



COMMENTS ON PROPOSALS FOR AMENDMENT OF THE ICSID RULES BY THE ARGENTINE REPUBLIC

TABLE OF CONTENTS

PROPOSED ADMINISTRATIVE AND FINANCIAL REGULATIONS	4
Chapter I: Procedures of the Administrative Council	4
Regulation 7: Voting	4
Chapter III: Financial Provisions.....	4
Regulation 14: Costs of Proceedings.....	4
Regulation 16: Fee for Lodging Requests	7
PROPOSED ICSID ARBITRATION RULES	7
Chapter II: Conduct of the Proceeding	7
Rule 2: Meaning of Party and Party Representation	7
Rule 3: Method of Filing	7
Rule 4: Routing of Written Communications.....	8
Rule 5: Procedural Languages, Translation and Interpretation	8
Rule 7: Calculation of Time Limits.....	9
Rule 8: Time Limits Specified by the Convention and these Rules or Fixed by the Secretary- General	10
Rule 9: Time Limits Fixed by the Tribunal.....	10
Rule 10: Waiver.....	11
Rule 12: Orders and Agreements	11
Rule 13: Written Submissions and Observations	11
Rule 16: Deliberations	12
Rule 18: Decisions Taken by Majority Vote.....	12
Rule 19: Payment of Advances and Costs of the Proceeding.....	13
Chapter III: Constitution of the Tribunal.....	14
Rule 20: General Provisions Regarding the Constitution of the Tribunal.....	14
Rule 21: Third-party Funding.....	14
Rule 22: Method of Constituting the Tribunal	15
Rule 25: Appointment of Arbitrators by the Chairman of the Administrative Council in Accordance with Article 38 of the Convention	16
Rule 26: Acceptance of Appointment	16
Chapter IV Disqualification of Arbitrators and Vacancies	17
Rule 29: Proposal for Disqualification of Arbitrators	18
Rule 30: Decision on the Proposal for Disqualification.....	19



Rule 32: Resignation	20
Rule 33: Vacancy on the Tribunal.....	20
Chapter V: Initial Procedures	21
Rule 35: Manifest Lack of Legal Merit.....	21
Rule 36: Preliminary Objections	21
Rule 37: Bifurcation	23
Rule 38: Consolidation or Coordination on Consent of Parties	23
Chapter VI: Evidence	24
Rule 40: Tribunal Order to Produce Documents or Other Evidence.....	24
Rule 41: Witnesses and Experts	24
Rule 42: Tribunal-Appointed Experts	25
Rule 43: Visits and Inquiries	26
Chapter VII: Publication, Access to Proceedings and Non-Disputing Party Submissions.....	26
Rule 44: Publication of Awards and Decisions on Annulment.....	26
Rule 45: Publication of Orders and Decisions	27
Rule 46: Publication of Documents Filed by a Party	27
Rule 47: Observation of Hearings	27
Rule 48: Submission of Non-disputing Parties	28
Rule 49: Participation of Non-disputing Treaty Party.....	29
Chapter VIII: Special Procedures	29
Rule 50: Provisional Measures	29
Rule 51: Security for Costs.....	31
Rule 52: Ancillary Claims	32
Rule 53: Default	32
Chapter IX: Suspension and Discontinuance	33
Rule 54: Suspension	33
Rule 57: Discontinuance for Failure of Parties to Act.....	34
Chapter X: The Award	35
Rule 59: Timing of the Award.....	35
Rule 60: Contents of the Award	35
Rule 61: Rendering of the Award.....	36
Rule 62: Supplementary Decision and Rectification.....	36
Chapter XI: Interpretation, Revision and Annulment of the Award	37
Rule 63: The Application	37
Rule 66: Procedure Applicable to Interpretation, Revision and Annulment.....	38
Rule 67: Stay of Enforcement of the Award	39



Rule 68: Resubmission of Dispute after an Annulment	40
Chapter XII: Expedited Arbitration.....	41
Rule 69: Consent of Parties to Expedited Arbitration	41
Rule 70: Number of Arbitrators and Method of Constituting the Tribunal for Expedited Arbitration	42
Rule 77: The Procedural Schedule for Supplementary Decision and Rectification in Expedited Arbitration	43
Rule 78: The Procedural Schedule for an Application for Interpretation, Revision or Annulment of an Award Rendered in Expedited Arbitration	43



PROPOSED ADMINISTRATIVE AND FINANCIAL REGULATIONS

CHAPTER I: PROCEDURES OF THE ADMINISTRATIVE COUNCIL

Regulation 7: Voting

(1) Except as otherwise provided in the Convention, all decisions of the Administrative Council shall be taken by a majority of the votes cast. At any meeting the Presiding Officer may ascertain the sense of the meeting in lieu of a formal vote but shall require a formal vote upon the request of any member. The written text of the motion shall be distributed to the members if a formal vote is required.

(2) No member of the Administrative Council may vote by proxy or by any method other than in person, but a member may designate a temporary alternate to cast its vote at any meeting at which the regular alternate is not present.

(3) Between Annual Meetings, the Chairman may call a special meeting or request that the Administrative Council vote by correspondence on a motion. The Secretary-General shall transmit the motion to each member. Votes shall be cast within ~~60~~30 days after such transmission, unless a longer period is approved by the Chairman. Upon expiry of the established period, the Secretary-General shall record the results and notify all members of the outcome. The motion shall be considered lost if the replies received do not include affirmative votes ~~those~~ of a majority of the members.

(4) If all Contracting States are not represented at a meeting of the Administrative Council and the votes necessary to adopt a proposed decision by a majority of two thirds of the members of the Council are not obtained, the Council, with the concurrence of the Chairman, may decide that the votes of those members of the Council represented at the meeting shall be registered and the votes of the absent members shall be solicited in accordance with paragraph (3). Votes registered at the meeting may be changed by the member before the expiry of the voting period established pursuant to paragraph (3).

Commentary

Current Administrative and Financial Regulation 7(3) allows the Chairman to call for a vote by correspondence only if the action to be voted on must be taken before the next Annual Meeting and it does not warrant calling a special meeting. Proposed Regulation 7(3) gives the Chairman greater flexibility to request a written vote between meetings, even if the action can be postponed to the next Annual Meeting of the Council. In that case, member States should be given a longer period of at least 60 days to cast a written vote.

In addition, the safeguard that a written motion must be passed by a majority of member States and not simply by a majority of those voting should clarify that the replies received must include *affirmative* votes of a majority of the members.

CHAPTER III: FINANCIAL PROVISIONS

Regulation 14: Costs of Proceedings



- (1) Each member of a Commission, Tribunal or Committee shall receive:
 - (a) a fee for each hour of work performed in connection with the proceeding;
 - ~~(b) when not travelling to attend a hearing or session, reimbursement of expenses reasonably incurred for the sole purpose of the proceeding; and~~
 - ~~(be)~~ when required to travel to attend a hearing or session held away from the member's place of residence:
 - (i) reimbursement of the cost of ground transportation between the points of departure and arrival;
 - (ii) reimbursement of the cost of air and ground transportation to and from the city in which the hearing or session is held; and
 - (iii) a *per diem* allowance for each day the member spends away from their place of residence.

- (2) The Secretary-General, with the approval of the Administrative Council~~Chairman~~, shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and ~~(be)~~. Any request ~~by a member~~ for a higher amount shall be made through the Secretary-General, and not directly to the parties. Such a request must be made for justified reasons and approved by the parties before acceptance of the appointment to the first session of the Commission, Tribunal or Committee~~and shall justify the increase requested.~~

- (3) The Secretary-General, with the approval of the Administrative Council, shall determine and publish an annual administrative charge payable by the parties for the services of the Centre.

- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
 - (a) members of Commissions, Tribunals and Committees, and any assistants approved by the parties;
 - (b) witnesses and experts called by a Commission, Tribunal or Committee, and not by a party;
 - (c) service providers that the Centre engages for a proceeding; and
 - (d) the host of any hearing or session held away from an ICSID facility.

- (5) To enable the Centre to pay the costs referred to in paragraphs (1)-(4), the parties shall make payments to the Centre in accordance with the following:
 - (a) upon registration of a Request for arbitration or conciliation, the Secretary-General shall request the claimant(s) to make a payment to defray the estimated costs of the proceeding through the first session of the Tribunal, which shall be considered partial payment by the claimant(s) of the payment referred to in paragraph (5)(b);
 - (b) upon constitution of a Commission or Tribunal, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the proceeding;
 - (c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the proceeding.
The Centre shall provide a statement of account to the parties with any request for a supplementary payment;
 - (d) in conciliation proceedings, each party shall pay one half of the payments referred to in paragraph (5)(b) and (c), unless the parties agree on a different division. In arbitration proceedings, each party shall pay one half of the payments referred to in paragraph (5)(b) and (c), unless a different division is agreed to by the parties or ordered by the



Tribunal. Payment of these sums is without prejudice to the Tribunal's final decision on the payment of costs pursuant to Article 61(2) of the Convention;

(e) payments shall be payable on the date of the request from the Secretary-General.

The following procedure shall apply in the event of non-payment:

(i) if the amounts requested are not paid in full within ~~30~~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;

(ii) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (5)(e)(i), the Secretary-General may, after notice to and ~~as far as possible~~ in consultation with the parties and the Commission or Tribunal, if constituted, suspend the proceeding until payment is made; and

(iii) if any proceeding is suspended for non-payment for more than 90 days, the Secretary-General may, after notice to and ~~as far as possible~~ in consultation with the parties, ~~move that~~ and the Commission or Tribunal, ~~if constituted~~, discontinue the proceeding. If the Commission or Tribunal has not yet been constituted of there is a vacancy on the Tribunal, the Secretary-General may discontinue the proceeding after consulting with the parties.

(6) Regulation 14(5) shall apply to an application for annulment of an Award, except that the applicant shall be solely responsible for making the payments requested by the Secretary-General.

(7) The Centre shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or reimbursements of the members of any Commission, Tribunal or Committee, unless the parties have made sufficient payments to defray the costs of the proceeding.

(8) For the purposes of this Regulation, "party" includes, where the context so admits, all parties acting as claimants or as respondents.

Commentary

The fees and expenses of the members of a Commission, Tribunal or Committee to be covered should only include the fee for each hour of work performed in connection with the proceeding and, when required to travel to attend a hearing or session away from the member's place of residence, transportation expenses and a *per diem allowance*.

The amount of the hourly fee and the *per diem* allowance of the members of a Commission, Tribunal or Committee, and the annual administrative charge payable by the parties for the services of the Centre, should be determined by the Secretary-General, *with the approval of the Administrative Council*.

Any request for a higher amount of hourly fees or *per diem* allowances should be made through the Secretary-General for justified reasons and approved by the parties *before acceptance of the appointment* to the Commission, Tribunal or Committee.

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 Commission, Tribunal or Committee to issue the relevant order, as provided for in current Administrative and Financial Regulation 14(3)(d).

Regulation 16: Fee for Lodging Requests

The party or parties (if a request is made jointly) wishing to institute an arbitration or conciliation proceeding, or requesting a supplementary decision, rectification, interpretation, revision or annulment of an Award, or resubmission of a dispute, shall pay the Centre a non-refundable lodging fee determined by the Secretary-General, [with the approval of the Administrative Council](#), and published in the schedule of fees.

Commentary

The amount of the lodging fees should be determined by the Secretary-General, *with the approval of the Administrative Council*.

PROPOSED ICSID ARBITRATION RULES

CHAPTER II: CONDUCT OF THE PROCEEDING

Rule 2: Meaning of Party and Party Representation

(1) For the purposes of these Rules, “party” may include, where the context so admits:
(a) all parties acting as claimants or as respondents; and
(b) an authorized representative of a party.

(2) Each party may be represented or assisted by agents, counsel or advocates (“representative(s)”), whose names and proof of authority to act shall be notified by that party to the Secretariat, [the Tribunal and the other party](#).

Commentary

The Tribunal and the opposing party should also be notified of the names and proof of authority to act of a representative of a party.

Rule 3: Method of Filing

(1) Written submissions, observations, supporting documents and communications shall be filed electronically, unless the parties agree or the Tribunal orders otherwise. They shall be introduced into the proceeding by filing them with the Secretariat, which shall acknowledge receipt and distribute them in accordance with Rule 4. [If the authenticity of a document is disputed, the Tribunal may require the submission of the original document for examination or of a duly certified copy.](#)



(2) Supporting documents, including witness statements, expert reports, exhibits and legal authorities, shall be filed together with the written submissions to which they relate, within the time limit fixed to file such written submissions.

(3) If an exhibit or legal authority is lengthy and relevant only in part, An extract of a the supporting document may be filed, if provided the omission of the text does not render the extract misleading. The document shall indicate on its face that it is an extract and specify which parts have been omitted. The Tribunal may require a fuller extract or a complete version of the document.

Commentary

The rule should provide for the situation where the authenticity of a document is disputed, in which case the Tribunal may require the submission of the original document for examination or of a duly certified copy.

Only exhibits and legal authorities should be allowed to be submitted as extracts, not witness statements or expert reports. The submission of extracts of exhibits and legal authorities should only be permitted in cases where an exhibit or legal authority is lengthy and relevant only in part, provided the omission of the text does not render the extract misleading. The party submitting an extract of an exhibit or legal authority should specify that it has not filed a complete version of the document.

Rule 4: Routing of Written Communications

(1) The Secretariat shall be the official channel of written communications among the parties, the Tribunal, and the Chairman of the Administrative Council (“Chairman”), except that:

- (a) the parties may communicate directly with each other, provided that the Secretariat is copied on all communications to be introduced into the proceeding;
- (b) the members of the Tribunal shall communicate directly with each other; and
- (c) a party may communicate directly with the Tribunal if requested to do so by the Tribunal or agreed by the parties, provided that the other party and the Secretariat are copied on the communications.

(2) The Secretariat shall acknowledge receipt of all communications filed by a party and, subject to paragraph (1)(a) and (c), distribute them to the other party and the Tribunal.

Commentary

It is common practice for the parties to agree to copy the members of the Tribunal on communications sent to the Secretariat.

Rule 5: Procedural Languages, Translation and Interpretation

(1) The parties may agree to use one or two procedural languages in the proceeding. The parties shall consult with the Tribunal and the Secretariat regarding the use of a language that is not an official language of the Centre.

(2) If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.



(3) Written submissions, observations, supporting documents and communications shall be filed in a procedural language. In a proceeding with two procedural languages, the Tribunal may require a party to file any document in both procedural languages.

(4) A document in a language other than a procedural language shall be accompanied by a translation into a procedural language. In a proceeding with two procedural languages, the Tribunal may require a party to translate any document into both procedural languages. Translation of only the relevant part of a document is sufficient, provided that [the translation indicates on its face that only part of the document have been translated and specifies which parts have been omitted.](#) ‡The Tribunal may require a fuller or a complete translation. If the translation is disputed, the Tribunal may require a certified translation.

(5) Any written communication from the Tribunal or the Secretariat shall be in a procedural language. In a proceeding with two procedural languages, the Tribunal and, where applicable the Secretary-General, shall render orders, decisions, and the Award in both procedural languages, unless the parties agree otherwise.

(6) Any oral communication shall be in a procedural language. In a proceeding with two procedural languages, the Tribunal may require interpretation into the other procedural language. The recordings and transcripts of a hearing shall be kept in the procedural language(s) used at the hearing.

(7) The testimony of a witness or an expert in a language other than a procedural language shall be interpreted into the procedural language(s) used at the hearing.

Commentary

The party submitting a translation of only part of a document should specify that it has not filed a complete translation of the document.

Rule 7: Calculation of Time Limits

(1) Any time limit expressed as a period of time shall be calculated from the day after the date:

- (a) of the relevant notice [to the parties](#);
- (b) on which the Tribunal announces the period [and it becomes known to the parties](#); or
- (c) on which the procedural step starting the period is taken [and it becomes known to the parties](#).

(2) A time limit expires at 11:59 p.m. at the seat of the Centre on the relevant date.

Where the end of a time limit falls on a Saturday, Sunday, or a [public](#) holiday observed ~~by the Secretariat at the place of the party or representative making the relevant submission~~, it shall be satisfied if the relevant step is taken or the relevant document is received by the Secretariat on the subsequent business day.

Commentary

No event should trigger a time limit if it is unknown to the parties.



The holidays observed at the place of the party or representative making the relevant submission should be taken into account to establish that a time limit does not fall on a business day. Parties have increasingly adopted such criterion.

Rule 8: Time Limits Specified by the Convention and these Rules or Fixed by the Secretary- General

(1) The parties may agree to extend a time limit fixed by the Secretary-General or specified by the Convention or these Rules if such time limit is not mandatory under the Convention.

(2) Any step taken by the parties after expiry of a time limit fixed by the Secretary-General or specified by the Convention or these Rules shall be disregarded, unless the Secretary-General or the Tribunal, as applicable, concludes that there are special circumstances justifying the delay, provided that such time limit is not mandatory under the Convention and both parties are given an opportunity to state their views.

(3) Where these Rules prescribe time limits for orders, decisions and the Award, the Tribunal, or the Chairman, where applicable, shall use best efforts to meet those time limits. If special circumstances arise which prevent the Tribunal or the Chairman from complying with a time limit, ~~it shall advise~~ the parties shall be notified of the reason for delay and the date when ~~it anticipates~~ the order, decision or Award is expected to will be delivered.

Commentary

Both parties should be given an opportunity to state their views before the Secretary-General or the Tribunal, as applicable, concludes a delay is justified, as provided for in current Arbitration Rule 26(3). Failure to comply with a time limit that is mandatory under the Convention should not be excused.

Both the Tribunal and the Chairman may be prevented from meeting a time limit in special circumstances.

Rule 9: Time Limits Fixed by the Tribunal

(1) The Tribunal shall fix time limits for completion of each step in the proceeding, other than time limits specified by the Convention or these Rules, provided that both parties are given an opportunity to state their views.

(2) The Tribunal may extend a time limit it fixed upon joint request by both parties or reasoned application by a party made prior to the expiry of the time limit, provided that the other party is given an opportunity to state its views. The Tribunal may delegate this power to its President.

(3) The Tribunal shall disregard any step taken after expiry of a time limit it fixed unless it concludes that there are special circumstances justifying the delay, provided that both parties are given an opportunity to state their views.

Commentary



Time limits should not be fixed or extended without giving both parties an opportunity to state their views. Both parties should be given an opportunity to state their views before the Tribunal concludes a delay is justified, as provided for in current Arbitration Rule 26(3).

Rule 10: Waiver

Subject to Article 45 of the Convention, if a party knows or should have known that any ~~applicable~~ rule, ~~or~~ agreement of the parties applicable to the proceeding, or any order or decision of the Tribunal or the Secretary-General has not been complied with, and does not promptly object, then that party shall be deemed to have waived its right to object to that non-compliance.

Commentary

It should be clarified that the rules and agreements in question are those applicable to the proceeding, as provided for in current Arbitration Rule 27.

Rule 12: Orders, ~~Decisions~~ and Agreements

(1) The Tribunal shall make the orders ~~and decisions~~ required for the conduct of the proceeding.

(2) Procedural ~~Orders~~ ~~and decisions~~ may be taken by any appropriate means of communication and may be ~~signed~~ issued by the President on behalf of the Tribunal, once all members have had the opportunity to state their views, unless the parties agree otherwise.

(3) The Tribunal shall apply any agreement of the parties on procedural matters to the extent that it conforms with the Convention and the Administrative and Financial Regulations.

Commentary

It is important to clarify that the President may issue a procedural order on behalf of the Tribunal once all members have had the opportunity to state their views. Other decisions should be signed by all members of the Tribunal who voted for it.

Rule 13: Written Submissions and Observations

(1) The parties shall file the following written submissions, with any supporting documents, within the time limits fixed by the Tribunal:

(a) a memorial by the requesting party, subject to paragraph (2);

(b) a counter-memorial by the other party;

and, ~~if unless~~ the parties ~~so agree or the Tribunal finds~~ it unnecessary:

(c) a reply by the requesting party; and

(d) a rejoinder by the other party.

(2) The ~~requesting parties~~ may ~~agree~~ elect to have the Request for arbitration considered as the memorial.



(3) A memorial shall contain a statement of the relevant facts, law and arguments, and the request for relief. A counter-memorial shall contain a statement of the relevant facts, including an admission or denial of facts stated in the memorial, and any necessary additional facts, a statement of law in reply to the memorial, arguments, and the request for relief. A reply and rejoinder shall be limited to responding to the previous written submission.

(4) The Tribunal ~~shall~~may grant leave to file unscheduled written submissions, observations or supporting documents upon a timely and reasoned application, provided that the other party is given an opportunity to state its views and only if these are necessary in view of all relevant circumstances.

Commentary

The decision to have the Request for arbitration considered as the memorial should not be unilaterally made by the requesting party. This should only be the case if both parties agree. A Request for arbitration is generally quite brief, it does not engage in a comprehensive analysis of the issues involved, it is not well-documented, and it usually does not include witness statements or expert reports.

The parties should not be deprived of the possibility of filing a second round of written submissions. Only if both parties agree should they dispense with the reply and the rejoinder.

The Tribunal should have discretion but not a duty to grant leave to file unscheduled submissions or documents. Both parties should be given an opportunity to state their views before the Tribunal grants leave to file unscheduled submissions or documents.

Rule 16: Deliberations

(1) The deliberations of the Tribunal shall take place in private and remain confidential.

(2) The Tribunal may deliberate at any place and by any means it considers convenient.

(3) Only members of the Tribunal shall take part in its deliberations. No other person shall be admitted unless the Tribunal decides otherwise.

(4) The Tribunal shall endeavour to hold deliberations~~deliberate~~ on any matter for decision immediately after the last written or oral submission on that matter.

Commentary

The Tribunal may not only hold in-person deliberations, but also through any appropriate means of communication.

The duty of the Tribunal to reserve time for deliberations immediately after the last written or oral submission should be a best effort obligation. There may be special circumstances that prevent a Tribunal from deliberating immediately after the last submission. In such cases, the Tribunal may reserve time shortly thereafter.

Rule 18: Decisions Taken by Majority Vote



The Tribunal shall take decisions by a majority of the votes of all its members, once all members have had the opportunity to state their views. Abstention shall count as a negative vote. Decisions may be taken by any appropriate means of communication.

Commentary

It is important to clarify that the Tribunal shall take decisions by a majority vote only once all members have had the opportunity to state their views, and that decisions may be taken by any appropriate means of communication.

Rule 19: Payment of Advances and Costs of the Proceeding

(1) The Tribunal shall determine the portion of the advances payable by each party in accordance with Administrative and Financial Regulation 14(5) to defray the costs of the Tribunal and the Centre in connection with the proceeding.

(2) 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 members of the Tribunal; and
- (c) the administrative charges and direct costs of the Centre.

(3) The Tribunal shall request that each party file a statement 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 the request of a party.

(4) In determining and allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including, but not limited to:

- (a) ~~the outcome of any part of the proceeding or overall~~ 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 parties' conduct during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner;
- (c) the complexity of the issues; and
- (d) the reasonableness of the costs claimed.

(5) The Tribunal may at any time make interim decisions on the costs of any part of a proceeding.

(6) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.

Commentary

Only reasonable legal fees and expenses of the parties should form part of the costs of the proceeding.



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.

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.

CHAPTER III: CONSTITUTION OF THE TRIBUNAL

Rule 20: General Provisions Regarding the Constitution of the Tribunal

(1) The parties shall constitute a Tribunal without delay after [the notification of the registration of the Request for arbitration, with due regard to Section 2 of Chapter IV of the Convention](#).

(2) The majority of the arbitrators on a Tribunal shall be nationals of States other than the State party to the dispute and the State whose national is a party to the dispute, unless the Sole Arbitrator or each individual member of the Tribunal is appointed by agreement of the parties.

(3) A party may not appoint an arbitrator who is a national of the State party to the dispute or the State whose national is a party to the dispute without agreement of the other party.

(4) A person previously involved in the resolution of the parties' dispute as a judge, mediator, conciliator or in a similar capacity may be appointed as an arbitrator only by agreement of the parties.

Commentary

The expressions “notification of the registration” and “with due regard to Section 2 of Chapter IV of the Convention” in current Arbitration Rule 1(1) should be retained.

Rule 21: Disclosure of Third-party Funding

(1) “Third-party funding” is the provision of funds or other material support for the pursuit or defense of a proceeding, by a natural or juridical person that is not a party to the dispute (“third-party funder”), to a party to the proceeding, an affiliate of that party, or a law firm representing that party. Such funds or material support may be provided:

(a) through a donation or grant; or



(b) in return for a premium or in exchange for remuneration or reimbursement wholly or partially dependent on the outcome of the proceeding.

(2) A party shall file a written notice disclosing that it has third-party funding and the name of the third-party funder, and providing the terms and conditions of the third-party funding and any agreements and documents related to the third-party funding arrangement. Such notice shall be sent to the Secretariat and the other party immediately upon registration of the Request for arbitration, or upon concluding a third-party funding arrangement after registration, and shall be provided to the Tribunal once it is constituted.

(3) Each party shall have a continuing obligation to disclose any changes to the information referred to in paragraph (2) occurring after the initial disclosure, including termination of the funding arrangement.

(4) 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) retain its own independent counsel;

(b) 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;

(c) 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;

(d) the third-party funder shall be obliged to follow the same confidentiality rules that apply to all parties in the arbitration;

(e) 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;

(f) the third-party funder must not be a disguised party or the real party in interest.

(5) 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 4, under penalty of discontinuance of the proceeding.

(6) At the request of the State party to the dispute, the Tribunal shall order the other party benefiting from third-party funding to post security for costs, under penalty of discontinuance of the proceeding.

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.

Rule 22: Method of Constituting the Tribunal



(1) The number of arbitrators and the method of their appointment must be determined before the Secretary-General can act on any appointment proposed by a party.

(2) The parties shall endeavor to agree on any uneven number of arbitrators and the method of their appointment. If the parties do not advise the Secretary-General of an agreement within 60 days after the date of registration, the Tribunal shall be constituted in accordance with Article 37(2)(b) of the Convention. The Secretary-General shall thereupon promptly inform the parties that the Tribunal is to be constituted in accordance with that Article.

Commentary

The notification by the Secretary-General that the Tribunal shall be constituted in accordance with Article 37(2)(b), as provided for in current Arbitration Rule 2(3), should not be eliminated.

Rule 25: Appointment of Arbitrators by the Chairman of the Administrative Council in Accordance with Article 38 of the Convention

(1) If the Tribunal has not been constituted within 90 days after the date of the notice of registration, or such other period as the parties may agree, either party may request that the Chairman appoint the arbitrator(s) who have not yet been appointed pursuant to Article 38 of the Convention. A copy of the request shall forthwith be sent to the other party.

(2) The Chairman shall appoint the President of the Tribunal after appointing any members who have not yet been appointed.

(3) The Chairman shall consult with the parties as far as possible before appointing an arbitrator and shall use best efforts to appoint any arbitrator(s) within 30 days after receipt of the request to appoint. The Chairman shall provide the parties with information about the candidates and the criteria for their selection.

Commentary

The 90-day period for the constitution of the Tribunal should run from the notice of registration.

A copy of the request by a party that the Chairman appoint the arbitrator(s) who have not yet been appointed should forthwith be sent to the other party.

When consulting with the parties before appointing an arbitrator, the Chairman should provide the parties with information about the candidates and the criteria for their selection.

Rule 26: Acceptance of Appointment

(1) A party appointing an arbitrator shall notify the Secretariat of the appointment and provide the appointee's name, nationality(ies) and contact information.

(2) The Secretariat shall request an acceptance from the appointee upon receipt of the notice referred to in paragraph (1). The Secretariat shall also transmit to each appointee



the information received from the parties relevant to completion of the declaration referred to in paragraph (3)(b).

(3) Within 20 days after the receipt of the request for acceptance of an appointment, an 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 ~~matters including~~ the arbitrator's ~~independence, impartiality,~~ availability and commitment to maintain the confidentiality of the proceedings.

(4) The Secretariat shall notify the parties of the acceptance of appointment by each arbitrator and provide their signed declaration.

(5) The Secretariat 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.

(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, notify any new professional, business or academic activities he or she intends to undertake, and promptly disclose any change of circumstances that may be relevant to the declaration referred to in paragraph (3)(b).

(7) Failure by an arbitrator to comply with the above duties shall constitute a manifest lack of the qualities required by paragraph (1) of Article 14 of the Convention in the terms of Article 57 of the Convention.

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 form published by the Centre and the forthcoming Code of Ethics.

It should be clarified that an arbitrator's failure to comply with the duties of investigation, notification and disclosure shall constitute a manifest lack of the qualities required by paragraph (1) of Article 14 of the Convention in the terms of Article 57 of the Convention.

CHAPTER IV DISQUALIFICATION OF ARBITRATORS AND VACANCIES



Rule 29: Proposal for Disqualification of Arbitrators

(1) A party may propose the disqualification of one or more arbitrators (“proposal”) pursuant to Article 57 of the Convention. 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.

(2) The following procedure shall apply, unless the parties agree otherwise:

(a) any proposal shall be filed after the constitution of the Tribunal and within ~~20~~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;

(b) the party proposing the disqualification shall file a written submission, specifying the grounds on which it is based and including a statement of the relevant facts, law and arguments, with any supporting documents;

(c) the other party shall file its response and supporting documents within ~~seven~~7 days after receipt of the written submission, and may agree to the proposal without this implying accepting the validity of the grounds for the proposal, in which case a replacement arbitrator shall be appointed in accordance with the method by which the replaced arbitrator was appointed;

(d) the arbitrator to whom the proposal relates may file a statement limited to factual information relevant to the proposal. ~~This statement shall be filed~~ within ~~five~~7 days after receipt of the written submissions referred to in paragraph (2)(c), and may also withdraw from his or her office without this implying accepting the validity of the grounds for the proposal, in which case his or her resignation shall be accepted for the purposes of Rule 33(3)(a) and a replacement arbitrator shall be appointed in accordance with the method by which the replaced arbitrator was appointed; and

(e) the parties may file final written submissions on the proposal within ~~seven~~7 days after expiry of the time limit referred to in paragraph (2)(d).

(3) The proceeding shall be suspended ~~continue~~ while the proposal is pending, unless it is suspended, in whole or in part, by agreement of the parties agree otherwise. ~~If the proposal results in a disqualification, either party may request that any order or decision issued by the Tribunal while the proposal was pending, be reconsidered by the reconstituted Tribunal.~~

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 Chairman of the Administrative Council in *Blue Bank v. Venezuela*,¹ and reaffirmed in subsequent decisions on disqualification. This should be clarified in proposed Rule 29.

In this regard, an annulment committee has recently 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

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.



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 parties should be allowed to agree to modify the procedure for a proposal for disqualification.

A party should have at least three weeks (21 days) to make a proposal for disqualification. Such time limit 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.

The arbitrator to whom the proposal relates should have at least one week (7 days) to examine the proposal.

Proposed Rule 29 should allow for the possibility that the parties may agree to the proposal or that the arbitration to whom the proposal relates may decide to withdraw from his or her office, without this implying acceptance of the validity of the grounds for the proposal. This is similar to UNCITRAL Arbitration Rules.

Current Arbitration Rule 9(6) provides that the proceeding shall be suspended until a decision has been taken on the proposal. Such provision should not be modified. It is highly inappropriate as a question of due process to allow the proceeding to continue pending a decision on the proposal to disqualify an arbitrator.

Rule 30: Decision on the Proposal for Disqualification

(1) If the parties do not agree to the proposal or the arbitrator does not withdraw, ~~The~~ decision on a proposal shall be taken by the arbitrators not subject to the proposal or by the Chairman in accordance with Article 58 of the Convention.

(2) For the purposes of Article 58 of the Convention:

- (a) if the arbitrators not subject to a proposal are unable to decide the proposal for any reason, they shall notify the Secretary-General and shall be considered equally divided;
- (b) if a subsequent proposal is filed while the decision on a prior proposal is pending, both proposals shall be decided by the Chairman as if they were a proposal to disqualify a majority of the Tribunal.

(3) The decision on any proposal shall be made within 30 days after the later of the expiry of the time limit referred to in Rule 29(2)(e) or the notice in Rule 30(2)(a), subject to Rule 8(3).

Commentary

Only if the parties do not agree to the proposal or the arbitrator does not withdraw will a decision on the proposal for disqualification become necessary.

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.



It is not clear how the 30-day time limit to make a decision on a proposal for disqualification will be calculated in the case of proposed Rule 30(2)(b).

It should be clarified that the 30-day time limit to make a decision on a proposal for disqualification is subject to proposed Rule 8(3), which provides that special circumstances may prevent the Tribunal or the Chairman from meeting a time limit, in which case the parties shall be notified of the reason for delay and the date when the order, decision or Award is expected to be delivered.

Rule 32: Resignation

(1) An arbitrator may resign by notifying the Secretary-General, ~~and~~ the other members of the Tribunal and the parties, and providing reasons for the resignation.

(2) If the arbitrator was appointed by a party, the other members of the Tribunal shall promptly notify the Secretary-General and the parties whether they consent to the arbitrator's resignation for the purposes of Rule 33(3)(a).

Commentary

The resigning arbitrator should notify the Secretary-General, the other members of the Tribunal *and the parties*.

If the arbitrator was appointed by a party, the other members of the Tribunal shall promptly notify the Secretary-General *and the parties* whether they consent to the arbitrator's resignation.

Rule 33: Vacancy on the Tribunal

(1) The Secretary-General shall notify the parties of any vacancy on the Tribunal.

(2) The proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.

(3) A vacancy on the Tribunal shall be filled by the method used to make the original appointment, except that the Chairman shall fill the following vacancies from the Panel of Arbitrators:

(a) a vacancy caused by the resignation of a party-appointed arbitrator without the consent of the other members of the Tribunal; or

(b) at the request of either party, a vacancy that has not been filled within 45 days after the notice of vacancy.

(4) Once a vacancy has been filled and the Tribunal has been reconstituted, the proceeding shall continue from the point it had reached at the time the vacancy was notified. A newly appointed arbitrator may require that any portion of a hearing be recommenced if necessary to decide a pending matter.

Commentary



Any appointments by the Chairman under scenario (3)(b) should not happen automatically upon the expiry of 45 days after the notice of vacancy, but only if a party expressly requests that the vacancy be filled by the Chairman, as provided for in current Arbitration Rule 11(2)(b).

CHAPTER V: INITIAL PROCEDURES

Rule 35: Manifest Lack of Legal Merit

(1) A party may object that a claim is manifestly without legal merit. The objection may relate to the substance of the claim, the jurisdiction of the Centre, or the competence of the Tribunal.

(2) The following procedure shall apply, unless the parties agree otherwise:

(a) a party shall file a written submission no later than 30 days after the constitution of the Tribunal, specifying the grounds on which the objection is based, and including a statement of the relevant facts, law and arguments, with any supporting documents;

(b) the Tribunal shall fix time limits for written or oral submissions, as required, on the objection;

(c) if a party files the objection before constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the objection, so that the Tribunal may consider the objection promptly upon its constitution; and

(d) subject to Rule 8(3), the Tribunal shall issue its decision on the objection within 60 days after the latest of:

(i) the constitution of the Tribunal;

(ii) the last written submission on the objection; or

(iii) the last oral submission on the objection.

(3) The decision of the Tribunal shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 36 or to argue subsequently in the proceeding that a claim is without legal merit.

(4) If the Tribunal decides that all claims are manifestly without legal merit, it shall render an Award to that effect. Otherwise, the Tribunal shall issue a decision on the objection and fix any time limit necessary for the further conduct of the proceeding.

Commentary

The parties should be allowed to agree to modify the procedure applicable to an objection of manifest lack of legal merit.

It should be clarified that the time limit for the Tribunal to rule on the objection is subject to proposed Rule 8(3), which specifies that the Tribunal shall use best efforts to meet such time limit.

Rule 36: Preliminary Objections

(1) A party may file a preliminary objection that the dispute or any ancillary claim is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Tribunal.



- (2) The following procedure shall apply, unless the parties agree otherwise:
- (a) a preliminary objection shall be made as soon as possible. Unless the facts on which the objection is based are unknown to the party at the relevant time, the objection shall be made no later than:
- (i) the date to file the counter-memorial if the objection relates to the main claim; or
- (ii) the date to file the next written submission after an ancillary claim is raised, if the objection relates to the ancillary claim;
- (b) the party shall file a written submission, specifying the grounds on which the preliminary objection is based and including a statement of relevant facts, law and arguments, with any supporting documents; and
- (c) the Tribunal shall fix time limits for written or oral submissions, as required, on the preliminary objection.
- (3) The Tribunal may address a preliminary objection in a separate phase of the proceeding pursuant to Rule 37 or join the objection to the merits. Until the Tribunal decides whether to address a preliminary objection in a separate phase or join it to the merits, the proceeding on the merits shall be suspended. If the Tribunal decides to address the preliminary objection in a separate phase, it ~~may~~ shall suspend the proceeding on the merits. If the Tribunal decides to join the objection to the merits, it shall fix any time limit necessary for the further conduct of the proceeding.
- (4) If ~~a~~ the party ~~fillinges~~ a preliminary objection does not request the bifurcation of the proceeding pursuant to Rule 37, it shall also file its counter-memorial on the merits at the date scheduled to make such submission, or file its next written submission after an ancillary claim is raised if the objection relates to the ancillary claim, ~~unless the Tribunal has ordered otherwise~~.
- (5) The Tribunal may at any time on its own initiative consider whether a claim is within the jurisdiction of the Centre or within its own competence.
- (6) The Tribunal shall issue its decision on the preliminary objection within 180 days after the last written or oral submission on the objection, subject to Rule 8(3).
- (7) If the Tribunal decides that the dispute is not within the jurisdiction of the Centre, or for other reasons is not within its competence, it shall render an Award to that effect. Otherwise, the Tribunal shall issue a decision on the objection and fix any time limit necessary for the further conduct of the proceeding.

Commentary

The parties should be allowed to agree to modify the procedure for preliminary objections.

The proceeding on the merits should be suspended pending a decision on whether to address a preliminary objection in a separate phase or join it to the merits. If the preliminary objection is addressed in a separate phase, the proceeding on the merits must be suspended. If the Tribunal decides to join the objection to the merits, it should fix any time limit necessary for the further conduct of the proceeding.



If the party filing the preliminary objection does not request the bifurcation of the proceeding pursuant to Rule 37, it should not have to file its counter-memorial on the merits unless and until the Tribunal decides to join the preliminary objection to the merits.

It should be clarified that the time limit for the Tribunal to rule on the objection is subject to proposed Rule 8(3), which specifies that the Tribunal shall use best efforts to meet such time limit.

Rule 37: Bifurcation

(1) A party may request that a question be addressed in a separate phase of the proceeding (“request for bifurcation”).

(2) The following procedure shall apply, unless the parties agree otherwise:

(a) if the request for bifurcation relates to a preliminary objection, a party shall file the request no later than the filing of the preliminary objection within 30 days after the filing of the memorial on the merits or, if the objection relates to an ancillary claim, within 30 days after the filing of the written submission containing the ancillary claim, unless the facts on which the objection is based are unknown to the party at the relevant time;

(b) the request for bifurcation shall specify the questions to be bifurcated;

(c) the Tribunal shall suspend the proceeding on the merits and fix time limits for written or oral submissions, as required, on the request for bifurcation; and

(d) the Tribunal shall issue its decision on a request for bifurcation within 30 days after the last written or oral submission on the request, subject to Rule 8(3).

(3) The Tribunal may at any time on its own initiative decide whether a question is to be addressed in a separate phase of the proceeding.

(4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether bifurcation would materially reduce the time and cost of the proceeding.

Commentary

The parties should be allowed to agree to modify the procedure for bifurcation.

A party filing a request for bifurcation related to a preliminary objection should be permitted to make it together with the preliminary objection.

The proceeding on the merits should be suspended pending a decision on bifurcation.

It should be clarified that the time limit for the Tribunal to rule on bifurcation is subject to proposed Rule 8(3), which specifies that the Tribunal shall use best efforts to meet such time limit.

Since the Tribunal should consider all relevant circumstances when deciding whether to bifurcate, mentioning only one of the circumstances that may be relevant is misleading.

Rule 38: Consolidation or Coordination on Consent of Parties



(1) Parties to two or more pending arbitrations administered by the Centre may agree to consolidate or coordinate these arbitrations.

(2) The parties referred to in paragraph (1) shall provide the Secretary-General with written terms of reference, specifying the terms of consolidation or coordination to which they would consent.

(3) The Secretary-General shall take all necessary administrative steps to implement the agreement of the parties and make any recommendations and suggestions aimed at if the consolidation or coordination requested would promoting a fair and efficient resolution of all or any claims asserted in the arbitrations.

Commentary

When taking all necessary administrative steps to implement the agreement of the parties on consolidation or coordination, the Secretary-General may make any recommendations and suggestions aimed at promoting a fair and efficient resolution of all or any claims asserted in the arbitrations.

CHAPTER VI: EVIDENCE

Rule 40: Tribunal Order to Produce Documents or Other Evidence

(1) The Tribunal shall decide any dispute arising out of a party's request for production of documents or other evidence. In doing so, it shall consider all relevant circumstances including, but not limited to, the burden of proof of the requesting party, the efforts made by the requesting party to obtain the requested evidence through its own means, the scope and timeliness of the request, the relevance of the documents and evidence requested, the time and burden of production and any objections raised by the other party.

(2) The Tribunal may at any time on its own initiative order a party to produce documents or other evidence.

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.

Rule 41: 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.

(2) A witness who has filed a written statement may be called for examination at a hearing.

(3) The Tribunal shall determine the manner in which the examination is conducted.



(4) A witness shall be examined before the Tribunal, by the parties, and under the control of the President. Any member of the Tribunal may put questions to the witness.

(5) A witness shall be examined in person unless the Tribunal determines that another means of examination is appropriate in the circumstances.

(6) Paragraphs (1)-(5) shall apply, with necessary modifications, to evidence given by an expert.

(7) Each witness shall make the following declaration before giving evidence:
“I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth.”

(8) Each expert shall make the following declaration before giving evidence:
“I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief.”

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.

Rule 42: Tribunal-Appointed Experts

(1) 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 addressed by the parties in the proceeding.

(2) The Tribunal shall consult with the parties on the appointment of an expert, including, but not limited to, on the background and qualifications of the expert, the terms of reference of the expert, the candidates that are being considered and their budgets, and any other relevant information for the appointment of the expert. When deciding whether to appoint an expert and who should be selected for that position, the Tribunal shall endeavour not to unnecessarily increase the cost of the proceeding.

(3) The parties shall provide the Tribunal-appointed expert with any information, document or other evidence that the expert may require. The Tribunal shall decide any dispute regarding the evidence required by the Tribunal-appointed expert.

(4) The parties shall have the right to make written or oral submissions on the report of the Tribunal-appointed expert.

(5) Either party may challenge the Tribunal-appointed expert for justified reasons.

~~(5)~~ Rule 41(1)-(5) and (8) 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-appointed expert should only report on matters addressed by the parties in the proceeding.

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 43: Visits and Inquiries

(1) The Tribunal may order a visit to any place connected with the dispute, upon a party's request or, unless the parties disapprove, on its own initiative ~~or upon a party's request~~, if it deems the visit necessary, and may conduct inquiries there as appropriate.

(2) The ~~order~~ Tribunal shall consult with the parties on ~~define~~ the scope of the visit and the subject of any inquiry, the procedure to be followed, the applicable time limits and other terms.

(3) The parties shall have the right to participate in any visit or inquiry.

Commentary

The Tribunal may order a visit or inquiry upon a party's request or, unless the parties disapprove, on its own initiative.

The Tribunal should consult with the parties on any relevant questions related to the visit or inquiry.

CHAPTER VII: PUBLICATION, ACCESS TO PROCEEDINGS AND NON-DISPUTING PARTY SUBMISSIONS

Rule 44: Publication of Awards and Decisions on Annulment

(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.

(2) 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 date of dispatch of the document.

(3) Absent consent of the parties referred to in paragraphs (1) or (2), the Centre shall publish excerpts of the legal reasoning in such documents ("excerpts"). The following procedure shall apply to publication of excerpts, unless the parties agree otherwise:

(a) the Centre shall propose excerpts to the parties within 30 days after receiving notice that a party declines consent to publication of a document referred to in paragraph (1);



- (b) the parties may send comments on the proposed excerpts to the Centre within 30 days after their receipt; and
- (c) the Centre shall publish excerpts within 30 days after receipt of the parties' comments on the proposed excerpts, if any.

Commentary

The parties should be allowed to agree to modify the procedure applicable to the publication of excerpts.

Rule 45: Publication of Orders and Decisions

(1) The Centre shall publish orders and decisions, including, but not limited to, decisions on bifurcation, decisions on disqualification, and decisions on provisional measures within 60 days after their issuance, with any redactions agreed to by the parties and jointly notified to the Centre within the 60-day period.

(2) ~~If either party~~ may propose redactions before an order or decision is published by ~~notifies~~ the Centre within the ~~60-day~~ 30 days after their issuance. If the other party disagrees with the proposed redactions period referred to in paragraph (1) that the parties disagree on the redactions, the Centre shall ~~refer the order or decision to the Tribunal to determine any redactions, and shall~~ publish the order or decision with the redactions approved by the Tribunal.

Commentary

Decisions on bifurcation, disqualification, and provisional measures should be included among the orders and decisions to be published by the Centre.

The procedure for the publication of orders and decisions should be simplified, as proposed above.

Rule 46: Publication of Documents Filed by a Party

~~Upon request of a party, t~~The Centre shall not publish any written submissions, observations or other documents ~~which that filed by either party filed~~ in the proceeding without the express written consent of both parties, with redactions agreed to by the parties.

Commentary

Unlike orders and decisions, written submissions, observations or other documents filed by either party must not be published, unless *both* parties give their consent in writing.

Rule 47: Observation of Hearings

(1) The Tribunal shall only allow persons in addition to the parties, their representatives, witnesses and experts during their testimony, and persons assisting the Tribunal to observe hearings, ~~unless either if both parties~~ objects agree thereto.

(2) The Tribunal shall establish procedures to prevent the disclosure of confidential information to persons observing the hearings.



(3) The Centre shall not publish recordings and transcripts of hearings without the express written consent of both parties, unless either party objects.

Commentary

Persons who are not involved in the proceeding in some capacity should not be allowed to observe hearings unless *both* parties agree thereto.

Recordings and transcripts of hearings must not be published, unless *both* parties give their consent in writing.

Rule 48: Submission of Non-disputing Parties

(1) Any person or entity that is not a disputing party (“non-disputing party”) may apply for permission to file a written submission in the proceeding, providing the relevant information addressed in paragraph (2).

(2) In determining whether to permit a non-disputing party submission, the Tribunal shall consider all relevant circumstances, including:

- (a) whether the submission would address a matter within the scope of the dispute;
- (b) how the submission would assist the Tribunal to determine a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;
- (c) whether the non-disputing party has a significant interest in the proceeding;
- (d) the identity, activities, organization and ownership of the non-disputing party, including any direct or indirect affiliation between the non-disputing party, a party or a non-disputing Treaty Party; and
- (e) whether any person or entity will provide the non-disputing party with financial or other assistance to file the submission.

(3) The parties shall have the right to make observations on whether a non-disputing party should be permitted to file a written submission in the proceeding and on the conditions for filing such a submission, if any.

(4) The Tribunal shall ensure that non-disputing party participation does not disrupt the proceeding or unduly burden or unfairly prejudice either party. To this end, the Tribunal may impose conditions on the non-disputing party, including with respect to:

- (a) the format, length or scope of the submission;
- (b) the date of filing; and
- (c) if the non-disputing party is a for profit organization, the payment of funds to defray the increased costs of the proceeding attributable to the non-disputing party’s participation.

(5) The Tribunal may provide the non-disputing party with access to relevant documents filed in the proceeding, unless either with the consent of both partiesy objects.

(6) If the Tribunal permits a non-disputing party to file a written submission, the parties shall have the right to make observations on the submission.



Commentary

The person or entity applying for permission to file a written submission in the proceeding should include in the application the information specified in paragraph (2), which is necessary for the Tribunal to decide whether to permit a non-disputing party submission.

Only for profit organizations should be required to pay funds to defray the increased costs of the proceeding attributable to their participation as non-disputing parties.

Non-disputing parties should not have access to documents filed in the proceeding unless *both* parties agree thereto.

Rule 49: 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 ~~application or~~ interpretation of a treaty at issue in the dispute, unless such treaty provides for a joint interpretation mechanism.

(2) A Tribunal may allow a non-disputing Treaty Party to make a written submission on any other matter within the scope of the dispute, in accordance with the procedure in Rule 48.

(3) The parties shall have the right to make observations on the submission of the non-disputing Treaty Party.

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 Rule 48, 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.

A submission by a non-disputing Treaty Party under the special procedure in proposed Rule 49 should be limited to questions of interpretation of the treaty at issue in the dispute.

CHAPTER VIII: SPECIAL PROCEDURES

Rule 50: Provisional Measures

(1) A party may at any time request that the Tribunal recommend provisional measures to preserve that party’s rights, including measures to:

(a) prevent action that is likely to cause:

(i) current or imminent harm to the other party; or

(ii) prejudice to the arbitral process;

(b) prevent action which might aggravate or extend ~~maintain or restore the status quo pending determination of~~ the dispute; and



(c) preserve evidence that may be relevant to the resolution of the dispute.

(2) The following procedure shall apply, unless the parties agree otherwise:

(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.

~~(bc)~~ the Tribunal shall fix time limits for written or oral submissions, as required, on the request;

~~(ed)~~ 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

~~(de)~~ subject to Rule 8(3), 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.

(3) In deciding whether to recommend provisional measures, the Tribunal shall consider all relevant circumstances. The Tribunal shall only recommend provisional measures if it determines that they are urgent and necessary.

(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.

(7) A party may request any judicial or other authority to order provisional measures if such recourse is available in the instrument recording the parties' consent to arbitration.

Commentary

It is more appropriate to provide for provisional measures to prevent action that might aggravate or extend the dispute, rather than to maintain the *status quo*.

The parties should be allowed to agree to modify the procedure for provisional measures.



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.

It should be clarified that the time limit for the Tribunal to rule on provisional measures is subject to proposed Rule 8(3), which specifies that the Tribunal shall use best efforts to meet such time limit.

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.

Rule 51: Security for Costs

(1) A State that is party to the dispute may request that the Tribunal order the other party to provide security for the costs of the proceeding and determine the appropriate terms for provision of the security, if there are reasonable grounds to believe that there is a risk the disputing investor may not be able to honour a possible decision on costs issued against it.

(2) The following procedure shall apply, unless the parties agree otherwise:

(a) the request shall specify the circumstances that require security for costs;

(b) the Tribunal shall fix time limits for written or oral submissions, as required, on the request;

(c) if a State party to the dispute 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

(d) subject to Rule 8(3), 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.

(3) In determining whether to order a party-disputing investor to provide security for costs, the Tribunal shall consider the party's-disputing investor's ability to comply with an adverse decision on costs and any other relevant circumstances.

(4) If the disputing investor a party fails to comply with an order for security for costs within the time limit set by the Tribunal, the Tribunal may-shall suspend the proceeding until the security is provided. If the proceeding is suspended for more than 90 days, the Tribunal mayshall, after consulting with the parties, order the discontinuance of the proceeding.



(5) A party must promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.

(6) The Tribunal may at any time modify or revoke its order for security for costs, on its own initiative or upon a party's request, [after giving the parties an opportunity to make submissions](#).

Commentary

A State party to the dispute should be allowed to request the Tribunal to order the disputing investor to provide security for the costs if there are reasonable grounds to believe that there is a risk the disputing investor may not be able to honour a possible decision on costs issued against it.

The parties should be allowed to agree to modify the procedure for security for costs.

It should be clarified that the time limit for the Tribunal to rule on security for costs is subject to proposed Rule 8(3), which specifies that the Tribunal shall use best efforts to meet such time limit.

Suspension and discontinuance of the proceeding should be mandatory in case of failure by the disputing investor to comply with an order to provide security for costs.

Both parties should be given an opportunity to present their observations before a Tribunal modifies or revokes its order for security for costs.

Rule 52: Ancillary Claims

(1) Unless the parties agree otherwise, a party may file an incidental or additional claim or a counter-claim (“ancillary claim”) arising directly out of the subject-matter of the dispute, provided that such ancillary claim is within the scope of the consent of the parties and the jurisdiction of the Centre.

(2) An incidental or additional claim shall be presented no later than ~~the date to file in~~ the reply, and a counter-claim shall be presented no later than ~~the date to file in~~ the counter-memorial, unless the Tribunal ~~decides otherwise~~ [authorizes their presentation at a later stage in the proceeding, after giving the parties an opportunity to state their views](#).

Commentary

As current Arbitration Rule 40(2), proposed Rule 52(2) should provide that an incidental or additional claim may be presented up to the filing of the reply and a counter-claim up to the filing of the counter-memorial, unless the Tribunal authorizes the presentation of an ancillary claim at a later stage in the proceeding, after giving the parties an opportunity to state their views.

Rule 53: Default

(1) A party is in default if it fails to appear or present its case, or indicates that it will not appear or present its case.



(2) If a party is in default at any stage of the proceeding, the other party may request that the Tribunal address the questions submitted to it and render an Award.

(3) Upon receipt of the request referred to in paragraph (2), the Tribunal shall notify the defaulting party of the request and grant a grace period to cure the default, unless it is satisfied that the defaulting party does not intend to appear or present its case. The grace period shall not exceed 60 days without the consent of the other party.

(4) If the default relates to a first session or hearing, the Tribunal may set the grace period as follows:

- (a) reschedule the first session or hearing to a date within 60 days after the original date;
- (b) proceed with the first session or hearing in the absence of the defaulting party and fix a time limit for the defaulting party to file a written submission within 60 days after the first session or hearing; or
- (c) cancel the hearing and fix a time limit for the parties to file written submissions within 60 days after the original date of the first session or hearing.

(5) If the default relates to another scheduled procedural step, the Tribunal may set the grace period to cure the default by fixing a new time limit for the defaulting party to complete that step within 60 days after the date of the notice of default referred to in paragraph (3).

(6) A party's default shall not be deemed an admission of the assertions made by the other party.

(7) The Tribunal may invite the party appearing to file observations, produce evidence or make oral submissions.

(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 Rule 53 should provide that in case of default the Tribunal must also verify that the submissions made are well-funded in fact and in law.

CHAPTER IX: SUSPENSION AND DISCONTINUANCE

Rule 54: Suspension

(1) Except as otherwise provided in the Administrative and Financial Regulations or these Rules, the Tribunal may suspend the proceeding on:

- (a) agreement of the parties;
- (b) request of a party; or
- (c) its own initiative.

(2) The Tribunal shall give the parties the opportunity to make observations before ordering the suspension of the proceeding pursuant to paragraph (1)(b) or (c).



(3) In its order recording the suspension of the proceeding the Tribunal shall specify:

- (a) the period of the suspension;
- (b) any appropriate conditions; and
- (c) if necessary, a modified procedural calendar to take effect on resumption of the proceeding.

(4) The Tribunal may extend the period of the suspension prior to its expiry, on its own initiative or upon a party's request, after giving the parties an opportunity to make observations.

(5) The Secretary-General shall suspend the proceedings pursuant to paragraph (1)(a) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal. The parties shall inform the Secretary-General of the period of the suspension and any conditions agreed to by the parties.

Commentary

It may not always be necessary to specify a procedural calendar to take effect on resumption of the proceeding.

Before deciding to extend the period of the suspension on its own initiative or upon a party's request, the Tribunal should give the parties an opportunity to make observations.

Rule 57: Discontinuance for Failure of Parties to Act

(1) If the parties fail to take any steps in the proceeding for more than 150 days, the Tribunal shall notify them of the time elapsed since the last step taken in the proceeding.

(2) If the parties fail to take a step within 30 days after the notice referred to in paragraph (1), they shall be deemed to have discontinued the proceeding and the Tribunal may shall issue an order taking note of the discontinuance.

(3) If either party takes a step within 30 days after the notice referred to in paragraph (1), the proceeding shall continue.

(4) The Secretary-General shall issue the notice and the order referred to in paragraphs (1) and (2) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

Commentary

Current Arbitration Rule 45 provides that in case of failure of the parties to act, after notice to the parties, the Tribunal "shall" in an order take note of the discontinuance. Proposed Rule 57 provides that in case of failure of the parties to act, after notice to the parties, the Tribunal "may" issue an order taking note of the discontinuance. The word "shall" should be used instead of "may" in proposed Rule 57, as it is used in current Arbitration Rule 45.



CHAPTER X: THE AWARD

Rule 59: Timing of the Award

(1) Subject to Rule 8(3), the Tribunal shall render the Award as soon as possible and, in any event, no later than:

- (a) 60 days after the last written or oral submission if the Award is rendered pursuant to Rule 35(4);
- (b) 180 days after the last written or oral submission if the Award is rendered pursuant to Rule 36(7); or
- (c) 240 days after the last written or oral submission on all other matters.

(2) A statement of costs filed in accordance with Rule 19(3) shall not be considered a submission for the purposes of calculating the time limits referred to in paragraph (1).

Commentary

It should be clarified that the time limits for the Tribunal to render an Award is subject to proposed Rule 8(3), which specifies that the Tribunal shall use best efforts to meet such time limits.

Rule 60: Contents of the Award

(1) The Award shall be in writing and shall contain:

- (a) a precise designation of each party;
- (b) the names of the representatives of the parties;
- (c) a statement that the Tribunal was established under the Convention, and a description of the method of its constitution;
- (d) the name of each member of the Tribunal and the appointing authority of each;
- (e) the dates and place(s) of the first session and the hearings;
- (f) a brief summary of the proceeding;
- (g) a statement of the relevant facts as found by the Tribunal;
- (h) a brief summary of the submissions of the parties, including the relief sought;
- (i) the decision of the Tribunal on every question submitted to it, and the reasons on which the Award is based; and
- (j) a statement of the costs of the proceeding, including the fees and expenses of each member of the Tribunal, and a reasoned decision regarding the allocation of the costs of the proceeding.

(2) The Award shall be signed by the members of the Tribunal who voted for it and the date of each signature shall be indicated. It may be signed by electronic means if the parties agree.

(3) Any member of the Tribunal may attach an individual opinion or a statement of dissent to the Award before the Award is rendered.

Commentary

The requirement that the Award indicate the date of the arbitrators' signatures as provided for in current Arbitration Rule 47(2) should be maintained in proposed Rule 60(2).



Rule 61: Rendering of the Award

(1) ~~Upon signature by the last arbitrator to sign~~ Once the Award has been signed by the members of the Tribunal who voted for it, the Secretary-General shall promptly:

- (a) dispatch a certified copy of the Award to each party, together with any individual opinion and statement of dissent, indicating the date of dispatch on the Award; and
- (b) ~~authenticate the text of the Award and~~ deposit ~~it the Award~~ in the archives of the Centre, together with any individual opinion and statement of dissent.

(2) The Award shall be deemed to have been rendered on the date of dispatch.

(3) The Secretary-General shall provide additional certified copies of the Award to a party upon request.

Commentary

The requirements that the Award be dispatched upon signature by the last arbitrator to sign and that the Secretary-General authenticate the text of the Award to be deposited in the archives of the Centre, as provided for in current Arbitration Rule 48(1), should be maintained in proposed Rule 61(1).

Rule 62: Supplementary Decision and Rectification

~~(1) A Tribunal may rectify any clerical, arithmetical or similar error in the Award on its own initiative within 30 days after rendering the Award.~~

~~(2)~~ A party requesting a supplementary decision on, or the rectification of, an Award pursuant to Article 49(2) of the Convention shall file the request with the Secretary-General within 45 days after the Award was rendered and pay the lodging fee published in the schedule of fees.

~~(3)~~ The request referred to in paragraph ~~(1)~~ shall:

- (a) identify the Award to which it relates;
- (b) be signed by each requesting party or its representative and be dated; and
- (c) specify:
 - (i) with respect to a request for a supplementary decision, any question which the Tribunal omitted to decide in the Award; and
 - (ii) with respect to a request for rectification, any clerical, arithmetical or similar error in the Award.

~~(4)~~ Upon receipt of the request and the lodging fee, the Secretary-General shall promptly:

- (a) transmit the request to the other party;
- (b) register the request, or refuse registration if the request is not made within the time limit referred to in paragraph ~~(1)~~; and
- (c) notify the parties of the registration or refusal to register.

~~(5)~~ As soon as the request is registered, the Secretariat shall transmit the request and the notice of registration to each member of the Tribunal.

~~(6)~~ The President of the Tribunal shall determine the procedure to consider the request, after consulting with the other members of the Tribunal and the parties.



(76) Rules 60-61 shall apply to any decision of the Tribunal pursuant to this Rule.

(87) Subject to Rule 8(3), ~~T~~the Tribunal shall issue the supplementary decision or rectification within 60 days after the last written or oral submission on the request.

(98) The date of dispatch of the supplementary decision or rectification shall be the relevant date for the purposes of calculating the time limits specified in Articles 51(2) and 52(2) of the Convention.

(109) A supplementary decision or rectification under this Rule shall become part of the Award and shall be reflected on all certified copies of the Award.

Commentary

Article 49(2) of the ICSID Convention does not authorize a Tribunal to rectify clerical, arithmetical or similar errors in the Award on its own initiative, but only upon request of a party made within 45 days after the date on which the Award was rendered. Therefore, proposed Rule 62(1) must be deleted.

It should be clarified that the time limit for the Tribunal to issue a supplementary decision or rectification is subject to proposed Rule 8(3), which specifies that the Tribunal shall use best efforts to meet such time limit.

CHAPTER XI: INTERPRETATION, REVISION AND ANNULMENT OF THE AWARD

Rule 63: The Application

(1) A party applying for interpretation, revision or annulment of an Award shall file the application with the Secretary-General, together with any supporting documents and pay the lodging fee published in the schedule of fees.

(2) The application shall:

- (a) identify the Award to which it relates;
- (b) be in a procedural language used in the original proceeding, provided it is an official language of the Centre;
- (c) be signed by each applicant or its representative and be dated;
- (d) attach proof of any representative's authority to act; and
- (e) include the contents and be filed within the time limits referred to in paragraphs (3)-(5).

(3) An application for interpretation made pursuant to Article 50(1) of the Convention may be filed at any time after the dispatch of the Award and shall specify the points in dispute concerning the meaning or scope of the Award.

(4) An application for revision made pursuant to Article 51(1) of the Convention shall be filed within 90 days after the discovery of a fact of such a nature as decisively to affect the Award, and in any event within three years after the Award (or any supplementary decision on or rectification of the Award) was rendered. The application shall specify:

- (a) the change sought in the Award;



(b) the newly discovered fact that decisively affects the Award; and
(c) evidence that when the Award was rendered that fact was unknown to the Tribunal and to the applicant, and that the applicant's ignorance of that fact was not due to negligence.

(5) An application for annulment made pursuant to Article 52(1) of the Convention shall:

(a) be filed within 120 days after the date on which the Award (or any supplementary decision on or rectification of the Award) was rendered if the application is based on any of the grounds in Article 52(1)(a), (b), (d) or (e) of the Convention; or

(b) be filed within 120 days after the discovery of corruption on the part of a member of the Tribunal and in any event within three years after the date on which the Award (or any supplementary decision on or rectification of the Award) was rendered, if the application is based on Article 52(1)(c) of the Convention; and

(c) specify the grounds on which it is based, limited to the grounds in Article 52(1)(a)-(e) of the Convention, and the reasons in support of each ground.

(6) Upon receiving an application and the lodging fee, the Secretary-General shall promptly:

(a) transmit the application and the supporting documents to the other party;

(b) register the application, or refuse registration if the application is not made within the relevant time limits referred to in paragraphs (4) or (5); and

(c) notify the parties of the registration or refusal to register.

(7) The last date for filing an application under this Rule shall be determined in accordance with Rule 7. A complete application and evidence of payment of the lodging fee must be filed by such date.

(8) An applicant may withdraw from its application before it has been registered by filing a written notice of withdrawal with the Secretary-General. The Secretariat shall promptly notify the parties of the withdrawal, unless the application has not yet been transmitted to the other party pursuant to paragraph (6)(a).

Commentary

The application should be drawn up in a procedural language used in the original proceeding, provided it is an official language of the Centre.

Rule 66: Procedure Applicable to Interpretation, Revision and Annulment

(1) Except as provided below, the provisions of these Rules shall apply, with necessary modifications, to any procedure relating to the interpretation, revision or annulment of an Award and to the decision of the Tribunal or Committee.

(2) The procedural agreements and orders on matters addressed at the first session of the original Tribunal ~~shall~~ may apply to a proceeding under this Rule, with necessary modifications, ~~unless if both the~~ parties agree thereto ~~or the Tribunal or Committee orders otherwise~~.



(3) In addition to the application, the written procedure shall consist of ~~one~~two rounds of written submissions, unless the parties agree ~~otherwise or the Tribunal or Committee orders otherwise.~~

(4) A hearing shall be held upon the request of either party, or if ordered by the Tribunal or Committee.

(5) Subject to Rule 8(3), ~~T~~he Tribunal or Committee shall issue its decision within 120 days after the last written or oral submission on the application.

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.

The procedure should consist of *two* rounds of written submissions, unless the parties agree otherwise.

It should be clarified that the time limit to issue a decision on interpretation, revision or annulment is subject to proposed Rule 8(3), which specifies that the Tribunal (or Committee) shall use best efforts to meet such time limit.

Rule 67: Stay of Enforcement of the Award

(1) A party to an interpretation, revision or annulment proceeding may request a stay of enforcement of all or part of the Award at any time before the final decision on the application.

(2) If the stay is requested in the application for revision or annulment of an Award, enforcement shall be stayed provisionally by the Secretary-General until the Tribunal or Committee decides on the request.

(3) The following procedure shall apply, unless the parties agree otherwise:

(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, as required, on the request; and

~~(c) if a party files the request before the constitution of the Tribunal or Committee, the Secretary General shall fix time limits for written submissions on the request, so that the Tribunal or Committee may consider the request promptly upon its constitution; and~~

(d) subject to Rule 8(3), the Tribunal or Committee shall issue its decision on the request within 30 days after the latest of:

~~(i) the constitution of the Tribunal or Committee;~~

(i) the last written submission on the request; or

(ii) the last oral submission on the request.

~~(4) If a Tribunal or Committee decides to stay enforcement of the Award, it may impose conditions for the stay, or for lifting the stay, in view of all relevant circumstances.~~

~~(5) A party must promptly disclose to the Tribunal or Committee any change in the circumstances upon which the enforcement was stayed.~~



(64) The Tribunal or Committee may at any time modify or terminate a stay of enforcement, ~~on its own initiative or~~ 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.

(75) A stay of enforcement shall terminate on the date of dispatch of the decision on the application for interpretation, revision or annulment, or on the date of discontinuance of the proceeding, except that a Committee granting the partial annulment of an Award may order the temporary stay of enforcement of the unannulled portion in order to give either party an opportunity to request a new Tribunal constituted pursuant to Article 52(6) of the Convention to grant a stay.

Commentary

The parties should be allowed to agree to modify the procedure for stay of enforcement of the Award.

Only the Tribunal or Committee should fix time limits for submissions on stay of enforcement, not the Secretary-General.

It should be clarified that the time limit to issue a decision on stay of enforcement is subject to proposed Rule 8(3), which specifies that the Tribunal (or Committee) shall use best efforts to meet such time limit. Such time limit should not be calculated from the day after the constitution of the Tribunal or Committee, but from the day after 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.

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.

The possibility that a Committee granting the partial annulment of an Award may order the temporary stay of enforcement of the unannulled portion in order to give either party an opportunity to request a new Tribunal constituted pursuant to Article 52(6) of the Convention to grant a stay, as provided for in current Arbitration Rule 54(3), should be maintained in proposed Rule 67.

Rule 68: Resubmission of Dispute after an Annulment

(1) If a Committee annuls all or part of an Award, either party may file with the Secretary-General a request to resubmit the dispute to a new Tribunal, together with any supporting documents and pay the lodging fee published in the schedule of fees.



The request shall:

- (a) identify the Award to which it relates;
- (b) be in a procedural language used in the original proceeding [provided it is an official language of the Centre](#);
- (c) be signed by each requesting party or its representative and be dated;
- (d) attach proof of any representative's authority to act; and
- (e) specify which aspect(s) of the dispute is resubmitted to the new Tribunal.

(2) Upon receiving a request for resubmission and the lodging fee, the Secretary-General shall promptly:

- (a) transmit the request and the supporting documents to the other party;
- (b) register the request;
- (c) notify the parties of the registration; and
- (d) invite the parties to constitute a new Tribunal without delay, which shall have the same number of arbitrators, and be appointed by the same method as the original Tribunal.

(3) If the original Award was annulled in part, the new Tribunal shall only reconsider that part of the dispute pertaining to the annulled portion of the Award. [It may, however, stay or continue to stay the enforcement of the unannulled portion of the Award until the date its own Award is rendered.](#)

(4) Except as otherwise provided in paragraphs (1)-(3), these Rules shall apply to the resubmission proceeding.

(5) The procedural agreements and orders on matters addressed at the first session of the original Tribunal ~~shall~~ may apply to the resubmission proceeding, with necessary modifications, if both unless the parties agree ~~thereto or the new Tribunal orders otherwise~~.

Commentary

The request should be drawn up in a procedural language used in the original proceeding, provided it is an official language of the Centre.

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 Rule 68(3).

The procedural agreements and orders on matters addressed at the first session of the original Tribunal should not apply to resubmission proceeding unless *both* parties agree thereto.

CHAPTER XII: EXPEDITED ARBITRATION

Rule 69: 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 following the procedure in paragraph (2). [The parties may jointly amend the expedited](#)



arbitration rules of this Chapter, or, at the request of a party, the Tribunal may make necessary modifications to the expedited arbitration of this Chapter if the circumstances so require. At any time of the proceeding, the parties may agree to discontinue the use of the expedited arbitration rules of this Chapter, or, at the request of a party, the Tribunal may decide to discontinue of the use of the expedited arbitration rules of this Chapter if the circumstances so require.

(2) The parties shall jointly notify the Secretariat in writing of their consent to an expedited arbitration in accordance with this Chapter. Such notice must be received within 260 days after the date of registration of the Request for arbitration.

(3) Chapters I-XI of the Arbitration Rules shall apply to an expedited arbitration except that:

(a) Rules 8(1), 22, 23, 25, 35, 37, 38, 42, and 43 do not apply in an expedited arbitration pursuant to this Chapter; and

(b) Rules 26, 30, 34, 36, 40, 53, 59, 62 and 66, as modified by Rules 70-78, apply in an expedited arbitration pursuant to this Chapter.

Commentary

The parties should be allowed to jointly amend the expedited arbitration rules 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.

In addition, at any time of the proceeding, the parties should be allowed to agree to discontinue the use of the expedited arbitration rules and, at the request of a party, the Tribunal should be allowed to decide to discontinue of the use of the expedited arbitration rules if the circumstances so require.

The parties should be given at least 60 days to jointly notify the Secretariat of their consent to an expedited arbitration.

Rule 70: Number of Arbitrators and Method of Constituting the Tribunal for Expedited Arbitration

(1) The Tribunal in an expedited arbitration shall consist of a Sole Arbitrator appointed pursuant to Rule 71 or a three-member Tribunal appointed pursuant to Rule 72.

(2) The parties shall jointly notify the Secretariat in writing of their election of a Sole Arbitrator or a three-member Tribunal within 360 days after the date of registration of the Request for arbitration.

(3) If the parties do not notify the Secretariat of their election within the time limit referred to in paragraph (2), the Tribunal shall consist of a Sole Arbitrator to be appointed in accordance with Rule 71.

(4) An appointment under Rules 71-72 shall be deemed an appointment in accordance with a method agreed by the parties pursuant to Article 37(2)(a) of the Convention.

Commentary



The parties should be given at least 60 days to jointly notify the Secretariat of of their election of a Sole Arbitrator or a three-member Tribunal.

Rule 77: The Procedural Schedule for Supplementary Decision and Rectification in Expedited Arbitration

~~The consent of the parties given pursuant to Rule 69 shall not apply to The Tribunal shall issue a supplementary decision or rectification pursuant to Rule 62 within 30 days after the last written or oral submission on the request.~~

Commentary

The consent of the parties to expedited arbitration should only cover the original arbitration proceeding and should not extend to post-award remedies.

Rule 78: The Procedural Schedule for an Application for Interpretation, Revision or Annulment of an Award Rendered in Expedited Arbitration

~~(1) A Tribunal may rectify any clerical, arithmetical or similar error in the Award on its own initiative within 15 days after rendering the Award.~~

~~(2) The following schedule for written submissions and the hearing shall apply to the procedure relating to an~~ The consent of the parties given pursuant to Rule 69 shall not apply to interpretation, revision or annulment of an Award rendered in an expedited arbitration.:

~~(a) the applicant shall file a memorial on interpretation, revision or annulment within 30 days after the first session;~~

~~(b) the other party shall file a counter-memorial on interpretation, revision or annulment within 30 days after the memorial;~~

~~(c) a hearing shall be held within 45 days after the date for filing the countermemorial;~~

~~(d) the parties shall file statements of costs within 5 days after the last day of the hearing referred to in paragraph (2)(c); and~~

~~(e) the Tribunal or Committee shall render the decision on interpretation, revision or annulment as soon as possible, and in any event no later than 60 days after the hearing referred to in paragraph (2)(c).~~

~~(3) Any schedule for submissions other than those referred to in paragraph (2) shall run in parallel with the main schedule, unless the Tribunal or Committee determines that there are exceptional circumstances that justify the suspension of the main schedule.~~

~~In fixing time limits for such submissions, the Tribunal or Committee shall take into account the expedited nature of the process.~~

Commentary

The consent of the parties to expedited arbitration should only cover the original arbitration proceeding and should not extend to post-award remedies.