

# UNCITRAL Model Clause on Adjudication



UNITED NATIONS

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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

UNCITRAL  
Model Clause on  
Adjudication



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# **Decision by the United Nations Commission on International Trade Law on the adoption of the UNCITRAL Model Clauses on Specialized Express Dispute Resolution<sup>1</sup>**

*The United Nations Commission on International Trade Law,*

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

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

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

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

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

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

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

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

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

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

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



# I. Preface

1. This Model Clause is one of the four UNCITRAL Model Clauses on Specialized Express Dispute Resolution (SPEDR) (2024) (the “Model Clauses”). The Model Clauses have been developed as part of UNCITRAL’s efforts to achieve three common objectives, namely, expeditious dispute resolution, comprehension of technical matters, and maintaining confidentiality. They are designed as a resource for businesses and practitioners engaging in international dispute resolution.

2. The four Model Clauses are on: Highly Expedited Arbitration, Adjudication, Technical Advisers and Confidentiality.

3. The Model Clauses are contractual texts, flexible enough for users to adapt and adjust them to their circumstances and preferences. Parties can use any of the model clauses individually or combine them as they wish, depending on their specific needs. For this reason, the Model Clauses are presented to potential users in both consolidated and separate formats, in order to accommodate their flexibility and facilitate its use.

4. The Model Clauses are also accompanied by explanatory notes to promote their best possible use. These notes provide guidance to parties on their specific objectives and any associated risks or alternate approaches that can be adopted while including them in contracts.

5. This Model Clause focuses on adjudication to resolve disputes while also allowing for full arbitration when a party deems it necessary. It enables parties to obtain a fast and cost-efficient determination by an adjudicator with the requisite expertise, which is essential for swiftly resolving disagreements and keeping a project on track. Although the determination is contractually binding and may be enforced in the near term, any party dissatisfied with the adjudicator’s decision retains the right to refer the dispute to arbitration (either under the UNCITRAL Arbitration Rules (“UARs”) or the UNCITRAL Expedited Arbitration Rules (“Expedited Rules” or “EARs”) to obtain a final award on the same issues that were the subject of adjudication.



## II. Model Clause on Adjudication

### Model Clause

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

#### **Arbitration**

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

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

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

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

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

#### **Adjudication**

##### *Option I*

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

OR

##### *Option II*

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

\* For example, claims solely for monetary relief.

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

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

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

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

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

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

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

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

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

### ***Compliance arbitration***

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

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

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

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

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

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

### ***Arbitration under paragraph 1 in relation to adjudication***

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

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

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

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

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

## **Explanatory notes**

### *Introduction*

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

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

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

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

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

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

### *Arbitration – paragraph 1*

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

resolve their Disputes by arbitration. Parties should be mindful of the distinction between “Dispute” with a capital “D”, as defined in paragraph 1 of the Model Clause as “dispute, controversy or claim arising out of or relating to this contract, or breach, termination or invalidity thereof”, and “dispute” with a small “d”, which refers to the subject matter of the case at hand.<sup>2</sup>

## *Adjudication – paragraph 2*

### Scope - chapeau

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

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

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

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<sup>2</sup>To avoid translation issues, the Arabic and Chinese versions of the Model Clause abbreviate “dispute, controversy or claim arising out of or relating to this contract, or breach, termination or invalidity thereof” in paragraph 1 by using the first two words of the phrase, that is “dispute, controversy”. Such abbreviations are used in the Arabic and Chinese language versions because the concept of capitalization does not exist in these languages. All six language versions are intended to convey the same notion.



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

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

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

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

Appointment of an adjudicator –  
subparagraph (b)

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

Appointing authority for adjudication –  
subparagraph (c)

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

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

Consultation – subparagraph (d)

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

Communication of acceptance of appointment –  
subparagraph (e)

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

Conduct of the proceedings – subparagraph (f)

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

Suitability – subparagraph (g)

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

## The determination – subparagraph (h)

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

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

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

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

## Effect of the determination – subparagraph (i)

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

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

Request of a security in granting relief

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

*Compliance arbitration – paragraph 3*

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

*Arbitration under paragraph 1 in relation to  
adjudication – paragraph 4*

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

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

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

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

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

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

### *Concurrent proceedings – paragraph 5*

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

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

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

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

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







