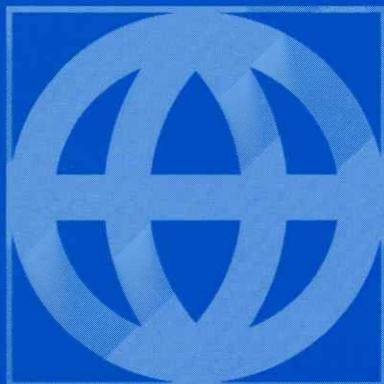


ICSID



ADDITIONAL FACILITY

FOR THE
ADMINISTRATION OF
CONCILIATION,
ARBITRATION AND
FACT-FINDING PROCEEDINGS

ICSID ADDITIONAL FACILITY

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INTRODUCTORY NOTES

On September 27, 1978, the Administrative Council of the Centre authorized the Secretariat to administer at the request of the parties concerned certain proceedings between States and nationals of other States which fall outside the scope of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. They are (i) conciliation or arbitration proceedings for the settlement of investment disputes arising between parties one of which is not a Contracting State or a national of a Contracting State; (ii) conciliation or arbitration proceedings between parties at least one of which is a Contracting State or a national of a Contracting State for the settlement of disputes that do not directly arise out of an investment; and (iii) fact-finding proceedings.

The scope within which and the terms on which the Secretariat may administer these proceedings, which would of course not be governed by the provisions of the Convention, are set out in the attached *Additional Facility Rules*. They provide, among other things, that the Additional Facility will not be available for the settlement of ordinary commercial disputes. The text of most of the Articles of the Additional Facility Rules are followed by explanatory comments.

Four schedules are also attached:

A. The Administrative and Financial Rules (Additional Facility)

These Rules provide for non-refundable fees, expressed in Special Drawing Rights, of SDR 100 each for an application for approval under Article 4 of the Additional Facility Rules and for notice of commencement of proceedings. Fees of conciliators, arbitrators and members of fact-finding committees are, unless otherwise agreed between them and the parties, determined on a time basis at the rate of SDR 350 per day of meetings or other work performed in connection with the proceedings. These fees are subject to adjustment by the Secretary-General in the light of changes in price levels. The Secretariat's administrative charges consist of reimbursement of out-of-pocket expenses and a time charge for staff services. Advance payments in respect of estimated fees and administrative charges are required on a quarterly basis.

B. The Conciliation (Additional Facility) Rules

These Rules are an amalgam of certain provisions of the Convention suitable for inclusion in an instrument of a contractual nature and of appropriate portions of the ICSID Conciliation Rules. The reference table following the text of the Conciliation (Additional Facility) Rules shows the origin of their provisions.

C. The Arbitration (Additional Facility) Rules

The Arbitration (Additional Facility) Rules are based on the ICSID Arbitration Rules, and provisions of the Convention which lend themselves to inclusion in an instrument of a contractual nature, and include some provisions derived from the UNCITRAL Rules and the

ICC Rules. The reference table following the text of the Arbitration (Additional Facility) Rules shows the origin of their provisions.

As under the ICSID Rules, the majority of the members of a tribunal are required to be nationals of third countries, and the Chairman of the Centre's Administrative Council is the residual appointing authority. However, the Chairman is not restricted in his choice to a Panel of Arbitrators. Arbitrators are explicitly required to disclose any past and present professional business and other relevant relationships with the parties (Art. 14).

In order to assure the widest possible international recognition and enforcement of awards arbitration proceedings may be held only in States that are parties to the 1958 UN Convention. Subject thereto the Tribunal determines the place of arbitration and the award must be made at that place (Art. 20, 21).

Following UNCITRAL Article 1.2 the Rules provide that they shall govern the proceedings "save that if any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail" (Art. 1). As regards the law applicable to the dispute in the absence of its designation by the parties "the Tribunal shall apply (a) the law determined by the conflict of laws rules which it considers applicable and (b) such rules of international law as the Tribunal considers applicable" (Art. 55). Paragraph (a) follows UNCITRAL Article 33.1 while paragraph (b) is derived from Article 42 of the Convention.

D. The Fact-Finding (Additional Facility) Rules

Fact-finding, as contemplated by the Additional Facility Rules is a process for preventing, rather than settling legal disputes. It is thus basically different from conciliation as well as arbitration. Under these Rules the proceedings will end with a Report which "shall be limited to findings of fact. The Report shall not contain any recommendations to the parties nor shall it have the character of an award" (Art. 16), and the parties will be "entirely free as to the effect to be given to the Report" (Art. 17).

The reason for including fact-finding in the Additional Facility was the need perceived in both private and public circles for fact-finding proceedings in the "pre-dispute" stage. They could provide the parties with an impartial assessment of facts which, if accepted by them, would prevent differences of view arising on specific factual issues in the course of a long-term relationship from escalating to legal disputes. Fact-finding can be useful in a contractual framework as well as in other contexts such as national or international guidelines or codes of conduct relating to foreign investment.

ADDITIONAL FACILITY RULES

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A

**RULES GOVERNING THE ADDITIONAL FACILITY
FOR THE ADMINISTRATION OF PROCEEDINGS
BY THE SECRETARIAT
OF THE INTERNATIONAL CENTRE
FOR SETTLEMENT OF INVESTMENT DISPUTES
(ADDITIONAL FACILITY RULES)**

Article 1

Definitions

(1) "Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, submitted to Governments by the Executive Directors of the International Bank for Reconstruction and Development on March 18, 1965, which entered into force on October 14, 1966.

(2) "Centre" means the International Centre for Settlement of Investment Disputes established pursuant to Article 1 of the Convention.

(3) "Secretariat" means the Secretariat of the Centre.

(4) "Contracting State" means a State for which the Convention has entered into force.

(5) "Secretary-General" means the Secretary-General of the Centre or his deputy.

(6) "National of another State" means a person who is not, or whom the parties to the proceeding in question have agreed not to treat as, a national of the State party to that proceeding.

Article 2

Additional Facility

The Secretariat of the Centre is hereby authorized to administer, subject to and in accordance with these Rules, proceedings between a State (or a constituent subdivision or agency of a State) and a national of another State, falling within the following categories:

(a) conciliation and arbitration proceedings for the settlement of legal disputes arising directly out of an investment which are not within the jurisdiction of the Centre because either the State party to the dispute or the State whose national is a party to the dispute is not a Contracting State;

(b) conciliation and arbitration proceedings for the settlement of legal disputes which are not within the jurisdiction of the Centre because they do not arise directly out of an investment, provided that either the State party to the dispute or the State whose national is a party to the dispute is a Contracting State; and

(c) fact-finding proceedings.

The administration of proceedings authorized by these Rules is hereinafter referred to as the Additional Facility.

Comment

(i) This provision defines the scope of the Additional Facility by specifying three categories of proceedings which may be administered by the Secretariat of the Centre. There is a common requirement of all three categories, namely that the parties to the proceedings be a State (or a constituent subdivision or agency of a State) on the one hand and a national of another State on the other. The three categories of proceedings also share a common negative feature namely that they are not within the jurisdiction of the Centre, either because the requirements *ratione personae* are not met or because the dispute is not an investment dispute or, finally, because the type of proceeding, namely fact-finding is not provided for in the Convention.

(ii) It should be noted that in the case of conciliation and arbitration proceedings under (a) and (b) either the State party to the dispute or the State whose national is the other party to the dispute must be a Contracting State.

(iii) Paragraph (b) should be read in conjunction with Article 4(3) and (4).

Article 3

Convention Not Applicable

Since the proceedings envisaged by Article 2 are outside the jurisdiction of the Centre, none of the provisions of the Convention shall be applicable to them or to recommendations, awards, or reports which may be rendered therein.

Comment

This is an explicit reminder that the provisions of the Convention are not applicable to Additional Facility proceedings. With respect to arbitration proceedings this means, e.g., that awards, unlike awards rendered pursuant to the Convention, are not insulated from national law and that their recognition and enforcement will be governed by the law of the forum, including applicable international conventions.

Article 4

Access to the Additional Facility in Respect of Conciliation and Arbitration Proceedings Subject to Secretary-General's Approval

(1) Any agreement providing for conciliation or arbitration proceedings under the Additional Facility in respect of existing or future disputes requires the approval of the Secretary-General. The parties may apply for such approval at any time prior to the institution of proceedings by submitting to the Secretariat a copy of the agreement concluded or proposed to be concluded between them together with other relevant documentation and such additional information as the Secretariat may reasonably request.

(2) In the case of an application based on Article 2 (a), the Secretary-General shall give his approval only if (a) he is satisfied that the requirements of that provision are fulfilled at the time, and (b) both parties give their consent to the jurisdiction of the Centre under Article 25 of the Convention (in lieu of the Additional Facility) in the event that the jurisdictional requirements *ratione personae* of that Article shall have been met at the time when proceedings are instituted.

(3) In the case of an application based on Article 2 (b), the Secretary-General shall give his approval only if he is satisfied (a) that the requirements of that provision are fulfilled, and (b) that the underlying transaction has features which distinguish it from an ordinary commercial transaction.

(4) If in the case of an application based on Article 2 (b) the jurisdictional requirements *ratione personae* of Article 25 of the Convention shall have been met and the Secretary-General is of the opinion that it is likely that a Conciliation Commission or Arbitral Tribunal, as the case may be, will hold that the dispute arises directly out of an investment, he may make his approval of the application conditional upon consent by both parties to submit any dispute in the first instance to the jurisdiction of the Centre.

(5) The Secretary-General shall as soon as possible notify the parties whether he approves or disapproves the agreement of the parties. He may hold discussions with the parties or invite the parties to a meeting with the officials of the Secretariat either at the parties' request or at his own initiative. The Secretary-General shall, upon the request of the parties or any of them, keep confidential any or all information furnished to him by such parties or party in connection with the provisions of this Article.

(6) The Secretary-General shall record his approval of an agreement pursuant to this Article together with the names and addresses of the parties in a register to be maintained at the Secretariat for that purpose. Such approval shall be a conclusive determination that the proceedings contemplated by the agreement come within the scope of these Rules.

Comment

(i) *Paragraphs (1) and (6)*: The Additional Facility is neither intended as an alternative to the Convention nor as a broad alternative to existing mechanisms for the settlement of commercial disputes. The requirement of advance approval serves to prevent access to the Additional Facility beyond its intended scope. In order to avoid surprises and possible frustration of the conciliation or arbitration undertaking, it is advisable as a practical matter that such undertakings (compromissory clauses or *compromis*) be submitted for approval prior to being entered into. Approval once obtained is a conclusive determination that the proceedings contemplated by the agreements come within the scope of the Additional Facility, thus barring jurisdictional objectives on this issue once proceedings have been instituted.

(ii) *Paragraph (2)*: This paragraph calls for a compromissory clause providing in the alternative for consent to the jurisdiction of the Centre, if at the time of institution of proceedings the State party to the dispute as well as the State whose national is the other party to the dispute are parties to the Convention, or Additional Facility proceedings if the requirements *ratione personae* have not been met at that time. Its purpose is to promote use of the Convention whenever this is possible.

(iii) *Paragraph (3)*: This provision guards against the use of the Additional Facility for disputes arising out of an "ordinary commercial transaction". While the term is not defined, and hardly capable of precise definition, the Administrative Council in approving the provision recorded the following: "Economic transactions which (a) may or may not, depending on their terms,

be regarded by the parties as investments for the purposes of the Convention, which (b) involve long-term relationships or the commitment of substantial resources on the part of either party, and which (c) are of special importance to the economy of the State party, can be clearly distinguished from ordinary commercial transactions. Examples of such transactions may be found in various forms of industrial cooperation agreements and major civil works contracts”.

(iv) *Paragraph (4)*: The term “investment” is not defined in the Convention and among the reasons for the proposal to establish the Additional Facility was the concern that a conciliation or arbitration agreement might be frustrated if a Commission or Tribunal declared itself incompetent on the ground that it considered the underlying transaction not to be an “investment”. The purpose of paragraph (4) is to avoid such frustration on the one hand and unnecessary failure to use the Convention on the other. Use of the authority given the Secretary-General by this paragraph would be appropriate in border-line cases.

Article 5

The responsibilities of the Secretariat in operating the Additional Facility and the financial provisions regarding its operation shall be as set forth in Schedule A, Administrative and Financial Rules (Additional Facility).

Article 6

Conciliation, arbitration and fact-finding proceedings under the Additional Facility shall be conducted in accordance with the respective Conciliation (Additional Facility), Arbitration (Additional Facility) and Fact-finding (Additional Facility) Rules set forth in Schedules B, C and D.

ADMINISTRATIVE AND FINANCIAL RULES (ADDITIONAL FACILITY)

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SCHEDULE A
ADMINISTRATIVE AND FINANCIAL RULES
(ADDITIONAL FACILITY)

CHAPTER I

**FUNCTIONS WITH RESPECT TO
ADMINISTRATION OF PROCEEDINGS**

Article 1

The Registers and Depository Functions

(1) The Secretariat shall maintain separate Registers to record notices for conciliation, arbitration and fact-finding and all other significant data in respect of the proceedings. The original text of the said notices, of all instruments and documents filed or prepared in connection with any proceeding, and of any report of a Commission or Committee or any award of a Tribunal shall be deposited in the archives of the Secretariat.

(2) The Secretariat shall, upon payment of any charges to be determined by it, make available to the parties to a proceeding certified copies of such reports, awards, instruments and documents relating to that proceeding.

Article 2

Secretary

The Secretary-General shall appoint a Secretary for each Commission, Tribunal and Committee to perform such functions as the Secretary-General may prescribe. The Secretary may be drawn from among the Secretariat of the Centre, and shall in any case, while serving in that capacity, be considered as a member of its staff.

Article 3

Other Assistance

(1) The Secretariat shall be responsible for making and supervising arrangements for the proceedings.

(2) The Secretariat shall provide such other assistance as may be required in connection with all meetings of Commissions, Tribunals and Committees, in particular in providing or arranging for translation and interpretation services.

CHAPTER II

FINANCIAL PROVISIONS

Article 4

Fee for Request of Approval of Agreement for Access to Additional Facility

Any person or persons seeking the Secretary-General's approval in accordance with Article 4 of the Additional Facility Rules shall pay the Centre a non-refundable fee of SDR 100.

Article 5

Fee for Lodging Notice of Commencement of Proceedings

The party or parties (if a notice is given jointly) wishing to commence a conciliation, arbitration or fact-finding proceeding shall pay the Centre a non-refundable fee of SDR 100, and in addition such amount as the Secretary-General shall determine to cover the Secretariat's estimated expenses during the period preceding the constitution of the Commission, Tribunal or Committee.

Article 6

Fees and Expenses of Commissions, Tribunals and Committees

Unless otherwise agreed between the parties and the Commission, Tribunal or Committee, as the case may be, each member of a Commission, a Tribunal or a Committee shall receive:

- (a) a fee of SDR 350 per day for each day on which he participates in meetings of the body of which he is a member;
- (b) a fee of SDR 350 for the equivalent of each eight-hour day of other work performed in connection with the proceedings;
- (c) in lieu of the reimbursement of subsistence expenses, when away from his normal place of residence, a *per diem* allowance equal to the amount which shall be established from time to time for the Executive Directors of the International Bank for Reconstruction and Development; and
- (d) reimbursement of any other direct expenses reasonably incurred.

Article 7

Administrative Charges

The administrative charges in connection with any proceeding shall include, in addition to reimbursement of all direct expenses attributable to such proceeding, a charge for staff services calculated substantially in accordance with the formula used by the International Bank for Reconstruction and Development to determine charges for reimbursable technical assistance activities.

Article 8

Adjustment for Price Level Changes

The amounts stated in Articles 4, 5 and 6 of these Rules may be increased or decreased by the Secretary-General in order to take account of changes in price levels.

Article 9

Currency of Payment and Determination of Currency Equivalent of SDR

The amounts payable pursuant to Articles 4, 5, 6, 7 and 8 of these Rules shall be paid in such currency or currencies as the Secretariat shall reasonably determine. The equivalent in any currency of any amount in SDR due in respect of any calendar quarter shall be determined as of the first day of such quarter as published by the International Monetary Fund.

Article 10

Payments to be Made by Secretariat

All payments, including reimbursement of expenses, to the following shall in all cases be made by the Secretariat and not by or through either party to the proceeding:

- (a) members of Commissions, Tribunals and Committees;
- (b) witnesses and experts summoned at the initiative of a Commission, Tribunal or Committee, and not of one of the parties;
- (c) members of the Secretariat and persons (such as interpreters, translators, reporters or secretaries) especially engaged by the Secretariat for a particular proceeding; and
- (d) the host of any proceeding held away from the seat of the Centre.

Article 11

Payments to be Made to Secretariat

In order to enable the Secretariat to make the payments provided for in Article 10 of these Rules, as well as to be reimbursed for or to incur other expenses in connection with a proceeding (other than expenses covered by Article 14 of these Rules):

- (a) the parties shall make payments to the Secretariat as follows:
 - (i) as soon as a Commission, Tribunal or Committee has been constituted and thereafter before the beginning of each calendar quarter, the Secretary-General shall estimate the expenses that will be incurred by the Secretariat during the following calendar quarter (including the balance of the current quarter in the case of the initial estimate) and request the parties to make an advance payment of this amount and, in the case of the initial request, to pay in addition the estimated amount of expenses incurred prior

to the constitution of the Commission, Tribunal or Committee to the extent it exceeds the amount paid toward such expenses under Article 5 of these Rules; and

- (ii) if at any time the Secretary-General determines that the advances made by the parties will not cover a revised estimate of expenses for the applicable period, he shall request the parties to make a supplementary advance payment.
- (b) The Secretariat shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or expenses of the members of any Commission, Tribunal or Committee, unless sufficient advance payments shall previously have been made.

Article 12

Quarterly Statements

As soon as possible after the end of each calendar quarter the Secretariat shall ascertain the actual expenses incurred and commitments entered into by it with regard to each proceeding and shall appropriately charge or credit the parties, taking into account the advance payments made by them.

Article 13

Division of Charges

In connection with every conciliation, arbitration or fact-finding proceeding each party shall pay one-half of each payment requested by the Secretariat, without prejudice to the final decision on the payment of the cost of an arbitration proceeding to be made by the Tribunal pursuant to Article 59 of the Arbitration (Additional Facility) Rules. All amounts shall be payable at the place and in the currencies specified by the Secretariat, as soon as a request for payment is made by it. If the amounts requested are not paid in full within 30 days, then the Secretariat shall inform both parties of the default and give an opportunity to either of them to make the required payment. At any time 15 days after such information is sent, the Secretary-General may move that the Commission, Tribunal or Committee stay the proceeding, if by the date of such motion any part of the required payment is still outstanding. If any proceeding is stayed for non-payment for a consecutive period in excess of six months, the Secretary-General may, after notice to and as far as possible in consultation with the parties, move that the competent body discontinue the proceeding.

Article 14

Special Services to Parties

The Secretariat shall only perform any special service for a party in connection with a proceeding (for example, the provision of translations or copies) if the party shall in advance have deposited an amount sufficient to cover the charge for such service.

CONCILIATION (ADDITIONAL FACILITY) RULES

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SCHEDULE B
CONCILIATION (ADDITIONAL FACILITY) RULES

CHAPTER I
INTRODUCTION

Article 1

Scope of Application

Where the parties to a dispute have agreed that it shall be referred to conciliation under the Conciliation (Additional Facility) Rules, the dispute shall be settled in accordance with these Rules.

CHAPTER II
INSTITUTION OF PROCEEDINGS

Article 2

The Notice

(1) Any State or any national of a State wishing to institute conciliation proceedings (hereinafter called the "Requesting Party") under the Additional Facility shall send a notice to that effect in writing to the Secretariat at the seat of the Centre. It shall be drawn up in an official language of the Centre, shall be dated and shall be signed by the party sending it.

(2) The notice may be given jointly by the parties to the dispute.

Article 3

Contents of the Notice

(1) The notice shall:

- (a) designate precisely each party to the dispute and state the address of each;
- (b) set forth the relevant provisions embodying the agreement of the parties to refer the dispute to conciliation;
- (c) contain information concerning the issues in dispute; and
- (d) indicate the date of approval by the Secretary-General pursuant to Article 4 of the Additional Facility Rules of the agreement of the parties providing for access to the Additional Facility.

(2) The notice may in addition set forth any provisions agreed by the parties regarding the number of conciliators and the method of their appointment, as well as any other provisions agreed concerning the settlement of the dispute.

(3) The notice shall be accompanied by five additional signed copies, and by the fee prescribed by Article 5 of the Administrative and Financial Rules (Additional Facility).

Article 4

Registration of the Notice

As soon as the Secretary-General shall have satisfied himself that the notice conforms in form and substance to the provisions of Article 3 of these Rules, he shall register the notice in the Conciliation (Additional Facility) Register and on the same day dispatch to the parties a certificate of registration. He shall also transmit a copy of the notice and of the accompanying documentation (if any) to the other party to the dispute (hereinafter called the "Other Party").

Article 5

Certificate of Registration

The certificate of registration of a notice shall:

- (a) record that the notice is registered and indicate the date of the registration and of the dispatch of that notice;
- (b) notify each party that all communications in connection with the proceeding will be sent to the address stated in the notice, unless another address is indicated to the Secretariat;
- (c) unless such information has already been provided, invite the parties to communicate to the Secretary-General any provisions agreed by them regarding the number and the method of appointment of the conciliators; and
- (d) invite the parties to proceed, as soon as possible, to constitute a Conciliation Commission in accordance with Chapter III of these Rules.

CHAPTER III

THE COMMISSION

Article 6

General Provisions

(1) Upon the dispatch of the certificate of registration of the notice for conciliation, the parties shall promptly proceed to constitute a Conciliation Commission.

(2) The Commission shall consist of a sole conciliator or any uneven number of conciliators appointed as the parties shall agree.

(3) In the absence of agreement between the parties regarding the number of conciliators and the method of their appointment, the Commission shall consist of three conciliators, one conciliator appointed by each party and the third, who shall be the President of the Commission, appointed by agreement of the parties.

(4) If the Commission shall not have been constituted within 90 days after the certificate of registration of the notice for conciliation has been dispatched by the Secretary-General, or such other period as the parties may agree, the Chairman of the Administrative Coun-

cil (hereinafter called the "Chairman") shall, at the request of either party transmitted through the Secretary-General, appoint the conciliator or conciliators not yet appointed and, unless the President shall already have been designated or is to be designated later, designate a conciliator to be President of the Commission.

Article 7

Delegation in Case of Investment or Contract Financed by World Bank Group

Notwithstanding the provisions of Article 6 (4) of these Rules, if the notice for conciliation relates to a dispute arising under any investment or agreement financed in whole or in part by the International Bank for Reconstruction and Development, the International Finance Corporation or the International Development Association, the Secretary-General shall so inform the Chairman, and the Chairman shall, when required to take any action pursuant to these Rules, select a person to whom he shall promptly delegate all the functions, responsibilities and powers assigned to the Chairman hereunder. The Secretary-General shall promptly inform the parties of any action taken pursuant to this Article.

Article 8

Qualifications of Conciliators

Conciliators shall be persons of high moral character who may be relied upon to exercise independent judgment.

Article 9

Method of Constituting the Commission in the Absence of Previous Agreement between the Parties

(1) If the parties, at the time of the registration of the notice for conciliation, have not agreed upon the number of conciliators and the method of their appointment, they shall, unless they agree otherwise, follow the following procedures:

- (a) the Requesting Party shall, within 10 days after the registration of the notice, propose to the Other Party the appointment of a sole conciliator or of a specified uneven number of conciliators and specify the method proposed for their appointment;
- (b) within 20 days after receipt of the proposals made by the Requesting Party, the Other Party shall:
 - (i) accept such proposals; or
 - (ii) make other proposals regarding the number of conciliators and the method of their appointment; and
- (c) within 20 days after receipt of the reply containing any such proposals, the Requesting Party shall notify the Other Party whether it accepts or rejects such proposals.

(2) The communications provided for in paragraph (1) of this Article shall be made or promptly confirmed in writing and shall either be transmitted through the Secretary-General or directly between the parties with a copy to the Secretary-General. The parties shall promptly notify the Secretary-General of the contents of any agreement reached.

(3) At any time 60 days after the registration of the notice, if no agreement on another procedure is reached, either party may inform the Secretary-General that it chooses the formula provided for in Article 6 (3) of these Rules. The Secretary-General shall thereupon promptly inform the parties that the Commission is to be constituted in accordance with that provision.

Article 10

Appointment of Conciliators to Commission Constituted in Accordance with Article 6 (3) of these Rules

(1) If the Commission is to be constituted in accordance with Article 6 (3) of these Rules:

- (a) the Requesting Party shall, in a communication to the Other Party:
 - (i) name two persons, identifying one of them as the conciliator appointed by it and the other as the conciliator proposed to be the President of the Commission; and
 - (ii) invite the Other Party to concur in the appointment of the conciliator proposed to be the President of the Commission and to appoint another conciliator;
- (b) promptly upon receipt of this communication the Other Party shall, in its reply:
 - (i) name a person as the conciliator appointed by it; and
 - (ii) concur in the appointment of the conciliator proposed to be the President of the Commission or name another person as the conciliator proposed to be the President; and
- (c) promptly upon receipt of the reply containing such a proposal, the Requesting Party shall notify the Other Party whether it concurs in the appointment of the conciliator proposed by that party to be the President of the Commission.

(2) The communications provided for in this Article shall be made or promptly confirmed in writing and shall either be transmitted through the Secretary-General or directly between the parties with a copy to the Secretary-General.

Article 11

Appointment of Conciliators and Designation of President of the Commission by the Chairman

(1) Promptly upon receipt of a request by a party to the Chairman to make an appointment or designation pursuant to Article 6 (4) of

these Rules, the Secretary-General shall send a copy thereof to the other party.

(2) The Chairman shall use his best efforts to comply with that request within 30 days after its receipt, or such longer period as the parties may agree. Before he proceeds to make appointments or a designation, he shall consult both parties as far as possible.

(3) The Secretary-General shall promptly notify the parties of any appointment or designation made by the Chairman.

Article 12

Acceptance of Appointments

(1) The party or parties concerned shall notify the Secretary-General of the appointment of each conciliator and indicate the method of his appointment.

(2) As soon as the Secretary-General has been informed by a party or the Chairman of the appointment of a conciliator, he shall seek an acceptance from the appointee.

(3) If a conciliator fails to accept his appointment within 15 days, the Secretary-General shall promptly notify the parties, and if appropriate the Chairman, and invite them to proceed to the appointment of another conciliator in accordance with the method followed for the previous appointment.

Article 13

Replacement of Conciliators prior to Constitution of the Commission

At any time before the Commission is constituted, each party may replace any conciliator appointed by it and the parties may by common consent agree to replace any conciliator.

Article 14

Constitution of the Commission

(1) The Commission shall be deemed to be constituted and the proceeding to have begun on the date the Secretary-General notifies the parties that all the conciliators have accepted their appointment.

(2) Before or at the first session of the Commission, each conciliator shall sign a declaration in the following form:

“To the best of my knowledge there is no reason why I should not serve on the Conciliation Commission constituted with respect to a dispute between _____ and _____.

“I shall keep confidential all information coming to my knowledge as a result of my participation in this proceeding, as well as the contents of any report drawn up by the Commission.

“A statement of my past and present professional, business and other relevant relationships (if any) with the parties is attached hereto.

“I shall not accept any instruction or compensation with regard to the proceeding from any source except as provided in the Administrative and Financial Rules (Additional Facility).”

Any conciliator failing to sign such a declaration by the end of the first session of the Tribunal shall be deemed to have resigned.

Article 15

Replacement of Conciliators after Constitution of the Commission

(1) After a Commission has been constituted and proceedings have begun, its composition shall remain unchanged; provided, however, that if a conciliator should die, become incapacitated, resign or be disqualified, the resulting vacancy shall be filled as provided in this Article and Article 18 of these Rules.

(2) A conciliator who becomes incapacitated shall, as soon as possible, notify the other members of the Commission and the Secretary-General thereof.

(3) A conciliator may resign by submitting his resignation to the other members of the Commission and the Secretary-General. If the conciliator was appointed by one of the parties, the Commission shall promptly consider the reasons for his resignation and decide whether it consents thereto. The Commission shall promptly notify the Secretary-General of its decision.

Article 16

Disqualification of Conciliators

(1) A party may propose to a Commission the disqualification of any of its members on account of any fact indicating a manifest lack of the qualities required by Article 8 of these Rules.

(2) A party proposing the disqualification of a conciliator shall promptly, and in any event before the proceeding is declared closed, file its proposal with the Secretary-General, stating its reasons therefor.

(3) The Secretary-General shall forthwith:

(a) transmit the proposal to the members of the Commission and, if it relates to a sole conciliator or to a majority of the members of the Commission, to the Chairman; and

(b) notify the other party of the proposal.

(4) The conciliator to whom the proposal relates may, without delay, furnish explanations to the Commission or the Chairman, as the case may be.

(5) The decision on any proposal to disqualify a conciliator shall be taken by the other members of the Commission except that where those members are equally divided, or in the case of a pro-

posal to disqualify a sole conciliator, or a majority of the conciliators, the Chairman shall take that decision.

(6) Whenever the Chairman has to decide on a proposal to disqualify a conciliator, he shall take that decision within 30 days after he has received the proposal.

(7) The proceeding shall be suspended until a decision has been taken on the proposal.

Article 17

Procedure during a Vacancy on the Commission

(1) The Secretary-General shall forthwith notify the parties and, if necessary, the Chairman of the disqualification, death, incapacity or resignation of a conciliator and of the consent, if any, of the Commission to a resignation.

(2) Upon the notification by the Secretary-General of a vacancy on the Commission, the proceeding shall be or remain suspended until the vacancy has been filled.

Article 18

Filling Vacancies on the Commission

(1) Except as provided in paragraph (2) of this Article, a vacancy resulting from the disqualification, death, incapacity or resignation of a conciliator shall be promptly filled by the same method by which his appointment has been made.

(2) In addition to filling vacancies relating to conciliators appointed by him, the Chairman shall:

- (a) fill a vacancy caused by the resignation, without the consent of the Commission, of a conciliator appointed by a party; or
- (b) at the request of either party, fill any other vacancy, if no new appointment is made and accepted within 30 days of the notification of the vacancy by the Secretary-General.

(3) In filling a vacancy the party or the Chairman, as the case may be, shall observe the provisions of these Rules with respect to the appointment of conciliators. Article 14 (2) of these Rules shall apply *mutatis mutandis* to the newly appointed conciliator.

Article 19

Resumption of Proceeding after Filling a Vacancy

As soon as a vacancy on the Commission has been filled, the proceeding shall continue from the point it had reached at the time the vacancy occurred. The newly appointed conciliator may, however, require that the oral procedure be recommended, if this had already been started.

CHAPTER IV
PLACE OF PROCEEDINGS

Article 20

Determination of Place of Conciliation Proceeding

Unless the parties have agreed upon the place where the conciliation proceeding is to be held, such place shall be determined by the Secretary-General in consultation with the President of the Commission, or if there is no President, with the single conciliator, having regard to the circumstances of the proceeding and the convenience of the parties.

CHAPTER V
WORKING OF THE COMMISSION

Article 21

Sessions of the Commission

(1) The Commission shall meet for its first session within 60 days after its constitution or such other period as the parties may agree. The dates of that session shall be fixed by the President of the Commission after consultation with its members and the Secretariat, and with the parties as far as possible. If, upon its constitution, the Commission has no President, such dates shall be fixed by the Secretary-General after consultation with the members of the Commission, and with the parties as far as possible.

(2) Subsequent sessions shall be convened by the President within time limits determined by the Commission. The dates of such sessions shall be fixed by the President of the Commission after consultation with its members and the Secretariat, and with the parties as far as possible.

(3) The Secretary-General shall notify the members of the Commission and the parties of the dates and place of the sessions of the Commission in good time.

Article 22

Sittings of the Commission

(1) The President of the Commission shall conduct its hearings and preside at its deliberations.

(2) Except as the parties otherwise agree, the presence of a majority of the members of the Commission shall be required at its sittings.

(3) The President of the Commission shall fix the date and hour of its sittings.

Article 23

Deliberations of the Commission

(1) The deliberations of the Commission shall take place in private and remain secret.

(2) Only members of the Commission shall take part in its deliberations. No other person shall be admitted unless the Commission decides otherwise.

Article 24

Decisions of the Commission

The decisions of the Commission shall be taken by a majority of the votes of all its members. Abstention by any member of the Commission shall count as a negative vote.

Article 25

Incapacity of the President

If at any time the President of the Commission should be unable to act, his functions shall be performed by one of the other members of the Commission, acting in the order in which the Secretariat had received the notice of their acceptance of their appointment to the Commission.

Article 26

Representation of the Parties

(1) Each party may be represented or assisted by agents, counsel or advocates whose names and authority shall be notified by that party to the Secretariat, which shall promptly inform the Commission and the other party.

(2) For the purposes of these Rules, the expression "party" includes, where the context so admits, an agent, counsel or advocate authorized to represent that party.

CHAPTER VI

GENERAL PROCEDURAL PROVISIONS

Article 27

Procedural Orders

The Commission shall make the orders required for the conduct of the proceeding.

Article 28

Preliminary Procedural Consultation

(1) As early as possible after the constitution of a Commission, its President shall endeavor to ascertain the views of the parties regarding questions of procedure. For this purpose he may request the par-

ties to meet him. He shall, in particular, seek their views on the following matters:

- (a) the number of members of the Commission required to constitute a quorum at its sittings;
- (b) the language or languages to be used in the proceeding;
- (c) the evidence, oral or written, which each party intends to produce or to request the Commission to call for, and the written statements which each party intends to file, as well as the time limits within which such evidence should be produced and such statements filed; and
- (d) the number of copies desired by each party of instruments filed by the other.

(2) In the conduct of the proceeding the Commission shall apply any agreement between the parties on procedural matters, which is not inconsistent with any provisions of the Additional Facility Rules and the Administrative and Financial Rules (Additional Facility).

Article 29

Procedural Languages

(1) The parties may agree on the use of one or two languages to be used in the proceeding, provided that, if they agree on any language that is not an official language of the Centre, the Commission, after consultation with the Secretary-General, gives its approval. If the parties do not agree on any such procedural language, each of them may select one of the official languages for this purpose. Notwithstanding the foregoing, one of the official languages of the Centre shall be used for all communications to and from the Secretariat.

(2) If the parties agree on two procedural languages, or each party selects a different one, any instrument may be filed in either such language. Statements made before the Commission or by one of its members in one procedural language shall, unless the Commission decides to dispense therewith, be interpreted into the other procedural language. The orders and recommendations shall be made, the report of the Commission rendered and the minutes kept in both procedural languages, both versions being equally authentic.

(3) The Commission may authorize the use of a language other than a procedural language for a specified part of the proceeding. In such event it shall determine to what extent translation and interpretation into and from the procedural languages is required.

(4) If a party uses a language other than an official language of the Centre, it shall be wholly responsible for the arrangement for and the special expenses incurred by any translation and interpretation into and from that language.

Article 30

Written Statements

Except as otherwise provided by the Commission after consultation with the parties and the Secretariat, every notice, request, written statement or other instrument shall be filed in the form of a signed original accompanied by the following number of additional copies:

- (a) before the number of members of the Commission has been determined: five; and
- (b) after the number of members of the Commission has been determined: two more than the number of its members.

Article 31

Supporting Documentation

(1) Documentation filed in support of any notice, request, written statement, or other instrument introduced into a proceeding shall consist of one original and of the number of additional copies equal to the number of additional copies required of the instrument to which this documentation relates. The original shall unless otherwise agreed by the parties or ordered by the Commission, consist of the complete document or of a copy or extract duly certified by a public official.

(2) Each document which is not in a language approved for the proceeding in question shall, unless otherwise ordered by the Commission, be accompanied by a certified translation into such a language.

Article 32

Time Limits

(1) All time limits specified in these Rules or fixed by a Commission or the Secretary-General shall be computed from the date on which the limit is announced in the presence of the parties or their representatives or on which the Secretary-General dispatches the pertinent notification or instrument (which date shall be marked on it). The day of such announcement or dispatch shall be excluded from the calculation.

(2) A time limit shall be satisfied if a notification or instrument dispatched by a party is delivered at the seat of the Centre, or to the Secretary of the competent Commission that is meeting away from the seat of the Centre, before the close of business on the indicated date or, if that day is a Saturday, a Sunday, a public holiday observed at the place of delivery or a day on which for any reason regular mail delivery is restricted at the place of delivery, then before the close of business on the next subsequent day on which regular mail service is available.

(3) Any step taken after expiration of the applicable time limit shall be disregarded unless the Commission, in special circum-

stances and after giving the other party an opportunity of stating its views, decides otherwise.

CHAPTER VII CONCILIATION PROCEDURES

Article 33

Functions of the Commission

(1) It shall be the duty of the Commission to clarify the issues in dispute and to endeavour to bring about agreement between them upon mutually acceptable terms.

(2) In order to clarify the issues in dispute between the parties, the Commission shall hear the parties and shall endeavour to obtain any information that might serve this end. The parties shall be associated with its work as closely as possible.

(3) In order to bring about agreement between the parties, the Commission may, from time to time at any stage of the proceeding, make recommendations to the parties, together with arguments in favor thereof, including recommendations to the effect that the parties accept specific terms of settlement or that they refrain, while it seeks to bring about agreement between them, from specific acts that might aggravate the dispute. It may fix time limits within which each party shall inform the Commission of its decision concerning the recommendations made. The parties shall give their most serious consideration to such recommendations.

(4) The Commission, in order to obtain information that might enable it to discharge its functions, may at any stage of the proceeding:

- (a) request from either party oral explanations, documents and other information;
- (b) request evidence from other persons; and
- (c) with the consent of the party concerned, visit any place connected with the dispute or conduct inquiries there, provided that the parties may participate in any such visits and inquiries.

Article 34

Cooperation of the Parties

The parties shall cooperate in good faith with the Commission in order to enable the Commission to carry out its functions, and shall give their most serious consideration to its recommendations. Without prejudice to the generality of the foregoing, the parties shall: (a) at the request of the Commission, furnish all relevant documents, information and explanations as well as use the means at their disposal to enable the Commission to hear witnesses and experts whom it desires to call; (b) facilitate visits to and inquiries at any

place connected with the dispute that the Commission desires to undertake; and (c) comply with any time limits agreed with or fixed by the Commission.

Article 35

Transmission of the Notice

As soon as the Commission is constituted, the Secretary-General shall transmit to each member of the Commission a copy each of:

- (a) the notice by which the proceeding was commenced;
- (b) the supporting documentation;
- (c) the certificate of registration of the notice; and
- (d) any communication received from either party in response thereto.

Article 36

Filing of Written Statements

Upon the constitution of the Commission, its President or where the Commission consists of a single conciliator, such conciliator shall invite each party to file, within 30 days or such longer time limit as the President or the single conciliator may fix, a written statement of its position. If the Commission comprises more than one conciliator but upon its constitution, the Commission has no President, such invitation shall be issued and any such longer time limit shall be fixed by the Secretary-General. At any stage of the proceeding, within such time limits as the Commission shall fix, either party may file such other written statements as it deems useful and relevant.

Article 37

Hearings

(1) The hearings of the Commission shall take place in private and, except as the parties otherwise agree, shall remain secret.

(2) The Commission shall decide, with the consent of the parties, which other persons besides the parties, their agents, counsel and advocates, witnesses and experts during their testimony, and officers of the Commission may attend the hearings.

Article 38

Witnesses and Experts

(1) Each party may, at any stage of the proceeding, request that the Commission hear the witnesses and experts whose evidence the party considers relevant. The Commission shall fix a time limit within which such hearing shall take place.

(2) Witnesses and experts shall, as a rule, be examined before the Commission by the parties under the control of its President. Questions may also be put to them by any member of the Commission.

(3) If a witness or expert is unable to appear before it, the Commission, in agreement with the parties, may make appropriate arrangements for the evidence to be given in a written deposition or to be taken by examination elsewhere. The parties may participate in any such examination, and minutes shall be kept in accordance with Article 39 of these Rules, *mutatis mutandis*.

Article 39

Minutes

(1) The Secretary-General shall keep minutes of all hearings; these shall include:

- (a) the place, date and time of the hearing;
- (b) the names of the members of the Commission present;
- (c) the designation of each party present;
- (d) the names of the agents, counsel and advocates present;
- (e) the names, descriptions and addresses of the witnesses and experts heard;
- (f) a summary record of the evidence produced;
- (g) a summary record of the statements made by the parties;
- (h) a summary record of questions put to the parties by the members of the Commission, as well as the replies thereto; and
- (i) any order or recommendation made or announced by the Commission.

(2) The minutes of the hearing shall be signed by the President of the Commission and the Secretary-General. These minutes alone shall be authentic. They shall not be published without the consent of the parties.

(3) The Commission may, and at the request of a party shall, order that hearings be more fully recorded, in which event items (f), (g) and (h) listed in paragraph (1) of this Article may be omitted from the minutes.

CHAPTER VIII

TERMINATION OF THE PROCEEDING

Article 40

Objections to Competence

(1) The Commission shall have the power to rule on its competence.

(2) Any objection that the dispute is not within the competence of the Commission, shall be filed by a party with the Secretary-General as soon as possible after the constitution of the Commission and in any event no later than in its first written statement or at the

first hearing if that occurs earlier, unless the facts on which the objection is based are unknown to the party at that time.

(3) The Commission may on its own initiative consider, at any stage of the proceeding, whether the dispute before it is within its competence.

(4) Upon the formal raising of an objection, the proceeding on the merits shall be suspended. The Commission may deal with the objection as a preliminary question or join it to the merits of the dispute. If the Commission overrules the objection or joins it to the merits, the proceedings on the merits shall be resumed. If the Commission decides that the dispute is not within its competence, it shall close the proceeding and draw up a report to that effect, in which it shall state its reasons.

Article 41

Closure of the Proceeding

(1) If one party fails to appear or participate in the proceeding, the Commission shall, after notice to the parties, close the proceeding and draw up its report noting the reference of the dispute to conciliation and recording the failure of that party to appear or participate.

(2) If at any stage of the proceeding it appears to the Commission that there is no likelihood of settlement between the parties, the Commission shall, after notice to the parties, close the proceeding and draw up its report noting the reference of the dispute to conciliation and recording the failure of the parties to reach a settlement.

(3) If the parties reach agreement on the issues in dispute, the Commission shall close the proceeding and draw up its report noting the issues in dispute and recording that the parties have reached agreement. At the request of the parties, the report shall record the detailed terms and conditions of their agreement.

(4) Except as the parties otherwise agree, neither party to a conciliation proceeding may in any other proceeding before arbitrators, courts or otherwise invoke or rely on any views expressed or statements or admissions or offers of settlement made by the other party in the conciliation proceeding, or the report or any recommendations made by the Commission.

Article 42

The Report

(1) The report of the Commission shall be drawn up and signed as soon as possible after the closure of the proceeding. It shall contain, in addition to the material specified in Article 41 of these Rules, as appropriate:

- (a) a precise designation of each party;
- (b) a description of the method of its constitution;

- (c) the names of the members of the Commission, and an identification of the appointing authority of each;
- (d) the names of the agents, counsel and advocates of the parties;
- (e) the dates and place of the sittings of the Commission; and
- (f) a summary of the proceeding.

(2) The report shall also record any agreement of the parties, referred to in Article 41 (4) of these Rules.

(3) The report shall be signed by the members of the Commission; the date of each signature shall be indicated. The fact that a member refuses to sign the report shall be recorded therein.

Article 43

Communication of the Report

(1) Upon signature of the last conciliator to sign, the Secretary-General shall promptly:

- (a) authenticate the original text of the report and deposit it in the archives of the Secretariat; and
- (b) dispatch a certified copy of the report to each party, indicating the date of dispatch on the original text and on all copies.

(2) The Secretary-General shall, upon request, make available to a party additional certified copies of the report.

CHAPTER IX

COSTS

Article 44

Cost of Proceeding

The fees and expenses of the members of the Commission as well as the charge for the use of facilities of the Centre, shall be borne equally by the parties. Each party shall bear any other expenses it incurs with the proceeding. The Secretariat shall provide the Commission and the parties all information in its possession to facilitate the division of the costs.

CHAPTER X

GENERAL PROVISIONS

Article 45

Final Provision

The texts of these Rules in each official language of the Centre shall be equally authentic.

REFERENCE TABLE

Conciliation (Additional Facility) Rules

The table below relates each Article of the Conciliation (Additional Facility) Rules (CAF) to similar provisions in:

- (1) The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Convention);
- (2) The Administrative and Financial Regulations of the Centre (AFR);
- (3) The Institution Rules of the Centre (IR);
- (4) The Conciliation Rules of the Centre (CR); and
- (5) The Arbitration Rules of the Centre (AR).

<i>CAF</i>	<i>Convention</i>	<i>AFR</i>	<i>IR</i>	<i>CR</i>	<i>AR</i>
1					
2(1)	28(1)		1(1)		
2(2)			1(2)		
3(1)			2(1)		
3(2)			3		
3(3)			4(1)		
4			5(2);6(1)(a)		
5			7(a)-(d)		
6(1)	29(1)			1(1)	
6(2)	29(2)(a)				
6(3)	29(2)(b)				
6(4)	30			4(1)	
7					
8	14(1)				
9				2	
10				3	
11				4	
12				5	
13				7	
14				6	
15(1)	56(1)				
15(2)				8(1)	
15(3)				8(2)	
16(1)	57				
16(2)				9(1)	
16(3)				9(2)	
16(4)				9(3)	
16(5)	58				
16(6)				9(5)	
16(7)				9(6)	
17				10	
18				11	
19				12	
20					
21(1)				13(1)	
21(2)				13(2)	
21(3)				13(4)	
22				14	
23				15	

<i>CAF</i>	<i>Convention</i>	<i>AFR</i>	<i>IR</i>	<i>CR</i>	<i>AR</i>
24				16(1)	
25				17	
26				18	
27				19	
28				20	
29(1)				21(1)	
29(2)				21(3)	
29(3)				21(4)	
29(4)				21(5)	
30				25(2)	
31(1)		30(1)			
31(2)		30(3)			
32(1)		29(1)			
32(2)		29(2)			
32(3)					25(3)
33(1)	34(1)				
33(2)				22(1)	
33(3)	34(1)			22(2)	
33(4)				22(3)	
34				23	
35				24	
36				25(1)	
37				27	
38				28	
39(1)				29(1)	
39(2)				29(3)	
39(3)				29(2)	
40(1)	32(1)				
40(2)	32(2)			30(1)	
40(3)				30(2)	
40(4)				30(3)-(5)	
41(1)				31(3)	
41(2)				31(2)	
41(3)				31(1)	
41(4)	35				
42(1)				32;33(1)	
42(2)				33(2)	
42(3)				33(3)	
43(1)				34(1)	
43(2)				34(2)	
44	61(1)				
45				35(1)	

ARBITRATION (ADDITIONAL FACILITY) RULES

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SCHEDULE C
ARBITRATION (ADDITIONAL FACILITY) RULES

CHAPTER I
INTRODUCTION

Article 1

Scope of Application

Where the parties to a dispute have agreed that it shall be referred to arbitration under the Arbitration (Additional Facility) Rules, the dispute shall be settled in accordance with these Rules, save that if any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

CHAPTER II
INSTITUTION OF PROCEEDINGS

Article 2

The Notice

(1) Any State or any national of a State wishing to institute arbitration proceedings (hereinafter called the "Claimant") shall send a notice to that effect in writing to the Secretariat at the seat of the Centre. It shall be drawn up in an official language of the Centre, shall be dated and shall be signed by the party sending it.

(2) The notice may be given jointly by the parties to the dispute.

Article 3

Contents of the Notice

(1) The notice shall:

- (a) designate precisely each party to the dispute and state the address of each;
- (b) set forth the relevant provisions embodying the agreement of the parties to refer the dispute to arbitration;
- (c) indicate the date of approval by the Secretary-General pursuant to Article 4 of the Additional Facility Rules of the agreement of the parties providing for access to the Additional Facility; and
- (d) contain information concerning the issues in dispute and an indication of the amount involved, if any.

(2) The notice shall in addition set forth any provisions agreed by the parties regarding the number of arbitrators and the method of their appointment, as well as any other provisions agreed concerning the settlement of the dispute.

(3) The notice shall be accompanied by five additional signed copies and by the fee prescribed by Article 5 of the Administrative and Financial Rules (Additional Facility).

Article 4

Registration of the Notice

As soon as the Secretary-General shall have satisfied himself that the notice conforms in form and substance to the provisions of Article 3 of these Rules, he shall register the notice in the Arbitration (Additional Facility) Register and on the same day dispatch to the parties a certificate of registration. He shall also transmit a copy of the notice and of the accompanying documentation (if any) to the other party to the dispute (hereinafter called the "Respondent").

Article 5

Certificate of Registration

The certificate of registration of a notice shall:

- (a) record that the notice is registered and indicate the date of the registration and of the dispatch of that notice;
- (b) notify each party that all communications in connection with the proceeding will be sent to the address stated in the notice, unless another address is indicated to the Secretariat;
- (c) unless such information has already been provided, invite the parties to communicate to the Secretary-General any provisions agreed by them regarding the number and the method of appointment of the arbitrators; and
- (d) invite the parties to proceed, as soon as possible, to constitute an Arbitral Tribunal in accordance with Chapter III of these Rules.

CHAPTER III

THE TRIBUNAL

Article 6

General Provisions

(1) In the absence of agreement between the parties regarding the number of arbitrators and the method of their appointment, 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, all in accordance with Article 10 of these Rules.

(2) Upon the dispatch of the certificate of registration of the notice for arbitration, the parties shall promptly proceed to constitute a Tribunal.

(3) The Tribunal shall consist of a sole arbitrator or any uneven number of arbitrators appointed as the parties shall agree.

(4) If the Tribunal shall not have been constituted within 90 days after the certificate of registration of the notice for arbitration has been dispatched by the Secretary-General, or such other period as the parties may agree, the Chairman of the Administrative Council (hereinafter called the "Chairman") shall, at the request of either party transmitted through the Secretary-General, appoint the arbitrator or arbitrators not yet appointed and, unless the President shall already have been designated or is to be designated later, designate an arbitrator to be President of the Tribunal.

(5) Except as the parties shall otherwise agree, no person who had previously acted as a conciliator or arbitrator in any proceeding for the settlement of the dispute or as a member of any fact-finding committee relating thereto may be appointed as a member of the Tribunal.

Article 7

Nationality of Arbitrators

(1) Except where the sole arbitrator or each individual member of the Tribunal is appointed by agreement of the parties, the majority of the arbitrators shall be nationals of States other than the State party to the dispute and the State whose national is a party to the dispute. Accordingly, nationals of the State party to the dispute or of the State whose national is a party to the dispute may be appointed by a party only if appointment by the other party to the dispute of the same number of arbitrators of either of these nationalities would not result in a majority of arbitrators of these nationalities.

(2) Arbitrators appointed by the Chairman shall not be nationals of the State party to the dispute or of the State whose national is a party to the dispute.

Article 8

Delegation in Case of Investment or Contract Financed by World Bank Group

Notwithstanding the provisions of Article 6 (4) of these Rules, if the notice for arbitration relates to a dispute arising under any investment or agreement financed in whole or in part by the International Bank for Reconstruction and Development, the International Finance Corporation or the International Development Association, the Secretary-General shall so inform the Chairman, and the Chairman shall, when required to take any action pursuant to these Rules, select a person to whom he shall promptly delegate all the functions, responsibilities and powers assigned to the Chairman hereunder. The Secretary-General shall promptly inform the parties of any action taken pursuant to this Article.

Article 9

Qualifications of Arbitrators

Arbitrators shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment.

Article 10

Method of Constituting the Tribunal in the Absence of Agreement between the Parties

(1) If the parties have not agreed upon the number of arbitrators and the method of their appointment within 60 days after the registration of the notice, the Secretary-General shall, upon the request of either party promptly inform the parties that the Tribunal is to be constituted in accordance with the following procedure:

- (a) the Claimant shall, in a communication to the Respondent:
 - (i) name two persons, identifying one of them, who shall not have the same nationality as nor be a national of either party, as the arbitrator appointed by it, and the other as the arbitrator proposed to be the President of the Tribunal; and
 - (ii) invite the Respondent to concur in the appointment of the arbitrator proposed to be the President of the Tribunal and to appoint another arbitrator;
- (b) promptly upon receipt of this communication the Respondent shall, in its reply:
 - (i) name a person as the arbitrator appointed by it, who shall not have the same nationality as nor be a national of either party; and
 - (ii) concur in the appointment of the arbitrator proposed to be the President of the Tribunal or name another person as the arbitrator proposed to be President; and
- (c) promptly upon receipt of the reply containing such a proposal, the Claimant shall notify the Respondent whether it concurs in the appointment of the arbitrator proposed by that party to be the President of the Tribunal.

(2) The communications provided for in paragraph (1) of this Article shall be made or promptly confirmed in writing and shall either be transmitted through the Secretary-General or directly between the parties with a copy to the Secretary-General.

Article 11

Appointment of Arbitrators and Designation of President of Tribunal by the Chairman of the Administrative Council

(1) Promptly upon receipt of a request by a party to the Chairman to make an appointment or designation pursuant to Article 6 (4) of these Rules, the Secretary-General shall send a copy thereof to the other party.

(2) The Chairman shall use his best efforts to comply with that request within 30 days after its receipt, or such longer period as the parties may agree. Before he proceeds to make appointments or a designation, he shall consult both parties as far as possible.

(3) The Secretary-General shall promptly notify the parties of any appointment or designation made by the Chairman.

Article 12

Acceptance of Appointments

(1) The party or parties concerned shall notify the Secretary-General of the appointment of each arbitrator and indicate the method of his appointment.

(2) As soon as the Secretary-General has been informed by a party or the Chairman of the appointment of an arbitrator, he shall seek an acceptance from the appointee.

(3) If an arbitrator fails to accept his appointment within 15 days, the Secretary-General shall promptly notify the parties, and if appropriate the Chairman, and invite them to proceed to the appointment of another arbitrator in accordance with the method followed for the previous appointment.

Article 13

Replacement of Arbitrators prior to Constitution of the Tribunal

At any time before the Tribunal is constituted, each party may replace any arbitrator appointed by it and the parties may by common consent agree to replace any arbitrator.

Article 14

Constitution of the Tribunal

(1) The Tribunal shall be deemed to be constituted and the proceeding to have begun on the date the Secretary-General notifies the parties that all the arbitrators have accepted their appointment.

(2) Before or at the first session of the Tribunal, each arbitrator shall sign a declaration in the following form:

“To the best of my knowledge there is no reason why I should not serve on the Arbitral Tribunal constituted with respect to a dispute between _____ and _____.

“A statement of my past and present professional, business and other relevant relationships (if any) with the parties is attached hereto.

“I shall keep confidential all information coming to my knowledge as a result of my participation in this proceeding, as well as the contents of any award made by the Tribunal.

“I shall judge fairly as between the parties and shall not accept any instruction or compensation with regard to the proceeding from any source except as provided in the Administrative and Financial Rules (Additional Facility).”

Any arbitrator failing to sign such a declaration by the end of the first session of the Tribunal shall be deemed to have resigned.

Article 15

Replacement of Arbitrators after Constitution of the Tribunal

(1) After a Tribunal has been constituted and proceedings have begun, its composition shall remain unchanged; provided, however, that if an arbitrator should die, become incapacitated, resign or be disqualified, the resulting vacancy shall be filled as provided in this Article and Article 18 of these Rules.

(2) An arbitrator who becomes incapacitated shall, as soon as possible, notify the other members of the Tribunal, and the Secretary-General thereof.

(3) An arbitrator may resign by submitting his resignation to the other members of the Tribunal and the Secretary-General. If the arbitrator was appointed by one of the parties, the Tribunal shall promptly consider the reasons for his resignation and decide whether it consents thereto. The Tribunal shall promptly notify the Secretary-General of its decision.

Article 16

Disqualification of Arbitrators

(1) A party may propose to a Tribunal the disqualification of any of its members on account of any fact indicating a manifest lack of the qualities required by Article 9 of these Rules, or on the ground that he was ineligible for appointment to the Tribunal under Article 7 of these Rules.

(2) A party proposing the disqualification of an arbitrator shall promptly, and in any event before the proceeding is declared closed, file its proposal with the Secretary-General, stating its reasons therefor.

(3) The Secretary-General shall forthwith:

(a) transmit the proposal to the members of the Tribunal and, if it relates to a sole arbitrator or to a majority of the members of the Tribunal, to the Chairman; and

(b) notify the other party of the proposal.

(4) The arbitrator to whom the proposal relates may, without delay, furnish explanations to the Tribunal or the Chairman, as the case may be.

(5) The decision on any proposal to disqualify an arbitrator shall be taken by the other members of the Tribunal except that where those members are equally divided, or in the case of a proposal to disqualify a sole arbitrator, or a majority of the arbitrators, the Chairman shall take that decision.

(6) Whenever the Chairman has to decide on a proposal to disqualify an arbitrator, he shall take that decision within 30 days after he has received the proposal.

(7) The proceeding shall be suspended until a decision has been taken on the proposal.

Article 17

Procedure during a Vacancy on the Tribunal

(1) The Secretary-General shall forthwith notify the parties and, if necessary, the Chairman of the disqualification, death, incapacity or resignation of an arbitrator and of the consent, if any, of the Tribunal to a resignation.

(2) Upon the notification by the Secretary-General of a vacancy on the Tribunal, the proceeding shall be or remain suspended until the vacancy has been filled.

Article 18

Filling Vacancies on the Tribunal

(1) Except as provided in paragraph 2 of this Article, a vacancy resulting from the disqualification, death, incapacity or resignation of an arbitrator shall be promptly filled by the same method by which his appointment had been made.

(2) In addition to filling vacancies relating to arbitrators appointed by him, the Chairman shall:

- (a) fill a vacancy caused by the resignation, without the consent of the Tribunal, of an arbitrator appointed by a party; or
- (b) at the request of either party, fill any other vacancy, if no new appointment is made and accepted within 30 days of the notification of the vacancy by the Secretary-General.

(3) In filling a vacancy the party or the Chairman, as the case may be, shall observe the provisions of these Rules with respect to the appointment of arbitrators. Article 14 (2) of these Rules shall apply *mutatis mutandis* to the newly appointed arbitrator.

Article 19

Resumption of Proceeding after Filling a Vacancy

As soon as a vacancy on the Tribunal has been filled, the proceeding shall continue from the point it had reached at the time the vacancy occurred. The newly appointed arbitrator may, however, require that the oral procedure be recommenced, if this had already been started.

CHAPTER IV

PLACE OF ARBITRATION

Article 20

Limitation on Choice of Forum

Arbitration proceedings shall be held only in States that are parties to the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Article 21

Determination of Place of Arbitration

(1) Subject to Article 20 of these Rules the place of arbitration shall be determined by the Arbitral Tribunal after consultation with the parties and the Secretariat.

(2) The Arbitral Tribunal may meet at any place it deems appropriate for the inspection of goods, other property or documents. It may also visit any place connected with the dispute or conduct inquiries there. The parties shall be given sufficient notice to enable them to be present at such inspection or visit.

(3) The award shall be made at the place of arbitration.

CHAPTER V

WORKING OF THE TRIBUNAL

Article 22

Sessions of the Tribunal

(1) The Tribunal shall meet for its first session within 60 days after its constitution or such other period as the parties may agree. The dates of that session shall be fixed by the President of the Tribunal after consultation with its members and the Secretariat, and with the parties as far as possible. If, upon its constitution, the Tribunal has no President, such dates shall be fixed by the Secretary-General after consultation with the members of the Tribunal, and with the parties as far as possible.

(2) Subsequent sessions shall be convened by the President within time limits determined by the Tribunal. The dates of such sessions shall be fixed by the President of the Tribunal after consultation with its members and the Secretariat, and with the parties as far as possible.

(3) The Secretary-General shall notify the members of the Tribunal and the parties of the dates and place of the sessions of the Tribunal in good time.

Article 23

Sittings of the Tribunal

(1) The President of the Tribunal shall conduct its hearings and preside at its deliberations.

(2) Except as the parties otherwise agree, the presence of a majority of the members of the Tribunal shall be required at its sittings.

(3) The President of the Tribunal shall fix the date and hour of its sittings.

Article 24

Deliberations of the Tribunal

(1) The deliberations of the Tribunal shall take place in private and remain secret.

(2) Only members of the Tribunal shall take part in its deliberations. No other person shall be admitted unless the Tribunal decides otherwise.

Article 25

Decisions of the Tribunal

Any award or other decision of the Tribunal shall be made by a majority of the votes of all its members. Abstention by any member of the Tribunal shall count as a negative vote.

Article 26

Incapacity of the President

If at any time the President of the Tribunal should be unable to act, his functions shall be performed by one of the other members of the Tribunal, acting in the order in which the Secretariat had received the notice of their acceptance of their appointment to the Tribunal.

Article 27

Representation of the Parties

(1) Each party may be represented or assisted by agents, counsel or advocates whose names and authority shall be notified by that party to the Secretariat, which shall promptly inform the Tribunal and the other party.

(2) For the purposes of these Rules, the expression "party" includes, where the context so admits, an agent, counsel or advocate authorized to represent that party.

CHAPTER VI

GENERAL PROCEDURAL PROVISIONS

Article 28

Procedural Orders

The Tribunal shall make the orders required for the conduct of the proceeding.

Article 29

Preliminary Procedural Consultation

(1) As early as possible after the constitution of a Tribunal, its President shall endeavor to ascertain the views of the parties regarding questions of procedure. For this purpose he may request the

parties to meet him. He shall, in particular, seek their views on the following matters:

- (a) the number of members of the Tribunal required to constitute a quorum at its sittings;
- (b) the language or languages to be used in the proceeding;
- (c) the number and sequence of the pleadings and the time limits within which they are to be filed;
- (d) the number of copies desired by each party of instruments filed by the other;
- (e) dispensing with the written or oral procedure; and
- (f) the manner in which the cost of the proceeding is to be apportioned.

(2) In the conduct of the proceeding the Tribunal shall apply any agreement between the parties on procedural matters, which is not inconsistent with any provisions of these Rules, the Additional Facility Rules and the Administrative and Financial Rules (Additional Facility).

Article 30

Procedural Languages

(1) The parties may agree on the use of one or two languages to be used in the proceeding, provided that if they agree on any language that is not an official language of the Centre, the Tribunal, after consultation with the Secretary-General, gives its approval. If the parties do not agree on any such procedural language, each of them may select one of the official languages for this purpose. Notwithstanding the foregoing, one of the official languages of the Centre shall be used for all communications to and from the Secretariat.

(2) If the parties agree on two procedural languages, or each party selects a different one, any instrument may be filed in either such language. Statements made before the Tribunal or by one of its members in one procedural language shall, unless the Tribunal decides to dispense therewith, be interpreted into the other procedural language. The orders and the award of the Tribunal shall be rendered and the minutes kept in both procedural languages, both versions being equally authentic.

(3) The Tribunal may authorize the use of a language other than a procedural language for a specified part of the proceeding. In such event it shall determine to what extent translation and interpretation into and from the procedural language or languages is required.

(4) If a party uses a language other than an official language of the Centre, it shall be wholly responsible for the arrangements for and the special expenses incurred by any translation and interpretation into and from that language.

Article 31

Copies of Instruments

Except as otherwise provided by the Tribunal after consultation with the parties and the Secretariat, every notice, request, pleading, application, written observation or other instrument shall be filed in the form of a signed original accompanied by the following number of additional copies:

- (a) before the number of members of the Tribunal has been determined: five; and
- (b) after the number of members of the Tribunal has been determined: two more than the number of its members.

Article 32

Supporting Documentation

(1) Documentation filed in support of any notice, request, pleading, application, written observation or other instrument introduced into a proceeding shall consist of one original and of the number of additional copies equal to the number of additional copies required of the instrument to which the documentation relates. The original shall, unless otherwise agreed by the parties or ordered by the Tribunal, consist of the complete document or of a copy or extract duly certified by a public official.

(2) Each document which is not in a language approved for the proceeding in question shall, unless otherwise ordered by the Tribunal, be accompanied by a certified translation into such a language.

Article 33

Time Limits

(1) All time limits specified in these Rules or fixed by a Tribunal or the Secretary-General shall be computed from the date on which the limit is announced in the presence of the parties or their representatives or on which the Secretary-General dispatches the pertinent notification or instrument (which date shall be marked on it). The day of such announcement or dispatch shall be excluded from the calculation.

(2) A time limit shall be satisfied if a notification or instrument dispatched by a party is delivered at the seat of the Centre, or to the Secretary of a Tribunal that is meeting away from the seat of the Centre, before the close of business on the indicated date or, if that day is a Saturday, a Sunday, a public holiday observed at the place of delivery or a day on which for any reason regular mail delivery is restricted at the place of delivery, then before the close of business on the next subsequent day on which regular mail service is available.

(3) Any step taken after expiration of the applicable time limit shall be disregarded unless the Tribunal, in special circumstances and

after giving the other party an opportunity of stating its views, decides otherwise.

Article 34

Waiver

A party which knows or ought to have known that a provision of these Rules, of any other rules or agreement applicable to the proceeding, or of an order of the Tribunal has not been complied with and which fails to state promptly its objections thereto, shall be deemed to have waived the right to object.

Article 35

Filling of Gaps

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

CHAPTER VII

WRITTEN AND ORAL PROCEDURES

Article 36

Normal Procedures

Except if the parties otherwise agree, the proceeding shall comprise two distinct phases: a written procedure followed by an oral one.

Article 37

Transmission of the Notice

As soon as the Tribunal is constituted, the Secretary-General shall transmit to each member of the Tribunal a copy of the notice by which the proceeding was commenced, of the supporting documentation, of the certificate of registration of notice and of any communication received from either party in response thereto.

Article 38

The Written Procedure

(1) In addition to the request for arbitration, the written procedure shall consist of the following pleadings, filed within time limits set by the Tribunal:

- (a) a memorial by the Claimant;
- (b) a counter-memorial by the Respondent;

and, if the parties so agree or the Tribunal deems it necessary:

- (c) a reply by the Claimant; and
- (d) a rejoinder by the Respondent.

(2) If the request was made jointly, each party shall, within the same time limit determined by the Tribunal, file its memorial. How-

ever, the parties may instead agree that one of them shall, for the purposes of paragraph (1) of this Article, be considered as the Claimant.

(3) A memorial shall contain: a statement of the relevant facts; a statement of law; and the submissions. A counter-memorial, reply or rejoinder shall contain an admission or denial of the facts stated in the last previous pleading; any additional facts, if necessary; observations concerning the statement of law in the last previous pleading; a statement of law in answer thereto; and the submissions.

Article 39

The Oral Procedure

(1) The oral procedure shall consist of the hearing by the Tribunal of the parties, their agents, counsel and advocates, and of witnesses and experts.

(2) The Tribunal shall decide, with the consent of the parties, which other persons besides the parties, their agents, counsel and advocates, witnesses and experts during their testimony, and officers of the Tribunal may attend the hearings.

(3) The members of the Tribunal may, during the hearings, put questions to the parties, their agents, counsel and advocates, and ask them for explanations.

Article 40

Marshalling of Evidence

Without prejudice to the rules concerning the production of documents, each party shall, within time limits fixed by the Tribunal, communicate to the Secretary-General, for transmission to the Tribunal and the other party, precise information regarding the evidence which it intends to produce and that which it intends to request the Tribunal to call for, together with an indication of the points to which such evidence will be directed.

Article 41

Evidence: General Principles

(1) The Tribunal shall be the judge of the admissibility of any evidence adduced and of its probative value.

(2) The Tribunal may, if it deems it necessary at any stage of the proceeding, call upon the parties to produce documents, witnesses and experts.

Article 42

Examination of Witnesses and Experts

Witnesses and experts shall be examined before the Tribunal by the parties under the control of its President. Questions may also be put to them by any member of the Tribunal.

Article 43

Witnesses and Experts: Special Rules

The Tribunal may:

- (a) admit evidence given by a witness or expert in a written deposition;
- (b) with the consent of both parties, arrange for the examination of a witness or expert otherwise than before the Tribunal itself. The Tribunal shall define the procedure to be followed. The parties may participate in the examination. Minutes shall be kept in accordance with Article 44 of these Rules, *mutatis mutandis*; and
- (c) appoint one or more experts, define their terms of reference, examine their reports and hear from them in person.

Article 44

Minutes

(1) The Secretary-General shall keep minutes of all hearings; these shall include:

- (a) the place, date and time of the hearing;
- (b) the names of the members of the Tribunal present;
- (c) the designation of each party present;
- (d) the names of the agents, counsel and advocates present;
- (e) the names, descriptions and addresses of the witnesses and experts heard;
- (f) a summary record of the evidence produced;
- (g) a summary record of the statements made by the parties;
- (h) a summary record of questions put to the parties by the members of the Tribunal, as well as of the replies thereto; and
- (i) any order made or announced by the Tribunal.

(2) The minutes of the hearing shall be signed by the President of the Tribunal and the Secretary-General. These minutes alone shall be authentic. They shall not be published without the consent of the parties.

(3) The Tribunal may, and at the request of a party shall, order that the hearings be more fully recorded, in which event items (f), (g) and (h) listed in paragraph (1) of this Article may be omitted from the minutes.

Article 45

Closure of the Proceeding

(1) When the presentation of the case by the parties is completed, the proceeding shall be declared closed.

(2) Exceptionally, the Tribunal may, before the award has been rendered, reopen the proceeding on the ground that new evidence is forthcoming of such a nature as to constitute a decisive factor, or that there is a vital need for clarification on certain specific points.

CHAPTER VIII PARTICULAR PROCEDURES

Article 46

Objections to Competence

(1) The Tribunal shall have the power to rule on its competence. For the purposes of this Article, an agreement providing for arbitration under the Additional Facility shall be separable from the other terms of the contract in which it may have been included.

(2) Any objection that the dispute is not within the competence of the Tribunal shall be filed with the Secretary-General as soon as possible after the constitution of the Tribunal and in any event no later than the expiration of the time limit fixed for the filing of the counter-memorial or, if the objection relates to an ancillary claim, for the filing of the rejoinder—unless the facts on which the objection is based are unknown to the party at that time.

(3) The Tribunal may on its own initiative consider, at any stage of the proceeding, whether the dispute before it is within its competence.

(4) Upon the formal raising of an objection relating to the dispute, the proceeding on the merits shall be suspended. The Tribunal may deal with the objection as a preliminary question or join it to the merits of the dispute. If the Tribunal overrules the objection or joins it to the merits, the proceeding on the merits shall be resumed. If the Tribunal decides that the dispute is not within its competence, it shall issue an order to that effect, stating the grounds for its decision.

Article 47

Provisional Measures of Protection

(1) Unless the arbitration agreement otherwise provides, either party may at any time during the proceeding request that provisional measures for the preservation of its rights be ordered by the Tribunal. The Tribunal shall give priority to the consideration of such a request.

(2) The Tribunal may also recommend provisional measures on its own initiative or recommend measures other than those specified in a request. It may at any time modify or revoke its recommendations.

(3) The Tribunal shall order or recommend provisional measures, or any modification or revocation thereof, only after giving each party an opportunity of presenting its observations.

(4) The parties may apply to any competent judicial authority for interim or conservatory measures. By doing so they shall not be held to infringe the agreement to arbitrate or to affect the powers of the Tribunal.

Article 48

Ancillary Claims

(1) Except as the parties otherwise agree, a party may present an incidental or additional claim or counter-claim, provided that such ancillary claim is within the scope of the arbitration agreement of the parties.

(2) An incidental or additional claim shall be presented not later than in the reply and a counter-claim no later than in the counter-memorial, unless the Tribunal, upon justification by the party presenting the ancillary claim and upon considering any objection of the other party, authorizes the presentation of the claim at a later stage in the proceeding.

Article 49

Default

(1) If a party fails to appear or to present its case at any stage of the proceeding, the other party may request the Tribunal to deal with the questions submitted to it and to render an award.

(2) Whenever such a request is made by a party the Tribunal shall promptly notify the defaulting party thereof. Unless the Tribunal is satisfied that that party does not intend to appear or to present its case in the proceeding, it shall, at the same time, grant a period of grace and to this end:

- (a) if that party had failed to file a pleading or any other instrument within the time limit fixed therefor, fix a new time limit for its filing; or
- (b) if that party had failed to appear or present its case at a hearing, fix a new date for the hearing.

The period of grace shall not, without the consent of the other party, exceed 60 days.

(3) After the expiration of the period of grace or when, in accordance with paragraph (2) of this Article, no such period is granted, the Tribunal shall examine whether the dispute is within its jurisdiction and, if it is satisfied as to its jurisdiction, decide whether the submissions made are well-founded in fact and in law. To this end, it may, at any stage of the proceeding, call on the party appearing to file observations, produce evidence or submit oral explanations.

Article 50

Settlement and Discontinuance

(1) If, before the award is rendered, the parties agree on a settlement of the dispute or otherwise to discontinue the proceeding, the

Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, or has not yet met, shall, at their written request, in an order take note of the discontinuance of the proceeding.

(2) If requested by both parties and accepted by the Tribunal, the Tribunal shall record the settlement in the form of an award. The Tribunal shall not be obliged to give reasons for such an award. The parties will accompany their request with the full and signed text of their settlement.

Article 51

Discontinuance at Request of a Party

If a party requests the discontinuance of the proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, shall in an order fix a time limit within which the other party may state whether it opposes the discontinuance. If no objection is made in writing within the time limit, the Tribunal, or if appropriate the Secretary-General, shall in an order take note of the discontinuance of the proceeding. If objection is made, the proceeding shall continue.

Article 52

Discontinuance for Failure of Parties to Act

If the parties fail to take any steps in the proceeding during six consecutive months or such period as they may agree with the approval of the Tribunal, or of the Secretary-General if the Tribunal has not yet been constituted, they shall be deemed to have discontinued the proceeding and the Tribunal, or if appropriate the Secretary-General, shall, after notice to the parties, in an order take note of the discontinuance.

CHAPTER IX

THE AWARD

Article 53

The Award

(1) The award shall be made in writing, shall deal with every question submitted to the Tribunal and shall state the reasons upon which it is based.

(2) The award shall be signed by the members of the Tribunal who voted for it; the date of each signature shall be indicated. Any member of the Tribunal may attach his individual opinion to the award, whether he dissents from the majority or not, or a statement of his dissent.

(3) If the arbitration law of the country where the award is made requires that it be filed or registered by the Tribunal, the Tribunal shall comply with this requirement within the period of time required by law.

(4) The award shall be final and binding on the parties. The parties waive any time limits for the rendering of the award which may be provided for by the law of the country where the award is made.

Article 54

Authentication of the Award; Certified Copies; Date

(1) Upon signature by the last arbitrator to sign, the Secretary-General shall promptly:

- (a) authenticate the original text of the award and deposit it in the archives of the Secretariat, together with any individual opinions and statements of dissent; and
- (b) dispatch a certified copy of the award (including individual opinions and statements of dissent) to each party, indicating the date of dispatch on the original text and on all copies;

provided, however, that if the original text of the award must be filed or registered as contemplated by Article 53 (3) of these Rules the Secretary-General shall do so on behalf of the Tribunal or return the award to the Tribunal for this purpose.

(2) The award shall be deemed to have been rendered on the date on which the certified copies were dispatched.

Article 55

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 determined by the conflict of laws rules which it considers applicable and (b) such rules of international law as the Tribunal 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.

Article 56

Interpretation of the Award

(1) Within 45 days after the date of the award either party, with notice to the other party, may request that the Secretary-General obtain from the Tribunal an interpretation of the award.

(2) The Tribunal shall determine the procedure to be followed.

(3) The interpretation shall form part of the award, and the provisions of Articles 53 and 54 of these Rules shall apply.

Article 57

Correction of the Award

(1) Within 45 days after the date of the award either party, with

notice to the other party, may request the Secretary-General to obtain from the Tribunal a correction in the award of any clerical, arithmetical or similar errors. The Tribunal may within the same period make such corrections on its own initiative.

(2) The provisions of Articles 53 and 54 of these Rules shall apply to such corrections.

Article 58

Supplementary Decisions

(1) Within 45 days after the date of the award either party, with notice to the other party may request the Tribunal, through the Secretary-General, to decide any question which it had omitted to decide in the award.

(2) The Tribunal shall determine the procedure to be followed.

(3) The decision of the Tribunal shall become part of the award and the provisions of Articles 53 and 54 of these Rules shall apply thereto.

CHAPTER X

COSTS

Article 59

Cost of Proceeding

(1) Unless the parties otherwise agree, the Tribunal shall decide how and by whom the fees and expenses of the members of the Tribunal, the expenses and charges of the Secretariat and the expenses incurred by the parties in connection with the proceeding shall be borne. The Tribunal may, to that end, call on the Secretariat and the parties to provide it with the information it needs in order to formulate the division of the cost of the proceeding between the parties.

(2) The decision of the Tribunal pursuant to paragraph (1) of this Article shall form part of the award.

CHAPTER XI

GENERAL

Article 60

Final Provision

The text of these Rules in each official language of the Centre shall be equally authentic.

REFERENCE TABLE

Arbitration (Additional Facility) Rules

The table below relates each Article of the Arbitration (Additional Facility) Rules (AAF) to similar provisions in:

- (1) The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Convention);
- (2) The Administrative and Financial Regulations of the Centre (AFR);
- (3) The Institution Rules of the Centre (IR);
- (4) The Arbitration Rules of the Centre (AR);
- (5) The UNCITRAL Arbitration Rules of 1976 (UNCITRAL); and
- (6) The Rules of Arbitration of the ICC (ICC).

<i>AAF</i>	<i>Convention</i>	<i>AFR</i>	<i>IR</i>	<i>AR</i>	<i>UNCITRAL</i>	<i>ICC</i>
1					1.2	
2(1)	36(1)		1(1)			
2(2)			1(2)			
3(1)			2(1)			
3(2)			3			
3(3)			4(1)			
4			5(2); 6(1)(a) 7(a)-(d)			
5						
6(1)	37(2)(b)					
6(2)				1(1)		
6(3)	37(2)(a)					
6(4)	38			4(1)		
6(5)				1(4)		
7(1)	39			1(3)		
7(2)	38					
8						
9	14(1)					
10				3		
11				4		
12				5		
13				7		
14				6		
15(1)	56(1)					
15(2)				8(1)		
15(3)				8(2)		
16(1)	57					
16(2)				9(1)		
16(3)				9(2)		
16(4)				9(3)		
16(5)				9(4)		
16(6)				9(5)		
16(7)				9(6)		
17				10		
18				11		
19				12		
20						
21(1)						

<i>AAF</i>	<i>Convention</i>	<i>AFR</i>	<i>IR</i>	<i>AR</i>	<i>UNCITRAL</i>	<i>ICC</i>
21(2)	43(b)			33(2)(b)		
21(3)					16.4	
22(1)				13(1)		
22(2)				13(2)		
22(3)				13(4)		
23				14		
24				15		
25				16(1)		
26				17		
27				18		
28				19		
29				20		
30(1)				21(1)		
30(2)				21(3)		
30(3)				21(4)		
30(4)				21(5)		
31				22		
32(1)		30(1)				
32(2)		30(3)				
33(1)		29(1)				
33(2)		29(2)				
33(3)				25(3)		
34				26		
35						
36				28		
37				29		
38				30		
39				31		
40				32		
41(1)				33(1)		
41(2)				33(2)(a)		
42				34(1)		
43(a)				35(a)		
43(b)				35(b)		
43(c)					27.1	14.2
44				37		
45				38		
46(1)	41(1)					
46(2)	41(2)			41(1)		
46(3)				41(2)		
46(4)				41(3)-(5)		
47(1)				39(1)-(2)		
47(2)				39(3)		
47(3)				39(4)		
47(4)					26.3	
48(1)				40(1)		
48(2)				40(2)		
49(1)				42(1)		
49(2)				42(2)		
49(3)				42(3)-(4)		
50				43		
51				44		
52				45		

<i>AAF</i>	<i>Convention</i>	<i>AFR</i>	<i>IR</i>	<i>AR</i>	<i>UNCITRAL</i>	<i>ICC</i>
53(1)	48(2)-(3)					
53(2)	48(2) & (4)			47(2)-(3)		
53(3)					31.7	
53(4)	53(1)					
54(1)				48(1)		
54(2)				48(2)		
55(1)	42(1)				33.1	
55(2)	42(3)					
56(1)	50(1)					
56(2)						
56(3)	49(2)					
57(1)	49(2)					
57(2)						
58(1)	49(2)					
58(2)						
58(3)	49(2)					
59(1)	61(2)			27(2)		
59(2)	61(2)					
60						

FACT-FINDING (ADDITIONAL FACILITY) RULES

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SCHEDULE D
FACT-FINDING (ADDITIONAL FACILITY) RULES

CHAPTER I
INSTITUTION OF PROCEEDINGS

Article 1

The Request

(1) Any State or national of a State wishing to institute an inquiry under the Additional Facility (hereinafter called the "Requesting Party") to examine and report on facts (hereinafter called a "fact-finding proceeding") shall send a request to that effect in writing to the Secretariat at the seat of the Centre. It shall be drawn up in an official language of the Centre, shall be dated and shall be signed by the Requesting Party.

(2) The request may be made jointly by the parties to the fact-finding proceeding.

Article 2

Contents of the Request

(1) The request shall:

- (a) designate precisely each party to the fact-finding proceeding and state the address of each;
- (b) set forth the agreement between the parties providing for recourse to the fact-finding proceeding; and
- (c) state the circumstances to be examined and reported on.

(2) The request shall in addition set forth any provisions agreed by the parties regarding the number of commissioners, their qualifications, appointment, replacement, resignation and disqualification, the extent of the powers of the Committee, the appointment of its President, and the place of its sessions, as well as the procedure to be followed in the fact-finding proceeding (hereinafter called the "Procedural Arrangement").

(3) The request shall be accompanied by five additional signed copies and by the fee prescribed by Article 5 of the Administrative and Financial Rules (Additional Facility).

Article 3

Registration of the Request

(1) As soon as the Secretary-General has satisfied himself that the request conforms in form and substance to the provisions of Article 2 of these Rules he shall register the request in the Fact-finding (Additional Facility) Register, notify the Requesting Party and the other party (hereinafter called the "Other Party") of the registration

and transmit to the Other Party a copy of the request and of the accompanying documentation, if any.

(2) The notice of registration of a request shall:

- (a) record that the request is registered and indicate the date of the registration and of the dispatch of that notice;
- (b) notify each party that all communications in connection with the proceeding will be sent to the address stated in the request, unless another address is indicated to the Secretariat; and
- (c) request the Other Party to inform the Secretary-General in writing within 30 days after receipt of the notice whether it agrees with the request or it objects thereto.

(3) In agreeing with the request, the Other Party may state additional circumstances which it wishes to be examined and reported on within the scope of the agreement between the parties for recourse to fact-finding proceedings. In that event, the Secretary-General shall request the Requesting Party to inform him promptly in writing whether it agrees to the inclusion of the additional facts or whether it objects thereto.

Article 4

Objections to the Request

(1) Any objection by the Other Party pursuant to Article 3 (2) (c) of these Rules shall be filed by it in writing with the Secretary-General and shall indicate on which of the following grounds it is based and the reasons therefor:

- (a) the Other Party is under no obligation to have recourse to fact-finding;
- (b) the circumstances indicated in the request as the circumstances to be examined and reported on are wholly or partly outside the scope of the agreement between the parties for recourse to fact-finding.

(2) The provisions of paragraph (1) of this Article shall apply *mutatis mutandis* to an objection by the Requesting Party pursuant to Article 3 (3) of these Rules.

Article 5

Settlement of Objections to the Request; Appointment of Special Commissioner

(1) Promptly upon receipt of the notice of objections, the Secretary-General shall send a copy thereof to the Requesting Party or the Other Party, as the case may be, and shall invite the Parties to meet with him in order to seek to resolve the objections by agreement.

(2) Failing such agreement, he shall invite the Parties to designate within 30 days a third party (hereinafter called the "Special Commissioner") to rule on the objections.

(3) If the Parties shall not have designated the Special Commissioner within the period specified in paragraph (2) of this Article, or such other period as the parties may agree, and if they or either one of them shall not be willing to request the Chairman of the Administrative Council (hereinafter called the "Chairman") or any other authority to designate the Special Commissioner, the Secretary-General shall inform the parties that the fact-finding proceeding cannot be held, recording the failure of the parties or one of them to cooperate.

(4) The Special Commissioner shall rule on the objections only after hearing both parties and in his ruling shall decide whether or not the fact-finding proceeding is to continue, stating the reasons for his decision. If he decides that the proceeding is to continue, he shall determine the scope thereof.

Article 6

Absence of Procedural Arrangement

(1) If, or to the extent that, the request does not set forth an agreement between the parties regarding the matters referred to in Article 2 (2) of these Rules, the Secretary-General shall invite the parties to conclude in writing and furnish to the Secretariat within 30 days a Procedural Arrangement. The Procedural Arrangement may include any other matter or matters the parties may agree.

(2) If the Procedural Arrangement cannot be concluded within the period referred to in paragraph (1) of this Article, or such other period as the parties may agree, the Procedural Arrangement shall be drawn up within 30 days from the expiry of such period by the Chairman after consulting with the parties and shall be binding upon the parties.

(3) Unless the parties agree otherwise, the Procedural Arrangement drawn up by the Chairman shall provide for the appointment of three commissioners. Other provisions made by the Chairman relating to: (a) qualifications, appointment, replacement, resignation, and disqualification of the commissioners, filling up of the vacancies and consequential resumption of proceeding; and (b) incapacity of the President of the Committee and procedural matters, including procedural languages, shall, to the extent practicable, be similar to those applicable to conciliators and conciliation proceedings under the Conciliation (Additional Facility) Rules.

(4) Notwithstanding the provisions of paragraph (3) of this Article, the Chairman may, whenever he is satisfied that the circumstances so warrant, include within the Procedural Arrangement provisions similar to written and oral procedures set forth in Chapter VII of the Arbitration (Additional Facility) Rules.

Article 7

UN Register of Experts and GATT Panel on Complaints

For purposes of the fact-finding proceeding, the Secretary-General shall, upon request by the parties, use his best endeavors to enter

into appropriate arrangements: (a) with the Secretary-General of the United Nations for the use of the services of experts entered in the Register of Experts for fact-finding maintained by the United Nations Secretariat pursuant to General Assembly Resolution 2329 (XXII) of December 18, 1967; or (b) with the Director-General of GATT for the use of the services of experts entered in the Panel on Complaints maintained by the GATT.

CHAPTER II THE COMMITTEE AND ITS WORKING

Article 8

Number of Commissioners

(1) Except as the parties may otherwise agree, the Committee shall consist of a sole commissioner or any uneven number of commissioners.

(2) If the Committee is to consist of three or more commissioners, one person shall be appointed the President of the Committee. References in these Rules to a Committee or a President of a Committee shall include a sole commissioner.

Article 9

Constitution of the Committee

(1) The Committee shall be deemed to be constituted and the proceeding to have begun on the date the Secretary-General notifies the parties that all the commissioners have accepted their appointments.

(2) Before or at the first session of the Committee, each commissioner shall sign a declaration in the following form:

“To the best of my knowledge there is no reason why I should not serve on the Fact-finding Committee constituted to examine certain facts under the Additional Facility pursuant to an agreement between _____ and _____.

“A statement of my past and present professional, business and other relevant relationships (if any) with the parties is attached hereto.

“I shall keep confidential all information coming to my knowledge as a result of my participation in this proceeding, as well as the contents of any report drawn up by the Committee.

“I shall not accept any instruction or compensation with regard to the proceeding from any source except as provided in the Administrative and Financial Rules (Additional Facility).”

Any commissioner failing to sign such a declaration by the end of the first session of the Committee shall be deemed to have resigned.

Article 10

Sessions of the Committee

(1) The Committee shall meet for its first session within 60 days after its constitution or such other period as the parties may agree. The dates of the first and subsequent sessions shall be fixed by the President of the Committee after consultation with its members and the Secretary-General, and with the parties as far as possible. If, upon its constitution, the Committee has no President, such dates shall be fixed by the Secretary-General after consultation with the members of the Committee, and with the parties as far as possible.

(2) The President of the Committee shall: (a) convene its subsequent sessions within time limits determined by the Committee; (b) conduct its hearings and preside at its deliberations; and (c) fix the date and hour of its sittings.

(3) The Secretary-General shall notify the members of the Committee and the parties of the dates and place of the sessions of the Committee in good time.

(4) The sessions of the Committee shall not be public.

Article 11

Conduct of Investigations and Examinations

Each investigation, and each examination of a locality, must be made in the presence of agents and counsel of the parties or after they have been duly notified.

Article 12

Decisions of the Committee

(1) Except as the parties shall otherwise agree, all decisions of the Committee shall be taken by a majority of the votes of all its members.

(2) Abstention by any member of the Committee shall count as a negative vote.

Article 13

Notices to be Served by the Committee

The Secretary-General shall, to the extent possible, make necessary arrangements for the serving of notices by the Committee.

Article 14

Determinations of Questions of Procedure

Subject to the provisions of this Chapter, the constitution of the Committee and its procedure shall be governed by the Procedural Arrangement. Any matters not provided for in these Rules or in the Procedural Arrangement shall be determined by agreement of the parties or, failing such agreement, by the Committee.

CHAPTER III
TERMINATION OF THE PROCEEDINGS

Article 15

Closure of the Proceeding

(1) After the parties have presented all the explanations and evidence, and the witnesses (if any) have all been heard, the President of the Committee shall declare the fact-finding proceeding closed, and the Committee shall adjourn to deliberate and draw up its report (hereinafter called the "Report").

(2) If one party fails to appear or participate in the proceeding or cooperate with the Committee at any stage, and the Committee determines that as a result thereof it is unable to carry out its task, it shall, after notice to the parties, close the proceeding and draw up its Report, noting the reference to fact-finding under the Additional Facility and recording the failure of that party to appear, participate or cooperate.

Article 16

The Report

(1) The Report of the Committee shall be adopted by a majority of all the commissioners.

(2) The Report shall be signed by all the commissioners. The refusal by a commissioner to sign the Report shall not invalidate the Report. The fact of such refusal shall be recorded.

(3) If a commissioner dissents from the Report that fact will be noted in the Report. The commissioner may in addition attach a statement to the Report explaining the reasons for his dissent.

(4) The Report shall be limited to findings of fact. The Report shall not contain any recommendations to the parties nor shall it have the character of an award.

Article 17

Effect to be Given to the Report

The parties shall be entirely free as to the effect to be given to the Report.

CHAPTER IV
MISCELLANEOUS

Article 18

Cooperation with the Committee

The parties undertake to facilitate the work of the Committee and to supply it with all means and facilities necessary to enable it to become fully acquainted with, and to accurately understand, the facts in question. Without prejudice to the generality of the fore-

going, the parties in particular undertake to supply the Committee to the greatest possible extent with all relevant documents and information, as well as to use the means at their disposal to allow the Committee to visit the localities in question and to summon and hear witnesses or experts.

Article 19

Cost of the Proceeding

The fees and expenses of the members of the Committee and of any Special Commissioner, as well as the charges for the use of the facilities of the Centre, shall be borne equally by the parties. Each party shall bear any other expenses it incurs in connection with the proceeding.

Article 20

Final Provision

The text of these Rules in each official language of the Centre shall be equally authentic.

**International Centre for
Settlement of Investment Disputes**

1818 H Street, N.W., Washington, D.C. 20433, U.S.A.