

ICSID ADDITIONAL FACILITY ARBITRATION RULES

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INTRODUCTORY NOTE

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

The ICSID Additional Facility Arbitration Rules are supplemented by the ICSID Additional Facility Administrative and Financial Regulations.

The ICSID Additional Facility Arbitration Rules apply from the submission of a Request for arbitration until an Award is rendered, and to any proceedings arising from a request for a supplementary decision on, rectification of, or interpretation of an Award.

CHAPTER I SCOPE

Rule 1 **Application of Rules**

- (1) These Rules shall apply to any arbitration proceeding conducted pursuant to the ICSID Additional Facility Rules.
- (2) The parties may agree to modify the application of any of these Rules other than Rules 1-9.
- (3) If any of these Rules, or any agreement pursuant to paragraph (2), conflicts with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
- (4) The applicable ICSID Additional Facility Arbitration Rules are those in force on the date of filing the request for arbitration, unless the parties agree otherwise.

CHAPTER II

INSTITUTION OF PROCEEDINGS

Rule 2 The Request

- (1) Any party wishing to institute arbitration proceedings pursuant to the ICSID Additional Facility Rules shall file a request for arbitration together with the required supporting documents ("Request") with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the dispute.

Rule 3 Contents of the Request

- (1) The Request shall:
 - (a) be in English, French or Spanish;
 - (b) identify each party to the dispute and provide its contact information, including electronic mail address, street address and telephone number;
 - (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) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request and attach the authorizations.
- (2) The Request shall include:
 - (a) a description of the investment and of its ownership and control, a summary of the relevant facts and claims, the request for relief, including an estimate of the amount of any damages sought, and an indication that there is a legal dispute between the parties arising out of the investment;
 - (b) with respect to each party's consent to submit the dispute to arbitration pursuant to the ICSID Additional Facility Rules:
 - (i) the instrument(s) in which each party's consent is recorded;
 - (ii) the date of entry into force of the instrument(s) on which consent is based, together with supporting documents demonstrating that date;

- (iii) the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or, if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre; and
- (iv) an indication that the requesting party has complied with any condition for submission of the dispute in the instrument of consent;
- (c) if a party is a natural person:
 - (i) information concerning that person's nationality on the date of consent, together with supporting documents demonstrating such nationality; and
 - (ii) a statement that the person is a national of a State other than the State party to the dispute or other than any constituent State of the REIO party to the dispute on the date of consent;
- (d) if a party is a juridical person:
 - (i) information concerning and supporting documents demonstrating that party's nationality on the date of consent; and
 - (ii) if that party had the nationality of the State party to the dispute or of any constituent State of the REIO party to the dispute on the date of consent, information concerning and supporting documents demonstrating the agreement of the parties to treat the juridical person as a national of another State pursuant to Article 1(5)(b) of the ICSID Additional Facility Rules;
- (e) if a party is a constituent subdivision of a State or an agency of a State or of an REIO, supporting documents demonstrating the approval of consent of the State or the REIO, unless the State or the REIO has notified the Centre that no such approval is required.

Rule 4

Recommended Additional Information

It is recommended that the Request:

- (a) contain any procedural proposals or agreements reached by the parties, including with respect to:

- (i) the number and method of appointment of arbitrators;
 - (ii) the seat of arbitration;
 - (iii) the law applicable to the dispute;
 - (iv) the procedural language(s); and
 - (v) the use of expedited arbitration under Chapter XIII; and
- (b) include the names of the persons and entities that own or control a requesting party which is a juridical person.

Rule 5

Filing of the Request and Supporting Documents

- (1) The Request shall be filed electronically. The Secretary-General may require the Request to be filed in an alternative format if necessary.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Secretary-General may require a fuller extract or a complete version of the document.
- (3) The Secretary-General may require a certified copy of a supporting document.
- (4) Any document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or a complete translation of the document.

Rule 6

Receipt of the Request and Routing of Written Communications

The Secretary-General shall:

- (a) promptly acknowledge receipt of the Request to the requesting party;
- (b) transmit the Request to the other party upon receipt of the lodging fee; and
- (c) act as the official channel of written communications between the parties.

Rule 7

Review and Registration of the Request

- (1) Upon receipt of the Request and lodging fee, the Secretary-General shall register the Request if it appears on the basis of the information provided that the Request is not manifestly outside the scope of Article 2(1) of the ICSID Additional Facility Rules.
- (2) The Secretary-General shall promptly notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.

Rule 8

Notice of Registration

The notice of registration of the Request shall:

- (a) record that the Request is registered and indicate the date of registration;
- (b) confirm that all correspondence to the parties in connection with the proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Centre;
- (c) invite the parties to inform the Secretary-General of their agreement regarding the number and method of appointment of arbitrators, unless such information has already been provided, and to constitute a Tribunal without delay;
- (d) remind the parties that registration of the Request is without prejudice to the powers and functions of the Tribunal in regard to jurisdiction and competence of the Tribunal, and the merits; and
- (e) remind the parties to make the disclosure required by Rule 23.

Rule 9

Withdrawal of the Request

At any time before registration, a requesting party may notify the Secretary-General in writing of the withdrawal of the Request or, if there is more than one requesting party, that it is withdrawing from the Request. The Secretary-General shall promptly notify the parties of the withdrawal, unless the Request has not yet been transmitted pursuant to Rule 6(b).

CHAPTER III

GENERAL PROVISIONS

Rule 10 **Party and Party Representative**

- (1) For the purposes of these Rules, "party" includes all parties acting as claimant or as respondent.
- (2) Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be promptly notified by that party to the Secretary-General ("representative(s)").

Rule 11 **General Duties**

- (1) The Tribunal and the parties shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.
- (2) The Tribunal shall treat the parties equally and provide each party with a reasonable opportunity to present its case.

Rule 12 **Method of Filing**

- (1) A document to be filed in the proceeding shall be filed with the Secretary-General, who shall acknowledge its receipt.
- (2) Documents shall be filed electronically. In special circumstances, the Tribunal may order that documents also be filed in a different format.

Rule 13 **Supporting Documents**

- (1) Supporting documents, including witness statements, expert reports, exhibits and legal authorities, shall be filed together with the request, written submission, observations or communication to which they relate.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Tribunal or a party may require a fuller extract or a complete version of the document.

- (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 available for examination.

Rule 14

Routing of Documents

Following the registration of the Request pursuant to Rule 7, the Secretary-General shall transmit a document filed in the proceeding to:

- (a) the other party, unless the parties communicate directly with each other; and
- (b) the Tribunal, unless the parties communicate directly with the Tribunal on request of the Tribunal or by agreement of the parties.

Rule 15

Procedural Languages, Translation and Interpretation

- (1) The parties may agree to use one or two procedural languages in the proceeding. The parties shall consult with the Tribunal and the Secretary-General regarding the use of a language that is not an official language of the Centre. If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (2) In a proceeding with one procedural language:
 - (a) documents shall be filed and hearings shall be conducted in that procedural language;
 - (b) documents in another language shall be accompanied by a translation into that procedural language; and
 - (c) testimony in another language shall be interpreted into that procedural language.
- (3) In a proceeding with two procedural languages:
 - (a) documents may be filed and hearings may be conducted in either procedural language, unless the Tribunal orders that a document be filed in both procedural languages or that a hearing be conducted with interpretation into both procedural languages;
 - (b) documents in another language shall be accompanied by a translation into either procedural language, unless the Tribunal orders translation into both procedural languages;

- (c) testimony in another language shall be interpreted into either procedural language, unless the Tribunal orders interpretation into both procedural languages;
 - (d) the Tribunal and the Secretary-General may communicate in either procedural language; and
 - (e) all orders, decisions and the Award shall be rendered in both procedural languages, unless the parties agree otherwise.
- (4) Translation of only the relevant part of a supporting document is sufficient, unless the Tribunal orders a party to provide a fuller or a complete translation. If the translation is disputed, the Tribunal may order a party to provide a certified translation.

Rule 16

Correction of Errors

A party may correct an accidental error in a document promptly upon discovery and before the Award is rendered. The parties may refer any dispute regarding a correction to the Tribunal for determination.

Rule 17

Calculation of Time Limits

- (1) References to time shall be determined based on the time at the seat of the Centre on the relevant date.
- (2) Any time limit expressed as a period of time shall be calculated from the day after the date on which:
 - (a) the Tribunal, or the Secretary-General if applicable, announces the period; or
 - (b) the procedural step starting the period is taken.
- (3) A time limit shall be satisfied if a procedural step is taken or a document is received by the Secretary-General on the relevant date, or on the subsequent business day if the date falls on a Saturday or Sunday.

Rule 18

Fixing Time Limits

- (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 these Rules.

- (2) In fixing time limits pursuant to paragraph (1), the Tribunal, or the Secretary-General if applicable, shall consult with the parties as far as possible.
- (3) The Tribunal may delegate the power to fix time limits to its President.

Rule 19

Extension of Time Limits Applicable to Parties

- (1) A time limit prescribed by these Rules may only be extended by agreement of the parties. A procedural step taken or document received after the expiry of such time limit shall be disregarded, unless the parties agree otherwise or the Tribunal decides that there are special circumstances justifying the failure to meet the time limit.
- (2) A time limit fixed by the Tribunal or the Secretary-General may be extended by agreement of the parties or by the Tribunal, or the Secretary-General if applicable, upon reasoned application by either party made prior to its expiry. A procedural step taken or a document received after the expiry of such time limit shall be disregarded, unless the parties agree otherwise or the Tribunal, or the Secretary-General if applicable, decides that there are special circumstances justifying the failure to meet the time limit.
- (3) The Tribunal may delegate the power to extend time limits to its President.

Rule 20

Time Limits Applicable to the Tribunal

- (1) The Tribunal shall use best efforts to meet time limits to render orders, decisions and the Award.
- (2) If the Tribunal cannot comply with an applicable time limit, it shall advise the parties of the special circumstances justifying the delay and the date when it anticipates rendering the order, decision or Award.

CHAPTER IV

ESTABLISHMENT OF THE TRIBUNAL

Rule 21

General Provisions Regarding the Establishment of the Tribunal

- (1) The Tribunal shall be constituted without delay after registration of the Request.
- (2) Unless the parties agree otherwise:
 - (a) the majority of the arbitrators on a Tribunal shall be nationals of States other than the State party to the dispute, any constituent State of the REIO party to the dispute and the State whose national is a party to the dispute;
 - (b) a party may not appoint an arbitrator who is a national of the State party to the dispute, any constituent State of the REIO party to the dispute or the State whose national is a party to the dispute;
 - (c) arbitrators appointed by the Secretary-General shall not be nationals of the State party to the dispute, a constituent State of the REIO party to the dispute or the State whose national is a party to the dispute; and
 - (d) no person previously involved in the resolution of the dispute as a conciliator, judge, mediator or in a similar capacity may be appointed as an arbitrator.
- (3) The composition of a Tribunal shall remain unchanged after it has been constituted, except as provided in Chapter V.

Rule 22

Qualifications of Arbitrators

Arbitrators shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who are impartial and independent.

Rule 23

Notice of Third-Party Funding

- (1) A party shall file a written notice disclosing the name and address of any non-party from which the party, directly or indirectly,

has received funds for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding ("third-party funding"). If the non-party providing funding is a juridical person, the notice shall include the names of the persons and entities that own and control that juridical person.

- (2) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request, 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.
- (3) The Secretary-General shall transmit the notice of third-party funding and any notification of changes to the information in such notice to the parties and to any arbitrator proposed for appointment or appointed in a proceeding for purposes of completing the arbitrator declaration required by Rule 27(3)(b).
- (4) The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding pursuant to Rule 46(3).

Rule 24

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.
- (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 45 days after the date of registration, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party and the third, who shall be the President of the Tribunal, appointed by agreement of the parties.

Rule 25

Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of the President of the Tribunal or a Sole Arbitrator.

Rule 26

Appointment of Arbitrators by the Secretary-General

- (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 Secretary-General appoint the arbitrator(s) who have not yet been appointed.
- (2) The Secretary-General shall appoint the President of the Tribunal after appointing any members who have not yet been appointed.
- (3) The Secretary-General 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.

Rule 27

Acceptance of Appointment

- (1) A party appointing an arbitrator shall notify the Secretary-General of the appointment and provide the appointee's name, nationality and contact information.
- (2) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from the appointee and shall transmit to the appointee the information received from the parties relevant to completion of the declaration referred to in paragraph (3)(b).
- (3) Within 20 days after receipt of the request for acceptance of an appointment, the appointee shall:
 - (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 proceeding.
- (4) The Secretary-General shall notify the parties of the acceptance of appointment by each arbitrator and transmit the signed declaration to them.
- (5) The Secretary-General 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.

- (6) Each arbitrator shall have a continuing obligation promptly to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).

Rule 28

Replacement of Arbitrators Prior to Constitution of the Tribunal

- (1) At any time before the Tribunal is constituted:
 - (a) an arbitrator may withdraw an acceptance;
 - (b) a party may replace an arbitrator whom it appointed; or
 - (c) the parties may agree to replace any arbitrator.
- (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.

Rule 29

Constitution of the Tribunal

- (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 and signed the declaration required by Rule 27(3)(b).
- (2) As soon as the Tribunal is constituted, the Secretary-General shall transmit the Request, the supporting documents, the notice of registration and communications with the parties to each member.

CHAPTER V

DISQUALIFICATION OF ARBITRATORS AND VACANCIES

Rule 30

Proposal for Disqualification of Arbitrators

- (1) A party may file a proposal to disqualify one or more arbitrators ("proposal") on the following grounds:
 - (a) that the arbitrator was ineligible for appointment to the Tribunal pursuant to Rule 21(2)(a)-(c); or

- (b) that circumstances exist that give rise to justifiable doubts as to the qualities of the arbitrator required by Rule 22.
- (2) The following procedure shall apply:
- (a) the proposal shall be filed after the constitution of the Tribunal and within 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 proposal shall include the grounds on which it is based, a statement of the relevant facts, law and arguments, and any supporting documents;
 - (c) the other party shall file its response and any supporting documents within 21 days after receipt of the proposal;
 - (d) the arbitrator to whom the proposal relates may file a statement that is limited to factual information relevant to the proposal. The statement shall be filed within five days after the earlier of receipt of the response or expiry of the time limit referred to in paragraph (2)(c); and
 - (e) each party may file a final written submission on the proposal within seven days after the earlier of receipt of the statement or expiry of the time limit referred to in paragraph (2)(d).
- (3) If the other party agrees to the proposal prior to the dispatch of the decision referred to in Rule 31, the arbitrator shall resign in accordance with Rule 33.
- (4) The proceeding shall be suspended upon the filing of the proposal until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding.

Rule 31

Decision on the Proposal for Disqualification

- (1) The Secretary-General shall make the decision on the proposal.
- (2) The Secretary-General shall use best efforts to decide any proposal within 30 days after the expiry of the time limit referred to in Rule 30(2)(e).

Rule 32

Incapacity or Failure to Perform Duties

If an arbitrator becomes incapacitated or fails to perform the duties required of an arbitrator, the procedure in Rules 30 and 31 shall apply.

Rule 33

Resignation

An arbitrator may resign by notifying the Secretary-General and the other members of the Tribunal.

Rule 34

Vacancy on the Tribunal

- (1) The Secretary-General shall notify the parties of any vacancy on the Tribunal.
- (2) The proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.
- (3) A vacancy on the Tribunal shall be filled by the method used to make the original appointment, except that the Secretary-General shall fill any vacancy that has not been filled within 45 days after the notice of vacancy.
- (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. Any portion of a hearing shall be recommenced if the newly appointed arbitrator considers it necessary to decide a pending matter.

CHAPTER VI

CONDUCT OF THE PROCEEDING

Rule 35

Orders, Decisions and Agreements

- (1) The Tribunal shall make the orders and decisions required for the conduct of the proceeding.
- (2) Orders and decisions may be made by any appropriate means of communication, shall indicate the reasons upon which they are made, and may be signed by the President on behalf of the Tribunal.

- (3) The Tribunal shall apply any agreement of the parties on procedural matters, subject to Rule 1(3), and to the extent that the agreement does not conflict with the ICSID Additional Facility Administrative and Financial Regulations.
- (4) The Tribunal shall consult with the parties prior to making an order or decision it is authorized by these Rules to make on its own initiative.

Rule 36

Waiver

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 object promptly, then that party shall be deemed to have waived its right to object to that non-compliance, unless the Tribunal decides that there are special circumstances justifying the failure to object promptly.

Rule 37

Filling of Gaps

If a question of procedure arises which is not covered by these Rules or by any agreement of the parties, the Tribunal shall decide the question.

Rule 38

First Session

- (1) The Tribunal shall hold a first session to address the procedure, including the matters listed in paragraph (4).
- (2) 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.
- (3) The first session shall be held within 60 days after the constitution of the Tribunal 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 Tribunal shall decide whether to hold the first session solely between the President of the Tribunal and the parties, or solely among the Tribunal members based on the parties' written submissions.

- (4) Before the first session, the Tribunal shall invite the parties' views on procedural matters, including:
- (a) the applicable arbitration rules;
 - (b) the division of advances payable pursuant to ICSID Additional Facility Administrative and Financial Regulation 7;
 - (c) the procedural language(s), translation and interpretation;
 - (d) the method of filing and routing of documents;
 - (e) the number, length, type and format of written submissions;
 - (f) the seat of arbitration;
 - (g) the place of hearings and whether a hearing will be held in person or remotely;
 - (h) whether there will be requests for production of documents as between the parties and, if so, the scope, timing and procedure for such requests;
 - (i) the procedural calendar;
 - (j) the manner of making recordings and transcripts of hearings;
 - (k) the publication of documents and recordings;
 - (l) the treatment of confidential or protected information; and
 - (m) any other procedural matter raised by either party or the Tribunal.
- (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.

Rule 39

Written Submissions

- (1) The parties shall file the following written submissions:
- (a) a memorial by the requesting party;
 - (b) a counter-memorial by the other party;
- and, unless the parties agree otherwise:
- (c) a reply by the requesting party; and
 - (d) a rejoinder by the other party.
- (2) 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 and addressing any relevant facts that are new or could not have been known prior to filing the reply or rejoinder.

- (3) A party may file unscheduled written submissions, observations or supporting documents only after obtaining leave of the Tribunal, unless the filing of such documents is provided for by these Rules. The Tribunal may grant such leave upon a timely and reasoned application if it finds such written submissions, observations or supporting documents are necessary in view of all relevant circumstances.

Rule 40

Case Management Conferences

With a view to conducting an expeditious and cost-effective proceeding, the Tribunal shall convene one or more case management conferences with the parties at any time after the first session to:

- (a) identify uncontested facts;
- (b) clarify and narrow the issues in dispute; or
- (c) address any other procedural or substantive issue related to the resolution of the dispute.

Rule 41

Seat of Arbitration

The seat of arbitration shall be agreed on by the parties or, absent agreement, shall be determined by the Tribunal having regard to the circumstances of the proceeding and after consulting with the parties.

Rule 42

Hearings

- (1) The Tribunal shall hold one or more hearings, unless the parties agree otherwise.
- (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.

- (3) A hearing in person may be held at any place agreed to by the parties after consulting with the Tribunal and the Secretary-General. If the parties do not agree on the place of a hearing, it shall be held at a place determined by the Tribunal.
- (4) Any member of the Tribunal may put questions to the parties and ask for explanations at any time during a hearing.

Rule 43

Quorum

The participation of a majority of the members of the Tribunal by any appropriate means of communication shall be required at the first session, case management conferences, hearings and deliberations, except as provided in these Rules or unless the parties agree otherwise.

Rule 44

Deliberations

- (1) The deliberations of the Tribunal shall take place in private and remain confidential.
- (2) The Tribunal may deliberate at any place and by any means it considers appropriate.
- (3) The Tribunal may be assisted by the Secretary of the Tribunal at its deliberations. No other person shall assist the Tribunal at its deliberations, unless the Tribunal decides otherwise and notifies the parties.
- (4) The Tribunal shall deliberate on any matter for decision immediately after the last submission on that matter.

Rule 45

Decisions Made by Majority Vote

The Tribunal shall make decisions by a majority of the votes of all its members. Abstention shall count as a negative vote.

CHAPTER VII

EVIDENCE

Rule 46 **Evidence: General Principles**

- (1) The Tribunal shall determine the admissibility and probative value of the evidence adduced.
- (2) Each party has the burden of proving the facts relied on to support its claim or defense.
- (3) The Tribunal may call upon a party to produce documents or other evidence if it deems it necessary at any stage of the proceeding.

Rule 47 **Disputes Arising from Requests for Production of Documents**

In deciding a dispute arising out of a party's objection to the other party's request for production of documents, the Tribunal shall consider all relevant circumstances, including:

- (a) the scope and timeliness of the request;
- (b) the relevance and materiality of the documents requested;
- (c) the burden of production; and
- (d) the basis of the objection.

Rule 48 **Witnesses and Experts**

- (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.
- (2) A witness who has filed a written statement may be called for examination at a hearing.
- (3) The Tribunal shall determine the manner in which the examination is conducted.
- (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.

- (5) A witness shall be examined in person unless the Tribunal determines that another means of examination is appropriate in the circumstances.
- (6) 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."
- (7) Paragraphs (1)-(5) shall apply, with necessary modifications, to evidence given by an expert.
- (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."

Rule 49

Tribunal-Appointed Experts

- (1) Unless the parties agree otherwise, the Tribunal may appoint one or more independent experts to report to it on specific matters within the scope of the dispute.
- (2) The Tribunal shall consult with the parties on the appointment of an expert, including on the terms of reference and fees of the expert.
- (3) Upon accepting an appointment by the Tribunal, an expert shall provide a signed declaration in the form published by the Centre.
- (4) 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.
- (5) The parties shall have the right to make submissions on the report of the Tribunal-appointed expert.
- (6) Rule 48 shall apply, with necessary modifications, to the Tribunal-appointed expert.

Rule 50

Visits and Inquiries

- (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.
- (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 relevant terms.

- (3) The parties shall have the right to participate in any visit or inquiry.

CHAPTER VIII

SPECIAL PROCEDURES

Rule 51 **Manifest Lack of Legal Merit**

- (1) A party may object that a claim is manifestly without legal merit. The objection may relate to the substance of the claim or to the jurisdiction or competence of the Tribunal.
- (2) The following procedure shall apply:
 - (a) a party shall file a written submission no later than 45 days after the constitution of the Tribunal;
 - (b) the written submission shall specify the grounds on which the objection is based and contain a statement of the relevant facts, law and arguments;
 - (c) the Tribunal shall fix time limits for submissions on the objection;
 - (d) if a party files the objection before the 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
 - (e) the Tribunal shall render its decision or Award on the objection within 60 days after the later of the constitution of the Tribunal or the last submission on the objection.
- (3) 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.
- (4) A decision that a claim is not manifestly without legal merit shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 53 or to argue subsequently in the proceeding that a claim is without legal merit.

Rule 52 Bifurcation

- (1) A party may request that a question be addressed in a separate phase of the proceeding ("request for bifurcation").
- (2) If a request for bifurcation relates to a preliminary objection, Rule 54 shall apply.
- (3) The following procedure shall apply to a request for bifurcation other than a request referred to in Rule 54:
 - (a) the request for bifurcation shall be filed as soon as possible;
 - (b) the request for bifurcation shall state the questions to be bifurcated;
 - (c) the Tribunal shall fix time limits for submissions on the request for bifurcation;
 - (d) the Tribunal shall issue its decision on the request for bifurcation within 30 days after the last submission on the request; and
 - (e) the Tribunal shall fix any time limit necessary for the further conduct of the proceeding.
- (4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
 - (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and
 - (c) the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical.
- (5) If the Tribunal orders bifurcation pursuant to this Rule, it shall suspend the proceeding with respect to any questions to be addressed at a later phase, unless the parties agree otherwise.
- (6) The Tribunal may at any time on its own initiative decide whether a question should be addressed in a separate phase of the proceeding.

Rule 53 Preliminary Objections

- (1) The Tribunal shall have the power to rule on its jurisdiction and competence. For the purposes of this Rule, an agreement providing for arbitration pursuant to the ICSID Additional

Facility Rules shall be severable from the other terms of the contract in which it may have been included.

- (2) A party may file a preliminary objection that the dispute or any ancillary claim is not within the jurisdiction or competence of the Tribunal ("preliminary objection").
- (3) A party shall notify the Tribunal and the other party of its intent to file a preliminary objection as soon as possible.
- (4) The Tribunal may at any time on its own initiative consider whether a dispute or an ancillary claim is within its jurisdiction or competence.
- (5) The Tribunal may address a preliminary objection in a separate phase of the proceeding or join the objection to the merits. It may do so upon request of a party pursuant to Rule 54 or at any time on its own initiative, in accordance with the procedure in Rule 54(2)-(4).

Rule 54

Preliminary Objections with a Request for Bifurcation

- (1) The following procedure shall apply with respect to a request for bifurcation relating to a preliminary objection:
 - (a) unless the parties agree otherwise, the request for bifurcation shall be filed:
 - (i) within 45 days after filing the memorial on the merits;
 - (ii) within 45 days after filing the written submission containing the ancillary claim, if the objection relates to the ancillary claim; or
 - (iii) 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 that party on the dates referred to in paragraph (1)(a)(i) and (ii);
 - (b) the request for bifurcation shall state the preliminary objection to which it relates;
 - (c) unless the parties agree otherwise, the proceeding on the merits shall be suspended until the Tribunal decides whether to bifurcate;
 - (d) the Tribunal shall fix time limits for submissions on the request for bifurcation; and
 - (e) the Tribunal shall issue its decision on a request for bifurcation within 30 days after the last submission on the request.

- (2) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
 - (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and
 - (c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical.
- (3) If the Tribunal decides to address the preliminary objection in a separate phase of the proceeding, it shall:
 - (a) suspend the proceeding on the merits, unless the parties agree otherwise;
 - (b) fix time limits for submissions on the preliminary objection;
 - (c) render its decision or Award on the preliminary objection within 180 days after the last submission, in accordance with Rule 69(1)(b); 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) fix time limits for submissions on the preliminary objection;
 - (b) modify any time limits for submissions on the merits, as required; and
 - (c) render its Award within 240 days after the last submission in the proceeding, in accordance with Rule 69(1)(c).

Rule 55

Preliminary Objections without a Request for Bifurcation

If a party does not request bifurcation of a preliminary objection within the time limits referred to in Rule 54(1)(a) or the parties confirm that they will not request bifurcation, the preliminary objection shall be joined to the merits and the following procedure shall apply:

- (a) the Tribunal shall fix time limits for submissions on the preliminary objection;
- (b) the memorial on the preliminary objection shall be filed:
 - (i) by the date to file the counter-memorial on the merits;

- (ii) by 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 that party on the dates referred to in paragraph (b)(i) and (ii);
- (c) the party filing the memorial on preliminary objections shall also file its counter-memorial on the merits, or, if the objection relates to an ancillary claim, file its next written submission after the ancillary claim; and
- (d) the Tribunal shall render its Award within 240 days after the last submission in the proceeding, in accordance with Rule 69(1)(c).

Rule 56

Consolidation or Coordination of Arbitrations

- (1) Parties to two or more pending arbitrations administered by the Centre may agree to consolidate or coordinate these arbitrations.
- (2) Consolidation joins all aspects of the arbitrations sought to be consolidated and results in one Award. To be consolidated pursuant to this Rule, the arbitrations shall have been registered in accordance with these Rules and shall involve the same State or the same REIO (or constituent subdivision of the State or agency of the State or the REIO).
- (3) Coordination aligns specific procedural aspects of two or more pending arbitrations, but the arbitrations remain separate proceedings and result in separate Awards.
- (4) The parties referred to in paragraph (1) shall jointly provide the Secretary-General with proposed terms for the conduct of the consolidated or coordinated arbitrations and consult with the Secretary-General to ensure that the proposed terms are capable of being implemented.
- (5) After the consultation referred to in paragraph (4), the Secretary-General shall communicate the proposed terms agreed by the parties to the Tribunals constituted in the arbitrations. Such Tribunals shall make any order or decision required to implement these terms.

Rule 57

Provisional Measures

- (1) A party may at any time request that the Tribunal order provisional measures to preserve that party's rights, including measures to:
 - (a) prevent action that is likely to cause current or imminent harm to that party or prejudice to the arbitral process;
 - (b) maintain or restore the status quo pending determination of the dispute; or
 - (c) preserve evidence that may be relevant to the resolution of the dispute.
- (2) The following procedure shall apply:
 - (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 submissions on the request;
 - (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
 - (d) the Tribunal shall issue its decision on the request within 30 days after the later of the constitution of the Tribunal or the last submission on the request.
- (3) In deciding whether to order provisional measures, the Tribunal shall consider all relevant circumstances, including:
 - (a) whether the measures are urgent and necessary; and
 - (b) the effect that the measures may have on each party.
- (4) The Tribunal may order provisional measures on its own initiative. The Tribunal may also order provisional measures different from those requested by a party.
- (5) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered provisional measures.
- (6) The Tribunal may at any time modify or revoke the provisional measures, on its own initiative or upon a party's request.
- (7) A party may request any judicial or other authority to order interim or conservatory measures. Such a request shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Rule 58

Ancillary Claims

- (1) Unless the parties agree otherwise, a party may file an incidental or additional claim or a counterclaim ("ancillary claim"), provided that such ancillary claim is within the scope of the arbitration agreement of the parties.
- (2) An incidental or additional claim shall be presented no later than in the reply, and a counterclaim shall be presented no later than in the counter-memorial, unless the Tribunal decides otherwise.
- (3) The Tribunal shall fix time limits for submissions on the ancillary claim.

Rule 59

Default

- (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.
- (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.
- (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.
- (4) If the request in paragraph (2) relates to a failure to appear at a hearing, the Tribunal may:
 - (a) reschedule the hearing to a date within 60 days after the original date;
 - (b) proceed with the hearing in the absence of the defaulting party and fix a time limit for the defaulting party to file a written submission within 60 days after the 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 hearing.
- (5) If the default relates to a scheduled procedural step other than a hearing, 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).

- (6) If the defaulting party fails to act within the grace period or if no such period is granted, the Tribunal shall resume consideration of the dispute and render an Award. For this purpose:
- (a) a party's default shall not be deemed an admission of the assertions made by the other party;
 - (b) the Tribunal may invite the party that is not in default to make submissions and produce evidence; and
 - (c) the Tribunal shall examine its jurisdiction and competence and, if it is satisfied, decide whether the submissions made are well-founded.

CHAPTER IX

COSTS

Rule 60 **Costs of the Proceeding**

The costs of the proceeding are all costs incurred by the parties in connection with the proceeding, including:

- (a) the legal fees and expenses of the parties;
- (b) the fees and expenses of the Tribunal, Tribunal assistants approved by the parties and Tribunal-appointed experts; and
- (c) the administrative charges and direct costs of the Centre.

Rule 61 **Statement of and Submission on Costs**

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 between the parties.

Rule 62 **Decisions on Costs**

- (1) In allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including:
- (a) the outcome of the proceeding or any part of it;
 - (b) the conduct of the parties during the proceeding, including

the extent to which they acted in an expeditious and cost-effective manner and complied with these Rules and the orders and decisions of the Tribunal;

- (c) the complexity of the issues; and
 - (d) the reasonableness of the costs claimed.
- (2) If the Tribunal renders an Award pursuant to Rule 51(3), it shall award the prevailing party its reasonable costs, unless the Tribunal determines that there are special circumstances justifying a different allocation of costs.
 - (3) The Tribunal may make an interim decision on costs at any time, on its own initiative or upon a party's request.
 - (4) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.

Rule 63

Security for Costs

- (1) Upon request of a party, the Tribunal may order any party asserting a claim or counterclaim to provide security for costs.
- (2) The following procedure shall apply:
 - (a) the request shall include a statement of the relevant circumstances and the supporting documents;
 - (b) the Tribunal shall fix time limits for submissions 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
 - (d) the Tribunal shall issue its decision on the request within 30 days after the later of the constitution of the Tribunal or the last submission on the request.
- (3) In determining whether to order a party to provide security for costs, the Tribunal shall consider all relevant circumstances, including:
 - (a) that party's ability to comply with an adverse decision on costs;
 - (b) that party's willingness to comply with an adverse decision on costs;
 - (c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim; and
 - (d) the conduct of the parties.

- (4) The Tribunal shall consider all evidence adduced in relation to the circumstances in paragraph (3), including the existence of third-party funding.
- (5) The Tribunal shall specify any relevant terms in an order to provide security for costs and fix a time limit for compliance with the order.
- (6) If a party fails to comply with an order to provide security for costs, the Tribunal may suspend the proceeding. If the proceeding is suspended for more than 90 days, the Tribunal may, after consulting with the parties, order the discontinuance of the proceeding.
- (7) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.
- (8) The Tribunal may at any time modify or revoke its order on security for costs, on its own initiative or upon a party's request.

CHAPTER X

SUSPENSION, SETTLEMENT AND DISCONTINUANCE

Rule 64 **Suspension of the Proceeding**

- (1) The Tribunal shall suspend the proceeding by agreement of the parties.
- (2) The Tribunal may suspend the proceeding upon the request of either party or on its own initiative, except as otherwise provided in the ICSID Additional Facility Administrative and Financial Regulations or these Rules.
- (3) The Tribunal shall give the parties the opportunity to make observations before ordering a suspension pursuant to paragraph (2).
- (4) In its order suspending the proceeding, the Tribunal shall specify:
 - (a) the period of the suspension;
 - (b) any relevant terms; and
 - (c) a modified procedural calendar to take effect on resumption of the proceeding, if necessary.
- (5) The Tribunal shall extend the period of a suspension prior to its expiry by agreement of the parties.

- (6) The Tribunal may extend the period of a suspension prior to its expiry, on its own initiative or upon a party's request, after giving the parties an opportunity to make observations.
- (7) The Secretary-General shall suspend the proceeding pursuant to paragraph (1) or extend the suspension pursuant to paragraph (5) if the 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 terms agreed to by the parties.

Rule 65

Settlement and Discontinuance by Agreement of the Parties

- (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) An Award rendered pursuant to paragraph (2)(b) does not need to include the reasons on which it is based.
- (4) 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.

Rule 66

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.

Rule 67

Discontinuance for Failure of Parties to Act

- (1) If the parties fail to take any steps in the proceeding for more than 150 consecutive days, the Tribunal shall notify them of the time elapsed since the last step taken in the proceeding.
- (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 shall issue an order taking note of the discontinuance.
- (3) If either party takes a step within 30 days after the notice referred to in paragraph (1), the proceeding shall continue.
- (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.

CHAPTER XI

THE AWARD

Rule 68

Applicable Law

- (1) The Tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Tribunal shall apply:
 - (a) the law which it determines to be applicable; and
 - (b) the rules of international law it considers applicable.
- (2) The Tribunal may decide *ex aequo et bono* if the parties have expressly authorized it to do so and if the law applicable to the arbitration so permits.

Rule 69

Timing of the Award

- (1) The Tribunal shall render the Award as soon as possible, and in any event no later than:
 - (a) 60 days after the later of the Tribunal constitution or the last submission, if the Award is rendered pursuant to Rule 51(3);
 - (b) 180 days after the last submission if the Award is rendered pursuant to Rule 54(3)(c); or
 - (c) 240 days after the last submission in all other cases.
- (2) A statement of costs and submission on costs filed pursuant to Rule 61 shall not be considered a submission for the purposes of paragraph (1).
- (3) The parties waive any time limits for rendering the Award which may be provided for by the law of the seat of arbitration.

Rule 70

Contents of the Award

- (1) The Award shall be in writing and shall contain:
 - (a) a precise designation of each party;
 - (b) the names of the representatives of the parties;
 - (c) a statement that the Tribunal was established pursuant to these Rules and a description of the method of its constitution;
 - (d) the name of each member of the Tribunal and the appointing authority of each;
 - (e) the seat of arbitration, the date and place of the first session, case management conferences and hearings;
 - (f) a brief summary of the proceeding;
 - (g) a statement of the relevant facts as found by the Tribunal;
 - (h) a brief summary of the submissions of the parties, including the relief sought;
 - (i) the reasons on which the Award is based, unless the parties have agreed that no reasons are to be given; and
 - (j) a statement of the costs of the proceeding, including the fees and expenses of each member of the Tribunal, and a reasoned decision on costs.

- (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 and if allowed by the law of the seat of arbitration.
- (3) Any member of the Tribunal may attach an individual opinion or a statement of dissent to the Award before the Award is rendered.
- (4) The Award shall be final and binding on the parties.

Rule 71

Rendering of the Award

- (1) Once the Award has been signed by the members of the Tribunal who voted for it, the Secretary-General shall promptly:
 - (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
 - (b) deposit the Award in the archives of the Centre, together with any individual opinion and statement of dissent.
- (2) Upon request of the parties that the original text of the Award be filed or registered by the Tribunal pursuant to the law of the seat of arbitration, the Secretary-General shall do so on behalf of the Tribunal.
- (3) The Award shall be deemed to have been made at the seat of arbitration and deemed to have been rendered on the date of dispatch of certified copies of the Award.
- (4) The Secretary-General shall provide additional certified copies of the Award to a party upon request.

Rule 72

Supplementary Decision, Rectification and Interpretation of an Award

- (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.
- (2) A party may request a supplementary decision, rectification or interpretation of an Award by filing a request with the Secretary-General and paying the lodging fee published in the schedule of fees within 45 days after the Award was rendered.
- (3) The request referred to in paragraph (2) shall:
 - (a) identify the Award to which it relates;

- (b) be in an official language of the Centre used in the proceeding;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) specify:
 - (i) with respect to a request for a supplementary decision, any question which the Tribunal omitted to decide in the Award;
 - (ii) with respect to a request for rectification, any clerical, arithmetical or similar error in the Award;
 - (iii) with respect to a request for interpretation, the points in dispute concerning the meaning or scope of the Award; and
 - (e) attach proof of payment of the lodging fee.
- (4) Upon receipt of the request and the lodging fee, the Secretary-General shall promptly:
- (a) transmit the request to the other party;
 - (b) register the request, or refuse registration if the request is not filed or the fee is not paid within the time limit referred to in paragraph (2); and
 - (c) notify the parties of the registration or refusal to register.
- (5) As soon as the request is registered, the Secretary-General shall transmit the request and the notice of registration to each member of the Tribunal.
- (6) 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.
- (7) Rules 70-71 shall apply to any decision of the Tribunal pursuant to this Rule.
- (8) The Tribunal shall issue a decision on the request for supplementary decision, rectification or interpretation within 60 days after the last submission on the request.
- (9) A supplementary decision, rectification or interpretation pursuant to this Rule shall become part of the Award and shall be reflected on all certified copies of the Award.

CHAPTER XII

PUBLICATION, ACCESS TO PROCEEDINGS AND NON-DISPUTING PARTY SUBMISSIONS

Rule 73

Publication of Orders, Decisions and Awards

- (1) The Centre shall publish orders, decisions and Awards with any redactions agreed to by the parties and jointly notified to the Secretary-General within 60 days after the order, decision or Award is rendered.
- (2) If either party notifies the Secretary-General within the 60-day period referred to in paragraph (1) that the parties disagree on any proposed redactions, the Secretary-General shall refer the order, decision or Award to the Tribunal to decide any disputed redactions. The Centre shall publish the order, decision or Award in accordance with the decision of the Tribunal.
- (3) In deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 76.

Rule 74

Publication of Documents Filed in the Proceeding

- (1) With consent of the parties, the Centre shall publish any written submission or supporting document filed by a party in the proceeding, with any redactions agreed to by the parties and jointly notified to the Secretary-General.
- (2) Absent consent of the parties pursuant to paragraph (1), a party may refer to the Tribunal a dispute regarding the redaction of a written submission, excluding supporting documents, that it filed in the proceeding. The Tribunal shall decide any disputed redactions and the Centre shall publish the document in accordance with the decision of the Tribunal.
- (3) In deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 76.

Rule 75

Observation of Hearings

- (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.
- (2) The Tribunal shall establish procedures to prevent the disclosure of confidential or protected information as defined in Rule 76 to persons observing the hearings.
- (3) Upon request of a party, the Centre shall publish recordings or transcripts of hearings, unless the other party objects.

Rule 76

Confidential or Protected Information

For the purposes of Rules 73-75, confidential or protected information is information which is protected from public disclosure:

- (a) by the instrument of consent to arbitration;
- (b) by the applicable law or applicable rules;
- (c) in the case of information of a State or an REIO party to the dispute, by the law of that State or that REIO;
- (d) in accordance with the orders and decisions of the Tribunal;
- (e) by agreement of the parties;
- (f) because it constitutes confidential business information or protected personal information;
- (g) because public disclosure would impede law enforcement;
- (h) because a State or an REIO party to the dispute considers that public disclosure would be contrary to its essential security interests;
- (i) because public disclosure would aggravate the dispute between the parties; or
- (j) because public disclosure would undermine the integrity of the arbitral process.

Rule 77

Submission of Non-Disputing Parties

- (1) Any person or entity that is not a party to the dispute ("non-disputing party") may apply for permission to file a written submission in the proceeding. The application shall be made in the procedural language(s) used in the proceeding.
- (2) In determining whether to permit a non-disputing party submission, the Tribunal shall consider all relevant circumstances, including:
 - (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 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.
- (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 any conditions for filing such a submission.
- (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 the format, length, scope or publication of the written submission and the time limit to file the submission.
- (5) The Tribunal shall issue a reasoned decision on whether to permit a non-disputing party submission within 30 days after the last written submission on the application.
- (6) The Tribunal shall provide the non-disputing party with relevant documents filed in the proceeding, unless either party objects.
- (7) 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.

Rule 78

Participation of Non-Disputing Treaty Party

- (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 submission on the interpretation of the treaty at issue in the dispute and upon which consent to arbitration is based. The Tribunal may, after consulting with the parties, invite a non-disputing Treaty Party to make such a submission.
- (2) A submission of a non-disputing Treaty Party pursuant to paragraph (1) shall not support a party in a manner tantamount to diplomatic protection.
- (3) The Tribunal shall ensure that non-disputing Treaty 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 making of the submission by the non-disputing Treaty Party, including with respect to the format, length, scope or publication of the submission, and the time limit to file the submission.
- (4) The Tribunal shall provide the non-disputing Treaty Party with relevant documents filed in the proceeding, unless either party objects.
- (5) The parties shall have the right to make observations on the submission of the non-disputing Treaty Party.

CHAPTER XIII

EXPEDITED ARBITRATION

Rule 79

Consent of Parties to Expedited Arbitration

- (1) At any time, the parties to an arbitration conducted pursuant to these Rules may consent to expedite the arbitration in accordance with this Chapter ("expedited arbitration") by jointly notifying the Secretary-General in writing of their consent.
- (2) Chapters I-XII of the ICSID Additional Facility Arbitration Rules apply to an expedited arbitration except that:
 - (a) Rules 24, 26, 49, 50, 51, 52, 54 and 56 do not apply in an expedited arbitration; and
 - (b) Rules 27, 38, 47, 53, 59, 69 and 72, as modified by Rules 80-87, apply in an expedited arbitration.

- (3) If the parties consent to expedited arbitration after the constitution of the Tribunal pursuant to Chapter IV, Rules 80-82 shall not apply, and the expedited arbitration shall proceed subject to all members of the Tribunal confirming their availability pursuant to Rule 83(2). If an arbitrator is unavailable to proceed on an expedited basis, the arbitrator may offer to resign.

Rule 80

Number of Arbitrators and Method of Constituting the Tribunal for Expedited Arbitration

- (1) The Tribunal in an expedited arbitration shall consist of a Sole Arbitrator appointed pursuant to Rule 81 or a three-member Tribunal appointed pursuant to Rule 82.
- (2) The parties shall jointly notify the Secretary-General in writing of their election of a Sole Arbitrator or a three-member Tribunal within 30 days after the date of the notice of consent referred to in Rule 79(1).
- (3) If the parties do not notify the Secretary-General of their election within the time limit referred to in paragraph (2), the Tribunal shall consist of a Sole Arbitrator to be appointed pursuant to Rule 81.
- (4) An appointment pursuant to Rule 81 or 82 is an appointment in accordance with the method agreed by the parties.

Rule 81

Appointment of Sole Arbitrator for Expedited Arbitration

- (1) The parties shall jointly appoint the Sole Arbitrator within 20 days after the notice referred to in Rule 80(2).
- (2) The Secretary-General shall appoint the Sole Arbitrator if:
 - (a) the parties do not appoint the Sole Arbitrator within the time limit referred to in paragraph (1);
 - (b) the parties notify the Secretary-General that they are unable to agree on the Sole Arbitrator; or
 - (c) the appointee declines the appointment or does not comply with Rule 83(1).
- (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; and
- (d) if the selected candidate declines the appointment or does not comply with Rule 83(1), the Secretary-General shall select the next highest-ranked candidate.

Rule 82

Appointment of Three-Member Tribunal for Expedited Arbitration

- (1) A three-member Tribunal shall be appointed in accordance with the following procedure:
 - (a) each party shall appoint an arbitrator ("co-arbitrator") within 20 days after the notice referred to in Rule 80(2); and
 - (b) the parties shall jointly appoint the President of the Tribunal within 20 days after the receipt of the acceptances from both co-arbitrators.
- (2) The Secretary-General shall appoint the arbitrators not yet appointed if:
 - (a) an appointment is not made within the applicable time limit referred to in paragraph (1);
 - (b) the parties notify the Secretary-General that they are unable to agree on the President of the Tribunal; or
 - (c) an appointee declines the appointment or does not comply with Rule 83(1).
- (3) The following procedure shall apply to the appointment by the Secretary-General of any arbitrators pursuant to paragraph (2):
 - (a) the Secretary-General shall first appoint the co-arbitrator(s) not yet appointed. The Secretary-General shall consult with the parties as far as possible and use best efforts to appoint the co-arbitrator(s) within 15 days after the relevant event in paragraph (2);

- (b) within 10 days after the later of the date on which both co-arbitrators have accepted their appointments or 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;
- (c) 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;
- (d) 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; and
- (e) if the selected candidate declines the appointment or does not comply with Rule 83(1), the Secretary-General shall select the next highest-ranked candidate.

Rule 83

Acceptance of Appointment in Expedited Arbitration

- (1) An arbitrator appointed pursuant to Rule 81 or 82 shall accept the appointment and provide a declaration pursuant to Rule 27(3) within 10 days after receipt of the request for acceptance.
- (2) An arbitrator appointed to a Tribunal constituted pursuant to Chapter IV shall confirm being available to conduct an expedited arbitration within 10 days after receipt of the notice of consent pursuant to Rule 79(3).

Rule 84

First Session in Expedited Arbitration

- (1) The Tribunal shall hold a first session pursuant to Rule 38 within 30 days after the constitution of the Tribunal.
- (2) The first session shall be held remotely, unless both parties and the Tribunal agree it shall be held in person.

Rule 85

Procedural Schedule in Expedited Arbitration

- (1) The following schedule for written submissions and the hearing shall apply in an expedited arbitration:

- (a) the claimant shall file a memorial within 60 days after the first session;
 - (b) the respondent shall file a counter-memorial within 60 days after the date of filing the memorial;
 - (c) the memorial and counter-memorial referred to in paragraph (1)(a) and (b) shall be no longer than 200 pages;
 - (d) the claimant shall file a reply within 40 days after the date of filing the counter-memorial;
 - (e) the respondent shall file a rejoinder within 40 days after the date of filing the reply;
 - (f) the reply and rejoinder referred to in paragraph (1)(d) and (e) shall be no longer than 100 pages;
 - (g) the hearing shall be held within 60 days after the last written submission is filed;
 - (h) the parties shall file statements of their costs and written submissions on costs within 10 days after the last day of the hearing referred to in paragraph (1)(g); and
 - (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).
- (2) Any preliminary objection, counterclaim, incidental or additional claim shall be joined to the 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.
 - (3) The Tribunal may extend the time limits referred to in paragraph (1) by up to 30 days to decide a dispute arising from requests to produce documents pursuant to Rule 47. The Tribunal shall decide such requests based on written submissions and without an in-person hearing.
 - (4) Any schedule for submissions other than those referred to in paragraphs (1)-(3) shall run in parallel with the schedule referred to in paragraph (1), unless the proceeding is suspended or the Tribunal decides that there are special circumstances justifying the suspension of the schedule. In fixing time limits for such submissions, the Tribunal shall take into account the expedited nature of the process.

Rule 86

Default in Expedited Arbitration

A Tribunal may grant a party in default a grace period not to exceed 30 days pursuant to Rule 59.

Rule 87

Procedural Schedule for Supplementary Decision, Rectification and Interpretation in Expedited Arbitration

- (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.
- (2) A request for a supplementary decision, rectification or interpretation of an Award made pursuant to Rule 72 shall be filed within 15 days after the Award was rendered.
- (3) The Tribunal shall issue a supplementary decision, rectification or interpretation of an Award pursuant to Rule 72 within 30 days after the last submission on the request.

Rule 88

Opting Out of Expedited Arbitration

- (1) The parties may opt out of an expedited arbitration at any time by jointly notifying the Tribunal and Secretary-General in writing of their agreement.
- (2) Upon request of a party, the Tribunal may decide that an arbitration should no longer be expedited. In deciding the request, the Tribunal shall consider the complexity of the issues, the stage of the proceeding and all other relevant circumstances.
- (3) The Tribunal, or the Secretary-General if a Tribunal has not been constituted, shall determine the further procedure pursuant to Chapters I-XII and fix any time limit necessary for the conduct of the proceeding.