



**ICSID**

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

**November 2021**  
**English**

The background of the cover is a photograph of a modern glass skyscraper, showing a grid of windows and reflections. A semi-transparent white box is overlaid on the center of the image, containing the title text.

# **PROPOSALS FOR AMENDMENT OF THE ICSID RULES**



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**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.

# PROPOSALS FOR AMENDMENT OF THE ICSID RULES – ENGLISH

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# I. ICSID ADMINISTRATIVE AND FINANCIAL REGULATIONS

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## I. ICSID ADMINISTRATIVE AND FINANCIAL REGULATIONS

### *Introductory Note*

*The ICSID 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 ICSID 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, but a member may designate a temporary alternate to vote at any meeting at which the regular alternate is not present.  
*(Text is reproduced as amended by Resolution AC(C)/RES/1/2021 of the Administrative Council)*
- (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 service.

**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) reimbursement of expenses reasonably incurred for the sole purpose of the proceeding when not travelling to attend a hearing, meeting or session; 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 spent away from the member's 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 in writing 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 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 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, applications for interpretation or revision of an Award, and requests for resubmission of the dispute.
- (5) This Regulation shall apply to applications 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.

### **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 Secretariat of the Centre is the only body 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 the 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 of 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 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 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;
  - (d) any order, decision, Report or Award by a Commission, Tribunal or Committee; and
  - (e) any notice, order or decision by the Chair or the Secretary-General.
- (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)-(e) 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, 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, 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, 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 Final Provisions**

### **Regulation 32 Languages of Rules and Regulations**

- (1) The official languages of the Centre are English, French and Spanish.
- (2) The texts of the Rules and Regulations made pursuant to the Convention are equally authentic in each official language.
- (3) Where required by the context, the singular form of a word in the Rules and Regulations made pursuant to the Convention includes the plural form of that word.
- (4) Where required by the context, the masculine gender in the French and Spanish versions of the Rules and Regulations made pursuant to the Convention shall be used as a gender-neutral form and shall be understood as referring to the masculine or feminine gender.

## II. ICSID INSTITUTION RULES

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## II. ICSID INSTITUTION RULES

### *Introductory Note*

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

*The ICSID 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 ICSID Arbitration or Conciliation Rules apply to the subsequent procedure. The ICSID Institution Rules do not apply to the initiation of post-Award remedy proceedings, or to proceedings pursuant to the ICSID Additional Facility, the ICSID Fact-Finding Rules or 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 its 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) The Request shall include:

- (a) a description of the investment and of its ownership and control, 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 condition for submission of the dispute in the instrument of consent;
- (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 and supporting documents demonstrating that party's nationality on the date of consent; and
  - (ii) if that party had the nationality of the Contracting State party to the dispute on the date of consent, information concerning and supporting documents demonstrating the agreement of the parties to treat the juridical person as a

national of another Contracting State pursuant to Article 25(2)(b) of the Convention;

- (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:

- (a) contain any procedural proposals or agreements reached by the parties, including with respect to:
  - (i) the number and method of appointment of arbitrators or conciliators;
  - (ii) the procedural language(s); and
  - (iii) the use of expedited arbitration under Chapter XII of the ICSID Arbitration Rules; and
- (b) include the names of the persons and entities that own or control a requesting party which is a juridical person.

### **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 ICSID Arbitration Rule 14 or ICSID 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).

### III. ICSID ARBITRATION RULES

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### III. ICSID ARBITRATION RULES

#### *Introductory Note*

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

*The ICSID Arbitration Rules are supplemented by the ICSID Administrative and Financial Regulations.*

*The ICSID 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 ICSID Administrative and Financial Regulations.

##### **Rule 2 Party and Party Representative**

- (1) For the purposes of these Rules, “party” includes 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 promptly notified by that party to the Secretary-General (“representative(s”).

### **Rule 3 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 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 be filed electronically. In special circumstances, the Tribunal may order that documents also be filed in a different format.

### **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. If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (2) In a proceeding with one procedural language:
  - (a) documents shall be filed and hearings shall be conducted in that procedural language;
  - (b) documents in another language shall be accompanied by a translation into that procedural language; and
  - (c) testimony in another language shall be interpreted into that procedural language.
- (3) In a proceeding with two procedural languages:
  - (a) documents may be filed and hearings may be conducted in either procedural language, unless the Tribunal orders that a document be filed in both procedural languages or that a hearing be conducted with interpretation into both procedural languages;
  - (b) documents in another language shall be accompanied by a translation into either procedural language, unless the Tribunal orders translation into both procedural languages;
  - (c) testimony in another language shall be interpreted into either procedural language, unless the Tribunal orders interpretation into both procedural languages;
  - (d) the Tribunal and the Secretary-General may communicate in either procedural language; and
  - (e) all orders, decisions and the Award shall be rendered in both procedural languages, unless the parties agree otherwise.

- (4) Translation of only the relevant part of a supporting document is sufficient, unless the Tribunal orders 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.

### **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 on the subsequent business day if the date falls on a Saturday or Sunday.

### **Rule 10 Fixing Time Limits**

- (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) In fixing time limits pursuant to paragraph (1), the Tribunal, or the Secretary-General if applicable, shall consult with the parties as far as possible.

- (3) The Tribunal may delegate the power to fix time limits to its President.

**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 or the Tribunal decides that there are special circumstances justifying the failure to meet the time limit.
- (3) A time limit fixed by the Tribunal or the Secretary-General may be extended by agreement of the parties or the Tribunal, or the 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 parties agree otherwise or the Tribunal, or the Secretary-General if applicable, decides that there are special circumstances justifying the failure to meet the time limit.
- (4) The Tribunal may delegate the power to extend time limits to its President.

**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 justifying the delay and the date when it anticipates rendering the order, decision or Award.

**Chapter II**  
**Establishment of the Tribunal**

**Rule 13**  
**General Provisions Regarding the Establishment 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 and address of any non-party from which the party, directly or indirectly, 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 proceeding (“third-party funding”). If the non-party providing funding is a juridical person, the notice shall include the names of the persons and entities that own and control that juridical person.
- (2) 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.
- (3) The Secretary-General shall transmit the notice of third-party funding and any notification of changes to the information in 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).

- (4) The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding pursuant to Rule 36(3).

**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 the 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 and contact information.
- (2) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from the appointee and shall transmit to the 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, the 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 transmit the signed declaration to them.
- (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 promptly 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 and signed the declaration required by Rule 19(3)(b).
- (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 any supporting documents within 21 days after receipt of the proposal;
  - (d) the arbitrator to whom the proposal relates may file a statement that is limited to factual information relevant to the proposal. The statement shall be filed within five days after the earlier of receipt of the response or expiry of the time limit referred to in paragraph (1)(c); and
  - (e) each party may file a final written submission on the proposal within seven days after the earlier of receipt of the statement or expiry of the time limit referred to in paragraph (1)(d).
- (2) The proceeding shall be suspended upon the filing of the proposal until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding.

**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, shall indicate the reasons upon which they are made, 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 object promptly, then that party shall be deemed to have waived its right to object to that non-compliance, unless the Tribunal decides that there are special circumstances justifying the failure to object promptly.

### **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 Tribunal shall decide whether to hold the first session solely between the President of the Tribunal and the parties, or solely among the Tribunal members based on the parties' written submissions.
- (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 ICSID 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 and whether a hearing will be held in person or remotely;
  - (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 and addressing any relevant facts that are new or could not have been known prior to filing the reply or rejoinder.
- (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 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 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) A hearing in person 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, except as provided in these Rules or 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) The Tribunal may be assisted by the Secretary of the Tribunal at its deliberations. No other person shall assist the Tribunal at its deliberations, unless the Tribunal decides otherwise and notifies the parties.
- (4) The Tribunal shall deliberate on any matter for decision immediately after the last 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 Production of Documents**

In deciding a dispute arising out of a party's objection to the other party's request for production of documents, 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 submissions on the report of the Tribunal-appointed expert.
- (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 relevant 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 submissions on the objection;
  - (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 later of the constitution of the Tribunal or the last 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 submissions on the request for bifurcation;
  - (d) the Tribunal shall issue its decision on the request for bifurcation within 30 days after the last 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.
- (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 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.
- (4) The Tribunal may address a preliminary objection in a separate phase of the proceeding or join the objection to the merits. It may do so upon request of a party pursuant to Rule 44 or at any time on its own initiative, in accordance with the procedure in Rule 44(2)-(4).

### **Rule 44 Preliminary Objections with a Request for Bifurcation**

- (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 submissions on the request for bifurcation; and
  - (e) the Tribunal shall issue its decision on a request for bifurcation within 30 days after the last 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;
  - (b) fix time limits for submissions on the preliminary objection;
  - (c) render its decision or Award on the preliminary objection within 180 days after the last submission, in accordance with Rule 58(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 submissions on the preliminary objection;
  - (b) modify any time limits for submissions on the merits, as required; and
  - (c) render its Award within 240 days after the last submission in the proceeding, in accordance with Rule 58(1)(c).

**Rule 45**  
**Preliminary Objections without a Request for Bifurcation**

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 preliminary objection shall be joined to the merits and the following procedure shall apply:

- (a) the Tribunal shall fix time limits for submissions on the preliminary objection;
- (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 (1)(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 last submission in the proceeding, in accordance with Rule 58(1)(c).

**Rule 46**  
**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 one 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 two or more pending arbitrations, but the arbitrations remain separate proceedings and result in separate Awards.

- (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 arbitrations 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 agreed by the parties to the Tribunals constituted in the arbitrations. Such Tribunals shall make any order or decision required to implement these terms.

#### **Rule 47** **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 submissions 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 later of the constitution of the Tribunal or the last 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 48 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 submissions on the ancillary claim.

#### **Rule 49 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 a scheduled procedural step other than a hearing, 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) If the defaulting party fails to act within the grace period or if no such period is granted, the Tribunal shall resume consideration of the dispute and render an Award. For this purpose:
- (a) a party's default shall not be deemed an admission of the assertions made by the other party;
  - (b) the Tribunal may invite the party that is not in default to make submissions and produce evidence; and
  - (c) the Tribunal shall examine the jurisdiction of the Centre and its own competence and, if it is satisfied, decide whether the submissions made are well-founded.

## **Chapter VII Costs**

### **Rule 50 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 51**  
**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 between the parties.

**Rule 52**  
**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 and complied with these Rules and the orders and decisions of the Tribunal;
  - (c) the complexity of the issues; and
  - (d) the reasonableness of the costs claimed.
- (2) If the Tribunal renders an Award pursuant to Rule 41(3), it shall award the prevailing party its reasonable costs, unless the Tribunal determines that there are special circumstances justifying a different allocation of costs.
- (3) The Tribunal may make an interim decision on costs at any time, on its own initiative or upon a party's request.
- (4) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.

**Rule 53**  
**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 include a statement of the relevant circumstances and the supporting documents;
  - (b) the Tribunal shall fix time limits for submissions 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 later of the constitution of the Tribunal or the last 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 shall consider all evidence adduced in relation to the circumstances in paragraph (3), including the existence of third-party funding.
- (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 54**  
**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 ICSID 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 55**  
**Settlement and Discontinuance by Agreement of the Parties**

- (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 56**  
**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 57**  
**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 58 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 later of the Tribunal constitution or the last submission, if the Award is rendered pursuant to Rule 41(3);
  - (b) 180 days after the last submission if the Award is rendered pursuant to Rule 44(3)(c); or
  - (c) 240 days after the last submission in all other cases.
- (2) A statement of costs and submission on costs filed pursuant to Rule 51 shall not be considered a submission for the purposes of paragraph (1).

### **Rule 59 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 date and place 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 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 60** **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 61** **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 filed or the fee is not paid 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 59-60 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 last 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 62**  
**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 pursuant to paragraphs (1)-(3), the Centre shall publish excerpts of the documents referred to in paragraph (1). 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 either party objects to publication or notifies the Secretary-General that the parties disagree on redaction of the document;
  - (b) the parties may send comments on the proposed excerpts to the Secretary-General within 60 days after their receipt, including whether any information in the proposed excerpts is confidential or protected as defined in Rule 66; and
  - (c) the Secretary-General shall consider any comments received on the proposed excerpts and publish such excerpts within 30 days after the expiry of the time limit referred to in paragraph (4)(b).

**Rule 63**  
**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 decide any disputed redactions. The Centre shall publish the order or decision in accordance with the decision of the Tribunal.
- (3) In deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 66.

**Rule 64**  
**Publication of Documents Filed in the Proceeding**

- (1) With consent of the parties, the Centre shall publish any written submission or supporting document filed by a party in the proceeding, with any redactions agreed to by the parties and jointly notified to the Secretary-General.
- (2) Absent consent of the parties pursuant to paragraph (1), a party may refer to the Tribunal a dispute regarding the redaction of a written submission, excluding supporting documents, that it filed in the proceeding. The Tribunal shall decide any disputed redactions and the Centre shall publish the written submission in accordance with the decision of the Tribunal.
- (3) In deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 66.

**Rule 65**  
**Observation of Hearings**

- (1) The Tribunal shall 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.
- (2) The Tribunal shall establish procedures to prevent the disclosure of confidential or protected information as defined in Rule 66 to persons observing the hearings.
- (3) Upon request of a party, the Centre shall publish recordings or transcripts of hearings, unless the other party objects.



**Rule 66**  
**Confidential or Protected Information**

For the purposes of Rules 62-65, confidential or protected information is information which is protected from public disclosure:

- (a) by the instrument of consent to arbitration;
- (b) by the applicable law or applicable rules;
- (c) in the case of information of a State party to the dispute, by the law of that State;
- (d) in accordance with the orders and decisions of the Tribunal;
- (e) by agreement of the parties;
- (f) because it constitutes confidential business information or protected personal information;
- (g) because public disclosure would impede law enforcement;
- (h) because a State party to the dispute considers that public disclosure would be contrary to its essential security interests;
- (i) because public disclosure would aggravate the dispute between the parties; or
- (j) because public disclosure would undermine the integrity of the arbitral process.

**Rule 67**  
**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 the procedural language(s) 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 any conditions for filing such a submission.
- (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, scope or publication 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 last written submission on the application.
- (6) The Tribunal shall provide the non-disputing party with 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 68**  
**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 submission on the interpretation of the treaty at issue in the dispute and upon which consent to arbitration is based. The Tribunal may, after consulting with the parties, invite a non-disputing Treaty Party to make such a submission.
- (2) The Tribunal shall ensure that non-disputing Treaty 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 making of the submission by the

non-disputing Treaty Party, including with respect to the format, length, scope or publication of the submission, and the time limit to file the submission.

- (3) The Tribunal shall provide the non-disputing Treaty Party with relevant documents filed in the proceeding, unless either party objects.
- (4) 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 69 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 filed or the fee is not paid 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 70**

#### **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 71**

##### **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).
- (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 72**

##### **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 last submission on the application.

### **Rule 73**

#### **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 submissions 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 later of the constitution of the Tribunal or Committee or the last 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 74**  
**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 not reconsider any portion of the Award that was not annulled.
- (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 75 Consent of Parties to Expedited Arbitration**

- (1) At any time, the parties to an arbitration conducted under the Convention may consent 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 46 do not apply in an expedited arbitration; and
  - (b) Rules 19, 22, 29, 37, 43, 49, 58, 61 and 72, as modified by Rules 76-84, apply in an expedited arbitration.
- (3) If the parties consent to expedited arbitration after the constitution of the Tribunal pursuant to Chapter II, Rules 76-78 shall not apply, and the expedited arbitration shall proceed subject to all members of the Tribunal confirming their availability pursuant to Rule 79(2). If an arbitrator is unavailable to proceed on an expedited basis, the arbitrator may offer to resign.

### **Rule 76 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 77 or a three-member Tribunal appointed pursuant to Rule 78.
- (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 75(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 77.



- (4) An appointment pursuant to Rules 77 or 78 is an appointment in accordance with the method agreed by the parties pursuant to Article 37(2)(a) of the Convention.

**Rule 77**  
**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 76(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 79(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 79(1), the Secretary-General shall select the next highest-ranked candidate.

**Rule 78**  
**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 76(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 79(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 days 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 79(1), the Secretary-General shall select the next highest-ranked candidate.

**Rule 79**  
**Acceptance of Appointment in Expedited Arbitration**

- (1) An arbitrator appointed pursuant to Rule 77 or 78 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 75(3).

**Rule 80**  
**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 remotely, unless both parties and the Tribunal agree it shall be held in person.

**Rule 81**  
**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;
  - (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;
  - (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 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 to decide a dispute arising from requests to produce documents pursuant to Rule 37. The Tribunal shall decide such requests 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 schedule referred to in paragraph (1), unless the proceeding is suspended or the Tribunal decides that there are special circumstances justifying the suspension of the schedule. In fixing time limits for such submissions, the Tribunal shall take into account the expedited nature of the process.

## **Rule 82**

### **Default in Expedited Arbitration**

A Tribunal may grant a party in default a grace period not to exceed 30 days pursuant to Rule 49.

**Rule 83**  
**Procedural Schedule for Supplementary Decision and Rectification  
in Expedited Arbitration**

The Tribunal shall issue a supplementary decision or rectification pursuant to Rule 61 within 30 days after the last submission on the request.

**Rule 84**  
**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;
  - (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 schedule referred to in paragraph (1), unless the proceeding is suspended or the Tribunal or Committee decides that there are special circumstances justifying the suspension of the schedule. In fixing time limits for such submissions, the Tribunal or Committee shall take into account the expedited nature of the process.

**Rule 85**  
**Resubmission of a Dispute after Annulment in Expedited Arbitration**

The consent of the parties to expedited arbitration pursuant to Rule 75 shall not apply to resubmission of the dispute.

**Rule 86**  
**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. ICSID CONCILIATION RULES

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## IV. ICSID CONCILIATION RULES

### *Introductory Note*

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

*The ICSID Conciliation Rules are supplemented by the ICSID Administrative and Financial Regulations.*

*The ICSID 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**

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.

#### **Rule 2 Party and Party Representative**

- (1) For the purposes of these Rules, “party” includes 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 promptly 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 be filed electronically. In special circumstances, the Commission may order that documents also be filed in a different format.

#### **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. If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (2) In a proceeding with one procedural language:
  - (a) documents shall be filed and meetings shall be conducted in that procedural language;

- (b) documents in another language shall be accompanied by a translation into that procedural language; and
  - (c) oral statements in another language shall be interpreted into that procedural language.
- (3) In a proceeding with two procedural languages:
- (a) documents may be filed and meetings may be conducted in either procedural language, unless the Commission orders that a document be filed in both procedural languages or that a meeting be conducted with interpretation into both procedural languages;
  - (b) documents in another language shall be accompanied by a translation into either procedural language, unless the Commission orders translation into both procedural languages;
  - (c) oral statements in another language shall be interpreted into either procedural language, unless the Commission orders interpretation into both procedural languages;
  - (d) the Commission and the Secretary-General may communicate in either procedural language; and
  - (e) all orders, decisions, recommendations and the Report shall be rendered in both procedural languages, unless the parties agree otherwise.
- (4) Translation of only the relevant part of a supporting document is sufficient, unless the Commission orders 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.

#### **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 on the subsequent business day if the date falls on a Saturday or Sunday.

**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**

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 ICSID 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**  
**Establishment 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 and address of any non-party from which the party, directly or indirectly, has received funds for the conciliation through a donation or grant, or in return for remuneration dependent on the outcome of the conciliation (“third-party funding”). If the non-party providing funding is a juridical person, the notice shall include the names of the persons and entities that own and control that juridical person.
- (2) 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.
- (3) The Secretary-General shall transmit a notice of third-party funding and any notification of changes to the information in 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).

- (4) The Commission may request further information regarding the funding agreement and the non-party providing funding pursuant to Rule 24(4)(a).

### **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 the 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 and contact information.

- (2) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from the appointee and shall transmit to the 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, the 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 transmit the signed declaration to them.
- (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 promptly 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 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 and signed the declaration required by Rule 16(3)(b).
- (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 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 any supporting documents within 21 days after receipt of the proposal;
  - (d) the conciliator to whom the proposal relates may file a statement that is limited to factual information relevant to the proposal. The statement shall be filed within five days after the earlier of receipt of the response or expiry of the time limit referred to in paragraph (1)(c); and
  - (e) each party may file a final written submission on the proposal within seven days after the earlier of receipt of the statement or expiry of the time limit referred to in paragraph (1)(d).



- (2) The proceeding shall be suspended upon the filing of the proposal until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding.

**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 ICSID 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) The Commission may be assisted by the Secretary of the Commission at its deliberations. No other person shall assist the Commission at its deliberations, unless the Commission decides otherwise and notifies the parties.

**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) At the request of the Commission, the parties shall provide all relevant explanations, documents or other information. They shall facilitate visits to any place connected with the dispute in accordance with Rule 24(4)(c) and use best efforts to facilitate 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 on such other date as the Commission may fix in consultation with the parties, and 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 constitution of the Commission 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 of meetings between the Commission and the parties and whether a meeting will be held in person or remotely;
  - (f) the manner of recording or keeping minutes of meetings, if any;
  - (g) the treatment of information relating to, and documents generated in or obtained during, the proceeding;

- (h) 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 any other proceeding in respect of the dispute during the conciliation;
    - (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
  - (i) 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 person or entity authorized to negotiate and settle the dispute on its behalf; and
  - (b) describe the process that would be followed to conclude and implement a settlement agreement.
- (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) A meeting in person 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 reasoned Report to that effect. Otherwise, the Commission shall issue a reasoned decision on the objection 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 date and place 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. ICSID ADDITIONAL FACILITY RULES**

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## V. ICSID ADDITIONAL FACILITY RULES

### *Introductory Note*

*ICSID Additional Facility proceedings are governed by the ICSID Additional Facility Rules, the ICSID Additional Facility Administrative and Financial Regulations, and the relevant ICSID Additional Facility Arbitration Rules or ICSID Additional Facility Conciliation 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 such 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 other than 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 ICSID Additional Facility Arbitration Rules or the ICSID Additional Facility Conciliation Rules respectively. The ICSID Additional Facility Administrative and Financial Regulations shall apply to such proceedings.

**Article 3**  
**Convention Not Applicable**

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

**Article 4**  
**Application of Rules**

The applicable Rules are those in force on the date of filing the Request, unless the parties agree otherwise.

## VI. ICSID ADDITIONAL FACILITY ADMINISTRATIVE AND FINANCIAL REGULATIONS

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## VI. ICSID ADDITIONAL FACILITY ADMINISTRATIVE AND FINANCIAL REGULATIONS

### *Introductory Note*

*The ICSID Additional Facility Administrative and Financial Regulations apply to ICSID 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 ICSID 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 ICSID 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 ICSID 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 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;
  - (d) any order, decision, recommendation, Report or Award by a Commission or Tribunal; and
  - (e) any notice, order or decision by the Secretary-General.
- (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)-(e) 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) reimbursement of expenses reasonably incurred for the sole purpose of the proceeding when not travelling to attend a hearing, meeting or session; 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 spent away from the member's 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 in writing 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 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 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 70(1)(j) of the ICSID 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 applications 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 Secretariat of the Centre is the only body authorized to administer proceedings conducted pursuant to the ICSID Additional Facility Rules.

**Chapter IV**  
**Official Languages and Limitation of Liability**

**Regulation 12**  
**Languages of Rules and Regulations**

- (1) The ICSID Additional Facility Rules, ICSID Additional Facility Arbitration Rules, ICSID Additional Facility Conciliation Rules, and these Regulations (“ICSID Additional Facility Rules and Regulations”) are published in the official languages of the Centre, English, French and Spanish.
- (2) The texts of the ICSID Additional Facility Rules and Regulations are equally authentic in each official language.
- (3) Where required by the context, the singular form of a word in the ICSID Additional Facility Rules and Regulations includes the plural form of that word.
- (4) Where required by the context, the masculine gender in the French and Spanish versions of the ICSID Additional Facility Rules and Regulations shall be used as a gender-neutral form and shall be understood as referring to the masculine or feminine gender.

**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. ICSID ADDITIONAL FACILITY ARBITRATION RULES

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## VII. ICSID ADDITIONAL FACILITY ARBITRATION RULES

### *Introductory Note*

*The ICSID 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 ICSID Additional Facility Arbitration Rules are supplemented by the ICSID Additional Facility Administrative and Financial Regulations.*

*The ICSID 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 ICSID 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 ICSID Additional Facility Arbitration Rules are those in force on the date of filing the request for arbitration, unless the parties agree otherwise.

**Chapter II**  
**Institution of Proceedings**

**Rule 2**  
**The Request**

- (1) Any party wishing to institute arbitration proceedings pursuant to the ICSID 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 its 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) The Request shall include:
  - (a) a description of the investment and of its ownership and control, 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 ICSID 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 condition for submission of the dispute in the instrument of consent;
- (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 other than 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 and supporting documents demonstrating that party's nationality on the date of consent; 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 concerning and supporting documents demonstrating the agreement of the parties to treat the juridical person as a national of another State pursuant to Article 1(5)(b) of the ICSID Additional Facility Rules;
- (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:

- (a) contain any procedural proposals or agreements reached by the parties, including with respect to:

- (i) the number and method of appointment of arbitrators;
  - (ii) the seat of arbitration;
  - (iii) the law applicable to the dispute;
  - (iv) the procedural language(s); and
  - (v) the use of expedited arbitration under Chapter XIII; and
- (b) include the names of the persons and entities that own or control a requesting party which is a juridical person.

**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 ICSID 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  
Party and Party Representative**

- (1) For the purposes of these Rules, “party” includes 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 promptly notified by that party to the Secretary-General (“representative(s)”).

**Rule 11  
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 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 be filed electronically. In special circumstances, the Tribunal may order that documents also be filed in a different format.

**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. If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (2) In a proceeding with one procedural language:
  - (a) documents shall be filed and hearings shall be conducted in that procedural language;
  - (b) documents in another language shall be accompanied by a translation into that procedural language; and
  - (c) testimony in another language shall be interpreted into that procedural language.
- (3) In a proceeding with two procedural languages:
  - (a) documents may be filed and hearings may be conducted in either procedural language, unless the Tribunal orders that a document be filed in both procedural



languages or that a hearing be conducted with interpretation into both procedural languages;

(b) documents in another language shall be accompanied by a translation into either procedural language, unless the Tribunal orders translation into both procedural languages;

(c) testimony in another language shall be interpreted into either procedural language, unless the Tribunal orders interpretation into both procedural languages;

(d) the Tribunal and the Secretary-General may communicate in either procedural language; and

(e) all orders, decisions and the Award shall be rendered in both procedural languages, unless the parties agree otherwise.

(4) Translation of only the relevant part of a supporting document is sufficient, unless the Tribunal orders 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.

#### **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 on the subsequent business day if the date falls on a Saturday or Sunday.

**Rule 18**  
**Fixing Time Limits**

- (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) In fixing time limits pursuant to paragraph (1), the Tribunal, or the Secretary-General if applicable, shall consult with the parties as far as possible.
- (3) The Tribunal may delegate the power to fix time limits to its President.

**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 or the Tribunal decides that there are special circumstances justifying the failure to meet the time limit.
- (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 the 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 parties agree otherwise or the Tribunal, or the Secretary-General if applicable, decides that there are special circumstances justifying the failure to meet the time limit.
- (3) The Tribunal may delegate the power to extend time limits to its President.

**Rule 20**  
**Time Limits Applicable to the Tribunal**

- (1) The Tribunal shall use best efforts to meet time limits to render orders, decisions and the Award.

- (2) If the Tribunal cannot comply with an applicable time limit, it shall advise the parties of the special circumstances justifying the delay and the date when it anticipates rendering the order, decision or Award.

## **Chapter IV Establishment of the Tribunal**

### **Rule 21 General Provisions Regarding the Establishment of the Tribunal**

- (1) The Tribunal shall be constituted without delay after registration of the Request.
- (2) Unless the parties agree otherwise:
  - (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 and address of any non-party from which the party, directly or indirectly, 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 proceeding (“third-party funding”). If the non-party providing funding is a juridical person, the notice shall include the names of the persons and entities that own and control that juridical person.
- (2) 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.
- (3) The Secretary-General shall transmit a notice of third-party funding and any notification of changes to the information in 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).
- (4) The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding pursuant to Rule 46(3).

### **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 the 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 and contact information.
- (2) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from the appointee and shall transmit to the 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, the 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 transmit the signed declaration to them.
- (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 promptly 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 and signed the declaration required by Rule 27(3)(b).
- (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 any supporting documents within 21 days after receipt of the proposal;
  - (d) the arbitrator to whom the proposal relates may file a statement that is limited to factual information relevant to the proposal. The statement shall be filed within five days after the earlier of receipt of the response or expiry of the time limit referred to in paragraph (2)(c); and
  - (e) each party may file a final written submission on the proposal within seven days after the earlier of receipt of the statement or 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 upon the filing of the proposal until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding.

**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, shall indicate the reasons upon which they are made, 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 ICSID 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 object promptly, then that party shall be deemed to have waived its right to object to that non-compliance, unless the Tribunal decides that there are special circumstances justifying the failure to object promptly.

### **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 Tribunal shall decide whether to hold the first session solely between the President of the Tribunal and the parties, or solely among the Tribunal members based on the parties' written submissions.

- (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 ICSID 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 and whether a hearing will be held in person or remotely;
  - (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 and addressing any relevant facts that are new or could not have been known prior to filing the reply or rejoinder.

(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) A hearing in person 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, except as provided in these Rules or 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) The Tribunal may be assisted by the Secretary of the Tribunal at its deliberations. No other person shall assist the Tribunal at its deliberations, unless the Tribunal decides otherwise and notifies the parties.
- (4) The Tribunal shall deliberate on any matter for decision immediately after the last 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 Production of Documents**

In deciding a dispute arising out of a party's objection to the other party's request for production of documents, 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 submissions on the report of the Tribunal-appointed expert.
- (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 relevant 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 submissions on the objection;
  - (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 later of the constitution of the Tribunal or the last 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 submissions on the request for bifurcation;
  - (d) the Tribunal shall issue its decision on the request for bifurcation within 30 days after the last 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.
- (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 ICSID 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 at any time on its own initiative consider whether a dispute or an ancillary claim is within its jurisdiction or competence.
- (5) The Tribunal may address a preliminary objection in a separate phase of the proceeding or join the objection to the merits. It may do so upon request of a party pursuant to Rule 54 or at any time on its own initiative, in accordance with the procedure in Rule 54(2)-(4).

**Rule 54**  
**Preliminary Objections with a Request for Bifurcation**

- (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 submissions on the request for bifurcation; and
  - (e) the Tribunal shall issue its decision on a request for bifurcation within 30 days after the last 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;

- (b) fix time limits for submissions on the preliminary objection;
  - (c) render its decision or Award on the preliminary objection within 180 days after the last submission, in accordance with Rule 69(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 submissions on the preliminary objection;
  - (b) modify any time limits for submissions on the merits, as required; and
  - (c) render its Award within 240 days after the last submission in the proceeding, in accordance with Rule 69(1)(c).

**Rule 55**  
**Preliminary Objections without a Request for Bifurcation**

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 preliminary objection shall be joined to the merits and the following procedure shall apply:

- (a) the Tribunal shall fix time limits for submissions on the preliminary objection;
- (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 (1)(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 last submission in the proceeding, in accordance with Rule 69(1)(c).

**Rule 56**  
**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 one 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 two or more pending arbitrations, but the arbitrations remain separate proceedings and result in separate Awards.
- (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 arbitrations 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 agreed by the parties to the Tribunals constituted in the arbitrations. Such Tribunals shall make any order or decision required to implement these terms.

**Rule 57**  
**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 submissions 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 later of the constitution of the Tribunal or the last 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 58**

#### **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 submissions on the ancillary claim.

### **Rule 59 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 a scheduled procedural step other than a hearing, 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) If the defaulting party fails to act within the grace period or if no such period is granted, the Tribunal shall resume consideration of the dispute and render an Award. For this purpose:
  - (a) a party's default shall not be deemed an admission of the assertions made by the other party;
  - (b) the Tribunal may invite the party that is not in default to make submissions and produce evidence; and

- (c) the Tribunal shall examine its jurisdiction and competence and, if it is satisfied, decide whether the submissions made are well-founded.

## **Chapter IX Costs**

### **Rule 60 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 61 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 between the parties.

### **Rule 62 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 and complied with these Rules and the orders and decisions of the Tribunal;
  - (c) the complexity of the issues; and
  - (d) the reasonableness of the costs claimed.

- (2) If the Tribunal renders an Award pursuant to Rule 51(3), it shall award the prevailing party its reasonable costs, unless the Tribunal determines that there are special circumstances justifying a different allocation of costs.
- (3) The Tribunal may make an interim decision on costs at any time, on its own initiative or upon a party's request.
- (4) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.

### **Rule 63 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 include a statement of the relevant circumstances and the supporting documents;
  - (b) the Tribunal shall fix time limits for submissions 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 later of the constitution of the Tribunal or the last 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 shall consider all evidence adduced in relation to the circumstances in paragraph (3), including the existence of third-party funding.
- (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 64**  
**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 ICSID 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 65**  
**Settlement and Discontinuance by Agreement of the Parties**

- (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 66**  
**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 67**  
**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 68**  
**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 69**  
**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 later of the Tribunal constitution or the last submission, if the Award is rendered pursuant to Rule 51(4);
  - (b) 180 days after the last submission if the Award is rendered pursuant to Rule 54(3)(c); or
  - (c) 240 days after the last submission in all other cases.
- (2) A statement of costs and submission on costs filed pursuant to with Rule 61 shall not be considered a 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 70**  
**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 date and place 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 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 71 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 72**  
**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 filed or the fee is not paid 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 70-71 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 last 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 73**  
**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 decide any disputed redactions. The Centre shall publish the order, decision or Award in accordance with the decision of the Tribunal.
- (3) In deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 76.

**Rule 74**  
**Publication of Documents Filed in the Proceeding**

- (1) With consent of the parties, the Centre shall publish any written submission or supporting document filed by a party in the proceeding, with any redactions agreed to by the parties and jointly notified to the Secretary-General.
- (2) Absent consent of the parties pursuant to paragraph (1), a party may refer to the Tribunal a dispute regarding the redaction of a written submission, excluding supporting documents, that it filed in the proceeding. The Tribunal shall decide any

disputed redactions and the Centre shall publish the document in accordance with the decision of the Tribunal.

- (3) In deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 76.

### **Rule 75 Observation of Hearings**

- (1) The Tribunal shall 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.
- (2) The Tribunal shall establish procedures to prevent the disclosure of confidential or protected information as defined in Rule 76 to persons observing the hearings.
- (3) Upon request of a party, the Centre shall publish recordings or transcripts of hearings, unless the other party objects.

### **Rule 76 Confidential or Protected Information**

For the purposes of Rules 73-75, confidential or protected information is information which is protected from public disclosure:

- (a) by the instrument of consent to arbitration;
- (b) by the applicable law or applicable rules;
- (c) in the case of information of a State or an REIO party to the dispute, by the law of that State or that REIO;
- (d) in accordance with the orders and decisions of the Tribunal;
- (e) by agreement of the parties;
- (f) because it constitutes confidential business information or protected personal information;
- (g) because public disclosure would impede law enforcement;



- (h) because a State or an REIO party to the dispute considers that public disclosure would be contrary to its essential security interests;
- (i) because public disclosure would aggravate the dispute between the parties; or
- (j) because public disclosure would undermine the integrity of the arbitral process.

**Rule 77**  
**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 the procedural language(s) 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 any conditions for filing such a submission.
- (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, scope or publication 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 last submission on the application.

- (6) The Tribunal shall provide the non-disputing party with 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 78**  
**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 submission on the interpretation of the treaty at issue in the dispute and upon which consent to arbitration is based. The Tribunal may, after consulting with the parties, invite a non-disputing Treaty Party to make such a submission.
- (2) A submission of a non-disputing Treaty Party pursuant to paragraph (1) shall not support a party in a manner tantamount to diplomatic protection.
- (3) The Tribunal shall ensure that non-disputing Treaty 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 making of the submission by the non-disputing Treaty Party, including with respect to the format, length, scope or publication of the submission, and the time limit to file the submission.
- (4) The Tribunal shall provide the non-disputing Treaty Party with relevant documents filed in the proceeding, unless either party objects.
- (5) The parties shall have the right to make observations on the submission of the non-disputing Treaty Party.

**Chapter XIII**  
**Expedited Arbitration**

**Rule 79**  
**Consent of Parties to Expedited Arbitration**

- (1) At any time, the parties to an arbitration conducted pursuant to these Rules may consent 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 ICSID Additional Facility Arbitration Rules apply to an expedited arbitration except that:
  - (a) Rules 24, 26, 49, 50, 51, 52, 54 and 56 do not apply in an expedited arbitration; and
  - (b) Rules 27, 30, 38, 47, 53, 59, 69 and 72, as modified by Rules 80-87, apply in an expedited arbitration.
- (3) If the parties consent to expedited arbitration after the constitution of the Tribunal pursuant to Chapter IV, Rules 80-82 shall not apply, and the expedited arbitration shall proceed subject to all members of the Tribunal confirming their availability pursuant to Rule 83(2). If an arbitrator is unavailable to proceed on an expedited basis, the arbitrator may offer to resign.

**Rule 80**  
**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 81 or a three-member Tribunal appointed pursuant to Rule 82.
- (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 79(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 81.
- (4) An appointment pursuant to Rules 81-82 is an appointment in accordance with the method agreed by the parties.

**Rule 81**  
**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 80(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 83(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 83(1), the Secretary-General shall select the next highest-ranked candidate.

## **Rule 82**

### **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 80(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 83(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 days 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 83(1), the Secretary-General shall select the next highest-ranked candidate.

**Rule 83**  
**Acceptance of Appointment in Expedited Arbitration**

- (1) An arbitrator appointed pursuant to Rule 81 or 82 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 79(3).

**Rule 84**  
**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 remotely, unless both parties and the Tribunal agree it shall be held in person.

**Rule 85**  
**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;
  - (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;
  - (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 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 to decide a dispute arising from requests to produce documents pursuant to Rule 47. The Tribunal shall decide such requests 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 schedule referred to in paragraph (1), unless the proceeding is suspended or the Tribunal decides that there are special circumstances justifying the suspension of the schedule. In fixing time limits for such submissions, the Tribunal shall take into account the expedited nature of the process.

### **Rule 86**

#### **Default in Expedited Arbitration**

A Tribunal may grant a party in default a grace period not to exceed 30 days pursuant to Rule 59.

### **Rule 87**

#### **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 72 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 72 within 30 days after the last submission on the request.

### **Rule 88**

#### **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. ICSID ADDITIONAL FACILITY CONCILIATION RULES

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## VIII. ICSID ADDITIONAL FACILITY CONCILIATION RULES

### *Introductory Note*

*The ICSID 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 ICSID Additional Facility Conciliation Rules are supplemented by the ICSID Additional Facility Administrative and Financial Regulations.*

*The ICSID 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 ICSID 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 ICSID Additional Facility Conciliation Rules are those in force on the date of filing the Request for conciliation, unless the parties agree otherwise.

### **Chapter II Institution of the Proceedings**

#### **Rule 2 The Request**

- (1) Any party wishing to institute conciliation proceedings pursuant to the ICSID 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 its 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) The Request shall include:

- (a) a description of the investment and of its ownership and control, 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 ICSID 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 condition for the submission of the dispute in the instrument of consent;
- (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 other than 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 and supporting documents demonstrating that party's nationality on the date of consent; 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 concerning and supporting documents demonstrating the agreement of the parties to treat the juridical person as a national of another State pursuant to Article 1(5)(b) of the ICSID Additional Facility Rules;
- (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:

- (a) contain any procedural proposals or agreements reached by the parties, including with respect to the number and method of appointment of conciliators and the procedural language(s); and
- (b) include the names of the persons and entities that own or control a requesting party which is a juridical person.

**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 ICSID 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 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 promptly 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 be filed electronically. In special circumstances, the Commission may order that documents also be filed in a different format.

### **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. If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (2) In a proceeding with one procedural language:
  - (a) documents shall be filed and meetings shall be conducted in that procedural language;
  - (b) documents in another language shall be accompanied by a translation into that procedural language; and
  - (c) oral statements in another language shall be interpreted into that procedural language.
- (3) In a proceeding with two procedural languages:
  - (a) documents may be filed and meetings may be conducted in either procedural language, unless the Commission orders that a document be filed in both procedural languages or that a meeting be conducted with interpretation into both procedural languages;
  - (b) documents in another language shall be accompanied by a translation into either procedural language, unless the Commission orders translation into both procedural languages;
  - (c) oral statements in another language shall be interpreted into either procedural language, unless the Commission orders interpretation into both procedural languages;
  - (d) the Commission and the Secretary-General may communicate in either procedural language; and
  - (e) all orders, decisions, recommendations and the Report shall be rendered in both procedural languages, unless the parties agree otherwise.
- (4) Translation of only the relevant part of a supporting document is sufficient, unless the Commission orders 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.

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

**Rule 16**  
**Costs of the Proceeding**

Unless the parties agree otherwise:

- (a) the fees and expenses of the Commission and the administrative charges and direct costs of the Centre shall be borne equally by the parties; and
- (b) each party shall bear any other costs it incurs in connection with the proceeding.

**Rule 17**  
**Confidentiality of the Conciliation**

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 ICSID 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**  
**Establishment 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 and address of any non-party from which the party, directly or indirectly has received funds for the conciliation through a donation or grant, or in return for remuneration dependent on the outcome of the conciliation (“third-party funding”). If the non-party providing funding is a juridical person, the notice shall include the names of the persons and entities that own and control that juridical person.
- (2) 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.
- (3) The Secretary-General shall transmit a notice of third-party funding and any notification of changes to the information in 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 24(3)(b).
- (4) The Commission may request further information regarding the funding agreement and the non-party providing funding pursuant to Rule 32(4)(a).

**Rule 22**  
**Assistance of the Secretary-General with Appointment**

The parties may jointly request that the Secretary-General assist with the appointment of the 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 and contact information.
- (2) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from the appointee and shall transmit to the 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, the 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 transmit the signed declaration to them.
- (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 promptly 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 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 26**  
**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 and signed the declaration required by Rule 24(3)(b).
- (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 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 any supporting documents within 21 days after receipt of the proposal;
  - (d) the conciliator to whom the proposal relates may file a statement that is limited to factual information relevant to the proposal. The statement shall be filed within five days after the earlier of receipt of the response or expiry of the time limit referred to in paragraph (2)(c); and
  - (e) each party may file a final written submission on the proposal within seven days after the earlier of receipt of the statement or 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 upon the filing of the proposal until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding.

**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 ICSID 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) The Commission may be assisted by the Secretary of the Commission at its deliberations. No other person shall assist the Commission at its deliberations, unless the Commission decides otherwise and notifies the parties.

**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) At the request of the Commission, the parties shall provide all relevant explanations, documents or other information. They shall facilitate visits to any place connected with the dispute in accordance with Rule 32(4)(c) and use best efforts to facilitate 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 on such other date as the Commission may fix in consultation with the parties, and 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 constitution of the Commission 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 ICSID 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 of meetings between the Commission and the parties and whether a meeting will be held in person or remotely;
  - (g) the manner of recording or keeping minutes of meetings, if any;

- (h) the treatment of information relating to, and documents generated in or obtained during, the proceeding;
  - (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 32(4)(b);
    - (ii) not to initiate or pursue any other proceeding in respect of the dispute during the conciliation;
    - (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
  - (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 person or entity authorized to negotiate and settle the dispute on its behalf; and
  - (b) describe the process that would be followed to conclude and implement a settlement agreement.
- (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) A meeting in person 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 reasoned Report to that effect. Otherwise, the Commission shall issue a reasoned decision on the objection 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 date and place 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. ICSID FACT-FINDING RULES

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## IX. ICSID FACT-FINDING RULES

### *Introductory Note*

*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.*

*The ICSID Fact-Finding Rules are supplemented by the ICSID Fact-Finding Administrative and Financial Regulations.*

### **Chapter I General Provisions**

#### **Rule 1 Definitions**

- (1) “Secretariat” means the Secretariat of the Centre.
- (2) “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 such matters.
- (3) “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.
- (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) “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 that relate to an investment, involve a State or an REIO, and 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 ICSID Fact-Finding Administrative and Financial Regulations 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 1-7.
- (3) The applicable ICSID Fact-Finding Rules are those in force on the date of filing the Request, unless the parties agree otherwise.

### **Rule 4 Party Representative**

Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be promptly notified by that party to the Secretary-General (“representative(s)”).

## **Chapter II Institution of the Fact-Finding Proceeding**

### **Rule 5 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 6**  
**Contents and Filing of the Request**

- (1) The Request shall:
- (a) be in English, French or Spanish, or in any other language with the approval of the Secretary-General;
  - (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, Spanish or a language approved by the Secretary-General pursuant to Rule 6(1)(a), 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 7**  
**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 8 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 specific qualifications or expertise.

#### **Rule 9 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 10 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) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from the appointee.
- (3) Within 20 days after receipt of the request for acceptance of an appointment, the 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 promptly 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 proceeding relating to circumstances examined during the fact-finding.

### **Rule 11**

#### **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 and signed the declaration required by Rule 10(3)(b). As soon as the Committee is constituted, the Secretary-General shall transmit the Request, any supporting documents, communications received from the parties and the notice of registration to each member.

## **Chapter IV**

### **Conduct of the Fact-Finding Proceeding**

#### **Rule 12**

##### **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, and in any event before the first session. 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; whether a session will be held in person or remotely; the next steps in the proceeding; the treatment of information and documents; 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 13 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 best efforts to facilitate the Committee's inquiry.

### **Rule 14 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 on the subsequent business day if the date falls on a Saturday or Sunday.

### **Rule 15 Costs of the Proceeding**

Unless the parties agree otherwise:



- (a) the fees and expenses of the Committee and the administrative charges and direct costs of the Centre shall be borne equally by the parties; and
- (b) each party shall bear any other costs it incurs in connection with the proceeding.

**Rule 16**  
**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) Unless the parties agree otherwise, the fact that they are seeking or have sought fact-finding shall be confidential.

**Rule 17**  
**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 18**  
**Manner of Terminating the Proceeding**

The proceeding shall terminate upon:

- (a) the issuance of a notice by the Secretary-General pursuant to Rule 9(4);
- (b) the issuance of a Report by the Committee; or

(c) a notice from the parties that they have agreed to terminate the proceeding.

### **Rule 19**

#### **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 20**

#### **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 19.
- (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 21**  
**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. ICSID FACT-FINDING ADMINISTRATIVE AND FINANCIAL REGULATIONS

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## X. ICSID FACT-FINDING ADMINISTRATIVE AND FINANCIAL REGULATIONS

### *Introductory Note*

*The ICSID 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.

### **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 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 fact-finding 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;
  - (d) any Report of the Committee; and
  - (e) any notice from the Secretary-General.
- (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)-(e) 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) reimbursement of expenses reasonably incurred for the sole purpose of the proceeding when not travelling to attend a meeting or session; 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 spent away from the member's 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 in writing 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 administrative charges 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 an equal share 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 Secretariat of the Centre is the only body 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 Rules and Regulations**

- (1) The ICSID Fact-Finding Rules and these Regulations are published in the official languages of the Centre, English, French and Spanish.

- (2) The texts of the ICSID Fact-Finding Rules and these Regulations are equally authentic in each official language.
- (3) Where required by the context, the singular form of a word in the ICSID Fact-Finding Rules and these Regulations includes the plural form of that word.
- (4) Where required by the context, the masculine gender in the French and Spanish versions of the ICSID Fact-Finding Rules and these Regulations shall be used as a gender-neutral form and shall be understood as referring to the masculine or feminine gender.

**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. ICSID MEDIATION RULES

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## XI. ICSID MEDIATION RULES

### *Introductory Note*

*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.*

*The ICSID Mediation Rules are supplemented by the ICSID Mediation Administrative and Financial Regulations.*

### **Chapter I General Provisions**

#### **Rule 1 Definitions**

- (1) “Secretariat” means the Secretariat of the Centre.
- (2) “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 such matters.
- (3) “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.
- (4) “Request” means a request for mediation together with the required supporting documents.
- (5) “Secretary-General” means the Secretary-General of the Centre.
- (6) “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 that relate to an investment, involve a State or an REIO, and 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 ICSID Mediation Administrative and Financial Regulations 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 1-7.
- (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.

### **Rule 4 Party Representative**

Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be promptly notified by that party to the Secretary-General (“representative(s)”).

## **Chapter II Institution of the Mediation**

### **Rule 5 Institution of Mediation Based on Prior Party Agreement**

- (1) If the parties have agreed in writing 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 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, or in any other language with the approval of the Secretary-General;
  - (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 to be mediated;
  - (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, Spanish or a language approved by the Secretary-General pursuant to Rule 5(3)(a), 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 6**  
**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 5(3)(a)-(h) and 5(4);
  - (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 advise whether it accepts 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 shall inform the parties that no further action will be taken on the Request.

**Rule 7**  
**Registration of the Request**

- (1) Upon receipt of:
  - (a) the lodging fee; and

(b) a Request pursuant to Rule 5, or a Request and an agreement to mediate pursuant to Rule 6;

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

#### **Rule 9 Costs of the Mediation**

Unless the parties agree otherwise:

(a) the fees and expenses of the mediator and the administrative charges and direct costs of the Centre shall be borne equally by the parties; and

(b) each party shall bear any other costs it incurs in connection with the mediation.



**Rule 10**  
**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) Unless the parties agree otherwise, the fact that they are mediating or have mediated shall be confidential.

**Rule 11**  
**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 12**  
**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 specific qualifications or expertise.

**Rule 13**  
**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 14**

##### **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) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from the appointee.
- (3) Within 20 days after receipt of the request for acceptance of an appointment, the 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 transmit the signed declaration to them.
- (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 promptly 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 proceeding relating to the issues in dispute in the mediation.

### **Rule 15 Transmittal of the Request**

As soon as the mediator has, or both co-mediators have, accepted the appointment(s) and signed the declaration required by Rule 14(3)(b), the Secretary-General shall transmit the Request, any supporting documents, communications received from the parties and the notice of registration to each mediator and notify the parties of the transmittal.

### **Rule 16 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 17 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 has no authority to impose a resolution of the dispute on the parties.
- (2) The mediator shall conduct the mediation in good faith and in an expeditious and cost-effective manner.
- (3) The mediator shall treat the parties equally and provide each party with a reasonable opportunity to participate in the mediation.
- (4) 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. Information received by the mediator from one party shall not be disclosed to the other party without authorization from the disclosing party.

### **Rule 18 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 19 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 15, 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 20 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 15 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 and whether a meeting will be held in person or remotely;
  - (d) the next steps in the mediation;
  - (e) the treatment of information relating to, and documents generated in or obtained during, the mediation;
  - (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 17(4);
    - (ii) not to initiate or pursue other proceedings in respect of the issues being mediated;
    - (iii) concerning the application of prescription or limitation periods; and
    - (iv) concerning the disclosure of any settlement agreement resulting from the mediation;

- (h) the division of advances payable pursuant to ICSID Mediation Administrative and Financial Regulation 7; and
  - (i) any other relevant procedural and administrative matters.
- (4) At the first session or within such other period as the mediator may determine, each party shall:
- (a) identify a person or entity authorized to negotiate and settle the issues being mediated on its behalf; and
  - (b) describe the process that would be followed to conclude and implement a settlement agreement.

**Rule 21  
Mediation Procedure**

- (1) The mediator shall conduct the mediation in accordance with the Protocol and shall consider the views of the parties and the issues being mediated.
- (2) The mediator may request that the parties provide additional information or written statements.
- (3) The mediator may obtain expert advice with the agreement of the parties.
- (4) The mediator may make oral or written recommendations for the resolution of any issues being mediated, if requested by all parties.

**Rule 22  
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) fulfilment of the requirements of Rule 13(5).

(2) The notice of termination shall contain a brief summary of the procedural steps, any agreement of the parties pursuant to Rule 11, and the basis for termination of the mediation pursuant to paragraph (1).

(3) The notice shall be dated and signed by the mediator or the Secretary-General, as applicable.

(4) 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. ICSID MEDIATION ADMINISTRATIVE AND FINANCIAL REGULATIONS

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## XII. ICSID MEDIATION ADMINISTRATIVE AND FINANCIAL REGULATIONS

### *Introductory Note*

*The ICSID Mediation Administrative and Financial Regulations apply to mediations 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 mediations 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.

### **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 mediations and delegated to the Secretary; and
- (b) assist the parties and the mediator with the mediation, including the expeditious and cost-effective conduct of the mediation.

### **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 mediation. 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 and communications pursuant to ICSID Mediation Rules 5 and 6;
  - (b) all documents and communications filed in a mediation relating to the appointment of the mediator;
  - (c) the mediation protocol issued pursuant to ICSID Mediation Rule 20; and
  - (d) any notice issued pursuant to ICSID Mediation Rules 7 and 22.
- (2) Subject to the ICSID Mediation Rules and the agreement of the parties to the mediation, 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 a mediation, indicating that they are traveling in connection with a mediation 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 mediation;
  - (b) reimbursement of expenses reasonably incurred for the sole purpose of the mediation when not travelling to attend a meeting or session; 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 spent away from the mediator's 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 in writing 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 15 and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish administrative charges 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 21(3);
  - (c) service providers that the Centre engages for a mediation; 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 mediation or to pay the fees, allowances or reimbursements of the mediator, unless the parties have made sufficient payments to defray the costs of the mediation.

### **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 instituting the mediation to make a payment to defray the estimated costs of the mediation through the first session of the mediation, which shall be considered partial payment by the instituting party of the payment referred to in paragraph (1)(b);
  - (b) upon the transmittal of the Request for mediation to the mediator pursuant to ICSID Mediation Rule 15, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the mediation; 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 mediation.
- (2) Each party shall pay an equal share 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 mediation until payment is made, after giving notice to the parties and to the mediator if appointed; and
- (c) if any mediation is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the mediation, 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 Mediations**

The Secretariat of the Centre is the only body authorized to administer mediations conducted pursuant to the ICSID Mediation Rules.

**Chapter IV**  
**Official Languages and Limitation of Liability**

**Regulation 12**  
**Languages of Rules and Regulations**

- (1) The ICSID Mediation Rules and these Regulations are published in the official languages of the Centre, English, French and Spanish.
- (2) The texts of the ICSID Mediation Rules and these Regulations are equally authentic in each official language.
- (3) Where required by the context, the singular form of a word in the ICSID Mediation Rules and these Regulations includes the plural form of that word.
- (4) Where required by the context, the masculine gender in the French and Spanish versions of the ICSID Mediation Rules and these Regulations shall be used as a gender-neutral form and shall be understood as referring to the masculine or feminine gender.

**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.

**SCHEDULES\***

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\*The Schedules do not form part of the formal resolutions for a vote but are included for convenience.

**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 ICSID 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 ICSID 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 ICSID Fact-Finding Rules; or (b) requesting the institution of a mediation under the ICSID 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. With respect to fact-finding and mediation proceedings, the Centre will levy a charge of US\$200 per hour for staff services.



#### **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. The Centre will provide a statement of the case account to the parties with each request for payment and at any other time upon the request of a party.
9. 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, ICSID ADDITIONAL FACILITY, ICSID FACT-FINDING OR ICSID MEDIATION RULES**

10. 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, ICSID Additional Facility, ICSID Fact-Finding or ICSID 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.
11. 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, ICSID Additional Facility, ICSID Fact-Finding or ICSID Mediation Rules.

#### **VI. CHARGES FOR SPECIAL SERVICES**

12. 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](mailto:icsidsecretariat@worldbank.org).

**MEMORANDUM ON FEES AND EXPENSES IN ICSID PROCEEDINGS**  
(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 ICSID Administrative and Financial Regulation 14, ICSID Additional Facility Administrative and Financial Regulation 6(1), ICSID Fact-Finding Administrative and Financial Regulation 6(1) or ICSID 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 economic 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.
12. All travel arrangements should be made in the most economic manner possible and, to the extent possible, should minimize the adverse ecological impact of the travel.

#### **IV. OTHER REIMBURSABLE EXPENSES**

13. 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.
14. Claims for reimbursement of all expenses must be accompanied by receipts or other supporting documents.

#### **V. CLAIMS AND PAYMENT**

15. Claims for fees, *per diem* allowances and expenses should be submitted electronically to [icsidpayments@worldbank.org](mailto:icsidpayments@worldbank.org) using the Centre's Claim for Fees and Expenses form.
16. Claims must be submitted regularly, and at least on a quarterly basis. Final claims must be submitted prior to the conclusion of the case.
17. 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.
18. A financial statement of the case account containing an itemized account of the fees and expenses of each member will be available to the parties at any time during the proceeding and upon conclusion of the proceeding.
19. Members will be provided a financial statement of the case account on a regular basis and 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.
20. 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.

21. 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 form.
22. 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.

## 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 ICSID [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 / ICSID Additional Facility 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



## 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 (ICSID Additional Facility 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 / ICSID Additional Facility 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





## ***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 ICSID 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



## 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 ICSID [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 [(ICSID Conciliation Rule 12(1) / ICSID Additional Facility 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



## 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 ICSID 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



## 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 ICSID 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







**ICSID**

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



**ICSID**

**International Centre for  
Settlement of Investment Disputes**  
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