

ICSID ADMINISTRATIVE AND FINANCIAL REGULATIONS

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INTRODUCTORY NOTE

The ICSID Administrative and Financial Regulations were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(a) of the ICSID Convention.

These Regulations concern the functioning of ICSID as an international institution. They also contain provisions that apply generally in proceedings and are complementary to the Convention and the ICSID Institution, Conciliation and Arbitration Rules, adopted pursuant to Article 6(1)(b) and (c) of the Convention.

CHAPTER I PROCEDURES OF THE ADMINISTRATIVE COUNCIL

Regulation 1 Date and Place of the Annual Meeting

The Annual Meeting of the Administrative Council shall take place in conjunction with the Annual Meeting of the Board of Governors of the International Bank for Reconstruction and Development ("Bank"), unless the Council specifies otherwise.

Regulation 2 Notice of Meetings

- (1) The Secretary-General shall give each member notice of the time and place of meetings of the Administrative Council by any rapid means of communication. This notice shall be dispatched not less than 42 days prior to the date set for such meeting, except that in urgent cases notice shall be sufficient if dispatched not less than 10 days prior to the date of the meeting.
- (2) Any meeting of the Administrative Council at which no quorum is present may be adjourned by a majority of the members present and notice of the adjourned meeting need not be given.

Regulation 3 Agenda for Meetings

- (1) The Secretary-General shall prepare an agenda for each meeting of the Administrative Council under the direction of the Chairman of the Administrative Council ("Chair") and shall transmit the agenda to each member with notice of the meeting.
- (2) Additional subjects may be placed on the agenda by any member by giving notice thereof to the Secretary-General not less than 7 days prior to the date set for such meeting.
- (3) In special circumstances the Chair, or the Secretary-General after consulting with the Chair, may at any time place additional subjects on the agenda for a meeting of the Administrative Council.
- (4) The Secretary-General shall promptly give each member notice of additional subjects on the agenda.
- (5) The Administrative Council may authorize any subject to be placed on the agenda at any time even though the notice required by this Regulation has not been given.

Regulation 4 Presiding Officer

- (1) The Chair shall be the Presiding Officer at meetings of the Administrative Council.
- (2) The Chair shall designate a Vice President of the Bank to preside over all or any part of a meeting if the Chair is unable to preside.

Regulation 5 Secretary of the Council

- (1) The Secretary-General shall serve as Secretary of the Administrative Council.
- (2) Except as otherwise directed by the Administrative Council, the Secretary-General, in consultation with the Chair, shall make all arrangements for meetings of the Council and may coordinate with appropriate officers of the Bank for this purpose.
- (3) The Secretary-General shall present the annual report on the operation of the Centre to each Annual Meeting of the Administrative Council for its approval pursuant to Article 6(1)(g)

of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("Convention").

- (4) The Secretary-General shall publish the annual report and a summary record of the proceedings of the Administrative Council.

Regulation 6 Attendance at Meetings

- (1) The Secretary-General and the Deputy Secretaries-General may attend all meetings of the Administrative Council.
- (2) The Secretary-General, in consultation with the Chair, may invite observers to attend any meeting of the Administrative Council.

Regulation 7 Voting

- (1) Except as otherwise provided in the Convention, all decisions of the Administrative Council shall be taken by a majority of the votes cast. The Presiding Officer may ascertain the sense of the meeting in lieu of a formal vote but shall require a formal vote upon the request of any member. The written text of the motion shall be distributed to the members if a formal vote is required.
- (2) No member of the Administrative Council may vote by proxy, but a member may designate a temporary alternate to vote at any meeting at which the regular alternate is not present.
- (3) Between Annual Meetings, the Chair may call a special meeting or request that the Administrative Council vote by correspondence on a motion. The Secretary-General shall transmit the request for a vote by correspondence to each member with the text of the motion to be voted upon. Votes shall be cast within 45 days after such transmission, unless a longer period is approved by the Chair. Upon expiry of the established period, the Secretary-General shall record the results and notify all members of the outcome. The motion shall be considered lost if the replies received do not include those of a majority of the members.
- (4) If all Contracting States are not represented at a meeting of the Administrative Council and the votes necessary to adopt a proposed decision by a majority of two-thirds of the members of the Council are not obtained, the Council, with the concurrence

of the Chair, may decide that the votes of those members of the Council represented at the meeting shall be registered and the votes of the absent members shall be solicited in accordance with paragraph (3). Votes registered at the meeting may be changed by the member before the expiry of the voting period established pursuant to paragraph (3).

CHAPTER II

THE SECRETARIAT

Regulation 8 **Election of the Secretary-General and** **Deputy Secretaries-General**

In proposing to the Administrative Council one or more candidates for the office of Secretary-General or Deputy Secretary-General, the Chair shall also make proposals with respect to their term and conditions of service.

Regulation 9 **Acting Secretary-General**

- (1) If there is more than one Deputy Secretary-General, the Chair may propose to the Administrative Council the order in which the Deputies shall act as Secretary-General pursuant to Article 10(3) of the Convention. In the absence of such a decision by the Administrative Council, the Secretary-General shall determine the order in which the Deputies shall act as Secretary-General.
- (2) The Secretary-General shall designate the member of the staff of the Centre who shall act as Secretary-General during the absence or inability to act of the Secretary-General and the Deputy Secretaries-General. If there should be a simultaneous vacancy in the offices of Secretary-General and Deputy Secretary-General, the Chair shall designate the member of the staff who shall act as the Secretary-General.

Regulation 10 **Appointment of Staff Members**

The Secretary-General shall appoint the staff of the Centre. Appointments may be made directly or by secondment.

Regulation 11

Conditions of Employment

- (1) The conditions of employment of the staff of the Centre shall be the same as those of the staff of the Bank.
- (2) The Secretary-General shall make arrangements with the Bank, within the framework of the general administrative arrangements approved by the Administrative Council pursuant to Article 6(1)(d) of the Convention, for the participation of members of the Secretariat in the Staff Retirement Plan of the Bank and in other facilities and contractual arrangements established for the benefit of the staff of the Bank.

Regulation 12

Authority of the Secretary-General

- (1) Deputy Secretaries-General and the staff of the Centre shall act solely under the direction of the Secretary-General.
- (2) The Secretary-General shall have authority to dismiss members of the Secretariat and to impose disciplinary measures. Deputy Secretaries-General may only be dismissed with the concurrence of the Administrative Council.

Regulation 13

Incompatibility of Functions

The Secretary-General, the Deputy Secretaries-General and the staff of the Centre may not serve on the Panels of Conciliators or of Arbitrators, as members of any Commission, Tribunal or Committee, or as a mediator.

CHAPTER III

FINANCIAL PROVISIONS

Regulation 14

Fees, Allowances and Charges

- (1) Each member of a Commission, Tribunal or Committee 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, with the approval of the Chair, 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, Tribunal or Committee 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, Tribunals and Committees, and any assistants approved by the parties;
 - (b) witnesses and experts called by a Commission, Tribunal or Committee 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, Tribunal or Committee, unless the parties have made sufficient payments to defray the costs of the proceeding.

Regulation 15

Payments to the Centre

- (1) To enable the Centre to pay the costs referred to in Regulation 14, 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, Tribunal or Committee, 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). 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 Article 61(2) of the Convention.
- (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, applications for interpretation or revision of an Award, and requests for resubmission of the dispute.
- (5) This Regulation shall apply to applications for annulment of an Award, except that the applicant shall be solely responsible for making the payments requested by the Secretary-General.

Regulation 16

Consequences of Default in Payment

- (1) The payments referred to in Regulation 15 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, Tribunal or Committee 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, Tribunal or Committee if constituted.

Regulation 17

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 18

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, interpretation, revision or annulment of an Award, or resubmission of a dispute, shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 19

The Budget

- (1) The fiscal year of the Centre shall run from July 1 of each year to June 30 of the following year.
- (2) Before the end of each fiscal year, the Secretary-General shall prepare a budget indicating expected expenditures of the Centre (excepting those to be incurred on a reimbursable basis) and expected revenues (excepting reimbursements) for the following

fiscal year. The budget shall be submitted for adoption by the Administrative Council at its next Annual Meeting in accordance with Article 6(1)(f) of the Convention.

- (3) If the Secretary-General determines during the fiscal year that the expected expenditures will exceed those authorized in the budget, or wishes to incur expenditures not previously authorized, the Secretary-General shall prepare a supplementary budget in consultation with the Chair and submit it to the Administrative Council for adoption, in accordance with Regulation 7.
- (4) The adoption of a budget constitutes authority for the Secretary-General to make expenditures and incur obligations for the purposes and within the limits specified in the budget. Unless otherwise provided by the Administrative Council, the Secretary-General may exceed the amount specified for any given budget item, provided that the total amount of the budget is not exceeded.
- (5) Pending the adoption of the budget by the Administrative Council, the Secretary-General may incur expenditures for the purposes and within the limits specified in the budget submitted, up to one quarter of the amount authorized to be expended in the previous fiscal year.

Regulation 20

Assessment of Contributions

- (1) Any excess of expected expenditures over expected revenues shall be assessed on the Contracting States. Each State that is not a member of the Bank shall be assessed a fraction of the total assessment equal to the fraction of the budget of the International Court of Justice that it would have to bear if that budget were divided only among the Contracting States in proportion to the then current scale of contributions applicable to the budget of the Court; the balance of the total assessment shall be divided among the Contracting States that are members of the Bank in proportion to their respective subscription to the capital stock of the Bank. The assessments shall be calculated by the Secretary-General immediately after the adoption of the annual budget, on the basis of the then current membership of the Centre, and shall be promptly communicated to all Contracting States. The assessments shall be payable as soon as they are communicated.
- (2) On the adoption of a supplementary budget, the Secretary-General shall immediately calculate supplementary assessments, which shall be payable as soon as they are communicated to the Contracting States.

- (3) A State which is party to the Convention during any part of a fiscal year shall be assessed for the entire fiscal year. If a State becomes a party to the Convention after the assessments for a given fiscal year have been calculated, its assessment shall be calculated by the application of the same appropriate factor as was applied in calculating the original assessments, and no recalculation of the assessments of the other Contracting States shall be made.
- (4) If, after the close of a fiscal year, it is determined that there is a cash surplus, such surplus shall, unless the Administrative Council decides otherwise, be credited to the Contracting States in proportion to the assessed contributions they had paid for that fiscal year. These credits shall be made with respect to the assessments for the fiscal year commencing two years after the end of the fiscal year to which the surplus pertains.

Regulation 21

Audits

The Secretary-General shall have an audit of the accounts of the Centre made once each year and on the basis of this audit submit a financial statement to the Administrative Council for consideration at the Annual Meeting.

Regulation 22

Administration of Proceedings

The Secretariat of the Centre is the only body authorized to administer proceedings conducted under the Convention.

CHAPTER IV

GENERAL FUNCTIONS OF THE SECRETARIAT

Regulation 23

List of Contracting States

The Secretary-General shall maintain and publish a list of the Contracting States (including former Contracting States, showing the date on which their notice of denunciation was received by the

depository), indicating for each:

- (a) the date on which the Convention entered into force with respect to it;
- (b) any territories excluded pursuant to Article 70 of the Convention and the dates on which the notice of exclusion and any modification of such notice were received by the depository;
- (c) any designation pursuant to Article 25(1) of the Convention of constituent subdivisions or agencies to whose investment disputes the jurisdiction of the Centre extends;
- (d) any notification pursuant to Article 25(3) of the Convention that no approval by the State is required for the consent by a constituent subdivision or agency to the jurisdiction of the Centre;
- (e) any notification pursuant to Article 25(4) of the Convention of the class or classes of disputes which the State would or would not consider submitting to the jurisdiction of the Centre;
- (f) the competent court or other authority for the recognition and enforcement of arbitral awards, designated pursuant to Article 54(2) of the Convention;
- (g) any legislative or other measures taken pursuant to Article 69 of the Convention for making the provisions of the Convention effective in the territories of the State and communicated by the State to the Centre; and
- (h) the name, address and contact details of the authority in each State to which documents should be notified, as reported by the State.

Regulation 24

Panels of Conciliators and of Arbitrators

- (1) The Secretary-General shall invite each Contracting State to make its designations to the Panels of Conciliators and of Arbitrators if a designation has not been made or the period of a designation has expired.
- (2) Each designation made by a Contracting State or by the Chair shall indicate the designee's name, contact information, nationality and qualifications, with particular reference to competence in the fields of law, commerce, industry or finance.
- (3) The Secretary-General shall immediately inform a designee of the designation, the designating authority, and the end of

the designation period, and shall request confirmation that the designee is willing to serve.

- (4) The Secretary-General shall maintain and publish lists of the members of the Panels of Conciliators and of Arbitrators, indicating the contact information, nationality, end of the designation period, designating authority and qualifications of each member.

Regulation 25

Publication

With a view to furthering the development of international law in relation to investment, the Centre shall publish:

- (a) information about the operation of the Centre; and
- (b) documents generated in proceedings, in accordance with the rules applicable to the individual proceeding.

Regulation 26

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, Tribunal and Committee.

Regulation 27

Communications with Contracting States

- (1) Unless a specific channel of communication is notified by the State concerned, all communications required by the Convention or these Regulations to be sent to Contracting States shall be addressed to the State's representative on the Administrative Council and sent by rapid means of communication.
- (2) The time limits referred to in Regulations 2, 3 and 7 shall be calculated from the date on which the Secretary-General transmits or receives the relevant document. The date of transmittal or receipt shall be excluded from the calculation.

Regulation 28 Secretary

The Secretary-General shall appoint a Secretary for each Commission, Tribunal and Committee. 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 Rules applicable to individual proceedings or assigned to the Secretary-General by the Convention, and delegated to the Secretary; and
- (b) assist the parties and the Commission, Tribunal or Committee with the proceeding, including the expeditious and cost-effective conduct of the proceeding.

Regulation 29 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, interpretation, revision or applications for annulment;
 - (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, Report or Award by a Commission, Tribunal or Committee; and
 - (e) any notice, order or decision by the Chair or 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, interpretation, revision or annulment and any stay of enforcement in effect.

CHAPTER V

IMMUNITIES AND PRIVILEGES

Regulation 30 Certificates of Official Travel

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

Regulation 31 Waiver of Immunities

- (1) The Secretary-General may waive the immunity of:
 - (a) the Centre; and
 - (b) members of the Secretariat.
- (2) The Chair may waive the immunity of:
 - (a) the Secretary-General and any Deputy Secretary-General;
 - (b) members of a Commission, Tribunal or Committee; and
 - (c) the parties, agents, counsel, advocates, witnesses or experts appearing in a proceeding, if the Commission, Tribunal or Committee concerned recommends such waiver.
- (3) The Administrative Council may waive the immunity of:
 - (a) the Chair and members of the Council;
 - (b) the parties, agents, counsel, advocates, witnesses or experts appearing in a proceeding, even if no recommendation for such a waiver is made by the Commission, Tribunal or Committee concerned; and
 - (c) the Centre or any person referred to in paragraphs (1) or (2).
- (4) A waiver under paragraph (1) or (2) shall be made in writing by the Secretary-General or Chair, as applicable. A waiver under paragraph (3) shall be made by a decision of the Administrative Council in accordance with Article 7(2) of the Convention.

CHAPTER VI

FINAL PROVISIONS

Regulation 32

Languages of Rules and Regulations

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