

This document includes comments on specific rules which are of particular interest to Costa Rica to date. Such comments are presented without prejudice of future proposals, observations or modifications in its position as a result of discussions in the amendment process.

December 28, 2018

Costa Rica's Proposals for Amendment of the ICSID Rules

Pursuant to ICSID's invitation, the Republic of Costa Rica hereby submits its comments to the ICSID Arbitration Rules and Regulations amendment proposal, concerning the following instruments:

1. Administrative and Financial Regulations
2. Institution Rules
3. Arbitration Rules

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

All suggestions are presented in a table format. Where considered appropriate or necessary, a new proposal is suggested in brackets at the bottom of each comment.

1. Administrative and Financial Regulations

Proposal	Comments from Costa Rica
Regulation 14: Cost of Proceedings	<p>Costa Rica views this proposal in favorable terms. Such a rule will unify the methodology to calculate fees and allow for a more exact compensation, as it requires accountability and transparency for billable hours.</p> <p>Additionally, the rule proposes an important advance in making sure that any request by a member of the tribunal for a higher amount is justified and made only through the Secretary General. In practice, direct requests to the parties are undesirable because it puts them in a difficult position before the tribunal. These requests could result in increasing the overall costs of the proceedings and in compromising the independence and impartiality of the tribunal.</p> <p>Costa Rica considers the 30 days for payment is not enough time to fulfill its administrative process. It suggests including at least a period of at least 60 days.</p>
Regulation 22: Publication	<p>Costa Rica shares the objective of enhancing transparency through the Administrative and Financial Regulations, and more generally, in the arbitration process. Consequently, Costa Rica considers that publishing the award (allowing for redaction</p>

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	<p>when required) should be mandatory. Given the specific characteristics of ISDS and the fact that public interests are involved, this would be a very relevant step towards promoting greater transparency.</p> <p>Costa Rica also suggests mentioning in the rule the specific documents that should be published for greater certainty as to the coverage of this rule. In its view, the documents to be included should be the ones that provide value to external observers in terms of accountability, and not all documents. In Costa Rica's experience, it has been observed that some documents are merely procedural, and their publication could negatively affect the proceedings' good governance and may create greater confusion if taken out of context. Costa Rica suggests an alternative drafting below for consideration, listing the main documents, which in any case, contain the relevant substantive and procedural information.</p> <p style="text-align: center;">Regulation 22 Publication</p> <p>With a view to furthering the development of international law in relation to investment, the Centre shall publish:</p> <p class="list-item-l1">(a) information about the operation of the Centre; and</p> <p class="list-item-l1">[CR: (b) documents generated in proceedings, in accordance with the applicable rules.-(b) the following documents generated in proceedings: request for arbitration, memorial, counter-memorial, reply, rejoinder, decisions on jurisdiction, awards and decisions on interpretation, revision and annulment.]</p>
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2. Institution Rules

Proposal	Proposal /Comments from Costa Rica
Rule 2: Contents of the Request	<p>Costa Rica welcomes this proposal. In general, Costa Rica acknowledges the effort to create a more detailed and well supported list of requirements. These could also be easily verified when processing a request for arbitration and expedite the identification of objections to the Centre's jurisdiction on matters such as nationality and authorization to file the claim.</p> <p>Costa Rica finds the requirement of proving that a juridical person has authorization to file the request particularly useful. In one of its arbitrations, a company initiated presented a claim and afterwards, one of the shareholders requested the suspension of the proceedings alleging a lack of authorization. In such situations, a proper mandate can save costs and time. In the case of natural persons, Costa Rica sees in favorable terms the requirement to provide supporting documents to prove the nationality of the investor. This specific topic is usually an objection on jurisdiction and identifying if the case falls outside of the Centre's jurisdiction could result in saving costs.</p> <p style="text-align: center;">Rule 2 Contents of the Request</p> <p>(1) The Request shall:</p>

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	<p>(a) state whether it relates to an arbitration or conciliation proceeding;</p> <p>(b) be in English, French or Spanish;</p> <p>(c) identify each party to the dispute and provide their contact information, including electronic mail address, street address and telephone number;</p> <p>(d) be signed by each requesting party or its representative and be dated;</p> <p>(e) attach proof of any representative's authority to act; and</p> <p>(f) if the requesting party is a juridical person, state that it has obtained all necessary authorizations to file the Request and attach the authorizations.</p> <p>(2) With regard to the jurisdiction of the Centre, the Request shall include:</p> <p>(a) a description of the investment, a statement of the relevant facts, claims, and request for relief, and an indication that there is a legal dispute between the parties arising directly out of the investment;</p> <p>(b) with respect to each party's consent to submit the dispute to arbitration or conciliation under the Convention:</p> <p>(i) the instrument(s) in which each party's consent is recorded;</p> <p>(ii) the date of entry into force of the instrument(s) on which consent is based, together with supporting documents demonstrating that date; and</p> <p>(iii) the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or, if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre;</p> <p>(c) if a party is a natural person:</p> <p>(i) information concerning that person's nationality on both the date of consent and on the date of the Request, together with supporting documents demonstrating such nationality; and</p> <p>(ii) a statement that the person did not have the nationality of the Contracting State party to the dispute on the date of consent and on the date of the Request;</p> <p>(d) if a party is a juridical person:</p> <p>(i) information concerning that party's nationality on the date of consent, together with supporting documents demonstrating such nationality; and</p> <p>(ii) if that party had the nationality of the Contracting State party to the dispute on the date of consent, information identifying the agreement of the parties to treat the juridical person as a national of another Contracting State pursuant to Article 25(2)(b) of the Convention, together with supporting documents demonstrating such agreement;</p> <p>(e) if a party is a constituent subdivision or agency of a Contracting State:</p> <p>(i) the State's designation to the Centre pursuant to Article 25(1) of the Convention; and</p> <p>(ii) supporting documents demonstrating the State's approval of consent pursuant to Article 25(3) of the Convention, unless the State has notified the Centre that no such approval is required [CR:; and</p> <p>(f) an estimate of the amount of pecuniary compensation sought.]</p>
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Rule 3: Recommended additional information	<p>Costa Rica suggests including the element of estimated damages as mandatory information in Rule 2 (Contents of the Request). An initial estimate of damages has proven to be key in the preparation for the arbitration, for example replying to the RFA, hiring legal or technical counselling and consideration of mediation, conciliation or negotiation.</p> <p style="text-align: center;">Rule 3 Recommended Additional Information</p> <p>It is recommended that the Request also contain:</p> <p class="list-item-l1">[CR: (a) an estimate of the amount of pecuniary compensation sought, if any;]</p> <p class="list-item-l1">(b) a proposal concerning the number and method of appointment of arbitrators or conciliators;</p> <p class="list-item-l1">(c) the proposed procedural language(s);</p> <p class="list-item-l1">(d) any other procedural proposals; and</p> <p class="list-item-l1">(e) any procedural agreements reached by the parties.</p>
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3. Arbitration Rules

Proposal	Comments from Costa Rica
Rule 3: Method of filing	<p>Costa Rica welcomes this new rule, as it will change the method of document filing from paper to electronic. Eliminating paper will both reduce costs and is a responsible environmental policy. The encouragement of these practices is also consistent with Costa Rica's environmental policy priorities.</p> <p>In terms of the language of paragraph 1 of this Rule, Costa Rica suggests a change in the drafting to clarify that exceptions to electronic filing shall be justified by a good cause.</p> <p>Additionally, on paragraph 3 Costa Rica proposes that both, the Tribunal and the other party, may request a full version of a supporting document. A drafting proposal is included below.</p> <p style="text-align: center;">Rule 3 Method of Filing</p> <p class="list-item-l1">(1) Written submissions, observations, supporting documents and communications shall be filed electronically, unless the parties agree or the Tribunal [CR: for good cause,] 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.</p> <p class="list-item-l1">(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.</p> <p class="list-item-l1">(3) An extract of a supporting document may be filed if the omission of the text does not render the extract misleading. [CR: The other disputing party or the]he Tribunal may require a fuller extract or a complete version of the document.</p>

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Rule 7: Calculation of Time limits	With the objective of having greater certainty in the calculation of time limits, Costa Rica suggests that a specific time-zone is included in the Rule.
Rule 13: Written Submissions and Observations	<p>Costa Rica shares the proposal to paragraph 1.</p> <p>Regarding paragraph 2, while Costa Rica shares the general objective of reducing the duration of the process, it considers that this is not an adequate procedural stage to cut timeframes. As Costa Rica understands the proposed rule, the requesting party could decide when filing the RFA that it becomes also the memorial. From its point of view, if this happens, the respondent State would be left with an extremely short period to hire counselling (if necessary), object to ICSID's jurisdiction, allege that the claim is frivolous, carry out any preliminary negotiations with the claimant and reply to the RFA properly.</p> <p>Moreover, and speaking from Costa Rica's experience, the country has committed to have transparent and open procurement processes. These must be followed in order to hire legal and technical counselling. Such processes would be negatively affected with short procedural timeframes at the beginning of the arbitration. Constraints to hire adequate counselling would leave the State in an unbalanced position for its defense. For the reasons explained above, Costa Rica suggests the elimination of paragraph 2 of the proposal of Rule 13.</p> <p>Regarding the last sentence of paragraph 3, Costa Rica acknowledges the element of time effectiveness in restricting the scope of the last two submissions. Paragraph 197 of the Working Paper indicates that introduction of new facts or arguments that are not responsive to the previous pleading would need the approval by the other party or the Tribunal. Although both submissions respond to the previous filing, time effectiveness must be balanced with the flexibility that either of the parties might require. It should be noted that the reply and rejoinder are filed after document production, a phase which normally leads to new arguments. In Costa Rica's experience, introducing new facts or even documents and arguments that arise through document production has been useful. Given these reasons, Costa Rica suggests changing the last phrase of paragraph 3.</p> <p>Costa Rica agrees with paragraph 4 of the proposal of rule 13.</p> <p style="text-align: center;">Rule 13 Written Submissions and Observations</p> <p class="list-item-l1">(1) The parties shall file the following written submissions, with any supporting documents, within the time limits fixed by the Tribunal:</p> <p class="list-item-l2">(a) a memorial by the requesting party [CR:, subject to paragraph (2)];</p> <p class="list-item-l2">(b) a counter-memorial by the other party; and, if the parties so agree or the Tribunal finds it necessary:</p> <p class="list-item-l2">(c) a reply by the requesting party; and</p> <p class="list-item-l2">(d) a rejoinder by the other party.</p> <p class="list-item-l1">[CR: (2) The requesting party may elect to have the Request for arbitration considered as the memorial.]</p> <p class="list-item-l1">(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</p>

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	<p>memorial, and any necessary additional facts, a statement of law in reply to the memorial, arguments, and the request for relief. [CR: A reply and rejoinder shall at least respond be limited to responding to the previous written submission.]</p> <p>(4) The Tribunal shall grant leave to file unscheduled written submissions, observations or supporting documents upon a timely and reasoned application and only if these are necessary in view of all relevant circumstances.</p>
Rule 14: Case management conference	<p>Costa Rica has found pre-hearing conferences convened under current AR 21(2) to be very useful. If this rule will no longer exist, Costa Rica supports the alternative proposed and further considers that holding this conference at least once, should be mandatory.</p> <p style="text-align: center;">Rule 14 Case Management Conference</p> <p>With a view to expediting the proceeding, the Tribunal [CR: may convene shall convene at least once] a case management conference with the parties at any time to:</p> <p class="list-item-l1">(a) identify uncontested facts;</p> <p class="list-item-l1">(b) narrow the issues in dispute; and</p> <p class="list-item-l1">(c) address any other procedural or substantive issue related to the resolution of the dispute.</p>
Rule 16: Deliberations	<p>Costa Rica notes that, according to the Working Paper, it is possible for deliberations to occur not only at any place but also by any method. Costa Rica suggests that the second paragraph be amended to reflect this on the new rule.</p> <p style="text-align: center;">Rule 16 Deliberations</p> <p class="list-item-l1">(1) The deliberations of the Tribunal shall take place in private and remain confidential.</p> <p class="list-item-l1">(2) The Tribunal may deliberate at any place [CR: and by any method] it considers convenient.</p> <p class="list-item-l1">(3) Only members of the Tribunal shall take part in its deliberations. No other person shall be admitted unless the Tribunal decides otherwise.</p> <p class="list-item-l1">(4) The Tribunal shall deliberate on any matter for decision immediately after the last written or oral submission on that matter.</p>
Rule 19: Payment of Advances and Costs of the Proceeding	<p>While Costa Rica welcomes that the current proposal includes criteria to determine and allocate the costs of the proceeding, it suggests that ICSID considers including a special rule for a finding under Rule 35 (cases dismissed for manifest lack of merit). Such a rule could eventually be useful in cases of frivolous claims, where the investor should be responsible for all the costs of the proceeding.</p>

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Rule 21: Disclosure of Third – Party Funding	Costa Rica appreciates ICSID's efforts to strengthen transparency in arbitration through the disclosure of third-party funding (TPF). This topic has been widely discussed in the ISDS community and one of the key problems identified concerning TPF is non-disclosure, as it may lead to conflicts of interest regarding the Tribunal or counsel to the parties. Furthermore, Costa Rica welcomes that this proposal creates a continuous obligation, making sure that parties disclose any changes in their funding scheme throughout the arbitration, and that tribunals identify any connection with a funder at any stage of the proceeding.
Rule 26: Acceptance of Appointment	<p>Costa Rica views this draft article in favorable terms.</p> <p>In paragraph 1, Costa Rica supports the introduction of two positive features. First, the clarification that parties are required to provide specific information when they notify ICSID of the appointment of an arbitrator. Second, that it establishes a specific and short time frame for the appointee to accept. This will certainly result in a more expedited process.</p> <p>Costa Rica welcomes the proposed arbitrator declaration, which adds language to allow the disclosure of the arbitrator's impartiality and independence from the parties. From its point of view, this purpose will be served to a great extent, with the requirement to disclose professional, business and other significant relationships (within the past 5 years) with parties, counsel of the parties, members of the tribunal and third-party funders.</p> <p>Although Costa Rica recognizes that this is a relevant step towards a more suitable appointment of authorities, it considers that this must be complemented with a Code of Conduct to establish guidelines and clear rules for tribunal members. As expressed in its initial statement (January 2017) to this amendment process: marking the field is always the best means to assure a fair game.</p>
Rule 29: Proposal for Disqualification of Arbitrators	<p>Costa Rica recognizes that including specific time limits in the procedure for disqualification will benefit procedural efficiency. However, it believes that the proposed periods are insufficient given the actions required. For example, from Costa Rica's point of view, the 7-day period to respond to the request for disqualification is too short because it is required to do research based on alleged facts, internal consultations and request legal opinions from external counsel before drafting an official position.</p> <p>Costa Rica experienced a disqualification process that lasted over a year. While this might be an extreme case, Costa Rica respectfully suggests that the ICSID Secretariat includes a number based on the average time frames in practice; in order to have an objective bar to define reasonable periods.</p> <p>With regards to paragraph 3, Costa Rica does not share the proposal to eliminate the automatic suspension of the arbitration. Its main concern is, what will happen if no agreement is reached? In that case, it would not be possible to suspend even though one of the parties considers that the continuation of the process could affect its legitimacy. For instance, decisions taken during the parallel proceeding of disqualification, could be biased; also, if the disqualification succeeds, all actions made by the disqualified arbitrator would be void. These effects will not be easily reversible and could bring irreparable harm to due process.</p>

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	<p>Considering the above, Costa Rica suggests the following drafting:</p> <p style="text-align: center;">Rule 29 Proposal for Disqualification of Arbitrators</p> <p class="list-item-l1">(1) A party may propose the disqualification of one or more arbitrators (“proposal”) pursuant to Article 57 of the Convention.</p> <p class="list-item-l1">(2) The following procedure shall apply:</p> <p class="list-item-l2">(a) any proposal shall be filed after the constitution of the Tribunal and within [CR: 20 XX (include reasonable time)] days after the later of:</p> <p class="list-item-l3">(i) the constitution of the Tribunal; or</p> <p class="list-item-l3">(ii) the date on which the party proposing the disqualification first knew or first should have known of the facts on which the proposal is based;</p> <p class="list-item-l2">(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;</p> <p class="list-item-l2">(c) the other party shall file its response and supporting documents within [CR: seven XX (include reasonable time)] days after receipt of the written submission;</p> <p class="list-item-l2">(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 [CR: five XX (include reasonable time)] days after receipt of the written submissions referred to in paragraph (2)(c); and</p> <p class="list-item-l2">(e) the parties may file final written submissions on the proposal within [CR: seven XX (include reasonable time)] days after expiry of the time limit referred to in paragraph (2)(d).</p> <p class="list-item-l1">(3) The proceeding [CR: shall continue shall be suspended] while the proposal is pending [CR: unless it is suspended in whole or in part, by agreement of parties unless the parties agree to continue the proceedings in whole or in part]. If [CR: the proposal results in a disqualification the parties agree to continue the proceedings while the proposal is pending, and 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.</p>
Rule 36: Preliminary Objections	Costa Rica considers that in all cases preliminary objections shall be decided before continuing with the discussion of the merits. Therefore, Costa Rica suggests reflecting this on this rule.
Rule 37: Bifurcation	Costa Rica notes based on its experience that, on matters of bifurcation, flexibility has a lot of value and the analysis should be done on a case by case basis. It is important that parties can mutually agree to bifurcate the process from the beginning of the proceeding or at any moment according to each case’s characteristics. If the parties do not reach an agreement, they should have enough time to decide whether to seek bifurcation as stated in paragraph 2 (a), and to respond to a request for bifurcation, as indicated in paragraph 2(b). Furthermore, the proceedings on the merits should be suspended when bifurcation is requested, to provide the necessary space to the respondent party to reply.

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Rule 38: Consolidation	Costa Rica agrees with the alternative set out in Rule 38, as we consider that it provides more flexible process for the consolidation of arbitration processes and allows for deciding consolidation rules on a case by case basis.
Rule 38 Bis: Consolidation by order	Costa Rica prefers the first option to this rule.
Rule 42: Tribunal-Appointed Experts	<p>Costa Rica considers that the appointment proposed might increase the costs of the procedure and has the potential to tilt the burden of proof of the parties. Therefore, Costa Rica suggests that this rule includes a requirement to justify the appointment of the experts by the tribunal and maintain the consultation with the disputing parties as well as the possibility to comment on the expert report.</p> <p style="text-align: center;">Rule 42 Tribunal-Appointed Experts</p> <p class="list-item-l1">(1) [CR: Under justified circumstances] the Tribunal may appoint one or more independent experts to report to it on specific matters.</p> <p class="list-item-l1">(2) The Tribunal shall consult with the parties on the appointment of an expert, including on the terms of reference of the expert.</p> <p class="list-item-l1">(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.</p> <p class="list-item-l1">(4) The parties shall have the right to make written or oral submissions on the report of the Tribunal-appointed expert.</p> <p class="list-item-l1">(5) Rule 41(1)-(5) and (8) shall apply, with necessary modifications, to the Tribunal appointed expert.</p>
Rule 44: Publication of Awards and Decisions on Annulment	As expressed in Costa Rica's comments to Rule 22 of the Administrative and Financial Regulations, Costa Rica considers that publishing the award and decisions on annulment (allowing for redaction when required) should be mandatory. Given the specific characteristics of ISDS and the fact that public interests are involved, this would be a very relevant step towards promoting greater transparency.
Rule 45: Publication of Orders and Decisions and Rule 46: Publication of Documents Filed by a Party	As also mentioned in the comments to Rule 22 of the Administrative and Financial Regulations, it is Costa Rica's view that the documents to be published should be the ones that provide value to external observers in terms of accountability, and not all documents of the process. In Costa Rica's experience, it has been observed that some documents are merely procedural, and their publication could negatively affect the proceedings' good governance and may create greater confusion if taken out of context. Furthermore, they may create greater confusion and affect the reputation of individuals acting in the process if taken out of context.

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	<p>Following the concept expressed above, an important part of good governance is also assuring legal certainty through the protection of some information, preventing the disclosure of sensitive personal data and guaranteeing the safety and integrity of individuals. For example, in the case of experts and witnesses.</p> <p>In order to guarantee consistency, Costa Rica suggests that ICSID considers addressing publication in a single rule (Rule 44).</p>
Rule 48: Submission of Non-Disputing Parties	<p>Costa Rica shares the proposal of distinguishing between the non-disputing parties, as subjects external to the treaty, and the non-disputing Treaty Party. Both figures have a very significant value and serve different purposes due to their specific faculties. Therefore, the requirements and limitations for their participation should be separated.</p> <p>Costa Rica understands that this provision refers to non-disputing parties that are not a party to the investment treaty, also known as “amici curiae”. These consist of persons (natural or juridical) who assist the Tribunal by bringing a perspective or particular knowledge that is different from that of the disputing parties. The above opens a window for the civil society and other organizations to participate more actively in the processes, contribute to the case and enhance transparency and accountability.</p> <p>With respect to paragraph 4(c), Costa Rica considers that the participation of third parties will not lead to significant increases in the costs of arbitration, that calculating exactly what the increased costs are would be difficult and that such a measure might discourage participation of relevant stakeholders. Hence, Costa Rica suggests the deletion of this subparagraph.</p> <p style="text-align: center;">Rule 48 Submission of Non-disputing Parties</p> <p class="list-item-l1">(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.</p> <p class="list-item-l1">(2) In determining whether to permit a non-disputing party submission, the Tribunal shall consider all relevant circumstances, including:</p> <p class="list-item-l2">(a) whether the submission would address a matter within the scope of the dispute;</p> <p class="list-item-l2">(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;</p> <p class="list-item-l2">(c) whether the non-disputing party has a significant interest in the proceeding;</p> <p class="list-item-l2">(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</p> <p class="list-item-l2">(e) whether any person or entity will provide the non-disputing party with financial or other assistance to file the submission.</p> <p class="list-item-l1">(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.</p> <p class="list-item-l1">(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:</p>

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	<p>(a) the format, length or scope of the submission; (b) the date of filing; and [CR: (e) 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 party 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.</p>
Rule 49: Participation of Non-Disputing Treaty Party	<p>Costa Rica favours the proposal of a separate rule for non-disputing Treaty Parties because they may provide useful insight as to the context, object and purpose intended by the parties when they subscribed the treaty. Costa Rica has had a positive experience with this figure as a tool to assist tribunals with interpretation of the international investment agreement. For this reason, it is Costa Rica's position that the non-disputing Treaty Party's participation should be limited to the interpretation of standards and rules in the agreement. The reference to the facts and to the explicit application of treaty provisions to the specific case is not considered adequate because the non-disputing Treaty Parties lack direct knowledge of the facts.</p> <p>On this basis, Costa Rica provides the following suggestion for this provision:</p> <p style="text-align: center;">Rule 49 Participation of Non-disputing Treaty Party</p> <p class="list-item-l1">(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 [CR: application or] interpretation of a treaty at issue in the dispute.</p> <p class="list-item-l1">(2) [CR: 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.]</p> <p class="list-item-l1">(3) The parties shall have the right to make observations on the submission of the non-disputing Treaty Party.</p>
Rule 51: Security for Costs	<p>Costa Rica supports this proposal because the possibility of granting security for costs might help to discourage frivolous claims and secure the costs of the proceeding for the State involved in cases of frivolous claims. Therefore, Costa Rica believes that it would be useful for the Rules to expressly give to a tribunal the authority to award security for costs, rather than leaving it as implied under the current approach. Costa Rica provides below some drafting proposals in order to reflect this view.</p> <p>With regards to paragraph 3, Costa Rica provides below a drafting suggestion to clarify the obligation of the tribunal to take into consideration reasonable grounds when requested to grant security for costs. In the case of TPF, while its existence is not determinative, it might be relevant grounds to assume that the other party has financial difficulties and may have no resources to pay for the costs of the proceedings. At the same time, normally there is no information on whether the TPF will be liable for the costs of the proceeding in case of loss. Therefore, Costa Rica would support a reference to it in paragraph 3.</p> <p style="text-align: center;">Rule 51</p>

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	<p style="text-align: center;">Security for Costs</p> <p>(1) [CR: On the request of the other party to the dispute or on its own initiative, a Tribunal may order a party to provide security for the costs of the proceeding and determine the appropriate terms for provision of the security.]</p> <p>(2) The following procedure shall apply:</p> <p>(a) the request shall specify the circumstances that require security for costs;</p> <p>(b) the Tribunal shall fix time limits for written or oral submissions, as required, on the request;</p> <p>(c) if a party requests security for costs before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the request, so that the Tribunal may consider the request promptly upon its constitution; and</p> <p>(d) the Tribunal shall issue its decision on the request within 30 days after the latest of:</p> <p>(i) the constitution of the Tribunal;</p> <p>(ii) the last written submission on the request; or</p> <p>(iii) the last oral submission on the request.</p> <p>(3) In determining whether to order a party to provide security for costs, the Tribunal shall consider [CR: whether there are reasonable grounds to believe that a party will not be able the party's ability] to comply with an adverse decision on costs and any other relevant circumstances[CR:, including the whether the party has received third party funding and the terms thereof.]</p> <p>(4) If a party fails to comply with an order for security for costs, the Tribunal may suspend the proceeding until the security is provided. If the proceeding is suspended for more than 90 days, the Tribunal may, after consulting with the parties, order the discontinuance of the proceeding.</p> <p>(5) A party must promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.</p> <p>(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.</p>
Rule 66: Procedure Applicable to Interpretation, Revision and Annulment	<p>This proposed rule limits the pleadings to one round of submissions, unless otherwise agreed by the Parties or ordered by the Tribunal or Committee. Costa Rica considers that in annulment proceedings, parties should be granted two rounds of submissions to guarantee an adequate right of reply and proper defense, unless the parties agree otherwise. Annulment proceedings concern the decision over the legitimacy of the award, and often, of the whole arbitration itself. This is a transcendental issue that could imply great costs as a result and cannot be treated lightly.</p> <p>Costa Rica suggests the following language for this rule:</p> <p style="text-align: center;">Rule 66</p> <p style="text-align: center;">Procedure Applicable to Interpretation, Revision and Annulment</p> <p>(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.</p>

This document includes comments on specific rules which are of particular interest to Costa Rica to date. Such comments are presented without prejudice of future proposals, observations or modifications in its position as a result of discussions in the amendment process.

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	<p>(2) The procedural agreements and orders on matters addressed at the first session of the original Tribunal shall apply to a proceeding under this Rule, with necessary modifications, unless the parties agree or the Tribunal or Committee orders otherwise.</p> <p>(3) In addition to the application, the written procedure shall consist of [CR: two rounds one round] of written submissions, unless the parties agree or the Tribunal or Committee orders otherwise.</p> <p>(4) A hearing shall be held upon the request of either party, or if ordered by the Tribunal or Committee.</p> <p>(5) The Tribunal or Committee shall issue its decision within 120 days after the last written or oral submission on the application.</p>
Rules 69 -79	We appreciate ICSID's efforts to provide an alternative to reduce costs and times of the process under certain circumstances. An important feature that we would like to highlight from these Rules is the fact that expedited procedure requires consent from both disputing parties because this guarantees an adequate opportunity of defense, even within a shorter proceeding.