

ICSID CONCILIATION RULES

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INTRODUCTORY NOTE

The ICSID Conciliation Rules were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(c) of the ICSID Convention.

The ICSID Conciliation Rules are supplemented by the ICSID Administrative and Financial Regulations.

The ICSID Conciliation Rules apply from the date of registration of a Request for conciliation until termination of the conciliation.

CHAPTER I GENERAL PROVISIONS

Rule 1 **Application of Rules**

These Rules shall apply to any conciliation proceeding conducted under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("Convention") in accordance with Article 33 of the Convention.

Rule 2 **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 3 **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 Commission may order that documents also be filed in a different format.

Rule 4

Supporting Documents

- (1) Supporting documents shall be filed together with the written statement, request, 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 Commission or a party may require a fuller extract or a complete version of the document.

Rule 5

Routing of Documents

The Secretary-General shall transmit a document filed in the proceeding to:

- (a) the other party, unless the parties communicate directly with each other;
- (b) the Commission, unless the parties communicate directly with the Commission on request of the Commission or by agreement of the parties; and
- (c) the Chairman of the Administrative Council ("Chair") if applicable.

Rule 6

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 Commission 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 meetings shall be conducted in that procedural language;
 - (b) documents in another language shall be accompanied by a translation into that procedural language; and
 - (c) oral statements in another language shall be interpreted into that procedural language.
- (3) In a proceeding with two procedural languages:

- (a) documents may be filed and meetings may be conducted in either procedural language, unless the Commission orders that a document be filed in both procedural languages or that a meeting 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 Commission orders translation into both procedural languages;
 - (c) oral statements in another language shall be interpreted into either procedural language, unless the Commission orders interpretation into both procedural languages;
 - (d) the Commission and the Secretary-General may communicate in either procedural language; and
 - (e) all orders, decisions, recommendations and the Report 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 Commission orders a party to provide a fuller or a complete translation. If the translation is disputed, the Commission may order a party to provide a certified translation.

Rule 7

Calculation of Time Limits

Time limits referred to in these Rules shall be calculated from the day after the date on which the procedural step starting the period is taken, based on the time at the seat of the Centre. A time limit shall be satisfied if a procedural step is taken on the relevant date, or on the subsequent business day if the date falls on a Saturday or Sunday.

Rule 8

Costs of the Proceeding

- (1) The fees and expenses of the Commission and the administrative charges and direct costs of the Centre incurred in connection with the proceeding shall be borne equally by the parties, in accordance with Article 61(1) of the Convention.
- (2) Each party shall bear any other costs it incurs in connection with the proceeding.

Rule 9

Confidentiality of the Conciliation

All information relating to the conciliation and all documents generated in or obtained during the conciliation shall be confidential, unless:

- (a) the parties agree otherwise;
- (b) the information is to be published by the Centre pursuant to ICSID Administrative and Financial Regulation 26;
- (c) the information or document is independently available; or
- (d) disclosure is required by law.

Rule 10

Use of Information in Other Proceedings

Unless the parties to the dispute agree otherwise pursuant to Article 35 of the Convention, a party shall not rely on any of the following in other proceedings:

- (a) views expressed, statements, admissions, offers of settlement, or positions taken by the other party in the conciliation; or
- (b) the Report, order, decision or any recommendation made by the Commission in the conciliation.

CHAPTER II

ESTABLISHMENT OF THE COMMISSION

Rule 11

General Provisions, Number of Conciliators and Method of Constitution

- (1) The Commission shall be constituted without delay after registration of the Request for conciliation.
- (2) The number of conciliators and the method of their appointment must be determined before the Secretary-General can act on any appointment proposed by a party.
- (3) The parties shall endeavor to agree on a Sole Conciliator or any uneven number of conciliators 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, either party may inform the Secretary-General that the Commission shall be constituted in accordance with Article 29(2)(b) of the Convention.

- (4) References in these Rules to a Commission or a President of a Commission shall include a Sole Conciliator.

Rule 12

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 conciliation through a donation or grant, or in return for remuneration dependent on the outcome of the conciliation ("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 for conciliation, 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 conciliator proposed for appointment or appointed in a proceeding for purposes of completing the conciliator declaration required by Rule 16(3)(b).
- (4) The Commission may request further information regarding the funding agreement and the non-party providing funding pursuant to Rule 24(4)(a).

Rule 13

Appointment of Conciliators to a Commission Constituted in Accordance with Article 29(2)(b) of the Convention

If the Commission is to be constituted in accordance with Article 29(2)(b) of the Convention, each party shall appoint a conciliator and the parties shall jointly appoint the President of the Commission.

Rule 14

Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of the Sole Conciliator or any uneven number of conciliators.

Rule 15

Appointment of Conciliators by the Chair in Accordance with Article 30 of the Convention

- (1) If a Commission 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 Chair appoint the conciliator(s) who have not yet been appointed pursuant to Article 30 of the Convention.
- (2) The Chair shall appoint the President of the Commission after appointing any members who have not yet been appointed.
- (3) The Chair shall consult with the parties as far as possible before appointing a conciliator and shall use best efforts to appoint any conciliator(s) within 30 days after receipt of the request to appoint.

Rule 16

Acceptance of Appointment

- (1) A party appointing a conciliator 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 conciliator'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 conciliator and transmit the signed declaration to them.
- (5) The Secretary-General shall notify the parties if a conciliator 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 conciliator in accordance with the method followed for the previous appointment.
- (6) Each conciliator shall have a continuing obligation promptly to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).
- (7) Unless the parties and the conciliator agree otherwise, a conciliator may not act as arbitrator, counsel, expert, judge, mediator, witness or in any other capacity in any proceeding relating to the dispute that is the subject of the conciliation.

Rule 17

Replacement of Conciliators Prior to Constitution of the Commission

- (1) At any time before the Commission is constituted:
 - (a) a conciliator may withdraw an acceptance;
 - (b) a party may replace a conciliator whom it appointed; or
 - (c) the parties may agree to replace any conciliator.
- (2) A replacement conciliator shall be appointed as soon as possible, in accordance with the method by which the withdrawing or replaced conciliator was appointed.

Rule 18

Constitution of the Commission

- (1) The Commission shall be deemed to be constituted on the date the Secretary-General notifies the parties that each conciliator has accepted the appointment and signed the declaration required by Rule 16(3)(b).
- (2) As soon as the Commission is constituted, the Secretary-General shall transmit the Request for conciliation, the supporting documents, the notice of registration and communications with the parties to each conciliator.

CHAPTER III

DISQUALIFICATION OF CONCILIATORS AND VACANCIES

Rule 19

Proposal for Disqualification of Conciliators

- (1) A party may file a proposal to disqualify one or more conciliators ("proposal") in accordance with the following procedure:
 - (a) the proposal shall be filed after the constitution of the Commission and within 21 days after the later of:
 - (i) the constitution of the Commission; or
 - (ii) the date on which the party proposing the disqualification first knew or first should have known of the facts upon 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 conciliator 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 (1)(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 (1)(d).
- (2) 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 20

Decision on the Proposal for Disqualification

- (1) The decision on a proposal shall be made by the conciliators not subject to the proposal or by the Chair in accordance with Article 58 of the Convention.

- (2) For the purposes of Article 58 of the Convention:
 - (a) if the conciliators not subject to a proposal are unable to decide the proposal for any reason, they shall notify the Secretary-General and they shall be considered equally divided;
 - (b) if a subsequent proposal is filed while the decision on a prior proposal is pending, both proposals shall be decided by the Chair as if they were a proposal to disqualify a majority of the Commission.
- (3) The conciliators not subject to the proposal and the Chair shall use best efforts to decide any proposal within 30 days after the later of the expiry of the time limit referred to in Rule 19(1) (e) or the notice in Rule 20(2)(a).

Rule 21

Incapacity or Failure to Perform Duties

If a conciliator becomes incapacitated or fails to perform the duties required of a conciliator, the procedure in Rules 19 and 20 shall apply.

Rule 22

Resignation

- (1) A conciliator may resign by notifying the Secretary-General and the other members of the Commission and providing reasons for the resignation.
- (2) If the conciliator was appointed by a party, the other members of the Commission shall promptly notify the Secretary-General whether they consent to the conciliator's resignation for the purposes of Rule 23(3)(a).

Rule 23

Vacancy on the Commission

- (1) The Secretary-General shall notify the parties of any vacancy on the Commission.
- (2) The proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.
- (3) A vacancy on the Commission shall be filled by the method used to make the original appointment, except that the Chair shall fill the following from the Panel of Conciliators:

- (a) a vacancy caused by the resignation of a party-appointed conciliator without the consent of the other members of the Commission; or
 - (b) a vacancy that has not been filled within 45 days after the notice of vacancy.
- (4) Once a vacancy has been filled and the Commission has been reconstituted, the conciliation shall continue from the point it had reached at the time the vacancy was notified.

CHAPTER IV

CONDUCT OF THE CONCILIATION

Rule 24

Functions of the Commission

- (1) The Commission shall clarify the issues in dispute and assist the parties in reaching a mutually acceptable resolution of all or part of the dispute.
- (2) In order to bring about agreement between the parties, the Commission may, at any stage of the proceeding, after consulting with the parties, recommend:
 - (a) specific terms of settlement to the parties; or
 - (b) that the parties refrain from taking specific action that might aggravate the dispute while the conciliation is ongoing.
- (3) Recommendations may be made orally or in writing. Either party may request that the Commission provide reasons for any recommendation. The Commission may invite each party to provide observations concerning any recommendation made.
- (4) At any stage of the proceeding, the Commission may:
 - (a) request explanations, documents or other information from either party or other persons;
 - (b) communicate with the parties jointly or separately; or
 - (c) visit any place connected with the dispute or conduct inquiries with the agreement and participation of the parties.

Rule 25

General Duties of the Commission

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

Rule 26

Orders, Decisions and Agreements

- (1) The Commission shall make the orders and decisions required for the conduct of the conciliation.
- (2) The Commission shall make decisions by a majority of the votes of all its members. Abstentions shall count as a negative vote.
- (3) Orders and decisions may be made by any appropriate means of communication and may be signed by the President on behalf of the Commission.
- (4) The Commission shall apply any agreement of the parties on procedural matters to the extent that it does not conflict with the Convention and the ICSID Administrative and Financial Regulations.

Rule 27

Quorum

The participation of a majority of the members of the Commission by any appropriate means of communication shall be required at the first session, meetings and deliberations, unless the parties agree otherwise.

Rule 28

Deliberations

- (1) The deliberations of the Commission shall take place in private and remain confidential.
- (2) The Commission may deliberate at any place and by any means it considers appropriate.
- (3) The Commission may be assisted by the Secretary of the Commission at its deliberations. No other person shall assist

the Commission at its deliberations, unless the Commission decides otherwise and notifies the parties.

Rule 29

Cooperation of the Parties

- (1) The parties shall cooperate with the Commission and with one another, and shall conduct the conciliation in good faith and in an expeditious and cost-effective manner.
- (2) At the request of the Commission, the parties shall provide all relevant explanations, documents or other information. They shall facilitate visits to any place connected with the dispute in accordance with Rule 24(4)(c) and use best efforts to facilitate the participation of other persons as requested by the Commission.
- (3) The parties shall comply with any time limit agreed upon or fixed by the Commission.
- (4) The parties shall give their most serious consideration to the Commission's recommendations pursuant to Article 34(1) of the Convention.

Rule 30

Written Statements

- (1) Each party shall simultaneously file a brief, initial written statement describing the issues in dispute and its views on these issues 30 days after the constitution of the Commission, or on such other date as the Commission may fix in consultation with the parties, and in any event before the first session.
- (2) Either party may file further written statements at any stage of the conciliation within the time limits fixed by the Commission.

Rule 31

First Session

- (1) The Commission shall hold a first session with the parties 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 Commission deems appropriate. The agenda, method and date of the first session shall be determined by the Commission after consulting with the parties.

- (3) The first session shall be held within 60 days after the constitution of the Commission or such other period as the parties may agree.
- (4) Before the first session, the Commission shall invite the parties' views on procedural matters, including:
 - (a) the applicable conciliation rules;
 - (b) the procedural language(s), translation and interpretation;
 - (c) the method of filing and routing of documents;
 - (d) a schedule for further written statements and meetings;
 - (e) the place of meetings between the Commission and the parties and whether a meeting will be held in person or remotely;
 - (f) the manner of recording or keeping minutes of meetings, if any;
 - (g) the treatment of information relating to, and documents generated in or obtained during, the proceeding;
 - (h) any agreement between the parties:
 - (i) concerning the treatment of information disclosed by one party to the Commission by way of separate communication pursuant to Rule 24(4)(b);
 - (ii) not to initiate or pursue any other proceeding in respect of the dispute during the conciliation;
 - (iii) concerning the application of prescription or limitation periods;
 - (iv) concerning the disclosure of any settlement agreement resulting from the conciliation; and
 - (v) pursuant to Article 35 of the Convention; and
 - (i) any other procedural matter raised by either party or the Commission.
- (5) At the first session or within any other period determined by the Commission, each party shall:
 - (a) identify a person or entity authorized to negotiate and settle the dispute on its behalf; and
 - (b) describe the process that would be followed to conclude and implement a settlement agreement.
- (6) The Commission shall issue summary minutes recording the parties' agreements and the Commission's decisions on the procedure within 15 days after the later of the first session or the last written statement on procedural matters addressed at the first session.

Rule 32

Meetings

- (1) The Commission may meet with the parties jointly or separately.
- (2) The Commission shall determine the date, time and method of holding meetings, after consulting with the parties.
- (3) A meeting in person may be held at any place agreed to by the parties after consulting with the Commission and the Secretary-General. If the parties do not agree on the place of a meeting, it shall be held at the seat of the Centre pursuant to Article 62 of the Convention.
- (4) Meetings shall remain confidential. The parties may agree to observation of meetings by persons in addition to the parties and the Commission.

Rule 33

Preliminary Objections

- (1) A party may file a preliminary objection that the dispute is not within the jurisdiction of the Centre or for other reasons is not within the competence of the Commission ("preliminary objection").
- (2) A party shall notify the Commission and the other party of its intent to file a preliminary objection as soon as possible. The objection shall be made no later than the date of the initial written statement referred to in Rule 30(1), unless the facts on which the objection is based are unknown to the party at the relevant time.
- (3) The Commission may address a preliminary objection separately or with other issues in dispute. If the Commission decides to address the objection separately, it may suspend the conciliation on the other issues in dispute to the extent necessary to address the objection.
- (4) The Commission may at any time on its own initiative consider whether the dispute is within the jurisdiction of the Centre or within its own competence.
- (5) If the Commission decides that the dispute is not within the jurisdiction of the Centre or for other reasons is not within its competence, it shall close the proceeding and issue a reasoned Report to that effect. Otherwise, the Commission shall issue a reasoned decision on the preliminary objection and fix any time limit necessary for the further conduct of the conciliation.

CHAPTER V

TERMINATION OF THE CONCILIATION

Rule 34

Discontinuance Prior to the Constitution of the Commission

- (1) If the parties notify the Secretary-General prior to the constitution of the Commission that they have agreed to discontinue the proceeding, the Secretary-General shall issue an order taking note of the discontinuance.
- (2) If a party requests the discontinuance of the proceeding prior to the constitution of the Commission, the Secretary-General 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 Secretary-General 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.
- (3) If, prior to the constitution of the Commission, the parties fail to take any steps in the proceeding for more than 150 consecutive days, the Secretary-General shall notify them of the time elapsed since the last step taken in the proceeding. If the parties fail to take a step within 30 days after the notice, they shall be deemed to have discontinued the proceeding and the Secretary-General shall issue an order taking note of the discontinuance. If either party takes a step within 30 days after the Secretary-General's notice, the proceeding shall continue.

Rule 35

Report Noting the Parties' Agreement

- (1) If the parties reach agreement on some or all of the issues in dispute, the Commission shall close the proceeding and issue its Report noting the issues in dispute and recording the issues upon which the parties have agreed.
- (2) The parties may provide the Commission with the complete and signed text of their settlement agreement and may request that the Commission embody such settlement in the Report.

Rule 36

Report Noting the Failure of the Parties to Reach Agreement

At any stage of the proceeding, and after notice to the parties, the Commission shall close the proceeding and issue its Report noting the issues in dispute and recording that the parties have not reached agreement on the issues in dispute during the conciliation if:

- (a) it appears to the Commission that there is no likelihood of agreement between the parties; or
- (b) the parties advise the Commission that they have agreed to discontinue the conciliation.

Rule 37

Report Recording the Failure of a Party to Appear or Participate

If one party fails to appear or participate in the proceeding, the Commission shall, after notice to the parties, close the proceeding and issue its Report noting the submission of the dispute to conciliation and recording the failure of that party to appear or participate.

Rule 38

The Report

- (1) The Report shall be in writing and shall contain, in addition to the information specified in Rules 35-37:
 - (a) a precise designation of each party;
 - (b) the names of the representatives of the parties;
 - (c) a statement that the Commission was established under the Convention and a description of the method of its constitution;
 - (d) the name of each member of the Commission and of the appointing authority of each;
 - (e) the date and place of the first session and the meetings of the Commission with the parties;
 - (f) a brief summary of the proceeding;
 - (g) the complete and signed text of the parties' settlement agreement if requested by the parties pursuant to Rule 35(2);

- (h) a statement of the costs of the proceeding, including the fees and expenses of each member of the Commission and the costs to be paid by each party pursuant to Rule 8; and
 - (i) any agreement of the parties pursuant to Article 35 of the Convention.
- (2) The Report shall be signed by the members of the Commission. It may be signed by electronic means if the parties agree. If a member does not sign the Report, such fact shall be recorded.

Rule 39

Issuance of the Report

- (1) Once the Report has been signed by the members of the Commission, the Secretary-General shall promptly:
- (a) dispatch a certified copy of the Report to each party, indicating the date of dispatch on the Report; and
 - (b) deposit the Report in the archives of the Centre.
- (2) The Secretary-General shall provide additional certified copies of the Report to a party upon request.