COMMENTS ON WORKING PAPER # 3

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List of State comments in the compendium (in alphabetical order):	**List of Public Stakeholder comments in the compendium (in alphabetical order):**
A group of 9 states, including Australia, Canada, and Chile Algeria Argentina Armenia Chile Colombia Costa Rica France Georgia Haiti Korea Panama Paraguay Singapore Togo Turkey Zimbabwe	Ayodeji Akin Corporate Counsels' International Arbitration Groupdeire (CCIAG)

GENERAL	COMMENT
Process, Timing & Effective Date for Adoption of Proposals	Singapore: Where we have not made any comments, please take this to be a reflection that Singapore finds the proposed amendment to be acceptable. Singapore had made the following points during the third meeting and is reflecting them in our written comments for completeness. Singapore thanks the ICSID Secretariat for their herculean work over the past three years on this rules amendment project, and is extremely appreciative for ICSID's proactive seeking and consideration of Member State's input. In response to a proposal raised by the Secretariat at the third meeting to hiving off certain topics for a later date, Singapore is of the view that this, whilst not fatal, would be a disservice to the work done thus far. Whilst Working Paper 3 is not perfect, it represents an overall compromise package that meets a minimum level of consensus between all Member States. Singapore notes that there are options available for States to establish a higher level of discipline or protection at other *fora* or in their own bilateral or multilateral investment treaties. On this basis, Singapore is keen for concrete outcomes to be delivered sooner rather than later, and welcomes the possibility of putting such amendments to a vote in 2020. On the issue of further work on Working Paper 4, if further work is required, such work should be focussed and targeted. Where possible, further comments should take place by circulation or electronic means. Without prejudging the need for further meeting in April 2020, ICSID Member States should only look at having this meeting if absolutely necessary. Korea: Korea understands that the ICSID rules are institutional rules, and that a certain level of compromise is required for all interested parties for the amendment project to bear meaningful fruit. Korea is also of the opinion that where further discussions are required, it is necessary to produce a result which reflects sufficient efforts to harmonize the concerns of different member States. In this context, Korea is open to the idea of an additional round of written comments as well as an in- person meeting following the publication of Working Paper no.4. Korea believes that it requires some reflection on the upcoming fourth Working Paper to confirm its position. In this regard, Korea welcomes the proposal made by the Secretariat to go through a survey on the necessity of a fourth member State meeting after the the publication of Working Paper no.4. Panama commends the Secretariat, and all of the Member State delegates, for the progress already reflected in the amendments in WP3. Even though there are some points that need tweaking — and further debates will take place regarding reform — the amendments, generally speaking, are a step in the right direction, and Panama looks forward to moving the process forward with an eye to voting on proposed amendments in 2020. Panama: Panama commends the Secretariat, and all of the Member State delegates, for the progress already reflected in the amendments in WP3. Even though there are some points that need tweaking — and further debates will take place regarding reform — the amendments, generally speaking, are a step in the right direction, and Panama looks forward to moving the process forward with an eye to voting on proposed amendments in 2020. Panama applauds the decision to produce a fourth working paper, and hopes that this will help narrow any remaining debate or discussion. In Panama's view, the aim at this juncture should be to bring the new rules into effect, on the understanding that such rules are first steps, and are open to future amendments. In addition, Panama appreciates the confirmation from the Secretariat that the Secretariat's comments in the working papers are not akin to travaux, and that they instead are simply one view (among many) of the reasoning for a particular rule. Given that, for some of the rules, Panama accepts the text but does not necessarily share the Secretariat's commentary, Panama supports the Secretariat's idea of memorializing a disclaimer about the nature of the comments in the working papers. Algeria: Je vous remercie pour votre envoi et pour cette consultation qui démontre encore une fois, l'efficacité des services du CIRDI, de son personnel et de son encadrement. L'Etat algérien accorde un grand intérêt à la réforme des règlements du CIRDI du fait, qu' il a mis en exergue la révision des traités bilatéraux relatifs à la promotion de l'investissement qui ont consacré le recours à la convention du CIRDI. L'Etat algérien compte profiter le plutôt possible des amendements qui seront adoptés par le CIRDI dans les meilleures délais . **Aussi nous n'avons pas de commentaires à produire sur le document de travail n° 3 relatif aux propositions d'amendement des règlements du CIRDI pour remplir le formulaire au regard, des efforts produits par le CIRDI et les travaux des participants à la dernière rencontre.**

	Par ailleurs l'Etat algérien soutient la recherche d'un mécanisme adapté et plus performant afin de promouvoir la **Médiation** qui est adaptée à sa culture liée au respect du pacte et accord des parties, sachant qu'il est important de distinguer ce qui relève du CIRDI de celui de la CNUDCI notamment, en matière de promotion de l'Investissement, ceci mérite le renforcement de l'Ethique des arbitres et la transparence dans le financement par les tiers sans oublier que le contexte général des reformes doit assurer un équilibre entre les Etats par rapport au développement des OIER qui peut compliquer les mécanismes du règlement alternatif des différends **.** Armenia: In light of the progress made to date on the mediation, conciliation, fact-finding as well as administration and finance proposals, we believe that the next iteration of these texts should be final (save for drafting points) so that we may proceed to a vote on them. Concerning the arbitration proposals, we believe that Working Paper #4 should be narrowly focused on the issues on which points of discussion remain, such as third-party funding and security for costs. We do not believe another in-person consultation to be necessary or cost-effective both in financial and ecological terms. Rather, we would prefer States Parties to submit written comments on Working Paper #4 from which the Secretariat may produce the final version of the arbitration texts to put to a vote.
Approach to gender neutral language in Spanish/French	Panama: Panama supports the consensus reached at the meetings in Washington. France: La Délégation française est toujours d'avis que l'écriture dite inclusive, qui n'est pas admise par les règles et pratiques françaises en lien avec la redaction de textes juridiques, est la source de nombreuses lourdeurs et complications inutiles d'un point de vue rédactionnel qui ont pour conséquence de rendre peu clair ou ambigu le sens de plusieurs dispositions des versions française et espagnole du projet de révision des règles. Cette Délégation est d'avis que cette situation pourrait in fine porter préjudice à l'utilisation du français et de l'espagnol en tant que langue de procédure dans le cadre d'instances organisées sous l'égide du CIRDI. Elle demande par conséquent au Secrétariat de revenir à l'usage en français (et probablement en espagnol) voulant que le masculin soit utilisé soit utilisé pour des termes applicables aussi bien aux femmes qu'aux hommes lorsqu'il n'est pas possible de trouver des solutions rédactionnelles alternatives. La Délégation française soutient l'idée d'une clause explicative générale, comme proposé par la Secrétariat, mais elle estime que la rédaction actuelle n'est pas appropriée et pourrait prêter à confusion («… the masculine gender… shall include the feminine gender »). Cette Délégation propose par conséquent la rédaction alternative ci-après qui pourrait être insérée dans la note introductive de chacune des règles révisées : « Dans le cadre des versions française et espagnole du présent Règlement, il est entendu que le genre masculin est neutre lorsqu'il est utilisé, y compris à des fins rédactionnelles, pour des mots et expressions applicables aussi bien aux femmes qu'aux hommes ». La Délégation française formule par ailleurs les suggestions suivantes : 1. S'agissant des titres ou fonctions officiels auxquels il est fait référence dans de nombreuses dispositions, le féminin et le masculin pourraient être utilisés conjointement une fois, lorsque le titre ou fonction en cause est rencontré pour la première fois, avec une indication voulant que le genre masculin sera par la suite employé pour désigné cette fonction (ex. AFR 2(1), 3(1), 6(1), 8) ; 2. S'agissant des titres ou fonctions officiels auxquels il est fait référence une seule fois, le féminin et le masculin pourraient être utilisés conjointement sans indication ou précision complémentaire (ex. AFR 4(2)) ; 3. Des tournures alternatives de phrases, formulées de manière neutre, devraient être privilégiées lorsque cela est possible (ex. AFR 8, 14(4), 26, 28/heading) ; 4. S'agissant de fonctions spécifiques (arbitre, conciliateur, expert, témoin, etc.), le recours au masculin doit être privilégié sans indication ou précision complémentaire (ex. AFR 13, 24, 28, 30). Ces suggestions sont reflétées ci-après, de manière exhaustive, pour ce qui concerne le règlement administratif et financier (AFR). La Délégation française souhaite que ces suggestions soient reflétées dans les autres dispositions du règlement AFR et dans les versions française (et si possible/applicable, espagnol) des autres règlements révisés. Chile: Chile considera que es necesario mantener un lenguaje inclusivo, en temas de género, y esto con respecto a todas las versiones de las reglas, es decir, español, francés e inglés. Si bien estamos de acuerdo en que es necesario adoptar formas menos engorrosas de llegar a este objetivo que las actualmente adoptadas en la propuesta del CIADI, consideramos que el objetivo inicial de utilizar un enfoque neutro debe permanecer.

	Consideramos que sería una mala señal volver a un mensaje masculino para todos los actores, como ocurre en la versión actual de las reglas. Si se adopta un sólo género para las reglas, proponemos que sea el femenino y que sea este el que incluya el masculino, como propuso la Secretaria General. Asimismo, hay que tener en cuenta que establecer un lenguaje inclusivo estaría en línea con la posición adoptada en las reparticiones públicas de muchos países y en un importante número de organismos internacionales. Ha sido además un tema importante que Chile ha impulsado en foros multilaterales de los que participa. Haiti: La République d'Haïti prend acte et approuve le consensus obtenu par les délégations francophones et hispanophones en ce que, pour des raisons à la fois stylistiques et grammaticales, le genre masculin englobe également le féminin. Toutefois, elle préconise que lorsqu'il s'agit d'une fonction occupée par une femme, et que l'on s'adresse ou parle de cette personne, la version féminine de la fonction soit utilisée, p.ex. Mme. la Présidente, ou Mme. la Secrétaire Générale.
Other:	Korea: The Republic of Korea is grateful for the continued and tireless efforts made by the Secretariat for the amendment of the ICSID rules. The following submissions are Korea's further comments to Working Paper no.3 in light of the 3rd meeting of Member States which took place 11th ~ 15th November 2019 at Washington DC. At the same time, Korea is currently taking part in an effort with other member States, to produce an additional joint submission. Korea believes that such a joint submission will better reflect the combined ideas and opionions of the interested member States, and help promote the efficiency of the rule amendment process. An additional joint submission if made, and to the extent that it does not coincide with the present comments, will reflect Korea's secondary position and preference in the event its primary position is not adopted and shall not be understood as a compromised or revised position of Korea in that regard. Additionally, Korea would like to clarify that Korea's oral and written comments during the amendment process, as well as its approval or disapproval of a final draft in the future, do not represent the final opinion of Korea regarding the invididual issues dealt within the ICSID rules. It is without prejudice to any position Korea may take outside the context of the current ICSID rule amendment process. France: La Délégation française est d'avis que les Annexes 3 et suivantes devraient être insérées dans le « paquet » des règlements révisés soumis au vote pour adoption. S'agissant plus particulièrement de la déclaration d'arbitre en application de l'Annexe 3, et compte tenu des explications du Secrétariat au §67 du document de travail n°3 et au cours de la troisième réunion de consultation, cette Délégation reste d'avis, que dans l'attente de l'élaboration d'un Code de conduite, les arbitres peuvent avoir à respecter des règles déontologiques spécifiques applicables au différend en application de l'instrument fondant le consentement des parties (e.g. référence aux lignes directrices de l'IBA dans le traité invoqué dans le litige). La Délégation française estime par conséquent que cette circonstance devrait être reflétée dans la déclaration d'arbitre et propose de modifier le §5 de l'Annexe 3 comme suit : « 5. Je reconnais que j'ai une obligation continue de respecter les règles déontologiques spécifiques applicables en vertu de l'instrument servant au fondement du consentement et de divulguer tout changement dans les circonstances qui pourrait conduire une partie à mettre en cause mon indépendance ou mon impartialité et je notifierai au ou à la Secrétaire général(e), dans les plus brefs délais, toute circonstance de cette nature ». Cette formule devrait être reflétée mutatis mutandis au §5 des Annexes 4 à 8 (en utilisant l'expression « accord des parties » en lieu et place de « l'instrument servant au fondement du consentement » s'agissant des règles sur la constatation des faits et la médiation).

I. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR ICSID CONVENTION PROCEEDINGS	COMMENT ON PROVISION
Introductory Note	France: Ces suggestions sont reflétées ci-après, de manière exhaustive, pour ce qui concerne le règlement administratif et financier (AFR). La Délégation française souhaite que ces suggestions soient reflétées dans les autres dispositions du règlement AFR et dans les versions française (et si possible/applicable, espagnol) des autres règlements révisés. Dans le cadre des versions française et espagnole du présent Règlement, il est entendu que le genre masculin est une forme neutre lorsqu'il est utilisé, y compris à des fins rédactionnelles, pour des mots ou expressions susceptibles de s'appliquer aussi bien aux femmes qu'aux hommes.
Chapter I - Procedures of the Administrative Council	
Regulation 1 - Date and Place of the Annual Meeting	
Regulation 2 - Notice of Meetings	
Regulation 3 - Agenda for Meetings	
Regulation 4 - Presiding Officer	
Regulation 5 - Secretary of the Council	
Regulation 6 - Attendance at Meetings	
Regulation 7 - Voting	Argentina: Current Administrative and Financial Regulation 7(3) allows the Chair to call for a vote by correspondence only if the action to be voted on must be taken before the next Annual Meeting and it does not warrant calling a special meeting. Proposed Regulation 7(3) gives the Chair greater flexibility to request a written vote between meetings, even if the action can be postponed to the next Annual Meeting of the Council. In that case, member States should be given a longer period of at least 60 days to cast a written vote. In addition, the safeguard that a written motion must be passed by a majority of member States and not simply by a majority of those voting should clarify that the replies received must include *affirmative* votes of a majority of the members.
Chapter II - The Secretariat	
Regulation 8 - Election of the Secretary-General and Deputy Secretaries-General	
Regulation 9 - Acting Secretary-General	
Regulation 10 - Appointment of Staff Members	
Regulation 11 - Conditions of Employment	
Regulation 12 - Authority of the Secretary-General	

Regulation 13 - Incompatibility of Functions	
Chapter III - Financial Provisions	
Regulation 14 - Fees, Allowances and Charges	Togo: Article 14 (1) (b) "ajouter sur présentation de justificatifs" Argentina: The fees and expenses of the members of a Commission, Tribunal or Committee to be covered should only include the fee for each hour of work performed in connection with the proceeding and, when required to travel to attend a hearing or session away from the member's place of residence, transportation expenses and a per *diem allowance*. The amount of the hourly fee and the *per diem* allowance of the members of a Commission, Tribunal or Committee, and the annual administrative charge payable by the parties for the services of the Centre, should be determined by the Secretary-General, *with the approval of the Administrative Council*. Any request for a higher amount of hourly fees or *per diem* allowances should be made through the Secretary-General for justified reasons and approved by the parties *before acceptance of the appointment* to the Commission, Tribunal or Committee. Armenia: We propose that, when required to travel to attend a hearing, meeting or session held away from the member's place of residence, members as a general rule be required to use the means of transportation that produces the lowest emissions of greenhouse gases possible. Members should promptly submit proposed travel itineraries to the Secretary-General for approval. The Secretary-General could approve proposed alternative plans generating higher greenhouse gas emissions on exceptional grounds, such as a journey time or cost that is out of all proportion in relation to the difference in greenhouse gas emissions. Chile: Respecto a la Regla 14(2), se sugiere que la Secretaría del CIADI solicite la aprobación de los Estados Miembros en caso de modificar el honorario de los árbitros y el per diem. Si bien entendemos que la propuesta actual es que el per diem sea aprobado por el Presidente del Consejo Administrativo, consideramos que ni esto, ni la aprobación del presupuesto del Centro por parte de los Estados Miembros es suficiente, como señala el Centro en respuesta. Considerando que existen importantes reparos respecto al rol, selección y compensación de los árbitros, creemos que es vital que no haya un aumento de los honorarios y del per diem, sin la autorización de los Estados Miembros. Consideramos que el hecho que los Estados sean a la vez Estados Contratantes, y Estados demandados no cambia en nada esta situación, ni creemos que pueda dar lugar a que se considere que haya un conflicto de interés. El hecho que el Estado pueda ser Estado demandado y además Estado Contratante es una constante de la arquitectura y diseño del sistema CIADI desde sus orígenes, y los Estados deben poder ejercer ambos roles apropiadamente. Georgia: Georgia maintains its position with respect to introducing additional mechanisms to ensure timeliness and efficiency on the part of the arbitrators (*See Georgia's comment to Working Paper #2*[1]). Further to the discussion during the third meeting of state representatives in November 2019, Georgia believes that proposed changes to the schedule of fees in terms of 'postponing the processing of arbitrator invoices' is not sufficient; Georgia proposes that mechanism of suspending arbitrator's fees be introduced as a rule in the Administrative and Financial Regulation. The ides of the proposal was to introduce a new rule/regulation and not just technically address the issue.

[1] "Pursuant to the Working Paper #2, paragraph 22, in response to the comments by the states, ICSID has considered options to reduce arbitrators' fees for non-timely services, but at this stage decided not to "link the payment of the prescribed fees with the timeliness". We understand the reasoning behind this decision and recognize the importance of all other the procedures and tools included in amended rules to ensure efficiency; however, we still believe that there could be several ways to address the issue of efficiency and timeliness without introducing some drastic changes in the suggested fee-structure:

1. During the Second round of state consultations Canada has proposed to introduce a mechanism whereby arbitral tribunal will not be able to submit request for payment in case of delay of the award for the additional period of time they require to issue an award and will not be able to provide good justification for such delay. In case of such delay, arbitrator's fees could be suspended unless and until they present justification for the delay."

	Turkey: The Regulation allows the Secretariat to higher the amount. Turkey has a concern about the high costs of arbitration including the arbitrators' fees. In some cases, the delays and non-cost effective procedure might be taken without any fault of the parties but the arbitrators themselves. Therefore, Turkey suggests the view that the ICSID might have the authority to decrease the amount of the arbitrator fees, especially in the occurrence of long delays by arbitrators' fault. This approach is also followed by the new 2017 ICC Rules of Arbitrators, which takes into account of the cost-efficient and expeditious arbitration proceedings, the diligence of arbitrators.
Regulation 15 - Payments to the Centre	Haiti: La République d'Haïti n'approuve pas les propositions visant à fixer le barème des arbitres ad valorem. Il n'existe pas en effet de corrélation entre l'importance financière d'un litige et la complexité juridique de l'affaire et le temps devant être consacrés par les arbitres à sa résolution. De plus, alors que le différend présente des difficultés juridiques, des arbitres expérimentés s'en désintéresseront si leurs honoraires sont insignifiants, ce qui peut avoir un impact sur la qualité des décisions rendues. L'institution d'un fond pour permettre aux PVD de faire face aux frais de l'instance est intéressante mais mérite d'être étudiée plus profondément lors d'instances ultérieures. Il est heureux que les contraintes budgétaires soulevées lors de la session d'avril aient été prises en compte dans l'Annexe 2
Regulation 16 - Consequences of Default in Payment	Togo: Article 16 (2) (c) 120 ou 150 jours au lieu de 90 jours Argentina: The 30-day period for payment is impractical in light of the administrative process of many States. Reflecting this reality, a longer period of time of 120 days should be provided for. The parties should always be consulted before the suspension or the discontinuance of a proceeding for lack of payment. While it may be appropriate to allow the Secretary-General to suspend the proceeding for lack of payment, in order to discontinue the proceeding for lack of payment the Secretary-General should move the competent Tribunal, Commission or Committee to issue the relevant order, as provided for in current Administrative and Financial Regulation 14(3)(d). Costa Rica: Costa Rica appreciates ICSID's comment on WP3 regarding the internal budgeting processes. Even though a solution is offered, Costa Rica considers that the Memorandum in Schedule 2 does not reflect that understanding. Therefore, Costa Rica proposes a modification to Schedule 2 that clarifies that parties can arrange to receive advance notice that a call for funds would be made. Georgia: Georgia does not support the idea of extending time limits provided in Regulation 16. States can take measures in advance to ensure the timely allocation of the budget for the purposes of their pending arbitration matters; and as we understand, in case of exceptional circumstances they can always arrange with the Centre a different approach or different time limits. Moreover, as it was kindly explained by the Secretariat at the third meeting of state representatives in November 2019, party has 45 days to comply with the request for payment (30 Days + 15 Days after the notice of non-payment) and 90 Days until the proceedings are discontinued for the purposes of non-payment.
Regulation 17 - Special Services	
Regulation 18 - Fee for Lodging Requests	Argentina: The amount of the lodging fees should be determined by the Secretary-General, *with the approval of the Administrative Council.*
Regulation 19 - The Budget	
Regulation 20 - Assessment of Contributions	
Regulation 21 - Audits	
Regulation 22 - Administration of Proceedings	

Chapter IV - General Functions of the Secretariat	
Regulation 23 - List of Contracting States	
Regulation 24 - Panels of Conciliators and of Arbitrators	Armenia: We support the proposal of certain delegations by which government officials should be disqualified from appointment to panels. This is a manifest conflict of interest that should be prohibited by the Rules.
Regulation 25 - Publication	Costa Rica: Costa Rica shares the objective of enhancing transparency through the Administrative and Financial Regulations, and more generally, in the arbitration process. Consequently, Costa Rica considers that publishing the award (allowing for redaction when required) should be mandatory. Given the specific characteristics of ISDS and the fact that public interests are involved, this would be a very relevant step towards promoting greater transparency. Costa Rica also suggests mentioning in the rule the specific documents that should be published for greater certainty as to the coverage of this rule. In its view, the documents to be included should be the ones that provide value to external observers in terms of accountability, and not all documents. In Costa Rica's experience, it has been observed that some documents are merely procedural, and their publication could negatively affect the proceedings' good governance and may create greater confusion if taken out of context. Costa Rica suggests an alternative drafting below for consideration, listing the main documents, which in any case, contain the relevant substantive and procedural information. **Regulation 25 Publication** With a view to furthering the development of international law in relation to investment, the Centre shall publish: (a) information about the operation of the Centre; and ~~documents generated in proceedings, in accordance with the rules applicable to the individual proceeding~~ the following documents generated in proceedings: request for arbitration, memorial, counter-memorial, reply, rejoinder, decisions on jurisdiction, awards and decisions on interpretation, revision and annulment. CCIAG: Transparency The CCIAG believes that it is critical to implement reforms to enhance the transparency of ISDS proceedings, with appropriate protection for confidential information. Transparency will showcase the professionalism of ISDS arbitrators and counsel and the integrity of the process, and thereby help counter the harmful myths and misconceptions that have been circulating for some time regarding ISDS. It will also enable the public meaningfully to take the opportunity to offer non-disputing party submissions in ISDS cases (as contemplated by Rule 66 of the proposed rules), which will enhance the quality and legitimacy of arbitral decisions. With respect to transparency, the CCIAG supports the ICSID Secretariat's proposal to publish the full text of an award if neither disputing party objects in writing within 60 days of the award being rendered. In our view, this approach provides the maximum transparency that is permissible under ICSID Convention Article 48(5), which requires the Secretariat to obtain the consent of the disputing parties to publish an award. "Deeming" the consent of the disputing parties after 60 days without objection is a creative and legally sound approach to working within the limits of the ICSID Convention, which is difficult to modify.
Regulation 26 - The Registers	
Regulation 27 - Communications with Contracting States	
Regulation 28 - Secretary	
Regulation 29 - Depositary Functions	
Chapter V - Immunities and Privileges	

Regulation 30 - Certificates of Official Travel	
Regulation 31 - Waiver of Immunities	
Chapter VI - Official Languages	
Regulation 32 - Languages of Regulations	

II. INSTITUTION RULES FOR ICSID CONVENTION PROCEEDINGS	COMMENT ON PROVISION
Introductory Note	
Rule 1 - The Request	
Rule 2 - Contents of the Request	<u>Panama</u>: Panama agrees with the many delegations that stated that any request for arbitration submitted by a juridical entity should be accompanied by a corporate diagram. Such a diagram would not be a burden for the claimant to find or create, and the requirement would go hand in hand with the objective of promoting efficiency. In any case, Panama encourages the Secretariat to rethink its view that the request for arbitration “does not play a role in the [actual] case,” as the tribunal is looking instead to the memorial and other submissions. In Panama’s experience, the RFA is very important for both the parties and for the tribunal. Among other things, it (1) can affect the agenda for the first session, and (2) will inform the discussion of any expedited objections. <u>A group of 9 states, including Australia, Canada, and Chile:</u> **Proposed Revised Language:** …… ▪ ~~With regard to the jurisdiction of the Centre, t~~The Request shall include: • a description of the investment, a description of the investor’s ownership and control of the investment, a summary of the relevant facts and claims, the request for relief, including an estimate of the amount of any damages sought, and an indication that there is a legal dispute between the parties arising directly out of the investment; …. (d) if a party is a juridical person: (i) information concerning and supporting documents demonstrating ~~information concerning~~ that party’s nationality on the date of consent, ~~together with supporting documents demonstrating such nationality~~; (ii) information concerning the ultimate beneficial owner and corporate structure of the party; and (iii) if that party had the nationality of the Contracting State party to the dispute on the date of consent, ~~information identifying~~ information concerning and supporting documents demonstrating the agreement of the parties to treat the juridical person as a national of another Contracting State pursuant to Article 25(2)(b) of the Convention~~, together with supporting documents demonstrating such agreement~~; <u>Argentina</u>: There is no need to have the introductory language in the chapeau of paragraph 2. The Request for Arbitration serves other purposes, and the information required to be contained in the Request need not be solely for the purposes of establishing the jurisdiction of the Centre. In addition, this language is not included in the current version of the Rules, and there is no benefit to its introduction here. It is also important for the Request to include a description of the corporate structure of the investment and the investor. This information is relevant for the State to understand if it might have jurisdictional objections, and whether other objections may be made through an expedited procedure. Language is suggested in two spots. In paragraph (2)(a) to ensure that the relationship between the investment and investor is understood, and in paragraph (2)(d) to understand the ownership structure of the investor itself, where the investor is a juridical person. <u>Chile</u>: Atendida la importancia de este tema por las razones que detallaremos a continuación, nos permitimos insistir en la necesidad de que se incorpore la estructura societaria de la persona-jurídica demandante, así como de la titularidad y control de la inversión, dentro de los requisitos que deben ser incluidos en la solicitud de arbitraje bajo la Regla 2. Buscando este objetivo, señalamos los siguientes aspectos: ▪ ***Primero***, consideramos que una identificación de la estructura societaria, titularidad y beneficiario efectivo en la solicitud de arbitraje permitirá al Estado identificar lo más temprano

	posible objeciones o excepciones preliminares, y hacer uso de los recursos que se han incorporado tanto en los mecanismos del CIADI, como en los tratados. Nos referimos a recursos como solicitar la bifurcación del procedimiento, invocar la manifiesta falta de mérito jurídico, denegar beneficios, u otra serie de objeciones jurisdiccionales relativas a la nacionalidad o el control del inversionista. El contar con esta información de manera temprana permitirá que el procedimiento se desarrolle con mayor rapidez y se disminuyan los incidentes procesales, lo cual tendrá incidencia en el costo y duración del procedimiento. En este contexto, estamos de acuerdo con lo expresado por otras delegaciones, en el sentido que la solicitud de arbitraje cumple otras funciones dentro del proceso arbitral, más allá que simplemente determinar si la solicitud puede o no ser registrada. ▪ ***Segundo***, la inclusión de la estructura societaria y beneficiario final de la inversión, son elementos críticos para el ejercicio apropiado de la defensa por parte de los Estados, al permitir la correcta y acabada identificación de la contraparte durante el juicio arbitral. Del mismo modo, resulta complejo imaginar una situación en la cual proporcionar el contenido de esa información resulte en un perjuicio para el solicitante- Inversionista. En particular, consideramos que incluir esta información en la solicitud de arbitraje no representa una carga significativa para el solicitante-inversionista por cuanto dicha información está en su poder. Por el contrario, para el Estado obtener esa misma información representa una carga onerosa, teniendo además en cuenta la complejidad de las estructuras societarias actuales. ▪ ***Tercero,*** conocer la estructura societaria permitirá al Estado identificar rápidamente si está ante un posible riesgo de doble compensación, en la situación en la que más de un accionista haya iniciado procedimientos relativos a la misma inversión o proyecto, con respecto a la misma medida tomada por el Estado. ▪ ***Cuarto,*** al consentir someter las disputas a arbitraje conforme al Convenio, en ejercicio de su soberanía, el Estado ha concedido un beneficio importante al solicitante-inversionista. Que el Estado tenga la total y plena información respecto a la persona jurídica que está presentando acciones legales en su contra, o de la inversión respecto de la cual debe tratar de resolver una disputa, parece ser una solicitud considerablemente menor, atendido este beneficio. ▪ ***Quinto***, hacemos presente que esto es consistente con la necesidad de proponer soluciones al problema de los procedimientos paralelos, las pérdidas reflejas, el *treaty shopping* y el abuso de proceso, que también están siendo discutidos en otros foros. ▪ Chile agradece los comentarios del Secretariado, respecto a que dicha información podría ser incluida por el solicitante bajo la Regla 2(2)(a) en caso de ser relevante. Sin embargo, consideramos que la práctica también muestra que hay ocasiones en que dicha información no es incorporada por el demandante al considerar, por ejemplo, que puede ser perjudicial para su posición. ▪ Por último, hacemos una propuesta de eliminar la referencia a "*información que identifique*" en la Regla 2.2.(d) (iii). Consideramos que esto incorpora un nivel de incertidumbre adicional que podría prestarse a ser mal utilizado, pues la parte solicitante sólo tendría que proporcionar “información que identifique el acuerdo”, pero no el acuerdo propiamente dicho. Observamos que, en virtud de la actual regla 2(1)(d)(iii) de las Reglas de Iniciación, la parte solicitante necesita especificar que existe un “acuerdo” además de proporcionar la documentación justificativa. Consideramos que esta es la aproximación adecuada. Colombia: Para Colombia sigue siendo importante que esta fase del procedimiento se exija información sobre la estructura corporativa del inversionista que presenta la reclamación, y que esta posibilidad no se extienda hasta la fase de producción de documentos, ya que permitiría a las partes llegar a la primera sesión con argumentos sobre bifurcación o excepciones preliminares. Así las cosas, Colombia sugiere la siguiente redacción: Regla 2 Contenido de la Solicitud (1) La solicitud deberá: (a) indicar si se refiere a un procedimiento de arbitraje o conciliación; (b) estar redactada en español, francés o inglés; 25 Reglas de Iniciación (c) identificar a cada parte en la diferencia y proporcionar su información de contacto, incluyendo su dirección de correo electrónico, dirección postal y número de teléfono; (d) estar firmada por cada parte solicitante o su representante y estar fechada; (e) acompañar prueba del poder de representación de cada representante; y (f) si la parte solicitante es una persona jurídica, indicar que ha obtenido todas las autorizaciones internas necesarias para presentar la solicitud y adjuntar dichas autorizaciones; (g) indicar la estructura corporativa del inversionista que presenta la reclamación. […] Costa Rica: Costa Rica considers that this article could be reduced to only one chapeau cointaining a list of requierements to be submitted with the Request for Arbitration. The different elements could serve for different purposes other than establishing the jurisdiction of the Centre.

	Alongside the requirements already included in Rule 2, it is also important for the Request to include a description of the corporate structure of the investment and the investor. There is no stage, either before or during the arbitration, where it is mandatory for claimants to reveal this information. This information is relevant for the preparation of the case at different stages. For example, in the jurisdictional phase this information is relevant when the treaty has limitations to shareholders claims and to determine if the claimaint complies with the definition of an investor. Later on, this information can be used if the respondent state requests security for cost, and at the end of the arbitration if the state is granted with the cost of the proceeding. As other delegations have also explained, it is important to address two situations: (i) confirm that the claimant complies with the definition of investor and (ii) to obtain knowledge on features of the claimant's corporate structure that might affect the case. (2) The Request shall include: (a) a description of the investment, a description of the investor's ownership and control of the investment, a summary of the relevant facts and claims, the request for relief, including an estimate of the amount of any damages sought, and an indication that there is a legal dispute between the parties arising directly out of the investment; .... (d) if a party is a juridical person: (i) information concerning that party's nationality on the date of consent, together with supporting documents demonstrating such nationality; (ii) information concerning the shareholding and corporate structure of the party; and (iii) if that party had the nationality of the Contracting State party to the dispute on the date of consent, information identifying the agreement of the parties to treat the juridical person as a national of another Contracting State pursuant to Article 25(2)(b) of the Convention, together with supporting documents demonstrating such agreement. Georgia: Georgia maintains its position that the Request for Arbitration should serve for more than just a jurisdictional filter for the purposes of registration of the request (*See Georgia's comment to Working Paper #2*[2]). Georgia does not see why the purpose of the request could not be extended beyond the jurisdiction of the Centre, especially when the recent treaty practice demonstrated that states attach great importance to the content of the first communication of dispute (whether it is referred to as Notice of Dispute or Request for Arbitration). The potential of the Request for Arbitration to serve for greater Georgia maintains its position that the Request for Arbitration should serve for more than just a jurisdictional filter for the purposes of registration of the request (*See Georgia's comment to Working Paper #2*[3]). Georgia does not see why the purpose of the request could not be extended beyond the jurisdiction of the Centre, especially when the recent treaty practice demonstrated that states attach great importance to the content of the first communication of dispute (whether it is referred to as Notice of Dispute or Request for Arbitration). The potential of the Request for Arbitration to serve for greater purpose then provided in the current amendment of the IR 2(2) was already considered by Working Paper #I when discussing the possibility for the Request for Arbitration to be considered as the claimant's first memorial.

[2] "It is very important that respondent state parties to the dispute are duly notified regarding the legal and factual basis of the dispute and the relief thought by the Claimant. The investigation of the facts and preparation of the defense requires ample time, resources and coordination inside (relevant governmental bodies and structures, or other entities involves) and outside (outside counsel, experts, etc.) the country. Therefore, it is crucially important that state receives this information as early on the case as possible. Base on the recent trends, states try more and more to include the requirements of the notice of dispute, including the information that it shall contain, in their investment treaties.

In the view of the above, it would be beneficial if this understanding is addressed and reflected in ICSID rules as well. We propose to include a language in Rule 2(2) of the Institutional Rules suggesting that the information included in the Request is not only for the purposes of the "jurisdiction of the Centre" but also to duly inform the respondent state party about the dispute initiated against it."

[3] "It is very important that respondent state parties to the dispute are duly notified regarding the legal and factual basis of the dispute and the relief thought by the Claimant. The investigation of the facts and preparation of the defense requires ample time, resources and coordination inside (relevant governmental bodies and structures, or other entities involves) and outside (outside counsel, experts, etc.) the country. Therefore, it is crucially important that state receives this information as early on the case as possible. Base on the recent trends, states try more and more to include the requirements of the notice of dispute, including the information that it shall contain, in their investment treaties.

In the view of the above, it would be beneficial if this understanding is addressed and reflected in ICSID rules as well. We propose to include a language in Rule 2(2) of the Institutional Rules suggesting that the information included in the Request is not only for the purposes of the "jurisdiction of the Centre" but also to duly inform the respondent state party about the dispute initiated against it."

	In the view of the above, Georgia proposes to either expand the purpose of the Request in paragraph (2) of IR 2 by adding relevant language (*See Georgia's comment to Working Paper #2*[4]) or to remove reference to any purpose altogether. Haiti: L'idée que des informations complémentaires sur la personne morale allant au-delà de sa raison sociale, de son siège social et de la loi qui la gouverne est intéressante en ce qu'aller au-delà du voile social en identifiant l'identité ou la nationalité des actionnaires ou associés majoritaires permettra la constitution d'un tribunal véritablement impartial. Paraguay: Apoyamos la decisión del CIADI de incorporar un monto estimado de la compensación pretendida. Sin embargo, creemos necesario que tambien se incluyan los siguientes datos: a. **Información respecto al tercer financista:** Esta información puede tener implicancias en la elección de los árbitros. Si bien el artículo 14 del Reglamento hace una referencia al tercer financista, entendemos que son momentos distintos y los efectos temporales pueden ser distintos. Por ello consideramos necesaria la inclusión de esta información al momento de la solicitud del arbitraje. b. **Información respecto a la estructura societaria:** Consideramos que es necesaria que se incluya al momento de la solicitud de arbitraje para que se tenga en cuenta la bifurcación y si se opondrá excepciones preliminares durante el proceso. Brindar esta información permitirá al demandado identificar si es que el demandante se acogió a un tratado más conveniente *(treaty shopping),* dando al demandado la posibilidad de oponer las defensas correspondientes. Por otro lado, se debe tener en cuenta que antes de solicitar el arbitraje, el inversionista ya tiene toda la información referente al Estado, sin embargo, el Estado no tiene esa información referente al inversionista. Por ello, y por el principio de equidad de armas que debe regir entre las partes, es necesario que esta información sea incluida con la solicitud del arbitraje. Turkey: Turkey suggests in either Rule 2 the Contents of the Request or Rule 3 Recommended Additional Information, to add further information about the corporate structure of the requesting party. The corporate structure may assist in identifying whether the request is about a real foreign investment and made by a real foreign investor. Such information would assist to find out and prevent frivolous claims at the very first stage, even before the constitution of the arbitration tribunal.
Rule 3 - Recommended Additional Information	
Rule 4 - Filing of the Request and Supporting Documents	
Rule 5 - Receipt of the Request and Routing of Written Communications	
Rule 6 - Review and Registration of the Request	
Rule 7 - Notice of Registration	
Rule 8 - Withdrawal of the Request	
Rule 9 - Final Provisions	

[4] *"(2) With regard to the jurisdiction of the Centre and in order to duly inform the respondent state party to the dispute, the Request shall include:"*

III. ARBITRATION RULES FOR ICSID CONVENTION PROCEEDINGS	COMMENT ON PROVISION
Introductory Note	
Chapter I - General Provisions	
Rule 1 - Application of Rules	
Rule 2 - General Duties	Armenia: Armenia considers the good faith obligation to apply throughout the proceeding, including implementation of Tribunal orders. Turkey: Turkey supports the explicit inclusion of Rule 2- General Duties and prefers to revise the Article paragraph 1 as follows: "*The Tribunal and the parties shall conduct the proceeding in an expeditious and cost-effective manner in as required by good faith*". Turkey also supports deletion of paragraph 3 given the fact the States may not be expected to bound by provisional decisions, especially by provisional protection decisions taken by arbitral tribunals.
Rule 3 - Party and Party Representative	Armenia: Armenia opines that agents and counsel (not advisors) should be required to be qualified lawyers in a national jurisdiction with a minimal amount of practical experience, such as five years. In the case of academic lawyers, this could be a requirement to hold a doctorate in law with five years of academic experience. Chile: Se sugiere que el establecimiento o cambio de representantes deba ser notificado no sólo al Secretariado sino también a la otra Parte y al Tribunal. Para ello se propone añadir al final de la Regla 3(2), lo siguiente "el o la cual informará sin demora a la otra parte y al tribunal." Si bien entendemos que el Secretariado informa todo a la otra parte y al Tribunal, creemos que es importante que sea aclarado que no solo la notificación, sino también el poder de representación deben ser comunicados a la otra parte y al tribunal, lo cual no ocurre de manera sistemática.
Rule 4 - Method of Filing	
Rule 5 - Supporting Documents	Singapore: Singapore had made the following points during the third meeting and is reflecting them in our written comments for completeness. *(1) Supporting documents, including witness statements, expert reports, exhibits and legal authorities, shall be filed together with the request, written submissions, observations or communication to which they relate.* *(2) An extract of a ~~supporting~~ document may be filed as a supporting document if the extract ~~omission of the text does not render the extract~~ is not misleading. The Tribunal or a party may require a fuller extract or a complete version of the document.* *(3) If the authenticity of a supporting document is disputed, the Tribunal may order a party to provide a certified copy or to make the original ~~document~~ available for examination.* Singapore is of the view that the current drafting of Rule 5 represents a reasonable position. In particular, Singapore would not support a default rule that all documents ought to be produced in full, as these could take the form of articles or financial records that could be voluminous, where only an extract is relevant to the dispute. It would also increase time and costs of the proceedings

	as counsel would have to review these documents. In response to the Member States that advocate for disclosure of all documents in full, Singapore does not take the position that just because certain documents are produced in an extract, the producing party is trying to hide something. Costa Rica: Costa Rica welcomes the addition of paragraph three because it will provide security to the proceeding, in cases when the authenticity of a supporting document is questioned. For greater certainty, Costa Rica suggests to also clarify that the certification relates to the legislation of the jurisdiction in which it was issued, since an eventual misunderstanding of the Rule could lead to higher costs and duration to the proceeding. **Rule 5 Supporting Documents** (1) Supporting documents, including witness statements, expert reports, exhibits and legal authorities, shall be filed together with the request, written submission, observations or communication to which they relate. (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Tribunal or a party may require a fuller extract or a complete version of the document. (3) If the authenticity of a supporting document is disputed, the Tribunal may order a party to provide a certified copy according to the legislation of the jurisdiction where the document was issued or to make the original available for examination.
Rule 6 - Routing of Documents	
Rule 7 - Procedural Languages, Translation and Interpretation	Armenia: On Rule 7(2) and 7(3), Armenia considers that if each party selects on of the official languages of the Centre, the arbitrators should be required to be competent in both of the official languages selected. As the first session would take place after the constitution of the Tribunal, it would be necessary to replace an arbitrator who is not competent to operate in both languages. An incentive would thus be created for the parties to use one language or to appoint arbitrators fluent in both languages. We thus propose deletion of sentence in para. 3 whereby 'the Tribunal may order a party to file such documents in both procedural languages' as well as the equivalent sentences in para. 4. Chile: Cuando cada parte elige un idioma distinto en el procedimiento, se propone que ambas proporcionen traducciones, por lo menos de los escritos, solicitudes y presentaciones principales. Lo anterior, para evitar desigualdades en donde una parte, comúnmente un Estado demandado, cuyo idioma oficial es el español o el francés, se ve obligado a proporcionar traducciones al inglés de sus escritos principales, pero la parte demandante se niega a proporcionar copias en español o francés bajo el pretexto que los tres miembros del Tribunal dominan el inglés y no necesitan dichas traducciones. En dichos casos, el Estado podría verse en la obligación de cargar con el costo de traducir no sólo sus propios escritos, sino también los de los demandantes para realizar las coordinaciones internas necesarias a su defensa. Esto genera una desigualdad que proponemos corregir, por medio de una modificación a la Regla 7.3, en el sentido que los documentos principales deben ser presentados en ambos idiomas, salvo que haya acuerdo en contrario de las partes (ver texto columna izquierda). Consideramos que esto es algo que no se debe dejar a la discreción del tribunal, sino que las partes deben tener el control sobre la decisión final, por medio de la posibilidad de acordar que solo se produzcan los documentos en un idioma del procedimiento.
Rule 8 - Correction of Errors	Turkey: Turkey suggests the wording "clerical" or "typographical" before the error in order to strengthen the meaning of incidental errors. Adding the word 'clerical' in the rule will limit an error to a manifest clerical error. This way, any modification that might affect the merits will definitely be eliminated. What we care about is, the parties should not be allowed to *change their position *hide the documents *production of new documents *making new arguments In other ways, we do not allow the guerrilla tactics or confuse the Tribunal and/or mislead the hearing. Turkey experienced in a case that the Requesting party presented new documents untruly produced to prove alleged "foreign" investors. Turkey just wants to be allowed typographical or clerical errors to be corrected.

Rule 9 - Calculation of Time Limits	Argentina: The reference to Saturday or Sunday should be broadened to include any non-business day.
Rule 10 - Fixing Time Limits	Argentina: Time limits should be fixed in consultation with the parties.
Rule 11 - Extension of Time Limits Applicable to Parties	Argentina: Both parties should be given an opportunity to state their views before the Tribunal or the Secretary-General, as applicable, concludes a delay is justified, as provided for in current Arbitration Rule 26(3). Time limits should not be extended without giving both parties an opportunity to state their views. Turkey: In Paragraph 2; in the event that the decision on whether to accept a procedural matter or production of documents that may take place at the end of an extension of time is available only if there is a mutual agreement of the parties. It is considered that it would be appropriate to grant a limited discretion to the tribunal and to prevent any parties to abuse the procedure by not agreeing a reasonable and justifiable request for extension of time. Considering the fact that, it is unlikely for the parties to agree on any matter after the dispute arose, irrespective of the request was just and fair. To conclude Turkey suggests to add Art.11/2 … "*or the tribunal decides in exceptional circumstances, where there are justifiable and reasoned application.*"
Rule 12 - Time Limits Applicable to the Tribunal	Togo: Article 12, (2) réécrire "si le Tribunal ne peut respecter un délai applicable, il informe les parties et la Secrétaire Générale…" Chile: Considerando que una de las mayores críticas al sistema es la larga duración de los procedimientos y que en algunos casos, una de las razones es el retraso de los tribunales a rendir el laudo o dictar las decisiones, Chile propone eliminar la referencia a "*best efforts*" o que "el Tribunal hará lo posible", para cumplir con los plazos para dictar las resoluciones, decisiones y el laudo, incorporada actualmente en la propuesta de Regla 12(1), y a la Regla 20 del mecanismo complementario. Creemos que esto no es necesario, por las siguientes razones: ▪ Consideramos que la Regla 12(2) ya establece una buena manera para lidiar con aquellos casos -que deben ser excepcionales- en los que los tribunales no cumplan con el plazo, y por lo tanto se puede confirmar que los laudos se emitirán en ese plazo. ▪ Entendemos que ya se ha determinado que, de no cumplir con los plazos para la emisión de decisiones y el laudo, el Secretariado retrasaría el procesamiento y por tanto el pago de los honorarios al Tribunal. Consideramos que para implementar apropiadamente esta positiva medida, es importante que los árbitros cuenten con una obligación firme de rendir los laudos y decisiones en un plazo particular. ▪ Asimismo, Chile ha revisado otras reglas de arbitraje en donde se establecen plazos aplicables al tribunal, y no ha encontrado otras que le permitan al tribunal solamente hacer los mejores esfuerzos por cumplir los plazos. Considerando además la importancia de los temas que se ventilan en el CIADI, sugerimos que esta excepcionalidad se omita. Costa Rica: In the interest of certainty and considering that the objective of this process is to reduce the duration of the proceedings, we suggest to include an obligation in paragraph one that can guide the expectations of the parties and paragraph two contains the exception, which provides flexibility to the tribunals, when needed. **Rule 12. Time Limits Applicable to the Tribunal** (1) The Tribunal shall ~~use best efforts to~~ meet time limits to render orders, decisions and the Award. (2) If the Tribunal cannot comply with an applicable time limit, it shall advise the parties of special circumstances that justify the delay and the date when it anticipates rendering the order, decision or Award.
Chapter II - Constitution of the Tribunal	
Rule 13 - General Provisions Regarding the Constitution of the Tribunal	Panama: In past annulment proceedings, parties have argued — and committees have held — that the titles of certain Rules may lend meaning to Article 52(1)(a) of the ICSID Convention (annulment for "improper constitution of the tribunal"). Accordingly, Panama is concerned that the title of draft Rule 13 may inadvertently expand the grounds for annulment. For example, the

	fact that one of the "general provisions regarding constitution" is that "[t]he Tribunal shall be constituted without delay" might suggest that a delay in constitution could serve to annul an award. In Panama's view, this would not be an appropriate basis for annulment. Argentina: The expressions "notification of the registration" and "with due regard to Section 2 of Chapter IV of the Convention" in current Arbitration Rule 1(1) should be retained. Chile: Tal y como se estableció en los comentarios conjuntos que Chile presentó junto con Colombia, México, Perú y Costa Rica, consideramos esencial avanzar rápidamente en el establecimiento de un código de conducta, para contar con reglas claras respecto a la conformación y desempeño de los tribunales, para así asegurar la imparcialidad, legitimidad, independencia y credibilidad de los árbitros, y del sistema en general. Los siguientes, son algunos de los temas que consideramos importante que el código aborde: 1. *el double hatting* o confusión de roles, 2. la obligación del árbitro de contar con la adecuada diligencia y celeridad, dándole la prioridad adecuada a su trabajo de árbitro al aceptar el nombramiento de una de las partes; 3. la obligación del árbitro de no aceptar posteriormente otros compromisos que tengan el potencial de crear un conflicto, 4. la obligación de realizar un examen exhaustivo del expediente que tome en consideración y analice todo el acervo probatorio que las partes presenten al tribunal. CCIAG: Code of conduct for arbitrators The CCIAG commends the ICSID Secretariat's cooperation with the UNCITRAL Secretariat to develop a code of conduct for arbitrators[5]. The absence of a universal code of conduct for arbitrators in ISDS cases is a glaring flaw in the current system. Arbitrators in ISDS cases have generally exhibited great integrity, but we believe that a code of conduct is necessary to ensure arbitrators have a clear understanding of their ethical obligations and to ensure that conflicts of interest can be identified and addressed. This will establish a level playing field which is transparent and fair for all. As a general matter, we consider that the main elements of a code of conduct should include: independence and impartiality; integrity; diligence and efficiency; confidentiality; competence or qualifications; and disclosure. We look forward to providing detailed comments on the code of conduct when it is prepared. At this stage, it is important to note that we strongly oppose a broad double-hatting prohibition, which would narrow the pool of qualified arbitrators and produce other unintended consequences that would outweigh any potential benefits of such an approach.
Rule 14 - Notice of Third-Party Funding	Singapore: Singapore had commented extensively on this rule in Working Papers 1 and 2. We reiterate that we are *strongly supportive* of the overall approach and think that the current rule 14 strikes appropriate balance between access to justice and confidentiality. However, we wish to address two main themes that were raised at the third meeting. First, it was strongly reiterated by a number of Member States that the duty of disclosure regarding the identity of the third party funder should apply also to disclosure of the name and address of any person with an ultimate financial interest in the outcome, in particular an ultimate beneficial owner. This is intended to address the potential situation that the companies directly funding the litigation could be shell entities with ultimate beneficial owners. Singapore would once again like to express its support for this suggestion. On tweaking the language, a delegation had suggested replacing "affiliate or representative" in paragraph (1) with "directly or indirectly". Singapore will let the Secretariat consider such textual amendments. Second, there was extensive discussion on whether paragraph (2) ought to be deleted or retained. Based on Singapore's treaty practice, we consider that third party disclosure would cover contingency fee and *pro bono* arrangements as these would satisfy the description of a "donation or grant, or in return for remuneration". Nonetheless, Singapore is agnostic to the retention or deletion of this paragraph. We further note that this issue is related to Rule 52 (Security for Costs), and that this issue does not simply relate to conflict of interests, but includes procedural aspects on the abuse of process.

[5] ICSID Secretariat's Proposals for Amendment of the ICSID Rules - Working Paper #3, at p. 294, para. 49.

Rule 143 – Notice of Third-Pparty Funding

(1) ~~For purposes of completing the arbitrator declaration required by Rule 18(3)(b), a~~A party shall file a written notice disclosing the name of any non-party from which the party, its affiliate or its representative has received funds ~~or equivalent support~~ for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the dispute ("third-party funding").

(2) A non-party referred to in paragraph (1) does not include a representative of a party.

(3) A party shall file ~~send~~ the notice referred to in paragraph (1) with~~to~~ the Secretary-General upon registration of the Request for arbitration, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.

(4) The Secretary-General shall transmit the notice of third-party funding and any changes to such notice to the parties and to any arbitrator proposed for appointment or appointed in a proceeding for purposes of completing the arbitrator declaration required by Rule 19(3)(b).

Korea: Korea reiterates its previous position that paragraph (2) which carves-out party representatives from the scope of Third-Party Funders needs to be deleted.
In Korea's opinion, the inclusion of Rule 52(4) which introduces the existence of Third-Party Funding (hereinafter "TPF") as an element to be taken into consideration in relation to Security for Costs, reflects a shared understanding that TPF is also relevant to the matter of a party's financial status. In this light, and given the possiblity that certain alternate fee arragements between a party and its representative may be used to cloak that party's impecuniosity or lack of will to comply with an adverse decision on costs, it would be more prudent not to carve-out party representatives from the scope of application.
Furthermore, Korea echos its previous comments that the general terms of the TPF agreement should also be subject to disclosure, and that express language regarding the tribunal's power to request further information be added.

Panama: Panama commends the introduction of an express rule requiring written notice of the existence of third-party funding. Further — and given the unfortunate events that transpired in one of Panama's past cases — Panama appreciates the Secretariat's inclusion of an ongoing disclosure requirement.

In Panama's view, it would also be useful to add a paragraph stating that the tribunal has the discretion to order additional TPF-related disclosures.

A group of 9 states, including Australia, Canada, and Chile: **Proposed Revised Language:**

Rule 14
Notice of Third-Party Funding

- A party shall file a written notice disclosing the name, address, and where applicable, ultimate beneficial owner and corporate structure, of any non-party from which the party, its affiliate or its representative, individually or collectively, has received, directly or indirectly, funds for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the dispute ("third-party funding").

- ~~A non-party referred to in paragraph (1) does not include a representative of a party.]~~

(~~3~~2) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request for arbitration, or with the Secretary-General and the Tribunal, if

constituted, immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General and the Tribunal, if constituted, of any changes to the information in the notice.

- The Secretary-General shall transmit the notice of third-party funding and any changes to such notice to the parties and to any arbitrator proposed for appointment or appointed in a proceeding for purposes of completing the arbitrator declaration required by Rule 19(3)(b).

The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding.

Argentina: The Argentine Republic is opposed to third-party funding. However, if a majority of two thirds of the members of the Administrative Council decides not to prohibit third-party funding, it should be strictly limited and penalties should be expressly provided for, as proposed above.
Proposed Rule 14 includes the obligation for a party to disclose that it has third-party funding and the name of the third-party funder. However, this provision is not sufficient to limit the negative impact third-party funding may have on the integrity of the arbitration proceeding, due process, the settlement of the dispute, and the object and purpose of the ICSID Convention. At a minimum, it is essential to include the obligation of the funded party to disclose the terms and conditions of the funding agreement.
There should also be legal consequences in case of non-compliance.

Armenia: On the issue of 'third party funding', Armenia supports in principle a complete ban on such funding, whether in the form of financing by a speculator (that is, one acquiring a stake in the dispute settlement process, in contrast to a donor) or by counsel in the form of a contingency funding arrangement. This is due to the various systemic risks, such as party autonomy and conflicts of interest, which such funding arrangements bring to the dispute settlement process. However, we acknowledge that such a complete ban would be impractical in the absence of a trust fund to support indigent claimants; for example, a company whose sole asset at the heart of the proceedings has been allegedly expropriated, leaving it impecunious. We note that the establishment of such a trust fund or advisory centre is a topic under discussion in UNCITRAL Working Group #3. In light of these considerations, we support the comments made by other States Parties, such as the European Union and her Member States, for more stringent language in draft Rule 14 with respect to both the obligation to disclose the personal details of the 'ultimate funder' of the party and the relevance of failure to disclose third-party funding for the purpose of costs allocation orders.

In addition, Armenia endorses the idea that Arbitral Tribunals be expressly empowered to order the disclosure of *relevant extracts or provisions* of third-party funding arrangements. We acknowledge the potential tactical advantage that can arise for the opposing party in the event that certain provisions of the agreement, such as the gross sum of funding provided by the third party. However, we suggest that disclosure of other information, such as the *percentage* that the level of funding constitutes in relation to the total budget of the party, would be highly relevant to enable the opposing party and the Arbitral Tribunal to determine whether the third party is exercising effective control over the funded party. Disclosure of the percentage, as opposed to the gross sum, would not provide the opposing party with an unfair advantage, as the total budget of the funded party would remain undisclosed.

We acknowledge that Article 43 of the ICSID Convention restricts the general power of the Arbitral Tribunal to 'call upon the parties to produce documents or other evidence'. However, we note that this provision pertains to the *general* power of the Arbitral Tribunal to request such documents during the course of the proceedings. In our view, an express power granted to the Arbitral Tribunal through draft Rule 14 to *order* a party to produce documents for a narrow purpose prescribed in the Rule is compatible with the exhortatory power of the Arbitral Tribunal to request documents for general purposes.

Chile: Agradecemos los esfuerzos hechos por el Secretariado por regular el tema del financiamiento por terceros, que consideramos muy positivo, sujeto a los siguientes comentarios.

- Entendemos que hubo consenso entre los delegados presentes de que la notificación de la Regla 14(1), abarque otros aspectos más allá del nombre del Tercero que esté proporcionando financiamiento. En este sentido, incorporamos una propuesta de que el demandante que cuente con financiamiento deba incluir, aparte del nombre, la dirección, la estructura societaria y el beneficiario final, de ser aplicable.
- Chile propone suprimir el párrafo 2, a la luz del hecho de que la divulgación del financiamiento por terceros debería realizarse aun cuando el financiador es un representante de una parte.

	• Asimismo, sugerimos la incorporación de una nueva regla, Regla 14(5), que le otorgue, de manera expresa, las facultades al Tribunal para requerir información adicional respecto al acuerdo de financiamiento y del tercero financista. Esto va en la línea de lo manifestado por muchas delegaciones durante la última reunión, y en concordancia con los comentarios que Chile presentó junto con Colombia, Perú, México y Costa Rica, anteriormente. o Respecto a los aspectos que podrían ser solicitados por el Tribunal al ordenar una revelación parcial del acuerdo, creemos que éstos deben incluir cuestiones tales como: la proporción de costos otorgada; si existen disposiciones que regulan el cumplimiento de un laudo adverso; el nivel de participación del financista en la toma de decisiones; el derecho de veto del financista ante la posibilidad de una solución negociada, entre otras disposiciones. Se ha propuesto una cláusula abierta, pues se pretende otorgar al Tribunal los poderes más amplios posibles para, en función de las características del caso, solicitar este y otro tipo de información tanto del financista como del acuerdo de financiamiento. • Agradecemos los comentarios del Secretariado en el DT No. 3, los cuales indican que el tribunal tiene la autoridad para ordenar la producción de documentos necesarios o evidencia en cualquier fase del procedimiento, bajo la Regla 36 de Arbitraje o el Artículo 43 del Convenio. Sin embargo, consideramos que podría dar espacio a una interpretación de que estas disposiciones se refieren únicamente a cuestiones probatorias, relativas específicamente a la disputa entre las partes. Asimismo, entendemos que, en casos recientes, en que tribunales han solicitado información sobre la existencia de financiamiento o el acuerdo que lo refleja, lo han hecho sobre la base de sus poderes inherentes y no han hecho referencia a la Regla 36 o el Artículo 43 (ver, e.g., *Muhammet Çap & Sehil v. Turkmenistan, ICSID Case No. ARB/12/6,* Resoluciones Procesales No. 2 y 3*).* Esto podría ser indicativo de una falta de claridad respecto a las facultades del tribunal. El no establecer una regla expresa, debiendo recurrir a las reglas generales de la prueba dará pie a un incidente procesal, con largos argumentos escritos e incluso orales de ambas partes, con el único objetivo de persuadir al tribunal que tiene o no tiene poderes, según corresponda. Esto aumentará la duración y el costo del procedimiento. • Asimismo, en la medida en que se considere que el Tribunal ya tiene poderes para solicitar esta información, no debería ser controversial incorporar la disposición 14(5) propuesta para darles certezas a las partes sobre un aspecto que ha levantado muchos comentarios y es de especial importancia para los países que han participado en este proceso de enmiendas. • Por último, creemos que es oportuno abordar este tipo de cuestiones relativas a los poderes de Tribunal en el presente proceso de reforma, y que éstos formen parte de las reglas de arbitraje, evitando de esta manera que este tipo de provisiones dependan de las enmiendas o negociaciones de nuevos tratados. Colombia: Colombia entiende que la razón para incluir el tercero financiador en el actual proceso de enmienda es para reducir el conflicto de intereses. Sin embargo, Colombia consdiera que esta revelación tiene también otros propósitos legítimos como la asunción de costos, que se discutirá en la regla correspondiente, y el nivel de control o poder de veto sobre una posible solució negociada. Para cumplir estos dos objetivos se considera necesario que el Tribunal cuente con facultades expresas para solicitar información adicional frente a la existencia de un tercero financiador. Colombia considera que esta mención expresa es importante en esta regla dado que el articulo 36 (3), es un principio general de prueba que está dispuesta para otra etapa del procedimiento. Además, de su redacción se desprende que esto es facultativo, lo que no garantiza que el Tribunal pueda solicitar este tipo de información. En este sentido, Colombia sugiere la siguiente redacción: Regla 14 Notificación de Financiamiento por Terceros (1) Una parte presentará una notificación por escrito revelando el nombre de cualquier tercero de quien la parte, su afiliada o su representante haya recibido fondos para la interposición de, o defensa en un procedimiento a través de una donación o una subvención, o a cambio de una remuneración dependiente del resultado de la disputa ("financiamiento por terceros"). Dicha notificación deberá incluir el alcance de las facultades de dicho tercero financiador respecto de la controversia. (2) El tercero al que se refiere el párrafo (1) no incluye al o a la representante de una parte. (3) La parte presentará la notificación a la que se refiere el párrafo (1) al o a la Secretario(a) General al momento del registro de la solicitud de arbitraje o, en su caso, inmediatamente después de concluir el acuerdo de financiamiento si sucede después del registro. La parte comunicará inmediatamente al o a la Secretario(a) General cualquier cambio en el contenido de la notificación. (4) El o la Secretario(a) General transmitirá la notificación de financiamiento por terceros y cualquier cambio a dicha notificación a las partes y a cualquier árbitro propuesto para nombramiento o nombrado en el procedimiento a efectos de completar la declaración de árbitro requerida por la Regla 19(3)(b). (5) El Tribunal a su discreción podrá requerir a cualquiera de las partes, información relacionada con el tercero financiador. Costa Rica: Costa Rica appreciates ICSID´s efforts to strengthen transparency in arbitration through the disclosure of third-party funding (TPF). However, after the last two meetings it has

become evident to Costa Rica that this provision merits further examination beyond the effects in the constitution of the Tribunal and the potential conflict of interest.

While Costa Rica is flexible with regard to the language and is able to withdraw its previous proposal, it hereby proposes three modifications to reflect the fundamental conditions that, in its view, this article must contain. These are: granting powers to the Tribunal to request further information on third-party funding once the party has disclosed that it has a funder; the need for this information to include corporate structure and the powers to consider such information when deciding on security for cost and on cost.
The rationale behind this is that, in Costa Rica's view this discussion should necessarily consider the following objectives: support a request for security for costs, refrain from becoming an obstacle to reach amicable solutions or submitting counterclaims, and foster transparency in general.

Also, Costa Rica suggests to delete paragraph (2) so as not to limit the range of situations new developments of new methods of funding.

Rule 14
Notice of Third-Party Funding

(1) A party shall file a written notice disclosing the name, address and, where applicable, shareholding and corporate structure of any non-party from which the party, its affiliate or its representative has, directly or indirectly, received funds for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the dispute ("third-party funding").

(2) ~~A non-party referred to in paragraph (1) does not include a representative of a party.~~

(3) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request for arbitration, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.

(4) The Secretary-General shall transmit the notice of third-party funding and any changes to such notice to the parties and to any arbitrator proposed for appointment or appointed in a proceeding for purposes of completing the arbitrator declaration required by Rule 19(3)(b).

(5) The Tribunal may order disclosure of further information related to the funding agreement.

The Tribunal may, in its decisions on security for cost and on costs, take into account the information provided on third party funding.

Haiti: Il n'est pas raisonnable d'interdire le financement par un tiers. D'une part, il n'existe aucun moyen de vérifier le respect de cette interdiction. Donc un financement occulte est possible. Par ailleurs le financement par un tiers peut servir à garantir le droit d'accès à la justice.

Toutefois, pour des raisons tenant à l'impartialité du tribunal, il est impératif que le financement par un tiers soit déclaré dès le début de l'instance. Il serait intéressant à cet égard qu'un memorandum soit préparé par le CIRDI indiquant les sources de financements qui entreraient dans le champ de cet article.

Il n'est pas nécessaire d'alourdir cet article sur les pouvoirs du tribunal pour obtenir des renseignements supplémentaires, cette question étant couverte, au sens de la délégation haïtienne, par l'article 36 du présent règlement.

Paraguay: Consideramos que el financiamiento por tercero debe estar necesariamente regulado. El artículo 14 sigue siendo muy amplio y por más que se sepa cual es la empresa que ha realizado los fondos, el Estado sigue sin conocer quien efectivamente se beneficia (detrás de esa empresa). Por ello, es necesario que se regule estableciéndose que se debe informar sobre (i)

	datos del financista (Accionistas) y domicilio, (ii) términos del financiamiento, (iii) Cualquier cambio, incluyendo su terminación. Así mismo, vemos necesario que se incluya un numeral 5) agregando facultades al Tribunal para que, en casos necesarios, pueda requerir mayor información referente al tercer financista. Atendiendo al peligro o riesgo de la existencia del tercer financista, se sugiere que se incluya una sanción en el caso que no se brinde toda la información o la misma sea falsa. <u>Turkey</u>: Turkey considers that, third party funding should be regulated to provide transparency and be subjected to clear, detailed regulations including mandatory disclosure of the identity of the funder, the ultimate funder, as well as the terms on adverse costs inter alia considering that the funder is not a party to the arbitration case and there may be financial imbalance between host-States and foreign investors. Moreover, it would be useful to adopt a detailed Regulation on third party funding. With this kind of regulation respondent states' financial rights are also protected. When considering cost and benefit balance, such a rule will better serve the purpose, since the third party should equally be subjected to interest as well as the potential costs of the arbitration. It may assist to a decrease in the number of frivolous claims. In this way, a fair trial can be fully ensured. To sum up, Turkey suggests to add para.1: "*This notice shall also include the terms on the liability of adverse costs of the third-party funding agreement in question.*" Or a similar formulation as stated in Singapore Rules. <u>Zimbawbe</u>: In the event of third party, where the funder is a legal person/arrangement, there should be full disclosure of the ultimate beneficial owner of such legal person/arrangement. In the event of failure to ether make disclosure or adequate disclosure, depending on the nature of the prejudice arising, an appropriate remedy may go beyond costs to providing a basis for annulment where for instance it becomes apparent the disclosure would have revealed conflict of interest or lack of independence of the Tribunal or where the very question of jurisdiction could be in issue under an assignment of rights under a third party funding agreement. <u>Ayodeji Akindeire</u>: On Third-Party Funding: Proposal on Further Review of the ICSID's 2018 Rule Amendments With hopes that this may still be considered before the adoption of the proposed amended ICSID rules under reference, may I make the following proposal: Permit me to say that the steps taken by ICSID in 2018 to review its extant dispute resolution rules are indeed the right steps in the right direction; particularly the intended regulation on Third-Party Funding (TPF) by making the institution responsible for ensuring disclosure of TPF arrangement. However, the manner with which the provision on TPF is being couched is inadequate or, to say the least, overstretched to the point that it now seems to further compound the issue that TPF creates in international arbitration. For clarity, Rule 21 of the Draft Arbitration Rules provides that: (continue in my COMMENT 2 below). COMMENT 2 (2) A party shall file a written notice disclosing that it has third-party funding and the name of the third-party funder. Such notice shall be sent to the Secretariat immediately upon registration of the Request for arbitration, or upon concluding a third-party funding arrangement after registration. (3) Each party shall have a continuing obligation to disclose any changes to the information referred to in paragraph (2) occurring after the initial disclosure, including termination of the funding arrangement (NB: There is a corresponding provision under Rule 32, Annex B, of the Draft Additional Facility Arbitration Rules) (continue in COMMENT 3 below) COMMENT 3 The above provision is indeed a welcome development in the circles of investor-state arbitration. The provision makes disclosure of TPF arrangement mandatory, thereby reducing (if not dispossessing of) the uncertainties and speculations that trail the impact of TPF in an arbitral process, especially when not disclosed. However, the above provision is faulty. An eagle-eye analysis of the second sentence in Rule 21(2) of the above provision would reveal a hidden fault: "Such notice shall be sent to the Secretariat immediately upon registration of the Request for arbitration, or upon concluding a third-party funding arrangement after registration." The above allows a party to disclose a third-party funding arrangement immediately upon registration or upon concluding a third-party funding arrangement after registration. In other words, parties to an international arbitration are free to enter into a TPF agreement at any time during the course of the proceedings, in as much as such party immediately sends notice of such funding arrangement to the Secretariat. (continue in COMMENT 4 below) COMMENT 4 The above provision is inherently faulty and calls for an immediate review because it is time and cost inefficient. For instance, if a party decided to contract a third-party funder when the arbitral proceedings have made a considerable progress, it is undeniable that such step would automatically interrupt or even truncate the entire proceedings because the Secretariat would then have to consider if such TPF arrangement gives rise to conflicts of interest. The golden question now is 'what if it does?' What if the presence of this funder occasions a conflicts of interest issue with an arbitrator. The arbitrator would have no choice than to recuse himself from further participation in the proceedings. That being the case, the search for a new arbitrator becomes inevitable. This would not only waste time but also resources, and most likely truncate the entire proceedings. Therefore, it is proposed that ICSID should further review this provision to give room for automatic conflict check by the institution upon a mandatory TPF disclosure by a party prior to the appointment of arbitrators in respect of the dispute in question.

	CCIAG: Third-party funding Third-party funding is an important tool to ensure that investors - or states - without adequate resources can effectively defend their interests in ISDS cases. To ensure that third-party funding continues to provide access to justice while preventing real or perceived conflicts of interests from arising, the CCIAG supports the ICSID Secretariat's proposal to require a disputing party to disclose the identity of its third-party funder at the very earliest stages of the arbitration. We also support three other important aspects of the Secretariat's proposal. • First, we concur that the disclosure requirement should not extend to the terms of the funding arrangement, which can be sensitive for many reasons, including the risk that it may reveal the funder's perception of the strengths or weaknesses of the party's case. The terms are not relevant to assessing a potential conflict of interest. • Second, we concur that the disclosure obligation should not extend to contingency arrangements between the attorney and client, as such disclosure may undermine attorney-client privilege in some jurisdictions (in addition to potentially revealing perceptions of the strengths and weaknesses of the party's case while not helping assess potential conflicts of interest). • Third, we concur that the existence of third-party funding should not dictate that a party must provide a security for costs. Obtaining third-party funding is simply not evidence of impecuniosity or a disclination to comply with an adverse costs order.
Rule 15 - Method of Constituting the Tribunal	
Rule 16 - Appointment of Arbitrators to a Tribunal Constituted in Accordance with Article 37(2)(b) of the Convention	
Rule 17 - Assistance of the Secretary-General with Appointment	
Rule 18 - Appointment of Arbitrators by the Chair in accordance with Article 38 of the Convention	Argentina: When consulting with the parties before appointing an arbitrator, the Chair should provide the parties with information about the candidates and the criteria for their selection.
Rule 19 - Acceptance of Appointment	Singapore: Singapore had made the following points during the third meeting and is reflecting them in our written comments for completeness. The current Rule 13 and Schedule 3 as crafted, strike a reasonable balance. At the third meeting, there was extensive discussion on whether there ought to be a higher level of regulation by prohibiting double hatting in its entirety. In response, a Member State had stated that whilst this ought to be regulated, we ought to be careful of over-regulation as it might create an inadvertent chill on diversity. Singapore associates ourselves with the latter view. *(1) A party appointing an arbitrator shall notify the Secretary-General of the appointment and provide the appointee's name, nationality(ies) and contact information.* *(2) The Secretary-General shall request an acceptance from each appointee as soon as the appointee is selected. The Secretary-General shall also transmit to each appointee the information received from the parties relevant to completion of the declaration referred to in paragraph (3)(b).*

(3) Within 20 days after receipt of the request for acceptance of an appointment, an appointee shall:

(a) accept the appointment; and

(b) provide a signed declaration in the form published by the Centre, addressing matters including the arbitrator's independence, impartiality, availability and commitment to maintain the confidentiality of the proceedings.

(4) The Secretary-General shall notify the parties of the acceptance of appointment by each arbitrator and provide the~~ir~~ signed declarations.

(5) The Secretary-General shall notify the parties if an arbitrator fails to accept the appointment or provide a signed declaration within the time limit referred to in paragraph (3), and another person shall be appointed as arbitrator in accordance with the method followed for the previous appointment.

(6) Each arbitrator shall have a continuing obligation to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).

Argentina: The arbitrator's duties should include: investigation, notification and disclosure, as detailed in the above proposal.
For greater certainty, the type of information to be provided by an arbitrator should be included in the Arbitration Rules, as detailed in the above proposal, notwithstanding the text of the declaration form published by the Centre and the forthcoming Code of Ethics.
Determining the consequences in case of non-compliance is essential in order to not deprive the rule of all meaning. Therefore, it should be clarified that an arbitrator's failure to comply with the duties of investigation, notification and disclosure shall constitute a manifest lack of the qualities required by paragraph (1) of Article 14 of the Convention in the terms of Article 57 of the Convention.

Argentina: Concerning the issue of 'double-hatting', Armenia opines that draft Rule 19 ought to prohibit persons designated as arbitrators from acting as counsel in other ICSID arbitrations. The well-known risk of conflicts of interest, including 'issue conflicts' arising from the potential manipulation of arbitral power to create precedents favourable to a client in another proceeding, is an important rationale. Moreover, a person who has deliberated with arbitrators *as an arbitrator* becomes familiar with the thinking and approach not only of those arbitrators but also with those of other arbitrators with whom they have collaborated. The resulting insight gained by the individual provides him with an advantage when pleading as counsel in other arbitrations, whether before the same arbitrators with whom he has collaborated or other arbitrators with whose thinking he has become vicariously familiar.

For these reasons, Armenia believes that the issue should be addressed in the Rules rather than left to a potential code of conduct in collaboration with Working Group #3 of UNCITRAL. This is both for reasons of principle and practicality: the issue, in our view, is an eligibility matter to be addressed in the Rules while the deliberate pace and consensus rule of the Working Group is likely to delay a code of conduct for years. We therefore prefer action to be taken to deal with this issue in the current revision of the Arbitration Rules.

While Armenia would prefer to institute a complete ban on undertaking counsel work upon acceptance of first appointment as arbitrator, we recognise that ongoing efforts to broaden the pool of potential arbitrators may not yet have made this practicable. For this reason, we would be willing to consider a proposal from the Secretariat to include a 'cooling-off period' for arbitrators whereby they would be required to affirm in the Arbitrator Declaration in Schedule 3 that they would not accept any appointment as agent, counsel or adviser for a defined period after the termination of their appointment as arbitrator. This period could be, for example, one of three years, as was adopted in 2001 by the International Court of Justice with respect to *ad hoc* judges and counsel.
Alternatively, we would consider a proposal to require arbitrators upon acceptance of appointment to declare in Schedule 3 that they will not accept any appointment as counsel in an ICSID proceeding for so long as their appointment as arbitrator remains active. Whilst neither of these ideas would completely address the aforementioned problems arising from 'double-hatting', they would at least mitigate them by precluding conflicts and tactical advantages from arising in the short-term. We acknowledge that the broadening of the pool of qualified arbitrators as 'new entrants', as mentioned in the 2019 Report of the Secretariat, is necessary to provide a basis for a complete ban on double-hatting.

Costa Rica: As already suggested, Costa Rica considers that this provision should mention a possible Code of Conduct that should be attached to the Arbitrator Declaration in Schedule 2.

Rule 20 - Replacement of Arbitrators Prior to Constitution of the Tribunal	Panama: In paragraph 2 of the draft Rule, it states that "[a] replacement arbitrator shall be appointed . . . in accordance with the method by which the withdrawing or replaced arbitrator was appointed." It is not clear to Panama what would happen in the case of a default appointment — i.e., if ICSID would still make the appointment, or if the appointment would revert back to the party. This may be useful to clarify.
Rule 21 - Constitution of the Tribunal	
Chapter III - Disqualification of Arbitrators and Vacancies	Chile: Recordamos que, durante la última reunión en noviembre de 2019, varias delegaciones manifestaron estar de acuerdo con que se hiciera una encuesta o proceso similar, para determinar si existe interés en modificar el Convenio CIADI en lo relativo a las recusaciones de los árbitros (Artículo 58). Vemos como positiva la realización de este ejercicio, y consideramos además que otras materias podrían ser incorporadas.
Rule 22 - Proposal for Disqualification of Arbitrators	Argentina: Current ICSID decisions on disqualification confirm that Article 57 of the Convention does not require proof of actual dependence or bias; rather it is sufficient to establish the appearance of dependence or bias, as explained by the Chair in *Blue Bank v. Venezuela* [6]and reaffirmed in subsequent decisions on disqualification. This should be clarified in proposed Rule 22. In this regard, an annulment committee has noted "the generally unsatisfactory nature of the process for dealing with challenges to arbitrators" and the difficulty in "formulating the appropriate test for deciding on disqualification in the absence of clear guidance in the Convention", expressed its concern that "insufficient attention may be given to the question of the perception of lack of independence or impartiality", and observed that "there may be a difference between commercial arbitration [...] and investment arbitration where there is much greater a degree of public interest in the process and outcomes[7]." The parties should be allowed to agree to modify the procedure for a proposal for disqualification. The time limit to make a proposal for disqualification should be calculated from the day after the constitution of the Tribunal or the date on which the party proposing the disqualification first knew or first should have *reasonably* known of the facts on which the proposal is based. Proposed Rule 22 should allow for the possibility that the parties may agree to the proposal or that the arbitration to whom the proposal relates may decide to withdraw from his or her office, without this implying acceptance of the validity of the grounds for the proposal. This is similar to UNCITRAL Arbitration Rules. Colombia: Para Colombia es una preocupación que el trámite de recusación no sea efectivo. A lo anterior se suma el hecho que el estándar es muy alto y la consecuencia es que los árbitros renuncian antes de ser recusados. Al respecto, Colombia entiende que Perú comparte precupación, y la propuesta es revisar este procedimiento, hacer unas consultas sobre la posibilidad de establecer un mecanismo que sea efectivo en cuanto a recusaciones. Por ejemplo, que estas las revise el Centro. Costa Rica: Costa Rica appreciates ICSID´s efforts of increasing the time limit to file a proposal for disqualification. However, Costa Rica shares the view expressed by several members during November session, regarding the seven-day period indicated in paragraph (1)(ii)(e). A seven-day period to respond to the arbitrator´s statement is too short. Due to the nature of the disqualification, States may require internal consultations and request legal opinions from external counsel before drafting an official position. Regarding paragraph 2 of WP3, Costa Rica would like to reiterate the importance of maintaining the suspension of the proceeding until a decision on the disqualification is made. The suspension is an important element to protect the legitimacy of the arbitration and to prevent any biased decision. Turkey: Turkey would like to comment on rule 22 and 23 together. Article 58 of the ICSID Convention states that the decision on any proposal to disqualify an arbitrator shall be taken by the other members of the tribunal. We believe that the procedure for disqualification of arbitrators should be more transparent and needs to be tailored with the objective of strengthening the perception of impartiality and independence of the arbitral tribunal. Turkey would like to address the revision of rules on the disqualification of arbitrators from two perspectives:

[6] Blue Bank International & Trust (Barbados) Ltd. v. Bolivarian Republic of Venezuela, ICSID Case No. ARB/12/20, Decision on the Parties' Proposal to Disqualify a Majority of the Tribunal, 12 November 2013, ¶¶ 59-60.

[7] Suez, Sociedad General de Aguas de Barcelona, S.A., and InterAguas Servicios Integrales del Agua, S.A v. Argentine Republic, ICSID Case No. ARB/03/17, Decision on Argentina's Application for Annulment, 14 December 2018, ¶¶ 171-172.

	Firstly; the disqualification procedure which is based on a review by the arbitral tribunal members should be revised. As ISDS mechanism would lead to enormous amounts of disputes, it is a legitimate expectation of states that the mechanism ensures the independence and impartiality of arbitrators. These expectations of states are recently being reflected in the arbitration rules of different ISDS mechanisms, such as Article 27 of the Singapore Arbitration Center's Investment Rules where the disqualification procedure is not run by the tribunal itself, but by the Court. Therefore, to maintain objectivity in the ICSID mechanism, Rule 22 and 23 may be amended in a similar way so that the disqualification procedure is held by an objective body instead of the tribunal itself. Likewise, under the Arbitration Rules of Stockholm Chamber of Commerce (SCC) Arbitration Institute, London Court of International Arbitration (LCIA) Rules, International Chamber of Commerce (ICC) Rules of Arbitration, and American Arbitration Association (AAA) International Center for Dispute Resolution (ICDR) Rules provide a similar mechanism. Secondly; the disqualification rules should provide an objective criterion for disqualification. In practice, most decisions are based on "manifest lack of quality" test. Under such a test, the challenging party is required to purport evidence on the high probability that the challenged arbitrator is manifestly biased or unable to judge independently. Therefore; Turkey proposes replacing manifest lack of quality test with justifiable doubt test as applied in the UNCITRAL arbitration rules. The Rules may specify the grounds for disqualification of an arbitrator; parallel to the grounds in Institutional rules. Therefore; Turkey suggests that to justifiable doubt test; should be stated in the rule as well as Explanatory Note to the ICSID Convention. The disqualification procedure is to be run by an independent, objective body; so the ICSID Secretariat should give a comment on the application for challenge of arbitrators or similar mechanism in order to guide the Tribunals.
Rule 23 - Decision on the Proposal for Disqualification	
Rule 24 - Incapacity or Failure to Perform Duties	
Rule 25 - Resignation	
Rule 26 - Vacancy on the Tribunal	Argentina: Any appointments by the Chair under scenario (3)(b) should not happen automatically upon the expiry of 45 days after the notice of vacancy, but only if a party expressly requests that the vacancy be filled by the Chair, as provided for in current Arbitration Rule 11(2)(b).
Chapter IV - Conduct of the Proceeding	
Rule 27 - Orders and Decisions	
Rule 28 - Waiver	A group of 9 states, including Australia, Canada, and Chile: **Proposed Revised Language:** **Rule 28** **Waiver** Subject to Article 45 of the Convention, if a party knows or should have known that an applicable rule, agreement of the parties, or any order or decision of the Tribunal or Secretary-General has not been complied with, and does not promptly object, then that party shall be deemed to have waived its right to object to that non-compliance, unless such party can show that, under the circumstances, its failure to object was justified. Zimbabwe: Consider incorporating the words "unless such party can show that, under the circumstances, its failure to object was justified."
Rule 29 - First Session	

	Armenia: Concerning paragraph 2, Armenia suggests that the first session should be stipulated to be held remotely as general practice in order to promote procedural efficiency. We also propose that the question of bifurcation be expressly included in the list of matters to be considered in the first session. We also suggest to empower the President to conduct the first session as default while President consults with other Tribunal members. Chile: Respecto a la Regla 29 (3), solicitamos que se reconsidere la propuesta de que la primera sesión sea celebrada entre los miembros del Tribunal únicamente, en aquellas situaciones en que el Presidente del Tribunal considera que no es posible convocar a las partes y a los otros miembros del Tribunal dentro del periodo de 60 días después de la constitución del Tribunal. Esta delegación considera que, si se propone establecer medida default para esta primera sesión, ésta debería consistir en que la primera sesión sea celebrada entre las dos partes y el presidente del tribunal y solamente considerar las presentaciones escritas de las partes. Esta es además la solución que en la práctica ha sido aplicada en varias ocasiones. Consideramos que, aún si se celebran por teléfono, la primera sesión es una buena oportunidad para tener una aproximación entre las partes y el tribunal o parte de éste y que resulta valorable que la misma sea conservada con este enfoque. Las reglas procesales que se aplicarán a lo largo del procedimiento se determinan en esa primera sesión y las partes deben tener un rol preponderante en la determinación de dichas reglas. De manera alternativa, si no se quiere acoger la propuesta anterior, se sugiere eliminar la segunda parte de la Regla 29(3) (entre corchetes, y permitirle al Tribunal llegar a la solución que le parezca más apropiada para las circunstancias, en caso que no sea posible convocar a las partes y a los otros miembros dentro de este plazo.
Rule 30 - Written Submissions	Panama: The draft Rule contains a textual loophole that Panama believes should be closed. In certain past cases, tribunals have cited the current analog of this Rule as the basis for allowing the claimant to submit a "rejoinder on jurisdiction." The theory was that, by advancing an objection to jurisdiction, the respondent became the "requesting party" for purposes of this Rule. However, this theory is fundamentally flawed, for at least two reasons. First, it is akin to saying that, by advancing a merits defense, the respondent suddenly becomes the "requesting party" on the issue of merits. Second, the theory creates an imbalance between the two parties, as the claimant (a) is heard first and last, and (b) receives three written pleadings (as compared to the respondent's two). To claim that parity exists, one would need to stake out the untenable position that the claimant — i.e., the party that is "requesting" that jurisdiction be exercised — may avoid jurisdiction entirely in its memorial. To protect parity, and give proper effect to each party's role in the case, Panama proposes the following revision: "The Parties shall file the following written submissions: (a) a memorial by the claimant ~~requesting party~~; (b) a counter-memorial by the respondent ~~other party~~; and, unless the parties agree otherwise: (c) a reply by the claimant ~~requesting party~~; and (d) a rejoinder by the respondent ~~other party~~." Argentina: Both parties should be given an opportunity to state their views before the Tribunal grants leave to file unscheduled submissions or documents. Armenia: Regarding paragraph 1, Armenia prefers the current position in the Rules whereby replies and rejoinders be authorised by Tribunal as an exception, rather than become a general expectation as proposed. We consider that this proposal runs counter to the overarching objective of procedural efficiency. Tribunals could consider a second round of written pleadings alternatively with oral argument flexibly on a case-by-case basis, rather than have both as the default expectation. Costa Rica: Costa Rica appreciates ICSID´s comments on Rule 30, and proposes the following adjustment to reflect that this provision does not limit any arguments that are based on new documents or fact: **Rule 30 Written Submissions** (1) The parties shall file the following written submissions: (a) a memorial by the requesting party;

	(b) a counter-memorial by the other party; and, unless the parties agree otherwise: (c) a reply by the requesting party; and (d) a rejoinder by the other party. (2) A memorial shall contain a statement of the relevant facts, law and arguments, and the request for relief. A counter-memorial shall contain a statement of the relevant facts, including an admission or denial of facts stated in the memorial, and any necessary additional facts, a statement of law in reply to the memorial, arguments, and the request for relief. A reply and rejoinder shall be limited to responding to the previous written submission. This provision does not limit arguments based on new documents or newly discovered facts occurring after a party's first written submission. (3) A party may file unscheduled written submissions, observations or supporting documents only after obtaining leave of the Tribunal, unless the filing of such documents is provided for by the Convention or these Rules. The Tribunal may grant such leave upon a timely and reasoned application if it finds such written submissions, observations or supporting documents are necessary in view of all relevant circumstances. Turkey: Regarding Rule 30, the parties shall not state a new claim/defence that was not submitted in their first submission. Turkey would like to clarify that the parties shall be entitled to support legal arguments in the scope of their claim/defence state in their first submission. Therefore, the claim and defence rights of the parties shall be protected. Thus, Turkey suggests to adding the following sentence to the end of paragraph 2 or in an explanatory note *"provided that each party may support their legal arguments asserted in their first submissions or develop for newly discovered documents."*
Rule 31 - Case Management Conference	Armenia: See comments on Rule 29 above.
Rule 32 - Hearings	
Rule 33 - Quorum	
Rule 34 - Deliberations	Chile: ▪ Chile tiene una sugerencia respecto a la Regla 34(3), con el objetivo de que haya mayor transparencia respecto a quién está presente en las deliberaciones. Proponemos explicitar en las reglas que la o el Secretaria(o) del Tribunal designado por el CIADI, puede estar presente en las deliberaciones del Tribunal. Cualquier otra persona que se encuentre presente en dichas deliberaciones, puede hacerlo únicamente si ha habido previa notificación a las partes. Dado que las deliberaciones son un momento esencial del procedimiento, sería importante que las partes conozcan quiénes estarán presentes durante el desarrollo de las mismas. ▪ También solicitamos que se modifique el término "será admitida" y sea sustituida por "estará presente en las deliberaciones" para dejar claro que sólo los miembros del Tribunal deberán deliberar sobre los elementos en disputa.
Rule 35 - Decisions Made by Majority Vote	
Chapter V - Evidence	
Rule 36 - Evidence: General Principles	
Rule 37 - Disputes Arising from Requests for Documents	Panama: Panama supports the consensus that emerged from the meetings in Washington — *i.e.*, that (1) this Rule should be reoriented to reflect the reality that there is no presumption in favor of document production, and (2) the Rule should identify items that are exempt from document production (*e.g.*, documents subject to attorney/client privilege; the file from an investigation pertaining to a third party). Argentina: It should be clarified that the list of circumstances to be considered by the Tribunal for the purposes of deciding a dispute on a request for production of documents and evidence is not exhaustive. Other relevant circumstances should be listed by way of illustration, as proposed above.

	Armenia: In light of the extraordinary financial and logistical burden that document production can place on governments, Armenia supports the idea that language be included for claimants to satisfy a test of relevance in requests for document production. Concerning objections from respondents to production on national security and legal confidentiality grounds, Armenia suggests that the Secretariat produce and regularly update a Practice Direction containing best practice for the use of Tribunals. For example, recent case-law in inter-State arbitration and in WTO practice has seen creative approaches by arbitral tribunals to faciliate document production, such as the 'blacking out' of excerpts, expurgation of sensitive segments from the opposing side but not the Tribunal, and limited access to the opposing side under controlled conditions. Chile: Chile comparte algunas de las preocupaciones que han sido mencionadas por otros países durante la última sesión presencial, incluida la necesidad de establecer límites más claros respecto a las solicitudes de documentos y evitar los *fishing expeditions* durante la fase de exhibición de documentos. En este sentido y sin pretender que esta sea la solución definitiva a las preocupaciones planteadas, proponemos modificar la sección 37(c), para que en vez de establecer simplemente que el tribunal debe tener en cuenta "la carga de proporcionar los documentos", sea sustituido por "asegurar que la solicitud de proporcionar los documentos no genere una carga indebida" Georgia: **Arbitration Rules**[8] Georgia maintains its position with respect to document production (See *Georgia's comment to Working Paper #2*[9]). While Georgia appreciates the progress achieved so far regarding the regulation of document production, Georgia believes that the approach taken in Rule 37 does not go beyond what is already a widely excepted standard and existing practice. We believe that Rule 37 could be amended further to strengthen powers of arbitral tribunal against unreasonably and lengthy document production requests and possible abuse of procedure. Georgia also shares the view of many delegates who proposed inclusion of the rule on general exceptions from document production (to protect certain specific types of information, such business confidential or privileged information, or information exchanged on a without prejudice basis in the context of settlement negotiations, etc.).
Rule 38 - Witnesses and Experts	Argentina: It should be clarified that the written statement by a witness or an expert should be filed together with the party's written submission to which it relates. Armenia: As not all arbitrators and counsel are familiar with the modalities for examination of witnesses, which also differ across jurisdictions, Armenia suggests that the Secretariat produce and regularly update a Practice Direction containing best practice for the use of Tribunals. Chile: Considerando que las relaciones de los peritos con las partes y/o con el tribunal han dado lugar a recusaciones, retrasos en la conducción del procedimiento y dificultades adicionales, proponemos encontrar mecanismos que reduzcan este tipo de situaciones, por ejemplo, exigiéndole a los peritos revelar cualquier lazo con las partes, con el tribunal o con el tercero financista en caso de haberlo (similar a lo que se propone en la Regla 39(4) para los expertos nombrados por el Tribunal). Esto, aun cuando la credibilidad del perito sea un tema a ser determinado en un contrainterrogatorio y aun cuando los peritos sean pagados por las partes y trabajen con estos, como bien ha establecido el Secretariado. Sin perjuicio de que deben realizar una declaración durante la audiencia, como expuso el Secretariado, esto ocurre en una etapa muy avanzada del procedimiento y no evita que se generen recusaciones de los expertos. Consideramos que solicitar este tipo de declaraciones no es oneroso y podría evitar incidentes procesales, aminorando el costo y duración de los procedimientos.

[8] Georgia's comments and proposals with respect to the amended Arbitration Rules proposed by ICSID shall equally extend to the corresponding provisions of the amended Additional Facility Arbitration Rules proposed by ICSID.

[9] "Document production is one of the most painful stages of the proceedings; on some cases it can results in an unreasonably lengthy and costly exercise. It has been noted in paragraph 241 of the Working Paper #2 that the arbitral tribunal has a "power to grant, deny or modify the scope of the document production", however, in practice arbitrators tend to be reluctant to use their inherent powers to properly address the lengthy and/or unreasonable production requests or abusive conduct of the party during documents production process (fishing expeditions, dilatory tactics, obstructing the other party in preparing its case and directing its resources thereto by endless written exchange on document production, etc.).

It would be highly beneficial if this problem is somehow addressed in the rules or in a separate instrument issued within ICSID that could provide guidance to the tribunal and encourage arbitrators to use their inherent powers more effectively in addressing this problem."

Rule 39 - Tribunal-Appointed Experts	Korea: Korea reiterates its previous suggestion that reference be added to the tribunal's duty to take into due consideration: (a) the general principles of the burden of proof and (b) the increase in time and costs incurred as a consequence of the appointment when appointing experts on its own initiative. As previously mentioned, it is Korea's concern that tribunal-appointed experts are often retained at the expense of the parties in circumstances where a party has simply failed to sufficiently discharge its burden of proof. Togo: Article 39 (1) prévoir une procédure si une partie s'oppose à la nomitation d'un expert Argentina: An expert may be appointed by the Tribunal upon a party's request or, unless the parties disapprove, on its own initiative. The Tribunal should consult with the parties on any relevant information for the appointment of the expert, as proposed above. The Tribunal should be mindful of costs when deciding whether it is necessary to appoint an expert and selecting the expert. The parties should have the right to challenge the Tribunal-appointed expert for justified reasons.
Rule 40 - Visits and Inquiries	Argentina: The Tribunal may order a visit or inquiry upon a party's request or, unless the parties disapprove, on its own initiative. The Tribunal should consult with the parties on any relevant questions related to the visit or inquiry.
Chapter VI - Special Procedures	
Rule 41 - Manifest Lack of Legal Merit	Korea: Korea echos its own previous comments and the comments made by multiple delegations in that an explicit reference must be made to the power of the tribunal to take into consideration the fact that a claim was dismissed as manifestly lacking legal merit when deciding costs. It is Korea's view that the issue of compatibility with the ICSID Convention Article 61(2) can be well resolved by using non-binding language as previously suggested in its second written comments. Such suggested formulations will not create an unbalanced position between the Claimant and Respondent in that a Respondent's request for post-Award remedies would also be subject to an objection of manifest lack of legal merit. A group of 9 states, including Australia, Canada, and Chile: **Proposed Revised Language:** **Rule 41** **Manifest Lack of Legal Merit** 1) A party may object to a claim, or a portion thereof, on the grounds that it is manifestly without legal merit. The objection may relate to the substance of the claim, the jurisdiction of the Centre, or the competence of the Tribunal. … (4) A decision that a claim, or a portion thereof, is not manifestly without legal merit shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 43 or to argue subsequently in the proceeding that a claim, or portion thereof, is without legal merit. Chile: Ver Comentarios relacionados en la Regla 51. Colombia: Colombia considera importante que la asunción de costos cuando la demanda ha sido rechazada por falta de mérito debe ser contemplada en la regla de manera expresa. La presunción del articulo 61 no es suficiente si se tiene en cuenta que no existe otra regla que contenga una presunción sobre costos bajo esta causal de demandas frívolas. Colombia agregaría a la redacción del articulo 41 el siguiente numeral

	(3) Si el Tribunal decide que todas las reclamaciones carecen manifiestamente de mérito jurídico, dictará un laudo a tal efecto y determinará los costos en los que se incurrió. De lo contrario, el Tribunal emitirá una decisión sobre la excepción y fijará cualquier plazo necesario para la continuación del procedimiento Georgia: Georgia concurs with the delegations that have proposed to introduce special rule on costs for the cases of manifest lack of legal merits. While Georgia is generally happy with the regulation proposed for the allocation of costs as provided in Rule 51, the manifest lack of legal merits is a specific case which warrants different approach. Thus, we would support the proposal made by Canada to award costs to the wining party and at the same time empower the Tribunal with the authority to order different allocation whenever appropriate given the circumstances of the case. Paraguay: Consideramos que se debe prever una sanción en los casos de planteamiento de demandas con falta de mérito jurídico. Esto desalentará la presentación de demandas frívolas contra los Estados. Turkey: "Manifest Lack of Legal Merit" is crucial for the states in order to ensure early termination of frivolous claims at an early stage. However in practice, the Tribunals generally discuss the merits of the case; although the jurisdiction of the Centre or the competence of the Tribunal should be decided initially. As a matter of fact, if the arbitration cases filed by the persons and institutions that do not fall into the category of foreign investors as envisaged in the ICSID arbitration mechanism, it is better to conclude the proceedings for the interests of both parties in order not to bear high legal costs. From the claimant's side, it will continue to bear expenses and from the defendant state's side, it will spend tax payers' money for frivolous claims. At this point, Turkey proposes introduction of a preliminary review mechanism as foreseen in other systems *(such as Stockholm Arbitration Rules)* where in the first stage, the tribunal deals with the sole question of whether the claimant is in a position to purport a claim against a state as a foreign investor and its investments are protected within the jurisdiction of ICSID Convention or any other treaty in question. In this respect, Turkey supports the revision of Rule 41 granting a party the right to object with regard to a claim which is frivolous. CCIAG: Efficiency As discussed above, the CCIAG broadly supports the ICSID Secretariat's effort to improve the efficiency of ISDS cases; neither states nor investors benefit from unduly lengthy and expensive proceedings. However, we are concerned that in some instances, the current proposals would lengthen, rather than shorten, the proceedings. We would highlight, in particular, the proposal to allow a respondent 45 days after the constitution of the tribunal, rather than the current 30 days, to file an objection that a claim is manifestly without merit under Rule 41 of the proposed rules. As the Secretariat notes, by the time the tribunal is constituted, the respondent will have already had 5-6 months on average to prepare such an objection[10]. An additional 15 days will needlessly lengthen the proceedings. We would respectfully urge the Secretariat to revert to 30 days, barring compelling reasons to the contrary.
Rule 42 - Bifurcation	Panama: In draft Rule 42, paragraph 4 lists the following factors (among others): "(a) [whether] bifurcation would materially reduce the time and cost of the proceeding; (b) [whether determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute . . . ." This standard is exceedingly high; in essence, it would require the respondent to prove the point that it is seeking to bifurcate in order to obtain bifurcation. Yet the conventional wisdom is that a decision on bifurcation is a decision on bifurcation, and not a decision on the merits of the objection/threshold issue.

[10] *Id*. at p. 320, para. 103.

	Panama proposes that, as past tribunals have found, the factors should be framed in terms of whether bifurcation "***could*** materially reduce the time and cost of the proceeding," and whether "determination of the questions to be bifurcated ***could*** dispose of all or a substantial portion of the dispute." Argentina: The parties should be allowed to agree to modify the procedure for bifurcation. The proceeding should be suspended pending a decision on bifurcation, unless the parties agree otherwise. Since the Tribunal should consider all relevant circumstances when deciding whether to bifurcate, it should be clarified that the list of circumstances mentioned in paragraph 4 is non-exhaustive. Armenia: Whilst Armenia welcomes draft Rules 42-44 on bifurcation and preliminary objections, we suggest that these might be improved by providing for a time-limit for a request for bifurcation of jurisdictional objections of 45 days from the constitution of the Tribunal. This would not only harmonise this procedure with draft Rule 41 on 'manifest lack of legal merit' but it would also enhance the procedural efficiency benefits of bifurcation by enabling it to be done at the earliest possible stage of the proceedings. Whereas the issue is whether the statement of claim is sufficiently complete as to enable respondents to accurately understand the essence of the claim, this should be addressed by the Arbitral Tribunal in the first session (draft Rule 29) to require claimants to adequately and definitively state their claim. Failure by claimants to have filed a sufficiently detailed statement of claim should also be a relevant factor in decisions on costs (draft Rule 51(1)(b)). Whereas respondents should retain the right to raise jurisdictional objections within 45 days of the memorial on the merits (draft Rule 44(1)(a)) such objections should automatically be joined to the merits on grounds of procedural efficiency. Paraguay: Se sugiere que el proceso sobre el fondo quede suspendido hasta tanto se resuelva la bifurcación.
Rule 43 - Preliminary Objections	Panama: In draft Rule 43, the text of paragraph 5 appears to suggest that, even in circumstances in which bifurcation has not been requested, the parties are to submit two separate types of memorials — namely, memorials on the merits and memorials on jurisdiction. This approach seems inefficient. Panama proposes that, as is customary in a non-bifurcated scenarios, the parties submit plenary pleadings, instead of two sets of memorials. Argentina: The parties should be allowed to agree to modify the procedure for preliminary objections. Armenia: See comment on Rule 42 above.
Rule 44 - Bifurcation of Preliminary Objections	Panama: For the reasons explained above, in connection with Rule 42, the factors should be framed in terms of whether bifurcation "***could*** materially reduce the time and cost of the proceeding," and whether "determination of the questions to be bifurcated ***could*** dispose of all or a substantial portion of the dispute." Argentina: Since the Tribunal should consider all relevant circumstances when deciding whether to bifurcate, it should be clarified that the list of circumstances mentioned in paragraph 3 is non-exhaustive. The Tribunal should not be allowed to decide that there are special circumstances that do not justify suspension of the proceeding on the merits pending a decision on preliminary objections, unless the parties agree otherwise. Armenia: See comment on Rule 42 above.
Rule 45 - Consolidation or Coordination of Arbitrations	

Rule 46 - Provisional Measures	Panama: In draft Rule 46, one of the factors is "whether the measures are urgent and necessary" — a phrase that is used in the case law, but which is not accurate or grammatically correct. It is not the *measures* that must be "urgent," but rather the *need* for the measures. If the standard is to become a part of the Rules, then the standard should be accurately recorded. Panama proposes that the Rule be revised to state: "whether the measures are urgently necessary." Argentina: It is more appropriate to provide for provisional measures to prevent action that might aggravate or extend the dispute, rather than to maintain the status quo. The parties should be allowed to agree to modify the procedure for provisional measures. The party requesting the recommendation of a provisional measure should satisfy the Tribunal that: harm not adequately reparable by an award of damages is likely to result if the measure is not recommended, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the Tribunal in making any subsequent determination. Both parties should be given an opportunity to present their observations before a Tribunal recommends provisional measures on its own initiative, recommends provisional measures different from those requested by a party, or modifies or revokes provisional measures Turkey: Provisional measure is regulated comprehensively in Article 46 of the Draft. It is stated that a party may at any time request that the Tribunal recommend provisional measures to protect that Party's rights. What kind of and under which circumstances, the provisional measures may be requested by the Parties, are stated in an exemplary manner under Article 46. Although the word "recommend" is used in the article, different interpretations are brought in practice. As Secretariat underlined during the WP#3 meeting, it is a recommendation and not an order. Turkey suggests that Article 46, which is regulated as recommendatory, might be revised or the ICSID Convention might have an Explanatory Note stating that: • The tribunals may only recommend provisional measures on the subject matter of investment dispute, • The provisional measure is applied in extraordinary and exceptional circumstances. Therefore, Turkey suggests an emphasis which explicitly states that provisional measures are non-binding upon parties should be added, • Tribunals cannot grant provisional measures which interfere with the Contracting States' sovereign rights and contradict with the constitutional provisions of the Contracting States and the principles of the national legal framework, Lastly, provisional measures shall be urgent, necessary and proportionate.
Rule 47 - Ancillary Claims	Panama: In draft Rule 47, certain deadlines are described by reference to the "reply" and the "counter- memorial." This language also appears in the 2006 Arbitration Rules. In the new version, however, the references could lead to confusion. Because WP3 adverts to two different types of replies/counter-memorials, the terms "reply" and "counter-memorial" are now ambiguous.
Rule 48 - Default	Argentina: As current Arbitration Rule 42(4), proposed Rule 48 should provide that in case of default the Tribunal must also verify that the submissions made are well-funded in fact an in law.
Chapter VII - Costs	
Rule 49 - Costs of the Proceeding	Argentina: Only reasonable legal fees and expenses of the parties should form part of the costs of the proceeding.
Rule 50 - Statement of and Submission on Costs	Argentina: Current Arbitration Rule 28 provides that the Secretary-General shall submit an account of costs and that the Tribunal may request the parties and the Secretary-General to provide additional information. It is necessary to maintain such provision. In addition, the statements of costs submitted by the parties and the account submitted by the Secretary-General should be communicated to both parties, so that they may examine the costs, ask the Tribunal to request additional information, and make observations, if any.
Rule 51 - Decisions on Costs	Togo: Supprimer le (2) A group of 9 states, including Australia, Canada, and Chile: **Proposed Revised Language:** **Rule 51**

	Decisions on Costs (1) In allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including: (a) the outcome of the proceeding or any specific claims, defences or part of ~~it~~ the proceeding, and the proportion in which the amount claimed is reflected in the compensation awarded, if any; (b) the conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner and complied with the obligations in these Rules and the orders issued by the Tribunal; (c) the complexity of the issues; and (d) the reasonableness of the costs claimed. (2) In exercising its discretion under paragraph 1 in a case where it has found a claim, or a portion thereof, to be manifestly without legal merit pursuant to Rule 41, the Tribunal shall award all of the costs related to the claims dismissed under Rule 41 to the party which made the objection, unless the Tribunal determines that there are special circumstances that justify a different allocation of costs. (3) The Tribunal may make an interim decision on costs at any time. The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award. Argentina: It should be clarified that the list of circumstances to be considered by the Tribunal for the purposes of the allocation of costs is not exhaustive, but a list of minimum factors to be considered when deciding how to allocate costs. In investment arbitration cases, it is usually misleading to look at the final outcome of the proceeding. Instead, the extent to which each claim, objection or defence has been successful should be considered for the purposes of allocating costs, as well as the proportion in which the amount claimed is reflected in the compensation awarded to the claimant, if any, which may be significantly lower than the amount claimed. Chile: Chile considera que es importante que las normas reflejen la discreción de los tribunales en lo que respecta a la asignación de costos, pero que también se establezcan reglas claras que puedan disuadir reclamaciones que no debían haberse iniciado nunca al manifiestamente carecer de mérito jurídico. Consideramos que la propuesta que realizamos para una nueva regla 51(2), cumple estos objetivos, y está además en línea con los textos negociados por Chile en sus más recientes Acuerdos. Consideramos necesario que esta indicación sea incorporada a las reglas, de manera tal que estos elementos se entiendan incorporados en toda controversia. Con respecto al trato equitativo de las partes, - tema que entendemos como una de las preocupaciones del Secretariado- al cual hizo referencia Canadá durante sus intervenciones, no sería necesariamente una regla que beneficie únicamente a los Estados, pues han habido solicitudes bajo la actual regla 41(5) respecto a procedimientos de anulación, y por lo tanto si hubiera un Estado que solicita la anulación de un laudo y esto manifiestamente carece de mérito jurídico, se vería confrontado a la misma regla y a la misma realidad. De hecho, la primera vez que un Comité aceptó la aplicación de la regla 41 (5) en un procedimiento de anulación, entendemos que fue en el caso *Elsamex c. Honduras*, y se aplicó en detrimento de la posición del Estado en ese caso. Por lo tanto, Chile apoyaría una regla que se aplique con respecto a cualquier parte que un tribunal o comité determine ha presentado un reclamo que carezca manifiestamente de mérito jurídico. Costa Rica: In line with comments expressed in the last ICSID meeting, it is Costa Rica's view, that when a claim is dismissed due to manifest lack of legal merit, there should be a presumption that the Claimant has to bear the cost of the proceedings without prejudice to the possibility of considering special circumstances which justify a different allocation of costs.
Rule 52 - Security for Costs	Singapore: Singapore had made the following points during the third meeting and is reflecting them in our written comments for completeness. If a reference to third party funding is included in this rule, the current balance in paragraph (4) represents a reasonable compromise and Singapore would support retaining paragraph (4) as currently drafted. In particular, the word "*may*" is

an appropriate reflection of the compromise. We are not in favour of deleting the the second part – "*but the existence of third-party funding by itself is not sufficient to justify an order for security for costs*". In light of the comments raised at the third meeting, should the Secretariat wish to make any textual amendments to this phrase, it could be clarified as "*the existence of third-party funding does not by itself automatically justify an order for security for costs*."

Rule 52~~1~~ – Security for Costs

(1) Upon the request of a party, the Tribunal may order any party asserting a claim or counterclaim to provide security for costs.

(2) The following procedure shall apply:

(a) the request shall specify the circumstances that require security for costs;

(b) the Tribunal shall fix time limits for written and oral submissions on the request, as required~~, on the request~~;

(c) if a party requests security for costs before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the request, so that the Tribunal may consider the request promptly upon its constitution; and

(d) the Tribunal shall issue its decision on the request within 30 days after the latest of:

(i) the constitution of the Tribunal;

(ii) the last written submission on the request; or

(iii) the last oral submission on the request.

(3) In determining whether to order a party to provide security for costs, the Tribunal shall consider all relevant circumstances, including:

(a) that party's ability to comply with an adverse decision on costs;

(b) that party's willingness to comply with an adverse decision on costs;

(c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim; and

(d) the conduct of the parties~~; and~~

~~*(e) all other relevant circumstances*~~*.*

(4) The Tribunal may consider third-party funding as evidence relating to a circumstance in paragraph (3), but the existence of third-party funding by itself is not sufficient to justify an order for security for costs.

(5~~4~~) The Tribunal shall specify any relevant terms in an order to provide security for costs and shall fix a time limit for compliance with the order.

(6~~5~~) If a party fails to comply with an order to provide security for costs, the Tribunal may suspend the proceeding. If the proceeding is suspended for more than 90 days, the Tribunal may, after consulting with the parties, order the discontinuance of the proceeding.

(7~~6~~) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.

(8~~7~~) The Tribunal may at any time modify or revoke its order on security for costs, on its own initiative or upon a party's request.

Korea: Korea would like to suggest again the deletion of paragraph (3) subparagraph (c). In Korea's opinion, the effect that providing security for costs may have on a party's ability to maintain its claim is an element that is not readily reconcilable with the other elements that are to be taken into consideration under paragraph (3).

Furthermore, while Korea greatly welcomes the inclusion of paragraph (4), Korea believes that its terms should be made more clear. Korea notes the Secretariat's concerns that the existence of TPF in and of itself should not be construed as grounds for ordering security for costs. However, Korea has some concerns that the current text may be miscontrued as to preclude the possibility of ordering security for costs in situations where the existence of TPF successfuly functions as the sole and proof of the existence of one or more circumstances prescribed in paragraph (3). In this context, Korea suggests to modify the text 'but the existence of third-party funding by itself is not sufficient to justify an order for security for costs' to remove this ambiguity.

Panama: ICSID proceedings are costly, and — for States — they are taxpayer funded. Many tribunals have held that a State should not need to pay for the cost of defending itself against an unmeritorious claim. But collecting from a claimant is difficult, and some costs awards are never recovered. Panama accordingly applauds the Secretariat's decision to create a rule that expressly addresses the issue of security for costs.

In addition, Panama wishes to express its satisfaction: (1) that the Rule identifies third-party funding as a relevant factor; (2) that the rule enables tribunals to "order" security for costs; and (3) that "urgency" and "necessity" are not hardwired into the standard.

With respect to paragraph 2(a) ("the request shall specify the circumstances that require security for costs"), Panama notes that the word "require" would seem to upset the balance intended. Panama would suggest revising the paragraph to state: "the circumstances that *justify* security for costs."

A group of 9 states, including Australia, Canada, and Chile: **Proposed Revised Language:**
Rule 52
Security for Costs
…
(4) The Tribunal may consider third-party funding as evidence relating to ~~a~~ the circumstances it considered in applying paragraph (3), but the existence of third-party funding by itself ~~is~~ may not necessarily be sufficient to ~~justify an order for security for costs~~ conclude that such circumstances exist.

Argentina: A State party to the dispute should be allowed to request the Tribunal to order the disputing investor to provide security for the costs.
The parties should be allowed to agree to modify the procedure for security for costs.
It should be clarified that the list of circumstances to be considered by the Tribunal to order a disputing investor to provide security for costs is not exhaustive and that those circumstances include the existence of third-party funding.
Suspension and discontinuance of the proceeding should be mandatory in case of failure by the disputing investor to comply with an order to provide security for costs.
Both parties should be given an opportunity to present their observations before a Tribunal modifies or revokes its order for security for costs.

Chile: Respecto a la Regla 52, Chile agradece los cambios realizados por el Secretariado en el DT No. 3, en el sentido de incorporar la existencia del financiamiento como uno de los elementos a ser tenidos en cuenta porel Tribunal al momento de determinar si se ordenará o no otorgar una garantía por costos bajo la Regla 52(4).

Asimismo, Chile agradece los comentarios orales realizados por la Secretaría durante la última sesión presencial, pero al igual que otros Estados, solicitamos que no se elimine la referencia a FpT en la Regla 52. Lo anterior sin perjuicio de proponer ciertas modificaciones a la redacción propuesta.

En particular, solicitamos que el financiamiento por terceros se incluya en la Regla 52(3) como un literal adicional (e) de la Regla 52(2), en lugar de como Regla 52(4). Consideramos que la existencia de financiamiento es una de aquellas circunstancias relevantes que deben ser tenidas en cuenta por el Tribunal para determinar si ordena o no otorgar una garantía por costos, y por lo mismo no debe ser considerada como una "prueba relacionada a las otras circunstancias." Adicionalmente, esta redacción eliminaría la necesidad de incorporar la clarificación de la Regla 52(4), en el

sentido que la existencia de financiamiento por terceros en sí mismos no es suficiente para justificar una orden de garantía por costos, lo cual generó comentarios de muchas delegaciones en la última reunión.

En cualquier caso, si se llegase a mantener el texto de la Regla 52(4), consideramos que es necesario realizar modificaciones al lenguaje. Consideramos importante dejar en claro que, si bien la existencia de financiamiento por terceros no implica que se deba otorgar garantía por costos de manera automática, es posible considerar que en circunstancias particulares, el FpT sea en efecto suficiente para determinar que se deben otorgar garantías por costos. El lenguaje actual podría dar lugar a otra lectura, y consideramos que esto debe ser aclarado.

Finalmente, y como ha sido mencionado, el FpT es utilizado en ocasiones por motivos diferentes al hecho de no contar con los recursos necesarios para acceder al sistema. Por lo anterior, creemos que es claro que los costos relacionados con la existencia de FpT, no deben ser incorporados, ni interpretados en ningún caso por los tribunales como parte integrante de los gastos de las partes, y esto debe ser aclarado (si bien probablemente dicha clarificación no debe ser realizada en la Regla 52, sino en la Regla 49 u otras).

Colombia: Colombia considera importante incluir la financiación por terceros como un criterio que tiene el Tribunal para ordenar la garnatía por costos. En este sentido, sugiere la siguiente redacción.

Regla 52

[…] (3) Al determinar si ordena a una parte que otorgue una garantía por costos, el Tribunal deberá considerar todas las circunstancias relevantes, incluyendo: (a) la capacidad que tiene dicha parte para cumplir con una decisión adversa en materia de costos; (b) la voluntad de esa parte de cumplir con una decisión adversa en materia de costos; (c) el efecto que pudiera tener el otorgar dicha garantía por costos sobre la capacidad de dicha parte para seguir adelante con su demanda o demanda reconvencional; y (d) la conducta de las partes. (e) El Tribunal podrá considerar la existencia de financiamiento por terceros como prueba relacionada a las circunstancias del párrafo ~~(3). Sin embargo, la existencia de financiamiento por terceros en sí mismo no es suficiente para justificar una orden de garantía por costos. […]~~

Costa Rica: Costa Rica appreciates ICSID´s efforts to include third-party funding as evidence in deciding whether or not to order security for costs. However, we deem necessary to clarify that the existence of third-party funding by itself is not sufficient for the Tribunal to conclude that one or more of the circumstances in paragraph (3) exist, this is important for legal certainty.

Haiti: Il n’est point nécessaire de singulariser le finanement par un tiers comme un facteur particulier pouvant pousser le tribunal à ordonner la fourniture d’une garantie de paiement des frais ainsi qu’il est écrit à l’alinéa 4. Privilégier cet aspect présente certains inconvénients :

- Il pourrait être interprété comme un facteur à considérer isolément entraînant nécessairement cette mesure.
- Il pourrait dénoter un manque de confiance à l’égard des arbitres limitant leur liberté d’appréciation des circonstances dénotant l’impécuniosité de la partie ; alors que les arbitres devraient rester libres d’envisager un faisceau d’indices concordants.
- Malgré la précaution selon laquelle le financement par un tiers ne devrait pas être considéré seul, on ne peut nier en pratique l’impact que cet alinéa aurait sur les arbitres qui se sentiraient obligés d’apprécier cette circonstance en priorité par rapport aux autres circonstances.
- L’effet pervers à redouter serait que la partie éviterait de se plier à l’obligation de divulgation du financement par un tiers pour éviter d’avoir à fournir la garantie, favorisant de ce fait le financement occulte, avec en bout de ligne la perversion du processus de sélection des arbitres en terme d’impartialité.

Puisqu’un consensus semble s’être dégagé pour ne pas éliminer ce facteur, il serait préférable de l’intégrer de préférence à l’alinéa 3, lequel inclurait de plus une phrase selon laquelle les circonstances énumérées ne le sont pas dans l’ordre de priorité.

Paraguay: Proponemos que la referencia indicada en el punto (4) sea agregada como punto (3) (e). Esto le dará más claridad al artículo a las circunstancias relevantes que deben ser analizadas por el Tribunal. Así mismo, sugerimos que se modifique la palabra “podrá” por “deberá”.

	Turkey: The provision related to security for costs can be a basis upon which the defendant States requests security against the legal costs to be incurred. While in practice claimant may have also recourse to security for costs, it can be an important tool for States in numerous cases where the tribunal decides that the costs borne by the defendant are to be recovered by the Claimant upon failure of frivolous claims. States cannot enforce such an award against the claimants who have hidden their assets or have no financial resources. Even though the provision as stipulated in WP#3 contains cost-efficient management of proceedings, it is still inevitable for States to incur a large amount of legal expenses in the ISDS mechanism. We believe that this stance taken by the tribunals in favor of the investors should be balanced by a more subtle threshold to be highlighted in the security for costs provisions to meet the needs of States who are spending tax payers' money for the legal costs. ICSID ISDS mechanism as it is now and the revision suggested in WP#3 does not provide enough protection for host States bearing high amount of legal costs incurred due to frivolous claims, even if entitled to do so upon the grant by the tribunals. With this regard, Turkey prefers to delete "*but the existence of third-party funding by itself is not sufficient to justify an order for security for costs.*" from paragraph 4, or alternatively, we suggest to revise paragraph 4 as, "*(4) The Tribunal ~~may~~ shall consider third-party funding as evidence relating to a circumstance in paragraph (3), but the existence of third-party funding by itself ~~is~~ may not be sufficient to justify an order for security for costs.*" In addition to that, revising paragraph 3/a as " *(a) that party's financial ability and availability of financial resources to comply with an adverse decision on costs;"*
Chapter VIII - Suspension, Settlement and Discontinuance	
Rule 53 - Suspension of the Proceeding	
Rule 54 - Settlement and Discontinuance	
Rule 55 - Discontinuance at Request of a Party	
Rule 56 - Discontinuance for Failure of Parties to Act	
Chapter IX - The Award	
Rule 57 - Timing of the Award	Colombia: Colombia Apoya la idea de publicar el tiempo y plazos de emisión de laudos. Colombia considera importante conocer cómo se va a implementar la suspensión de pagos a un árbitro cuando no cumple con los plazos. Costa Rica: Costa Rica suggests clarifying the language in section a), as follows: **"Rule 57 Timing of the Award** (1) The Tribunal shall render the Award as soon as possible, and in any event no later than: (a) 60 days after the latest of either of the following: (i) the Tribunal constitution, (ii) the last written submission or (iii) the last oral submission, if the Award is rendered pursuant to Rule 41~~0~~(3); (...)"
Rule 58 - Contents of the Award	Chile: Sugerimos que en la Regla 58(1) se incluya, además de los factores ya listados, otros requisitos como el derecho aplicable, el análisis del nexo causal entre los hechos considerados violatorios del instrumento invocado y los perjuicios alegados, así como una justificación del método utilizado para cuantificar y sobre todo calcular el daño. Esta solicitud se realizó anteriormente por

<table>
<tr><td></td><td>Chile en conjunto con México, Perú, Colombia y Costa Rica. Chile considera que actualmente hay laudos que carecen de factores necesarios, lo cual afecta indebidamente la legitimidad del sistema y hace que, en caso de existir una decisión condenatoria, sea más difícil para los Estados demandados tener los elementos necesarios para justificar el pago de la indemnización ordenada por el Tribunal.

Agradecemos el esfuerzo del Secretariado, por considerar nuestra solicitud y mencionar que el Art. 48 del Convenio ya contiene una obligación del Tribunal. No obstante, no consideramos que el Artículo 48 del Convenio sea suficiente para abordar las inquietudes planteadas. Asimismo, considerando que muchas otras propuestas de las enmiendas han regulado de manera detallada varios aspectos del procedimiento, proponemos seguir esa misma aproximación respecto al contenido del Laudo, que es un elemento fundamental del procedimiento.

Por otro parte, consideramos que esta propuesta iría en favor de la legitimidad del sistema y ayudaría tanto a la parte demandante como a la parte demandada, al proporcionar mayor certeza respecto a las bases de las decisiones y laudos.

<u>Costa Rica</u>: Costa Rica suggests including an additional requirement for the contents of the award. The suggested language would require for the Tribunal to include legal analysis, clearly linking the facts to the legal grounds. This would provide more certainty on the grounds on which the Tribunal is rendering its decision.

Rule 58
Contents of the Award
(1) The Award shall be in writing and shall contain:
(a) a precise designation of each party;
(b) the names of the representatives of the parties;
(c) a statement that the Tribunal was established in accordance with the Convention, and a description of the method of its constitution;
(d) the name of each member of the Tribunal and the appointing authority of each;
(e) the dates and place(s) of the first session, case management conferences and hearings;
(f) a brief summary of the proceeding;
(g) a statement of the relevant facts as found by the Tribunal;
(h) a brief summary of the submissions of the parties, including the relief sought;
(i) the decision of the Tribunal on every question submitted to it, and the legal reasoning ~~reasons~~ on which the Award is based; and
(j) a statement of the costs of the proceeding, including the fees and expenses of each member of the Tribunal, and a reasoned decision on the allocation of costs.
(2) The Award shall be signed by the members of the Tribunal who voted for it. It may be signed by electronic means if the parties agree.
(3) Any member of the Tribunal may attach an individual opinion or a statement of dissent to the Award before the Award is rendered.

<u>Paraguay</u>: Consideramos que en el inciso (i) debe decir “la decisión motivada del Tribunal sobre cada cuestión…”. Así mismo, sugerimos que se incluya tambien el metodo utiizado para cuantificar los daños como el derecho aplicable.</td></tr>
<tr><td>Rule 59 - Rendering of the Award</td><td></td></tr>
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Rule	Comments
Rule 60 - Supplementary Decision and Rectification	
Chapter X - Publication, Access to Proceedings and Non-Disputing Party Submissions	Whilst Singapore had not commented on Chapter X at the third meeting, we would like to state that Singapore continues to support having this chapter, and that the current approach strikes an appropriate balance.
Rule 61 - Publication of Awards and Decisions on Annulment	Togo: Le caractère confidentiel de l'arbitrage serait difficilement préservé Costa Rica: Costa Rica will like to insist on the point that it had made in previous occasions regarding the importance of providing the reasons for an objection to the publication of the Award. Regarding the paragraph 3), Costa Rica considers that 60 days term is too long will result in unnecessary delays of the procedure. **Rule 61 Publication of Awards and Decisions on Annulment** (1) With consent of the parties, the Centre shall publish every Award, supplementary decision on an Award, rectification, interpretation, and revision of an Award, and decision on annulment. (2) The parties may consent to publication of the full text or to a jointly redacted text of the documents referred to in paragraph (1). (3) Consent to publish the documents referred to in paragraph (1) shall be deemed to have been given if no party objects in writing to such publication within 60 days after the dispatch of the document. If a party declines such publication it shall submit the reasoning of its objection. (4) Absent consent of the parties in accordance with paragraphs (1) (3), the Centre shall publish excerpts of the document~~s~~. The following procedure shall apply to publication of excerpts: (a) the Secretary-General shall propose excerpts to the parties within 60 days after the date upon which a party declines consent to publication of the document; (b) the parties may send comments on the proposed excerpts to the Secretary-General within 60~~30~~ days after their receipt; and (c) the Secretary-General shall consider anycomments received on the proposed excerpts, ~~,~~and publish excerpts within 30 days afterreceipt of such comments. Zimbawbe: Where no agreemenet is reached on the excepts to be published the Secretary General should be limited to publishing legal excepts only (Sub Rule 4 (c)
Rule 62 - Publication of Orders and Decisions	Korea: Korea would like to stress again that Rule 62 should be made to mirror Rule 61, and that the inclusion of a deemed-consent-clause strikes the proper balance between the interests of promoting transparency and issues of compatibility with the ICSID Convention. Togo: Le caractère confidentiel de l'arbitrage serait difficilement préservé Costa Rica: As previously mentioned, it is Costa Rica's view that the documents to be published should be the ones that provide value to external observers in terms of accountability, and not all documents of the process In Costa Rica's experience, it has been observed that some documents are merely procedural, and their publication could negatively affect the proceedings' good governance and may create greater confusion if taken out of context. Furthermore, they may create greater confusion and affect the reputation of individuals acting in the process if taken out of context. **Rule 62 Publication of ~~Orders and~~ Decisions** (1) The Centre shall publish ~~orders and~~ decisions, with any redactions agreed to by the parties and jointly notified to theSecretary-General 60 days after the ~~order or~~ decision is issued. (2) If either party notifies the Secretary-General within the 60-day period referred to in paragraph (1) that the parties disagree on any proposed redactions, the Secretary-General shall refer the ~~order or~~ decision to the Tribunal to determine any disputed redactions The Centre shall publish the ~~order or~~ decision in accordance with the determination of theTribunal. (3) In determining disputes pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information. Turkey: Turkey's comments are related to Rule 61 and 62 as follows. Transparency is important for Turkey. We support the introduction of 61 par.3. But we have a concern about Rule 62.

	Rule 62 of the draft regulates that publication of the decisions and orders to be decided by tribunals. The draft rule has not taken consents of the parties into account in terms of publication of decisions and/or orders as regulated in Rule 61 of the draft and ICSID Convention for awards. The main rule and principle of confidentiality in the Convention requires parties' consent for publication. The intent of the Convention is that only the parties should be able to decide whether to publish the decisions instead of tribunals. The main principle in the Convention is publication with the consent of the parties. The loophole for the decisions other than awards and annulment should not derogate and also follow the main principle of consent.
Rule 63 - Publication of Documents Filed in the Proceeding	In page 350, paragraph 162 of Working Paper no.3, the Secretariat had stated that "AR 63 is similar to proposed AR 63 in WP#2". Accordingly, it is Korea's understanding that the current text of Rule 63 is no different from its previous formulation in Working Paper no.2 in that a party may only unilaterally request for the publication of the documents that it has submitted in the proceedings, and not the documents submitted by the other party. This is because it is only natural that parties enjoy the highest degree of control over its own documents as compared to Awards, Decisions and Orders which can be said to reflect a joint interest of the parties in terms of transparency. However, Korea has concerns that the changes introduced to the text in Working Paper no.3 carries a deal of risk in that it may be misunderstood to allow parties to request publication of documents filed by the other party as well. Therefore, Korea proposes to return to the unequivocal text in Working Paper no.2 , or modify the current text to that effect. Additionally, Korea proposes to add in paragraph (1) the requirement for the parties to comply with any confidentiality concerns and timelines agreed by the parties or ordered by the tribunal when making a request for the publication of filed documents. This is to ensure that parties would not be subject to overly burdensome redaction exercises during an inconvenient phase of the proceedings such as during its preparations for the submission of written pleadings. Togo: Le caractère confidentiel de l'arbitrage serait difficilement préservé Panama: In WP2, Arbitration Rule 63 had stated that, "[u]pon [the] request of a party, the Centre shall publish any document **which that party** filed in the proceeding, with redactions agreed to the parties and jointly notified to the Secretary-General." (emphasis added). The text that appears in bold has been removed in WP3, and Panama is concerned that the current rule could lead to abuse (*e.g.*, one of the parties could force the publication of its opponent's pleadings, witness statements or other documents submitted in the proceedings in circumstances when there is no other legal requirement to do so). Argentina: Documents filed by either party must not be published, unless both parties give their consent. Chile: Adicionalmente, Chile está de acuerdo con lo señalado por otros Estados durante la última sesión, proponiendo la necesidad de establecer en las reglas algunos lineamientos con respecto al momento de la publicación. Asimismo, Chile está de acuerdo con la necesidad de encontrar un equilibrio adecuado entre permitir la más amplia transparencia posible, y el apropiado resguardo y protección de las posiciones de ambas partes durante el procedimiento. Consideramos que se podría llegar a este equilibrio, categorizando los documentos que se publican, siguiendo la lógica de la Regla 3 de las Reglas de UNCITRAL sobre Transparencia. • En este sentido, se propone que se publiquen ciertos documentos a solicitud de cualquiera de las partes, esto es, el Memorial de Demanda, el Memorial de Contestación, la Réplica y la Dúplica, solicitudes de arbitraje, de medidas provisionales, de anulación y por último solicitudes que busquen establecer la manifiesta falta de mérito jurídico. • Posteriormente, se propone que el Tribunal decida sobre la publicación de los informes de expertos, declaraciones testimoniales y anexos, si su publicación es solicitada por cualquiera de las partes, y esto tras realizar la debida consulta a la otra parte, para que esta pueda hacer las supresiones de texto y observaciones apropiadas. Asimismo, se propone aclarar que la publicación debe, en todos los casos, estar sujeta a las reglas temporales o de confidencialidad establecidas por el Tribunal.

	Colombia: Colombia considera que se debe publicar los documentos que cumplen con los objetivos de transparencia, así, salvo acuerdo en contrario por las partes, la regla debería ser publicidad de laudos y decisiones sobre medidas cautelares y jurisdicción. Sin embargo, las ordenes procedimentales y declaraciones de testigos y documentos aportados al tribunal no necesariamente son esenciales para cumplir con estos objetivos. Por lo tanto, su publicidad podría estar sujeta a voluntad de las partes. Costa Rica: As previously mentioned, it is Costa Rica's view that the documents to be published should be the ones that provide value to external observers in terms of accountability, and not all documents of the process. In Costa Rica's experience, it has been observed that some documents are merely procedural, and their publication could negatively affect the proceedings' good governance and may create greater confusion if taken out of context. Furthermore, they may create greater confusion and affect the reputation of individuals acting in the process if taken out of context. Following the concept expressed above, an important part of good governance is also assuring legal certainty through the protection of some information, preventing the disclosure of sensitive personal data and guaranteeing the safety and integrity of individuals. For example, in the case of experts and witnesses. Furthermore, although redaction is a possibility when this is considered as confidential information such course of action might result in an excessive burden on the parties. Costa Rica suggests the following wording: **Rule 63** **Publication of Documents Filed by a Party** (1) Upon request of a party, the Centre shall publish the following documents generated in proceedings: request for arbitration, memorial, counter-memorial, reply, rejoinder, requests on interpretation, revision and annulment ~~,documents which that party filed in the proceeding~~, with redactions agreed to by the parties. (2) The parties may refer any dispute regarding the publication or redaction of a document in paragraph (1) to the Tribunal for determination. The Centre shall publish the document in accordance with the determination of the Tribunal. (3) In determining disputes pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information. Georgia: Various concerns of potential abuse of procedure were raised by the delegates with respect to the current version of Rule 63. As we understand the concerns were inspired by the amendments to the proposed rule which now allows either party to request the publication of any document, including the documents filed by the opposing party. We believe that the approach ultimately taken in this Rule should weigh the potential benefit of publishing documents filed by the opposing party against the potential abuse of procedure. We do not see much benefit of having the possibility to publish the documents filed by the opposing party, while we recognize the potential for the abuse of right/procedure. In the view of the above, Georgia would be in favour of reinstating the previous version whereby either party can request publication of documents which that party filed. Haiti: La volonté de transparence est louable, cependant deux délais doivent être ajoutés à cet article pour assurer son efficacité. Le premier délai doit circonscrire le temps alloué aux parties pour convenir du caviardage des documents à publier. Ce délai pourrait être de 15 jours. Le second délai à ajouter permettrait de fixer une période pour demander la publication de tout document afin d'éviter des lassants retours sur cette question. Il est difficilement envisageable de trouver des équipes dédiées à travailler sur le caviardage d'un énième document à publier plusieurs mois ou années après le prononcé d'une sentence ayant mis fin au litige. Pareille modification harmoniserait aussi cet article avec l'art 62 qui prévoit que les ordonnances et sentences seront publiés dans les 60 jours suivant leur prononcé. Paraguay: Consideramos que el CIADI no debe publicar nada sin el consentimiento expreso de ambas partes, dado que puede afectar el desarrollo del proceso.
Rule 64 - Observation of Hearings	Korea: Korea suggests that paragraph (1) return to its formulation in Working Paper no.2. It is Korea's view that it is the parties and not the tribunal that should have primary control over the conduct of the hearings.

	Togo: Le caractère confidentiel de l'arbitrage serait difficilement préservé Argentina: Persons who are not involved in the proceeding in some capacity should not be allowed to observe hearings unless both parties agree thereto. Armenia: Whilst Armenia is content with the present formulation of paragraph 1, in light of the comments of other delegations, we propose as a compromise solution between a veto for respondents and Tribunal authorisation, that the Tribunal be empowered to decide unless both parties object.
Rule 65 - Confidential or Protected Information	Singapore: Singapore concurs with positions of several delegations at the third meeting that the simple reference to "applicable law" in paragraph (b) is insufficient. One solution would be to draw inspiration from Article 7 paragraphs (2)(b) and (c) of the UNCITRAL Transparency Rules, which are reproduced below for ease of reference. Article 7 2. Confidential or protected information consists of: (b) Information that is protected against being made available to the public under the treaty; (c) Information that is protected against being made available to the public, in the case of the information of the respondent State, under the law of the respondent State, and in the case of other information, under any law or rules determined by the arbitral tribunal to be aplicable to the disclosure of such information. ***New - Rule 65 Confidential or Protected Information*** *For the purposes of Rules 61-64, confidential or protected information is information which:* *(a) is protected from disclosure pursuant to the instrument of consent to arbitration;* *(b) is protected from disclosure pursuant to the applicable law;* *(c) is protected from disclosure in accordance with the orders and decisions of the Tribunal;* *(d) is protected from disclosure by agreement of the parties;* *(e) constitutes confidential business information;* *(f) would impede law enforcement if disclosed to the public;* *(g) would prejudice the essential security interests of the State if disclosed to the public;* *(h) would aggravate the dispute between the parties if disclosed to the public; or* *(i) would undermine the integrity of the arbitral process if disclosed to the public.* Korea: Korea proposes to specify the term "applicable law" in paragraph (b), and make clear that this term is a reference to the relevant domestic laws of the parties.

	Togo: Le caractère confidentiel de l'arbitrage serait difficilement préservé Argentina: It is unclear whether the reference to "protected from disclosure pursuant to the applicable law" in paragraph (b) means the domestic law of the respondent state or if it means international law. This reference should be amended to clarify that it includes, in the case of the information of the respondent State, information that is protected under the law of the respondent State, and in the case of other information, information that is protected under any law or rules determined by the arbitral tribunal to be applicable to the disclosure of such information. Armenia: Whilst Armenia is content with the present draft text, in light of the comments of other delegations concerning the need for consistency with the UNCITRAL Rules on Transparency, we propose the deletion of paragraph (h) on the ground that it is implied in paragraph (i): the aggravation of the dispute through the disclosure of sensitive information would be contrary to the integrity of the arbitral process. Costa Rica: For legal certainty, Costa Rica considers that the reference to "protected from disclosure pursuant to the applicable law" in Rule 65(b) should be further specified to include the domestic legislation of the repondent state. Georgia: Georgia welcomes the introduction of Rule 65 in the Arbitration Rules in terms of the protection of various types of information in general. Georgia attaches significant importance specifically to the non-aggravation of the dispute and the integrity of the arbitral process and highly supports the inclusion of paragraphs (h) and (i) in Rule 65. However, we believe that it might be more reasonable to include reference to non-aggravation of the dispute and the integrity of the arbitral process as a general acceptation to the publication in a separate paragraph; Articles 7(6) and 7(7) of the UNCITRAL Transparency Rules could serve as a good guidance in this case. Georgia believes that the "applicable law" in Rule 65(b) needs to be specified further. The appropriate solution could be the adoption of the approach similar to one found in Article 7(2)(c) of the UNCITRAL Transparency Rules.
Rule 66 - Submission of Non-Disputing Parties	Korea: Korea would like to reiterate its previous position that in the interests of the reduction of time and costs of the proceedings, explicit reference should be made to the tribunal's power to order a Non- Disputing Party to submit its application and submission in *all* procedural languages. Togo: Supprimer la possibilité pour l'amicus curiae d'avoir accès aux documents déposés dans le cadre de l'instance. Il y a dans cette formalisation de la participation de l'amicus curiae à l'arbitrage un risque de déséquilibre du procès Chile: En relación con la Regla 66(4) Chile se permite insistir en el hecho de que la presente regla, tal como está redactada en la actualidad, permite a los Tribunales imponer condiciones adicionales respecto a la participación de partes no contendientes, al hacer referencia a la palabra "incluyendo respecto a" o en inglés "including with respect to". Nos genera cierta preocupación que esto sea una lista abierta y que por este medio los tribunales reincorporen la obligación de desembolso de los costos a las partes no contendientes, lo que entendemos fue rechazado por la mayoría de los Estados Miembros en sus comentarios escritos y orales. Por lo tanto, sugerimos borrar la palabra "incluso" y limitarlo a la lista que está claramente establecida.
Rule 67 - Participation of Non-Disputing Treaty Party	Korea: Korea requests the Secretariat to take into consideration the proposal previously made by Korea in granting the Non-Disputing Treaty Party right to request documents to the tribunal. In Korea's view, the parties and the tribunal would mutually benefit from explicitly granting this right already accorded to Non-Disputing Parties, and in even higher degrees. Togo: Cette partie doit être indépendante et impartiale

France: Comme indiqué au cours de la réunion de consultation, la Délégation française estime que les tribunaux arbitraux devraient avoir la possibilité d'inviter une Partie à un Traité non contestante à participer à l'instance, comme le prévoient les règles de la CNUDCI sur la transparence ainsi que les traités d'investissement les plus récents. Comme d'autres délégations, la France est également d'avis que l'intervention d'une Partie à Traité non contestante ne devrait pas nécessairement être limitée à une participation écrite et aux questions liées à l'interprétation du traité en cause dans le différend.
Compte tenu de ce qui précède, le paragraphe 1 de l'article 67 du règlement d'arbitrage devrait être modifié comme suit : « Le Tribunal doit autoriser ou, après consultation des parties, peut inviter une partie à un traité qui n'est pas partie au différend (« Partie à un Traité non contestante ») à présenter des écritures ou des observations orales sur l'interprétation du traité en cause dans le différend et sur lequel le consentement à l'arbitrage est fondé ou, après consultation des parties, sur d'autres questions s'inscrivant dans le cadre du litige ».

Argentina: If a majority of two thirds of the members of the Administrative Council considers that a special procedure for participation of non-disputing Treaty Parties should be provided for, different from the procedure in proposed Rule 66, such special procedure should be excluded in case the treaty at issue in the dispute provides for a joint interpretation mechanism. In such case, the non-disputing Treaty Party should use the treaty mechanism.

Chile: Chile está de acuerdo con la incorporación de esta regla. En sintonía con lo expresado por otros Estados, consideramos que las presentaciones de Partes no Contendientes son un instrumento que aporta legitimidad al sistema y que ha significado un aporte importante en muchos procedimientos.

Asimismo, consideramos que, al incorporar esta regla, deberíamos asegurarnos de que ésta sea utilizada de la mejor manera posible. En este sentido, proponemos que se incorpore una Regla (67(1)), por la cual el Secretariado deba informar a la Parte No Contendiente del Tratado respecto de la existencia de la disputa, para que esta tome las medidas necesarias, en caso de querer intervenir de conformidad con la Regla 67.

Costa Rica: Costa Rica favours the proposal of a separate rule for non-disputing Treaty Parties because they may provide useful insight as to the context, object and purpose intended by the parties when they subscribed the treaty. Costa Rica has had a positive experience with this figure as a tool to assist tribunals with interpretation of the international investment agreement, in both the written and oral phases of the proceeding. For this reason, it is Costa Rica's position that the non- disputing Treaty Party's participation should not be limited by specific conditions imposed by the Tribunal. Therefore, we suggest deleting paragraph two.

Rule 67 Participation of Non-Disputing Treaty Party

(1) The Tribunal shall permit a Party to a treaty that is not a party to the dispute ("non-disputing Treaty Party") to make a written or oral submission on the interpretation of the treaty at issue in the dispute and upon which consent to arbitration is based.

(2) ~~The Tribunal may impose conditions on the filing of a written submission by the non-disputing Treaty Party, including with respect to the format, length or scope of the submission and the time limit to file the submission.~~

(3) The parties shall have the right to make observations on the submission of the non-disputing Treaty Party.

Georgia: Georgia maintains its position with respect to Rule 67 in the sense that the participation of Non-Disputing Treaty Parties (NDTPs) should be limited to "interpretation" only (See Georgia's comment *to Working Paper #2*[11]*)*.

[11] "Georgia proposes to maintain the version of the Rule 66(1) as proposed in Working Paper #2. In particular, Georgia believes that the participation of the Non-disputing Treaty Party (NDTP) in investor-state arbitration is important in order to make sure that the treaty is interpreted accurately in compliance with the will of the contracting parties and the meaning attributed to the terms of the treaty by the latter. In our understanding the aim of extending the possibility to the NDTPs in investor-state arbitration proceedings is to ensure correct and consistent interpretation of treaty provisions by the arbitral tribunals, which have been extensively criticized lately on this subject. However, the participation of NDTPs should not go beyond assisting the disputing parties and the arbitral tribunal in interpreting the treaty terms, i.e. NDTPs should not have a possibility to argue the case or dispute or comment in any manner on factual or legal evidence presented by the parties to the dispute.

	With respect to the proposal of some delegations regarding NDTP participation in horal hearings, while Georgia is not in principle against such participation, we are mindful of significant additional costs for the parties. In any event, Georgia believes that participation of NDTPs in horal hearings shall be agreed by the parties or shall be subject to the leave from the Tribunal. Paraguay: Consideramos que la participación de una parte no contendiente del tratado debe limitarse solo a la interpretación del tratado. Se debe tener en cuenta que la participación de una parte no contendiente del tratado puede ocasionar una dilatación de manera innecesaria.
Chapter XI - Interpretation, Revision and Annulment of the Award	
Rule 68 - The Application	Zimbawbe: The Secretariat is encouraged to continue to develop for Memebrs consideration, rules for an appeals mechanism (if appropriate in conjuction with UNCITRAL)
Rule 69 - Interpretation or Revision: Reconstitution of the Tribunal	
Rule 70 - Annulment: Appointment of the ad hoc Committee	
Rule 71 - Procedure Applicable to Interpretation, Revision and Annulment	Argentina: The procedural agreements and orders on matters addressed at the first session of the original Tribunal should not apply to interpretation, revision or annulment proceedings unless both parties agree thereto.
Rule 72 - Stay of Enforcement of the Award	Argentina: The parties should be allowed to agree to modify the procedure for stay of enforcement of the Award. Only the Tribunal or Committee should fix time limits for submissions on stay of enforcement, not the Secretary-General. The 30 days to issue a decision on stay of enforcement should not be calculated from the constitution of the Tribunal or Committee, but from the last written submission on the request or the last oral submission on the request, whichever is later. The ICSID Convention does not authorize the imposition of conditions for the stay, which may even prevent the application of Article 55 of the ICSID Convention. Upon analysing the preparatory works of the ICSID Convention, it is clear that the first draft of current Article 52(5) of the Convention provided for the possibility that an annulment committee might require the provision of a bond or similar measure for the purpose of maintaining the stay of enforcement of the award[12].3 However, the negotiators of the Convention specifically refused to confer these powers upon an annulment committee[13].4 Any information regarding any changes of circumstances upon which the enforcement was stayed should be provided in the context of a request to modify or terminate a stay of enforcement. The Tribunal or Committee should only modify or terminate a stay of enforcement upon a party's request specifying the circumstances that require the modification or termination of the stay of enforcement, after giving the other party an opportunity to present observations. The possibility that a Committee granting the partial annulment of an Award may order the temporary stay of enforcement of the unannulled portion in order to give either party an opportunity to request a new Tribunal constituted pursuant to Article 52(6) of the Convention to grant a stay, as provided for in current Arbitration Rule 54(3), should be maintained in proposed Rule 72.
Rule 73 - Resubmission of Dispute after an Annulment	Panama: Whereas the 2006 Rules rightly provide that, "[i]f the original award had only been annulled in part, the new Tribunal [in a resubmission proceeding] shall not reconsider any portion of the award not so annulled," draft Rule 73 currently states that, "[i]f the original Award was annulled in part, the new Tribunal shall consider the aspect(s) of the resubmitted dispute

Extending the scope of the NDTP's participation to the "application" of the treaty might provide possibility for non-disputing Treaty Parties to attempt arguing the case or somehow effecting the outcome on the case."

[12] HISTORY OF THE ICSID CONVENTION, vol. I, p. 238 (1968).
[13] HISTORY OF THE ICSID CONVENTION, vol. II-2, p. 858 (1968).

	pertaining to the annulled portion of the Award." In Panama's view, this revision weakens the force of Article 53(1) of the ICSID Convention. Panama would propose amending the draft text to state: "If the original Award was annulled in part, the new Tribunal shall **only** consider the aspect(s) of the resubmitted dispute pertaining to the annulled portion of the Award." Argentina: The possibility that the new Tribunal may stay or continue to stay the enforcement of the unannulled portion of the Award until the date its own Award is rendered, as provided for in current Arbitration Rule 55(3), should be maintained in proposed Rule 73(4). The procedural agreements and orders on matters addressed at the first session of the original Tribunal should not apply to resubmission proceeding unless both parties agree thereto.
Chapter XII - Expedited Arbitration	Chile: Si bien consideramos que los esfuerzos realizados para acortar el tiempo y la duración de los procedimientos siempre son bienvenidos, a Chile le preocupa la incorporación de este mecanismo en las reglas del CIADI, yse opone a que haya una incorporación automática de este mecanismo Si bien Chile entiende que lo que se propone es un mecanismo consensual, consideramos que los efectos e implicancias de declarar la responsabilidad internacional de un Estado son múltiples, amplios y complejos y nos preguntamos si un arbitraje expedito es el mecanismo adecuado para solucionar controversias entre inversionistas y Estados. Este fue un punto que Chile presentó junto con Colombia, Costa Rica, Perú y México, en sus comentarios conjuntos y que nos permitimos volver a mencionar, atendidos los efectos negativos para los Estados que la incorporación de este mecanismo conllevaría. Observamos, por ejemplo, que la propuesta de arbitraje expedito está modelada sobre la base del arbitraje comercial y elimina ciertas herramientas de defensa, como la posibilidad de bifurcar procedimientos y garantías procesales. Además, la apropiada defensa del Estado requiere tiempo y la coordinación de más de una entidad, además de los asesores externos. Por lo tanto, la inclusión de este capítulo es una preocupación para nuestro país.
Rule 74 - Consent of Parties to Expedited Arbitration	Argentina: The parties should be allowed to jointly amend the expedited arbitration rules and, at the request of a party, the Tribunal should be allowed to make necessary modifications to the expedited arbitration if the circumstances so require. In addition, at any time of the proceeding, the parties should be allowed to agree to discontinue the use of the expedited arbitration rules and, at the request of a party, the Tribunal should be allowed to decide to discontinue of the use of the expedited arbitration rules if the circumstances so require. Armenia: Armenia suggests that the Secretariat set out a standard practice whereby it will draw the attention of parties to the possibility of expedited arbitration in 'low value claims', which should be expressed through a 'floor and ceiling' in terms of financial value. Encouraging parties to make use of this mechanism for low value claims should lead to more proportionate use of resources, which may lead to an 'opt out' approach rather than an 'opt in' approach in a future Rules revision. Costa Rica: We appreciate ICSID's efforts to provide an alternative to reduce costs and times of the process under certain circumstances. An important feature that we would like to highlight from these Rules is the fact that expedited procedure requires consent from both disputing parties because this guarantees an adequate opportunity of defense, even within a shorter proceeding.
Rule 75 - Number of Arbitrators and Method of Constituting the Tribunal for Expedited Arbitration	Argentina: The parties should be given at least 60 days to jointly notify the Secretariat of their election of a Sole Arbitrator or a three-member Tribunal. In order not to discourage the choice of expedited arbitration, the default rule should be reversed, so that in the absence of agreement, the Tribunal is composed of three members.
Rule 76 - Appointment of Sole Arbitrator for Expedited Arbitration	Argentina: The parties should have the possibility to appoint another Sole Arbitrator if their original appointee declines the appointment or does not comply with Rule 78(1). In paragraph (3)(c), when two or more candidates share the best ranking, it is not clear what criteria will be applied by the Secretary-General to select one of them. It is suggested that it be decided by lot to be drawn.
Rule 77 - Appointment of Three-Member Tribunal for Expedited Arbitration	Argentina: A party should have the possibility to appoint another arbitrator if its original appointee declines the appointment or does not comply with Rule 78(1). In paragraph (3)(d), when two or more candidates share the best ranking, it is not clear what criteria will be applied by the Secretary-General to select one of them. It is suggested that it be decided by lot to be drawn

	Armenia: We propose the deletion of this provision on the ground that an expedited arbitration should always be under a sole arbitrator further to the overarching objective of procedural efficiency.
Rule 78 - Acceptance of Appointment in Expedited Arbitration	
Rule 79 - First Session in Expedited Arbitration	
Rule 80 - Procedural Schedule in Expedited Arbitration	
Rule 81 - Default in Expedited Arbitration	
Rule 82 - Procedural Schedule for Supplementary Decision and Rectification in Expedited Arbitration	Argentina: The consent of the parties to expedited arbitration should only cover the original arbitration proceeding and should not extend to post-award remedies.
Rule 83 - Procedural Schedule for Interpretation, Revision or Annulment in Expedited Arbitration	Argentina: The consent of the parties to expedited arbitration should only cover the original arbitration proceeding and should not extend to post-award remedies. Keeping this rule may discourage the use of expedited arbitration.
Rule 84 - Resubmission of a Dispute after Annulment in Expedited Arbitration	
Rule 85 - Opting Out of Expedited Arbitration	

IV. CONCILIATION RULES FOR ICSID CONVENTION PROCEEDINGS	COMMENT ON PROVISION
Introductory Note	Chile: Chile no hace comentarios adicionales respecto a las reglas de arbitraje para el mecanismo complementario, pero hace extensivas los comentarios realizados respecto a las reglas de arbitraje bajo el Convenio.
Chapter I - General Provisions	Togo: Pas de commentaire
Rule 1 - Application of Rules	
Rule 2 - Party and Party Representative	
Rule 3 - Method of Filing	
Rule 4 - Supporting Documents	Costa Rica: Costa Rica welcomes the addition of paragraph three because it will provide security to the proceeding, in cases when the authenticity of a supporting document is questioned. For greater certainty, Costa Rica suggests to also clarify that the certification relates to the legislation of the jurisdiction in which it was issued, since an eventual misunderstanding of the Rule could lead to higher costs and duration to the proceeding. **Rule 4 Supporting Documents** (1) Supporting documents, including witness statements, expert reports, exhibits and legal authorities, shall be filed together with the request, written submission, observations or communication to which they relate. (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Commission or a party may require a fuller extract or a complete version of the document. (3) If the authenticity of a supporting document is disputed, the Commission may order a party to provide a certified copy according to the legislation of the jurisdiction where the document was issued or to make the original available for examination.
Rule 5 - Routing of Documents	
Rule 6 - Procedural Languages, Translation and Interpretation	
Rule 7 - Calculation of Time Limits	Togo: Pas de commentaire
Rule 8 - Costs of the Proceeding	
Rule 9 - Confidentiality of the Conciliation	Togo: Pas de commentaire
Rule 10 - Use of Information in Other Proceedings	
Chapter II - Constitution of the Commission	
Rule 11 - General Provisions, Number of Conciliators and Method of Constitution	

Rule 12 - Notice of Third-Party Funding	Costa Rica: Costa Rica appreciates ICSID´s efforts to strengthen transparency in Conciliation through the disclosure of third-party funding (TPF). However, after the last two meetings it has become evident to Costa Rica that this provision merits further examination beyond the effects in the constitution of the Commission and the potential conflict of interest. While Costa Rica is flexible with regard to the language and is able to withdraw its previous proposal, it hereby proposes three modifications to reflect the fundamental conditions that, in its view, this article must contain. These are: granting powers to the Commission to request further information on third- party funding once the party has disclosed that it has a funder; the need for this information to include corporate structure and the powers to consider such information when deciding on security for cost and on cost. The rationale behind this is that, in Costa Rica's view this discussion should necessarily consider the following objectives: support a request for security for costs, refrain from becoming an obstacle to reach amicable solutions or submitting counterclaims, and foster transparency in general. Thus Costa Rica suggests to replicate the proposed language in Rule 14 of the Arbitration Rules.
Rule 13 - Appointment of Conciliators to a Commission Constituted in Accordance with Article 29(2)(b) of the Convention	
Rule 14 - Assistance of the Secretary-General with Appointment	
Rule 15 - Appointment of Conciliators by the Chair in Accordance with Article 30 of the Convention	
Rule 16 - Acceptance of Appointment	Costa Rica: As already suggested, Costa Rica considers that this provision should mention a possible Code of Conduct that should be attached to the Conciliator Declaration.
Rule 17 - Replacement of Conciliators Prior to Constitution of the Commission	
Rule 18 - Constitution of the Commission	
Chapter III - Disqualification of Conciliators and Vacancies	
Rule 19 - Proposal for Disqualification of Conciliators	Costa Rica: Costa Rica appreciates ICSID´s efforts of increasing the time limit to file a proposal for disqualification. However, Costa Rica shares the view expressed by several members during November session, regarding the seven-day period indicated in paragraph (1)(ii)(e). A seven-day period to respond to the Conciliators´s statement is too short. Due to the nature of the disqualification, States may require internal consultations and request legal opinions from external counsel before drafting an official position. Regarding paragraph 2 of WP3, Costa Rica would like to reiterate the importance of maintaining the suspension of the proceeding until a decision on the disqualification is made. The suspension is an important element to protect the legitimacy of the arbitration and to prevent any biased decision.
Rule 20 - Decision on the Proposal for Disqualification	
Rule 21 - Incapacity or Failure to Perform Duties	
Rule 22 - Resignation	

Rule 23 - Vacancy on the Commission	
Chapter IV - Conduct of the Conciliation	
Rule 24 - Functions of the Commission	
Rule 25 - General Duties of the Commission	
Rule 26 - Orders, Decisions and Agreements	
Rule 27 - Quorum	
Rule 28 - Deliberations	
Rule 29 - Cooperation of the Parties	
Rule 30 - Written Statements	
Rule 31 - First Session	
Rule 32 - Meetings	
Rule 33 - Preliminary Objections	
Chapter V - Termination of the Conciliation	
Rule 34 - Discontinuance Prior to the Constitution of the Commission	
Rule 35 - Report Noting the Parties' Agreement	
Rule 36 - Report Noting the Failure of the Parties to Reach Agreement	
Rule 37 - Report Recording the Failure of a Party to Appear or Participate	
Rule 38 - The Report	
Rule 39 - Issuance of the Report	

V. THE ADDITIONAL FACILITY RULES	COMMENT ON PROVISION
Introductory Note	
Article 1 - Definitions	Armenia: Armenia suggests that the Secretariat re-examine the definition of a 'Regional Economic Integration Organization'. As the Secretariat would have to make a first determination as to whether a given organization meets the definition and the Additional Facility Rules are premised not only upon prior consent through a bilateral investment treaty or contract but also on the possibility of ad hoc participation by a REIO, we consider it to be possible that a REIO would seek to participate in proceedings to the exclusion of a Member State that may be the true respondent in the case. The current definition, which is based on competences, may require the Secretariat to inquire into the law of the REIO in question, concerning which it lacks jurisdiction. Armenia proposes a simpler definition based on Article 2(a) of the International Law Commission Articles on the Responsibility of International Organizations 2011: 'an international organization established by a treaty for the purpose of regional economic integration and possessing its own international legal personality'. Costa Rica: Costa Rica suggests that the definitions should be placed in alphabetical order.
Article 2 - Additional Facility Proceedings	Togo: Pas de commentaire
Article 3 - Convention Not Applicable	
Article 4 - Final Provisions	

VI. (ADDITIONAL FACILITY) ADMINISTRATIVE AND FINANCIAL REGULATIONS	COMMENT ON PROVISION
Introductory Note	
Chapter I - General Provisions	
Regulation 1 - Application of these Regulations	
Chapter II - General Functions of the Secretariat	
Regulation 2 - Secretary	
Regulation 3 - The Registers	
Regulation 4 - Depositary Functions	
Regulation 5 - Certificates of Official Travel	
Chapter III - Financial Provisions	
Regulation 6 - Fees, Allowances and Charges	
Regulation 7 - Payments to the Centre	
Regulation 8 - Consequences of Default in Payment	Costa Rica: Based in our experience in procedures, Costa Rica suggests a 45 day-term in paragraph 2(a). Sometimes, countries face challenges to meet the 30 days term, merely due to compliance with internal administrative proceedings.
Regulation 9 - Special Services	
Regulation 10 - Fee for Lodging Requests	
Regulation 11 - Administration of Proceedings	
Chapter IV - Official Languages and Limitation of Liability	
Regulation 12 - Languages of Regulations	
Regulation 13 - Prohibition Against Testimony and Limitation of Liability	

VII. (ADDITIONAL FACILITY) ARBITRATION RULES (ANNEX B)	COMMENT ON PROVISION
Introductory Note	
Chapter I - Scope	
Rule 1 - Application of Rules	Togo: Pas de commentaire
Chapter II - Institution of Proceedings	
Rule 2 - The Request	
Rule 3 - Contents of the Request	Togo: Pas de commentaire
Rule 4 - Recommended Additional Information	
Rule 5 - Filing of the Request and Supporting Documents	
Rule 6 - Receipt of the Request and Routing of Written Communications	
Rule 7 - Review and Registration of the Request	
Rule 8 - Notice of Registration	
Rule 9 - Withdrawal of the Request	
Chapter III - General Provisions	
Rule 10 - General Duties	Togo: Pas de commentaire
Rule 11 - Party and Party Representative	
Rule 12 - Method of Filing	
Rule 13 - Supporting Documents	
Rule 14 - Routing of Documents	
Rule 15 - Procedural Languages, Translation and Interpretation	
Rule 16 - Correction of Errors	
Rule 17 - Calculation of Time Limits	
Rule 18 - Fixing Time Limits	Togo: Pas de commentaire
Rule 19 - Extension of Time Limits Applicable to Parties	Togo: Pas de commentaire

Rule 20 - Time Limits Applicable to Tribunal	Costa Rica: In the interest of certainty and considering that the objective of this process is to reduce the duration of the proceedings, we suggest to include an obligation in paragraph one that can guide the expectations of the parties and paragraph two contains the exception, which provides flexibility to the tribunals, when needed. **Rule 20 Time Limits Applicable to the Tribunal** (1) The Tribunal shall ~~use best efforts to~~ meet time limits to render orders, decisions and the Award. (2) If the Tribunal cannot comply with an applicable time limit, it shall advise the parties of the special circumstances that justify the delay and the date when it anticipates rendering the order, decision or Award.
Chapter IV - Constitution of the Tribunal	
Rule 21 - General Provisions Regarding the Constitution of the Tribunal	
Rule 22 - Qualifications of Arbitrators	
Rule 23 - Notice of Third-Party Funding	Costa Rica: Costa Rica appreciates ICSID´s efforts to strengthen transparency in arbitration through the disclosure of third-party funding (TPF). However, after the last two meetings it has become evident to Costa Rica that this provision merits further examination beyond the effects in the constitution of the Tribunal and the potential conflict of interest. While Costa Rica is flexible with regard to the language and is able to withdraw its previous proposal, it hereby proposes three modifications to reflect the fundamental conditions that, in its view, this article must contain. These are: granting powers to the Tribunal to request further information on third-party funding once the party has disclosed that it has a funder; the need for this information to include corporate structure and the powers to consider such information when deciding on security for cost and on cost. The rationale behind this is that, in Costa Rica's view this discussion should necessarily consider the following objectives: support a request for security for costs, refrain from becoming an obstacle to reach amicable solutions or submitting counterclaims, and foster transparency in general. Thus Costa Rica suggests to replicate the proposed language of Rule 14 of Arbitration Rules.
Rule 24 - Method of Constituting the Tribunal	
Rule 25 - Assistance of the Secretary-General with Appointment	
Rule 26 - Appointment of Arbitrators by the Secretary-General	
Rule 27 - Acceptance of Appointment	Costa Rica: As already suggested, Costa Rica considers that this provision should mention a possible Code of Conduct that should be attached to the Arbitrator Declaration.
Rule 28 - Replacement of Arbitrators Prior to Constitution of the Tribunal	

Rule 29 - Constitution of the Tribunal	
Chapter V - Disqualification of Arbitrators and Vacancies	
Rule 30 - Proposal for Disqualification of Arbitrators	Costa Rica: Costa Rica appreciates ICSID´s efforts of increasing the time limit to file a proposal for disqualification. However, Costa Rica shares the view expressed by several members during November session, regarding the seven-day period indicated in paragraph (1)(ii)(e). A seven-day period to respond to the arbitrator´s statement is too short. Due to the nature of the disqualification, States may require internal consultations and request legal opinions from external counsel before drafting an official position.
Rule 31 - Decision on the Proposal for Disqualification	
Rule 32 - Incapacity or Failure to Perform Duties	
Rule 33 - Resignation	
Rule 34 - Vacancy on the Tribunal	
Chapter VI - Conduct of the Proceeding	
Rule 35 - Orders, Decisions and Agreements	
Rule 36 - Waiver	
Rule 37 - Filling of Gaps	
Rule 38 - First Session	Togo: Pas de commentaire
Rule 39 - Written Submissions	Costa Rica: ICSID has explained that the limitation to the Reply and to the rejoinder does not exclude arguments based on new documents or new discovered facts that have occurred after a Party has filed its first submission. Therefore, Costa Rica suggests reflecting this clearly in the language of rule 39. **Rule 39 Written Submissions** (1) The parties shall file the following written submissions: (a) a memorial by the requesting party; (b) a counter-memorial by the other party; and, unless the parties agree otherwise: (c) a reply by the requesting party; and (d) a rejoinder by the other party. (2) A memorial shall contain a statement of the relevant facts, law and arguments, and the request for relief. A counter-memorial shall contain a statement of the relevant facts, including an admission or denial of facts stated in the memorial, and any necessary additional facts, a statement of law in reply to the memorial, arguments, and the request for relief. A reply and rejoinder shall be limited to responding to the previous written submission. This provision does not limit arguments based on new documents or newly discovered facts occurring after a party's first written submission. (3) A party may file unscheduled written submissions, observations, or supporting documents only after obtaining leave of the Tribunal, unless the filing of such documents is provided for by these Rules. The Tribunal may grant such leave upon a timely and reasoned application if it finds such written submissions, observations or supporting documents are necessary in view of all relevant circumstances.
Rule 40 - Case Management Conferences	
Rule 41 - Seat of Arbitration	

Rule 42 - Hearings	
Rule 43 - Quorum	
Rule 44 - Deliberations	
Rule 45 - Decisions Made by Majority Vote	
Chapter VII - Evidence	
Rule 46 - Evidence: General Principles	
Rule 47 - Disputes Arising from Requests for Documents	Togo: Pas de commentaire
Rule 48 - Witnesses and Experts	
Rule 49 - Tribunal-Appointed Experts	Togo: Pas de commentaire
Rule 50 - Visits and Inquiries	
Chapter VIII - Special Procedures	
Rule 51 - Manifest Lack of Legal Merit	
Rule 52 - Bifurcation	Togo: Pas de commentaire
Rule 53 - Preliminary Objections	
Rule 54 - Bifurcation of Preliminary Objections	Togo: Pas de commentaire
Rule 55 - Consolidation or Coordination of Arbitrations	
Rule 56 - Provisional Measures	
Rule 57 - Ancillary Claims	
Rule 58 - Default	
Chapter IX - Costs	
Rule 59 - Costs of the Proceeding	
Rule 60 - Statement of and Submission on Costs	
Rule 61 - Decisions on Costs	Togo: Article 61 (2) La décision intérimaire sur les frais peut dissuader une partie faible de poursuivre l'arbitrage Costa Rica: In line with comments expressed in the last ICSID meeting, it is Costa Rica's view, that when a claim is dismissed due to manifest lack of legal merit, there should be a presumption that the Claimant has to bear the cost of the proceedings without prejudice to the possibility of considering special circumstances which justify a different allocation of costs
Rule 62 - Security for Costs	 Costa Rica: Costa Rica appreciates ICSID´s efforts to include third-party funding as evidence in deciding whether or not to order security for costs. However, we deem necessary to clarify that the existence of third-party funding by itself is not sufficient for the Tribunal to conclude that one or more of the circumstances in paragraph (3) exist, this is important for legal certainty.

Chapter X - Suspension, Settlement and Discontinuance	
Rule 63 - Suspension of the Proceeding	
Rule 64 - Settlement and Discontinuance	
Rule 65 - Discontinuance at Request of a Party	
Rule 66 - Discontinuance for Failure of Parties to Act	
Chapter XI - The Award	
Rule 67 - Applicable Law	
Rule 68 - Timing of the Award	Costa Rica: Costa Rica suggests clarifying the language in section a), as follows: **"Rule 68 Timing of the Award** (1) The Tribunal shall render the Award as soon as possible, and in any event no later than: (a) 60 days after the latest of either of the following: (i) the Tribunal constitution, (ii) the last written submission or (iii) the last oral submission, if the Award is rendered pursuant to Rule 51(4); (…)"
Rule 69 - Contents of the Award	Costa Rica: Costa Rica suggests including an additional requirement for the contents of the award. The suggested language would require for the Tribunal to include legal analysis, clearly linking the facts to the legal grounds. This would provide more certainty on the grounds on which the Tribunal is rendering its decision. **Rule 69** **Contents of the Award** (1) The Award shall be in writing and shall contain: (a) a precise designation of each party; (b) the names of the representatives of the parties; (c) a statement that the Tribunal was established pursuant to these Rules and a description of the method of its constitution; (d) the name of each member of the Tribunal and the appointing authority of each; (e) the dates and place(s) of the first session, case management conferences and hearings; (f) a brief summary of the proceeding; (g) a statement of the relevant facts as found by the Tribunal; (h) a brief summary of the submissions of the parties, including the relief sought; (i) the decision of the Tribunal on every question submitted to it, and the legal reasoning ~~reasons~~ on which the Award is based; and (j) a statement of the costs of the proceeding, including the fees and expenses of each member of the Tribunal, and a reasoned decision on the allocation of costs. (2) The Award shall be signed by the members of the Tribunal who voted for it. It may be signed by electronic means if the parties agree and if allowed by the law of the seat of arbitration. (3) Any member of the Tribunal may attach an individual opinion or a statement of dissent to the Award before the Award is rendered. (4) The Award shall be final and binding on the parties.

Rule 70 - Rendering of the Award	
Rule 71 - Supplementary Decision, Rectification and Interpretation of an Award	
Chapter XII - Publication, Access to Proceedings and Non-Disputing Party Submissions	
Rule 72 - Publication of Orders, Decisions and Awards	Togo: Le caractère confidentiel de l'arbitrage serait difficilement préservé Costa Rica: As previously mentioned, it is Costa Rica's view that the documents to be published should be the ones that provide value to external observers in terms of accountability, and not all documents of the process In Costa Rica's experience, it has been observed that some documents are merely procedural, and their publication could negatively affect the proceedings' good governance and may create greater confusion if taken out of context. Furthermore, they may create greater confusion and affect the reputation of individuals acting in the process if taken out of context.
Rule 73 - Publication of Documents Filed in the Proceeding	Togo: Le caractère confidentiel de l'arbitrage serait difficilement préservé Costa Rica: As previously mentioned, it is Costa Rica's view that the documents to be published should be the ones that provide value to external observers in terms of accountability, and not all documents of the process. In Costa Rica's experience, it has been observed that some documents are merely procedural, and their publication could negatively affect the proceedings' good governance and may create greater confusion if taken out of context. Furthermore, they may create greater confusion and affect the reputation of individuals acting in the process if taken out of context. Following the concept expressed above, an important part of good governance is also assuring legal certainty through the protection of some information, preventing the disclosure of sensitive personal data and guaranteeing the safety and integrity of individuals. For example, in the case of experts and witnesses. Furthermore, although redaction is a possibility when this is considered as confidential information such course of action might result in an excessive burden on the parties. Costa Rica suggests the following wording: **Rule 73** **Publication of Documents Filed in the Proceeding** (1) Upon request of either party, the Centre shall publish the following documents generated in proceedings: request for arbitration, memorial, counter-memorial, reply, rejoinder, requests on interpretation, revision and annulment ~~any document filed in the proceeding, with any redactions agreed to by the parties and jointly notified to theSecretary-General.~~ (2) Either party may refer any dispute regarding the publication or redaction of a document in paragraph (1) to the Tribunal for determination. The Centre shall publish the document in accordance with the determination of the Tribunal. (3) (3) In determining disputes pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information.
Rule 74 - Observation of Hearings	Togo: Le caractère confidentiel de l'arbitrage serait difficilement préservé
Rule 75 - Confidential or Protected Information	 Costa Rica: For legal certainty, Costa Rica considers that the reference to "protected from disclosure pursuant to the applicable law" in Rule 75(b) should be further specified to include the domestic legislation of the repondent state.

Rule 76 - Submission of Non-Disputing Parties	Togo: Supprimer la possibilité pour l'amicus curiae d'avoir accès aux documents déposés dans le cadre de l'instance. Il y a dans cette formalisation de la participation de l'amicus curiae à l'arbitrage un risque de déséquilibre du procès
Rule 77 - Participation of Non-Disputing Treaty Party	Togo: Cette partie doit être indépendante et impartiale Costa Rica: Costa Rica favours the proposal of a separate rule for non-disputing Treaty Parties because they may provide useful insight as to the context, object and purpose intended by the parties when they subscribed the treaty. Costa Rica has had a positive experience with this figure as a tool to assist tribunals with interpretation of the international investment agreement, in both the written and oral phases of the proceeding. For this reason, it is Costa Rica's position that the non- disputing Treaty Party's participation should not be limited by specific conditions imposed by the Tribunal. Therefore, we suggest deleting paragraph two and to include the possibility to have oral participation.
Chapter XIII - Expedited Arbitration	
Rule 78 - Consent of Parties to Expedited Arbitration	Costa Rica: We appreciate ICSID's efforts to provide an alternative to reduce costs and times of the process under certain circumstances. An important feature that we would like to highlight from these Rules is the fact that expedited procedure requires consent from both disputing parties because this guarantees an adequate opportunity of defense, even within a shorter proceeding.
Rule 79 - Number of Arbitrators and Method of Constituting the Tribunal for Expedited Arbitration	
Rule 80 - Appointment of Sole Arbitrator for Expedited Arbitration	
Rule 81 - Appointment of Three-Member Tribunal for Expedited Arbitration	
Rule 82 - Acceptance of Appointment in Expedited Arbitration	
Rule 83 - First Session in Expedited Arbitration	
Rule 84 - Procedural Schedule in Expedited Arbitration	
Rule 85 - Default in Expedited Arbitration	
Rule 86 - Procedural Schedule for Supplementary Decision, Rectification and Interpretation in Expedited Arbitration	
Rule 87 - Opting Out of Expedited Arbitration	

VIII. (ADDITIONAL FACILITY) CONCILIATION RULES	COMMENT ON PROVISION
Introductory Note	
Chapter I - Scope	Togo: Pas de commentaire
Rule 1 - Application of Rules	
Chapter II - Institution of the Proceedings	
Rule 2 - The Request	
Rule 3 - Contents of the Request	
Rule 4 - Recommended Additional Information	
Rule 5 - Filing of the Request and Supporting Documents	
Rule 6 - Receipt of the Request and Routing of Written Communications	
Rule 7 - Review and Registration of the Request	
Rule 8 - Notice of Registration	
Rule 9 - Withdrawal of the Request	
Chapter III - General Provisions	
Rule 10 - Party and Party Representative	
Rule 11 - Method of Filing	
Rule 12 - Supporting Documents	
Rule 13 - Routing of Document	
Rule 14 - Procedural Languages, Translation and Interpretation	
Rule 15 - Calculation of Time Limits	Togo: Pas de commentaire
Rule 16 - Costs of the Proceeding	
Rule 17 - Confidentiality of the Conciliation	Togo: Pas de commentaire
Rule 18 - Use of Information in Other Proceedings	

Chapter IV - Constitution of the Commission	
Rule 19 - General Provisions, Number of Conciliators and Method of Constitution	
Rule 20 - Qualifications of Conciliators	
Rule 21 - Notice of Third-Party Funding	Costa Rica: Costa Rica appreciates ICSID´s efforts to strengthen transparency in arbitration through the disclosure of third-party funding (TPF). However, after the last two meetings it has become evident to Costa Rica that this provision merits further examination beyond the effects in the constitution of the Tribunal and the potential conflict of interest. While Costa Rica is flexible with regard to the language and is able to withdraw its previous proposal, it hereby proposes three modifications to reflect the fundamental conditions that, in its view, this article must contain. These are: granting powers to the Tribunal to request further information on third-party funding once the party has disclosed that it has a funder; the need for this information to include corporate structure and the powers to consider such information when deciding on security for cost and on cost. The rationale behind this is that, in Costa Rica's view this discussion should necessarily consider the following objectives: support a request for security for costs, refrain from becoming an obstacle to reach amicable solutions or submitting counterclaims, and foster transparency in general. Thus, Costa Rica suggests to include the proposed language of Rul 14 of the Arbitration Rules.
Rule 22 - Assistance of the Secretary-General with Appointment	
Rule 23 - Appointment of Conciliators by the Secretary-General	
Rule 24 - Acceptance of Appointment	Costa Rica: As already suggested, Costa Rica considers that this provision should mention a possible Code of Conduct that should be attached to the Conciliator Declaration in Schedule 2.
Rule 25 - Replacement of Conciliators Prior to Constitution of the Commission	
Rule 26 - Constitution of the Commission	
Chapter V - Disqualification of Conciliators and Vacancies	
Rule 27 - Proposal for Disqualification of Conciliators	Costa Rica: Costa Rica appreciates ICSID´s efforts of increasing the time limit to file a proposal for disqualification. However, Costa Rica shares the view expressed by several members during November session, regarding the seven-day period indicated in paragraph (2)(e). A seven-day period to respond to the arbitrator´s statement is too short. Due to the nature of the disqualification, States may require internal consultations and request legal opinions from external counsel before drafting an official position.
Rule 28 - Decision on the Proposal for Disqualification	
Rule 29 - Incapacity or Failure to Perform Duties	
Rule 30 - Resignation	
Rule 31 - Vacancy on the Commission	

Chapter VI - Conduct of the Conciliation	
Rule 32 - Functions of the Commission	
Rule 33 - General Duties of the Commission	
Rule 34 - Orders, Decisions and Agreements	
Rule 35 - Quorum	
Rule 36 - Deliberations	
Rule 37 - Cooperation of the Parties	
Rule 38 - Written Statements	
Rule 39 - First Session	
Rule 40 - Meetings	
Rule 41 - Preliminary Objections	
Chapter VII - Termination of the Conciliation	
Rule 42 - Discontinuance Prior to the Constitution of the Commission	
Rule 43 - Report Noting the Parties' Agreement	
Rule 44 - Report Noting the Failure of the Parties to Reach Agreement	
Rule 45 - Report Recording the Failure of a Party to Appear or Participate	
Rule 46 - The Report	
Rule 47 - Issuance of the Report	

IX. ICSID FACT-FINDING RULES	COMMENT ON PROVISION
Introductory Note	
Chapter I - General Provisions	
Rule 1 - Definitions	Togo: Pas de commentaire
Rule 2 - Fact-Finding Proceedings	
Rule 3 - Application of Rules	Togo: Pas de commentaire
Chapter II - Institution of the Fact-Finding Proceeding	
Rule 4 - The Request	
Rule 5 - Contents and Filing of the Request	Togo: Pas de commentaire
Rule 6 - Receipt and Registration of the Request	
Chapter III - The Fact-Finding Committee	
Rule 7 - Qualifications of Members of the Committee	
Rule 8 - Number of Members and Method of Constituting the Committee	
Rule 9 - Acceptance of Appointment	
Rule 10 - Constitution of the Committee	
Chapter IV - Conduct of the Fact-Finding Proceeding	
Rule 11 - Sessions and Work of the Committee	
Rule 12 - General Duties	
Rule 13 - Calculation of Time Limits	
Rule 14 - Costs of the Proceeding	
Rule 15 - Confidentiality of the Proceeding	Togo: Pas de commentaire
Rule 16 - Use of Information in Other Proceedings	

Chapter V - Termination of the Fact-Finding Proceeding	
Rule 17 - Manner of Terminating the Proceeding	Togo: Pas de commentaire
Rule 18 - Failure of a Party to Participate or Cooperate	
Rule 19 - Report of the Committee	Armenia: As a general matter, Armenia would welcome clarification concerning the use of fact-finding reports, particularly binding ones, in a subsequent arbitration process. In particular, whether such binding reports would bind the parties and the Tribunal as to factual issues addressed therein.
Rule 20 - Issuance of the Report	

X. (FACT-FINDING) ADMINISTRATIVE AND FINANCIAL REGULATIONS	COMMENT ON PROVISION
Introductory Note	
Chapter I - General Provisions	
Regulation 1 - Application of these Regulations	
Chapter II - General Functions of the Secretariat	
Regulation 2 - Secretary	
Regulation 3 - The Registers	
Regulation 4 - Depositary Functions	
Regulation 5 - Certificates of Official Travel	
Chapter III - Financial Provisions	
Regulation 6 - Fees, Allowances and Charges	
Regulation 7 - Payments to the Centre	
Regulation 8 - Consequences of Default in Payment	
Regulation 9 - Special Services	
Regulation 10 - Fee for Lodging Requests	
Regulation 11 - Administration of Proceedings	
Chapter IV - Official Languages and Limitation of Liability	
Regulation 12 - Languages of Regulations	
Regulation 13 - Prohibition Against Testimony and Limitation of Liability	

XI. RULES FOR MEDIATION PROCEEDINGS	COMMENT ON PROVISION
Introductory Note	
Chapter I - General Provisions	
Rule 1 - Definitions	Togo: Pas de commentaire
Rule 2 - Mediation Proceedings	Togo: Pas de commentaire
Rule 3 - Application of Rules	Togo: Pas de commentaire
Chapter II - Institution of the Mediation	
Rule 4 - Institution of Mediation Based on Prior Party Agreement	
Rule 5 - Institution of Mediation Absent a Prior Party Agreement	Chile: Chile apoya la decisión del Centro de proponer Reglas de Mediación y esperamos que éstas resulten en un método efectivo para resolver disputas. Sin embargo, en la medida que se buscan mecanismos que saquen a las partes de una lógica de litigio y más cerca al área de consenso, creemos que el Centro sólo debería administrar procedimientos de mediación en los cuales ambas partes ya se hayan puesto de acuerdo sobre la idoneidad de la mediación para la disputa en cuestión. Esto se hace aún más necesario puesto que son pocos los tratados que actualmente contienen una referencia a mediación, y dado que las reglas están actualmente fuera del Convenio del CIADI, no es claro cómo se va a definir si el "procedimiento de mediación [es] relativo a una inversión", conforme con la Regla 2. Consideramos que eliminar esta regla es necesario para evitar: (a) utilizar los recursos de la parte solicitante y del Centro cuando no hay acuerdo entre las partes para transmitir y notificar de la solicitud, asignar personal, abrir una cuenta financiera…etc., cuando el efecto será igual en caso de que la mediación no prospere; y (b) que el Estado se vea obligado a utilizar recursos para responder a una solicitud ante el CIADI, un organismo internacional, puesto que esto requiere del despliegue de una serie de mecanismos internos de coordinación y autorización, sin contar con el tener que establecer una estrategia ante la prensa debido a la solicitud. Esto significa un gasto de recursos para el Estado, sin que se realice previamente la determinación de que el Estado tiene la intención de mediar esa disputa en particular. Por lo tanto, solicitamos eliminar la Regla 5 y fortalecer en cambio el mecanismo contenido en la Regla 4, que permite la iniciación de la mediación por acuerdo previo **de ambas partes**.
Rule 6 - Registration of the Request	
Chapter III - General Procedural Provisions	
Rule 7 - Calculations of Time Limits	Togo: Pas de commentaire
Rule 8 - Costs of the Mediation	Georgia: **Issue of third party funding (TPF)** Georgia proposes to introduce in the Mediation Rules a requirement to disclose third party funding in the process of mediation. TPF Agreements may contain arrangements that could make the entire mediation or any attempt to settle the case futile; for example, TPF Agreements main prohibit funded party to settle the matter, might grant funding party certain authority over the decision to settle or might provide for the funder's financial interest in the outcome of the settlement. Such arrangements could ultimately effect the possibility to settle the matter in mediation and if known to the other party well in advance might have saved the latter the time and cost incurred in the process of mediation. In the view of the above, Georgia proposes to include disclosure obligation in the Mediation Rules; such disclosure should not be limited to disclosing merely the fact of funding but should extend to any arrangements made by the parties to the TPF Agreement with respect to the settlement of dispute.

Rule 9 - Confidentiality of the Mediation	Togo: Pas de commentaire
Rule 10 - Use of Information in Other Proceedings	
Chapter IV - The Mediator	
Rule 11 - Qualifications of the Mediator	Turkey: Turkey considers that Rule 12(1) stipulates for one or two co-mediators, whereas Rule 12(2) does not state the appointment of co-mediators unless the parties agree on the number of mediators. We suggest to include co-mediators in the system. Instead of conducting the mediation process by one mediator, empanelling two mediators—an expert in the process and an expert in substantive issues—might be an optimal solution. Accordingly, -while mediating- the former could ensure the fair process and techniques to encourage effective discussion between the parties, whereas the latter could understand and evaluate with a better insight into the substantive issues of the investment dispute. It is very difficult for the parties to agree on any terms of the dispute and its procedure, including the number of mediators. Therefore, we support the view that ICSID should have the authority to appoint co mediators where it is more appropriate or needed, especially where the dispute is complex in nature.
Rule 12 - Number of Mediators and Method of Appointment	
Rule 13 - Acceptance of Appointment	
Rule 14 - Transmittal of the Request	
Rule 15 - Resignation and Replacement of Mediator	
Chapter V - Conduct of the Mediation	
Rule 16 - Role and Duties of the Mediator	
Rule 17 - Duties of the Parties	
Rule 18 - Initial Written Statements	
Rule 19 - First Session	
Rule 20 - Conduct of the Mediation	Turkey: Turkey considers that Rule 20(5) precludes mediator recommendations for settlement terms unless all parties request the mediator to do so. We suggest that the mediator should be granted the opportunity to propose a settlement agreement to the parties at the last stage of the mediation proceeding—especially it is useful where there is an impasse or stuck point in the bargaining, and each party should be given the option of accepting or rejecting it. Finally, Turkey supports an active mediator, especially when there is a deadlock and as the last resort.
Rule 21 - Termination of the Mediation	Togo: Le retrait d’une partie doit mettre fin à la médiation même si les autres conviennent de poursuivre la médiation

XII. (MEDIATION) ADMINISTRATIVE AND FINANCIAL REGULATIONS)	COMMENT ON PROVISION
Introductory Note	
Chapter I - General Provisions	
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Regulation 6 - Fees, Allowances and Charges	
Regulation 7 - Payments to the Centre	
Regulation 8 - Consequences of Default in Payment	
Regulation 9 - Special Services	
Regulation 10 - Fee for Lodging Requests	
Regulation 11 - Administration of Proceedings	
Chapter IV - Official Languages and Limitation of Liability	
Regulation 12 - Languages of Regulations	
Regulation 13 - Prohibition Against Testimony and Limitation of Liability	