

## Suggestions for amendments to the Arbitration Rules

Dear Madams, Sirs,

In response to your invitation of 24 January to file suggestions for potential amendments to the ICSID Arbitration Rules, I respectfully submit the following:

**Rules 6.-** add a third paragraph:

(3) The Tribunal may appoint an administrative secretary, subject to the agreement of the parties regarding both the identity of the person and the arrangement of the fees and costs incurred by such administrative secretary; for the purposes of the Rules, the administrative secretary is not deemed to be a “member” of the Tribunal

**Rule 9.-** Modify the rule in the following terms:

(1) A party ~~proposing~~ **requesting** the disqualification of an arbitrator pursuant to Article 57 of the Convention, **or otherwise**, shall ~~promptly, and in any event before the proceeding is declared closed,~~ **file its proposal with the Secretary-General within 30 days from the notice of the acceptance of appointment of such arbitrator or of the circumstances that give rise to the request**, stating its reasons therefor.

(2) The Secretary-General shall forthwith:

(a) **notify the Tribunal of the request**; ~~transmit the proposal to the members of the Tribunal and, if it relates to a sole arbitrator or to a majority of the members of the Tribunal, to the Chairman of the Administrative Council;~~ and

(b) notify the other party of the request ~~proposal~~.

(3) The arbitrator to whom the request **proposal** relates may, ~~without delay, furnish explanations to the Tribunal or the Chairman, as the case may be~~ **furnish explanations to the Secretariat within 10 days after he or she has received the proposal**.

(4) ~~Unless the proposal relates to a majority of the members of the Tribunal, the other members shall promptly consider and vote on the proposal in the absence of the arbitrator concerned. If those members are equally divided, they shall, through the Secretary-General, promptly notify the Chairman of the proposal, of any explanation furnished by the arbitrator concerned and of their failure to reach a decision.~~

(5) ~~Whenever the Chairman has to decide on a proposal to disqualify an arbitrator, he shall use his best efforts to~~ The Secretariat shall take the decision **within 30 days after receiving** ~~he has received~~ the proposal **and notify the Tribunal and the Parties of the grounds for the decision.**

(6) The proceeding shall be suspended until a decision has been taken on the **request** ~~proposal~~.

**Rule 22.-**Modify as follows:

[...]

(2) If two procedural languages are selected by the parties, any instrument may be filed in either language. Either language may be used at the hearings, subject, if the Tribunal so requires, to translation and interpretation. The orders and the award of the Tribunal ~~shall~~ **may** be rendered and the record **may be** kept in ~~both~~ **one of the procedural languages, provided the parties and the Tribunal agree. In such a case, and upon the request of a party, translation of the award to the other language may be made available to the parties within 30 days of the dispatch of the award per Rule 48.**

**Rule. 39.-** Replace “recommendation/recommend/recommended” with “order/ordered”

**Rule 41.-** Add the following paragraph:

(7) If the Tribunal decides that the requesting party did not exhaust required local administrative or judicial remedies per article 26 of the Convention, it shall render a decision to that effect, without prejudice of the requesting party’s right to bring the claim in the future.

Rule 47.- Modify as follows:

(1) The award shall be in writing and shall contain:

[...]

(f) a **brief** summary of the proceeding;

(g) a statement of the **relevant** facts as found by the Tribunal;

(h) the **summary of the** submissions of the parties;

(i) the decision of the Tribunal on every question submitted to it, together with the reasons upon which the decision is based; and

(j) any decision of the Tribunal regarding the cost of the proceeding, **with the reasons upon which the decision is based.**

(2) The award shall be signed by the members of the Tribunal who voted for it; the date of each signature shall be indicated.

(3) Any member of the Tribunal may attach his **or her** individual opinion to the award ~~whether he dissents from the majority or not, or a statement of his dissent.~~

**Rule 46.-** modify as follows:

**(1) The Tribunal shall declare the proceeding closed as soon as possible after the evidenciary hearing is held but not later than 90 days thereafter;**

**(2) After the closure the the proceeding, no new evidence or submission shall be presented, unless otherwise allowed by the Tribunal;**

**(3) The award (including any individual or dissenting opinion) shall be drawn up and signed within ~~120~~ 90 days after closure of the proceeding. Upon request from the Tribunal the Secretariat may, however, extend this period by a further 30 ~~60~~ days if it would otherwise be unable to draw up the award.**

Rule 48.- Modify as follows:

[...]

(4) The Centre shall ~~not~~ publish the award ~~without the consent of the parties.~~ The Centre shall, however, promptly include in its publications excerpts of the legal reasoning of the Tribunal.

Yours sincerely,



**Dyalá Jiménez**

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