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Settlement of Investment Disputes**
WORLD BANK GROUP

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A low-angle, upward-looking photograph of a modern glass skyscraper. The image shows a complex grid of glass panels held together by metal spigots, reflecting the sky and other parts of the building. The perspective creates a sense of height and architectural scale.

PROPOSALS FOR AMENDMENT OF THE ICSID RULES

**ICSID****International Centre for
Settlement of Investment Disputes**
WORLD BANK GROUP

International Centre for Settlement of Investment Disputes

ICSID was established in 1966 by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention). The ICSID Convention is a multilateral treaty formulated by the Executive Directors of the World Bank to further the Bank's objective of promoting international investment.

ICSID is an independent, depoliticized and effective dispute-settlement institution. Its availability to investors and States helps to promote international investment by providing confidence in the dispute resolution process. It is also available for State-State disputes under investment treaties and free trade agreements, and as an administrative registry.

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ABBREVIATIONS

(AF)AFR	(Additional Facility) Administrative and Financial Regulations
(AF)AR currently A(AF)R	(Additional Facility) Arbitration Rules
(AF)CR currently C(AF)R	(Additional Facility) Conciliation Rules
AF Rules	Additional Facility Rules
AFR	Administrative and Financial Regulations
AR	Arbitration Rules – ICSID Convention
CR	Conciliation Rules – ICSID Convention
FFR currently FF(AF)R	ICSID Fact-Finding Rules
(FFR)AFR	(Fact-Finding) Administrative and Financial Regulations
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States
IR	Institution Rules – ICSID Convention
ISDS	Investor-State Dispute Settlement
Member States	Contracting States of ICSID Convention (ICSID 3)
MR	ICSID Mediation Rules
(MR)AFR	(Mediation) Administrative and Financial Regulations
NDP	Non-disputing Party
NDTP	Non-disputing Treaty Party
REIO	Regional Economic Integration Organization
TPF	Third-Party Funding
WP # 1	ICSID Working Paper on Amendment (August 2018)
WP # 2	ICSID Updated Working Paper on Amendment (March 2019)
WP # 3	ICSID Updated Working Paper on Amendment (August 2019)
WP # 4	ICSID Updated Working Paper on Amendment (February 2020)

INTRODUCTION TO WORKING PAPER # 4 – FEBRUARY 28, 2020

1. ICSID has been pursuing amended rules for investor-State proceedings since October 2016. To this end, ICSID has published three prior working papers, each setting out the proposals for amendment in English, French and Spanish, and the explanation for each proposal. This has been paired with broad consultation with States, counsel, arbitrators, private sector representatives and stakeholder groups, and an open invitation for interested parties to submit written comments on the proposals. The working papers and written comments on the proposals are available on [ICSID's rules amendment webpage](#).
2. Working Paper # 4 (WP # 4) contains the latest iteration of the proposed amended rules and is based on written comments received by February 27, 2020 and discussion during the November 11-15, 2019 consultation with Member States.
3. The WPs have been drafted by the ICSID Secretariat reflecting the comments received to date. It should go without saying that the final product will reflect an overall consensus of ICSID Member States on the package of amendments proposed, but of course no position can be attributed to any single State or commentator.
4. WP # 4 contains relatively few changes from WP # 3, reflecting the fact that increasing consensus has been obtained throughout this process. Most of the changes are linguistic or organizational, are relatively minor, and do not propose new concepts. A summary of the proposals in WP # 4 is found [here](#).
5. WP # 4 reflects a decision taken by States at the third consultation with respect to gender-neutral language. WPs # 1- # 3 used gender-neutral language and applied gender agreement of words in the French and Spanish versions. Most States commented that this created less user-friendly French and Spanish texts. As a result, the administrative regulations for each set of rules have adopted a general provision stating that the masculine gender of the word in French or Spanish will be used as the gender-neutral form and understood as referring to both the masculine and feminine gender. In turn, the gender agreement of individual words has been deleted in the French and Spanish versions of WP # 4.
6. Member States have been asked whether a further consultation on WP # 4 is required or whether the proposed amendments are ready to be attached to formal resolutions for a vote. In either instance, our goal is to place the proposed amended rules before the membership for a vote in the latter half of 2020 and, if adopted, to have these in place by early 2021.



Meg Kinnear
ICSID Secretary-General

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**I. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR ICSID CONVENTION
PROCEEDINGS
(ADMINISTRATIVE AND FINANCIAL REGULATIONS)**

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I. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR ICSID CONVENTION PROCEEDINGS (ADMINISTRATIVE AND FINANCIAL REGULATIONS)

Introductory Note

The Administrative and Financial Regulations for ICSID Convention Proceedings (Administrative and Financial Regulations) were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(a) of the ICSID Convention.

These Regulations concern the functioning of ICSID as an international institution. They also contain provisions that apply generally in proceedings and are complementary to the Convention and the Institution, Conciliation and Arbitration Rules, adopted pursuant to Article 6(1)(b) and (c) of the Convention.

Chapter I Procedures of the Administrative Council

Regulation 1 Date and Place of the Annual Meeting

The Annual Meeting of the Administrative Council shall take place in conjunction with the Annual Meeting of the Board of Governors of the International Bank for Reconstruction and Development (“Bank”), unless the Council specifies otherwise.

Regulation 2 Notice of Meetings

- (1) The Secretary-General shall give each member notice of the time and place of meetings of the Administrative Council by any rapid means of communication. This notice shall be dispatched not less than 42 days prior to the date set for such meeting, except that in urgent cases notice shall be sufficient if dispatched not less than 10 days prior to the date of the meeting.
- (2) Any meeting of the Administrative Council at which no quorum is present may be adjourned by a majority of the members present and notice of the adjourned meeting need not be given.

Regulation 3 Agenda for Meetings

- (1) The Secretary-General shall prepare an agenda for each meeting of the Administrative Council under the direction of the Chairman of the Administrative Council (“Chair”) and shall transmit the agenda to each member with notice of the meeting.
- (2) Additional subjects may be placed on the agenda by any member by giving notice thereof to the Secretary-General not less than 7 days prior to the date set for such meeting.
- (3) In special circumstances the Chair, or the Secretary-General after consulting with the Chair, may at any time place additional subjects on the agenda for a meeting of the Administrative Council.
- (4) The Secretary-General shall promptly give each member notice of additional subjects on the agenda.
- (5) The Administrative Council may authorize any subject to be placed on the agenda at any time even though the notice required by this Regulation has not been given.

Regulation 4 Presiding Officer

- (1) The Chair shall be the Presiding Officer at meetings of the Administrative Council.
- (2) The Chair shall designate a Vice-President of the Bank to preside over all or any part of a meeting if the Chair is unable to preside.

Regulation 5 Secretary of the Council

- (1) The Secretary-General shall serve as Secretary of the Administrative Council.
- (2) Except as otherwise directed by the Administrative Council, the Secretary-General, in consultation with the Chair, shall make all arrangements for meetings of the Council and may coordinate with appropriate officers of the Bank for this purpose.
- (3) The Secretary-General shall present the annual report on the operation of the Centre to each Annual Meeting of the Administrative Council for its approval pursuant to

Article 6(1)(g) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“Convention”).

- (4) The Secretary-General shall publish the annual report and a summary record of the proceedings of the Administrative Council.

Regulation 6 Attendance at Meetings

- (1) The Secretary-General and the Deputy Secretaries-General may attend all meetings of the Administrative Council.
- (2) The Secretary-General, in consultation with the Chair, may invite observers to attend any meeting of the Administrative Council.

Regulation 7 Voting

- (1) Except as otherwise provided in the Convention, all decisions of the Administrative Council shall be taken by a majority of the votes cast. The Presiding Officer may ascertain the sense of the meeting in lieu of a formal vote but shall require a formal vote upon the request of any member. The written text of the motion shall be distributed to the members if a formal vote is required.
- (2) No member of the Administrative Council may vote by proxy or by any method other than in person, but a member may designate a temporary alternate to vote at any meeting at which the regular alternate is not present.
- (3) Between Annual Meetings, the Chair may call a special meeting or request that the Administrative Council vote by correspondence on a motion. The Secretary-General shall transmit the request for a vote by correspondence to each member with the text of the motion to be voted upon. Votes shall be cast within 45 days after such transmission, unless a longer period is approved by the Chair. Upon expiry of the established period, the Secretary-General shall record the results and notify all members of the outcome. The motion shall be considered lost if the replies received do not include those of a majority of the members.
- (4) If all Contracting States are not represented at a meeting of the Administrative Council and the votes necessary to adopt a proposed decision by a majority of two-thirds of the members of the Council are not obtained, the Council, with the concurrence of the Chair, may decide that the votes of those members of the Council represented at the meeting shall be registered and the votes of the absent members

shall be solicited in accordance with paragraph (3). Votes registered at the meeting may be changed by the member before the expiry of the voting period established pursuant to paragraph (3).

Chapter II The Secretariat

Regulation 8 Election of the Secretary-General and Deputy Secretaries-General

In proposing to the Administrative Council one or more candidates for the office of Secretary-General or Deputy Secretary-General, the Chair shall also make proposals with respect to their term and conditions of service.

Regulation 9 Acting Secretary-General

- (1) If there is more than one Deputy Secretary-General, the Chair may propose to the Administrative Council the order in which the Deputies shall act as Secretary-General pursuant to Article 10(3) of the Convention. In the absence of such a decision by the Administrative Council, the Secretary-General shall determine the order in which the Deputies shall act as Secretary-General.
- (2) The Secretary-General shall designate the member of the staff of the Centre who shall act as Secretary-General during the absence or inability to act of the Secretary-General and the Deputy Secretaries-General. If there should be a simultaneous vacancy in the offices of Secretary-General and Deputy Secretary-General, the Chair shall designate the member of the staff who shall act as the Secretary-General.

Regulation 10 Appointment of Staff Members

The Secretary-General shall appoint the staff of the Centre. Appointments may be made directly or by secondment.

Regulation 11 Conditions of Employment

- (1) The conditions of employment of the staff of the Centre shall be the same as those of the staff of the Bank.
- (2) The Secretary-General shall make arrangements with the Bank, within the framework of the general administrative arrangements approved by the Administrative Council pursuant to Article 6(1)(d) of the Convention, for the participation of members of the Secretariat in the Staff Retirement Plan of the Bank and in other facilities and contractual arrangements established for the benefit of the staff of the Bank.

Regulation 12 Authority of the Secretary-General

- (1) Deputy Secretaries-General and the staff of the Centre shall act solely under the direction of the Secretary-General.
- (2) The Secretary-General shall have authority to dismiss members of the Secretariat and to impose disciplinary measures. Deputy Secretaries-General may only be dismissed with the concurrence of the Administrative Council.

Regulation 13 Incompatibility of Functions

The Secretary-General, the Deputy Secretaries-General and the staff of the Centre may not serve on the Panels of Conciliators or of Arbitrators, or as members of any Commission, Tribunal or Committee.

Chapter III Financial Provisions

Regulation 14 Fees, Allowances and Charges

- (1) Each member of a Commission, Tribunal or Committee shall receive:

- (a) a fee for each hour of work performed in connection with the proceeding;
- (b) when not travelling to attend a hearing, meeting or session, reimbursement of expenses reasonably incurred for the sole purpose of the proceeding; and
- (c) when required to travel to attend a hearing, meeting or session held away from the member's place of residence:
 - (i) reimbursement of the cost of ground transportation between the points of departure and arrival;
 - (ii) reimbursement of the cost of air and ground transportation to and from the city in which the hearing, meeting or session is held; and
 - (iii) a *per diem* allowance for each day the member spends away from their place of residence.
- (2) The Secretary-General, with the approval of the Chair, shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and (c). Any request by a member for a higher amount shall be made through the Secretary-General, and not directly to the parties. Such a request must be made before the constitution of the Commission, Tribunal or Committee and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish an annual administrative charge payable by the parties to the Centre.
- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
 - (a) members of Commissions, Tribunals and Committees, and any assistants approved by the parties;
 - (b) witnesses and experts called by a Commission, Tribunal or Committee who have not been presented by a party;
 - (c) service providers that the Centre engages for a proceeding; and
 - (d) the host of any hearing, meeting or session held outside an ICSID facility.
- (5) The Centre shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or reimbursements of the members of any Commission, Tribunal or Committee, unless the parties have made sufficient payments to defray the costs of the proceeding.

Regulation 15

Payments to the Centre

- (1) To enable the Centre to pay the costs referred to in Regulation 14, the parties shall make payments to the Centre as follows:
 - (a) upon registration of a Request for arbitration or conciliation, the Secretary-General shall request the claimant to make a payment to defray the estimated costs of the proceeding through the first session of the Commission or Tribunal, which shall be considered partial payment by the claimant of the payment referred to in paragraph (1)(b);
 - (b) upon constitution of a Commission, Tribunal or Committee, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the proceeding; and
 - (c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the proceeding.
- (2) In conciliation proceedings, each party shall pay one half of the payments referred to in paragraph (1)(b) and (c). In arbitration proceedings, each party shall pay one half of the payments referred to in paragraph (1)(b) and (c), unless a different division is agreed to by the parties or ordered by the Tribunal. Payment of these sums is without prejudice to the Tribunal's final decision on costs pursuant to Article 61(2) of the Convention.
- (3) The Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.
- (4) This Regulation shall apply to requests for a supplementary decision on or rectification of an Award, applications for interpretation or revision of an Award, and requests for resubmission of the dispute.
- (5) This Regulation shall apply to applications for annulment of an Award, except that the applicant shall be solely responsible for making the payments requested by the Secretary-General.

Regulation 16 **Consequences of Default in Payment**

- (1) The payments referred to in Regulation 15 shall be payable on the date of the request from the Secretary-General.
- (2) The following procedure shall apply in the event of non-payment:
 - (a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;
 - (b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the proceeding until payment is made, after giving notice to the parties and to the Commission, Tribunal or Committee if constituted; and
 - (c) if any proceeding is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the proceeding, after giving notice to the parties and to the Commission, Tribunal or Committee if constituted.

Regulation 17 **Special Services**

- (1) The Centre may perform any special services related to disputes if the requestor deposits in advance an amount sufficient to defray the charge for such services.
- (2) Charges for special services shall normally be based on a schedule of fees published by the Secretary-General.

Regulation 18 **Fee for Lodging Requests**

The party or parties (if a request is filed jointly) wishing to institute an arbitration or conciliation proceeding, or requesting a supplementary decision, rectification, interpretation, revision or annulment of an Award, or resubmission of a dispute, shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 19 The Budget

- (1) The fiscal year of the Centre shall run from July 1 of each year to June 30 of the following year.
- (2) Before the end of each fiscal year, the Secretary-General shall prepare a budget indicating expected expenditures of the Centre (excepting those to be incurred on a reimbursable basis) and expected revenues (excepting reimbursements) for the following fiscal year. The budget shall be submitted for adoption by the Administrative Council at its next Annual Meeting in accordance with Article 6(1)(f) of the Convention.
- (3) If the Secretary-General determines during the fiscal year that the expected expenditures will exceed those authorized in the budget, or wishes to incur expenditures not previously authorized, the Secretary-General shall prepare a supplementary budget in consultation with the Chair and submit it to the Administrative Council for adoption, in accordance with Regulation 7.
- (4) The adoption of a budget constitutes authority for the Secretary-General to make expenditures and incur obligations for the purposes and within the limits specified in the budget. Unless otherwise provided by the Administrative Council, the Secretary-General may exceed the amount specified for any given budget item, provided that the total amount of the budget is not exceeded.
- (5) Pending the adoption of the budget by the Administrative Council, the Secretary-General may incur expenditures for the purposes and within the limits specified in the budget submitted, up to one quarter of the amount authorized to be expended in the previous fiscal year but in no event exceeding the amount that the Bank has agreed to make available for the current fiscal year.

Regulation 20 Assessment of Contributions

- (1) Any excess of expected expenditures over expected revenues shall be assessed on the Contracting States. Each State that is not a member of the Bank shall be assessed a fraction of the total assessment equal to the fraction of the budget of the International Court of Justice that it would have to bear if that budget were divided only among the Contracting States in proportion to the then current scale of contributions applicable to the budget of the Court; the balance of the total assessment shall be divided among the Contracting States that are members of the Bank in proportion to their respective subscription to the capital stock of the Bank. The assessments shall be calculated by the Secretary-General immediately after the

adoption of the annual budget, on the basis of the then current membership of the Centre, and shall be promptly communicated to all Contracting States. The assessments shall be payable as soon as they are communicated.

- (2) On the adoption of a supplementary budget, the Secretary-General shall immediately calculate supplementary assessments, which shall be payable as soon as they are communicated to the Contracting States.
- (3) A State which is party to the Convention during any part of a fiscal year shall be assessed for the entire fiscal year. If a State becomes a party to the Convention after the assessments for a given fiscal year have been calculated, its assessment shall be calculated by the application of the same appropriate factor as was applied in calculating the original assessments, and no recalculation of the assessments of the other Contracting States shall be made.
- (4) If, after the close of a fiscal year, it is determined that there is a cash surplus, such surplus shall, unless the Administrative Council decides otherwise, be credited to the Contracting States in proportion to the assessed contributions they had paid for that fiscal year. These credits shall be made with respect to the assessments for the fiscal year commencing two years after the end of the fiscal year to which the surplus pertains.

Regulation 21 Audits

The Secretary-General shall have an audit of the accounts of the Centre made once each year and on the basis of this audit submit a financial statement to the Administrative Council for consideration at the Annual Meeting.

Regulation 22 Administration of Proceedings

The ICSID Secretariat is the only body authorized to administer proceedings conducted under the Convention.

Chapter IV General Functions of the Secretariat

Regulation 23 List of Contracting States

The Secretary-General shall maintain and publish a list of the Contracting States (including former Contracting States, showing the date on which their notice of denunciation was received by the depositary), indicating for each:

- (a) the date on which the Convention entered into force with respect to it;
- (b) any territories excluded pursuant to Article 70 of the Convention and the dates on which the notice of exclusion and any modification of such notice were received by the depositary;
- (c) any designation pursuant to Article 25(1) of the Convention of constituent subdivisions or agencies to whose investment disputes the jurisdiction of the Centre extends;
- (d) any notification pursuant to Article 25(3) of the Convention that no approval by the State is required for the consent by a constituent subdivision or agency to the jurisdiction of the Centre;
- (e) any notification pursuant to Article 25(4) of the Convention of the class or classes of disputes which the State would or would not consider submitting to the jurisdiction of the Centre;
- (f) the competent court or other authority for the recognition and enforcement of arbitral awards, designated pursuant to Article 54(2) of the Convention;
- (g) any legislative or other measures taken pursuant to Article 69 of the Convention for making the provisions of the Convention effective in the territories of the State and communicated by the State to the Centre; and
- (h) the name, address and contact details of the authority in each State to which documents should be notified, as reported by the State.

Regulation 24 **Panels of Conciliators and of Arbitrators**

- (1) The Secretary-General shall invite each Contracting State to make its designations to the Panels of Conciliators and of Arbitrators if a designation has not been made or the period of a designation has expired.
- (2) Each designation made by a Contracting State or by the Chair shall indicate the designee's name, contact information, nationality and qualifications, with particular reference to competence in the fields of law, commerce, industry or finance.
- (3) The Secretary-General shall immediately inform a designee of their designation, the designating authority, and the end of the designation period, and shall request confirmation that the designee is willing to serve.
- (4) The Secretary-General shall maintain and publish lists naming the members of the Panels of Conciliators and of Arbitrators, indicating the contact information, nationality, end of the designation period, designating authority and qualifications of each member.

Regulation 25 **Publication**

With a view to furthering the development of international law in relation to investment, the Centre shall publish:

- (a) information about the operation of the Centre; and
- (b) documents generated in proceedings, in accordance with the rules applicable to the individual proceeding.

Regulation 26 **The Registers**

The Secretary-General shall maintain and publish a Register for each case containing all significant data concerning the institution, conduct and disposition of the proceeding, including the economic sector involved, the names of the parties and their representatives, and the method of constitution and membership of each Commission, Tribunal and Committee.

Regulation 27 **Communications with Contracting States**

- (1) Unless a specific channel of communication is notified by the State concerned, all communications required by the Convention or these Regulations to be sent to Contracting States shall be addressed to the State's representative on the Administrative Council and sent by rapid means of communication.
- (2) The time limits referred to in Articles 65 and 66 of the Convention and Regulations 2, 3 and 7 shall be calculated from the date on which the Secretary-General transmits or receives the relevant document. The date of transmittal or receipt shall be excluded from the calculation.

Regulation 28 **Secretary**

The Secretary-General shall appoint a Secretary for each Commission, Tribunal and Committee. The Secretary may be drawn from the Secretariat and shall be considered a member of its staff while serving as a Secretary. The Secretary shall:

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the Rules applicable to individual proceedings or assigned to the Secretary-General by the Convention, and delegated to the Secretary; and
- (b) assist the parties and the Commission, Tribunal or Committee with all aspects of the proceeding, including the expeditious and cost-effective conduct of the proceeding.

Regulation 29 **Depositary Functions**

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
 - (a) all requests for arbitration, conciliation, supplementary decision, rectification, interpretation, revision or applications for annulment;
 - (b) all written submissions, written statements, observations, supporting documents and communications filed in a proceeding;

- (c) the minutes, recordings and transcripts of hearings, meetings or sessions in a proceeding; and
 - (d) any order, decision, Report or Award by a Commission, Tribunal or Committee.
- (2) Subject to the applicable rules and the agreement of the parties to the proceedings, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c) and (d) available to the parties. Certified copies of the documents referred to in paragraph (1)(d) shall reflect any supplementary decision, rectification, interpretation, revision or annulment and any stay of enforcement in effect.

Chapter V

Immunities and Privileges

Regulation 30

Certificates of Official Travel

The Secretary-General may issue certificates of official travel to members of Commissions, Tribunals or Committees, to persons assisting them, to members of the Secretariat, and to the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in proceedings, indicating that they are traveling in connection with a proceeding under the Convention.

Regulation 31

Waiver of Immunities

- (1) The Secretary-General may waive the immunity of:
- (a) the Centre; and
 - (b) members of the Secretariat.
- (2) The Chair may waive the immunity of:
- (a) the Secretary-General and any Deputy Secretary-General;
 - (b) members of a Commission, Tribunal or Committee; and

- (c) the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in a proceeding, if the Commission, Tribunal or Committee concerned recommends such waiver.
- (3) The Administrative Council may waive the immunity of:
- (a) the Chair and members of the Council;
 - (b) the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in a proceeding, even if no recommendation for such a waiver is made by the Commission, Tribunal or Committee concerned; and
 - (c) the Centre or any person referred to in paragraphs (1) or (2).
- (4) A waiver under paragraph (1) or (2) shall be made in writing by the Secretary-General or Chair, as applicable. A waiver under paragraph (3) shall be made by a decision of the Administrative Council in accordance with Article 7(2) of the Convention.

Chapter VI Official Languages

Regulation 32 Languages of Regulations

- (1) The official languages of the Centre are English, French and Spanish.
- (2) The texts of these Regulations in each official language are equally authentic.
- (3) Unless otherwise stated or required by the context of the provision, the singular form of a word in the Rules and Regulations made pursuant to the Convention includes the plural form of that word.
- (4) Where required by the context, the masculine gender of a word in the French and Spanish versions of the Rules and Regulations made pursuant to the Convention shall be used as a gender-neutral form and shall be understood as referring to the masculine or feminine gender.

II. INSTITUTION RULES FOR ICSID CONVENTION PROCEEDINGS (INSTITUTION RULES)

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II. INSTITUTION RULES

Introductory Note

The Institution Rules for ICSID Convention Proceedings (Institution Rules) were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(b) of the ICSID Convention.

The Institution Rules apply from the filing of a Request for arbitration or conciliation under the ICSID Convention to the date of registration or refusal to register. If a Request is registered, the Arbitration or Conciliation Rules apply to the subsequent procedure. The Institution Rules do not apply to the initiation of post-Award remedy proceedings, or to proceedings pursuant to the Additional Facility, the ICSID Fact-Finding Rules or the ICSID Mediation Rules.

Rule 1 The Request

- (1) Any Contracting State or any national of a Contracting State wishing to institute proceedings under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“Convention”) shall file a Request for arbitration or conciliation together with the required supporting documents (“Request”) with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the dispute.

Rule 2 Contents of the Request

- (1) The Request shall:
 - (a) state whether it relates to an arbitration or conciliation proceeding;
 - (b) be in English, French or Spanish;
 - (c) identify each party to the dispute and provide their contact information, including electronic mail address, street address and telephone number;
 - (d) be signed by each requesting party or its representative and be dated;

- (e) attach proof of any representative's authority to act; and
- (f) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request and attach the authorizations.

(2) With regard to the jurisdiction of the Centre, the Request shall include:

- (a) a description of the investment, a summary of the relevant facts and claims, the request for relief, including an estimate of the amount of any damages sought, and an indication that there is a legal dispute between the parties arising directly out of the investment;
- (b) with respect to each party's consent to submit the dispute to arbitration or conciliation under the Convention:
 - (i) the instrument(s) in which each party's consent is recorded;
 - (ii) the date of entry into force of the instrument(s) on which consent is based, together with supporting documents demonstrating that date;
 - (iii) the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or, if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre; and
 - (iv) an indication that the requesting party has complied with any conditions in the instrument of consent for submission of the dispute;
- (c) if a party is a natural person:
 - (i) information concerning that person's nationality on both the date of consent and the date of the Request, together with supporting documents demonstrating such nationality; and
 - (ii) a statement that the person did not have the nationality of the Contracting State party to the dispute either on the date of consent or the date of the Request;
- (d) if a party is a juridical person:
 - (i) information concerning and supporting documents demonstrating that party's nationality on the date of consent; and
 - (ii) if that party had the nationality of the Contracting State party to the dispute on the date of consent, information concerning and supporting documents

demonstrating the agreement of the parties to treat the juridical person as a national of another Contracting State pursuant to Article 25(2)(b) of the Convention;

- (e) if a party is a constituent subdivision or agency of a Contracting State:
 - (i) the State's designation to the Centre pursuant to Article 25(1) of the Convention; and
 - (ii) supporting documents demonstrating the State's approval of consent pursuant to Article 25(3) of the Convention, unless the State has notified the Centre that no such approval is required.

Rule 3 **Recommended Additional Information**

It is recommended that the Request:

- (a) contain any procedural proposals or agreements reached by the parties, including with respect to the number and method of appointment of arbitrators or conciliators and the procedural language(s); and
- (b) include the names of the persons and entities that own or control a requesting party which is a juridical person.

Rule 4 **Filing of the Request and Supporting Documents**

- (1) The Request shall be filed electronically. The Secretary-General may require the Request to be filed in an alternative format if necessary.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Secretary-General may require a fuller extract or a complete version of the document.
- (3) The Secretary-General may require a certified copy of a supporting document.
- (4) Any document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or a complete translation of the document.

Rule 5
Receipt of the Request and Routing of Written Communications

The Secretary-General shall:

- (a) promptly acknowledge receipt of the Request to the requesting party;
- (b) transmit the Request to the other party upon receipt of the lodging fee; and
- (c) act as the official channel of written communications between the parties.

Rule 6
Review and Registration of the Request

- (1) Upon receipt of the Request and lodging fee, the Secretary-General shall review the Request pursuant to Article 28(3) or 36(3) of the Convention.
- (2) The Secretary-General shall promptly notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.

Rule 7
Notice of Registration

The notice of registration of the Request shall:

- (a) record that the Request is registered and indicate the date of registration;
- (b) confirm that all correspondence to the parties in connection with the proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Centre;
- (c) invite the parties to inform the Secretary-General of their agreement regarding the number and method of appointment of arbitrators or conciliators, unless such information has already been provided, and to constitute a Tribunal or Commission without delay;
- (d) remind the parties that registration of the Request is without prejudice to the powers and functions of the Tribunal or Commission in regard to jurisdiction of the Centre, competence of the Tribunal or Commission, and the merits; and

- (e) remind the parties to make the disclosure required by Arbitration Rule 14 or Conciliation Rule 12.

Rule 8

Withdrawal of the Request

At any time before registration, a requesting party may notify the Secretary-General in writing of the withdrawal of the Request or, if there is more than one requesting party, that it is withdrawing from the Request. The Secretary-General shall promptly notify the parties of the withdrawal, unless the Request has not yet been transmitted pursuant to Rule 5(b).

Rule 9

Final Provisions

- (1) The English, French and Spanish texts of these Rules are equally authentic.
- (2) These Rules may be cited as the “Institution Rules” of the Centre.

III. ARBITRATION RULES FOR ICSID CONVENTION PROCEEDINGS (ARBITRATION RULES)

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III. ARBITRATION RULES FOR ICSID CONVENTION PROCEEDINGS (ARBITRATION RULES)

Introductory Note

The Arbitration Rules for ICSID Convention Proceedings (Arbitration Rules) were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(c) of the ICSID Convention.

The Arbitration Rules are supplemented by the Administrative and Financial Regulations of the Centre.

The Arbitration Rules apply from the date of registration of a Request for arbitration until an Award is rendered and to any post-Award remedy proceedings.

Chapter I General Provisions

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 Tribunal shall apply any agreement of the parties on procedural matters to the extent that it does not conflict with the Convention or the Administrative and Financial Regulations.
- (3) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language.
- (4) These Rules may be cited as the “Arbitration Rules” of the Centre.

Rule 2 Party and Party Representative

- (1) For the purposes of these Rules, “party” includes, where required by the context, all parties acting as claimant or as respondent.

- (2) Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be promptly notified by that party to the Secretary-General (“representative(s)”).

Rule 3 General Duties

- (1) The Tribunal and the parties shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.
- (2) The Tribunal shall treat the parties equally and provide each party with a reasonable opportunity to present its case.

Rule 4 Method of Filing

- (1) A document to be filed in the proceeding shall be filed with the Secretary-General, who shall acknowledge its receipt.
- (2) Documents shall only be filed electronically, unless the Tribunal orders otherwise in special circumstances.

Rule 5 Supporting Documents

- (1) Supporting documents, including witness statements, expert reports, exhibits and legal authorities, shall be filed together with the request, written submission, observations or communication to which they relate.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Tribunal or a party may require a fuller extract or a complete version of the document.
- (3) If the authenticity of a supporting document is disputed, the Tribunal may order a party to provide a certified copy or to make the original available for examination.

Rule 6

Routing of Documents

The Secretary-General shall transmit a document filed in the proceeding to:

- (a) the other party, unless the parties communicate directly with each other;
- (b) the Tribunal, unless the parties communicate directly with the Tribunal on request of the Tribunal or by agreement of the parties; and
- (c) the Chairman of the Administrative Council (“Chair”) if applicable.

Rule 7

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 Secretary-General regarding the use of a language that is not an official language of the Centre. If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (2) In a proceeding with one procedural language:
 - (a) documents shall be filed and hearings shall be conducted in that procedural language;
 - (b) documents in another language shall be accompanied by a translation into that procedural language; and
 - (c) testimony in another language shall be interpreted into that procedural language.
- (3) In a proceeding with two procedural languages:
 - (a) documents may be filed and hearings may be conducted in either procedural language, unless the Tribunal orders that a document be filed in both procedural languages or that a hearing be conducted with interpretation into both procedural languages;
 - (b) documents in another language shall be accompanied by a translation into either procedural language, unless the Tribunal orders translation into both procedural languages;

- (c) testimony in another language shall be interpreted into either procedural language, unless the Tribunal orders interpretation into both procedural languages;
 - (d) the Tribunal and the Secretary-General may communicate in either procedural language; and
 - (e) all orders, decisions and the Award shall be rendered in both procedural languages, unless the parties agree otherwise.
- (4) Translation of only the relevant part of a supporting document is sufficient, unless the Tribunal orders a party to provide a fuller or a complete translation. If the translation is disputed, the Tribunal may order a party to provide a certified translation.

Rule 8

Correction of Errors

A party may correct an accidental error in a document promptly upon discovery and before the Award is rendered. The parties may refer any dispute regarding a correction to the Tribunal for determination.

Rule 9

Calculation of Time Limits

- (1) References to time shall be determined based on the time at the seat of the Centre on the relevant date.
- (2) Any time limit expressed as a period of time shall be calculated from the day after the date on which:
 - (a) the Tribunal, or the Secretary-General if applicable, announces the period; or
 - (b) the procedural step starting the period is taken.
- (3) A time limit shall be satisfied if a procedural step is taken or a document is received by the Secretary-General on the relevant date, or on the subsequent business day if the date falls on a Saturday or Sunday.

Rule 10

Fixing Time Limits

- (1) The Tribunal, or the Secretary-General if applicable, shall fix time limits for the completion of each procedural step in the proceeding, other than time limits prescribed by the Convention or these Rules.
- (2) In fixing time limits pursuant to paragraph (1), the Tribunal, or the Secretary-General if applicable, shall consult with the parties as far as possible.
- (3) The Tribunal may delegate the power to fix time limits to its President.

Rule 11

Extension of Time Limits Applicable to Parties

- (1) The time limits in Articles 49, 51 and 52 of the Convention cannot be extended. An application or request filed after the expiry of such time limits shall be disregarded.
- (2) A time limit prescribed by the Convention or these Rules, other than those referred to in paragraph (1), may only be extended by agreement of the parties. A procedural step taken or document received after the expiry of such time limit shall be disregarded, unless the parties agree otherwise or the Tribunal decides that there are special circumstances justifying the failure to meet the time limit.
- (3) A time limit fixed by the Tribunal or the Secretary-General may be extended by agreement of the parties or the Tribunal, or the Secretary-General if applicable, upon reasoned application by either party made prior to its expiry. A procedural step taken or document received after the expiry of such time limit shall be disregarded, unless the parties agree otherwise or the Tribunal, or the Secretary-General if applicable, decides that there are special circumstances justifying the failure to meet the time limit.
- (4) The Tribunal may delegate the power to extend time limits to its President.

Rule 12

Time Limits Applicable to the Tribunal

- (1) The Tribunal shall use best efforts to meet time limits to render orders, decisions and the Award.

- (2) If the Tribunal cannot comply with an applicable time limit, it shall advise the parties of the special circumstances justifying the delay and the date when it anticipates rendering the order, decision or Award.

Chapter II

Establishment of the Tribunal

Rule 13

General Provisions Regarding the Establishment of the Tribunal

- (1) The Tribunal shall be constituted 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 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 dispute as a conciliator, judge, mediator or in a similar capacity may be appointed as an arbitrator only by agreement of the parties.

Rule 14

Notice of Third-Party Funding

- (1) A party shall file a written notice disclosing the name and address of any non-party from which the party, directly or indirectly, has received funds for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding (“third-party funding”).
- (2) A non-party referred to in paragraph (1) does not include a representative of a party.
- (3) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request for arbitration, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.

- (4) The Secretary-General shall transmit the notice of third-party funding and any notification of changes to the information in such notice to the parties and to any arbitrator proposed for appointment or appointed in a proceeding for purposes of completing the arbitrator declaration required by Rule 19(3)(b).
- (5) The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding pursuant to Rule 36(3) if it deems it necessary at any stage of the proceeding.

Rule 15

Method of Constituting the Tribunal

- (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 45 days after the date of registration, the Tribunal shall be constituted in accordance with Article 37(2)(b) of the Convention.

Rule 16

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.

Rule 17

Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of the President of the Tribunal or a Sole Arbitrator.

Rule 18
Appointment of Arbitrators by the Chair 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 Chair appoint the arbitrator(s) who have not yet been appointed pursuant to Article 38 of the Convention.
- (2) The Chair shall appoint the President of the Tribunal after appointing any members who have not yet been appointed.
- (3) The Chair 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.

Rule 19
Acceptance of Appointment

- (1) A party appointing an arbitrator shall notify the Secretary-General of the appointment and provide the appointee's name, nationality and contact information.
- (2) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from the appointee and shall transmit to the appointee the information received from the parties relevant to completion of the declaration referred to in paragraph (3)(b).
- (3) Within 20 days after receipt of the request for acceptance of an appointment, the 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 proceeding.
- (4) The Secretary-General shall notify the parties of the acceptance of appointment by each arbitrator and transmit the signed declaration to them.
- (5) The Secretary-General 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 promptly disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).

Rule 20
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
 - (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.

Rule 21
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.

Chapter III
Disqualification of Arbitrators and Vacancies

Rule 22
Proposal for Disqualification of Arbitrators

- (1) A party may file a proposal to disqualify one or more arbitrators (“proposal”) in accordance with the following procedure:
- (a) the proposal shall be filed after the constitution of the Tribunal and within 21 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 proposal shall include the grounds on which it is based, a statement of the relevant facts, law and arguments, and any supporting documents;
 - (c) the other party shall file its response and supporting documents within 21 days after receipt of the proposal;
 - (d) the arbitrator to whom the proposal relates may file a statement that is limited to factual information relevant to the proposal. The statement shall be filed within five days after receipt of the response referred to in paragraph (1)(c); and
 - (e) each party may file a final written submission on the proposal within seven days after the earlier of receipt of the statement or expiry of the time limit referred to in paragraph (1)(d).
- (2) The proceeding shall be suspended upon the filing of the proposal until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding.

Rule 23

Decision on the Proposal for Disqualification

- (1) The decision on a proposal shall be made by the arbitrators not subject to the proposal or by the Chair 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 they 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 Chair as if they were a proposal to disqualify a majority of the Tribunal.
- (3) The arbitrators not subject to the proposal and the Chair shall use best efforts to decide any proposal within 30 days after the later of the expiry of the time limit referred to in Rule 22(1)(e) or the notice in Rule 23(2)(a).

Rule 24
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 22 and 23 shall apply.

Rule 25
Resignation

- (1) An arbitrator may resign by notifying the Secretary-General and the other members of the Tribunal and providing reasons for the resignation.
- (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 26(3)(a).

Rule 26
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 Chair 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. Any portion of a hearing shall be recommenced if the newly appointed arbitrator considers it necessary to decide a pending matter.

Chapter IV Conduct of the Proceeding

Rule 27 Orders and Decisions

- (1) The Tribunal shall make the orders and decisions required for the conduct of the proceeding.
- (2) Orders and decisions may be made by any appropriate means of communication and may be signed by the President on behalf of the Tribunal.
- (3) The Tribunal shall consult with the parties prior to making an order or decision it is authorized by these Rules to make on its own initiative.

Rule 28 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 object promptly, then that party shall be deemed to have waived its right to object to that non-compliance, unless the Tribunal decides that there are special circumstances justifying the failure to object promptly.

Rule 29 First Session

- (1) The Tribunal shall hold a first session to address the procedure, including the matters listed in paragraph (4).
- (2) 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.
- (3) The first session shall be held within 60 days after the constitution of the Tribunal 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 within this period, the Tribunal shall decide whether to hold the first session solely

between the President of the Tribunal and the parties, or solely among the Tribunal members based on the parties' written submissions.

- (4) Before the first session, the Tribunal shall invite the parties' views on procedural matters, including:
- (a) the applicable arbitration rules;
 - (b) the division of advances payable pursuant to Administrative and Financial Regulation 15;
 - (c) the procedural language(s), translation and interpretation;
 - (d) the method of filing and routing of documents;
 - (e) the number, length, type and format of written submissions;
 - (f) the place of hearings;
 - (g) whether there will be requests for production of documents as between the parties and if so, the scope, timing and procedure for such requests;
 - (h) the procedural calendar;
 - (i) the manner of making recordings and transcripts of hearings;
 - (j) the publication of documents and recordings;
 - (k) the treatment of confidential or protected information; and
 - (l) any other procedural matter raised by either party or the Tribunal.
- (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 session or the last written submission on procedural matters addressed at the first session.

Rule 30

Written Submissions

- (1) The parties shall file the following written submissions:
- (a) a memorial by the requesting party;
 - (b) a counter-memorial by the other party;

and, unless the parties agree otherwise:

- (c) a reply by the requesting party; and
 - (d) a rejoinder by the other party.
- (2) 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 and addressing any relevant facts that are new or could not have been known prior to filing the reply or rejoinder.
- (3) A party may file unscheduled written submissions, observations or supporting documents only after obtaining leave of the Tribunal, unless the filing of such documents is provided for by the Convention or these Rules. The Tribunal may grant such leave upon a timely and reasoned application if it finds such written submissions, observations or supporting documents are necessary in view of all relevant circumstances.

Rule 31

Case Management Conference

With a view to conducting an expeditious and cost-effective proceeding, the Tribunal shall convene one or more case management conferences with the parties at any time after the first session to:

- (a) identify uncontested facts;
- (b) clarify and narrow the issues in dispute; or
- (c) address any other procedural or substantive issue related to the resolution of the dispute.

Rule 32

Hearings

- (1) The Tribunal shall hold one or more hearings, unless the parties agree otherwise.

- (2) The President of the Tribunal shall determine the date, time and method of holding a hearing after consulting with the other members of the Tribunal and the parties.
- (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 Secretary-General. 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.

Rule 33 Quorum

The participation of a majority of the members of the Tribunal by any appropriate means of communication shall be required at the first session, case management conferences, hearings and deliberations, except as provided in these Rules or unless the parties agree otherwise.

Rule 34 Deliberations

- (1) The deliberations of the Tribunal shall take place in private and remain confidential.
- (2) The Tribunal may deliberate at any place and by any means it considers appropriate.
- (3) The Tribunal may be assisted by the Secretary of the Tribunal at its deliberations. No other person shall assist the Tribunal at its deliberations, unless the Tribunal decides otherwise and notifies the parties.
- (4) The Tribunal shall deliberate on any matter for decision immediately after the last written or oral submission on that matter.

Rule 35 Decisions Made by Majority Vote

The Tribunal shall make decisions by a majority of the votes of all its members. Abstention shall count as a negative vote.

Chapter V Evidence

Rule 36 Evidence: General Principles

- (1) The Tribunal shall determine the admissibility and probative value of the evidence adduced.
- (2) Each party has the burden of proving the facts relied on to support its claim or defense.
- (3) The Tribunal may call upon a party to produce documents or other evidence if it deems it necessary at any stage of the proceeding.

Rule 37 Disputes Arising from Requests for Production of Documents

In deciding a dispute arising out of a party's objection to the other party's request for production of documents, the Tribunal shall consider all relevant circumstances, including:

- (a) the scope and timeliness of the request;
- (b) the relevance and materiality of the documents requested;
- (c) the burden of production; and
- (d) the basis of the objection.

Rule 38 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.
- (5) A witness shall be examined in person unless the Tribunal determines that another means of examination is appropriate in the circumstances.
- (6) 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.”
- (7) Paragraphs (1)-(5) shall apply, with necessary modifications, to evidence given by an expert.
- (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.”

Rule 39

Tribunal-Appointed Experts

- (1) Unless the parties agree otherwise, the Tribunal may appoint one or more independent experts to report to it on specific matters within the scope of the dispute.
- (2) The Tribunal shall consult with the parties on the appointment of an expert, including on the terms of reference and fees of the expert.
- (3) Upon accepting an appointment by the Tribunal, an expert shall provide a signed declaration in the form published by the Centre.
- (4) 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.
- (5) The parties shall have the right to make written and oral submissions on the report of the Tribunal-appointed expert, as required.
- (6) Rule 38 shall apply, with necessary modifications, to the Tribunal-appointed expert.

Rule 40

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 relevant terms.
- (3) The parties shall have the right to participate in any visit or inquiry.

Chapter VI

Special Procedures

Rule 41

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 45 days after the constitution of the Tribunal;
 - (b) the written submission shall specify the grounds on which the objection is based and contain a statement of the relevant facts, law and arguments;
 - (c) the Tribunal shall fix time limits for written and oral submissions on the objection, as required;
 - (d) if a party files the objection before the 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
 - (e) the Tribunal shall render its decision or Award 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) 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 on the objection and fix any time limit necessary for the further conduct of the proceeding.
- (4) A decision that a claim is not manifestly without legal merit shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 43 or to argue subsequently in the proceeding that a claim is without legal merit.

Rule 42 **Bifurcation**

- (1) A party may request that a question be addressed in a separate phase of the proceeding (“request for bifurcation”).
- (2) If a request for bifurcation relates to a preliminary objection, Rule 44 shall apply.
- (3) The following procedure shall apply to a request for bifurcation other than a request referred to in Rule 44:
- (a) the request for bifurcation shall be filed as soon as possible;
 - (b) the request for bifurcation shall state the questions to be bifurcated;
 - (c) the Tribunal shall fix time limits for written and oral submissions on the request for bifurcation, as required;
 - (d) the Tribunal shall issue its decision on the request for bifurcation within 30 days after the later of the last written or oral submission on the request; and
 - (e) the Tribunal shall fix any time limit necessary for the further conduct of the proceeding.
- (4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
- (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and

- (c) the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical.
- (5) If the Tribunal orders bifurcation pursuant to this Rule, it shall suspend the proceeding with respect to any questions to be addressed at a later phase, unless the parties agree otherwise or the Tribunal decides that there are special circumstances that do not justify suspension.
- (6) The Tribunal may at any time on its own initiative decide whether a question should be addressed in a separate phase of the proceeding.

Rule 43

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 (“preliminary objection”).
- (2) A party shall notify the Tribunal and the other party of its intent to file a preliminary objection as soon as possible.
- (3) The Tribunal may address a preliminary objection in a separate phase of the proceeding or join the objection to the merits.

Rule 44

Preliminary Objections with a Request for Bifurcation

- (1) The following procedure shall apply with respect to a request for bifurcation relating to a preliminary objection:
 - (a) unless the parties agree otherwise, the request for bifurcation shall be filed:
 - (i) within 45 days after filing the memorial on the merits;
 - (ii) within 45 days after filing the written submission containing the ancillary claim, if the objection relates to the ancillary claim; or
 - (iii) as soon as possible after the facts on which the preliminary objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (1)(a)(i) and (ii);

- (b) the request for bifurcation shall state the preliminary objection to which it relates;
 - (c) unless the parties agree otherwise, the proceeding on the merits shall be suspended until the Tribunal decides whether to bifurcate;
 - (d) the Tribunal shall fix time limits for written and oral submissions on the request for bifurcation, as required; and
 - (e) the Tribunal shall issue its decision on a request for bifurcation within 30 days after the later of the last written or oral submission on the request.
- (2) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
- (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and
 - (c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical.
- (3) If the Tribunal decides to address the preliminary objection in a separate phase of the proceeding, it shall:
- (a) suspend the proceeding on the merits, unless the parties agree otherwise, or the Tribunal decides that there are special circumstances that do not justify suspension;
 - (b) fix time limits for written and oral submissions on the preliminary objection, as required;
 - (c) render its decision or Award on the preliminary objection within 180 days after the later of the last written or oral submission, in accordance with Rule 58(1)(b); and
 - (d) fix any time limit necessary for the further conduct of the proceeding if the Tribunal does not render an Award.
- (4) If the Tribunal decides to join the preliminary objection to the merits, it shall:
- (a) fix time limits for written and oral submissions on the preliminary objection, as required;

- (b) modify any time limits for written and oral submissions on the merits, as required; and
- (c) render its Award within 240 days after the later of the last written or oral submission in the proceeding, in accordance with Rule 58(1)(c).

Rule 45

Preliminary Objections without a Request for Bifurcation

- (1) If a party does not request bifurcation of a preliminary objection within the time limits referred to in Rule 44(1)(a) or the parties confirm that they will not request bifurcation, the objection shall be joined to the merits and the following procedure shall apply:
 - (a) the Tribunal shall fix time limits for written and oral submissions on the preliminary objection, as required;
 - (b) the memorial on the preliminary objection shall be filed:
 - (i) by the date to file the counter-memorial on the merits;
 - (ii) by the date to file the next written submission after an ancillary claim, if the objection relates to the ancillary claim; or
 - (iii) as soon as possible after the facts on which the objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (1)(b)(i) and (ii);
 - (c) the party filing the memorial on preliminary objections shall also file its counter-memorial on the merits, or, if the objection relates to an ancillary claim, file its next written submission after the ancillary claim; and
 - (d) the Tribunal shall render its Award within 240 days after the later of the last written or oral submission in the proceeding, in accordance with Rule 58(1)(c).
- (2) The Tribunal may at any time on its own initiative consider whether a dispute or an ancillary claim is within the jurisdiction of the Centre or within its own competence.

Rule 46

Consolidation or Coordination of Arbitrations

- (1) Parties to two or more pending arbitrations administered by the Centre may agree to consolidate or coordinate these arbitrations.
- (2) Consolidation joins all aspects of the arbitrations sought to be consolidated and results in one Award. To be consolidated pursuant to this Rule, the arbitrations shall have been registered in accordance with the Convention and shall involve the same Contracting State (or constituent subdivision or agency of the Contracting State).
- (3) Coordination aligns specific procedural aspects of two or more pending arbitrations, but the arbitrations remain separate proceedings and result in separate Awards.
- (4) The parties referred to in paragraph (1) shall jointly provide the Secretary-General with proposed terms for the conduct of the consolidated or coordinated arbitrations and consult with the Secretary-General to ensure that the proposed terms are capable of being implemented.
- (5) After the consultation referred to in paragraph (4), the Secretary-General shall communicate the proposed terms agreed by the parties to the Tribunals constituted in the arbitrations. Such Tribunals shall make any order or decision required to implement these terms.

Rule 47

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 current or imminent harm to that party or prejudice to the arbitral process;
 - (b) maintain or restore the *status quo* pending determination of the dispute; or
 - (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 and oral submissions on the request, as required;
- (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:
 - (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, including:
 - (a) whether the measures are urgent and necessary; and
 - (b) the effect that the measures may have on each party.
- (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 shall 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 permitted by the instrument recording the parties' consent to arbitration.

Rule 48

Ancillary Claims

- (1) Unless the parties agree otherwise, a party may file an incidental or additional claim or a counterclaim ("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.

- (2) An incidental or additional claim shall be presented no later than in the reply, and a counterclaim shall be presented no later than in the counter-memorial, unless the Tribunal decides otherwise.
- (3) The Tribunal shall fix time limits for written and oral submissions on the ancillary claim, as required.

Rule 49

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 request in paragraph (2) relates to a failure to appear at a hearing, the Tribunal may:
 - (a) reschedule the hearing to a date within 60 days after the original date;
 - (b) proceed with the 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 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 hearing.
- (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 that is not in default 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.

Chapter VII Costs

Rule 50 Costs of the Proceeding

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 Tribunal, Tribunal assistants approved by the parties and Tribunal-appointed experts; and
- (c) the administrative charges and direct costs of the Centre.

Rule 51 Statement of and Submission on Costs

The Tribunal shall request that each party file a statement of its costs and a written submission on the allocation of costs before allocating the costs of the proceeding between the parties.

Rule 52 Decisions on Costs

- (1) In allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including:
- (a) the outcome of the proceeding or any part of it;
 - (b) the conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner and complied with these Rules and the orders and decisions of the Tribunal;

- (c) the complexity of the issues; and
 - (d) the reasonableness of the costs claimed.
- (2) The Tribunal shall award the party prevailing on an objection made pursuant to Rule 41 its costs of submitting or opposing the objection, unless the circumstances justify a different allocation of costs in accordance with paragraph (1).
- (3) The Tribunal may make an interim decision on costs at any time.
- (4) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.

Rule 53

Security for Costs

- (1) Upon request of a party, the Tribunal may order any party asserting a claim or counterclaim to provide security for costs.
- (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 and oral submissions on the request, as required;
 - (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 all relevant circumstances, including:
- (a) that party's ability to comply with an adverse decision on costs;

- (b) that party's willingness to comply with an adverse decision on costs;
 - (c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim; and
 - (d) the conduct of the parties.
- (4) The Tribunal shall consider all evidence adduced in relation to the circumstances in paragraph (3). The existence of third-party funding may form part of such evidence but is not by itself sufficient to justify an order for security for costs.
 - (5) The Tribunal shall specify any relevant terms in an order to provide security for costs and shall fix a time limit for compliance with the order.
 - (6) If a party fails to comply with an order to provide security for costs, the Tribunal may suspend the proceeding. If the proceeding is suspended for more than 90 days, the Tribunal may, after consulting with the parties, order the discontinuance of the proceeding.
 - (7) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.
 - (8) The Tribunal may at any time modify or revoke its order on security for costs, on its own initiative or upon a party's request.

Chapter VIII Suspension, Settlement and Discontinuance

Rule 54 Suspension of the Proceeding

- (1) The Tribunal shall suspend the proceeding by agreement of the parties.
- (2) The Tribunal may suspend the proceeding upon the request of either party or on its own initiative, except as otherwise provided in the Administrative and Financial Regulations or these Rules.
- (3) The Tribunal shall give the parties the opportunity to make observations before ordering a suspension pursuant to paragraph (2).
- (4) In its order suspending the proceeding, the Tribunal shall specify:
 - (a) the period of the suspension;

- (b) any relevant terms; and
- (c) a modified procedural calendar to take effect on resumption of the proceeding, if necessary.
- (5) The Tribunal shall extend the period of a suspension prior to its expiry by agreement of the parties.
- (6) The Tribunal may extend the period of a suspension prior to its expiry, on its own initiative or upon a party's request, after giving the parties an opportunity to make observations.
- (7) The Secretary-General shall suspend the proceeding pursuant to paragraph (1) or extend the suspension pursuant to paragraph (5) 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 terms agreed to by the parties.

Rule 55

Settlement and Discontinuance by Agreement of the Parties

- (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.

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.

- (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.

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 consecutive 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 shall 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.

Chapter IX

The Award

Rule 58

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 latest of the Tribunal constitution, the last written submission or the last oral submission, if the Award is rendered pursuant to Rule 41(3);
 - (b) 180 days after the later of the last written or oral submission if the Award is rendered pursuant to Rule 44(3)(c); or

- (c) 240 days after the later of the last written or oral submission in all other cases.
- (2) A statement of costs and submission on costs filed pursuant to Rule 51 shall not be considered a written submission for the purposes of paragraph (1).

Rule 59

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 in accordance with 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 date and place of the first session, case management conferences and 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 on the allocation of costs.
- (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.

Rule 60

Rendering of the Award

- (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 of certified copies of the Award.
- (3) The Secretary-General shall provide additional certified copies of the Award to a party upon request.

Rule 61

Supplementary Decision and Rectification

- (1) 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 and pay the lodging fee published in the schedule of fees within 45 days after the Award was rendered.
- (2) The request referred to in paragraph (1) shall:
 - (a) identify the Award to which it relates;
 - (b) be signed by each requesting party or its representative and be dated;
 - (c) specify:
 - (i) with respect to a request for a supplementary decision, any question which the Tribunal omitted to decide in the Award;
 - (ii) with respect to a request for rectification, any clerical, arithmetical or similar error in the Award; and
 - (d) attach proof of payment of the lodging fee.

- (3) 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 (1); and
 - (c) notify the parties of the registration or refusal to register.
- (4) As soon as the request is registered, the Secretary-General shall transmit the request and the notice of registration to each member of the Tribunal.
- (5) 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.
- (6) Rules 59-60 shall apply to any decision of the Tribunal pursuant to this Rule.
- (7) The Tribunal shall issue a decision on the request for supplementary decision or rectification within 60 days after the later of the last written or oral submission on the request.
- (8) The date of dispatch of certified copies of the supplementary decision or rectification shall be the relevant date for the purposes of calculating the time limits in Articles 51(2) and 52(2) of the Convention.
- (9) 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.

Chapter X

Publication, Access to Proceedings and Non-Disputing Party Submissions

Rule 62

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) The parties may consent to publication of the full text or to a jointly redacted text of the documents referred to in paragraph (1).

- (3) 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 dispatch of the document.
- (4) Absent consent of the parties pursuant to paragraphs (1)-(3), the Centre shall publish excerpts of the document. The following procedure shall apply to publication of excerpts:
 - (a) the Secretary-General shall propose excerpts to the parties within 60 days after the date upon which either party objects to publication or notifies the Secretary-General that the parties disagree on redaction of the document;
 - (b) the parties may send comments on the proposed excerpts to the Secretary-General within 60 days after their receipt, including whether any information in the proposed excerpts is confidential or protected as defined in Rule 66; and
 - (c) the Secretary-General shall consider any comments received on the proposed excerpts and publish excerpts within 30 days after the expiry of the time limit referred to in paragraph (4)(b).

Rule 63

Publication of Orders and Decisions

- (1) The Centre shall publish orders and decisions, with any redactions agreed to by the parties and jointly notified to the Secretary-General within 60 days after the order or decision is issued.
- (2) If either party notifies the Secretary-General within the 60-day period referred to in paragraph (1) that the parties disagree on any proposed redactions, the Secretary-General shall refer the order or decision to the Tribunal to decide any disputed redactions. The Centre shall publish the order or decision in accordance with the decision of the Tribunal.
- (3) In deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 66.

Rule 64
Publication of Documents Filed in the Proceeding

- (1) With consent of the parties, the Centre shall publish any written submission or supporting document filed by a party in the proceeding, with any redactions agreed to by the parties and jointly notified to the Secretary-General.
- (2) Absent consent of the parties pursuant to paragraph (1), a party may refer to the Tribunal a dispute regarding the redaction of a written submission that it filed in the proceeding, excluding supporting documents. The Tribunal shall decide any disputed redactions and the Centre shall publish the written submission in accordance with the decision of the Tribunal.
- (3) In deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 66.

Rule 65
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 or protected information as defined in Rule 66 to persons observing the hearings.
- (3) Upon request of a party, the Centre shall publish recordings or transcripts of hearings, unless the other party objects.

Rule 66
Confidential or Protected Information

For the purposes of Rules 62-65, confidential or protected information is information which is protected from public disclosure:

- (a) by the instrument of consent to arbitration;
- (b) by the applicable law or applicable rules;
- (c) in the case of information of a State party to the dispute, by the law of that State;

- (d) in accordance with the orders and decisions of the Tribunal;
- (e) by agreement of the parties;
- (f) because it constitutes confidential business information;
- (g) because public disclosure would impede law enforcement;
- (h) because a State party to the dispute considers that public disclosure would be contrary to its essential security interests;
- (i) because public disclosure would aggravate the dispute between the parties; or
- (j) because public disclosure would undermine the integrity of the arbitral process.

Rule 67

Submission of Non-Disputing Parties

- (1) Any person or entity that is not a party to the dispute (“non-disputing party”) may apply for permission to file a written submission in the proceeding. The application shall be made in the procedural language(s) used 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, particular knowledge or insight that is different from that of the 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 any conditions for filing or publication of such a submission.
- (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 the format, length, scope or publication of the written submission and the time limit to file the submission.
- (5) The Tribunal shall issue a reasoned decision on whether to permit a non-disputing party submission within 30 days after the later of the last written or oral submission on the application.
- (6) The Tribunal shall provide the non-disputing party with access to relevant documents filed in the proceeding, unless either party objects.
- (7) 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 68

Participation of Non-Disputing Treaty Party

- (1) The Tribunal shall permit a Party to a treaty that is not a party to the dispute (“non-disputing Treaty Party”) to make a written or oral submission on the interpretation of the treaty at issue in the dispute and upon which consent to arbitration is based. The Tribunal may, after consulting with the parties, invite a non-disputing Treaty Party to make such a submission.
- (2) The Tribunal shall ensure that non-disputing Treaty 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 filing of a written submission by the non-disputing Treaty Party, including with respect to the format, length or publication of the written submission and the time limit to file the submission.
- (3) The parties shall have the right to make observations on the submission of the non-disputing Treaty Party.

Chapter XI

Interpretation, Revision and Annulment of the Award

Rule 69

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.
- (2) The application shall:
 - (a) identify the Award to which it relates;
 - (b) be in a language in which the Award was rendered or if the Award was not rendered in an official language of the Centre, be in an official language;
 - (c) be signed by each applicant or its representative and be dated;
 - (d) attach proof of any representative's authority to act; and
 - (e) attach proof of payment of the lodging fee.
- (3) An application for interpretation pursuant to Article 50(1) of the Convention may be filed at any time after the Award is rendered and shall specify the points in dispute concerning the meaning or scope of the Award.
- (4) An application for revision 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) that the fact was unknown to the Tribunal and to the applicant when the Award was rendered, and that the applicant's ignorance of that fact was not due to negligence.
- (5) An application for annulment pursuant to Article 52(1) of the Convention shall:

- (a) be filed within 120 days after 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 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 receipt of 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 time limits referred to in paragraphs (4) or (5); and
 - (c) notify the parties of the registration or refusal to register.
- (7) At any time before registration, an applicant may notify the Secretary-General in writing of the withdrawal of the application or, if there is more than one applicant, that it is withdrawing from the application. The Secretary-General shall promptly notify the parties of the withdrawal, unless the application has not yet been transmitted to the other party pursuant to paragraph (6)(a).

Rule 70

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
 - (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.

Rule 71

Annulment: Appointment of the *ad hoc* Committee

- (1) As soon as an application for annulment of an Award is registered, the Chair 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 19.
- (3) The Committee shall be deemed to be constituted on the date the Secretary-General notifies the parties that all members have accepted their appointments.

Rule 72

Procedure Applicable to Interpretation, Revision and Annulment

- (1) Except as provided below, 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 continue to apply to an interpretation, revision or annulment proceeding, 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 in an interpretation or revision proceeding, and two rounds of written submissions in an annulment proceeding, 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 later of the last written or oral submission on the application.

Rule 73
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 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 on the request, as required;
 - (c) if a party files the request before the constitution of the Tribunal or Committee, the Secretary-General shall fix time limits for written 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 shall 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.

Rule 74

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.
- (2) The request shall:
 - (a) identify the Award to which it relates;
 - (b) be in an official language of the Centre;
 - (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.
- (3) Upon receipt of 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;
 - (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, unless the parties agree otherwise.
- (4) If the original Award was annulled in part, the new Tribunal shall not reconsider any portion of the Award that was not annulled.
- (5) Except as otherwise provided in paragraphs (1)-(4), these Rules shall apply to the resubmission proceeding.

- (6) The procedural agreements and orders on matters addressed at the first session of the original Tribunal shall not apply to the resubmission proceeding, unless the parties agree otherwise.

Chapter XII Expedited Arbitration

Rule 75 Consent of Parties to Expedited Arbitration

- (1) The parties to an arbitration conducted under the Convention may consent at any time to expedite the arbitration in accordance with this Chapter (“expedited arbitration”) by jointly notifying the Secretary-General in writing of their consent.
- (2) Chapters I-XI of the Arbitration Rules apply to an expedited arbitration except that:
 - (a) Rules 15, 16, 18, 39, 40, 41, 42, 44 and 46 do not apply in an expedited arbitration; and
 - (b) Rules 19, 22, 29, 37, 43, 49, 58, 61 and 72, as modified by Rules 76-84, apply in an expedited arbitration.
- (3) If the parties consent to expedited arbitration after the constitution of the Tribunal pursuant to Chapter II, Rules 76-78 shall not apply, and the expedited arbitration shall proceed subject to all members of the Tribunal confirming their availability pursuant to Rule 79(2). If any arbitrator fails to confirm availability before the expiry of the applicable time limit, the arbitration shall proceed in accordance with Chapters I-XI.

Rule 76 Number of Arbitrators and Method of Constituting the Tribunal for Expedited Arbitration

- (1) The Tribunal in an expedited arbitration shall consist of a Sole Arbitrator appointed pursuant to Rule 77 or a three-member Tribunal appointed pursuant to Rule 78.
- (2) The parties shall jointly notify the Secretary-General in writing of their election of a Sole Arbitrator or a three-member Tribunal within 30 days after the date of the notice of consent referred to in Rule 75(1).

- (3) If the parties do not notify the Secretary-General of their election within the time limit referred to in paragraph (2), the Tribunal shall consist of a Sole Arbitrator to be appointed pursuant to Rule 77.
- (4) An appointment pursuant to Rules 77 or 78 shall be deemed an appointment in accordance with a method agreed by the parties pursuant to Article 37(2)(a) of the Convention.

Rule 77
Appointment of Sole Arbitrator for Expedited Arbitration

- (1) The parties shall jointly appoint the Sole Arbitrator within 20 days after the notice referred to in Rule 76(2).
- (2) The Secretary-General shall appoint the Sole Arbitrator if:
 - (a) the parties do not appoint the Sole Arbitrator within the time limit referred to in paragraph (1);
 - (b) the parties notify the Secretary-General that they are unable to agree on the Sole Arbitrator; or
 - (c) the appointee declines the appointment or does not comply with Rule 79(1).
- (3) The following procedure shall apply to an appointment by the Secretary-General of the Sole Arbitrator pursuant to paragraph (2):
 - (a) the Secretary-General shall transmit a list of five candidates for appointment as Sole Arbitrator to the parties within 10 days after the relevant event referred to in paragraph (2);
 - (b) each party may strike one name from the list and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;
 - (c) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them; and
 - (d) if the selected candidate declines the appointment or does not comply with Rule 79(1), the Secretary-General shall select the next highest-ranked candidate.

Rule 78
Appointment of Three-Member Tribunal for Expedited Arbitration

- (1) A three-member Tribunal shall be appointed in accordance with the following procedure:
 - (a) each party shall appoint an arbitrator (“co-arbitrator”) within 20 days after the notice referred to in Rule 76(2); and
 - (b) the parties shall jointly appoint the President of the Tribunal within 20 days after the receipt of the acceptances from both co-arbitrators.
- (2) The Secretary-General shall appoint the arbitrators not yet appointed if:
 - (a) an appointment is not made within the applicable time limit referred to in paragraph (1);
 - (b) the parties notify the Secretary-General that they are unable to agree on the President of the Tribunal; or
 - (c) an appointee declines the appointment or does not comply with Rule 79(1).
- (3) The following procedure shall apply to the appointment by the Secretary-General of any arbitrators pursuant to paragraph (2):
 - (a) the Secretary-General shall first appoint the co-arbitrator(s) not yet appointed. The Secretary-General shall consult with the parties as far as possible and use best efforts to appoint the co-arbitrator(s) within 15 days after the relevant event in paragraph (2);
 - (b) within 10 days after the later of the date on which both co-arbitrators have accepted their appointments or the relevant event referred to in paragraph (2), the Secretary-General shall transmit a list of five candidates for appointment as President of the Tribunal to the parties;
 - (c) each party may strike one name from the list and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;
 - (d) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them; and

- (e) if the selected candidate declines the appointment or does not comply with Rule 79(1), the Secretary-General shall select the next highest-ranked candidate.

Rule 79
Acceptance of Appointment in Expedited Arbitration

- (1) An arbitrator appointed pursuant to Rule 77 or 78 shall accept the appointment and provide a declaration pursuant to Rule 19(3) within 10 days after receipt of the request for acceptance.
- (2) An arbitrator appointed to a Tribunal constituted pursuant to Chapter II shall confirm their availability to conduct an expedited arbitration within 10 days after receipt of the notice of consent pursuant to Rule 75(3).

Rule 80
First Session in Expedited Arbitration

- (1) The Tribunal shall hold a first session pursuant to Rule 29 within 30 days after the constitution of the Tribunal.
- (2) The first session shall be held by telephone or electronic means of communication, unless both parties and the Tribunal agree it shall be held in person.

Rule 81
Procedural Schedule in Expedited Arbitration

- (1) The following schedule for written submissions and the hearing shall apply in an expedited arbitration:
 - (a) the claimant shall file a memorial within 60 days after the first session;
 - (b) the respondent shall file a counter-memorial within 60 days after the date of filing the memorial;
 - (c) the memorial and counter-memorial referred to in paragraph (1)(a) and (b) shall be no longer than 200 pages;
 - (d) the claimant shall file a reply within 40 days after the date of filing the counter-memorial;

- (e) the respondent shall file a rejoinder within 40 days after the date of filing the reply;
 - (f) the reply and rejoinder referred to in paragraph (1)(d) and (e) shall be no longer than 100 pages;
 - (g) the hearing shall be held within 60 days after the last written submission is filed;
 - (h) the parties shall file statements of their costs and written submissions on costs within 10 days after the last day of the hearing referred to in paragraph (1)(g); and
 - (i) the Tribunal shall render the Award as soon as possible, and in any event no later than 120 days after the hearing referred to in paragraph (1)(g).
- (2) Any preliminary objection, counterclaim, incidental or additional claim shall be joined to the main schedule referred to in paragraph (1). The Tribunal shall adjust the schedule if a party raises any such matter, taking into account the expedited nature of the process.
 - (3) The Tribunal may extend the time limits referred to in paragraph (1)(a) and (b) by up to 30 days if any party requests that the Tribunal decide a dispute arising from requests to produce documents pursuant to Rule 37. The Tribunal shall decide such applications based on written submissions and without an in-person hearing.
 - (4) Any schedule for submissions other than those referred to in paragraphs (1)-(3) shall run in parallel with the main schedule referred to in paragraph (1), unless the Tribunal decides that there are special circumstances justifying the suspension of the main schedule. In fixing time limits for such submissions, the Tribunal shall take into account the expedited nature of the process.

Rule 82

Default in Expedited Arbitration

A Tribunal may grant a party in default a grace period not to exceed 30 days pursuant to Rule 49.

Rule 83
**Procedural Schedule for Supplementary Decision and Rectification
in Expedited Arbitration**

The Tribunal shall issue a supplementary decision or rectification pursuant to Rule 61 within 30 days after the later of the last written or oral submission on the request.

Rule 84
**Procedural Schedule for Interpretation, Revision or Annulment
in Expedited Arbitration**

- (1) The following schedule for written submissions and the hearing shall apply to the procedure relating to an interpretation, revision or annulment of an Award rendered in an expedited arbitration:
 - (a) the applicant shall file a memorial on interpretation, revision or annulment within 30 days after the first session;
 - (b) the other party shall file a counter-memorial on interpretation, revision or annulment within 30 days after the memorial;
 - (c) the memorial and counter-memorial referred to in paragraph (1)(a) and (b) shall be no longer than 100 pages;
 - (d) a hearing shall be held within 45 days after the date for filing the counter-memorial;
 - (e) the parties shall file statements of their costs and written submissions on costs within 5 days after the last day of the hearing referred to in paragraph (1)(d); and
 - (f) the Tribunal or Committee shall issue the decision on interpretation, revision or annulment as soon as possible, and in any event no later than 60 days after the hearing referred to in paragraph (1)(d).
- (2) Any schedule for submissions other than those referred to in paragraph (1) shall run in parallel with the main schedule, unless the Tribunal or Committee decides that there are special circumstances justifying the suspension of the main schedule. In fixing time limits for such submissions, the Tribunal or Committee shall take into account the expedited nature of the process.

Rule 85
Resubmission of a Dispute after Annulment in Expedited Arbitration

The consent of the parties to expedited arbitration pursuant to Rule 75 shall not apply to resubmission of the dispute.

Rule 86
Opting Out of Expedited Arbitration

- (1) The parties may opt out of an expedited arbitration at any time by jointly notifying the Tribunal and Secretary-General in writing of their agreement.
- (2) Upon request of a party, the Tribunal may decide that an arbitration should no longer be expedited. In deciding the request, the Tribunal shall consider the complexity of the issues, the stage of the proceeding and all other relevant circumstances.
- (3) The Tribunal, or the Secretary-General if a Tribunal has not been constituted, shall determine the further procedure pursuant to Chapters I-XI and fix any time limit necessary for the conduct of the proceeding.

IV. CONCILIATION RULES FOR ICSID CONVENTION PROCEEDINGS (CONCILIATION RULES)

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IV. CONCILIATION RULES

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IV. CONCILIATION RULES FOR ICSID CONVENTION PROCEEDINGS (CONCILIATION RULES)

Introductory Note

The Conciliation Rules for ICSID Convention Proceedings (Conciliation Rules) were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(c) of the ICSID Convention.

The Conciliation Rules are supplemented by the Administrative and Financial Regulations of the Centre.

The Conciliation Rules apply from the date of registration of a Request for conciliation until termination of the conciliation.

Chapter I General Provisions

Rule 1 Application of Rules

- (1) These Rules shall apply to any conciliation proceeding conducted under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“Convention”) in accordance with Article 33 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 “Conciliation Rules” of the Centre.

Rule 2 Party and Party Representative

- (1) For the purposes of these Rules, “party” includes, where required by the context, all parties acting as claimant or as respondent.
- (2) Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be promptly notified by that party to the Secretary-General (“representative(s)").

Rule 3 Method of Filing

- (1) A document to be filed in the proceeding shall be filed with the Secretary-General, who shall acknowledge its receipt.
- (2) Documents shall only be filed electronically, unless the Commission orders otherwise in special circumstances.

Rule 4 Supporting Documents

- (1) Supporting documents shall be filed together with the written statement, request, observations or communication to which they relate.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Commission or a party may require a fuller extract or a complete version of the document.

Rule 5 Routing of Documents

The Secretary-General shall transmit a document filed in the proceeding to:

- (a) the other party, unless the parties communicate directly with each other;
- (b) the Commission, unless the parties communicate directly with the Commission on request of the Commission or by agreement of the parties; and
- (c) the Chairman of the Administrative Council (“Chair”) if applicable.

Rule 6 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 Commission and the Secretary-General regarding the use of a language that is not an official language of the Centre. If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.

- (2) In a proceeding with one procedural language:
 - (a) documents shall be filed and meetings shall be conducted in that procedural language;
 - (b) documents in another language shall be accompanied by a translation into that procedural language; and
 - (c) oral statements in another language shall be interpreted into that procedural language.
- (3) In a proceeding with two procedural languages:
 - (a) documents may be filed and meetings may be conducted in either procedural language, unless the Commission orders that a document be filed in both procedural languages or that a meeting be conducted with interpretation into both procedural languages;
 - (b) documents in another language shall be accompanied by a translation into either procedural language, unless the Commission orders translation into both procedural languages;
 - (c) oral statements in another language shall be interpreted into either procedural language, unless the Commission orders interpretation into both procedural languages;
 - (d) the Commission and the Secretary-General may communicate in either procedural language; and
 - (e) all orders, decisions, recommendations and the Report shall be rendered in both procedural languages, unless the parties agree otherwise.
- (4) Translation of only the relevant part of a supporting document is sufficient, unless the Commission orders a party to provide a fuller or a complete translation. If the translation is disputed, the Commission may order a party to provide a certified translation.

Rule 7

Calculation of Time Limits

Time limits referred to in these Rules shall be calculated from the day after the date on which the procedural step starting the period is taken, based on the time at the seat of the

Centre. A time limit shall be satisfied if a procedural step is taken on the relevant date, or on the subsequent business day if the date falls on a Saturday or Sunday.

Rule 8 Costs of the Proceeding

- (1) The fees and expenses of the Commission and the administrative charges and direct costs of the Centre incurred in connection with the proceeding shall be borne equally by the parties, in accordance with Article 61(1) of the Convention.
- (2) Each party shall bear any other costs it incurs in connection with the proceeding.

Rule 9 Confidentiality of the Conciliation

All information relating to the conciliation and all documents generated in or obtained during the conciliation shall be confidential, unless:

- (a) the parties agree otherwise;
- (b) the information is to be published by the Centre pursuant to Administrative and Financial Regulation 26;
- (c) the information or document is independently available; or
- (d) disclosure is required by law.

Rule 10 Use of Information in Other Proceedings

Unless the parties to the dispute agree otherwise pursuant to Article 35 of the Convention, a party shall not rely on any of the following in other proceedings:

- (a) views expressed, statements, admissions, offers of settlement, or positions taken by the other party in the conciliation; or
- (b) the Report, order, decision or any recommendation made by the Commission in the conciliation.

Chapter II

Establishment of the Commission

Rule 11

General Provisions, Number of Conciliators and Method of Constitution

- (1) The Commission shall be constituted without delay after registration of the Request for conciliation.
- (2) The number of conciliators and the method of their appointment must be determined before the Secretary-General can act on any appointment proposed by a party.
- (3) The parties shall endeavor to agree on a Sole Conciliator or any uneven number of conciliators and the method of their appointment. If the parties do not advise the Secretary-General of an agreement within 45 days after the date of registration, either party may inform the Secretary-General that the Commission shall be constituted in accordance with Article 29(2)(b) of the Convention.
- (4) References in these Rules to a Commission or a President of a Commission shall include a Sole Conciliator.

Rule 12

Notice of Third-Party Funding

- (1) A party shall file a written notice disclosing the name and address of any non-party from which the party, directly or indirectly, has received funds for the conciliation through a donation or grant, or in return for remuneration dependent on the outcome of the conciliation (“third-party funding”).
- (2) A non-party referred to in paragraph (1) does not include a representative of a party.
- (3) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request for conciliation, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.
- (4) The Secretary-General shall transmit a notice of third-party funding and any notification of changes to the information in such notice to the parties, and to any conciliator proposed for appointment or appointed in a proceeding for purposes of completing the conciliator declaration required by Rule 16(3)(b).

- (5) The Commission may request further information regarding the funding agreement and the non-party providing funding pursuant to Rule 24(4)(a).

Rule 13

Appointment of Conciliators to a Commission Constituted in Accordance with Article 29(2)(b) of the Convention

If the Commission is to be constituted in accordance with Article 29(2)(b) of the Convention, each party shall appoint a conciliator and the parties shall jointly appoint the President of the Commission.

Rule 14

Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of the Sole Conciliator or any uneven number of conciliators.

Rule 15

Appointment of Conciliators by the Chair in Accordance with Article 30 of the Convention

- (1) If a Commission 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 Chair appoint the conciliator(s) who have not yet been appointed pursuant to Article 30 of the Convention.
- (2) The Chair shall appoint the President of the Commission after appointing any members who have not yet been appointed.
- (3) The Chair shall consult with the parties as far as possible before appointing a conciliator and shall use best efforts to appoint any conciliator(s) within 30 days after receipt of the request to appoint.

Rule 16

Acceptance of Appointment

- (1) A party appointing a conciliator shall notify the Secretary-General of the appointment and provide the appointee's name, nationality and contact information.

- (2) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from the appointee and shall transmit to the appointee the information received from the parties relevant to completion of the declaration referred to in paragraph (3)(b).
- (3) Within 20 days after receipt of the request for acceptance of an appointment, the appointee shall:
 - (a) accept the appointment; and
 - (b) provide a signed declaration in the form published by the Centre, addressing matters including the conciliator's independence, impartiality, availability and commitment to maintain the confidentiality of the proceeding.
- (4) The Secretary-General shall notify the parties of the acceptance of appointment by each conciliator and transmit the signed declaration to them.
- (5) The Secretary-General shall notify the parties if a conciliator 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 conciliator in accordance with the method followed for the previous appointment.
- (6) Each conciliator shall have a continuing obligation to promptly disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).
- (7) Unless the parties and the conciliator agree otherwise, a conciliator may not act as arbitrator, counsel, expert, judge, mediator, witness or in any other capacity in any proceeding relating to the dispute that is the subject of the conciliation.

Rule 17

Replacement of Conciliators Prior to Constitution of the Commission

- (1) At any time before the Commission is constituted:
 - (a) a conciliator may withdraw an acceptance;
 - (b) a party may replace a conciliator whom it appointed; or
 - (c) the parties may agree to replace any conciliator.
- (2) A replacement conciliator shall be appointed as soon as possible, in accordance with the method by which the withdrawing or replaced conciliator was appointed.

Rule 18

Constitution of the Commission

- (1) The Commission shall be deemed to be constituted on the date the Secretary-General notifies the parties that each conciliator has accepted the appointment.
- (2) As soon as the Commission is constituted, the Secretary-General shall transmit the Request for conciliation, the supporting documents, the notice of registration and communications with the parties to each conciliator.

Chapter III

Disqualification of Conciliators and Vacancies

Rule 19

Proposal for Disqualification of Conciliators

- (1) A party may file a proposal to disqualify one or more conciliators (“proposal”) in accordance with the following procedure:
 - (a) the proposal shall be filed after the constitution of the Commission and within 21 days after the later of:
 - (i) the constitution of the Commission; or
 - (ii) the date on which the party proposing the disqualification first knew or first should have known of the facts upon which the proposal is based;
 - (b) the proposal shall include the grounds on which it is based, a statement of the relevant facts, law and arguments, and any supporting documents;
 - (c) the other party shall file its response and supporting documents within 21 days after receipt of the proposal;
 - (d) the conciliator to whom the proposal relates may file a statement that is limited to factual information relevant to the proposal. The statement shall be filed within five days after receipt of the response referred to in paragraph (1)(c); and
 - (e) each party may file a final written submission on the proposal within seven days after the earlier of receipt of the statement or expiry of the time limit referred to in paragraph (1)(d).

- (2) The proceeding shall be suspended upon the filing of the proposal until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding.

Rule 20

Decision on the Proposal for Disqualification

- (1) The decision on a proposal shall be made by the conciliators not subject to the proposal or by the Chair in accordance with Article 58 of the Convention.
- (2) For the purposes of Article 58 of the Convention:
 - (a) if the conciliators not subject to a proposal are unable to decide the proposal for any reason, they shall notify the Secretary-General and they 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 Chair as if they were a proposal to disqualify a majority of the Commission.
- (3) The conciliators not subject to the proposal and the Chair shall use best efforts to decide any proposal within 30 days after the later of the expiry of the time limit referred to in Rule 19(1)(e) or the notice in Rule 20(2)(a).

Rule 21

Incapacity or Failure to Perform Duties

If a conciliator becomes incapacitated or fails to perform the duties required of a conciliator, the procedure in Rules 19 and 20 shall apply.

Rule 22

Resignation

- (1) A conciliator may resign by notifying the Secretary-General and the other members of the Commission and providing reasons for the resignation.
- (2) If the conciliator was appointed by a party, the other members of the Commission shall promptly notify the Secretary-General whether they consent to the conciliator's resignation for the purposes of Rule 23(3)(a).

Rule 23

Vacancy on the Commission

- (1) The Secretary-General shall notify the parties of any vacancy on the Commission.
- (2) The proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.
- (3) A vacancy on the Commission shall be filled by the method used to make the original appointment, except that the Chair shall fill the following from the Panel of Conciliators:
 - (a) a vacancy caused by the resignation of a party-appointed conciliator without the consent of the other members of the Commission; 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 Commission has been reconstituted, the conciliation shall continue from the point it had reached at the time the vacancy was notified.

Chapter IV

Conduct of the Conciliation

Rule 24

Functions of the Commission

- (1) The Commission shall clarify the issues in dispute and assist the parties in reaching a mutually acceptable resolution of all or part of the dispute.
- (2) In order to bring about agreement between the parties, the Commission may, at any stage of the proceeding, after consulting with the parties, recommend:
 - (a) specific terms of settlement to the parties; or
 - (b) that the parties refrain from taking specific action that might aggravate the dispute while the conciliation is ongoing.
- (3) Recommendations may be made orally or in writing. Either party may request that the Commission provide reasons for any recommendation. The Commission may invite each party to provide observations concerning any recommendation made.

- (4) At any stage of the proceeding, the Commission may:
- (a) request explanations, documents or other information from either party or other persons;
 - (b) communicate with the parties jointly or separately; or
 - (c) visit any place connected with the dispute or conduct inquiries with the agreement and participation of the parties.

Rule 25
General Duties of the Commission

- (1) The Commission shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.
- (2) The Commission shall treat the parties equally and provide each party with a reasonable opportunity to appear and participate in the proceeding.

Rule 26
Orders, Decisions and Agreements

- (1) The Commission shall make the orders and decisions required for the conduct of the conciliation.
- (2) The Commission shall make decisions by a majority of the votes of all its members. Abstentions shall count as a negative vote.
- (3) Orders and decisions may be made by any appropriate means of communication and may be signed by the President on behalf of the Commission.
- (4) The Commission shall apply any agreement of the parties on procedural matters to the extent that it does not conflict with the Convention and the Administrative and Financial Regulations.

**Rule 27
Quorum**

The participation of a majority of the members of the Commission by any appropriate means of communication shall be required at the first session, meetings and deliberations, unless the parties agree otherwise.

**Rule 28
Deliberations**

- (1) The deliberations of the Commission shall take place in private and remain confidential.
- (2) The Commission may deliberate at any place and by any means it considers appropriate.
- (3) The Commission may be assisted by the Secretary of the Commission at its deliberations. No other person shall assist the Commission at its deliberations, unless the Commission decides otherwise and notifies the parties.

**Rule 29
Cooperation of the Parties**

- (1) The parties shall cooperate with the Commission and with one another, and shall conduct the conciliation in good faith and in an expeditious and cost-effective manner.
- (2) The parties shall provide all relevant explanations, documents or other information. They shall facilitate visits to any place connected with the dispute in accordance with Rule 24(4)(c) and use best efforts to facilitate the participation of other persons as requested by the Commission.
- (3) The parties shall comply with any time limit agreed upon or fixed by the Commission.
- (4) The parties shall give their most serious consideration to the Commission's recommendations pursuant to Article 34(1) of the Convention.

Rule 30

Written Statements

- (1) Each party shall simultaneously file a brief, initial written statement describing the issues in dispute and its views on these issues 30 days after the constitution of the Commission, or such longer time as the Commission may fix in consultation with the parties, but in any event before the first session.
- (2) Either party may file further written statements at any stage of the conciliation within the time limits fixed by the Commission.

Rule 31

First Session

- (1) The Commission shall hold a first session with the parties to address the procedure, including the matters listed in paragraph (4).
- (2) The first session may be held in person or remotely, by any means that the Commission deems appropriate. The agenda, method and date of the first session shall be determined by the Commission after consulting with the parties.
- (3) The first session shall be held within 60 days after the constitution of the Commission or such other period as the parties may agree.
- (4) Before the first session, the Commission shall invite the parties' views on procedural matters, including:
 - (a) the applicable conciliation rules;
 - (b) the procedural language(s), translation and interpretation;
 - (c) the method of filing and routing of documents;
 - (d) a schedule for further written statements and meetings;
 - (e) the place and format of meetings between the Commission and the parties;
 - (f) the manner of recording or keeping minutes of meetings, if any;
 - (g) the treatment of confidential or protected information;
 - (h) the publication of documents;

- (i) any agreement between the parties:
 - (i) concerning the treatment of information disclosed by one party to the Commission by way of separate communication pursuant to Rule 24(4)(b);
 - (ii) not to initiate or pursue any other proceeding in respect of the dispute during the conciliation;
 - (iii) concerning the application of prescription or limitation periods;
 - (iv) concerning the disclosure of any settlement agreement resulting from the conciliation; and
 - (v) pursuant to Article 35 of the Convention; and
 - (j) any other procedural matter raised by either party or the Commission.
- (5) At the first session or within any other period determined by the Commission, each party shall:
- (a) identify a representative who is authorized to settle the dispute on its behalf; and
 - (b) describe the process that would be followed to implement a settlement.
- (6) The Commission shall issue summary minutes recording the parties' agreements and the Commission's decisions on the procedure within 15 days after the later of the first session or the last written statement on procedural matters addressed at the first session.

Rule 32 Meetings

- (1) The Commission may meet with the parties jointly or separately.
- (2) The Commission shall determine the date, time and method of holding meetings, after consulting with the parties.
- (3) If a meeting is to be held in person, it may be held at any place agreed to by the parties after consulting with the Commission and the Secretary-General. If the parties do not agree on the place of a meeting, it shall be held at the seat of the Centre pursuant to Article 62 of the Convention.

- (4) Meetings shall remain confidential. The parties may agree to observation of meetings by persons in addition to the parties and the Commission.

Rule 33

Preliminary Objections

- (1) A party may file a preliminary objection that the dispute is not within the jurisdiction of the Centre or for other reasons is not within the competence of the Commission (“preliminary objection”).
- (2) A party shall notify the Commission and the other party of its intent to file a preliminary objection as soon as possible. The objection shall be made no later than the date of the initial written statement referred to in Rule 30(1), unless the facts on which the objection is based are unknown to the party at the relevant time.
- (3) The Commission may address a preliminary objection separately or with other issues in dispute. If the Commission decides to address the objection separately, it may suspend the conciliation on the other issues in dispute to the extent necessary to address the preliminary objection.
- (4) The Commission may at any time on its own initiative consider whether the dispute is within the jurisdiction of the Centre or within its own competence.
- (5) If the Commission decides that the dispute is not within the jurisdiction of the Centre or for other reasons is not within its competence, it shall close the proceeding and issue a Report to that effect, in which it shall state its reasons. Otherwise, the Commission shall issue a decision on the objection with brief reasons and fix any time limit necessary for the further conduct of the conciliation.

Chapter V

Termination of the Conciliation

Rule 34

Discontinuance Prior to the Constitution of the Commission

- (1) If the parties notify the Secretary-General prior to the constitution of the Commission that they have agreed to discontinue the proceeding, the Secretary-General shall issue an order taking note of the discontinuance.
- (2) If a party requests the discontinuance of the proceeding prior to the constitution of the Commission, the Secretary-General 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 Secretary-General 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.

- (3) If, prior to the constitution of the Commission, the parties fail to take any steps in the proceeding for more than 150 consecutive days, the Secretary-General shall notify them of the time elapsed since the last step taken in the proceeding. If the parties fail to take a step within 30 days after the notice, they shall be deemed to have discontinued the proceeding and the Secretary-General shall issue an order taking note of the discontinuance. If either party takes a step within 30 days after the Secretary-General's notice, the proceeding shall continue.

Rule 35

Report Noting the Parties' Agreement

- (1) If the parties reach agreement on some or all of the issues in dispute, the Commission shall close the proceedings and issue its Report noting the issues in dispute and recording the issues upon which the parties have agreed.
- (2) The parties may provide the Commission with the complete and signed text of their settlement agreement and may request that the Commission embody such settlement in the Report.

Rule 36

Report Noting the Failure of the Parties to Reach Agreement

At any stage of the proceeding, and after notice to the parties, the Commission shall close the proceedings and issue its Report noting the issues in dispute and recording that the parties have not reached agreement on the issues in dispute during the conciliation if:

- (a) it appears to the Commission that there is no likelihood of agreement between the parties; or
- (b) the parties advise the Commission that they have agreed to discontinue the conciliation.

Rule 37
Report Recording the Failure of a Party to Appear or Participate

If one party fails to appear or participate in the proceeding, the Commission shall, after notice to the parties, close the proceedings and issue its Report noting the submission of the dispute to conciliation and recording the failure of that party to appear or participate.

Rule 38
The Report

- (1) The Report shall be in writing and shall contain, in addition to the information specified in Rules 35-37:
 - (a) a precise designation of each party;
 - (b) the names of the representatives of the parties;
 - (c) a statement that the Commission was established under the Convention and a description of the method of its constitution;
 - (d) the name of each member of the Commission and of the appointing authority of each;
 - (e) the date and place of the first session and the meetings of the Commission with the parties;
 - (f) a brief summary of the proceeding;
 - (g) the complete and signed text of the parties' settlement agreement if requested by the parties pursuant to Rule 35(2);
 - (h) a statement of the costs of the proceeding, including the fees and expenses of each member of the Commission and the costs to be paid by each party pursuant to Rule 8; and
 - (i) any agreement of the parties pursuant to Article 35 of the Convention.
- (2) The Report shall be signed by the members of the Commission. It may be signed by electronic means if the parties agree. If a member does not sign the Report, such fact shall be recorded.

Rule 39
Issuance of the Report

- (1) Once the Report has been signed by the members of the Commission, the Secretary-General shall promptly:
 - (a) dispatch a certified copy of the Report to each party, indicating the date of dispatch on the Report; and
 - (b) deposit the Report in the archives of the Centre.
- (2) The Secretary-General shall provide additional certified copies of the Report to a party upon request.

V. THE ADDITIONAL FACILITY RULES

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V. THE ADDITIONAL FACILITY RULES

Introductory Note

Additional Facility proceedings are governed by the Additional Facility Rules, the Additional Facility Administrative and Financial Regulations (Annex A), and the relevant (Additional Facility) Arbitration (Annex B) or Conciliation (Annex C) Rules.

Article 1 Definitions

- (1) “Secretariat” means the Secretariat of the Centre.
- (2) “Centre” means the International Centre for Settlement of Investment Disputes established pursuant to Article 1 of the Convention.
- (3) “Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States which entered into force on October 14, 1966.
- (4) “Regional Economic Integration Organization” or “REIO” means an organization constituted by States to which they have transferred competence in respect of matters governed by these Rules, including the authority to make decisions binding on them in respect of those matters.
- (5) “National of another State” means, unless otherwise agreed:
 - (a) a natural or juridical person that, on the date of consent to the proceeding, is a national of a State other than the State party to the dispute, or other than any constituent State of the REIO party to the dispute; or
 - (b) a juridical person that, on the date of consent to the proceeding, is a national of the State party to the dispute or of any constituent State of the REIO party to the dispute, and which the parties agree not to treat as a national of that State for the purpose of these Rules.
- (6) “Request” means a request for arbitration or conciliation.
- (7) “Contracting State” means a State for which the Convention is in force.

Article 2 Additional Facility Proceedings

- (1) The Secretariat is authorized to administer arbitration and conciliation proceedings for the settlement of legal disputes arising out of an investment between a State or an REIO on the one hand, and a national of another State on the other hand, which the parties consent in writing to submit to the Centre if:
 - (a) none of the parties to the dispute is a Contracting State or a national of a Contracting State;
 - (b) either the State party to the dispute, or the State whose national is a party to the dispute, but not both, is a Contracting State; or
 - (c) an REIO is a party to the dispute.
- (2) Reference to a State or an REIO includes a constituent subdivision of the State, or an agency of the State or the REIO. The State or the REIO must approve the consent of the constituent subdivision or agency which is a party to the proceeding pursuant to paragraph (1), unless the State or the REIO concerned notifies the Centre that no such approval is required.
- (3) Arbitration and conciliation proceedings under these Rules shall be conducted in accordance with the (Additional Facility) Arbitration Rules (Annex B) or the (Additional Facility) Conciliation Rules (Annex C) respectively. The (Additional Facility) Administrative and Financial Regulations (Annex A) shall apply to such proceedings.

Article 3 Convention Not Applicable

The provisions of the Convention do not apply to the conduct of Additional Facility proceedings.

Article 4 Final Provisions

- (1) The applicable Rules are those in force on the date of filing the Request, unless the parties agree otherwise.
- (2) These Rules are published in the official languages of the Centre, English, French

and Spanish. The texts of these Rules in each official language are equally authentic.

(3) These Rules may be cited as the “Additional Facility Rules” of the Centre.

**VI. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR ADDITIONAL
FACILITY PROCEEDINGS (ANNEX A)
((ADDITIONAL FACILITY) ADMINISTRATIVE AND FINANCIAL REGULATIONS)**

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VI. (ADDITIONAL FACILITY) ADMINISTRATIVE AND FINANCIAL REGULATIONS

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**VI. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR ADDITIONAL
FACILITY PROCEEDINGS (ANNEX A)
((ADDITIONAL FACILITY) ADMINISTRATIVE AND FINANCIAL REGULATIONS)**

Introductory Note

The (Additional Facility) Administrative and Financial Regulations apply to Additional Facility Arbitration and Conciliation proceedings and were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

**Chapter I
General Provisions**

**Regulation 1
Application of these Regulations**

- (1) These Regulations apply to arbitration and conciliation proceedings which the Secretariat of the Centre is authorized to administer pursuant to Article 2 of the Additional Facility Rules.
- (2) The applicable Regulations are those in force on the date of filing the Request for arbitration or conciliation pursuant to the Additional Facility Rules.
- (3) These Regulations may be referred to as the “(Additional Facility) Administrative and Financial Regulations” of the Centre (“Annex A” to the Additional Facility Rules).

**Chapter II
General Functions of the Secretariat**

**Regulation 2
Secretary**

The Secretary-General of the Centre shall appoint a Secretary for each Commission and Tribunal. The Secretary may be drawn from the Secretariat and shall be considered a member of its staff while serving as a Secretary. The Secretary shall:

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the (Additional Facility) Arbitration

and Conciliation Rules applicable to individual proceedings and delegated to the Secretary; and

- (b) assist the parties and the Commission or Tribunal with all aspects of the proceeding, including the expeditious and cost-effective conduct of the proceeding.

Regulation 3 The Registers

The Secretary-General shall maintain and publish a Register for each case containing all significant data concerning the institution, conduct and disposition of the proceeding, including the economic sector involved, the names of the parties and their representatives, and the method of constitution and membership of each Commission or Tribunal.

Regulation 4 Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
 - (a) all requests for arbitration, conciliation, supplementary decision, rectification or interpretation;
 - (b) all written submissions, written statements, observations, supporting documents and communications filed in a proceeding;
 - (c) the minutes, recordings and transcripts of hearings, meetings or sessions in a proceeding; and
 - (d) any order, decision, recommendation, Report or Award by a Commission or Tribunal.
- (2) Subject to the applicable rules and the agreement of the parties to the proceedings, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c) and (d) available to the parties. Certified copies of the documents referred to in paragraph (1)(d) shall reflect any supplementary decision, rectification or interpretation.

Regulation 5

Certificates of Official Travel

The Secretary-General may issue certificates of official travel to members of Commissions or Tribunals, to persons assisting them, to members of the Secretariat, and to the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in proceedings, indicating that they are traveling in connection with a proceeding pursuant to the ICSID Additional Facility Rules.

Chapter III

Financial Provisions

Regulation 6

Fees, Allowances and Charges

- (1) Each member of a Commission or Tribunal shall receive:
 - (a) a fee for each hour of work performed in connection with the proceeding;
 - (b) when not travelling to attend a hearing, meeting or session, reimbursement of expenses reasonably incurred for the sole purpose of the proceeding; and
 - (c) when required to travel to attend a hearing, meeting or session held away from the member's place of residence:
 - (i) reimbursement of the cost of ground transportation between the points of departure and arrival;
 - (ii) reimbursement of the cost of air and ground transportation to and from the city in which the hearing, meeting or session is held; and
 - (iii) a *per diem* allowance for each day the member spends away from their place of residence.
- (2) The Secretary-General shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and (c). Any request by a member for a higher amount shall be made through the Secretary-General, and not directly to the parties. Such a request must be made before the constitution of the Commission or Tribunal and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish an annual administrative charge payable by the parties to the Centre.

- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
- (a) members of Commissions and Tribunals, and any assistants approved by the parties;
 - (b) witnesses and experts called by a Commission or Tribunal who have not been presented by a party;
 - (c) service providers that the Centre engages for a proceeding; and
 - (d) the host of any hearing, meeting or session held outside an ICSID facility.
- (5) The Centre shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or reimbursements of the members of any Commission or Tribunal, unless the parties have made sufficient payments to defray the costs of the proceeding.

Regulation 7 **Payments to the Centre**

- (1) To enable the Centre to pay the costs referred to in Regulation 6, the parties shall make payments to the Centre as follows:
- (a) upon registration of a Request for arbitration or conciliation, the Secretary-General shall request the claimant to make a payment to defray the estimated costs of the proceeding through the first session of the Commission or Tribunal, which shall be considered partial payment by the claimant of the payment referred to in paragraph (1)(b);
 - (b) upon constitution of a Commission or Tribunal, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the proceeding; and
 - (c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the proceeding.
- (2) In conciliation proceedings, each party shall pay one half of the payments referred to in paragraph (1)(b) and (c), unless the parties agree on a different division. In arbitration proceedings, each party shall pay one half of the payments referred to in paragraph (1)(b) and (c), unless a different division is agreed to by the parties or ordered by the Tribunal. Payment of these sums is without prejudice to the Tribunal's final decision on costs pursuant to Rule 70(1)(j) of the (Additional Facility) Arbitration Rules.

- (3) The Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.
- (4) This Regulation shall apply to requests for a supplementary decision on or rectification of an Award, and to applications for interpretation of an Award.

Regulation 8

Consequences of Default in Payment

- (1) The payments referred to in Regulation 7 shall be payable on the date of the request from the Secretary-General.
- (2) The following procedure shall apply in the event of non-payment:
 - (a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;
 - (b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the proceeding until payment is made, after giving notice to the parties and to the Commission or Tribunal if constituted; and
 - (c) if any proceeding is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the proceeding, after giving notice to the parties and to the Commission or Tribunal if constituted.

Regulation 9

Special Services

- (1) The Centre may perform any special services related to disputes if the requestor deposits in advance an amount sufficient to defray the charge for such services.
- (2) Charges for special services shall normally be based on a schedule of fees published by the Secretary-General.

Regulation 10
Fee for Lodging Requests

The party or parties (if a request is filed jointly) wishing to institute an arbitration or conciliation proceeding, or requesting a supplementary decision, rectification or interpretation of an Award, shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 11
Administration of Proceedings

The ICSID Secretariat is the only body authorized to administer proceedings conducted pursuant to the Additional Facility Rules.

Chapter IV
Official Languages and Limitation of Liability

Regulation 12
Languages of Regulations

- (1) These Regulations are published in the official languages of the Centre, English, French and Spanish.
- (2) The texts of these Regulations in each official language are equally authentic.
- (3) Unless otherwise stated or required by the context of the provision, the singular form of a word in the Additional Facility Rules and Annexes A, B and C, includes the plural form of that word.
- (4) Where required by the context, the masculine gender of a word in the French and Spanish versions of the Additional Facility Rules and Annexes A, B and C, shall be used as a gender-neutral form and shall be understood as referring to the masculine or feminine gender.

Regulation 13
Prohibition Against Testimony and Limitation of Liability

- (1) Unless required by applicable law or unless the parties and all the members of the Commission or Tribunal agree otherwise in writing, no member of the Commission

or Tribunal shall give testimony in any judicial, arbitral or similar proceeding concerning any aspect of the arbitration or conciliation proceeding.

- (2) Except to the extent such limitation of liability is prohibited by applicable law, no member of the Commission or Tribunal shall be liable for any act or omission in connection with the exercise of their functions in the arbitration or conciliation proceeding, unless there is fraudulent or willful misconduct.

**VII. THE ARBITRATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
(ANNEX B)
((ADDITIONAL FACILITY) ARBITRATION RULES)**

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**VII. THE ARBITRATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
(ANNEX B)
((ADDITIONAL FACILITY) ARBITRATION RULES)**

Introductory Note

The Arbitration Rules for Additional Facility Proceedings ((Additional Facility) Arbitration Rules) were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

The (Additional Facility) Arbitration Rules are supplemented by the (Additional Facility) Administrative and Financial Regulations in Annex A.

The (Additional Facility) Arbitration Rules apply from the submission of a Request for arbitration until an Award is rendered and to any proceedings arising from a request for a supplementary decision on, rectification of, or interpretation of, an Award.

**Chapter I
Scope**

**Rule 1
Application of Rules**

- (1) These Rules shall apply to any arbitration proceeding conducted pursuant to the Additional Facility Rules.
- (2) The parties may agree to modify the application of any of these Rules other than Rules 1-9.
- (3) If any of these Rules, or any agreement pursuant to paragraph (2), conflicts with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
- (4) The applicable (Additional Facility) Arbitration Rules are those in force on the date of filing the Request for arbitration, unless the parties agree otherwise.
- (5) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language.
- (6) These Rules may be cited as the “(Additional Facility) Arbitration Rules” of the Centre.

Chapter II Institution of Proceedings

Rule 2 The Request

- (1) Any party wishing to institute arbitration proceedings pursuant to the Additional Facility Rules shall file a Request for arbitration together with the required supporting documents (“Request”) with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the dispute.

Rule 3 Contents of the Request

- (1) The Request shall:
 - (a) be in English, French or Spanish;
 - (b) identify each party to the dispute and provide their contact information, including electronic mail address, street address and telephone number;
 - (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) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request and attach the authorizations.
- (2) With regard to Article 2(1)(a) of the Additional Facility Rules, the Request shall include:
 - (a) a description of the investment, a summary of the relevant facts and claims, the request for relief, including an estimate of the amount of any damages sought, and an indication that there is a legal dispute between the parties arising out of the investment;
 - (b) with respect to each party’s consent to submit the dispute to arbitration pursuant to the Additional Facility Rules:
 - (i) the instrument(s) in which each party’s consent is recorded;

- (ii) the date of entry into force of the instrument(s) on which consent is based, together with supporting documents demonstrating that date;
 - (iii) the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or, if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre; and
 - (iv) an indication that the requesting party has complied with any conditions in the instrument of consent for submission of the dispute;
- (c) if a party is a natural person:
- (i) information concerning that person's nationality on the date of consent, together with supporting documents demonstrating such nationality; and
 - (ii) a statement that the person is a national of a State other than the State party to the dispute or other than any constituent State of the REIO party to the dispute on the date of consent;
- (d) if a party is a juridical person:
- (i) information concerning and supporting documents demonstrating that party's nationality on the date of consent; and
 - (ii) if that party had the nationality of the State party to the dispute or of any constituent State of the REIO party to the dispute on the date of consent, information concerning and supporting documents demonstrating the agreement of the parties to treat the juridical person as a national of another State pursuant to Article 1(5)(b) of the Additional Facility Rules;
- (e) if a party is a constituent subdivision of a State or an agency of a State or of an REIO, supporting documents demonstrating the approval of consent of the State or the REIO, unless the State or the REIO has notified the Centre that no such approval is required.

Rule 4
Recommended Additional Information

It is recommended that the Request:

- (a) contain any procedural proposals or agreements reached by the parties, including with respect to the number and method of appointment of arbitrators, the seat of arbitration, the law applicable to the dispute and the procedural language(s); and
- (b) include the names of the persons and entities that own or control a requesting party which is a juridical person.

Rule 5
Filing of the Request and Supporting Documents

- (1) The Request shall be filed electronically. The Secretary-General may require the Request to be filed in an alternative format if necessary.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Secretary-General may require a fuller extract or a complete version of the document.
- (3) The Secretary-General may require a certified copy of a supporting document.
- (4) Any document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or a complete translation of the document.

Rule 6
Receipt of the Request and Routing of Written Communications

The Secretary-General shall:

- (a) promptly acknowledge receipt of the Request to the requesting party;
- (b) transmit the Request to the other party upon receipt of the lodging fee; and
- (c) act as the official channel of written communications between the parties.

Rule 7

Review and Registration of the Request

- (1) Upon receipt of the Request and lodging fee, the Secretary-General shall register the Request if it appears on the basis of the information provided that the Request is not manifestly outside the scope of Article 2(1) of the Additional Facility Rules.
- (2) The Secretary-General shall promptly notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.

Rule 8

Notice of Registration

The notice of registration of the Request shall:

- (a) record that the Request is registered and indicate the date of registration;
- (b) confirm that all correspondence to the parties in connection with the proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Centre;
- (c) invite the parties to inform the Secretary-General of their agreement regarding the number and method of appointment of arbitrators, unless such information has already been provided, and to constitute a Tribunal without delay;
- (d) remind the parties that registration of the Request is without prejudice to the powers and functions of the Tribunal in regard to jurisdiction, competence of the Tribunal and the merits; and
- (e) remind the parties to make the disclosure required by Rule 23.

Rule 9

Withdrawal of the Request

At any time before registration, a requesting party may notify the Secretary-General in writing of the withdrawal of the Request or, if there is more than one requesting party, that it is withdrawing from the Request. The Secretary-General shall promptly notify the parties of the withdrawal, unless the Request has not yet been transmitted pursuant to Rule 6(b).

Chapter III General Provisions

Rule 10 Party and Party Representative

- (1) For the purposes of these Rules, “party” includes, where required by the context, all parties acting as claimant or as respondent.
- (2) Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be promptly notified by that party to the Secretary-General (“representative(s)”).

Rule 11 General Duties

- (1) The Tribunal and the parties shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.
- (2) The Tribunal shall treat the parties equally and provide each party with a reasonable opportunity to present its case.

Rule 12 Method of Filing

- (1) A document to be filed in the proceeding shall be filed with the Secretary-General, who shall acknowledge its receipt.
- (2) Documents shall only be filed electronically, unless the Tribunal orders otherwise in special circumstances.

Rule 13 Supporting Documents

- (1) Supporting documents, including witness statements, expert reports, exhibits and legal authorities, shall be filed together with the request, written submission, observations or communication to which they relate.

- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Tribunal or a party may require a fuller extract or a complete version of the document.
- (3) If the authenticity of a supporting document is disputed, the Tribunal may order a party to provide a certified copy or to make the original available for examination.

Rule 14

Routing of Documents

Following the registration of the Request pursuant to Rule 7, the Secretary-General shall transmit a document filed in the proceeding to:

- (a) the other party, unless the parties communicate directly with each other; and
- (b) the Tribunal, unless the parties communicate directly with the Tribunal on request of the Tribunal or by agreement of the parties.

Rule 15

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 Secretary-General regarding the use of a language that is not an official language of the Centre. If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (2) In a proceeding with one procedural language:
 - (a) documents shall be filed and hearings shall be conducted in that procedural language;
 - (b) documents in another language shall be accompanied by a translation into that procedural language; and
 - (c) testimony in another language shall be interpreted into that procedural language.
- (3) In a proceeding with two procedural languages:
 - (a) documents may be filed and hearings may be conducted in either procedural language, unless the Tribunal orders that a document be filed in both procedural

languages or that a hearing be conducted with interpretation into both procedural languages;

- (b) documents in another language shall be accompanied by a translation into either procedural language, unless the Tribunal orders translation into both procedural languages;
 - (c) testimony in another language shall be interpreted into either procedural language, unless the Tribunal orders interpretation into both procedural languages;
 - (d) the Tribunal and the Secretary-General may communicate in either procedural language; and
 - (e) all orders, decisions and the Award shall be rendered in both procedural languages, unless the parties agree otherwise.
- (4) Translation of only the relevant part of a supporting document is sufficient, unless the Tribunal orders a party to provide a fuller or a complete translation. If the translation is disputed, the Tribunal may order a party to provide a certified translation.

Rule 16 **Correction of Errors**

A party may correct an accidental error in a document promptly upon discovery and before the Award is rendered. The parties may refer any dispute regarding a correction to the Tribunal for determination.

Rule 17 **Calculation of Time Limits**

- (1) References to time shall be determined based on the time at the seat of the Centre on the relevant date.
- (2) Any time limit expressed as a period of time shall be calculated from the day after the date on which:
 - (a) the Tribunal, or the Secretary-General if applicable, announces the period; or
 - (b) the procedural step starting the period is taken.

- (3) A time limit shall be satisfied if a procedural step is taken or a document is received by the Secretary-General on the relevant date, or on the subsequent business day if the date falls on a Saturday or Sunday.

Rule 18

Fixing Time Limits

- (1) The Tribunal, or the Secretary-General if applicable, shall fix time limits for the completion of each procedural step in the proceeding, other than time limits prescribed by these Rules.
- (2) In fixing time limits pursuant to paragraph (1), the Tribunal, or the Secretary-General if applicable, shall consult with the parties as far as possible.
- (3) The Tribunal may delegate the power to fix time limits to its President.

Rule 19

Extension of Time Limits Applicable to Parties

- (1) A time limit prescribed by these Rules may only be extended by agreement of the parties. A procedural step taken or document received after the expiry of such time limit shall be disregarded, unless the parties agree otherwise or the Tribunal decides that there are special circumstances justifying the failure to meet the time limit.
- (2) A time limit fixed by the Tribunal or the Secretary-General may be extended by agreement of the parties or by the Tribunal, or the Secretary-General if applicable, upon reasoned application by either party made prior to its expiry. A procedural step taken or a document received after the expiry of such time limit shall be disregarded, unless the parties agree otherwise or the Tribunal, or the Secretary-General if applicable, decides that there are special circumstances justifying the failure to meet the time limit.
- (3) The Tribunal may delegate the power to extend time limits to its President.

Rule 20

Time Limits Applicable to Tribunal

- (1) The Tribunal shall use best efforts to meet time limits to render orders, decisions and the Award.

- (2) If the Tribunal cannot comply with an applicable time limit, it shall advise the parties of the special circumstances justifying the delay and the date when it anticipates rendering the order, decision or Award.

Chapter IV Establishment of the Tribunal

Rule 21 General Provisions Regarding the Establishment of the Tribunal

- (1) The Tribunal shall be constituted without delay after registration of the Request.
- (2) Unless otherwise agreed by the parties:
- (a) the majority of the arbitrators on a Tribunal shall be nationals of States other than the State party to the dispute, any constituent State of the REIO party to the dispute and the State whose national is a party to the dispute;
 - (b) a party may not appoint an arbitrator who is a national of the State party to the dispute, any constituent State of the REIO party to the dispute or the State whose national is a party to the dispute;
 - (c) arbitrators appointed by the Secretary-General shall not be nationals of the State party to the dispute, a constituent State of the REIO party to the dispute or the State whose national is a party to the dispute; and
 - (d) no person previously involved in the resolution of the dispute as a conciliator, judge, mediator or in a similar capacity may be appointed as an arbitrator.
- (3) The composition of a Tribunal shall remain unchanged after it has been constituted, except as provided in Chapter V.

Rule 22 Qualifications of Arbitrators

Arbitrators shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who are impartial and independent.

Rule 23

Notice of Third-Party Funding

- (1) A party shall file a written notice disclosing the name and address of any non-party from which the party, directly or indirectly, has received funds for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding (“third-party funding”).
- (2) A non-party referred to in paragraph (1) does not include a representative of a party.
- (3) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.
- (4) The Secretary-General shall transmit a notice of third-party funding and any notification of changes to the information in such notice to the parties and to any arbitrator proposed for appointment or appointed in a proceeding for purposes of completing the arbitrator declaration required by Rule 27(3)(b).
- (5) The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding pursuant to Rule 46(3) if it deems it is necessary at any stage of the proceeding.

Rule 24

Method of Constituting the Tribunal

- (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 45 days after the date of registration, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party and the third, who shall be the President of the Tribunal, appointed by agreement of the parties.

Rule 25
Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of the President of the Tribunal or a Sole Arbitrator.

Rule 26
Appointment of Arbitrators by the Secretary-General

- (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 Secretary-General appoint the arbitrator(s) who have not yet been appointed.
- (2) The Secretary-General shall appoint the President of the Tribunal after appointing any members who have not yet been appointed.
- (3) The Secretary-General 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.

Rule 27
Acceptance of Appointment

- (1) A party appointing an arbitrator shall notify the Secretary-General of the appointment and provide the appointee's name, nationality and contact information.
- (2) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from the appointee and shall transmit to the appointee the information received from the parties relevant to completion of the declaration referred to in paragraph (3)(b).
- (3) Within 20 days after receipt of the request for acceptance of an appointment, the 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 proceeding.

- (4) The Secretary-General shall notify the parties of the acceptance of appointment by each arbitrator and transmit the signed declaration to them.
- (5) The Secretary-General 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 promptly disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).

Rule 28

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
 - (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.

Rule 29

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, the supporting documents, the notice of registration and communications with the parties to each member.

Chapter V
Disqualification of Arbitrators and Vacancies

Rule 30
Proposal for Disqualification of Arbitrators

- (1) A party may file a proposal to disqualify one or more arbitrators (“proposal”) on the following grounds:
 - (a) that the arbitrator was ineligible for appointment to the Tribunal pursuant to Rule 21(2)(a)-(c); or
 - (b) that circumstances exist that give rise to justifiable doubts as to the qualities of the arbitrator required by Rule 22.
- (2) The following procedure shall apply:
 - (a) the proposal shall be filed after the constitution of the Tribunal and within 21 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 proposal shall include the grounds on which it is based, a statement of the relevant facts, law and arguments, and any supporting documents;
 - (c) the other party shall file its response and supporting documents within 21 days after receipt of the proposal;
 - (d) the arbitrator to whom the proposal relates may file a statement that is limited to factual information relevant to the proposal. The statement shall be filed within five days after receipt of the response referred to in paragraph (2)(c); and
 - (e) each party may file a final written submission on the proposal within seven days after the earlier of receipt of the statement or expiry of the time limit referred to in paragraph (2)(d).
- (3) If the other party agrees to the proposal prior to the dispatch of the decision referred to in Rule 31, the arbitrator shall resign in accordance with Rule 33.
- (4) The proceeding shall be suspended upon the filing of the proposal until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding.

Rule 31
Decision on the Proposal for Disqualification

- (1) The Secretary-General shall make the decision on the proposal.
- (2) The Secretary-General shall use best efforts to decide any proposal within 30 days after the expiry of the time limit referred to in Rule 30(2)(e).

Rule 32
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 30 and 31 shall apply.

Rule 33
Resignation

An arbitrator may resign by notifying the Secretary-General and the other members of the Tribunal.

Rule 34
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 Secretary-General shall fill any 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. Any portion of a hearing shall be recommenced if the newly appointed arbitrator considers it necessary to decide a pending matter.

Chapter VI
Conduct of the Proceeding

Rule 35
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 made by any appropriate means of communication and may be signed by the President on behalf of the Tribunal.
- (3) The Tribunal shall apply any agreement of the parties on procedural matters, subject to Rule 1(3), and to the extent that the agreement does not conflict with the (Additional Facility) Administrative and Financial Regulations.
- (4) The Tribunal shall consult with the parties prior to making an order or decision it is authorized by these Rules to make on its own initiative.

Rule 36
Waiver

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 object promptly, then that party shall be deemed to have waived its right to object to that non-compliance, unless the Tribunal decides that there are special circumstances justifying the failure to object promptly.

Rule 37
Filling of Gaps

If a question of procedure arises which is not covered by these Rules or by any agreement of the parties, the Tribunal shall decide the question.

Rule 38
First Session

- (1) The Tribunal shall hold a first session to address the procedure, including the matters listed in paragraph (4).

- (2) 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.
- (3) The first session shall be held within 60 days after the constitution of the Tribunal 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 within this period, the Tribunal shall decide whether to hold the first session solely between the President of the Tribunal and the parties, or solely among the Tribunal members based on the parties' written submissions.
- (4) Before the first session, the Tribunal shall invite the parties' views on procedural matters, including:
 - (a) the applicable arbitration rules;
 - (b) the division of advances payable pursuant to (Additional Facility) Administrative and Financial Regulation 7;
 - (c) the procedural language(s), translation and interpretation;
 - (d) the method of filing and routing of documents;
 - (e) the number, length, type and format of written submissions;
 - (f) the seat of arbitration;
 - (g) the place of hearings;
 - (h) whether there will be requests for production of documents as between the parties and, if so, the scope, timing and procedure for such requests;
 - (i) the procedural calendar;
 - (j) the manner of making recordings and transcripts of hearings;
 - (k) the publication of documents and recordings;
 - (l) the treatment of confidential or protected information; and
 - (m) any other procedural matter raised by either party or the Tribunal.

- (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 session or the last written submission on procedural matters addressed at the first session.

Rule 39

Written Submissions

- (1) The parties shall file the following written submissions:
- (a) a memorial by the requesting party;
 - (b) a counter-memorial by the other party;
- and, unless the parties agree otherwise:
- (c) a reply by the requesting party; and
 - (d) a rejoinder by the other party.
- (2) 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 and addressing any relevant facts that are new or could not have been known prior to filing the reply or rejoinder.
- (3) A party may file unscheduled written submissions, observations, or supporting documents only after obtaining leave of the Tribunal, unless the filing of such documents is provided for by these Rules. The Tribunal may grant such leave upon a timely and reasoned application if it finds such written submissions, observations or supporting documents are necessary in view of all relevant circumstances.

Rule 40

Case Management Conferences

With a view to conducting an expeditious and cost-effective proceeding, the Tribunal shall convene one or more case management conferences with the parties at any time after the first session to:

- (a) identify uncontested facts;

- (b) clarify and narrow the issues in dispute; or
- (c) address any other procedural or substantive issue related to the resolution of the dispute.

Rule 41 Seat of Arbitration

The seat of arbitration shall be agreed on by the parties or, absent agreement, shall be determined by the Tribunal having regard to the circumstances of the proceeding and after consulting with the parties.

Rule 42 Hearings

- (1) The Tribunal shall hold one or more hearings, 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.
- (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 Secretary-General. If the parties do not agree on the place of a hearing, it shall be held at a place determined by the Tribunal.
- (4) Any member of the Tribunal may put questions to the parties and ask for explanations at any time during a hearing.

Rule 43 Quorum

The participation of a majority of the members of the Tribunal by any appropriate means of communication shall be required at the first session, case management conferences, hearings and deliberations, except as provided in these Rules or unless the parties agree otherwise.

Rule 44 Deliberations

- (1) The deliberations of the Tribunal shall take place in private and remain confidential.
- (2) The Tribunal may deliberate at any place and by any means it considers appropriate.
- (3) The Tribunal may be assisted by the Secretary of the Tribunal at its deliberations. No other person shall assist the Tribunal at its deliberations, unless the Tribunal decides otherwise and notifies the parties.
- (4) The Tribunal shall deliberate on any matter for decision immediately after the last written or oral submission on that matter.

Rule 45 Decisions Made by Majority Vote

The Tribunal shall make decisions by a majority of the votes of all its members. Abstention shall count as a negative vote.

Chapter VII Evidence

Rule 46 Evidence: General Principles

- (1) The Tribunal shall determine the admissibility and probative value of the evidence adduced.
- (2) Each party has the burden of proving the facts relied on to support its claim or defense.
- (3) The Tribunal may call upon a party to produce documents or other evidence if it deems it necessary at any stage of the proceeding.

Rule 47
Disputes Arising from Requests for Production of Documents

In deciding a dispute arising out of a party's objection to the other party's request for production of documents, the Tribunal shall consider all relevant circumstances, including:

- (a) the scope and timeliness of the request;
- (b) the relevance and materiality of the documents requested;
- (c) the burden of production; and
- (d) the basis of the objection.

Rule 48
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.
- (5) A witness shall be examined in person unless the Tribunal determines that another means of examination is appropriate in the circumstances.
- (6) 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.”
- (7) Paragraphs (1)-(5) shall apply, with necessary modifications, to evidence given by an expert.

(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.”

Rule 49 Tribunal-Appointed Experts

- (1) Unless the parties agree otherwise, the Tribunal may appoint one or more independent experts to report to it on specific matters within the scope of the dispute.
- (2) The Tribunal shall consult with the parties on the appointment of an expert, including on the terms of reference and fees of the expert.
- (3) Upon accepting an appointment by the Tribunal, an expert shall provide a signed declaration in the form published by the Centre.
- (4) 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.
- (5) The parties shall have the right to make written and oral submissions on the report of the Tribunal-appointed expert, as required.
- (6) Rule 48 shall apply, with necessary modifications, to the Tribunal-appointed expert.

Rule 50 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 relevant terms.
- (3) The parties shall have the right to participate in any visit or inquiry.

Chapter VIII Special Procedures

Rule 51 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 or to the jurisdiction or competence of the Tribunal.
- (2) The following procedure shall apply:
 - (a) a party shall file a written submission no later than 45 days after the constitution of the Tribunal;
 - (b) the written submission shall specify the grounds on which the objection is based and contain a statement of the relevant facts, law and arguments;
 - (c) the Tribunal shall fix time limits for written and oral submissions on the objection, as required;
 - (d) if a party files the objection before the 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
 - (e) the Tribunal shall render its decision or Award 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) 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 on the objection and fix any time limit necessary for the further conduct of the proceeding.
- (4) A decision that a claim is not manifestly without legal merit shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 53 or to argue subsequently in the proceeding that a claim is without legal merit.

Rule 52 Bifurcation

- (1) A party may request that a question be addressed in a separate phase of the proceeding (“request for bifurcation”).
- (2) If a request for bifurcation relates to a preliminary objection, Rule 54 shall apply.
- (3) The following procedure shall apply to a request for bifurcation other than a request referred to in Rule 54:
 - (a) the request for bifurcation shall be filed as soon as possible;
 - (b) the request for bifurcation shall state the questions to be bifurcated;
 - (c) the Tribunal shall fix time limits for written and oral submissions on the request for bifurcation, as required;
 - (d) the Tribunal shall issue its decision on the request for bifurcation within 30 days after the later of the last written or oral submission on the request; and
 - (e) the Tribunal shall fix any time limit necessary for the further conduct of the proceeding.
- (4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
 - (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and
 - (c) the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical.
- (5) If the Tribunal orders bifurcation pursuant to this Rule, it shall suspend the proceeding with respect to any questions to be addressed at a later phase, unless the parties agree otherwise or the Tribunal decides that there are special circumstances that do not justify suspension.
- (6) The Tribunal may at any time on its own initiative decide whether a question should be addressed in a separate phase of the proceeding.

Rule 53
Preliminary Objections

- (1) The Tribunal shall have the power to rule on its jurisdiction and competence. For the purposes of this Rule, an agreement providing for arbitration pursuant to the Additional Facility Rules shall be severable from the other terms of the contract in which it may have been included.
- (2) A party may file a preliminary objection that the dispute or any ancillary claim is not within the jurisdiction or competence of the Tribunal (“preliminary objection”).
- (3) A party shall notify the Tribunal and the other party of its intent to file a preliminary objection as soon as possible.
- (4) The Tribunal may address a preliminary objection in a separate phase of the proceeding or join the objection to the merits.

Rule 54
Preliminary Objections with a Request for Bifurcation

- (1) The following procedure shall apply with respect to a request for bifurcation relating to a preliminary objection:
 - (a) unless the parties agree otherwise, the request for bifurcation shall be filed:
 - (i) within 45 days after filing the memorial on the merits;
 - (ii) within 45 days after filing the written submission containing the ancillary claim, if the objection relates to the ancillary claim; or
 - (iii) as soon as possible after the facts on which the preliminary objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (1)(a)(i) and (ii);
 - (b) the request for bifurcation shall state the preliminary objection to which it relates;
 - (c) unless the parties agree otherwise, the proceeding on the merits shall be suspended until the Tribunal decides whether to bifurcate;
 - (d) the Tribunal shall fix time limits for written and oral submissions on the request for bifurcation, as required; and

- (e) the Tribunal shall issue its decision on a request for bifurcation within 30 days after the later of the last written or oral submission on the request.
- (2) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
- (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and
 - (c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical.
- (3) If the Tribunal decides to address the preliminary objection in a separate phase of the proceeding, it shall:
- (a) suspend the proceeding on the merits, unless the parties agree otherwise, or the Tribunal decides that there are special circumstances that do not justify suspension;
 - (b) fix time limits for written and oral submissions on the preliminary objection, as required;
 - (c) render its decision or Award on the preliminary objection within 180 days after the later of the last written or oral submission, in accordance with Rule 69(1)(b); and
 - (d) fix any time limit necessary for the further conduct of the proceeding if the Tribunal does not render an Award.
- (4) If the Tribunal decides to join the preliminary objection to the merits, it shall:
- (a) fix time limits for written and oral submissions on the preliminary objection, as required;
 - (b) modify any time limits for written and oral submissions on the merits, as required; and
 - (c) render its Award within 240 days after the later of the last written or oral submission in the proceeding, in accordance with Rule 69(1)(c).

Rule 55
Preliminary Objections without a Request for Bifurcation

- (1) If a party does not request bifurcation of a preliminary objection within the time limits referred to in Rule 54(1)(a) or the parties confirm that they will not request bifurcation, the objection shall be joined to the merits and the following procedure shall apply:
 - (a) the Tribunal shall fix time limits for written and oral submissions on the preliminary objection, as required;
 - (b) the memorial on the preliminary objection shall be filed:
 - (i) by the date to file the counter-memorial on the merits;
 - (ii) by the date to file the next written submission after an ancillary claim, if the objection relates to the ancillary claim; or
 - (iii) as soon as possible after the facts on which the objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (1)(b)(i) and (ii).
 - (c) the party filing the memorial on preliminary objections shall also file its counter-memorial on the merits, or, if the objection relates to an ancillary claim, file its next written submission after the ancillary claim; and
 - (d) the Tribunal shall render its Award within 240 days after the later of the last written or oral submission in the proceeding, in accordance with Rule 69(1)(c).
- (2) The Tribunal may at any time on its own initiative consider whether a dispute or an ancillary claim is within its own jurisdiction and competence.

Rule 56
Consolidation or Coordination of Arbitrations

- (1) Parties to two or more pending arbitrations administered by the Centre may agree to consolidate or coordinate these arbitrations.
- (2) Consolidation joins all aspects of the arbitrations sought to be consolidated and results in one Award. To be consolidated pursuant to this Rule, the arbitrations shall have been registered in accordance with these Rules and shall involve the same State or the same REIO (or constituent subdivision of the State or agency of the State or the REIO).

- (3) Coordination aligns specific procedural aspects of two or more pending arbitrations, but the arbitrations remain separate proceedings and result in separate Awards.
- (4) The parties referred to in paragraph (1) shall jointly provide the Secretary-General with proposed terms for the conduct of the consolidated or coordinated arbitrations and consult with the Secretary-General to ensure that the proposed terms are capable of being implemented.
- (5) After the consultation referred to in paragraph (4), the Secretary-General shall communicate the proposed terms agreed by the parties to the Tribunals constituted in the arbitrations. Such Tribunals shall make any order or decision required to implement these terms.

Rule 57 **Provisional Measures**

- (1) A party may at any time request that the Tribunal order provisional measures to preserve that party's rights, including measures to:
 - (a) prevent action that is likely to cause current or imminent harm to that party or prejudice to the arbitral process;
 - (b) maintain or restore the *status quo* pending determination of the dispute; or
 - (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 and oral submissions on the request, as required;
 - (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:
 - (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 order provisional measures, the Tribunal shall consider all relevant circumstances, including:
- (a) whether the measures are urgent and necessary; and
 - (b) the effect that the measures may have on each party.
- (4) The Tribunal may order provisional measures on its own initiative. The Tribunal may also order provisional measures different from those requested by a party.
- (5) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered 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 interim or conservatory measures. Such a request shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Rule 58

Ancillary Claims

- (1) Unless the parties agree otherwise, a party may file an incidental or additional claim or a counterclaim ("ancillary claim"), provided that such ancillary claim is within the scope of the agreement of the parties.
- (2) An incidental or additional claim shall be presented no later than in the reply, and a counterclaim shall be presented no later than in the counter-memorial, unless the Tribunal decides otherwise.
- (3) The Tribunal shall fix time limits for written and oral submissions on the ancillary claim, as required.

Rule 59

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 request in paragraph (2) relates to a failure to appear at a hearing, the Tribunal may:
 - (a) reschedule the hearing to a date within 60 days after the original date;
 - (b) proceed with the 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 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 hearing.
- (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 that is not in default 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 whether the dispute is within its own jurisdiction and competence before deciding the questions submitted to it and rendering an Award.

Chapter IX Costs

Rule 60 Costs of the Proceeding

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 Tribunal, Tribunal assistants approved by the parties and Tribunal-appointed experts; and
- (c) the administrative charges and direct costs of the Centre.

Rule 61 Statement of and Submission on Costs

The Tribunal shall request that each party file a statement of its costs and a written submission on the allocation of costs before allocating the costs of the proceeding between the parties.

Rule 62 Decisions on Costs

- (1) In allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including:
 - (a) the outcome of the proceeding or any part of it;
 - (b) the conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner and complied with these Rules and the orders and decisions of the Tribunal;
 - (c) the complexity of the issues; and
 - (d) the reasonableness of the costs claimed.

- (2) The Tribunal shall award the party prevailing on an objection made pursuant to Rule 51 its costs of submitting or opposing the objection, unless the circumstances justify a different allocation of costs in accordance with paragraph (1).
- (3) The Tribunal may make an interim decision on costs at any time.
- (4) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.

Rule 63

Security for Costs

- (1) Upon request of a party, the Tribunal may order any party asserting a claim or counterclaim to provide security for costs.
- (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 and oral submissions on the request, as required;
 - (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 all relevant circumstances, including:
 - (a) that party's ability to comply with an adverse decision on costs;
 - (b) that party's willingness to comply with an adverse decision on costs;
 - (c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim; and

(d) the conduct of the parties.

- (4) The Tribunal shall consider all evidence adduced in relation to the circumstances in paragraph (3). The existence of third-party funding may form part of such evidence but is not by itself sufficient to justify an order for security for costs.
- (5) The Tribunal shall specify any relevant terms in an order to provide security for costs and fix a time limit for compliance with the order.
- (6) If a party fails to comply with an order to provide security for costs, the Tribunal may suspend the proceeding. If the proceeding is suspended for more than 90 days, the Tribunal may, after consulting with the parties, order the discontinuance of the proceeding.
- (7) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.
- (8) The Tribunal may at any time modify or revoke its order on security for costs, on its own initiative or upon a party's request.

Chapter X

Suspension, Settlement and Discontinuance

Rule 64

Suspension of the Proceeding

- (1) The Tribunal shall suspend the proceeding by agreement of the parties.
- (2) The Tribunal may suspend the proceeding upon the request of either party or on its own initiative, except as otherwise provided in the (Additional Facility) Administrative and Financial Regulations or these Rules.
- (3) The Tribunal shall give the parties the opportunity to make observations before ordering a suspension pursuant to paragraph (2).
- (4) In its order suspending the proceeding, the Tribunal shall specify:
 - (a) the period of the suspension;
 - (b) any relevant terms; and
 - (c) a modified procedural calendar to take effect on resumption of the proceeding, if necessary.

- (5) The Tribunal shall extend the period of a suspension prior to its expiry by agreement of the parties.
- (6) The Tribunal may extend the period of a suspension prior to its expiry, on its own initiative or upon a party's request, after giving the parties an opportunity to make observations.
- (7) The Secretary-General shall suspend the proceeding pursuant to paragraph (1) or extend the suspension pursuant to paragraph (5) 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 terms agreed to by the parties.

Rule 65
Settlement and Discontinuance by Agreement of the Parties

- (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) An Award rendered pursuant to paragraph (2)(b) does not need to include the reasons on which it is based.
- (4) 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.

Rule 66
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.

- (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.

Rule 67 **Discontinuance for Failure of Parties to Act**

- (1) If the parties fail to take any steps in the proceeding for more than 150 consecutive 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 shall 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.

Chapter XI **The Award**

Rule 68 **Applicable Law**

- (1) The Tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Tribunal shall apply:
 - (a) the law which it determines to be applicable; and
 - (b) the rules of international law it considers applicable.

- (2) The Tribunal may decide *ex aequo et bono* if the parties have expressly authorized it to do so and if the law applicable to the arbitration so permits.

Rule 69

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 latest of the Tribunal constitution, the last written submission or the last oral submission, if the Award is rendered pursuant to Rule 51(4);
 - (b) 180 days after the later of the last written or oral submission if the Award is rendered pursuant to Rule 54(3)(c); or
 - (c) 240 days after the later of the last written or oral submission in all other cases.
- (2) A statement of costs and submission on costs filed pursuant to with Rule 61 shall not be considered a written submission for the purposes of paragraph (1).
- (3) The parties waive any time limits for rendering the Award which may be provided for by the law of the seat of arbitration.

Rule 70

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 pursuant to these Rules 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 seat of arbitration, the date and place of the first session, case management conferences and 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 reasons on which the Award is based, unless the parties have agreed that no reasons are to be given; 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 on the allocation of costs.
- (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 and if allowed by the law of the seat of arbitration.
- (3) Any member of the Tribunal may attach an individual opinion or a statement of dissent to the Award before the Award is rendered.
- (4) The Award shall be final and binding on the parties.

Rule 71

Rendering of the Award

- (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) Upon request of the parties that the original text of the Award be filed or registered by the Tribunal pursuant to the law of the seat of arbitration, the Secretary-General shall do so on behalf of the Tribunal.
- (3) The Award shall be deemed to have been made at the seat of arbitration and deemed to have been rendered on the date of dispatch of certified copies of the Award.
- (4) The Secretary-General shall provide additional certified copies of the Award to a party upon request.

Rule 72 **Supplementary Decision, Rectification and Interpretation of an Award**

- (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 may request a supplementary decision, rectification or interpretation of an Award by filing a request with the Secretary-General and paying the lodging fee published in the schedule of fees within 45 days after the Award was rendered.
- (3) The request referred to in paragraph (2) shall:
 - (a) identify the Award to which it relates;
 - (b) be in an official language of the Centre used in the proceeding;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) specify:
 - (i) with respect to a request for a supplementary decision, any question which the Tribunal omitted to decide in the Award;
 - (ii) with respect to a request for rectification, any clerical, arithmetical or similar error in the Award;
 - (iii) with respect to a request for interpretation, the points in dispute concerning the meaning or scope of the Award; and
 - (e) attach proof of payment of the lodging fee.
- (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 Secretary-General 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 70-71 shall apply to any decision of the Tribunal pursuant to this Rule.
- (8) The Tribunal shall issue a decision on the request for supplementary decision, rectification or interpretation within 60 days after the later of the last written or oral submission on the request.
- (9) A supplementary decision, rectification or interpretation pursuant to this Rule shall become part of the Award and shall be reflected on all certified copies of the Award.

Chapter XII

Publication, Access to Proceedings and Non-Disputing Party Submissions

Rule 73

Publication of Orders, Decisions and Awards

- (1) The Centre shall publish orders, decisions and Awards with any redactions agreed to by the parties and jointly notified to the Secretary-General within 60 days after the order, decision or Award is rendered.
- (2) If either party notifies the Secretary-General within the 60-day period referred to in paragraph (1) that the parties disagree on any proposed redactions, the Secretary-General shall refer the order, decision or Award to the Tribunal to decide any disputed redactions. The Centre shall publish the order, decision or Award in accordance with the decision of the Tribunal.
- (3) In deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 76.

Rule 74

Publication of Documents Filed in the Proceeding

- (1) With consent of the parties, the Centre shall publish any written submission or supporting document filed by a party in the proceeding, with any redactions agreed to by the parties and jointly notified to the Secretary-General.
- (2) Absent consent of the parties pursuant to paragraph (1), a party may refer to the Tribunal a dispute regarding the redaction of a written submission that it filed in the proceeding, excluding supporting documents. The Tribunal shall decide any

disputed redactions and the Centre shall publish the document in accordance with the decision of the Tribunal.

- (3) In deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 76.

Rule 75 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 or protected information as defined in Rule 76 to persons observing the hearings.
- (3) Upon request of a party, the Centre shall publish recordings or transcripts of hearings, unless the other party objects.

Rule 76 Confidential or Protected Information

For the purposes of Rules 73-75, confidential or protected information is information which is protected from public disclosure:

- (a) by the instrument of consent to arbitration;
- (b) by the applicable law or applicable rules;
- (c) in the case of information of a State or an REIO party to the dispute, by the law of that State or that REIO;
- (d) in accordance with the orders and decisions of the Tribunal;
- (e) by agreement of the parties;
- (f) because it constitutes confidential business information;
- (g) because public disclosure would impede law enforcement;

- (h) because a State or an REIO party to the dispute considers that public disclosure would be contrary to its essential security interests;
- (i) because public disclosure would aggravate the dispute between the parties; or
- (j) because public disclosure would undermine the integrity of the arbitral process.

Rule 77

Submission of Non-Disputing Parties

- (1) Any person or entity that is not a party to the dispute (“non-disputing party”) may apply for permission to file a written submission in the proceeding. The application shall be made in the procedural language(s) used 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, particular knowledge or insight that is different from that of the 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 any conditions for filing or publication of such a submission.
- (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 the format, length, scope or publication of the written submission and the time limit to file the submission.

- (5) The Tribunal shall issue a reasoned decision on whether to permit a non-disputing party submission within 30 days after the later of the last written or oral submission on the application.
- (6) The Tribunal shall provide the non-disputing party with access to relevant documents filed in the proceeding, unless either party objects.
- (7) 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 78

Participation of Non-Disputing Treaty Party

- (1) The Tribunal shall permit a Party to a treaty that is not a party to the dispute (“non-disputing Treaty Party”) to make a written or oral submission on the interpretation of the treaty at issue in the dispute and upon which consent to arbitration is based. The Tribunal may, after consulting with the parties, invite a non-disputing Treaty Party to make such a submission.
- (2) A submission of a non-disputing Treaty Party pursuant to paragraph (1) shall not support a party in a manner tantamount to diplomatic protection.
- (3) The Tribunal shall ensure that non-disputing Treaty 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 filing of a written submission by the non-disputing Treaty Party, including with respect to the format, length or publication of the written submission and the time limit to file the submission.
- (4) The parties shall have the right to make observations on the submission of the non-disputing Treaty Party.

Chapter XIII

Expedited Arbitration

Rule 79

Consent of Parties to Expedited Arbitration

- (1) The parties to an arbitration conducted pursuant to these Rules may consent at any time to expedite the arbitration in accordance with this Chapter (“expedited arbitration”) by jointly notifying the Secretary-General in writing of their consent.

- (2) Chapters I-XII of the (Additional Facility) Arbitration Rules apply to an expedited arbitration except that:
- (a) Rules 24, 26, 49, 50, 51, 52, 54 and 56 do not apply in an expedited arbitration; and
 - (b) Rules 27, 30, 38, 47, 53, 59, 69 and 72, as modified by Rules 80-87, apply in an expedited arbitration.
- (3) If the parties consent to expedited arbitration after the constitution of the Tribunal pursuant to Chapter IV, Rules 80-82 shall not apply, and the expedited arbitration shall proceed subject to all members of the Tribunal confirming their availability pursuant to Rule 83(2). If any arbitrator fails to confirm availability before the expiry of the applicable time limit, the arbitration shall proceed in accordance with Chapters I-XII.

Rule 80
Number of Arbitrators and Method of Constituting the Tribunal
for Expedited Arbitration

- (1) The Tribunal in an expedited arbitration shall consist of a Sole Arbitrator appointed pursuant to Rule 81 or a three-member Tribunal appointed pursuant to Rule 82.
- (2) The parties shall jointly notify the Secretary-General in writing of their election of a Sole Arbitrator or a three-member Tribunal within 30 days after the date of the notice of consent referred to in Rule 79(1).
- (3) If the parties do not notify the Secretary-General of their election within the time limit referred to in paragraph (2), the Tribunal shall consist of a Sole Arbitrator to be appointed pursuant to Rule 81.
- (4) An appointment pursuant to Rules 81-82 shall be deemed an appointment in accordance with a method agreed by the parties.

Rule 81
Appointment of Sole Arbitrator for Expedited Arbitration

- (1) The parties shall jointly appoint the Sole Arbitrator within 20 days after the notice referred to in Rule 80(2).
- (2) The Secretary-General shall appoint the Sole Arbitrator if:

- (a) the parties do not appoint the Sole Arbitrator within the time limit referred to in paragraph (1);
 - (b) the parties notify the Secretary-General that they are unable to agree on the Sole Arbitrator; or
 - (c) the appointee declines the appointment or does not comply with Rule 83(1).
- (3) The following procedure shall apply to the appointment by the Secretary-General of the Sole Arbitrator pursuant to paragraph (2):
- (a) the Secretary-General shall transmit a list of five candidates for appointment as Sole Arbitrator to the parties within 10 days after the relevant event referred to in paragraph (2);
 - (b) each party may strike one name from the list and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;
 - (c) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them; and
 - (d) if the selected candidate declines the appointment or does not comply with Rule 83(1), the Secretary-General shall select the next highest-ranked candidate.

Rule 82

Appointment of Three-Member Tribunal for Expedited Arbitration

- (1) A three-member Tribunal shall be appointed in accordance with the following procedure:
- (a) each party shall appoint an arbitrator (“co-arbitrator”) within 20 days after the notice referred to in Rule 80(2); and
 - (b) the parties shall jointly appoint the President of the Tribunal within 20 days after the receipt of the acceptances from both co-arbitrators.
- (2) The Secretary-General shall appoint the arbitrators not yet appointed if:
- (a) an appointment is not made within the applicable time limit referred to in paragraph (1);

- (b) the parties notify the Secretary-General that they are unable to agree on the President of the Tribunal; or
 - (c) an appointee declines the appointment or does not comply with Rule 83(1).
- (3) The following procedure shall apply to the appointment by the Secretary-General of any arbitrators pursuant to paragraph (2):
- (a) the Secretary-General shall first appoint the co-arbitrator(s) not yet appointed. The Secretary-General shall consult with the parties as far as possible and use best efforts to appoint the co-arbitrator(s) within 15 days after the relevant event in paragraph (2);
 - (b) within 10 days after the later of the date on which both co-arbitrators have accepted their appointments or the relevant event referred to in paragraph (2), the Secretary-General shall transmit a list of five candidates for appointment as President of the Tribunal to the parties;
 - (c) each party may strike one name from the list and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;
 - (d) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them; and
 - (e) if the selected candidate declines the appointment or does not comply with Rule 83(1), the Secretary-General shall select the next highest-ranked candidate.

Rule 83

Acceptance of Appointment in Expedited Arbitration

- (1) An arbitrator appointed pursuant to Rule 81 or 82 shall accept the appointment and provide a declaration pursuant to Rule 27(3) within 10 days after receipt of the request for acceptance.
- (2) An arbitrator appointed to a Tribunal constituted pursuant to Chapter IV shall confirm their availability to conduct an expedited arbitration within 10 days after receipt of the notice of consent pursuant to Rule 79(3).

Rule 84
First Session in Expedited Arbitration

- (1) The Tribunal shall hold a first session pursuant to Rule 38 within 30 days after the constitution of the Tribunal.
- (2) The first session shall be held by telephone or electronic means of communication, unless both parties and the Tribunal agree it shall be held in person.

Rule 85
Procedural Schedule in Expedited Arbitration

- (1) The following schedule for written submissions and the hearing shall apply in an expedited arbitration:
 - (a) the claimant shall file a memorial within 60 days after the first session;
 - (b) the respondent shall file a counter-memorial within 60 days after the date of filing the memorial;
 - (c) the memorial and counter-memorial referred to in paragraph (1)(a) and (b) shall be no longer than 200 pages;
 - (d) the claimant shall file a reply within 40 days after the date of filing the counter-memorial;
 - (e) the respondent shall file a rejoinder within 40 days after the date of filing the reply;
 - (f) the reply and rejoinder referred to in paragraph (1)(d) and (e) shall be no longer than 100 pages;
 - (g) the hearing shall be held within 60 days after the last written submission is filed;
 - (h) the parties shall file statements of their costs and written submissions on costs within 10 days after the last day of the hearing referred to in paragraph (1)(g); and
 - (i) the Tribunal shall render the Award as soon as possible, and in any event no later than 120 days after the hearing referred to in paragraph (1)(g).
- (2) Any preliminary objection, counterclaim, incidental or additional claim shall be joined to the main schedule referred to in paragraph (1). The Tribunal shall adjust

the schedule if a party raises any such matter, taking into account the expedited nature of the process.

- (3) The Tribunal may extend the time limits referred to in paragraph (1)(a) and (b) by up to 30 days if any party requests that the Tribunal decide a dispute arising from requests to produce documents pursuant to Rule 47. The Tribunal shall decide such applications based on written submissions and without an in-person hearing.
- (4) Any schedule for submissions other than those referred to in paragraphs (1)-(3) shall run in parallel with the main schedule referred to in paragraph (1), unless the Tribunal decides that there are special circumstances justifying the suspension of the main schedule. In fixing time limits for such submissions, the Tribunal shall take into account the expedited nature of the process.

Rule 86

Default in Expedited Arbitration

A Tribunal may grant a party in default a grace period not to exceed 30 days pursuant to Rule 59.

Rule 87

Procedural Schedule for Supplementary Decision, Rectification and Interpretation in Expedited Arbitration

- (1) A Tribunal may rectify any clerical, arithmetical or similar error in the Award on its own initiative within 15 days after rendering the Award.
- (2) A request for a supplementary decision, rectification or interpretation of an Award made pursuant to Rule 72 shall be filed within 15 days after the Award was rendered.
- (3) The Tribunal shall issue a supplementary decision, rectification or interpretation of an Award pursuant to Rule 72 within 30 days after the later of the last written or oral submission on the request.

Rule 88

Opting Out of Expedited Arbitration

- (1) The parties may opt out of an expedited arbitration at any time by jointly notifying the Tribunal and Secretary-General in writing of their agreement.

- (2) Upon request of a party, the Tribunal may decide that an arbitration should no longer be expedited. In deciding the request, the Tribunal shall consider the complexity of the issues, the stage of the proceeding and all other relevant circumstances.
- (3) The Tribunal, or the Secretary-General if a Tribunal has not been constituted, shall determine the further procedure pursuant to Chapters I-XII and fix any time limit necessary for the conduct of the proceeding.

**VIII. CONCILIATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
(ANNEX C)
((ADDITIONAL FACILITY) CONCILIATION RULES)**

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VIII. (ADDITIONAL FACILITY) CONCILIATION RULES

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**VIII. CONCILIATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
(ANNEX C)
((ADDITIONAL FACILITY) CONCILIATION RULES)**

Introductory Note

The Conciliation Rules for Additional Facility Proceedings ((Additional Facility) Conciliation Rules) were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

The (Additional Facility) Conciliation Rules are supplemented by the (Additional Facility) Administrative and Financial Regulations in Annex A.

The (Additional Facility) Conciliation Rules apply from the submission of a Request for conciliation until termination of the conciliation.

**Chapter I
Scope**

**Rule 1
Application of Rules**

- (1) These Rules shall apply to any conciliation proceeding conducted pursuant to the Additional Facility Rules.
- (2) The parties may agree to modify the application of any of these Rules other than Rules 1-9.
- (3) If any of these Rules, or any agreement pursuant to paragraph (2), conflicts with a provision of law from which the parties cannot derogate, that provision shall prevail.
- (4) The applicable (Additional Facility) Conciliation Rules are those in force on the date of filing the Request for conciliation, unless the parties agree otherwise.
- (5) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language.
- (6) These Rules may be cited as the “(Additional Facility) Conciliation Rules” of the Centre.

Chapter II Institution of the Proceedings

Rule 2 The Request

- (1) Any party wishing to institute conciliation proceedings pursuant to the Additional Facility Rules shall file a Request for conciliation together with the required supporting documents (“Request”) with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the dispute.

Rule 3 Contents of the Request

- (1) The Request shall:
 - (a) be in English, French or Spanish;
 - (b) identify each party to the dispute and provide their contact information, including electronic mail address, street address and telephone number;
 - (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) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request and attach the authorizations.
- (2) With regard to Article 2(1)(a) of the Additional Facility Rules, the Request shall include:
 - (a) a description of the investment, a summary of the relevant facts and claims, the request for relief, including an estimate of the amount of any damages sought, and an indication that there is a legal dispute between the parties arising out of the investment;
 - (b) with respect to each party’s consent to submit the dispute to conciliation pursuant to the Additional Facility Rules:
 - (i) the instrument(s) in which each party’s consent is recorded;

- (ii) the date of entry into force of the instrument(s) on which consent is based, together with supporting documents demonstrating that date;
 - (iii) the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or, if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre; and
 - (iv) an indication that the requesting party has complied with any conditions in the instrument of consent for submission of the dispute;
- (c) if a party is a natural person:
- (i) information concerning that person's nationality on the date of consent, together with supporting documents demonstrating such nationality; and
 - (ii) a statement that the person is a national of a State other than the State party to the dispute or other than any constituent State of the REIO party to the dispute on the date of consent;
- (d) if a party is a juridical person:
- (i) information concerning and supporting documents demonstrating that party's nationality on the date of consent; and
 - (ii) if that party had the nationality of the State party to the dispute or of any constituent State of the REIO party to the dispute on the date of consent, information concerning and supporting documents demonstrating the agreement of the parties to treat the juridical person as a national of another State pursuant to Article 1(5)(b) of the Additional Facility Rules;
- (e) if a party is a constituent subdivision of a State or an agency of a State or of an REIO, supporting documents demonstrating the approval of consent of the State or the REIO, unless the State or the REIO has notified the Centre that no such approval is required.

Rule 4

Recommended Additional Information

It is recommended that the Request:

- (a) contain any procedural proposals or agreements reached by the parties, including with respect to the number and method of appointment of conciliators and the procedural language(s); and
- (b) include the names of the persons and entities that own or control a requesting party which is a juridical person.

Rule 5

Filing of the Request and Supporting Documents

- (1) The Request shall be filed electronically. The Secretary-General may require the Request to be filed in an alternative format if necessary.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Secretary-General may require a fuller extract or a complete version of the document.
- (3) The Secretary-General may require a certified copy of a supporting document.
- (4) Any document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or a complete translation of the document.

Rule 6

Receipt of the Request and Routing of Written Communications

The Secretary-General shall:

- (a) promptly acknowledge receipt of the Request to the requesting party;
- (b) transmit the Request to the other party upon receipt of the lodging fee; and
- (c) act as the official channel of written communications between the parties.

Rule 7
Review and Registration of the Request

- (1) Upon receipt of the Request and lodging fee, the Secretary-General shall register the Request if it appears on the basis of the information provided that the Request is not manifestly outside the scope of Article 2(1) of the Additional Facility Rules.
- (2) The Secretary-General shall promptly notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.

Rule 8
Notice of Registration

The notice of registration of the Request shall:

- (a) record that the Request is registered and indicate the date of registration;
- (b) confirm that all correspondence to the parties in connection with the proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Centre;
- (c) invite the parties to inform the Secretary-General of their agreement regarding the number and method of appointment of conciliators, unless such information has already been provided, and to constitute a Commission without delay;
- (d) remind the parties that registration of the Request is without prejudice to the powers and functions of the Commission in regard to jurisdiction and competence of the Commission, and the issues in dispute; and
- (e) remind the parties to make the disclosure required by Rule 21.

Rule 9
Withdrawal of the Request

At any time before registration, a requesting party may notify the Secretary-General in writing of the withdrawal of the Request or, if there is more than one requesting party, that it is withdrawing from the Request. The Secretary-General shall promptly notify the parties of the withdrawal, unless the Request has not yet been transmitted pursuant to Rule 6(b).

Chapter III General Provisions

Rule 10 Party and Party Representative

- (1) For the purposes of these Rules, “party” includes, where required by the context, all parties acting as claimant or as respondent.
- (2) Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be promptly notified by that party to the Secretary-General (“representative(s)”).

Rule 11 Method of Filing

- (1) A document to be filed in the proceeding shall be filed with the Secretary-General, who shall acknowledge its receipt.
- (2) Documents shall only be filed electronically, unless the Commission orders otherwise in special circumstances.

Rule 12 Supporting Documents

- (1) Supporting documents shall be filed together with the written statement, request, observations or communication to which they relate.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Commission or a party may require a fuller extract or a complete version of the document.

Rule 13 Routing of Document

Following the registration of the Request pursuant to Rule 7, the Secretary-General shall transmit a document filed in the proceeding to:

- (a) the other party, unless the parties communicate directly with each other; and

- (b) the Commission, unless the parties communicate directly with the Commission on request of the Commission or by agreement of the parties.

Rule 14
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 Commission and the Secretary-General regarding the use of a language that is not an official language of the Centre. If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (2) In a proceeding with one procedural language:
- (a) documents shall be filed and meetings shall be conducted in that procedural language;
 - (b) documents in another language shall be accompanied by a translation into that procedural language; and
 - (c) oral statements in another language shall be interpreted into that procedural language.
- (3) In a proceeding with two procedural languages:
- (a) documents may be filed and meetings may be conducted in either procedural language, unless the Commission orders that a document be filed in both procedural languages or that a meeting be conducted with interpretation into both procedural languages;
 - (b) documents in another language shall be accompanied by a translation into either procedural language, unless the Commission orders translation into both procedural languages;
 - (c) oral statements in another language shall be interpreted into either procedural language, unless the Commission orders interpretation into both procedural languages;
 - (d) the Commission and the Secretary-General may communicate in either procedural language; and
 - (e) all orders, decisions, recommendations and the Report shall be rendered in both procedural languages, unless the parties agree otherwise.

- (4) Translation of only the relevant part of a supporting document is sufficient, unless the Commission orders a party to provide a fuller or a complete translation. If the translation is disputed, the Commission may order a party to provide a certified translation.

Rule 15

Calculation of Time Limits

Time limits referred to in these Rules shall be calculated from the day after the date on which the procedural step starting the period is taken, based on the time at the seat of the Centre. A time limit shall be satisfied if a procedural step is taken on the relevant date, or on the subsequent business day if the date falls on a Saturday or Sunday.

Rule 16

Costs of the Proceeding

Unless the parties agree otherwise:

- (a) the fees and expenses of the Commission and the administrative charges and direct costs of the Centre shall be borne equally by the parties; and
- (b) each party shall bear any other costs it incurs in connection with the proceeding.

Rule 17

Confidentiality of the Conciliation

All information relating to the conciliation, and all documents generated in or obtained during the conciliation, shall be confidential, unless:

- (a) the parties agree otherwise;
- (b) the information is to be published by the Centre pursuant to (Additional Facility) Administrative and Financial Regulation 3;
- (c) the information or document is independently available; or
- (d) disclosure is required by law.

Rule 18
Use of Information in Other Proceedings

Unless the parties to the dispute agree otherwise, a party shall not rely on any of the following in other proceedings:

- (a) views expressed, statements, admissions, offers of settlement or positions taken by the other party in the conciliation; or
- (b) the Report, order, decision or any recommendation made by the Commission in the conciliation.

Chapter IV
Establishment of the Commission

Rule 19
General Provisions, Number of Conciliators and Method of Constitution

- (1) The Commission shall be constituted without delay after registration of the Request.
- (2) The number of conciliators and the method of their appointment must be determined before the Secretary-General can act on any appointment proposed by a party.
- (3) The parties shall endeavor to agree on a Sole Conciliator or any uneven number of conciliators and the method of their appointment. If the parties do not advise the Secretary-General of an agreement within 45 days after the date of registration, either party may inform the Secretary-General that the Commission shall consist of a Sole Conciliator, appointed by agreement of the parties.
- (4) The composition of a Commission shall remain unchanged after it has been constituted, except as provided in Chapter V.
- (5) References in these Rules to a Commission or a President of a Commission shall include a Sole Conciliator.

Rule 20
Qualifications of Conciliators

Conciliators shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who are impartial and independent.

Rule 21
Notice of Third-Party Funding

- (1) A party shall file a written notice disclosing the name and address of any non-party from which the party, directly or indirectly has received funds for the conciliation through a donation or grant, or in return for remuneration dependent on the outcome of the conciliation (“third-party funding”).
- (2) A non-party referred to in paragraph (1) does not include a representative of a party.
- (3) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.
- (4) The Secretary-General shall transmit a notice of third-party funding and any notification of changes to the information in such notice to the parties, and to any conciliator proposed for appointment or appointed in a proceeding for purposes of completing the conciliator declaration required by Rule 24(3)(b).
- (5) The Commission may request further information regarding the funding agreement and the non-party providing funding pursuant to Rule 32(4)(a).

Rule 22
Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of the Sole Conciliator or any uneven number of conciliators.

Rule 23
Appointment of Conciliators by the Secretary-General

- (1) If a Commission 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 Secretary-General appoint the conciliator(s) who have not yet been appointed.
- (2) The Secretary-General shall appoint the President of the Commission after appointing any members who have not yet been appointed.
- (3) The Secretary-General shall consult with the parties as far as possible before appointing a conciliator and shall use best efforts to appoint any conciliator(s) within 30 days after receipt of the request to appoint.

Rule 24
Acceptance of Appointment

- (1) A party appointing a conciliator shall notify the Secretary-General of the appointment and provide the appointee's name, nationality and contact information.
- (2) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from the appointee and shall transmit to the appointee the information received from the parties relevant to completion of the declaration referred to in paragraph (3)(b).
- (3) Within 20 days after receipt of the request for acceptance of an appointment, the appointee shall:
 - (a) accept the appointment; and
 - (b) provide a signed declaration in the form published by the Centre, addressing matters including the conciliator's independence, impartiality, availability and commitment to maintain the confidentiality of the proceeding.
- (4) The Secretary-General shall notify the parties of the acceptance of appointment by each conciliator and transmit the signed declaration to them.
- (5) The Secretary-General shall notify the parties if a conciliator 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 conciliator in accordance with the method followed for the previous appointment.

- (6) Each conciliator shall have a continuing obligation to promptly disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).
- (7) Unless the parties and the conciliator agree otherwise, a conciliator may not act as arbitrator, counsel, expert, judge, mediator, witness or in any other capacity in any proceeding relating to the dispute that is the subject of the conciliation.

Rule 25

Replacement of Conciliators Prior to Constitution of the Commission

- (1) At any time before the Commission is constituted:
 - (a) a conciliator may withdraw an acceptance;
 - (b) a party may replace a conciliator whom it appointed; or
 - (c) the parties may agree to replace any conciliator.
- (2) A replacement conciliator shall be appointed as soon as possible, in accordance with the method by which the withdrawing or replaced conciliator was appointed.

Rule 26

Constitution of the Commission

- (1) The Commission shall be deemed to be constituted on the date the Secretary-General notifies the parties that each conciliator has accepted the appointment.
- (2) As soon as the Commission is constituted, the Secretary-General shall transmit the Request, the supporting documents, the notice of registration and communications with the parties to each conciliator.

Chapter V

Disqualification of Conciliators and Vacancies

Rule 27

Proposal for Disqualification of Conciliators

- (1) A party may file a proposal to disqualify one or more conciliators (“proposal”) on the ground that circumstances exist that give rise to justifiable doubts as to the qualities of the conciliator required by Rule 20.

- (2) The following procedure shall apply:
- (a) the proposal shall be filed after the constitution of the Commission and within 21 days after the later of:
 - (i) the constitution of the Commission; or
 - (ii) the date on which the party proposing the disqualification first knew or first should have known of the facts upon which the proposal is based;
 - (b) the proposal shall include the grounds on which it is based, a statement of the relevant facts, law and arguments, and any supporting documents;
 - (c) the other party shall file its response and supporting documents within 21 days after receipt of the proposal;
 - (d) the conciliator to whom the proposal relates may file a statement that is limited to factual information relevant to the proposal. The statement shall be filed within five days after receipt of the response referred to in paragraph (2)(c); and
 - (e) each party may file a final written submission on the proposal within seven days after the earlier of receipt of the statement or expiry of the time limit referred to in paragraph (2)(d).
- (3) If the other party agrees to the proposal prior to the dispatch of the decision referred to in Rule 28, the conciliator shall resign in accordance with Rule 30.
- (4) The proceeding shall be suspended upon the filing of the proposal until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding.

Rule 28
Decision on the Proposal for Disqualification

- (1) The Secretary-General shall make the decision on the proposal.
- (2) The Secretary-General shall use best efforts to decide any proposal within 30 days after the expiry of the time limit referred to in Rule 27(2)(e).

Rule 29
Incapacity or Failure to Perform Duties

If a conciliator becomes incapacitated or fails to perform the duties required of a conciliator, the procedure in Rules 27 and 28 shall apply.

Rule 30
Resignation

- (1) A conciliator may resign by notifying the Secretary-General and the other members of the Commission.
- (2) A conciliator shall resign upon the joint request of the parties.

Rule 31
Vacancy on the Commission

- (1) The Secretary-General shall notify the parties of any vacancy on the Commission.
- (2) The proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.
- (3) A vacancy on the Commission shall be filled by the method used to make the original appointment, except that the Secretary-General shall fill any vacancy that has not been filled within 45 days after the notice of vacancy.
- (4) Once a vacancy has been filled and the Commission has been reconstituted, the conciliation shall continue from the point it had reached at the time the vacancy was notified.

Chapter VI
Conduct of the Conciliation

Rule 32
Functions of the Commission

- (1) The Commission shall clarify the issues in dispute and assist the parties in reaching a mutually acceptable resolution of all or part of the dispute.

- (2) In order to bring about agreement between the parties, the Commission may, at any stage of the proceeding, after consulting with the parties, recommend:
 - (a) specific terms of settlement to the parties; or
 - (b) that the parties refrain from taking specific action that might aggravate the dispute while the conciliation is ongoing.
- (3) Recommendations may be made orally or in writing. Either party may request that the Commission provide reasons for any recommendation. The Commission may invite each party to provide observations concerning any recommendation made.
- (4) At any stage of the proceeding, the Commission may:
 - (a) request explanations, documents or other information from either party or other persons;
 - (b) communicate with the parties jointly or separately; or
 - (c) visit any place connected with the dispute or conduct inquiries with the agreement and participation of the parties.

Rule 33

General Duties of the Commission

- (1) The Commission shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.
- (2) The Commission shall treat the parties equally and provide each party with a reasonable opportunity to appear and participate in the proceeding.

Rule 34

Orders, Decisions and Agreements

- (1) The Commission shall make the orders and decisions required for the conduct of the conciliation.
- (2) The Commission shall make decisions by a majority of the votes of all its members. Abstentions shall count as a negative vote.
- (3) Orders and decisions may be made by any appropriate means of communication and may be signed by the President on behalf of the Commission.

- (4) The Commission shall apply any agreement between of the parties on procedural matters, subject to Rule 1(3), and to the extent that the agreement does not conflict with the (Additional Facility) Administrative and Financial Regulations.

Rule 35 Quorum

The participation of a majority of the members of the Commission by any appropriate means of communication shall be required at the first session, meetings and deliberations, unless the parties agree otherwise.

Rule 36 Deliberations

- (1) The deliberations of the Commission shall take place in private and remain confidential.
- (2) The Commission may deliberate at any place and by any means it considers appropriate.
- (3) The Commission may be assisted by the Secretary of the Commission at its deliberations. No other person shall assist the Commission at its deliberations, unless the Commission decides otherwise and notifies the parties.

Rule 37 Cooperation of the Parties

- (1) The parties shall cooperate with the Commission and with one another, and shall conduct the conciliation in good faith and in an expeditious and cost-effective manner.
- (2) The parties shall provide all relevant explanations, documents or other information. They shall facilitate visits to any place connected with the dispute in accordance with Rule 32(4)(c) and use best efforts to facilitate the participation of other persons as requested by the Commission.
- (3) The parties shall comply with any time limit agreed upon or fixed by the Commission.

- (4) The parties shall give their most serious consideration to the Commission's recommendations.

Rule 38 Written Statements

- (1) Each party shall simultaneously file a brief, initial written statement describing the issues in dispute and its views on these issues 30 days after the constitution of the Commission, or such longer time as the Commission may fix in consultation with the parties, but in any event before the first session.
- (2) Either party may file further written statements at any stage of the conciliation within the time limits fixed by the Commission.

Rule 39 First Session

- (1) The Commission shall hold a first session with the parties to address the procedure, including the matters listed in paragraph (4).
- (2) The first session may be held in person or remotely, by any means that the Commission deems appropriate. The agenda, method and date of the first session shall be determined by the Commission after consulting with the parties.
- (3) The first session shall be held within 60 days after the constitution of the Commission or such other period as the parties may agree.
- (4) Before the first session, the Commission shall invite the parties' views on procedural matters, including:
 - (a) the applicable conciliation rules;
 - (b) the division of advances payable pursuant to (Additional Facility) Administrative and Financial Regulation 7;
 - (c) the procedural language(s), translation and interpretation;
 - (d) the method of filing and routing of documents;
 - (e) a schedule for further written statements and meetings;
 - (f) the place and format of meetings between the Commission and the parties;

- (g) the manner of recording or keeping minutes of meetings, if any;
 - (h) the treatment of confidential or protected information;
 - (i) the publication of documents;
 - (j) any agreement between the parties:
 - (i) concerning the treatment of information disclosed by one party to the Commission by way of separate communication pursuant to Rule 32(4)(b);
 - (ii) not to initiate or pursue any other proceeding in respect of the dispute during the conciliation;
 - (iii) concerning the application of prescription or limitation periods;
 - (iv) concerning the disclosure of any settlement agreement resulting from the conciliation; and
 - (v) pursuant to Rule 18; and
 - (k) any other procedural matter raised by either party or the Commission.
- (5) At the first session or within any other period determined by the Commission, each party shall:
- (a) identify a representative who is authorized to settle the dispute on its behalf; and
 - (b) describe the process that would be followed to implement a settlement.
- (6) The Commission shall issue summary minutes recording the parties' agreements and the Commission's decisions on the procedure within 15 days after the later of the first session or the last written statement on procedural matters addressed at the first session.

Rule 40 Meetings

- (1) The Commission may meet with the parties jointly or separately.
- (2) The Commission shall determine the date, time and method of holding meetings, after consulting with the parties.

- (3) If a meeting is to be held in person, it may be held at any place agreed to by the parties after consulting with the Commission and the Secretary-General. If the parties do not agree on the place of a meeting, it shall be held at a place determined by the Commission.
- (4) Meetings shall remain confidential. The parties may agree to observation of meetings by persons in addition to the parties and the Commission.

Rule 41

Preliminary Objections

- (1) A party may file a preliminary objection that the dispute is not within the jurisdiction or competence of the Commission (“preliminary objection”).
- (2) A party shall notify the Commission and the other party of its intent to file a preliminary objection as soon as possible. The objection shall be made no later than the date of the initial written statement referred to in Rule 38(1), unless the facts on which the objection is based are unknown to the party at the relevant time.
- (3) The Commission may address a preliminary objection separately or with other issues in dispute. If the Commission decides to address the objection separately, it may suspend the conciliation on the other issues in dispute to the extent necessary to address the preliminary objection.
- (4) The Commission may at any time on its own initiative consider whether the dispute is within its own jurisdiction or competence.
- (5) If the Commission decides that the dispute is not within its jurisdiction or competence, it shall issue a Report to that effect, in which it shall state its reasons. Otherwise, the Commission shall issue a decision on the objection with brief reasons and fix any time limit necessary for the further conduct of the conciliation.

Chapter VII

Termination of the Conciliation

Rule 42

Discontinuance Prior to the Constitution of the Commission

- (1) If the parties notify the Secretary-General prior to the constitution of the Commission that they have agreed to discontinue the proceeding, the Secretary-General shall issue an order taking note of the discontinuance.

- (2) If a party requests the discontinuance of the proceeding prior to the constitution of the Commission, the Secretary-General 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 Secretary-General 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.
- (3) If, prior to the constitution of the Commission, the parties fail to take any steps in the proceeding for more than 150 consecutive days, the Secretary-General shall notify them of the time elapsed since the last step taken in the proceeding. If the parties fail to take a step within 30 days after the notice, they shall be deemed to have discontinued the proceeding and the Secretary-General shall issue an order taking note of the discontinuance. If either party takes a step within 30 days after the Secretary-General's notice, the proceeding shall continue.

Rule 43

Report Noting the Parties' Agreement

- (1) If the parties reach agreement on some or all of the issues in dispute, the Commission shall issue its Report noting the issues in dispute and recording the issues upon which the parties have agreed.
- (2) The parties may provide the Commission with the complete and signed text of their settlement agreement and may request that the Commission embody such settlement in the Report.

Rule 44

Report Noting the Failure of the Parties to Reach Agreement

At any stage of the proceeding, and after notice to the parties, the Commission shall issue its Report noting the issues in dispute and recording that the parties have not reached agreement on the issues in dispute during the conciliation if:

- (a) it appears to the Commission that there is no likelihood of agreement between the parties; or
- (b) the parties advise the Commission that they have agreed to discontinue the conciliation.

Rule 45
Report Recording the Failure of a Party to Appear or Participate

If one party fails to appear or participate in the proceeding, the Commission shall, after notice to the parties, issue its Report noting the submission of the dispute to conciliation and recording the failure of that party to appear or participate.

Rule 46
The Report

- (1) The Report shall be in writing and shall contain, in addition to the information specified in Rules 43-45:
 - (a) a precise designation of each party;
 - (b) the names of the representatives of the parties;
 - (c) a statement that the Commission was established pursuant to these Rules and a description of the method of its constitution;
 - (d) the name of each member of the Commission and of the appointing authority of each;
 - (e) the date and place of the first session and the meetings of the Commission with the parties;
 - (f) a brief summary of the proceeding;
 - (g) the complete and signed text of the parties' settlement agreement if requested by the parties pursuant to Rule 43(2);
 - (h) a statement of the costs of the proceeding, including the fees and expenses of each member of the Commission and the costs to be paid by each party pursuant to Rule 16; and
 - (i) any agreement of the parties pursuant to Rule 18.
- (2) The Report shall be signed by the members of the Commission. It may be signed by electronic means if the parties agree. If a member does not sign the Report, such fact shall be recorded.

Rule 47
Issuance of the Report

- (1) Once the Report has been signed by the members of the Commission, the Secretary-General shall promptly:
 - (a) dispatch a certified copy of the Report to each party, indicating the date of dispatch on the Report; and
 - (b) deposit the Report in the archives of the Centre.
- (2) The Secretary-General shall provide additional certified copies of the Report to a party upon request.

**IX. RULES FOR FACT-FINDING PROCEEDINGS
(ICSID FACT-FINDING RULES)**

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IX. ICSID FACT-FINDING RULES

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IX. RULES FOR FACT-FINDING PROCEEDINGS (ICSID FACT-FINDING RULES)

Introductory Note

The Rules for Fact-Finding Proceedings (ICSID Fact-Finding Rules) were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

The ICSID Fact-Finding Rules are supplemented by the (Fact-Finding) Administrative and Financial Regulations (Annex A).

Chapter I General Provisions

Rule 1 Definitions

- (1) “Secretariat” means the Secretariat of the Centre.
- (2) “Regional Economic Integration Organization” or “REIO” means an organization constituted by States to which they have transferred competence in respect of matters governed by these Rules, including the authority to make decisions binding on them in respect of those matters.
- (3) “Centre” or “ICSID” means the International Centre for Settlement of Investment Disputes established pursuant to Article 1 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.
- (4) “Request” means a request for fact-finding together with the required supporting documents.
- (5) “Secretary-General” means the Secretary-General of the Centre.
- (6) “Schedule of fees” means the schedule of fees published by the Secretary-General.

Rule 2

Fact-Finding Proceedings

- (1) The Secretariat is authorized to administer fact-finding proceedings that relate to an investment, involve a State or an REIO, and which the parties consent in writing to submit to the Centre.
- (2) Reference to a State or an REIO includes a constituent subdivision of the State, or an agency of the State or the REIO. The State or the REIO must approve the consent of the constituent subdivision or agency which is a party to the fact-finding pursuant to paragraph (1), unless the State or the REIO concerned notifies the Centre that no such approval is required.
- (3) The (Fact-Finding) Administrative and Financial Regulations, attached as Annex A, shall apply to proceedings pursuant to these Rules.

Rule 3

Application of Rules

- (1) These Rules shall apply to any fact-finding proceeding conducted pursuant to Rule 2.
- (2) The parties may agree to modify the application of any of these Rules other than Rules 1-7.
- (3) The applicable ICSID Fact-Finding Rules are those in force on the date of filing the Request, unless the parties agree otherwise.
- (4) The texts of these Rules are equally authentic in English, French and Spanish.
- (5) These Rules may be cited as the “ICSID Fact-Finding Rules.”

Rule 4

Party Representative

Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be promptly notified by that party to the Secretary-General (“representative(s)”).

Chapter II

Institution of the Fact-Finding Proceeding

Rule 5

The Request

Parties wishing to institute a fact-finding proceeding pursuant to Rule 2 shall file a joint Request with the Secretary-General and pay the lodging fee published in the schedule of fees.

Rule 6

Contents and Filing of the Request

(1) The Request shall:

- (a) be in English, French or Spanish;
- (b) identify each party to the proceeding and provide their contact information, including electronic mail address, street address and telephone number;
- (c) be signed by each requesting party or its representative and be dated;
- (d) attach proof of any representative's authority to act;
- (e) be filed electronically, unless the Secretary-General authorizes the filing of the Request in an alternative format;
- (f) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request, and attach the authorizations;
- (g) indicate that the proceeding involves a State or an REIO, describe the investment to which the proceeding relates, and indicate the facts to be examined and the relevant circumstances;
- (h) attach the agreement of the parties to have recourse to fact-finding pursuant to these Rules; and
- (i) contain any proposals or agreements reached by the parties concerning the constitution of a Fact-Finding Committee ("Committee"), the qualifications of its member(s), its mandate and the procedure to be followed during the fact-finding.

- (2) Any supporting document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or complete translation of the document.

Rule 7

Receipt and Registration of the Request

- (1) The Secretary-General shall promptly acknowledge receipt of the Request.
- (2) Upon receipt of the Request and the lodging fee, the Secretary-General shall register the Request if it appears, on the basis of the information provided, that the Request is within the scope of Rule 2(1).
- (3) The Secretary-General shall notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.
- (4) The notice of registration of the Request shall:
 - (a) record that the Request is registered and indicate the date of registration;
 - (b) confirm that all correspondence to the parties in connection with the proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Secretary-General; and
 - (c) invite the parties to constitute a Committee without delay.

Chapter III

The Fact-Finding Committee

Rule 8

Qualifications of Members of the Committee

- (1) Each member of a fact-finding Committee shall be impartial and independent of the parties.
- (2) The parties may agree that a member of a Committee shall have particular qualifications or expertise.

Rule 9
Number of Members and Method of Constituting the Committee

- (1) The parties shall endeavor to agree on a sole or any uneven number of Committee members, and the method of their appointment. If the parties do not advise the Secretary-General of an agreement on the number of members and method of appointment within 30 days after the date of registration, the Committee shall consist of a sole member, appointed by agreement of the parties.
- (2) The parties may jointly request that the Secretary-General assist with the appointment of any member at any time.
- (3) If the parties are unable to appoint a sole member or any member of a Committee within 60 days after the date of registration, either party may request that the Secretary-General appoint the member(s) not yet appointed. The Secretary-General shall consult with the parties as far as possible on the qualifications, expertise, nationality and availability of the member(s) and shall use best efforts to appoint any Committee member(s) within 30 days after receipt of the request to appoint.
- (4) If no step has been taken by the parties to appoint the members of a Committee within 120 consecutive days after the date of registration, or such other period as the parties may agree, the Secretary-General shall notify the parties that the fact-finding is terminated.

Rule 10
Acceptance of Appointment

- (1) The parties shall notify the Secretary-General of the appointment of the members of the Committee and provide the names and contact information of the appointees.
- (2) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from the appointee.
- (3) Within 20 days after receipt of the request for acceptance of an appointment, the appointee shall:
 - (a) accept the appointment; and
 - (b) provide a signed declaration in the form published by the Centre, addressing matters including the appointee's independence, impartiality, availability and commitment to maintain the confidentiality of the proceeding.

- (4) The Secretary-General shall notify the parties of the acceptance of appointment by each member and provide the signed declaration.
- (5) The Secretary-General shall notify the parties if an appointee 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 in accordance with the method followed for the previous appointment.
- (6) Each member shall have a continuing obligation to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).
- (7) Unless the parties and the Committee agree otherwise, a member may not act as arbitrator, conciliator, counsel, expert, judge, mediator, witness or in any other capacity in any proceeding relating to circumstances examined during the fact-finding.

Rule 11

Constitution of the Committee

The Committee shall be deemed to be constituted on the date the Secretary-General notifies the parties that each member has accepted their appointment. As soon as the Committee is constituted, the Secretary-General shall transmit the Request, any supporting documents, communications received from the parties and the notice of registration to each member.

Chapter IV

Conduct of the Fact-Finding Proceeding

Rule 12

Sessions and Work of the Committee

- (1) Each party shall file a preliminary written statement of not more than 50 pages with the Secretary-General within 15 days after the date of constitution of the Committee, unless the parties agree otherwise. The preliminary statement shall address the party's view on the mandate of the Committee, the scope of the inquiry, relevant documents, persons to be interviewed, site visits and any other relevant matters. The Secretary-General shall transmit the preliminary written statements to the Committee and the other party.
- (2) The Committee shall hold a first session with the parties within 30 days after its constitution or such other period as the parties may agree.

- (3) At the first session, the Committee shall determine the protocol for the fact-finding (“Protocol”) after consulting with the parties on procedural matters, including:
- (a) the Committee’s mandate;
 - (b) the procedure for the conduct of the proceeding, such as the procedural languages, method of communication, place of sessions, the next steps in the proceeding, the treatment of confidential or protected information, documents to be provided, persons to be interviewed, site visits and any other procedural and administrative matters;
 - (c) whether the Report to be issued will be binding on the parties; and
 - (d) whether the Committee should make any recommendations in its Report.
- (4) The Committee shall conduct the proceeding in accordance with the Protocol and take all steps necessary to discharge its mandate. To that end, it shall make all decisions required for the conduct of the proceeding.
- (5) Any matters not provided for in these Rules or not previously agreed to by the parties shall be determined by agreement of the parties or, failing such agreement, by the Committee.

Rule 13

General Duties

- (1) The Committee shall treat the parties equally and provide each party with a reasonable opportunity to participate in the proceeding. It shall conduct the proceeding in an expeditious and cost-effective manner and shall consult regularly with the parties on the conduct of the proceeding.
- (2) The parties shall cooperate with the Committee and with one another and shall conduct the proceeding in good faith and in an expeditious and cost-effective manner. The parties shall endeavor to provide all relevant explanations, documents or other information requested by the Committee and participate in the sessions of the Committee. The parties shall use best efforts to facilitate the Committee’s inquiry.

Rule 14
Calculation of Time Limits

Time limits referred to in these Rules shall be calculated from the day after the date on which the procedural step starting the period is taken, based on the time at the seat of the Centre. A time limit shall be satisfied if a procedural step is taken on the relevant date, or on the subsequent business day if the date falls on a Saturday or Sunday.

Rule 15
Costs of the Proceeding

Unless the parties agree otherwise:

- (a) the fees and expenses of the Committee and the administrative charges and direct costs of the Centre shall be borne equally by the parties; and
- (b) each party shall bear any other costs it incurs in connection with the proceeding.

Rule 16
Confidentiality of the Proceeding

- (1) All information relating to the fact-finding proceeding, and all documents generated in or obtained during the proceeding, shall be confidential, unless:
 - (a) the parties agree otherwise;
 - (b) the information or document is independently available; or
 - (c) disclosure is required by law.
- (2) Unless the parties agree otherwise, the fact that they are seeking or have sought fact-finding shall be confidential.

Rule 17
Use of Information in Other Proceedings

A party shall not rely in other proceedings on any positions taken, admissions made, or views expressed by the other party or the members of the Committee during the fact-finding proceeding, unless the parties agree otherwise.

Chapter V
Termination of the Fact-Finding Proceeding

Rule 18
Manner of Terminating the Proceeding

The proceeding shall terminate upon:

- (a) the issuance of a notice by the Secretary-General pursuant to Rule 9(4);
- (b) the issuance of a Report by the Committee; or
- (c) a notice from the parties that they have agreed to terminate the proceeding.

Rule 19
Failure of a Party to Participate or Cooperate

If a party fails to participate in the proceeding or cooperate with the Committee, and the Committee determines that it is no longer able to discharge its mandate, the Committee shall, after notice to the parties, record the failure of that party to participate or cooperate in its Report.

Rule 20
Report of the Committee

(1) The Report shall be in writing and shall contain:

- (a) the mandate of the Committee;
- (b) the Protocol followed;
- (c) a brief summary of the proceeding;

- (d) a recommendation if requested by the parties; and
 - (e) the facts established by the Committee and the reasons why certain facts may not be considered as having been established; or
 - (f) an indication of the failure of a party to participate or cooperate pursuant to Rule 19.
- (2) The Report shall be adopted by a majority of the members and signed by them. If a member does not sign the Report, such fact shall be recorded.
 - (3) Any member may attach a statement to the Report if the member disagrees on any of the facts found.
 - (4) Unless the parties agree otherwise, the Report of the Committee shall not be binding upon the parties, and the parties shall be free to give any effect to it.

Rule 21

Issuance of the Report

- (1) Once the Report has been signed by the members of the Committee, the Secretary-General shall promptly:
 - (a) dispatch a certified copy of the Report to each party, indicating the date of dispatch on the Report; and
 - (b) deposit the Report in the archives of the Centre.
- (2) The Secretary-General shall provide additional certified copies of the Report to a party upon request.

**X. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR FACT-FINDING
PROCEEDINGS (ANNEX A)
((FACT-FINDING) ADMINISTRATIVE AND FINANCIAL REGULATIONS)**

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X. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR FACT-FINDING PROCEEDINGS (ANNEX A)

((FACT-FINDING) ADMINISTRATIVE AND FINANCIAL REGULATIONS)

Introductory Note

The (Fact-Finding) Administrative and Financial Regulations apply to fact-finding proceedings and were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Regulation 7.

Chapter I General Provisions

Regulation 1 Application of these Regulations

- (1) These Regulations apply to fact-finding proceedings which the Secretariat of the Centre is authorized to administer pursuant to Rule 2 of the ICSID Fact-Finding Rules.
- (2) The applicable Regulations are those in force on the date of filing the Request for fact-finding pursuant to the ICSID Fact-Finding Rules.
- (3) These Regulations may be referred to as the “(Fact-Finding) Administrative and Financial Regulations” of the Centre (“Annex A” to the ICSID Fact-Finding Rules).

Chapter II General Functions of the Secretariat

Regulation 2 Secretary

The Secretary-General of the Centre shall appoint a Secretary for each Fact-Finding Committee (“Committee”). The Secretary may be drawn from the Secretariat and shall be considered a member of its staff while serving as a Secretary. The Secretary shall:

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the ICSID Fact-Finding Rules applicable to individual proceedings and delegated to the Secretary; and

- (b) assist the parties and the Committee with all aspects of the proceeding, including the expeditious and cost-effective conduct of the proceeding.

Regulation 3 The Registers

The Secretary-General shall maintain a Register for each proceeding containing all significant data concerning the institution, conduct and disposition of the proceeding. The information in the Register shall not be published, unless the parties agree otherwise.

Regulation 4 Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
- (a) all Requests for fact-finding;
 - (b) all documents and communications filed in a proceeding;
 - (c) any records of meetings or sessions in a proceeding; and
 - (d) any Report of the Committee.
- (2) Subject to the ICSID Fact-Finding Rules and the agreement of the parties to the proceeding, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c) and (d) available to the parties.

Regulation 5 Certificates of Official Travel

The Secretary-General may issue certificates of official travel to members of Committees, to persons assisting them, to members of the Secretariat, and to the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in proceedings, indicating that they are traveling in connection with a proceeding pursuant to the ICSID Fact-Finding Rules.

Chapter III Financial Provisions

Regulation 6 Fees, Allowances and Charges

- (1) Each member of a Committee shall receive:
 - (a) a fee for each hour of work performed in connection with the proceeding;
 - (b) when not travelling to attend a meeting or session, reimbursement of expenses reasonably incurred for the sole purpose of the proceeding; and
 - (c) when required to travel to attend a meeting or session held away from the member's place of residence:
 - (i) reimbursement of the cost of ground transportation between the points of departure and arrival;
 - (ii) reimbursement of the cost of air and ground transportation to and from the city in which the meeting or session is held; and
 - (iii) a *per diem* allowance for each day the member spends away from their place of residence.
- (2) The Secretary-General shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and (c). Any request by a member for a higher amount shall be made through the Secretary-General, and not directly to the parties. Such a request must be made before the constitution of the Committee and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish an annual administrative charge payable by the parties to the Centre.
- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
 - (a) Members of Committees and any assistants approved by the parties;
 - (b) witnesses and experts called by a Committee who have not been presented by a party;
 - (c) service providers that the Centre engages for a proceeding; and
 - (d) the host of any meeting or session held outside an ICSID facility.

- (5) The Centre shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or reimbursements of the members of any Committee, unless the parties have made sufficient payments to defray the costs of the proceeding.

Regulation 7

Payments to the Centre

- (1) To enable the Centre to pay the costs referred to in Regulation 6, the parties shall make payments to the Centre as follows:
- (a) upon registration of a Request for fact-finding, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the proceeding through the first session of the Committee;
 - (b) upon constitution of a Committee, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the proceeding; and
 - (c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the proceeding.
- (2) Each party shall pay an equal share of the payments referred to in paragraph (1), unless the parties agree on a different division.
- (3) The Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.

Regulation 8

Consequences of Default in Payment

- (1) The payments referred to in Regulation 7 shall be payable on the date of the request from the Secretary-General.
- (2) The following procedure shall apply in the event of non-payment:
- (a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;
 - (b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the

proceeding until payment is made, after giving notice to the parties and to the Committee if constituted; and

- (c) if any proceeding is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the proceeding, after giving notice to the parties and to the Committee if constituted.

Regulation 9 Special Services

- (1) The Centre may perform any special services related to disputes if the requestor deposits in advance an amount sufficient to defray the charge for such services.
- (2) Charges for special services shall normally be based on a schedule of fees published by the Secretary-General.

Regulation 10 Fee for Lodging Requests

The parties wishing to institute a fact-finding proceeding shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 11 Administration of Proceedings

The ICSID Secretariat is the only body authorized to administer fact-finding proceedings conducted pursuant to the ICSID Fact-Finding Rules.

Chapter IV Official Languages and Limitation of Liability

Regulation 12 Languages of Regulations

- (1) These Regulations are published in the official languages of the Centre, English, French and Spanish.

- (2) The texts of these Regulations in each official language are equally authentic.
- (3) Unless otherwise stated or required by the context of the provision, the singular form of a word in these Regulations and in the ICSID Fact-Finding Rules includes the plural form of that word.
- (4) Where required by the context, the masculine gender of a word in the French and Spanish versions of these Regulations and the ICSID Fact-Finding Rules shall be used as a gender-neutral form and shall be understood as referring to the masculine or feminine gender.

Regulation 13

Prohibition Against Testimony and Limitation of Liability

- (1) Unless required by applicable law or unless the parties and all the members of the Committee agree otherwise in writing, no member of the Committee shall give testimony in any judicial, arbitral or similar proceeding concerning any aspect of the fact-finding proceeding.
- (2) Except to the extent such limitation of liability is prohibited by applicable law, no member of the Committee shall be liable for any act or omission in connection with the exercise of their functions in the fact-finding proceeding, unless there is fraudulent or willful misconduct.

**XI. RULES FOR MEDIATION PROCEEDINGS
(ICSID MEDIATION RULES)**

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XI. ICSID MEDIATION RULES

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XI. RULES FOR MEDIATION PROCEEDINGS (ICSID MEDIATION RULES)

Introductory Note

The Rules for Mediation Proceedings (ICSID Mediation Rules) were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

The ICSID Mediation Rules are supplemented by the (Mediation) Administrative and Financial Regulations (Annex A).

Chapter I General Provisions

Rule 1 Definitions

- (1) “Secretariat” means the Secretariat of the Centre.
- (2) “Regional Economic Integration Organization” or “REIO” means an organization constituted by States to which they have transferred competence in respect of matters governed by these Rules, including the authority to make decisions binding on them in respect of those matters.
- (3) “Centre” or “ICSID” means the International Centre for Settlement of Investment Disputes established pursuant to Article 1 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.
- (4) “Request” means a request for mediation together with the required supporting documents.
- (5) “Secretary-General” means the Secretary-General of the Centre.
- (6) “Schedule of fees” means the schedule of fees published by the Secretary-General.
- (7) “Mediator” includes, where required by the context, two co-mediators appointed in accordance with these Rules.

Rule 2

Mediation Proceedings

- (1) The Secretariat is authorized to administer mediations that relate to an investment, involve a State or an REIO, and which the parties consent in writing to submit to the Centre.
- (2) Reference to a State or an REIO includes a constituent subdivision of the State, or an agency of the State or the REIO. The State or the REIO must approve the consent of the constituent subdivision or agency which is a party to the mediation pursuant to paragraph (1), unless the State or the REIO concerned notifies the Centre that no such approval is required.
- (3) The (Mediation) Administrative and Financial Regulations, attached as Annex A, shall apply to mediations pursuant to these Rules.

Rule 3

Application of Rules

- (1) These Rules shall apply to any mediation conducted pursuant to Rule 2.
- (2) The parties may agree to modify the application of any of these Rules other than Rules 1-7.
- (3) If any of these Rules, or any agreement pursuant to paragraph (2), conflicts with a provision of law from which the parties cannot derogate, that provision shall prevail.
- (4) The applicable ICSID Mediation Rules are those in force on the date of filing the Request, unless the parties agree otherwise.
- (5) The texts of these Rules are equally authentic in English, French and Spanish.
- (6) These Rules may be cited as the “ICSID Mediation Rules”.

Rule 4

Party Representative

Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be promptly notified by that party to the Secretary-General (“representative(s”).

Chapter II Institution of the Mediation

Rule 5 Institution of Mediation Based on Prior Party Agreement

- (1) If the parties have agreed in writing to mediate pursuant to Rule 2, any party wishing to institute a mediation shall file a Request with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the mediation.
- (3) The Request shall:
 - (a) be in English, French or Spanish;
 - (b) identify each party to the mediation and provide their contact information, including electronic mail address, street address and telephone number;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) attach proof of any representative's authority to act;
 - (e) be filed electronically, unless the Secretary-General authorizes the filing of the Request in an alternative format;
 - (f) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request, and attach the authorizations;
 - (g) indicate that the mediation involves a State or an REIO, describe the investment to which the mediation relates, and include a brief statement of the issues in dispute;
 - (h) contain any proposals or agreements reached by the parties concerning the appointment and qualifications of the mediator and the procedure to be followed during the mediation; and
 - (i) attach the agreement of the parties to mediate pursuant to these Rules.
- (4) Any supporting document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the

relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or complete translation of the document.

(5) Upon receipt of the Request, the Secretary-General shall:

- (a) promptly acknowledge receipt of the Request to the requesting party; and
- (b) transmit the Request to the other party upon receipt of the lodging fee.

Rule 6

Institution of Mediation Absent a Prior Party Agreement

- (1) If the parties have no prior written agreement to mediate pursuant to Rule 2, any party wishing to institute a mediation shall file a Request with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request shall:
 - (a) comply with the requirements in Rule 5(3)(a)-(h);
 - (b) include an offer to the other party to mediate pursuant to Rule 2; and
 - (c) request that the Secretary-General invite the other party to accept the offer to mediate.
- (3) Upon receipt of the Request, the Secretary-General shall:
 - (a) promptly acknowledge receipt of the Request to the requesting party;
 - (b) transmit the Request to the other party upon receipt of the lodging fee; and
 - (c) invite the other party to inform the Secretary-General within 60 days after transmittal of the Request whether it accepts the offer to mediate.
- (4) If the other party informs the Secretary-General that it accepts the offer to mediate, the Secretary-General shall acknowledge receipt and transmit the acceptance of the offer to mediate to the requesting party.
- (5) If the other party rejects the offer to mediate, or fails to accept the offer to mediate within the 60-day period referred to in paragraph (3)(c) or within such other period as the parties may agree, the Secretary-General shall acknowledge receipt and transmit any communication received to the requesting party and shall inform the parties that no further action will be taken on the Request.

Rule 7
Registration of the Request

- (1) Upon receipt of:
- (a) the lodging fee; and
 - (b) a Request pursuant to Rule 5 or a Request and an agreement to mediate pursuant to Rule 6;
- the Secretary-General shall register the Request if it appears, on the basis of the information provided, that the Request is within the scope of Rule 2(1).
- (2) The Secretary-General shall notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.
- (3) The notice of registration of the Request shall:
- (a) record that the Request is registered and indicate the date of registration;
 - (b) confirm that all correspondence to the parties in connection with the mediation will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Secretary-General; and
 - (c) invite the parties to appoint the mediator without delay.

Chapter III
General Procedural Provisions

Rule 8
Calculation of Time Limits

Time limits referred to in these Rules shall be calculated from the day after the date on which the procedural step starting the period is taken, based on the time at the seat of the Centre. A time limit shall be satisfied if a procedural step is taken on the relevant date, or on the subsequent business day if the date falls on a Saturday or Sunday.

Rule 9 Costs of the Mediation

Unless the parties agree otherwise:

- (a) the fees and expenses of the mediator and the administrative charges and direct costs of the Centre shall be borne equally by the parties; and
- (b) each party shall bear any other costs it incurs in connection with the mediation.

Rule 10 Confidentiality of the Mediation

- (1) All information relating to the mediation, and all documents generated in or obtained during the mediation shall be confidential, unless:
 - (a) the parties agree otherwise;
 - (b) the information or document is independently available; or
 - (c) disclosure is required by law.
- (2) Unless the parties agree otherwise, the fact that they are mediating or have mediated shall be confidential.

Rule 11 Use of Information in Other Proceedings

A party shall not rely in other proceedings on any positions taken, admissions or offers of settlement made, or views expressed by the other party or the mediator during the mediation, unless the parties agree otherwise.

Chapter IV The Mediator

Rule 12 Qualifications of the Mediator

- (1) The mediator shall be impartial and independent of the parties.

- (2) The parties may agree that the mediator shall have particular qualifications or expertise.

Rule 13

Number of Mediators and Method of Appointment

- (1) There shall be one mediator or two co-mediators. Each mediator shall be appointed by agreement of the parties.
- (2) If the parties do not advise the Secretary-General of an agreement on the number of mediators within 30 days after the date of registration, there shall be one mediator appointed by agreement of the parties.
- (3) The parties may jointly request that the Secretary-General assist with the appointment of a mediator at any time.
- (4) If the parties are unable to appoint the mediator within 60 days after the date of registration, either party may request that the Secretary-General appoint the mediator not yet appointed. The Secretary-General shall consult with the parties as far as possible on the qualifications, expertise, nationality and availability of the mediator and shall use best efforts to appoint any mediator within 30 days after receipt of the request to appoint.
- (5) If no step has been taken by the parties to appoint the mediator within 120 consecutive days after the date of registration, or such other period as the parties may agree, the Secretary-General shall notify the parties that the mediation is terminated.

Rule 14

Acceptance of Appointment

- (1) The parties shall notify the Secretary-General of the appointment of the mediator and provide the name and contact information of the appointee.
- (2) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from the appointee.
- (3) Within 20 days after receipt of the request for acceptance of an appointment, the appointee shall:

- (a) accept the appointment; and
 - (b) provide a signed declaration in the form published by the Centre, addressing matters including the mediator's independence, impartiality, availability and commitment to maintain the confidentiality of the mediation.
- (4) The Secretary-General shall notify the parties of the acceptance of appointment by the mediator and transmit the signed declaration to them.
- (5) The Secretary-General shall notify the parties if a mediator 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 mediator in accordance with the method followed for the previous appointment.
- (6) The mediator shall have a continuing obligation to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).
- (7) Unless the parties and the mediator agree otherwise, a mediator may not act as arbitrator, conciliator, counsel, expert, judge, witness or in any other capacity in any proceeding relating to the issues in dispute in the mediation.

Rule 15

Transmittal of the Request

As soon as the mediator has, or both co-mediators have, accepted the appointment(s), the Secretary-General shall transmit the Request, any supporting documents, communications received from the parties and the notice of registration to each mediator and notify the parties of the transmittal.

Rule 16

Resignation and Replacement of Mediator

- (1) A mediator may resign by notifying the Secretary-General and the parties.
- (2) A mediator shall resign:
- (a) on the joint request of the parties; or
 - (b) if the mediator becomes incapacitated or fails to perform the duties required of a mediator.

- (3) Following the resignation of a mediator, the Secretary-General shall notify the parties of the vacancy. A new mediator shall be appointed by the same method used to make the original appointment, except that:
- (a) the Secretary-General shall fill any vacancy that has not been filled within 45 days after the notice of the vacancy; or
 - (b) if a co-mediator resigns and the parties notify the Secretary-General within 45 days after the notice of the vacancy that they have agreed to continue the mediation with the remaining co-mediator acting as sole mediator, no new mediator shall be appointed.

Chapter V Conduct of the Mediation

Rule 17 Role and Duties of the Mediator

- (1) The mediator shall assist the parties in reaching a mutually acceptable resolution of all or part of the issues in dispute. The mediator does not have the authority to impose a resolution of the dispute on the parties.
- (2) The mediator shall conduct the mediation in good faith and in an expeditious and cost-effective manner.
- (3) The mediator shall treat the parties equally and provide each party with a reasonable opportunity to participate in the mediation.
- (4) The mediator may meet and communicate with the parties jointly or separately. Such communication may be in person or in writing and by any appropriate means. Information received by the mediator from one party shall not be disclosed to the other party without authorization from the disclosing party.

Rule 18 Duties of the Parties

The parties shall cooperate with the mediator and with one another and shall conduct the mediation in good faith and in an expeditious and cost-effective manner.

Rule 19

Initial Written Statements

- (1) Each party shall file a brief initial written statement with the Secretary-General describing the issues in dispute and its views on these issues and on the procedure to be followed during the mediation. These statements shall be filed within 15 days after the date of the transmittal of the Request pursuant to Rule 15, or such other period as the mediator may determine in consultation with the parties.
- (2) The Secretary-General shall transmit the initial written statements to the mediator and the other party.

Rule 20

First Session

- (1) The mediator shall hold a first session with the parties within 30 days after the date of the transmittal of the Request pursuant to Rule 15 or such other period as the parties may agree.
- (2) The agenda, method and date of the first session shall be determined by the mediator after consulting with the parties. In preparation for the first session, the mediator may meet and communicate with the parties jointly or separately.
- (3) At the first session, the mediator shall determine the protocol for the conduct of the mediation (“Protocol”) after consulting with the parties on procedural matters, including:
 - (a) the procedural language(s);
 - (b) the method of communication;
 - (c) the place of meetings;
 - (d) the next steps in the mediation;
 - (e) the treatment of confidential or protected information;
 - (f) the participation of other persons in the mediation;
 - (g) any agreement between the parties:
 - (i) concerning the treatment of information disclosed by one party to the mediator by separate communication pursuant to Rule 17(4);

- (ii) not to initiate or pursue other proceedings in respect of the issues in dispute during the mediation;
 - (iii) concerning the application of prescription or limitation periods; and
 - (iv) concerning the disclosure of any settlement agreement resulting from the mediation;
 - (h) the division of advances payable pursuant to (Mediation) Administrative and Financial Regulation 7; and
 - (i) any other relevant procedural and administrative matters.
- (4) At the first session or within such other period as the mediator may determine, each party shall:
- (a) identify a representative who is authorized to settle the issues in dispute on its behalf; and
 - (b) describe the process that would be followed to implement a settlement.

Rule 21

Mediation Procedure

- (1) The mediator shall conduct the mediation in accordance with the Protocol and shall take into account the views of the parties and the issues in dispute.
- (2) The mediator may request that the parties provide additional information or written statements.
- (3) If requested by all parties, the mediator may make oral or written recommendations for the resolution of any issues in dispute.
- (4) The mediator may obtain expert advice with the agreement of the parties.

Rule 22

Termination of the Mediation

- (1) The mediator, or the Secretary-General if no mediator has been appointed, shall issue a notice of termination of the mediation upon:

- (a) a notice from the parties that they have signed a settlement agreement;
 - (b) a notice from the parties that they have agreed to terminate the mediation;
 - (c) a notice of withdrawal by any party, unless the remaining parties agree to continue the mediation;
 - (d) a determination by the mediator that there is no likelihood of resolution through the mediation; or
 - (e) fulfilment of the requirements of Rule 13(5).
- (2) The notice of termination shall contain a brief summary of the procedural steps and the basis for termination of the mediation pursuant to paragraph (1). The notice shall be dated and signed by the mediator or the Secretary-General, as applicable.
- (3) The Secretary-General shall promptly dispatch a certified copy of the notice of termination to each party and deposit the notice in the archives of the Centre. The Secretary-General shall provide additional certified copies of the notice to a party upon request.

**XII. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR MEDIATION
(ANNEX A)
((MEDIATION) ADMINISTRATIVE AND FINANCIAL REGULATIONS)**

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XII. (MEDIATION) ADMINISTRATIVE AND FINANCIAL REGULATIONS

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XII. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR MEDIATION (ANNEX A) ((MEDIATION) ADMINISTRATIVE AND FINANCIAL REGULATIONS)

Introductory Note

The (Mediation) Administrative and Financial Regulations apply to mediations and were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

Chapter I General Provisions

Regulation 1 Application of these Regulations

- (1) These Regulations apply to mediations which the Secretariat of the Centre is authorized to administer pursuant to Rule 2 of the ICSID Mediation Rules.
- (2) The applicable Regulations are those in force on the date of filing the Request for mediation pursuant to the ICSID Mediation Rules.
- (3) These Regulations may be referred to as the “(Mediation) Administrative and Financial Regulations” of the Centre (“Annex A” to the ICSID Mediation Rules).

Chapter II General Functions of the Secretariat

Regulation 2 Secretary

The Secretary-General of the Centre shall appoint a Secretary for each mediation. The Secretary may be drawn from the Secretariat and shall be considered a member of its staff while serving as a Secretary. The Secretary shall:

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the ICSID Mediation Rules applicable to individual mediations and delegated to the Secretary; and

- (b) assist the parties and the mediator with all aspects of the mediation, including the expeditious and cost-effective conduct of the mediation.

Regulation 3 The Registers

The Secretary-General shall maintain a Register for each mediation containing all significant data concerning the institution, conduct and disposition of the mediation. The information in the Register shall not be published, unless the parties agree otherwise.

Regulation 4 Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
- (a) all Requests for mediation;
 - (b) all documents and communications filed in a mediation;
 - (c) any records of meetings or sessions in a mediation; and
 - (d) any notice of termination of a mediation pursuant to ICSID Mediation Rule 22.
- (2) Subject to the ICSID Mediation Rules and the agreement of the parties to the mediation, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c) and (d) available to the parties.

Regulation 5 Certificates of Official Travel

The Secretary-General may issue certificates of official travel to mediators, to persons assisting them, to members of the Secretariat, and to the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in a mediation, indicating that they are traveling in connection with a mediation pursuant to the ICSID Mediation Rules.

Chapter III Financial Provisions

Regulation 6 Fees, Allowances and Charges

- (1) Each mediator shall receive:
 - (a) a fee for each hour of work performed in connection with the mediation;
 - (b) when not travelling to attend a meeting or session, reimbursement of expenses reasonably incurred for the sole purpose of the mediation; and
 - (c) when required to travel to attend a meeting or session held away from the place of residence of the mediator:
 - (i) reimbursement of the cost of ground transportation between the points of departure and arrival;
 - (ii) reimbursement of the cost of air and ground transportation to and from the city in which the meeting or session is held; and
 - (iii) a *per diem* allowance for each day the mediator spends away from their place of residence.
- (2) The Secretary-General shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and (c). Any request by a mediator for a higher amount shall be made through the Secretary-General, and not directly to the parties. Such a request must be made before the transmittal of the Request for mediation to the mediator pursuant to ICSID Mediation Rule 15 and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish an annual administrative charge payable by the parties to the Centre.
- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
 - (a) mediators and any assistants approved by the parties;
 - (b) any experts appointed by a mediator pursuant to ICSID Mediation Rule 21(4);
 - (c) service providers that the Centre engages for a mediation; and
 - (d) the host of any meeting or session held outside an ICSID facility.

- (5) The Centre shall not be required to provide any service in connection with a mediation or to pay the fees, allowances or reimbursements of the mediator, unless the parties have made sufficient payments to defray the costs of the mediation.

Regulation 7

Payments to the Centre

- (1) To enable the Centre to pay the costs referred to in Regulation 6, the parties shall make payments to the Centre as follows:
- (a) upon registration of a Request for mediation, the Secretary-General shall request the party instituting the mediation to make a payment to defray the estimated costs of the mediation through the first session of the mediation, which shall be considered partial payment by the instituting party of the payment referred to in paragraph (1)(b);
 - (b) upon the transmittal of the Request for mediation pursuant to ICSID Mediation Rule 15, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the mediation; and
 - (c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the mediation.
- (2) Each party shall pay an equal share of the payments referred to in paragraph (1)(b) and (c), unless the parties agree on a different division.
- (3) The Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.

Regulation 8

Consequences of Default in Payment

- (1) The payments referred to in Regulation 7 shall be payable on the date of the request from the Secretary-General.
- (2) The following procedure shall apply in the event of non-payment:
- (a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;

- (b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the mediation until payment is made, after giving notice to the parties and to the mediator if appointed; and
- (c) if any mediation is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the mediation, after giving notice to the parties and to the mediator if appointed.

Regulation 9 Special Services

- (1) The Centre may perform any special services related to disputes if the requestor deposits in advance an amount sufficient to defray the charge for such services.
- (2) Charges for special services shall normally be based on a schedule of fees published by the Secretary-General.

Regulation 10 Fee for Lodging Requests

The party or parties (if a Request is filed jointly) wishing to institute a mediation shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 11 Administration of Mediations

The ICSID Secretariat is the only body authorized to administer mediations conducted pursuant to the ICSID Mediation Rules.

Chapter IV
Official Languages and Limitation of Liability

Regulation 12
Languages of Regulations

- (1) These Regulations are published in the official languages of the Centre, English, French and Spanish.
- (2) The texts of these Regulations in each official language are equally authentic.
- (3) Unless otherwise stated or required by the context of the provision, the singular form of a word in these Regulations and in the ICSID Mediation Rules includes the plural form of that word.
- (4) Where required by the context, the masculine gender of a word in the French and Spanish versions of these Regulations and the ICSID Mediation Rules shall be used as a gender-neutral form and shall be understood as referring to the masculine or feminine gender.

Regulation 13
Prohibition Against Testimony and Limitation of Liability

- (1) Unless required by applicable law or unless the parties and the mediator agree otherwise in writing, no mediator shall give testimony in any judicial, arbitral or similar proceeding concerning any aspect of the mediation.
- (2) Except to the extent such limitation of liability is prohibited by applicable law, no mediator shall be liable for any act or omission in connection with the exercise of their functions in the mediation, unless there is fraudulent or willful misconduct.

SCHEDULES*

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*The Schedules do not form part of the formal resolutions for a vote but are included for convenience.

SCHEDULE OF FEES [DRAFT]
(EFFECTIVE DATE TBD)

I. FEE FOR LODGING REQUESTS

1. Subject to paragraphs 2 and 3 below, the fee for lodging requests prescribed by the applicable Administrative and Financial Regulations is US\$25,000. This non-refundable fee is payable to the Centre by a party: (a) requesting the institution of conciliation or arbitration proceedings under the Convention or the Additional Facility Rules; or (b) applying for annulment of an arbitral award rendered pursuant to the Convention.
2. A non-refundable fee of US\$10,000 is payable to the Centre by any party: (a) requesting a supplementary decision to, or the rectification, interpretation or revision of, an arbitral award rendered pursuant to the Convention; (b) requesting a supplementary decision to, rectification or interpretation of, an arbitral award rendered pursuant to the Additional Facility Rules; or (c) requesting the resubmission of a dispute to a new Tribunal after the annulment of an arbitral award rendered pursuant to the Convention.
3. A non-refundable fee of US\$3,000 is payable to the Centre by any party: (a) requesting the institution of fact-finding proceedings under the Fact-Finding Rules; or (b) requesting the institution of a mediation under the Mediation Rules.

II. FEES AND EXPENSES OF ARBITRATORS, CONCILIATORS, AD HOC COMMITTEE MEMBERS, FACT-FINDING COMMITTEE MEMBERS AND MEDIATORS

4. In addition to receiving reimbursement for any direct expenses reasonably incurred, arbitrators, conciliators, *ad hoc* Committee members, Fact-Finding Committee members and mediators are entitled to receive a fee of US\$375 for each hour of work performed in connection with the proceedings including each hour spent in hearings, sessions and meetings, as well as *per diem* allowances and reimbursement of travel and other expenses within limits set forth in the applicable Administrative and Financial Regulation. Any request for a higher amount shall be made through the Secretary-General.

III. ADMINISTRATIVE CHARGES

5. An administrative charge of US\$42,000 is levied by the Centre upon the registration of a request for arbitration, conciliation or post-award proceeding and annually thereafter. For cases registered before July 1, 2016, the annual administrative charge is levied by the Centre on the date of the constitution of the Conciliation Commission, Arbitral Tribunal, or *ad hoc* Committee concerned. The same annual charge applies to proceedings administered by the Centre under rules other than the ICSID Convention or Additional Facility Rules.
6. An administrative charge of [US\$TBD] is levied by the Centre upon the registration of a request for mediation or a fact-finding proceeding and annually thereafter.

IV. PAYMENTS TO THE CENTRE

7. The administrative charge, the direct expenses incurred in connection with the proceedings, and the fees and expenses of the Commission, Tribunal, *ad hoc* Committee, Fact-Finding Committee or mediators are met from advance payments that the parties are periodically requested to make to the Centre under the applicable Administrative and Financial Regulation.
8. Any party may ask to be given advance notice that the Centre will be requesting a supplementary payment in a proceeding. Such a request should be addressed to the Secretary-General and should be made as early as possible in the proceeding.

V. APPOINTMENTS AND CHALLENGES IN PROCEEDINGS NOT CONDUCTED UNDER THE ICSID CONVENTION, ADDITIONAL FACILITY, FACT-FINDING OR MEDIATION RULES

9. A non-refundable fee of US\$10,000 is payable to the Centre by a party requesting that the Secretary-General make an appointment in proceedings not conducted under the ICSID Convention, Additional Facility, Fact-Finding or Mediation Rules. This fee will be credited to the requesting party's share of the administrative charge if ICSID subsequently is selected to administer the proceeding.
10. A non-refundable fee of US\$10,000 is payable to the Centre by a party requesting that the Secretary-General decide a disqualification proposal in proceedings not conducted under the ICSID Convention, Additional Facility, Fact-Finding or Mediation Rules.

VI. CHARGES FOR SPECIAL SERVICES

11. Under the applicable Administrative and Financial Regulation, a person asking the Centre to perform a special service must deposit in advance an amount sufficient to cover the resulting charges. The charges for such services are determined on the basis of the cost to ICSID of providing the service. Such services are additional to services provided by the Secretariat during the regular administration of cases or are services rendered to non-parties. For example, special services could include digitalizing or copying case records in a closed case. Any questions regarding such charges should be addressed to ICSID at icsidsecretariat@worldbank.org.

MEMORANDUM ON FEES AND EXPENSES IN ICSID PROCEEDINGS

(EFFECTIVE DATE TBD)

Members of Commissions, Tribunals, *ad hoc* Committees, Fact-Finding Committees and Mediators in ICSID proceedings (referred to as “members” below) are entitled to receive an hourly fee, *per diem* allowance, and travel and other expense reimbursements referred to in Administrative and Financial Regulation 14, (Additional Facility) Administrative and Financial Regulation 6(1), (Fact-Finding) Administrative and Financial Regulation 6(1) or (Mediation) Administrative and Financial Regulation 6(1), as applicable. This memorandum explains those entitlements and how they are calculated, claimed and paid.

I. FEES

1. Members receive a fee for each hour of work performed in connection with the proceeding, including each hour spent participating in hearings, sessions and meetings.
2. When traveling for hearings, sessions or meetings held away from the member’s city of residence, the member receives a fee for each hour spent traveling, either by air or by ground, to and from the location of the hearing, session or meeting.
3. The amount of the hourly fee is US\$375 per hour.

II. PER DIEM ALLOWANCE

4. Members are entitled to receive the flat-rate *per diem* allowances in paragraphs 5 and 6 below for each day they spend away from their city of residence while traveling in connection with a proceeding.
5. When overnight lodging is required, the amount of the *per diem* allowance is US\$800 for each day. The allowance covers all personal expenses, including lodging, tax on lodging, service charges, meals, gratuities, in-city transportation (taxis, other means of transportation), laundry, personal communications and internet.
6. For day trips not requiring overnight lodging, the amount of the *per diem* allowance is US\$200.
7. Members are entitled to claim the US\$200 *per diem* allowance for each day of travel to and from the hearing, session or meeting, when lodging is not required, and for the day of return to their city of residence.

III. TRAVEL EXPENSES

8. When members are required to attend a hearing, session or meeting held away from their city of residence, they are entitled to claim reimbursement for the costs of air and ground transportation to and from the city where the hearing, session or meeting is held. Travel must be arranged by the most economic route.

9. Members are authorized to travel at one class above economy. Reimbursement will be made based on the actual expenses incurred. Receipts and the passenger copy of the transport ticket or electronic boarding pass must be submitted with the claim for reimbursement.
10. Members may claim reimbursement for the costs of taxis to and from the points of departure and arrival, both at the city of residence and the city where the hearing, session or meeting is held. Receipts must be submitted with the claim for reimbursement.
11. If travel is undertaken in a privately-owned automobile, a mileage allowance will be paid at the rate of US\$0.535 per mile/US\$0.33 per km.
12. All travel arrangements should be made in the most economic manner possible and, to the extent possible, should minimize the adverse ecological impact of the travel.

IV. OTHER REIMBURSABLE EXPENSES

13. Members are entitled to receive reimbursement for expenses reasonably incurred for the sole purpose of the proceeding. Such expenses may include, for example, courier costs and shredding case-related documents.
14. Claims for reimbursement of all expenses must be accompanied by receipts or other supporting documents.

V. CLAIMS AND PAYMENT

15. Claims for fees, *per diem* allowances and expenses should be submitted electronically to icsidpayments@worldbank.org using the Centre's Claim for Fees and Expenses form.
16. Claims must be submitted regularly, and at least on a quarterly basis. Final claims must be submitted prior to the conclusion of the case.
17. A detailed breakdown of the work performed must be provided in the Claim form, and receipts or supporting documents for all expenses claimed must be attached.
18. A financial statement of the case account containing an itemized account of the fees and expenses of each member will be available to the parties at any time during the proceeding and upon conclusion of the proceeding.
19. Members are encouraged to share copies of their claim forms with one another during a proceeding to ensure it is conducted on a cost-effective basis.
20. Amounts paid to members do not include value added tax (VAT) or any other taxes and charges that might be applicable to the members' fees and expenses. The recovery of any such taxes or charges is a matter solely between the member and the parties.

21. Claims are reviewed, processed and approved by the Secretariat, and payments are made by wire transfer to the accounts provided by the members. Typically, ICSID processes claims within 3-7 days of receipt of the claim.
22. Payment will be postponed if a Tribunal or Committee has not complied with applicable rules concerning time limits to render orders, decisions or Awards. Any payments postponed on this basis will be processed as soon as the Tribunal or Committee complies with the relevant rule.

ARBITRATOR DECLARATION

Case Name and No.:

Arbitrator name:

Arbitrator nationality(ies):

I accept my appointment as arbitrator in this proceeding and make the following declarations:

1. To the best of my knowledge, there is no reason why I should not serve on the Tribunal constituted by the International Centre for Settlement of Investment Disputes (“the Centre”) in this proceeding.
2. I am impartial and independent of the parties, and shall judge fairly, in accordance with the applicable law.
3. I shall not accept any instruction or compensation with regard to the arbitration from any source except as provided in the ICSID [Convention, Arbitration Rules and Administrative and Financial Regulations] or [Additional Facility Rules, Additional Facility Arbitration Rules and (Additional Facility) Administrative and Financial Regulations].
4. I understand that I am required to disclose:
 - a. My professional, business and other significant relationships, within the past five years with:
 - i. the parties;
 - ii. the parties’ representatives;
 - iii. other members of the Tribunal (presently known); and
 - iv. any third-party funder disclosed pursuant to [(ICSID Arbitration Rule 14 / (AF) Arbitration Rule 23)].
 - b. Investor-State cases in which I have been or am currently involved as counsel, conciliator, arbitrator, *ad hoc* Committee member, Fact-Finding Committee member, mediator or expert; and
 - c. Other circumstances that might reasonably cause my independence or impartiality to be questioned.

[Select one]:

☐

A statement is attached.

☐

I have no such disclosures to make and attach no statement.

5. I acknowledge that I have a continuing obligation to disclose any change of circumstances which might cause my independence or impartiality to be questioned, and will promptly notify the Secretary-General of any such circumstances.
6. I shall keep confidential all information coming to my knowledge as a result of my participation in this arbitration, including the contents of any Award made by the Tribunal.
7. I will not engage in any *ex parte* communication concerning this arbitration with a party or its representative.
8. I have sufficient availability to perform my duties as arbitrator in an expeditious and cost-effective manner and in accordance with the time limits in the applicable arbitration rules. My availability in the next 24 months, as currently known by me is [insert calendar].
9. I confirm that I will not accept new commitments that would conflict with or interfere with my capacity to perform my duties in this arbitration.
10. I will adhere to the [Memorandum on Fees and Expenses in ICSID Proceedings](#) published by the Centre.
11. I attach my current *curriculum vitae*.

Signed [form to allow electronic signature]

Date

TRIBUNAL-APPOINTED EXPERT DECLARATION

Case Name and No.:

Expert name:

Expert nationality(ies):

I accept my appointment as a Tribunal-appointed expert in this proceeding and make the following declarations:

1. To the best of my knowledge, there is no reason why I should not serve as a Tribunal-appointed expert in this proceeding.
2. I am impartial and independent of the parties and their representatives in this proceeding and shall report to the Tribunal on the matter(s) assigned to me in accordance with AR 39 of the ICSID Arbitration Rules ((AF) Arbitration Rule 49) and my terms of reference.
3. I understand that I am required to disclose:
 - a. My professional, business and other significant relationships, within the past five years with:
 - i. the parties;
 - ii. the parties' representatives;
 - iii. members of the Tribunal; and
 - iv. any third-party funder disclosed pursuant to [(ICSID Arbitration Rule 13 / (AF) Arbitration Rule 22)].
 - b. Investor-State cases in which I have been or am currently involved as counsel, conciliator, arbitrator, *ad hoc* Committee member, Fact-Finding Committee member, mediator or expert; and
 - c. Other circumstances that might reasonably cause my independence or impartiality to be questioned.

[Select one]:

☐

A statement is attached.

☐

I have no such disclosures to make and attach no statement.

4. I acknowledge that I have a continuing obligation to disclose any change of circumstances which might cause my independence or impartiality to be questioned, and will promptly notify the Secretary-General of any such circumstances.

5. I shall keep confidential all information coming to my knowledge as a result of my participation in this arbitration, including the contents of any Award made by the Tribunal.
6. I will not engage in any *ex parte* communication concerning this arbitration with a party or their representatives.
7. I attach my current *curriculum vitae*.

Signed [form to allow electronic signature]



Date



AD HOC COMMITTEE MEMBER DECLARATION

Case Name and No.:

Committee member name:

Committee member nationality(ies):

I accept my appointment as a Committee member in this annulment proceeding and make the following declarations:

1. To the best of my knowledge, there is no reason why I should not serve on the Committee constituted by the International Centre for Settlement of Investment Disputes (“the Centre”) in this proceeding.
2. I am impartial and independent of the parties, and shall judge fairly in accordance with the applicable law.
3. I shall not accept any instruction or compensation with regard to the annulment proceeding from any source except as provided in the ICSID Convention, Arbitration Rules and Administrative and Financial Regulations.
4. I understand that I am required to disclose:
 - a. My professional, business and other significant relationships, within the past five years with:
 - i. the parties;
 - ii. the parties’ representatives;
 - iii. other members of the Committee (presently known); and
 - iv. any third-party funder disclosed pursuant to (ICSID Arbitration Rule 14.
 - b. Investor-State cases in which I have been or am currently involved as counsel, conciliator, arbitrator, *ad hoc* Committee member, Fact-Finding Committee member, mediator or expert; and
 - c. Other circumstances that might reasonably cause my independence or impartiality to be questioned.

[Select one]:

☐

A statement is attached.

☐

I have no such disclosures to make and attach no statement.

5. I acknowledge that I have a continuing obligation to disclose any change of circumstances which might cause my independence or impartiality to be questioned, and will promptly notify the Secretary-General of any such circumstances.
6. I shall keep confidential all information coming to my knowledge as a result of my participation in this annulment proceeding, including the contents of any Decision on Annulment made by the Committee.
7. I will not engage in any *ex parte* communication concerning this case with a party or its representative.
8. I have sufficient availability to perform my duties as a Committee member in an expeditious and cost-effective manner and in accordance with the time limits in the applicable arbitration rules. My availability in the next 24 months, as currently known by me is [insert calendar].
9. I confirm that I will not accept new commitments that would conflict with or interfere with my capacity to perform my duties in this annulment proceeding.
10. I will adhere to the [Memorandum of Fees and Expenses in ICSID Proceedings](#) published by the Centre.
11. I attach my current *curriculum vitae*.

Signed [form to allow electronic signature]

Date

CONCILIATOR DECLARATION

Case Name and No.:

Conciliator name:

Conciliator nationality(ies):

I accept my appointment as conciliator in this proceeding and make the following declarations:

1. To the best of my knowledge, there is no reason why I should not serve on the Conciliation Commission constituted by the International Centre for Settlement of Investment Disputes (“the Centre”) in this proceeding.
2. I am impartial and independent of the parties, and shall act fairly in accordance with the applicable rules.
3. I shall not accept any instruction or compensation with regard to the conciliation from any source except as provided in the ICSID [Convention, Conciliation Rules and Administrative and Financial Regulations] or [Additional Facility Rules, (Additional Facility) Conciliation Rules and (Additional Facility) Administrative and Financial Regulations].
4. I understand that I am required to disclose:
 - a. My professional, business and other significant relationships, within the past five years with:
 - i. the parties;
 - ii. the parties’ representatives;
 - iii. other members of the Commission (presently known); and
 - iv. any third-party funder disclosed pursuant to [(Conciliation Rule 12(1) / (AF) Conciliation Rule 21(1)].
 - b. Investor-State cases in which I have been or am currently involved as counsel, conciliator, arbitrator, *ad hoc* Committee member, Fact-Finding Committee member, mediator or expert; and
 - c. Other circumstances that might reasonably cause my independence or impartiality to be questioned.

[Select one]:

☐

A statement is attached.

☐

I have no such disclosures to make and attach no statement.

5. I acknowledge that I have a continuing obligation to disclose any change in circumstances which might cause my independence or impartiality to be questioned, and will promptly notify the Secretary-General of any such circumstances.
6. I shall keep confidential all information coming to my knowledge as a result of my participation in this conciliation, including the contents of any Report made by the Commission.
7. I will not have any *ex parte* communication concerning this conciliation with a party or its representative during the conciliation except as contemplated by the Minutes of the First Session, the applicable rules or any party agreement.
8. I have sufficient availability to perform my duties as conciliator in an expeditious and cost-effective manner and in accordance with the time limits in the applicable conciliation rules. My availability in the next 24 months, as currently known by me is [insert calendar].
9. I confirm that I will not accept new commitments that would conflict with or interfere with my capacity to perform my duties in this conciliation.
10. I will adhere to the [Memorandum on Fees and Expenses in ICSID Proceedings](#) published by the Centre.
11. I attach my current *curriculum vitae*.

Signed [form to allow electronic signature]

Date



FACT-FINDING COMMITTEE MEMBER DECLARATION

Case Name and No.:

Committee member name:

Committee member nationality(ies):

I accept my appointment as a Committee member in this fact-finding and make the following declarations:

1. To the best of my knowledge, there is no reason why I should not serve on the Committee constituted by the International Centre for Settlement of Investment Disputes (“the Centre”) in this fact-finding.
2. I am impartial and independent of the parties, and shall discharge my mandate fairly.
3. I shall not accept any instruction or compensation with regard to the fact-finding from any source except as provided in the ICSID Fact-Finding Rules and (Fact-Finding) Administrative and Financial Regulations.
4. I understand that I am required to disclose:
 - a. My professional, business and other significant relationships, within the past five years with:
 - i. the parties;
 - ii. the parties’ representatives;
 - iii. the other members of the Committee (presently known); and
 - b. Other circumstances that might reasonably cause my independence or impartiality to be questioned.

[Select one]:

☐

A statement is attached.

☐

I have no such disclosures to make and attach no statement.

5. I acknowledge that I have a continuing obligation to disclose any change of circumstances which might cause my independence or impartiality to be questioned, and will promptly notify the Secretary-General of any such circumstances.
6. I shall keep confidential all information coming to my knowledge as a result of my participation in this fact-finding, including the contents of any Report made by the Committee.

7. I will not engage in any *ex parte* communication concerning this fact-finding with a party or its representative.
8. I have sufficient availability to perform my duties as a Committee member in an expeditious and cost-effective manner. My availability in the next 24 months, as currently known by me is [insert calendar].
9. I confirm that I will not accept new commitments that would conflict with or interfere with my capacity to perform my duties in this fact-finding.
10. I will adhere to the [Memorandum on Fees and Expenses in ICSID Proceedings](#) published by the Centre.
11. I attach my current *curriculum vitae*.

Signed [form to allow electronic signature]



Date



MEDIATOR DECLARATION

Case Name and No.:

Mediator name:

Mediator nationality(ies):

I accept my appointment as mediator in this proceeding and make the following declarations:

1. To the best of my knowledge, there is no reason why I should not serve as a mediator in this mediation administered by the Secretariat of the International Centre for Settlement of Investment Disputes (“the Centre”).
2. I am impartial and independent of the parties, and shall act fairly in accordance with the applicable rules.
3. I shall not accept any instruction or compensation with regard to the mediation from any source except as provided in the ICSID Mediation Rules and (Mediation) Administrative and Financial Regulations.
4. I understand that I am required to disclose:
 - a. My professional, business and other significant relationships, within the past five years with:
 - i. the parties;
 - ii. the parties’ representatives;
 - iii. the other co-mediator, if any.
 - b. Investor-State cases in which I have been or am currently involved as counsel, conciliator, arbitrator, *ad hoc* Committee member, Fact-Finding Committee member, mediator or expert; and
 - c. Other circumstances that might reasonably cause my independence or impartiality to be questioned.

[Select one]:

☐

A statement is attached.

☐


I have no such disclosures to make and attach no statement.

5. I acknowledge that I have a continuing obligation to disclose any change in circumstances which might cause my independence or impartiality to be questioned, and will promptly notify the Secretary-General of any such circumstances.

6. I shall keep confidential all information coming to my knowledge as a result of my participation in this mediation, including the contents of any Notice of Termination of the mediation.
7. I will not have any *ex-parte* communication concerning this mediation with a party or its representative during the mediation except as contemplated by the Protocol, the applicable rules or any party agreement.
8. I have sufficient availability to perform my duties as mediator in an expeditious and cost-effective manner and in accordance with the time limits in the applicable mediation rules. My availability in the next 24 months, as currently known by me is [insert calendar].
9. I confirm that I will not accept new commitments that would conflict with or interfere with my capacity to perform my duties in this mediation.
10. I will adhere to the [Memorandum on Fees and Expenses in ICSID Proceedings](#) published by the Centre.
11. I attach my current *curriculum vitae*.

Signed [form to allow electronic signature]

Date



WORKING PAPER # 4 – VOLUME 1 – ENGLISH

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**I. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR ICSID CONVENTION
PROCEEDINGS
(ADMINISTRATIVE AND FINANCIAL REGULATIONS)**

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I. ADMINISTRATIVE AND FINANCIAL REGULATIONS

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I. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR ICSID CONVENTION PROCEEDINGS (ADMINISTRATIVE AND FINANCIAL REGULATIONS)

Introductory Note

The Administrative and Financial Regulations for ICSID Convention Proceedings (Administrative and Financial Regulations) were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(a) of the ICSID Convention.

These Regulations concern the functioning of ICSID as an international institution. They also contain provisions that apply generally in proceedings and are complementary to the Convention and the Institution, Conciliation and Arbitration Rules, adopted pursuant to Article 6(1)(b) and (c) of the Convention.

Chapter I Procedures of the Administrative Council

Regulation 1 Date and Place of the Annual Meeting

The Annual Meeting of the Administrative Council shall take place in conjunction with the Annual Meeting of the Board of Governors of the International Bank for Reconstruction and Development (“Bank”), unless the Council specifies otherwise.

Regulation 2 Notice of Meetings

- (1) The Secretary-General shall give each member notice of the time and place of meetings of the Administrative Council by any rapid means of communication. This notice shall be dispatched not less than 42 days prior to the date set for such meeting, except that in urgent cases notice shall be sufficient if dispatched not less than 10 days prior to the date of the meeting.
- (2) Any meeting of the Administrative Council at which no quorum is present may be adjourned by a majority of the members present and notice of the adjourned meeting need not be given.

Regulation 3 Agenda for Meetings

- (1) The Secretary-General shall prepare an agenda for each meeting of the Administrative Council under the direction of the Chairman of the Administrative Council (“Chair”) and shall transmit the agenda to each member with notice of the meeting.
- (2) Additional subjects may be placed on the agenda by any member by giving notice thereof to the Secretary-General not less than 7 days prior to the date set for such meeting.
- (3) In special circumstances the Chair, or the Secretary-General after consulting with the Chair, may at any time place additional subjects on the agenda for a meeting of the Administrative Council.
- (4) The Secretary-General shall promptly give each member notice of additional subjects on the agenda.
- (5) The Administrative Council may authorize any subject to be placed on the agenda at any time even though the notice required by this Regulation has not been given.

Regulation 4 Presiding Officer

- (1) The Chair shall be the Presiding Officer at meetings of the Administrative Council.
- (2) The Chair shall designate a Vice-President of the Bank to preside over all or any part of a meeting if the Chair is unable to preside.

Regulation 5 Secretary of the Council

- (1) The Secretary-General shall serve as Secretary of the Administrative Council.
- (2) Except as otherwise directed by the Administrative Council, the Secretary-General, in consultation with the Chair, shall make all arrangements for meetings of the Council and may coordinate with appropriate officers of the Bank for this purpose.
- (3) The Secretary-General shall present the annual report on the operation of the Centre to each Annual Meeting of the Administrative Council for its approval pursuant to

Article 6(1)(g) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“Convention”).

- (4) The Secretary-General shall publish the annual report and a summary record of the proceedings of the Administrative Council.

Regulation 6 Attendance at Meetings

- (1) The Secretary-General and the Deputy Secretaries-General may attend all meetings of the Administrative Council.
- (2) The Secretary-General, in consultation with the Chair, may invite observers to attend any meeting of the Administrative Council.

Regulation 7 Voting

- (1) Except as otherwise provided in the Convention, all decisions of the Administrative Council shall be taken by a majority of the votes cast. The Presiding Officer may ascertain the sense of the meeting in lieu of a formal vote but shall require a formal vote upon the request of any member. The written text of the motion shall be distributed to the members if a formal vote is required.
- (2) No member of the Administrative Council may vote by proxy or by any method other than in person, but a member may designate a temporary alternate to vote at any meeting at which the regular alternate is not present.
- (3) Between Annual Meetings, the Chair may call a special meeting or request that the Administrative Council vote by correspondence on a motion. The Secretary-General shall transmit the request for a vote by correspondence to each member with the text of the motion to be voted upon. Votes shall be cast within 45 days after such transmission, unless a longer period is approved by the Chair. Upon expiry of the established period, the Secretary-General shall record the results and notify all members of the outcome. The motion shall be considered lost if the replies received do not include those of a majority of the members.
- (4) If all Contracting States are not represented at a meeting of the Administrative Council and the votes necessary to adopt a proposed decision by a majority of two-thirds of the members of the Council are not obtained, the Council, with the concurrence of the Chair, may decide that the votes of those members of the Council represented at the meeting shall be registered and the votes of the absent members

shall be solicited in accordance with paragraph (3). Votes registered at the meeting may be changed by the member before the expiry of the voting period established pursuant to paragraph (3).

Chapter II The Secretariat

Regulation 8 Election of the Secretary-General and Deputy Secretaries-General

In proposing to the Administrative Council one or more candidates for the office of Secretary-General or Deputy Secretary-General, the Chair shall also make proposals with respect to their term and conditions of ~~employment~~ service.

1. The word “employment” has been replaced by “service” in AFR 8 to better reflect the fact that the Secretary-General and Deputy Secretaries-General are elected by the Council, rather than employed by the Council.

Regulation 9 Acting Secretary-General

- (1) If there is more than one Deputy Secretary-General, the Chair may propose to the Administrative Council the order in which the Deputies shall act as Secretary-General pursuant to Article 10(3) of the Convention. In the absence of such a decision by the Administrative Council, the Secretary-General shall determine the order in which the Deputies shall act as Secretary-General.
- (2) The Secretary-General shall designate the member of the staff of the Centre who shall act as Secretary-General during the absence or inability to act of the Secretary-General and the Deputy Secretaries-General. If there should be a simultaneous vacancy in the offices of Secretary-General and Deputy Secretary-General, the Chair shall designate the member of the staff who shall act as the Secretary-General.

Regulation 10 Appointment of Staff Members

The Secretary-General shall appoint the staff of the Centre. Appointments may be made directly or by secondment.

Regulation 11 Conditions of Employment

- (1) The conditions of employment of the staff of the Centre shall be the same as those of the staff of the Bank.
- (2) The Secretary-General shall make arrangements with the Bank, within the framework of the general administrative arrangements approved by the Administrative Council pursuant to Article 6(1)(d) of the Convention, for the participation of members of the Secretariat in the Staff Retirement Plan of the Bank and in other facilities and contractual arrangements established for the benefit of the staff of the Bank.

Regulation 12 Authority of the Secretary-General

- (1) Deputy Secretaries-General and the staff of the Centre shall act solely under the direction of the Secretary-General.
- (2) The Secretary-General shall have authority to dismiss members of the Secretariat and to impose disciplinary measures. Deputy Secretaries-General may only be dismissed with the concurrence of the Administrative Council.

Regulation 13 Incompatibility of Functions

The Secretary-General, the Deputy Secretaries-General and the staff of the Centre may not serve on the Panels of Conciliators or of Arbitrators, or as members of any Commission, Tribunal or Committee.

Chapter III Financial Provisions

Regulation 14 Fees, Allowances and Charges

- (1) Each member of a Commission, Tribunal or Committee shall receive:
 - (a) a fee for each hour of work performed in connection with the proceeding;
 - (b) when not travelling to attend a hearing, meeting or session, reimbursement of expenses reasonably incurred for the sole purpose of the proceeding; and
 - (c) when required to travel to attend a hearing, meeting or session held away from the member's place of residence:
 - (i) reimbursement of the cost of ground transportation between the points of departure and arrival;
 - (ii) reimbursement of the cost of air and ground transportation to and from the city in which the hearing, meeting or session is held; and
 - (iii) a *per diem* allowance for each day the member spends away from their place of residence.
- (2) The Secretary-General, with the approval of the Chair, shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and (c). Any request by a member for a higher amount shall be made through the Secretary-General, and not directly to the parties. Such a request must be made before the constitution of the Commission, Tribunal or Committee and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish an annual administrative charge payable by the parties to the Centre.
- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
 - (a) members of Commissions, Tribunals and Committees, and any assistants approved by the parties;
 - (b) witnesses and experts called by a Commission, Tribunal or Committee who have not been presented by a party;
 - (c) service providers that the Centre engages for a proceeding; and
 - (d) the host of any hearing, meeting or session held outside an ICSID facility.

(5) The Centre shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or reimbursements of the members of any Commission, Tribunal or Committee, unless the parties have made sufficient payments to defray the costs of the proceeding.

2. Two States requested that members consider the ecological impact of their travel claims. This has been added as a new paragraph 12 of the Memorandum on Fees and Expenses in ICSID Proceedings, stating: “All travel arrangements should be arranged in the most economic manner possible and in a manner that minimizes the adverse ecological impact of the travel.”
3. One delegation proposed that Member States set the fees and *per diems* in Schedule 2. ICSID notifies Member States about any proposed changes in fees and *per diems*. However, this should remain a function of the Chair of the Administrative Council given the fact that Member States are potentially parties in cases, and hence ought not to also set arbitrator fees. Setting of rates and fees is a standard function of all arbitral institutions and the Chair has always exercised this function judiciously.
4. Similarly, one delegation suggested that the Administrative Council should set the administrative fees of ICSID. This has not been adopted as the setting of fees is closely linked to the internal budgeting process of ICSID, making it important that it remain a function of the Chair. The audited financial statement of ICSID is provided to Member States every year and they approve the overall budget at the Annual Meeting.
5. One State proposed to delete AFR 14(1)(b), suggesting that members should be reimbursed for expenses only while traveling. This provision is maintained because members may incur limited expenses such as courier costs when they are not traveling. Members are required to provide receipts and are only reimbursed when the expense is “reasonably incurred for the sole purpose of the proceeding.”
6. In relation to AFR 14(2), one State suggested that any request for a higher fee or allowance should be made and approved before an appointment is accepted. AFR 14(2) sets the date for such requests at constitution because parties can unilaterally replace an arbitrator at any time before constitution. Such requests are rare at ICSID.
7. One State suggested that ICSID consider *ad valorem* fees, while another State expressed the view that an *ad valorem* system would be inappropriate because there is no link between the amount claimed in a proceeding and the amount of time required to resolve the dispute. ICSID is studying this issue and will update Member States on its findings.
8. One State suggested that ICSID should have authority to decrease members’ fees in case of delay. As explained in WP # 1, it is fair to compensate members for the hours actually worked. WP # 3 addressed the issue of timeliness by providing that the payment of fees shall be postponed when members fail to render decisions, orders or Awards within time limits prescribed in the rules.
9. Several States suggested that the provision concerning postponement of payment for failure

to render decisions, orders or Awards should be in the Rules rather than in a schedule. Others supported its placement in a schedule. It is appropriate for this to be in the Memorandum of Fees and Expenses as postponing payments will be an administrative function fulfilled by ICSID in its management of case accounts. This is consistent with the practice of all arbitral institutions, which address such matters in administrative directives and not as part of the rules of procedure. The Memorandum of Fees and Expenses is provided to each arbitrator when they are appointed and so this clause is specifically brought to their attention.

10. One State reiterated its suggestion to include timeliness in past arbitrations as a stated criterion for selection of arbitrators by the Secretary-General or the Chair. This is a relevant consideration in practice and will be noted on the Centre's webpage addressing arbitrator selection. It is not included in the amended rules as the formal criteria are stated in Art. 14 of the Convention.
11. Several States suggested that fees and charges be reduced for developing States, especially those with multiple ongoing arbitrations. Other States noted that this would be a proper topic of discussion and coordination with UNCITRAL Working Group III in respect of an Advisory Center. No changes have been made to the rules concerning differentiated fee structures, but ICSID would be glad to participate in this discussion at WG III.

Regulation 15 **Payments to the Centre**

- (1) To enable the Centre to pay the costs referred to in Regulation 14, the parties shall make payments to the Centre as follows:
 - (a) upon registration of a Request for arbitration or conciliation, the Secretary-General shall request the claimant(s) to make a payment to defray the estimated costs of the proceeding through the first session of the Commission or Tribunal, which shall be considered partial payment by the claimant(s) of the payment referred to in paragraph (1)(b);
 - (b) upon constitution of a Commission, Tribunal or Committee, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the proceeding; and
 - (c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the proceeding.
- (2) In conciliation proceedings, each party shall pay one half of the payments referred to in paragraph (1)(b) and (c). In arbitration proceedings, each party shall pay one half of the payments referred to in paragraph (1)(b) and (c), unless a different division is agreed to by the parties or ordered by the Tribunal. Payment of these sums is without prejudice to the Tribunal's final decision on costs pursuant to Article 61(2) of the Convention.

- (3) The Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.
- (4) This Regulation shall apply to requests for a supplementary decision on or rectification of an Award, ~~an~~ application_s for interpretation or revision of an Award, and ~~a~~ request_s for resubmission of the dispute.
- (5) This Regulation shall apply to ~~an~~ application_s for annulment of an Award, except that the applicant shall be solely responsible for making the payments requested by the Secretary-General.

12. Given AFR 32(3) it is no longer necessary to put (s) in brackets in AFR 15(1)(a).

Regulation 16 **Consequences of Default in Payment**

- (1) The payments referred to in Regulation 15 shall be payable on the date of the request from the Secretary-General.
- (2) The following procedure shall apply in the event of non-payment:
 - (a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;
 - (b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the proceeding until payment is made, after giving notice to the parties and to the Commission, Tribunal or Committee if constituted; and
 - (c) if any proceeding is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the proceeding, after giving notice to the parties and to the Commission, Tribunal or Committee if constituted.

- 13. Some States commented that the 30-day period in AFR 16(2)(a) does not provide sufficient advance notice for their internal budgeting processes and wanted 45 or 60 days. Other States noted that States are currently able to make their payment in 30 days and that in the rare instances where this has been a problem, it has been addressed effectively with ICSID. As a first session must be scheduled within 60 days after constitution of the Tribunal, it is important to maintain the current schedule for payment, and no change has been made.
- 14. Additionally, the Memorandum of Fees and Expenses expressly notes that parties can arrange with the Centre to receive advance notice that a call for funds will be made. Thus, a party might ask that requests for advances be notified within a certain number of months

before the next scheduled event in the case, at a regular interval, or otherwise. Therefore, no change to the proposed rule is required.

Regulation 17 Special Services

- (1) The Centre may perform any special services related to disputes if the requestor deposits in advance an amount sufficient to defray the charge for such services.
- (2) Charges for special services shall normally be based on a schedule of fees published by the Secretary-General.

Regulation 18 Fee for Lodging Requests

The party or parties (if a request is filed jointly) wishing to institute an arbitration or conciliation proceeding, or requesting a supplementary decision, rectification, interpretation, revision or annulment of an Award, or resubmission of a dispute, shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 19 The Budget

- (1) The fiscal year of the Centre shall run from July 1 of each year to June 30 of the following year.
- (2) Before the end of each fiscal year, the Secretary-General shall prepare a budget indicating expected expenditures of the Centre (excepting those to be incurred on a reimbursable basis) and expected revenues (excepting reimbursements) for the following fiscal year. The budget shall be submitted for adoption by the Administrative Council at its next Annual Meeting in accordance with Article 6(1)(f) of the Convention.
- (3) If the Secretary-General determines during the fiscal year that the expected expenditures will exceed those authorized in the budget, or wishes to incur expenditures not previously authorized, the Secretary-General shall prepare a supplementary budget in consultation with the Chair and submit it to the Administrative Council for adoption, in accordance with Regulation 7.

- (4) The adoption of a budget constitutes authority for the Secretary-General to make expenditures and incur obligations for the purposes and within the limits specified in the budget. Unless otherwise provided by the Administrative Council, the Secretary-General may exceed the amount specified for any given budget item, provided that the total amount of the budget is not exceeded.
- (5) Pending the adoption of the budget by the Administrative Council, the Secretary-General may incur expenditures for the purposes and within the limits specified in the budget submitted, up to one quarter of the amount authorized to be expended in the previous fiscal year but in no event exceeding the amount that the Bank has agreed to make available for the current fiscal year.

Regulation 20 **Assessment of Contributions**

- (1) Any excess of expected expenditures over expected revenues shall be assessed on the Contracting States. Each State that is not a member of the Bank shall be assessed a fraction of the total assessment equal to the fraction of the budget of the International Court of Justice that it would have to bear if that budget were divided only among the Contracting States in proportion to the then current scale of contributions applicable to the budget of the Court; the balance of the total assessment shall be divided among the Contracting States that are members of the Bank in proportion to their respective subscription to the capital stock of the Bank. The assessments shall be calculated by the Secretary-General immediately after the adoption of the annual budget, on the basis of the then current membership of the Centre, and shall be promptly communicated to all Contracting States. The assessments shall be payable as soon as they are communicated.
- (2) On the adoption of a supplementary budget, the Secretary-General shall immediately calculate supplementary assessments, which shall be payable as soon as they are communicated to the Contracting States.
- (3) A State which is party to the Convention during any part of a fiscal year shall be assessed for the entire fiscal year. If a State becomes a party to the Convention after the assessments for a given fiscal year have been calculated, its assessment shall be calculated by the application of the same appropriate factor as was applied in calculating the original assessments, and no recalculation of the assessments of the other Contracting States shall be made.
- (4) If, after the close of a fiscal year, it is determined that there is a cash surplus, such surplus shall, unless the Administrative Council decides otherwise, be credited to the Contracting States in proportion to the assessed contributions they had paid for that fiscal year. These credits shall be made with respect to the assessments for the fiscal

year commencing two years after the end of the fiscal year to which the surplus pertains.

Regulation 21 Audits

The Secretary-General shall have an audit of the accounts of the Centre made once each year and on the basis of this audit submit a financial statement to the Administrative Council for consideration at the Annual Meeting.

Regulation 22 Administration of Proceedings

The ICSID Secretariat is the only **entity**~~body~~ authorized to administer proceedings conducted under the Convention.

15. One State preferred the formulation of AFR 22 in WP # 2, in that it used “body” rather than “entity”. This change has been made.

Chapter IV General Functions of the Secretariat

Regulation 23 List of Contracting States

The Secretary-General shall maintain and publish a list of the Contracting States (including former Contracting States, showing the date on which their notice of denunciation was received by the depositary), indicating for each:

- (a) the date on which the Convention entered into force with respect to it;
- (b) any territories excluded pursuant to Article 70 of the Convention and the dates on which the notice of exclusion and any modification of such notice were received by the depositary;
- (c) any designation pursuant to Article 25(1) of the Convention of constituent subdivisions or agencies to whose investment disputes the jurisdiction of the Centre extends;

- (d) any notification pursuant to Article 25(3) of the Convention that no approval by the State is required for the consent by a constituent subdivision or agency to the jurisdiction of the Centre;
- (e) any notification pursuant to Article 25(4) of the Convention of the class or classes of disputes which the State would or would not consider submitting to the jurisdiction of the Centre;
- (f) the competent court or other authority for the recognition and enforcement of arbitral awards, designated pursuant to Article 54(2) of the Convention;
- (g) any legislative or other measures taken pursuant to Article 69 of the Convention for making the provisions of the Convention effective in the territories of the State and communicated by the State to the Centre; and
- (h) the name, address and contact details of the authority in each State to which documents should be notified, as reported by the State.

Regulation 24 **Panels of Conciliators and of Arbitrators**

- (1) The Secretary-General shall invite each Contracting State to make its designations to the Panels of Conciliators and of Arbitrators if a designation has not been made or the period of a designation has expired.
- (2) Each designation made by a Contracting State or by the Chair shall indicate the designee's name, contact information, nationality and qualifications, with particular reference to competence in the fields of law, commerce, industry or finance.
- (3) The Secretary-General shall immediately inform a designee of their designation, the designating authority, and the end of the designation period, and shall request confirmation that the designee is willing to serve.
- (4) The Secretary-General shall maintain and publish lists naming the members of the Panels of Conciliators and of Arbitrators, indicating the contact information, nationality, end of the designation period, designating authority and qualifications of each member.

Regulation 25 Publication

With a view to furthering the development of international law in relation to investment, the Centre shall publish:

- (a) information about the operation of the Centre; and
- (b) documents generated in proceedings, in accordance with the rules applicable to the individual proceeding.

Regulation 26 The Registers

The Secretary-General shall maintain and publish a Register for each case containing all significant data concerning the institution, conduct and disposition of the proceeding, including the economic sector involved, the names of the parties and their representatives, and the method of constitution and membership of each Commission, Tribunal and Committee.

Regulation 27 Communications with Contracting States

- (1) Unless a specific channel of communication is notified by the State concerned, all communications required by the Convention or these Regulations to be sent to Contracting States shall be addressed to the State's representative on the Administrative Council and sent by rapid means of communication.
- (2) The time limits referred to in Articles 65 and 66 of the Convention and Regulations 2, 3 and 7 shall be calculated from the date on which the Secretary-General transmits or receives the relevant document. The date of transmittal or receipt shall be excluded from the calculation.

Regulation 28 Secretary

The Secretary-General shall appoint a Secretary for each Commission, Tribunal and Committee. The Secretary may be drawn from the Secretariat and shall be considered a member of its staff while serving as a Secretary. The Secretary shall:

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the Rules applicable to individual proceedings or assigned to the Secretary-General by the Convention, and delegated to the Secretary; and
- (b) assist the parties and the Commission, Tribunal or Committee with all aspects of the proceeding, including the expeditious and cost-effective conduct of the proceeding.

Regulation 29 Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
 - (a) all requests for arbitration, conciliation, supplementary decision, rectification, interpretation, revision or applications for annulment;
 - (b) all written submissions, written statements, observations, supporting documents and communications filed in a proceeding;
 - (c) the minutes, recordings and transcripts of hearings, meetings or sessions in a proceeding; and
 - (d) any order, decision, Report or Award by a Commission, Tribunal or Committee.
- (2) Subject to the applicable rules and the agreement of the parties to the proceedings, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c) and (d) available to the parties. Certified copies of the documents referred to in paragraph (1)(d) shall reflect any supplementary decision, rectification, interpretation, revision or annulment and any stay of enforcement in effect.

Chapter V Immunities and Privileges

Regulation 30 Certificates of Official Travel

The Secretary-General may issue certificates of official travel to members of Commissions, Tribunals or Committees, to persons assisting them, to members of the Secretariat, and to the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in proceedings, indicating that they are traveling in connection with a proceeding under the Convention.

Regulation 31 Waiver of Immunities

- (1) The Secretary-General may waive the immunity of:
 - (a) the Centre; and
 - (b) members of the Secretariat.
- (2) The Chair may waive the immunity of:
 - (a) the Secretary-General and any Deputy Secretary-General;
 - (b) members of a Commission, Tribunal or Committee; and
 - (c) the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in a proceeding, if the Commission, Tribunal or Committee concerned recommends such waiver.
- (3) The Administrative Council may waive the immunity of:
 - (a) the Chair and members of the Council;
 - (b) the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in a proceeding, even if no recommendation for such a waiver is made by the Commission, Tribunal or Committee concerned; and
 - (c) the Centre or any person referred to in paragraphs (1) or (2).
- (4) A waiver under paragraph (1) or (2) shall be made in writing by the Secretary-General or Chair, as applicable. A waiver under paragraph (3) shall be made by a

decision of the Administrative Council in accordance with Article 7(2) of the Convention.

Chapter VI Official Languages

Regulation 32 Languages of Regulations

- (1) The official languages of the Centre are English, French and Spanish.
- (2) The texts of these Regulations in each official language are equally authentic.
- (3) Unless otherwise stated or required by the context of the provision, ~~the singular form of a word~~s in the Rules and Regulations made pursuant to the Convention includes the plural form of that word, ~~unless otherwise stated or required by the context of the provision.~~
- (4) Where required by the context, the masculine gender of a word in the French and Spanish versions of the Rules and Regulations made pursuant to the Convention shall be used as a gender-neutral form and shall be understood as referring to the masculine or feminine gender.

16. Numerous commentators stated that the implementation of gender-neutral wording in French and Spanish by including the feminine and masculine versions of relevant words made the text less user-friendly. As a result, Member States opted to use the masculine gender as a gender-neutral form and to note that it includes the feminine and masculine genders. This approach is consistent with United Nations guidelines and with the domestic practice of many States.

II. INSTITUTION RULES FOR ICSID CONVENTION PROCEEDINGS (INSTITUTION RULES)

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II. INSTITUTION RULES FOR ICSID CONVENTION PROCEEDINGS (INSTITUTION RULES)

Introductory Note

The Institution Rules for ICSID Convention Proceedings (Institution Rules) were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(b) of the ICSID Convention.

The Institution Rules apply from the filing of a Request for arbitration or conciliation under the ICSID Convention to the date of registration or refusal to register. If a Request is registered, the Arbitration or Conciliation Rules apply to the subsequent procedure. The Institution Rules do not apply to the initiation of post-Award remedy proceedings, or to proceedings pursuant to the Additional Facility, the ICSID Fact-Finding Rules ~~and~~^{or} the ICSID Mediation Rules.

Rule 1 The Request

- (1) Any Contracting State or any national of a Contracting State wishing to institute proceedings under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“Convention”) shall file a Request for arbitration or conciliation together with the required supporting documents (“Request”) with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the dispute.

Rule 2 Contents of the Request

- (1) The Request shall:
 - (a) state whether it relates to an arbitration or conciliation proceeding;
 - (b) be in English, French or Spanish;
 - (c) identify each party to the dispute and provide their contact information, including electronic mail address, street address and telephone number;

- (d) be signed by each requesting party or its representative and be dated;
- (e) attach proof of any representative's authority to act; and
- (f) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request and attach the authorizations.

(2) With regard to the jurisdiction of the Centre, the Request shall include:

- (a) a description of the investment, a summary of the relevant facts and claims, the request for relief, including an estimate of the amount of any damages sought, and an indication that there is a legal dispute between the parties arising directly out of the investment;
- (b) with respect to each party's consent to submit the dispute to arbitration or conciliation under the Convention:
 - (i) the instrument(s) in which each party's consent is recorded;
 - (ii) the date of entry into force of the instrument(s) on which consent is based, together with supporting documents demonstrating that date;
 - (iii) the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or, if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre; and
 - (iv) an indication that the requesting party has complied with any conditions in the instrument of consent for submission of the dispute;
- (c) if a party is a natural person:
 - (i) information concerning that person's nationality on both the date of consent and the date of the Request, together with supporting documents demonstrating such nationality; and
 - (ii) a statement that the person did not have the nationality of the Contracting State party to the dispute either on the date of consent or the date of the Request;
- (d) if a party is a juridical person:
 - (i) information concerning [and supporting documents demonstrating](#) that party's nationality on the date of consent, ~~together with supporting documents demonstrating such nationality~~; and

- (ii) if that party had the nationality of the Contracting State party to the dispute on the date of consent, information ~~identifying~~ concerning and supporting documents demonstrating the agreement of the parties to treat the juridical person as a national of another Contracting State pursuant to Article 25(2)(b) of the Convention, ~~together with supporting documents demonstrating such agreement;~~

(e) if a party is a constituent subdivision or agency of a Contracting State:

- (i) the State's designation to the Centre pursuant to Article 25(1) of the Convention; and
- (ii) supporting documents demonstrating the State's approval of consent pursuant to Article 25(3) of the Convention, unless the State has notified the Centre that no such approval is required.

17. Some States suggested the deletion of "With regard to the jurisdiction of the Centre" in IR 2(2) because they view the information in the Request as useful for preparing the next steps in the case. WP # 4 retains the phrase, as it accurately reflects the formal purpose of the Request established by the Convention. The Secretary-General's review of the Request under the Convention is limited to determining whether "on the basis of the information contained in the request, the dispute is manifestly outside the jurisdiction of the Centre." Therefore, the information required under IR 2(2) is tailored to this inquiry and IR 2(2) confirms this.
18. Several States suggested that the Request require disclosures relating to: (i) the corporate structure of requesting parties that are juridical persons; (ii) third-party funding; and (iii) the financial status of each requesting party. IR 2 is not revised to require these disclosures, because they have no bearing on the registration decision.

Rule 3 Recommended Additional Information

It is recommended that the Request ~~also contain any procedural proposals or agreements reached by the parties, including with respect to:~~

- (a) contain any procedural proposals or agreements reached by the parties, including with respect to the number and method of appointment of arbitrators or conciliators and the procedural language(s); and
- (b) ~~the procedural language(s)~~ include the names of the persons and entities that own or control a requesting party which is a juridical person.

19. IR 3 is amended to recommend that a Request include disclosures regarding the corporate

structure of requesting parties which are juridical persons, to the extent that such information is not disclosed pursuant to IR 2(2)(d). This information will assist the parties and any appointing authorities in, *inter alia*, identifying Tribunal or Commission candidates who are free from conflicts of interest.

20. WP # 4 does not recommend financial status disclosures. If relevant, the other party may request such information after the case is registered.
21. WP # 4 also does not recommend disclosures relating to third-party funding in the Request. If the Request is registered, the disclosure of third-party funding must be made immediately pursuant to proposed AR 14 or CR 12, and IR 7(e) regulating the contents of the Notice of Registration reminds the parties of this obligation. Requests are registered on average within 18 days after receipt of the Request and the lodging fee. Thus, third-party funding arrangements will be promptly disclosed.

Rule 4

Filing of the Request and Supporting Documents

- (1) The Request shall be filed electronically. The Secretary-General may require the Request to be filed in an alternative format if necessary.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Secretary-General may require a fuller extract or a complete version of the document.
- (3) The Secretary-General may require a certified copy of a supporting document.
- (4) Any document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or a complete translation of the document.

Rule 5

Receipt of the Request and Routing of Written Communications

The Secretary-General shall:

- (a) promptly acknowledge receipt of the Request to the requesting party;
- (b) transmit the Request to the other party upon receipt of the lodging fee; and
- (c) act as the official channel of written communications between the parties.

Rule 6

Review and Registration of the Request

- (1) Upon receipt of the Request and lodging fee, the Secretary-General shall review the Request pursuant to Article 28(3) or 36(3) of the Convention.
- (2) The Secretary-General shall promptly notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.

Rule 7

Notice of Registration

The notice of registration of the Request shall:

- (a) record that the Request is registered and indicate the date of registration;
- (b) confirm that all correspondence to the parties in connection with the proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Centre;
- (c) invite the parties to inform the Secretary-General of their agreement regarding the number and method of appointment of arbitrators or conciliators, unless such information has already been provided, and to constitute a Tribunal or Commission without delay;
- (d) remind the parties that registration of the Request is without prejudice to the powers and functions of the Tribunal or Commission in regard to jurisdiction of the Centre, competence of the Tribunal or Commission, and the merits; and
- (e) remind the parties to make the disclosure required by Arbitration Rule 14 or Conciliation Rule 12.

Rule 8
Withdrawal of the Request

At any time before registration, a requesting party may notify the Secretary-General in writing of the withdrawal of the Request or, if there is more than one requesting party, that it is withdrawing from the Request. The Secretary-General shall promptly notify the parties of the withdrawal, unless the Request has not yet been transmitted pursuant to Rule 5(b).

Rule 9
Final Provisions

- (1) The English, French and Spanish texts of these Rules are equally authentic.
- (2) These Rules may be cited as the “Institution Rules” of the Centre.

III. ARBITRATION RULES FOR ICSID CONVENTION PROCEEDINGS (ARBITRATION RULES)

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III. ARBITRATION RULES FOR ICSID CONVENTION PROCEEDINGS (ARBITRATION RULES)

Introductory Note

The Arbitration Rules for ICSID Convention Proceedings (Arbitration Rules) were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(c) of the ICSID Convention.

The Arbitration Rules are supplemented by the Administrative and Financial Regulations of the Centre.

The Arbitration Rules apply from the date of registration of a Request for arbitration until an Award is rendered and to any post-Award remedy proceedings.

Chapter I General Provisions

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 Tribunal shall apply any agreement of the parties on procedural matters to the extent that it does not conflict with the Convention or the Administrative and Financial Regulations.
- (3) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language.
- (4) These Rules may be cited as the “Arbitration Rules” of the Centre.

Rule 23 Party and Party Representative

- (1) For the purposes of these Rules, “party” includes, where [required by](#) the context ~~so~~ [admits](#), all parties acting as claimant or as respondent.

- (2) Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be [promptly](#) notified by that party to the Secretary-General (“representative(s)”).

22. One State proposed to place AR 3 in WP # 3 (“Party and Party Representative”) before AR 2 (“General Duties”) so that the definition of a party precedes the provision regulating party conduct. WP # 4 adopts this change.
23. Another State suggested that the rule on Party Representative explicitly state that the other party and the Tribunal be notified “without delay” when a new party representative is named. The text of AR 2(2) has been revised to this effect.

Rule ~~3~~2

General Duties

- (1) The Tribunal and the parties shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.
- (2) The Tribunal shall treat the parties equally and provide each party with a reasonable opportunity to present its case.

24. Comments received on AR 2 in WP # 3 (now AR 3) were positive and the text has been maintained in WP # 4, although the numbering of the rule has changed (*see* above under AR 2).
25. One State suggested that the good faith requirement in paragraph (1) be linked to time and cost efficiency. Good faith conduct relates to the duty to arbitrate in good faith and is not limited to time and cost efficiency. Therefore, this change has not been made.

Rule 4

Method of Filing

- (1) A document to be filed in the proceeding shall be filed with the Secretary-General, who shall acknowledge its receipt.
- (2) Documents shall only be filed electronically, unless the Tribunal orders otherwise in special circumstances.

Rule 5 Supporting Documents

- (1) Supporting documents, including witness statements, expert reports, exhibits and legal authorities, shall be filed together with the request, written submission, observations or communication to which they relate.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Tribunal or a party may require a fuller extract or a complete version of the document.
- (3) If the authenticity of a supporting document is disputed, the Tribunal may order a party to provide a certified copy or to make the original available for examination.

26. Some States suggested that the default rule concerning extracts of documents filed as supporting documents in AR 5(2) should be that a document be provided in full instead of as an extract. Other States suggested the opposite default rule with Tribunal discretion to order a fuller extract or a complete version of the document in case of a dispute. WP # 3 was a compromise between these positions and the text has been maintained in WP # 4. A party may thus file extracts of a document by default, but the other party may request the document in full at any time and without the intervention of the Tribunal.
27. One State suggested that AR 5(3) require certification according to the legislation applicable in the jurisdiction where the document was made. Given the variety of documents and potential jurisdictions involved, it is preferable to leave the issue of certification to the Tribunal.

Rule 6 Routing of Documents

The Secretary-General shall transmit a document filed in the proceeding to:

- (a) the other party, unless the parties communicate directly with each other;
- (b) the Tribunal, unless the parties communicate directly with the Tribunal on request of the Tribunal or by agreement of the parties; and
- (c) the Chairman of the Administrative Council (“Chair”) if applicable.

Rule 7

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 Secretary-General regarding the use of a language that is not an official language of the Centre. If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (2) ~~If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.~~ In a proceeding with one procedural language:
 - (a) documents shall be filed and hearings shall be conducted in that procedural language;
 - (b) documents in another language shall be accompanied by a translation into that procedural language; and
 - (c) testimony in another language shall be interpreted into that procedural language.
- (3) ~~Requests, written submissions, observations and communications shall be filed in a procedural language. In a proceeding with two procedural languages, the Tribunal may order a party to file such documents in both procedural languages.~~ In a proceeding with two procedural languages:
 - (a) documents may be filed and hearings may be conducted in either procedural language, unless the Tribunal orders that a document be filed in both procedural languages or that a hearing be conducted with interpretation into both procedural languages;
 - (b) documents in another language shall be accompanied by a translation into either procedural language, unless the Tribunal orders translation into both procedural languages;
 - (c) testimony in another language shall be interpreted into either procedural language, unless the Tribunal orders interpretation into both procedural languages;
 - (d) the Tribunal and the Secretary-General may communicate in either procedural language; and
 - (e) all orders, decisions and the Award shall be rendered in both procedural languages, unless the parties agree otherwise.

- (4) ~~Supporting documents 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 order a party to translate any supporting document into both procedural languages.~~ Translation of only the relevant part of a supporting document is sufficient, ~~provided that~~ unless the Tribunal ~~may order~~ a party to provide a fuller or a complete translation. If the translation is disputed, the Tribunal may order a party to provide a certified translation.
- (5) ~~Any document from the Tribunal or the Secretary General 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 order interpretation into the other procedural language.~~
- (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.~~
- (8) ~~The recordings and transcripts of a hearing shall be made in the procedural language(s) used at the hearing.~~

28. This rule has been revised for greater clarity regarding proceedings conducted in one or two procedural languages, though the substance has not changed.
29. With regard to the choice of procedural languages, one State suggested that the language of the State where the investment was made be the only procedural language.
30. WP # 4 retains the current rules that: (i) allow parties to agree on one or two language(s) as procedural language(s); and (ii) allow each party to select one of the official languages of the Centre – English, French or Spanish – as the procedural language if they disagree on the procedural language(s). The Centre can accommodate the use of languages other than the official languages if agreed by the parties. However, absent an agreement, the default languages are the official languages of the Centre since the authentic texts of the Convention, Regulations and Rules are drawn up in these languages.
31. With regard to translation, some States suggested that bilingual proceedings should require the submission of documents in both procedural languages by default, instead of leaving the matter to the Tribunal's discretion if the parties do not agree. Such a default rule would lead to increased cost and delay in cases where translations may not be necessary, and hence the provision has not been modified. WP # 4 retains the default rule that documents may be filed in either procedural language, but that the Tribunal may decide to order

translations into both procedural languages if the parties disagree. A party making a reasonable request concerning the need for translations should feel confident that the Tribunal will give it due consideration. In practice, in most cases where there has been disagreement on translations, the Tribunal provided for translation of some or all documents into both procedural languages. Such Tribunal discretion strikes the correct balance given the significant cost of translation.

Rule 8 Correction of Errors

A party may correct an accidental error in a document promptly upon discovery and before the Award is rendered. The parties may refer any dispute regarding a correction to the Tribunal for determination.

32. One State proposed a reference to “clerical” error in AR 8. Another State asked whether translation errors are covered by the rule.
33. As stated in WP # 1, an “accidental error” includes typographical errors, miscalculations, misnomers and any other inadvertent error, and could include a translation error. The wording has not caused difficulty in practice and Tribunals require flexibility in case of a dispute. Therefore, no change has been made to the provision.

Rule 9 Calculation of Time Limits

- (1) References to time shall be determined based on the time at the seat of the Centre on the relevant date.
- (2) Any time limit expressed as a period of time shall be calculated from the day after the date on which:
 - (a) the Tribunal, or the Secretary-General if applicable, announces the period; or
 - (b) the procedural step starting the period is taken.
- (3) A time limit shall be satisfied if a procedural step is taken or a document is received by the Secretary-General on the relevant date, or on the subsequent business day, if the date falls on a Saturday or Sunday, ~~on the subsequent business day~~.

34. As a result of comments received on WP # 2, the reference to “holidays observed by the Secretariat” was deleted from WP # 3. Several States wanted to reintroduce a reference to official holidays in AR 9(3). One State suggested that official holidays for the purposes of calculating time limits should be those holidays observed by the party required to take the procedural step, based on the nationality of the disputing parties. Another State proposed

to replace “Saturday and Sunday” by “non-business day” to broaden the scope.

35. The calculation of time limits must be a bright-line rule that is clear to anyone applying the ICSID Rules, and thus no changes have been made in WP # 4. Introducing party-specific holidays in the rules for the purposes of calculating time limits would create uncertainty, in particular in multi-party proceedings and cases involving individuals with multiple nationalities. It also does not take into account the fact that cases often involve party representatives who are not of the same nationality as the party that they represent.
36. In any event, the parties and the Tribunal can take into account any specific holidays that may apply to them when establishing the procedural calendar. A new provision in AR 10(2) emphasizes that the Tribunal should consult with the parties as far as possible regarding time limits.

Rule 10 Fixing Time Limits

- (1) The Tribunal, or the Secretary-General if applicable, shall fix time limits for the completion of each procedural step in the proceeding, other than time limits prescribed by the Convention or these Rules.
- (2) In fixing time limits pursuant to paragraph (1), the Tribunal, or the Secretary-General if applicable, shall consult with the parties as far as possible.
- (3) The Tribunal may delegate the power to fix time limits to its President.

37. AR 10(2) introduces a new provision that addresses State comments concerning consultations with the parties with regard to time limits. The availability of a consultation regarding the fixing of time limits will enable parties and Tribunals to account for particular holidays and other contingencies.
38. AR 10(3) has been included to provide that a Tribunal may delegate to its President the power to fix time limits.

Rule 11 Extension of Time Limits Applicable to Parties

- (1) The time limits in Articles 49, 51 and 52 of the Convention cannot be extended. -An application or request filed after the expiry of such time limits shall be disregarded.
- (2) A time limit prescribed by the Convention or these Rules, other than those referred to in paragraph (1), may only be extended by agreement of the parties. A procedural step taken or document received after the expiry of such time limit shall be disregarded, unless the parties agree otherwise or the Tribunal decides that there are special circumstances justifying the failure to meet the time limit.

- (3) A time limit fixed by the Tribunal or the Secretary-General may be extended by agreement of the parties or the Tribunal, or the Secretary-General if applicable, upon reasoned application by either party made prior to its expiry. A procedural step taken or document received after the expiry of such time limit shall be disregarded unless the parties agree otherwise or the Tribunal, or the Secretary-General if applicable, ~~concludes~~ decides that there are special circumstances justifying the failure to meet the time limit.
- (4) The Tribunal may delegate the power to extend time limits to ~~the~~ its President ~~the power to extend time limits referred to in paragraph (3).~~

39. Two States commented that there should be some Tribunal discretion to extend time limits in AR 11(2). As a result, the text has been revised to mirror AR 11(3) (“special circumstances”).
40. One State proposed that AR 11(3) be revised to provide that the other party be given an opportunity to present its views. This is covered under proposed AR 2(2), which provides that the Tribunal must “provide each party with a reasonable opportunity to present its case.” This applies to substantive and to procedural matters and there is no need to repeat this general rule throughout the AR.
41. The text of AR 11(3) has been revised to reflect the possibility of the parties agreeing to a late procedural step or filing after the expiry of a time limit (as in AR 11(2)).
42. AR 11(4) has been amended to reflect the change to AR 11(2), *i.e.* the power to extend time limits can be delegated to the President of the Tribunal with regard to paragraphs (2) and (3).

Rule 12

Time Limits Applicable to the Tribunal

- (1) The Tribunal shall use best efforts to meet time limits to render orders, decisions and the Award.
- (2) If the Tribunal cannot comply with an applicable time limit, it shall advise the parties of the special circumstances ~~that~~ justify the delay and the date when it anticipates rendering the order, decision or Award.
43. Several States suggested that AR 12(1) concerning time limits applicable to the Tribunal be made into a firm obligation, deleting the reference to “best efforts”. Because non-compliance with this Rule can depend on circumstances outside of the Tribunal’s control, a firm obligation would not provide needed flexibility and may be counter-productive. The objective of the provision is to improve timeliness of orders, decisions and Awards without compromising the Award in cases where there was non-compliance with a Tribunal time

limit.

44. States also suggested that consequences be tied to non-compliance with AR 12. The Centre will adopt multiple rules and practices to reinforce compliance with AR 12:
- arbitrators must indicate availability and confirm that they will not accept conflicting commitments in the arbitrator declaration submitted pursuant to AR 19(3);
 - the Secretariat will track compliance with Tribunal time limits on its website;
 - payment of arbitrator invoices will be postponed if an order, decision or Award is not rendered in accordance with AR 12;
 - the Secretariat reminds arbitrators of applicable time limits at the time of acceptance and throughout the proceeding; and
 - the Tribunal has a duty to conduct the proceeding in good faith and in an expeditious and cost-effective manner pursuant to AR 2, and is expected to be pro-active in complying with this duty, *e.g.* by providing guidance to the parties in case management conferences held pursuant to AR 31.

These measures will ensure timeliness for delivery of orders, decisions and Awards.

Chapter II

~~Constitution~~-Establishment of the Tribunal

Rule 13

General Provisions Regarding the ~~Constitution~~-Establishment of the Tribunal

- (1) The Tribunal shall be constituted 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 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 dispute as a conciliator, judge, mediator or in a similar capacity may be appointed as an arbitrator only by agreement of the parties.

45. One State questioned whether the title of AR 13 might inadvertently expand the grounds

for annulment in Article 52 of the ICSID Convention. The title of Chapter II and Rule 13 have been changed to avoid possible misinterpretations.

46. Some States suggested including a “placeholder” provision in AR 13 or in the Arbitrator Declaration, reflecting a commitment to apply any future Code of Conduct from UNCITRAL Working Group III. Another group of States suggested that the Arbitrator Declaration include a commitment to abide by other sets of existing ethical rules pending the adoption of a Code of Conduct. Another State suggested that the core principles from the Code of Conduct should be reflected in AR 13. Finally, other States expressed interest in expediting the efforts towards the establishment of the Code of Conduct.
47. No further amendment is proposed in this regard. Recognizing the importance that States have placed on the development of a Code of Conduct for arbitrators, the ICSID and UNCITRAL Secretariats continue joint work to develop such a Code of Conduct in the context of UNCITRAL Working Group III. This approach has the potential to memorialize a uniform set of ethical expectations for ISDS generally (*see*, [WP # 1, ¶ 298](#)).
48. AR 19(3) allows for incorporation by reference of a Code of Conduct in the Arbitrator Declaration (*see*, [WP # 3, ¶ 67](#); [WP # 2, ¶ 121](#)). Once consensus on a Code of Conduct is reached, the ICSID Secretariat will invite States to consider whether it should be included in the AR via the Arbitrator Declaration.
49. One State reiterated the view that the expressions “notification of the registration” and “with due regard to Section 2 of Chapter IV of the Convention” in current AR 1(1) should be retained in AR 13(1). No amendment is included in this regard. The Secretariat refers to the observations made at [WP # 2, ¶ 119](#).
50. A few States suggested amendment of AR 13(2) to prohibit the appointment of any arbitrator with the nationality of a Party to the dispute. Two other States reiterated the suggestion to amend AR 13(2) to prohibit the appointment of arbitrators that are nationals of a State with which the Respondent State has no diplomatic relations. These suggestions are not incorporated. AR 13(2) and AR 13(3) reflect the nationality principles in the Convention, and parties may include additional nationality requirements in their agreed method of constitution of the Tribunal (*see*, [WP# 2, ¶ 122](#)).

Rule 14

Notice of Third-Party Funding

- (1) A party shall file a written notice disclosing the name [and address](#) of any non-party from which the party, [directly or indirectly](#), ~~its affiliate or its representative~~ has received funds for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the [proceeding](#) ~~dispute~~ (“third-party funding”).
- (2) A non-party referred to in paragraph (1) does not include a representative of a party.

(3) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request for arbitration, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.

(4) The Secretary-General shall transmit the notice of third-party funding and any [notification of](#) changes to [the information in](#) such notice to the parties and to any arbitrator proposed for appointment or appointed in a proceeding for purposes of completing the arbitrator declaration required by Rule 19(3)(b).

(5) [The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding pursuant to Rule 36\(3\) if it deems it necessary at any stage of the proceeding.](#)

51. The focus of AR 14 continues to be the prevention of conflicts of interest (*see*, [WP #1, ¶¶ 255-263](#); [WP # 2, ¶ 128](#)). This is consistent with the [majority of treaty provisions and institution rules, policies and guidelines on the topic](#).
52. AR 14(1) adds the “address” of the funder.
53. A few States suggested replacing “its affiliate or its representative” with “directly and indirectly.” WP # 4 adopts the phrase “directly and indirectly” in AR 14(1), which would capture funding provided to the party through affiliates or representatives as well as the ultimate beneficial owner.
54. Some States requested more comprehensive disclosure of the TPF agreement or of terms of the agreement related to, for example, authority to settle a claim or liability for adverse costs. Consistent with treaty provisions and other institutional rules on this matter, this has not been included. As explained in prior WPs (*see*, [WP # 1, ¶ 263](#); [WP # 2 ¶ 132](#); [WP # 3 ¶ 56](#)), the Tribunal may order disclosure of any information related to TPF if it becomes relevant to a question in dispute in the proceeding. Indeed, Tribunals have already invoked their inherent authority, ICSID Convention Art. 44, and current AR 33-34 to do so in ongoing cases. To address this point, a new paragraph (5) has been added expressly referencing the possibility of disclosure of further information regarding the funding agreement and the non-party providing funding pursuant to AR 36(3), if the Tribunal deems it necessary at any stage of the proceeding.
55. Some States proposed to delete AR 14(2), but there was no consensus on such a change. As the focus of AR 14 remains prevention of conflict of interest, and the names of counsel are already known to the parties and arbitrators, this paragraph is retained in WP # 4.
56. Some States proposed to add details concerning the transmittal of the TPF notice to the Tribunal. This is not required as it is addressed by AR 4 and AR 6.
57. Finally, some States reiterated the suggestion that a new rule be added stipulating that failure to comply with AR 14 would be considered by a Tribunal when allocating the costs

of the proceeding. As explained in [WP # 3 ¶ 58](#), failure to comply with proposed AR 14 could be addressed by AR 52 (Decisions on Costs), and in particular the requirement to consider the conduct of the parties as a factor in allocating costs, and so no additional specific costs provision is needed.

Rule 15
Method of Constituting the Tribunal

- (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 45 days after the date of registration, the Tribunal shall be constituted in accordance with Article 37(2)(b) of the Convention.

Rule 16
**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.

Rule 17
Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of [the](#) President of the Tribunal or a Sole Arbitrator.

Rule 18
**Appointment of Arbitrators by the Chair in [A](#)ccordance 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 Chair appoint the arbitrator(s) who have not yet been appointed pursuant to Article 38 of the Convention.

- (2) The Chair shall appoint the President of the Tribunal after appointing any members who have not yet been appointed.
- (3) The Chair 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.

- 58. A State reiterated a suggestion to codify in AR 18 the current practice to strive for more gender and geographical balance in appointments. The Secretariat refers to the observations in [WP # 3, ¶ 64](#).
- 59. Another State observed that language capability should be considered in appointments by the Chair. In practice, language capability is among the factors routinely considered to the extent possible, bearing in mind other factors including candidate availability and conflicts.
- 60. One State suggested amendment of AR 18(3) to delete the consultation requirement for appointment of a co-arbitrator by the Chair. Two other States reiterated a suggestion to amend AR 18(3) to eliminate the words “as far as possible.” No further amendment has been made in either regard, as this language rule originates in Article 38 of the Convention ([WP # 3, ¶ 65](#)).
- 61. One State reiterated the suggestion that AR 18 be amended to specify that parties shall be informed of the selection criteria for appointments by the Chair under Article 38 of the Convention. The Secretariat refers to the observations at [WP # 2, ¶ 153](#).
- 62. One State suggested favouring mechanisms to facilitate arbitrator selection by the parties, rather than by the Chair. The AR do so. AR 15 expressly envisages that the parties may agree on a method of constitution of the Tribunal, and the default method of constitution in Article 37(2)(b) of the ICSID Convention and AR 16 contemplate the appointment of one arbitrator by each party. Moreover, in practice, when the Chair is requested to appoint a presiding arbitrator under Article 38 of the ICSID Convention, the parties are invited to state whether they want ICSID to first conduct a ballot or list process to assist them in selecting a mutually agreeable candidate.

Rule 19 Acceptance of Appointment

- (1) A party appointing an arbitrator shall notify the Secretary-General of the appointment and provide the appointee’s name, nationality~~(ies)~~ and contact information.
- (2) [Upon receipt of a notification pursuant to paragraph \(1\),](#) ~~t~~The Secretary-General shall request an acceptance from ~~each~~[the](#) appointee~~as soon as the appointee is selected. The Secretary-General~~ [and](#) shall ~~also~~ transmit to ~~each~~[the](#) appointee the information received from the parties relevant to completion of the declaration referred to in paragraph (3)(b).

- (3) Within 20 days after receipt of the request for acceptance of an appointment, ~~an~~[the](#) 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 proceeding.
- (4) The Secretary-General shall notify the parties of the acceptance of appointment by each arbitrator and ~~provide~~[transmit](#) the signed declaration [to them](#).
- (5) The Secretary-General 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 [promptly](#) disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).

63. AR 19(1) has been amended to streamline the text and in consideration of AFR 32(3), pursuant to which, the singular form of a word includes the plural form of that word.
64. AR 19(2) has been amended to streamline the text, but no substantive change has been introduced.
65. One State suggested the amendment of Section 4(c) of the Arbitrator Declaration to specify that in disclosing “[o]ther circumstances that might reasonably cause my independence or impartiality to be questioned,” an arbitrator shall take into account issues raised by the parties. No amendment to the Arbitrator Declaration has been made. In practice, arbitrators are invited to answer questions raised by the parties.
66. One State reiterated the suggestion that the Arbitrator Declaration expressly require disclosure of significant relationships of the arbitrator's law firm and its partners. The suggestion was not adopted because the umbrella of Section 4(c) of the Declaration already covers situations that “might reasonably cause [the arbitrator's] independence or impartiality to be questioned,” and Section 5 of the Declaration contains an express “continuing obligation to disclose any change of circumstances which might cause [the arbitrator's] independence or impartiality to be questioned” (*see*, [WP # 3, ¶ 66](#)).
67. Some States suggested amendment of AR 19(6) to add a timing element. The word “promptly” has been added in AR 19(6) to align it with Section 5 of the Arbitrator Declaration.
68. States expressed divergent positions on a prohibition of “double-hatting” in the AR. Some States asked to reconsider incorporating such a ban as a matter of ineligibility for

appointments; others suggested that a strict prohibition might hamper diversity of arbitrators and observed that the matter would be discussed in the context of the on-going work of UNCITRAL Working Group III on a Code of Conduct. The Secretariat refers to the observations made in [WP # 1, ¶ 303 et seq.](#)

69. One State reiterated a suggestion to amend AR 19 to provide that failure to comply with disclosure obligations constitutes a manifest lack of the qualities required of an arbitrator under the Convention. The decision-maker in a disqualification proposal must determine whether there is a “manifest lack of the qualities required by paragraph (1) of Article 14” having regard to all the circumstances. The introduction of the proposed rule would usurp that function from the proper decision-maker, and would exceed the purpose of the AR.
70. The same State proposed to expand the Arbitrator Declaration to include a continuing obligation “to make reasonable efforts to become aware of any interest, relationship, connection or matter that is likely to affect his or her independence or impartiality, or that might reasonably create an appearance of dependence or bias,” and a further obligation to “notify any new professional business or academic activities he or she intends to undertake, and promptly disclose any changes of circumstance that may be relevant to the declaration referred to in paragraph 3(b).” The Secretariat refers to the observations in [WP # 2, ¶¶ 159-160.](#)

Rule 20

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
 - (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.

Rule 21

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.

Chapter III Disqualification of Arbitrators and Vacancies

Rule 22 Proposal for Disqualification of Arbitrators

- (1) A party may file a proposal to disqualify one or more arbitrators (“proposal”) in accordance with the following procedure:
 - (a) the proposal shall be filed after the constitution of the Tribunal and within 21 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 proposal shall include the grounds on which it is based, a statement of the relevant facts, law and arguments, and any supporting documents;
 - (c) the other party shall file its response and supporting documents within 21 days after receipt of the proposal;
 - (d) the arbitrator to whom the proposal relates may file a statement that is limited to factual information relevant to the proposal. The statement shall be filed within five days after receipt of the response referred to in paragraph (1)(c); and
 - (e) each party may file a final written submission on the proposal within seven days after the earlier of receipt of the statement or expiry of the time limit referred to in paragraph (1)(d).
- (2) The proceeding shall be suspended upon the filing of the proposal until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding ~~in whole or in part~~.

71. One State proposed to increase the time period in AR 22(1)(d) for the statement of the arbitrator to whom the challenge relates from five to seven days. The statement by the challenged arbitrator is meant to state or clarify facts relevant to the proposal and would not require legal argument. Five days are sufficient for that purpose and so WP # 4 does not propose any change in this regard.
72. Several States proposed to increase the time period in AR 22(1)(e) for the final written submissions of the parties. As noted in WP # 3, WP # 2 had already revised and extended various deadlines in this rule following comments to WP # 1. To maintain the expedited

nature of this procedure, no further changes to the deadlines are proposed. However, AR 22(1)(e) has been revised to clarify the time limit for the parties' submissions.

73. Whether the suspension of the proceeding should operate automatically was again raised by various States, but there was no consensus on this question, and hence WP # 4 retains the automatic suspension of the proceeding.
74. One State suggested dispensing with the automatic suspension if the proceeding was in a phase that does not require Tribunal involvement. While the parties to a particular proceeding remain free to agree to this, it is not incorporated in AR 22(2) as the need to involve the Tribunal at any stage of the proceeding cannot generally be anticipated with certainty.
75. One State proposed that AR 22(2) expressly indicate the moment from which the proceeding is suspended. This proposal has been implemented for greater clarity. The words "in whole or in part" have been deleted as the possibility of full or partial continuation of the proceeding is understood from the preceding text.
76. Two States enquired whether arbitrators should be paid for time spent addressing a disqualification proposal. The fees, allowances and charges of arbitrators are regulated in AFR 14. Pursuant to Regulation 14, arbitrators are paid for work performed in connection with a proceeding, which includes work performed to address a disqualification proposal.

Rule 23

Decision on the Proposal for Disqualification

- (1) The decision on a proposal shall be made by the arbitrators not subject to the proposal or by the Chair 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 they 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 Chair as if they were a proposal to disqualify a majority of the Tribunal.
- (3) The arbitrators not subject to the proposal and the Chair shall use best efforts to decide any proposal within 30 days after the later of the expiry of the time limit referred to in Rule 22(1)(e) or the notice in Rule 23(2)(a).

77. One State recommended that the decision on the disqualification proposal be made by an independent body, and that the standard be "justifiable doubts". These matters are governed by the ICSID Convention and WP # 4 does not propose changes in this regard.

Rule 24
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 22 and 23 shall apply.

Rule 25
Resignation

- (1) An arbitrator may resign by notifying the Secretary-General and the other members of the Tribunal and providing reasons for the resignation.
- (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 26(3)(a).

Rule 26
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 Chair 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. Any portion of a hearing shall be recommenced if the newly appointed arbitrator considers it necessary to decide a pending matter.

Chapter IV Conduct of the Proceeding

Rule 27 Orders and Decisions

- (1) The Tribunal shall make the orders and decisions required for the conduct of the proceeding.
- (2) Orders and decisions may be made by any appropriate means of communication and may be signed by the President on behalf of the Tribunal.
- (3) The Tribunal shall consult with the parties prior to making an order or decision it is authorized by these Rules to make on its own initiative.

Rule 28 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 promptly, then that party shall be deemed to have waived its right to object to that non-compliance, unless the Tribunal decides that there are special circumstances justifying the failure to object promptly.

78. AR 28 has been modified to reflect State comments that there may be special circumstances that justify a failure of a party to object promptly.

Rule 29 First Session

- (1) The Tribunal shall hold a first session to address the procedure, including the matters listed in paragraph (4).
- (2) 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.
- (3) The first session shall be held within 60 days after the constitution of the Tribunal 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

within this period, the Tribunal shall decide whether to hold the first session solely between the President of the Tribunal and the parties, or solely among the Tribunal members based on the parties' written submissions.~~the first session shall be held solely among the Tribunal members after considering the parties' written submissions on the matters listed in paragraph (4).~~

- (4) Before the first session, the Tribunal shall invite the parties' views on procedural matters, including:
 - (a) the applicable arbitration rules;
 - (b) the division of advances payable pursuant to Administrative and Financial Regulation 15;
 - (c) the procedural language(s), translation and interpretation;
 - (d) the method of filing and routing of documents;
 - (e) the number, length, type and format of written submissions;
 - (f) the place of hearings;
 - (g) whether there will be requests for production of documents as between the parties and if so, the scope, timing and procedure for such requests;
 - (h) the procedural calendar;
 - (i) the manner of making recordings and transcripts of hearings;
 - (j) the publication of documents and recordings;
 - (k) the treatment of confidential or protected information; and
 - (l) any other procedural matter raised by either party or the Tribunal.
- (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 session or the last written submission on procedural matters addressed at the first session.

79. One State commented that the 60-day time period to hold the first session after the constitution of the Tribunal could be too short. The 60-day time period in AR 29 can, however, be extended by agreement of the parties.
80. Under AR 29(3) in WP # 3, if the first session could not be held within 60 days after constitution of the Tribunal or such period as the parties may agree, the session would be held solely among the Tribunal members based on the parties' written submissions. One

State commented that the default should be that the President alone hold the first session with the parties, or that the Tribunal determine the most appropriate solution to allow the parties to participate in the first session. The default in AR 29(3) has been amended to provide that the Tribunal may decide to hold the session solely between the President and the parties, or solely among the Tribunal members based on the parties' written submissions on the matters listed in AR 29(4).

Rule 30

Written Submissions

(1) The parties shall file the following written submissions:

- (a) a memorial by the requesting party;
- (b) a counter-memorial by the other party;

and, unless the parties agree otherwise:

- (c) a reply by the requesting party; and
- (d) a rejoinder by the other party.

(2) 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 and addressing any relevant facts that are new or could not have been known prior to filing the reply or rejoinder.

(3) A party may file unscheduled written submissions, observations or supporting documents only after obtaining leave of the Tribunal, unless the filing of such documents is provided for by the Convention or these Rules. The Tribunal may grant such leave upon a timely and reasoned application if it finds such written submissions, observations or supporting documents are necessary in view of all relevant circumstances.

81. One State suggested that the terms “requesting party” and “other party” in AR 30(1) be modified to “claimant requesting party” and “the respondent other party” because a respondent should not be viewed as a requesting party when it raises preliminary objections. No change has been made to AR 30(1) because the current drafting preserves the equal opportunity of the parties to respond to a written submission such as a memorial on preliminary objections or on a counterclaim.
82. To address a State comment, AR 30(2) has been modified to clarify that if there are new

facts or facts that could not previously have been known, the reply and rejoinder may address these facts.

83. One State proposed to add in AR 30(3) that both parties should be given an opportunity to state their views before the Tribunal grants leave to file unscheduled submissions or documents. This has not been added as it is clear from the rule and is also provided in AR 3(2) (AR 2(2) in WP # 3).

Rule 31

Case Management Conference

With a view to conducting an expeditious and cost-effective proceeding, the Tribunal shall convene one or more case management conferences with the parties at any time after the first session to:

- (a) identify uncontested facts;
- (b) clarify and narrow the issues in dispute; or
- (c) address any other procedural or substantive issue related to the resolution of the dispute.

Rule 32

Hearings

- (1) The Tribunal shall hold one or more hearings, unless the parties agree otherwise.
- (2) The President of the Tribunal shall determine the date, time and method of holding a hearing after consulting with the other members of the Tribunal and the parties.
- (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 Secretary-General. 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.

Rule 33 Quorum

The participation of a majority of the members of the Tribunal by any appropriate means of communication shall be required at the first session, case management conferences, hearings and deliberations, [except as provided in these Rules or](#) unless the parties agree otherwise.

84. The change to AR 33 reflects a change to AR 29(3) to the effect that the President of the Tribunal may hold the first session with the parties but without the other members of the Tribunal.

Rule 34 Deliberations

- (1) The deliberations of the Tribunal shall take place in private and remain confidential.
- (2) The Tribunal may deliberate at any place and by any means it considers appropriate.
- (3) ~~Only members of the~~ The Tribunal [may be assisted by the Secretary of the Tribunal](#) ~~shall take part in~~ [at](#) its deliberations. No other person shall [assist the Tribunal at its deliberations](#), ~~be admitted~~ unless the Tribunal decides otherwise [and notifies the parties](#).
- (4) The Tribunal shall deliberate on any matter for decision immediately after the last written or oral submission on that matter.

85. Several States suggested specifying that the Secretary of the Tribunal should be permitted to attend the deliberations of the Tribunal. This is consistent with current practice and provides increased transparency. Some States also asked that the Tribunal notify the parties if it decides to admit another person in its deliberations. AR 34 has been modified to this end.

Rule 35 Decisions Made by Majority Vote

The Tribunal shall make decisions by a majority of the votes of all its members. Abstention shall count as a negative vote.

Chapter V Evidence

Rule 36 Evidence: General Principles

- (1) The Tribunal shall determine the admissibility and probative value of the evidence adduced.
- (2) Each party has the burden of proving the facts relied on to support its claim or defense.
- (3) The Tribunal may call upon a party to produce documents or other evidence if it deems it necessary at any stage of the proceeding.

Rule 37 Disputes Arising from Requests for Production of Documents

~~The Tribunal shall decide any dispute arising out of a party's objection to the other party's request for production of documents.~~ In deciding ~~the~~ a dispute arising out of a party's objection to the other party's request for production of documents, the Tribunal shall consider all relevant circumstances, including:

- (a) the scope and timeliness of the request;
- (b) the relevance and materiality of the documents requested;
- (c) the burden of production; and
- (d) the basis of the objection.

86. WP # 4 proposes deleting the first sentence of AR 37 and rewording the second in order to clarify that there is no presumption of document production. AR 37 addresses document production only where (i) the parties have agreed or the Tribunal has decided that there will be some form of document production (*see* proposed AR 29(4)(g)); (ii) one party objects to the other party's request for a document; and (iii) the dispute is submitted to the Tribunal. It does not establish a presumption of document production.
87. Some States suggested that AR 37 be expanded to address the admissibility and the permissible scope of document requests. However, these are matters for the parties and the Tribunal to discuss at the first session and determine in light of the specific circumstances of the case (*see* proposed AR 29(4)(g)). In many ICSID proceedings, parties agree to the application of the IBA Rules on the Taking of Evidence in International Arbitration. In

contrast, the ARs only provide for basic evidentiary rules and cannot regulate every aspect of document production.

88. Similarly, several States suggested that AR 37 should set forth categories of documents that are exempt from document production, such as privileged or confidential material. As noted in [WP # 3, ¶ 93](#), the ICSID Rules do not regulate exemptions from document production because exemptions depend on the applicable law and evidentiary rules. For example, the IBA Rules list exemptions from production including commercial or technical confidentiality, privilege, and special political or institutional sensitivity (IBA Article 9). A party may invoke any relevant exemption as an objection to a document production request, and if that objection leads to a dispute under AR 37, the Tribunal must consider the exemption under AR 37(d).
89. States also reiterated that document production is too lengthy, expensive and burdensome. AR 37 expressly requires the Tribunal to consider the scope and timeliness of a request for documents, as well as the burden of production. With respect to costs, the Tribunal must consider the parties' conduct, including with respect to document production, when deciding on the allocation of costs under AR 52 (1)(b).

Rule 38 **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.
- (5) A witness shall be examined in person unless the Tribunal determines that another means of examination is appropriate in the circumstances.
- (6) 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.”
- (7) Paragraphs (1)-(5) shall apply, with necessary modifications, to evidence given by an expert.

- (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.”

Rule 39 Tribunal-Appointed Experts

- (1) Unless the parties agree otherwise, the Tribunal may appoint one or more independent experts to report to it on specific matters within the scope of the dispute.
- (2) The Tribunal shall consult with the parties on the appointment of an expert, including on the terms of reference and fees of the expert.
- (3) Upon accepting an appointment by the Tribunal, an expert shall provide a signed declaration in the form published by the Centre.
- (4) 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.
- (5) The parties shall have the right to make written and oral submissions on the report of the Tribunal-appointed expert, as required.
- (6) Rule 38 shall apply, with necessary modifications, to the Tribunal-appointed expert.

Rule 40 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 [relevant](#) terms.
- (3) The parties shall have the right to participate in any visit or inquiry.

Chapter VI Special Procedures

Rule 41 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 45 days after the constitution of the Tribunal;
 - (b) the written submission shall specify the grounds on which the objection is based and contain a statement of the relevant facts, law and arguments;
 - (c) the Tribunal shall fix time limits for written and oral submissions on the objection, as required;
 - (d) if a party files the objection before the 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
 - (e) the Tribunal shall render its decision or Award 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) 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 on the objection and fix any time limit necessary for the further conduct of the proceeding.
- (4) A decision that a claim is not manifestly without legal merit shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 43 or to argue subsequently in the proceeding that a claim is without legal merit.

90. Several States suggested to specify in AR 41(1) that a party may object to a portion of a claim that manifestly lacks legal merit. A “claim” under AR 41(1) can relate to particular

claims regarding substance, jurisdiction or the competence of the Tribunal. This has not caused difficulty in practice where AR 41 applications have related to portions of a claim. Therefore, the proposed change is not necessary.

91. Many States commented on the allocation of costs with regard to an objection submitted under AR 41. This is addressed under AR 52 (Decisions on Costs).

Rule 42 Bifurcation

- (1) A party may request that a question be addressed in a separate phase of the proceeding (“request for bifurcation”).
- (2) If a request for bifurcation relates to a preliminary objection, Rule 44 shall apply.
- (3) The following procedure shall apply to a request for bifurcation other than a request referred to in Rule 44:
 - (a) the request for bifurcation shall be filed as soon as possible;
 - (b) the request for bifurcation shall state the questions to be bifurcated;
 - (c) the Tribunal shall fix time limits for written and oral submissions on the request for bifurcation, as required;
 - (d) the Tribunal shall issue its decision on the request for bifurcation within 30 days after the later of the last written or oral submission on the request; and
 - (e) the Tribunal shall fix any time limit necessary for the further conduct of the proceeding.
- (4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
 - (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and
 - (c) the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical.
- (5) If the Tribunal orders bifurcation pursuant to this Rule, it shall suspend the proceeding with respect to any questions to be addressed at a later phase, unless the parties agree

otherwise or the Tribunal decides [that](#) there are special circumstances that do not justify suspension.

- (6) The Tribunal may at any time on its own initiative decide whether a question should be addressed in a separate phase of the proceeding.

92. One State proposed that there should be a minimum time limit for written and oral submissions on a request for bifurcation. The appropriate time limit will vary depending on the circumstances in each case. In any event, the parties may indicate the time needed to the Tribunal for its consideration when fixing the time limits.
93. One State proposed that the word “would” be replaced by “could” in paragraph (4)(a) because the standard should be that bifurcation is capable of materially reducing time and costs and disposing of the dispute. As noted in [WP # 1](#), unless the questions to be addressed in the separate phase of the proceeding succeed, bifurcated proceedings are, on average, longer and costlier than non-bifurcated proceedings. As a result, it is appropriate for the Tribunal to consider whether bifurcation would reduce time and cost.
94. Two States suggested that the proceedings on the merits be suspended pending the consideration of the request for bifurcation under this Rule. As explained in [WP # 1, ¶¶ 402-403](#) and [WP # 2, ¶ 271](#), the automatic suspension of the proceedings on the merits based on the filing of a request for bifurcation may cause undue delay and may not be necessary. In view of this, it appears appropriate not to make the suggested change.
95. One State suggested that the parties be allowed to agree otherwise in relation to the procedure. This is possible under AR 1(2).

Rule 43 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 (“preliminary objection”).
- (2) A party shall notify the Tribunal and the other party of its intent to file a preliminary objection as soon as possible.
- (3) The Tribunal may address a preliminary objection in a separate phase of the proceeding or join the objection to the merits.
- ~~(4) If a party requests bifurcation of a preliminary objection, Rule 44 shall apply.~~
- ~~(5) If a party does not request bifurcation of a preliminary objection within the time limits referred to in Rule 44(1)(a) or the parties confirm that they will not request~~

~~bifurcation, the objection shall be joined to the merits and the following procedure shall apply:~~

~~(a) the Tribunal shall fix time limits for written and oral submissions on the preliminary objection, as required;~~

~~(b) the memorial on the preliminary objection shall be filed:~~

~~(i) by the date to file the counter memorial on the merits;~~

~~(ii) by the date to file the next written submission after an ancillary claim, if the objection relates to the ancillary claim; or~~

~~(iii) as soon as possible after the facts on which the objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (5)(b)(i) and (ii);~~

~~(c) the party filing the memorial on preliminary objections shall also file its counter-memorial on the merits, or, if the objection relates to an ancillary claim, file its next written submission after the ancillary claim; and~~

~~(d) the Tribunal shall render its Award within 240 days after the later of the last written or oral submission in the proceeding, in accordance with Rule 57(1)(c).~~

~~(6) The Tribunal may at any time on its own initiative consider whether a dispute or an ancillary claim is within the jurisdiction of the Centre or within its own competence.~~

96. One State proposed to clarify the application of AR 43 and 44 when there are preliminary objections with and without a request for bifurcation. AR 43 is divided into two provisions: one which includes general provisions relating to all preliminary objections (AR 43(1)-(3) in WP # 3) and one concerning preliminary objections without a request for bifurcation (AR 43(5)-(6) in WP # 3). As a result, AR 43(5) and (6) in WP # 3 is now a stand-alone AR 45 with the heading “Preliminary Objections without a Request for Bifurcation,” preceded by AR 44 concerning “Preliminary Objections with a Request for Bifurcation.”

Rule 44

~~Bifurcation of~~ Preliminary Objections with a Request for Bifurcation

- (1) The following procedure shall apply with respect to a request for bifurcation relating to a preliminary objection:
- (a) unless the parties agree otherwise, the request for bifurcation shall be filed:
- (i) within 45 days after filing the memorial on the merits;

- (ii) within 45 days after filing the written submission containing the ancillary claim, if the objection relates to the ancillary claim; or
 - (iii) as soon as possible after the facts on which the preliminary objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (1)(a)(i) and (ii);
- (b) the request for bifurcation shall state the preliminary objection to which it relates;
- (c) unless the parties agree otherwise, the proceeding on the merits shall be suspended until the Tribunal decides whether to bifurcate;
- (d) the Tribunal shall fix time limits for written and oral submissions on the request for bifurcation, as required; and
- (e) the Tribunal shall issue its decision on a request for bifurcation within 30 days after the later of the last written or oral submission on the request.
- (2) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
 - (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and
 - (c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical.
- (3) If the Tribunal decides to address the preliminary objection in a separate phase of the proceeding, it shall:
 - (a) suspend the proceeding on the merits, unless the parties agree otherwise, or the Tribunal decides that there are special circumstances that do not justify suspension;
 - (b) fix time limits for written and oral submissions on the preliminary objection, as required;
 - (c) render its decision or Award on the preliminary objection within 180 days after the later of the last written or oral submission, in accordance with Rule 58~~7~~(1)(b); and
 - (d) fix any time limit necessary for the further conduct of the proceeding if the Tribunal does not render an Award.

(4) If the Tribunal decides to join the preliminary objection to the merits, it shall:

- (a) fix time limits for written and oral submissions on the preliminary objection, as required;
- (b) modify any time limits for written and oral submissions on the merits, as required; and
- (c) render its Award within 240 days after the later of the last written or oral submission in the proceeding, in accordance with Rule 58~~7~~(1)(c).

97. One State suggested clarifying that the list of circumstances considered for bifurcation is not exhaustive. There is no need for such clarification as AR 44(2) specifies that the Tribunal must consider “all relevant circumstances, including...” This indicates that the circumstances listed are not exhaustive.
98. A further comment on AR 44(3)(a) suggested that the Tribunal always suspend the proceeding on the merits unless the parties agree otherwise. The rule recognizes that there may be special circumstances where an aspect of the merits ought not to be suspended, *e.g.* when the claim is based on several instruments of consent, but the preliminary objection only relates to one of them. Tribunal discretion not to suspend in special circumstances has therefore been maintained.

Rule 45

Preliminary Objections without a Request for Bifurcation

- (1) If a party does not request bifurcation of a preliminary objection within the time limits referred to in Rule 44(1)(a) or the parties confirm that they will not request bifurcation, the objection shall be joined to the merits and the following procedure shall apply:
- (a) the Tribunal shall fix time limits for written and oral submissions on the preliminary objection, as required;
 - (b) the memorial on the preliminary objection shall be filed:
 - (i) by the date to file the counter-memorial on the merits;
 - (ii) by the date to file the next written submission after an ancillary claim, if the objection relates to the ancillary claim; or
 - (iii) as soon as possible after the facts on which the objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (1~~5~~)(b)(i) and (ii);

- (c) the party filing the memorial on preliminary objections shall also file its counter-memorial on the merits, or, if the objection relates to an ancillary claim, file its next written submission after the ancillary claim; and
 - (d) the Tribunal shall render its Award within 240 days after the later of the last written or oral submission in the proceeding, in accordance with Rule 58~~7~~(1)(c).
- (2) The Tribunal may at any time on its own initiative consider whether a dispute or an ancillary claim is within the jurisdiction of the Centre or within its own competence.

99. AR 45 is AR 43(5)-(6) in WP # 3.

100. One State commented that AR 43(1)(c) should not refer to a “memorial” on preliminary objections as a “memorial” can only be a pleading on the merits. As in current practice, AR 30 on “Written Submissions” also applies to preliminary objections (*see* AR 30). This includes objections to the main claim or to a counterclaim and other ancillary claims.

Rule 4~~6~~⁵ Consolidation or Coordination of Arbitrations

- (1) Parties to two or more pending arbitrations administered by the Centre may agree to consolidate or coordinate these arbitrations.
- (2) Consolidation joins all aspects of the arbitrations sought to be consolidated and results in ~~one a single~~ Award. To be consolidated pursuant to this Rule, the arbitrations shall have been registered in accordance with the Convention and shall involve the same Contracting State (or constituent subdivision or agency of the Contracting State).
- (3) Coordination aligns specific procedural aspects of ~~each two or more~~ pending arbitrations, but the arbitrations remain separate proceedings and ~~each results in an individual separate~~ Awards.
- (4) The parties referred to in paragraph (1) shall jointly provide the Secretary-General with proposed terms for the conduct of the consolidated or coordinated ~~proceeding arbitration~~(s) and consult with the Secretary-General to ensure that the proposed terms are capable of being implemented.
- (5) After the consultation referred to in paragraph (4), the Secretary-General shall communicate the proposed terms agreed by the parties to the Tribunal(s) constituted in the arbitrations. Such Tribunal(s) shall make any order or decision required to implement these terms.

101. Upon a State suggestion, AR 46(2) and (3) have been revised for greater clarity.

102. AR 46(5) notes that the terms of the consolidation or coordination need to be agreed to by the parties before the Secretary-General forwards them to the relevant tribunals.

Rule 47⁶
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 current or imminent harm to that party or prejudice to the arbitral process;
 - (b) maintain or restore the *status quo* pending determination of the dispute; or
 - (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 and oral submissions on the request, as required;
 - (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:
 - (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, including:
 - (a) whether the measures are urgent and necessary; and
 - (b) the effect that the measures may have on each party.

- (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 shall 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 permitted by the instrument recording the parties' consent to arbitration.

103. Two States suggested adding different requirements for provisional measures in AR 47(3) (e.g. “irreparable harm,” or “harm not adequately reparable by an award on damages”). ICSID Tribunals have consistently considered urgency, necessity and the balancing test in deciding whether to recommend provisional measures. In considering “necessity”, Tribunals have often considered “irreparable harm” and sometimes “harm not adequately reparable by an award on damages”. These are therefore not independent requirements as they are part of the analysis of necessity. This has also been addressed in [WP # 1, ¶ 483](#) and [WP # 2, ¶ 313](#).
104. Two States commented on the power of the Tribunal to grant provisional measures or to modify such measures “on its own initiative.” As provided in AR 27(3), a Tribunal must consult with the parties prior to making any such decision.
105. Several States suggested limiting the Tribunal's power to recommend provisional measures that particularly affect State sovereignty or to significantly circumscribe that power. As explained in [WP # 1, ¶ 481](#), [WP # 2, ¶ 315](#) and [WP # 3, ¶ 120](#), Tribunals have applied a high threshold for measures affecting State sovereignty. WP # 4 maintains Tribunal discretion in this respect.
106. One State proposed that AR 47(3)(a) read “whether the measures are urgently necessary,” noting that it is not the measure that must be urgent but rather the need for the measure. The word “urgent” in AR 47(3)(a) is indeed a reference to the urgent need for the measure. The requirements of urgency and necessity have been phrased in this manner in case law. Therefore, there is no need to modify the text.

Rule ~~48~~⁷ Ancillary Claims

- (1) Unless the parties agree otherwise, a party may file an incidental or additional claim or a counterclaim (“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.

- (2) An incidental or additional claim shall be presented no later than in the reply, and a counterclaim shall be presented no later than in the counter-memorial, unless the Tribunal decides otherwise.
- (3) The Tribunal shall fix time limits for written and oral submissions on the ancillary claim, as required.

Rule 4~~9~~8 **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 request in paragraph (2) relates to a failure to appear at a hearing, the Tribunal may:
 - (a) reschedule the hearing to a date within 60 days after the original date;
 - (b) proceed with the 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 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 hearing.
- (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 that is not in default 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.

Chapter VII

Costs

Rule ~~50~~⁴⁹

Costs of the Proceeding

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 Tribunal, Tribunal assistants approved by the parties and Tribunal-appointed experts; and
- (c) the administrative charges and direct costs of the Centre.

Rule ~~51~~⁰

Statement of and Submission on Costs

The Tribunal shall request that each party file a statement of its costs and a written submission on the allocation of costs before allocating the costs of the proceeding between the parties.

Rule ~~52~~¹

Decisions on Costs

- (1) In allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including:
- (a) the outcome of the proceeding or any part of it;

(b) the conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner and complied with these Rules and the orders and decisions of the Tribunal;

(c) the complexity of the issues; and

(d) the reasonableness of the costs claimed.

(2) The Tribunal shall award the party prevailing on an objection made pursuant to Rule 41 its costs of submitting or opposing the objection, unless the circumstances justify a different allocation of costs in accordance with paragraph (1).

~~(2)~~(3) The Tribunal may make an interim decision on costs at any time.

~~(3)~~(4) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.

107. Several states suggested that AR 52 be amended to clarify that Tribunals may consider the outcome of discrete claims and defences in allocating costs. There is no need for further amendment to the rule, as AR 52(1)(a) already provides that the Tribunal may consider “the outcome of the proceeding or any part of it” in allocating costs. This includes the outcome of discrete claims and defences and could also involve an assessment of the relative success of the parties with regard to *e.g.* the compensation awarded.
108. A number of States commented that there should be mandatory cost consequences for making claims that lack legal merit and suggested a special rule on costs for claims that are dismissed under AR 41. Proposed AR 52(2) creates a presumption that the party which prevails on an application under AR 41 will be awarded its costs. This is consistent with many treaty provisions (*see e.g.* – [DR-CAFTA Art. 10.20\(6\)](#); [CPTPP Art. 9.23\(6\)](#); [US-Colombia FTA Art. 10.20\(6\)](#)) and ensures equal treatment of claimants and respondents addressing AR 41 applications. Tribunals would continue to have discretion to allocate costs differently under Article 61 of the Convention, considering the circumstances listed in AR 52(1).

Rule 5~~2~~3 Security for Costs

- (1) Upon request of a party, the Tribunal may order any party asserting a claim or counterclaim to provide security for costs.
- (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 and oral submissions on the request, as required;
- (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 all relevant circumstances, including:
 - (a) that party's ability to comply with an adverse decision on costs;
 - (b) that party's willingness to comply with an adverse decision on costs;
 - (c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim; and
 - (d) the conduct of the parties.
- (4) The Tribunal shall consider all evidence adduced in relation to the circumstances in paragraph (3). The existence of third-party funding may form part of such evidence but is not by itself sufficient to justify an order for security for costs. ~~The Tribunal may consider third-party funding as evidence relating to a circumstance in paragraph (3), but the existence of third-party funding by itself is not sufficient to justify an order for security for costs.~~
- (5) The Tribunal shall specify any relevant terms in an order to provide security for costs and shall fix a time limit for compliance with the order.
- (6) If a party fails to comply with an order to provide security for costs, the Tribunal may suspend the proceeding. If the proceeding is suspended for more than 90 days, the Tribunal may, after consulting with the parties, order the discontinuance of the proceeding.
- (7) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.

(8) The Tribunal may at any time modify or revoke its order on security for costs, on its own initiative or upon a party's request.

109. WP # 4 maintains AR 53 as proposed in WP # 3 with a revised paragraph (4) addressing third-party funding as evidence.
110. In relation to AR 53(1), two States repeated their suggestion that the Tribunal should only be permitted to order a disputing investor to provide security for costs. WP # 4 maintains the current text, which makes the rule available to any party that incurs costs as a result of having to defend a claim or counterclaim. This approach is balanced and consistent with the purpose of security for costs.
111. One State suggested changing “require” to “justify” in AR 53(2). This change has not been implemented because the term “require” is consistent with the drafting of other rules (Provisional Measures and Stay of Enforcement of the Award) and reflects the appropriate standard for security for costs.
112. One State suggested adding the sentence “unless the parties agree otherwise” to AR 53(2). AR 1(2) already sets forth the ability of the parties to agree on a different procedure (to the extent there is no conflict with the Convention or the AFRs). It is therefore unnecessary to include this statement in each rule.
113. One State proposed that AR 53(3)(a) be changed to: “that party’s financial ability and availability of financial resources to comply with an adverse decision on costs”. The text proposed in WP # 3 is broad enough to encompass both “financial ability” and the “availability of financial resources” and therefore is maintained.
114. Three States suggested removing subparagraph (c) from AR 53(3). However, as recognized by other States, imposing security for costs may in some cases impede a party’s access to justice. Therefore, it is important that the Tribunal consider, among other factors, “the effect that providing security for costs may have on [a] party’s ability to pursue its claim or counterclaim”.
115. Another State suggested requiring the Tribunal to order security for costs when there is reason to believe that the investor has structured its business and assets in order to avoid an adverse costs award. The Tribunal may already consider this type of activity in relation to AR 53(3)(b) and (d). A more specific rule that would restrict the Tribunal’s discretion is not necessary.
116. Most comments on AR 53 concerned paragraph (4). Some States considered this paragraph unnecessary, while others supported the text proposed in WP # 3. Most States were in favour of including an express reference to third-party funding but suggested different ways to revise paragraph (4). For example, several States proposed to delete the phrase “but the existence of third-party funding by itself is not sufficient to justify an order for security for costs”, one State suggested to clarify that “the existence of third-party funding by itself is not sufficient for the Tribunal to conclude that one or more of the circumstances in paragraph (3) exist” and several States proposed to say that “the existence of third-party

- funding by itself may not necessarily be sufficient to conclude” that the relevant circumstance exists. Several States suggested replacing “may consider” with “shall consider” or moving the reference to third-party funding to paragraph (3). Finally, one State suggested replacing “evidence” with “simple presumption”.
117. WP # 4 proposes a new paragraph (4) that reflects a fair and balanced compromise: it maintains the express reference to third-party funding, still recognizing that third-party funding on its own is not sufficient to justify an order for security for costs. This is consistent with ICSID case law on security for costs to date. In addition, the first sentence provides greater context by confirming the Tribunal’s duty to consider the evidence adduced by the parties in relation to the circumstances of paragraph (3), which may include third-party funding.
 118. With respect to AR 53(6), one State repeated its suggestion that discontinuance of the proceeding should be mandatory for non-compliance with an order to provide security for costs. The text as proposed in WP # 3 is maintained because it provides the Tribunal the flexibility required to ensure respect for the parties’ due process rights and to account for the circumstances of the case.
 119. A State also proposed the addition of the words “after giving the parties an opportunity to make submissions” at the end of AR 53(8). This addition is not needed in light of proposed AR 27(3), which requires the Tribunal to consult with the Parties prior to taking such a decision on its own initiative. More generally, proposed AR 2(2) ensures that the parties are treated equally and given a reasonable opportunity to present their case.
 120. Another State proposed that there should be an ongoing obligation to disclose any significant change in the financial situation or structure of a company. This suggestion is not implemented. AR 53(7) already contains the relevant disclosure obligation tied to an order for security for costs.

Chapter VIII Suspension, Settlement and Discontinuance

Rule 5~~4~~3 Suspension of the Proceeding

- (1) The Tribunal shall suspend the proceeding by agreement of the parties.
- (2) The Tribunal may suspend the proceeding upon the request of either party or on its own initiative, except as otherwise provided in the Administrative and Financial Regulations or these Rules.
- (3) The Tribunal shall give the parties the opportunity to make observations before ordering a suspension pursuant to paragraph (2).
- (4) In its order suspending the proceeding, the Tribunal shall specify:

- (a) the period of the suspension;
 - (b) any relevant terms; and
 - (c) a modified procedural calendar to take effect on resumption of the proceeding, if necessary.
- (5) The Tribunal shall extend the period of a suspension prior to its expiry by agreement of the parties.
- (6) The Tribunal may extend the period of a suspension prior to its expiry, on its own initiative or upon a party's request, after giving the parties an opportunity to make observations.
- (7) The Secretary-General shall suspend the proceeding pursuant to paragraph (1) or extend the suspension pursuant to paragraph (5) 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 terms agreed to by the parties.

Rule 54
Settlement and Discontinuance by Agreement of the Parties

- (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.

121. The title of AR 55 has been changed to distinguish this provision more clearly from discontinuance under AR 56.

Rule 565
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.
- (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.

Rule 576
Discontinuance for Failure of Parties to Act

- (1) If the parties fail to take any steps in the proceeding for more than 150 consecutive 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 shall 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.

122. One State suggested that the notice requirement in AR 57(1) be deleted. As indicated in [WP # 1, ¶ 566](#), a party's failure to take steps does not prevent the arbitration from advancing as long as the other party acts to ensure the continuation of the proceeding.

Chapter IX
The Award

Rule 587
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 latest of the Tribunal constitution, the last written submission or the last oral submission, if the Award is rendered pursuant to Rule 41(3);
 - (b) 180 days after the later of the last written or oral submission if the Award is rendered pursuant to Rule 44(3)(c); or
 - (c) 240 days after the later of the last written or oral submission in all other cases.
- (2) A statement of costs and submission on costs filed pursuant to Rule 51~~9~~ shall not be considered a written submission for the purposes of paragraph (1).

123. One State asked whether the time limits in AR 58 also apply to proceedings with two procedural languages. This is confirmed.

Rule 5~~9~~8 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 in accordance with 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, case management conferences and 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 on the allocation of costs.

- (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.

124. Some States proposed modifying AR 59(1)(i) to ensure that the Award contains the “legal” reasoning of the Tribunal’s decisions. The Secretariat refers to the discussion on this matter at [WP # 1, ¶ 595](#).
125. Other States requested that this provision require specific consideration of other issues such as the Tribunal’s determination of the applicable law, causation, and the damages valuation method. Under Art. 48(3) of the Convention and AR 59(1)(i), the Tribunal’s reasoning on such issues already must be included in the Award. See [WP # 3, ¶ 146](#). The Secretariat will publish a sample Award template on its website that may be of assistance to tribunals.

Rule ~~60~~⁵⁹ Rendering of the Award

- (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 of certified copies of the Award.
- (3) The Secretary-General shall provide additional certified copies of the Award to a party upon request.

Rule ~~61~~¹⁰ Supplementary Decision and Rectification

- (1) 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 and pay the lodging fee published in the schedule of fees within 45 days after the Award was rendered.

- (2) The request referred to in paragraph (1) shall:
 - (a) identify the Award to which it relates;
 - (b) be signed by each requesting party or its representative and be dated;
 - (c) specify:
 - (i) with respect to a request for a supplementary decision, any question which the Tribunal omitted to decide in the Award;
 - (ii) with respect to a request for rectification, any clerical, arithmetical or similar error in the Award; and
 - (d) attach proof of payment of the lodging fee.
- (3) 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 (1); and
 - (c) notify the parties of the registration or refusal to register.
- (4) As soon as the request is registered, the Secretary-General shall transmit the request and the notice of registration to each member of the Tribunal.
- (5) 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.
- (6) Rules ~~598-605~~ shall apply to any decision of the Tribunal pursuant to this Rule.
- (7) The Tribunal shall issue a decision on the request for supplementary decision or rectification within 60 days after the later of the last written or oral submission on the request.
- (8) The date of dispatch of certified copies of the supplementary decision or rectification shall be the relevant date for the purposes of calculating the time limits in Articles 51(2) and 52(2) of the Convention.
- (9) 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.

Chapter X Publication, Access to Proceedings and Non-Disputing Party Submissions

Rule 62~~1~~ 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) The parties may consent to publication of the full text or to a jointly redacted text of the documents referred to in paragraph (1).
 - (3) 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 dispatch of the document.
 - (4) Absent consent of the parties ~~in accordance with~~ pursuant to paragraphs (1)-(3), the Centre shall publish excerpts of the document. The following procedure shall apply to publication of excerpts:
 - (a) the Secretary-General shall propose excerpts to the parties within 60 days after the date upon which ~~either a party declines consent~~ objects to publication or notifies the Secretary-General that the parties disagree on redaction of the document;
 - (b) the parties may send comments on the proposed excerpts to the Secretary-General within 60 days after their receipt, including whether any information in the proposed excerpts is confidential or protected as defined in Rule 66; and
 - (c) the Secretary-General shall consider any comments received on the proposed excerpts, and publish excerpts within 30 days after ~~receipt of such comments~~ the expiry of the time limit referred to in paragraph (4)(b).
126. Most States supported AR 62, including the re-introduction of deemed consent in paragraph (3).
127. One State suggested that each party be required to provide reasons justifying its objection to publication of the Award. This has not been included because it would increase the cost and time of the process. In practice, parties may explain their position on publication of the Award and proposed excerpts, and they remain able to do so under AR 62.
128. Some States proposed a shorter period for the excerpting process while others suggested a longer period. The time frames originally proposed have been maintained.

129. One State proposed that the language concerning consent in AR 62(2) and 61(4)(a) (“objects”) be aligned. This is reflected in revised AR 62(4)(a). In addition, proposed AR 62(4)(a) clarifies the trigger point for preparation of excerpts as either the date of objection to publication or of the parties disagreeing on proposed redactions.
130. Several States suggested that AR 66 be expressly referenced in AR 62. This has been added to AR 62(4)(b), as the parties are in the best position to indicate whether information is protected and confidential in the context of their case.

Rule 63²
Publication of Orders and Decisions

- (1) The Centre shall publish orders and decisions, with any redactions agreed to by the parties and jointly notified to the Secretary-General within 60 days after the order or decision is issued.
- (2) If either party notifies the Secretary-General within the 60-day period referred to in paragraph (1) that the parties disagree on any proposed redactions, the Secretary-General shall refer the order or decision to the Tribunal to ~~determine~~decide any disputed redactions. The Centre shall publish the order or decision in accordance with the ~~determination~~decision of the Tribunal.
- (3) In ~~determining~~deciding a disputes pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 66.

131. Most States supported the proposed scheme and language of AR 63, which has therefore been retained. Several States would have preferred a requirement that both parties consent to publication of orders and decisions in the same manner as AR 62 for Awards.
132. Numerous States requested that express reference to AR 66 be made in AR 63. This has been included in AR 63(3).
133. One State suggested that AR 63 limit publication to useful decisions and orders rather than all decisions and orders. It suggested that only those orders and decisions that provide value to external observers in terms of accountability be published. This has not been incorporated because determination of whether a decision or order is useful is a subjective assessment upon which parties could easily disagree. Further, routine decisions, for example on schedules, may still be useful to some parties.
134. One State suggested that AR 63 include a provision allowing parties to vary the time period in the rule. This is already permitted by virtue of AR 11(2) and is not repeated in each individual rule.

Rule 64~~3~~
Publication of Documents Filed in the Proceeding

- (1) ~~Upon request of either party~~ With consent of the parties, the Centre shall publish any written submission or supporting document filed by a party in the proceeding, with any redactions agreed to by the parties and jointly notified to the Secretary-General.
- (2) ~~Either~~ Absent consent of the parties pursuant to paragraph (1), a party may refer to the Tribunal any a dispute regarding the publication or redaction of a written submission that it filed in the proceeding, excluding supporting documents in paragraph (1) to the Tribunal for determination. The Tribunal shall decide any disputed redactions and ~~The~~ Centre shall publish the ~~document~~ written submission in accordance with the ~~determination~~ decision of the Tribunal.
- (3) In ~~determining~~ deciding a disputes pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 66.

135. Comments on AR 64 were divided on the extent to which documents other than Awards, decisions or orders should be made public. Many States questioned the extent to which broad publication of case documents advanced the objectives of transparency. Most States raised concern about the time and cost involved in redacting such documents and in referring disputed redactions to the Tribunal for decision. They also raised concern about the potential for abuse of this rule. Other States took the position that all publication advanced transparency, that the time and cost involved in redaction was manageable, and that Tribunals had the inherent ability to prevent abuse of the rule.
136. Comments from the public generally supported broad publication of documents filed in proceedings, did not address the logistics involved in publication, but did raise concern about the time and cost involved in redaction and referring disputed redactions for Tribunal resolution.
137. Proposed AR 64 in WP # 4 is a new proposal. It seeks to find an acceptable compromise between these divergent positions. Proposed AR 64(1) allows the publication of any written submission (*see* AR 30) or supporting document (*see* AR 5) filed by a party in the proceeding, provided the parties consent to publication and agree on any redactions to such document.
138. Proposed AR 64(2) also allows a party that has filed a written submission to refer a dispute concerning redaction of such submission (*e.g.* memorials, counter-memorials, replies, rejoinders) to the Tribunal for decision. The Tribunal would decide on any disputed redactions to the document and the Centre would publish it in accordance with the Tribunal's decision. However, disputes concerning publication of supporting documents appended to memorials, counter-memorials, replies, rejoinders and other written

submissions must be resolved by the parties and the Centre would only publish supporting documents with the parties' consent. This paragraph seeks to ensure that a party can request the publication of a submission *it* filed, subject only to redactions as ordered by the Tribunal, even where the opposing party might not consent to publication, while also ensuring that the time and costs of redaction do not become exorbitant. In particular, supporting documents are usually voluminous and hence Tribunal review and redaction of these is excluded in AR 64(2). The Centre would prepare, on the basis of the current practice of Tribunals, a practice note regarding disputes about redactions to written submissions that would propose a cost- and time-effective procedure leading up to publication of the written submission.

139. Proposed AR 64(3) requires the Tribunal to ensure, when considering disputed redactions, that publication of a document does not disclose confidential or protected information.
140. Some delegations suggested that Rule 64 regulate the timing of requests for publication. Such a matter is usually addressed in the first session but can be raised at any time in the proceeding. The Tribunal retains inherent powers to address abuses of such requests, which need not be addressed in the rules.

Rule 654 Observation of Hearings

- (1) The Tribunal shall ~~determine whether to~~ allow persons in addition to the parties, their representatives, witnesses and experts during their testimony, and persons assisting the Tribunal, to observe hearings, ~~after consulting with the parties~~ unless either party objects.
- (2) The Tribunal shall establish procedures to prevent the disclosure of ~~any~~ confidential or protected information as defined in Rule 66 to persons observing the hearings.
- (3) Upon the request of a party, ~~The~~ Centre shall publish recordings or transcripts ~~of those portions of hearings that were available for observation by the public in accordance with paragraphs (1) and (2), unless either the other~~ party objects.

141. Numerous States took the position that hearings should not be open to the public without the consent of both parties. Many other States agreed that this decision should be made by the Tribunal after consulting with the parties. Proposed AR 65(1) allows open hearings unless either party to objects.
142. All States agreed that Tribunals should take necessary measures to ensure confidential or protected information is not publicly disclosed in the course of open hearings. Proposed AR 65(2) reflects this concern and ties it to the definition of confidential and protected information in Rule 66.
143. Proposed AR 65(3) simplifies the language of the rule allowing publication of recordings or transcripts of hearings, unless a party objects, and clarifies that it is upon party request.

Rule ~~66~~⁶⁵ Confidential or Protected Information

For the purposes of Rules ~~62~~⁶⁴-~~65~~⁶⁴, confidential or protected information is information which is protected from public disclosure:

- (a) ~~is protected from disclosure pursuant to~~^{by} the instrument of consent to arbitration;
- (b) ~~is protected from disclosure pursuant to~~^{by} the applicable law or applicable rules;
- (c) in the case of information of a State party to the dispute, by the law of that State;
- ~~(e)~~^(d) ~~is protected from disclosure~~ in accordance with the orders and decisions of the Tribunal;
- ~~(d)~~^(e) ~~is protected from disclosure~~ by agreement of the parties;
- ~~(e)~~^(f) because it constitutes confidential business information;
- ~~(f)~~^(g) because public disclosure would impede law enforcement ~~if disclosed to the public~~;
- ~~(g)~~^(h) because a State party to the dispute considers that public disclosure would be contrary to its ~~would prejudice the~~ essential security interests ~~of the State if disclosed to the public~~;
- ~~(h)~~⁽ⁱ⁾ because public disclosure would aggravate the dispute between the parties ~~if disclosed to the public~~; or
- ~~(i)~~^(j) because public disclosure would undermine the integrity of the arbitral process ~~if disclosed to the public~~.

144. AR 66 defines the categories of information that are confidential or protected from public disclosure to the public. Rule 66 is expressly referenced in Rules 62-65, and in turn the chapeau to Rule 66 notes that the listed categories are “for the purposes of Rules 62-65.” This is further clarified by the addition of “is protected from public disclosure” in the chapeau of Rule 66.
145. One State asked whether AR 66 should contain a shorter list of inclusive items (rather than an exhaustive list of items). However, no suggestions have been made with respect to additional categories of information that should be considered confidential or protected.

146. The majority of comments supported the inclusion of AR 66; however, some adjustments were requested to individual paragraphs of that rule.
147. With respect to AR 66(b), numerous States noted that information of a State that is protected from disclosure in accordance with the law of the State party to the dispute should also be addressed. This has been included in AR 66(c).
148. With respect to AR 66(h), numerous States commented that the essential security exception should be self-judging. This has been revised and is found in renumbered AR 66(h).
149. With respect to AR 66(i) and (j), there was discussion as to whether these were required, and whether AR 66(i) (aggravation of dispute) was implied in AR 66(j) (undermine integrity of the arbitral process). Other delegations supported the distinct categories in AR 66(i) and (j) and they have been retained.

Rule 676 Submission of Non-Disputing Parties

- (1) Any person or entity that is not a party to the dispute (“non-disputing party”) may apply for permission to file a written submission in the proceeding. The application shall be made in [the](#) procedural language(s) used 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, particular knowledge or insight that is different from that of the 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~~ [any](#) conditions for filing [or publication of](#) 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 the format, length, ~~or~~ scope [or publication](#) of the written submission and the time limit to file the submission.

- (5) The Tribunal shall issue a reasoned decision on whether to permit a non-disputing party submission within 30 days after the later of the last written or oral submission on the application.
- (6) The Tribunal ~~may~~ [shall](#) provide the non-disputing party with access to relevant documents filed in the proceeding, unless either party objects.
- (7) 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.

- 150. Several States requested that applications to file a non-disputing party (“NDP”) submission and NDP submissions be in all procedural languages of the proceeding in order to minimize costs of the disputing parties. This has been included in AR 67(1).
- 151. Proposed paragraphs (3) and (4) allow the parties to make submissions on the filing and publication of an NDP submission and give the Tribunal authority to impose conditions on the format, length, scope and publication of the NDP submission.
- 152. AR 67(6) has been adjusted to provide that the Tribunal “shall” (not “may”) provide NDPs with access to documents unless either disputing party objects. One State suggested that NDPs should not have access to documents as this would formalize their participation. No change has been made in this respect as AR 67(6) allows either party to object to such access.

Rule ~~67~~⁶⁸

Participation of Non-Disputing Treaty Party

- (1) The Tribunal shall permit a Party to a treaty that is not a party to the dispute (“non-disputing Treaty Party”) to make a written [or oral](#) submission on the interpretation of the treaty at issue in the dispute and upon which consent to arbitration is based. [The Tribunal may, after consulting with the parties, invite a non-disputing Treaty Party to make such a submission.](#)
- (2) [The Tribunal shall ensure that non-disputing Treaty Party participation does not disrupt the proceeding or unduly burden or unfairly prejudice either party. To this end, ~~The~~ The Tribunal may impose conditions on the filing of a written submission by the non-disputing Treaty Party, including with respect to the format, length \[or publication of the written submission and the time limit to file the submission\]\(#\) ~~or scope of the submission and the time limit to file the submission.~~](#)

(3) The parties shall have the right to make observations on the submission of the non-disputing Treaty Party.

153. AR 68(1) has been revised to allow an NDTP to make either a written or oral submission. It has also been revised to allow a Tribunal to invite an NDTP submission, after consultation with the parties. This has been done in the past using the inherent powers of the Tribunal.
154. States were divided as to whether NDTP submissions should be limited to treaty interpretation or should address a broader range of issues. The provision has not been revised in this respect as most States favoured “interpretation” only. A State wishing broader participation could provide for this in the instrument of consent or could apply to participate under AR 67, assuming it could meet the relevant criteria in that rule.
155. Numerous States noted that AR 68(2) should not require the Tribunal to address the scope of the submission, as that is already limited by AR 68(1) to interpretation of the treaty at issue in the dispute. The word “scope” has therefore been deleted in AR 68(2). Additionally, proposed AR 68(2) allows the Tribunal to impose conditions on the format, length, or publication of an NDTP submission and the time limit to file the submission.
156. Some concern was raised as to the potential for an NDTP submission to become diplomatic protection. This is prohibited by Article 27 of the Convention and need not be addressed in the Convention Arbitration Rules. However, this has been addressed in the Additional Facility Rules (AF)AR 72(2), which provide: “A submission of a non-disputing Treaty Party pursuant to paragraph (1) shall not support a party in a manner tantamount to diplomatic protection.”

Chapter XI Interpretation, Revision and Annulment of the Award

Rule 698 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.
- (2) The application shall:
 - (a) identify the Award to which it relates;
 - (b) be in a language in which the Award was rendered or if the Award was not rendered in an official language of the Centre, be in an official language;
 - (c) be signed by each applicant or its representative and be dated;

- (d) attach proof of any representative's authority to act; and
 - (e) attach proof of payment of the lodging fee.
- (3) An application for interpretation pursuant to Article 50(1) of the Convention may be filed at any time after the Award is rendered and shall specify the points in dispute concerning the meaning or scope of the Award.
- (4) An application for revision 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) that the fact was unknown to the Tribunal and to the applicant when the Award was rendered, and that the applicant's ignorance of that fact was not due to negligence.
- (5) An application for annulment pursuant to Article 52(1) of the Convention shall:
- (a) be filed within 120 days after 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 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 receipt of 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 time limits referred to in paragraphs (4) or (5); and

(c) notify the parties of the registration or refusal to register.

- (7) At any time before registration, an applicant may notify the Secretary-General in writing of the withdrawal of the application or, if there is more than one applicant, that it is withdrawing from the application. The Secretary-General shall promptly notify the parties of the withdrawal, unless the application has not yet been transmitted to the other party pursuant to paragraph (6)(a).

Rule 70⁶⁹

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
 - (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.

157. One State suggested that the rules incorporate an appeals mechanism. As indicated in [WP # 3, ¶ 173](#) and [WP # 2, ¶ 434](#), the Secretariat remains prepared to assist States if they wish to discuss the establishment of such a mechanism.

Rule 71⁰

Annulment: Appointment of the *ad hoc* Committee

- (1) As soon as an application for annulment of an Award is registered, the Chair 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 19.

- (3) The Committee shall be deemed to be constituted on the date the Secretary-General notifies the parties that all members have accepted their appointments.

Rule 7²¹

Procedure Applicable to Interpretation, Revision and Annulment

- (1) Except as provided below, 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 continue to apply to an interpretation, revision or annulment proceeding, 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 in an interpretation or revision proceeding, and two rounds of written submissions in an annulment proceeding, 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 later of the last written or oral submission on the application.

158. One State reiterated its earlier suggestion that procedural agreements and orders from the original proceeding should not apply to interpretation, revision or annulment proceedings if either party objects. As indicated in [WP # 3, ¶ 175](#), the proposed formulation avoids unnecessary delays in the proceeding while allowing the parties and the Tribunal or Committee to propose procedural agreements different from those of the original Tribunal if they wish.

Rule 7³²

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 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 on the request, as required;
 - (c) if a party files the request before the constitution of the Tribunal or Committee, the Secretary-General shall fix time limits for written 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 shall 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.

159. One State reiterated its view that the ICSID Convention does not allow the Tribunal or Committee to impose conditions for a stay of enforcement of an Award, if it considers that a stay is required. As indicated in [WP # 2, ¶ 456](#) and [WP # 1, ¶¶ 647-648](#), proposed AR 73(4) reflects the practice arising out of the interpretation of the Convention and the Rules by Committees, many of which have held that the stay of enforcement of the Award can be conditional.
160. One State indicated that the parties should be allowed to agree to modify the procedure for seeking a stay of enforcement of an Award. This is possible under AR 1(2) and AR 72(1).
161. Another State commented that the Secretary-General should not have the power to fix time

limits for submissions on a request for stay of enforcement before the Tribunal or Committee is constituted. As mentioned in [WP # 2, ¶ 460](#) and [WP # 1, ¶ 646](#), proposed AR 73(3)(c) seeks to ensure expediency and is consistent with similar provisions concerning provisional measures, security for costs and manifest lack of legal merit.

162. One State suggested that the Tribunal or Committee should have the power to modify or terminate a stay of enforcement only upon a party's request. This has not been adopted as the Tribunal or Committee may need to act on its own initiative with regard to non-compliance with an order of stay of enforcement.
163. One State proposed to maintain the possibility to prolong the stay of enforcement of the unannulled portion of an Award. As indicated in [WP # 2, ¶ 458](#) and [WP # 1, ¶¶ 651 and 654](#), the proposed deletion was made to ensure consistency with Art. 52(5) of the Convention, which provides that a Committee may stay enforcement of the Award "pending its decision".

Rule 7~~4~~3

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.
- (2) The request shall:
 - (a) identify the Award to which it relates;
 - (b) be in an official language of the Centre;
 - (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.
- (3) Upon receipt of 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;
 - (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, unless the parties agree otherwise.

- (4) If the original Award was annulled in part, the new Tribunal shall ~~not reconsider consider the aspect(s) of the resubmitted dispute pertaining to the annulled~~ any portion of the Award that was not annulled.
- (5) Except as otherwise provided in paragraphs (1)-(4), these Rules shall apply to the resubmission proceeding.
- (6) The procedural agreements and orders on matters addressed at the first session of the original Tribunal shall not apply to the resubmission proceeding, unless the parties agree otherwise.

164. Following a State comment, AR 74(4) has been revised to specify that the new Tribunal shall not reconsider any portion of the Award that was not annulled.
165. One State commented that the procedural agreements and orders on matters addressed at the first session of the original Tribunal should not apply to resubmission proceedings unless the parties agree otherwise. This is consistent with AR 74(6).

Chapter XII Expedited Arbitration

Rule ~~75~~4 Consent of Parties to Expedited Arbitration

- (1) The parties to an arbitration conducted under the Convention may consent at any time to expedite the arbitration in accordance with this Chapter (“expedited arbitration”) by jointly notifying the Secretary-General in writing of their consent.
- (2) Chapters I-XI of the Arbitration Rules apply to an expedited arbitration except that:
 - (a) Rules 15, 16, 18, 39, 40, 41, 42, 44 and ~~46~~5 do not apply in an expedited arbitration; and
 - (b) Rules 19, 22, 29, 37, 43, ~~49~~8, ~~58~~7, ~~61~~0 and ~~72~~1, as modified by Rules ~~76~~5-~~84~~3, apply in an expedited arbitration.
- (3) If the parties consent to expedited arbitration after the constitution of the Tribunal pursuant to Chapter II, Rules ~~76~~5-~~78~~7 shall not apply, and the expedited arbitration shall proceed subject to all members of the Tribunal confirming their availability pursuant to Rule ~~79~~8(2). If any arbitrator fails to confirm availability before the expiry of the applicable time limit, the arbitration shall proceed in accordance with Chapters I-XI.

166. Chapter XII on Expedited Arbitration (“EA”) applies only if the parties expressly consent in writing to arbitration under this Chapter. The parties may do so before the dispute arises in any instrument of consent, *e.g.* a contract between an investor and a State agency, or as an ad hoc agreement after the dispute has arisen.
167. One State suggested that the ICSID Secretariat explore the automatic application of EA to small claims cases using an ad valorem system. Other States were opposed to an automatic application of EA, and one State proposed to eliminate the EA Chapter. The majority of States agreed that EA fits well with the objective to reduce time and cost, their investment promotion policies, and that it should operate on an opt-in basis. One State commented on the time limits in EA, some of which it found too short for investor-State disputes.
168. WP # 4 maintains Chapter XII in view of the EA’s consensual character and the comments received. The Secretariat will explore an ad valorem system for ICSID arbitrations (*see* AFR 14) and can further explore its use with EA to address efficiency and access to justice.
169. One State suggested adding to AR 75(1) that: (i) the provisions of Chapter XII may be modified by party agreement or by the Tribunal at the request of a party; and (ii) EA may be “discontinued” at any time. Under AR 1(2) the parties may agree to modify the procedure in an EA (to the extent there is no conflict with the Convention or the AFRs). Also, AR 86 allows the parties to jointly opt out of EA and the Tribunal to decide, at the request of a party, that the EA should no longer apply. The suggested additions are therefore unnecessary.
170. One State proposed in relation to AR 75(3) (consent to EA after the Tribunal constitution), that the parties should have the power to jointly replace the arbitrator who fails to confirm availability for an EA or that such arbitrator must resign, so that the parties’ consent to an EA can be implemented. Under Art. 56(1) of the ICSID Convention, the parties may not replace an arbitrator or force an arbitrator to resign after the Tribunal has been constituted. However, it is likely that the unavailable arbitrator will resign if the parties wish to proceed with an EA. Therefore, the provision is kept as is.

Rule 76⁵

Number of Arbitrators and Method of Constituting the Tribunal for Expedited Arbitration

- (1) The Tribunal in an expedited arbitration shall consist of a Sole Arbitrator appointed pursuant to Rule 77⁶ or a three-member Tribunal appointed pursuant to Rule 78⁷.
- (2) The parties shall jointly notify the Secretary-General in writing of their election of a Sole Arbitrator or a three-member Tribunal within 30 days after the date of the notice of consent referred to in Rule 75⁴(1).
- (3) If the parties do not notify the Secretary-General of their election within the time limit referred to in paragraph (2), the Tribunal shall consist of a Sole Arbitrator to be appointed pursuant to Rule 77⁶.

- (4) An appointment pursuant to Rules 776 or 787 shall be deemed an appointment in accordance with a method agreed by the parties pursuant to Article 37(2)(a) of the Convention.

171. In relation to AR 76(2), one State proposed extending the time limit from 30 to 60 days. WP # 4 maintains the 30-day time limit to preserve the expedited nature of the proceeding. The parties may agree to extend the time limit under AR 11(2).
172. One State proposed three as the default number of arbitrators for the Tribunal. Another State suggested a sole arbitrator for all EAs. A third State commented on its positive experience with a sole arbitrator in an ICSID case. WP # 4 maintains a sole arbitrator by default because this is the more cost-effective alternative. The parties may nevertheless agree on a three-member Tribunal.

Rule 776

Appointment of Sole Arbitrator for Expedited Arbitration

- (1) The parties shall jointly appoint the Sole Arbitrator within 20 days after the notice referred to in Rule 765(2).
- (2) The Secretary-General shall appoint the Sole Arbitrator if:
- (a) the parties do not appoint the Sole Arbitrator within the time limit referred to in paragraph (1);
 - (b) the parties notify the Secretary-General that they are unable to agree on the Sole Arbitrator; or
 - (c) the appointee declines the appointment or does not comply with Rule 789(1).
- (3) The following procedure shall apply to an appointment by the Secretary-General of the Sole Arbitrator pursuant to paragraph (2):
- (a) the Secretary-General shall transmit a list of five candidates for appointment as Sole Arbitrator to the parties within 10 days after the relevant event referred to in paragraph (2);
 - (b) each party may strike one name from the list and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;
 - (c) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate

with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them; and

(d) if the selected candidate declines the appointment or does not comply with Rule 798(1), the Secretary-General shall select the next highest-ranked candidate.

173. One State suggested extending from 20 to 30 days the time limit for the parties' joint appointment of the sole arbitrator. WP # 4 maintains the 20-day time limit for the same reasons explained above under AR 76.
174. One State proposed eliminating AR 77(2)(c), so that the parties jointly appoint a new candidate if their appointee declines the appointment or fails to provide the declaration required under AR 79(1). WP # 4 maintains the current text, which permits the Secretary-General to move forward with the Tribunal constitution and avoids the application of the default provisions in the ICSID Convention. However, the parties may agree to appoint a new candidate if the situation arises.
175. One State proposed that the Secretary-General draw a lot to select a candidate if there is a tie under AR 77(3)(c). It is helpful to keep flexibility if, for example, one of the candidates becomes unavailable. Therefore, no change has been made to the rule.

Rule 787

Appointment of Three-Member Tribunal for Expedited Arbitration

- (1) A three-member Tribunal shall be appointed in accordance with the following procedure:
 - (a) each party shall appoint an arbitrator ("co-arbitrator") within 20 days after the notice referred to in Rule 765(2); and
 - (b) the parties shall jointly appoint the President of the Tribunal within 20 days after the receipt of the acceptances from both co-arbitrators.
- (2) The Secretary-General shall appoint the arbitrators not yet appointed if:
 - (a) an appointment is not made within the applicable time limit referred to in paragraph (1);
 - (b) the parties notify the Secretary-General that they are unable to agree on the President of the Tribunal; or
 - (c) an appointee declines the appointment or does not comply with Rule 798(1).
- (3) The following procedure shall apply to the appointment by the Secretary-General of any arbitrators pursuant to paragraph (2):

- (a) the Secretary-General shall first appoint the co-arbitrator(s) not yet appointed. The Secretary-General shall consult with the parties as far as possible and use best efforts to appoint the co-arbitrator(s) within 15 days after the relevant event in paragraph (2);
- (b) within 10 days after the later of the date on which both co-arbitrators have accepted their appointments or the relevant event referred to in paragraph (2), the Secretary-General shall transmit a list of five candidates for appointment as President of the Tribunal to the parties;
- (c) each party may strike one name from the list and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;
- (d) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them; and
- (e) if the selected candidate declines the appointment or does not comply with Rule 798(1), the Secretary-General shall select the next highest-ranked candidate.

176. One State proposed eliminating AR 78(2)(c), so that a party may appoint a new co-arbitrator if its appointee declines the appointment or fails to provide the declaration required under AR 79(1). WP # 4 maintains the current text for the reasons explained above under AR 77.
177. One State proposed that the Secretary-General draw a lot to select a candidate if there is a tie under AR 78(3)(d). No change has been made to the rule for the reasons explained above under AR 77.

Rule 798

Acceptance of Appointment in Expedited Arbitration

- (1) An arbitrator appointed pursuant to Rule 776 or 787 shall accept the appointment and provide a declaration pursuant to Rule 19(3) within 10 days after receipt of the request for acceptance.
- (2) An arbitrator appointed to a Tribunal constituted pursuant to Chapter II shall confirm their availability to conduct an expedited arbitration within 10 days after receipt of the notice of consent pursuant to Rule 754(3).

Rule ~~80~~⁷⁹
First Session in Expedited Arbitration

- (1) The Tribunal shall hold a first session pursuant to Rule 29 within 30 days after the constitution of the Tribunal.
- (2) The first session shall be held by telephone or electronic means of communication, unless both parties and the Tribunal agree it shall be held in person.

Rule ~~81~~¹⁰
Procedural Schedule in Expedited Arbitration

- (1) The following schedule for written submissions and the hearing shall apply in an expedited arbitration:
 - (a) the claimant shall file a memorial within 60 days after the first session;
 - (b) the respondent shall file a counter-memorial within 60 days after the date of filing the memorial;
 - (c) the memorial and counter-memorial referred to in paragraph (1)(a) and (b) shall be no longer than 200 pages ~~in length~~;
 - (d) the claimant shall file a reply within 40 days after the date of filing the counter-memorial;
 - (e) the respondent shall file a rejoinder within 40 days after the date of filing the reply;
 - (f) the reply and rejoinder referred to in paragraph (1)(d) and (e) shall be no longer than 100 pages ~~in length~~;
 - (g) the hearing shall be held within 60 days after the last written submission is filed;
 - (h) the parties shall file statements of their costs and written submissions on costs within 10 days after the last day of the hearing referred to in paragraph (1)(g); and
 - (i) the Tribunal shall render the Award as soon as possible, and in any event no later than 120 days after the hearing referred to in paragraph (1)(g).
- (2) Any preliminary objection, counterclaim, incidental or additional claim shall be joined to the main schedule referred to in paragraph (1). The Tribunal shall adjust

the schedule if a party raises any such matter, taking into account the expedited nature of the process.

- (3) The Tribunal may extend the time limits referred to in paragraph (1)(a) and (b) by up to 30 days if any party requests that the Tribunal ~~determine~~decide a dispute arising from requests to produce documents pursuant to Rule 37. The Tribunal shall decide such applications based on written submissions and without an in-person hearing.
- (4) Any schedule for submissions other than those referred to in paragraphs (1)-(3) shall run in parallel with the main schedule referred to in paragraph (1), unless the Tribunal ~~determines~~decides that there are special circumstances ~~that~~justifying the suspension of the main schedule. In fixing time limits for such submissions, the Tribunal shall take into account the expedited nature of the process.

Rule 8~~2~~1

Default in Expedited Arbitration

A Tribunal may grant a party in default a grace period not to exceed 30 days pursuant to Rule 4~~9~~8.

Rule 8~~3~~2

Procedural Schedule for Supplementary Decision and Rectification in Expedited Arbitration

The Tribunal shall issue a supplementary decision or rectification pursuant to Rule 6~~1~~0 within 30 days after the later of the last written or oral submission on the request.

178. One State proposed that the consent given pursuant to AR 75 should only apply to the arbitration, excluding post-award remedies. WP # 4 maintains the availability of EA for post-award remedies, as it assumes that the parties wish to expedite the full case and, in this regard, there is no reason to distinguish post-award remedies from the arbitration.

Rule 8~~4~~3

Procedural Schedule for Interpretation, Revision or Annulment in Expedited Arbitration

- (1) The following schedule for written submissions and the hearing shall apply to the procedure relating to an interpretation, revision or annulment of an Award rendered in an expedited arbitration:

- (a) the applicant shall file a memorial on interpretation, revision or annulment within 30 days after the first session;
 - (b) the other party shall file a counter-memorial on interpretation, revision or annulment within 30 days after the memorial;
 - (c) the memorial and counter-memorial referred to in paragraph (1)(a) and (b) shall be no longer than 100 pages ~~in length~~;
 - (d) a hearing shall be held within 45 days after the date for filing the counter-memorial;
 - (e) the parties shall file statements of their costs and written submissions on costs within 5 days after the last day of the hearing referred to in paragraph (1)(d); and
 - (f) the Tribunal or Committee shall issue the decision on interpretation, revision or annulment as soon as possible, and in any event no later than 60 days after the hearing referred to in paragraph (1)(d).
- (2) Any schedule for submissions other than those referred to in paragraph (1) shall run in parallel with the main schedule, unless the Tribunal or Committee ~~determines~~ decides that there are special circumstances ~~that justify~~ ing the suspension of the main schedule. In fixing time limits for such submissions, the Tribunal or Committee shall take into account the expedited nature of the process.

179. As noted above, one State proposed that the consent given pursuant to AR 75 should only apply to the arbitration, excluding post-award remedies. WP # 4 maintains the availability of EA for post-award remedies. It should be noted that the constitution of a Tribunal or *ad hoc* Committee in a post-award proceeding is unaffected in an EA, which only regulates the procedural schedule. If the parties wish to amend that schedule, they may do so pursuant to AR 11(2).

Rule 8~~5~~⁴

Resubmission of a Dispute after Annulment in Expedited Arbitration

The consent of the parties to expedited arbitration pursuant to Rule 7~~5~~⁴ shall not apply to resubmission of the dispute.

Rule 8~~6~~⁵

Opting Out of Expedited Arbitration

- (1) The parties may opt out of an expedited arbitration at any time by jointly notifying the Tribunal and Secretary-General in writing of their agreement.

- (2) Upon request of a party, the Tribunal may decide that an arbitration should no longer be expedited. In deciding the request, the Tribunal shall consider the complexity of the issues, the stage of the proceeding and all other relevant circumstances.
- (3) The Tribunal, or the Secretary-General if a Tribunal has not been constituted, shall determine the further procedure pursuant to Chapters I-XI and fix any time limit necessary for the conduct of the proceeding.

IV. CONCILIATION RULES FOR ICSID CONVENTION PROCEEDINGS (CONCILIATION RULES)

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IV. CONCILIATION RULES

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IV. CONCILIATION RULES FOR ICSID CONVENTION PROCEEDINGS (CONCILIATION RULES)

Introductory Note

The Conciliation Rules for ICSID Convention Proceedings (Conciliation Rules) were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(c) of the ICSID Convention.

The Conciliation Rules are supplemented by the Administrative and Financial Regulations of the Centre.

The Conciliation Rules apply from the date of registration of a Request for conciliation until termination of the conciliation.

Chapter I General Provisions

Rule 1 Application of Rules

- (1) These Rules shall apply to any conciliation proceeding conducted under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“Convention”) in accordance with Article 33 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 “Conciliation Rules” of the Centre.

Rule 2 Party and Party Representative

- (1) For the purposes of these Rules, “party” includes, where [required by](#) the context ~~so~~ **admits**, all parties acting as claimant or as respondent.
- (2) Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be [promptly](#) notified by that party to the Secretary-General (“representative(s)”).

180. CR 2 has been revised, reflecting changes to the corresponding provision in AR 2.

**Rule 3
Method of Filing**

- (1) A document to be filed in the proceeding shall be filed with the Secretary-General, who shall acknowledge its receipt.
- (2) Documents shall only be filed electronically, unless the Commission orders otherwise in special circumstances.

181. Two States commented on this provision. No modifications have been made for the reasons explained in AR 5.

**Rule 4
Supporting Documents**

- (1) Supporting documents shall be filed together with the written statement, request, observations or communication to which they relate.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Commission or a party may require a fuller extract or a complete version of the document.

**Rule 5
Routing of Documents**

The Secretary-General shall transmit a document filed in the proceeding to:

- (a) the other party, unless the parties communicate directly with each other;
- (b) the Commission, unless the parties communicate directly with the Commission on request of the Commission or by agreement of the parties; and
- (c) the Chairman of the Administrative Council (“Chair”) if applicable.

**Rule 6
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 Commission and the Secretary-General regarding the use of a language that is not an official language of the Centre. If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (2) ~~If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.~~ In a proceeding with one procedural language:
 - (a) documents shall be filed and meetings shall be conducted in that procedural language;
 - (b) documents in another language shall be accompanied by a translation into that procedural language; and
 - (c) oral statements in another language shall be interpreted into that procedural language.
- (3) ~~Requests, written statements, observations and communications shall be filed in a procedural language. In a proceeding with two procedural languages, the Commission may order a party to file such documents in both procedural languages.~~ In a proceeding with two procedural languages:
 - (a) documents may be filed and meetings may be conducted in either procedural language, unless the Commission orders that a document be filed in both procedural languages or that a meeting be conducted with interpretation into both procedural languages;
 - (b) documents in another language shall be accompanied by a translation into either procedural language, unless the Commission orders translation into both procedural languages;
 - (c) oral statements in another language shall be interpreted into either procedural language, unless the Commission orders interpretation into both procedural languages;
 - (d) the Commission and the Secretary-General may communicate in either procedural language; and
 - (e) all orders, decisions, recommendations and the Report shall be rendered in both procedural languages, unless the parties agree otherwise.
- (4) ~~Supporting documents 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 Commission may order a party to translate any supporting~~

~~document into both procedural languages.~~ Translation of only the relevant part of a supporting document is sufficient, ~~provided that~~ unless the Commission ~~may order~~ a party to provide a fuller or a complete translation. If the translation is disputed, the Commission may order a party to provide a certified translation.

~~(5) Any document from the Commission or the Secretary General shall be in a procedural language. In a proceeding with two procedural languages, the Commission or the Secretary General if applicable, shall issue orders, decisions, recommendations and the Report 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 Commission may order interpretation into the other procedural language.~~

182. CR 6 reflects changes made to the corresponding provisions in AR 7.

Rule 7 Calculation of Time Limits

Time limits referred to in these Rules shall be calculated from the day after the date on which the procedural step starting the period is taken, based on the time at the seat of the Centre. A time limit shall be satisfied if a procedural step is taken on the relevant date, or on the subsequent business day; if the date falls on a Saturday or Sunday, ~~on the subsequent business day~~.

183. CR 7 reflects changes made to the corresponding provision in AR 9.

Rule 8 Costs of the Proceeding

- (1) The fees and expenses of the Commission and the administrative charges and direct costs of the Centre incurred in connection with the proceeding shall be borne equally by the parties, in accordance with Article 61(1) of the Convention.
- (2) Each party shall bear any other costs it incurs in connection with the proceeding.

Rule 9 Confidentiality of the Conciliation

All information relating to the conciliation and all documents generated in or obtained

during the conciliation shall be confidential, unless:

- (a) the parties agree otherwise;
- (b) the information is to be published by the Centre pursuant to Administrative and Financial Regulation 26;
- (c) the information or document is independently available; or
- (d) disclosure is required by law.

184. CR 9 sets out the confidentiality principle first introduced in WP # 1. No changes are proposed to this provision in WP # 4.
185. One State inquired whether the principle of transparency should apply to conciliation. Confidentiality provisions are common in conciliation and mediation rules and assist parties to fully engage in the process with candor. Consistent with this, the current CR requires confidentiality of meetings for all participants (*see* CR 27). The transparency regime in international treaties such as the Mauritius Convention and other bilateral and multilateral treaties is only applicable to arbitration. In practice, the vast majority of parties to ICSID conciliations have kept information related to the conciliation process confidential. Should parties wish to disclose information beyond that provided for in (b)-(d), they may agree to do so.

Rule 10 **Use of Information in Other Proceedings**

Unless the parties to the dispute agree otherwise pursuant to Article 35 of the Convention, a party shall not rely on any of the following in other proceedings:

- (a) views expressed, statements, admissions, offers of settlement, or positions taken by the other party in the conciliation; or
- (b) the Report, order, decision or any recommendation made by the Commission in the conciliation.

Chapter II ~~Constitution~~ Establishment of the Commission

Rule 11 General Provisions, Number of Conciliators and Method of Constitution

- (1) The Commission shall be constituted without delay after registration of the Request for conciliation.
- (2) The number of conciliators and the method of their appointment must be determined before the Secretary-General can act on any appointment proposed by a party.
- (3) The parties shall endeavor to agree on a Sole Conciliator or any uneven number of conciliators and the method of their appointment. If the parties do not advise the Secretary-General of an agreement within 45 days after the date of registration, either party may inform the Secretary-General that the Commission shall be constituted in accordance with Article 29(2)(b) of the Convention.
- (4) References in these Rules to a Commission or a President of a Commission shall include a Sole Conciliator.

186. The heading of Chapter II has been revised, reflecting changes to the corresponding heading in Chapter II of the AR.

Rule 12 Notice of Third-Party Funding

- (1) A party shall file a written notice disclosing the name and address of any non-party from which the party, ~~its affiliate or its representative~~ directly or indirectly, has received funds for the conciliation through a donation or grant, or in return for remuneration dependent on the outcome of the ~~dispute~~ conciliation (“third-party funding”).
- (2) A non-party referred to in paragraph (1) does not include a representative of a party.
- (3) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request for conciliation, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.
- (4) The Secretary-General shall transmit a notice of third-party funding and any notification of changes to the information in such notice to the parties, and to any conciliator proposed for appointment or appointed in a proceeding for purposes of completing the conciliator declaration required by Rule 16(3)(b).

[\(5\) The Commission may request further information regarding the funding agreement and the non-party providing funding pursuant to Rule 24\(4\)\(a\).](#)

187. CR 12 has been revised, reflecting changes to the corresponding provisions in AR 14, and modified to account for the specific powers of the Commission prescribed in CR 24.

Rule 13

Appointment of Conciliators to a Commission Constituted in Accordance with Article 29(2)(b) of the Convention

If the Commission is to be constituted in accordance with Article 29(2)(b) of the Convention, each party shall appoint a conciliator and the parties shall jointly appoint the President of the Commission.

Rule 14

Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of [the](#) Sole Conciliator or any uneven number of conciliators.

Rule 15

Appointment of Conciliators by the Chair in Accordance with Article 30 of the Convention

- (1) If a Commission 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 Chair appoint the conciliator(s) who have not yet been appointed pursuant to Article 30 of the Convention.
- (2) The Chair shall appoint the President of the Commission after appointing any members who have not yet been appointed.
- (3) The Chair shall consult with the parties as far as possible before appointing a conciliator and shall use best efforts to appoint any conciliator(s) within 30 days after receipt of the request to appoint.

Rule 16

Acceptance of Appointment

- (1) A party appointing a conciliator shall notify the Secretary-General of the appointment and provide the appointee's name, nationality~~(ies)~~ and contact information.
- (2) Upon receipt of a notification pursuant to paragraph (1), ~~t~~The Secretary-General shall request an acceptance from ~~each~~the appointee ~~as soon as the appointee is selected. The Secretary-General~~and shall ~~also~~ transmit to ~~each~~the appointee the information received from the parties relevant to completion of the declaration referred to in paragraph (3)(b).
- (3) Within 20 days after receipt of the request for acceptance of an appointment, ~~the~~an appointee shall:
 - (a) accept the appointment; and
 - (b) provide a signed declaration in the form published by the Centre, addressing matters including the conciliator's independence, impartiality, availability and commitment to maintain the confidentiality of the proceeding.
- (4) The Secretary-General shall notify the parties of the acceptance of appointment by each conciliator and ~~provide~~transmit the signed declaration to them.
- (5) The Secretary-General shall notify the parties if a conciliator 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 conciliator in accordance with the method followed for the previous appointment.
- (6) Each conciliator shall have a continuing obligation to promptly disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).
- (7) Unless the parties and the conciliator agree otherwise, a conciliator may not act as arbitrator, counsel, expert, judge, mediator, witness or in any other capacity in any ~~other~~ proceeding relating to the dispute that is the subject of the conciliation.

188. CR 16 has been revised, reflecting changes to the corresponding provision in AR 19.

Rule 17

Replacement of Conciliators Prior to Constitution of the Commission

- (1) At any time before the Commission is constituted:

- (a) a conciliator may withdraw an acceptance;
 - (b) a party may replace a conciliator whom it appointed; or
 - (c) the parties may agree to replace any conciliator.
- (2) A replacement conciliator shall be appointed as soon as possible, in accordance with the method by which the withdrawing or replaced conciliator was appointed.

Rule 18

Constitution of the Commission

- (1) The Commission shall be deemed to be constituted on the date the Secretary-General notifies the parties that each conciliator has accepted the appointment.
- (2) As soon as the Commission is constituted, the Secretary-General shall transmit the Request for conciliation, the supporting documents, the notice of registration and communications with the parties to each conciliator.

Chapter III

Disqualification of Conciliators and Vacancies

Rule 19

Proposal for Disqualification of Conciliators

- (1) A party may file a proposal to disqualify one or more conciliators (“proposal”) in accordance with the following procedure:
 - (a) the proposal shall be filed after the constitution of the Commission and within 21 days after the later of:
 - (i) the constitution of the Commission; or
 - (ii) the date on which the party proposing the disqualification first knew or first should have known of the facts upon which the proposal is based;
 - (b) the proposal shall include the grounds on which ~~the proposal~~ [it](#) is based, a statement of the relevant facts, law and arguments, and any supporting documents;
 - (c) the other party shall file its response and supporting documents within 21 days after receipt of the proposal;

- (d) the conciliator to whom the proposal relates may file a statement that is limited to factual information relevant to the proposal. The statement shall be filed within five days after receipt of the response referred to in paragraph (1)(c); and
 - (e) each party may file a final written submission on the proposal within seven days after the earlier of receipt of the statement or expiry of the time limit referred to in paragraph (1)(d).
- (2) The proceeding shall be suspended upon the filing of the proposal until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding ~~in whole or in part~~.

189. CR 19 has been revised, reflecting changes to the corresponding provision in AR 22.

Rule 20

Decision on the Proposal for Disqualification

- (1) The decision on a proposal shall be made by the conciliators not subject to the proposal or by the Chair in accordance with Article 58 of the Convention.
- (2) For the purposes of Article 58 of the Convention:
 - (a) if the conciliators not subject to a proposal are unable to decide the proposal for any reason, they shall notify the Secretary-General and they 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 Chair as if they were a proposal to disqualify a majority of the Commission.
- (3) The conciliators not subject to the proposal and the Chair shall use best efforts to decide any proposal within 30 days after the later of the expiry of the time limit referred to in Rule 19(1)(e) or the notice in Rule 20(2)(a).

Rule 21

Incapacity or Failure to Perform Duties

If a conciliator becomes incapacitated or fails to perform the duties required of a conciliator, the procedure in Rules 19 and 20 shall apply.

Rule 22

Resignation

- (1) A conciliator may resign by notifying the Secretary-General and the other members of the Commission and providing reasons for the resignation.
- (2) If the conciliator was appointed by a party, the other members of the Commission shall promptly notify the Secretary-General whether they consent to the conciliator's resignation for the purposes of Rule 23(3)(a).

Rule 23

Vacancy on the Commission

- (1) The Secretary-General shall notify the parties of any vacancy on the Commission.
- (2) The proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.
- (3) A vacancy on the Commission shall be filled by the method used to make the original appointment, except that the Chair shall fill the following from the Panel of Conciliators:
 - (a) a vacancy caused by the resignation of a party-appointed conciliator without the consent of the other members of the Commission; 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 Commission has been reconstituted, the conciliation shall continue from the point it had reached at the time the vacancy was notified.

Chapter IV

Conduct of the Conciliation

Rule 24

Functions of the Commission

- (1) The Commission shall clarify the issues in dispute and assist the parties in reaching a mutually acceptable resolution of all or part of the dispute.

- (2) In order to bring about agreement between the parties, the Commission may, at any stage of the proceeding, after consulting with the parties, recommend:
 - (a) specific terms of settlement to the parties; or
 - (b) that the parties refrain from taking specific action that might aggravate the dispute while the conciliation is ongoing.
- (3) Recommendations may be made orally or in writing. Either party may request that the Commission provide reasons for any recommendation. The Commission may invite each party to provide observations concerning any recommendation made.
- (4) At any stage of the proceeding, the Commission may:
 - (a) request explanations, documents or other information from either party or other persons;
 - (b) communicate with the parties jointly or separately; or
 - (c) visit any place connected with the dispute or conduct inquiries with the agreement and participation of the parties.

190. One State suggested a modification to CR 24(4)(c) to clarify that site visits and inquiries both require party agreement and participation. That is the intent of CR 24(4)(c); no textual modification is considered necessary.

Rule 25

General Duties of the Commission

- (1) The Commission shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.
- (2) The Commission shall treat the parties equally and provide each party with a reasonable opportunity to appear and participate in the proceeding.

Rule 26

Orders, Decisions and Agreements

- (1) The Commission shall make the orders and decisions required for the conduct of the conciliation.
- (2) The Commission shall make decisions by a majority of the votes of all its members. Abstentions shall count as a negative vote.

- (3) Orders and decisions may be made by any appropriate means of communication and may be signed by the President on behalf of the Commission.
- (4) The Commission shall apply any agreement of the parties on procedural matters to the extent that it does not conflict with the Convention and the Administrative and Financial Regulations.

Rule 27 Quorum

The participation of a majority of the members of the Commission by any appropriate means of communication shall be required at the first session, meetings and deliberations, unless the parties agree otherwise.

Rule 28 Deliberations

- (1) The deliberations of the Commission shall take place in private and remain confidential.
- (2) The Commission may deliberate at any place and by any means it considers appropriate.
- (3) ~~Only members of the~~ Commission may be assisted by the Secretary of the Commission shall take part in at its deliberations. No other person shall assist the Commission at its deliberations, ~~be admitted~~ unless the Commission decides otherwise and notifies the parties.

191. CR 28 has been revised, reflecting changes to the corresponding provision in AR 34.

Rule 29 Cooperation of the Parties

- (1) The parties shall cooperate with the Commission and with one another, and shall conduct the conciliation in good faith and in an expeditious and cost-effective manner.
- (2) The parties shall provide all relevant explanations, documents or other information. They shall facilitate visits to any place connected with the dispute in accordance

[with Rule 24\(4\)\(c\)](#) and [use best efforts to facilitate](#) the participation of other persons as requested by the Commission.

- (3) The parties shall comply with any time limit agreed upon or fixed by the Commission.
- (4) The parties shall give their most serious consideration to the Commission's recommendations pursuant to Article 34(1) of the Convention.

192. One State suggested adding a reference in CR 29(2) to clarify that the parties' duty to facilitate site visits applies only to visits pursuant to CR 24(4)(c), which are conducted with the agreement and participation of the parties. In response to another comment, CR 29 now clarifies that the parties shall use their best efforts to facilitate the participation of other persons, consistent with the current CR which require parties to use "the means at their disposal".

Rule 30 **Written Statements**

- (1) Each party shall simultaneously file a brief, initial written statement describing the issues in dispute and its views on these issues 30 days after the constitution of the Commission, or such longer time as the Commission may fix in consultation with the parties, but in any event before the first session.
- (2) Either party may file further written statements at any stage of the conciliation within the time limits fixed by the Commission.

Rule 31 **First Session**

- (1) The Commission shall hold a first session with the parties to address the procedure, including the matters listed in paragraph (4).
- (2) The first session may be held in person or remotely, by any means that the Commission deems appropriate. The agenda, method and date of the first session shall be determined by the Commission after consulting with the parties.
- (3) The first session shall be held within 60 days after the ~~Commission's~~ constitution [of the Commission](#) or such other period as the parties may agree.
- (4) Before the first session, the Commission shall invite the parties' views on procedural matters, including:

- (a) the applicable conciliation rules;
 - (b) the procedural language(s), translation and interpretation;
 - (c) the method of filing and routing of documents;
 - (d) a schedule for further written statements and meetings;
 - (e) the place and format of meetings between the Commission and the parties;
 - (f) the manner of recording or keeping minutes of meetings, if any;
 - (g) the treatment of confidential or protected information;
 - (h) the publication of documents;
 - (i) any agreement between the parties:
 - (i) concerning the treatment of information disclosed by one party to the Commission by way of separate communication pursuant to Rule 24 (4)(b);
 - (ii) not to initiate or pursue ~~during the conciliation~~ any other proceeding in respect of the dispute [during the conciliation](#);
 - (iii) concerning the application of prescription or limitation periods;
 - (iv) concerning the disclosure of any settlement agreement resulting from the conciliation; and
 - (v) pursuant to Article 35 of the Convention; and
 - (j) any other procedural matter raised by either party or the Commission.
- (5) At the first session or within any other period determined by the Commission, each party shall:
- (a) identify a representative who is authorized to settle the dispute on its behalf; and
 - (b) describe the process that would be followed to implement a settlement.
- (6) The Commission shall issue summary minutes recording the parties' agreements and the Commission's decisions on the procedure within 15 days after the later of the first session or the last written statement on procedural matters addressed at the first session.

Rule 32 Meetings

- (1) The Commission may meet with the parties jointly or separately.
- (2) The Commission shall determine the date, time and method of holding meetings, after consulting with the parties.
- (3) If a meeting is to be held in person, it may be held at any place agreed to by the parties after consulting with the Commission and the Secretary-General. If the parties do not agree on the place of a meeting, it shall be held at the seat of the Centre pursuant to Article 62 of the Convention.
- (4) Meetings shall remain confidential. The parties may agree to observation of meetings by persons in addition to the parties and the Commission.

Rule 33 Preliminary Objections

- (1) A party may file a preliminary objection that the dispute is not within the jurisdiction of the Centre or for other reasons is not within the competence of the Commission (“preliminary objection”).
- (2) A party shall notify the Commission and the other party of its intent to file a preliminary objection as soon as possible. The objection shall be made no later than the date of the initial written statement referred to in Rule 30(1), unless the facts on which the objection is based are unknown to the party at the relevant time.
- (3) The Commission may address a preliminary objection separately or with other issues in dispute. If the Commission decides to address the objection separately, it may suspend the conciliation on the other issues in dispute to the extent necessary to address the preliminary objection.
- (4) The Commission may at any time on its own initiative consider whether the dispute is within the jurisdiction of the Centre or within its own competence.
- (5) If the Commission decides that the dispute is not within the jurisdiction of the Centre or for other reasons is not within its competence, it shall close the proceeding and issue a Report to that effect, in which it shall state its reasons. Otherwise, the Commission shall issue a decision on the objection with brief reasons and fix any time limit necessary for the further conduct of the conciliation.

Chapter V Termination of the Conciliation

Rule 34 Discontinuance Prior to the Constitution of the Commission

- (1) If the parties notify the Secretary-General prior to the constitution of the Commission that they have agreed to discontinue the proceeding, the Secretary-General shall issue an order taking note of the discontinuance.
- (2) If a party requests the discontinuance of the proceeding prior to the constitution of the Commission, the Secretary-General 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 Secretary-General 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.
- (3) If, prior to the constitution of the Commission, the parties fail to take any steps in the proceeding for more than 150 consecutive days, the Secretary-General shall notify them of the time elapsed since the last step taken in the proceeding. If the parties fail to take a step within 30 days after the notice, they shall be deemed to have discontinued the proceeding and the Secretary-General shall issue an order taking note of the discontinuance. If either party takes a step within 30 days after the Secretary-General's notice, the proceeding shall continue.

193. One State suggested that the notice requirement in CR 34(3) be deleted. A party's failure to take steps prior to the constitution of the Commission does not prevent the conciliation from advancing as long as the other party acts to ensure the continuation of the proceeding.

Rule 35 Report Noting the Parties' Agreement

- (1) If the parties reach agreement on some or all of the issues in dispute, the Commission shall close the proceedings and issue its Report noting the issues in dispute and recording the issues upon which the parties have agreed.
- (2) The parties may provide the Commission with the complete and signed text of their settlement agreement and may request that the Commission embody such settlement in the Report.

194. One State suggested clarifying that CR 35(2) requires a joint request from the parties. This is the intent of the provision; no modification is suggested.

Rule 36

Report Noting the Failure of the Parties to Reach Agreement

At any stage of the proceeding, and after notice to the parties, the Commission shall close the proceedings and issue its Report noting the issues in dispute and recording that the parties have not reached agreement on the issues in dispute during the conciliation if:

- (a) it appears to the Commission that there is no likelihood of agreement between the parties; or
- (b) the parties advise the Commission that they have agreed to discontinue the conciliation.

Rule 37

Report Recording the Failure of a Party to Appear or Participate

If one party fails to appear or participate in the proceeding, the Commission shall, after notice to the parties, close the proceedings and issue its Report noting the submission of the dispute to conciliation and recording the failure of that party to appear or participate.

Rule 38

The Report

- (1) The Report shall be in writing and shall contain, in addition to the information specified in Rules 35-37:
 - (a) a precise designation of each party;
 - (b) the names of the representatives of the parties;
 - (c) a statement that the Commission was established under the Convention and a description of the method of its constitution;
 - (d) the name of each member of the Commission and of the appointing authority of each;
 - (e) the dates and place(s) of the first session and the meetings of the Commission with the parties;
 - (f) a brief summary of the proceeding;

- (g) the complete and signed text of the parties' settlement agreement if requested by the parties pursuant to Rule 35(2);
 - (h) a statement of the costs of the proceeding, including the fees and expenses of each member of the Commission and the costs to be paid by each party pursuant to Rule 8; and
 - (i) any agreement of the parties pursuant to Article 35 of the Convention.
- (2) The Report shall be signed by the members of the Commission. It may be signed by electronic means if the parties agree. If a member does not sign the Report, such fact shall be recorded.

Rule 39

Issuance of the Report

- (1) Once the Report has been signed by the members of the Commission, the Secretary-General shall promptly:
- (a) dispatch a certified copy of the Report to each party, indicating the date of dispatch on the Report; and
 - (b) deposit the Report in the archives of the Centre.
- (2) The Secretary-General shall provide additional certified copies of the Report to a party upon request.

V. THE ADDITIONAL FACILITY RULES

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V. THE ADDITIONAL FACILITY RULES

Introductory Note

Additional Facility proceedings are governed by the Additional Facility Rules, the Additional Facility Administrative and Financial Regulations (Annex A), and the relevant (Additional Facility) Arbitration (Annex B) or Conciliation (Annex C) Rules.

Article 1 Definitions

- (1) “Secretariat” means the Secretariat of the Centre.
- (2) “Centre” means the International Centre for Settlement of Investment Disputes established pursuant to Article 1 of the Convention.
- (3) “Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States which entered into force on October 14, 1966.
- (4) “Regional Economic Integration Organization” or “REIO” means an organization constituted by States to which they have transferred competence in respect of matters governed by these Rules, including the authority to make decisions binding on them in respect of those matters.
- (5) “National of another State” means, unless otherwise agreed:
 - (a) a natural or juridical person that, on the date of consent to the proceeding, is a national of a State other than the State party to the dispute, or other than ~~of~~ any constituent State of the REIO party to the dispute; or
 - (b) a juridical person that, on the date of consent to the proceeding, is a national of the State party to the dispute or of any constituent State of the REIO party to the dispute, and which the parties agree not to treat as a national of that State for the purpose of these Rules.
- (6) “Request” means a request for arbitration or conciliation.
- (7) “Contracting State” means a State for which the Convention is in force.

195. Changes made to Article 1(5)(a) clarify the text.

196. One State suggested that the Article 1 definitions should be in alphabetical order. The definitions are listed in order of appearance, consistent with the approach adopted in the Convention, the current AF Rules, the MR and FFR. This allows for a consistent order in the three language versions.
197. Another State suggested that the definition of REIO be re-examined, and that the International Law Commission's 2011 definition of an REIO be adopted instead. The definition contained in Article 1(4) is the most widely accepted formulation (*see* [WP # 1, ¶ 934](#) for the list of other international instruments in which this definition is used). The definition has also received support from other States and relevant REIOs during the rules amendment process. (*see* [WP # 2, ¶ 561](#) and [WP # 3, ¶¶ 204-210](#)).

Article 2

Additional Facility Proceedings

- (1) The Secretariat is authorized to administer arbitration and conciliation proceedings for the settlement of legal disputes arising out of an investment between a State or an REIO on the one hand, and a national of another State on the other hand, which the parties consent in writing to submit to the Centre if:
 - (a) none of the parties to the dispute is a Contracting State or a national of a Contracting State;
 - (b) either the State party to the dispute, or the State whose national is a party to the dispute, but not both, is a Contracting State; or
 - (c) an REIO is a party to the dispute.
- (2) Reference to a State or an REIO includes a constituent subdivision of the State, or an agency of the State or the REIO. The State or the REIO must approve the consent of the constituent subdivision or agency which is a party to the proceeding pursuant to paragraph (1), unless the State or the REIO concerned notifies the Centre that no such approval is required.
- (3) Arbitration and conciliation proceedings under these Rules shall be conducted in accordance with the (Additional Facility) Arbitration Rules (Annex B) or the (Additional Facility) Conciliation Rules (Annex C) respectively. The (Additional Facility) Administrative and Financial Regulations (Annex A) shall apply to such proceedings.

Article 3

Convention Not Applicable

The provisions of the Convention do not apply to the conduct of Additional Facility proceedings.

Article 4

Final Provisions

- (1) The applicable Rules are those in force on the date of filing of the Request, unless the parties agree otherwise.
- (2) These Rules are published in the official languages of the Centre, English, French and Spanish. The texts of these Rules in each official language are equally authentic.
- (3) These Rules may be cited as the “Additional Facility Rules” of the Centre.

**VI. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR ADDITIONAL
FACILITY PROCEEDINGS (ANNEX A)
((ADDITIONAL FACILITY) ADMINISTRATIVE AND FINANCIAL REGULATIONS)**

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**VI. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR ADDITIONAL
FACILITY PROCEEDINGS (ANNEX A)
((ADDITIONAL FACILITY) ADMINISTRATIVE AND FINANCIAL REGULATIONS)**

198. Changes made in the (AF)AFR reflect changes in the corresponding AFR applicable to ICSID Convention proceedings.

Introductory Note

The (Additional Facility) Administrative and Financial Regulations apply to Additional Facility Arbitration and Conciliation proceedings and were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

**Chapter I
General Provisions**

**Regulation 1
Application of these Regulations**

- (1) These Regulations apply to arbitration and conciliation proceedings which the Secretariat of the Centre is authorized to administer pursuant to Article 2 of the Additional Facility Rules.
- (2) The applicable Regulations are those in force on the date of filing the Request for arbitration or conciliation pursuant to the Additional Facility Rules.
- (3) These Regulations may be referred to as the “(Additional Facility) Administrative and Financial Regulations” of the Centre (“Annex A” to the Additional Facility Rules).

**Chapter II
General Functions of the Secretariat**

**Regulation 2
Secretary**

The Secretary-General of the Centre shall appoint a Secretary for each Commission and Tribunal. The Secretary may be drawn from the Secretariat and shall be considered a member of its staff while serving as a Secretary. The Secretary shall:

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the (Additional Facility) Arbitration and Conciliation Rules applicable to individual proceedings and delegated to the Secretary; and
- (b) assist the parties and the Commission or Tribunal with all aspects of the proceeding, including the expeditious and cost-effective conduct of the proceeding.

Regulation 3 The Registers

The Secretary-General shall maintain and publish a Register for each case containing all significant data concerning the institution, conduct and disposition of the proceeding, including the economic sector involved, the names of the parties and their representatives, and the method of constitution and membership of each Commission or Tribunal.

Regulation 4 Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
 - (a) all requests for arbitration, conciliation, supplementary decision, rectification or interpretation;
 - (b) all written submissions, written statements, observations, supporting documents and communications filed in a proceeding;
 - (c) the minutes, recordings and transcripts of hearings, meetings or sessions in a proceeding; and
 - (d) any order, decision, recommendation, Report or Award by a Commission or Tribunal.
- (2) Subject to the applicable rules and the agreement of the parties to the proceedings, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c) and (d) available to the parties. Certified copies of the documents referred to in paragraph (1)(d) shall reflect any supplementary decision, rectification or interpretation.

Regulation 5

Certificates of Official Travel

The Secretary-General may issue certificates of official travel to members of Commissions or Tribunals, to persons assisting them, to members of the Secretariat, and to the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in proceedings, indicating that they are traveling in connection with a proceeding pursuant to the ICSID Additional Facility Rules.

Chapter III

Financial Provisions

Regulation 6

Fees, Allowances and Charges

- (1) Each member of a Commission or Tribunal shall receive:
- (a) a fee for each hour of work performed in connection with the proceeding;
 - (b) when not travelling to attend a hearing, meeting or session, reimbursement of expenses reasonably incurred for the sole purpose of the proceeding; and
 - (c) when required to travel to attend a hearing, meeting or session held away from the member's place of residence:
 - (i) reimbursement of the cost of ground transportation between the points of departure and arrival;
 - (ii) reimbursement of the cost of air and ground transportation to and from the city in which the hearing, meeting or session is held; and
 - (iii) a *per diem* allowance for each day the member spends away from their place of residence.
- (2) The Secretary-General shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and (c). Any request by a member for a higher amount shall be made through the Secretary-General, and not directly to the parties. Such a request must be made before the constitution of the Commission or Tribunal and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish an annual administrative charge payable by the parties to the Centre.

- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
- (a) members of Commissions and Tribunals, and any assistants approved by the parties;
 - (b) witnesses and experts called by a Commission or Tribunal who have not been presented by a party;
 - (c) service providers that the Centre engages for a proceeding; and
 - (d) the host of any hearing, meeting or session held outside an ICSID facility.
- (5) The Centre shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or reimbursements of the members of any Commission or Tribunal, unless the parties have made sufficient payments to defray the costs of the proceeding.

Regulation 7 **Payments to the Centre**

- (1) To enable the Centre to pay the costs referred to in Regulation 6, the parties shall make payments to the Centre as follows:
- (a) upon registration of a Request for arbitration or conciliation, the Secretary-General shall request the claimant(s) to make a payment to defray the estimated costs of the proceeding through the first session of the Commission or Tribunal, which shall be considered partial payment by the claimant(s) of the payment referred to in paragraph (1)(b);
 - (b) upon constitution of a Commission or Tribunal, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the proceeding; and
 - (c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the proceeding.
- (2) In conciliation proceedings, each party shall pay one half of the payments referred to in paragraph (1)(b) and (c), unless the parties agree on a different division. In arbitration proceedings, each party shall pay one half of the payments referred to in paragraph (1)(b) and (c), unless a different division is agreed to by the parties or ordered by the Tribunal. Payment of these sums is without prejudice to the Tribunal's final decision on costs pursuant to Rule 6970(1)(j) of the (Additional Facility) Arbitration Rules.

- (3) The Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.
- (4) This Regulation shall apply to requests for a supplementary decision on or rectification of an Award, and to ~~an~~ application^s for interpretation of an Award.

Regulation 8

Consequences of Default in Payment

- (1) The payments referred to in Regulation 7 shall be payable on the date of the request from the Secretary-General.
- (2) The following procedure shall apply in the event of non-payment:
 - (a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;
 - (b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the proceeding until payment is made, after giving notice to the parties and to the Commission or Tribunal if constituted; and
 - (c) if any proceeding is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the proceeding, after giving notice to the parties and to the Commission or Tribunal if constituted.

Regulation 9

Special Services

- (1) The Centre may perform any special services related to disputes if the requestor deposits in advance an amount sufficient to defray the charge for such services.
- (2) Charges for special services shall normally be based on a schedule of fees published by the Secretary-General.

Regulation 10

Fee for Lodging Requests

The party or parties (if a request is filed jointly) wishing to institute an arbitration or conciliation proceeding, or requesting a supplementary decision, rectification or interpretation of an Award, shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 11

Administration of Proceedings

The ICSID Secretariat is the only ~~body~~^{entity} authorized to administer proceedings conducted pursuant to the Additional Facility Rules.

199. The change in (AF) AFR 11 corresponds to the change in AFR 22.

Chapter IV

Official Languages and Limitation of Liability

Regulation 12

Languages of Regulations

- (1) These Regulations are published in the official languages of the Centre, English, French and Spanish.
- (2) The texts of these Regulations in each official language are equally authentic.
- ~~(3) Unless otherwise stated or required by the context of the provision, t~~
The singular form of a words ~~in these Regulations and in the (Additional Facility) Arbitration and Conciliation Rules and Annexes A, B, and C,~~ includes the plural form of that word; ~~unless otherwise stated or required by the context of the provision.~~
- ~~(3)~~(4) Where required by the context, the masculine gender of a word in the French and Spanish versions of the Additional Facility Rules and Annexes A, B and C, shall be used as a gender-neutral form and shall be understood as referring to the masculine or feminine gender.

200. The change in (AF)AFR 12 corresponds to the changes in AFR 32.

Regulation 13
Prohibition Against Testimony and Limitation of Liability

- (1) Unless required by applicable law or unless the parties and all the members of the Commission or Tribunal agree otherwise in writing, no member of the Commission or Tribunal shall give testimony in any judicial, arbitral or similar proceeding concerning any aspect of the arbitration or conciliation proceeding.
- (2) Except to the extent such limitation of liability is prohibited by applicable law, no member of the Commission or Tribunal shall be liable for any act or omission in connection with the exercise of their functions in the arbitration or conciliation proceeding, unless there is fraudulent or willful misconduct.

**VII. THE ARBITRATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
(ANNEX B)
((ADDITIONAL FACILITY) ARBITRATION RULES)**

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**VII. THE ARBITRATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
(ANNEX B)
((ADDITIONAL FACILITY) ARBITRATION RULES)**

201. Any changes in WP # 4 explained below are specific to (AF)AR. Other changes, made without explanation, reflect changes to the AR or IR and are explained in the AR or IR chapters of WP # 4 under the corresponding provisions.

Introductory Note

The Arbitration Rules for Additional Facility Proceedings ((Additional Facility) Arbitration Rules) were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

The (Additional Facility) Arbitration Rules are supplemented by the (Additional Facility) Administrative and Financial Regulations in Annex A.

The (Additional Facility) Arbitration Rules apply from the submission of a Request for arbitration until an Award is rendered and to any proceedings arising from a request for a supplementary decision on, rectification of, or interpretation of, an Award.

**Chapter I
Scope**

**Rule 1
Application of Rules**

- (1) These Rules shall apply to any arbitration proceeding conducted pursuant to the Additional Facility Rules.
- (2) The parties may agree to modify the application of any of these Rules other than Rules 1-9.
- (3) If any of these Rules, or any agreement pursuant to paragraph (2), conflicts with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
- (4) The applicable (Additional Facility) Arbitration Rules are those in force on the date of filing the Request for arbitration, unless the parties agree otherwise.
- (5) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language.

- (6) These Rules may be cited as the “(Additional Facility) Arbitration Rules” of the Centre.

Chapter II Institution of Proceedings

Rule 2 The Request

- (1) Any party wishing to institute arbitration proceedings pursuant to the Additional Facility Rules shall file a Request for arbitration together with the required supporting documents (“Request”) with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the dispute.

Rule 3 Contents of the Request

- (1) The Request shall:
- (a) be in English, French or Spanish;
 - (b) identify each party to the dispute and provide their contact information, including electronic mail address, street address and telephone number;
 - (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) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request and attach the authorizations.
- (2) With regard to Article 2(1)(a) of the Additional Facility Rules, the Request shall include:
- (a) a description of the investment, a summary of the relevant facts and claims, the request for relief, including an estimate of the amount of any damages sought, and an indication that there is a legal dispute between the parties arising out of the investment;

- (b) with respect to each party's consent to submit the dispute to arbitration pursuant to the Additional Facility Rules:
- (i) the instrument(s) in which each party's consent is recorded;
 - (ii) the date of entry into force of the instrument(s) on which consent is based, together with supporting documents demonstrating that date;
 - (iii) the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or, if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre; and
 - (iv) an indication that the requesting party has complied with any conditions in the instrument of consent for submission of the dispute;
- (c) if a party is a natural person:
- (i) information concerning that person's nationality on the date of consent, together with supporting documents demonstrating such nationality; and
 - (ii) a statement that the person is a national of a State other than the State party to the dispute or ~~of other than~~ any constituent State of the REIO party to the dispute on the date of consent;
- (d) if a party is a juridical person:
- (i) information concerning and supporting documents demonstrating that party's nationality on the date of consent, ~~together with supporting documents demonstrating such nationality~~; and
 - (ii) if that party had the nationality of the State party to the dispute or of any constituent State of the REIO party to the dispute on the date of consent, information ~~identifying concerning and supporting documents demonstrating~~ the agreement of the parties to treat the juridical person as a national of another State pursuant to Article 1(5)(b) of the Additional Facility Rules, ~~together with supporting documents demonstrating such agreement~~;
- (e) if a party is a constituent subdivision of a State or an agency of a State or of an REIO, supporting documents demonstrating the approval of consent of the State or the REIO, unless the State or the REIO has notified the Centre that no such approval is required.

Rule 4

Recommended Additional Information

It is recommended that the Request ~~also contain any procedural proposals or agreements reached by the parties, including with respect to:~~

- (a) contain any procedural proposals or agreements reached by the parties, including with respect to the number and method of appointment of arbitrators; the seat of arbitration, the law applicable to the dispute and the procedural language(s); and
- (b) ~~the seat of arbitration;~~include the names of the persons and entities that own or control a requesting party which is a juridical person.
- (c) ~~the law applicable to the dispute; and~~
- (d) ~~the procedural language(s).~~

Rule 5

Filing of the Request and Supporting Documents

- (1) The Request shall be filed electronically. The Secretary-General may require the Request to be filed in an alternative format if necessary.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Secretary-General may require a fuller extract or a complete version of the document.
- (3) The Secretary-General may require a certified copy of a supporting document.
- (4) Any document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or a complete translation of the document.

Rule 6

Receipt of the Request and Routing of Written Communications

The Secretary-General shall:

- (a) promptly acknowledge receipt of the Request to the requesting party;

- (b) transmit the Request to the other party upon receipt of the lodging fee; and
- (c) act as the official channel of written communications between the parties.

Rule 7

Review and Registration of the Request

- (1) Upon receipt of the Request and lodging fee, the Secretary-General shall register the Request if it appears on the basis of the information provided that the Request is not manifestly outside the scope of Article 2(1) of the Additional Facility Rules.
- (2) The Secretary-General shall promptly notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.

Rule 8

Notice of Registration

The notice of registration of the Request shall:

- (a) record that the Request is registered and indicate the date of registration;
- (b) confirm that all correspondence to the parties in connection with the proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Centre;
- (c) invite the parties to inform the Secretary-General of their agreement regarding the number and method of appointment of arbitrators, unless such information has already been provided, and to constitute a Tribunal without delay;
- (d) remind the parties that registration of the Request is without prejudice to the powers and functions of the Tribunal in regard to jurisdiction, competence of the Tribunal and the merits; and
- (e) remind the parties to make the disclosure required by Rule 23.

Rule 9

Withdrawal of the Request

At any time before registration, a requesting party may notify the Secretary-General in writing of the withdrawal of the Request or, if there is more than one requesting party, that it is withdrawing from the Request. The Secretary-General shall promptly notify the parties of the withdrawal, unless the Request has not yet been transmitted pursuant to Rule 6(b).

Chapter III

General Provisions

Rule ~~11~~¹⁰

Party and Party Representative

- (1) For the purposes of these Rules, “party” includes, where required by the context ~~so~~ **admits**, all parties acting as claimant or as respondent.
- (2) Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be promptly notified by that party to the Secretary-General (“representative(s)”).

Rule ~~10~~¹¹

General Duties

- (1) The Tribunal and the parties shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.
- (2) The Tribunal shall treat the parties equally and provide each party with a reasonable opportunity to present its case.

Rule 12

Method of Filing

- (1) A document to be filed in the proceeding shall be filed with the Secretary-General, who shall acknowledge its receipt.

- (2) Documents shall only be filed electronically, unless the Tribunal orders otherwise in special circumstances.

Rule 13

Supporting Documents

- (1) Supporting documents, including witness statements, expert reports, exhibits and legal authorities, shall be filed together with the request, written submission, observations or communication to which they relate.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Tribunal or a party may require a fuller extract or a complete version of the document.
- (3) If the authenticity of a supporting document is disputed, the Tribunal may order a party to provide a certified copy or to make the original available for examination.

Rule 14

Routing of Documents

Following the registration of the Request pursuant to Rule 7, the Secretary-General shall transmit a document filed in the proceeding to:

- (a) the other party, unless the parties communicate directly with each other; and
- (b) the Tribunal, unless the parties communicate directly with the Tribunal on request of the Tribunal or by agreement of the parties.

Rule 15

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 Secretary-General regarding the use of a language that is not an official language of the Centre. If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (2) ~~If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.~~ In a proceeding with one procedural language:

- (a) documents shall be filed and hearings shall be conducted in that procedural language;
 - (b) documents in another language shall be accompanied by a translation into that procedural language; and
 - (c) testimony in another language shall be interpreted into that procedural language.
- (3) ~~Requests, written submissions, observations and communications shall be filed in a procedural language. In a proceeding with two procedural languages, the Tribunal may order a party to file such documents in both procedural languages. In a proceeding with two procedural languages:~~
 - (a) documents may be filed and hearings may be conducted in either procedural language, unless the Tribunal orders that a document be filed in both procedural languages or that a hearing be conducted with interpretation into both procedural languages;
 - (b) documents in another language shall be accompanied by a translation into either procedural language, unless the Tribunal orders translation into both procedural languages;
 - (c) testimony in another language shall be interpreted into either procedural language, unless the Tribunal orders interpretation into both procedural languages;
 - (d) the Tribunal and the Secretary-General may communicate in either procedural language; and
 - (e) all orders, decisions and the Award shall be rendered in both procedural languages, unless the parties agree otherwise.
- (4) ~~Supporting documents 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 order a party to translate any supporting document into both procedural languages.~~ Translation of only the relevant part of a supporting document is sufficient, ~~provided that~~ unless the Tribunal ~~may order~~s a party to provide a fuller or a complete translation. If the translation is disputed, the Tribunal may order a party to provide a certified translation.
- ~~(5) Any document from the Tribunal or the Secretary-General shall be in a procedural language. In a proceeding with two procedural languages, the Tribunal, or the Secretary-General if applicable, 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 order interpretation into the other procedural language.~~
- ~~(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.~~
- ~~(8) The recordings and transcripts of a hearing shall be made in the procedural language(s) used at the hearing.~~

Rule 16

Correction of Errors

A party may correct an accidental error in a document promptly upon discovery and before the Award is rendered. The parties may refer any dispute regarding a correction to the Tribunal for determination.

Rule 17

Calculation of Time Limits

- (1) References to time shall be determined based on the time at the seat of the Centre on the relevant date.
- (2) Any time limit expressed as a period of time shall be calculated from the day after the date on which:
- (a) the Tribunal, or the Secretary-General if applicable, announces the period; or
 - (b) the procedural step starting the period is taken.
- (3) A time limit shall be satisfied if a procedural step is taken or a document is received by the Secretary-General on the relevant date, or on the subsequent business day, if the date falls on a Saturday or Sunday, ~~on the subsequent business day~~.

Rule 18

Fixing Time Limits

- (1) The Tribunal, or the Secretary-General if applicable, shall fix time limits for the completion of each procedural step in the proceeding, other than time limits prescribed by these Rules.
- (2) In fixing time limits pursuant to paragraph (1), the Tribunal, or the Secretary-General if applicable, shall consult with the parties as far as possible.
- (3) The Tribunal may delegate the power to fix time limits to its President.

Rule 19

Extension of Time Limits Applicable to Parties

- (1) A time limit prescribed by these Rules may only be extended by agreement of the parties. A procedural step taken or document received after the expiry of such time limit shall be disregarded, unless the parties agree otherwise or the Tribunal decides that there are special circumstances justifying the failure to meet the time limit.
- (2) A time limit fixed by the Tribunal or the Secretary-General may be extended by agreement of the parties or by the Tribunal, or the Secretary-General if applicable, upon reasoned application by either party made prior to its expiry. A procedural step taken or a document received after the expiry of such time limit shall be disregarded unless the parties agree otherwise or the Tribunal, or the Secretary-General if applicable, ~~concludes~~ decides that there are special circumstances justifying the failure to meet the time limit.
- (3) The Tribunal may delegate ~~to the President~~ the power to extend time limits to its President ~~referred to in paragraph (2).~~

Rule 20

Time Limits Applicable to Tribunal

- (1) The Tribunal shall use best efforts to meet time limits to render orders, decisions and the Award.
- (2) If the Tribunal cannot comply with an applicable time limit, it shall advise the parties of the special circumstances ~~that~~ justify the delay and the date when it anticipates rendering the order, decision or Award.

Chapter IV
~~Constitution~~-Establishment of the Tribunal

Rule 21
General Provisions Regarding the ~~Constitution~~-Establishment of the Tribunal

- (1) The Tribunal shall be constituted without delay after registration of the Request.
- (2) Unless otherwise agreed by the parties:
 - (a) the majority of the arbitrators on a Tribunal shall be nationals of States other than the State party to the dispute, any constituent State of the REIO party to the dispute and the State whose national is a party to the dispute;
 - (b) a party may not appoint an arbitrator who is a national of the State party to the dispute, any constituent State of the REIO party to the dispute or the State whose national is a party to the dispute;
 - (c) arbitrators appointed by the Secretary-General shall not be nationals of the State party to the dispute, a constituent State of the REIO party to the dispute or the State whose national is a party to the dispute; and
 - (d) no person previously involved in the resolution of the dispute as a conciliator, judge, mediator or in a similar capacity may be appointed as an arbitrator.
- (3) The composition of a Tribunal shall remain unchanged after it has been constituted, except as provided in Chapter V.

Rule 22
Qualifications of Arbitrators

Arbitrators shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who are impartial and independent.

Rule 23
Notice of Third-Party Funding

- (1) A party shall file a written notice disclosing the name and address of any non-party from which the party, directly or indirectly, ~~its affiliate or its representative~~ has received funds for the pursuit or defense of the proceeding through a donation or

grant, or in return for remuneration dependent on the outcome of the [proceeding](#)~~dispute~~ (“third-party funding”).

- (2) A non-party referred to in paragraph (1) does not include a representative of a party.
- (3) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.
- (4) The Secretary-General shall transmit a notice of third-party funding and any [notification of](#) changes to [the information in](#) such notice to the parties and to any arbitrator proposed for appointment or appointed in a proceeding for purposes of completing the arbitrator declaration required by Rule 27(3)(b).
- (5) [The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding pursuant to Rule 46\(3\) if it deems it is necessary at any stage of the proceeding.](#)

Rule 24

Method of Constituting the Tribunal

- (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 45 days after the date of registration, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party and the third, who shall be the President of the Tribunal, appointed by agreement of the parties.

Rule 25

Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of ~~a~~[the](#) President of the Tribunal or a Sole Arbitrator.

Rule 26

Appointment of Arbitrators by the Secretary-General

- (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 Secretary-General appoint the arbitrator(s) who have not yet been appointed.
- (2) The Secretary-General shall appoint the President of the Tribunal after appointing any members who have not yet been appointed.
- (3) The Secretary-General 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.

Rule 27

Acceptance of Appointment

- (1) A party appointing an arbitrator shall notify the Secretary-General of the appointment and provide the appointee's name, nationality(~~ies~~) and contact information.
- (2) Upon receipt of a notification pursuant to paragraph (1), ~~t~~The Secretary-General shall request an acceptance from ~~each~~the appointee ~~as soon as the appointee is selected. The Secretary-General~~and shall ~~also~~ transmit to ~~each~~the appointee the information received from the parties relevant to completion of the declaration referred to in paragraph (3)(b).
- (3) Within 20 days after receipt of the request for acceptance of an appointment, ~~an~~the 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 proceeding.
- (4) The Secretary-General shall notify the parties of the acceptance of appointment by each arbitrator and ~~provide~~transmit the signed declaration to them.
- (5) The Secretary-General 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 [promptly](#) disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).

Rule 28
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
 - (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.

Rule 29
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, the supporting documents, the notice of registration and communications with the parties to each member.

Chapter V
Disqualification of Arbitrators and Vacancies

Rule 30
Proposal for Disqualification of Arbitrators

- (1) A party may file a proposal to disqualify one or more arbitrators (“proposal”) on the following grounds:
- (a) that the arbitrator was ineligible for appointment to the Tribunal pursuant to Rule 21(2)(a)-(c); or

(b) that circumstances exist that give rise to justifiable doubts as to the qualities of the arbitrator required by Rule 22.

(2) The following procedure shall apply:

(a) the proposal shall be filed after the constitution of the Tribunal and within 21 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 proposal shall include the grounds on which it is based, a statement of the relevant facts, law and arguments, and any supporting documents;

(c) the other party shall file its response and supporting documents within 21 days after receipt of the proposal;

(d) the arbitrator to whom the proposal relates may file a statement that is limited to factual information relevant to the proposal. The statement shall be filed within five days after receipt of the response referred to in paragraph (2)(c); and

(e) each party may file a final written submission on the proposal within seven days after the earlier of receipt of the statement or expiry of the time limit referred to in paragraph (2)(d).

(3) If the other party agrees to the proposal prior to the dispatch of the decision referred to in Rule 31, the arbitrator shall resign in accordance with Rule 33.

(4) The proceeding shall be suspended upon the filing of the proposal until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding ~~in whole or in part~~.

Rule 31 **Decision on the Proposal for Disqualification**

(1) The Secretary-General shall make the decision on the proposal.

(2) The Secretary-General shall use best efforts to decide any proposal within 30 days after the expiry of the time limit referred to in Rule 30(2)(e).

Rule 32
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 30 and 31 shall apply.

Rule 33
Resignation

An arbitrator may resign by notifying the Secretary-General and the other members of the Tribunal.

Rule 34
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 Secretary-General shall fill any 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. Any portion of a hearing shall be recommenced if the newly appointed arbitrator considers it necessary to decide a pending matter.

Chapter VI
Conduct of the Proceeding

Rule 35
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 made by any appropriate means of communication and may be signed by the President on behalf of the Tribunal.
- (3) The Tribunal shall apply any agreement of the parties on procedural matters, subject to Rule 1(3), and to the extent that the agreement does not conflict with the (Additional Facility) Administrative and Financial Regulations.
- (4) The Tribunal shall consult with the parties prior to making an order or decision it is authorized by these Rules to make on its own initiative.

Rule 36 Waiver

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 promptly, then that party shall be deemed to have waived its right to object to that non-compliance, unless the Tribunal decides that there are special circumstances justifying the failure to object promptly.

Rule 37 Filling of Gaps

If a question of procedure arises which is not covered by these Rules or by any agreement of the parties, the Tribunal shall decide the question.

Rule 38 First Session

- (1) The Tribunal shall hold a first session to address the procedure, including the matters listed in paragraph (4).
- (2) 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.
- (3) The first session shall be held within 60 days after the constitution of the Tribunal 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 within this period, the Tribunal shall decide whether to hold the first session solely

between the President of the Tribunal and the parties, or solely among the Tribunal members based on the parties' written submissions. ~~the first session shall be held solely among the Tribunal members after considering the parties' written submissions on the matters listed in paragraph (4).~~

- (4) Before the first session, the Tribunal shall invite the parties' views on procedural matters, including:
- (a) the applicable arbitration rules;
 - (b) the division of advances payable pursuant to (Additional Facility) Administrative and Financial Regulation 7;
 - (c) the procedural language(s), translation and interpretation;
 - (d) the method of filing and routing of documents;
 - (e) the number, length, type and format of written submissions;
 - (f) the seat of arbitration;
 - (g) the place of hearings;
 - (h) whether there will be requests for production of documents as between the parties and, if so, the scope, timing and procedure for such requests;
 - (i) the procedural calendar;
 - (j) the manner of making recordings and transcripts of hearings;
 - (k) the publication of documents and recordings;
 - (l) the treatment of confidential or protected information; and
 - (m) any other procedural matter raised by either party or the Tribunal.
- (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 session or the last written submission on procedural matters addressed at the first session.

Rule 39

Written Submissions

- (1) The parties shall file the following written submissions:
 - (a) a memorial by the requesting party;
 - (b) a counter-memorial by the other party;and, unless the parties agree otherwise:
 - (c) a reply by the requesting party; and
 - (d) a rejoinder by the other party.
- (2) 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 and addressing any relevant facts that are new or could not have been known prior to filing the reply or rejoinder.
- (3) A party may file unscheduled written submissions, observations, or supporting documents only after obtaining leave of the Tribunal, unless the filing of such documents is provided for by these Rules. The Tribunal may grant such leave upon a timely and reasoned application if it finds such written submissions, observations or supporting documents are necessary in view of all relevant circumstances.

Rule 40

Case Management Conferences

With a view to conducting an expeditious and cost-effective proceeding, the Tribunal shall convene one or more case management conferences with the parties at any time after the first session to:

- (a) identify uncontested facts;
- (b) clarify and narrow the issues in dispute; or
- (c) address any other procedural or substantive issue related to the resolution of the dispute.

Rule 41 **Seat of Arbitration**

The seat of arbitration shall be agreed on by the parties or, absent agreement, shall be determined by the Tribunal having regard to the circumstances of the proceeding and after consulting with the parties.

Rule 42 **Hearings**

- (1) The Tribunal shall hold one or more hearings, 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.
- (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 Secretary-General. If the parties do not agree on the place of a hearing, it shall be held at a place determined by the Tribunal.
- (4) Any member of the Tribunal may put questions to the parties and ask for explanations at any time during a hearing.

Rule 43 **Quorum**

The participation of a majority of the members of the Tribunal by any appropriate means of communication shall be required at the first session, case management conferences, hearings and deliberations, [except as provided in these Rules or](#) unless the parties agree otherwise.

Rule 44 **Deliberations**

- (1) The deliberations of the Tribunal shall take place in private and remain confidential.
- (2) The Tribunal may deliberate at any place and by any means it considers appropriate.

- (3) ~~Only members of the Tribunal shall take part in~~ The Tribunal may be assisted by the Secretary of the Tribunal at its deliberations ~~be admitted~~ unless the Tribunal decides otherwise and notifies the parties.
- (4) The Tribunal shall deliberate on any matter for decision immediately after the last written or oral submission on that matter.

Rule 45

Decisions Made by Majority Vote

The Tribunal shall make decisions by a majority of the votes of all its members. Abstention shall count as a negative vote.

Chapter VII

Evidence

Rule 46

Evidence: General Principles

- (1) The Tribunal shall determine the admissibility and probative value of the evidence adduced.
- (2) Each party has the burden of proving the facts relied on to support its claim or defense.
- (3) The Tribunal may call upon a party to produce documents or other evidence if it deems it necessary at any stage of the proceeding.

Rule 47

Disputes Arising from Requests for Production of Documents

~~The Tribunal shall decide any dispute arising out of a party's objection to the other party's request for production of documents.~~ In deciding ~~the~~ a dispute arising out of a party's objection to the other party's request for production of documents, the Tribunal shall consider all relevant circumstances, including:

- (a) the scope and timeliness of the request;

- (b) the relevance and materiality of the documents requested;
- (c) the burden of production; and
- (d) the basis of the objection.

Rule 48

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.
- (5) A witness shall be examined in person unless the Tribunal determines that another means of examination is appropriate in the circumstances.
- (6) 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.”
- (7) Paragraphs (1)-(5) shall apply, with necessary modifications, to evidence given by an expert.
- (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.”

Rule 49

Tribunal-Appointed Experts

- (1) Unless the parties agree otherwise, the Tribunal may appoint one or more independent experts to report to it on specific matters within the scope of the dispute.
- (2) The Tribunal shall consult with the parties on the appointment of an expert, including on the terms of reference and fees of the expert.
- (3) Upon accepting an appointment by the Tribunal, an expert shall provide a signed declaration in the form published by the Centre.
- (4) 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.
- (5) The parties shall have the right to make written and oral submissions on the report of the Tribunal-appointed expert, as required.
- (6) Rule 48 shall apply, with necessary modifications, to the Tribunal-appointed expert.

Rule 50

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 [relevant](#) terms.
- (3) The parties shall have the right to participate in any visit or inquiry.

Chapter VIII Special Procedures

Rule 51 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 or to the jurisdiction or competence of the Tribunal.
- (2) The following procedure shall apply:
 - (a) a party shall file a written submission no later than 45 days after the constitution of the Tribunal;
 - (b) the written submission shall specify the grounds on which the objection is based and contain a statement of the relevant facts, law and arguments;
 - (c) the Tribunal shall fix time limits for written and oral submissions on the objection, as required;
 - (d) if a party files the objection before the 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
 - (e) the Tribunal shall render its decision or Award 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) 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 on the objection and fix any time limit necessary for the further conduct of the proceeding.
- (4) A decision that a claim is not manifestly without legal merit shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 53 or to argue subsequently in the proceeding that a claim is without legal merit.

Rule 52 Bifurcation

- (1) A party may request that a question be addressed in a separate phase of the proceeding (“request for bifurcation”).
- (2) If a request for bifurcation relates to a preliminary objection, Rule 54 shall apply.
- (3) The following procedure shall apply to a request for bifurcation other than a request referred to in Rule 54:
 - (a) the request for bifurcation shall be filed as soon as possible;
 - (b) the request for bifurcation shall state the questions to be bifurcated;
 - (c) the Tribunal shall fix time limits for written and oral submissions on the request for bifurcation, as required;
 - (d) the Tribunal shall issue its decision on the request for bifurcation within 30 days after the later of the last written or oral submission on the request; and
 - (e) the Tribunal shall fix any time limit necessary for the further conduct of the proceeding.
- (4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
 - (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and
 - (c) the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical.
- (5) If the Tribunal orders bifurcation pursuant to this Rule, it shall suspend the proceeding with respect to any questions to be addressed at a later phase, unless the parties agree otherwise or the Tribunal decides that there are special circumstances that do not justify suspension.
- (6) The Tribunal may at any time on its own initiative decide whether a question should be addressed in a separate phase of the proceeding.

Rule 53

Preliminary Objections

- (1) The Tribunal shall have the power to rule on its jurisdiction and competence. For the purposes of this Rule, an agreement providing for arbitration pursuant to the Additional Facility Rules shall be severable from the other terms of the contract in which it may have been included.
- (2) A party may file a preliminary objection that the dispute or any ancillary claim is not within the jurisdiction or competence of the Tribunal (“preliminary objection”).
- (3) A party shall notify the Tribunal and the other party of its intent to file a preliminary objection as soon as possible.
- (4) The Tribunal may address a preliminary objection in a separate phase of the proceeding or join the objection to the merits.

~~(5) If a party requests bifurcation of a preliminary objection, Rule 54 shall apply.~~

~~(6) If a party does not request bifurcation of a preliminary objection within the time limits referred to in Rule 54(1)(a) or the parties confirm that they will not request bifurcation, the objection shall be joined to the merits and the following procedure shall apply:~~

~~(a) the Tribunal shall fix time limits for written and oral submissions on the preliminary objection, as required;~~

~~(b) the memorial on the preliminary objection shall be filed:~~

~~(i) by the date to file the counter-memorial on the merits;~~

~~(ii) by the date to file the next written submission after an ancillary claim, if the objection relates to the ancillary claim; or~~

~~(iii) as soon as possible after the facts on which the objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (6)(b)(i) and (ii).~~

~~(c) the party filing the memorial on preliminary objections shall also file its counter-memorial on the merits, or, if the objection relates to an ancillary claim, file its next written submission after the ancillary claim; and~~

~~(d) the Tribunal shall render its Award within 240 days after the later of the last written or oral submission in the proceeding, in accordance with Rule 68(1)(c).~~

~~(7) The Tribunal may at any time on its own initiative consider whether a dispute or an ancillary claim is within its own jurisdiction and competence.~~

Rule 54

~~Bifurcation of Preliminary Objections~~ with a Request for Bifurcation

- (1) The following procedure shall apply with respect to a request for bifurcation relating to a preliminary objection:
 - (a) unless the parties agree otherwise, the request for bifurcation shall be filed:
 - (i) within 45 days after filing the memorial on the merits;
 - (ii) within 45 days after filing the written submission containing the ancillary claim, if the objection relates to the ancillary claim; or
 - (iii) as soon as possible after the facts on which the preliminary objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (1)(a)(i) and (ii);
 - (b) the request for bifurcation shall state the preliminary objection to which it relates;
 - (c) unless the parties agree otherwise, the proceeding on the merits shall be suspended until the Tribunal decides whether to bifurcate;
 - (d) the Tribunal shall fix time limits for written and oral submissions on the request for bifurcation, as required; and
 - (e) the Tribunal shall issue its decision on a request for bifurcation within 30 days after the later of the last written or oral submission on the request.
- (2) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
 - (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and
 - (c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical.

- (3) If the Tribunal decides to address the preliminary objection in a separate phase of the proceeding, it shall:
 - (a) suspend the proceeding on the merits, unless the parties agree otherwise, or the Tribunal decides [that](#) there are special circumstances that do not justify suspension;
 - (b) fix time limits for written and oral submissions on the preliminary objection, as required;
 - (c) render its decision or Award on the preliminary objection within 180 days after the later of the last written or oral submission, in accordance with Rule ~~68~~[69](#)(1)(b); and
 - (d) fix any time limit necessary for the further conduct of the proceeding if the Tribunal does not render an Award.
- (4) If the Tribunal decides to join the preliminary objection to the merits, it shall:
 - (a) fix time limits for written and oral submissions on the preliminary objection, as required;
 - (b) modify any time limits for written and oral submissions on the merits, as required; and
 - (c) render its Award within 240 days after the later of the last written or oral submission in the proceeding, in accordance with Rule ~~68~~[69](#)(1)(c).

[Rule 55](#) [Preliminary Objections without a Request for Bifurcation](#)

- (1) If a party does not request bifurcation of a preliminary objection within the time limits referred to in Rule 54(1)(a) or the parties confirm that they will not request bifurcation, the objection shall be joined to the merits and the following procedure shall apply:
 - (a) the Tribunal shall fix time limits for written and oral submissions on the preliminary objection, as required;
 - (b) the memorial on the preliminary objection shall be filed:
 - (i) by the date to file the counter-memorial on the merits;

- (ii) by the date to file the next written submission after an ancillary claim, if the objection relates to the ancillary claim; or
- (iii) as soon as possible after the facts on which the objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (61)(b)(i) and (ii).
- (c) the party filing the memorial on preliminary objections shall also file its counter-memorial on the merits, or, if the objection relates to an ancillary claim, file its next written submission after the ancillary claim; and
- (d) the Tribunal shall render its Award within 240 days after the later of the last written or oral submission in the proceeding, in accordance with Rule 6869(1)(c).
- (2) The Tribunal may at any time on its own initiative consider whether a dispute or an ancillary claim is within its own jurisdiction and competence.

Rule 565 Consolidation or Coordination of Arbitrations

- (1) Parties to two or more pending arbitrations administered by the Centre may agree to consolidate or coordinate these arbitrations.
- (2) Consolidation joins all aspects of the arbitrations sought to be consolidated and results in ~~a single~~one Award. To be consolidated pursuant to this Rule, the arbitrations shall have been registered in accordance with these Rules and shall involve the same State or the same REIO (or constituent subdivision of the State or agency of the State or the REIO).
- (3) Coordination aligns specific procedural aspects of ~~each~~two or more pending arbitrations, but the arbitrations remain separate proceedings and ~~each~~results in ~~an individual~~separate Awards.
- (4) The parties referred to in paragraph (1) shall jointly provide the Secretary-General with proposed terms for the conduct of the consolidated or coordinated ~~proceeding~~arbitration(s) and consult with the Secretary-General to ensure that the proposed terms are capable of being implemented.
- (5) After the consultation referred to in paragraph (4), the Secretary-General shall communicate the proposed terms agreed by the parties to the Tribunal(s) constituted in the arbitrations. Such Tribunal(s) shall make any order or decision required to implement these terms.

Rule 576
Provisional Measures

- (1) A party may at any time request that the Tribunal order provisional measures to preserve that party's rights, including measures to:
 - (a) prevent action that is likely to cause current or imminent harm to that party or prejudice to the arbitral process;
 - (b) maintain or restore the *status quo* pending determination of the dispute; or
 - (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 and oral submissions on the request, as required;
 - (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:
 - (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 order provisional measures, the Tribunal shall consider all relevant circumstances, including:
 - (a) whether the measures are urgent and necessary; and
 - (b) the effect that the measures may have on each party.
- (4) The Tribunal may order provisional measures on its own initiative. The Tribunal may also order provisional measures different from those requested by a party.

- (5) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered 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 interim or conservatory measures. Such a request shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Rule 587 **Ancillary Claims**

- (1) Unless the parties agree otherwise, a party may file an incidental or additional claim or a counterclaim ("ancillary claim"), provided that such ancillary claim is within the scope of the agreement of the parties.
- (2) An incidental or additional claim shall be presented no later than in the reply, and a counterclaim shall be presented no later than in the counter-memorial, unless the Tribunal decides otherwise.
- (3) The Tribunal shall fix time limits for written and oral submissions on the ancillary claim, as required.

Rule 598 **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 request in paragraph (2) relates to a failure to appear at a hearing, the Tribunal may:
 - (a) reschedule the hearing to a date within 60 days after the original date;

- (b) proceed with the 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 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 hearing.
- (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 that is not in default 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 whether the dispute is within its own jurisdiction and competence before deciding the questions submitted to it and rendering an Award.

Chapter IX Costs

Rule ~~60~~⁵⁹ Costs of the Proceeding

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 Tribunal, Tribunal assistants approved by the parties and Tribunal-appointed experts; and
- (c) the administrative charges and direct costs of the Centre.

Rule ~~60~~61
Statement of and Submission on Costs

The Tribunal shall request that each party file a statement of its costs and a written submission on the allocation of costs before allocating the costs of the proceeding between the parties.

Rule ~~61~~62
Decisions on Costs

- (1) In allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including:
 - (a) the outcome of the proceeding or any part of it;
 - (b) the conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner and complied with these Rules and the orders and decisions of the Tribunal;
 - (c) the complexity of the issues; and
 - (d) the reasonableness of the costs claimed.
- (2) The Tribunal shall award the party prevailing on an objection made pursuant to Rule 51 its costs of submitting or opposing the objection, unless the circumstances justify a different allocation of costs in accordance with paragraph (1).
- ~~(2)~~(3) The Tribunal may make an interim decision on costs at any time.
- ~~(3)~~(4) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.

Rule ~~62~~63
Security for Costs

- (1) Upon request of a party, the Tribunal may order any party asserting a claim or counterclaim to provide security for costs.
- (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 and oral submissions on the request, as required;
- (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 all relevant circumstances, including:
 - (a) that party's ability to comply with an adverse decision on costs;
 - (b) that party's willingness to comply with an adverse decision on costs;
 - (c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim; and
 - (d) the conduct of the parties.
- (4) The Tribunal shall consider all evidence adduced in relation to the circumstances in paragraph (3). The existence of third-party funding may form part of such evidence but is not by itself sufficient to justify an order for security for costs. ~~The Tribunal may consider third-party funding as evidence relating to a circumstance in paragraph (3), but the existence of third-party funding by itself is not sufficient to justify an order for security for costs.~~
- (5) The Tribunal shall specify any relevant terms in an order to provide security for costs and fix a time limit for compliance with the order.
- (6) If a party fails to comply with an order to provide security for costs, the Tribunal may suspend the proceeding. If the proceeding is suspended for more than 90 days, the Tribunal may, after consulting with the parties, order the discontinuance of the proceeding.
- (7) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.

- (8) The Tribunal may at any time modify or revoke its order on security for costs, on its own initiative or upon a party's request.

Chapter X

Suspension, Settlement and Discontinuance

Rule ~~63~~64

Suspension of the Proceeding

- (1) The Tribunal shall suspend the proceeding by agreement of the parties.
- (2) The Tribunal may suspend the proceeding upon the request of either party or on its own initiative, except as otherwise provided in the (Additional Facility) Administrative and Financial Regulations or these Rules.
- (3) The Tribunal shall give the parties the opportunity to make observations before ordering a suspension pursuant to paragraph (2).
- (4) In its order suspending the proceeding, the Tribunal shall specify:
 - (a) the period of the suspension;
 - (b) any relevant terms; and
 - (c) a modified procedural calendar to take effect on resumption of the proceeding, if necessary.
- (5) The Tribunal shall extend the period of a suspension prior to its expiry by agreement of the parties.
- (6) The Tribunal may extend the period of a suspension prior to its expiry, on its own initiative or upon a party's request, after giving the parties an opportunity to make observations.
- (7) The Secretary-General shall suspend the proceeding pursuant to paragraph (1) or extend the suspension pursuant to paragraph (5) 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 terms agreed to by the parties.

Rule ~~64~~⁶⁵
Settlement and Discontinuance by Agreement of the Parties

- (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) An Award rendered pursuant to paragraph (2)(b) does not need to include the reasons on which it is based.
- (4) 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.

Rule ~~65~~⁶⁶
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.
- (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.

Rule 676
Discontinuance for Failure of Parties to Act

- (1) If the parties fail to take any steps in the proceeding for more than 150 consecutive 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 shall 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.

Chapter XI
The Award

Rule 6768
Applicable Law

- (1) The Tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Tribunal shall apply:
 - (a) the law which it determines to be applicable; and
 - (b) the rules of international law it considers applicable.
- (2) The Tribunal may decide *ex aequo et bono* if the parties have expressly authorized it to do so and if the law applicable to the arbitration so permits.

202. One State stated that the phrase “the law which it determines to be applicable” is very broad, and that it is concerned this formulation could generate arbitrariness. It further stated that the provision potentially confuses the application of the rules of international and investment law. (AF)AR 67(1), as drafted, hews very close to the language in the currently in-effect provision. The minor language differences, which were made for clarity in WP #1 and which have not since changed, were not intended to alter the effect of this provision (see [WP #1, ¶ 1148](#)). The Secretariat is not aware of difficulties caused

by this formulation in practice and has not received any other comments with regard to this provision.

Rule ~~68~~⁶⁹
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 latest of the Tribunal constitution, the last written submission or the last oral submission, if the Award is rendered pursuant to Rule 51(4);
 - (b) 180 days after the later of the last written or oral submission if the Award is rendered pursuant to Rule 54(3)(c); or
 - (c) 240 days after the later of the last written or oral submission in all other cases.
- (2) A statement of costs and submission on costs filed pursuant to with Rule ~~60~~⁶¹ shall not be considered a written submission for the purposes of paragraph (1).
- (3) The parties waive any time limits for rendering the Award which may be provided for by the law of the seat of arbitration.

Rule ~~69~~⁷⁰
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 pursuant to these Rules 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 seat of arbitration, the dates and place(s) of the first session, case management conferences and 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 reasons on which the Award is based, unless the parties have agreed that no reasons are to be given; 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 on the allocation of costs.
- (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 and if allowed by the law of the seat of arbitration.
 - (3) Any member of the Tribunal may attach an individual opinion or a statement of dissent to the Award before the Award is rendered.
 - (4) The Award shall be final and binding on the parties.

Rule ~~70~~⁷¹ Rendering of the Award

- (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) Upon request of the parties that the original text of the Award be filed or registered by the Tribunal pursuant to the law of the seat of arbitration, the Secretary-General shall do so on behalf of the Tribunal.
- (3) The Award shall be deemed to have been made at the seat of arbitration and deemed to have been rendered on the date of dispatch of certified copies of the Award.
- (4) The Secretary-General shall provide additional certified copies of the Award to a party upon request.

Rule ~~71~~72

Supplementary Decision, Rectification and Interpretation of an Award

- (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 may request a supplementary decision, rectification or interpretation of an Award by filing a request with the Secretary-General and paying the lodging fee published in the schedule of fees within 45 days after the Award was rendered.
- (3) The request referred to in paragraph (2) shall:
 - (a) identify the Award to which it relates;
 - (b) be in an official language of the Centre used in the proceeding;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) specify:
 - (i) with respect to a request for a supplementary decision, any question which the Tribunal omitted to decide in the Award;
 - (ii) with respect to a request for rectification, any clerical, arithmetical or similar error in the Award;
 - (iii) with respect to a request for interpretation, the points in dispute concerning the meaning or scope of the Award; and
 - (e) attach proof of payment of the lodging fee.
- (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 Secretary-General 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 ~~69~~70-70-71 shall apply to any decision of the Tribunal pursuant to this Rule.
- (8) The Tribunal shall issue a decision on the request for supplementary decision, rectification or interpretation within 60 days after the later of the last written or oral submission on the request.
- (9) A supplementary decision, rectification or interpretation pursuant to this Rule shall become part of the Award and shall be reflected on all certified copies of the Award.

Chapter XII Publication, Access to Proceedings and Non-Disputing Party Submissions

Rule ~~72~~73 Publication of Orders, Decisions and Awards

- (1) The Centre shall publish orders, decisions and Awards with any redactions agreed to by the parties and jointly notified to the Secretary-General within 60 days after the order, decision or Award is rendered.
- (2) If either party notifies the Secretary-General within the 60-day period referred to in paragraph (1) that the parties disagree on any proposed redactions, the Secretary-General shall refer the order, decision or Award to the Tribunal to ~~determine~~decide any disputed redactions. The Centre shall publish the order, decision or Award in accordance with the ~~determination~~decision of the Tribunal.
- (3) In ~~determining~~deciding a disputes pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 76.

Rule ~~73~~74 Publication of Documents Filed in the Proceeding

- (1) ~~Upon request of either party~~With consent of the parties, the Centre shall publish any written submission or supporting document filed by a party in the proceeding, with any redactions agreed to by the parties and jointly notified to the Secretary-General.
- (2) ~~Either~~Absent consent of the parties pursuant to paragraph (1), a party may refer to the Tribunal ~~any~~a dispute regarding the ~~publication or~~ redaction of a written submission that it filed in the proceeding, excluding supporting documents ~~in~~

~~paragraph (1) to the Tribunal for determination.~~ The Tribunal shall decide any disputed redactions and ~~The~~ Centre shall publish the document in accordance with the ~~determination~~decision of the Tribunal.

- (3) In ~~determining~~deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 76.

Rule ~~74~~75 **Observation of Hearings**

- (1) The Tribunal shall ~~determine whether to~~ allow persons in addition to the parties, their representatives, witnesses and experts during their testimony, and persons assisting the Tribunal, to observe hearings, ~~after consulting with the parties~~unless either party objects.
- (2) The Tribunal shall establish procedures to prevent the disclosure of ~~any~~ confidential or protected information as defined in Rule 76 to persons observing the hearings.
- (3) Upon request of a party, ~~The~~ Centre shall publish recordings or transcripts ~~of those portions of hearings that were available for observation by the public in accordance with paragraphs (1) and (2), unless either~~ the other party objects.

Rule ~~75~~76 **Confidential or Protected Information**

For the purposes of Rules ~~72~~73-7475, confidential or protected information is information which is protected from public disclosure:

- (a) ~~is protected from disclosure pursuant to~~by the instrument of consent to arbitration;
- (b) ~~is protected from disclosure pursuant to~~by the applicable law or applicable rules;
- (c) in the case of information of a State or an REIO party to the dispute, by the law of that State or that REIO; is protected from disclosure
- ~~(e)~~(d) in accordance with the orders and decisions of the Tribunal;
- ~~(d)~~(e) ~~is protected from disclosure~~ by agreement of the parties;
- ~~(e)~~(f) because it constitutes confidential business information;

~~(f)~~(g) because public disclosure would impede law enforcement ~~if disclosed to the public~~;

~~(g)~~(h) because a State or an REIO party to the dispute considers that public disclosure would be contrary to its ~~would prejudice the~~ essential security interests ~~of the State or the REIO if disclosed to the public~~;

~~(h)~~(i) because public disclosure would aggravate the dispute between the parties ~~if disclosed to the public~~; or

~~(i)~~(j) because public disclosure would undermine the integrity of the arbitral process ~~if disclosed to the public~~.

Rule ~~76~~77 **Submission of Non-Disputing Parties**

- (1) Any person or entity that is not a party to the dispute (“non-disputing party”) may apply for permission to file a written submission in the proceeding. The application shall be made in ~~a~~the procedural language~~(s)~~ used 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, particular knowledge or insight that is different from that of the 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~~ any conditions for filing or publication of 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 the format, length, ~~or~~ scope or publication of the written submission and the time limit to file the submission.
- (5) The Tribunal shall issue a reasoned decision on whether to permit a non-disputing party submission within 30 days after the later of the last written or oral submission on the application.
- (6) The Tribunal ~~may~~ shall provide the non-disputing party with access to relevant documents filed in the proceeding, unless either party objects.
- (7) 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 ~~77~~78 Participation of Non-Disputing Treaty Party

- (1) The Tribunal shall permit a Party to a treaty that is not a party to the dispute (“non-disputing Treaty Party”) to make a written or oral submission on the interpretation of the treaty at issue in the dispute and upon which consent to arbitration is based. The Tribunal may, after consulting with the parties, invite a non-disputing Treaty Party to make such a submission.
- (2) A submission of a non-disputing Treaty Party pursuant to paragraph (1) shall not support a party in a manner tantamount to diplomatic protection.
- ~~(2)~~(3) The Tribunal shall ensure that non-disputing Treaty 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 filing of a written submission by the non-disputing Treaty Party, including with respect to the format, length or publication of the written submission and the time limit to file and publish the submission. ~~scope of the submission and the time limit to file the submission.~~
- ~~(3)~~(4) The parties shall have the right to make observations on the submission of the non-disputing Treaty Party.

Chapter XIII

Expedited Arbitration

Rule ~~79~~8

Consent of Parties to Expedited Arbitration

- (1) The parties to an arbitration conducted pursuant to these Rules may consent at any time to expedite the arbitration in accordance with this Chapter (“expedited arbitration”) by jointly notifying the Secretary-General in writing of their consent.
- (2) Chapters I-XII of the (Additional Facility) Arbitration Rules apply to an expedited arbitration except that:
 - (a) Rules 24, 26, 49, 50, 51, 52, 54 and ~~55~~56 do not apply in an expedited arbitration; and
 - (b) Rules 27, ~~30~~1, 38, 47, 53, ~~58~~59, ~~68~~69 and ~~71~~72, as modified by Rules ~~78~~80-87, apply in an expedited arbitration.
- (3) If the parties consent to expedited arbitration after the constitution of the Tribunal pursuant to Chapter IV, Rules ~~79~~80-~~81~~82 shall not apply, and the expedited arbitration shall proceed subject to all members of the Tribunal confirming their availability pursuant to Rule ~~82~~83(2). If any arbitrator fails to confirm availability before the expiry of the applicable time limit, the arbitration shall proceed in accordance with Chapters I-XII.

Rule ~~79~~80

Number of Arbitrators and Method of Constituting the Tribunal for Expedited Arbitration

- (1) The Tribunal in an expedited arbitration shall consist of a Sole Arbitrator appointed pursuant to Rule ~~80~~81 or a three-member Tribunal appointed pursuant to Rule ~~81~~82.
- (2) The parties shall jointly notify the Secretary-General in writing of their election of a Sole Arbitrator or a three-member Tribunal within 30 days after the date of the notice of consent referred to in Rule ~~78~~79(1).
- (3) If the parties do not notify the Secretary-General of their election within the time limit referred to in paragraph (2), the Tribunal shall consist of a Sole Arbitrator to be appointed pursuant to Rule ~~80~~81.
- (4) An appointment pursuant to Rules ~~80~~81-~~81~~82 shall be deemed an appointment in accordance with a method agreed by the parties.

Rule ~~80~~81

Appointment of Sole Arbitrator for Expedited Arbitration

- (1) The parties shall jointly appoint the Sole Arbitrator within 20 days after the notice referred to in Rule ~~79~~80(2).
- (2) The Secretary-General shall appoint the Sole Arbitrator if:
 - (a) the parties do not appoint the Sole Arbitrator within the time limit referred to in paragraph (1);
 - (b) the parties notify the Secretary-General that they are unable to agree on the Sole Arbitrator; or
 - (c) the appointee declines the appointment or does not comply with Rule ~~82~~83(1).
- (3) The following procedure shall apply to the appointment by the Secretary-General of the Sole Arbitrator pursuant to paragraph (2):
 - (a) the Secretary-General shall transmit a list of five candidates for appointment as Sole Arbitrator to the parties within 10 days after the relevant event referred to in paragraph (2);
 - (b) each party may strike one name from the list and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;
 - (c) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them; and
 - (d) if the selected candidate declines the appointment or does not comply with Rule ~~82~~83(1), the Secretary-General shall select the next highest-ranked candidate.

Rule ~~81~~82

Appointment of Three-Member Tribunal for Expedited Arbitration

- (1) A three-member Tribunal shall be appointed in accordance with the following procedure:

- (a) each party shall appoint an arbitrator (“co-arbitrator”) within 20 days after the notice referred to in Rule ~~79~~80(2); and
 - (b) the parties shall jointly appoint the President of the Tribunal within 20 days after the receipt of the acceptances from both co-arbitrators.
- (2) The Secretary-General shall appoint the arbitrators not yet appointed if:
- (a) an appointment is not made within the applicable time limit referred to in paragraph (1);
 - (b) the parties notify the Secretary-General that they are unable to agree on the President of the Tribunal; or
 - (c) an appointee declines the appointment or does not comply with Rule ~~82~~83(1).
- (3) The following procedure shall apply to the appointment by the Secretary-General of any arbitrators pursuant to paragraph (2):
- (a) the Secretary-General shall first appoint the co-arbitrator(s) not yet appointed. The Secretary-General shall consult with the parties as far as possible and use best efforts to appoint the co-arbitrator(s) within 15 days after the relevant event in paragraph (2);
 - (b) within 10 days after the later of the date on which ~~after~~ both co-arbitrators have accepted their appointments ~~or and within 10 days after~~ the relevant event referred to in paragraph (2), the Secretary-General shall transmit a list of five candidates for appointment as President of the Tribunal to the parties;
 - (c) each party may strike one name from the list and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;
 - (d) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them; and
 - (e) if the selected candidate declines the appointment or does not comply with Rule ~~82~~83(1), the Secretary-General shall select the next highest-ranked candidate.

Rule ~~82~~⁸³

Acceptance of Appointment in Expedited Arbitration

- (1) An arbitrator appointed pursuant to Rule ~~84~~⁸¹~~5~~ or ~~85~~⁸²~~6~~ shall accept the appointment and provide a declaration pursuant to Rule 27(3) within 10 days after receipt of the request for acceptance.
- (2) An arbitrator appointed to a Tribunal constituted pursuant to Chapter IV shall confirm their availability to conduct an expedited arbitration within 10 days after receipt of the notice of consent pursuant to Rule ~~78~~⁷⁹(3).

Rule ~~83~~⁸⁴

First Session in Expedited Arbitration

- (1) The Tribunal shall hold a first session pursuant to Rule 38 within 30 days after the constitution of the Tribunal.
- (2) The first session shall be held by telephone or electronic means of communication, unless both parties and the Tribunal agree it shall be held in person.

Rule ~~84~~⁸⁵

Procedural Schedule in Expedited Arbitration

- (1) The following schedule for written submissions and the hearing shall apply in an expedited arbitration:
 - (a) the claimant shall file a memorial within 60 days after the first session;
 - (b) the respondent shall file a counter-memorial within 60 days after the date of filing the memorial;
 - (c) the memorial and counter-memorial referred to in paragraph (1)(a) and (b) shall be no longer than 200 pages ~~in length~~;
 - (d) the claimant shall file a reply within 40 days after the date of filing the counter-memorial;
 - (e) the respondent shall file a rejoinder within 40 days after the date of filing the reply;

- (f) the reply and rejoinder referred to in paragraph (1)(d) and (e) shall be no longer than 100 pages ~~in length~~;
 - (g) the hearing shall be held within 60 days after the last written submission is filed;
 - (h) the parties shall file statements of their costs and written submissions on costs within 10 days after the last day of the hearing referred to in paragraph (1)(g); and
 - (i) the Tribunal shall render the Award as soon as possible, and in any event no later than 120 days after the hearing referred to in paragraph (1)(g).
- (2) Any preliminary objection, counterclaim, incidental or additional claim shall be joined to the main schedule referred to in paragraph (1). The Tribunal shall adjust the schedule if a party raises any such matter, taking into account the expedited nature of the process.
- (3) The Tribunal may extend the time limits referred to in paragraph (1)(a) and (b) by up to 30 days if any party requests that the Tribunal ~~determine~~decide a dispute arising from requests to produce documents pursuant to Rule 47. The Tribunal shall decide such applications based on written submissions and without an in-person hearing.
- (4) Any schedule for submissions other than those referred to in paragraphs (1)-(3) shall run in parallel with the main schedule referred to in paragraph (1), unless the Tribunal ~~determines~~decides that there are special circumstances ~~that~~justifying the suspension of the main schedule. In fixing time limits for such submissions, the Tribunal shall take into account the expedited nature of the process.

Rule ~~85~~86
Default in Expedited Arbitration

A Tribunal may grant a party in default a grace period not to exceed 30 days pursuant to Rule ~~58~~59.

Rule ~~86~~⁸⁷

Procedural Schedule for Supplementary Decision, Rectification and Interpretation in Expedited Arbitration

- (1) A Tribunal may rectify any clerical, arithmetical or similar error in the Award on its own initiative within 15 days after rendering the Award.
- (2) A request for a supplementary decision, rectification or interpretation of an Award made pursuant to Rule ~~71~~⁷² shall be filed within 15 days after the Award was rendered.
- (3) The Tribunal shall issue a supplementary decision, rectification or interpretation of an Award pursuant to Rule ~~71~~⁷² within 30 days after the later of the last written or oral submission on the request.

Rule ~~87~~⁸⁸

Opting Out of Expedited Arbitration

- (1) The parties may opt out of an expedited arbitration at any time by jointly notifying the Tribunal and Secretary-General in writing of their agreement.
- (2) Upon request of a party, the Tribunal may decide that an arbitration should no longer be expedited. In deciding the request, the Tribunal shall consider the complexity of the issues, the stage of the proceeding and all other relevant circumstances.
- (3) The Tribunal, or the Secretary-General if a Tribunal has not been constituted, shall determine the further procedure pursuant to Chapters I-XII and fix any time limit necessary for the conduct of the proceeding.

**VIII. CONCILIATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
(ANNEX C)
((ADDITIONAL FACILITY) CONCILIATION RULES)**

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**VIII. CONCILIATION RULES FOR ADDITIONAL FACILITY PROCEEDINGS
(ANNEX C)
((ADDITIONAL FACILITY) CONCILIATION RULES)**

203. Any changes in WP # 4 explained below are specific to the (AF)CR. Other changes, made without explanation, reflect changes to the AR or IR and are explained in the AR or IR chapters of WP # 4 under the corresponding provisions.

Introductory Note

The Conciliation Rules for Additional Facility Proceedings ((Additional Facility) Conciliation Rules) were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

The (Additional Facility) Conciliation Rules are supplemented by the (Additional Facility) Administrative and Financial Regulations in Annex A.

The (Additional Facility) Conciliation Rules apply from the submission of a Request for conciliation until termination of the conciliation.

**Chapter I
Scope**

**Rule 1
Application of Rules**

- (1) These Rules shall apply to any conciliation proceeding conducted pursuant to the Additional Facility Rules.
- (2) The parties may agree to modify the application of any of these Rules other than Rules 1-9.
- (3) If any of these Rules, or any agreement pursuant to paragraph (2), conflicts with a provision of law from which the parties cannot derogate, that provision shall prevail.
- (4) The applicable (Additional Facility) Conciliation Rules are those in force on the date of filing the Request for conciliation, unless the parties agree otherwise.
- (5) The official languages of the Centre are English, French and Spanish. The texts of these Rules are equally authentic in each official language.
- (6) These Rules may be cited as the “(Additional Facility) Conciliation Rules” of the Centre.

Chapter II Institution of the Proceedings

Rule 2 The Request

- (1) Any party wishing to institute conciliation proceedings pursuant to the Additional Facility Rules shall file a Request for conciliation together with the required supporting documents (“Request”) with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the dispute.

Rule 3 Contents of the Request

- (1) The Request shall:
 - (a) be in English, French or Spanish;
 - (b) identify each party to the dispute and provide their contact information, including electronic mail address, street address and telephone number;
 - (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) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request and attach the authorizations.
- (2) With regard to Article 2(1)(a) of the Additional Facility Rules, the Request shall include:
 - (a) a description of the investment, a summary of the relevant facts and claims, the request for relief, including an estimate of the amount of any damages sought, and an indication that there is a legal dispute between the parties arising out of the investment;
 - (b) with respect to each party’s consent to submit the dispute to conciliation pursuant to the Additional Facility Rules:

- (i) the instrument(s) in which each party's consent is recorded;
 - (ii) the date of entry into force of the instrument(s) on which consent is based, together with supporting documents demonstrating that date;
 - (iii) the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or, if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre; and
 - (iv) an indication that the requesting party has complied with any conditions in the instrument of consent for submission of the dispute;
- (c) if a party is a natural person:
- (i) information concerning that person's nationality on the date of consent, together with supporting documents demonstrating such nationality; and
 - (ii) a statement that the person is a national of a State other than the State party to the dispute or ~~of other than~~ any constituent State of the REIO party to the dispute on the date of consent;
- (d) if a party is a juridical person:
- (i) information concerning and supporting documents demonstrating that party's nationality on the date of consent, ~~together with supporting documents demonstrating such nationality~~; and
 - (ii) if that party had the nationality of the State party to the dispute or of any constituent State of the REIO party to the dispute on the date of consent, information ~~identifying concerning~~ and supporting documents demonstrating the agreement of the parties to treat the juridical person as a national of another State pursuant to Article 1(5)(b) of the Additional Facility Rules; ~~together with supporting documents demonstrating such agreement~~;
- (e) if a party is a constituent subdivision of a State or an agency of a State or of an REIO, supporting documents demonstrating the approval of consent of the State or the REIO, unless the State or the REIO has notified the Centre that no such approval is required.

Rule 4

Recommended Additional Information

It is recommended that the Request ~~also contain any procedural proposals or agreements reached by the parties, including with respect to:~~

- (a) contain any procedural proposals or agreements reached by the parties, including with respect to the number and method of appointment of conciliators and the procedural language(s); and
- (b) include the names of the persons and entities that own or control a requesting party which is a juridical person ~~procedural language(s).~~

Rule 5

Filing of the Request and Supporting Documents

- (1) The Request shall be filed electronically. The Secretary-General may require the Request to be filed in an alternative format if necessary.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Secretary-General may require a fuller extract or a complete version of the document.
- (3) The Secretary-General may require a certified copy of a supporting document.
- (4) Any document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or a complete translation of the document.

Rule 6

Receipt of the Request and Routing of Written Communications

The Secretary-General shall:

- (a) promptly acknowledge receipt of the Request to the requesting party;
- (b) transmit the Request to the other party upon receipt of the lodging fee; and
- (c) act as the official channel of written communications between the parties.

Rule 7
Review and Registration of the Request

- (1) Upon receipt of the Request and lodging fee, the Secretary-General shall register the Request if it appears on the basis of the information provided that the Request is not manifestly outside the scope of Article 2(1) of the Additional Facility Rules.
- (2) The Secretary-General shall promptly notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.

Rule 8
Notice of Registration

The notice of registration of the Request shall:

- (a) record that the Request is registered and indicate the date of registration;
- (b) confirm that all correspondence to the parties in connection with the proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Centre;
- (c) invite the parties to inform the Secretary-General of their agreement regarding the number and method of appointment of conciliators, unless such information has already been provided, and to constitute a Commission without delay;
- (d) remind the parties that registration of the Request is without prejudice to the powers and functions of the Commission in regard to jurisdiction and competence of the Commission, and the issues in dispute; and
- (e) remind the parties to make the disclosure required by Rule 21.

Rule 9
Withdrawal of the Request

At any time before registration, a requesting party may notify the Secretary-General in writing of the withdrawal of the Request or, if there is more than one requesting party, that it is withdrawing from the Request. The Secretary-General shall promptly notify the parties of the withdrawal, unless the Request has not yet been transmitted pursuant to Rule 6(b).

Chapter III General Provisions

Rule 10 Party and Party Representative

- (1) For the purposes of these Rules, “party” includes, where [required by](#) the context ~~so~~ ~~admits~~, all parties acting as claimant or as respondent.
- (2) Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be [promptly](#) notified by that party to the Secretary-General (“representative(s)”).

Rule 11 Method of Filing

- (1) A document to be filed in the proceeding shall be filed with the Secretary-General, who shall acknowledge its receipt.
- (2) Documents shall only be filed electronically, unless the Commission orders otherwise in special circumstances.

Rule 12 Supporting Documents

- (1) Supporting documents shall be filed together with the written statement, request, observations or communication to which they relate.
- (2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Commission or a party may require a fuller extract or a complete version of the document.

Rule 13 Routing of Document

Following the registration of the Request pursuant to Rule 7, the Secretary-General shall transmit a document filed in the proceeding to:

- (a) the other party, unless the parties communicate directly with each other; and
- (b) the Commission, unless the parties communicate directly with the Commission on request of the Commission or by agreement of the parties.

Rule 14

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 Commission and the Secretary-General regarding the use of a language that is not an official language of the Centre. If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (2) ~~If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.~~ In a proceeding with one procedural language:
 - (a) documents shall be filed and meetings shall be conducted in that procedural language;
 - (b) documents in another language shall be accompanied by a translation into that procedural language; and
 - (c) oral statements in another language shall be interpreted into that procedural language.
- (3) ~~Requests, written statements, observations and communications shall be filed in a procedural language. In a proceeding with two procedural languages, the Commission may order a party to file such documents in both procedural languages.~~ In a proceeding with two procedural languages:
 - (a) documents may be filed and meetings may be conducted in either procedural language, unless the Commission orders that a document be filed in both procedural languages or that a meeting be conducted with interpretation into both procedural languages;
 - (b) documents in another language shall be accompanied by a translation into either procedural language, unless the Commission orders translation into both procedural languages;
 - (c) oral statements in another language shall be interpreted into either procedural language, unless the Commission orders interpretation into both procedural languages;

(d) the Commission and the Secretary-General may communicate in either procedural language; and

(e) all orders, decisions, recommendations and the Report shall be rendered in both procedural languages, unless the parties agree otherwise.

(4) ~~Supporting documents 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 Commission may order a party to translate any supporting document into both procedural languages.~~ Translation of only the relevant part of a supporting document is sufficient, ~~provided that~~ unless the Commission may order a party to provide a fuller or a complete translation. If the translation is disputed, the Commission ~~may~~ order a party to provide a certified translation.

~~(5) Any document from the Commission or the Secretary General shall be in a procedural language. In a proceeding with two procedural languages, the Commission, or the Secretary General if applicable, shall issue orders, decisions, recommendations and the Report in both procedural languages, unless the parties agree otherwise.~~

~~(5) Any oral communication shall be in a procedural language. In a proceeding with two procedural languages, the Commission may order interpretation into the other procedural language.~~

Rule 15 Calculation of Time Limits

Time limits referred to in these Rules shall be calculated from the day after the date on which the procedural step starting the period is taken, based on the time at the seat of the Centre. A time limit shall be satisfied if a procedural step is taken on the relevant date, or on the subsequent business day; if the date falls on a Saturday or Sunday, ~~on the subsequent business day~~.

Rule 16 Costs of the Proceeding

Unless the parties agree otherwise, ~~each party shall~~:

(a) ~~pay one half of~~ the fees and expenses of the Commission and the administrative charges and direct costs of the Centre shall be borne equally by the parties; and

- (b) [each party shall](#) bear any other costs it incurs in connection with the proceeding.

Rule 17

Confidentiality of the Conciliation

All information relating to the conciliation, and all documents generated in or obtained during the conciliation, shall be confidential, unless:

- (a) the parties agree otherwise;
- (b) the information is to be published by the Centre pursuant to (Additional Facility) Administrative and Financial Regulation 3;
- (c) the information or document is independently available; or
- (d) disclosure is required by law.

Rule 18

Use of Information in Other Proceedings

Unless the parties to the dispute agree otherwise, a party shall not rely on any of the following in other proceedings:

- (a) views expressed, statements, admissions, offers of settlement or positions taken by the other party in the conciliation; or
- (b) the Report, order, decision or any recommendation made by the Commission in the conciliation.

(Additional Facility)
Conciliation Rules

Chapter IV

~~Constitution~~ [Establishment](#) of the Commission

Rule 19

General Provisions, Number of Conciliators and Method of Constitution

- (1) The Commission shall be constituted without delay after registration of the Request.
- (2) The number of conciliators and the method of their appointment must be determined before the Secretary-General can act on any appointment proposed by a party.

- (3) The parties shall endeavor to agree on a Sole Conciliator or any uneven number of conciliators and the method of their appointment. If the parties do not advise the Secretary-General of an agreement within 45 days after the date of registration, either party may inform the Secretary-General that the Commission shall consist of a Sole Conciliator, appointed by agreement of the parties.
- (4) The composition of a Commission shall remain unchanged after it has been constituted, except as provided in Chapter V.
- (5) References in these Rules to a Commission or a President of a Commission shall include a Sole Conciliator.

Rule 20 Qualifications of Conciliators

Conciliators shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who are impartial and independent.

Rule 21 Notice of Third-Party Funding

- (1) A party shall file a written notice disclosing the name [and address](#) of any non-party from which the party, ~~its affiliate or its representative~~ [directly or indirectly](#) has received funds for the conciliation through a donation or grant, or in return for remuneration dependent on the outcome of the ~~dispute conciliation~~ (“third-party funding”).
- (2) A non-party referred to in paragraph (1) does not include a representative of a party.
- (3) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.
- (4) The Secretary-General shall transmit a notice of third-party funding and any [notification of](#) changes to [the information in](#) such notice to the parties, and to any conciliator proposed for appointment or appointed in a proceeding for purposes of completing the [conciliator](#) declaration required by Rule 24(3)(b).
- (5) [The Commission may request further information regarding the funding agreement and the non-party providing funding pursuant to Rule 32\(4\)\(a\).](#)

Rule 22

Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of ~~the~~^a Sole Conciliator or any uneven number of conciliators.

Rule 23

Appointment of Conciliators by the Secretary-General

- (1) If a Commission 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 Secretary-General appoint the conciliator(s) who have not yet been appointed.
- (2) The Secretary-General shall appoint the President of the Commission after appointing any members who have not yet been appointed.
- (3) The Secretary-General shall consult with the parties as far as possible before appointing a conciliator and shall use best efforts to appoint any conciliator(s) within 30 days after receipt of the request to appoint.

Rule 24

Acceptance of Appointment

- (1) A party appointing a conciliator shall notify the Secretary-General of the appointment and provide the appointee's name, nationality(~~ies~~) and contact information.
- (2) Upon receipt of a notification pursuant to paragraph (1).~~The~~^{The} Secretary-General shall request an acceptance from ~~each the~~^{each the} appointee ~~as soon as the appointee is selected.~~
~~The Secretary-General~~^{and} shall ~~also~~^{also} transmit to ~~each the~~^{each the} appointee the information received from the parties relevant to completion of the declaration referred to in paragraph (3)(b).
- (3) Within 20 days after receipt of the request for acceptance of an appointment, ~~an~~^{the} appointee shall:
 - (a) accept the appointment; and

- (b) provide a signed declaration in the form published by the Centre, addressing matters including the conciliator's independence, impartiality, availability and commitment to maintain the confidentiality of the proceeding.
- (4) The Secretary-General shall notify the parties of the acceptance of appointment by each conciliator and ~~provide~~ transmit the signed declaration to them.
- (5) The Secretary-General shall notify the parties if a conciliator 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 conciliator in accordance with the method followed for the previous appointment.
- (6) Each conciliator shall have a continuing obligation to promptly disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).
- (7) Unless the parties and the conciliator agree otherwise, a conciliator may not act as arbitrator, counsel, expert, judge, mediator, witness or in any other capacity in any ~~other~~ proceeding relating to the dispute that is the subject of the conciliation.

Rule 25

Replacement of Conciliators Prior to Constitution of the Commission

- (1) At any time before the Commission is constituted:
 - (a) a conciliator may withdraw an acceptance;
 - (b) a party may replace a conciliator whom it appointed; or
 - (c) the parties may agree to replace any conciliator.
- (2) A replacement conciliator shall be appointed as soon as possible, in accordance with the method by which the withdrawing or replaced conciliator was appointed.

Rule 26

Constitution of the Commission

- (1) The Commission shall be deemed to be constituted on the date the Secretary-General notifies the parties that each conciliator has accepted the appointment.

- (2) As soon as the Commission is constituted, the Secretary-General shall transmit the Request, the supporting documents, the notice of registration and communications with the parties to each conciliator.

Chapter V

Disqualification of Conciliators and Vacancies

Rule 27

Proposal for Disqualification of Conciliators

- (1) A party may file a proposal to disqualify one or more conciliators (“proposal”) on the ground that circumstances exist that give rise to justifiable doubts as to the qualities of the conciliator required by Rule 20.
- (2) The following procedure shall apply:
- (a) the proposal shall be filed after the constitution of the Commission and within 21 days after the later of:
 - (i) the constitution of the Commission; or
 - (ii) the date on which the party proposing the disqualification first knew or first should have known of the facts upon which the proposal is based;
 - (b) the proposal shall include the grounds on which ~~the proposal~~ it is based, a statement of the relevant facts, law and arguments, and any supporting documents;
 - (c) the other party shall file its response and supporting documents within 21 days after receipt of the proposal;
 - (d) the conciliator to whom the proposal relates may file a statement that is limited to factual information relevant to the proposal. The statement shall be filed within five days after receipt of the response referred to in paragraph (2)(c); and
 - (e) each party may file a final written submission on the proposal within seven days after the earlier of receipt of the statement or expiry of the time limit referred to in paragraph (2)(d).
- (3) If the other party agrees to the proposal prior to the dispatch of the decision referred to in Rule 28, the conciliator shall resign in accordance with Rule 30.

- (4) The proceeding shall be suspended upon the filing of the proposal until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding ~~in whole or in part~~.

Rule 28

Decision on the Proposal for Disqualification

- (1) The Secretary-General shall make the decision on the proposal.
- (2) The Secretary-General shall use best efforts to decide any proposal within 30 days after the expiry of the time limit referred to in Rule 27(2)(e).

Rule 29

Incapacity or Failure to Perform Duties

If a conciliator becomes incapacitated or fails to perform the duties required of a conciliator, the procedure in Rules 27 and 28 shall apply.

Rule 30

Resignation

- (1) A conciliator may resign by notifying the Secretary-General and the other members of the Commission.
- (2) A conciliator shall resign upon the joint request of the parties.

Rule 31

Vacancy on the Commission

- (1) The Secretary-General shall notify the parties of any vacancy on the Commission.
- (2) The proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.
- (3) A vacancy on the Commission shall be filled by the method used to make the original appointment, except that the Secretary-General shall fill any vacancy that has not been filled within 45 days after the notice of vacancy.

- (4) Once a vacancy has been filled and the Commission has been reconstituted, the conciliation shall continue from the point it had reached at the time the vacancy was notified.

Chapter VI

Conduct of the Conciliation

Rule 32

Functions of the Commission

- (1) The Commission shall clarify the issues in dispute and assist the parties in reaching a mutually acceptable resolution of all or part of the dispute.
- (2) In order to bring about agreement between the parties, the Commission may, at any stage of the proceeding, after consulting with the parties, recommend:
 - (a) specific terms of settlement to the parties; or
 - (b) that the parties refrain from taking specific action that might aggravate the dispute while the conciliation is ongoing.
- (3) Recommendations may be made orally or in writing. Either party may request that the Commission provide reasons for any recommendation. The Commission may invite each party to provide observations concerning any recommendation made.
- (4) At any stage of the proceeding, the Commission may:
 - (a) request explanations, documents or other information from either party or other persons;
 - (b) communicate with the parties jointly or separately; or
 - (c) visit any place connected with the dispute or conduct inquiries with the agreement and participation of the parties.

Rule 33

General Duties of the Commission

- (1) The Commission shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.

- (2) The Commission shall treat the parties equally and provide each party with a reasonable opportunity to appear and participate in the proceeding.

Rule 34

Orders, Decisions and Agreements

- (1) The Commission shall make the orders and decisions required for the conduct of the conciliation.
- (2) The Commission shall make decisions by a majority of the votes of all its members. Abstentions shall count as a negative vote.
- (3) Orders and decisions may be made by any appropriate means of communication and may be signed by the President on behalf of the Commission.
- (4) The Commission shall apply any agreement between of the parties on procedural matters, subject to Rule 1(3), and to the extent that the agreement does not conflict with the (Additional Facility) Administrative and Financial Regulations.

Rule 35

Quorum

The participation of a majority of the members of the Commission by any appropriate means of communication shall be required at the first session, meetings and deliberations, unless the parties agree otherwise.

Rule 36

Deliberations

- (1) The deliberations of the Commission shall take place in private and remain confidential.
- (2) The Commission may deliberate at any place and by any means it considers appropriate.
- (3) ~~Only members of the~~ The Commission ~~shall take part~~ may be assisted by the Secretary of the Commission at its deliberations. No other person shall ~~be admitted~~ assist

[the Commission at its deliberations](#), unless the Commission decides otherwise [and notifies the parties](#).

Rule 37 Cooperation of the Parties

- (1) The parties shall cooperate with the Commission and with one another, and shall conduct the conciliation in good faith and in an expeditious and cost-effective manner.
- (2) The parties shall provide all relevant explanations, documents or other information. They shall facilitate visits to any place connected with the dispute [in accordance with Rule 32\(4\)\(c\)](#) and [use best efforts to facilitate](#) the participation of other persons as requested by the Commission.
- (3) The parties shall comply with any time limit agreed upon or fixed by the Commission.
- (4) The parties shall give their most serious consideration to the Commission's recommendations.

Rule 38 Written Statements

- (1) Each party shall simultaneously file a brief, initial written statement describing the issues in dispute and its views on these issues 30 days after the constitution of the Commission, or such longer time as the Commission may fix in consultation with the parties, but in any event before the first session.
- (2) Either party may file further written statements at any stage of the conciliation within the time limits fixed by the Commission.

Rule 39 First Session

- (1) The Commission shall hold a first session with the parties to address the procedure, including the matters listed in paragraph (4).

- (2) The first session may be held in person or remotely, by any means that the Commission deems appropriate. The agenda, method and date of the first session shall be determined by the Commission after consulting with the parties.
- (3) The first session shall be held within 60 days after the ~~Commission's~~ constitution [of the Commission](#) or such other period as the parties may agree.
- (4) Before the first session, the Commission shall invite the parties' views on procedural matters, including:
 - (a) the applicable conciliation rules;
 - (b) the division of advances payable pursuant to (Additional Facility) Administrative and Financial Regulation 7;
 - (c) the procedural language(s), translation and interpretation;
 - (d) the method of filing and routing of documents;
 - (e) a schedule for further written statements and meetings;
 - (f) the place and format of meetings between the Commission and the parties;
 - (g) the manner of recording or keeping minutes of meetings, if any;
 - (h) the treatment of confidential or protected information;
 - (i) the publication of documents;
 - (j) any agreement between the parties:
 - (i) concerning the treatment of information disclosed by one party to the Commission by way of separate communication pursuant to Rule 32(4)(b);
 - (ii) not to initiate or pursue ~~during the conciliation~~ any other proceeding in respect of the dispute [during the conciliation](#);
 - (iii) concerning the application of prescription or limitation periods;
 - (iv) concerning the disclosure of any settlement agreement resulting from the conciliation; and
 - (v) pursuant to Rule 18; and
 - (k) any other procedural matter raised by either party or the Commission.

- (5) At the first session or within any other period determined by the Commission, each party shall:
 - (a) identify a representative who is authorized to settle the dispute on its behalf; and
 - (b) describe the process that would be followed to implement a settlement.
- (6) The Commission shall issue summary minutes recording the parties' agreements and the Commission's decisions on the procedure within 15 days after the later of the first session or the last written statement on procedural matters addressed at the first session.

Rule 40 Meetings

- (1) The Commission may meet with the parties jointly or separately.
- (2) The Commission shall determine the date, time and method of holding meetings, after consulting with the parties.
- (3) If a meeting is to be held in person, it may be held at any place agreed to by the parties after consulting with the Commission and the Secretary-General. If the parties do not agree on the place of a meeting, it shall be held at a place determined by the Commission.
- (4) Meetings shall remain confidential. The parties may agree to observation of meetings by persons in addition to the parties and the Commission.

Rule 41 Preliminary Objections

- (1) A party may file a preliminary objection that the dispute is not within the jurisdiction or competence of the Commission ("preliminary objection").
- (2) A party shall notify the Commission and the other party of its intent to file a preliminary objection as soon as possible. The objection shall be made no later than the date of the initial written statement referred to in Rule 38(1), unless the facts on which the objection is based are unknown to the party at the relevant time.
- (3) The Commission may address a preliminary objection separately or with other issues in dispute. If the Commission decides to address the objection separately, it may

suspend the conciliation on the other issues in dispute to the extent necessary to address the preliminary objection.

- (4) The Commission may at any time on its own initiative consider whether the dispute is within its own jurisdiction or competence.
- (5) If the Commission decides that the dispute is not within its jurisdiction or competence, it shall issue a Report to that effect, in which it shall state its reasons. Otherwise, the Commission shall issue a decision on the objection with brief reasons and fix any time limit necessary for the further conduct of the conciliation.

Chapter VII Termination of the Conciliation

Rule 42 Discontinuance Prior to the Constitution of the Commission

- (1) If the parties notify the Secretary-General prior to the constitution of the Commission that they have agreed to discontinue the proceeding, the Secretary-General shall issue an order taking note of the discontinuance.
- (2) If a party requests the discontinuance of the proceeding prior to the constitution of the Commission, the Secretary-General 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 Secretary-General 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.
- (3) If, prior to the constitution of the Commission, the parties fail to take any steps in the proceeding for more than 150 consecutive days, the Secretary-General shall notify them of the time elapsed since the last step taken in the proceeding. If the parties fail to take a step within 30 days after the notice, they shall be deemed to have discontinued the proceeding and the Secretary-General shall issue an order taking note of the discontinuance. If either party takes a step within 30 days after the Secretary-General's notice, the proceeding shall continue.

Rule 43
Report Noting the Parties' Agreement

- (1) If the parties reach agreement on some or all of the issues in dispute, the Commission shall issue its Report noting the issues in dispute and recording the issues upon which the parties have agreed.
- (2) The parties may provide the Commission with the complete and signed text of their settlement agreement and may request that the Commission embody such settlement in the Report.

Rule 44
Report Noting the Failure of the Parties to Reach Agreement

At any stage of the proceeding, and after notice to the parties, the Commission shall issue its Report noting the issues in dispute and recording that the parties have not reached agreement on the issues in dispute during the conciliation if:

- (a) it appears to the Commission that there is no likelihood of agreement between the parties; or
- (b) the parties advise the Commission that they have agreed to discontinue the conciliation.

Rule 45
Report Recording the Failure of a Party to Appear or Participate

If one party fails to appear or participate in the proceeding, the Commission shall, after notice to the parties, issue its Report noting the submission of the dispute to conciliation and recording the failure of that party to appear or participate.

Rule 46
The Report

- (1) The Report shall be in writing and shall contain, in addition to the information specified in Rules 43-45:
 - (a) a precise designation of each party;

- (b) the names of the representatives of the parties;
 - (c) a statement that the Commission was established pursuant to these Rules and a description of the method of its constitution;
 - (d) the name of each member of the Commission and of the appointing authority of each;
 - (e) the date(s) and place(s) of the first session and the meetings of the Commission with the parties;
 - (f) a brief summary of the proceeding;
 - (g) the complete and signed text of the parties' settlement agreement if requested by the parties pursuant to Rule 43 (2);
 - (h) a statement of the costs of the proceeding, including the fees and expenses of each member of the Commission and the costs to be paid by each party pursuant to Rule 16; and
 - (i) any agreement of the parties pursuant to Rule 18.
- (2) The Report shall be signed by the members of the Commission. It may be signed by electronic means if the parties agree. If a member does not sign the Report, such fact shall be recorded.

Rule 47 Issuance of the Report

- (1) Once the Report has been signed by the members of the Commission, the Secretary-General shall promptly:
- (a) dispatch a certified copy of the Report to each party, indicating the date of dispatch on the Report; and
 - (b) deposit the Report in the archives of the Centre.
- (2) The Secretary-General shall provide additional certified copies of the Report to a party upon request.

**IX. RULES FOR FACT-FINDING PROCEEDINGS
(ICSID FACT-FINDING RULES)**

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IX. FACT-FINDING RULES

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IX. RULES FOR FACT-FINDING PROCEEDINGS (ICSID FACT-FINDING RULES)

Introductory Note

The Rules for Fact-Finding Proceedings (ICSID Fact-Finding Rules) were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

The ICSID Fact-Finding Rules are supplemented by the (Fact-Finding) Administrative and Financial Regulations (Annex A).

Chapter I General Provisions

Rule 1 Definitions

(1) “Secretariat” means the Secretariat of the Centre.

~~(2)~~ (3) “Regional Economic Integration Organization” or “REIO” means an organization constituted by States to which they have transferred competence in respect of matters governed by these Rules, including the authority to make decisions binding on them in respect of those matters.

~~(2)~~ (3) “Centre” or “ICSID” means the International Centre for Settlement of Investment Disputes established pursuant to Article 1 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

~~(3) “Regional Economic Integration Organization” or “REIO” means an organization constituted by States to which they have transferred competence in respect of matters governed by these Rules, including the authority to make decisions binding on them in respect of those matters.~~

(4) “Request” means a request for fact-finding together with the required supporting documents.

(5) “Secretary-General” means the Secretary-General of the Centre.

~~(6) “Party” includes, where the context so admits, all parties to the fact finding. Each party may be represented or assisted by agents, counsel, advocates or other advisors whose names and proof of authority to act shall be notified by that party to the Secretary General (“representative(s)).~~

~~(7)~~(6) “Schedule of fees” means the schedule of fees published by the Secretary-General.

204. The sequence of definitions in FFR 1 has been aligned with the order in which the terms appear in the rules. The definition of party representative has been moved to new FFR 4, consistent with the approach taken in the MR.

Rule 2

Fact-Finding Proceedings

- (1) The Secretariat is authorized to administer fact-finding proceedings that relate ~~relating~~ to an investment, ~~involving~~ a State or an REIO, and which the parties consent in writing to submit to the Centre.
- (2) Reference to a State or an REIO includes a constituent subdivision of the State, or an agency of the State or the REIO. The State or the REIO must approve the consent of the constituent subdivision or agency which is a party to the fact-finding pursuant to paragraph (1), unless the State or the REIO concerned notifies the Centre that no such approval is required.
- (3) The (Fact-Finding) Administrative and Financial Regulations, attached as Annex A, shall apply to proceedings pursuant to these Rules.

205. The proposed language modifications in FFR 2(1) are stylistic only, made for consistency with the corresponding MR 2(1).
206. One State noted the deletion from FFR 2(1), made in WP # 3, of the reference to “a national from another State,” and sought clarification regarding the effect of this change in terms of who may request fact-finding proceedings (and in particular, whether the change would allow State-to-State or State-to-NGO fact-finding proceedings). As noted in [WP # 3, ¶ 313](#), the intent of this change was to ensure expansive access to the Fact-Finding facilities, without the limitations applicable to Additional Facility arbitration and conciliation proceedings. Provided that consent of all putative parties to a fact-finding proceeding exists, and the proposed fact-finding relates to an investment and involves a State or an REIO, the fact-finding can proceed; there are no additional limitations on the types of parties that might avail themselves of fact-finding

Rule 3

Application of Rules

- (1) These Rules shall apply to any fact-finding proceeding conducted pursuant to Rule 2.

- (2) The parties may agree to modify the application of any of these Rules other than Rules 1-~~6~~7.
- (3) The applicable ICSID Fact-Finding Rules are those in force on the date of filing the Request, unless the parties agree otherwise.
- (4) The texts of these Rules are equally authentic in English, French and Spanish.
- (5) These Rules may be cited as the “ICSID Fact-Finding Rules.”

Rule 4 **Party Representative**

Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be promptly notified by that party to the Secretary-General (“representative(s)”).

207. This provision addressing the representation of parties in fact-finding proceedings has been moved from the definitions into its own rule to align with MR 1 and other ICSID dispute settlement frameworks.

Chapter II **Institution of the Fact-Finding Proceeding**

Rule ~~4~~5 **The Request**

Parties wishing to institute a fact-finding proceeding pursuant to ~~these~~ Rules ~~2~~2 shall file a joint Request with the Secretary-General and pay the lodging fee published in the schedule of fees.

208. The change in FFR 5(1) has been made to align this rule with MR 5(1).

Rule ~~5~~6 **Contents and Filing of the Request**

- (1) The Request shall:
 - (a) be in English, French or Spanish;
 - (b) identify each party to the proceeding and provide their contact information, including electronic mail address, street address and telephone number;

- (c) be signed by each requesting party or its representative and be dated;
 - (d) attach proof of any representative's authority to act;
 - (e) be filed electronically, unless the Secretary-General authorizes the filing of the Request in an alternative format;
 - (f) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request, and attach the authorizations;
 - (g) indicate that the proceeding involves a State or an REIO, describe the investment to which the proceeding relates, and indicate the facts to be examined and the relevant circumstances;
 - (h) attach the agreement of the parties to have recourse to fact-finding pursuant to these Rules; and
 - (i) contain any proposals or agreements reached by the parties concerning the constitution of a Fact-Finding Committee ("Committee"), the qualifications of its member(s), its mandate and the procedure to be followed during the fact-finding.
- (2) Any supporting document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or complete translation of the document.

Rule 67 **Receipt and Registration of the Request**

- (1) The Secretary-General shall promptly acknowledge receipt of the Request.
- (2) Upon receipt of the Request and the lodging fee, the Secretary-General shall register the Request if it appears, on the basis of the information provided, that the Request is within the scope of Rule 2(1).
- (3) The Secretary-General shall notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.
- (4) The notice of registration of the Request shall:
 - (a) record that the Request is registered and indicate the date of registration;

(b) confirm that all correspondence to the parties in connection with the proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Secretary-General; and

(c) invite the parties to constitute a Committee without delay.

Chapter III

The Fact-Finding Committee

Rule 78

Qualifications of Members of the Committee

- (1) Each member of a fact-finding Committee shall be impartial and independent of the parties.
- (2) The parties may agree that a member of a Committee shall have particular qualifications or expertise.

Rule 89

Number of Members and Method of Constituting the Committee

- (1) The parties shall endeavor to agree on a sole or any uneven number of Committee members, and the method of their appointment. If the parties do not advise the Secretary-General of an agreement on the number of members and method of appointment within 30 days after the date of registration, the Committee shall consist of a sole member, appointed by agreement of the parties.
- (2) The parties may jointly request that the Secretary-General assist with the appointment of any member at any time.
- (3) If the parties are unable to appoint a sole member or any member of a Committee within 60 days after the date of registration, either party may request that the Secretary-General appoint the member(s) not yet appointed. The Secretary-General shall consult with the parties as far as possible on the qualifications, expertise, nationality and availability of the member(s) and shall use best efforts to appoint any Committee member(s) within 30 days after receipt of the request to appoint.
- (4) If no step has been taken by the parties to appoint the members of a Committee within 120 consecutive days after the date of registration, or such other period as the parties may agree, the Secretary-General shall notify the parties that the fact-finding is terminated.

Rule 9~~10~~
Acceptance of Appointment

- (1) The parties shall notify the Secretary-General of the appointment of the members of the Committee and provide the names and contact information of the appointees.
- (2) Upon receipt of a notification pursuant to paragraph (1), ~~The~~ Secretary-General shall request an acceptance from ~~each~~ the appointee ~~as soon as the appointee is selected.~~
- (3) Within 20 days after receipt of the request for acceptance of an appointment, ~~an~~ the appointee shall:
 - (a) accept the appointment; and
 - (b) provide a signed declaration in the form published by the Centre, addressing matters including the appointee's independence, impartiality, availability and commitment to maintain the confidentiality of the proceeding.
- (4) The Secretary-General shall notify the parties of the acceptance of appointment by each member and provide the signed declaration.
- (5) The Secretary-General shall notify the parties if an appointee 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 in accordance with the method followed for the previous appointment.
- (6) Each member shall have a continuing obligation to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).
- (7) Unless the parties and the Committee agree otherwise, a member may not act as arbitrator, conciliator, counsel, expert, judge, mediator, witness or in any other capacity in any ~~other~~ proceeding relating to circumstances examined during the fact-finding.

209. The changes in FFR 10 have been made to reflect the changes to AR 19 and MR 14.

Rule ~~10~~11
Constitution of the Committee

The Committee shall be deemed to be constituted on the date the Secretary-General notifies the parties that each member has accepted their appointment. As soon as the Committee is constituted, the Secretary-General shall transmit the Request, any

supporting documents, [communications received from the parties](#) and the notice of registration to each member.

210. The change in FFR 11 has been made to align this rule with MR 15.

Chapter IV

Conduct of the Fact-Finding Proceeding

Rule ~~11~~¹²

Sessions and Work of the Committee

- (1) Each party shall file a preliminary written statement of not more than 50 pages with the Secretary-General within 15 days after the date of constitution of the Committee, unless the parties agree otherwise. The preliminary statement shall address the party's view on the mandate of the Committee, the scope of the inquiry, relevant documents, persons to be interviewed, site visits and any other relevant matters. The Secretary-General shall transmit the preliminary written statements to the Committee and the other party.
- (2) The Committee shall hold a first session with the parties within 30 days after its constitution or such other period as the parties may agree.
- (3) At the first session, the Committee shall determine the protocol for the fact-finding ("Protocol") after consulting with the parties on procedural matters, including:
 - (a) the Committee's mandate;
 - (b) the procedure for the conduct of the proceeding, such as the procedural languages, method of communication, place of sessions, the next steps in the proceeding, the treatment of confidential or protected information, documents to be provided, persons to be interviewed, site visits and any other procedural and administrative matters;
 - (c) whether the Report to be issued will be binding on the parties; and
 - (d) whether the Committee should make any recommendations in its Report.
- (4) The Committee shall conduct the proceeding in accordance with the Protocol and take all steps necessary to discharge its mandate. To that end, it shall make all decisions required for the conduct of the proceeding.
- (5) Any matters not provided for in these Rules or not previously agreed to by the parties shall be determined by agreement of the parties or, failing such agreement, by the Committee.

211. No changes have been proposed to this rule. One state sought clarification regarding the relationship between FFR 12(3)(c), and Rule 20(4). FFR 12(3)(c) simply prompts for consideration at the first session the question of whether the parties wish to agree in advance that the Report of the Committee should be binding. Absent such agreement, it will remain non-binding, as the default position in Rule 20(4) stipulates.

Rule ~~12~~¹³
General Duties

- (1) The Committee shall treat the parties equally and provide each party with a reasonable opportunity to participate in the proceeding. It shall conduct the proceeding in an expeditious and cost-effective manner and shall consult regularly with the parties on the conduct of the proceeding.
- (2) The parties shall cooperate with the Committee and with one another and shall conduct the proceeding in good faith and in an expeditious and cost-effective manner. The parties shall endeavor to provide all relevant explanations, documents or other information requested by the Committee and participate in the sessions of the Committee. The parties shall use ~~all available means~~ best efforts to facilitate the Committee's inquiry.

212. The change in FFR 13(2) has been made to align this rule with CR 29(2).

Rule ~~13~~¹⁴
Calculation of Time Limits

Time limits referred to in these Rules shall be calculated from the day after the date on which the procedural step starting the period is taken, based on the time at the seat of the Centre. A time limit shall be satisfied if a procedural step is taken on the relevant date, or on the subsequent business day; if the date falls on a Saturday or Sunday, ~~on the subsequent business day~~.

213. The change in FFR 14 has been made to reflect corresponding changes in AR 7, CR 7, and MR 8.

Rule ~~14~~¹⁵
Costs of the Proceeding

Unless the parties agree otherwise, ~~each party shall~~:

- (a) ~~pay one half of~~ the fees and expenses of the Committee and the administrative charges and direct costs of the Centre shall be borne equally by the parties; and

- (b) each party shall bear any other costs it incurs in connection with the proceeding.

214. FFR 15 has been amended to reflect corresponding changes in MR 9.

Rule ~~15~~16
Confidentiality of the Proceeding

- (1) All information relating to the fact-finding proceeding, and all documents generated in or obtained during the proceeding, shall be confidential, unless:
- (a) the parties agree otherwise;
 - (b) the information or document is independently available; or
 - (c) disclosure is required by law.
- (2) Unless the parties agree otherwise, ~~T~~he fact that the y-~~parties~~ are seeking or have sought fact-finding shall ~~not~~ be confidential.

215. FFR 16(2) has been amended to reflect corresponding changes in MR 10(2).

Rule ~~16~~17
Use of Information in Other Proceedings

A party shall not rely in other proceedings on any positions taken, admissions made, or views expressed by the other party or the members of the Committee during the fact-finding proceeding, unless the parties agree otherwise.

Chapter V
Termination of the Fact-Finding Proceeding

Rule ~~17~~18
Manner of Terminating the Proceeding

The proceeding shall terminate upon:

- (a) the issuance of a notice by the Secretary-General pursuant to Rule ~~8~~9(4);
- (b) the issuance of a Report by the Committee; or

(c) a notice from the parties that they have agreed to ~~conclude~~terminate the proceeding.

216. FFR 18 has been modified to align with the title and chapeau of this provision.

Rule ~~18~~19
Failure of a Party to Participate or Cooperate

If a party fails to participate in the proceeding or cooperate with the Committee, and the Committee determines that it is no longer able to discharge its mandate, the Committee shall, after notice to the parties, record the failure of that party to participate or cooperate in its Report.

Rule ~~19~~20
Report of the Committee

- (1) The Report shall be in writing and shall contain:
 - (a) the mandate of the Committee;
 - (b) the Protocol followed;
 - (c) a brief summary of the proceeding;
 - (d) a recommendation if requested by the parties; and
 - (e) the facts established by the Committee and the reasons why certain facts may not be considered as having been established; or
 - (f) an indication of the failure of a party to participate or cooperate pursuant to Rule ~~18~~19.
- (2) The Report shall be adopted by a majority of the members and signed by them. If a member does not sign the Report, such fact shall be recorded.
- (3) Any member may attach a statement to the Report if the member disagrees on any of the facts found.
- (4) Unless the parties agree otherwise, the Report of the Committee shall not be binding upon the parties, and the parties shall be free to give any effect to it.

Rule ~~20~~²¹
Issuance of the Report

- (1) Once the Report has been signed by the members of the Committee, the Secretary-General shall promptly:
 - (a) dispatch a certified copy of the Report to each party, indicating the date of dispatch on the Report; and
 - (b) deposit the Report in the archives of the Centre.
- (2) The Secretary-General shall provide additional certified copies of the Report to a party upon request.

217. One State sought clarification about the use of fact-finding reports in a subsequent arbitration process. The use to be made of a fact-finding report in a subsequent arbitration will depend on whether the parties have agreed pursuant to FFR 16 that the report will not be confidential and/or FFR 20(4) that the report will be binding. As a practical matter, parties may prefer to agree on a binding fact-finding report and to jointly submit this to an arbitral tribunal, whose task could then be limited to issue a legal ruling on the facts as determined by the fact-finding. This could help reduce time and costs of the arbitration.

**X. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR FACT-FINDING
PROCEEDINGS (ANNEX A)
(FACT-FINDING) ADMINISTRATIVE AND FINANCIAL REGULATIONS**

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X. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR FACT-FINDING PROCEEDINGS (ANNEX A)

((FACT-FINDING) ADMINISTRATIVE AND FINANCIAL REGULATIONS)

218. Except where indicated below, changes made in the (FF)AFR reflect changes in corresponding (AF)AFR.

Introductory Note

The (Fact-Finding) Administrative and Financial Regulations apply to fact-finding proceedings and were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Regulation 7.

Chapter I General Provisions

Regulation 1 Application of these Regulations

- (1) These Regulations apply to fact-finding proceedings which the Secretariat of the Centre is authorized to administer pursuant to Rule 2 of the ICSID Fact-Finding Rules.
- (2) The applicable Regulations are those in force on the date of filing the Request for fact-finding pursuant to the ICSID Fact-Finding Rules.
- (3) These Regulations may be referred to as the “(Fact-Finding) Administrative and Financial Regulations” of the Centre (“Annex A” to the ICSID Fact-Finding Rules).

Chapter II General Functions of the Secretariat

Regulation 2 Secretary

The Secretary-General of the Centre shall appoint a Secretary for each Fact-Finding Committee (“Committee”). The Secretary may be drawn from the Secretariat and shall be considered a member of its staff while serving as a Secretary. The Secretary shall:

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the ICSID Fact-Finding Rules applicable to individual proceedings and delegated to the Secretary; and
- (b) assist the parties and the Committee with all aspects of the proceedings, including the expeditious and cost-effective conduct of the proceeding.

Regulation 3 The Registers

The Secretary-General shall maintain a Register for each proceeding containing all significant data concerning the institution, conduct and disposition of the proceeding. The information in the Register shall not be published, unless the parties agree otherwise.

Regulation 4 Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
 - (a) all **R**requests for fact-finding;
 - (b) all documents and communications filed in a proceeding;
 - (c) any records of meetings or sessions in a proceeding; and
 - (d) any Report of the Committee.
- (2) Subject to the ICSID Fact-Finding Rules and the agreement of the parties to the proceeding, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c) and (d) available to the parties.

Regulation 5 Certificates of Official Travel

The Secretary-General may issue certificates of official travel to members of Committees, to persons assisting them, to members of the Secretariat, and to the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in proceedings,

indicating that they are traveling in connection with a proceeding pursuant to the ICSID Fact-Finding Rules.

Chapter III Financial Provisions

Regulation 6 Fees, Allowances and Charges

- (1) Each member of a Committee shall receive:
 - (a) a fee for each hour of work performed in connection with the proceeding;
 - (b) when not travelling to attend a meeting or session, reimbursement of expenses reasonably incurred for the sole purpose of the proceeding; and
 - (c) when required to travel to attend a meeting or session held away from the member's place of residence:
 - (i) reimbursement of the cost of ground transportation between the points of departure and arrival;
 - (ii) reimbursement of the cost of air and ground transportation to and from the city in which the meeting or session is held; and
 - (iii) a *per diem* allowance for each day the member spends away from their place of residence.
- (2) The Secretary-General shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and (c). Any request by a member for a higher amount shall be made through the Secretary-General, and not directly to the parties. Such a request must be made before the constitution of the Committee and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish an annual administrative charge payable by the parties to the Centre.
- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
 - (a) Members of Committees and any assistants approved by the parties;
 - (b) witnesses and experts called by a Committee who have not been presented by a party;

(c) service providers that the Centre engages for a proceeding; and

(d) the host of any meeting or session held outside an ICSID facility.

(5) The Centre shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or reimbursements of the members of any Committee, unless the parties have made sufficient payments to defray the costs of the proceeding.

Regulation 7 Payments to the Centre

(1) To enable the Centre to pay the costs referred to in Regulation 6, the parties shall make payments to the Centre as follows:

(a) upon registration of a Request for fact-finding, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the proceeding through the first session of the Committee;

(b) upon constitution of a Committee, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the proceeding; and

(c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the proceeding.

(2) Each party shall pay an equal share ~~one-half~~ of the payments referred to in paragraph (1), unless the parties agree on a different division.

(3) The Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.

219. The change to (FF)AFR 7(2) is made to reflect corresponding changes to FFR 15 and MR 9.

Regulation 8 Consequences of Default in Payment

(1) The payments referred to in Regulation 7 shall be payable on the date of the request from the Secretary-General.

(2) The following procedure shall apply in the event of non-payment:

- (a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;
- (b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the proceeding until payment is made, after giving notice to the parties and to the Committee if constituted; and
- (c) if any proceeding is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the proceeding, after giving notice to the parties and to the Committee if constituted.

Regulation 9 Special Services

- (1) The Centre may perform any special services related to disputes if the requestor deposits in advance an amount sufficient to defray the charge for such services.
- (2) Charges for special services shall normally be based on a schedule of fees published by the Secretary-General.

Regulation 10 Fee for Lodging Requests

The parties wishing to institute a fact-finding proceeding shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 11 Administration of Proceedings

The ICSID Secretariat is the only **bodyentity** authorized to administer fact-finding proceedings conducted pursuant to the ICSID Fact-Finding Rules.

Chapter IV Official Languages and Limitation of Liability

Regulation 12 Languages of Regulations

- (1) These Regulations are published in the official languages of the Centre, English, French and Spanish.
- (2) The texts of these Regulations in each official language are equally authentic.
- (3) Unless otherwise stated or required by the context of the provision, ~~The singular form of a word in these Regulations and in the ICSID Fact-Finding Rules includes the plural form of that word, unless otherwise stated or required by the context of the provision.~~
- (4) Where required by the context, the masculine gender of a word in the French and Spanish versions of these Regulations and the ICSID Fact-Finding Rules shall be used as a gender-neutral form and shall be understood as referring to the masculine or feminine gender.

Regulation 13 Prohibition Against Testimony and Limitation of Liability

- (1) Unless required by applicable law or unless the parties and all the members of the Committee agree otherwise in writing, no member of the Committee shall give testimony in any judicial, arbitral or similar proceeding concerning any aspect of the fact-finding proceeding.
- (2) Except to the extent such limitation of liability is prohibited by applicable law, no member of the Committee shall be liable for any act or omission in connection with the exercise of their functions in the fact-finding proceeding, unless there is fraudulent or willful misconduct.

**XI. RULES FOR MEDIATION PROCEEDINGS
(ICSID MEDIATION RULES)**

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XI. ICSID MEDIATION RULES

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XI. RULES FOR MEDIATION PROCEEDINGS (ICSID MEDIATION RULES)

Introductory Note

The Rules for Mediation Proceedings (ICSID Mediation Rules) were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

The ICSID Mediation Rules are supplemented by the (Mediation) Administrative and Financial Regulations (Annex A).

Chapter I General Provisions

Rule 1 Definitions

- (1) “Secretariat” means the Secretariat of the Centre.
- (2) ~~(3)~~ “Regional Economic Integration Organization” or “REIO” means an organization constituted by States to which they have transferred competence in respect of matters governed by these Rules, including the authority to make decisions binding on them in respect of those matters.
- ~~(2)(3)~~ “Centre” or “ICSID” means the International Centre for Settlement of Investment Disputes established pursuant to Article 1 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.
- ~~(3) “Regional Economic Integration Organization” or “REIO” means an organization constituted by States to which they have transferred competence in respect of matters governed by these Rules, including the authority to make decisions binding on them in respect of those matters.~~
- (4) “Request” means a request for mediation together with the required supporting documents.
- (5) “Secretary-General” means the Secretary-General of the Centre.
- ~~(6) “Party” includes, where the context so admits, all parties acting together in to the mediation. Each party may be represented or assisted by agents, counsel, advocates or other advisors whose names and proof of authority to act shall be notified by that party to the Secretary-General (“representative(s)”).~~

~~(7)~~(6) “Schedule of fees” means the schedule of fees published by the Secretary-General.

(7) “Mediator” includes, where required by the context, two co-mediators appointed in accordance with these Rules.

220. The sequence of definitions in MR 1 has been aligned with the order in which the terms appear in the rules. The definition of party representative has been moved to new MR 4 and the term mediator has been moved from MR 14(1) to MR 1(7).

Rule 2 Mediation Proceedings

- (1) The Secretariat is authorized to administer mediations ~~relating~~that relate to an investment, ~~involving~~and a State or an REIO, and which the parties consent in writing to submit to the Centre.
- (2) Reference to a State or an REIO includes a constituent subdivision of the State, or an agency of the State or the REIO. The State or the REIO must approve the consent of the constituent subdivision or agency which is a party to the mediation pursuant to paragraph (1), unless the State or the REIO concerned notifies the Centre that no such approval is required.
- (3) The (Mediation) Administrative and Financial Regulations, attached as Annex A, shall apply to mediations pursuant to these Rules.

221. The proposed language modifications in MR 2(1) are stylistic only.

Rule 3 Application of Rules

- (1) These Rules shall apply to any mediation conducted pursuant to Rule 2.
- (2) The parties may agree to modify the application of any of these Rules other than Rules 1-~~6~~7.
- (3) If any of these Rules, or any agreement pursuant to paragraph (2), conflicts with a provision of law from which the parties cannot derogate, that provision shall prevail.
- (4) The applicable ICSID Mediation Rules are those in force on the date of filing the Request, unless the parties agree otherwise.
- (5) The texts of these Rules are equally authentic in English, French and Spanish.

(6) These Rules may be cited as the “ICSID Mediation Rules”.

Rule 4 **Party Representative**

Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be promptly notified by that party to the Secretary-General (“representative(s)”).

222. This provision addressing the representation of parties in mediation has been moved into its own rule to align the MR with other ICSID dispute settlement frameworks.

Chapter II **Institution of the Mediation**

Rule ~~4~~5 **Institution of Mediation Based on Prior Party Agreement**

- (1) If the parties have agreed in writing to mediate~~ion~~ pursuant to ~~Rule 2~~these Rules, any party wishing to institute a mediation shall file a Request with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the mediation.
- (3) The Request shall:
 - (a) be in English, French or Spanish;
 - (b) identify each party to the mediation and provide their contact information, including electronic mail address, street address and telephone number;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) attach proof of any representative’s authority to act;
 - (e) be filed electronically, unless the Secretary-General authorizes the filing of the Request in an alternative format;
 - (f) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request, and attach the authorizations;

- (g) indicate that the mediation involves a State or an REIO, describe the investment to which the mediation relates, and include a brief statement of the issues in dispute;
 - (h) contain any proposals or agreements reached by the parties concerning the appointment and qualifications of the mediator and the procedure to be followed during the mediation; and
 - (i) attach the agreement of the parties to mediate pursuant to these Rules.
- (4) Any supporting document in a language other than English, French or Spanish shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or complete translation of the document.
- (5) Upon receipt of the Request, the Secretary-General shall:
- (a) promptly acknowledge receipt of the Request to the requesting party; and
 - (b) transmit the Request to the other party upon receipt of the lodging fee.

223. The change in MR 5(1) has been made to align MR 5(1) with MR 6(1).

Rule 56 **Institution of Mediation Absent a Prior Party Agreement**

- (1) If the parties have no prior written agreement to mediate pursuant to ~~these Rules~~[Rule 2](#), any party wishing to institute a mediation shall file a Request with the Secretary-General and pay the lodging fee published in the schedule of fees.
- (2) The Request shall:
 - (a) comply with the requirements in Rule ~~45~~[5](#)(3)(a)-(h);
 - (b) include an offer to the other party to mediate pursuant to ~~these Rules~~[Rule 2](#); and
 - (c) request that the Secretary-General invite the other party to accept the offer to mediate.
- (3) Upon receipt of the Request, the Secretary-General shall:
 - (a) promptly acknowledge receipt of the Request to the requesting party;

(b) transmit the Request to the other party upon receipt of the lodging fee; and

(c) invite the other party to inform the Secretary-General within 60 days after transmittal of the Request whether it accepts the offer to mediate.

(4) If the other party informs the Secretary-General that it accepts the offer to mediate, the Secretary-General shall acknowledge receipt and transmit the acceptance of the offer to mediate to the requesting party.

(5) If the other party rejects the offer to mediate, or fails to accept the offer to mediate within the 60-day period referred to in paragraph (3)(c) or within such other period as the parties may agree, the Secretary-General shall acknowledge receipt and transmit any communication received to the requesting party and [shall](#) inform the parties that no further action will be taken on the Request.

224. One State suggested eliminating MR 6, noting that this provision would oblige the State party and the Centre to take preliminary steps even if no consent to mediate materializes. However, several Member States requested such a provision to facilitate mediation at ICSID. As a result, MR 6 is maintained. MR 6 does not require the other party to consent to an offer to mediate transmitted by ICSID, and it can refuse such an offer. In practice, this is what a State would currently do with an offer received directly from the other party. Moreover, the institution of mediation proceedings absent a prior agreement is commonly found in other mediation frameworks such as those of the International Chamber of Commerce (ICC), the Singapore International Arbitration Center (SIAC), the London Court of International Arbitration (LCIA) and the Judicial Arbitration and Mediation Services (JAMS). Should an agreement to mediate not materialize, the Secretary-General will inform the parties accordingly and no further action will be taken on the request (*see* MR 6(5)).

225. One State suggested clarifying in MR 6(5) that the Secretary-General shall also inform the parties that no further action will be taken on the Request upon the expiry of the period envisioned for a response to the offer to mediate (where no response is received). This is the drafting intent and MR 6(5) has been amended accordingly.

Rule [67](#) **Registration of the Request**

(1) Upon receipt of:

(a) the lodging fee; and

(b) a Request pursuant to Rule [45](#) or a Request and an agreement to mediate pursuant to Rule [56](#);

the Secretary-General shall register the Request if it appears, on the basis of the information provided, that the Request is within the scope of Rule 2(1).

(2) The Secretary-General shall notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.

(3) The notice of registration of the Request shall:

- (a) record that the Request is registered and indicate the date of registration;
- (b) confirm that all correspondence to the parties in connection with the mediation will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Secretary-General; and
- (c) invite the parties to appoint the mediator without delay.

226. No comments were received in relation to the threshold for registration in MR 7(1) as outlined in WP # 3. The Secretary-General's determination under MR 7(1) ensures that the Centre administers only those mediations that fall within the scope of MR 2. One State inquired as to which criteria would determine the existence of an investment required by MR 2(1). This determination will be made on the basis of the information provided by the parties prior to registration. In particular, the Secretary-General will consider any relevant provisions of the parties' agreement to mediate.

Chapter III

General Procedural Provisions

Rule 78

Calculation of Time Limits

Time limits referred to in these Rules shall be calculated from the day after the date on which the procedural step starting the period is taken, based on the time at the seat of the Centre. A time limit shall be satisfied if a procedural step is taken on the relevant date, or on the subsequent business day, if the date falls on a Saturday or Sunday, ~~on the subsequent business day~~.

227. The provision has been aligned with the corresponding changes in AR 7 and CR 7.

Rule 89

Costs of the Mediation

Unless the parties agree otherwise, ~~each party shall~~:

- (a) ~~pay one half of~~ the fees and expenses of the mediator and the administrative charges and direct costs of the Centre shall be borne equally by the parties; and
- (b) each party shall bear any other costs it incurs in connection with the mediation.

228. MR 9 maintains the principle that the costs of the mediation are shared equally between the parties to the mediation. The revisions to this rule have been made to align with the corresponding provisions in the CR and (AF)CR.

Rule ~~9~~10 **Confidentiality of the Mediation**

- (1) All information relating to the mediation, and all documents generated in or obtained during the mediation shall be confidential, unless:
 - (a) the parties agree otherwise;
 - (b) the information or document is independently available; or
 - (c) disclosure is required by law.
- (2) Unless the parties agree otherwise, ~~T~~he fact that the y-~~parties~~ are mediating or have mediated shall ~~not~~ be confidential.

229. Some States commented that confidentiality could be a key consideration for parties when deciding whether to mediate. As a result, the express reference to a party agreement in MR 10(2) (contained in WP # 2 and deleted in WP # 3) is reinstated and disclosure of the fact of mediation is made subject to party agreement. Should a disclosure of the fact of mediation be required, for example if a dispute settlement provision in a treaty required mediation as a pre-condition to arbitration, that scenario is covered by MR 10(1). This change is also consistent with (M)AFR 3, requiring the parties' consent to publication of the mediation registers by ICSID.

Rule ~~10~~11 **Use of Information in Other Proceedings**

A party shall not rely in other proceedings on any positions taken, admissions or offers of settlement made, or views expressed by the other party or the mediator during the mediation, unless the parties agree otherwise.

Chapter IV The Mediator

Rule ~~11~~¹² Qualifications of the Mediator

- (1) The mediator shall be impartial and independent of the parties.
- (2) The parties may agree that the mediator shall have particular qualifications or expertise.

230. The development of a code of conduct for mediators is not currently proposed. Most aspects commonly regulated in codes of conducts for mediators (such as independence, impartiality, availability, qualifications, confidentiality obligations and fees) are regulated in the MR and (M)AFR. A code of conduct for mediators could be developed at a later stage should Member States wish.

Rule ~~12~~¹³ Number of Mediators and Method of Appointment

- (1) There shall be one mediator or two co-mediators. Each mediator shall be appointed by agreement of the parties. ~~All references to “mediator” in these Rules shall include co-mediators, as applicable.~~
- (2) If the parties do not advise the Secretary-General of an agreement on the number of mediators within 30 days after the date of registration, there shall be one mediator appointed by agreement of the parties.
- (3) The parties may jointly request that the Secretary-General assist with the appointment of a mediator at any time.
- (4) If the parties are unable to appoint the mediator within 60 days after the date of registration, either party may request that the Secretary-General appoint the mediator not yet appointed. The Secretary-General shall consult with the parties as far as possible on the qualifications, expertise, nationality and availability of the mediator and shall use best efforts to appoint any mediator within 30 days after receipt of the request to appoint.
- (5) If no step has been taken by the parties to appoint the mediator within 120 consecutive days after the date of registration, or such other period as the parties may agree, the Secretary-General shall notify the parties that the mediation is terminated.

231. One State suggested nationality requirements for mediators similar to those applicable to arbitrators pursuant to Art. 39 of the Convention. It also suggested nationality restrictions on the appointment of nationals of a State that does not maintain diplomatic relations with the State party to the dispute or with the State whose national is a party to the dispute. No nationality restrictions are envisioned in WP # 4, which is consistent with the principle adopted under the Convention for conciliation proceedings, to which Art. 39 does not apply. Parties may include nationality requirements in their agreed method of appointment of the mediator.
232. One State proposed the inclusion of a mediator disqualification process similar to that available under the arbitration framework. No such procedure is proposed in WP # 4. Mediation requires a party's "ongoing consent" to mediate. Should a party have concerns about the mediator's ability to exercise the functions in accordance with the MR, that party may: (i) voice such concerns with the mediator to resolve the matter; (ii) require the mediator to resign with the agreement of the other party (*see* MR 16(a)); or (iii) withdraw from the mediation (*see* MR 22(1)(c)).
233. One State inquired about the desirability of the default mediator appointment procedure upon request of one party only (MR 13(4)) given the consensual nature of mediation. MR 13(4) reflects widespread practice in international mediation frameworks, which envision default procedures for mediator appointments (*see* ICDR, Art. 4; SIAC, Art. 4.2, ICC Art. 5(2), SCC Art. 6). Such default procedures may overcome a breakdown in communications. Should the parties want the default provision to require a joint request, they may include this in their agreement regarding the method of appointment of the mediator.
234. One State proposed co-mediation as the default in MR 13(2). The default to a single mediator in MR 13(2) is intended to provide a speedy and cost-effective mediator appointment and mediation process. Should the parties prefer co-mediation, they may include a provision to that effect in their agreement regarding the appointment of the mediator, which may also include requirements on the qualifications of each co-mediator.

Rule ~~14~~¹³ Acceptance of Appointment

(1) The parties shall notify the Secretary-General of the appointment of the mediator and provide the name and contact information of the appointee.

~~(1)~~(2) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from ~~each~~ the appointee ~~as soon as the appointee is selected~~.

~~(2)~~(3) Within 20 days after receipt of the request for acceptance of an appointment, ~~an~~ the appointee shall:

(a) accept the appointment; and

(b) provide a signed declaration in the form published by the Centre, addressing matters including the mediator's independence, impartiality, availability and commitment to maintain the confidentiality of the mediation.

~~(3)~~(4) The Secretary-General shall notify the parties of the acceptance of appointment by the mediator and ~~transmit~~provide the signed declaration ~~to them~~.

~~(4)~~(5) The Secretary-General shall notify the parties if a mediator 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 mediator in accordance with the method followed for the previous appointment.

~~(5)~~(6) The mediator shall have a continuing obligation to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).

~~(6)~~(7) Unless the parties and the mediator agree otherwise, a mediator may not act as arbitrator, conciliator, counsel, expert, judge, witness or in any other capacity in any ~~other~~ proceeding relating to the issues in dispute in the mediation.

235. Some States were uncertain as to whether the MR required a provision on disclosure of third-party funding (TPF). The MR do not propose such a rule. This is because the mediation process is not adversarial or binding in the same fashion as arbitration. In any event, parties will likely expressly inquire about TPF before consenting to mediate if this was a concern for them. It is also expected that in selecting a mediator, the parties would discuss and disclose to one another any information that might relate to the mediator's impartiality or independence, including the existence of TPF and the identity of the funder. Additionally, if the mediation is in parallel with an ICSID arbitration, the parties will have relevant disclosures without a TPF rule in the MR because they will already have disclosure of third-party funding under AR 14. Further, MR 20(4) deals with a party's ability to settle in the mediation, requiring each party to identify a representative authorized to settle and describe the process that would be followed to implement a settlement, which would include disclosure of TPF if relevant to settlement discussions.

236. If an express TPF clause is desired for the MR, it could be inserted after MR 12 on qualifications of the mediator and would resemble AR 14. Such a provision would read:

- (1) Upon registration of a Request for mediation, a party shall file a written notice with the Secretary-General disclosing the name and address of any non-party from which it received funds for the mediation. A non-party referred to in this provision does not include a representative of a party.
- (2) A party shall provide the notice referred to in paragraph (1) to the other party and any proposed mediator and shall update the notice if the circumstances concerning funding from a non-party change during the mediation.

Rule ~~14~~¹⁵
Transmittal of the Request

As soon as the mediator has, or both co-mediators have, accepted the appointment(s), the Secretary-General shall transmit the Request, any supporting documents, ~~and~~ communications received from the parties and the notice of registration to each mediator and notify the parties of the ~~is~~ transmittal.

237. MR 15 has been amended to clarify that communications received from the parties to the mediation are also transmitted to the mediator(s). As explained in WP # 3, the transmittal of the Request for mediation to the mediator pursuant to MR 15 is the triggering event for the timelines in MR 19 and 20.

Rule ~~15~~¹⁶
Resignation and Replacement of Mediator

- (1) A mediator may resign by notifying the Secretary-General and the parties.
- (2) A mediator shall resign:
 - (a) on the joint request of the parties; or
 - (b) if the mediator becomes incapacitated or fails to perform the duties required of a mediator.
- (3) Following the resignation of a mediator, the Secretary-General shall notify the parties of the vacancy. A new mediator shall be appointed by the same method used to make the original appointment, except that:
 - (a) the Secretary-General shall fill any vacancy that has not been filled within 45 days after the notice of the vacancy; or
 - (b) if a co-mediator resigns and the parties notify the Secretary-General within 45 days after the notice of the vacancy that they have agreed to continue the mediation with the remaining co-mediator acting as sole mediator, no new mediator shall be appointed.

Chapter V Conduct of the Mediation

Rule ~~16~~¹⁷ Role and Duties of the Mediator

- (1) The mediator shall assist the parties in reaching a mutually acceptable resolution of all or part of the issues in dispute. The mediator does not have the authority to impose a ~~settlement~~resolution of the dispute on the parties.
- (2) The mediator shall conduct the mediation in good faith and in an expeditious and cost-effective manner.
- (3) The mediator shall treat the parties equally and provide each party with a reasonable opportunity to participate in the ~~proceeding~~mediation.
- (4) The mediator may meet and communicate with the parties jointly or separately. Such communication may be in person or in writing and by any appropriate means. Information received by the mediator from one party shall not be disclosed to the other party without authorization from the disclosing party.

238. The text of MR 21(2)-(4) has been moved to MR 17 without any modification.

Rule ~~17~~¹⁸ Duties of the Parties

The parties shall cooperate with the mediator~~(s)~~ and with one another and shall conduct the mediation in good faith and in an expeditious and cost-effective manner.

Rule ~~18~~¹⁹ Initial Written Statements

- (1) Each party shall file a brief initial written statement with the Secretary-General describing the issues in dispute and its views on these issues and on the procedure to be followed during the mediation. These statements shall be filed within 15 days after the date of the transmittal of the Request pursuant to Rule ~~14~~¹⁵, or such other period as the mediator may determine in consultation with the parties, ~~and in any event before the first session.~~

- (2) The Secretary-General shall transmit the initial written statements to the mediator and the other party.

239. The initial written statements are intended to give the mediator a first overview of the proceeding before meeting the parties for a first session, hence are scheduled to be delivered within 15 days after transmittal of the Request to the mediators. As the date of the first session may be extended, the date for the initial statements may also be revised by the mediator.

Rule ~~19~~²⁰ **First Session**

- (1) The mediator shall hold a first session with the parties within 30 days after the date of the transmittal of the Request pursuant to Rule ~~14~~¹⁵ or such other period as the parties may agree.
- (2) The agenda, method and date of the first session shall be determined by the mediator after consulting with the parties. In preparation for the first session, the mediator may meet and communicate with the parties jointly or separately.
- (3) At the first session, the mediator shall determine the protocol for the conduct of the mediation (“Protocol”) after consulting with the parties on procedural matters, including:
 - (a) the procedural language(s);
 - (b) the method of communication;
 - (c) the place of meetings;
 - (d) the next steps in the ~~proceeding~~^{mediation};
 - (e) the treatment of confidential or protected information;
 - (f) the participation of other persons in the mediation;
 - (g) any agreement between the parties:
 - (i) concerning the treatment of information disclosed by one party to the mediator by separate communication pursuant to Rule ~~20~~¹⁷(~~34~~);
 - (ii) not to initiate or pursue other proceedings in respect of the issues in dispute during the mediation;
 - (iii) concerning the application of prescription or limitation periods; and

- (iv) concerning the disclosure of any settlement agreement resulting from the mediation;
 - (h) the division of advances payable pursuant to (Mediation) Administrative and Financial Regulation 7; and
 - (i) any other relevant procedural and administrative matters.
- (4) At the first session or within ~~any other~~ such other period as the mediator may determine, each party shall:
- (a) identify a representative who is authorized to settle the issues in dispute on its behalf; and
 - (b) describe the process that would be followed to implement a settlement.

Rule ~~20~~21 ~~Conduct of the~~ Mediation Procedure

- (1) The mediator shall conduct the mediation in accordance with the Protocol and shall take into account the views of the parties and ~~the circumstances of~~ the issues in dispute.
- ~~(2) The mediator shall conduct the mediation in good faith and in an expeditious and cost-effective manner.~~
- ~~(3) The mediator may meet and communicate with the parties jointly or separately. Such communication may be in person or in writing and by any appropriate means.~~
- ~~(4) Information received by the mediator from one party shall not be disclosed to the other party without authorization from the disclosing party.~~
- ~~(5)~~(2) The mediator may request that the parties provide additional information or written statements.
- ~~(6)~~(3) If requested by all parties, the mediator may make oral or written recommendations for the resolution of ~~all or part of the~~ any issues in dispute.
- ~~(7)~~(4) The mediator may obtain expert advice with the agreement of the parties.

240. MR 21(2)-(4) have been moved to MR 17 which addresses the role and duties of the mediator.

241. The procedure envisioned in the MR does not prescribe a specific mediation style but allows parties to jointly determine the functions they want the mediator to undertake. One State suggested that the mediator have authority to recommend terms of settlement at any time during the mediation without a joint request from the parties to do so. WP # 4 maintains the requirement that the parties agree to such recommendations in MR 21(3).

Rule ~~21~~²²
Termination of the Mediation

- (1) The mediator, or the Secretary-General if no mediator has been appointed, shall issue a notice of termination of the mediation upon:
 - (a) a notice from the parties that they have signed a settlement agreement;
 - (b) a notice from the parties that they have agreed to terminate the mediation;
 - (c) a notice of withdrawal by any party, unless the remaining parties agree to continue the mediation;
 - (d) a determination by the mediator that there is no likelihood of resolution through the mediation; or
 - (e) ~~satisfaction~~-fulfilment of the requirements of Rule ~~12~~¹³(5).
- (2) The notice of termination shall contain a brief summary of the procedural steps and the basis for termination of the mediation pursuant to paragraph (1). The notice shall be dated and signed by the mediator or the Secretary-General, as applicable.
- (3) The Secretary-General shall promptly dispatch a certified copy of the notice of termination to each party and deposit the notice in the archives of the Centre. The Secretary-General shall provide additional certified copies of the notice to a party upon request.

242. One State suggested deleting the possibility in MR 21(1)(c) of continuing the mediation if one of multiple parties withdraws from it, so that the mediation would terminate upon withdrawal of one party. WP # 4 proposes to maintain the possibility of the remaining parties agreeing on the continuation of the mediation if one party withdraws from the process. If the withdrawal of one of multiple parties were to automatically terminate the mediation for all parties, that would require the remaining parties who wish to continue the mediation to commence a new process and incur time and cost. In addition, any eventual settlement agreement reached in the context of the mediation would only be binding upon the parties to the mediation at the time of settlement.

**XII. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR MEDIATION
(ANNEX A)
(MEDIATION) ADMINISTRATIVE AND FINANCIAL REGULATIONS)**

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XII. (MEDIATION) ADMINISTRATIVE AND FINANCIAL REGULATIONS

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XII. ADMINISTRATIVE AND FINANCIAL REGULATIONS FOR MEDIATION (ANNEX A) ((MEDIATION) ADMINISTRATIVE AND FINANCIAL REGULATIONS)

243. Except where indicated below, changes made in the (MR)AFR reflect changes in corresponding (AF)AFR. In addition, throughout the (MR)AFRs, “proceeding” has been replaced with “mediation” for consistency, except where the context necessitates otherwise.

Introductory Note

The (Mediation) Administrative and Financial Regulations apply to mediation s ~~proceedings~~ and were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

Chapter I General Provisions

Regulation 1 Application of these Regulations

- (1) These Regulations apply to mediation s ~~proceedings~~ which the Secretariat of the Centre is authorized to administer pursuant to Rule 2 of the ICSID Mediation Rules.
- (2) The applicable Regulations are those in force on the date of filing the Request for mediation pursuant to the ICSID Mediation Rules.
- (3) These Regulations may be referred to as the “(Mediation) Administrative and Financial Regulations” of the Centre (“Annex A” to the ICSID Mediation Rules).

Chapter II General Functions of the Secretariat

Regulation 2 Secretary

The Secretary-General of the Centre shall appoint a Secretary for each mediation. The Secretary may be drawn from the Secretariat and shall be considered a member of its staff while serving as a Secretary. The Secretary shall:

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the ICSID Mediation Rules applicable to individual ~~proceedings~~ mediations and delegated to the Secretary; and
- (b) assist the parties and the mediator with all aspects of the mediation~~proceeding~~, including the expeditious and cost-effective conduct of the mediation~~proceeding~~.

Regulation 3 The Registers

The Secretary-General shall maintain a Register for each mediation containing all significant data concerning the institution, conduct and disposition of the mediation~~proceeding~~. The information in the Register shall not be published, unless the parties agree otherwise.

Regulation 4 Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
 - (a) all R~~e~~quests for mediation;
 - (b) all documents and communications filed in a mediation;
 - (c) any records of meetings or sessions in a mediation; and
 - (d) any notice of termination of a mediation pursuant to ICSID Mediation Rule 22~~1~~.
- (2) Subject to the ICSID Mediation Rules and the agreement of the parties to the mediation~~proceeding~~, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c) and (d) available to the parties.

Regulation 5 Certificates of Official Travel

The Secretary-General may issue certificates of official travel to mediators, to persons assisting them, to members of the Secretariat, and to the parties, agents, counsel, advocates, advisors, witnesses or experts appearing in a mediation~~proceedings~~,

indicating that they are traveling in connection with a ~~proceeding~~ mediation pursuant to the ICSID Mediation Rules.

Chapter III Financial Provisions

Regulation 6 Fees, Allowances and Charges

- (1) Each mediator shall receive:
 - (a) a fee for each hour of work performed in connection with the ~~proceeding~~ mediation;
 - (b) when not travelling to attend a meeting or session, reimbursement of expenses reasonably incurred for the sole purpose of the mediation ~~proceeding~~; and
 - (c) when required to travel to attend a meeting or session held away from the place of residence of the mediator:
 - (i) reimbursement of the cost of ground transportation between the points of departure and arrival;
 - (ii) reimbursement of the cost of air and ground transportation to and from the city in which the meeting or session is held; and
 - (iii) a *per diem* allowance for each day the mediator spends away from their place of residence.
- (2) The Secretary-General shall determine and publish the amount of the fee and the *per diem* allowance referred to in paragraph (1)(a) and (c). Any request by a mediator for a higher amount shall be made through the Secretary-General, and not directly to the parties. Such a request must be made before the transmittal of the Request for mediation to the mediator pursuant to ICSID Mediation Rule 154 and shall justify the increase requested.
- (3) The Secretary-General shall determine and publish an annual administrative charge payable by the parties to the Centre.
- (4) All payments, including reimbursement of expenses, shall be made by the Centre to:
 - (a) mediators and any assistants approved by the parties;

(b) any experts appointed by a mediator pursuant to ICSID Mediation Rule ~~2021~~(74);

(c) service providers that the Centre engages for a [mediation proceeding](#); and

(d) the host of any meeting or session held outside an ICSID facility.

(5) The Centre shall not be required to provide any service in connection with a [mediation proceeding](#) or to pay the fees, allowances or reimbursements of the mediator, unless the parties have made sufficient payments to defray the costs of the [mediation proceeding](#).

Regulation 7 Payments to the Centre

(1) To enable the Centre to pay the costs referred to in Regulation 6, the parties shall make payments to the Centre as follows:

(a) upon registration of a Request for mediation, the Secretary-General shall request the party(ies) instituting the mediation to make a payment to defray the estimated costs of the [mediation proceeding](#) through the first session of the mediation, which shall be considered partial payment by the instituting party(ies) of the payment referred to in paragraph (1)(b);

(b) upon the transmittal of the Request for mediation pursuant to ICSID Mediation Rule ~~153~~, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the [mediation proceeding](#); and

(c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the [mediation proceeding](#).

(2) Each party shall pay ~~one-half~~ an equal share of the payments referred to in paragraph (1)(b) and (c), unless the parties agree on a different division.

(3) The Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.

244. Given (MR)AFR 12(3) it is no longer necessary to put (ies) in brackets in (MR)AFR 7(1)(a).

245. The change to (MR)AFR 7(2) is made to reflect corresponding changes to MR 9 and FFR 15.

Regulation 8 Consequences of Default in Payment

- (1) The payments referred to in Regulation 7 shall be payable on the date of the request from the Secretary-General.
- (2) The following procedure shall apply in the event of non-payment:
 - (a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;
 - (b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the mediation~~proceeding~~ until payment is made, after giving notice to the parties and to the mediator if appointed; and
 - (c) if any mediation~~proceeding~~ is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the mediation~~proceeding~~, after giving notice to the parties and to the mediator if appointed.

Regulation 9 Special Services

- (1) The Centre may perform any special services related to disputes if the requestor deposits in advance an amount sufficient to defray the charge for such services.
- (2) Charges for special services shall normally be based on a schedule of fees published by the Secretary-General.

Regulation 10 Fee for Lodging Requests

The party or parties (if a ~~R~~Request is filed jointly) wishing to institute a mediation shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 11 **Administration of Mediations ~~Proceedings~~**

The ICSID Secretariat is the only ~~body~~entity authorized to administer mediations ~~proceedings~~ conducted pursuant to the ICSID Mediation Rules.

Chapter IV **Official Languages and Limitation of Liability**

Regulation 12 **Languages of Regulations**

- (1) These Regulations are published in the official languages of the Centre, English, French and Spanish.
- (2) The texts of these Regulations in each official language are equally authentic.
- (3) Unless otherwise stated or required by the context of the provision, t~~The singular form of a words in these Regulations and in the ICSID Mediation Rules includes the plural form of that word, unless otherwise stated or required by the context of the provision.~~
- (4) Where required by the context, the masculine gender of a word in the French and Spanish versions of these Regulations and the ICSID Mediation Rules shall be used as a gender-neutral form and shall be understood as referring to the masculine or feminine gender.

Regulation 13 **Prohibition Against Testimony and Limitation of Liability**

- (1) Unless required by applicable law or unless the parties and the mediator agree otherwise in writing, no mediator shall give testimony in any judicial, arbitral or similar proceeding concerning any aspect of the mediation.
- (2) Except to the extent such limitation of liability is prohibited by applicable law, no mediator shall be liable for any act or omission in connection with the exercise of their functions in the mediation, unless there is fraudulent or willful misconduct.

CONCORDANCE TABLES WP # 4

Concordance Table of AFRs

WP # 4 Proposed AFR	WP # 3 Proposed AFR	Current AFR (2006)
1	1	1
2	2	2
3	3	3
4	4	4
5	5	5 and 1(2)
6	6	6
7	7	7
8	8	8
9	9	9
10	10	10
11	11	11
12	12	12
13	13	13
14	14	14
15	15	14
16	16	14
17	17	15
18	18	16
19	19	17
20	20	18
21	21	19
22	22	
23	23	20
24	24	21
25	25	22
26	26	23
27	27	33
28	28	25 and 26
29	29	28
30	30	31
31	31	32
32	32	34

Concordance Table of IR

WP # 4 Proposed IR	WP # 3 Proposed IR	Current IR (2006)
1	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9

Concordance Table of AR

WP # 4 Proposed AR	WP # 3 Proposed AR	Current AR (2006)	Current AFR or IR (2006)
1	1	56	
2	3	18	
3	2		
4	4	23	AFR 24
5	5	24	AFR 30
6	6		AFR 24
7	7	22	AFR 30
8	8	25	AFR 24
9	9	26	AFR 29
10	10	26	AFR 29
11	11		
12	12		
13	13	1	
14	14		
15	15	2	IR 3
16	16	3	
17	17		
18	18	4	
19	19	5 and 6(2)	
20	20	7	
21	21	6(1) and 30	
22	22	9	
23	23	9	
24	24	8(1)	
25	25	8(2)	
26	26	10, 11, 12	
27	27	19 and 20	
28	28	27	
29	29	13 and 20	
30	30	31	

WP # 4 Proposed AR	WP # 3 Proposed AR	Current AR (2006)	Current AFR or IR (2006)
31	31	21	
32	32	29 and 32	
33	33	14	
34	34	15	
35	35	16	
36	36	34	
37	37		
38	38	35 and 36	
39	39		
40	40	34 and 37	AFR 26(2)
41	41	41(5)	
42	42	41	
43	43(1)(2)(3)	41	
44	44		
45	43(4) (5) (6)	41	
46	45		
47	46	39	
48	47	31(1), 40, 41(1)	
49	48	42	
50	49	28	AFR 14
	-	28	AFR 14
51	50	28	AFR 14
52	51	28	AFR 14
53	52	16, 38, 39, 54	
54	53	9(6) and 10(2)	AFR 14(3)(d)
55	54	43	
56	55	44	
57	56	45	AFR 14
	-		AFR 14
58	57	46	
59	58	28 and 47	
60	59	48	
61	60	49	
62	61	48(4)	
63	62		
64	63		
65	64	32	
66	65		
67	66	37(2)	
68	67	37(2)	
69	68	50	
70	69	51	
71	70	52	
72	71	53	
73	72	54	
74	73	55	
75-86	74-85		

Concordance Table of CR

WP # 4 Proposed CR	WP # 3 Proposed CR	Current CR (2006)	Current AFR or IR (2006)
1	1	34	
2	2	18	
3	3	25(2) and 26(2)	AFR 24(2) and 30
4	4		
5	5		AFR 24 and 28
6	6	21	AFR 30
7	7		
8	8		AFR 14
9	9	27(2) and 33(3)	
10	10	32(2)	
11	11	1(2) and 2	IR 3
12	12		
13	13	3	
14	14		
15	15	4	
16	16	5	
17	17	7	
18	18	6(1) and 24	
19	19	9 and 30	
20	20		
21	21	8(1)	
22	22	8(2)	
23	23	10, 11 and 12	
24	24	22	
25	25		
26	26	16, 19 and 20(2)	
27	27	14(2)	
28	28	15	
29	29	23	
30	30	25	
31	31	13(1) and 20	
32	32	27	
33	33	29	
34	34		
			AFR 14
35	35	30	
36	36	30	
37	37	30	
38	38	32	
39	39	33	

Concordance Table of AF Rules

WP # 4 Proposed AF Rules	WP # 3 Proposed AF Rules	Current AF Rules
1	1	1
2	2	2
3	3	3
4	4	

Concordance Table of (AF)AFR Regulations

WP # 4 Proposed (AF) AFR	WP # 3 Proposed (AF) AFR	Current AFR*	WP # 4 Proposed AFR
1	1	AF Article 5	
2	2	25 and 26	28
3	3	23	26
4	4	28	29
5	5	31	30
6	6	14	14
7	7	14	15
8	8	14	16
9	9	15	17
10	10	16	18
11	11		22
12	12	34	32
13	13		

*In accordance with Article 5 of the current AF Rules, “Regulations 14 through 16, 22 through 30 and 34(1) of the Administrative and Financial Regulations of the Centre shall apply, *mutatis mutandis*, in respect of fact-finding, conciliation and arbitration proceedings under the Additional Facility.”

Concordance Table of (AF)AR

WP # 4 Proposed (AF) AR	WP # 3 Proposed (AF) AR	Current A(AF)R (2006)	Current AFR (2006)	WP # 4 Proposed AR	WP # 4 Proposed IR
1	1	1		1	
2	2	2			1
3	3	3			2
4	4	3(2)			3
5	5	3(3) and 32			4
6	6	4			5
7	7	4			6
8	8	5			7
9	9	2			8
10	11			2	
11	10	26		3	
12	12	31		4	

WP # 4 Proposed (AF) AR	WP # 3 Proposed (AF) AR	Current A(AF)R (2006)	Current AFR (2006)	WP # 4 Propose d AR	WP # 4 Proposed IR
13	13	32		5	
14	14			6	
15	15	30		7	
16	16			8	
17	17	33		9	
18	18			10	
19	19			11	
20	20			12	
21	21	6,7,8 and 14(1)		13	
22	22	8		14	
23	23			15	
24	24	6 and 9			
25	25			17	
26	26	6(4) and 10		18	
27	27	11		19	
28	28	12		20	
29	29	13		21	
30	30	15		22	
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32	32	14(1) and (2)		24	
33	33	14(3)		25	
34	34	16,17,18		26	
35	35	24(2) and 27		27	
36	36	34		28	
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38	38	21(1) and 28		29	
39	39	38		30	
40	40	29		31	
41	41	19 and 20			
42	42	21 and 22		32	
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46	46	41(1)		36	
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52	52	45(4) and (5)		42	
53	53(1)(2)(3)	45(1)-(5) and (7)		43	
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58	57	47		48	
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61	60	58	14	51	
62	61	58	14	52	
63	62	24, 44 and 46	14	53	
64	63		14(3)(d)	54	
65	64	49		55	
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67	66	51	14	57	
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1	1	1		1	
2	2	2			1
3	3	3			2
4	4	3(2)			3
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11	11	29	24, 28, 30	3	
12	12			4	
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16	16		14	8	
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18	18	37(4)		10	
19	19	6 and 8		11	
20	20	7			
21	21			12	
22	22			14	
23	23	10		15	
24	24	11		16	
25	25	12		17	
26	26	13		18	
27	27	15		19	
28	28	15		20	
29	29	14		21	
30	30	14(3)		22	
31	31	16 and 17		23	
32	32	30		24	
33	33			25	
34	34	26		26	
35	35	21		27	
36	36	22		28	
37	37	31		29	
38	38	33		30	
39	39	20		31	
40	40	20		32	
41	41	36		33	
42	42			34	
43	43	37		35	
44	44	37		36	
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47	47	39		39	

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2	2	AF Rules Art. 2
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4	1(6)	
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10	9	8(1)
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