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BY EMAIL

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**Proposed Amendments to 2006 ICSID Rules**

Dear Ms. Kinnear:

The partners of the International Dispute Resolution Group of Debevoise & Plimpton LLP are pleased to present suggestions regarding potential amendments to the 2006 ICSID Rules and Regulations (the “Rules”).

***Debevoise’s Commitment to Efficiency and Fairness in International Arbitration***

As one of the world’s leading arbitral institutions, ICSID plays a key role in the resolution of investment disputes involving states. We therefore welcome ICSID’s willingness to adapt its Rules to address the evolving needs and concerns of its users and other interested parties.

At Debevoise, we place significant emphasis on ensuring that arbitration proceedings are efficient and tailored to the needs of the particular case. In our experience, ICSID proceedings often take too long and cost too much, partly because the Rules do not provide the structure or incentives to encourage arbitration tribunals and parties to resolve disputes in an efficient and timely fashion. We believe that it is in the interest of all parties that procedures be efficient and promote the swift and timely resolution of disputes, while still ensuring equality between the parties and respecting due process rights. We therefore fully support ICSID’s stated objective “to simplify the dispute settlement procedure to make it increasingly cost and time effective, while continuing to ensure due process and equal treatment of the parties.”

To that end, we provide in this letter suggestions regarding potential amendments to the Rules that are designed to promote ICSID arbitration as an efficient dispute resolution mechanism. While some of our suggestions relate to existing Rules, others invite ICSID to consider new rules that reflect the evolution of arbitration practices.

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## I. ESTABLISHMENT OF THE TRIBUNAL

- A. ***Constitution of the Tribunal (Rule 6(2))***. Rule 6(2) requires each arbitrator to sign a declaration before or at the first session of the Tribunal. To promote efficiency, and to ensure that the Tribunal members have sufficient availability to fulfill their obligations expeditiously, ICSID should require each arbitrator to confirm as part of the same declaration (i) his/her commitment to conduct the proceedings fairly and efficiently, by adopting procedures suitable to the circumstances of the arbitration, (ii) the days or weeks in the next two years that he/she has already committed to other cases or other obligations that make him/her unavailable, and (iii) his/her commitment that he/she will not take on new appointments that will conflict with his/her responsibilities to the case subject to the appointment.
- B. ***Duties of the Tribunal***. To emphasize the Tribunal's obligations towards the parties, ICSID should include a rule establishing that the Tribunal's general duties at all times during the arbitration shall include (i) a duty to act fairly and impartially as between all parties, and (ii) a duty to adopt procedures suitable to the circumstances of the arbitration, avoiding unnecessary delay and expense, so as to provide a fair, efficient and expeditious means for the final resolution of the parties' dispute. See LCIA Rules, Article 14.4.
- C. ***Disqualification of Arbitrators (Rule 9(1))***. Rule 9(1) requires that disqualification challenges made under Article 57 of the ICSID Convention (the "Convention") be filed "promptly, and in any event before the proceeding is declared closed." In some cases, parties appear to seek to disqualify arbitrators as a way to delay the proceedings. For example, in *ConocoPhillips v. Venezuela*, Venezuela filed six different requests to disqualify L. Yves Fortier over the course of five years.<sup>1</sup> To deter parties from seeking to disqualify arbitrators as a delaying tactic, ICSID should:
1. *First*, impose specific time limits for filing such challenges, for example, within 30 days of receiving the notice of appointment of that arbitrator, or within 30 days of the date on which the proposing party became, or could have reasonably become, aware of the circumstances giving rise to the challenge;
  2. *Second*, preclude parties from proposing the disqualification of the same arbitrator a second time, unless there is a material change in the circumstances that existed at the time of the first proposal; and

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<sup>1</sup> See e.g., *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/30, Decision on the Proposal to Disqualify L. Yves Fortier, Q.C., Arbitrator, 27 February 2012; Decision on the Proposal to Disqualify a Majority of the Tribunal, 5 May 2014; Decision on the Proposal to Disqualify a Majority of the Tribunal, 1 July 2015.

3. *Third*, replace Rule 9(6), which suspends the proceeding “until a decision has been taken on the proposal,” with a rule giving arbitrators who are not subject to the disqualification challenge the authority to continue the proceedings pending the resolution of the disqualification challenge.

## II. WORKING OF THE TRIBUNAL

- A. ***Fixed Dates for Deliberations (Rules 14, 15)***. To avoid delays in the issuance of the award, and to ensure that the Tribunal engages in a thorough discussion of the issues immediately before and after the hearing, ICSID should require the Tribunal to set aside (i) dates immediately before the hearing for a conference among themselves, and (ii) dates immediately after the hearing, or within 30 days of the end of the hearing, for deliberations. To ensure that these dates are available, they should be set in the procedural order decided at the preliminary procedural conference (*see* Section III.B.2 below). When arbitrators wait until the hearing to set their deliberations, conflicting schedules often prevent them from getting together for a long time. This delay reduces the impact of the hearing and causes substantial delay in drafting the award.
- B. ***Arbitrators’ Fees***. As a method to incentivize arbitrators to pursue the twin goals of efficiency and fairness, in setting the arbitrators’ fees, ICSID should take into consideration (i) the diligence and efficiency of the arbitrator, (ii) the time spent working on the arbitration, (iii) the rapidity of the proceedings, (iv) the complexity of the dispute, and (v) the timeliness of the submission of the draft award. ICSID could adopt a fee scale similar to that contained in Appendix III of the ICC Rules.

## III. GENERAL PROCEDURAL PROVISIONS

- A. ***Tailored Procedures (Rules 19, 20)***. ICSID should adopt rules that encourage Tribunals and the parties to adopt procedures that are appropriate for the particular case and are designed to lead to an efficient resolution. For example:
  1. *First*, the Rules should require the respondent to file an answer, including any jurisdictional objections and counterclaims, within 45 days of the receipt of the request for arbitration and, in any event, *before* the first procedural conference (*see* UNCITRAL Rules, Article 4). The Secretariat could have the authority to grant a short extension if requested prior to the constitution of the Tribunal. It is inefficient for a procedural schedule to be set and for the investor to have to proceed with further submissions without any knowledge of the respondent state’s position.
  2. *Second*, the Tribunal should ask the parties to agree on a preliminary list of issues to be addressed by the Tribunal.

3. *Third*, the Tribunal should be encouraged to adopt a thumbs-up-thumbs-down procedure, including with respect to jurisdictional, merits, or other interim decisions. In this procedure, the Tribunal issues a brief decision, without stating reasons, as soon as possible after the parties have completed their respective submissions and pleadings on the issue, but no later than 30 days after the last submission or hearing date (*see also* Section IV.B below). For example, if the Tribunal decides to reject a jurisdictional challenge, it can simply say so, order the parties to proceed with a pre-set schedule on the merits, and issue the decision later or in its award on the merits. If the Tribunal accepts the challenge, it can inform the parties not to proceed further and issue its award whenever it is ready (within appropriate time limits). We have used this procedure effectively in several cases. Just this month, in a simple statement, the Tribunal in *Tethyan Copper Company v. Islamic Republic of Pakistan* rejected Pakistan's last defense on liability and confirmed the commencement of the damages phase.<sup>2</sup> To accomplish this, ICSID should revise Rule 47(1)(i), which requires that all awards state their reasons, to expressly allow the Tribunal to issue brief decisions prior to the full award.
  4. *Finally*, the parties should be able to grant authority to the President of the Tribunal to rule on certain aspects of the procedure, including document requests (*see also* Section V.A.3 below).
- B. ***Setting the Procedural Schedule (Rules 19, 20)***. ICSID should adopt rules that require the Tribunal to set the entire schedule for the arbitration at the first procedural conference. These rules should:
1. *First*, require the parties and the Tribunal to decide whether or not to bifurcate or trifurcate the proceedings, by separating jurisdiction, liability or quantum phases.
  2. *Second*, require that the procedural schedule includes, *inter alia*, (i) deadlines and hearing dates that include all phases of the case, if it is to be bifurcated or trifurcated, (ii) deadlines for the parties' submission of their detailed statements of position, (iii) dates for meet-and-confer sessions between the parties and with the Tribunal, to narrow disputes relating to document discovery, (iv) dates for a pre-hearing procedural conference during which the parties and the Tribunal may consider the procedures, (v) dates immediately before the hearing for the Tribunal to hold a

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<sup>2</sup> See Tom Jones, *Pakistan to Pay in ICSID Mining Claim*, Global Arbitration Review, 22 March 2017, available at <http://globalarbitrationreview.com/article/1138509/pakistan-to-pay-in-icsid-mining-claim>.

conference among themselves, (vi) dates immediately after the hearing, or within 30 days of the hearing, for the Tribunal to conduct its deliberations, (vii) dates for the issuance of the award and any interim decisions, and (viii) any other dates that would facilitate the timely resolution of the proceedings (see Sections II.A above, and IV.B, V.A.2 and VII.A below).

- C. ***Procedural Meetings (Rules 20, 21)***. In order for procedural conferences to be meaningful, productive and effective, party representatives with the requisite authorization should be present at all procedural conferences to make decisions and engage fully in the discussions. ICSID should also consider rules encouraging the parties and their counsel to attend procedural meetings with the Tribunal in person whenever possible, because they lead to more in-depth discussions and reduce subsequent disputes.
- D. ***Electronic Filings (Rule 23)***. Rule 23 requires that “every request, pleading, application, written observation, supporting documentation, if any, or other instrument be filed...in the form of a signed original.” ICSID should instead provide that filings be electronic, unless the parties are unable to do so. Debevoise, for example, has successfully implemented hyperlinked electronic memorials in proceedings under the ICC, ICDR, UNCITRAL and LCIA Rules. Hard copies of the parties’ submissions would only be provided upon request. In addition, when hard copies are submitted, the default rule should be that submissions and other communications are submitted directly to the Tribunal, with copies to the Secretariat. The current practice of making all submissions through the ICSID Secretariat is cumbersome and consumes time of the Secretariat that could be better spent.
- E. ***Costs Allocation (Rule 28)***. ICSID should incentivize the parties to conduct the proceedings in an expeditious and cost-effective manner, including by not raising myriad meritless arguments. In *Occidental v. Ecuador*, for example, Ecuador was successful on only one out of 20 grounds for annulment.<sup>3</sup> ICSID should provide a list of factors that the Tribunal should consider in making decisions as to costs, including (i) the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner, (ii) the number and nature of issues on which the parties were ultimately successful, and (iii) the compliance or non-compliance with provisional measures. See ICC Rules, Articles 29(4), 38.

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<sup>3</sup> See *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador*, ICSID Case No. ARB/06/11, Ecuador’s Memorial on Annulment, 12 August 2013; *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador*, ICSID Case No. ARB/06/11, Decision on Annulment of the Award, 2 November 2015, ¶ 68, FN 51 (noting that there were additional sub-arguments to the 13 main grounds that Ecuador raised).

#### IV. JURISDICTIONAL PROCEDURES

- A. ***Considering Jurisdictional Objections in the Initial Procedural Schedule (Rules 19, 20)***. As noted above, ICSID should adopt rules that require the Tribunal to set the entire schedule for the arbitration at the first procedural conference (*see also* Section III.B.2 above). These rules should require the parties and the Tribunal to decide whether or not to bifurcate or trifurcate the proceedings, by separating jurisdiction, liability or quantum phases.
- B. ***Decisions on Jurisdictional Objections (Rule 41(6))***. In order to avoid unnecessarily prolonging the proceedings as a result of jurisdiction objections, ICSID should (i) set shorter time limits for the issuance of decisions on jurisdiction, and (ii) use a thumbs-up-thumbs-down procedure (*see* Section III.A.3 above).

#### V. WRITTEN AND ORAL PROCEDURES

- A. ***Document Requests (Rules 33, 34)***. In order to promote efficiency, ICSID should:
1. *First*, introduce rules requiring the parties to limit and focus requests for the production of documents. For example, discovery requests regarding electronic documents could be drafted in such a way as to take account of how documents are stored, for example, by specifying specific search terms and using hit counts. The standards set forth in the IBA Rules of Evidence generally provide an appropriate balance of interests, but the nature of requests could be adapted to the nature of electronic documents. In addition, the rules could require that, in deciding the propriety of individual requests, Tribunals must balance the cost of producing responsive documents against the materiality and relevance of the documents sought.
  2. *Second*, introduce procedures that encourage the parties and the Tribunal to discuss and confer on the issues related to document requests. When Tribunals simply decide discovery disputes on the basis of written submissions, they are much less able to determine the relevance of the documents sought and the cost of producing them. Relevant procedures include, for example, (i) scheduling meet-and-confer conferences between the parties aimed at resolving as many outstanding issues as possible, as well as (ii) conference calls with the Tribunal following such conferences to further narrow points of disagreement (*see* Section III.B.2 above). Debevoise has successfully organized such meet-and-confer conferences with opposing counsel in many cases.

3. *Third*, introduce a rule granting the President of the Tribunal the authority to rule on document requests, where appropriate (*see* Section III.A.4 above).
- B. ***Expert Evidence (Rules 34, 35)***. ICSID should encourage (i) meetings of experts, either before or after their reports are drafted, to identify points of agreement and to narrow points of disagreement before the hearing, and (ii) the parties not to present experts on issues of law unless the Tribunal and counsel are not qualified to act under that law. From our experience, meetings of experts frequently reduce the issues in dispute and permit much more focused questioning at the hearing.
  - C. ***Examination of Witnesses and Experts (Rules 35, 36)***. ICSID should encourage Tribunals to adopt procedures for examining witnesses and experts at the hearing that ensure the most efficient resolution of the issues, including the use of (i) written witness statements as direct testimony to focus the evidence and hearings, and (ii) conferencing/hot-tubbing for experts.
  - D. ***Post-Hearing Submissions***. ICSID should adopt rules stating that closing arguments at the end of a hearing should be the default and that the Tribunal should not request post-hearing submissions from the parties unless appropriate and necessary. When such submissions are requested, ICSID should require Tribunals to ensure the efficient resolution of the issues, by, for example, (i) identifying and limiting the issues on which the Tribunal may benefit from further exposition, (ii) imposing page limits, and (iii) using detailed outlines rather than narrative briefs to focus the issues and to make the briefs more useful to the Tribunal. In arbitrations under the ICC Rules, LCIA Rules, the Milan Chamber of Commerce Rules, and the Convention, for example, Debevoise has used detailed outlines for post-hearing briefs to present the hearing testimony on a particular topic in a focused way and avoid repetition of argument.
  - E. ***Visits and Inquiries (Rule 37(1))***. ICSID should adopt rules requiring that (i) the parties cooperate with the Tribunal to the extent the Tribunal considers it necessary to visit any place connected to the dispute or to conduct an inquiry there, and (ii) any such visit or inquiry proceed in a way that maintains equality between the parties.
  - F. ***Reconsideration of Interim Decisions Prior to an Award (Rules 25, 38(2))***. Although most arbitration tribunals have found that they lack the power to reconsider interim decisions prior to an award,<sup>4</sup> neither the Convention nor the

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<sup>4</sup> See, e.g., *Perenco Ecuador Ltd. v. The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case No. ARB/08/6, Decision on Ecuador's Reconsideration Motion, 10 April 2015; *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Reconsideration and Award, 7 February 2017; *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of*

Rules squarely address this point. Consistent with principles of efficiency and fairness that undergird the international arbitration regime, ICSID should clarify that decisions of the Tribunal, once made, should be binding for the purposes of the case. If ICSID concludes that parties should have some basis to seek reconsideration of the Tribunal's decisions, it should limit reconsideration to very exceptional circumstances.

## VI. PARTICULAR PROCEDURES

- A. ***Expedited Procedures.*** ICSID should adopt expedited procedures if the amount in dispute does not exceed, for example, USD 10 million. This threshold appears appropriate based on a finding that the amount in dispute in 11.86% of ICSID cases does not exceed USD 10 million.<sup>5</sup> Such expedited procedures could involve the appointment of a sole arbitrator (as opposed to a three-member Tribunal), who would have discretion to adopt such procedural measures as he/she deems appropriate. After consulting the parties, and subject to their agreement, the arbitrator could, for example, (i) limit or eliminate document production, (ii) limit the number, length and scope of written submissions and written witness evidence, and (iii) decide the dispute solely on the basis of the documents submitted by the parties, with no hearing and no examination of witnesses or experts. *See, e.g.,* ICC Rules, Article 30 and Appendix VI.
- B. ***Emergency Arbitrators.*** Subject to the terms of the Convention and the parties' agreement, ICSID should adopt rules for the appointment of emergency arbitrators *before* the constitution of the Tribunal.
1. In situations where time is of the essence and there is risk of irreparable harm if the status quo is not swiftly preserved, having to wait for a Tribunal to be established before being able to seek provisional measures is often harmful to the claimant.
  2. The fact that a sovereign is involved does not alter the claimant's need for relief and, in some cases, may even accentuate it. For example, in *Occidental v. Ecuador*, even though the respondent state had seized the claimant's assets and taken over the claimant's operations even before the request for arbitration had been filed, the claimant had to wait more than six months for a hearing on its request for provisional measures and more than a year for a

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*Venezuela*, ICSID Case No. ARB/07/30, Decision on the Respondent's Request for Reconsideration, 9 February 2016.

<sup>5</sup> *See Investment Treaty Arbitration: How much does it cost? How long does it take?* Allen & Overy Publications, 18 February 2014 (finding, based on a review of 221 ICSID cases, that the amount in dispute was between USD 0–10 million in 11.86% of the cases, between USD 10–25 million in 9.6% of the cases, and between USD 25–50 million in 10.17% of the cases).

decision.<sup>6</sup> Similarly, in *Nova Group Investments, B.V. v. Romania*, one of the claimants, Dan Adamescu, died due to health complications before the Tribunal was able to rule on the claimants' provisional measures request seeking, *inter alia*, an amendment of the terms of Mr. Adamescu's detention to allow him to receive the necessary medical care.<sup>7</sup>

3. Many other arbitral institutions such as the ICC, ICDR, HKIAC, LCIA, and CIETAC have adopted rules providing for the appointment of emergency arbitrators. The SCC and SIAC have also adopted these rules in the investment arbitration context (*see* SCC Rules, Appendix II; SIAC (IA) Rules, Schedule 1), and they have been successfully invoked by investors.<sup>8</sup> Such rules in the ICSID context could, for example, specify the procedure for (i) appointing and challenging emergency arbitrators, (ii) obtaining emergency measures, and (iii) seeking reconsideration of these measures once the Tribunal is appointed. *See, e.g.*, ICC Rules, Article 29 and Appendix V.

- C. ***Provisional Measures (Rule 39(3))***. Under Rule 39(3), the Tribunal “may at any time modify or revoke its recommendations” on provisional measures. This Rule, however, does not specify the applicable standard for reconsidering provisional measures. Some arbitration tribunals have granted such requests when there are “changed circumstances, which make it urgent and necessary to adopt a new decision on provisional measures, which can suspend, terminate or modify the scope of the provision measures granted.”<sup>9</sup> ICSID should specify the applicable standard for reconsidering provisional measures, and may wish to use similar language as quoted above.
- D. ***Scope of Preliminary Objections that a Claim Is Without Legal Merit (Rule 41(5))***. Under Rule 41(5), a party may raise preliminary objections that “a claim is manifestly without legal merit.” To avoid the parties having to waste time, energy and expense on briefing frivolous and unmeritorious arguments, ICSID should expand Rule 41(5) to allow a party to raise

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<sup>6</sup> *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador*, ICSID Case No. ARB/06/11, Decision on Provisional Measures, 17 August 2007.

<sup>7</sup> *Nova Group Investments, B.V. v. Romania*, ICSID Case No. ARB/16/19, Request for Provisional Measures, 21 June 2016.

<sup>8</sup> *See, e.g.*, *TSIKinvest LLC v. Republic of Moldova*, SCC Emergency Arbitration No. 2014/053, Emergency Decision, 29 April 2014; *JKX Oil & Gas plc, Poltava Gas B.B., Poltava Petroleum Company v. Ukraine*, SCC, Emergency Award, 14 January 2015.

<sup>9</sup> *Lao Holdings N.V. v. The Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, Ruling on Motion to Amend the Provisional Measures Order, 30 May 2014, ¶ 9; *Hydro S.r.l & Others. v. Republic of Albania*, ICSID Case No. ARB/15/28, Decision on Claimant's Request for a Partial Award and Respondent's Application for Revocation or Modification of the Order on Provisional Measures, 1 September 2016, ¶ 4.1.

preliminary objections against “a claim, counterclaim, or defense” that is manifestly without legal merit.

- E. ***Multi-Party Proceedings***. While the consolidation of two or more proceedings may generate significant cost and time savings, neither the Convention nor the Rules address the availability of such a procedure. ICSID should introduce procedures granting the Secretariat or the Tribunal the power to consolidate two or more proceedings into one multi-party proceeding in the event that it finds that (i) there are issues of fact or law common to the two proceedings so that a consolidated proceeding would be more efficient than separate proceedings, and (ii) no party would be prejudiced as a result of such consolidation through undue delay or otherwise.
- F. ***Mass Claims***. Although the Convention and the Rules are silent on the issue, arbitration tribunals have relied on Article 44 of the Convention and Rule 19 to find that mass claims are allowed.<sup>10</sup> ICSID should (i) introduce procedures granting the Tribunal the power to oversee mass claims and to craft suitable procedures applicable to such claims, and/or (ii) specify the circumstances in which mass claims would be acceptable in investment arbitration proceedings. For example, in *Abaclat v. Argentina*, the Tribunal found that such claims may be acceptable where “claims raised by a multitude of claimants are considered identical or at least sufficiently homogenous.”<sup>11</sup>

## VII. THE AWARD

- A. ***Issuance of the Award (Rule 46)***. Rule 46 currently requires that awards “be drawn up and signed within 120 days after closure of the proceeding.” However, Tribunals generally wait to close the proceeding until they are ready to issue the award. As a result, the rule does not provide any meaningful deadline. To promote efficiency and the expeditious resolution of cases, ICSID should instead require that (i) awards must be drawn up and signed within six months of the final hearing or final submission, (ii) any extensions may only be granted by the Secretariat, and (iii) the arbitrators’ fees will be proportionately reduced if any awards are issued after the stipulated deadline. In order to meet these deadlines, dates for deliberations should be included in the original procedural order (*see* Section III.B.2 above).
- B. ***Non-Pecuniary Relief***. ICSID should clarify in the Rules that Tribunals have the power to award both pecuniary and non-pecuniary damages, assuming that non-pecuniary damages are available under the applicable law. Although the obligation to enforce an award under Article 54 of the Convention only covers

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<sup>10</sup> See, e.g., *Abaclat and Others v. Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011, ¶¶ 517–519; *Ambiente Ufficio S.p.A. and Others v. The Argentine Republic*, ICSID Case No. ARB/08/09, Decision on Jurisdiction and Admissibility, 8 February 2013, ¶ 169; *Giovanni Alemanni and Others v. The Argentine Republic*, ICSID Case No. ARB/07/8, Decision on Jurisdiction and Admissibility, 17 November 2014, ¶ 324.

<sup>11</sup> See *Abaclat*, ¶ 540.

pecuniary obligations, arbitration tribunals have not interpreted Article 54 as precluding the award of non-pecuniary relief such as an injunction or an order for specific performance.<sup>12</sup>

### VIII. INTERPRETATION, REVISION AND ANNULMENT OF THE AWARD

- A. *Stay of Enforcement Pending Annulment (Rule 54(1))*. Under Rule 54(1), “[t]he party applying for the interpretation, revision or annulment of an award may in its application, and either party may at any time before the final disposition of the application, request a stay in the enforcement of part or all of the award to which the application relates.” In order to deter award debtors from disposing of their assets during the annulment phase, ICSID should require (i) the party seeking to stay enforcement to provide security for costs, and (ii) the Tribunal or Committee to rule on such requests within a specific timeframe.

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We very much appreciate your consideration of our suggestions and remain available to discuss further if that would be helpful.

Yours sincerely,

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<sup>12</sup> See, e.g., *Enron Creditors Recovery Corp. and Ponderosa Assets, LP v. Argentine Republic*, ICSID Case No. ARB/01/3, Decision on Jurisdiction, 14 January 2004, ¶¶ 79–81 (finding that it had jurisdiction to order injunctions or to require a state to perform certain acts); *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015, ¶ 744 (ordering Zimbabwe to return legal title to farms expropriated from the claimants); *Ioan Micula and others v. Romania*, ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility, 24 September 2008, ¶¶ 166–168 (finding that it had the power to order restitution of the legal framework previously in force in Romania, and dismissing Romania’s jurisdictional objection on that basis).