

ICSID FACT-FINDING RULES

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INTRODUCTORY NOTE

The ICSID Fact-Finding 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 Fact-Finding Rules are supplemented by the ICSID Fact-Finding Administrative and Financial Regulations.

CHAPTER I GENERAL PROVISIONS

Rule 1 Definitions

- (1) "Secretariat" means the Secretariat of the Centre.
- (2) "Regional Economic Integration Organization" or "REIO" means an organization constituted by States to which they have transferred competence in respect of matters governed by these Rules, including the authority to make decisions binding on them in respect of such matters.
- (3) "Centre" or "ICSID" means the International Centre for Settlement of Investment Disputes established pursuant to Article 1 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.
- (4) "Request" means a request for fact-finding together with the required supporting documents.
- (5) "Secretary-General" means the Secretary-General of the Centre.
- (6) "Schedule of fees" means the schedule of fees published by the Secretary-General.

Rule 2 Fact-Finding Proceedings

- (1) The Secretariat is authorized to administer fact-finding proceedings that relate to an investment, involve a State or an REIO, and which the parties consent in writing to submit to the Centre.
- (2) Reference to a State or an REIO includes a constituent subdivision of the State, or an agency of the State or the

REIO. The State or the REIO must approve the consent of the constituent subdivision or agency which is a party to the fact-finding pursuant to paragraph (1), unless the State or the REIO concerned notifies the Centre that no such approval is required.

- (3) The ICSID Fact-Finding Administrative and Financial Regulations shall apply to proceedings pursuant to these Rules.

Rule 3

Application of Rules

- (1) These Rules shall apply to any fact-finding proceeding conducted pursuant to Rule 2.
- (2) The parties may agree to modify the application of any of these Rules other than Rules 1-7.
- (3) The applicable ICSID Fact-Finding Rules are those in force on the date of filing the Request, unless the parties agree otherwise.

Rule 4

Party Representative

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)").

CHAPTER II

INSTITUTION OF THE FACT-FINDING PROCEEDING

Rule 5

The Request

Parties wishing to institute a fact-finding proceeding pursuant to these Rules shall file a joint Request with the Secretary-General and pay the lodging fee published in the schedule of fees.

Rule 6

Contents and Filing of the Request

- (1) The Request shall:
 - (a) be in English, French or Spanish, or in any other language with the approval of the Secretary-General;
 - (b) identify each party to the proceeding 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;
 - (e) be filed electronically, unless the Secretary-General authorizes the filing of the Request in an alternative format;
 - (f) 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;
 - (g) indicate that the proceeding involves a State or an REIO, describe the investment to which the proceeding relates, and indicate the facts to be examined and the relevant circumstances;
 - (h) attach the agreement of the parties to have recourse to fact-finding pursuant to these Rules; and
 - (i) contain any proposals or agreements reached by the parties concerning the constitution of a Fact-Finding Committee ("Committee"), the qualifications of its member(s), its mandate and the procedure to be followed during the fact-finding.
- (2) Any supporting document in a language other than English, French, Spanish or a language approved by the Secretary-General pursuant to Rule 6(1)(a) 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 complete translation of the document.

Rule 7

Receipt and Registration of the Request

- (1) The Secretary-General shall promptly acknowledge receipt of the Request.

- (2) Upon receipt of the Request and the lodging fee, the Secretary-General shall register the Request if it appears, on the basis of the information provided, that the Request is within the scope of Rule 2(1).
- (3) The Secretary-General shall notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.
- (4) 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 Secretary-General; and
 - (c) invite the parties to constitute a Committee without delay.

CHAPTER III

THE FACT-FINDING COMMITTEE

Rule 8 **Qualifications of Members of the Committee**

- (1) Each member of a Fact-Finding Committee shall be impartial and independent of the parties.
- (2) The parties may agree that a member of a Committee shall have specific qualifications or expertise.

Rule 9 **Number of Members and Method of Constituting the Committee**

- (1) The parties shall endeavor to agree on a sole or any uneven number of Committee members, and the method of their appointment. If the parties do not advise the Secretary-General of an agreement on the number of members and method of appointment within 30 days after the date of registration, the Committee shall consist of a sole member, appointed by agreement of the parties.
- (2) The parties may jointly request that the Secretary-General assist with the appointment of any member at any time.

- (3) If the parties are unable to appoint a sole member or any member of a Committee within 60 days after the date of registration, either party may request that the Secretary-General appoint the member(s) not yet appointed. The Secretary-General shall consult with the parties as far as possible on the qualifications, expertise, nationality and availability of the member(s) and shall use best efforts to appoint any Committee member(s) within 30 days after receipt of the request to appoint.
- (4) If no step has been taken by the parties to appoint the members of a Committee within 120 consecutive days after the date of registration, or such other period as the parties may agree, the Secretary-General shall notify the parties that the fact-finding is terminated.

Rule 10

Acceptance of Appointment

- (1) The parties shall notify the Secretary-General of the appointment of the members of the Committee and provide the names and contact information of the appointees.
- (2) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from the appointee.
- (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 appointee'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 member and provide the signed declaration.
- (5) The Secretary-General shall notify the parties if an appointee 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 in accordance with the method followed for the previous appointment.
- (6) Each member 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 Committee agree otherwise, a member may not act as arbitrator, conciliator, counsel, expert, judge, mediator, witness or in any other capacity in any proceeding relating to circumstances examined during the fact-finding.

Rule 11

Constitution of the Committee

The Committee shall be deemed to be constituted on the date the Secretary-General notifies the parties that each member has accepted their appointment and signed the declaration required by Rule 10(3)(b). As soon as the Committee is constituted, the Secretary-General shall transmit the Request, any supporting documents, communications received from the parties and the notice of registration to each member.

CHAPTER IV

CONDUCT OF THE FACT-FINDING PROCEEDING

Rule 12

Sessions and Work of the Committee

- (1) Each party shall file a preliminary written statement of not more than 50 pages with the Secretary-General within 15 days after the date of constitution of the Committee, unless the parties agree otherwise, and in any event before the first session. The preliminary statement shall address the party's view on the mandate of the Committee, the scope of the inquiry, relevant documents, persons to be interviewed, site visits and any other relevant matters. The Secretary-General shall transmit the preliminary written statements to the Committee and the other party.
- (2) The Committee shall hold a first session with the parties within 30 days after its constitution or such other period as the parties may agree.
- (3) At the first session, the Committee shall determine the protocol for the fact-finding ("Protocol") after consulting with the parties on procedural matters, including:
 - (a) the Committee's mandate;

- (b) the procedure for the conduct of the proceeding, such as the procedural languages; method of communication; place of sessions; whether a session will be held in person or remotely; the next steps in the proceeding; the treatment of information and documents; persons to be interviewed; site visits; and any other procedural and administrative matters;
 - (c) whether the Report to be issued will be binding on the parties; and
 - (d) whether the Committee should make any recommendations in its Report.
- (4) The Committee shall conduct the proceeding in accordance with the Protocol and take all steps necessary to discharge its mandate. To that end, it shall make all decisions required for the conduct of the proceeding.
- (5) Any matters not provided for in these Rules or not previously agreed to by the parties shall be determined by agreement of the parties or, failing such agreement, by the Committee.

Rule 13

General Duties

- (1) The Committee shall treat the parties equally and provide each party with a reasonable opportunity to participate in the proceeding. It shall conduct the proceeding in an expeditious and cost-effective manner and shall consult regularly with the parties on the conduct of the proceeding.
- (2) The parties shall cooperate with the Committee and with one another and shall conduct the proceeding in good faith and in an expeditious and cost-effective manner. The parties shall endeavor to provide all relevant explanations, documents or other information requested by the Committee and participate in the sessions of the Committee. The parties shall use best efforts to facilitate the Committee's inquiry.

Rule 14

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 15

Costs of the Proceeding

Unless the parties agree otherwise:

- (a) the fees and expenses of the Committee and the administrative charges and direct costs of the Centre shall be borne equally by the parties; and
- (b) each party shall bear any other costs it incurs in connection with the proceeding.

Rule 16

Confidentiality of the Proceeding

- (1) All information relating to the fact-finding proceeding, and all documents generated in or obtained during the proceeding, shall be confidential, unless:
 - (a) the parties agree otherwise;
 - (b) the information or document is independently available; or
 - (c) disclosure is required by law.
- (2) Unless the parties agree otherwise, the fact that they are seeking or have sought fact-finding shall be confidential.

Rule 17

Use of Information in Other Proceedings

A party shall not rely in other proceedings on any positions taken, admissions made, or views expressed by the other party or the members of the Committee during the fact-finding proceeding, unless the parties agree otherwise.

CHAPTER V

TERMINATION OF THE FACT-FINDING PROCEEDING

Rule 18

Manner of Terminating the Proceeding

The proceeding shall terminate upon:

- (a) the issuance of a notice by the Secretary-General pursuant to Rule 9(4);
- (b) the issuance of a Report by the Committee; or
- (c) a notice from the parties that they have agreed to terminate the proceeding.

Rule 19

Failure of a Party to Participate or Cooperate

If a party fails to participate in the proceeding or cooperate with the Committee, and the Committee determines that it is no longer able to discharge its mandate, the Committee shall, after notice to the parties, record the failure of that party to participate or cooperate in its Report.

Rule 20

Report of the Committee

- (1) The Report shall be in writing and shall contain:
 - (a) the mandate of the Committee;
 - (b) the Protocol followed;
 - (c) a brief summary of the proceeding;
 - (d) a recommendation if requested by the parties; and
 - (e) the facts established by the Committee and the reasons why certain facts may not be considered as having been established; or
 - (f) an indication of the failure of a party to participate or cooperate pursuant to Rule 19.
- (2) The Report shall be adopted by a majority of the members and signed by them. If a member does not sign the Report, such fact shall be recorded.
- (3) Any member may attach a statement to the Report if the member disagrees on any of the facts found.
- (4) Unless the parties agree otherwise, the Report of the Committee shall not be binding upon the parties, and the parties shall be free to give any effect to it.

Rule 21

Issuance of the Report

- (1) Once the Report has been signed by the members of the Committee, 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.