

**ICSID
ADDITIONAL
FACILITY
ADMINISTRATIVE
AND FINANCIAL
REGULATIONS**

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INTRODUCTORY NOTE

The ICSID Additional Facility Administrative and Financial Regulations apply to ICSID Additional Facility Arbitration and Conciliation proceedings and were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

CHAPTER I GENERAL PROVISIONS

Regulation 1 Application of these Regulations

- (1) These Regulations apply to arbitration and conciliation proceedings which the Secretariat of the Centre is authorized to administer pursuant to Article 2 of the ICSID Additional Facility Rules.
- (2) The applicable Regulations are those in force on the date of filing the Request for arbitration or conciliation pursuant to the ICSID Additional Facility Rules.

CHAPTER II GENERAL FUNCTIONS OF THE SECRETARIAT

Regulation 2 Secretary

The Secretary-General of the Centre shall appoint a Secretary for each Commission and Tribunal. The Secretary may be drawn from the Secretariat and shall be considered a member of its staff while serving as a Secretary. The Secretary shall:

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the ICSID Additional Facility Arbitration and

Conciliation Rules applicable to individual proceedings and delegated to the Secretary; and

- (b) assist the parties and the Commission or Tribunal with the proceeding, including the expeditious and cost-effective conduct of the proceeding.

Regulation 3 The Registers

The Secretary-General shall maintain and publish a Register for each case containing all significant data concerning the institution, conduct and disposition of the proceeding, including the economic sector involved, the names of the parties and their representatives, and the method of constitution and membership of each Commission or Tribunal.

Regulation 4 Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
 - (a) all requests for arbitration, conciliation, supplementary decision, rectification or interpretation;
 - (b) all written submissions, written statements, observations, supporting documents and communications filed in a proceeding;
 - (c) the minutes, recordings and transcripts of hearings, meetings or sessions in a proceeding;
 - (d) any order, decision, recommendation, Report or Award by a Commission or Tribunal; and
 - (e) any notice, order or decision by the Secretary-General.
- (2) Subject to the applicable rules and the agreement of the parties to the proceedings, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c)-(e) available to the parties. Certified copies of the documents referred to in paragraph (1)(d) shall reflect any supplementary decision, rectification or interpretation.

Regulation 5 Certificates of Official Travel

The Secretary-General may issue certificates of official travel to members of Commissions or Tribunals, to persons assisting them, to members of the Secretariat, and to the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in proceedings, indicating that they are traveling in connection with a proceeding pursuant to the ICSID Additional Facility Rules.

CHAPTER III FINANCIAL PROVISIONS

Regulation 6 Fees, Allowances and Charges

- (1) Each member of a Commission or Tribunal shall receive:
 - (a) a fee for each hour of work performed in connection with the proceeding;
 - (b) reimbursement of expenses reasonably incurred for the sole purpose of the proceeding when not travelling to attend a hearing, meeting or session; and
 - (c) when required to travel to attend a hearing, meeting or session held away from the member's place of residence:
 - (i) reimbursement of the cost of ground transportation between the points of departure and arrival;
 - (ii) reimbursement of the cost of air and ground transportation to and from the city in which the hearing, meeting or session is held; and
 - (iii) a *per diem* allowance for each day spent away from the member's place of residence.
- (2) The Secretary-General shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and (c). Any request by a member for a higher amount shall be made in writing through the Secretary-General, and not directly to the parties. Such a request must be made before the constitution of the Commission or Tribunal and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish an annual administrative charge payable by the parties to the Centre.

- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
 - (a) members of Commissions and Tribunals, and any assistants approved by the parties;
 - (b) witnesses and experts called by a Commission or Tribunal who have not been presented by a party;
 - (c) service providers that the Centre engages for a proceeding; and
 - (d) the host of any hearing, meeting or session held outside an ICSID facility.
- (5) The Centre shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or reimbursements of the members of any Commission or Tribunal, unless the parties have made sufficient payments to defray the costs of the proceeding.

Regulation 7

Payments to the Centre

- (1) To enable the Centre to pay the costs referred to in Regulation 6, the parties shall make payments to the Centre as follows:
 - (a) upon registration of a Request for arbitration or conciliation, the Secretary-General shall request the claimant to make a payment to defray the estimated costs of the proceeding through the first session of the Commission or Tribunal, which shall be considered partial payment by the claimant of the payment referred to in paragraph (1)(b);
 - (b) upon constitution of a Commission or Tribunal, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the proceeding; and
 - (c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the proceeding.
- (2) In conciliation proceedings, each party shall pay one half of the payments referred to in paragraph (1)(b) and (c), unless the parties agree on a different division. In arbitration proceedings, each party shall pay one half of the payments referred to in paragraph (1)(b) and (c), unless a different division is agreed to by the parties or ordered by the Tribunal. Payment of these sums is without prejudice to the Tribunal's final decision on costs pursuant to Rule 70(1)(j) of the ICSID Additional Facility Arbitration Rules.

- (3) The Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.
- (4) This Regulation shall apply to requests for a supplementary decision on or rectification of an Award, and to applications for interpretation of an Award.

Regulation 8

Consequences of Default in Payment

- (1) The payments referred to in Regulation 7 shall be payable on the date of the request from the Secretary-General.
- (2) The following procedure shall apply in the event of non-payment:
 - (a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;
 - (b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the proceeding until payment is made, after giving notice to the parties and to the Commission or Tribunal if constituted; and
 - (c) if any proceeding is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the proceeding, after giving notice to the parties and to the Commission or Tribunal if constituted.

Regulation 9

Special Services

- (1) The Centre may perform any special services related to disputes if the requestor deposits in advance an amount sufficient to defray the charge for such services.
- (2) Charges for special services shall normally be based on a schedule of fees published by the Secretary-General.

Regulation 10

Fee for Lodging Requests

The party or parties (if a request is filed jointly) wishing to institute an arbitration or conciliation proceeding, or requesting a

supplementary decision, rectification or interpretation of an Award, shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 11

Administration of Proceedings

The Secretariat of the Centre is the only body authorized to administer proceedings conducted pursuant to the ICSID Additional Facility Rules.

CHAPTER IV

OFFICIAL LANGUAGES AND LIMITATION OF LIABILITY

Regulation 12

Languages of Rules and Regulations

- (1) The ICSID Additional Facility Rules, ICSID Additional Facility Arbitration Rules, ICSID Additional Facility Conciliation Rules, and these Regulations ("ICSID Additional Facility Rules and Regulations") are published in the official languages of the Centre, English, French and Spanish.
- (2) The texts of the ICSID Additional Facility Rules and Regulations are equally authentic in each official language.
- (3) Where required by the context, the singular form of a word in the ICSID Additional Facility Rules and Regulations includes the plural form of that word.
- (4) Where required by the context, the masculine gender in the French and Spanish versions of the ICSID Additional Facility Rules and Regulations shall be used as a gender-neutral form and shall be understood as referring to the masculine or feminine gender.

Regulation 13

Prohibition of Testimony and Limitation of Liability

- (1) Unless required by applicable law or unless the parties and all the members of the Commission or Tribunal agree otherwise

in writing, no member of the Commission or Tribunal shall give testimony in any judicial, arbitral or similar proceeding concerning any aspect of the arbitration or conciliation proceeding.

- (2) Except to the extent such limitation of liability is prohibited by applicable law, no member of the Commission or Tribunal shall be liable for any act or omission in connection with the exercise of their functions in the arbitration or conciliation proceeding, unless there is fraudulent or willful misconduct.