**IX. ANNEX D: ADDITIONAL FACILITY RULES OF PROCEDURE FOR FACT-FINDING PROCEEDING**

**((ADDITIONAL FACILITY) FACT-FINDING RULES)**

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**Introductory Note**

The Additional Facility Rules of Procedure for Fact-Finding Proceedings (the (Additional Facility) Fact-Finding Rules) were adopted by the Administrative Council of the Centre pursuant to Administrative and Financial Regulation 7(1).


The (Additional Facility) Fact-Finding Rules apply from the submission of a Request for fact-finding until the termination of the proceeding.

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**Chapter I**

**General Provisions**

**Rule 1**

**Application of Rules**

(1) These Rules shall apply to any fact-finding proceeding conducted under the Additional Facility Rules, except to the extent the parties agree to modify or exclude their application.

(2) The applicable (Additional Facility) Fact-Finding Rules are those in force on the date of filing of the request for fact-finding.

(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 “((Additional Facility) Fact-Finding 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, all parties to the fact-finding and 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.

Chapter II
Institution of the Fact-Finding

Rule 3
The Request

Parties wishing to institute a fact-finding proceeding under the Additional Facility Rules shall file a joint request for fact-finding together with the required supporting documents (“Request”) with the Secretary-General and pay the lodging fee published in the schedule of fees.

Rule 4
Contents and Filing of the Request

(1) The Request shall:

(a) be in English, French or Spanish;

(b) identify each party to the proceeding and its nationality and provide their contact information (including electronic mail address, street address and telephone number);

(c) be signed by each requesting party or its representative and be dated;

(d) attach proof of each 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 authorizations to file the Request, and attach the authorizations;

(g) with regard to Article 2(1)(b) of the Additional Facility Rules, indicate that the fact-finding is between a State or an REIO on the one hand and a national of another State on the other hand, describe the investment to which the fact-finding pertains, and indicate the facts to be examined and the relevant circumstances;

(h) attach a copy of the agreement between the parties providing for recourse to fact-finding; and

(i) contain any provisions agreed to by the parties regarding the constitution of a Fact-Finding Committee (“Committee”), the qualifications of its members, its mandate and the procedure to be followed.

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<th>Rule 5</th>
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<td><strong>Receipt and Registration of the Request</strong></td>
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<td>(1) The Secretary-General shall promptly acknowledge receipt of the Request, and act as the official channel of written communications between the parties.</td>
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<td>(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 not manifestly outside the scope of Article 2(1) of the Additional Facility Rules.</td>
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<td>(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.</td>
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<td>(4) The notice of registration of the Request shall:</td>
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<td>(a) record that the Request is registered and indicate the date of registration;</td>
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<td>(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; and</td>
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<td>(c) invite the parties to constitute a Committee without delay.</td>
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Chapter III
The Fact-Finding Committee

Rule 6
Qualifications of Members of the Committee

(1) Any member of a Committee shall be impartial and independent of the parties.

(2) The parties may agree that a member of a Committee shall have particular qualifications or expertise relevant to the subject-matter of the Request.

Rule 7
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 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 a sole member or any other members at any time.

(3) If the parties are unable to appoint a sole member or any member of a Committee within 60 days after the date of registration, either party may request that the Secretary-General appoint the member(s) not yet appointed. The Secretary-General shall consult with the parties as far as possible on the qualifications, expertise, nationality and availability of the member(s) and shall use best efforts to appoint any Committee member(s) within 30 days after receipt of the request to appoint.

(4) If no step is taken by the parties to constitute the Committee pursuant to this Rule within 120 days after the date of registration, or such other period as the parties may agree, the Secretary-General shall inform the parties that the fact-finding cannot proceed.
Rule 8
Acceptance of Appointment

(1) The parties shall notify the Secretariat of the appointment and provide the name, and contact information of the appointee.

(2) The Secretariat shall request an acceptance from the appointee as soon as the appointee is selected.

(3) An appointee shall accept the appointment and provide a signed declaration in the form published by the Centre within 20 days after the receipt of the request for acceptance.

(4) The Secretariat shall notify the parties of the acceptance of appointment by each member and provide their signed declaration.

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

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

(7) Unless the parties and the Committee agree otherwise, the member(s) may not act as arbitrator, counsel, expert, witness, judge or in any other capacity in any other proceeding relating to circumstances examined during the fact-finding.

Rule 9
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 the appointment. As soon as the Committee is constituted, the Secretary-General shall transmit the Request, any supporting documents, and the notice of registration to each member.
Chapter IV
Conduct of the Fact-Finding

Rule 10
Sessions and Work of the Committee

(1) Each party shall file a written preliminary statement of not more than 50 pages with the Secretariat within 15 days after the date of constitution of the Committee. 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 statements to the Committee and the other party.

(2) The Committee shall hold a first session with the parties within 30 days after its constitution or such other period as the parties may agree.

(3) At the first session, the Committee shall determine the protocol for the fact-finding (“Protocol”) after consulting with the parties on procedural matters, including:

(a) the Committee’s mandate;

(b) the procedure for the conduct of the proceeding, such as the procedural languages, method of communication, place of sessions, the next steps in the proceeding, confidentiality arrangements, 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;

(d) whether the Committee shall make any recommendations in the Report; and

(e) any other relevant matters.

(4) The Committee shall conduct the fact-finding in accordance with the Protocol and take all steps necessary to discharge its mandate. To that end, it shall make all decisions required for the conduct of the proceeding.

(5) Any matters not provided for in these Rules or not previously agreed to by the parties shall be determined by agreement of the parties or, failing such agreement, by the Committee.
Rule 11
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 fact-finding in an expeditious and cost-effective manner and shall consult with the parties regularly 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. The parties shall provide all relevant explanations, documents or other information requested by the Committee and participate in the sessions of the Committee. The parties shall use all available means to facilitate the Committee’s inquiry.

Rule 12
Payment of Advances and Costs of the Proceeding

Unless the parties agree otherwise, each party shall:

(a) pay one half of the advances payable in accordance with (Additional Facility) Administrative and Financial Regulation 7(5);

(b) pay one half of the fees and expenses of the Committee, as well as the administrative fee for the use of the facilities of the Centre, in accordance with (Additional Facility) Administrative and Financial Regulation 7(5); and

(c) bear any other expenses it incurs in connection with the proceeding.

Rule 13
Confidentiality of the Fact-Finding and Use of Information in Other Proceedings

(1) Unless the parties agree otherwise, all matters relating to the fact-finding, other than the information to be published by the Centre pursuant to (Additional Facility) Administrative and Financial Regulation 4, shall remain confidential.

(2) The parties shall not make any use of information or documents obtained in the fact-finding, and shall not rely on any positions taken, admissions made, or views
expressed by the other party or the Committee during the fact-finding in other proceedings.

Chapter V
Termination of the Fact-Finding

Rule 14
Manner of Terminating the Fact-Finding

The fact-finding shall terminate upon:

(a) the issuance of a Report by the Committee; or

(b) an agreement of the parties to conclude the proceeding.

Rule 15
Failure of a Party to Participate or Cooperate

If a party fails to participate in the fact-finding or cooperate with the Committee, and the Committee determines that it is unable to discharge its mandate, the Committee shall, after notice to the parties, record in its Report the failure of that party to participate or cooperate.

Rule 16
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; and

(d) the facts established by the Committee and the reasons why certain facts may not be considered as having been established; or
(e) an indication of the failure of a party to participate or cooperate pursuant to Rule 15.

(2) The Report shall be adopted by a majority of the members and signed by them. If a member does not sign the Report, such fact shall be recorded.

(3) Any member may attach a statement to the Report if the member disagrees on any of the facts found and explain the reasons for any such disagreement.

(4) Unless the parties agree otherwise, the Report of the Committee shall not be binding upon the parties, and the parties shall be free to give any effect to it.

Rule 17
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.