

In this Document Israel refers only to ICSID arbitration rules. However, in similar provisions under ICSID conciliation rules and under the Additional Facility Proceedings, Israel maintains the same positions *mutatis mutandis*

Amendment Procedure to ICSID ISDS Rules

Arbitration Rules

#	Rule	Israel's position
1	Application of Rules	No comment
2	Meaning of Party and Party Representation	No comment
3	Method of Filing	With regards to para.2, we believe that room should be left for submission of supporting documents also after written submissions, as was allowed previously in the current Rule 24.
4	Routing of Written Communications	No comment
5	Procedural Languages, Translation and Interpretation	No comment
6	Correction of Errors and Deficiencies	Regarding para. 2, in light of the explanation of the Working Paper, we believe that the role of the Secretariat should be clarified vis a vis the rule of the Tribunal in this rule.
7	Calculation of Time Limits	No comment
8	Time Limits Specified by the Convention and these Rules or Fixed by the Secretary General	With regards to para. 2, it is suggested to include a duty for the SG to give the other Party an opportunity to state its views.
9	Time Limits Fixed by the Tribunal	With regards to para. 2, we believe that the Parties should also be allowed to agree upon the extension of the time limit.

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10	Waiver	No comment
11	General Duties	<p>In light of the explanation of para. 188 of the Working Paper, we are unclear whether this article will apply to decisions to disregard steps taken after the time limit (as stated in rule 9(3)) - although it seems like a technical measure, we believe that it is significant.</p>
12	Orders, Decisions and Agreements	No comment
13	Written Submissions and Observations	No comment
14	Case Management Conference	<p>Rule 14 Case Management Conference With a view to expediting the proceeding, the Tribunal may, at the request of the Parties or on its own initiative, convene a case management conference with the parties at any time to: (a) identify uncontested facts; (b) narrow the issues in dispute; and (c) address any other procedural or substantive issue related to the resolution of the dispute.</p> <p>This suggestion aims to maintain the opportunity set on the current AR rule 21(2) - the right of the Parties to request such meetings (though it should not obligate the Tribunal).</p>
15	Hearings	No comment
16	Deliberations	No comment
17	Quorum	No comment
18	Decisions Taken by Majority Vote	No comment

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19	Payment of Advances and Costs of the Proceeding	<p>Israel maintains that the Tribunal should be able to determine the method of assigning costs to each party, according to its case-by-case judgement. We believe that a one-for-all approach is not necessary and the current proposal for paragraph (4) reflects this position.</p> <p>Regarding rule 19(4)(b), States could sometimes need more time than the private investor to prepare for each type of case, and therefore we believe that the inclusion of the criteria of expeditiousness may be difficult to assess, and therefore we would suggest omitting this word.</p> <p>Regarding para. 5 - (5) Without prejudice to the final decision, the Tribunal may at any time make interim decisions on the costs of any part of a proceeding.</p>
20	General Provisions Regarding the Constitution of the Tribunal	<p>In order to avoid intertwining investment disputes with political ones, Israel proposes adding a new paragraph. (5):</p> <p><i>"(5) A party may not appoint an arbitrator who is a national of a State which does not maintain diplomatic relations with the state party to the dispute or with the State whose national is a party to the dispute, without agreement of the other party."</i></p> <p>With regards to para. 4, in light of the explanation in the Working Paper and to the text of current AR Rule 24, we would appreciate clarification as to the omission of 'arbitrator' from the list of persons previously involved in the dispute.</p>

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21	Disclosure of Third-party Funding	<p data-bbox="671 315 1481 472">Third-Party Funding is a major issue in recent investment arbitration discussions. Israel believes that if a balanced approach is taken, it could serve as a legitimate tool for Parties to a dispute.</p> <p data-bbox="671 510 1481 712">Subparagraph 1(a): We feel that the means of TPF referred to in this paragraph do not cover enough cases in which TPF does not include financial assistance (such as pro-bono legal representation). we suggest inserting: "<i>through a financial or non-financial donation or grant</i>"</p> <p data-bbox="671 750 1481 1243">Paragraph. 2: As we see the legitimate aspects of this tool aside with the risks attached, Israel believes that further transparency will assist in strengthening the legitimacy over the risks of this tool. We therefore propose that in addition to the name of the third-party funder, the Party using TPF shall have to provide a detailed description of the third party funder, which will include, inter alia, information regarding its ownership structure and stakeholders (in case where the funder is a legal person) as well as its potential stake in the outcome of the proceedings. Furthermore, we suggest enabling the tribunal, upon request of a party to the dispute, or on its own initiative, to require additional information regarding the TPF.</p> <p data-bbox="671 1281 1481 1527">In our view the Rule is, at the moment, missing consequences, for example in cases were discovery was made in a very late stage even after the rendering of an award. We would appreciate clarification whether such discovery could be taken into account in decision for costs or may serve as a basis for annulment procedures.</p> <p data-bbox="671 1565 1481 1812">In our view, the wording of the first para. of page 3 of the Backgrounder on Proposals for Amendment of the ICSID Rules should be incorporated into this Rule, stating that : The name of an involved funder will be provided to potential arbitrators prior to appointment to avoid inadvertent conflicts of interest .</p>
22	Method of Constituting the Tribunal	No comment

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23	Appointment of Arbitrators to a Tribunal Constituted in Accordance with Article 37(2)(b) of the Convention	No comment
24	Assistance of the Secretary-General with Appointment	Israel believes that certain limitations on the Secretary-General should be implemented when assisting in the appointment of an arbitrator, such as nationality of the appointee and ethics requirements.
25	Appointment of Arbitrators by the Chairman of the Administrative Council in Accordance with Article 38 of the Convention	See #24
26	Acceptance of Appointment	Regarding para. 5, Israel prefers the wording of the current AR rule 5(3), which is less final, and leaves some flexibility to the Parties to decide whether they want to move on or allow a grace period to the current arbitrator: If an arbitrator fails to accept his appointment within 15 days, the Secretary-General shall promptly notify the parties, and if appropriate the Chairman, and invite them to proceed to the appointment of another arbitrator in accordance with the method followed for the previous appointment.
27	Replacement of Arbitrators Prior to Constitution of the Tribunal	Israel believes that clarifications should be made with regard to the timeline in the case of replacement arbitrators, especially with regard to replacement under subparagraph 1(b).
28	Constitution of the Tribunal	No comment

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29	Proposal for Disqualification of Arbitrators	No comment
30	Decision on the Proposal for Disqualification	It seems that the timeline in para. 3 is not clear – can the procedure potentially take 60 days?
31	Incapacity or Failure to Perform Duties	No comment
32	Resignation	No comment
33	Vacancy on the Tribunal	No comment
34	First Session	Israel suggest suggest leaving Para. 4 (k) to discussion in light of the provisions adopted relating to transparency under these rules.
35	Manifest Lack of Legal Merit	No comment
36	Preliminary Objections	It is Israel's view that if a preliminary objection is filed then the requirement to submit a counter-memorial should be delayed until after the decision on the preliminary objection is made. This is in order not to force a party to spend unnecessary fund and resources for the preparation of a counter memorial, in the case it will later be decided that the whole procedure should be rejected.
37	Bifurcation	Israel believes that in addition to the provision in paragraph (4), the Tribunal should consider whether bifurcation would materially reduce the time and cost of the proceeding, the tribunal should also " <i>consider whether the avoidance of bifurcation would increase the time and cost of the proceeding.</i> ". when deciding for bifurcation according to paragraph (4), the Tribunal shall consult with both Parties and allow them to present their case regarding the decision.

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		<p>We would also suggest allowing bifurcation at the request of both Parties to the dispute.</p>
38	Consolidation or Coordination on Consent of Parties	<p>Israel believes that the decision whether or not to consolidate should remain under the mandate of the Parties and that the Secretary-General's discretion should be minimal.</p> <p>We also reckon that there should be some reference to the procedural aspect of such procedure.</p>
38BIS	Consolidation by Order	<p>Israel believes that consolidation by order should only take place as a result of the request of the State Party to the dispute. In addition, we would like to add in the end of the current text of subparagraph 6(b): "<i>...nor have the nationality of a state not having diplomatic relations with the State party to the dispute or the State whose national is a party to the dispute</i>".</p> <p>In order to prevent additional claimants joining a consolidated claim, we suggest inserting a new paragraph 7: <i>The Consolidating Arbitrator may only consolidate arbitrations specified in subparagraph 3(a)</i></p>
39	Evidence: General Principle	No comment
40	Tribunal Order to Produce Documents or Other Evidence	No comment
41	Witnesses and Experts	No comment
42	Tribunal-Appointed Experts	<p>Israel believes that the concept of a Tribunal-Appointed Expert is less favorable under ISDS mechanisms.</p> <p>If such a concept is adopted, it should be under limited and clear terms and conditions. It may only be allowed in the case where the expert is necessary for the Tribunal to have a better understanding of the facts and claims presented to it, taking into account that any relevant information should normally be</p>

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		<p>supplied by the Parties and their experts throughout the arbitration procedure. In addition, it is Israel's view that the expert shall not be able to require documents from the parties. And at least. It should be clarified that the provision of documents to an expert should be subject to the designation of the confidentiality of a document by a Party.</p>
43	Visits and Inquiries	<p>As it may increase the cost of the procedure, it is our view that such a measure will be taken only in exceptional cases. Israel would like to insert a new paragraph 3: <i>"When deciding on ordering a visit, the Tribunal shall take under advisement the financial burden on the Parties."</i></p> <p>Despite the fact that the ability of a tribunal to conduct the inquiries in a place connected to the dispute (Rule 24(2)(b)), it this opportunity of amending the rules, we suggest adding that such inquiries may be conducted, so the article could read: "... and may conduct inquiries there as appropriate <u>in accordance with the domestic law</u>". Our comment is relevant also to paragraph 3.</p>
44	Publication of Awards and Decisions on Annulment	No comment
45	Publication of Orders and Decisions	It is our view that rules regarding the publication of Orders and Decisions should be similar to the publication of Awards.
46	Publication of Documents Filed by a Party	No comment
47	Observation of Hearings	No comment
48	Submission of Non-disputing Parties	<p>Israel maintains that any Non-disputing party submission should be subject to a high threshold on its contribution to the procedure. It is our view that the tribunal should not be able to provide non-disputing Parties with access to documents provided by the Parties. Therefore, we suggest that the</p>

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		paragraph will require consent of the Parties as a rule and not only with an ability to object.
49	Participation of Non-disputing Treaty Party	<p>Israel position in its IIA policy is to distance itself from any dispute between its investors and other states, and wouldn't like other states' involvement in investment disputed in its territory. Our concern is that that such provision may cause unwanted state involvement in disputes with private investors.</p> <p>Israel believes that this provision should not be adopted under the ICSID 2019 rules amendment and be left for interested states to discuss under bilateral agreements negotiations..</p>
50	Provisional Measures	No comment
51	Security for Costs	<p>Should this Article refer only to security for costs by the claimant? Or at least para 4? Otherwise the respondent (state) could use this Article as a tool to attempt to suspend proceedings.</p> <p>In paragraph 3, Israel believes that "any other circumstances" is too broad. Hence, there should be an exhaustive list of circumstances.</p>
52	Ancillary Claims	No comment
53	Default	No comment
54	Suspension	<p>Israel suggests to insert new paragraph 2: <i>"in deciding to suspend a proceeding under subparagraph 2(c), the tribunal shall take under consideration the financial burden of such suspension on the Parties."</i></p> <p>It is our view that as paragraph 1 is drafted, the reasons for calling for suspension are not clear. Additionally, in cases were the disputing Parties agree to suspend the proceeding, the Tribunal <u>'shall'</u> suspend and shall not have discretion on the matter.</p>
55	Settlement and Discontinuance	No comment

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56	Discontinuance at Request of a Party	No comment
57	Discontinuance for Failure of Parties to Act	No comment
58	Discontinuance for Failure to Pay	We believe that such provision should be applicable only to the claimant
59	Timing of the Award	No comment
60	Contents of the Award	No comment
61	Rendering of the Award	No comment
62	Supplementary Decision and Rectification	No comment
63	Interpretation, Revision and Annulment of the Award	No comment
64	Interpretation or Revision: Reconstitution of the Tribunal	No comment
65	Annulment: Appointment of ad hoc Committee	It is our view that the Committee under this Rule bares some of the aspects relevant to appointing of a tribunal, and therefore would like that the Parties may be able to have some affect in the sense that they would be able to submit an objection to a Committee member. Furthermore, we suggest that the Secretary General may not appoint a Committee member who

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		is a national of a State which does not maintain diplomatic relations with the state party to the dispute or with the State whose national is a party to the dispute, without agreement of the other party.
66	Procedure Applicable to Interpretation, Revision and Annulment	In Israel's view it is unclear whether Rules 56-58 regarding discontinuance apply to this Procedure, as we believe they should. We suggest clarifying this matter.
67	Stay of Enforcement of the Award	No comment
68	Resubmission of Dispute after an Annulment	<p>Israel is of the view that the deletion of the second part of the current AR Rule 55(3) deserves further discussions in order to understand its practical consequences.</p> <p>With regards to paragraph 3, we suggest making the following modifications in order to adjust this paragraph with para 1(e): If the original Award was annulled in part, the new Tribunal shall only reconsider aspects of that part of the dispute pertaining to the annulled portion of the Award, as specified in paragraph 1(e).</p>
69	Consent of Parties to Expedited Arbitration	No comment
70	Number of Arbitrators and Method of Constituting the Tribunal for Expedited Arbitration	No comment
71	Number of Arbitrators and Method of Constituting the Tribunal for	We suggest that a provision similar to the one in Rule 25 should be included here, for example that the paragraph will state:

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	Expedited Arbitration	The Secretary General shall consult with the parties as far as possible before appointing an arbitrator.
72	Appointment of Three-Member Tribunal for Expedited Arbitration	Our suggestion for Rule 71 applies to this rule <i>mutatis mutandis</i> .
73	Acceptance of Appointment in Expedited Arbitration	No comment
74	First Session in Expedited Arbitration	No comment
75	The Procedural Schedule in Expedited Arbitration	We suggest to reconsider whether this timeline provided in this rule (and for the entire procedure) is feasible, especially on the part of states.
76	Default during Expedited Arbitration	No comment
77	The Procedural Schedule for Supplementary Decision and Rectification in Expedited Arbitration	No comment
78	The Procedural Schedule for an Application for Interpretation,	With regards to paragraph 1, we believe that this paragraph belongs to Rule 77.

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	Revision or Annulment of an Award Rendered in Expedited Arbitration	It is also our view that the timeline may not be feasible and we suggest extending it.
79	Resubmission of a Dispute after an Annulment in Expedited Arbitration	No comment