

The Hague Rules On Business and Human Rights Arbitration



December 2019



CILC
Center for International
Legal Cooperation

Foreword

The Hague Rules on Business and Human Rights Arbitration provide a set of rules for the arbitration of business and human rights disputes. The Hague Rules represent the result of a more than five-year long project involving the elaboration of the concept of business and human rights arbitration, consultation with numerous stakeholders and drafting of the text. The project began with the creation of a Working Group on Business and Human Rights Arbitration by Claes Cronstedt, Jan Eijsbouts and Robert Thompson, and later expanded to include other interested individuals. In 2017, a Drafting Team, whose names appear below, was established to prepare and draft the Rules.

The Drafting Team held sessions at the Center for International Legal Cooperation (CILC) in The Hague in January 2018, October 2018, April 2019 and October 2019. It also conducted numerous other meetings via electronic means. To solicit a wide range of views on its work, the Working Group and the Drafting Team created a Sounding Board of over 220 individuals from different stakeholder groups, including business, non-governmental organizations, governments, international organizations, human rights lawyers, judiciary, arbitrators, practicing attorneys, academics and others with expertise in human rights, arbitration, operation of supply chains and other topics relevant to the elaboration of the Hague Rules.

In October 2018, the Drafting Team launched a first public consultation on an Elements Paper, a compilation of issues concerning business and human rights arbitration with a series of questions posed in order to garner input. The Elements Paper was sent to the members of the Sounding Board and posted on the project's page on the CILC website (www.cilc.nl). In response to numerous comments on the Elements Paper, a summary of which was published on the project website, the Drafting Team prepared a first draft of the Hague Rules, along with a draft Commentary. In June 2019, the consolidated draft was posted on the CILC website for a second round of consultation with the members of the Sounding Board and the broader public. Individual members of the Drafting Team and Working Group also publicized and discussed the proposal and the draft Rules with various stakeholders. Based on the reactions to the consolidated draft, the Drafting Team revised and finalized the Hague Rules and Commentary. The final text was officially launched at a ceremony in The Hague on 12 December 2019.

The work of drafting the Hague Rules and related activities of the project were funded by the City of The Hague and supported by the Ministry of Foreign Affairs of the Netherlands. The Drafting Team expresses its appreciation to CILC as hosting partner of the project and to Manon Tiessink for superlative support.

A handwritten signature in black ink, appearing to read 'Bruno Simma', with a long horizontal flourish extending to the right.

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Introductory note

The Hague Rules on Business and Human Rights Arbitration provide a set of procedures for the arbitration of disputes related to the impact of business activities on human rights. The Hague Rules are based on the [Arbitration Rules of the United Nations Commission on International Trade Law \(with new article 1, paragraph 4, as adopted in 2013\)](#) (the “UNCITRAL Rules”), with modifications needed to address certain issues likely to arise in the context of business and human rights disputes. Each article is accompanied by a commentary, which includes background on the drafting of various provisions in the Rules, explaining in particular the reasons for possible deviations made from the UNCITRAL Rules. The Commentary may be useful in interpreting and applying the Rules, but it is not part of the Hague Rules.

As with the UNCITRAL Rules, the scope of the Hague Rules is not limited by the type of claimant(s) or respondent(s) or the subject-matter of the dispute and extends to any disputes that the parties to an arbitration agreement have agreed to resolve by arbitration under the Hague Rules. Parties could thus include business entities, individuals, labor unions and organizations, States, State entities, international organizations and civil society organizations, as well as any other parties of any kind. Equally, the Hague Rules purposefully do not define the terms “business,” “human rights” or “business and human rights.” For the purposes of the Hague Rules, such terms should be understood at least as broadly as the meaning such terms have under the [UN Guiding Principles on Business and Human Rights](#). However, in the vast majority of cases, no definition of these terms should be necessary at all.

The Hague Rules have been conceived as a uniform set of rules. However, considering the breadth of the scope of potential disputes that may be arbitrated under the Hague Rules, parties may exercise their discretion to modify or opt out of certain provisions that do not respond to their needs in the dispute at issue. Certain Model Clauses annexed to the Hague Rules have been developed in this respect.

Like the UNCITRAL Rules, the Hague Rules do not address the modalities by which the parties may consent to arbitration nor the content of such consent. As with all arbitration, proper and informed consent remains the cornerstone of business and human rights arbitration. Such consent can be established before a dispute arises, e.g., in contractual clauses, or after a dispute arises, e.g., in a

submission agreement (*compromis*). The Model Clauses found in the Annex to the Hague Rules may provide potential parties with options for expressing their consent to arbitration in various contexts and instruments. The Hague Rules also do not address enforcement of arbitral awards, which are governed by national laws and various treaty obligations, including in most cases the [1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards](#). Lastly, the Hague Rules do not address other modalities for ensuring compliance with an award, such as monitoring by intergovernmental institutions, non-governmental organizations or multi-stakeholder initiatives.

Although the Hague Rules attempt to lower barriers to access to remedy, arbitration under these Rules is meant to be employed where it is reasonable to presume that all parties have a minimum of resources at their disposal to cover the basic costs of the arbitration and their own representation, either by themselves or through a “legal aid” system, contingency funding or an agreement on the asymmetric distribution of costs and deposits between the parties.

The Rules use the pronouns “they,” “their” and “them” as both singular and plural pronouns.

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The Hague Rules On Business and Human Rights Arbitration



Preamble

1. The Hague Rules on Business and Human Rights Arbitration (the “Rules”) provide a set of procedures for the arbitration of disputes related to the human rights impacts of business activities.
2. In particular, arbitration under the Rules can provide:
 - (a) For the possibility of a remedy for those affected by the human rights impacts of business activities, as set forth in Pillar III of the United Nations Guiding Principles on Business and Human Rights (the “UN Guiding Principles”), serving as a grievance mechanism consistent with Principle 31 of the UN Guiding Principles; and
 - (b) Businesses with a mechanism for addressing adverse human rights impacts with which they are involved, as set forth in Pillar II and Principles 11 and 13 of the UN Guiding Principles.
3. Arbitration under the Rules is not meant as a general substitute for State-based judicial or non-judicial mechanisms.
4. The settlement of disputes by collaborative settlement mechanisms, such as mediation, conciliation, negotiation and facilitation is encouraged, including at any stage of an arbitration proceeding that has already been commenced.
5. Nothing in these Rules should be read as creating new international legal obligations or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with respect to human rights.
6. These Rules are based on the [Arbitration Rules of the United Nations Commission on International Trade Law \(with new article 1, paragraph 4, as adopted in 2013\)](#) (the “2013 UNCITRAL Arbitration Rules”) with changes in order to reflect:
 - (a) The particular characteristics of disputes related to the human rights impacts of business activities;
 - (b) The possible need for special measures to address the circumstances of those affected by the human rights impacts of business activities;

- (c) The potential imbalance of power that may arise in disputes under these Rules;
- (d) The public interest in the resolution of such disputes, which may require, among other things, a high degree of transparency of the proceedings and an opportunity for participation by interested third persons and States;
- (e) The importance of having arbitrators with expertise appropriate for such disputes and bound by high standards of conduct; and
- (f) The possible need for the arbitral tribunal to create special mechanisms for the gathering of evidence and protection of witnesses.

Commentary

1. The Preamble is new as compared to the text of the [2013 UNCITRAL Arbitration Rules](#). It states certain purposes and overarching principles of the Rules.
2. Paragraph 2 of the Preamble summarizes two key purposes of business and human rights arbitration. First, it can provide a remedy for those affected by the human rights impacts of business activities in situations where more traditional remedies, such as judicial proceedings, are not available or effective. Second, business and human rights arbitration can assist businesses to meet their responsibilities under the [UN Guiding Principles](#), both to respect human rights (Pillar II) and to provide a remedy to victims (Pillar III), or under the provisions of the [International Labour Organization \(ILO\) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy](#) and the [Organisation for Economic Co-operation and Development \(OECD\) Guidelines for Multinational Enterprises](#). Business and human rights arbitration could be relied upon by businesses to enforce contractual human rights commitments vis-à-vis their business partners (e.g., in supply chains and development projects) and thereby prevent or resolve business and human rights harms. These Rules thus intend to provide both a means for access to remedy for rights-holders affected by business activities and a human rights compliance and risk management strategy for businesses themselves. It is also worth noting that, for States, the encouragement, facilitation or even requirement to use business and human rights arbitration would also constitute an additional

tool to fulfil their responsibilities under Pillars I and III of the [UN Guiding Principles](#).

3. Paragraph 3 of the Preamble clarifies that arbitration under these Rules is meant to address a gap in access to remedy for the human rights impacts of business activities by facilitating the resolution of disputes where alternative avenues are not available or adequate. Business and human rights arbitration may also serve a complementary function in the exercise of the parties' autonomy to submit their disputes to the dispute resolution procedure that best suits their needs, in particular for business and human rights obligations voluntarily undertaken over and above existing legal obligations. However, arbitration is by no means a substitute for existing State judicial or non-judicial mechanisms. With respect to judicial mechanisms (principally national courts), the gap in access to remedy may arise due to reasons that include issues of capacity in the national courts of the State where the underlying conduct took place; procedural, jurisdictional or substantive legal restrictions on lawsuits in the courts of a State of nationality of a parent company; length and unpredictability of proceedings; and costs of litigation. Such a gap in judicial remedy should be directly addressed through improvements in the procedures and functioning of national courts and development of private international law rules applicable to cross-border disputes involving multinational business enterprises. However, arbitration under these Rules may also serve to address such gaps in access to remedy. In a similar vein, arbitration under these Rules is not meant to displace or discourage resort to non-judicial mechanisms, such as those under the [OECD Guidelines for Multinational Enterprises](#). Many provisions of these Rules seek to facilitate resort to such means of dispute settlement as well as other formal and informal means of collaborative settlement, which remain important complementary mechanisms to ensure the greatest possible access to remedy under Pillar III of the UN Guiding Principles. Arbitration may also serve as an escalation mechanism and a backstop in order to enhance the effectiveness of mediation and other forms of collaborative settlement.
4. Paragraph 4 of the Preamble affirms the importance of other collaborative and dialogue-based modes of resolving business and human rights disputes, which the parties can employ instead of arbitration at any point during their dispute. The provision should be read in conjunction with Article 1(6),

Article 18(3), Article 47 (Settlement or other grounds for termination) and Article 56 (Mediation and other forms of collaborative settlement).

5. Paragraph 5 of the Preamble is based on the introduction to the [Permanent Court of Arbitration Optional Rules for Arbitration of Disputes Relating to the Environment and/or Natural Resources](#) (the “[PCA Environmental Rules](#)”) and is in line with the [UN Guiding Principles](#), both of which clarify that an instrument such as these Rules cannot create new international legal obligations. Rather these Rules are voluntary tools for dispute settlement that parties can choose to apply to resolve their differences.
6. Paragraph 6 of the Preamble highlights six key features of business and human rights arbitration that necessitate modifications and additions to the [2013 UNCITRAL Arbitration Rules](#). Where the [2013 UNCITRAL Arbitration Rules](#) offer adequate procedures for business and human rights arbitration, they have been left unchanged. The Rules only introduce changes justified by the nature of business and human rights arbitration. The rationale for all changes is provided in the commentary to the respective article. The result is that an arbitration that raises no particular issues relating to business and human rights may proceed under these Rules in a manner largely akin to an arbitration under the [2013 UNCITRAL Arbitration Rules](#), while arbitrations dealing with business and human rights will benefit from specialized procedures.

Section I. Introductory rules

Scope of application

Article 1

1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under these Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may expressly agree upon in writing. The Rules include the Code of Conduct for Arbitrators (the “Code of Conduct”). The characterization of the dispute as relating to business and human rights is not necessary for jurisdiction where all the parties to the arbitration have agreed to settle a dispute under these Rules.

2. The parties agree that any dispute that is submitted to arbitration under these Rules shall be deemed to have arisen out of a commercial relationship or transaction for the purposes of Article I of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”).

3. Agreement by a party to arbitration under these Rules constitutes a waiver of any right of immunity from jurisdiction in respect of the proceedings relating to the dispute in question to which such party might otherwise be entitled. A waiver of immunity relating to the execution of an arbitral award must be explicitly expressed.

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

5. The International Bureau of the Permanent Court of Arbitration (the “PCA”) shall serve as the repository under Article 43. In addition, upon written request of any party and subject to the agreement of the arbitral tribunal and the Secretary-General of the PCA, the PCA shall also provide secretariat services and serve as registry.

6. Without prejudice to the right of any party to commence or continue an arbitration under these Rules, the parties shall endeavour to resolve any dispute in good faith through negotiation, conciliation, mediation, facilitation or other collaborative settlement mechanisms. Such settlement may be agreed at any time, including after arbitral proceedings under these Rules have been commenced.

Commentary

1. Article 1(1) modifies Article 1 of the [2013 UNCITRAL Arbitration Rules](#) to impose a formal requirement of an expression in written form for deviations from the Hague Rules. The language of this provision is taken from Article 1(1) of the [PCA Environmental Rules](#). This approach reflects the general desire to avoid too many deviations from the Hague Rules, which might upset the balance sought in various provisions among the many varied legitimate interests at play in the resolution of business and human rights disputes. Arbitration rules cannot, of course, limit the parties' autonomy to derogate from the Hague Rules as they choose (consistent with mandatory applicable law) as long as such derogations are made in the proper form. The Model Clauses included in the Annex provide potential parties with draft language to adapt these Rules to the specific circumstances of their disputes.
2. Article 1(2) contains a deeming provision intended to opt in to the enforcement regime of the [New York Convention](#) and to effect a waiver of certain potential defences to its application, even where the underlying relationship or transaction may not be considered "commercial" under applicable law. Although the stipulation of "commerciality" in Article 1(2) is not binding upon national courts tasked with deciding upon the enforcement of an award rendered under these Rules in accordance with the [New York Convention](#), it can be expected that national courts will accord substantial weight to the expectations and intentions of the parties as expressed in this provision. The provision may therefore operate in many cases to preclude a party from making an objection to the enforcement of an award rendered under these Rules on the basis of a "commercial" reservation made by the relevant Contracting State(s) to the [New York Convention](#). In any event, it is hoped that national courts will avail themselves of their discretion, both under the [New York Convention](#) and other applicable law, to enforce an award rendered under these Rules where they conclude that such award is human rights-compatible and otherwise satisfies the requirements for recognition and enforcement. Similar issues may arise with respect to the arbitrability of business and human rights disputes under national laws.
3. The waiver-of-immunity provision in Article 1(3) is taken from the [PCA Environmental Rules](#). The provision clarifies that, regardless of the general position under applicable law, an agreement to arbitrate under these Rules constitutes a waiver of sovereign or international organization immunity

from arbitral jurisdiction but does not constitute a waiver of such immunity in respect of measures relating to the execution of an award (or other decision) rendered under these Rules. A separate and explicit waiver would be necessary in order to waive immunity from execution.

4. Issues of proper and informed consent may be particularly sensitive in the business and human rights context, especially with respect to the agreement by natural persons to the arbitration of non-contractual matters. No express additional requirements are imposed for obtaining or proving such consent to arbitration under these Rules. Nevertheless, an arbitral tribunal under these Rules remains under a special duty to verify that natural persons have given proper and informed consent to arbitrate their claims under these Rules, in particular for non-contractual claims, without relying on unwarranted presumptions of knowledge and consent.
5. Article 1(4) reflects the text of Article 1(3) of the [2013 UNCITRAL Arbitration Rules](#). The provision clarifies that the operation of the provisions of these Rules remains subject to mandatory law, both where such mandatory law imposes additional requirements beyond those found in these Rules and where it disallows a party or an arbitral tribunal from exercising a power granted under the provisions of these Rules.
6. Without prejudice to the parties' ability to agree on another institution to administer and support the arbitral proceedings, Article 1(5) foresees that the PCA will serve this role unless agreed or decided otherwise. Although disputes under these Rules may be administered by any institution that has the capacity and expertise to do so, parties are encouraged not to derogate from the PCA's role as repository under Article 43 of the Rules, as this would defeat certain objectives of the transparency provisions under these Rules.
7. Article 1(6) is meant to highlight the importance of collaborative settlement mechanisms in business and human rights disputes. The term "collaborative settlement mechanisms" should be understood broadly to include not only the kinds of proceedings expressly named in this paragraph but all other related forms of "alternative dispute resolution," "amicable dispute resolution" or "dialogue-based mechanisms." The provision should be read in conjunction with Article 18(3), Article 47 (Settlement or other grounds

for termination), Article 56 (Mediation and other forms of collaborative settlement) and paragraph 4 of the Preamble.

Notice and calculation of periods of time

Article 2

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.

2. If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorized.

3. In the absence of such designation or authorization, a notice is:

- (a) Received if it is physically delivered to the addressee;
- (b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee, or through diplomatic channels in the case of a State.

4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.

6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Commentary

1. Article 2(3)(b) clarifies the appropriate channel for service in the case of a State party, based on the equivalent provision of the [PCA Environmental Rules](#).
2. Article 2 otherwise reflects the text of Article 2 of the [2013 UNCITRAL Arbitration Rules](#).

Notice of arbitration

Article 3

1. The party or parties initiating recourse to arbitration (the “claimant”) shall communicate to the other party or parties (the “respondent”) a notice of arbitration.
2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.
3. The notice of arbitration shall include the following:
 - (a) A demand that the dispute be referred to arbitration;
 - (b) The names and contact details of the parties;
 - (c) Identification of the arbitration agreement that is invoked;
 - (d) Identification of any rule, decision, agreement, contract, convention, treaty, constituent instrument of an organization or agency or relationship out of, or in relation to which, the dispute arises;
 - (e) A brief description of the claim and an indication of the amount involved, if any;

- (f) The relief or remedy sought;
- (g) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.

4. The notice of arbitration may also include:

- (a) A proposal for the designation of an appointing authority referred to in Article 6, paragraph 1;
- (b) A proposal for the appointment of a sole arbitrator referred to in Article 8, paragraph 1;
- (c) Notification of the appointment of an arbitrator referred to in Article 9 or 10.

5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

Commentary

1. Article 3(3)(d) is based on the language used in Article 3(3)(d) of the [PCA Arbitration Rules 2012](#). Given the broad scope of the Rules, the term “arbitration agreement” referred to under Article 3(3)(c) should be afforded the broadest possible meaning. In particular, the term is meant to include as a minimum all instruments mentioned in Article 3(3)(d) in which consent to refer the dispute to arbitration under these Rules may be found, including consent to arbitration with third parties to the relevant instrument or relationship. While keeping in mind potential issues of proper and informed consent, the means by which such consent to arbitration may be proven should be equally broadly construed, subject only to any mandatory applicable rules regarding the required form of an arbitration agreement.
2. Article 3 otherwise reflects the text of Article 3 of the [2013 UNCITRAL Arbitration Rules](#).

Response to the notice of arbitration

Article 4

1. Within 30 days of the receipt of the notice of arbitration, or such other period as may be set by the appointing authority, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall include:

- (a) The name and contact details of each respondent;
- (b) A response to the information set forth in the notice of arbitration, pursuant to Article 3, paragraphs 3 (c) to (g).

2. The response to the notice of arbitration may also include:

- (a) Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;
- (b) A proposal for the designation of an appointing authority referred to in Article 6, paragraph 1;
- (c) A proposal for the appointment of a sole arbitrator referred to in Article 8, paragraph 1;
- (d) Notification of the appointment of an arbitrator referred to in Article 9 or 10;
- (e) A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;
- (f) A notice of arbitration in accordance with Article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

Commentary

1. Article 4(1) grants the appointing authority the power to modify the deadline for the respondent to submit its response to the notice of arbitration.
2. Article 4 otherwise reflects the text of Article 4 of the [2013 UNCITRAL Arbitration Rules](#).

Representation and assistance

Article 5

1. Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. The parties' communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine.

2. Where a party faces barriers to access to remedy, including a lack of awareness of the mechanism, lack of adequate representation, language, literacy, costs, physical location or fears of reprisal, the arbitral tribunal shall, without compromising its independence and impartiality, ensure that such party is given an effective opportunity to present its case in fair and efficient proceedings.

Commentary

1. Article 5(2), in keeping with Principle 31(b) of the [UN Guiding Principles](#), responds to the potential inequality of arms among the disputing parties that may have a negative impact on the overall fairness of the arbitral proceedings, including in terms of legal representation. Such inequality of arms may arise, for instance, in cases between rights-holders and businesses as well as in a claim by a large multinational company against a small local supplier. Equally, counterclaims may have an impact on the amount in dispute and on the initial decision by claimants to represent themselves.

Thus, the tribunal should make efforts to ensure that an unrepresented party can present its case in a fair and efficient way, including by adopting more proactive and inquisitorial, as opposed to adversarial, procedures.

2. Article 5 otherwise reflects the text of Article 5 of the [2013 UNCITRAL Arbitration Rules](#).

Appointing authority

Article 6

1. Unless the parties have already agreed on another appointing authority, the appointing authority shall be the Secretary-General of the PCA.

2. If the appointing authority refuses to act, or if it fails to appoint an arbitrator within 30 days after it receives a party's request to do so, fails to act within any other period provided by these Rules, or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party's request to do so, any party may request the Secretary-General of the PCA to serve as a substitute appointing authority.

3. In exercising their functions under these Rules, the appointing authority and the PCA may require from any party and the arbitrators the information they deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority and the PCA shall also be provided by the sender to all other parties.

4. The appointing authority shall have regard to the qualifications of the arbitrators indicated under Article 11 below as well as to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

Commentary

1. Article 6 foresees that the PCA, given its intergovernmental nature and experience in business and human rights disputes, will serve as appointing authority unless otherwise agreed by the parties. Considering that the

legitimacy of the arbitral proceedings is closely tied to the selection of suitable arbitrators, parties are encouraged to consider the matter carefully before choosing a different appointing authority.

2. Article 6 otherwise reflects the text of Article 6 of the [2013 UNCITRAL Arbitration Rules](#).

Section II. Composition of the arbitral tribunal

Number of arbitrators

Article 7

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.
2. Notwithstanding paragraph 1, the appointing authority may, at the request of a party, and after inviting the parties to express their views, appoint a sole arbitrator pursuant to the procedure provided for in Article 8, paragraph 2, if it determines that, in view of the circumstances of the case, this is more appropriate.

Commentary

1. Article 7(2) grants the appointing authority the power to determine that it would be more appropriate to appoint a sole arbitrator instead of a tribunal of three arbitrators, if the parties have not previously agreed on the number of arbitrators.
2. Where only monetary compensation is sought, the decision to appoint a sole arbitrator on the part of the appointing authority automatically triggers expedited arbitration proceedings under Article 57. From that point on, the decision of whether to continue with expedited arbitration proceedings rests with the sole arbitrator, who may take into account the specific circumstances of the case, including any subsequent developments or further information that was not available to the appointing authority.
3. Article 7 otherwise reflects the text of Article 7 of the [2013 UNCITRAL Arbitration Rules](#).

Appointment of arbitrators (Articles 8 to 11)

Article 8

1. If the parties have agreed that a sole arbitrator is to be appointed, and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator, or such other period as may be set by the appointing authority, the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.

2. The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:

- (a) The appointing authority shall communicate to each of the parties an identical list containing at least three names;
- (b) Within 15 days after the receipt of this list, or such other period as may be set by the appointing authority, each party may return the list to the appointing authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;
- (c) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
- (d) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

Commentary

1. As with other similar provisions in the Rules, Articles 8(1) and 8(2)(b) grant the appointing authority the power to modify deadlines under the Rules.

2. Article 8 otherwise reflects the text of Article 8 of the [2013 UNCITRAL Arbitration Rules](#).

Article 9

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.

2. If within 30 days after the receipt of a party's notification of the appointment of an arbitrator, or such other period as may be set by the appointing authority, the other party has not notified the first party of the arbitrator it has appointed, the first party may request the appointing authority to appoint the second arbitrator.

3. If within 30 days after the appointment of the second arbitrator, or such other period as may be set by the appointing authority, the two arbitrators have not agreed on the choice of the remaining arbitrators or the presiding arbitrator, the remaining arbitrators or the presiding arbitrator shall be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under Article 8.

Commentary

1. As with other similar provisions in the Rules, Articles 9(2) and 9(3) grant the appointing authority the power to modify the deadline for the appointment of the second arbitrator.
2. Article 9 otherwise reflects the text of Article 9 of the [2013 UNCITRAL Arbitration Rules](#).

Article 10

1. For the purposes of Article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.

2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.

3. In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

Commentary

Article 10 reflects the text of Article 10 of the [2013 UNCITRAL Arbitration Rules](#) without any changes.

Article 11

1. Unless otherwise agreed by the parties or unless the appointing authority determines in its discretion that it is not appropriate for the case, the appointment of arbitrators under these Rules shall be made in accordance with the following:

- (a) No person who has previously been involved in the dispute in any capacity may be appointed as an arbitrator;
- (b) Persons appointed to serve as arbitrators under these Rules shall be persons of high moral character, who may be relied upon to exercise independent and impartial judgment. Without prejudice to Articles 12 to 14, in assessing the impartiality, independence or qualifications of arbitrators, the parties, the arbitrators and the appointing authority shall apply the Code of Conduct;
- (c) The presiding or sole arbitrator shall have demonstrated expertise in international dispute resolution and in areas relevant to the dispute, which may include, depending on the circumstances of the case, business and human rights law and practice, relevant national and international law and knowledge of the relevant field or industry;
- (d) The presiding or sole arbitrator shall not be a national of States whose nationals are parties or of any State that is a party. The nationality of a party

shall be understood to include those of its controlling shareholders or interests.

2. The arbitrators shall comply with the Code of Conduct.
3. The Parties, arbitrators and the appointing authority shall take into account the advisability of forming a diverse tribunal.

Commentary

1. Article 11 is a new article as compared to the [2013 UNCITRAL Arbitration Rules](#). Given the special characteristics of business and human rights disputes, as well as the importance of impartiality, independence and expertise to the legitimacy of business and human rights arbitration under these Rules, provisions have been developed to address these issues in the selection of the arbitrators.
2. Paragraph 1(a) of Article 11 states the general principle that no arbitrator should have had any prior involvement in the dispute.
3. The requirement under paragraph 1(b) of Article 11 that arbitrators shall be of high moral character and exercise independent and impartial judgment reflects the customary formulation of the ethical standard for adjudicators in international courts and tribunals, including the [Permanent Court of Arbitration](#), the [International Court of Justice](#), the [International Criminal Court](#), the [International Centre for Settlement of Investment Disputes \(ICSID\)](#), as well as regional human rights courts and UN quasi-judicial bodies monitoring compliance with human rights treaties.
4. Paragraph 1(c) of Article 11 preserves the autonomy of the parties in the selection of their party-appointed arbitrators. However, the presiding arbitrator is required to have demonstrated expertise in international dispute resolution and in areas relevant to the dispute (e.g., business and human rights law and practice, relevant national and international law, or knowledge of the relevant field or industry). The breadth of the qualifications potentially included under paragraph 1(c) for the presiding or sole arbitrator promotes effective decision-making in the particular case.
5. Paragraph 1(d) of Article 11 provides that the presiding or sole arbitrator shall not be a national of States whose nationals are parties to proceedings under these Rules or of any State that is a party. Paragraph 1(d) also

recognizes that, in the context of legal persons, appearances of bias may also arise from the nationalities of controlling shareholders or interests. This is a standard provision of ethical codes in international arbitration, including under General Standard 6(b) of the [IBA Guidelines on Conflicts of Interest in International Arbitration](#).

6. Article 11(2) makes the Code of Conduct applicable to all appointments and challenges. The Code of Conduct provides further precision regarding the application of the standards of impartiality and independence under these Rules.
7. Article 11(3) encourages the parties, the arbitrators and the appointing authority to seek the formation of a diverse tribunal. There are numerous forms of diversity. The relevant forms of diversity and appropriate balance among them may vary depending on the circumstances of the case.

Disclosures by and challenge of arbitrators (Articles 12 to 14)

Article 12

When a person is approached in connection with their possible appointment as an arbitrator, they shall disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. An arbitrator, from the time of their appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by them of these circumstances. In assessing the circumstances likely to give rise to justifiable doubts as to their impartiality or independence, a person approached in connection with their possible appointment as an arbitrator shall be guided by the highest international standards as reflected in the Code of Conduct.

Commentary

1. The last sentence of Article 12 incorporates the Code of Conduct as part of the standards for arbitrator disclosures.
2. Article 12 otherwise reflects the text of Article 11 of the [2013 UNCITRAL Arbitration Rules](#).
3. Model statements of impartiality and independence pursuant to Article 12 can be found in the Annex to the Rules.

Article 13

1. Any arbitrator may be challenged 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 to by the parties in their arbitration agreement.
2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.
3. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of their performing their functions, the procedure in respect of the challenge of an arbitrator as provided in Article 14 shall apply.

Commentary

1. Article 13(1) envisages the possibility that the parties may agree to further qualifications that the arbitrators must possess in order to serve under these Rules.
2. Article 13 otherwise reflects the text of Article 12 of the [2013 UNCITRAL Arbitration Rules](#).

Article 14

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 30 days after it has been notified of the appointment of the challenged

arbitrator, or within 30 days after the circumstances mentioned in Articles 12 and 13 became known to that party.

2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.

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

4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority.

5. Unless otherwise agreed by the parties, the appointing authority shall give reasons for the decision on the challenge.

Commentary

1. Article 14(1) provides parties with a longer time frame of 30 days to bring a challenge against an arbitrator, instead of the 15 days provided in Article 13 of the [2013 UNCITRAL Arbitration Rules](#), in order to mitigate concerns of potential inequality of arms and other barriers to access to remedy that may preclude certain parties from being able to effectively avail themselves of their right to challenge an arbitrator.
2. The default rule under Article 14(5) is that the appointing authority will issue a reasoned decision on any arbitrator challenge.
3. Article 14 otherwise reflects the text of Article 13 of the [2013 UNCITRAL Arbitration Rules](#).

Replacement of an arbitrator

Article 15

1. Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Articles 8 to 12 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.

2. If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views:

- (a) Appoint the substitute arbitrator; or
- (b) Authorize the other arbitrators to proceed with the arbitration and make any decision or award.

Commentary

Article 15 reflects the text of Article 14 of the [2013 UNCITRAL Arbitration Rules](#) without any changes.

Repetition of hearings in the event of the replacement of an arbitrator

Article 16

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform their functions, unless the arbitral tribunal decides otherwise.

Commentary

Article 16 reflects the text of Article 15 of the [2013 UNCITRAL Arbitration Rules](#) without any changes.

Exclusion of liability

Article 17

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the appointing authority and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

Commentary

Article 17 reflects the text of Article 16 of the [2013 UNCITRAL Arbitration Rules](#) without any changes.

Section III. Arbitral proceedings

General provisions

Article 18

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expenses and to provide a fair, efficient, culturally appropriate and rights-compatible process for resolving the parties' dispute, including in particular by giving due regard to the urgency of addressing the alleged human rights impacts.

2. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.

3. Without compromising its independence and impartiality, the arbitral tribunal may take steps to facilitate the settlement of the dispute before it. The parties agree that the arbitral tribunal's facilitation of settlement in accordance with this paragraph will not be asserted by any party as grounds for the challenge of any of the arbitrators or for the set aside or refusal of enforcement of any award rendered by the arbitral tribunal.

4. Unless the parties agree otherwise, the arbitral tribunal shall decide whether to hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument.

5. In order to protect the identity of a party or its representatives where it may be sensitive in the circumstances of the case, the arbitral tribunal may designate specific representatives of other parties who may be informed of the identity of a party or the representatives of a party who request such designation. The party or its representatives requesting the designation shall demonstrate a legitimate interest in

such a designation. All representatives so designated shall observe confidentiality in connection with this identity.

6. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.

Commentary

1. Article 18 delineates the general principles underlying business and human rights arbitration proceedings. In addition to any inherent or implied power that an arbitral tribunal may have and to the powers granted by specific provisions of these Rules, Article 18(1) provides the arbitral tribunal with the general procedural power to organize the proceeding in the most fair and efficient way based on the circumstances of the case. This power is limited only by the agreement of the parties and the mandatory law applicable to the arbitration.
2. Drawing upon the commentary to Principle 28 of the [UN Guiding Principles](#), the second sentence of Article 18(1) refers to two additional factors—cultural appropriateness and rights-compatibility—that provide further guidance to the tribunal when addressing matters relevant to business and human rights disputes.
3. Article 18(3) expressly provides that, as is the case in many national court systems, arbitral tribunals may facilitate the collaborative resolution of the dispute before them at any point during the proceedings. Article 18(3) expressly provides them with the power to do so. In exercising this power, the arbitral tribunal may wish to take into account the [Centre for Effective Dispute Resolution \(CEDR\) Rules for the Facilitation of Settlement in International Arbitration](#). Processes for such collaborative settlement include facilitation, mediation, negotiation and any other means that the parties may choose to avail themselves of. This provision should be read in conjunction with the Preamble (paragraph 4), Article 1(6) and Article 56 on mediation.
4. Article 18(5) empowers the tribunal to protect the confidentiality of the identity of a party or its representatives vis-à-vis other parties where the disclosure of such identity may be sensitive or may otherwise prejudice that

party or its representatives. The sensitivity of the disclosure of the identity of a party or its representatives is to be determined by the tribunal according to the specific circumstances of the case.

5. Paragraphs (2) and (6) of Article 18 reflect the text of paragraphs (2) and (4) of Article 17 of the [2013 UNCITRAL Arbitration Rules](#) without any changes.

Multiparty claims

Article 19

1. In so far as possible, claims with significant common legal and factual issues shall be heard together. The arbitral tribunal may adopt special procedures appropriate to the number, character, amount and subject matter of the particular claims under consideration.

2. The arbitral tribunal may allow one or more third persons to join in the arbitration as a party provided such person is a party to or a third party beneficiary of the underlying legal instrument that includes the relevant arbitration agreement, unless, after giving all parties and the person or persons to be joined the opportunity to be heard, the arbitral tribunal finds that joinder should not be permitted. Third persons so joined shall become parties to the arbitration agreement for the purposes of the arbitration. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

3. Notwithstanding paragraph 2, where a third person is a party to or a relevant third party beneficiary of the arbitration agreement, the arbitral tribunal shall not deny the joinder solely on the basis that such joinder might prejudice other parties.

Commentary

1. Whereas the [2013 UNCITRAL Arbitration Rules](#) provide a single paragraph on joinder within Article 18 (General provisions), given the likelihood of such claims in business and human rights arbitration, a separate Article 19 has been created to govern multiparty claims. This provision and the arbitral

tribunal's discretion will not, however, be able to solve all the procedural issues that arise in cases with a large number of claims and parties with varied positions and interests. It is therefore advisable to address such issues expressly in the arbitration agreement to the extent possible. The Model Clauses in the Annex to these Rules provide parties with a platform to address these issues in the arbitration agreement, although they do not purport to resolve the many such issues that may arise in any given case.

2. Article 19(1) expresses the general principle of efficiency that claims with significant common issues should be heard together. This provision does not expand the jurisdiction of the arbitral tribunal or confer upon the arbitral tribunal additional powers of consolidation or joinder, all of which remain subject to the requirement of the consent of the parties and the rules on joinder set forth in paragraphs 2 and 3. The second sentence does, however, empower the arbitral tribunal to adopt special procedures (such as those envisaged under other arbitration rules, including the [Supplementary Rules for Class Arbitrations of the American Arbitration Association](#) and the [Judicial Arbitration and Mediation Services \(JAMS\) Class Action Procedures](#)) where appropriate in order to efficiently handle large numbers of parties and claims which fall within the jurisdiction of the arbitral tribunal. In this vein, this provision intends to set aside the presumption that exists in certain jurisdictions whereby an agreement to arbitrate is construed as a waiver of the right to proceed with a class, mass, collective or multi-party action in any forum, including in an arbitration brought under that very arbitration agreement. The question of whether class, mass, collective or multi-party procedures are available and appropriate for the particular arbitration is instead left to be determined by the arbitral tribunal taking into account the particular facts and circumstances of the case, including the terms of the arbitration agreement and the context in which it was concluded. Notwithstanding the foregoing, given that in some jurisdictions consent to class arbitration will not be inferred and must be explicit, parties are advised to address this matter expressly in their arbitration agreement (e.g., by using the relevant Model Clause provided for this purpose in the Annex to these Rules).
3. Paragraphs (2) and (3) of Article 19 cover two different situations, namely that of third persons identified as parties or third party beneficiaries of the underlying *legal instrument* that includes the relevant arbitration clause

(paragraph 2), and that of parties to, or third party beneficiaries of, the *arbitration agreement* itself (paragraph 3):

- i. In the first scenario, *the underlying legal instrument in which the arbitration clause is contained* grants certain rights to third persons – for instance by providing that the parties to the agreement commit themselves to the protection of the rights of third parties – who are thus recognized as having an interest in the enforcement of such rights through arbitral proceedings. In that case, it will be for the arbitral tribunal to balance the interest of such third persons in joining the proceedings against the possible competing interests of the existing parties to the arbitral proceedings that such third persons should not be allowed to participate.
 - ii. In the second scenario, the *arbitration agreement itself* foresees the right of certain third persons to join the arbitral proceedings. In that case, the arbitral tribunal would not have the discretion to negate such rights solely on account of ostensible prejudice to the parties to the proceeding, but would need to justify such a decision to disallow joinder on the basis of compelling reasons such as serious prejudice to the arbitral proceedings (e.g., in terms of witnesses who may be intimidated by the intervention of certain parties or the disruption caused by an untimely application for joinder that could have been made earlier).
4. By agreeing to these Rules, the parties to the arbitration have consented to the potential joinder of third party beneficiaries of the underlying agreement as additional parties to the arbitration where the arbitral tribunal decides that joinder should be permitted under paragraphs 2 and 3 of Article 19.

Place of arbitration

Article 20

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the

circumstances of the case. The award shall be deemed to have been made at the place of arbitration.

2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

Commentary

1. Article 20 reflects the text of Article 18 of the [2013 UNCITRAL Arbitration Rules](#) without any changes.
2. As set forth in the Preamble to these Rules, one of the overall objectives of business and human rights arbitration is to enhance access to remedy. The parties and the arbitral tribunal should therefore take care to select a legal place (or “seat”) of the arbitration where business and human rights disputes are arbitrable (i.e., legally allowed to be settled by arbitration), so as not to frustrate the agreement of the parties to submit such disputes to arbitration.
3. At the same time, an award that is not human rights-compatible does not further the objective of access to remedy. Although Article 45(4) already requires the arbitral tribunal to satisfy itself that its award is human rights-compatible, it is desirable for the arbitral tribunal to select a place of the arbitration in a jurisdiction whose arbitration law allows for the review and set aside of awards on grounds of public policy where such awards violate human rights. The above considerations should therefore be taken into account by the arbitral tribunal when determining the legal place of the arbitration, alongside other relevant circumstances of the case (such as those listed in paragraphs 28 to 30 of the [UNCITRAL Notes on Organizing Arbitral Proceedings](#)).
4. With respect to the selection of the location of hearings and other meetings under paragraph 2, the arbitral tribunal may also wish to take into account barriers to access to remedy, including considerations relating to the safety, privacy and confidentiality of the parties, witnesses and representatives, as well as the potential for aggravating conflicts between and among relevant stakeholders.

Language

Article 21

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Commentary

1. Article 21(1) reflects the text of Article 19 of the [2013 UNCITRAL Arbitration Rules](#) without any changes.
2. Language is a significant factor in both access to justice and costs. In the business and human rights context, the arbitral tribunal should pay particular attention to enhancing access and reducing costs through the judicious use of multiple languages, translation and interpretation, while at the same time resorting to such tools only where needed in order not to increase costs unduly.

Statement of claim

Article 22

1. The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in Article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this Article.

2. The statement of claim shall include the following particulars:

- (a) The names and contact details of the parties;
- (b) A statement of the facts supporting the claim;
- (c) The points at issue;
- (d) The relief or remedy sought;
- (e) The legal grounds or arguments supporting the claim.

3. A copy of any rule, decision, agreement, contract, convention, treaty, constituent instrument of an organization or agency, or a description of any relationship out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.

4. The statement of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

Commentary

1. The language in Article 22(3) reflects the same broad range of possible instruments, relationships and arbitration agreements which may form the basis of an arbitration under these Rules as are reflected in Articles 3(3)(c) and 3(3)(d).
2. The expression “as far as possible” in Article 22(4) allows the arbitral tribunal to take into account the possible imbalance in power and access to evidence of the parties in the arbitral proceedings, including both situations of *economic* imbalance – e.g., where the cost of obtaining the documents is prohibitive – and situations of *power* imbalance – e.g., where a party is aware of the existence of certain documents but is unable to obtain them because they are in possession of the other party or of third parties. In these instances, the arbitral tribunal may admit a statement of claim even if it is not accompanied by certain evidence that would otherwise be necessary. The arbitral tribunal could address this issue subsequently through its power to order the production of evidence or other means of organizing the taking of evidence in the particular proceedings.

3. Article 22 otherwise reflects the text of Article 20 of the [2013 UNCITRAL Arbitration Rules](#).

Statement of defence

Article 23

1. The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in Article 4 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this Article.
2. The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (Article 22, paragraph 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.
3. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.
4. The provisions of Article 22, paragraphs 2 to 4, shall apply to a counterclaim, a claim under Article 4, paragraph 2 (f), and a claim relied on for the purpose of a set-off.

Commentary

Article 23 reflects the text of Article 21 of the [2013 UNCITRAL Arbitration Rules](#) without any changes.

Amendments to the claim or defence

Article 24

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

Commentary

Article 24 reflects the text of Article 22 of the [2013 UNCITRAL Arbitration Rules](#) without any changes.

Objections to the jurisdiction of the arbitral tribunal

Article 25

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as

soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

Commentary

Article 25 reflects the text of Article 23 of the [2013 UNCITRAL Arbitration Rules](#) without any changes.

Objections to claims or defences manifestly without merit

Article 26

1. The arbitral tribunal shall have the power to rule on an objection that a claim or defence, including a counterclaim, a claim for the purpose of a set-off or any point of law or fact supporting such claims or defences, is manifestly without merit. The objection may relate to the jurisdiction of the arbitral tribunal or the substance of the dispute, including any relief or remedy sought.

2. An objection that a claim, defence or point of law or fact is manifestly without merit shall be made as promptly as possible after the relevant claim, defence or point of law or fact is raised, unless the arbitral tribunal directs otherwise.

3. The arbitral tribunal shall rule on an objection made in accordance with paragraph 1 as soon as practicable after inviting the parties to express their views on the objection.

4. A decision by the arbitral tribunal that a claim or defence is not manifestly without merit shall not preclude a party from raising an objection that the arbitral tribunal does not have jurisdiction under Article 25 or to include such grounds in its claims or defences raised in the course of the arbitral proceedings under Articles 22 to 24.

5. The arbitral tribunal may continue the arbitral proceedings as it considers appropriate notwithstanding any objection made under this Article.

6. Notwithstanding Articles 39 to 41, until the arbitral tribunal has ruled on an objection made in accordance with paragraph 1, no materials or information regarding the arbitration shall be made public, except with the consent of the party making the objection, or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.

Commentary

1. Article 26 is a new provision as compared to the [2013 UNCITRAL Arbitration Rules](#). Given the possibility of unfounded claims that might entail costly litigation and reputational consequences for respondents, as well as unfounded defences that might be used to discourage a claim or even intimidate claimants, Article 26 seeks to provide for an expedited procedure to dispose of claims and defences manifestly without merit at a preliminary stage of an arbitration. Although the general procedural powers of an arbitral tribunal under these Rules already allow for the preliminary and expedited disposal of manifestly unfounded claims and defences, various sets of arbitration rules include provisions on the subject. Article 26 has thus been developed on the basis of, among other sources, the relevant provisions of the [ICSID Convention Arbitration Rules](#), the [Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce](#) (the “[SCC Arbitration Rules](#)”), the [Arbitration Rules of the Singapore International Arbitration Centre](#) and the [Hong Kong International Arbitration Centre Administered Arbitration Rules](#).
2. Article 26(1) clarifies that the provision applies to legal as well as factual matters, and jurisdictional objections as well as issue of the merits. The word “manifest” means that the lack of merit must be clear and obvious upon a preliminary review without need of evidentiary fact-finding. This high standard serves to protect due process and the efficacy of the dispute resolution process. Preliminary objections that involve a consideration of complex legal and factual issues should be dismissed.
3. In making its determinations under Article 26, the arbitral tribunal should also take account of the possible inequality of arms and of access to evidence

among the parties, as well as a party's ability to request document production under these Rules. The arbitral tribunal should be careful not to dismiss a claim or defence in a preliminary fashion on the basis of a lack of evidence where there is a reasonable possibility that a party will be able to address such evidentiary deficiencies through document production requests that such party is entitled to make under Article 32.

4. Article 26(6) establishes a delay in publication of materials according to the transparency provisions of the Rules during the pendency of an application for early dismissal for manifest lack of merit, since little legitimate interest exists in the immediate transparency of frivolous, spurious or abusive claims or defences. The party making the objection may nevertheless consent to transparency and waive the application of this rule.

Further written statements

Article 27

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements. The arbitral tribunal may also set requirements concerning the length and form of such statements in order to provide a fair and efficient process for resolving the parties' dispute.

Commentary

1. The second sentence of Article 27 provides that the arbitral tribunal shall have the power to set requirements in terms of length and form of the parties' additional written submissions. Such requirements respond to the principles of efficiency and fairness that, under Article 18(1) of the Rules, inform the entire proceedings. Similar considerations are reflected in Article 32(2) on the rules on evidence. Although the arbitral tribunal already possesses the power to order such measures under Article 18(1) of the Rules, the sentence encourages tribunals to manage the written proceedings

proactively so as to ensure efficiency and equality of arms without compromising due process.

2. Article 27 otherwise reflects the text of Article 24 of the [2013 UNCITRAL Arbitration Rules](#).

Submission by a third person

Article 28

1. After consultation with the parties, the arbitral tribunal may invite or allow a person or entity that is not a party (“third person(s)”) to file a written submission with the arbitral tribunal regarding a matter within the scope of the dispute.

2. A third person wishing to make a submission shall apply to the arbitral tribunal, and shall, in a concise written statement, which is in a language of the arbitration and complies with any page limits set by the arbitral tribunal:

- (a) Describe the third person, including, where relevant, its membership and legal status (e.g., trade association or other non-governmental organization), its general objectives, the nature of its activities and any parent organization (including any organization that directly or indirectly controls the third person);
- (b) Disclose any connection, direct or indirect, which the third person has with any party;
- (c) Provide information on any government, person or organization that has provided to the third person:
 - (i) any financial or other assistance in preparing the submission; or
 - (ii) substantial assistance in either of the two years preceding the application by the third person under this Article (e.g., funding around 20 per cent of its overall operations annually);
- (d) Describe the nature of the interest that the third person has in the arbitration; and

- (e) Identify the specific issues of fact or law in the arbitration that the third person wishes to address in its written submission.

3. In determining whether to allow such a submission, the arbitral tribunal shall take into consideration, among other factors it determines to be relevant:

- (a) Whether the third person has a significant interest in the arbitral proceedings; and
- (b) The extent to which the submission would assist the arbitral tribunal in the determination of a factual or legal issue related to the arbitral proceedings by bringing a perspective, particular knowledge or insight that is different from that of the parties.

4. Notwithstanding paragraphs 1 to 3, the arbitral tribunal shall in principle allow written submissions from the State(s) of nationality of the parties, the State(s) on whose territory the conduct that gave rise to the dispute occurred and the State(s) parties to any treaties applicable to the arbitration.

5. The submission filed by the third person or entity shall:

- (a) Be dated and signed by the person filing the submission on behalf of the third person;
- (b) Be concise, and in no case longer than as authorized by the arbitral tribunal;
- (c) Set out a precise statement of the third person's position on issues; and
- (d) Address only matters within the scope of the dispute.

6. The arbitral tribunal shall ensure that any submission does not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any party. If the arbitral tribunal deems it appropriate to do so, the arbitral tribunal may condition the participation of the third person or entity to the deposit of a reasonable sum to cover the costs of such participation.

7. The arbitral tribunal shall ensure that the parties are given a reasonable opportunity to present their observations on any submission by the third person or entity.

Commentary

Article 28 is taken largely from Article 4 of the [UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration](#) (the “UNCITRAL Transparency Rules”), with the addition in paragraph 4 of a right to make written submissions granted to the State(s) of nationality of the parties, the State(s) on whose territory the conduct that gave rise to the dispute occurred and the State(s) parties to any treaties applicable to the arbitration. Should the arbitral tribunal decide not to allow a State to make written submissions, it should generally provide written reasons for its decision.

Periods of time

Article 29

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

Commentary

Article 29 reflects the text of Article 25 of the [2013 UNCITRAL Arbitration Rules](#) without any changes.

Interim measures

Article 30

1. The arbitral tribunal may, at the request of a party, take any interim measures it deems necessary, including any measure to prevent serious harm to the enjoyment of human rights falling within the subject-matter of the dispute.

2. Such interim measures may be established in any form the arbitral tribunal considers appropriate, including the form of an award.
3. Subject to Article 1, paragraph 4, the arbitral tribunal may, at the request of a party, stipulate an appropriate monetary penalty for non-compliance with its interim measures.
4. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.
5. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security or undertakings in connection with the measure.
6. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
7. Subject to Article 1, paragraph 4, and notwithstanding Article 18, paragraph 6, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested. The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure. The arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.
8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.
9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Commentary

1. Article 30 represents a simplified interim measures provision as compared to Article 26 of the [2013 UNCITRAL Arbitration Rules](#). It is modeled instead on Article 26 of the [1976 UNCITRAL Arbitration Rules](#). The changes made as compared to Article 26 of the [2013 UNCITRAL Arbitration Rules](#) do not intend to depart from the commonly accepted standards for interim measures. Rather, this simplified provision attempts to recapture maximum flexibility for the arbitral tribunal in handling requests for interim measures, thereby allowing greater space for practice to develop in the context of business and human rights arbitration.
2. As with all arbitrations, among the key purposes of interim measures are prevention of any aggravation of the dispute and maintenance or restoration of the status quo. While Article 30(1) mentions particular harms relevant to business and human rights disputes that interim measures can be directed to prevent, interim measures may be justifiable for other reasons, such as prevention of retaliatory measures by one party against another, which may take on particular importance in certain business and human rights disputes. The use of “including” clarifies that the specific mention of “prevent[ing] serious harm to the enjoyment of human rights falling within the subject-matter of the dispute” is not intended to limit the scope of interim measures available to the arbitral tribunal.
3. Accordingly, the arbitral tribunal should be understood to have the widest possible discretion in adopting any interim measures that it deems necessary to protect the rights of the parties, limited only by mandatory provisions applicable to the proceedings. An arbitral tribunal may therefore order any of the traditional forms of interim measures, such as orders to:
 - (a) maintain or restore the status quo pending determination of the dispute;
 - (b) take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm, or (ii) prejudice to the arbitral process itself;
 - (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or

- (d) preserve evidence that may be relevant and material to the resolution of the dispute.

An arbitral tribunal may also use its discretion in adopting measures different from those falling within the traditional categories mentioned above, which may be better suited to the circumstances of the case. This entails the power to adopt measures that are in whole or in part different from those requested.

4. Flexibility is also enhanced in paragraphs 2 and 3 of Article 30. Article 30(2) empowers arbitral tribunals to render interim measures in the form of arbitral awards (even if this does not necessarily guarantee that national courts will treat them as such for the purposes of enforcement). Article 30(3) empowers the arbitral tribunal to order penalties for non-compliance with its interim measures in order to increase their effectiveness, which may be important in order to mitigate the potential for ongoing harm or prejudice to the arbitral process. Such powers are subject to mandatory applicable law through the inclusion of a reference to Article 1(4), which already makes the entirety of the arbitration rules subject to mandatory applicable law. Although in some measure redundant, this reference should serve as an important reminder to arbitral tribunals to verify whether applicable law permits use of penalties before potentially exceeding their powers in this regard. This provision does not apply to emergency arbitrator orders under Article 31, where the expedited procedures make penalties for noncompliance inappropriate, and such penalties would be potentially unlawful in many jurisdictions.
5. The term “undertakings” in Article 30(5) is intended to refer to legally binding commitments—such as promises given by a party or its representatives to do or abstain from doing something—but which would have to be enforced (e.g., by a national court seizing assets on the basis of the legally binding commitment undertaken) rather than being immediately and independently enforceable against assets or documents held in escrow (i.e., the security). The rationale for the changes in these paragraphs is to allow more flexibility to the arbitral tribunal to adopt interim measures when sensitive human rights issues may be at stake, and in particular to take into account potential barriers to access to remedy for parties who may otherwise find themselves unable to obtain interim measures to protect their rights.

6. The definition of what is “appropriate” security or undertakings under Article 30(5) rests with the arbitral tribunal, who must evaluate what is appropriate in all the circumstances (in particular with respect to financial burden) so as not to unduly favor or disfavor any party – be they claimants or respondents, businesses or natural persons, or parties of any other kind or circumstances.
7. Article 30(7) addresses *ex parte* interim measures, which may be appropriate where prior notice of the measure may allow the affected party to preempt the measure and frustrate its purpose – or where the urgency for the adoption of interim measures is so compelling that any delay, including even that associated with notice to a counterparty, may compromise the usefulness of interim protection. Such exceptional powers, which exist already under the 2006 amendments to the [UNCITRAL Model Law on International Commercial Arbitration](#), may be particularly important in business and human rights proceedings. The language of the provision is largely taken from the 2006 amendments to the [UNCITRAL Model Law on International Commercial Arbitration](#), and in particular from its Articles 17(b) and 17(c)(2).
8. While Article 30 provides for robust interim measures, various safety valves prevent abusive resort to interim measures, including the requirement of potential security or undertakings and the early dismissal mechanism in Article 26. The usual requirements of a *prima facie* case on the merits (*fumus boni iuris*) and proportionality between the burdens of the interim measure and the harm sought to be avoided (see Articles 26(3)(b) and 26(3)(a) of the [2013 UNCITRAL Arbitration Rules](#)) should also prevent parties from being able to leverage frivolous claims into justifying burdensome interim measures in order to extort an undue settlement from a counterparty. As already mentioned, the deletion of these elements of Article 26 of the [2013 UNCITRAL Arbitration Rules](#) is not intended to render them inapplicable. Rather, the provision is modeled on Article 26 of the [1976 UNCITRAL Arbitration Rules](#) in order to grant maximum flexibility to the arbitral tribunal to decide upon the most appropriate interim measures for the particular context.

Emergency arbitrator

Article 31

1. A party that needs urgent interim measures that cannot await the constitution of an arbitral tribunal may submit a request for such measures to the appointing authority, provided that such request is received by the appointing authority prior to the constitution of the arbitral tribunal. The request shall also be provided at the same time to all other parties.

2. The request shall include the following:

- (a) The names and contact details of the parties and their representatives;
- (b) Identification of the arbitration agreement that is invoked;
- (c) Identification of any rule, decision, agreement, contract, convention, treaty, constituent instrument of an organization or agency, or relationship out of or in relation to which the dispute arises;
- (d) A description of the circumstances giving rise to the request and of the underlying dispute referred or to be referred to arbitration;
- (e) A statement of the urgent interim measures sought;
- (f) The reasons why the applicant needs urgent interim measures that cannot await the constitution of an arbitral tribunal;
- (g) Any agreement as to the place of arbitration, the applicable rules of law or the language of the arbitration;
- (h) Any notice of arbitration and any other submissions in connection with the underlying dispute made prior to the request;
- (i) Such other documents or information as the requesting party considers appropriate.

3. The request shall be made in the language of the arbitration if agreed upon by the parties or, in the absence of any such agreement, in the language of the arbitration agreement.

4. The appointing authority shall terminate the proceedings if a notice of arbitration has not been received from the requesting party within 10 days of the receipt of the

request, unless the emergency arbitrator determines that a longer period of time is necessary.

5. The appointing authority shall appoint an emergency arbitrator within as short a time as possible, normally within two days from receipt of the request.

6. The emergency arbitrator shall be and remain impartial and independent of the parties involved in the dispute. The emergency arbitrator shall without delay disclose to the appointing authority and the parties any circumstances likely to give rise to justifiable doubts as to their impartiality or independence, unless they have already been informed of these circumstances. The emergency arbitrator shall not act as an arbitrator in any arbitration relating to the dispute that gave rise to the request. The emergency arbitrator shall comply with the requirements set out in Article 11 of the Rules.

7. An emergency arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the emergency arbitrator's impartiality or independence. A party that intends to challenge an emergency arbitrator shall send notice of its challenge within three days after it has been notified of the appointment of the emergency arbitrator or within three days after the circumstances on which the challenge is based became known to that party. The challenge shall be decided by the appointing authority after affording an opportunity for the emergency arbitrator and the other party or parties to provide comments in writing within a suitable period of time.

8. If the parties have agreed upon the place of the arbitration, such place shall be the place of the emergency arbitrator proceedings. In the absence of such agreement, the appointing authority shall determine the place of the emergency arbitrator proceedings, without prejudice to the determination of the place of the arbitration pursuant to Article 20 of the Rules. Any meetings with the emergency arbitrator may be conducted through a meeting in person at any location the emergency arbitrator considers appropriate or by videoconference, telephone or similar means of communication.

9. The emergency arbitrator's decision shall take the form of an order. The order shall be made in writing and shall state the reasons upon which it is based. It shall be dated and signed by the emergency arbitrator and it shall contain the date on which the order was made and indicate the place of the emergency arbitrator proceedings. The emergency arbitrator may make the order subject to such conditions as the emergency arbitrator considers appropriate, including requiring the provision of appropriate security or undertakings. The order shall fix and

apportion the costs of the proceedings. The parties shall carry out any order made by the emergency arbitrator without delay.

10. The emergency arbitrator's order shall not bind the arbitral tribunal with respect to any question, issue or dispute determined in the order. The arbitral tribunal may modify, terminate or annul the order. The arbitral tribunal shall decide upon any party's requests or claims related to the emergency arbitrator proceedings, including the reallocation of the costs of such proceedings and any claims arising out of or relating to compliance or non-compliance with the order.

11. This Article shall not apply if the parties have agreed to another pre-arbitral procedure that provides for the granting of interim or similar measures. Where this Article does not apply, any party may request the appointing authority to establish a schedule for submissions on interim measures until the constitution of the arbitral tribunal has been completed.

12. Any party may seek urgent interim measures from a competent judicial authority at any time prior to making a request for such measures, and in appropriate circumstances even thereafter, pursuant to these Rules. A request for such measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement. Any such request and any measures taken by the judicial authority must be notified without delay to the appointing authority.

Commentary

The current [2013 UNCITRAL Arbitration Rules](#) do not contain any emergency arbitrator provisions. However, considering the particular need for urgent interim relief that may arise in business and human rights arbitration, the Rules provide for this possibility in a new Article 31. Article 31 draws on various sources including [Article 29](#) and [Annex V of the Rules of Arbitration of the International Chamber of Commerce](#) as well as to a lesser degree [Appendix II of the SCC Arbitration Rules](#), as adapted to the structure, content and style of the [2013 UNCITRAL Arbitration Rules](#).

Evidence

Article 32

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.
2. The arbitral tribunal may organize the taking of evidence in the manner that it deems appropriate to enable each party to effectively present its case, taking into account relevant best practices in the taking of evidence in international dispute resolution and the circumstances of the case, including considerations of fairness, efficiency, cultural appropriateness and rights-compatibility. In organizing the taking of evidence, the arbitral tribunal may limit the scope of the evidence that may be produced by the parties. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.
3. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.
4. At any time during the arbitral proceedings the arbitral tribunal may, on its own motion or at the request of a party, require any party to produce documents, exhibits, witness statements or other evidence within such a period of time as the arbitral tribunal shall determine. The arbitral tribunal shall order the production of documents to the extent necessary to enable each party to have a reasonable opportunity of presenting its case, taking into account considerations of fairness, efficiency, cultural appropriateness and rights-compatibility. If a party fails to produce documents required by the arbitral tribunal, the arbitral tribunal may draw the consequences it deems appropriate, including an inference that such evidence would be adverse to the interests of that party or a reversal of the burden of proof.
5. A request by a party for another party to produce documents shall contain:
 - (a) (i) A description of each requested document sufficient to identify it, or
(ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of documents that are reasonably believed to exist; in the case of documents maintained in electronic form,

the requesting party may, or the arbitral tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such documents in an efficient and economical manner;

- (b) A statement as to how the documents requested are relevant to the case and material to its outcome; and
- (c) (i) A statement that the documents requested are not in the possession, custody or control of the requesting party or a statement of the reasons why it would be unreasonably burdensome for the requesting party to produce such documents, and (ii) a statement of the reasons why the requesting party assumes the documents requested are in the possession, custody or control of another party.

6. After inviting the parties to express their views on the request, the arbitral tribunal shall rule on the request. The arbitral tribunal may order the party to whom such request is addressed to produce any requested document in its possession, custody or control as to which the arbitral tribunal determines that:

- (a) The issues that the requesting party wishes to prove are relevant to the case and material to its outcome;
- (b) No compelling grounds of inadmissibility apply to such document; and
- (c) The requirements of paragraph 5 of this Article have been satisfied.

Any such document shall be produced to the other parties and, if the arbitral tribunal so orders, to it.

Commentary

1. In line with the general procedural powers of the arbitral tribunal under Article 18 to conduct the arbitration in such manner as it considers appropriate, Article 32(2) includes a broad, general and flexible power to organize the taking of evidence in the manner deemed most appropriate for the circumstances of the case. As with other provisions of the Rules (e.g., Articles 18, 22 and 27), Article 32 attempts to strike a balance among a number of factors with respect to the taking of evidence, notably fairness, efficiency, cultural appropriateness and rights-compatibility. The inclusion of cultural appropriateness reflects the reality that certain modes of gathering

evidence that are accepted in certain legal systems or cultures may be inappropriate with respect to some parties, claims or situations.

2. Article 32(2) also allows the tribunal to respond to the possible inequality of arms and of access to evidence among the parties. Among the tools at the disposal of the arbitral tribunal to address such issues are document production procedures, the ability to limit the scope of evidence produced and the power to sanction non-compliance with orders to produce evidence through adverse inferences or a reversal of the burden of proof. Tribunals may, for instance, encourage the use of electronic means of communication for the taking of witness evidence, including live testimony by means of audio or video-link technology and prior recorded testimony as suggested by Articles 67 and 68 of the [Rules of Procedure and Evidence of the International Criminal Court](#). In addition, the arbitral tribunal may, at its discretion, direct the order of proof, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence, set limits to written and oral statements and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.
3. In exercising its general discretion, the arbitral tribunal should be guided by relevant best practices in the taking of evidence in international dispute resolution, including those relating to international arbitration (e.g., the [International Bar Association \(IBA\) Rules on the Taking of Evidence in International Arbitration](#)) as well as those relating to human rights contexts (e.g., the [Rules of Procedure of the Complaints and Dispute Mechanism of the Agreement on Sustainable Garment and Textile](#), the [International Human Rights Fact-Finding Guidelines \(The Lund-London Guidelines\)](#) and the [Rules of Procedure and Evidence of the International Criminal Court](#)).
4. Article 32(4) to 32(6) are based on Articles 3 and 9 of the [IBA Rules on the Taking of Evidence in International Arbitration](#) in order to guide document production procedures in accordance with best practices and with the overall considerations of fairness, efficiency, cultural appropriateness and rights-compatibility. Article 32(4) recognizes that document production may be required in order to enable a party to have a reasonable opportunity of presenting its case. In the application of these provisions, the arbitral tribunal should be cognizant of both the difficulty that certain parties may face in collecting evidence (or making precise document requests) and the potential cost and other burdens that may be entailed by document production

procedures. In addition, before taking decisions on its own initiative, the arbitral tribunal should generally discuss these matters with the parties in order to determine what evidence may be relevant, material and necessary to enable each party to have a reasonable opportunity of presenting its case.

5. Article 32 otherwise reflects the text of Article 27 of the [2013 UNCITRAL Arbitration Rules](#).

Hearings

Article 33

1. In the event of an oral hearing, the arbitral tribunal shall give the parties and the public adequate advance notice of the date, time and place thereof.
2. The arbitral tribunal may organize the hearing in the manner that it deems most appropriate to enable each party to effectively present its case, taking into account relevant best practices in the conduct of hearings in international dispute resolution and the circumstances of the case, including considerations of fairness, efficiency, cultural appropriateness and rights-compatibility.
3. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal. If the legitimate interest of a witness based on a demonstrated genuine fear requires restriction of the representatives of the parties who are informed of the identity of the witness, the arbitral tribunal may order such restriction.
4. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses. A witness, including an expert witness, who is also a party to the arbitration shall not, in principle, be asked to retire.
5. The arbitral tribunal may authorize that witnesses, including expert witnesses, be examined through any means of telecommunication that do not require their physical presence at the hearing.

Commentary

1. In line with Articles 18 and 32, Article 33 confers broad discretion upon arbitral tribunals to conduct hearings as they deem appropriate. In this vein, the arbitral tribunal may limit the oral and written presentation of the parties at the hearing to what is adequate for the presentation of that party's case. The arbitral tribunal may also indicate any points or issues it wishes the parties to address or put questions to the parties during the hearing. In addition, the arbitral tribunal may allow for the presentation of evidence by alternative means including web conferencing, internet communication, telephonic conferences and other means that do not require an in-person presentation of evidence.
2. As indicated in Article 33(2), in exercising its general discretion to organize hearings, the arbitral tribunal should be guided by best practices in international dispute resolution, including those relating to international arbitration (e.g., the [UNCITRAL Notes on Organizing Arbitral Proceedings](#) and the [IBA Rules on the Taking of Evidence in International Arbitration](#)) as well as those relating to human rights contexts (e.g., the [Rules of Procedure of the Complaints and Dispute Mechanism of the Agreement on Sustainable Garment and Textile](#), the [International Human Rights Fact-Finding Guidelines \(The Lund-London Guidelines\)](#) and the [Rules of Procedure and Evidence of the International Criminal Court](#)).
3. Under Article 33(3), the arbitral tribunal may adopt specific measures for the protection of witnesses. These may include the non-disclosure to the public or the other party of the identity or whereabouts of a witness or of persons related to or associated with a witness by such means as: (a) expunging names and identifying information from the public record; (b) non-disclosure to the public of any records identifying the victim or witness; (c) giving of testimony through image- or voice- altering devices or closed circuit television; and (d) assignment of a pseudonym. The arbitral tribunal may also opt for closed hearings under Article 41 and adopt any appropriate measures to facilitate the testimony of vulnerable witnesses, such as one-way closed-circuit television. The possibility to conceal the identity of witnesses provided in Article 33(3) may entail complete anonymity of the witness or a limitation to specific party representatives who are informed of the identity of the witnesses. The burden of proof of demonstrating a "genuine fear" rests on the person or party seeking the restriction. This person or party will

have to show how the witness would be prejudiced by publicity, which may also depend on what information is already in the public domain. The concept of “genuine fear” should be understood as a subjective fear of harm to the person or their livelihood. A witness may have a “genuine fear” even if similarly placed witnesses have testified without retaliation against them.

4. Article 33 otherwise reflects the text of Article 28 of the [2013 UNCITRAL Arbitration Rules](#).

Experts appointed by the arbitral tribunal

Article 34

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert’s terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of their qualifications and a statement of their impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert’s qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert’s appointment, a party may object to the expert’s qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.
3. The parties shall give the expert any relevant information or produce for their inspection any relevant documents or goods that they may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
4. Upon receipt of the expert’s report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in

writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in their report.

5. At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of Article 33 shall be applicable to such proceedings.

Commentary

Article 34 reflects the text of Article 29 of the [2013 UNCITRAL Arbitration Rules](#) without any changes.

Default

Article 35

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:

- (a) The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;
- (b) The respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

2. If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing

sufficient cause for such failure, the arbitral tribunal may draw the consequences it deems appropriate and make the award on the evidence before it.

Commentary

1. The last sentence of Article 35(3) adds that the arbitral tribunal may “draw the consequences it deems appropriate” from a failure to produce documents. This is intended to reinforce the similar provision in the last sentence of Article 32(4), relating to the production of evidence.
2. Article 35 otherwise reflects the text of Article 30 of the [UNCITRAL Arbitration Rules](#).

Closure of hearings

Article 36

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.
2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

Commentary

Article 36 reflects the text of Article 31 of the [2013 UNCITRAL Arbitration Rules](#) without any changes.

Waiver of right to object

Article 37

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

Commentary

Article 37 reflects the text of Article 32 of the [2013 UNCITRAL Arbitration Rules](#) without any changes.

Section IV. Transparency

Scope of application of transparency provisions

Article 38

1. The arbitral tribunal shall have the power, besides its discretionary authority under certain provisions of these Rules, to adapt the requirements of any provision of this Section to the particular circumstances of the case, after consultation with the parties, if such adaptation is necessary to conduct the arbitration in a practical manner and is consistent with the transparency objective of Articles 38 to 43.

2. Where Articles 38 to 43 provide for the arbitral tribunal to exercise discretion, the arbitral tribunal in exercising such discretion shall take into account:

- (a) The public interest in transparency in arbitration under these Rules and in the particular arbitral proceedings;
- (b) The parties' interest in a fair and efficient resolution of their dispute;
- (c) The safety, privacy and confidentiality concerns of the parties, witnesses, representatives and others involved in or affected by the arbitral proceedings; and
- (d) The potential for aggravating conflicts between and among relevant stakeholders.

3. Articles 38 to 43 shall not affect any authority that the arbitral tribunal may otherwise have to conduct the arbitration in such a manner as to promote transparency.

4. In the presence of any conduct, measure or other action having the effect of wholly undermining the transparency objectives of Articles 38 to 43, the arbitral tribunal shall ensure that those objectives prevail.

5. If all parties are legal persons of a commercial character and the arbitral tribunal determines that there is no public interest involved in the dispute, the arbitral

tribunal may, on its own motion or at the request of a party, and after inviting the parties to express their views, decide not to apply Articles 38 to 43.

Commentary

1. Article 38 reflects the text of Article 1 of the [UNCITRAL Transparency Rules](#) with certain adaptations to the context of business and human rights arbitration under these Rules, in particular through the addition of the specific considerations in Articles 38(2)(c) and 38(2)(d). In taking decisions on adapting the transparency regime to the cases before them, arbitral tribunals have wide flexibility and may, for instance, allow the disclosure of information to the public after a certain period of time has elapsed.
2. Article 38(5) provides the arbitral tribunal with the power to exclude in full or in part the application of Section IV in situations where the default transparency regime provided for under these Rules is not necessary or appropriate under the circumstances of the case.
3. As noted in the commentary to Article 1(1), it is not desirable for parties to make too many deviations from these Rules as it might upset the balance sought in various provisions of the Rules between the many varied legitimate interests at play in the resolution of business and human rights disputes. However, arbitration rules cannot limit the parties' autonomy to derogate from these Rules as they choose (consistent with mandatory applicable law) as long as such derogations are made in the proper written form. Therefore, while transparency forms an important part of arbitration under these Rules, the parties may exercise their discretion to opt out of certain provisions that do not respond to their needs in the dispute at issue. Model Clauses, found in the Annex to these Rules, may provide potential parties with options for regulating the degree of transparency or confidentiality of the proceedings according to their needs.

Publication of information at the commencement of arbitral proceedings

Article 39

Once the response to the notice of arbitration has been received or the deadline for such has elapsed, each of the disputing parties shall promptly communicate a copy of the notice of arbitration and the response to the notice of arbitration to the repository referred to under Article 43. Unless a party has made a request under Article 26 or indicated an intention to make an application to the arbitral tribunal under Article 18, paragraph 5, or Article 33, paragraph 3, the repository shall promptly make available to the public information regarding the name of the disputing parties, the economic sector involved and the legal instrument under which the claim is being made.

Commentary

Article 39 reflects the text of Article 2 of the [UNCITRAL Transparency Rules](#) with the addition of exceptions to transparency provided for under Articles 18, 26 and 33 of these Rules.

Publication of documents

Article 40

1. Subject to Article 42, the following documents shall be made available to the public: the notice of arbitration, the response to the notice of arbitration, the statement of claim, the statement of defence; a table listing all exhibits to the aforesaid documents and to expert reports and witness statements, if such table was produced in the proceedings; the orders, decisions and awards of the arbitral tribunal.

2. Subject to Article 42, the arbitral tribunal may decide, on its own initiative or upon request from any person, and after consultation with the disputing parties, whether and how to make available exhibits and any other documents provided to, or issued by, the arbitral tribunal not falling within paragraph 1 above.

3. Subject to Article 42, the documents to be made available to the public pursuant to paragraphs 1 and 2 shall be transmitted by the arbitral tribunal to the repository referred to under Article 43 as soon as possible. The repository shall make all documents available in a timely manner, in the form and in the language in which it receives them.

4. A person granted access to documents under paragraph 2 shall bear any administrative costs of such access, such as the costs of photocopying or shipping documents to that person, but not the costs of making those documents available to the public through the repository.

Commentary

1. Article 40 reflects the text of Article 3 of the [UNCITRAL Transparency Rules](#) with certain adaptations to the context of business and human rights arbitration under these Rules.
2. Article 40(1) lists documents that must be made public. At the same time, given the direct costs of access and publication or reputational costs for the parties, that list is limited to documents needed to make business and human rights arbitrations known to the public and to nurture a culture of protection of human rights by promoting awareness and legal certainty. For example, further written submissions made by the parties, the transcripts of hearings and submissions by third persons under Article 28 are not included in Article 40(1). Such information is not universally available in national court proceedings, even those of a constitutional or public law character.
3. The arbitral tribunal may nevertheless consider whether, in view of the objectives of business and human rights proceedings and the particular circumstances of the case, further documents should be made available under Article 40(2). Indeed, considering the default transparency adopted by these Rules, arbitral tribunals should make available to the public any material information not subject to a legitimate confidentiality claim, including whatever is necessary to understand the tribunal's reasoning in its award.

Public hearings

Article 41

1. Subject to paragraphs 2 and 3, hearings for the presentation of evidence or for oral argument shall be public.
2. Where there is a need to protect confidential or restricted information or the integrity of the arbitral process pursuant to Articles 18, 26, 33 and 42, the arbitral tribunal shall make the appropriate arrangements to hold in private that part of the hearing requiring such protection.
3. The arbitral tribunal shall make logistical arrangements to facilitate the public access to hearings by the means as it deems most appropriate. However, the arbitral tribunal may, after consultation with the parties and third persons making submissions in accordance with Article 28, decide to hold all or part of the hearings in private where necessary for logistical reasons, such as when the circumstances render any original arrangement for public access to a hearing infeasible.

Commentary

1. Article 41 reflects the text of Article 6 of the [UNCITRAL Transparency Rules](#) with the addition of exceptions to transparency provided for under Articles 18, 26 and 33 of these Rules.
2. In line with Article 18, Article 41(3) provides the arbitral tribunal with broad flexibility to organize the logistical arrangements for public access to hearings, which may include video links or such other technological instruments that best attain the level of access that the tribunal determines to be appropriate and compatible with the need to prevent the disclosure of confidential or protected information.

Exceptions to transparency

Article 42

1. Confidential or protected information, as defined in paragraph 2 and as identified pursuant to the arrangements referred to in paragraphs 3 and 4, shall not be made available to the public pursuant to Articles 39 to 41.

2. Confidential or protected information consists of:

- (a) Names and addresses of the parties and their representatives protected by an order of the arbitral tribunal pursuant to Article 18, paragraph 5, as well as of witnesses protected by an order of the arbitral tribunal pursuant to Article 33, paragraph 3;
- (b) Confidential business information, information that has been classified as secret by a Government or a public international institution and any other information deemed confidential under any other grounds of confidentiality that the arbitral tribunal determines to be compelling;
- (c) Information that is protected against being made available to the public under the arbitration agreement;
- (d) Information that is protected against being made available to the public under any law or rules determined by the arbitral tribunal to be applicable to the disclosure of such information;
- (e) Information the disclosure of which would impede law enforcement; or
- (f) Information the non-disclosure of which is necessary to protect the safety, physical and psychological well-being and privacy of parties, witnesses, representatives and others involved in or affected by the arbitral proceedings.

Any determination as to whether information is confidential or protected shall be made by the arbitral tribunal after consultation with the parties.

3. The arbitral tribunal, after consultation with the parties, shall make arrangements to prevent any confidential or protected information from being made available to the public, including by putting in place, as appropriate:

- (a) Time limits in which a party or third person shall give notice that it seeks protection for such information in documents;
- (b) Procedures for the prompt designation and redaction of the particular confidential or protected information in such documents; and
- (c) Procedures for holding hearings in private to the extent required by Article 41, paragraph 2.

4. Where the arbitral tribunal determines that information should not be redacted from a document, or that a document should not be prevented from being made available to the public, any party or third person that voluntarily introduced the document into the record shall be permitted to withdraw all or part of the document from the record of the arbitral proceedings.

5. The arbitral tribunal may, on its own initiative or upon the application of a party, after consultation with the parties where practicable, take appropriate measures to restrain or delay the publication of information pursuant to Articles 39 to 41 where such publication would jeopardize the integrity of the arbitral process because it could hamper the collection or production of evidence, lead to the intimidation of witnesses, parties, representatives or members of the arbitral tribunal, or in comparably exceptional circumstances.

Commentary

1. Article 42 reflects the text of the [UNCITRAL Transparency Rules](#) with certain adaptations to the context of business and human rights arbitration under these Rules, in particular with respect to the categories of confidential and protected information under Article 42(2).
2. In paragraph 2(b) of Article 42, the phrase “any other information deemed confidential under any other grounds of confidentiality that the arbitral tribunal determines to be compelling” is intended to cover confidentiality obligations that are not imposed directly by law under paragraph 2(d) of the same Article but which the arbitral tribunal nevertheless considers provide compelling grounds for non-disclosure (e.g., confidentiality provisions in contracts or other agreements or the duties of discretion in a code of conduct promulgated by a professional association). The meaning of “confidential business information” is well established in arbitration law and

practice, for instance in Article 7(2)(a) of the [UNCITRAL Transparency Rules](#).

3. Considering the sensitivity of the interests and situations that may be involved in the proceedings under these Rules, Article 42(2)(f) confers the power on the arbitral tribunal to deem information confidential if necessary to protect the safety, physical and psychological well-being and privacy of all those involved directly or indirectly in the proceedings. The provision draws on similar considerations as those underlying Articles 18(5), 26(6), 28(6), 33(3), 38(2)(c), 39, 40(2) and 41(2).

Repository of published information

Article 43

The repository of published information under these Rules shall be the PCA. The repository shall regularly publish general information about arbitration under these Rules as a source of continuous learning, including industry sector, names of arbitrators, outcome of cases and costs.

Commentary

Article 43 reflects the text of Article 8 of the [UNCITRAL Transparency Rules](#) with the addition that the repository is to publish general information about arbitration under these Rules as a source of continuous learning in keeping with Principle 31(g) of the [UN Guiding Principles](#).

Section V. The award

Decisions

Article 44

1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

Commentary

Article 44 reflects the text of Article 33 of the [2013 UNCITRAL Arbitration Rules](#) without any changes.

Form and effect of the award

Article 45

1. The arbitral tribunal may make separate awards on different issues at different times.
2. An award may order monetary compensation and non-monetary relief, including restitution, rehabilitation, satisfaction, specific performance and the provision of guarantees of non-repetition. An award may also contain recommendations for other measures that may assist in resolving the underlying dispute and preventing future disputes or the repetition of harm, which shall be binding only if agreed by the parties.
3. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay. Subject to Article 1, paragraph 4, the arbitral tribunal may, at the request of a party, stipulate any penalty, monetary

or otherwise, it deems appropriate for non-compliance with any non-monetary relief contained in its award.

4. The arbitral tribunal shall state the reasons upon which the award is based and shall satisfy itself that the award is human rights-compatible.

5. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

Commentary

1. The illustrative list of the kinds of relief in Article 45(2) is based on the commentary to Principle 25 of the [UN Guiding Principles](#), which is the “Foundational Principle” of access to remedy under Pillar III of the same text. This list serves to confirm that arbitral tribunals may grant any monetary or non-monetary relief available under applicable law and should seek to appropriately tailor remedies to the needs of the case. In addition, this paragraph empowers the arbitral tribunal to make non-binding recommendations, including additional options for satisfaction and moral redress.
2. The specification “monetary or otherwise” under Article 45(3) intends to allow the arbitral tribunal to adopt a wide range of sanctions, such as those affecting the reputation of the non-complying party, to ensure compliance with its decisions.
3. The duty of the arbitral tribunal to ensure the human rights-compatibility of its award in Article 45(4) flows from Article 18(1) and Principle 31(f) of the [UN Guiding Principles](#). The arbitral tribunal has discretion to interpret this term and what is required in order for its award to be rights-compatible. Nevertheless, it would be appropriate to include some discussion of the issue of rights-compatibility in the reasoning of any award. This is also part of the motivation for linking the requirement of rights-compatibility to the general requirement of reasons for the award. At the same time, this requirement is one of procedure and form, as part of the general requirement of reasons,

and not of substance or applicable law. The rights-compatibility requirement serves to encourage the arbitral tribunal to consider this issue within the ambit of its discretion in crafting remedies under its award but does not authorize the arbitral tribunal to disregard or alter the result required by the applicable law as determined in accordance with Article 46. Moreover, it assists in fulfilling the arbitral tribunal's duty to render an enforceable award by ensuring that the arbitral tribunal has considered potential issues of compliance with public policy which may arise in business and human rights arbitration, in particular those arising under the law of the legal place (seat) of the arbitration and likely place(s) of enforcement of the award.

4. Article 45 otherwise reflects the text of Article 34 of the [2013 UNCITRAL Arbitration Rules](#).

Applicable law, amiable compositeur

Article 46

1. The arbitral tribunal shall apply the law, rules of law or standards designated by the parties as applicable to the substance of the dispute.
2. Failing such designation by the parties, the arbitral tribunal shall apply the law or rules of law which it determines to be appropriate.
3. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the arbitral tribunal to do so.
4. In all cases, the arbitral tribunal shall decide in accordance with the terms of the applicable agreement(s), if any, and shall take into account any usage of trade applicable to the transaction, including any business and human rights standards or instruments that may have become usages of trade.

Commentary

1. The term “rules of law” in Article 46(1) and (2) refers to the possibility for the parties to designate, and for the arbitral tribunal to apply, rules emanating from different legal systems or even from non-national sources (e.g., the

UNIDROIT Principles of International Commercial Contracts) rather than only being able to apply one legal system in its entirety as national conflict of law rules often require. This may also encompass situations of rules of mandatory application (*loi de police*), insofar as found applicable, as well as rules determined to be applicable through conventional choice of law methodologies.

2. The use of the complete phrase “law, rules of law or standards” in Article 46(1) intends to provide the parties with the broadest possible flexibility in choosing the normative sources from which the applicable law is drawn, including, for example, industry or supply chain codes of conduct, statutory commitments or regulations from sports-governing bodies or any other relevant (business and) human rights norms which the parties have agreed to apply.
3. The applicable law or rules of law determined by the tribunal under Article 46(2) may include international human rights obligations. Another matter for the tribunal to consider is the potential direct or indirect relevance of international human rights obligations of any States involved in the dispute either as parties or as the State of nationality of any of the parties.
4. Without seeking to alter the applicable law as compared to what it would otherwise be, Article 46(4) draws the arbitral tribunal’s attention to various additional sources of binding rules that the arbitral tribunal may draw upon to resolve business and human rights disputes. In particular, within industries where all relevant participants have committed to a certain level of human rights protection, a usage of trade may arise and bind the parties, even where the contract does not expressly incorporate applicable human rights standards.
5. Article 46 otherwise reflects the text of Article 35 of the [2013 UNCITRAL Arbitration Rules](#).

Settlement or other grounds for termination

Article 47

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award but must be unanimously satisfied that such an award is human rights-compatible.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that need to be decided and the arbitral tribunal considers it appropriate to do so.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of Article 45, paragraphs 3, 5 and 6, shall apply.

Commentary

1. Article 47(1) requires the arbitral tribunal to be unanimously satisfied of the human rights-compatibility of any award on agreed terms. Under this provision, as under Article 36 of the [2013 UNCITRAL Arbitration Rules](#), an award on agreed terms can be issued only if the arbitral tribunal agrees to do so. An arbitral tribunal may therefore refuse to render an award on agreed terms for any reason whatsoever. Such a refusal to issue an award on agreed terms in no way prevents the parties from concluding a settlement or impedes the legal effect of any such settlement. As compared to Article 36 of the [2013 UNCITRAL Arbitration Rules](#), this paragraph requires that the arbitral tribunal's agreement to render an award on agreed terms be unanimous with respect to the rights-compatibility of such award. The requirement of unanimity reflects the fact that, as compared to a regular award, there is little, if any, possibility for a dissent in respect of an award on agreed terms—including on the rights-compatibility of the award—given

that an award on agreed terms may lack any reasons from which to dissent. An arbitral tribunal should therefore not assist the parties to enshrine a settlement in an award on agreed terms where any of its members harbours doubts as to the rights-compatibility of such settlement. By requiring unanimous endorsement by the arbitral tribunal of the rights-compatibility of an award on agreed terms, the provision provides a guarantee to the public at large that, whatever the content of a settlement may have been, it was found to be rights-compatible by an arbitral tribunal of business and human rights experts.

2. Article 47 otherwise reflects the text of Article 36 of the [2013 UNCITRAL Arbitration Rules](#).

Interpretation of the award

Article 48

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 45, paragraphs 3 to 6, shall apply.

Commentary

Article 48 reflects the text of Article 37 of the [2013 UNCITRAL Arbitration Rules](#) without any changes.

Correction of the award

Article 49

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.
2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
3. Such corrections shall be in writing and shall form part of the award. The provisions of Article 45, paragraphs 3 to 6, shall apply.

Commentary

Article 49 reflects the text of Article 38 of the [2013 UNCITRAL Arbitration Rules](#) without any changes.

Additional award

Article 50

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.
2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.
3. When such an award or additional award is made, the provisions of Article 45, paragraphs 3 to 6, shall apply.

Commentary

Article 50 reflects the text of Article 39 of the [2013 UNCITRAL Arbitration Rules](#) without any changes.

Definition of costs

Article 51

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.
2. The term “costs” includes only:
 - (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the arbitral tribunal itself in accordance with Article 52;
 - (b) The reasonable travel and other expenses incurred by the arbitrators;
 - (c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
 - (d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
 - (e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
 - (f) Any fees and expenses of the appointing authority and the PCA.
3. In relation to interpretation, correction or completion of any award under Articles 48 to 50, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

Commentary

Article 51 reflects the text of Article 40 of the [2013 UNCITRAL Arbitration Rules](#) with the clarification that paragraph 2(f) covers the costs of the appointing authority and of the PCA in all its functions under these Rules.

Fees and expenses of arbitrators

Article 52

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators, the cost burden on each party and any other relevant circumstances of the case, including any agreements by the parties, such as those on controlling costs and financing options.
2. If the appointing authority applies or has stated that it will apply a schedule or particular method for determining the fees and expenses for arbitrators in international cases, the arbitral tribunal shall take that schedule or method into account in determining its fees and expenses.
3. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If, within 45 days of receipt of such a referral, the appointing authority finds that the proposal of the arbitral tribunal is inconsistent with paragraphs 1 or 2, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal.
4. (a) When informing the parties of the arbitrators' fees and expenses that have been fixed pursuant to Article 51, paragraphs 2 (a) and (b), the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated;
- (b) Within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the appointing authority;

- (c) If the appointing authority finds that the arbitral tribunal's determination is inconsistent with the arbitral tribunal's proposal (and any adjustment thereto) under paragraph 3 or is otherwise manifestly excessive, it shall, within 45 days of receiving such a referral, make any adjustments to the arbitral tribunal's determination that are necessary to satisfy the criteria in paragraph 1. Any such adjustments shall be binding upon the arbitral tribunal;
- (d) Any such adjustments shall either be included by the arbitral tribunal in its award or, if the award has already been issued, be implemented in a correction to the award, to which the procedure of Article 49, paragraph 3, shall apply.

5. Throughout the procedure under paragraphs 3 and 4, the arbitral tribunal shall proceed with the arbitration, in accordance with Article 18, paragraph 1.

6. A referral under paragraph 4 shall not affect any determination in the award other than the arbitral tribunal's fees and expenses; nor shall it delay the recognition and enforcement of all parts of the award other than those relating to the determination of the arbitral tribunal's fees and expenses.

Commentary

1. Article 52(1) makes certain additions to the text of Article 41 of the [2013 UNCITRAL Arbitration Rules](#). These additions make explicit that, in charging fees and incurring expenses, the arbitral tribunal should take into account any relevant agreements of the parties as well as the possible burden on a party of certain means of conducting the arbitration. These additions also add to the tools available for parties and the appointing authority to control the costs of the arbitration, such as the cost review mechanisms under paragraphs 2 to 4 of Article 52 and Article 54(3). For example, it would be inappropriate for an arbitral tribunal to choose an unreasonably expensive hearing venue where cheaper and equally suitable options were available, one of the parties is of limited financial means and the costs of such venue exceed the parties' agreed budget for the costs of the hearing.
2. Article 52(1) does not prescribe the form that arbitrators' fees may take. The arbitral tribunal may decide to use a fixed fee scale, to charge an hourly rate or to use some other method for determining its fees. One or more arbitrators may also be willing to offer their services free of charge (*pro bono*).

However, it may be appropriate for arbitrators to give an early estimate of the overall expected amount of their fees and expenses or to agree to apply a cap to their fees and expenses in order not to unduly burden parties with unexpected costs.

3. Article 52(2) has also been modified from the [2013 UNCITRAL Arbitration Rules](#) to clarify that the appointing authority may adopt a schedule or method in respect of the arbitrators' expenses as well as their fees, and that such schedule or method is binding upon the arbitral tribunal.
4. Article 52 otherwise reflects the text of Article 41 of the [2013 UNCITRAL Arbitration Rules](#).

Allocation of costs

Article 53

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case, including the conduct of the parties in the arbitration, the financial burden on each party and the public interest, if any.
2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

Commentary

1. The principle of loser pays as the default method of allocation of the costs of the arbitration constitutes both an incentive to arbitrate for the economically weaker party that has a strong case and a safety shield for respondents from unfounded actions. Nonetheless, the second sentence of Article 53(1) affords the arbitral tribunal the discretion to deviate from the loser pays principle and adopt the apportionment of costs that it considers reasonable considering all circumstances of the case. An illustrative list has

been added to the end of the second sentence of Article 53(1) in order to guide arbitral tribunals as to some of the relevant circumstances that they may wish to consider when contemplating a departure from the loser pays principle, namely the conduct of the parties, the particular burden on a party resulting from a costs award and any public interest implicated.

2. Article 53 otherwise reflects the text of Article 42 of the [2013 UNCITRAL Arbitration Rules](#).
3. Model Clauses found in the Annex to these Rules also provide parties with options to agree in advance on the apportionment of costs under Article 53 and the payment of deposits under Article 54.

Deposit of costs

Article 54

1. The arbitral tribunal, on its establishment, may request the parties to deposit an advance for the costs referred to in Article 51, paragraphs 2 (a) to (c) and (f). During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.
2. The amount of the deposit requested from each party may differ and should in any case be reasonable, taking into account the amount in dispute, the complexity of the subject matter, the estimated time to be spent by the arbitrators, the cost burden on each party and any other relevant circumstances of the case, including any agreements by the parties such as those on controlling costs and financing options. The arbitral tribunal shall ensure that the amount of the deposit does not constitute an undue obstacle to any party's participation in the proceedings.
3. The arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only upon approval of the appointing authority.
4. If the required deposits are not paid in full within 30 days after the receipt of the request, or such other period as may be set by the arbitral tribunal, the arbitral tribunal shall so inform the parties in order that one or more of them may make the

required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

5. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Commentary

1. As part of the general attempt to lower barriers to access to remedy, Article 54(2) requires that the amount of deposits be reasonable in amount and includes the same illustrative list of factors that may inform the assessment of “reasonableness” as under Article 52(1). This serves to prevent the amount of the deposits requested from the parties from unduly impairing access to arbitration for parties of limited financial means. This paragraph also notes that the amount of the deposit requested may also differ for each party. The third sentence sets the overarching principle that the payment of deposits should not create an insurmountable impediment for a party to commence or continue an arbitration proceeding under these Rules. In particular, this general principle coupled with the notion that the obstacle must be “undue” means that the arbitral tribunal can only dismiss a case under Article 54(4) if the parties fail to pay a requested deposit that is reasonable in accordance with the criteria set out in Article 54(2).
2. Article 54(3) grants the appointing authority the role of overseeing the reasonableness of the deposits for costs, providing a form of ex ante control over their amount.
3. Article 54 otherwise reflects the text of Article 43 of the [2013 UNCITRAL Arbitration Rules](#).
4. Model Clauses found in the Annex to these Rules also provide parties with options to agree in advance on the payment of deposits under this Article and the apportionment of costs under Article 53.

Section VI. Miscellaneous provisions

Third party funding

Article 55

1. Where a party or a third person making submissions in accordance with Article 28 benefits from any form of funding or financial assistance for the participation in the proceedings, such party or third person shall promptly disclose to all other parties and to the arbitral tribunal the name and contact details of the source of the funding or financial assistance.
2. Notwithstanding paragraph 1, upon request of the funded party, the arbitral tribunal may determine that such information shall not be disclosed to the other parties or made available to the public.
3. The arbitral tribunal may take into account any such funding when making its determinations on costs and deposits in the arbitration.

Commentary

1. Article 55 is a new article as compared to the [2013 UNCITRAL Arbitration Rules](#), which specifically regulates third party funding. The legitimacy of arbitration under these Rules depends on transparency of the interests underlying the proceedings.
2. Under Article 55(1), the basic information that must be disclosed by default by the funded party are the name and contact details of the source of the funding or financial assistance. The arbitral tribunal may request the disclosure of further information where necessary, such as when it is considering whether to withhold information on the funder from disclosure under Article 55(2).
3. Article 55(2) establishes an exception to the default disclosure requirement under Article 55(1) to account for circumstances in which such disclosure may cause undue prejudice. The provision empowers the arbitral tribunal to decide not to disclose information on the funder, in whole or part, to the

other party, to third persons or the public at large. In the exercise of its discretion under Article 55(2), the arbitral tribunal may condition the non-disclosure on the provision by the funded party of appropriate security or undertakings, including consent by the funder to be bound by an adverse costs award.

4. Article 55(3) further clarifies that any third party funding may also be taken into account by the arbitral tribunal in decisions on costs and deposits.

Mediation and other forms of collaborative settlement

Article 56

1. At any time during the course of the arbitral proceedings, parties may agree in writing to resort to negotiation, mediation, conciliation or other facilitation methods to resolve their dispute. In that case, upon the joint request of the parties, the arbitral tribunal shall stay the arbitral proceedings.
2. No mediator or other facilitator may subsequently participate in the arbitral proceedings in any capacity, including as arbitrator, expert, representative, adviser or otherwise.
3. All offers, admissions or other statements by the parties, or recommendations by the mediator or other facilitator, made during the course of the settlement proceedings shall be inadmissible as evidence in the arbitral proceedings, unless otherwise agreed by the parties.
4. If the collaborative settlement proceedings are terminated without a settlement of the dispute, the arbitral tribunal, at the request of any party, shall resume the arbitral proceedings.

Commentary

1. Article 56 is a new article as compared to the [2013 UNCITRAL Arbitration Rules](#), which emphasizes the importance of collaborative and dialogue-based

settlement mechanisms in business and human rights disputes. Article 56 establishes a framework for mediation that takes place in parallel to or in conjunction with arbitration under these Rules, in keeping with other provisions in the Rules concerning the facilitation of settlement through collaborative settlement mechanisms, such as Article 18(3), Article 47 (Settlement or other grounds for termination) and paragraph 4 of the Preamble. Its provisions are largely taken from or inspired by the [CEDR Rules for the Facilitation of Settlement in International Arbitration](#) and the [UNCITRAL Conciliation Rules](#).

2. As highlighted in the commentary to Article 1(6), there is no universally-accepted definition of “mediation” or “collaborative settlement mechanisms.” For the purposes of this Article, these terms should therefore be understood broadly to include not only the kinds of proceedings expressly named in Article 56(1), but all other related forms of “alternative dispute resolution” or “amicable dispute resolution.”

Expedited arbitration

Article 57

1. Unless the parties have agreed otherwise, where only monetary compensation is sought and the appointing authority determines that, in view of the circumstances of the case, it is appropriate to appoint a sole arbitrator pursuant to Article 7, paragraph 2, the following expedited procedures shall apply:

- (a) All time limits under the Rules shall in principle be halved;
- (b) The proceeding shall be decided on the basis of written statements and documents without an oral hearing; and
- (c) The final award shall be made within six months from the date of the appointment of the sole arbitrator.

2. Once appointed, the sole arbitrator may determine that the expedited procedures shall not apply.

3. The provisions of these Rules shall apply without modification to all other aspects of the arbitral proceedings.

Commentary

1. Article 57 is a new article as compared to the [2013 UNCITRAL Arbitration Rules](#). The expedited procedure under these Rules is designed to accommodate the need for the efficient resolution of disputes of a simpler nature and with a modest amount in dispute. All of the adjustments to the regular procedure envisaged in paragraphs 1 (a) to (c) may already be carried out by the appointing authority or the arbitral tribunal according to the discretion conferred upon them by the existing provisions of these Rules:
 - i. the appointing authority and the arbitral tribunal already have the authority to modify time limits;
 - ii. the arbitral tribunal already enjoys the power to decide whether to hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument under Article 18(4); and
 - iii. the arbitral tribunal already holds full control over the timing of issuance of its award and its reasoning under Article 45.
2. Article 57 merely changes the default starting position on these procedural issues where only monetary compensation is sought and the appointing authority has determined under Article 7(2) that the circumstances of the case justify the appointment a sole arbitrator instead of a tribunal of three arbitrators. The decision by the appointing authority to appoint a sole arbitrator in these circumstances is a strong indication that it is appropriate to apply expedited procedures for that case. The sole arbitrator may still decide at any subsequent point that the expedited procedures set forth in this Article are not appropriate for the particular dispute.
3. The condition that “only monetary compensation is sought” in Article 57(1) also covers cases in which a declaration of breach or other declaration is sought which is a predicate to monetary compensation, provided that no other non-monetary final relief of the kinds mentioned in Article 45(2) is requested. Equally, the application of Article 57 does not preclude a party from seeking interim measures in accordance with Articles 30 and 31, even though such interim measures are commonly non-monetary in nature.



Code of Conduct

The Code of Conduct forms an integral part of the Hague Rules on Business and Human Rights Arbitration. Its application can also be agreed to in arbitrations conducted under other rules of procedure. The provisions of the Code of Conduct have been elaborated on the basis of international best practices, similar codes under various international instruments and other ethical standards such as the IBA Guidelines on Conflicts of Interest in International Arbitration, but in some cases adopt stricter requirements due to the nature of business and human rights disputes.

Definitions

- (a) “Affiliate” encompasses all companies in a group of companies, including the parent company.
- (b) “Close family member” refers to a spouse, sibling, child, parent or life partner, in addition to any other family member with whom a close relationship exists.
- (c) “the Rules” refer to The Hague Rules on Business and Human Rights Arbitration.

1. General Duties

At all times, arbitrators shall:

- (a) Be, and reasonably appear to be, independent and impartial;
- (b) Avoid impropriety as well as any reasonable perception of impropriety;
- (c) Avoid direct and indirect conflicts of interests;
- (d) Respect the confidentiality of the arbitral proceedings;
- (e) Observe high standards of conduct that preserve in all respects the integrity of the arbitral proceedings; and
- (f) Act diligently, fairly and in a timely manner.

2. Duty of Disclosure

1. Prior to appointment as an arbitrator under these Rules, a person approached in connection with their possible appointment as an arbitrator (the “candidate”) shall disclose any interest, relationship or matter that could reasonably¹ be considered as affecting their independence or impartiality, or that might otherwise give rise to a reasonable perception of impropriety. An arbitrator, from the time of their appointment and throughout the arbitral proceedings shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by them of these circumstances. To this end, a candidate or arbitrator shall make all reasonable efforts to become aware of such interests, relationships and matters. The disclosure obligations of candidates and arbitrators shall conform to international best practices.

2. Candidates shall disclose at least the following interests, relationships and matters:

- (a) Any financial interest of the candidate or arbitrator:
 - i. in the proceeding or in its outcome; and
 - ii. in any other administrative, judicial or arbitral proceeding that involves any of the same issues that may be decided in the arbitral proceedings under these Rules;
- (b) Any financial interest of the candidate’s or arbitrator’s employer, partner, business associate or close family member:
 - i. in the proceeding or in its outcome; and
 - ii. in any other administrative, judicial or arbitral proceeding that involves any of the same issues that may be decided in the arbitral proceedings under these Rules;
- (c) Any past or existing² financial, business, professional, close family or close personal relationship with the parties or their affiliates or

¹ The use of the terms “reasonable” and “reasonably” throughout this Code of Conduct, in the same manner as the use of the term “justifiable” in Article 11 of the Rules, is meant to establish an objective standard, i.e., the view of a reasonable and informed third party, rather than the subjective view of a party involved in the dispute.

² For the purposes of this Code of Conduct, “existing” relationships include reasonably expected future relationships.

representatives, or any such relationship involving a candidate's or arbitrator's employer, partner, business associate or close family member;

- (d) Public advocacy or legal or other representation concerning issues closely related to the dispute in the proceeding or involving the same matters;
- (e) All past and pending arbitral appointments made by any of the parties or their affiliates or close family members;
- (f) All pending appointments made by any of the parties' representatives and law firms involved in the dispute, as well as any such appointments made in the previous five years;
- (g) All pending work as a party representative, expert or in any other role in any matter for or adverse to any of the parties involved in the arbitration, including the parties' representatives, law firms, expert companies and financial institutions, as well as any such work performed in the previous five years; and
- (h) The nature and content of any pre-appointment contact between a party or its representatives and a candidate.

3. The disclosure obligations set out in paragraphs 1 and 2 above shall not be construed in such a way that the burden of detailed disclosure makes it impractical for qualified individuals to serve as arbitrators. Candidates and arbitrators are not required to disclose interests, relationships or matters whose bearing on their role in the arbitral proceedings would be trivial.

3. Independence and Impartiality of Arbitrators

1. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or reasonably appear to interfere, with the proper performance of their duties.

2. An arbitrator shall not use their position on the arbitral tribunal to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence them in respect of the arbitration.

3. An arbitrator shall not allow financial, business, professional, family or social relationships or responsibilities to influence their conduct or judgement in respect of the arbitration.

4. An arbitrator shall avoid entering into any relationship or acquiring any financial interest that is likely to affect their independence and impartiality or give rise to a reasonable appearance thereof, or that might otherwise give rise to a reasonable appearance of impropriety.

4. Duties of Arbitrators, Candidates and Former Arbitrators

1. An arbitrator shall not delegate the duty to decide the dispute to any other person. An arbitrator shall ensure that their assistants and staff, as well as any tribunal secretaries, comply with the provisions of this code.

2. For the duration of the arbitral proceedings under these Rules, an arbitrator shall not act as party representative, party-appointed expert or witness in any other administrative, judicial or arbitral proceeding that involves any of the same issues that may be decided in the arbitral proceedings under these Rules.

3. Under no circumstance shall a candidate or arbitrator discuss with any party any jurisdictional, substantive or procedural issue relevant to the dispute except in the presence of all other parties.

4. All former arbitrators shall avoid actions that may create the reasonable appearance that they lacked independence or impartiality in carrying out their duties or derived advantage from the decisions of the arbitration panel.

5. Confidentiality

1. No arbitrator or former arbitrator shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of that proceeding, except with the consent of all parties or where and to the extent disclosure is required by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority. Any arbitrator or former arbitrator shall not, in any case, disclose or use any such

information to gain personal advantage or advantage for others or to adversely affect the interest of others.

2. An arbitrator or former arbitrator shall not at any time disclose the deliberations of the arbitral tribunal or any member's view.

6. International Best Practices

1. For matters governed by but not expressly settled in the Code of Conduct, the Code of Conduct shall be interpreted and applied in light of international best practices.

2. A Code of Conduct Committee may be established by the Permanent Court of Arbitration or a body designated by the Permanent Court of Arbitration. The Code of Conduct Committee may revise and update the Code of Conduct. The Code of Conduct Committee may also serve other functions, including in connection with actual or potential violations of this Code.



Annex – Model clauses

This Annex provides examples of arbitral clauses which may be used in a variety of contexts, involving different combinations of parties, subject matters, agreements and other instruments. The Annex also provides model clauses which the parties may use to adapt the application of specific provisions of these Rules to the particular circumstances of the case and model statements of impartiality and independence pursuant to Article 12 of the Rules.

Model clauses for pre-dispute submission to arbitration

Model arbitration clause for contracts

Parties may choose to include the following model clause in contracts to have disputes referred to arbitration under the Hague Rules on Business and Human Rights Arbitration:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Hague Rules on Business and Human Rights Arbitration.

Note — *Parties should consider adding:*

- (a) The number of arbitrators shall be . . . [one or three];
- (b) The place of arbitration shall be . . . [town and country];
- (c) The language(s) to be used in the arbitral proceedings shall be . . . [select one or more languages].

Note — *Although the Permanent Court of Arbitration may already be called upon to provide institutional support to the arbitration under Article 1(5) of the Rules, the parties may wish to provide expressly for such administrative support by the PCA or to provide for administrative support by another arbitral institution. The parties may therefore consider adding a provision to that effect as suggested below.*

- (d) The [Permanent Court of Arbitration] shall provide secretariat services and serve as registry in the arbitration.

Model arbitration clause for other agreements or instruments

Parties may choose to include the following model clause in other kinds of agreements to have disputes referred to arbitration under the Hague Rules on Business and Human Rights Arbitration:

Any dispute, controversy or claim arising out of or in relation to this [agreement] [treaty] [instrument] [rule] [decision] [relationship], or the existence, interpretation, application, breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Hague Rules on Business and Human Rights Arbitration.

Note — *Parties should consider adding:*

- (a) The number of arbitrators shall be . . . [one or three];
- (b) The place of arbitration shall be . . . [town and country];
- (c) The language(s) to be used in the arbitral proceedings shall be . . . [select one or more languages].

Note — *Although the Permanent Court of Arbitration may already be called upon to provide institutional support to the arbitration under Article 1(5) of the Rules, the parties may wish to provide expressly for such administrative support by the PCA or to provide for administrative support by another arbitral institution. The parties may therefore consider adding a provision to that effect as suggested below.*

- (d) The [Permanent Court of Arbitration] shall provide secretariat services and serve as registry in the arbitration.

Model submission agreement for existing disputes

If the parties have not already entered into an arbitration agreement, or if they mutually agree to change a previous agreement in order to provide for arbitration under the Hague Rules on Business and Human Rights Arbitration, they may enter into an agreement in the following form:

The parties agree to submit the following dispute to final and binding arbitration in accordance with the Hague Rules on Business and Human

Rights Arbitration, as in effect on the date of this agreement: . . . [insert brief description of dispute].

Note — *Parties should consider adding:*

- (a) The number of arbitrators shall be . . . [one or three];
- (b) The place of arbitration shall be . . . [town and country];
- (c) The language(s) to be used in the arbitral proceedings shall be . . . [select one or more languages];
- (d) This submission agreement is governed by the law of [country].

Note — *Although the Permanent Court of Arbitration may already be called upon to provide institutional support to the arbitration under Article 1(5) of the Rules, the parties may wish to provide expressly for such administrative support by the PCA or to provide for administrative support by another arbitral institution. The parties may therefore consider adding a provision to that effect as suggested below.*

- (e) The [Permanent Court of Arbitration] shall provide secretariat services and serve as registry in the arbitration.

Model clauses to incorporate the Rules into existing arbitration agreements

If the parties have already entered into an arbitration agreement, or if they mutually agree to supplement an existing agreement in order to incorporate some of the special features of the Hague Rules on Business and Human Rights Arbitration, the parties may add the following model language to their arbitration agreement or to an initial procedural agreement of the parties. The arbitral tribunal may also consider adding the following model language to an initial procedural order:

Incorporation as binding rules

Where the arbitral tribunal considers that issues of human rights are relevant to the dispute, the arbitration shall be conducted in accordance with the Hague Rules on Business and Human Rights Arbitration in respect of the determination of those issues.

Incorporation as non-binding guidelines

In addition to the relevant articles of the [insert name of applicable arbitration rules], the arbitral tribunal may use the Hague Rules on Business and Human Rights Arbitration as an additional guideline when considering matters of human rights.

Model clauses for specific issues

Possible waiver statement

If the parties wish to exclude recourse against the arbitral award that may be available under the applicable law, they may consider adding a provision to that effect as suggested below, considering, however, that the effectiveness and conditions of such an exclusion depend on the applicable law.

The parties hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under the applicable law.

Model clause for facilitation or mediation prior to arbitration

In addition to the elements noted in the model clauses above, the parties may choose to include the following model language in their arbitration clause in order to have disputes referred to arbitration under the Hague Rules on Business and Human Rights Arbitration:

In the event of any dispute, controversy or claim arising out of or relating to this [contract] [agreement] [treaty] [instrument] [rule] [decision] [relationship], or the existence, interpretation, application, breach, termination or invalidity thereof, the parties shall initially try to settle their differences amicably between themselves by good faith negotiations.

Potential facilitation or mediation

If any party deems such negotiations to be unsuccessful, such party may, by notice in writing, invite the other party or parties concerned either to employ the services of a facilitator to assist the parties in the settlement of their differences or to mediate the dispute under the [select mediation or conciliation rules, e.g., UNCITRAL Conciliation Rules] as in effect on the date of this agreement. If facilitation is selected and any party thereafter

deems such facilitation to be unsuccessful, such party may, by notice in writing, invite the other party or parties concerned to submit the dispute to mediation in accordance with this paragraph.

The number of facilitators or mediators and the name(s) of any person(s) that a party proposes to appoint shall be stated in each relevant notice. If three or more mediators are to be appointed each side shall appoint an equal number of mediators and the final mediator shall be appointed by [insert appointing authority for mediation (e.g., the Permanent Court of Arbitration)]. If the parties are unable to agree upon the number of mediators or if a party fails to appoint its share of mediator(s), then [insert appointing authority for mediation (e.g., the Permanent Court of Arbitration)] shall determine the number of mediators and make any necessary appointments.

The language(s) to be used in the mediation shall be . . . [select one or more languages].

Upon the written consent of all parties, persons that a party has identified as having been adversely affected by a breach of this [contract] [agreement] [treaty] [instrument] [rule] [decision] [relationship] may participate in such facilitation or mediation. Such consent shall contain the terms governing such participation, including the extent of such participation, the means of representation, any requirements for safeguarding the confidentiality of information, the sharing of costs and any other relevant matters.

Arbitration

If the parties agree not to resort to good faith negotiations, facilitation or mediation, or if any party deems any such procedure to be unsuccessful, any dispute, controversy or claim arising out of or in relation to this [contract] [agreement] [treaty] [instrument] [rule] [decision] [relationship], or the existence, interpretation, application, breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Hague Rules on Business and Human Rights Arbitration.

Model clause to adopt or exclude expedited proceedings

In addition to the elements noted in the model clauses above, the parties may choose to include the following model language in their arbitration clause in order to adopt or exclude the provisions of the Rules on expedited arbitration proceedings.

Expedited proceedings in all cases:

The provisions of paragraphs (a) to (c) of Article 57(1) of the Rules shall apply to all arbitrations conducted under this [contract] [agreement] [treaty] [instrument] [rule] [decision] [relationship].

No expedited proceedings:

The provisions of paragraphs (a) to (c) of Article 57(1) of the Rules shall not apply to any arbitration conducted under this [contract] [agreement] [treaty] [instrument] [rule] [decision] [relationship].

Model clause to grant third party arbitration rights

In addition to the elements noted in the model clauses above, the parties may choose to include the following model language in their arbitration clause in order to allow third party beneficiaries to bring an arbitration against one or more of the parties to the underlying agreement as foreseen in Article 19(3) of the Rules:

Defined class of third party beneficiaries entitled to arbitrate:

The parties irrevocably consent that any dispute, controversy or claim arising out of or in relation to the obligations undertaken by the parties under this [contract] [agreement] [treaty] [instrument] [rule] [decision] [relationship] for the benefit of:

[insert defined class of third party beneficiaries]

may be submitted by any such third person to arbitration in accordance with the Hague Rules on Business and Human Rights Arbitration.

Defined scope of third party claims entitled to be arbitrated:

The parties irrevocably consent that any dispute, controversy or claim arising out of or in relation to:

[insert defined subject matter, which may include:

- (a) selected national laws;
- (b) selected international instruments;
- (c) other industry or supply chain codes of conduct, statutory commitments or regulations from sports governing bodies, or any other relevant business and human rights norms or instruments]

may be submitted by any third party beneficiary of such [law(s)] [instrument(s)] to arbitration in accordance with the Hague Rules on Business and Human Rights Arbitration.

***Note** — Parties should consider whether to define also the class of potential beneficiaries as above in lieu of the general phrase “any third party beneficiary.”*

Model clause for transparency or confidentiality

In addition to the elements noted in the model clauses above, the parties may choose to include the following model language in their arbitration clause in order to modify the transparency and confidentiality obligations:

Enhanced transparency:

All documents and information concerning the arbitration shall be public and may be disclosed by any party. The repository referred to under Article 43 of the Rules shall make available to the public in a timely manner all documents concerning the arbitration which are communicated to it, including all submissions of the parties, all evidence admitted into the record of the proceedings, all transcripts or other recordings of hearings and all orders, decisions and awards of the arbitral tribunal, subject only to the arbitral tribunal’s powers to take such measures as may be necessary to safeguard the integrity of the arbitral process pursuant to Articles 18, 33, 41 and 42 of the Rules. Article 26(6) of the Rules shall not apply.

Confidentiality:

All documents and information concerning the arbitration shall be confidential, except with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority. Articles 38 to 43 of the Rules shall not apply.

Model clauses regarding costs

In addition to the elements noted in the model clauses above, the parties may choose to include the following model language in their arbitration clause in order to adopt a one-way costs-shifting rule or exclude the arbitral tribunal's power to award costs, as well as to agree to make one party responsible for the payment of all deposits of advances for the costs of the arbitration.

One-way costs-shifting:

Where a party has made a claim for harm to the enjoyment of human rights, unless that party's claim has been ruled manifestly without merit under Article 26 of the Rules, costs may not be awarded by the arbitral tribunal under Article 53 of the Rules against that party in excess of the aggregate amount awarded in its favor.

***Note** — Parties may also consider allocating part or all of the costs of the arbitration to a specific party in lieu of conditioning one-way costs shifting upon the making of a claim for harm to the enjoyment of human rights.*

No costs-shifting:

Where a party has made a claim for harm to the enjoyment of human rights, costs may not be awarded by the arbitral tribunal under Article 53 of the Rules.

Deposits covered by one party:

All deposits requested by the arbitral tribunal under Article 54 of the Rules shall be paid by [select relevant party who will cover all deposits of costs].

Model statements of impartiality and independence pursuant to Article 12 of the Rules

No circumstances to disclose

I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties and the other arbitrators of any such

circumstances that may subsequently come to my attention during this arbitration.

Circumstances to disclose

I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made pursuant to Article 12 of the Hague Rules on Business and Human Rights Arbitration of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances.

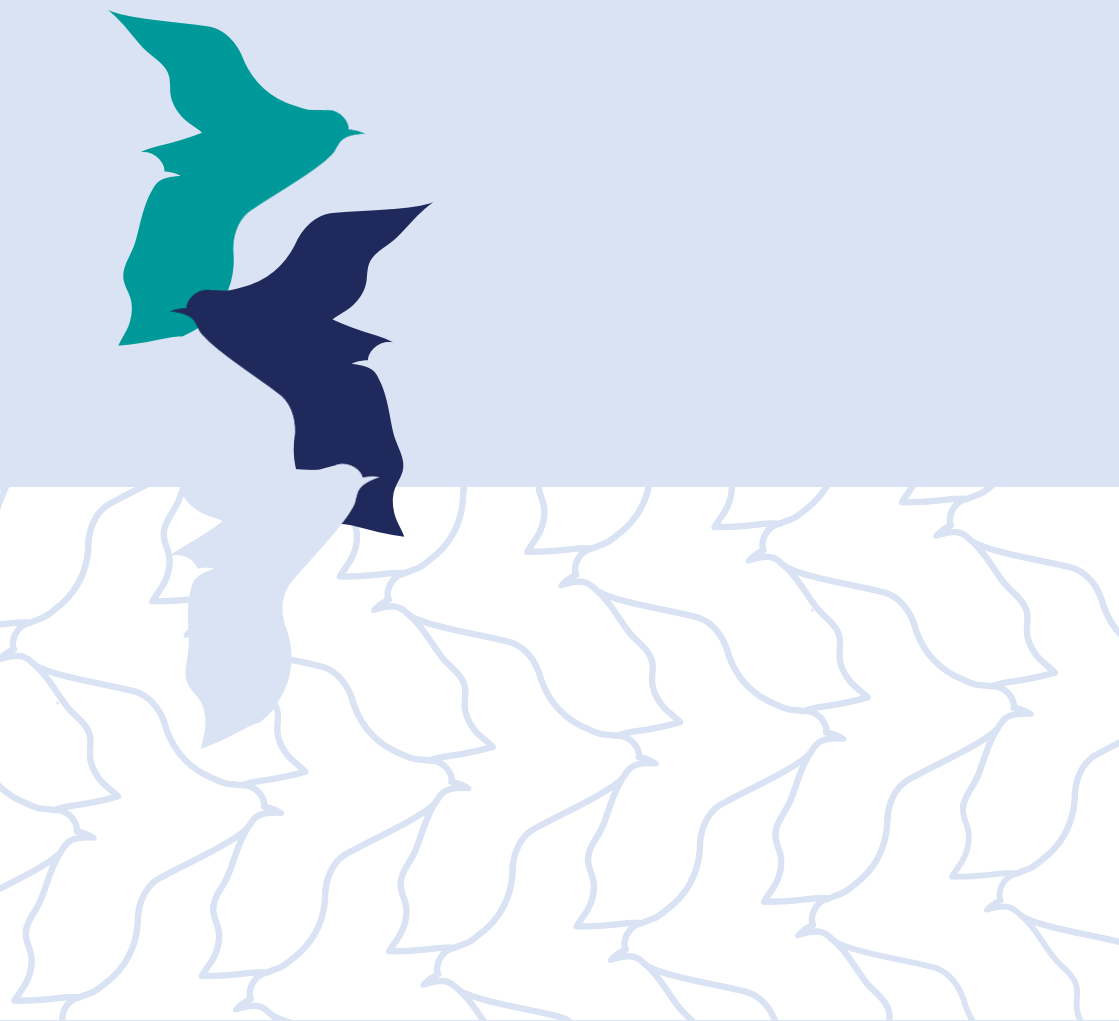
[Include statement]

I confirm that those relationships or circumstances do not affect my independence and impartiality. I shall promptly notify the parties and the other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration.

***Note** — Any party may consider requesting from the arbitrator the following additions to the statement of impartiality and independence:*

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules.

I hereby undertake to comply with the Code of Conduct of the Hague Rules on Business and Human Rights Arbitration.



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