



ICSID

**International Centre for
Settlement of Investment Disputes**
WORLD BANK GROUP

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PROPOSALS FOR AMENDMENT OF THE ICSID RULES



ICSID

**International Centre for
Settlement of Investment Disputes**
WORLD BANK GROUP

International Centre for Settlement of Investment Disputes

ICSID was established in 1966 by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention). The ICSID Convention is a multilateral treaty formulated by the Executive Directors of the World Bank to further the Bank's objective of promoting international investment.

ICSID is an independent, depoliticized and effective dispute-settlement institution. Its availability to investors and States helps to promote international investment by providing confidence in the dispute resolution process. It is also available for State-State disputes under investment treaties and free trade agreements, and as an administrative registry.

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ABBREVIATIONS

(AF)AFR	(Additional Facility) Administrative and Financial Regulations
(AF)AR currently A(AF)R	(Additional Facility) Arbitration Rules
(AF)CR currently C(AF)R	(Additional Facility) Conciliation Rules
AF Rules	Additional Facility Rules
AFR	Administrative and Financial Regulations
AR	Arbitration Rules – ICSID Convention
CR	Conciliation Rules – ICSID Convention
FFR currently FF(AF)R	ICSID Fact-Finding Rules
(FFR)AFR	(Fact-Finding) Administrative and Financial Regulations
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States
IR	Institution Rules – ICSID Convention
ISDS	Investor-State Dispute Settlement
Member States	Contracting States of ICSID Convention (ICSID 3)
MR	ICSID Mediation Rules
(MR)AFR	(Mediation) Administrative and Financial Regulations
NDP	Non-disputing Party
NDTP	Non-disputing Treaty Party
REIO	Regional Economic Integration Organization
TPF	Third-Party Funding
WP # 1	ICSID Working Paper on Amendment (August 2018)
WP # 2	ICSID Updated Working Paper on Amendment (March 2019)
WP # 3	ICSID Updated Working Paper on Amendment (August 2019)

INTRODUCTION TO WORKING PAPER #3 – August 16, 2019

1. ICSID is proposing a comprehensive amendment of the rules governing arbitration and conciliation under the ICSID Convention and ICSID Additional Facility, as well as new stand-alone rules for fact-finding and mediation in investment disputes.
2. This amendment process began in October 2016 with an initial survey of stakeholders on topics to be addressed in the amended rules. ICSID has subsequently published a survey on recovery of costs, released two working papers with draft proposals for amendment, and issued compilations of comments received on each of the [working papers](#). In addition, ICSID has held two extensive in-person consultations with States and has made more than 75 presentations to individuals, stakeholder groups, counsel, arbitrators and government officials.
3. Working Paper #3 (WP #3) contains the latest iteration of the proposed amended rules based on [comments received by August 15, 2019](#). It is available in the three official languages of ICSID: English (Volume 1), French (Volume 2), and Spanish (Volume 3).
4. Volume 1 of WP #3 contains the proposed English text in “clean copy” format of each rule in a green box, followed by the text in “track change” format and an explanation of changes made. Volume 2 contains the proposed rules in French in a pink box with text in “clean copy” and in “track change” format. Similarly, Volume 3 contains the proposed rules in Spanish in a blue box with text also in “clean copy” and “track change” format.
5. The explanation of changes found in Volume 1 of WP #3 addresses substantive points only. Minor changes made to streamline the text or for grammatical purposes are not expressly addressed in the explanations but are shown in the “track change” versions. In addition, the French and Spanish versions incorporate comments made with respect to translation; these changes are also not explained individually but are evident in the “track change” versions.
6. As should be expected, there are significantly fewer changes in WP #3 than in the prior working papers, reflecting developing consensus on the amendments through the consultation process. The text in WP #3 offers a modern, sophisticated and balanced set of investment dispute settlement rules that will ensure both due process and an effective process.
7. ICSID will hold the next in-person consultation with Member States on WP #3 from November 11-15, 2019. Our goal is for the November consultation to be the final, or at least penultimate, consultation before the amended rules are placed before the Administrative Council for a vote.

Meg Kinnear,
ICSID Secretary-General



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**I. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR ICSID CONVENTION
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I. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR ICSID CONVENTION PROCEEDINGS (ADMINISTRATIVE AND FINANCIAL REGULATIONS)

Introductory Note

The Administrative and Financial Regulations for ICSID Convention Proceedings (Administrative and Financial Regulations) were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(a) of the ICSID Convention.

These Regulations concern the functioning of ICSID as an international institution. They also contain provisions that apply generally in proceedings and are complementary to the Convention and the Institution, Conciliation and Arbitration Rules, adopted pursuant to Article 6(1)(b) and (c) of the Convention.

Chapter I Procedures of the Administrative Council

Regulation 1 Date and Place of the Annual Meeting

The Annual Meeting of the Administrative Council shall take place in conjunction with the Annual Meeting of the Board of Governors of the International Bank for Reconstruction and Development (“Bank”), unless the Council specifies otherwise.

Regulation 2 Notice of Meetings

- (1) The Secretary-General shall give each member notice of the time and place of meetings of the Administrative Council by any rapid means of communication. This notice shall be dispatched not less than 42 days prior to the date set for such meeting, except that in urgent cases notice shall be sufficient if dispatched not less than 10 days prior to the date of the meeting.
- (2) Any meeting of the Administrative Council at which no quorum is present may be adjourned by a majority of the members present and notice of the adjourned meeting need not be given.

Regulation 3 Agenda for Meetings

- (1) The Secretary-General shall prepare an agenda for each meeting of the Administrative Council under the direction of the Chairman of the Administrative Council (“Chair”) and shall transmit the agenda to each member with notice of the meeting.
- (2) Additional subjects may be placed on the agenda by any member by giving notice thereof to the Secretary-General not less than 7 days prior to the date set for such meeting.
- (3) In special circumstances the Chair, or the Secretary-General after consulting with the Chair, may at any time place additional subjects on the agenda for a meeting of the Administrative Council.
- (4) The Secretary-General shall promptly give each member notice of additional subjects on the agenda.
- (5) The Administrative Council may authorize any subject to be placed on the agenda at any time even though the notice required by this Regulation has not been given.

Regulation 4 Presiding Officer

- (1) The Chair shall be the Presiding Officer at meetings of the Administrative Council.
- (2) The Chair shall designate a Vice-President of the Bank to preside over all or any part of a meeting if the Chair is unable to preside.

Regulation 5 Secretary of the Council

- (1) The Secretary-General shall serve as Secretary of the Administrative Council.
- (2) Except as otherwise directed by the Administrative Council, the Secretary-General, in consultation with the Chair, shall make all arrangements for meetings of the Council and may coordinate with appropriate officers of the Bank for this purpose.
- (3) The Secretary-General shall present the annual report on the operation of the Centre to each Annual Meeting of the Administrative Council for its approval pursuant to

Article 6(1)(g) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“Convention”).

- (4) The Secretary-General shall publish the annual report and a summary record of the proceedings of the Administrative Council.

Regulation 6 Attendance at Meetings

- (1) The Secretary-General and the Deputy Secretaries-General may attend all meetings of the Administrative Council.
- (2) The Secretary-General, in consultation with the Chair, may invite observers to attend any meeting of the Administrative Council.

Regulation 7 Voting

- (1) Except as otherwise provided in the Convention, all decisions of the Administrative Council shall be taken by a majority of the votes cast. The Presiding Officer may ascertain the sense of the meeting in lieu of a formal vote but shall require a formal vote upon the request of any member. The written text of the motion shall be distributed to the members if a formal vote is required.
- (2) No member of the Administrative Council may vote by proxy or by any method other than in person, but a member may designate a temporary alternate to vote at any meeting at which the regular alternate is not present.
- (3) Between Annual Meetings, the Chair may call a special meeting or request that the Administrative Council vote by correspondence on a motion. The Secretary-General shall transmit the request for a vote by correspondence to each member with the text of the motion to be voted upon. Votes shall be cast within 45 days after such transmission, unless a longer period is approved by the Chair. Upon expiry of the established period, the Secretary-General shall record the results and notify all members of the outcome. The motion shall be considered lost if the replies received do not include those of a majority of the members.
- (4) If all Contracting States are not represented at a meeting of the Administrative Council and the votes necessary to adopt a proposed decision by a majority of two-thirds of the members of the Council are not obtained, the Council, with the concurrence of the Chair, may decide that the votes of those members of the Council represented at the meeting shall be registered and the votes of the absent members

shall be solicited in accordance with paragraph (3). Votes registered at the meeting may be changed by the member before the expiry of the voting period established pursuant to paragraph (3).

Chapter II The Secretariat

Regulation 8 Election of the Secretary-General and Deputy Secretaries-General

In proposing to the Administrative Council one or more candidates for the office of Secretary-General or Deputy Secretary-General, the Chair shall also make proposals with respect to their term and conditions of employment.

Regulation 9 Acting Secretary-General

- (1) If there is more than one Deputy Secretary-General, the Chair may propose to the Administrative Council the order in which the Deputies shall act as Secretary-General pursuant to Article 10(3) of the Convention. In the absence of such a decision by the Administrative Council, the Secretary-General shall determine the order in which the Deputies shall act as Secretary-General.
- (2) The Secretary-General shall designate the member of the staff of the Centre who shall act as Secretary-General during the absence or inability to act of the Secretary-General and the Deputy Secretaries-General. If there should be a simultaneous vacancy in the offices of Secretary-General and Deputy Secretary-General, the Chair shall designate the member of the staff who shall act as the Secretary-General.

Regulation 10 Appointment of Staff Members

The Secretary-General shall appoint the staff of the Centre. Appointments may be made directly or by secondment.

**Regulation 11
Conditions of Employment**

- (1) The conditions of employment of the staff of the Centre shall be the same as those of the staff of the Bank.
- (2) The Secretary-General shall make arrangements with the Bank, within the framework of the general administrative arrangements approved by the Administrative Council pursuant to Article 6(1)(d) of the Convention, for the participation of members of the Secretariat in the Staff Retirement Plan of the Bank and in other facilities and contractual arrangements established for the benefit of the staff of the Bank.

**Regulation 12
Authority of the Secretary-General**

- (1) Deputy Secretaries-General and the staff of the Centre shall act solely under the direction of the Secretary-General.
- (2) The Secretary-General shall have authority to dismiss members of the Secretariat and to impose disciplinary measures. Deputy Secretaries-General may only be dismissed with the concurrence of the Administrative Council.

**Regulation 13
Incompatibility of Functions**

The Secretary-General, the Deputy Secretaries-General and the staff of the Centre may not serve on the Panels of Conciliators or of Arbitrators, or as members of any Commission, Tribunal or Committee.

Chapter III Financial Provisions

Regulation 14 Fees, Allowances and Charges

- (1) Each member of a Commission, Tribunal or Committee shall receive:
 - (a) a fee for each hour of work performed in connection with the proceeding;
 - (b) when not travelling to attend a hearing, meeting or session, reimbursement of expenses reasonably incurred for the sole purpose of the proceeding; and
 - (c) when required to travel to attend a hearing, meeting or session held away from the member's place of residence:
 - (i) reimbursement of the cost of ground transportation between the points of departure and arrival;
 - (ii) reimbursement of the cost of air and ground transportation to and from the city in which the hearing, meeting or session is held; and
 - (iii) a *per diem* allowance for each day the member spends away from their place of residence.
- (2) The Secretary-General, with the approval of the Chair, shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and (c). Any request by a member for a higher amount shall be made through the Secretary-General, and not directly to the parties. Such a request must be made before the constitution of the Commission, Tribunal or Committee and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish an annual administrative charge payable by the parties to the Centre.
- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
 - (a) members of Commissions, Tribunals and Committees, and any assistants approved by the parties;
 - (b) witnesses and experts called by a Commission, Tribunal or Committee who have not been presented by a party;
 - (c) service providers that the Centre engages for a proceeding; and
 - (d) the host of any hearing, meeting or session held outside an ICSID facility.

- (5) The Centre shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or reimbursements of the members of any Commission, Tribunal or Committee, unless the parties have made sufficient payments to defray the costs of the proceeding.

Regulation 15 Payments to the Centre

- (1) To enable the Centre to pay the costs referred to in Regulation 14, the parties shall make payments to the Centre as follows:
- (a) upon registration of a Request for arbitration or conciliation, the Secretary-General shall request the claimant(s) to make a payment to defray the estimated costs of the proceeding through the first session of the Commission or Tribunal, which shall be considered partial payment by the claimant(s) of the payment referred to in paragraph (1)(b);
 - (b) upon constitution of a Commission, Tribunal or Committee, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the proceeding; and
 - (c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the proceeding.
- (2) In conciliation proceedings, each party shall pay one half of the payments referred to in paragraph (1)(b) and (c). In arbitration proceedings, each party shall pay one half of the payments referred to in paragraph (1)(b) and (c), unless a different division is agreed to by the parties or ordered by the Tribunal. Payment of these sums is without prejudice to the Tribunal's final decision on costs pursuant to Article 61(2) of the Convention.
- (3) The Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.
- (4) This Regulation shall apply to requests for a supplementary decision on or rectification of an Award, an application for interpretation or revision of an Award, and a request for resubmission of the dispute.
- (5) This Regulation shall apply to an application for annulment of an Award, except that the applicant shall be solely responsible for making the payments requested by the Secretary-General.

**Regulation 16
Consequences of Default in Payment**

- (1) The payments referred to in Regulation 15 shall be payable on the date of the request from the Secretary-General.
- (2) The following procedure shall apply in the event of non-payment:
 - (a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;
 - (b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the proceeding until payment is made, after giving notice to the parties and to the Commission, Tribunal or Committee if constituted; and
 - (c) if any proceeding is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the proceeding, after giving notice to the parties and to the Commission, Tribunal or Committee if constituted.

**Regulation 17
Special Services**

- (1) The Centre may perform any special services related to disputes if the requestor deposits in advance an amount sufficient to defray the charge for such services.
- (2) Charges for special services shall normally be based on a schedule of fees published by the Secretary-General.

**Regulation 18
Fee for Lodging Requests**

The party or parties (if a request is filed jointly) wishing to institute an arbitration or conciliation proceeding, or requesting a supplementary decision, rectification, interpretation, revision or annulment of an Award, or resubmission of a dispute, shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 19

The Budget

- (1) The fiscal year of the Centre shall run from July 1 of each year to June 30 of the following year.
- (2) Before the end of each fiscal year, the Secretary-General shall prepare a budget indicating expected expenditures of the Centre (excepting those to be incurred on a reimbursable basis) and expected revenues (excepting reimbursements) for the following fiscal year. The budget shall be submitted for adoption by the Administrative Council at its next Annual Meeting in accordance with Article 6(1)(f) of the Convention.
- (3) If the Secretary-General determines during the fiscal year that the expected expenditures will exceed those authorized in the budget, or wishes to incur expenditures not previously authorized, the Secretary-General shall prepare a supplementary budget in consultation with the Chair and submit it to the Administrative Council for adoption, in accordance with Regulation 7.
- (4) The adoption of a budget constitutes authority for the Secretary-General to make expenditures and incur obligations for the purposes and within the limits specified in the budget. Unless otherwise provided by the Administrative Council, the Secretary-General may exceed the amount specified for any given budget item, provided that the total amount of the budget is not exceeded.
- (5) Pending the adoption of the budget by the Administrative Council, the Secretary-General may incur expenditures for the purposes and within the limits specified in the budget submitted, up to one quarter of the amount authorized to be expended in the previous fiscal year but in no event exceeding the amount that the Bank has agreed to make available for the current fiscal year.

Regulation 20

Assessment of Contributions

- (1) Any excess of expected expenditures over expected revenues shall be assessed on the Contracting States. Each State that is not a member of the Bank shall be assessed a fraction of the total assessment equal to the fraction of the budget of the International Court of Justice that it would have to bear if that budget were divided only among the Contracting States in proportion to the then current scale of contributions applicable to the budget of the Court; the balance of the total assessment shall be divided among the Contracting States that are members of the Bank in proportion to their respective subscription to the capital stock of the Bank. The assessments shall be calculated by the Secretary-General immediately after the

adoption of the annual budget, on the basis of the then current membership of the Centre, and shall be promptly communicated to all Contracting States. The assessments shall be payable as soon as they are communicated.

- (2) On the adoption of a supplementary budget, the Secretary-General shall immediately calculate supplementary assessments, which shall be payable as soon as they are communicated to the Contracting States.
- (3) A State which is party to the Convention during any part of a fiscal year shall be assessed for the entire fiscal year. If a State becomes a party to the Convention after the assessments for a given fiscal year have been calculated, its assessment shall be calculated by the application of the same appropriate factor as was applied in calculating the original assessments, and no recalculation of the assessments of the other Contracting States shall be made.
- (4) If, after the close of a fiscal year, it is determined that there is a cash surplus, such surplus shall, unless the Administrative Council decides otherwise, be credited to the Contracting States in proportion to the assessed contributions they had paid for that fiscal year. These credits shall be made with respect to the assessments for the fiscal year commencing two years after the end of the fiscal year to which the surplus pertains.

Regulation 21 Audits

The Secretary-General shall have an audit of the accounts of the Centre made once each year and on the basis of this audit submit a financial statement to the Administrative Council for consideration at the Annual Meeting.

Regulation 22 Administration of Proceedings

The ICSID Secretariat is the only entity authorized to administer proceedings conducted under the Convention.

Chapter IV General Functions of the Secretariat

Regulation 23 List of Contracting States

The Secretary-General shall maintain and publish a list of the Contracting States (including former Contracting States, showing the date on which their notice of denunciation was received by the depositary), indicating for each:

- (a) the date on which the Convention entered into force with respect to it;
- (b) any territories excluded pursuant to Article 70 of the Convention and the dates on which the notice of exclusion and any modification of such notice were received by the depositary;
- (c) any designation pursuant to Article 25(1) of the Convention of constituent subdivisions or agencies to whose investment disputes the jurisdiction of the Centre extends;
- (d) any notification pursuant to Article 25(3) of the Convention that no approval by the State is required for the consent by a constituent subdivision or agency to the jurisdiction of the Centre;
- (e) any notification pursuant to Article 25(4) of the Convention of the class or classes of disputes which the State would or would not consider submitting to the jurisdiction of the Centre;
- (f) the competent court or other authority for the recognition and enforcement of arbitral awards, designated pursuant to Article 54(2) of the Convention;
- (g) any legislative or other measures taken pursuant to Article 69 of the Convention for making the provisions of the Convention effective in the territories of the State and communicated by the State to the Centre; and
- (h) the name, address and contact details of the authority in each State to which documents should be notified, as reported by the State.

Regulation 24

Panels of Conciliators and of Arbitrators

- (1) The Secretary-General shall invite each Contracting State to make its designations to the Panels of Conciliators and of Arbitrators if a designation has not been made or the period of a designation has expired.
- (2) Each designation made by a Contracting State or by the Chair shall indicate the designee's name, contact information, nationality and qualifications, with particular reference to competence in the fields of law, commerce, industry or finance.
- (3) The Secretary-General shall immediately inform a designee of their designation, the designating authority, and the end of the designation period, and shall request confirmation that the designee is willing to serve.
- (4) The Secretary-General shall maintain and publish lists naming the members of the Panels of Conciliators and of Arbitrators, indicating the contact information, nationality, end of the designation period, designating authority and qualifications of each member.

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
- (b) documents generated in proceedings, in accordance with the rules applicable to the individual proceeding.

Regulation 26

The Registers

The Secretary-General shall maintain and publish a Register for each case containing all significant data concerning the institution, conduct and disposition of the proceeding, including the economic sector involved, the names of the parties and their representatives, and the method of constitution and membership of each Commission, Tribunal and Committee.

Regulation 27
Communications with Contracting States

- (1) Unless a specific channel of communication is notified by the State concerned, all communications required by the Convention or these Regulations to be sent to Contracting States shall be addressed to the State's representative on the Administrative Council and sent by rapid means of communication.
- (2) The time limits referred to in Articles 65 and 66 of the Convention and Regulations 2, 3 and 7 shall be calculated from the date on which the Secretary-General transmits or receives the relevant document. The date of transmittal or receipt shall be excluded from the calculation.

Regulation 28
Secretary

The Secretary-General shall appoint a Secretary for each Commission, Tribunal and Committee. The Secretary may be drawn from the Secretariat and shall be considered a member of its staff while serving as a Secretary. The Secretary shall:

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the Rules applicable to individual proceedings or assigned to the Secretary-General by the Convention, and delegated to the Secretary; and
- (b) assist the parties and the Commission, Tribunal or Committee with all aspects of the proceeding, including the expeditious and cost-effective conduct of the proceeding.

Regulation 29
Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
 - (a) all requests for arbitration, conciliation, supplementary decision, rectification, interpretation, revision or applications for annulment;
 - (b) all written submissions, written statements, observations, supporting documents and communications filed in a proceeding;

(c) the minutes, recordings and transcripts of hearings, meetings or sessions in a proceeding; and

(d) any order, decision, Report or Award by a Commission, Tribunal or Committee.

(2) Subject to the applicable rules and the agreement of the parties to the proceedings, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c) and (d) available to the parties. Certified copies of the documents referred to in paragraph (1)(d) shall reflect any supplementary decision, rectification, interpretation, revision or annulment and any stay of enforcement in effect.

Chapter V Immunities and Privileges

Regulation 30 Certificates of Official Travel

The Secretary-General may issue certificates of official travel to members of Commissions, Tribunals or Committees, to persons assisting them, to members of the Secretariat, and to the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in proceedings, indicating that they are traveling in connection with a proceeding under the Convention.

Regulation 31 Waiver of Immunities

(1) The Secretary-General may waive the immunity of:

- (a) the Centre; and
- (b) members of the Secretariat.

(2) The Chair may waive the immunity of:

- (a) the Secretary-General and any Deputy Secretary-General;
- (b) members of a Commission, Tribunal or Committee; and

(c) the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in a proceeding, if the Commission, Tribunal or Committee concerned recommends such waiver.

(3) The Administrative Council may waive the immunity of:

(a) the Chair and members of the Council;

(b) the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in a proceeding, even if no recommendation for such a waiver is made by the Commission, Tribunal or Committee concerned; and

(c) the Centre or any person referred to in paragraphs (1) or (2).

(4) A waiver under paragraph (1) or (2) shall be made in writing by the Secretary-General or Chair, as applicable. A waiver under paragraph (3) shall be made by a decision of the Administrative Council in accordance with Article 7(2) of the Convention.

Chapter VI Official Languages

Regulation 32 Languages of Regulations

(1) The official languages of the Centre are English, French and Spanish.

(2) The texts of these Regulations in each official language are equally authentic.

(3) The singular form of words in the Rules and Regulations made pursuant to the Convention include the plural form of that word, unless otherwise stated or required by the context of the provision.

**II. INSTITUTION RULES FOR ICSID CONVENTION PROCEEDINGS
(INSTITUTION RULES)**

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II. INSTITUTION RULES FOR ICSID CONVENTION PROCEEDINGS (INSTITUTION RULES)

Introductory Note

The Institution Rules for ICSID Convention Proceedings (Institution Rules) were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(b) of the ICSID Convention.

The Institution Rules apply from the filing of a Request for arbitration or conciliation under the ICSID Convention to the date of registration or refusal to register. If a Request is registered, the Arbitration or Conciliation Rules apply to the subsequent procedure. The Institution Rules do not apply to the initiation of post-Award remedy proceedings, or to proceedings pursuant to the Additional Facility, the ICSID Fact-Finding Rules and the ICSID Mediation Rules.

Rule 1 The Request

- (1) Any Contracting State or any national of a Contracting State wishing to institute proceedings under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“Convention”) shall file a Request for arbitration or conciliation together with the required supporting documents (“Request”) with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the dispute.

Rule 2 Contents of the Request

- (1) The Request shall:
 - (a) state whether it relates to an arbitration or conciliation proceeding;
 - (b) be in English, French or Spanish;
 - (c) identify each party to the dispute and provide their contact information, including electronic mail address, street address and telephone number;

- (d) be signed by each requesting party or its representative and be dated;
- (e) attach proof of any representative's authority to act; and
- (f) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request and attach the authorizations.

(2) With regard to the jurisdiction of the Centre, the Request shall include:

- (a) a description 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;
- (b) with respect to each party's consent to submit the dispute to arbitration or conciliation under the Convention:
 - (i) the instrument(s) in which each party's consent is recorded;
 - (ii) the date of entry into force of the instrument(s) on which consent is based, together with supporting documents demonstrating that date;
 - (iii) the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or, if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre; and
 - (iv) an indication that the requesting party has complied with any conditions in the instrument of consent for submission of the dispute;
- (c) if a party is a natural person:
 - (i) information concerning that person's nationality on both the date of consent and the date of the Request, together with supporting documents demonstrating such nationality; and
 - (ii) a statement that the person did not have the nationality of the Contracting State party to the dispute either on the date of consent or the date of the Request;
- (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; and

- (ii) 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;
- (e) if a party is a constituent subdivision or agency of a Contracting State:
- (i) the State's designation to the Centre pursuant to Article 25(1) of the Convention; and
 - (ii) supporting documents demonstrating the State's approval of consent pursuant to Article 25(3) of the Convention, unless the State has notified the Centre that no such approval is required.

Rule 3 Recommended Additional Information

It is recommended that the Request also contain any procedural proposals or agreements reached by the parties, including with respect to:

- (a) the number and method of appointment of arbitrators or conciliators; and
- (b) the procedural language(s).

Rule 4 Filing of the Request and Supporting Documents

- (1) The Request shall be filed electronically. The Secretary-General may require the Request to be filed in an alternative format if necessary.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Secretary-General may require a fuller extract or a complete version of the document.
- (3) The Secretary-General may require a certified copy of a supporting document.
- (4) Any document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or a complete translation of the document.

Rule 5
Receipt of the Request and Routing of Written Communications

The Secretary-General shall:

- (a) promptly acknowledge receipt of the Request to the requesting party;
- (b) transmit the Request to the other party upon receipt of the lodging fee; and
- (c) act as the official channel of written communications between the parties.

Rule 6
Review and Registration of the Request

- (1) Upon receipt of the Request and lodging fee, the Secretary-General shall review the Request pursuant to Article 28(3) or 36(3) of the Convention.
- (2) The Secretary-General shall promptly notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.

Rule 7
Notice of Registration

The notice of registration of the Request shall:

- (a) record that the Request is registered and indicate the date of registration;
- (b) confirm that all correspondence to the parties in connection with the proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Centre;
- (c) invite the parties to inform the Secretary-General of their agreement regarding the number and method of appointment of arbitrators or conciliators, unless such information has already been provided, and to constitute a Tribunal or Commission without delay;
- (d) remind the parties that registration of the Request is without prejudice to the powers and functions of the Tribunal or Commission in regard to jurisdiction of the Centre, competence of the Tribunal or Commission, and the merits; and

(e) remind the parties to make the disclosure required by Arbitration Rule 14 or Conciliation Rule 12.

Rule 8
Withdrawal of the Request

At any time before registration, a requesting party may notify the Secretary-General in writing of the withdrawal of the Request or, if there is more than one requesting party, that it is withdrawing from the Request. The Secretary-General shall promptly notify the parties of the withdrawal, unless the Request has not yet been transmitted pursuant to Rule 5(b).

Rule 9
Final Provisions

- (1) The English, French and Spanish texts of these Rules are equally authentic.
- (2) These Rules may be cited as the “Institution Rules” of the Centre.

**III. ARBITRATION RULES FOR ICSID CONVENTION PROCEEDINGS
(ARBITRATION RULES)**

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III. ARBITRATION RULES FOR ICSID CONVENTION PROCEEDINGS (ARBITRATION RULES)

Introductory Note

The Arbitration Rules for ICSID Convention Proceedings (Arbitration Rules) were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(c) of the ICSID Convention.

The Arbitration Rules are supplemented by the Administrative and Financial Regulations of the Centre.

The Arbitration Rules apply from the date of registration of a Request for arbitration until an Award is rendered and to any post-Award remedy proceedings.

Chapter I General Provisions

Rule 1 Application of Rules

- (1) These Rules shall apply to any arbitration proceeding conducted under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“Convention”) in accordance with Article 44 of the Convention.
- (2) The Tribunal shall apply any agreement of the parties on procedural matters to the extent that it does not conflict with the Convention or the Administrative and Financial Regulations.
- (3) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language.
- (4) These Rules may be cited as the “Arbitration Rules” of the Centre.

Rule 2 General Duties

- (1) The Tribunal and the parties shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.

- (2) The Tribunal shall treat the parties equally and provide each party with a reasonable opportunity to present its case.

Rule 3 Party and Party Representative

- (1) For the purposes of these Rules, “party” includes, where the context so admits, all parties acting as claimant or as respondent.
- (2) Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be notified by that party to the Secretary-General (“representative(s)”).

Rule 4 Method of Filing

- (1) A document to be filed in the proceeding shall be filed with the Secretary-General, who shall acknowledge its receipt.
- (2) Documents shall only be filed electronically, unless the Tribunal orders otherwise in special circumstances.

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 or to make the original available for examination.

Rule 6 Routing of Documents

The Secretary-General shall transmit a document filed in the proceeding to:

- (a) the other party, unless the parties communicate directly with each other;
- (b) the Tribunal, unless the parties communicate directly with the Tribunal on request of the Tribunal or by agreement of the parties; and
- (c) the Chairman of the Administrative Council (“Chair”) if applicable.

Rule 7 Procedural Languages, Translation and Interpretation

- (1) The parties may agree to use one or two procedural languages in the proceeding. The parties shall consult with the Tribunal and the Secretary-General regarding the use of a language that is not an official language of the Centre.
- (2) If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (3) Requests, written submissions, observations and communications shall be filed in a procedural language. In a proceeding with two procedural languages, the Tribunal may order a party to file such documents in both procedural languages.
- (4) Supporting documents in a language other than a procedural language shall be accompanied by a translation into a procedural language. In a proceeding with two procedural languages, the Tribunal may order a party to translate any supporting document into both procedural languages. Translation of only the relevant part of a supporting document is sufficient, provided that the Tribunal may order a party to provide a fuller or a complete translation. If the translation is disputed, the Tribunal may order a party to provide a certified translation.
- (5) Any document from the Tribunal or the Secretary-General shall be in a procedural language. In a proceeding with two procedural languages, the Tribunal or, the Secretary-General if applicable, shall render orders, decisions and the Award in both procedural languages, unless the parties agree otherwise.
- (6) Any oral communication shall be in a procedural language. In a proceeding with two procedural languages, the Tribunal may order interpretation into the other procedural language.

- (7) The testimony of a witness or an expert in a language other than a procedural language shall be interpreted into the procedural language(s) used at the hearing.
- (8) The recordings and transcripts of a hearing shall be made in the procedural language(s) used at the hearing.

Rule 8 Correction of Errors

A party may correct an accidental error in a document promptly upon discovery and before the Award is rendered. The parties may refer any dispute regarding a correction to the Tribunal for determination.

Rule 9 Calculation of Time Limits

- (1) References to time shall be determined based on the time at the seat of the Centre on the relevant date.
- (2) Any time limit expressed as a period of time shall be calculated from the day after the date on which:
 - (a) the Tribunal, or the Secretary-General if applicable, announces the period; or
 - (b) the procedural step starting the period is taken.
- (3) A time limit shall be satisfied if a procedural step is taken or a document is received by the Secretary-General on the relevant date, or, if the date falls on a Saturday or Sunday, on the subsequent business day.

Rule 10 Fixing Time Limits

The Tribunal, or the Secretary-General if applicable, shall fix time limits for the completion of each procedural step in the proceeding, other than time limits prescribed by the Convention or these Rules.

Rule 11
Extension of Time Limits Applicable to Parties

- (1) The time limits in Articles 49, 51 and 52 of the Convention cannot be extended. An application or request filed after the expiry of such time limits shall be disregarded.
- (2) A time limit prescribed by the Convention or these Rules, other than those referred to in paragraph (1), may only be extended by agreement of the parties. A procedural step taken or document received after the expiry of such time limit shall be disregarded, unless the parties agree otherwise.
- (3) A time limit fixed by the Tribunal or the Secretary-General may be extended by agreement of the parties or the Tribunal, or Secretary-General if applicable, upon reasoned application by either party made prior to its expiry. A procedural step taken or document received after the expiry of such time limit shall be disregarded unless the Tribunal, or the Secretary-General if applicable, concludes that there are special circumstances justifying the failure to meet the time limit.
- (4) The Tribunal may delegate to the President the power to extend time limits referred to in paragraph (3).

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 the 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

- (1) The Tribunal shall be constituted without delay after registration of the Request for arbitration.
- (2) The majority of the arbitrators on a Tribunal shall be nationals of States other than the State party to the dispute and the State whose national is a party to the dispute, unless the Sole Arbitrator or each individual member of the Tribunal is appointed by agreement of the parties.
- (3) A party may not appoint an arbitrator who is a national of the State party to the dispute or the State whose national is a party to the dispute without agreement of the other party.
- (4) A person previously involved in the resolution of the dispute as a conciliator, judge, mediator or in a similar capacity may be appointed as an arbitrator only by agreement of the parties.

Rule 14
Notice of Third-Party Funding

- (1) 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 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).

Rule 15
Method of Constituting the Tribunal

- (1) The number of arbitrators and the method of their appointment must be determined before the Secretary-General can act on any appointment proposed by a party.
- (2) The parties shall endeavor to agree on any uneven number of arbitrators and the method of their appointment. If the parties do not advise the Secretary-General of an agreement within 45 days after the date of registration, the Tribunal shall be constituted in accordance with Article 37(2)(b) of the Convention.

Rule 16
Appointment of Arbitrators to a Tribunal Constituted in Accordance with Article 37(2)(b) of the Convention

If the Tribunal is to be constituted in accordance with Article 37(2)(b) of the Convention, each party shall appoint an arbitrator and the parties shall jointly appoint the President of the Tribunal.

Rule 17
Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of a President of the Tribunal or a Sole Arbitrator.

Rule 18
Appointment of Arbitrators by the Chair in accordance with Article 38 of the Convention

- (1) If the Tribunal has not been constituted within 90 days after the date of registration, or such other period as the parties may agree, either party may request that the Chair appoint the arbitrator(s) who have not yet been appointed pursuant to Article 38 of the Convention.
- (2) The Chair shall appoint the President of the Tribunal after appointing any members who have not yet been appointed.

- (3) The Chair shall consult with the parties as far as possible before appointing an arbitrator and shall use best efforts to appoint any arbitrator(s) within 30 days after receipt of the request to appoint.

Rule 19

Acceptance of Appointment

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

Rule 20

Replacement of Arbitrators Prior to Constitution of the Tribunal

- (1) At any time before the Tribunal is constituted:
 - (a) an arbitrator may withdraw an acceptance;

- (b) a party may replace an arbitrator whom it appointed; or
 - (c) the parties may agree to replace any arbitrator.
- (2) A replacement arbitrator shall be appointed as soon as possible, in accordance with the method by which the withdrawing or replaced arbitrator was appointed.

Rule 21
Constitution of the Tribunal

- (1) The Tribunal shall be deemed to be constituted on the date the Secretary-General notifies the parties that all the arbitrators have accepted their appointments.
- (2) As soon as the Tribunal is constituted, the Secretary-General shall transmit the Request for arbitration, the supporting documents, the notice of registration and communications with the parties to each member.

Chapter III
Disqualification of Arbitrators and Vacancies

Rule 22
Proposal for Disqualification of Arbitrators

- (1) A party may file a proposal to disqualify one or more arbitrators (“proposal”) in accordance with the following procedure:
- (a) the proposal shall be filed after the constitution of the Tribunal and within 21 days after the later of:
 - (i) the constitution of the Tribunal; or
 - (ii) the date on which the party proposing the disqualification first knew or first should have known of the facts on which the proposal is based;
 - (b) the proposal shall include the grounds on which it is based, a statement of the relevant facts, law and arguments, and any supporting documents;
 - (c) the other party shall file its response and supporting documents within 21 days after receipt of the proposal;

- (d) the arbitrator to whom the proposal relates may file a statement limited to factual information relevant to the proposal. The statement shall be filed within five days after receipt of the response referred to in paragraph (1)(c); and
 - (e) each party may file a final written submission on the proposal within seven days after expiry of the time limit referred to in paragraph (1)(d).
- (2) The proceeding shall be suspended until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding in whole or in part.

Rule 23

Decision on the Proposal for Disqualification

- (1) The decision on a proposal shall be made by the arbitrators not subject to the proposal or by the Chair in accordance with Article 58 of the Convention.
- (2) For the purposes of Article 58 of the Convention:
- (a) if the arbitrators not subject to a proposal are unable to decide the proposal for any reason, they shall notify the Secretary-General and they shall be considered equally divided;
 - (b) if a subsequent proposal is filed while the decision on a prior proposal is pending, both proposals shall be decided by the Chair as if they were a proposal to disqualify a majority of the Tribunal.
- (3) The arbitrators not subject to the proposal and the Chair shall use best efforts to decide any proposal within 30 days after the later of the expiry of the time limit referred to in Rule 22(1)(e) or the notice in Rule 23(2)(a).

Rule 24

Incapacity or Failure to Perform Duties

If an arbitrator becomes incapacitated or fails to perform the duties required of an arbitrator, the procedure in Rules 22 and 23 shall apply.

Rule 25 Resignation

- (1) An arbitrator may resign by notifying the Secretary-General and the other members of the Tribunal and providing reasons for the resignation.
- (2) If the arbitrator was appointed by a party, the other members of the Tribunal shall promptly notify the Secretary-General whether they consent to the arbitrator's resignation for the purposes of Rule 26(3)(a).

Rule 26 Vacancy on the Tribunal

- (1) The Secretary-General shall notify the parties of any vacancy on the Tribunal.
- (2) The proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.
- (3) A vacancy on the Tribunal shall be filled by the method used to make the original appointment, except that the Chair shall fill the following vacancies from the Panel of Arbitrators:
 - (a) a vacancy caused by the resignation of a party-appointed arbitrator without the consent of the other members of the Tribunal; or
 - (b) a vacancy that has not been filled within 45 days after the notice of vacancy.
- (4) Once a vacancy has been filled and the Tribunal has been reconstituted, the proceeding shall continue from the point it had reached at the time the vacancy was notified. Any portion of a hearing shall be recommenced if the newly appointed arbitrator considers it necessary to decide a pending matter.

Chapter IV Conduct of the Proceeding

Rule 27 Orders and Decisions

- (1) The Tribunal shall make the orders and decisions required for the conduct of the proceeding.

- (2) Orders and decisions may be made by any appropriate means of communication and may be signed by the President on behalf of the Tribunal.
- (3) The Tribunal shall consult with the parties prior to making an order or decision it is authorized by these Rules to make on its own initiative.

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 the 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.

Rule 29 First Session

- (1) The Tribunal shall hold a first session to address the procedure, including the matters listed in paragraph (4).
- (2) The first session may be held in person or remotely, by any means that the Tribunal deems appropriate. The agenda, method and date of the first session shall be determined by the President of the Tribunal after consulting with the other members and the parties.
- (3) The first session shall be held within 60 days after the constitution of the Tribunal or such other period as the parties may agree. If the President of the Tribunal determines that it is not possible to convene the parties and the other members within this period, the first session shall be held solely among the Tribunal members after considering the parties' written submissions on the matters listed in paragraph (4).
- (4) Before the first session, the Tribunal shall invite the parties' views on procedural matters, including:
 - (a) the applicable arbitration rules;
 - (b) the division of advances payable pursuant to Administrative and Financial Regulation 15;
 - (c) the procedural language(s), translation and interpretation;

- (d) the method of filing and routing of documents;
 - (e) the number, length, type and format of written submissions;
 - (f) the place of hearings;
 - (g) whether there will be requests for production of documents as between the parties and if so, the scope, timing and procedure for such requests;
 - (h) the procedural calendar;
 - (i) the manner of making recordings and transcripts of hearings;
 - (j) the publication of documents and recordings;
 - (k) the treatment of confidential or protected information; and
 - (l) any other procedural matter raised by either party or the Tribunal.
- (5) The Tribunal shall issue an order recording the parties' agreements and any Tribunal decisions on the procedure within 15 days after the later of the first session or the last written submission on procedural matters addressed at the first session.

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.

- (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.

Rule 31 Case Management Conference

With a view to conducting an expeditious and cost-effective proceeding, the Tribunal shall convene one or more case management conferences with the parties at any time after the first session to:

- (a) identify uncontested facts;
- (b) clarify and narrow the issues in dispute; or
- (c) address any other procedural or substantive issue related to the resolution of the dispute.

Rule 32 Hearings

- (1) The Tribunal shall hold one or more hearings, unless the parties agree otherwise.
- (2) The President of the Tribunal shall determine the date, time and method of holding a hearing after consulting with the other members of the Tribunal and the parties.
- (3) If a hearing is to be held in person, it may be held at any place agreed to by the parties after consulting with the Tribunal and the Secretary-General. If the parties do not agree on the place of a hearing, it shall be held at the seat of the Centre pursuant to Article 62 of the Convention.
- (4) Any member of the Tribunal may put questions to the parties and ask for explanations at any time during a hearing.

Rule 33 Quorum

The participation of a majority of the members of the Tribunal by any appropriate means of communication shall be required at the first session, case management conferences, hearings and deliberations, unless the parties agree otherwise.

Rule 34 Deliberations

- (1) The deliberations of the Tribunal shall take place in private and remain confidential.
- (2) The Tribunal may deliberate at any place and by any means it considers appropriate.
- (3) Only members of the Tribunal shall take part in its deliberations. No other person shall be admitted unless the Tribunal decides otherwise.
- (4) The Tribunal shall deliberate on any matter for decision immediately after the last written or oral submission on that matter.

Rule 35 Decisions Made by Majority Vote

The Tribunal shall make decisions by a majority of the votes of all its members. Abstention shall count as a negative vote.

Chapter V Evidence

Rule 36 Evidence: General Principles

- (1) The Tribunal shall determine the admissibility and probative value of the evidence adduced.
- (2) Each party has the burden of proving the facts relied on to support its claim or defense.

- (3) The Tribunal may call upon a party to produce documents or other evidence if it deems it necessary at any stage of the proceeding.

Rule 37
Disputes Arising from Requests for Documents

The Tribunal shall decide any dispute arising out of a party's objection to the other party's request for production of documents. In deciding the dispute, the Tribunal shall consider all relevant circumstances, including:

- (a) the scope and timeliness of the request;
- (b) the relevance and materiality of the documents requested;
- (c) the burden of production; and
- (d) the basis of the objection.

Rule 38
Witnesses and Experts

- (1) A party intending to rely on evidence given by a witness shall file a written statement by that witness. The statement shall identify the witness, contain the evidence of the witness, and be signed and dated.
- (2) A witness who has filed a written statement may be called for examination at a hearing.
- (3) The Tribunal shall determine the manner in which the examination is conducted.
- (4) A witness shall be examined before the Tribunal, by the parties, and under the control of the President. Any member of the Tribunal may put questions to the witness.
- (5) A witness shall be examined in person unless the Tribunal determines that another means of examination is appropriate in the circumstances.
- (6) Each witness shall make the following declaration before giving evidence:

"I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth."

(7) Paragraphs (1)-(5) shall apply, with necessary modifications, to evidence given by an expert.

(8) Each expert shall make the following declaration before giving evidence:

“I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief.”

Rule 39 Tribunal-Appointed Experts

- (1) Unless the parties agree otherwise, the Tribunal may appoint one or more independent experts to report to it on specific matters within the scope of the dispute.
- (2) The Tribunal shall consult with the parties on the appointment of an expert, including on the terms of reference and fees of the expert.
- (3) Upon accepting an appointment by the Tribunal, an expert shall provide a signed declaration in the form published by the Centre.
- (4) The parties shall provide the Tribunal-appointed expert with any information, document or other evidence that the expert may require. The Tribunal shall decide any dispute regarding the evidence required by the Tribunal-appointed expert.
- (5) The parties shall have the right to make written and oral submissions on the report of the Tribunal-appointed expert, as required.
- (6) Rule 38 shall apply, with necessary modifications, to the Tribunal-appointed expert.

Rule 40 Visits and Inquiries

- (1) The Tribunal may order a visit to any place connected with the dispute, on its own initiative or upon a party's request, if it deems the visit necessary, and may conduct inquiries there as appropriate.
- (2) The order shall define the scope of the visit and the subject of any inquiry, the procedure to be followed, the applicable time limits and other terms.
- (3) The parties shall have the right to participate in any visit or inquiry.

Chapter VI
Special Procedures

Rule 41
Manifest Lack of Legal Merit

- (1) A party may object that a claim 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.
- (2) The following procedure shall apply:
 - (a) a party shall file a written submission no later than 45 days after the constitution of the Tribunal;
 - (b) the written submission shall specify the grounds on which the objection is based and contain a statement of the relevant facts, law and arguments;
 - (c) the Tribunal shall fix time limits for written and oral submissions on the objection, as required;
 - (d) if a party files the objection before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the objection, so that the Tribunal may consider the objection promptly upon its constitution; and
 - (e) the Tribunal shall render its decision or Award on the objection within 60 days after the latest of:
 - (i) the constitution of the Tribunal;
 - (ii) the last written submission on the objection; or
 - (iii) the last oral submission on the objection.
- (3) If the Tribunal decides that all claims are manifestly without legal merit, it shall render an Award to that effect. Otherwise, the Tribunal shall issue a decision on the objection and fix any time limit necessary for the further conduct of the proceeding.
- (4) A decision that a claim 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 is without legal merit.

Rule 42 Bifurcation

- (1) A party may request that a question be addressed in a separate phase of the proceeding (“request for bifurcation”).
- (2) If a request for bifurcation relates to a preliminary objection, Rule 44 shall apply.
- (3) The following procedure shall apply to a request for bifurcation other than a request referred to in Rule 44:
 - (a) the request for bifurcation shall be filed as soon as possible;
 - (b) the request for bifurcation shall state the questions to be bifurcated;
 - (c) the Tribunal shall fix time limits for written and oral submissions on the request for bifurcation, as required;
 - (d) the Tribunal shall issue its decision on the request for bifurcation within 30 days after the later of the last written or oral submission on the request; and
 - (e) the Tribunal shall fix any time limit necessary for the further conduct of the proceeding.
- (4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
 - (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and
 - (c) the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical.
- (5) If the Tribunal orders bifurcation pursuant to this Rule, it shall suspend the proceeding with respect to any questions to be addressed at a later phase, unless the parties agree otherwise or the Tribunal decides there are special circumstances that do not justify suspension.
- (6) The Tribunal may at any time on its own initiative decide whether a question should be addressed in a separate phase of the proceeding.

Rule 43 Preliminary Objections

- (1) A party may file a preliminary objection that the dispute or any ancillary claim is not within the jurisdiction of the Centre or for other reasons is not within the competence of the Tribunal (“preliminary objection”).
- (2) A party shall notify the Tribunal and the other party of its intent to file a preliminary objection as soon as possible.
- (3) The Tribunal may address a preliminary objection in a separate phase of the proceeding or join the objection to the merits.
- (4) If a party requests bifurcation of a preliminary objection, Rule 44 shall apply.
- (5) If a party does not request bifurcation of a preliminary objection within the time limits referred to in Rule 44(1)(a) or the parties confirm that they will not request bifurcation, the objection shall be joined to the merits and the following procedure shall apply:
 - (a) the Tribunal shall fix time limits for written and oral submissions on the preliminary objection, as required;
 - (b) the memorial on the preliminary objection shall be filed:
 - (i) by the date to file the counter-memorial on the merits;
 - (ii) by the date to file the next written submission after an ancillary claim, if the objection relates to the ancillary claim; or
 - (iii) as soon as possible after the facts on which the objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (5)(b)(i) and (ii);
 - (c) the party filing the memorial on preliminary objections shall also file its counter-memorial on the merits, or, if the objection relates to an ancillary claim, file its next written submission after the ancillary claim; and
 - (d) the Tribunal shall render its Award within 240 days after the later of the last written or oral submission in the proceeding, in accordance with Rule 57(1)(c).
- (6) The Tribunal may at any time on its own initiative consider whether a dispute or an ancillary claim is within the jurisdiction of the Centre or within its own competence.

Rule 44
Bifurcation of Preliminary Objections

- (1) The following procedure shall apply with respect to a request for bifurcation relating to a preliminary objection:
 - (a) unless the parties agree otherwise, the request for bifurcation shall be filed:
 - (i) within 45 days after filing the memorial on the merits;
 - (ii) within 45 days after filing the written submission containing the ancillary claim, if the objection relates to the ancillary claim; or
 - (iii) as soon as possible after the facts on which the preliminary objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (1)(a)(i) and (ii);
 - (b) the request for bifurcation shall state the preliminary objection to which it relates;
 - (c) unless the parties agree otherwise, the proceeding on the merits shall be suspended until the Tribunal decides whether to bifurcate;
 - (d) the Tribunal shall fix time limits for written and oral submissions on the request for bifurcation, as required; and
 - (e) the Tribunal shall issue its decision on a request for bifurcation within 30 days after the later of the last written or oral submission on the request.
- (2) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
 - (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and
 - (c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical.
- (3) If the Tribunal decides to address the preliminary objection in a separate phase of the proceeding, it shall:
 - (a) suspend the proceeding on the merits, unless the parties agree otherwise, or the Tribunal decides there are special circumstances that do not justify suspension;

- (b) fix time limits for written and oral submissions on the preliminary objection, as required;
 - (c) render its decision or Award on the preliminary objection within 180 days after the later of the last written or oral submission, in accordance with Rule 57(1)(b); and
 - (d) fix any time limit necessary for the further conduct of the proceeding if the Tribunal does not render an Award.
- (4) If the Tribunal decides to join the preliminary objection to the merits, it shall:
- (a) fix time limits for written and oral submissions on the preliminary objection, as required;
 - (b) modify any time limits for written and oral submissions on the merits, as required; and
 - (c) render its Award within 240 days after the later of the last written or oral submission in the proceeding, in accordance with Rule 57(1)(c).

Rule 45

Consolidation or Coordination of Arbitrations

- (1) Parties to two or more pending arbitrations administered by the Centre may agree to consolidate or coordinate these arbitrations.
- (2) Consolidation joins all aspects of the arbitrations sought to be consolidated and results in a single Award. To be consolidated pursuant to this Rule, the arbitrations shall have been registered in accordance with the Convention and shall involve the same Contracting State (or constituent subdivision or agency of the Contracting State).
- (3) Coordination aligns specific procedural aspects of each pending arbitration, but the arbitrations remain separate proceedings and each results in an individual Award.
- (4) The parties referred to in paragraph (1) shall jointly provide the Secretary-General with proposed terms for the conduct of the consolidated or coordinated proceeding(s) and consult with the Secretary-General to ensure that the proposed terms are capable of being implemented.

- (5) After the consultation referred to in paragraph (4), the Secretary-General shall communicate the proposed terms to the Tribunal(s) constituted in the arbitrations. Such Tribunal(s) shall make any order or decision required to implement these terms.

Rule 46 Provisional Measures

- (1) A party may at any time request that the Tribunal recommend provisional measures to preserve that party's rights, including measures to:
- (a) prevent action that is likely to cause current or imminent harm to that party or prejudice to the arbitral process;
 - (b) maintain or restore the *status quo* pending determination of the dispute; or
 - (c) preserve evidence that may be relevant to the resolution of the dispute.
- (2) The following procedure shall apply:
- (a) the request shall specify the rights to be preserved, the measures requested, and the circumstances that require such measures;
 - (b) the Tribunal shall fix time limits for written and oral submissions on the request, as required;
 - (c) if a party requests provisional measures 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 deciding whether to recommend provisional measures, the Tribunal shall consider all relevant circumstances, including:
- (a) whether the measures are urgent and necessary; and
 - (b) the effect that the measures may have on each party.

- (4) The Tribunal may recommend provisional measures on its own initiative. The Tribunal may also recommend provisional measures different from those requested by a party.
- (5) A party shall promptly disclose any material change in the circumstances upon which the Tribunal recommended provisional measures.
- (6) The Tribunal may at any time modify or revoke the provisional measures, on its own initiative or upon a party's request.
- (7) A party may request any judicial or other authority to order provisional measures if such recourse is permitted by the instrument recording the parties' consent to arbitration.

Rule 47 Ancillary Claims

- (1) Unless the parties agree otherwise, a party may file an incidental or additional claim or a counterclaim ("ancillary claim") arising directly out of the subject-matter of the dispute, provided that such ancillary claim is within the scope of the consent of the parties and the jurisdiction of the Centre.
- (2) An incidental or additional claim shall be presented no later than in the reply, and a counterclaim shall be presented no later than in the counter-memorial, unless the Tribunal decides otherwise.
- (3) The Tribunal shall fix time limits for written and oral submissions on the ancillary claim, as required.

Rule 48 Default

- (1) A party is in default if it fails to appear or present its case, or indicates that it will not appear or present its case.
- (2) If a party is in default at any stage of the proceeding, the other party may request that the Tribunal address the questions submitted to it and render an Award.
- (3) Upon receipt of the request referred to in paragraph (2), the Tribunal shall notify the defaulting party of the request and grant a grace period to cure the default, unless it

is satisfied that the defaulting party does not intend to appear or present its case. The grace period shall not exceed 60 days without the consent of the other party.

- (4) If the request in paragraph (2) relates to a failure to appear at a hearing, the Tribunal may:
- (a) reschedule the hearing to a date within 60 days after the original date;
 - (b) proceed with the hearing in the absence of the defaulting party and fix a time limit for the defaulting party to file a written submission within 60 days after the hearing; or
 - (c) cancel the hearing and fix a time limit for the parties to file written submissions within 60 days after the original date of the hearing.
- (5) If the default relates to another scheduled procedural step, the Tribunal may set the grace period to cure the default by fixing a new time limit for the defaulting party to complete that step within 60 days after the date of the notice of default referred to in paragraph (3).
- (6) A party's default shall not be deemed an admission of the assertions made by the other party.
- (7) The Tribunal may invite the party that is not in default to file observations, produce evidence or make oral submissions.
- (8) If the defaulting party fails to act within the grace period or if no such period is granted, the Tribunal shall examine the jurisdiction of the Centre and its own competence before deciding the questions submitted to it and rendering an Award.

Chapter VII

Costs

Rule 49

Costs of the Proceeding

The costs of the proceeding are all costs incurred by the parties in connection with the proceeding, including:

- (a) the legal fees and expenses of the parties;
- (b) the fees and expenses of the Tribunal, Tribunal assistants approved by the parties and Tribunal-appointed experts; and

(c) the administrative charges and direct costs of the Centre.

Rule 50
Statement of and Submission on Costs

The Tribunal shall request that each party file a statement of its costs and a written submission on the allocation of costs before allocating the costs of the proceeding between the parties.

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 part of it;
 - (b) the conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner;
 - (c) the complexity of the issues; and
 - (d) the reasonableness of the costs claimed.
- (2) The Tribunal may make an interim decision on costs at any time.
- (3) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.

Rule 52
Security for Costs

- (1) Upon 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;
 - (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.
- (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) 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) 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) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.
- (8) 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.

Chapter VIII
Suspension, Settlement and Discontinuance

Rule 53
Suspension of the Proceeding

- (1) The Tribunal shall suspend the proceeding by agreement of the parties.
- (2) The Tribunal may suspend the proceeding upon the request of either party or on its own initiative, except as otherwise provided in the Administrative and Financial Regulations or these Rules.
- (3) The Tribunal shall give the parties the opportunity to make observations before ordering a suspension pursuant to paragraph (2).
- (4) In its order suspending the proceeding, the Tribunal shall specify:
 - (a) the period of the suspension;
 - (b) any relevant terms; and
 - (c) a modified procedural calendar to take effect on resumption of the proceeding, if necessary.
- (5) The Tribunal shall extend the period of a suspension prior to its expiry by agreement of the parties.
- (6) The Tribunal may extend the period of a suspension prior to its expiry, on its own initiative or upon a party's request, after giving the parties an opportunity to make observations.
- (7) The Secretary-General shall suspend the proceeding pursuant to paragraph (1) or extend the suspension pursuant to paragraph (5) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal. The parties shall inform the Secretary-General of the period of the suspension and any terms agreed to by the parties.

Rule 54
Settlement and Discontinuance

- (1) If the parties notify the Tribunal that they have agreed to discontinue the proceeding, the Tribunal shall issue an order taking note of the discontinuance.

- (2) If the parties agree on a settlement of the dispute before the Award is rendered, the Tribunal:
 - (a) shall issue an order taking note of the discontinuance of the proceeding, if the parties so request; or
 - (b) may record the settlement in the form of an Award, if the parties file the complete and signed text of their settlement and request that the Tribunal embody such settlement in an Award.
- (3) The Secretary-General shall issue the order referred to in paragraphs (1) and (2)(a) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

Rule 55
Discontinuance at Request of a Party

- (1) If a party requests the discontinuance of the proceeding, the Tribunal shall fix a time limit within which the other party may oppose the discontinuance. If no objection in writing is made within the time limit, the other party shall be deemed to have acquiesced in the discontinuance and the Tribunal shall issue an order taking note of the discontinuance of the proceeding. If any objection in writing is made within the time limit, the proceeding shall continue.
- (2) The Secretary-General shall fix the time limit and issue the order referred to in paragraph (1) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

Rule 56
Discontinuance for Failure of Parties to Act

- (1) If the parties fail to take any steps in the proceeding for more than 150 consecutive days, the Tribunal shall notify them of the time elapsed since the last step taken in the proceeding.
- (2) If the parties fail to take a step within 30 days after the notice referred to in paragraph (1), they shall be deemed to have discontinued the proceeding and the Tribunal shall issue an order taking note of the discontinuance.
- (3) If either party takes a step within 30 days after the notice referred to in paragraph (1), the proceeding shall continue.

- (4) The Secretary-General shall issue the notice and the order referred to in paragraphs (1) and (2) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

Chapter IX The Award

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 the Tribunal constitution, the last written submission or the last oral submission, if the Award is rendered pursuant to Rule 41(3);
 - (b) 180 days after the later of the last written or oral submission if the Award is rendered pursuant to Rule 44(3)(c); or
 - (c) 240 days after the later of the last written or oral submission in all other cases.
- (2) A statement of costs and submission on costs filed pursuant to Rule 50 shall not be considered a written submission for the purposes of paragraph (1).

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 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.

Rule 59 **Rendering of the Award**

- (1) Once the Award has been signed by the members of the Tribunal who voted for it, the Secretary-General shall promptly:
- (a) dispatch a certified copy of the Award to each party, together with any individual opinion and statement of dissent, indicating the date of dispatch on the Award; and
 - (b) deposit the Award in the archives of the Centre, together with any individual opinion and statement of dissent.
- (2) The Award shall be deemed to have been rendered on the date of dispatch of certified copies of the Award.
- (3) The Secretary-General shall provide additional certified copies of the Award to a party upon request.

Rule 60 **Supplementary Decision and Rectification**

- (1) A party requesting a supplementary decision on, or the rectification of, an Award pursuant to Article 49(2) of the Convention shall file the request with the Secretary-

General and pay the lodging fee published in the schedule of fees within 45 days after the Award was rendered.

- (2) The request referred to in paragraph (1) shall:
 - (a) identify the Award to which it relates;
 - (b) be signed by each requesting party or its representative and be dated;
 - (c) specify:
 - (i) with respect to a request for a supplementary decision, any question which the Tribunal omitted to decide in the Award;
 - (ii) with respect to a request for rectification, any clerical, arithmetical or similar error in the Award; and
 - (d) attach proof of payment of the lodging fee.
- (3) Upon receipt of the request and the lodging fee, the Secretary-General shall promptly:
 - (a) transmit the request to the other party;
 - (b) register the request, or refuse registration if the request is not made within the time limit referred to in paragraph (1); and
 - (c) notify the parties of the registration or refusal to register.
- (4) As soon as the request is registered, the Secretary-General shall transmit the request and the notice of registration to each member of the Tribunal.
- (5) The President of the Tribunal shall determine the procedure to consider the request, after consulting with the other members of the Tribunal and the parties.
- (6) Rules 58-59 shall apply to any decision of the Tribunal pursuant to this Rule.
- (7) The Tribunal shall issue a decision on the request for supplementary decision or rectification within 60 days after the later of the last written or oral submission on the request.
- (8) The date of dispatch of certified copies of the supplementary decision or rectification shall be the relevant date for the purposes of calculating the time limits in Articles 51(2) and 52(2) of the Convention.

- (9) A supplementary decision or rectification under this Rule shall become part of the Award and shall be reflected on all certified copies of the Award.

Chapter X
Publication, Access to Proceedings and Non-Disputing Party Submissions

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.
- (4) Absent consent of the parties in accordance with paragraphs (1)-(3), the Centre shall publish excerpts of the document. 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 days after their receipt; and
 - (c) the Secretary-General shall consider any comments received on the proposed excerpts, and publish excerpts within 30 days after receipt of such comments.

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 the Secretary-General within 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 the Tribunal.

- (3) In determining disputes pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information.

Rule 63

Publication of Documents Filed in the Proceeding

- (1) Upon request of either party, the Centre shall publish any document filed in the proceeding, with any redactions agreed to by the parties and jointly notified to the Secretary-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) In determining disputes pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information.

Rule 64

Observation of Hearings

- (1) The Tribunal shall determine whether to allow persons in addition to the parties, their representatives, witnesses and experts during their testimony, and persons assisting the Tribunal, to observe hearings, after consulting with the parties.
- (2) The Tribunal shall establish procedures to prevent the disclosure of any confidential or protected information to persons observing the hearings.
- (3) The Centre shall publish recordings or transcripts of those portions of hearings that were available for observation by the public in accordance with paragraphs (1) and (2), unless either party objects.

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.

Rule 66
Submission of Non-Disputing Parties

- (1) Any person or entity that is not a party to the dispute (“non-disputing party”) may apply for permission to file a written submission in the proceeding. The application shall be made in a procedural language used in the proceeding.
- (2) In determining whether to permit a non-disputing party submission, the Tribunal shall consider all relevant circumstances, including:
 - (a) whether the submission would address a matter within the scope of the dispute;
 - (b) how the submission would assist the Tribunal to determine a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the parties;
 - (c) whether the non-disputing party has a significant interest in the proceeding;
 - (d) the identity, activities, organization and ownership of the non-disputing party, including any direct or indirect affiliation between the non-disputing party, a party or a non-disputing Treaty Party; and

- (e) whether any person or entity will provide the non-disputing party with financial or other assistance to file the submission.
- (3) The parties shall have the right to make observations on whether a non-disputing party should be permitted to file a written submission in the proceeding and on the conditions for filing such a submission, if any.
- (4) The Tribunal shall ensure that non-disputing party participation does not disrupt the proceeding or unduly burden or unfairly prejudice either party. To this end, the Tribunal may impose conditions on the non-disputing party, including with respect to the format, length or scope of the written submission and the time limit to file the submission.
- (5) The Tribunal shall issue a reasoned decision on whether to permit a non-disputing party submission within 30 days after the later of the last written or oral submission on the application.
- (6) The Tribunal may provide the non-disputing party with access to relevant documents filed in the proceeding, unless either party objects.
- (7) If the Tribunal permits a non-disputing party to file a written submission, the parties shall have the right to make observations on the submission.

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 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.

Chapter XI
Interpretation, Revision and Annulment of the Award

Rule 68
The Application

- (1) A party applying for interpretation, revision or annulment of an Award shall file the application with the Secretary-General, together with any supporting documents, and pay the lodging fee published in the schedule of fees.
- (2) The application shall:
 - (a) identify the Award to which it relates;
 - (b) be in a language in which the Award was rendered or if the Award was not rendered in an official language of the Centre, be in an official language;
 - (c) be signed by each applicant or its representative and be dated;
 - (d) attach proof of any representative's authority to act; and
 - (e) attach proof of payment of the lodging fee.
- (3) An application for interpretation pursuant to Article 50(1) of the Convention may be filed at any time after the Award is rendered and shall specify the points in dispute concerning the meaning or scope of the Award.
- (4) An application for revision pursuant to Article 51(1) of the Convention shall be filed within 90 days after the discovery of a fact of such a nature as decisively to affect the Award, and in any event within three years after the Award (or any supplementary decision on or rectification of the Award) was rendered. The application shall specify:
 - (a) the change sought in the Award;
 - (b) the newly discovered fact that decisively affects the Award; and
 - (c) that the fact was unknown to the Tribunal and to the applicant when the Award was rendered, and that the applicant's ignorance of that fact was not due to negligence.
- (5) An application for annulment pursuant to Article 52(1) of the Convention shall:

- (a) be filed within 120 days after the Award (or any supplementary decision on or rectification of the Award) was rendered if the application is based on any of the grounds in Article 52(1)(a), (b), (d) or (e) of the Convention; or
 - (b) be filed within 120 days after the discovery of corruption on the part of a member of the Tribunal and in any event within three years after the Award (or any supplementary decision on or rectification of the Award) was rendered, if the application is based on Article 52(1)(c) of the Convention; and
 - (c) specify the grounds on which it is based, limited to the grounds in Article 52(1)(a)-(e) of the Convention, and the reasons in support of each ground.
- (6) Upon receipt of an application and the lodging fee, the Secretary-General shall promptly:
- (a) transmit the application and the supporting documents to the other party;
 - (b) register the application, or refuse registration if the application is not made within the time limits referred to in paragraphs (4) or (5); and
 - (c) notify the parties of the registration or refusal to register.
- (7) At any time before registration, an applicant may notify the Secretary-General in writing of the withdrawal of the application or, if there is more than one applicant, that it is withdrawing from the application. The Secretary-General shall promptly notify the parties of the withdrawal, unless the application has not yet been transmitted to the other party pursuant to paragraph (6)(a).

Rule 69

Interpretation or Revision: Reconstitution of the Tribunal

- (1) As soon as an application for the interpretation or revision of an Award is registered, the Secretary-General shall:
- (a) transmit the notice of registration, the application and any supporting documents to each member of the original Tribunal; and
 - (b) request each member of the Tribunal to inform the Secretary-General within 10 days whether that member can take part in the consideration of the application.

- (2) If all members of the Tribunal can take part in the consideration of the application, the Secretary-General shall notify the Tribunal and the parties of the reconstitution of the Tribunal.
- (3) If the Tribunal cannot be reconstituted in accordance with paragraph (2), the Secretary-General shall invite the parties to constitute a new Tribunal without delay. The new Tribunal shall have the same number of arbitrators and be appointed by the same method as the original Tribunal.

Rule 70

Annulment: Appointment of the *ad hoc* Committee

- (1) As soon as an application for annulment of an Award is registered, the Chair shall appoint an *ad hoc* Committee in accordance with Article 52(3) of the Convention.
- (2) Each member of the Committee shall provide a signed declaration in accordance with Rule 19.
- (3) The Committee shall be deemed to be constituted on the date the Secretary-General notifies the parties that all members have accepted their appointments.

Rule 71

Procedure Applicable to Interpretation, Revision and Annulment

- (1) Except as provided below, these Rules shall apply, with necessary modifications, to any procedure relating to the interpretation, revision or annulment of an Award and to the decision of the Tribunal or Committee.
- (2) The procedural agreements and orders on matters addressed at the first session of the original Tribunal shall continue to apply to an interpretation, revision or annulment proceeding, with necessary modifications, unless the parties agree or the Tribunal or Committee orders otherwise.
- (3) In addition to the application, the written procedure shall consist of one round of written submissions in an interpretation or revision proceeding, and two rounds of written submissions in an annulment proceeding, unless the parties agree or the Tribunal or Committee orders otherwise.
- (4) A hearing shall be held upon the request of either party, or if ordered by the Tribunal or Committee.

- (5) The Tribunal or Committee shall issue its decision within 120 days after the later of the last written or oral submission on the application.

Rule 72
Stay of Enforcement of the Award

- (1) A party to an interpretation, revision or annulment proceeding may request a stay of enforcement of all or part of the Award at any time before the final decision on the application.
- (2) If the stay is requested in the application for revision or annulment of an Award, enforcement shall be stayed provisionally until the Tribunal or Committee decides on the request.
- (3) The following procedure shall apply:
 - (a) the request shall specify the circumstances that require the stay;
 - (b) the Tribunal or Committee shall fix time limits for written or oral submissions on the request, as required;
 - (c) if a party files the request before the constitution of the Tribunal or Committee, the Secretary-General shall fix time limits for written submissions on the request so that the Tribunal or Committee may consider the request promptly upon its constitution; and
 - (d) the Tribunal or Committee shall issue its decision on the request within 30 days after the latest of:
 - (i) the constitution of the Tribunal or Committee;
 - (ii) the last written submission on the request; or
 - (iii) the last oral submission on the request.
- (4) If a Tribunal or Committee decides to stay enforcement of the Award, it may impose conditions for the stay, or for lifting the stay, in view of all relevant circumstances.
- (5) A party shall promptly disclose to the Tribunal or Committee any change in the circumstances upon which the enforcement was stayed.
- (6) The Tribunal or Committee may at any time modify or terminate a stay of enforcement, on its own initiative or upon a party's request.

- (7) A stay of enforcement shall terminate on the date of dispatch of the decision on the application for interpretation, revision or annulment, or on the date of discontinuance of the proceeding.

Rule 73
Resubmission of Dispute after an Annulment

- (1) If a Committee annuls all or part of an Award, either party may file with the Secretary-General a request to resubmit the dispute to a new Tribunal, together with any supporting documents, and pay the lodging fee published in the schedule of fees.
- (2) The request shall:
- (a) identify the Award to which it relates;
 - (b) be in an official language of the Centre;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) attach proof of any representative's authority to act; and
 - (e) specify which aspect(s) of the dispute is resubmitted to the new Tribunal.
- (3) Upon receipt of a request for resubmission and the lodging fee, the Secretary-General shall promptly:
- (a) transmit the request and the supporting documents to the other party;
 - (b) register the request;
 - (c) notify the parties of the registration; and
 - (d) invite the parties to constitute a new Tribunal without delay, which shall have the same number of arbitrators, and be appointed by the same method as the original Tribunal, unless the parties agree otherwise.
- (4) If the original Award was annulled in part, the new Tribunal shall consider the aspect(s) of the resubmitted dispute pertaining to the annulled portion of the Award.
- (5) Except as otherwise provided in paragraphs (1)-(4), these Rules shall apply to the resubmission proceeding.

- (6) The procedural agreements and orders on matters addressed at the first session of the original Tribunal shall not apply to the resubmission proceeding, unless the parties agree otherwise.

Chapter XII Expedited Arbitration

Rule 74 Consent of Parties to Expedited Arbitration

- (1) The parties to an arbitration conducted under the Convention may consent at any time to expedite the arbitration in accordance with this Chapter (“expedited arbitration”) by jointly notifying the Secretary-General in writing of their consent.
- (2) Chapters I-XI of the Arbitration Rules apply to an expedited arbitration except that:
 - (a) Rules 15, 16, 18, 39, 40, 41, 42, 44 and 45 do not apply in an expedited arbitration; and
 - (b) Rules 19, 22, 29, 37, 43, 48, 57, 60 and 71, as modified by Rules 75-83, apply in an expedited arbitration.
- (3) If the parties consent to expedited arbitration after the constitution of the Tribunal pursuant to Chapter II, Rules 75-77 shall not apply, and the expedited arbitration shall proceed subject to all members of the Tribunal confirming their availability pursuant to Rule 78(2). If any arbitrator fails to confirm availability before the expiry of the applicable time limit, the arbitration shall proceed in accordance with Chapters I-XI.

Rule 75 Number of Arbitrators and Method of Constituting the Tribunal for Expedited Arbitration

- (1) The Tribunal in an expedited arbitration shall consist of a Sole Arbitrator appointed pursuant to Rule 76 or a three-member Tribunal appointed pursuant to Rule 77.
- (2) The parties shall jointly notify the Secretary-General in writing of their election of a Sole Arbitrator or a three-member Tribunal within 30 days after the date of the notice of consent referred to in Rule 74(1).

- (3) If the parties do not notify the Secretary-General of their election within the time limit referred to in paragraph (2), the Tribunal shall consist of a Sole Arbitrator to be appointed pursuant to Rule 76.
- (4) An appointment pursuant to Rules 76 or 77 shall be deemed an appointment in accordance with a method agreed by the parties pursuant to Article 37(2)(a) of the Convention.

Rule 76
Appointment of Sole Arbitrator for Expedited Arbitration

- (1) The parties shall jointly appoint the Sole Arbitrator within 20 days after the notice referred to in Rule 75(2).
- (2) The Secretary-General shall appoint the Sole Arbitrator if:
 - (a) the parties do not appoint the Sole Arbitrator within the time limit referred to in paragraph (1);
 - (b) the parties notify the Secretary-General that they are unable to agree on the Sole Arbitrator; or
 - (c) the appointee declines the appointment or does not comply with Rule 78(1).
- (3) The following procedure shall apply to an appointment by the Secretary-General of the Sole Arbitrator pursuant to paragraph (2):
 - (a) the Secretary-General shall transmit a list of five candidates for appointment as Sole Arbitrator to the parties within 10 days after the relevant event referred to in paragraph (2);
 - (b) each party may strike one name from the list and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;
 - (c) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them; and
 - (d) if the selected candidate declines the appointment or does not comply with Rule 78(1), the Secretary-General shall select the next highest-ranked candidate.

Rule 77
Appointment of Three-Member Tribunal for Expedited Arbitration

- (1) A three-member Tribunal shall be appointed in accordance with the following procedure:
 - (a) each party shall appoint an arbitrator (“co-arbitrator”) within 20 days after the notice referred to in Rule 75(2); and
 - (b) the parties shall jointly appoint the President of the Tribunal within 20 days after the receipt of the acceptances from both co-arbitrators.
- (2) The Secretary-General shall appoint the arbitrators not yet appointed if:
 - (a) an appointment is not made within the applicable time limit referred to in paragraph (1);
 - (b) the parties notify the Secretary-General that they are unable to agree on the President of the Tribunal; or
 - (c) an appointee declines the appointment or does not comply with Rule 78(1).
- (3) The following procedure shall apply to the appointment by the Secretary-General of any arbitrators pursuant to paragraph (2):
 - (a) the Secretary-General shall first appoint the co-arbitrator(s) not yet appointed. The Secretary-General shall consult with the parties as far as possible and use best efforts to appoint the co-arbitrator(s) within 15 days after the relevant event in paragraph (2);
 - (b) within 10 day after the later of the date on which both co-arbitrators have accepted their appointments or the relevant event referred to in paragraph (2), the Secretary-General shall transmit a list of five candidates for appointment as President of the Tribunal to the parties;
 - (c) each party may strike one name from the list and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;
 - (d) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them; and

- (e) if the selected candidate declines the appointment or does not comply with Rule 78(1), the Secretary-General shall select the next highest-ranked candidate.

Rule 78
Acceptance of Appointment in Expedited Arbitration

- (1) An arbitrator appointed pursuant to Rule 76 or 77 shall accept the appointment and provide a declaration pursuant to Rule 19(3) within 10 days after receipt of the request for acceptance.
- (2) An arbitrator appointed to a Tribunal constituted pursuant to Chapter II shall confirm their availability to conduct an expedited arbitration within 10 days after receipt of the notice of consent pursuant to Rule 74(3).

Rule 79
First Session in Expedited Arbitration

- (1) The Tribunal shall hold a first session pursuant to Rule 29 within 30 days after the constitution of the Tribunal.
- (2) The first session shall be held by telephone or electronic means of communication, unless both parties and the Tribunal agree it shall be held in person.

Rule 80
Procedural Schedule in Expedited Arbitration

- (1) The following schedule for written submissions and the hearing shall apply in an expedited arbitration:
 - (a) the claimant shall file a memorial within 60 days after the first session;
 - (b) the respondent shall file a counter-memorial within 60 days after the date of filing the memorial;
 - (c) the memorial and counter-memorial referred to in paragraph (1)(a) and (b) shall be no longer than 200 pages in length;
 - (d) the claimant shall file a reply within 40 days after the date of filing the counter-memorial;

- (e) the respondent shall file a rejoinder within 40 days after the date of filing the reply;
 - (f) the reply and rejoinder referred to in paragraph (1)(d) and (e) shall be no longer than 100 pages in length;
 - (g) the hearing shall be held within 60 days after the last written submission is filed;
 - (h) the parties shall file statements of their costs and written submissions on costs within 10 days after the last day of the hearing referred to in paragraph (1)(g); and
 - (i) the Tribunal shall render the Award as soon as possible, and in any event no later than 120 days after the hearing referred to in paragraph (1)(g).
- (2) Any preliminary objection, counterclaim, incidental or additional claim shall be joined to the main schedule referred to in paragraph (1). The Tribunal shall adjust the schedule if a party raises any such matter, taking into account the expedited nature of the process.
- (3) The Tribunal may extend the time limits referred to in paragraph (1)(a) and (b) by up to 30 days if any party requests that the Tribunal determine a dispute arising from requests to produce documents pursuant to Rule 37. The Tribunal shall decide such applications based on written submissions and without an in-person hearing.
- (4) Any schedule for submissions other than those referred to in paragraphs (1)-(3) shall run in parallel with the main schedule referred to in paragraph (1), unless the Tribunal determines that there are special circumstances that justify the suspension of the main schedule. In fixing time limits for such submissions, the Tribunal shall take into account the expedited nature of the process.

Rule 81

Default in Expedited Arbitration

A Tribunal may grant a party in default a grace period not to exceed 30 days pursuant to Rule 48.

Rule 82
**Procedural Schedule for Supplementary Decision and Rectification
in Expedited Arbitration**

The Tribunal shall issue a supplementary decision or rectification pursuant to Rule 60 within 30 days after the later of the last written or oral submission on the request.

Rule 83
**Procedural Schedule for Interpretation, Revision or Annulment
in Expedited Arbitration**

- (1) The following schedule for written submissions and the hearing shall apply to the procedure relating to an interpretation, revision or annulment of an Award rendered in an expedited arbitration:
 - (a) the applicant shall file a memorial on interpretation, revision or annulment within 30 days after the first session;
 - (b) the other party shall file a counter-memorial on interpretation, revision or annulment within 30 days after the memorial;
 - (c) the memorial and counter-memorial referred to in paragraph (1)(a) and (b) shall be no longer than 100 pages in length;
 - (d) a hearing shall be held within 45 days after the date for filing the counter-memorial;
 - (e) the parties shall file statements of their costs and written submissions on costs within 5 days after the last day of the hearing referred to in paragraph (1)(d); and
 - (f) the Tribunal or Committee shall issue the decision on interpretation, revision or annulment as soon as possible, and in any event no later than 60 days after the hearing referred to in paragraph (1)(d).
- (2) Any schedule for submissions other than those referred to in paragraph (1) shall run in parallel with the main schedule, unless the Tribunal or Committee determines that there are special circumstances that justify the suspension of the main schedule. In fixing time limits for such submissions, the Tribunal or Committee shall take into account the expedited nature of the process.

Rule 84
Resubmission of a Dispute after Annulment in Expedited Arbitration

The consent of the parties to expedited arbitration pursuant to Rule 74 shall not apply to resubmission of the dispute.

Rule 85
Opting Out of Expedited Arbitration

- (1) The parties may opt out of an expedited arbitration at any time by jointly notifying the Tribunal and Secretary-General in writing of their agreement.
- (2) Upon request of a party, the Tribunal may decide that an arbitration should no longer be expedited. In deciding the request, the Tribunal shall consider the complexity of the issues, the stage of the proceeding and all other relevant circumstances.
- (3) The Tribunal, or the Secretary-General if a Tribunal has not been constituted, shall determine the further procedure pursuant to Chapters I-XI and fix any time limit necessary for the conduct of the proceeding.

**IV. CONCILIATION RULES FOR ICSID CONVENTION PROCEEDINGS
(CONCILIATION RULES)**

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IV. CONCILIATION RULES

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IV. CONCILIATION RULES FOR ICSID CONVENTION PROCEEDINGS (CONCILIATION RULES)

Introductory Note

The Conciliation Rules for ICSID Convention Proceedings (Conciliation Rules) were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(c) of the ICSID Convention.

The Conciliation Rules are supplemented by the Administrative and Financial Regulations of the Centre.

The Conciliation Rules apply from the date of registration of a Request for conciliation until termination of the conciliation.

Chapter I General Provisions

Rule 1 Application of Rules

- (1) These Rules shall apply to any conciliation proceeding conducted under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“Convention”) in accordance with Article 33 of the Convention.
- (2) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language.
- (3) These Rules may be cited as the “Conciliation Rules” of the Centre.

Rule 2 Party and Party Representative

- (1) For the purposes of these Rules, “party” includes, where the context so admits, all parties acting as claimant or as respondent.
- (2) Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be notified by that party to the Secretary-General (“representative(s)”).

Rule 3 Method of Filing

- (1) A document to be filed in the proceeding shall be filed with the Secretary-General, who shall acknowledge its receipt.
- (2) Documents shall only be filed electronically, unless the Commission orders otherwise in special circumstances.

Rule 4 Supporting Documents

- (1) Supporting documents shall be filed together with the written statement, request, 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.

Rule 5 Routing of Documents

The Secretary-General shall transmit a document filed in the proceeding to:

- (a) the other party, unless the parties communicate directly with each other;
- (b) the Commission, unless the parties communicate directly with the Commission on request of the Commission or by agreement of the parties; and
- (c) the Chairman of the Administrative Council (“Chair”) if applicable.

Rule 6 Procedural Languages, Translation and Interpretation

- (1) The parties may agree to use one or two procedural languages in the proceeding. The parties shall consult with the Commission and the Secretary-General regarding the use of a language that is not an official language of the Centre.

- (2) If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (3) Requests, written statements, observations and communications shall be filed in a procedural language. In a proceeding with two procedural languages, the Commission may order a party to file such documents in both procedural languages.
- (4) Supporting documents in a language other than a procedural language shall be accompanied by a translation into a procedural language. In a proceeding with two procedural languages, the Commission may order a party to translate any supporting document into both procedural languages. Translation of only the relevant part of a supporting document is sufficient, provided that the Commission may order a party to provide a fuller or a complete translation. If the translation is disputed, the Commission may order a party to provide a certified translation.
- (5) Any document from the Commission or the Secretary-General shall be in a procedural language. In a proceeding with two procedural languages, the Commission or the Secretary-General if applicable, shall issue orders, decisions, recommendations and the Report in both procedural languages, unless the parties agree otherwise.
- (6) Any oral communication shall be in a procedural language. In a proceeding with two procedural languages, the Commission may order interpretation into the other procedural language.

Rule 7 Calculation of Time Limits

Time limits referred to in these Rules shall be calculated from the day after the date on which the procedural step starting the period is taken, based on the time at the seat of the Centre. A time limit shall be satisfied if a procedural step is taken on the relevant date, or, if the date falls on a Saturday or Sunday, on the subsequent business day.

Rule 8 Costs of the Proceeding

- (1) The fees and expenses of the Commission and the administrative charges and direct costs of the Centre incurred in connection with the proceeding shall be borne equally by the parties, in accordance with Article 61(1) of the Convention.
- (2) Each party shall bear any other costs it incurs in connection with the proceeding.

Rule 9
Confidentiality of the Conciliation

- (1) All information relating to the conciliation and all documents generated in or obtained during the conciliation shall be confidential, unless:
- (a) the parties agree otherwise;
 - (b) the information is to be published by the Centre pursuant to Administrative and Financial Regulation 26;
 - (c) the information or document is independently available; or
 - (d) disclosure is required by law.

Rule 10
Use of Information in Other Proceedings

Unless the parties to the dispute agree otherwise pursuant to Article 35 of the Convention, a party shall not rely on any of the following in other proceedings:

- (a) views expressed, statements, admissions, offers of settlement, or positions taken by the other party in the conciliation; or
- (b) the Report, order, decision or any recommendation made by the Commission in the conciliation.

Chapter II
Constitution of the Commission

Rule 11
General Provisions, Number of Conciliators and Method of Constitution

- (1) The Commission shall be constituted without delay after registration of the Request for conciliation.
- (2) The number of conciliators and the method of their appointment must be determined before the Secretary-General can act on any appointment proposed by a party.

- (3) The parties shall endeavor to agree on a Sole Conciliator or any uneven number of conciliators and the method of their appointment. If the parties do not advise the Secretary-General of an agreement within 45 days after the date of registration, either party may inform the Secretary-General that the Commission shall be constituted in accordance with Article 29(2)(b) of the Convention.
- (4) References in these Rules to a Commission or a President of a Commission shall include a Sole Conciliator.

Rule 12 Notice of Third-Party Funding

- (1) 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 for the conciliation 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 conciliation, 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 a notice of third-party funding and any changes to such notice to the parties, and to any conciliator proposed for appointment or appointed in a proceeding for purposes of completing the conciliator declaration required by Rule 16(3)(b).

Rule 13 Appointment of Conciliators to a Commission Constituted in Accordance with Article 29(2)(b) of the Convention

If the Commission is to be constituted in accordance with Article 29(2)(b) of the Convention, each party shall appoint a conciliator and the parties shall jointly appoint the President of the Commission.

Rule 14
Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of a Sole Conciliator or any uneven number of conciliators.

Rule 15
Appointment of Conciliators by the Chair in Accordance with Article 30 of the Convention

- (1) If a Commission has not been constituted within 90 days after the date of registration, or such other period as the parties may agree, either party may request that the Chair appoint the conciliator(s) who have not yet been appointed pursuant to Article 30 of the Convention.
- (2) The Chair shall appoint the President of the Commission after appointing any members who have not yet been appointed.
- (3) The Chair shall consult with the parties as far as possible before appointing a conciliator and shall use best efforts to appoint any conciliator(s) within 30 days after receipt of the request to appoint.

Rule 16
Acceptance of Appointment

- (1) A party appointing a conciliator 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 conciliator's independence, impartiality, availability and commitment to maintain the confidentiality of the proceeding.
- (4) The Secretary-General shall notify the parties of the acceptance of appointment by each conciliator and provide the signed declaration.
- (5) The Secretary-General shall notify the parties if a conciliator 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 conciliator in accordance with the method followed for the previous appointment.
- (6) Each conciliator shall have a continuing obligation to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).
- (7) Unless the parties and the conciliator agree otherwise, a conciliator may not act as arbitrator, counsel, expert, judge, mediator, witness or in any other capacity in any other proceeding relating to the dispute that is the subject of the conciliation.

Rule 17

Replacement of Conciliators Prior to Constitution of the Commission

- (1) At any time before the Commission is constituted:
 - (a) a conciliator may withdraw an acceptance;
 - (b) a party may replace a conciliator whom it appointed; or
 - (c) the parties may agree to replace any conciliator.
- (2) A replacement conciliator shall be appointed as soon as possible, in accordance with the method by which the withdrawing or replaced conciliator was appointed.

Rule 18

Constitution of the Commission

- (1) The Commission shall be deemed to be constituted on the date the Secretary-General notifies the parties that each conciliator has accepted the appointment.
- (2) As soon as the Commission is constituted, the Secretary-General shall transmit the Request for conciliation, the supporting documents, the notice of registration and communications with the parties to each conciliator.

Chapter III
Disqualification of Conciliators and Vacancies

Rule 19
Proposal for Disqualification of Conciliators

- (1) A party may file a proposal to disqualify one or more conciliators (“proposal”) in accordance with the following procedure:
 - (a) the proposal shall be filed after the constitution of the Commission and within 21 days after the later of:
 - (i) the constitution of the Commission; or
 - (ii) the date on which the party proposing the disqualification first knew or first should have known of the facts upon which the proposal is based;
 - (b) the proposal shall include the grounds on which the proposal is based, a statement of the relevant facts, law and arguments, and any supporting documents;
 - (c) the other party shall file its response and supporting documents within 21 days after receipt of the proposal;
 - (d) the conciliator to whom the proposal relates may file a statement limited to factual information relevant to the proposal. The statement shall be filed within five days after receipt of the response referred to in paragraph (1)(c); and
 - (e) each party may file a final written submission on the proposal within seven days after expiry of the time limit referred to in paragraph (1)(d).
- (2) The proceeding shall be suspended until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding in whole or in part.

Rule 20
Decision on the Proposal for Disqualification

- (1) The decision on a proposal shall be made by the conciliators not subject to the proposal or by the Chair in accordance with Article 58 of the Convention.
- (2) For the purposes of Article 58 of the Convention:

- (a) if the conciliators not subject to a proposal are unable to decide the proposal for any reason, they shall notify the Secretary-General and they shall be considered equally divided;
 - (b) if a subsequent proposal is filed while the decision on a prior proposal is pending, both proposals shall be decided by the Chair as if they were a proposal to disqualify a majority of the Commission.
- (3) The conciliators not subject to the proposal and the Chair shall use best efforts to decide any proposal within 30 days after the later of the expiry of the time limit referred to in Rule 19(1)(e) or the notice in Rule 20(2)(a).

Rule 21 Incapacity or Failure to Perform Duties

If a conciliator becomes incapacitated or fails to perform the duties required of a conciliator, the procedure in Rules 19 and 20 shall apply.

Rule 22 Resignation

- (1) A conciliator may resign by notifying the Secretary-General and the other members of the Commission and providing reasons for the resignation.
- (2) If the conciliator was appointed by a party, the other members of the Commission shall promptly notify the Secretary-General whether they consent to the conciliator's resignation for the purposes of Rule 23(3)(a).

Rule 23 Vacancy on the Commission

- (1) The Secretary-General shall notify the parties of any vacancy on the Commission.
- (2) The proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.
- (3) A vacancy on the Commission shall be filled by the method used to make the original appointment, except that the Chair shall fill the following from the Panel of Conciliators:

- (a) a vacancy caused by the resignation of a party-appointed conciliator without the consent of the other members of the Commission; or
 - (b) a vacancy that has not been filled within 45 days after the notice of vacancy.
- (4) Once a vacancy has been filled and the Commission has been reconstituted, the conciliation shall continue from the point it had reached at the time the vacancy was notified.

Chapter IV Conduct of the Conciliation

Rule 24 Functions of the Commission

- (1) The Commission shall clarify the issues in dispute and assist the parties in reaching a mutually acceptable resolution of all or part of the dispute.
- (2) In order to bring about agreement between the parties, the Commission may, at any stage of the proceeding, after consulting with the parties, recommend:
 - (a) specific terms of settlement to the parties; or
 - (b) that the parties refrain from taking specific action that might aggravate the dispute while the conciliation is ongoing.
- (3) Recommendations may be made orally or in writing. Either party may request that the Commission provide reasons for any recommendation. The Commission may invite each party to provide observations concerning any recommendation made.
- (4) At any stage of the proceeding, the Commission may:
 - (a) request explanations, documents or other information from either party or other persons;
 - (b) communicate with the parties jointly or separately; or
 - (c) visit any place connected with the dispute or conduct inquiries with the agreement and participation of the parties.

Rule 25
General Duties of the Commission

- (1) The Commission shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.
- (2) The Commission shall treat the parties equally and provide each party with a reasonable opportunity to appear and participate in the proceeding.

Rule 26
Orders, Decisions and Agreements

- (1) The Commission shall make the orders and decisions required for the conduct of the conciliation.
- (2) The Commission shall make decisions by a majority of the votes of all its members. Abstentions shall count as a negative vote.
- (3) Orders and decisions may be made by any appropriate means of communication and may be signed by the President on behalf of the Commission.
- (4) The Commission shall apply any agreement of the parties on procedural matters to the extent that it does not conflict with the Convention and the Administrative and Financial Regulations.

Rule 27
Quorum

The participation of a majority of the members of the Commission by any appropriate means of communication shall be required at the first session, meetings and deliberations, unless the parties agree otherwise.

Rule 28
Deliberations

- (1) The deliberations of the Commission shall take place in private and remain confidential.

- (2) The Commission may deliberate at any place and by any means it considers appropriate.
- (3) Only members of the Commission shall take part in its deliberations. No other person shall be admitted unless the Commission decides otherwise.

Rule 29
Cooperation of the Parties

- (1) The parties shall cooperate with the Commission and with one another, and shall conduct the conciliation in good faith and in an expeditious and cost-effective manner.
- (2) The parties shall provide all relevant explanations, documents or other information. They shall facilitate visits to any place connected with the dispute and the participation of other persons as requested by the Commission.
- (3) The parties shall comply with any time limit agreed upon or fixed by the Commission.
- (4) The parties shall give their most serious consideration to the Commission's recommendations pursuant to Article 34(1) of the Convention.

Rule 30
Written Statements

- (1) Each party shall simultaneously file a brief, initial written statement describing the issues in dispute and its views on these issues 30 days after the constitution of the Commission, or such longer time as the Commission may fix in consultation with the parties, but in any event before the first session.
- (2) Either party may file further written statements at any stage of the conciliation within the time limits fixed by the Commission.

Rule 31
First Session

- (1) The Commission shall hold a first session with the parties to address the procedure, including the matters listed in paragraph (4).

- (2) The first session may be held in person or remotely, by any means that the Commission deems appropriate. The agenda, method and date of the first session shall be determined by the Commission after consulting with the parties.
- (3) The first session shall be held within 60 days after the Commission's constitution or such other period as the parties may agree.
- (4) Before the first session, the Commission shall invite the parties' views on procedural matters, including:
 - (a) the applicable conciliation rules;
 - (b) the procedural language(s), translation and interpretation;
 - (c) the method of filing and routing of documents;
 - (d) a schedule for further written statements and meetings;
 - (e) the place and format of meetings between the Commission and the parties;
 - (f) the manner of recording or keeping minutes of meetings, if any;
 - (g) the treatment of confidential or protected information;
 - (h) the publication of documents;
 - (i) any agreement between the parties:
 - (i) concerning the treatment of information disclosed by one party to the Commission by way of separate communication pursuant to Rule 24 (4)(b);
 - (ii) not to initiate or pursue during the conciliation any other proceeding in respect of the dispute;
 - (iii) concerning the application of prescription or limitation periods;
 - (iv) concerning the disclosure of any settlement agreement resulting from the conciliation; and
 - (v) pursuant to Article 35 of the Convention; and
 - (j) any other procedural matter raised by either party or the Commission.
- (5) At the first session or within any other period determined by the Commission, each party shall:

- (a) identify a representative who is authorized to settle the dispute on its behalf; and
 - (b) describe the process that would be followed to implement a settlement.
- (6) The Commission shall issue summary minutes recording the parties' agreements and the Commission's decisions on the procedure within 15 days after the later of the first session or the last written statement on procedural matters addressed at the first session.

Rule 32 Meetings

- (1) The Commission may meet with the parties jointly or separately.
- (2) The Commission shall determine the date, time and method of holding meetings, after consulting with the parties.
- (3) If a meeting is to be held in person, it may be held at any place agreed to by the parties after consulting with the Commission and the Secretary-General. If the parties do not agree on the place of a meeting, it shall be held at the seat of the Centre pursuant to Article 62 of the Convention.
- (4) Meetings shall remain confidential. The parties may agree to observation of meetings by persons in addition to the parties and the Commission.

Rule 33 Preliminary Objections

- (1) A party may file a preliminary objection that the dispute is not within the jurisdiction of the Centre or for other reasons is not within the competence of the Commission ("preliminary objection").
- (2) A party shall notify the Commission and the other party of its intent to file a preliminary objection as soon as possible. The objection shall be made no later than the date of the initial written statement referred to in Rule 30(1), unless the facts on which the objection is based are unknown to the party at the relevant time.
- (3) The Commission may address a preliminary objection separately or with other issues in dispute. If the Commission decides to address the objection separately, it may suspend the conciliation on the other issues in dispute to the extent necessary to address the preliminary objection.

- (4) The Commission may at any time on its own initiative consider whether the dispute is within the jurisdiction of the Centre or within its own competence.
- (5) If the Commission decides that the dispute is not within the jurisdiction of the Centre or for other reasons is not within its competence, it shall close the proceeding and issue a Report to that effect, in which it shall state its reasons. Otherwise, the Commission shall issue a decision on the objection with brief reasons and fix any time limit necessary for the further conduct of the conciliation.

Chapter V Termination of the Conciliation

Rule 34 Discontinuance Prior to the Constitution of the Commission

- (1) If the parties notify the Secretary-General prior to the constitution of the Commission that they have agreed to discontinue the proceeding, the Secretary-General shall issue an order taking note of the discontinuance.
- (2) If a party requests the discontinuance of the proceeding prior to the constitution of the Commission, the Secretary-General shall fix a time limit within which the other party may oppose the discontinuance. If no objection in writing is made within the time limit, the other party shall be deemed to have acquiesced in the discontinuance and the Secretary-General shall issue an order taking note of the discontinuance of the proceeding. If any objection in writing is made within the time limit, the proceeding shall continue.
- (3) If, prior to the constitution of the Commission, the parties fail to take any steps in the proceeding for more than 150 consecutive days, the Secretary-General shall notify them of the time elapsed since the last step taken in the proceeding. If the parties fail to take a step within 30 days after the notice, they shall be deemed to have discontinued the proceeding and the Secretary-General shall issue an order taking note of the discontinuance. If either party takes a step within 30 days after the Secretary-General's notice, the proceeding shall continue.

Rule 35 Report Noting the Parties' Agreement

- (1) If the parties reach agreement on some or all of the issues in dispute, the Commission shall close the proceedings and issue its Report noting the issues in dispute and recording the issues upon which the parties have agreed.

- (2) The parties may provide the Commission with the complete and signed text of their settlement agreement and may request that the Commission embody such settlement in the Report.

Rule 36
Report Noting the Failure of the Parties to Reach Agreement

At any stage of the proceeding, and after notice to the parties, the Commission shall close the proceedings and issue its Report noting the issues in dispute and recording that the parties have not reached agreement on the issues in dispute during the conciliation if:

- (a) it appears to the Commission that there is no likelihood of agreement between the parties; or
- (b) the parties advise the Commission that they have agreed to discontinue the conciliation.

Rule 37
Report Recording the Failure of a Party to Appear or Participate

If one party fails to appear or participate in the proceeding, the Commission shall, after notice to the parties, close the proceedings and issue its Report noting the submission of the dispute to conciliation and recording the failure of that party to appear or participate.

Rule 38
The Report

- (1) The Report shall be in writing and shall contain, in addition to the information specified in Rules 35-37:
 - (a) a precise designation of each party;
 - (b) the names of the representatives of the parties;
 - (c) a statement that the Commission was established under the Convention and a description of the method of its constitution;

- (d) the name of each member of the Commission and of the appointing authority of each;
 - (e) the dates and place(s) of the first session and the meetings of the Commission with the parties;
 - (f) a brief summary of the proceeding;
 - (g) the complete and signed text of the parties' settlement agreement if requested by the parties pursuant to Rule 35 (2);
 - (h) a statement of the costs of the proceeding, including the fees and expenses of each member of the Commission and the costs to be paid by each party pursuant to Rule 8; and
 - (i) any agreement of the parties pursuant to Article 35 of the Convention.
- (2) The Report shall be signed by the members of the Commission. It may be signed by electronic means if the parties agree. If a member does not sign the Report, such fact shall be recorded.

Rule 39 Issuance of the Report

- (1) Once the Report has been signed by the members of the Commission, the Secretary-General shall promptly:
- (a) dispatch a certified copy of the Report to each party, indicating the date of dispatch on the Report; and
 - (b) deposit the Report in the archives of the Centre.
- (2) The Secretary-General shall provide additional certified copies of the Report to a party upon request.

V. THE ADDITIONAL FACILITY RULES

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V. THE ADDITIONAL FACILITY RULES

Introductory Note

Additional Facility proceedings are governed by the Additional Facility Rules, the Additional Facility Administrative and Financial Regulations (Annex A), and the relevant (Additional Facility) Arbitration (Annex B) or Conciliation (Annex C) Rules.

Article 1 Definitions

- (1) “Secretariat” means the Secretariat of the Centre.
- (2) “Centre” means the International Centre for Settlement of Investment Disputes established pursuant to Article 1 of the Convention.
- (3) “Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States which entered into force on October 14, 1966.
- (4) “Regional Economic Integration Organization” or “REIO” means an organization constituted by States to which they have transferred competence in respect of matters governed by these Rules, including the authority to make decisions binding on them in respect of those matters.
- (5) “National of another State” means, unless otherwise agreed:
 - (a) a natural or juridical person that, on the date of consent to the proceeding, is a national of a State other than the State party to the dispute, or of any constituent State of the REIO party to the dispute; or
 - (b) a juridical person that, on the date of consent to the proceeding, is a national of the State party to the dispute or of any constituent State of the REIO party to the dispute, and which the parties agree not to treat as a national of that State for the purpose of these Rules.
- (6) “Request” means a request for arbitration or conciliation.
- (7) “Contracting State” means a State for which the Convention is in force.

Article 2
Additional Facility Proceedings

- (1) The Secretariat is authorized to administer arbitration and conciliation proceedings for the settlement of legal disputes arising out of an investment between a State or an REIO on the one hand, and a national of another State on the other hand, which the parties consent in writing to submit to the Centre if:
- (a) none of the parties to the dispute is a Contracting State or a national of a Contracting State;
 - (b) either the State party to the dispute, or the State whose national is a party to the dispute, but not both, is a Contracting State; or
 - (c) an REIO is a party to the dispute.
- (2) Reference to a State or an REIO includes a constituent subdivision of the State, or an agency of the State or the REIO. The State or the REIO must approve the consent of the constituent subdivision or agency which is a party to the proceeding pursuant to paragraph (1), unless the State or the REIO concerned notifies the Centre that no such approval is required.
- (3) Arbitration and conciliation proceedings under these Rules shall be conducted in accordance with the (Additional Facility) Arbitration Rules (Annex B) or the (Additional Facility) Conciliation Rules (Annex C) respectively. The (Additional Facility) Administrative and Financial Regulations (Annex A) shall apply to such proceedings.

Article 3
Convention Not Applicable

The provisions of the Convention do not apply to the conduct of Additional Facility proceedings.

Article 4
Final Provisions

- (1) The applicable Rules are those in force on the date of filing of the Request, unless the parties agree otherwise.
- (2) These Rules are published in the official languages of the Centre, English, French and Spanish. The texts of these Rules in each official language are equally authentic.
- (3) These Rules may be cited as the “Additional Facility Rules” of the Centre.

**VI. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR ADDITIONAL
FACILITY PROCEEDINGS (ANNEX A)
((ADDITIONAL FACILITY) ADMINISTRATIVE AND FINANCIAL REGULATIONS)**

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**VI. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR ADDITIONAL
FACILITY PROCEEDINGS (ANNEX A)
(ADDITIONAL FACILITY) ADMINISTRATIVE AND FINANCIAL REGULATIONS)**

Introductory Note

The (Additional Facility) Administrative and Financial Regulations apply to Additional Facility Arbitration and Conciliation proceedings and were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

**Chapter I
General Provisions**

**Regulation 1
Application of these Regulations**

- (1) These Regulations apply to arbitration and conciliation proceedings which the Secretariat of the Centre is authorized to administer pursuant to Article 2 of the Additional Facility Rules.
- (2) The applicable Regulations are those in force on the date of filing the Request for arbitration or conciliation pursuant to the Additional Facility Rules.
- (3) These Regulations may be referred to as the “(Additional Facility) Administrative and Financial Regulations” of the Centre (“Annex A” to the Additional Facility Rules).

**Chapter II
General Functions of the Secretariat**

**Regulation 2
Secretary**

The Secretary-General of the Centre shall appoint a Secretary for each Commission and Tribunal. The Secretary may be drawn from the Secretariat and shall be considered a member of its staff while serving as a Secretary. The Secretary shall:

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the (Additional Facility) Arbitration

and Conciliation Rules applicable to individual proceedings and delegated to the Secretary; and

- (b) assist the parties and the Commission or Tribunal with all aspects of the proceeding, including the expeditious and cost-effective conduct of the proceeding.

Regulation 3 The Registers

The Secretary-General shall maintain and publish a Register for each case containing all significant data concerning the institution, conduct and disposition of the proceeding, including the economic sector involved, the names of the parties and their representatives, and the method of constitution and membership of each Commission or Tribunal.

Regulation 4 Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
 - (a) all requests for arbitration, conciliation, supplementary decision, rectification or interpretation;
 - (b) all written submissions, written statements, observations, supporting documents and communications filed in a proceeding;
 - (c) the minutes, recordings and transcripts of hearings, meetings or sessions in a proceeding; and
 - (d) any order, decision, recommendation, Report or Award by a Commission or Tribunal.
- (2) Subject to the applicable rules and the agreement of the parties to the proceedings, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c) and (d) available to the parties. Certified copies of the documents referred to in paragraph (1)(d) shall reflect any supplementary decision, rectification or interpretation.

**Regulation 5
Certificates of Official Travel**

The Secretary-General may issue certificates of official travel to members of Commissions or Tribunals, to persons assisting them, to members of the Secretariat, and to the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in proceedings, indicating that they are traveling in connection with a proceeding pursuant to the ICSID Additional Facility Rules.

**Chapter III
Financial Provisions**

**Regulation 6
Fees, Allowances and Charges**

- (1) Each member of a Commission or Tribunal shall receive:
 - (a) a fee for each hour of work performed in connection with the proceeding;
 - (b) when not travelling to attend a hearing, meeting or session, reimbursement of expenses reasonably incurred for the sole purpose of the proceeding; and
 - (c) when required to travel to attend a hearing, meeting or session held away from the member's place of residence:
 - (i) reimbursement of the cost of ground transportation between the points of departure and arrival;
 - (ii) reimbursement of the cost of air and ground transportation to and from the city in which the hearing, meeting or session is held; and
 - (iii) a *per diem* allowance for each day the member spends away from their place of residence.
- (2) The Secretary-General shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and (c). Any request by a member for a higher amount shall be made through the Secretary-General, and not directly to the parties. Such a request must be made before the constitution of the Commission or Tribunal and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish an annual administrative charge payable by the parties to the Centre.

- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
- (a) members of Commissions and Tribunals, and any assistants approved by the parties;
 - (b) witnesses and experts called by a Commission or Tribunal who have not been presented by a party;
 - (c) service providers that the Centre engages for a proceeding; and
 - (d) the host of any hearing, meeting or session held outside an ICSID facility.
- (5) The Centre shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or reimbursements of the members of any Commission or Tribunal, unless the parties have made sufficient payments to defray the costs of the proceeding.

Regulation 7 Payments to the Centre

- (1) To enable the Centre to pay the costs referred to in Regulation 6, the parties shall make payments to the Centre as follows:
- (a) upon registration of a Request for arbitration or conciliation, the Secretary-General shall request the claimant(s) to make a payment to defray the estimated costs of the proceeding through the first session of the Commission or Tribunal, which shall be considered partial payment by the claimant(s) of the payment referred to in paragraph (1)(b);
 - (b) upon constitution of a Commission or Tribunal, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the proceeding; and
 - (c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the proceeding.
- (2) In conciliation proceedings, each party shall pay one half of the payments referred to in paragraph (1)(b) and (c), unless the parties agree on a different division. In arbitration proceedings, each party shall pay one half of the payments referred to in paragraph (1)(b) and (c), unless a different division is agreed to by the parties or ordered by the Tribunal. Payment of these sums is without prejudice to the Tribunal's final decision on costs pursuant to Rule 69(1)(j) of the (Additional Facility) Arbitration Rules.

- (3) The Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.
- (4) This Regulation shall apply to requests for a supplementary decision on or rectification of an Award, and to an application for interpretation of an Award.

Regulation 8 Consequences of Default in Payment

- (1) The payments referred to in Regulation 7 shall be payable on the date of the request from the Secretary-General.
- (2) The following procedure shall apply in the event of non-payment:
 - (a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;
 - (b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the proceeding until payment is made, after giving notice to the parties and to the Commission or Tribunal if constituted; and
 - (c) if any proceeding is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the proceeding, after giving notice to the parties and to the Commission or Tribunal if constituted.

Regulation 9 Special Services

- (1) The Centre may perform any special services related to disputes if the requestor deposits in advance an amount sufficient to defray the charge for such services.
- (2) Charges for special services shall normally be based on a schedule of fees published by the Secretary-General.

Regulation 10
Fee for Lodging Requests

The party or parties (if a request is filed jointly) wishing to institute an arbitration or conciliation proceeding, or requesting a supplementary decision, rectification or interpretation of an Award, shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 11
Administration of Proceedings

The ICSID Secretariat is the only entity authorized to administer proceedings conducted pursuant to the Additional Facility Rules.

Chapter IV
Official Languages and Limitation of Liability

Regulation 12
Languages of Regulations

- (1) These Regulations are published in the official languages of the Centre, English, French and Spanish.
- (2) The texts of these Regulations in each official language are equally authentic.
- (3) The singular form of words in these Regulations and in the (Additional Facility) Arbitration and Conciliation Rules include the plural form of that word, unless otherwise stated or required by the context of the provision.

Regulation 13
Prohibition Against Testimony and Limitation of Liability

- (1) Unless required by applicable law or unless the parties and all the members of the Commission or Tribunal agree otherwise in writing, no member of the Commission or Tribunal shall give testimony in any judicial, arbitral or similar proceeding concerning any aspect of the arbitration or conciliation proceeding.
- (2) Except to the extent such limitation of liability is prohibited by applicable law, no member of the Commission or Tribunal shall be liable for any act or omission in

connection with the exercise of their functions in the arbitration or conciliation proceeding, unless there is fraudulent or willful misconduct.

**VII. THE ARBITRATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
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VII. THE ARBITRATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS (ADDITIONAL FACILITY) ARBITRATION RULES (ANNEX B)

Introductory Note

The Arbitration Rules for Additional Facility Proceedings ((Additional Facility) Arbitration Rules) were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

The (Additional Facility) Arbitration Rules are supplemented by the (Additional Facility) Administrative and Financial Regulations in Annex A.

The (Additional Facility) Arbitration Rules apply from the submission of a Request for arbitration until an Award is rendered and to any proceedings arising from a request for a supplementary decision on, rectification of, or interpretation of, an Award.

Chapter I Scope

Rule 1 Application of Rules

- (1) These Rules shall apply to any arbitration proceeding conducted pursuant to the Additional Facility Rules.
- (2) The parties may agree to modify the application of any of these Rules other than Rules 1-9.
- (3) If any of these Rules, or any agreement pursuant to paragraph (2), conflicts with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
- (4) The applicable (Additional Facility) Arbitration Rules are those in force on the date of filing the Request for arbitration, unless the parties agree otherwise.
- (5) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language.
- (6) These Rules may be cited as the “(Additional Facility) Arbitration Rules” of the Centre.

Chapter II
Institution of Proceedings

Rule 2
The Request

- (1) Any party wishing to institute arbitration proceedings pursuant to the Additional Facility Rules shall file a Request for arbitration together with the required supporting documents (“Request”) with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the dispute.

Rule 3
Contents of the Request

- (1) The Request shall:
 - (a) be in English, French or Spanish;
 - (b) identify each party to the dispute and provide their contact information, including electronic mail address, street address and telephone number;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) attach proof of any representative’s authority to act; and
 - (e) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request and attach the authorizations.
- (2) With regard to Article 2(1)(a) of the Additional Facility Rules, the Request shall include:
 - (a) a description 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 out of the investment;
 - (b) with respect to each party’s consent to submit the dispute to arbitration pursuant to the Additional Facility Rules:
 - (i) the instrument(s) in which each party’s consent is recorded;

- (ii) the date of entry into force of the instrument(s) on which consent is based, together with supporting documents demonstrating that date;
 - (iii) the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or, if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre; and
 - (iv) an indication that the requesting party has complied with any conditions in the instrument of consent for submission of the dispute;
- (c) if a party is a natural person:
- (i) information concerning that person's nationality on the date of consent, together with supporting documents demonstrating such nationality; and
 - (ii) a statement that the person is a national of a State other than the State party to the dispute or of any constituent State of the REIO party to the dispute on the date of consent;
- (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; and
 - (ii) if that party had the nationality of the State party to the dispute or of any constituent State of the REIO 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 State pursuant to Article 1(5)(b) of the Additional Facility Rules, together with supporting documents demonstrating such agreement;
- (e) if a party is a constituent subdivision of a State or an agency of a State or of an REIO, supporting documents demonstrating the approval of consent of the State or the REIO, unless the State or the REIO has notified the Centre that no such approval is required.

Rule 4
Recommended Additional Information

It is recommended that the Request also contain any procedural proposals or agreements reached by the parties, including with respect to:

- (a) the number and method of appointment of arbitrators;
- (b) the seat of arbitration;
- (c) the law applicable to the dispute; and
- (d) the procedural language(s).

Rule 5
Filing of the Request and Supporting Documents

- (1) The Request shall be filed electronically. The Secretary-General may require the Request to be filed in an alternative format if necessary.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Secretary-General may require a fuller extract or a complete version of the document.
- (3) The Secretary-General may require a certified copy of a supporting document.
- (4) Any document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or a complete translation of the document.

Rule 6
Receipt of the Request and Routing of Written Communications

The Secretary-General shall:

- (a) promptly acknowledge receipt of the Request to the requesting party;
- (b) transmit the Request to the other party upon receipt of the lodging fee; and

(c) act as the official channel of written communications between the parties.

Rule 7
Review and Registration of the Request

- (1) Upon receipt of the Request and lodging fee, the Secretary-General shall register the Request if it appears on the basis of the information provided that the Request is not manifestly outside the scope of Article 2(1) of the Additional Facility Rules.
- (2) The Secretary-General shall promptly notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.

Rule 8
Notice of Registration

The notice of registration of the Request shall:

- (a) record that the Request is registered and indicate the date of registration;
- (b) confirm that all correspondence to the parties in connection with the proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Centre;
- (c) invite the parties to inform the Secretary-General of their agreement regarding the number and method of appointment of arbitrators, unless such information has already been provided, and to constitute a Tribunal without delay;
- (d) remind the parties that registration of the Request is without prejudice to the powers and functions of the Tribunal in regard to jurisdiction, competence of the Tribunal and the merits; and
- (e) remind the parties to make the disclosure required by Rule 23.

Rule 9
Withdrawal of the Request

At any time before registration, a requesting party may notify the Secretary-General in writing of the withdrawal of the Request or, if there is more than one requesting party, that it is withdrawing from the Request. The Secretary-General shall promptly notify the

parties of the withdrawal, unless the Request has not yet been transmitted pursuant to Rule 6(b).

Chapter III General Provisions

Rule 10 General Duties

- (1) The Tribunal and the parties shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.
- (2) The Tribunal shall treat the parties equally and provide each party with a reasonable opportunity to present its case.

Rule 11 Party and Party Representative

- (1) For the purposes of these Rules, “party” includes, where the context so admits, all parties acting as claimant or as respondent.
- (2) Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be notified by that party to the Secretary-General (“representative(s)”).

Rule 12 Method of Filing

- (1) A document to be filed in the proceeding shall be filed with the Secretary-General, who shall acknowledge its receipt.
- (2) Documents shall only be filed electronically, unless the Tribunal orders otherwise in special circumstances.

Rule 13
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 or to make the original available for examination.

Rule 14
Routing of Documents

Following the registration of the Request pursuant to Rule 7, the Secretary-General shall transmit a document filed in the proceeding to:

- (a) the other party, unless the parties communicate directly with each other; and
- (b) the Tribunal, unless the parties communicate directly with the Tribunal on request of the Tribunal or by agreement of the parties.

Rule 15
Procedural Languages, Translation and Interpretation

- (1) The parties may agree to use one or two procedural languages in the proceeding. The parties shall consult with the Tribunal and the Secretary-General regarding the use of a language that is not an official language of the Centre.
- (2) If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (3) Requests, written submissions, observations and communications shall be filed in a procedural language. In a proceeding with two procedural languages, the Tribunal may order a party to file such documents in both procedural languages.

- (4) Supporting documents in a language other than a procedural language shall be accompanied by a translation into a procedural language. In a proceeding with two procedural languages, the Tribunal may order a party to translate any supporting document into both procedural languages. Translation of only the relevant part of a supporting document is sufficient, provided that the Tribunal may order a party to provide a fuller or a complete translation. If the translation is disputed, the Tribunal may order a party to provide a certified translation.
- (5) Any document from the Tribunal or the Secretary-General shall be in a procedural language. In a proceeding with two procedural languages, the Tribunal, or the Secretary-General if applicable, shall render orders, decisions and the Award in both procedural languages, unless the parties agree otherwise.
- (6) Any oral communication shall be in a procedural language. In a proceeding with two procedural languages, the Tribunal may order interpretation into the other procedural language.
- (7) The testimony of a witness or an expert in a language other than a procedural language shall be interpreted into the procedural language(s) used at the hearing.
- (8) The recordings and transcripts of a hearing shall be made in the procedural language(s) used at the hearing.

Rule 16 **Correction of Errors**

A party may correct an accidental error in a document promptly upon discovery and before the Award is rendered. The parties may refer any dispute regarding a correction to the Tribunal for determination.

Rule 17 **Calculation of Time Limits**

- (1) References to time shall be determined based on the time at the seat of the Centre on the relevant date.
- (2) Any time limit expressed as a period of time shall be calculated from the day after the date on which:
 - (a) the Tribunal, or the Secretary-General if applicable, announces the period; or
 - (b) the procedural step starting the period is taken.

- (3) A time limit shall be satisfied if a procedural step is taken or a document is received by the Secretary-General on the relevant date, or, if the date falls on a Saturday or Sunday, on the subsequent business day.

Rule 18
Fixing Time Limits

The Tribunal, or the Secretary-General if applicable, shall fix time limits for the completion of each procedural step in the proceeding, other than time limits prescribed by these Rules.

Rule 19
Extension of Time Limits Applicable to Parties

- (1) A time limit prescribed by these Rules may only be extended by agreement of the parties. A procedural step taken or document received after the expiry of such time limit shall be disregarded, unless the parties agree otherwise.
- (2) A time limit fixed by the Tribunal or the Secretary-General may be extended by agreement of the parties or by the Tribunal, or Secretary-General if applicable, upon reasoned application by either party made prior to its expiry. A procedural step taken or a document received after the expiry of such time limit shall be disregarded unless the Tribunal, or the Secretary-General if applicable, concludes that there are special circumstances justifying the failure to meet the time limit.
- (3) The Tribunal may delegate to the President the power to extend time limits referred to in paragraph (2).

Rule 20
Time Limits Applicable to 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

- (1) The Tribunal shall be constituted without delay after registration of the Request.
- (2) Unless otherwise agreed by the parties:
 - (a) the majority of the arbitrators on a Tribunal shall be nationals of States other than the State party to the dispute, any constituent State of the REIO party to the dispute and the State whose national is a party to the dispute;
 - (b) a party may not appoint an arbitrator who is a national of the State party to the dispute, any constituent State of the REIO party to the dispute or the State whose national is a party to the dispute;
 - (c) arbitrators appointed by the Secretary-General shall not be nationals of the State party to the dispute, a constituent State of the REIO party to the dispute or the State whose national is a party to the dispute; and
 - (d) no person previously involved in the resolution of the dispute as a conciliator, judge, mediator or in a similar capacity may be appointed as an arbitrator.
- (3) The composition of a Tribunal shall remain unchanged after it has been constituted, except as provided in Chapter V.

Rule 22
Qualifications of Arbitrators

Arbitrators shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who are impartial and independent.

Rule 23
Notice of Third-Party Funding

- (1) 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 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, 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 a 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 27(3)(b).

Rule 24
Method of Constituting the Tribunal

- (1) The number of arbitrators and the method of their appointment must be determined before the Secretary-General can act on any appointment proposed by a party.
- (2) The parties shall endeavor to agree on any uneven number of arbitrators and the method of their appointment. If the parties do not advise the Secretary-General of an agreement within 45 days after the date of registration, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party and the third, who shall be the President of the Tribunal, appointed by agreement of the parties.

Rule 25
Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of a President of the Tribunal or a Sole Arbitrator.

Rule 26
Appointment of Arbitrators by the Secretary-General

- (1) If the Tribunal has not been constituted within 90 days after the date of registration, or such other period as the parties may agree, either party may request that the Secretary-General appoint the arbitrator(s) who have not yet been appointed.
- (2) The Secretary-General shall appoint the President of the Tribunal after appointing any members who have not yet been appointed.

- (3) The Secretary-General shall consult with the parties as far as possible before appointing an arbitrator and shall use best efforts to appoint any arbitrator(s) within 30 days after receipt of the request to appoint.

Rule 27

Acceptance of Appointment

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

Rule 28

Replacement of Arbitrators Prior to Constitution of the Tribunal

- (1) At any time before the Tribunal is constituted:

- (a) an arbitrator may withdraw an acceptance;
 - (b) a party may replace an arbitrator whom it appointed; or
 - (c) the parties may agree to replace any arbitrator.
- (2) A replacement arbitrator shall be appointed as soon as possible, in accordance with the method by which the withdrawing or replaced arbitrator was appointed.

Rule 29
Constitution of the Tribunal

- (1) The Tribunal shall be deemed to be constituted on the date the Secretary-General notifies the parties that all the arbitrators have accepted their appointments.
- (2) As soon as the Tribunal is constituted, the Secretary-General shall transmit the Request, the supporting documents, the notice of registration and communications with the parties to each member.

Chapter V
Disqualification of Arbitrators and Vacancies

Rule 30
Proposal for Disqualification of Arbitrators

- (1) A party may file a proposal to disqualify one or more arbitrators (“proposal”) on the following grounds:
- (a) that the arbitrator was ineligible for appointment to the Tribunal pursuant to Rule 21(2)(a)-(c); or
 - (b) that circumstances exist that give rise to justifiable doubts as to the qualities of the arbitrator required by Rule 22.
- (2) The following procedure shall apply:
- (a) the proposal shall be filed after the constitution of the Tribunal and within 21 days after the later of:
 - (i) the constitution of the Tribunal; or

- (ii) the date on which the party proposing the disqualification first knew or first should have known of the facts on which the proposal is based;
 - (b) the proposal shall include the grounds on which it is based, a statement of the relevant facts, law and arguments, and any supporting documents;
 - (c) the other party shall file its response and supporting documents within 21 days after receipt of the proposal;
 - (d) the arbitrator to whom the proposal relates may file a statement limited to factual information relevant to the proposal. The statement shall be filed within five days after receipt of the response referred to in paragraph (2)(c); and
 - (e) each party may file a final written submission on the proposal within seven days after expiry of the time limit referred to in paragraph (2)(d).
- (3) If the other party agrees to the proposal prior to the dispatch of the decision referred to in Rule 31, the arbitrator shall resign in accordance with Rule 33.
- (4) The proceeding shall be suspended until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding in whole or in part.

Rule 31
Decision on the Proposal for Disqualification

- (1) The Secretary-General shall make the decision on the proposal.
- (2) The Secretary-General shall use best efforts to decide any proposal within 30 days after the expiry of the time limit referred to in Rule 30(2)(e).

Rule 32
Incapacity or Failure to Perform Duties

If an arbitrator becomes incapacitated or fails to perform the duties required of an arbitrator, the procedure in Rules 30 and 31 shall apply.

**Rule 33
Resignation**

An arbitrator may resign by notifying the Secretary-General and the other members of the Tribunal.

**Rule 34
Vacancy on the Tribunal**

- (1) The Secretary-General shall notify the parties of any vacancy on the Tribunal.
- (2) The proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.
- (3) A vacancy on the Tribunal shall be filled by the method used to make the original appointment, except that the Secretary-General shall fill any vacancy that has not been filled within 45 days after the notice of vacancy.
- (4) Once a vacancy has been filled and the Tribunal has been reconstituted, the proceeding shall continue from the point it had reached at the time the vacancy was notified. Any portion of a hearing shall be recommenced if the newly appointed arbitrator considers it necessary to decide a pending matter.

**Chapter VI
Conduct of the Proceeding**

**Rule 35
Orders, Decisions and Agreements**

- (1) The Tribunal shall make the orders and decisions required for the conduct of the proceeding.
- (2) Orders and decisions may be made by any appropriate means of communication and may be signed by the President on behalf of the Tribunal.
- (3) The Tribunal shall apply any agreement of the parties on procedural matters, subject to Rule 1(3), and to the extent that the agreement does not conflict with the (Additional Facility) Administrative and Financial Regulations.
- (4) The Tribunal shall consult with the parties prior to making an order or decision it is authorized by these Rules to make on its own initiative.

**Rule 36
Waiver**

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 the 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.

**Rule 37
Filling of Gaps**

If a question of procedure arises which is not covered by these Rules or by any agreement of the parties, the Tribunal shall decide the question.

**Rule 38
First Session**

- (1) The Tribunal shall hold a first session to address the procedure, including the matters listed in paragraph (4).
- (2) The first session may be held in person or remotely, by any means that the Tribunal deems appropriate. The agenda, method and date of the first session shall be determined by the President of the Tribunal after consulting with the other members and the parties.
- (3) The first session shall be held within 60 days after the constitution of the Tribunal or such other period as the parties may agree. If the President of the Tribunal determines that it is not possible to convene the parties and the other members within this period, the first session shall be held solely among the Tribunal members after considering the parties' written submissions on the matters listed in paragraph (4).
- (4) Before the first session, the Tribunal shall invite the parties' views on procedural matters, including:
 - (a) the applicable arbitration rules;
 - (b) the division of advances payable pursuant to (Additional Facility) Administrative and Financial Regulation 7;

- (c) the procedural language(s), translation and interpretation;
 - (d) the method of filing and routing of documents;
 - (e) the number, length, type and format of written submissions;
 - (f) the seat of arbitration;
 - (g) the place of hearings;
 - (h) whether there will be requests for production of documents as between the parties and, if so, the scope, timing and procedure for such requests;
 - (i) the procedural calendar;
 - (j) the manner of making recordings and transcripts of hearings;
 - (k) the publication of documents and recordings;
 - (l) the treatment of confidential or protected information; and
 - (m) any other procedural matter raised by either party or the Tribunal.
- (5) The Tribunal shall issue an order recording the parties' agreements and any Tribunal decisions on the procedure within 15 days after the later of the first session or the last written submission on procedural matters addressed at the first session.

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.

- (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**

With a view to conducting an expeditious and cost-effective proceeding, the Tribunal shall convene one or more case management conferences with the parties at any time after the first session to:

- (a) identify uncontested facts;
- (b) clarify and narrow the issues in dispute; or
- (c) address any other procedural or substantive issue related to the resolution of the dispute.

Rule 41 **Seat of Arbitration**

The seat of arbitration shall be agreed on by the parties or, absent agreement, shall be determined by the Tribunal having regard to the circumstances of the proceeding and after consulting with the parties.

Rule 42 **Hearings**

- (1) The Tribunal shall hold one or more hearings, unless the parties agree otherwise.
- (2) The President of the Tribunal shall determine the date, time and method of holding hearings, after consulting with the other members of the Tribunal and the parties.

- (3) If a hearing is to be held in person, it may be held at any place agreed to by the parties after consulting with the Tribunal and the Secretary-General. If the parties do not agree on the place of a hearing, it shall be held at a place determined by the Tribunal.
- (4) Any member of the Tribunal may put questions to the parties and ask for explanations at any time during a hearing.

Rule 43 Quorum

The participation of a majority of the members of the Tribunal by any appropriate means of communication shall be required at the first session, case management conferences, hearings and deliberations, unless the parties agree otherwise.

Rule 44 Deliberations

- (1) The deliberations of the Tribunal shall take place in private and remain confidential.
- (2) The Tribunal may deliberate at any place and by any means it considers appropriate.
- (3) Only members of the Tribunal shall take part in its deliberations. No other person shall be admitted unless the Tribunal decides otherwise.
- (4) The Tribunal shall deliberate on any matter for decision immediately after the last written or oral submission on that matter.

Rule 45 Decisions Made by Majority Vote

The Tribunal shall make decisions by a majority of the votes of all its members. Abstention shall count as a negative vote.

**Chapter VII
Evidence**

**Rule 46
Evidence: General Principles**

- (1) The Tribunal shall determine the admissibility and probative value of the evidence adduced.
- (2) Each party has the burden of proving the facts relied on to support its claim or defense.
- (3) The Tribunal may call upon a party to produce documents or other evidence if it deems it necessary at any stage of the proceeding.

**Rule 47
Disputes Arising from Requests for Documents**

The Tribunal shall decide any dispute arising out of a party's objection to the other party's request for production of documents. In deciding the dispute, the Tribunal shall consider all relevant circumstances, including:

- (a) the scope and timeliness of the request;
- (b) the relevance and materiality of the documents requested;
- (c) the burden of production; and
- (d) the basis of the objection.

**Rule 48
Witnesses and Experts**

- (1) A party intending to rely on evidence given by a witness shall file a written statement by that witness. The statement shall identify the witness, contain the evidence of the witness, and be signed and dated.
- (2) A witness who has filed a written statement may be called for examination at a hearing.
- (3) The Tribunal shall determine the manner in which the examination is conducted.

- (4) A witness shall be examined before the Tribunal, by the parties, and under the control of the President. Any member of the Tribunal may put questions to the witness.
- (5) A witness shall be examined in person unless the Tribunal determines that another means of examination is appropriate in the circumstances.

- (6) Each witness shall make the following declaration before giving evidence:

“I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth.”

- (7) Paragraphs (1)-(5) shall apply, with necessary modifications, to evidence given by an expert.

- (8) Each expert shall make the following declaration before giving evidence:

“I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief.”

Rule 49 Tribunal-Appointed Experts

- (1) Unless the parties agree otherwise, the Tribunal may appoint one or more independent experts to report to it on specific matters within the scope of the dispute.
- (2) The Tribunal shall consult with the parties on the appointment of an expert, including on the terms of reference and fees of the expert.
- (3) Upon accepting an appointment by the Tribunal, an expert shall provide a signed declaration in the form published by the Centre.
- (4) The parties shall provide the Tribunal-appointed expert with any information, document or other evidence that the expert may require. The Tribunal shall decide any dispute regarding the evidence required by the Tribunal-appointed expert.
- (5) The parties shall have the right to make written and oral submissions on the report of the Tribunal-appointed expert, as required.
- (6) Rule 48 shall apply, with necessary modifications, to the Tribunal-appointed expert.

Rule 50
Visits and Inquiries

- (1) The Tribunal may order a visit to any place connected with the dispute, on its own initiative or upon a party's request, if it deems the visit necessary, and may conduct inquiries there as appropriate.
- (2) The order shall define the scope of the visit and the subject of any inquiry, the procedure to be followed, the applicable time limits and other terms.
- (3) The parties shall have the right to participate in any visit or inquiry.

Chapter VIII
Special Procedures

Rule 51
Manifest Lack of Legal Merit

- (1) A party may object that a claim is manifestly without legal merit. The objection may relate to the substance of the claim or to the jurisdiction or competence of the Tribunal.
- (2) The following procedure shall apply:
 - (a) a party shall file a written submission no later than 45 days after the constitution of the Tribunal;
 - (b) the written submission shall specify the grounds on which the objection is based and contain a statement of the relevant facts, law and arguments;
 - (c) the Tribunal shall fix time limits for written and oral submissions on the objection, as required;
 - (d) if a party files the objection before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the objection, so that the Tribunal may consider the objection promptly upon its constitution; and
 - (e) the Tribunal shall render its decision or Award on the objection within 60 days after the latest of:
 - (i) the constitution of the Tribunal;

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

(iii) the last oral submission on the objection.

(3) If the Tribunal decides that all claims are manifestly without legal merit, it shall render an Award to that effect. Otherwise, the Tribunal shall issue a decision on the objection and fix any time limit necessary for the further conduct of the proceeding.

(4) A decision that a claim is not manifestly without legal merit shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 53 or to argue subsequently in the proceeding that a claim is without legal merit.

Rule 52 Bifurcation

(1) A party may request that a question be addressed in a separate phase of the proceeding (“request for bifurcation”).

(2) If a request for bifurcation relates to a preliminary objection, Rule 54 shall apply.

(3) The following procedure shall apply to a request for bifurcation other than a request referred to in Rule 54:

(a) the request for bifurcation shall be filed as soon as possible;

(b) the request for bifurcation shall state the questions to be bifurcated;

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

(d) the Tribunal shall issue its decision on the request for bifurcation within 30 days after the later of the last written or oral submission on the request; and

(e) the Tribunal shall fix any time limit necessary for the further conduct of the proceeding.

(4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:

(a) bifurcation would materially reduce the time and cost of the proceeding;

(b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and

- (c) the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical.
- (5) If the Tribunal orders bifurcation pursuant to this Rule, it shall suspend the proceeding with respect to any questions to be addressed at a later phase, unless the parties agree otherwise or the Tribunal decides there are special circumstances that do not justify suspension.
- (6) The Tribunal may at any time on its own initiative decide whether a question should be addressed in a separate phase of the proceeding.

Rule 53 Preliminary Objections

- (1) The Tribunal shall have the power to rule on its jurisdiction and competence. For the purposes of this Rule, an agreement providing for arbitration pursuant to the Additional Facility Rules shall be severable from the other terms of the contract in which it may have been included.
- (2) A party may file a preliminary objection that the dispute or any ancillary claim is not within the jurisdiction or competence of the Tribunal (“preliminary objection”).
- (3) A party shall notify the Tribunal and the other party of its intent to file a preliminary objection as soon as possible.
- (4) The Tribunal may address a preliminary objection in a separate phase of the proceeding or join the objection to the merits.
- (5) If a party requests bifurcation of a preliminary objection, Rule 54 shall apply.
- (6) If a party does not request bifurcation of a preliminary objection within the time limits referred to in Rule 54(1)(a) or the parties confirm that they will not request bifurcation, the objection shall be joined to the merits and the following procedure shall apply:
 - (a) the Tribunal shall fix time limits for written and oral submissions on the preliminary objection, as required;
 - (b) the memorial on the preliminary objection shall be filed:
 - (i) by the date to file the counter-memorial on the merits;
 - (ii) by the date to file the next written submission after an ancillary claim, if the objection relates to the ancillary claim; or

- (iii) as soon as possible after the facts on which the objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (6)(b)(i) and (ii).
 - (c) the party filing the memorial on preliminary objections shall also file its counter-memorial on the merits, or, if the objection relates to an ancillary claim, file its next written submission after the ancillary claim; and
 - (d) the Tribunal shall render its Award within 240 days after the later of the last written or oral submission in the proceeding, in accordance with Rule 68(1)(c).
- (7) The Tribunal may at any time on its own initiative consider whether a dispute or an ancillary claim is within its own jurisdiction and competence.

Rule 54

Bifurcation of Preliminary Objections

- (1) The following procedure shall apply with respect to a request for bifurcation relating to a preliminary objection:
- (a) unless the parties agree otherwise, the request for bifurcation shall be filed:
 - (i) within 45 days after filing the memorial on the merits;
 - (ii) within 45 days after filing the written submission containing the ancillary claim, if the objection relates to the ancillary claim; or
 - (iii) as soon as possible after the facts on which the preliminary objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (1)(a)(i) and (ii);
 - (b) the request for bifurcation shall state the preliminary objection to which it relates;
 - (c) unless the parties agree otherwise, the proceeding on the merits shall be suspended until the Tribunal decides whether to bifurcate;
 - (d) the Tribunal shall fix time limits for written and oral submissions on the request for bifurcation, as required; and
 - (e) the Tribunal shall issue its decision on a request for bifurcation within 30 days after the later of the last written or oral submission on the request.

- (2) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
 - (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and
 - (c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical.
- (3) If the Tribunal decides to address the preliminary objection in a separate phase of the proceeding, it shall:
 - (a) suspend the proceeding on the merits, unless the parties agree otherwise, or the Tribunal decides there are special circumstances that do not justify suspension;
 - (b) fix time limits for written and oral submissions on the preliminary objection, as required;
 - (c) render its decision or Award on the preliminary objection within 180 days after the later of the last written or oral submission, in accordance with Rule 68(1)(b); and
 - (d) fix any time limit necessary for the further conduct of the proceeding if the Tribunal does not render an Award.
- (4) If the Tribunal decides to join the preliminary objection to the merits, it shall:
 - (a) fix time limits for written and oral submissions on the preliminary objection, as required;
 - (b) modify any time limits for written and oral submissions on the merits, as required; and
 - (c) render its Award within 240 days after the later of the last written or oral submission in the proceeding, in accordance with Rule 68(1)(c).

Rule 55
Consolidation or Coordination of Arbitrations

- (1) Parties to two or more pending arbitrations administered by the Centre may agree to consolidate or coordinate these arbitrations.

- (2) Consolidation joins all aspects of the arbitrations sought to be consolidated and results in a single Award. To be consolidated pursuant to this Rule, the arbitrations shall have been registered in accordance with these Rules and shall involve the same State or the same REIO (or constituent subdivision of the State or agency of the State or the REIO).
- (3) Coordination aligns specific procedural aspects of each pending arbitration, but the arbitrations remain separate proceedings and each results in an individual Award.
- (4) The parties referred to in paragraph (1) shall jointly provide the Secretary-General with proposed terms for the conduct of the consolidated or coordinated proceeding(s) and consult with the Secretary-General to ensure that the proposed terms are capable of being implemented.
- (5) After the consultation referred to in paragraph (4), the Secretary-General shall communicate the proposed terms to the Tribunal(s) constituted in the arbitrations. Such Tribunal(s) shall make any order or decision required to implement these terms.

Rule 56 Provisional Measures

- (1) A party may at any time request that the Tribunal order provisional measures to preserve that party's rights, including measures to:
 - (a) prevent action that is likely to cause current or imminent harm to that party or prejudice to the arbitral process;
 - (b) maintain or restore the *status quo* pending determination of the dispute; or
 - (c) preserve evidence that may be relevant to the resolution of the dispute.
- (2) The following procedure shall apply:
 - (a) the request shall specify the rights to be preserved, the measures requested, and the circumstances that require such measures;
 - (b) the Tribunal shall fix time limits for written and oral submissions on the request, as required;
 - (c) if a party requests provisional measures 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 deciding whether to order provisional measures, the Tribunal shall consider all relevant circumstances, including:
 - (a) whether the measures are urgent and necessary; and
 - (b) the effect that the measures may have on each party.
- (4) The Tribunal may order provisional measures on its own initiative. The Tribunal may also order provisional measures different from those requested by a party.
- (5) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered provisional measures.
- (6) The Tribunal may at any time modify or revoke the provisional measures, on its own initiative or upon a party's request.
- (7) A party may request any judicial or other authority to order interim or conservatory measures. Such a request shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Rule 57
Ancillary Claims

- (1) Unless the parties agree otherwise, a party may file an incidental or additional claim or a counterclaim (“ancillary claim”), provided that such ancillary claim is within the scope of the agreement of the parties.
- (2) An incidental or additional claim shall be presented no later than in the reply, and a counterclaim shall be presented no later than in the counter-memorial, unless the Tribunal decides otherwise.
- (3) The Tribunal shall fix time limits for written and oral submissions on the ancillary claim, as required.

Rule 58 Default

- (1) A party is in default if it fails to appear or present its case, or indicates that it will not appear or present its case.
- (2) If a party is in default at any stage of the proceeding, the other party may request that the Tribunal address the questions submitted to it and render an Award.
- (3) Upon receipt of the request referred to in paragraph (2), the Tribunal shall notify the defaulting party of the request and grant a grace period to cure the default, unless it is satisfied that the defaulting party does not intend to appear or present its case. The grace period shall not exceed 60 days without the consent of the other party.
- (4) If the request in paragraph (2) relates to a failure to appear at a hearing, the Tribunal may:
 - (a) reschedule the hearing to a date within 60 days after the original date;
 - (b) proceed with the hearing in the absence of the defaulting party and fix a time limit for the defaulting party to file a written submission within 60 days after the hearing; or
 - (c) cancel the hearing and fix a time limit for the parties to file written submissions within 60 days after the original date of the hearing.
- (5) If the default relates to another scheduled procedural step, the Tribunal may set the grace period to cure the default by fixing a new time limit for the defaulting party to complete that step within 60 days after the date of the notice of default referred to in paragraph (3).
- (6) A party's default shall not be deemed an admission of the assertions made by the other party.
- (7) The Tribunal may invite the party that is not in default to file observations, produce evidence or make oral submissions.
- (8) If the defaulting party fails to act within the grace period or if no such period is granted, the Tribunal shall examine whether the dispute is within its own jurisdiction and competence before deciding the questions submitted to it and rendering an Award.

**Chapter IX
Costs**

**Rule 59
Costs of the Proceeding**

The costs of the proceeding are all costs incurred by the parties in connection with the proceeding, including:

- (a) the legal fees and expenses of the parties;
- (b) the fees and expenses of the Tribunal, Tribunal assistants approved by the parties and Tribunal-appointed experts; and
- (c) the administrative charges and direct costs of the Centre.

**Rule 60
Statement of and Submission on Costs**

The Tribunal shall request that each party file a statement of its costs and a written submission on the allocation of costs before allocating the costs of the proceeding between the parties.

**Rule 61
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 part of it;
 - (b) the conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner;
 - (c) the complexity of the issues; and
 - (d) the reasonableness of the costs claimed.
- (2) The Tribunal may make an interim decision on costs at any time.

- (3) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.

Rule 62 Security for Costs

- (1) Upon 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;
 - (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.
- (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) The Tribunal shall specify any relevant terms in an order to provide security for costs and fix a time limit for compliance with the order.
- (6) 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) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.
- (8) 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.

Chapter X
Suspension, Settlement and Discontinuance

Rule 63
Suspension of the Proceeding

- (1) The Tribunal shall suspend the proceeding by agreement of the parties.
- (2) The Tribunal may suspend the proceeding upon the request of either party or on its own initiative, except as otherwise provided in the (Additional Facility) Administrative and Financial Regulations or these Rules.
- (3) The Tribunal shall give the parties the opportunity to make observations before ordering a suspension pursuant to paragraph (2).
- (4) In its order suspending the proceeding, the Tribunal shall specify:
 - (a) the period of the suspension;
 - (b) any relevant terms; and
 - (c) a modified procedural calendar to take effect on resumption of the proceeding, if necessary.
- (5) The Tribunal shall extend the period of a suspension prior to its expiry by agreement of the parties.

- (6) The Tribunal may extend the period of a suspension prior to its expiry, on its own initiative or upon a party's request, after giving the parties an opportunity to make observations.
- (7) The Secretary-General shall suspend the proceeding pursuant to paragraph (1) or extend the suspension pursuant to paragraph (5) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal. The parties shall inform the Secretary-General of the period of the suspension and any terms agreed to by the parties.

Rule 64
Settlement and Discontinuance

- (1) If the parties notify the Tribunal that they have agreed to discontinue the proceeding, the Tribunal shall issue an order taking note of the discontinuance.
- (2) If the parties agree on a settlement of the dispute before the Award is rendered, the Tribunal:
 - (a) shall issue an order taking note of the discontinuance of the proceeding, if the parties so request; or
 - (b) may record the settlement in the form of an Award, if the parties file the complete and signed text of their settlement and request that the Tribunal embody such settlement in an Award.
- (3) An Award rendered pursuant to paragraph (2)(b) does not need to include the reasons on which it is based.
- (4) The Secretary-General shall issue the order referred to in paragraphs (1) and (2)(a) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

Rule 65
Discontinuance at Request of a Party

- (1) If a party requests the discontinuance of the proceeding, the Tribunal shall fix a time limit within which the other party may oppose the discontinuance. If no objection in writing is made within the time limit, the other party shall be deemed to have acquiesced in the discontinuance and the Tribunal shall issue an order taking note of the discontinuance of the proceeding. If any objection in writing is made within the time limit, the proceeding shall continue.

- (2) The Secretary-General shall fix the time limit and issue the order referred to in paragraph (1) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

Rule 66
Discontinuance for Failure of Parties to Act

- (1) If the parties fail to take any steps in the proceeding for more than 150 consecutive days, the Tribunal shall notify them of the time elapsed since the last step taken in the proceeding.
- (2) If the parties fail to take a step within 30 days after the notice referred to in paragraph (1), they shall be deemed to have discontinued the proceeding and the Tribunal shall issue an order taking note of the discontinuance.
- (3) If either party takes a step within 30 days after the notice referred to in paragraph (1), the proceeding shall continue.
- (4) The Secretary-General shall issue the notice and the order referred to in paragraphs (1) and (2) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

Chapter XI
The Award

Rule 67
Applicable Law

- (1) The Tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Tribunal shall apply:
 - (a) the law which it determines to be applicable; and
 - (b) the rules of international law it considers applicable.
- (2) The Tribunal may decide *ex aequo et bono* if the parties have expressly authorized it to do so and if the law applicable to the arbitration so permits.

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 the Tribunal constitution, the last written submission or the last oral submission, if the Award is rendered pursuant to Rule 51(4);
 - (b) 180 days after the later of the last written or oral submission if the Award is rendered pursuant to Rule 54(3)(c); or
 - (c) 240 days after the later of the last written or oral submission in all other cases.
- (2) A statement of costs and submission on costs filed pursuant to with Rule 60 shall not be considered a written submission for the purposes of paragraph (1).
- (3) The parties waive any time limits for rendering the Award which may be provided for by the law of the seat of arbitration.

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 seat of arbitration, 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 reasons on which the Award is based, unless the parties have agreed that no reasons are to be given; 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

- (1) Once the Award has been signed by the members of the Tribunal who voted for it, the Secretary-General shall promptly:
 - (a) dispatch a certified copy of the Award to each party, together with any individual opinion and statement of dissent, indicating the date of dispatch on the Award; and
 - (b) deposit the Award in the archives of the Centre, together with any individual opinion and statement of dissent.
- (2) Upon request of the parties that the original text of the Award be filed or registered by the Tribunal pursuant to the law of the seat of arbitration, the Secretary-General shall do so on behalf of the Tribunal.
- (3) The Award shall be deemed to have been made at the seat of arbitration and deemed to have been rendered on the date of dispatch of certified copies of the Award.
- (4) The Secretary-General shall provide additional certified copies of the Award to a party upon request.

Rule 71
Supplementary Decision, Rectification and Interpretation of an Award

- (1) A Tribunal may rectify any clerical, arithmetical or similar error in the Award on its own initiative within 30 days after rendering the Award.
- (2) A party may request a supplementary decision, rectification or interpretation of an Award by filing a request with the Secretary-General and paying the lodging fee published in the schedule of fees within 45 days after the Award was rendered.
- (3) The request referred to in paragraph (2) shall:
 - (a) identify the Award to which it relates;
 - (b) be in an official language of the Centre used in the proceeding;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) specify:
 - (i) with respect to a request for a supplementary decision, any question which the Tribunal omitted to decide in the Award;
 - (ii) with respect to a request for rectification, any clerical, arithmetical or similar error in the Award;
 - (iii) with respect to a request for interpretation, the points in dispute concerning the meaning or scope of the Award; and
 - (e) attach proof of payment of the lodging fee.
- (4) Upon receipt of the request and the lodging fee, the Secretary-General shall promptly:
 - (a) transmit the request to the other party;
 - (b) register the request, or refuse registration if the request is not made within the time limit referred to in paragraph (2); and
 - (c) notify the parties of the registration or refusal to register.
- (5) As soon as the request is registered, the Secretary-General shall transmit the request and the notice of registration to each member of the Tribunal.

- (6) The President of the Tribunal shall determine the procedure to consider the request, after consulting with the other members of the Tribunal and the parties.
- (7) Rules 69-70 shall apply to any decision of the Tribunal pursuant to this Rule.
- (8) The Tribunal shall issue a decision on the request for supplementary decision, rectification or interpretation within 60 days after the later of the last written or oral submission on the request.
- (9) A supplementary decision, rectification or interpretation pursuant to this Rule shall become part of the Award and shall be reflected on all certified copies of the Award.

Chapter XII
Publication, Access to Proceedings and Non-Disputing Party Submissions

Rule 72
Publication of Orders, Decisions and Awards

- (1) The Centre shall publish orders, decisions and Awards with any redactions agreed to by the parties and jointly notified to the Secretary-General within 60 days after the order, decision or Award is rendered.
- (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, decision or Award to the Tribunal to determine any disputed redactions. The Centre shall publish the order, decision or Award 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.

Rule 73
Publication of Documents Filed in the Proceeding

- (1) Upon request of either party, the Centre shall publish any document filed in the proceeding, with any redactions agreed to by the parties and jointly notified to the Secretary-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) 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

- (1) The Tribunal shall determine whether to allow persons in addition to the parties, their representatives, witnesses and experts during their testimony
- (2)
- (3)
- (4) , and persons assisting the Tribunal, to observe hearings after consulting with the parties.
- (5) The Tribunal shall establish procedures to prevent the disclosure of any confidential or protected information to persons observing the hearings.
- (6) The Centre shall publish recordings or transcripts of those portions of hearings that were available for observation by the public in accordance with paragraphs (1) and (2), unless either party objects.

Rule 75 Confidential or Protected Information

For the purposes of Rules 72-74, 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 or the REIO 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.

Rule 76
Submission of Non-Disputing Parties

- (1) Any person or entity that is not a party to the dispute (“non-disputing party”) may apply for permission to file a written submission in the proceeding. The application shall be made in a procedural language used in the proceeding.
- (2) In determining whether to permit a non-disputing party submission, the Tribunal shall consider all relevant circumstances, including:
 - (a) whether the submission would address a matter within the scope of the dispute;
 - (b) how the submission would assist the Tribunal to determine a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the parties;
 - (c) whether the non-disputing party has a significant interest in the proceeding;
 - (d) the identity, activities, organization and ownership of the non-disputing party, including any direct or indirect affiliation between the non-disputing party, a party or a non-disputing Treaty Party; and
 - (e) whether any person or entity will provide the non-disputing party with financial or other assistance to file the submission.
- (3) The parties shall have the right to make observations on whether a non-disputing party should be permitted to file a written submission in the proceeding and on the conditions for filing such a submission, if any.
- (4) The Tribunal shall ensure that non-disputing party participation does not disrupt the proceeding or unduly burden or unfairly prejudice either party. To this end, the Tribunal may impose conditions on the non-disputing party, including with respect to the format, length or scope of the written submission and the time limit to file the submission.
- (5) The Tribunal shall issue a reasoned decision on whether to permit a non-disputing party submission within 30 days after the later of the last written or oral submission on the application.

- (6) The Tribunal may provide the non-disputing party with access to relevant documents filed in the proceeding, unless either party objects.
- (7) If the Tribunal permits a non-disputing party to file a written submission, the parties shall have the right to make observations on the submission.

Rule 77
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 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.

Chapter XIII
Expedited Arbitration

Rule 78
Consent of Parties to Expedited Arbitration

- (1) The parties to an arbitration conducted pursuant to these Rules may consent at any time to expedite the arbitration in accordance with this Chapter (“expedited arbitration”) by jointly notifying the Secretary-General in writing of their consent.
- (2) Chapters I-XII of the (Additional Facility) Arbitration Rules apply to an expedited arbitration except that:
 - (a) Rules 24, 26, 49, 50, 51, 52, 54 and 55 do not apply in an expedited arbitration; and
 - (b) Rules 27, 31, 38, 47, 53, 58, 68 and 71, as modified by Rules 78-87, apply in an expedited arbitration.
- (3) If the parties consent to expedited arbitration after the constitution of the Tribunal pursuant to Chapter IV, Rules 79-81 shall not apply, and the expedited arbitration shall proceed subject to all members of the Tribunal confirming their availability

pursuant to Rule 82(2). If any arbitrator fails to confirm availability before the expiry of the applicable time limit, the arbitration shall proceed in accordance with Chapters I-XII.

Rule 79
**Number of Arbitrators and Method of Constituting the Tribunal
for Expedited Arbitration**

- (1) The Tribunal in an expedited arbitration shall consist of a Sole Arbitrator appointed pursuant to Rule 80 or a three-member Tribunal appointed pursuant to Rule 81.
- (2) The parties shall jointly notify the Secretary-General in writing of their election of a Sole Arbitrator or a three-member Tribunal within 30 days after the date of the notice of consent referred to in Rule 78(1).
- (3) If the parties do not notify the Secretary-General of their election within the time limit referred to in paragraph (2), the Tribunal shall consist of a Sole Arbitrator to be appointed pursuant to Rule 80.
- (4) An appointment pursuant to Rules 80-81 shall be deemed an appointment in accordance with a method agreed by the parties.

Rule 80
Appointment of Sole Arbitrator for Expedited Arbitration

- (1) The parties shall jointly appoint the Sole Arbitrator within 20 days after the notice referred to in Rule 79(2).
- (2) The Secretary-General shall appoint the Sole Arbitrator if:
 - (a) the parties do not appoint the Sole Arbitrator within the time limit referred to in paragraph (1);
 - (b) the parties notify the Secretary-General that they are unable to agree on the Sole Arbitrator; or
 - (c) the appointee declines the appointment or does not comply with Rule 82(1).
- (3) The following procedure shall apply to the appointment by the Secretary-General of the Sole Arbitrator pursuant to paragraph (2):

- (a) the Secretary-General shall transmit a list of five candidates for appointment as Sole Arbitrator to the parties within 10 days after the relevant event referred to in paragraph (2);
- (b) each party may strike one name from the list and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;
- (c) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them; and
- (d) if the selected candidate declines the appointment or does not comply with Rule 82(1), the Secretary-General shall select the next highest-ranked candidate.

Rule 81

Appointment of Three-Member Tribunal for Expedited Arbitration

- (1) A three-member Tribunal shall be appointed in accordance with the following procedure:
 - (a) each party shall appoint an arbitrator (“co-arbitrator”) within 20 days after the notice referred to in Rule 79(2); and
 - (b) the parties shall jointly appoint the President of the Tribunal within 20 days after the receipt of the acceptances from both co-arbitrators.
- (2) The Secretary-General shall appoint the arbitrators not yet appointed if:
 - (a) an appointment is not made within the applicable time limit referred to in paragraph (1);
 - (b) the parties notify the Secretary-General that they are unable to agree on the President of the Tribunal; or
 - (c) an appointee declines the appointment or does not comply with Rule 82(1).
- (3) The following procedure shall apply to the appointment by the Secretary-General of any arbitrators pursuant to paragraph (2):
 - (a) the Secretary-General shall first appoint the co-arbitrator(s) not yet appointed. The Secretary-General shall consult with the parties as far as possible and use

best efforts to appoint the co-arbitrator(s) within 15 days after the relevant event in paragraph (2);

- (b) after both co-arbitrators have accepted their appointments and within 10 days after the relevant event referred to in paragraph (2), the Secretary-General shall transmit a list of five candidates for appointment as President of the Tribunal to the parties;
- (c) each party may strike one name from the list and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;
- (d) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them; and
- (e) if the selected candidate declines the appointment or does not comply with Rule 82(1), the Secretary-General shall select the next highest-ranked candidate.

Rule 82

Acceptance of Appointment in Expedited Arbitration

- (1) An arbitrator appointed pursuant to Rule 84 or 85 shall accept the appointment and provide a declaration pursuant to Rule 27(3) within 10 days after receipt of the request for acceptance.
- (2) An arbitrator appointed to a Tribunal constituted pursuant to Chapter IV shall confirm their availability to conduct an expedited arbitration within 10 days after receipt of the notice of consent pursuant to Rule 78(3).

Rule 83

First Session in Expedited Arbitration

- (1) The Tribunal shall hold a first session pursuant to Rule 38 within 30 days after the constitution of the Tribunal.
- (2) The first session shall be held by telephone or electronic means of communication, unless both parties and the Tribunal agree it shall be held in person.

Rule 84
Procedural Schedule in Expedited Arbitration

- (1) The following schedule for written submissions and the hearing shall apply in an expedited arbitration:
 - (a) the claimant shall file a memorial within 60 days after the first session;
 - (b) the respondent shall file a counter-memorial within 60 days after the date of filing the memorial;
 - (c) the memorial and counter-memorial referred to in paragraph (1)(a) and (b) shall be no longer than 200 pages in length;
 - (d) the claimant shall file a reply within 40 days after the date of filing the counter-memorial;
 - (e) the respondent shall file a rejoinder within 40 days after the date of filing the reply;
 - (f) the reply and rejoinder referred to in paragraph (1)(d) and (e) shall be no longer than 100 pages in length;
 - (g) the hearing shall be held within 60 days after the last written submission is filed;
 - (h) the parties shall file statements of their costs and written submissions on costs within 10 days after the last day of the hearing referred to in paragraph (1)(g); and
 - (i) the Tribunal shall render the Award as soon as possible, and in any event no later than 120 days after the hearing referred to in paragraph (1)(g).
- (2) Any preliminary objection, counterclaim, incidental or additional claim shall be joined to the main schedule referred to in paragraph (1). The Tribunal shall adjust the schedule if a party raises any such matter, taking into account the expedited nature of the process.
- (3) The Tribunal may extend the time limits referred to in paragraph (1)(a) and (b) by up to 30 days if any party requests that the Tribunal determine a dispute arising from requests to produce documents pursuant to Rule 47. The Tribunal shall decide such applications based on written submissions and without an in-person hearing.
- (4) Any schedule for submissions other than those referred to in paragraphs (1)-(3) shall run in parallel with the main schedule referred to in paragraph (1), unless the Tribunal determines that there are special circumstances that justify the suspension

of the main schedule. In fixing time limits for such submissions, the Tribunal shall take into account the expedited nature of the process.

Rule 85
Default in Expedited Arbitration

A Tribunal may grant a party in default a grace period not to exceed 30 days pursuant to Rule 58.

Rule 86
Procedural Schedule for Supplementary Decision, Rectification and Interpretation in Expedited Arbitration

- (1) A Tribunal may rectify any clerical, arithmetical or similar error in the Award on its own initiative within 15 days after rendering the Award.
- (2) A request for a supplementary decision, rectification or interpretation of an Award made pursuant to Rule 71 shall be filed within 15 days after the Award was rendered.
- (3) The Tribunal shall issue a supplementary decision, rectification or interpretation of an Award pursuant to Rule 71 within 30 days after the later of the last written or oral submission on the request.

Rule 87
Opting Out of Expedited Arbitration

- (1) The parties may opt out of an expedited arbitration at any time by jointly notifying the Tribunal and Secretary-General in writing of their agreement.
- (2) Upon request of a party, the Tribunal may decide that an arbitration should no longer be expedited. In deciding the request, the Tribunal shall consider the complexity of the issues, the stage of the proceeding and all other relevant circumstances.
- (3) The Tribunal, or the Secretary-General if a Tribunal has not been constituted, shall determine the further procedure pursuant to Chapters I-XII and fix any time limit necessary for the conduct of the proceeding.

**VIII. CONCILIATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
((ADDITIONAL FACILITY) CONCILIATION RULES) (ANNEX C)**

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VIII. (ADDITIONAL FACILITY) CONCILIATION RULES

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VIII. CONCILIATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS ((ADDITIONAL FACILITY) CONCILIATION RULES) (ANNEX C)

Introductory Note

The Conciliation Rules for Additional Facility Proceedings ((Additional Facility) Conciliation Rules) were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

The (Additional Facility) Conciliation Rules are supplemented by the (Additional Facility) Administrative and Financial Regulations in Annex A.

The (Additional Facility) Conciliation Rules apply from the submission of a Request for conciliation until termination of the conciliation.

Chapter I Scope

Rule 1 Application of Rules

- (1) These Rules shall apply to any conciliation proceeding conducted pursuant to the Additional Facility Rules.
- (2) The parties may agree to modify the application of any of these Rules other than Rules 1-9.
- (3) If any of these Rules, or any agreement pursuant to paragraph (2), conflicts with a provision of law from which the parties cannot derogate, that provision shall prevail.
- (4) The applicable (Additional Facility) Conciliation Rules are those in force on the date of filing the Request for conciliation, unless the parties agree otherwise.
- (5) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language.
- (6) These Rules may be cited as the “(Additional Facility) Conciliation Rules” of the Centre.

Chapter II
Institution of the Proceedings

Rule 2
The Request

- (1) Any party wishing to institute conciliation proceedings pursuant to the Additional Facility Rules shall file a Request for conciliation together with the required supporting documents (“Request”) with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the dispute.

Rule 3
Contents of the Request

- (1) The Request shall:
 - (a) be in English, French or Spanish;
 - (b) identify each party to the dispute and provide their contact information, including electronic mail address, street address and telephone number;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) attach proof of any representative’s authority to act; and
 - (e) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request and attach the authorizations.
- (2) With regard to Article 2(1)(a) of the Additional Facility Rules, the Request shall include:
 - (a) a description 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 out of the investment;
 - (b) with respect to each party’s consent to submit the dispute to conciliation pursuant to the Additional Facility Rules:
 - (i) the instrument(s) in which each party’s consent is recorded;

- (ii) the date of entry into force of the instrument(s) on which consent is based, together with supporting documents demonstrating that date;
 - (iii) the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or, if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre; and
 - (iv) an indication that the requesting party has complied with any conditions in the instrument of consent for submission of the dispute;
- (c) if a party is a natural person:
- (i) information concerning that person's nationality on the date of consent, together with supporting documents demonstrating such nationality; and
 - (ii) a statement that the person is a national of a State other than the State party to the dispute or of any constituent State of the REIO party to the dispute on the date of consent;
- (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; and
 - (ii) if that party had the nationality of the State party to the dispute or of any constituent State of the REIO 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 State pursuant to Article 1(5)(b) of the Additional Facility Rules, together with supporting documents demonstrating such agreement;
- (e) if a party is a constituent subdivision of a State or an agency of a State or of an REIO, supporting documents demonstrating the approval of consent of the State or the REIO, unless the State or the REIO has notified the Centre that no such approval is required.

Rule 4 **Recommended Additional Information**

It is recommended that the Request also contain any procedural proposals or agreements reached by the parties, including with respect to:

- (a) the number and method of appointment of conciliators; and
- (b) the procedural language(s).

Rule 5
Filing of the Request and Supporting Documents

- (1) The Request shall be filed electronically. The Secretary-General may require the Request to be filed in an alternative format if necessary.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Secretary-General may require a fuller extract or a complete version of the document.
- (3) The Secretary-General may require a certified copy of a supporting document.
- (4) Any document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or a complete translation of the document.

Rule 6
Receipt of the Request and Routing of Written Communications

The Secretary-General shall:

- (a) promptly acknowledge receipt of the Request to the requesting party;
- (b) transmit the Request to the other party upon receipt of the lodging fee; and
- (c) act as the official channel of written communications between the parties.

Rule 7
Review and Registration of the Request

- (1) Upon receipt of the Request and lodging fee, the Secretary-General shall register the Request if it appears on the basis of the information provided that the Request is not manifestly outside the scope of Article 2(1) of the Additional Facility Rules.

- (2) The Secretary-General shall promptly notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.

Rule 8 Notice of Registration

The notice of registration of the Request shall:

- (a) record that the Request is registered and indicate the date of registration;
- (b) confirm that all correspondence to the parties in connection with the proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Centre;
- (c) invite the parties to inform the Secretary-General of their agreement regarding the number and method of appointment of conciliators, unless such information has already been provided, and to constitute a Commission without delay;
- (d) remind the parties that registration of the Request is without prejudice to the powers and functions of the Commission in regard to jurisdiction and competence of the Commission, and the issues in dispute; and
- (e) remind the parties to make the disclosure required by Rule 21.

Rule 9 Withdrawal of the Request

At any time before registration, a requesting party may notify the Secretary-General in writing of the withdrawal of the Request or, if there is more than one requesting party, that it is withdrawing from the Request. The Secretary-General shall promptly notify the parties of the withdrawal, unless the Request has not yet been transmitted pursuant to Rule 6(b).

**Chapter III
General Provisions**

**Rule 10
Party and Party Representative**

- (1) For the purposes of these Rules, “party” includes, where the context so admits, all parties acting as claimant or as respondent.
- (2) Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be notified by that party to the Secretary-General (“representative(s)").

**Rule 11
Method of Filing**

- (1) A document to be filed in the proceeding shall be filed with the Secretary-General, who shall acknowledge its receipt.
- (2) Documents shall only be filed electronically, unless the Commission orders otherwise in special circumstances.

**Rule 12
Supporting Documents**

- (1) Supporting documents shall be filed together with the written statement, request, 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.

**Rule 13
Routing of Document**

Following the registration of the Request pursuant to Rule 7, the Secretary-General shall transmit a document filed in the proceeding to:

- (a) the other party, unless the parties communicate directly with each other; and

- (b) the Commission, unless the parties communicate directly with the Commission on request of the Commission or by agreement of the parties.

Rule 14
Procedural Languages, Translation and Interpretation

- (1) The parties may agree to use one or two procedural languages in the proceeding. The parties shall consult with the Commission and the Secretary-General regarding the use of a language that is not an official language of the Centre.
- (2) If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (3) Requests, written statements, observations and communications shall be filed in a procedural language. In a proceeding with two procedural languages, the Commission may order a party to file such documents in both procedural languages.
- (4) Supporting documents in a language other than a procedural language shall be accompanied by a translation into a procedural language. In a proceeding with two procedural languages, the Commission may order a party to translate any supporting document into both procedural languages. Translation of only the relevant part of a supporting document is sufficient, provided that the Commission may order a party to provide a fuller or a complete translation. If the translation is disputed, the Commission may order a party to provide a certified translation.
- (5) Any document from the Commission or the Secretary-General shall be in a procedural language. In a proceeding with two procedural languages, the Commission, or the Secretary-General if applicable, shall issue orders, decisions, recommendations and the Report in both procedural languages, unless the parties agree otherwise.
- (6) Any oral communication shall be in a procedural language. In a proceeding with two procedural languages, the Commission may order interpretation into the other procedural language.

Rule 15
Calculation of Time Limits

Time limits referred to in these Rules shall be calculated from the day after the date on which the procedural step starting the period is taken, based on the time at the seat of the Centre. A time limit shall be satisfied if a procedural step is taken on the

relevant date, or, if the date falls on a Saturday or Sunday, on the subsequent business day.

Rule 16 Costs of the Proceeding

Unless the parties agree otherwise, each party shall:

- (a) pay one half of the fees and expenses of the Commission and the administrative charges and direct costs of the Centre; and
- (b) bear any other costs it incurs in connection with the proceeding.

Rule 17 Confidentiality of the Conciliation

- (1) All information relating to the conciliation, and all documents generated in or obtained during the conciliation, shall be confidential, unless:
 - (a) the parties agree otherwise;
 - (b) the information is to be published by the Centre pursuant to (Additional Facility) Administrative and Financial Regulation 3;
 - (c) the information or document is independently available; or
 - (d) disclosure is required by law.

Rule 18 Use of Information in Other Proceedings

Unless the parties to the dispute agree otherwise, a party shall not rely on any of the following in other proceedings:

- (a) views expressed, statements, admissions, offers of settlement or positions taken by the other party in the conciliation; or
- (b) the Report, order, decision or any recommendation made by the Commission in the conciliation.

Chapter IV
Constitution of the Commission

Rule 19
General Provisions, Number of Conciliators and Method of Constitution

- (1) The Commission shall be constituted without delay after registration of the Request.
- (2) The number of conciliators and the method of their appointment must be determined before the Secretary-General can act on any appointment proposed by a party.
- (3) The parties shall endeavor to agree on a Sole Conciliator or any uneven number of conciliators and the method of their appointment. If the parties do not advise the Secretary-General of an agreement within 45 days after the date of registration, either party may inform the Secretary-General that the Commission shall consist of a Sole Conciliator, appointed by agreement of the parties.
- (4) The composition of a Commission shall remain unchanged after it has been constituted, except as provided in Chapter V.
- (5) References in these Rules to a Commission or a President of a Commission shall include a Sole Conciliator.

Rule 20
Qualifications of Conciliators

Conciliators shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who are impartial and independent.

Rule 21
Notice of Third-Party Funding

- (1) 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 for the conciliation 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, 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 a notice of third-party funding and any changes to such notice to the parties, and to any conciliator proposed for appointment or appointed in a proceeding for purposes of completing the declaration required by Rule 24(3)(b).

Rule 22

Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of a Sole Conciliator or any uneven number of conciliators.

Rule 23

Appointment of Conciliators by the Secretary-General

- (1) If a Commission has not been constituted within 90 days after the date of registration, or such other period as the parties may agree, either party may request that the Secretary-General appoint the conciliator(s) who have not yet been appointed.
- (2) The Secretary-General shall appoint the President of the Commission after appointing any members who have not yet been appointed.
- (3) The Secretary-General shall consult with the parties as far as possible before appointing a conciliator and shall use best efforts to appoint any conciliator(s) within 30 days after receipt of the request to appoint.

Rule 24

Acceptance of Appointment

- (1) A party appointing a conciliator 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 conciliator's independence, impartiality, availability and commitment to maintain the confidentiality of the proceeding.
- (4) The Secretary-General shall notify the parties of the acceptance of appointment by each conciliator and provide the signed declaration.
- (5) The Secretary-General shall notify the parties if a conciliator 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 conciliator in accordance with the method followed for the previous appointment.
- (6) Each conciliator shall have a continuing obligation to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).
- (7) Unless the parties and the conciliator agree otherwise, a conciliator may not act as arbitrator, counsel, expert, judge, mediator, witness or in any other capacity in any other proceeding relating to the dispute that is the subject of the conciliation.

Rule 25
Replacement of Conciliators Prior to Constitution of the Commission

- (1) At any time before the Commission is constituted:
 - (a) a conciliator may withdraw an acceptance;
 - (b) a party may replace a conciliator whom it appointed; or
 - (c) the parties may agree to replace any conciliator.
- (2) A replacement conciliator shall be appointed as soon as possible, in accordance with the method by which the withdrawing or replaced conciliator was appointed.

Rule 25
Constitution of the Commission

- (1) The Commission shall be deemed to be constituted on the date the Secretary-General notifies the parties that each conciliator has accepted the appointment.
- (2) As soon as the Commission is constituted, the Secretary-General shall transmit the Request, the supporting documents, the notice of registration and communications with the parties to each conciliator.

Chapter V
Disqualification of Conciliators and Vacancies

Rule 27
Proposal for Disqualification of Conciliators

- (1) A party may file a proposal to disqualify one or more conciliators (“proposal”) on the ground that circumstances exist that give rise to justifiable doubts as to the qualities of the conciliator required by Rule 20.
- (2) The following procedure shall apply:
 - (a) the proposal shall be filed after the constitution of the Commission and within 21 days after the later of:
 - (i) the constitution of the Commission; or
 - (ii) the date on which the party proposing the disqualification first knew or first should have known of the facts upon which the proposal is based;
 - (b) the proposal shall include the grounds on which the proposal is based, a statement of the relevant facts, law and arguments, and any supporting documents;
 - (c) the other party shall file its response and supporting documents within 21 days after receipt of the proposal;
 - (d) the conciliator to whom the proposal relates may file a statement limited to factual information relevant to the proposal. The statement shall be filed within five days after receipt of the response referred to in paragraph (2)(c); and
 - (e) each party may file a final written submission on the proposal within seven days after expiry of the time limit referred to in paragraph (2)(d).

- (3) If the other party agrees to the proposal prior to the dispatch of the decision referred to in Rule 28, the conciliator shall resign in accordance with Rule 30.
- (4) The proceeding shall be suspended until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding in whole or in part.

Rule 28
Decision on the Proposal for Disqualification

- (1) The Secretary-General shall make the decision on the proposal.
- (2) The Secretary-General shall use best efforts to decide any proposal within 30 days after the expiry of the time limit referred to in Rule 27(2)(e).

Rule 29
Incapacity or Failure to Perform Duties

If a conciliator becomes incapacitated or fails to perform the duties required of a conciliator, the procedure in Rules 27 and 28 shall apply.

Rule 30
Resignation

- (1) A conciliator may resign by notifying the Secretary-General and the other members of the Commission.
- (2) A conciliator shall resign upon the joint request of the parties.

Rule 31
Vacancy on the Commission

- (1) The Secretary-General shall notify the parties of any vacancy on the Commission.
- (2) The proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.

- (3) A vacancy on the Commission shall be filled by the method used to make the original appointment, except that the Secretary-General shall fill any vacancy that has not been filled within 45 days after the notice of vacancy.
- (4) Once a vacancy has been filled and the Commission has been reconstituted, the conciliation shall continue from the point it had reached at the time the vacancy was notified.

Chapter VI Conduct of the Conciliation

Rule 32 Functions of the Commission

- (1) The Commission shall clarify the issues in dispute and assist the parties in reaching a mutually acceptable resolution of all or part of the dispute.
- (2) In order to bring about agreement between the parties, the Commission may, at any stage of the proceeding, after consulting with the parties, recommend:
 - (a) specific terms of settlement to the parties; or
 - (b) that the parties refrain from taking specific action that might aggravate the dispute while the conciliation is ongoing.
- (3) Recommendations may be made orally or in writing. Either party may request that the Commission provide reasons for any recommendation. The Commission may invite each party to provide observations concerning any recommendation made.
- (4) At any stage of the proceeding, the Commission may:
 - (a) request explanations, documents or other information from either party or other persons;
 - (b) communicate with the parties jointly or separately; or
 - (c) visit any place connected with the dispute or conduct inquiries with the agreement and participation of the parties.

Rule 33
General Duties of the Commission

- (1) The Commission shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.
- (2) The Commission shall treat the parties equally and provide each party with a reasonable opportunity to appear and participate in the proceeding.

Rule 34
Orders, Decisions and Agreements

- (1) The Commission shall make the orders and decisions required for the conduct of the conciliation.
- (2) The Commission shall make decisions by a majority of the votes of all its members. Abstentions shall count as a negative vote.
- (3) Orders and decisions may be made by any appropriate means of communication and may be signed by the President on behalf of the Commission.
- (4) The Commission shall apply any agreement between of the parties on procedural matters, subject to Rule 1(3), and to the extent that the agreement does not conflict with the (Additional Facility) Administrative and Financial Regulations.

Rule 35
Quorum

The participation of a majority of the members of the Commission by any appropriate means of communication shall be required at the first session, meetings and deliberations, unless the parties agree otherwise.

Rule 36
Deliberations

- (1) The deliberations of the Commission shall take place in private and remain confidential.

- (2) The Commission may deliberate at any place and by any means it considers appropriate.
- (3) Only members of the Commission shall take part in its deliberations. No other person shall be admitted unless the Commission decides otherwise.

Rule 37
Cooperation of the Parties

- (1) The parties shall cooperate with the Commission and with one another, and shall conduct the conciliation in good faith and in an expeditious and cost-effective manner.
- (2) The parties shall provide all relevant explanations, documents or other information. They shall facilitate visits to any place connected with the dispute and the participation of other persons as requested by the Commission.
- (3) The parties shall comply with any time limit agreed upon or fixed by the Commission.
- (4) The parties shall give their most serious consideration to the Commission's recommendations.

Rule 38
Written Statements

- (1) Each party shall simultaneously file a brief, initial written statement describing the issues in dispute and its views on these issues 30 days after the constitution of the Commission, or such longer time as the Commission may fix in consultation with the parties, but in any event before the first session.
- (2) Either party may file further written statements at any stage of the conciliation within the time limits fixed by the Commission.

Rule 39
First Session

- (1) The Commission shall hold a first session with the parties to address the procedure, including the matters listed in paragraph (4).

- (2) The first session may be held in person or remotely, by any means that the Commission deems appropriate. The agenda, method and date of the first session shall be determined by the Commission after consulting with the parties.
- (3) The first session shall be held within 60 days after the Commission's constitution or such other period as the parties may agree.
- (4) Before the first session, the Commission shall invite the parties' views on procedural matters, including:
 - (a) the applicable conciliation rules;
 - (b) the division of advances payable pursuant to (Additional Facility) Administrative and Financial Regulation 7;
 - (c) the procedural language(s), translation and interpretation;
 - (d) the method of filing and routing of documents;
 - (e) a schedule for further written statements and meetings;
 - (f) the place and format of meetings between the Commission and the parties;
 - (g) the manner of recording or keeping minutes of meetings, if any;
 - (h) the treatment of confidential or protected information;
 - (i) the publication of documents;
 - (j) any agreement between the parties:
 - (i) concerning the treatment of information disclosed by one party to the Commission by way of separate communication pursuant to Rule 32(4)(b);
 - (ii) not to initiate or pursue during the conciliation any other proceeding in respect of the dispute;
 - (iii) concerning the application of prescription or limitation periods;
 - (iv) concerning the disclosure of any settlement agreement resulting from the conciliation; and
 - (v) pursuant to Rule 18; and
 - (k) any other procedural matter raised by either party or the Commission.

- (5) At the first session or within any other period determined by the Commission, each party shall:
 - (a) identify a representative who is authorized to settle the dispute on its behalf; and
 - (b) describe the process that would be followed to implement a settlement.
- (6) The Commission shall issue summary minutes recording the parties' agreements and the Commission's decisions on the procedure within 15 days after the later of the first session or the last written statement on procedural matters addressed at the first session.

Rule 40 Meetings

- (1) The Commission may meet with the parties jointly or separately.
- (2) The Commission shall determine the date, time and method of holding meetings, after consulting with the parties.
- (3) If a meeting is to be held in person, it may be held at any place agreed to by the parties after consulting with the Commission and the Secretary-General. If the parties do not agree on the place of a meeting, it shall be held at a place determined by the Commission.
- (4) Meetings shall remain confidential. The parties may agree to observation of meetings by persons in addition to the parties and the Commission.

Rule 41 Preliminary Objections

- (1) A party may file a preliminary objection that the dispute is not within the jurisdiction or competence of the Commission ("preliminary objection").
- (2) A party shall notify the Commission and the other party of its intent to file a preliminary objection as soon as possible. The objection shall be made no later than the date of the initial written statement referred to in Rule 38(1), unless the facts on which the objection is based are unknown to the party at the relevant time.
- (3) The Commission may address a preliminary objection separately or with other issues in dispute. If the Commission decides to address the objection separately, it may

suspend the conciliation on the other issues in dispute to the extent necessary to address the preliminary objection.

- (4) The Commission may at any time on its own initiative consider whether the dispute is within its own jurisdiction or competence.
- (5) If the Commission decides that the dispute is not within its jurisdiction or competence, it shall issue a Report to that effect, in which it shall state its reasons. Otherwise, the Commission shall issue a decision on the objection with brief reasons and fix any time limit necessary for the further conduct of the conciliation.

Chapter VII Termination of the Conciliation

Rule 42 Discontinuance Prior to the Constitution of the Commission

- (1) If the parties notify the Secretary-General prior to the constitution of the Commission that they have agreed to discontinue the proceeding, the Secretary-General shall issue an order taking note of the discontinuance.
- (2) If a party requests the discontinuance of the proceeding prior to the constitution of the Commission, the Secretary-General shall fix a time limit within which the other party may oppose the discontinuance. If no objection in writing is made within the time limit, the other party shall be deemed to have acquiesced in the discontinuance and the Secretary-General shall issue an order taking note of the discontinuance of the proceeding. If any objection in writing is made within the time limit, the proceeding shall continue.
- (3) If, prior to the constitution of the Commission, the parties fail to take any steps in the proceeding for more than 150 consecutive days, the Secretary-General shall notify them of the time elapsed since the last step taken in the proceeding. If the parties fail to take a step within 30 days after the notice, they shall be deemed to have discontinued the proceeding and the Secretary-General shall issue an order taking note of the discontinuance. If either party takes a step within 30 days after the Secretary-General's notice, the proceeding shall continue.

Rule 43
Report Noting the Parties' Agreement

- (1) If the parties reach agreement on some or all of the issues in dispute, the Commission shall issue its Report noting the issues in dispute and recording the issues upon which the parties have agreed.
- (2) The parties may provide the Commission with the complete and signed text of their settlement agreement and may request that the Commission embody such settlement in the Report.

Rule 44
Report Noting the Failure of the Parties to Reach Agreement

At any stage of the proceeding, and after notice to the parties, the Commission shall issue its Report noting the issues in dispute and recording that the parties have not reached agreement on the issues in dispute during the conciliation if:

- (a) it appears to the Commission that there is no likelihood of agreement between the parties; or
- (b) the parties advise the Commission that they have agreed to discontinue the conciliation.

Rule 45
Report Recording the Failure of a Party to Appear or Participate

If one party fails to appear or participate in the proceeding, the Commission shall, after notice to the parties, issue its Report noting the submission of the dispute to conciliation and recording the failure of that party to appear or participate.

Rule 46
The Report

- (1) The Report shall be in writing and shall contain, in addition to the information specified in Rules 43-45:
 - (a) a precise designation of each party;

- (b) the names of the representatives of the parties;
 - (c) a statement that the Commission was established pursuant to these Rules and a description of the method of its constitution;
 - (d) the name of each member of the Commission and of the appointing authority of each;
 - (e) the dates and place(s) of the first session and the meetings of the Commission with the parties;
 - (f) a brief summary of the proceeding;
 - (g) the complete and signed text of the parties' settlement agreement if requested by the parties pursuant to Rule 43 (2);
 - (h) a statement of the costs of the proceeding, including the fees and expenses of each member of the Commission and the costs to be paid by each party pursuant to Rule 16; and
 - (i) any agreement of the parties pursuant to Rule 18.
- (2) The Report shall be signed by the members of the Commission. It may be signed by electronic means if the parties agree. If a member does not sign the Report, such fact shall be recorded.

Rule 47 Issuance of the Report

- (1) Once the Report has been signed by the members of the Commission, the Secretary-General shall promptly:
- (a) dispatch a certified copy of the Report to each party, indicating the date of dispatch on the Report; and
 - (b) deposit the Report in the archives of the Centre.
- (2) The Secretary-General shall provide additional certified copies of the Report to a party upon request.

**IX. RULES FOR FACT-FINDING PROCEEDINGS
(ICSID FACT-FINDING RULES)**

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IX. RULES FOR FACT-FINDING PROCEEDINGS (ICSID FACT-FINDING RULES)

Introductory Note

The Rules for Fact-Finding Proceedings (ICSID Fact-Finding Rules) were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

The ICSID Fact-Finding Rules are supplemented by the (Fact-Finding) Administrative and Financial Regulations (Annex A).

Chapter I General Provisions

Rule 1 Definitions

- (1) “Secretariat” means the Secretariat of the Centre.
- (2) “Centre” or “ICSID” means the International Centre for Settlement of Investment Disputes established pursuant to Article 1 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.
- (3) “Regional Economic Integration Organization” or “REIO” means an organization constituted by States to which they have transferred competence in respect of matters governed by these Rules, including the authority to make decisions binding on them in respect of those matters.
- (4) “Request” means a request for fact-finding together with the required supporting documents.
- (5) “Secretary-General” means the Secretary-General of the Centre.
- (6) “Party” includes, where the context so admits, all parties to the fact-finding. Each party may be represented or assisted by agents, counsel, advocates or other advisors whose names and proof of authority to act shall be notified by that party to the Secretary-General (“representative(s)”).
- (7) “Schedule of fees” means the schedule of fees published by the Secretary-General.

Rule 2
Fact-Finding Proceedings

- (1) The Secretariat is authorized to administer fact-finding proceedings relating to an investment involving a State or an REIO, which the parties consent in writing to submit to the Centre.
- (2) Reference to a State or an REIO includes a constituent subdivision of the State, or an agency of the State or the REIO. The State or the REIO must approve the consent of the constituent subdivision or agency which is a party to the fact-finding pursuant to paragraph (1), unless the State or the REIO concerned notifies the Centre that no such approval is required.
- (3) The (Fact-Finding) Administrative and Financial Regulations, attached as Annex A, shall apply to proceedings pursuant to these Rules.

Rule 3
Application of Rules

- (1) These Rules shall apply to any fact-finding proceeding conducted pursuant to Rule 2.
- (2) The parties may agree to modify the application of any of these Rules other than Rules 1-6.
- (3) The applicable ICSID Fact-Finding Rules are those in force on the date of filing the Request, unless the parties agree otherwise.
- (4) The texts of these Rules are equally authentic in English, French and Spanish.
- (5) These Rules may be cited as the “ICSID Fact-Finding Rules.”

Chapter II
Institution of the Fact-Finding Proceeding

Rule 4
The Request

Parties wishing to institute a fact-finding proceeding pursuant to these Rules shall file a joint Request with the Secretary-General and pay the lodging fee published in the schedule of fees.

Rule 5
Contents and Filing of the Request

- (1) The Request shall:
- (a) be in English, French or Spanish;
 - (b) identify each party to the proceeding and provide their contact information, including electronic mail address, street address and telephone number;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) attach proof of any representative's authority to act;
 - (e) be filed electronically, unless the Secretary-General authorizes the filing of the Request in an alternative format;
 - (f) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request, and attach the authorizations;
 - (g) indicate that the proceeding involves a State or an REIO, describe the investment to which the proceeding relates, and indicate the facts to be examined and the relevant circumstances;
 - (h) attach the agreement of the parties to have recourse to fact-finding pursuant to these Rules; and
 - (i) contain any proposals or agreements reached by the parties concerning the constitution of a Fact-Finding Committee ("Committee"), the qualifications of its member(s), its mandate and the procedure to be followed during the fact-finding.

- (2) Any supporting document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or complete translation of the document.

Rule 6
Receipt and Registration of the Request

- (1) The Secretary-General shall promptly acknowledge receipt of the Request.
- (2) Upon receipt of the Request and the lodging fee, the Secretary-General shall register the Request if it appears, on the basis of the information provided, that the Request is within the scope of Rule 2(1).
- (3) The Secretary-General shall notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.
- (4) The notice of registration of the Request shall:
 - (a) record that the Request is registered and indicate the date of registration;
 - (b) confirm that all correspondence to the parties in connection with the proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Secretary-General; and
 - (c) invite the parties to constitute a Committee without delay.

Chapter III
The Fact-Finding Committee

Rule 7
Qualifications of Members of the Committee

- (1) Each member of a fact-finding Committee shall be impartial and independent of the parties.
- (2) The parties may agree that a member of a Committee shall have particular qualifications or expertise.

Rule 8
Number of Members and Method of Constituting the Committee

- (1) The parties shall endeavor to agree on a sole or any uneven number of Committee members, and the method of their appointment. If the parties do not advise the Secretary-General of an agreement on the number of members and method of appointment within 30 days after the date of registration, the Committee shall consist of a sole member, appointed by agreement of the parties.
- (2) The parties may jointly request that the Secretary-General assist with the appointment of any member at any time.
- (3) If the parties are unable to appoint a sole member or any member of a Committee within 60 days after the date of registration, either party may request that the Secretary-General appoint the member(s) not yet appointed. The Secretary-General shall consult with the parties as far as possible on the qualifications, expertise, nationality and availability of the member(s) and shall use best efforts to appoint any Committee member(s) within 30 days after receipt of the request to appoint.
- (4) If no step has been taken by the parties to appoint the members of a Committee within 120 consecutive days after the date of registration, or such other period as the parties may agree, the Secretary-General shall notify the parties that the fact-finding is terminated.

Rule 9
Acceptance of Appointment

- (1) The parties shall notify the Secretary-General of the appointment of the members of the Committee and provide the names and contact information of the appointees.
- (2) The Secretary-General shall request an acceptance from each appointee as soon as the appointee is selected.
- (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 appointee's independence, impartiality, availability and commitment to maintain the confidentiality of the proceeding.

- (4) The Secretary-General shall notify the parties of the acceptance of appointment by each member and provide the signed declaration.
- (5) The Secretary-General shall notify the parties if an appointee 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 in accordance with the method followed for the previous appointment.
- (6) Each member shall have a continuing obligation to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).
- (7) Unless the parties and the Committee agree otherwise, a member may not act as arbitrator, conciliator, counsel, expert, judge, mediator, witness or in any other capacity in any other proceeding relating to circumstances examined during the fact-finding.

Rule 10 Constitution of the Committee

The Committee shall be deemed to be constituted on the date the Secretary-General notifies the parties that each member has accepted their appointment. As soon as the Committee is constituted, the Secretary-General shall transmit the Request, any supporting documents and the notice of registration to each member.

Chapter IV Conduct of the Fact-Finding Proceeding

Rule 11 Sessions and Work of the Committee

- (1) Each party shall file a preliminary written statement of not more than 50 pages with the Secretary-General within 15 days after the date of constitution of the Committee, unless the parties agree otherwise. The preliminary statement shall address the party's view on the mandate of the Committee, the scope of the inquiry, relevant documents, persons to be interviewed, site visits and any other relevant matters. The Secretary-General shall transmit the preliminary written statements to the Committee and the other party.
- (2) The Committee shall hold a first session with the parties within 30 days after its constitution or such other period as the parties may agree.

- (3) At the first session, the Committee shall determine the protocol for the fact-finding (“Protocol”) after consulting with the parties on procedural matters, including:
 - (a) the Committee’s mandate;
 - (b) the procedure for the conduct of the proceeding, such as the procedural languages, method of communication, place of sessions, the next steps in the proceeding, the treatment of confidential or protected information, documents to be provided, persons to be interviewed, site visits and any other procedural and administrative matters;
 - (c) whether the Report to be issued will be binding on the parties; and
 - (d) whether the Committee should make any recommendations in its Report.
- (4) The Committee shall conduct the proceeding in accordance with the Protocol and take all steps necessary to discharge its mandate. To that end, it shall make all decisions required for the conduct of the proceeding.
- (5) Any matters not provided for in these Rules or not previously agreed to by the parties shall be determined by agreement of the parties or, failing such agreement, by the Committee.

Rule 12 General Duties

- (1) The Committee shall treat the parties equally and provide each party with a reasonable opportunity to participate in the proceeding. It shall conduct the proceeding in an expeditious and cost-effective manner and shall consult regularly with the parties on the conduct of the proceeding.
- (2) The parties shall cooperate with the Committee and with one another and shall conduct the proceeding in good faith and in an expeditious and cost-effective manner. The parties shall endeavor to provide all relevant explanations, documents or other information requested by the Committee and participate in the sessions of the Committee. The parties shall use all available means to facilitate the Committee’s inquiry.

Rule 13
Calculation of Time Limits

Time limits referred to in these Rules shall be calculated from the day after the date on which the procedural step starting the period is taken, based on the time at the seat of the Centre. A time limit shall be satisfied if a procedural step is taken on the relevant date, or, if the date falls on a Saturday or Sunday, on the subsequent business day.

Rule 14
Costs of the Proceeding

Unless the parties agree otherwise, each party shall:

- (a) pay one half of the fees and expenses of the Committee and the administrative charges and direct costs of the Centre; and
- (b) bear any other costs it incurs in connection with the proceeding.

Rule 15
Confidentiality of the Proceeding

- (1) All information relating to the fact-finding proceeding, and all documents generated in or obtained during the proceeding, shall be confidential, unless:
 - (a) the parties agree otherwise;
 - (b) the information or document is independently available; or
 - (c) disclosure is required by law.
- (2) The fact that the parties are seeking or have sought fact-finding shall not be confidential.

Rule 16
Use of Information in Other Proceedings

A party shall not rely in other proceedings on any positions taken, admissions made, or views expressed by the other party or the members of the Committee during the fact-finding proceeding, unless the parties agree otherwise.

Chapter V
Termination of the Fact-Finding Proceeding

Rule 17
Manner of Terminating the Proceeding

The proceeding shall terminate upon:

- (a) the issuance of a notice by the Secretary-General pursuant to Rule 8(4);
- (b) the issuance of a Report by the Committee; or
- (c) a notice from the parties that they have agreed to conclude the proceeding.

Rule 18
Failure of a Party to Participate or Cooperate

If a party fails to participate in the proceeding or cooperate with the Committee, and the Committee determines that it is no longer able to discharge its mandate, the Committee shall, after notice to the parties, record the failure of that party to participate or cooperate in its Report.

Rule 19
Report of the Committee

- (1) The Report shall be in writing and shall contain:
 - (a) the mandate of the Committee;
 - (b) the Protocol followed;
 - (c) a brief summary of the proceeding;

- (d) a recommendation if requested by the parties; and
 - (e) the facts established by the Committee and the reasons why certain facts may not be considered as having been established; or
 - (f) an indication of the failure of a party to participate or cooperate pursuant to Rule 18.
- (2) The Report shall be adopted by a majority of the members and signed by them. If a member does not sign the Report, such fact shall be recorded.
 - (3) Any member may attach a statement to the Report if the member disagrees on any of the facts found.
 - (4) Unless the parties agree otherwise, the Report of the Committee shall not be binding upon the parties, and the parties shall be free to give any effect to it.

Rule 20
Issuance of the Report

- (1) Once the Report has been signed by the members of the Committee, the Secretary-General shall promptly:
 - (a) dispatch a certified copy of the Report to each party, indicating the date of dispatch on the Report; and
 - (b) deposit the Report in the archives of the Centre.
- (2) The Secretary-General shall provide additional certified copies of the Report to a party upon request.

**X. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR FACT-FINDING
PROCEEDINGS (ANNEX A)
(FACT-FINDING) ADMINISTRATIVE AND FINANCIAL REGULATIONS**

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X. (FACT-FINDING) ADMINISTRATIVE AND FINANCIAL REGULATIONS

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**X.ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR FACT-FINDING
PROCEEDINGS (ANNEX A)
((FACT-FINDING) ADMINISTRATIVE AND FINANCIAL REGULATIONS)**

Introductory Note

The (Fact-Finding) Administrative and Financial Regulations apply to fact-finding proceedings and were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Regulation 7.

**Chapter I
General Provisions**

**Regulation 1
Application of these Regulations**

- (1) These Regulations apply to fact-finding proceedings which the Secretariat of the Centre is authorized to administer pursuant to Rule 2 of the ICSID Fact-Finding Rules.
- (2) The applicable Regulations are those in force on the date of filing the Request for fact-finding pursuant to the ICSID Fact-Finding Rules.
- (3) These Regulations may be referred to as the “(Fact-Finding) Administrative and Financial Regulations” of the Centre (“Annex A” to the ICSID Fact-Finding Rules).

**Chapter II
General Functions of the Secretariat**

**Regulation 2
Secretary**

The Secretary-General of the Centre shall appoint a Secretary for each Fact-Finding Committee (“Committee”). The Secretary may be drawn from the Secretariat and shall be considered a member of its staff while serving as a Secretary. The Secretary shall:

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the ICSID Fact-Finding Rules applicable to individual proceedings and delegated to the Secretary; and

- (b) assist the parties and the Committee with all aspects of the proceedings, including the expeditious and cost-effective conduct of the proceeding.

Regulation 3 The Registers

The Secretary-General shall maintain a Register for each proceeding containing all significant data concerning the institution, conduct and disposition of the proceeding. The information in the Register shall not be published, unless the parties agree otherwise.

Regulation 4 Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
- (a) all requests for fact-finding;
 - (b) all documents and communications filed in a proceeding;
 - (c) any records of meetings or sessions in a proceeding; and
 - (d) any Report of the Committee.
- (2) Subject to the ICSID Fact-Finding Rules and the agreement of the parties to the proceeding, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c) and (d) available to the parties.

Regulation 5 Certificates of Official Travel

The Secretary-General may issue certificates of official travel to members of Committees, to persons assisting them, to members of the Secretariat, and to the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in proceedings, indicating that they are traveling in connection with a proceeding pursuant to the ICSID Fact-Finding Rules.

Chapter III Financial Provisions

Regulation 6 Fees, Allowances and Charges

- (1) Each member of a Committee shall receive:
 - (a) a fee for each hour of work performed in connection with the proceeding;
 - (b) when not travelling to attend a meeting or session, reimbursement of expenses reasonably incurred for the sole purpose of the proceeding; and
 - (c) when required to travel to attend a meeting or session held away from the member's place of residence:
 - (i) reimbursement of the cost of ground transportation between the points of departure and arrival;
 - (ii) reimbursement of the cost of air and ground transportation to and from the city in which the meeting or session is held; and
 - (iii) a *per diem* allowance for each day the member spends away from their place of residence.
- (2) The Secretary-General shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and (c). Any request by a member for a higher amount shall be made through the Secretary-General, and not directly to the parties. Such a request must be made before the constitution of the Committee and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish an annual administrative charge payable by the parties to the Centre.
- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
 - (a) Members of Committees and any assistants approved by the parties;
 - (b) witnesses and experts called by a Committee who have not been presented by a party;
 - (c) service providers that the Centre engages for a proceeding; and
 - (d) the host of any meeting or session held outside an ICSID facility.

- (5) The Centre shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or reimbursements of the members of any Committee, unless the parties have made sufficient payments to defray the costs of the proceeding.

Regulation 7 Payments to the Centre

- (1) To enable the Centre to pay the costs referred to in Regulation 6, the parties shall make payments to the Centre as follows:
 - (a) upon registration of a Request for fact-finding, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the proceeding through the first session of the Committee;
 - (b) upon constitution of a Committee, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the proceeding; and
 - (c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the proceeding.
- (2) Each party shall pay one half of the payments referred to in paragraph (1), unless the parties agree on a different division.
- (3) The Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.

Regulation 8 Consequences of Default in Payment

- (1) The payments referred to in Regulation 7 shall be payable on the date of the request from the Secretary-General.
- (2) The following procedure shall apply in the event of non-payment:
 - (a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;

- (b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the proceeding until payment is made, after giving notice to the parties and to the Committee if constituted; and
- (c) if any proceeding is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the proceeding, after giving notice to the parties and to the Committee if constituted.

Regulation 9 Special Services

- (1) The Centre may perform any special services related to disputes if the requestor deposits in advance an amount sufficient to defray the charge for such services.
- (2) Charges for special services shall normally be based on a schedule of fees published by the Secretary-General.

Regulation 10 Fee for Lodging Requests

The parties wishing to institute a fact-finding proceeding shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 11 Administration of Proceedings

The ICSID Secretariat is the only entity authorized to administer fact-finding proceedings conducted pursuant to the ICSID Fact-Finding Rules.

Chapter IV
Official Languages and Limitation of Liability

Regulation 12
Languages of Regulations

- (1) These Regulations are published in the official languages of the Centre, English, French and Spanish.
- (2) The texts of these Regulations in each official language are equally authentic.
- (3) The singular form of words in these Regulations and in the ICSID Fact-Finding Rules include the plural form of that word, unless otherwise stated or required by the context of the provision.

Regulation 13
Prohibition Against Testimony and Limitation of Liability

- (1) Unless required by applicable law or unless the parties and all the members of the Committee agree otherwise in writing, no member of the Committee shall give testimony in any judicial, arbitral or similar proceeding concerning any aspect of the fact-finding proceeding.
- (2) Except to the extent such limitation of liability is prohibited by applicable law, no member of the Committee shall be liable for any act or omission in connection with the exercise of their functions in the fact-finding proceeding, unless there is fraudulent or willful misconduct.

**XI. RULES FOR MEDIATION PROCEEDINGS
(ICSID MEDIATION RULES)**

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**XI. RULES FOR MEDIATION PROCEEDINGS
(ICSID MEDIATION RULES)**

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XI. RULES FOR MEDIATION PROCEEDINGS (ICSID MEDIATION RULES)

Introductory Note

The Rules for Mediation Proceedings (ICSID Mediation Rules) were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

The ICSID Mediation Rules are supplemented by the (Mediation) Administrative and Financial Regulations (Annex A).

Chapter I General Provisions

Rule 1 Definitions

- (1) “Secretariat” means the Secretariat of the Centre.
- (2) “Centre” or “ICSID” means the International Centre for Settlement of Investment Disputes established pursuant to Article 1 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.
- (3) “Regional Economic Integration Organization” or “REIO” means an organization constituted by States to which they have transferred competence in respect of matters governed by these Rules, including the authority to make decisions binding on them in respect of those matters.
- (4) “Request” means a request for mediation together with the required supporting documents.
- (5) “Secretary-General” means the Secretary-General of the Centre.
- (6) “Party” includes, where the context so admits, all parties to the mediation. Each party may be represented or assisted by agents, counsel, advocates or other advisors whose names and proof of authority to act shall be notified by that party to the Secretary-General (“representative(s)”).
- (7) “Schedule of fees” means the schedule of fees published by the Secretary-General.

Rule 2 Mediation Proceedings

- (1) The Secretariat is authorized to administer mediations relating to an investment involving a State or an REIO, which the parties consent in writing to submit to the Centre.
- (2) Reference to a State or an REIO includes a constituent subdivision of the State, or an agency of the State or the REIO. The State or the REIO must approve the consent of the constituent subdivision or agency which is a party to the mediation pursuant to paragraph (1), unless the State or the REIO concerned notifies the Centre that no such approval is required.
- (3) The (Mediation) Administrative and Financial Regulations, attached as Annex A, shall apply to mediations pursuant to these Rules.

Rule 3 Application of Rules

- (1) These Rules shall apply to any mediation conducted pursuant to Rule 2.
- (2) The parties may agree to modify the application of any of these Rules other than Rules 1-6.
- (3) If any of these Rules, or any agreement pursuant to paragraph (2), conflicts with a provision of law from which the parties cannot derogate, that provision shall prevail.
- (4) The applicable ICSID Mediation Rules are those in force on the date of filing the Request, unless the parties agree otherwise.
- (5) The texts of these Rules are equally authentic in English, French and Spanish.
- (6) These Rules may be cited as the “ICSID Mediation Rules”.

Chapter II
Institution of the Mediation

Rule 4
Institution of Mediation Based on Prior Party Agreement

- (1) If the parties have agreed in writing to mediation pursuant to these Rules, any party wishing to institute a mediation shall file a Request with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the mediation.
- (3) The Request shall:
 - (a) be in English, French or Spanish;
 - (b) identify each party to the mediation and provide their contact information, including electronic mail address, street address and telephone number;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) attach proof of any representative's authority to act;
 - (e) be filed electronically, unless the Secretary-General authorizes the filing of the Request in an alternative format;
 - (f) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request, and attach the authorizations;
 - (g) indicate that the mediation involves a State or an REIO, describe the investment to which the mediation relates, and include a brief statement of the issues in dispute;
 - (h) contain any proposals or agreements reached by the parties concerning the appointment and qualifications of the mediator and the procedure to be followed during the mediation; and
 - (i) attach the agreement of the parties to mediate pursuant to these Rules.
- (4) Any supporting document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or complete translation of the document.

(5) Upon receipt of the Request, the Secretary-General shall:

- (a) promptly acknowledge receipt of the Request to the requesting party; and
- (b) transmit the Request to the other party upon receipt of the lodging fee.

Rule 5

Institution of Mediation Absent a Prior Party Agreement

- (1) If the parties have no prior written agreement to mediate pursuant to these Rules, any party wishing to institute a mediation shall file a Request with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request shall:
 - (a) comply with the requirements in Rule 4(3)(a)-(h);
 - (b) include an offer to the other party to mediate pursuant to these Rules; and
 - (c) request that the Secretary-General invite the other party to accept the offer to mediate.
- (3) Upon receipt of the Request, the Secretary-General shall:
 - (a) promptly acknowledge receipt of the Request to the requesting party;
 - (b) transmit the Request to the other party upon receipt of the lodging fee; and
 - (c) invite the other party to inform the Secretary-General within 60 days after transmittal of the Request whether it accepts the offer to mediate.
- (4) If the other party informs the Secretary-General that it accepts the offer to mediate, the Secretary-General shall acknowledge receipt and transmit the acceptance of the offer to mediate to the requesting party.
- (5) If the other party rejects the offer to mediate, or fails to accept the offer to mediate within the 60-day period referred to in paragraph (3)(c) or within such other period as the parties may agree, the Secretary-General shall acknowledge receipt and transmit any communication received to the requesting party and inform the parties that no further action will be taken on the Request.

Rule 6
Registration of the Request

- (1) Upon receipt of:
- (a) the lodging fee; and
 - (b) a Request pursuant to Rule 4 or a Request and an agreement to mediate pursuant to Rule 5;
- the Secretary-General shall register the Request if it appears, on the basis of the information provided, that the Request is within the scope of Rule 2(1).
- (2) The Secretary-General shall notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.
- (3) The notice of registration of the Request shall:
- (a) record that the Request is registered and indicate the date of registration;
 - (b) confirm that all correspondence to the parties in connection with the mediation will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Secretary-General; and
 - (c) invite the parties to appoint the mediator without delay.

Chapter III
General Procedural Provisions

Rule 7
Calculation of Time Limits

Time limits referred to in these Rules shall be calculated from the day after the date on which the procedural step starting the period is taken, based on the time at the seat of the Centre. A time limit shall be satisfied if a procedural step is taken on the relevant date, or, if the date falls on a Saturday or Sunday, on the subsequent business day.

**Rule 8
Costs of the Mediation**

Unless the parties agree otherwise, each party shall:

- (a) pay one half of the fees and expenses of the mediator and the administrative charges and direct costs of the Centre; and
- (b) bear any other costs it incurs in connection with the mediation.

**Rule 9
Confidentiality of the Mediation**

- (1) All information relating to the mediation, and all documents generated in or obtained during the mediation shall be confidential, unless:
 - (a) the parties agree otherwise;
 - (b) the information or document is independently available; or
 - (c) disclosure is required by law.
- (2) The fact that the parties are mediating or have mediated shall not be confidential.

**Rule 10
Use of Information in Other Proceedings**

A party shall not rely in other proceedings on any positions taken, admissions or offers of settlement made, or views expressed by the other party or the mediator during the mediation, unless the parties agree otherwise.

**Chapter IV
The Mediator**

**Rule 11
Qualifications of the Mediator**

- (1) The mediator shall be impartial and independent of the parties.
- (2) The parties may agree that the mediator shall have particular qualifications or expertise.

**Rule 12
Number of Mediators and Method of Appointment**

- (1) There shall be one mediator or two co-mediators. Each mediator shall be appointed by agreement of the parties. All references to “mediator” in these Rules shall include co-mediators, as applicable.
- (2) If the parties do not advise the Secretary-General of an agreement on the number of mediators within 30 days after the date of registration, there shall be one mediator appointed by agreement of the parties.
- (3) The parties may jointly request that the Secretary-General assist with the appointment of a mediator at any time.
- (4) If the parties are unable to appoint the mediator within 60 days after the date of registration, either party may request that the Secretary-General appoint the mediator not yet appointed. The Secretary-General shall consult with the parties as far as possible on the qualifications, expertise, nationality and availability of the mediator and shall use best efforts to appoint any mediator within 30 days after receipt of the request to appoint.
- (5) If no step has been taken by the parties to appoint the mediator within 120 consecutive days after the date of registration, or such other period as the parties may agree, the Secretary-General shall notify the parties that the mediation is terminated.

Rule 13
Acceptance of Appointment

- (1) The parties shall notify the Secretary-General of the appointment of the mediator and provide the name and contact information of the appointee.
- (2) The Secretary-General shall request an acceptance from each appointee as soon as the appointee is selected.
- (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 mediator's independence, impartiality, availability and commitment to maintain the confidentiality of the mediation.
- (4) The Secretary-General shall notify the parties of the acceptance of appointment by the mediator and provide the signed declaration.
- (5) The Secretary-General shall notify the parties if a mediator 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 mediator in accordance with the method followed for the previous appointment.
- (6) The mediator shall have a continuing obligation to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).
- (7) Unless the parties and the mediator agree otherwise, a mediator may not act as arbitrator, conciliator, counsel, expert, judge, witness or in any other capacity in any other proceeding relating to the issues in dispute in the mediation.

Rule 14
Transmittal of the Request

As soon as the mediator has, or both co-mediators have, accepted the appointment(s), the Secretary-General shall transmit the Request, any supporting documents and the notice of registration to each mediator and notify the parties of this transmittal.

Rule 15
Resignation and Replacement of Mediator

- (1) A mediator may resign by notifying the Secretary-General and the parties.
- (2) A mediator shall resign:
 - (a) on the joint request of the parties; or
 - (b) if the mediator becomes incapacitated or fails to perform the duties required of a mediator.
- (3) Following the resignation of a mediator, the Secretary-General shall notify the parties of the vacancy. A new mediator shall be appointed by the same method used to make the original appointment, except that:
 - (a) the Secretary-General shall fill any vacancy that has not been filled within 45 days after the notice of the vacancy; or
 - (b) if a co-mediator resigns and the parties notify the Secretary-General within 45 days after the notice of the vacancy that they have agreed to continue the mediation with the remaining co-mediator acting as sole mediator, no new mediator shall be appointed.

Chapter V
Conduct of the Mediation

Rule 16
Role and Duties of the Mediator

- (1) The mediator shall assist the parties in reaching a mutually acceptable resolution of all or part of the issues in dispute. The mediator does not have the authority to impose a settlement on the parties.
- (2) The mediator shall treat the parties equally and provide each party with a reasonable opportunity to participate in the proceeding.

Rule 17
Duties of the Parties

The parties shall cooperate with the mediator and with one another and shall conduct the mediation in good faith and in an expeditious and cost-effective manner.

Rule 18
Initial Written Statements

- (1) Each party shall file a brief initial written statement with the Secretary-General describing the issues in dispute and its views on these issues and on the procedure to be followed during the mediation. These statements shall be filed within 15 days after the date of the transmittal of the Request pursuant to Rule 14, or such other period as the mediator may determine in consultation with the parties, and in any event before the first session.
- (2) The Secretary-General shall transmit the initial written statements to the mediator and the other party.

Rule 19
First Session

- (1) The mediator shall hold a first session with the parties within 30 days after the date of the transmittal of the Request pursuant to Rule 14 or such other period as the parties may agree.
- (2) The agenda, method and date of the first session shall be determined by the mediator after consulting with the parties. In preparation for the first session, the mediator may meet and communicate with the parties jointly or separately.
- (3) At the first session, the mediator shall determine the protocol for the conduct of the mediation (“Protocol”) after consulting with the parties on procedural matters, including:
 - (a) the procedural language(s);
 - (b) the method of communication;
 - (c) the place of meetings;
 - (d) the next steps in the proceeding;

- (e) the treatment of confidential or protected information;
 - (f) the participation of other persons in the mediation;
 - (g) any agreement between the parties:
 - (i) concerning the treatment of information disclosed by one party to the mediator by separate communication pursuant to Rule 20(3);
 - (ii) not to initiate or pursue other proceedings in respect of the issues in dispute during the mediation;
 - (iii) concerning the application of prescription or limitation periods;
 - (iv) concerning the disclosure of any settlement agreement resulting from the mediation; and
 - (h) the division of advances payable pursuant to (Mediation) Administrative and Financial Regulation 7; and
 - (i) any other relevant procedural and administrative matters.
- (4) At the first session or within any other period as the mediator may determine, each party shall:
- (a) identify a representative who is authorized to settle the issues in dispute on its behalf; and
 - (b) describe the process that would be followed to implement a settlement.

Rule 20 Conduct of the Mediation

- (1) The mediator shall conduct the mediation in accordance with the Protocol and shall take into account the views of the parties and the circumstances of the issues in dispute.
- (2) The mediator shall conduct the mediation in good faith and in an expeditious and cost-effective manner.
- (3) The mediator may meet and communicate with the parties jointly or separately. Such communication may be in person or in writing and by any appropriate means.

- (4) Information received by the mediator from one party shall not be disclosed to the other party without authorization from the disclosing party.
- (5) The mediator may request that the parties provide additional information or written statements.
- (6) If requested by all parties, the mediator may make oral or written recommendations for the resolution of all or part of the issues in dispute.
- (7) The mediator may obtain expert advice with the agreement of the parties.

Rule 21
Termination of the Mediation

- (1) The mediator, or the Secretary-General if no mediator has been appointed, shall issue a notice of termination of the mediation upon:
 - (a) a notice from the parties that they have signed a settlement agreement;
 - (b) a notice from the parties that they have agreed to terminate the mediation;
 - (c) a notice of withdrawal by any party, unless the remaining parties agree to continue the mediation;
 - (d) a determination by the mediator that there is no likelihood of resolution through the mediation; or
 - (e) satisfaction of the requirements of Rule 12(5).
- (2) The notice of termination shall contain a brief summary of the procedural steps and the basis for termination of the mediation pursuant to paragraph (1). The notice shall be dated and signed by the mediator or the Secretary-General, as applicable.
- (3) The Secretary-General shall promptly dispatch a certified copy of the notice of termination to each party and deposit the notice in the archives of the Centre. The Secretary-General shall provide additional certified copies of the notice to a party upon request.

**XII. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR MEDIATION
(ANNEX A)
(MEDIATION) ADMINISTRATIVE AND FINANCIAL REGULATIONS)**

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(MEDIATION) ADMINISTRATIVE AND FINANCIAL REGULATIONS)

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**XII. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR MEDIATION
(ANNEX A)
(MEDIATION) ADMINISTRATIVE AND FINANCIAL REGULATIONS**

Introductory Note

The (Mediation) Administrative and Financial Regulations apply to mediation proceedings and were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

**Chapter I
General Provisions**

**Regulation 1
Application of these Regulations**

- (1) These Regulations apply to mediation proceedings which the Secretariat of the Centre is authorized to administer pursuant to Rule 2 of the ICSID Mediation Rules.
- (2) The applicable Regulations are those in force on the date of filing the Request for mediation pursuant to the ICSID Mediation Rules.
- (3) These Regulations may be referred to as the “(Mediation) Administrative and Financial Regulations” of the Centre (“Annex A” to the ICSID Mediation Rules).

**Chapter II
General Functions of the Secretariat**

**Regulation 2
Secretary**

The Secretary-General of the Centre shall appoint a Secretary for each mediation. The Secretary may be drawn from the Secretariat and shall be considered a member of its staff while serving as a Secretary. The Secretary shall:

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the ICSID Mediation Rules applicable to individual proceedings and delegated to the Secretary; and
- (b) assist the parties and the mediator with all aspects of the proceeding, including the expeditious and cost-effective conduct of the proceeding.

Regulation 3 The Registers

The Secretary-General shall maintain a Register for each mediation containing all significant data concerning the institution, conduct and disposition of the proceeding. The information in the Register shall not be published, unless the parties agree otherwise.

Regulation 4 Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
 - (a) all requests for mediation;
 - (b) all documents and communications filed in a mediation;
 - (c) any records of meetings or sessions in a mediation; and
 - (d) any notice of termination of a mediation pursuant to ICSID Mediation Rule 21.
- (2) Subject to the ICSID Mediation Rules and the agreement of the parties to the proceeding, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c) and (d) available to the parties.

Regulation 5 Certificates of Official Travel

The Secretary-General may issue certificates of official travel to mediators, to persons assisting them, to members of the Secretariat, and to the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in proceedings, indicating that they are traveling in connection with a proceeding pursuant to the ICSID Mediation Rules.

Chapter III Financial Provisions

Regulation 6 Fees, Allowances and Charges

- (1) Each mediator shall receive:
 - (a) a fee for each hour of work performed in connection with the proceeding;
 - (b) when not travelling to attend a meeting or session, reimbursement of expenses reasonably incurred for the sole purpose of the proceeding; and
 - (c) when required to travel to attend a meeting or session held away from the place of residence of the mediator:
 - (i) reimbursement of the cost of ground transportation between the points of departure and arrival;
 - (ii) reimbursement of the cost of air and ground transportation to and from the city in which the meeting or session is held; and
 - (iii) a *per diem* allowance for each day the mediator spends away from their place of residence.
- (2) The Secretary-General shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and (c). Any request by a mediator for a higher amount shall be made through the Secretary-General, and not directly to the parties. Such a request must be made before the transmittal of the Request for mediation to the mediator pursuant to ICSID Mediation Rule 14 and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish an annual administrative charge payable by the parties to the Centre.
- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
 - (a) mediators and any assistants approved by the parties;
 - (b) any experts appointed by a mediator pursuant to ICSID Mediation Rule 20(7);
 - (c) service providers that the Centre engages for a proceeding; and
 - (d) the host of any meeting or session held outside an ICSID facility.

- (5) The Centre shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or reimbursements of the mediator, unless the parties have made sufficient payments to defray the costs of the proceeding.

Regulation 7 Payments to the Centre

- (1) To enable the Centre to pay the costs referred to in Regulation 6, the parties shall make payments to the Centre as follows:
 - (a) upon registration of a Request for mediation, the Secretary-General shall request the party(ies) instituting the mediation to make a payment to defray the estimated costs of the proceeding through the first session of the mediator, which shall be considered partial payment by the instituting party(ies) of the payment referred to in paragraph (1)(b);
 - (b) upon the transmittal of the Request for mediation pursuant to ICSID Mediation Rule 13, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the proceeding; and
 - (c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the proceeding.
- (2) Each party shall pay one half of the payments referred to in paragraph (1)(b) and (c), unless the parties agree on a different division.
- (3) The Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.

Regulation 8 Consequences of Default in Payment

- (1) The payments referred to in Regulation 7 shall be payable on the date of the request from the Secretary-General.
- (2) The following procedure shall apply in the event of non-payment:
 - (a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;

- (b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the proceeding until payment is made, after giving notice to the parties and to the mediator if appointed; and
- (c) if any proceeding is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the proceeding, after giving notice to the parties and to the mediator if appointed.

Regulation 9 Special Services

- (1) The Centre may perform any special services related to disputes if the requestor deposits in advance an amount sufficient to defray the charge for such services.
- (2) Charges for special services shall normally be based on a schedule of fees published by the Secretary-General.

Regulation 10 Fee for Lodging Requests

The party or parties (if a request is filed jointly) wishing to institute a mediation shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 11 Administration of Proceedings

The ICSID Secretariat is the only entity authorized to administer mediation proceedings conducted pursuant to the ICSID Mediation Rules.

Chapter IV
Official Languages and Limitation of Liability

Regulation 12
Languages of Regulations

- (1) These Regulations are published in the official languages of the Centre, English, French and Spanish.
- (2) The texts of these Regulations in each official language are equally authentic.
- (3) The singular form of words in these Regulations and in the ICSID Mediation Rules include the plural form of that word, unless otherwise stated or required by the context of the provision.

Regulation 13
Prohibition Against Testimony and Limitation of Liability

- (1) Unless required by applicable law or unless the parties and the mediator agree otherwise in writing, no mediator shall give testimony in any judicial, arbitral or similar proceeding concerning any aspect of the mediation.
- (2) Except to the extent such limitation of liability is prohibited by applicable law, no mediator shall be liable for any act or omission in connection with the exercise of their functions in the mediation, unless there is fraudulent or willful misconduct.

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SCHEDULE 1: SCHEDULE OF FEES [DRAFT]
(EFFECTIVE DATE TBD)

I. FEE FOR LODGING REQUESTS

1. Subject to paragraphs 2 and 3 below, the fee for lodging requests prescribed by the applicable Administrative and Financial Regulations is US\$25,000. This non-refundable fee is payable to the Centre by a party: (a) requesting the institution of conciliation or arbitration proceedings under the Convention or the Additional Facility Rules; or (b) applying for annulment of an arbitral award rendered pursuant to the Convention.
2. A non-refundable fee of US\$10,000 is payable to the Centre by any party: (a) requesting a supplementary decision to, or the rectification, interpretation or revision of, an arbitral award rendered pursuant to the Convention; (b) requesting a supplementary decision to, rectification or interpretation of, an arbitral award rendered pursuant to the Additional Facility Rules; or (c) requesting the resubmission of a dispute to a new Tribunal after the annulment of an arbitral award rendered pursuant to the Convention.
3. A non-refundable fee of US\$3,000 is payable to the Centre by any party: (a) requesting the institution of fact-finding proceedings under the Fact-Finding Rules; or (b) requesting the institution of a mediation under the Mediation Rules.

II. FEES AND EXPENSES OF ARBITRATORS, CONCILIATORS, AD HOC COMMITTEE MEMBERS, FACT-FINDING COMMITTEE MEMBERS AND MEDIATORS

4. In addition to receiving reimbursement for any direct expenses reasonably incurred, arbitrators, conciliators, *ad hoc* Committee members, Fact-Finding Committee members and mediators are entitled to receive a fee of US\$375 for each hour of work performed in connection with the proceedings including each hour spent in hearings, sessions and meetings, as well as *per diem* allowances and reimbursement of travel and other expenses within limits set forth in the applicable Administrative and Financial Regulation. Any request for a higher amount shall be made through the Secretary-General.

III. ADMINISTRATIVE CHARGES

5. An administrative charge of US\$42,000 is levied by the Centre upon the registration of a request for arbitration, conciliation or post-award proceeding and annually thereafter. For cases registered before July 1, 2016, the annual administrative charge is levied by the Centre on the date of the constitution of the Conciliation Commission, Arbitral Tribunal, or *ad hoc* Committee concerned. The same annual charge applies to proceedings administered by the Centre under rules other than the ICSID Convention or Additional Facility Rules.
6. An administrative charge of [US\$TBD] is levied by the Centre upon the registration of a request for mediation or a fact-finding proceeding and annually thereafter.

IV. PAYMENTS TO THE CENTRE

7. The administrative charge, the direct expenses incurred in connection with the proceedings, and the fees and expenses of the Commission, Tribunal, *ad hoc* Committee, Fact-Finding Committee or mediators are met from advance payments that the parties are periodically requested to make to the Centre under the applicable Administrative and Financial Regulation.
8. Any party may ask to be given advance notice that the Centre will be requesting a supplementary payment in a proceeding. Such a request should be addressed to the Secretary-General and should be made as early as possible in the proceeding.

V. APPOINTMENTS AND CHALLENGES IN PROCEEDINGS NOT CONDUCTED UNDER THE ICSID CONVENTION, ADDITIONAL FACILITY, FACT-FINDING OR MEDIATION RULES

9. A non-refundable fee of US\$10,000 is payable to the Centre by a party requesting that the Secretary-General make an appointment in proceedings not conducted under the ICSID Convention, Additional Facility, Fact-Finding or Mediation Rules. This fee will be credited to the requesting party's share of the administrative charge if ICSID subsequently is selected to administer the proceeding.
10. A non-refundable fee of US\$10,000 is payable to the Centre by a party requesting that the Secretary-General decide a disqualification proposal in proceedings not conducted under the ICSID Convention, Additional Facility, Fact-Finding or Mediation Rules.

VI. CHARGES FOR SPECIAL SERVICES

11. Under the applicable Administrative and Financial Regulation, a person asking the Centre to perform a special service must deposit in advance an amount sufficient to cover the resulting charges. The charges for such services are determined on the basis of the cost to ICSID of providing the service. Such services are additional to services provided by the Secretariat during the regular administration of cases or are services rendered to non-parties. For example, special services could include digitalizing or copying case records in a closed case. Any questions regarding such charges should be addressed to ICSID at icsidsecretariat@worldbank.org.

**SCHEDULE 2: MEMORANDUM ON FEES AND EXPENSES IN ICSID
PROCEEDINGS [DRAFT]
(EFFECTIVE DATE TBD)**

Members of Commissions, Tribunals, *ad hoc* Committees, Fact-Finding Committees and mediators in ICSID proceedings (referred to as “members” below) are entitled to receive an hourly fee, *per diem* allowance, and travel and other expense reimbursements referred to in Administrative and Financial Regulation 14, (Additional Facility) Administrative and Financial Regulation 6(1), (Fact-Finding) Administrative and Financial Regulation 6(1) or (Mediation) Administrative and Financial Regulation 6(1), as applicable. This memorandum explains those entitlements and how they are calculated, claimed and paid.

I. FEES

1. Members receive a fee for each hour of work performed in connection with the proceeding, including each hour spent participating in hearings, sessions and meetings.
2. When traveling for hearings, sessions or meetings held away from the member’s city of residence, the member receives a fee for each hour spent traveling, either by air or by ground, to and from the location of the hearing, session or meeting.
3. The amount of the hourly fee is US\$375 per hour.

II. PER DIEM ALLOWANCE

4. Members are entitled to receive the flat-rate *per diem* allowances in paragraphs 5 and 6 below for each day they spend away from their city of residence while traveling in connection with a proceeding.
5. When overnight lodging is required, the amount of the *per diem* allowance is US\$800 for each day. The allowance covers all personal expenses, including lodging, tax on lodging, service charges, meals, gratuities, in-city transportation (taxis, other means of transportation), laundry, personal communications and internet.
6. For day trips not requiring overnight lodging, the amount of the *per diem* allowance is US\$200.
7. Members are entitled to claim the US\$200 *per diem* allowance for each day of travel to and from the hearing, session or meeting, when lodging is not required, and for the day of return to their city of residence.

III. TRAVEL EXPENSES

8. When members are required to attend a hearing, session or meeting held away from their city of residence, they are entitled to claim reimbursement for the costs of air and ground transportation to and from the city where the hearing, session or meeting is held. Travel

must be arranged by the most direct route.

9. Members are authorized to travel at one class above economy. Reimbursement will be made based on the actual expenses incurred. Receipts and the passenger copy of the transport ticket or electronic boarding pass must be submitted with the claim for reimbursement.
10. Members may claim reimbursement for the costs of taxis to and from the points of departure and arrival, both at the city of residence and the city where the hearing, session or meeting is held. Receipts must be submitted with the claim for reimbursement.
11. If travel is undertaken in a privately-owned automobile, a mileage allowance will be paid at the rate of US\$0.535 per mile/US\$0.33 per km.

IV. OTHER REIMBURSABLE EXPENSES

12. Members are entitled to receive reimbursement for expenses reasonably incurred for the sole purpose of the proceeding. Such expenses may include, for example, courier costs and shredding case-related documents.
13. Claims for reimbursement of all expenses must be accompanied by receipts or other supporting documents.

V. CLAIMS AND PAYMENT

14. Claims for fees, *per diem* allowances and expenses should be submitted electronically to icsidpayments@worldbank.org using the Centre's Claim for Fees and Expenses form.
15. Claims must be submitted regularly, and at least on a quarterly basis. Final claims must be submitted prior to the conclusion of the case.
16. A detailed breakdown of the work performed must be provided in the Claim form, and receipts or supporting documents for all expenses claimed must be attached.
17. A financial statement of the case account containing an itemized account of the fees and expenses of each member of the Commission, Tribunal, *ad hoc* Committee, Fact-Finding Committee or each mediator will be available to the parties at any time during the proceeding and upon conclusion of the proceeding.
18. Members are encouraged to share copies of their claim forms with one another during a proceeding to ensure it is conducted on a cost-effective basis.
19. Amounts paid to members do not include value added tax (VAT) or any other taxes and charges that might be applicable to the members' fees and expenses. The recovery of any such taxes or charges is a matter solely between the member and the parties.

20. Claims are reviewed, processed and approved by the Secretariat, and payments are made by wire transfer to the accounts provided by the members. Typically, ICSID processes claims within 3-7 days of receipt of the claim.
21. Payment will be postponed if a Tribunal or Committee has not complied with applicable rules concerning time limits to render orders, decisions or Awards. Any payments postponed on this basis will be processed as soon as the Tribunal or Committee complies with the relevant rule.

SCHEDULE 3: ARBITRATOR DECLARATION

Case Name and No.:

Arbitrator name:

Arbitrator nationality(ies):

I accept my appointment as arbitrator in this proceeding and make the following declarations:

1. To the best of my knowledge, there is no reason why I should not serve on the Tribunal constituted by the International Centre for Settlement of Investment Disputes (“the Centre”) in this proceeding.
2. I am impartial and independent of the parties, and shall judge fairly, in accordance with the applicable law.
3. I shall not accept any instruction or compensation with regard to the arbitration from any source except as provided in the ICSID [Convention, Arbitration Rules and Administrative and Financial Regulations] or [Additional Facility Rules, Additional Facility Arbitration Rules and (Additional Facility) Administrative and Financial Regulations].
4. I understand that I am required to disclose:
 - a. My professional, business and other significant relationships, within the past five years with:
 - i. the parties;
 - ii. the parties’ representatives;
 - iii. other members of the Tribunal (presently known); and
 - iv. any third-party funder disclosed pursuant to [(ICSID Arbitration Rule 14 / (AF) Arbitration Rule 23)].
 - b. Investor-State cases in which I have been or am currently involved as counsel, conciliator, arbitrator, *ad hoc* Committee member, Fact-Finding Committee member, mediator or expert; and
 - c. Other circumstances that might reasonably cause my independence or impartiality to be questioned.

[Select one]:

- A statement is attached.
- I have no such disclosures to make and attach no statement.

5. I acknowledge that I have a continuing obligation to disclose any change of circumstances which might cause my independence or impartiality to be questioned, and will promptly notify the Secretary-General of any such circumstances.
6. I shall keep confidential all information coming to my knowledge as a result of my participation in this arbitration, including the contents of any Award made by the Tribunal.
7. I will not engage in any *ex parte* communication concerning this arbitration with a party or its representative.
8. I have sufficient availability to perform my duties as arbitrator in an expeditious and cost-effective manner and in accordance with the time limits in the applicable arbitration rules. My availability in the next 24 months, as currently known by me is [insert calendar].
9. I confirm that I will not accept new commitments that would conflict with or interfere with my capacity to perform my duties in this arbitration.
10. I will adhere to the [Memorandum on Fees and Expenses in ICSID Proceedings](#) published by the Centre.
11. I attach my current *curriculum vitae*.

Signed [form to allow electronic signature]



Date



SCHEDULE 4: TRIBUNAL-APPOINTED EXPERT DECLARATION

Case Name and No.:

Expert name:

Expert nationality(ies):

I accept my appointment as a Tribunal-appointed expert in this proceeding and make the following declarations:

1. To the best of my knowledge, there is no reason why I should not serve as a Tribunal-appointed expert in this proceeding.
2. I am impartial and independent of the parties and their representatives in this proceeding and shall report to the Tribunal on the matter(s) assigned to me in accordance with AR 39 of the ICSID Arbitration Rules ((AF) Arbitration Rule 49) and my terms of reference.
3. I understand that I am required to disclose:
 - a. My professional, business and other significant relationships, within the past five years with:
 - i. the parties;
 - ii. the parties' representatives;
 - iii. members of the Tribunal; and
 - iv. any third-party funder disclosed pursuant to [(ICSID Arbitration Rule 14 / (AF) Arbitration Rule 23)].
 - b. Investor-State cases in which I have been or am currently involved as counsel, conciliator, arbitrator, *ad hoc* Committee member, Fact-Finding Committee member, mediator or expert; and
 - c. Other circumstances that might reasonably cause my independence or impartiality to be questioned.

[Select one]:

- A statement is attached.
- I have no such disclosures to make and attach no statement.

4. I acknowledge that I have a continuing obligation to disclose any change of circumstances which might cause my independence or impartiality to be questioned, and will promptly notify the Secretary-General of any such circumstances.

5. I shall keep confidential all information coming to my knowledge as a result of my participation in this arbitration, including the contents of any Award made by the Tribunal.
6. I will not engage in any *ex parte* communication concerning this arbitration with a party or their representatives.
7. I attach my current *curriculum vitae*.

Signed [form to allow electronic signature]



Date



SCHEDULE 5: *AD HOC* COMMITTEE MEMBER DECLARATION

Case Name and No.:

Committee member name:

Committee member nationality(ies):

I accept my appointment as a Committee member in this annulment proceeding and make the following declarations:

1. To the best of my knowledge, there is no reason why I should not serve on the Committee constituted by the International Centre for Settlement of Investment Disputes (“the Centre”) in this proceeding.
2. I am impartial and independent of the parties, and shall judge fairly in accordance with the applicable law.
3. I shall not accept any instruction or compensation with regard to the annulment proceeding from any source except as provided in the ICSID Convention, Arbitration Rules and Administrative and Financial Regulations.
4. I understand that I am required to disclose:
 - a. My professional, business and other significant relationships, within the past five years with:
 - i. the parties;
 - ii. the parties’ representatives;
 - iii. other members of the Committee (presently known); and
 - iv. any third-party funder disclosed pursuant to (ICSID Arbitration Rule 14.
 - b. Investor-State cases in which I have been or am currently involved as counsel, conciliator, arbitrator, *ad hoc* Committee member, Fact-Finding Committee member, mediator or expert; and
 - c. Other circumstances that might reasonably cause my independence or impartiality to be questioned.

[Select one]:

- A statement is attached.
- I have no such disclosures to make and attach no statement.

5. I acknowledge that I have a continuing obligation to disclose any change of circumstances which might cause my independence or impartiality to be questioned, and will promptly notify the Secretary-General of any such circumstances.
6. I shall keep confidential all information coming to my knowledge as a result of my participation in this annulment proceeding, including the contents of any Decision on Annulment made by the Committee.
7. I will not engage in any *ex parte* communication concerning this case with a party or its representative.
8. I have sufficient availability to perform my duties as a Committee member in an expeditious and cost-effective manner and in accordance with the time limits in the applicable arbitration rules. My availability in the next 24 months, as currently known by me is [insert calendar].
9. I confirm that I will not accept new commitments that would conflict with or interfere with my capacity to perform my duties in this annulment proceeding.
10. I will adhere to the [Memorandum of Fees and Expenses in ICSID Proceedings](#) published by the Centre.
11. I attach my current *curriculum vitae*.

Signed [form to allow electronic signature]



Date



SCHEDULE 6: CONCILIATOR DECLARATION

Case Name and No.:

Conciliator name:

Conciliator nationality(ies):

I accept my appointment as conciliator in this proceeding and make the following declarations:

1. To the best of my knowledge, there is no reason why I should not serve on the Conciliation Commission constituted by the International Centre for Settlement of Investment Disputes (“the Centre”) in this proceeding.
2. I am impartial and independent of the parties, and shall act fairly in accordance with the applicable rules.
3. I shall not accept any instruction or compensation with regard to the conciliation from any source except as provided in the ICSID [Convention, Conciliation Rules and Administrative and Financial Regulations] or [Additional Facility Rules, (Additional Facility) Conciliation Rules and (Additional Facility) Administrative and Financial Regulations].
4. I understand that I am required to disclose:
 - a. My professional, business and other significant relationships, within the past five years with:
 - i. the parties;
 - ii. the parties’ representatives;
 - iii. other members of the Commission (presently known); and
 - iv. any third-party funder disclosed pursuant to [(Conciliation Rule 12(1) / (AF) Conciliation Rule 21(1)].
 - b. Investor-State cases in which I have been or am currently involved as counsel, conciliator, arbitrator, *ad hoc* Committee member, Fact-Finding Committee member, mediator or expert; and
 - c. Other circumstances that might reasonably cause my independence or impartiality to be questioned.

[Select one]:

- A statement is attached.
- I have no such disclosures to make and attach no statement.

5. I acknowledge that I have a continuing obligation to disclose any change in circumstances which might cause my independence or impartiality to be questioned, and will promptly notify the Secretary-General of any such circumstances.
6. I shall keep confidential all information coming to my knowledge as a result of my participation in this conciliation, including the contents of any Report made by the Commission.
7. I will not have any *ex parte* communication concerning this conciliation with a party or its representative during the conciliation except as contemplated by the Minutes of the First Session, the applicable rules or any party agreement.
8. I have sufficient availability to perform my duties as conciliator in an expeditious and cost-effective manner and in accordance with the time limits in the applicable conciliation rules. My availability in the next 24 months, as currently known by me is [insert calendar].
9. I confirm that I will not accept new commitments that would conflict with or interfere with my capacity to perform my duties in this conciliation.
10. I will adhere to the [Memorandum on Fees and Expenses in ICSID Proceedings](#) published by the Centre.
11. I attach my current *curriculum vitae*.

Signed [form to allow electronic signature]



Date



SCHEDULE 7: FACT-FINDING COMMITTEE MEMBER DECLARATION

Case Name and No.:

Committee member name:

Committee member nationality(ies):

I accept my appointment as a Committee member in this fact-finding and make the following declarations:

1. To the best of my knowledge, there is no reason why I should not serve on the Committee constituted by the International Centre for Settlement of Investment Disputes (“the Centre”) in this fact-finding.
2. I am impartial and independent of the parties, and shall discharge my mandate fairly.
3. I shall not accept any instruction or compensation with regard to the fact-finding from any source except as provided in the ICSID Fact-Finding Rules and (Fact-Finding) Administrative and Financial Regulations.
4. I understand that I am required to disclose:
 - a. My professional, business and other significant relationships, within the past five years with:
 - i. the parties;
 - ii. the parties’ representatives;
 - iii. the other members of the Committee (presently known); and
 - b. Other circumstances that might reasonably cause my independence or impartiality to be questioned.

[Select one]:

- A statement is attached.
- I have no such disclosures to make and attach no statement.

5. I acknowledge that I have a continuing obligation to disclose any change of circumstances which might cause my independence or impartiality to be questioned, and will promptly notify the Secretary-General of any such circumstances.
6. I shall keep confidential all information coming to my knowledge as a result of my participation in this fact-finding, including the contents of any Report made by the Committee.

7. I will not engage in any *ex parte* communication concerning this fact-finding with a party or its representative.
8. I have sufficient availability to perform my duties as a Committee member in an expeditious and cost-effective manner. My availability in the next 24 months, as currently known by me is [insert calendar].
9. I confirm that I will not accept new commitments that would conflict with or interfere with my capacity to perform my duties in this fact-finding.
10. I will adhere to the [Memorandum on Fees and Expenses in ICSID Proceedings](#) published by the Centre.
11. I attach my current *curriculum vitae*.

Signed [form to allow electronic signature]



Date



SCHEDULE 8: MEDIATOR DECLARATION

Case Name and No.:

Mediator name:

Mediator nationality(ies):

I accept my appointment as mediator in this proceeding and make the following declarations:

1. To the best of my knowledge, there is no reason why I should not serve as a mediator in this mediation administered by the Secretariat of the International Centre for Settlement of Investment Disputes (“the Centre”).
2. I am impartial and independent of the parties, and shall act fairly in accordance with the applicable rules.
3. I shall not accept any instruction or compensation with regard to the mediation from any source except as provided in the ICSID Mediation Rules and (Mediation) Administrative and Financial Regulations.
4. I understand that I am required to disclose:
 - a. My professional, business and other significant relationships, within the past five years with:
 - i. the parties;
 - ii. the parties’ representatives;
 - iii. the other co-mediator, if any.
 - b. Investor-State cases in which I have been or am currently involved as counsel, conciliator, arbitrator, *ad hoc* Committee member, Fact-Finding Committee member, mediator or expert; and
 - c. Other circumstances that might reasonably cause my independence or impartiality to be questioned.

[Select one]:

- A statement is attached.
- I have no such disclosures to make and attach no statement.

5. I acknowledge that I have a continuing obligation to disclose any change in circumstances which might cause my independence or impartiality to be questioned, and will promptly notify the Secretary-General of any such circumstances.

6. I shall keep confidential all information coming to my knowledge as a result of my participation in this mediation, including the contents of any Notice of Termination of the mediation.
7. I will not have any *ex-parte* communication concerning this mediation with a party or its representative during the mediation except as contemplated by the Protocol, the applicable rules or any party agreement.
8. I have sufficient availability to perform my duties as mediator in an expeditious and cost-effective manner and in accordance with the time limits in the applicable mediation rules. My availability in the next 24 months, as currently known by me is [insert calendar].
9. I confirm that I will not accept new commitments that would conflict with or interfere with my capacity to perform my duties in this mediation.
10. I will adhere to the [Memorandum on Fees and Expenses in ICSID Proceedings](#) published by the Centre.
11. I attach my current *curriculum vitae*.

Signed [form to allow electronic signature]



Date



WORKING PAPER # 3 – VOLUME 1 – ENGLISH

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**I. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR ICSID CONVENTION
PROCEEDINGS
(ADMINISTRATIVE AND FINANCIAL REGULATIONS)**

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I. ADMINISTRATIVE AND FINANCIAL REGULATIONS

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I. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR ICSID CONVENTION PROCEEDINGS
(ADMINISTRATIVE AND FINANCIAL REGULATIONS)

Introductory Note

The Administrative and Financial Regulations for ICSID Convention Proceedings (Administrative and Financial Regulations) were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(a) of the ICSID Convention.

These Regulations concern the functioning of ICSID as an international institution. They also contain provisions that apply generally in proceedings and are complementary to the Convention and the Institution, Conciliation and Arbitration Rules, adopted pursuant to Article 6(1)(b) and (c) of the Convention.

Chapter I
Procedures of the Administrative Council

Regulation 1
Date and Place of the Annual Meeting

The Annual Meeting of the Administrative Council shall take place in conjunction with the Annual Meeting of the Board of Governors of the International Bank for Reconstruction and Development (“Bank”), unless the Council specifies otherwise.

Regulation 2
Notice of Meetings

- (1) The Secretary-General shall give each member notice of the time and place of meetings of the Administrative Council by any rapid means of communication. This notice shall be dispatched not less than 42 days prior to the date set for such meeting, except that in urgent cases notice shall be sufficient if dispatched not less than 10 days prior to the date of the meeting.
- (2) Any meeting of the Administrative Council at which no quorum is present may be adjourned by a majority of the members present and notice of the adjourned meeting need not be given.

**Regulation 3
Agenda for Meetings**

- (1) The Secretary-General shall prepare an agenda for each meeting of the Administrative Council under the direction of the Chairman of the Administrative Council (“Chair”) and shall transmit the agenda to each member with notice of the meeting.
- (2) Additional subjects may be placed on the agenda by any member ~~by giving~~ ~~if it gives~~ notice thereof to the Secretary-General not less than 7 days prior to the date set for such meeting.
- (3) In special circumstances the Chair, or the Secretary-General after consulting with the Chair, may at any time place additional subjects on the agenda for a meeting of the Administrative Council.
- (4) The Secretary-General shall promptly give each member notice of additional subjects on the agenda.
- (5) The Administrative Council may authorize any subject to be placed on the agenda at any time even though the notice required by this Regulation has not been given.

**Regulation 4
Presiding Officer**

- (1) The Chair shall be the Presiding Officer at meetings of the Administrative Council.
- (2) The Chair shall designate a Vice-President of the Bank to preside over all or any part of a meeting if the Chair is unable to preside.

**Regulation 5
Secretary of the Council**

- (1) The Secretary-General shall serve as Secretary of the Administrative Council.
- (2) Except as otherwise directed by the Administrative Council, the Secretary-General, in consultation with the Chair, shall make all arrangements for meetings of the Council and may coordinate with appropriate officers of the Bank for this purpose.
- (3) The Secretary-General shall present the annual report on the operation of the Centre to each Annual Meeting of the Administrative Council for its approval pursuant to

Article 6(1)(g) of the Convention [on the Settlement of Investment Disputes between States and Nationals of Other States](#) (“Convention”).

- (4) The Secretary-General shall publish the annual report and a summary record of the proceedings of the Administrative Council.

Regulation 6 Attendance at Meetings

- (1) The Secretary-General and the Deputy Secretaries-General may attend all meetings of the Administrative Council.
- (2) The Secretary-General, in consultation with the Chair, may invite observers to attend any meeting of the Administrative Council.

Regulation 7 Voting

- (1) Except as otherwise provided in the Convention, all decisions of the Administrative Council shall be taken by a majority of the votes cast. The Presiding Officer may ascertain the sense of the meeting in lieu of a formal vote but shall require a formal vote upon the request of any member. The written text of the motion shall be distributed to the members if a formal vote is required.
- (2) No member of the Administrative Council may vote by proxy or by any method other than in person, but a member may designate a temporary alternate to ~~cast its~~ vote at any meeting at which the regular alternate is not present.
- (3) Between Annual Meetings, the Chair may call a special meeting or request that the Administrative Council vote by correspondence on a motion. The Secretary-General shall transmit the request for a vote by correspondence [to each member](#) with the text of the motion to be voted ~~upon to each member~~. Votes shall be cast within 45 days after such transmission, unless a longer period is approved by the Chair. Upon expiry of the established period, the Secretary-General shall record the results and notify all members of the outcome. The motion shall be considered lost if the replies received do not include those of a majority of the members.
- (4) If all Contracting States are not represented at a meeting of the Administrative Council and the votes necessary to adopt a proposed decision by a majority of two-thirds of the members of the Council are not obtained, the Council, with the concurrence of the Chair, may decide that the votes of those members of the Council represented at the meeting shall be registered and the votes of the absent members

shall be solicited in accordance with paragraph (3). Votes registered at the meeting may be changed by the member before the expiry of the voting period established pursuant to paragraph (3).

1. A proposal to delete the last sentence of AFR 7(4) was not adopted (see [WP # 2, Vol. 1, ¶ 10](#) for further detail).

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**Chapter II
The Secretariat**

**Regulation 8
Election of the Secretary-General and Deputy Secretaries-General**

In proposing to the Administrative Council one or more candidates for the office of Secretary-General or Deputy Secretary-General, the Chair shall also make proposals with respect to their term and conditions of employment.

**Regulation 9
Acting Secretary-General**

- (1) If there is more than one Deputy Secretary-General, the Chair may propose to the Administrative Council the order in which the Deputies shall act as Secretary-General pursuant to Article 10(3) of the Convention. In the absence of such a decision by the Administrative Council, the Secretary-General shall determine the order in which the Deputies shall act as Secretary-General.
- (2) The Secretary-General shall designate the member of the staff of the Centre who shall act as Secretary-General during the absence or inability to act of the Secretary-General and the Deputy Secretaries-General. If there should be a simultaneous vacancy in the offices of Secretary-General and Deputy Secretary-General, the Chair shall designate the member of the staff who shall act as the Secretary-General.

2. One State noted the importance of designating a replacement for the Secretary-General who has significant experience in ICSID proceedings given the duties of the Secretary-General under the Convention and relevant rules. This is clearly a factor considered by the Chair when the situation arises.

**Regulation 10
Appointment of Staff Members**

The Secretary-General shall appoint the staff of the Centre. Appointments may be made directly or by secondment.

Regulation 11 Conditions of Employment

- (1) The conditions of employment of the staff of the Centre shall be the same as those of the staff of the Bank.
- (2) The Secretary-General shall make arrangements with the Bank, within the framework of the general administrative arrangements approved by the Administrative Council pursuant to Article 6(1)(d) of the Convention, for the participation of members of the Secretariat in the Staff Retirement Plan of the Bank and in other facilities and contractual arrangements established for the benefit of the staff of the Bank.

Regulation 12 Authority of the Secretary-General

- (1) Deputy Secretaries-General and the staff of the Centre shall act solely under the direction of the Secretary-General.
- (2) The Secretary-General shall have authority to dismiss members of the Secretariat and to impose disciplinary measures. Deputy Secretaries-General may only be dismissed with the concurrence of the Administrative Council.

Regulation 13 Incompatibility of Functions

The Secretary-General, the Deputy Secretaries-General and the staff of the Centre may not serve on the Panels of Conciliators or of Arbitrators, or as members of any Commission, Tribunal or Committee.

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Chapter III Financial Provisions

Regulation 14 Fees, Allowances and Charges

- (1) Each member of a Commission, Tribunal or Committee shall receive:
 - (a) a fee for each hour of work performed in connection with the proceeding;
 - (b) when not travelling to attend a hearing, meeting or session, reimbursement of expenses reasonably incurred for the sole purpose of the proceeding; and
 - (c) when required to travel to attend a hearing, meeting or session held away from the member's place of residence:
 - (i) reimbursement of the cost of ground transportation between the points of departure and arrival;
 - (ii) reimbursement of the cost of air and ground transportation to and from the city in which the hearing, meeting or session is held; and
 - (iii) a *per diem* allowance for each day the member spends away from their place of residence.
- (2) The Secretary-General, with the approval of the Chair, shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and (c). Any request by a member for a higher amount shall be made through the Secretary-General, and not directly to the parties. Such a request must be made before the constitution of the Commission, Tribunal or Committee and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish an annual administrative charge payable by the parties ~~to for the services of~~ the Centre.
- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
 - (a) members of Commissions, Tribunals and Committees, and any assistants approved by the parties;
 - (b) witnesses and experts called by a Commission, Tribunal or Committee who have not been presented by a party;
 - (c) service providers that the Centre engages for a proceeding; and
 - (d) the host of any hearing, meeting or session held outside an ICSID facility.

(5) The Centre shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or reimbursements of the members of any Commission, Tribunal or Committee, unless the parties have made sufficient payments to defray the costs of the proceeding.

3. Numerous States and the public requested further steps to ensure compliance with the rules concerning timely rendering of orders, decisions and Awards. As noted in WP # 2, the Centre will track such non-compliance on its webpage (*see* [WP # 2, Vol. 1, ¶ 22](#)). In addition, WP # 3 proposes changes to the schedule of fees ([Schedule 1](#)) to postpone the processing of arbitrator invoices until the Tribunal or *ad hoc* Committee has complied with the relevant timelines, most notably those stipulated in AR 12, AR 57(1) and AR 71(5).
4. One State suggested including timeliness in the rules as a stated criterion for selection of arbitrators by the Secretary-General or the Chair. This is a relevant consideration in practice and will be noted on the Centre's webpage addressing arbitrator selection. It is not included in the amended rules as the formal criteria are stated in Art. 14 of the Convention.

Regulation 15 Payments to the Centre

- (1) To enable the Centre to pay the costs referred to in Regulation 14, the parties shall make payments to the Centre as follows:
 - (a) upon registration of a Request for arbitration or conciliation, the Secretary-General shall request the claimant(s) to make a payment to defray the estimated costs of the proceeding through the first session of the Commission or Tribunal, which shall be considered partial payment by the claimant(s) of the payment referred to in paragraph (1)(b);
 - (b) upon constitution of a Commission, Tribunal or Committee, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the proceeding; [and](#)
 - (c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the proceeding; ~~and~~
 - ~~(d) the Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.~~
- (2) In conciliation proceedings, each party shall pay one half of the payments referred to in paragraph (1)(b) and (c); ~~unless the parties agree on a different division.~~ In arbitration proceedings, each party shall pay one half of the payments referred to in paragraph (1)(b) and (c), unless a different division is agreed to by the parties or

ordered by the Tribunal. Payment of these sums is without prejudice to the Tribunal's final decision on ~~the payment of~~ costs pursuant to Article 61(2) of the Convention.

(3) The Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.

~~(3)~~(4) This Regulation shall apply to requests for a supplementary decision on or rectification of an Award, ~~and to~~ an application for interpretation or revision of an Award, and a request for resubmission of the dispute.

~~(4)~~(5) This Regulation shall apply to an application for annulment of an Award, except that the applicant shall be solely responsible for making the payments requested by the Secretary-General.

5. One State requested interim financial statements identifying fees and expenses by individual arbitrators. This practice will be adopted and the amount each arbitrator bills individually will be detailed in the interim and final financial statements (*see* Schedule 2 – Memorandum of Fees and Expenses). In addition, new AR 58(1)(j) requires this information to be in the Award.
6. AFR 15(2) is amended to delete “unless the parties agree on a different division”, as this contradicts Art. 61 of the Convention.

Regulation 16 Consequences of Default in Payment

(1) The payments referred to in Regulation 15 shall be payable on the date of the request from the Secretary-General.

(2) The following procedure shall apply in the event of non-payment:

- (a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;
- (b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the proceeding until payment is made, after giving notice to the parties and to the Commission, Tribunal or Committee if constituted; and
- (c) if any proceeding is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the proceeding, after giving notice to the parties and to the Commission, Tribunal or Committee if constituted.

7. Some States commented that the 30-day period in AFR 16(2)(a) does not provide sufficient advance notice for their internal budgeting processes. This can be addressed administratively. Specifically, the Memorandum of Fees and Expenses (Schedule 2) has been updated to expressly note that parties can arrange with the Centre to receive advance notice that a call for funds will be made. Thus, a party might ask that requests for advances be notified within a certain number of months before the next scheduled event in the case, at a regular interval, or otherwise. Therefore, no change to the proposed rule is required.
8. One State requested that AFR 16(2)(c) clarify that the 90-day period is 90 consecutive days; this has been incorporated.

**Regulation 17
Special Services**

- (1) The Centre may perform any special services related to disputes if the requestor deposits in advance an amount sufficient to defray the charge for such services.
- (2) Charges for special services shall normally be based on a schedule of fees published by the Secretary-General.

9. One State asked for further elaboration of what is included in special services. A short note to this effect is added in the Schedule of Fees (Schedule 1).

**Regulation 18
Fee for Lodging Requests**

The party or parties (if a request is [filed](#) ~~made~~ jointly) wishing to institute an arbitration or conciliation proceeding, or requesting a supplementary decision, rectification, interpretation, revision or annulment of an Award, or resubmission of a dispute, shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

**Regulation 19
The Budget**

- (1) The fiscal year of the Centre shall run from July 1 of each year to June 30 of the following year.
- (2) Before the end of each fiscal year, the Secretary-General shall prepare a budget indicating expected expenditures of the Centre (excepting those to be incurred on a reimbursable basis) and expected revenues (excepting reimbursements) for the

following fiscal year. The budget shall be submitted for adoption by the Administrative Council at its next Annual Meeting in accordance with Article 6(1)(f) of the Convention.

- (3) If the Secretary-General determines during the fiscal year that the expected expenditures will exceed those authorized in the budget, or wishes to incur expenditures not previously authorized, the Secretary-General shall prepare a supplementary budget in consultation with the Chair and submit it to the Administrative Council for adoption, in accordance with Regulation 7.
- (4) The adoption of a budget constitutes authority for the Secretary-General to make expenditures and incur obligations for the purposes and within the limits specified in the budget. Unless otherwise provided by the Administrative Council, the Secretary-General may exceed the amount specified for any given budget item, provided that the total amount of the budget is not exceeded.
- (5) Pending the adoption of the budget by the Administrative Council, the Secretary-General may incur expenditures for the purposes and within the limits specified in the budget submitted, up to one quarter of the amount authorized to be expended in the previous fiscal year but in no event exceeding the amount that the Bank has agreed to make available for the current fiscal year.

Regulation 20 **Assessment of Contributions**

- (1) Any excess of expected expenditures over expected revenues shall be assessed on the Contracting States. Each State that is not a member of the Bank shall be assessed a fraction of the total assessment equal to the fraction of the budget of the International Court of Justice that it would have to bear if that budget were divided only among the Contracting States in proportion to the then current scale of contributions applicable to the budget of the Court; the balance of the total assessment shall be divided among the Contracting States that are members of the Bank in proportion to their respective subscription to the capital stock of the Bank. The assessments shall be calculated by the Secretary-General immediately after the adoption of the annual budget, on the basis of the then current membership of the Centre, and shall be promptly communicated to all Contracting States. The assessments shall be payable as soon as they are communicated.
- (2) On the adoption of a supplementary budget, the Secretary-General shall immediately calculate supplementary assessments, which shall be payable as soon as they are communicated to the Contracting States.
- (3) A State which is party to the Convention during any part of a fiscal year shall be assessed for the entire fiscal year. If a State becomes a party to the Convention after

the assessments for a given fiscal year have been calculated, its assessment shall be calculated by the application of the same appropriate factor as was applied in calculating the original assessments, and no recalculation of the assessments of the other Contracting States shall be made.

- (4) If, after the close of a fiscal year, it is determined that there is a cash surplus, such surplus shall, unless the Administrative Council decides otherwise, be credited to the Contracting States in proportion to the assessed contributions they had paid for that fiscal year. These credits shall be made with respect to the assessments for the fiscal year commencing two years after the end of the fiscal year to which the surplus pertains.

Regulation 21 Audits

The Secretary-General shall have an audit of the accounts of the Centre made once each year and on the basis of this audit submit a financial statement to the Administrative Council for consideration at the Annual Meeting.

Regulation 22 Administration of Proceedings

The ICSID Secretariat is the only entity ~~body~~ authorized to administer proceedings conducted under the ~~ICSID~~-Convention.

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Chapter IV General Functions of the Secretariat

Regulation 23 List of Contracting States

The Secretary-General shall maintain and publish a list of the Contracting States (including former Contracting States, showing the date on which their notice of denunciation was received by the depositary), indicating for each:

- (a) the date on which the Convention entered into force with respect to it;
- (b) any territories excluded pursuant to Article 70 of the Convention and the dates on which the notice of exclusion and any modification of such notice were received by the depositary;
- (c) any designation pursuant to Article 25(1) of the Convention of constituent subdivisions or agencies to whose investment disputes the jurisdiction of the Centre extends;
- (d) any notification pursuant to Article 25(3) of the Convention that no approval by the State is required for the consent by a constituent subdivision or agency to the jurisdiction of the Centre;
- (e) any notification pursuant to Article 25(4) of the Convention of the class or classes of disputes which the State would or would not consider submitting to the jurisdiction of the Centre;
- (f) the competent court or other authority for the recognition and enforcement of arbitral awards, designated pursuant to Article 54(2) of the Convention;
- (g) any legislative or other measures taken pursuant to Article 69 of the Convention for making the provisions of the Convention effective in the territories of the State and communicated by the State to the Centre; and
- (h) the name, address and contact details of the authority in each State to which documents should be notified, as reported by the State.

**Regulation 24
Panels of Conciliators and of Arbitrators**

- (1) The Secretary-General shall invite each Contracting State to make its designations to the Panels of Conciliators and of Arbitrators if a designation has not been made or the period of a designation has expired.
- (2) Each designation made by a Contracting State or by the Chair shall indicate the designee's name, contact information, nationality and qualifications, with particular reference to competence in the fields of law, commerce, industry or finance.
- (3) The Secretary-General shall immediately inform a designee of their designation, the designating authority, and the end of the designation period, and shall request confirmation that the designee is willing to serve.
- (4) The Secretary-General shall maintain and publish lists naming the members of the Panels of Conciliators and of Arbitrators, indicating the contact information, nationality, end of the designation period, designating authority, and qualifications of each member.

10. One State proposed that States be required to make best efforts to respond within 90 days to a reminder to appoint to the Panels of Arbitrators and of Conciliators, and that States refrain from appointing persons concurrently holding public office, as these persons would be conflicted. ICSID proposes to include these points in its guidance for States on appointment of Panel members.

**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
- (b) documents generated in proceedings, in accordance with the [IR](#) rules applicable to [the](#) individual proceedings.

11. At the suggestion of several States, this regulation retains the form proposed in WP # 1 and # 2. AFR 25(b) recognizes that publication in a specific case may depend on a number of factors including the scope of consent of the parties, the procedural rules applicable and the applicable treaty.

**Regulation 26
The Registers**

The Secretary-General shall maintain and publish a Register for each case containing all significant data concerning the institution, conduct and disposition of the proceeding, including the economic sector involved, the names of the parties and their representatives, and the method of constitution and membership of each Commission, Tribunal and Committee.

**Regulation 27
Communications with Contracting States**

(1) Unless a specific channel of communication is notified by the State concerned, all communications required by the Convention or these Regulations to be sent to Contracting States shall be addressed to the State's representative on the Administrative Council and sent by rapid means of communication.

~~(1)~~(2) The time limits referred to in Articles 65 and 66 of the Convention and Regulations 2, 3 and 7 shall be calculated from the date on which the Secretary-General transmits or receives the relevant document. The date of transmittal or receipt shall be excluded from the calculation.

12. One State asked for further detail on the time limits applicable to the delivery of institutional documents, including with respect to the impact of weekends and holidays. AFR 27(2) has therefore been added. The proposed provision does not exclude weekend or holiday days in any State from the calculation, to ensure the same overall time is available to each Member State.

**Regulation 28
Secretary**

The Secretary-General shall appoint a Secretary for each Commission, Tribunal and Committee. The Secretary may be drawn from the Secretariat, and shall be considered a member of its staff while serving as a Secretary. The Secretary shall:

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the Rules applicable to individual proceedings or assigned to the Secretary-General by the Convention, and delegated to the Secretary; and

(b) assist the parties and the Commission, Tribunal or Committee with all aspects of the proceedings, [including the expeditious and cost-effective conduct of the proceeding](#).

13. The additional language reflects a suggestion from States to reinforce the importance of timeliness. In practice, the Secretariat already encourages parties and Commissions, Tribunals and Committees to proceed in an expeditious fashion, and hence the addition reflects existing practice.
14. As requested by States, ICSID will draft an information note for its website with further information about the role of an ICSID Secretary.

Regulation 29 Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
 - (a) all requests for arbitration, conciliation, supplementary decisions, rectification, interpretation, revision or applications for annulment;
 - (b) all written submissions, written statements, observations, supporting documents and communications filed in a proceeding;
 - (c) the [minutes](#), recordings and transcripts of hearings, meetings or sessions in a proceeding; and
 - (d) any order, decision, Report or Award by a Commission, Tribunal or Committee.
- (2) Subject to the applicable rules and the agreement of the parties to the proceedings, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c) and (d) available to the parties. Certified copies of the documents referred to in paragraph (1)(d) shall reflect any supplementary decision, rectification, interpretation, revision or annulment and any stay of enforcement in effect.

15. One State requested further detail in the rules on the period for archiving and the format of archived documents (electronic). ICSID maintains one copy of every case indefinitely, and follows the World Bank administrative procedures specifying the period and format of archiving, hence no change has been made to this rule.

I. ADMINISTRATIVE AND FINANCIAL REGULATIONS

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**Chapter V
Immunities and Privileges**

**Regulation 30
Certificates of Official Travel**

The Secretary-General may issue certificates of official travel to members of Commissions, Tribunals or Committees, to persons assisting them, to members of the Secretariat, and to the parties, agents, counsel, advocates, [advisors](#), witnesses or experts appearing in proceedings, indicating that they are traveling in connection with a proceeding under the Convention.

16. The addition of “advisors” makes Regulation 30 and 31 consistent with the definition of “representative” in AR 3 and CR 2.

**Regulation 31
Waiver of Immunities**

- (1) The Secretary-General may waive the immunity of:
 - (a) the Centre; and
 - (b) members of the Secretariat.
- (2) The Chair may waive the immunity of:
 - (a) the Secretary-General and any Deputy Secretary-General;
 - (b) members of a Commission, Tribunal or Committee; and
 - (c) the parties, agents, counsel, advocates, [advisors](#), witnesses or experts appearing in a proceeding, if the Commission, Tribunal or Committee concerned recommends such waiver.
- (3) The Administrative Council may waive the immunity of:
 - (a) the Chair and members of the Council;
 - (b) the parties, agents, counsel, advocates, [advisors](#), witnesses or experts appearing in a proceeding, even if no recommendation for such a waiver is made by the Commission, Tribunal or Committee concerned; and
 - (c) the Centre or any person referred to in paragraphs (1) or (2).

(4) A waiver under paragraphs (1) or (2) shall be made in writing by the Secretary-General or Chair, as applicable. A waiver under paragraph (3) shall be made by a decision of the Administrative Council in accordance with Article 7(2) of the Convention.

I. ADMINISTRATIVE AND FINANCIAL REGULATIONS

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Chapter VI
Official Languages

Regulation 32
Languages of Regulations

- (1) The official languages of the Centre are English, French and Spanish.
- (2) The texts of these Regulations in each official language are equally authentic.
- (3) The singular form of words in the Rules and Regulations made pursuant to the Convention include the plural form of that word, unless otherwise stated or required by the context of the provision.

**II. INSTITUTION RULES FOR ICSID CONVENTION PROCEEDINGS
(INSTITUTION RULES)**

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II. INSTITUTION RULES OF PROCEDURE FOR THE INSTITUTION OF ICSID CONVENTION CONCILIATION AND ARBITRATION PROCEEDINGS (INSTITUTION RULES)

Introductory Note

The Institution Rules of Procedure for the Institution of Conciliation and Arbitration ICSID Convention Proceedings (~~the Institution Rules~~) were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(b) of the ICSID Convention.

The Institution Rules apply from the filing of a Request for arbitration or conciliation under the ICSID Convention to the date of registration or refusal to register. If a Request is registered, the Arbitration or Conciliation Rules apply to the subsequent procedure. The Institution Rules do not apply to the initiation of post-Award remedy proceedings, or to proceedings ~~under~~ pursuant to the Additional Facility, the ICSID Fact-Finding Rules and the ICSID Mediation Rules.

**Rule 1
The Request**

- (1) Any Contracting State or any national of a Contracting State wishing to institute proceedings under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“Convention”) shall file a Request for arbitration or conciliation together with the required supporting documents (“Request”) with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the dispute.

**Rule 2
Contents of the Request**

- (1) The Request shall:
 - (a) state whether it relates to an arbitration or conciliation proceeding;
 - (b) be in English, French or Spanish;

- (c) identify each party to the dispute and provide their contact information, including electronic mail address, street address and telephone number;
- (d) be signed by each requesting party or its representative and be dated;
- (e) attach proof of any representative's authority to act; and
- (f) if the requesting party is a juridical person, state that it has obtained all necessary [internal](#) authorizations to file the Request and attach the authorizations.

(2) With regard to the jurisdiction of the Centre, the Request shall include:

- (a) a description 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;
- (b) with respect to each party's consent to submit the dispute to arbitration or conciliation under the Convention:
 - (i) the instrument(s) in which each party's consent is recorded;
 - (ii) the date of entry into force of the instrument(s) on which consent is based, together with supporting documents demonstrating that date; ~~and~~
 - (iii) the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or, if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre; [and](#)
 - (iv) [an indication that the requesting party has complied with any conditions in the instrument of consent for submission of the dispute;](#)

(c) if a party is a natural person:

- (i) information concerning that person's nationality on both the date of consent and ~~on~~ the date of the Request, together with supporting documents demonstrating such nationality; and
- (ii) a statement that the person did not have the nationality of the Contracting State party to the dispute either on the date of consent or ~~on~~ the date of the Request;

(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; and
 - (ii) 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;
- (e) if a party is a constituent subdivision or agency of a Contracting State:
- (i) the State's designation to the Centre pursuant to Article 25(1) of the Convention; and
 - (ii) supporting documents demonstrating the State's approval of consent pursuant to Article 25(3) of the Convention, unless the State has notified the Centre that no such approval is required.

17. IR 2(2)(a) adds a requirement that the Request include an estimate of any damages sought.
18. New IR 2(b)(iv) in WP # 3 requires that a requesting party indicate whether it has complied with any conditions in the applicable instrument of consent. This would address, for example, cooling-off periods, fork-in-the-road clauses and prescription and limitation periods.
19. Some States suggested that the rule require or recommend (*see* IR 3, below) disclosure of the financial status of a requesting party and the corporate structure of a requesting party that is a legal entity. To the extent that this information is relevant for the purposes of the Secretariat's review of the Request, it would be addressed by the requestor in the information submitted under IR 2(2)(a).

Rule 3 Recommended Additional Information

It is recommended that the Request also contain [any procedural proposals or agreements reached by the parties, including with respect to:](#)

~~(a) an estimate of the amount of damages sought, if any;~~

~~(b)(a) a proposal concerning~~ the number and method of appointment of arbitrators or conciliators; [and](#)

~~(e)(b) the proposed~~ procedural language(s); [and](#)

~~(d) any other procedural proposals or agreements reached by the parties.~~

20. The estimate of any damages sought is now required content (IR 2) and is thus deleted from IR 3.

Rule 4

Filing of the Request and Supporting Documents

- (1) The Request shall be filed electronically. The Secretary-General may require the Request to be filed in an alternative format if necessary.
- (2) An extract of a ~~supporting~~ document may be filed as a supporting document if the extract is not ~~omission of the text does not render the extract~~ misleading. The Secretary-General may require a fuller extract or a complete version of the document.
- (3) The Secretary-General may require a certified copy of a supporting document.
- (4) Any document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or a complete translation of the document.

Rule 5

Receipt of the Request and Routing of Written Communications

The Secretary-General shall:

- (a) promptly acknowledge receipt of the Request to the requesting party;
- (b) transmit the Request to the other party upon receipt of the lodging fee; and
- (c) act as the official channel of written communications between the parties.

Rule 6 Review and Registration of the Request

- (1) Upon receipt of the Request and lodging fee, the Secretary-General shall review the Request pursuant to Article 28(3) or 36(3) of the Convention.
- (2) The Secretary-General shall promptly notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.

Rule 7 Notice of Registration

The notice of registration of the Request shall:

- (a) record that the Request is registered and indicate the date of registration;
- (b) confirm that all correspondence to the parties in connection with the proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Centre;
- (c) invite the parties to inform the Secretary-General of their agreement regarding the number and method of appointment of arbitrators or conciliators, unless such information has already been provided, and to constitute a Tribunal or Commission without delay;
- ~~(d) invite the parties to constitute a Tribunal or Commission without delay~~
- ~~(e)~~(d) remind the parties that registration of the Request is without prejudice to the powers and functions of the Tribunal or Commission in regard to jurisdiction of the Centre, competence of the Tribunal or Commission, and the merits; and
- ~~(f)~~(e) remind the parties to make the disclosure required by Arbitration Rule ~~143~~ or ~~and~~ Conciliation Rule ~~120~~.

21. IR 7(d) has been merged with paragraph (c) in WP # 3 to further streamline the rule.
22. The “and” previously appearing in IR 7(e) is replaced with “or” as only one of the two provisions referenced will apply.
23. One State suggested that the Notice of Registration mention the availability of Expedited Arbitration pursuant to Chapter XII of the AR. Another State suggested that the Notice of Registration remind parties of the availability of mediation. The Notice of Registration is

accompanied by a letter to the parties with additional information concerning the proceeding. The availability of Expedited Arbitration, Mediation and Fact-Finding proceedings will be added in this letter.

Rule 8
Withdrawal of the Request

At any time before registration, a requesting party may notify the Secretary-General in writing of the withdrawal of the Request or, if there is more than one requesting party, that it is withdrawing from the Request. The Secretary-General shall promptly notify the parties of the withdrawal, unless the Request has not yet been transmitted pursuant to Rule 5(b).

Rule 9
Final Provisions

- (1) The English, French and Spanish texts of these Rules are equally authentic.
- (2) These Rules may be cited as the “Institution Rules” of the Centre.

**III. ARBITRATION RULES FOR ICSID CONVENTION PROCEEDINGS
(ARBITRATION RULES)**

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III. ARBITRATION RULES

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**III. ARBITRATION RULES ~~OF PROCEDURE~~ FOR ~~ARBITRATION~~ ICSID
CONVENTION PROCEEDINGS
(ARBITRATION RULES)**

Introductory Note

The Arbitration Rules of Procedure for Arbitration-ICSID Convention Proceedings (Arbitration Rules) were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(c) of the ICSID Convention.

The Arbitration Rules are supplemented by the Administrative and Financial Regulations of the Centre.

The Arbitration Rules apply from the date of registration of a Request for arbitration until an Award is rendered and to any post-Award remedy proceedings.

**Chapter I
General Provisions**

**Rule 1
Application of Rules**

(1) These Rules shall apply to any arbitration proceeding conducted under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“Convention”) in accordance with Article 44 of the Convention.

(2) The Tribunal shall apply any agreement of the parties on procedural matters to the extent that it does not conflict with the Convention or the Administrative and Financial Regulations.

~~(2)~~(3) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language.

~~(3)~~(4) These Rules may be cited as the “Arbitration Rules” of the Centre.

24. AR 26(4) from WP # 2 has been moved to AR 1(2) in view of the general application of the rule.

Rule 2 General Duties

- (1) The Tribunal and the parties shall conduct the proceeding ~~and implement the Tribunal's orders and decisions~~ in good faith and in an expeditious and cost-effective manner.
- (2) The Tribunal shall treat the parties equally and provide each party with a reasonable opportunity to present its case.
- ~~(3) The Tribunal and the parties shall conduct the proceeding in an expeditious and cost-effective manner.~~

25. Some States inquired as to the application of the good faith obligation required by AR 2(1) and sought clarity as to whether it applied to matters such as jurisdiction. Other States commented that they understood that the good faith obligation related only to procedural matters.
26. States also commented that the good faith obligation should be related to the conduct of the proceeding but not to the implementation of the Tribunal's orders. One State suggested the imposition of adequate and specific penalties for violation of the good faith obligation.
27. The proposed change to AR 2(1) in WP # 3 clarifies that the good faith obligation is related to the conduct of the proceeding. In addition, AR 2(3) in WP # 2 has been merged with paragraph (1) as it also concerns the conduct of the proceeding.

Rule 3 **Meaning of Party and Party Representative**

- (1) For the purposes of these Rules, "party" ~~may include~~ s, where the context so admits: ~~(a) all parties acting as claimant or as respondent; and~~
~~(b) a representative of a party.~~
- (2) Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be notified by that party to the Secretary-General ("representative(s)").

28. AR 3(1)(b) is deleted as "representative" is fully dealt with in AR 3(2).
29. One State commented that the definition of "Party" and "Party representative" was overly broad. The definition is intended to be broad enough to accommodate officials or other

advisors acting on behalf of the State, in response to comments received in WP # 2.

30. Another State asked that Rule 3 explicitly state that the other party and the Tribunal will be notified without delay when a new party representative is named. The Centre acknowledges receipt of all documents filed and transmits them to the other party immediately upon receipt, including any notifications of a new representative; no amendment to this rule is required.

Rule 4 Method of Filing

- (1) A document to be filed in the proceeding shall ~~only~~ be filed with the Secretary-General, who shall acknowledge its receipt. ~~electronically, unless the Tribunal orders otherwise in special circumstances.~~
- (2) ~~Documents~~ A document shall only be filed electronically, unless the Tribunal orders otherwise in special circumstances. ~~with the Secretary-General, who shall acknowledge receipt and distribute it in accordance with Rule 6.~~

31. AR 4 now addresses only the manner of filing documents, while AR 6 deals with the routing of the documents filed.
32. The order of AR 4(1) and (2) has been switched.

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 ~~supporting~~ document may be filed as a supporting document if the extract ~~the 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.

33. One State suggested that the term “supporting documents” in AR 5(1) should be expanded to capture all potential forms of evidence such as video or audio exhibits that may be filed

- in a proceeding. WP # 3 does not propose such a change because it is understood that “exhibits” cover all formats evidence, including mixed media files. However, a change has been made in paragraphs (2) and (3) to account for the fact that not all supporting documents are in written format.
34. One State commented that supporting documents are not always filed with the written submission to which they relate if they are filed following leave to file an unscheduled supporting document pursuant to AR 30(3). This is correct and is consistent with AR 5(1).
35. With regard to extracting documents, some States suggested that the default rule should be that a document be provided in full instead of an extract. Such a default rule may prove burdensome and is not necessary since AR 5(2) gives a party the ability to request the extract in full at any time and without the intervention of the Tribunal.

Rule 6 Routing of Documents

The Secretary-General shall transmit a document filed in the proceeding to:

- (a) the other party, unless the parties communicate directly with each other;
- (b) the Tribunal, unless the parties communicate directly with the Tribunal on request of the Tribunal or by agreement of the parties; and
- (c) the Chairman of the Administrative Council (“Chair”) if applicable.

~~(1) The Secretary-General shall be the official channel for routing of documents among the parties, the Tribunal, and the Chairman of the Administrative Council (“Chair”), except that:~~

- ~~(a) the parties may communicate directly with each other, provided that they transmit all documents to be filed in the proceeding to the Secretary-General;~~
- ~~(b) the members of the Tribunal shall communicate directly with each other; and~~
- ~~(c) a party may communicate directly with the Tribunal on request of the Tribunal or by agreement of the parties, provided that the other party and the Secretary-General are copied.~~

~~(2) The Secretary-General shall:~~

- ~~(a) acknowledge receipt of all documents transmitted by a party; and distribute the documents to the other party and the Tribunal, unless they were transmitted pursuant to paragraph 1(a) or (c).~~

36. AR 6 streamlines provisions relating to the routing of documents but does not change the substance of the Rule.

Rule 7
Procedural Languages, Translation and Interpretation

- (1) The parties may agree to use one or two procedural languages in the proceeding. The parties shall consult with the Tribunal and the Secretary-General regarding the use of a language that is not an official language of the Centre.
- (2) If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (3) Requests, written submissions, observations and communications shall be filed in a procedural language. In a proceeding with two procedural languages, the Tribunal may order a party to file such documents in both procedural languages.
- (4) Supporting documents in a language other than a procedural language shall be accompanied by a translation into a procedural language. In a proceeding with two procedural languages, the Tribunal may order a party to translate any supporting document into both procedural languages. Translation of only the relevant part of a supporting document is sufficient, provided that the Tribunal may order a party to provide a fuller or a complete translation. If the translation is disputed, the Tribunal may order a party to provide a certified translation.
- (5) Any document from the Tribunal or the Secretary-General shall be in a procedural language. In a proceeding with two procedural languages, the Tribunal ~~or~~ ~~and~~, ~~where~~ ~~the Secretary-General~~ if applicable ~~the Secretary-General~~, shall render orders, decisions, and the Award in both procedural languages, unless the parties agree otherwise.
- (6) Any oral communication shall be in a procedural language. In a proceeding with two procedural languages, the Tribunal may order interpretation into the other procedural language.
- (7) The testimony of a witness or an expert in a language other than a procedural language shall be interpreted into the procedural language(s) used at the hearing.
- (8) The recordings and transcripts of a hearing shall be made in the procedural language(s) used at the hearing.

37. States offered differing views on the need to limit the number of procedural languages and on the rules regulating translations. Some States suggested that parties to a dispute should

use their best efforts to agree on only one procedural language in order to reduce costs. Other States were of the view that each party should have the right to select the procedural language that it prefers and that all documents be translated into both languages if there are two, to ensure public access to case documents in the relevant language and to comply with domestic legislation regarding public documents.

38. Given the time and cost of preparing translations in a bi-lingual proceeding, WP # 3 retains the default rule that the Tribunal has discretion to order translation of documents into the other procedural language when the parties do not agree on translations.

Rule 8 Correction of Errors ~~and Deficiencies~~

~~(1) A party may correct an accidental error in a document promptly upon discovery and at any time before the Award is rendered, with agreement of the other party or with leave of the Tribunal. The parties may refer any dispute regarding a correction to the Tribunal for determination.~~

~~(2) The Secretary General may request that a party correct any deficiency in a filing or make the required correction.~~

39. AR 8(1) has been revised in response to comments from States suggesting that a party should correct an error in a document as promptly as possible. The provision now specifies that the Tribunal will address any disputed corrections.
40. AR 8(2) has been deleted in response to State comments that the Secretary-General's power to request the correction of deficiencies in a filing ought to be circumscribed. As a practical matter, the Secretary of the Tribunal typically requests that the relevant party rectify a deficiency, for example to provide additional USB keys. This practice does not need to be addressed in the Rules.

Rule 9 Calculation of Time Limits

- (1) References to time shall be determined based on the time at the seat of the Centre on the relevant date.
- (2) Any time limit expressed as a period of time shall be calculated from the day after the date on which:
- (a) the Tribunal, or the Secretary-General if applicable, announces the period; or
 - (b) the procedural step starting the period is taken.

(3) A time limit shall be satisfied if a procedural step is taken or a document is received by the Secretary-General on the relevant date, or, if the date falls on a Saturday or Sunday, ~~or a holiday observed by the Secretariat,~~ on the subsequent business day.

41. Some States suggested that AR 9(3) refer to a holiday observed by the party required to take a step instead of a “holiday observed by the Secretariat”. AR 9(3) deletes “holidays observed by the Secretariat” from the calculation of time limits on procedural steps to be taken by parties.
42. The parties and the Tribunal can take into account any specific holidays that may apply to them when establishing the procedural calendar.

Rule 10

Fixing Time Limits ~~Applicable to Parties~~

~~(1) The Tribunal, or the Secretary-General if applicable, shall fix time limits for the completion of each procedural step in the proceeding, other than time limits prescribed by the Convention or these Rules.~~

~~(2) The Parties may agree to extend any time limit other than those in Articles 49, 51 and 52 of the Convention.~~

~~(3) The Tribunal, or the Secretary-General if applicable, may extend any time limit that they fixed, upon a reasoned application by either party made prior to its expiry. The Tribunal may delegate this power to its president.~~

~~(4) An application or request filed after the expiry of the time limits in Articles 49, 41 and 52 of the Convention shall be disregarded. A procedural step taken or document received after the expiry of any other time limit shall be disregarded unless:~~

~~(a) the other party does not object to the late step or filing; or~~

~~(b) the Tribunal, or the Secretary-General if applicable, concludes that there are special circumstances justifying the failure to meet a time limit that they fixed.~~

43. AR 10 has been divided into two rules for greater clarity. AR 10 in WP # 3 regulates the fixing of time limits and AR 11 addresses the extension of time limits and the consequences of a failure to meet a time limit when an extension was not sought or was not granted.

Rule 11
Extension of Time Limits Applicable to Parties

- (1) The time limits in Articles 49, 51 and 52 of the Convention cannot be extended. An application or request filed after the expiry of such time limits shall be disregarded.
- (2) A time limit prescribed by the Convention or these Rules, other than those referred to in paragraph (1), may only be extended by agreement of the parties. A procedural step taken or document received after the expiry of such time limit shall be disregarded, unless the parties agree otherwise.
- (3) A time limit fixed by the Tribunal or the Secretary-General may be extended by agreement of the parties or the Tribunal, or Secretary-General if applicable, upon reasoned application by either party made prior to its expiry. A procedural step taken or document received after the expiry of such time limit shall be disregarded unless the Tribunal, or the Secretary-General if applicable, concludes that there are special circumstances justifying the failure to meet the time limit.
- (4) The Tribunal may delegate to the President the power to extend time limits referred to in paragraph (3).

44. AR 11 ([AR 10\(2\)-\(4\) of WP # 2](#)) clarifies when time limits may be extended, by whom and the consequence of failure to meet time limits.
45. AR 11(1) lists the time limits that may not be extended and specifies that the relevant application or request will be disregarded if it is late.
46. AR 11(2) applies only to time limits prescribed by the Convention or the AR. The default rule is the same as in WP # 2: unless the parties agree to extend such time limits, they cannot be extended. Consequently, a procedural step taken or submission filed after the expiry of the time limit will be disregarded, unless the parties agree otherwise.
47. AR 11(3) applies to time limits fixed by the Tribunal or the Secretary-General. WP # 2, AR 10(4)—which is now AR 11(3)—stated that a late procedural step or filing would not be disregarded if the other party did not object (*see* [WP # 2, Vol. 2, at page 102](#)). AR 11(3) requires the party taking the late procedural step or filing the submission late to show that special circumstances exist justifying the late step or filing.

Rule 12~~1~~
Time Limits Applicable to the Tribunal

- (1) The Tribunal shall use best efforts to meet ~~all applicable~~ time limits to render orders, decisions and the Award.
- (2) If ~~special circumstances arise which prevent~~ the Tribunal cannot comply from complying with an applicable time limit, it shall advise the parties of the ~~reason for~~ special circumstances that justify the delay and the date when it anticipates rendering the order, decision or Award ~~will be delivered~~.

48. AR 12 is revised for greater clarity. The Centre will track compliance with this rule on its website and payment of arbitrator invoices will be postponed if an order, decision or Award is not rendered in accordance with the relevant time lines.

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Chapter II Constitution of the Tribunal

Rule 13~~2~~ General Provisions Regarding the Constitution of the Tribunal

- (1) The Tribunal shall be constituted without delay after registration of the Request for arbitration.
- (2) The majority of the arbitrators on a Tribunal shall be nationals of States other than the State party to the dispute and the State whose national is a party to the dispute, unless the Sole Arbitrator or each individual member of the Tribunal is appointed by agreement of the parties.
- (3) A party may not appoint an arbitrator who is a national of the State party to the dispute or the State whose national is a party to the dispute without agreement of the other party.
- (4) A person previously involved in the resolution of the dispute as a [conciliator](#), judge, mediator, ~~conciliator~~ or in a similar capacity may be appointed as an arbitrator only by agreement of the parties.

49. Further comments were received about the need for a code of conduct for arbitrators. The ICSID and UNCITRAL Secretariats continue joint work on a background paper to develop a Code of Conduct for arbitrators in the context of UNCITRAL Working Group III. Such a Code of Conduct could be incorporated in ICSID proceedings via the Arbitrator Declaration if States wish to do so (*see* [WP # 2, Vol. 1, ¶ 121](#)).
50. A Member State asked for further nationality restrictions in AR 13, aimed at preventing appointment of nationals of a State that does not maintain diplomatic relations with the State party to the dispute or with the State whose national is a party to the dispute. In this respect, see the discussion on this matter at [WP # 2, Vol. 1, ¶ 122](#).

Rule 14~~3~~ Notice of Third-Party 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).

51. States generally recognize that TPF is a widely available mechanism that provides important systemic benefits, for example, by enhancing access to arbitration for small and medium enterprises (“SMEs”). At the same time, some States remain concerned about the existence and potential impact of TPF.
52. WP # 3 refines AR 14(1) to reflect more closely the existing provisions that have been incorporated by a significant number of Member States in their treaties. The proposed definition of TPF is intended to provide certainty and ease of application.
53. WP # 3 further includes an editorial change to AR 14(3), reflecting a drafting suggestion made by Singapore.
54. New AR 14(4) states that the Secretary-General will provide the parties, any proposed arbitrator and any arbitrator already appointed with a copy of the third-party funding notice and any updated notices. This notice assists arbitrators in completing their declaration, which expressly requires disclosure of any relationship between the arbitrator and the third-party funder (see Schedule 3: Arbitrator Declaration; Schedule 5: Ad hoc Committee Member Declaration; Schedule 6: Conciliator Declaration).
55. Some States have suggested requiring the disclosure of information other than the existence of third-party funding and the name of the third-party funder. Most of these suggestions concerned the power of a Tribunal to order disclosure of the third-party funding agreement.
56. There is no right to further information or disclosure of the agreement under the proposed rule. To the extent that the agreement or information in the agreement is relevant to an issue in dispute, this is addressed by other rules. In particular, a Tribunal has power to order production of necessary documents or evidence at any stage of a proceeding. This is expressly stated in Art. 43 of the Convention and is further reflected in proposed AR 36(3). If third-party funding were relevant to an issue in the arbitration, the Tribunal already has the authority to make the appropriate order to disclose relevant documents or information.
57. AR 52 on Security for Costs has been revised in WP # 3 to state that a Tribunal may consider third-party funding as evidence relating to a circumstance required to obtain an

order for security listed in AR 52(3). AR 52(4) stipulates that the existence of third-party funding by itself is insufficient to justify ordering security for costs. This revision is consistent with case law on third-party funding and security for costs and with the comments of most States on AR 52.

58. Some States suggested a new rule stating that failure to comply with the duty of disclosure in AR 14 is to be considered by a Tribunal when allocating the costs of the proceeding. Proposed AR 52 requires a Tribunal to consider the conduct of the parties as a factor in allocating costs. Failure to comply with proposed AR 14 would, therefore, be covered by AR 52 and no additional specific costs provision is needed.
59. One State suggested there should be a carve-out for funding by a sub-national entity. For the reasons explained at [WP # 2, ¶ 141](#), this has not been included in AR 14.

Rule 154
Method of Constituting the Tribunal

- (1) The number of arbitrators and the method of their appointment must be determined before the Secretary-General can act on any appointment proposed by a party.
- (2) The parties shall endeavor to agree on any uneven number of arbitrators and the method of their appointment. If the parties do not advise the Secretary-General of an agreement within 45 days after the date of registration, the Tribunal shall be constituted in accordance with Article 37(2)(b) of the Convention.

60. A few Member States suggested that the deadline in proposed AR 15(2) revert to 60 days. The reduction to 45 days responds to concerns expressed about efficiency in the Tribunal constitution process, and it impacts only a discrete aspect: the method of constitution. Parties can modify the deadline by agreement.
61. A Member State suggested incorporating detailed requirements in this rule concerning arbitrator independence, impartiality, credibility, legitimacy, experience and availability. AR 15 is aimed at establishing the number of arbitrators and method for appointments only. Arts. 40(2) and 14(1) of the Convention regulate the qualities of arbitrators. Additionally, many of these concerns expressed are addressed in the proposed Arbitrator Declaration ([Schedule 3](#)).

Rule 165**Appointment of Arbitrators to a Tribunal Constituted in Accordance with Article 37(2)(b) of the Convention**

If the Tribunal is to be constituted in accordance with Article 37(2)(b) of the Convention, each party shall appoint an arbitrator and the parties shall jointly appoint the President of the Tribunal.

62. One commentator suggested that Member States consider alternatives to party appointment. Proposed AR 16 reflects Art. 37(2)(b) of the Convention, which provides for party-appointed co-arbitrators as part of the default method of constitution. Absent a different agreement by the parties under Art. 37(2)(a) of the Convention, Art. 37(2)(b) governs and cannot be amended via the AR.

Rule 176**Assistance of the Secretary-General with Appointment**

The parties may jointly request that the Secretary-General assist with the appointment of a President of the Tribunal or a Sole Arbitrator.

Rule 187**Appointment of Arbitrators by the Chair in accordance with Article 38 of the Convention**

- (1) If the Tribunal has not been constituted within 90 days after the date of registration, or such other period as the parties may agree, either party may request that the Chair appoint the arbitrator(s) who have not yet been appointed pursuant to Article 38 of the Convention.
- (2) The Chair shall appoint the President of the Tribunal after appointing any members who have not yet been appointed.
- (3) The Chair shall consult with the parties as far as possible before appointing an arbitrator and shall use best efforts to appoint any arbitrator(s) within 30 days after receipt of the request to appoint.

63. One Member State suggested that AR 18(3) require the Chair to take into account any requirements agreed by the parties when making appointments pursuant to Art. 38 of the Convention. The suggestion is not adopted as proposed AR 18 operates as the default mechanism for appointments required to complete a Tribunal, whether or not there is an

- agreed method of constitution. When there is an agreed method, the appointment authority takes into account any agreement by the parties that is consistent with the Convention.
64. Two Member States and another commentator suggested that proposed AR 18(3) explicitly state that the Chair shall strive to achieve gender and geographical diversity in appointments. Geographical diversity is expressly mandated in appointments to the Panel by the Chair pursuant to Art. 14 of the Convention. Further, gender and geographical diversity are among the many factors routinely considered in appointments by the Chair under Art. 38 of the Convention, and they are embodied in the notion that such appointments are to be made from the Panel, a defined and necessarily diverse body of individuals designated by the Member States themselves.
65. A Member State suggested removal of the expression “as far as possible” from AR 18(3). The language has been maintained as it originates in Art. 38 of the Convention. In practice, the Chair consults the parties when making an appointment under Art. 38.

Rule 198
Acceptance of Appointment

- (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 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).

66. While no further substantive amendments are proposed to AR 19, an adjustment is proposed to the Arbitrator Declaration referred to in AR 18(3)(b) ([Schedule 3](#)). Section 4(a)(ii) of the Declaration now refers to the “parties’ representatives” instead of “counsel for the parties,” to align with proposed AR 3(2) (“Party and Party Representative”). Other suggestions for additions to the Declaration were not adopted. Disclosure of significant relationships with counsel for the parties is covered under Section 4(a)(ii) of the Declaration; and other situations that “might reasonably cause [an arbitrator’s] independence or impartiality to be questioned” are covered under the umbrella of Section 4(c) of the Declaration, and the “continuing obligation to disclose any change of circumstances which might cause my independence or impartiality to be questioned.”
67. Two States suggested that AR 19(3) require an arbitrator accepting an appointment to commit to complying with the requirements of a Code of Conduct; and another commentator suggested adding a general “commitment to comply with existing relevant ethical rules” as part of the arbitrator’s acceptance. Proposed AR 19(3) allows for incorporation by reference of a Code of Conduct in the Arbitrator Declaration, thereby eliminating the need to refer to undetermined parameters in the rule at this time.
68. One commentator reiterated prohibiting the practice of “double-hatting”. The Secretariat refers to the discussion on this matter at [WP # 1, Vol. 3, ¶¶ 302 et seq.](#)
69. A Member State inquired whether the deadline for acceptance of an appointment proposed in AR 19(3) could be extended by party agreement. That possibility exists under AR 1(2) which confirms the general principle that AR deadlines can be modified by agreement of the parties.

Rule ~~2019~~

Replacement of Arbitrators Prior to Constitution of the Tribunal

- (1) At any time before the Tribunal is constituted:
- (a) an arbitrator may withdraw an acceptance;
 - (b) a party may replace an arbitrator whom it appointed; or
 - (c) the parties may agree to replace any arbitrator.
- (2) A replacement arbitrator shall be appointed as soon as possible, in accordance with the method by which the withdrawing or replaced arbitrator was appointed.

70. A Member State suggested making a reference to Arts. 38 and 56 of the Convention in proposed AR 20. Overarching principles in the Convention have not been restated in the AR.

Rule 210
Constitution of the Tribunal

- (1) The Tribunal shall be deemed to be constituted on the date the Secretary-General notifies the parties that all the arbitrators have accepted their appointments.
- (2) As soon as the Tribunal is constituted, the Secretary-General shall transmit the Request for arbitration, the supporting documents, the notice of registration and communications with the parties to each member.

III. ARBITRATION RULES

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Chapter III
Disqualification of Arbitrators and Vacancies

Rule 22~~1~~
Proposal for Disqualification of Arbitrators

- (1) A party may file a proposal to disqualify one or more arbitrators (“proposal”) in accordance with the following procedure:
 - (a) the proposal shall be filed after the constitution of the Tribunal and within 21 days after the later of:
 - (i) the constitution of the Tribunal; or
 - (ii) the date on which the party proposing the disqualification first knew or first should have known of the facts on which the proposal is based;
 - (b) the proposal shall include the grounds on which it is based, a statement of the relevant facts, law and arguments, and any supporting documents;
 - (c) the other party shall file its response and supporting documents within 21 days after receipt of the proposal;
 - (d) the arbitrator to whom the proposal relates may file a statement limited to factual information relevant to the proposal. The statement shall be filed within five days after receipt of the response referred to in paragraph (1)(c); and
 - (e) each party may file a final written submission on the proposal within seven days after expiry of the time limit referred to in paragraph (1)(d).
- (2) The proceeding shall be suspended until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding in whole or in part.

71. Most comments on AR 22 concerned whether the automatic suspension of the proceeding upon the filing of a challenge should be maintained. WP # 1 had proposed to eliminate the automatic suspension, but this proposal was abandoned in WP # 2 following numerous comments suggesting potential complications or legitimacy concerns related to the challenged arbitrator participating in the proceeding pending a decision on the challenge. The same type of comments were received on WP # 2. Accordingly, no changes are proposed in WP # 3.
72. Greater efficiency is achieved through the specific timelines included in the rule, the ability of parties to agree to continue the proceeding or any part thereof, and the use of costs to

address strategic challenges.

73. One comment indicated that the 7-day deadline for simultaneous submissions following the statement of the challenged arbitrator is too short. WP # 2 already revised and extended various deadlines in this rule following comments on WP # 1. To maintain the expedited nature of this procedure, no further changes to the deadlines are proposed.
74. One commentator urged that filing a second proposal for disqualification by the same party against the same arbitrator should be deemed abusive. There have been few instances where the same arbitrator has been repeatedly challenged on similar grounds. The Tribunal has discretion to award costs if it finds any conduct abusive.

Rule ~~23~~²

Decision on the Proposal for Disqualification

- (1) The decision on a proposal shall be made by the arbitrators not subject to the proposal or by the Chair in accordance with Article 58 of the Convention.
- (2) For the purposes of Article 58 of the Convention:
 - (a) if the arbitrators not subject to a proposal are unable to decide the proposal for any reason, they shall notify the Secretary-General and [they](#) shall be considered equally divided;
 - (b) if a subsequent proposal is filed while the decision on a prior proposal is pending, both proposals shall be decided by the Chair as if they were a proposal to disqualify a majority of the Tribunal.
- (3) The arbitrators not subject to the proposal and the Chair shall use best efforts to decide any proposal within 30 days after the later of the expiry of the time limit referred to in Rule ~~22~~¹(1)(e) or the notice in ~~paragraph~~ [Rule 23](#)(2)(a).

75. One commentator requested further specificity on the grounds for disqualification under the Convention. No changes are proposed in this regard. The grounds for disqualification are contained in Art. 14 of the Convention, and the circumstances that may justify disqualification are to be determined in every case by the non-challenged members of the Tribunal or Committee, or by the Chair, as applicable.
76. One State asked whether a proposal to disqualify the entire Tribunal qualified as a proposal to disqualify a majority for the purposes of Art. 58 of the Convention. Challenges filed against the entire Tribunal are treated as a proposal to disqualify a majority of the Tribunal. Accordingly, no changes are necessary.
77. One State asked whether it is possible to engage the responsibility of a disqualified

arbitrator. This matter is governed by Art. 21(a) of the Convention, pursuant to which arbitrators enjoy immunity from legal process with respect to acts performed by them in the exercise of their functions, except when the Centre waives this immunity. No changes to WP # 2 are proposed in this regard.

Rule 243
Incapacity or Failure to Perform Duties

If an arbitrator becomes incapacitated or fails to perform the duties required of an arbitrator, the procedure in Rules 224 and 232 shall apply.

Rule 254
Resignation

- (1) An arbitrator may resign by notifying the Secretary-General and the other members of the Tribunal and providing reasons for the resignation.
- (2) If the arbitrator was appointed by a party, the other members of the Tribunal shall promptly notify the Secretary-General whether they consent to the arbitrator's resignation for the purposes of Rule 265(3)(a).

Rule 265
Vacancy on the Tribunal

- (1) The Secretary-General shall notify the parties of any vacancy on the Tribunal.
- (2) The proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.
- (3) A vacancy on the Tribunal shall be filled by the method used to make the original appointment, except that the Chair shall fill the following vacancies from the Panel of Arbitrators:
 - (a) a vacancy caused by the resignation of a party-appointed arbitrator without the consent of the other members of the Tribunal; or
 - (b) a vacancy that has not been filled within 45 days after the notice of vacancy.
- (4) Once a vacancy has been filled and the Tribunal has been reconstituted, the proceeding shall continue from the point it had reached at the time the vacancy was

notified. Any portion of a hearing shall be recommenced if the newly appointed arbitrator considers it necessary to decide a pending matter.

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Chapter IV Conduct of the Proceeding

Rule 276 Orders, ~~and~~ Decisions ~~and~~ Agreements

- (1) The Tribunal shall make the orders and decisions required for the conduct of the proceeding.
- (2) Orders and decisions may be made by any appropriate means of communication and may be signed by the President on behalf of the Tribunal.
- (3) The Tribunal shall consult with the parties prior to making an order or decision it is authorized by these Rules to ~~make~~ be made by a Tribunal on its own initiative.
- ~~(4) The Tribunal shall apply any agreement of the parties on procedural matters to the extent that it conforms with the Convention and the Administrative and Financial Regulations.~~

78. One State asked whether AR 27(2) could mean that the President of the Tribunal has the power to issue orders and decisions without deliberations of the Tribunal. To the contrary, when orders are signed by the President on behalf of the Tribunal pursuant to AR 27(2), the full Tribunal has already deliberated on the ruling contained. This ensures the prompt dispatch of orders and decisions.
79. AR 27(4) has been moved to AR 1 in Chapter I on General Provisions because of its general application in arbitration proceedings.

Rule 287 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 the 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.

80. One State proposed requiring an objection concerning non-compliance to be made within a “reasonable time” rather than “promptly.” The wording of AR 28 has been maintained due to the significance of a waiver.

Rule 298 First Session

- (1) ~~Subject to paragraph (2), the~~ The Tribunal shall hold a first session ~~with the parties~~ to address the procedure, including the matters listed in paragraph (4).
- ~~(2) The first session may be held in person or remotely, by any means that the Tribunal deems appropriate. The agenda, method and date of the first session shall be determined by the President of the Tribunal after consulting with the other members and the parties.~~
- ~~(2)~~(3) The first session shall be held within 60 days after the constitution of the Tribunal's ~~constitution~~ or such other period as the parties may agree. If the President of the Tribunal determines that it is not possible to convene the parties and the other members within this period, the first session shall be held solely among the Tribunal members after ~~consulting with the parties in writing~~ considering the parties' written submissions on the matters listed in paragraph (4).
- ~~(3) The first session may be held in person or remotely, by any means that the Tribunal deems appropriate. The agenda, method and date of the first session shall be determined by the President of the Tribunal after consulting with the other members and the parties.~~
- (4) Before the first session, the Tribunal shall ~~circulate an agenda to the parties and~~ invite the parties' ~~their~~ views on procedural matters, including:
- (a) the applicable arbitration rules;
 - (b) the division of advances payable pursuant to Administrative and Financial Regulation 15;
 - (c) the procedural language(s), translation and interpretation;
 - (d) the method of filing and routing of documents;
 - (e) the number, length, type and format of written submissions;
 - (f) the place of hearings;
 - (g) whether there will be requests for production of documents as between the parties and if so, the scope, timing and procedure for such requests ~~for production of documents between the parties, if any;~~
 - (h) the procedural calendar, ~~including written submissions, hearings, case management conferences and the Tribunal's orders and decisions;~~

- (i) the manner of making recordings and transcripts of hearings;
 - (j) the publication of documents and recordings;
 - (k) the ~~treatment protection~~ of confidential or protected information; and
 - (l) any other procedural matter raised by either party or the Tribunal.
- (5) The Tribunal shall issue an order recording the parties' agreements and any Tribunal decisions on the procedure within 15 days after the later of the first session or the last written submission on procedural matters addressed at the first session.

81. One State asked whether the first session could be held among Tribunal members only, without the parties. In practice this happens only if the parties are not available within the 60-day time frame and do not agree to an extension. In any event, during such a meeting the Tribunal would consider the parties' written submissions on the matters listed in AR 29(4).
82. AR 29(4)(g) has been revised to address comments received with respect to document production. The proposed language makes it clear that the onus is on the parties to decide at the first session whether a document production process should take place and, if so, to determine the procedural aspects of such process, including the scope, timing and procedure applicable.
83. AR 29(4)(h) has been simplified to "the procedural calendar" because certain steps in the proceeding may not be known at the time of the first session or it may be premature to decide on the time limits for certain steps. These may be fixed later.

Rule ~~30~~²⁹
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.

~~(3) A memorial on the merits or a memorial on preliminary objections may be filed at any time before the first session.~~

~~(4)~~⁽³⁾ ~~A No~~ party may [only](#) file ~~an~~ unscheduled written submissions, observations or supporting documents [only after obtaining](#) ~~without~~ 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.

84. AR 30(2) has been modified to state that the reply and rejoinder shall “be limited to” responding to the previous written submission. This reverts to the language originally proposed in WP # 1 and emphasizes that parties should not raise new claims in the reply and rejoinder. This provision does not limit arguments based on new documents or newly discovered facts occurring after a party’s first written submission.
85. AR 30(3) ensures that unscheduled submissions cannot be filed without leave of the Tribunal. Hence, if a party wishes to file a memorial on the merits before the Tribunal fixes a procedural calendar, it would need to seek leave to do so pursuant to AR 30(3).

Rule 310 **Case Management Conference**

With a view to conducting an [expeditious and cost-effective](#) ~~and expeditious~~ proceeding, the Tribunal shall convene one or more case management conferences with the parties at any time after the first session to:

- (a) identify uncontested facts;
- (b) [clarify and](#) narrow the issues in dispute; or
- (c) address any other procedural or substantive issue related to the resolution of the dispute.

86. In response to a comment made by one State, language has been added to AR 31(6) to encourage tribunals to also clarify the issues in dispute.
87. One State suggested adding a reference to the management of document production requests. This is one of the roles that a case management conference may usefully play and is covered under paragraph (c). A reference concerning document production is also included in the matters to be discussed during the first session (AR 29(4)(g)).

Rule 321 **Hearings**

- (1) ~~There shall be one or more hearings before the~~ The Tribunal shall hold one or more hearings, unless the parties agree otherwise.
- (2) The President of the Tribunal shall determine the date, time and method of holding a hearing, after consulting with the other members of the Tribunal and the parties.
- (3) If a hearing is to be held in person, it may be held at any place agreed to by the parties after consulting with the Tribunal and the Secretary-General. If the parties do not agree on the place of a hearing, it shall be held at the seat of the Centre pursuant to Article 62 of the Convention.
- (4) Any member of the Tribunal may put questions to the parties and ask for explanations at any time during a hearing.

Rule 332 **Quorum**

The participation of a majority of the members of the Tribunal by any appropriate means of communication shall be required at the first session, case management conferences, hearings and deliberations, ~~by any appropriate means of communication~~, unless the parties agree otherwise.

Rule 343 **Deliberations**

- (1) The deliberations of the Tribunal shall take place in private and remain confidential.
- (2) The Tribunal may deliberate at any place and by any means it considers appropriate.

- (3) Only members of the Tribunal shall take part in its deliberations. No other person shall be admitted unless the Tribunal decides otherwise.
- (4) The Tribunal shall deliberate on any matter for decision immediately after the last written or oral submission on that matter.

88. One State suggested that the Tribunal notify the parties if anyone other than the Tribunal or the Secretary were admitted to deliberations. This is addressed in [WP # 2, Vol. 1, ¶ 229](#).

Rule 3~~5~~4
Decisions Made by Majority Vote

The Tribunal shall make decisions by a majority of the votes of all its members. Abstention shall count as a negative vote.

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Chapter V Evidence

Rule 365 Evidence: General Principles

- (1) The Tribunal shall determine the admissibility and probative value of the evidence adduced.
- (2) Each party has the burden of proving the facts relied on to support its claim or defense.
- (3) The Tribunal may, ~~if it deems it necessary at any stage of the proceedings,~~ call upon a party to produce documents or other evidence [if it deems it necessary at any stage of the proceeding](#).

Rule 376 Disputes Arising from Requests for Documents

The Tribunal shall decide any dispute arising out of a party's objection to the other party's request for production of documents. In deciding the dispute, the Tribunal shall consider [all relevant circumstances, including](#):

- (a) the scope and timeliness of the request;
- (b) the relevance and materiality of the documents requested;
- (c) the burden of production; [and](#)
- (d) the basis of the objection; ~~and~~
- ~~(e) all other relevant circumstances.~~

89. Many States suggested that the rules should state that document production need not occur in every case. This is clear from AR 29(4)(g) requiring the determination at the first session of “whether there will be requests for production of documents as between the parties and if so, the scope, timing and procedure for such requests.”
90. Other comments received from States reiterated the concern that document production is too lengthy, expensive and burdensome. This concern is addressed by AR 37 and other mechanisms such as case management conferences.

91. Finally, several States suggested that the ICSID Rules should include exemptions from document production, for example on the basis of confidentiality or commercial secrets.
92. The exemptions from production are not governed by the ICSID Rules. They depend on the applicable law, in particular the evidentiary rules which apply in each case. In fact, parties usually authorize the Tribunal to be guided by the [IBA Rules on the Taking of Evidence in International Arbitration](#) which include detailed provisions addressing the scope and timing of requests for documents production (IBA Article 3). The IBA Rules also list exemptions from production including commercial or technical confidentiality, privilege, and special political or institutional sensitivity (IBA Article 9).
93. AR 37 specifically reminds tribunals deciding on objections to production to consider the burden of production, the scope and timeliness of the request, the relevance and materiality of the documents requested, the burden of production and the basis of the objection. This reinforces the Tribunal's role in managing the cost and time of document production.

Rule 387
Witnesses and Experts

- (1) A party intending to rely on evidence given by a witness shall file a written statement by that witness. The statement shall identify the witness, contain the evidence of the witness, and be signed and dated.
- (2) A witness who has filed a written statement may be called for examination at a hearing.
- (3) The Tribunal shall determine the manner in which the examination is conducted.
- (4) A witness shall be examined before the Tribunal, by the parties, and under the control of the President. Any member of the Tribunal may put questions to the witness.
- (5) A witness shall be examined in person unless the Tribunal determines that another means of examination is appropriate in the circumstances.
- (6) Each witness shall make the following declaration before giving evidence:

“I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth.”
- (7) Paragraphs (1)-(5) shall apply, with necessary modifications, to evidence given by an expert.
- (8) Each expert shall make the following declaration before giving evidence:

“I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief.”

94. A few States suggested that witnesses and experts should be required to submit a written declaration of independence and impartiality and to disclose their relationships, if any, with the participants in the proceeding.
95. In practice, however, witnesses are not required to be independent from a party. For instance, States often present officials of their own government as witnesses, and a party who is a natural person may testify on his or her own behalf. At the same time, witnesses are required to tell the truth.
96. With respect to party-appointed experts, there is an expectation of independence and impartiality, but there is also an understanding that the expert is paid by a party and may work closely with that party in preparing the report. Therefore, it would be inappropriate to require experts to sign a declaration of independence and impartiality akin to the declaration provided by Tribunal Members.
97. Any concerns related to the independence and impartiality of witnesses and experts may be tested in cross-examination and go to the credibility of the witness or expert. It is for the Tribunal to assess the probative value of any witness and expert evidence, pursuant to proposed AR 36.
98. One State proposed that the word “expert” be included throughout the rule as it is intended to cover both witnesses and experts. This is adequately addressed by AR 38(7).

Rule 398 **Tribunal-Appointed Experts**

- (1) Unless the parties agree otherwise, the ~~The~~ Tribunal may appoint one or more independent experts to report to it on specific matters within the scope of the dispute.
- (2) The Tribunal shall consult with the parties on the appointment of an expert, including on the terms of reference and fees of the expert.
- ~~(2)~~(3) Upon accepting an appointment by the Tribunal, an expert shall provide a signed declaration in the form published by the Centre.
- ~~(3)~~(4) The parties shall provide the Tribunal-appointed expert with any information, document or other evidence that the expert may require. The Tribunal shall decide any dispute regarding the evidence required by the Tribunal-appointed expert.

~~(4)~~(5) The parties shall have the right to make written and oral submissions, ~~as required,~~ on the report of the Tribunal-appointed expert, [as required](#).

~~(5)~~(6) Rule 3~~8~~7(1) ~~(5) and (8)~~ shall apply, with necessary modifications, to the Tribunal-appointed expert.

99. Some States suggested that AR 39(2) should require the Tribunal to obtain both parties' agreement on the appointment of a Tribunal-appointed expert and their terms of reference, while other States recognized that such a requirement would allow one party to block the process. The opening clause "unless the parties agree otherwise" has been added to underscore that the parties jointly can refuse to have a Tribunal-appointed expert.
100. In relation to AR 39(2), some States suggested additional criteria that the Tribunal must raise with the parties before appointing an expert, including for example the expert's qualifications, scope of work, and any increase in time and costs. As noted in [WP # 2, Vol. 1, ¶¶ 250-255](#), the concept of "terms of reference" is broad and covers all of the proposed additions.
101. A new paragraph (3) is added to AR 39 to implement the suggestion made by several States that the Tribunal-appointed expert be required to sign a declaration of independence and impartiality. The draft declaration form is contained in [Schedule 4](#). It requires the expert to disclose any significant relationship with the main participants in the case.
102. A few States expressed concern about the impact of a Tribunal-appointed expert in relation to the burden of proof. The burden of proof is addressed by the general principle in proposed AR 36(2), which is not affected by the Tribunal's appointment of an expert.

Rule ~~40~~39 Visits and Inquiries

- (1) The Tribunal may order a visit to any place connected with the dispute, on its own initiative or upon a party's request, if it deems the visit necessary, and may conduct inquiries there as appropriate.
- (2) The order shall define the scope of the visit and the subject of any inquiry, the procedure to be followed, the applicable time limits and other terms.
- (3) The parties shall have the right to participate in any visit or inquiry.

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Chapter VI Special Procedures

Rule 4~~10~~ Manifest Lack of Legal Merit

- (1) A party may object that a claim 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.
- (2) The following procedure shall apply:
 - ~~(a)~~ a party shall file a written submission no later than ~~45~~ 30 days after the constitution of the Tribunal;
 - ~~(a)~~~~(b)~~ the written submission shall specify ~~specifying~~ the grounds on which the objection is based; and contain ~~including~~ a statement of the relevant facts, law and arguments;
 - ~~(b)~~~~(c)~~ the Tribunal shall fix time limits for written and oral submissions on the objection, as required, ~~on the objection~~;
 - ~~(c)~~~~(d)~~ if a party files the objection before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the objection, so that the Tribunal may consider the objection promptly upon its constitution; and
 - ~~(d)~~~~(e)~~ the Tribunal shall render ~~issue~~ its decision or ~~render its~~ Award on the objection within 60 days after the latest of:
 - (i) the constitution of the Tribunal;
 - (ii) the last written submission on the objection; or
 - (iii) the last oral submission on the objection.
- (3) If the Tribunal decides that all claims are manifestly without legal merit, it shall render an Award to that effect. Otherwise, the Tribunal shall issue a decision on the objection and fix any time limit necessary for the further conduct of the proceeding.
- (4) A decision that a claim is not manifestly without legal merit shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 4~~32~~ or to argue subsequently in the proceeding that a claim is without legal merit.

103. The time period in AR 41(2)(a) to object that a claim manifestly lacks legal merit (“MLLM”) has been extended to 45 days after the tribunal constitution. In practice, because the average time to reach the stage of tribunal constitution is approximately 5-6 months, the party wishing to object to a claim on these grounds has sufficient time to prepare the submission.
104. Several States suggested that AR 41 include a presumption of costs in favor of the party successfully objecting on the basis of manifest lack of legal merit. This suggestion has not been adopted for several reasons.
105. *First*, a presumption is not compatible with the scheme of costs in ICSID proceedings. That scheme adopts the basic approach that costs are within the discretion of the Tribunal (Art. 61 of Convention) and the rules on costs provide specific factors to consider in exercising this discretion. Such factors include success, conduct of the parties, complexity of the matter, and reasonableness of cost claimed. In addition, the Tribunal is under an obligation to provide reasons for a given cost allocation.
106. *Second*, no provision in the proposed (or current) rules includes a presumption of costs, and it would be discordant to place such a provision in this rule, as opposed to any other.
107. *Third*, there can be a number of different outcomes on an application for MLLM that are not consistent with the presumption of costs but can be well addressed by the usual approach of discretion on matters of costs. For example, a number of MLLM applications have resulted in a partial dismissal based on the finding that only part of the claim manifestly lacks legal merit, and a presumption of costs in such a circumstance is not useful.
108. *Fourth*, States that wish to have such a presumption may place it in their treaties, as some have already done in recent years.

Rule ~~42~~⁴¹ Bifurcation

- (1) A party may request that a question be addressed in a separate phase of the proceeding (“request for bifurcation”).
- (2) If a request for bifurcation relates to a preliminary objection, Rule ~~44~~^{42BIS} shall apply.
- (3) The following procedure shall apply to a requests for bifurcation other than a request referred to in Rule 44-paragraph (2):

- (a) the request for bifurcation shall be filed as soon as possible;
- (b) the request for bifurcation shall state the questions to be bifurcated;
- (c) the Tribunal shall fix time limits for written and oral submissions on the request for bifurcation, as required; ~~on the request for bifurcation~~;
- (d) the Tribunal shall issue its decision on ~~the~~ a request for bifurcation within ~~320~~ 30 days after the later of the last written or oral submission on the request; and
- ~~(e) the Tribunal shall decide whether to suspend any part of the proceeding if it decides to bifurcate; and~~
- ~~(f)~~(e) the Tribunal shall fix any time limit necessary for the further conduct of the proceeding, ~~as required~~.
- (4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether: ~~bifurcation could materially reduce the time and cost of the proceeding and all other relevant circumstances.~~
- (a) bifurcation would materially reduce the time and cost of the proceeding;
- (b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and
- (c) the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical.
- (5) If the Tribunal orders bifurcation pursuant to this Rule, it shall suspend the proceeding with respect to any questions to be addressed at a later phase, unless the parties agree otherwise or the Tribunal decides there are special circumstances that do not justify suspension.
- ~~(5)~~(6) The Tribunal may at any time on its own initiative decide whether a question should ~~is to~~ be addressed in a separate phase of the proceeding.

109. Several States proposed reinstating the 30-day deadline in WP # 1 for the Tribunal to decide on a request for bifurcation, instead of the 20 days proposed in WP # 2. This change has been made in AR 42(3)(d) and is consistent with the average number of days (approximately 28 days) to issue a reasoned decision on bifurcation in ICSID practice.
110. Several States also suggested including additional criteria that Tribunals should consider when deciding whether to bifurcate, based on case law. WP # 3 adds the most widely adopted circumstances in AR 42(4)(a)-(c). As suggested by the chapeau, these

circumstances are not exhaustive.

Rule 432 **Preliminary Objections**

- (1) A party may file a preliminary objection ~~object~~ that the dispute or any ancillary claim is not within the jurisdiction of the Centre; or for other reasons is not within the competence of the Tribunal (“preliminary objection”).
- (2) A party shall notify the Tribunal and the other party of its intent to file a preliminary objection ~~shall be raised~~ as soon as possible.
- (3) The Tribunal may address a preliminary objection in a separate phase of the proceeding or join the objection to the merits.
- (4) If a party requests bifurcation of a preliminary objection, Rule ~~442BIS~~ shall apply.
- (5) If a party does not request bifurcation of a preliminary objection within the time limits referred to in Rule ~~442BIS~~(1)(a) or the parties confirm that they will not request bifurcation, the objection shall be joined to the merits and the following procedure shall apply:
 - (a) the Tribunal shall fix time limits for written and oral submissions on the preliminary objection, as required;
 - (b) the memorial on the preliminary objection shall be filed ~~no later than~~:
 - (i) by the date to file the counter-memorial on the merits;
 - (ii) by the date to file the next written submission after an ancillary claim, if the objection relates to the ancillary claim; or
 - (iii) as soon as possible after the facts on which the objection is based become known to a party, if those facts were unknown to ~~that the~~ party on the ~~relevant~~ dates referred to in paragraph (5)(b)(i) and (ii);
 - (c) the party filing the memorial on preliminary objections shall also file its counter-memorial on the merits, or, if the objection relates to ~~an the~~ ancillary claim, file its next written submission after the ancillary claim; and
 - (d) the Tribunal shall render its Award within 240 days after the later of the last written or oral submission in the proceeding, in accordance with Rule 57(1)(c).

(6) The Tribunal may at any time on its own initiative consider whether a dispute or an ~~any~~ ancillary claim is within the jurisdiction of the Centre or within its own competence.

111. One State commented that the language in AR 43(2) and 43(5)(b)(i) (AR 42 in WP # 2) might suggest that the party filing a preliminary objection within the time limit in AR 43(5)(b)(i) loses its right to do so if it does not also raise the objection as soon as possible pursuant to AR 43(2). The revised language in paragraph (2) clarifies that the party wishing to file a preliminary objection must notify its intent to do so as soon as possible. This is for scheduling purposes and does not preclude a party from filing the preliminary objection pursuant to AR 43(5)(b)(i). If possible, intent to file preliminary objections should be notified at the first session as part of the discussions concerning the procedural calendar. The party notifying such intent need not specify its preliminary objections.
112. A further comment suggested a clarification to the effect that preliminary objections based on new facts can be made after the counter-memorial on the merits is filed. AR 43(5)(b)(iii) has been revised to clarify that this is the situation contemplated.

Rule ~~44~~⁴²BIS **Bifurcation of Preliminary Objections**

- (1) The following procedure shall apply with respect to a request for bifurcation relating to a preliminary objection:
- (a) unless the parties agree otherwise ~~on a different time limit~~, the request for bifurcation shall be filed ~~within~~:
- (i) ~~30 days after the first session, if the memorial on the merits is filed before the first session;~~
- (i) within 45 ~~30~~ days after filing the memorial on the merits, ~~if it is filed after the first session;~~
- (ii) within 45 ~~30~~ days after filing the written submission containing the ancillary claim, if the objection relates to the ~~an~~ ancillary claim; or
- (iii) as soon as possible after the facts on which the preliminary objection is based become known to a party, if those facts were unknown to that ~~the~~ party on the ~~relevant~~ dates referred to in paragraph (1)(a)(i) and (ii);
- (b) the request for bifurcation shall state the preliminary objection to which it relates;

- (c) ~~unless the parties agree otherwise, the proceeding on the merits shall be suspended until the Tribunal decides whether to bifurcate pending the Tribunal's consideration of the request for bifurcation, unless the parties agree otherwise;~~
- (d) the Tribunal shall fix time limits for written and oral submissions on the request for bifurcation, as required, ~~on the request for bifurcation~~; and
- (e) the Tribunal shall issue its decision on a request for bifurcation within 320 days after the later of the last written or oral submission on the request.
- (2) In determining whether to bifurcate, the Tribunal shall consider ~~whether bifurcation could materially reduce the time and cost of the proceeding and all other~~ relevant circumstances, including whether:
- (a) bifurcation would materially reduce the time and cost of the proceeding;
- (b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and
- (c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical.
- (3) If the Tribunal decides to address the preliminary objection in a separate phase of the proceeding, it shall:
- (a) suspend the proceeding on the merits, unless the parties agree otherwise, or the Tribunal decides there are special circumstances that do not justify suspension ~~decide whether to suspend any part of the proceeding on the merits;~~
- (b) fix time limits for written and oral submissions on the preliminary objection, as required;
- (c) render ~~issue~~ its decision or ~~render its~~ Award on the preliminary objection within 180 days after the later of the last written or oral submission, in accordance with Rule 57(1)(b); and
- (d) fix any time limit necessary for the further conduct of the proceeding if the Tribunal does not render an Award.
- (4) If the Tribunal decides to join the preliminary objection to the merits, it shall:
- ~~(a) lift any suspension of the proceeding on the merits in place pursuant to paragraph (1)(e);~~
- ~~(b)~~(a) fix time limits for written and oral submissions on the preliminary objection, as required;

~~(e)~~(b) modify any time limits for written and oral submissions on the merits, as required; and

~~(d)~~(c) render its Award within 240 days after the later of the last written or oral submission in the proceeding, in accordance with Rule 57(1)(c).

113. The deletion of AR 29(3) in WP # 2 (*see* AR 30 under Chapter IV) concerning the option to file a memorial on the merits before the first session is reflected in AR 44(1)(a) by the deletion of sub-paragraph (i).
114. WP # 3 proposes to extend the time limit in AR 44(1)(a) to 45 days to file a request for bifurcation relating to a preliminary objection. This should not materially impact on any other time limits.
115. Several States suggested that AR 44(2) add criteria developed in case law when deciding on a request for bifurcation of preliminary objections. As in AR 42(4), WP # 3 proposes to add the most widely-adopted criteria in AR 44(2), while maintaining tribunal discretion to consider the specific circumstances of the case.
116. Several States suggested that there should be a presumption to suspend the proceeding after a decision to bifurcate. This change has been adopted in AR 44(3)(a), which specifies that the parties may agree otherwise or the Tribunal may find there are special circumstances that do not justify suspension.

Rule 45~~3~~

Consolidation or Coordination of Arbitrations

- (1) Parties to two or more pending arbitrations administered by the Centre may agree to consolidate or coordinate these arbitrations.
- (2) ~~To be consolidated under this Rule, the arbitrations shall have been registered in accordance with the Convention and shall involve the same Contracting State (or any constituent subdivision or agency of the Contracting State).~~ Consolidation joins all aspects of the arbitrations sought to be consolidated and results in a single Award. To be consolidated pursuant to this Rule, the arbitrations shall have been registered in accordance with the Convention and shall involve the same Contracting State (or constituent subdivision or agency of the Contracting State).
- (3) Coordination aligns specific procedural aspects of each pending arbitration, but the arbitrations remain separate proceedings and each results in an individual Awards.
- (4) The parties referred to in paragraph (1) shall jointly provide the Secretary-General with proposed terms ~~of reference~~ for the conduct of the consolidated ~~ion~~ or

coordinated ~~proceeding(s)ion~~ and consult with the Secretary-General to ensure that the proposed terms ~~of reference~~ are capable of being implemented.

- (5) After the consultation referred to in paragraph (4), the Secretary-General shall communicate the ~~proposed agreed~~ terms ~~of reference~~ to the Tribunal(s) constituted in the arbitrations. Such Tribunal(s) shall make any order or decision required to implement ~~these~~ terms ~~of reference~~.

117. A number of States supported adding an express provision on voluntary consolidation and coordination as outlined in AR 45.
118. The language and structure of AR 45 has been amended to streamline this provision. The order of the sentences in AR 45(2) has been inverted.
119. One State suggested that AR 45(4) should specify that States wishing to consolidate must provide the Secretary-General with a proposed procedural outline for the consolidation process, including rules for the appointment of a Tribunal in a consolidated case. AR 45(4) and (5) are clarified to address this suggestion.

Rule 464 **Provisional Measures**

- (1) A party may at any time request that the Tribunal recommend provisional measures to preserve that party's rights, including measures to:
- (a) prevent action that is likely to cause current or imminent harm to that party or prejudice to the arbitral process;
 - (b) maintain or restore the *status quo* pending determination of the dispute; or
 - (c) preserve evidence that may be relevant to the resolution of the dispute.
- (2) The following procedure shall apply:
- (a) the request shall specify the rights to be preserved, the measures requested, and the circumstances that require such measures;
 - (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 provisional measures 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 deciding whether to recommend provisional measures, the Tribunal shall consider [all relevant circumstances, including](#):
- (a) whether the measures are urgent and necessary; [and](#)
 - (b) the effect that the measures may have on each party; ~~and~~
 - ~~(c) all other relevant circumstances.~~
- (4) The Tribunal may recommend provisional measures on its own initiative. The Tribunal may also recommend provisional measures different from those requested by a party.
- (5) A party shall promptly disclose any material change in the circumstances upon which the Tribunal recommended provisional measures.
- (6) The Tribunal may at any time modify or revoke the provisional measures, on its own initiative or upon a party's request.
- (7) A party may request any judicial or other authority to order provisional measures if such recourse is permitted by the instrument recording the parties' consent to arbitration.

120. One State reiterated the suggestion that the Tribunal should consider whether the requested provisional measures interfere with State sovereignty, a State's domestic legal framework or the ability to implement the measure under the State's domestic laws. These factors may be relevant to a decision on provisional measures and a State may raise these for consideration by a Tribunal.
121. One commentator suggested further elaboration on the circumstances to be considered in deciding whether to recommend provisional measures. WP # 3 does not list further circumstances, as AR 46(3) reflects circumstances considered in all cases ([see WP # 2, Vol. 1, ¶¶311-315](#)), while enabling tribunals to consider other relevant circumstances.
122. One comment suggested the addition of "unless the parties agree otherwise" in AR 46(3). This wording has not been added as the parties may always agree otherwise pursuant to

AR 1(2).

123. One State suggested modifying AR 46(7) to allow a party to request a domestic judicial authority to order provisional measures even where the parties have not consented to such recourse. Current AR 39(6) was added in 1984 to preserve the exclusivity of ICSID proceedings, except when the parties have agreed otherwise pursuant to Art. 26 of the Convention. This exclusive remedy rule has been repeatedly confirmed by domestic courts and ICSID tribunals. Therefore, no change is proposed in this respect.
124. By contrast, the AF Arbitration Rules do not contain such a limitation and (AF)AR 54(7) provides that a party may at any time request any judicial or other authority to order interim or conservatory measures.

Rule 47~~5~~ **Ancillary Claims**

- (1) Unless the parties agree otherwise, a party may file an incidental or additional claim or a counterclaim (“ancillary claim”) arising directly out of the subject-matter of the dispute, provided that such ancillary claim is within the scope of the consent of the parties and the jurisdiction of the Centre.
- (2) An incidental or additional claim shall be presented no later than in the reply, and a counterclaim shall be presented no later than in the counter-memorial, unless the Tribunal decides otherwise.
- (3) The Tribunal shall fix time limits for written and oral submissions on the ancillary claim, as required, ~~on the ancillary claim~~.

Rule 48~~6~~ **Default**

- (1) A party is in default if it fails to appear or present its case, or indicates that it will not appear or present its case.
- (2) If a party is in default at any stage of the proceeding, the other party may request that the Tribunal address the questions submitted to it and render an Award.
- (3) Upon receipt of the request referred to in paragraph (2), the Tribunal shall notify the defaulting party of the request and grant a grace period to cure the default, unless it is satisfied that the defaulting party does not intend to appear or present its case. The grace period shall not exceed 60 days without the consent of the other party.

- (4) If the request in paragraph (2) relates to a failure to appear at a hearing, the Tribunal may:
- (a) reschedule the hearing to a date within 60 days after the original date;
 - (b) proceed with the hearing in the absence of the defaulting party and fix a time limit for the defaulting party to file a written submission within 60 days after the hearing; or
 - (c) cancel the hearing and fix a time limit for the parties to file written submissions within 60 days after the original date of the hearing.
- (5) If the default relates to another scheduled procedural step, the Tribunal may set the grace period to cure the default by fixing a new time limit for the defaulting party to complete that step within 60 days after the date of the notice of default referred to in paragraph (3).
- (6) A party's default shall not be deemed an admission of the assertions made by the other party.
- (7) The Tribunal may invite the party that is not in default to file observations, produce evidence or make oral submissions.
- (8) If the defaulting party fails to act within the grace period or if no such period is granted, the Tribunal shall examine the jurisdiction of the Centre and its own competence before deciding the questions submitted to it and rendering an Award.

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Chapter VII Costs

Rule ~~47~~ Costs of the Proceeding

The costs of the proceeding are all costs incurred by the parties in connection with the proceeding, including:

- (a) the legal fees and expenses of the parties;
- (b) the fees and expenses of the ~~members of the~~ Tribunal, Tribunal assistants approved by the parties and Tribunal-appointed experts ~~and any Tribunal assistants approved by the parties~~; and
- (c) the administrative charges and direct costs of the Centre.

125. One State requested clarification on whether the legal fees and expenses of the parties in (a) include the costs associated with party-appointed experts. Such costs are covered by AR 49(a).

~~Rule 48 Payment of Advances~~

~~The Tribunal shall determine the portion of the advances payable by each party in accordance with Administrative and Financial Regulation 15 to defray the costs referred to in Rule 47(b) and (c).~~

126. AR 48 in WP # 2 is deleted because the payment and division of advances is already addressed in AFR 15.

Rule ~~50~~49 Statement of and Submission on Costs

The Tribunal shall request that each party file a statement of its costs and a written submission on the allocation of costs before allocating the costs of the proceeding between the parties.

Rule 51~~0~~
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 part of it;
 - (b) the ~~parties'~~ conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner;
 - (c) the complexity of the issues; and
 - (d) the reasonableness of the costs claimed; ~~and~~
 - ~~(e) all other relevant circumstances.~~
- (2) The Tribunal may make an interim decisions on ~~the costs of any part of a proceeding~~ at any time.
- (3) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.

127. Two States suggested that AR 51(1)(a) be revised to more specifically indicate that a Tribunal could allocate costs based on the outcome of specific claims, defences and parts of a proceeding. AR 51(1)(a) allows a Tribunal to take into account the outcome with respect to any phase of the proceeding, including the success of any individual claim or defence or the overall outcome in allocating costs.
128. Among other changes to streamline AR 51, “any part of a proceeding” is deleted from paragraph (2). Such language is superfluous as an “interim” decision necessarily applies to “any part of a proceeding.”
129. Comments regarding the allocation of costs in the context of an objection that a claim is manifestly without legal merit are addressed under AR 41 (Chapter VI). Comments regarding the allocation of costs in the context of third-party funding are addressed under AR 14 (Chapter II). Comments regarding the allocation of costs in the context of discontinuance are addressed under AR 55 and 56 (Chapter VIII).

Rule 52~~1~~
Security for Costs

- (1) Upon 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.

- ~~(4)~~(5) 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.
- ~~(5)~~(6) 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.
- ~~(6)~~(7) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.
- ~~(7)~~(8) 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.

130. WP # 3 maintains AR 52 as revised in WP # 2 with the addition of a new paragraph (4) that refers to the use of evidence of the existence of third-party funding.
131. On AR 52(1), a few States and one public commentator reiterated the suggestion that only claimants be required to provide security for costs. This suggestion has not been adopted. Consistent with the objective of rules balanced between investors and States, the rule is available to any party that incurs costs as a result of having to defend a claim or counterclaim.
132. Two States suggested that a Tribunal should be able to issue an order for security for costs on its own initiative. As explained in [WP # 1, Vol. 3, ¶ 518](#), the requirement that a party initiate a request for security for costs is retained because only a party will be in a position to determine whether it wants security, and that party will need to establish the circumstances of the case that justify such an order.
133. One State reiterated its suggestion that an order of security for costs should be automatic upon a claimant's disclosure of third-party funding. However, other States have recognized that the existence of third-party funding should not, on its own, justify an order for security for costs. In addition, an automatic order for security for costs could unreasonably impede access to ICSID dispute resolution mechanisms, particularly for SMEs.
134. Some States suggested that third-party funding be included among the factors that tribunals may consider in deciding whether to order security for costs. An express reference to third-party funding has now been included in a new paragraph (4), reflecting the fact that third-party funding is not by itself a separate factor but may be "considered as evidence of a circumstance listed in paragraph (3)".
135. If the Tribunal determines that the terms of the third-party funding agreement would be relevant to its decision (for example whether the funder has undertaken to cover an adverse cost award), it may order disclosure of relevant information or terms (potentially redacted to protect confidential information).

136. Another suggestion received in relation to AR 52(3) was that sub-paragraphs (a) and (b) be replaced with the text: “reasonable doubt as to the party’s willingness or ability to comply with an adverse costs decision.” The current text provides tribunals with sufficient guidance in exercising their power to order security for costs.
137. With respect to AR 52(3)(b), one State proposed eliminating the factor related to “willingness to comply” and one commentator suggested changing this reference to “history of non-compliance with previous awards in relevant proceedings”. These suggestions are not incorporated because they would narrow the factors that the Tribunal should consider and would restrict the Tribunal’s discretion.
138. On AR 52(5) (proposed AR 51(4) in WP # 2), one State suggested adding that the Tribunal must specify “the amount required to be paid” and “shall decide disputes regarding compliance with the order”. These additions are not necessary because: (i) the amount is covered by the requirement for the Tribunal to specify “any relevant terms” and (ii) the Tribunal’s obligation to determine any disputes regarding compliance is addressed in proposed AR 27(1), which provides that the Tribunal “shall make the orders and decisions required for the conduct of the proceeding”.
139. In relation to AR 52(6) (proposed AR 51(5) in WP # 2), one State repeated its suggestion that discontinuance of the proceeding should be mandatory for non-compliance. The text as proposed in WP # 2 is maintained because it balances Tribunal discretion with due process and flexibility to account for the circumstances of the case.

III. ARBITRATION RULES

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Chapter VIII Suspension, Settlement and Discontinuance

Rule 532 Suspension of the Proceeding

- (1) The Tribunal shall suspend the proceeding by agreement of the parties.
- (2) The Tribunal may suspend the proceeding upon the request of either party or on its own initiative, except as otherwise provided in the Administrative and Financial Regulations or these Rules.
- (3) The Tribunal shall give the parties the opportunity to make observations before ordering ~~a~~~~the~~ suspension pursuant to paragraph (2).
- (4) In its order suspending the proceeding, the Tribunal shall specify:
 - (a) the period of the suspension;
 - (b) any ~~relevant terms~~~~appropriate conditions~~; and
 - (c) a modified procedural calendar to take effect on resumption of the proceeding, if necessary.
- (5) The Tribunal shall extend the period of ~~a~~~~the~~ suspension prior to its expiry by agreement of the parties.
- (6) The Tribunal may extend the period of ~~a~~~~the~~ suspension prior to its expiry, on its own initiative or upon a party's request, after giving the parties an opportunity to make observations.
- (7) The Secretary-General shall suspend the proceeding pursuant to paragraph (1) or extend the suspension pursuant to paragraph (5) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal. The parties shall inform the Secretary-General of the period of the suspension and any ~~terms~~~~conditions~~ agreed to by the parties.

Rule 54~~3~~
Settlement and Discontinuance

- (1) If the parties notify the Tribunal that they have agreed to discontinue the proceeding, the Tribunal shall issue an order taking note of the discontinuance.
- (2) If the parties agree on a settlement of the dispute before the Award is rendered, the Tribunal:
 - (a) shall issue an order taking note of the discontinuance of the proceeding, if the parties so request; or
 - (b) may record the settlement in the form of an Award, if the parties file the complete and signed text of their settlement and request that the Tribunal embody such settlement in an Award.
- (3) The Secretary-General shall issue the order referred to in paragraphs (1) and (2)(a) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

140. No change is proposed to the text of AR 54. One State asked whether AR 54(2)(a) ought to require the parties to request the issuance of a discontinuance order “jointly.” The provision gives the parties flexibility to approach the Tribunal either by a joint letter or to confirm the request by separate communications.

Rule 54
Discontinuance at Request of a Party

- (1) If a party requests the discontinuance of the proceeding, the Tribunal shall fix a time limit within which the other party may oppose the discontinuance. If no objection in writing is made within the time limit, the other party shall be deemed to have acquiesced in the discontinuance and the Tribunal shall issue an order taking note of the discontinuance of the proceeding. If any objection in writing is made within the time limit, the proceeding shall continue.
- (2) The Secretary-General shall fix the time limit and issue the order referred to in paragraph (1) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

141. One State reiterated its earlier proposal that the grounds for discontinuance pursuant to AR 55 should be specified. Discontinuance is based on a request of a party which the other party does not oppose (*see* [WP # 1, Vol. 3, ¶¶ 561-564](#) and [WP # 2, Vol. 1, ¶¶ 377-378](#)). The issuance of the discontinuance order depends solely on the other party’s non-objection

to the discontinuance of the proceeding.

142. One State asked about the meaning of “any objection” in the last sentence of AR 54(1). “Objection” is any indication that the other party does not agree to the discontinuance. If the other party raises any objection, or seeks to impose a condition on the discontinuance, the proceeding will continue because there has been no acquiescence in the discontinuance of the proceeding.

Rule 5~~6~~5

Discontinuance for Failure of Parties to Act

- (1) If the parties fail to take any steps in the proceeding for more than 150 consecutive days, the Tribunal shall notify them of the time elapsed since the last step taken in the proceeding.
- (2) If the parties fail to take a step within 30 days after the notice referred to in paragraph (1), they shall be deemed to have discontinued the proceeding and the Tribunal shall issue an order taking note of the discontinuance.
- (3) If either party takes a step within 30 days after the notice referred to in paragraph (1), the proceeding shall continue.
- (4) The Secretary-General shall issue the notice and the order referred to in paragraphs (1) and (2) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

143. The word “consecutive” has been added to AR 56 to reflect a corresponding change in AFR 16(2)(c) and clarify the 150-day period is 150 consecutive days.
144. Some States inquired as to whether they could recover costs where the proceeding does not continue. If either party abandons the proceeding (*i.e.*, fails to appear or present its case), the other can invoke the default provision of AR 48 to obtain an enforceable Award. Alternatively, if the parties agree on the terms of ending the proceeding, their agreement may be incorporated in an enforceable Award pursuant to AR 54. If either party fails to pay advances, the other can make the outstanding payment pursuant to AFR 16 to ensure that the proceeding continues and to obtain an enforceable Award. Moreover, the new rule on security for costs (proposed AR 52) is specifically designed to address such concerns. When the proceeding is discontinued by the Secretary-General for non-payment of advances before the constitution of the Tribunal, the recovery of costs is not possible. Costs at this early stage of the proceeding are usually limited.

Rule 56
Discontinuance for Failure to Pay

~~If the parties fail to make payments to defray the costs of the proceeding as required by Administrative and Financial Regulation 15, the proceeding may be discontinued pursuant to Administrative and Financial Regulation 16.~~

145. Proposed AR 56 has been deleted since it is not necessary considering AFR 16.

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Chapter IX The Award

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 the Tribunal constitution, the last written submission or the last oral submission, ~~or the Tribunal constitution, whichever is later~~, if the Award is rendered pursuant to Rule 410(3);
 - (b) 180 days after the later of the last written or oral submission if the Award is rendered pursuant to Rule 42BIS(3)(c); or
 - (c) 240 days after the later of the last written or oral submission ~~in~~ ~~on~~ all other cases matters.
- (2) A statement of costs and submissions on costs filed pursuant to ~~in accordance with~~ Rule 5049 shall not be considered a written submission for the purposes of paragraph (1).

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 ~~under~~ 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 ~~the~~ 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 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.

146. Some States requested that the list of items in AR 58(1) be expanded to include the reasoning of the Tribunal on specific questions, such as jurisdiction, applicable law and damages. Under Arts. 48(3) of the Convention and AR 58(1)(i), the Tribunal's reasoning on such issues already must be included in the Award.
147. One State proposed that the parties and the Tribunal be required to agree on a list of "questions" to be decided by the Tribunal. This comment was addressed in [WP # 2, Vol. 1, ¶ 393](#).
148. One State suggested that electronic signatures under AR 58(2) be the default option. This matter was addressed in [WP # 1, Vol. 3, ¶ 598](#).
149. Finally, one State proposed that the rules clarify whether statements of dissent and individual opinions may be issued after the Award is rendered and whether they may be considered as part of the Award. This issue was addressed in [WP # 1, Vol. 3, ¶ 599](#).

Rule 59 **Rendering of the Award**

- (1) Once the Award has been signed by the members of the Tribunal who voted for it, the Secretary-General shall promptly:
- (a) dispatch a certified copy of the Award to each party, together with any individual opinion and statement of dissent, indicating the date of dispatch on the Award; and
 - (b) deposit the Award in the archives of the Centre, together with any individual opinion and statement of dissent.

- (2) The Award shall be deemed to have been rendered on the date of dispatch of certified copies of the Award.
- (3) The Secretary-General shall provide additional certified copies of the Award to a party upon request.

Rule 60 **Supplementary Decision and Rectification**

- (1) A party requesting a supplementary decision on, or the rectification of, an Award pursuant to Article 49(2) of the Convention shall, ~~within 45 days after the Award was rendered~~, file the request with the Secretary-General and pay the lodging fee published in the schedule of fees within 45 days after the Award was rendered.
- (2) The request referred to in paragraph (1) shall:
 - (a) identify the Award to which it relates;
 - (b) be signed by each requesting party or its representative and be dated; ~~and~~
 - (c) specify:
 - (i) with respect to a request for a supplementary decision, any question which the Tribunal omitted to decide in the Award; ~~and~~
 - (ii) with respect to a request for rectification, any clerical, arithmetical or similar error in the Award; and
 - (d) attach proof of payment of the lodging fee.
- (3) Upon receipt of the request and the lodging fee, the Secretary-General shall promptly:
 - (a) transmit the request to the other party;
 - (b) register the request, or refuse registration if the request is not made within the time limit referred to in paragraph (1); and
 - (c) notify the parties of the registration or refusal to register.
- (4) As soon as the request is registered, the Secretary-General shall transmit the request and the notice of registration to each member of the Tribunal.

- (5) The President of the Tribunal shall determine the procedure to consider the request, after consulting with the other members of the Tribunal and the parties.
- (6) Rules 58-59 shall apply to any decision of the Tribunal pursuant to this Rule.
- (7) The Tribunal shall issue [a decision on the request for](#) ~~the~~ supplementary decision or rectification within 60 days after the [later of the](#) last written or oral submission on the request.
- (8) The date of dispatch of [certified copies of](#) the supplementary decision or rectification shall be the relevant date for the purposes of calculating the time limits ~~specified~~ in Articles 51(2) and 52(2) of the Convention.
- (9) A supplementary decision or rectification under this Rule shall become part of the Award and shall be reflected on all certified copies of the Award.

III. ARBITRATION RULES

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150. Chapter X governs publication of case materials by the Centre, public access to ICSID proceedings, and submissions by non-parties. The rules governing these matters can be varied by specific provisions in the instrument of consent, agreement of the parties, or accession to the Mauritius Convention.
151. This Chapter should be considered with complementary provisions in AFR 23 (publication of information concerning Contracting States), AFR 24 (publication of information on the Panels of Arbitrators and of Conciliators), AFR 25(a) (publication of information concerning the operation of the Centre), and AFR 26 (publication of case registers with all significant data concerning the institution, conduct and disposition of the proceeding, including the economic sector involved, the names of the parties and their representatives, and the method of constitution and membership of each Commission, Tribunal and Committee). AFR 25(b) refers to the rules applicable in the individual proceeding for regulation of publication of documents generated in proceedings.
152. As is evident from the published compilations of comments to date, States and other commentators continue to have different positions on transparency in investment arbitration. The proposals below ensure that the most important documents and information are made available to the public and that documents and information which are properly confidential or otherwise protected are not disclosed to the public.

Chapter X
Publication, Access to Proceedings and Non-Disputing Party Submissions

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.
- ~~(3)~~(4) Absent consent of the parties in accordance with ~~referred to in~~ paragraphs (1) ~~and (32)~~, the Centre shall publish excerpts of the ~~legal reasoning in such~~ documents (“~~excerpts~~”). The following procedure shall apply to publication of excerpts:
- (a) the ~~Secretary-General Centre~~ shall propose excerpts to the parties within ~~60~~30 days after the date upon which a party declines consent to publication of the document receiving notice that a party declines consent to publication of a

~~document referred to in paragraphs (1) and (2), or if the parties have not provided their consent to publication within 90 days after the dispatch of the document;~~

- (b) the parties may send comments on the proposed excerpts to the ~~Centre~~ [Secretary-General](#) within ~~60~~30 days after their receipt; and
- (c) the ~~Secretary-General~~Centre shall consider ~~any the~~ [comments received](#) on the proposed excerpts, ~~if any~~, and publish excerpts within 30 days after receipt of ~~such those~~ [comments](#).

153. As explained in [WP # 1](#) and [WP # 2](#), Art. 48(5) of the Convention requires consent to publication of an Award.
154. AR 61(2) reminds the parties that they may consent to publication of the full Award or a jointly redacted Award. The clarification that the redacted version be “jointly” submitted by the parties reflects the fact that consent is mandatory in this circumstance and there is no ability to refer disputed redactions of the Award to a Tribunal for a binding ruling.
155. AR 61(3) revives the notion of deemed consent which was advanced in [WP # 1](#). Numerous States noted that deemed consent was useful in this context. A few States queried whether deemed consent might contradict Art. 48(5) of the Convention. Given that a bare objection is required to avoid deemed consent to publication of an Award, it seems clear that this does not contradict the Convention.
156. AR 61(4) contains the procedure for excerpting Awards where consent to publication has not been given. It is similar to proposed AR 61 in [WP # 2](#), but gives the Centre 60 (rather than 30) days to compile proposed redactions for consideration by the parties and gives parties 60 (rather than 30) days to comment on proposed excerpts.
157. In addition, AR 61(4) proposes excerpts of the Award rather than excerpts of the legal reasoning in the Award. This reflects current practice whereby parties are provided a draft of a fully extracted Award for comment rather than merely the legal reasoning in the Award. Some States suggested that parties should also be required to provide compelling reasons why proposed excerpts might not be published. While parties are entitled to explain the reason for their position on extracts, this has not been required in AR 61(4) as it would increase the time and cost of the excerpting mechanism.

Rule 62
Publication of Orders and Decisions

- (1) The Centre shall publish orders and decisions ~~within 60 days after their issuance,~~ with any redactions agreed to by the parties and jointly notified to the [Secretary-General Centre](#) ~~within the 60-day period.~~ [60 days after the order or decision is issued.](#)
- (2) If either party notifies the [Secretary-General Centre](#) ~~within the 60-day period~~ referred to in paragraph (1) that the parties disagree on [any proposed](#) ~~the~~ redactions, the [Secretary-General Centre](#) ~~shall~~ refer the order or decision to the Tribunal to determine any [disputed](#) redactions, ~~and~~ [The Centre](#) shall publish the order or decision [in accordance](#) with the [determination of](#) ~~redactions approved by~~ the Tribunal.
- (3) [In determining disputes pursuant to paragraph \(2\), the Tribunal shall ensure that publication does not disclose any confidential or protected information.](#)

158. AR 62 is similar to [WP # 2](#) except that it clarifies that only disputed redactions will be referred to the Tribunal. This version of AR 62 was supported by many, although not all, States.
159. Some States disagreed with this approach and urged a rule that required consent to publication, similar to AR 61. Such an approach is not proposed because the Convention clearly requires consent to publication of Awards and does not extend this requirement to the discrete category of orders and decisions. This is consistent with the clear distinction in the Convention and rules between Awards, on the one hand, and orders and decisions, on the other.
160. The approach in AR 62 seeks to balance the interests of all parties by allowing publication of orders and decisions with redaction of confidential or otherwise protected information and the possibility of review of disputed redactions by the Tribunal.
161. Parties should note that in reviewing disputed redactions under this rule, the Tribunal shall not permit publication of confidential or protected information, now defined in new proposed AR 65.

Rule 63
Publication of Documents Filed ~~by a Party~~ in the Proceeding

- (1) Upon request of either ~~a~~ party, the Centre shall publish any document ~~which that party~~ filed in the proceeding, with any redactions agreed to by the parties and jointly notified to the Secretary-General, ~~subject to paragraph (2)~~.
- (2) ~~The parties~~ 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) In determining disputes pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information.

162. AR 63 is similar to proposed AR 63 in [WP # 2](#). AR 63 allows either party to request publication of any document filed in the proceeding, with redactions agreed to by the parties and jointly notified to the Centre. Like AR 62, it allows either party to refer disputed redactions to the Tribunal for review. In addition, it allows either party to object to publication of the document and to refer such objection to the Tribunal if disputed.
163. AR 63 does not provide a list of the documents filed in the proceeding as urged by some States, as there are numerous categories of documents filed in an ICSID proceeding and these are all subsumed in the category of “documents filed in the proceeding”.

Rule 64
Observation of Hearings

- (1) The Tribunal shall determine whether to allow persons in addition to the parties, their representatives, witnesses and experts during their testimony, and persons assisting the Tribunal, to observe hearings, after consulting with the parties ~~unless either party objects~~.
- (2) The Tribunal shall establish procedures to prevent the disclosure of any confidential or protected information to persons observing the hearings.
- (3) The Centre shall publish ~~video~~-recordings or transcripts of those portions of hearings that were available for observation by the public in accordance with paragraphs (1) and (2), unless either party objects.

164. AR 64 is revised to reflect comments received on observation of hearings in [WP # 2](#). It permits a Tribunal to address whether a hearing shall be open to the public. In addition,

AR 64(2) requires a Tribunal to ensure that confidential or protected information, defined in AR 65, is not disclosed to the public.

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.

165. AR 65 is new. It provides general principles governing the application of Rules 61-64 and reflects the request of many stakeholders to provide guidance for parties and the Tribunal as to when information would be considered confidential or protected, and hence not subject to access by the public.

Rule 66~~5~~
Submission of Non-Disputing Parties

- (1) Any person or entity that is not a ~~disputing~~ party to the dispute (“non-disputing party”) may apply for permission to file a written submission in the proceeding. The application shall be made in a procedural language used in the proceeding.
- (2) In determining whether to permit a non-disputing party submission, the Tribunal shall consider all relevant circumstances, including:
 - (a) whether the submission would address a matter within the scope of the dispute;
 - (b) how the submission would assist the Tribunal to determine a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the ~~disputing~~ parties;
 - (c) whether the non-disputing party has a significant interest in the proceeding;
 - (d) the identity, activities, organization and ownership of the non-disputing party, including any direct or indirect affiliation between the non-disputing party, a party or a non-disputing Treaty Party; and
 - (e) whether any person or entity will provide the non-disputing party with financial or other assistance to file the submission.
- (3) The parties shall have the right to make observations on whether a non-disputing party should be permitted to file a written submission in the proceeding and on the conditions for filing such a submission, if any.
- (4) The Tribunal shall ensure that non-disputing party participation does not disrupt the proceeding or unduly burden or unfairly prejudice either party. To this end, the Tribunal may impose conditions on the non-disputing party, including with respect to the format, length or scope of the written submission and the time limit to file the submission.
- (5) The Tribunal shall issue a reasoned decision on whether to permit a non-disputing party submission within 30 days after the later of the last written or oral submission on the application.
- (6) The Tribunal may provide the non-disputing party with access to relevant documents filed in the proceeding, unless either party objects.
- (7) If the Tribunal permits a non-disputing party to file a written submission, the parties shall have the right to make observations on the submission.

166. Comments received on AR 66 were generally positive, and few changes are proposed to this provision.
167. AR 66(1) is modified to refer to a person or entity that is not a party to the dispute. This is based on the definition of “party” in AR 3, which is a “claimant or respondent”. This change should clarify that an REIO or an NDTP may apply to make a submission pursuant to AR 66 if it is not a named party in the case.

Rule 676
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 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.

168. Comments on this rule were favorable overall, although some States did not support NDTP participation and were concerned that it might be tantamount to diplomatic protection. Others urged NDTP participation to be made available for a broader range of subjects than interpretation of the treaty. AR 67 retains its limited scope as “interpretation of the treaty at issue in the dispute and upon which consent to arbitrate is based”. Art. 27 of the Convention prevents a party from offering diplomatic protection and would apply if a proposed NDTP submission would be tantamount to diplomatic protection.

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Chapter XI Interpretation, Revision and Annulment of the Award

Rule 687 The Application

- (1) A party applying for interpretation, revision or annulment of an Award shall file the application with the Secretary-General, together with any supporting documents, and pay the lodging fee published in the schedule of fees.
- (2) The application shall:
 - (a) identify the Award to which it relates;
 - (b) be in ~~a an official~~ language in which the Award was rendered ~~of the Centre used in the original proceeding~~, or if the Award was not rendered in an any official language of the Centre, be in if no an official language was used in the original proceeding;
 - (c) be signed by each applicant or its representative and be dated; ~~and~~
 - (d) attach proof of any representative's authority to act; and
 - (e) attach proof of payment of the lodging fee.
- (3) An application for interpretation pursuant to Article 50(1) of the Convention may be filed at any time after the ~~dispatch of the~~ Award is rendered and shall specify the points in dispute concerning the meaning or scope of the Award.
- (4) An application for revision pursuant to Article 51(1) of the Convention shall be filed within 90 days after the discovery of a fact of such a nature as decisively to affect the Award, and in any event within three years after the Award (or any supplementary decision on or rectification of the Award) was rendered. The application shall specify:
 - (a) the change sought in the Award;
 - (b) the newly discovered fact that decisively affects the Award; and
 - (c) that the fact was unknown to the Tribunal and to the applicant when the Award was rendered, and that the applicant's ignorance of that fact was not due to negligence.
- (5) An application for annulment pursuant to Article 52(1) of the Convention shall:

- (a) be filed within 120 days after ~~the date on which~~ the Award (or any supplementary decision on or rectification of the Award) was rendered if the application is based on any of the grounds in Article 52(1)(a), (b), (d) or (e) of the Convention; or
- (b) be filed within 120 days after the discovery of corruption on the part of a member of the Tribunal and in any event within three years after ~~the date on which~~ the Award (or any supplementary decision on or rectification of the Award) was rendered, if the application is based on Article 52(1)(c) of the Convention; and
- (c) specify the grounds on which it is based, limited to the grounds in Article 52(1)(a)-(e) of the Convention, and the reasons in support of each ground.

~~(6) A complete application and evidence of payment of the lodging fee must be filed by the time limits referred to in paragraphs (4) or (5).~~

~~(7)~~(6) Upon receipt of ~~receiving~~ an application and the lodging fee, the Secretary-General shall promptly:

- (a) transmit the application and the supporting documents to the other party;
- (b) register the application, or refuse registration if the application is not made within the time limits referred to in paragraphs (4) or (5); and
- (c) notify the parties of the registration or refusal to register.

~~(8)~~(7) An applicant may withdraw from an application before it has been registered by filing a written notice of withdrawal with the Secretary-General. At any time before registration, an applicant may notify the Secretary-General in writing of the withdrawal of the application or, if there is more than one applicant, that it is withdrawing from the application. The Secretary-General shall promptly notify the parties of the withdrawal, unless the application has not yet been transmitted to the other party pursuant to paragraph ~~(67)~~(a).

169. AR 68(2)(b) now refers to the language of the Award, rather than to the language of the proceeding, for purposes of determining the language of an application for annulment. This proposed change removes the risk of delay in case an application for annulment is filed after resubmission proceedings, or if the language changed in the course of the proceeding.
170. One State suggested that the Rule should require the applicant to detail the alleged errors of procedure or errors in the Award justifying each ground and the reasons why it considers that these errors constitute a basis to invoke such grounds. AR 68(5)(c) contains language to that effect.

171. AR 68(6) in WP # 2 has been deleted and a reference to proof of payment of the lodging fee is instead included in AR 68(2)(e), indicating that the lodging fee must be paid within the time limit to file an application.
172. AR 68(7) (AR 68(8) in WP # 2) has been revised to mirror the language in IR 8 concerning the withdrawal of a Request for arbitration.

Rule 6~~9~~8

Interpretation or Revision: Reconstitution of the Tribunal

- (1) As soon as an application for the interpretation or revision of an Award is registered, the Secretary-General shall:
 - (a) transmit the notice of registration, the application and any supporting documents to each member of the original Tribunal; and
 - (b) request each member of the Tribunal to inform the Secretary-General within 10 days whether that member can take part in the consideration of the application.
 - (2) If all members of the Tribunal can take part in the consideration of the application, the Secretary-General shall notify the Tribunal and the parties of the reconstitution of the Tribunal.
 - (3) If the Tribunal cannot be reconstituted in accordance with paragraph (2), the Secretary-General shall invite the parties to constitute a new Tribunal without delay. The new Tribunal shall have the same number of arbitrators and be appointed by the same method as the original Tribunal.
173. One State suggested that the rules incorporate an appeals mechanism. As indicated in [WP # 2, Vol. 1, ¶ 434](#), the Secretariat remains prepared to assist States if they wish to discuss the establishment of such a mechanism.
174. One State suggested that the parties be able to reappoint the arbitrators who participated in the original arbitration. AR 69 requires the new Tribunal to be appointed by the same method as the original Tribunal, but the parties are free to appoint the remaining individuals that acted as party-appointed arbitrators and/or as presiding arbitrator if they wish (*see* [WP # 2, Vol. 1, ¶ 446](#)).

Rule 70~~69~~**Annulment: Appointment of the *ad hoc* Committee**

- (1) As soon as an application for annulment of an Award is registered, the Chair shall appoint an *ad hoc* Committee in accordance with Article 52(3) of the Convention.
- (2) Each member of the Committee shall provide a signed declaration in accordance with Rule 198.
- (3) The Committee shall be deemed to be constituted on the date the Secretary-General notifies the parties that all members have accepted their appointments.

Rule 71~~0~~**Procedure Applicable to Interpretation, Revision and Annulment**

- (1) Except as provided below, ~~the provisions of~~ these Rules shall apply, with necessary modifications, to any procedure relating to the interpretation, revision or annulment of an Award and to the decision of the Tribunal or Committee.
- (2) The procedural agreements and orders on matters addressed at the first session of the original Tribunal shall continue to apply to an interpretation, revision or annulment proceeding, with necessary modifications, unless the parties agree or the Tribunal or Committee orders otherwise.
- (3) In addition to the application, the written procedure shall consist of one round of written submissions in an interpretation or revision proceeding, and two rounds of written submissions in an annulment proceeding, unless the parties agree or the Tribunal or Committee orders otherwise.
- (4) A hearing shall be held upon the request of either party, or if ordered by the Tribunal or Committee.
- (5) The Tribunal or Committee shall issue its decision within 120 days after the later of the last written or oral submission on the application.

175. One State suggested that procedural agreements made by the original Tribunal should not apply to interpretation, revision or annulment proceedings if either party objects. AR 71(2) allows parties to object to the application of procedural agreements of the original Tribunal, and any such objection would be decided by the Tribunal or Committee. The proposed formulation avoids unnecessary delays in the proceeding while allowing the parties to propose procedural agreements different from those of the original Tribunal.

Rule 72~~1~~
Stay of Enforcement of the Award

- (1) A party to an interpretation, revision or annulment proceeding may request a stay of enforcement of all or part of the Award at any time before the final decision on the application.
- (2) If the stay is requested in the application for revision or annulment of an Award, enforcement shall be stayed provisionally until the Tribunal or Committee decides on the request.
- (3) The following procedure shall apply:
 - (a) the request shall specify the circumstances that require the stay;
 - (b) the Tribunal or Committee shall fix time limits for written or oral submissions on the request, as required, ~~on the request~~;
 - (c) if a party files the request before the constitution of the Tribunal or Committee, the Secretary-General shall fix time limits for written submissions on the request so that the Tribunal or Committee may consider the request promptly upon its constitution; and
 - (d) the Tribunal or Committee shall issue its decision on the request within 30 days after the latest of:
 - (i) the constitution of the Tribunal or Committee;
 - (ii) the last written submission on the request; or
 - (iii) the last oral submission on the request.
- (4) If a Tribunal or Committee decides to stay enforcement of the Award, it may impose conditions for the stay, or for lifting the stay, in view of all relevant circumstances.
- (5) A party shall promptly disclose to the Tribunal or Committee any change in the circumstances upon which the enforcement was stayed.
- (6) The Tribunal or Committee may at any time modify or terminate a stay of enforcement, on its own initiative or upon a party's request.
- (7) A stay of enforcement shall terminate on the date of dispatch of the decision on the application for interpretation, revision or annulment, or on the date of discontinuance of the proceeding.

Rule 7~~3~~2
Resubmission of Dispute after an Annulment

- (1) If a Committee annuls all or part of an Award, either party may file with the Secretary-General a request to resubmit the dispute to a new Tribunal, together with any supporting documents, and pay the lodging fee published in the schedule of fees.
- (2) The request shall:
 - (a) identify the Award to which it relates;
 - (b) be in an official language of the Centre;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) attach proof of any representative's authority to act; and
 - (e) specify which aspect(s) of the dispute is resubmitted to the new Tribunal.
- (3) Upon receipt of ~~receiving~~ a request for resubmission and the lodging fee, the Secretary-General shall promptly:
 - (a) transmit the request and the supporting documents to the other party;
 - (b) register the request;
 - (c) notify the parties of the registration; and
 - (d) invite the parties to constitute a new Tribunal without delay, which shall have the same number of arbitrators, and be appointed by the same method as the original Tribunal, unless the parties agree otherwise.
- (4) If the original Award was annulled in part, the new Tribunal shall consider the aspect(s) of the resubmitted dispute pertaining to the annulled portion of the Award.
- (5) Except as otherwise provided in paragraphs (1)-(~~4~~3), these Rules shall apply to the resubmission proceeding.
- (6) The procedural agreements and orders on matters addressed at the first session of the original Tribunal shall not apply to the resubmission proceeding, unless the parties agree otherwise.

176. One State inquired whether the indication in [WP # 2, Vol. 1, ¶ 465](#) that the parties may agree to limit the time period for resubmission refers to the parties to the instrument invoked as basis of consent to ICSID jurisdiction or the parties to the dispute. If the consent to arbitration is expressed in a contract, parties to the instrument of consent and parties to the dispute are the same. If consent to ICSID jurisdiction stems from an investment treaty or from a national law, acceptance by the investor of the State's offer of consent expressed in the treaty or the law would be interpreted as an agreement on any time limit for resubmission contained in the instrument of consent.
177. Two States proposed to include a time limit for the resubmission of disputes. The Convention does not provide for any time limit for the resubmission of the dispute, and it would be difficult to determine the appropriate length of such time limit (*see* [WP # 1, Vol. 3, ¶ 652](#) and [WP # 2, Vol. 1, ¶ 465](#)). WP # 3 therefore does not propose to add a time limit. The parties to the instrument invoked as basis of consent to ICSID jurisdiction may include such a time limit in that instrument.

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Chapter XII Expedited Arbitration

Rule 743 Consent of Parties to Expedited Arbitration

- (1) The parties to an arbitration conducted under the Convention may consent at any time to expedite the arbitration in accordance with this Chapter (“expedited arbitration”) by jointly notifying the Secretary-General in writing of their consent.
- (2) Chapters I-XI of the Arbitration Rules apply to an expedited arbitration except that:
 - (a) Rules 154, 165, 187, ~~29(3)~~, 398, 4039, 410, 421, 442BIS, and 453 do not apply in an expedited arbitration; and
 - (b) Rules 198, 221, 298, 376, 432, 486, 57, 60 and 710, as modified by Rules 754-832, apply in an expedited arbitration.
- (3) If the parties consent to expedited arbitration after the constitution of the Tribunal pursuant to Chapter II, Rules 754-776 shall not apply, and the expedited arbitration shall proceed subject to all members of the Tribunal confirming their availability pursuant to Rule 787(2). If any arbitrator fails to confirm availability before the expiry of the applicable time limit, the arbitration shall proceed in accordance with Chapters I-XI.

Rule 754 Number of Arbitrators and Method of Constituting the Tribunal for Expedited Arbitration

- (1) The Tribunal in an expedited arbitration shall consist of a Sole Arbitrator appointed pursuant to Rule 765 or a three-member Tribunal appointed pursuant to Rule 776.
- (2) The parties shall jointly notify the Secretary-General in writing of their election of a Sole Arbitrator or a three-member Tribunal within 30 days after the date of the notice of consent referred to in Rule 743(1).
- (3) If the parties do not notify the Secretary-General of their election within the time limit referred to in paragraph (2), the Tribunal shall consist of a Sole Arbitrator to be appointed pursuant to ~~in accordance with~~ Rule 765.
- (4) An appointment pursuant to ~~under~~ Rules 765 or 776 shall be deemed an appointment in accordance with a method agreed by the parties pursuant to Article 37(2)(a) of the Convention.

Rule 765

Appointment of Sole Arbitrator for Expedited Arbitration

- ~~(1) A Sole Arbitrator in an expedited arbitration shall be appointed in accordance with the following procedure:~~
- ~~(2)(1)~~ (1) The parties shall jointly appoint the ~~advise the Secretary General in writing of their agreement on a~~ Sole Arbitrator ~~and shall provide the appointee's name, nationality(ies) and contact information~~ within 20 days after the notice referred to in Rule 754(2); ~~and~~
- ~~(a) The Secretary General shall immediately send the request for acceptance of the appointment to the appointee and shall request a reply within 10 days of receipt in accordance with Rule 77(1).~~
- ~~(3)(2)~~ (2) The Secretary-General shall appoint the Sole Arbitrator if:
- ~~(b)(a)~~ (a) the parties do not appoint ~~agree on~~ the Sole Arbitrator within the time limit referred to in paragraph (1)~~(a)~~;
- ~~(e)(b)~~ (b) the parties notify the Secretary-General that they are unable to agree on the Sole Arbitrator; or
- ~~(d)(c)~~ (c) the appointee declines the appointment or does not comply with ~~accept the appointment within the time limit referred to in~~ Rule 787(1); ~~or~~
- ~~(e) the appointee declines the appointment.~~
- ~~(4)(3)~~ (3) The following procedure shall apply to an appointment by the Secretary-General of the Sole Arbitrator pursuant to paragraph (2):
- (a) the Secretary-General shall transmit a list of five candidates for appointment as Sole Arbitrator to the parties within 10 days after the relevant event referred to in paragraph (2);
- (b) each party may strike one name from the list and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;
- (c) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them; and

~~(d) the Secretary General shall immediately send the request for acceptance of the appointment to the appointee and shall request a reply within 10 days of receipt in accordance with Rule 77(1); and~~

~~(e)~~(d) if the selected candidate declines the appointment or does not comply with accept the appointment within the time limit referred to in Rule 787(1), the Secretary-General shall select the next highest-ranked candidate.

178. WP # 3 streamlines the procedure for appointing a Sole Arbitrator in an expedited arbitration. Proposed paragraphs (1)(b) and (3)(d) in WP # 2 are deleted as this process is already covered by AR 19(2) and (3), as modified by AR 78(1), with a shorter, 10-day, time limit for the appointee’s reply to the appointment request.

Rule 776

Appointment of Three-Member Tribunal for Expedited Arbitration

- (1) A three-member Tribunal shall be appointed in accordance with the following procedure:
- (a) each party shall appoint an arbitrator (“co-arbitrator”) within 20 days after the notice referred to in Rule 754(2) ~~and shall notify the Secretary General of the appointee’s name, nationality(ies) and contact information within such time; and~~
- ~~(b) the Secretary General shall immediately send the request for acceptance of the appointment to the appointee and shall request a reply within 10 days of receipt in accordance with Rule 77(1);~~
- ~~(c)~~(b) the parties shall jointly appoint the President of the Tribunal within 20 days after the receipt of the acceptances from ~~of~~ both co-arbitrators. ~~appointments made pursuant to paragraph (1)(a) and shall notify the Secretary General of the appointee’s name, nationality(ies) and contact information within such time; and~~
- ~~(d) the Secretary General shall immediately send the request for acceptance of the appointment to the appointee and shall request a reply within 10 days of receipt in accordance with Rule 77(1).~~
- (2) The Secretary-General shall appoint the arbitrators not yet appointed if:
- (a) an appointment is not made within the applicable time limits referred to in paragraph (1)(a) ~~or (c)~~;
- (b) the parties notify the Secretary-General that they are unable to agree on the President of the Tribunal; or

(c) an appointee declines the appointment or does not comply with ~~accept the appointment within the time limit referred to in~~ Rule 787(1); ~~or~~

~~(d) an appointee declines the appointment.~~

(3) The following procedure shall apply to the appointment by the Secretary-General of any arbitrators ~~not yet appointed~~ pursuant to paragraphs ~~(1) and~~ (2):

(a) the Secretary-General shall first appoint the co-arbitrator(s) not yet appointed; ~~after consulting as far as possible with the parties.~~ The Secretary-General shall consult with the parties as far as possible and use best efforts to appoint ~~make~~ the co-arbitrator(s) ~~appointment(s)~~ within 15 days after the relevant event in paragraph (2);

~~(b) the Secretary-General shall immediately send the request for acceptance of the appointment to the appointee and shall request a reply within 10 days of receipt in accordance with Rule 77(1);~~

~~(e)~~(b) within 10 days after the later of the date on which ~~as soon as~~ both co-arbitrators have accepted their appointments; ~~or within 10 days after~~ the relevant event referred to in paragraph (2), the Secretary-General shall transmit a list of five candidates for appointment as President of the Tribunal to the parties;

~~(d)~~(c) each party may strike one name from the list; and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;

~~(e)~~(d) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them; and

~~(f) the Secretary-General shall immediately send the request for acceptance of the appointment to the appointee and shall request a reply within 10 days of receipt in accordance with Rule 77(1); and~~

~~(g)~~(e) if the selected candidate declines the appointment or does not comply with ~~accept the appointment within the time limit referred to in~~ Rule 787(1), the Secretary-General shall select the next highest-ranked candidate.

179. WP # 3 streamlines the procedure for appointing a three-member Tribunal in an expedited arbitration and reflects many of the same changes made in AR 76, but does not make any substantive changes.

Rule 787**Acceptance of Appointment in Expedited Arbitration**

- (1) An arbitrator appointed ~~in an expedited arbitration~~ pursuant to Rule 765 or 776 shall accept the appointment and provide a declaration pursuant to Rule 198(3) within 10 days after receipt of the request for acceptance.
- (2) An arbitrator appointed to a Tribunal constituted pursuant to Chapter II shall confirm ~~provide a supplementary declaration confirming~~ their availability to conduct an expedited ~~the~~ arbitration ~~in accordance with Chapter XII~~ within 10 days after receipt of the ~~parties'~~ notice of consent pursuant to Rule 743(3).

180. The wording of AR 78(2) simplifies the process to confirm availability by arbitrators who were appointed pursuant to Chapter II. Instead of having to submit a supplementary declaration, as proposed in WP # 2, the members of the already constituted Tribunal can confirm their availability by any appropriate means, such as an affirmative statement provided by email.

Rule 798**First Session in Expedited Arbitration**

- (1) The Tribunal shall hold a first session pursuant to Rule 298 within 30 days after the constitution of the Tribunal.
- (2) The first session shall be held by telephone or electronic means of communication, unless both parties and the Tribunal agree it shall be held in person.

Rule 8079**~~The~~ Procedural Schedule in Expedited Arbitration**

- (1) The following schedule for written submissions and the hearing shall apply in an ~~the~~ expedited arbitration:
 - (a) the claimant ~~requesting party~~ shall file a memorial within 60 days after the first session;
 - (b) the respondent ~~other party~~ shall file a counter-memorial within 60 days after the date of filing the memorial;
 - (c) the memorial and counter-memorial referred to in paragraph (1)(a) and (b) shall be no longer than 200 pages in length;

- (d) the claimant ~~requesting party~~ shall file a reply within 40 days after the date of filing the counter-memorial;
 - (e) the respondent ~~other party~~ shall file a rejoinder within 40 days after the date of filing the reply;
 - (f) the reply and rejoinder referred to in paragraph (1)(d) and (e) shall be no longer than 100 pages in length;
 - (g) the hearing shall be held within 60 days after the last written submission is filed;
 - (h) the parties shall file statements of their costs and written submissions on costs within 10 days after the last day of the hearing referred to in paragraph (1)(g); and
 - (i) the Tribunal shall render the Award as soon as possible, and in any event no later than 120 days after the hearing referred to in paragraph (1)(g).
- (2) Any preliminary objection, counterclaim, incidental or additional claim shall be joined to the main schedule referred to in paragraph (1). The Tribunal shall adjust the schedule if a party raises any such matter, taking into account the expedited nature of the process.
- (3) The Tribunal may extend the time limits referred to in paragraph (1)(a) and (b) by up to 30 days if any party requests that the Tribunal determine a dispute arising from requests to produce documents ~~or other evidence~~ pursuant to Rule 37~~6~~. The Tribunal shall decide such applications based on written submissions and without an in-person hearing.
- (4) Any schedule for submissions other than those referred to in paragraphs (1)-(3) shall run in parallel with the main schedule referred to in paragraph (1), unless the Tribunal determines that there are special ~~exceptional~~ circumstances that justify the suspension of the main schedule. In fixing time limits for such submissions, the Tribunal shall take into account the expedited nature of the process.

181. The words “or other evidence” are removed from AR 80(3) to mirror the same change made to AR 37 on Disputes Arising from Requests for Documents. AR 37 and AR 80(3) have the same scope for the disputes arising out of document production requests that the Tribunal must determine.
182. AR 80(4) replaces the reference to “exceptional circumstances” with “special circumstances”, which is used throughout the rules.

Rule 810
Default ~~during~~ in Expedited Arbitration

A Tribunal may grant a party in default a grace period not to exceed 30 days pursuant to Rule 486.

Rule 821
**~~The~~ Procedural Schedule for Supplementary Decision and Rectification
in Expedited Arbitration**

The Tribunal shall issue a supplementary decision or rectification pursuant to Rule 60 within 30 days after the later of the last written or oral submission on the request.

Rule 832
**~~The~~ Procedural Schedule for ~~an Application for~~ Interpretation, Revision or Annulment
of an Award Rendered in Expedited Arbitration**

- (1) The following schedule for written submissions and the hearing shall apply to the procedure relating to an interpretation, revision or annulment of an Award rendered in an expedited arbitration:
 - (a) the applicant shall file a memorial on interpretation, revision or annulment within 30 days after the first session;
 - (b) the other party shall file a counter-memorial on interpretation, revision or annulment within 30 days after the memorial;
 - (c) the memorial and counter-memorial referred to in paragraph (1)(a) and (b) shall be no longer than 100 pages in length;
 - (d) a hearing shall be held within 45 days after the date for filing the counter-memorial;
 - (e) the parties shall file statements of their costs and written submissions on costs within 5 days after the last day of the hearing referred to in paragraph (1)(d); and
 - (f) the Tribunal or Committee shall issue the decision on interpretation, revision or annulment as soon as possible, and in any event no later than 60 days after the hearing referred to in paragraph (1)(d).

- (2) Any schedule for submissions other than those referred to in paragraph (1) shall run in parallel with the main schedule, unless the Tribunal or Committee determines that there are special exceptional circumstances that justify the suspension of the main schedule. In fixing time limits for such submissions, the Tribunal or Committee shall take into account the expedited nature of the process.

Rule 8~~4~~3

Resubmission of a Dispute after ~~an~~ Annulment in Expedited Arbitration

The consent of the parties to expedited arbitration ~~given~~ pursuant to Rule 7~~4~~3 shall not apply to resubmission of the dispute.

Rule 8~~5~~4

Opting Out of Expedited Arbitration

- (1) The parties may ~~agree to~~ opt out of an expedited arbitration at any time by jointly notifying the Tribunal and Secretary-General in writing of their agreement. ~~Upon such notification, only Chapters I-XI shall apply to the arbitration.~~
- (2) Upon request of a party, the Tribunal may decide that an arbitration should no longer be expedited. In deciding the request, the Tribunal shall consider the complexity of the issues, the stage of the proceeding and all other relevant circumstances.
- ~~(2)~~(3) The Tribunal, or the Secretary-General if a Tribunal has not been constituted, shall determine the further procedure pursuant to Chapters I-XI and fix any time limit necessary for the conduct of the proceeding.

183. AR 85(1) clarifies that the parties may opt out of EA “at any time,” to mirror the wording of AR 74.
184. AR 85(1) also clarifies that a joint written notification is required to opt out of expedited arbitration. The consequence of opting out is moved to AR 85(3), dealing with the conduct of the further proceeding after Chapter XII no longer applies.
185. WP # 3 expands the mechanisms available to conclude the application of the EA and continue the arbitration under Chapters I-XI. A new mechanism is proposed in AR 85(2) and operates at the request of a party, decided by the Tribunal on the basis of non-exhaustive criteria, such as the complexity of the issues in dispute and the stage of the proceeding. This offers greater flexibility, and protection to the parties and addresses Member States’ comments that the possibility to opt out of EA should not depend solely on party agreement.

186. AR 85(3) allows the Secretary-General to determine further procedure, recognizing that the parties may opt out of the EA before a Tribunal has been constituted. It also specifies that the proceeding shall then be conducted pursuant to the provisions of Chapters I-XI once the arbitration is no longer expedited.

**IV. CONCILIATION RULES FOR ICSID CONVENTION PROCEEDINGS
(CONCILIATION RULES)**

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IV. CONCILIATION RULES

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**IV. CONCILIATION RULES ~~OF PROCEDURE~~ FOR CONCILIATION ICSID
CONVENTION PROCEEDINGS
(CONCILIATION RULES)**

187. Revisions made to the CR in WP # 3 respond to comments from Member States and the public. Revisions to the corresponding provisions in the AR are also reflected in the CR, where suitable.

Introductory Note

The Conciliation Rules ~~of Procedure~~ for Conciliation-ICSID Convention Proceedings (~~the~~ Conciliation Rules) were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(c) of the ICSID Convention.

The Conciliation Rules are supplemented by the Administrative and Financial Regulations of the Centre.

The Conciliation Rules apply from the date of registration of a Request for conciliation until termination of the conciliation.

**Chapter I
General Provisions**

**Rule 1
Application of Rules**

- (1) These Rules shall apply to any conciliation proceeding conducted under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“Convention”) in accordance with Article 33 of the Convention.
- (2) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language.
- (3) These Rules may be cited as the “Conciliation Rules” of the Centre.

**Rule 2
~~Meaning of Party and Party Representative~~**

- (1) For the purposes of these Rules, “party” ~~may include~~s, where the context so admits, ~~(a) all parties acting as claimant or as respondent; and~~

~~(b) a representative of a party.~~

- (2) Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be notified by that party to the Secretary-General (“representative(s)”).

188. CR 2 has been revised, reflecting changes to the corresponding provision in AR 3.

Rule 3

Method of Filing ~~and Supporting Documents~~

- (1) A document to be filed in the proceeding shall ~~only~~ be filed with the Secretary-General, who shall acknowledge its receipt. ~~electronically, unless the Commission orders otherwise in special circumstances.~~
- (2) ~~A document~~ Documents shall only be filed electronically, unless the Commission orders otherwise in special circumstances. ~~with the Secretary General, who shall acknowledge receipt and distribute it in accordance with Rule 4.~~
- (3) ~~Supporting documents shall be filed together with the written statement, request, observation or communication to which they relate.~~
- (4) ~~An extract of a supporting document may be filed if the omission of the text does not render the extract misleading. The Commission or a party may require a fuller extract or a complete version of the document.~~

189. CR 3 has been divided into two rules. CR 3 now sets out the default rules for the method of filing, while CR 4 addresses supporting documents. Changes made to CR 3 reflect those made to the corresponding provision in AR 4.

Rule 4~~3~~

Supporting Documents

- (1) Supporting documents shall be filed together with the written statement, request, observations or communication to which they relate.
- (2) An extract of a ~~supporting~~ document may be filed as a supporting document if the extract ~~the omission of the text does not render the extract is not~~ misleading. The Commission or a party may require a fuller extract or a complete version of the document.

190. CR 4 reflects changes to the corresponding provision in AR 5(1) and (2).

Rule ~~5~~4
Routing of Documents

The Secretary-General shall transmit a document filed in the proceeding to:

(a) the other party, unless the parties communicate directly with each other;

(b) the Commission, unless the parties communicate directly with the Commission on request of the Commission or by agreement of the parties; and

(c) the Chairman of the Administrative Council (“Chair”) if applicable.

~~(1) The Secretary-General shall be the official channel for routing of documents among the parties, the Commission, and the Chairman of the Administrative Council (“Chair”), except that:~~

~~(2) The Secretary-General shall:~~

~~(a) acknowledge receipt of all documents transmitted by a party; and~~

~~(b) distribute the documents to the other party and the Commission, unless they were transmitted pursuant to paragraph 1(a) or (c).~~

~~(3) the parties may communicate directly with each other, provided that they transmit all documents to be filed in the conciliation to the Secretary-General;~~

~~(4) the members of the Commission shall communicate directly with each other; and~~

~~(5) a party may communicate directly with the Commission on request of the Commission, provided that the Secretary-General is copied.~~

191. CR 5 streamlines provisions relating to the routing of documents and aligns the text with revisions to AR 6. CR 5(b) includes direct communication between the Commission and one party only, consistent with CR 24(4)(b).

Rule ~~6~~5
Procedural Languages, Translation and Interpretation

(1) The parties may agree to use one or two procedural languages in the proceeding ~~conciliation~~. The parties shall consult with the Commission and the Secretary-

General regarding the use of a language that is not an official language of the Centre.

- (2) If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (3) Requests, written statements, observations and communications shall be filed in a procedural language. In a proceeding with two procedural languages, the Commission may order a party to file such documents in both procedural languages.
- (4) Supporting documents in a language other than a procedural language shall be accompanied by a translation into a procedural language. In a proceeding with two procedural languages, the Commission may order a party to translate any supporting document into both procedural languages. Translation of only the relevant part of a supporting document is sufficient, provided that the Commission may order a party to provide a fuller or a complete translation. If the translation is disputed, the Commission may order a party to provide a certified translation.
- (5) Any document from the Commission or the Secretary-General shall be in a procedural language. In a proceeding with two procedural languages, the Commission ~~and, or where applicable~~ the Secretary-General if applicable, shall issue orders, decisions, recommendations and the Report in both procedural languages, unless the parties agree otherwise.
- (6) Any oral communication shall be in a procedural language. In a proceeding with two procedural languages, the Commission may order interpretation into the other procedural language.

192. CR 6 reflects changes made to the corresponding provisions in AR 7(1)-(6).

Rule 7 Calculation of Time Limits

Time limits referred to in these Rules shall be calculated from the day after the date on which the procedural step starting the period is taken, based on the time at the seat of the Centre. A time limit shall be satisfied if a procedural step is taken on the relevant date, or, if the date falls on a Saturday or Sunday, on the subsequent business day.

193. CR 7 has been added to provide a default provision for the calculation of time limits in conciliation proceedings. This provision reflects the corresponding provision in AR 9.

Rule 86**Payment of Advances and Costs of the Proceeding**

- ~~(1) Each party shall pay one half of the advances payable in accordance with Administrative and Financial Regulation 15.~~
- ~~(2)~~(1) The fees and expenses of the ~~members of the~~ Commission and the administrative charges and direct costs of the Centre incurred in connection with the proceeding shall be borne equally by the parties, in accordance with Article 61(1) of the Convention.
- ~~(3)~~(2) Each party shall bear ~~its own~~ any other costs ~~it incurs~~ red in connection with the proceeding.

194. The reference to payment of advances has been removed from CR 8 as this is dealt with in AFR 15. The language in new CR 8(1) has been simplified. New CR 8(2) has been aligned with the corresponding provision in MR 8.

Rule 97**Confidentiality of the Conciliation**

- (1) All information relating to the conciliation; ~~or~~ and all documents generated in or obtained during the conciliation; shall be ~~kept~~ confidential, unless:
- (a) the parties agree otherwise;
 - (b) the information is to be published by the Centre pursuant to Administrative and Financial Regulation 26;
 - (c) the information or document is independently available; or
 - (d) disclosure is required by law.
- ~~(2) Any settlement agreement concluded during of the conciliation shall be kept confidential, except to the extent that disclosure is required by law or for purposes of its implementation and enforcement.~~
- ~~(3) The parties to a conciliation may consent to:~~
- ~~(a) disclosure to a non party of any information relating to or document generated in or obtained during the conciliation, other than the information to be published by the Centre pursuant to Administrative and Financial Regulation 26; and~~

~~(b) publication by the Centre of any document generated in the conciliation.~~

195. CR 9(2) in WP # 2 has been deleted because the disclosure of settlement agreements resulting from the conciliation is covered by CR 9(1). In addition, a reference to the disclosure of settlement agreements has been added to the list of items to be addressed at the first session between the Commission and the parties.
196. Likewise, the publication of information by ICSID contemplated in CR 9(3) in WP # 2 has been deleted given that publication on the basis of party consent is covered in CR 9(1).

Rule 108

Use of Information in Other Proceedings

Unless the parties to the dispute agree otherwise pursuant to Article 35 of the Convention, ~~neither a~~ party shall not rely on any of the following in other proceedings:

- (a) ~~any~~ views expressed, statements, admissions, ~~or~~ offers of settlement ~~made~~, or positions taken by the other party in the conciliation; or
- (b) the Report, order, decision, ~~r~~ or any recommendation made by the Commission in the conciliation.

**IV. CONCILIATION RULES FOR ICSID CONVENTION PROCEEDINGS
(CONCILIATION RULES)**

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Chapter II Constitution of the Commission

Rule ~~119~~

General Provisions, Number of Conciliators and Method of Constitution

- (1) The Commission shall be constituted without delay after registration of the Request for conciliation.
- (2) The number of conciliators and the method of their appointment must be determined before the Secretary-General can act on any appointment proposed by a party.
- (3) The parties shall endeavor to agree on a Sole Conciliator, or any uneven number of conciliators, and the method of their appointment. If the parties do not advise the Secretary-General of an agreement within 45 days after the date of registration, either party may inform the Secretary-General that the Commission shall be constituted in accordance with Article 29(2)(b) of the Convention.
- (4) References in these Rules to a Commission or a President of a Commission shall include a Sole Conciliator.

Rule ~~120~~

Notice of Third-Party Funding

- (1) ~~For purposes of completing the conciliator declaration required by Rule 164(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 conciliation 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 ~~send file~~ the notice referred to in paragraph (1) ~~to~~ with the Secretary-General upon registration of the Request for conciliation, 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 a notice of third-party funding and any changes to such notice to the parties, and to any conciliator proposed for appointment or appointed in a proceeding for purposes of completing the conciliator declaration required by Rule 16(3)(b).

197. CR 12 reflects changes to the corresponding provision in AR 14.

Rule 131

Appointment of Conciliators to a Commission Constituted in Accordance with Article 29(2)(b) of the Convention

If the Commission is to be constituted in accordance with Article 29(2)(b) of the Convention, each party shall appoint a conciliator and the parties shall jointly appoint the President of the Commission.

Rule 142

Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of a Sole Conciliator, or any uneven number of conciliators.

Rule 153

Appointment of Conciliators by the Chair in Accordance with Article 30 of the Convention

- (1) If a Commission has not been constituted within 90 days after the date of registration, or such other period as the parties may agree, either party may request that the Chair appoint the conciliator(s) who have not yet been appointed pursuant to Article 30 of the Convention.
- (2) The Chair shall appoint the President of the Commission after appointing any members who have not yet been appointed.
- (3) The Chair shall consult with the parties as far as possible before appointing a conciliator and shall use best efforts to appoint any conciliator(s) within 30 days after receipt of the request to appoint.

Rule 164

Acceptance of Appointment

- (1) A party appointing a conciliator 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 conciliator'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~~ ~~the~~ conciliator(s) and provide the signed declaration.
- (5) The Secretary-General shall notify the parties if a conciliator 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 conciliator in accordance with the method followed for the previous appointment.
- (6) Each conciliator shall have a continuing obligation to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).
- (7) Unless the parties and the conciliator agree otherwise, a conciliator may not act as arbitrator, counsel, expert, judge, mediator, witness or in any other capacity in any other proceeding relating to the dispute that is the subject of the conciliation.

Rule 17~~5~~

Replacement of Conciliators Prior to Constitution of the Commission

- (1) At any time before the Commission is constituted:
 - (a) a conciliator may withdraw an acceptance;
 - (b) a party may replace a conciliator whom it appointed; or
 - (c) the parties may agree to replace any conciliator.
- (2) A replacement conciliator shall be appointed as soon as possible, in accordance with the method by which the withdrawing or replaced conciliator was appointed.

Rule 186
Constitution of the Commission

- (1) The Commission shall be deemed to be constituted on the date the Secretary-General notifies the parties that each conciliator has accepted the appointment.
- (2) As soon as the Commission is constituted, the Secretary-General shall transmit the Request for conciliation, the supporting documents, the notice of registration and communications with the parties to ~~the~~each conciliator~~(s)~~.

**IV. CONCILIATION RULES FOR ICSID CONVENTION PROCEEDINGS
(CONCILIATION RULES)**

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Chapter III
Disqualification of Conciliators and Vacancies

Rule 197
Proposal for Disqualification of Conciliators

- (1) A party may file a proposal to disqualify one or more conciliators (“proposal”) in accordance with the following procedure:
 - (a) the proposal shall be filed after the constitution of the Commission and within 21 days after the later of:
 - (i) the constitution of the Commission; or
 - (ii) the date on which the party proposing the disqualification first knew or first should have known of the facts upon which the proposal is based;
 - (b) the proposal shall include the grounds on which the proposal is based, a statement of the relevant facts, law and arguments, and any supporting documents;
 - (c) the other party shall file its response and supporting documents within 21 days after receipt of the proposal;
 - (d) the conciliator to whom the proposal relates may file a statement limited to factual information relevant to the proposal. The statement shall be filed within five days after receipt of the response referred to in paragraph (1)(c); and
 - (e) each party may file a final written submission on the proposal within seven days after expiry of the time limit referred to in paragraph (1)(d).
- (2) The proceeding shall be suspended until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding in whole or in part.

Rule 2018
Decision on the Proposal for Disqualification

- (1) The decision on a proposal shall be made by the conciliators not subject to the proposal or by the Chair in accordance with Article 58 of the Convention.
- (2) For the purposes of Article 58 of the Convention:

- (a) if the conciliators not subject to a proposal are unable to decide the proposal for any reason, they shall notify the Secretary-General and [they](#) shall be considered equally divided;
- (b) if a subsequent proposal is filed while the decision on a prior proposal is pending, both proposals shall be decided by the Chair as if they were a proposal to disqualify a majority of the Commission.
- (3) The conciliators not subject to the proposal and the Chair shall use best efforts to decide any proposal within 30 days after the later of the expiry of the time limit referred to in Rule [197](#)(1)(e) or the notice in ~~paragraph~~ [Rule 20](#)(2)(a).

Rule [21](#)~~19~~
Incapacity or Failure to Perform Duties

If a conciliator becomes incapacitated or fails to perform the duties required of a conciliator, the procedure in Rules [19](#)~~17~~ and [20](#)~~18~~ shall apply.

Rule [22](#)~~0~~
Resignation

- (1) A conciliator may resign by notifying the Secretary-General and the other members of the Commission and providing reasons for the resignation.
- (2) If the conciliator was appointed by a party, the other members of the Commission shall promptly notify the Secretary-General whether they consent to the conciliator's resignation for the purposes of Rule [23](#)~~1~~(3)(a).

Rule [23](#)~~1~~
Vacancy on the Commission

- (1) The Secretary-General shall notify the parties of any vacancy on the Commission.
- (2) The proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.
- (3) A vacancy on the Commission shall be filled by the method used to make the original appointment, except that the Chair shall fill the following from the Panel of Conciliators:

- (a) a vacancy caused by the resignation of a party-appointed conciliator without the consent of the other members of the Commission; or
 - (b) a vacancy that has not been filled within 45 days after the notice of vacancy.
- (4) Once a vacancy has been filled and the Commission has been reconstituted, the conciliation shall continue from the point it had reached at the time the vacancy was notified.

**IV. CONCILIATION RULES FOR ICSID CONVENTION PROCEEDINGS
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Chapter IV Conduct of the Conciliation

Rule 242 Functions of the Commission

- (1) The Commission shall clarify the issues in dispute and assist the parties in reaching a mutually acceptable resolution of all or part of the dispute.
- (2) In order to bring about agreement between the parties, the Commission may, at any stage of the proceeding, after consulting with the parties, recommend:
 - (a) specific terms of settlement to the parties; or
 - (b) that the parties refrain from taking specific action that might aggravate the dispute while the conciliation is ongoing.
- (3) Recommendations may be made orally or in writing. Either party may request that the Commission provide reasons for any recommendation. The Commission may invite each party to provide observations concerning any recommendation made.
- (4) At any stage of the proceeding, the Commission may:
 - (a) request explanations, documents or other information from either party or other persons;
 - (b) communicate with the parties jointly or separately; or
 - (c) visit any place connected with the dispute or conduct inquiries with the [agreement](#)-~~consent~~ and participation of the parties.

Rule 253 General Duties of the Commission

- (1) The Commission shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.
- ~~(2)~~ (2) The Commission shall treat the parties equally and provide each party with a reasonable opportunity to appear and participate in the proceeding.
- ~~(2) The Commission shall conduct the proceeding in an expeditious and cost-effective manner.~~

198. The sequence of paragraph (1) and (2) has been inverted to mirror the corresponding changes to AR 2. Many States commented on the good faith provision in the context of AR 2(1). The good faith requirement was added in CR 25(1) to address these comments and to mirror the corresponding duty of the parties in Article 34 of the Convention.

Rule 264
Orders, Decisions and ~~Procedural~~ Agreements

- (1) The Commission shall make the orders and decisions required for the conduct of the conciliation.
- (2) The Commission shall make decisions by a majority of the votes of all its members. Abstentions shall count as a negative vote.
- (3) Orders and decisions may be made by any appropriate means of communication and may be signed by the President on behalf of the Commission.
- (4) The Commission shall apply any agreement ~~between-of~~ the parties on procedural matters to the extent that it ~~conforms-does not conflict~~ with the Convention and the Administrative and Financial Regulations.

199. CR 26(4) has been revised to clarify that the Commission shall apply any agreement between the parties unless it conflicts with provisions in the Convention or the AFR.

Rule 275
Quorum

The participation of a majority of the members of the Commission by any appropriate means of communication shall be required at the first session, meetings and deliberations, ~~by any appropriate means of communication,~~ unless the parties agree otherwise.

Rule 286
Deliberations

- (1) The deliberations of the Commission shall take place in private and remain confidential.
- (2) The Commission may deliberate at any place and by any means it considers appropriate.

- (3) Only members of the Commission shall take part in its deliberations. No other person shall be admitted unless the Commission decides otherwise.

Rule ~~29~~7

Cooperation of the Parties

- (1) The parties shall cooperate with the Commission and with one another, and shall conduct the conciliation in good faith, and in an expeditious and cost-effective manner.
- (2) The parties shall provide all relevant explanations, documents or other information. ~~The parties~~ They shall ~~also~~ facilitate visits to any place connected with the dispute and the participation of other persons as requested by the Commission.
- (3) The parties shall comply with any time limit agreed upon or fixed by the Commission.
- (4) The parties shall give their most serious consideration to the Commission's recommendations pursuant to Article 34(1) of the Convention.

Rule ~~30~~28

Written Statements

- (1) Each party shall simultaneously file a brief, initial written statement describing the issues in dispute and its views on these issues 30 days after the constitution of the Commission, or such longer time as the Commission may fix in consultation with the parties, but in any event before the first session.
- (2) Either party may file further written statements at any stage of the conciliation within the time limits fixed by the Commission.

200. A consultation requirement has been added in CR 30(1) as in the corresponding provision in MR 18.

Rule ~~31~~29

First Session

- (1) ~~Subject to paragraph (2), the~~ The Commission shall hold a first session with the parties to address the procedure, including the matters listed in paragraph (4).

(2) The first session may be held in person or remotely, by any means that the Commission deems appropriate. The agenda, method and date of the first session shall be determined by the Commission after consulting with the parties.

~~(2)~~(3) The first session shall be held within 60 days ~~of~~after the Commission's constitution or such other period as the parties may agree.

~~(3) The first session may be held in person or remotely, by any means that the Commission deems appropriate. The agenda, method and date of the first session shall be determined by the Commission after consulting with the parties.~~

(4) Before the first session, the Commission shall invite the parties' views ~~of the parties~~ on procedural matters, including:

- (a) the applicable conciliation rules;
- (b) the procedural language(s), translation and interpretation;
- (c) the method of filing and routing of documents;
- (d) a schedule for further written statements and meetings;
- (e) the place and format of meetings between the Commission and the parties;
- (f) the manner of recording or keeping minutes of meetings, if any;
- (g) the ~~protection~~treatment of confidential or protected information;
- (h) the publication of documents;
- (i) any agreement between the parties:
 - (i) concerning the treatment of information disclosed by one party to the Commission by way of separate communication pursuant to Rule ~~24~~2 (4)(b);
 - (ii) not to initiate or pursue during the conciliation any other proceeding in respect of the dispute;
 - (iii) concerning the application of prescription or limitation periods;
 - ~~(iii)~~(iv) concerning the disclosure of any settlement agreement resulting from the conciliation; and
 - ~~(iv)~~(v) pursuant to Article 35 of the Convention; and

- (j) any other procedural matter raised by either party or the Commission.
- (5) At the first session or within any other period ~~as determined by~~ the Commission ~~may determine~~, each party shall:
- (a) identify a representative who is authorized to settle the dispute on its behalf; and
 - (b) describe the process that would be followed to implement a settlement.
- (6) The Commission shall issue summary minutes recording the parties' agreements and the Commission's decisions on the procedure within 15 days after the later of the first session or the last written statement on procedural matters addressed at the first session.

201. CR 31(1) reflects changes to the corresponding provision in the AR, reverses the sequence of paragraph (2) and (3) and modifies the language in CR 31(4)(g). CR 31(4)(i)(iv) has been added in light of the deletion of the reference to settlement agreements in CR 9.

Rule ~~320~~ **Meetings**

- (1) The Commission may meet with the parties jointly or separately.
- (2) The Commission shall determine the date, time and method of holding meetings, after consulting with the parties.
- (3) If a meeting is to be held in person, it may be held at any place agreed to by the parties after consulting with the Commission and the Secretary-General. If the parties do not agree on the place of a meeting, it shall be held at the seat of the Centre pursuant to Article 62 of the Convention.
- (4) Meetings shall remain confidential. The parties may ~~consent~~ agree to observation of meetings by persons in addition to the parties and the Commission.

Rule ~~331~~ **Preliminary Objections**

- (1) A party may file a preliminary objection that the dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Commission ("preliminary objection").

- (2) A [party shall notify the Commission and the other party of its intent to file a preliminary objection](#) ~~shall be made~~ as soon as possible. The objection shall be made no later than the date of the initial written statement referred to in Rule [3028\(1\)](#), unless the facts on which the objection is based are unknown to the party at the relevant time.
- (3) The Commission may address a preliminary objection separately or with other issues in dispute. If the Commission decides to address the objection separately, it may suspend the conciliation on the other issues in dispute to the extent necessary to address the preliminary objection.
- (4) The Commission may at any time on its own initiative consider whether the dispute is within the jurisdiction of the Centre or within its own competence.
- (5) If the Commission decides that the dispute is not within the jurisdiction of the Centre or for other reasons is not within its competence, it shall close the proceeding and issue a Report to that effect, in which it shall state its reasons. Otherwise, the Commission shall issue a decision on the objection with brief reasons and fix any time limit necessary for the further conduct of the conciliation.

202. The notification requirement in CR 33 reflects the corresponding change to AR 43(2).

**IV. CONCILIATION RULES FOR ICSID CONVENTION PROCEEDINGS
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Chapter V Termination of the Conciliation

Rule 342 Discontinuance Prior to the Constitution of the Commission

- (1) If the parties notify the Secretary-General prior to the constitution of the Commission that they have agreed to discontinue the proceeding, the Secretary-General shall issue an order taking note of the discontinuance.
- (2) If a party requests the discontinuance of the proceeding prior to the constitution of the Commission, the Secretary-General shall fix a time limit within which the other party may oppose the discontinuance. If no objection in writing is made within the time limit, the other party shall be deemed to have acquiesced in the discontinuance and the Secretary-General shall issue an order taking note of the discontinuance of the proceeding. If any objection in writing is made within the time limit, the proceeding shall continue.
- (3) If, prior to the constitution of the Commission, the parties fail to take any steps in the proceeding for more than 150 consecutive days, the Secretary-General shall notify them of the time elapsed since the last step taken in the proceeding. If the parties fail to take a step within 30 days after the notice, they shall be deemed to have discontinued the proceeding and the Secretary-General shall issue an order taking note of the discontinuance. If either party takes a step within 30 days after the Secretary-General's notice, the proceeding shall continue.

Rule 33 Discontinuance for Failure to Pay

~~If the parties fail to make payments to defray the costs of the proceeding as required by Administrative and Financial Regulation 15, the proceeding may be discontinued pursuant to Administrative and Financial Regulation 16.~~

203. The provision relating to the discontinuance of the proceeding for failure to pay the required advances has been removed as this is covered by AFR 16.

Rule 354
Report Noting the Parties' Agreement

- (1) If the parties reach agreement on some or all of the issues in dispute, the Commission shall close the proceedings and issue its Report noting the issues in dispute and recording the issues upon which the parties have agreed.
- (2) The parties may provide the Commission with the complete and signed text of their settlement agreement and may request that the Commission embody such settlement in the Report.

Rule 365
Report Noting the Failure of the Parties to Reach Agreement

At any stage of the proceeding, and after notice to the parties, the Commission shall close the proceedings and issue its Report noting the issues in dispute and recording that the parties have not reached agreement on the issues in dispute during the conciliation if:

- (a) it appears to the Commission that there is no likelihood of agreement between the parties; or
- (b) the parties advise the Commission that they have agreed to discontinue the conciliation.

Rule 376
Report Recording the Failure of a Party to Appear or Participate

If one party fails to appear or participate in the proceeding, the Commission shall, after notice to the parties, close the proceedings and issue its Report noting the submission of the dispute to conciliation and recording the failure of that party to appear or participate.

Rule 387
The Report

- (1) The Report shall be in writing and shall contain, in addition to the information specified in Rules 354-376:

- (a) a precise designation of each party;
 - (b) the names of the representatives of the parties;
 - (c) a statement that the Commission was established under the Convention and a description of the method of its constitution;
 - (d) the name of each member of the Commission and of the appointing authority of each;
 - (e) the dates and place(s) of the first session and the meetings of the Commission with the parties;
 - (f) a brief summary of the proceeding;
 - (g) the complete and signed text of the parties' settlement agreement if requested by the parties pursuant to Rule 354 (2);
 - (h) a statement of the costs of the proceeding, including the fees and expenses of each member of the Commission and the costs to be paid by each party pursuant to Rule 86; and
 - (i) any agreement of the parties pursuant to Article 35 of the Convention.
- (2) The Report shall be signed by the members of the Commission. It may be signed by electronic means if the parties agree. If a member does not sign the Report, such fact shall be recorded ~~therein~~.

Rule 398 **Issuance of the Report**

- (1) Once the Report has been signed by the members of the Commission, the Secretary-General shall promptly:
- (a) dispatch a certified copy of the Report to each party, indicating the date of dispatch on the Report; and
 - (b) deposit the Report in the archives of the Centre.
- (2) The Secretary-General shall provide additional certified copies of the Report to a party upon request.

V. THE ADDITIONAL FACILITY RULES

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V. THE ADDITIONAL FACILITY RULES

Introductory Note

Additional Facility proceedings are governed by the Additional Facility Rules, [the Additional Facility Administrative and Financial Regulations \(Annex A\)](#), and the relevant (Additional Facility) Arbitration (Annex B) or Conciliation (Annex C) Rules, ~~and the Additional Facility Administrative and Financial Regulations (Annex A)~~. They apply to investment proceedings that cannot be brought under the ICSID Convention due to lack of jurisdiction.

Article 1 Definitions

- (1) “Secretariat” means the Secretariat of the Centre.
- (2) “Centre” means the International Centre for Settlement of Investment Disputes established pursuant to Article 1 of the Convention.
- (3) “Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States which entered into force on October 14, 1966.
- (4) “Regional Economic Integration Organization” or “REIO” means an organization constituted by States to which they have transferred competence in respect of matters governed by these Rules, including the authority to make decisions binding on them in respect of those matters.
- (5) “National of another State” means, unless otherwise agreed:
 - (a) a natural or juridical person that, on the date of consent to the proceeding, is a national of a State other than the State party to the dispute, or of any constituent State of the REIO party to the dispute; or
 - (b) a juridical person that, on the date of consent to the proceeding, is a national of the State party to the dispute or of any constituent State of the REIO party to the dispute, and which the parties agree not to treat as a national of that State for the purpose of these Rules.
- (6) “Request” means a request for arbitration or conciliation.
- (7) “Contracting State” means a State for which the Convention is in force.

204. One State requested further discussion regarding the definition of an REIO in Art. 1(4), the concept of transfer of competence in respect of matters governed by the AF Rules and the consequences of REIO participation for States.
205. The proposed definition of an REIO in Art. 1(4) is commonly used in other international instruments, including the ECT (see [WP # 1, Vol. 3, ¶¶ 934 et seq.](#) and [WP # 2, Vol. 1, ¶¶ 561 et seq.](#) for further examples using this definition of REIO).
206. The proposed definition of REIO in Art. 1(4) has two main components. First, the REIO must be an organization composed by States. Second, the constituent States of the REIO must have transferred competence to the REIO in respect of matters governed by these Rules, including the authority to make decisions binding on them in respect of such matters. As explained in WP # 1, the requirement that the REIO has the power to bind its member States is typically implied by the competence transferred to the organization.
207. The foundational instrument of an REIO generally prescribes the competences transferred from its Member States, including ISDS. Whether an REIO qualifies under Art. 1(4) will be determined based on the text of such instruments.
208. Assuming that an REIO meets the definition in Art. 1(4), it would also have to consent to AF arbitration or conciliation to be a disputing party. This consent typically is included in the investment treaty or contract concluded by the REIO and its constituent States.
209. To give a concrete example, the EU meets the definition of an REIO in Art. 1(4) because it is an organization constituted by its 28 Member States (the first component), to which States have transferred competence in respect of matters governed by the AF Rules, including the authority to make decisions binding on them in respect of such matters (see Lisbon Treaty and TFEU), thus meeting the second component of the definition in Art. 1(4). IIAs signed by the EU offer ICSID AF arbitration for resolution of investment disputes. Thus, the AF (as proposed) would be available in ISDS disputes naming the EU.
210. In this fashion, the proposed addition of Art. 1(4) ensures that States that enter into IIAs with REIOs will have the option of ICSID dispute resolution for cases in which the REIO is a claimant or a respondent. Increasingly States are entering treaties in this manner, and so this amendment is important to modernize the AF Rules and to ensure dispute settlement at ICSID remains available to investors and host States party to such a treaty.
211. One State asked about the benefits of allowing dual nationals to be parties, as envisioned under Art. 1(5).
212. This proposal accommodates those IIAs in force that explicitly extend ISDS to dual nationals.
213. States can offer ISDS to dual nationals in the instrument of consent, but currently ICSID AF Arbitration and Conciliation is not available to such dual nationals. It therefore seems

appropriate to also make proceedings under the AF available to dual nationals, expanding the fora available to settle such disputes.

Article 2 **Additional Facility Proceedings**

- (1) The Secretariat is authorized to administer arbitration and conciliation proceedings for the settlement of legal disputes arising out of an investment between a State or an REIO on the one hand, and a national of another State on the other hand, which the parties consent in writing to submit to the Centre if:
 - (a) none of the parties to the dispute is a Contracting State or a national of a Contracting State;
 - (b) either the State party to the dispute, or the State whose national is a party to the dispute, but not both, is a Contracting State; or
 - (c) an REIO is a party to the dispute.
- (2) Reference to a State or an REIO includes a constituent subdivision of the State, or an agency of the State or the REIO. The State or the REIO must approve the consent of the constituent subdivision or agency which is a party to the proceeding pursuant to paragraph (1), unless the State or the REIO concerned notifies the Centre that no such approval is required.
- (3) Arbitration and conciliation proceedings under these Rules shall be conducted in accordance with the (Additional Facility) Arbitration Rules (Annex B) or the (Additional Facility) Conciliation Rules (Annex C) [respectively](#). The (Additional Facility) Administrative and Financial Regulations (Annex A) shall apply to such proceedings.

214. One State queried whether proposed Art. 2(1) might be perceived as adopting a subjective (as opposed to objective) notion of investment. This is addressed comprehensively in [WP # 1, ¶¶ 953-960 and 966-967](#).
215. The proposed AF does not take any position as to whether investment is an objective or subjective concept and which of these approaches should apply.
216. Taking stock of the AF case law, the Centre noted in WP # 1 that the vast majority of tribunals in AF cases have not applied a definition of investment other than what is expressly stated in the instrument of consent. These tribunals examined whether there was an investment for the purposes of the IIA or contract invoked, without doing the “double-keyhole” test usually employed under the Convention. This has been the majority practice in NAFTA and CAFTA cases (*see e.g., Apotex v. USA* (ARB(AF)/12/1), Award (August

25, 2014), *Bayview v. Mexico* (ARB(AF)/05/1), Award (June 19, 2007)). Only a few cases have applied the “double-keyhole” jurisdictional test to AF proceedings (*see e.g., Nova Scotia v. Venezuela* (ARB(AF)/11/1), Award (April 30, 2014)).

217. Conversely, there are cases under the UNCITRAL Rules that have applied a “double-keyhole” test to the definition of investment (*see e.g., Romak S.A. (Switzerland) v. The Republic of Uzbekistan*, UNCITRAL, PCA Case No. AA280, Award (November 26, 2009)) even though that test is not expressed in the UNCITRAL Rules.
218. Referring to “legal disputes arising out of an investment” is especially apt for cases under the AF where one or both of the parties will not be signatory to the Convention.
219. The reference to investment in Art. 2 does not deviate from current practice and does not prohibit an objective interpretation of “investment” by tribunals.

Article 3 Convention Not Applicable

The provisions of the Convention do not apply to the conduct of Additional Facility proceedings.

Article 4 Final Provisions

(1) The applicable Rules are those in force on the date of filing of the Request, unless the parties agree otherwise.

(2) These Rules are published in the official languages of the Centre, English, French and Spanish. The texts of these Rules in each official language are equally authentic.

~~(2)~~(3) These Rules may be cited as the “Additional Facility Rules” of the Centre.

220. Changes in Art. 4(2) were made to reflect similar provisions in other Rules.

**VI. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR ADDITIONAL
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VI. ~~(ADDITIONAL FACILITY)~~ ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR ADDITIONAL FACILITY PROCEEDINGS (ANNEX A)

((ADDITIONAL FACILITY) ADMINISTRATIVE AND FINANCIAL REGULATIONS)

Introductory Note

The (Additional Facility) Administrative and Financial Regulations apply to Additional Facility Arbitration and Conciliation proceedings and were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

**Chapter I
General Provisions**

**Regulation 1
Application of these Regulations**

- (1) These Regulations apply to arbitration and conciliation proceedings which the Secretariat of the Centre is authorized to administer ~~under~~ pursuant to Article 2 of the Additional Facility Rules.
- (2) The applicable Regulations are those in force on the date of filing the Request for arbitration or conciliation ~~under~~ pursuant to the Additional Facility Rules, ~~unless the parties agree otherwise.~~
- (3) These Regulations may be referred to as the “(Additional Facility) Administrative and Financial Regulations” of the Centre (“Annex A” to the Additional Facility Rules).

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Chapter II General Functions of the Secretariat

Regulation 2 Secretary

The Secretary-General of the Centre shall appoint a Secretary for each Commission and Tribunal. The Secretary may be drawn from the Secretariat, and shall be considered a member of its staff while serving as a Secretary. The Secretary shall:

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the (Additional Facility) Arbitration and Conciliation Rules applicable to individual proceedings and delegated to the Secretary; and
- (b) assist the parties and the Commission or Tribunal with all aspects of the proceedings, [including the expeditious and cost-effective conduct of the proceeding](#).

221. This change reflects change in corresponding AFR 28(b).

Regulation 3 The Registers

The Secretary-General shall maintain and publish a Register for each case containing all significant data concerning the institution, conduct and disposition of the proceeding, including the economic sector involved, the names of the parties and their representatives, and the method of constitution and membership of each Commission or Tribunal.

Regulation 4 Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
 - (a) all requests for arbitration, conciliation, supplementary decisions, rectification or interpretation;
 - (b) all written submissions, written statements, observations, supporting documents and communications filed in a proceeding;

- (c) the [minutes](#), recordings and transcripts of hearings, meetings or sessions in a proceeding; and
- (d) any order, decision, recommendation, Report or Award by a Commission or Tribunal.
- (2) Subject to the applicable rules and the agreement of the parties to the proceedings, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c) and (d) available to the parties. Certified copies of the documents referred to in paragraph (1)(d) shall reflect any [supplementary decision, rectification or interpretation](#); ~~rectification or supplementary decision~~.

222. The change to (AF)AFR 4 reflects change in corresponding AFR 29(1).

Regulation 5 Certificates of Official Travel

The Secretary-General may issue certificates of official travel to members of Commissions or Tribunals, to persons assisting them, to members of the Secretariat, and to the parties, agents, counsel, advocates, [advisors](#), witnesses or experts appearing in proceedings, indicating that they are traveling in connection with a proceeding ~~under~~ [pursuant to the ICSID](#) Additional Facility Rules.

223. (AF)AFR 5 reflects change in corresponding AFR 30, and ensures consistency.

VI. (ADDITIONAL FACILITY) ADMINISTRATIVE AND FINANCIAL REGULATIONS

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Chapter III Financial Provisions

Regulation 6 Fees, Allowances and Charges

- (1) Each member of a Commission or Tribunal shall receive:
 - (a) a fee for each hour of work performed in connection with the proceeding;
 - (b) when not travelling to attend a hearing, meeting or session, reimbursement of expenses reasonably incurred for the sole purpose of the proceeding; and
 - (c) when required to travel to attend a hearing, meeting or session held away from the member's place of residence:
 - (i) reimbursement of the cost of ground transportation between the points of departure and arrival;
 - (ii) reimbursement of the cost of air and ground transportation to and from the city in which the hearing, meeting or session is held; and
 - (iii) a *per diem* allowance for each day the member spends away from their place of residence.
- (2) The Secretary-General shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and (c). Any request by a member for a higher amount shall be made through the Secretary-General, and not directly to the parties. Such a request must be made before the constitution of the Commission or Tribunal and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish an annual administrative charge payable by the parties ~~for the services of~~ to the Centre.
- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
 - (a) members of Commissions and Tribunals, and any assistants approved by the parties;
 - (b) witnesses and experts called by a Commission or Tribunal who have not been presented by a party;
 - (c) service providers that the Centre engages for a proceeding; and
 - (d) the host of any hearing, meeting or session held outside an ICSID facility.

- (5) The Centre shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or reimbursements of the members of any Commission or Tribunal, unless the parties have made sufficient payments to defray the costs of the proceeding.

224. This change reflects change in corresponding AFR 14.

Regulation 7 Payments to the Centre

- (1) To enable the Centre to pay the costs referred to in Regulation 6, the parties shall make payments to the Centre as follows:

(a) upon registration of a Request for arbitration or conciliation, the Secretary-General shall request ~~ask~~ the claimant(s) to make a payment to defray the estimated costs of the proceeding through the first session of the Commission or Tribunal, which shall be considered partial payment by the claimant(s) of the payment referred to in paragraph (1)(b);

(b) upon constitution of a Commission or Tribunal, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the proceeding; and

(c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the proceeding; ~~and~~

~~(2) the Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.~~

~~(3)~~(2) In conciliation proceedings, each party shall pay one half of the payments referred to in paragraph (1)(b) and (c), unless the parties agree on a different division. In arbitration proceedings, each party shall pay one half of the payments referred to in paragraph (1)(b) and (c), unless a different division is agreed to by the parties or ordered by the Tribunal. Payment of these sums is without prejudice to the Tribunal's final decision on ~~the payment of~~ costs pursuant to Rule ~~69(1)(j)58~~ of the (Additional Facility) Arbitration Rules.

(3) The Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.

- (4) This Regulation shall apply to requests for a supplementary decision on or rectification of an Award, and to an application for interpretation of an Award.

225. Changes in (AF)AFR 7 reflect changes in corresponding AFR 15.

**Regulation 8
Consequences of Default in Payment**

- (1) The payments referred to in Regulation 7 shall be payable on the date of the request from the Secretary-General.
- (2) The following procedure shall apply in the event of non-payment:
 - (a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;
 - (b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the proceeding until payment is made, after giving notice to the parties and to the Commission or Tribunal if constituted; and
 - (c) if any proceeding is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the proceeding, after giving notice to the parties and to the Commission or Tribunal if constituted.

226. The addition of “consecutive” reflects the change in corresponding AFR 16(2)(c).

**Regulation 9
Special Services**

- (1) The Centre may perform any special services related to disputes if the requestor deposits in advance an amount sufficient to defray the charge for such services.
- (2) Charges for special services shall normally be based on a schedule of fees published by the Secretary-General.

**Regulation 10
Fee for Lodging Requests**

The party or parties (if a request is ~~made~~filed jointly) wishing to institute an arbitration or conciliation proceeding, or requesting a supplementary decision, rectification or interpretation of an Award, shall pay the Centre a non-refundable

lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 11
Administration of Proceedings

The ICSID Secretariat is the only entity ~~body~~ authorized to administer proceedings conducted pursuant to ~~under~~ the Additional Facility Rules.

227. This change reflects change in corresponding AFR 22.

VI. (ADDITIONAL FACILITY) ADMINISTRATIVE AND FINANCIAL REGULATIONS

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**Chapter IV
Official Languages and Limitation of Liability**

**Regulation 12
Languages of Regulations**

- (1) These Regulations are published in the official languages of the Centre, English, French and Spanish.
- (2) The texts of these Regulations in each ~~of these~~ official languages are equally authentic.
- (3) The singular form of words in these Regulations and in the (Additional Facility) Arbitration and Conciliation Rules include the plural form of that word, unless otherwise stated or required by the context of the provision.

**Regulation 13
Prohibition Against Testimony and Limitation of Liability**

- (1) Unless required by applicable law or unless the parties and all the members of the Commission or Tribunal agree otherwise in writing, no member of the Commission or Tribunal shall give testimony in any judicial, arbitral or similar proceeding concerning any aspect of the arbitration or conciliation proceeding.
- (2) Except to the extent such limitation of liability is prohibited by applicable law, no member of the Commission or Tribunal shall be liable for any act or omission in connection with the exercise of their functions in the arbitration or conciliation proceeding, unless there is fraudulent or willful misconduct.

**VII. THE ARBITRATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
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VII. THE ARBITRATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS (ADDITIONAL FACILITY) ARBITRATION RULES (ANNEX B)

Introductory Note

The ~~Additional Facility Rules of Procedure for~~ Arbitration Rules for Additional Facility Proceedings (~~the~~ (Additional Facility) Arbitration Rules) were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7(1).

The (Additional Facility) Arbitration Rules are supplemented by the (Additional Facility) Administrative and Financial Regulations in Annex A.

The (Additional Facility) Arbitration Rules apply from the submission of a Request for arbitration until an Award is rendered and to any proceedings arising from a request for a supplementary decision on, rectification of, or interpretation of, an Award.

228. Any changes addressed in WP # 3 below are specific to (AF)AR. Other changes made reflect changes to the AR and are explained in the AR under the corresponding provisions.

Chapter I **General Provisions** Scope

Rule 1 **Application of Rules**

(1) These Rules shall apply to any arbitration proceeding conducted under pursuant to the Additional Facility Rules, ~~except to the extent that the parties agree otherwise and subject to paragraph (2).~~

(1)(2) The parties may agree to modify the application of any of these Rules other than Rules 1-9.

(2)(3) If any of these Rules, or any ~~aspect of the parties'~~ agreement pursuant to paragraph (2) ~~to modify the application of these Rules~~, conflicts with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

(3) ~~The Tribunal shall apply any agreement of the parties on procedural matters to the extent that it conforms with the (Additional Facility) Administrative and Financial Regulations, subject to paragraph (2).~~

(4) The applicable (Additional Facility) Arbitration Rules are those in force on the date of filing the [Request for arbitration](#), [unless the parties agree otherwise](#).

[\(5\) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language.](#)

[\(6\) These Rules may be cited as the “\(Additional Facility\) Arbitration Rules” of the Centre.](#)

229. (AF)AR 1(2) allows the parties to modify the application of the Rules except for Chapters I and II that contain the institution and registration provisions.
230. (AF)AR 1(3) in WP # 2 has been removed and reinserted under (AF)AR 34.
231. (AF)AR 1(4) has been modified to allow parties to apply prior versions of the Rules should they wish to do so.
232. (AF)AR 2-11 in WP # 2 have been moved to new Chapter III on the Conduct of the Proceeding.

**VII. THE ARBITRATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
(ADDITIONAL FACILITY) ARBITRATION RULES**

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Chapter II Institution of Proceedings

Rule 12 The Request

- (1) Any party wishing to institute arbitration proceedings ~~under~~ [pursuant to](#) the Additional Facility Rules shall file a Request for arbitration together with the required supporting documents (“Request”) with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the dispute.

Rule 13 Contents of the Request

- (1) The Request shall:
 - (a) be in English, French or Spanish;
 - (b) identify each party to the dispute and provide their contact information, including electronic mail address, street address and telephone number;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) attach proof of any representative’s authority to act; and
 - (e) if the requesting party is a juridical person, state that it has obtained all necessary [internal](#) authorizations to file the Request and attach the authorizations.
- (2) With regard to Article 2(1)(a) of the Additional Facility Rules, the Request shall include:
 - (a) a description 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 out of the investment~~:-~~;
 - (b) with respect to each party’s consent to submit the dispute to arbitration [pursuant to](#) ~~under~~ the Additional Facility Rules:
 - (i) the instrument(s) in which each party’s consent is recorded;

- (ii) the date of entry into force of the instrument(s) on which consent is based, together with supporting documents demonstrating that date; ~~and~~
 - (iii) the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or, if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre; and
 - (iv) an indication that the requesting party has complied with any conditions in the instrument of consent for submission of the dispute;
- (c) if a party is a natural person:
- (i) information concerning that person's nationality on the date of consent, together with supporting documents demonstrating such nationality; and
 - (ii) a statement that the person ~~did not have the nationality of~~ is a national of a State other than the State party to the dispute or of any constituent State of ~~an~~ the REIO party to the dispute on the date of consent;
- (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; and
 - (ii) if that party had the nationality of the State party to the dispute or of any constituent State of the REIO party to the dispute on the date of ~~the~~ consent, information identifying the agreement of the parties to treat the juridical person as a national of another State pursuant to Article 1(5)(b) of the Additional Facility Rules, together with supporting documents demonstrating such agreement;
- (e) if a party is a constituent subdivision of a State or an agency of a State or of an REIO, supporting documents demonstrating the ~~State's or REIO's~~ approval of consent of the State or the REIO, unless the State or the REIO has notified the Centre that no such approval is required.

233. Changes to (AF)AR 1(e) and 3(2)(a) reflect changes in proposed IR 2.

234. The change to (AF)AR 3(2)(c) accommodates dual nationals, as proposed under AF Art. 1(5).

Rule 14
Recommended Additional Information

It is recommended that the Request also contain any procedural proposals or agreements reached by the parties, including with respect to:

- ~~(a) an estimate of the amount of damages sought, if any;~~
- ~~(b)(a) a proposal concerning~~ the number and method of appointment of arbitrators;
- ~~(e)(b) the agreed or proposed~~ seat of arbitration;
- ~~(d)(c) the agreed or proposed~~ law applicable to the dispute; and
- ~~(e)(d) the proposed~~ procedural language(s); and
- ~~(f) any other procedural proposals or agreements reached by the parties.~~

235. Changes to (AF)AR 4 reflect changes in IR 3.

Rule 15
Filing of the Request and Supporting Documents

- (1) The Request shall be filed electronically. The Secretary-General may require the Request to be filed in an alternative format if necessary.
- (2) An extract of a ~~supporting~~ document may be filed as a supporting document if the ~~omission of the text does not render the~~ extract is not misleading. The Secretary-General may require a fuller extract or a complete version of the document.
- (3) The Secretary-General may require a certified copy of a supporting document.
- (4) Any document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or a complete translation of the document.

236. Changes to (AF)AR 5 reflect changes in IR 4.

Rule 16
Receipt of the Request and Routing of Written Communications

The Secretary-General shall:

- (a) promptly acknowledge receipt of the Request to the requesting party;
- (b) transmit the Request to the other party upon receipt of the lodging fee; and
- (c) act as the official channel of written communications between the parties.

Rule 17
Review and Registration of the Request

- (1) Upon receipt of the Request and lodging fee, the Secretary-General shall register the Request if it appears on the basis of the information provided that the Request is not manifestly outside the scope of Article 2(1) of the Additional Facility Rules.
- (2) The Secretary-General shall promptly notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.

Rule 18
Notice of Registration

The notice of registration of the Request shall:

- (a) record that the Request is registered and indicate the date of registration;
- (b) confirm that all correspondence to the parties in connection with the proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Centre;
- (c) invite the parties to inform the Secretary-General of their agreement regarding the number and method of appointment of arbitrators, unless such information has already been provided, and to constitute a Tribunal without delay;
- ~~(d) invite the parties to constitute a Tribunal without delay;~~
- ~~(e)~~(d) remind the parties that registration of the Request is without prejudice to the powers and functions of the Tribunal in regard to jurisdiction, competence of the Tribunal, and the merits; and

~~(f)~~(e) remind the parties to make the disclosure required by Rule ~~23~~2.

237. Changes to (AF)AR 8 reflect changes in IR 7.

Rule 19
Withdrawal of the Request

At any time before registration, a requesting party may notify the Secretary-General in writing of the withdrawal of the Request or, if there is more than one requesting party, that it is withdrawing from the Request. The Secretary-General shall promptly notify the parties of the withdrawal, unless the Request has not yet been transmitted pursuant to Rule ~~1~~6(b).

**VII. THE ARBITRATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
(ADDITIONAL FACILITY) ARBITRATION RULES**

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Chapter III
General Provisions

Rule ~~10~~2
General Duties

- ~~(1) The parties shall conduct the proceeding and implement the Tribunal's orders and decisions in good faith.~~
- (1) The Tribunal and the parties shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.
- (2) The Tribunal shall treat the parties equally and provide each party with a reasonable opportunity to present its case.
- ~~(3) The Tribunal and the parties shall conduct the proceeding in an expeditious and cost-effective manner.~~

238. Changes to (AF)AR 10 reflect changes in AR 2.

Rule ~~11~~3
Meaning of Party and Party Representative

- (1) For the purposes of these Rules, "party" ~~may~~ includes, where the context so admits,:
- ~~(a) all parties acting as claimant or as respondent; and~~
 - ~~(b) a representative of a party.~~
- (2) Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be notified by that party to the Secretary-General ("representative(s)").

239. Changes to (AF)AR 11 reflect changes in AR 3.

Rule ~~12~~4
Method of Filing

- (1) A document to be filed in the proceeding shall be filed with the Secretary-General, who shall acknowledge its receipt. ~~shall only be filed electronically, unless the Tribunal orders otherwise in special circumstances.~~

- (2) Documents ~~A document~~ shall only be filed electronically, unless the Tribunal orders otherwise in special circumstances. ~~document shall be filed with the Secretary-General, who shall acknowledge receipt and distribute it in accordance with Rule 6.~~

240. Changes to (AF)AR 12 reflect changes in AR 4.

Rule 135
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 ~~supporting~~ document may be filed as a supporting document if the ~~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.

241. Changes to (AF)AR 13 reflect changes in AR 5.

Rule 146
Routing of Documents

- ~~(1)~~ Following the registration of the Request pursuant to Rule ~~17(2)~~, the Secretary-General shall transmit a document filed in the proceeding to be the official channel for routing of documents among the parties and the Tribunal, except that:
- (a) the other party, unless the parties ~~may~~ communicate directly with each other, provided that they transmit all documents to be filed in the proceeding to the Secretary-General; and
- (b) ~~the members of~~ the Tribunal, unless the parties shall communicate directly with ~~each other~~ the Tribunal on request of the Tribunal or by agreement of the parties; and
- ~~(c)~~ ~~a party may communicate directly with the Tribunal on request of the Tribunal or by agreement of the parties, provided that the other party and the Secretary-General are copied.~~

~~(2) The Secretary-General shall:~~

~~(a) acknowledge receipt of all documents transmitted by a party; and~~

~~(b) distribute them to the other party and the Tribunal, unless they were transmitted pursuant to paragraph (1)(a) or (c).~~

242. Changes to (AF)AR 14 reflect changes in AR 6.

Rule 157

Procedural Languages, Translation and Interpretation

- (1) The parties may agree to use one or two procedural languages in the proceeding. The parties shall consult with the Tribunal and the Secretary-General regarding the use of a language that is not an official language of the Centre.
- (2) If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (3) Requests, written submissions, observations and communications shall be filed in a procedural language. In a proceeding with two procedural languages, the Tribunal may order a party to file such documents in both procedural languages.
- (4) Supporting documents in a language other than a procedural language shall be accompanied by a translation into a procedural language. In a proceeding with two procedural languages, the Tribunal may order a party to translate any supporting document into both procedural languages. Translation of only the relevant part of a supporting document is sufficient, provided that the Tribunal may order a party to provide a fuller or a complete translation. If the translation is disputed, the Tribunal may order a party to provide a certified translation.
- (5) Any document from the Tribunal or the Secretary-General shall be in a procedural language. In a proceeding with two procedural languages, the Tribunal, ~~or and,~~ ~~where the Secretary-General if applicable~~ ~~the Secretary-General~~, shall render orders, decisions and the Award in both procedural languages, unless the parties agree otherwise.
- (6) Any oral communication shall be in a procedural language. In a proceeding with two procedural languages, the Tribunal may order interpretation into the other procedural language.
- (7) The testimony of a witness or an expert in a language other than a procedural language shall be interpreted into the procedural language(s) used at the hearing.

(8) The recordings and transcripts of a hearing shall be made in the procedural language(s) used at the hearing.

243. Changes to (AF)AR 15 reflect changes in AR 7.

Rule ~~16~~8
Correction of Errors ~~and Deficiencies~~

~~(1)~~ A party may correct an accidental error in a document promptly upon discovery and at any time before the Award is rendered, ~~with agreement of the other party or with leave of the Tribunal.~~ The parties may refer any dispute regarding a correction to the Tribunal for determination.

~~(2) The Secretary-General may request that a party correct any deficiency in a filing or make the required correction.~~

244. Changes to (AF)AR 16 reflect changes in AR 8.

Rule ~~17~~9
Calculation of Time Limits

- (1) References to time shall be determined based on the time at the seat of the Centre on the relevant date.
- (2) Any time limit expressed as a period of time shall be calculated from the day after the date on which:
 - (a) the Tribunal, or the Secretary-General if applicable, announces the period; or
 - (b) the procedural step starting the period is taken.
- (3) A time limit shall be satisfied if a procedural step is taken or a document is received by the Secretary-General on the relevant date, or, if the date falls on a Saturday, or Sunday, ~~or a holiday observed by the Secretariat,~~ on the subsequent business day.

245. Changes to (AF)AR 17 reflect changes in AR 9.

Rule 180
Fixing Time Limits **Applicable to Parties**

~~(1) The Tribunal, or the Secretary-General if applicable, shall fix time limits for the completion of each procedural step in the proceeding, other than time limits prescribed by these Rules.~~

~~(2) The parties may agree to extend any time limit.~~

~~(3) The Tribunal, or the Secretary-General if applicable, may extend any time limit that they fixed, upon a reasoned application by either party made prior to its expiry. The Tribunal may delegate this power to its President.~~

~~(4) An application or request filed after the expiry of the time limits in Rule 71 shall be disregarded. A procedural step taken or document received after the expiry of any other time limit shall be disregarded unless:~~

~~(a) the other party does not object to the late step or filing; or~~

~~(b) the Tribunal, or the Secretary-General if applicable, concludes that there are special circumstances justifying the failure to meet a time limit that they fixed.~~

246. Changes to (AF)AR 18 reflect changes in AR 10.

Rule 19
Extension of Time Limits **Applicable to Parties**

(1) A time limit prescribed by these Rules may only be extended by agreement of the parties. A procedural step taken or document received after the expiry of such time limit shall be disregarded, unless the parties agree otherwise.

(2) A time limit fixed by the Tribunal or the Secretary-General may be extended by agreement of the parties or by the Tribunal, or Secretary-General if applicable, upon reasoned application by either party made prior to its expiry. A procedural step taken or a document received after the expiry of such time limit shall be disregarded unless the Tribunal, or the Secretary-General if applicable, concludes that there are special circumstances justifying the failure to meet the time limit.

(3) The Tribunal may delegate to the President the power to extend time limits referred to in paragraph (2).

247. New (AF)AR 19 reflects new AR 11.

Rule ~~2011~~
Time Limits Applicable to ~~the~~ Tribunal

- (1) The Tribunal shall use best efforts to meet ~~all applicable~~ time limits to render orders, decisions and the Award.
- (2) If ~~special circumstances arise which prevent~~ the Tribunal cannot from complying with an applicable time limit, it shall advise the parties of the special circumstances that justify the ~~reason for~~ delay and the date when it anticipates rendering the order, decision or Award. ~~will be delivered.~~

248. Changes to (AF)AR 20 reflect changes in AR 12.

Chapter II
Institution of Proceedings

Rule 12
The Request

- ~~(3) Any party wishing to institute arbitration proceedings under the Additional Facility Rules shall file a Request for arbitration together with the required supporting documents (“Request”) with the Secretary General and pay the lodging fee published in the schedule of fees.~~
- ~~(4) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the dispute.~~

249. The institution of the proceedings has been moved to Chapter II.

Rule 13
Contents of the Request

- ~~(3) The Request shall:~~
 - ~~(f) be in English, French or Spanish;~~
 - ~~(g) identify each party to the dispute and provide their contact information, including electronic mail address, street address and telephone number;~~
 - ~~(h) be signed by each requesting party or its representative and be dated;~~

~~(i) attach proof of any representative's authority to act; and~~

~~(j) if the requesting party is a juridical person, state that it has obtained all necessary authorizations to file the Request and attach the authorizations.~~

~~(4) With regard to Article 2(1)(a) of the Additional Facility Rules, the Request shall include:~~

~~(f) a description of the investment, a summary of the relevant facts and claims, the request for relief, and an indication that there is a legal dispute between the parties arising out of the investment.~~

~~(g) with respect to each party's consent to submit the dispute to arbitration under the Additional Facility Rules:~~

~~(v) the instrument(s) in which each party's consent is recorded;~~

~~(vi) the date of entry into force of the instrument(s) on which consent is based, together with supporting documents demonstrating that date; and~~

~~(vii) — the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or, if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre;~~

~~(h) if a party is a natural person:~~

~~(iii) information concerning that person's nationality on the date of consent, together with supporting documents demonstrating such nationality; and~~

~~(iv) a statement that the person did not have the nationality of the State party to the dispute or of any constituent State of an REIO party to the dispute on the date of consent;~~

~~(i) if a party is a juridical person:~~

~~(iii) information concerning that party's nationality on the date of consent, together with supporting documents demonstrating such nationality; and~~

~~(iv) if that party had the nationality of the State party to the dispute or of any constituent State of the REIO party to the dispute on the date of the consent, information identifying the agreement of the parties to treat the juridical person as a national of another State pursuant to Article 1(5)(b) of the Additional Facility Rules, together with supporting documents demonstrating such agreement;~~

~~(j) if a party is a constituent subdivision of a State or an agency of a State or of an REIO, supporting documents demonstrating the State's or REIO's approval of consent, unless the State or the REIO has notified the Centre that no such approval is required.~~

Rule 14 **Recommended Additional Information**

It is recommended that the Request also contain:

- ~~(g) an estimate of the amount of damages sought, if any;~~
- ~~(h) a proposal concerning the number and method of appointment of arbitrators;~~
- ~~(i) the agreed or proposed seat of arbitration;~~
- ~~(j) the agreed or proposed law applicable to the dispute;~~
- ~~(k) the proposed procedural language(s); and~~
- ~~(l) any other procedural proposals or agreements reached by the parties.~~

Rule 15 **Filing of the Request and Supporting Documents**

- ~~(5) The Request shall be filed electronically. The Secretary General may require the Request to be filed in an alternative format if necessary.~~
- ~~(6) An extract of a supporting document may be filed if the omission of the text does not render the extract misleading. The Secretary General may require a fuller extract or a complete version of the document.~~
- ~~(7) The Secretary General may require a certified copy of a supporting document.~~
- ~~(8) Any document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary General may require a fuller or a complete translation of the document.~~

Rule 16
Receipt of the Request and Routing of Written Communications

The Secretary General shall:

- ~~(d) promptly acknowledge receipt of the Request to the requesting party;~~
- ~~(e) transmit the Request to the other party upon receipt of the lodging fee; and~~
- ~~(f) act as the official channel of written communications between the parties.~~

Rule 17
Review and Registration of the Request

- ~~(3) Upon receipt of the Request and lodging fee, the Secretary General shall register the Request if it appears on the basis of the information provided that the Request is not manifestly outside the scope of Article 2(1) of the Additional Facility Rules.~~
- ~~(4) The Secretary General shall promptly notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.~~

Rule 18
Notice of Registration

The notice of registration of the Request shall:

- ~~(g) record that the Request is registered and indicate the date of registration;~~
- ~~(h) confirm that all correspondence to the parties in connection with the proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Centre;~~
- ~~(i) invite the parties to inform the Secretary General of their agreement regarding the number and method of appointment of arbitrators, unless such information has already been provided;~~
- ~~(j) invite the parties to constitute a Tribunal without delay;~~
- ~~(k) remind the parties that registration of the Request is without prejudice to the powers and functions of the Tribunal in regard to jurisdiction, competence of the Tribunal, and the merits; and~~

~~(1) remind the parties to make the disclosure required by Rule 22.~~

Rule 19
~~Withdrawal of the Request~~

~~At any time before registration, a requesting party may notify the Secretary General in writing of the withdrawal of the Request or, if there is more than one requesting party, that it is withdrawing from the Request. The Secretary General shall promptly notify the parties of the withdrawal, unless the Request has not yet been transmitted pursuant to Rule 16(b).~~

**VII. THE ARBITRATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
(ADDITIONAL FACILITY) ARBITRATION RULES**

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Chapter ~~III~~IV
Constitution of the Tribunal

Rule ~~21~~20
General Provisions Regarding the Constitution of the Tribunal

- (1) The Tribunal shall be constituted without delay after registration of the Request.
- (2) Unless otherwise agreed by the parties:
 - (a) the majority of the arbitrators on a Tribunal shall be nationals of States other than the State party to the dispute, any constituent State of the REIO party to the dispute, and the State whose national is a party to the dispute;
 - (b) a party may not appoint an arbitrator who is a national of the State party to the dispute, any constituent State of the REIO party to the dispute or the State whose national is a party to the dispute;
 - (c) arbitrators appointed by the Secretary-General shall not be nationals of the State party to the dispute, a constituent State of the REIO party to the dispute or the State whose national is a party to the dispute; and
 - (d) no person previously involved in the resolution of the dispute as a [conciliator](#), judge, mediator, ~~conciliator~~ or in a similar capacity may be appointed as an arbitrator.
- (3) The composition of a Tribunal shall remain unchanged after it has been constituted, except as provided in Chapter ~~IV~~IV.

Rule ~~22~~21
Qualifications of Arbitrators

Arbitrators shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who are impartial and independent.

Rule ~~23~~22
Notice of Third-~~P~~Party Funding

- (1) ~~For purposes of completing the arbitrator declaration required by Rule 26(3)(b), a~~A party shall file a written notice disclosing the name of any non-party from which ~~the~~that 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, 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 a 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 27\(3\)\(b\).](#)

250. Changes to (AF)AR 23 reflect changes in AR 14.

Rule 243
Method of Constituting the Tribunal

- (1) The number of arbitrators and the method of their appointment must be determined before the Secretary-General can act on any appointment proposed by a party.
- (2) The parties shall endeavor to agree on any uneven number of arbitrators and the method of their appointment. If the parties do not advise the Secretary-General of an agreement within 45 days after the date of registration, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party and the third, who shall be the President of the Tribunal, appointed by agreement of the parties.

Rule 254
Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of a President of the Tribunal or a Sole Arbitrator.

Rule 26~~5~~
Appointment of Arbitrators by the Secretary-General

- (1) If the Tribunal has not been constituted within 90 days after the date of registration, or such other period as the parties may agree, either party may request that the Secretary-General appoint the arbitrator(s) who have not yet been appointed.
- (2) The Secretary-General shall appoint the President of the Tribunal after appointing any members who have not yet been appointed.
- (3) The Secretary-General shall consult with the parties as far as possible before appointing an arbitrator and shall use best efforts to appoint any arbitrator(s) within 30 days after receipt of the request to appoint.

Rule 27~~6~~
Acceptance of Appointment

- (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 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).

Rule 287

Replacement of Arbitrators Prior to Constitution of the Tribunal

- (1) At any time before the Tribunal is constituted:
 - (a) an arbitrator may withdraw an acceptance;
 - (b) a party may replace an arbitrator whom it appointed; or
 - (c) the parties may agree to replace any arbitrator.
- (2) A replacement arbitrator shall be appointed as soon as possible, in accordance with the method by which the withdrawing or replaced arbitrator was appointed.

Rule 298

Constitution of the Tribunal

- (1) The Tribunal shall be deemed to be constituted on the date the Secretary-General notifies the parties that all the arbitrators have accepted their appointments.
- (2) As soon as the Tribunal is constituted, the Secretary-General shall transmit the Request, the supporting documents, the notice of registration and communications with the parties to each member.

**VII. THE ARBITRATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
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Chapter IV
Disqualification of Arbitrators and Vacancies

Rule ~~30~~29
Proposal for Disqualification of Arbitrators

- (1) A party may file a proposal to disqualify one or more arbitrators (“proposal”) on the following grounds:
 - (a) that the arbitrator was ineligible for appointment to the Tribunal ~~under~~ pursuant to Rule 21~~0~~(2)(a)-~~to~~(c); or
 - (b) that circumstances exist that give rise to justifiable doubts as to the ~~arbitrator’s~~ qualities of the arbitrator required by Rule 22~~1~~.
- (2) The following procedure shall apply:
 - (a) the proposal shall be filed after the constitution of the Tribunal and within 21 days after the later of:
 - (i) the constitution of the Tribunal; or
 - (ii) the date on which the party proposing the disqualification first knew or first should have known of the facts on which the proposal is based;
 - (b) the proposal shall include the grounds on which it is based, a statement of the relevant facts, law and arguments, and any supporting documents;
 - (c) the other party shall file its response and supporting documents within 21 days after receipt of the proposal;
 - (d) the arbitrator to whom the proposal relates may file a statement limited to factual information relevant to the proposal. The statement shall be filed within five days after receipt of the response referred to in paragraph (2)(c); and
 - (e) each party may file a final written submission on the proposal within seven days after expiry of the time limit referred to in paragraph (2)(d).
- (3) If the other party agrees to the proposal prior to the dispatch of the decision referred to in Rule 31~~0~~, the arbitrator shall resign in accordance with Rule 33~~2~~.
- (4) The proceeding shall be suspended until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding in whole or in part.

Rule 310
Decision on the Proposal for Disqualification

- (1) The Secretary-General shall make the decision on the proposal.
- (2) The Secretary-General shall use best efforts to decide any proposal within 30 days after the expiry of the time limit referred to in Rule ~~3029~~(2)(e).

Rule 321
Incapacity or Failure to Perform Duties

If an arbitrator becomes incapacitated or fails to perform the duties required of an arbitrator, the procedure in Rules ~~3029~~ and 310 shall apply.

Rule 332
Resignation

An arbitrator may resign by notifying the Secretary-General and the other members of the Tribunal.

Rule 343
Vacancy on the Tribunal

- (1) The Secretary-General shall notify the parties of any vacancy on the Tribunal.
- (2) The proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.
- (3) A vacancy on the Tribunal shall be filled by the method used to make the original appointment, except that the Secretary-General shall fill any vacancy that has not been filled within 45 days after the notice of vacancy.
- (4) Once a vacancy has been filled and the Tribunal has been reconstituted, the proceeding shall continue from the point it had reached at the time the vacancy was notified. Any portion of a hearing shall be recommenced if the newly appointed arbitrator considers it necessary to decide a pending matter.

**VII. THE ARBITRATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
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Chapter VI
Conduct of the Proceeding

Rule 354
Orders, ~~and~~ Decisions and Agreements

- (1) The Tribunal shall make the orders and decisions required for the conduct of the proceeding.
- (2) Orders and decisions may be made by any appropriate means of communication and may be signed by the President on behalf of the Tribunal.
- (3) The Tribunal shall apply any agreement of the parties on procedural matters, subject to Rule 1(3), and to the extent that the agreement does not conflict with the (Additional Facility) Administrative and Financial Regulations.
- (4) The Tribunal shall consult with the parties prior to making an order or decision it is authorized by these Rules to ~~make~~ be made ~~by a Tribunal~~ on its own initiative.

251. (AF)AR 35(3) was (AF)AR 34 in WP # 2. It was reinserted into this Rule.

252. Changes to (AF)AR 35(4) reflect changes in AR 27.

Rule 365
Waiver

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 the 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.

Rule 376
Filling of Gaps

If a question of procedure arises which is not covered by these Rules or by any agreement of the parties, the Tribunal shall decide the question.

Rule 387
First Session

- (1) ~~Subject to paragraph (2),~~ The Tribunal shall hold a first session ~~with the parties~~ to address the procedure, including the matters listed in paragraph (4).
- ~~(2) The first session may be held in person or remotely, by any means that the Tribunal deems appropriate. The agenda, method and date of the first session shall be determined by the President of the Tribunal after consulting with the other members and the parties.~~
- ~~(2)~~(3) The first session shall be held within 60 days after the constitution of the Tribunal ~~'s constitution~~ or such other period as the parties may agree. If the President of the Tribunal determines that it is not possible to convene the parties and the other members within this period, the first session shall be held solely among the Tribunal members after ~~consulting with the parties in writing on~~ considering the parties' written submissions on the matters listed in paragraph (4).
- ~~(3) The first session may be held in person or remotely, by any means that the Tribunal deems appropriate. The agenda, method and date of the first session shall be determined by the President of the Tribunal after consulting with the other members and the parties.~~
- (4) Before the first session, the Tribunal shall ~~circulate an agenda to the parties and~~ invite the ~~if~~ parties' views on procedural matters, including:
- (a) the applicable arbitration rules;
 - (b) the division of advances payable pursuant to (Additional Facility) Administrative and Financial Regulation 7;
 - (c) the procedural language(s), translation and interpretation;
 - (d) the method of filing and routing of documents;
 - (e) the number, length, type and format of written submissions;
 - (f) the seat of arbitration;
 - (g) the place of hearings;
 - (h) whether there will be requests for production of documents as between the parties and, if so, the scope, timing and procedure for such requests ~~for production of documents between the parties, if any;~~

(i) the procedural calendar, ~~including written submissions, hearings, case management conferences and the Tribunal's orders and decisions;~~

(j) the manner of making recordings and transcripts of hearings;

(k) the publication of documents and recordings;

(l) the ~~treatment~~ ~~protection~~ of confidential ~~or protected~~ information; and

(m) any other procedural matter raised by either party or the Tribunal.

(5) The Tribunal shall issue an order recording the parties' agreements and any Tribunal decisions on the procedure within 15 days after the later of the first session or the last written submission on procedural matters addressed at the first session.

253. Changes to (AF)AR 38 reflect changes in AR 29.

Rule 3~~9~~8 **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.

~~(3) A memorial on the merits or a memorial on preliminary objections may be filed at any time before the first session.~~

~~(4)~~(3) ~~No~~ A party may file unscheduled written submissions, observations, or supporting documents ~~without~~ 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.

254. Changes to (AF)AR 39 reflect changes in AR 30.

Rule ~~40~~³⁹
Case Management Conferences

With a view to conducting an expeditious and cost-effective ~~and expeditious~~ proceeding, the Tribunal shall convene one or more case management conferences with the parties at any time after the first session to:

- (a) identify uncontested facts;
- (b) clarify and narrow the issues in dispute; or
- (c) address any other procedural or substantive issue related to the resolution of the dispute.

255. Changes to (AF)AR 40 reflect changes in AR 31.

Rule ~~41~~⁰
Seat of Arbitration

The seat of arbitration shall be agreed on by the parties or, absent agreement, shall be determined by the Tribunal having regard to the circumstances of the proceeding and after consulting with the parties.

Rule ~~42~~¹
Hearings

- (1) ~~There shall be one or more hearings before the~~ The Tribunal shall hold one or more hearings, unless the parties agree otherwise.
- (2) The President of the Tribunal shall determine the date, time and method of holding hearings, after consulting with the other members of the Tribunal and the parties.

- (3) If a hearing is to be held in person, it may be held at any place agreed to by the parties after consulting with the Tribunal and the Secretary-General. If the parties do not agree on the place of a hearing, it shall be held at a place determined by the Tribunal.
- (4) Any member of the Tribunal may put questions to the parties and ask for explanations at any time during a hearing.

256. Changes to (AF)AR 42 reflect changes in AR 32.

Rule 43~~2~~ **Quorum**

The participation of a majority of the members of the Tribunal by any appropriate means of communication shall be required at the first session, case management conferences, hearings and deliberations, ~~by any appropriate means of communication~~, unless the parties agree otherwise.

Rule 44~~3~~ **Deliberations**

- (1) The deliberations of the Tribunal shall take place in private and remain confidential.
- (2) The Tribunal may deliberate at any place and by any means it considers appropriate.
- (3) Only members of the Tribunal shall take part in its deliberations. No other person shall be admitted unless the Tribunal decides otherwise.
- (4) The Tribunal shall deliberate on any matter for decision immediately after the last written or oral submission on that matter.

Rule 45~~4~~ **Decisions Made by Majority Vote**

The Tribunal shall make decisions by a majority of the votes of all its members. Abstention shall count as a negative vote.

**VII. THE ARBITRATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
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Chapter VII
Evidence

Rule 465
Evidence: General Principles

- (1) The Tribunal shall determine the admissibility and probative value of the evidence adduced.
- (2) Each party has the burden of proving the facts relied on to support its claim or defense.
- (3) The Tribunal may, ~~if it deems it necessary at any stage of the proceedings,~~ call upon a party to produce documents or other evidence if it deems it necessary at any stage of the proceeding.

Rule 476
Disputes Arising from Requests for Documents

The Tribunal shall decide any dispute arising out of a party's objection to the other party's request for production of documents. In deciding the dispute, the Tribunal shall consider all relevant circumstances, including:

- (a) the scope and timeliness of the request;
- (b) the relevance and materiality of the documents requested;
- (c) the burden of production; and
- (d) the basis of the objection; ~~and~~
- ~~(e) all other relevant circumstances.~~

257. Changes to (AF)AR 47 reflect changes in AR 37.

Rule 487
Witnesses and Experts

- (1) A party intending to rely on evidence given by a witness shall file a written statement by that witness. The statement shall identify the witness, contain the evidence of the witness, and be signed and dated.

- (2) A witness who has filed a written statement may be called for examination at a hearing.
- (3) The Tribunal shall determine the manner in which the examination is conducted.
- (4) A witness shall be examined before the Tribunal, by the parties, and under the control of the President. Any member of the Tribunal may put questions to the witness.
- (5) A witness shall be examined in person unless the Tribunal determines that another means of examination is appropriate in the circumstances.
- (6) Each witness shall make the following declaration before giving evidence:

“I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth.”
- (7) Paragraphs (1)-(5) shall apply, with necessary modifications, to evidence given by an expert.
- (8) Each expert shall make the following declaration before giving evidence:

“I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief.”

Rule 498
Tribunal-~~A~~ppointed Experts

- (1) Unless the parties agree otherwise, the ~~The~~ Tribunal may appoint one or more independent experts to report to it on specific matters within the scope of the dispute.
- (2) The Tribunal shall consult with the parties on the appointment of an expert, including on the terms of reference and fees of the expert.
- (3) Upon accepting an appointment by the Tribunal, an expert shall provide a signed declaration in the form published by the Centre.
- ~~(3)~~(4) _____ The parties shall provide the Tribunal-appointed expert with any information, document or other evidence that the expert may require. The Tribunal shall decide any dispute regarding the evidence required by the Tribunal-appointed expert.

~~(4)~~(5) The parties shall have the right to make written and oral submissions, ~~as required,~~ on the report of the Tribunal-appointed expert, as required.

~~(5)~~(6) Rule 487(1) (5) and (8) shall apply, with necessary modifications, to the Tribunal-appointed expert.

258. Changes to (AF)AR 49 reflect changes in AR 39.

Rule ~~50~~49
Visits and Inquiries

- (1) The Tribunal may order a visit to any place connected with the dispute, on its own initiative or upon a party's request, if it deems the visit necessary, and may conduct inquiries there as appropriate.
- (2) The order shall define the scope of the visit and the subject of any inquiry, the procedure to be followed, the applicable time limits and other terms.
- (3) The parties shall have the right to participate in any visit or inquiry.

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Chapter VIII
Special Procedures

Rule 51~~0~~
Manifest Lack of Legal Merit

- (1) A party may object that a claim is manifestly without legal merit. The objection may relate to the substance of the claim or to the jurisdiction or competence of the Tribunal.
- (2) The following procedure shall apply:
 - (a) a party shall file a written submission no later than 45~~30~~ days after the constitution of the Tribunal~~;~~;
 - ~~(a)~~(b) the written submission shall specify~~ing~~ the grounds on which the objection is based and contain ~~including~~ a statement of the relevant facts, law and arguments;
 - ~~(b)~~(c) the Tribunal shall fix time limits for written and oral submissions on the objection, as required~~, on the objection~~;
 - ~~(c)~~(d) if a party files the objection before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the objection, so that the Tribunal may consider the objection promptly upon its constitution; and
 - ~~(d)~~(e) the Tribunal shall render ~~issue~~ its decision or ~~render its~~ Award on the objection within 60 days after the latest of:
 - (i) the constitution of the Tribunal;
 - (ii) the last written submission on the objection; or
 - (iii) the last oral submission on the objection.
- (3) If the Tribunal decides that all claims are manifestly without legal merit, it shall render an Award to that effect. Otherwise, the Tribunal shall issue a decision on the objection and fix any time limit necessary for the further conduct of the proceeding.
- (4) A decision that a claim is not manifestly without legal merit shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 53~~2~~ or to argue subsequently in the proceeding that a claim is without legal merit.

259. Changes to (AF)AR 51 reflect changes in AR 41.

Rule 521 Bifurcation

- (1) A party may request that a question be addressed in a separate phase of the proceeding (“request for bifurcation”).
- (2) If a request for bifurcation relates to a preliminary objection, Rule 542BIS shall apply.
- (3) The following procedure shall apply to a requests for bifurcation other than a request referred to in ~~paragraph~~ Rule 54(2):
 - (a) the request for bifurcation shall be filed as soon as possible;
 - (b) the request for bifurcation shall state the questions to be bifurcated;
 - (c) the Tribunal shall fix time limits for written and oral submissions on the request for bifurcation, as required, ~~on the request for bifurcation~~;
 - (d) the Tribunal shall issue its decision on the a-request for bifurcation within 320 days after the later of the last written or oral submission on the request; and
 - ~~(e) the Tribunal shall decide whether to suspend any part of the proceeding if it decides to bifurcate; and~~
 - ~~(f)~~(e) the Tribunal shall fix any time limit necessary for the further conduct of the proceeding, ~~as required~~.
- (4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether: ~~bifurcation could materially reduce the time and cost of the proceeding and all other relevant circumstances~~.
 - (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and
 - (c) the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical.
- (5) If the Tribunal orders bifurcation pursuant to this Rule, it shall suspend the proceeding with respect to any questions to be addressed at a later phase, unless the parties agree

otherwise or the Tribunal decides there are special circumstances that do not justify suspension.

~~(5)~~(6) The Tribunal may at any time on its own initiative decide whether a question ~~is to~~should be addressed in a separate phase of the proceeding.

260. Changes to (AF)AR 52 reflect changes in AR 42.

Rule ~~53~~² Preliminary Objections

- (1) The Tribunal shall have the power to rule on its jurisdiction and competence. For the purposes of this Rule, an agreement providing for arbitration pursuant to ~~under~~ the Additional Facility Rules shall be severable from the other terms of the contract in which it may have been included.
- (2) A party may file a preliminary objection that the dispute or any ancillary claim is not within the jurisdiction or competence of the Tribunal (“preliminary objection”).
- (3) A party shall notify the Tribunal and the other party of its intent to file a preliminary objection ~~shall be raised~~ as soon as possible.
- (4) The Tribunal may address a preliminary objection in a separate phase of the proceeding or join the objection to the merits.
- (5) If a party requests bifurcation of a preliminary objection, Rule ~~54~~^{2BIS} shall apply.
- (6) If a party does not request bifurcation of a preliminary objection within the time limits referred to in Rule ~~54~~^{2BIS}(1)(a) or the parties confirm that they will not request bifurcation, the objection shall be joined to the merits and the following procedure shall apply:
 - (a) the Tribunal shall fix time limits for written and oral submissions on the preliminary objection, as required;
 - (b) the memorial on the preliminary objection shall be filed ~~no later than~~:
 - (i) by the date to file the counter-memorial on the merits;
 - (ii) by the date to file the next written submission after an ancillary claim, if the objection relates to the ancillary claim; or

- (iii) as soon as possible after the facts on which the objection is based become known to a party, if those facts were unknown to ~~that the~~ party on the ~~relevant~~ dates [referred to in paragraph \(6\)\(b\)\(i\) and \(ii\)](#).
 - (c) the party filing the memorial on preliminary objections shall also file its counter-memorial on the merits, or, if the objection relates to ~~an the~~ ancillary claim, file its next written submission after ~~the an~~ ancillary claim; and
 - (d) the Tribunal shall render its Award within 240 days after the [later of the](#) last written or oral submission in the proceeding, in accordance with Rule 68(1)(c).
- (7) The Tribunal may at any time on its own initiative consider whether [a dispute or an ancillary-a](#) claim is within its own [jurisdiction and](#) competence.

261. Changes to (AF)AR 53 reflect changes in AR 43.

Rule 54~~2~~BIS
Bifurcation of Preliminary Objections

- (1) The following procedure shall apply with respect to a request for bifurcation relating to a preliminary objection:
 - (a) unless the parties agree ~~otherwise on a different time limit~~, the request for bifurcation shall be filed ~~within~~:
 - ~~(i) 30 days after the first session, if the memorial on the merits is filed before the first session;~~
 - ~~(ii)(i)~~ [within 4530](#) days after filing the memorial on the merits, ~~if it is filed after the first session;~~
 - ~~(iii)(ii)~~ [within 4530](#) days after filing the written submission containing the ancillary claim, if the objection relates to ~~the an~~ ancillary claim; or
 - ~~(iv)(iii)~~ [as soon as possible](#) after the facts on which the preliminary objection is based become known to a party, if those facts were unknown to ~~that the~~ party on the ~~relevant~~ dates [referred to in paragraph \(1\)\(a\)\(i\) and \(ii\)](#);
 - (b) the request for bifurcation shall state the preliminary objection to which it relates;
 - (c) [unless the parties agree otherwise](#), the proceeding on the merits shall be suspended ~~until the Tribunal decides whether to bifurcate pending the~~

~~Tribunal's consideration of the request for bifurcation, unless the parties agree otherwise;~~

- (d) the Tribunal shall fix time limits for written and oral submissions on the request for bifurcation, as required, ~~on the request for bifurcation~~; and
 - (e) the Tribunal shall issue its decision on a request for bifurcation within 320 days after the later of the last written or oral submission on the request.
- (2) In determining whether to bifurcate, the Tribunal shall consider ~~whether bifurcation could materially reduce the time and cost of the proceeding and all other~~ relevant circumstances, including whether:
- (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and
 - (c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical.
- (3) If the Tribunal decides to address the preliminary objection in a separate phase of the proceeding, it shall:
- (a) suspend the proceeding on the merits, unless the parties agree otherwise, or the Tribunal decides there are special circumstances that do not justify suspension ~~decide whether to suspend any part of the proceeding on the merits;~~
 - (b) fix time limits for written and oral submissions on the preliminary objection, as required;
 - (c) ~~issue-render~~ its decision or ~~render its~~ Award on the preliminary objection within 180 days after the later of the last written or oral submission, in accordance with Rule 68(1)(b); and
 - (d) fix any time limit necessary for the further conduct of the proceeding if the Tribunal does not render an Award.
- (4) If the Tribunal decides to join the preliminary objection to the merits, it shall:
- ~~(a) lift any suspension of the proceeding on the merits in place pursuant to paragraph (1)(c);~~
 - ~~(b)~~(a) fix time limits for written and oral submissions on the preliminary objection, as required;

~~(e)~~(b) modify any time limits for written and oral submissions on the merits, as required; and

~~(d)~~(c) render its Award within 240 days after the later of the last written or oral submission in the proceeding, in accordance with Rule 68(1)(c).

262. Changes to (AF)AR 54 reflect changes in AR 44.

Rule 5~~5~~3

Consolidation or Coordination of Arbitrations

- (1) Parties to two or more pending arbitrations administered by the Centre may agree to consolidate or coordinate these arbitrations.
- (2) ~~To be consolidated under this Rule, the arbitrations shall have been registered in accordance with these Rules and shall involve the same State or the same REIO (or any constituent subdivision of the State or agency of the State or the REIO).~~
Consolidation joins all aspects of the arbitrations sought to be consolidated and results in a single Award. To be consolidated pursuant to this Rule, the arbitrations shall have been registered in accordance with these Rules and shall involve the same State or the same REIO (or constituent subdivision of the State or agency of the State or the REIO).
- (3) Coordination aligns specific procedural aspects of each pending arbitration, but the arbitrations remain separate proceedings and each results in an individual Awards.
- (4) The parties referred to in paragraph (1) shall jointly provide the Secretary-General with proposed terms ~~of reference~~ for the conduct of the consolidated~~ed~~ or coordinated~~ed~~ proceeding(s) and consult with the Secretary-General to ensure that the proposed terms ~~of reference~~ are capable of being implemented.
- (5) After the consultation referred to in paragraph (4), the Secretary-General shall communicate the ~~agreed-proposed~~ terms ~~of reference~~ to the Tribunal(s) constituted in the arbitrations. Such Tribunal(s) shall make any order or decision required to implement the se terms ~~of reference~~.

263. Changes to (AF)AR 55 reflect changes in AR 45.

Rule 5~~6~~4

Provisional Measures

- (1) A party may at any time request that the Tribunal order provisional measures

to preserve that party's rights, including measures to:

- (a) prevent action that is likely to cause current or imminent harm to that party or prejudice to the arbitral process;
- (b) maintain or restore the *status quo* pending determination of the dispute; or
- (c) preserve evidence that may be relevant to the resolution of the dispute.

(2) The following procedure shall apply:

- (a) the request shall specify the rights to be preserved, the measures requested, and the circumstances that require such measures;
- (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 provisional measures 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 deciding whether to order provisional measures, the Tribunal shall consider all relevant circumstances, including:

- (a) whether the measures are urgent and necessary; and
- (b) the effect that the measures may have on each party; ~~and~~
- ~~(c) —all other relevant circumstances.~~

(4) The Tribunal may order provisional measures on its own initiative. The Tribunal may also order provisional measures different from those requested by a party.

(5) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered provisional measures.

- (6) The Tribunal may at any time modify or revoke the provisional measures, on its own initiative or upon a party's request.
- (7) A party may request any judicial or other authority to order interim or conservatory measures. Such a request shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Rule 575 **Ancillary Claims**

- (1) Unless the parties agree otherwise, a party may file an incidental or additional claim or a counterclaim ("ancillary claim"), provided that such ancillary claim is within the scope of the agreement of the parties.
- (2) An incidental or additional claim shall be presented no later than in the reply, and a counterclaim shall be presented no later than in the counter-memorial, unless the Tribunal decides otherwise.
- (3) The Tribunal shall fix time limits for written and oral submissions [on the ancillary claim](#), as required, ~~on the ancillary claim~~.

Rule 586 **Default**

- (1) A party is in default if it fails to appear or present its case, or indicates that it will not appear or present its case.
- (2) If a party is in default at any stage of the proceeding, the other party may request that the Tribunal address the questions submitted to it and render an Award.
- (3) Upon receipt of the request referred to in paragraph (2), the Tribunal shall notify the defaulting party of the request and grant a grace period to cure the default, unless it is satisfied that the defaulting party does not intend to appear or present its case. The grace period shall not exceed 60 days without the consent of the other party.
- (4) If the request in paragraph (2) relates to a failure to appear at a hearing, the Tribunal may:
 - (a) reschedule the hearing to a date within 60 days after the original date;

- (b) proceed with the hearing in the absence of the defaulting party and fix a time limit for the defaulting party to file a written submission within 60 days after the hearing; or
 - (c) cancel the hearing and fix a time limit for the parties to file written submissions within 60 days after the original date of the hearing.
- (5) If the default relates to another scheduled procedural step, the Tribunal may set the grace period to cure the default by fixing a new time limit for the defaulting party to complete that step within 60 days after the date of the notice of default referred to in paragraph (3).
- (6) A party's default shall not be deemed an admission of the assertions made by the other party.
- (7) The Tribunal may invite the party that is not in default to file observations, produce evidence or make oral submissions.
- (8) If the defaulting party fails to act within the grace period or if no such period is granted, the Tribunal shall examine whether the dispute is within its own [jurisdiction](#) [and](#) competence before deciding the questions submitted to it and rendering an Award.

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Chapter ~~IX~~**VIII**
Costs

Rule ~~57~~**59**
Costs of the Proceeding

The costs of the proceeding are all costs incurred by the parties in connection with the proceeding, including:

- (a) the legal fees and expenses of the parties;
- (b) the fees and expenses of ~~the members of~~ the Tribunal, Tribunal assistants approved by the parties and Tribunal-appointed experts ~~and any Tribunal assistants approved by the parties~~; and
- (c) the administrative charges and direct costs of the Centre.

264. Changes to (AF)AR 58 reflect changes in AR 48.

~~Rule 58~~
~~Payment of Advances~~

~~The Tribunal shall determine the portion of the advances payable by each party in accordance with (Additional Facility) Administrative and Financial Regulation 7 to defray the costs referred to in Rule 57(b) and (c).~~

265. Deletion of (AF)AR 58 in WP # 2 reflects deletion of AR 48 in WP # 2.

Rule ~~60~~**59**
Statement of and Submission on Costs

The Tribunal shall request that each party file a statement of its costs and a written submission on the allocation of costs before allocating the costs of the proceeding between the parties.

Rule 610
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 part of it;
 - (b) the ~~parties'~~ conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner;
 - (c) the complexity of the issues; and
 - (d) the reasonableness of the costs claimed; ~~and~~
 - ~~(e) all other relevant circumstances.~~
- (2) The Tribunal may make an interim decisions on ~~the costs of any part of a proceeding~~ at any time.
- (3) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.

266. Changes to (AF)AR 61 reflect changes in AR 51.

Rule 621
Security for Costs

- (1) Upon 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.

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

~~(5)~~(6) 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.

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

~~(7)~~(8) 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.

267. Changes to (AF)AR 62 reflect changes in AR 52.

**VII. THE ARBITRATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
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Chapter IX
Suspension, Settlement and Discontinuance

Rule 632
Suspension of the Proceeding

- (1) The Tribunal shall suspend the proceeding by agreement of the parties.
- (2) The Tribunal may suspend the proceeding upon the request of either party or on its own initiative, except as otherwise provided in the (Additional Facility) Administrative and Financial Regulations or these Rules.
- (3) The Tribunal shall give the parties the opportunity to make observations before ordering ~~the a~~ suspension pursuant to paragraph (2).
- (4) In its order suspending the proceeding, the Tribunal shall specify:
 - (a) the period of the suspension;
 - (b) any relevant terms ~~appropriate conditions~~; and
 - (c) a modified procedural calendar to take effect on resumption of the proceeding, if necessary.
- (5) The Tribunal shall extend the period of ~~the a~~ suspension prior to its expiry by agreement of the parties.
- (6) The Tribunal may extend the period of ~~the a~~ suspension prior to its expiry, on its own initiative or upon a party's request, after giving the parties an opportunity to make observations.
- (7) The Secretary-General shall suspend the proceeding pursuant to paragraph (1) or extend the suspension pursuant to paragraph (5) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal. The parties shall inform the Secretary-General of the period of the suspension and any terms ~~conditions~~ agreed to by the parties.

Rule 643
Settlement and Discontinuance

- (1) If the parties notify the Tribunal that they have agreed to discontinue the proceeding, the Tribunal shall issue an order taking note of the discontinuance.

- (2) If the parties agree on a settlement of the dispute before the Award is rendered, the Tribunal:
 - (a) shall issue an order taking note of the discontinuance of the proceeding, if the parties so request; or
 - (b) may record the settlement in the form of an Award, if the parties file the complete and signed text of their settlement and request that the Tribunal embody such settlement in an Award.
- (3) An Award rendered pursuant to paragraph (2)(b) does not need to include the reasons on which it is based.
- (4) The Secretary-General shall issue the order referred to in paragraphs (1) and (2)(a) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

Rule 654

Discontinuance at Request of a Party

- (1) If a party requests the discontinuance of the proceeding, the Tribunal shall fix a time limit within which the other party may oppose the discontinuance. If no objection in writing is made within the time limit, the other party shall be deemed to have acquiesced in the discontinuance and the Tribunal shall issue an order taking note of the discontinuance of the proceeding. If any objection in writing is made within the time limit, the proceeding shall continue.
- (2) The Secretary-General shall fix the time limit and issue the order referred to in paragraph (1) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

Rule 665

Discontinuance for Failure of Parties to Act

- (1) If the parties fail to take any steps in the proceeding for more than 150 consecutive days, the Tribunal shall notify them of the time elapsed since the last step taken in the proceeding.
- (2) If the parties fail to take a step within 30 days after the notice referred to in paragraph (1), they shall be deemed to have discontinued the proceeding and the Tribunal shall issue an order taking note of the discontinuance.

- (3) If either party takes a step within 30 days after the notice referred to in paragraph (1), the proceeding shall continue.
- (4) The Secretary-General shall issue the notice and the order referred to in paragraphs (1) and (2) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

268. Changes to (AF)AR 66 reflect changes in AR 56.

Rule 66
Discontinuance for Failure to Pay

~~If the parties fail to make payments to defray the costs of the proceeding as required by (Additional Facility) Administrative and Financial Regulation 7, the proceeding may be discontinued pursuant to (Additional Facility) Administrative and Financial Regulation 8.~~

269. The deletion of (AF)AR 66 in WP #2 reflects the deletion of AR 56 in WP # 2.

**VII. THE ARBITRATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
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Chapter XI
The Award

Rule 67
Applicable Law

- (1) The Tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Tribunal shall apply:
 - (a) the law which it determines to be applicable; and
 - (b) the rules of international law ~~as~~ it considers applicable.
- (2) The Tribunal may decide *ex aequo et bono* if the parties have expressly authorized it to do so and if the law applicable to the arbitration so permits.

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 the Tribunal constitution, the last written submission or the last oral submission, ~~or the Tribunal constitution, whichever is later~~, if the Award is rendered pursuant to Rule 510(4);
 - (b) 180 days after the later of the last written or oral submission if the Award is rendered pursuant to Rule 542BIS(3)(c); or
 - (c) 240 days after the later of the last written or oral submission ~~in on~~ all other cases matters.
- (2) A statement of costs and submissions on costs filed pursuant to ~~in accordance~~ with Rule 6059 shall not be considered a written submission for the purposes of paragraph (1).
- (3) The parties waive any time limits for rendering the Award which may be provided for by the law of the seat of arbitration.

270. Changes to (AF)AR 68 reflect changes in AR 57.

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 ~~under~~ 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 seat of arbitration, the dates and place(s) of the first session, case management conferences and ~~the~~ 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 reasons on which the Award is based, unless the parties have agreed that no reasons are to be given; 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.

271. With regard to (AF)AR 69(1)(i), one State suggested that the Tribunal should always give reasons in the Award. The possibility to forego reasons is subject to the agreement of the parties and may provide for a more expeditious and cost-effective process if agreed on. Given the requirement of consent, WP # 3 does not propose any change in this respect.

Rule 70
Rendering of the Award

- (1) Once the Award has been signed by the members of the Tribunal who voted for it, the Secretary-General shall promptly:
 - (a) dispatch a certified copy of the Award to each party, together with any individual opinion and statement of dissent, indicating the date of dispatch on the Award; and
 - (b) deposit the Award in the archives of the Centre, together with any individual opinion and statement of dissent.
- (2) Upon request of the parties that the original text of the Award be filed or registered by the Tribunal pursuant to the law of the seat of arbitration, the Secretary-General shall do so on behalf of the Tribunal.
- (3) The Award shall be deemed to have been made at the seat of arbitration and deemed to have been rendered on the date of dispatch [of certified copies of the Award](#).
- (4) The Secretary-General shall provide additional certified copies of the Award to a party upon request.

Rule 71
Supplementary Decision, Rectification and Interpretation of an Award

- (1) A Tribunal may rectify any clerical, arithmetical or similar error in the Award on its own initiative within 30 days after rendering the Award.
- (2) A party may request a supplementary decision, rectification or interpretation of an Award by filing a request with the Secretary-General ~~within 45 days after the Award was rendered~~ and paying the lodging fee published in the schedule of fees [within 45 days after the Award was rendered](#).
- (3) The request referred to in paragraph (2) shall:
 - (a) identify the Award to which it relates;
 - (b) be in an official language of the Centre used in the proceeding;
 - (c) be signed by each requesting party or its representative and be dated; ~~and~~
 - (d) specify:

- (i) with respect to a request for a supplementary decision, any question which the Tribunal omitted to decide in the Award;
- (ii) with respect to a request for rectification, any clerical, arithmetical or similar error in the Award; ~~and~~
- (iii) with respect to a request for interpretation, the points in dispute concerning the meaning or scope of the Award; and

(e) attach proof of payment of the lodging fee.

~~(4) A complete request and evidence of payment of the lodging fee must be filed by the time limit referred to in paragraph (2).~~

~~(5)~~(4) Upon receipt of the request and the lodging fee, the Secretary-General shall promptly:

- (a) transmit the request to the other party;
- (b) register the request, or refuse registration if the request is not made within the time limit referred to in paragraph (2); and
- (c) notify the parties of the registration or refusal to register.

~~(6)~~(5) As soon as the request is registered, the Secretary-General shall transmit the request and the notice of registration to each member of the Tribunal.

~~(7)~~(6) The President of the Tribunal shall determine the procedure to consider the request, after consulting with the other members of the Tribunal and the parties.

~~(8)~~(7) Rules 69-70 shall apply to any decision of the Tribunal pursuant to this Rule.

~~(9)~~(8) The Tribunal shall issue a decision on the request for ~~the~~ supplementary decision, rectification or interpretation within 60 days after the later of the last written or oral submission on the request.

~~(10)~~(9) A supplementary decision, rectification or interpretation pursuant to ~~under~~ this Rule shall become part of the Award and shall be reflected on all certified copies of the Award.

272. Changes to (AF)AR 71 reflect changes in AR 60.

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Chapter XII
Publication, Access to Proceedings and Non-Disputing Party Submissions

Rule 72
Publication of ~~Awards, Orders, and Decisions~~ and Awards

- (1) The Centre shall publish ~~Awards, orders, and decisions~~ and Awards ~~within 60 days after their issuance,~~ with any redactions agreed to by the parties and jointly notified to the ~~Centre Secretary-General~~ within 60 days after of the order, decision or Award is rendered ~~the 60-day period.~~
- (2) If either party notifies the ~~Secretary-General Centre~~ within the 60-day period referred to in paragraph (1) that the parties disagree on any proposed redactions, the ~~Centre Secretary-General~~ shall refer the ~~Award, order, or decision~~ or Award to the Tribunal to determine any disputed redactions. ~~The Centre, and~~ shall publish the ~~Award, order, or decision~~ or Award in accordance with the determination of redactions approved by the Tribunal.
- (3) In determining disputes pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information.

273. Changes to (AF)AR 72 reflect changes in AR 62.

Rule 73
Publication of Documents Filed in the Proceeding ~~by a Party~~

- (1) Upon request of either a party, the Centre shall publish any document ~~which that party~~ filed in the proceeding, with any redactions agreed to by the parties and jointly notified to the Secretary-General.
- (2) ~~The parties~~ 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) In determining disputes pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information.

274. Changes to (AF)AR 73 reflect changes in AR 63.

Rule 74
Observation of Hearings

- (1) The Tribunal shall determine whether to allow persons in addition to the parties, their representatives, witnesses and experts during their testimony, and persons assisting the Tribunal, to observe hearings, ~~unless either party objects~~ after consulting with the parties.
- (2) The Tribunal shall establish procedures to prevent the disclosure of any confidential or protected information to persons observing the hearings.
- (3) The Centre shall publish ~~video~~ recordings or transcripts of those portions of hearings that were available for observation by the public in accordance with paragraphs (1) and (2), unless either party objects.

275. Changes to (AF)AR 74 reflect changes in AR 64.

Rule 75
Confidential or Protected Information

For the purposes of Rules 72-74, 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 or the REIO 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.

276. (AF)AR 75 is a new rule and reflects new AR 65.

Rule 765
Submission of Non-Disputing Parties

- (1) Any person or entity that is not a ~~disputing~~ party to the dispute (“non-disputing party”) may apply for permission to file a written submission in the proceeding. The application shall be made in a procedural language used in the proceeding.
- (2) In determining whether to permit a non-disputing party submission, the Tribunal shall consider all relevant circumstances, including:
 - (a) whether the submission would address a matter within the scope of the dispute;
 - (b) how the submission would assist the Tribunal to determine a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the ~~disputing~~ parties;
 - (c) whether the non-disputing party has a significant interest in the proceeding;
 - (d) the identity, activities, organization and ownership of the non-disputing party, including any direct or indirect affiliation between the non-disputing party, a party or a non-disputing Treaty Party; and
 - (e) whether any person or entity will provide the non-disputing party with financial or other assistance to file the submission.
- (3) The parties shall have the right to make observations on whether a non-disputing party should be permitted to file a written submission in the proceeding and on the conditions for filing such a submission, if any.
- (4) The Tribunal shall ensure that non-disputing party participation does not disrupt the proceeding or unduly burden or unfairly prejudice either party. To this end, the Tribunal may impose conditions on the non-disputing party, including with respect to the format, length or scope of the written submission and the time limit to file the submission.
- (5) The Tribunal shall issue a reasoned decision on whether to permit a non-disputing party ~~a~~ submission within 30 days after the later of the last written or oral submission on the application.
- (6) The Tribunal may provide the non-disputing party with access to relevant documents filed in the proceeding, unless either party objects.

- (7) If the Tribunal permits a non-disputing party to file a written submission, the parties shall have the right to make observations on the submission.

Rule 776
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 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.

277. Given the limited scope of NDTP in this rule, there is no need to address the concern that NDTP participation may amount to diplomatic protection.

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Chapter XIII
Expedited Arbitration

Rule 787
Consent of Parties to Expedited Arbitration

- (1) The parties to an arbitration conducted pursuant to ~~under~~ these Rules may consent at any time to expedite the arbitration in accordance with this Chapter (“expedited arbitration”) by jointly notifying the Secretary-General in writing of their consent.
- (2) Chapters I-XII of the (Additional Facility) Arbitration Rules apply to an expedited arbitration except that:
 - (a) Rules 243, 265, ~~38(3)~~, 498, 5049, 510, 521, ~~542BIS~~, and 553, do not apply in an expedited arbitration; and
 - (b) Rules 2716, 310, 387, 476, 532, 586, 68, and 71, as modified by Rules 787-876, apply in an expedited arbitration.
- (3) If the parties consent to expedited arbitration after the constitution of the Tribunal pursuant to Chapter IVH, Rules 798-810 shall not apply, and the expedited arbitration shall proceed subject to all members of the Tribunal confirming their availability pursuant to Rule 821(2). If any arbitrator fails to confirm availability before the expiry of the applicable time limit, the arbitration shall proceed in accordance with Chapters I-XII.

278. Changes to (AF)AR 78 reflect changes in AR 74.

Rule 798
**Number of Arbitrators and Method of Constituting the Tribunal
for Expedited Arbitration**

- (1) The Tribunal in an expedited arbitration shall consist of a Sole Arbitrator appointed pursuant to Rule 8079 or a three-member Tribunal appointed pursuant to Rule 810.
- (2) The parties shall jointly notify the Secretary-General in writing of their election of a Sole Arbitrator or a three-member Tribunal within 30 days after the date of the notice of consent referred to in Rule 787(1).
- (3) If the parties do not notify the Secretary-General of their election within the time limit referred to in paragraph (2), the Tribunal shall consist of a Sole Arbitrator to be appointed pursuant to ~~in accordance with~~ Rule 8079.

- (4) An appointment pursuant to ~~under~~ Rules ~~8079-810~~ shall be deemed an appointment in accordance with a method agreed by the parties.

Rule ~~8079~~

Appointment of Sole Arbitrator for Expedited Arbitration

~~(1) A Sole Arbitrator in an expedited arbitration shall be appointed in accordance with the following procedure:~~

~~(2)(1) The the~~ parties shall jointly advise the Secretary General in writing of their agreement on appoint the Sole Arbitrator and shall provide the appointee's name, nationality(ies) and contact information within 20 days after the notice referred to in Rule ~~798(2)~~; ~~and~~

~~(a) the Secretary General shall immediately send the request for acceptance of the appointment to the appointee and shall request a reply within 10 days of receipt in accordance with Rule 81.~~

~~(3)(2)~~ The Secretary-General shall appoint the Sole Arbitrator if:

(a) the parties do not appoint ~~agree on~~ the Sole Arbitrator within the time limit referred to in paragraph (1)~~(a)~~;

(b) the parties notify the Secretary-General that they are unable to agree on the Sole Arbitrator; or

(c) the appointee ~~does not accept~~ declines the appointment or does not comply with the appointment within the time limit referred to in Rule 821(1); ~~or~~

~~(d) the appointee declines the appointment.~~

~~(4)(3)~~ The following procedure shall apply to the appointment by the Secretary-General of the Sole Arbitrator pursuant to paragraph (2):

(a) the Secretary-General shall transmit a list of five candidates for appointment as Sole Arbitrator to the parties within 10 days after the relevant event referred to in paragraph (2);

(b) each party may strike one name from the list; and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;

(c) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate

with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them; [and](#)

~~(d) the Secretary-General shall immediately send the request for acceptance of the appointment to the appointee and shall request a reply within 10 days of receipt in accordance with Rule 81(1); and~~

~~(e)~~[\(d\)](#) if the selected candidate declines the appointment or does not ~~accept the appointment within the time limit referred to in~~ [comply with](#) Rule ~~82~~[81](#)(1), the Secretary-General shall select the next highest-ranked candidate.

279. Changes to (AF)AR 80 reflect changes in AR 76.

Rule ~~81~~[810](#)

Appointment of Three-Member Tribunal for Expedited Arbitration

- (1) A three-member Tribunal shall be appointed in accordance with the following procedure:
 - (a) each party shall appoint an arbitrator (“co-arbitrator”) within 20 days after the notice referred to in Rule ~~79~~[80](#)(2) ~~and shall notify the Secretary-General of the appointee’s name, nationality(ies) and contact information within such time; and~~
 - ~~(b) the Secretary-General shall immediately send the request for acceptance of the appointment to the appointee and shall request a reply within 10 days of receipt in accordance with Rule 81(1);~~
 - ~~(c)~~[\(b\)](#) the parties shall jointly appoint the President of the Tribunal within 20 days after the receipt of [the acceptances from](#) ~~of~~ both [co-arbitrators](#). ~~appointments made pursuant to paragraph (1)(a) and shall notify the Secretary-General of the appointee’s name, nationality(ies) and contact information within such time; and~~
 - ~~(d) the Secretary-General shall immediately send the request for acceptance of the appointment to the appointee and shall request a reply within 10 days of receipt in accordance with Rule 81(1).~~
- (2) The Secretary-General shall appoint the arbitrators not yet appointed if:
 - (a) an appointment is not made within the [applicable](#) time limits referred to in paragraph (1)~~(a) or (c)~~;
 - (b) the parties notify the Secretary-General that they are unable to agree on the President of the Tribunal; [or](#)

(c) an appointee declines the appointment or does not ~~accept the appointment within the time limit referred to in~~ comply with Rule 82~~1~~(1); ~~or~~

~~(d) an appointee declines the appointment.~~

(3) The following procedure shall apply to the appointment by the Secretary-General of any arbitrators ~~not yet appointed~~ pursuant to paragraphs ~~(1) and~~ (2):

(a) the Secretary-General shall first appoint the co-arbitrator(s) not yet appointed; ~~after consulting as far as possible with the parties.~~ The Secretary-General shall consult with the parties as far as possible and use best efforts to appoint ~~make~~ the co-arbitrator(s) ~~appointment(s)~~ within 15 days after the relevant event in paragraph (2);

~~(b) the Secretary-General shall immediately send the request for acceptance of the appointment to the appointee and shall request a reply within 10 days of receipt in accordance with Rule 81(1);~~

~~(e)~~ (b) ~~as soon as~~ within 10 days after the later of the date on which both co-arbitrators have accepted their appointments; ~~or within 10 days after~~ the relevant event referred to in paragraph (2), the Secretary-General shall transmit a list of five candidates for appointment as President of the Tribunal to the parties;

~~(d)~~ (c) each party may strike one name from the list; and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;

~~(e)~~ (d) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them; and

~~(f) the Secretary-General shall immediately send the request for acceptance of the appointment to the appointee and shall request a reply within 10 days of receipt in accordance with Rule 81(1); and~~

~~(g)~~ (e) if the selected candidate declines the appointment or does not ~~accept the appointment within the time limit referred to in~~ comply with Rule 82~~1~~(1), the Secretary-General shall select the next highest-ranked candidate.

280. Changes to (AF)AR 81 reflect changes in AR 77.

Rule 821
Acceptance of Appointment in Expedited Arbitration

- (1) An arbitrator appointed ~~in an expedited arbitration~~ pursuant to Rule 843 or 854 shall accept the appointment and provide a declaration pursuant to Rule 276(3) within 10 days after receipt of the request for acceptance.
- (2) An arbitrator appointed to a Tribunal constituted pursuant to Chapter HIV shall ~~provide a supplementary declaration confirming~~ their availability to conduct ~~the an expedited arbitration in accordance with Chapter XII~~ within 10 days after receipt of the ~~parties'~~ notice of consent pursuant to Rule 787(3).

281. Changes to (AF)AR 82 reflect changes in AR 78.

Rule 832
First Session in Expedited Arbitration

- (1) The Tribunal shall hold a first session pursuant to Rule 387 within 30 days after the constitution of the Tribunal.
- (2) The first session shall be held by telephone or electronic means of communication, unless both parties and the Tribunal agree it shall be held in person.

Rule 843
~~The~~ Procedural Schedule in Expedited Arbitration

- (1) The following schedule for written submissions and the hearing shall apply in ~~an the~~ expedited arbitration:
 - (a) the ~~claimant requesting party~~ shall file a memorial within 60 days after the first session;
 - (b) the ~~respondent other party~~ shall file a counter-memorial within 60 days after the date of filing the memorial;
 - (c) the memorial and counter-memorial referred to in paragraph (1)(a) and (b) shall be no longer than 200 pages in length;
 - (d) the ~~claimant requesting party~~ shall file a reply within 40 days after the date of filing the counter-memorial;

- (e) the respondent ~~other party~~ shall file a rejoinder within 40 days after the date of filing the reply;
 - (f) the reply and rejoinder referred to in paragraph (1)(d) and (e) shall be no longer than 100 pages in length;
 - (g) the hearing shall be held within 60 days after the last written submission is filed;
 - (h) the parties shall file statements of their costs and written submissions on costs within 10 days after the last day of the hearing referred to in paragraph (1)(g); and
 - (i) the Tribunal shall render the Award as soon as possible, and in any event no later than 120 days after the hearing referred to in paragraph (1)(g).
- (2) Any preliminary objection, counterclaim, incidental or additional claim shall be joined to the main schedule referred to in paragraph (1). The Tribunal shall adjust the schedule if a party raises any such matter, taking into account the expedited nature of the process.
- (3) The Tribunal may extend the time limits referred to in paragraph (1)(a) and (b) by up to 30 days if any party requests that the Tribunal determine a dispute arising from requests to produce documents ~~or other evidence~~ pursuant to Rule 476. The Tribunal shall decide such applications based on written submissions and without an in-person hearing.
- (4) Any schedule for submissions other than those referred to in paragraphs (1)-(3) shall run in parallel with the main schedule referred to in paragraph (1), unless the Tribunal determines that there are ~~exceptional~~ special circumstances that justify the suspension of the main schedule. In fixing time limits for such submissions, the Tribunal shall take into account the expedited nature of the process.

Rule 854
Default induring Expedited Arbitration

A Tribunal may grant a party in default a grace period not to exceed 30 days pursuant to Rule 586.

Rule 8~~6~~5

~~The~~ Procedural Schedule for Supplementary Decision, Rectification and Interpretation in Expedited Arbitration

- (1) A Tribunal may rectify any clerical, arithmetical or similar error in the Award on its own initiative within 15 days after rendering the Award.
- (2) A request for a supplementary decision, rectification or interpretation of an Award made pursuant to Rule 71 shall be filed within 15 days after the Award was rendered.
- (3) The Tribunal shall issue a supplementary decision, rectification or interpretation of an Award pursuant to Rule 71 within 30 days after the later of the last written or oral submission on the request.

Rule 87~~6~~

Opting Out of Expedited Arbitration

- (1) The parties may ~~agree to~~ opt out of an expedited arbitration at any time by jointly notifying the Tribunal and Secretary-General in writing of their agreement. ~~Upon such notification, only Chapters I-XI shall apply to the arbitration.~~
- (2) Upon request of a party, the Tribunal may decide that an arbitration should no longer be expedited. In deciding the request, the Tribunal shall consider the complexity of the issues, the stage of the proceeding and all other relevant circumstances.
- ~~(2)~~(3) The Tribunal , or the Secretary-General if a Tribunal has not been constituted, shall determine the further procedure pursuant to Chapters I-XII and fix any time limit necessary for the conduct of the proceeding.

282. Changes to (AF)AR 87 reflect changes in AR 85.

**VIII. CONCILIATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
((ADDITIONAL FACILITY) CONCILIATION RULES) (ANNEX C)**

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**(Additional Facility)
Conciliation Rules**

VIII. CONCILIATION RULES FOR ADDITIONAL FACILITY RULES OF PROCEDURE FOR CONCILIATION PROCEEDINGS
((ADDITIONAL FACILITY) CONCILIATION RULES) (ANNEX C)

283. The revisions in this document reflect changes to the corresponding provisions in the CR.
284. The general procedural provisions, which were included in Chapter I in WP # 2, have been re-located to Chapter III.

Introductory Note

The Conciliation Rules for Additional Facility ~~Rules of Procedure for Conciliation Proceedings~~ (~~the~~ (Additional Facility) Conciliation Rules) were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7(~~1~~).

The (Additional Facility) Conciliation Rules are supplemented by the (Additional Facility) Administrative and Financial Regulations in Annex A.

The (Additional Facility) Conciliation Rules apply from the submission of a Request for conciliation until termination of the conciliation.

Chapter I
~~General Provisions~~ Scope

Rule 1
Application of Rules

(1) These Rules shall apply to any conciliation proceeding conducted ~~under~~ pursuant to the Additional Facility Rules.

~~(1)~~(2) The parties may agree to modify the application of any of these Rules other than Rules 1-9, except to the extent that the parties agree otherwise and subject to paragraph (2).

~~(2)~~(3) If any of these Rules, or any ~~aspect of the parties'~~ agreement pursuant to paragraph (2) ~~to modify the application of these Rules~~, conflicts with a provision of law from which the parties cannot derogate, that provision shall prevail.

~~(3)~~ ~~The Commission shall apply any agreement between the parties on procedural matters to the extent it conforms with the (Additional Facility) Administrative and Financial Regulations.~~

- (4) The applicable (Additional Facility) Conciliation Rules are those in force on the date of filing ~~of~~ the Request for conciliation, [unless the parties agree otherwise](#).
- (5) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language.
- (6) These Rules may be cited as the “(Additional Facility) Conciliation Rules” of the Centre.

285. (AF)CR 1(2) clarifies that the parties can modify the application of the Rules except for those in Chapters I and II. In light of this change, (AF)CR 1(4) allows the parties to agree on the applicable (AF)CR, so that they may agree to apply a prior version of the (AF)CR should they wish to do so. This may be of particular relevance to dispute settlement provisions in contracts.
286. (AF)CR 1(3) has been moved to (AF)CR 32 as the provision deals with the conduct of the proceeding.

VIII. (ADDITIONAL FACILITY) CONCILIATION RULES

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Chapter III
Institution of the Proceedings

Rule ~~29~~
The Request

- (1) Any party wishing to institute conciliation proceedings pursuant to ~~under~~ the Additional Facility Rules shall file a Request for conciliation together with the required supporting documents (“Request”) with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the dispute.

Rule ~~310~~
Contents of the Request

- (1) The Request shall:
 - (a) be in English, French or Spanish;
 - (b) identify each party to the dispute and provide their contact information, including electronic mail address, street address and telephone number;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) attach proof of any representative’s authority to act; and
 - (e) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request and attach the authorizations.
- (2) With regard to Article 2(1)(a) of the Additional Facility Rules, the Request shall include:
 - (a) a description 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 out of the investment~~:-~~;
 - (b) with respect to each party’s consent to submit the dispute to conciliation ~~under~~ pursuant to the Additional Facility Rules:
 - (i) the instrument(s) in which each party’s consent is recorded;

- (ii) the date of entry into force of the instrument(s) on which consent is based, together with supporting documents demonstrating that date; ~~and~~
 - (iii) the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or, if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre; and
 - (iv) an indication that the requesting party has complied with any conditions in the instrument of consent for submission of the dispute;
- (c) if a party is a natural person:
- (i) information concerning that person's nationality on the date of consent, together with supporting documents demonstrating such nationality; and
 - (ii) a statement that the person is a national of a State other than ~~did not have the nationality of~~ the State party to the dispute or of any constituent State of the ~~an~~-REIO party to the dispute on the date of consent;
- (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; and
 - (ii) if that party had the nationality of the State party to the dispute or of any constituent State of the REIO party to the dispute on the date of ~~the~~ consent, information identifying the agreement of the parties to treat the juridical person as a national of another State pursuant to Article 1(5)(b) of the Additional Facility Rules, together with supporting documents demonstrating such agreement;
- (e) if a party is a constituent subdivision of a State or an agency of a State or of an REIO, supporting documents demonstrating the ~~State's or REIO's~~ approval of consent of the State or the REIO, unless the State or the REIO has notified the Centre that no such approval is required.

287. The changes to proposed (AF)CR 3(1)(e), (2)(a) and (2)(b)(iv) reflect the corresponding changes in proposed IR 2.

288. (AF)CR 3(2)(c) is updated to reflect the change in AF Rule 1(5), permitting dual nationals to be party to a proceeding under the (AF)CR.

Rule ~~411~~
Recommended Additional Information

It is recommended that the Request also contain any procedural proposals or agreements reached by the parties, including with respect to:

- ~~(a) an estimate of the amount of damages sought, if any;~~
- ~~(b)(a) a proposal concerning~~ the number and method of appointment of conciliators; and
- ~~(c)(b) the proposed~~ procedural language(s); ~~and~~
- ~~(d) any other procedural proposals or agreements reached by the parties.~~

289. Changes to proposed (AF)CR 4 reflect changes reflected in proposed IR 3.

Rule ~~512~~
Filing of the Request and Supporting Documents

- (1) The Request shall be filed electronically. The Secretary-General may require the Request to be filed in an alternative format if necessary.
- (2) An extract of a ~~supporting~~ document may be filed as a supporting document if the ~~omission of the text does not render the~~ extract is not misleading. The Secretary-General may require a fuller extract or a complete version of the document.
- (3) The Secretary-General may require a certified copy of a supporting document.
- (4) Any ~~supporting~~ document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or a complete translation of the document.

290. Changes to proposed (AF)CR 5 reflect changes in proposed IR 4.

Rule ~~6~~13

Receipt of the Request and Routing of Written Communications

The Secretary-General shall:

- (a) promptly acknowledge receipt of the Request to the requesting party;
- (b) transmit the Request to the other party upon receipt of the lodging fee; and
- (c) act as the official channel of written communications between the parties.

Rule ~~7~~14

Review and Registration of the Request

- (1) Upon receipt of the Request and lodging fee, the Secretary-General shall register the Request if it appears on the basis of the information provided that the Request is not manifestly outside the scope of Article 2(1) of the Additional Facility Rules.
- (2) The Secretary-General shall promptly notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.

Rule ~~8~~15

Notice of Registration

The notice of registration of the Request shall:

- (a) record that the Request is registered and indicate the date of registration;
- (b) confirm that all correspondence to the parties in connection with the proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Centre;
- (c) invite the parties to inform the Secretary-General of their agreement regarding the number and method of appointment of conciliators, unless such information has already been provided, and to constitute a Commission without delay;
- ~~(d) invite the parties to constitute a Commission without delay;~~
- ~~(e)~~(d) remind the parties that registration of the Request is without prejudice to the powers and functions of the Commission in regard to jurisdiction and competence of the Commission, and the issues in dispute; and

~~(f)~~(e) remind the parties to make the disclosure required by Rule ~~21~~¹⁹.

291. Changes to proposed (AF)CR 8 reflect changes in proposed IR 7.

Rule ~~9~~¹⁶
Withdrawal of the Request

At any time before registration, a requesting party may notify the Secretary-General in writing of the withdrawal of the Request or, if there is more than one requesting party, that it is withdrawing from the Request. The Secretary-General shall promptly notify the parties of the withdrawal, unless the Request has not yet been transmitted pursuant to Rule ~~6~~¹³(b).

VIII. (ADDITIONAL FACILITY) CONCILIATION RULES

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Chapter III
General Procedural Provisions

Rule 102
Meaning of Party and Party Representative

- (1) For the purposes of these Rules, “party” ~~may~~ includes, where the context so admits,
~~(a) all parties acting as claimant or as respondent; and~~

~~(b) a representative of a party.~~
- (2) Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be notified by that party to the Secretary-General (“representative(s)”).

292. Changes to proposed (AF)CR 10 reflect changes in proposed CR 2.

Rule 113
Method of Filing ~~and Supporting Documents~~

- (1) A document to be filed in the proceeding shall be filed with the Secretary-General, who shall acknowledge its receipt~~shall only be filed electronically, unless the Commission orders otherwise in special circumstances.~~
- (2) Documents shall only be filed electronically, unless the Commission orders otherwise in special circumstances~~A document shall be filed with the Secretary-General, who shall acknowledge receipt and distribute it in accordance with Rule 4.~~
- (3) ~~Supporting documents shall be filed together with the written statement, request, observation or communication to which they relate.~~
- (4) ~~An extract of a supporting document may be filed if the omission of the text does not render the extract misleading. The Commission or a party may require a fuller extract or a complete version of the document.~~

293. Proposed (AF)CR 11 and 12 have been divided into two Rules, reflecting the corresponding changes to CR 3 and 4.

Rule 12~~3~~
Supporting Documents

- (1) Supporting documents shall be filed together with the written statement, request, observations or communication to which they relate.
- (2) An extract of a **supporting** document may be filed as a supporting document if ~~the omission of the text does not render~~ the extract is not misleading. The Commission or a party may require a fuller extract or a complete version of the document.

Rule 134
Routing of Document

Following the registration of the Request pursuant to Rule 7, the Secretary-General shall transmit a document filed in the proceeding to:

- (a) the other party, unless the parties communicate directly with each other; and
- (b) the Commission, unless the parties communicate directly with the Commission on request of the Commission or by agreement of the parties.

~~(1) Following the registration of the Request pursuant to Rule 7, the Secretary-General shall transmit a document filed in the proceeding to:~~

- ~~(a) the other party, unless the parties communicate directly with each other; and~~
- ~~(b) the Commission, unless the parties communicate directly with the Commission on request of the Commission or by agreement of the parties.~~

~~(1) Following the registration of the Request pursuant to Rule 14(2), the Secretary-General shall be the official channel for routing of documents among the parties and the Commission, except that:~~

- ~~(a) the other party, unless the parties may communicate directly with each other, provided that they transmit all documents to be filed in the conciliation to the Secretary-General; and~~
- ~~(b) the members of the Commission shall communicate directly with each other; and~~
- ~~(c) a party may communicate directly with the Commission on request of the Commission, provided that the Secretary-General is copied.~~

~~(2) The Secretary-General shall:~~

- ~~(a) acknowledge receipt of all documents transmitted by a party; and~~
- ~~(b) distribute the documents to the other party and the Commission, unless they were transmitted pursuant to paragraph (1)(a) or (c).~~

294. Proposed (AF)CR 13 is modified to reflect changes made to proposed CR 5.

Rule 145
Procedural Languages, Translation and Interpretation

- (1) The parties may agree to use one or two procedural languages in the ~~conciliation~~ proceeding. The parties shall consult with the Commission and the Secretary-General regarding the use of a language that is not an official language of the Centre.
- (2) If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (3) Requests, written statements, observations and communications shall be filed in a procedural language. In a proceeding with two procedural languages, the Commission may order a party to file such documents in both procedural languages.
- (4) Supporting documents in a language other than a procedural language shall be accompanied by a translation into a procedural language. In a proceeding with two procedural languages, the Commission may order a party to translate any supporting document into both procedural languages. Translation of only the relevant part of a supporting document is sufficient, provided that the Commission may order a party to provide a fuller or a complete translation. If the translation is disputed, the Commission may order a party to provide a certified translation.
- (5) Any document from the Commission or the Secretary-General shall be in a procedural language. In a proceeding with two procedural languages, the Commission ~~and, or where applicable~~ the Secretary-General if applicable, shall issue orders, decisions, recommendations and the Report in both procedural languages, unless the parties agree otherwise.
- (6) Any oral communication shall be in a procedural language. In a proceeding with two procedural languages, the Commission may order interpretation into the other procedural language.

295. Proposed (AF)CR 14 is modified to reflect changes made to proposed CR 6.

Rule 15
Calculation of Time Limits

Time limits referred to in these Rules shall be calculated from the day after the date on which the procedural step starting the period is taken, based on the time at the seat of the Centre. A time limit shall be satisfied if a procedural step is taken on the relevant date, or, if the date falls on a Saturday or Sunday, on the subsequent business day.

296. Proposed (AF)CR 15 is new and replicates proposed CR 7.

Rule 166
Payment of Advances and Costs of the Proceeding

Unless the parties agree otherwise, each party shall:

- ~~(a) pay one half of the advances payable in accordance with (Additional Facility) Administrative and Financial Regulation 7(2);~~
- ~~(b)~~(a) pay one half of the fees and expenses of ~~the members of~~ the Commission and the administrative charges and direct costs of the Centre; and
- ~~(c)~~(b) bear any other ~~its own~~ costs it ~~incurs~~~~red~~ in connection with the proceeding.

297. Proposed (AF)CR 16 is modified to reflect changes made to proposed CR 8.

Rule 177
Confidentiality of the Conciliation

- (1) All information relating to the conciliation, ~~or~~ and all documents generated in or obtained during the conciliation, shall be ~~kept~~ confidential, unless:
 - (a) the parties agree otherwise;
 - (b) the information is to be published by the Centre pursuant to (Additional Facility) Administrative and Financial Regulation 3;
 - (c) the information or document is independently available; or
 - (d) disclosure is required by law.

~~(2) Any settlement agreement concluded during the conciliation shall be kept confidential, except to the extent that disclosure is required by law or for purposes of implementation and enforcement of the settlement agreement.~~

~~(3) The parties to a conciliation may consent to:~~

~~(a) disclosure to a non-party of any information relating to or document generated in or obtained during the conciliation, other than the information to be published by the Centre pursuant to (Additional Facility) Administrative and Financial Regulation 3; and~~

~~(a) publication by the Centre of any document generated in the conciliation.~~

298. Proposed (AF)CR 17 is modified to reflect changes made to proposed CR 9.

Rule 188

Use of Information in Other Proceedings

Unless the parties to the dispute agree otherwise, ~~neither a~~ party shall not rely on any of the following in other proceedings:

(a) ~~any~~ views expressed, statements, admissions, ~~or~~ offers of settlement ~~made~~, or positions taken by the other party in the conciliation; or

(b) the Report, order, decision~~;~~ or any recommendation made by the Commission in the conciliation.

299. Proposed (AF)CR 17 is modified to reflect changes made to proposed CR 10.

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 Rule 24 - Acceptance of Appointment..... 511

 Rule 25 - Replacement of Conciliators Prior to Constitution of the Commission..... 512

 Rule 26 - Constitution of the Commission 513

Chapter ~~III~~IV
Constitution of the Commission

Rule ~~17~~19
General Provisions, Number of Conciliators and Method of Constitution

- (1) The Commission shall be constituted without delay after registration of the Request.
- (2) The number of conciliators and the method of their appointment must be determined before the Secretary-General can act on any appointment proposed by a party.
- (3) The parties shall endeavor to agree on a Sole Conciliator, or any uneven number of conciliators, and the method of their appointment. If the parties do not advise the Secretary-General of an agreement within 45 days after the date of registration, either party may inform the Secretary-General that the Commission shall consist of a Sole Conciliator, appointed by agreement of the parties.
- (4) The composition of a Commission shall remain unchanged after it has been constituted, except as provided in Chapter ~~IV~~.
- (5) References in these Rules to a Commission or a President of a Commission shall include a Sole Conciliator.

300. Proposed (AF)CR 19 is modified to reflect changes made to proposed CR 11.

Rule ~~18~~20
Qualifications of Conciliators

Conciliators shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who are impartial and independent.

Rule ~~19~~21
Notice of Third-~~P~~Party Funding

- (1) ~~For purposes of completing the conciliator declaration required by Rule 224(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 conciliation 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 ~~send~~ file the notice referred to in paragraph (1) ~~to~~ with the Secretary-General upon registration of the Request, 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 a notice of third-party funding and any changes to such notice to the parties, and to any conciliator proposed for appointment or appointed in a proceeding for purposes of completing the declaration required by Rule 24(3)(b).

301. Proposed (AF)CR 21 is modified to reflect changes made to proposed CR 12.

Rule 22~~0~~

Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of a Sole Conciliator~~;~~ or any uneven number of conciliators.

Rule 23~~1~~

Appointment of Conciliators by the Secretary-General

- (1) If a Commission has not been constituted within 90 days after the date of registration, or such other period as the parties may agree, either party may request that the Secretary-General appoint the conciliator(s) who have not yet been appointed.
- (2) The Secretary-General shall appoint the President of the Commission after appointing any members who have not yet been appointed.
- (3) The Secretary-General shall consult with the parties as far as possible before appointing a conciliator and shall use best efforts to appoint any conciliator(s) within 30 days after receipt of the request to appoint.

Rule 24~~2~~

Acceptance of Appointment

- (1) A party appointing a conciliator 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 conciliator'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 ~~the~~ each conciliator~~(s)~~ and provide the signed declaration.
- (5) The Secretary-General shall notify the parties if a conciliator 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 conciliator in accordance with the method followed for the previous appointment.
- (6) Each conciliator shall have a continuing obligation to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).
- (7) Unless the parties and the conciliator agree otherwise, a conciliator may not act as arbitrator, counsel, expert, judge, mediator, witness or in any other capacity in any other proceeding relating to the dispute that is the subject of the conciliation.

302. Proposed (AF)CR 24 is modified to reflect changes made to proposed CR 16.

Rule 2~~5~~3
Replacement of Conciliators Prior to Constitution of the Commission

- (1) At any time before the Commission is constituted:
 - (a) a conciliator may withdraw an acceptance;
 - (b) a party may replace a conciliator whom it appointed; or
 - (c) the parties may agree to replace any conciliator.

- (2) A replacement conciliator shall be appointed as soon as possible, in accordance with the method by which the withdrawing or replaced conciliator was appointed.

Rule 254
Constitution of the Commission

- (1) The Commission shall be deemed to be constituted on the date the Secretary-General notifies the parties that each conciliator has accepted the appointment.
- (2) As soon as the Commission is constituted, the Secretary-General shall transmit the Request, the supporting documents, the notice of registration and communications with the parties to ~~the~~each conciliator~~(s)~~.

303. Proposed (AF)CR 25 is modified to reflect changes made to proposed CR 18.

VIII. (ADDITIONAL FACILITY) CONCILIATION RULES

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Chapter IV
Disqualification of Conciliators and Vacancies

Rule 275
Proposal for Disqualification of Conciliators

- (1) A party may file a proposal to disqualify one or more conciliators (“proposal”) on the ground that circumstances exist that give rise to justifiable doubts as to the ~~conciliator’s~~ qualities [of the conciliator](#) required by Rule [2018](#).
- (2) The following procedure shall apply:
 - (a) the proposal shall be filed after the constitution of the Commission and within 21 days after the later of:
 - (i) the constitution of the Commission; or
 - (ii) the date on which the party proposing the disqualification first knew or first should have known of the facts upon which the proposal is based;
 - (b) the proposal shall include the grounds on which the proposal is based, a statement of the relevant facts, law and arguments, and any supporting documents;
 - (c) the other party shall file its response and supporting documents within 21 days after receipt of the proposal;
 - (d) the conciliator to whom the proposal relates may file a statement limited to factual information relevant to the proposal. The statement shall be filed within five days after receipt of the response referred to in paragraph (2)(c); and
 - (e) each party may file a final written submission on the proposal within seven days after expiry of the time limit referred to in paragraph (2)(d).
- (3) If the other party agrees to the proposal prior to the dispatch of the decision referred to in Rule [286](#), the conciliator shall resign in accordance with Rule [3028](#).
- (4) The proceeding shall be suspended until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding in whole or in part.

Rule 286
Decision on the Proposal for Disqualification

- (1) The Secretary-General shall make the decision on the proposal.
- (2) The Secretary-General shall use best efforts to decide any proposal within 30 days after the expiry of the time limit referred to in Rule 275(2)(e).

Rule 297
Incapacity or Failure to Perform Duties

If a conciliator becomes incapacitated or fails to perform the duties required of a conciliator, the procedure in Rules 257 and 268 shall apply.

Rule 3028
Resignation

- (1) A conciliator may resign by notifying the Secretary-General and the other members of the Commission.
- (2) A conciliator shall resign upon the joint request of the parties.

Rule 3129
Vacancy on the Commission

- (1) The Secretary-General shall notify the parties of any vacancy on the Commission.
- (2) The proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.
- (3) A vacancy on the Commission shall be filled by the method used to make the original appointment, except that the Secretary-General shall fill any vacancy that has not been filled within 45 days after the notice of vacancy.
- (4) Once a vacancy has been filled and the Commission has been reconstituted, the conciliation shall continue from the point it had reached at the time the vacancy was notified.

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Chapter VI
Conduct of the Conciliation

Rule 320
Functions of the Commission

- (1) The Commission shall clarify the issues in dispute and assist the parties in reaching a mutually acceptable resolution of all or part of the dispute.
- (2) In order to bring about agreement between the parties, the Commission may, at any stage of the proceeding, after consulting with the parties, recommend:
 - (a) specific terms of settlement to the parties; or
 - (b) that the parties refrain from taking specific action that might aggravate the dispute while the conciliation is ongoing.
- (3) Recommendations may be made orally or in writing. Either party may request that the Commission provide reasons for any recommendation. The Commission may invite each party to provide observations concerning any recommendation made.
- (4) At any stage of the proceeding, the Commission may:
 - (a) request explanations, documents or other information from either party or other persons;
 - (b) communicate with the parties jointly or separately; or
 - (c) visit any place connected with the dispute or conduct inquiries with the ~~consent~~ agreement and participation of the parties.

**(Additional Facility)
Conciliation Rules**

304. Proposed (AF)CR 32 is modified to reflect changes made to proposed CR 24.

Rule 331
General Duties of the Commission

- ~~(1) The Commission shall treat the parties equally and provide each party with a reasonable opportunity to appear and participate in the proceeding.~~
- (1) The Commission shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.

(2) The Commission shall treat the parties equally and provide each party with a reasonable opportunity to appear and participate in the proceeding.

305. Proposed (AF)CR 33 is modified to reflect changes made to proposed CR 25.

Rule 342
Orders, ~~and~~ Decisions and Agreements

- (1) The Commission shall make the orders and decisions required for the conduct of the conciliation.
- (2) The Commission shall make decisions by a majority of the votes of all its members. Abstentions shall count as a negative vote.
- (3) Orders and decisions may be made by any appropriate means of communication and may be signed by the President on behalf of the Commission.

(4) The Commission shall apply any agreement between of the parties on procedural matters, subject to Rule 1(3), and to the extent that the agreement does not conflict with the (Additional Facility) Administrative and Financial Regulations.

306. Proposed (AF)CR 34 is modified to incorporate the duty of the Commission to apply procedural agreements of the parties, previously set out in (AF)CR1 in WP # 2.

Rule 353
Quorum

The participation of a majority of the members of the Commission by any appropriate means of communication shall be required at the first session, meetings and deliberations, ~~by any appropriate means of communication~~, unless the parties agree otherwise.

307. Proposed (AF)CR 35 is modified to reflect changes made to proposed CR 27.

Rule 364
Deliberations

- (1) The deliberations of the Commission shall take place in private and remain confidential.

- (2) The Commission may deliberate at any place and by any means it considers appropriate.
- (3) Only members of the Commission shall take part in its deliberations. No other person shall be admitted unless the Commission decides otherwise.

Rule 37~~5~~
Cooperation of the Parties

- (1) The parties shall cooperate with the Commission and with one another, and shall conduct the conciliation in good faith, and in an expeditious and cost-effective manner.
- (2) The parties shall provide all relevant explanations, documents or other information. ~~The y parties shall also~~ facilitate visits to any place connected with the dispute and the participation of other persons as requested by the Commission.
- (3) The parties shall comply with any time limit agreed upon or fixed by the Commission.
- (4) The parties shall give their most serious consideration to the Commission's recommendations.

308. Proposed (AF)CR 37 is modified to reflect changes made to proposed CR 29.

Rule 38~~6~~
Written Statements

- (1) Each party shall simultaneously file a brief, initial written statement describing the issues in dispute and its views on these issues 30 days after the constitution of the Commission, or such longer time as the Commission may fix [in consultation with the parties](#), but in any event before the first session.
- (2) Either party may file further written statements at any stage of the conciliation within [the](#) time limits fixed by the Commission.

Rule 397
First Session

- (1) ~~Subject to paragraph (2), the~~ The Commission shall hold a first session with the parties to address the procedure, including the matters listed in paragraph (4).
- (2) The first session may be held in person or remotely, by any means that the Commission deems appropriate. The agenda, method and date of the first session shall be determined by the Commission after consulting with the parties.
- ~~(2)~~(3) The first session shall be held within 60 days ~~of~~ after the Commission's constitution or such other period as the parties may agree.
- ~~(3) The first session may be held in person or remotely, by any means that the Commission deems appropriate. The agenda, method and date of the first session shall be determined by the Commission after consulting with the parties.~~
- (4) Before the first session, the Commission shall invite the parties' views ~~of the parties~~ on procedural matters, including:
- (a) the applicable conciliation rules;
 - (b) the division of advances payable pursuant to (Additional Facility) Administrative and Financial Regulation 7~~(2)~~;
 - (c) the procedural language(s), translation and interpretation;
 - (d) the method of filing and routing of documents;
 - (e) a schedule for further written statements and meetings;
 - (f) the place and format of meetings between the Commission and the parties;
 - (g) the manner of recording or keeping minutes of meetings, if any;
 - (h) the treatment ~~protection~~ of confidential or protected information;
 - (i) the publication of documents;
 - (j) any agreement between the parties:
 - (i) concerning the treatment of information disclosed by one party to the Commission by way of separate communication pursuant to Rule 320~~(4)~~(b);

(ii) not to initiate or pursue during the conciliation any other proceeding in respect of the dispute;

(iii) concerning the application of prescription or limitation periods; ~~and~~

(iv) concerning the disclosure of any settlement agreement resulting from the conciliation; and

~~(iv)~~(v) pursuant to Rule ~~818~~; and

(k) any other procedural matter raised by either party or the Commission.

(5) At the first session or within any other period ~~as the~~determined by the Commission ~~may determine~~, each party shall:

(a) identify a representative who is authorized to settle the dispute on its behalf; and

(b) describe the process that would be followed to implement a settlement.

(6) The Commission shall issue summary minutes recording the parties' agreements and the Commission's decisions on the procedure within 15 days after the later of the first session or the last written statement on procedural matters addressed at the first session.

309. Proposed (AF)CR 39 is modified to reflect changes made to proposed CR 31.

Rule ~~4038~~ Meetings

(1) The Commission may meet with the parties jointly or separately.

(2) The Commission shall determine the date, time and method of holding meetings, after consulting with the parties.

(3) If a meeting is to be held in person, it may be held at any place agreed to by the parties after consulting with the Commission and the Secretary-General. ~~-If the parties do not agree on the place of a meeting, it shall be held at a place determined by the Commission.~~

(4) Meetings shall remain confidential. The parties may ~~consent-agree~~ to observation of meetings by persons in addition to the parties and the Commission.

Rule ~~41~~³⁹
Preliminary Objections

- (1) A party may file a preliminary objection that the dispute is not within the [jurisdiction or](#) competence of the Commission (“[preliminary objection](#)”).
- (2) A [party shall notify the Commission and the other party of its intent to file a preliminary objection](#) ~~shall be made~~ as soon as possible. The objection shall be made no later than the date of the initial written statement referred to in Rule ~~36~~³⁸(1), unless the facts on which the objection is based are unknown to the party at the relevant time.
- (3) The Commission may address a preliminary objection separately or with other issues in dispute. If the Commission decides to address the objection separately, it may suspend the conciliation on the other issues in dispute to the extent necessary to address the preliminary objection.
- (4) The Commission may at any time on its own initiative consider whether the dispute is within its own [jurisdiction or](#) competence.
- (5) If the Commission decides that the dispute is not within its [jurisdiction or](#) competence, it shall issue a Report to that effect, in which it shall state its reasons. Otherwise, the Commission shall issue a decision on the objection with brief reasons and fix any time limit necessary for the further conduct of the conciliation.

310. Proposed (AF)CR 41 is modified to reflect changes made to proposed CR 33.

VIII. (ADDITIONAL FACILITY) CONCILIATION RULES

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Chapter VII
Termination of the Conciliation

Rule 420
Discontinuance Prior to the Constitution of the Commission

- (1) If the parties notify the Secretary-General prior to the constitution of the Commission that they have agreed to discontinue the proceeding, the Secretary-General shall issue an order taking note of the discontinuance.
- (2) If a party requests the discontinuance of the proceeding prior to the constitution of the Commission, the Secretary-General shall fix a time limit within which the other party may oppose the discontinuance. If no objection in writing is made within the time limit, the other party shall be deemed to have acquiesced in the discontinuance and the Secretary-General shall issue an order taking note of the discontinuance of the proceeding. If any objection in writing is made within the time limit, the proceeding shall continue.
- (3) If, prior to the constitution of the Commission, the parties fail to take any steps in the proceeding for more than 150 consecutive days, the Secretary-General shall notify them of the time elapsed since the last step taken in the proceeding. If the parties fail to take a step within 30 days after the notice, they shall be deemed to have discontinued the proceeding and the Secretary-General shall issue an order taking note of the discontinuance. If either party takes a step within 30 days after the Secretary-General's notice, the proceeding shall continue.

Rule 41
Discontinuance for Failure to Pay

~~If the parties fail to make payments to defray the costs of the proceeding as required by (Additional Facility) Administrative and Financial Regulation 7, the proceeding may be discontinued pursuant to (Additional Facility) Administrative and Financial Regulation 8.~~

311. Proposed (AF)CR 41 has been deleted, reflecting the corresponding deletion of CR 33 in WP # 2. The discontinuance for the failure to pay is regulated in (AF)AFR 8.

Rule 432
Report Noting the Parties' Agreement

- (1) If the parties reach agreement on some or all of the issues in dispute, the Commission shall issue its Report noting the issues in dispute and recording the issues upon which the parties have agreed.
- (2) The parties may provide the Commission with the complete and signed text of their settlement agreement and may request that the Commission embody such settlement in the Report.

Rule 443
Report Noting the Failure of the Parties to Reach Agreement

At any stage of the proceeding, and after notice to the parties, the Commission shall issue its Report noting the issues in dispute and recording that the parties have not reached agreement on the issues in dispute during the conciliation if:

- (a) it appears to the Commission that there is no likelihood of agreement between the parties; or
- (b) the parties advise the Commission that they have agreed to discontinue the conciliation.

Rule 454
Report Recording the Failure of a Party to Appear or Participate

If one party fails to appear or participate in the proceeding, the Commission shall, after notice to the parties, issue its Report noting the submission of the dispute to conciliation and recording the failure of that party to appear or participate.

Rule 465
The Report

- (1) The Report shall be in writing and shall contain, in addition to the information specified in Rules 432-454:
 - (a) a precise designation of each party;

- (b) the names of the representatives of the parties;
 - (c) a statement that the Commission was established ~~under~~ [pursuant to](#) these Rules and a description of the method of its constitution;
 - (d) the name of each member of the Commission and of the appointing authority of each;
 - (e) the dates and place(s) of the first session and the meetings of the Commission with the parties;
 - (f) a brief summary of the proceeding;
 - (g) the complete and signed text of the parties' settlement agreement if requested by the parties pursuant to Rule ~~432~~ (2);
 - (h) a statement of the costs of the proceeding, including the fees and expenses of each member of the Commission and the costs to be paid by each party pursuant to Rule ~~166~~; and
 - (i) any agreement of the parties pursuant to Rule ~~1846~~.
- (2) The Report shall be signed by the members of the Commission. It may be signed by electronic means if the parties agree. If a member does not sign the Report, such fact shall be recorded.

Rule ~~476~~
Issuance of the Report

- (1) Once the Report has been signed by the members of the Commission, the Secretary-General shall promptly:
- (a) dispatch a certified copy of the Report to each party, indicating the date of dispatch on the Report; and
 - (b) deposit the Report in the archives of the Centre.
- (2) The Secretary-General shall provide additional certified copies of the Report to a party upon request.

**IX. RULES FOR FACT-FINDING PROCEEDINGS
(ICSID FACT-FINDING RULES)**

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IX. ICSID FACT-FINDING RULES

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IX. RULES ~~OF PROCEDURE~~ FOR FACT-FINDING PROCEEDINGS (ICSID FACT-FINDING RULES)

Introductory Note

The Rules ~~of Procedure~~ for Fact-Finding Proceedings (~~the~~ ICSID Fact-Finding Rules) were adopted by the Administrative Council of the Centre pursuant to [Article 7 of the ICSID Convention and Administrative and Financial Regulation 7](#)(~~H~~).

The ICSID Fact-Finding Rules are supplemented by the (Fact-Finding) Administrative and Financial Regulations (Annex A).

The ICSID Fact-Finding Rules apply from the submission of a Request for fact-finding until the termination of the proceeding.

Chapter I General Provisions

Rule 1 Definitions

- (1) “Secretariat” means the Secretariat of the Centre.
- (2) “Centre” or “ICSID” means the International Centre for Settlement of Investment Disputes established pursuant to Article 1 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.
- (3) “Regional Economic Integration Organization” or “REIO” means an organization constituted by States to which they have transferred competence in respect of matters governed by these Rules, including the authority to make decisions binding on them in respect of those matters.
- ~~(4) “National of another State” means, unless otherwise agreed:~~
 - ~~(a) a natural or juridical person that, on the date of consent to the fact finding, is a national of a State other than the State party to the fact finding, or of any constituent State of the REIO party to the fact finding; or~~
 - ~~(b) a juridical person that, on the date of consent to the fact finding, is a national of the State party to the fact finding or of any constituent State of the REIO party to the fact finding, and which the parties agree not to treat as a national of that State for the purpose of these Rules.~~

~~(5)~~(4) “Request” means a request for fact-finding together with the required supporting documents.

~~(6)~~(5) “Secretary-General” means the Secretary-General of the Centre.

~~(7)~~(6) “Party” ~~may include~~s, where the context so admits, all parties to the fact-finding ~~and a representative of a party~~. Each party may be represented or assisted by agents, counsel, advocates or other advisors whose names and proof of authority to act ~~have been~~ shall be notified by that party to the Secretary-General (“representative(s)”).

~~(8)~~(7) “Schedule of fees” means the schedule of fees published by the Secretary-General.

312. The definition of the term “national of another State” has been removed from FFR 1 to reflect the modification of FFR 2(1).

Rule 2 Fact-Finding Proceedings

- (1) The Secretariat is authorized to administer fact-finding proceedings pertaining relating to an investment, ~~between involving~~ a State or an REIO ~~on the one hand, and a national of another State on the other hand~~, which the parties consent in writing to submit to the Centre.
- (2) Reference to a State or an REIO includes a constituent subdivision of the State, or an agency of the State or the REIO. The State or the REIO must approve the consent of the constituent subdivision or agency which is a party to the fact-finding pursuant to paragraph (1), unless the State or the REIO concerned notifies the Centre that no such approval is required.
- (3) The (Fact-Finding) Administrative and Financial Regulations, attached as Annex A, shall apply to ~~any such~~ proceedings pursuant to these Rules.

313. The reference in FFR 2(1) of WP # 2 to “a national from another State” (i.e., a State other than the State party to the mediation) has been removed to authorize the Secretariat to administer any FFR proceeding that relates to an investment “involving a State or an REIO” (irrespective of who is the other party or parties to the FFR would be). This proposed change would provide States broader access to investment Fact-Finding facilities without the limitations applicable to Additional Facility arbitration and conciliation proceedings. As in all cases, the consent of all parties would be required before a proceeding could be initiated.

314. The word “pertaining” has been replaced with “relating” in FFR 2(1). This is to be given its ordinary meaning, and is not intended as a legal term of art. This terminology in FFR 2(1) is purposefully broader than notions such as “arising directly out of” or “arising out of” used in the Convention and Additional Facility Rules. It is consistent with the overall approach of the FFR to provide parties with a flexible framework in relation to disputed investment matters for which the States wish to engage the Centre’s fact-finding services.
315. The FFR are proposed as stand-alone rules and not as part of the Additional Facility framework. This reflects the fact that some of the limiting jurisdictional requirements applicable to Additional Facility arbitration and conciliation do not apply to proceedings under the FFR. Having the FFR as a stand-alone set of rules avoids confusion between the FFR and other ICSID rules and provides a short, simple, user-friendly framework based on party consent to participate in a fact-finding proceeding.

Rule 3 Application of Rules

- (1) These Rules shall apply to any fact-finding proceeding ~~administered by the Centre conducted~~ pursuant to Rule 2., ~~except to the extent the parties agree to modify or exclude their application.~~
- (2) The parties may agree to modify the application of any of these Rules other than Rules 1-6.
- ~~(2)~~(3) The applicable ICSID Fact-Finding Rules are those in force on the date of filing the Request, unless the parties agree otherwise.
- ~~(3)~~(4) The texts of these Rules are equally authentic in English, French and Spanish.
- ~~(4)~~(5) These Rules may be cited as the “ICSID Fact-Finding Rules.”

316. FFR 3(2) clarifies that the Rules allowing the Secretariat to administer FFR proceedings and the provisions relating to the institution of proceedings (FFR 1-6) may not be modified by party agreement. Parties may consensually modify any of the rules following FFR 6.

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Chapter II
Institution of the Fact-Finding [Proceeding](#)

Rule 4
The Request

Parties wishing to institute a fact-finding proceeding ~~under~~ [pursuant to](#) these Rules shall file a joint Request with the Secretary-General and pay the lodging fee published in the schedule of fees.

Rule 5
Contents and Filing of the Request

- (1) The Request shall:
- (a) be in English, French or Spanish;
 - (b) identify each party to the ~~fact-finding and its nationality~~ [proceeding](#) and provide their contact information, ~~(including electronic mail address, street address and telephone number);~~
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) attach proof of any representative's authority to act;
 - (e) be filed electronically, unless the Secretary-General authorizes the filing of the Request in an alternative format;
 - (f) if the requesting party is a juridical person, state that it has obtained all necessary [internal](#) authorizations to file the Request, and attach the authorizations;
 - (g) indicate that the ~~fact-finding is between~~ [proceeding involves](#) a State or an REIO ~~on the one hand and a national of another State on the other hand~~, describe the investment to which the ~~fact-finding pertains~~ [proceeding relates](#), and indicate the facts to be examined and the relevant circumstances;
 - (h) attach ~~a copy of~~ the agreement of the parties ~~providing for to have~~ recourse to fact-finding ~~under~~ [pursuant to](#) these Rules; and
 - (i) contain [any](#) proposals or agreements reached by the parties concerning the constitution of a Fact-Finding Committee ("Committee"), the qualifications of its member(s), its mandate and the procedure to be followed during the fact-finding.

- (2) Any supporting document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or complete translation of the document.

Rule 6
Receipt and Registration of the Request

- (1) The Secretary-General shall promptly acknowledge receipt of the Request, ~~and act as the official channel of written communications between the parties.~~
- (2) Upon receipt of the Request and the lodging fee, the Secretary-General shall register the Request if it appears, on the basis of the information provided, that the Request is within ~~not manifestly outside~~ the scope of Rule 2(1).
- (3) The Secretary-General shall notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.
- (4) The notice of registration of the Request shall:
- (a) record that the Request is registered and indicate the date of registration;
 - (b) confirm that all correspondence to the parties in connection with the ~~fact-finding~~ proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Secretary-General; and
 - (c) invite the parties to constitute a Committee without delay.

317. FFR 6(1) has been modified as it is implicit that any correspondence related to the initiation of Fact-Finding should be addressed to the Secretary-General.
318. FFR 6(2) has been modified to underline that the screening process is intended to be light, consistent with the consensual nature of the FFR process.

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Chapter III The Fact-Finding Committee

Rule 7 Qualifications of Members of the Committee

- (1) Each member of a fact-finding Committee shall be impartial and independent of the parties.
- (2) The parties may agree that a member of a Committee shall have particular qualifications or expertise ~~relevant to the subject matter of the Request.~~

319. The change in FFR 7(2) underlines the principle of party autonomy, including the parties' ability to agree on the qualifications of fact-finding committee members. Such qualifications might relate to the subject-matter of the Request, but also to other matters that could be important to the parties, for example expertise in fact-finding, nationality or linguistic ability.

Rule 8 Number of Members and Method of Constituting the Committee

- (1) The parties shall endeavor to agree on a sole or any uneven number of Committee members, and the method of their appointment. If the parties do not advise the Secretary-General of an agreement on the number of members and method of appointment within 30 days after the date of registration, the Committee shall consist of a sole member, appointed by agreement of the parties.
- (2) The parties may jointly request that the Secretary-General assist with the appointment of any ~~sole-member or any other members~~ at any time.
- (3) If the parties are unable to appoint a sole member or any member of a Committee within 60 days after the date of registration, either party may request that the Secretary-General appoint the member(s) not yet appointed. The Secretary-General shall consult with the parties as far as possible on the qualifications, expertise, nationality and availability of the member(s) and shall use best efforts to appoint any Committee member(s) within 30 days after receipt of the request to appoint.
- (4) If no step has been taken by the parties to appoint the members of a Committee within 120 consecutive days after the date of registration, or such other period as the parties may agree, the Secretary-General shall notify the parties that the fact-finding is terminated. ~~the appointees have not accepted their appointments within 120 days after the date of registration, or such other period as the parties may agree, the Secretary-General shall inform the parties that the fact-finding cannot proceed.~~

320. FFR 8(4) clarifies that the inactivity of the parties vis-à-vis the appointment of the member of a fact-finding committee triggers the termination of the proceeding.

Rule 9
Acceptance of Appointment

- (1) The parties shall notify the Secretary-General of the appointment of the members of the Committee and provide the names~~;~~ and contact information of the appointees.
- (2) The Secretary-General shall request an acceptance from each appointee as soon as the appointee is selected.
- (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 appointee's independence, impartiality, availability and commitment to maintain the confidentiality of the proceeding.
- (4) The Secretary-General shall notify the parties of the acceptance of appointment by each member and provide the~~ir~~ signed declaration~~(s)~~.
- (5) The Secretary-General shall notify the parties if an appointee 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 in accordance with the method followed for the previous appointment.
- (6) Each member shall have a continuing obligation to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).
- (7) Unless the parties and the Committee agree otherwise, a member may not act as arbitrator, conciliator, counsel, expert, judge, mediator, witness or in any other capacity in any other proceeding relating to circumstances examined during the fact-finding.

Rule 10
Constitution of the Committee

The Committee shall be deemed to be constituted on the date the Secretary-General notifies the parties that each member has accepted their appointment. As soon as the Committee is constituted, the Secretary-General shall transmit the Request, any supporting documents, and the notice of registration to each member.

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Chapter IV
Conduct of the Fact-Finding Proceeding

Rule 11
Sessions and Work of the Committee

- (1) Each party shall file a ~~written~~-preliminary written statement of not more than 50 pages with the Secretary-General within 15 days after the date of constitution of the Committee, unless the parties agree otherwise. The preliminary statement shall address the party's view on the mandate of the Committee, the scope of the inquiry, relevant documents, persons to be interviewed, site visits and any other relevant matters. The Secretary-General shall transmit the ~~written~~-preliminary written statements to the Committee and the other party.
- (2) The Committee shall hold a first session with the parties within 30 days after its constitution or such other period as the parties may agree.
- (3) At the first session, the Committee shall determine the protocol for the fact-finding ("Protocol") after consulting with the parties on procedural matters, including:
 - (a) the Committee's mandate;
 - (b) the procedure for the conduct of the proceeding, such as the procedural languages, method of communication, place of sessions, the next steps in the proceeding, the treatment-~~protection~~ of confidential or protected information, documents to be provided, persons to be interviewed, site visits and any other procedural and administrative matters;
 - (c) whether the Report to be issued will be binding on the parties; and
 - (d) whether the Committee should make any recommendations in its Report; ~~and~~
 - ~~(e) any other relevant matters.~~
- (4) The Committee shall conduct the proceeding ~~fact-finding~~ in accordance with the Protocol and take all steps necessary to discharge its mandate. To that end, it shall make all decisions required for the conduct of the proceeding.
- (5) Any matters not provided for in these Rules or not previously agreed to by the parties shall be determined by agreement of the parties or, failing such agreement, by the Committee.

Rule 12 General Duties

- (1) The Committee shall treat the parties equally and provide each party with a reasonable opportunity to participate in the proceeding. It shall conduct the proceeding ~~fact-finding~~ in an expeditious and cost-effective manner and shall consult regularly with the parties on the conduct of the proceeding.
- (2) The parties shall cooperate with the Committee and with one another and shall conduct the proceeding in good faith and in an expeditious and cost-effective manner. The parties shall endeavor to provide all relevant explanations, documents or other information requested by the Committee and participate in the sessions of the Committee. The parties shall use all available means to facilitate the Committee's inquiry.

Rule 13 Calculation of Time Limits

Time limits referred to in these Rules shall be calculated from the day after the date on which the procedural step starting the period is taken, based on the time at the seat of the Centre. A time limit shall be satisfied if a procedural step is taken on the relevant date, or, if the date falls on a Saturday or Sunday, on the subsequent business day.

321. FFR 13 has been added as a default provision for the calculation of time limits applicable in FFR proceedings.

Rule 1~~4~~3 ~~Payment of Advances and~~ Costs of the Proceeding ~~Fact-Finding~~

Unless the parties agree otherwise, each party shall:

- ~~(a) pay one half of the advances payable in accordance with (Fact Finding) Administrative and Financial Regulation 7;~~
- ~~(b)~~(a) pay one half of the fees and expenses of the Committee, ~~as well as the administrative fee for use of the facilities of the Centre, in accordance with (Fact Finding) Administrative and Financial Regulation 7~~ and the administrative charges and direct costs of the Centre; and
- ~~(e)~~(b) bear any other costs it incurs in connection with the proceeding ~~fact-finding~~.

322. The reference to payment of advances has been removed in FFR 14 as this is dealt with in (FFR)AFR 7.

Rule 15

Confidentiality of the ~~Fact-Finding and Use of Information in Other Proceedings~~

- (1) All information relating to the fact-finding proceeding, ~~or and all~~ documents generated in or obtained during the proceeding, ~~fact-finding~~ shall be ~~kept~~ confidential, unless:
- (a) the parties agree otherwise;
 - (b) the information or document is independently available; or
 - (c) disclosure is required by law.
- (2) ~~Unless the parties to the fact-finding agree otherwise, the~~ The fact that the parties are seeking or have sought fact-finding, shall not be confidential.
- ~~(3) The parties to a fact-finding may consent to:~~
- ~~(a) disclosure to a non-party of any information relating to, or document generated in or obtained during the fact-finding; and~~
 - ~~(b) publication by the Centre of information relating to the fact-finding, or any document generated in connection with the fact-finding.~~
- ~~(4) Unless the parties to the fact-finding agree otherwise, the parties shall not rely, in other proceedings, on any positions taken, admissions made, or views expressed by the other party or the members of the Committee during the fact-finding.~~

323. FFR 3 addressing the publication of information has been deleted given that such publication may be consented to by the parties pursuant to 15(1).

Rule 16

Use of Information in Other Proceedings

A party shall not rely in other proceedings on any positions taken, admissions made, or views expressed by the other party or the members of the Committee during the fact-finding proceeding, unless the parties agree otherwise.

324. Proposed FFR 16 is former FFR 15(4).

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Chapter V
Termination of the Fact-Finding Proceeding

Rule 17~~5~~
Manner of Terminating the ~~Fact-Finding~~ Proceeding

The ~~fact-finding~~ proceeding shall terminate upon:

(a) the issuance of a notice by the Secretary-General pursuant to Rule 8(4);

~~(a)~~(b) the issuance of a Report by the Committee; or

~~(b)~~(c) an agreement of the parties a notice from the parties that they have agreed to conclude the proceeding.

325. Changes to proposed FFR17 are made to clarify that the notice of termination might be issued by the Secretary-General if no member has been appointed.
326. FFR 17(c) has been updated to clarify that the proceeding does not automatically concludes upon the signing of an agreement to terminate but that notification by the parties either to the Committee or to the Secretary-General is required.

Rule 18~~6~~
Failure of a Party to Participate or Cooperate

If a party fails to participate in the proceeding ~~fact-finding~~ or cooperate with the Committee, and the Committee determines that it is no longer able to discharge its mandate, the Committee shall, after notice to the parties, record the failure of that party to participate or cooperate in its Report.

Rule 19~~7~~
Report of the Committee

- (1) The Report shall be in writing and shall contain:
- (a) the mandate of the Committee;
 - (b) the Protocol followed;
 - (c) a brief summary of the proceeding;

- (d) a recommendation if requested by the parties; and
 - (e) the facts established by the Committee and the reasons why certain facts may not be considered as having been established; or
 - (f) an indication of the failure of a party to participate or cooperate pursuant to Rule 186.
- (2) The Report shall be adopted by a majority of the members and signed by them. If a member does not sign the Report, such fact shall be recorded.
 - (3) Any member may attach a statement to the Report if the member disagrees on any of the facts found ~~and explain the reasons for any such disagreement~~.
 - (4) Unless the parties agree otherwise, the Report of the Committee shall not be binding upon the parties, and the parties shall be free to give any effect to it.

327. Changes to proposed FFR 19 are made to streamline the provision. FFR 19(3) clarifies that the member attaching a statement to the Report may, but need not, explain the reasons for disagreeing with the Report.

Rule 2018
Issuance of the Report

- (1) Once the Report has been signed by the members of the Committee, the Secretary-General shall promptly:
 - (a) dispatch a certified copy of the Report to each party, indicating the date of dispatch on the Report; and
 - (b) deposit the Report in the archives of the Centre.
- (2) The Secretary-General shall provide additional certified copies of the Report to a party upon request.

**X. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR FACT-FINDING
PROCEEDINGS (ANNEX A)
(FACT-FINDING) ADMINISTRATIVE AND FINANCIAL REGULATIONS**

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X. ~~ANNEX A: (FACT-FINDING)~~ ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR FACT-FINDING PROCEEDINGS (ANNEX A)

((FACT-FINDING) ADMINISTRATIVE AND FINANCIAL REGULATIONS)

Introductory Note

The (Fact-Finding) Administrative and Financial Regulations apply to fact-finding proceedings and were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Regulation 7.

**Chapter I
General Provisions**

**Regulation 1
Application of these Regulations**

- (1) These Regulations apply to fact-finding proceedings which the Secretariat of the Centre is authorized to administer pursuant to ~~under~~ Rule 23 of the ICSID Fact-Finding Rules.
- (2) The applicable Regulations are those in force on the date of filing the Request for fact-finding pursuant to ~~under~~ the ICSID Fact-Finding Rules.
- (3) These Regulations may be referred to as the “(Fact-Finding) Administrative and Financial Regulations” of the Centre ~~or~~ (“Annex A” to the ICSID Fact-Finding Rules).

X. (FACT-FINDING) ADMINISTRATIVE AND FINANCIAL REGULATIONS

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Chapter II General Functions of the Secretariat

Regulation 2 Secretary

The Secretary-General of the Centre shall appoint a Secretary for ~~each~~^{the} Fact-Finding Committee (“Committee”). The Secretary may be drawn from the Secretariat, and shall be considered a member of its staff while serving as a Secretary. The Secretary shall:

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the ICSID Fact-Finding Rules applicable to individual proceedings and delegated to the Secretary; and
- (b) assist the parties and the Committee with all aspects of the proceedings, including the expeditious and cost-effective conduct of the proceeding.

328. This change reflects a change in corresponding AFR 28(b).

Regulation 3 The Registers

The Secretary-General shall maintain a Register for each proceeding containing all significant data concerning the institution, conduct and disposition of the proceeding. The information in the Register shall not be published, ~~except as provided for in ICSID Fact-Finding Rule 14~~^{unless the parties agree otherwise.}

329. (FF)AFR 3 reflects changes to FFR 15 (FFR 14 in WP #2).

Regulation 4 Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
 - (a) all requests for fact-finding;
 - (b) all documents and communications filed in a proceeding;
 - (c) ~~any~~^{the} records ~~sings and transcripts~~ of meetings or sessions in a proceeding; and

(d) any Report of the Committee.

(2) Subject to the ICSID Fact-Finding Rules and the agreement of the parties to the proceedings, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c) and (d) available to the parties.

Regulation 5 Certificates of Official Travel

The Secretary-General may issue certificates of official travel to members of Committees, to persons assisting them, to members of the Secretariat, and to the parties, agents, counsel, advocates, [advisors](#), witnesses or experts appearing in proceedings, indicating that they are traveling in connection with a proceeding [pursuant to](#) ~~under~~ the ICSID Fact-Finding Rules.

330. These changes reflect proposed amendments to corresponding AFR 30.

X. (FACT-FINDING) ADMINISTRATIVE AND FINANCIAL REGULATIONS

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Chapter III Financial Provisions

Regulation 6 Fees, Allowances and Charges

- (1) Each member of a Committee shall receive:
 - (a) a fee for each hour of work performed in connection with the proceeding;
 - (b) when not travelling to attend a meeting or session, reimbursement of expenses reasonably incurred for the sole purpose of the proceeding; and
 - (c) when required to travel to attend a meeting or session held away from the member's place of residence:
 - (i) reimbursement of the cost of ground transportation between the points of departure and arrival;
 - (ii) reimbursement of the cost of air and ground transportation to and from the city in which the meeting or session is held; and
 - (iii) a *per diem* allowance for each day the member spends away from their place of residence.
- (2) The Secretary-General shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and (c). Any request by a member for a higher amount shall be made through the Secretary-General, and not directly to the parties. Such a request must be made before the constitution of the Committee and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish an annual administrative charge payable by the parties ~~for the services of~~to the Centre.
- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
 - (a) Members of Committees and any assistants approved by the parties;
 - (b) witnesses and experts called by ~~the~~ Committee who have not been presented by a party;
 - (c) service providers that the Centre engages for a proceeding; and
 - (d) the host of any meeting or session held outside an ICSID facility.

- (5) The Centre shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or reimbursements of the members of any Committee, unless the parties have made sufficient payments to defray the costs of the proceeding.

Regulation 7 Payments to the Centre

- (1) To enable the Centre to pay the costs referred to in Regulation 6, the parties shall make payments to the Centre as follows:
- (a) upon registration of a Request for fact-finding, the Secretary-General shall ~~ask~~ request the ~~requesting~~ parties to make a payment to defray the estimated costs of the proceeding through the first session of the Committee, ~~which shall be considered partial payment by the requesting parties of the payment referred to in paragraph (1)(b);~~
 - (b) upon constitution of a Committee, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the proceeding; and
 - (c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the proceeding; and
 - ~~(d) the Centre shall provide a statement of account to the parties with each request for payment and at any other time upon request of a party.~~
- (2) Each party shall pay one half of the payments referred to in paragraph (1)(~~b~~) and (e), unless the parties agree on a different division.
- (3) The Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.

331. (FF)AFR 7 incorporates changes in corresponding AFR 15, and is clarified to reflect the joint nature of any request to institute fact-finding proceedings.

Regulation 8 Consequences of Default in Payment

- (1) The payments referred to in Regulation 7 shall be payable on the date of the request from the Secretary-General.

- (2) The following procedure shall apply in the event of non-payment:
- (a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;
 - (b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the proceeding until payment is made, after giving notice to the parties and to the Committee if constituted; and
 - (c) if any proceeding is suspended for non-payment for more than 90 [consecutive](#) days, the Secretary-General may discontinue the proceeding, after giving notice to the parties and to the Committee if constituted.

332. The addition of “consecutive” reflects change in corresponding AFR 16(2)(c).

Regulation 9 Special Services

- (1) The Centre may perform any special services related to disputes if the requestor deposits in advance an amount sufficient to defray the charge for such services.
- (2) Charges for special services shall normally be based on a schedule of fees published by the Secretary-General.

Regulation 10 Fee for Lodging Requests

The parties wishing to institute a fact-finding [proceeding](#) shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 11
Administration of Proceedings

The ICSID Secretariat is the only entity ~~body~~-authorized to administer fact-finding proceedings conducted pursuant to ~~under~~ the ICSID Fact-Finding Rules.

333. (FF)AFR 11 reflects change in corresponding AFR 22.

X. (FACT-FINDING) ADMINISTRATIVE AND FINANCIAL REGULATIONS

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Chapter IV
Official Languages and Limitation of Liability

Regulation 12
Languages of Regulations

- (1) These Regulations are published in the official languages of the Centre, English, French and Spanish.
- (2) The texts of these Regulations in each ~~of these~~ official languages are equally authentic.
- (3) The singular form of words in these Regulations and in the ICSID Fact-Finding Rules include the plural form of that word, unless otherwise stated or required by the context of the provision.

Regulation 13
Prohibition Against Testimony and Limitation of Liability

- (1) Unless required by applicable law or unless the parties and all the members of the Committee agree otherwise in writing, no member of the Committee shall give testimony in any judicial, arbitral or similar proceeding concerning any aspect of the fact-finding proceeding.
- (2) Except to the extent such limitation of liability is prohibited by applicable law, no member of the Committee shall be liable for any act or omission in connection with the exercise of their functions in the fact-finding proceeding, unless there is fraudulent or willful misconduct.

**XI. RULES FOR MEDIATION PROCEEDINGS
(ICSID MEDIATION RULES)**

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XI. ICSID MEDIATION RULES

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XI. RULES ~~OF PROCEDURE~~ FOR MEDIATION PROCEEDINGS (ICSID MEDIATION RULES)

Introductory Note

The Rules ~~of Procedure~~ for Mediation Proceedings (~~the~~ ICSID Mediation Rules) were adopted by the Administrative Council of the Centre pursuant to [Article 7 of the ICSID Convention and Administrative and Financial Regulation 7\(H\)](#).

The ICSID Mediation Rules are supplemented by the (Mediation) Administrative and Financial Regulations (Annex A).

~~The ICSID Mediation Rules apply from the submission of a Request for mediation until termination of the mediation.~~

334. The Introductory Note has been updated to stipulate the basis for adoption of the MR by the Administrative Council, which is also the basis for adoption of the Additional Facility and Fact-Finding Rules. The final paragraph has been removed in light of the stand-alone nature of the MR, including rules authorizing the Secretariat to administer mediations.

Chapter I General Provisions

Rule 1 Definitions

- (1) “Secretariat” means the Secretariat of the Centre.
- (2) “Centre” or “ICSID” means the International Centre for Settlement of Investment Disputes established pursuant to Article 1 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.
- (3) “Regional Economic Integration Organization” or “REIO” means an organization constituted by States to which they have transferred competence in respect of matters governed by these Rules, including the authority to make decisions binding on them in respect of those matters.
- ~~(4) “National of another State” means, unless otherwise agreed:~~
 - ~~(a) a natural or juridical person that, on the date of consent to the mediation, is a national of a State other than the State party to the dispute or of any constituent State of the REIO party to the dispute; or~~

~~(b) a juridical person that, on the date of consent to the mediation, is a national of the State party to the dispute or of any constituent State of the REIO party to the dispute, and which the parties agree not to treat as a national of that State for the purpose of these Rules.~~

~~(5)~~(4) “Request” means a request for mediation together with the required supporting documents.

~~(6)~~(5) “Secretary-General” means the Secretary-General of the Centre.

~~(7)~~(6) “Party” ~~may include~~s, where the context so admits, all parties to the mediation ~~and any representative of a party~~. Each party may be represented or assisted by agents, counsel, advocates or other advisors whose names and proof of authority to act shall be notified by that party to the Secretary-General (“representative(s)”).

~~(8)~~(7) “Schedule of fees” means the schedule of fees ~~as~~ published by the Secretary-General.

335. The definition of the term “national of another State” has been removed from MR 1 to reflect the modification of MR 2(1).

Rule 2 Mediation Proceedings

- (1) The Secretariat is authorized to administer mediations ~~relating proceedings pertaining to an investment, between involving~~ a State or an REIO ~~on the one hand, and a national of another State on the other hand~~, which the parties consent in writing to submit to the Centre.
- (2) Reference to a State or an REIO includes a constituent subdivision of the State, or an agency of the State or the REIO. The State or the REIO must approve the consent of the constituent subdivision or agency which is a party to the mediation pursuant to paragraph (1), unless the State or the REIO concerned notifies the Centre that no such approval is required.
- (3) The (Mediation) Administrative and Financial Regulations, attached as Annex A, shall apply to ~~such proceedings~~ mediations pursuant to these Rules.

336. The reference in MR 2(1) of WP # 2 to “a national from another State” (*i.e.*, a State other than the State party to the mediation) has been removed to authorize the Secretariat to administer any mediation proceeding that relates to an investment “involving a State or an REIO” (irrespective of who the other party to the mediation is). This proposed change would provide States broader access to investment mediation facilities without the

limitations applicable to Additional Facility arbitration and conciliation proceedings. As in all cases, the consent of all parties would be required before a mediation could commence.

337. The word “pertaining” has been replaced with “relating” in MR 2(1). This new term is to be given its ordinary meaning, and is not intended as a legal term of art. This terminology in MR 2(1) is purposefully broader than the notions “arising directly out of” or “arising out of” used in the Convention and Additional Facility Rules. It is consistent with the overall approach of the MR to provide parties with a flexible framework in relation to disputed investment matters for which the States wish to engage the Centre’s mediation services.
338. One State inquired about the consistency of the MR with ICSID’s functions. The mandate of the Centre is to offer facilities to assist States with the settlement of investment disputes, and the MR provide a further tool to achieve this goal. The proposed MR complement the Centre’s services, and in particular conciliation.
339. One State requested clarification as to why the MR are proposed as stand-alone rules and delinked from the Additional Facility framework. The stand-alone nature of the MR reflects the fact that some of the limiting jurisdictional requirements applicable to Additional Facility arbitration and conciliation do not apply to proceedings under the MR. In particular, (i) the MR do not require the involvement of a national of a State other than the State party to the mediation; and (ii) there is no requirement for the dispute to be of a legal nature or for the dispute to have formally crystallized. Having the MR as a stand-alone set of rules avoids confusion between the MR and other ICSID rules and provides a short, simple, user-friendly framework for these rules.

Rule 3 Application of Rules

- (1) These Rules shall apply to any mediation ~~proceeding administered by the Centre~~ conducted pursuant to Rule 2, ~~except to the extent the parties agree otherwise and subject to paragraph (2).~~
- (2) The parties may agree to modify the application of any of these Rules other than Rules 1-6.
- ~~(2)~~(3) If any of these Rules, or any ~~aspect of the parties’~~ agreement to modify the application of these Rules pursuant to paragraph (2), conflicts with a provision of law from which the parties cannot derogate, that provision shall prevail.
- ~~(3)~~(4) The applicable ICSID Mediation Rules are those in force on the date of filing the Request, unless the parties agree otherwise.
- ~~(4)~~(5) The texts of these Rules are equally authentic in English, French and Spanish.

~~(5)~~(6) These Rules may be cited as the “ICSID Mediation Rules”.

340. MR 3(2) clarifies that the Rules allowing the Secretariat to administer mediations and the provisions relating to the institution of proceedings (MR 1-6) may not be modified by party agreement. Parties may consensually modify any of the rules following MR 6, subject to the limitation in MR 3(3).

**XI. RULES FOR MEDIATION PROCEEDINGS
(ICSID MEDIATION RULES)**

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Chapter II Institution of the Mediation

Rule 4 Institution of Mediation Based on Prior Party Agreement

- (1) If the parties have agreed in writing ~~to refer the dispute~~ to mediation ~~under~~ pursuant to these Rules, any party wishing to institute a mediation shall file a Request with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the mediation ~~to the dispute~~.
- (3) The Request shall:
 - (a) be in English, French or Spanish;
 - (b) identify each party to the mediation ~~and its nationality~~ and provide their contact information, ~~(including electronic mail address, street address and telephone number)~~;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) attach proof of any representative's authority to act;
 - (e) be filed electronically, unless the Secretary-General authorizes the filing of the Request in an alternative format;
 - (f) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request, and attach the authorizations;
 - (g) indicate that the mediation ~~is between~~ involves a State or an REIO ~~on the one hand and a national of another State on the other hand~~, describe the investment to which the mediation ~~pertains~~ relates, and include a brief statement of the issues in dispute;
 - ~~(h) attach a copy of the agreement of the parties to refer the dispute to mediation under these Rules; and~~
 - (h) contain any proposals or agreements reached by the parties concerning the appointment and qualifications of the mediator and the procedure to be followed during the mediation; and
 - (i) ~~attach a copy of~~ the agreement of the parties to mediate pursuant to these Rules.

(4) Any supporting document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or complete translation of the document.

(5) Upon receipt of the Request, the Secretary-General shall:

- (a) promptly acknowledge receipt of the Request to the requesting party; and
- (b) transmit the Request to the other party upon receipt of the lodging fee.

~~(6) The Secretary-General shall act as the official channel of written communications between the parties.~~

341. MR 4(6) in WP # 2 has been removed, as it is implicit that any correspondence related to the mediation should be addressed to the Secretary-General.

Rule 5 Institution of Mediation Absent a Prior Party Agreement

(1) If the parties have no prior written agreement ~~to refer the dispute to mediation to mediate under pursuant to~~ these Rules, any party wishing to institute a mediation shall file a Request with the Secretary-General, and pay the lodging fee published in the schedule of fees, ~~and make an offer to mediate to the other party in accordance with paragraphs (2)-(5).~~

(2) The Request shall:

- (a) comply with the requirements in Rule 4(3)(a)-(h);
- (b) include an offer to the other party ~~to refer the dispute to mediation under pursuant to~~ these Rules; and
- (c) request that the Secretary-General invite the other party to accept the offer to mediate ~~referred to in paragraph (2)(b).~~

(3) Upon receipt of the Request, the Secretary-General shall:

- (a) promptly acknowledge receipt of the Request to the requesting party;
- (b) transmit the Request to the other party upon receipt of the lodging fee; and

(c) invite the other party to inform the Secretary-General within 60 days after transmittal of the Request ~~pursuant to paragraph (3)(b)~~ whether it accepts the offer to mediate ~~referred to in paragraph (2)(b)~~.

(4) If the other party informs the Secretary-General that it accepts the offer to mediate ~~referred to in paragraph (2)(b)~~, the Secretary-General shall acknowledge receipt and transmit the acceptance of the offer to mediate to the requesting party.

(5) If the other party ~~rejects the offer to mediate, or~~ fails to accept the offer to mediate ~~referred to in paragraph (2)(b)~~ within the 60-day period referred to in paragraph (3)(c); or within such other period as the parties may agree, the Secretary-General shall acknowledge receipt and transmit any communication received to the requesting party and inform the parties that no further action will be taken on the Request.

342. MR 5(1) clarifies that a written agreement to mediate is required to institute mediations pursuant to the MR. MR 5(5) specifically allows the parties to agree to extend (or shorten) the period within which the other party must accept or reject an offer to mediate.

343. One State suggested that the institution of mediation should be limited to instances in which a written agreement to mediate was in force prior to the submission of the Request (i.e., under MR 4 only). MR 5 has been retained as it responds to requests from States for ICSID to introduce this option.

344. MR 5 complements systemic investment dispute response mechanisms adopted by many States and assists Member States to effectively manage investment disputes even where there is no formal instrument offering mediation.

Rule 6 Registration of the Request

(1) Upon receipt of:

(a) the lodging fee; and

(b) a Request pursuant to Rule 4; or a Request and an agreement to mediate pursuant to Rule 5;

~~(c) a Request and an agreement to mediate pursuant to Rule 5;~~

the Secretary-General shall register the Request if it appears, on the basis of the information provided, that the Request is ~~not manifestly outside~~ within the scope of Rule 2(1).

- (2) The Secretary-General shall notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.
- (3) The notice of registration of the Request shall:
 - (a) record that the Request is registered and indicate the date of registration;
 - (b) confirm that all correspondence to the parties in connection with the mediation will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Secretary-General; and
 - (c) invite the parties to appoint the mediator without delay.

- 345. MR 6 has been modified to underline that the screening process is intended to be light (see WP # 1, AF Rules), consistent with the consensual nature of the mediation process.
- 346. MR 6(1)(b) and (c) have been merged to clarify that MR 4 and 5 set out alternatives, only one of which needs to be satisfied.

**XI. RULES FOR MEDIATION PROCEEDINGS
(ICSID MEDIATION RULES)**

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Chapter III
General Procedural Provisions

Rule 7
Calculation of Time Limits

Time limits referred to in these Rules shall be calculated from the day after the date on which the procedural step starting the period is taken, based on the time at the seat of the Centre. A time limit shall be satisfied if a procedural step is taken on the relevant date, or, if the date falls on a Saturday or Sunday, on the subsequent business day.

347. MR 7 has been added as a default provision for the calculation of time limits applicable in mediation proceedings.

Rule ~~8~~7
~~Payment of Advances and~~ Costs of the Mediation

Unless the parties agree otherwise, each party shall:

- ~~(a) pay one half of the advances payable in accordance with (Mediation) Administrative and Financial Regulation 7;~~
- ~~(b)~~(a) pay one half of the fees and expenses of the mediator and the administrative charges and direct costs of the Centre, as well as the administrative fee for use of the facilities of the Centre, in accordance with (Mediation) Administrative and Financial Regulation 7; and
- ~~(c)~~(b) bear any other costs it incurs in connection with the mediation.

348. The reference to payment of advances has been removed in MR 8 as this is dealt with in (M)AFR 7.

Rule ~~9~~8
Confidentiality of the Mediation

- (1) All information relating to the mediation, ~~or~~ and all documents generated in or obtained during the mediation, shall be ~~kept~~ confidential, unless:
- (a) the parties agree otherwise;
- (b) the information or document is independently available; or

(c) disclosure is required by law.

~~(2) Any settlement agreement concluded during the mediation shall be kept confidential, to the extent that disclosure is required by law or for purposes of implementation and enforcement of the settlement agreement.~~

~~(3)~~(2) ~~Unless the parties to the dispute agree otherwise, the~~The fact that the parties are mediating, or have mediated, shall not be confidential.

~~(4) The parties to a mediation may consent to:~~

~~(a) disclosure to a non-party of any information relating to, or document generated in or obtained during the mediation; and~~

~~(b) publication by the Centre of information relating to the mediation, or any document generated in the mediation.~~

349. MR 9(2) in WP # 2 has been deleted given that the disclosure of settlement agreements resulting from the mediation is covered by MR 9(1). In addition, a reference to the disclosure of settlement agreements has been added to the list of items to be addressed by the parties with the mediator at the first session pursuant to MR 19.
350. Likewise, MR 9(4) in WP # 2 addressing the publication of information has been deleted given that such publication may be consented to by the parties pursuant to MR 9(1).
351. Finally, the first clause in MR 9(3) in WP # 2 has been deleted. It is unnecessary given MR 3(2).

Rule 109

Use of Information in Other Proceedings

~~Unless the parties agree otherwise, A party~~the parties shall not rely, in other proceedings, on any positions taken, admissions or offers of settlement made, or views expressed by the other party or the mediator during the mediation, unless the parties agree otherwise.

**XI. RULES FOR MEDIATION PROCEEDINGS
(ICSID MEDIATION RULES)**

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Chapter IV The Mediator

Rule 110 Qualifications of the Mediator

- (1) The mediator shall be impartial and independent of the parties.
- (2) The parties may agree that the mediator shall have particular qualifications or expertise ~~relevant to the subject matter of the Request.~~

352. MR 11(2) has been updated in response to a comment from the public. The change underlines the principle of party autonomy, including the parties' ability to agree on mediator qualifications. Such qualification might relate to the subject-matter of the Request, but also to other matters that could be important to the parties, for example expertise in mediation, nationality or linguistic ability.

Rule 121 Number of Mediators and Method of Appointment

- (1) There shall be one mediator or two co-mediators. Each mediator shall be appointed by agreement of the parties. All references to "mediator" in these Rules shall include co-mediators, as applicable ~~where the context so admits.~~
- (2) If the parties do not advise the Secretary-General of an agreement on the number of mediators within 30 days after the date of registration, there shall be one mediator appointed by agreement of the parties.
- (3) The parties may jointly request that the Secretary-General assist with the appointment of a mediator at any time.
- (4) If the parties are unable to appoint the mediator within 60 days after the date of registration, either party may request that the Secretary-General appoint the mediator not yet appointed. The Secretary-General shall consult with the parties as far as possible on the qualifications, expertise, nationality and availability of the mediator and shall use best efforts to appoint any mediator within 30 days after receipt of the request to appoint.
- (5) If no step has been taken by the parties to appoint the mediator within 120 consecutive days after the date of registration, or such other period as the parties may agree, the Secretary-General shall notify the parties that the mediation is terminated. ~~the mediator has not accepted the appointment within 120 days after the~~

~~date of registration, or such other period as the parties may agree, the Secretary-General shall inform the parties that the mediation cannot proceed.~~

~~(6) If the parties notify the Secretary-General prior to the appointment of a mediator that they have agreed to terminate the mediation, the Secretary-General shall notify the parties that the mediation cannot proceed.~~

353. MR 12(5) clarifies that the inactivity of the parties vis-à-vis the appointment of the mediator triggers the termination of the mediation.
354. One State requested further information regarding the appointment and selection of mediators and suggested an ICSID panel of mediators. Criteria for parties to consider in selecting mediators are addressed in WP # 1 ([Vol. 3, ¶ 1352](#)) and WP # 2 ([Vol. 1, ¶ 784](#)). The type of Secretariat assistance available in the appointment process is set out in WP # 2 ([Vol. 1, ¶ 785](#)). The Secretariat will assess the possibility of establishing a mediator panel after the MR enter into force.

Rule 13~~2~~ **Acceptance of Appointment**

- (1) The parties shall notify the Secretary-General of the appointment of the mediator and provide the name and contact information of the appointee.
- (2) The Secretary-General shall request an acceptance from each appointee as soon as the appointee is selected.
- (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 mediator's independence, impartiality, availability and commitment to maintain the confidentiality of the mediation.
- (4) The Secretary-General shall notify the parties of the acceptance of appointment by the mediator and provide the signed declaration.
- (5) The Secretary-General shall notify the parties if a mediator 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 mediator in accordance with the method followed for the previous appointment.

- (6) The mediator shall have a continuing obligation to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).
- (7) Unless the parties and the mediator agree otherwise, a mediator may not act as arbitrator, conciliator, counsel, expert, judge, witness or in any other capacity in any other proceeding relating to the ~~dispute that is the subject of the~~ [issues in dispute in the](#) mediation.

355. MR 13(7) has been aligned with MR 2(1) and MR 4(3)(g). Corresponding revisions for consistency have also been made to MR 16(1), 19(3)(g)(ii) and (4)(a) and MR 20(1) and (6).
356. One State suggested adding a requirement to disclose third-party funding in the MR (as is required in proposed AR 14). A provision regarding third-party funding has never been suggested in the context of the MR, as the role of a mediator differs significantly from that of a Tribunal. While third-party funding arrangements are less likely to be in place in the context of mediations, the parties are of course free to agree on disclosures of third-party funding. In cases where the mediation is happening in parallel with an ongoing ICSID arbitration (as is likely to happen), the parties will already know of any third-party funding as a consequence of the reporting obligations contained in the relevant arbitration rules.

Rule 1~~3~~3

~~Notice of Acceptance~~ [Transmittal of the Request](#)

As soon as the mediator has, or both co-mediators have, accepted the appointment(s), the Secretary-General shall ~~notify the parties of such acceptance (“notice of acceptance”)~~ and transmit the Request, any supporting documents, and the notice of registration to each mediator [and notify the parties of this transmittal](#).

357. MR 14 has been clarified to avoid confusion with the notification of the acceptance of appointment by a mediator in MR 13(4). It now makes the transmittal of the Request for mediation to the mediator the triggering event for the timelines in MR 17 and 18.

Rule 1~~5~~4

Resignation and Replacement of Mediator

- (1) A mediator may resign by notifying the Secretary-General and the parties.
- (2) A mediator shall resign:
 - (a) on the joint request of the parties; or

(b) if the mediator becomes incapacitated or ~~is unable~~ fails to perform the duties required of a mediator.

(3) Following the resignation of a mediator, the Secretary-General shall notify the parties of the vacancy, ~~and a~~ A new mediator shall be appointed by the same method used to make the original appointment, except that:

(a) the Secretary-General shall fill any vacancy that has not been filled within 45 days after the notice of the vacancy, ~~or such other period as agreed by the parties; or~~

(b) if a co-mediator resigns and the parties notify the Secretary-General within 45 days after the notice of the vacancy that they have agreed to continue the mediation with the remaining co-mediator acting as sole mediator, no new mediator shall be appointed.

~~(3) Following the resignation of a co-mediator, the parties may agree to continue the mediation with the remaining co-mediator acting as a sole mediator. The parties shall notify the Secretary-General of such agreement within 45 days after the notice of the vacancy or such other period as agreed by the parties pursuant to paragraph (2).~~

358. MR 15(2)(b) has been updated to align the wording with the corresponding provisions in the CR and (AF)CR.
359. The structure of MR 15(3) has been updated for clarification without changing the substance of the provision. As MR 3(1) provides that the parties may agree to modify the application of the provisions in this Chapter, the reference to the parties' ability to modify the 45-day period has been removed in MR 15(3)(a) and (b).

XI. ICSID MEDIATION RULES

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Chapter V
Conduct of the Mediation

Rule 16~~5~~
Role and Duties of the Mediator

- (1) The mediator shall assist the parties in reaching a mutually acceptable resolution of all or part of the ~~dispute~~ issues in dispute. The mediator does not have the authority to impose a settlement on the parties.
- (2) The mediator shall treat the parties equally and provide each party with a reasonable opportunity to participate in the proceeding.
- ~~(3) The mediator shall conduct the proceeding in an expeditious and cost-effective manner.~~

360. MR16(1) has been modified to clarify that the mediator cannot decide the manner in which the parties shall settle disputed matters. MR 16(3) has been deleted as this is covered in MR 20(2).

Rule 17~~6~~
Duties of the Parties

- ~~(1)~~ The parties shall cooperate with the mediator and with one another and shall conduct the mediation in good faith, and in an expeditious and cost-effective manner.
- ~~(2) The parties shall endeavor to provide all relevant explanations, documents or other information requested by the mediator.~~

361. MR 17(2) in WP # 2 has been removed as it is covered by the more general provision in MR 17.

Rule 18~~7~~
Initial Written Statements

- (1) Each party shall file a brief, initial written statement with the Secretary-General describing the issues in dispute and its views on these issues and on the procedure to be followed during the mediation. These statements shall be filed within 15 days after the date of ~~the notice of acceptance~~ the transmittal of the Request pursuant to Rule 14, or such other period as the mediator may determine in consultation with the parties, ~~but and~~ in any event before the first session.

- (2) The Secretary-General shall transmit the initial written statements to the mediator and the other party.

362. MR 18(1) has been updated to simplify the language and reflect the modification in MR 14.
363. MR 18(1) contemplates that the mediator may determine the filing deadlines for the parties' initial written statements. One State suggested including an option for the parties to agree on the applicable timelines. A consultation requirement has been added to address this concern; however, MR 18(1) is otherwise retained to ensure that the mediator has sufficient time to prepare and engage with the parties prior to the first session, which is regular practice in mediation proceedings (*see* also the proposed revision in MR 19(2)).

Rule 198 **First Session**

- (1) The mediator shall hold a first session with the parties within 30 days after the date of the ~~notice of acceptance~~ [transmittal of the Request pursuant to Rule 14](#) or such other period as the parties may agree.
- (2) ~~The first session may be held in person or remotely, by any means that the mediator deems appropriate.~~ The agenda, method and date of the first session shall be determined by the mediator after consulting with the parties. [In preparation for the first session, the mediator may meet and communicate with the parties jointly or separately.](#)
- (3) At the first session, the mediator shall determine the protocol for the conduct of the mediation (“Protocol”) after consulting with the parties on procedural matters, including:
- (a) the procedural language(s);
 - (b) the method of communication;
 - (c) the place of meetings;
 - (d) the next steps in the proceeding;
 - (e) the [treatment](#) ~~protection~~ of confidential [or protected](#) information;
 - (f) the participation of other persons in the mediation;
 - (g) any agreement between the parties;

- (i) concerning the treatment of information disclosed by one party to the mediator by separate communication pursuant to Rule ~~20~~19(3);
 - (ii) not to initiate or pursue other proceedings in respect of the issues in dispute during the mediation;
 - ~~(iii)~~ concerning the application of prescription or limitation periods;
 - ~~(iii)~~(iv) concerning the disclosure of any settlement agreement resulting from the mediation; and
 - (h) the division of advances payable pursuant to (Mediation) Administrative and Financial Regulation 7; and
 - (i) any other relevant procedural and administrative matters.
- (4) At the first session or within any other period as the mediator may determine, each party shall:
- (a) identify a representative who is authorized to settle the issues in dispute on its behalf; and
 - (b) describe the process that would be followed to implement a settlement.

364. MR 19(1) has been updated to reflect the revision in MR 14. In response to inquiries regarding the mediation procedure prior to the first session, MR 19(2) clarifies that the mediator may meet or communicate with the parties jointly or separately prior to the first session to effectively prepare the discussions. This reflects common practice in mediation proceedings. The general confidentiality provision in MR 19(4) applies to such interactions.
365. MR 19(3)(e) has been aligned with the corresponding provisions in other ICSID rules. This provision also covers discussions by the parties regarding the adoption of a customized protocol for disclosure of information to a wider audience, including through the making of joint press releases or other agreed-upon disclosures to a specified audience or the general public.
366. MR 19(3)(g)(iv) has been added given the deletion of the reference to settlement agreements in MR 9.
367. With regard to MR 19(4)(i), one commentator proposed requiring proof of settlement authority. The requirement of such proof is best left to the parties to address at the first session if desired.

Rule ~~20~~19
Conduct of the Mediation

- (1) The mediator shall conduct the mediation in accordance with the Protocol and shall take into account the views of the parties and the circumstances of the issues in dispute.
- (2) The mediator shall conduct the mediation in good faith and in an expeditious and cost-effective manner.
- (3) The mediator may meet and communicate with the parties jointly or separately. Such communications may be in person or in writing, and by any appropriate means ~~of communication.~~
- (4) Information received by the mediator from one party shall not be disclosed to the other party without authorization from the disclosing party.
- ~~(4)~~(5) The mediator may request that the parties provide additional information or written statements.
- ~~(5)~~(6) If requested by ~~the~~ all parties, the mediator may make oral or written recommendations for the resolution of all or part of the issues in dispute.
- ~~(6)~~(7) The mediator may obtain expert advice with the agreement of the parties.

368. Mirroring the parties' obligation to cooperate with the mediator and with one another in good faith, MR 20(2) now includes a duty for the mediator to conduct the mediation in good faith.
369. MR 20(4) underlines the importance of confidentiality within the mediation process and specifies that information shared with the mediator by one party – by way of separate meetings or otherwise – shall not be disclosed to the other party absent express authorization. The matter is also to be addressed by the parties at the first session, as contemplated by MR 19(3)(g)(i).
370. One commentator inquired about the parties' ability to amend the Protocol for the conduct of the mediation following the first session. In light of the consensual nature of the mediation process, this is envisioned on the basis of an agreement between all parties and the mediator. Adding a rule expressly providing for this appears unnecessary given the nature of mediation.
371. Reflecting the facilitative nature of mediation under these Rules, MR 20(6) has been updated to clarify that a request for the mediator to make any recommendations for the

resolution of all or part of the issues in dispute must be made by all the parties to the mediation.

Chapter V
Termination of the Mediation

Rule 210
Notice of Termination of the Mediation

- (1) The mediator, or the Secretary-General if no mediator has been appointed, shall issue a notice of termination of the mediation ~~The mediation shall be terminated~~ upon:
 - (a) a notice from the parties that they have signed ~~the signing of~~ a settlement agreement ~~by the parties~~;
 - (b) a notice ~~by~~ from the parties that they have agreed to ~~discontinue~~ terminate the mediation;
 - (c) a notice of withdrawal by any party, unless the remaining parties agree to continue the mediation;
 - (d) a determination by the mediator that there is no likelihood of resolution through ~~this~~ the mediation; or
 - ~~(e) a determination by the mediator that a party failed to participate in the mediation or cooperate with the mediator.~~
 - ~~(f)~~ (e) satisfaction of the requirements of Rule 12(5).
- (2) ~~The mediator shall take note of the termination in writing.~~ The notice of termination shall contain a brief summary of the procedural steps and the basis for termination of the mediation pursuant to paragraph (1). The notice shall be dated and signed by the mediator or the Secretary-General, as applicable.
- (3) The Secretary-General shall promptly dispatch a certified copy of the notice of termination to each party, ~~indicating the date of dispatch,~~ and deposit the notice in the archives of the Centre. The Secretary-General shall provide additional certified copies of the notice to a party upon request.

372. The first sentence in MR 21(2) has been merged into MR 21(1) to simplify the provision.

373. MR 21(1) has further been updated to clarify that the notice of termination might be issued by the Secretary-General if no mediator has been appointed, or if a mediator has resigned and a replacement mediator has not yet been appointed. The language in MR 21(2)(a) has

been updated to clarify that the mediation does not automatically terminate upon the signing of a settlement agreement but that notification by the parties either to the mediator or to the Secretary-General is required.

374. MR 21(2)(e) refers to termination if no steps are taken by the parties to appoint a mediator pursuant to MR 12(5).

**XII. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR MEDIATION
(ANNEX A)
(MEDIATION) ADMINISTRATIVE AND FINANCIAL REGULATIONS)**

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(MEDIATION) ADMINISTRATIVE AND FINANCIAL REGULATIONS

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**(Mediation)
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**XII. ~~ANNEX A: (MEDIATION)~~ ADMINISTRATIVE AND FINANCIAL REGULATIONS
FOR MEDIATION (ANNEX A)**

((MEDIATION) ADMINISTRATIVE AND FINANCIAL REGULATIONS)

Introductory Note

The (Mediation) Administrative and Financial Regulations apply to mediation proceedings and were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

**Chapter I
General Provisions**

**Regulation 1
Application of these Regulations**

- (1) These Regulations apply to mediation proceedings which the Secretariat of the Centre is authorized to administer ~~under~~ pursuant to Rule 2 of the ICSID Mediation Rules.
- (2) The applicable Regulations are those in force on the date of filing the Request for mediation ~~under~~ pursuant to the ICSID Mediation Rules.
- (3) These Regulations may be referred to as the “(Mediation) Administrative and Financial Regulations” of the Centre ~~or~~ (“Annex A” to the ICSID Mediation Rules).

(MEDIATION) ADMINISTRATIVE AND FINANCIAL REGULATIONS

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Chapter II General Functions of the Secretariat

Regulation 2 Secretary

The Secretary-General of the Centre shall appoint a Secretary for ~~the each~~ mediation. The Secretary may be drawn from the Secretariat, and shall be considered a member of its staff while serving as a Secretary. The Secretary shall:

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the ICSID Mediation Rules applicable to individual proceedings and delegated to the Secretary; and
- (b) assist the parties and the ~~m~~Mediator with all aspects of the proceedings, including the expeditious and cost-effective conduct of the proceeding.

375. These changes reflect change in corresponding AFR 28(b) and ensure consistency with the MR.

Regulation 3 The Registers

The Secretary-General shall maintain a Register for each mediation containing all significant data concerning the institution, conduct and disposition of the proceeding. The information in the Register shall not be published, unless the parties agree otherwise ~~except as provided for in ICSID Mediation Rule 7.~~

376. The changes to (MR)AFR 3 complement MR 7.
377. One State commented that Registers for mediations should be published as a default. Given the nature of mediation, no change has been made to this rule. Parties may consent to publication, and States may incorporate a requirement for publication into their treaties, contracts and mediation agreements, should they consider that desirable.

Regulation 4 Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:

- (a) all requests for mediation;
- (b) all documents and communications filed in a ~~proceeding~~ [mediation](#);
- (c) any records of meetings or sessions in a ~~proceeding~~ [mediation](#); and
- (d) any notice of termination of a mediation pursuant to ICSID Mediation Rule ~~21~~[10](#).

(2) Subject to the ICSID Mediation Rules and the agreement of the parties to the proceedings, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c) and (d) available to the parties.

Regulation 5 Certificates of Official Travel

The Secretary-General may issue certificates of official travel to ~~m~~[M](#)ediators, to persons assisting them, to members of the Secretariat, and to the parties, agents, counsel, advocates, [advisors](#), witnesses or experts appearing in proceedings, indicating that they are traveling in connection with a proceeding ~~under~~ [pursuant to](#) the ICSID Mediation Rules.

378. These changes reflect change in corresponding AFR 30.

(MEDIATION) ADMINISTRATIVE AND FINANCIAL REGULATIONS

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Chapter III Financial Provisions

Regulation 6 Fees, Allowances and Charges

- (1) Each mMediator shall receive:
 - (a) a fee for each hour of work performed in connection with the proceeding;
 - (b) when not travelling to attend a meeting or session, reimbursement of expenses reasonably incurred for the sole purpose of the proceeding; and
 - (c) when required to travel to attend a meeting or session held away from the place of residence of the mMediator:
 - (i) reimbursement of the cost of ground transportation between the points of departure and arrival;
 - (ii) reimbursement of the cost of air and ground transportation to and from the city in which the meeting or session is held; and
 - (iii) a *per diem* allowance for each day the mMediator spends away from their place of residence.
- (2) The Secretary-General shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and (c). Any request by a mMediator for a higher amount shall be made through the Secretary-General, and not directly to the parties. Such a request must be made before the [transmittal of the Request for mediation to notice of acceptance](#) by the mMediator pursuant to ICSID Mediation Rule ~~14~~3 and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish an annual administrative charge payable by the parties ~~for the services of~~ to the Centre.
- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
 - (a) mMediators and any assistants approved by the parties;
 - (b) any experts appointed by a mMediator pursuant to ICSID Mediation Rule ~~20(7)~~19(6);
 - (c) service providers that the Centre engages for a proceeding; and
 - (d) the host of any meeting or session held outside an ICSID facility.

(5) The Centre shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or reimbursements of the ~~m~~Mediator, unless the parties have made sufficient payments to defray the costs of the proceeding.

379. These changes reflect corresponding changes in AFR 14 and update the rule to address changes of terminology in MR 13.

Regulation 7 Payments to the Centre

- (1) To enable the Centre to pay the costs referred to in Regulation 6, the parties shall make payments to the Centre as follows:
- (a) upon registration of a Request for mediation, the Secretary-General shall ~~request~~ask the party(ies) instituting the mediation ~~requesting party(ies)~~ to make a payment to defray the estimated costs of the proceeding through the first session of the ~~m~~Mediator, which shall be considered partial payment by the ~~requesting instituting~~ party(ies) of the payment referred to in paragraph (1)(b);
 - (b) upon the ~~notice of acceptance of appointment by the Mediator~~ transmittal of the Request for mediation pursuant to ICSID Mediation Rule 13, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the proceeding; and
 - (c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the proceeding; ~~and~~
 - ~~(d) the Centre shall provide a statement of account to the parties with each request for payment and at any other time upon request of a party.~~
- (2) Each party shall pay one half of the payments referred to in paragraph (1)(b) and (c), unless the parties agree on a different division.
- (3) The Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.

380. The changes in (MR)AFR 7 address corresponding changes in AFR 15.

Regulation 8 Consequences of Default in Payment

- (1) The payments referred to in Regulation 7 shall be payable on the date of the request from the Secretary-General.
- (2) The following procedure shall apply in the event of non-payment:
 - (a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;
 - (b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the proceeding until payment is made, after giving notice to the parties and to the [mM](#)ediator if appointed; and
 - (c) if any proceeding is suspended for non-payment for more than 90 [consecutive](#) days, the Secretary-General may discontinue the proceeding, after giving notice to the parties and to the [mM](#)ediator if appointed.

381. The addition of “consecutive” reflects change in corresponding AFR 16(2)(c).

Regulation 9 Special Services

- (1) The Centre may perform any special services related to disputes if the requestor deposits in advance an amount sufficient to defray the charge for such services.
- (2) Charges for special services shall normally be based on a schedule of fees published by the Secretary-General.

Regulation 10 Fee for Lodging Requests

The party or parties (if a request is [made-filed](#) jointly) wishing to institute a mediation shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 11
Administration of Proceedings

The ICSID Secretariat is the only entity ~~body~~ authorized to administer mediation proceedings conducted ~~under~~ pursuant to the ICSID Mediation Rules.

382. This change reflects change in corresponding AFR 22.

(MEDIATION) ADMINISTRATIVE AND FINANCIAL REGULATIONS

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Chapter IV
Official Languages and Limitation of Liability

Regulation 12
Languages of Regulations

- (1) These Regulations are published in the official languages of the Centre, English, French and Spanish.
- (2) The texts of these Regulations in each ~~of these~~ official languages are equally authentic.
- (3) The singular form of words in these Regulations and in the ICSID Mediation Rules include the plural form of that word, unless otherwise stated or required by the context of the provision.

Regulation 13
Prohibition Against Testimony and Limitation of Liability

- (1) Unless required by applicable law or unless the parties and the mMediator agree otherwise in writing, no mMediator shall give testimony in any judicial, arbitral or similar proceeding concerning any aspect of the mediation.
- (2) Except to the extent such limitation of liability is prohibited by applicable law, no mMediator shall be liable for any act or omission in connection with the exercise of their functions in the mediation, unless there is fraudulent or willful misconduct.

CONCORDANCE TABLES WP # 3

Concordance Table of AFRs

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4	4
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Concordance Table of IR

WP # 3 Proposed IR	Current IR (2006)
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5	5
6	6
7	7
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9	9

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WP # 3 Proposed AR	WP # 2 Proposed AR	Current AR (2006)	Current AFR or IR (2006)
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7	7	22	AFR 30
8	8	25	AFR 24
9	9	26	AFR 29
10	10	26	AFR 29
11	10BIS (New)		
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13	12	1	
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15	14	2	IR 3
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WP # 3 Proposed AR	WP # 2 Proposed AR	Current AR (2006)	Current AFR or IR (2006)
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65	64BIS (New)		
66	65	37(2)	
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Concordance Table of CR

WP # 3 Proposed CR	WP # 2 Proposed CR	Current CR (2006)	Current AFR or IR (2006)
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2	2	18	
3	3	25(2) and 26(2)	AFR 24(2) and 30
4	3BIS (New)		
5	4		AFR 24 and 28
6	5	21	AFR 30
7	5BIS (New)		
8	6		AFR 14
9	7	27(2) and 33(3)	
10	8	32(2)	
11	9	1(2) and 2	IR 3
12	10		
13	11	3	
14	12		
15	13	4	
16	14	5	
17	15	7	
18	16	6(1) and 24	
19	17	9 and 30	
20	18		
21	19	8(1)	
22	20	8(2)	
23	21	10, 11 and 12	
24	22	22	
25	23		
26	24	16, 19 and 20(2)	
27	25	14(2)	
28	26	15	
29	27	23	
30	28	25	
31	29	13(1) and 20	
32	30	27	
33	31	29	
34	32		
	33		AFR 14
35	34	30	
36	35	30	
37	36	30	
38	37	32	
39	38	33	

Concordance Table of AF Rules

WP # 3 Proposed AF Rules	WP # 2 Proposed AF Rules	Current AF Rules
1	1	1
2	2	2
3	3	3
4	4	

Concordance Table of (AF)AFR Regulations

WP # 3 Proposed (AF) AFR	WP # 2 Proposed (AF)AFR	Current AFR*	WP # 3 Proposed AFR
1	1	AF Article 5	
2	2	25 and 26	28
3	3	23	26
4	4	28	29
5	5	31	30
6	6	14	14
7	7	14	15
8	8	14	16
9	9	15	17
10	10	16	18
11	11		22
12	12	34	32
13	13		

*In accordance with Article 5 of the current AF Rules, “Regulations 14 through 16, 22 through 30 and 34(1) of the Administrative and Financial Regulations of the Centre shall apply, *mutatis mutandis*, in respect of fact-finding, conciliation and arbitration proceedings under the Additional Facility.”

Concordance Table of (AF)AR

WP # 3 Proposed (AF) AR	WP # 2 Proposed (AF)AR	Current A(AF)R (2006)	Current AFR (2006)	WP # 3 Proposed AR	WP # 2 Proposed AR	WP # 3 Proposed IR
1	1	1		1	1	
2	12	2				1
3	13	3				2
4	14	3(2)				3
5	15	3(3) and 32				4
6	16	4				5
7	17	4				6
8	18	5				7
9	19	2				8
10	2			2	2	
11	3	26		3	3	
12	4	31		4	4	

WP # 3 Proposed (AF) AR	WP # 2 Proposed (AF)AR	Current A(AF)R (2006)	Current AFR (2006)	WP # 3 Proposed AR	WP # 2 Proposed AR	WP # 3 Proposed IR
13	5	32		5	5	
14	6			6	6	
15	7	30		7	7	
16	8			8	8	
17	9	33		9	9	
18	10			10	10	
19	10BIS (New)			11	10BIS (New)	
20	11			12	11	
21	20	6,7,8 and 14(1)		13	12	
22	21	8		14	13	
23	22			15	14	
24	23	6 and 9				
25	24			17	16	
26	25	6(4) and 10		18	17	
27	26	11		19	18	
28	27	12		20	19	
29	28	13		21	20	
30	29	15		22	21	
31	30	15(5)		23	22	
32	31	14(1) and (2)		24	23	
33	32	14(3)		25	24	
34	33	16,17,18		26	25	
35	34	24(2) and 27		27	26	
36	35	34		28	27	
37	36	35				
38	37	21(1) and 28		29	28	
39	38	38		30	29	
40	39	29		31	30	
41	40	19 and 20				
42	41	21 and 22		32	31	
43	42	22(2)		31	32	
44	43	23		34	33	
45	44	24(1)		35	34	
46	45	41(1)		36	35	
47	46	41(2) and 40		37	36	
48	47	42 and 43		38	37	
49	48	43(c)		39	38	
50	49	20(c)		40	39	
51	50	45(6)		41	40	
52	51	45(4) and (5)		42	41	
53	52	45(1)-(5) and (7)		43	42	
54	52BIS			44	42BIS	
55	53			45	43	
56	54	46		46	44	

WP # 3 Proposed (AF) AR	WP # 2 Proposed (AF)AR	Current A(AF)R (2006)	Current AFR (2006)	WP # 3 Proposed AR	WP # 2 Proposed AR	WP # 3 Proposed IR
57	55	47		47	45	
58	56	48		48	46	
59	57	58	14	49	47	
	58	58	14	-	48	
60	59	58	14	50	49	
61	60	58	14	51	50	
62	61	24, 44 and 46	14	52	51	
63	62		14(3)(d)	53	52	
64	63	49		54	53	
65	64	50		55	54	
66	65	51		56	55	
	66		14	-	56	
67	67	54				
68	68	52(4)		57	57	
69	69	52		58	58	
70	70	53		59	59	
71	71	55,56 and 57		60	60	
72	72	53(3)		62	62	
73	73	53(3)		63	63	
74	74	39(2)		64	64	
75	74BIS (New)	41(3)		65	64BIS (New)	
76	75			66	65	
77	76	41(3)		67	66	
78	77			74	73	
79	78			75	74	
80	79			76	75	
81	80			77	76	
82	81			78	77	
83	82			79	78	
84	83			80	79	
85	84			81	80	
86	85			82	81	
87	86			85	84	

Concordance Table of (AF)CR

WP # 3 Proposed (AF) CR	WP # 2 Proposed (AF)CR	Current A(CR)R (2006)	Current AFR (2006)	WP # 3 Proposed CR	WP # 2 Proposed CR	WP # 3 Proposed IR
1	1	1		1	1	
2	9	2				1
3	10	3				2
4	11	3(2)				3
5	12	3(3) and 32				4
6	13	4				5

WP # 3 Proposed (AF) CR	WP # 2 Proposed (AF)CR	Current A(CR)R (2006)	Current AFR (2006)	WP # 3 Proposed CR	WP # 2 Proposed CR	WP # 3 Proposed IR
7	14	4				6
8	15	5				7
9	16					8
10	2	25		2	2	2
11	3	29	24, 28, 30	3	3	
12	3BIS (New)			4	3BIS (New)	
13	4		24, 28	5	4	
14	5	28	30	6	5	
15	5BIS (New)			7	5BIS (New)	
16	6		14	8	6	
17	7	34(2)		9	7	
18	8	37(4)		10	8	
19	17	6 and 8		11	9	
20	18	7				
21	19			12	10	
22	20			14	12	
23	21	10		15	13	
24	22	11		16	14	
25	23	12		17	15	
26	24	13		18	16	
27	25	15		19	17	
28	26	15		20	18	
29	27	14		21	19	
30	28	14(3)		22	20	
31	29	16 and 17		23	21	
32	30	30		24	22	
33	31			25	23	
34	32	26		26	24	
35	33	21		27	25	
36	34	22		28	26	
37	35	31		29	27	
38	36	33		30	28	
39	37	20		31	29	
40	38	20		32	30	
41	39	36		33	31	
42	40			34	32	
-	41		14		33	
43	42	37		35	34	
44	43	37		36	35	
45	44	37		37	36	
46	45	38		38	37	
47	46	39		39	38	

Concordance Table of (AF)FFR

WP # 3 Proposed (AF) FFR	WP # 2 Proposed (AF)FFR	Current A(FF)R (2006)
1	1	AF Rules Art. 1
2	2	AF Rules Art. 2
3	3	19
4	4	1
5	5	2
6	6	3(1)
7	7	
8	8	7
9	9	8(1)
10	10	8
11	11	6 and 9-13
12	12	17
13	12BIS (New)	
14	13	18
15	14	9(4)
16	14BIS (New)	
17	15	14
18	16	14(2)
19	17	15 and 16
20	18	



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