



MINISTER OF JUSTICE
REPUBLIC OF ARMENIA

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N^o 256

«27» December 2018 թ.

By Email

Meg Kinnear, Esq.
Secretary-General ICSID
1818 H Street, N.W. MSN J2-200
Washington, D.C. 20433 U.S.A.

Re: Position of the Republic of Armenia on the Amendments to 2006 ICSID Rules

Dear Ms. Kinnear:

We are pleased to present the position of the Republic of Armenia regarding amendments to the 2006 ICSID Rules and Regulations (the “Rules”) following the consultation held thereon with Member States in Washington DC on September 26-27, 2018.

We welcome ICSID’s willingness to adapt its Rules to address the evolving needs of its users and other interested parties, i.e., to increase time and cost efficiency of ICSID arbitration, and to make ICSID proceedings less paper-intensive. Our comments relate to the following:

- (i) ***Disqualification of arbitrators (Arbitration Rule 29)***. We acknowledge the need for a uniform and coherent interpretation of Article 57 of the ICSID Convention which provides a standard for disqualification of an arbitrator, i.e., “a manifest lack of the qualities” outlined in Article 14 (1). We support proposals advising the ICSID Secretariat to prepare a paper reviewing ICSID practice on dealing with disqualification proposals and provide guidelines based on the practice. Particularly, it is advisable to develop a precise interpretation of “manifest”, and how this threshold differs from the more common “justifiable doubts” formulation.
- (ii) ***Consolidation by Order (Arbitration Rule 38BIS)***. Consolidation of multiple disputes into a single arbitration proceeding is considered progress with respect to the efficiency of the arbitration process. However, arguments against consolidation made by some commentators focus on: (i) lack of the parties’ consent; (ii) non-participation in the appointment of the arbitral tribunal; (iii) potential infringements of a party’s substantive rights; (iv) allocation of arbitral fees and other costs; and (v) general lack of efficiency. While we acknowledge the progressive nature of consolidation mechanism in arbitration that is to ensure efficiency and saving of costs

and time, we strongly believe that "voluntary" consolidation under Rule 38 completely addresses situations of multiple claims that might be joined for efficiency purposes. Therefore, the Republic of Armenia supports proposals advising the Secretariat to consider consolidation as a sole discretion of responding Contracting States and modify AR 38BIS accordingly.

- (iii) **Method of Filing (Arbitration Rule 3).** While the Rule stipulates that written submissions, observations, supporting documents and communications shall be filed electronically, it also provides a possibility for the Tribunal to order otherwise. It is advisable to develop criteria when the Tribunal may order so to avoid possible "out of convenience" situations.
- (iv) **Time Limits Fixed by the Tribunal (Arbitration Rule 9).** Paragraph 2 of the Rules 9 states that the Tribunal may extend a time limit it fixed upon reasoned application by a party made prior to the expiry of the time limit. We propose to modify this wording as to specify that a reasoned application should be made within "reasonable time" prior the expiry of the time limit.
- (v) **Matters to be addressed at first session (Arbitration Rule 34).** Paragraph 4 of AR 34 provides number of procedural matters to be addressed during the preliminary procedural consultation. We propose to add secretaries that will be used and third-party funding into the items listed in par. 4.
- (vi) **Provisional Measures (Arbitration Rule 39).** We propose to develop a guidance (based also on other arbitration rules and best practice of arbitral tribunals in this regard) as to the circumstances in which provisional measures may be issued.
- (vii) **Tribunal Order to Produce Documents or Other Evidence (Arbitration Rule 40).** We propose to consider introducing the 'adverse inferences' principle under the IBA Rules on the Taking of Evidence in International Arbitration into this Rule.
- (viii) **Security for Costs (Arbitration Rule 51).** We share some of the Member States' concerns with respect to the reciprocal application of this Rule. While private parties-claimants, i.e., nationals of the other Contracting States may have insufficient assets for well-known reasons, Contracting States are sovereign entities with unlimited number of assets. We support proposals that suggest modifying this Rule as to make it applicable only to the claimants that are nationals of the other Contracting State and not to the Contracting States.

Please note that comments provided above are without prejudice to Armenia's right to make subsequent modifications to this proposal and to complement its proposal at a later stage.

Let me take this opportunity to wish you and the ICSID Secretariat, on behalf of the Government of the Republic of Armenia, a Happy, Healthy, and Successful New Year.

Sincerely,

ARTAK ZEYNALYAN



CC: Tatevik Davtyan, Director of Judicial Projects
Implementation Unit, Ministry of Justice of
the Republic of Armenia