

HUNGARY'S COMMENTS CONCERNING THE PROPOSED AMENDMENTS TO THE ICSID RULES

1. Introduction

Hungary welcomes the long awaited process to modernize the ICSID Rules and congratulates the ICSID Secretariat on its ambitious work in compiling the Proposals for Amendment of the ICSID Rules.

In addition to the observations made during the meeting of State representatives held on September 26-27, 2018 in Washington, D.C., Hungary submits the following comments to the proposed Rules of Procedure for Arbitration Proceedings.

2. Rule 9 - Time Limits Fixed by the Tribunal

The current text of Rule 9 appears to imply that the Tribunal may disregard an agreement reached by the parties to extend a time limit to complete a given procedural step. Also, when Rule 9 is read in conjunction with Rule 12 (3) there appears to be a conflict.

Accordingly, in order to ensure that the agreement of the parties is respected by the Tribunal when extending a time limit, Hungary proposes the following amendment to the wording of Rule 9 (2) [suggested changes highlighted in bold italics]:

“The parties may agree to extend a time limit fixed by the Tribunal. Absent an agreement of the parties the Tribunal may extend a time limit it fixed upon reasoned application by a party made prior to the expiry of the time limit. The Tribunal may delegate this power to its President.”

Finally, Hungary notes that it would be essential for the Secretariat to provide clear and uniform guidance as to what qualify as “*special circumstances*” under the wording of Rule 9 (3).

3. Rule 21 - Disclosure of Third-party Funding

As a general remark, Hungary welcomes the introduction of the obligation to disclose third-party funding into the Arbitration Rules (and into the Additional Facility Arbitration Rules).

Hungary is of the view that the reference to a “*law firm*” as the recipient of the funding in Rule 21 (1) is overly restrictive, given that a party may also be represented by other entities or persons during arbitral proceedings. Accordingly, Hungary would favor the change of the reference to a “*law firm*” to a broader term, to encompass not only law firms as representatives receiving the

funding but any other types of potential entities or persons in a representative or advisory capacity.

As regards its views on the consequences of a failure to disclose third party funding, Hungary merely refers to paragraph 12 of the *Comments to the proposed amendments to the ICSID Rules submitted on behalf of the European Union and its Member States*.

4. Rule 37 - Bifurcation

In the spirit of its comments made to Rule 9 above, Hungary believes that it would be appropriate to make clear in the wording of Rule 37 that the Tribunal may not disregard an agreement reached by the parties to bifurcate the proceedings.

5. Rule 38 - Consolidation or Coordination on Consent of Parties

Hungary welcomes the proposed rules on consolidation and coordination.

Nevertheless, Hungary would favor the addition of wording to make it clear that in the absence of the parties' agreement to consolidate or coordinate certain arbitration proceedings, tribunals empanelled to hear the given proceedings should be prevented from coordinating with each other.

6. Rule 75 - The Procedural Schedule in Expedited Arbitration

Hungary welcomes the proposed rules on expedited arbitration.

In order to make expedited arbitration more appealing to the parties, Hungary suggests the change of the deadlines stipulated in Rule 75 (1) (b) to 90 days, and the deadlines stipulated in Rule 75 (1) (e) to 60 days.
