

Costa Rica's comments to the Amendment of the ICSID Rules

Pursuant to ICSID's invitation, the Republic of Costa Rica hereby submits its comments to the Working Paper 2 regarding the Proposals for Amendment of the ICSID Rules.

As a Member State to the ICSID Convention, Costa Rica has considered the proposal for amendment taking into account factors that are important to ISDS, such as costs, time-limits and transparency. Furthermore, based on our arbitration experience, Costa Rica has given due consideration to issues such as achieving balance among the parties, as well as fostering accountability, legal certainty and good governance of the arbitration process.

All suggestions are presented in a table format. Where considered appropriate or necessary, a new proposal is suggested.

Working Paper 2	Costa Rica's comments
<p>Rule 3-5 Method of Filing Supporting Documents (1) Written submissions, observations, supporting documents and communications shall be filed electronically, unless the parties agree or the Tribunal orders otherwise. They shall be introduced into the proceeding by filing them with the Secretariat, which shall acknowledge receipt and distribute them in accordance with Rule 4.</p> <p>(1)(2) Supporting documents, including witness statements, expert reports, exhibits and legal authorities, shall be filed together with the request, written submissions, observations or communication to which they relate, within the time limit fixed to file such written submissions.</p> <p>(2) (3) An extract of a supporting document may be filed if the omission of the text does not render the extract misleading. The Tribunal or a party may require a fuller extract or a complete version of the document.</p> <p>(3) If the authenticity of a supporting document is disputed, the Tribunal may order a party to provide a certified copy or to make the original document available for examination.</p>	<p>Costa Rica welcomes the addition of paragraph three because it will provide security to the proceeding, in cases when the authenticity of a supporting document is questioned. For greater certainty, Costa Rica suggests to also clarify that the certification relates to the legislation of the jurisdiction in which it was issued, since an eventual misunderstanding of the Rule could lead to higher costs and duration to the proceeding.</p> <p>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.</p> <p>(2) An extract of a supporting document may be filed if the omission of the text does not render the extract misleading. The Tribunal or a party may require a fuller extract or a complete version of the document.</p> <p>(3) If the authenticity of a supporting document is disputed, the Tribunal may order a party to provide a certified copy according to the legislation of the jurisdiction where the document was issued or to make the original document available for examination.</p>

Working Paper 2	Costa Rica's comments
<p>Rule 7.9 Calculation of Time Limits</p> <p>(1) References to time shall be determined based on the time at the seat of the Centre on the relevant date.</p> <p>(2) (1) Any time limit expressed as a period of time shall be calculated from the day after the date on which:</p> <p>(a) of the relevant notice;</p> <p>(a) (b) on which the Tribunal, or the Secretary-General if applicable, announces the period; or</p> <p>(b) (c) on which the procedural step starting the period is taken.</p> <p>(3) (2) A time limit expires at 11:59 p.m. at the seat of the Centre on the relevant date. Where the end of a time limit falls on a Saturday, Sunday, or a holiday observed by the Secretariat, it shall be satisfied if a procedural the relevant step is taken or the relevant a document is received by the Secretariat Secretary-General on the relevant date, or, if the date falls on a Saturday, Sunday, or a holiday observed by the Secretariat, on the subsequent business day.</p>	<p>As expressed by other Members during the April's meeting, Costa Rica supports the proposal to provide flexibility to the parties in deciding which holidays they will want to take into consideration during the course of the proceeding.</p> <p>Rule 9 Calculation of Time Limits</p> <p>(1) References to time shall be determined based on the time at the seat of the Centre on the relevant date.</p> <p>(2) Any time limit expressed as a period of time shall be calculated from the day after the date on which:</p> <p>(a) the Tribunal, or the Secretary-General if applicable, announces the period; or</p> <p>(b) the procedural step starting the period is taken.</p> <p>(3) A time limit shall be satisfied if a procedural step is taken or a document is received by the Secretary-General on the relevant date, or, if the date falls on a Saturday, Sunday, or a holiday observed by the Secretariat or as agreed by the parties, on the subsequent business day.</p>
<p>Rule 9.11 Time Limits Fixed by Applicable to the Tribunal</p> <p>(1) The Tribunal shall fix time limits for completion of each step in the proceeding, other than time limits specified by the Convention or these Rules.</p> <p>(2) The Tribunal may extend a time limit it fixed upon reasoned application by a party made prior to the expiry of the time limit. The Tribunal may delegate this power to its President.</p> <p>(3) The Tribunal shall disregard any step taken after expiry of a time limit it fixed unless it concludes that there are special circumstances justifying the delay.</p>	<p>In the interest of certainty and considering that the objective of this process is to reduce the duration of the proceedings, we suggest to include an obligation in paragraph one that can guide the expectations of the parties and paragraph two contains the exception, which provides flexibility to the tribunals, when needed.</p> <p>Rule 11 Time Limits to the Tribunal</p> <p>(1) The Tribunal shall use best efforts to meet all applicable time limits.</p> <p>(2) If special circumstances arise which prevent the Tribunal from complying with a time limit, it shall advise the parties of the reason for delay and the date when it anticipates the order, decision or Award will be delivered.</p>

Working Paper 2	Costa Rica's comments
<p>(1) The Tribunal shall use best efforts to meet all applicable time limits.</p> <p>(2) If special circumstances arise which prevent the Tribunal from complying with a time limit, it shall advise the parties of the reason for delay and the date when it anticipates the order, decision or Award will be delivered.</p>	
<p>Rule 21 13 Disclosure Notice of Third-party Funding</p> <p>(1) "Third party funding" is the provision of funds or other material support for the pursuit or defense of a proceeding, by a natural or juridical person that is not a party to the dispute ("third party funder"), to a party to the proceeding, an affiliate of that party, or a law firm representing that party. Such funds or material support may be provided:</p> <p>(a) through a donation or grant; or</p> <p>(b) in return for a premium or in exchange for remuneration or reimbursement wholly or partially dependent on the outcome of the proceeding.</p> <p>(2) A party shall file a written notice disclosing that it has third party funding and the name of the third party funder. Such notice shall be sent to the Secretariat immediately upon registration of the Request for arbitration, or upon concluding a third party funding arrangement after registration.</p> <p>(3) Each party shall have a continuing obligation to disclose any changes to the information referred to in paragraph (2) occurring after the initial disclosure, including termination of the funding arrangement.</p> <p>(1) For purposes of completing the arbitrator declaration required by Rule 26(3)(b), a party shall file a written notice disclosing the name of any non-party from which that party, its affiliate or its representative has received funds or equivalent support for the pursuit or defense of the proceeding ("third-party funding").</p>	<p>Costa Rica appreciates ICSID's efforts to strengthen transparency in arbitration through the disclosure of third-party funding (TPF). However, after April's discussions, Costa Rica considers that this provision merits further examination beyond the effects in the constitution of the tribunals and the potential conflict of interest. For example, States discussed that TPF is also linked to security for costs, possibility of reaching amicable solutions, counterclaims and transparency in general. Thus, Costa Rica suggests:</p> <ol style="list-style-type: none"> 1. Moving this Rule to section of General Provisions because this topic is not only linked to the constitution of the Tribunal. 2. Eliminate the first sentence of paragraph one to avoid a constrained interpretation of the use of information on TPF, since there are other concerns associated with it. 3. It has been Costa Rica's consistent practice to ensure a balance between transparency and confidential information in arbitration. Therefore, we support that confidential information could prejudice legitimate commercial interests. <p>Rule13 Notice of Third-party Funding</p> <p>(1) For purposes of completing the arbitrator declaration required by Rule 26(3)(b), a party shall file a written notice disclosing the name of any non-party from which that party, its affiliate or its representative has received funds or equivalent support for the pursuit or defense of the proceeding ("third-party funding").</p> <p>(2) A non-party referred to in paragraph (1) does not include a representative of a party.</p>

Working Paper 2	Costa Rica's comments
<p>(2) A non-party referred to in paragraph (1) does not include a representative of a party.</p> <p>(3) A party shall send the notice referred to in paragraph (1) to the Secretary-General upon registration of the Request, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.</p>	<p>(3) A party shall send the notice referred to in paragraph (1) to the Secretary-General upon registration of the Request, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.</p> <p>(4) Once a Party has disclosed the existence of third-party funding, the Tribunal shall order the funded Party to provide information to determine if:</p> <ul style="list-style-type: none"> (i) there is a conflict of interest; (ii) the third-party funding will cover the compliance of an adverse decision on cost; (iii) the third-party funding imposes restrictions to reach amicable solutions; or (iv) there is any other circumstance that may negatively affect the conduction of the proceeding.
<p>Rule 25–17 Appointment of Arbitrators by the Chairman of the Administrative Council in accordance with Article 38 of the Convention</p> <p>(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 Chairman appoint the arbitrator(s) who have not yet been appointed pursuant to Article 38 of the Convention.</p> <p>(2) The Chairman shall appoint the President of the Tribunal after appointing any members who have not yet been appointed.</p> <p>(3) The Chairman 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.</p>	<p>Costa Rica agrees with the content of this Rule regarding the current practice of consulting the Parties before appointing the President. This could help to ensure that the preference of the Parties regarding a specific profile is considered. Including the phrase “as far as possible” could be interpreted as a facultative consultation to the Parties.</p> <p>Rule 17 Appointment of Arbitrators by the Chair in accordance with Article 38 of the Convention</p> <p>(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.</p>

Working Paper 2	Costa Rica's comments
	<p>(2) The Chair shall appoint the President of the Tribunal after appointing any members who have not yet been appointed.</p> <p>(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.</p>
<p>Rule 26 18 Acceptance of Appointment</p> <p>(1) A party appointing an arbitrator shall notify the Secretariat Secretary-General of the appointment and provide the appointee's name, nationality(ies) and contact information.</p> <p>(2) The Secretariat Secretary-General shall request an acceptance from the each appointee upon receipt of the notice referred to in paragraph (1) as soon as the appointee is selected. The Secretariat Secretary-General shall also transmit to each appointee the information received from the parties relevant to completion of the declaration referred to in paragraph (3)(b).</p> <p>(3) Within 20 days after the receipt of the request for acceptance of an appointment, an appointee shall:</p> <p>(a) accept the appointment; and</p> <p>(b) provide a signed declaration in the form published by the Centre, addressing matters including the arbitrator's independence, impartiality, availability and commitment to maintain the confidentiality of the proceedings.</p> <p>(4) The Secretariat Secretary-General shall notify the parties of the acceptance of appointment by each arbitrator and provide their signed declarations.</p> <p>(5) The Secretariat Secretary-General shall notify the parties if an arbitrator fails to accept the appointment or provide a signed declaration</p>	<p>As already suggested, Costa Rica considers that this provision should mention a possible Code of Conduct that should be attached to the Arbitrator Declaration in Schedule 2.</p>

Working Paper 2	Costa Rica's comments
<p>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.</p> <p>(6) Each arbitrator shall have a continuing obligation to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).</p>	
<p>Rule 13 29 Written Submissions and Observations</p> <p>(1) The parties shall file the following written submissions, with any supporting documents, within the time limits fixed by the Tribunal:</p> <p>(a) a memorial by the requesting party, subject to paragraph (2);</p> <p>(b) a counter-memorial by the other party;</p> <p>and, if unless the parties so agree or the Tribunal finds it necessary otherwise:</p> <p>(c) a reply by the requesting party; and</p> <p>(d) a rejoinder by the other party.</p> <p>(2) The requesting party may elect to have the Request for arbitration considered as the memorial.</p> <p>(2) (3) 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.</p>	<p>Costa Rica identifies an inconsistency between the resulting Rule 28.4.h and the resulting Rule 29.3 because in the former, the procedural calendar agreed in the first session shall establish dates for the written submission, whereas in the latter the Rule indicates that the memorial on the merits or on preliminary objections shall be filed before the first session. We appreciate the clarification of this inconsistency.</p> <p>Costa Rica does not support the filing of any submission before agreeing a procedural calendar during the first session.</p>

Working Paper 2	Costa Rica's comments
<p>(3) A memorial on the merits or a memorial on preliminary objections may be filed at any time before the first session.</p> <p>(4) The Tribunal shall grant leave to file No party may file unscheduled written submissions, observations or supporting documents without leave of the Tribunal, unless the filing of such documents is provided for by the Convention or these Rules. The Tribunal may grant such leave upon a timely and reasoned application and only if it finds such written submissions, observations or supporting documents these are necessary in view of all relevant circumstances.</p>	
<p>Rule 37-41 Bifurcation (1) A party may request that a question be addressed in a separate phase of the proceeding (“request for bifurcation”).</p> <p>(2) If a request for bifurcation relates to a preliminary objection, Rule 42BIS shall apply.</p> <p>(3) (2) The following procedure shall apply to requests for bifurcation other than a request referred to in paragraph (2):</p> <p>(a) if the request for bifurcation relates to a preliminary objection, a party shall file the request within 30 days after the filing of the memorial on the merits or, if the objection relates to an ancillary claim, within 30 days after the filing of the written submission containing the ancillary claim, unless the facts on which the objection is based are unknown to the party at the relevant time; shall be filed as soon as possible;</p> <p>(b) the request for bifurcation shall specify state the questions to be bifurcated;</p> <p>(c) the Tribunal shall fix time limits for written and or oral submissions, as required, on the request for bifurcation; and</p>	<p>Costa Rica appreciates CIADI’s efforts to promote a prompt resolution of the matters submitted to the Tribunal, resulting in a more efficient proceeding. Nevertheless, we consider that such a reduction in the time limit of the Tribunal could cause an inadequate analysis of the matter due to the complexity of the disputes. Thus, Costa Rica supports keeping the 30-days’ time limit previously included in the WP1.</p> <p>Rule 41 Bifurcation (1) A party may request that a question be addressed in a separate phase of the proceeding (“request for bifurcation”).</p> <p>(2) If a request for bifurcation relates to a preliminary objection, Rule 42BIS shall apply.</p> <p>(3) The following procedure shall apply to requests for bifurcation other than a request referred to in paragraph (2):</p> <p>(a) the request for bifurcation shall be filed as soon as possible;</p> <p>(b) the request for bifurcation shall state the questions to be bifurcated;</p> <p>(c) the Tribunal shall fix time limits for written and oral submissions, as required, on the request for bifurcation;</p>

Working Paper 2	Costa Rica's comments
<p>(d) the Tribunal shall issue its decision on a request for bifurcation within 30 20 days after the last written or oral submission on the request;</p> <p>(e) the Tribunal shall decide whether to suspend any part of the proceeding if it decides to bifurcate; and</p> <p>(f) the Tribunal shall fix any time limit for the further conduct of the proceeding, as required.</p> <p>(4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether bifurcation would could materially reduce the time and cost of the proceeding and all other relevant circumstances.</p> <p>(5) (3) The Tribunal may at any time on its own initiative decide whether a question is to be addressed in a separate phase of the proceeding.</p>	<p>(d) the Tribunal shall issue its decision on a request for bifurcation within 30 20 days after the last written or oral submission on the request;</p> <p>(e) the Tribunal shall decide whether to suspend any part of the proceeding if it decides to bifurcate; and</p> <p>(f) the Tribunal shall fix any time limit for the further conduct of the proceeding, as required.</p> <p>(4) In determining whether to bifurcate, the Tribunal shall consider whether bifurcation would could materially reduce the time and cost of the proceeding and all other relevant circumstances.</p> <p>(5) The Tribunal may at any time on its own initiative decide whether a question is to be addressed in a separate phase of the proceeding.</p>
<p>Rule 42BIS Bifurcation of Preliminary Objections</p> <p>(1) The following procedure shall apply with respect to a request for bifurcation relating to a preliminary objection:</p> <p>(a) unless the parties agree on a different time limit, the request for bifurcation shall be filed within:</p> <p>(i) 30 days after the first session, if the memorial on the merits is filed before the first session;</p> <p>(ii) 30 days after filing the memorial on the merits, if it is filed after the first session;</p> <p>(iii) 30 days after filing the written submission containing the ancillary claim, if the objection relates to an ancillary claim; or</p>	<p>After further reflexions resulting from discussions with the other Member States, Costa Rica considers that the time limit set out in this Rule could be insufficient for the State to properly assess and decide the convenience on whether to request the bifurcation of preliminary objections. Thus, extend that period to 60 days would better suit the internal administrative procedures that a State should conduct before deciding about the bifurcation.</p> <p>Rule 42BIS Bifurcation of Preliminary Objections</p> <p>(1) The following procedure shall apply with respect to a request for bifurcation relating to a preliminary objection:</p> <p>(a) unless the parties agree on a different time limit, the request for bifurcation shall be filed within:</p> <p>(i) 60 30 days after the first session, if the memorial on the merits is filed before the first session;</p>

Working Paper 2	Costa Rica's comments
<p>(iv) 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 the party on the relevant dates;</p> <p>(b) the request for bifurcation shall state the preliminary objection to which it relates;</p> <p>(c) the proceeding on the merits shall be suspended pending the Tribunal's consideration of the request for bifurcation, unless the parties agree otherwise;</p> <p>(d) the Tribunal shall fix time limits for written and oral submissions, as required, on the request for bifurcation; and</p> <p>(e) the Tribunal shall issue its decision on a request for bifurcation within 20 days after the last written or oral submission on the request.</p> <p>(2) In determining whether to bifurcate, the Tribunal shall consider whether bifurcation could materially reduce the time and cost of the proceeding and all other relevant circumstances.</p> <p>(3) If the Tribunal decides to address the preliminary objection in a separate phase of the proceeding, it shall:</p> <p>(a) decide whether to suspend any part of the proceeding on the merits;</p> <p>(b) fix time limits for written and oral submissions on the preliminary objection, as required;</p> <p>(c) issue its decision or render its Award on the preliminary objection within 180 days after the last written or oral submission; and</p> <p>(d) fix any time limit necessary for the further conduct of the proceeding if the Tribunal does not render an Award.</p>	<p>(ii) 30 days after filing the memorial on the merits, if it is filed after the first session;</p> <p>(iii) 30 days after filing the written submission containing the ancillary claim, if the objection relates to an ancillary claim; or</p> <p>(iv) 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 the party on the relevant dates;</p> <p>(b) the request for bifurcation shall state the preliminary objection to which it relates;</p> <p>(c) the proceeding on the merits shall be suspended pending the Tribunal's consideration of the request for bifurcation, unless the parties agree otherwise;</p> <p>(d) the Tribunal shall fix time limits for written and oral submissions, as required, on the request for bifurcation; and</p> <p>(e) the Tribunal shall issue its decision on a request for bifurcation within 20 days after the last written or oral submission on the request.</p> <p>(2) In determining whether to bifurcate, the Tribunal shall consider whether bifurcation could materially reduce the time and cost of the proceeding and all other relevant circumstances.</p> <p>(3) If the Tribunal decides to address the preliminary objection in a separate phase of the proceeding, it shall:</p> <p>(a) decide whether to suspend any part of the proceeding on the merits;</p> <p>(b) fix time limits for written and oral submissions on the preliminary objection, as required;</p>

Working Paper 2	Costa Rica's comments
<p>(4) If the Tribunal decides to join the preliminary objection to the merits, it shall:</p> <p>(a) lift any suspension of the proceeding on the merits in place pursuant to paragraph (1)(c);</p> <p>(b) fix time limits for written and oral submissions on the preliminary objection, as required;</p> <p>(c) modify any time limits for written and oral submissions on the merits, as required; and</p> <p>(d) render its Award within 240 days after the last written or oral submission in the proceeding, in accordance with Rule 57(1)(c).</p>	<p>(c) issue its decision or render its Award on the preliminary objection within 180 days after the last written or oral submission; and</p> <p>(d) fix any time limit necessary for the further conduct of the proceeding if the Tribunal does not render an Award.</p> <p>(4) If the Tribunal decides to join the preliminary objection to the merits, it shall:</p> <p>(a) lift any suspension of the proceeding on the merits in place pursuant to paragraph (1)(c);</p> <p>(b) fix time limits for written and oral submissions on the preliminary objection, as required;</p> <p>(c) modify any time limits for written and oral submissions on the merits, as required; and</p> <p>(d) render its Award within 240 days after the last written or oral submission in the proceeding, in accordance with Rule 57(1)(c).</p>
<p>Rule 51 Security for Costs Security for Costs</p> <p>(1) A party may request that Upon request of a party, the Tribunal may order the other any party asserting a claim or counterclaim to provide security for the costs of the proceeding and determine the appropriate terms for provision of the security.</p> <p>(2) The following procedure shall apply:</p> <p>(a) the request shall specify the circumstances that require security for costs;</p> <p>(b) the Tribunal shall fix time limits for written or and oral submissions, as required, on the request;</p>	<p>Costa Rica suggests to include the existence of third-party funding as an additional factor that the Tribunal shall consider in the decision to order security for costs. In the case of TPF, while its existence is not determinative, it might be relevant grounds to assume that the other party has financial difficulties and may have no resources to pay for the costs of the proceedings. At the same time, normally there is no information on whether the TPF will be liable for the costs of the proceeding in case of loss.</p> <p>Rule 51 Security for Costs Security for Costs</p> <p>(1) Upon request of a party, the Tribunal may order any party asserting a claim or counterclaim to provide security for costs.</p> <p>(2) The following procedure shall apply:</p>

Working Paper 2	Costa Rica's comments
<p>(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</p> <p>(d) the Tribunal shall issue its decision on the request within 30 days after the latest of:</p> <p>(i) the constitution of the Tribunal;</p> <p>(ii) the last written submission on the request; or</p> <p>(iii) the last oral submission on the request.</p> <p>(3) In determining whether to order a party to provide security for costs, the Tribunal shall consider:</p> <p>(a) the that party's ability to comply with an adverse decision on costs and;</p> <p>(b) any other relevant circumstances that party's willingness to comply with an adverse decision on costs;</p> <p>(c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim;</p> <p>(d) the conduct of the parties; and</p> <p>(e) all other relevant circumstances.</p> <p>(4) The Tribunal shall specify any relevant terms in an order to provide security for costs and shall fix a time limit for compliance with the order.</p> <p>(5)(4) If a party fails to comply with an order for to provide security for costs, the Tribunal may suspend the proceeding until the security is provided. If the proceeding is suspended for more than 90 days, the</p>	<p>(a) the request shall specify the circumstances that require security for costs;</p> <p>(b) the Tribunal shall fix time limits for written and oral submissions, as required, on the request;</p> <p>(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</p> <p>(d) the Tribunal shall issue its decision on the request within 30 days after the latest of:</p> <p>(i) the constitution of the Tribunal;</p> <p>(ii) the last written submission on the request; or</p> <p>(iii) the last oral submission on the request.</p> <p>(3) In determining whether to order a party to provide security for costs, the Tribunal shall consider:</p> <p>(a) that party's ability to comply with an adverse decision on costs;</p> <p>(b) that party's willingness to comply with an adverse decision on costs;</p> <p>(c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim;</p> <p>(d) the conduct of the parties; and</p> <p>(e) the existence of a third-party funder.</p>

Working Paper 2	Costa Rica's comments
<p>Tribunal may, after consulting with the parties, order the discontinuance of the proceeding.</p> <p>(6)(5) A party must shall promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.</p> <p>(7)(6) The Tribunal may at any time modify or revoke its order for on security for costs, on its own initiative or upon a party's request.</p>	<p>(f)(e) all other relevant circumstances.</p> <p>(4) The Tribunal shall specify any relevant terms in an order to provide security for costs and shall fix a time limit for compliance with the order.</p> <p>(5) If a party fails to comply with an order for 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.</p> <p>(6) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.</p> <p>(7) The Tribunal may at any time modify or revoke its order on security for costs, on its own initiative or upon a party's request.</p>
<p>Rule 6058 Contents of the Award (1) The Award shall be in writing and shall contain:</p> <p>(a) a precise designation of each party;</p> <p>(b) the names of the representatives of the parties;</p> <p>(c) a statement that the Tribunal was established under the Convention, and a description of the method of its constitution;</p> <p>(d) the name of each member of the Tribunal and the appointing authority of each;</p> <p>(e) the dates and place(s) of the first session, case management conferences and the hearings;</p> <p>(f) a brief summary of the proceeding;</p> <p>(g) a statement of the relevant facts as found by the Tribunal;</p>	<p>Costa Rica suggests to include an additional requirement for the contents of the award. This would provide more certainty on the grounds on which the Tribunal is rendering its decision.</p> <p>Rule 58 Contents of the Award (1) The Award shall be in writing and shall contain:</p> <p>(a) a precise designation of each party;</p> <p>(b) the names of the representatives of the parties;</p> <p>(c) a statement that the Tribunal was established under the Convention, and a description of the method of its constitution;</p> <p>(d) the name of each member of the Tribunal and the appointing authority of each;</p> <p>(e) the dates and place(s) of the first session, case management conferences and the hearings;</p>

Working Paper 2	Costa Rica's comments
<p>(h) a brief summary of the submissions of the parties, including the relief sought;</p> <p>(i) the decision of the Tribunal on every question submitted to it, and the reasons on which the Award is based; and</p> <p>(j) a statement of the costs of the proceeding, including the fees and expenses of each member of the Tribunal, and a reasoned decision regarding the on the allocation of the costs.</p> <p>(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.</p> <p>(3) Any member of the Tribunal may attach an individual opinion or a statement of dissent to the Award before the Award is rendered.</p>	<p>(f) a brief summary of the proceeding;</p> <p>(g) a statement of the relevant facts as found by the Tribunal;</p> <p>(h) a brief summary of the submissions of the parties, including the relief sought;</p> <p>(i) the decision of the Tribunal on every question submitted to it, and the legal reasoning reasons on which the Award is based; and</p> <p>(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.</p> <p>(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.</p> <p>(3) Any member of the Tribunal may attach an individual opinion or a statement of dissent to the Award before the Award is rendered.</p>
<p>Rule 44 61 Publication of Awards and Decisions on Annulment</p> <p>(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.</p> <p>(2) 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 date of dispatch of the document. The parties may consent to publication of the full text or a redacted text of the documents referred to in paragraph (1).</p> <p>(3) Absent consent of the parties referred to in paragraphs (1) and (2), the Centre shall publish excerpts of the legal reasoning in such</p>	<p>In Costa Rica's view, the publication of the awards and decisions are an important transparency element. Since the ISDS does impact the use of public resources of a State, it is a matter of public interest that the citizens may have access to the documents that settled a dispute. Therefore, we consider that any objection of such publication shall be accompanied by an explanation of the reasons for not give its consent.</p> <p>The amendment of the Rules is an appropriate opportunity to include additional transparency elements that can strengthen the legitimacy of ISDS.</p> <p>Rule 61 Publication of Awards and Decisions on Annulment</p>

Working Paper 2	Costa Rica's comments
<p>documents (“excerpts”). The following procedure shall apply to publication of excerpts:</p> <p>(a) the Centre shall propose excerpts to the parties within 30 days after receiving notice that a party declines consent to publication of a document referred to in paragraphs (1) and (2), or if the parties have not provided their consent to publication within 90 days after the dispatch of the document;</p> <p>(b) the parties may send comments on the proposed excerpts to the Centre within 30 days after their receipt; and</p> <p>(c) the Centre shall consider the comments on the proposed excerpts, if any, and publish excerpts within 30 days after receipt of the parties those comments on the proposed excerpts, if any.</p>	<p>(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. If a party does not consent to the publication of an Award or decision, that party shall explain the reasons for its objection.</p> <p>(2) The parties may consent to publication of the full text or a redacted text of the documents referred to in paragraph (1).</p> <p>(3) Absent consent of the parties referred to in paragraphs (1) and (2), the Centre shall publish excerpts of the legal reasoning in such documents (“excerpts”). The following procedure shall apply to publication of excerpts:</p> <p>(a) the Centre shall propose excerpts to the parties within 30 days after receiving notice that a party declines consent to publication of a document referred to in paragraphs (1) and (2), or if the parties have not provided their consent to publication within 90 days after the dispatch of the document;</p> <p>(b) the parties may send comments on the proposed excerpts to the Centre within 30 days after their receipt; and</p> <p>(c) the Centre shall consider the comments on the proposed excerpts, if any, and publish excerpts within 30 days after receipt of those comments.</p>
<p>Rule 45-62 Publication of Orders and Decisions</p> <p>(1) The Centre shall publish orders and decisions within 60 days after their issuance, with any redactions agreed to by the parties and jointly notified to the Centre within the 60-day period.</p> <p>(2) If either party notifies the Centre within the 60-day period referred to in paragraph (1) that the parties disagree on the redactions, the Centre shall refer the order or decision to the Tribunal to determine any</p>	<p>As previously mentioned, it is Costa Rica’s view that the documents to be published should be the ones that provide value to external observers in terms of accountability, and not all documents of the process. In Costa Rica’s experience, it has been observed that some documents are merely procedural, and their publication could negatively affect the proceedings’ good governance and may create greater confusion if taken out of context. Furthermore, they may create greater confusion and</p>

Working Paper 2	Costa Rica's comments
<p>redactions and shall publish the order or decision with the redactions approved by the Tribunal.</p>	<p>affect the reputation of individuals acting in the process if taken out of context.</p> <p>Following the concept expressed above, an important part of good governance is also assuring legal certainty through the protection of some information, preventing the disclosure of sensitive personal data and guaranteeing the safety and integrity of individuals. For example, in the case of experts and witnesses.</p>
<p>Rule 46 63 Publication of Documents Filed by a Party (1) Upon request of a party, the Centre shall publish any written submissions, observations or other documents which that party filed in the proceeding, with redactions agreed to by the parties.</p> <p>(2) The parties may refer any dispute regarding the publication or redaction of a document in paragraph (1) to the Tribunal for determination. The Centre shall publish the document in accordance with the determination of the Tribunal.</p>	<p>As previously mentioned, it is Costa Rica's view that the documents to be published should be the ones that provide value to external observers in terms of accountability, and not all documents of the process. In Costa Rica's experience, it has been observed that some documents are merely procedural, and their publication could negatively affect the proceedings' good governance and may create greater confusion if taken out of context. Furthermore, they may create greater confusion and affect the reputation of individuals acting in the process if taken out of context.</p> <p>Following the concept expressed above, an important part of good governance is also assuring legal certainty through the protection of some information, preventing the disclosure of sensitive personal data and guaranteeing the safety and integrity of individuals. For example, in the case of experts and witnesses.</p> <p>Costa Rica suggests the following wording:</p> <p>Rule 63 Publication of Documents Filed by a Party (1) Upon request of a party, the Centre shall publish the following documents generated in proceedings: request for arbitration, memorial, counter-memorial, reply, rejoinder, requests on interpretation, revision and annulment ,documents which that party filed in the proceeding, with redactions agreed to by the parties.</p>

Working Paper 2	Costa Rica's comments
	<p>(2) The parties may refer any dispute regarding the publication or redaction of a document in paragraph (1) to the Tribunal for determination. The Centre shall publish the document in accordance with the determination of the Tribunal.</p>
<p>Rule 4966 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 application or interpretation of a the treaty at issue in the dispute and upon which consent to arbitrate is based.</p> <p>(2) A The Tribunal may allow a non-disputing Treaty Party to make a written submission on any other matter within the scope of the dispute, in accordance with the procedure in Rule 48 impose conditions on the filing of a written submission by the non-disputing Treaty Party, including with respect to the format, length or scope of the submission and the time limit to file the submission.</p> <p>(3) The parties shall have the right to make observations on the submission of the non-disputing Treaty Party.</p>	<p>Costa Rica favours the proposal of a separate rule for non-disputing Treaty Parties because they may provide useful insight as to the context, object and purpose intended by the parties when they subscribed the treaty. Costa Rica has had a positive experience with this figure as a tool to assist tribunals with interpretation of the international investment agreement. For this reason, it is Costa Rica’s position that the non-disputing Treaty Party’s participation should not be limited by specific conditions imposed by the Tribunal. Therefore, we suggest deleting paragraph two.</p> <p>Rule 66 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 arbitrate is based.</p> <p>(2) A The Tribunal may allow a non-disputing Treaty Party to make a written submission on any other matter within the scope of the dispute, in accordance with the procedure in Rule 48 impose conditions on the filing of a written submission by the non-disputing Treaty Party, including with respect to the format, length or scope of the submission and the time limit to file the submission.</p> <p>(3) The parties shall have the right to make observations on the submission of the non-disputing Treaty Party.</p>
<p>Rule 68 72 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</p>	<p>Costa Rica understands that even when the Convention does not provide for any time limit for the resubmission of the dispute, it does not preclude the possibility to establish other time limits additional to those</p>

Working Paper 2	Costa Rica's comments
<p>Tribunal, together with any supporting documents, and pay the lodging fee published in the schedule of fees.</p> <p>(2) The request shall:</p> <p>(a) identify the Award to which it relates;</p> <p>(b) be in a procedural an official language used in the original proceeding of the Centre;</p> <p>(c) be signed by each requesting party or its representative and be dated;</p> <p>(d) attach proof of any representative's authority to act; and</p> <p>(e) specify which aspect(s) of the dispute is resubmitted to the new Tribunal.</p> <p>(3) (2) Upon receiving a request for resubmission and the lodging fee, the Secretary-General shall promptly:</p> <p>(a) transmit the request and the supporting documents to the other party;</p> <p>(b) register the request;</p> <p>(c) notify the parties of the registration; and</p> <p>(d) invite the parties to constitute a new Tribunal without delay, which shall have</p> <p>the same number of arbitrators, and be appointed by the same method as the original Tribunal, unless the parties agree otherwise.</p>	<p>set by it, in this or many other matters. The WP2 indicates that: "Parties may agree to limit the time period for resubmission. WP # 2 therefore does not propose to add a time limit." Does this refer to the Parties to the Investment Agreement or the Parties to the dispute?</p>

Working Paper 2	Costa Rica's comments
<p>(4) (3) If the original Award was annulled in part, the new Tribunal shall only reconsider that part the aspect(s) of the dispute pertaining to the annulled portion of the Award.</p> <p>(5) (4) Except as otherwise provided in paragraphs (1)-(3), these Rules shall apply to the resubmission proceeding.</p> <p>(6) (5) The procedural agreements and orders on matters addressed at the first session of the original Tribunal shall not apply to the resubmission proceeding, with necessary modifications, unless the parties agree or the new Tribunal orders otherwise.</p>	
<p>Rule 6973 Consent of Parties to Expedited Arbitration</p> <p>(1) The parties to an arbitration conducted under the ICSID Convention may consent at any time to expedite the arbitration in accordance with this Chapter ("expedited arbitration") by following the procedure in paragraph (2).</p> <p>(2) The parties shall jointly notifying the Secretariat-Secretary-General in writing of their consent. to an expedited arbitration in accordance with this Chapter. Such notice must be received within 20 days after the date of registration of the Request for arbitration.</p> <p>(2) (3) Chapters I-XI of the Arbitration Rules shall apply to an expedited arbitration except that:</p> <p>(a) Rules 8(1), 22, 23, 25, 35, 37, 38, 42 and 43 Rules 14, 15, 17, 29(3), 38, 39, 40, 42, 42BIS, and 43 do not apply in an expedited arbitration pursuant to this Chapter; and</p> <p>(b) Rules 26, 30, 34, 36, 40, 53, 59, 62 and 66, Rules 18, 22, 28, 36, 42, 46, 57, 60 and 70, as modified by Rules 70-78 74-82, apply in an expedited arbitration pursuant to this Chapter.</p>	<p>We appreciate ICSID's efforts to provide an alternative to reduce costs and times of the process under certain circumstances. However, after further consideration of this matter and conversations with other member States, we considerate that it is unnecessary to have an expedited arbitration, since it could limit States' ability to exercise an appropriate defence.</p>

Working Paper 2	Costa Rica's comments
<p>(3) If the parties consent to expedited arbitration after the constitution of the Tribunal pursuant to Chapter II, Rules 74-76 shall not apply, and the expedited arbitration shall proceed subject to all members of the Tribunal confirming their availability pursuant to Rule 77(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.</p>	