




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

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A photograph of a modern glass skyscraper facade, showing a grid of windows and reflections. A semi-transparent white box is overlaid in the center, containing the title text.

PROPOSALS FOR AMENDMENT OF THE ICSID RULES



ICSID

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

International Centre for Settlement of Investment Disputes

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

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

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ABBREVIATIONS

(AF)AFR	ICSID Additional Facility Administrative and Financial Regulations
(AF)AR currently A(AF)R	ICSID Additional Facility Arbitration Rules
(AF)CR currently C(AF)R	ICSID Additional Facility Conciliation Rules
AF Rules	ICSID Additional Facility Rules
AFR	ICSID Administrative and Financial Regulations
AR	ICSID Arbitration Rules
CR	ICSID Conciliation Rules
FFR currently FF(AF)R	ICSID Fact-Finding Rules
FFR AFR	ICSID Fact-Finding Administrative and Financial Regulations
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States
IR	ICSID Institution Rules
ISDS	Investor-State Dispute Settlement
Member States	Contracting States of ICSID Convention (ICSID 3)
MR	ICSID Mediation Rules
MR AFR	ICSID Mediation Administrative and Financial Regulations
NDP	Non-disputing Party
NDTP	Non-disputing Treaty Party
REIO	Regional Economic Integration Organization
TPF	Third-Party Funding
WP # 1	ICSID Working Paper on Amendment (August 2018)
WP # 2	ICSID Updated Working Paper on Amendment (March 2019)
WP # 3	ICSID Updated Working Paper on Amendment (August 2019)
WP # 4	ICSID Updated Working Paper on Amendment (February 2020)
WP # 5	ICSID Updated Working Paper on Amendment (June 2021)

INTRODUCTION TO WORKING PAPER # 5 – June 15, 2021

1. ICSID is proposing a comprehensive amendment of its rules and regulations for ICSID Convention and ICSID Additional Facility proceedings, as well as new stand-alone rules for fact-finding and mediation in investment disputes.
2. To this end, ICSID has published four prior working papers, each setting out the proposals for amendment in English, French and Spanish, and the explanation for each proposal. This has been paired with broad consultation with States, counsel, arbitrators, private sector representatives and stakeholder groups, and an open invitation for interested parties to submit written comments on the proposals. The working papers and written comments on the proposals are available on [ICSID's rules amendment webpage](#).
3. Working Paper # 5 (*WP # 5*) contains the latest iteration of the proposed amended rules and is based on written comments received by June 14, 2021. It contains relatively few changes from *WP # 4*, reflecting the increasing consensus developed during the consultation process. The main changes concern the checklist of instructions for filing a case (IR 3), disclosure of third-party funding (AR 14), orders and decisions (AR 27), bifurcation (AR 42 and 43), default (AR 49), decisions on costs (AR 52), security for costs (AR 53) and expedited arbitration (AR 75). Most other changes are linguistic or organizational. A summary of the proposals in *WP # 5* is found [here](#).
4. *WP # 5* reflects the emerging consensus developed over the last four years of meetings, discussions and drafting. As a result, ICSID is hopeful that Member States will be supportive of the text in *WP # 5* and will now be prepared to move to the voting stage based on this iteration of the text. Member States have nevertheless been invited to send any final written comments on *WP # 5* to the ICSID Secretariat by the end of August 2021.
5. ICSID's objective is to place the proposed amended rules before the membership, hopefully by the end of 2021 and, if adopted, to have these in place by early 2022. We believe that the work of Member States in this regard has been extensive, and that it is time to incorporate these updated rules into the daily practice of parties in ICSID cases.



Meg Kinnear
ICSID Secretary-General

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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”).
- (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 specify the circumstances that require security for costs;

- (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 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, or scope of the written submission and the time limit to file the submission.
- (5) The Tribunal shall issue a reasoned decision on whether to permit a non-disputing party submission within 30 days after the last written submission on the application.
- (6) The Tribunal may 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 written 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 filing of the submission by the non-disputing Treaty Party, including with respect to the format and length of the submission, and the time limit to file the submission.
- (3) The parties shall have the right to make observations on the submission of the non-disputing Treaty Party.

Chapter XI Interpretation, Revision and Annulment of the Award

Rule 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) 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).

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”).
- (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”).
- (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 specify the circumstances that require security for costs;
 - (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 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, or scope of the written submission and the time limit to file the submission.
- (5) The Tribunal shall issue a reasoned decision on whether to permit a non-disputing party submission within 30 days after the last submission on the application.

- (6) The Tribunal may 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 written 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 filing of the submission by the non-disputing Treaty Party, including with respect to the format and length of the submission, and the time limit to file the submission.
- (4) 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).

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”).
- (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(4);
 - (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.

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 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 13 / ICSID Additional Facility Arbitration Rule 22)].
 - 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



WORKING PAPER # 5 – VOLUME 1 – ENGLISH

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I. ICSID ADMINISTRATIVE AND FINANCIAL REGULATIONS

1. The name of this set of regulations has been simplified to the *ICSID Administrative and Financial Regulations* (“AFR”). Similar simplification has been made to the titles of other sets of rules.

Introductory Note

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

These Regulations concern the functioning of ICSID as an international institution. They also contain provisions that apply generally in proceedings and are complementary to the Convention and the 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).

2. The text of AFR 7(2) is reproduced in WP #5 as amended by Resolution AC(C)/RES/1/2021 of the Administrative Council. The Resolution was adopted on May 17, 2021 by a vote of 134 members in favor, representing more than two-thirds of the Members. The procedural requirement for an ‘in-person’ vote was removed from Regulation 7(2) to allow the Council to vote by mail or electronically when its meetings are held by virtual means. The amendment reflects the experience of WBG institutions during the 2020-21 pandemic when it was necessary to pass year-end motions by virtual means as an in-person meeting was not possible. All WBG institutions made this amendment to their voting provisions.

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) ~~when not travelling to attend a hearing, meeting or session,~~ 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 ~~the member spends~~ away from ~~their~~ 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.
3. The changes in AFR 14(1)(b) and 14(1)(c)(iii) simplify the language but do not change the substance of these provisions.
 4. One State proposed to modify AFR 14(2) to require Member State approval of any change in the amount of fees or *per diem* allowances for members of a Commission, Tribunal or Committee. This suggestion has not been incorporated for the reasons given in WP # 4 (see, [WP # 4, ¶ 3](#)). Notably, Member States are often parties in cases and should not also set rates; setting of fees and *per diem* allowances is a standard function of all arbitral institutions; and the Chair has always exercised this function judiciously.
 5. AFR 14(2) now clarifies that any request to the Secretary-General for an increased fee must be made “in writing”, as suggested by Jamaica.

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.

6. One State proposed that the notice in AFR 16(2)(a) be issued 120 days after failure to pay, while another State proposed that this notice be issued 60 days after the failure to pay. This was based on concern that internal financial procedures might require more time.
7. This suggestion has not been incorporated in proposed AFR 16 for five reasons. *First*, this has rarely been a problem in practice, and it has effectively been addressed with the Centre when raised. *Second*, the proposed 30-day period is necessary to ensure that the first session can be held within 60 days of constitution of the Tribunal. *Third*, the 30-day period triggers the events in AFR 16(2)(b) and (c), creating an overall period of 135 days before the proceeding could be discontinued for lack of payment, and hence allowing ample time to arrange payment. *Fourth*, at least from the date of registration, all parties know that payment will be required early in the proceeding. *Fifth*, complementary amendments to the

Schedule of Fees have been proposed offering advance notice of a request for a supplementary payment (*see*, [WP # 4, draft modified Schedule of Fees, ¶ 8](#); *see also*, [WP # 4, ¶¶ 13-14](#)).

8. One State suggested that AFR 16(2)(b) and (c) should require the Secretary-General to consult with the Tribunal and/or the parties before discontinuing for failure to pay advances. This suggestion has not been incorporated. AFR 16 requires the Secretary-General to put the Tribunal and parties on notice of an impending discontinuance. An additional consultation requirement would incur further cost and delay for no practical effect as an unfunded case cannot proceed, regardless of the position of the Tribunal or parties.

**Regulation 17
 Special Services**

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

**Regulation 18
 Fee for Lodging Requests**

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

**Regulation 19
 The Budget**

- (1) The fiscal year of the Centre shall run from July 1 of each year to June 30 of the following year.
- (2) Before the end of each fiscal year, the Secretary-General shall prepare a budget indicating expected expenditures of the Centre (excepting those to be incurred on a reimbursable basis) and expected revenues (excepting reimbursements) for the following fiscal year. The budget shall be submitted for adoption by the Administrative Council at its next Annual Meeting in accordance with Article 6(1)(f) of the Convention.

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

9. The deletion in AFR 19(5) reflects the fact that the Centre's expenditures are mainly covered by its operational revenues. The reference to the Bank's contributions is therefore not necessary.

Regulation 20 **Assessment of Contributions**

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

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

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

Regulation 21 Audits

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

Regulation 22 Administration of Proceedings

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

10. The change proposed makes the language of AFR 22 consistent with the rest of the rules and does not affect the meaning of the provision.

Chapter IV General Functions of the Secretariat

Regulation 23 List of Contracting States

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

- (a) the date on which the Convention entered into force with respect to it;

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

Regulation 24

Panels of Conciliators and of Arbitrators

- (1) The Secretary-General shall invite each Contracting State to make its designations to the Panels of Conciliators and of Arbitrators if a designation has not been made or the period of a designation has expired.
- (2) Each designation made by a Contracting State or by the Chair shall indicate the designee's name, contact information, nationality and qualifications, with particular reference to competence in the fields of law, commerce, industry or finance.
- (3) The Secretary-General shall immediately inform a designee of their designation, the designating authority, and the end of the designation period, and shall request confirmation that the designee is willing to serve.
- (4) The Secretary-General shall maintain and publish lists ~~naming 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 ~~Articles 65 and 66 of the Convention and~~ Regulations 2, 3 and 7 shall be calculated from the date on which the Secretary-General transmits or receives the relevant document. The date of transmittal or receipt shall be excluded from the calculation.

11. The reference to Articles 65 and 66 of the Convention is not required and has been deleted from AFR 27(2).

Regulation 28 Secretary

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

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

12. The deletion of “all aspects of” in AFR 28(b) streamlines the provision without changing its meaning.

Regulation 29 Depositary Functions

(1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:

- (a) all requests for arbitration, conciliation, supplementary decision, rectification, interpretation, revision or applications for annulment;
- (b) all written submissions, written statements, observations, supporting documents and communications filed in a proceeding;
- (c) the minutes, recordings and transcripts of hearings, meetings or sessions in a proceeding; ~~and~~
- (d) any order, decision, Report or Award by a Commission, Tribunal or Committee; 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) ~~and (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.

13. AFR 29 is amended to clarify that notices, orders and decisions by the Chair or the Secretary-General are also archived and that copies of such documents may be certified pursuant to AFR 29(2).

Chapter V Immunities and Privileges

Regulation 30 Certificates of Official Travel

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

Regulation 31 Waiver of Immunities

- (1) The Secretary-General may waive the immunity of:
 - (a) the Centre; and
 - (b) members of the Secretariat.
- (2) The Chair may waive the immunity of:
 - (a) the Secretary-General and any Deputy Secretary-General;
 - (b) members of a Commission, Tribunal or Committee; and
 - (c) the parties, agents, counsel, advocates, ~~advisors~~, witnesses or experts appearing in a proceeding, if the Commission, Tribunal or Committee concerned recommends such waiver.
- (3) The Administrative Council may waive the immunity of:
 - (a) the Chair and members of the Council;

- (b) the parties, agents, counsel, advocates, ~~advisors~~, witnesses or experts appearing in a proceeding, even if no recommendation for such a waiver is made by the Commission, Tribunal or Committee concerned; and
- (c) the Centre or any person referred to in paragraphs (1) or (2).
- (4) A waiver under paragraph (1) or (2) shall be made in writing by the Secretary-General or Chair, as applicable. A waiver under paragraph (3) shall be made by a decision of the Administrative Council in accordance with Article 7(2) of the Convention.

14. The noun “advisors” in AFR 31(2)(c) and (3)(b) is deleted because “advisors” are not listed in the grant of immunity in Article 22 of the ICSID Convention.

Chapter VI
~~Official Languages~~ 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 these Regulations made pursuant to the Convention in ~~each official language~~ are equally authentic in each official language.
- (3) ~~Unless otherwise stated or~~ Where required by the context ~~of the provision~~, 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 ~~of a word~~ 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.

15. Chapter VI of the AFR has been retitled “Final Provisions” as it does not deal solely with official languages.
16. AFR 32(2) and (3) have been amended to include “Rules” and Regulations. This change is intended to make the principle stated in AFR 32(2), (3) and (4) applicable to all of the Rules (IR; AR and CR) and to the AFR, and to avoid the need to repeat the principle in each set of Rules.
17. AFR 32(4) has been amended to provide that use of the masculine gender in French and Spanish shall include the feminine gender. Delegates discussed methods to ensure gender neutral language in the Rules and Regulations at great length, but were unable to agree on

a different format which would provide certainty in interpretation. It should be noted that both the feminine and masculine forms were used in the text proposed in WP # 1, but delegates uniformly agreed this approach detracted from the clarity of the provisions and asked that they be replaced with a rule of interpretation such as AFR 32(4).

II. ICSID INSTITUTION RULES

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II. ICSID INSTITUTION RULES

18. The name of this set of rules has been simplified to the ICSID Institution Rules (“IR”). Similar simplification has been made to the titles of other sets of rules.

Introductory Note

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

The 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 ~~their~~-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) ~~With regard to the jurisdiction of the Centre,~~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 conditions for submission of the dispute in the instrument of consent ~~for submission of the dispute~~;
 - (c) if a party is a natural person:
 - (i) information concerning that person's nationality on both the date of consent and the date of the Request, together with supporting documents demonstrating such nationality; and
 - (ii) a statement that the person did not have the nationality of the Contracting State party to the dispute either on the date of consent or the date of the Request;
 - (d) if a party is a juridical person:

- (i) information concerning 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.
19. Two States proposed to delete the reference to the jurisdiction of the Centre in IR 2(2) because they view it as important for purposes other than registration. The text has been simplified to exclude this reference in accordance with the text of current IR 2. However, this does not alter the fact that the Secretary-General's review of the Request is solely to determine whether the dispute is manifestly outside the jurisdiction of the Centre under Arts. 28(3) and 36(3) of the ICSID Convention (*see* IR 6(1) and [WP # 1, Vol. 1, ¶ 99](#)).
20. Many States proposed that IR 2(2)(a) mandate a "description of the investor's ownership and control of the investment." The proposal has been adopted with some revision. This reflects existing practice to address ownership or control to the extent it is relevant to jurisdiction (e.g., pursuant to investment treaty provisions). The amount of detail to be provided will depend on its relevance to registration. Providing this information should impose no burden on the requesting party.
21. Many States also proposed that IR (2)(2)(d) require "information concerning the ultimate beneficial owner and corporate structure of the party." To the extent that the ultimate beneficial owner and the corporate structure is relevant to jurisdiction (e.g. pursuant to investment treaty provisions), the matter must already be addressed in the Request. For example, this is necessary when showing foreign control of the requesting party for purposes of Art. 25(2)(b) of the Convention. Given that there are cases where such information is not relevant, IR 3(b) recommends that such information be included where applicable (*see* below). If the information is not included, the other party may request it upon registration.

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) ~~with respect to~~ the number and method of appointment of arbitrators or conciliators;
 - (ii) ~~and~~ 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.

22. New IR 3(a)(iii) encourages a requesting party to indicate if it has reached an agreement with the other party to use, or if it proposes to use expedited arbitration (“EA”) under Chapter XII of the ICSID Arbitration Rules. As noted in previous WPs (see in particular [WP # 1, Schedule 9 – Addressing Time and Cost in ICSID Arbitration, ¶¶ 34-51](#) and [WP # 1, Vol. 3, ¶¶ 666-667](#)), EA could significantly reduce the time and cost of proceedings and could be particularly suited for investment contract disputes and with respect to disputes brought by small and medium size enterprises (“SMEs”).

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).

Rule 9
Final Provisions

~~The English, French and Spanish texts of these Rules are equally authentic.~~

~~These Rules may be cited as the “Institution Rules” of the Centre.~~

23. WP # 5 proposes to delete IR 9 because it is already covered by AFR 32 and because of the simplified title of the IR (*see* above).

III. ICSID ARBITRATION RULES

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III. ICSID ARBITRATION RULES

24. The name of this set of rules has been simplified to the *ICSID Arbitration Rules* (“AR”). A similar simplification has been made to the titles of other sets of rules.

Introductory Note

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

The [ICSID Arbitration Rules](#) are supplemented by the [ICSID Administrative and Financial Regulations](#) ~~of the Centre~~.

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](#).
- ~~(3) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language.~~
- ~~(4) These Rules may be cited as the “Arbitration Rules” of the Centre.~~

25. One State proposed to delete references to the potential for parties to agree otherwise in some AR provisions to avoid ambiguity with AR 1(2). This change has not been incorporated as the references elsewhere in the AR have been used to remind parties that they can agree to modify the particular provision.
26. WP # 5 proposes to delete AR 1(3) because it is already covered by AFR 32. It also proposes to delete AR 1(4) because of the simplified title of the AR.

Rule 2 Party and Party Representative

- (1) For the purposes of these Rules, “party” includes, ~~where required by the context,~~ 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)”).

27. One State proposed to delete the text “required by” in AR 2(1). WP # 5 adopts this proposal and deletes the text “where required by the context” as it is not necessary.

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 ~~only~~ be filed electronically, ~~unless the Tribunal orders otherwise in special circumstances.~~ In special circumstances, the Tribunal may order that documents also be filed in a different format.

28. One State proposed to mention supporting documents in AR 4(1). The change has not been made as the generic reference to “document” includes any document filed in the proceeding, including a supporting document referred to in AR 5.
29. AR 4(2) has been revised to clarify that documents must always be filed electronically, but that the Tribunal may order that they also be filed in a different format in special circumstances. As indicated in previous WPs, hard copy filing may thus apply, but only in special circumstances and not merely for Tribunal convenience (*see e.g.* [WP # 1, ¶ 149](#)).

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.

30. One State proposed that the Tribunal be given discretion to decide whether a fuller extract or a complete version of the document be produced under AR 5(2), as that could increase time and cost effectiveness. WP # 5 proposes to maintain the current text (*see*, [WP # 4, ¶ 26](#)).

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.

31. One State proposed to mention supporting documents in AR 6. The change has not been made for the same reasons as those concerning AR 4 (*see* above, [¶ 28](#)).

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.

32. One State asked about the default procedural language if a party or both parties fail to select a language. The claimant typically selects a language by filing a request for arbitration in an official language of the Centre. If the parties subsequently do not agree on one procedural language, both parties can choose any of the official languages of the Centre.
33. Another State proposed to require interpretation and translation into both procedural languages in AR 7(3)(a)-(c). It suggested that tribunals be given guidance to consider the time and cost burdens of the official languages of the Centre for non-native speakers when deciding on interpretation and/or translation by a party. For the reasons stated in previous WPs, this change has not been adopted (*see*, [WP # 1, ¶¶ 159-162](#) and [WP # 2, ¶ 88](#)).

Guidance on interpretation and translation in bi-lingual proceedings is provided in [Draft Procedural Order No. 1](#). A party should bring any case-specific implications arising from translation and interpretation (e.g. the impact on the procedural calendar) to the Tribunal's attention during the first session so that the Tribunal may ensure an adequate balance between time and cost efficiency and the burden of translations and interpretation.

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.

34. One State enquired about the meaning of “a procedural step” in AR 9(3). A procedural step is any step prescribed by the Rules or ordered by the Tribunal (for example, the holding of a first session pursuant to AR 29 or the compliance with the terms of an order for security for costs pursuant to AR 53).
35. Another State proposed to reinstate holidays observed by the Secretariat in AR 9(3). This proposal has not been adopted as States had different views on the holidays to be observed. However, as previously mentioned (*see*, [WP # 2, ¶ 98](#), [WP # 3, ¶ 42](#) and [WP # 4, ¶ 36](#)), the parties and the Tribunal can take into account any specific holidays when establishing the procedural calendar.

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.

36. Two States proposed to delete the reference to “best efforts” in AR 12(1) and make Tribunal compliance with time limits an absolute obligation. The proposal has not been adopted as some flexibility is necessary to address the circumstances of each case (*see*, [WP # 1, ¶ 177](#); [WP # 2, ¶ 113](#); [WP # 4, ¶ 43](#)). However, it is expected that arbitrators will comply with time limits unless there are special circumstances notified in accordance with AR 12(2). Moreover, the Secretariat will adopt practices to reinforce compliance as noted in [WP # 4](#) (*see*, [¶ 44](#)). Some of the practices already apply, as it is possible to track timeliness of awards and decisions on ICSID’s website (which includes the dates of all procedural steps) and the Secretariat regularly reminds arbitrators of applicable time limits throughout the proceeding. Other practices such as postponement of payment of arbitrator invoices will be implemented once the new Rules are adopted.

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”).

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

~~(3)~~(2) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request for arbitration, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.

~~(4)~~(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).

~~(5)~~(4) The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding pursuant to Rule 36(3) ~~if it deems it necessary at any stage of the proceeding.~~

37. At its last consultation with Member States, ICSID distributed a list of provisions addressing third-party funding in arbitral rules and treaties governing ISDS. The ICC subsequently adopted a TPF rule in its 2021 amendments, which came into force on January 1, 2021. It reads:

[Article 11 \(7\)](#)

(7) In order to assist prospective arbitrators and arbitrators in complying with their duties under Articles 11(2) and 11(3), each party must promptly inform the Secretariat, the arbitral tribunal and the other parties, of the existence and identity of any non-party which has entered into an arrangement for the funding of claims or defences and under which it has an economic interest in the outcome of the arbitration.

38. States provided numerous comments on TPF, which are discussed below.
39. *First*, some States suggested that AR 14(1) should also require disclosure of the non-party funder’s corporate structure and ultimate beneficial owner (“UBO”) to allow a potential or existing conflict to be identified more easily when the non-party is not a natural person. AR 14(1) has not incorporated this suggestion for several reasons: (i) the potential risk identified by States has not been a concern in practice, and non-party funders have provided ample information for arbitrators to assess whether they have a conflict; (ii) adding these terms could create significant confusion for users of the rules, making the provision unclear and difficult to comply with; (iii) no other institutional rules or recent treaties addressing

- this matter include these terms¹; and (iv) if further information is required to assess a conflict, it can be requested pursuant to AR 14(4).
40. *Second*, one State suggested disclosure of the nationality of the funder. This has not been included as nationality of the funder is not relevant to conflict of interest.
 41. *Third*, many States suggested deletion of AR 14(2) because it put counsel providing funding on a different footing than non-counsel funders. This suggestion has been adopted as proposed.
 42. *Fourth*, several States commented on AR 14(5). These included suggestions that: (i) disclosure of further information under AR 14(5) be mandatory upon request of the opposing party; (ii) AR 14(5) should not cross-reference AR 36(3); (iii) AR 14(5) should not state that disclosure be ordered “if ...necessary” as the relevant test is already in AR 36(3); and (iv) AR 14(5) should define the “further information” that might be ordered. WP # 5 proposes to simplify AR 14(5) by deleting the final phrase, “if it deems it necessary at any stage of the proceeding”.
 43. *Fifth*, one State suggested that a party not be entitled to invoke confidential business information (CBI) privilege as a ground for not providing information under AR 14. The factors proposed for disclosure would not be CBI and hence this concern does not arise. Arguably, if further information is ordered disclosed under AR 14(5), it potentially could be CBI, attorney-client privileged, or otherwise confidential and protected. It would be inappropriate to bar parties from invoking relevant and applicable privileges. This is the kind of issue a tribunal would address under AR 14(4), and it could fashion an order to ensure disclosure of necessary information without violating evidentiary privileges of either party.
 44. *Sixth*, some States reiterated the suggestion that AR 14 include specific penalties for failure to disclose the information required by the notice, and suggested penalties such as costs, suspension of the proceeding, or discontinuance of the proceeding. This has not been incorporated. Rather, the current rules would allow for such conduct to be considered in the allocation of costs (*see*, [WP # 4, ¶ 57](#); [WP # 3, ¶ 58](#); [WP # 2, ¶ 143](#)).

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

¹ *See, e.g.* Art 42 of Canada’s 2021 Model Foreign Investment Promotion and Protection Agreement; Art. 11 of the ICC Arbitration Rules (2021); Art. 14 of the ICDR Arbitration Rules (2021); Art. 54 ACICA Arbitration Rules (2021); Art 3.5 of Code of Ethics Appendix to the AmCham (Peru) Arbitration Rules (2021).

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 ~~to~~ promptly to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).

45. Some States reiterated the suggestion to include a “placeholder” provision in AR 19, to reflect a binding application of the [Code of Conduct for Adjudicators in Investor-State Dispute Settlement](#), which is being jointly developed by the ICSID and UNCITRAL Secretariats. This suggestion is not adopted. As explained in [WP # 2, ¶ 121](#); [WP #3, ¶ 49](#) and [¶ 67](#) and [WP #4, ¶¶ 46-48](#), AR 19 allows for the incorporation by reference of a Code of Conduct in the Arbitrator's Declaration, once consensus is reached.
46. One State reiterated its suggestion to amend the Arbitrator's Declaration to specify that the disclosure obligations shall extend to issues raised by the parties. As explained in [WP # 4, ¶ 65](#), in practice, parties may ask prospective arbitrators questions. Further, arbitrators have a continuing obligation to disclose any change in their circumstances throughout the proceeding.
47. One State reiterated its proposal to include in AR 19(3) a continuing obligation for the arbitrator to make efforts to become aware of matters that may create an appearance of bias and to disclose changes of circumstances that could be relevant to the Arbitrator's Declaration required by Rule 19(3)(b). The Secretariat refers to the observations in [WP # 2, ¶¶ 159-160](#), and [WP # 4, ¶ 70](#) in this regard.
48. A minor stylistic change is included in AR 19(6).

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.

49. One State suggested that the Tribunal be deemed as constituted once the Secretary-General notified the parties that all the arbitrators had accepted their appointments and provided the signed declaration required by Rule 19(3)(b). The suggestion is adopted. Under the current rules, the arbitrator declaration must be signed by the end of the first session of the Tribunal (i.e. potentially after the constitution of the Tribunal) (*see*, [WP # 1, ¶ 296](#)).

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.

50. One State reiterated its proposal to specify in AR 22 that a disqualification proposal does not require proof of actual bias, and that an appearance of bias would be sufficient. The standard for the disqualification of arbitrators is established in Art. 57 of the Convention and its interpretation falls on the decision-maker (the non-challenged co-arbitrators or the Chair, as applicable). The proposal is therefore not adopted.
51. The same State suggested that the time-limit to propose the disqualification in paragraph (1)(a)(ii) should run from the date on which the challenging party should have *reasonably* known of the facts on which the proposal is based. The suggestion is not adopted, as the date on which the facts *should have* been known by the challenging party will be determined by the decision-makers taking into account a number of factors, including whether it was *reasonable* to expect the challenging party to know.
52. One State proposed that if the parties agree on the disqualification of an arbitrator, the arbitrator shall resign. As explained in [WP # 2, ¶ 185](#), pursuant to Art. 56 of the Convention, once the Tribunal is constituted, its composition must remain unchanged, unless an arbitrator dies, resigns or is disqualified. In practice, were the parties to agree on the disqualification of an arbitrator, the arbitrator most likely would resign, and if not, the parties' agreement would likely be given strong consideration by the decision-makers. It should be noted that the same proposal has been adopted in AF(AR) 30(3), as the limitation in Art. 56 of the Convention does not extend to the Additional Facility Rules.

53. The same State suggested modifying AR 22(1)(d) to allow the challenged arbitrator to furnish explanations on the disqualification proposal within five days from the earlier of (i) receipt of the response or (ii) expiry of the time limit referred to in AR 22(1)(c). The suggestion has been adopted as it adds certainty to the process.
54. One State reiterated prior suggestions to amend who shall decide disqualification proposals and the applicable standard. These matters would require an amendment of the ICSID Convention and are not the object of the present amendment process.

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).

55. One State suggested adding a requirement that decisions on disqualification proposals be reasoned. In practice, decisions on proposals for disqualification of arbitrators are accompanied by the reasons on which they are based. In addition, following comments by States, AR 27(3) has been amended to reflect that procedural orders and decisions under the Rules shall include the reasons.

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.

56. One State suggested to amend AR 26(2) to clarify that if a proposal for disqualification had been filed, the proceeding would be automatically suspended, irrespective of a notice or vacancy. AR 26 regulates the procedure to be followed in connection with vacancies on the tribunal, which may be caused by disqualification, death, incapacity or resignation of an arbitrator. Proceedings may be suspended for reasons other than a vacancy (e.g. agreement of the parties (AR 54), failure to make advance payments (AFR 16), filing of a proposal for disqualification (AR 22(2))). If a proceeding has been suspended for reasons other than a vacancy, the suspension proceeding could continue even after the vacancy has been filled.

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.

57. A few States suggested that the AR specify that certain decisions must be reasoned (e.g. a decision on a proposal to disqualify an arbitrator (AR 23), security for costs (AR 53) and that the arbitration no longer be expedited (AR 86)). Procedural orders and decisions made under the Rules typically contain reasons, and AR 27(2) has been revised to reflect this practice. Tribunals are not required to provide reasoning for minor procedural and organizational matters, e.g. requests for extensions of time limits and hearing logistics.

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.

58. The method of holding a hearing has been added to AR 29(4)(f) so that parties discuss whether they wish to hold hearings in person or remotely.

59. One State proposed to add “support of the Tribunal by a secretary” to the list under AR 29(4). This change has not been adopted as an ICSID counsel is assigned as a case secretary in every case (*see* also AR 34).

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.

60. One State proposed to replace “requesting party” by “claimant” and “other party” by “respondent” in AR 30(1). WP # 5 proposes to maintain the wording of current AR 30(1) as a memorial can be filed by a claimant or by a respondent as the moving party (*e.g.* a memorial on a counter-claim).
61. Another State proposed to replace “may” by “shall” in AR 30(3), second sentence. This change has not been implemented as the Tribunal has discretion to determine whether the unscheduled filing is necessary in all the 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) ~~If a hearing is to be held in person, it~~ 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.

- 62. One State proposed a default rule in AR 32 providing that hearings must be held in person unless the parties agree otherwise, and that any other method of holding hearings be reserved for exceptional circumstances. WP # 5 proposes to keep Tribunal discretion with regard to the method of holding hearings in AR 32(2). Most hearings on procedural matters are held remotely by audio or video conference for cost and time efficiency purposes. As regards hearings on substantive matters, there may be circumstances where Tribunal discretion is useful to determine whether to proceed with a hearing remotely.
- 63. A change to streamline the text has been made to AR 32(3).

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 ~~written or oral~~ submission on that matter.

64. One State proposed to reintroduce a paragraph regulating attendance by the Secretary of the Tribunal at deliberations. The change has not been made as the attendance by the Secretary is implied from the assistance at deliberations.

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.

65. Two States suggested amending AR 36(3) to indicate that States would not be required to disclose information protected by law, considered contrary to the State's essential security interest, or having special political sensitivity. As explained before, (*see*, [WP # 4, ¶ 88](#); [WP # 3 ¶¶ 91-92](#)) exemptions from document production are not regulated by the ICSID Rules, as they depend on the applicable law and evidentiary rules. The parties can invoke relevant exemptions as objections to document production, and if such objection leads to a dispute, the Tribunal will consider the exemption under AR 37(d).

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.
66. One State suggested clarifying that the list of circumstances in AR 37 is not exhaustive and proposed adding other relevant circumstances by way of illustration. The proposal is not adopted as AR 37 clearly states that the Tribunal shall consider all relevant circumstances.
67. One State expressed concerns over document production being used as an opportunity to request documents not linked to the actual arbitration proceeding. Under AR 37, the

Tribunal is called on to determine, among other issues, the relevance and materiality of the documents requested to solve the dispute before it and no change to the Rule is therefore needed.

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.”

68. One State suggested adding to AR 38 that witness statements and expert reports shall be filed with the written submission to which they relate. The proposal is not adopted, as the matter is already addressed in AR 5 on Supporting Documents.
69. Another State reiterated its request to add to AR 38 an obligation for experts to disclose any relationships they may have with the parties, a member of the tribunal or a third interested party. The suggestion is not adopted for the reasons stated in [WP # 3 ¶¶ 94-97](#).

Rule 39 Tribunal-Appointed Experts

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

70. One State suggested that experts may only be appointed by the Tribunal upon request of a party or, if the parties disagree, on its own initiative. AR 39(1), in its current form, underscores that the parties can jointly refuse to have a Tribunal-appointed expert, as had been suggested by many States. It also reflects ICSID's practice on Tribunal appointment of independent experts, as explained in [WP # 2, ¶ 250](#).
71. The same State commented that the Tribunal should be mindful of costs when deciding to appoint an expert. Under AR 3, the Tribunal has a general duty to conduct the proceeding in an expeditious and cost-effective manner, and no further amendment is therefore needed.
72. The same State suggested that parties should have the right to challenge the Tribunal-appointed expert for justified reasons. Under AR 39, the parties are consulted on the selection of the Tribunal-appointed experts, their terms of reference and fees. The parties also have a right to comment on the expert's report. Should a party seek to disqualify the Tribunal-appointed expert, it could bring it to the Tribunal, which will decide. Establishing an additional procedure for this matter would only add a layer of complexity to the proceeding.
73. Changes in AR 39(5) seek to streamline the text but do not make substantive changes. It clarifies that a Tribunal may order oral submissions, written submissions or both, as it deems appropriate.

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 ~~written and oral~~ submissions on the objection, ~~as required~~;
 - (d) if a party files the objection before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the objection, so that the Tribunal may consider the objection promptly upon its constitution; and

(e) the Tribunal shall render its decision or Award on the objection within 60 days after the ~~latest~~ later of the constitution of the Tribunal or the last submission on the objection.;

~~(i) the constitution of the Tribunal;~~

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

~~(iii) the last oral submission on the objection.~~

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

(4) A decision that a claim is not manifestly without legal merit shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 43 or to argue subsequently in the proceeding that a claim is without legal merit.

74. Changes in AR 41(2)(c) and (e) mirror changes made to AR 39(5) and streamline the text but do not make any substantive change. A Tribunal may order oral submissions, written submissions or both, as it sees fit.
75. Many States commented on the allocation of costs arising from an objection pursuant to AR 41. This is addressed under [AR 52 \(Decisions on Costs\)](#).

Rule 42 Bifurcation

- (1) A party may request that a question be addressed in a separate phase of the proceeding (“request for bifurcation”).
- (2) If a request for bifurcation relates to a preliminary objection, Rule 44 shall apply.
- (3) The following procedure shall apply to a request for bifurcation other than a request referred to in Rule 44:
- (a) the request for bifurcation shall be filed as soon as possible;
- (b) the request for bifurcation shall state the questions to be bifurcated;
- (c) the Tribunal shall fix time limits for ~~written and oral~~ submissions on the request for bifurcation, ~~as required~~;
- (d) the Tribunal shall issue its decision on the request for bifurcation within 30 days after the ~~later of the last written or oral~~ submission on the request; and

- (e) the Tribunal shall fix any time limit necessary for the further conduct of the proceeding.
- (4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
- (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and
 - (c) the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical.
- (5) If the Tribunal orders bifurcation pursuant to this Rule, it shall suspend the proceeding with respect to any questions to be addressed at a later phase, unless the parties agree otherwise ~~or the Tribunal decides that there are special circumstances that do not justify suspension.~~
- (6) The Tribunal may at any time on its own initiative decide whether a question should be addressed in a separate phase of the proceeding.

76. Changes in AR 42(3)(c) and (d) mirror changes made to AR 39(5) and AR 41 and streamline the text but make no substantive change. A Tribunal may order either or both oral and written submissions as it sees fit.
77. One State proposed that the proceeding be suspended during the Tribunal's consideration of a request for bifurcation under AR 42. This change has not been adopted (*see*, [WP # 4, ¶ 94](#)).
78. The State also proposed that AR 42(4) clarify that the circumstances listed in subparagraphs (a)-(c) are not exhaustive. This change is not necessary as it is clear from the text that the list is not exhaustive (*see*, [WP # 4, ¶ 97](#)).
79. Consistent with the change in AR 44(3)(a) (*see* below), the last part of AR 42(5) is deleted.
80. One State asked whether AR 42(6) applies to bifurcation of preliminary objections in cases where neither party requested bifurcation. To clarify that it does, a corresponding provision has been incorporated in AR 43(4) (*see* below).

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) ~~(3)~~ 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).

81. One State suggested moving AR 45(2) to AR 43 as it applies to all preliminary objections, whether they are bifurcated or not. This change has been implemented in AR 43(3).
82. A new sentence has been added to AR 43(4) to clarify that the Tribunal may also bifurcate on its own initiative, provided that it follows the procedure in AR 44(2)-(4) and gives the parties the opportunity to file observations in accordance with AR 27(3).

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 ~~written and oral~~ submissions on the request for bifurcation, ~~as required~~; and
 - (e) the Tribunal shall issue its decision on a request for bifurcation within 30 days after the ~~later of the last~~ ~~written or oral~~ submission on the request.
- (2) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
- (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and
 - (c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical.
- (3) If the Tribunal decides to address the preliminary objection in a separate phase of the proceeding, it shall:
- (a) suspend the proceeding on the merits, unless the parties agree otherwise, ~~or the Tribunal decides that there are special circumstances that do not justify suspension~~;
 - (b) fix time limits for ~~written and oral~~ submissions on the preliminary objection, ~~as required~~;
 - (c) render its decision or Award on the preliminary objection within 180 days after the ~~later of the last~~ ~~written or oral~~ submission, in accordance with Rule 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 ~~written and oral~~ submissions on the preliminary objection, ~~as required~~;
 - (b) modify any time limits for ~~written and oral~~ submissions on the merits, as required; and

(c) render its Award within 240 days after the ~~later of the last written or oral~~ submission in the proceeding, in accordance with Rule 58(1)(c).

83. Changes in AR 44 concerning “written and oral submissions” mirror changes made to AR 39(5) and 41(2) but make no substantive changes.
84. One State proposed that the Tribunal have no discretion to refuse to suspend the proceeding if it decides to bifurcate. The State observed that the Tribunal should not bifurcate if it does not believe suspension of the merits is appropriate. This change has been adopted and the last part of AR 44(3)(a) has thus been deleted.

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

~~(1)~~ 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 ~~written and oral~~ submissions on the preliminary objection, ~~as required~~;
- (b) the memorial on the preliminary objection shall be filed:
- (i) by the date to file the counter-memorial on the merits;
 - (ii) by the date to file the next written submission after an ancillary claim, if the objection relates to the ancillary claim; or
 - (iii) as soon as possible after the facts on which the objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (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 ~~later of the last written or oral~~ submission in the proceeding, in accordance with Rule 58(1)(c).

~~(2) 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.~~

85. The word “preliminary” has been added in AR 45(1) for clarity.

86. Changes in AR 45 concerning “written and oral submissions” mirror wording changes made to other Rules but make no substantive changes.
87. One State suggested moving AR 45(2) to AR 43 as it applies to all preliminary objections, whether they are bifurcated or not. This change has been adopted (*see above*).

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 ~~written and oral~~ submissions on the request, ~~as required~~;
 - (c) if a party requests provisional measures before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the request so that the Tribunal may consider the request promptly upon its constitution; and
 - (d) the Tribunal shall issue its decision on the request within 30 days after the latest of the constitution of the Tribunal or the last submission on the request. ~~;~~
 - ~~(i) the constitution of the Tribunal;~~
 - ~~(ii) the last written submission on the request; or~~
 - ~~(iii) the last oral submission on the request.~~
- (3) In deciding whether to recommend provisional measures, the Tribunal shall consider all relevant circumstances, including:
- (a) whether the measures are urgent and necessary; and
 - (b) the effect that the measures may have on each party.
- (4) The Tribunal may recommend provisional measures on its own initiative. The Tribunal may also recommend provisional measures different from those requested by a party.
- (5) A party shall promptly disclose any material change in the circumstances upon which the Tribunal recommended provisional measures.
- (6) The Tribunal may at any time modify or revoke the provisional measures, on its own initiative or upon a party's request.
- (7) A party may request any judicial or other authority to order provisional measures if such recourse is permitted by the instrument recording the parties' consent to arbitration.

88. Changes in AR 47 concerning “written and oral submissions” mirror wording changes made to other Rules but make no substantive changes.
89. One State proposed to delete the first sentence of AR 47(4). The proposal has not been adopted as this discretion is anchored in Art. 47 of the Convention.

90. Another State suggested specifying that the Tribunal must give the parties the opportunity to make submissions before recommending, modifying or revoking provisional measures pursuant to AR 47(4) and (6). The change is not necessary as this is clear from AR 27(3).
91. One State asked that the Centre include an Explanatory Note to AR 47 emphasizing, among other things, that the Tribunal’s decision is a recommendation and that provisional measures can only be recommended in extraordinary and exceptional circumstances. Previous Working Papers have summarized the ICSID case law and practice on these matters and a summary of the explanations will be issued once the rules are adopted.

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 ~~written and oral~~ submissions on the ancillary claim, ~~as required~~.

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 another~~-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) ~~A party's default shall not be deemed an admission of the assertions made by the other party. 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.
- ~~(7) The Tribunal may invite the party that is not in default to file observations, produce evidence or make oral submissions.~~
- ~~(8) If the defaulting party fails to act within the grace period or if no such period is granted, the Tribunal shall examine the jurisdiction of the Centre and its own competence before deciding the questions submitted to it and rendering an Award.~~

92. AR 49(6)-(8) has been revised to clarify the procedure when a defaulting party fails to act within the grace period or if no such period is granted. In this respect, two States suggested including the text in current AR 42(4) to the effect that the Tribunal must decide whether the submissions on record are well-founded in fact and in law. This change has been adopted in AR 49(6)(c).

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.

93. One State proposed inserting the word “reasonable” before “legal fees and expenses” in AR 50(a). This change has not been adopted for the reasons explained in [WP # 2, ¶ 333](#); the reasonableness of the costs is assessed under AR 52(1)(d).

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 ~~of the proceeding~~ between the parties.

94. AR 51 has been modified to reflect that interim decisions on costs can be made pursuant to AR 52(3). Statements of costs to be submitted need not include the full costs of the proceeding when dealing with interim decisions on costs.
95. One State suggested maintaining the wording in current AR 28 to require the Secretary-General to provide the Tribunal with a financial statement of the case account. This is provided for in the [Memorandum on Fees and Expenses in ICSID Proceedings, ¶ 19](#), and the change is therefore not necessary.

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) ~~The Tribunal shall award the party prevailing on an objection made pursuant to Rule 41 its costs of submitting or opposing the objection, unless the circumstances justify a different allocation of costs in accordance with paragraph (1).~~ 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.

96. A group of States proposed that the rule concerning allocation of costs only apply in favour of the party that filed the objection if the Tribunal has determined that a claim manifestly lacks legal merit. In their view this is justified given the high threshold to succeed on an objection that a claim manifestly lacks legal merit. They also stated that the current draft proposal could deter meritorious objections under AR 41.
97. The text of AR 52(2) has been modified to include a presumption in favour of the prevailing party where the Tribunal renders an Award pursuant to Rule 41(3) and thus disposes of the whole case. In such circumstance, the Tribunal would award the prevailing party its reasonable costs unless there are special circumstances justifying a different allocation of costs. If the Tribunal issues a decision that dismisses the objection that a claim manifestly lacks legal merit or that upholds it only in part, the Tribunal could issue an interim decision on costs pursuant to AR 52(3). AR 52(1) would apply to such decision.
98. One State proposed clarifying that the Tribunal may make an interim decision on costs on its own initiative or upon a party's request. This change has been adopted.

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 specify the circumstances that require security for costs;
 - (b) the Tribunal shall fix time limits for ~~written and oral~~ submissions on the request; ~~as required~~;
 - (c) if a party requests security for costs before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the request so that the Tribunal may consider the request promptly upon its constitution; and
 - (d) the Tribunal shall issue its decision on the request within 30 days after the latest of the constitution of the Tribunal or the last submission on the request:
 - ~~(i) the constitution of the Tribunal;~~
 - ~~(ii) the last written submission on the request; or~~
 - ~~(iii) the last oral submission on the request.~~
- (3) In determining whether to order a party to provide security for costs, the Tribunal shall consider all relevant circumstances, including:
 - (a) that party's ability to comply with an adverse decision on costs;
 - (b) that party's willingness to comply with an adverse decision on costs;
 - (c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim; and
 - (d) the conduct of the parties.
- (4) The Tribunal shall consider all evidence adduced in relation to the circumstances in paragraph (3), including the existence of third-party funding. ~~The existence of third-party funding may form part of such evidence but is not by itself sufficient to justify an order for security for costs.~~
- (5) The Tribunal shall specify any relevant terms in an order to provide security for costs and shall fix a time limit for compliance with the order.

- (6) If a party fails to comply with an order to provide security for costs, the Tribunal may suspend the proceeding. If the proceeding is suspended for more than 90 days, the Tribunal may, after consulting with the parties, order the discontinuance of the proceeding.
- (7) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.
- (8) The Tribunal may at any time modify or revoke its order on security for costs, on its own initiative or upon a party's request.
99. Changes in AR 53(2)(b) and (d) concerning “written and oral submissions” mirror wording changes made to other AR (*see* [Chapter VI – Special Procedures](#)) but make no substantive changes.
100. One State proposed replacing the word “require” with “justify” in AR 53(2)(a). This change has not been adopted for the reasons explained in [WP # 4, ¶ 111](#), as this is the appropriate standard for an order of security for costs.
101. One State suggested deleting AR 53(3)(c) as this circumstance may deter tribunals from ordering security for costs. To ensure a balanced decision, Tribunal should be able to consider circumstances in favour of and against ordering security for costs. In practice, the effect security for costs may have on a party's access to justice is considered by most Tribunals. The deletion has therefore not been made.
102. Most comments on security for costs concerned the reference to third-party funding in AR 52(4). States commented that it is important that third-party funding be taken into account by Tribunals when considering security for costs and that the weight to be given to the existence of third-party funding should not be prejudged. They proposed different modifications of the wording in paragraph (4).
103. WP # 5 modifies the text of AR 52(4) as follows: “The Tribunal shall consider all evidence adduced in relation to the circumstances in paragraph (3), including the existence of third-party funding.” If a party raises third-party funding as evidence of a circumstance in paragraph (3), the Tribunal must consider such evidence as it would any other evidence adduced in favour of or against providing security for costs. The Tribunal has discretion to determine the weight to be given to such evidence pursuant to AR 36(1). However, the existence of third-party funding is not by itself sufficient to justify an order for security for costs as there must also be circumstances in favour of providing security pursuant to paragraph (3) (e.g. inability or unwillingness to pay an adverse decision on costs).
104. One State suggested requiring mandatory suspension if a party does not comply with an order to provide security for costs in AR 53(6). The text is maintained because it provides the Tribunal the flexibility required to ensure respect for the parties' due process rights and to account for the circumstances of the case (*see*, [WP # 2, ¶ 369](#); [WP # 3, ¶ 139](#); and [WP # 4, ¶ 118](#)).

105. One State proposed requiring written reasons for a modification or revocation of an order on security for costs in AR 53(8). As this type of ruling would be issued in the form of an order or decision, this change is not necessary in view of the change to AR 27(3).

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

106. The changes in AR 58 mirror changes made in other AR (*see e.g.* AR 39, 43-45 and 47) and streamline the text but make no substantive change.

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 ~~the allocation of~~ costs.
- (2) The Award shall be signed by the members of the Tribunal who voted for it. It may be signed by electronic means if the parties agree.
- (3) Any member of the Tribunal may attach an individual opinion or a statement of dissent to the Award before the Award is rendered.

107. The deletion in AR 59(1)(j) makes the text consistent with AR 51 and 52.

108. One State proposed to add additional criteria to the contents of an Award, e.g. the applicable law. As the Tribunal is required to decide on every question submitted to it pursuant to AR 59(1)(i). The addition is therefore not necessary.

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 ~~made~~ [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 ~~later of the last written or oral~~ submission on the request.
- (8) The date of dispatch of certified copies of the supplementary decision or rectification shall be the relevant date for the purposes of calculating the time limits in Articles 51(2) and 52(2) of the Convention.
- (9) A supplementary decision or rectification under this Rule shall become part of the Award and shall be reflected on all certified copies of the Award.

109. The change in AR 61(3)(b) is to clarify that there will also be refusal of registration if the lodging fee is not paid within the time limit referred to in AR 61(1).

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).

110. One State suggested that a party refusing consent to publish an Award be required to give reasons for the refusal. This has not been added because there is no means to compel a party to provide such reasons and debate over a failure to provide such reasons would only delay the process. Parties are entitled to provide such reasons of their own volition.
111. One State asked that the Centre ensure that no confidential or protected information be disclosed in the published excerpts (as in AR 63(3)). As noted in AR 62(4)(c), the parties can identify such information in their comments (AR 62(4)(b)); parties should indicate such concerns when they submit comments in accordance with AR 62(4)(b) so that confidential or protected information is not disclosed.

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.
112. Several States suggested that decisions and orders should be regulated in the same manner as Awards, and hence should require party consent to publication. For the reasons explained in [WP # 1, ¶¶ 446 to 451](#), [WP # 2, ¶¶ 412-414](#), [WP # 3, ¶¶ 158-161](#) and [WP # 4, ¶¶ 131-134](#), the proposed amendments reflect the Convention distinction between Awards and decisions on annulment (which conclude the proceeding), and orders and decisions (which do not conclude the proceeding). As a result, consent is not required for publication of decisions and orders. Proposed AR 63 ensures publication of these documents with a process to ensure appropriate redaction.

113. Some States asked that AR 64 state that it applies to all decisions and orders, including those made in the context of supplementary decision, rectification, interpretation, revision and annulment proceedings. This is correct and is clear from the meaning of order and decision in the AR.
114. Some States and commentators suggested that only useful decisions and orders be published given the substantial number of decisions and orders issued by Tribunals. However, there is no viable way to distinguish between “useful” and “less useful” decisions or orders, and hence this proposal has not been included (*see*, [WP # 1, ¶ 451](#); [WP # 2, ¶ 414](#); [WP # 3, ¶ 159](#); [WP # 4, ¶133](#)).

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, ~~excluding supporting documents~~. 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.

115. AR 64 was a new proposal in WP # 4, and sought to bridge divergent positions of stakeholders concerning publication of documents other than Awards, decisions or orders (*see*, [WP # 4, ¶¶ 135-140](#)). This continues to be debated by stakeholders, who diverge on: (1) the extent to which such documents should be published at all; (2) whether a party should have a right to publish its own documents, with or without evidence; (3) the ability to publish documents filed by other participants in the process, including non-disputing parties (NDP), non-disputing treaty parties (NDTP), and tribunal appointed experts; and (4) the cost and delay incurred by extensive Tribunal review of debated document redaction. Proposed AR 64 has been modified in response to these comments.
116. Proposed AR 64(1) deletes “filed by a party”, indicating that the parties to the proceeding could agree to publication of any document, including a submission by an NDP, NDTP, and tribunal appointed expert. If the parties do not agree to such publication, the document would not be published by the Centre and could not be referred to the Tribunal for adjudication of disputes over publication and redaction. This reflects the substantial time and cost that would be incurred if all such documents could be referred to a Tribunal to parse redaction.

117. Each party has the ability to have its own submission published by the Centre in accordance with the procedure in AR 64(2). Proposed AR 64(2) is an exception to AR 64(1) in that it would allow a party to refer a dispute over redaction of its own submission, without supporting documents, to the Tribunal. The Tribunal would decide any disputed redaction and the Centre would publish in accordance with the decision of the Tribunal. This proposal seeks to find a balance between the firmly held view of many parties that they should be allowed to publish their own submissions, and the concern that in so doing, protected or confidential information is not disclosed.

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.

118. One State urged that observation of hearings be fully within the discretion of the Tribunal, as had been proposed in [WP # 3, ¶ 164](#), however, the formula above was supported by a majority of States and reflects the existing rule.

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.

119. The text “or protected personal information” has been added to AR 66(f) to ensure that there is no doubt applicable privacy laws can be raised to prevent protected personal information from being disclosed to the public.

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

120. The word “publication” has been deleted from AR 67(3) and (4). Instead, publication of the NDP submission is now addressed in AR 64(1) which allows the parties to consent to publication of the NDP submission. If one or both parties do not consent to such publication, the Centre will not publish the document.

121. The modifications to AR 67(6) were suggested by one State and make the rule more succinct.

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 written ~~or oral~~ 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 filing of ~~a written~~ the submission by the non-disputing Treaty Party, including with respect to the format ~~and~~; length ~~or publication~~ of the ~~written~~ submission, and the time limit to file the submission.
- (3) The parties shall have the right to make observations on the submission of the non-disputing Treaty Party.

122. One State suggested that NDTP participation not be available if the relevant treaty has a joint interpretation mechanism. This has not been added as there may be circumstances

where a joint interpretation is not possible but the NDTP has relevant submissions for the Tribunal.

123. AR 68(1) deletes “oral submission” and allows the NDTP to make a written submission on the interpretation of the treaty providing consent to arbitration, as of right.
124. AR 68(2) deletes “publication, as this is now addressed by AR 64(1). AR 64(1) allows the parties to consent to publication of the NDTP submission. If one or both parties do not consent to such publication, the Centre will not publish the document.

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 ~~made~~ [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).

125. The change in AR 69(6)(b) is a clarification also reflected in AR 61(3)(b).

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) The Committee shall be deemed to be constituted on the date the Secretary-General notifies the parties that all members have accepted their appointments.

126. One State proposed to add a sentence in AR 71(2) providing that Chapter III shall apply accordingly. This is not necessary in view of AR 72(1).

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 ~~later of the last written or oral~~ submission on the application.

127. One State proposed in AR 72(2) to apply procedural agreements and orders in the original proceeding to the interpretation, revision or annulment proceeding only by agreement of the parties. This change has not been made for the reasons explained in [WP # 3, ¶ 175](#). The parties may propose procedural arrangements different from those applied by the original Tribunal for the Tribunal's/Committee's consideration.

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 ~~written or oral~~ submissions on the request, ~~as required~~;
 - (c) if a party files the request before the constitution of the Tribunal or Committee, the Secretary-General shall fix time limits for written submissions on the request so that the Tribunal or Committee may consider the request promptly upon its constitution; and
 - (d) the Tribunal or Committee shall issue its decision on the request within 30 days after the ~~later~~ ~~st~~ of: ~~(i)~~ the constitution of the Tribunal or Committee; ~~or~~ ~~(ii)~~ the last ~~written~~ submission on the request; ~~or~~ ~~(iii)~~ the last ~~oral submission on the request~~.

- (4) If a Tribunal or Committee decides to stay enforcement of the Award, it may impose conditions for the stay, or for lifting the stay, in view of all relevant circumstances.
- (5) A party shall promptly disclose to the Tribunal or Committee any change in the circumstances upon which the enforcement was stayed.
- (6) The Tribunal or Committee may at any time modify or terminate a stay of enforcement, on its own initiative or upon a party's request.
- (7) A stay of enforcement shall terminate on the date of dispatch of the decision on the application for interpretation, revision or annulment, or on the date of discontinuance of the proceeding.

128. One State suggested deleting AR 73(3)(c) to allow only the Tribunal or Committee to fix time limits for submissions on stay of enforcement. This change has not been adopted as it would delay the Tribunal's or Committee's decision on the stay of enforcement.
129. Changes in AR 73(3)(d) concerning "written and oral submissions" mirror wording changes made to other AR (*see* [Chapter VI – Special Procedures](#)) but make no substantive changes.
130. One State reiterated its view that the ICSID Convention does not confer on the Tribunal or Committee the power to condition a stay of enforcement of an Award and proposed the deletion of AR 74(4) and (5). As indicated in [WP #1, ¶¶ 647-649](#), and [WP #2, ¶ 456](#), proposed AR 73(4) reflects practice that a conditional stay of enforcement is possible under the Convention.
131. The same State suggested that the Tribunal or Committee should have the power to modify or terminate a stay of enforcement only upon a party's request in AR 73(6). This has not been adopted as the Tribunal or Committee may need to act on its own initiative *e.g.* with regard to non-compliance with an order of stay of enforcement.

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.

132. One State proposed a provision allowing the stay of enforcement of the unannulled portion of the Award until the Award of the resubmission Tribunal is rendered in AR 74(4). This change has not been made as the unannulled portion of the original Award cannot be reconsidered.

Chapter XII Expedited Arbitration

Rule 75 Consent of Parties to Expedited Arbitration

- (1) At any time, ~~F~~the parties to an arbitration conducted under the Convention may consent ~~at any time~~ to expedite the arbitration in accordance with this Chapter ("expedited arbitration") by jointly notifying the Secretary-General in writing of their consent.

- (2) Chapters I-XI of the Arbitration Rules apply to an expedited arbitration except that:
- (a) Rules 15, 16, 18, 39, 40, 41, 42, 44 and 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 any arbitrator fails to confirm availability before the expiry of the applicable time limit, the arbitration shall proceed in accordance with Chapters I-XI.~~

133. The change in AR 75(1) is a minor language revision.
134. One State proposed clarifying that the parties may amend the expedited arbitration rules by agreement and that the Tribunal may make modifications to the rules if required by the circumstances. The change is not necessary as this is clear from AR 1(2) which applies to expedited arbitration.
135. With regard to AR 75(3), one State commented that an arbitrator should not be able to frustrate the will of the parties to proceed with an expedited arbitration due to unavailability. The last sentence of AR 75(3) has been deleted to address that concern. An arbitrator may offer to resign in case of unavailability so that the parties may proceed with the expedited arbitration.

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 ~~shall be deemed~~ is an appointment in accordance with ~~a~~ the method agreed by the parties pursuant to Article 37(2)(a) of the Convention.

136. The change in AR 76(4) is a clarification that does not change the substance of the provision.

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.

137. One State reiterated its proposal to eliminate AR 77(2)(c) and 78(2)(c), so that the parties jointly appoint a new candidate if their appointee declines the appointment or fails to provide the necessary declaration. WP # 5 maintains the current text, which permits the

Secretary-General to move forward with the Tribunal constitution and avoids any uncertainty about the applicable default provisions if the parties fail to agree on a new appointee. However, the parties may agree to amend the method in AR 77 and 78 pursuant to AR 1(2) if this situation arises. In any event, the Secretary-General would consult with the parties concerning a replacement 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 ~~by telephone or electronic means of communication~~ 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 ~~main~~-schedule referred to in paragraph (1). The Tribunal shall adjust the schedule if a party raises any such matter, taking into account the expedited nature of the process.
- (3) The Tribunal may extend the time limits referred to in paragraph (1)(a) and (b) by up to 30 days ~~if any party requests that the Tribunal~~to decide a dispute arising from requests to produce documents pursuant to Rule 37. The Tribunal shall decide such ~~applications-requests~~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 ~~main~~-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 ~~main~~-schedule. In fixing time limits for such submissions, the Tribunal shall take into account the expedited nature of the process.

138. With regard to AR 81(4), one State proposed clarifying that the schedule for submissions on a challenge filed pursuant to AR 22 will not run in parallel with the main schedule as the proceeding will be suspended. AR 81(4) has been clarified accordingly.

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 ~~later of the~~ last ~~written or oral~~ submission on the request.

139. One State reiterated its proposal that the consent of the parties to expedited arbitration should only apply to the arbitration and not to post-award remedies. This has not been adopted for the reasons explained in [WP # 4, ¶ 178](#). It is assumed that the parties wish to expedite the full case when they consent to expedited arbitration, and there is no reason to distinguish post-award remedies from the arbitration. However, the parties may agree to opt-out of expedited arbitration at any time pursuant to AR 86.

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

140. The changes in AR 84(2) reflect the changes in AR 81(4) ([see above, ¶ 138](#)).

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.

141. One State proposed requiring a reasoned decision on a request by a party to no longer apply the expedited arbitration rules. This has been addressed by the revision of AR 27(3) requiring basic reasons for orders and decisions.

IV. ICSID CONCILIATION RULES

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IV. ICSID CONCILIATION RULES

142. The name of this set of rules has been simplified to the *ICSID Conciliation Rules* (“CR”). A similar simplification has been made to the titles of other sets of rules.
143. Any changes in WP # 5 explained below are specific to CR. Other changes, made without explanation, reflect changes to the AR or MR and are explained in the AR or MR chapters of WP # 5 under the corresponding provisions.

Introductory Note

The ~~Conciliation Rules for ICSID Convention Proceedings~~ (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 ~~of the Centre~~.

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

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

Rule 2 Party and Party Representative

- (1) For the purposes of these Rules, “party” includes, ~~where required by the context~~, 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 ~~only~~ be filed electronically. In special circumstances, the Commission may order that documents also be filed in a different format, ~~unless the Commission orders otherwise in special circumstances.~~

Rule 4 Supporting Documents

- (1) Supporting documents shall be filed together with the written statement, request, observations or communication to which they relate.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Commission or a party may require a fuller extract or a complete version of the document.

Rule 5 Routing of Documents

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

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

Rule 6
Procedural Languages, Translation and Interpretation

- (1) The parties may agree to use one or two procedural languages in the proceeding. The parties shall consult with the Commission and the Secretary-General regarding the use of a language that is not an official language of the Centre. 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”).
- ~~(2) A non-party referred to in paragraph (1) does not include a representative of a party.~~
- ~~(3)~~(2) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request for conciliation, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.

~~(4)~~(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).

~~(5)~~(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 ~~to~~ 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](#).

144. The change in AR 27(2) has not be reflected to keep CR 26(3) consistent with CR 24(3).

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.

145. CR 29(2) has been aligned with CR 24(4)(a).

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 longer time other date as the Commission may fix in consultation with the parties, ~~but~~ 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.

146. CR 30(1) is modified for clarity.

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 ~~and format~~ 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 ~~confidential or protected~~ information relating to, and documents generated in or obtained during, the proceeding;
 - ~~(h) the publication of documents;~~
 - ~~(h)~~ (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)~~ (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 representative who is~~ 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.

147. CR 31(4)(e) has been revised reflecting changes in the corresponding provision in AR 29(4)(f). CR 31(3)(g) has been modified to reflect the wording used in CR 9. Given this modification, CR 31(3)(h) has been removed as the publication of documents is covered under CR 31(3)(g).

148. CR 31(5) has been modified to make clear that the parties must both (1) indicate who is authorized to negotiate and settle the issues in dispute on behalf of each party (e.g., a specific government entity such as a lead agency for investment disputes, a ministry or ministries, or Cabinet; or, for an investor, a board of directors, a corporate oversight body, a principal shareholder, etc.) and (2) describe the process required for each party to conclude (i.e., execute) and implement a binding settlement agreement.

Rule 32 Meetings

- (1) The Commission may meet with the parties jointly or separately.
- (2) The Commission shall determine the date, time and method of holding meetings, after consulting with the parties.
- (3) ~~If a meeting is to be held in person, it~~ 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, ~~in which it shall state its reasons~~. Otherwise, the Commission shall issue a reasoned decision on the objection ~~with brief reasons~~ and fix any time limit necessary for the further conduct of the conciliation.

Chapter V Termination of the Conciliation

Rule 34 Discontinuance Prior to the Constitution of the Commission

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

Rule 35 Report Noting the Parties' Agreement

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

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

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

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

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

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

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

Rule 38
The Report

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

- (e) the 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](#) (~~Annex A~~), and the relevant [ICSID \(Additional Facility\) Arbitration Rules](#) (~~Annex B~~) or [ICSID Additional Facility Conciliation](#) (~~Annex C~~) Rules.

Article 1 Definitions

- (1) “Secretariat” means the Secretariat of the Centre.
- (2) “Centre” means the International Centre for Settlement of Investment Disputes established pursuant to Article 1 of the Convention.
- (3) “Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States which entered into force on October 14, 1966.
- (4) “Regional Economic Integration Organization” or “REIO” means an organization constituted by States to which they have transferred competence in respect of matters governed by these Rules, including the authority to make decisions binding on them in respect of ~~those~~ [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.

149. A comment suggested defining the terms in alphabetical order. They are defined by order of appearance in the text as the alphabetical order would be different in each official language.

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 ~~(Annex B)~~ or the [ICSID](#) ~~(Additional Facility)~~ Conciliation Rules ~~(Annex C)~~ respectively. The ~~(ICSID Additional Facility)~~ Administrative and Financial Regulations ~~(Annex A)~~ shall apply to such proceedings.

ICSID
Additional Facility Rules

Article 3
Convention Not Applicable

The provisions of the Convention do not apply to the conduct of [ICSID](#) Additional Facility proceedings.

Article 4
Final Provisions [Application of Rules](#)

~~(1) The applicable Rules are those in force on the date of filing the Request, unless the parties agree otherwise.~~

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

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

150. WP # 5 proposes to delete AR 4(2) because it is already covered by (AF)AFR 12. It also proposes to delete AR 4(3) because the defined name is in the title of the Rules.

VI. ICSID ADDITIONAL FACILITY ADMINISTRATIVE AND FINANCIAL REGULATIONS

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VI. ICSID ADDITIONAL FACILITY ADMINISTRATIVE AND FINANCIAL REGULATIONS

151. The name of this set of regulations has been simplified to the *ICSID Additional Facility Administrative and Financial Regulations* (“(AF)AFR”). Similar simplification has been made to the titles of other sets of rules.
152. The changes in WP # 5 shown below reflect changes to the AFR and are explained in the AFR chapters of WP # 5 under the corresponding provisions.

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.
- ~~(3) These Regulations may be referred to as the “(Additional Facility) Administrative and Financial Regulations” of the Centre (“Annex A” to the Additional Facility Rules).~~

Chapter II General Functions of the Secretariat

Regulation 2 Secretary

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

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the [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 ~~all aspects of~~ the proceeding, including the expeditious and cost-effective conduct of the proceeding.

Regulation 3 The Registers

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

Regulation 4 Depositary Functions

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

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

(d) any order, decision, recommendation, Report or Award by a Commission or Tribunal; 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) ~~and (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) ~~when not travelling to attend a hearing, meeting or session,~~ 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 ~~the member spends~~ away from ~~their~~ 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 ~~ICSID~~ 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 t](#)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 ~~these and~~ Regulations are equally authentic in each official language ~~are equally authentic~~.
- (3) ~~Unless otherwise stated or~~ Where required by the context ~~of the provision~~, the singular form of a word in the ICSID Additional Facility Rules and ~~Annexes A, B and C~~ these Regulations, includes the plural form of that word.
- (4) Where required by the context, the masculine gender ~~of a word~~ in the French and Spanish versions of the ICSID Additional Facility Rules ~~and these Regulations and Annexes A, B and C~~, 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

153. The name of this set of rules has been simplified to the *ICSID Additional Facility Arbitration Rules* (“(AF)AR”). Similar simplification has been made to the titles of other sets of rules.
154. Any changes in WP # 5 explained below are specific to (AF)AR. Other changes, made without explanation, reflect changes to the AR or IR and are explained in the AR or IR chapters of WP # 5 under the corresponding provisions.

Introductory Note

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

The [ICSID](#) ~~(Additional Facility)~~ Arbitration Rules are supplemented by the [ICSID](#) ~~(Additional Facility)~~ Administrative and Financial Regulations ~~in Annex A~~.

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 ~~R~~Request for arbitration, unless the parties agree otherwise.

~~(5) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language.~~

~~(6) These Rules may be cited as the “(Additional Facility) Arbitration Rules” of the Centre.~~

Chapter II Institution of Proceedings

Rule 2 The Request

- (1) Any party wishing to institute arbitration proceedings pursuant to the [ICSID Additional Facility Rules](#) shall file a **R**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](#) ~~their~~ contact information, including electronic mail address, street address and telephone number;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) attach proof of any representative’s authority to act; and
 - (e) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request and attach the authorizations.
- (2) ~~With regard to Article 2(1)(a) of the Additional Facility Rules, t~~**I**he 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 conditions [for submission of the dispute](#) in the instrument of consent ~~for submission of the dispute~~;
- (c) if a party is a natural person:
 - (i) information concerning that person's nationality on the date of consent, together with supporting documents demonstrating such nationality; and
 - (ii) a statement that the person is a national of a State other than the State party to the dispute or 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) ~~and~~ 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, ~~where required by the context,~~ 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 ~~only~~ be filed electronically. In special circumstances, the Tribunal may order that documents also be filed in a different format, ~~unless the Tribunal orders otherwise in special circumstances.~~

Rule 13 Supporting Documents

- (1) Supporting documents, including witness statements, expert reports, exhibits and legal authorities, shall be filed together with the request, written submission, observations or communication to which they relate.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Tribunal or a party may require a fuller extract or a complete version of the document.
- (3) If the authenticity of a supporting document is disputed, the Tribunal may order a party to provide a certified copy or to make the original available for examination.

Rule 14 Routing of Documents

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

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

Rule 15
Procedural Languages, Translation and Interpretation

- (1) The parties may agree to use one or two procedural languages in the proceeding. The parties shall consult with the Tribunal and the Secretary-General regarding the use of a language that is not an official language of the Centre. 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 ~~agreed by the parties~~:
 - (a) the majority of the arbitrators on a Tribunal shall be nationals of States other than the State party to the dispute, any constituent State of the REIO party to the dispute and the State whose national is a party to the dispute;

- (b) a party may not appoint an arbitrator who is a national of the State party to the dispute, any constituent State of the REIO party to the dispute or the State whose national is a party to the dispute;
 - (c) arbitrators appointed by the Secretary-General shall not be nationals of the State party to the dispute, a constituent State of the REIO party to the dispute or the State whose national is a party to the dispute; and
 - (d) no person previously involved in the resolution of the dispute as a conciliator, judge, mediator or in a similar capacity may be appointed as an arbitrator.
- (3) The composition of a Tribunal shall remain unchanged after it has been constituted, except as provided in Chapter V.

Rule 22 Qualifications of Arbitrators

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

Rule 23 Notice of Third-Party Funding

- (1) A party shall file a written notice disclosing the name 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”).

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

- ~~(3)~~(2) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.

- ~~(4)~~(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).

~~(5)~~(4) The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding pursuant to Rule 46(3) ~~if it deems it is necessary at any stage of the proceeding.~~

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 ~~to~~ 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) ~~If a hearing is to be held in person, it~~ [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 ~~written or oral~~ submission on that matter.

Rule 45 Decisions Made by Majority Vote

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

**Chapter VII
Evidence**

**Rule 46
Evidence: General Principles**

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

**Rule 47
Disputes Arising from Requests for 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 ~~written and oral~~ submissions on the report of the Tribunal-appointed expert, ~~as required~~.
- (6) Rule 48 shall apply, with necessary modifications, to the Tribunal-appointed expert.

Rule 50
Visits and Inquiries

- (1) The Tribunal may order a visit to any place connected with the dispute, on its own initiative or upon a party's request, if it deems the visit necessary, and may conduct inquiries there as appropriate.
- (2) The order shall define the scope of the visit and the subject of any inquiry, the procedure to be followed, the applicable time limits and other 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 ~~written and oral~~ submissions on the objection, ~~as required~~;
 - (d) if a party files the objection before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the objection, so that the Tribunal may consider the objection promptly upon its constitution; and
 - (e) the Tribunal shall render its decision or Award on the objection within 60 days after the latest of the constitution of the Tribunal or the last submission on the objection.
 - ~~(i) the constitution of the Tribunal;~~

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

~~(iii) the last oral submission on the objection.~~

- (3) If the Tribunal decides that all claims are manifestly without legal merit, it shall render an Award to that effect. Otherwise, the Tribunal shall issue a decision on the objection and fix any time limit necessary for the further conduct of the proceeding.
- (4) A decision that a claim is not manifestly without legal merit shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 53 or to argue subsequently in the proceeding that a claim is without legal merit.

Rule 52 Bifurcation

- (1) A party may request that a question be addressed in a separate phase of the proceeding (“request for bifurcation”).
- (2) If a request for bifurcation relates to a preliminary objection, Rule 54 shall apply.
- (3) The following procedure shall apply to a request for bifurcation other than a request referred to in Rule 54:
 - (a) the request for bifurcation shall be filed as soon as possible;
 - (b) the request for bifurcation shall state the questions to be bifurcated;
 - (c) the Tribunal shall fix time limits for ~~written and oral~~ submissions on the request for bifurcation, ~~as required~~;
 - (d) the Tribunal shall issue its decision on the request for bifurcation within 30 days after the ~~later of the last written or oral~~ submission on the request; and
 - (e) the Tribunal shall fix any time limit necessary for the further conduct of the proceeding.
- (4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
 - (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and

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

Rule 53 Preliminary Objections

- (1) The Tribunal shall have the power to rule on its jurisdiction and competence. For the purposes of this Rule, an agreement providing for arbitration pursuant to the [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) ~~(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 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 ~~written and oral~~ submissions on the request for bifurcation, ~~as required~~; and
 - (e) the Tribunal shall issue its decision on a request for bifurcation within 30 days after the ~~later of the~~ last ~~written or oral~~ submission on the request.
- (2) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
- (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and
 - (c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical.
- (3) If the Tribunal decides to address the preliminary objection in a separate phase of the proceeding, it shall:
- (a) suspend the proceeding on the merits, unless the parties agree otherwise, ~~or the Tribunal decides that there are special circumstances that do not justify suspension~~;
 - (b) fix time limits for ~~written and oral~~ submissions on the preliminary objection, ~~as required~~;
 - (c) render its decision or Award on the preliminary objection within 180 days after ~~the later of~~ the last ~~written or oral~~ submission, in accordance with Rule 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 ~~written and oral~~ submissions on the preliminary objection, ~~as required~~;
- (b) modify any time limits for ~~written and oral~~ submissions on the merits, as required; and
- (c) render its Award within 240 days after the ~~later of the last written or oral~~ submission in the proceeding, in accordance with Rule 69(1)(c).

Rule 55

Preliminary Objections without a Request for Bifurcation

~~(1)~~ 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 ~~written and oral~~ submissions on the preliminary objection, ~~as required~~;
- (b) the memorial on the preliminary objection shall be filed:
 - (i) by the date to file the counter-memorial on the merits;
 - (ii) by the date to file the next written submission after an ancillary claim, if the objection relates to the ancillary claim; or
 - (iii) as soon as possible after the facts on which the objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (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 ~~later of the last written or oral~~ submission in the proceeding, in accordance with Rule 69(1)(c).

~~(2) The Tribunal may at any time on its own initiative consider whether a dispute or an ancillary claim is within its own jurisdiction and competence.~~

Rule 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 ~~written and oral~~ submissions on the request, ~~as required~~;
 - (c) if a party requests provisional measures before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the request so that the Tribunal may consider the request promptly upon its constitution; and
 - (d) the Tribunal shall issue its decision on the request within 30 days after the latest of the constitution of the Tribunal or the last submission on the request.:
 - ~~(i) the constitution of the Tribunal;~~
 - ~~(ii) the last written submission on the request; or~~
 - ~~(iii) the last oral submission on the request.~~
- (3) In deciding whether to order provisional measures, the Tribunal shall consider all relevant circumstances, including:
- (a) whether the measures are urgent and necessary; and
 - (b) the effect that the measures may have on each party.
- (4) The Tribunal may order provisional measures on its own initiative. The Tribunal may also order provisional measures different from those requested by a party.
- (5) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered provisional measures.
- (6) The Tribunal may at any time modify or revoke the provisional measures, on its own initiative or upon a party's request.
- (7) A party may request any judicial or other authority to order interim or conservatory measures. Such a request shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Rule 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 ~~written and oral~~ submissions on the ancillary claim, ~~as required~~.

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 ~~another~~ 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) A party's default shall not be deemed an admission of the assertions made by the other party.~~

~~(7) The Tribunal may invite the party that is not in default to file observations, produce evidence or make oral submissions.~~

~~(8) If the defaulting party fails to act within the grace period or if no such period is granted, the Tribunal shall examine whether the dispute is within its own jurisdiction and competence before deciding the questions submitted to it and rendering an Award.~~

(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 ~~of the proceeding~~ 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) ~~The Tribunal shall award the party prevailing on an objection made pursuant to Rule 51 its costs of submitting or opposing the objection, unless the circumstances justify a different allocation of costs in accordance with paragraph (1).~~ 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 specify the circumstances that require security for costs;
 - (b) the Tribunal shall fix time limits for ~~written and oral~~ submissions on the request, ~~as required~~;
 - (c) if a party requests security for costs before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the request so that the Tribunal may consider the request promptly upon its constitution; and
 - (d) the Tribunal shall issue its decision on the request within 30 days after the latest of the constitution of the Tribunal or the last submission on the request:
 - ~~(i) the constitution of the Tribunal;~~
 - ~~(ii) the last written submission on the request; or~~
 - ~~(iii) the last oral submission on the request.~~
- (3) In determining whether to order a party to provide security for costs, the Tribunal shall consider all relevant circumstances, including:
- (a) that party's ability to comply with an adverse decision on costs;
 - (b) that party's willingness to comply with an adverse decision on costs;
 - (c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim; and
 - (d) the conduct of the parties.
- (4) The Tribunal shall consider all evidence adduced in relation to the circumstances in paragraph (3), including the existence of third-party funding. ~~The existence of third-party funding may form part of such evidence but is not by itself sufficient to justify an order for security for costs.~~
- (5) The Tribunal shall specify any relevant terms in an order to provide security for costs and fix a time limit for compliance with the order.
- (6) If a party fails to comply with an order to provide security for costs, the Tribunal may suspend the proceeding. If the proceeding is suspended for more than 90 days, the Tribunal may, after consulting with the parties, order the discontinuance of the proceeding.

- (7) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.
- (8) The Tribunal may at any time modify or revoke its order on security for costs, on its own initiative or upon a party's request.

Chapter X Suspension, Settlement and Discontinuance

Rule 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 latest of the Tribunal constitution, ~~or~~ the last ~~written~~ submission ~~or the last oral submission~~, if the Award is rendered pursuant to Rule 51(4);
 - (b) 180 days after ~~the later of~~ the last ~~written or oral~~ submission if the Award is rendered pursuant to Rule 54(3)(c); or
 - (c) 240 days after ~~the later of~~ the last ~~written or oral~~ submission in all other cases.
- (2) A statement of costs and submission on costs filed pursuant to with Rule 61 shall not be considered a ~~written~~ submission for the purposes of paragraph (1).
- (3) The parties waive any time limits for rendering the Award which may be provided for by the law of the seat of arbitration.

Rule 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 ~~the allocation of~~ costs.

- (2) The Award shall be signed by the members of the Tribunal who voted for it. It may be signed by electronic means if the parties agree and if allowed by the law of the seat of arbitration.
- (3) Any member of the Tribunal may attach an individual opinion or a statement of dissent to the Award before the Award is rendered.
- (4) The Award shall be final and binding on the parties.

Rule 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 ~~made-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 ~~later of the last~~ ~~written or oral~~ submission on the request.
- (9) A supplementary decision, rectification or interpretation pursuant to this Rule shall become part of the Award and shall be reflected on all certified copies of the Award.

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

Rule 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, ~~excluding supporting documents~~. 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 ~~or publication of~~ 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, or 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 ~~later of the last written or oral~~ submission on the application.
- (6) The Tribunal ~~may~~shall provide the non-disputing party with ~~access to~~ relevant documents filed in the proceeding, unless either party objects.

- (7) If the Tribunal permits a non-disputing party to file a written submission, the parties shall have the right to make observations on the submission.

Rule 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 written ~~or oral~~ 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 filing of ~~the a written~~ submission by the non-disputing Treaty Party, including with respect to the format ~~and~~; length ~~or publication~~ of the ~~written~~ submission, and the time limit to file the submission.
- (4) 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 ~~at any time~~ to expedite the arbitration in accordance with this Chapter (“expedited arbitration”) by jointly notifying the Secretary-General in writing of their consent.
- (2) Chapters I-XII of the ~~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 any arbitrator fails to confirm availability before the expiry of the applicable time limit, the arbitration shall proceed in accordance with Chapters I-XII.~~

Rule 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 ~~shall be deemed~~ is an appointment in accordance with ~~a~~ 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 ~~by telephone or electronic means of communication~~ 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 ~~main~~ schedule referred to in paragraph (1). The Tribunal shall adjust the schedule if a party raises any such matter, taking into account the expedited nature of the process.
- (3) The Tribunal may extend the time limits referred to in paragraph (1)(a) and (b) by up to 30 days ~~if any party requests that the Tribunal to~~ decide a dispute arising from requests to produce documents pursuant to Rule 47. The Tribunal shall decide such

~~applications~~ 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 ~~main~~-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 ~~main~~-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 ~~later of the last~~ ~~written or oral~~ 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

155. The name of this set of rules has been simplified to the *ICSID Additional Facility Conciliation Rules* (“(AF)CR”). A similar simplification has been made to the titles of other sets of rules.
156. Any changes in WP # 5 explained below are specific to (AF)CR. Other changes, made without explanation, reflect changes to the AR or IR and are explained in the AR, CR, MR or IR chapters of WP # 5 under the corresponding provisions.

Introductory Note

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

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

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.
- ~~(5) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language.~~

~~(6) These Rules may be cited as the “(Additional Facility) Conciliation Rules” of the Centre.~~

Chapter II Institution of the Proceedings

Rule 2 The Request

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

Rule 3 Contents of the Request

- (1) The Request shall:
 - (a) be in English, French or Spanish;
 - (b) identify each party to the dispute and provide ~~their~~**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) ~~With regard to Article 2(1)(a) of the Additional Facility Rules, t~~**he** 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 conditions [for the submission of the dispute](#) in the instrument of consent ~~for submission of the dispute~~;
- (c) if a party is a natural person:
- (i) information concerning that person's nationality on the date of consent, together with supporting documents demonstrating such nationality; and
 - (ii) a statement that the person is a national of a State other than the State party to the dispute or 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, ~~where required by the context,~~ 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 ~~only~~ be filed electronically. In special circumstances, the Commission may order that documents also be filed in a different format, ~~unless the Commission orders otherwise in special circumstances.~~

Rule 12 Supporting Documents

- (1) Supporting documents shall be filed together with the written statement, request, observations or communication to which they relate.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Commission or a party may require a fuller extract or a complete version of the document.

Rule 13 Routing of Document

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

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

Rule 14
Procedural Languages, Translation and Interpretation

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

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

~~(3)~~(2) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.

~~(4)~~(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).

~~(5)~~(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 ~~to~~ 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 ~~longer time~~ other date as the Commission may fix in consultation with the parties, and~~but~~ in any event before the first session.
- (2) Either party may file further written statements at any stage of the conciliation within the time limits fixed by the Commission.

Rule 39
First Session

- (1) The Commission shall hold a first session with the parties to address the procedure, including the matters listed in paragraph (4).
- (2) The first session may be held in person or remotely, by any means that the Commission deems appropriate. The agenda, method and date of the first session shall be determined by the Commission after consulting with the parties.

- (3) The first session shall be held within 60 days after the 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 ~~and format~~ 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 ~~confidential or protected~~ information relating to, and documents generated in or obtained during, the proceeding;
 - ~~(i) the publication of documents;~~
 - ~~(j)~~ (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
 - ~~(k)~~ (j) any other procedural matter raised by either party or the Commission.
- (5) At the first session or within any other period determined by the Commission, each party shall:

(a) identify ~~a representative who is 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 ~~If a meeting is to be held in person, it~~ may be held at any place agreed to by the parties after consulting with the Commission and the Secretary-General. If the parties do not agree on the place of a meeting, it shall be held at a place determined by the Commission.

(4) Meetings shall remain confidential. The parties may agree to observation of meetings by persons in addition to the parties and the Commission.

Rule 41 Preliminary Objections

(1) A party may file a preliminary objection that the dispute is not within the jurisdiction or competence of the Commission ("preliminary objection").

(2) A party shall notify the Commission and the other party of its intent to file a preliminary objection as soon as possible. The objection shall be made no later than the date of the initial written statement referred to in Rule 38(1), unless the facts on which the objection is based are unknown to the party at the relevant time.

(3) The Commission may address a preliminary objection separately or with other issues in dispute. If the Commission decides to address the objection separately, it may

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

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

Chapter VII Termination of the Conciliation

Rule 42 Discontinuance Prior to the Constitution of the Commission

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

Rule 43
Report Noting the Parties' Agreement

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

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

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

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

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

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

Rule 46
The Report

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

- (b) the names of the representatives of the parties;
 - (c) a statement that the Commission was established pursuant to these Rules and a description of the method of its constitution;
 - (d) the name of each member of the Commission and of the appointing authority of each;
 - (e) the 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

157. The name of this set of rules has been simplified to the *ICSID Fact-Finding Rules* (“FFR”). A similar simplification has been made to the titles of other sets of rules.
158. Any changes in WP # 5 explained below are specific to the FFR. Other changes, made without explanation, reflect changes to the MR and CR and are explained in those chapters of WP # 5 under the corresponding provisions.

Introductory Note

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

The ICSID Fact-Finding Rules are supplemented by the [ICSID \(Fact-Finding\) Administrative and Financial Regulations](#) ~~((Annex A))~~.

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](#) ~~these~~ 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.

159. The AR and CR contain a definition of “Party”. The AR and CR require such definition to

clarify the terms “claimant” and “respondent.” By contrast, the FFR do not refer to “claimant” and “respondent.”

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, ~~attached as Annex A~~, shall apply to proceedings pursuant to these Rules.

Rule 3 Application of Rules

- (1) These Rules shall apply to any fact-finding proceeding conducted pursuant to Rule 2.
- (2) The parties may agree to modify the application of any of these Rules other than Rules 1-7.
- (3) The applicable ICSID Fact-Finding Rules are those in force on the date of filing the Request, unless the parties agree otherwise.
- ~~(4) The texts of these Rules are equally authentic in English, French and Spanish.~~
- ~~(5) These Rules may be cited as the “ICSID Fact-Finding Rules.”~~

160. The provision has been aligned with the corresponding changes in AR 1. FFR 3(4) is now addressed in (FF)AFR 1(3). Given the change in the title of the FFR, FFR 3(5) is no longer necessary.

**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 ~~Rule 2~~ [these Rules](#) shall file a joint Request with the Secretary-General and pay the lodging fee published in the schedule of fees.

161. The language of FFR 5 has been modified without changing the substance of the provision.

**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, ~~or~~ 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.

162. FFR 6(1)(a) and 6(2) have been modified to offer parties the option to file a request for fact finding in a language other than English, French or Spanish, the three official languages of the Centre, subject to the approval of the Secretary-General.

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 ~~particular~~-specific qualifications or expertise.

163. The language of FFR 8(2) has been modified without changing the substance of the provision.

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.

164. The provision has been aligned with the corresponding change in AR 21(1).

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 ~~confidential or protected~~ information and; documents; ~~to be provided~~; persons to be interviewed; site visits; and any other procedural and administrative matters;
 - (c) whether the Report to be issued will be binding on the parties; and
 - (d) whether the Committee should make any recommendations in its Report.
- (4) The Committee shall conduct the proceeding in accordance with the Protocol and take all steps necessary to discharge its mandate. To that end, it shall make all decisions required for the conduct of the proceeding.
- (5) Any matters not provided for in these Rules or not previously agreed to by the parties shall be determined by agreement of the parties or, failing such agreement, by the Committee.

165. The change in FFR 12(1) clarifies that the preliminary written statements are to be filed prior to the first session to provide the Committee a first overview of the background and the issues before meeting the parties.

166. FFR 12(3)(b) clarifies that the method and place of sessions is to be addressed at the first session, allowing for the possibility of holding meetings via video-conference technology.
167. FFR 12(3)(c) has been streamlined and reflects that a broader range of issues beyond the treatment of confidential and protected information may be discussed.

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.

168. One State reiterated its previous comment that the FFRs should maintain a similar arrangement as that of the existing rule (in the fact-finding rules under the Additional Facility Rules) on failure to participate or cooperate. When one party fails to appear or participate in the proceeding and the Committee determines that as a result thereof it is unable to carry out its task, it shall, after notice to the parties, close the proceeding and draw up its Report. This is exactly what FFR 19 contemplates.

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

169. The name of this set of regulations has been simplified to the *ICSID Fact-Finding Administrative and Financial Regulations* (“(FF)AFR”). Similar simplification has been made to the titles of other sets of rules.
170. The changes in WP # 5 shown below reflect changes to the AFR and are explained in the AFR chapters of WP # 5 under the corresponding provisions.

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.
- ~~(3) These Regulations may be referred to as the “(Fact-Finding) Administrative and Financial Regulations” of the Centre (“Annex A” to the ICSID Fact-Finding Rules).~~

Chapter II General Functions of the Secretariat

Regulation 2 Secretary

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

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the ICSID Fact-Finding Rules applicable to individual proceedings and delegated to the Secretary; and
- (b) assist the parties and the Committee with ~~all aspects of~~ the 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; ~~and~~
 - [\(d\)](#) any Report of the Committee; ~~and~~
 - ~~(d)~~[\(e\)](#) [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) ~~and (d)-(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) ~~when not travelling to attend a meeting or session,~~ 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 ~~the member spent~~ away from ~~their~~ 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 ~~an annual~~ administrative charges payable by the parties to the Centre.

- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
- (a) mMembers 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 ~~ICSID~~ 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 ~~in each official language~~ are equally authentic in each official language.
- (3) ~~Unless otherwise stated or~~ Where required by the context ~~of the provision~~, the singular form of a word in the ICSID Fact-Finding Rules and these Regulations ~~and in the ICSID Fact-Finding Rules~~ includes the plural form of that word.
- (4) Where required by the context, the masculine gender ~~of a word~~ in the French and Spanish versions of the ICSID Fact-Finding Rules and these Regulations ~~and the ICSID Fact-Finding Rules~~ 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

171. The name of this set of rules has been simplified to the *ICSID Mediation Rules* (“MR”). A similar simplification has been made to the titles of other sets of rules.
172. Any changes in WP # 5 explained below are specific to the MR. Other changes, made without explanation, reflect changes to the AR, CR or IR and are explained in the AR, CR, or IR chapters of WP # 5 under the corresponding provisions.

Introductory Note

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

The ICSID Mediation Rules are supplemented by the [ICSID \(Mediation\) Administrative and Financial Regulations](#) (~~*Annex A*~~).

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 ~~those~~ [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.

~~(7) “Mediator” includes, where required by the context, two co-mediators appointed in accordance with these Rules.~~

173. One State suggested reintroducing the definition of “Party” in MR 1 to align the MR with the AR and CR. However, it is unnecessary to include such a definition in the MR. The AR and CR require such definition to clarify the terms “claimant” and “respondent.” By contrast, the MR do not refer to “claimant” and “respondent.”
174. The definition of “mediator” is now in MR 13(1).

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, ~~attached as Annex A,~~ shall apply to mediations pursuant to these Rules.

175. One State suggested including an express reference to a “dispute” in MR 2(1). No change has been introduced as MR 2(1) offers access to mediation, irrespective of whether the mediation is characterized as relating to a grievance, a difference or a dispute.

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.

~~(5) The texts of these Rules are equally authentic in English, French and Spanish.~~

~~(6) These Rules may be cited as the “ICSID Mediation Rules”.~~

176. The provision has been aligned with the corresponding changes in AR 1. MR 3(5) is now addressed in (MR)AFR 12. Given the change in the title of the MR, MR 3(6) is no longer necessary.

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 ~~Rule 2~~ [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 ~~in dispute~~;
- (h) contain any proposals or agreements reached by the parties concerning the appointment and qualifications of the mediator and the procedure to be followed during the mediation; and
- (i) attach the agreement of the parties to mediate pursuant to these Rules.

(4) Any supporting document in a language other than English, French, ~~or~~ Spanish 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.

177. MR 5(3)(a) has been modified to offer parties the option to file a request for mediation in a language other than English, French or Spanish, the three official languages of the Centre, subject to the approval of the Secretary-General.

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 ~~pursuant to Rule 2~~, 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 ~~Rule 2~~ 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.

178. MR 6(2)(a) clarifies that a Request pursuant to MR 6 must include translations of supporting documentation, as is required under MR 5(4).
179. One State reiterated its request that MR 6 be eliminated, noting that this provision would oblige the responding party to consider an offer to mediate. As noted in [WP # 4, ¶ 224](#), this provision responds to requests from several other States to include such an option in the MR. MR 6 does not require the other party to consent to an offer to mediate transmitted by ICSID. Absent such consent, no steps will be taken on the request (see MR 6(5)). Therefore, the provision has been retained.
180. One State suggested that the MR mandate mediation for certain types of disputes. Whether resort to mediation is mandatory or voluntary is a policy choice for States that would be reflected in the instrument of consent to mediation. The ICSID MR are available regardless of whether mediation is mandatory or voluntary.

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 ~~particular~~ specific qualifications or expertise.

181. The language of MR 12(2) has been modified without changing the substance of the provision.

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.

182. One State repeated an earlier suggestion that MR 13 should provide for two co-mediators as a default. This suggestion has not been adopted. As noted in WP 4, the default to a single mediator advances the goal of a cost-effective process. The parties are free to agree to the appointment of two co-mediators if they consider co-mediation desirable ([WP # 4, ¶ 234](#)).

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.

183. The MR do not include a provision requiring the disclosure of third-party funding. In WP # 4, language for a TPF provision was included for consideration in the notes. Only one State supported the inclusion of this provision. The reasons for not including such a provision in the MR are explained in ([WP # 4, ¶ 235](#)).

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.~~ ~~does not have the~~ 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.

184. MR 19(1) reintroduces language that had been deleted in WP # 4, at the suggestion of one State. The text clarifies that these initial statements are to be filed prior to the first session to provide the mediator a first overview of the background and issues in dispute before meeting the parties.

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 ~~confidential or protected~~ 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 ~~in dispute during the mediation~~;
 - (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 representative a person or entity who is~~ authorized to negotiate and settle the issues ~~in dispute~~ being mediated on its behalf; and
 - (b) describe the process that would be followed to conclude and implement a settlement agreement.

185. MR 20(3)(c) clarifies that the method and place of meetings is to be addressed at the first session, allowing for the possibility of holding meetings via video-conference technology. The language provision in MR 20(3)(e) reflects the wording used in MR 10.
186. MR 20(4) has been modified to make clear that the parties must both (1) indicate who is authorized to negotiate and settle the issues being mediated on behalf of each party (e.g., a specific government entity such as a lead agency for investment disputes, a ministry or ministries, or Cabinet; or, for an investor, a board of directors, a corporate oversight body, a principal shareholder, etc.,) and (2) describe the process required for each party to conclude (i.e., execute) and implement a binding settlement agreement.

Rule 21 Mediation Procedure

- (1) The mediator shall conduct the mediation in accordance with the Protocol and shall ~~take into account~~consider the views of the parties and the issues ~~in dispute~~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.
- ~~(3)~~(4) If requested by all parties, the mediator may make oral or written recommendations for the resolution of any issues ~~in dispute~~being mediated, if requested by all parties.
- ~~(4) The mediator may obtain expert advice with the agreement of the parties.~~

187. Minor language modifications have been introduced in MR 21 to enhance clarity without changing the substance.
188. One State repeated its suggestion that the MR provide the mediator with the ability to make settlement recommendations. MR 21(3) is maintained. As noted in WP # 4, the procedure envisioned in the MR does not prescribe a specific mediation style but allows parties to jointly determine the functions they want the mediator to undertake ([WP # 4, ¶ 241](#)).

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.

~~(3)~~(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.

189. MR 22(2) has been modified to require that any agreement of the parties regarding the use of information in other proceedings, in accordance with MR 11, be summarized in the notice of termination. This is consistent with CR 38, addressing the Reports that are issued at the end of conciliation proceedings, which requires similar information to be included.

XII. ICSID MEDIATION ADMINISTRATIVE AND FINANCIAL REGULATIONS

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XII. ICSID MEDIATION ADMINISTRATIVE AND FINANCIAL REGULATIONS

190. The name of this set of regulations has been simplified to the *ICSID Mediation Administrative and Financial Regulations* (“(MR)AFR”). Similar simplification has been made to the titles of other sets of rules.
191. Any changes in WP # 5 explained below are specific to the (MR)AFR. Other changes, made without explanation, reflect changes to the AFR and are explained in the AFR chapters of WP # 5 under the corresponding provisions.

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.
- ~~(3) These Regulations may be referred to as the “ICSID (Mediation) Administrative and Financial Regulations” of the Centre (“Annex A” to the ICSID Mediation Rules).~~

Chapter II General Functions of the Secretariat

Regulation 2 Secretary

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

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the ICSID Mediation Rules applicable to individual mediations and delegated to the Secretary; and
- (b) assist the parties and the mediator with ~~all aspects of~~ 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 ~~any records of meetings or sessions in a mediation~~; and
 - (d) any notice issued ~~of termination of a mediation~~ 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.

192. (MR)AFR 4 has been amended to reflect that the Secretary-General retains only certain records that relate to the mediation procedure, such as the request for mediation and related correspondence, the notice of registration and termination pursuant to ICSID Mediation Rules 7 and 22, documents and correspondence relating to the appointment of the mediator, and the framework for the conduct of the mediation (i.e. the Mediation

Protocol pursuant to MR 20).

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) ~~when not travelling to attend a meeting or session,~~ 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 ~~the mediator spends~~ away from their 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 ~~an annual~~ 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(4);
 - (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.

193. The changes in (MR)AFR 6 reflect changes made to the corresponding provisions in AFR 14(1)(b), 14(1)(c)(iii) and 14(2). (MR)AFR 6(3) has been amended to reflect the administrative fee for services provided in the context of mediation as reflected in the Schedule of Fees.

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.

194. (MR)AFR 7(1)(b) is modified for clarity.

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 ~~ICSID~~ 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~~se~~ Regulations are published in the official languages of the Centre, English, French and Spanish.
- (2) The texts of the ICSID Mediation Rules and~~se~~ these Regulations ~~in each official language~~ are equally authentic in each official language.
- (3) ~~Unless otherwise stated or~~ Where required by the context ~~of the provision~~, the singular form of a word in ~~these~~ the ICSID Mediation Rules and these Regulations ~~and in the ICSID Mediation Rules~~ includes the plural form of that word.
- (4) Where required by the context, the masculine gender ~~of a word~~ in the French and Spanish versions of the ICSID Mediation Rules and these Regulations ~~and the ICSID Mediation Rules~~ 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.

INSERT CONCORDANCE TABLES HERE



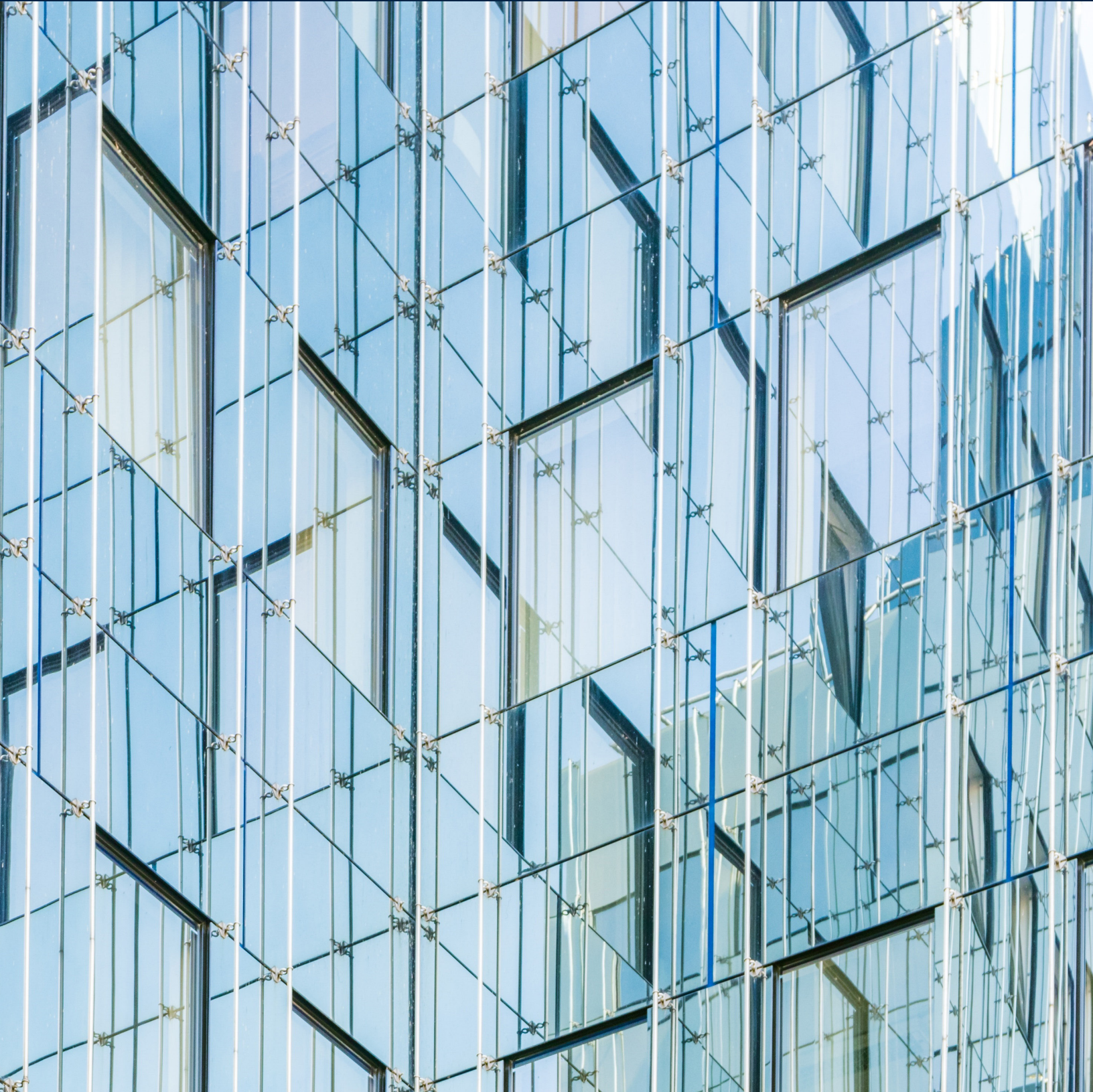
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