

The Republic of Korea's Further Comments on ICSID Arbitration Rule Amendments

Please find below the Republic of Korea's further comments for the ICSID Arbitration Rule Amendments, along with its sincere compliments to the ICSID Secretariat. Korea greatly appreciates the tireless efforts made by the Secretariat in this crucial endeavor for the improvement and modernization of the ICSID Rules.

While the comments below correspond to the revised version of the proposed amendments as provided by Working Paper #2, they are also to be understood in conjunction with Korea's previously submitted written comments of 28th December 2018, as well as the oral comments submitted by the Korean delegation to the Second Meeting on Rule Amendments (7th ~ 9th April 2019, Washington DC). However, the present written comments are to take precedence over Korea's previous comments both written and oral.

Proposed Amendments to the ICSID Arbitration Rules	Korea's Comments & Observations
Chapter I: General Provisions	
<p style="text-align: center;">Rule 2 General Duties</p> <p>(1) The parties shall conduct the proceeding and implement the Tribunal's orders and decisions in good faith.</p> <p>(2) The Tribunal shall treat the parties equally and provide each party with a reasonable opportunity to present its case.</p> <p>(3) The Tribunal and the parties shall conduct the proceeding in an expeditious and cost effective manner.</p>	<ul style="list-style-type: none">• Korea supports the addition of an explicit reference to the obligation of the parties to conduct the proceeding and implement the Tribunal's orders and decisions in good faith, which is a fundamental principle duly recognized under international law.• Korea further believes that the Rules must be made to include adequate and specific penalties for the violation of this fundamental rule.

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.

(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) Requests, written submissions, observations and communications shall be filed in a procedural language. In a proceeding with two procedural languages, the Tribunal may order a party to file such documents in both procedural languages.

(4) Supporting documents 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 Tribunal may order a party to translate any supporting document into both procedural languages. Translation of only the relevant part of a supporting document is sufficient, provided that the Tribunal may order 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.

(5) Any document from the Tribunal or the Secretary-General shall be in a procedural language. In a proceeding with two procedural languages, the Tribunal and, where applicable the Secretary-General, shall render orders, decisions, and the Award 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 Tribunal may order interpretation into the other procedural language.

(7) The testimony of a witness or an expert in a language other than a procedural language shall be interpreted into the procedural language(s) used at the hearing.

- Korea proposes to amend paragraphs (3), (4) and (6) to state “In a proceeding with two procedural languages, the other party or the Tribunal may require a party to...” provide interpretation and/or translation.
- Korea believes that it is an imperative requirement of due process and procedural equality for a party to be able to fully comprehend the other party’s submissions, documents and communications in a timely manner. To achieve such purposes, a party must be able to require translation from the other party.

<p>(8) The recordings and transcripts of a hearing shall be made in the procedural language(s) used at the hearing.</p>	
<p style="text-align: center;">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 style="padding-left: 20px;">(a) the Tribunal, or the Secretary-General if applicable, announces the period; or</p> <p style="padding-left: 20px;">(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, on the subsequent business day.</p>	<ul style="list-style-type: none"> • Korea proposes that the holidays that are to be taken into consideration for time calculation purposes in Rule 9(3) be changed from holidays observed by the ICSID Secretariat to public holidays observed by the disputing parties. It is Korea’s observation that public holidays observed by the parties have higher relevance in terms of effective case management.

Chapter II: Constitution of the Tribunal

<p style="text-align: center;">Rule 13 Notice of Third-party Funding</p> <p>(1) For purposes of completing the arbitrator declaration required by Rule 18(3)(b), a party shall file a written notice disclosing the name of any non-party from which the 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> <p>(3) A party shall send the notice referred to in paragraph (1) to the Secretary-</p>	<ul style="list-style-type: none"> • Korea proposes to delete paragraph (2) of Rule 13, which carves out party representatives from the scope of non-party funders. It is Korea’s opinion that the previous position taken by Rule 21 in Working Paper #1 where party representatives were also included among third-party funders was the more preferable approach. - In Korea’s view, there is no reason to limit the purpose of the obligation to disclose Third-party Funding (hereinafter “TPF”) to the avoidance of conflict of interest between arbitrators and third-party funders. The necessity of recognizing the possibility of a party’s impecuniosity at an early stage must also be considered a legitimate
---	--

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.

interest which should be addressed by such a disclosure obligation.

- Alternate fee arrangements such as contingency fee arrangements are classic examples of TPF provided by party representatives and may serve as a useful indicator of the lack of that party's ability to comply with adverse decisions on costs. The Tribunal and the parties alike may benefit much from access to such highly relevant information.
- The general terms and the nature of the TPF contract must also be subject to the disclosure requirement along with the existence of TPF and the name of the funder. An understanding of the nature of the TPF contract may be crucial in determining the existence of any conflict of interests, as well as a party's impecuniosity.
- Korea suggests adding an explicit reference to the Tribunal's power to order a party to supply additional information regarding TPF. In many instances, the information disclosed by a funded party may not be sufficient for the purposes of Rule 13. For example, knowledge of the entirety of the TPF contract may be required to discern the possible existence of any conflict of interest. It may also be the case that the disclosed funder was a mere conduit vehicle established solely for the purposes of shielding the true identity of the actual funder.
- The non-compliance of the disclosure obligation must be subject to negative consequences such as the mandatory suspension of the proceedings, adverse considerations by the Tribunal in terms of cost allocation and/or securities for costs.
 - To incorporate the requirement of the mandatory suspension of the proceedings, Korea suggests adding a fourth paragraph which reads "The Tribunal shall suspend the proceedings when a party is found not to have complied with its obligations under paragraphs (1) and (3), until that party has performed such obligations in good faith."
 - To incorporate the requirement of negative considerations for costs and security for costs, Korea further suggests adding a fifth paragraph which reads "The Tribunal may take into account the non-compliance

	<p>of a party with its obligations under paragraphs (1) and (3) as the conduct of a party in the context of Rule 50(1)(b) and Rule 51(3)(d).”</p> <ul style="list-style-type: none"> • These comments are without prejudice to Korea’s position on the permissibility of TPF as a general matter.
--	--

Chapter III: Disqualification of Arbitrators and Vacancies

<p style="text-align: center;">Rule 21 Proposal for Disqualification of Arbitrators</p> <p>(1) A party may file a proposal to disqualify one or more arbitrators (“proposal”) in accordance with the following procedure:</p> <p style="padding-left: 20px;">(a) the proposal shall be filed after the constitution of the Tribunal and within 21 days after the later of:</p> <p style="padding-left: 40px;">(i) the constitution of the Tribunal; or</p> <p style="padding-left: 40px;">(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;</p> <p style="padding-left: 20px;">(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;</p> <p style="padding-left: 20px;">(c) the other party shall file its response and supporting documents within 21 days after receipt of the proposal;</p> <p style="padding-left: 20px;">(d) the arbitrator to whom the proposal relates may file a statement limited to factual information relevant to the proposal. The statement shall be filed within five days after receipt of the response referred to in paragraph (1)(e); and</p> <p style="padding-left: 20px;">(e) each party may file a final written submission on the proposal within seven days after expiry of the time limit referred to in paragraph (1)(d).</p> <p>(2) The proceeding shall be suspended until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding in whole or in part.</p>	<ul style="list-style-type: none"> • Korea supports the automatic suspension of proceedings in the instance of a proposal for the disqualification of an arbitrator as currently prescribed in Rule 21(2). In Korea’s opinion, this approach better ensures the legitimacy of the arbitral proceedings, and also shows better compatibility with the automatic suspension of the proceedings in case of vacancy of the Tribunal as provided by Rule 25(2).
--	---

Chapter V: Evidence

<p style="text-align: center;">Rule 35 Evidence: General Principles</p> <p>(1) The Tribunal shall determine the admissibility and probative value of the evidence adduced.</p> <p>(2) Each party has the burden of proving the facts relied on to support its claim or defense.</p> <p>(3) The Tribunal may, if it deems it necessary at any stage of the proceedings, call upon a party to produce documents or other evidence.</p>	<ul style="list-style-type: none"> • Korea welcomes the addition of Rule 35 which embodies the general principles of the burden of proof. The principle that the party making a claim bears the initial responsibility of establishing that claim with sufficient evidence is a fundamental basis on which international arbitration stands upon.
<p style="text-align: center;">Rule 36 Disputes Arising from Requests for Documents</p> <p>The Tribunal shall decide any dispute arising out of a party's objection to the other party's request for production of documents. In deciding the dispute, the Tribunal shall consider:</p> <p>(a) the scope and timeliness of the request;</p> <p>(b) the relevance and materiality of the documents requested;</p> <p>(c) the burden of production;</p> <p>(d) the basis of the objection; and</p> <p>(e) all other relevant circumstances.</p>	<ul style="list-style-type: none"> • Korea suggests adding an explicit reference to the power of the Tribunal to deny requests for documents. As many States have well pointed out, document production phases are prone to incur substantial time and costs due to unnecessarily sweeping document requests that often made by Claimants. Providing an explicit basis for the power to deny document requests will hopefully encourage the Tribunals to manage the proceedings in a more time and cost effective manner.
<p style="text-align: center;">Rule 38 Tribunal-Appointed Experts</p> <p>(1) The Tribunal may appoint one or more independent experts to report to it on specific matters within the scope of the dispute.</p> <p>(2) The Tribunal shall consult with the parties on the appointment of an</p>	<ul style="list-style-type: none"> • Extensive use of Tribunal-appointed experts may undermine the adversarial system and the principles burden of proof, and may also substantially increase the time and costs of the proceedings. It is therefore proposed that Tribunal-appointed experts be limited to cases where both parties agree to its use. <ul style="list-style-type: none"> - The instances in which a Tribunal requires the use of an expert would

expert, including on the terms of reference and fees of the expert.

(3) 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.

(4) The parties shall have the right to make written and oral submissions, as required, on the report of the Tribunal-appointed expert.

(5) Rule 37(1)-(5) and (8) shall apply, with necessary modifications, to the Tribunal-appointed expert.

in many cases be a situation where one party has failed to discharge its burden of proof regarding a specific issue. In such circumstances, the Tribunal should be encouraged to make a decision in accordance with the general principles of the burden of proof, rather than to seek to exercise any form of inquisitorial powers.

- Notwithstanding the issue of whether Tribunal-appointed experts must require party consent, Korea proposes to add a further paragraph which states “In appointing an expert in accordance with paragraph (1) and admitting the report of that expert, the Tribunal shall give due consideration to: (a) the general principles of the burden of proof; and (2) the increase in time and costs incurred as a consequence of the appointment.”

Chapter VI: Special Procedures

**Rule 40
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 30 days after the constitution of the Tribunal, specifying the grounds on which the objection is based, and including a statement of the relevant facts, law and arguments;

(b) the Tribunal shall fix time limits for written and oral submissions, as required, on the objection;

(c) if a party files the objection before constitution of the Tribunal, the SecretaryGeneral shall fix time limits for written submissions on the objection, so that the Tribunal may consider the objection promptly upon its constitution; and

- It is Korea’s position that the 30-day deadline prescribed in Rule 40(2)(a) is too short. It is therefore suggested that the time limit for the submission of an objection on the grounds that a claim manifestly lacks legal merit be extended to 60 days.
- The fact that a claim was dismissed under Rule 40 is a hallmark of the abusive nature of that claim. However, States have no choice but to respond to such claims at significant costs. It is highly necessary therefore, that Tribunals be given a strong indication that a dismissal on such grounds is a cause to award costs in favor of the Respondent. Korea believes that either one of the following options may achieve that objective without incurring problems of compatibility with Article 61 of the ICSID Convention.
 - A new paragraph or subparagraph may be added in Rule 40 which reads: “When a claim is dismissed due to a party’s objection under paragraph (1), the Tribunal may award the relevant costs to that prevailing objecting party.”

<p>(d) the Tribunal shall issue its decision or render its Award on the objection within 60 days after the latest of:</p> <ul style="list-style-type: none"> (i) the constitution of the Tribunal; (ii) the last written submission on the objection; or 	<ul style="list-style-type: none"> - Rule 50(1)(a) may be modified to accommodate the dismissal of a claim according to Rule 40 as an example of an ‘outcome of the proceeding’: “the outcome on specific claims or arguments of any part of the proceedings or overall, including whether a claim was dismissed as manifestly lacking legal merit under Rule 40.”
<p style="text-align: center;">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> <ul style="list-style-type: none"> (a) unless the parties agree on a different time limit, the request for bifurcation shall be filed within: <ul style="list-style-type: none"> (i) 30 days after the first session, if the memorial on the merits is filed before the first session; (ii) 30 days after filing the memorial on the merits, if it is filed after the first session; (iii) 30 days after filing the written submission containing the ancillary claim, if the objection relates to an ancillary claim; or (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; (b) the request for bifurcation shall state the preliminary objection to which it relates; (c) the proceeding on the merits shall be suspended pending the Tribunal’s consideration of the request for bifurcation, unless the parties agree otherwise; (d) the Tribunal shall fix time limits for written and oral submissions, as required, on the request for bifurcation; and (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>(2) In determining whether to bifurcate, the Tribunal shall consider whether bifurcation could materially reduce the time and cost of the proceeding and</p>	<ul style="list-style-type: none"> • Korea proposes to delete the 30-day time limits to file a request for bifurcation regarding preliminary objections in Rule 42BIS(1)(a). It is Korea’s opinion that questions as to the timeliness of a request for bifurcation would be better handled during a procedural conference or by the Tribunal’s discretion in each case. <ul style="list-style-type: none"> - To assure that untimely requests for bifurcation do not unduly disrupt the proceedings, subparagraph (1)(a) must be modified to state “to the extent that the parties have not agreed on a time limit, the request for bifurcation shall be made in a timely manner.” - Also, it is further proposed that paragraph (2) be amended to state “In determining whether to bifurcate...the Tribunal shall consider...all other circumstances, including whether the request for bifurcation was made in a timely manner.”

all other relevant circumstances.

(3) If the Tribunal decides to address the preliminary objection in a separate phase of the proceeding, it shall:

- (a)** decide whether to suspend any part of the proceeding on the merits;
- (b)** fix time limits for written and oral submissions on the preliminary objection, as required;
- (c)** issue its decision or render its Award on the preliminary objection within 180 days after the last written or oral submission; 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)** lift any suspension of the proceeding on the merits in place pursuant to paragraph (1)(c);
- (b)** fix time limits for written and oral submissions on the preliminary objection, as required;
- (c)** modify any time limits for written and oral submissions on the merits, as required;

and

- (d)** render its Award within 240 days after the last written or oral submission in the proceeding, in accordance with Rule 57(1)(c).

Chapter VII: Costs

Rule 50 Decisions on Costs

(1) In allocating the costs of the proceeding, the Tribunal shall consider:

- (a)** the outcome of the proceeding or any part of it;
- (b)** the parties' conduct during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner;

- It is Korea's observation that the text "any part of it" in Rule 50(1)(a) may be misunderstood to refer only to distinguishable 'phases' of a case such as bifurcated jurisdiction phases. The Tribunal should be free to take into account more specific elements of the case, including the outcome of certain claims or arguments when deciding on the allocation of costs.
- The fact that a claim was dismissed as manifestly lacking legal merit, as well as any circumstances regarding the non-compliance of the obligation

<p>(c) the complexity of the issues; (d) the reasonableness of the costs claimed; and (e) all other relevant circumstances.</p> <p>(2) The Tribunal may make interim decisions on the costs of any part of a proceeding at any time.</p> <p>(3) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.</p>	<p>to disclose TPF must be reflected in the Tribunal’s decision on costs.</p> <ul style="list-style-type: none"> • Suggestions as to how the above concerns may be best addressed are specified in Korea’s comments to Rule 13 and Rule 40.
<p style="text-align: center;">Rule 51 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> <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</p>	<ul style="list-style-type: none"> • It is Korea’s position that the Tribunal should be able to order security for costs on its own initiative. There is no reason why the Tribunal’s general powers over procedure should not extend to security for costs. It would also be in better balance with paragraph (7) which allows the Tribunal to revoke an order on security for costs on its own initiative. - Accordingly, paragraph (1) must be amended to read: “The Tribunal may, on its own initiative, or upon the request of a party, order any party asserting a claim or counterclaim to provide security for costs.” • The existence of TPF and the terms of the TPF agreement must be taken into account when assessing a party’s ability to comply with an adverse decision on costs under subparagraph (3)(a). As previously mentioned in the comments regarding TPF, the existence and terms of TPF may act as a useful indicator of a party’s impecuniosity. • Korea proposes to delete subparagraph (3)(c). It is Korea’s opinion that the requirement to consider any negative effects that providing security for costs may have on a party’s ability to pursue its claim cannot be reconciled with the requirement to consider a party’s ability to comply with an adverse decision on costs prescribed in subparagraph (3)(a). A party must not be compelled to assume the risks of another party’s evident impecuniosity. • Failure of a party to comply with an order to provide security for costs should result in an automatic suspension of the proceedings, unless the

<p>ability to pursue its claim or counterclaim; (d) the conduct of the parties; and (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 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>other party objects. Korea believes that the penalty of mandatory suspension would better guarantee compliance with an order to provide security for costs. However, since the other party may prefer to seek an enforceable final award against the non-complying party, the other party must be allowed to object to the suspension of the proceedings.</p> <ul style="list-style-type: none"> - Therefore, the first sentence of paragraph (5) must be amended to read: "If a party fails to comply with an order to provide security for costs, the Tribunal shall suspend the proceeding unless the other party objects." • Korea proposes to introduce a continuing obligation to disclose material changes in a party's financial status and corporate structure. The financial statuses of the parties are always subject to change, and the necessity of security for costs may arise and decline accordingly. It may also be useful in instances where Claimants liquidate or transfer their assets through corporate restructuring in anticipation of an adverse award on costs, which is not an uncommon development in ISD proceedings.
--	---

Chapter X: Publication, Access to Proceedings and Non-disputing Party Submissions

<p style="text-align: center;">Rule 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 redactions and shall publish the order or decision with the redactions approved by the Tribunal.</p>	<ul style="list-style-type: none"> • In line with its oral comments made during the Second Meeting, Korea submits that Rule 62 should mirror the structure of Rule 61 on the publication of awards and decisions on annulment, given due consideration of the balance between the two provisions as well as the issues of compatibility with the ICSID Convention.
--	---

Rule 65
Submission of Non-disputing Parties

(1) Any person or entity that is not a disputing party (“non-disputing party”) may apply for permission to file a written submission in the proceeding. The application shall be made in a procedural language 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 disputing 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 the conditions for filing such a submission, if any.

(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 or oral submission on the application.

(6) The Tribunal may provide the non-disputing party with access to relevant

- It is Korea’s position that Non-disputing Party (hereinafter “NDP”) submissions must be submitted in *all* procedural languages applicable to the relevant proceeding. The parties should not have to bear the additional costs of interpretation for third-party participation.
 - Therefore, the second sentence of paragraph (1) should be amended to read: “The application and the submission, if permitted by the Tribunal, shall be made in all procedural languages.”
- Korea proposes to reintroduce the Tribunal’s power to require an NDP to pay funds to defray the increase in costs of the proceeding attributable to that NDP’s participation prescribed in Rule 47(4)(c) of Working Paper #1. In Korea’s view, it is only equitable to leave open the possibility of levying costs from a NDP if it results in a substantial increase in costs for the disputing parties.

<p>documents filed in the proceeding, unless either party objects.</p> <p>(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.</p>	
<p style="text-align: center;">Rule 66</p> <p style="text-align: center;">Participation of Non-disputing Treaty Party</p> <p>(1) The Tribunal shall permit a Party to a treaty that is not a party to the dispute (“nondisputing 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) The Tribunal may 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 nondisputing Treaty Party.</p>	<ul style="list-style-type: none"> • Korea supports the position of Rule 66 in limiting the scope of Non-disputing Treaty Party (hereinafter “NDTP”) submissions to matters concerning the interpretation of the treaty at dispute. It is Korea’s observation that if the NDTP should be imbued with a <i>right</i> of participation, it is only natural that that right be limited to matters of interpretation of the treaty which provided it with that NDTP status. • In Korea’s opinion, it is the NDTP instead of the NDP which should be given the opportunity to be provided with the relevant documents by the Tribunal. The NDTP has a much more direct interest in the outcome of the case in terms of treaty interpretation, and is in a position to provide valuable insight into the key issues of the dispute. <ul style="list-style-type: none"> - Therefore, Korea proposes to delete Rule 65(6), and add its equivalent to Rule 66 which reads: “The Tribunal may provide the non-disputing treaty party with access to relevant documents filed in the proceeding, unless either party objects.”