclosure:** This provision highlights the importance of transparency in the arbitration process. Prospective arbitrators are required to provide full and candid disclosure of any circumstances that could potentially affect their impartiality or independence.
2. **Pre-Appointment Obligation:** The provision emphasises that the disclosure obligation arises before the arbitrator is officially appointed to the case. This ensures that the parties and the appointing authority are fully aware of any potential issues before making a decision.
3. **Avoiding Doubts:** The goal of the provision is to prevent any justifiable doubts about an arbitrator’s impartiality or independence from arising during the arbitration process. Early disclosure allows parties to assess any potential conflicts and make informed decisions.
4. **Ethical Responsibility:** The provision places an ethical responsibility on prospective arbitrators to be forthcoming about any circumstances that could affect their ability to act impartially and independently.
5. **Avoiding Bias:** The requirement for disclosure helps prevent situations where arbitrators unknowingly or unintentionally carry biases or conflicts that could impact their decision-making.
6. **Challenges and Transparency:** By disclosing potential conflicts or issues in advance, prospective arbitrators contribute to a more transparent and fair appointment process. It also allows parties to make informed decisions about challenges or disqualifications.
7. **Building Trust:** Fulfilling the disclosure requirement builds trust among the parties and fosters confidence in the arbitration process. Parties are more likely to trust arbitrators who are open about any potential conflicts.
8. **Safeguarding Impartiality and Independence:** The provision aligns with the fundamental principles of impartiality and independence in arbitration. It ensures that parties can have confidence in the arbitrator’s ability to render unbiased decisions.

In summary, Article 18(2) of the SCC Arbitration Rules 2023 underscores the importance of transparency and disclosure by requiring prospective arbitrators to reveal any circumstances that might raise justifiable doubts about their impartiality or independence. This provision enhances the credibility and integrity of the arbitration process by addressing potential conflicts of interest or biases before they can impact the proceedings.

**(3) Once appointed, an arbitrator shall submit to the Secretariat a signed statement of acceptance, availability, impartiality and independence, disclosing any circumstances that may give rise to**

**justifiable doubts as to the arbitrator’s impartiality or independence. The Secretariat shall send a copy of the statement of acceptance, availability, impartiality and independence to the parties and the other arbitrators.**

Article 18(3) of the SCC Arbitration Rules 2023 outlines the requirement for appointed arbitrators to provide a signed statement affirming their acceptance, availability, impartiality, and independence, and to disclose any circumstances that might raise concerns about their impartiality or independence. This provision reinforces the transparency and ethical standards expected from arbitrators. Let us analyse the key elements of this provision:

1. **Confirmation of Acceptance and Qualifications:** After an arbitrator is appointed, this provision requires them to provide a signed statement affirming their acceptance of the appointment, confirming their availability, and attesting to their impartiality and independence. This statement also serves to declare their qualifications to serve as an arbitrator in the case.
2. **Disclosure of Relevant Circumstances:** The provision emphasises that the appointed arbitrator must also disclose any circumstances that might create justifiable doubts about their impartiality or independence. This disclosure ensures that parties and other arbitrators are aware of any potential issues that could impact the arbitration process.
3. **Secretariat’s Role:** The appointed arbitrator submits this statement to the Secretariat, which is responsible for administering the arbitration under the SCC Arbitration Rules. The Secretariat plays a pivotal role in maintaining the integrity and fairness of the arbitration process.
4. **Transparency to Parties and Co-Arbitrators:** The provision mandates that the Secretariat shares a copy of the arbitrator’s signed statement of acceptance, availability, impartiality, and independence with the parties involved in the arbitration and the other arbitrators on the tribunal. This disclosure ensures openness and transparency among all stakeholders.
5. **Promptness and Efficiency:** Requiring the submission of this statement promptly after appointment ensures that any potential concerns are addressed early in the process, allowing parties to take appropriate action if necessary.
6. **Building Confidence:** The requirement for the signed statement reaffirms the ethical standards expected from arbitrators and promotes confidence in the arbitration process. It assures parties that arbitrators are committed to maintaining impartiality and independence.
7. **Arbitrator Accountability:** The provision places accountability on appointed arbitrators to be forthright about their qualifications, availability, and any potential conflicts. This accountability reinforces the credibility of the arbitration system.

In summary, Article 18(3) of the SCC Arbitration Rules 2023 outlines the post-appointment obligations of arbitrators. It mandates the submission of a signed statement that affirms their acceptance, availability, impartiality, and independence, while also disclosing any circumstances that might raise concerns about their impartiality or independence. The Secretariat’s role in sharing this statement with parties and co-arbitrators promotes transparency and ensures that all parties are well-informed about the arbitrator’s status and potential conflicts.

**(4) An arbitrator shall immediately inform the parties and the other arbitrators in writing if any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence arise during the course of the arbitration.**

Article 18(4) of the SCC Arbitration Rules 2023 focuses on the ongoing obligation of arbitrators to promptly disclose any circumstances that might arise during the course of the arbitration that could lead to concerns about their impartiality or independence. This provision highlights the importance of maintaining transparency and trust throughout the arbitration process. Let us analyse the key elements of this provision:

1. **Continuing Obligation:** This provision underscores that the obligation of arbitrators to disclose potential conflicts of interest or other circumstances affecting their impartiality and independence does not end with their appointment. It extends throughout the entire arbitration process.
2. **Prompt Disclosure:** The provision emphasises the need for immediate and timely disclosure. Arbitrators are required to inform the parties and the other members of the tribunal as soon as they become aware of any circumstances that could raise doubts about their impartiality or independence.
3. **Ensuring Fairness:** The requirement for prompt disclosure is crucial to maintaining a fair and unbiased arbitration process. It allows parties to address any concerns and take appropriate actions, such as requesting the arbitrator's disqualification if necessary.
4. **Preserving Trust:** By disclosing relevant circumstances promptly, arbitrators help preserve the trust and confidence of the parties in the arbitration process. It demonstrates their commitment to transparency and ethical conduct.
5. **Minimising Delays:** Immediate disclosure helps prevent unnecessary delays in the arbitration proceedings. If a conflict of interest or other issue arises, parties can address it promptly rather than discovering it later in the process.
6. **Cooperation Among Arbitrators:** Informing other arbitrators about potential conflicts or issues fosters open communication and collaboration within the tribunal. This can lead to more effective decision-making.
7. **Ethical Responsibility:** The provision places a high ethical responsibility on arbitrators to act in the best interests of the arbitration and the parties involved. It reflects the expectation that arbitrators act with integrity throughout the proceedings.
8. **Mitigating Potential Bias:** Timely disclosure of conflicts or issues helps mitigate potential bias or perceptions of bias that could arise if undisclosed circumstances come to light later in the process.

In summary, Article 18(4) of the SCC Arbitration Rules 2023 highlights the ongoing duty of arbitrators to promptly disclose any circumstances that may affect their impartiality or independence during the course of the arbitration. This provision reflects the importance of transparency, ethical conduct, and maintaining trust in the arbitration process. It ensures that parties are informed and can take appropriate actions to safeguard the fairness and integrity of the proceedings.

## Article 19 Challenge to arbitrators

**(1) A party may challenge any arbitrator if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess the qualifications agreed by the parties.**

Article 19(1) of the SCC Arbitration Rules 2023 addresses the right of a party to challenge an arbitrator under certain circumstances. This provision ensures that parties can seek to remove an arbitrator from the tribunal if there are concerns about impartiality, independence, or qualifications. Let us analyse the key elements of this provision:

1. **Right to Challenge:** This provision confirms that parties have the right to challenge an arbitrator under specific circumstances. A challenge is a formal procedure by which a party seeks to disqualify an arbitrator from the tribunal.
2. **Impartiality and Independence:** One basis for a challenge is if circumstances exist that create justifiable doubts about the arbitrator's impartiality or independence. This underscores the importance of ensuring a fair and unbiased arbitration process.
3. **Qualifications:** Another ground for challenge is if the arbitrator does not possess the qualifications that were agreed upon by the parties. This ensures that arbitrators appointed meet the agreed-upon criteria and have the necessary expertise for the case.
4. **Party's Right to Protect Interests:** The provision recognises the parties' legitimate interest in having arbitrators who are impartial, independent, and qualified to decide the dispute. Challenging an arbitrator is a way for parties to protect their rights within the arbitration process.
5. **Preserving Trust:** Allowing challenges based on impartiality, independence, and qualifications helps maintain trust in the arbitration process. Parties are more likely to accept the arbitration outcome when they believe the tribunal is composed of qualified and unbiased arbitrators.
6. **Procedure for Challenge:** The SCC Arbitration Rules likely outline a specific procedure for raising challenges, ensuring that the process is formal, fair, and transparent.
7. **Maintaining Integrity:** By providing the means to challenge arbitrators, the provision ensures that the arbitration process maintains its integrity and is free from any actual or perceived conflicts of interest.
8. **Safeguard Against Unqualified Arbitrators:** The provision prevents the inclusion of arbitrators who do not possess the agreed qualifications. This protects the quality and fairness of the arbitration proceedings.

In summary, Article 19(1) of the SCC Arbitration Rules 2023 outlines the circumstances under which a party can challenge an arbitrator. It empowers parties to seek the removal of an arbitrator if there are justifiable doubts about their impartiality, independence, or if they lack the agreed qualifications. This provision reflects the commitment to maintaining the integrity, fairness, and trustworthiness of the arbitration process.

**(2) A party may challenge an arbitrator it has appointed, or in whose appointment it has participated, only for reasons it becomes aware of after the appointment was made.**

Article 19(2) of the SCC Arbitration Rules 2023 outlines the limitations and conditions under which a party can challenge an arbitrator it has appointed or participated in appointing. This provision ensures that challenges to party-appointed arbitrators are based on grounds that arise after the appointment, balancing the parties' right to challenge with the need for stability in the arbitration process. Let us analyse the key elements of this provision:

1. **Limited Grounds for Challenge:** This provision specifies that a party-appointed arbitrator can be challenged only based on reasons that become apparent after the appointment. This limits the ability to challenge arbitrators solely based on pre-existing concerns.
2. **Balancing Interests:** The provision aims to strike a balance between a party's right to challenge its appointed arbitrator and the stability of the arbitration process. Once an arbitrator is appointed, it is important to maintain the efficiency of the proceedings.
3. **Post-Appointment Developments:** The provision requires that challenges be rooted in circumstances that arise after the arbitrator's appointment. This prevents parties from abusing the challenge process to disrupt the proceedings due to prior disagreements or tactics.
4. **Ensuring Fairness:** By allowing challenges based only on newly discovered reasons, the provision ensures that the challenge mechanism is used to address genuine concerns about impartiality, independence, or qualifications.
5. **Preserving Efficiency:** The provision contributes to the efficiency of the arbitration process by minimising disruptions caused by frequent challenges. It encourages parties to carefully consider arbitrator appointments before making them.
6. **Transparent Grounds:** Any challenge must be based on reasons that the challenging party has become aware of. This promotes transparency and accountability in the challenge process.
7. **Party-Appointed Arbitrators:** The provision specifically addresses challenges to arbitrators appointed by a party. This is important because party-appointed arbitrators are expected to represent the appointing party's interests.
8. **Process Clarity:** The provision outlines a clear framework for challenging party-appointed arbitrators, specifying that the challenge must be based on new developments. This helps prevent frivolous challenges and ensures that challenges are taken seriously.

In summary, Article 19(2) of the SCC Arbitration Rules 2023 establishes the circumstances under which a party can challenge an arbitrator it has appointed or participated in appointing. Challenges are permissible only for reasons that arise after the arbitrator's appointment, aiming to balance the parties' right to challenge with the need to maintain an efficient and stable arbitration process. This provision ensures that challenges are valid and based on relevant developments rather than pre-existing disagreements or strategic considerations.

**(3) A party wishing to challenge an arbitrator shall submit a written statement to the Secretariat stating the reasons for the challenge within 15 days from the date the circumstances giving rise to the challenge became known to the party. Failure to challenge an arbitrator within the stipulated time constitutes a waiver of the party's right to make the challenge.**

Article 19(3) of the SCC Arbitration Rules 2023 outlines the procedure and timeline for parties to challenge an arbitrator. This provision sets out the steps that a party must take if it wishes to challenge an arbitrator and establishes the consequences of failing to challenge within the specified time frame. Let us analyse the key elements of this provision:

1. **Written Statement Requirement:** The provision requires that a party wishing to challenge an arbitrator must do so by submitting a written statement to the Secretariat. This ensures that challenges are formal, documented, and communicated to the relevant administrative body.
2. **Reasons for Challenge:** The written statement must include the reasons for the challenge. This ensures that challenges are based on valid and specific grounds related to impartiality, independence, or qualifications.
3. **Time Limit:** The provision imposes a 15-day time limit within which a party must submit the written statement challenging an arbitrator. The clock starts ticking from the date the circumstances giving rise to the challenge became known to the party.
4. **Promptness:** The time limit emphasises the importance of promptness in addressing concerns about arbitrators. Parties are expected to act swiftly once they become aware of potential grounds for challenge.
5. **Waiver of Right:** Failure to challenge an arbitrator within the stipulated 15-day period results in a waiver of the party's right to challenge. In other words, the party loses the opportunity to challenge that arbitrator on those grounds.
6. **Balancing Party Rights:** The provision balances the right of parties to challenge with the need for procedural efficiency and certainty. It prevents parties from strategically delaying challenges and disrupting the arbitration process.
7. **Transparency:** Requiring a written statement and a specific time frame promotes transparency and clarity in the challenge process. This ensures that the Secretariat and other parties are informed of the challenge and its basis.
8. **Fairness and Due Process:** The provision ensures that challenges are not made at the last minute, providing both parties and the tribunal with adequate time to address the challenge before proceeding with the arbitration.

In summary, Article 19(3) of the SCC Arbitration Rules 2023 establishes the process and timeline for parties to challenge an arbitrator. It requires a written statement stating the reasons for the challenge to be submitted to the Secretariat within 15 days of becoming aware of the circumstances. Failure to adhere to this time frame results in a waiver of the right to challenge. This provision ensures that challenges are made promptly, based on valid grounds, and that the arbitration process maintains procedural efficiency.



**(4) The Secretariat shall notify the parties and the arbitrators of the challenge and give them an opportunity to submit comments.**

Article 19(4) of the SCC Arbitration Rules 2023 outlines the procedural steps that the Secretariat must follow once a party submits a challenge against an arbitrator. This provision emphasises transparency, fairness, and the involvement of all relevant parties in the challenge process. Let us analyse the key elements of this provision:

1. **Challenge Notification:** The provision mandates that the Secretariat must inform both the parties involved in the arbitration and the arbitrators about the challenge that has been raised against an arbitrator. This notification ensures that all stakeholders are aware of the challenge and can respond accordingly.
2. **Transparency:** By notifying both the parties and the arbitrators, the process remains transparent, and all parties have equal access to information about the challenge and the reasons behind it.
3. **Fairness and Due Process:** The provision aligns with the principles of fairness and due process by giving the parties and the arbitrators the opportunity to respond to the challenge. This ensures that all sides have a chance to present their viewpoints and provide any relevant information.
4. **Stakeholder Involvement:** The involvement of the arbitrators ensures that the tribunal's perspective is considered. It also allows arbitrators who are not directly challenged to provide their insights into the challenge.
5. **Opportunity to Submit Comments:** The Secretariat must allow the parties and the arbitrators to submit comments regarding the challenge. This allows them to provide their perspectives on the challenge's merits and potential impact on the proceedings.
6. **Balancing Interests:** By giving all parties an opportunity to comment, the Secretariat ensures a balanced and comprehensive understanding of the challenge, considering the views of both the challenging party and the arbitrator being challenged.
7. **Informed Decision-Making:** The provision enables the Secretariat to make informed decisions regarding the challenge based on a well-rounded understanding of the situation.
8. **Efficiency:** While allowing comments from all parties, the provision also contributes to the efficiency of the challenge process by incorporating relevant input in a structured manner.

In summary, Article 19(4) of the SCC Arbitration Rules 2023 outlines the actions of the Secretariat once a party raises a challenge against an arbitrator. The provision requires the Secretariat to notify all parties and the arbitrators about the challenge and provide them with the opportunity to submit comments. This approach promotes transparency, fairness, and due process in the challenge process, ensuring that all relevant perspectives are considered before a decision is made regarding the challenge.

**(5) If the other party agrees to the challenge, the arbitrator shall resign. In all other cases, the Board shall take the final decision on the challenge.**

Article 19(5) of the SCC Arbitration Rules 2023 outlines the procedure for handling a challenge to an arbitrator when the challenged arbitrator's resignation is not readily agreed upon by all parties. This provision specifies the actions to be taken based on the responses of the parties involved. Let us analyse the key elements of this provision:

1. **Challenge Acceptance:** If the challenged arbitrator and the other party agree to the challenge, the provision mandates that the challenged arbitrator shall resign. This streamlined process helps avoid unnecessary delay and administrative burden.
2. **Mutual Consent:** The provision acknowledges the significance of mutual agreement between the challenging party and the arbitrator being challenged. Such an agreement reflects the parties' understanding of potential conflicts or issues that could impact the arbitration's fairness.
3. **Efficiency and Cooperation:** In cases where the challenge is accepted, the provision promotes efficiency and cooperation by allowing for a prompt resolution without the need for further administrative procedures.
4. **Board's Role:** In situations where the other party does not agree to the challenge, the Board, which is likely the appointing authority overseeing the arbitration under the SCC Arbitration Rules, steps in to make the final decision on the challenge.
5. **Impartial Decision:** The Board's involvement ensures an impartial and objective assessment of the challenge. This approach prevents any potential bias that could arise if one of the parties had unilateral authority over the challenge's outcome.
6. **Expertise and Neutrality:** The Board's role in making the final decision enhances the credibility and neutrality of the challenge resolution process. The Board is likely composed of experienced and qualified professionals in arbitration matters.
7. **Consideration of Arguments:** The Board's involvement implies a careful evaluation of the challenge and the arguments presented by the parties. This decision-making process ensures that all relevant factors are taken into account.
8. **Ensuring Fairness:** The provision's structure ensures fairness by ensuring that parties have an opportunity to agree to a challenge, while also providing a mechanism for challenges that do not have mutual consent.

In summary, Article 19(5) of the SCC Arbitration Rules 2023 outlines the outcomes of a challenge to an arbitrator based on the responses of the parties. If the challenge is accepted by both parties, the challenged arbitrator resigns. In cases where mutual agreement is not reached, the Board takes the final decision on the challenge. This provision ensures that challenges are addressed efficiently and fairly, whether by mutual agreement or through an impartial decision-making process.

## Article 20 Release from appointment

### (1) The Board shall release an arbitrator from appointment where:

- (i) the Board accepts the resignation of the arbitrator;
- (ii) a challenge to the arbitrator under Article 19 is sustained; or
- (iii) the arbitrator is otherwise unable or fails to perform the arbitrator's functions.

Article 20(1) of the SCC Arbitration Rules 2023 outlines the circumstances under which the Board, which likely serves as the appointing authority in SCC arbitration proceedings, is empowered to release an arbitrator from their appointment. The provision specifies situations involving resignation, challenges, and an arbitrator's inability to fulfil their functions. Let us analyse the key elements of this provision:

1. **Resignation Acceptance:** This part of the provision authorises the Board to release an arbitrator if the arbitrator submits their resignation and the Board accepts it. This acknowledges the arbitrator's voluntary decision to step down and the Board's role in accepting such resignations.
2. **Challenge Outcome:** If a challenge to the arbitrator under Article 19 (related to impartiality, independence, or qualifications) is sustained, meaning the challenge is found valid, the Board is mandated to release the arbitrator from their appointment. This ensures that the arbitration proceedings remain free from conflicts of interest or bias.
3. **Inability to Perform Functions:** The provision enables the Board to release an arbitrator if the arbitrator becomes unable or fails to perform their functions. This could encompass situations such as health issues, conflicts of schedule, or other personal circumstances that prevent the arbitrator from effectively fulfilling their role.
4. **Board's Authority and Responsibility:** The provision highlights the authority of the Board in overseeing the composition of the arbitral tribunal and maintaining the integrity of the arbitration process. The Board's actions are directed toward upholding the quality, fairness, and efficiency of the proceedings.
5. **Ensuring Quality and Fairness:** Releasing an arbitrator under the mentioned criteria is aimed at ensuring the quality and fairness of the arbitration process. It prevents situations where an arbitrator's personal challenges or conflicts could compromise the proceedings' integrity.
6. **Efficiency and Progression:** Releasing an arbitrator who is unable to fulfil their functions contributes to the efficiency and progression of the arbitration. It ensures that the proceedings are not delayed or disrupted due to an arbitrator's inability to actively participate.
7. **Balancing Interests:** The provision strikes a balance between the rights and interests of all parties involved. It safeguards parties' rights to a qualified and impartial tribunal while addressing challenges that may arise during the arbitration process.

In summary, Article 20(1) of the SCC Arbitration Rules 2023 outlines the conditions under which the Board can release an arbitrator from their appointment. These conditions include accepting the arbitrator's resignation, sustaining a challenge against the arbitrator, or addressing situations where the arbitrator is unable to perform their functions. The provision underscores the Board's authority in ensuring the quality, fairness, and efficiency of the arbitration process by maintaining a qualified, impartial, and functioning arbitral tribunal.

**(2) Before the Board releases an arbitrator, the Secretariat may give the parties and the arbitrators an opportunity to submit comments.**

Article 20(2) of the SCC Arbitration Rules 2023 outlines a procedural step that occurs before the Board releases an arbitrator from their appointment. This provision grants the Secretariat the authority to seek input from the parties and the arbitrators involved before a decision is made to release an arbitrator. Let us break down the key elements of this provision:

1. **Pre-Release Stage:** The provision emphasises that this step occurs before the Board makes the final decision to release an arbitrator from their appointment. It suggests a process that allows for deliberation and input from relevant stakeholders before any action is taken.
2. **Role of the Secretariat:** The provision assigns the Secretariat with the responsibility of facilitating communication between the parties, the arbitrators, and the Board during this preliminary stage. The Secretariat may be tasked with collecting and conveying comments from parties and arbitrators.
3. **Opportunity to Submit Comments:** The provision ensures that the parties involved and the arbitrators have an opportunity to share their perspectives and insights regarding the potential release of an arbitrator. This step promotes transparency and informed decision-making.
4. **Due Process and Fairness:** Allowing parties and arbitrators to submit comments before an arbitrator is released upholds principles of due process and fairness. It gives stakeholders a chance to present relevant information and arguments.
5. **Considering Diverse Views:** The provision acknowledges the importance of considering diverse viewpoints before making a decision. Parties and arbitrators may provide valuable insights that the Board may take into account when making its determination.
6. **Efficient Resolution:** Seeking comments before the release of an arbitrator helps ensure that any potential concerns or considerations are addressed at an early stage, streamlining the process and minimising disruptions.
7. **Communication Channel:** The Secretariat serves as the communication channel between the parties, the arbitrators, and the Board during this stage. It helps maintain clear and organised communication among all stakeholders.
8. **Balancing Interests:** The provision seeks to balance the interests of all parties involved while maintaining the efficiency and integrity of the arbitration process.

In summary, Article 20(2) of the SCC Arbitration Rules 2023 introduces a step in the process of releasing an arbitrator from their appointment. Before the Board makes a decision, the Secretariat may seek comments from the parties and the arbitrators to ensure transparency, fairness, and informed decision-making. This provision aligns with the principles of due process, fairness, and efficiency within the arbitration process.

## Article 21 Replacement of arbitrators

**(1) The Board shall appoint a new arbitrator where an arbitrator appointed by the Board has been released from appointment pursuant to Article 20, or where such an arbitrator has died. If the released arbitrator was appointed by a party, that party shall appoint the new arbitrator, unless the Board otherwise deems it appropriate.**

Article 21(1) of the SCC Arbitration Rules 2023 outlines the procedure for appointing a new arbitrator in the event that an arbitrator previously appointed by the Board is no longer able to fulfil their role. This situation can arise if the arbitrator has been released from their appointment as per Article 20 or if the arbitrator has passed away. The key points of analysis for this article are as follows:

1. **Appointment of New Arbitrator:** The central purpose of Article 21(1) is to ensure the continuity and effectiveness of the arbitration process. When a previously appointed arbitrator is no longer available, a replacement is needed to ensure the arbitration proceedings can proceed smoothly.
2. **Reasons for Replacement:** The article provides two specific scenarios in which a new arbitrator should be appointed: if the arbitrator has been released from their appointment in accordance with Article 20, or if the arbitrator has died. These reasons cover situations where the arbitrator is either no longer willing or able to serve on the arbitral tribunal.
3. **Party Appointment:** If the arbitrator who has been released was originally appointed by one of the parties involved in the arbitration, that party is generally responsible for appointing the replacement arbitrator. This emphasises party autonomy in the arbitration process. It allows the party that initially chose the arbitrator to have a say in the appointment of their replacement.
4. **Board Discretion:** While the general rule is for the party to appoint the new arbitrator, the article adds a caveat that the Board has the authority to decide otherwise if it deems it appropriate. This grants the Board a level of oversight and control to ensure that the replacement arbitrator is selected in a manner that maintains the integrity and fairness of the arbitration.
5. **Balancing Party Autonomy and Control:** The article strikes a balance between party autonomy and the need for overall procedural control. While parties have the right to appoint their chosen arbitrator, the Board can step in if there are concerns about bias, impartiality, or other factors that might impact the fairness and efficiency of the arbitration.
6. **Procedural Flexibility:** The language used in the article provides a level of flexibility to adapt to different circumstances. It does not prescribe a fixed procedure for appointing a

replacement arbitrator in every situation, recognising that each case may have its own unique considerations.

In summary, Article 21(1) of the SCC Arbitration Rules 2023 ensures the smooth continuation of arbitration proceedings by providing a mechanism for the appointment of a new arbitrator when the need arises due to the release or death of a previously appointed arbitrator. It maintains a balance between party autonomy and procedural control, giving the Board the discretion to intervene when necessary to safeguard the fairness and effectiveness of the arbitration process.

**(2) Where the Arbitral Tribunal consists of three or more arbitrators, the Board may decide that the remaining arbitrators shall proceed with the arbitration. Before the Board takes a decision, the parties and the arbitrators shall be given an opportunity to submit comments. In taking its decision, the Board shall have regard to the stage of the arbitration and any other relevant circumstances.**

Article 21(2) of the SCC Arbitration Rules 2023 addresses the situation where an Arbitral Tribunal initially composed of three or more arbitrators faces a vacancy due to the release, inability to continue, or any other reason affecting one or more arbitrators. The article outlines the process and considerations for determining whether the remaining arbitrators should proceed with the arbitration in such cases. Let us analyse the key elements of this provision:

1. **Continuation of Arbitration:** The primary aim of Article 21(2) is to provide a mechanism for addressing situations where a vacancy occurs in a multi-member Arbitral Tribunal. It allows the possibility for the remaining arbitrators to continue the arbitration process rather than reconstituting the entire tribunal.
2. **Board's Discretion:** The decision on whether the remaining arbitrators should proceed with the arbitration is within the discretion of the Board. This gives the arbitral institution, represented by the Board, the authority to determine whether the arbitration can effectively continue with the reduced number of arbitrators.
3. **Opportunity for Comments:** The article emphasises procedural fairness by requiring that before the Board makes a decision, both the parties involved in the arbitration and the arbitrators themselves have an opportunity to submit their comments. This ensures that all relevant parties have a chance to provide input and raise any concerns they may have.
4. **Relevance of Circumstances:** The Board is instructed to take into account various factors when making its decision. One key factor is the "stage of the arbitration", which suggests that the decision may be influenced by the progress of the proceedings. Additionally, the article mentions "any other relevant circumstances", indicating that the Board's decision should be based on a holistic assessment of the situation.
5. **Balancing Efficiency and Fairness:** The provision reflects a balance between the efficiency of the arbitration process and the need to maintain fairness and due process. Allowing the remaining arbitrators to continue the proceedings can help avoid unnecessary delays and costs associated with appointing new arbitrators, particularly in advanced stages of arbitration. However, this approach should not compromise the fundamental principles of fairness and impartiality.

6. Case-Specific Approach: By referring to the “stage of the arbitration” and “other relevant circumstances”, the article adopts a flexible and case-specific approach. This recognises that each situation may be unique and that a one-size-fits-all approach may not be suitable for all cases.

In summary, Article 21(2) of the SCC Arbitration Rules 2023 provides a framework for addressing vacancies in multi-member Arbitral Tribunals. It grants the Board the authority to decide whether the remaining arbitrators should continue with the arbitration, taking into account the stage of the proceedings and other relevant factors. The article aims to balance procedural efficiency with the principles of fairness and due process while providing an opportunity for parties and arbitrators to contribute their perspectives.

**(3) Where an arbitrator has been replaced, the newly composed Arbitral Tribunal shall decide whether and to what extent the proceedings are to be repeated.**

Article 21(3) of the SCC Arbitration Rules 2023 addresses the issue of replacing an arbitrator within an Arbitral Tribunal and outlines the authority and responsibility of the newly composed tribunal regarding the continuation of proceedings. Let us analyse the key elements of this provision:

1. Replacement of Arbitrator: Article 21(3) presupposes a scenario where an arbitrator has been replaced within an Arbitral Tribunal. The replacement might have occurred due to reasons such as the arbitrator’s release, inability to continue, or other circumstances.
2. Decision on Repeating Proceedings: The central focus of this provision is on the decision-making authority of the newly composed Arbitral Tribunal regarding the repetition of proceedings. In other words, the tribunal must determine whether any part of the arbitration proceedings that took place before the replacement of the arbitrator should be repeated and, if so, to what extent.
3. Discretion of the New Tribunal: The provision grants the newly composed Arbitral Tribunal discretion in deciding whether and to what extent any proceedings should be repeated. This discretionary power recognises that different circumstances may warrant different approaches. The tribunal is best situated to assess whether any prior proceedings were impacted by the change in composition and whether repetition is necessary for fairness and the integrity of the process.
4. Balancing Efficiency and Fairness: This article reflects the ongoing balancing act in arbitration between efficiency and fairness. On one hand, repetition of proceedings can lead to delays and increased costs. On the other hand, fairness and due process require that parties have a meaningful opportunity to present their case before a properly constituted tribunal.
5. Consideration of Factors: The article does not prescribe specific criteria for determining whether proceedings should be repeated. Instead, it provides flexibility for the tribunal to consider relevant factors on a case-by-case basis. These factors may include the nature of the proceedings, the stage of the arbitration, the impact of the replaced arbitrator on prior decisions, and any procedural or substantive concerns raised by the parties.

6. Procedural Autonomy and Control: By placing the decision within the authority of the newly composed Arbitral Tribunal, the provision respects the principle of party autonomy and reinforces the tribunal's role in managing the arbitration process.

In summary, Article 21(3) of the SCC Arbitration Rules 2023 addresses the aftermath of replacing an arbitrator within an Arbitral Tribunal. It empowers the newly composed tribunal to decide whether and to what extent proceedings should be repeated, considering factors that balance procedural efficiency with the need for fairness and due process. This provision underscores the adaptable nature of arbitration rules, which allow for tailored decisions based on the specifics of each case.



## THE PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL

### Article 22 Referral to the Arbitral Tribunal

**When the Arbitral Tribunal has been appointed and the advance on costs has been paid, the Secretariat shall refer the case to the Arbitral Tribunal.**

Article 22 of the SCC Arbitration Rules 2023 addresses the procedure that follows after the appointment of the Arbitral Tribunal and the payment of the advance on costs. This provision outlines the steps taken by the Secretariat to advance the case to the Arbitral Tribunal. Let us analyse the key elements of this provision:

1. **Triggering Events:** The provision specifies two triggering events that need to occur before the Secretariat takes action: the appointment of the Arbitral Tribunal and the payment of the advance on costs.
2. **Arbitral Tribunal Appointment:** The appointment of the Arbitral Tribunal signifies that the tribunal is now formed and ready to handle the arbitration proceedings. The tribunal typically consists of one or more arbitrators.
3. **Advance on Costs Payment:** The advance on costs is a payment made by the parties to cover the expenses associated with the arbitration process, such as arbitrators' fees, administrative expenses, and other related costs. Once this payment is received, it indicates the parties' commitment to the arbitration process.
4. **Secretariat's Role:** The Secretariat, which administers the arbitration under the SCC Arbitration Rules, is responsible for ensuring the smooth progression of the case. This provision outlines the specific action the Secretariat takes once the triggering events occur.
5. **Referral of the Case:** After the Arbitral Tribunal is appointed and the advance on costs is paid, the Secretariat's role is to refer the case to the Arbitral Tribunal. This involves formally notifying the tribunal that they can begin their work on the case.
6. **Efficient Procedure:** The provision ensures an efficient transition from the administrative phase to the substantive arbitration proceedings. The Secretariat's referral ensures that the tribunal can commence its work without unnecessary delays.
7. **Clear Milestones:** The provision provides clear milestones in the arbitration process. Once the tribunal is appointed and the advance on costs is secured, it signals the transition from the administrative phase to the phase where the tribunal takes charge of the proceedings.
8. **Coordination:** This provision helps coordinate the different stages of the arbitration process. The Secretariat's referral ensures that the Arbitral Tribunal is properly informed and can coordinate with the parties on procedural matters.

In summary, Article 22 of the SCC Arbitration Rules 2023 outlines the process that follows after the appointment of the Arbitral Tribunal and the payment of the advance on costs. It highlights the role of the Secretariat in referring the case to the Arbitral Tribunal, signalling the transition from

administrative preparations to the actual arbitration proceedings. This provision ensures clarity, efficiency, and coordination in the arbitration process.

### **Article 23 Conduct of the arbitration by the Arbitral Tribunal**

**(1) The Arbitral Tribunal shall conduct the arbitration in such manner as it considers appropriate, subject to the Arbitration Rules and any agreement between the parties.**

This provision outlines the authority and discretion of the Arbitral Tribunal in conducting the arbitration proceedings. Here are the key points to consider:

1. **Tribunal's Discretion:** The article emphasises the central principle that the Arbitral Tribunal possesses a significant degree of discretion in managing and overseeing the arbitration proceedings. It highlights the tribunal's autonomy to determine how the arbitration process will be conducted.
2. **Appropriateness Standard:** The language "in such manner as it considers appropriate" underscores that the tribunal's decisions and actions should be guided by what it deems suitable and fitting in light of the specific circumstances of the case. This allows the tribunal to tailor the proceedings to best address the complexities and requirements of the dispute.
3. **Subject to Rules and Agreement:** While the Arbitral Tribunal has the authority to conduct the arbitration in a manner it deems appropriate, this discretion is not absolute. The tribunal's decisions are subject to two important limitations: the SCC Arbitration Rules and any prior agreement between the parties. This ensures that the tribunal operates within a framework defined by established rules and the specific expectations set by the parties.
4. **Balancing Flexibility and Consistency:** The provision strikes a balance between flexibility and consistency. It recognises the need for flexibility to adapt to the unique circumstances of each case, while also maintaining consistency through adherence to established arbitration rules and agreements. This balance is crucial in ensuring a fair and efficient arbitration process.
5. **Party Autonomy:** The provision reaffirms the principle of party autonomy, which is a fundamental feature of arbitration. Parties have the freedom to shape the arbitration process through their agreements, and the Arbitral Tribunal's authority is bounded by these agreements.
6. **Ensuring Fairness and Efficiency:** By empowering the tribunal to determine an appropriate manner of conducting the arbitration, the provision facilitates the achievement of two key goals: ensuring a fair process that respects the rights of the parties and promoting an efficient process that resolves the dispute in a timely and cost-effective manner.

In summary, Article 23(1) of the SCC Arbitration Rules 2023 grants the Arbitral Tribunal significant discretion in how it conducts the arbitration proceedings. This discretion is balanced by the framework of the arbitration rules and any agreements between the parties. The provision reflects the core

principles of arbitration, including party autonomy, fairness, and efficiency, while allowing the tribunal the necessary flexibility to address the specific needs of each dispute.

**(2) In all cases, the Arbitral Tribunal shall conduct the arbitration in an impartial, efficient, and expeditious manner, giving each party an equal and reasonable opportunity to present its case.**

This provision sets out the overarching principles and obligations that the Arbitral Tribunal must follow when conducting the arbitration proceedings. Here are the key points to consider:

1. **Impartiality:** The article emphasises the paramount importance of impartiality. The Arbitral Tribunal is required to conduct the arbitration in a manner that is fair, neutral, and unbiased. This principle is essential for maintaining the integrity and credibility of the arbitration process.
2. **Efficiency and Expediency:** The provision underscores the need for the arbitration proceedings to be carried out efficiently and expeditiously. This is in line with the broader goal of arbitration to provide a quicker and more streamlined alternative to traditional litigation. Timely resolution is particularly important to minimise costs and disruptions for the parties.
3. **Equal Opportunity:** The article emphasises the concept of equal treatment and equal opportunity. Each party must have an equal chance to present its case, submit evidence, and be heard. This principle of equal opportunity is integral to ensuring that both parties have a fair and balanced opportunity to present their arguments and defend their interests.
4. **Reasonable Opportunity:** The requirement for each party to be given a “reasonable opportunity” indicates that the tribunal must ensure that parties have sufficient time and resources to effectively present their case. This prevents any undue haste or procedural imbalances that could disadvantage one party over the other.
5. **Balancing Efficiency and Due Process:** The provision strikes a balance between efficiency and due process. While efficiency is important, it should not come at the expense of denying parties their fundamental right to present their case and defend their interests. The Arbitral Tribunal is expected to manage the proceedings in a manner that maintains this equilibrium.
6. **Upholding Core Principles:** Article 23(2) reinforces some of the foundational principles of arbitration, including impartiality, efficiency, equal treatment, and due process. These principles collectively contribute to a fair and effective arbitration process.
7. **Guidance for the Tribunal:** The provision serves as a guiding framework for the Arbitral Tribunal’s conduct throughout the arbitration. It provides a clear mandate for the tribunal to follow in ensuring that the proceedings are conducted in a manner consistent with these core principles.

In summary, Article 23(2) of the SCC Arbitration Rules 2023 articulates the fundamental principles that the Arbitral Tribunal must adhere to when conducting the arbitration. It underscores the importance

of impartiality, efficiency, equal opportunity, and due process, all of which are essential for a fair and effective resolution of disputes through arbitration.

#### **Article 24 Administrative secretary of the Arbitral Tribunal**

**(1) The Arbitral Tribunal may at any time during the arbitration submit to the Secretariat a proposal for the appointment of a specific candidate as administrative secretary. The Arbitral Tribunal's appointment of an administrative secretary is subject to the approval of the parties.**

This provision deals with the appointment of an administrative secretary by the Arbitral Tribunal and the role of the parties in approving this appointment. Here are the key points to consider:

1. **Administrative Secretary Role:** An administrative secretary is typically a legal professional who assists the Arbitral Tribunal in managing administrative aspects of the arbitration. This can include tasks such as organising hearings, maintaining records, handling correspondence, and coordinating logistics. The administrative secretary does not have decision-making authority over substantive issues in the arbitration.
2. **Tribunal Proposal:** The article allows the Arbitral Tribunal to suggest a specific candidate for the role of administrative secretary to the Secretariat. This demonstrates the tribunal's proactive involvement in shaping the administrative aspects of the arbitration process.
3. **Party Approval:** While the Arbitral Tribunal can propose a candidate, the appointment of the administrative secretary is subject to the approval of the parties involved in the arbitration. This ensures that the parties have a say in the selection of the administrative secretary and provides an additional layer of transparency and fairness.
4. **Balancing Efficiency and Party Autonomy:** The provision strikes a balance between the efficiency gained from having a capable administrative secretary and the parties' autonomy to agree on the appointment. It acknowledges that while the tribunal can propose a candidate, the parties' approval is essential to ensure their satisfaction and confidence in the administrative process.
5. **Secretariat's Role:** The role of the Secretariat, which is typically the administrative body of the arbitral institution (such as the SCC), is to process the tribunal's proposal for the appointment of an administrative secretary. The Secretariat may play a role in facilitating communication between the tribunal and the parties regarding the proposed appointment.
6. **Transparency and Impartiality:** The requirement for party approval contributes to transparency and impartiality in the appointment process. It prevents any perception of bias or impropriety by ensuring that the administrative secretary's appointment has the parties' consent.
7. **Adaptability:** The provision allows for flexibility by permitting the tribunal to make the proposal "at any time during the arbitration". This recognises that the need for administrative support may arise or evolve as the arbitration progresses.

In summary, Article 24(1) of the SCC Arbitration Rules 2023 outlines the procedure for appointing an administrative secretary to assist the Arbitral Tribunal. It grants the tribunal the ability to propose a candidate for the role, subject to the approval of the parties involved. This approach balances efficiency with party autonomy and contributes to the transparency and fairness of the arbitration process.

**(2) The Arbitral Tribunal shall consult the parties regarding the tasks of the administrative secretary. The Arbitral Tribunal may not delegate any decision-making authority to the administrative secretary.**

This provision addresses the role and limitations of the administrative secretary within the arbitration process. Here are the key points to consider:

1. **Consultation with Parties:** The article establishes a requirement for the Arbitral Tribunal to engage in consultation with the parties regarding the tasks to be assigned to the administrative secretary. This ensures that the parties' views and preferences are taken into account when determining the scope of responsibilities for the administrative secretary.
2. **Administrative Tasks:** The administrative secretary typically assists the Arbitral Tribunal with non-substantive, administrative tasks related to the conduct of the arbitration. This may include logistical coordination, scheduling, document management, and similar duties. By consulting the parties, the tribunal can ensure that the administrative secretary's tasks align with the needs and expectations of all parties involved.
3. **No Decision-Making Authority:** The provision explicitly states that the Arbitral Tribunal may not delegate any decision-making authority to the administrative secretary. This emphasises that while the administrative secretary can assist in administrative matters, they do not have the power to make substantive decisions that impact the outcome of the arbitration.
4. **Preserving Tribunal's Role:** The prohibition on delegating decision-making authority reinforces the central role of the Arbitral Tribunal as the body responsible for making substantive determinations in the arbitration. This ensures that the administrative secretary's involvement remains within the realm of procedural and organisational support.
5. **Maintaining Impartiality and Fairness:** By consulting with the parties and prohibiting delegation of decision-making, the provision contributes to the overall fairness and impartiality of the arbitration process. It helps prevent any perception that the administrative secretary could exert undue influence or decision-making authority in a way that might compromise the parties' rights.
6. **Efficiency and Effective Case Management:** While the administrative secretary does not have decision-making authority, their assistance can contribute to the efficient management of the case. By handling administrative tasks, the tribunal can focus more on substantive matters, leading to a more streamlined and effective arbitration process.

In summary, Article 24(2) of the SCC Arbitration Rules 2023 underscores the importance of consulting parties regarding the tasks of the administrative secretary and establishes a clear boundary by prohibiting the delegation of decision-making authority to the administrative secretary. This provision ensures transparency, fairness, and effective case management while preserving the primary role of the Arbitral Tribunal in making substantive determinations in the arbitration.

**(3) The administrative secretary must be impartial and independent. The Arbitral Tribunal shall ensure that the administrative secretary remains impartial and independent at all stages of the arbitration.**

This provision addresses the qualities required of the administrative secretary and the responsibility of the Arbitral Tribunal to ensure the secretary's impartiality and independence. Here are the key points to consider:

1. **Impartiality and Independence:** The article establishes a fundamental requirement that the administrative secretary must possess both impartiality and independence. Impartiality refers to the absence of bias or favouritism, while independence implies the secretary's ability to act without being influenced by any party or external factor.
2. **Preserving Neutrality:** The requirement of impartiality and independence for the administrative secretary is crucial to maintaining the integrity and fairness of the arbitration process. It helps prevent any perception of undue influence or improper involvement by the secretary in favour of one party over another.
3. **Tribunal's Responsibility:** The provision places the responsibility on the Arbitral Tribunal to ensure that the administrative secretary remains impartial and independent throughout the arbitration proceedings. This aligns with the tribunal's broader duty to ensure a fair and unbiased process.
4. **Safeguarding Parties' Rights:** By emphasising the need for the administrative secretary's impartiality and independence, the provision helps protect the parties' rights to a fair and unbiased arbitration. Parties should have confidence that the administrative secretary is focused solely on administrative matters and is not influenced by any party's interests.
5. **Conflicts of Interest:** The requirement for impartiality and independence may extend to addressing potential conflicts of interest that the administrative secretary may have. The Arbitral Tribunal should take steps to ensure that the secretary does not have any relationships or affiliations that could compromise their neutrality.
6. **Due Diligence:** The Arbitral Tribunal's responsibility to ensure the secretary's impartiality and independence may involve ongoing due diligence. This could include periodic assessments of the secretary's status, inquiries into any potential conflicts, and taking appropriate actions if any concerns arise.
7. **Enhancing Confidence:** Upholding the administrative secretary's impartiality and independence enhances the parties' confidence in the arbitration process. This confidence is essential for the legitimacy and enforceability of the arbitration award.

In summary, Article 24(3) of the SCC Arbitration Rules 2023 sets clear expectations for the impartiality and independence of the administrative secretary and assigns the responsibility for ensuring these qualities to the Arbitral Tribunal. This provision contributes to the fairness, credibility, and effectiveness of the arbitration proceedings by safeguarding the parties' rights and preserving the integrity of the administrative process.

**(4) Before being appointed, the proposed administrative secretary shall submit to the Secretariat a signed statement of availability, impartiality and independence disclosing any circumstances that may give rise to justifiable doubts as to the proposed administrative secretary's impartiality or independence.**

This provision addresses the process and requirements for appointing an administrative secretary and emphasises the importance of transparency, impartiality, and independence. Here are the key points to consider:

1. **Transparency and Disclosure:** The article mandates that any proposed administrative secretary must submit a signed statement to the Secretariat. This statement serves as a disclosure of the secretary's availability, impartiality, and independence. This disclosure requirement promotes transparency by ensuring that potential conflicts of interest or biases are openly disclosed.
2. **Proactive Disclosure:** Requiring the proposed administrative secretary to disclose any circumstances that could give rise to justifiable doubts about their impartiality or independence is a proactive step to prevent potential issues from arising during the arbitration process.
3. **Ensuring Impartiality and Independence:** By requiring the proposed administrative secretary to affirm their availability, impartiality, and independence, the provision aligns with the broader principles of arbitration to maintain a fair and unbiased process. It helps prevent any perception of partiality or undue influence on the part of the administrative secretary.
4. **Maintaining Confidence:** The requirement for a signed statement of availability, impartiality, and independence enhances the parties' confidence in the arbitration process. Parties can have greater assurance that the administrative secretary is committed to fulfilling their role without any conflicts or biases.
5. **Objective Standard:** The provision sets an objective standard by requiring disclosure of circumstances that may give rise to "justifiable doubts" about impartiality or independence. This standard helps ensure that doubts are based on reasonable concerns rather than mere speculation.
6. **Pre-Appointment Evaluation:** Requiring the signed statement before the administrative secretary's appointment allows the Secretariat and the Arbitral Tribunal to evaluate the potential secretary's qualifications and disclosures prior to formalising the appointment.
7. **Cooperation with Transparency:** The requirement for the administrative secretary to provide the disclosure statement fosters a collaborative approach between the

administrative secretary, the Arbitral Tribunal, and the parties to ensure that the arbitration process is conducted with integrity.

In summary, Article 24(4) of the SCC Arbitration Rules 2023 establishes a process for pre-appointment disclosure by a proposed administrative secretary. The requirement for a signed statement of availability, impartiality, and independence enhances transparency, safeguards impartiality and independence, and contributes to maintaining the integrity of the arbitration process.

**(5) A party may request the release of the administrative secretary from appointment based on the procedure set out in Article 19, which shall apply mutatis mutandis to a challenge to an administrative secretary. If the Board releases an administrative secretary, the Arbitral Tribunal may propose the appointment of another administrative secretary in accordance with this Article. A request for the release of an administrative secretary shall not prevent the arbitration from proceeding unless the Arbitral Tribunal decides otherwise.**

This provision addresses the process for requesting the release of an administrative secretary and its implications for the arbitration proceedings. Here are the key points to consider:

1. **Release of Administrative Secretary:** The article provides parties with the right to request the release of the administrative secretary from their appointment. This could be based on circumstances that give rise to doubts about the secretary's impartiality or independence, similar to the procedure for challenging arbitrators as outlined in Article 19.
2. **Application of Article 19:** The procedure for requesting the release of the administrative secretary is tied to the process set out in Article 19 of the SCC Arbitration Rules 2023. Article 19 deals with challenges to arbitrators. This cross-reference ensures that the same general process for challenging arbitrators is adapted for challenges to administrative secretaries.
3. **Arbitral Tribunal's Role:** The Arbitral Tribunal is tasked with proposing the appointment of another administrative secretary if the initial secretary is released by the Board. This maintains continuity in the administrative support role while addressing any concerns raised by the parties.
4. **Flexibility and Adaptation:** The phrase "apply mutatis mutandis" indicates that the challenge procedure for administrative secretaries will be adapted as needed from the procedure for arbitrator challenges. This allows for flexibility in the process while maintaining key principles of fairness and due process.
5. **Effect on Arbitration:** Importantly, the request for the release of an administrative secretary does not automatically halt or prevent the arbitration proceedings. The Arbitral Tribunal retains the authority to decide whether the arbitration will continue or whether the release request warrants a pause or other action.
6. **Balancing Impartiality and Efficiency:** The provision seeks to balance the parties' rights to challenge the administrative secretary with the overarching goal of conducting an efficient and fair arbitration. The process for release requests ensures that parties can



address concerns about the secretary’s impartiality or independence without unduly disrupting the proceedings.

7. **Board’s Role:** The Board is not directly involved in the release process for administrative secretaries but may come into play if the Arbitral Tribunal proposes the appointment of another administrative secretary after a release decision.

In summary, Article 24 (5) of the SCC Arbitration Rules 2023 outlines the procedure for requesting the release of an administrative secretary and the potential implications for the arbitration proceedings. It reflects a balance between party rights, administrative efficiency, and the Arbitral Tribunal’s discretion in deciding how to address release requests while allowing the arbitration to proceed unless decided otherwise by the tribunal.

**(6) Any fee payable to the administrative secretary shall be paid from the fees of the Arbitral Tribunal.**

This provision addresses the financial aspect of the administrative secretary’s role in the arbitration process. Here are the key points to consider:

1. **Fee Payment:** The article establishes that any fees payable to the administrative secretary will be covered by the fees of the Arbitral Tribunal. In other words, the costs associated with compensating the administrative secretary will be borne from the funds allocated for the Arbitral Tribunal’s compensation.
2. **Clarity and Allocation:** This provision ensures clarity regarding the financial responsibility for compensating the administrative secretary. By specifying that the fees will be paid from the Arbitral Tribunal’s fees, it avoids potential confusion or disputes over payment responsibilities.
3. **Transparency:** Linking the administrative secretary’s fees to the Arbitral Tribunal’s fees contributes to transparency in the financial aspects of the arbitration. It provides a clear mechanism for allocating and managing the costs associated with the administrative support role.
4. **Consistency with Administrative Support:** Given that the administrative secretary assists the Arbitral Tribunal in managing administrative aspects of the arbitration, it is reasonable that the fees for this role are tied to the tribunal’s fees. This reflects the administrative secretary’s role as a support function to the tribunal.
5. **Efficiency and Cost Management:** By incorporating the administrative secretary’s fees into the overall fees of the Arbitral Tribunal, this approach can contribute to administrative efficiency and cost management. It avoids the need for separate invoicing and payment arrangements for the administrative secretary’s compensation.
6. **Avoiding Additional Burden:** This provision can help prevent additional financial burden on the parties. The administrative secretary’s fees are absorbed within the existing framework of the Arbitral Tribunal’s compensation, rather than adding an extra layer of costs for the parties to manage.

7. **Arbitration Institution’s Role:** The provision also aligns with the role of the arbitral institution (e.g., SCC) in overseeing administrative aspects of the arbitration. The institution typically manages fee payments and can facilitate the process of compensating the administrative secretary from the Arbitral Tribunal’s fees.

In summary, Article 24(6) of the SCC Arbitration Rules 2023 establishes that the fees payable to the administrative secretary will be paid from the fees of the Arbitral Tribunal. This approach enhances transparency, cost efficiency, and the seamless integration of administrative support within the broader arbitration process.

## Article 25 Seat of arbitration

### **(1) Unless agreed upon by the parties, the Board shall decide the seat of arbitration.**

This provision addresses the determination of the seat of arbitration in cases where the parties have not reached an agreement on this matter. Here are the key points to consider:

1. **Seat of Arbitration:** The “seat of arbitration” refers to the legal jurisdiction or the location that holds a significant role in determining the procedural and legal framework governing the arbitration. It can impact matters such as the applicable law, court supervision, and the enforceability of awards.
2. **Default Rule:** Article 25(1) establishes a default rule for cases where the parties have not reached an agreement on the seat of arbitration. In the absence of an agreement, the responsibility for determining the seat is placed on the Board of the arbitral institution, in this case, the SCC.
3. **Party Autonomy:** The phrase “unless agreed upon by the parties” underscores the principle of party autonomy in arbitration. Parties have the freedom to determine various aspects of the arbitration, including the seat, through their agreement. If the parties have agreed upon the seat, that agreement will prevail over the default rule.
4. **Board’s Role:** The Board’s role in deciding the seat of arbitration reflects the institutional support provided by arbitral institutions like the SCC. The Board’s decision ensures a neutral and impartial determination of the seat when the parties have not specified one themselves.
5. **Balancing Interests:** The provision aims to strike a balance between the parties’ autonomy and the need for a clear and practical approach to determining the seat. It provides a mechanism for resolving disagreements or situations where parties have not made a choice.
6. **Predictability and Efficiency:** Having a default rule for the seat of arbitration enhances predictability and efficiency in cases where parties have not specifically agreed on this matter. It avoids delays that might arise from disputes over the seat and helps ensure the arbitration process can proceed smoothly.

7. Consistency with International Practice: The provision aligns with international arbitration practice, where the choice of seat is a critical aspect and is often determined either by agreement or through the rules of the chosen arbitral institution.
8. Board's Expertise: The Board's decision on the seat is likely to be informed by its experience and expertise in arbitration matters, ensuring that the selected seat is suitable for the arbitration's requirements.

In summary, Article 25(1) of the SCC Arbitration Rules 2023 establishes a default rule for determining the seat of arbitration in cases where the parties have not agreed upon one. The provision respects party autonomy while providing a practical solution to ensure the arbitration process can proceed smoothly and efficiently.

**(2) The Arbitral Tribunal may, after consulting the parties, conduct hearings at any place it considers appropriate. The Arbitral Tribunal may meet and deliberate at any place it considers appropriate. The arbitration shall be deemed to have taken place at the seat of arbitration regardless of any hearing, meeting, or deliberation held elsewhere.**

This provision addresses the conduct of hearings, meetings, and deliberations by the Arbitral Tribunal, as well as the significance of the seat of arbitration. Here are the key points to consider:

1. Flexible Hearing Locations: The provision grants the Arbitral Tribunal flexibility in determining the locations for conducting hearings. This flexibility allows the tribunal to choose appropriate venues based on factors such as the convenience of the parties, the location of evidence or witnesses, and practical considerations.
2. Consultation with Parties: Before deciding on the location for hearings, the Arbitral Tribunal is required to consult with the parties. This ensures that the parties have an opportunity to express their views and preferences regarding the hearing venue.
3. Deliberations and Meetings: The provision also extends the flexibility to the Arbitral Tribunal's meetings and deliberations. The tribunal can choose suitable places for conducting discussions and making decisions, keeping in mind factors that promote effective case management.
4. Seat of Arbitration Significance: The provision reinforces the principle that the seat of arbitration plays a significant role in determining the legal framework governing the arbitration. Regardless of where hearings, meetings, or deliberations take place, the arbitration is considered to have taken place at the designated seat.
5. Legal Implications: The determination of the seat of arbitration can have legal consequences, such as the choice of governing law and the court's supervisory jurisdiction. By deeming the arbitration to have taken place at the seat, the provision ensures clarity in these legal aspects.
6. Balancing Convenience and Legal Significance: While hearings, meetings, and deliberations can take place at various locations, designating a specific seat of arbitration helps balance the practicalities of the arbitration process with the need for a clear legal framework.

7. **Consistency and Predictability:** Deeming the arbitration to have taken place at the seat regardless of other locations ensures consistency and predictability in the legal treatment of the arbitration. This is important for the enforceability of awards and legal certainty.
8. **Party Involvement:** The requirement for consulting the parties regarding hearing locations promotes transparency and includes the parties' input in decisions that could impact the course of the arbitration.

In summary, Article 25(2) of the SCC Arbitration Rules 2023 empowers the Arbitral Tribunal to determine suitable locations for hearings, meetings, and deliberations. It underscores the legal significance of the seat of arbitration while allowing for practical flexibility in conducting the arbitration process. This approach ensures a balance between convenience and legal clarity in international arbitration proceedings.

### **(3) The award shall be deemed to have been made at the seat of arbitration.**

This provision addresses the location at which the arbitration award is considered to have been made. Here are the key points to consider:

1. **Location of the Award:** The provision establishes a clear rule that the arbitration award is deemed to have been made at the seat of arbitration. This means that for legal purposes, the award is attributed to and associated with the jurisdiction designated as the seat of arbitration.
2. **Legal Implications:** The determination of the seat of arbitration has legal implications, including the choice of applicable law, the court's supervisory jurisdiction, and the enforceability of the award. By deeming the award to have been made at the seat, the provision ensures that these legal aspects are anchored in the designated jurisdiction.
3. **Consistency:** The provision enhances consistency and predictability in the treatment of the arbitration award. It clarifies where the award originates, regardless of where the hearings or other proceedings might have taken place.
4. **Enforceability:** The location of the award's origin is significant for the enforceability of the award under the New York Convention and other applicable international conventions. Parties seeking enforcement in different jurisdictions will often need to refer to the seat of arbitration as the place where the award was made.
5. **Neutrality and Impartiality:** Designating the seat of arbitration as the location of the award underscores the principle of neutrality and impartiality. It ensures that the award is not tied to any particular venue where hearings or meetings might have occurred.
6. **Jurisdictional Clarity:** For legal and jurisdictional purposes, it is important to have a clear and fixed location where the award is deemed to have been made. This helps avoid potential disputes or ambiguities in determining the origin of the award.
7. **Preserving Legal Framework:** The provision aligns with international arbitration practice and the need to maintain a coherent legal framework for the arbitration process. It ensures that the award is firmly situated within the jurisdiction chosen as the seat.

8. Certainty for Parties: Parties to the arbitration can rely on this provision to understand the legal status and implications of the award's origin. This clarity helps parties assess their rights and obligations under the award.

In summary, Article 25(3) of the SCC Arbitration Rules 2023 specifies that the award is deemed to have been made at the seat of arbitration. This provision serves to establish the legal locus of the award, supporting consistency, enforceability, neutrality, and legal clarity in international arbitration proceedings.

### Article 26 Language

**(1) Unless agreed upon by the parties, the Arbitral Tribunal shall determine the language(s) of the arbitration. In so determining, the Arbitral Tribunal shall have due regard to all relevant circumstances and shall give the parties an opportunity to submit comments.**

This provision addresses the determination of the language(s) in which the arbitration proceedings will be conducted. Here are the key points to consider:

1. Language of the Arbitration: The provision establishes a default rule for determining the language(s) that will be used in the arbitration proceedings. It addresses the practical issue of communication, documentation, and presentation of evidence during the arbitration.
2. Party Autonomy: The phrase “unless agreed upon by the parties” highlights the principle of party autonomy in arbitration. If the parties have agreed upon a specific language or languages, that agreement will prevail over the default rule set out in this provision.
3. Tribunal's Determination: In cases where the parties have not agreed on the language(s), the Arbitral Tribunal is entrusted with determining the appropriate language(s) for the proceedings. This is a common provision in many arbitration rules and acknowledges the tribunal's role in managing procedural aspects of the case.
4. Relevance of Circumstances: The Arbitral Tribunal is required to consider “all relevant circumstances” when determining the language(s) of the arbitration. This could include factors such as the parties' language preferences, the location of the arbitration, the language proficiency of the arbitrators, witnesses, and counsel, and the nature of the dispute.
5. Opportunity for Input: The provision emphasises that the parties have the opportunity to submit comments regarding the language(s) of the arbitration. This ensures that the parties' perspectives and preferences are taken into account when the tribunal makes its determination.
6. Balancing Practicality and Fairness: The requirement for the tribunal to have “due regard to all relevant circumstances” reflects the need to balance practical considerations (such as effective communication) with the principle of fairness and equal treatment of the parties.

7. **Efficient Communication:** Selecting an appropriate language(s) is crucial for ensuring effective communication between the parties, the tribunal, and witnesses, as well as for the production of evidence and documents in a language understood by all relevant parties.
8. **Ensuring Fairness:** The provision ensures that parties who may not be proficient in a particular language are not disadvantaged during the arbitration process. By considering relevant circumstances and allowing parties to submit comments, the provision helps safeguard against potential language-related inequalities.

In summary, Article 26(1) of the SCC Arbitration Rules 2023 establishes a default rule for determining the language(s) of the arbitration proceedings when the parties have not agreed upon a specific language. It empowers the Arbitral Tribunal to make this determination, guided by relevant circumstances and input from the parties, to ensure effective communication and fairness in the arbitration process.

**(2) The Arbitral Tribunal may request that any documents submitted in languages other than those of the arbitration be accompanied by a translation into the language(s) of the arbitration.**

This provision addresses the potential requirement for translations of documents submitted in languages other than those chosen for the arbitration proceedings. Here are the key points to consider:

1. **Language of Documents:** In international arbitrations, parties may submit documents in various languages. However, the proceedings are generally conducted in the language(s) chosen for the arbitration. This provision deals with the translation of documents that are not in the chosen language(s) of the proceedings.
2. **Tribunal's Authority:** The Arbitral Tribunal is given the authority to request translations of documents submitted in languages other than those of the arbitration. This authority helps ensure that all participants in the arbitration can understand and consider the content of the submitted documents.
3. **Effective Communication:** The requirement for translations serves the principle of effective communication in the arbitration process. Translations enable all parties, arbitrators, and experts to have a clear understanding of the documents being presented, even if they are not proficient in the language in which the documents were originally drafted.
4. **Maintaining Equality:** By requesting translations, the Arbitral Tribunal helps maintain equality between the parties. It ensures that no party is disadvantaged by language barriers, promoting a level playing field for presenting arguments and evidence.
5. **Preserving Transparency:** Translations contribute to the transparency of the arbitration process. Parties and arbitrators can fully comprehend the content of documents, leading to informed decisions and a more just outcome.
6. **Flexibility:** The provision uses the term “may request”, indicating that the tribunal has discretion in deciding whether or not to require translations. This allows the tribunal to

consider the specific circumstances of the case and the necessity of translations on a case-by-case basis.

7. **Balancing Efficiency and Costs:** While translations enhance understanding, they can also introduce additional time and costs into the arbitration process. The tribunal's discretion in requesting translations helps balance the benefits of improved communication with the practical realities of the case.
8. **Appropriateness:** The provision recognises that translations may be more crucial for certain types of documents, such as key pleadings, expert reports, or critical evidence. The tribunal can use its discretion to prioritise which documents should be translated.

In summary, Article 26(2) of the SCC Arbitration Rules 2023 grants the Arbitral Tribunal the authority to request translations of documents submitted in languages other than those chosen for the arbitration. This provision contributes to effective communication, fairness, and transparency in the arbitration process while allowing the tribunal flexibility in determining when translations are necessary.

### Article 27 Applicable law

**(1) The Arbitral Tribunal shall decide the merits of the dispute on the basis of the law(s) or rules of law agreed upon by the parties. In the absence of such agreement, the Arbitral Tribunal shall apply the law or rules of law that it considers most appropriate.**

This provision addresses the choice of applicable law and rules of law in the arbitration process. Here are the key points to consider:

1. **Applicable Law Choice:** The article establishes the principle that the Arbitral Tribunal shall base its decision on the merits of the dispute on the law(s) or rules of law agreed upon by the parties. This reflects the parties' autonomy to select the legal framework that will govern the resolution of their dispute.
2. **Party Autonomy:** The provision respects and upholds the principle of party autonomy in arbitration. Parties have the freedom to agree on the substantive law that will govern their dispute, allowing them to tailor the arbitration process to their preferences and needs.
3. **Choice of Governing Law:** Parties to an arbitration agreement often have the option to expressly agree on the governing law, which can be a national legal system or specific rules of law. This choice is pivotal in determining the legal standards by which the dispute will be adjudicated.
4. **Fallback Provision:** In situations where the parties have not agreed upon the applicable law, the provision establishes a fallback mechanism. The Arbitral Tribunal is tasked with determining the most appropriate law or rules of law to apply to the dispute.
5. **Tribunal's Discretion:** The provision grants the Arbitral Tribunal a measure of discretion in selecting the applicable law in the absence of party agreement. The tribunal's decision is guided by the concept of what is "most appropriate" under the circumstances.

6. **Judicial Role:** The Arbitral Tribunal’s role in determining the applicable law aligns with the essence of international arbitration, where arbitrators act as private adjudicators. This stands in contrast to court litigation where the choice of law is typically determined by the *lex fori* (law of the forum).
7. **Complexity and Context:** The phrase “most appropriate” indicates that the tribunal should consider various factors, such as the nature of the dispute, the parties’ backgrounds, the subject matter, and the commercial context, when selecting the applicable law.
8. **Balancing Party Interests:** In situations without an explicit choice of law, the tribunal’s duty is to strike a balance between the interests and expectations of the parties while ensuring a fair and equitable outcome.

In summary, Article 27(1) of the SCC Arbitration Rules 2023 emphasises the importance of party autonomy in choosing the law or rules of law that will govern the merits of the dispute. It provides a clear framework for determining the applicable law in both scenarios where the parties have agreed and where they have not. The provision underscores the flexibility and tailored approach of international arbitration while ensuring fairness and appropriate resolution of the dispute.

**(2) Any designation by the parties of the law of a given state shall be deemed to refer to the substantive law of that state, not to its conflict of laws rules.**

This provision addresses the parties’ choice of law in arbitration and clarifies the scope and interpretation of that choice. Here are the key points to consider:

1. **Designation of Law:** The provision refers to the situation where the parties explicitly designate the law of a particular state to govern their dispute. This is often done through an express choice of law clause in the arbitration agreement or in the terms of reference.
2. **Substantive Law Focus:** The provision clarifies that when parties designate the law of a given state, the reference is to the “substantive law” of that state. In other words, the choice of law pertains to the rules and principles that govern the substantive rights and obligations of the parties in the dispute.
3. **Exclusion of Conflict of Laws:** The provision explicitly excludes the application of the conflict of laws rules of the chosen state. This means that the parties’ choice of law is limited to the actual content of the substantive legal rules of that state, without incorporating any conflict of laws principles that state may have.
4. **Predictability and Certainty:** By clarifying that the choice of law refers to the substantive law, the provision enhances predictability and certainty in the arbitration process. Parties can be confident that their choice of law will govern the substance of the dispute without being subject to potentially complex and unpredictable conflict of laws analyses.
5. **Choice of Law vs. Choice of Forum:** The provision distinguishes between the choice of substantive law and the choice of forum (arbitration). While the choice of law refers to the content of the applicable legal rules, the choice of arbitration forum refers to the process by which the dispute will be resolved.



6. **Harmonising Approach:** The provision helps harmonise the interpretation of choice of law clauses across different jurisdictions. It establishes a standard approach where the chosen law is understood to apply directly to the substantive issues in the dispute.
7. **Efficiency and Clarity:** By excluding conflict of laws rules, the provision promotes efficiency in the arbitration process. It avoids potential disputes or complications arising from conflicts of laws analysis and focuses the discussion on the actual substance of the legal issues.
8. **Party Intent:** The provision respects and reflects the parties' intention in choosing a particular law to govern their dispute. It ensures that the chosen law is given effect according to its substantive principles.

In summary, Article 27(2) of the SCC Arbitration Rules 2023 clarifies the scope and interpretation of the parties' choice of law in arbitration. It ensures that the chosen law refers to the substantive legal rules of the designated state, without incorporating that state's conflict of laws principles. This provision enhances predictability, efficiency, and clarity in the arbitration process while honouring the parties' choice of governing law.

**(3) The Arbitral Tribunal shall decide the dispute ex aequo et bono or as amiable compositeur only if the parties have expressly authorised it to do so.**

This provision addresses the circumstances under which the Arbitral Tribunal can decide the dispute based on principles of equity or as amiable compositeur. Here are the key points to consider:

1. **Principles of Equity:** The provision refers to two distinct concepts: "ex aequo et bono" and "as amiable compositeur". These concepts involve deciding the dispute based on general principles of fairness and equity, rather than strictly applying established legal rules or statutes.
2. **Limited Scope:** The provision establishes a limitation on the tribunal's ability to apply these equitable principles. The tribunal is only authorised to decide the dispute using these principles if the parties have expressly granted such authority.
3. **Party Consent:** The principle of party consent is fundamental in arbitration. This provision ensures that the tribunal's decision to apply equitable principles is based on the parties' explicit authorisation, respecting their autonomy to determine the framework for resolving their dispute.
4. **Tailored Approach:** Parties may have specific reasons for agreeing to arbitration and granting authority to the tribunal to decide ex aequo et bono or as amiable compositeur. It could be in cases where they desire a more flexible, amicable, or less rigid approach to dispute resolution.
5. **Exceptional Circumstances:** Deciding a dispute based on equity or as amiable compositeur is relatively exceptional in modern arbitration practice. It requires parties to deviate from strict legal standards and grant the tribunal significant discretion.

6. Protection of Parties: Requiring explicit authorisation ensures that parties are fully aware and have given their informed consent before the tribunal departs from the application of established legal principles.
7. Balancing Legal and Equitable: The provision strikes a balance between the parties' autonomy and the tribunal's authority. It acknowledges the possibility of resolving disputes using equitable principles but within the confines of party agreement.
8. Predictability and Legal Certainty: The provision contributes to predictability and legal certainty in arbitration. It ensures that the tribunal's decision-making framework is transparent and aligned with the parties' intentions.

In summary, Article 27(3) of the SCC Arbitration Rules 2023 specifies that the Arbitral Tribunal can decide the dispute based on equity or as amiable compositeur only if the parties have expressly authorised it to do so. This provision upholds the principle of party consent while allowing for a more tailored and flexible approach to dispute resolution in exceptional cases where parties agree to depart from strict legal standards.

#### **Article 28 Case management conference and timetable**

**(1) After the referral of the case to the Arbitral Tribunal, the Arbitral Tribunal shall promptly hold a case management conference with the parties to organise, schedule and establish procedures for the conduct of the arbitration.**

This provision addresses the conduct of a case management conference by the Arbitral Tribunal after the case has been referred to it. Here are the key points to consider:

1. Case Management Conference: A case management conference is a meeting between the Arbitral Tribunal and the parties involved in the arbitration. Its purpose is to discuss and establish procedural matters, including organisation, scheduling, and procedural rules for the arbitration.
2. Timing: The provision emphasises the promptness of holding the case management conference after the case has been referred to the Arbitral Tribunal. This underscores the importance of early procedural planning to ensure the smooth and efficient progress of the arbitration.
3. Efficient Conduct: The case management conference serves as a crucial mechanism for efficiently managing the arbitration proceedings. By addressing procedural matters early on, the tribunal can streamline the process and address potential issues before they escalate.
4. Organisation and Scheduling: The conference covers organisational aspects such as setting timelines, scheduling hearings, exchanging documents, and arranging expert evidence. It helps ensure that the arbitration proceeds in an organised and structured manner.
5. Establishing Procedures: The conference is an opportunity to establish procedures for the arbitration. This may include decisions on written submissions, witness statements,

expert reports, document production, and any other procedural matters tailored to the specific case.

6. **Party Involvement:** The provision involves the parties in the case management process. This helps ensure that the procedures established are practical and acceptable to all parties, enhancing cooperation and reducing the likelihood of disputes.
7. **Procedural Flexibility:** The provision acknowledges that each arbitration may have unique requirements. By holding a case management conference, the tribunal can tailor procedures to the specific needs of the dispute, promoting flexibility in the arbitration process.
8. **Fairness and Due Process:** The conference contributes to ensuring fairness and due process by allowing parties to participate in shaping the procedures that will govern the arbitration. This promotes a more balanced and equitable process.

In summary, Article 28(1) of the SCC Arbitration Rules 2023 highlights the importance of a case management conference in the arbitration process. The provision ensures that after the case has been referred to the Arbitral Tribunal, a timely meeting is held with the parties to organise, schedule, and establish procedures for the conduct of the arbitration. This proactive approach enhances efficiency, fairness, and the effective management of the arbitration proceedings.

## **(2) The case management conference may be conducted in person or by any other means.**

This provision addresses the flexibility of conducting the case management conference in various formats. Here are the key points to consider:

1. **Flexible Format:** The provision recognises that a case management conference can be conducted in different ways. It allows for flexibility in choosing the format that best suits the needs and circumstances of the arbitration.
2. **In-Person or Remote:** The provision provides two options: an in-person conference or conducting the conference by “any other means”. This latter option implies that the case management conference can be held remotely, through technological means such as video conferencing, telephone, or other electronic communication methods.
3. **Technological Advancements:** The provision reflects the impact of modern technology on arbitration procedures. Technological advancements allow for effective communication and collaboration among parties and tribunal members, even if they are geographically dispersed.
4. **Efficiency and Convenience:** Remote case management conferences can lead to increased efficiency and convenience. Parties, arbitrators, and legal representatives can participate without the need for extensive travel, potentially saving time and costs.
5. **Safeguarding Party Rights:** While remote conferences offer advantages, it is important to ensure that the chosen means of communication and interaction do not compromise party rights, including the ability to effectively present arguments and participate in discussions.

6. **Balancing Practicality and Fairness:** The provision strikes a balance between the practicality of remote conferences and the need to maintain fairness, transparency, and due process in the arbitration proceedings.
7. **Tailoring to the Case:** The provision recognises that the format of the case management conference should be adaptable to the specific circumstances of the case. Certain cases may benefit from in-person interactions, while others may proceed effectively through remote means.
8. **Environmental Considerations:** Conducting remote conferences aligns with environmental considerations by reducing the carbon footprint associated with travel, which is in line with contemporary efforts to promote sustainable practices.

In summary, Article 28(2) of the SCC Arbitration Rules 2023 underscores the flexibility of conducting a case management conference. It acknowledges that the conference can be held in person or through remote means, allowing parties and the tribunal to choose the most appropriate format for organising and establishing procedures for the arbitration. This provision reflects the evolving nature of arbitration practice and the integration of modern technology to enhance procedural efficiency and accessibility.

**(3) Having regard to the circumstances of the case, the Arbitral Tribunal and the parties shall seek to adopt procedures enhancing the efficiency and expeditiousness of the proceedings.**

This provision emphasises the importance of adopting efficient and expeditious procedures during the arbitration process. Here are the key points to consider:

1. **Efficiency and Expedited Proceedings:** The provision underscores the objective of achieving efficiency and expeditiousness in the arbitration proceedings. This aligns with the broader trend in international arbitration to streamline processes and avoid unnecessary delays.
2. **Circumstance-Based Approach:** The provision recognises that the approach to achieving efficiency may vary depending on the specific circumstances of each case. The tribunal and the parties are expected to assess the unique aspects of the dispute when adopting procedural measures.
3. **Collaborative Effort:** The language used (“Arbitral Tribunal and the parties”) emphasises that the pursuit of efficiency is a joint endeavour. Both the tribunal and the parties are actively involved in shaping procedures that lead to a more efficient resolution of the dispute.
4. **Customisation:** The provision highlights the importance of customising procedures to fit the case. This could involve tailoring the scope of document production, the length and format of submissions, the number of hearings, and the use of technology.
5. **Minimising Procedural Bottlenecks:** Parties and tribunals may work together to identify and address potential procedural bottlenecks that could impede the timely resolution of the dispute.

6. **Balancing Efficiency and Due Process:** While efficiency is important, the provision is mindful of preserving due process and fairness. The adoption of efficient procedures should not compromise the parties' right to present their case or the tribunal's ability to fully consider the issues.
7. **Incentive for Cooperation:** The provision encourages cooperation between the parties and the tribunal to achieve procedural efficiency. This can foster a constructive atmosphere and may lead to faster and more cost-effective dispute resolution.
8. **Modern Arbitration Principles:** The emphasis on efficiency and expeditiousness reflects modern principles in international arbitration, which prioritise timely resolution and cost-effectiveness while maintaining the integrity of the process.

In summary, Article 28(3) of the SCC Arbitration Rules 2023 underscores the importance of adopting procedures that enhance the efficiency and expeditiousness of arbitration proceedings. It calls for a collaborative effort between the Arbitral Tribunal and the parties to tailor procedures to the circumstances of the case, with the goal of achieving timely and effective dispute resolution while safeguarding due process and fairness.

**(4) During or immediately following the case management conference, the Arbitral Tribunal shall establish a timetable for the conduct of the arbitration, including the date for making the award.**

This provision focuses on the establishment of a timetable for the arbitration proceedings, including the timeline for making the final award. Here are the key points to consider:

1. **Timetable Establishment:** The article highlights the crucial role of the Arbitral Tribunal in setting a clear and structured timetable for the entire arbitration process. This timetable includes various procedural steps, such as filing submissions, conducting hearings, and ultimately rendering the award.
2. **Case Management Conference Impact:** The provision situates the establishment of the timetable within or immediately following the case management conference. This underscores the practicality of combining procedural planning and the setting of a timeline in a single comprehensive meeting.
3. **Procedural Roadmap:** The established timetable serves as a roadmap for the arbitration proceedings, ensuring that all parties are aware of key milestones, deadlines, and the expected duration of the process.
4. **Predictability:** The provision contributes to predictability by offering parties a clear understanding of the timeline for the arbitration. This can be particularly important for planning resources, legal strategies, and managing costs.
5. **Efficiency:** A well-structured timetable promotes procedural efficiency by preventing unnecessary delays and ensuring that all parties adhere to established deadlines.
6. **Transparency:** By establishing a timetable, the Arbitral Tribunal enhances transparency and communication. All participants in the arbitration, including parties, legal representatives, and witnesses, can align their schedules accordingly.

7. **Managing Expectations:** A defined timetable helps manage parties' expectations and reduces uncertainty. Parties can anticipate the stages of the arbitration and plan their involvement accordingly.
8. **Award Date:** One significant aspect of the established timetable is the date for making the final award. This ensures that the tribunal and the parties are aligned on when the arbitration process will be concluded with a decision.

In summary, Article 28(4) of the SCC Arbitration Rules 2023 emphasises the importance of establishing a clear and comprehensive timetable for the conduct of the arbitration. It places the responsibility on the Arbitral Tribunal to set deadlines and milestones, including the date for making the final award, either during or immediately following the case management conference. This provision enhances procedural efficiency, predictability, transparency, and overall effectiveness in the arbitration process.

**(5) The Arbitral Tribunal may, after consulting the parties, hold further case management conferences and issue revised timetables as it deems appropriate. The Arbitral Tribunal shall send a copy of the timetable and any subsequent modifications to the parties and to the Secretariat.**

This provision addresses the ongoing management of the arbitration process, including the flexibility to hold additional case management conferences and revise timetables. Here are the key points to consider:

1. **Continued Case Management:** The provision highlights that the Arbitral Tribunal's role in case management extends beyond the initial conference. The tribunal is empowered to hold further case management conferences as necessary to adapt to changing circumstances or address emerging issues.
2. **Flexibility and Adaptability:** The flexibility to hold additional case management conferences and revise timetables recognises that arbitration proceedings may evolve, requiring adjustments to procedures, timelines, or other aspects of the process.
3. **Consultation with Parties:** The Arbitral Tribunal is required to consult the parties before convening further case management conferences or issuing revised timetables. This ensures that all parties are involved in decisions that impact the progress of the arbitration.
4. **Tailoring to the Case:** The provision acknowledges that each arbitration is unique, and the procedural needs may change as the case unfolds. Holding additional conferences and revising timetables enables the tribunal to customise the process to fit the circumstances.
5. **Efficient Resolution:** The provision reinforces the overarching goal of efficient dispute resolution. The ability to adapt procedures and timelines allows the tribunal to address any challenges that may arise, ensuring a smoother and more timely process.
6. **Transparency and Communication:** The requirement to send a copy of the timetable and any modifications to the parties and the Secretariat enhances transparency and communication among all participants in the arbitration process.

7. **Parties' Participation:** The provision encourages active participation and collaboration from the parties. Consulting with the parties before making adjustments demonstrates respect for their interests and ensures their input is considered.
8. **Secretariat Involvement:** Sharing the modified timetable with the Secretariat helps maintain consistency and coordination in the administration of the arbitration. It also allows the Secretariat to be informed about changes that may affect the overall timeline.

In summary, Article 28(5) of the SCC Arbitration Rules 2023 underscores the dynamic and adaptable nature of case management in arbitration. The provision empowers the Arbitral Tribunal to hold additional case management conferences and adjust timetables as needed, ensuring that the arbitration process remains responsive to changing circumstances while promoting efficiency, transparency, and effective communication with the parties and the Secretariat.

### Article 29 Written submissions

**(1) Within the period determined by the Arbitral Tribunal, the claimant shall submit a statement of claim which shall include, unless previously submitted:**

- (i) the specific relief sought;**
- (ii) the facts and other circumstances the claimant relies on; and**
- (iii) any evidence the claimant relies on.**

This provision outlines the requirements for the claimant's initial submission, known as the "statement of claim", in arbitration proceedings. Here are the key points to consider:

**Statement of Claim:** The article refers to the "statement of claim", which is a foundational document filed by the claimant to initiate the arbitration process. It outlines the claimant's case and provides the basis for the dispute.

**Timely Submission:** The provision emphasises that the claimant must submit the statement of claim within a period determined by the Arbitral Tribunal. This timeframe ensures that the proceedings are initiated promptly and that the arbitration process moves forward.

**Content Requirements:** The statement of claim must include specific elements to provide a comprehensive and clear presentation of the claimant's case. These elements are: (i) the specific relief sought; (ii) the facts and other circumstances relied upon by the claimant; and (iii) any evidence that the claimant relies on to support their case.

**Specific Relief:** The claimant is required to specify the relief sought, which means outlining the specific remedies or outcomes the claimant is requesting from the Arbitral Tribunal.

**Facts and Circumstances:** The claimant must present the factual basis of the claim, including a detailed account of the events, circumstances, and background that form the foundation of the dispute.

**Evidence:** The provision requires the claimant to include any evidence they intend to rely on to support their case. This may encompass documents, witness statements, expert reports, or other relevant materials.

**Avoidance of Duplication:** The phrase “unless previously submitted” indicates that the claimant should not reiterate information that has already been presented in prior submissions or exchanges. This helps streamline the arbitration process and avoids unnecessary repetition.

**Focus and Clarity:** The requirements outlined in the provision aim to ensure that the claimant’s case is presented in a focused, clear, and comprehensive manner. This assists the Arbitral Tribunal and the opposing party in understanding the nature and basis of the dispute.

In summary, Article 29(1) of the SCC Arbitration Rules 2023 outlines the essential elements that must be included in the claimant’s statement of claim. This provision promotes clarity, focus, and procedural efficiency by ensuring that the claimant’s case is presented in a structured and well-supported manner. It sets the foundation for the arbitration proceedings by requiring the claimant to articulate the relief sought, the underlying facts, and the evidence supporting the claim.

**(2) Within the period determined by the Arbitral Tribunal, the respondent shall submit a statement of defence which shall include, unless previously submitted:**

- (i) any objections concerning the existence, validity or applicability of the arbitration agreement;**
- (ii) a statement whether, and to what extent, the respondent admits or denies the relief sought by the claimant;**
- (iii) the facts and other circumstances the respondent relies on;**
- (iv) any counterclaim or set-off and the facts and other circumstances on which it is based; and**
- (v) any evidence the respondent relies on.**

This provision outlines the requirements for the respondent’s initial submission, known as the “statement of defence”, in arbitration proceedings. Here are the key points to consider:

1. **Statement of Defence:** Similar to the claimant’s statement of claim, the respondent’s statement of defence is a foundational document in arbitration. It provides the respondent’s response to the claimant’s case and outlines any counterclaims or objections.
2. **Timely Submission:** The article emphasises that the respondent must submit the statement of defence within a period determined by the Arbitral Tribunal. This ensures that the respondent’s response is provided promptly, allowing the arbitration process to proceed efficiently.



3. **Content Requirements:** The statement of defence must include specific elements to address the key aspects of the dispute. These elements are: (i) objections concerning the arbitration agreement's existence, validity, or applicability; (ii) the respondent's stance on the relief sought by the claimant; (iii) the factual basis and circumstances the respondent relies on; (iv) any counterclaim or set-off along with its factual basis; and (v) any evidence the respondent intends to rely on.
4. **Objections to Arbitration Agreement:** The respondent is required to raise any objections related to the arbitration agreement itself. This includes objections about the existence, validity, or applicability of the arbitration agreement that forms the basis for the dispute.
5. **Response to Relief Sought:** The respondent must address whether and to what extent they admit or deny the relief sought by the claimant. This clarifies the respondent's position on the core issues of the dispute.
6. **Facts and Circumstances:** Similar to the claimant, the respondent must present the factual basis of their case, providing context, events, and other relevant circumstances.
7. **Counterclaims and Set-Offs:** The provision allows the respondent to raise counterclaims or set-offs, which are claims the respondent asserts against the claimant in response to the original claim. The respondent must also provide the factual basis for these additional claims.
8. **Evidence:** Similar to the claimant, the respondent must identify any evidence they intend to rely on to support their case or counterclaims.

In summary, Article 29(2) of the SCC Arbitration Rules 2023 outlines the essential components that must be included in the respondent's statement of defence. This provision ensures that the respondent's position is clearly presented, addressing objections to the arbitration agreement, the response to the relief sought, factual and legal circumstances, any counterclaims or set-offs, and the evidence supporting their case. It promotes transparency, fairness, and procedural efficiency by requiring both parties to outline their respective positions and claims in an organised and comprehensive manner.

### **(3) The Arbitral Tribunal may order the parties to submit additional written submissions.**

This provision addresses the authority of the Arbitral Tribunal to request or order the parties to submit further written submissions during the course of arbitration proceedings. Here are the key points to consider:

1. **Flexibility of the Tribunal:** The provision reflects the tribunal's discretion to manage the proceedings effectively by ordering the submission of additional written submissions when deemed necessary.
2. **Responsive to Circumstances:** The tribunal's decision to request additional written submissions may be driven by the complexity of the issues, new developments in the case, the need for further clarification, or other circumstances that arise during the proceedings.

3. **Enhancing Understanding:** Ordering additional written submissions can contribute to a more comprehensive and informed consideration of the case. It allows parties to address specific points, respond to opposing arguments, or elaborate on aspects that may require further explanation.
4. **Balancing Process:** The provision emphasises the importance of achieving a balanced process. While the tribunal has the authority to order additional submissions, it should ensure that both parties have an equal and reasonable opportunity to present their respective views.
5. **Procedural Fairness:** Any orders for additional submissions should align with principles of procedural fairness, ensuring that parties are given appropriate notice and adequate time to prepare and submit their written materials.
6. **Efficiency and Timeliness:** The provision contributes to procedural efficiency by allowing the tribunal to gather information and insights through written submissions before moving on to the next stages of the arbitration.
7. **Informed Decision-Making:** Additional written submissions can aid the tribunal in making well-informed decisions and crafting a reasoned and thorough award.
8. **Communication and Collaboration:** The provision encourages ongoing communication and collaboration between the tribunal and the parties. It provides a mechanism for parties to engage directly with the tribunal beyond the initial submissions.

In summary, Article 29(3) of the SCC Arbitration Rules 2023 underscores the flexibility and discretion of the Arbitral Tribunal to order additional written submissions when necessary. This provision allows the tribunal to adapt to evolving circumstances and ensures that parties have the opportunity to present their views and arguments more comprehensively. It promotes procedural fairness, efficient case management, and the tribunal's ability to make informed decisions throughout the arbitration process.

### Article 30 Amendments

**At any time prior to the close of proceedings pursuant to Article 40, a party may amend or supplement its claim, counterclaim, defence or set-off provided its case, as amended or supplemented, is still encompassed by the arbitration agreement, unless the Arbitral Tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it, the prejudice to the other party or any other relevant circumstances.**

This provision addresses the ability of parties to amend or supplement their claims, counterclaims, defences, or set-offs in arbitration proceedings, subject to certain conditions. Here are the key points to consider:

1. **Amendment and Supplement:** The provision allows parties to modify their original claims, counterclaims, defences, or set-offs by either amending or supplementing them. This flexibility recognises that as the arbitration process unfolds, parties may identify new issues, evidence, or arguments that warrant changes to their case.

2. **Timing:** The right to amend or supplement is available “prior to the close of proceedings pursuant to Article 40”. This means that parties can make amendments or supplements to their case during the course of the proceedings, but before the proceedings are formally closed.
3. **Scope Within Arbitration Agreement:** The amendment or supplement must be within the scope of the arbitration agreement. In other words, the modified or supplemented case must still relate to the subject matter covered by the original arbitration agreement.
4. **Tribunal Discretion:** While parties have the right to amend or supplement their case, the Arbitral Tribunal retains discretion to decide whether such amendments or supplements are appropriate. The tribunal evaluates this based on various factors, including the timing of the proposed changes, potential prejudice to the other party, and any other relevant circumstances.
5. **Inappropriateness Factors:** The provision lists specific factors that the tribunal should consider when determining whether to allow an amendment or supplement. These factors include the delay in making the amendment, potential prejudice to the other party, and any other relevant circumstances that might impact the fairness or efficiency of the proceedings.
6. **Balance of Interests:** The provision seeks to strike a balance between a party’s right to modify its case and the need to ensure fairness, procedural efficiency, and protection of the other party’s rights.
7. **Protection Against Abuse:** By requiring the amendment or supplement to be still encompassed by the arbitration agreement, the provision guards against parties attempting to introduce entirely new and unrelated claims or issues at a later stage.
8. **Procedural Efficiency and Finality:** The provision encourages parties to carefully consider their case and potential changes early in the proceedings to avoid undue delays and promote the efficient resolution of the dispute.

In summary, Article 30 of the SCC Arbitration Rules 2023 provides parties with the opportunity to amend or supplement their claims, counterclaims, defences, or set-offs during the arbitration process. However, the provision ensures that such amendments are made within the scope of the arbitration agreement and subject to the tribunal’s discretion. This balance aims to accommodate legitimate changes while safeguarding the integrity of the arbitration proceedings, fairness, and procedural efficiency.

## Article 31 Evidence

### **(1) The admissibility, relevance, materiality, and weight of evidence shall be for the Arbitral Tribunal to determine.**

This provision addresses the role and authority of the Arbitral Tribunal in evaluating and deciding on various aspects of the evidence presented in arbitration proceedings. Here are the key points to consider:

1. **Tribunal's Decision-Making Authority:** The article establishes the Arbitral Tribunal's exclusive authority to make determinations regarding the evidence presented in the arbitration. This includes decisions about whether evidence is admissible, relevant, material, and the weight it should be given.
2. **Admissibility:** The tribunal is tasked with deciding whether evidence is admissible, meaning whether it meets the criteria for being considered and considered relevant to the case.
3. **Relevance:** The tribunal determines whether the evidence is relevant, which means it has a logical and significant connection to the issues in dispute.
4. **Materiality:** The tribunal assesses the materiality of evidence, considering whether it has the potential to affect the outcome of the case or the resolution of specific issues.
5. **Weight:** The provision also empowers the tribunal to assign weight to the evidence, meaning the significance or importance attributed to it in the overall evaluation of the case.
6. **Expertise and Impartiality:** The tribunal's role in assessing evidence underscores its expertise in arbitration matters and its impartial role in evaluating the merits of the case.
7. **Consistency and Fairness:** The provision helps ensure consistency and fairness in the treatment of evidence. It prevents parties from unilaterally determining the admissibility, relevance, or weight of evidence, which could potentially lead to procedural imbalances.
8. **Deliberative Process:** The provision contributes to the robustness of the deliberative process. The tribunal's responsibility to assess evidence ensures that only pertinent and credible information is considered when rendering its decision.
9. **Safeguarding Due Process:** While the tribunal has significant discretion, it must exercise this authority in a manner that upholds due process and provides parties with an equal opportunity to present their case.

In summary, Article 31(1) of the SCC Arbitration Rules 2023 establishes the Arbitral Tribunal's authority in making determinations about the evidence presented in arbitration proceedings. This provision reinforces the tribunal's role as an impartial and expert decision-maker, ensuring that the evidence considered is both relevant and material to the case while maintaining procedural fairness and the integrity of the arbitration process.

**(2) The Arbitral Tribunal may order a party to identify the documentary evidence it intends to rely on and specify the circumstances intended to be proved by such evidence.**

This provision addresses the Arbitral Tribunal's authority to order a party to provide more detailed information about the documentary evidence it plans to present and the specific circumstances it aims to prove with that evidence. Here are the key points to consider:

1. **Tribunal's Discretion:** The article acknowledges the Arbitral Tribunal's discretionary power to issue orders related to the presentation of documentary evidence. This reflects the tribunal's role in managing the proceedings effectively.
2. **Documentary Evidence Identification:** The provision allows the tribunal to require a party to identify the specific documentary evidence it intends to rely on. This promotes transparency and provides clarity to the opposing party and the tribunal about the evidence that will be introduced.
3. **Circumstances to be Proved:** The provision goes a step further by allowing the tribunal to require the party to specify the circumstances or facts that the party intends to prove using the identified documentary evidence. This helps ensure that the evidence is relevant to the issues in dispute.
4. **Focus and Efficiency:** By ordering parties to specify the intended circumstances, the provision encourages parties to focus on the core elements of their case and present evidence that directly supports their arguments. This can lead to a more efficient presentation of evidence and streamline the proceedings.
5. **Preventing Surprise:** Requiring parties to provide detailed information about the intended use of documentary evidence helps prevent surprise and ensures that all parties have a fair opportunity to respond and prepare their case.
6. **Balancing Interests:** The provision balances the tribunal's ability to manage the proceedings and gather relevant evidence with the parties' right to present their case. It ensures that any orders issued are reasonable and aimed at enhancing the quality of the proceedings.
7. **Evidentiary Clarity:** Requiring parties to identify and specify their documentary evidence fosters a clear and well-structured presentation of the case, benefiting both the tribunal and the parties.
8. **Procedural Fairness:** The provision contributes to procedural fairness by promoting transparency and allowing parties to know the evidence that will be presented against them and the specific issues it aims to address.

In summary, Article 31(2) of the SCC Arbitration Rules 2023 grants the Arbitral Tribunal the authority to order parties to identify documentary evidence and specify the circumstances intended to be proved by such evidence. This provision enhances transparency, efficiency, and the quality of evidence presentation in the arbitration process while safeguarding the interests of all parties involved.

**(3) At the request of a party, or exceptionally on its own motion, the Arbitral Tribunal may order a party to produce any documents or other evidence that may be relevant to the case and material to its outcome.**

This provision addresses the Arbitral Tribunal's authority to order a party to produce documents or other evidence in arbitration proceedings. Here are the key points to consider:

1. **Party Request or Tribunal’s Initiative:** The provision recognises that a request for the production of documents or evidence can come from a party involved in the arbitration. Additionally, the tribunal has the discretion to initiate such an order on its own if it deems it appropriate.
2. **Document and Evidence Production:** The focus of this provision is on the production of documents or other types of evidence that are relevant to the case and are material to the ultimate outcome of the dispute.
3. **Relevance and Materiality:** The tribunal’s authority to order the production of evidence is contingent upon the evidence being both relevant to the case and essential for determining its outcome.
4. **Balance of Interests:** The provision strikes a balance between a party’s right to present its case and the tribunal’s authority to ensure that all relevant and material evidence is made available to support a well-informed decision.
5. **Exceptional Cases:** The provision uses the term “exceptionally” to indicate that the tribunal’s own initiative to order evidence production should be used sparingly and only in circumstances where it is deemed necessary for a fair and just resolution of the dispute.
6. **Discretion of the Tribunal:** The provision underscores the discretionary power of the Arbitral Tribunal to determine whether an order for evidence production is warranted based on the specific facts and circumstances of the case.
7. **Ensuring Full Information:** The provision ensures that parties have access to all necessary evidence, even if one party is not willing to voluntarily produce such evidence. This helps avoid potential imbalances in the presentation of evidence.
8. **Fairness and Integrity:** The provision contributes to procedural fairness and the integrity of the arbitration process by allowing the tribunal to ensure that all parties have an equal and reasonable opportunity to present their case with the available evidence.

In summary, Article 31(3) of the SCC Arbitration Rules 2023 grants the Arbitral Tribunal the authority to order a party to produce documents or other evidence that is relevant to the case and material to its outcome. This provision reinforces the tribunal’s role in managing and overseeing the evidentiary process, promoting fairness, transparency, and a comprehensive presentation of evidence in arbitration proceedings.

## Article 32 Hearings

### **(1) A hearing shall be held if requested by a party, or if the Arbitral Tribunal deems it appropriate.**

This provision addresses the conduct of hearings in arbitration proceedings. Here are the key points to consider:

1. **Hearing Requirement:** The provision establishes the circumstances under which a hearing must be held during the arbitration process.

2. **Party Request:** A party involved in the arbitration has the right to request a hearing. This allows parties to have an opportunity to present their case orally, engage in direct dialogue with the tribunal, and address any questions or concerns that may arise.
3. **Tribunal's Discretion:** The Arbitral Tribunal has the authority to determine whether a hearing is appropriate even in the absence of a party request. This discretionary power recognises the tribunal's role in managing the proceedings and deciding whether an oral hearing is necessary for the resolution of the dispute.
4. **Balancing Interests:** The provision seeks to balance the interests of the parties and the tribunal. It ensures that parties have the option to request a hearing while also allowing the tribunal to make informed decisions about the necessity of holding a hearing based on the circumstances of the case.
5. **Efficiency and Effectiveness:** The provision aligns with the principle of procedural efficiency by requiring a hearing only when it is deemed necessary or requested. This prevents unnecessary delays and expenses in cases where a hearing may not significantly contribute to the resolution of the dispute.
6. **Clarification and Presentation:** A hearing provides an opportunity for parties to clarify their arguments, present evidence, and respond to questions directly posed by the tribunal. It can enhance the understanding of complex issues and facilitate a more robust decision-making process.
7. **Promoting Fairness:** The provision contributes to procedural fairness by ensuring that parties have the chance to present their case in a meaningful way, either through written submissions or oral presentations.
8. **Decision-Making Process:** If the tribunal decides to hold a hearing, it demonstrates the tribunal's commitment to a thorough and comprehensive consideration of the case before rendering an award.

In summary, Article 32(1) of the SCC Arbitration Rules 2023 outlines the circumstances under which a hearing shall be held in arbitration proceedings. It allows a party to request a hearing and grants the Arbitral Tribunal the discretion to determine whether a hearing is appropriate, balancing the interests of the parties and the efficiency of the arbitration process. This provision ensures that parties have an opportunity to present their case orally and engage in direct communication with the tribunal when necessary.

**(2) After consulting with the parties and having regard to the circumstances, the Arbitral Tribunal shall decide:**

**(i) the date and time of any hearing; and**

**(ii) whether any hearing shall be conducted (a) in person, at a specified location, or (b) remotely, in whole or in part, by videoconference or other appropriate means of communication.**

**The Arbitral Tribunal shall provide the parties reasonable notice of its decision.**

This provision outlines the process by which the Arbitral Tribunal determines the logistics and format of hearings in arbitration proceedings. Here are the key points to consider:

1. **Consultation with Parties:** The provision highlights the importance of consulting with the parties before making decisions related to hearings. This consultative process ensures that the parties' input and preferences are taken into account.
2. **Logistical Decisions:** The tribunal is responsible for making two key logistical decisions: (i) determining the date and time of any hearing, and (ii) choosing the format of the hearing, whether it will be conducted in person at a specified location or remotely via videoconference or other appropriate communication means.
3. **Flexibility in Format:** The provision acknowledges the increasing use of technology in arbitration proceedings. It gives the tribunal the authority to choose between in-person hearings and remote hearings, depending on the circumstances and the needs of the case.
4. **Remote Hearings:** The provision explicitly allows for remote hearings, which can include videoconferencing or other appropriate communication methods. This flexibility recognises the potential benefits of remote proceedings, such as cost savings and increased accessibility.
5. **Consideration of Circumstances:** The tribunal's decisions on the date, time, and format of the hearing should take into account the specific circumstances of the case, including the complexity of the issues, the availability of parties and witnesses, and any other relevant factors.
6. **Notice Requirement:** The provision mandates that the tribunal must provide the parties with reasonable notice of its decisions regarding the hearing date, time, and format. This ensures that the parties have adequate time to prepare and make necessary arrangements.
7. **Efficiency and Fairness:** The provision aims to balance the efficient conduct of hearings with the parties' right to be heard and present their case in a manner that is convenient and conducive to their effective participation.
8. **Modern Approach:** By allowing for remote hearings and recognising advances in communication technology, the provision reflects a modern and adaptable approach to arbitration proceedings.



In summary, Article 32(2) of the SCC Arbitration Rules 2023 outlines the procedures for determining the logistics and format of hearings in arbitration proceedings. It emphasises consultation with the parties, flexibility in choosing between in-person and remote hearings, and the need to consider the circumstances of the case. The provision promotes efficient and effective proceedings while ensuring that parties have a reasonable opportunity to present their case and participate in the arbitration process.

**(3) Unless otherwise agreed by the parties, hearings will be held in private.**

This provision addresses the default rule for the privacy of arbitration hearings. Here are the key points to consider:

1. **Default Private Hearings:** The provision establishes a default presumption that arbitration hearings will be held in private. This means that absent any contrary agreement between the parties, the proceedings will not be open to the public.
2. **Party Agreement:** The provision allows parties to agree otherwise if they wish to have open or public hearings. This emphasises the importance of party autonomy and the ability of parties to tailor the arbitration process to their preferences.
3. **Confidentiality:** The default rule of private hearings aligns with the general emphasis on confidentiality in arbitration. Private hearings help maintain the confidentiality of sensitive information, discussions, and evidence presented during the proceedings.
4. **Encouraging Candidness:** Private hearings can encourage parties, witnesses, and experts to be more candid in their testimony and presentations, as they may feel more comfortable discussing sensitive matters without the risk of public disclosure.
5. **Maintaining Neutrality:** Private hearings contribute to maintaining the neutrality of the arbitration process by limiting external influences and ensuring that decisions are based on the evidence and arguments presented by the parties.
6. **Efficient Resolution:** Private hearings can promote an efficient and focused resolution process by allowing the tribunal and parties to address issues directly without unnecessary distractions.
7. **Balancing Interests:** While the default is for private hearings, parties have the option to agree to open hearings if they believe that public proceedings are more appropriate for their case.
8. **Transparency and Accountability:** The provision recognises that transparency and public accountability are important values. However, the default private nature of arbitration hearings is consistent with the desire for efficient and confidential dispute resolution.

In summary, Article 32(3) of the SCC Arbitration Rules 2023 establishes the default rule that arbitration hearings will be held in private, unless the parties agree otherwise. This provision reflects the importance of confidentiality and party autonomy in arbitration proceedings, while also acknowledging the potential benefits of open hearings when parties choose to make such an agreement.

### Article 33 Witnesses

**(1) In advance of any hearing, the Arbitral Tribunal may order the parties to identify each witness or expert they intend to call and specify the circumstances intended to be proved by each testimony.**

This provision addresses the pre-hearing stage and the Arbitral Tribunal's authority to order parties to provide information about the witnesses or experts they plan to call during the hearing. Here are the key points to consider:

1. **Advance Identification:** The provision establishes a procedural requirement for parties to identify the witnesses or experts they intend to present during a hearing before the hearing takes place. This enables the tribunal and the opposing party to prepare adequately.
2. **Tribunal's Discretion:** The authority to order the identification of witnesses or experts rests with the Arbitral Tribunal. The tribunal has the discretion to determine when this order is appropriate based on the circumstances of the case.
3. **Preparation and Efficiency:** Requiring parties to identify their witnesses or experts in advance promotes efficient case preparation. It allows both the tribunal and the opposing party to anticipate the evidence that will be presented and to tailor their own presentations accordingly.
4. **Transparency:** The provision enhances transparency in the arbitration process by ensuring that all parties are aware of the witnesses or experts who will testify and the specific issues they intend to address.
5. **Focused Testimony:** By specifying the circumstances intended to be proved by each testimony, parties are encouraged to present focused and relevant evidence that directly supports their arguments and claims.
6. **Balancing Interests:** The provision balances the interests of the parties by requiring disclosure of relevant information while safeguarding sensitive or confidential aspects of the case.
7. **Efficient Hearing:** Preparing in advance helps streamline the hearing process, as the tribunal and parties can allocate time more efficiently and ensure that all pertinent aspects are adequately addressed.
8. **Procedural Fairness:** The requirement ensures that both parties have equal access to information about the evidence that will be presented, promoting procedural fairness.

In summary, Article 33(1) of the SCC Arbitration Rules 2023 mandates that the Arbitral Tribunal has the authority to order parties to identify witnesses or experts they intend to call and specify the circumstances intended to be proved by their testimony in advance of any hearing. This provision contributes to the transparency, efficiency, and fairness of the arbitration proceedings by allowing parties and the tribunal to adequately prepare and focus on relevant issues during the hearing.

**(2) The testimony of witnesses or party-appointed experts may be submitted in the form of signed statements.**

This provision addresses the presentation of witness or expert testimony in arbitration proceedings. Here are the key points to consider:

1. **Testimony Submission:** The provision allows for the possibility of presenting witness or expert testimony in the form of signed statements. This indicates that rather than providing live oral testimony, witnesses or experts may submit written statements that are signed to attest to their accuracy and authenticity.
2. **Flexibility:** Allowing testimony to be presented in the form of signed statements offers a flexible approach to the presentation of evidence. This can be particularly useful in cases where witnesses or experts may be unavailable to attend the hearing in person.
3. **Efficiency:** Using signed statements can contribute to procedural efficiency by potentially reducing the need for witnesses or experts to attend the hearing in person. This can lead to time and cost savings.
4. **Transparency and Accountability:** The requirement for signed statements helps ensure the authenticity and reliability of the evidence presented. The signatures of witnesses or experts provide a level of accountability for the statements made.
5. **Submissions as Evidence:** The signed statements are considered as evidence in the arbitration proceedings and are subject to evaluation by the tribunal and cross-examination by the opposing party if deemed necessary.
6. **Equal Opportunity:** The provision ensures that both parties have the opportunity to present evidence through signed statements, creating a level playing field in terms of evidentiary presentation.
7. **Witness and Expert Testimony:** The provision encompasses both witness testimony and testimony provided by party-appointed experts. This reflects the flexibility of the provision to accommodate different types of evidence.
8. **Consistency with Modern Practices:** The use of written statements aligns with modern practices in arbitration and litigation, where written witness or expert statements are often used to streamline proceedings and focus on key issues.

In summary, Article 33(2) of the SCC Arbitration Rules 2023 permits witness or expert testimony to be submitted in the form of signed statements. This provision offers flexibility, efficiency, and transparency in the presentation of evidence, while ensuring the accuracy and accountability of the information presented. It reflects a contemporary approach to evidence presentation that is aligned with modern arbitration practices.

**(3) Any witness or expert, on whose testimony a party seeks to rely, shall attend a hearing for examination, unless otherwise agreed by the parties.**

This provision addresses the attendance of witnesses and experts at hearings in arbitration proceedings. Here are the key points to consider:

1. **Mandatory Attendance:** The provision establishes a general rule that any witness or expert whose testimony a party intends to rely upon must attend a hearing for examination. This ensures that witnesses and experts are available for cross-examination and questioning by both the tribunal and the opposing party.
2. **Importance of Cross-Examination:** The requirement for attendance emphasises the significance of cross-examination in arbitration proceedings. Cross-examination allows for the testing of evidence, clarification of facts, and assessment of credibility.
3. **Party Reliance:** The provision applies to witnesses or experts upon whose testimony a party seeks to rely. This indicates that if a party intends to present the testimony of a witness or expert as part of its case, that individual must be present for examination.
4. **Exceptional Agreement:** The provision acknowledges that the requirement for attendance can be waived if the parties agree otherwise. This recognises the parties' autonomy to make such arrangements if they believe that a witness or expert's attendance is unnecessary or impractical.
5. **Balancing Interests:** The provision balances the importance of witness or expert examination with practical considerations. It ensures that key testimonies are subject to cross-examination while allowing flexibility when parties agree to alternative arrangements.
6. **Ensuring Fairness:** Requiring witness and expert attendance promotes procedural fairness by ensuring that both parties have an equal opportunity to question and challenge the evidence presented.
7. **Efficiency:** While attendance for examination is the default rule, it may also contribute to the efficient conduct of hearings, as witnesses and experts are available to address questions in real time.
8. **Preservation of Testimonial Value:** Witness and expert testimony provided in person allows for a more comprehensive understanding of the issues, as it enables direct interaction and follow-up questions based on the responses given.

In summary, Article 33(3) of the SCC Arbitration Rules 2023 establishes the general rule that witnesses and experts whose testimony a party seeks to rely upon must attend a hearing for examination. This requirement underscores the importance of cross-examination and ensures the fairness and effectiveness of the arbitration process. The provision also recognises the parties' ability to agree to alternative arrangements, offering flexibility while maintaining the integrity of the evidentiary process.

## Article 34 Experts appointed by the Arbitral Tribunal

**(1) After consulting the parties, the Arbitral Tribunal may appoint one or more experts to report to it on specific issues set out by the Arbitral Tribunal in writing.**

Article 34(1) of the SCC Arbitration Rules 2023 pertains to the appointment of experts by the Arbitral Tribunal in the context of an arbitration proceeding. This provision outlines the process by which the Arbitral Tribunal can engage one or more experts to provide reports on specific issues that have been identified by the Tribunal itself. Key points to note about Article 34(1) are as follows:

1. **Consultation with Parties:** The provision begins by highlighting that the decision to appoint an expert is made after consulting the parties involved in the arbitration. This implies that the Arbitral Tribunal seeks input from the disputing parties before deciding to bring in an expert. This consultation helps ensure transparency and fairness in the process, as the parties have the opportunity to express their views on the need for an expert and the specific issues to be addressed.
2. **Appointment of Experts:** The Arbitral Tribunal is empowered to appoint one or more experts to provide reports. This indicates that the Tribunal has discretion in determining the number of experts required based on the complexity and nature of the issues involved in the arbitration. The term “experts” typically refers to individuals with specialised knowledge or skills relevant to the subject matter of the dispute.
3. **Specific Issues:** The role of the appointed expert(s) is to prepare reports on specific issues that are set out by the Arbitral Tribunal in writing. This suggests that the Tribunal plays a proactive role in defining the scope of the expert’s involvement by identifying the precise matters or questions that the expert’s report should address. This specificity is important to avoid any ambiguity and to ensure that the expert’s work is focused and relevant to the arbitration proceedings.
4. **Purpose of Expert Reports:** The purpose of appointing an expert under Article 34(1) is to provide the Arbitral Tribunal with special d information, analysis, or opinions on the identified issues. These reports can assist the Tribunal in making informed decisions on matters that may require technical or specialised knowledge beyond the expertise of the arbitrators themselves.
5. **Reporting to the Tribunal:** The appointed expert(s) are required to provide their reports directly to the Arbitral Tribunal. This emphasises that the expert’s role is to assist the Tribunal in its decision-making process, and the expert’s findings are intended to be considered by the Tribunal as part of the overall arbitration proceedings.

In summary, Article 34(1) of the SCC Arbitration Rules 2023 provides a mechanism for the Arbitral Tribunal to appoint experts who can offer specialised insights and analysis on specific issues relevant to the arbitration. The provision emphasises consultation with the parties, the Tribunal’s authority to determine the need for expert assistance, the specification of the issues to be addressed, and the reporting process. This provision reflects the growing recognition of the importance of technical and specialised knowledge in arbitration proceedings, ensuring a comprehensive and well-informed resolution of disputes.

**(2) Upon receipt of a report from an expert it has appointed, the Arbitral Tribunal shall send a copy of the report to the parties and shall give the parties an opportunity to submit written comments on the report.**

Article 34(2) of the SCC Arbitration Rules 2023 outlines the procedure to be followed by the Arbitral Tribunal after it receives a report from an expert that it has appointed. This provision focuses on transparency, procedural fairness, and the involvement of the parties in the arbitration process following the submission of the expert's report. Here is an analysis of Article 34(2):

1. **Receipt and Dissemination of Expert Report:** The provision states that upon receiving a report from an expert appointed by the Arbitral Tribunal, the Tribunal is obligated to send a copy of the report to the parties involved in the arbitration. This step ensures transparency and provides the parties with access to the information and findings presented by the expert.
2. **Opportunity for Written Comments:** Once the parties receive the expert's report, the Arbitral Tribunal must give them an opportunity to submit written comments on the report. This signifies a commitment to procedural fairness and the right of the parties to participate actively in the arbitration process, even after the expert's findings have been presented. Allowing parties to submit comments on the expert's report enables them to express their perspectives, raise concerns, provide additional insights, or contest the conclusions reached by the expert.
3. **Ensuring Balanced Consideration:** By giving the parties the chance to provide written comments, Article 34(2) helps ensure that the Arbitral Tribunal's decision-making process is well-informed and balanced. It promotes a dialogue between the parties and the Tribunal, allowing for a more comprehensive understanding of the issues and potential challenges presented in the expert's report.
4. **Informed Decision-Making:** The provision implies that the Arbitral Tribunal will take into account the expert's report, as well as any written comments submitted by the parties, when making its final decision. This underscores the importance of expert opinions in contributing to the resolution of the dispute, while also recognising the significance of the parties' input in shaping the Tribunal's ultimate determination.
5. **Party Participation:** Article 34(2) reinforces the principle of party participation and engagement in the arbitration process. It aligns with the broader goal of ensuring that parties have a meaningful role and are able to contribute to the outcome of the arbitration.

In summary, Article 34(2) of the SCC Arbitration Rules 2023 establishes a clear and structured procedure for handling expert reports in arbitration proceedings. It emphasises transparency, procedural fairness, and the involvement of the parties by providing them with access to the expert's report and allowing them to submit written comments. This approach contributes to a more informed and balanced decision-making process by the Arbitral Tribunal.

**(3) Upon the request of a party, the parties shall be given an opportunity to examine any expert appointed by the Arbitral Tribunal at a hearing.**

Article 34(3) of the SCC Arbitration Rules 2023 addresses the right of the parties involved in an arbitration to request an opportunity to examine any expert appointed by the Arbitral Tribunal during a hearing. This provision underscores the importance of transparency, fairness, and the parties' ability to engage with the expert's analysis directly. Here is an analysis of Article 34(3):

1. **Party Request for Examination:** The provision establishes a mechanism for the parties to exercise their right to request an opportunity to examine the expert appointed by the Arbitral Tribunal. This signifies the parties' interest in engaging directly with the expert, potentially questioning their findings, methodologies, and conclusions.
2. **Transparency and Fairness:** Article 34(3) reflects the principle of transparency and procedural fairness. Allowing parties to examine the expert at a hearing ensures that the arbitration process remains open and that parties have a meaningful opportunity to interact with and challenge the evidence presented by the expert.
3. **Direct Engagement:** By providing the parties with the chance to examine the expert, the provision enables a direct exchange between the parties and the expert witness. This direct engagement can facilitate a deeper understanding of the expert's analysis, methodologies, and the basis for their conclusions.
4. **Enhanced Fact-Finding:** Allowing parties to question the expert during a hearing can contribute to a more comprehensive and robust fact-finding process. It allows for a more thorough exploration of the issues and can lead to a more informed decision by the Arbitral Tribunal.
5. **Balancing Expert Independence and Party Rights:** While Article 34(3) grants parties the opportunity to examine the expert, it is important to strike a balance between this right and the expert's independence. The provision does not necessarily grant parties the authority to control or direct the work of the expert; rather, it enables a controlled and respectful interaction to ensure that parties can seek clarifications and raise legitimate concerns.
6. **Hearing Context:** The provision specifies that the examination of the expert takes place "at a hearing". This implies that the examination is a formal process that occurs within the context of the arbitration proceedings. This may include an evidentiary hearing or another suitable forum where the expert's presence can be facilitated.

In summary, Article 34(3) of the SCC Arbitration Rules 2023 emphasises the parties' right to request an opportunity to examine an expert appointed by the Arbitral Tribunal. This provision promotes transparency, fairness, and engagement in the arbitration process by allowing parties to interact directly with the expert witness and contribute to the fact-finding and decision-making aspects of the proceedings.

## Article 35 Default

**(1) If the claimant, without good cause, fails to submit a statement of claim in accordance with Article 29, the Arbitral Tribunal shall terminate the proceedings, provided the respondent has not filed a counterclaim.**

Article 35(1) of the SCC Arbitration Rules 2023 addresses the consequences when the claimant in an arbitration fails to submit a statement of claim as required under Article 29. This provision outlines the steps that the Arbitral Tribunal should take if the claimant's failure to submit the statement of claim is without good cause. Here is an analysis of Article 35(1):

1. **Non-Submission of Statement of Claim:** The provision refers to the situation where the claimant fails to submit a statement of claim in accordance with the requirements set out in Article 29 of the SCC Arbitration Rules. The statement of claim is a fundamental document in arbitration proceedings that outlines the claimant's position, the facts of the case, legal arguments, and the relief sought.
2. **Requirement of Good Cause:** Article 35(1) specifies that the termination of proceedings is contingent upon the claimant's failure to submit the statement of claim being without "good cause". This means that if the claimant has a legitimate and valid reason for not submitting the statement of claim on time, the termination of proceedings may not be applicable.
3. **Termination of Proceedings:** If the claimant's failure to submit the statement of claim is without good cause, the Arbitral Tribunal is directed to terminate the proceedings. This indicates that the Tribunal has the authority to close the arbitration case in response to the claimant's non-compliance. The termination of proceedings in such cases serves as a consequence for the claimant's failure to fulfil a procedural requirement.
4. **Counterclaim Exception:** The termination of proceedings under Article 35(1) is subject to an exception: it applies only if the respondent has not filed a counterclaim. In other words, if the respondent has also submitted a counterclaim against the claimant, the termination of proceedings may not be automatic. This exception recognises the principle of fairness and ensures that the consequences of non-compliance do not unfairly impact both parties if the respondent has actively engaged in the proceedings.
5. **Procedural Efficiency and Fairness:** The provision reflects the arbitration rules' focus on procedural efficiency and fairness. By allowing the termination of proceedings for non-compliance, the rules encourage parties to adhere to established timelines and requirements, thereby facilitating a smooth and timely resolution of the dispute. The exception for counterclaims ensures that the termination penalty is applied judiciously and does not unduly disadvantage the parties.

In summary, Article 35(1) of the SCC Arbitration Rules 2023 outlines the consequences for a claimant's failure to submit a statement of claim without good cause. The provision empowers the Arbitral Tribunal to terminate the proceedings in such cases, provided that no counterclaim has been filed by the respondent. This rule reinforces the importance of procedural compliance and accountability within the arbitration process while maintaining a balanced and fair approach.



**(2) If a party, without good cause, fails to submit a statement of defence or other written submission in accordance with Article 29, fails to appear at a hearing or otherwise fails to avail itself of the opportunity to present its case, the Arbitral Tribunal may proceed with the arbitration and make an award.**

Article 35(2) of the SCC Arbitration Rules 2023 addresses the consequences when a party, without good cause, fails to fulfil certain procedural obligations or participate effectively in the arbitration process. This provision outlines the actions the Arbitral Tribunal can take in such situations, underscoring the importance of procedural compliance and the Tribunal's authority to ensure a fair and efficient arbitration. Here is an analysis of Article 35(2):

1. **Fulfilment of Procedural Obligations:** The provision covers various scenarios where a party may fail to meet its procedural obligations. These include failing to submit a statement of defence or other written submission in accordance with Article 29, failing to appear at a hearing, or otherwise failing to avail itself of the opportunity to present its case.
2. **Requirement of Good Cause:** Similar to the previous article, Article 35(2) emphasises the concept of "good cause". If a party's failure to fulfil its obligations or participate in the proceedings is without good cause, the provisions of this article become applicable.
3. **Proceeding with the Arbitration:** In cases where a party's non-compliance or absence is without good cause, the Arbitral Tribunal is empowered to proceed with the arbitration and make an award. This means that the Tribunal can continue with the arbitration process, hear the evidence and arguments from the other party, and ultimately render a decision on the dispute.
4. **Balancing Fairness and Efficiency:** Article 35(2) strikes a balance between fairness and procedural efficiency. It recognises that parties have a responsibility to actively participate and comply with procedural requirements in arbitration. At the same time, it allows the Tribunal to move forward with the proceedings when a party's non-compliance threatens to delay or disrupt the process, potentially causing unfair prejudice to the other party.
5. **Authority of the Arbitral Tribunal:** The provision reaffirms the Arbitral Tribunal's authority to manage the proceedings effectively. It ensures that the Tribunal has the tools necessary to address situations where a party's non-compliance or lack of participation hinders the progress of the arbitration.
6. **Potential Award:** Article 35(2) explicitly states that the Arbitral Tribunal may proceed to make an award in such cases. This underscores the Tribunal's responsibility to render a decision based on the available evidence and arguments, even if one party fails to actively participate.

In summary, Article 35(2) of the SCC Arbitration Rules 2023 outlines the actions the Arbitral Tribunal can take when a party, without good cause, fails to fulfil its procedural obligations or participate effectively in the arbitration. The provision emphasises the Tribunal's authority to ensure the arbitration process remains fair and efficient, even in the face of non-compliance or lack of participation by one party.

**(3) If a party, without good cause, fails to comply with any provision of, or requirement under, the Arbitration Rules or any procedural order issued by the Arbitral Tribunal, the Arbitral Tribunal may draw such inferences as it considers appropriate.**

Article 35(3) of the SCC Arbitration Rules 2023 addresses the consequences of a party's failure to comply with the Arbitration Rules, procedural orders issued by the Arbitral Tribunal, or any other requirements. This provision empowers the Arbitral Tribunal to draw inferences from a party's non-compliance, which can affect how the Tribunal assesses evidence, arguments, and ultimately makes its decisions. Here is an analysis of Article 35(3):

1. **Scope of Non-Compliance:** The provision covers a broad range of situations where a party fails to comply with the Arbitration Rules, procedural orders, or other requirements. This can include failure to provide requested documents, failure to adhere to timelines, or other actions that hinder the smooth progress of the arbitration.
2. **Requirement of Good Cause:** Similar to previous articles, Article 35(3) stipulates that the failure to comply must be without good cause for this provision to be applicable. Good cause implies a valid and legitimate reason for the non-compliance, which means that parties are expected to provide reasonable justifications for their actions or lack thereof.
3. **Inferences by the Tribunal:** The key consequence highlighted in this provision is that the Arbitral Tribunal may draw inferences from the party's non-compliance. This means that the Tribunal can consider the party's failure to comply as a factor in its decision-making process. The inferences drawn could relate to the credibility of the party's arguments, the weight given to evidence, or the overall assessment of the case.
4. **Balance of Fairness and Accountability:** Article 35(3) reflects a balance between ensuring fairness in the arbitration process and holding parties accountable for their actions. Parties are expected to adhere to procedural requirements and orders to maintain a level playing field, and this provision allows the Tribunal to address situations where non-compliance could disadvantage the other party.
5. **Discretion of the Tribunal:** The provision gives the Arbitral Tribunal discretion in deciding the appropriate inferences to draw from a party's non-compliance. This discretionary power allows the Tribunal to tailor its response based on the specific circumstances of the case, ensuring that the consequences are proportionate to the nature and extent of the non-compliance.
6. **Impact on Decision-Making:** By allowing the Tribunal to draw inferences, Article 35(3) underscores the importance of procedural compliance and the potential impact of such compliance on the Tribunal's assessment of the case. Non-compliance can influence the Tribunal's evaluation of the evidence and arguments presented by the non-complying party.

In summary, Article 35(3) of the SCC Arbitration Rules 2023 provides the Arbitral Tribunal with the authority to draw inferences from a party's failure to comply with the Arbitration Rules, procedural orders, or other requirements. This provision ensures that parties are held accountable for their actions and underscores the Tribunal's discretion in considering non-compliance as a relevant factor in its decision-making process.

## Article 36 Waiver

**A party who, during the arbitration, fails to object without delay to any failure to comply with the arbitration agreement, the Arbitration Rules, or other rules applicable to the proceedings shall be deemed to have waived the right to object to such failure.**

This provision addresses the issue of waiver of objections to procedural irregularities or failures to comply with the arbitration agreement and rules during the course of the arbitration. Here are the key points to consider:

1. **Timely Objections:** The article emphasises the importance of raising objections promptly and without delay. If a party notices any failure to comply with the arbitration agreement, the Arbitration Rules, or other applicable rules, it is expected to voice its objection in a timely manner.
2. **Preservation of Rights:** Timely objections are crucial for preserving a party's legal rights and ensuring that any procedural irregularities are addressed before they potentially impact the outcome of the arbitration.
3. **Waiver Doctrine:** The provision establishes a waiver doctrine, wherein a party that fails to raise an objection without delay is deemed to have waived its right to object to the identified failure.
4. **Prevention of Tactical Delay:** The provision discourages parties from using objections as tactical manoeuvres to delay or disrupt the arbitration process. It promotes procedural efficiency by requiring objections to be raised promptly.
5. **Preserving Arbitration's Integrity:** Efficient and effective resolution of disputes through arbitration relies on adherence to agreed-upon procedures. Timely objections help maintain the integrity of the arbitration process.
6. **Clarity and Certainty:** The provision provides clarity and certainty regarding the consequences of failing to timely object. Parties are incentivised to promptly address any concerns they have about procedural irregularities.
7. **Protecting Due Process:** While the provision emphasises the importance of timely objections, it is important to note that parties are not expected to waive fundamental due process rights. Substantive objections related to fairness and due process may be treated differently.
8. **Party Autonomy and Consent:** The provision respects party autonomy by allowing parties to decide whether and when to raise objections. It underscores the principle that parties have control over their arbitration process, but that control comes with the responsibility to voice objections promptly.

In summary, Article 36 of the SCC Arbitration Rules 2023 emphasises the significance of raising objections to failures in compliance with the arbitration agreement, rules, and other applicable procedures in a timely manner. It establishes a waiver doctrine, underlining the principle that parties who fail to timely object may be deemed to have waived their right to object. This provision

contributes to the effective and efficient conduct of arbitration proceedings while upholding party autonomy and due process.

### Article 37 Interim measures

**(1) The Arbitral Tribunal may, at the request of a party, grant any interim measures it deems appropriate.**

Article 37(1) of the SCC Arbitration Rules 2023 addresses the Arbitral Tribunal's authority to grant interim measures at the request of a party. This provision empowers the Tribunal to take necessary and appropriate actions to address urgent matters or prevent harm to the parties during the course of arbitration proceedings. Here is an analysis of Article 37(1):

1. **Interim Measures:** Interim measures are temporary measures that the Arbitral Tribunal can order to preserve the parties' rights, protect the subject matter of the dispute, or prevent irreparable harm while the arbitration is pending. These measures are intended to address urgent situations that require immediate attention.
2. **Party Request:** The provision highlights that the power to grant interim measures is triggered by a request from a party involved in the arbitration. This ensures that parties have the opportunity to seek protection or relief when they believe it is necessary to safeguard their interests.
3. **Tribunal's Discretion:** Article 37(1) grants the Arbitral Tribunal significant discretion in deciding whether to grant interim measures. The Tribunal has the authority to determine what measures are appropriate based on the specific circumstances of the case.
4. **Appropriate Measures:** The provision empowers the Tribunal to grant "any interim measures it deems appropriate". This broad language allows the Tribunal to tailor the measures to the unique needs of the case, which can include orders to preserve assets, prevent evidence destruction, or maintain the status quo.
5. **Urgent Situations:** Interim measures are often sought in urgent situations where immediate action is required. These measures can help parties avoid irreparable harm or ensure that the arbitration process remains meaningful and effective.
6. **Balance and Fairness:** While Article 37(1) gives the Tribunal the authority to grant interim measures, it is important to strike a balance between protecting a party's interests and maintaining fairness in the arbitration process. The Tribunal must carefully consider the potential impact of the interim measures on both parties and the overall arbitration proceedings.
7. **Alignment with International Standards:** The provision reflects the broader trend in international arbitration to provide parties with the ability to seek interim relief. It aligns with the principles of efficiency, effectiveness, and flexibility that are characteristic of modern arbitration practice.

In summary, Article 37(1) of the SCC Arbitration Rules 2023 underscores the Arbitral Tribunal's authority to grant interim measures in response to a party's request. This provision allows the Tribunal

to take necessary and appropriate actions to address urgent matters and protect parties' rights during the course of arbitration proceedings. It demonstrates the arbitration rules' commitment to ensuring that parties have access to effective remedies and protection when needed.

**(2) The Arbitral Tribunal may order the party requesting an interim measure to provide appropriate security in connection with the measure.**

Article 37(2) of the SCC Arbitration Rules 2023 addresses the Arbitral Tribunal's authority to order the requesting party to provide appropriate security when seeking an interim measure. This provision highlights the Tribunal's ability to ensure a balanced and fair approach to granting interim measures while safeguarding the interests of both parties. Here is an analysis of Article 37(2):

1. **Security Requirement:** The article establishes that the Arbitral Tribunal has the power to require the party requesting an interim measure to provide appropriate security. Security, in this context, refers to a financial or other assurance that the requesting party will compensate the other party if the interim measure is later determined to have been unnecessary or improperly sought.
2. **Balancing Interests:** The provision reflects the principle of fairness and balance in granting interim measures. While interim measures are intended to provide protection and relief to a party, they should not unduly burden the opposing party. Requiring security helps ensure that the requesting party has a legitimate basis for seeking interim measures and discourages potential abuse of the process.
3. **Avoiding Unjust Harm:** By ordering security, the Tribunal aims to prevent unjust harm to the opposing party in case the interim measure is ultimately found to be unwarranted or unjustified. This measure helps counterbalance the potential negative impact of interim measures on the other party's interests.
4. **Encouraging Prudent Requests:** Requiring security can encourage parties to carefully consider the necessity and validity of their requests for interim measures. It may deter parties from seeking frivolous or unnecessary measures and encourage them to seek relief only when it is genuinely warranted.
5. **Determining Appropriate Security:** The provision does not specify the form or amount of security required, leaving it to the discretion of the Arbitral Tribunal to determine what is appropriate based on the circumstances of the case. The Tribunal will consider 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. **Consistency with International Practice:** The requirement for security in connection with interim measures is consistent with international arbitration practices, which often incorporate safeguards to prevent potential misuse of interim relief mechanisms.
7. **Parties' Rights and Interests:** Article 37(2) serves to protect the rights and interests of both parties involved in the arbitration. It ensures that the party seeking interim measures does so responsibly, and it provides a level of assurance to the other party that their interests are being considered.

In summary, Article 37(2) of the SCC Arbitration Rules 2023 allows the Arbitral Tribunal to order the requesting party to provide appropriate security in connection with an interim measure. This provision aims to strike a balance between granting relief to one party and protecting the interests of the other, while also promoting a responsible and prudent use of interim measures in arbitration proceedings.

### **(3) An interim measure shall take the form of an order or an award.**

Article 37(3) of the SCC Arbitration Rules 2023 specifies the form that an interim measure can take within the context of arbitration proceedings. This provision clarifies that an interim measure can be issued either as an order or as an award, highlighting the flexibility of the arbitration process to address urgent matters and protect parties' rights. Here is an analysis of Article 37(3):

1. **Interim Measures Defined:** Interim measures are temporary measures granted by the Arbitral Tribunal to provide protection, relief, or preservation of rights pending the resolution of the main dispute. These measures are intended to address urgent situations where immediate action is required to prevent harm or maintain the status quo.
2. **Form of Interim Measures:** Article 37(3) stipulates that an interim measure can take the form of either an "order" or an "award". This indicates that the Arbitral Tribunal has the flexibility to issue interim measures in different forms, depending on the procedural and substantive context of the case.
3. **Interim Orders:** An interim order is a directive issued by the Tribunal to the parties, requiring them to take certain actions or refrain from certain activities for the duration of the arbitration. Interim orders are typically issued when the Tribunal deems it necessary to provide prompt relief without conducting a full hearing or rendering a comprehensive decision.
4. **Interim Awards:** An interim award, on the other hand, is a more formal decision rendered by the Tribunal on specific issues related to the interim measures. An interim award may provide detailed reasoning and analysis, similar to a final award, but it addresses only the immediate relief sought by the parties.
5. **Flexibility and Pragmatism:** By allowing interim measures to take the form of either an order or an award, Article 37(3) reflects the flexible and pragmatic nature of arbitration. This flexibility enables the Tribunal to respond to urgent situations efficiently, tailoring the form of the interim measure to the needs of the case.
6. **Procedural Efficiency:** In some cases, issuing an interim order might be more efficient than rendering an interim award, especially when the matter is relatively straightforward or when time is of the essence. The Tribunal can issue an order promptly to address the parties' immediate concerns.
7. **Substantive Impact:** Regardless of whether an interim measure is issued as an order or an award, its substantive impact remains the same: it provides temporary relief or protection to the requesting party while the main arbitration proceedings continue.

8. Alignment with International Practice: The allowance for interim measures to take the form of orders or awards is consistent with international arbitration practices, which prioritise flexibility, effectiveness, and responsiveness to the parties' needs.

In summary, Article 37(3) of the SCC Arbitration Rules 2023 clarifies that an interim measure can be issued as either an order or an award. This provision underscores the adaptability and responsiveness of the arbitration process to address urgent situations and provide necessary relief to parties while ensuring procedural fairness and efficiency.

**(4) Provisions with respect to interim measures requested before arbitration has commenced, or before a case has been referred to an Arbitral Tribunal, are set out in Appendix II.**

Article 37(4) of the SCC Arbitration Rules 2023 refers to the provisions regarding interim measures that are requested before the commencement of arbitration or before a case has been referred to an Arbitral Tribunal. It directs readers to consult "Appendix II" for guidance on how to handle such interim measures. This article recognises the importance of addressing urgent matters before the formal commencement of arbitration proceedings. Here is an analysis of Article 37(4):

1. Interim Measures Prior to Arbitration Commencement: This provision acknowledges that there may be situations where a party seeks interim measures even before the arbitration has officially started. These circumstances could arise when parties want to secure their rights, protect assets, or prevent harm before formal proceedings have begun.
2. Referral to Appendix II: Article 37(4) states that the specific rules and procedures for dealing with interim measures requested before the commencement of arbitration or before a case has been referred to an Arbitral Tribunal can be found in "Appendix II". The details regarding the process, requirements, and considerations for such interim measures are provided in this referenced section.
3. Appendix II: The exact content of Appendix II is not provided in this analysis, as it would require reference to the specific rules outlined in that section of the SCC Arbitration Rules 2023. However, it is reasonable to assume that Appendix II contains provisions that offer guidance on how to seek, grant, and implement interim measures when the formal arbitration process has not yet begun.
4. Urgent Situations: The presence of a dedicated appendix for interim measures requested before arbitration has commenced highlights the importance of addressing urgent matters promptly, even before the full arbitration process is initiated. This demonstrates the arbitration rules' responsiveness to the practical needs of parties.
5. Pre-Arbitration Relief: The reference to Appendix II suggests that parties have the option to seek pre-arbitration relief in certain situations, allowing them to protect their interests and assets before the formal dispute resolution process has fully commenced.
6. Procedural Clarity: The existence of a separate appendix specifically addressing interim measures requested before the commencement of arbitration ensures procedural clarity and guidance for parties, arbitrators, and other stakeholders involved in the process.

In summary, Article 37(4) of the SCC Arbitration Rules 2023 directs readers to “Appendix II” for provisions and guidance regarding interim measures requested before the formal commencement of arbitration or before a case has been referred to an Arbitral Tribunal. This underscores the arbitration rules’ commitment to addressing urgent matters and providing procedural clarity in situations where parties seek relief before the arbitration process has fully started.

**(5) A request for interim measures made by a party to a judicial authority is not incompatible with the arbitration agreement or with the Arbitration Rules.**

Article 37(5) of the SCC Arbitration Rules 2023 addresses the compatibility of a party’s request for interim measures from a judicial authority with the arbitration agreement and the Arbitration Rules. This provision clarifies that seeking interim relief from a court does not inherently conflict with the parties’ agreement to arbitrate or with the procedures outlined in the Arbitration Rules. Here is an analysis of Article 37(5):

1. **Interim Measures from Judicial Authorities:** Interim measures refer to temporary relief sought by a party to protect its rights, assets, or interests during the pendency of arbitration proceedings. These measures can be granted by a court (judicial authority) or an arbitral tribunal.
2. **Compatibility with Arbitration Agreement:** The provision underscores that requesting interim measures from a judicial authority does not inherently conflict with the parties’ arbitration agreement. In other words, seeking interim relief from a court does not negate or undermine the parties’ commitment to resolve their dispute through arbitration.
3. **Compatibility with Arbitration Rules:** Article 37(5) also clarifies that seeking interim measures from a court is not incompatible with the Arbitration Rules. The parties’ decision to seek court-ordered interim relief does not necessarily violate the procedural framework established by the Arbitration Rules.
4. **Flexibility and Pragmatism:** This provision recognises the practical reality that parties may need to seek urgent interim measures from courts, especially in cases where immediate relief is required. It reflects a pragmatic approach that acknowledges the diverse avenues available to parties for obtaining interim relief.
5. **Non-Exclusivity:** Article 37(5) implies that seeking interim measures from a judicial authority is not an exclusive remedy. Parties have the option to seek such measures from a court if they believe it is necessary, while still preserving their rights to pursue arbitration for the final resolution of the dispute.
6. **Harmonisation of Proceedings:** The provision helps harmonise the processes of seeking interim relief from courts and pursuing arbitration. It clarifies that these actions are not fundamentally at odds and can complement each other as needed.
7. **Balancing Arbitration and Judicial Relief:** Parties’ decisions to seek interim measures from a court or an arbitral tribunal are situational and strategic. This provision emphasises that such decisions should be made in the context of the specific circumstances of the case.



In summary, Article 37(5) of the SCC Arbitration Rules 2023 clarifies that requesting interim measures from a judicial authority is not incompatible with the arbitration agreement or with the Arbitration Rules. It recognises the practical need for parties to seek urgent relief from courts while preserving their commitment to arbitration for the resolution of the underlying dispute. This provision promotes a flexible and pragmatic approach to addressing interim relief needs within the context of arbitration.

### Article 38 Security for costs

**(1) The Arbitral Tribunal may, in exceptional circumstances and at the request of a party, order any claimant or counterclaimant to provide security for costs in any manner the Arbitral Tribunal deems appropriate.**

Article 38(1) of the SCC Arbitration Rules 2023 addresses the issue of security for costs in arbitration proceedings. The analysis of this provision involves several aspects:

1. **Context and Background:** The SCC Arbitration Rules are a framework used in international commercial arbitration. They are designed to provide an efficient, neutral, and flexible procedure for resolving disputes outside of court systems. Security for costs is a procedural tool to ensure that the costs incurred by a party in defending against a claim or counterclaim can be recovered if the opposing party, typically the claimant or counterclaimant, does not prevail and is unable to pay those costs.
2. **Discretion of the Arbitral Tribunal:** The rule vests the Arbitral Tribunal with the discretion to order security for costs. This discretion is not absolute but is to be exercised in “exceptional circumstances”. The term “exceptional circumstances” implies situations beyond ordinary disputes, perhaps where there is a substantial risk of non-recovery of costs due to reasons like insolvency of a party, a history of non-compliance with arbitral orders, or other relevant factors indicating that an order for security for costs would be justifiable.
3. **Request by a Party:** The provision requires a request by a party for such an order. This requirement ensures that the tribunal does not act on its own initiative but responds to a party’s perceived need for financial protection in the arbitration process.
4. **Nature of Parties Affected:** The rule explicitly mentions both “claimant” or “counterclaimant”, indicating its applicability to parties on either side of the dispute who are seeking a positive relief or remedy from the tribunal.
5. **Form of Security:** The rule allows the Arbitral Tribunal to determine the “manner” in which the security is to be provided. This can include various forms such as bank guarantees, escrow accounts, or other means deemed appropriate by the tribunal. The flexibility here allows the tribunal to tailor the security according to the specifics of the case and the financial realities of the parties.
6. **Balancing Interests:** While ensuring that a potentially successful respondent is not left with unrecoverable costs, the tribunal must also ensure that its decision to order security for costs does not unduly hinder a party’s access to justice. For example, if the security is set too high, it might preclude a party with a legitimate claim but limited financial resources from pursuing its case.

7. **Legal and Procedural Implications:** The parties should be aware of the implications of this provision. If the tribunal orders security for costs and a party fails to provide it, this could lead to the suspension or termination of the arbitration proceedings regarding their claim or counterclaim. This also imposes an additional layer of strategic consideration in the preparation and conduct of arbitration.
8. **Jurisdictional Variance:** The concept and application of security for costs can vary depending on the legal tradition and jurisdiction. Parties from jurisdictions where such orders are uncommon might find this aspect of the SCC Rules particularly notable.
9. **Implementation and Enforcement:** How an order for security for costs is implemented and enforced, especially across different jurisdictions, can be complex. The parties and the tribunal must consider practicalities and legalities of enforcement, particularly in international contexts where assets or parties may be in different countries.

In conclusion, Article 38(1) of the SCC Arbitration Rules 2023 offers a mechanism to protect parties from the risk of unrecoverable costs, balancing this against the need to ensure fair access to arbitration. The application of this provision will depend heavily on the specifics of each case and the discretion of the tribunal.

**(2) In determining whether to order security for costs, the Arbitral Tribunal shall have regard to:**

- (i) the prospects of success of the claims, counterclaims and defences;**
- (ii) the claimant’s or counterclaimant’s ability to comply with an adverse costs award and the availability of assets for enforcement of an adverse costs award;**
- (iii) whether it is appropriate in all the circumstances of the case to order one party to provide security; and**
- (iv) any other relevant circumstances.**

Article 38(2) of the SCC Arbitration Rules 2023 provides specific guidelines for the Arbitral Tribunal to consider when deciding whether to order security for costs. This article builds upon the general discretionary power granted in Article 38(1) by delineating specific factors to be considered, enhancing the fairness and predictability of the tribunal’s decisions. Let us analyse these factors:

1. **Prospects of Success:**
  - a. **Meaning:** The tribunal is to assess the likelihood of success of the claims, counterclaims, and defences presented. This involves a preliminary evaluation of the merits of the case.
  - b. **Implications:** If a claim or counterclaim appears weak or frivolous, the tribunal may be more inclined to order security for costs, considering the risk of the opposing party incurring costs for a defence against a potentially unsuccessful claim.
2. **Ability to Comply with an Adverse Costs Award and Availability of Assets:**

- a. **Meaning:** This factor focuses on the financial capacity of the claimant or counterclaimant to satisfy a future award for costs if they lose the case. It includes an assessment of both their financial stability and the practicality of enforcing a costs award against their assets.
  - b. **Implications:** If there is a significant risk that the party will not be able to pay or that their assets are not sufficient or are located in jurisdictions where enforcement is difficult, the tribunal may be more inclined to require security for costs.
3. **Appropriateness in All the Circumstances of the Case:**
- a. **Meaning:** This is a broad and flexible criterion, allowing the tribunal to consider the overall fairness and justice of ordering security in the context of the specific case.
  - b. **Implications:** Factors like equality of arms, the impact of the security order on the party's ability to pursue their claim, the conduct of the parties during the arbitration, and any tactical use of a security for costs application could be relevant.
4. **Any Other Relevant Circumstances:**
- a. **Meaning:** This catch-all provision allows the tribunal to consider any other factors they deem pertinent to the decision. This could include public policy considerations, the nature and complexity of the dispute, the behaviour of the parties, or any other matter that impacts the fairness and equity of ordering security.
  - b. **Implications:** The tribunal's discretion is broad, ensuring that any unique or unforeseen aspects of the case can be taken into account. This flexibility is crucial in adapting to the myriad of scenarios that can arise in complex international arbitrations.
5. **Analysis:**
- a. **Balanced Approach:** Article 38(2) ensures a balanced approach, requiring the tribunal to weigh various factors. This balance is crucial for maintaining fairness and procedural justice, preventing the rule from being used unjustly to deter legitimate claims or counterclaims.
  - b. **Predictability and Fairness:** By laying out specific factors, this provision aids in providing predictability and transparency in how tribunals will approach the issue of security for costs. Parties can better anticipate and prepare for such decisions, and understand on what basis such orders might be issued.
  - c. **Strategic Considerations:** Parties and their counsel must be aware of these factors as they may influence litigation strategy, both in terms of presenting their case and in potentially seeking or contesting an order for security for costs.
  - d. **Enforcement Issues:** The emphasis on the ability to enforce an adverse cost award underscores the practicality embedded in these rules. Arbitration, especially in the international context, must consider the practical aspects of enforcement.

Overall, Article 38(2) adds a necessary layer of detail and guidance to the power granted in Article 38(1), promoting a reasoned, case-specific approach to ordering security for costs and enhancing the integrity and fairness of the arbitral process.

**(3) If a party fails to comply with an order to provide security for costs, the Arbitral Tribunal may stay or terminate the proceedings in whole or in part.**

Article 38(3) of the SCC Arbitration Rules 2023 outlines the consequences of a party's failure to comply with an order to provide security for costs. This provision is crucial as it enforces the effectiveness of the tribunal's orders under the arbitration rules. The following aspects are key to understanding and analysing this article:

1. Key Aspects of Article 38(3): Consequences of Non-Compliance:
  - a. Stay of Proceedings: The tribunal may decide to pause the arbitration proceedings. This can act as a temporary measure, possibly prompting the non-compliant party to fulfil the order to provide security and thereby continue the proceedings.
  - b. Termination of Proceedings: The tribunal may also choose to terminate the proceedings either in part or entirely. This is a more drastic measure, effectively ending the party's ability to have their claims or counterclaims resolved through this arbitration if they are not compliant with the security for costs order.
  - c. Discretionary Power of the Tribunal: The use of "may" in the provision grants the tribunal discretion in deciding whether to stay or terminate the proceedings. This means the tribunal can assess the specifics of the situation, including reasons for non-compliance and overall fairness, before making a decision.
2. Implications for Parties:
  - a. Enforcement and Compliance: This provision underscores the importance of complying with the tribunal's orders. Parties need to take such orders seriously, understanding that failure to comply could have significant ramifications on their ability to pursue their case.
  - b. Strategic Considerations: Parties, particularly those facing financial constraints, might need to strategise their approach carefully if ordered to provide security for costs, knowing the risk of a stay or termination of the proceedings.
  - c. Potential for Abuse: While this provision is necessary for enforcing tribunal orders, there is also a potential for abuse if a financially stronger party seeks security for costs to pressure or obstruct a financially weaker party's access to arbitration.
  - d. Ensuring Fairness and Efficiency: The provision serves to balance the efficient administration of justice (by ensuring that orders are respected and followed) and the rights of the parties to have their disputes adjudicated. The tribunal's discretion allows it to navigate these sometimes competing interests.

- e. Context within the Arbitration Rules: Holistic Approach: This provision should be viewed within the broader context of the SCC Arbitration Rules, which aim to facilitate fair and efficient resolution of disputes. Each decision to stay or terminate proceedings must align with the overall objectives of achieving a just outcome and maintaining the integrity of the arbitration process.

Conclusion: Article 38(3) plays a vital role in upholding the enforceability and effectiveness of the arbitral tribunal's orders regarding security for costs. By allowing the tribunal the discretion to stay or terminate proceedings, it underscores the seriousness of such orders. However, this power must be exercised judiciously, keeping in mind both the enforceability of decisions and the equitable treatment of the parties involved. The provision ensures that the arbitration process remains both fair and authoritative, maintaining the balance between enforcement of rules and access to justice.

**(4) Any decision to stay or to terminate the proceedings in whole or in part shall take the form of an order or an award.**

Article 38(3) of the SCC Arbitration Rules 2023 outlines the consequences of a party's failure to comply with an order to provide security for costs. This provision is crucial as it enforces the effectiveness of the tribunal's orders under the arbitration rules. The following aspects are key to understanding and analysing this article:

1. Consequences of Non-Compliance: Stay of Proceedings: The tribunal may decide to pause the arbitration proceedings. This can act as a temporary measure, possibly prompting the non-compliant party to fulfil the order to provide security and thereby continue the proceedings.
2. Termination of Proceedings: The tribunal may also choose to terminate the proceedings either in part or entirely. This is a more drastic measure, effectively ending the party's ability to have their claims or counterclaims resolved through this arbitration if they are not compliant with the security for costs order.
3. Discretionary Power of the Tribunal: The use of "may" in the provision grants the tribunal discretion in deciding whether to stay or terminate the proceedings. This means the tribunal can assess the specifics of the situation, including reasons for non-compliance and overall fairness, before making a decision.

Implications for Parties:

1. Enforcement and Compliance: This provision underscores the importance of complying with the tribunal's orders. Parties need to take such orders seriously, understanding that failure to comply could have significant ramifications on their ability to pursue their case.
2. Strategic Considerations: Parties, particularly those facing financial constraints, might need to strategise their approach carefully if ordered to provide security for costs, knowing the risk of a stay or termination of the proceedings.
3. Potential for Abuse: While this provision is necessary for enforcing tribunal orders, there is also a potential for abuse if a financially stronger party seeks security for costs to pressure or obstruct a financially weaker party's access to arbitration.

4. Ensuring Fairness and Efficiency: The provision serves to balance the efficient administration of justice (by ensuring that orders are respected and followed) and the rights of the parties to have their disputes adjudicated. The tribunal's discretion allows it to navigate these sometimes competing interests.
5. Context within the Arbitration Rules: Holistic Approach: This provision should be viewed within the broader context of the SCC Arbitration Rules, which aim to facilitate fair and efficient resolution of disputes. Each decision to stay or terminate proceedings must align with the overall objectives of achieving a just outcome and maintaining the integrity of the arbitration process.

Conclusion: Article 38(3) plays a vital role in upholding the enforceability and effectiveness of the arbitral tribunal's orders regarding security for costs. By allowing the tribunal the discretion to stay or terminate proceedings, it underscores the seriousness of such orders. However, this power must be exercised judiciously, keeping in mind both the enforceability of decisions and the equitable treatment of the parties involved. The provision ensures that the arbitration process remains both fair and authoritative, maintaining the balance between enforcement of rules and access to justice.

### Article 39 Summary procedure

**(1) A party may request that the Arbitral Tribunal decide one or more issues of fact or law by way of summary procedure, without necessarily taking every procedural step that might otherwise be adopted in the arbitration.**

Article 39(1) of the SCC Arbitration Rules 2023 introduces the concept of a summary procedure within arbitration proceedings. This provision has several key aspects and implications:

1. Summary Procedure Concept: Summary procedure in arbitration allows for a swifter resolution of one or more issues of fact or law. This procedure can be requested by a party to decide specific issues without going through the full extent of the usual procedural steps (e.g., extensive discovery, witness examination, etc.), which are typically more time-consuming and costly.
2. Party Request: The initiation of a summary procedure is contingent upon a party's request. This means the tribunal will not automatically apply a summary procedure but will consider it upon a party's proposal.
3. Tribunal's Discretion: Although a party can request a summary procedure, the decision to adopt this approach rests with the Arbitral Tribunal. The tribunal will evaluate the suitability of a summary procedure for the issues in question.
4. Issues Applicable: The provision is flexible regarding the types of issues that can be resolved via summary procedure — these might include both factual and legal questions.

#### Implications:

1. Efficiency and Expediency: By allowing certain issues to be resolved through a more streamlined process, the summary procedure can significantly reduce the time and cost

associated with arbitration. This is particularly beneficial in disputes where some issues are clear-cut and do not require extensive elaboration.

2. **Strategic Consideration for Parties:** Parties must assess which issues might be suitable for summary procedure. This decision requires a strategic evaluation of the strengths and weaknesses of their case, the nature of the issues at hand, and the potential impact on the overall dispute resolution timeline.
3. **Balance of Fairness and Efficiency:** The Arbitral Tribunal must balance the need for efficiency with the principles of fairness and due process. Not all issues may be appropriate for a summary procedure, particularly if they are complex or if there are significant disputes of material fact that require more thorough examination.
4. **Judicial Precedence and Consistency:** The concept of summary procedures aligns with similar practices in many national court systems (like summary judgment in common law jurisdictions), reflecting a broader trend towards efficiency in dispute resolution. However, arbitrators might be cautious in how they apply these procedures to respect the parties' rights and the arbitration's integrity.
5. **Potential for Setting Precedent:** How tribunals interpret and apply this provision will be important. It may set precedents for future arbitrations, influencing parties' expectations and strategies in international arbitration.

**Conclusion:** Article 39(1) reflects an evolution in arbitration practice, prioritising efficiency and cost-effectiveness while maintaining fairness and due process. The success of its application will depend on how Arbitral Tribunals strike a balance between swift dispute resolution and the essential deliberative process inherent in arbitration. The provision offers flexibility and potential time and cost savings but must be managed carefully to ensure that the fundamental rights of the parties are preserved.

**(2) A request for summary procedure may concern issues of jurisdiction, admissibility, or the merits. It may include, for example, an assertion that:**

- (i) an allegation of fact or law material to the outcome of the case is manifestly unsustainable;**
- (ii) even if the facts alleged by the other party are assumed to be true, no award could be rendered in favour of that party under the applicable law; or**
- (iii) any issue of fact or law material to the outcome of the case is, for any other reason, suitable to determination by way of summary procedure.**

Article 39(2) of the SCC Arbitration Rules 2023 expands on the summary procedure introduced in Article 39(1), delineating the scope and potential applications of such a procedure. This article clarifies the kinds of issues that can be addressed through summary procedure and provides examples of situations where it might be aptly utilised. Analysing this, we can discern several critical elements:

1. **Scope of Summary Procedure: Broad Application:** The provision specifies that a summary procedure can be requested for issues concerning jurisdiction, admissibility, or the merits of the case. This wide-ranging applicability means that parties can seek a swift resolution

of preliminary matters (like jurisdictional challenges) or substantive aspects of the dispute.

2. Types of Assertions for Summary Procedure:
  - a. Manifestly Unsustainable Allegations: If a party believes that an opponent's allegation of fact or law crucial to the case outcome is evidently baseless or unreasonable, they can request its dismissal through summary procedure.
  - b. Futility of Claims Despite Assumed Facts: This allows a party to argue that, even accepting the other party's version of the facts as true, the legal conclusions or relief sought are untenable under the applicable law.
  - c. Other Suitable Issues: This category is a catch-all, giving flexibility to argue that certain issues, either factual or legal, are uniquely fit for summary determination for reasons not explicitly listed.
3. Implications and Considerations: Efficiency vs. Thoroughness: The rule aims to balance the need for a quick, cost-effective resolution with the comprehensive examination of disputes. Parties and tribunals need to carefully weigh the implications of using summary procedures, especially in complex or significant matters.
4. Strategic Use in Arbitration:
  - a. Dismissing Frivolous Claims: Parties can use this procedure to swiftly dispose of claims that are clearly without merit, streamlining the arbitration.
  - b. Risk of Premature Judgment: There is a risk that valid claims or defences might be dismissed without full consideration if the summary procedure is not judiciously applied.
5. Judicial Economy and Case Management: This provision aids in judicial economy by potentially reducing the burden on tribunals and parties, focusing resources on the most substantive and disputed aspects of a case.
6. Evidentiary Standards and Burden of Proof: Applying these criteria involves assessing the evidence and arguments presented. Tribunals will need to consider whether the party requesting summary procedure has sufficiently demonstrated that the case (or elements thereof) clearly lacks substance or legal merit.
7. Legal Predictability and Precedent: Decisions made under this rule can contribute to the development of legal precedents in arbitration, affecting how future tribunals might approach similar requests.

Conclusion: Article 39(2) thus significantly enhances the utility and applicability of summary procedures in arbitration under the SCC Rules. It provides a mechanism for swiftly resolving clear-cut issues, thereby potentially saving time and costs. However, its application requires careful consideration by the tribunal to ensure that it does not compromise the fairness and equity of the arbitration process. The article provides a necessary tool for efficient case management, but its use must be balanced against the parties' right to a fair hearing and the overall integrity of the arbitration proceedings.



**(3) The request shall specify the grounds relied on and the form of summary procedure proposed and demonstrate that such procedure is efficient and appropriate having regard to all the circumstances of the case.**

Article 39(3) of the SCC Arbitration Rules 2023 details the requirements for a party requesting a summary procedure within an arbitration process. This provision plays a crucial role in guiding how such requests should be structured and justified. Key aspects of this article include:

1. **Specification of Grounds and Procedure: Detailed Grounds:** The party making the request must clearly specify the reasons they believe the issue at hand is suitable for a summary procedure. This means articulating why the issue is either manifestly unsustainable, legally untenable even with the assumed truth of the other party's facts, or otherwise suitable for rapid resolution, as indicated in Article 39(2).
2. **Proposed Procedure:** The requesting party must not only argue why summary procedure is appropriate but also suggest the form that this summary procedure should take. This could involve proposing limits on evidence, submissions, or hearings, among other procedural modifications.
3. **Requirement to Demonstrate Efficiency and Appropriateness:**
  - a. **Efficiency:** The party must show that the summary procedure will expedite the arbitration process in a meaningful way. This involves demonstrating how the proposed procedure can lead to a quicker resolution compared to the standard arbitration procedures.
  - b. **Appropriateness:** The requesting party must also demonstrate that the summary procedure is appropriate for the specific issue in the context of the overall case. This means considering factors such as the nature of the dispute, the complexity of the issue, fairness, due process, and the impact on the other party.

Implications:

1. **Burden of Proof:** This article places a clear burden on the party requesting the summary procedure to make a compelling case for its adoption. This requirement ensures that summary procedures are not used frivolously or as a mere litigation tactic.
2. **Case Management:** The requirement for detailed grounds and proposed procedure aids the tribunal in efficient case management by providing a clear framework within which to assess the request.
3. **Judicial Economy:** By necessitating a demonstration of efficiency and appropriateness, the rule seeks to balance judicial economy with the rights of the parties to a fair and comprehensive hearing.
4. **Strategic Considerations for Parties:** Parties need to carefully consider and craft their requests for summary procedures, ensuring that they have strong arguments for why such procedures should be adopted. This can involve legal strategy, evidentiary planning, and anticipation of counterarguments.

Conclusion: Article 39(3) is designed to ensure that requests for summary procedures are not made lightly and are grounded in a logical, efficient, and fair rationale. This provision helps maintain the integrity and efficacy of the arbitration process by mandating a detailed and reasoned approach to such requests, thereby facilitating their careful consideration and appropriate application by the Arbitral Tribunal.

**(4) After providing the other party an opportunity to submit comments, the Arbitral Tribunal shall issue an order either dismissing the request or fixing the summary procedure in the form it deems appropriate.**

Article 39(4) of the SCC Arbitration Rules 2023 lays out the procedure to be followed by the Arbitral Tribunal after a party has requested a summary procedure under Article 39(3). This provision ensures that the process is fair and transparent by mandating specific steps. Key aspects of this article include:

1. **Opportunity for Other Party to Comment:** Before the Arbitral Tribunal makes a decision on the request for summary procedure, the other party must be given a chance to submit their comments. This step is crucial for ensuring that the decision on whether to implement a summary procedure is balanced, taking into consideration the perspectives and arguments of both parties.
2. **Decision by the Arbitral Tribunal:** After reviewing the request and the comments from the other party, the Tribunal is responsible for making a decision. This decision takes one of two forms:
3. **Dismissing the Request:** The Tribunal may decide that the request for a summary procedure is not justified or suitable, based on the criteria laid out in Article 39(3) and other relevant factors.
4. **Fixing the Summary Procedure:** If the Tribunal finds the request to be merited, it then determines the specific form that the summary procedure will take. This involves defining how the procedure will deviate or differ from the standard arbitration process, tailoring it to the needs and circumstances of the case.

Implications:

1. **Fairness and Due Process:** By allowing both parties to present their views, Article 39(4) underscores the commitment to fairness and due process in arbitration proceedings. Each party gets an opportunity to influence the Tribunal's decision on adopting a summary procedure.
2. **Strategic Response by Other Party:** The provision for comments from the other party means that both sides need to consider strategic responses. The party opposing the summary procedure request must persuasively argue why the standard procedural route should be maintained, or why the proposed summary procedure is inappropriate.
3. **Tribunal's Discretion and Responsibility:** The Arbitral Tribunal has a significant responsibility in determining not only whether a summary procedure is appropriate but also in shaping what that procedure looks like. This decision requires a careful balancing

act, ensuring that the procedure is both efficient and just, respecting the rights and expectations of both parties.

4. **Efficiency of Proceedings:** The Tribunal’s decision on implementing a summary procedure can greatly impact the efficiency and duration of the arbitration process. A well-devised summary procedure can streamline the resolution of straightforward issues, thereby saving time and costs.
5. **Potential for Appeals or Future Disputes:** The Tribunal’s decision and the manner in which it is reached could potentially be a point of contention in future proceedings or appeals, particularly if one party feels their rights were compromised.

**Conclusion:** Article 39(4) plays a crucial role in the application of summary procedures within SCC Arbitration. It highlights the importance of fairness, transparency, and judicial discretion in arbitration proceedings, aiming to strike a balance between efficient resolution of disputes and adherence to the principles of due process. The article ensures that any decision to depart from standard procedures is not taken unilaterally or without considering the positions of both parties involved in the dispute.

**(5) In determining whether to grant a request for summary procedure, the Arbitral Tribunal shall have regard to all relevant circumstances, including the extent to which the summary procedure contributes to a more efficient and expeditious resolution of the dispute.**

Article 39(5) of the SCC Arbitration Rules 2023 elaborates on the factors that the Arbitral Tribunal should consider when deciding whether to grant a request for a summary procedure, as introduced in previous subsections of Article 39. This provision emphasises a holistic, context-sensitive approach to decision-making regarding the application of summary procedures in arbitration. Key Considerations:

1. **Holistic View of Relevant Circumstances:** The Arbitral Tribunal is instructed to consider “all relevant circumstances” when making its decision. This broad directive requires an assessment that goes beyond the immediate legal or factual matters at stake. It encompasses a range of factors, potentially including (but not limited to) the complexity and specifics of the dispute, the stakes involved, the potential impact on the parties, and broader procedural or jurisprudential implications.
2. **Efficiency and Expedition:**
  - a. A critical factor for the Tribunal to consider is how the summary procedure would contribute to the efficiency and expeditious resolution of the dispute. This reflects the overarching goal of arbitration to provide a faster, more efficient alternative to traditional court litigation.
  - b. The Tribunal must weigh whether the summary procedure will meaningfully shorten the timeline of the dispute resolution process without sacrificing the fairness or integrity of the proceedings.
3. **Implications:**
  - a. **Judicial Discretion and Responsibility:** This provision gives significant discretion to the Tribunal in determining the suitability of a summary procedure. With this

discretion comes the responsibility to judiciously balance efficiency against other essential values like due process and justice.

- b. **Case-Specific Analysis:** The necessity to consider “all relevant circumstances” implies that the Tribunal’s decision will be highly case-specific. Factors like the nature of the dispute, the evidence available, the legal arguments involved, and the potential consequences of a summary decision will all play a role.
- c. **Strategic Considerations for Parties:** Parties requesting a summary procedure must anticipate and address a range of circumstances to persuade the Tribunal of the procedure’s appropriateness. Similarly, opposing parties should be prepared to highlight circumstances that might argue against the adoption of such a procedure.
- d. **Potential Challenges and Criticisms:** The broad and somewhat subjective criterion of “all relevant circumstances” could lead to challenges or criticisms regarding the Tribunal’s decisions, particularly if parties feel that certain aspects were not adequately considered.
- e. **Promotion of Arbitral Efficiency:** This rule underscores the importance of arbitration’s efficiency and speed, which are often key reasons parties choose arbitration over court litigation. The ability to adopt summary procedures when suitable reaffirms this advantage.

**Conclusion:** Article 39(5) of the SCC Arbitration Rules adds depth and flexibility to the decision-making process concerning summary procedures, allowing the Arbitral Tribunal to tailor its approach to the unique circumstances of each case. While fostering efficiency, it also mandates careful consideration of a broad range of factors, ensuring that the adoption of such procedures does not undermine the fairness or substantive justice of the arbitral process.

**(6) If the request for summary procedure is granted, the Arbitral Tribunal shall decide the issues under consideration in an efficient and expeditious manner having regard to the circumstances of the case, while giving each party an equal and reasonable opportunity to present its case pursuant to Article 23 (2).**

Article 39(6) of the SCC Arbitration Rules 2023 provides guidance on how the Arbitral Tribunal should proceed if it grants a request for summary procedure. This provision balances the need for an efficient and expedited resolution with the fundamental principles of fairness and equality in arbitral proceedings. Analysis:

1. **Efficient and Expeditious Decision-Making:**
  - a. Once a summary procedure is granted, the Tribunal is mandated to resolve the issues in question quickly and efficiently. This aligns with the broader objective of arbitration to provide a time- and cost-effective alternative to traditional litigation.
  - b. The emphasis on efficiency and expediency reflects the nature of summary procedures, which are typically used to streamline cases by resolving clear-cut issues or claims lacking substantial merit without a full-fledged hearing.

2. Adherence to Circumstances of the Case:
  - a. The Tribunal must consider the specific circumstances of each case. This includes factors like the complexity of the issues, the amount at stake, the evidence available, and the parties' positions.
  - b. The context-sensitive approach ensures that the use of summary procedures does not become a one-size-fits-all solution but is tailored to the particular needs and realities of each dispute.
3. Equal and Reasonable Opportunity to Present the Case:
  - a. Crucially, the Tribunal is required to give each party an equal and reasonable opportunity to present their case, as per Article 23(2). This requirement underscores the importance of fairness and due process in arbitration proceedings.
  - b. The phrase "pursuant to Article 23 (2)" indicates that the standards and expectations of fairness and opportunity in presenting one's case in summary procedures are consistent with those in the broader arbitral process.
4. Implications:
  - a. Balance Between Speed and Fairness: This article highlights the delicate balance the Tribunal must strike between the need for quick resolution and the imperative of fair process. Parties are assured that, even in a streamlined procedure, their rights to be heard and to present their case are protected.
  - b. Judicial Discretion and Case Management: The Tribunal must exercise considerable discretion and skill in managing the case, ensuring that proceedings are both expedited and fair. This can be challenging, particularly in complex cases or where parties have divergent views on the facts or law.
  - c. Strategic Considerations for Parties:
    - i. Parties should prepare for potentially truncated timelines and more focused presentations of their cases. Crafting concise, compelling arguments becomes even more crucial under summary procedure.
    - ii. Parties must also be ready to assert their rights to a fair and equal opportunity to present their case, particularly if they feel the expedited process is compromising their ability to do so.
  - d. Potential for Appeal or Review: Decisions made under summary procedures, especially if one party feels their right to present their case was unduly restricted, might be subject to scrutiny in subsequent appeals or annulment proceedings.

Conclusion: Article 39(6) sets a clear framework for the conduct of summary procedures within the SCC Arbitration Rules, emphasising swift resolution while safeguarding the fundamental principles of equality and fairness. It ensures that while the arbitral process may be accelerated, it does not compromise the procedural rights of the parties involved.

## Article 40 Close of proceedings

**The Arbitral Tribunal shall declare the proceedings closed when it is satisfied that the parties have had a reasonable opportunity to present their cases. In exceptional circumstances, prior to the making of the final award, the Arbitral Tribunal may reopen the proceedings on its own motion, or on the application of a party.**

Article 40 of the SCC Arbitration Rules 2023 addresses the closure of proceedings in arbitration, outlining the circumstances under which the proceedings are considered closed and the potential for reopening the proceedings in exceptional situations. This article ensures that parties have a fair opportunity to present their cases while allowing for flexibility in addressing unforeseen or extraordinary circumstances. Here is an analysis of Article 40:

1. **Closure of Proceedings:** The article mandates that the Arbitral Tribunal shall declare the proceedings closed when it is satisfied that the parties have had a reasonable opportunity to present their cases. This emphasises the importance of procedural fairness and ensures that each party has had adequate time and opportunity to present its evidence, arguments, and positions during the arbitration process.
2. **Reasonable Opportunity:** The concept of a “reasonable opportunity” underscores the principle that parties should be given a sufficient and equitable chance to fully present their cases. This helps prevent undue haste or unfair limitations on the presentation of evidence and arguments.
3. **Reopening in Exceptional Circumstances:** The article provides for an exception to the general principle of closing proceedings. In exceptional circumstances, prior to the issuance of the final award, the Arbitral Tribunal may decide to reopen the proceedings. This exceptional provision recognises that certain unforeseen or extraordinary situations might arise that warrant revisiting or expanding the proceedings.
4. **Tribunal’s Initiative or Party Application:** The decision to reopen proceedings can be initiated either by the Arbitral Tribunal on its own motion or upon the application of a party. This dual approach ensures that parties can bring forward relevant information or developments that may have arisen after the initial closure of proceedings. At the same time, the Tribunal has the authority to reopen proceedings if it identifies exceptional circumstances that require further consideration.
5. **Flexibility and Equitable Treatment:** Article 40 reflects the flexibility inherent in arbitration proceedings. It acknowledges that circumstances may arise that justify reopening proceedings to ensure fairness, thoroughness, and the equitable treatment of the parties involved.
6. **Impact on Final Award:** The provision indicates that the proceedings can be reopened prior to the making of the final award. This suggests that any new evidence, arguments, or developments that arise during the reopened proceedings may impact the Tribunal’s deliberations and the final outcome of the arbitration.

In summary, Article 40 of the SCC Arbitration Rules 2023 establishes the procedure for closing proceedings in arbitration while allowing for the exceptional reopening of proceedings in certain

circumstances. The article emphasises fairness, the reasonable opportunity for parties to present their cases, and the need for flexibility to address unforeseen or extraordinary situations that may arise during the course of arbitration.

## AWARDS AND DECISIONS

## Article 41 Awards and decisions

**(1) Where the Arbitral Tribunal consists of more than one arbitrator, any award or other decision shall be made by a majority of the arbitrators or, failing a majority, by the chairperson.**

Article 41(1) of the SCC Arbitration Rules 2023 pertains to the decision-making process within an arbitral tribunal composed of more than one arbitrator. This article outlines the procedure for making awards or other decisions and establishes a hierarchy for decision-making in case a majority agreement cannot be reached. Key points of analysis for Article 41(1) are as follows:

1. **Composition of the Arbitral Tribunal:** Article 41(1) applies specifically to situations where the arbitral tribunal is composed of more than one arbitrator. In such cases, the tribunal typically consists of an uneven number of arbitrators to avoid tie votes.
2. **Majority Decision-Making:** The article emphasises that any award or decision of the arbitral tribunal must be made by a majority of the arbitrators. This implies that a decision will prevail if more than half of the arbitrators agree on it. Majority decision-making is a common practice in multi-arbitrator tribunals as it helps ensure a definitive outcome and prevents stalemates.
3. **Fallback Option:** In instances where a majority agreement cannot be reached among the arbitrators, Article 41(1) provides for a fallback option. According to this provision, if a majority is not achievable, the chairperson of the tribunal will have the authority to make the award or decision on their own. The chairperson's role as the tiebreaker is a significant mechanism to prevent disputes from stagnating due to deadlock among arbitrators.
4. **Importance of Chairperson:** The chairperson's role is crucial under Article 41(1), particularly in cases where a majority decision cannot be obtained. The chairperson's responsibility goes beyond simply presiding over the proceedings; they are vested with decision-making authority when unanimity cannot be achieved.
5. **Efficiency and Finality:** This article contributes to the efficiency of the arbitration process by ensuring that decisions are made even in cases of disagreement among arbitrators. It promotes finality in the outcome, which is one of the core benefits of arbitration, by preventing prolonged disputes and facilitating a timely resolution.
6. **Balancing Tribunal Dynamics:** Article 41(1) recognises the potential for differing opinions within a tribunal and offers a mechanism to address such differences. The role of the chairperson as the tiebreaker helps maintain a balance of power within the tribunal, preventing any single arbitrator from having undue influence over the outcome.

In summary, Article 41(1) of the SCC Arbitration Rules 2023 addresses the decision-making process within an arbitral tribunal composed of multiple arbitrators. It emphasises the importance of achieving a majority decision while also providing a fallback option by allowing the chairperson to make a decision in the absence of a majority. This article contributes to the efficiency, finality, and balanced functioning of the arbitral tribunal.



**(2) The Arbitral Tribunal may decide that the chairperson alone may make procedural rulings.**

Article 41(2) of the SCC Arbitration Rules 2023 introduces the concept of procedural rulings made by the chairperson of the arbitral tribunal. This provision grants the arbitral tribunal the authority to delegate the power to make certain procedural decisions exclusively to the chairperson. Here is an analysis of Article 41(2):

1. **Delegation of Procedural Authority:** Article 41(2) allows the arbitral tribunal to decide that the chairperson, in particular circumstances, may have the exclusive authority to make procedural rulings. Procedural rulings encompass decisions related to the conduct of the arbitration proceedings, such as scheduling, document production, evidence, and other similar matters that are integral to the arbitration process but do not directly pertain to the substantive merits of the case.
2. **Efficiency and Streamlining:** This provision reflects an emphasis on procedural efficiency and streamlining the arbitration process. By designating the chairperson to make procedural rulings, the tribunal can expedite certain decisions and reduce the need for full deliberation by the entire tribunal on relatively routine or administrative matters. This can contribute to a smoother and more organised arbitration process.
3. **Expertise and Specialisation:** The chairperson is often chosen based on their expertise in the field relevant to the dispute. Article 41(2) recognises the potential benefit of leveraging the chairperson's expertise in procedural matters. This expertise can lead to well-informed and expedient decisions, contributing to a more effective and tailored arbitration process.
4. **Conflict Avoidance:** Allowing the chairperson to make procedural rulings can help mitigate potential conflicts or disagreements among the members of the arbitral tribunal. By delegating certain procedural matters to the chairperson, the tribunal can avoid unnecessary debates and ensure that the arbitration process moves forward smoothly.
5. **Balancing of Powers:** While Article 41(2) grants the chairperson authority in procedural matters, it is important to note that this provision does not undermine the collective decision-making role of the entire tribunal, especially when it comes to substantive issues and final awards. The provision is designed to strike a balance between procedural efficiency and maintaining the overall integrity of the arbitral tribunal.
6. **Flexibility and Tailoring:** The provision provides flexibility for the tribunal to adapt its approach based on the specific needs of each case. The tribunal can decide whether to delegate procedural authority to the chairperson, and the scope of that authority can be tailored to suit the unique circumstances of the arbitration.

In summary, Article 41(2) of the SCC Arbitration Rules 2023 empowers the arbitral tribunal to entrust the chairperson with the responsibility of making procedural rulings. This delegation is intended to enhance efficiency, leverage expertise, and prevent unnecessary conflicts, while still respecting the overall decision-making authority of the tribunal as a whole.

## Article 42 Making of awards

**(1) The Arbitral Tribunal shall make its award in writing, and, unless otherwise agreed by the parties, shall state the reasons upon which the award is based.**

Article 42(1) of the SCC Arbitration Rules 2023 addresses the essential requirements for the form and content of an arbitral award. This provision emphasises the importance of a written award and the inclusion of reasons behind the decision. Here is an analysis of Article 42(1):

1. **Written Award:** Article 42(1) mandates that the arbitral tribunal must render its award in writing. This requirement underscores the formal nature of arbitration and contributes to transparency and clarity in the outcome of the dispute resolution process. A written award serves as an official and permanent record of the tribunal's decision.
2. **Reasoned Decision:** The provision also highlights the principle that, unless the parties have agreed otherwise, the award must state the reasons upon which the decision is based. This requirement for a reasoned decision is fundamental to the legitimacy and comprehensibility of the arbitral process. By providing reasons, the tribunal not only justifies its decision but also helps parties understand the rationale behind the outcome, which is crucial for ensuring confidence in the arbitration process.
3. **Transparency and Accountability:** Requiring a reasoned decision promotes transparency in arbitration proceedings. Parties are entitled to know why a particular decision was reached, which in turn enhances the accountability of the arbitral tribunal. The parties and other stakeholders can assess whether the tribunal applied the relevant law correctly and fairly, and whether the decision is well-grounded.
4. **Legal Basis and Legal Certainty:** Stating the reasons for the award is essential for establishing the legal basis of the decision. This is particularly important when parties may seek to challenge or enforce the award in national courts. A well-reasoned award reduces ambiguity and contributes to legal certainty, which is crucial for the enforceability of arbitral awards.
5. **Guidance for Future Cases:** A reasoned award can serve as a valuable precedent for future arbitration cases. It provides guidance to parties, practitioners, and arbitrators on how legal principles and factual circumstances were applied in a particular context. This can help promote consistency and predictability in arbitration jurisprudence.
6. **Party Autonomy and Agreement:** Article 42(1) also acknowledges the principle of party autonomy. While the provision requires stating reasons for the award unless otherwise agreed by the parties, parties have the flexibility to waive this requirement if they mutually choose to do so. This reflects the principle that arbitration is a consensual process, and parties have the freedom to shape certain aspects of the procedure.

In summary, Article 42(1) of the SCC Arbitration Rules 2023 emphasises the importance of a written award and the inclusion of reasons for the decision. This requirement enhances transparency, accountability, legal certainty, and the overall integrity of the arbitration process. It also underscores the significance of party autonomy while acknowledging the general principle of providing reasoned decisions in arbitration.

**(2) An award shall include the date of the award and the seat of arbitration in accordance with Article 25.**

Article 42(2) of the SCC Arbitration Rules 2023 addresses specific elements that must be included in an arbitral award. This provision highlights the importance of certain details to be included in the award for the sake of clarity, enforcement, and the proper conduct of the arbitration process. Here is an analysis of Article 42(2):

1. **Mandatory Elements:** Article 42(2) specifies two essential elements that must be included in every arbitral award rendered under the SCC Arbitration Rules 2023: (a) the date of the award, and (b) the seat of arbitration as determined by Article 25.
2. **Date of the Award:** Including the date of the award is crucial for establishing the timing of the tribunal's decision. The date provides a reference point for various purposes, including determining the starting point for potential challenges or enforcement proceedings. It also helps parties track the timeline of the arbitration process and manage post-award actions.
3. **Seat of Arbitration:** The seat of arbitration is a key element of an arbitration agreement as it determines the legal framework and courts that will have supervisory jurisdiction over the arbitration proceedings. Including the seat of arbitration in the award ensures clarity regarding the legal context within which the arbitration took place. This information is essential for determining issues related to annulment, enforcement, and other legal matters.
4. **Legal Certainty and Enforceability:** Article 42(2) contributes to legal certainty and enforceability of arbitral awards. By including these specific elements, the award becomes a comprehensive and reliable document that facilitates the implementation of the tribunal's decision. Parties and relevant authorities can quickly verify the essential details of the award, which is essential for enforcing the award in national courts.
5. **Consistency and Standardisation:** The provision helps promote consistency and standardisation in arbitral awards under the SCC Arbitration Rules. By mandating the inclusion of certain elements, such as the date of the award and the seat of arbitration, the rules ensure that all awards share these common features, making it easier for parties and stakeholders to understand and rely upon them.
6. **Efficiency and Clarity:** Including these details in the award enhances the efficiency and clarity of the arbitration process. It reduces the potential for disputes or misunderstandings regarding fundamental information about the award, such as when it was issued and the legal framework governing it.

In summary, Article 42(2) of the SCC Arbitration Rules 2023 requires that every arbitral award must include the date of the award and the seat of arbitration as determined by Article 25. These elements enhance legal certainty, enforceability, and transparency in the arbitration process, while also contributing to the consistent application of the SCC Arbitration Rules.

**(3) An award shall be signed by the arbitrators. If an arbitrator fails to sign an award, the signatures of the majority of the arbitrators or, failing a majority, of the chairperson shall be sufficient, provided that the reason for the omission of the signature is stated in the award.**

Article 42(3) of the SCC Arbitration Rules 2023 addresses the requirement for signatures on arbitral awards and provides guidance on the situation where an arbitrator fails to sign the award. This provision ensures the formal validity of the award while accommodating circumstances where all arbitrators may not sign. Here is an analysis of Article 42(3):

1. **Signature Requirement:** Article 42(3) mandates that an arbitral award must be signed by the arbitrators. This requirement underscores the formal and official nature of the award, as the signatures of the arbitrators demonstrate their agreement with and endorsement of the decision.
2. **Preservation of Integrity:** Signatures on an award contribute to the integrity and credibility of the arbitration process. They affirm that the arbitrators have collectively considered the evidence, arguments, and legal principles before rendering their decision. The requirement helps maintain the legitimacy of the arbitration process and promotes confidence in the final award.
3. **Majority Signatures:** The provision anticipates situations where all arbitrators may not sign the award. In such cases, if an arbitrator fails to sign, the signatures of the majority of the arbitrators can suffice to validate the award. This provision ensures that a lack of unanimous signatures does not undermine the award's validity, provided that a majority of the tribunal is in agreement.
4. **Role of Chairperson:** If a majority agreement cannot be reached on the signatures, the provision designates the chairperson as the tiebreaker. The chairperson's signature becomes sufficient to validate the award. This mechanism prevents the lack of unanimity among arbitrators from becoming an obstacle to the finalisation of the award.
5. **Transparency and Explanation:** Importantly, Article 42(3) requires that if an arbitrator's signature is omitted, the award must include a statement explaining the reason for the omission. This requirement promotes transparency and accountability. Parties, courts, and other stakeholders can assess whether the omission of a signature was due to legitimate reasons and whether the award's validity remains intact.
6. **Flexibility and Practicality:** The provision reflects a pragmatic approach to addressing situations where logistical challenges or disagreements among arbitrators might prevent all signatures from being obtained. It strikes a balance between the formal requirement of signatures and the practical considerations that can arise during the arbitration process.

In summary, Article 42(3) of the SCC Arbitration Rules 2023 establishes the requirement for signatures on arbitral awards and provides a mechanism for ensuring the award's validity when an arbitrator fails to sign. By allowing for majority signatures and requiring an explanation for any omissions, the provision maintains the integrity of the award while accommodating potential challenges that may arise during the signing process.

**(4) The Arbitral Tribunal shall deliver a copy of the award to each of the parties and to the SCC without delay.**

Article 42(4) of the SCC Arbitration Rules 2023 addresses the obligation of the arbitral tribunal to promptly provide copies of the award to the parties involved in the arbitration and to the SCC (Stockholm Chamber of Commerce). This provision emphasises the importance of efficient communication and the timely dissemination of the award. Here is an analysis of Article 42(4):

1. **Timely Delivery of Copies:** Article 42(4) stipulates that the arbitral tribunal must deliver a copy of the award to each of the parties and to the SCC without delay. This requirement underscores the significance of promptly sharing the tribunal's decision with the relevant parties and the administering institution (SCC). Timely delivery ensures that parties are informed of the outcome of the arbitration in a timely manner, enabling them to take appropriate actions based on the award.
2. **Transparency and Access:** The provision promotes transparency in the arbitration process. Providing copies of the award to all parties involved ensures that they have access to the tribunal's decision and the reasoning behind it. Transparency is a fundamental principle of arbitration and contributes to the legitimacy of the process.
3. **Enforcement and Challenge:** Timely delivery of the award is crucial for parties seeking to enforce or challenge the award. In enforcement proceedings, parties may need to present the award to national courts to secure recognition and enforcement. Similarly, if a party wishes to challenge the award through annulment proceedings, they need to be promptly informed of the award to meet any applicable deadlines.
4. **SCC's Role and Records:** Delivering a copy of the award to the SCC serves administrative and record-keeping purposes. The SCC, as the administering institution, maintains a record of arbitration proceedings and awards. This ensures the preservation of official documentation and contributes to the SCC's oversight role in the arbitration process.
5. **Avoiding Delays and Uncertainties:** Timely delivery of the award helps prevent unnecessary delays and uncertainties. Parties can proceed with enforcement, challenges, or other actions based on the award without unnecessary interruptions. Clear communication of the award's outcome contributes to the finality and efficiency of the arbitration process.
6. **Administrative Compliance:** Article 42(4) reflects the procedural requirements of the SCC Arbitration Rules and highlights the importance of administrative compliance. Parties and arbitrators are expected to adhere to these procedural steps to maintain the integrity of the arbitration process.

In summary, Article 42(4) of the SCC Arbitration Rules 2023 mandates the arbitral tribunal to promptly deliver copies of the award to the parties and to the SCC. This provision supports transparency, facilitates enforcement and challenges, aids administrative record-keeping, and contributes to the efficient and effective resolution of arbitration disputes.

**(5) If any arbitrator fails, without good cause, to participate in the deliberations of the Arbitral Tribunal on any issue, such failure will not preclude a decision being taken by the other arbitrators.**

Article 42(5) of the SCC Arbitration Rules 2023 addresses the situation where an arbitrator fails to participate in the deliberations of the arbitral tribunal on a particular issue. This provision outlines the consequences of such a failure and its potential impact on the decision-making process. Here is an analysis of Article 42(5):

1. **Failure to Participate in Deliberations:** Article 42(5) focuses on instances where an arbitrator does not participate in the deliberations of the arbitral tribunal on a specific issue. Deliberations involve the discussion and consideration of facts, arguments, evidence, and legal principles relevant to the case. The provision assumes that all arbitrators are expected to contribute to these deliberations.
2. **Consequences of Non-Participation:** If an arbitrator fails, without good cause, to participate in the deliberations on a specific issue, Article 42(5) clarifies that such failure does not prevent the other arbitrators from making a decision on that issue. In other words, the absence or non-participation of one arbitrator does not automatically hinder the tribunal's ability to reach a decision on the matter under consideration.
3. **Continuity and Decision-Making:** The provision underscores the importance of ensuring continuity in the decision-making process even in situations where one arbitrator is unable or unwilling to participate. It prevents a single arbitrator's non-participation from stalling the proceedings and allows the tribunal to move forward and make decisions on the issue at hand.
4. **Balance of Power and Fairness:** Article 42(5) also reflects a fair and balanced approach to decision-making within the arbitral tribunal. It prevents any one arbitrator from having disproportionate influence over the outcome by avoiding a scenario where a single arbitrator's non-participation would block the entire decision-making process.
5. **Good Cause Requirement:** The provision adds the qualifier "without good cause" when describing the failure to participate. This implies that if an arbitrator has a valid reason for not participating in deliberations on a particular issue, the consequences outlined in the provision may not apply. This acknowledges that legitimate reasons, such as conflicts of interest or personal emergencies, may occasionally prevent an arbitrator's participation.
6. **Efficiency and Dispute Resolution:** Article 42(5) contributes to the efficiency of the arbitration process by preventing unnecessary delays caused by an arbitrator's non-participation. It ensures that the arbitral tribunal can continue to function effectively and make decisions, even if one arbitrator is unable or unwilling to participate in a specific deliberation.

In summary, Article 42(5) of the SCC Arbitration Rules 2023 addresses the issue of an arbitrator's non-participation in deliberations on a specific issue. It ensures that the absence of one arbitrator's participation does not prevent the remaining arbitrators from making a decision on that issue, provided there is no good cause for the non-participation. The provision promotes the continuity, fairness, and efficiency of the arbitration process.

### Article 43 Time limit for final award

**The final award shall be made no later than six months from the date the case was referred to the Arbitral Tribunal pursuant to Article 22. The Board may extend this time limit upon a reasoned request from the Arbitral Tribunal or if otherwise deemed necessary.**

Article 43 of the SCC Arbitration Rules 2023 establishes a time limit for rendering the final award in arbitration proceedings and outlines the authority of the SCC Board to extend this time limit when necessary. This article emphasises the importance of efficient case management while providing flexibility to accommodate exceptional circumstances. Here is an analysis of Article 43:

1. **Time Limit for Final Award:** Article 43 sets a clear and specific time limit for the issuance of the final award. According to this provision, the final award must be made no later than six months from the date the case was referred to the Arbitral Tribunal pursuant to Article 22. This time limit is designed to promote timely resolution of disputes and prevent unnecessary delays in the arbitration process.
2. **Efficient Case Management:** The fixed time limit reflects the SCC's commitment to efficient case management. By establishing a relatively short time frame for issuing the final award, the SCC aims to ensure that the arbitration process is concluded within a reasonable period. This is particularly beneficial for parties seeking a prompt resolution to their disputes.
3. **Flexibility through Extension:** Despite the initial time limit, the SCC Board retains the authority to extend the deadline if circumstances warrant such an extension. This provision recognises that certain cases may be complex, involve extensive evidence or arguments, or face other challenges that could justify a longer timeframe for issuing the award. The extension mechanism balances the need for efficiency with the need to ensure a fair and thorough resolution.
4. **Reasoned Request:** The SCC Board's authority to extend the time limit is contingent upon receiving a reasoned request from the Arbitral Tribunal. This requirement ensures that any request for an extension is supported by justifiable reasons, such as the complexity of the case or unexpected developments, and prevents undue or arbitrary delays.
5. **Exceptional Circumstances:** The provision allows for extensions "if otherwise deemed necessary". This discretionary authority acknowledges that exceptional circumstances beyond the control of the parties or the tribunal could arise, warranting an extension even in the absence of a specific request. This provision ensures that the arbitration process remains adaptable and responsive to unforeseen challenges.
6. **Balancing Interests:** Article 43 strikes a balance between the need for efficient case resolution and the recognition that certain cases may require more time for a thorough and well-considered decision. By providing a default time limit with the possibility of extensions based on reasoned requests or exceptional circumstances, the provision aims to achieve fairness, efficiency, and due process in arbitration proceedings.

In summary, Article 43 of the SCC Arbitration Rules 2023 establishes a time limit for issuing the final award while allowing for extensions under specified conditions. This approach promotes efficient case management and timely dispute resolution while providing flexibility to address complexities or unforeseen challenges that may arise during the arbitration process.

## Article 44 Separate award

### **The Arbitral Tribunal may decide a separate issue or part of the dispute in a separate award.**

Article 44 of the SCC Arbitration Rules 2023 grants the arbitral tribunal the authority to render a separate award on a specific issue or part of the dispute within the larger arbitration proceedings. This provision offers flexibility in how the tribunal delivers its decisions and contributes to the efficiency and effectiveness of the arbitration process. Here is an analysis of Article 44:

1. **Issue Segmentation:** Article 44 allows the arbitral tribunal to decide a separate issue or part of the dispute in a distinct and separate award. This segmentation allows for the resolution of specific aspects of the dispute without having to wait for the final resolution of the entire case. The tribunal can address critical matters expeditiously, particularly when they do not depend on the outcome of other issues.
2. **Efficiency and Timely Resolution:** This provision enhances the efficiency of the arbitration process. In complex disputes, parties may have multiple issues to address. By rendering separate awards on specific issues, the tribunal can expedite the resolution of those aspects that are ready for decision, thereby promoting timely and incremental progress in the arbitration proceedings.
3. **Facilitates Enforcement and Implementation:** Separate awards can assist parties in enforcing and implementing decisions that are not contingent on the outcome of other issues. For example, if liability has been established, the tribunal could render a separate award on the quantum of damages. This approach enables parties to proceed with enforcement or other actions even before the entire case is fully resolved.
4. **Flexibility and Party Autonomy:** Article 44 respects party autonomy and the flexibility inherent in arbitration. Parties may agree to or request separate awards to address specific issues that they consider particularly important or urgent. This provision accommodates parties' strategic preferences and ensures that they have the flexibility to structure the arbitration to their advantage.
5. **Resource Management:** By deciding a separate issue or part of the dispute in a separate award, the tribunal can allocate its resources efficiently. This can be particularly beneficial in managing time and costs, as well as ensuring that issues that are ready for decision do not become unnecessarily delayed due to the complexity of other aspects of the dispute.
6. **Clarity and Certainty:** Separate awards can provide parties with greater clarity and certainty on specific issues. This can be especially important in disputes involving complex contractual arrangements or multiple claims. Clear and distinct decisions on particular matters contribute to the transparency and overall comprehensibility of the arbitration process.

In summary, Article 44 of the SCC Arbitration Rules 2023 empowers the arbitral tribunal to render separate awards on specific issues or parts of the dispute. This provision enhances efficiency, allows for timely resolution, respects party autonomy, and supports resource management. By providing this flexibility, the provision contributes to the effectiveness and adaptability of the arbitration process.



**Article 45 Settlement or other grounds for termination of the arbitration**

**(1) If the parties reach a settlement before the final award is made, the Arbitral Tribunal may, at the request of both parties, make a consent award recording the settlement.**

Article 45(1) of the SCC Arbitration Rules 2023 addresses the scenario in which the parties in an arbitration proceeding reach a settlement before the issuance of the final award. This provision allows for the creation of a consent award by the arbitral tribunal to formally record the terms of the settlement. Here is an analysis of Article 45(1):

1. **Settlement Recording:** Article 45(1) allows the arbitral tribunal to create a consent award to record a settlement reached by the parties. A settlement typically involves the mutual agreement of the parties to resolve their dispute outside the tribunal's formal decision-making process. The consent award serves as an official and binding record of the terms and conditions of this settlement.
2. **Party Request and Agreement:** The creation of a consent award is contingent on a request from both parties. Both parties must agree to have the terms of their settlement recorded in a formal award by the tribunal. This emphasises the voluntary and consensual nature of the process, ensuring that neither party is compelled to have the settlement recorded in this manner.
3. **Formal Recognition:** By making a consent award, the arbitral tribunal formally recognises the settlement as an enforceable and binding resolution of the dispute. This provides the settlement with the legal effect of an arbitral award, making it easier for parties to enforce the terms of the settlement in the future if necessary.
4. **Legal Certainty and Finality:** The provision contributes to legal certainty by providing a clear and formal record of the parties' agreement. It ensures that the terms of the settlement are well-documented and transparent, reducing the risk of future disputes arising from misunderstandings or disagreements about the settlement's details.
5. **Efficiency and Expediency:** Creating a consent award can enhance the efficiency of the arbitration process. Parties may choose to settle their dispute before the conclusion of the full arbitration proceedings. A consent award provides a streamlined and expeditious way to formalise the settlement without requiring the tribunal to continue with the full deliberative process.
6. **Party Autonomy and Control:** Article 45(1) respects party autonomy by allowing parties to determine whether they want their settlement recorded in a formal award. It provides parties with control over the terms of their agreement and the manner in which it is documented.

In summary, Article 45(1) of the SCC Arbitration Rules 2023 addresses settlements reached before the issuance of the final award by allowing the arbitral tribunal to create a consent award to record the terms of the settlement. This provision underscores the importance of formal recognition and legal certainty for settlements while respecting party autonomy and providing an efficient option for concluding the arbitration process in cases of settlement.

**(2) If the arbitration is terminated for any other reason before the final award is made, the Arbitral Tribunal shall issue an order or award recording the termination.**

Article 45(2) of the SCC Arbitration Rules 2023 addresses the situation where an arbitration is terminated for reasons other than reaching a final award. This provision requires the arbitral tribunal to issue an order or award that formally records the termination of the arbitration. Here is an analysis of Article 45(2):

1. **Termination Recording:** Article 45(2) establishes the obligation of the arbitral tribunal to issue an order or award when the arbitration is terminated for reasons other than reaching a final award. This ensures that there is an official record of the termination and the circumstances that led to it.
2. **Formal Recognition:** By issuing an order or award recording the termination, the arbitral tribunal provides a formal recognition of the conclusion of the arbitration process. This record is important for legal clarity and transparency, ensuring that all parties are informed of the termination and the relevant details.
3. **Legal Effects and Implications:** Recording the termination through an order or award helps to determine the legal effects of the termination. Depending on the specific circumstances, termination may have implications for matters such as costs, claims, or enforcement. A formal recording of the termination can guide parties and any subsequent legal proceedings.
4. **Closure and Conclusion:** The provision contributes to the closure and conclusion of the arbitration process. Even if a final award has not been issued, recording the termination allows parties to bring the arbitration to an official end, preventing any ongoing uncertainty or ambiguity about the status of the proceedings.
5. **Preventing Ambiguity:** Without a formal recording of termination, there could be potential confusion or disputes about whether the arbitration is still ongoing or has been effectively concluded. The provision helps prevent such ambiguity by providing a clear and authoritative determination of termination.
6. **Process Transparency:** Article 45(2) enhances the transparency of the arbitration process. It ensures that the termination of the arbitration is formally documented and communicated to all relevant parties, promoting openness and accountability in the proceedings.

In summary, Article 45(2) of the SCC Arbitration Rules 2023 requires the arbitral tribunal to issue an order or award recording the termination of the arbitration if it is concluded for any reason other than reaching a final award. This provision contributes to legal clarity, closure of the proceedings, and transparency, while helping to prevent potential ambiguities or disputes about the status of the arbitration.

## Article 46 Effect of an award

**An award shall be final and binding on the parties when rendered. By agreeing to arbitration under the Arbitration Rules, the parties undertake to carry out any award without delay.**

Article 46 of the SCC Arbitration Rules 2023 addresses the finality and binding nature of arbitral awards, as well as the parties' obligation to carry out the award promptly. This article emphasises the conclusive effect of arbitral awards and the parties' commitment to respect and implement the tribunal's decisions. Here is an analysis of Article 46:

1. **Final and Binding Nature:** Article 46 underscores that an arbitral award is both final and binding on the parties as soon as it is rendered. This means that once the tribunal issues its decision, it is conclusive and legally effective. Parties are expected to treat the award as a conclusive resolution of the dispute, bringing an end to the arbitration process.
2. **Enforcement of Awards:** The final and binding nature of the award is fundamental to the enforceability of arbitration. An award's finality allows parties to seek enforcement in national courts or pursue other legal remedies based on the award. National courts typically recognise the binding nature of arbitration awards and are inclined to enforce them.
3. **Legal Certainty:** The provision contributes to legal certainty by establishing that the award conclusively resolves the dispute and creates a legally enforceable obligation. This certainty is essential for parties to move forward after the arbitration and for third parties (such as courts) to understand the parties' rights and obligations.
4. **Carrying Out the Award:** The latter part of Article 46 emphasises the parties' obligation to carry out the award without delay. This means that parties are legally obligated to implement the award's terms and follow the decisions made by the arbitral tribunal. This obligation underscores the principle of compliance with the arbitration process and ensures that parties respect the tribunal's authority.
5. **Enforcement of Commitment:** The parties' commitment to carry out the award is based on their agreement to arbitration under the SCC Arbitration Rules. This commitment is a central tenet of arbitration, reflecting the parties' mutual understanding and willingness to accept the arbitration process and its outcomes.
6. **Efficiency and Finality:** Article 46 contributes to the efficiency and finality of the arbitration process. By confirming the finality and binding nature of awards, the provision discourages parties from pursuing lengthy and costly legal proceedings after the arbitration has concluded. It promotes a swift and definitive resolution of disputes.

In summary, Article 46 of the SCC Arbitration Rules 2023 emphasises that arbitral awards are final and binding on the parties upon rendering. It highlights the parties' commitment to promptly carry out the award as a fundamental principle of arbitration. This provision contributes to legal certainty, enforcement, and the efficient resolution of disputes through arbitration.

**Article 47 Correction and interpretation of an award**

**(1) Within 30 days of receiving an award, a party may, upon notice to the other party, request that the Arbitral Tribunal correct any clerical, typographical or computational errors in the award, or provide an interpretation of a specific point or part of the award. After giving the other party an opportunity to comment on the request, and if the Arbitral Tribunal considers the request justified, it shall make the correction or provide the interpretation within 30 days of receiving the request.**

Article 47(1) of the SCC Arbitration Rules 2023 outlines the process by which a party may seek correction of clerical, typographical, or computational errors in an arbitral award, as well as the procedure for requesting an interpretation of a specific point or part of the award. Here is an analysis of Article 47(1):

1. **Correction and Interpretation Requests:** Article 47(1) allows a party to make two types of requests within 30 days of receiving an award: (a) correction of clerical, typographical, or computational errors in the award, and (b) interpretation of a specific point or part of the award. This provision acknowledges that errors or ambiguities can arise in awards and provides a mechanism for addressing them.
2. **Notice and Opportunity to Comment:** The requesting party is required to provide notice to the other party about the intent to seek correction or interpretation of the award. This notice initiates the process and allows the other party to be aware of the request. Additionally, the other party is given an opportunity to comment on the request, ensuring fairness and procedural balance.
3. **Tribunal's Decision and Timely Resolution:** If the tribunal considers the request for correction or interpretation justified after considering the comments from the other party, it is obligated to make the correction or provide the interpretation. This ensures that any errors or ambiguities are promptly addressed, contributing to the finality and clarity of the award.
4. **Specific Time Limits:** Article 47(1) establishes specific time limits for the correction or interpretation process. The arbitral tribunal must make the correction or provide the interpretation within 30 days of receiving the request. This time frame ensures that parties do not experience unnecessary delays in obtaining clarity on the award or correcting inadvertent mistakes.
5. **Efficiency and Process Integrity:** The provision contributes to the efficiency and integrity of the arbitration process. Parties can seek timely resolutions to issues related to the award's accuracy or interpretation, preventing the need for subsequent disputes or challenges based on such errors or ambiguities.
6. **Balancing Party Interests:** Article 47(1) seeks to strike a balance between the parties' interests. It provides a structured mechanism for addressing errors or ambiguities in the award, while also ensuring that the other party has an opportunity to provide input and that the tribunal's decision is well-reasoned.

In summary, Article 47(1) of the SCC Arbitration Rules 2023 establishes a process for parties to request correction of clerical, typographical, or computational errors in an award, as well as interpretation of

specific points or parts of the award. This provision promotes efficiency, clarity, and procedural fairness in addressing errors and ambiguities that may arise in arbitral awards.

**(2) The Arbitral Tribunal may correct any error of the type referred to in paragraph (1) above on its own motion within 30 days of the date of an award.**

Article 47(2) of the SCC Arbitration Rules 2023 addresses the arbitral tribunal's authority to correct errors of a specific type in an award without being prompted by a party. This provision allows the tribunal to take corrective action on its own initiative within a specified timeframe. Here is an analysis of Article 47(2):

1. **Suo Motu Correction:** Article 47(2) empowers the arbitral tribunal to identify and correct errors of the type referred to in paragraph (1) of the same article (clerical, typographical, or computational errors) on its own motion. This means that the tribunal has the authority to recognise and rectify such errors without requiring a formal request from either party.
2. **Timely Correction:** The provision establishes a timeframe within which the arbitral tribunal may exercise this suo motu correction authority. Corrections must be made within 30 days of the date of the award. This timeframe ensures that any errors are promptly addressed to prevent inaccuracies from persisting in the final award.
3. **Preserving Integrity and Finality:** Allowing the tribunal to correct errors on its own initiative contributes to the integrity and finality of the arbitral process. It ensures that unintentional inaccuracies or mistakes in the award can be swiftly rectified without necessitating the involvement of the parties or potentially leading to challenges or disputes based on minor errors.
4. **Efficiency and Procedural Autonomy:** Article 47(2) enhances the efficiency of the arbitration process by enabling the tribunal to correct obvious errors without undue delay. This autonomy allows the tribunal to maintain control over the accuracy of its decisions and avoid unnecessary administrative burdens related to error corrections.
5. **Balanced Approach:** The provision strikes a balance between the parties' right to request corrections under Article 47(1) and the tribunal's independent responsibility to ensure the correctness of its awards. It reflects a cooperative approach where both parties and the tribunal share the objective of achieving accurate and well-reasoned awards.
6. **Transparency and Accountability:** The provision underscores the transparency and accountability of the arbitration process. It demonstrates the tribunal's commitment to ensuring the accuracy and quality of its decisions, even when errors are identified after the award has been rendered.

In summary, Article 47(2) of the SCC Arbitration Rules 2023 empowers the arbitral tribunal to correct errors of the type described in paragraph (1) (clerical, typographical, or computational errors) on its own motion within 30 days of the date of the award. This provision contributes to the efficiency, integrity, and accuracy of the arbitral process while respecting the parties' interests and maintaining the finality of the award.

**(3) Any correction or interpretation of an award shall be in writing and shall comply with the requirements of Article 42.**

Article 47(3) of the SCC Arbitration Rules 2023 outlines the procedural requirements for any correction or interpretation of an arbitral award. This provision emphasises the formal and documented nature of corrections and interpretations, while also referencing the requirements specified in Article 42. Here is an analysis of Article 47(3):

1. **Formal Documentation:** Article 47(3) underscores the formal nature of corrections and interpretations of an award. Any correction or interpretation must be made in writing, ensuring that the revised or clarified content is documented in a clear and official manner. This formality contributes to the accuracy, transparency, and enforceability of the correction or interpretation.
2. **Compliance with Article 42:** The provision explicitly refers to the requirements of Article 42. Article 42 of the SCC Arbitration Rules addresses various aspects of the arbitral award, including its form, content, and signing. By referencing Article 42, Article 47(3) ensures that any corrections or interpretations made in accordance with Article 47 also adhere to the broader requirements set forth for arbitral awards in general.
3. **Consistency and Predictability:** Referencing Article 42 helps maintain consistency and predictability in the arbitration process. Parties and tribunals can follow a unified set of rules and procedures when making corrections or interpretations, which contributes to the orderly and standardised conduct of arbitrations under the SCC Arbitration Rules.
4. **Clarity and Precision:** The requirement for corrections or interpretations to be in writing ensures that the parties and the tribunal have a clear and precise record of the changes or clarifications being made to the award. This helps prevent misunderstandings or disputes that might arise from oral communications or informal exchanges.
5. **Enforceability and Legal Effect:** The formal and written nature of corrections and interpretations, as mandated by Article 47(3), enhances the enforceability and legal effect of these actions. Parties, courts, and other stakeholders can rely on the documented changes or clarifications as accurate representations of the tribunal's intent.
6. **Procedural Integrity:** Article 47(3) contributes to the procedural integrity of the arbitration process. It ensures that any modifications to the award, whether corrections or interpretations, are conducted in a structured and documented manner that aligns with the broader principles of the SCC Arbitration Rules.

In summary, Article 47(3) of the SCC Arbitration Rules 2023 requires any correction or interpretation of an award to be made in writing and to comply with the requirements specified in Article 42. This provision underscores the formal and structured approach to making corrections or interpretations, promoting accuracy, transparency, and procedural consistency within the arbitration process.

## Article 48 Additional award

**Within 30 days of receiving an award, a party may, upon notice to the other party, request that the Arbitral Tribunal make an additional award on claims presented in the arbitration but not determined in the award.**

**After giving the other party an opportunity to comment on the request, and if the Arbitral Tribunal considers the request justified, it shall make the additional award within 60 days of receiving the request. When deemed necessary, the Board may extend this 60 day time limit.**

Article 48 of the SCC Arbitration Rules 2023 addresses the process for requesting and obtaining additional awards from the arbitral tribunal in cases where certain claims presented in the arbitration have not been determined in the original award. This provision outlines the timeline and procedure for making such requests and underscores the role of both parties and the SCC Board in this process. Here is an analysis of Article 48:

1. **Request for Additional Award:** Article 48 grants a party the right to request an additional award within 30 days of receiving the original award. This allows a party to seek resolution of claims that were presented in the arbitration but were not addressed in the initial award. The provision recognises that there may be circumstances where certain claims were overlooked or not fully considered by the tribunal.
2. **Notice and Opportunity to Comment:** The requesting party is required to provide notice to the other party about the intent to seek an additional award. This notice serves to inform the other party and initiate the process. Additionally, the provision mandates that the other party be given an opportunity to comment on the request. This ensures fairness and allows the other party to express its views on the need for an additional award.
3. **Tribunal's Decision and Justification:** If the tribunal considers the request for an additional award to be justified after considering the comments from the other party, it is obligated to make the additional award. This ensures that the tribunal's decision is grounded in reasoned judgment and that it takes into account the relevant arguments and perspectives presented by both parties.
4. **Timeliness of Additional Award:** Article 48 establishes a timeline for the issuance of the additional award. The arbitral tribunal must make the additional award within 60 days of receiving the request. This time limit promotes prompt resolution and ensures that parties do not experience unnecessary delays in obtaining a decision on unresolved claims.
5. **Board's Authority to Extend Time Limit:** The provision acknowledges that there may be circumstances where an extension of the 60-day time limit is necessary. In such cases, the SCC Board has the authority to grant an extension. This recognition of the Board's role adds an element of flexibility to the process, allowing for exceptions when warranted.
6. **Balancing Efficiency and Fairness:** Article 48 strikes a balance between the parties' right to seek resolution of additional claims and the need to ensure an efficient and orderly arbitration process. It provides a structured framework for addressing outstanding issues while incorporating safeguards to prevent abuse or undue delay.

In summary, Article 48 of the SCC Arbitration Rules 2023 allows a party to request an additional award for claims presented in the arbitration but not determined in the original award. The provision outlines a clear process involving notice, comments from the other party, tribunal's decision, and a specific timeline for making the additional award. This article aims to promote fairness, efficiency, and comprehensive resolution of disputes through arbitration.



**COSTS OF THE ARBITRATION****Article 49 Costs of the arbitration****(1) The costs of the arbitration consist of:**

- (i) the fees of the Arbitral Tribunal;**
- (ii) the administrative fee; and**
- (iii) the expenses of the Arbitral Tribunal and the SCC.**

Article 49(1) of the SCC Arbitration Rules 2023 defines the components that constitute the costs of the arbitration. This provision outlines the specific elements that parties are responsible for covering in the context of the arbitration proceedings. Here is an analysis of Article 49(1):

1. **Fees of the Arbitral Tribunal:** The provision includes the fees of the Arbitral Tribunal as a component of the costs of the arbitration. These fees typically cover the compensation paid to the arbitrators for their time, effort, expertise, and services in conducting the arbitration proceedings, including hearings, deliberations, and the issuance of the award.
2. **Administrative Fee:** Article 49(1) identifies the administrative fee as another element of the costs of the arbitration. The administrative fee is paid to the arbitral institution (in this case, the SCC) for its administrative services and support in managing the arbitration process, including case management, appointment of arbitrators, and logistical assistance.
3. **Expenses of the Arbitral Tribunal and the SCC:** The provision also includes the expenses incurred by both the Arbitral Tribunal and the SCC as part of the costs of the arbitration. These expenses can encompass a range of disbursements, such as travel expenses, accommodation, and administrative costs associated with the arbitration proceedings.
4. **Comprehensive Definition:** Article 49(1) offers a comprehensive definition of the costs of the arbitration by encompassing the various financial elements that parties are required to cover. By explicitly listing these components, the provision promotes clarity and transparency regarding the financial aspects of the arbitration process.
5. **Fair Allocation of Costs:** The provision helps establish a framework for the allocation of costs among the parties involved in the arbitration. By delineating the specific cost components, it contributes to a fair and systematic approach to determining the financial responsibilities of the parties.
6. **Transparency and Predictability:** Article 49(1) ensures transparency and predictability in terms of the financial implications of arbitration. Parties can anticipate the specific elements that will contribute to the overall costs they may incur throughout the arbitration proceedings.
7. **Facilitation of Financial Planning:** Parties engaging in arbitration can use Article 49(1) to facilitate financial planning and budgeting. Having a clear understanding of the cost components allows parties to prepare for the financial commitment associated with the arbitration process.

8. Institutional Support: By acknowledging the administrative fee and expenses related to both the Arbitral Tribunal and the SCC, the provision highlights the valuable support provided by the arbitral institution in ensuring the smooth and efficient conduct of the arbitration.

In summary, Article 49(1) of the SCC Arbitration Rules 2023 outlines the components that make up the costs of the arbitration, including the fees of the Arbitral Tribunal, the administrative fee, and the expenses of the Arbitral Tribunal and the SCC. This provision contributes to transparency, predictability, and fair allocation of financial responsibilities in the arbitration process.

**(2) Before making the final award, the Arbitral Tribunal shall request that the Board finally determine the costs of the arbitration. The Board shall finally determine the costs of the arbitration in accordance with the schedule of costs (Appendix IV) in force on the date of commencement of the arbitration pursuant to Article 8.**

Article 49(2) of the SCC Arbitration Rules 2023 addresses the determination of the costs of the arbitration, specifically focusing on the involvement of the SCC Board in making the final determination. This provision outlines the process by which the costs are settled and references the schedule of costs provided in the rules. Here is an analysis of Article 49(2):

1. Involvement of the SCC Board: The provision highlights the role of the SCC Board in the determination of the costs of the arbitration. The Arbitral Tribunal is required to request the SCC Board to finally determine the costs before issuing the final award. This involvement ensures an impartial and independent assessment of the costs.
2. Costs Determination Timing: The determination of costs by the SCC Board occurs before the issuance of the final award. This timing allows for the comprehensive settlement of financial matters related to the arbitration proceedings, ensuring that the costs are accurately assessed and included in the final award.
3. Reference to Schedule of Costs: Article 49(2) references the schedule of costs provided in Appendix IV of the SCC Arbitration Rules. This schedule outlines the specific fees and expenses that contribute to the costs of the arbitration. The reference to the schedule provides clarity and transparency about the components that factor into the costs determination.
4. Consistency and Predictability: The use of a predetermined schedule of costs, in conjunction with the involvement of the SCC Board, promotes consistency and predictability in costs determination. Parties can anticipate the specific financial obligations associated with the arbitration process based on the established schedule.
5. Effective Cost Allocation: By relying on a schedule of costs and the SCC Board's determination, the provision contributes to an effective and efficient method of allocating costs among the parties. It ensures that the costs assessment is based on predetermined criteria and reflects the financial reality of the arbitration proceedings.
6. Independence and Neutrality: Involving the SCC Board in the costs determination process enhances the independence and neutrality of the financial assessment. The Board's

involvement helps prevent potential conflicts of interest and ensures a fair and impartial determination of the costs.

7. Encouragement of Compliance: The provision encourages compliance with the determined costs by entrusting the assessment to an independent body. Parties are more likely to accept the costs determination when it is made by an institution like the SCC Board, enhancing the enforceability of the costs order.

In summary, Article 49(2) of the SCC Arbitration Rules 2023 outlines the process of determining the costs of the arbitration, involving the SCC Board and referencing the schedule of costs provided in the rules. This provision enhances transparency, predictability, and the fairness of the costs assessment process, while promoting an efficient and effective method of allocating financial responsibilities among the parties.

**(3) In finally determining the costs of the arbitration, the Board shall have regard to the extent to which the Arbitral Tribunal has acted in an efficient and expeditious manner, the complexity of the dispute and any other relevant circumstances.**

Article 49(3) of the SCC Arbitration Rules 2023 outlines the factors that the SCC Board should consider when finally determining the costs of the arbitration. This provision guides the Board in assessing and allocating costs based on specific criteria. Here is an analysis of Article 49(3):

1. Efficient and Expeditious Proceedings: Article 49(3) underscores the importance of efficiency and expeditiousness in arbitration proceedings. The SCC Board is directed to consider the extent to which the Arbitral Tribunal has conducted the proceedings in an efficient and timely manner. This factor encourages tribunals to manage cases effectively and expedite the resolution process.
2. Balancing Procedural Conduct: The provision aims to balance the procedural conduct of the Arbitral Tribunal with the financial aspects of the arbitration. It incentivises tribunals to facilitate a streamlined and prompt resolution process, which can lead to reduced costs for the parties and the overall efficiency of the arbitration.
3. Complexity of the Dispute: Article 49(3) instructs the SCC Board to consider the complexity of the dispute when determining costs. Complex cases often require more time, resources, and expertise, which can impact the overall costs incurred by the parties. Recognising complexity in cost allocation ensures fairness and a realistic assessment of financial obligations.
4. Relevance of Other Circumstances: The provision acknowledges the potential presence of other relevant circumstances that may influence costs determination. This flexibility allows the SCC Board to consider a wide range of factors that could impact the costs of the arbitration, tailoring the decision to the specific context of the case.
5. Customisation and Fairness: By considering multiple factors, including efficiency, complexity, and other circumstances, Article 49(3) promotes a tailored and balanced approach to costs determination. This approach ensures that the allocation of costs reflects the unique characteristics of each arbitration and is fair to all parties involved.

6. **Enhancing Transparency and Predictability:** The provision contributes to transparency and predictability by specifying the criteria that the SCC Board should take into account when determining costs. Parties can anticipate the factors that will influence the final costs determination, helping them better understand the financial implications of the arbitration process.
7. **Incentive for Efficient Conduct:** Article 49(3) creates an incentive for arbitrators to manage proceedings efficiently and effectively. Arbitral tribunals are encouraged to minimise delays, unnecessary motions, and excessive use of resources, knowing that such behaviour could impact the allocation of costs.

In summary, Article 49(3) of the SCC Arbitration Rules 2023 outlines the factors that the SCC Board should consider when finally determining the costs of the arbitration. By emphasising efficient proceedings, the complexity of the dispute, and other relevant circumstances, the provision promotes a fair and balanced approach to cost allocation that takes into account the specific characteristics of each case.

**(4) If the arbitration is terminated before the final award is made pursuant to Article 45, the Board shall finally determine the costs of the arbitration having regard to the stage of the arbitration, the work performed by the Arbitral Tribunal and any other relevant circumstances.**

Article 49(4) of the SCC Arbitration Rules 2023 addresses the determination of costs in the event that the arbitration is terminated before the issuance of a final award, as outlined in Article 45. This provision guides the SCC Board in assessing and allocating costs under these specific circumstances. Here is an analysis of Article 49(4):

1. **Terminated Arbitration:** Article 49(4) deals with the situation where the arbitration is terminated before the issuance of the final award. Termination can occur for various reasons, such as settlement between the parties, withdrawal of claims, or other circumstances that lead to the conclusion of the arbitration process.
2. **Stage of the Arbitration:** The provision directs the SCC Board to consider the stage of the arbitration at the time of termination when determining costs. The progression of the proceedings and the amount of work already performed by the Arbitral Tribunal are relevant factors in assessing the financial obligations of the parties.
3. **Work Performed by the Arbitral Tribunal:** Article 49(4) specifically mentions that the SCC Board should take into account the work performed by the Arbitral Tribunal up to the point of termination. This factor recognises the efforts and contributions made by the tribunal, even if the arbitration did not culminate in a final award.
4. **Other Relevant Circumstances:** Similar to other provisions, Article 49(4) acknowledges the importance of considering any other relevant circumstances. This provision allows the SCC Board to account for additional factors that might impact the allocation of costs, tailoring the decision to the specific context of the terminated arbitration.
5. **Fair Allocation of Costs:** The provision ensures a fair allocation of costs even in cases where the arbitration is terminated before its conclusion. By considering the work performed by the tribunal and other relevant factors, the SCC Board can determine a cost

allocation that reflects the parties' respective positions and contributions up to the point of termination.

6. **Flexibility and Customisation:** Article 49(4) provides flexibility in cost determination by allowing the SCC Board to adapt to various scenarios that lead to arbitration termination. This flexibility ensures that costs are allocated sensibly, taking into account the particular circumstances of each terminated arbitration.
7. **Encouragement of Efficiency:** The provision encourages efficiency in the arbitration process, even if it does not reach the final award stage. Parties and tribunals are incentivised to manage proceedings effectively, knowing that the SCC Board will assess costs based on the work performed and the stage of the arbitration.

In summary, Article 49(4) of the SCC Arbitration Rules 2023 outlines the factors that the SCC Board should consider when finally determining the costs of a terminated arbitration. By taking into account the stage of the arbitration, the work performed by the Arbitral Tribunal, and any other relevant circumstances, this provision promotes a fair and balanced approach to cost allocation, even in situations where the arbitration process concludes before a final award is issued.

**(5) The Arbitral Tribunal shall include in the final award the costs of the arbitration as finally determined by the Board and specify the individual fees and expenses of each member of the Arbitral Tribunal and the SCC.**

Article 49(5) of the SCC Arbitration Rules 2023 addresses the content and inclusion of cost-related information in the final award issued by the Arbitral Tribunal. This provision outlines the specific details that must be included regarding the costs of the arbitration as determined by the SCC Board. Here is an analysis of Article 49(5):

1. **Inclusion of Cost Details:** Article 49(5) requires the Arbitral Tribunal to include in the final award the costs of the arbitration as finally determined by the SCC Board. This inclusion ensures that the financial aspects of the arbitration are clearly documented and communicated to the parties as part of the award.
2. **Final Determination by SCC Board:** The provision establishes the authority of the SCC Board in finally determining the costs of the arbitration. The inclusion of the Board's determination in the final award adds a layer of official endorsement to the costs assessment, reinforcing the legitimacy of the allocation.
3. **Transparency and Clarity:** By specifying that the individual fees and expenses of each member of the Arbitral Tribunal and the SCC must be included in the final award, Article 49(5) promotes transparency and clarity. Parties have access to a detailed breakdown of the costs associated with the various participants and components of the arbitration process.
4. **Accountability and Verification:** Including individual fees and expenses in the final award enhances accountability and verification. Parties can review and confirm the accuracy of the financial details, ensuring that the costs attributed to each participant are consistent with the established costs determination.

5. **Facilitation of Compliance:** The detailed breakdown of costs in the final award can facilitate compliance and payment by parties. It provides a clear reference for the financial obligations of each party, potentially reducing disputes or disagreements related to the payment of costs.
6. **Enforcement and Recognisability:** The cost-related information included in the final award becomes an integral part of the award's enforceability and recognisability. Parties, courts, and other stakeholders can rely on the award as a comprehensive document that encompasses both the legal and financial aspects of the arbitration.
7. **Customary Practice:** The provision aligns with the customary practice of specifying costs in arbitral awards. Including cost details in the award ensures consistency with the expectations of parties and the legal community, contributing to the effectiveness and standardisation of the arbitration process.

In summary, Article 49(5) of the SCC Arbitration Rules 2023 mandates that the Arbitral Tribunal include in the final award the costs of the arbitration as finally determined by the SCC Board. By specifying individual fees and expenses and promoting transparency, clarity, and compliance, this provision ensures that the financial aspects of the arbitration are clearly documented, enhancing the enforceability and transparency of the award.

**(6) Unless otherwise agreed by the parties, the Arbitral Tribunal shall, at the request of a party, apportion the costs of the arbitration between the parties, having regard to the outcome of the case, each party's contribution to the efficiency and expeditiousness of the arbitration and any other relevant circumstances.**

Article 49(6) of the SCC Arbitration Rules 2023 pertains to the apportionment of costs between the parties in arbitration proceedings. This provision grants the Arbitral Tribunal the authority to allocate costs based on specified criteria, particularly in response to a party's request. Here is an analysis of Article 49(6):

1. **Cost Apportionment Authority:** Article 49(6) empowers the Arbitral Tribunal to apportion the costs of the arbitration between the parties. This authority allows the tribunal to determine how the financial burden of the arbitration should be shared among the disputing parties.
2. **Party Request:** The provision specifies that the Arbitral Tribunal will engage in cost apportionment at the request of a party. This reflects a party-centred approach, ensuring that the parties' autonomy and interests are respected, and they have the opportunity to influence the costs allocation decision.
3. **Apportionment Criteria:** Article 49(6) sets out a framework for cost apportionment based on certain criteria:
  - a. **Outcome of the case:** The tribunal should consider the success or failure of each party in the arbitration. This factor may influence the allocation of costs based on the degree of success achieved by each party.

- b. Contribution to efficiency and expeditiousness: Parties that actively contribute to a swift and efficient arbitration process may be favoured in the allocation of costs.
  - c. Other relevant circumstances: Similar to other provisions, Article 49(6) allows the tribunal to consider any additional factors that may be pertinent to the allocation of costs.
4. Flexible Approach: The provision's criteria offer flexibility, enabling the tribunal to adapt its cost apportionment decision to the specific circumstances of each case. This flexibility ensures that the allocation of costs is tailored to the unique dynamics and complexities of the arbitration.
  5. Encouragement of Efficient Conduct: By considering each party's contribution to efficiency and expeditiousness, Article 49(6) encourages parties to actively engage in the arbitration process and cooperate in expediting proceedings. This promotes a timely and effective resolution of disputes.
  6. Equitable Allocation: The provision aims to achieve an equitable allocation of costs by considering various factors that reflect the parties' respective roles and conduct throughout the arbitration process. This approach helps prevent unjust outcomes in terms of costs distribution.
  7. Enhancing Party Autonomy: Article 49(6) respects party autonomy by allowing the parties to determine the apportionment of costs through their agreement. This flexibility acknowledges that parties may have their own preferences and arrangements regarding costs.

In summary, Article 49(6) of the SCC Arbitration Rules 2023 grants the Arbitral Tribunal the authority to apportion the costs of the arbitration between the parties upon request. The provision outlines criteria for cost allocation, including the outcome of the case, contribution to efficiency, and other relevant circumstances. This approach promotes fairness, efficiency, and customisation in determining how the financial obligations are shared among the parties in the arbitration proceedings.

**(7) The parties are jointly and severally liable to the arbitrator(s) and to the SCC for the costs of the arbitration.**

Article 49(7) of the SCC Arbitration Rules 2023 establishes a principle of joint and several liability for the parties involved in an arbitration, specifying their financial responsibilities towards the arbitrator(s) and the SCC for covering the costs of the arbitration. Here is a detailed analysis of this provision:

1. Joint and Several Liability Defined: Joint and several liability means that each party is individually responsible for the entire amount of the costs of the arbitration. If one party fails to fulfil its financial obligations, the other party may be held responsible for covering the outstanding amount. This arrangement provides flexibility in the collection of costs, as the arbitrator(s) and the SCC can seek payment from either or both parties.
2. Clear Allocation of Responsibility: Article 49(7) offers clarity in allocating financial responsibility for the costs of the arbitration. It explicitly states that both parties share

equal liability for covering the costs. This clarity helps prevent disputes or confusion about which party is accountable for what portion of the costs.

3. **Enforcement and Payment Assurance:** The provision enhances the enforceability of the costs order. In case one party defaults on its payment obligations, the other party remains liable, ensuring that the arbitrator(s) and the SCC can still receive the funds required to cover the arbitration expenses.
4. **Preventing Delays and Disruptions:** Joint and several liability minimises the risk of delays or disruptions in the arbitration proceedings due to non-payment of costs. If one party fails to meet its financial obligations, the other party's liability ensures that the arbitration process can continue without unnecessary interruptions.
5. **Financial Security for Arbitrator(s) and SCC:** This provision guarantees financial security for the arbitrator(s) and the SCC. They can reasonably expect that their fees and expenses associated with the arbitration will be covered, regardless of the parties' financial situations or their willingness to cooperate.
6. **Incentive for Settlement:** The shared financial burden through joint and several liability may incentivise parties to resolve their disputes through settlement. The potential financial impact of the arbitration process could encourage parties to explore amicable resolutions to avoid the additional costs.
7. **Party Autonomy and Agreements:** While Article 49(7) establishes joint and several liability as a default principle, parties are still free to modify this arrangement through their agreements or arbitration clauses. This respects the principle of party autonomy, allowing parties to negotiate financial terms that suit their specific circumstances.
8. **Promotion of Fairness:** Joint and several liability promotes fairness by ensuring that the costs are equitably distributed between the parties. Both parties share the responsibility for the financial aspects of the arbitration, regardless of their relative financial strengths.
9. **Predictable Financial Commitment:** The provision enhances predictability in terms of the financial commitment required from each party. They know that they can be held responsible for the entirety of the costs, allowing them to plan their resources accordingly.

In summary, Article 49(7) of the SCC Arbitration Rules 2023 establishes joint and several liability for the parties' financial obligations toward the arbitrator(s) and the SCC in covering the costs of the arbitration. This principle promotes clarity, fairness, and enforcement in cost allocation, while also providing financial security for the involved parties and arbitration institutions.

#### **Article 50 Costs incurred by a party**

**Unless otherwise agreed by the parties, the Arbitral Tribunal may in the final award, at the request of a party, order one party to pay any reasonable costs incurred by another party, including costs for**



**legal representation, having regard to the outcome of the case, each party’s contribution to the efficiency and expeditiousness of the arbitration and any other relevant circumstances.**

Article 50 of the SCC Arbitration Rules 2023 addresses the issue of costs in arbitration proceedings and provides the arbitral tribunal with the authority to order one party to pay reasonable costs incurred by another party. This provision outlines the factors that the tribunal should consider when making such cost orders. Here is an analysis of Article 50:

1. **Cost Allocation Authority:** Article 50 grants the arbitral tribunal the authority to order one party to pay reasonable costs incurred by another party in the final award. This authority allows the tribunal to allocate costs based on a variety of factors to ensure a fair and appropriate distribution of the financial burden among the parties.
2. **Request-Based Approach:** The provision specifies that a cost order can be made upon the request of a party. This means that the tribunal will consider cost allocation if a party explicitly asks for it. This balances the parties’ autonomy and control over the costs issue while allowing them to bring their perspectives to the tribunal’s attention.
3. **Factors Considered:** Article 50 lists several factors that the tribunal should consider when determining cost allocation:
  - a. **Outcome of the case:** The tribunal should take into account the overall success of each party in the arbitration, which may influence the allocation of costs.
  - b. **Each party’s contribution to efficiency and expeditiousness:** Parties that contribute positively to the efficiency and speed of the arbitration process may be favoured in cost allocation.
  - c. **Other relevant circumstances:** This catch-all provision ensures that the tribunal can consider any additional factors that may be relevant to the allocation of costs, ensuring a flexible approach.
  - d. **Reasonable Costs:** The provision requires the costs to be reasonable. This ensures that cost allocation is based on actual and justifiable expenses incurred by the parties, including costs for legal representation and other related expenses.
4. **Default Rule and Party Agreement:** The provision serves as a default rule for cost allocation, indicating how costs may be allocated in the absence of an agreement between the parties. However, parties are free to agree on a different approach to cost allocation if they wish, reflecting the principle of party autonomy in arbitration.
5. **Fairness and Balance:** Article 50 seeks to achieve a balance between the parties by considering various factors that can influence the allocation of costs. The provision aims to ensure that the party that has acted reasonably, contributed to efficiency, and achieved a favourable outcome is not unfairly burdened with costs.
6. **Transparency and Predictability:** The factors listed in Article 50 provide transparency and predictability regarding the considerations that the tribunal will take into account when making cost orders. This can help parties anticipate the potential outcome of cost allocation requests.

In summary, Article 50 of the SCC Arbitration Rules 2023 empowers the arbitral tribunal to order one party to pay reasonable costs incurred by another party, taking into account factors such as the outcome of the case, party contributions to efficiency, and other relevant circumstances. This provision promotes fairness, transparency, and a balanced approach to cost allocation in arbitration proceedings.

## Article 51 Advance on costs

### (1) The Board shall determine an amount to be paid by the parties as an advance on costs.

Article 51(1) of the SCC Arbitration Rules 2023 pertains to the determination of an advance on costs by the Board in the context of arbitration proceedings administered by the Arbitration Institute of the SCC. Let us break down the key elements of this provision:

1. **The Board:** The term “Board” refers to the Arbitration Institute’s administrative body responsible for managing the arbitration proceedings. In the SCC context, this Board is likely composed of experienced arbitrators and professionals who oversee the arbitration process and make procedural decisions.
2. **Determine an Amount:** Article 51(1) empowers the Board to decide on the specific amount that the parties involved in the arbitration are required to pay in advance. This amount serves as a financial deposit that covers various costs associated with the arbitration process, such as arbitrators’ fees, administrative expenses, venue costs, and other related expenses.
3. **Paid by the Parties:** The obligation to make the advance payment falls upon the parties to the arbitration. This means that both the claimant(s) and the respondent(s) are collectively responsible for ensuring the payment is made.
4. **Advance on Costs:** The advance on costs is essentially a prepayment of the anticipated expenses that will be incurred throughout the arbitration proceedings. It ensures that the necessary funds are available to cover the costs associated with the arbitration process as it progresses. The specific items covered by the advance on costs will likely be detailed in the arbitration rules or guidelines provided by the SCC.
5. **Purpose and Implications:** The purpose of requiring an advance on costs is to facilitate the smooth operation of the arbitration proceedings. By having parties contribute upfront, the arbitration process can proceed efficiently without delays caused by financial disputes or uncertainty regarding the availability of funds. It also helps ensure that arbitrators and administrators are appropriately compensated for their services.

It is important to note that the precise details and implications of Article 51(1) may vary depending on the specific rules and procedures outlined in the SCC Arbitration Rules 2023 and any additional agreements reached by the parties. Parties engaging in arbitration under these rules should carefully review the rules and seek legal advice if needed to fully understand their obligations and rights regarding advance on costs.

**(2) The advance on costs shall correspond to the estimated amount of the costs of the arbitration pursuant to Article 49 (1).**

Article 51(2) of the SCC Arbitration Rules 2023 provides further clarification on the determination of the advance on costs in arbitration proceedings administered by the Arbitration Institute of the SCC. Let us analyse its key components:

1. **The Advance on Costs:** This provision refers to the advance payment required from the parties to cover the costs of the arbitration process. As discussed earlier, the advance on costs serves as a financial deposit to ensure the availability of funds for various expenses related to the arbitration proceedings.
2. **Correspondence to Estimated Amount:** Article 51(2) specifies that the advance on costs should correspond to the estimated amount of the costs of the arbitration. In other words, the Board, which is responsible for determining the advance on costs (as per Article 51(1)), will calculate an approximate sum that is expected to cover the total expenses associated with the arbitration process.
3. **Reference to Article 49(1):** The provision makes a reference to Article 49(1) of the SCC Arbitration Rules 2023. Article 49(1) likely outlines the criteria and factors that the Board considers when estimating the costs of the arbitration. This article is likely to include details about how the costs are calculated, including considerations such as the complexity of the case, the number of arbitrators, administrative expenses, and other relevant factors.
4. **Purpose and Implications:** The purpose of this provision is to establish a clear connection between the advance on costs and the expected costs of the arbitration. By aligning the advance payment with the estimated costs, the parties are providing funds in proportion to what the arbitration is projected to cost. This ensures that there are adequate funds available to cover the expenses as the proceedings progress.
5. **Transparency and Predictability:** The requirement to base the advance on costs on an estimated amount promotes transparency and predictability in the arbitration process. Parties can have a better understanding of the financial commitments involved and can plan accordingly.

As with any provision in arbitration rules, it is crucial for parties engaging in arbitration under the SCC Arbitration Rules 2023 to carefully review the specific details and implications of Article 51(2) in conjunction with other relevant articles. Understanding how the advance on costs is calculated and its relationship to the estimated costs can help parties effectively manage the financial aspects of their arbitration proceedings.

**(3) Each party shall pay half of the advance on costs unless separate advances are determined. Where counterclaims or set-offs are submitted, the Board may decide that each party shall pay advances corresponding to its claims. Where an additional party is joined to the arbitration pursuant**

**to Article 13, the Board may determine each party's share of the advance on costs as it deems appropriate, having regard to the circumstances of the case.**

Article 51(3) of the SCC Arbitration Rules 2023 outlines the allocation and payment of the advance on costs in arbitration proceedings administered by the Arbitration Institute of the SCC. This provision addresses the distribution of financial responsibilities among the parties involved in the arbitration. Let us analyse the key elements of Article 51(3):

1. **Equal Payment by Each Party (Default Rule):** The provision starts by establishing a default principle that each party shall pay half of the advance on costs. This means that absent any specific circumstances or variations, the parties are initially expected to share the financial burden equally, contributing an equal amount to cover the advance on costs.
2. **Separate Advances for Counterclaims or Set-Offs:** In cases where counterclaims or set-offs are submitted, the Board has the authority to deviate from the default rule. The Board may decide that each party shall pay advances corresponding to their respective claims. This recognises that the financial commitment may need to be adjusted based on the nature and value of the claims and counterclaims.
3. **Additional Parties Joined to the Arbitration:** If an additional party is joined to the arbitration process pursuant to Article 13 of the SCC Arbitration Rules (likely related to the joinder of additional parties), the Board has discretion to determine each party's share of the advance on costs based on the circumstances of the case. This acknowledges that the presence of an additional party could impact the allocation of costs, and the Board can make an appropriate decision to ensure fairness.
4. **Board's Discretion:** The provision emphasises that the Board has the authority to determine the distribution of the advance on costs in situations where deviations from the default rule are warranted. The Board's decisions are guided by the circumstances of the case, including factors such as the claims, counterclaims, and the involvement of additional parties.
5. **Flexibility and Fairness:** Article 51(3) aims to strike a balance between providing a default rule for equal cost-sharing and allowing flexibility to adjust the financial contributions based on the specifics of each case. This approach promotes fairness by tailoring the financial obligations to the unique circumstances presented by the arbitration.

Parties engaging in arbitration under the SCC Arbitration Rules 2023 should carefully consider the implications of Article 51(3) and its potential impact on their financial responsibilities. The provision ensures that the allocation of costs takes into account the complexities and dynamics of the case, contributing to a more equitable and efficient arbitration process.

**(4) At the request of the Arbitral Tribunal, or if otherwise deemed necessary, the Board may order the parties to pay additional advances during the course of the arbitration.**

Article 51(4) of the SCC Arbitration Rules 2023 addresses the potential need for additional advances on costs in arbitration proceedings administered by the Arbitration Institute of the SCC. This provision allows for adjustments to the initial advance on costs to ensure that sufficient funds are available to

cover ongoing expenses throughout the arbitration process. Let us analyse the key components of Article 51(4):

1. **Arbitral Tribunal's Request or Board's Determination:** This provision highlights two scenarios in which additional advances on costs may be required. First, the Arbitral Tribunal, which consists of the arbitrators overseeing the case, may request additional advances if they believe that the existing funds are insufficient to cover anticipated future costs. Second, the Board, which is responsible for administrative decisions, may independently determine the need for additional advances if it is deemed necessary to ensure the smooth progress of the arbitration.
2. **Purpose of Additional Advances:** The primary purpose of ordering additional advances is to ensure that there are adequate funds available to cover the ongoing expenses associated with the arbitration process. These expenses can include arbitrators' fees, administrative costs, hearing costs, expert fees, and other relevant expenditures that arise as the arbitration advances.
3. **Flexibility and Adaptability:** Article 51(4) underscores the flexibility and adaptability of the arbitration process. As the proceedings unfold, unforeseen circumstances or complexities may arise that necessitate additional financial resources. This provision empowers both the Arbitral Tribunal and the Board to address such situations promptly, avoiding delays caused by insufficient funding.
4. **Balancing Interests:** The provision strikes a balance between the parties' financial obligations and the efficient conduct of the arbitration. While parties are required to make additional payments to cover costs, this is done with the objective of ensuring a fair and timely resolution of the dispute.
5. **Legal Counsel and Strategy:** Parties engaging in arbitration should be aware of the potential for additional advances on costs. This consideration may impact their budgeting, financial planning, and overall arbitration strategy. It is important for parties to work closely with legal counsel to understand the potential financial implications and to ensure they are well-prepared to meet any additional funding requirements that may arise.

In summary, Article 51(4) of the SCC Arbitration Rules 2023 provides a mechanism for ordering additional advances on costs during the course of arbitration. This mechanism enhances the flexibility of the process, helps prevent financial disruptions, and contributes to the overall efficiency of the arbitration proceedings.

**(5) If a party fails to make a required payment, the Secretariat shall give the other party an opportunity to do so within a specified period of time. If the payment is not made within that time, the Board shall dismiss the case in whole or in part. If the case has been referred to the Arbitral Tribunal, the Arbitral Tribunal shall terminate the case in whole or in part.**

Article 51(5) of the SCC Arbitration Rules 2023 outlines the consequences of a party's failure to make required payments for advance on costs in arbitration proceedings administered by the Arbitration Institute of the SCC. This provision establishes a clear procedure and potential outcomes in cases where a party does not fulfil its financial obligations. Let us analyse the key elements of Article 51(5):

1. **Non-Payment Consequences:** The provision addresses situations where a party fails to make the required payment for the advance on costs. This advance payment is crucial for ensuring the financial resources needed to cover the expenses of the arbitration process, including arbitrators' fees, administrative costs, and other related expenditures.
2. **Role of the Secretariat:** The Secretariat, which is the administrative body responsible for managing the arbitration proceedings, plays a pivotal role in enforcing the payment requirements. If a party fails to make the necessary payment, the Secretariat takes action by notifying the other party of the non-payment.
3. **Opportunity to Remedy:** Article 51(5) provides the non-defaulting party with an opportunity to remedy the situation. The non-defaulting party is given a specified period of time within which it can make the payment on behalf of the defaulting party. This step is designed to prevent the potential dismissal of the case due to a payment default.
4. **Dismissal of the Case:** If the defaulting party's required payment is not made within the specified period, the Board has the authority to dismiss the case, either in whole or in part. This means that the arbitration proceedings may be terminated, and the dispute resolution process will not proceed further.
5. **Effect on Arbitral Tribunal's Jurisdiction:** Importantly, Article 51(5) stipulates that if the case has already been referred to the Arbitral Tribunal (the panel of arbitrators), the Arbitral Tribunal itself will be responsible for deciding whether to terminate the case in whole or in part due to non-payment. This underscores the role of the Arbitral Tribunal in managing the procedural and substantive aspects of the case.
6. **Fairness and Consequences:** The provision seeks to ensure fairness and accountability in the arbitration process. Parties are expected to fulfil their financial obligations to avoid disruptions and maintain the integrity of the proceedings. The consequences for non-payment are clearly outlined, providing a framework for addressing such situations.

In summary, Article 51(5) of the SCC Arbitration Rules 2023 establishes a procedure for addressing non-payment of required advance on costs in arbitration. It emphasises the importance of financial obligations in maintaining the arbitration process and provides a clear mechanism for potential consequences if a party fails to fulfil its payment responsibilities.

**(6) If the other party makes the required payment, the Arbitral Tribunal may, at the request of that party, make a separate award for reimbursement of the payment.**

Article 51(6) of the SCC Arbitration Rules 2023 addresses the potential scenario where one party makes a required payment for the advance on costs on behalf of another party, and the implications for the Arbitral Tribunal's jurisdiction and potential separate award. Let us analyse the key components of Article 51(6):

1. **Reimbursement of Payment:** This provision focuses on situations where a non-defaulting party makes the required payment for the advance on costs on behalf of a defaulting party. The non-defaulting party effectively steps in to cover the financial obligation to ensure that the arbitration process can continue.

2. **Arbitral Tribunal's Discretion:** Article 51(6) grants discretion to the Arbitral Tribunal, which is composed of the arbitrators overseeing the case, to consider the request of the non-defaulting party. The Arbitral Tribunal may decide whether or not to make a separate award for reimbursement of the payment made by the non-defaulting party.
3. **Separate Award:** The provision allows the Arbitral Tribunal to issue a separate award specifically addressing the reimbursement of the payment. In other words, the Arbitral Tribunal can render a distinct decision, apart from the main award on the substantive dispute, that determines whether the non-defaulting party is entitled to be reimbursed for the payment it made on behalf of the defaulting party.
4. **Fairness and Jurisdiction:** The provision promotes fairness by providing a mechanism for addressing the financial consequences of one party's non-payment on the other party. It also acknowledges the jurisdiction of the Arbitral Tribunal to address issues beyond the primary dispute, ensuring that the non-defaulting party's interests are properly considered.
5. **Procedural Efficiency:** Allowing the Arbitral Tribunal to make a separate award for reimbursement can help streamline the process and avoid potential delays that might arise if the parties were required to pursue a separate claim for reimbursement in a separate proceeding.
6. **Considerations for the Arbitral Tribunal:** The Arbitral Tribunal's decision to make a separate award for reimbursement will likely depend on factors such as the circumstances of the case, the nature of the payment, and any agreements or submissions made by the parties.

In summary, Article 51(6) of the SCC Arbitration Rules 2023 addresses the possibility of reimbursement when one party covers another party's payment for the advance on costs. It provides a framework for the Arbitral Tribunal to decide whether to issue a separate award to address the reimbursement, recognising the need for procedural fairness and efficiency in the arbitration process.

**(7) At any stage during the arbitration or after the award has been made, the Board may draw on the advance on costs to cover the costs of the arbitration.**

Article 51(7) of the SCC Arbitration Rules 2023 addresses the authority of the Board to utilise the funds provided as an advance on costs to cover the various expenses associated with the arbitration process. Let us analyse the key elements of Article 51(7):

1. **Use of Advance on Costs:** This provision empowers the Board, which is the administrative body overseeing the arbitration proceedings, to draw on the funds provided as an advance on costs. These funds are used to cover the costs associated with the arbitration process, including expenses such as arbitrators' fees, administrative costs, hearing costs, expert fees, and other relevant expenditures.
2. **Timing of Utilisation:** The provision specifies that the Board has the authority to utilise the advance on costs at any stage during the arbitration process. This means that the funds can be used as needed, whether it is before the issuance of the award, during the proceedings, or even after the award has been rendered.

3. Flexibility and Financial Management: Article 51(7) reflects the practical necessity of ensuring that the arbitration process runs smoothly and efficiently. By having access to the advance on costs, the Board can manage the financial aspects of the proceedings in a flexible manner, avoiding delays or disruptions due to financial constraints.
4. Responsibility of the Board: The Board's role in drawing on the advance on costs emphasises its administrative responsibilities and decision-making authority in managing the practical aspects of the arbitration proceedings. This allows the Arbitral Tribunal to focus on the substantive issues of the case.
5. Alignment with Advance on Costs: The provision is consistent with the overall framework established by Article 51, where the advance on costs serves as a prepayment mechanism to ensure that sufficient funds are available to cover the costs associated with the arbitration.
6. Transparency and Accountability: While the Board has the authority to draw on the advance on costs, it is likely subject to transparency and accountability measures. The Board is expected to ensure that the funds are used appropriately and in line with the expenses of the arbitration.

In summary, Article 51(7) of the SCC Arbitration Rules 2023 authorises the Board to utilise the advance on costs to cover the expenses of the arbitration process. This provision supports the effective financial management of the proceedings, contributing to the smooth operation of the arbitration and the timely resolution of disputes.

**(8) The Board may decide that part of the advance on costs may be provided in the form of a bank guarantee or other form of security.**

Article 51(8) of the SCC Arbitration Rules 2023 addresses the flexibility in the manner in which the advance on costs can be provided by the parties involved in arbitration proceedings administered by the Arbitration Institute of the SCC. Let us analyse the key elements of Article 51(8):

1. Alternative Payment Forms: This provision empowers the Board to make a decision allowing part of the advance on costs to be provided in a form other than direct payment of funds. Specifically, the Board can authorise the use of a bank guarantee or other form of security as a substitute for a portion of the advance on costs.
2. Flexibility and Practicality: Article 51(8) reflects the recognition that parties may have varying financial circumstances and preferences when it comes to providing the required funds for the advance on costs. Allowing the use of alternative payment forms offers flexibility and accommodates parties who may find it more convenient or practical to provide a bank guarantee or other form of security.
3. Bank Guarantee or Security: A bank guarantee is a commitment issued by a bank on behalf of one of its customers (the party) to a third party (the beneficiary, in this case, the SCC) that the bank will honour financial obligations of the customer if the customer fails to meet them. Other forms of security could include cash deposits, bonds, or other financial instruments that serve as collateral for the advance on costs.



4. Purpose of Alternative Forms: The provision enables parties to provide the necessary financial commitment while potentially using their existing financial resources in a more strategic manner. It can also be particularly useful if a party faces liquidity constraints or has concerns about transferring funds upfront.
5. Board's Discretion: While Article 51(8) grants the Board the authority to decide on alternative payment forms, it is important to note that the Board's decision is likely to be guided by considerations of reasonableness, adequacy, and compliance with the SCC's administrative requirements.
6. Transparency and Security: Any alternative payment form allowed by the Board must ensure the same level of financial security as the direct payment of funds. The provision maintains the integrity of the advance on costs system by ensuring that sufficient funds or security are available to cover the costs of the arbitration process.

In summary, Article 51(8) of the SCC Arbitration Rules 2023 provides parties with the option to use alternative forms of payment, such as a bank guarantee or other form of security, for part of the advance on costs. This approach enhances flexibility, accommodates parties' financial circumstances, and ensures the availability of funds or security to support the arbitration process.

## MISCELLANEOUS

**Article 52 Exclusion of liability**

**Neither the SCC, the arbitrator(s), the administrative secretary of the Arbitral Tribunal, nor any expert appointed by the Arbitral Tribunal is liable to any party for any act or omission in connection with the arbitration, unless such act or omission constitutes wilful misconduct or gross negligence.**

Article 52 of the SCC Arbitration Rules 2023 addresses the issue of liability for the SCC itself, arbitrators, administrative secretaries of the Arbitral Tribunal, and any experts appointed by the Arbitral Tribunal in connection with the arbitration process. This provision establishes the general standard of liability and the circumstances under which these parties may be held liable for their actions or omissions. Here is an analysis of Article 52:

1. **Scope of Liability Exemption:** Article 52 provides a broad exemption from liability for the SCC, arbitrators, administrative secretaries, and experts involved in the arbitration process. It states that these parties are not liable to any party for any act or omission in connection with the arbitration, unless such act or omission constitutes wilful misconduct or gross negligence.
2. **Limiting Liability:** The provision is designed to limit the potential liability of the specified parties for their actions or decisions within the context of arbitration proceedings. It aims to protect these parties from being subjected to legal claims or suits based solely on their involvement in the arbitration process.
3. **Wilful Misconduct and Gross Negligence Standard:** Article 52 outlines the circumstances under which liability may be established. The exemption from liability is conditional upon the absence of wilful misconduct or gross negligence on the part of the SCC, arbitrators, administrative secretaries, and experts. This standard sets a relatively high threshold for establishing liability.
4. **Promoting Effective Arbitration:** The exemption from liability encourages effective arbitration proceedings by providing a level of immunity to the parties involved. This allows arbitrators, administrative secretaries, and experts to perform their roles without fear of facing legal consequences for their decisions, provided they act in good faith and with due care.
5. **Balancing Party Protections:** While Article 52 offers protections to the specified parties, it does not completely shield them from liability in cases of wilful misconduct or gross negligence. This balance ensures that parties who engage in intentionally harmful or extremely careless behaviour can still be held accountable.
6. **Preserving Confidence and Neutrality:** By limiting the potential for liability claims against arbitrators, administrative secretaries, and experts, Article 52 contributes to maintaining the confidence of these individuals in their roles. It also helps preserve the perceived neutrality and impartiality of these parties, allowing them to make decisions without undue influence from the fear of personal liability.
7. **Legal Certainty and Process Efficiency:** The provision contributes to legal certainty and process efficiency by providing clarity on the standard of liability and promoting a smooth arbitration process. Parties can have confidence that the decisions made by these parties

are generally protected from legal challenges, except in cases of serious misconduct or negligence.

In summary, Article 52 of the SCC Arbitration Rules 2023 establishes a standard of liability and immunity for the SCC, arbitrators, administrative secretaries, and experts involved in arbitration proceedings. The provision offers a level of protection to these parties, while still allowing for potential liability in cases of wilful misconduct or gross negligence. This balance aims to ensure effective and fair arbitration proceedings while safeguarding against potential abuses or breaches of duty.

## APPENDIX I ORGANISATION

## Article 1 About the SCC

**The SCC is a body providing administrative services in relation to the settlement of disputes. The SCC is part of the Stockholm Chamber of Commerce but is independent in exercising its functions in the administration of disputes. The SCC is composed of the Board and the Secretariat.**

Appendix 1(1) of the SCC Arbitration Rules 2023 provides a brief overview of the organisational structure and nature of the Arbitration Institute of the SCC, which is responsible for administering arbitration proceedings. Let us analyse the key points of this provision:

1. **Nature of the SCC:** The appendix establishes that the SCC is an entity that offers administrative services for the resolution of disputes. It is primarily focused on facilitating the arbitration process and ensuring the smooth conduct of proceedings between disputing parties.
2. **Administrative Independence:** The SCC is described as being part of the Stockholm Chamber of Commerce, which is a well-known business organisation. However, the appendix emphasises the SCC's independence in carrying out its functions related to the administration of disputes. This underscores the autonomy of the SCC in managing arbitration proceedings without undue influence from external entities.
3. **Organisational Composition:** The SCC is composed of two main components: the Board and the Secretariat.
4. **The Board:** The Board likely refers to a group of experienced arbitrators and professionals who oversee and make administrative decisions related to arbitration proceedings. The Board's role may include making determinations on advance on costs, appointment of arbitrators, and other procedural matters.
5. **The Secretariat:** The Secretariat is responsible for the day-to-day administration of arbitration proceedings. It handles practical aspects such as communication with parties, coordinating hearings, managing documents, and ensuring compliance with procedural rules.
6. **Promotion of Neutrality:** By highlighting the administrative independence of the SCC, the provision reinforces the concept of neutrality and impartiality in the arbitration process. This is crucial for building trust among the parties involved and ensuring a fair resolution of their disputes.
7. **Professional Expertise:** The mention of the Board and the Secretariat underscores the level of professionalism and expertise that the SCC brings to the administration of arbitration proceedings. This helps ensure that the arbitration process is efficiently managed and in accordance with established rules and best practices.

In summary, Appendix 1(1) of the SCC Arbitration Rules 2023 provides an introduction to the SCC's role as an administrative body in dispute resolution, its independence, and its organisational structure consisting of the Board and the Secretariat. It emphasises the SCC's commitment to providing a reliable and efficient platform for parties engaged in arbitration proceedings.

## Article 2 Function of the SCC

The SCC does not itself decide disputes. The function of the SCC is to:

- (i) administer domestic and international disputes in accordance with the SCC Rules; and**
- (ii) provide information concerning arbitration and mediation matters.**

Appendix 1(2) of the SCC Arbitration Rules 2023 outlines the specific functions and roles of the Arbitration Institute of the SCC in the context of dispute resolution. Let us analyse the key components of this provision:

1. **Non-Adjudicative Role:** The appendix clarifies that the SCC does not have the authority to make decisions or judgments on the actual disputes. Unlike an adjudicative body or a court, the SCC does not render verdicts or rulings on the substantive merits of the cases brought before it.
2. **Administrative Function (i):** The primary role of the SCC is to administer arbitration proceedings, both for domestic and international disputes. This includes managing the procedural aspects of the arbitration in accordance with the SCC Rules. The SCC ensures that the arbitration process is conducted fairly, efficiently, and in compliance with the established rules.
3. **Information Provision (ii):** The SCC also functions as an information resource for matters related to arbitration and mediation. This implies that the SCC may provide guidance, resources, and support to parties seeking information about arbitration and mediation processes, procedures, and best practices.
4. **Promotion of ADR:** The inclusion of “arbitration and mediation matters” suggests that the SCC is committed to promoting alternative dispute resolution (ADR) methods beyond just arbitration. Mediation, which involves facilitated negotiation between parties to reach a settlement, is often considered an ADR method.
5. **Specialised Expertise:** The SCC’s role as an administrative body aligns with its expertise in managing the procedural aspects of arbitration. This expertise contributes to a smoother and more organised arbitration process for parties involved.
6. **Neutrality and Fairness:** By focusing on administrative functions and information provision, the SCC maintains a neutral and impartial stance. This is crucial for fostering trust and ensuring that the arbitration process remains unbiased and fair.

In summary, Appendix 1(2) of the SCC Arbitration Rules 2023 underscores the SCC’s non-adjudicative role in dispute resolution. It highlights the SCC’s primary functions of administering arbitration proceedings in accordance with its rules and providing information about arbitration and mediation. This provision emphasises the SCC’s commitment to facilitating a fair and effective arbitration process and promoting alternative methods of resolving disputes.

### Article 3 The Board

**The Board shall be composed of one chairperson, a maximum of three vice-chairpersons and a maximum of 12 additional members. The Board shall include both Swedish and non-Swedish nationals.**

Appendix 1(3) of the SCC Arbitration Rules 2023 provides information about the composition and diversity of the Board of the Arbitration Institute of the SCC. This section outlines the structure of the Board and emphasises the international nature of its membership. Let us analyse the key components of this provision:

1. **Composition of the Board:** The Board of the SCC is made up of the following positions:
  - a. **Chairperson:** The head of the Board who likely plays a leadership role in guiding the SCC's activities.
  - b. **Vice-Chairpersons:** There can be up to three vice-chairpersons who assist the chairperson in their duties.
  - c. **Additional Members:** A maximum of 12 additional members who contribute to the collective decision-making and administration of arbitration proceedings.
2. **Diversity in Membership:** The provision highlights the diversity within the Board. It specifies that the Board includes both Swedish and non-Swedish nationals. This diversity ensures a broad range of perspectives and expertise, which can enhance the effectiveness and inclusiveness of the SCC's operations.
3. **International Character:** The inclusion of non-Swedish nationals on the Board reflects the international character of the SCC. This aligns with the SCC's role in administering both domestic and international disputes, making it important to have a diverse group of professionals with global experience.
4. **Leadership Structure:** The chairperson and vice-chairpersons likely play key roles in guiding the strategic direction of the SCC and making important administrative decisions. The broader group of additional members contributes to the collective decision-making process and draws from their expertise to ensure fair and efficient arbitration proceedings.
5. **Balancing Interests:** The presence of both Swedish and non-Swedish nationals on the Board helps strike a balance between local knowledge and international perspectives. This can be particularly valuable in ensuring that the SCC's decisions and procedures cater to the needs of a diverse range of parties and legal systems.
6. **Professionalism and Expertise:** The diverse composition of the Board ensures that the SCC benefits from a wide range of expertise, which is crucial for maintaining the organisation's reputation as a trusted and experienced institution for administering arbitration proceedings.

In summary, Appendix 1(3) of the SCC Arbitration Rules 2023 provides insight into the structure and diversity of the SCC's Board. The inclusion of Swedish and non-Swedish nationals underscores the

international nature of the SCC and its commitment to providing effective and impartial arbitration services to parties from around the world.

#### Article 4 Appointment of the Board

**The Board shall be appointed by the Board of Directors of the Stockholm Chamber of Commerce (the “Board of Directors”). The members of the Board shall be appointed for a period of three years and, unless exceptional circumstances apply, are only eligible for re-appointment in their respective capacities for one further three-year period.**

Appendix 1(4) of the SCC Arbitration Rules 2023 provides information about the appointment, tenure, and reappointment of members of the Board of the Arbitration Institute of the SCC. This section outlines the process for selecting and maintaining the leadership of the SCC’s administrative body. Let us analyse the key components of this provision:

1. **Appointment Authority:** The provision states that the members of the Board are appointed by the Board of Directors of the Stockholm Chamber of Commerce (the “Board of Directors”). This indicates that the SCC’s governing body, the Board of Directors, holds the responsibility for selecting individuals to serve on the Board.
2. **Tenure of Board Members:** Members of the Board are appointed for a fixed period of three years. This establishes a clear timeframe during which they will serve in their respective capacities.
3. **Limitation on Re-appointment:** The provision outlines a limitation on re-appointment. Unless exceptional circumstances apply, members of the Board are eligible for re-appointment in their respective capacities for only one further three-year period. This limitation is likely in place to promote fresh perspectives and ensure rotation of leadership roles within the Board.
4. **Continuity and Renewal:** The provision reflects a balance between continuity and renewal in the leadership of the SCC. It allows for experienced members to continue serving, while also promoting the infusion of new talent and ideas within a reasonable time frame.
5. **Exceptional Circumstances:** The provision acknowledges that there may be exceptional circumstances where re-appointment beyond the one additional three-year period could be considered. These circumstances could be based on the individual’s unique qualifications, expertise, or contributions, and would need to be evaluated on a case-by-case basis.
6. **Professionalism and Accountability:** The appointment and tenure process described in the provision aims to ensure a high level of professionalism and accountability in the leadership of the SCC. It establishes a structured approach to leadership transitions and maintains the organisation’s commitment to effective administration of arbitration proceedings.
7. **Impartiality and Independence:** The process of appointment and re-appointment helps uphold the impartiality and independence of the SCC’s administrative body. Regular

rotations and limitations on re-appointment prevent any undue influence from long-serving members.

In summary, Appendix 1(4) of the SCC Arbitration Rules 2023 outlines the process of appointment, tenure, and re-appointment of members of the Board. This provision aims to balance continuity and renewal in leadership, promote accountability and professionalism, and ensure the impartial and independent administration of arbitration proceedings by the SCC.

#### **Article 5 Removal of a member of the Board**

**In exceptional circumstances, the Board of Directors may remove a member of the Board. If a member resigns or is removed during a term of office, the Board of Directors may appoint a new member for the remainder of the term.**

Appendix 1(5) of the SCC Arbitration Rules 2023 addresses the circumstances under which a member of the Board of the Arbitration Institute of the SCC may be removed or replaced, as well as the procedure for filling vacancies that may arise. Let us analyse the key components of this provision:

1. **Removal of a Member:** In exceptional circumstances, the Board of Directors of the Stockholm Chamber of Commerce (the “Board of Directors”) has the authority to remove a member of the Board. This highlights the recognition that there may be situations where it is deemed necessary to remove a member from their position due to compelling reasons.
2. **Resignation or Removal:** The provision also covers cases where a member of the Board resigns or is removed from their position during their term of office. This acknowledges that there can be instances where a member voluntarily steps down or is required to leave their role.
3. **Appointment of a New Member:** If a member resigns or is removed before the end of their term, the Board of Directors has the authority to appoint a new member to serve for the remainder of the term. This ensures continuity within the Board and prevents a leadership vacuum.
4. **Flexibility and Adaptability:** The provision reflects a degree of flexibility in responding to changes within the Board’s composition. It allows for adjustments to be made when members are no longer able to fulfil their responsibilities or when circumstances necessitate their removal.
5. **Exceptional Circumstances:** The provision emphasises that removal of a member is subject to exceptional circumstances, indicating that this action is not taken lightly and is reserved for situations where there is a compelling need.
6. **Board of Directors’ Role:** The authority of the Board of Directors to remove a member and appoint a new one underlines the overall oversight and governance role that the Board of Directors holds over the SCC’s administrative body.



7. Leadership Continuity: The provision’s mechanism for appointing a replacement member ensures that the SCC’s leadership maintains continuity and stability, even in the event of unexpected changes.

In summary, Appendix 1(5) of the SCC Arbitration Rules 2023 outlines the procedures for removing a member of the Board and appointing a replacement in exceptional circumstances. This provision reflects the importance of maintaining an effective and accountable leadership structure within the SCC while allowing for adaptability in the face of unexpected changes or challenges.

### Article 6 Function of the Board

**The function of the Board is to take the decisions required of the SCC in administering disputes under the SCC Rules. Such decisions include decisions on the jurisdiction of the SCC, determination of advances on costs, appointment of arbitrators, decisions upon challenges to arbitrators, removal of arbitrators and the fixing of the costs of the arbitration.**

Appendix 1(6) of the SCC Arbitration Rules 2023 outlines the key functions and decision-making responsibilities of the Board of the Arbitration Institute of the SCC. This provision clarifies the role and authority of the Board in the administration of arbitration proceedings under the SCC Rules. Let us analyse the functions specified in this provision:

1. Administration of Disputes: The Board is tasked with taking the necessary decisions related to the administration of disputes brought under the SCC Rules. This encompasses a wide range of procedural and administrative matters that are crucial for the smooth and efficient conduct of arbitration proceedings.
2. Jurisdiction of the SCC: The Board has the authority to make determinations regarding the jurisdiction of the SCC over a particular dispute. This involves deciding whether a dispute falls within the scope of the SCC Rules and whether the SCC is the appropriate institution to administer the arbitration.
3. Advance on Costs: The Board is responsible for determining the amount of advances on costs to be paid by the parties. This financial component is essential for ensuring that the necessary funds are available to cover the expenses of the arbitration process.
4. Appointment of Arbitrators: The Board has the power to appoint arbitrators to the tribunal in cases where parties are unable to agree on arbitrator appointments. This helps ensure that a neutral and competent panel of arbitrators is established.
5. Challenges to Arbitrators: The Board is involved in the decision-making process when challenges to arbitrators are raised. This may include considering objections to the appointment of a particular arbitrator based on issues of bias, conflict of interest, or other relevant factors.
6. Removal of Arbitrators: The Board also plays a role in determining whether an arbitrator should be removed from the tribunal for reasons such as bias, incapacity, or failure to fulfil their duties.

7. **Costs of the Arbitration:** The Board is responsible for fixing the costs of the arbitration, which includes determining how the various expenses related to the arbitration process will be allocated among the parties.
8. **Comprehensive Decision-Making:** The range of decisions listed in this provision highlights the comprehensive decision-making authority of the Board in overseeing and managing the arbitration proceedings in line with the SCC Rules.
9. **Efficiency and Fairness:** The Board's functions contribute to the efficient, transparent, and fair administration of arbitration proceedings, ensuring that disputes are resolved in a manner consistent with established rules and best practices.

In summary, Appendix 1(6) of the SCC Arbitration Rules 2023 outlines the critical decision-making functions of the Board in administering arbitration proceedings under the SCC Rules. These functions cover various aspects of arbitration, from jurisdiction and costs to appointment and removal of arbitrators, all of which are essential for the effective and equitable resolution of disputes.

### Article 7 Decisions by the Board

**Two members of the Board form a quorum. If a majority is not attained, the chairperson has the casting vote. The chairperson or a vice chairperson may take decisions on behalf of the Board in urgent matters. A committee of the Board may be appointed to take certain decisions on behalf of the Board. The Board may delegate decisions to the Secretariat, including decisions on advances on costs, extension of time for rendering an award, dismissal for non-payment of registration fee, release of arbitrators and the fixing of the costs of the arbitration. Decisions by the Board are final. Dismissal of a case by the Board or the Secretariat in whole or in part has no preclusive effect.**

Appendix 1(7) of the SCC Arbitration Rules 2023 provides insights into the decision-making structure, authority, and processes of the Board of the Arbitration Institute of the SCC. This provision outlines key aspects of the decision-making mechanisms within the SCC's administration of arbitration proceedings. Let us analyse the components of this provision:

1. **Quorum and Casting Vote:** Two members of the Board are required to form a quorum, which is the minimum number of members needed to hold a valid meeting and make decisions. If a majority cannot be reached in a decision, the chairperson has the casting vote. This mechanism ensures that decisions can be made even if there is a tie in the voting.
2. **Chairperson's and Vice Chairperson's Authority:** The chairperson or a vice chairperson is authorised to make decisions on behalf of the Board in urgent matters. This recognises the need for timely and efficient resolution of pressing issues that may arise during arbitration proceedings.
3. **Committee Authority:** The Board may appoint a committee to take specific decisions on its behalf. This allows for a focused and specialised approach to handling certain matters while ensuring that decisions are made by a representative group.
4. **Delegation to the Secretariat:** The Board has the discretion to delegate certain decisions to the Secretariat. These decisions may include matters related to advances on costs,

extending the time for rendering an award, dismissal of a case for non-payment of registration fees, release of arbitrators, and the determination of the costs of the arbitration. This delegation enhances procedural efficiency and allows the Board to focus on more substantive matters.

5. **Finality of Decisions:** Decisions made by the Board are considered final. This underscores the authority and importance of the Board's role in making administrative decisions related to arbitration proceedings.
6. **Preclusive Effect of Dismissal:** The provision clarifies that the dismissal of a case, whether by the Board or the Secretariat, either in whole or in part, does not have a preclusive effect. This means that the dismissal of a case does not prevent parties from pursuing their claims through other means if they choose to do so.
7. **Efficiency and Flexibility:** The decision-making mechanisms outlined in this provision aim to ensure efficient and effective administration of arbitration proceedings. They provide flexibility to address different types of decisions and circumstances that may arise during the arbitration process.
8. **Preservation of Parties' Rights:** The provision's clarification on the preclusive effect of dismissal helps ensure that parties' rights to pursue their claims in other forums are not unduly restricted by the dismissal of a case under SCC administration.

In summary, Appendix 1(7) of the SCC Arbitration Rules 2023 provides insights into the decision-making framework within the SCC's administration of arbitration proceedings. The provision outlines the quorum, casting vote, authority of the chairperson and vice chairperson, committee appointments, delegation to the Secretariat, finality of decisions, and the effect of case dismissal. These mechanisms collectively contribute to the efficient and fair resolution of disputes through the SCC's arbitration process.

## Article 8 The Secretariat

**The Secretariat acts under the direction of a secretary general. The Secretariat carries out the functions assigned to it under the SCC Rules. The Secretariat may also take decisions delegated to it by the Board.**

Appendix 1(8) of the SCC Arbitration Rules 2023 provides information about the role, functions, and authority of the Secretariat within the Arbitration Institute of the SCC. This provision outlines the responsibilities and decision-making capacity of the Secretariat in the administration of arbitration proceedings. Let us analyse the key components of this provision:

1. **Role of the Secretariat:** The Secretariat serves as the administrative arm of the SCC. It is responsible for carrying out various tasks and functions related to the administration of arbitration proceedings.
2. **Direction of a Secretary General:** The Secretariat operates under the direction of a secretary general. This indicates that the secretary general likely holds a leadership role within the Secretariat, overseeing its operations and ensuring that tasks are carried out effectively and in accordance with the SCC Rules.

3. **Functions Under SCC Rules:** The Secretariat is tasked with executing the functions assigned to it under the SCC Rules. This includes a wide range of administrative responsibilities, such as communication with parties, organising hearings, managing documents, and ensuring compliance with procedural requirements.
4. **Decision-Making Authority:** The provision grants the Secretariat the authority to take decisions that are specifically delegated to it by the Board. This highlights the ability of the Secretariat to make certain administrative decisions on behalf of the Board, contributing to the efficiency and smooth functioning of the arbitration process.
5. **Efficiency and Procedural Management:** The Secretariat's role is essential for maintaining the procedural aspects of arbitration proceedings. Its functions contribute to the effective management of cases, ensuring that administrative tasks are carried out in a timely and organised manner.
6. **Supporting the Board:** The provision's mention of decision-making delegation indicates that the Secretariat assists the Board in handling certain matters, allowing the Board to focus on more substantive and complex issues related to arbitration.
7. **Collaboration and Oversight:** The interaction between the Secretariat and the Board reflects a collaborative relationship aimed at ensuring that arbitration proceedings are conducted in accordance with established rules and best practices.

In summary, Appendix 1(8) of the SCC Arbitration Rules 2023 outlines the role, functions, and authority of the Secretariat within the SCC's administration of arbitration proceedings. The Secretariat's responsibilities encompass various administrative tasks, procedural management, and decision-making authority delegated by the Board. This provision underscores the importance of a well-organised and efficient administrative structure in facilitating the resolution of disputes through the SCC's arbitration process.

## Article 9 Procedures

**The SCC shall maintain the confidentiality of the arbitration and the award and shall deal with the arbitration in an impartial, efficient and expeditious manner.**

Appendix 1(9) of the SCC Arbitration Rules 2023 outlines two key principles that the Arbitration Institute of the SCC commits to uphold in its administration of arbitration proceedings. Let us analyse the components of this provision:

1. **Confidentiality of the Arbitration and Award:** The SCC is dedicated to maintaining the confidentiality of both the arbitration proceedings and the resulting award. This principle is crucial for preserving the privacy of the parties involved and the sensitive information shared during the arbitration process. Confidentiality promotes trust and encourages parties to be open and forthright in presenting their case, ultimately contributing to the effectiveness and integrity of the arbitration process.
2. **Impartial, Efficient, and Expeditious Handling:** The SCC is committed to dealing with the arbitration in a manner that is characterised by three key attributes:

3. **Impartiality:** The SCC ensures that it maintains an unbiased and neutral stance throughout the arbitration process, providing a level playing field for all parties involved. Impartiality is vital for upholding the fairness and integrity of the proceedings.
4. **Efficiency:** The SCC strives for efficiency in managing the procedural aspects of the arbitration. Timely and well-organised processes help prevent unnecessary delays and ensure that the parties' disputes are resolved in a reasonable timeframe.
5. **Expeditionessness:** This refers to the swift handling of the arbitration process. An expeditious approach is important to avoid undue delays and to provide parties with a timely resolution of their disputes.

By incorporating these principles, Appendix 1(9) underscores the SCC's commitment to creating a favourable environment for the resolution of disputes through arbitration. These principles align with international best practices and contribute to building trust and confidence in the SCC's arbitration services.

In summary, Appendix 1(9) of the SCC Arbitration Rules 2023 emphasises the SCC's dedication to maintaining confidentiality, impartiality, efficiency, and expeditiousness in the administration of arbitration proceedings. These principles collectively support a fair, effective, and private arbitration process that benefits parties seeking to resolve their disputes through the SCC.

## APPENDIX II EMERGENCY ARBITRATOR

## Article 1 Emergency arbitrator

**(1) A party may apply for the appointment of an emergency arbitrator until the case has been referred to an Arbitral Tribunal pursuant to Article 22 of the Arbitration Rules.**

Appendix 2 Article 1(1) of the SCC Arbitration Rules 2023 introduces the concept of an emergency arbitrator and outlines the conditions under which a party may apply for the appointment of an emergency arbitrator. Let us analyse the key components of this provision:

1. **Emergency Arbitrator Mechanism:** The provision establishes a mechanism for parties involved in arbitration proceedings to seek the appointment of an emergency arbitrator. An emergency arbitrator is a neutral third party who is empowered to make urgent decisions or issue interim measures before a formal arbitral tribunal is constituted.
2. **Timing of Application:** Parties can apply for the appointment of an emergency arbitrator at any point up until the case has been formally referred to an Arbitral Tribunal pursuant to Article 22 of the Arbitration Rules. This indicates that the application window for an emergency arbitrator closes once the formal arbitration proceedings have commenced before a tribunal.
3. **Pre-Tribunal Relief:** The provision recognises the need for swift and immediate relief in certain situations, such as cases where parties require urgent interim measures to protect their rights or interests before the full arbitration process begins. Emergency arbitrators can address these urgent matters without having to wait for the full tribunal to be constituted.
4. **Balancing Flexibility and Process:** Allowing parties to seek the appointment of an emergency arbitrator ensures flexibility and responsiveness in addressing urgent issues. It strikes a balance between the need for timely relief and the structured process of arbitration.
5. **Interim Measures:** Emergency arbitrators can grant interim measures that aim to preserve the status quo, prevent irreparable harm, or ensure that the arbitration process is not frustrated. These measures can include orders related to evidence preservation, asset freezing, or injunctions.
6. **Limitation on Application Window:** The provision places a limitation on when parties can apply for an emergency arbitrator. Once the case has been referred to an Arbitral Tribunal under Article 22, the opportunity to seek an emergency arbitrator's appointment ends, and any further interim relief would need to be sought from the formal tribunal.
7. **Efficiency and Speed:** The emergency arbitrator mechanism is designed to provide efficient and swift resolution of urgent issues, without causing unnecessary delays in the overall arbitration process.

In summary, Appendix 2 Article 1(1) of the SCC Arbitration Rules 2023 introduces the concept of an emergency arbitrator and outlines the conditions for applying for their appointment. This provision reflects the SCC's commitment to providing parties with a mechanism to obtain urgent relief when

needed before formal arbitration proceedings commence. It balances the need for quick and effective interim measures with the structured arbitration process.

**(2) The powers of the emergency arbitrator shall be those set out in Article 37 (1)-(3) of the Arbitration Rules. Such powers terminate on referral of the case to an Arbitral Tribunal pursuant to Article 22 of the Arbitration Rules, or when an emergency decision ceases to be binding according to Article 9 (4) of this Appendix.**

Appendix 2 Article 1(2) of the SCC Arbitration Rules 2023 elaborates on the powers and authority of an emergency arbitrator in the context of the SCC arbitration process. This provision outlines the scope and limitations of an emergency arbitrator's role. Let us analyse the key components of this provision:

1. **Incorporation of Arbitration Rules:** The provision refers to Article 37 (1)-(3) of the Arbitration Rules, which likely outlines the specific powers and authority of an emergency arbitrator. This incorporation ensures that the emergency arbitrator's powers are clearly defined and consistent with the broader framework of the SCC Arbitration Rules.
2. **Nature of Powers:** The emergency arbitrator is vested with certain powers, which are specified in Article 37 (1)-(3) of the Arbitration Rules. These powers likely include the authority to issue interim measures, make procedural decisions, and address urgent matters that require immediate attention before a formal arbitral tribunal is constituted.
3. **Termination of Powers:** The powers of the emergency arbitrator are time-limited. They cease to exist under two conditions:
4. **Referral to Arbitral Tribunal:** The emergency arbitrator's powers terminate when the case is formally referred to an Arbitral Tribunal pursuant to Article 22 of the Arbitration Rules. This marks the transition from the emergency arbitrator's interim measures to the full tribunal's authority over the case.
5. **Ceasing of Binding Decision:** The powers of the emergency arbitrator also come to an end when an emergency decision rendered by the emergency arbitrator ceases to be binding in accordance with Article 9 (4) of the same appendix. This suggests that the effects of the emergency decision may be limited or temporary under certain circumstances.
6. **Coherence and Transition:** The provision ensures coherence between the powers of the emergency arbitrator and the subsequent proceedings before the Arbitral Tribunal. It establishes a clear transition point where the tribunal assumes full control over the case.
7. **Timeliness and Efficiency:** The time-limited nature of the emergency arbitrator's powers reflects the urgency and timeliness associated with the mechanism. It ensures that interim measures can be swiftly addressed while also preserving the structure and integrity of the broader arbitration process.
8. **Flexibility and Effectiveness:** The provision allows parties to benefit from immediate relief through the emergency arbitrator's powers, while acknowledging the eventual transfer of decision-making authority to the formal arbitral tribunal.

In summary, Appendix 2 Article 1(2) of the SCC Arbitration Rules 2023 outlines the powers of an emergency arbitrator and their termination points. This provision ensures a smooth transition from the emergency arbitrator's temporary authority to the broader arbitration process, maintaining the effectiveness and integrity of both mechanisms.

## **Article 2 Application for the appointment of an emergency arbitrator**

**An application for the appointment of an emergency arbitrator shall include:**

- (i) the names, addresses, telephone numbers and e-mail addresses of the parties and their counsel;**
- (ii) a summary of the dispute;**
- (iii) a statement of the interim relief sought and the reasons therefor;**
- (iv) a copy or description of the arbitration agreement or clause under which the dispute is to be settled;**
- (v) comments on the seat of the emergency proceedings, the applicable law(s) and the language(s) of the proceedings; and (vi) proof of payment of the costs for the emergency proceedings pursuant to Article 10 (1) of this Appendix.**

Appendix 2 Article 2 of the SCC Arbitration Rules 2023 outlines the specific requirements for submitting an application for the appointment of an emergency arbitrator. This provision provides detailed guidance on the necessary information and documentation that parties need to include when seeking the appointment of an emergency arbitrator. Let us analyse the components of this provision:

1. **Party and Counsel Information:** The application must include the names, addresses, telephone numbers, and email addresses of the parties involved in the dispute, as well as their legal representatives (counsel). This information is essential for communication and coordination during the emergency arbitration proceedings.
2. **Summary of the Dispute:** A brief summary of the dispute should be provided. This helps the emergency arbitrator understand the nature and context of the dispute, which is crucial for making informed decisions regarding interim relief.
3. **Interim Relief Request and Reasons:** The application should clearly state the specific interim relief being sought and provide the reasons for requesting such relief. This allows the emergency arbitrator to assess the urgency and necessity of the requested measures.
4. **Arbitration Agreement Details:** The application must include a copy of, or a description of, the arbitration agreement or clause under which the dispute is subject to arbitration. This helps establish the existence and scope of the arbitration agreement, which is a prerequisite for invoking the emergency arbitrator mechanism.
5. **Seat, Applicable Law, and Language of Proceedings:** Parties are required to provide comments on certain procedural aspects, including the proposed seat of the emergency proceedings, the applicable law(s) governing the arbitration, and the language(s) in which



the proceedings will be conducted. These details are important for establishing the procedural framework for the emergency arbitration.

6. **Proof of Payment:** The application must include proof of payment of the costs associated with the emergency proceedings, as specified in Article 10(1) of the same appendix. Payment of costs is a prerequisite for initiating the emergency arbitrator process.
7. **Comprehensive and Organised Submission:** The provision's requirements aim to ensure that parties provide a comprehensive and organised submission that facilitates efficient and effective consideration by the emergency arbitrator.
8. **Clarity and Efficiency:** By specifying the information and documentation to be included in the application, this provision promotes clarity, efficiency, and fairness in the application process.

In summary, Appendix 2 Article 2 of the SCC Arbitration Rules 2023 outlines the key elements that must be included in an application for the appointment of an emergency arbitrator. These requirements help streamline the process, ensure that necessary information is provided to the emergency arbitrator, and contribute to the effective and timely consideration of urgent interim relief requests.

### Article 3 Notice

**As soon as an application for the appointment of an emergency arbitrator has been received, the Secretariat shall send the application to the other party.**

Appendix 2 Article 3 of the SCC Arbitration Rules 2023 outlines a procedural step that occurs upon the receipt of an application for the appointment of an emergency arbitrator. This provision focuses on the role of the Secretariat and the timely communication of the application to the other party. Let us analyse the key aspects of this provision:

1. **Timely Communication:** The provision emphasises the promptness with which the Secretariat is required to act upon receiving an application for the appointment of an emergency arbitrator. The Secretariat is mandated to take immediate action following receipt of the application.
2. **Communication of Application:** Once an application for the appointment of an emergency arbitrator is received, the Secretariat is responsible for sending the application to the other party involved in the dispute. This step ensures that both parties are promptly made aware of the request for an emergency arbitrator and are provided with the relevant information contained in the application.
3. **Ensuring Transparency and Equal Treatment:** Communicating the application to the other party ensures transparency and equal treatment. Both parties are given the opportunity to be informed of the emergency proceedings and to respond to the application if they wish to do so.

4. **Facilitating Participation:** Prompt communication of the application is essential for allowing the responding party to adequately prepare its response and arguments. This contributes to a fair and balanced emergency arbitration process.
5. **Secretariat's Administrative Role:** The provision highlights the administrative role of the Secretariat in managing the initial stages of the emergency arbitrator process. It reflects the Secretariat's responsibility for handling procedural matters and facilitating communication between the parties.
6. **Efficiency and Procedural Order:** The provision is designed to ensure an organised and efficient process for handling emergency arbitrator applications. It establishes a clear procedure for notifying the other party and initiating the response phase.
7. **Operational Consistency:** The provision contributes to maintaining a consistent and standardised approach to handling emergency arbitrator applications within the SCC's arbitration framework.

In summary, Appendix 2 Article 3 of the SCC Arbitration Rules 2023 stipulates that upon receiving an application for the appointment of an emergency arbitrator, the Secretariat promptly communicates the application to the other party. This procedural step is aimed at promoting transparency, facilitating equal treatment, and ensuring an efficient and fair process for both parties involved in the dispute.

#### **Article 4 Appointment of the emergency arbitrator**

##### **(1) The Board shall seek to appoint an emergency arbitrator within 24 hours of receipt of the application.**

Appendix 2 Article 4(1) of the SCC Arbitration Rules 2023 sets forth a specific timeframe within which the Board of the Arbitration Institute of the SCC aims to appoint an emergency arbitrator upon receiving an application. This provision emphasises the swift nature of the appointment process and the importance of addressing urgent matters promptly. Let us analyse the key elements of this provision:

1. **Appointment Timeframe:** The provision mandates that the Board should strive to appoint an emergency arbitrator within 24 hours of receiving the application for the appointment. This timeframe highlights the urgency inherent in emergency proceedings and the need for rapid response.
2. **Efficiency and Timeliness:** The provision underscores the commitment of the SCC to ensuring the efficient and timely resolution of urgent matters through the appointment of an emergency arbitrator. This aligns with the fundamental purpose of emergency arbitrations, which is to provide swift relief in situations where delay could cause irreparable harm.
3. **Operational Readiness:** By setting a specific timeframe, the provision indicates that the SCC has established procedures and resources in place to promptly handle emergency arbitrator appointments. This promotes confidence in the SCC's ability to manage urgent cases effectively.

4. **Party Confidence and Transparency:** The provision enhances parties' confidence in the emergency arbitration process by demonstrating the SCC's commitment to prompt action. Parties can expect a quick response to their urgent applications.
5. **Balancing Speed and Quality:** While speed is crucial in emergency proceedings, the provision implies that the appointment process is designed to be efficient without compromising the quality of the appointment decision.
6. **Support for Emergency Relief:** The provision supports the broader objective of emergency arbitrations, which is to provide parties with a mechanism for obtaining timely interim relief to protect their rights and interests.
7. **Operational Consistency:** The provision contributes to maintaining a consistent approach to handling emergency arbitrator appointments across cases within the SCC framework.

In summary, Appendix 2 Article 4(1) of the SCC Arbitration Rules 2023 sets a specific timeframe of 24 hours for the Board to seek the appointment of an emergency arbitrator upon receiving an application. This provision emphasises the SCC's commitment to rapid response and efficient handling of emergency arbitrator appointments, ultimately serving the overarching goal of providing swift relief to parties facing urgent situations.

**(2) An emergency arbitrator shall not be appointed if the SCC manifestly lacks jurisdiction over the dispute.**

Appendix 2 Article 4(2) of the SCC Arbitration Rules 2023 establishes a limitation on the appointment of an emergency arbitrator in cases where the SCC "manifestly lacks jurisdiction" over the dispute. This provision addresses the threshold for jurisdiction and ensures that the emergency arbitrator mechanism is invoked only when the SCC has a clear basis for asserting jurisdiction. Let us analyse the key elements of this provision:

1. **Limitation on Jurisdiction:** The provision introduces a safeguard to prevent the appointment of an emergency arbitrator if the SCC "manifestly lacks jurisdiction" over the dispute. This implies that there must be a reasonable and evident basis for the SCC to exercise its jurisdiction before the emergency arbitrator mechanism can be initiated.
2. **Jurisdictional Assessment:** Before proceeding with the appointment of an emergency arbitrator, the SCC is required to assess whether it has a valid and clear jurisdictional basis to hear the dispute. If it is evident that the SCC does not possess jurisdiction, an emergency arbitrator will not be appointed.
3. **Preserving Resources and Efficiency:** By preventing the appointment of an emergency arbitrator in cases where jurisdiction is manifestly lacking, the provision helps avoid unnecessary use of resources and efforts in cases where the SCC lacks the authority to hear the dispute.
4. **Legitimate Invocation of Emergency Mechanism:** The provision ensures that the emergency arbitrator mechanism is invoked only when the SCC has a valid jurisdictional basis and the dispute is within its scope of authority.

5. Procedural Fairness and Transparency: By incorporating this provision, the SCC promotes procedural fairness and transparency. It communicates to parties that the SCC will not proceed with an emergency arbitrator appointment if jurisdiction is clearly lacking.
6. Operational Consistency: The provision contributes to maintaining consistency and predictability in the application of the emergency arbitrator mechanism by establishing a jurisdictional threshold.
7. Balancing Urgency and Jurisdictional Assessment: While the appointment of an emergency arbitrator is designed to address urgent matters, the provision highlights the need to balance urgency with a preliminary assessment of jurisdiction.

In summary, Appendix 2 Article 4(2) of the SCC Arbitration Rules 2023 ensures that an emergency arbitrator shall not be appointed if the SCC manifestly lacks jurisdiction over the dispute. This provision adds an important element of due diligence by requiring a valid jurisdictional basis before initiating the emergency arbitration process. It aligns with the principle of conducting proceedings within the bounds of established authority and enhances the credibility and reliability of the emergency arbitrator mechanism.

**(3) Article 19 of the Arbitration Rules applies to the challenge to an emergency arbitrator, except that a challenge must be made within 24 hours from the time the circumstances giving rise to the challenge became known to the party.**

Appendix 2 Article 4(3) of the SCC Arbitration Rules 2023 outlines the process for challenging an emergency arbitrator and sets a specific timeframe within which such a challenge must be made. The provision references Article 19 of the Arbitration Rules and introduces a modified timeline for making challenges in emergency arbitrations. Let us analyse the key elements of this provision:

1. Application of Article 19: The provision incorporates Article 19 of the Arbitration Rules into the emergency arbitration context. Article 19 likely pertains to the challenge of arbitrators, and in this case, it is adapted for challenging an emergency arbitrator.
2. Timeline for Challenging the Emergency Arbitrator: The provision specifies that a challenge to an emergency arbitrator must be made within 24 hours from the time the challenging party becomes aware of the circumstances that give rise to the challenge. This is a relatively short timeframe, reflecting the urgency inherent in emergency proceedings.
3. Challenging Emergency Arbitrator Independence and Impartiality: Challenges to arbitrators often concern issues of independence and impartiality. By allowing challenges within 24 hours of becoming aware of relevant circumstances, the provision enables parties to promptly address potential concerns about the emergency arbitrator's neutrality.
4. Urgent Nature of Challenges: The shortened timeline for challenges aligns with the expedited nature of emergency arbitrations, ensuring that any disputes regarding the emergency arbitrator's qualifications are resolved swiftly.
5. Balancing Procedural Fairness and Efficiency: While the timeline is short, it reflects the necessity of addressing challenges quickly while maintaining an efficient process.

6. **Operational Consistency:** The provision ensures that the challenge procedure in emergency arbitrations adheres to established rules while accommodating the unique characteristics of such proceedings.
7. **Preserving Emergency Relief:** Swift resolution of challenges ensures that the emergency arbitrator's ability to provide urgent interim relief is not compromised by prolonged disputes over their qualifications.

In summary, Appendix 2 Article 4(3) of the SCC Arbitration Rules 2023 incorporates Article 19 of the Arbitration Rules into the context of challenging an emergency arbitrator. It establishes a 24-hour timeframe for making challenges, reflecting the expedited and urgent nature of emergency arbitration proceedings. This provision strikes a balance between procedural fairness and efficiency in addressing potential challenges to the emergency arbitrator's independence and impartiality.

**(4) An emergency arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless otherwise agreed by the parties.**

Appendix 2 Article 4(4) of the SCC Arbitration Rules 2023 sets forth a restriction on the role of an emergency arbitrator in future arbitrations related to the same dispute. This provision addresses the potential conflicts of interest that could arise if an emergency arbitrator were to subsequently serve as an arbitrator in a broader arbitration involving the same parties and subject matter. Let us analyse the key elements of this provision:

1. **Limitation on Future Role:** The provision restricts an emergency arbitrator from acting as an arbitrator in any future arbitration relating to the same dispute, unless the parties agree otherwise. This limitation is aimed at preventing potential conflicts of interest and preserving the integrity of the arbitration process.
2. **Avoiding Conflicts of Interest:** The provision reflects the importance of preventing conflicts of interest that may arise if an emergency arbitrator were to transition into a different arbitration role involving the same parties and issues.
3. **Maintaining Neutrality and Impartiality:** By preventing an emergency arbitrator from serving in future arbitrations related to the same dispute, the provision reinforces the principles of neutrality and impartiality that are fundamental to the arbitration process.
4. **Parties' Agreement:** The provision recognises the parties' autonomy to decide whether an emergency arbitrator can participate in future arbitrations related to the same dispute. This allows parties to assess the circumstances and make an informed decision about potential appointments.
5. **Preserving Credibility and Integrity:** The provision contributes to maintaining the credibility and integrity of the arbitration process by ensuring that arbitrators do not hold conflicting roles that could undermine the perceived fairness of the proceedings.
6. **Operational Consistency:** The provision establishes a consistent approach within the SCC Arbitration Rules to address the potential issue of an emergency arbitrator's future participation in related arbitrations.

7. **Balancing Party Autonomy and Ethical Standards:** The provision strikes a balance between respecting party autonomy and upholding ethical standards in arbitration. It respects parties' choices while also safeguarding against conflicts of interest.

In summary, Appendix 2 Article 4(4) of the SCC Arbitration Rules 2023 places a limitation on the role of an emergency arbitrator in future arbitrations related to the same dispute. This limitation is designed to prevent conflicts of interest and maintain the impartiality and credibility of the arbitration process. The provision recognises parties' autonomy to agree otherwise, but it ultimately aims to uphold the ethical standards and integrity of arbitration proceedings.

### **Article 5 Seat of the emergency proceedings**

**The seat of the emergency proceedings shall be that which has been agreed upon by the parties as the seat of the arbitration. If the seat of the arbitration has not been agreed by the parties, the Board shall determine the seat of the emergency proceedings.**

Appendix 2 Article 5 of the SCC Arbitration Rules 2023 addresses the determination of the seat of the emergency proceedings in cases where parties have not agreed upon a specific seat for the arbitration. The provision outlines the process for determining the seat, emphasising the significance of this procedural aspect. Let us analyse the key elements of this provision:

1. **Seat of the Emergency Proceedings:** The term "seat" in arbitration refers to the legal jurisdiction that governs the arbitration process and may have implications for issues such as the supervisory court's jurisdiction and the procedural law that applies. Appendix 2 Article 5 focuses on determining the seat specifically for the emergency proceedings.
2. **Agreement of the Parties:** If the parties have already agreed upon a specific seat for the arbitration, that same seat shall be considered the seat of the emergency proceedings. This reflects the principle of party autonomy, wherein the parties' mutual agreement plays a central role in shaping the arbitration process.
3. **Absence of Party Agreement:** If the parties have not agreed upon a seat for the arbitration, the provision empowers the Board of the Arbitration Institute of the SCC to determine the seat of the emergency proceedings. This ensures that the arbitration process can proceed even when the parties have not reached a consensus on the seat.
4. **Role of the Board:** The provision underscores the authority of the Board in making important procedural decisions, such as determining the seat of the emergency proceedings in the absence of party agreement.
5. **Legal Certainty and Predictability:** The provision helps ensure legal certainty and predictability by establishing a clear process for determining the seat of the emergency proceedings. This clarity benefits both parties and contributes to the effective management of the arbitration process.
6. **Operational Efficiency:** By providing a mechanism for seat determination, the provision contributes to the efficient initiation and conduct of the emergency arbitration proceedings.

7. **Balancing Flexibility and Structure:** The provision strikes a balance between the flexibility to proceed with arbitration even in the absence of party agreement and the need for a structured process governed by established rules.

In summary, Appendix 2 Article 5 of the SCC Arbitration Rules 2023 clarifies how the seat of the emergency proceedings is determined. The provision ensures that the seat is either based on the parties' agreement or, in the absence of such agreement, is determined by the Board. This approach maintains a balance between party autonomy and the administrative authority of the SCC in managing emergency arbitration proceedings.

### **Article 6 Referral to the emergency arbitrator**

**Once an emergency arbitrator has been appointed, the Secretariat shall promptly refer the application to the emergency arbitrator.**

Appendix 2 Article 6 of the SCC Arbitration Rules 2023 outlines a procedural step that follows the appointment of an emergency arbitrator. This provision focuses on the role of the Secretariat in promptly referring the application to the appointed emergency arbitrator. Let us analyse the key aspects of this provision:

1. **Timely Referral of Application:** The provision emphasises the importance of promptness in the referral process. Once an emergency arbitrator has been appointed, the Secretariat is required to take immediate action in forwarding the application to the appointed arbitrator.
2. **Responsibility of the Secretariat:** The Secretariat plays an administrative role in facilitating the smooth transition from the application phase to the emergency arbitration proceedings. Referring the application to the emergency arbitrator ensures that the arbitrator is promptly and fully informed about the case.
3. **Facilitating Case Review:** Referring the application to the emergency arbitrator allows the arbitrator to begin reviewing the details of the case, including the application for interim relief, the parties' positions, and any relevant documentation provided by the parties.
4. **Efficiency and Procedural Order:** The provision contributes to the efficiency of the emergency arbitration process by ensuring that the appointed emergency arbitrator can promptly commence their review and decision-making.
5. **Clear Separation of Roles:** The provision distinguishes between the roles of the Secretariat and the emergency arbitrator. While the Secretariat is responsible for administrative matters, the emergency arbitrator takes on the substantive role of reviewing the application and issuing decisions.
6. **Operational Consistency:** The provision establishes a consistent procedure for handling cases involving emergency arbitrators, promoting uniformity and clarity in the administration of emergency proceedings.
7. **Balancing Urgency and Procedural Integrity:** The requirement for prompt referral acknowledges the urgency of the situation that necessitates the involvement of an

emergency arbitrator, while also ensuring that the procedural steps are conducted in an organised and orderly manner.

In summary, Appendix 2 Article 6 of the SCC Arbitration Rules 2023 stipulates that upon the appointment of an emergency arbitrator, the Secretariat promptly refers the application to the emergency arbitrator. This procedural step is designed to facilitate the smooth transition from the application phase to the substantive review and decision-making process by the appointed emergency arbitrator.

### **Article 7 Conduct of the emergency proceedings**

#### **Article 23 of the Arbitration Rules shall apply to the emergency proceedings, taking into account the urgency inherent in such proceedings.**

Appendix 2 Article 7 of the SCC Arbitration Rules 2023 refers to the application of Article 23 of the Arbitration Rules to the emergency proceedings. This provision highlights the applicability of a specific provision to emergency arbitrations and emphasises the consideration of the inherent urgency in such proceedings. Let us analyse the key aspects of this provision:

1. **Reference to Article 23:** The provision directs attention to Article 23 of the Arbitration Rules. Article 23 likely addresses the appointment and replacement of arbitrators, and in the context of emergency proceedings, it would likely focus on the selection and appointment of the emergency arbitrator.
2. **Application to Emergency Proceedings:** By referencing Article 23, the provision clarifies that certain procedural aspects of arbitrator appointment from the broader Arbitration Rules are also applicable to the appointment of an emergency arbitrator.
3. **Urgency Consideration:** The provision underscores the importance of acknowledging the inherent urgency in emergency proceedings. Emergency arbitrations are typically initiated to address urgent matters that require immediate attention. Therefore, while applying Article 23, the urgency of the situation must be taken into account.
4. **Balancing Flexibility and Process:** The provision strikes a balance between applying established procedural rules (Article 23) and the need to address urgent matters promptly and efficiently. It ensures that the emergency arbitrator appointment process is responsive to the time-sensitive nature of emergency proceedings.
5. **Operational Consistency:** By incorporating a relevant provision from the Arbitration Rules, the provision maintains consistency in the arbitration process while accommodating the specific characteristics of emergency arbitrations.
6. **Preserving Procedural Fairness:** The provision contributes to ensuring that procedural fairness is upheld in emergency proceedings by providing a recognised framework for the appointment of an emergency arbitrator.
7. **Mitigating Procedural Uncertainty:** The provision helps parties and arbitrators involved in emergency proceedings understand the procedural framework that governs the appointment of an emergency arbitrator.



In summary, Appendix 2 Article 7 of the SCC Arbitration Rules 2023 indicates that Article 23 of the Arbitration Rules applies to emergency proceedings. This application acknowledges the urgency of emergency arbitrations while maintaining procedural order and fairness in the appointment process. By providing clarity and consistency, this provision facilitates the efficient and effective resolution of urgent matters through the emergency arbitration mechanism.

## Article 8 Emergency decisions on interim measures

**(1) Any emergency decision on interim measures shall be made no later than five days from the date the application was referred to the emergency arbitrator pursuant to Article 6 of this Appendix. The Board may extend this time limit upon a reasoned request from the emergency arbitrator, or if otherwise deemed necessary.**

Appendix 2 Article 8(1) of the SCC Arbitration Rules 2023 addresses the timeline for making emergency decisions on interim measures in arbitration proceedings administered by the SCC. This provision establishes specific timeframes within which an emergency arbitrator must render a decision on interim measures requested by a party. Let us analyse the key elements of this provision:

1. **Timely Decision-Making:** The provision sets a clear and relatively short time limit for making an emergency decision on interim measures. This underscores the urgency and expeditious nature of emergency arbitration proceedings.
2. **Five-Day Deadline:** The emergency arbitrator is required to issue the decision on interim measures within five days from the date the application was referred to them under Article 6 of the same Appendix.
3. **Emergency Nature:** The provision reflects the rapid response required in emergency arbitrations, where parties seek immediate relief to address urgent issues that cannot wait for the full arbitration process to unfold.
4. **Efficient Resolution:** By imposing a specific time limit, the provision promotes efficiency in emergency arbitration proceedings, ensuring that parties receive prompt resolution to their requests for interim measures.
5. **Balancing Speed and Due Process:** While emphasising timeliness, the provision should be interpreted in a manner that allows the emergency arbitrator to consider the merits of the case and the parties' rights to present their positions adequately.
6. **Flexibility for Extension:** The provision acknowledges the possibility of circumstances that might require an extension of the five-day time limit. The Board may grant an extension based on a reasoned request from the emergency arbitrator or if it deems an extension necessary.
7. **Preserving Fairness:** The provision's flexibility in allowing extensions reflects a commitment to ensuring that parties have a fair opportunity to present their arguments and evidence, even in the context of expedited proceedings.

8. **Effective Emergency Relief:** The provision aims to provide parties with timely and effective relief by ensuring that emergency decisions are rendered promptly, without unnecessary delay.
9. **Avoiding Unnecessary Delays:** The provision enables the emergency arbitrator to request an extension when unforeseen circumstances arise that may hinder the ability to issue a well-considered and informed decision within the initial five-day timeframe.

In summary, Appendix 2 Article 8(1) of the SCC Arbitration Rules 2023 establishes a specific time limit for emergency arbitrators to make decisions on interim measures. This provision reinforces the urgency and expedited nature of emergency arbitration proceedings while allowing for flexibility in extending the time limit when necessary. The aim is to strike a balance between prompt resolution and due process, ensuring that parties can effectively seek and obtain emergency relief in SCC-administered arbitration proceedings.

**(2) Any emergency decision on interim measures shall:**

- (i) be made in writing;**
- (ii) state the date when it was made, the seat of the emergency proceedings and the reasons upon which the decision is based; and**
- (iii) be signed by the emergency arbitrator.**

Appendix 2 Article 8(2) of the SCC Arbitration Rules 2023 outlines the requirements for the form and content of emergency decisions on interim measures in arbitration proceedings administered by the SCC. This provision emphasises the importance of clarity, transparency, and proper documentation in emergency arbitration proceedings. Let us analyse the key elements of this provision:

1. **Written Decision:** The provision mandates that any emergency decision on interim measures must be made in writing. This requirement ensures that the decision is documented in a clear and official manner, facilitating proper communication and record-keeping.
2. **Clarity and Transparency:** Requiring a written decision enhances transparency and ensures that the parties understand the terms, conditions, and reasoning underlying the emergency decision.
3. **Date and Seat of Emergency Proceedings:** The provision specifies that the written decision must include the date when it was made and indicate the seat of the emergency proceedings. This information helps establish the temporal context of the decision and clarifies the jurisdiction under which the decision was rendered.
4. **Reasons for Decision:** The decision must also state the reasons upon which it is based. This requirement promotes accountability and provides parties with insight into the emergency arbitrator's thought process and legal rationale.

5. **Preserving Due Process:** Requiring reasons for the decision supports the principles of due process, allowing parties to assess the validity of the decision and potentially challenge it if necessary.
6. **Signature of Emergency Arbitrator:** The provision mandates that the emergency decision must be signed by the emergency arbitrator. The signature adds an element of authenticity to the decision, confirming that it has been formally issued by the designated arbitrator.
7. **Legal Certainty:** The signature of the emergency arbitrator contributes to legal certainty by confirming the authenticity and authorship of the decision, which can be important in enforcement and review proceedings.
8. **Facilitating Enforcement:** The provision's emphasis on written decisions, including signatures, can facilitate the enforcement of the emergency decision in relevant jurisdictions, as it provides a verifiable record of the decision's issuance.
9. **Accountability and Quality Assurance:** Requiring a written decision with clear reasons and a signature helps ensure that emergency arbitrators are accountable for their decisions and promotes a consistent and high-quality standard of decision-making.
10. **Communication of Decisions:** The requirement for a written decision also ensures that the decision can be effectively communicated to the parties, facilitating their compliance with the decision's terms.

In summary, Appendix 2 Article 8(2) of the SCC Arbitration Rules 2023 establishes essential requirements for the form and content of emergency decisions on interim measures. By mandating written decisions with specific elements, including reasons and a signature, this provision enhances transparency, accountability, and communication in SCC-administered emergency arbitration proceedings.

**(3) The emergency arbitrator shall promptly deliver a copy of the emergency decision to each of the parties and to the SCC.**

Appendix 2 Article 8(3) of the SCC Arbitration Rules 2023 addresses the timely communication and distribution of emergency decisions on interim measures in arbitration proceedings administered by the SCC. This provision emphasises the importance of promptly delivering the decision to the relevant parties and the SCC. Let us analyse the key elements of this provision:

1. **Timely Communication:** The provision underscores the urgency associated with emergency arbitration proceedings by requiring the emergency arbitrator to promptly deliver a copy of the emergency decision. This requirement aligns with the expedited nature of emergency arbitrations.
2. **Parties and SCC as Recipients:** The provision specifies the recipients of the emergency decision—each of the parties involved in the arbitration and the SCC. Ensuring that both parties and the administering institution receive the decision promptly helps facilitate compliance and implementation.

3. **Transparency and Accountability:** By delivering the decision to both parties and the SCC, the provision promotes transparency and accountability in the arbitration process. All relevant parties are informed of the decision and its terms.
4. **Avoiding Delays:** Timely delivery of the decision to the parties and the SCC helps avoid delays in the enforcement or implementation of the interim measures ordered by the emergency arbitrator.
5. **Enforcement and Implementation:** Delivering the decision promptly to the parties enables them to take necessary steps to comply with the decision, such as implementing the ordered interim measures or preparing for any necessary enforcement actions.
6. **SCC's Role and Oversight:** Requiring delivery to the SCC ensures that the institution overseeing the arbitration is kept informed of the decision and can monitor its implementation, if needed.
7. **Communication Channels:** The provision does not prescribe a specific method of delivery, allowing flexibility in how the emergency arbitrator communicates the decision to the parties and the SCC.
8. **Consistency with Due Process:** Timely delivery of the decision is consistent with due process principles, ensuring that both parties have access to the decision and the opportunity to respond or take appropriate actions.
9. **Effective Arbitration Management:** By providing for prompt communication, the provision supports the efficient management of the arbitration process, especially in cases where immediate action is necessary.

In summary, Appendix 2 Article 8(3) of the SCC Arbitration Rules 2023 emphasises the importance of promptly delivering emergency decisions on interim measures to the parties and the SCC. This provision aligns with the urgent nature of emergency arbitrations, promotes transparency and accountability, and facilitates the effective enforcement and implementation of interim measures ordered by the emergency arbitrator in SCC-administered arbitration proceedings.

## **Article 9 Binding effect of emergency decisions**

### **(1) An emergency decision shall be binding on the parties when rendered.**

Appendix 2 Article 9(1) of the SCC Arbitration Rules 2023 establishes a fundamental principle regarding the binding nature of emergency decisions on interim measures in arbitration proceedings administered by the SCC. This provision underscores the legal effect and enforceability of emergency decisions. Let us analyse the key elements of this provision:

1. **Immediate Binding Effect:** The provision unequivocally states that an emergency decision on interim measures becomes binding on the parties immediately upon its rendering by the emergency arbitrator. This emphasises the seriousness and enforceability of the decision.

2. **Enforceable Obligations:** Once an emergency decision is rendered, the parties are legally obligated to comply with the terms and measures ordered by the emergency arbitrator. Failure to adhere to the decision could result in potential consequences or enforcement actions.
3. **Expedited Nature of Emergency Arbitration:** The binding effect of the emergency decision aligns with the expedited nature of emergency arbitration proceedings, where swift and effective relief is sought and granted to address urgent matters.
4. **Avoiding Harm or Prejudice:** The binding nature of the decision ensures that parties promptly implement the interim measures ordered by the emergency arbitrator, preventing potential harm, damage, or prejudice that the measures were designed to address.
5. **Predictability and Certainty:** The provision contributes to legal predictability and certainty by establishing the immediate and enforceable character of the emergency decision. Parties can rely on the decision's validity and effect.
6. **Enforcement Mechanism:** The provision facilitates the enforcement of the emergency decision in relevant jurisdictions, as it confirms the binding nature of the decision and the parties' obligation to comply.
7. **Mitigating the Risk of Non-Compliance:** By being binding upon rendering, the provision reduces the risk of parties disregarding or delaying compliance with the decision, which could undermine the purpose of seeking interim measures.
8. **Facilitating Effective Relief:** The binding effect of the emergency decision ensures that parties can effectively obtain and implement the necessary relief without undue delay, even before the full arbitration process concludes.
9. **Certainty in Dispute Resolution:** The provision contributes to maintaining the integrity of the dispute resolution process, as parties can trust that interim measures ordered in emergency arbitrations are binding and enforceable.

In summary, Appendix 2 Article 9(1) of the SCC Arbitration Rules 2023 establishes that emergency decisions on interim measures are binding on the parties upon their rendering. This provision reinforces the immediate legal effect and enforceability of such decisions, ensuring that parties promptly comply with the ordered measures in SCC-administered emergency arbitration proceedings.

**(2) Upon a reasoned request of a party, the emergency arbitrator may amend or revoke the emergency decision.**

Appendix 2 Article 9(2) of the SCC Arbitration Rules 2023 addresses the possibility of amending or revoking an emergency decision on interim measures in arbitration proceedings administered by the SCC. This provision grants a mechanism for parties to seek modifications to the initial emergency decision under certain circumstances. Let us analyse the key elements of this provision:

1. **Party Request for Amendment or Revocation:** The provision allows a party to make a reasoned request to the emergency arbitrator for amending or revoking the previously

rendered emergency decision. This acknowledges that circumstances may change after the decision is made, warranting a review or adjustment.

2. **Flexibility and Adaptability:** By permitting amendments or revocations, the provision accommodates situations where parties may need to alter the terms of the interim measures due to evolving circumstances or new information.
3. **Party-Centred Approach:** The provision reflects a party-centred approach to arbitration, where the needs and interests of the parties are considered, and adjustments can be made to better align with their evolving requirements.
4. **Reasoned Request:** The provision requires the requesting party to provide a reasoned request for the amendment or revocation. This ensures that parties must articulate the grounds and justifications for seeking changes, promoting transparency and accountability.
5. **Emergency Arbitrator Discretion:** While the provision grants parties the right to request changes, it vests the discretion to amend or revoke the emergency decision in the emergency arbitrator. The emergency arbitrator evaluates the merits of the request and decides whether modification is warranted.
6. **Balance Between Finality and Flexibility:** The provision strikes a balance between the finality and enforceability of the initial emergency decision and the need for flexibility to address changing circumstances. It provides a mechanism for modifications while maintaining a controlled and structured process.
7. **Efficiency and Expediency:** Allowing for amendments or revocations ensures that parties can address issues promptly without resorting to a new emergency arbitration process. This contributes to the efficiency and expediency of dispute resolution.
8. **Preserving the Purpose of Emergency Relief:** While the provision allows for adjustments, it maintains the primary objective of emergency relief—to provide swift and effective measures to address urgent matters that may cause harm or prejudice if left unattended.
9. **Ensuring Fairness:** By providing a mechanism for changes, the provision ensures fairness by allowing parties to seek adjustments when circumstances arise that could affect the equity of the situation.

In summary, Appendix 2 Article 9(2) of the SCC Arbitration Rules 2023 establishes a framework for parties to request amendments or revocations of emergency decisions on interim measures. This provision strikes a balance between maintaining the binding effect of the initial decision and allowing for flexibility to accommodate changing circumstances in SCC-administered emergency arbitration proceedings.

**(3) By agreeing to arbitration under the Arbitration Rules, the parties undertake to comply with any emergency decision without delay.**

Appendix 2 Article 9(3) of the SCC Arbitration Rules 2023 establishes a critical commitment by the parties to comply with emergency decisions on interim measures in arbitration proceedings

administered by the SCC. This provision emphasises the parties’ obligation to adhere to the emergency decision promptly. Let us analyse the key elements of this provision:

1. **Obligation to Comply:** The provision underscores the parties’ unequivocal obligation to comply with any emergency decision rendered by the emergency arbitrator. This emphasises the seriousness of the parties’ commitment to act upon the decision.
2. **Immediate Compliance:** By obligating parties to comply “without delay”, the provision highlights the urgency and expeditious nature of emergency decisions. Parties are expected to implement the ordered interim measures promptly and efficiently.
3. **Parties’ Undertaking:** The provision positions the compliance obligation as an essential part of the parties’ broader undertaking when agreeing to arbitration under the SCC Arbitration Rules. It reinforces that parties are bound not only by the formal agreement but also by the obligations that arise from the arbitration process.
4. **Enforcement Mechanism:** The provision strengthens the enforceability of emergency decisions by establishing a clear commitment by the parties to adhere to them. This commitment can be used to support enforcement actions if a party fails to comply.
5. **Preserving the Purpose of Emergency Measures:** The requirement for immediate compliance ensures that the purpose of emergency measures—addressing urgent matters to prevent harm or prejudice—is preserved. Delays in compliance could undermine the effectiveness of such measures.
6. **Supporting Effective Relief:** Immediate compliance with an emergency decision contributes to the effectiveness of the relief granted. It allows parties to benefit from the ordered measures promptly, even before the conclusion of the full arbitration process.
7. **Enhancing Credibility of the Process:** By committing to comply without delay, parties enhance the credibility of the arbitration process. It demonstrates their willingness to honour the decisions made within the framework of the proceedings.
8. **Deterrent Effect:** The provision serves as a deterrent against parties disregarding or delaying compliance with the emergency decision. The explicit commitment to timely compliance reduces the risk of non-compliance.
9. **Consistency with Due Process:** Immediate compliance aligns with due process principles by ensuring that parties respect the authority and legitimacy of the emergency arbitrator’s decisions.

In summary, Appendix 2 Article 9(3) of the SCC Arbitration Rules 2023 establishes a firm undertaking by the parties to promptly comply with any emergency decision rendered in the course of the arbitration. This provision reinforces the immediate and enforceable nature of emergency decisions and supports the effective implementation of ordered interim measures in SCC-administered emergency arbitration proceedings.

**(4) The emergency decision ceases to be binding if:**

- (i) the emergency arbitrator or an Arbitral Tribunal so decides;**
- (ii) an Arbitral Tribunal makes a final award;**
- (iii) arbitration is not commenced within 30 days from the date of the emergency decision; or**
- (iv) the case is not referred to an Arbitral Tribunal within 90 days from the date of the emergency decision.**

Appendix 2 Article 9(4) of the SCC Arbitration Rules 2023 outlines the circumstances under which the binding nature of an emergency decision on interim measures ceases. This provision establishes the conditions upon which the effectiveness and enforceability of the emergency decision come to an end in arbitration proceedings administered by the SCC. Let us analyse the key elements of this provision:

1. **Voluntary Termination:** The provision enables the emergency arbitrator or an Arbitral Tribunal to voluntarily decide to terminate the binding effect of the emergency decision. This recognises that situations may change, rendering the interim measures no longer necessary or applicable.
2. **Final Award:** The binding nature of the emergency decision automatically ceases if an Arbitral Tribunal renders a final award in the case. Once a final resolution is reached, the need for interim measures becomes moot.
3. **Commencement of Arbitration:** If arbitration is not initiated within 30 days from the date of the emergency decision, the decision loses its binding effect. This time limit reflects the expectation that parties should promptly initiate formal arbitration proceedings following the grant of interim measures.
4. **Referral to Arbitral Tribunal:** Similarly, if the case is not referred to an Arbitral Tribunal within 90 days from the date of the emergency decision, the binding nature of the decision comes to an end. This emphasises the requirement for a timely transition from emergency proceedings to full arbitration.
5. **Balancing Interests:** The provision balances the need for effective interim measures with the overall progress of the arbitration. It ensures that the binding effect of the emergency decision continues only as long as it remains necessary and consistent with the overall dispute resolution process.
6. **Preserving Efficiency:** The provision encourages the efficient progression of the case by requiring parties to take substantive steps toward formal arbitration within specified timeframes. This prevents undue delays and streamlines the proceedings.
7. **Ensuring Legal Finality:** The provision aligns with the principle of legal finality, as the binding effect of the emergency decision ceases upon certain events that mark significant developments in the arbitration process.
8. **Enforcement of Arbitral Process:** The provision supports the seamless transition from emergency proceedings to full arbitration by encouraging timely initiation and referral to an Arbitral Tribunal.



9. **Safeguarding Due Process:** The provision respects due process by allowing parties the opportunity to engage in formal arbitration proceedings and present their case before an Arbitral Tribunal.

In summary, Appendix 2 Article 9(4) of the SCC Arbitration Rules 2023 outlines the circumstances under which the binding effect of an emergency decision on interim measures ceases. This provision balances the need for immediate relief with the progress of the arbitration process, ensuring that interim measures remain effective and enforceable only as long as necessary in SCC-administered emergency arbitration proceedings.

#### **(5) An Arbitral Tribunal is not bound by the decision(s) and reasons of the emergency arbitrator.**

Appendix 2 Article 9(5) of the SCC Arbitration Rules 2023 establishes an important principle regarding the relationship between the decision of an emergency arbitrator and the subsequent proceedings before an Arbitral Tribunal in arbitration administered by the SCC. This provision addresses the extent to which an Arbitral Tribunal is bound by the decisions and reasoning of the emergency arbitrator. Let us analyse the key elements of this provision:

1. **Independence of Tribunals:** The provision underscores the independence of the Arbitral Tribunal from the emergency arbitrator's decisions. It affirms that the Tribunal's subsequent deliberations and determinations are not constrained by the conclusions reached by the emergency arbitrator.
2. **Distinct Phases of Proceedings:** The provision recognises that emergency proceedings and subsequent arbitration proceedings are distinct phases within the arbitration process. It allows the Arbitral Tribunal to exercise its own judgment and conduct a fresh analysis based on the evidence, arguments, and circumstances presented during the full arbitration proceedings.
3. **Due Process and Fairness:** The provision ensures due process and fairness by granting the Arbitral Tribunal the latitude to independently assess the merits of the case. This avoids any preconceived notions or constraints arising from the emergency arbitrator's decision.
4. **Re-evaluation of Interim Measures:** The provision permits the Arbitral Tribunal to re-evaluate the necessity and appropriateness of interim measures previously granted by the emergency arbitrator. This allows the Tribunal to consider any new evidence, developments, or changes in circumstances.
5. **Flexibility and Adaptability:** By not binding the Tribunal to the emergency arbitrator's decision, the provision enhances the flexibility and adaptability of the arbitration process. It enables the Tribunal to tailor its approach to the evolving needs of the case.
6. **Ensuring Comprehensive Analysis:** The provision encourages a comprehensive analysis of the dispute by allowing the Tribunal to consider all relevant factors without being confined to the emergency arbitrator's findings.
7. **Legal Finality:** The provision respects the principle of legal finality by treating the emergency arbitrator's decision as a provisional measure, subject to review and potentially modification by the Arbitral Tribunal.

8. **Evolving Legal and Factual Landscape:** As the arbitration process unfolds, legal arguments, evidence, and circumstances may evolve. This provision enables the Tribunal to take these changes into account in its decision-making.
9. **Avoiding Prejudice:** The provision safeguards parties from potential prejudice caused by a rigid adherence to the emergency arbitrator's decision, especially if new information or developments emerge.

In summary, Appendix 2 Article 9(5) of the SCC Arbitration Rules 2023 affirms the independence of the Arbitral Tribunal from the decisions and reasons of the emergency arbitrator. This provision empowers the Tribunal to conduct its own analysis and make determinations based on the full arbitration proceedings, ensuring a fair and comprehensive resolution in SCC-administered arbitration.

### **Article 10 Costs of the emergency proceedings**

**(1) The party applying for the appointment of an emergency arbitrator shall pay the costs set out in paragraph (2) (i) and (ii) below upon filing the application.**

Appendix 2 Article 10(1) of the SCC Arbitration Rules 2023 establishes the obligation of the party seeking the appointment of an emergency arbitrator to pay certain costs upon submitting the application. This provision outlines the financial responsibilities associated with initiating emergency arbitration proceedings under the SCC rules. Let us analyse the key aspects of this provision:

1. **Cost Payment Requirement:** The provision establishes a clear and straightforward requirement that the party applying for the appointment of an emergency arbitrator must cover certain costs at the outset. This ensures that parties are aware of their financial obligations from the outset of the emergency arbitration process.
2. **Party Initiating the Process:** The obligation to pay costs is placed on the party seeking the appointment of an emergency arbitrator. This party is the one that initiates the emergency arbitration proceedings by submitting the application.
3. **Prompt Payment:** The provision emphasises the timely payment of costs, as they are required to be paid "upon filing the application". This promotes efficiency and ensures that the emergency arbitration process can commence smoothly and without delay.
4. **Certainty and Transparency:** By specifying that costs need to be paid at the time of application, the provision enhances the transparency of the process for both the parties and the arbitral institution (SCC). Parties are informed about the financial commitments associated with the proceedings.
5. **Cost Structure:** The provision refers to the costs set out in paragraph (2) (i) and (ii) below, indicating that the specific cost components are further detailed in subsequent paragraphs. This allows parties to understand the breakdown of the costs they are required to cover.
6. **Initial Payment Requirement:** Requiring payment upon filing the application ensures that the SCC has the necessary funds to manage the administrative aspects of the emergency arbitration process, including the appointment of an emergency arbitrator.

7. **Financial Responsibility:** The provision reinforces the financial responsibility of the party applying for the emergency arbitrator, aligning with the general principle that parties should bear the costs associated with the proceedings they initiate.
8. **Transparency in Financial Commitment:** Clearly stating the requirement for payment at the outset helps parties plan and budget for the costs associated with emergency arbitration. This can help prevent misunderstandings or disputes over financial obligations later in the process.
9. **Administrative Efficiency:** Collecting the necessary costs early in the process allows the SCC to smoothly manage the appointment of the emergency arbitrator, ensuring the proceedings can begin promptly.
10. **Procedural Fairness:** Requiring payment from the party that initiates the proceedings contributes to the overall fairness of the process, as it aligns with the principle that those who seek remedies or services should cover the associated costs.

In summary, Appendix 2 Article 10(1) of the SCC Arbitration Rules 2023 sets forth the obligation for the party applying for the appointment of an emergency arbitrator to pay certain costs upon filing the application. This provision ensures transparency, procedural efficiency, and clarity regarding financial commitments in the initial stages of emergency arbitration proceedings administered by the SCC.

**(2) The costs of the emergency proceedings include:**

- (i) the fee of the emergency arbitrator, in the amount of EUR 16 000;**
- (ii) the application fee of EUR 4 000; and**
- (iii) the reasonable costs incurred by the parties, including costs for legal representation.**

Appendix 2 Article 10(2) of the SCC Arbitration Rules 2023 outlines the specific components that constitute the costs of emergency proceedings in arbitration administered by the SCC. This provision identifies the financial elements that parties are required to cover when seeking an emergency arbitrator's appointment and interim relief. Let us analyse the key elements of this provision:

1. **Emergency Arbitrator's Fee:** The provision sets out a fixed amount of EUR 16,000 as the fee for the emergency arbitrator. This fee compensates the arbitrator for their time, expertise, and efforts in promptly considering and rendering decisions on interim measures.
2. **Application Fee:** The provision stipulates an application fee of EUR 4,000. This fee covers the administrative costs associated with processing and managing the application for an emergency arbitrator.
3. **Reasonable Costs Incurred by Parties:** The provision includes the reasonable costs incurred by the parties as part of the overall costs of emergency proceedings. This encompasses various expenses, such as legal representation fees, administrative expenses, and any other costs directly related to the emergency proceedings.

4. **Transparency and Predictability:** By specifying the components of the emergency proceedings costs, the provision ensures transparency and predictability for parties seeking emergency relief. Parties are aware of the financial commitments required for initiating emergency proceedings.
5. **Balancing Financial Burden:** The provision strikes a balance between the need to provide fair compensation to the emergency arbitrator and cover administrative expenses, while also considering the parties' reasonable legal representation costs.
6. **Encouraging Efficient Use of Resources:** By delineating the elements that constitute the costs, the provision encourages parties to use resources efficiently and effectively throughout the emergency proceedings.
7. **Facilitating Timely Resolution:** Clear identification of costs helps streamline the process and contributes to the swift resolution of urgent matters by enabling parties to prepare and allocate resources promptly.
8. **Scope for Reasonable Costs:** The provision allows parties to recover reasonable costs incurred for legal representation, thereby ensuring access to effective advocacy during emergency proceedings.
9. **Financial Accountability:** Parties are held accountable for the costs incurred during the emergency proceedings, which promotes financial responsibility and ensures that the arbitration process operates smoothly.
10. **Ensuring Equitable Compensation:** By defining the emergency arbitrator's fee, the provision ensures that arbitrators are fairly compensated for their prompt and specialised involvement in emergency cases.

In summary, Appendix 2 Article 10(2) of the SCC Arbitration Rules 2023 specifies the components that constitute the costs of emergency proceedings, including the emergency arbitrator's fee, the application fee, and reasonable costs incurred by the parties. This provision establishes a clear framework for financial commitments and promotes transparency, accountability, and efficiency in SCC-administered emergency arbitration proceedings.

**(3) At the request of the emergency arbitrator, or if otherwise deemed appropriate, the Board may decide to increase or reduce the costs set out in paragraph (2) (i) and (ii) above, having regard to the nature of the case, the work performed by the emergency arbitrator and the SCC and any other relevant circumstances.**

Appendix 2 Article 10(3) of the SCC Arbitration Rules 2023 grants authority to the Board of the SCC to adjust the costs of emergency proceedings under certain circumstances. This provision allows for flexibility in determining the fees associated with emergency arbitration and reflects the SCC's commitment to ensuring fairness, efficiency, and appropriate compensation for emergency arbitrators. Let us analyse the key elements of this provision:

1. **Board's Discretion:** The provision vests the Board with discretionary power to modify the costs outlined in Appendix 2 Article 10(2) (i) and (ii) of the SCC Arbitration Rules. This

discretion allows the Board to make case-specific adjustments to the fees based on relevant factors.

2. **Emergency Arbitrator's Request:** The provision permits the emergency arbitrator to request a change in the costs, demonstrating a collaborative approach to determining fees based on the nature and complexity of the case.
3. **Balancing Factors:** The Board is directed to consider multiple factors when deciding to increase or reduce costs, including the nature of the case, the extent of work performed by the emergency arbitrator and the SCC, and any other relevant circumstances. This balanced approach ensures that the costs align with the specific needs of the emergency proceedings.
4. **Fair Compensation:** By allowing adjustments to the fees, the provision ensures that emergency arbitrators are fairly compensated for their efforts, expertise, and time spent on addressing urgent matters.
5. **Flexibility for Unforeseen Circumstances:** The provision acknowledges that unforeseen circumstances or exceptional cases may arise that warrant a departure from the standard costs. This flexibility accommodates unique situations that may impact the overall expenses of the emergency proceedings.
6. **Efficient Resource Allocation:** The provision supports efficient resource allocation by enabling the Board to match fees to the complexity and demands of each emergency case.
7. **Transparent Decision-Making:** Although the provision grants discretion to the Board, its decisions to adjust costs must still be based on relevant considerations and factors. This ensures a transparent and reasoned approach to determining fee adjustments.
8. **Responsive to Case-Specific Needs:** Different emergencies may require varying degrees of attention and resources. The provision recognises this variability and enables the Board to tailor costs accordingly.
9. **Enhancing Access to Emergency Relief:** By allowing for potential fee adjustments, the provision contributes to enhancing access to emergency arbitration for parties seeking swift interim relief, as costs can be adapted to the specific circumstances of the case.

In summary, Appendix 2 Article 10(3) of the SCC Arbitration Rules 2023 empowers the Board to modify the costs associated with emergency proceedings in response to factors such as the nature of the case, the work performed, and other relevant circumstances. This provision underscores the SCC's commitment to ensuring fair compensation, efficient resource allocation, and flexibility in handling urgent matters through emergency arbitration.

**(4) If payment of the costs set out in paragraph (2) (i) and (ii) above is not made in due time, the Secretariat shall dismiss the application.**

Appendix 2 Article 10(4) of the SCC Arbitration Rules 2023 addresses the consequences of non-payment of the costs associated with emergency proceedings. This provision emphasises the

importance of timely payment and the procedural impact of failing to meet financial obligations in the context of emergency arbitrations. Let us analyse the key aspects of this provision:

1. **Timely Payment Obligation:** The provision establishes a clear obligation for the parties to make timely payment of the costs outlined in Appendix 2 Article 10(2) (i) and (ii) of the SCC Arbitration Rules. This payment is required upon filing the application for an emergency arbitrator.
2. **Procedural Consequence:** If the payment is not made within the specified time frame, the Secretariat is authorised to dismiss the application for an emergency arbitrator. This highlights the procedural significance of meeting the financial obligations promptly.
3. **Preservation of Procedural Integrity:** Timely payment ensures that the emergency arbitration process can proceed smoothly and efficiently. Non-payment could disrupt the process, and the provision acts as a mechanism to uphold the procedural integrity of emergency proceedings.
4. **Incentive for Adherence:** The provision creates a financial incentive for parties to adhere to their payment obligations promptly. This encourages parties to fulfil their financial commitments to avoid potential dismissal of their application.
5. **Administrative Efficiency:** By allowing the Secretariat to dismiss the application in case of non-payment, the provision contributes to administrative efficiency by preventing the initiation of proceedings that are not adequately funded.
6. **Prompt Resolution:** Timely payment facilitates prompt resolution of urgent matters. The provision ensures that parties do not unduly delay the emergency arbitration process due to non-payment.
7. **Preservation of SCC Resources:** The provision helps ensure that the SCC's administrative resources are efficiently allocated to cases in which parties are fully committed to proceeding with emergency arbitration.
8. **Transparency and Predictability:** The provision provides transparency and predictability by outlining the consequences of non-payment, thereby enabling parties to understand the potential impact of their financial obligations.
9. **Balancing Interests:** While emphasising the importance of timely payment, the provision also aims to strike a balance between enforcing financial obligations and offering parties reasonable opportunities to fulfil their commitments.
10. **Encouraging Compliance:** By outlining the potential dismissal of the application, the provision encourages parties to comply with their financial obligations, promoting a more effective and orderly emergency arbitration process.

In summary, Appendix 2 Article 10(4) of the SCC Arbitration Rules 2023 underscores the significance of timely payment of the costs associated with emergency proceedings. The provision ensures that parties are incentivised to fulfil their financial obligations promptly to maintain the procedural integrity and efficiency of emergency arbitrations administered by the SCC.

**(5) At the request of a party, the emergency arbitrator shall in the emergency decision apportion the costs of the emergency proceedings between the parties.**

Appendix 2 Article 10(5) of the SCC Arbitration Rules 2023 addresses the issue of cost apportionment in emergency proceedings and provides parties with the opportunity to seek a determination of how the costs of the emergency arbitration will be divided between them. This provision aims to ensure transparency and fairness in allocating the financial burden associated with emergency arbitrations. Let us analyse the key aspects of this provision:

1. **Cost Allocation Authority:** The provision grants the emergency arbitrator the authority to apportion the costs of the emergency proceedings between the parties. This authority enables the emergency arbitrator to decide how the financial responsibilities should be divided based on the circumstances of the case.
2. **Party Request:** The provision is initiated by a party's request. This emphasises the voluntary nature of cost apportionment in emergency proceedings. Parties have the option to seek the emergency arbitrator's determination on cost sharing, but it is not mandatory.
3. **Transparency and Fairness:** By allowing parties to request cost apportionment, the provision promotes transparency and fairness in the allocation of financial responsibilities. It ensures that parties have an opportunity to present their arguments and seek a balanced outcome.
4. **Customised Approach:** The provision enables the emergency arbitrator to consider the specific circumstances of the case when determining cost allocation. This allows for a customised approach that takes into account the parties' respective positions and the nature of the emergency proceedings.
5. **Procedural Efficiency:** The provision contributes to procedural efficiency by addressing cost allocation matters within the context of the emergency decision. This avoids the need for separate proceedings or additional steps to resolve cost-sharing disputes.
6. **Prompt Resolution:** Addressing cost allocation in the emergency decision ensures that the parties receive a clear and final determination on this issue without further delay.
7. **Party Autonomy:** While the emergency arbitrator has the authority to apportion costs, parties retain some autonomy by initiating the request for cost allocation. This reflects a balanced approach to cost-sharing decisions.
8. **Certainty and Predictability:** The provision offers parties certainty and predictability regarding the financial implications of the emergency proceedings, helping them make informed decisions and manage their financial commitments.
9. **Conflict Prevention:** Clarifying cost allocation early in the process can help prevent disputes and conflicts related to financial responsibilities from arising later in the arbitration.
10. **Convenience and Flexibility:** The provision allows parties to address cost allocation at a stage when the emergency arbitrator is already engaged with the case, enhancing convenience and flexibility in the proceedings.

In summary, Appendix 2 Article 10(5) of the SCC Arbitration Rules 2023 enables parties to request that the emergency arbitrator apportion the costs of the emergency proceedings between them. This provision ensures that parties have a mechanism to seek a fair and transparent determination of cost allocation, enhancing the overall efficiency and effectiveness of emergency arbitrations administered by the SCC.

**(6) The emergency arbitrator shall apply the principles of Articles 49 (6) and 50 of the Arbitration Rules when apportioning the costs of the emergency proceedings.**

Appendix 2 Article 10(6) of the SCC Arbitration Rules 2023 outlines the principles that the emergency arbitrator must apply when apportioning the costs of the emergency proceedings. These principles are drawn from Articles 49(6) and 50 of the Arbitration Rules and provide guidance on how the costs of the emergency proceedings should be fairly and equitably allocated between the parties. Let us analyse the key aspects of this provision:

**Cost Allocation Framework:** The provision establishes a clear framework for cost allocation in emergency proceedings by incorporating the principles of Articles 49(6) and 50 of the Arbitration Rules. This ensures consistency and harmonisation of cost allocation practices across different stages of the arbitration process.

1. **Fairness and Equity:** The principles of Articles 49(6) and 50 of the Arbitration Rules emphasise fairness and equity in cost allocation. By incorporating these principles, Appendix 2 Article 10(6) ensures that the emergency arbitrator's decision on cost apportionment aligns with the overarching goal of achieving a just distribution of costs.
2. **Reasonable and Proportionate Costs:** Articles 49(6) and 50 of the Arbitration Rules require that costs be reasonable and proportionate to the circumstances of the case. This principle ensures that the parties' financial obligations are commensurate with the complexity and value of the emergency proceedings.
3. **Successful and Unsuccessful Claims:** The reference to Article 50 of the Arbitration Rules highlights that the emergency arbitrator must consider the outcome of the emergency proceedings when apportioning costs. This includes taking into account the success or lack thereof of the parties' respective claims.
4. **Discretion of the Emergency Arbitrator:** While the principles provide a framework, the emergency arbitrator retains discretion to apply them based on the specific facts and circumstances of the case. This allows for a nuanced and context-specific approach to cost allocation.
5. **Consistency with Main Arbitration:** The incorporation of principles from the main Arbitration Rules ensures consistency between the cost allocation mechanisms in emergency proceedings and the subsequent phases of arbitration, maintaining a coherent and predictable process.
6. **Guidance for Parties:** Parties benefit from a clear and familiar cost allocation framework, as they can anticipate how the emergency arbitrator will determine cost sharing based on established principles.



7. Encouragement of Efficient and Effective Proceedings: By aligning cost allocation with principles of reasonableness, proportionality, and outcome-based considerations, the provision incentivises parties to conduct the emergency proceedings in an efficient and effective manner.
8. Balanced Approach: The application of these principles ensures that cost apportionment is balanced and reflective of the parties' conduct and the overall outcome of the emergency proceedings.
9. Minimisation of Disputes: Clear and well-defined principles for cost allocation help minimise disputes between the parties concerning the financial aspects of the emergency proceedings.

In summary, Appendix 2 Article 10(6) of the SCC Arbitration Rules 2023 ensures that the emergency arbitrator applies the principles of Articles 49(6) and 50 of the Arbitration Rules when apportioning the costs of the emergency proceedings. This provision contributes to fairness, transparency, and consistency in cost allocation while allowing the emergency arbitrator the necessary discretion to tailor the decision to the unique circumstances of each case.

## APPENDIX III INVESTMENT TREATY DISPUTES

**Article 1 Scope of application**

**(1) The articles contained in this Appendix apply to cases under the Arbitration Rules based on a treaty providing for arbitration of disputes between an investor and a state.**

Appendix 3 Article 1(1) of the SCC Arbitration Rules 2023 specifies the scope and application of the articles within Appendix 3. This provision establishes that the articles contained in Appendix 3 are applicable to cases conducted under the SCC Arbitration Rules that are based on a treaty providing for the arbitration of disputes between an investor and a state. Let us analyse the key elements of this provision:

1. **Scope and Applicability:** The provision defines the scope of application for the articles within Appendix 3. It is limited to cases conducted under the SCC Arbitration Rules that involve disputes arising from treaties specifically designed for the resolution of conflicts between investors and states.
2. **Investor-State Disputes:** The provision identifies the nature of the disputes that fall within the scope of Appendix 3. These disputes involve a specific category of international arbitration known as investor-state arbitration, where an investor alleges a breach of obligations by a state under a treaty.
3. **Treaty Basis:** The provision requires that the arbitration must be based on a treaty that provides for the resolution of disputes between investors and states. This reflects the specific character of investor-state arbitration, which typically arises from bilateral or multilateral investment treaties.
4. **Recognition of Investor-State Arbitration:** The provision acknowledges the distinctiveness of investor-state arbitration and recognises the need for specialised procedures and rules to address the unique characteristics and complexities of disputes between investors and states.
5. **Ensuring Consistency:** By stipulating the application of specific articles in cases involving investor-state disputes, the provision contributes to maintaining consistency and coherence in the application of the SCC Arbitration Rules across different types of disputes.
6. **Specialised Provisions:** The provision implies that the articles within Appendix 3 are tailored to address the particular legal and procedural considerations that arise in investor-state arbitration cases.
7. **Promotion of Transparency and Fairness:** Investor-state arbitration cases often involve public policy considerations and significant financial implications. The specialised rules in Appendix 3 are likely designed to promote transparency, fairness, and the protection of investors' rights.

In summary, Appendix 3 Article 1(1) of the SCC Arbitration Rules 2023 outlines the scope of application for the articles within Appendix 3. It specifies that these articles are applicable to cases conducted under the SCC Arbitration Rules based on a treaty providing for the arbitration of disputes between an

investor and a state. This provision underscores the distinctiveness of investor-state arbitration and the need for tailored rules to address the unique features of such disputes.

**(2) Articles 13, 14 and 15 of the Arbitration Rules shall apply mutatis mutandis to the cases indicated in paragraph (1) above.**

Appendix 3 Article 1(2) of the SCC Arbitration Rules 2023 indicates the applicability of specific articles from the main Arbitration Rules (Articles 13, 14, and 15) to the cases covered by Appendix 3 Article 1(1), which involve disputes between an investor and a state based on a treaty. The Latin term “mutatis mutandis” is used to convey that the mentioned articles will apply with necessary modifications or adaptations. Let us analyse the key aspects of this provision:

1. **Applicability of Articles:** The provision specifies that certain articles from the main Arbitration Rules (Articles 13, 14, and 15) will apply to the investor-state disputes covered by Appendix 3 Article 1(1).
2. **Necessary Modifications:** The term “mutatis mutandis” indicates that the specified articles will apply with appropriate adjustments or modifications to suit the context of investor-state disputes. These modifications might be necessary due to the unique features and specialised nature of investor-state arbitration.
3. **Ensuring Consistency:** By incorporating certain articles from the main Arbitration Rules, the provision aims to maintain consistency and coherence in procedural matters across different types of disputes, while acknowledging the distinct characteristics of investor-state cases.
4. **Article 13:** Article 13 of the Arbitration Rules likely pertains to the appointment of an arbitrator. Its application to investor-state disputes indicates that the procedure for selecting an arbitrator will be adapted to address the specific circumstances of these cases.
5. **Article 14:** Article 14 deals with the challenge of an arbitrator. In the context of investor-state arbitration, the process of challenging an arbitrator will likely be tailored to consider the particular dynamics of disputes involving investors and states.
6. **Article 15:** Article 15 addresses the replacement of an arbitrator. Its application to investor-state disputes suggests that the rules governing the replacement of an arbitrator will be adjusted as necessary.
7. **Adaptation to Specialised Context:** The provision reflects the understanding that investor-state disputes have unique legal and procedural considerations. By incorporating these articles with appropriate modifications, the SCC aims to ensure that the arbitration process effectively addresses the complexities of investor-state arbitration.
8. **Facilitating Investor-State Arbitration:** The specialised application of these articles underscores the SCC’s commitment to providing a fair, efficient, and transparent mechanism for resolving disputes between investors and states.

In summary, Appendix 3 Article 1(2) of the SCC Arbitration Rules 2023 stipulates that certain articles (13, 14, and 15) from the main Arbitration Rules will apply with necessary modifications to the investor-state disputes covered by Appendix 3 Article 1(1). This provision reflects the SCC's effort to adapt established procedural rules to accommodate the unique characteristics of investor-state arbitration cases, thereby enhancing the effectiveness of the arbitration process for such disputes.

## Article 2 Number of arbitrators

### (1) The parties may agree on the number of arbitrators.

Appendix 3 Article 2(1) of the SCC Arbitration Rules 2023 addresses the issue of determining the number of arbitrators in cases falling under Appendix 3, which involve disputes between an investor and a state based on a treaty. This provision emphasises the principle of party autonomy in the context of selecting the number of arbitrators. Let us analyse the key elements of this provision:

1. **Party Autonomy:** The provision underscores the fundamental principle of party autonomy in arbitration. It highlights that the parties have the freedom to agree on the number of arbitrators that will preside over their dispute.
2. **Flexibility in Arbitrator Selection:** By allowing the parties to agree on the number of arbitrators, the provision offers flexibility to adapt the arbitration process to the specific circumstances of each case, including factors such as the complexity of the dispute and the preferences of the parties.
3. **Customisation of Proceedings:** The provision enables parties to tailor the arbitration proceedings to their specific needs and expectations by choosing the appropriate number of arbitrators.
4. **Efficiency and Cost Considerations:** The parties' ability to agree on the number of arbitrators allows them to balance the desire for a thorough and fair resolution with considerations of efficiency and cost-effectiveness.
5. **Promoting Cooperation:** The provision encourages parties to engage in cooperative decision-making at the outset of the arbitration, which can set a positive tone for the entire process.
6. **Potential for Dispute Avoidance:** Allowing the parties to agree on the number of arbitrators reduces the likelihood of disputes arising later in the arbitration process related to the composition of the arbitral tribunal.
7. **Adaptation to Investor-State Context:** In investor-state disputes, the selection of arbitrators can be particularly significant due to the involvement of states and international law considerations. Allowing the parties to determine the number of arbitrators reflects an understanding of the unique dynamics of investor-state arbitrations.
8. **Safeguarding Party Interests:** The provision respects the parties' interests and allows them to have a say in the composition of the arbitral tribunal, which can contribute to a sense of fairness and ownership in the process.

In summary, Appendix 3 Article 2(1) of the SCC Arbitration Rules 2023 establishes the parties' ability to agree on the number of arbitrators in investor-state disputes falling under Appendix 3. This provision upholds the principle of party autonomy and recognises the importance of customisation and cooperation in the arbitration process. It reflects a practical approach to adapting the proceedings to the specific characteristics of investor-state arbitration cases.

**(2) Where the parties have not agreed on the number of arbitrators, the Arbitral Tribunal shall consist of three arbitrators, unless the Board, having regard to the complexity of the case, the amount in dispute and any other relevant circumstances, decides that the dispute is to be decided by a sole arbitrator.**

Appendix 3 Article 2(2) of the SCC Arbitration Rules 2023 addresses the situation where the parties in investor-state disputes have not agreed on the number of arbitrators. This provision outlines the default composition of the arbitral tribunal and provides criteria for determining whether the tribunal should consist of one arbitrator (sole arbitrator) or three arbitrators. Let us analyse the key elements of this provision:

1. **Default Composition:** The provision establishes a default composition for the arbitral tribunal when the parties have not agreed on the number of arbitrators. In such cases, the default tribunal configuration is a panel of three arbitrators.
2. **Discretion of the Board:** The provision empowers the Board (of the Arbitration Institute of the Stockholm Chamber of Commerce) to make a determination regarding the number of arbitrators based on several factors, including the complexity of the case, the amount in dispute, and other relevant circumstances.
3. **Criteria for Sole Arbitrator:** The provision sets out the criteria that guide the Board's decision on whether the dispute should be decided by a sole arbitrator. The factors to consider include the complexity of the case and the monetary value of the dispute.
4. **Balancing Efficiency and Thoroughness:** The provision strikes a balance between the efficiency of a sole arbitrator and the potentially more comprehensive decision-making of a three-member tribunal. The Board's decision aims to ensure that the chosen tribunal configuration is appropriate for the specific circumstances of each case.
5. **Tailoring to Investor-State Disputes:** The provision recognises that investor-state disputes can vary widely in terms of complexity, legal issues, and monetary value. As a result, it allows for a flexible approach to tribunal composition.
6. **Board's Expertise:** The provision implies that the Board is equipped with the expertise to assess the factors mentioned and make an informed decision on the appropriate tribunal configuration.
7. **Promotion of Fairness:** By providing guidance on tribunal composition based on the complexity of the case and other relevant factors, the provision aims to ensure a fair and just resolution of investor-state disputes.

8. **Efficiency and Cost Considerations:** The provision’s flexibility in determining the number of arbitrators contributes to considerations of efficiency and cost-effectiveness, aligning with the broader trend toward expeditious and economical dispute resolution.

In summary, Appendix 3 Article 2(2) of the SCC Arbitration Rules 2023 outlines the default composition of the arbitral tribunal when the parties have not agreed on the number of arbitrators in investor-state disputes. It empowers the Board to decide whether the tribunal will consist of one arbitrator or three arbitrators based on considerations of case complexity, amount in dispute, and other relevant factors. This provision reflects a nuanced approach to tribunal composition that balances the need for efficiency with the desire for thorough and fair dispute resolution.

### **Article 3 Submission by a Third Person**

**(1) Any person that is neither a disputing party nor a non-disputing treaty party (“Third Person”) may apply to the Arbitral Tribunal for permission to make a written submission in the arbitration.**

Appendix 3 Article 3(1) of the SCC Arbitration Rules 2023 outlines the procedure by which a “Third Person”, someone who is neither a disputing party nor a non-disputing treaty party, can seek permission from the Arbitral Tribunal to submit a written document in the arbitration proceedings. This provision recognises the potential for external parties to have an interest in the dispute and offers a mechanism for their participation. Let us analyse the key elements of this provision:

1. **Inclusion of Third Persons:** The provision acknowledges the possibility that individuals or entities who are not direct parties to the dispute or the underlying treaty (non-disputing treaty parties) might have relevant information, expertise, or interests in the outcome of the arbitration.
2. **Procedural Fairness:** By allowing Third Persons to apply for permission to submit a written submission, the provision promotes procedural fairness and transparency in the arbitration process. It ensures that potentially relevant information or perspectives can be considered.
3. **Written Submissions:** The provision specifically allows Third Persons to make written submissions, which may include legal arguments, factual information, or other relevant materials.
4. **Tribunal’s Discretion:** The provision gives the Arbitral Tribunal the authority to decide whether to grant permission to a Third Person to make a written submission. This discretion ensures that the Tribunal can assess the relevance and potential impact of the proposed submission.
5. **Balancing Interests:** The provision balances the interests of Third Persons in participating in the proceedings with the overall efficiency and integrity of the arbitration process.
6. **Promotion of Comprehensive Information:** Allowing Third Persons to submit written submissions can contribute to a more complete and well-informed consideration of the issues at hand, potentially enriching the decision-making process.

7. Potential for Non-Party Expertise: Third Persons might possess specialised knowledge, industry expertise, or insights that could benefit the Tribunal's understanding of the dispute.
8. Protection of Parties' Rights: While Third Persons are given an opportunity to apply for permission to submit, the provision does not automatically grant them the right to participate. The Tribunal's discretion safeguards the rights of the disputing parties.

In summary, Appendix 3 Article 3(1) of the SCC Arbitration Rules 2023 provides a mechanism for Third Persons who are not disputing parties or non-disputing treaty parties to seek permission from the Arbitral Tribunal to make written submissions in investor-state arbitration proceedings. This provision reflects the recognition of the potential value of external perspectives and information while maintaining the Tribunal's authority to ensure fairness, efficiency, and the protection of parties' rights throughout the arbitration process.

**(2) All such applications shall:**

- (i) be made in a language of the arbitration;**
- (ii) identify and describe the Third Person, including where relevant its membership and legal status, its general objectives, the nature of its activities and any parent or other affiliated organisation, and any other entity or person that directly or indirectly controls the Third Person;**
- (iii) disclose any direct or indirect affiliation with any party to the arbitration;**
- (iv) identify any government, organisation or person that has directly or indirectly provided any financial or other assistance in preparing the submission;**
- (v) specify the nature of the interest that the Third Person has in the arbitration; and**
- (vi) identify the specific issues of fact or law in the arbitration that the Third Person wishes to address in its submission.**

Appendix 3 Article 3(2) of the SCC Arbitration Rules 2023 outlines the requirements and information that must be included in applications made by Third Persons seeking permission to make written submissions in investor-state arbitration proceedings. This provision ensures transparency and accountability in the process of involving external parties in the arbitration. Let us analyse the key elements of this provision:

1. Language of the Arbitration: The provision requires that applications from Third Persons be made in the language of the arbitration. This ensures that the Tribunal and other parties can understand and assess the content of the application.
2. Detailed Identification of Third Person: The provision mandates that the application should provide a thorough description of the Third Person, including its membership, legal status, general objectives, nature of activities, and any relevant affiliations. This information allows the Tribunal and parties to evaluate the relevance and potential impact of the submission.

3. **Affiliations and Relationships:** The provision requires disclosure of any direct or indirect affiliations with any party to the arbitration, as well as the identification of any entity or person that controls the Third Person. This disclosure is essential to assess potential conflicts of interest or bias.
4. **Financial or Other Assistance:** Third Persons are required to disclose any financial or other assistance they have received from governments, organisations, or individuals in preparing their submission. This information is crucial for understanding the context and potential motivations behind the submission.
5. **Identification of Interest:** Third Persons must specify the nature of their interest in the arbitration. This ensures that the Tribunal can evaluate the relevance and legitimacy of the Third Person's involvement.
6. **Specific Issues to Address:** The provision requires Third Persons to identify the precise issues of fact or law in the arbitration that they intend to address in their submission. This ensures that the submissions are focused and relevant to the proceedings.
7. **Transparency and Accountability:** By requiring comprehensive disclosure, the provision promotes transparency and accountability in the participation of Third Persons, contributing to the overall fairness and integrity of the arbitration process.
8. **Managing Potential Bias:** The information required by the provision helps the Tribunal and parties assess potential biases or conflicts of interest that could influence the content of the submission.
9. **Efficiency in Evaluation:** Requiring detailed information in the application allows the Tribunal to efficiently assess the significance and relevance of the Third Person's submission.

In summary, Appendix 3 Article 3(2) of the SCC Arbitration Rules 2023 establishes a set of requirements that Third Persons must meet when applying for permission to make written submissions in investor-state arbitration proceedings. These requirements ensure transparency, accountability, and fairness in involving external parties, while allowing the Tribunal and parties to assess the potential impact and legitimacy of such submissions.

**(3) In determining whether to allow such a submission, and after consulting the disputing parties, the Arbitral Tribunal shall have regard to:**

- (i) the nature and significance of the interest of the Third Person in the arbitration;**
- (ii) whether the submission would assist the Arbitral Tribunal in determining a material issue of fact or law in the arbitration by bringing a perspective, particular knowledge or insight that is distinct from or broader than that of the disputing parties; and**
- (iii) any other relevant circumstances.**

Appendix 3 Article 3(3) of the SCC Arbitration Rules 2023 outlines the factors that the Arbitral Tribunal should consider when deciding whether to allow a submission from a Third Person, who is neither a



disputing party nor a non-disputing treaty party, in investor-state arbitration proceedings. These factors help guide the Tribunal's assessment of the potential value and relevance of the Third Person's input. Let us analyse the key elements of this provision:

1. **Nature and Significance of Interest:** The provision directs the Arbitral Tribunal to assess the nature and significance of the Third Person's interest in the arbitration. This consideration ensures that the Tribunal evaluates the direct relevance and potential impact of the Third Person's submission.
2. **Assistance to the Tribunal:** The provision emphasises that the Tribunal should determine whether the Third Person's submission would assist in resolving a material issue of fact or law in the arbitration. This could involve providing a distinct or broader perspective, specialised knowledge, or unique insights that contribute to a more comprehensive understanding of the dispute.
3. **Distinct Perspective and Knowledge:** By seeking perspectives, knowledge, or insights that go beyond those of the disputing parties, the provision promotes a more balanced and thorough consideration of the issues.
4. **Avoiding Redundancy:** The provision encourages the Tribunal to assess whether the Third Person's submission adds value to the proceedings by offering information or insights that are not already available through the disputing parties.
5. **Relevance to the Dispute:** The requirement for distinctiveness or broader insight ensures that Third Persons' submissions are directly relevant to the arbitration and contribute to its resolution.
6. **Flexibility and Discretion:** The provision affords the Tribunal discretion in considering the value of the Third Person's input, allowing for adaptability to the unique circumstances of each case.
7. **Consultation with Disputing Parties:** The provision highlights the importance of consulting with the disputing parties before making a decision on whether to allow the Third Person's submission. This consultation ensures that the parties have an opportunity to provide input on the potential impact and relevance of the submission.
8. **Other Relevant Circumstances:** The provision acknowledges that there may be additional circumstances not explicitly listed that could influence the Tribunal's decision. This flexibility allows the Tribunal to consider any other factors that could be relevant to the determination.
9. **Promoting a Comprehensive Decision:** By considering these factors, the provision aims to ensure that the arbitration process benefits from a well-informed and comprehensive assessment of the dispute, while safeguarding the fairness and integrity of the proceedings.

In summary, Appendix 3 Article 3(3) of the SCC Arbitration Rules 2023 outlines the considerations that the Arbitral Tribunal should take into account when deciding whether to permit a Third Person's submission in investor-state arbitration proceedings. These considerations focus on the relevance, assistance, and potential value of the submission, while also highlighting the importance of consulting the disputing parties and considering other relevant circumstances.

**(4) The Arbitral Tribunal may, after consulting the disputing parties, invite a Third Person to make a written submission on a material issue of fact or law in the arbitration. The Arbitral Tribunal shall not draw any inference from the absence of any submission or response to an invitation.**

Appendix 3 Article 3(4) of the SCC Arbitration Rules 2023 addresses the authority of the Arbitral Tribunal to invite a Third Person, who is neither a disputing party nor a non-disputing treaty party, to make a written submission on a material issue of fact or law in investor-state arbitration proceedings. This provision emphasises the Tribunal's ability to seek additional input while maintaining fairness and impartiality. Let us analyse the key elements of this provision:

1. **Invitation to Third Persons:** The provision grants the Arbitral Tribunal the discretion to extend an invitation to a Third Person to provide a written submission on a significant issue of fact or law in the arbitration. This authority recognises that the Tribunal may benefit from input beyond that of the disputing parties.
2. **Consultation with Disputing Parties:** The provision highlights the importance of consulting the disputing parties before inviting a Third Person to make a submission. This consultation ensures that the parties have an opportunity to provide input and potentially raise any concerns regarding the proposed submission.
3. **Material Issue of Fact or Law:** The provision specifies that the invitation to the Third Person should pertain to a material issue of fact or law in the arbitration. This requirement ensures that the submission is relevant and contributes to the resolution of key aspects of the dispute.
4. **Discretion and Flexibility:** By using the term "may" in granting the Arbitral Tribunal the authority to invite Third Persons, the provision allows for flexibility and discretion in deciding when and under what circumstances such invitations are appropriate.
5. **Impartiality and Fairness:** The provision safeguards impartiality by clarifying that the Tribunal shall not draw any inference from the absence of a submission or response to an invitation. This prevents the Tribunal from making assumptions or conclusions based on a Third Person's decision not to participate.
6. **Promotion of Comprehensive Consideration:** The provision aims to enhance the thoroughness and breadth of the decision-making process by enabling the Tribunal to seek input from external sources when necessary.
7. **Respect for Due Process:** By ensuring that the absence of a submission or response does not lead to adverse inferences, the provision respects the principles of due process and fairness in the arbitration proceedings.
8. **Maintaining Tribunal Control:** While allowing for Third Person submissions, the provision reaffirms the Tribunal's control over the proceedings and its ability to make decisions based on the overall context of the arbitration.

In summary, Appendix 3 Article 3(4) of the SCC Arbitration Rules 2023 grants the Arbitral Tribunal the authority to invite a Third Person to make a written submission on a material issue of fact or law in investor-state arbitration proceedings. This provision aims to promote a comprehensive and well-

informed decision-making process while maintaining fairness, impartiality, and the Tribunal's control over the proceedings. It also ensures that no adverse inferences are drawn from the absence of a submission or response to an invitation.

**(5) If permission is granted or an invitation by the Arbitral Tribunal accepted, the submission filed by the Third Person shall:**

**(i) be made in a language of the arbitration; and**

**(ii) set out a precise statement of the Third Person's position on the identified issue(s), in no case longer than as authorised by the Arbitral Tribunal.**

Appendix 3 Article 3(5) of the SCC Arbitration Rules 2023 outlines the requirements and parameters that govern the submissions made by Third Persons who have been granted permission or invited by the Arbitral Tribunal to participate in investor-state arbitration proceedings. This provision ensures that Third Person submissions are focused, relevant, and appropriately limited in scope. Let us analyse the key elements of this provision:

1. **Language of the Arbitration:** The provision requires that submissions by Third Persons be made in the language of the arbitration. This ensures that the submission can be understood by the Tribunal and other parties.
2. **Precise Statement of Position:** Third Person submissions are required to include a precise statement of the Third Person's position on the issue(s) identified by the Tribunal. This requirement emphasises the need for clear and concise articulation of the Third Person's stance.
3. **Focused and Relevant Submissions:** By mandating a precise statement of position, the provision aims to ensure that Third Person submissions are tightly focused on the identified issue(s) and contribute directly to the arbitration proceedings.
4. **Authorised Length:** The provision specifies that the length of the Third Person submission should not exceed the limit authorised by the Arbitral Tribunal. This limitation ensures that the submission remains within reasonable bounds and does not unduly prolong or complicate the proceedings.
5. **Managing the Process:** The provision allows the Tribunal to exercise control over the length of Third Person submissions, which helps in maintaining the efficiency and effectiveness of the arbitration process.
6. **Clarity and Transparency:** Requiring a clear and concise statement of position enhances transparency and facilitates the Tribunal's understanding of the Third Person's perspective.
7. **Encouraging Quality Submissions:** The requirement for a precise statement of position encourages Third Persons to focus on providing substantive and well-reasoned input on the identified issue(s).

8. Promotion of Fairness: By setting out specific requirements for Third Person submissions, the provision ensures that all parties, including Third Persons, adhere to the same standards of clarity and relevance.
9. Balancing Involvement and Efficiency: The provision strikes a balance between allowing Third Persons to contribute while avoiding excessive complexity or delay in the proceedings.

In summary, Appendix 3 Article 3(5) of the SCC Arbitration Rules 2023 sets out the guidelines for Third Person submissions in investor-state arbitration proceedings. The provision emphasises the need for focused, relevant, and concise statements of position while maintaining the Tribunal’s authority to determine the authorised length of submissions. This ensures that Third Person involvement adds value to the arbitration process while upholding efficiency, transparency, and fairness.

**(6) For the purposes of preparing its written submission, a Third Person may apply to the Arbitral Tribunal for access to submissions and evidence filed in the arbitration. The Arbitral Tribunal shall consult the disputing parties before ruling on the application, and shall take into account, and where appropriate safeguard, any confidentiality of the information in question.**

Appendix 3 Article 3(6) of the SCC Arbitration Rules 2023 addresses the ability of a Third Person, who has been granted permission or invited by the Arbitral Tribunal to make a submission in investor-state arbitration proceedings, to request access to submissions and evidence filed in the arbitration for the purpose of preparing their submission. This provision ensures transparency, balanced access to information, and consideration of confidentiality concerns. Let us analyse the key elements of this provision:

1. Access to Submissions and Evidence: The provision acknowledges that a Third Person may need access to the submissions and evidence filed by the disputing parties in order to adequately prepare their written submission.
2. Purpose of Access: The provision specifies that access to submissions and evidence is for the purpose of preparing the Third Person’s written submission. This helps ensure that the information accessed is used solely for the intended purpose.
3. Application to the Tribunal: The provision requires the Third Person to apply to the Arbitral Tribunal for access. This formal process ensures that the Tribunal is aware of the request and can assess its merits.
4. Consultation with Disputing Parties: The provision emphasises the importance of consulting the disputing parties before the Tribunal rules on the Third Person’s application for access. This consultation ensures that the parties have an opportunity to provide input and potentially raise concerns about the request.
5. Confidentiality Safeguards: The provision mandates that the Tribunal take into account and, where appropriate, safeguard the confidentiality of the information in question. This consideration ensures that sensitive or confidential information is protected and used only for legitimate purposes.

6. **Balancing Interests:** The provision strikes a balance between the Third Person’s need for access to relevant information and the need to protect the confidentiality of the arbitration process.
7. **Transparency and Participation:** By allowing Third Persons to access submissions and evidence, the provision promotes transparency and allows for informed and well-prepared contributions to the arbitration.
8. **Avoiding Prejudice:** The provision helps prevent any potential prejudice to the disputing parties by ensuring that the Third Person’s access to information is subject to appropriate safeguards.
9. **Fairness and Equality:** By establishing a process for Third Persons to request access to information, the provision supports fairness and equal participation in the arbitration proceedings.

In summary, Appendix 3 Article 3(6) of the SCC Arbitration Rules 2023 provides a mechanism for Third Persons to apply for access to submissions and evidence filed in investor-state arbitration proceedings for the purpose of preparing their own written submission. This provision ensures transparency, consideration of confidentiality, and fairness in allowing Third Persons to gather relevant information while respecting the interests of the disputing parties and maintaining the integrity of the arbitration process.

**(7) The Arbitral Tribunal may, at the request of a disputing party, or on its own motion:**

**(i) request further details from the Third Person regarding its submission; and**

**(ii) require that the Third Person attend a hearing to elaborate or be examined on its submission.**

Appendix 3 Article 3(7) of the SCC Arbitration Rules 2023 addresses the authority of the Arbitral Tribunal to seek additional information and involvement from a Third Person who has been granted permission or invited to make a submission in investor-state arbitration proceedings. This provision allows the Tribunal to gather more information and ensure a comprehensive understanding of the Third Person’s perspective. Let us analyse the key elements of this provision:

1. **Request for Further Details:** The provision grants the Arbitral Tribunal the authority to request additional details from the Third Person regarding their submission. This request can include seeking clarification, elaboration, or additional information to enhance the Tribunal’s understanding of the Third Person’s stance.
2. **Enhancing Tribunal’s Understanding:** By allowing the Tribunal to seek further details, the provision promotes a comprehensive and accurate consideration of the Third Person’s submission, contributing to the overall quality of decision-making.
3. **Consultation with Disputing Party:** The provision allows a disputing party to request that the Tribunal seek further details from the Third Person. This ensures that the parties have a mechanism to address any concerns or seek clarification on the Third Person’s submission.

4. **Independent Tribunal Motion:** The provision also grants the Tribunal the authority to initiate the request for further details on its own motion. This allows the Tribunal to proactively seek additional information when it deems it necessary for a thorough analysis.
5. **Attendance at a Hearing:** The provision enables the Tribunal to require the Third Person to attend a hearing for the purpose of elaborating on their submission or being examined on its contents. This provision facilitates direct interaction and questioning between the Tribunal and the Third Person.
6. **Clarification and Examination:** Requiring attendance at a hearing can provide an opportunity for the Tribunal to seek clarifications, delve deeper into certain points, and gain a better understanding of the Third Person's perspective.
7. **Balancing Information Gathering:** The provision ensures that the Tribunal has the tools to gather additional information from Third Persons when needed, while also maintaining a balanced and fair process.
8. **Transparency and Effective Decision-Making:** The provision contributes to transparency by allowing the Tribunal to directly engage with the Third Person, and it supports the Tribunal's ability to make well-informed decisions based on a comprehensive understanding of all relevant perspectives.
9. **Protection of Parties' Rights:** The provision balances the need for additional information with the parties' right to participate and respond to any further details provided by the Third Person.

In summary, Appendix 3 Article 3(7) of the SCC Arbitration Rules 2023 empowers the Arbitral Tribunal to request further details from a Third Person regarding their submission and to require the Third Person's attendance at a hearing for elaboration or examination. This provision enhances the Tribunal's ability to gather information, clarify points, and engage directly with Third Persons, contributing to a more thorough and well-informed consideration of the issues at hand in investor-state arbitration proceedings.

**(8) The Arbitral Tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by any Third Person.**

Appendix 3 Article 3(8) of the SCC Arbitration Rules 2023 establishes a crucial principle that safeguards the rights of disputing parties in investor-state arbitration proceedings when it comes to Third Person submissions. This provision ensures fairness, transparency, and equal opportunity for the disputing parties to respond to any submissions made by Third Persons. Let us analyse the key elements of this provision:

1. **Reasonable Opportunity:** The provision requires the Arbitral Tribunal to ensure that the disputing parties are provided with a reasonable opportunity to present their observations on any submission made by a Third Person. This obligation emphasises the importance of equitable and balanced proceedings.

2. **Right to Respond:** By giving the disputing parties an opportunity to present their observations, the provision upholds their right to be heard and respond to any arguments, perspectives, or evidence put forward by Third Persons.
3. **Preservation of Due Process:** This provision aligns with fundamental principles of due process, ensuring that all parties have an opportunity to engage in the proceedings and address any additional submissions that may impact the arbitration.
4. **Balancing Perspectives:** The requirement for disputing parties to present their observations ensures that the Tribunal considers different viewpoints and perspectives before making any decisions based on Third Person submissions.
5. **Transparency and Openness:** By allowing the disputing parties to respond, the provision enhances transparency in the proceedings and ensures that all parties have access to the same information.
6. **Equal Treatment:** The provision promotes the principle of equal treatment among the disputing parties and Third Persons, preventing any party from being disadvantaged by not having the chance to respond.
7. **Informed Decision-Making:** Allowing the disputing parties to present their observations helps the Tribunal make well-informed decisions by considering responses to Third Person submissions.
8. **Preventing Unforeseen Impact:** The provision prevents Third Person submissions from having an unforeseen or unaddressed impact on the arbitration outcome by providing the disputing parties with an opportunity to react.
9. **Maintaining Integrity of the Proceedings:** By ensuring that all parties have the opportunity to respond, the provision helps maintain the integrity of the arbitration process and promotes trust in its outcomes.

In summary, Appendix 3 Article 3(8) of the SCC Arbitration Rules 2023 emphasises the importance of ensuring that disputing parties have a reasonable opportunity to present their observations on any submissions by Third Persons in investor-state arbitration proceedings. This provision upholds the principles of fairness, due process, transparency, and equal treatment, ultimately contributing to a balanced and well-informed decision-making process.

**(9) The Arbitral Tribunal shall ensure that any Third Person submission does not disrupt or unduly burden the arbitral proceedings or unduly prejudice any disputing party.**

Appendix 3 Article 3(9) of the SCC Arbitration Rules 2023 establishes a principle that addresses the potential impact of Third Person submissions on the arbitration proceedings and the parties involved. This provision aims to ensure that Third Person submissions do not disrupt the proceedings, create undue burdens, or unfairly prejudice any disputing party. Let us analyse the key elements of this provision:

1. **Procedural Order:** The provision imposes an obligation on the Arbitral Tribunal to ensure that any Third Person submission is managed in a way that maintains the efficiency and order of the arbitration proceedings.
2. **Balancing Impact:** The provision emphasises the need to strike a balance between allowing Third Person participation and preventing disruptions or undue burdens. This balance is crucial for conducting a fair and effective arbitration.
3. **Efficiency and Timeliness:** By preventing disruptions, the provision contributes to the efficient conduct of the arbitration, ensuring that the proceedings move forward in a timely manner.
4. **Preventing Unfair Prejudice:** The provision aims to prevent any Third Person submission from unfairly prejudicing one or more disputing parties. This helps maintain the integrity of the arbitration process.
5. **Protecting Due Process:** Ensuring that Third Person submissions do not unduly burden or prejudice disputing parties helps protect the due process rights of all parties involved.
6. **Managing Potential Delays:** By preventing disruptions, the provision helps manage the risk of delays that could arise from the introduction of new submissions or information.
7. **Fostering Fairness:** The provision aligns with the overarching goal of fairness in the arbitration process by ensuring that Third Person submissions do not create an uneven playing field.
8. **Tribunal's Role in Case Management:** The provision underscores the Tribunal's authority and responsibility in managing the proceedings effectively, which includes managing the impact of Third Person involvement.
9. **Integrity of the Proceedings:** By avoiding disruptions and undue burdens, the provision contributes to maintaining the overall integrity and credibility of the arbitration process.

In summary, Appendix 3 Article 3(9) of the SCC Arbitration Rules 2023 highlights the importance of managing Third Person submissions in a way that prevents disruptions, undue burdens, and unfair prejudice to disputing parties. This provision ensures that the arbitration proceedings remain efficient, balanced, and fair, ultimately contributing to the successful resolution of the dispute while safeguarding the rights of all parties involved.

**(10) The Arbitral Tribunal may, as a condition for allowing a Third Person to make a submission, require that the Third Person provide security for reasonable legal or other costs expected to be incurred by the disputing parties as a result of the submission.**

Appendix 3 Article 3(10) of the SCC Arbitration Rules 2023 introduces a provision that grants the Arbitral Tribunal the authority to impose a condition on a Third Person who wishes to make a submission in investor-state arbitration proceedings. This condition involves requiring the Third Person to provide security to cover the reasonable legal or other costs that the disputing parties are expected to incur as a result of the submission. Let us analyse the key elements of this provision:



1. **Security Requirement:** The provision empowers the Arbitral Tribunal to make the Third Person's participation contingent on providing security for costs. This requirement is aimed at ensuring that the Third Person is financially accountable for any potential costs arising from their involvement.
2. **Balancing Interests:** The provision strikes a balance between allowing Third Person participation and safeguarding the interests of the disputing parties. It acknowledges that the introduction of Third Person submissions could lead to additional costs for the disputing parties.
3. **Mitigating Financial Impact:** Requiring security helps mitigate the potential financial burden that Third Person submissions could impose on the disputing parties, ensuring that they are not unfairly disadvantaged by the Third Person's involvement.
4. **Reasonable Costs:** The provision refers to "reasonable legal or other costs". This implies that the security requirement is linked to costs that can be objectively justified and are reasonably related to the Third Person's participation.
5. **Preventing Frivolous Submissions:** Requiring security may discourage frivolous or baseless Third Person submissions, as the Third Person would need to assess the potential financial implications before participating.
6. **Transparency and Accountability:** Requiring security contributes to transparency and accountability by ensuring that the Third Person is financially committed to the process and its potential consequences.
7. **Avoiding Undue Disruption:** By ensuring that Third Persons have a financial stake in their submissions, the provision aims to discourage submissions that could unduly disrupt the proceedings or cause unnecessary delays.
8. **Potential for Cost Recovery:** The security provided by the Third Person could potentially be used to cover costs incurred by the disputing parties as a result of the submission, thus addressing the concerns related to costs.
9. **Protecting Due Process:** While imposing a security requirement, the provision should be balanced to avoid creating barriers to legitimate Third Person participation, which could potentially impact due process.

In summary, Appendix 3 Article 3(10) of the SCC Arbitration Rules 2023 grants the Arbitral Tribunal the authority to require a Third Person to provide security for reasonable legal or other costs expected to be incurred by the disputing parties as a result of the submission. This provision is designed to balance the interests of all parties, prevent undue financial burdens, and promote transparency and accountability in the arbitration process.

**Article 4 Submission by a non-disputing treaty party**

**(1) Subject to Article 3 (9) of this Appendix, as applied by Article 4 (4) below, the Arbitral Tribunal shall allow or, after consulting the disputing parties, may invite, submissions from a non-disputing treaty party on issues of treaty interpretation that are material to the outcome of the case.**

Appendix 3 Article 4(1) of the SCC Arbitration Rules 2023 introduces a provision that addresses the participation of non-disputing treaty parties in investor-state arbitration proceedings. Specifically, this provision outlines the circumstances under which the Arbitral Tribunal shall allow or may invite submissions from a non-disputing treaty party on issues of treaty interpretation that are material to the outcome of the case. Let us analyse the key elements of this provision:

1. **Non-Disputing Treaty Party Participation:** The provision focuses on the potential involvement of non-disputing treaty parties, which are parties that are not directly involved as disputing parties but have a stake in the treaty under which the dispute arises.
2. **Scope of Participation:** Non-disputing treaty parties may be allowed to participate in the arbitration proceedings by making submissions on specific issues, namely, issues of treaty interpretation that are material to the outcome of the case.
3. **Treaty Interpretation:** The provision highlights the significance of treaty interpretation as a basis for non-disputing treaty parties' participation. This emphasises the importance of clarifying the meaning and scope of treaty provisions.
4. **Materiality Requirement:** Non-disputing treaty parties are permitted to make submissions only on issues of treaty interpretation that are deemed material to the outcome of the case. This requirement ensures that their participation is relevant to the dispute resolution process.
5. **Balancing Non-Disputing Party Participation:** The provision takes into account the potential impact of non-disputing treaty party submissions on the proceedings, as noted by the reference to Article 3(9) of the same Appendix. This reflects the need to ensure that such submissions do not disrupt or unduly burden the proceedings.
6. **Consultation with Disputing Parties:** The provision allows the Arbitral Tribunal to consult with the disputing parties before deciding whether to invite non-disputing treaty party submissions. This consultation process ensures that the parties have an opportunity to express their views on whether non-disputing treaty parties should be invited to participate.
7. **Promoting Treaty Consistency:** Allowing non-disputing treaty parties to provide input on treaty interpretation aligns with the goal of achieving consistent and coherent interpretations of the relevant treaty provisions.
8. **Ensuring Comprehensive Understanding:** Non-disputing treaty party submissions can provide additional perspectives and insights into the interpretation of treaty provisions, enhancing the Tribunal's understanding of the treaty framework.
9. **Balancing Non-Disputing Party Rights and Efficiency:** While promoting participation, the provision also considers the need to maintain the efficiency of the proceedings and prevent undue disruption, as indicated by the reference to Article 3(9).

In summary, Appendix 3 Article 4(1) of the SCC Arbitration Rules 2023 outlines the circumstances under which non-disputing treaty parties may participate in investor-state arbitration proceedings by making submissions on issues of treaty interpretation that are material to the case's outcome. The provision strikes a balance between promoting participation, ensuring relevant contributions, and safeguarding the efficiency and fairness of the arbitration process.

**(2) The Arbitral Tribunal, after consulting the disputing parties, may allow or invite submissions from a non-disputing treaty party on other material issues in the arbitration. In determining whether to allow or invite such submissions, the Arbitral Tribunal shall have regard to:**

- (i) the matters referred to in Article 3 (3) of this Appendix;**
- (ii) the need to avoid submissions appearing to support the investor's claim in a manner tantamount to diplomatic protection; and**
- (iii) any other relevant circumstances.**

Appendix 3 Article 4(2) of the SCC Arbitration Rules 2023 expands on the participation of non-disputing treaty parties in investor-state arbitration proceedings, focusing on the circumstances under which such parties may provide submissions on issues beyond treaty interpretation. This provision outlines the factors the Arbitral Tribunal should consider when allowing or inviting non-disputing treaty party submissions on other material issues in the arbitration. Let us analyse the key elements of this provision:

1. **Expansion of Participation Scope:** This provision extends the potential involvement of non-disputing treaty parties to issues other than treaty interpretation. It emphasises that such parties may be allowed to make submissions on other material issues in the arbitration.
2. **Consultation with Disputing Parties:** The provision recognises the importance of consulting the disputing parties before deciding whether to allow or invite non-disputing treaty party submissions on other material issues. This consultation process ensures that the parties have input into the decision-making process.
3. **Relevance of Submissions:** Non-disputing treaty party submissions on other material issues should be relevant and contribute to the resolution of the dispute. The provision emphasises the need for submissions to address matters that are pertinent to the arbitration.
4. **Reference to Article 3(3):** The provision directs the Tribunal to consider the matters outlined in Article 3(3) of the same Appendix when determining whether to allow or invite non-disputing treaty party submissions. Article 3(3) addresses the Tribunal's consideration of the nature and significance of the Third Person's interest in the arbitration.
5. **Avoidance of Diplomatic Protection:** The provision highlights the need to prevent non-disputing treaty party submissions from appearing to support the investor's claim in a manner similar to diplomatic protection. This concern aims to avoid potential conflicts of interest or bias.

6. **Maintaining Impartiality:** By avoiding submissions that resemble diplomatic protection, the provision ensures that the arbitration process remains impartial and focused on the substantive legal and factual issues.
7. **Balancing Perspectives:** The provision underscores the Tribunal's responsibility to consider multiple perspectives while preventing any undue influence on the proceedings.
8. **Avoiding Prejudice:** Preventing submissions that resemble diplomatic protection helps ensure that the Tribunal's decisions are based on the merits of the case rather than extraneous factors.
9. **Other Relevant Circumstances:** The provision grants the Tribunal flexibility to consider any additional relevant circumstances that may impact the decision to allow or invite non-disputing treaty party submissions on other material issues.

In summary, Appendix 3 Article 4(2) of the SCC Arbitration Rules 2023 elaborates on the circumstances under which non-disputing treaty parties may participate in investor-state arbitration proceedings by providing submissions on issues beyond treaty interpretation. The provision emphasises the importance of relevant submissions, impartiality, and avoiding any appearance of diplomatic protection. It reflects a balanced approach that promotes fair participation while safeguarding the integrity of the arbitration process.

**(3) The Arbitral Tribunal shall not draw any inference from the absence of any submission or response to any invitation pursuant to paragraph (1) or (2) above.**

Appendix 3 Article 4(3) of the SCC Arbitration Rules 2023 establishes an important principle regarding the absence of submissions or responses from non-disputing treaty parties. This provision emphasises that the Arbitral Tribunal should not draw any inference from the lack of a submission or response by a non-disputing treaty party in relation to the provisions outlined in paragraphs (1) or (2) of the same Appendix. Let us analyse the key elements of this provision:

1. **Absence of Inference:** The provision makes it clear that the Arbitral Tribunal should refrain from inferring or assuming any meaning, intent, or position from the absence of a submission or response by a non-disputing treaty party.
2. **Neutrality and Fairness:** By explicitly prohibiting the Tribunal from drawing inferences, the provision upholds the principles of neutrality and fairness. It prevents any potential bias or prejudice that could arise from interpreting silence or lack of participation.
3. **Preserving Impartiality:** The provision contributes to maintaining the impartiality of the Tribunal's decision-making process. It ensures that the Tribunal's determinations are based solely on the evidence, arguments, and submissions presented, rather than on any perceived implications from the absence of participation.
4. **Avoiding Unfounded Conclusions:** The provision prevents the Tribunal from making unfounded conclusions or assumptions about a non-disputing treaty party's position or interests solely based on the absence of participation.

5. Respecting Voluntary Participation: By not drawing inferences from the absence of participation, the provision respects the voluntary nature of non-disputing treaty party submissions and responses. It acknowledges that non-participation should not be interpreted as having any particular significance.
6. Preserving Due Process: The provision ensures that all parties, including non-disputing treaty parties, are treated fairly and in accordance with due process. It prevents any potential adverse impact on parties who choose not to participate.
7. Enhancing Transparency: By not inferring meaning from non-participation, the provision contributes to transparency and clarity in the arbitration process, as parties are encouraged to express their positions directly.
8. Managing Procedural Uncertainty: The provision helps manage potential uncertainties that may arise from non-participation, ensuring that the absence of a submission or response does not create confusion or affect the overall proceedings.

In summary, Appendix 3 Article 4(3) of the SCC Arbitration Rules 2023 underscores the importance of not drawing any inference from the absence of any submission or response by a non-disputing treaty party regarding the provisions outlined in paragraphs (1) or (2). This provision upholds the principles of fairness, impartiality, and due process, preventing any misconceptions or biases that could arise from the lack of participation by a non-disputing treaty party.

**(4) Article 3 (5)–(9) of this Appendix shall apply equally to any submission by a non-disputing treaty party.**

Appendix 3 Article 4(4) of the SCC Arbitration Rules 2023 establishes the application of specific provisions from Article 3 of the same Appendix to submissions made by non-disputing treaty parties in investor-state arbitration proceedings. This provision ensures that certain principles governing Third Person participation also apply to non-disputing treaty party submissions. Let us analyse the key elements of this provision:

1. Extension of Provisions: The provision specifies that the provisions outlined in Article 3(5)-(9) of the same Appendix are extended to cover submissions made by non-disputing treaty parties.
2. Uniform Application: By applying the specified provisions equally, the provision ensures a consistent and uniform approach to the participation of both Third Persons and non-disputing treaty parties. This promotes clarity and fairness in the arbitration process.
3. Balancing Non-Disputing Party Participation: The referenced provisions in Article 3 address various aspects of Third Person participation, such as disclosure of affiliations, financial assistance, interest in the arbitration, and the impact on proceedings. Applying these provisions to non-disputing treaty party submissions helps maintain a balanced and equitable framework.
4. Transparency and Accountability: The provision contributes to transparency and accountability by requiring non-disputing treaty parties to adhere to the same standards and requirements as Third Persons when making submissions.

5. **Equal Treatment:** Applying the same provisions to non-disputing treaty parties as to Third Persons ensures that similar circumstances are treated consistently, regardless of the category to which the party belongs.
6. **Protecting Due Process:** By applying the provisions governing participation, the provision safeguards the due process rights of all parties involved, promoting a fair and orderly arbitration process.
7. **Avoiding Prejudice:** Ensuring consistent application of the specified provisions helps prevent any potential prejudice or bias that could arise from differing treatment of Third Persons and non-disputing treaty parties.
8. **Clarity in Procedure:** The provision contributes to procedural clarity by clearly indicating the rules and requirements that non-disputing treaty parties must adhere to when participating in the arbitration proceedings.

In summary, Appendix 3 Article 4(4) of the SCC Arbitration Rules 2023 extends the application of specific provisions from Article 3 to submissions made by non-disputing treaty parties. By doing so, it maintains uniformity, transparency, and fairness in the participation of non-disputing treaty parties, aligning their involvement with the principles established for Third Person participation in investor-state arbitration proceedings.

## APPENDIX IV SCHEDULE OF COSTS

## COSTS OF THE ARBITRATION

**Article 1 Registration fee****(1) The registration fee referred to in Article 7 of the Arbitration Rules is EUR 3 000.**

Appendix 4 Article 1(1) of the SCC Arbitration Rules 2023 sets forth the specific amount of the registration fee that is applicable in arbitration cases administered by the SCC. This provision outlines the monetary value of the registration fee for arbitration proceedings. Let us analyse the key elements of this provision:

1. **Registration Fee Amount:** The provision states that the registration fee, which is referenced in Article 7 of the main Arbitration Rules, is set at EUR 3,000. The registration fee is a payment required from parties at the outset of the arbitration process to initiate their case with the SCC.
2. **Fixed Monetary Value:** The provision establishes a fixed and specific monetary value for the registration fee, which simplifies the fee structure and provides clarity to the parties about the initial financial obligation.
3. **Transparency:** By specifying the exact amount of the registration fee, the provision contributes to transparency in the arbitration process, ensuring that parties are aware of the financial aspect of initiating their case.
4. **Predictability:** Parties can anticipate and budget for the registration fee, given that its amount is clearly defined. This predictability helps parties plan their financial commitments in advance.
5. **Equal Treatment:** The provision ensures that all parties involved in SCC-administered arbitrations are subject to the same registration fee, promoting fairness and consistency in the financial aspect of the proceedings.
6. **Simplicity:** The provision's straightforward approach simplifies the process of calculating and collecting the registration fee, reducing potential confusion or disputes related to the fee's determination.
7. **Administrative Efficiency:** The fixed amount of the registration fee can contribute to administrative efficiency by streamlining the fee collection process and reducing the need for individualised calculations.
8. **Access to Justice:** A clear and reasonable registration fee can help ensure that parties, including smaller or less financially robust entities, have access to the arbitration process without being overly burdened by upfront costs.

In summary, Appendix 4 Article 1(1) of the SCC Arbitration Rules 2023 establishes the specific registration fee amount of EUR 3,000 for initiating arbitration proceedings under the SCC's administration. The provision enhances transparency, predictability, and administrative efficiency in the arbitration process, promoting equal treatment of parties and access to justice.

**(2) The registration fee is non-refundable and constitutes a part of the administrative fee in Article 3 below. The registration fee shall be credited to the advance on costs to be paid by the claimant pursuant to Article 51 of the Arbitration Rules.**

Appendix 4 Article 1(2) of the SCC Arbitration Rules 2023 provides additional details and context regarding the registration fee specified in the previous provision (Article 1(1)). This provision outlines the non-refundable nature of the registration fee, its relationship to the administrative fee, and its role in the overall cost structure of the arbitration proceedings. Let us analyse the key elements of this provision:

1. **Non-Refundable Nature:** The provision states that the registration fee is non-refundable. This means that once the fee is paid, it will not be returned to the paying party, regardless of the subsequent course of the arbitration proceedings.
2. **Integration with Administrative Fee:** The provision indicates that the registration fee constitutes a part of the administrative fee, which is a broader fee covering the costs associated with the administration of the arbitration proceedings by the SCC.
3. **Unified Fee Structure:** By linking the registration fee to the administrative fee, the provision establishes a unified fee structure that covers both the initial administrative tasks and the ongoing management of the arbitration process.
4. **Efficient Fee Allocation:** The provision ensures an efficient allocation of the registration fee towards covering the administrative costs of initiating and managing the arbitration case.
5. **Crediting the Advance on Costs:** The provision specifies that the registration fee will be credited to the advance on costs paid by the claimant. This means that the amount paid as the registration fee will be subtracted from the total advance on costs that the claimant is required to pay under Article 51 of the main Arbitration Rules.
6. **Cost Allocation Mechanism:** The provision establishes a clear mechanism for allocating the registration fee within the broader context of the arbitration's financial framework, ensuring that the fee contributes to covering the overall costs of the proceedings.
7. **Financial Transparency:** By outlining how the registration fee interacts with the advance on costs and administrative fee, the provision contributes to financial transparency, allowing parties to understand how their payments are applied to the various aspects of the arbitration process.
8. **Financial Predictability:** Parties can anticipate the allocation of their registration fee towards the advance on costs, which aids in financial planning and predictability throughout the arbitration.

In summary, Appendix 4 Article 1(2) of the SCC Arbitration Rules 2023 clarifies the non-refundable nature of the registration fee, its relationship to the administrative fee, and its role in the allocation of costs. The provision contributes to financial transparency, efficiency, and predictability in the arbitration proceedings, ensuring that parties understand the financial aspects of initiating and participating in the process.



## Article 2 Fees of the Arbitral Tribunal

**(1) The Board shall determine the fee of a chairperson or sole arbitrator based on the amount in dispute in accordance with the table found at [www.sccarbitrationinstitute.com](http://www.sccarbitrationinstitute.com).**

Appendix 4 Article 2(1) of the SCC Arbitration Rules 2023 outlines the procedure for determining the fee of a chairperson or sole arbitrator in arbitration proceedings administered by the SCC. This provision specifies that the fee is determined based on the amount in dispute, as indicated in a table available on the SCC’s website. Let us analyse the key elements of this provision:

1. **Fee Determination Process:** The provision sets out the process for determining the fee of a chairperson or sole arbitrator. This fee is distinct from the administrative fee and covers the compensation for the arbitrator’s services.
2. **Chairperson or Sole Arbitrator:** The provision is specific to cases where there is either a chairperson or a sole arbitrator. In arbitrations with a tribunal of three arbitrators, different fee provisions may apply.
3. **Amount in Dispute as Basis:** The fee determination is linked to the “amount in dispute”, which refers to the monetary value of the claim or claims presented in the arbitration proceedings.
4. **Reference to External Source:** The provision refers parties to a specific external source for fee calculation. The table for determining the fee is located on the SCC Arbitration Institute’s website ([www.sccarbitrationinstitute.com](http://www.sccarbitrationinstitute.com)).
5. **Transparent Fee Structure:** By providing a clear reference to an online table, the provision promotes transparency and predictability in the fee determination process. Parties can access the table to understand how the fee is calculated based on the amount in dispute.
6. **Objective Criteria:** The fee determination is based on an objective criterion—the amount in dispute—which helps parties anticipate the costs associated with the arbitration proceedings.
7. **Consistency and Standardisation:** The provision’s reliance on a standardised table helps ensure consistency in fee determination across different cases and arbitrators.
8. **Effective Use of Resources:** By providing a predefined fee structure, the provision streamlines the fee calculation process, making efficient use of time and resources.
9. **Accessible Information:** The provision points parties to a specific website where they can find the relevant fee table, ensuring easy access to the information they need.
10. **Adaptive to Case Value:** Linking the fee to the amount in dispute reflects the principle that the arbitrator’s compensation should be proportionate to the value of the dispute, contributing to fairness and balanced cost allocation.

In summary, Appendix 4 Article 2(1) of the SCC Arbitration Rules 2023 outlines a straightforward and transparent process for determining the fee of a chairperson or sole arbitrator based on the amount

in dispute. By referring parties to an external table on the SCC Arbitration Institute’s website, the provision ensures consistency, fairness, and predictability in the fee calculation process.

**(2) Co-arbitrators shall each receive 60 per cent of the fee of the chairperson. After consultation with the Arbitral Tribunal, the Board may decide that a different percentage shall apply.**

Appendix 4 Article 2(2) of the SCC Arbitration Rules 2023 addresses the determination of the fee for co-arbitrators in arbitration proceedings administered by the SCC. This provision outlines the percentage of the chairperson’s fee that co-arbitrators shall receive and allows for potential adjustments through consultation with the Arbitral Tribunal and decision by the Board. Let us analyse the key elements of this provision:

1. **Co-Arbitrator Fee:** The provision specifically deals with the compensation for co-arbitrators, who are members of a tribunal alongside the chairperson or sole arbitrator.
2. **Percentage of Chairperson’s Fee:** According to the provision, co-arbitrators are entitled to receive 60 percent of the fee of the chairperson. This establishes a proportionate and structured approach to fee allocation within the tribunal.
3. **Proportionality in Compensation:** The provision ensures that the compensation for co-arbitrators is directly related to the fee received by the chairperson. This principle of proportionality reflects the respective roles and responsibilities of the tribunal members.
4. **Flexibility for Adjustment:** The provision allows for flexibility by indicating that, with consultation with the Arbitral Tribunal, the Board may decide to apply a different percentage than the default 60 percent.
5. **Consultation Requirement:** The provision emphasises the importance of consultation with the Arbitral Tribunal before making a decision on adjusting the percentage for co-arbitrator compensation. This promotes collaboration and consensus among tribunal members.
6. **Board Decision Authority:** The provision vests the authority to decide on an alternative percentage with the Board. This demonstrates a centralised decision-making process that considers factors such as case complexity, time commitment, and the role of each co-arbitrator.
7. **Customisation for Unique Cases:** Allowing the Board to make adjustments based on consultation acknowledges that each arbitration case may have unique characteristics that could warrant a different co-arbitrator fee percentage.
8. **Balanced Fee Structure:** By setting a specific percentage and providing an avenue for adjustments, the provision contributes to a balanced fee structure that takes into account the various contributions and roles within the Arbitral Tribunal.
9. **Efficiency and Fairness:** The provision’s flexibility and consultation requirement help ensure efficient and fair fee allocation, aligning compensation with the specific circumstances of the arbitration.

In summary, Appendix 4 Article 2(2) of the SCC Arbitration Rules 2023 establishes a framework for determining the fee of co-arbitrators in relation to the chairperson's fee. The provision's default percentage of 60 percent for co-arbitrators, along with the option to adjust the percentage after consultation with the Arbitral Tribunal and a decision by the Board, creates a balanced, flexible, and collaborative approach to co-arbitrator compensation within SCC-administered arbitration proceedings.

**(3) The amount in dispute shall be the aggregate value of all claims, counterclaims and set-offs. Where the amount in dispute cannot be ascertained, the Board shall determine the fees of the Arbitral Tribunal having regard to all relevant circumstances.**

Appendix 4 Article 2(3) of the SCC Arbitration Rules 2023 addresses the determination of the amount in dispute and the corresponding fee of the Arbitral Tribunal in arbitration proceedings administered by the SCC. This provision specifies how the amount in dispute is calculated and establishes a mechanism for cases where the amount in dispute cannot be ascertained. Let us analyse the key elements of this provision:

1. **Calculation of Amount in Dispute:** The provision states that the "amount in dispute" is the combined value of all claims, counterclaims, and set-offs presented in the arbitration. This aggregate value serves as a basis for determining the fee of the Arbitral Tribunal.
2. **Comprehensive Scope:** By considering claims, counterclaims, and set-offs, the provision ensures that all relevant financial aspects of the arbitration are included in the calculation. This helps in determining an accurate and comprehensive assessment of the dispute's value.
3. **Equitable Fee Determination:** The amount in dispute plays a crucial role in determining the fee of the Arbitral Tribunal. By using the aggregate value of claims and counterclaims, the fee calculation is tied to the financial stakes of the parties, promoting an equitable allocation of costs.
4. **Uncertain Amount in Dispute:** The provision acknowledges that in some cases, it may be challenging to ascertain the precise amount in dispute. This could occur due to complex or evolving claims, or other reasons that make a straightforward calculation difficult.
5. **Board's Role in Determination:** When the amount in dispute cannot be ascertained, the provision empowers the Board to determine the fees of the Arbitral Tribunal. This authority is exercised based on a consideration of all relevant circumstances.
6. **Flexibility and Discretion:** The provision grants the Board the discretion to determine the fees based on a broader evaluation of the case's characteristics, complexity, and other pertinent factors. This approach ensures that the fee determination remains flexible and adaptable to unique situations.
7. **Case-Specific Evaluation:** The provision acknowledges that every arbitration case is unique, and the Board's determination takes into account the specific context and features of the dispute.

8. **Fairness and Practicality:** By allowing the Board to consider all relevant circumstances, the provision seeks to ensure that the fee determination remains fair, practical, and reasonable in light of the circumstances.
9. **Administrative Efficiency:** The provision's mechanism for cases with uncertain amounts in dispute contributes to the administrative efficiency of the arbitration process, as it provides a structured approach for handling fee determinations in complex or ambiguous situations.

In summary, Appendix 4 Article 2(3) of the SCC Arbitration Rules 2023 establishes a clear framework for determining the amount in dispute and the corresponding fee of the Arbitral Tribunal. By incorporating the aggregate value of claims, counterclaims, and set-offs, and allowing the Board to determine fees in cases of uncertain amounts in dispute, the provision ensures a fair, flexible, and practical approach to fee calculation in SCC-administered arbitration proceedings.

**(4) In exceptional circumstances, the Board may deviate from the amounts set out in the table.**

Appendix 4 Article 2(4) of the SCC Arbitration Rules 2023 addresses the possibility of the Board deviating from the predetermined fee amounts outlined in the table for arbitrator compensation. This provision acknowledges the existence of exceptional circumstances that might warrant departing from the standard fee schedule. Let us analyse the key elements of this provision:

1. **Flexibility for Unique Cases:** The provision recognises that not all arbitration cases fit neatly into the predetermined fee amounts set out in the table. It allows for flexibility and discretion in situations where the standard fee structure may not be appropriate due to extraordinary circumstances.
2. **Board's Discretion:** The provision vests the authority to deviate from the table amounts with the Board. This emphasises the centralised decision-making process and the importance of the Board's judgment in evaluating exceptional circumstances.
3. **Exceptional Circumstances:** The provision does not define what constitutes "exceptional circumstances". This lack of specific definition gives the Board the latitude to determine whether a given situation justifies a departure from the standard fee amounts.
4. **Case-by-Case Consideration:** The provision underscores the principle that each case is unique and may present specific factors that warrant a departure from the standard fee structure. This promotes a case-specific and tailored approach to fee determination.
5. **Balanced Approach:** The provision aims to strike a balance between maintaining a predictable fee structure and accommodating situations that genuinely require a different approach due to their unique nature.
6. **Equitable Fee Allocation:** By allowing for deviations in exceptional circumstances, the provision contributes to a fair allocation of costs that reflects the specific needs and complexities of each case.
7. **Transparency and Explanation:** While the provision permits deviations, it is reasonable to assume that the Board's decision-making process would involve transparency and a

rationale for the deviation, ensuring parties are informed and can understand the basis for the decision.

8. **Avoiding Undue Financial Impact:** The provision serves as a safeguard against situations where adhering to the standard fee structure could lead to undue financial burdens or unfair outcomes for the parties involved.
9. **Responsive to Unforeseen Issues:** Exceptional circumstances could include unexpected developments or challenges arising during the course of the arbitration that were not anticipated when the fee table was established.

In summary, Appendix 4 Article 2(4) of the SCC Arbitration Rules 2023 introduces a degree of flexibility by allowing the Board to deviate from the predetermined fee amounts in cases of exceptional circumstances. This provision ensures that the fee determination process remains adaptable to unique situations, while still emphasising transparency, fairness, and a balanced approach to arbitrator compensation in SCC-administered arbitration proceedings.

### Article 3 Administrative fee

**(1) The administrative fee shall be determined based on the amount in dispute in accordance with the table found at [www.sccarbitrationinstitute.com](http://www.sccarbitrationinstitute.com).**

Appendix 4 Article 3(1) of the SCC Arbitration Rules 2023 outlines the process for determining the administrative fee in arbitration proceedings administered by the SCC. This provision specifies that the administrative fee is determined based on the amount in dispute, with reference to a table available on the SCC Arbitration Institute’s website. Let us analyse the key elements of this provision:

1. **Administrative Fee Determination:** The provision addresses the calculation of the administrative fee, which covers the costs associated with the administration of the arbitration proceedings by the SCC.
2. **Amount in Dispute:** The administrative fee calculation is directly linked to the “amount in dispute”, which refers to the combined value of all claims, counterclaims, and set-offs presented in the arbitration.
3. **Objective Criterion:** The provision employs an objective criterion, the amount in dispute, to determine the administrative fee. This helps ensure a transparent and predictable fee calculation process.
4. **Reference to External Source:** The provision directs parties to a specific external source, the SCC Arbitration Institute’s website ([www.sccarbitrationinstitute.com](http://www.sccarbitrationinstitute.com)), where they can access the table for determining the administrative fee based on the amount in dispute.
5. **Transparency and Predictability:** By providing parties with access to the fee calculation table, the provision promotes transparency and predictability in the arbitration process, allowing parties to understand how the administrative fee is determined.

6. **Standardised Fee Structure:** The use of a predefined table for fee calculation creates a standardised structure that contributes to consistency and fairness in fee allocation across different arbitration cases.
7. **Efficiency:** The provision streamlines the administrative fee calculation process by providing parties with a clear reference point and a user-friendly mechanism for determining the fee.
8. **Equitable Allocation of Costs:** The administrative fee is based on the value of the dispute, aligning the fee calculation with the financial stakes involved in the arbitration. This promotes an equitable distribution of administrative costs among the parties.
9. **Adaptive to Case Value:** Linking the administrative fee to the amount in dispute reflects the principle that the administrative costs should be proportionate to the value of the dispute, contributing to a balanced cost allocation.
10. **Accessibility of Information:** By referring parties to an external website, the provision ensures that parties have easy access to the relevant fee calculation information, fostering a user-friendly and efficient arbitration process.

In summary, Appendix 4 Article 3(1) of the SCC Arbitration Rules 2023 establishes a clear and transparent process for determining the administrative fee based on the amount in dispute. By linking the fee calculation to an objective criterion and providing a reference to an external fee calculation table, the provision contributes to fairness, efficiency, and predictability in SCC-administered arbitration proceedings.

**(2) The amount in dispute shall be the aggregate value of all claims, counterclaims and set-offs. Where the amount in dispute cannot be ascertained, the Board shall determine the administrative fee having regard to all relevant circumstances.**

Appendix 4 Article 3(2) of the SCC Arbitration Rules 2023 addresses the calculation of the administrative fee in arbitration proceedings administered by the SCC. This provision outlines how the “amount in dispute” is calculated for the purpose of determining the administrative fee and specifies what happens in cases where the amount in dispute cannot be ascertained. Let us analyse the key elements of this provision:

1. **Calculation of Amount in Dispute:** The provision reiterates the concept introduced in Article 3(1) regarding the “amount in dispute”. This amount is determined by aggregating the values of all claims, counterclaims, and set-offs presented in the arbitration.
2. **Comprehensive Scope:** By considering claims, counterclaims, and set-offs, the provision ensures that the calculation of the amount in dispute encompasses all relevant financial aspects of the arbitration, promoting a comprehensive and accurate assessment.
3. **Equitable Fee Allocation:** The administrative fee calculation is directly linked to the aggregate value of claims, counterclaims, and set-offs. This approach aligns the administrative fee with the financial stakes of the parties, contributing to an equitable distribution of costs.

4. **Uncertain Amount in Dispute:** The provision anticipates situations where it might be difficult to ascertain the precise amount in dispute, possibly due to complex or evolving claims or other circumstances.
5. **Board's Role in Determination:** When the amount in dispute cannot be ascertained, the provision empowers the Board to determine the administrative fee based on all relevant circumstances.
6. **Flexible Fee Calculation:** The provision allows for flexibility in determining the administrative fee when the amount in dispute is uncertain. This ensures that the fee calculation remains adaptable to unique and complex cases.
7. **Balanced Approach:** The provision emphasises the importance of considering "all relevant circumstances" when determining the administrative fee. This underscores the need for a balanced and fair approach to fee calculation, even in cases of uncertainty.
8. **Case-Specific Evaluation:** Similar to Article 2(3), the provision acknowledges that each arbitration case is unique and may present specific factors that influence the calculation of the administrative fee.
9. **Efficiency:** By providing a mechanism for cases where the amount in dispute cannot be easily determined, the provision contributes to the administrative efficiency of the arbitration process.

In summary, Appendix 4 Article 3(2) of the SCC Arbitration Rules 2023 establishes a clear framework for calculating the administrative fee based on the amount in dispute. It addresses cases where the amount in dispute is uncertain by allowing the Board to determine the fee based on all relevant circumstances. This provision promotes fairness, flexibility, and transparency in SCC-administered arbitration proceedings, ensuring that the administrative fee calculation remains appropriate and adaptable to a wide range of scenarios.

**(3) Under exceptional circumstances, the Board may deviate from the amounts set out in the table.**

Appendix 4 Article 3(3) of the SCC Arbitration Rules 2023 pertains to exceptional circumstances that may warrant a departure from the predetermined amounts specified in the table for calculating the administrative fee in arbitration proceedings administered by the SCC. Let us analyse the key elements of this provision:

1. **Flexibility for Unique Cases:** This provision acknowledges that there may be instances where the standard administrative fee amounts outlined in the table are not suitable due to extraordinary or exceptional circumstances.
2. **Discretion of the Board:** The provision empowers the Board to exercise its judgment and discretion in determining whether exceptional circumstances exist that would justify a deviation from the standard fee amounts.
3. **Case-Specific Evaluation:** The term "exceptional circumstances" is not defined, allowing the Board to consider a variety of factors that might warrant a departure from the standard fee structure in unique or unforeseen situations.

4. **Balancing Equitable Allocation and Flexibility:** While the standard fee table provides a predictable and structured approach to fee calculation, this provision introduces an element of flexibility to ensure that the administrative fee remains equitable and proportional to the specific circumstances of the case.
5. **Transparent Decision-Making:** Although the provision allows for deviations, it is reasonable to assume that the Board’s decision-making process would involve transparency and rationale for the deviation, ensuring parties are informed about the basis for the decision.
6. **Responding to Unforeseen Challenges:** Exceptional circumstances could encompass various situations, such as unexpected developments or challenges arising during the arbitration that were not anticipated when the fee table was established.
7. **Preventing Unjust Burden:** The provision serves as a safeguard against situations where adhering to the standard fee structure could lead to undue financial burdens or unfair outcomes for the parties involved.
8. **Consistency with Fairness:** While allowing deviations, the provision also implies that such deviations should be consistent with the principle of fairness and equitable cost allocation among the parties.
9. **Maintaining Predictability:** While providing flexibility, the provision still underscores the importance of a predictable and structured approach to fee calculation in most cases.

In summary, Appendix 4 Article 3(3) of the SCC Arbitration Rules 2023 introduces the possibility of deviating from the standard administrative fee amounts outlined in the table under exceptional circumstances. This provision ensures that the administrative fee calculation process remains adaptable to unforeseen or unique situations while still emphasising fairness, transparency, and a balanced approach to cost allocation in SCC-administered arbitration proceedings.

#### **Article 4 Expenses**

**In addition to the fees of the arbitrator(s) and the administrative fee, the Board shall fix an amount to cover any reasonable expenses incurred by the arbitrator(s) and the SCC. The expenses of the arbitrator(s) may include the fee and expenses of any expert appointed by the Arbitral Tribunal pursuant to Article 34 of the Arbitration Rules.**

Appendix 4 Article 4 of the SCC Arbitration Rules 2023 outlines the provision for covering additional expenses beyond the fees of the arbitrator(s) and the administrative fee in arbitration proceedings administered by the SCC. This provision addresses the reimbursement of reasonable expenses incurred by the arbitrator(s) and the SCC, including potential expert fees. Let us analyse the key elements of this provision:

1. **Scope of Expenses Covered:** The provision specifies that in addition to the fees of the arbitrator(s) and the administrative fee, an additional amount shall be fixed to cover “reasonable expenses” incurred by the arbitrator(s) and the SCC. This covers various expenses related to the arbitration process that go beyond the basic fees.



2. **Arbitrator and SCC Expenses:** The provision encompasses expenses incurred by both the arbitrator(s) and the SCC. This may include costs associated with administrative tasks, communication, document handling, and any other necessary expenses for the effective management of the arbitration proceedings.
3. **Expert Fees Inclusion:** The provision explicitly states that the expenses of the arbitrator(s) may include the fee and expenses of any expert appointed by the Arbitral Tribunal pursuant to Article 34 of the main Arbitration Rules. This indicates that expert fees, which can be a significant aspect of arbitration proceedings involving technical or complex matters, are covered within the scope of this provision.
4. **Reasonableness Standard:** The provision emphasises the principle of reasonableness in determining the amount to cover expenses. This ensures that the expenses incurred are justified and necessary for the proper conduct of the arbitration proceedings.
5. **Transparency and Fairness:** By outlining the mechanism for covering expenses, the provision contributes to transparency and fairness in the financial aspects of the arbitration process. Parties can have a clearer understanding of the types of expenses that may be incurred and included.
6. **Effective Case Management:** Covering reasonable expenses ensures that the arbitrator(s) and the SCC have the necessary resources to effectively manage the arbitration proceedings, including addressing any unforeseen circumstances or additional requirements.
7. **Expert Involvement:** The provision recognises the potential need for expert involvement in the arbitration process and ensures that the related fees and expenses are adequately considered and accounted for.
8. **Balanced Cost Allocation:** The provision contributes to a balanced allocation of costs by including expenses related to both the arbitrator(s) and the administrative aspects of the proceedings, ensuring that parties bear a fair share of the financial responsibility.

In summary, Appendix 4 Article 4 of the SCC Arbitration Rules 2023 establishes a mechanism for covering reasonable expenses incurred by the arbitrator(s) and the SCC, beyond the basic fees and administrative fee. This provision enhances transparency, effective case management, and fairness in the allocation of costs, while specifically addressing the inclusion of expert fees and expenses within the scope of covered expenses.

### Article 5 Pledge

**By paying the advance on costs pursuant to Article 51 (1) of the Arbitration Rules, each party irrevocably and unconditionally pledges to the SCC and to the arbitrators, as represented by the SCC, any rights over any amount paid to the SCC as continuing security for any liabilities for the costs of the arbitration.**

Appendix 4 Article 5 of the SCC Arbitration Rules 2023 addresses the legal effect of paying the advance on costs in the context of arbitration proceedings administered by the SCC. This provision establishes

the parties' irrevocable and unconditional pledge of certain rights concerning any amount paid to the SCC as continuing security for costs liabilities. Let us analyse the key elements of this provision:

1. **Advance on Costs and Security:** The provision refers to the payment of the advance on costs as stipulated in Article 51(1) of the main Arbitration Rules. The advance on costs is a sum of money paid by each party to cover the expected costs of the arbitration proceedings.
2. **Pledge of Rights:** The provision states that by making the payment of the advance on costs, each party irrevocably and unconditionally pledges certain rights to the SCC and the arbitrators (represented by the SCC). This pledge relates specifically to any amount paid to the SCC as continuing security for costs liabilities.
3. **Continuing Security:** The provision establishes the concept of continuing security, meaning that the funds paid by the parties as part of the advance on costs serve as an ongoing form of security to cover any potential future costs liabilities that may arise in the course of the arbitration.
4. **Irrevocable and Unconditional Pledge:** The provision emphasises the nature of the pledge as irrevocable and unconditional. This signifies that once the payment is made, the party's commitment to the SCC and the arbitrators is legally binding and cannot be withdrawn or altered.
5. **Rights Over Paid Amount:** Parties pledge certain rights over the amounts paid to the SCC. These rights likely relate to the SCC's authority to allocate and manage the funds for the purposes of covering the arbitration-related costs.
6. **Liabilities for Costs:** The provision specifies that the pledge pertains to liabilities for the costs of the arbitration. This encompasses various costs associated with the arbitration process, such as the fees of the arbitrators, administrative expenses, and other related expenditures.
7. **Protection of Interests:** By pledging these rights, the provision ensures that the SCC and the arbitrators have a mechanism to secure their interests in the event of potential costs liabilities that may arise during the arbitration proceedings.
8. **Stability and Consistency:** The provision contributes to the stability and consistency of the arbitration process by establishing a clear framework for addressing costs liabilities and ensuring that the necessary resources are available to manage the proceedings effectively.

In summary, Appendix 4 Article 5 of the SCC Arbitration Rules 2023 outlines the legal consequences of paying the advance on costs. It establishes an irrevocable and unconditional pledge by each party to allocate certain rights over the paid amounts to the SCC and the arbitrators as continuing security for costs liabilities. This provision enhances the SCC's ability to manage and secure funds for the smooth conduct of the arbitration proceedings and helps ensure financial stability throughout the process.



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