

ICSID FACT-FINDING ADMINISTRATIVE AND FINANCIAL REGULATIONS

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INTRODUCTORY NOTE

The ICSID Fact-Finding Administrative and Financial Regulations apply to fact-finding proceedings pursuant to the ICSID Fact-Finding Rules and were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

CHAPTER I GENERAL PROVISIONS

Regulation 1 Application of these Regulations

- (1) These Regulations apply to fact-finding proceedings which the Secretariat of the Centre is authorized to administer pursuant to Rule 2 of the ICSID Fact-Finding Rules.
- (2) The applicable Regulations are those in force on the date of filing the Request for fact-finding pursuant to the ICSID Fact-Finding Rules.

CHAPTER II GENERAL FUNCTIONS OF THE SECRETARIAT

Regulation 2 Secretary

The Secretary-General of the Centre shall appoint a Secretary for each Fact-Finding Committee ("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 ICSID Fact-Finding Rules applicable to individual proceedings and delegated to the Secretary; and

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

Regulation 3 The Registers

The Secretary-General shall maintain a Register for each fact-finding proceeding containing all significant data concerning the institution, conduct and disposition of the proceeding. The information in the Register shall not be published, unless the parties agree otherwise.

Regulation 4 Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
 - (a) all Requests for fact-finding;
 - (b) all documents and communications filed in a proceeding;
 - (c) any records of meetings or sessions in a proceeding;
 - (d) any Report of the Committee; and
 - (e) any notice from the Secretary-General.
- (2) Subject to the ICSID Fact-Finding Rules and the agreement of the parties to the proceeding, 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.

Regulation 5 Certificates of Official Travel

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

CHAPTER III

FINANCIAL PROVISIONS

Regulation 6

Fees, Allowances and Charges

- (1) Each member of a 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 meeting or session; and
 - (c) when required to travel to attend a 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 meeting or session is held; and
 - (iii) a *per diem* allowance for each day spent away from the member's place of residence.
- (2) The Secretary-General shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and (c). Any request by a member for a higher amount shall be made in writing through the Secretary-General, and not directly to the parties. Such a request must be made before the constitution of the Committee and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish administrative charges payable by the parties to the Centre.
- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
 - (a) members of Committees and any assistants approved by the parties;
 - (b) witnesses and experts called by a 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 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 Committee, unless the parties have made sufficient payments to defray the costs of the proceeding.

Regulation 7

Payments to the Centre

- (1) To enable the Centre to pay the costs referred to in Regulation 6, the parties shall make payments to the Centre as follows:
 - (a) upon registration of a Request for fact-finding, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the proceeding through the first session of the Committee;
 - (b) upon constitution of a 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) Each party shall pay an equal share of the payments referred to in paragraph (1), unless the parties agree on a different division.
- (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.

Regulation 8

Consequences of Default in Payment

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

payment is made, after giving notice to the parties and to the 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 Committee if constituted.

Regulation 9 Special Services

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

Regulation 10 Fee for Lodging Requests

The parties wishing to institute a fact-finding proceeding shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 11 Administration of Proceedings

The Secretariat of the Centre is the only body authorized to administer fact-finding proceedings conducted pursuant to the ICSID Fact-Finding Rules.

CHAPTER IV OFFICIAL LANGUAGES AND LIMITATION OF LIABILITY

Regulation 12 Languages of Rules and Regulations

- (1) The ICSID Fact-Finding Rules and these Regulations are published in the official languages of the Centre, English, French and Spanish.

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

Regulation 13

Prohibition of Testimony and Limitation of Liability

- (1) Unless required by applicable law or unless the parties and all the members of the Committee agree otherwise in writing, no member of the Committee shall give testimony in any judicial, arbitral or similar proceeding concerning any aspect of the fact-finding proceeding.
- (2) Except to the extent such limitation of liability is prohibited by applicable law, no member of the Committee shall be liable for any act or omission in connection with the exercise of their functions in the fact-finding proceeding, unless there is fraudulent or willful misconduct.