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Technology-related dispute resolution and adjudication: Model clauses and guidance texts

Note by the Secretariat

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I. Introduction

1. Upon considering the proposals for future work on technology-related dispute resolution and adjudication, the Commission, at its fifty-fifth session in 2022, entrusted the Working Group to consider the two topics jointly and to consider ways to further accelerate the resolution of disputes by incorporating elements of both proposals.

2. The Commission agreed that model provisions, clauses, or other forms of legislative or non-legislative text could be prepared on matters such as shorter time frames, the appointment of experts and/or neutrals, confidentiality, and the legal nature of the outcome of the proceedings. It was stressed that such work should be guided by the needs of the users, taking into account innovative solutions, as well as the use of technology and should further extend the use of the UNCITRAL Expedited Arbitration Rules ("EARs").[1]

3. At its seventy-sixth session (Vienna, 10–14 October 2022), the Working Group considered possible model clauses and guidance texts on technology-related dispute resolution and adjudication on the basis of the Note by the Secretariat (A/CN.9/WG.II/WP.227), as well as the submission by the Government of Israel on case management conferences and evidence (A/CN.9/WG.II/WP.228).

4. At its seventy-seventh session (New York, 6–10 February 2023), the Working Group continued considering the draft model clauses and guidance texts on technology-related dispute resolution and adjudication on the basis of the Note by the Secretariat (A/CN.9/WG.II/WP.231).

5. At its fifty-sixth session (Vienna, 3–21 July 2023), the Commission had before it the report of the seventy-sixth and seventy-seventh sessions of the Working Group (respectively A/CN.9/1123 and A/CN.9/1129) and expressed its satisfaction with the progress made by the Working Group and the support provided by the Secretariat. The Commission requested the Working Group to continue its work on technology-related dispute resolution and adjudication.[2]

6. At its seventy-eighth session (Vienna, 18–22 September 2023), the Working Group continued considering the model clauses and guidance texts on technology-related dispute resolution and adjudication on the basis of a Note by the Secretariat (A.CN.9/WG.II/WP.234) and requested that the Secretariat revise the model clauses and the guidance texts as well as to prepare explanatory texts to accompany the model clauses (A/CN.9/1159, para. 93). Accordingly, this Note presents an introduction to the instrument (see chapter VIII), revised texts and accompanying annotations to the Model Clauses. The term "annotations" has been chosen to avoid the term "guidance", in view of the guidance texts on confidentiality and evidence. Another possibility could be to entitle the accompanying text as "explanatory note" (A/CN.9/1159, para. 14).

II. Model clause on highly expedited arbitration

A. Draft model clause

7. The Working Group may wish to consider the following model clause:

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

[1] *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 17* (A/77/17), paras. 224–225.

[2] Ibid., *Seventy-eighth Session, Supplement No.17* (A/78/17), paras. 143–145.

(a) If the parties have not reached agreement on the appointment of an arbitrator [7] days after a proposal has been received by all other parties, the arbitrator shall, at the request of a party, be appointed by the appointing authority in accordance with article 8(2) of the UNCITRAL Arbitration Rules as promptly as possible;

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

(c) Promptly after and within [7] days of the constitution of the arbitral tribunal, the arbitral tribunal shall consult the parties;

(d) The period of time for making the award shall be [45][60][90] days;

(e) Option 1: The period of time in subparagraph (d) may be extended but shall not exceed a total of [90][120][180] days;

Option 2: The period of time in subparagraph (d) may not be extended;

(f) At the request of a party, the arbitral tribunal may in exceptional circumstances and after inviting the parties to express their views, determine that the modifications to the Expedited Arbitration Rules provided for herein shall no longer apply to the arbitration or that the UNCITRAL Arbitration Rules shall apply;

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

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

B. Draft annotations

8. The Working Group may wish to consider the following annotations.

Introduction

1. The EARs provide a comprehensive set of rules for expedited arbitration[3] and parties are free to amend the EARs to address their specific needs, preferences and any unique requirements that the EARs do not accommodate (article 1 of the EARs). The model clause on highly expedited arbitration is for parties that pursue an even quicker procedure than what the EARs offers by modifying some of its provisions (A/CN.9/1129, paras. 43–44; A/CN.9/1159, para. 15).

2. This might be particularly relevant in situations involving financial or contractual challenges, ongoing projects, or contracts encompassing perishable goods. However, highly expedited arbitration may not be suitable for cases with complex legal or technical issues requiring extensive evidence where parties need sufficient time to present their case or the arbitral tribunal to decide on the case (A/CN.9/1129, para. 45; A/CN.9/1159, para. 17). Furthermore, it may be difficult to predict the nature and complexity of the potential dispute before setting a rigid time frame. Therefore, parties should be attentive to preserve some flexibility in the time frame or applicable rules.

3. When parties opt for highly expedited arbitration, the arbitral tribunal needs to ensure that the proceedings are conducted with the level of speed and efficiency that the parties have agreed upon, by exercising its discretionary powers under article 3 of the EARs and article 17 of the UARs (A/CN.9/1159, para. 18). The parties should be fully aware of the consequences involved in shortening the proceedings, which may limit the procedural safeguards as provided for in the EARs. Additionally, parties need to cooperate to facilitate a streamlined process.

[3] Parties may find further explanations on the EARs in the Explanatory Note to the EARs.

Selection of an arbitrator – subparagraph (a)

4. Parties may jointly agree on a sole arbitrator before (possibly in the arbitration agreement) and after the dispute arises. If the parties have not agreed on a sole arbitrator, the appointing authority will, at the request of the parties, appoint a sole arbitrator [7] days after a proposal for the appointment of an arbitrator has been received by all other parties. This modifies the 15-day time period in article 8(2) of the EARs (A/CN.9/1159, para. 23).

Note to the Working Group: 7 and not 5 days as previously considered have been chosen as a time frame in the model clauses for which the EARs provide 15 days. Indeed, 7 days correspond to a week and hereby provides a predictable and easily understandable time frame.

5. Parties should, however, be mindful that agreeing on an arbitrator before the dispute arises may require the agreed arbitrator to be replaced pursuant to article 14 of the UARs. For example, if the dispute arises many years after the formation of a contract that contains an agreement on the arbitrator, the agreed arbitrator may have a conflict of interest, lack of willingness to function as arbitrator, or be unavailable due to other commitments, death or illness. The process of replacing an arbitrator may be unduly time consuming, especially considering the parties' need for a quick dispute resolution. In addition, pre-dispute agreement of the arbitrator also entails the potential risk of being bound with a specific arbitrator that parties may not have diligently considered and who might not be apt to conduct highly expedited arbitration (A/CN.9/1129, paras. 46–48; A/CN.9/1159, paras. 21–22).

Selecting an appointing authority – subparagraph (b)

6. To streamline the constitution of the arbitral tribunal, parties should agree on an appointing authority or could rely on the default appointing authority under article 6 of the EARs (A/CN.9/1129, paras. 47–48; A/CN.9/1159, para. 21).

Consultation – subparagraph (c)

7. The time period within which the arbitral tribunal should consult the parties is 7 days after the constitution of the arbitral tribunal. This ensures sufficient time to properly prepare for a meaningful consultation. Subparagraph (c) shortens the time frame foreseen in article 9 of the EARs (A/CN.9/1129, para. 49; A/CN.9/1159, para. 24).

8. Parties may wish to refer to the Explanatory Notes to the EARs in paragraphs 60 to 65 (Part G) which outlines how consultations could be conducted between the parties and the arbitral tribunal (A/CN.9/1129, para. 50; A/CN.9/1159, paras. 24–25).

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

9. Subparagraph (d) modifies the six-month time period in article 16(1) of the EARs to [45][60][90] days. Option 1 provides for a possible extension by the arbitral tribunal according to article 16(2) of the EARs, which should not exceed [90][120][180] days from the date of the constitution of the arbitral award. Alternatively, Option 2 foresees that the time period cannot be extended, which means that article 16(2) to (4) of the EARs do not apply (A.CN.9/1129, paras. 53–54; A/CN.9/1159, paras. 26–27, 30).

10. Parties should note that a rigid time frame for making the award, together with the non-application of article 16(2) to (4) of the EARs, may result in an award not being made within such a time frame and unenforceable under article V(1)(d) of the New York Convention or set aside in accordance with the domestic legislation[4] (A/CN.9/1159, paras. 28–29).

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

Reasoning of the award

11. Article 34(3) of the UARs requires the arbitral tribunal to state reasons in the award unless the parties agree otherwise. If permissible under the applicable law, parties could agree that no reasons should be given in the arbitral award, by including the following provision into the model clause: "The arbitral tribunal is not required to provide reasons in the award." (A/CN.9/1159, para. 38).

12. When considering whether to agree on a non-reasoned award, parties may take the following elements into consideration:

- Awards can be issued more quickly if reasons do not need to be provided, promoting a faster resolution of the dispute;
- Allowing the arbitral tribunal to make a non-reasoned award may lower arbitration costs;
- A non-reasoned award would not allow parties to comprehend and therefore accept the decision;
- If courts are required to assess the non-reasoned award, for instance in a setting aside proceeding, such assessment could require a time-consuming reopening of a number of issues;
- In a number of jurisdictions, arbitral awards without a certain standard of reasoning may face challenges in enforceability.

13. If permissible under the applicable law, the parties' preference regarding the inclusion of reasons could be discussed with the arbitral tribunal when organizing the proceedings so that parties understand the implications of their decision for the completeness and enforceability of the award (A/CN.9/1159, paras. 39–40).

Note to the Working Group: The Working Group may consider adding language into the model clause to the effect that the arbitral tribunal does not need to provide reasons, as suggested in para. 11 and elaborating on the elements to consider in the annotations as suggested in para. 12. Another alternative is to state in the model clause or the annotations that any such agreement on a non-reasoned award should be addressed to the arbitral tribunal orally or in writing (A/CN.9/1159, para. 42). Yet another way could be for the parties to agree on that the reasons may be set forth in summary fashion, with the key findings and conclusions without delving into extensive details or providing a comprehensive analysis. However, the line between a reasoned and a summary award cannot be easily drawn and may depend on specific practices. Furthermore, in expedited arbitrations, parties anticipate a more streamlined and efficient process, which might include the expectation of receiving a concise award (A/CN.9/1159, paras. 38–42).

Revert to EARs or UARs – Subparagraph (f)

14. Subparagraph (f) provides that the arbitral tribunal, at the request of one party, may revert to arbitration under the EARs or under the UARs if the circumstances of the dispute are not suitable for highly expedited arbitration (A/CN.9/1159, paras. 30–31). Parties may, however, wish to retain the option to revert first to the EARs, if expedited arbitration within the time frames set out in the EARs is appropriate. In practice, such a decision could remove the "hard-stop" limitation on the time period for granting the award provided for in option 2 in subparagraph (e), ensuring that due process is safeguarded.

III. Model clause on adjudication

A. Draft model clause

9. The Working Group may wish to consider the model clause on adjudication, including the appropriate terminology for use in the model clause. The Working Group opined that "expert" was not a suitable name, instead terms such as "neutral", "technical expert", "adjudicator" were suggested. The following uses the terms "adjudicator" for the decision-maker and "adjudication" for the procedure for ease of reference. The Working Group may wish to confirm whether "determination" is the appropriate term to refer to the adjudicator's decision (A/CN.9/1159, para. 44).

Wishing to have disputes settled by arbitration,
Believing that certain disputes may be rapidly and efficiently resolved by an adjudicator,
Committing to comply with the determination of such adjudicator and to the enforcement of this undertaking,
Preserving the right to commence arbitration,
the Parties agree as follows:

Note to the Working Group: A preamble is included at the beginning of the model clause to outline the design of the model clause so as to help the parties understand the provisions set forth in the subsequent paragraphs. However, the Working Group may wish to consider whether the "preamble" needs to be part of the model clause, or if it is sufficient to have an introductory text as a note, in particular as the text only generally sums up what paragraphs 1–4 regulate in detail.

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

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

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

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

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

2. Any dispute, controversy or claim arising out of or relating to this contract, or breach, termination or invalidity thereof may be settled by adjudication in accordance with the following:

(a) A party shall communicate a request for adjudication containing a detailed description of the basis of the dispute and an indication of the determination being requested to all other parties and the adjudicator agreed by the parties or appointed pursuant to paragraph 2(b);

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

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

(d) The adjudicator shall consult with the parties promptly and within 3 days from his/her appointment. The adjudicator may hold additional consultations with the parties or request additional information he/she deems necessary;

(e) Within [10/14 days] of the consultation, the other party or parties shall communicate a response to the request;

(f) The adjudicator may conduct the proceedings as he/she considers appropriate, provided that the parties are treated with equality and that each party is given a reasonable opportunity to present its case;

(g) The adjudicator may determine that the matter submitted to him/her in whole or in part is not suitable for adjudication;

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

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

3. A dispute relating to the compliance with the undertaking under subparagraph 2(i) shall be referred to arbitration in accordance with the UNCITRAL Expedited Arbitration Rules, with the additions in paragraph 1(a), (c) and (d) of this Clause and the following modifications:

Note: For the parties to include some or all of the following, as appropriate.

(a) If the parties have not reached agreement on the appointment of an arbitrator [7] days after a proposal has been received by all other parties, the arbitrator shall, at the request of a party, be appointed by the appointing authority in accordance with article 8(2) of the UNCITRAL Arbitration Rules as promptly as possible;

(b) Promptly after and within [7] days of the constitution of the arbitral tribunal, the arbitral tribunal shall consult the parties;

(c) The period of time for making the award shall be [30] days;

(d) Option (1): The period of time in subparagraph (c) may be extended, but shall not exceed a total of [60] days;

Option 2: The period of time in subparagraph (c) may not be extended;

(e) At the request of a party, the arbitral tribunal may in exceptional circumstances and after inviting the parties to express their views, determine that the modifications to the Expedited Arbitration Rules provided for in the model clause shall no longer apply to the arbitration or that the UNCITRAL Arbitration Rules shall apply.

4. (a) The referral of a matter to adjudication and the arbitration pursuant to paragraphs 2 and 3 shall not preclude a party from referring the same matter to arbitration under paragraph 1;

(b) If a matter is referred to arbitration pursuant to paragraph 1, the parties shall not be limited in submitting statements and evidence by the proceedings of adjudication and arbitration under paragraphs 2 and 3;

(c) If a matter is referred to arbitration pursuant to paragraph 1, the arbitral tribunal shall not be limited by the proceedings of adjudication and arbitration under paragraphs 2 and 3, in conducting the proceeding and making the award.

10. The Working Group may wish to consider, whether the scope of disputes that may be determined through adjudication should be unlimited, as per paragraph 2 of this model clause and reflected in para. 5 of the annotations. In other words, it is for the parties to choose which disputes to refer to adjudication and for the adjudicator to determine, pursuant to paragraph 2(g), whether the dispute is suitable for settlement through adjudication. Alternatively, considering that the notion of adjudication was put forward to prevent disputes from stalling the cash flow in long-term projects, and mindful that the scope needs to be circumscribed clearly, limiting the scope of disputes to monetary claims is a possibility. A monetary payment order tends to be simple and may be made with relative ease by an adjudicator. The downside of limiting the scope to monetary claims could be that disputes over non-monetary claims that may be usefully resolved by an adjudicator with expertise on the technical matter might be precluded. In defining the scope, the Working Group has also discussed whether or not disputes over the termination or invalidity of the contract or those over irreversible claims should be included (A/CN.9/1129, para. 69; A/CN.9/1159, paras. 48–52).

B. Draft annotations

11. The Working Group may wish to consider the following annotations.

Introduction

1. Alongside arbitration, this model clause optionally provides adjudication as a streamlined and efficient means/mechanism to handle potential disputes that may arise during a contractual relationship (A/CN.9/1129, para.56; A/CN.9/1159, paras. 45–47).

2. The in-built adjudication procedure is a rapid process, with a determination expected to be rendered within [30 days]. The parties contractually commit to abide by the decision made by the adjudicator ("determination"). Paragraph 3 sets forth a mechanism to ensure compliance with this commitment by providing for a highly expedited arbitration should a party fail to comply with the determination. Importantly, parties retain recourse to arbitration as outlined in paragraphs 1 and 4, should the need arise. Parallel proceedings might hence occur (A/CN.9/1129, paras. 74–77; A/CN.9/1159, para. 53).

3. Alternatively, parties may consider dispute avoidance and resolution procedures, before differences escalate to a point where adjudication or legal proceedings become necessary, such as the appointment of an accompanying neutral at the beginning of the project or of a board of experts to recommend a solution or mediate settlements to resolve the differences (A/CN.9/1129, para. 59; A/CN.9/1159, paras. 67–69).

Paragraph 1 – arbitration clause

4. Paragraph 1 replicates the Model Clause annexed to the UARs.

Paragraph 2 –adjudication

Scope

5. Parties may wish to agree on the scope of issues that would be suitable for determination by an adjudicator. Parties could limit the scope to certain remedies, such as monetary compensation, as monetary awards could be relatively easy to reverse if necessary. In different jurisdictions, adjudication has been used in other areas, including valuation, specific performance regarding delivery of goods and specific performance in construction contracts. Adjudication might not be suitable for purely legal matters (A/CN.9/1129, para. 69; A/CN.9/1159, paras. 48–52).

Selection of the adjudicator

6. The selection of an impartial, independent and qualified adjudicator is of paramount importance. The adjudicator should have the right qualification, and it is important for the parties to request the adjudicator to provide a statement of impartiality and independence (A/CN.9/1129, para. 70; A/CN.9/1159, para. 59).

7. Parties may agree on the adjudicator before the dispute arises to streamline the proceedings and save time and cost. Parties should, however, be aware of the possible consequences of agreeing on an adjudicator before the dispute arises. The agreed adjudicator may not always be able to perform its role when requested. For instance, if the dispute arises many years after the contract was formed, the agreed adjudicator may have a conflict of interest, lack the willingness to act as an adjudicator, or be unavailable due to other commitments, death or illness. Unlike in arbitration, there is no procedure to replace an agreed adjudicator in case its replacement is required. Furthermore, the expertise required for resolving potential disputes might be uncertain at the time of the contract formation, and the chosen adjudicator's expertise may not align with that required to decide on the specific issues in dispute (A/CN.9/1129, para. 70).

8. If parties do not jointly agree on an adjudicator, the appointing authority will, at the request of a party, appoint the adjudicator as promptly as possible. The appointing authority may be requested to set the terms of appointment, including the fees to be paid to the adjudicator. This is to define on what terms the adjudicator is expected to provide its services, as the party not willing to agree on the appointment

may otherwise refuse to agree on the terms or fees of that adjudicator after the appointment is made by the appointing authority if such matters are left to the parties.

Conduct of the proceedings

9. As provided under paragraph 2(f), the adjudicator may conduct the proceedings as he/she considers appropriate for the dispute, provided that the principles of fairness and due process are observed. Given the absence of widely acknowledged procedural rules for adjudication proceedings, the adjudicator and the parties can mutually agree on procedures or address matters that would facilitate the adjudication process. For instance, issues such as whether the adjudication process would involve a hearing, or whether it would be a documents-only process (A/CN.9/1129, para. 71; A/CN.9/1159, para. 59).

10. It should be noted that under paragraph 2(g), the adjudicator has also the discretion to determine that certain matter(s) submitted to him/her are not suitable for adjudication. The determination should be made, as promptly as possible, such as during the consultation between the adjudicator and the parties. This paragraph is based on the recognition that not all matters are amenable to resolution through adjudication. For instance, an adjudicator may determine that certain disputes are excessively complex to make a determination in the limited amount of time. An adjudicator with expertise on technical matters may find that legal issues being the main contention would not be suitable for its determination. When the relief sought is irreversible once performed or enforced, an adjudicator may determine that the matter is equally not suitable for adjudication. In such cases, parties may revert to arbitration under paragraph 1.

11. The adjudicator should provide a determination stating the reasons to the parties, to allow them to understand and accept the decision.

Note to the Working Group: the Working Group may wish to consider whether the determination could be issued with no reasons.

12. Furthermore, it is advisable for the adjudicator to enter into an undertaking of confidentiality and ensure that confidentiality is respected during the adjudication process.[5] The parties may also consider whether they agree to waive any claim against the adjudicator based on any act or omission in connection with the adjudication procedure, save for intentional wrongdoing, akin to article 16 of the UARs.

Request of a security

13. In granting relief, the adjudicator may request a security from the party referring the matter to adjudication. This should be done taking into account the nature of the relief granted. For instance, the adjudicator may find that the matter in which one party is seeking relief of specific performance is suitable for adjudication, but at the same time, find that a security would be warranted to ensure fairness, considering the irreversible nature of the performance, and in anticipation of a contrary decision that could be made subsequently by an arbitral tribunal under paragraph 1. The power of the adjudicator to request security may be exercised as part of his/her power to conduct the proceedings as he/she considers appropriate.

Failure to issue a determination by the adjudicator

14. An adjudicator's failure to render a determination can pose obstacles to the continuance of performance of the obligation of the parties and may lead to delays in resolving the dispute (A/CN.9/1129, para. 71; A/CN.9/1159, para. 59).

15. If an adjudicator does not render a determination and parties are dissatisfied with the delay or lack of progress in the dispute resolution process, parties may initiate arbitration proceedings.

[5] See model clause on confidentiality, paras. 14–15.

Limitation period

16. The impact of a request for adjudication on the limitation period can vary depending on the jurisdiction. In long-term contracts with progress payments, the commencement of the limitation period could be linked to each payment under applicable law. Long-term contracts may also include provisions outlining dispute resolution mechanisms and timelines for initiating processes such as arbitration or adjudication (A/CN.9/1159, para. 45).

Paragraph 3

17. Paragraph 3 provides that a dispute over the undertaking under paragraph 2(i) may be referred to arbitration. This paragraph aligns with the provisions in the model clause of highly expedited arbitration, and hence parties may wish to refer to the annotations to the Model Clause on Highly Expedited Arbitration.[6] Paragraph 3(c) provides that the arbitral tribunal should make an award within 30 days from the constitution of the arbitral tribunal, as the scope of such arbitration is only about the undertaking in paragraph 2(i) (A/CN.9/1129, para. 72; A/CN.9/1150, paras. 61–63).

Paragraph 4

18. Paragraph 4 indicates that parties could institute adjudication (paragraph 2) and arbitration (paragraph 1) either simultaneously or consecutively, partially or even wholly covering the same issues. Hence, adjudication and arbitration may theoretically be conducted in parallel. It is also highlighted in paragraph 4(c) that arbitration under paragraph 1 is not limited by the determination of the adjudicator, and the arbitral tribunal may conduct a full and de novo review of the merits of the adjudicator's determination on both issues of facts and law, pursuant to the EARs or the UARs. Consequently, the parties' statements and evidence provided in the adjudication procedure and the subsequent arbitration pursuant to paragraph 3 do not have any bearing on an arbitration under paragraph 1 (A/CN.9/1129, paras. 74–77; A/CN.9/1159, para. 53), and neither have the decisions made by the adjudicator or the arbitral tribunal under paragraph 3.

19. For the sake of clarity, the party not satisfied with the determination by the adjudicator and the subsequent award made by the arbitral tribunal pursuant to paragraph 3 should bring them to the attention of the arbitral tribunal in the arbitration under paragraph 1. The arbitral tribunal, in making its award in the arbitration pursuant to paragraph 1, should take into account any consequences of the determination of the adjudicator and the arbitral award made by the arbitral tribunal pursuant to paragraph 3.

Note to the Working Group: the Working Group will note that reference to specific conditions in the relevant model clause in A/CN.9/WG.II/WP.234 for initiating an arbitration are removed given the Working Group's concern that delineating a specific condition, including compliance with the determination, would pose difficulty and may limit a parties' access to justice (A/CN.9/1159, para. 53). It is noted that statutory adjudication in some jurisdictions do not have restrictions on parallel proceedings as the time frame for adjudication and a full-fledged arbitration is very different, the risk of parallel proceedings does not have a substantial impact on cost or time. The Working Group may wish to consider whether potential parallel proceedings should be avoided and if so, how, and discuss the implications of such parallel proceedings.

IV. Model clause on technical advisors

A. Draft model clause

12. The Working Group may wish to consider the model clause on technical advisors (for terminology, see A/CN.9/1159, para. 70) which takes inspiration from provisions

[6] See annotations on the model clause on highly expedited arbitration, para. 9.

allowing courts in various jurisdictions[7] to seek the assistance of individuals with expertise on technical matters in civil proceedings to ensure that courts have access to specialized knowledge and to help courts make informed decisions. The role of those court-appointed individuals is to provide the court with an unbiased assessment of the technical or scientific aspects of the case. The involvement of those individuals can vary depending on the legal systems and the nature of the case. Those individuals may be appointed to perform the required function on request by the parties, or on the court's own motion and their output is generally communicated transparently to the parties, who are given the opportunity to comment on it (A/CN.9/1159, para. 74).

1. The arbitral tribunal may appoint one or more independent technical advisors to accompany it in the proceedings and, as the need arises, seek technical advisors to explain, orally or in writing, technical matters in accordance with the terms of reference established pursuant to paragraph 4.

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

3. In appointing a technical advisor, the arbitral tribunal shall consult the parties on:

(a) The area of technical expertise required;

(b) The terms of reference, including the working methods of the technical advisor; and

(c) Any other issue the arbitral tribunal considers relevant in appointing a technical advisor.

[7] See for instance the jurisdictions in Japan and Singapore:
In *Japan*, the Code of Civil Procedure, as amended in 2003 provides the courts in civil proceedings with the means to seek participation of technical advisors. Prior to deciding on the participation of technical advisors, the court is required to consult the parties. When selected as the advisor to the court, the technical advisor is inherently expected to perform its role in a fair and neutral manner. The role of the technical advisor is to participate in the proceedings and provide explanations on technical matters disputed in the case. The technical advisor may also pose questions to the parties to seek clarification on the technical matters of the case as part of its role to give explanations. Unlike statements made by expert witnesses, explanations provided by the technical advisor in itself cannot be taken into account in the court's determination of the disputed issues. In other words, explanations provided by the technical advisor are supplementary in nature and are primarily expected to prompt the parties to act on the explanation, such as by submitting further briefs or evidence, so as to facilitate the court in understanding the technical matters of the case. To ensure transparency, explanations provided by the technical advisor will always be disclosed to the parties. In accordance with the provisions of the Code, the technical advisor either orally explains at a court date in which both parties may attend or explains in writing outside of a court date, in which case the court clerk will communicate the written explanation to both parties. The parties are provided with the opportunity to state their opinions on the explanations given by the technical advisor.
In *Singapore*, statutory provisions provide for assessors, who are persons of skill and experience in the particular matter to which the proceedings relate, to assist and sit with the court, which the Court may appoint as requested by a party or on its own motion. (In Singapore, "assessors" are regulated by the Supreme Court of Judicature Act 1969 (and the Singapore International Commercial Court Rules 2021, the State Courts Act 1970 (and the Rules of Courts 2021), the Family Justice Act (and the Family Justice Rules 2014), and the Evidence Act 1893. "Medical assessors", which are assessors in medical negligence proceedings, are further guided by a specific Supreme Court's Practice Directions.) The assessor(s) may sit with the Court before, during and after the trial as directed, and the Court may give directions relating to objections to proposed assessors, and the role and remuneration of the assessors. In trial, the assessor takes part in the proceedings and may put any questions to the witnesses through or by permission of the Judge. While there are no detailed statutory provisions on how the Court should conduct proceedings with assessors in general, regarding medical negligence proceedings, further guidance is provided for in the Supreme Court's Practice Directions, which sets forth measures to ensure transparency. Assessors may be asked to assist the Judge or the Registrar at case conferences prior to trial, or to sit with the Judge in open court while expert evidence is led. Assessors may also be called to assist the Judge after trial. In such case, due regard is given to the need to ensure transparency. Certain measures such as the disclosure to the parties of the question posed to the assessor by the Court need to be taken under the Directions.

4. Upon appointment, the arbitral tribunal shall establish the terms of reference, which shall be communicated to the parties. When the technical advisor performs its role orally, the parties shall have the opportunity to be present and, when the technical advisor performs its role in writing, the document shall be communicated to the parties.

B. Draft annotations

13. The Working Group may wish to consider the following annotations:

Role of the technical advisor

1. Arbitral tribunals are typically composed of individuals with legal background, while the cases before them may involve complex technical or scientific issues. For those cases, arbitral tribunals may benefit from support provided on the technical aspects so as to better understand and evaluate the case, thereby leading to ensure the quality and efficiency of the proceedings. In accordance with paragraph 1, the arbitral tribunal is vested with the power to appoint technical advisors to accompany it in the proceedings, both online or in person. The role performed by technical advisors is different from experts appointed pursuant article 29 of the UARs. The specific function of the technical advisor is to "explain" "orally" or "in writing" on relevant technical matters "as the need arises." The role of the technical advisor is limited to explaining the technical matters that appear in the submissions and evidence submitted by the parties, in light of generally accepted standards in the area of technical expertise (A/CN.9/1129, para. 82; A/CN.9/1159, para. 70).

2. The technical advisor may perform its function at any time after appointment and during the proceedings, including in case management conferences and hearings (A/CN.9/1129, para. 83).

Consultation with the parties

3. Certain issues in relation to the appointment of the technical advisor need to be addressed by the arbitral tribunal and this should be done in consultation with the parties. Paragraph 3 of this model clause lists two key issues, namely the area of technical expertise required and the terms of reference.

4. Establishing the terms of reference, including on working methods, is essential for the technical advisor to function properly and, therefore, the arbitral tribunal's consultation with the parties on this matter is key.

5. The parties, especially when they are specialists in the field, may be better placed to identify a relevant individual to be appointed as the technical advisor. If so, the arbitral tribunal may request the parties to provide a list of candidates to be considered by the other party and the arbitral tribunal (A/CN.9/1159, para. 72).

Terms of reference

6. The establishment of the terms of reference is essential to safeguard the rights of the parties to be heard by making comments, objecting and questioning the technical advisor, in a transparent manner. Ensuring transparency is essential for building confidence in the functioning of the technical advisor.

7. According to paragraph 4 of this model clause, unless the parties agree otherwise, the arbitral tribunal should ensure that the parties have the opportunity to be present when the technical advisor performs its role orally. The terms of reference may also provide that an oral inquiry or explanation by the technical advisor should be recorded for subsequent reference. When the technical advisor performs its role in writing, the parties should also be kept equally informed. The parties are given the opportunity to comment on the explanations by the technical advisor. Hence, unless the parties agree otherwise, the technical advisor will be restricted from performing its role in deliberations of the arbitral tribunal, a phase in the proceedings where the parties are not present and are not kept informed.

The parties' procedural rights

8. There is a need to ensure that the parties have the opportunity to exercise their procedural right to raise an objection regarding the technical advisor's qualification, impartiality and independence prior to and after the appointment. Hence, the same process as provided for in article 29(2) of the UARs is followed (A/CN.9/1159, para. 73).

Relationship with article 29 of the UARs

9. Technical advisors appointed pursuant to this model clause perform a distinct role from that performed by tribunal-appointed experts in article 29 of the UARs, where they report in writing, on specific issues to be determined by the arbitral tribunal, including by providing opinions. Having understood the technical aspects of the case, the arbitral tribunal nonetheless may further wish to seek views on the disputed issues from tribunal-appointed experts. The arbitral tribunal is not precluded from appointing experts in accordance with article 29 of the UARs (A/CN.9/1159, para. 71).

V. Model clause on confidentiality

A. Draft model clause

14. The Working Group may wish to consider the following model clause and confirm the inclusion of the following footnote at the beginning: "In some jurisdictions a valid confidentiality agreement can only be concluded once a dispute has arisen. In such cases, parties may add a first paragraph to the model clause: Upon commencement of a dispute, parties may consider agreeing on the following: (and then have the model clause as it currently stands)" (A/CN.9/1129, para. 92).

1. All aspects of the proceedings including all information disclosed by the parties in the proceedings and all non-public decisions or awards [that are not [lawfully] in the public domain] [including the existence of the proceeding itself], shall be kept confidential except and to the extent that such disclosure is required by legal duty, to protect or pursue a legal right or interest, or in relation to enforcement or challenging awards in legal proceedings before a court or other competent authority [, or for the purposes of having, or seeking, third-party funding of arbitration/legal, accounting or other professional services].

2. [The arbitral tribunal or the adjudicator in the model clause on adjudication] and the parties shall seek the same undertaking of confidentiality in writing from all those that they involve in the proceeding.

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

4. In the event of a breach of confidentiality, the parties may seek remedies.

B. Draft annotations

15. The Working Group may wish to consider the following annotations:

1. Parties that consider confidentiality a priority in the arbitration proceedings, are advised to address confidentiality in their arbitration agreements or consider concluding additional confidentiality agreements, to the extent permitted under the applicable law (A/CN.9/1129, para. 89; A/CN.9/1159, para. 75).

Paragraph 1

2. The objective of confidentiality in the arbitral proceedings is to prevent the disclosure of various aspects, including information exchanged during the process, decisions, and awards, specifically encompassing the statements of claim, defence, amendments, pleas, further written statements, and evidence disclosed during the arbitration process. However, there are exceptions to the duty of confidentiality, as specified in paragraph 1, to acknowledge situations where disclosure may be necessary or legally required.

Existence of the arbitration itself

3. While some parties may consider that the mere existence of the arbitration, the names of the parties involved, and basic information about the dispute do not need to be covered by a confidentiality duty/agreement, others may not wish to disclose the fact that an arbitration takes place (in that case, the parties should retain the bracketed language [including the existence of the arbitration itself]).

4. However, when confidentiality encompasses the duty to not disclose the existence of the arbitration itself, it can pose challenges when parties or counsel need to contact witnesses, third-party funders, or other parties involved, which is what the bracketed text [, or for the purposes of having, or seeking, third-party funding of arbitration/legal, accounting or other professional services] seeks to clarify. Maintaining confidentiality while conducting these necessary activities would mean that according to paragraph 2, parties require a confidentiality/non-disclosure undertaking/agreement to ensure that the individuals/entities involved agree to maintain the confidentiality (A/CN.9/1159, para.78).

Information in the public domain

5. According to paragraph 1, information being [lawfully] publicly available is not subject to confidentiality.

6. Parties may elect to retain the reference to “lawfully” in paragraph 1 of the model clause, bearing in the mind the following considerations (A/CN.9/1129, para. 90; A/CN.9/1159, para. 79).

7. On the one hand, the term “lawfully” can provide clarity and specificity to the clause ensuring that only information that entered the public domain lawfully is excluded from confidentiality. This can help prevent disputes and misunderstandings regarding the scope of confidentiality. A reference to “lawful” ensures that sensitive information that has been unlawfully disclosed continues to be the subject of confidentiality. Hereby the integrity of the arbitral proceedings could be preserved.

8. On the other hand, the term “lawfully” can introduce some ambiguity, as what is considered lawful disclosure may vary depending on the jurisdiction, context, and interpretation. This ambiguity could potentially lead to disputes over whether a particular disclosure was lawful or not. Furthermore, the inclusion of the term “lawfully” might result in the arbitral tribunal having to inquire how information entered into the public domain, potentially leading to both legal and factual challenges. Such disputes over what was “lawfully” disclosed may lead to delays and legal costs as parties litigate the issue, potentially defeating the purpose of a swift and confidential dispute resolution process.

Paragraph 2

9. Besides parties to the arbitration and the arbitral tribunal, other participants of the arbitral proceedings, such as the arbitral institutions, witnesses and experts, may be invited to agree on an undertaking, to ensure confidentiality where appropriate.

10. In some circumstances, it may be for the parties themselves to enter into a confidentiality agreement with the participants that they seek involvement. In other circumstances, for example where the tribunal invites experts to become involved in the proceedings, it may be more appropriate to have the duty rest with the arbitral tribunal (A/CN.9/1129, paras. 91–92; A/CN.9/1159, para. 78).

Paragraphs 3 and 4

11. An enforcement mechanism is highlighted in paragraphs 3 and 4 to ensure duties of confidentialities are complied with. Upon the request of a party, the arbitral tribunal may make orders and take appropriate measures concerning the confidentiality of the arbitral proceedings. In the event of a breach of confidentiality, the parties may seek remedies according to the applicable law (A/CN.9/1159, para. 76).

Note to the Working Group: The Working Group may consider paragraph 3 based on article 22(3) of the ICC Rules on Arbitration and paragraph 4 highlighting that parties may seek remedies in the event of a breach of confidentiality (A/CN.9/1159, para. 76). In view of the different approaches in different jurisdictions no further details on possible remedies were provided.

VI. Guidance text on confidentiality within the proceedings

16. The Working Group may wish to consider the following guidance text.

1. Confidentiality concerns may arise in respect of pieces of information of intrinsic value (such as trade secrets, know-how, algorithms, or any other proprietary information), which a party wishes to rely on when presenting its case to the arbitral tribunal/adjudicator but does not want to disclose them to the opposing party (including their legal representatives) due to their sensitivity. If such concerns arise, the way in which to treat such information may be discussed during a case management conference and certain measures may be taken. One way would be for the arbitral tribunal to classify such information as "confidential" within the proceedings and adopt measures to address them.

2. For example, information that is (i) in the possession of a party and treated as confidential by that party, (ii) inaccessible to the public or to the opposing parties and (iii) of a commercial, scientific or technical sensitivity, may be classified as confidential information.

3. A party invoking confidentiality may submit a request to the arbitral tribunal to have the information classified as confidential. The party making such a request would need to provide justifiable reasons for classifying the information as confidential.

4. Upon receipt of such a request and after inviting the opposing party to express its views, the arbitral tribunal may determine whether the information is to be classified as confidential and whether to adopt measures to protect the confidential nature of the information (for example, by limiting access to specified information to certain individuals; controlling the distribution of the specified information; permitting the submission of specified information in redacted form only as documentary evidence; requesting witnesses and experts to sign undertaking of confidentiality). In making the determination, the arbitral tribunal should consider whether the absence of measures to protect the confidential nature of the information would likely cause serious harm to the party making the request.

VII. Guidance text on evidence

17. The Working Group may wish to consider the following guidance text.

1. Article 27 of the UNCITRAL Arbitration Rules and article 15 of the Expedited Arbitration Rules refer to "witnesses", "statements by witnesses", and "evidence", which is further specified as "documents, exhibits or other evidence", as the means by which each party discharges its burden of proof. As medium neutral terms, these terms encompass information in electronic form that a party may wish to rely on to support its claim or defence.[8] Commonly referred to as "electronic evidence" or "digital evidence", such information may be generated and processed by a variety of different technologies, and subsists as "data messages" that form "electronic communications" and "electronic records" as defined, notably the Model Law on Electronic Commerce and Model Law on Electronic Transferable Records.[9] Electronic evidence plays an increasingly critical role in arbitral proceedings. While witness testimony given by videoconference ordinarily constitutes "electronic evidence", the focus of this guidance is on other forms of electronic evidence, including electronic equivalents of physical or paper-based "documents" and "exhibits".

2. Existing UNCITRAL legislative instruments on electronic commerce have been enacted in over 100 jurisdictions worldwide. When they apply, these texts give legal recognition to contracts concluded in electronic form, as well as communications in connection with the formation and performance of contracts, on which parties may seek to rely in presenting their case in arbitral proceedings. While these texts do not apply on their terms to arbitral proceedings, the principles on which they are based and the provisions that give expression to these principles can nevertheless provide useful guidance to arbitral tribunals in applying the UNCITRAL Arbitration Rules to the assessment of electronic evidence. These texts apply a "functional equivalence" approach, which recognizes that an electronic communication or record can serve an equivalent function to a paper-based document for the purpose of meeting certain legal requirements, even though the electronic communication or record, in and of itself, it cannot be regarded as an equivalent of a paper-based document.[10] After all, a paper-based document is a tangible thing containing information that is readable by the human eye. It is thus capable, without anything more, of being accessed and assessed by an arbitral tribunal. Conversely, an electronic communication or record is not so; it relies on information systems – comprising software (e.g., applications) and hardware (e.g., screens or other devices) – to be accessible and the information that it contains to be interpretable to a human.[11] Accordingly, the functional equivalence rules in these texts usually require some form of "method" to be used in order for the electronic communication or record to fulfil the functions of its paper-based equivalent.

3. Accordingly, when requiring the production or the presentation of electronic evidence, the arbitral tribunal may prescribe that the evidence be submitted in a form that is compatible with a particular information system that allows the arbitral tribunal to access and assess the electronic evidence, and to require the party presenting the electronic evidence to take measures to ensure that the information contained therein is in a form (e.g., file format) that can be stored and displayed by the software and hardware components of the system prescribed.

[8] In UNCITRAL texts, the term "documents" is generally qualified with the term "paper-based" or "paper" when they specifically refer to paper-based documents. For example, article 17 UNCITRAL Model Law on Electronic Commerce (MLEC).

[9] Article 2 of the UNCITRAL Model Law on Electronic Transferable Records defines "electronic records" as information generated, communicated, received or stored by electronic means, including, where appropriate, all information logically associated with or otherwise linked together so as to become part of the record, whether generated contemporaneously or not.

[10] MLEC Guide to Enactment, para. 17; United Nations Convention on the Use of Electronic Communications in International Contracts (ECC), Explanatory Note, para. 50.

[11] Article 6(1) and 8(1) of the MLEC; MLEC Guide to Enactment, para. 17; ECC, Explanatory Note, para. 50.

4. Issues such as data protection, security, interoperability, portability and localization, as well as associated costs, will likely be relevant factors in determining which information system to prescribe.[12] At the same time, arbitral tribunals should be aware that the evidential weight of the information contained in electronic evidence may be affected if the relevant data needs to be migrated from the format in which it was generated, sent or received (i.e. its "native format") in order to comply with the requirements of the prescribed system. This is because migration may result in the data losing some of the qualities afforded by its native format, which may in turn give rise to questions as to its authenticity and integrity. If a party still wishes to present data in its native format, that party may bring to the attention of the arbitral tribunal the need to submit the relevant electronic evidence accordingly. The arbitral tribunal may, if it accepts the need to do so, require the party submitting the electronic evidence to provide the necessary means to enable it to access and assess the evidence.

5. In accordance with article 27(4) of the UNCITRAL Arbitration Rules, it is for the arbitral tribunal to determine the admissibility, relevance, materiality and weight of the evidence offered. Article 9(2) of the Model Law on Electronic Commerce specifies certain factors that might be relevant in determining the *weight* of electronic evidence. It provides that, in assessing the weight of electronic evidence, "regard shall be had to the reliability of the manner in which the data message was generated, stored or communicated, to the reliability of the manner in which the integrity of the information was maintained, to the manner in which its originator was identified, and to any other relevant factor". These factors essentially go to the authenticity and integrity of the electronic evidence. As with paper-based documents, a party may raise a question regarding the quality of electronic evidence, and the arbitral tribunal may request the party relying on the evidence to provide additional evidence as to this matter.

6. The use of electronic evidence allows the arbitral tribunal, in assessing the evidence and in managing the case, to deploy a range of digital technologies and technology-enabled services, including artificial intelligence, distributed ledger technology systems and solutions offered by online platforms, to process the information, which can in turn enhance the efficiency of the proceedings. Digital technologies also provide parties with new ways to exhibit and display the information. It should be noted however that there are certain risks associated with their use and that measures to safeguard against those risks need to be taken, such as by providing the parties with the opportunity to exercise their due process rights. Furthermore, there may be cases in which the imbalance between the parties' access to the technologies are significant as such that it undermines the fairness of the proceedings and appropriate measures for counterbalancing are required.

VIII. Introductory text to UNCITRAL model clauses and guidance texts

18. The Working Group may wish to consider the following introductory text to the instrument (A/CN.9/1159, para. 92), which would need to be adjusted according to the deliberations. Additionally, each model clause and guidance text could be presented individually on the UNCITRAL website with a separate link.

19. The Working Group may also wish to consider the naming of the instrument, which could be retained as is: "technology-related dispute resolution and adjudication: model clauses and guidance texts", or the Working Group may wish to consider name proposals such as "model clauses and guidance texts on [Specialized Express Dispute Resolution (SpeEDR)][Express Resolution for Technology and

[12] Third-party systems may be offered as cloud computing service, in which case additional guidance is provided in the UNCITRAL Notes on the Main Issues of Cloud Computing Contracts.

Businesses (EXPERTS)][Dispute Resolution for Technology and Specialized Business (DARTS)][Specialist Technology and Expedited Resolution (STER)][Advanced Expedited Dispute Resolution (AEDR)]".

1. [Name of this instrument] is developed and adopted by the United Nations Commission on International Trade Law (UNCITRAL), containing model clauses and guidance texts that are intended to provide tailored solutions and guidance, building on the UNCITRAL Arbitrations Rules (UARs) and the UNCITRAL Expedited Arbitration Rules (EARs).

2. This text contains four model clauses and two guidance texts. The four model clauses are the Model Clause on Highly Expedited Arbitration, the Model Clause on Adjudication, the Model Clause on Technical Advisors and the Model Clause on Confidentiality. The two guidance texts are the Guidance on Confidentiality and the Guidance on Evidence. The first two model clauses provide tailored proceedings for parties with specific needs including but not limited to those engaging in the technology sector. As disputes suitable for settlement through such proceedings often require expertise on technical matters and treatment of information that is sensitive or in electronic form, the other two model clauses and the guidance texts may be deployed to complement the proceedings in the first two model clauses but they are also apt for arbitration more generally.

3. To promote their best possible use, the Model Clauses are accompanied by annotations which provide a detailed description on the objectives of their specific provisions as well as their associated risks, if any, and alternative approaches, where applicable. Parties are of course free to change the terms of the model clauses at any time and even during the course of the arbitration (or adjudication) proceedings. Model clauses serve as a starting point for negotiations between the parties and provide a framework, and are not set in stone. Arbitration and adjudications are flexible and consensual processes, and the parties have the autonomy to make adjustments to the procedural rules and terms as long as they reach an agreement.

Background[13]

4. In 2022, the Commission[14] entrusted Working Group II to consider the topics of technology-related dispute resolution and adjudication jointly and to consider ways to further accelerate the resolution of disputes by building on the EARs. Furthermore, the Commission entrusted the Working Group to prepare texts on the appointment of technical advisors, confidentiality, and evidence, all of which would allow disputing parties to tailor the proceeding to their needs. The Model Clauses and Guidance texts have been the result of extensive consultations and expert input.

Overview of the texts

The Model Clause on Highly Expedited Arbitration

5. This Model Clause provides an option for a highly expedited arbitration, further shortening the time frames and simplifying procedural steps provided in the EARs. The annotation to the Model Clause underscores the need for parties to be aware of the possible consequences of committing to a shortened time frame and to act accordingly so as not to undermine the basic principles of dispute resolution.

[13] Additional background information is available on the dedicated webpage of UNCITRAL Working Group II: Dispute Settlement, https://uncitral.un.org/working_groups/2/arbitration.

[14] *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 17* (A/77/17), paras. 224–225; Ibid., *Seventy-eighth Session, Supplement No.17 (*A/78/17), paras. 143–145.

The Model Clause on Adjudication

6. Recognizing the importance of dispute resolution mechanisms that are particularly suitable for long term contracts, the Model Clause on Adjudication enables parties involved in long-term contracts to incorporate a dispute resolution process that ensures prompt decisions on disputes arising from infrastructure or similarly complex projects. While the idea derives from adjudication as used in construction cases, the aim of the Model Clause is to provide for adjudication for all types of long-term and complex contracts. The clause foresees a mechanism to enforce the decision by the adjudicator through a highly expedited arbitration using the Model Clause on Highly Expedited Arbitration.

The Model Clause on Technical Advisors

7. This Model Clause provides for independent technical advisors accompanying arbitral tribunals in disputes involving complex technical matters. It ensures that the arbitral tribunal benefits from specialized knowledge to make informed decisions while maintaining the principles of transparency, impartiality, fairness and due process.

The Model Clause and Guidance Text on Confidentiality

8. Maintaining the confidentiality of arbitration proceedings may be an important feature of international arbitration, albeit not included into the UNCITRAL Model Law on International Commercial Arbitration (MAL), or the UARs. The Model Clause on Confidentiality, supplemented by a "Guidance Text on Confidentiality within the proceedings", intends to help parties establish clear and robust confidentiality safeguards, ensuring the integrity and privacy of the arbitration process.

Guidance Text on Evidence

9. As the digital landscape has changed considerably and will continue to change the way businesses operate, the proper handling of electronic evidence in arbitration is paramount. The Guidance Text on Evidence helps parties, arbitrators, and tribunals to utilize the UNCITRAL legislative texts on electronic commerce to navigate the challenges and opportunities presented by electronic evidence.

Adaptable tools

10. Parties engaged in international projects are encouraged to adapt these Model Clauses to meet their specific needs, recognizing that no two transactions are alike. One notable feature of the Model Clauses and Guidance texts is their modularity. Parties may pick and choose from this array of Model Clauses and consult the Guidance Texts according to their individual requirements in an ever-changing business environment, where expertise, speed, and confidentiality are of paramount importance.

11. In sum, these Model Clauses and Guidance texts are resources for businesses and practitioners engaging in international dispute resolution and providing parties with means to settle disputes in an expeditious manner with confidence, ensuring the integrity and effectiveness of their dispute resolution processes while catering for their unique needs.