Proposals for Amendment of the ICSID Rules — Consolidated Draft Rules
IV. RULES OF PROCEDURE FOR CONCILIATION PROCEEDINGS
(CONCILIATION RULES)

Introductory Note

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

The Conciliation Rules are supplemented by the Administrative and Financial Regulations of the Centre, in particular by Regulation 14.

The Conciliation Rules apply from the date of registration of a Request for conciliation until a Report is issued.

Chapter I
General Provisions

Rule 1
Application of Rules

(1) These Rules shall apply to any conciliation proceeding conducted under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“Convention”) in accordance with Article 33 of the Convention.

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

(3) These Rules may be cited as the “Conciliation Rules” of the Centre.

Rule 2
Meaning of Party and Party Representation

(1) For the purposes of these Rules, “party” may include, where the context so admits:

(a) all parties acting as claimants or as respondents; and

(b) an authorized representative of a party.
(2) Each party may be represented or assisted by agents, counsel or advocates ("representative(s)"), whose names and proof of authority to act shall be notified by that party to the Secretariat.

Rule 3
Method of Filing

(1) Written statements, observations, supporting documents and communications shall be filed electronically, unless the parties agree or the Commission orders otherwise. They shall be introduced into the proceeding by filing them with the Secretariat, which shall acknowledge their receipt and distribute them in accordance with Rule 4.

(2) Supporting documents shall be filed together with the written statements to which they relate, within the time limit fixed to file such written statements.

(3) An extract of a supporting document may be filed if the omission of the text does not render the extract misleading. The Commission may require a fuller extract or a complete version of the document.

Rule 4
Routing of Written Communications

(1) The Secretariat shall be the official channel of written communications among the parties, the Commission, and the Chairman of the Administrative Council ("Chairman"), except that:

(a) the parties may communicate directly with each other, provided that the Secretariat is copied on all communications to be introduced into the conciliation;

(b) the members of the Commission shall communicate directly with each other; and

(c) a party may communicate directly with the Commission if requested to do so by the Commission, provided that the Secretariat is copied on all communications.

(2) The Secretariat shall acknowledge receipt of all communications filed by a party and, subject to paragraph (1)(a) and (c), distribute them to the other party and the Commission.
Rule 5
Procedural Languages, Translation and Interpretation

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

(2) If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.

(3) Written statements, observations, supporting documents and communications shall be filed in a procedural language. In a proceeding with two procedural languages, the Commission may require a party to file any document in both procedural languages.

(4) A document in a language other than a procedural language shall be accompanied by a translation into a procedural language. In a proceeding with two procedural languages, the Commission may require a party to translate any document into both procedural languages. Translation of only the relevant part of a document is sufficient, provided that the Commission may require a fuller or a complete translation. If the translation is disputed, the Commission may require a certified translation.

(5) Any written communication from the Commission or the Secretariat shall be in a procedural language. In a proceeding with two procedural languages, the Commission and, where applicable the Secretary-General, shall issue orders, decisions, recommendations and the Report in both procedural languages, unless the parties agree otherwise.

(6) Any oral communication shall be in a procedural language. In a proceeding with two procedural languages, the Commission may require interpretation into the other procedural language.

Rule 6
Payment of Advances and Costs of the Proceeding

(1) Each party shall pay one half of the advances payable in accordance with Administrative and Financial Regulation 14(5), unless a different division is agreed to by the parties.

(2) The fees and expenses of the members of the Commission and the administrative charges and direct costs of the Centre incurred in connection with the proceeding
shall be borne equally by the parties, in accordance with Article 61(1) of the Convention.

(3) Each party shall bear its own costs and expenses incurred in connection with the proceeding.

**Rule 7**

**Confidentiality**

Documents generated in the conciliation shall be confidential. The parties to a conciliation may consent to:

(a) disclosure of any document generated in the conciliation to a non-party;

(b) disclosure by one party of any document obtained from the other party in the conciliation; and

(c) publication by the Centre of documents generated in connection with the proceeding.

**Rule 8**

**Use of Information in Other Proceedings**

Unless the parties to the dispute agree otherwise pursuant to Article 35 of the Convention, neither party shall rely on any of the following in other dispute settlement proceedings:

(a) any views expressed, statements, admissions, or offers of settlement made, or positions taken by the other party in the conciliation;

(b) the Report, order, decision, or any recommendation made by the Commission in the conciliation; or

(c) documents generated in connection with the proceeding.
Chapter II
Constitution of the Commission

Rule 9
General Provisions, Number of Conciliators and Method of Constitution

(1) The parties shall constitute a Commission 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 appointment. If the parties do not advise the Secretary-General of an agreement within 60 days after the date of registration, 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 10
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 11
Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of a Sole Conciliator, or any uneven number of conciliators.
Rule 12
Appointment of Conciliators by the Chairman of the Administrative Council 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 Chairman appoint the conciliator(s) who have not yet been appointed pursuant to Article 30 of the Convention.

(2) The Chairman shall appoint the President of the Commission after appointing any other members who have not yet been appointed.

(3) The Chairman 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 13
Disclosure of Third-party Funding

(1) “Third-party funding” is the provision of funds or other material support to a party in a conciliation, by a natural or juridical person that is not a party to the dispute (“third-party funder”), an affiliate of that party, or a law firm representing that party. Such funds or material support may be provided:

(a) through a donation or grant, or

(b) in return for a premium or in exchange for remuneration or reimbursement wholly or partially dependent on the outcome of the proceeding.

(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 conciliation, or upon concluding a third-party funding arrangement after registration.

(3) Each party shall have a continuing obligation to disclose any changes to the information referred to in paragraph (2) occurring after its initial disclosure, including termination of the funding arrangement.
Rule 14
Acceptance of Appointment

(1) A party appointing a conciliator shall notify the Secretariat of the appointment and provide the appointee’s name, nationality(ies) and contact information.

(2) The Secretariat shall request an acceptance from the appointee upon receipt of the notice referred to in paragraph (1). The Secretariat shall also transmit to each appointee the information received from the parties relevant to completion of the declaration referred to in paragraph (3)(b).

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

   (a) accept the appointment; and

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

(4) The Secretariat shall notify the parties of the acceptance of appointment by the conciliator(s) and provide the signed declaration.

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

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

(7) Unless the parties and the conciliator agree otherwise, a conciliator may not act as arbitrator, counsel, expert, witness, judge or in any other capacity in any other proceeding relating to the dispute that is the subject of the conciliation.

Rule 15
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 16
Constitution of the Commission

(1) The Commission shall be deemed to be constituted on the date the Secretary-General notifies the parties that each conciliator has accepted the appointment.

(2) As soon as the Commission is constituted, the Secretary-General shall transmit the Request for conciliation, the supporting documents, the notice of registration and communications with the parties to each conciliator.

Chapter III
Disqualification of Conciliators and Vacancies

Rule 17
Proposal for Disqualification of Conciliators

(1) A party may propose the disqualification of one or more conciliators (“proposal”) pursuant to Article 57 of the Convention.

(2) The following procedure shall apply:

(a) any proposal shall be filed after the constitution of the Commission and within 20 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 party proposing the disqualification shall file a written submission, specifying the grounds on which the proposal is based and including a statement of the relevant facts, law and arguments, with any supporting documents;
(c) the other party shall file its response and supporting documents within seven days after receipt of the written submission;

(d) the conciliator to whom the proposal relates may file a statement limited to factual information relevant to the proposal. This statement shall be filed within five days after receipt of the written submissions referred to in paragraph (2)(c);

and

(e) the parties may file final written submissions on the proposal within seven days after expiry of the time limit referred to in paragraph (2)(d).

(3) The proceeding shall continue while the proposal is pending unless it is suspended, in whole or in part, by agreement of the parties. If the proposal results in a disqualification, either party may request that any order or decision issued, or recommendation made by the Commission while the proposal was pending, be reconsidered by the reconstituted Commission.

Rule 18
Decision on the Proposal for Disqualification

(1) The decision on a proposal shall be taken by the conciliators not subject to the proposal or by the Chairman 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 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 Chairman as if they were a proposal to disqualify a majority of the Commission.

(3) The decision on any proposal shall be made within 30 days after the later of the expiry of the time limit referred to in Rule 17(2)(e) or the notice in Rule 18(2)(a).
Rule 19
Incapacity or Failure to Perform Duties

If a conciliator becomes incapacitated or fails to perform the duties required of a conciliator, the procedure in Rules 17 and 18 shall apply.

Rule 20
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 21(3)(a).

Rule 21
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 Chairman 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 22
Functions of the Commission

(1) The Commission shall clarify the issues in dispute and assist the parties in reaching a mutually acceptable resolution of all or part of the dispute.

(2) In order to bring about agreement between the parties, the Commission may, at any stage of the proceeding, after consulting with the parties, recommend:

   (a) specific terms of settlement to the parties; or

   (b) that the parties refrain from taking specific action that might aggravate the dispute while the conciliation is ongoing.

(3) Recommendations may be made orally or in writing. Either party may request that the Commission provide reasons for any recommendation. The Commission may invite each party to provide observations concerning any recommendation made.

(4) At any stage of the proceeding, the Commission may:

   (a) request explanations, documents or other information from either party or other persons;

   (b) communicate with the parties jointly or separately; or

   (c) visit any place connected with the dispute or conduct inquiries with the consent and participation of the parties.

Rule 23
General Duties of the Commission

(1) The Commission shall treat the parties equally and provide each party with a reasonable opportunity to appear and participate in the proceeding.

(2) The Commission shall conduct the proceeding in an expeditious and cost-effective manner.
Rule 24
Orders, Decisions and Procedural Agreements

(1) The Commission shall make the orders and decisions required for the conduct of the conciliation.

(2) The Commission shall take decisions by a majority of the votes of all its members. Abstentions shall count as a negative vote.

(3) Orders and decisions may be taken by any appropriate means of communication and may be signed by the President on behalf of the Commission, unless the parties agree otherwise.

(4) The Commission shall apply any agreement between the parties on procedural matters, to the extent that it conforms with the Convention and the Administrative and Financial Regulations.

Rule 25
Quorum

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

Rule 26
Deliberations

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

(2) The Commission may deliberate at any place it considers convenient.

(3) Only members of the Commission shall take part in its deliberations. No other person shall be admitted unless the Commission decides otherwise.
Rule 27  
Cooperation of the Parties  

(1) The parties shall cooperate with the Commission and with one another and shall conduct the conciliation in good faith.  

(2) The parties shall provide all relevant explanations, documents or other information. The parties shall also facilitate visits to any place connected with the dispute and the participation of other persons as requested by the Commission.  

(3) The parties shall comply with any time limit agreed upon or fixed by the Commission.  

(4) The parties shall give their most serious consideration to the Commission’s recommendations pursuant to Article 34(1) of the Convention.  

Rule 28  
Written Statements  

(1) Each party shall simultaneously file a brief, initial written statement describing the issues in dispute and its views on these issues 30 days after the constitution of the Commission, or such longer time as the Commission may fix, but in any event before the first session.  

(2) Either party may file further written statements at any stage of the conciliation within time limits fixed by the Commission.  

Rule 29  
First Session  

(1) Subject to paragraph (2), 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 shall be held within 60 days of the Commission’s constitution or such other period as the parties may agree.  

(3) The first session may be held in person or remotely, by any means that the Commission deems appropriate. The agenda, method and date of the first session shall be determined by the Commission after consulting with the parties.
Before the first session, the Commission shall invite the views of the parties on procedural matters, including:

(a) the applicable conciliation rules;

(b) the number of members required to constitute a quorum of the Commission;

(c) the division of advances payable pursuant to Administrative and Financial Regulation 14(5);

(d) the procedural language(s), translation and interpretation;

(e) the method of filing and routing of written communications;

(f) a schedule for further written statements and meetings;

(g) the place and format of meetings between the Commission and the parties;

(h) the manner of recording or keeping minutes of meetings, if any;

(i) the protection of confidential information;

(j) the publication of documents; and

(k) 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 22(4)(b);

   (ii) not to initiate or pursue during the conciliation any other proceeding in respect of the dispute;

   (iii) concerning the application of prescription or limitation periods; and

   (iv) pursuant to Article 35 of the Convention.

At the first session or within any other period as the Commission may determine, each party shall:

(a) identify a representative who is authorized to settle the dispute on its behalf; and

(b) describe the process that would be followed to implement a settlement.

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 30**

**Meetings**

(1) The Commission may meet with the parties jointly or separately.

(2) The Commission shall determine the date, time and method of holding meetings, after consulting with the parties.

(3) If a meeting is to be held in person, it may be held at any place agreed to by the parties after consulting with the Commission and the Secretariat. If the parties do not agree on the place of a meeting, it shall be held at the seat of the Centre pursuant to Article 62 of the Convention.

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

**Rule 31**

**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.

(2) A preliminary objection shall be made as soon as possible. The objection shall be made no later than the date of the initial written statement referred to in Rule 28(1), unless the facts on which the objection is based are unknown to the party at the relevant time.

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

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

Chapter V
Termination of the Conciliation

Rule 32
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 days, the Secretary-General shall notify them of the time elapsed since the last step taken in the proceeding. If the parties fail to take a step within 30 days after the notice, they shall be deemed to have discontinued the proceeding and the Secretary-General shall issue an order taking note of the discontinuance. If either party takes a step within 30 days after the Secretary-General’s notice, the proceeding shall continue.

Rule 33
Discontinuance for Failure to Pay

If the parties fail to make payments to defray the costs of the proceeding as required by Administrative and Financial Regulation 14, the proceeding may be discontinued pursuant to that Regulation.
Rule 34
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 35
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 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 36
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 37
The Report

(1) The Report shall be in writing and shall contain, in addition to the information specified in Rules 34-36:
(a) a precise designation of each party;

(b) the names of the representatives of the parties;

(c) a statement that the Commission was established under the Convention and a description of the method of its constitution;

(d) the name of each member of the Commission and of the appointing authority of each;

(e) the dates and place(s) of the first session and of 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 34(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 6(2); and

(i) any agreement of the parties pursuant to Article 35 of the Convention.

(2) The Report shall be signed by the members of the Commission. It may be signed by electronic means if the parties agree. If a member does not sign the Report, such fact shall be recorded therein.

Rule 38
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.