

Costa Rica’s comments to the Amendment of the ICSID Rules

Pursuant to ICSID’s invitation, the Republic of Costa Rica hereby submits its comments to the Working Paper 4 regarding the Proposals for Amendment of the ICSID Rules.

As a Member State to the ICSID Convention, Costa Rica has considered the proposal for amendment taking into account factors that are important to ISDS, such as costs, time-limits and transparency. Furthermore, based on our arbitration experience, Costa Rica has given due consideration to issues such as achieving balance among the parties, as well as fostering accountability, legal certainty, and good governance of the arbitration process.

All suggestions are presented in a table format. Where considered appropriate or necessary, a new proposal is suggested

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ICSID Convention Proceedings	
I. Administrative and Financial Regulations	
Chapter III – Financial Provisions	
<p>Regulation 16 Consequences of Default in Payment</p> <p>(1) The payments referred to in Regulation 15 shall be payable on the date of the request from the Secretary-General.</p> <p>(2) The following procedure shall apply in the event of non-payment:</p> <p>(a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;</p> <p>(b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the proceeding until payment is made, after giving notice to the parties and to the Commission, Tribunal or Committee if constituted; and</p> <p>(c) if any proceeding is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the proceeding, after giving notice to the parties and to the Commission, Tribunal or Committee if constituted.</p>	<p>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.</p>
Chapter IV – General Functions of the Secretariat	
ICSID Convention Proceedings	
II. Institution Rules	

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<p>Rule 2 Contents of the Request</p> <p>(1) The Request shall:</p> <p>(a) state whether it relates to an arbitration or conciliation proceeding;</p> <p>(b) be in English, French or Spanish;</p> <p>(c) identify each party to the dispute and provide their contact information, including electronic mail address, street address and telephone number;</p> <p>(d) be signed by each requesting party or its representative and be dated;</p> <p>(e) attach proof of any representative's authority to act; and</p> <p>(f) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request and attach the authorizations.</p> <p>(2) With regard to the jurisdiction of the Centre, the Request shall include:</p> <p>(a) a description 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;</p> <p>(b) with respect to each party's consent to submit the dispute to arbitration or conciliation under the Convention:</p> <p>(i) the instrument(s) in which each party's consent is recorded;</p> <p>(ii) the date of entry into force of the instrument(s) on which consent is based, together with supporting documents demonstrating that date;</p> <p>(iii) the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or, if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre; and</p> <p>(iv) an indication that the requesting party has complied with any conditions in the instrument of consent for submission of the dispute;</p> <p>(c) if a party is a natural person:</p> <p>(i) information concerning that person's nationality on both the date of consent and the date of the Request, together with supporting documents demonstrating such nationality; and</p>	<p>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.</p> <p>Rule 2 Contents of the Request</p> <p>(...)</p> <p>(2) With regard to the jurisdiction of the Centre, tThe Request shall include:</p> <p>(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;</p> <p>(...)</p> <p>(d) if a party is a juridical person:</p> <p>(...)</p> <p>(ii) information concerning the ultimate beneficial owner and corporate structure of the party;</p> <p>(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;</p>

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<p>(ii) a statement that the person did not have the nationality of the Contracting State party to the dispute either on the date of consent or the date of the Request;</p> <p>(d) if a party is a juridical person:</p> <p>(i) information concerning and supporting documents demonstrating that party's nationality on the date of consent, together with supporting documents demonstrating such nationality; and</p> <p>(ii) if that party had the nationality of the Contracting State party to the dispute on the date of consent, information identifying 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, together with supporting documents demonstrating such agreement;</p> <p>(e) if a party is a constituent subdivision or agency of a Contracting State:</p> <p>(i) the State's designation to the Centre pursuant to Article 25(1) of the Convention; and</p> <p>(ii) supporting documents demonstrating the State's approval of consent pursuant to Article 25(3) of the Convention, unless the State has notified the Centre that no such approval is required.</p>	<p>(...)</p>
ICSID Convention Proceedings	
III. Arbitration Rules	
Chapter I – General Provisions	
<p>Rule 12 Time Limits Applicable to the Tribunal</p> <p>(1) The Tribunal shall use best efforts to meet time limits to render orders, decisions and the Award.</p> <p>(2) If the Tribunal cannot comply with an applicable time limit, it shall advise the parties of special circumstances that justifying the delay and the date when it anticipates rendering the order, decision or Award.</p>	<p>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.</p> <p>Rule 12 Time Limits Applicable to the Tribunal</p> <p>(1) The Tribunal shall use best efforts to meet time limits to render orders, decisions and the Award.</p>

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	<p>(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.</p>
<p>Chapter II – Establishment of the Tribunal</p>	
<p>Rule 14 Notice of Third-Party Funding</p> <p>(1) A party shall file a written notice disclosing the name and address of any non-party from which the party, directly or indirectly, its affiliate or its representative 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 dispute (“third-party funding”).</p> <p>(2) A non-party referred to in paragraph (1) does not include a representative of a party.</p> <p>(3) A party shall file send the notice referred to in paragraph (1) with to 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.</p> <p>(4) 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).</p> <p>(5) 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.</p>	<p>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.</p> <p>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 discretionary 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.</p>
<p>Rule 19 Acceptance of Appointment</p> <p>(1) A party appointing an arbitrator shall notify the Secretary-General of the appointment and provide the appointee’s name, nationality(ies) and contact information.</p> <p>(2) Upon receipt of a notification pursuant to paragraph (1), tThe Secretary-General shall request an acceptance from each—the appointee as soon as the appointee is selected. The Secretary General and shall also transmit to each—the appointee the information received</p>	<p>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.</p>

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<p>from the parties relevant to completion of the declaration referred to in paragraph (3)(b).</p> <p>(3) Within 20 days after receipt of the request for acceptance of an appointment, anthe appointee shall:</p> <p>(a) accept the appointment; and</p> <p>(b) provide a signed declaration in the form published by the Centre, addressing matters including the arbitrator's independence, impartiality, availability and commitment to maintain the confidentiality of the proceeding.</p> <p>(4) The Secretary-General shall notify the parties of the acceptance of appointment by each arbitrator and provide transmit the signed declaration to them.</p> <p>(5) The Secretary-General shall notify the parties if an arbitrator fails to accept the appointment or provide a signed declaration within the time limit referred to in paragraph (3), and another person shall be appointed as arbitrator in accordance with the method followed for the previous appointment.</p> <p>(6) Each arbitrator shall have a continuing obligation to promptly disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).</p>	
<p>Chapter VII – Costs</p>	
<p>Rule 524 Decisions on Costs</p> <p>(1) In allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including:</p> <p>(a) the outcome of the proceeding or any part of it;</p> <p>(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 the orders and decisions of the Tribunal;</p> <p>(c) the complexity of the issues; and</p> <p>(d) the reasonableness of the costs claimed.</p> <p>(2) The Tribunal shall award the party prevailing on an objection made pursuant to Rule 41 its costs of submitting or opposing the objection, unless the circumstances justify a different allocation of costs in accordance with paragraph (1).</p>	<p>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 41 Manifest Lack of Legal Merit.</p>

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<p>(3) The Tribunal may make an interim decision on costs at any time.</p> <p>(4) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.</p>	
<p>Rule 532 Security for Costs</p> <p>(1) Upon request of a party, the Tribunal may order any party asserting a claim or counterclaim to provide security for costs.</p> <p>(2) The following procedure shall apply:</p> <p>(a) the request shall specify the circumstances that require security for costs;</p> <p>(b) the Tribunal shall fix time limits for written and oral submissions on the request, as required;</p> <p>(c) if a party requests security for costs 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</p> <p>(d) the Tribunal shall issue its decision on the request within 30 days after the latest of:</p> <p>(i) the constitution of the Tribunal;</p> <p>(ii) the last written submission on the request; or (iii) the last oral submission on the request.</p> <p>(3) In determining whether to order a party to provide security for costs, the Tribunal shall consider all relevant circumstances, including:</p> <p>(a) that party's ability to comply with an adverse decision on costs;</p> <p>(b) that party's willingness to comply with an adverse decision on costs;</p> <p>(c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim; and</p> <p>(d) the conduct of the parties.</p> <p>(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 and order for security for costs. The Tribunal may consider third party funding as evidence relating to a circumstance in paragraph (3), but the existence of third party funding by itself is not sufficient to justify an order for security for costs.</p>	<p>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 prejudice 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.</p> <p>Rule 53 Security for Costs</p> <p>(...)</p> <p>(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 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.</p> <p>(...)</p>

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<p>(5) The Tribunal shall specify any relevant terms in an order to provide security for costs and shall fix a time limit for compliance with the order.</p> <p>(6) If a party fails to comply with an order to provide security for costs, the Tribunal may suspend the proceeding. If the proceeding is suspended for more than 90 days, the Tribunal may, after consulting with the parties, order the discontinuance of the proceeding.</p> <p>(7) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.</p> <p>(8) The Tribunal may at any time modify or revoke its order on security for costs, on its own initiative or upon a party's request.</p>	
<p>Chapter IX – The Award</p>	
<p>Rule 587 Timing of the Award</p> <p>(1) The Tribunal shall render the Award as soon as possible, and in any event no later than:</p> <p>(a) 60 days after the latest of the Tribunal constitution, the last written submission or the last oral submission, if the Award is rendered pursuant to Rule 41(3);</p> <p>(b) 180 days after the later of the last written or oral submission if the Award is rendered pursuant to Rule 44(3)(c); or</p> <p>(c) 240 days after the later of the last written or oral submission in-all other cases.</p> <p>(2) A statement of costs and submissions on costs filed pursuant to Rule 519 shall not be considered a written submission for the purposes of paragraph (1).</p>	<p>Costa Rica suggests clarifying the language in (1)(a), as follows:</p> <p>Rule 57 Timing of the Award</p> <p>(1) The Tribunal shall render the Award as soon as possible, and in any event no later than:</p> <p>(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);</p> <p>(...)</p>
<p>Rule 598 Contents of the Award</p> <p>(1) The Award shall be in writing and shall contain:</p> <p>(a) a precise designation of each party;</p> <p>(b) the names of the representatives of the parties;</p> <p>(c) a statement that the Tribunal was established in accordance with the Convention, and a description of the method of its constitution;</p> <p>(d) the name of each member of the Tribunal and the appointing authority of each;</p> <p>(e) the dates and place(s) of the first session, case management conferences and hearings;</p>	<p>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).</p>

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<p>(f) a brief summary of the proceeding;</p> <p>(g) a statement of the relevant facts as found by the Tribunal;</p> <p>(h) a brief summary of the submissions of the parties, including the relief sought;</p> <p>(i) the decision of the Tribunal on every question submitted to it, and the reasons on which the Award is based; and</p> <p>(j) a statement of the costs of the proceeding, including the fees and expenses of each member of the Tribunal, and a reasoned decision on the allocation of costs.</p> <p>(2) The Award shall be signed by the members of the Tribunal who voted for it. It may be signed by electronic means if the parties agree.</p> <p>(3) Any member of the Tribunal may attach an individual opinion or a statement of dissent to the Award before the Award is rendered.</p>	
<p>Chapter X – Publication, Access to Proceedings and Non-Disputing Party Submissions</p>	
<p>Rule 621 Publication of Awards and Decisions on Annulment</p> <p>(1) With consent of the parties, the Centre shall publish every Award, supplementary decision on an Award, rectification, interpretation, and revision of an Award, and decision on annulment.</p> <p>(2) The parties may consent to publication of the full text or to a jointly redacted text of the documents referred to in paragraph (1).</p> <p>(3) Consent to publish the documents referred to in paragraph (1) shall be deemed to have been given if no party objects in writing to such publication within 60 days after the dispatch of the document.</p> <p>(4) Absent consent of the parties in accordance with pursuant to paragraphs (1) and (32), the Centre shall publish excerpts of the legal reasoning in such documents (“excerpts”). The following procedure shall apply to publication of excerpts:</p> <p>(a) the Secretary-General shall propose excerpts to the parties within 60 days after the date upon which either a party declines consent objects to publication or notifies the Secretary-General that the parties disagree on redaction of the document;</p> <p>(b) the parties may send comments on the proposed excerpts to the Secretary-General within 60 days after their receipt, including whether any information in the proposed excerpts is confidential or protected as defined in Rule 66; and</p>	<p>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.</p>

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<p>(c) the Secretary-General shall consider any comments received on the proposed excerpts, and publish excerpts within 30 days after receipt of such comments the expiry of the time limit referred to in paragraph (4)(b).</p>	
<p>ICSID Convention Proceedings</p>	
<p>IV. Conciliation Rules</p>	
<p>Chapter II – Establishment of the Commission</p>	
<p>Rule 12 Notice of Third-Party Funding</p>	
<p>(1) A party shall file a written notice disclosing the name and address of any non-party from which the party, its affiliate or its representative directly or indirectly, has received funds for the conciliation through a donation or grant, or in return for remuneration dependent on the outcome of the dispute conciliation (“third-party funding”).</p> <p>(2) A non-party referred to in paragraph (1) does not include a representative of a party.</p> <p>(3) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request for conciliation, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.</p> <p>(4) The Secretary-General shall transmit a notice of third-party funding and any notification of changes to the information in such notice to the parties, and to any conciliator proposed for appointment or appointed in a proceeding for purposes of completing the conciliator declaration required by Rule 16(3)(b).</p> <p>(5) The Commission may request further information regarding the funding agreement and the non-party providing funding pursuant to Rule 24(4)(a).</p>	<p>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.</p>
<p>Additional Facility Proceedings</p>	
<p>VI. Administrative and Financial Regulations for Additional Facility Proceedings (Annex A)</p>	
<p>Chapter III – Financial Provisions</p>	
<p>Regulation 8 Consequences of Default in Payment</p>	
<p>(1) The payments referred to in Regulation 7 shall be payable on the date of the request from the Secretary-General.</p> <p>(2) The following procedure shall apply in the event of non-payment:</p>	<p>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.</p>

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<p>(a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;</p> <p>(b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the proceeding until payment is made, after giving notice to the parties and to the Commission or Tribunal if constituted; and</p> <p>(c) if any proceeding is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the proceeding, after giving notice to the parties and to the Commission or Tribunal if constituted.</p>	
<p>Additional Facility Proceedings</p>	
<p>VII. Arbitration Rules for Additional Facility Proceedings (Annex B)</p>	
<p>Chapter II – Institutions of Proceedings</p>	
<p>Rule 3 Contents of the Request</p> <p>(1) The Request shall:</p> <p>(a) be in English, French or Spanish;</p> <p>(b) identify each party to the dispute and provide their contact information, including electronic mail address, street address and telephone number;</p> <p>(c) be signed by each requesting party or its representative and be dated;</p> <p>(d) attach proof of any representative's authority to act; and</p> <p>(e) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request and attach the authorizations.</p> <p>(2) With regard to Article 2(1)(a) of the Additional Facility Rules, the Request shall include:</p> <p>(a) a description 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 out of the investment;</p> <p>(b) with respect to each party's consent to submit the dispute to arbitration pursuant to the Additional Facility Rules:</p>	<p>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.</p> <p>Rule 3 Contents of the Request</p> <p>(...)</p> <p>(2) With regard to Article 2(1)(a) of the Additional Facility Rules, the Request shall include:</p> <p>(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</p>

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<p>(i) the instrument(s) in which each party's consent is recorded;</p> <p>(ii) the date of entry into force of the instrument(s) on which consent is based, together with supporting documents demonstrating that date;</p> <p>(iii) the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or, if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre; and</p> <p>(iv) an indication that the requesting party has complied with any conditions in the instrument of consent for submission of the dispute;</p> <p>(c) if a party is a natural person:</p> <p>(i) information concerning that person's nationality on the date of consent, together with supporting documents demonstrating such nationality; and</p> <p>(ii) a statement that the person is a national of a State other than the State party to the dispute or of other than any constituent State of the REIO party to the dispute on the date of consent;</p> <p>(d) if a party is a juridical person:</p> <p>(i) information concerning and supporting documents demonstrating that party's nationality on the date of consent, together with supporting documents demonstrating such nationality; and</p> <p>(ii) 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 identifying 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, together with supporting documents demonstrating such agreement;</p> <p>(e) if a party is a constituent subdivision of a State or an agency of a State or of an REIO, supporting documents demonstrating the approval of consent of the State or the REIO, unless the State or the REIO has notified the Centre that no such approval is required.</p>	<p>amount of any damages sought, and an indication that there is a legal dispute between the parties arising directly out of the investment;</p> <p>(...)</p> <p>(d) if a party is a juridical person:</p> <p>(...)</p> <p>(ii) information concerning the ultimate beneficial owner and corporate structure of the party;</p> <p>(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;</p> <p>(...)</p>
Chapter III – General Provisions	
Rule 20 Time Limits Applicable to Tribunal	In the interest of certainty, and considering that the objective of this process is to reduce the duration of the proceedings, we suggest to

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<p>(1) The Tribunal shall use best efforts to meet time limits to render orders, decisions and the Award.</p> <p>(2) If the Tribunal cannot comply with an applicable time limit, it shall advise the parties of the special circumstances that justifying the delay and the date when it anticipates rendering the order, decision or Award.</p>	<p>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.</p> <p>Rule 20 Time Limits Applicable to Tribunal</p> <p>(1) The Tribunal shall use best efforts to meet time limits to render orders, decisions and the Award.</p> <p>(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.</p>
<p>Chapter IV – Establishment of the Tribunal</p>	
<p>Rule 23 Notice of Third-Party Funding</p> <p>(1) A party shall file a written notice and address of any non-party from which the party, directly or indirectly, its affiliate or its representative 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 dispute (“third-party funding”).</p> <p>(2) A non-party referred to in paragraph (1) does not include a representative of a party.</p> <p>(3) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request, 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.</p> <p>(4) The Secretary-General shall transmit a 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 27(3)(b).</p> <p>(5) The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding pursuant to Rule 46(3) if it deems it is necessary at any stage of the proceeding.</p>	<p>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.</p> <p>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 discretionary 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.</p>
<p>Rule 27 Acceptance of Appointment</p>	<p>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.</p>

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<p>(1) A party appointing an arbitrator shall notify the Secretary-General of the appointment and provide the appointee's name, nationality(ies) and contact information.</p> <p>(2) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from each the appointee as soon as the appointee is selected. The Secretary General and shall also transmit to each the appointee the information received from the parties relevant to completion of the declaration referred to in paragraph (3)(b).</p> <p>(3) Within 20 days after receipt of the request for acceptance of an appointment, anthe appointee shall:</p> <p>(a) accept the appointment; and</p> <p>(b) provide a signed declaration in the form published by the Centre, addressing matters including the arbitrator's independence, impartiality, availability and commitment to maintain the confidentiality of the proceeding.</p> <p>(4) The Secretary-General shall notify the parties of the acceptance of appointment by each arbitrator and provide transmit the signed declaration to them.</p> <p>(5) The Secretary-General shall notify the parties if an arbitrator fails to accept the appointment or provide a signed declaration within the time limit referred to in paragraph (3), and another person shall be appointed as arbitrator in accordance with the method followed for the previous appointment.</p> <p>(6) Each arbitrator shall have a continuing obligation to promptly disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).</p>	
<p>Chapter IX – Costs</p> <p>Rule 621 Decisions on Costs</p> <p>(1) In allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including:</p> <p>(a) the outcome of the proceeding or any part of it;</p> <p>(b) the conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner</p>	<p>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.</p>

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<p>and complied with these Rules and the orders and decisions of the Tribunal;</p> <p>(c) the complexity of the issues; and (d) the reasonableness of the costs claimed.</p> <p>(2) The Tribunal shall award the party prevailing on an objection made pursuant to Rule 51 its costs of submitting or opposing the objection, unless the circumstances justify a different allocation of costs in accordance with paragraph (1).</p> <p>(2)(3) The Tribunal may make an interim decision on costs at any time.</p> <p>(3)(4) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.</p>	
<p>Rule 632 Security for Costs</p> <p>(1) Upon request of a party, the Tribunal may order any party asserting a claim or counterclaim to provide security for costs.</p> <p>(2) The following procedure shall apply:</p> <p>(a) the request shall specify the circumstances that require security for costs;</p> <p>(b) the Tribunal shall fix time limits for written and oral submissions on the request, as required;</p> <p>(c) if a party requests security for costs 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</p> <p>(d) the Tribunal shall issue its decision on the request within 30 days after the latest of:</p> <p>(i) the constitution of the Tribunal;</p> <p>(ii) the last written submission on the request; or</p> <p>(iii) the last oral submission on the request.</p> <p>(3) In determining whether to order a party to provide security for costs, the Tribunal shall consider all relevant circumstances, including:</p> <p>(a) that party's ability to comply with an adverse decision on costs;</p> <p>(b) that party's willingness to comply with an adverse decision on costs;</p> <p>(c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim; and</p>	<p>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 prejudice 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.</p> <p>Rule 63 Security for Costs</p> <p>(...)</p> <p>(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 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.</p> <p>(...)</p>

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<p>(d) the conduct of the parties.</p> <p>(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. The Tribunal may consider third-party funding as evidence relating to a circumstance in paragraph (3), but the existence of third-party funding by itself is not sufficient to justify an order for security for costs.</p> <p>(5) The Tribunal shall specify any relevant terms in an order to provide security for costs and fix a time limit for compliance with the order.</p> <p>(6) If a party fails to comply with an order to provide security for costs, the Tribunal may suspend the proceeding. If the proceeding is suspended for more than 90 days, the Tribunal may, after consulting with the parties, order the discontinuance of the proceeding.</p> <p>(7) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.</p> <p>(8) The Tribunal may at any time modify or revoke its order on security for costs, on its own initiative or upon a party's request.</p>	
<p>Chapter XI – The Award</p> <p>Rule 68-69 Timing of the Award</p> <p>(1) The Tribunal shall render the Award as soon as possible, and in any event no later than:</p> <p>(a) 60 days after the latest of the Tribunal constitution, the last written submission or the last oral submission, if the Award is rendered pursuant to Rule 51(4);</p> <p>(b) 180 days after the later of the last written or oral submission if the Award is rendered pursuant to Rule 54(3)(c); or</p> <p>(c) 240 days after the later of the last written or oral submission in all other cases.</p> <p>(2) A statement of costs and submissions on costs filed pursuant to with Rule 60-61 shall not be considered a written submission for the purposes of paragraph (1).</p> <p>(3) The parties waive any time limits for rendering the Award which may be provided for by the law of the seat of arbitration.</p>	<p>Costa Rica suggests clarifying the language in (1)(a), as follows:</p> <p>Rule 69 Timing of the Award</p> <p>(1) The Tribunal shall render the Award as soon as possible, and in any event no later than:</p> <p>(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);</p> <p>(...)</p>

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<p>Rule 69 70 Contents of the Award</p> <p>(1) The Award shall be in writing and shall contain:</p> <p>(a) a precise designation of each party;</p> <p>(b) the names of the representatives of the parties;</p> <p>(c) a statement that the Tribunal was established pursuant to these Rules and a description of the method of its constitution;</p> <p>(d) the name of each member of the Tribunal and the appointing authority of each;</p> <p>(e) the seat of arbitration, the dates and place(s) of the first session, case management conferences and hearings;</p> <p>(f) a brief summary of the proceeding;</p> <p>(g) a statement of the relevant facts as found by the Tribunal;</p> <p>(h) a brief summary of the submissions of the parties, including the relief sought;</p> <p>(i) the reasons on which the Award is based, unless the parties have agreed that no reasons are to be given; and</p> <p>(j) a statement of the costs of the proceeding, including the fees and expenses of each member of the Tribunal, and a reasoned decision on the allocation of costs.</p> <p>(2) The Award shall be signed by the members of the Tribunal who voted for it. It may be signed by electronic means if the parties agree and if allowed by the law of the seat of arbitration.</p> <p>(3) Any member of the Tribunal may attach an individual opinion or a statement of dissent to the Award before the Award is rendered.</p> <p>(4) The Award shall be final and binding on the parties.</p>	<p>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).</p>
Additional Facility Proceedings	
VIII. Conciliation Rules for Additional Facility Proceedings (Annex C)	
Chapter II – Institution of the Proceedings	
<p>Rule 3 Contents of the Request</p> <p>(1) The Request shall:</p> <p>(a) be in English, French or Spanish;</p> <p>(b) identify each party to the dispute and provide their contact information, including electronic mail address, street address and telephone number;</p>	<p>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;</p>

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<p>(c) be signed by each requesting party or its representative and be dated;</p> <p>(d) attach proof of any representative's authority to act; and</p> <p>(e) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request and attach the authorizations.</p> <p>(2) With regard to Article 2(1)(a) of the Additional Facility Rules, the Request shall include:</p> <p>(a) a description 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 out of the investment;</p> <p>(b) with respect to each party's consent to submit the dispute to conciliation pursuant to the Additional Facility Rules:</p> <p>(i) the instrument(s) in which each party's consent is recorded;</p> <p>(ii) the date of entry into force of the instrument(s) on which consent is based, together with supporting documents demonstrating that date; and</p> <p>(iii) the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or, if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre; and</p> <p>(iv) an indication that the requesting party has complied with any conditions in the instrument of consent for submission of the dispute;</p> <p>(c) if a party is a natural person:</p> <p>(i) information concerning that person's nationality on the date of consent, together with supporting documents demonstrating such nationality; and</p> <p>(ii) a statement that the person is a national of a State other than the State party to the dispute or of other than any constituent State of the REIO party to the dispute on the date of consent;</p> <p>(d) if a party is a juridical person:</p>	<p>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.</p> <p>Rule 3 Contents of the Request</p> <p>(...)</p> <p>(2) With regard to Article 2(1)(a) of the Additional Facility Rules, the Request shall include:</p> <p>(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;</p> <p>(...)</p> <p>(d) if a party is a juridical person:</p> <p>(...)</p> <p>(ii) information concerning the ultimate beneficial owner and corporate structure of the party;</p> <p>(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;</p> <p>(...)</p>

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<p>(i) information concerning and supporting documents demonstrating that party's nationality on the date of consent, together with supporting documents demonstrating such nationality; and</p> <p>(ii) 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 the consent, information identifying 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, together with supporting documents demonstrating such agreement;</p> <p>(e) if a party is a constituent subdivision of a State or an agency of a State or of an REIO, supporting documents demonstrating the approval of consent of the State or the REIO, unless the State or the REIO has notified the Centre that no such approval is required.</p>	
<p>Chapter IV – Constitution of the Commission</p>	
<p>Rule 21 Notice of Third-Party Funding</p> <p>(1) A party shall file a written notice disclosing the name and address of any non-party from which the party, its affiliate or its representative directly or indirectly has received funds or equivalent support for the conciliation through a donation or grant, or in return for remuneration dependent on the outcome of the dispute conciliation (“third-party funding”).</p> <p>(2) A non-party referred to in paragraph (1) does not include a representative of a party.</p> <p>(3) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request, 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.</p> <p>(4) The Secretary-General shall transmit a notice of third-party funding and any notification of changes to the information in such notice to the parties, and to any conciliator proposed for appointment or appointed in a proceeding for purposes of completing the conciliator declaration required by Rule 24(3)(b).</p>	<p>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.</p>

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(5) The Commission may request further information regarding the funding agreement and the non-party providing funding pursuant to Rule 32(4)(a).	