



**MINISTRY OF LAW AND HUMAN RIGHTS OF REPUBLIC OF INDONESIA
DIRECTORATE GENERAL OF LEGAL ADMINISTRATIVE AFFAIRS**

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Ms. Meg Kinnear
Secretary General
International Centre for Settlement of Investment Disputes ("ICSID")
World Bank Group, 1818H Street, N.W.
Washington, D.C., U.S.A

Re: Indonesia's Written Comments to the Working Paper 4

Dear Madame Secretary General,

In light of ICSID's working paper 4 proposals for ICSID Rules Amendment (issued on February 28, 2020), please find as enclose Indonesia's comments on the said working paper.

This, of course, is without prejudice to Indonesia's right to make subsequent modifications to this proposal and to complement its proposal at a later stage, including by altering, supplementing or withdrawing all, or any part, at any time.

Should you need more information, please don't hesitate to contact us.

Yours sincerely,


Cahyo R. Muzhar
Director General of Legal Administrative Affairs
Ministry of Law and Human Rights, Republic of Indonesia

Indonesia's comments on ICSID Working Paper 4

1. Notice of Third-party Funding (AR 14)

Indonesia appreciates that secretariat noted its concern regarding the importance of disclosing the Third-party Funder. Indonesia reiterates its previous position that the disclosure shall include not only the name and address of any non-party funder, but also the funding arrangement in detail.

Based on its experience, the Disclosure of Third-party Funding is not merely about the independency of the arbitrators and counsel. Thus, TPF Arrangement including information on contingency fee arrangement by the law firm representing the party, shall be automatically disclosed to:

- a. uphold the independency of the arbitrators and counsel;
- b. avoid the "arbitral hit and run" practices.
- c. Avoid the existence of "not in good faith investors" where they raises financing through TPF but averting enforcement of the award against them. Therefore, host-state deserve to order Security for Cost.

Furthermore, if a non-party as mentioned in paragraph (2) Rule 14 does not include the representative of a party, it could be very tricky as the party could hide its funder, and allow them legally evade the TPF disclosure obligation. This formulation undermines the spirit of the TPF disclosure. Therefore paragraph (2) shall be deleted. Indonesia proposes to retain the phrase "*its affiliate or its representative*" as mentioned in Working Paper 3.

With regard to paragraph (1), Indonesia is of the view the phrase "*through a donation or grant*" must be deleted as the provision is meant to cover all kind of funding, not only limited to donation or grant.

2. Security for Costs (AR 53)

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

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

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