Updated as of September 17, 2020

Compendium of Comments for Working Paper # 4

List of State comments in the compendium:	**List of Public Stakeholder comments in the compendium:**
Argentina **Bangladesh** **China** **Chile** **Costa Rica** **Indonesia** **Israel** **Jamaica** **Korea** **Panama** **Turkey** **Group of 36 ICSID Member States [Australia, Canada, Chile, Colombia, Costa Rica, the European Union and its Member States (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden), Israel, Republic of Korea, Mexico, Peru, and Singapore]**	**Jonathan Brosseau,** Member of the Quebec Bar

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GENERAL COMMENTS	
Process, Timing & Effective Date for Adoption of Proposals	**Bangladesh:** With reference to your letter dated April 16, 2020 on above subject, the undersigned is directed to inform that the Government of Bangladesh has no objection to the Working Paper#4 concerning Proposed Amendments to the ICSID Rules. **Jamaica:** Jamaica is in support of the amendments proposed by ICSID to date and has no objection to the completion of the Rule Amendments process with the ongoing participation of Member States. **Korea:** The Republic of Korea ("Korea") sincerely appreciates the incredible leadership and effort put forth by the Secretariat in the ICSID Rule Amendment process during the COVID-19 crisis. Below are Korea's comments to Working Paper #4. Korea requests the Secretariat to take the following comments into consideration along with the Joint Submission on Working Paper #4 that Korea participated in as well as Korea's previous submissions. Korea's comments herewith are provided to further clarify Korea's current position. Any comments made by Korea in the ICSID Rule Amendment process (written, oral, and joint) are without prejudice to and do not reflect Korea's final position as to any relevant issues in the discussions of ISDS reform outside of the context of the ICSID Rules.
Approach to gender neutral language in Spanish/French	**Chile:** □ Chile solicita que se busquen otros mecanismos y alternativas para mantener un lenguaje inclusivo en temas de género. Si bien estamos de acuerdo en que el mecanismo adoptado anteriormente era engorroso, rogamos encontrar otro mecanismo que no sea indicar que el masculino de una palabra incluye el masculino y el femenino. Consideramos que esta fórmula va en contra de los objetivos de diversidad discutidos por todos como deseables y que son esenciales para recobrar la legitimidad del sistema.
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Regulation 14 - Fees, Allowances and Charges	**Chile:** ▪ Respecto a la Regla 14(2), se sugiere que la Secretaría del CIADI solicite la aprobación de los Estados Miembros en caso de modificar el honorario de los árbitros y el *per diem*.

	▪ Es importante recordar que la compensación de los árbitros compromete eventualmente el presupuesto de los Estados, por lo que es esencial que el Consejo Administrativo conozca y apruebe el monto e importe de los honorarios y el *per diem.* ▪ Considerando que existen importantes reparos respecto al rol, selección y compensación de los árbitros, creemos que es vital que no haya un aumento de los honorarios y del *per diem*, sin la autorización del Consejo Administrativo. El hecho que el Estado pueda ser Estado demandado y además Estado Contratante es una constante de la arquitectura y diseño del sistema CIADI desde sus orígenes, y los Estados deben poder ejercer ambos roles. *(2) El o la Secretario(a) General, con la aprobación del ~~o de la Presidente(a) del~~ Consejo Administrativo, determinará y publicará el importe de los honorarios y el per diem a los que se refiere el párrafo (1)(a) y (c). Cualquier solicitud de un importe mayor, deberá ser efectuada a través del o de la Secretario(a) General, y no directamente a las partes. Dicha solicitud deberá efectuarse con anterioridad a la constitución de la Comisión, Tribunal o Comité.* **Jamaica:** Regulation 14(2) (page 262): The GOJ recommends that the provision be amended to read: "Any request by a member for a higher amount shall be made through the Secretary-General in writing, 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."
Regulation 15 - Payments to the Centre	
Regulation 16 - Consequences of Default in Payment	**Argentina:** Regulation 16: Consequences of Default in Payment […] (2) The following procedure shall apply in the event of non-payment: (a) if the amounts requested are not paid in full within 120 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, and in consultation with, the parties and 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 move the Commission, Tribunal or Committee to discontinue the proceeding, after giving notice to, and in consultation with, the parties. If the Commission, Tribunal or Committee has not yet

	been constituted, or there is a vacancy, the Secretary-General may discontinue the proceeding after consulting with the parties. Commentary The 30-day period for payment is impractical in light of the administrative process of many States. Reflecting this reality, a longer period of time of 120 days should be provided for. The parties should always be consulted before the suspension or the discontinuance of a proceeding for lack of payment. While it may be appropriate to allow the Secretary-General to suspend the proceeding for lack of payment, in order to discontinue the proceeding for lack of payment the Secretary-General should move the competent Tribunal, Commission or Committee to issue the relevant order, as provided for in current Administrative and Financial Regulation 14(3)(d). **Costa Rica:** Costa Rica appreciates ICSID's comment on WP4 regarding the internal budgeting processes. Even though ICSID indicates that the practice has been flexible on this topic, Costa Rica considers that reflecting this in Regulation 16 will give more legal certainty to States with more complex internal budgeting processes. Additionally, the Memorandum in Schedule 2 does not reflect that the parties can arrange to receive advance notice that a call for funds would be made. Therefore, Costa Rica proposes a modification to Regulation 16 and Schedule 2 that clarifies that the parties can have 60 days to make their payment.
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Rule 2 - Contents of the Request	**Group of 36 ICSID Member States:** PROPOSED REVISED LANGUAGE (2) With regard to the jurisdiction of the Centre, the Request shall include: (a) a description of the investment, a description of the investor's ownership and control of the investment, a summary of the relevant facts and claims, the request for relief, including an estimate of the amount of any damages sought, and an indication that there is a legal dispute between the parties arising directly out of the investment; … (d) if a party is a juridical person: (i) information concerning and supporting documents demonstrating that party's nationality on the date of consent; (ii) information concerning the ultimate beneficial owner and corporate structure of the party;

	and (iii) if that party had the nationality of the Contracting State party to the dispute on the date of consent, information concerning and supporting documents demonstrating the agreement of the parties to treat the juridical person as a national of another Contracting State pursuant to Article 25(2)(b) of the Convention. **Argentina:** Rule 2: Contents of the Request […] (2) The Request shall include: (a) a description of the investment, evidence of the investor's ownership and control of the investment, a summary of the relevant facts and claims, the request for relief, including an estimate of the amount of any damages sought, and an indication that there is a legal dispute between the parties arising directly out of the investment; […] (d) if a party is a juridical person: (i) information concerning and supporting documents demonstrating that party's nationality on the date of consent; (ii) a description of the shareholding, corporate structure and ultimate beneficial owners of the party, together with supporting documents; and (iii) if that party had the nationality of the Contracting State party to the dispute on the date of consent, information concerning and supporting documents demonstrating the agreement of the parties to treat the juridical person as a national of another Contracting State pursuant to Article 25(2)(b) of the Convention; […] Commentary In accordance with Article 36 of the ICSID Convention, the Request for Arbitration does not only serve the purpose of allowing the Secretary-General to fulfil his or her duties under paragraph (3) of that Article, which is why copy of the Request is required to be sent to the other party as provided for in paragraph (1) of said Article. Therefore, the language "With regard to the jurisdiction of the Centre", which is not included in the Institution Rules currently in force, should be deleted in draft Institution Rule 2. It is also important for the Request to include a description of the corporate structure of the investment and the investor. This information is relevant for jurisdictional purposes. Language is suggested in two spots. In paragraph (2)(a) to ensure that the relationship between the investment and investor is understood, and in paragraph (2)(d) to understand the ownership structure of the investor itself, where

	the investor is a juridical person. This is also relevant for the purposes of the last case in proposed Institution Rule 2(2)(d). **Chile:** Chile agradece los comentarios del Secretariado, no obstante, en razón de la importancia de este tema, nos permitimos insistir en la necesidad de realizar las enmiendas reflejadas en control de cambios en la columna de la izquierda por las razones que detallamos ya en nuestros comentarios al DT No. 3, y que complementamos con los fundamentos que se detallan a continuación: ▪ Chile reitera la necesidad de requerir que cualquier solicitud de arbitraje incorpore la estructura societaria de la persona-jurídica demandante e incluya una descripción de la titularidad y el control de la inversión por parte del inversionista. La claridad sobre este punto es esencial para que los Estados preparen su defensa y presenten cualquier objeción jurisdiccional meritoria de manera oportuna, garantizando de ese modo la resolución eficiente de la disputa. Además, el simple hecho de tener que describir la propiedad y el control no impone carga alguna al reclamante. En particular, no se requiere que se presenten documentos y los hechos que se describirán no requieren investigación, ya que el reclamante ya los conocerá. ▪ Con respecto a la adición propuesta de un nuevo subpárrafo (2) (d) (ii), dicha información es clave para evaluar el derecho del reclamante a presentar una reclamación y asegurarse de que no se confronte con múltiples casos relacionados con las mismas inversiones directas o indirectas, dando lugar a posibles dobles recuperaciones. Además, esta información es importante para que el Estado demandado prepare adecuadamente su defensa, así como para la conducción eficiente y ordenada de la disputa. En contraste con (i) y (iii), todo lo que se solicita en este subpárrafo es información, sin necesidad de que se adjunten además documentos de respaldo, por lo tanto, no impondrá una carga significativa adicional al reclamante. ▪ Chile ha tomado en cuenta que la Secretaría está proponiendo incluir una divulgación voluntaria de hechos similares bajo la Regla 3. Sin embargo, en su opinión, no hay razón por la cual esta divulgación no debiese ser obligatoria, ya que es esencial para garantizar la resolución adecuada de la disputa. Este es también un tema que ha sido resaltado en la presentación conjuntamente presentada por Chile con otros países incluyendo Australia, Canadá, Colombia, Corea y Costa Rica entre otros. (…) *(2) Respecto de la jurisdicción del Centro, la solicitud deberá incluir:*

(a) una descripción de la inversión, una descripción de la titularidad y control de la inversión, un resumen de los hechos pertinentes y de las reclamaciones, los petitorios, incluyendo un estimado del monto de la compensación pretendida, y una indicación de que existe una diferencia de naturaleza jurídica entre las partes que surge directamente de la inversión;
(…)
(d) si una parte es una persona jurídica:
(i) información respecto a la nacionalidad de esa parte en la fecha del consentimiento, junto con documentos de respaldo que demuestren dicha nacionalidad; (…)
(ii) información relativa al beneficiario efectivo y a la estructura societaria de esa parte, y*
(iii) si esa parte tenía la nacionalidad del Estado Contratante parte en la diferencia en la fecha del consentimiento, información respecto al acuerdo de las partes para que la persona jurídica sea tratada como si fuese nacional de otro Estado Contratante en virtud del Artículo 25(2)(b) del Convenio, junto con documentos de respaldo que demuestren dicho acuerdo.

* nos referimos a "beneficial owner" o "ultimate beneficial owner."

Costa Rica:

Costa Rica continues to support removing the chapeau of paragraph (2), "With regard to the jurisdiction of the Centre", because this information is important beyond just deciding the jurisdiction of the Centre. Additionally, after further consideration and comments by other participants, Costa Rica proposes to include a description of the investor's ownership in (2)(a). At the beginning of an arbitral procedure, it is important to clearly identify the Claimant, to allow the State to have an appropriate preparation of the case. Costa Rica also supports the inclusion of a new sub-paragraph (2)(d)(ii) since this information helps the State understand certain facts about the Claimant and its right to bring a claim. ICSID includes a similar recommendation in Rule 3; however, experience tells that if the information is not mandatory the investor will not present it and the Tribunal will not have the obligation to request it.

Rule 2 Contents of the Request

(…)

(2) ~~With regard to the jurisdiction of the Centre, t~~The Request shall include:

(a) a description of the investment, a description of the investor's ownership and control of the investment, a summary of the relevant facts and claims, the request for relief, including an estimate of the amount of any damages sought, and an indication that there is a legal dispute between the parties arising directly out of the investment; (…)

(d) if a party is a juridical person:

(…)

(ii) information concerning the ultimate beneficial owner and corporate structure of the party;

	(iii) if that party had the nationality of the Contracting State party to the dispute on the date of consent, information concerning and supporting documents demonstrating the agreement of the parties to treat the juridical person as a national of another Contracting State pursuant to Article 25(2)(b) of the Convention; (…) **Jamaica:** Rule 2(2){a) (page 23): The Government of Jamaica (GOJ) recommends that the request should also include a description of the investor's ownership and control. This ensures that the claimant complies with the definition of investor.
Rule 3 - Recommended Additional Information	
Rule 4 - Filing of the Request and Supporting Documents	
Rule 5 - Receipt of the Request and Routing of Written Communications	
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III. Arbitration Rules	
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Chapter I - General Provisions	
Rule 1 - Application of Rules	
Rule 2 - Party and Party Representative	**Israel:** The modification of para. (1) and the use of the word of "required by" is unclear and seems as setting a high interpretative threshold.
Rule 3 - General Duties	
Rule 4 - Method of Filing	

Rule 5 - Supporting Documents	
Rule 6 - Routing of Documents	
Rule 7 - Procedural Languages, Translation and Interpretation	**Korea:** □ Korea maintains its position regarding interpretation and translation in a proceeding with two procedural languages, and proposes to replace "unless the Tribunal orders" in subparagraphs (3)(a), (b), and (c) with "unless the Tribunal or a party requires…." Korea believes that a party's right to require interpretation and/or translation for the timely and accurate comprehension of the other party's submissions is indispensable for due process and procedural equality. □ At the very least, Korea suggests that statutory guidance be given to the tribunal to consider the time and cost burdens of non-native speakers of the official languages of the Centre when deciding upon an application for an order for interpretation and/or translation by a party.
Rule 8 - Correction of Errors	
Rule 9 - Calculation of Time Limits	
Rule 10 - Fixing Time Limits	
Rule 11 - Extension of Time Limits Applicable to Parties	
Rule 12 - Time Limits Applicable to the Tribunal	**Chile:** ▪ Chile toma nota y agradece los esfuerzos del Secretariado por vincular el incumplimiento de los plazos por el Tribunal, a consecuencias precisas. Si bien consideramos que vincular el retraso en la dictación de las resoluciones, decisiones o laudos a la postergación del pago de los árbitros va en el sentido correcto, consideramos que esto no es suficiente. ▪ Por las razones señaladas en los comentarios de Chile al DT No. 3 estimamos que señalar como regla general que el Tribunal hará lo posible para cumplir con los plazos, manda una señal equívoca de que el Tribunal no está ante una obligación firme y que esta es más bien discrecional. Por ello, Chile reitera su propuesta de eliminar la referencia a "*best efforts*" o que "el Tribunal hará lo posible", para cumplir con los plazos para dictar las resoluciones, decisiones y el laudo, incorporada actualmente en la propuesta de Regla 12(1), y a la Regla 20 del mecanismo complementario. *1) El Tribunal ~~hará lo posible para~~ cumplirá con los plazos para dictar las resoluciones, decisiones y el laudo.*

	(2) En el caso excepcional de que ~~Si~~ el Tribunal no pued~~e~~a cumplir con un plazo aplicable, este notificará a las partes las circunstancias especiales que justifican la demora y la fecha en la que prevé que se dictará la resolución, la decisión o el laudo. **Costa Rica:** In the interest of certainty, and considering that the objective of this process is to reduce the duration of the proceedings, we suggest to include an obligation in paragraph (1) that can guide the expectations of the parties and paragraph (2) contains the exception, which provides flexibility to the tribunals, when needed. **Rule 12 Time Limits Applicable to the Tribunal** (1) The Tribunal shall ~~use best efforts to~~ meet time limits to render orders, decisions and the Award. (2) If the Tribunal cannot comply with an applicable time limit, it shall advise the parties of special circumstances justifying the delay and the date when it anticipates rendering the order, decision or Award. **Israel:** Israel views positively the Secretariat's comment in the explanatory notes stating that "[t]he Centre will adopt multiple rules and practices to reinforce compliance with AR 12." Israel would appreciate a clarification on this statement and the pursuant bullet points – have they been adopted or are they only being considered? In our view, these steps should be brought up for discussion between the Member States (especially the deferred payment).
Chapter II - Establishment of the Tribunal	
Rule 13 - General Provisions Regarding the Establishment of the Tribunal	
Rule 14 - Notice of Third-Party Funding	**Group of 36 ICSID Member States:** PROPOSED REVISED LANGUAGE (1) A party shall file a written notice disclosing the name, ~~and~~ address, and where applicable, ultimate beneficial owner and corporate structure, of any non-party from which the party, directly or indirectly, has received funds for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding ("third- party funding"). **…** ~~(2) A non-party referred to in paragraph (1) does not include a representative of a party.]~~

	… (5 4) The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding ~~pursuant to Rule 36(3) if it deems it necessary~~ at any stage for the proceeding. **Argentina:** Rule 14: Third-party Funding (1) A party shall file a written notice disclosing the name, address and, where applicable, shareholding, corporate structure and ultimate beneficial owners, of any non-party from which the party, directly or indirectly, has received funds for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding ("third-party funding"), and shall [provide the terms and conditions of the third-party funding and any agreements and documents related to the third-party funding arrangement / disclose the nature of the funding arrangement]. (2) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request for arbitration, 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 arbitrator proposed for appointment or appointed in a proceeding for purposes of completing the arbitrator declaration required by Rule 19(3)(b), and to the Tribunal once it is constituted. (4) The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding pursuant to Rule 36(3) if it deems it necessary at any stage of the proceeding. (5) The Tribunal shall verify that the third-party funding arrangement respects the following principles: (a) the funded party must not have assigned its claim or the right to collect the result of its claim; (b) the funded party must retain its own independent counsel; (c) the third-party funder must not cause, directly or indirectly, the funded party's counsel to act in breach of their professional duties, nor take control of decisions to be made by counsel; (d) the third-party funder must not seek to influence the funded party's counsel to cede control or conduct of the dispute to the funder;

(e) the third-party funder shall be obliged to follow the same confidentiality rules that apply to all parties in the arbitration;
(f) the third-party funder must not be allowed to withdraw support during the proceeding, unless under circumstances clearly provided for in the contract or if the funded party has acted in breach of the financing agreement;
(g) the third-party funder must not be a disguised party or the real party in interest.

(6) The party benefiting from third-party funding and the third-party funding arrangement shall observe the obligations and principles provided for in paragraphs 2 to 5. In case of failure to comply with such obligations and principles, the Tribunal shall [suspend/discontinue the proceeding / take such failure into account in its decision on costs].

Commentary
The Argentine Republic is opposed to third-party funding. However, if a majority of two thirds of the members of the Administrative Council decides not to prohibit third-party funding, it should be strictly limited and penalties should be expressly provided for, as proposed above.

Proposed Arbitration Rule 14 includes the obligation for a party to disclose that it has third-party funding and the name and address of the third-party funder. However, this provision is not sufficient to limit the negative impact third-party funding may have on the integrity of the arbitration proceeding, due process, the settlement of the dispute, and the object and purpose of the ICSID Convention. At a minimum, it is essential to include the obligation of the funded party to disclose the terms and conditions of the funding agreement, or at least the nature of the funding arrangement.

There should also be legal consequences in case of non-compliance.

China:

2. On disclosure of third-party funding
Considering the potential influence of third-party funding on the fairness of arbitration, China proposes to increase transparency of third-party funding, and the relevant legal consequences shall be clarified:
1) to avoid potential conflict of interests between arbitrator and the funder due to third-party funding, apart from those information as required in Rule 21(2), other information of the funder shall also be disclosed, such as the contents of the funding contract or arrangement and nationality. Therefore, China proposes to amend the Rule 14(1) as follow,
Rule 14 Notice of Third-Party Funding
(1)A party shall file a written notice disclosing the name, address, contents of the funding contract or arrangement, nationality and where applicable, ultimate beneficial owner and corporate

	structure, of any non-party from which the party, its affiliate or its representative, individually or collectively, has received, directly or indirectly, funds for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the dispute ("third-party funding"). 2) the party receiving the funding may not refuse to disclose the above mentioned information on the excuse that such information are business confidential information. Therefore, China proposes to add a separate paragraph in the Rule 14 as follow, Rule 14 Notice of Third-Party Funding For greater certainty, the party receiving the third-party funding may not refuse to disclose the information referred to in paragraph (1) on the excuse that such information are business confidential information. **Chile:** ▪ Chile considera que la notificación del financiamiento de terceros debe incluir también la divulgación del beneficiario final del tercero financiador y su estructura societaria. Chile propone que esta divulgación se haga sólo "de ser aplicable", ya que podría haber casos en que el financiador sea una persona natural. Sin este requisito adicional de divulgación, el valor de cualquier divulgación obligatoria se vería muy disminuido. Cabe reiterar que esta es información que ya está en posesión del tercero financiador de terceros y que no le representará una carga reunir o divulgar. ▪ En segundo lugar, Chile es de la posición que el párrafo (2) debe ser eliminado. Si el representante de una parte está financiando el litigio, esto debe ser revelado. Si bien Chile entiende que uno de los objetivos de la obligación de divulgación es contribuir a evitar los conflictos de interés, tal como lo hemos señalado previamente, este no es en ningún caso el único objetivo perseguido al imponer esta obligación. La divulgación es también importante para otros asuntos incluyendo el análisis de cuestiones jurisdiccionales, la avenencia, las contrademandas y las garantías por costos, por nombrar sólo algunos. o Desde el punto de vista de Chile, no deberían existir diferencias en el tratamiento acordado por las reglas a los diferentes financiadores simplemente por cómo organizan su relación con un reclamante. Un representante-financiador no debe obtener un trato más favorable en las Reglas que un financiador que no lo sea. Si bien Chile comprende las importantes protecciones que la ley otorga a la relación entre el abogado y el cliente, una simple revelación al tribunal arbitral de la relación de financiación no perjudicará la capacidad del demandante de obtener servicios jurídicos. ▪ Finalmente, con respecto al último párrafo de esta Regla, otorgándole al Tribunal los poderes de ordenar la revelación de información adicional, Chile agradece los cambios propuestos por la Secretaría. No obstante, sugiere la eliminación de la referencia a la Regla 36(3) y la referencia a

"si lo considera necesario".

- Sobre este punto, consideramos que la facultad del Tribunal debería provenir de la regla misma, y no de los poderes del Tribunal bajo la Regla 36. Dicha remisión generará confusión y crea una limitación artificial que sólo aumentará los incidentes de procedimiento a lo largo de un caso, en lugar de ayudar a una rápida resolución de la disputa. Además, los tribunales que han solicitado recientemente información adicional relativa al financiamiento o al financiador, lo han hecho sobre la base de sus facultades inherentes y no sobre la base de la Regla 36 (actual Regla 34), mostrando, por lo tanto, que la Regla 36 no es necesariamente la única base potencial, o la que ha sido considerada por tribunales anteriores como la regla más apropiada.
- En cuanto al segundo punto, la introducción de un test de necesidad es, en opinión de Chile, poco útil y añade incertidumbre. Si una solicitud debe ser presentada para obtener divulgación adicional, el Tribunal puede considerarla a la luz de los argumentos hechos por las partes y decidirla en el normal ejercicio de sus facultades.

(1) Una parte presentará una notificación por escrito revelando el nombre ~~y~~ la dirección, y de ser aplicable, la estructura societaria y beneficiario efectivo de cualquier tercero de quien la parte, directa o indirectamente haya recibido fondos para la interposición de, o defensa en un procedimiento a través de una donación o una subvención, o a cambio de una remuneración dependiente del resultado del procedimiento ("financiamiento por terceros").

(2) ~~El tercero al que se refiere el párrafo (1) no incluye al representante de una parte.~~

(…)

(5) El Tribunal podrá ordenar la revelación de información adicional respecto al acuerdo de financiamiento y al tercero financiador ~~en virtud de la Regla 36(3) si lo considera necesario~~ en cualquier momento del procedimiento.

Costa Rica:

Costa Rica considers that this provision merits further examination beyond the effects in the constitution of the Tribunal and the potential conflict of interest. For example, TPF is also linked to security for costs, possibility of reaching amicable solutions, counterclaims, and transparency in general. Costa Rica is flexible in the language that can be adopted in the Rule to reach this objective; however, Costa Rica considers that paragraph (1) must request disclosing information about the party´s corporate structure.

Regarding paragraph (5), Costa Rica considers that the proposed language does not address our concerns due to the following reasons:

a. the request for further information remains as a discretional decision of the Tribunal, and b. the advantages of including this paragraph could be diminished by including the high standard of a necessity

	criterion. This could be an obstacle for the Respondent when its interest in TPF lies beyond a conflict of interest. **Indonesia:** Indonesia appreciates that secretariat noted its concern regarding the importance of disclosing the Third-party Funder. Indonesia reiterates its previous position that the disclosure shall include not only the name and address of any non-party funder, but also the funding arrangement in detail. Based on its experience, the Disclosure of Third-party Funding is not merely about the independency of the arbitrators and counsel. Thus, TPF Arrangement including information on contingency fee arrangement by the law firm representing the party, shall be automatically disclosed to: a. uphold the independency of the arbitrators and counsel; b. avoid the "arbitral hit and run" practices. c. Avoid the existence of "not in good faith investors" where they raises financing through TPF but averting enforcement of the award against them. Therefore, host-state deserve to order Security for Cost. Furthermore, if a non-party as mentioned in paragraph (2) Rule 14 does not include the representative of a party, it could be very tricky as the party could hide its funder, and allow them legally evade the TPF disclosure obligation. This formulation undermines the spirit of the TPF disclosure. Therefore paragraph (2) shall be deleted. Indonesia proposes to retain the phrase "its affiliate or its representative" as mentioned in Working Paper 3. With regard to paragraph (1), Indonesia is of the view the phrase "through a donation or grant must be deleted as the provision is meant to cover all kind of funding, not only limited to donation or grant. **Israel:** Please see the joint submission to which Israel is a party (that was submmited to the ICSID Secretariat on July 31, 2020).
Rule 15 - Method of Constituting the Tribunal	
Rule 16 - Appointment of Arbitrators to a Tribunal Constituted in Accordance with Article 37(2)(b) of the Convention	
Rule 17 - Assistance of the Secretary-General with Appointment	
Rule 18 - Appointment of Arbitrators by the Chair in Accordance with Article 38 of the Convention	
Rule 19 - Acceptance of Appointment	**Argentina:**

	Rule 19: Acceptance of Appointment […] (3) Within 20 days after the 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, disclosing any past or present interest, relationship, connection or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of dependence or bias, and addressing the arbitrator's availability and commitment to maintain the confidentiality of the proceedings. […] (6) Each arbitrator shall have a continuing obligation throughout the proceedings to make reasonable efforts to become aware of any interest, relationship, connection or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of dependence or bias, and promptly disclose any new professional, business or academic activities he or she intends to undertake, and any change of circumstances that may be relevant to the declaration referred to in paragraph (3)(b). Commentary The arbitrator's duties should include: investigation, notification and disclosure, as detailed in the above proposal. For greater certainty, the type of information to be provided by an arbitrator should be included in the Arbitration Rules, as detailed in the above proposal, notwithstanding the text of the Declaration in the form published by the Centre and the proposed Code of Conduct. The minimum content of the Declaration should be provided for in the Arbitration Rules. In addition, it is still unclear how the Code of Conduct will be implemented. **Costa Rica:** Costa Rica considers that, since there is a proposed Code of Conduct, this provision should refer to it. It should be attached to the Arbitrator Declaration in Schedule 2. **Turkey:** The rule can refer to Draft Code of Conduct for Adjudicators in Investor-State Dispute Settlement, and unless otherwise agreed by the parties, the parties and the members of the Tribunal agrees to apply the Draft Ethical Code.
Rule 20 - Replacement of Arbitrators Prior to Constitution of the Tribunal	

Rule 21 - Constitution of the Tribunal	
Chapter III - Disqualification of Arbitrators and Vacancies	
Rule 22 - Proposal for Disqualification of Arbitrators	**Argentina:** Rule 22: Proposal for Disqualification of Arbitrators (1) A party may file a proposal to disqualify one or more arbitrators ("proposal") pursuant to Article 57 of the Convention, which does not require proof of actual dependence or bias; rather it is sufficient to establish the appearance of dependence or bias. The following procedure shall apply, unless the parties agree otherwise: (a) the proposal shall be filed after the constitution of the Tribunal and within 21 days after the later of: (i) the constitution of the Tribunal; or (ii) the date on which the party proposing the disqualification first knew or first should have reasonably known of the facts on which the proposal is based; […] Commentary Current ICSID decisions on disqualification confirm that Article 57 of the Convention does not require proof of actual dependence or bias; rather it is sufficient to establish the appearance of dependence or bias, as explained by the Chair in *Blue Bank v. Venezuela*[1] and reaffirmed in subsequent decisions on disqualification. This should be clarified in proposed Arbitration Rule 22. In this regard, an annulment committee has noted "the generally unsatisfactory nature of the process for dealing with challenges to arbitrators" and the difficulty in "formulating the appropriate test for deciding on disqualification in the absence of clear guidance in the Convention", expressed its concern that "insufficient attention may be given to the question of the perception of lack of independence or impartiality", and observed that "there may be a difference between commercial arbitration […] and investment arbitration where there is much greater a degree of public interest in the process and outcomes."[2] The time limit to make a proposal for disqualification should be calculated from the day after the constitution of the Tribunal or the date on which the party proposing the disqualification first knew or first should have *reasonably* known of the facts on which the proposal is based.

[1] *Blue Bank International & Trust (Barbados) Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/12/20, Decision on the Parties' Proposal to Disqualify a Majority of the Tribunal, 12 November 2013, ¶¶ 59-60.
[2] *Suez, Sociedad General de Aguas de Barcelona, S.A., and InterAguas Servicios Integrales del Agua, S.A v. Argentine Republic*, ICSID Case No. ARB/03/17, Decision on Argentina's Application for Annulment, 14 December 2018, ¶¶ 171-172.

Israel:
It is Israel's position that AR 22 should give more weight to an agreement between parties to a dispute regarding the disqualification of an arbitrator, and determine, similarly to (AF)AR 30(3), that in the case the other party agrees to the proposal to disqualify, the arbitrator shall resign.

In addition, Israel would like to reiterate the comment it made in the Washington conference in November 2019, that similarly to para. (1)(e), para. 1(d) should also include the option for the arbitrator to submit his/her comments either five days from the receipt of the response or within five days after expiry of the time limit referred to in paragraph 1(c). This will enable greater certainty with regards to the timeline of the disqualification procedure. Otherwise, para. 1(d) may be interpreted so the ability of the arbitrator to submit a statement on a proposal to disqualify him/her may be dependent on the prior filing of a response by the 'other' party (under para. 1(c)).

Turkey:
Rule 22,23- Proposal for Disqualification of Arbitrators, Decision on the Proposal for Disqualification
Turkey would like to comment and repeat its concerns on both rules 22 and 23 together. Even though, the Article 58 of the ICSID Convention states that the decision on any proposal to disqualify an arbitrator shall be taken by the other members of the tribunal, we believe that the procedure for disqualification of arbitrators should be more transparent and needs to be tailored with the objective of ensuring full impartiality and independence of the arbitral tribunal.
Turkey would like to address the revision of the rules on the disqualification of arbitrators from two perspectives:
Firstly; the disqualification procedure, which is based on a review by the arbitral tribunal members themselves, should be revised. As ISDS mechanism would lead to some disputes, it is a legitimate expectation of states that the mechanism ensures the independence and impartiality of arbitrators. These expectations of states are recently being reflected in the arbitration rules of different ISDS mechanisms, such as the Article 27 of the Singapore Arbitration Center's Investment Rules where the disqualification procedure is not run by the tribunal itself, but by the Court. Therefore, to maintain objectivity in the ICSID mechanism, Rules 22 and 23 may be amended in a similar way so that the disqualification procedure is held by an objective body instead of the tribunal itself. Likewise, under the Arbitration Rules of Stockholm Chamber of Commerce (SCC) Arbitration Institute, London Court of International Arbitration (LCIA) Rules, International Chamber of Commerce (ICC) Rules of Arbitration, and American Arbitration Association (AAA) International Center for Dispute Resolution (ICDR) Rules provide a similar mechanism.
Secondly; the disqualification rules should provide an objective criterion for disqualification. In practice, most decisions are based on "manifest lack of quality" test. Under such a test, the challenging party is required to purport evidence on the high probability that the challenged arbitrator is manifestly biased or unable to judge independently. Therefore, Turkey proposes replacing manifest lack of quality

	test with "justifiable doubt test" as applied in the UNCITRAL Arbitration Rules. The Rules may specify the grounds for disqualification of an arbitrator; parallel to the grounds in institutional rules. Moreover, ICSID Additional Facility Arbitration Rules [Rule 30/1(b)] provides that a party may file a proposal to disqualify one or more arbitrators on the ground that circumstances exist give rise to justifiable doubts as to the qualities of the arbitrator required by the Rule 22, including impartiality and independence. In this regard, there is no reason why there is a basic difference between ICSID Additional Facility Arbitration Rule 30/1(b) and ICSID Arbitration Rule 22 in terms of disqualification threshold. Both rules aim and serve to ensure impartiality and independence in dispute settlement processes. Therefore, we believe that disqualification threshold of ICSID Arbitration Rules should be revised in accordance with the ICSID Additional Facility Arbitration Rules [Rule 30/1(b)]. In addition, there might be reference to "Code of Conduct for Adjudicators in Investor-State Dispute Settlement" on the qualifications of the arbitrators. Therefore, Turkey suggests that the justifiable doubt test should be stated in the rule or as an Explanatory Note. It should be noted that Explanatory Note would not be contrary to the Convention itself, which is also applied by the UNCITRAL. The disqualification procedure is to be run by an independent objective body, therefore the ICSID Secretariat should at least be involved on the application for challenge of arbitrators, such as able to give a commentary or guidance the Tribunals and attend the deliberations for challenge, parallel to newly suggested Rule 34 ("may be assisted by the Secretary of the Tribunal") and/or similar observatory or supervisory mechanism.
Rule 23 - Decision on the Proposal for Disqualification	**Israel:** Para. (1): For the sake of due process and transparency, Israel suggests adding a requirement to provide reasoning to the decision on the proposal for disqualification. This suggested requirement is in line with several ARs (e.g., 52(4), 59(1)(i)-(j), and 67(5)), which explicitly require a reasoned decision.
Rule 24 - Incapacity or Failure to Perform Duties	
Rule 25 - Resignation	
Rule 26 - Vacancy on the Tribunal	**Israel:** Israel would like to reiterate the comment it made in the Washington conference in November 2019, with regards to para. (2), stating that this paragraph in our view should reflect the fact that in relation to disqualification procedures, the proceeding would have already been suspended prior to the notice of vacancy; we believe this should be reflected in the paragraph in order to avoid misunderstandings. Thus, a textual suggestion: *unless already suspended (under AR 22), the proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.*
Chapter IV - Conduct of the Proceeding	

Rule 27 - Orders and Decisions	**Jonathan Brosseau, Member of the Quebec Bar:** (1) The Tribunal shall make the orders and decisions required ~~for the conduct~~ to ensure the fairness and integrity of the proceeding, including regarding the conduct of its participants.
Rule 28 - Waiver	
Rule 29 - First Session	
Rule 30 - Written Submissions	**Panama:** As Panama has previously explained, Paragraph 1 of this Rule contains a textual loophole that creates an unjustifiable disparity. The current draft reads as follows: "The Parties shall file the following written submissions: (a) a memorial by the requesting party; (b) a counter-memorial by the other party; and, unless the parties agree otherwise: (c) a reply by the requesting party; and (d) a rejoinder by the other party. In certain past cases, tribunals have cited the current analogue of this Rule as the basis for authorizing the claimant to submit a "rejoinder on jurisdiction" — that is, a fourth submission on jurisdiction[3], compared to the two that a respondent may file[4]. This disparity is not appropriate. In WP4, the Secretariat opines that "the current drafting preserves the equal opportunity of the parties to ***respond*** to a written submission such as a memorial on preliminary objections or on a counterclaim.[5]" However, there is no such thing as an "equal" right to "respond." To be sure, both parties must have an equal opportunity to *argue*. But, as the parties are differently situated, so, too, is their presentation of arguments. The claimant, by definition, makes claims, and the respondent, by definition, responds. The "claimant" plainly is not entitled to the same number of "responses" as the respondent. If such were the case, the sequence would be: • memorial by the claimant, • counter-memorial by the respondent (*i.e.*, respondent's first response) • reply by the claimant (*i.e.*, claimant's first response) • rejoinder by the respondent (*i.e.*, respondent's second response) • sur-rejoinder by the claimant (*i.e.*, claimant's second response) However, the Rules have never adopted the above sequence, which (1) would offer the claimant more pleadings than the respondent, (2) would offer the claimant the first *and* last word in every case, (3) would ignore the distinction between the claimant and the respondent, and (4) would deny the respondent the final chance to "respond."

[3] Request for Arbitration, Memorial, Reply, Rejoinder on Jurisdiction.
[4] Counter-Memorial, Rejoinder on Jurisdiction.
[5] WP4, ¶ 81 (emphasis added).

	Panama is not requesting a fundamental change to the Rule; rather, it is attempting to preserve its plain meaning and spirit. To protect parity, and give proper effect to each party's role in the case, Panama proposes the following revision: "The Parties shall file the following written submissions: (a) a memorial by the claimant; (b) a counter-memorial by the respondent; and, unless the parties agree otherwise: (c) a reply by the claimant; and (d) a rejoinder by the respondent."
Rule 31 - Case Management Conference	
Rule 32 - Hearings	**Turkey:** Article 32 of the Arbitration Rules states that "2. The President of the Tribunal shall determine the date, time and method of holding a hearing after consulting with the other members of the Tribunal and the parties." While in arbitration the main principle is parties' consent, according to the sub-paragraph 2 of the Article 32 the authority of deciding the method of holding a hearing is delegated to a tribunal against to this main principle. Turkey suggests that the form of hearings should be decided on the consent of the parties. In other words, if one party does not consent on the method proposed by the other party or the tribunal, the proposed method should not have an effect. This position is more appropriate than delegating the power to a tribunal taking the right of fair trial and due process right of parties into account. As stated by the Article 31 of the WP#2 Draft Arbitration Rules by the Secretariat, the prevalent practice is in-person hearing. Other methods of hearing (remote-online-virtual hearings) are envisaged to provide flexibility for the participation of an expert, witness, or Tribunal Member via video conferencing in exceptional cases. Therefore, Turkey suggests adding a default rule to Article 32, which requires that the hearings shall be held in-person unless otherwise agreed by the parties, with reserve to exceptional circumstances.
Rule 33 - Quorum	
Rule 34 - Deliberations	**Israel:** Israel can accept the comment made by other countries as referred to in the explanatory notes (in WP#4) – that the Secretary of the Tribunal could attend the deliberations. However, in our view, the proposed text of the Rule does not closely reflect that comment, thus creating a different arrangement. The main focus of the rule was the attendance at the deliberations of the Tribunal, which in our view should remain limited in principle. As currently drafted, the focus changed to assistance rather than attendance, leaving the question of attendance in the deliberations open. We suggest reintroducing a para. to regulate attendance.
Rule 35 - Decisions Made by Majority Vote	

Chapter V - Evidence	
Rule 36 - Evidence: General Principles	**China:** **3. Protection of Confidential Information** As the investment disputes may involve information of protected information relating to government measures under dispute, or the information which the respondent considers contrary to its essential security. Such information shall be protected from disclosure. Therefore, China proposes to add a separate paragraph in the Rule 36 as follow, Rule 36 Evidence: General Principles The respondent shall not be required to disclose protected information by the law of the respondent, or any information which it considers contrary to its essential security interest. The tribunal may not draw adverse inference based on the fact that such information is not disclosed by the respondent.
Rule 37 - Disputes Arising from Requests for Production of Documents	**Argentina:** Rule 37: Disputes Arising from Requests for Production of Documents In deciding a dispute arising out of a party's objection to the other party's request for production of documents, the Tribunal shall consider all relevant circumstances including without limitation: (a) the allocation of the burden of proof with respect to the issue related to the documents requested; (b) the efforts the requesting party could have reasonably made to obtain the requested evidence through its own means; (c) the scope and timeliness of the request; (d) the relevance and materiality of the documents requested; (e) the burden of production; and (f) the basis of the objection. Commentary It should be clarified that the list of circumstances to be considered by the Tribunal for the purposes of deciding a dispute on a request for production of documents and evidence is not exhaustive. Other relevant circumstances should be listed by way of illustration, as proposed above. **Israel:** Israel believes that it is desirable to avoid unnecessary allocation of time and funds and to avoid abuse of this procedure. Thus, the right balance needs to be reached. As commented by Israel previously, Israel is of the view that proposed AR 37 should enforce the ability of parties to object to the production of documents. Moreover, disclosure of documents clauses should not be used as an opportunity to receive documents that are not necessarily linked to the proceeding in ICSID but for other purposes. We suggest an addition to subpara. (b) to that effect. Pursuant to the above comments, please see the following suggested modifications to the wording of AR 37 (in green):

	~~The Tribunal shall decide any dispute arising out of a party's objection to the other party's request for production of documents.~~ In deciding ~~the~~ a dispute arising out of a party's objection to the other party's request for production of documents, the Tribunal shall: (a) allow the party making the objection to provide reasons for its objection, including, *inter alia*, on the grounds that the requested documents are exempted or protected from disclosure by applicable privileges and laws or by having special political or institutional sensitivity; and (b) consider all relevant circumstances, including: ~~(a)~~ (i) the scope and timeliness of the request; ~~(b)~~ (ii) the relevance and materiality of the documents requested to the dispute before the Tribunal; ~~(c)~~ (iii) the burden of production; and ~~(d)~~ (iv) the basis of the objection pursuant to paragraph (a).
Rule 38 - Witnesses and Experts	**Argentina:** Rule 38: Witnesses and Experts (1) A party intending to rely on evidence given by a witness shall file a written statement by that witness together with the written submission to which it relates. The statement shall identify the witness, contain the evidence of the witness and be signed and dated. […] Commentary It should be clarified that the written statement by a witness or an expert should be filed together with the party's written submission to which it relates. Written witness statements should not be filed by a party after it has made its relevant written submission, unless both parties agree otherwise. **Chile:** ▪ Reiteramos nuestra propuesta de incorporar una disposición adicional, en virtud de la cual se exija a los peritos revelar cualquier lazo con las partes, con el tribunal o con el tercero financiador en caso de haberlo (similar a lo que se propone en la Regla 39(4) para los expertos nombrados por el Tribunal). Lo anterior con la finalidad de establecer mecanismos que asistan en la identificación temprana de posibles conflictos. Consideramos que si bien la credibilidad del perito es un tema que puede ser determinado en un contrainterrogatorio, lo anterior en nada obsta a la incorporación de este requerimiento, puesto que una disposición como la propuesta buscaría establecer si existen

	conflictos de interés y no determinar el valor de la prueba aducida por medio del experto, lo que es el objetivo del contrainterrogatorio. ▪ Lo anterior se vuelve especialmente relevante, en consideración al efecto adverso que podría generar en el procedimiento que un laudo sea anulado por estimarse que la no revelación de un vínculo entre un perito y un miembro del tribunal podría implicar una incorrecta constitución del Tribunal y/o el quebrantamiento grave de una norma de procedimiento, como sucedió recientemente en la Decisión sobre la Solicitud de Anulación del Reino de España en el caso *Eiser Infrastructure Limited y Energía Solar Luxembourg S.À.R.L. c. Reino de España* (Caso CIADI No. ARB/13/36). Teniendo en cuenta que este tipo de declaraciones no es oneroso y podría evitar incidentes procesales, aminorando el costo y duración de los procedimientos, nos permitimos insistir sobre este punto. (…) *(8) Al momento del nombramiento de un(a) perito(a), éste deberá revelar cualquier lazo que tenga o haya tenido con las partes, el tribunal, los(as) peritos(as) o testigos (as) de la otra parte, y el tercero financista en caso de haberlo.* *(9~~8~~) Antes de su interrogatorio, cada perito hará la siguiente declaración: "Declaro solemnemente, por mi honor y conciencia, que lo que manifestaré estará de acuerdo con lo que sinceramente creo".*
Rule 39 - Tribunal-Appointed Experts	**Argentina:** Rule 39: Tribunal-Appointed Experts (1) Unless the parties agree otherwise, the Tribunal, upon a party's request or, unless the parties disapprove, on its own initiative, may appoint one or more independent experts to report to it on specific matters within the scope of the dispute. (2) The Tribunal shall consult with the parties on the appointment of an expert, including without limitation on the background and qualifications of the expert, the terms of reference and fees of the expert, the candidates that are being considered and the budgets, and any other relevant information for the appointment of the expert. When deciding whether to appoint and expert and who should be selected for that position, the Tribunal shall endeavour not to unnecessarily increase the cost of the proceeding. […] (6) Either party may challenge the Tribunal-appointed expert for justified reasons. (7) Rule 38 shall apply, with necessary modifications, to the Tribunal-appointed expert.

	Commentary An expert may be appointed by the Tribunal upon a party's request or, unless the parties disapprove, on its own initiative. The Tribunal should consult with the parties on any relevant information for the appointment of the expert, as proposed above. The Tribunal should be mindful of costs when deciding whether it is necessary to appoint an expert and selecting the expert. The parties should have the right to challenge the Tribunal-appointed expert for justified reasons.
Rule 40 - Visits and Inquiries	
Chapter VI - Special Procedures	
Rule 41 - Manifest Lack of Legal Merit	**Chile:** Ver Comentarios relacionados en la Regla 51.
Rule 42 - Bifurcation	**Argentina:** Rule 42: Bifurcation […] (3) The following procedure shall apply to a request for bifurcation other than a request referred to in Rule 44: (a) the request for bifurcation shall be filed as soon as possible; (b) the request for bifurcation shall state the questions to be bifurcated; (c) the proceeding shall be suspended until the Tribunal decides whether to bifurcate, unless the parties agree otherwise; (d) the Tribunal shall fix time limits for written or oral submissions on the request for bifurcation, as required; (e) the Tribunal shall issue its decision on a request for bifurcation within 30 days after the last written or oral submission on the request; and (f) the Tribunal shall fix any time limit necessary for the further conduct of the proceeding. (4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including without limitation whether: (a) bifurcation would materially reduce the time and cost of the proceeding; (b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and

	(c) the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical. […] Commentary The proceeding should be suspended pending a decision on bifurcation, unless the parties agree otherwise. The suspension enables the Tribunal to deal with the request for bifurcation without the risk of exceeding the time limit for a subsequent filing. It also means that the cost of preparing such filing could potentially be avoided, if the proceeding is bifurcated and the case is dismissed based on the question addressed in a separated phase of the proceeding. Since the Tribunal should consider all relevant circumstances when deciding whether to bifurcate, it should be clarified that the list of circumstances mentioned in paragraph 4 is non-exhaustive. Although it has been clarified that the chapeau suggests the circumstances are not exhaustive,[6] it would be convenient to make it clear in the proposed rule with language such as "without limitation". **China:** **1. On Treaty interpretation and application rules** To avoid erroneous or manifestly inappropriate interpretation of treaties, which may affect the correctness and predictability of rules of treaties, China suggests that the Arbitration Rules add a requirement that the rules as codified in Article 31 and 32 of the Vienna Convention on the Law of Treaties shall be adopted by the tribunal in treaty interpretation. Therefore, China proposes to add an individual article in Chapter IV with the title of "Treaty Interpretation". Treaty Interpretation When rendering its orders, decisions and awards, the Tribunal shall interpret the rules of international laws referred to in Article 42(1) of the Convention in accordance with Article 31 and 32 of the *Vienna Convention on the Law of Treaties*, and other rules and principles on international law applicable between the Parties.
Rule 43 - Preliminary Objections	
Rule 44 - Preliminary Objections with a Request for Bifurcation	**Argentina:** Rule 44: Preliminary Objections with a Request for bifurcation […]

[6] WP # 3, ¶ 110.

	(2) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including without limitation whether: (a) bifurcation would materially reduce the time and cost of the proceeding; (b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and (c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical. (3) If the Tribunal decides to address the preliminary objection in a separate phase of the proceeding, it shall: (a) suspend the proceeding on the merits, unless the parties agree otherwise; (b) fix time limits for written and oral submissions on the preliminary objection, as required; (c) render its decision or Award on the preliminary objection within 180 days after the later of the last written or oral submission, in accordance with Rule 58(1)(b); and (d) fix any time limit necessary for the further conduct of the proceeding if the Tribunal does not render an Award. […] Commentary Since the Tribunal should consider all relevant circumstances when deciding whether to bifurcate, it should be clarified that the list of circumstances mentioned in paragraph 3 is non-exhaustive.[7] Although it has been clarified that the language "all relevant circumstances, including…" indicates that the circumstances listed are not exhaustive,[8] it would be convenient to make it clear in the proposed rule with language such as "without limitation". If the Tribunal decides to address the preliminary objections in a separate phase of the proceeding, the proceeding on the merits should be suspended pending a decision on preliminary objections. If the Tribunal considers there are special circumstances that do not justify suspension, then it should join the objections to the merits.
Rule 45 - Preliminary Objections without a Request for Bifurcation	Israel: Following the separation of the paragraphs of this Rule from AR 43: Para. (2) refers to preliminary objections in general (not only with respect to a request for bifurcation of preliminary objections) and therefore is more suitable to be moved back to Rule 43.

[7] *See MetLife, Inc., MetLife Servicios S.A. and MetLife Seguros de Retiro S.A. v. Argentine Republic,* ICSID Case No. ARB/17/17, Procedural Order Nº 2 Decision on Bifurcation, 21 December 2018, ¶ 7 ("Reference is made to ICSID's Commentary on its Arbitration Rules, which considers relevant considerations to include (1) the merits of the objection; (2) whether bifurcation would materially reduce time and costs; and (3) whether jurisdiction and merits are so intertwined as to make bifurcation impractical. **These considerations are not exhaustive**.") (emphasis added).

[8] WP # 4, ¶ 97.

	Also, it is not clear whether AR 42(6) applies to AR 45, i.e., to preliminary objections in cases where no party asked for bifurcation.
Rule 46 - Consolidation or Coordination of Arbitrations	
Rule 47 - Provisional Measures	**Argentina:** Rule 47: Provisional Measures […] (2) The following procedure shall apply: (a) the request shall specify the rights to be preserved, the measures requested, and the circumstances that require such measures; (b) the party requesting the recommendation of a provisional measure shall satisfy the Tribunal that: (i) harm not adequately reparable by an award of damages is likely to result if the measure is not recommended, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and (ii) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the Tribunal in making any subsequent determination. (c) the Tribunal shall fix time limits for written or oral submissions on the request, as required; (d) if a party requests provisional measures before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the request, so that the Tribunal may consider the request promptly upon its constitution; and (e) the Tribunal shall issue its decision on the request within 30 days after the latest of: (i) the constitution of the Tribunal; (ii) the last written submission on the request; or (iii) the last oral submission on the request. […] (4) The Tribunal may recommend provisional measures on its own initiative, after giving the parties an opportunity to make submissions. The Tribunal may also recommend provisional measures different from those requested by a party, after giving the parties an opportunity to present their observations on such measures. (5) A party must promptly disclose any material change in the circumstances upon which the Tribunal recommended provisional measures.

	(6) The Tribunal may at any time modify or revoke the provisional measures, on its own initiative or upon a party's request, after giving the parties an opportunity to make submissions. […] Commentary The party requesting the recommendation of a provisional measure should satisfy the Tribunal that: harm not adequately reparable by an award of damages is likely to result if the measure is not recommended, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the Tribunal in making any subsequent determination. Although it has been clarified that "irreparable harm" and "harm not adequately reparable by an award on damages" are part of the analysis of necessity,[9] it would be convenient to make it clear in the proposed rule with specific language addressing this issue. Both parties should be given an opportunity to present their observations before a Tribunal recommends provisional measures on its own initiative, recommends provisional measures different from those requested by a party, or modifies or revokes provisional measures. **Turkey:** Provisional measure is regulated comprehensively in the Article 47 of the WP#4, the same as the WP#3. Turkey wants to put an emphasis on the recommendatory nature of the provisional measures in accordance with the previous comments given for the WP#3. Thus, although the word "recommend" is used in the Article, different interpretations are brought in practice. As Secretariat underlined during the WP#3 meeting, it is a recommendation, not an order. Turkey suggests that Article 47, which is regulated as recommendatory, should be revised or the ICSID Convention should devise an Explanatory Note stating that: - The tribunals may only recommend provisional measures on the subject matter of investment dispute, - The provisional measure is applied in extraordinary and exceptional circumstances. Therefore, Turkey suggests the addition of an emphasis which explicitly states that provisional measures are non-binding upon parties, • Tribunals cannot grant provisional measures which interfere with the Contracting States' sovereign rights and contradict with the constitutional provisions of the Contracting States and the principles of the national legal framework, • Lastly, provisional measures shall be urgent, necessary and proportionate, and also shall only be granted in exceptional circumstances.

[9] WP # 4, ¶ 103.

	We believe that the above note could be added at least as an Explanatory Note. The ICSID Secretariat in the WP#3 Meeting (in Washington DC in November 2019) confirmed its view that tribunals only have the power to "recommend" non-binding measures according to Article 47 of the Convention and Rule 39 of the ICSID Rules, in reply to our inquiry. However, some ICSID tribunals have interpreted this term in the same vein as the term "order", such as Maffezini [10]case, and followed by many tribunals, including in Pey Casado and others [11]in the view of so-called jurisprudence constante. We believe that, we as rule makers of the Rules, should expressly explain the meaning and the intent of the term, for avoidance of any ambiguity.
Rule 48 - Ancillary Claims	
Rule 49 - Default	**Argentina:** Rule 49: Default […] (8) If the defaulting party fails to act within the grace period or if no such period is granted, the Tribunal shall examine the jurisdiction of the Centre and its own competence and, if it is satisfied, verify that the submissions made are well-founded in fact and in law, before deciding the questions submitted to it and rendering an Award. Commentary As current Arbitration Rule 42(4), proposed Arbitration Rule 48 should provide that in case of default the Tribunal must also verify that the submissions made are well-funded in fact an in law.
Chapter VII - Costs	
Rule 50 - Costs of the Proceeding	**Argentina:** Rule 50: Costs of the Proceeding The costs of the proceeding are all costs incurred by the parties in connection with the proceeding, including: (a) the reasonable legal fees and expenses of the parties; (b) the fees and expenses of the Tribunal, Tribunal assistants approved by the parties and Tribunal-appointed experts; and (c) the administrative charges and direct costs of the Centre.

[10] *Emilio Agustín Maffezini v Kingdom of Spain*, ICSID Case No ARB/97/7, Procedural Order No 2 (28 October 1999)

[11] *Victor Pey Casado and President Allende Foundation v Republic of Chile*, ICSID Case No ARB/98/2, Decision on Provisional Measures (25 September 2001) *Tokios Tokelés v Ukraine*, ICSID Case No ARB/02/18, Procedural Order No 1 (1 July 2003) paras 2, 4; *Helnan International Hotels A/S v Arab Republic of Egypt*, ICSID Case No ARB/05/19, Claimant's Request for Provisional Measures (17 May 2006) para 32; *Perenco Ecuador Limited v Republic of Ecuador and Empresa Estatal Petróleos del Ecuador*, ICSID Case No ARB/08/6, Decision on Provisional Measures (8 May 2009) paras 66–77; *Tethyan Copper Company Pty Limited v Islamic Republic of Pakistan*, ICSID Case No ARB/12/1, Decision on Claimant's Request for Provisional Measures (13 December 2012) para 120; *City Oriente Limited v Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case No ARB/06/21, Decision on Provisional Measures (9 November 2007) para 92

	Commentary Only reasonable legal fees and expenses of the parties should form part of the costs of the proceeding. Although it has been clarified that the reasonableness of the costs is assessed by the Tribunal,[12] it would be convenient to make it clear in the proposed rule with specific language addressing this issue.
Rule 51 - Statement of and Submission on Costs	**Argentina:** Rule 51: Statement of and Submission on Costs The Tribunal shall request that each party file a statement of costs and a written submission on the allocation of costs, and that the Secretary-General submit an account of all amounts paid by each party to the Centre and of all costs incurred and payments made by the Centre for the proceeding, before allocating the costs of the proceeding between the parties. The statements of costs submitted by the parties and the account submitted by the Secretary-General shall be communicated to both parties. The Tribunal may request the parties and the Secretary-General to provide additional information concerning the costs of the proceeding, on its own initiative or at the request of a party. Commentary Current Arbitration Rule 28 provides that the Secretary-General shall submit an account of costs and that the Tribunal may request the parties and the Secretary-General to provide additional information. It is necessary to maintain such provision. In addition, the statements of costs submitted by the parties and the account submitted by the Secretary-General should be communicated to both parties, so that they may examine the costs, ask the Tribunal to request additional information, and make observations, if any.
Rule 52 - Decisions on Costs	**Group of 36 ICSID Member States:** PROPOSED REVISED LANGUAGE (2)) ~~The Tribunal shall award the party prevailing on an objection made pursuant to Rule 41 its costs of submitting or~~ opposing ~~the objection,~~ In exercising its discretion under paragraph 1 in a case where it has found a claim to be manifestly without legal merit pursuant to Rule 41, the Tribunal shall award all of the costs related to the claims dismissed under Rule 41 to the party which made the objection, unless the Tribunal determines that there are special circumstances which justify a different allocation of costs ~~in accordance with paragraph (1)~~. **Argentina:**

[12] WP # 2, ¶ 333.

	Rule 52: Decisions on Costs (1) In allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including, but not limited to: (a) the extent to which each claim, objection or defence has been successful, and the proportion in which the amount claimed is reflected in the compensation awarded to the claimant party, if any; (b) the conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner and complied with these Rules and orders and decisions of the Tribunal; (c) the complexity of the issues; and (d) the reasonableness of the costs claimed. (2) In exercising its discretion under paragraph 1 in a case where it has found a claim to be manifestly without legal merit pursuant to Rule 41, the Tribunal shall award all of the costs related to the claims dismissed under Rule 41 to the party which made the objection, unless the Tribunal determines that there are special circumstances which justify a different allocation of costs. […] Commentary It should be clarified that the list of circumstances to be considered by the Tribunal for the purposes of the allocation of costs is not exhaustive, but a list of minimum factors to be considered when deciding how to allocate costs. In investment arbitration cases, it is usually misleading to look at the final outcome of the proceeding. Instead, the extent to which each claim, objection or defence has been successful should be considered for the purposes of allocating costs, as well as the proportion in which the amount claimed is reflected in the compensation awarded to the claimant, if any, which may be significantly lower than the amount claimed. Although it has been clarified that the language proposed in proposed Arbitration Rule 52(1)(a) "includes the outcome of discrete claims and defences and could also involve an assessment of the relative success of the parties with regard to *e.g.* the compensation awarded,"[13] it would be convenient to make it clear in the proposed rule with specific language addressing this issue. In relation to paragraph 2, a different language is hereby suggested. The threshold to succeed on an objection that a claim is manifestly without legal merit is extremely high. In the face of such a high standard, imposing a presumption of costs if an objection is unsuccessful may limit the rules' effectiveness as a procedure to limit frivolous or unmeritorious claims. A claim could be without merit, and ultimately dismissed, even though the Tribunal might have found early on that it was not "manifestly" without merit. As a result, such a provision could have the effect of deterring meritorious objections under Rule 41. On the other hand, given the high standard, it makes sense to impose a presumption if a claim is determined by a Tribunal to be, in fact, manifestly without legal merit. If a

	party objecting can meet the high standard to get a claim dismissed, then this is the sort of frivolous claim that should never have been brought, and costs must be presumed to be appropriate. **Chile:** ▪ Chile reitera la importancia de que se establezcan reglas que puedan disuadir reclamaciones que no debían haberse iniciado nunca al manifiestamente carecer de mérito jurídico y considera que la actual Regla 52(2) va en contra de este propósito, por lo que solicita su modificación. ▪ Consideramos que la Regla 52(2), como está formulada en el DT No. 4, crea una presunción injustificada respecto a la recuperación de los costos, en contra de la parte cuya objeción presentada de acuerdo a la Regla 41 no prosperó. o Dicha presunción carece de sentido bajo la actual estructura de las Reglas. El umbral para prosperar en una objeción contra una reclamación que carece manifiestamente de mérito jurídico es extremadamente alto. De conformidad con dicho estándar, no tendría sentido imponer una presunción de costos en caso de que la objeción no resulte exitosa. Por el contrario, dicha disposición podría tener el efecto indeseado de disuadir objeciones fundadas bajo la Regla 41, con las que se buscan una pronta resolución de la disputa, además de evitar demandas frívolas. Además, en consideración al alto estándar señalado, pareciera ser congruente imponer una presunción de costos cuando un tribunal resuelve que la reclamación efectivamente carece de mérito jurídico, puesto que la parte que logre cumplir con los requisitos de dicho estándar demostraría que dicha reclamación nunca debió ser sometida a arbitraje. • Como dijimos en nuestra anterior presentación, consideramos que la modificación propuesta no sería necesariamente una regla que beneficie únicamente a los Estados, pues han habido solicitudes bajo la actual regla 41(5) respecto a procedimientos de anulación, y por lo tanto si hubiera un Estado que solicita la anulación de un laudo y esto manifiestamente carece de mérito jurídico, se vería confrontado a la misma regla y a la misma realidad. *(1) Al distribuir los costos del procedimiento, el Tribunal considerará todas las circunstancias relevantes, incluyendo:* *(a) el resultado del procedimiento o de una parte del mismo;* *(…)* *(2) ~~El Tribunal deberá adjudicar a la parte que prevalezca los costos de presentar u oponerse a una objeción presentada en virtud de la Regla 41~~,Al ejercer su discrecionalidad bajo el párrafo 1 en un caso donde haya establecido que una reclamación carece de mérito jurídico de acuerdo a la Regla 41, el Tribunal deberá adjudicar todos los costos relacionados con la reclamación rechazada de*

[13] WP # 4, ¶ 107.

	acuerdo a la Regla 41 a la parte que haya presentado la objeción, salvo que el Tribunal determine que existen ~~las~~ circunstancias que justifiquen una distribución de costos diferente ~~de conformidad con el párrafo (1)~~. *(3) El Tribunal podrá adoptar una decisión provisional sobre costos en cualquier momento.* **Costa Rica:** It is Costa Rica's view, that when a claim is dismissed due tomanifest lack of legal merit, there should be a presumption that the Claimant has to bear the cost of the proceedings, without prejudice to the possibility of considering special circumstances which justify a different allocation of costs. Such provision could have the effect of deterring meritorious objections under Rule 41 Manifest Lack of Legal Merit. **Israel:** Please see the joint submission to which Israel is a party (that was submmited to the ICSID Secretariat on July 31, 2020).
Rule 53 - Security for Costs	**Group of 36 ICSID Member States:** PROPOSED REVISED LANGUAGE (4) The Tribunal shall consider all evidence adduced in relation to the circumstances in paragraph (3). The Tribunal may consider ~~the existence of~~ third-party funding ~~may form p art of such~~ as evidence relating to the circumstances in paragraph (3), but ~~is~~ the existence of third-party funding by itself may not b~~y itself~~ necessarily be sufficient to conclude ~~justify an order for security for costs~~ that such circumstances exist. **Argentina:** Rule 53: Security for Costs […] (3) In determining whether to order a party to provide security for costs, the Tribunal shall consider all relevant circumstances, including without limitation: (a) that party's ability to comply with an adverse decision on costs; (b) that party's willingness to comply with an adverse decision on costs; (c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim; (d) the conduct of the parties; and (e) the existence of third-party funding.

Alternative to the above:
(4) The Tribunal shall consider all evidence adduced in relation to the circumstances in paragraph (3), including the existence of third-party funding.

[…]

Commentary
It should be clarified that the list of circumstances to be considered by the Tribunal to order a disputing investor to provide security for costs is not exhaustive and that those circumstances include the existence of third-party funding. Proposed language in WP # 4 does not adequately reflect that third-party funding should be a circumstance for the Tribunal to consider in determining whether to order a party to provide security for costs.

Alternatively, it should be clarified that the Tribunal shall consider all evidence relating to adduced in relation to the circumstances in paragraph (3), including the existence of third-party funding, without the qualification that this is not by itself sufficient to justify an order for security for costs, as this will depend on the circumstances of each case.

China:
3) the relevant legal consequence shall also be clarified. For instance, the party receiving the funding shall bear the obligation to provide security for costs, upon the request of the other party. Therefore, China proposes to amend the Rule 53(4) as follow,
Rule 53 Security for Costs
(4) The Tribunal shall consider all evidence adduced in relation to the circumstances in paragraph (3). The existence of third-party funding ~~may form part of such evidence but is not by itself~~ sufficient to justify an order for security for costs. Upon request of the other party, the Tribunal shall order the party receiving the third-party funding to provide security for costs.

Chile:
- Respecto a la Regla 53, Chile agradece los cambios realizados por el Secretariado en el DT No. 4. Sin perjuicio de lo anterior, quisiéramos insistir respecto de la redacción del numeral cuarto de la Regla 53, puesto que, en su redacción actual considera que, a priori, el financiamiento por terceros no puede, por sí solo considerarse suficiente para justificar una garantía por costos.
- Si bien la existencia de financiamiento por terceros no implica que se deba otorgar garantía por costos de manera automática, es posible establecer casos en los cuales el FpT sea de por sí suficiente para determinar que se deben otorgar garantías por costos, por lo que es necesario permitirle al Tribunal realizar el examen de este elemento sin que las reglas predispongan las conclusiones a las que debe llegar.

(…)

(4) El Tribunal considerará toda la prueba presentada en relación con las circunstancias previstas en el párrafo (3). El Tribunal podrá considerar ~~L~~la existencia de financiamiento por terceros ~~puede ser parte de dicha~~como prueba relacionada a las circunstancias del párrafo (3). Sin embargo la existencia de financiamiento por terceros ~~pero~~ por sí sola puede no ser ~~es~~ suficiente necesariamente para ~~justificar una orden de garantía por costos~~concluir que existen tales circunstancias.

Costa Rica:

The current proposal of paragraph (4) could be understood as precluding security for costs in the scenario that third-party funding is the only existing element. Therefore, Costa Rica hereby suggests a language that does not prejudge the weight the Tribunal should give to the existence of third-party funding. The Tribunal is the one that must determine the impact of third-party funding when deciding for security for costs.

Rule 53 Security for Costs

(…)

(4) The Tribunal ~~shall~~ may consider ~~all evidence adduced in relation~~ third-party funding as evidence relating to the circumstances it considered in applying paragraph (3), but ~~T~~the existence of third-party funding by itself may not necessarily be ~~form part of such evidence but is not by itself~~ sufficient to conclude that such circumstances exist ~~justify and order for security for costs~~.

(…)

Indonesia:

As mentioned in Indonesia's previous position, Indonesia proposes the provision regarding Security for Costs would prevail automatically once the Party registers Third-party Funder. The provision is to assure that in case the host state wins the case they will surely receive compensation of their expenses in the proceeding.

Indonesia suggests to add new paragraph (2) which stated "if a party has declared its TPF, the party shall deposit an estimated costs as a guarantee for the payment of any adverse decision".

Hence, Indonesia suggests to delete the phrase " ..the existence of third-party funding may form part of such evidence but is not by itself sufficient to justify an order for security for costs" in paragraph (4).

Israel:

Please see the joint submission to which Israel is a party (that was submmited to the ICSID Secretariat on July 31, 2020).

	Jamaica: Rule 53(8) (page 324): The GOJ recommends that the provision require that the Tribunal provide written reasons for a modification or revocation of an order for security for costs. **Korea:** • Korea reiterates its concerns on subparagraph (3)(c) and suggests that it be deleted. In Korea's opinion, consideration of subparagraph (3)(c) significantly contradicts the general object and purpose of security for costs and, in the same vein, the intent behind listing subparagraphs (3)(a) and (3)(b) as possible circumstances for consideration. That is, if and when the Tribunal determines that ordering a party to provide security for costs adversely affects that party's ability to pursue its claim or counterclaim, and if consideration of subparagraph (3)(c) is given more weight than to subparagraphs (3)(a), (b) or (d), the Tribunal may end up not issuing a security for costs order which then may put the other party at a greater risk of not recovering costs. Any necessary concerns regarding access to justice can be well addressed as other 'relevant circumstances' prescribed in paragraph (3). • Korea also maintains its position that the consequence of the failure of a party to comply with an order to provide security for costs should be mandatory suspension of the proceedings to ensure compliance. The other party may entertain a chance to object to such suspension, assuming that the other party may prefer to seek an enforceable final award against the non-complying party. **Panama:** Panama is pleased that the Secretariat has decided to create a rule that expressly addresses the issue of security for costs. Nevertheless, Panama is concerned about one aspect of the current draft: specifically, Paragraph 2(a), which states that "the request shall specify the circumstances that require security for costs." In WP4, the Secretariat advised that the word "require" was chosen in order to maintain "consisten[cy] with the drafting of other rules (Provisional Measures and Stay of Enforcement of the Award) and reflects the appropriate standard for security for costs."[14] However, the entire purpose of creating a standalone rule was to correct the misimpression that applications for "security for costs" come within the ambit of provisional measures. Given that the tribunal's authority to grant security for costs derives from Articles 61(2) and 44 of the ICSID Convention[15]

[14] WP4, ¶ 111.

[15] *See, e.g.*, *Commerce Group Corporation and San Sebastian Gold Mines, Inc. v. Republic of El Salvador*, ICSID Case No. ARB/09/17 (Decision on El Salvador's Application for Security for Costs, 20 September 2012), ¶¶ 40–45 (Gaillard, Pryles, Schreuer).

	— and not from Article 47 thereof —it does not seem appropriate to link the new rule back to "provisional measures." Considering the effort that the Secretariat had made to frame the rest of the rule in neutral terms, Panama reiterates its proposal to revise Paragraph 2(a) to state: "the circumstances that *justify* security for costs."
Chapter VIII - Suspension, Settlement and Discontinuance	
Rule 54 - Suspension of the Proceeding	
Rule 55 - Settlement and Discontinuance by Agreement of the Parties	
Rule 56 - Discontinuance at Request of a Party	
Rule 57 - Discontinuance for Failure of Parties to Act	
Chapter IX - The Award	
Rule 58 - Timing of the Award	**Costa Rica:** Costa Rica suggests clarifying the language in (1)(a), as follows: **Rule 57 Timing of the Award** (1) The Tribunal shall render the Award as soon as possible, and in any event no later than: (a) 60 days after the latest of either of the following: (i) the Tribunal constitution, (ii) the last written submission or (iii) the last oral submission, if the Award is rendered pursuant to Rule 41(3); (…)
Rule 59 - Contents of the Award	**Chile:** ▪ Al observar que esta Regla se mantiene inalterada, reiteramos nuestra solicitud – que ha sido realizada anteriormente por otros países- que busca se precise el contenido de la Regla 59(1) y por lo tanto de los laudos arbitrales, solicitando que se incluya, además de los factores ya listados, otros requisitos como el derecho aplicable, el análisis del nexo causal entre los hechos considerados violatorios del instrumento invocado y los perjuicios alegados, así como una justificación del método utilizado para cuantificar ysobre todo calcular el daño. ▪ Creemos que el mayor detalle en la elaboración y fundamento de los laudos solo redunda en una mayor legitimidad del sistema y hace que, en caso de existir una decisión condenatoria, sea más fácil para los Estados demandados tener los elementos necesarios para justificar el pago de la indemnización ordenada por el Tribunal. *(1) El laudo deberá dictarse por escrito y deberá incluir:* *(…)*

	(h) un breve resumen de los argumentos de las partes, incluyendo sus petitorios; (i) el derecho aplicable; *(j) el análisis del nexo causal entre los hechos considerados violatorios del instrumento invocado y los perjuicios alegados;* *(k) los principios de avaluación aplicados (l) el cálculo del daño;* *(l) la decisión del tribunal sobre cada cuestión que le haya sido sometida y las razones en las que se funda el laudo; y* ... **Costa Rica:** Costa Rica considers that any amendment to the Arbitration Rules must ensure that the Award is properly justified. While Costa Rica is flexible on the language, it does deem important to include explicit reference to legal reasoning as part of paragraph (1).
Rule 60 - Rendering of the Award	
Rule 61 - Supplementary Decision and Rectification	
Chapter X - Publication, Access to Proceedings and Non-Disputing Party Submissions	
Rule 62 - Publication of Awards and Decisions on Annulment	**Costa Rica:** To ensure transparency, it is Costa Rica's view that if a party decides not to publish the Award it must express the reasons for not doing so.
Rule 63 - Publication of Orders and Decisions	**Israel:** Israel wishes to reiterate the comments made by it previously, that in the same manner and for similar rationales for which the publication of awards is contingent upon the consent of the parties, so should be the case with respect to Decisions and orders. Decisions and orders may also divulge details of the dispute. The explanatory notes refer to the fact that the Convention clearly requires consent to publication of Awards and does not extend this requirement to the category of orders and decisions. Israel's view is that as the Convention is silent with regards to publication of Decisions and orders, its regulation under the ARs is not contrary to the Convention. In regards to ARs 63-65 (including the reference to confidential information on AR 66): Similarly to AR 62, in our view these ARs should explicitly state that they apply to proceedings of rectification, interpretation, revision and annulment as well. Otherwise, it may be inferred that these rules do not apply, contrary to AR 62, to such proceedings.

	Turkey: Turkey repeats its concerns about the Article 63 which does not comply with the Convention's main approach on the publication. First, the Rule 63 of the draft regulates that publication of the decisions and orders to be decided by tribunals. The draft rule has not taken consent of the parties into account, specifically, the publication of decisions and/or orders as regulated in the Rule 62 of the draft and ICSID Convention for awards. Additionally, it has not taken consent requirement in to account in terms of the written submission or supporting document filed by a party in the proceeding regulated by the Article 64. The main rule and principle of confidentiality in the Convention requires parties' consent for publication. The intent of the Convention is that only the parties should be able to decide whether to publish the decisions instead of tribunals. The main principle in the Convention is publication with the consent of the parties. The loophole for the decisions other than awards and decisions on annulment should not derogate and also follow the main principle of consent. Publication of all decisions, awards and process may also considerably increase the risk on the leak of private or confidential information, as well as that would put heavy burden on the Secretariat for detailed and sensitive control and may even put the Secretariat the responsibility for damages in case of any breach of confidentiality. Second, in terms of the Article 63 "Publication of Orders and Decisions" of the Arbitration Rules, and the Article 73 "Publication of Orders, Decisions and Awards" of the Additional Facilities Arbitration Rules, it should be reconsidered taking the principle of procedural economy into account whether publishing all kind of decisions and orders even a basic time extension decision by the Secretary is appropriate.
Rule 64 - Publication of Documents Filed in the Proceeding	**Israel:** Israel is concerned that AR 64 as it currently stands (alongside other relevant ARs) does not regulate all documents that may be submitted in the proceeding. For example, submissions of experts appointed by the tribunal. We believe that the publication of these documents should also be regulated.
Rule 65 - Observation of Hearings	
Rule 66 - Confidential or Protected Information	
Rule 67 - Submission of Non-Disputing Parties	**Israel:** Para. (6): In Israel's position, the word "may" should be reinstated, as it should not be automatic that the NDPs are immediately given access to documents in the case. Furthermore, it is unclear what in practice

	the word "access" means in this context, in comparison with being provided with documents. This is the only Rule in the ARs that employs the term "access" to documents. In our view, the use of the word "shall" as exists now places a heavy burden on the disputing parties in every case of NDPs' submission to scrutinize the need to object to the provision of documents to the NDPs. **Korea:** • Korea welcomes inclusion of the requirement that an application for a non-disputing party submission be made in the procedural language(s) used in the proceeding. This will ensure that third-party participation does not unnecessarily increase the procedural burdens of the parties. • For the sake of completeness, Korea suggests that the second sentence to paragraph (4) also includes reference to the tribunal's power to decide the language in which the written submission is made, if the application to make a written submission is successful.
Rule 68 - Participation of Non-Disputing Treaty Party	**Argentina:** Rule 68: Participation of Non-disputing Treaty Party (1) The Tribunal shall permit a Party to a treaty that is not a party to the dispute ("non-disputing Treaty Party") to make a written submission on the interpretation of the treaty at issue in the dispute and upon which consent to arbitration is based, unless such treaty provides for a joint interpretation mechanism. The Tribunal may, after consulting with the parties, invite a non-disputing Treaty Party to make such a submission. […] Commentary If a majority of two thirds of the members of the Administrative Council considers that a special procedure for participation of non-disputing Treaty Parties should be provided for, different from the procedure in proposed Arbitration Rule 67, such special procedure should be excluded in case the treaty at issue in the dispute provides for a joint interpretation mechanism. In such case, the non-disputing Treaty Party should use the treaty mechanism. The submission of a non-disputing Treaty Party should only be done in writing.

	Israel: Para (1): Israel wishes to reiterate the comments made by it previously, that an important characteristic of the ISDS mechanism is distancing States from disputes between their own investors and other States. In that context, we have 2 concerns: 1. We believe that the reference to an oral non-disputing treaty Party submission should not be added. In our approach, if an NDTP would like to express its position on a matter, a written submission is sufficient. It is crucial that the NDTP should not be pressured to express its opinion orally by any of the disputing parties. In our view, it might lead to unwanted politicization of the proceeding. 2. We are concerned that the current suggested addition at the end of paragraph 1 may lead to involvement in disputes which is unwanted by the State. As a general note on the issue, Israel believes that a decision to bring all treaty-parties to a dispute proceeding should be left for the discretion of interested States under bilateral discussions and treaty negotiations. Para. (2): Within the framework of submissions on the interpretation of the treaty, although this is the intention, in Israel's view it should be clarified within the text that the tribunal should be allowed to limit and focus the submissions to specific issues or articles of the treaty at issue. Therefore, "scope" should be reinstated. Para (3): In line with the addition to Rule 67(3), we think that the parties should have the right to make observations on publication as well.
Chapter XI - Interpretation, Revision and Annulment of the Award	
Rule 69 - The Application	
Rule 70 - Interpretation or Revision: Reconstitution of the Tribunal	
Rule 71 - Annulment: Appointment of the ad hoc Committee	
Rule 72 - Procedure Applicable to Interpretation, Revision and Annulment	**Argentina:** Rule 72: Procedure Applicable to Interpretation, Revision and Annulment […] (2) The procedural agreements and orders on matters addressed at the first session of the original Tribunal may continue to apply to an interpretation, revision or annulment proceeding, with necessary modifications, if both parties agree thereto. […]

	Commentary The procedural agreements and orders on matters addressed at the first session of the original Tribunal should not apply to interpretation, revision or annulment proceedings unless *both* parties agree thereto. Interpretation, revision and annulment proceedings are not the same as the original arbitration proceeding, and procedural agreements applicable to the latter may not be appropriate for the former.
Rule 73 - Stay of Enforcement of the Award	**Argentina:** Rule 73: Stay of Enforcement of the Award […] (3) The following procedure shall apply: (a) the request shall specify the circumstances that require the stay; (b) the Tribunal or Committee shall fix time limits for written or oral submissions on the request, as required; and (c) the Tribunal or Committee shall issue its decision on the request within 30 days after the latest of: (i) the last written submission on the request; or (ii) the last oral submission on the request. (4) The Tribunal or Committee may at any time modify or terminate a stay of enforcement upon a party's request specifying the circumstances that require the modification or termination of the stay of enforcement, after giving the other party an opportunity to present observations. […] Commentary Only the Tribunal or Committee has authority to decide on a request for stay of enforcement of the award pending a decision on interpretation, revision or annulment. If the applicant for revision for revision or annulment requests a stay of enforcement in the application, enforcement shall be stayed provisionally until the Tribunal or Committee rules on such request, pursuant to Articles 51 and 52 of the ICSID Convention. Therefore, it is for the Tribunal or Committee to fix time limits for submissions on stay of enforcement, not the Secretary-General. Consequently, the 30 days to issue a decision on stay of enforcement should not be calculated from the constitution of the Tribunal or Committee, but from the last written submission on the request or the last oral submission on the request, whichever is later. The ICSID Convention does not authorize the imposition of conditions for the stay, which may even prevent the application of Article 55 of the ICSID Convention. Upon analysing the preparatory works of the ICSID Convention, it is clear that the first draft of current Article 52(5) of the Convention provided for the possibility that an annulment committee might require the provision of a bond or similar measure

	for the purpose of maintaining the stay of enforcement of the award.[16] However, the negotiators of the Convention specifically refused to confer these powers upon an annulment committee.[17] Annulment committees have considered that conditioning a stay of enforcement of an award on the provision of security would be contrary to the ICSID Convention.[18] Any information regarding any changes of circumstances upon which the enforcement was stayed should be provided in the context of a request to modify or terminate a stay of enforcement. The Tribunal or Committee should only modify or terminate a stay of enforcement upon a party's request specifying the circumstances that require the modification or termination of the stay of enforcement, after giving the other party an opportunity to present observations.
Rule 74 - Resubmission of Dispute after an Annulment	**Argentina:** Rule 74: Resubmission of Dispute after an Annulment […] (4) If the original Award was annulled in part, the new Tribunal shall not reconsider any portion of the Award that was not annulled. It may, however, stay the enforcement of the unannulled portion of the Award until the date its own Award is rendered. […] Commentary The possibility that the new Tribunal may stay or continue to stay the enforcement of the unannulled portion of the Award until the date its own Award is rendered, as provided for in current Arbitration Rule 55(3), should be maintained in proposed Arbitration Rule 74(4).
Chapter XII - Expedited Arbitration	
Rule 75 - Consent of Parties to Expedited Arbitration	**Argentina:**

[16] HISTORY OF THE ICSID CONVENTION, vol. I, p. 238 (1968).
[17] HISTORY OF THE ICSID CONVENTION, vol. II-2, p. 856 (1968); *see also Teco Guatemala Holdings LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Republic of Guatemala's Request for the Continuation of the Stay of Enforcement of the Award, 19 December 2014, ¶¶ 2(g), 30-36.
[18] *See, e.g., Azurix Corp. v. the Argentine Republic*, ICSID Case No. ARB/01/12, Decision on the Argentine Republic's Request for a Continued Stay of Enforcement of the Award, 28 December 2007, ¶¶ 33-35; *Victor Pey Casado and Foundation "Presidente Allende" v. Republic of Chile*, ICSID Case No. ARB/98/2, Decision on the Republic of Chile's Application for a Stay of Enforcement of the Award, 5 May 2010, ¶ 34; *El Paso Energy International Company v. the Argentine Republic*, ICSID Case No. ARB/03/15, Decision on Argentina's Request for Stay of Enforcement of the Award, 14 November 2012, ¶¶ 55-60; *Carnegie Minerals (Gambia) Limited v. Republic of The Gambia*, ICSID Case No. ARB/09/19, Decision on Respondent Request for a Continued Stay of Enforcement of the Award, 18 October 2018, ¶ 51.

	Rule 75: Consent of Parties to Expedited Arbitration (1) The parties to an arbitration conducted under the ICSID Convention may consent to expedite the arbitration in accordance with this Chapter ("expedited arbitration") by jointly notifying the Secretary-General in writing of their consent. The parties may jointly amend the expedited arbitration rules of this Chapter, in accordance with Arbitration Rule 1(2) and, upon the request of a party, the Tribunal may make necessary modifications to the expedited arbitration of this Chapter if the circumstances so require. […] Commentary It should be made clear that the parties are be allowed to jointly amend the expedited arbitration rules, in accordance with Arbitration Rule 1(2), and, at the request of a party, the Tribunal should be allowed to make necessary modifications to the expedited arbitration if the circumstances so require. **Israel:** Para. (3): Israel would like to reiterate the comment it made in the Washington conference in November 2019, that the failing of an arbitrator to confirm his/her availability for an expedited schedule should not prevent the parties from proceeding to an expedited arbitration if they so desire. Thus, the parties should be allowed to replace the unavailable arbitrator or, for example, agree to proceed with a sole arbitrator.
Rule 76 - Number of Arbitrators and Method of Constituting the Tribunal for Expedited Arbitration	
Rule 77 - Appointment of Sole Arbitrator for Expedited Arbitration	**Israel:** Para(2)(c): Israel supports the comment made previously by one of the States, and request the deletion of para 2(c). There is no justification to assign the SG automatically with the power to appoint the sole arbitrator in cases where the parties could reach an agreement but the candidate happened to be unavailable.
Rule 78 - Appointment of Three-Member Tribunal for Expedited Arbitration	**Israel:** Please see our comment above on AR 77.
Rule 79 - Acceptance of Appointment in Expedited Arbitration	
Rule 80 - First Session in Expedited Arbitration	
Rule 81 - Procedural Schedule in Expedited Arbitration	**Israel:**

	Upon the combination of ARs 22 and 76, it is inferred that proposals for disqualification of arbitrators are included among the submissions referred to in Rule 81(4). Thus, the proposals are to be considered in parallel with the main schedule of the proceeding. However, it is Israel's view that the basic principle of Rule 22(2) should be maintained, according to which the proceedings should 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. In Israel's view, the rationales for suspending a proceeding during a procedure for disqualification of an arbitrator in expedited arbitration are similar to those applicable to the suspension of proceedings in the case of regular arbitration (AR 22(2)) and are substantive enough to be maintained even in expedited proceedings. This comment also refers to AR 84(2).
Rule 82 - Default in Expedited Arbitration	
Rule 83 - Procedural Schedule for Supplementary Decision and Rectification in Expedited Arbitration	**Argentina:** Rule 83: The Procedural Schedule for Supplementary Decision and Rectification in Expedited Arbitration The consent of the parties given pursuant to Rule 75 shall not apply to a supplementary decision or rectification. The Tribunal shall issue a supplementary decision or rectification pursuant to Rule 61 within 30 days after the last written or oral submission on the request if the parties to the arbitration consent to expedite the supplementary or rectification proceedings. Commentary The consent of the parties to expedited arbitration should only cover the original arbitration proceeding and should not extend to post-award remedies, unless the parties to the arbitration consent to expedite the post-award remedies proceedings. While expedited rules should be available for post-award remedies, it should not be assumed that the parties wish to expedite the full case by consenting to expedited arbitration in the original arbitration proceeding.
Rule 84 - Procedural Schedule for Interpretation, Revision or Annulment in Expedited Arbitration	**Argentina:** Rule 84: The Procedural Schedule for an Application for Interpretation, Revision or Annulment of an Award Rendered in Expedited Arbitration (1) The consent of the parties given pursuant to Rule 75 shall not apply to interpretation, revision or annulment of an Award rendered in an expedited arbitration. The following schedule for written submissions and the hearing shall apply to the procedure relating to an interpretation, revision or

	annulment of an Award rendered in an expedited arbitration, if the parties to the arbitration consent to expedite the interpretation, revision or annulment proceedings: […] Commentary The consent of the parties to expedited arbitration should only cover the original arbitration proceeding and should not extend to post-award remedies, unless the parties to the arbitration consent to expedite the post-award remedies proceedings. While expedited rules should be available for post-award remedies, it should not be assumed that the parties wish to expedite the full case by consenting to expedited arbitration in the original arbitration proceeding. **Israel:** Please see our comment above on AR 81.
Rule 85 - Resubmission of a Dispute after Annulment in Expedited Arbitration	
Rule 86 - Opting Out of Expedited Arbitration	**Israel:** Para. (2): For the sake of due process and transparency, Israel suggests adding a requirement to provide reasoning to a decision made under para. (2). This suggested requirement is in line with several ARs (e.g., 52(4), 59(1)(i)-(j), and 67(5)), which explicitly require a reasoned decision. We may propose a modification to the wording: *The tribunal shall issue a reasoned decision on this matter*.
IV. Conciliation Rules	
Introductory Note	
Chapter I - General Provisions	
Rule 1 - Application of Rules	
Rule 2 - Party and Party Representative	
Rule 3 - Method of Filing	
Rule 4 - Supporting Documents	
Rule 5 - Routing of Documents	
Rule 6 - Procedural Languages, Translation and Interpretation	
Rule 7 - Calculation of Time Limits	

Rule 8 - Costs of the Proceeding	
Rule 9 - Confidentiality of the Conciliation	
Rule 10 - Use of Information in Other Proceedings	
Chapter II - Establishment of the Commission	
Rule 11 - General Provisions, Number of Conciliators and Method of Constitution	
Rule 12 - Notice of Third-Party Funding	**Costa Rica:** Costa Rica considers that this provision merits further examination beyond the effects in the constitution of the Commission and the potential conflict of interest. For example, TPF is also linked to security for costs, possibility of reaching amicable solutions, counterclaims, and transparency in general. Costa Rica is flexible in the language that can be adopted in the Rule to reach this objective; however, Costa Rica considers that paragraph (1) must request disclosing information about the party´s corporate structure. **Israel:** It is Israel's view that the modifications suggested to AR 14 in the joint submission to which Israel is a party (that was submitted to the ICSID Secretariat on July 31, 2020) should also apply to CR 12 and (AF)CR 21 *mutatis mutandis*.
Rule 13 - Appointment of Conciliators to a Commission Constituted in Accordance with Article 29(2)(b) of the Convention	
Rule 14 - Assistance of the Secretary-General with Appointment	
Rule 15 - Appointment of Conciliators by the Chair in Accordance with Article 30 of the Convention	
Rule 16 - Acceptance of Appointment	
Rule 17 - Replacement of Conciliators Prior to Constitution of the Commission	
Rule 18 - Constitution of the Commission	
Chapter III - Disqualification of Conciliators and Vacancies	

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ADDITIONAL FACILITY PROCEEDINGS	
V. Additional Facility Rules	**Chile:** Chile no hace comentarios adicionales respecto a las reglas de arbitraje para el mecanismo complementario, pero hace extensivas los comentarios realizados respecto a las reglas de arbitraje bajo el Convenio.
Introductory Note	
Article 1 - Definitions	**Jamaica:** The GOJ recommends that the defined terms be placed in alphabetical order. This comment is also applicable to all definition sections, for example, those found on pages 195 (ICSID Fact- Finding Rules) and 215 (ICSID Mediation Rules).
Article 2 - Additional Facility Proceedings	
Article 3 - Convention Not Applicable	
Article 4 - Final Provisions	
VI. Administrative and Financial Regulations	
Introductory Note	
Chapter I - General Provisions	
Regulation 1 - Application of these Regulations	
Chapter II - General Functions of the Secretariat	
Regulation 2 - Secretary	
Regulation 3 - The Registers	
Regulation 4 - Depositary Functions	
Regulation 5 - Certificates of Official Travel	
Chapter III - Financial Provisions	
Regulation 6 - Fees, Allowances and Charges	
Regulation 7 - Payments to the Centre	

Regulation 8 - Consequences of Default in Payment	**Costa Rica:** Based on our experience in procedures, Costa Rica suggests a 45 day-term in paragraph 2(a). Sometimes, countries face challenges to meet the 30 days term, merely due to compliance with internal administrative proceedings.
Regulation 9 - Special Services	
Regulation 10 - Fee for Lodging Requests	
Chapter IV - Official Languages and Limitation of Liability	
Regulation 12 - Languages of Regulations	
Regulation 13 - Prohibition Against Testimony and Limitation of Liability	
VII. Arbitration Rules	
Introductory Note	
Chapter I - Scope	
Rule 1 - Application of Rules	
Chapter II - Institution of Proceedings	
Rule 2 - The Request	
Rule 3 - Contents of the Request	**Costa Rica:** Costa Rica proposes to include a description of the investor's ownership in (2)(a). At the beginning of an arbitral procedure, it is important to clearly identify the Claimant, to allow the State to have an appropriate preparation of the case. Costa Rica also supports the inclusion of a new sub-paragraph (2)(d)(ii) since this information helps the State understand certain facts about the Claimant and its right to bring a claim. ICSID includes a similar recommendation in Rule 4; however, experience tells that if the information is not mandatory the investor will not present it and the Tribunal will not have the obligation to request it. **Rule 3 Contents of the Request** (…) (2) With regard to Article 2(1)(a) of the Additional Facility Rules, the Request shall include:

	(a) a description of the investment, a description of the investor's ownership and control of the investment, a summary of the relevant facts and claims, the request for relief, including an estimate of the amount of any damages sought, and an indication that there is a legal dispute between the parties arising directly out of the investment; (…) (d) if a party is a juridical person: (…) (ii) information concerning the ultimate beneficial owner and corporate structure of the party; (iii) if that party had the nationality of the State party to the dispute or of any constituent State of the REIO party to the dispute on the date of consent, information concerning and supporting documents demonstrating the agreement of the parties to treat the juridical person as a national of another State pursuant to Article 1(5)(b) of the Additional Facility Rules; (…)
Rule 4 - Recommended Additional Information	
Rule 5 - Filing of the Request and Supporting Documents	
Rule 6 - Receipt of the Request and Routing of Written Communications	
Rule 7 - Review and Registration of the Request	
Rule 8 - Notice of Registration	
Rule 9 - Withdrawal of the Request	
Chapter III - General Provisions	
Rule 10 - Party and Party Representative	
Rule 11 - General Duties	
Rule 12 - Method of Filing	
Rule 13 - Supporting Documents	
Rule 14 - Routing of Documents	
Rule 15 - Procedural Languages, Translation and Interpretation	
Rule 16 - Correction of Errors	
Rule 17 - Calculation of Time Limits	
Rule 18 - Fixing Time Limits	

Rule 19 - Extension of Time Limits Applicable to Parties	
Rule 20 - Time Limits Applicable to Tribunal	**Costa Rica:** In the interest of certainty, and considering that the objective of this process is to reduce the duration of the proceedings, we suggest to include an obligation in paragraph (1) that can guide the expectations of the parties and paragraph (2) contains the exception, which provides flexibility to the tribunals, when needed. **Rule 20 Time Limits Applicable to Tribunal** (1) The Tribunal shall ~~use best efforts to~~ meet time limits to render orders, decisions and the Award. (2) If the Tribunal cannot comply with an applicable time limit, it shall advise the parties of special circumstances justifying the delay and the date when it anticipates rendering the order, decision or Award.
Chapter IV - Establishment of the Tribunal	
Rule 21 - General Provisions Regarding the Establishment of the Tribunal	
Rule 22 - Qualifications of Arbitrators	
Rule 23 - Notice of Third-Party Funding	**Costa Rica:** Costa Rica considers that this provision merits further examination beyond the effects in the constitution of the Tribunal and the potential conflict of interest. For example, TPF is also linked to security for costs, possibility of reaching amicable solutions, counterclaims, and transparency in general. Costa Rica is flexible in the language that can be adopted in the Rule to reach this objective; however, Costa Rica considers that paragraph (1) must request disclosing information about the party´s corporate structure. Regarding paragraph (5), Costa Rica considers that the proposed language does not address our concerns due to the following reasons: a. the request for further information remains as a discretional decision of the Tribunal, and b. the advantages of including this paragraph could be diminished by including the high standard of a necessity criterion. This could be an obstacle for the Respondent when its interest in TPF lies beyond a conflict of interest.
Rule 24 - Method of Constituting the Tribunal	
Rule 25 - Assistance of the Secretary-General with Appointment	

Rule 26 - Appointment of Arbitrators by the Secretary-General	
Rule 27 - Acceptance of Appointment	**Costa Rica:** Costa Rica considers that, since there is a proposed Code of Conduct, this provision should refer to it. It should be attached to the Arbitrator Declaration in Schedule 2.
Rule 28 - Replacement of Arbitrators Prior to Constitution of the Tribunal	
Rule 29 - Constitution of the Tribunal	
Chapter V - Disqualification of Arbitrators and Vacancies	
Rule 30 - Proposal for Disqualification of Arbitrators	
Rule 31 - Decision on the Proposal for Disqualification	
Rule 32 - Incapacity or Failure to Perform Duties	
Rule 33 - Resignation	
Rule 34 - Vacancy on the Tribunal	
Chapter VI - Conduct of the Proceeding	
Rule 35 - Orders, Decisions and Agreements	
Rule 36 - Waiver	
Rule 37 - Filling of Gaps	
Rule 38 - First Session	
Rule 39 - Written Submissions	
Rule 40 - Case Management Conferences	
Rule 41 - Seat of Arbitration	
Rule 42 - Hearings	
Rule 43 - Quorum	
Rule 44 - Deliberations	
Rule 45 - Decisions Made by Majority Vote	
Chapter VII - Evidence	
Rule 46 - Evidence: General Principles	

Rule 47 - Disputes Arising from Requests for Production of Documents	
Rule 48 - Witnesses and Experts	
Rule 49 - Tribunal-Appointed Experts	
Rule 50 - Visits and Inquiries	
Chapter VIII - Special Procedures	
Rule 51 - Manifest Lack of Legal Merit	
Rule 52 - Bifurcation	
Rule 53 - Preliminary Objections	
Rule 54 - Preliminary Objections with a Request for Bifurcation	
Rule 55 - Preliminary Objections without a Request for Bifurcation	
Rule 56 - Consolidation or Coordination of Arbitrations	
Rule 57 - Provisional Measures	
Rule 58 - Ancillary Claims	
Rule 59 - Default	
Chapter IX - Costs	
Rule 60 - Costs of the Proceeding	
Rule 61 - Statement of and Submission on Costs	
Rule 62 - Decisions on Costs	**Costa Rica:** It is Costa Rica's view, that when a claim is dismissed due to manifest lack of legal merit, there should be a presumption that the Claimant has to bear the cost of the proceedings, without prejudice to the possibility of considering special circumstances which justify a different allocation of costs. Such provision could have the effect of deterring meritorious objections under Rule 51 Manifest Lack of Legal Merit.
Rule 63 - Security for Costs	**Costa Rica:** The current proposal of paragraph (4) could be understood as precluding security for costs in the scenario that third-party funding is the only existing element. Therefore, Costa Rica hereby suggests a language that does not prejudge the weight the Tribunal should give to the existence of third-party funding. The Tribunal is the one that must determine the impact of third-party funding when deciding for security for costs.

	Rule 63 Security for Costs (…) (4) The Tribunal ~~shall~~ may consider ~~all evidence adduced in relation~~ third-party funding as evidence relating to the circumstances it considered in applying paragraph (3), but ~~T~~the existence of third-party funding by itself may not necessarily be ~~form part of such evidence but is not by itself~~ sufficient to conclude that such circumstances exist ~~justify and order for security for costs~~. (…) **Jamaica:** Rule 63(8) (page 152): The GOJ proposes that the Tribunal should provide written reasons for a modification or revocation of an order for security for costs.
Chapter X - Suspension, Settlement and Discontinuance	
Rule 64 - Suspension of the Proceeding	
Rule 65 - Settlement and Discontinuance by Agreement of the Parties	
Rule 66 - Discontinuance at Request of a Party	
Rule 67 - Discontinuance for Failure of Parties to Act	
Chapter XI - The Award	
Rule 68 - Applicable Law	
Rule 69 - Timing of the Award	**Costa Rica:** Costa Rica suggests clarifying the language in (1)(a), as follows: **Rule 69 Timing of the Award** (1) The Tribunal shall render the Award as soon as possible, and in any event no later than: (a) 60 days after the latest of either of the following: (i) the Tribunal constitution, (ii) the last written submission or (iii) the last oral submission, if the Award is rendered pursuant to Rule 51(4); (…)
Rule 70 - Contents of the Award	**Costa Rica:** Costa Rica considers that any amendment to the Additional Facility Arbitration Rules must ensure that the Award is properly justified. While Costa Rica is flexible on the language, it does deem important to include explicit reference to legal reasoning as part of paragraph (1).
Rule 71 - Rendering of the Award	

Rule 72 - Supplementary Decision, Rectification and Interpretation of an Award	
Chapter XII - Publication, Access to Proceedings and Non-Disputing Party Submissions	
Rule 73 - Publication of Orders, Decisions and Awards	
Rule 74 - Publication of Documents Filed in the Proceeding	
Rule 75 - Observation of Hearings	
Rule 76 - Confidential or Protected Information	
Rule 77 - Submission of Non-Disputing Parties	
Rule 78 - Participation of Non-Disputing Treaty Party	
Chapter XIII - Expedited Arbitration	
Rule 79 - Consent of Parties to Expedited Arbitration	
Rule 80 - Number of Arbitrators and Method of Constituting the Tribunal for Expedited Arbitration	
Rule 81 - Appointment of Sole Arbitrator for Expedited Arbitration	
Rule 82 - Appointment of Three-Member Tribunal for Expedited Arbitration	
Rule 83 - Acceptance of Appointment in Expedited Arbitration	
Rule 84 - First Session in Expedited Arbitration	
Rule 85 - Procedural Schedule in Expedited Arbitration	
Rule 86 - Default in Expedited Arbitration	

Rule 87 - Procedural Schedule for Supplementary Decision, Rectification and Interpretation in Expedited Arbitration	
Rule 88 - Opting Out of Expedited Arbitration	
VIII. Conciliation Rules	
Introductory Note	
Chapter I - Scope	
Rule 1 - Application of Rules	
Chapter II - Institution of the Proceedings	
Rule 2 - The Request	
Rule 3 - Contents of the Request	**Costa Rica:** Costa Rica proposes to include a description of the investor's ownership in (2)(a). At the beginning of a conciliation procedure, it is important to clearly identify the Claimant, to allow the State to have an appropriate preparation of the case. Costa Rica also supports the inclusion of a new sub-paragraph (2)(d)(ii) since this information helps the State understand certain facts about the Claimant and its right to bring a claim. ICSID includes a similar recommendation in Rule 4; however, experience tells that if the information is not mandatory the investor will not present it and the Commission will not have the obligation to request it. **Rule 3 Contents of the Request** (…) (2) With regard to Article 2(1)(a) of the Additional Facility Rules, the Request shall include: (a) a description of the investment, a description of the investor's ownership and control of the investment, a summary of the relevant facts and claims, the request for relief, including an estimate of the amount of any damages sought, and an indication that there is a legal dispute between the parties arising directly out of the investment; (…) (d) if a party is a juridical person: (…) (ii) information concerning the ultimate beneficial owner and corporate structure of the party; (iii) if that party had the nationality of the State party to the dispute or of any constituent State of the REIO party to the dispute on the date of consent, information concerning and supporting documents demonstrating the agreement of the parties to treat the juridical person as a national of another State pursuant to Article 1(5)(b) of the Additional Facility Rules; (…)

Rule 4 - Recommended Additional Information	
Rule 5 - Filing of the Request and Supporting Documents	
Rule 6 - Receipt of the Request and Routing of Written Communications	
Rule 7 - Review and Registration of the Request	
Rule 8 - Notice of Registration	
Rule 9 - Withdrawal of the Request	
Chapter III - General Provisions	
Rule 10 - Party and Party Representative	
Rule 11 - Method of Filing	
Rule 12 - Supporting Documents	
Rule 13 - Routing of Document	
Rule 14 - Procedural Languages, Translation and Interpretation	
Rule 15 - Calculation of Time Limits	
Rule 16 - Costs of the Proceeding	
Rule 17 - Confidentiality of the Conciliation	
Rule 18 - Use of Information in Other Proceedings	
Chapter IV - Establishment of the Commission	
Rule 19 - General Provisions, Number of Conciliators and Method of Constitution	
Rule 20 - Qualifications of Conciliators	

Rule 21 - Notice of Third-Party Funding	**Costa Rica:** Costa Rica considers that this provision merits further examination beyond the effects in the constitution of the Commission and the potential conflict of interest. For example, TPF is also linked to security for costs, possibility of reaching amicable solutions, counterclaims, and transparency in general. Costa Rica is flexible in the language that can be adopted in the Rule to reach this objective; however, Costa Rica considers that paragraph (1) must request disclosing information about the party´s corporate structure.
Rule 22 - Assistance of the Secretary-General with Appointment	
Rule 23 - Appointment of Conciliators by the Secretary-General	
Rule 24 - Acceptance of Appointment	
Rule 25 - Replacement of Conciliators Prior to Constitution of the Commission	
Rule 26 - Constitution of the Commission	
Chapter V - Disqualification of Conciliators and Vacancies	
Rule 27 - Proposal for Disqualification of Conciliators	
Rule 28 - Decision on the Proposal for Disqualification	
Rule 29 - Incapacity or Failure to Perform Duties	
Rule 30 - Resignation	
Rule 31 - Vacancy on the Commission	
Chapter VI - Conduct of the Conciliation	
Rule 32 - Functions of the Commission	
Rule 33 - General Duties of the Commission	
Rule 34 - Orders, Decisions and Agreements	
Rule 35 - Quorum	
Rule 36 - Deliberations	
Rule 37 - Cooperation of the Parties	

Rule 38 - Written Statements	
Rule 39 - First Session	
Rule 40 - Meetings	
Rule 41 - Preliminary Objections	
Chapter VII - Termination of the Conciliation	
Rule 42 - Discontinuance Prior to the Constitution of the Commission	
Rule 43 - Report Noting the Parties' Agreement	
Rule 44 - Report Noting the Failure of the Parties to Reach Agreement	
Rule 45 - Report Recording the Failure of a Party to Appear or Participate	
Rule 46 - The Report	
Rule 47 - Issuance of the Report	

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FACT-FINDING PROCEEDINGS	
IX. Fact-Finding Rules	
Introductory Note	
Chapter I - General Provisions	
Rule 1 - Definitions	**Israel:** Israel would like to question the omission of the definition of "a Party". The phrase appears several times in the FFRs and such definition exists in the ARs, CRs, (AF)ARs and (AF)CRs, and we are of the view that the definition is necessary in the Fact-Finding Rules as well.
Rule 2 - Fact-Finding Proceedings	
Rule 3 - Application of Rules	
Chapter II - Institution of the Fact-Finding Proceeding	
Rule 4 - The Request	
Rule 5 - Contents and Filing of the Request	
Rule 6 - Receipt and Registration of the Request	
Chapter III - The Fact-Finding Committee	
Rule 7 - Qualifications of Members of the Committee	
Rule 8 - Number of Members and Method of Constituting the Committee	
Rule 9 - Acceptance of Appointment	
Rule 10 - Constitution of the Committee	
Chapter IV - Conduct of the Fact-Finding Proceeding	
Rule 11 - Sessions and Work of the Committee	
Rule 12 - General Duties	
Rule 13 - Calculation of Time Limits	
Rule 14 - Costs of the Proceeding	

Rule 15 - Confidentiality of the Proceeding	
Rule 16 - Use of Information in Other Proceedings	
Chapter V - Termination of the Fact-Finding Proceeding	
Rule 17 - Manner of Terminating the Proceeding	
Rule 18 - Failure of a Party to Participate or Cooperate	
Rule 19 - Report of the Committee	**Israel:** Israel wishes to reiterate its previous comment that the FFRs should maintain a similar arrangement as that of the existing rule (in the fact-finding rules under the Additional Facility Rules) on failure to participate or cooperate. It is our view that when one party fails to appear or participate in the proceeding and the Committee determines that as a result thereof it is unable to carry out its task, it shall, after notice to the parties, close the proceeding and draw up its Report.
Rule 20 - Issuance of the Report	
X. (Fact-Finding) AFR	
Introductory Note	
Chapter I - General Provisions	
Regulation 1 - Application of these Regulations	
Chapter II - General Functions of the Secretariat	
Regulation 2 - Secretary	
Regulation 3 - The Registers	
Regulation 4 - Depositary Functions	
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Regulation 8 - Consequences of Default in Payment	
Regulation 9 - Special Services	
Regulation 10 - Fee for Lodging Requests	
Regulation 11 - Administration of Proceedings	
Chapter IV - Official Languages and Limitation of Liability	
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MEDIATION	
XI. Mediation Rules	
Introductory Note	
Chapter I - General Provisions	
Rule 1 - Definitions	**Israel:** Israel would like to question the omission of the definition of "a Party". The phrase appears several times in the MRs and such definition exists in the ARs, CRs, (AF)ARs and (AF)CRs, and we are of the view that the definition is necessary in the Mediation Rules as well.
Rule 2 - Mediation Proceedings	**Israel:** Israel wishes to reiterate its previous comment that the mediation proceeding is related to a **dispute** relating to an investment, as also reflected in the substance of the rules. Therefore, we view that para. (1) should reflect this by referring explicitly to a dispute. A suggested drafting modification: *"The Secretariat is authorized to administer mediations **in disputes/on issues in dispute** that relate to an investment…"*
Rule 3 - Application of Rules	
Rule 4 - Party Representative	
Chapter II - Institution of the Mediation	
Rule 5 - Institution of Mediation Based on Prior Party Agreement	
Rule 6 - Institution of Mediation Absent a Prior Party Agreement	**Chile:** ▪ Chile apoya la decisión del Centro de proponer Reglas de Mediación y esperamos que éstas resulten en un método efectivo para resolver disputas. Sin embargo y como ya expresáramos en los comentarios al DT No. 3, creemos que el Centro sólo debería administrar procedimientos de mediación en los cuales ambas partes ya se hayan puesto de acuerdo sobre la idoneidad de la mediación para la disputa en cuestión. ▪ Consideramos que eliminar esta regla es necesario para evitar: (a) utilizar los recursos de la parte solicitante y del Centro cuando no hay acuerdo entre las partes para transmitir y notificar de la solicitud, asignar personal, abrir una cuenta financiera, etc., cuando el efecto será igual en caso de que la mediación no prospere; y (b) que el Estado se vea obligado a utilizar recursos para responder a una solicitud ante el CIADI, un organismo internacional, puesto que esto requiere del despliegue de una serie de mecanismos internos de coordinación y autorización,

	sin contar con el tener que establecer una estrategia ante la prensa debido a la solicitud. Esto significa un gasto de recursos para el Estado, sin que se realice previamente la determinación de que el Estado tiene la intención de mediar esa disputa en particular. ▪ Por lo tanto, reiteramos nuestra solicitud de eliminar la ahora Regla 6 y fortalecer en cambio el mecanismo contenido en la Regla 4, que permite la iniciación de la mediación por acuerdo previo **de ambas partes**. ~~*(1) Si las partes no tienen un acuerdo escrito previo en virtud de estas Reglas, cualquier parte que quiera iniciar una mediación deberá presentar una solicitud al o al Secretario(a) General y pagar el derecho de presentación publicado en el arancel de derechos.*~~ **Turkey:** Rule 6(5) precludes mediation unless the other party agrees on the offer to mediate. Mediation, focusing on the parties' interests rather than legal rights and obligations, is fundamentally suited to investment arbitration. For the sake of increasing its use, mandating mediation for certain types of investment disputes, such as disputes below or above a certain financial threshold, may encourage litigants to embrace mediation and use it for a wider range of investment disputes.
Rule 7 - Registration of the Request	
Chapter III - General Procedural Provisions	
Rule 8 - Calculation of Time Limits	
Rule 9 - Costs of the Mediation	
Rule 10 - Confidentiality of the Mediation	
Rule 11 - Use of Information in Other Proceedings	
Chapter IV - The Mediator	
Rule 12 - Qualifications of the Mediator	
Rule 13 - Number of Mediators and Method of Appointment	**Turkey:** Rule 13(1) stipulates for one or two co-mediators, whereas Rule 13(2) excludes appointment of co-mediators unless the parties agree on the number of mediators. Instead of conducting the mediation process by one mediator, empanelling two mediators—an expert in the process and an expert in substantive issues—would be an optimal solution. Accordingly, -while mediating- the former could ensure the fair process and techniques to encourage effective discussion between the parties, whereas the latter could understand and evaluate with a better insight into the substantive issues of the investment dispute.

Rule 14 - Acceptance of Appointment	**Israel:** In reference to the comments in the explanatory notes: it is Israel's position that TPF clause should be inserted in the Mediation Rules. For the most part, the rationales are similar to those supporting the introduction of TPF clauses to the Arbitration Rules (i.e. prevention of conflict of interests with the mediators, assessment of a party's ability to reach an agreement or settlement independently, etc.). Therefore, it is our view that an express TPF clause is desired for the MRs and that it should indeed draw from and resemble AR 14 (as will be concluded).
Rule 15 - Transmittal of the Request	
Rule 16 - Resignation and Replacement of Mediator	
Chapter V - Conduct of the Mediation	
Rule 17 - Role and Duties of the Mediator	
Rule 18 - Duties of the Parties	
Rule 19 - Initial Written Statements	**Israel:** It is unclear why the last part of para. (1) was deleted. Israel finds it important to ensure that the mediators and the other parties receive the written statement prior to the first session, so that the session be efficient and focused.
Rule 20 - First Session	
Rule 21 - Mediation Procedure	**Turkey:** Rule 21(3) precludes mediator recommendations for settlement terms, unless all parties request the mediator to do so. The mediator should be granted the opportunity to advise a settlement proposal to all parties at the appropriate stage of the mediation—especially when there's an impasse or stuck point in the bargaining, and each party should be given the option of accepting or rejecting it without modification. Needless to state, unless both parties accept, bargaining continues, otherwise settlement occurs. In terms of the mediator's settlement proposal, if the parties accept the same, a complimentary letter could also be issued for the purposes of acknowledging that negotiations were conducted in good faith focusing on the interests of the parties and that the settlement agreement is commercially reasonable.
Rule 22 - Termination of the Mediation	
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