

Singapore's comments to the proposed amendments to ICSID Rules (June 2019)

1. Singapore is grateful to the ICSID Secretariat for compiling a thorough and comprehensive Working Paper 2 detailing further revisions to the proposals to amend the following:

- a) the Arbitration Rules (“AR”);
- b) the Conciliation Rules (“CR”);
- c) the Administrative and Financial Regulations (“AFR”);
- d) the Institution Rules (“IR”); and
- e) the Additional Facility Rules and the rules of procedure annexed thereto, namely:
 - (i) Arbitration Rules (“(AF)AR”);
 - (ii) Conciliation Rules (“(AF)CR”);
 - (iii) Administrative and Financial Regulations (“(AF)AFR”);

2. We also note that, in Working Paper 2, the Additional Facility Mediation Rules and the Additional Facility Fact-finding Rules are now proposed as separate standalone rules (hereinafter referred to as “MR” and “FFR” respectively) instead, in order to clearly establish that these rules can equally be used for any ISDS disputes (regardless of whether the investors are from Contracting States and whether the respondents are Contracting States) so long as the disputants consent. **We support this structural change as well as the proposed substantive amendments in Working Paper 2 to these rules.**

3. We support the revisions in Working Paper 2 to the CR, IR, AFR, Additional Facility Rules, (AF)AFR, (AF)CR, FFR and the MR. **We have no further comments on these.**

4. We also support many of the proposed amendments to the AR and (AF)AR, and have additional comments on some. To that end, we have prepared **a table of comments for the AR**, which also encapsulates our views on the (AF)AR as many of the proposed amendments in Working Paper 2 to the (AF)AR mirror those proposed to the AR. **Where we have not made any comments, please take this to be a reflection that Singapore finds the proposed amendment to be acceptable.**

Abbreviations

ABBREVIATIONS	PROCEEDINGS UNDER THE ICSID CONVENTION
AFR	Administrative and Financial Regulations
IR	Institution Rules
AR	Arbitration Rules
-	PROCEEDINGS UNDER THE ICSID ADDITIONAL FACILITY
AF Rules	Additional Facility Rules
(AF)AR	Additional Facility Arbitration Rules
(AF) AFR	Additional Facility Administrative and Financial Regulations
-	OTHERS
ISDS	Investor-State dispute settlement
The Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States
The Secretariat	ICSID Secretariat
WP 1	Proposals for Amendment of the ICSID Rules — Working Paper 1 (September 2018)
WP 2	Proposals for Amendment of the ICSID Rules — Working Paper 2 Volume 1 (March 2019)

Proposed amendments to AR/(AF)AR

Proposed ICSID Arbitration Rules with changes in WP 2 tracked	Observations & comments
1. CHAPTER I GENERAL PROVISIONS	[This cell is intentionally left blank.]
2. Rule 1 Application of Rules. (1) These Rules shall apply to any arbitration proceeding conducted under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“Convention”) in accordance with Article 44 of the Convention. (2) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language. (3) These Rules may be cited as the “Arbitration Rules” of the Centre.	-
3. <u>New Rule 2 (taken from WP 1 Rule 11) - General Duties</u> <u>(1) The parties shall conduct the proceeding and implement the Tribunal’s orders and decisions in good faith.</u> (+2) The Tribunal shall treat the parties equally and provide each party with a reasonable opportunity to present its case. (2) The Tribunal shall consult with the parties prior to making an order or decision authorized by these Rules to be made by a Tribunal on its own initiative. (3) The Tribunal and the parties shall conduct the proceeding in an expeditious and cost effective manner.	We support the changes. This modification strengthens the language in the proposed AR 11 in WP 1 from one of cooperation to an obligation on the parties to implement the Tribunal’s orders and decisions. We also note that there was some debate during the second meeting about the meaning of “good faith” in paragraph 2 of this provision. We consider that ICSID’s clarification during the second meeting - that the reference to “good faith” is not intended to imply permission for tribunals to consider jurisdictional and admissibility issues – is adequate.

	Proposed ICSID Arbitration Rules with changes in WP 2 tracked	Observations & comments
	<p>(4) The parties shall cooperate in implementing the Tribunal's orders and decisions.</p>	
4.	<p>Rule 23 Meaning of Party and Party RepresentationRepresentative (1) For the purposes of these Rules, "party" may include, where the context so admits: (a) all parties acting as claimants or as respondents; and (b) an authorized representative of a party. (2) Each party may be represented or assisted by agents, counsel or, advocates <u>or other advisors</u> ("representative(s)"), whose names and proof of authority to act shall be notified by that party to the <u>Secretary-General Secretariat</u> ("representative(s)").</p>	-
5.	<p>Rule 34 Method of Filing (1) Written submissions, observations, supporting documents and communications A document shall <u>only</u> be filed electronically, unless the parties agree or the Tribunal orders otherwise <u>in special circumstances</u>. (2) They A document shall be introduced into the proceeding by filing <u>filed</u> them with the <u>Secretary-General</u>, which <u>who</u> shall acknowledge receipt and distribute them in accordance with Rule <u>46</u>. (2) Supporting documents, including witness statements, expert reports, exhibits and legal authorities, shall be filed together with the written submissions to which they relate, within the time limit fixed to file such written submissions. (3) An extract of a supporting document may be filed if the omission of the text does not render the extract misleading. The Tribunal may require a fuller extract or a complete version of the document.</p>	-

	Proposed ICSID Arbitration Rules with changes in WP 2 tracked	Observations & comments
6.	<p><u>Rule 5 Supporting Documents</u></p> <p><u>(1) Supporting documents, including witness statements, expert reports, exhibits and legal authorities, shall be filed together with the request, written submissions, observations or communication to which they relate.</u></p> <p><u>(2) An extract of a supporting document may be filed if the omission of the text does not render the extract misleading. The Tribunal or a party may require a fuller extract or a complete version of the document.</u></p> <p><u>(3) If the authenticity of a supporting document is disputed, the Tribunal may order a party to provide a certified copy or to make the original document available for examination.</u></p>	-

<p>Rule 4-6 Routing of Written Communications Documents</p> <p>(1) The Secretariat<u>Secretary-General</u> shall be the official channel <u>for routing of written communications documents</u> among the parties, the Tribunal, and the Chairman of the Administrative Council (“Chairman”), except that:</p> <p>(a) the parties may communicate directly with each other, provided that the Secretariat is copied on all communications to be introduced into the proceeding; they transmit all documents to be filed in the proceeding to the Secretary-General;</p> <p>(b) the members of the Tribunal shall communicate directly with each other; and</p> <p>(c) a party may communicate directly with the Tribunal if on requested to do so by of the Tribunal <u>or by agreement of the parties</u>, provided that the other party and the Secretary-General<u>Secretariat</u> are copied on the communications.</p> <p>(2) The <u>Secretary-General</u> Secretariat shall:</p> <p>(a) acknowledge receipt of all communications documents transmitted by a party; and,</p> <p>(b) subject to paragraph (1)(a) and (c), distribute them to the other party and the Tribunal, unless they were transmitted pursuant to paragraph 1(a) or (c).</p>	<p>Singapore had made the following points during the second meeting and is reflecting them in our written comments for avoidance of doubt:</p> <p>(1) We had queried what the intent behind the distinction between the use of the term “transmit” in AR 6 versus “file” in AR 4-5 was. ICSID clarified this was to cover the situation where parties may transmit documents to the Secretary-General but without the intent of filing it in the proceedings. We suggested that ICSID also review whether in AR 4 the reference to filing documents electronically should also be adjusted to cover transmission as well.</p> <p>(2) We had proposed to swap the order of AR 6(1)(b) and (c) for better flow, and remove the reference to paragraph 1(a) and (c) in paragraph 2(b) because communications between parties in paragraph 1(a) and communications between parties and the Tribunal in paragraph 1(c) did not necessarily involve the Secretary-General at all.</p>
<p>Rule 5-7 – Procedural Languages, Translation and Interpretation</p> <p>(1) The parties may agree to use one or two procedural languages in the proceeding. The parties shall consult with the Tribunal and the Secretariat<u>Secretary-General</u> regarding the use of a language that is not an official language of the Centre.</p> <p>(2) If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.</p> <p>(3) <u>Requests, W</u>ritten submissions, observations, supporting documents and communications shall be filed in a procedural language. In a proceeding</p>	<p>-</p>

<p>with two procedural languages, the Tribunal may require-order a party to file any-such documents in both procedural languages.</p> <p>(4) A-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 require-order a party to translate any document into both procedural languages. Translation of only the relevant part of a supporting document is sufficient, provided that the Tribunal may require-reorder a party to provide a fuller or a complete translation. If the translation is disputed, the Tribunal may order a party to provide-require a certified translation.</p> <p>(5) Any written-communicationdocument from the Tribunal or the Secretary-GeneralSecretariat 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.</p> <p>(6) Any oral communication shall be in a procedural language. In a proceeding with two procedural languages, the Tribunal may require-order interpretation into the other procedural language. The recordings and transcripts of a hearing shall be kept in the procedural language(s) used at the hearing.</p> <p>(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.</p> <p>(8) The recordings and transcripts of a hearing shall be kept in the procedural language(s) used at the hearing.</p>	
<p>Rule 6-8 Correction of Errors and Deficiencies</p>	<p>-</p>

<p>(1) A party may correct an accidental error in any written submission, observation, supporting document or communicationdocument at any time before the Award is rendered, with agreement of the other party or with leave of the Tribunal.</p> <p>(2) The SecretariatSecretary-General may request that a party correct any deficiency in a filing, at the party's own costor <u>make the required correction</u>.</p>	
<p>Rule 97 – Calculation of Time Limits</p> <p><u>(1) References to time shall be determined based on the time at the seat of the Centre on the relevant date.</u></p> <p>(1) Any time limit expressed as a period of time shall be calculated from the day after the date <u>on which</u>: (a) of the relevant notice; (b) on which the Tribunal, <u>or the Secretary-General if applicable</u>, announces the period; or (c) on which the procedural step starting the period is taken.</p> <p>(2) A time limit expires at 11:59 p.m. at the seat of the Centre on the relevant date. Where the end of a time limit falls on a Saturday, Sunday, or a holiday observed by the SecretariatSecretary-General, it shall be satisfied if <u>a procedural</u> the relevant step is taken or the relevanta document is received by the SecretariatSecretary-General on the <u>relevant date</u>, or if the date falls <u>on a Saturday, Sunday or a holiday observed by the Secretary-General, on the</u> subsequent business day.</p>	-
<p>Rule 8-10 – Time Limits Specified By The Convention and these Rules or Fixed by the Secretary-General <u>Applicable to Parties</u></p> <p><u>(1) The Tribunal, or the Secretary-General if applicable, shall fix time limits for the completion of each procedural step in the proceeding, other than time limits prescribed by the Convention or these Rules.</u></p>	-

<p>(12) The parties may agree to extend <u>any time limit fixed by the Secretary-General or specified by the Convention or these Rules</u> if such time limit is not mandatory <u>other than those in Articles 49, 51 and 52 of under</u> the Convention.</p> <p>(2) Any step taken by the parties after expiry of a time limit fixed by the Secretary-General or specified by the Convention or these Rules shall be disregarded, unless the Secretary-General or the Tribunal, as applicable, concludes that there are special circumstances justifying the delay.</p> <p>(3) The Tribunal, or the Secretary-General if applicable, may extend any time limit that they fixed, upon a reasoned application by either party made prior to its expiry. The Tribunal may delegate this power to its President.</p> <p>(3) Where these Rules prescribe time limits for orders, decisions and the Award, the Tribunal, or the Chairman, where applicable, shall use best efforts to meet those time limits. If special circumstances arise which prevent the Tribunal from complying with a time limit, it shall advise the parties of the reason for delay and the date when it anticipates the order, decision or Award will be delivered.</p> <p>(4) An application or request filed after the expiry of the time limits in Articles 49, 51 and 52 of the Convention shall be disregarded. A procedural step taken or document received after the expiry of any other time limit shall be disregarded unless:</p> <p style="padding-left: 40px;">(a) the other party does not object to the late step or filing; or</p> <p style="padding-left: 40px;">(b) the Tribunal, or the Secretary-General if applicable, concludes that there are special circumstances justifying the failure to meet a time limit that they fixed.</p>	
<p>Rule 9-11 – Time Limits Fixed By Applicable to the Tribunal</p>	<p>-</p>

	<p>(1) The Tribunal shall fix time limits for completion of each step in the proceeding, other than time limits specified by the Convention or these Rules.</p> <p>(2) 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.</p> <p>(3) The Tribunal shall disregard any step taken after expiry of a time limit it fixed unless it concludes that there are special circumstances justifying the delay.</p> <p><u>(1) The Tribunal shall use best efforts to meet all applicable time limits.</u></p> <p><u>(2) If special circumstances arise which prevent the Tribunal from complying with a time limit, it shall advise the parties of the reason for delay and the date when it anticipates the order, decision or Award will be delivered.</u></p>	
	<p><u>CHAPTER II- CONSTITUTION OF THE TRIBUNAL</u></p>	<p>[This cell is intentionally left blank.]</p>
	<p>Rule <u>20-12</u> – General Provisions Regarding the Constitution of the Tribunal</p> <p>(1) The parties shall constitute a Tribunal <u>shall be constituted</u> without delay after registration of the Request for arbitration.</p> <p>(2) The majority of the arbitrators on a Tribunal shall be nationals of States other than the State party to the dispute and the State whose national is a party to the dispute, unless the Sole Arbitrator or each individual member of the Tribunal is appointed by agreement of the parties.</p> <p>(3) A party may not appoint an arbitrator who is a national of the State party to the dispute or the State whose national is a party to the dispute without agreement of the other party.</p>	<p>-</p>

<p>(4) A person previously involved in the resolution of the parties' dispute as a judge, mediator, conciliator or in a similar capacity may be appointed as an arbitrator only by agreement of the parties.</p>	
<p>Rule 21-13 – Notice Disclosure of Third-party Funding</p> <p>(1) “Third-party funding” is the provision of funds or other material support for the pursuit or defense of a proceeding, by a natural or juridical person that is not a party to the dispute (“third party funder”), to a party to the proceeding, an affiliate of that party, or a law firm representing that party. Such funds or material support may be provided:</p> <p style="padding-left: 40px;">(a) through a donation or grant; or (b) in return for a premium or in exchange for remuneration or reimbursement wholly or partially dependent on the outcome of the proceeding.</p> <p>(2) A party shall file a written notice disclosing that it has third-party funding and the name of the third party funder. Such notice shall be sent to the Secretariat immediately upon registration of the Request for arbitration, or upon concluding a third-party funding arrangement after registration.</p> <p>(3) Each party shall have a continuing obligation to disclose any changes to the information referred to in paragraph (2) occurring after the initial disclosure, including termination of the funding arrangement.</p> <p><u>(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”).</u></p> <p><u>(2) A non-party referred to in paragraph (1) does not include a representative of a party.</u></p>	<p>We have two main points to make:</p> <p>(1) Singapore <i>strongly supports</i> ICSID’s current proposal, which requires the disclosure of the fact of third party funding and the identity of the funder, because it strikes the right balance between various interests. It is possible that States that obtain third party funding may not wish to disclose all the details of their funding arrangements for political or policy considerations. Requiring the disclosure of the entire funding arrangement may potentially stymie the use of this emerging option, and if there are States interested in requiring more extensive disclosure, it always remains open for them to include this in their treaty practice.</p> <p>That said, we note that during the second meeting, a suggestion was made that the duty of disclosure regarding the identity of the third party funder should apply also to the persons with an ultimate financial interest in the outcome, in particular ultimate beneficial owners (if any). This is intended to address the potential situation that the companies directly funding the litigation could be shell entities with ultimate beneficial owners. Singapore would like to express its support for this suggestion.</p> <p>(2) Singapore had made this point during the second meeting but is reflecting it here for avoidance of doubt. We noted the reasons given for excluding a party’s representative (<i>ie</i>, counsel) from the scope of disclosure</p>

	<p><u>(3) A party shall send the notice referred to in paragraph (1) to the Secretary-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.</u></p>	<p>under this rule but suggested that the Arbitrator’s Declaration should be refined to also include a declaration that the arbitrator has no conflicts of interest arising from any relationship with the party’s representative.</p> <p>In addition, in terms of wording, we think the first part of paragraph 3 should read “A party shall <i>file</i> the notice referred to in paragraph (1) <i>with</i> the Secretary-General...”, since this should be a document filed in the proceedings.</p>
	<p>Rule 22<u>14</u> – Method of Constituting the Tribunal (1) The number of arbitrators and the method of their appointment must be determined before the Secretary-General can act on any appointment proposed by a party.</p> <p>(2) The parties shall endeavor to agree on any uneven number of arbitrators and the method of their appointment. If the parties do not advise the Secretary-General of an agreement within 60<u>45</u> days after the date of registration, the Tribunal shall be constituted in accordance with Article 37(2)(b) of the Convention.</p>	-
	<p>Rule 23<u>15</u> Appointment of Arbitrators to a Tribunal Constituted in Accordance with Article 37(2)(b) of The Convention</p> <p>If the Tribunal is to be constituted in accordance with Article 37(2)(b) of the Convention, each party shall appoint an arbitrator and the parties shall jointly appoint the President of the Tribunal.</p>	-
	<p>Rule 24<u>16</u> Assistance of the Secretary-General with Appointment</p> <p>The parties may jointly request that the Secretary-General assist with the appointment of a President of the Tribunal or a Sole Arbitrator.</p>	-
	<p>Rule 25<u>17</u> Appointment of Arbitrators by the Chair man of the Administrative Council in Accordance with Article 38 of the Convention</p>	-

	<p>(1) If the Tribunal has not been constituted within 90 days after the date of registration, or such other period as the parties may agree, either party may request that the Chairman appoint the arbitrator(s) who have not yet been appointed pursuant to Article 38 of the Convention.</p> <p>(2) The Chairman shall appoint the President of the Tribunal after appointing any members who have not yet been appointed.</p> <p>(3) The Chairman shall consult with the parties as far as possible before appointing an arbitrator and shall use best efforts to appoint any arbitrator(s) within 30 days after receipt of the request to appoint.</p>	
	<p>Rule 26-18 Acceptance of Appointment</p> <p>(1) A party appointing an arbitrator shall notify the Seeretariat<u>Secretary-General</u> of the appointment and provide the appointee's name, nationality(ies) and contact information.</p> <p>(2) The Seeretariat<u>Secretary-General</u> shall request an acceptance from the <u>each</u> appointee upon receipt of the notice referred to in paragraph (1) <u>as soon as the appointee is selected</u>. The Seeretariat<u>Secretary-General</u> shall also transmit to each appointee the information received from the parties relevant to completion of the declaration referred to in paragraph (3)(b).</p> <p>(3) Within 20 days after the receipt of the request for acceptance of an appointment, an appointee shall:</p> <ul style="list-style-type: none"> (a) accept the appointment; and (b) provide a signed declaration in the form published by the Centre, addressing matters including the arbitrator's independence, impartiality, availability and commitment to maintain the confidentiality of the proceedings. 	-

	<p>(4) The Secretariat<u>Secretary-General</u> shall notify the parties of the acceptance of appointment by each arbitrator and provide their signed declaration.</p> <p>(5) The Secretariat<u>Secretary-General</u> shall notify the parties if an arbitrator 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 as arbitrator in accordance with the method followed for the previous appointment.</p> <p>(6) Each arbitrator shall have a continuing obligation to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).</p>	
	<p>Rule 27-19 Replacement of Arbitrators Prior to Constitution of the Tribunal</p> <p>(1) At any time before the Tribunal is constituted:</p> <p style="padding-left: 20px;">(a) an arbitrator may withdraw an acceptance;</p> <p style="padding-left: 20px;">(b) a party may replace an arbitrator whom it appointed; or</p> <p style="padding-left: 20px;">(c) the parties may agree to replace any arbitrator.</p> <p>(2) A replacement arbitrator shall be appointed as soon as possible, in accordance with the method by which the withdrawing or replaced arbitrator was appointed.</p>	-
	<p>Rule 28-20 Constitution of the Tribunal</p> <p>(1) The Tribunal shall be deemed to be constituted on the date the Secretary-General notifies the parties that all the arbitrators have accepted their appointments.</p> <p>(2) As soon as the Tribunal is constituted, the Secretary-General shall transmit the Request for arbitration, the supporting documents, the notice of registration and communications with the parties to each member.</p>	-
	<p>CHAPTER III- DISQUALIFICATION OF ARBITRATORS AND VACANCIES</p>	[This cell is intentionally left blank.]
	<p>Rule 29-21 Proposal for Disqualification of Arbitrators</p>	-

(1) A party may ~~file a proposal to disqualify~~ propose the disqualification of one or more arbitrators (“proposal”) in accordance with the following procedure: pursuant to Article 57 of the Convention.

~~(2) The following procedure shall apply:~~

(a) ~~any the~~ proposal shall be filed after the constitution of the Tribunal and within ~~20-21~~ days after the later of:

(i) the constitution of the Tribunal; or

(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;

(b) ~~the party proposing the disqualification shall file a written submission~~ the proposal shall include, specifying the grounds on which it is based, ~~and including~~ a statement of the relevant facts, law and arguments, ~~with and~~ any supporting documents;

(c) the other party shall file its response and supporting documents within ~~seven-21~~ days after receipt of the ~~written submission~~ proposal;

(d) the arbitrator to whom the proposal relates may file a statement limited to factual information relevant to the proposal. ~~This The~~ statement shall be filed within five days after receipt of the ~~written submissions~~ response referred to in paragraph (21)(c); and

(e) ~~the parties~~ each party may file a final written submissions on the proposal within seven days after expiry of the time limit referred to in paragraph (21)(d).

~~(3) The proceeding shall continue while the proposal is pending unless it is suspended, in whole or in part, by agreement of the parties. If the proposal results in a disqualification, either party may request that any order or decision issued by the Tribunal while the proposal was pending, be reconsidered by the reconstituted Tribunal.~~

	<u>(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.</u>	
	<p>Rule 30-22 Decision on the Proposal for Disqualification</p> <p>(1) The decision on a proposal shall be taken-made by the arbitrators not subject to the proposal or by the Chairman in accordance with Article 58 of the Convention.</p> <p>(2) For the purposes of Article 58 of the Convention:</p> <p>(a) if the arbitrators not subject to a proposal are unable to decide the proposal for any reason, they shall notify the Secretary-General and shall be considered equally divided;</p> <p>(b) if a subsequent proposal is filed while the decision on a prior proposal is pending, both proposals shall be decided by the Chairman as if they were a proposal to disqualify a majority of the Tribunal.</p> <p>(3) The <u>arbitrators not subject to the proposal and the Chair shall use best efforts to decide</u> decision on any proposal shall be made within 30 days after the later of the expiry of the time limit referred to in Rule 29-21(21)(e) or the notice in <u>Rule 30</u>paragraph (2)(a).</p>	-
	<p>Rule 31-23 Incapacity or Failure to Perform Duties</p> <p>If an arbitrator becomes incapacitated or fails to perform the duties required of an arbitrator, the procedure in Rules 29-21 and 30-22 shall apply.</p>	-
	<p>Rule 32-24 Resignation</p> <p>(1) An arbitrator may resign by notifying the Secretary-General and the other members of the Tribunal and providing reasons for the resignation.</p> <p>(2) If the arbitrator was appointed by a party, the other members of the Tribunal shall promptly notify the Secretary-General whether they consent to the arbitrator's resignation for the purposes of Rule 33-25(3)(a).</p>	-
	<p>Rule 33-25 – Vacancy on the Tribunal</p> <p>(1) The Secretary-General shall notify the parties of any vacancy on the Tribunal.</p>	-

<p>(2) The proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.</p> <p>(3) A vacancy on the Tribunal shall be filled by the method used to make the original appointment, except that the Chairman shall fill the following vacancies from the Panel of Arbitrators:</p> <p style="padding-left: 40px;">(a) a vacancy caused by the resignation of a party-appointed arbitrator without the consent of the other members of the Tribunal; or (b) a vacancy that has not been filled within 45 days after the notice of vacancy.</p> <p>(4) Once a vacancy has been filled and the Tribunal has been reconstituted, the proceeding shall continue from the point it had reached at the time the vacancy was notified. A newly appointed arbitrator may require that aAny portion of a hearing <u>shall</u> be recommenced if <u>the newly appointed arbitrator considers it</u> necessary to decide a pending matter.</p>	
<p>CHAPTER IV – CONDUCT OF THE PROCEEDINGS</p>	<p>[This cell is intentionally left blank.]</p>
<p>Rule 12-26 Orders, Decisions and Agreements</p> <p>(1) The Tribunal shall make the orders and decisions required for the conduct of the proceeding.</p> <p>(2) Orders and decisions may be made<u>taken</u> by any appropriate means of communication and may be signed by the President on behalf of the Tribunal; unless the parties agree otherwise.</p> <p><u>(3) The Tribunal shall consult with the parties prior to making an order or decision authorized by these Rules to be made by a Tribunal on its own initiative.</u></p>	<p>Singapore had made these points during the second meeting but is reflecting them here for avoidance of doubt:</p> <p>(1) The term “conforms” in paragraph 4 could be replaced with “does not conflict” to better reflect the fact that the Convention and the AFR are the outer limit constraints on what the parties can agree to do.</p> <p>(2) In terms of placement, we also suggested that paragraph 4 could in fact be a general rule on its own that is applied rather than a rule specifically relating to orders, decisions and agreements.</p>

	<p>(34) The Tribunal shall apply any agreement of the parties on procedural matters to the extent that it conforms with the Convention and the Administrative and Financial Regulations.</p>	
	<p>Rule 10-27 Waiver Subject to Article 45 of the Convention, if a party knows or should have known that an applicable rule, agreement of the parties, or any order or decision of the Tribunal or the Secretary-General has not been complied with, and does not promptly object, then that party shall be deemed to have waived its right to object to that non-compliance.</p>	-
	<p>Rule 34-28 First Session (1) Subject to paragraph (2), the Tribunal shall hold a first session with the parties to address the procedure, including the matters listed in paragraph (4). (2) The first session shall be held within 60 days after the Tribunal’s constitution or such other period as the parties may agree. If the President of the Tribunal determines that it is not possible to convene the parties and the other members within this period, the first session shall be held solely among the Tribunal members after consulting with the parties in writing on the matters listed in paragraph (4). (3) The first session may be held in person or remotely, by any means that the Tribunal deems appropriate. The agenda, method and date of the first session shall be determined by the President of the Tribunal after consulting with the other members and the parties. (4) Before the first session, the Tribunal shall circulate an agenda to the parties and invite their views on procedural matters, including: (a) the applicable arbitration rules; (b) the number of members required to constitute a quorum of the Tribunal;</p>	-

	<p>(c) the division of advances payable pursuant to the Administrative and Financial Regulation 1514(5);</p> <p>(d) the procedural language(s), translation and interpretation;</p> <p>(e) the method of filing and routing of written communicationsdocuments;</p> <p>(f) the number, length, type and format of written submissions;</p> <p>(g) the place of hearings;</p> <p>(h) the scope, timing and procedure for requests for production of documents between the parties, if any;</p> <p>(i) the procedural calendar, including written submissions, hearings, case management conferences and the Tribunal's orders, and decisions and the Award;</p> <p>(j) the manner of keeping-making the recordings and transcripts of hearings;</p> <p>(k) the publication of documents and recordings; and</p> <p>(l) the protection of confidential information; and- <u>(l) any other procedural matter raised by either party or the Tribunal.</u></p> <p>(5) The Tribunal shall issue an order recording the parties' agreements and any Tribunal decisions on the procedure within 15 days after the later of the first session or the last written submission on procedural matters addressed at the first session.</p>	
	<p>Rule 13-29 Written Submissions and Observations</p> <p>(1) The parties shall file the following written submissions, with any supporting documents, within the time limits fixed by the Tribunal:</p> <p>(a) a memorial by the requesting party, subject to paragraph (2);</p> <p>(b) a counter-memorial by the other party;</p> <p>and, if unless the parties so agree or the Tribunal finds it necessary otherwise:</p> <p>(c) a reply by the requesting party; and</p> <p>(d) a rejoinder by the other party.</p>	-

	<p>(2) The requesting party may elect to have the Request for arbitration considered as the memorial.</p> <p>(32) A memorial shall contain a statement of the relevant facts, law and arguments, and the request for relief. A counter-memorial shall contain a statement of the relevant facts, including an admission or denial of facts stated in the memorial, and any necessary additional facts, a statement of law in reply to the memorial, arguments, and the request for relief. A reply and rejoinder shall be limited to responding to the previous written submission.</p> <p><u>(3) A memorial on the merits or a memorial on preliminary objections may be filed at any time before the first session.</u></p> <p>(4) The Tribunal shall grant leave to file<u>No party may file</u> unscheduled written submissions, observations or supporting documents <u>without leave of the Tribunal, unless the filing of such documents is provided for by the Convention or these Rules. The Tribunal may grant such leave</u> upon a timely and reasoned application and only if it finds such written submissions, observations or supporting documents<u>these</u> are necessary in view of all relevant circumstances.</p>	
	<p>Rule 14<u>30</u> Case Management Conference With a view to expediting the<u>conducting an effective and expeditious</u> proceeding, the Tribunal may<u>shall</u> convene a<u>one or more</u> case management conferences with the parties at any time to:</p> <ul style="list-style-type: none"> (a) identify uncontested facts; (b) narrow the issues in dispute; and<u>or</u> address any other procedural or substantive issue related to the resolution of the dispute.	-
	<p>Rule 15<u>31</u> Hearings (1) There shall be one or more hearings before the Tribunal, unless the parties agree otherwise.</p>	-

	<p>(2) The President of the Tribunal shall determine the date, time and method of holding hearings, after consulting with the other members of the Tribunal and the parties.</p> <p>(3) If a hearing is to be held in person, it may be held at any place agreed to by the parties after consulting with the Tribunal and the Secretariat<u>Secretary-General</u>. If the parties do not agree on the place of a hearing, it shall be held at the seat of the Centre pursuant to Article 62 of the Convention.</p> <p>(4) Any member of the Tribunal may put questions to the parties and ask for explanations at any time during a hearing.</p>	
	<p>Rule 17-32 <u>32</u> Quorum The participation of a majority of the members of the Tribunal shall be required at the first session, <u>case management conferences</u>, hearings and deliberations, by any appropriate means of communication, unless the parties agree otherwise.</p>	-
	<p>Rule 16-33 <u>33</u> Deliberations (1) The deliberations of the Tribunal shall take place in private and remain confidential.</p> <p>(2) The Tribunal may deliberate at any place <u>and by any means</u> it considers convenient<u>appropriate</u>.</p> <p>(3) Only members of the Tribunal shall take part in its deliberations. No other person shall be admitted unless the Tribunal decides otherwise.</p> <p>(4) The Tribunal shall deliberate on any matter for decision immediately after the last written or oral submission on that matter.</p>	-
	<p>Rule 18-34 <u>34</u> Decisions Taken by Majority Vote The Tribunal shall take<u>make</u> decisions by a majority of the votes of all its members. Abstention shall count as a negative vote.</p>	-

	CHAPTER V – EVIDENCE	[This cell is intentionally left blank.]
	<p>Rule 39-35 – Evidence: General Principles</p> <p><u>(1) The Tribunal shall determine the admissibility and probative value of the evidence adduced.</u></p> <p><u>(2) Each party has the burden of proving the facts relied on to support its claim or defense.</u></p> <p><u>(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.</u></p>	-
	<p><u>Rule 40-36 - Tribunal Order to Produce Documents or Other Evidence Disputes Arising from Requests for Documents</u></p> <p><u>(1) The Tribunal shall decide any dispute arising out of a party’s objection to the other party’s request for production of documents or other evidence. In doing so, it deciding the dispute, the Tribunal shall consider: all relevant circumstances</u></p> <ul style="list-style-type: none"> <u>(a) including the scope and timeliness of the request;</u> <u>(b) the relevance and materiality of the documents and evidence requested;</u> <u>(c) the time and burden of production;</u> <u>(d) and any objections raised by the basis of the other party objection; and</u> <u>(e) all other relevant circumstances.</u> <p><u>(2) The Tribunal may at any time on its own initiative order a party to produce documents or other evidence.</u></p>	-
	<p>Rule 41-37 – Witnesses and Experts</p> <p>(1) A party intending to rely on evidence given by a witness shall file a written statement by that witness. The statement shall identify the witness, contain the evidence of the witness and be signed and dated.</p>	-

<p>(2) A witness who has filed a written statement may be called for examination at a hearing.</p> <p>(3) The Tribunal shall determine the manner in which the examination is conducted.</p> <p>(4) A witness shall be examined before the Tribunal, by the parties, and under the control of the President. Any member of the Tribunal may put questions to the witness.</p> <p>(5) A witness shall be examined in person unless the Tribunal determines that another means of examination is appropriate in the circumstances.</p> <p>(6) Paragraphs (1)-(5) shall apply, with necessary modifications, to evidence given by an expert.</p> <p>(7) Each witness shall make the following declaration before giving evidence: “I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth.”</p> <p>(7) Paragraphs (1)-(5) shall apply, with necessary modifications, to evidence given by an expert.</p> <p>(8) Each expert shall make the following declaration before giving evidence: “I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief.”</p>	
<p>Rule 42-38 – Tribunal-Appointed Experts</p> <p>(1) The Tribunal may appoint one or more independent experts to report to it on specific matters <u>within the scope of the dispute</u>.</p>	-

<p>(2) The Tribunal shall consult with the parties on the appointment of an expert, including on the terms of reference <u>and fees</u> of the expert.</p> <p>(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.</p> <p>(4) The parties shall have the right to make written or<u>and</u> oral submissions, <u>as required</u>, on the report of the Tribunal-appointed expert.</p> <p>(5) Rule 41<u>43</u>7(1)-(5) and (8) shall apply, with necessary modifications, to the Tribunal appointed expert.</p>	
<p>Rule 43<u>39</u> – Visits and Inquiries</p> <p>(1) The Tribunal may order a visit to any place connected with the dispute, on its own initiative or upon a party’s request, if it deems the visit necessary, and may conduct inquiries there as appropriate.</p> <p>(2) The order shall define the scope of the visit and the subject of any inquiry, the procedure to be followed, the applicable time limits and other terms.</p> <p>(3) The parties shall have the right to participate in any visit or inquiry.</p>	-
<p>CHAPTER VI – SPECIAL PROCEDURES</p>	[This cell is intentionally left blank.]
<p>Rule <u>40</u>35 – Manifest Lack of Legal Merit</p> <p>(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.</p> <p>(2) The following procedure shall apply:</p> <p style="padding-left: 40px;">(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</p>	-

<p>objection is based, and including a statement of the relevant facts, law and arguments, with any supporting documents;</p> <p>(b) the Tribunal shall fix time limits for written or <u>and</u> oral submissions, as required, on the objection;</p> <p>(c) if a party files the objection before constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the objection, so that the Tribunal may consider the objection promptly upon its constitution; and</p> <p>(d) the Tribunal shall issue its decision <u>or render its Award</u> 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 (iii) the last oral submission on the objection. <p><u>(34) The A decision of the Tribunal that a claim is not manifestly without legal merit</u> shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 36-42 or to argue subsequently in the proceeding that a claim is without legal merit.</p> <p><u>(43)</u> If the Tribunal decides that all claims are manifestly without legal merit, it shall render an Award to that effect. Otherwise, the Tribunal shall issue a decision on the objection and fix any time limit necessary for the further conduct of the proceeding.</p>	
<p>Rule 37-41 – Bifurcation</p> <p>(1) A party may request that a question be addressed in a separate phase of the proceeding (“request for bifurcation”).</p> <p><u>(2) If a request for bifurcation relates to a preliminary objection, Rule 42BIS shall apply.</u></p>	<p>We support the revised approach that ICSID has taken in WP 2 as regards bifurcation. It is helpful to provide for a separate rule on requests for bifurcation that involve preliminary objections because those requests, usually made in an early stage of the proceedings, raise concerns on timelines specific to those situations, whereas this AR 41 would only deal with bifurcation on the merits which could potentially happen at any point in the proceedings.</p>

<p>(23) The following procedure shall apply <u>to requests for bifurcation other than a request referred to in paragraph (2)</u>:</p> <p>(a) if the request for bifurcation relates to a preliminary objection, a party shall file the request within 30 days after the filing of the memorial on the merits or, if the objection relates to an ancillary claim, within 30 days after the filing of the written submission containing the ancillary claim, unless the facts on which the objection is based are unknown to the party at the relevant time shall be filed as soon as possible;</p> <p>(b) the request for bifurcation shall <u>specify state</u> the questions to be bifurcated;</p> <p>(c) the Tribunal shall fix time limits for written or <u>and</u> oral submissions, as required, on the request for bifurcation; and</p> <p>(d) the Tribunal shall issue its decision on a request for bifurcation within <u>30-20</u> days after the last written or oral submission on the request;</p> <p><u>(e) the Tribunal shall decide whether to suspend any part of the proceeding if it decides to bifurcate; and</u></p> <p><u>(f) the Tribunal shall fix any time limit for the further conduct of the proceeding, as required.</u></p> <p>(4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether bifurcation would <u>could</u> materially reduce the time and cost of the proceeding <u>and all other relevant circumstances</u>.</p> <p>(35) The Tribunal may at any time on its own initiative decide whether a question is to be addressed in a separate phase of the proceeding.</p>	
<p>Rule 36-42 – Preliminary objections</p>	<p>-</p>

(1) A party may ~~file a preliminary objection~~ that the dispute or any ancillary claim is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Tribunal (“preliminary objection”).

(2) A preliminary objection shall be raised as soon as possible.

(3) The Tribunal may address a preliminary objection in a separate phase of the proceeding or join the objection to the merits.

(4) If a party requests bifurcation of a preliminary objection, Rule 42BIS shall apply.

(5) If a party does not request bifurcation of a preliminary objection within the time limits referred to in Rule 42BIS(1)(a) or the parties confirm that they will not request bifurcation, the objection shall be joined to the merits and the following procedure shall apply:

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

(b) the memorial on the preliminary objection shall be filed no later than:

(i) the date to file the counter-memorial on the merits;

(ii) the date to file the next written submission after an ancillary claim, if the objection relates to the ancillary claim;
or

(iii) as soon as possible after the facts on which the objection is based become known to a party, if those facts were unknown to the party on the relevant dates;

(c) the party filing the memorial on preliminary objections shall also file its counter-memorial on the merits, or, if the objection relates to the ancillary claim, file its next written submission after an ancillary claim; and

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

(6) The Tribunal may at any time on its own initiative consider whether a dispute or any ancillary claim is within the jurisdiction of the Centre or within its own competence.

~~(2) The following procedure shall apply:~~

~~(a) a preliminary objection shall be made as soon as possible. Unless the facts on which the objection is based are unknown to the party at the relevant time, the objection shall be made no later than:~~

~~(i) the date to file the counter-memorial if the objection relates to the main claim; or~~

~~(ii) the date to file the next written submission after an ancillary claim is raised, if the objection relates to the ancillary claim;~~

~~(b) the party shall file a written submission, specifying the grounds on which the preliminary objection is based and including a statement of relevant facts, law and arguments, with any supporting documents; and~~

~~(c) the Tribunal shall fix time limits for written or oral submissions, as required, on the preliminary objection.~~

~~(3) The Tribunal may address a preliminary objection in a separate phase of the proceeding pursuant to Rule 37 or join the objection to the merits. If the~~

<p>Tribunal decides to address the preliminary objection in a separate phase, it may suspend the proceeding on the merits.</p> <p>(4) If a party files a preliminary objection it shall also file its counter-memorial on the merits, or file its next written submission after an ancillary claim is raised if the objection relates to the ancillary claim, unless the Tribunal has ordered otherwise.</p> <p>(5) The Tribunal may at any time on its own initiative consider whether a claim is within the jurisdiction of the Centre or within its own competence.</p> <p>(6) The Tribunal shall issue its decision on the preliminary objection within 180 days after the last written or oral submission on the objection.</p> <p>(7) If the Tribunal decides that the dispute is not within the jurisdiction of the Centre, or for other reasons is not within its competence, it shall render an Award to that effect. Otherwise, the Tribunal shall issue a decision on the objection and fix any time limit necessary for the further conduct of the proceeding.</p>	
<p><u>Rule 42BIS Bifurcation of Preliminary Objections (NEW)</u></p> <p><u>(1) The following procedure shall apply with respect to a request for bifurcation relating to a preliminary objection:</u></p> <p style="padding-left: 40px;"><u>(a) unless the parties agree on a different time limit, the request for bifurcation shall be filed within:</u></p> <p style="padding-left: 80px;"><u>(i) 30 days after the first session, if the memorial on the merits is filed before the first session;</u></p> <p style="padding-left: 80px;"><u>(ii) 30 days after filing the memorial on the merits, if it is filed after the first session;</u></p>	<p>We note that a number of States had indicated that it would be helpful to provide further guidance for tribunals in deciding on whether to allow the bifurcation request in paragraph 2, perhaps taking into account ICSID case law developments. We support this suggestion to further clarify paragraph 2.</p>

(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.

(2) In determining whether to bifurcate, the Tribunal shall consider whether bifurcation could materially reduce the time and cost of the proceeding and 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).

**Rule ~~38-43~~– Consolidation or Coordination ~~on Consent of Parties of~~
Arbitrations**

(1) Parties to two or more pending arbitrations administered by the Centre may agree to consolidate or coordinate these arbitrations.

~~(2) The parties referred to in paragraph (1) shall provide the Secretary-General with written terms of reference, specifying the terms of consolidation or coordination to which they would consent.~~

(2) To be consolidated under this Rule, the arbitrations shall have been registered in accordance with the Convention and shall involve the same Contracting State (or any constituent subdivision or agency of the Contracting State). Consolidation joins all aspects of the arbitrations sought to be consolidated and results in a single Award.

~~(3) The Secretary General shall take all necessary administrative steps to implement the agreement of the parties if the consolidation or coordination requested would promote a fair and efficient resolution of all or any claims asserted in the arbitrations.~~

(3) Coordination aligns specific procedural aspects of each pending arbitration, but the arbitrations remain separate proceedings and result in individual Awards.

(4) The parties referred to in paragraph (1) shall jointly provide the Secretary-General with proposed terms of reference for consolidation or coordination and consult with the Secretary-General to ensure that the proposed terms of reference are capable of being implemented.

(5) After the consultation referred to in paragraph (4), the Secretary-General shall communicate the agreed terms of reference to the Tribunal(s) constituted in the arbitrations. Such Tribunal(s) shall make any order or decision required to implement the terms of reference.

We *strongly support* this proposal. In our view, the proposed amendments in WP 2 make the distinction between consolidation and coordination clearer and also more user-friendly.

~~Rule 38bis—Consolidation by Order~~

~~(1) A party may request full or partial consolidation of two or more arbitrations (“the individual arbitrations”) pending under the ICSID Convention Arbitration Rules.~~

~~(2) The individual arbitrations proposed for consolidation shall:~~

- ~~(a) arise out of the same circumstances;~~
- ~~(b) have a question of law or fact in common; and~~
- ~~(c) if consolidated, promote a fair and efficient resolution of all or any of the claims asserted in the individual arbitrations.~~

~~(3) A party requesting consolidation shall file a written request with the Secretary General specifying:~~

- ~~(a) the arbitrations proposed for consolidation;~~
- ~~(b) the grounds for consolidation;~~
- ~~(c) the relevant facts and evidence relied on, attaching supporting documents;~~
- ~~(d) observations on why consolidation is warranted; and~~
- ~~(e) the terms of consolidation sought in the order.~~

~~(4) The Secretary General shall transmit the request for consolidation referred to in paragraph (1) to all parties named in the request and invite them to:~~

- ~~(a) submit their observations on the request with any supporting documents within 45 days after the date of receipt of the request; and~~
- ~~(b) indicate whether a hearing is requested or whether they consent to the order being made on the basis of the written submissions filed.~~

~~(5) The Secretary General shall also transmit a copy of the request for consolidation to all arbitrators appointed in the individual arbitrations.~~

~~(6) The request for consolidation shall be decided by a single Consolidating Arbitrator who shall:~~

~~(a) be selected by the Secretary General from the ICSID Panel of Arbitrators, after consulting as far as possible with the parties named in the request for consolidation;~~
~~(b) not have the nationality of any of the parties to the individual arbitrations;~~
~~(c) not be appointed in any of the individual arbitrations;~~
~~(d) be appointed as soon as possible, and no later than 60 days after the Secretary General receives the request for consolidation referred to in paragraph (3); and~~
~~(e) set a date for a hearing on the request for consolidation, if required, to take place no later than 30 days after the Consolidating Arbitrator accepts the appointment.~~

~~(7) Pending the order on consolidation, each arbitration sought to be consolidated may be suspended by the Tribunal established for that individual arbitration, or suspended by the Secretary General if no Tribunal has been constituted for the individual arbitration.~~

~~(8) The Consolidating Arbitrator may order consolidation of the individual arbitrations in full or in part, or may reject the request for consolidation. The Consolidating Arbitrator shall give brief reasons for the order within 45 days after the last written or oral submissions.~~

~~(9) If the Consolidating Arbitrator orders consolidation in full, the Tribunals constituted to hear the individual arbitrations shall be deemed discontinued pursuant to AR 53. If the Consolidating Arbitrator orders consolidation in part, the Tribunals constituted to hear the individual arbitrations shall continue only with respect to those parts that were not consolidated.~~

	<p>(10) If the Consolidating Arbitrator orders consolidation in full or in part, a Tribunal shall be constituted to hear and decide the Consolidated Arbitration.</p> <p>(11) The Tribunal for the Consolidated Arbitration shall consist of three members, with one selected by the claimants jointly, one selected by the respondents jointly, and the Presiding arbitrator selected by agreement of the claimants and the respondent. If the Tribunal for the Consolidated Arbitration has not been constituted within 45 days after dispatch of the order on consolidation, the Chairman shall appoint the arbitrators not yet appointed in accordance with the procedure in AR 25.</p> <p>(12) The Tribunal for the Consolidated Arbitration may consider requests by other parties to join the Consolidated Arbitration. In so doing, the Tribunal shall consider the stage of the proceedings, the costs incurred to date by the existing parties, and whether the criteria referred to in paragraph (2) are met.</p>	
	<p>Rule 50-44 – Provisional Measures</p> <p>(1) A party may at any time request that the Tribunal recommend provisional measures to preserve that party’s rights, including measures to:</p> <ul style="list-style-type: none"> (a) prevent action that is likely to cause (i) current or imminent harm to <u>that the other</u> party; or (ii) prejudice to the arbitral process; (b) maintain or restore the <i>status quo</i> pending determination of the dispute; <u>and/or</u> (c) preserve evidence that may be relevant to the resolution of the dispute. <p>(2) The following procedure shall apply:</p> <ul style="list-style-type: none"> (a) the request shall specify the rights to be preserved, the measures requested, and the circumstances that require such measures; (b) the Tribunal shall fix time limits for written or <u>and</u> oral submissions, as required, on the request; 	-

<p>(c) if a party requests provisional measures 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> <ul style="list-style-type: none"> (i) the constitution of the Tribunal; (ii) the last written submission on the request; or (iii) the last oral submission on the request. <p>(3) In deciding whether to recommend provisional measures, the Tribunal shall consider:</p> <ul style="list-style-type: none"> (a) <u>whether the measures are urgent and necessary;</u> (b) <u>the effect that the measures may have on each party; and</u> (c) <u>all other relevant circumstances. The Tribunal shall only recommend provisional measures if it determines that they are urgent and necessary.</u> <p>(4) The Tribunal may recommend provisional measures on its own initiative. The Tribunal may also recommend provisional measures different from those requested by a party.</p> <p>(5) A party must<u>shall</u> promptly disclose any material change in the circumstances upon which the Tribunal recommended provisional measures.</p> <p>(6) The Tribunal may at any time modify or revoke the provisional measures, on its own initiative or upon a party's request.</p> <p>(7) A party may request any judicial or other authority to order provisional measures if such recourse is available<u>inpermitted by</u> the instrument recording the parties' consent to arbitration.</p>	
<p>Rule <u>5245</u> – Ancillary Claims</p>	<p>-</p>

<p>(1) Unless the parties agree otherwise, a party may file an incidental or additional claim or a counter-claim (“ancillary claim”) arising directly out of the subject-matter of the dispute, provided that such ancillary claim is within the scope of the consent of the parties and the jurisdiction of the Centre.</p> <p>(2) An incidental or additional claim shall be presented no later than the date to file the reply, and a counter-claim shall be presented no later than the date to file the counter-memorial, unless the Tribunal decides otherwise.</p> <p><u>(3) The Tribunal shall fix time limits for written and oral submissions, as required, on the ancillary claim.</u></p>	
<p>Rule 53-46 Default</p> <p>(1) A party is in default if it fails to appear or present its case, or indicates that it will not appear or present its case.</p> <p>(2) If a party is in default at any stage of the proceeding, the other party may request that the Tribunal address the questions submitted to it and render an Award.</p> <p>(3) Upon receipt of the request referred to in paragraph (2), the Tribunal shall notify the defaulting party of the request and grant a grace period to cure the default, unless it is satisfied that the defaulting party does not intend to appear or present its case. The grace period shall not exceed 60 days without the consent of the other party.</p> <p>(4) If <u>request in paragraph (2) relates to a failure to appear at a the default relates to a first session or hearing</u>, the Tribunal may set the grace period as follows:</p> <ul style="list-style-type: none"> (a) reschedule the first session or hearing to a date within 60 days after the original date; (b) proceed with the first session or hearing in the absence of the defaulting party and fix a time limit for the defaulting party to file a 	-

<p>written submission within 60 days after the first session or hearing; or (c) cancel the hearing and fix a time limit for the parties to file written submissions within 60 days after the original date of the first session or hearing.</p> <p>(5) If the default relates to another scheduled procedural step, the Tribunal may set the grace period to cure the default by fixing a new time limit for the defaulting party to complete that step within 60 days after the date of the notice of default referred to in paragraph (3).</p> <p>(6) A party's default shall not be deemed an admission of the assertions made by the other party.</p> <p>(7) The Tribunal may invite the party that is not in default appearing to file observations, produce evidence or make oral submissions.</p> <p>(8) If the defaulting party fails to act within the grace period or if no such period is granted, the Tribunal shall examine the jurisdiction of the Centre and its own competence before deciding the questions submitted to it and rendering an Award.</p>	
<p><u>CHAPTER VII- COSTS (NEW)</u></p>	<p>[This cell is intentionally left blank.]</p>
<p><u>Rule 19-47</u> Payment of Advances and Costs of the Proceeding</p> <p>(1) The Tribunal shall determine the portion of the advances payable by each party in accordance with Administrative and Financial Regulation 14(5) to defray the costs of the Tribunal and the Centre in connection with the proceeding.</p> <p>(2) The costs of the proceeding are all costs incurred by the parties in connection with the proceeding, including:</p> <p>(a) the legal fees and expenses of the parties;</p>	<p>-</p>

	<p>(b) the fees and expenses of the members of the Tribunal, <u>Tribunal-appointed experts and any Tribunal assistants approved by the parties</u>; and</p> <p>(c) the administrative charges and direct costs of the Centre.</p> <p>(3) The Tribunal shall request that each party file a statement of costs before allocating the costs of the proceeding between the parties.</p> <p>(4) In determining and allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including:</p> <p style="padding-left: 20px;">(a) the outcome of any part of the proceeding or overall;</p> <p style="padding-left: 20px;">(b) the parties' conduct during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner;</p> <p style="padding-left: 20px;">(c) the complexity of the issues; and</p> <p style="padding-left: 20px;">(d) the reasonableness of the costs claimed.</p> <p>(5) The Tribunal may at any time make interim decisions on the costs of any part of a proceeding.</p> <p>(6) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.</p>	
	<p><u>Rule 48 Payment of Advances</u></p> <p><u>The Tribunal shall determine the portion of the advances payable by each party in accordance with Administrative and Financial Regulation 15 to defray the costs referred to in Rule 47(b) and (c)</u></p>	<p>We support having a separate chapter specific to costs and establishing AR 48, with its current formulation, as a separate rule.</p>
	<p><u>Rule 49 Statement of and Submissions on Costs</u></p> <p><u>The Tribunal shall request that each party file a statement of its costs and a written submission on the allocation of costs before allocating the costs of the proceeding between the parties.</u></p>	<p>We support having a separate chapter specific to costs and establishing AR 49, with its current formulation, as a separate rule.</p>

<p><u>Rule 50 Decisions on Costs</u></p> <p><u>(1) In allocating the costs of the proceeding, the Tribunal shall consider:</u></p> <ul style="list-style-type: none"> <u>(a) the outcome of the proceeding or any part of it;</u> <u>(b) the parties' conduct during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner;</u> <u>(c) the complexity of the issues;</u> <u>(d) the reasonableness of the costs claimed; and</u> <u>(e) all other relevant circumstances</u> <p><u>(2) The Tribunal may make interim decisions on the costs of any part of a proceeding at any time.</u></p> <p><u>(3) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.</u></p>	<p>We support having a separate chapter specific to costs and establishing AR 50, with its current formulation, as a separate rule.</p>
<p>Rule 51 – Security for Costs</p> <p>(1) A party may request<u>Upon the request of a party, that</u> the Tribunal <u>may</u> order the other any party <u>asserting a claim or counterclaim</u> to provide security for the costs of the proceeding and determine the appropriate terms for provision of the security.</p> <p>(2) The following procedure shall apply:</p> <ul style="list-style-type: none"> (a) the request shall specify the circumstances that require security for costs; (b) the Tribunal shall fix time limits for written and/or oral submissions, as required, on the request; (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>We continue to support having this provision as well as ICSID's proposed amendments in WP 2. The changes are welcome because they set out greater guidance for the tribunal in deciding whether to make an order for security for costs.</p>

<p>(d) the Tribunal shall issue its decision on the request within 30 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 request; or (iii) the last oral submission on the request. <p>(3) In determining whether to order a party to provide security for costs, the Tribunal shall consider:</p> <ul style="list-style-type: none"> <u>(a) the that party's ability to comply with an adverse decision on costs; and</u> <u>(b) any other relevant circumstances. that party's willingness to comply with an adverse decision on costs;</u> <u>(c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim;</u> <u>(d) the conduct of the parties; and</u> <u>(e) all other relevant circumstances.</u> <p><u>(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.</u></p> <p><u>(4)(5)</u> If a party fails to comply with an order for to provide security for costs, the Tribunal may suspend the proceeding until the security is provided. 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><u>(56)</u> A party must <u>shall</u> promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.</p> <p><u>(67)</u> The Tribunal may at any time modify or revoke its order for on security for costs, on its own initiative or upon a party's request.</p>	
<p>CHAPTER VIII - SUSPENSION, SETTLEMENT & DISCONTINUANCE</p>	<p>[This cell is intentionally left blank.]</p>

Rule ~~54-52~~ – Suspension of the Proceeding

(1) The Tribunal shall suspend the proceeding by agreement of the parties.

~~(2) Except as otherwise provided in the Administrative and Financial Regulations or these Rules, T~~the Tribunal may suspend the proceeding upon the request of either party or on its own initiative, except as otherwise provided in the Administrative and Financial Regulations or these Rules on:

- ~~(a) agreement of the parties;~~
- ~~(b) request of a party; or~~
- ~~(c) its own initiative.~~

~~(23)~~ The Tribunal shall give the parties the opportunity to make observations before ordering the suspension ~~of the proceeding~~ pursuant to paragraph ~~(1)(b) or (c)~~(2).

~~(34)~~ In its order ~~recording the suspension of~~suspending the proceeding the Tribunal shall specify:

- (a) the period of the suspension;
- (b) any appropriate conditions; and
- (c) a modified procedural calendar to take effect on resumption of the proceeding, if necessary.

(5) The Tribunal shall extend the period of the suspension prior to its expiry by agreement of the parties.

~~(46)~~ The Tribunal may extend the period of the suspension prior to its expiry, on its own initiative or upon a party's request, after giving the parties an opportunity to make observations.

(5) The Secretary-General shall suspend the proceedings pursuant to paragraph (1) ~~(a) or extend the suspension pursuant to paragraph (5)~~ if the

	<p>Tribunal has not yet been constituted or if there is a vacancy on the Tribunal. The parties shall inform the Secretary-General of the period of the suspension and any conditions agreed to by the parties.</p>	
	<p>Rule 55-53 – Settlement and Discontinuance (1) If the parties notify the Tribunal that they have agreed to discontinue the proceeding, the Tribunal shall issue an order taking note of the discontinuance. (2) If the parties agree on a settlement of the dispute before the Award is rendered, the Tribunal: (a) shall issue an order taking note of the discontinuance of the proceeding, if the parties so request; or (b) may record the settlement in the form of an Award, if the parties file the complete and signed text of their settlement and request that the Tribunal embody such settlement in an Award. (3) The Secretary-General shall issue the order referred to in paragraphs (1) and (2)(a) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.</p>	-
	<p>Rule 56-54– Discontinuance at Request of a Party (1) If a party requests the discontinuance of the proceeding, the Tribunal shall fix a time limit within which the other party may oppose the discontinuance. If no objection in writing is made within the time limit, the other party shall be deemed to have acquiesced in the discontinuance and the Tribunal shall issue an order taking note of the discontinuance of the proceeding. If any objection in writing is made within the time limit, the proceeding shall continue. (2) The Secretary-General shall fix the time limit and issue the order referred to in paragraph (1) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.</p>	-
	<p>Rule 57-55 – Discontinuance for Failure of Parties to Act (1) If the parties fail to take any steps in the proceeding for more than 150 days, the Tribunal shall notify them of the time elapsed since the last step taken in the proceeding.</p>	-

<p>(2) If the parties fail to take a step within 30 days after the notice referred to in paragraph (1), they shall be deemed to have discontinued the proceeding and the Tribunal may<u>shall</u> issue an order taking note of the discontinuance.</p> <p>(3) If either party takes a step within 30 days after the notice referred to in paragraph (1), the proceeding shall continue.</p> <p>(4) The Secretary-General shall issue the notice and the order referred to in paragraphs (1) and (2) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.</p>	
<p>Rule 58-56 – Discontinuance for Failure to Pay If the parties fail to make payments to defray the costs of the proceeding as required by Administrative and Financial Regulation 14, the proceeding may be discontinued pursuant to that Regulation.</p>	-
<p>CHAPTER IX - THE AWARD</p>	[This cell is intentionally left blank.]
<p>Rule 59-57 – Timing of the Award (1) The Tribunal shall render the Award as soon as possible and in any event no later than:</p> <ul style="list-style-type: none"> (a) 60 days after the last written or oral submission, <u>or the Tribunal constitution, whichever is later</u>, if the Award is rendered pursuant to Rule 35(4)40(3); (b) 180 days after the last written or oral submission if the Award is rendered pursuant to Rule 36(7)42BIS(3)(c); or (c) 240 days after the last written or oral submission on all other matters. <p>(2) A statement of costs <u>and submissions on costs</u> filed in accordance with Rule 19(3)49 shall not be considered a <u>written</u> submission for the purposes of calculating the time limits referred to in paragraph (1).</p>	-
<p>Rule 6058 – Contents of The Award (1) The Award shall be in writing and shall contain:</p>	-

	<p>(a) a precise designation of each party;</p> <p>(b) the names of the representatives of the parties;</p> <p>(c) a statement that the Tribunal was established under the Convention, and a description of the method of its constitution;</p> <p>(d) the name of each member of the Tribunal and the appointing authority of each;</p> <p>(e) the dates and place(s) of the first session, <u>case management conferences</u> and the hearings;</p> <p>(f) a brief summary of the proceeding;</p> <p>(g) a statement of the relevant facts as found by the Tribunal;</p> <p>(h) a brief summary of the submissions of the parties, including the relief sought;</p> <p>(i) the decision of the Tribunal on every question submitted to it, and the reasons on which the Award is based; and</p> <p>(j) a statement of the costs of the proceeding, including the fees and expenses of each member of the Tribunal, and a reasoned decision <u>regarding the on the allocation of the costs of the proceeding.</u></p> <p>(2) The Award shall be signed by the members of the Tribunal who voted for it. It may be signed by electronic means if the parties agree.</p> <p>(3) Any member of the Tribunal may attach an individual opinion or a statement of dissent to the Award before the Award is rendered.</p>	
	<p>Rule 6159 – Rendering of the Award</p> <p>(1) Once the Award has been signed by the members of the Tribunal who voted for it, the Secretary-General shall promptly:</p> <p>(a) dispatch a certified copy of the Award to each party, together with any individual opinion and statement of dissent, indicating the date of dispatch on the Award; and</p> <p>(b) deposit the Award in the archives of the Centre, together with any individual opinion and statement of dissent.</p>	-

	<p>(2) The Award shall be deemed to have been rendered on the date of dispatch.</p> <p>(3) The Secretary-General shall provide additional certified copies of the Award to a party upon request.</p>	
	<p>Rule 62-60 – Supplementary Decision and Rectification</p> <p>(1) A Tribunal may rectify any clerical, arithmetical or similar error in the Award on its own initiative within 30 days after rendering the Award.</p> <p>(2) A party requesting a supplementary decision on, or the rectification of, an Award pursuant to Article 49(2) of the Convention shall, <u>within 45 days after the Award was rendered</u>, file the request with the Secretary-General within 45 days after the Award was rendered and pay the lodging fee published in the schedule of fees.</p> <p>(2) The request referred to in paragraph (2) shall:</p> <ul style="list-style-type: none"> (a) identify the Award to which it relates; (b) be signed by each requesting party or its representative and be dated; and (c) specify: <ul style="list-style-type: none"> (i) with respect to a request for a supplementary decision, any question which the Tribunal omitted to decide in the Award; and (ii) with respect to a request for rectification, any clerical, arithmetical or similar error in the Award. <p>(3) Upon receipt of the request and the lodging fee, the Secretary-General shall promptly:</p> <ul style="list-style-type: none"> (a) transmit the request to the other party; (b) register the request, or refuse registration if the request is not made within the time limit referred to in paragraph (2); and (c) notify the parties of the registration or refusal to register. 	-

<p>(54) As soon as the request is registered, the Secretariat<u>Secretary-General</u> shall transmit the request and the notice of registration to each member of the Tribunal.</p> <p>(65) The President of the Tribunal shall determine the procedure to consider the request, after consulting with the other members of the Tribunal and the parties.</p> <p>(76) Rules 60-61<u>58-59</u> shall apply to any decision of the Tribunal pursuant to this Rule.</p> <p>(87) The Tribunal shall issue the supplementary decision or rectification within 60 days after the last written or oral submission on the request.</p> <p>(98) The date of dispatch of the supplementary decision or rectification shall be the relevant date for the purposes of calculating the time limits specified in Articles 51(2) and 52(2) of the Convention.</p> <p>(409) A supplementary decision or rectification under this Rule shall become part of the Award and shall be reflected on all certified copies of the Award.</p>	
<p>CHAPTER X – PUBLICATION, ACCESS TO PROCEEDINGS & NON-DISPUTING PARTY SUBMISSIONS</p>	<p>[This cell is intentionally left blank.]</p>
<p>Rule 44-61 – Publication of Awards and Decisions On Annulment</p> <p>(1) With consent of the parties, the Centre shall publish every Award, supplementary decision on an Award, rectification, interpretation, and revision of an Award, and decision on annulment.</p> <p>(2) Consent to publish the documents referred to in paragraph (1) shall be deemed to have been given if no party objects in writing to such publication within 60 days after the date of dispatch of the document. The parties may consent to publication of the full text or a redacted text of the document referred to in paragraph (1).</p>	<p><i>We strongly support ICSID’s proposal in WP 2. In our view it is the appropriate approach to the publication of Awards, taking into account the constraints imposed by the Convention. We also note that it always remains open for States who desire greater transparency to negotiate this in their treaties to the effect that parties to a particular treaty agree that they shall consent in ICSID arbitrations to the publication of Awards.</i></p>

<p>(3) Absent consent of the parties referred to in paragraphs (1) or (2), the Centre shall publish excerpts of the legal reasoning in such documents (“excerpts”). The following procedure shall apply to publication of excerpts:</p> <p>(a) the Centre shall propose excerpts to the parties within 30 days after receiving notice that a party declines consent to publication of a document referred to in paragraphs (1) <u>and (2), or if the parties have not provided their consent to publication within 90 days after the dispatch of the document;</u></p> <p>(b) the parties may send comments on the proposed excerpts to the Centre within 30 days after their receipt; and</p> <p>(c) the Centre shall <u>consider the comments on the proposed excerpts, if any, and</u> publish excerpts within 30 days after receipt of <u>the parties’ those comments on the proposed excerpts, if any.</u></p>	
<p>Rule 45-62 – 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>	-
<p>Rule 46-63– Publication of Documents Filed by a Party</p> <p><u>(1) Upon request of a party, the Centre shall publish any written submissions, observations or other documents which that party filed in the proceeding, with redactions agreed to by the parties.</u></p> <p><u>(2) The parties may refer any dispute regarding the publication or redaction of a document in paragraph (1) to the Tribunal for determination. The Centre shall publish the document in accordance with the determination of the Tribunal.</u></p>	-

<p>Rule 47 64 – Observation of Hearings</p> <p>(1) The Tribunal shall allow persons in addition to the parties, their representatives, witnesses and experts during their testimony, and persons assisting the Tribunal to observe hearings, unless either party objects.</p> <p>(2) The Tribunal shall establish procedures to prevent the disclosure of confidential information to persons observing the hearings.</p> <p>(3) The Centre shall publish <u>video</u> recordings orand transcripts of <u>those portions of hearings that were available for observation by the public in accordance with paragraph (1)</u>, unless either party objects.</p>	-
<p>Rule 48 65 – Submission of Non-Disputing Parties</p> <p>(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. <u>The application shall be made in a procedural language used in the proceeding.</u></p> <p>(2) In determining whether to permit a non-disputing party submission, the Tribunal shall consider all relevant circumstances, including:</p> <ul style="list-style-type: none"> (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. 	-

<p>(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.</p> <p>(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: <u>the format, length or scope of the written submission and the time limit to file the submission.</u></p> <p style="padding-left: 40px;">(a) the format, length or scope of the submission; (b) the date of filing; and (c) the payment of funds to defray the increased costs of the proceeding attributable to the non-disputing party's participation.</p> <p><u>(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.</u></p> <p>(56) The Tribunal may provide the non-disputing party with access to relevant documents filed in the proceeding, unless either party objects.</p> <p>(67) 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>Rule 49-66 – 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 (“non-disputing Treaty Party”) to make a written submission on the <u>application or</u> interpretation of <u>a the</u> treaty at issue in the dispute <u>and upon which consent to arbitrate is based.</u></p>	<p><i>We strongly support</i> retaining a rule dealing with the participation of a Non-Disputing Treaty Party (“NDTP”). However, we align ourselves with the views of the States that support the WP 1 version of this rule which does not limit the NDTP’s submissions to interpretations of the treaty and does not allow a Tribunal to impose conditions</p>

	<p>(2) A-The Tribunal may allow a non-disputing Treaty Party to make a written submission on any other matter within the scope of the dispute, in accordance with the procedure in Rule 48 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 non-disputing Treaty Party.</p>	<p>on the filing of submissions by the NDTP. States should have the broadest possible space to intervene as and when required because it is difficult to predict all the possible situations where a NDTP sees a necessity to intervene on issues that bear on the interpretation of a treaty to which it is a party. Therefore, this provision should be left as open-ended as possible.</p>
	<p>CHAPTER XI - INTERPRETATION, REVISION AND ANNULMENT OF THE AWARD</p>	<p>[This cell is intentionally left blank.]</p>
	<p>Rule 63-67 – The Application</p> <p>(1) A party applying for interpretation, revision or annulment of an Award shall file the application with the Secretary-General, together with any supporting documents and pay the lodging fee published in the schedule of fees.</p> <p>(2) The application shall:</p> <ul style="list-style-type: none"> (a) identify the Award to which it relates; (b) be in an official a procedural language <u>of the Centre</u> used in the original proceeding, <u>or in any official language of the Centre if no official language was used in the original proceeding;</u> (c) be signed by each applicant or its representative and be dated; <u>and</u> (d) attach proof of any representative’s authority to act; and (e) include the contents and be filed within the time limits referred to in paragraphs (3)–(5). <p>(3) An application for interpretation made pursuant to Article 50(1) of the Convention may be filed at any time after the dispatch of the Award and shall specify the points in dispute concerning the meaning or scope of the Award.</p>	<p>-</p>

(4) An application for revision ~~made~~ pursuant to Article 51(1) of the Convention shall be filed within 90 days after the discovery of a fact of such a nature as decisively to affect the Award, and in any event within three years after the Award (or any supplementary decision on or rectification of the Award) was rendered. The application shall specify:

- (a) the change sought in the Award;
- (b) the newly discovered fact that decisively affects the Award; and
- (c) ~~evidence that when the Award was rendered that~~ the fact was unknown to the Tribunal and to the applicant when the Award was rendered, and that the applicant's ignorance of that fact was not due to negligence.

(5) An application for annulment ~~made~~ pursuant to Article 52(1) of the Convention shall:

- (a) be filed within 120 days after the date on which the Award (or any supplementary decision on or rectification of the Award) was rendered if the application is based on any of the grounds in Article 52(1)(a), (b), (d) or (e) of the Convention; or
- (b) be filed within 120 days after the discovery of corruption on the part of a member of the Tribunal and in any event within three years after the date on which the Award (or any supplementary decision on or rectification of the Award) was rendered, if the application is based on Article 52(1)(c) of the Convention; and
- (c) specify the grounds on which it is based, limited to the grounds in Article 52(1)(a)-(e) of the Convention, and the reasons in support of each ground.

~~(76) The last date for filing an application under this Rule shall be determined in accordance with Rule 7.~~ A complete application and evidence of payment of the lodging fee must be filed by ~~such date~~ time limits referred to in paragraphs (4) or (5).

<p>(76) Upon receiving an application and the lodging fee, the Secretary-General shall promptly:</p> <ul style="list-style-type: none"> (a) transmit the application and the supporting documents to the other party; (b) register the application, or refuse registration if the application is not made within the relevant time limits referred to in paragraphs (3) or (4); and (c) notify the parties of the registration or refusal to register. <p>(8) An applicant may withdraw from its-an application before it has been registered by filing a written notice of withdrawal with the Secretary-General. The SecretariatSecretary-General shall promptly notify the parties of the withdrawal, unless the application has not yet been transmitted to the other party pursuant to paragraph (57)(a).</p>	
<p>Rule 64-68 Interpretation or Revision: Reconstitution of the Tribunal</p> <p>(1) As soon as an application for the interpretation or revision of an Award is registered, the Secretary-General shall:</p> <ul style="list-style-type: none"> (a) transmit the notice of registration, the application and any supporting documents to each member of the original Tribunal; and (b) request each member of the Tribunal to inform the Secretary-General within 10 days whether that member can take part in the consideration of the application. <p>(2) If all members of the Tribunal can take part in the consideration of the application, the Secretary-General shall notify the Tribunal and the parties of the reconstitution of the Tribunal.</p> <p>(3) If the Tribunal cannot be reconstituted in accordance with paragraph (2), the Secretary-General shall invite the parties to constitute a new Tribunal without delay. The new Tribunal shall have the same number of arbitrators and be appointed by the same method as the original Tribunal.</p>	-

<p>Rule 65-69 Annulment: Appointment of <i>ad hoc</i> Committee</p> <p>(1) As soon as an application for annulment of an Award is registered, the Chairman shall appoint an <i>ad hoc</i> Committee in accordance with Article 52(3) of the Convention.</p> <p>(2) Each member of the Committee shall provide a signed declaration in accordance with Rule 2618.</p> <p>(3) The Committee shall be deemed to be constituted on the date the Secretary-General notifies the parties that all members have accepted their appointment.</p>	-
<p>Rule 66-70 Procedure Applicable to Interpretation, Revision and Annulment</p> <p>(1) Except as provided below, the provisions of these Rules shall apply, with necessary modifications, to any procedure relating to the interpretation, revision or annulment of an Award and to the decision of the Tribunal or Committee.</p> <p>(2) The procedural agreements and orders on matters addressed at the first session of the original Tribunal shall <u>continue to</u> apply to an <u>interpretation, revision or annulment</u> proceeding under this Rule, with necessary modifications, unless the parties agree or the Tribunal or Committee orders otherwise.</p> <p>(3) In addition to the application, the written procedure shall consist of one round of written submissions <u>in an interpretation or revision proceeding, and two rounds of written submissions in an annulment proceeding</u>, unless the parties agree or the Tribunal or Committee orders otherwise.</p> <p>(4) A hearing shall be held upon the request of either party, or if ordered by the Tribunal or Committee.</p>	-

	<p>(5) The Tribunal or Committee shall issue its decision within 120 days after the last written or oral submission on the application.</p>	
	<p>Rule 67 71 – Stay of Enforcement of the Award</p> <p>(1) A party to an interpretation, revision or annulment proceeding may request a stay of enforcement of all or part of the Award at any time before the final decision on the application.</p> <p>(2) If the stay is requested in the application for revision or annulment of an Award, enforcement shall be stayed provisionally by the Secretary-General until the Tribunal or Committee decides on the request.</p> <p>(3) The following procedure shall apply:</p> <ul style="list-style-type: none"> (a) the request shall specify the circumstances that require the stay; (b) the Tribunal or Committee shall fix time limits for written or oral submissions, as required, on the request; (c) if a party files the request before the constitution of the Tribunal or Committee, the Secretary-General shall fix time limits for written submissions on the request, so that the Tribunal or Committee may consider the request promptly upon its constitution; and (d) the Tribunal or Committee shall issue its decision on the request within 30 days after the latest of: <ul style="list-style-type: none"> (i) the constitution of the Tribunal or Committee; (ii) the last written submission on the request; or (iii) the last oral submission on the request. <p>(4) If a Tribunal or Committee decides to stay enforcement of the Award, it may impose conditions for the stay, or for lifting the stay, in view of all relevant circumstances.</p>	-

<p>(5) A party must shall promptly disclose to the Tribunal or Committee any change in the circumstances upon which the enforcement was stayed.</p> <p>(6) The Tribunal or Committee may at any time modify or terminate a stay of enforcement, on its own initiative or upon a party's request.</p> <p>(7) A stay of enforcement shall terminate on the date of dispatch of the decision on the application for interpretation, revision or annulment, or on the date of discontinuance of the proceeding.</p>	
<p>Rule-68 72 – Resubmission of Dispute after an Annulment.</p> <p>(1) If a Committee annuls all or part of an Award, either party may file with the Secretary-General a request to resubmit the dispute to a new Tribunal, together with any supporting documents and pay the lodging fee published in the schedule of fees.</p> <p><u>(2)</u> The request shall:</p> <ul style="list-style-type: none"> (a) identify the Award to which it relates; (b) be in a proceduralan official language used in the original proceeding of the Centre; (c) be signed by each requesting party or its representative and be dated; (d) attach proof of any representative's authority to act; and (e) specify which aspect(s) of the dispute is resubmitted to the new Tribunal. <p><u>(23)</u> Upon receiving a request for resubmission and the lodging fee, the Secretary-General shall promptly:</p> <ul style="list-style-type: none"> (a) transmit the request and the supporting documents to the other party; (b) register the request; (c) notify the parties of the registration; and 	-

	<p>(d) invite the parties to constitute a new Tribunal without delay, which shall have the same number of arbitrators, and be appointed by the same method as the original Tribunal, <u>unless the parties agree otherwise.</u></p> <p>(34) If the original Award was annulled in part, the new Tribunal shall only <u>reconsider that part</u> the aspect(s) of the dispute pertaining to the annulled portion of the Award.</p> <p>(45) Except as otherwise provided in paragraphs (1)-(3), these Rules shall apply to the resubmission proceeding.</p> <p>(56) The procedural agreements and orders on matters addressed at the first session of the original Tribunal shall <u>not</u> apply to the resubmission proceeding, with necessary modifications, unless the parties agree or the new Tribunal orders otherwise.</p>	
	<p>CHAPTER XII EXPEDITED ARBITRATION</p>	<p>[This cell is intentionally left blank.]</p>
	<p>Rule 69-73 Consent of Parties to Expedited Arbitration</p> <p>(1) The parties to an arbitration conducted under the ICSID Convention may consent to expedite the arbitration in accordance with this Chapter (“expedited arbitration”) by following the procedure in paragraph (2).</p> <p>(2) The parties shall jointly notify the Secretariat in writing of their consent to an expedited arbitration in accordance with this Chapter. Such notice must be received within 20 days after the date of registration of the Request.</p> <p>(32) Chapters I-XI of the (Additional Facility) Arbitration Rules shall apply to an expedited arbitration except that:</p> <p>(a) Rules 14, 15, 17, 29(3), 38, 39, 40, 42, 42BIS, and 43 <u>Rules 45, 47, 48, 52, and 53</u> do not apply in an expedited arbitration pursuant to this Chapter; and</p>	<p>-</p>

<p>(b) Rules 18, 22, 28, 36, 42, 46, 57, 60 and 70, Rules 36, 40, 44, 46, 50, 62, 69, and 72, as modified by Rules 74-81<u>82</u>, apply in an expedited arbitration pursuant to this Chapter.</p> <p><u>(3) If the parties consent to expedited arbitration after the constitution of the Tribunal pursuant to Chapter II, Rules 74-76 shall not apply, and the expedited arbitration shall proceed subject to all members of the Tribunal confirming their availability pursuant to Rule 77(2). If any arbitrator fails to confirm availability before the expiry of the applicable time limit, the arbitration shall proceed in accordance with Chapters I-XI.</u></p>	
<p>Rule 70-74 Number of Arbitrators and Method of Constituting the Tribunal for Expedited Arbitration</p> <p>(1) The Tribunal in an expedited arbitration shall consist of a Sole Arbitrator appointed pursuant to Rule 75 or a three-member Tribunal appointed pursuant to Rule 76.</p> <p>(2) The parties shall jointly notify the Secretariat<u>Secretary-General</u> in writing of their election of a Sole Arbitrator or a three-member Tribunal within 30 days after <u>the notice of consent referred to in Rule 73(1)</u>the date of registration of the Request.</p> <p>(3) If the parties do not notify the Secretary-General Secretariat of their election within the time limit referred to in paragraph (2), the Tribunal shall consist of a Sole Arbitrator to be appointed in accordance with Rule 75.</p> <p>(4) An appointment under Rules 75- <u>or</u> 76 shall be deemed an appointment in accordance with a method agreed by the parties.</p>	-
<p>Rule 71-75 Appointment of Sole Arbitrator for Expedited Arbitration</p> <p>(1) A Sole Arbitrator in an expedited arbitration shall be appointed in accordance with the following procedure:</p> <p>(a) the parties shall jointly advise the Secretary-General in writing of their agreement on the Sole Arbitrator and shall provide the</p>	-

appointee's name, nationality(ies) and contact information within 20 days after the notice referred to in Rule 74(2); and

(b) the Secretary-General shall immediately send the request for acceptance of the appointment to the appointee and shall request a reply within 10 days of receipt in accordance with Rule 77(1);

(2) The Secretary-General shall appoint the Sole Arbitrator if:

(a) the parties do not agree on the Sole Arbitrator within the time limit referred to in paragraph (1)(a);

(b) the parties notify the Secretary-General that they are unable to agree on the Sole Arbitrator;

(c) the appointee does not accept the appointment within the time limit referred to in Rule 77(1); or

(d) the appointee declines the appointment.

(3) The following procedure shall apply to the appointment by the Secretary-General of the Sole Arbitrator pursuant to paragraph (2):

(a) the Secretary-General shall transmit a list of five candidates for appointment as Sole Arbitrator to the parties within 10 days after the relevant event referred to in paragraph (2);

(b) each party may strike one name from the list, and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-

General within 10 days after receipt of the list;

(c) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them;

(d) the Secretary-General shall immediately send the request for acceptance of the appointment to the appointee and shall request a reply within 10 days of receipt in accordance with Rule 77(1); and

	<p>(e) if the selected candidate <u>declines the appointment or</u> does not accept the appointment <u>within the time limit referred to in Rule 77(1)</u>, the Secretary-General shall select the next highest-ranked candidate.</p>	
	<p>Rule 72-76 Appointment of Three-Member Tribunal for Expedited Arbitration</p> <p>(1) A three-member Tribunal shall be appointed in accordance with the following procedure:</p> <p>(a) each party shall appoint an arbitrator (“co-arbitrators”) within 20 days after the notice referred to in Rule 74(2) and shall notify the Secretary-General of the appointee’s² names, <u>nationalities</u> <u>nationally(ies)</u> and contact information within such time;</p> <p>(b) the Secretary-General shall immediately send the request for acceptance of the appointment to the appointee and shall request a reply within 10 days of receipt in accordance with Rule 77(1);</p> <p>(c) the parties shall jointly appoint the President of the Tribunal within 20 days after the receipt of acceptance of both appointments made pursuant to paragraph (1)(a) and shall notify the Secretary-General of the appointee’s name, nationality(ies) and contact information within such time; and</p> <p>(d) the Secretary-General shall immediately send the request for acceptance of the appointment to the appointee and shall request a reply within 10 days of receipt in accordance with Rule 77(1).</p> <p>(2) The Secretary-General shall appoint the arbitrators not yet appointed if:</p> <p>(a) an appointment is not made within the time limits referred to in paragraph (1)(a) or (c);</p> <p>(b) the parties notify the Secretary-General that they are unable to agree on the President of the Tribunal;</p> <p>(c) an appointee does not accept the appointment within the time limit referred to in Rule 77(1); or</p> <p>(d) an appointee declines the appointment.</p>	

	<p>(3) The following procedure shall apply to the appointment by the Secretary-General of any arbitrators not yet appointed pursuant to paragraphs (1) and (2):</p> <p>(a) the Secretary-General shall first appoint the co-arbitrator(s) not yet appointed, after consulting as far as possible with the parties. The Secretary-General shall use best efforts to make the co-arbitrator appointment(s) within 15 days after the relevant event in paragraph (2);</p> <p>(b) the Secretary-General shall immediately send the request for acceptance of the appointment to the appointee and shall request a reply within 10 days of receipt in accordance with Rule 77(1);</p> <p>(c) as soon as both co-arbitrators have accepted their appointment, or within 10 days after the relevant event referred to in paragraph (2), the Secretary-General shall transmit a list of five candidates for appointment as President of the Tribunal to the parties;</p> <p>(d) each party may strike one name from the list, and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;</p> <p>(e) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them;</p> <p>(f) the Secretary-General shall immediately send the request for acceptance of the appointment to the appointee and shall request a reply within 10 days of receipt in accordance with Rule 77(1); and</p> <p>(g) if the selected candidate <u>declines the appointment or</u> does not accept the appointment <u>within the time limit referred to in Rule 77(1)</u>, the Secretary-General shall select the next highest-ranked candidate.</p>	
	<p>Rule 73-77 Acceptance of Appointment in Expedited Arbitration</p>	<p>-</p>

	<p>(1) An arbitrator appointed in an expedited arbitration pursuant to Rule 75 or 76 shall accept the appointment and provide a declaration pursuant to Rule 3618(3) within 10 days after receipt of the request for acceptance.</p> <p>(2) An arbitrator appointed to a Tribunal constituted pursuant to Chapter II shall provide a supplementary declaration confirming their availability to conduct the arbitration in accordance with Chapter XII within 10 days after receipt of the parties' notice of consent pursuant to Rule 73(3).</p>	
	<p>Rule 74-78 First Session in Expedited Arbitration</p> <p>(1) The Tribunal shall hold a first session pursuant to Rule 44-28 within 30 days after the constitution of the Tribunal.</p> <p>(2) The first session shall be held by telephone or electronic means of communication unless both parties and the Tribunal agree it shall be held in person.</p>	-
	<p>Rule 75-79 The Procedural Schedule in Expedited Arbitration</p> <p>(1) The following schedule for written submissions and the hearing shall apply in the expedited arbitration:</p> <ul style="list-style-type: none"> (a) the requesting party shall file a memorial within 60 days after the first session, unless the Request is to be considered the memorial pursuant to Rule 22(2); (b) the other party shall file a counter-memorial within 60 days after the date of filing of the memorial, or within 60 days after the first session if the requesting party has elected to use the Request as its memorial pursuant to Rule 22(2); (c) the memorial and counter-memorial referred to in paragraph (1)(a) and (b) shall be no longer than 200 pages in length; (d) the requesting party shall file a reply within 40 days after the date of filing of the counter-memorial; (e) the other party shall file a rejoinder within 40 days after the date of filing of the reply; 	-

	<p>(f) the reply and rejoinder referred to in paragraph (1)(d) and (e) shall be no longer than 100 pages in length;</p> <p>(g) the hearing shall be held within 60 days after the last written submission is filed;</p> <p>(h) the parties shall file statements of <u>their costs and written submissions on</u> costs within 10 days after the last day of the hearing referred to in paragraph (1)(g); and</p> <p>(i) the Tribunal shall render the Award as soon as possible, and in any event no later than 120 days after the hearing referred to in paragraph (1)(g).</p> <p>(2) Any preliminary objection, counter-claim, incidental or additional claim shall be joined to the main schedule referred to in paragraph (1). The Tribunal shall adjust the schedule if a party raises any such matter, taking into account the expedited nature of the process.</p> <p>(3) The Tribunal may extend the time limits in paragraph (1)(a) and (b) by up to 30 days if any party requests that the Tribunal determine a dispute arising from requests to produce documents or other evidence pursuant to Rule 50(1)<u>36</u>. The Tribunal shall decide such applications based on written submissions and without an in-person hearing.</p> <p>(4) Any schedule for submissions other than those referred to in paragraphs (1)-(3) shall run in parallel with the main schedule in paragraph (1), unless the Tribunal determines that there are exceptional circumstances that justify the suspension of the main schedule. In fixing time limits for such submissions, the Tribunal shall take into account the expedited nature of the process.</p>	
	<p>Rule 76-80 Default during Expedited Arbitration A Tribunal may grant a party in default a grace period not to exceed 30 days pursuant to Rule 62<u>46</u>.</p>	-

<p>Rule 77-81 The Procedural Schedule for Supplementary Decision, Rectification and Interpretation in Expedited Arbitration</p> <p>(1) A Tribunal may rectify any clerical, arithmetical or similar error in the Award on its own initiative within 15 days after rendering the Award.</p> <p>(2) A request for a supplementary decision, rectification or interpretation of an Award made pursuant to Rule 62-60 shall be filed within 15 days after the Award was rendered.</p>	-
<p>Rule 78-82 The Procedural Schedule for an Application for Interpretation, Revision or Annulment of an Award Rendered in Expedited Arbitration</p> <p>(1) A Tribunal may rectify any clerical, arithmetical or similar error in the Award on its own initiative within 15 days after rendering the Award.</p> <p>(2) The following schedule for written submissions and the hearing shall apply to the procedure relating to an interpretation, revision or annulment of an Award rendered in an expedited arbitration:</p> <p>(a) the applicant shall file a memorial on interpretation, revision or annulment within 30 days after the first session;</p> <p>(b) the other party shall file a counter-memorial on interpretation, revision or annulment within 30 days after the memorial;</p> <p>(c) <u>the memorial and counter-memorial referred to in paragraph (1)(a) and (b) shall be no longer than 100 pages in length;</u></p> <p>(d) a hearing shall be held within 45 days after the date for filing the counter-memorial;</p> <p>(e) the parties shall file statements of <u>their costs and written submissions on</u> costs within 5 days after the last day of the hearing referred to in paragraph (2)(e); and</p> <p>(f) the Tribunal or Committee shall <u>render-issue</u> the decision on interpretation, revision or annulment as soon as possible, and in any</p>	-

	<p>event no later than 60 days after the hearing referred to in paragraph (21)(ed).</p> <p>(32) Any schedule for submissions other than those referred to in paragraph (21) shall run in parallel with the main schedule, unless the Tribunal or Committee determines that there are exceptional circumstances that justify the suspension of the main schedule. In fixing time limits for such submissions, the Tribunal or Committee shall take into account the expedited nature of the process.</p>	
	<p>Rule 79-83 Resubmission of a Dispute after an Annulment in Expedited Arbitration</p> <p>The consent of the parties given pursuant to Rule 69-73 shall not apply to resubmission of the dispute.</p>	-
	<p><u>Rule 84 Opting Out of Expedited Arbitration (NEW)</u></p> <p><u>(1) The parties may agree to opt out of an expedited arbitration by jointly notifying the Tribunal and Secretary-General of their agreement. Upon such notification, only Chapters I-XI shall apply to the arbitration.</u></p> <p><u>(2) The Tribunal shall determine the further procedure and fix any time limit necessary for the conduct of the proceeding.</u></p>	<p>We support having this new rule. This would allow greater flexibility and encourage parties to try the EA procedure as there is an exit option possible if they find during the process that it does not suit the case.</p>