Singapore's comments to the proposed amendments to ICSID Rules

1. Singapore is grateful to the ICSID Secretariat for compiling a thorough and comprehensive Working Paper detailing proposals to amend the following:

a) the Arbitration Rules ("AR");
b) the Conciliation Rules ("CR");
c) the Administrative and Financial Regulations ("AFR");
d) the Institution Rules; and
e) the Additional Facility Rules and the rules of procedure annexed thereto, namely:
    (i) Arbitration Rules ("(AF)AR");
    (ii) Conciliation Rules ("(AF)CR");
    (iii) Administrative and Financial Regulations ("(AF)AFR");
    (iv) Fact-finding Rules ("(AF)FFR"); and
    (v) Mediation Rules ("(AF)MR").

2. Singapore takes the view that these proposals are sensible, practical and well-balanced and is heartened to see many of the areas of concern that we highlighted to ICSID in March 2017 were addressed in the proposed amendments.

3. We support the proposed amendments to the CR, (AF)CR, (AF)FFR, (AF)MR, and in particular, the proposed amendments which take into account the enforcement mechanism provided by the Singapore Convention on Mediation. We also strongly support the proposed amendments to the Institution Rules, the AFR and the (AF)AFR. **We have no further comments on these**.

4. We also support many of the proposed amendments to the AR and (AF)AR, but there are some rules to which we have additional comments, and would be most grateful for further information (if any) from the ICSID Secretariat. To that end, we have prepared **a table of comments for the AR**, which also encapsulates our views on the (AF)AR as many of the proposed amendments to the (AF)AR mirror those to the AR. **Where we have not made any comments, please take this to be a reflection that Singapore finds the proposed amendment to be acceptable.**

5. We have no issues with our comments being published on the ICSID website.

Abbreviations

ABBREVIATIONS	**PROCEEDINGS UNDER THE ICSID CONVENTION**
AR	Arbitration Rules
-	**PROCEEDINGS UNDER THE ICSID ADDITIONAL FACILITY**
(AF)AR	Additional Facility Arbitration Rules
-	**OTHERS**
ISDS	Investor-State dispute settlement
The Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States
The Secretariat	ICSID Secretariat
The Working Paper	Proposals for Amendment of the ICSID Rules — Working Paper

Proposed amendments to AR/(AF)AR

S/N	**Proposed ICSID Arbitration Rules**	**Observations & comments**
1.	**CHAPTER I GENERAL PROVISIONS**	-
2.	**Rule 1 Application of Rules.** (1) These Rules shall apply to any arbitration proceeding conducted under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("Convention") in accordance with Article 44 of the Convention. (2) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language. (3) These Rules may be cited as the "Arbitration Rules" of the Centre.	-
3.	**CHAPTER II CONDUCT OF THE PROCEEDING**	We note that the (AF)AR has equivalent provisions to this chapter in (AF)AR 11-29.
4.	**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.	-
5.	**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	**Note:** Same rule applies in (AF)AR 11.

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	them with the Secretariat, which shall acknowledge receipt and distribute them in accordance with Rule 4. (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) An extract of a supporting document may be filed if the omission of the text does not render the extract misleading. The Tribunal may require a fuller extract or a complete version of the document.	We note that the presumption of using electronic copies is likely to lead to cost savings and therefore support the proposal. We note ICSID's intent in the Working Paper that the tribunal should depart from the general rule of electronic filing only in extraordinary circumstances. However, this does not appear to be reflected in the wording of the rule itself, and so we suggest that this be reflected in the wording of the rule.
6.	**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, 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.	-
7.	**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.	**Note:** Same rule applies in (AF)AR 13. We support this proposal as it sets out greater clarity regarding the use of procedural languages.

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	(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 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.	However, we would like to suggest a change to the position in Rule 5(4). We think that the fact that a document filed in the proceeding need not be fully translated and the translation need not be certified unless the Tribunal orders otherwise may in fact lead to more skirmishes at the procedural stage if parties dispute translations or find issues with parts of the translation. In addition, it seems to us that in reality, for a party that does not understand the language in which a document is filed, if the document is not fully translated, costs would have to be incurred to translate it fully for the purposes of that party's understanding. Therefore, the additional work and cost will often be incurred anyway. It seems to us that while it would compromise to some extent on the speediness of the process, it would be advisable that the parties be required to fully translate any documents they intend to use for proceedings.

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	Proposed Institutional Rules 3 Recommended Additional Information It is recommended that the Request also contain: (a) an estimate of the amount of pecuniary compensation sought, if any; (b) a proposal concerning the number and method of appointment of arbitrators or conciliators; (c) the proposed procedural language(s); (d) any other procedural proposals; and (e) any procedural agreements reached by the parties.	
8.	**Rule 6 Correction of Errors and Deficiencies** (1) A party may correct an accidental error in any written submission, observation, supporting document or communication at any time before the Award is rendered, with agreement of the other party or with leave of the Tribunal. (2) The Secretariat may request that a party correct any deficiency in a filing, at the party's own cost.	-
9.	**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; (b) on which the Tribunal announces the period; or (c) on which the procedural step starting the period is taken. (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 holiday observed by the Secretariat, it shall be satisfied if the relevant step is taken or the relevant document is received by the Secretariat on the subsequent business day.	-
10.	**Rule 8 – Time Limits Specified By The Convention and these Rules or Fixed by the Secretary-General**	**Note:** Same rule applies in (AF)AR 16.

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	(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. (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 from complying with a time limit, it shall advise the parties of the reason for delay and the date when it anticipates the order, decision or Award will be delivered.	
11.	**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. (2) The Tribunal may extend a time limit it fixed upon reasoned application by a party made prior to the expiry of the time limit. 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.	**Note:** Same rule applies in (AF)AR 17.
12.	**Rule 10 Waiver** Subject to Article 45 of the Convention, if a party knows or should have known that an applicable rule, agreement of the parties, 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.	-
13.	**Rule 11 General Duties**	**Note:** Same rule applies in (AF)AR 20.

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	(1) The Tribunal shall treat the parties equally and provide each party with a reasonable opportunity to present its case. (2) The Tribunal shall consult with the parties prior to making an order or decision authorized by these Rules to be made by a Tribunal on its own initiative. (3) The Tribunal and the parties shall conduct the proceeding in an expeditious and cost effective manner. (4) The parties shall cooperate in implementing the Tribunal's orders and decisions.	
14.	**Rule 12 Orders, Decisions and Agreements** (1) The Tribunal shall make the orders and decisions required for the conduct of the proceeding. (2) Orders and decisions may be taken by any appropriate means of communication and may be signed by the President on behalf of the Tribunal, 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.	-
15.	**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 the parties so agree or the Tribunal finds it necessary: (c) a reply by the requesting party; and	**Note:** Same rule applies in (AF)AR 13. At the ICSID Rules Amendment meeting in September 2018, it was suggested by some States that the respondent should be given the right to seek "further particulars" should the claimant opt to have the RFA be treated as the first memorial pursuant to

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	(d) a rejoinder by the other party. (2) The requesting party may 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 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.	Rule 13(2). We also support this suggestion, and are of the view that this should be a general right not limited only to situations where an RFA is treated as a memorial. This will ensure that issues in dispute are crystallised sooner rather than later, which will save time and resources during the proceedings.
16.	**Rule 14 Case Management Conference** With a view to expediting the proceeding, the Tribunal may 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.	**Note:** Same rule applies in (AF)AR 23.
17.	**Rule 15 Hearings** (1) There shall be one or more hearings before the Tribunal, unless the parties agree otherwise. (2) The President of the Tribunal shall determine the date, time and method of holding hearings, after consulting with the other members of the Tribunal and the parties.	-

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	(3) If a hearing is to be held in person, it may be held at any place agreed to by the parties after consulting with the Tribunal and the Secretariat. If the parties do not agree on the place of a hearing, it shall be held at the seat of the Centre pursuant to Article 62 of the Convention. (4) Any member of the Tribunal may put questions to the parties and ask for explanations at any time during a hearing.	
18.	**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 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 deliberate on any matter for decision immediately after the last written or oral submission on that matter.	-
19.	**Rule 17 Quorum** The participation of a majority of the members of the Tribunal shall be required at the first session, hearings and deliberations, by any appropriate means of communication, unless the parties agree otherwise.	-
20.	**Rule 18 Decisions Taken by Majority Vote** The Tribunal shall take decisions by a majority of the votes of all its members. Abstention shall count as a negative vote.	-
21.	**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.	We strongly support this provision. While stopping short of explicitly setting out a default rule that costs should follow the event, there is now greater guidance on costs awards and an explicit obligation on the tribunal to give a reasoned decision on costs.

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	(2) The costs of the proceeding are all costs incurred by the parties in connection with the proceeding, including: (a) the 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 before allocating the costs of the proceeding between the parties. (4) In determining and allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including: (a) the outcome of any part of the proceeding or overall; (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.	This would ensure that Tribunals pay particular attention to setting out the factors considered in arriving at their costs allocation.
22.	**CHAPTER III - CONSTITUTION OF THE TRIBUNAL**	
23.	**Rule 20 – General Provisions Regarding the Constitution of the Tribunal** (1) The parties shall constitute a Tribunal without delay after registration of the Request for arbitration. (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	-

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	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.	
24.	**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. Such notice shall be sent to the Secretariat immediately upon registration of the Request for arbitration, or upon concluding a third-party funding arrangement after registration. (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.	**Note:** Similar rule applies in (AF)AR 32. We strongly support this new provision. This was one of the areas for reform that Singapore had raised to the Secretariat. The formulation of the rule is sufficiently flexible and addresses our earlier suggestion to the Secretariat.
25.	**Rule 22 – Method of Constituting the Tribunal**	-

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	(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.	
26.	**Rule 23 Appointment of Arbitrators to a Tribunal Constituted in Accordance with Article 37(2)(b) of The Convention** If the Tribunal is to be constituted in accordance with Article 37(2)(b) of the Convention, each party shall appoint an arbitrator and the parties shall jointly appoint the President of the Tribunal.	**Note:** Same rule applies in (AF)AR 33.
27.	**Rule 24 Assistance of the Secretary-General with Appointment** The parties may jointly request that the Secretary-General assist with the appointment of a President of the Tribunal or a Sole Arbitrator.	**Note:** Same rule applies in (AF)AR 34.
28.	**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 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. (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.	**Note:** Same rule applies in (AF)AR 36.

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29.	**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, 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 to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).	We welcome the amendments to this provision. The changes increase the information disclosed by the appointing parties and the appointee(s) for purposes of ensuring no conflicts of interest and reduces the duration required for appointment.
30.	**Rule 27 Replacement of Arbitrators Prior to Constitution of the Tribunal** (1) At any time before the Tribunal is constituted: (a) an arbitrator may withdraw an acceptance; (b) a party may replace an arbitrator whom it appointed; or	-

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	(c) the parties may agree to replace any arbitrator. (2) A replacement arbitrator shall be appointed as soon as possible, in accordance with the method by which the withdrawing or replaced arbitrator was appointed.	
31.	**Rule 28 Constitution of the Tribunal** (1) The Tribunal shall be deemed to be constituted on the date the Secretary-General notifies the parties that all the arbitrators have accepted their appointments. (2) As soon as the Tribunal is constituted, the Secretary-General shall transmit the Request for arbitration, the supporting documents, the notice of registration and communications with the parties to each member.	-
32.	**CHAPTER IV - DISQUALIFICATION OF ARBITRATORS AND VACANCIES**	-
33.	**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. (2) The following procedure shall apply: (a) any proposal shall be filed after the constitution of the Tribunal and within 20 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 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 days after receipt of the written submission; (d) the arbitrator to whom the proposal relates may file a statement limited to factual information relevant to the proposal. This statement shall be	**Note:** Same rule applies in (AF)AR 39. We support the main change to allowing proceedings to continue pending a challenge to the arbitrator, though we do share the concerns expressed by some States at the Rules Amendment meeting in September 2018 regarding the potential wastage in costs and duration downstream if a challenge subsequently proves to be successful and leads to the constitution of a new tribunal. We note the statistics provided by ICSID in its 2018 Annual Report – there were 18 proposals for disqualification filed, all of which were resolved. 1 arbitrator resigned, 16 proposals were rejected and only 1 challenge was upheld. The general trend in the industry is that while rates of success of challenges to arbitrators under ICSID arbitrations seem to be increasing, it still remains unsuccessful most of the time. Therefore,

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	filed within five days after receipt of the written submissions referred to in paragraph (2)(c); and (e) the parties may file final written submissions on the proposal within seven days after expiry of the time limit referred to in paragraph (2)(d). (3) The proceeding shall continue while the proposal is pending unless it is suspended, in whole or in part, by agreement of the parties. 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.	this proposed rule is more likely than not to increase the efficiency of the disqualification process.
34.	**Rule 30 Decision on the Proposal for Disqualification** (1) 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).	-
35.	**Rule 31 Incapacity or Failure to Perform Duties** If an arbitrator becomes incapacitated or fails to perform the duties required of an arbitrator, the procedure in Rules 29 and 30 shall apply.	-
36.	**Rule 32 Resignation** (1) An arbitrator may resign by notifying the Secretary-General and the other members of the Tribunal and providing reasons for the resignation.	-

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	(2) If the arbitrator was appointed by a party, the other members of the Tribunal shall promptly notify the Secretary-General whether they consent to the arbitrator's resignation for the purposes of Rule 33(3)(a).	
37.	**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) 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.	-
38.	**CHAPTER V - INITIAL PROCEDURES**	-
39.	**Rule 34 First Session** (1) Subject to paragraph (2), the Tribunal shall hold a first session with the parties to address the procedure, including the matters listed in paragraph (4). (2) The first session shall be held within 60 days after the Tribunal's constitution or such other period as the parties may agree. If the President of the Tribunal determines that it is not possible to convene the parties and the other members	**Note:** Same rule applies in (AF)AR 44.

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	within this period, the first session shall be held solely among the Tribunal members after consulting with the parties in writing on the matters listed in paragraph (4). (3) The first session may be held in person or remotely, by any means that the Tribunal deems appropriate. The agenda, method and date of the first session shall be determined by the President of the Tribunal after consulting with the other members and the parties. (4) Before the first session, the Tribunal shall circulate an agenda to the parties and invite their views on procedural matters, including: (a) the applicable arbitration rules; (b) the number of members required to constitute a quorum of the Tribunal; (c) the division of advances payable pursuant to the Administrative and Financial Regulation 14(5); (d) the procedural language(s), translation and interpretation; (e) the method of filing and routing of written communications; (f) the number, type and format of written submissions; (g) the place of hearings; (h) the scope, timing and procedure for requests for production of documents between the parties, if any; (i) the procedural calendar, including written submissions, hearings, the Tribunal's orders, decisions and the Award; (j) the manner of keeping the recordings and transcripts of hearings; (k) the publication of documents and recordings; and (l) the protection of confidential information. (5) The Tribunal shall issue an order recording the parties' agreements and any Tribunal decisions on the procedure within 15 days after the later of the first	

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	session or the last written submission on procedural matters addressed at the first session.	
40.	**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: (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) 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	**Note:** Same rule applies in (AF)AR 45.

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	on the objection and fix any time limit necessary for the further conduct of the proceeding.	
41.	**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: (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. If the Tribunal decides to address the preliminary objection in a separate phase, it may suspend the proceeding on the merits. (4) If a party files a preliminary objection it shall also file its counter-memorial on the merits, 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.	**Note:** Same rule applies in (AF)AR 46.

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	(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. (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.	
42.	**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: (a) if the request for bifurcation relates to a preliminary objection, a party shall file the request 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 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. (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.	**Note:** Same rule applies in (AF)AR 47.

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	(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.	
43.	**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 if the consolidation or coordination requested would promote a fair and efficient resolution of all or any claims asserted in the arbitrations.	**Note:** Same rule applies in (AF)AR 48. We strongly support this proposal. The respondents in ISDS cases are always States, and it is likely that some types of measures by a State may trigger numerous claims from investors arising from that same measure. It would be beneficial to a State, from a process or cost-management perspective, to be able to propose consolidating several parallel claims to be dealt with under one common set of proceedings.
44.	**Rule 38*bis* – Consolidation by Order** (1) A party may request full or partial consolidation of two or more arbitrations ("the individual arbitrations") pending under the ICSID Convention Arbitration Rules. (2) The individual arbitrations proposed for consolidation shall: (a) arise out of the same circumstances; (b) have a question of law or fact in common; and (c) if consolidated, promote a fair and efficient resolution of all or any of the claims asserted in the individual arbitrations. (3) A party requesting consolidation shall file a written request with the Secretary-General specifying: (a) the arbitrations proposed for consolidation; (b) the grounds for consolidation;	We wish to seek further information/statistics from the Secretariat, if available, regarding the frequency of use of voluntary consolidation procedures in investment treaties in the ISDS disputes that ICSID has administered thus far. If voluntary consolidation provisions are virtually unused, it may indicate that there is difficulty obtaining party consent, and thus suggest that "mandatory" consolidations upon application by one party is useful. This information would be helpful for Singapore's consideration of this proposed rule.

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	(c) the relevant facts and evidence relied on, attaching supporting documents; (d) observations on why consolidation is warranted; and (e) the terms of consolidation sought in the order. (4) The Secretary-General shall transmit the request for consolidation referred to in paragraph (1) to all parties named in the request and invite them to: (a) submit their observations on the request with any supporting documents within 45 days after the date of receipt of the request; and (b) indicate whether a hearing is requested or whether they consent to the order being made on the basis of the written submissions filed. (5) The Secretary-General shall also transmit a copy of the request for consolidation to all arbitrators appointed in the individual arbitrations. (6) The request for consolidation shall be decided by a single Consolidating Arbitrator who shall: (a) be selected by the Secretary-General from the ICSID Panel of Arbitrators, after consulting as far as possible with the parties named in the request for consolidation; (b) not have the nationality of any of the parties to the individual arbitrations; (c) not be appointed in any of the individual arbitrations; (d) be appointed as soon as possible, and no later than 60 days after the Secretary-General receives the request for consolidation referred to in paragraph (3); and (e) set a date for a hearing on the request for consolidation, if required, to take place no later than 30 days after the Consolidating Arbitrator accepts the appointment.	

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	(7) Pending the order on consolidation, each arbitration sought to be consolidated may be suspended by the Tribunal established for that individual arbitration, or suspended by the Secretary-General if no Tribunal has been constituted for the individual arbitration. (8) The Consolidating Arbitrator may order consolidation of the individual arbitrations in full or in part, or may reject the request for consolidation. The Consolidating Arbitrator shall give brief reasons for the order within 45 days after the last written or oral submissions. (9) If the Consolidating Arbitrator orders consolidation in full, the Tribunals constituted to hear the individual arbitrations shall be deemed discontinued pursuant to AR 53. If the Consolidating Arbitrator orders consolidation in part, the Tribunals constituted to hear the individual arbitrations shall continue only with respect to those parts that were not consolidated. (10) If the Consolidating Arbitrator orders consolidation in full or in part, a Tribunal shall be constituted to hear and decide the Consolidated Arbitration. (11) The Tribunal for the Consolidated Arbitration shall consist of three members, with one selected by the claimants jointly, one selected by the respondents jointly, and the Presiding arbitrator selected by agreement of the claimants and the respondent. If the Tribunal for the Consolidated Arbitration has not been constituted within 45 days after dispatch of the order on consolidation, the Chairman shall appoint the arbitrators not yet appointed in accordance with the procedure in AR 25. (12) The Tribunal for the Consolidated Arbitration may consider requests by other parties to join the Consolidated Arbitration. In so doing, the Tribunal shall	

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	consider the stage of the proceedings, the costs incurred to date by the existing parties, and whether the criteria referred to in paragraph (2) are met.	
45.	**CHAPTER VI - EVIDENCE**	-
46.	**Rule 39 – Evidence: General Principle** The Tribunal shall determine the admissibility and probative value of the evidence adduced.	-
47.	**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 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.	-
48.	**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. 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.	-

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	(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."	
49.	**Rule 42 – Tribunal-Appointed Experts** (1) The Tribunal may appoint one or more independent experts to report to it on specific matters. (2) The Tribunal shall consult with the parties on the appointment of an expert, including on the terms of reference of the expert. (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) Rule 41(1)-(5) and (8) shall apply, with necessary modifications, to the Tribunal appointed expert.	**Note:** This proposal is also repeated in (AF)AR 52. We support this proposal. That said, we think it would be even more helpful to have specific guidance within this rule as to the situations in which tribunals can appoint experts. We note that this was also a point raised by some States during the Rules Amendment meeting in September 2018.

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50.	**Rule 43 – Visits and Inquiries** (1) The Tribunal may order a visit to any place connected with the dispute, 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 shall 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.	-
51.	**CHAPTER VII - PUBLICATION, ACCESS TO PROCEEDINGS AND NON-DISPUTING PARTY SUBMISSIONS**	-
52.	**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: (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.	-

S/N	**Proposed ICSID Arbitration Rules**	**Observations & comments**
53.	**Rule 45 – Publication of Orders and Decisions** (1) The Centre shall publish orders and decisions 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 notifies the Centre within the 60-day 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.	**Note:** Same rule applies in (AF)AR 54.
54.	**Rule 46 – Publication of Documents Filed by a Party** Upon request of a party, the Centre shall publish any written submissions, observations or other documents which that party filed in the proceeding, with redactions agreed to by the parties.	**Note:** Same rule applies in (AF)AR 55.
55.	**Rule 47 – Observation of Hearings** (1) The Tribunal shall 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 party objects. (2) The Tribunal shall establish procedures to prevent the disclosure of confidential information to persons observing the hearings. (3) The Centre shall publish recordings and transcripts of hearings, unless either party objects.	**Note:** (AF)AR 56 is identical to AR 47.
56.	**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. (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,	**Note:** Same rule applies in (AF)AR 57. We support the participation of non-disputing parties ("NDP") in the dispute settlement process. The heightened scrutiny of the identity, activities, organization and ownership of NDP is welcome as a safeguard against abuse. However, we think it would be more desirable to set out more details as to the classes of

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	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) 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 or such documents have been designated as confidential or protected information pursuant to Rule 48*bis*. Such documents may include: (a) the notice of intent; (b) the notice of arbitration; (c) pleadings, memorials and briefs submitted to the tribunal by a disputing party; (d) minutes or transcripts of hearings of the tribunal, if available; and	information/documents that can be transmitted to a NDP, as well as classes that disputing parties are allowed to unilaterally designate as protected from disclosure. Such an approach can be found in some of the treaties that Singapore has recently concluded. We have suggested some changes to Rule 48 as well as proposed a new Rule 48*bis*, for the ICSID Secretariat's consideration (in tracked changes).

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	(e) orders, awards and decisions of the tribunal. (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. **Rule 48*bis*** (1) Confidential or protected information, as defined in paragraph 2, that has been identified in accordance with this Rule, shall not be made available to the non-disputing party. (2) Confidential or protected information consists of: (a) confidential business information; and (b) information which is protected against being made available to the public, in the case of information of the respondent, under the law of the respondent and in the case of other information, under any law or rules determined to be applicable to the disclosure of such information by the Tribunal. (3) The disputing party who submits a document sought to be designated as confidential or protected shall clearly designate the information at the time it is submitted to the Tribunal.	
57.	**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 ("nondisputing Treaty Party") to make a written submission on the application or interpretation of a treaty at issue in the dispute.	**Note:** Same rule applies in (AF)AR 58. We support this proposal. In our view, this would ensure that a non-disputing treaty party would be able to weigh in with its views on how the investment

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	(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 nondisputing Treaty Party.	treaty, which it had negotiated and agreed with the disputing treaty party, should be interpreted. We think this provision will be increasingly useful against the backdrop of a trend towards more comprehensive treaties being concluded amongst more than just two countries.
58.	**CHAPTER VIII - SPECIAL PROCEDURES**	-
59.	**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) 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: (a) the request shall specify the rights to be preserved, the measures requested, and the circumstances that require such measures; (b) the Tribunal shall fix time limits for written or oral submissions, as required, on the request; (c) 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 (d) the Tribunal shall issue its decision on the request within 30 days after the latest of:	**Note:** Same rule applies in (AF)AR 59.

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	(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. The Tribunal may also recommend provisional measures different from those requested by a party. (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. (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.	
60.	**Rule 51 – Security for Costs** (1) A party 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. (2) The following procedure shall apply: (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	**Note:** Same rule applies in (AF)AR 60. We strongly support this proposal. Many respondent States currently end up with the short end of the stick even if they succeed in defending themselves as they are statistically less successful in recovering costs than claimants. In contrast, given the relatively stronger financial standing of a State, a successful investor rarely has to worry about recovering any costs that are awarded in its favour. This proposal

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	the request; (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 (d) 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 to provide security for costs, the Tribunal shall consider the party's ability to comply with an adverse decision on costs and any other relevant circumstances. (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. (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.	would address the current systemic imbalance on costs recovery in ISDS.
61.	**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.	-

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	(2) An incidental or additional claim shall be presented no later than the date to file the reply, and a counter-claim shall be presented no later than the date to file the counter-memorial, unless the Tribunal decides otherwise.	
62.	**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.	-

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	(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 before deciding the questions submitted to it and rendering an Award.	
63.	**CHAPTER IX - SUSPENSION AND DISCONTINUANCE**	-
64.	**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	**Note:** Same rule applies in (AF)AR 63.

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	(c) 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. (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.	
65.	**Rule 55 – Settlement and Discontinuance** (1) If the parties notify the Tribunal that they have agreed to discontinue the proceeding, the Tribunal shall issue an order taking note of the discontinuance. (2) If the parties agree on a settlement of the dispute before the Award is rendered, the Tribunal: (a) shall issue an order taking note of the discontinuance of the proceeding, if the parties so request; or (b) may record the settlement in the form of an Award, if the parties file the complete and signed text of their settlement and request that the Tribunal embody such settlement in an Award. (3) The Secretary-General shall issue the order referred to in paragraphs (1) and (2)(a) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.	-
66.	**Rule 56 – Discontinuance at Request of a Party** (1) If a party requests the discontinuance of the proceeding, the Tribunal shall fix a time limit within which the other party may oppose the discontinuance. If no objection in writing is made within the time limit, the other party shall be deemed to have acquiesced in the discontinuance and the Tribunal shall issue an order taking note of the discontinuance of the proceeding. If any objection in writing is made within the time limit, the proceeding shall continue.	-

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	(2) The Secretary-General shall fix the time limit and issue the order referred to in paragraph (1) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.	
67.	**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 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.	-
68.	**Rule 58 – Discontinuance for Failure to Pay** If the parties fail to make payments to defray the costs of the proceeding as required by Administrative and Financial Regulation 14, the proceeding may be discontinued pursuant to that Regulation.	-
69.	**CHAPTER X - THE AWARD**	-
70.	**Rule 59 – Timing of the Award** (1) 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.	**Note:** Same rule applies in (AF)AR 69.

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	(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).	
71.	**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. 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.	-
72.	**Rule 61 – Rendering of the Award**	-

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	(1) 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) deposit 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.	
73.	**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 (2) 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.	-

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	(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 (2); 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. (7) Rules 60-61 shall apply to any decision of the Tribunal pursuant to this Rule. (8) The Tribunal shall issue the supplementary decision or rectification within 60 days after the last written or oral submission on the request. (9) 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. (10) 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.	
74.	**CHAPTER XI - INTERPRETATION, REVISION AND ANNULMENT OF THE AWARD**	-
75.	**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.	-

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	(2) The application shall: (a) identify the Award to which it relates; (b) be in a procedural language used in the original proceeding; (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	

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	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 (3) or (4); 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 (5)(a).	
76.	**Rule 64 Interpretation or Revision: Reconstitution of the Tribunal** (1) As soon as an application for the interpretation or revision of an Award is registered, the Secretary-General shall: (a) transmit the notice of registration, the application and any supporting documents to each member of the original Tribunal; and	-

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	(b) request each member of the Tribunal to inform the Secretary-General within 10 days whether that member can take part in the consideration of the application. (2) If all members of the Tribunal can take part in the consideration of the application, the Secretary-General shall notify the Tribunal and the parties of the reconstitution of the Tribunal. (3) If the Tribunal cannot be reconstituted in accordance with paragraph (2), the Secretary-General shall invite the parties to constitute a new Tribunal without delay. The new Tribunal shall have the same number of arbitrators and be appointed by the same method as the original Tribunal.	
77.	**Rule 65 Annulment: Appointment of *ad hoc* Committee** (1) As soon as an application for annulment of an Award is registered, the Chairman shall appoint an *ad hoc* Committee in accordance with Article 52(3) of the Convention. (2) Each member of the Committee shall provide a signed declaration in accordance with Rule 26. (3) The Committee shall be deemed to be constituted on the date the Secretary-General notifies the parties that all members have accepted their appointment.	We support the proposed amendments. We note that there were observations by some States that the list of qualifications mandated by Article 14 of the ICSID Convention did not appear to be exhaustive and so it remained open to require further qualifications of arbitrators appointed to annulment proceedings. We share this view as well. However, from a practical perspective, we are aware that to apply additional requirements to arbitrators appointed to annulment proceedings would require further discussion among the States as to what these additional requirements should be. We would be guided by the Secretariat's assessment whether there is sufficient time/interest among the States to have such discussions.
78.	**Rule 66 Procedure Applicable to Interpretation, Revision and Annulment**	-

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	(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 apply to a proceeding under this Rule, with necessary modifications, unless the parties agree or the Tribunal or Committee orders otherwise. (3) In addition to the application, the written procedure shall consist of one round of written submissions, unless the parties agree 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) The Tribunal or Committee shall issue its decision within 120 days after the last written or oral submission on the application.	
79.	**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: (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; (c) if a party files the request before the constitution of the Tribunal or Committee, the Secretary-General shall fix time limits for written	-

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	submissions on the request, so that the Tribunal or Committee may consider the request promptly upon its constitution; and (d) 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; (ii) the last written submission on the request; or (iii) 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. (6) 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. (7) 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.	
80.	**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; (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;	-

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	(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. (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 apply to the resubmission proceeding, with necessary modifications, unless the parties agree or the new Tribunal orders otherwise.	
81.	**CHAPTER XII EXPEDITED ARBITRATION**	**Note:** The same rules apply in (AF)AR 73-81. We will set out our views on this chapter here to avoid repetition. We support this new chapter regarding expedited arbitration. While there may be limits to the utility of such procedures if a particular dispute is complex and requires more time procedurally, it is in line with various States' interest to have such an option and the flexibility of opting into these procedures, in relation to smaller scale claims that could be disposed of more speedily, or if there are fewer factual issues in dispute. Ultimately, the responding State's autonomy is not fettered because the expedited procedure only applies if both disputing parties consent.