Georgia's Comments and proposals to the amended ICSID Rules proposed by ICSID as provided in Working Paper #3:

No	Rule Proposed by ICSID	Georgia's Comments and Proposals
Administrative and Financial Regulations		
1	**Regulation 14 – in relation to the issue of costs and efficiency**	Georgia maintains its position with respect to introducing additional mechanisms to ensure timeliness and efficiency on the part of the arbitrators (*See Georgia's comment to Working Paper #2*[1]). Further to the discussion during the third meeting of state representatives in November 2019, Georgia believes that proposed changes to the schedule of fees in terms of 'postponing the processing of arbitrator invoices' is not sufficient; Georgia proposes that mechanism of suspending arbitrator's fees be introduced as a rule in the Administrative and Financial Regulation. The ides of the proposal was to introduce a new rule/regulation and not just technically address the issue.

[1] "Pursuant to the Working Paper #2, paragraph 22, in response to the comments by the states, ICSID has considered options to reduce arbitrators' fees for non-timely services, but at this stage decided not to "link the payment of the prescribed fees with the timeliness". We understand the reasoning behind this decision and recognize the importance of all other the procedures and tools included in amended rules to ensure efficiency; however, we still believe that there could be several ways to address the issue of efficiency and timeliness without introducing some drastic changes in the suggested fee-structure:

1. During the Second round of state consultations Canada has proposed to introduce a mechanism whereby arbitral tribunal will not be able to submit request for payment in case of delay of the award for the additional period of time they require to issue an award and will not be able to provide good justification for such delay. In case of such delay, arbitrator's fees could be suspended unless and until they present justification for the delay."

2	**Regulation 16**	Georgia does not support the idea of extending time limits provided in Regulation 16. States can take measures in advance to ensure the timely allocation of the budget for the purposes of their pending arbitration matters; and as we understand, in case of exceptional circumstances they can always arrange with the Centre a different approach or different time limits. Moreover, as it was kindly explained by the Secretariat at the third meeting of state representatives in November 2019, party has 45 days to comply with the request for payment (30 Days + 15 Days after the notice of non-payment) and 90 Days until the proceedings are discontinued for the purposes of non-payment.
Institutional Rules		
3	**Rule 2(2)**	Georgia maintains its position that the Request for Arbitration should serve for more than just a jurisdictional filter for the purposes of registration of the request (*See Georgia's comment to Working Paper #2*[2]). Georgia does not see why the purpose of the request could not be extended beyond the jurisdiction of the Centre, especially when the recent treaty practice demonstrated that states attach great importance to the content of the first communication of dispute (whether it is referred to as Notice of Dispute or Request for Arbitration). The potential of the Request for Arbitration to serve for greater

[2] "It is very important that respondent state parties to the dispute are duly notified regarding the legal and factual basis of the dispute and the relief thought by the Claimant. The investigation of the facts and preparation of the defense requires ample time, resources and coordination inside (relevant governmental bodies and structures, or other entities involves) and outside (outside counsel, experts, etc.) the country. Therefore, it is crucially important that state receives this information as early on the case as possible. Base on the recent trends, states try more and more to include the requirements of the notice of dispute, including the information that it shall contain, in their investment treaties.

In the view of the above, it would be beneficial if this understanding is addressed and reflected in ICSID rules as well. We propose to include a language in Rule 2(2) of the Institutional Rules suggesting that the information included in the Request is not only for the purposes of the "jurisdiction of the Centre" but also to duly inform the respondent state party about the dispute initiated against it."

		purpose then provided in the current amendment of the IR 2(2) was already considered by Working Paper #I when discussing the possibility for the Request for Arbitration to be considered as the claimant's first memorial. In the view of the above, Georgia proposes to either expand the purpose of the Request in paragraph (2) of IR 2 by adding relevant language (*See Georgia's comment to Working Paper #2*[3]) or to remove reference to any purpose altogether.
Arbitration Rules[4]		
4	**Rule 37**	Georgia maintains its position with respect to document production (See *Georgia's comment to Working Paper #2*[5]). While Georgia appreciates the progress achieved so far regarding the regulation of document production, Georgia believes that the approach taken in Rule 37 does not go beyond what is already a widely excepted standard and existing practice. We believe that Rule 37 could be amended further to strengthen powers of arbitral tribunal against unreasonably and lengthy document production requests and possible abuse of procedure.

[3] "*(2) With regard to the jurisdiction of the Centre and in order to duly inform the respondent state party to the dispute, the Request shall include:"*

[4] Georgia's comments and proposals with respect to the amended Arbitration Rules proposed by ICSID shall equally extend to the corresponding provisions of the amended Additional Facility Arbitration Rules proposed by ICSID.

[5] "Document production is one of the most painful stages of the proceedings; on some cases it can results in an unreasonably lengthy and costly exercise. It has been noted in paragraph 241 of the Working Paper #2 that the arbitral tribunal has a "power to grant, deny or modify the scope of the document production", however, in practice arbitrators tend to be reluctant to use their inherent powers to properly address the lengthy and/or unreasonable production requests or abusive conduct of the party during documents production process (fishing expeditions, dilatory tactics, obstructing the other party in preparing its case and directing its resources thereto by endless written exchange on document production, etc.).

It would be highly beneficial if this problem is somehow addressed in the rules or in a separate instrument issued within ICSID that could provide guidance to the tribunal and encourage arbitrators to use their inherent powers more effectively in addressing this problem."

		Georgia also shares the view of many delegates who proposed inclusion of the rule on general exceptions from document production (to protect certain specific types of information, such business confidential or privileged information, or information exchanged on a without prejudice basis in the context of settlement negotiations, etc.).
5	**Rule 41 – costs**	Georgia concurs with the delegations that have proposed to introduce special rule on costs for the cases of manifest lack of legal merits. While Georgia is generally happy with the regulation proposed for the allocation of costs as provided in Rule 51, the manifest lack of legal merits is a specific case which warrants different approach. Thus, we would support the proposal made by Canada to award costs to the wining party and at the same time empower the Tribunal with the authority to order different allocation whenever appropriate given the circumstances of the case.
6	**Rule 63**	Various concerns of potential abuse of procedure were raised by the delegates with respect to the current version of Rule 63. As we understand the concerns were inspired by the amendments to the proposed rule which now allows either party to request the publication of any document, including the documents filed by the opposing party. We believe that the approach ultimately taken in this Rule should weigh the potential benefit of publishing documents filed by the opposing party against the potential abuse of procedure. We do not see much benefit of having the possibility to publish the documents filed by the opposing party, while we recognize the potential for the abuse of right/procedure. In the view of the above, Georgia would be in favour of reinstating the previous version whereby either party can request publication of documents which that party filed.

7	**Rule 65**	Georgia welcomes the introduction of Rule 65 in the Arbitration Rules in terms of the protection of various types of information in general. Georgia attaches significant importance specifically to the non-aggravation of the dispute and the integrity of the arbitral process and highly supports the inclusion of paragraphs (h) and (i) in Rule 65. However, we believe that it might be more reasonable to include reference to non-aggravation of the dispute and the integrity of the arbitral process as a general acceptation to the publication in a separate paragraph; Articles 7(6) and 7(7) of the UNCITRAL Transparency Rules could serve as a good guidance in this case.
8	**Rule 65(b)**	Georgia believes that the "applicable law" in Rule 65(b) needs to be specified further. The appropriate solution could be the adoption of the approach similar to one found in Article 7(2)(c) of the UNCITRAL Transparency Rules.
9	**Rule 67**	Georgia maintains its position with respect to Rule 67 in the sense that the participation of Non-Disputing Treaty Parties (NDTPs) should be limited to "interpretation" only (See Georgia's comment *to Working Paper #2*[6]*).*

[6] "Georgia proposes to maintain the version of the Rule 66(1) as proposed in Working Paper #2. In particular, Georgia believes that the participation of the Non-disputing Treaty Party (NDTP) in investor-state arbitration is important in order to make sure that the treaty is interpreted accurately in compliance with the will of the contracting parties and the meaning attributed to the terms of the treaty by the latter. In our understanding the aim of extending the possibility to the NDTPs in investor-state arbitration proceedings is to ensure correct and consistent interpretation of treaty provisions by the arbitral tribunals, which have been extensively criticized lately on this subject. However, the participation of NDTPs should not go beyond assisting the disputing parties and the arbitral tribunal in interpreting the treaty terms, i.e. NDTPs should not have a possibility to argue the case or dispute or comment in any manner on factual or legal evidence presented by the parties to the dispute.

Extending the scope of the NDTP's participation to the "application" of the treaty might provide possibility for non-disputing Treaty Parties to attempt arguing the case or somehow effecting the outcome on the case."

		With respect to the proposal of some delegations regarding NDTP participation in horal hearings, while Georgia is not in principle against such participation, we are mindful of significant additional costs for the parties. In any event, Georgia believes that participation of NDTPs in horal hearings shall be agreed by the parties or shall be subject to the leave from the Tribunal.
Mediation Rules		
10	**Issue of third party funding (TPF)**	Georgia proposes to introduce in the Mediation Rules a requirement to disclose third party funding in the process of mediation. TPF Agreements may contain arrangements that could make the entire mediation or any attempt to settle the case futile; for example, TPF Agreements main prohibit funded party to settle the matter, might grant funding party certain authority over the decision to settle or might provide for the funder's financial interest in the outcome of the settlement. Such arrangements could ultimately effect the possibility to settle the matter in mediation and if known to the other party well in advance might have saved the latter the time and cost incurred in the process of mediation. In the view of the above, Georgia proposes to include disclosure obligation in the Mediation Rules; such disclosure should not be limited to disclosing merely the fact of funding but should extend to any arrangements made by the parties to the TPF Agreement with respect to the settlement of dispute.