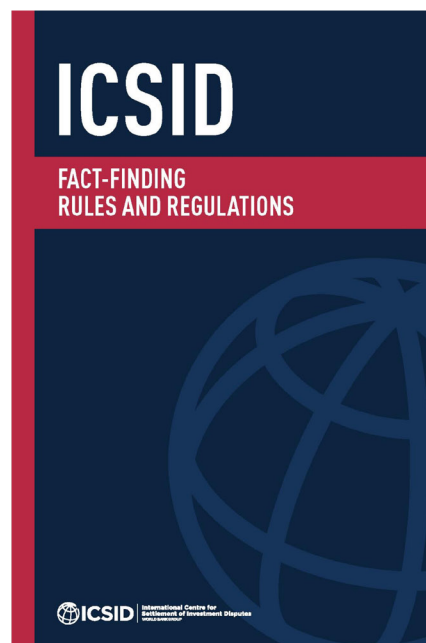
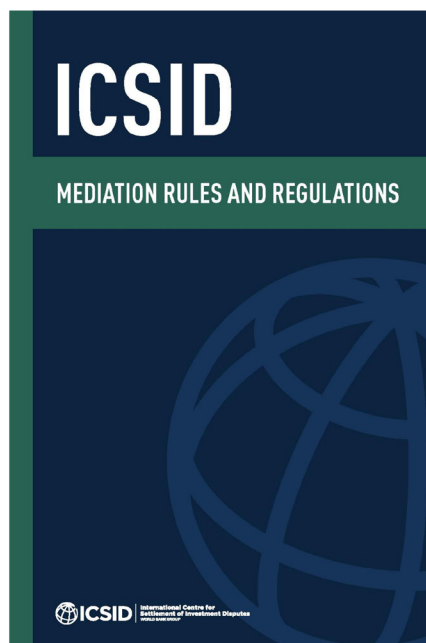
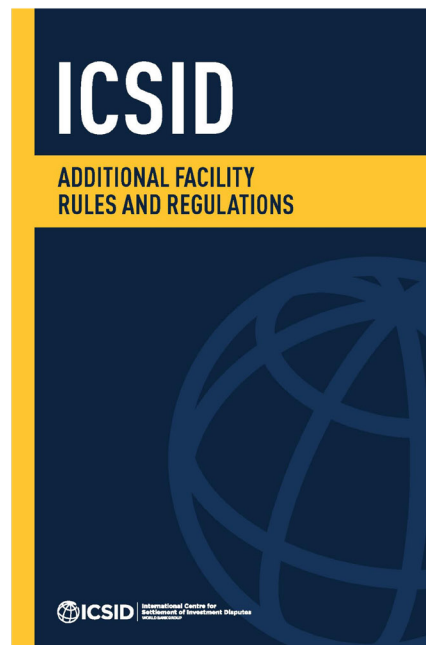
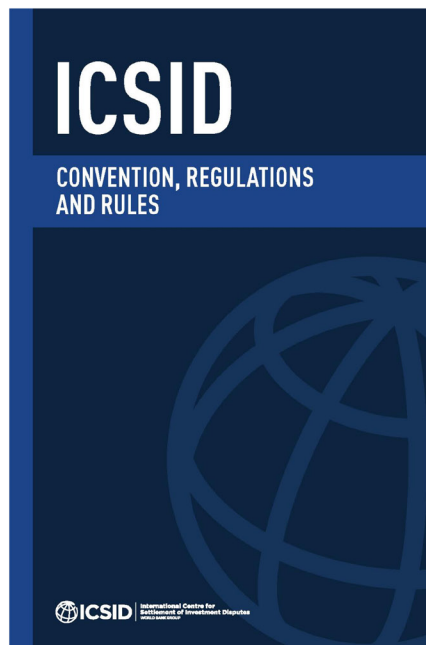




ICSID

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

The First Year of Practice Under the ICSID 2022 Rules



THE FIRST YEAR OF PRACTICE UNDER THE ICSID 2022 RULES

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PART ONE: INTRODUCTION

The 2022 ICSID Rules and Regulations came into force on July 1, 2022, after six years of collaboration with stakeholders including State officials and legal counsel. They were designed to make the administration of ICSID cases more efficient and transparent and to ensure ICSID’s facilities are accessible to a broader range of cases. The 2022 ICSID Rules and Regulations comprise modernized rules for arbitration, conciliation and fact-finding and introduce mediation rules.

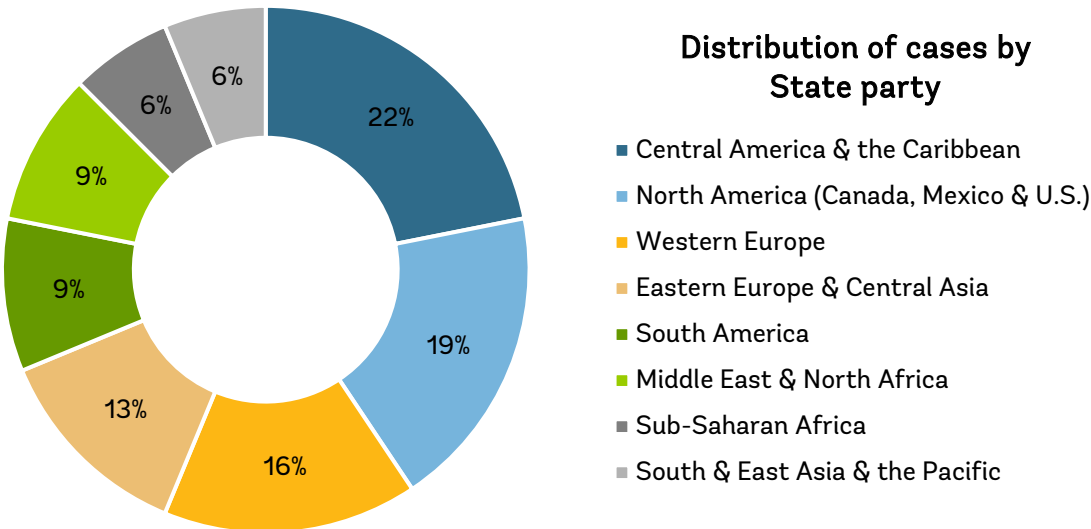
After one year of implementation, ICSID is pleased to present this overview highlighting observations on the applicability of the 2022 ICSID Rules and Regulations and the cases administered to date under the amended rules.

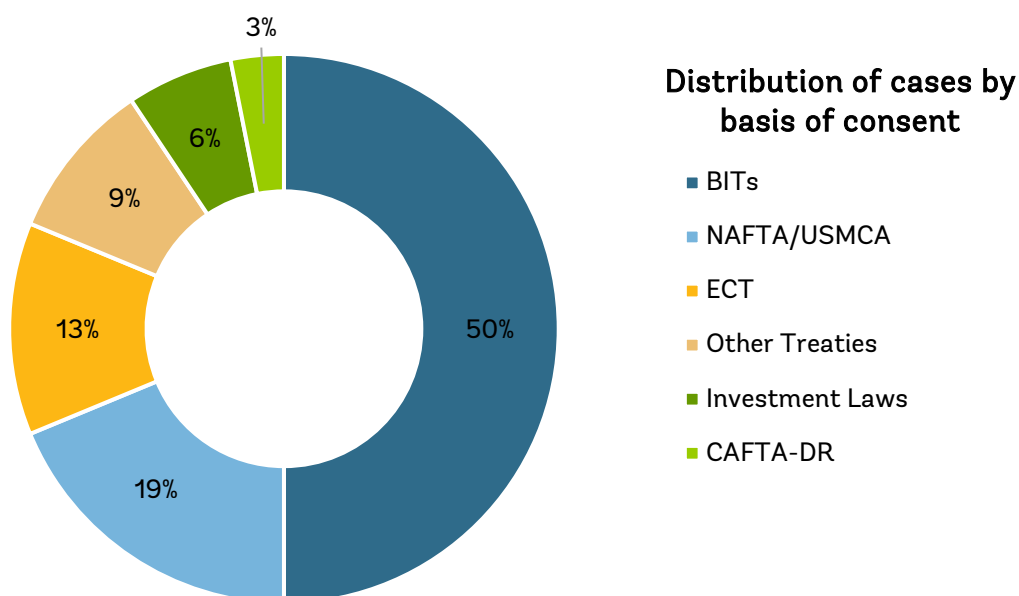
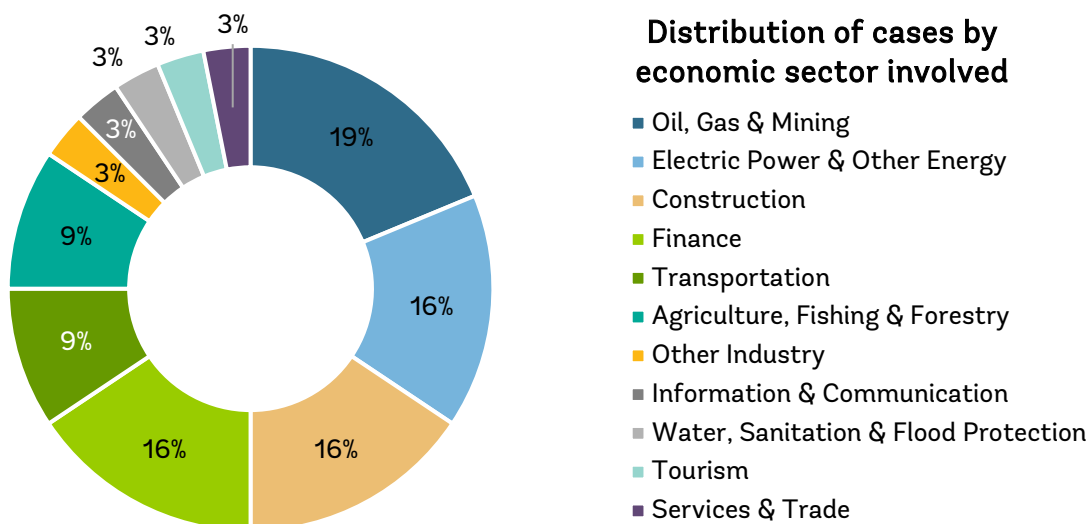
2022 Rules Cases: Metrics

As of June 30, 2023, 33 cases are being administered under the 2022 ICSID Arbitration Rules or the 2022 ICSID (Additional Facility) Arbitration Rules. A list of these cases is attached at [Annex A](#). Twenty-nine of these cases are conducted under the ICSID Arbitration Rules, and 4 cases are Additional Facility arbitrations.

Of the 33 cases, 10 are pre-constitution and awaiting the determination of the method of constitution; 15 are pre-constitution with arbitrator appointments in progress; five have constituted tribunals and a first session is pending; two have held first sessions; and there is one pending objection that a claim manifestly lacks legal merit. There was one proposal to disqualify an arbitrator, which has been resolved. Twenty-eight of the cases are pending; five are suspended.

The distribution of cases under the 2022 ICSID Rules and Regulations by State party, economic sector involved, and basis of consent is as follows:





Aside from an increase in cases involving Central America and North America, these statistics track with trends observed in prior years.

Enhanced Monitoring of Proceedings

The 2022 ICSID Rules and Regulations call on participants in proceedings—parties, counsel, and tribunal members—to foster a time and cost-efficient procedure culminating in an award within eight months of the last submission. To assist, ICSID has implemented an internal tool dedicated to its cases administered under the 2022 ICSID Rules and Regulations. It enables the Centre to track the progress of cases within the timelines prescribed by the rules. Using this tool, ICSID will advise parties and tribunals on upcoming case events to ensure that the aim of a time and cost-efficient procedure is maintained.

PART TWO: ICSID 2022 RULES PRACTICE OVERVIEW

This overview is presented within the framework of the 2022 ICSID Rules and Regulations, commencing first with developments applicable to ICSID Convention proceedings—the Institution Rules, the Arbitration Rules, the Conciliation Rules, and the Administrative and Financial Regulations—before other mechanisms. Observations from current practice are presented under the applicable rule or regulation.

One year into the implementation of the 2022 ICSID Rules and Regulations, the cases remain at an early stage. Thus, this overview focuses more on the rules corresponding to the first steps of an ICSID proceeding such as the institution and registration of a claim and the constitution of the tribunal. As the caseload matures, ICSID will provide annual updates emphasizing later stages of a case.

ICSID Convention Proceedings

I. Institution Rules

The amended [Institution Rules](#) (“IR”) apply to all requests to initiate arbitration or conciliation proceedings under the ICSID Convention. They apply to all proceedings initiated after July 1, 2022, even those administered under prior versions of the ICSID Arbitration and Conciliation Rules. The IR do not apply to Additional Facility, Mediation or Fact-Finding proceedings, as they contain their own, dedicated institution rules.

- a. **IR 2 “Contents of the Request”:** The rule contains a checklist of the required information and supporting documentation for a Request for Arbitration or Conciliation (“Request”).

Requests are promptly registered. If any of the required contents are missing, requesting parties will have an opportunity to supplement their Request.

- b. **IR 2(2)(b):** This provision requires inclusion in the Request of a number of elements demonstrating each party’s consent to submit the dispute at hand to arbitration or conciliation; some elements must be evidenced by supporting documentation.

The inquiry into consent is determinative for the Centre’s review under [Article 28\(3\)](#) and [Article 36\(3\)](#) of the ICSID Convention, and to the preliminary assessment of which arbitration rules apply.

As consent is the cornerstone of ICSID jurisdiction, requesting parties should carefully review and comply with the following provisions related to consent.

IR 2(2)(b)(i-ii) require the inclusion, by way of supporting documentation, of the instrument in which each party’s consent is recorded, and if it is a treaty or law, proof of its entry into force. A Request should not merely reference these materials; they must be exhibited with the Request.

IR 2(2)(b)(iii) states that the Request shall include with respect to each party's consent to submit the dispute to arbitration or conciliation under the Convention:

the date of consent, which is the date on which the parties consented in writing to submit the dispute to the Centre, or if the parties did not consent on the same date, the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre.

The date of consent determines the applicable arbitration rules. The 2022 ICSID Arbitration Rules will apply if the date of consent is on or after July 1, 2022, unless the parties have agreed otherwise. Correspondingly, if the date of consent is prior to July 1, 2022, then the ICSID Arbitration Rules applicable on the date of consent will apply, barring any party agreement to the contrary.

This is in keeping with [Article 33](#) and [Article 44](#) of the ICSID Convention, which state that conciliation and arbitration proceedings shall be conducted in accordance with the rules in effect on the date of consent.

Requesting parties should therefore ensure that the indication of consent is explicit, referencing the ICSID rules and the date of consent. In many cases, the date of consent is the date of the Request, but in others, the written consent may have been made earlier, such as in a notice of dispute or a contract.

If there is disagreement on the date of consent, and consequently the applicable rules, this will be an issue for the arbitral tribunal or conciliation commission to decide once the case is constituted. These bodies will also give effect to a party agreement on the applicable rules or rule on a request to change the applicable rules after constitution of the tribunal or commission.

In one arbitration initially conducted under the 2006 ICSID Arbitration Rules based on the date of consent, the parties agreed that the 2022 ICSID Arbitration rules would apply. In two cases, tribunals have issued rulings to resolve party disagreements on applicable rules. One of these rulings is published and discussed below.

In [*Tayeb Benabderrahmane v. State of Qatar* \(ICSID Case No. ARB/22/23\), Decision on the Applicable Arbitration Rules of March 13, 2023](#), the claimant sought to establish that consent was given in the notice of dispute (prior to July 1, 2022). The respondent disagreed, positing that consent was given in the request for arbitration (after July 1, 2022). The tribunal examined the content of the notice of dispute, finding that the object of the notice was to resolve the claimant's dispute amicably—without arbitration—but reserving the right to seek recourse in arbitration should amicable settlement fail. The tribunal found the language used in the notice did not clearly indicate consent to pursue

arbitration at ICSID; it was ambiguous. On the other hand, in the request, the claimant declared “that he accepts Qatar’s consent to the submission of the present dispute to [ICSID] pursuant to Article 8 of the BIT.” For the tribunal, this later declaration was unambiguous. Accordingly, the tribunal ruled that the claimant had consented to ICSID jurisdiction in the request for arbitration, and the 2022 ICSID Arbitration Rules applied. In reaching its decision, the tribunal underscored that the claimant’s own view, as stated in the request for arbitration, that he “has already consented” to arbitration was not dispositive of its inquiry.

- c. **IR 3 “Recommended Additional Information”:** While IR 2 lists the mandatory content of a Request, IR 3 lists recommended additional information. Nearly every Request filed under the 2022 rules has contained the information listed in IR 3(a)(i-ii), procedural proposals related to the number of arbitrators, the method of their appointment, and the procedural language.

One Request proposed the use of expedited arbitration under [Chapter XII of the ICSID Arbitration Rules](#), but the proposal was not agreed.

Additionally, IR 3(b) recommends disclosure of the names of the persons and entities that own or control a requesting party which is a juridical person. This disclosure applies only if the requesting party is not the ultimate parent and was explicitly made in 20 percent of Requests. Such information assists parties and appointing authorities in identifying tribunal or commission candidates who are free from conflicts of interest.

- d. **IR 5 “Receipt of the Request and Routing of Written Communications”:** States may designate a contact for receipt of requests transmitted by ICSID to ensure the appropriate agency and individual is promptly apprised of a Request. To designate a contact, please contact ICSID at icsidsecretariat@worldbank.org.

II. Arbitration Rules

The 2022 ICSID Arbitration Rules (“AR”) are available at [this link](#).

- a. **AR 9 “Calculation of Time Limits”:** In the 2022 ICSID Rules and Regulations, the provision related to the calculation of time limits was deleted from the AFR and codified instead as AR 9. For those cases pending under earlier versions of the Arbitration Rules, including the 2006 Arbitration Rules, the deletion of the regulation related to the calculation of time limits means there is no default provision applicable to the proceeding unless there is a provision in Procedural Order No. 1 or another order on point.
- b. **AR 14 “Notice of Third-Party Funding”:** Parties are making third-party funding disclosures at registration in accordance with this provision. In some cases, the disclosure was made in the request for arbitration itself.

It is notable that disclosures are also being made in the spirit of AR 14 in cases pending under the 2006 ICSID Arbitration Rules.

- c. **AR 15 “Method of Constituting the Tribunal”:** An important change in the 2022 ICSID Rules and Regulations was made with regard to this provision, which serves to avoid delays during the constitution phase.

Under AR 15(2), if the parties do not agree on the number of arbitrators and the method of their appointment within 45 days of registration—or such other period as the parties may agree—then the tribunal will be constituted in accordance with Article 37(2)(b) of the ICSID Convention. Article 37(2)(b) calls for a tribunal composed of three members, one appointed by each party and the third, who shall be the president of the tribunal, appointed by agreement of the parties.

In practice, the Secretariat will send a letter to the parties 30 days after registration to remind them of this provision and the impending 45-day deadline.

Presently 25 percent of the cases with an established method of constitution will be constituted pursuant to the default method.

- d. **AR 19 “Acceptance of Appointment”:** The declaration required by AR 19(3)(b) has been revised since entry into force of the 2022 ICSID Rules and Regulations. Appointees now need to disclose involvement in investor-State cases within the past five years instead of a disclosure without a time limitation. The revision responded to feedback received from appointees that a non-time-barred disclosure requirement was too burdensome. The five-year limitation is consistent with the UNCITRAL Draft Code of Conduct for Arbitrators in International Investment Dispute Resolution.¹ The disclosure requirement for circumstances that might cause an appointee’s independence or impartiality to be questioned is not time limited.

In addition, ICSID’s correspondence seeking acceptance of an arbitrator’s appointment makes plain the importance of time and cost efficiency. It urges appointees to consider their availability to ensure sufficient time to dedicate to the case, including consecutive free days to sit at hearings. Appointees are required to indicate and disclose their availability by highlighting monthly calendars within the next 24 months. The Secretariat also routinely calls arbitrators upon constitution to underscore the importance of time and cost efficiency and availability.

¹ At ICSID, the UNCITRAL Draft Code of Conduct for Arbitrators (“Draft Code”) will apply to arbitration proceedings by consent of the parties or as required in the instrument of consent to arbitral proceedings. ICSID will consult further with its membership on the Draft Code’s application in ICSID proceedings. The July 21, 2023 version of the Draft Code is available at [this link](#).

- e. **AR 31 “Case Management Conferences”:** This provision aims to reduce time and cost of proceedings by providing for one or more case management conferences at any time after the first session. They may be scheduled in the procedural calendar annexed to Procedural Order No. 1 or during the proceeding upon the request of a party or the tribunal.

Case management conferences are an opportunity for the tribunal and the parties to actively manage the case. When they are substantive in nature, they may narrow the issues in dispute or lead to a settlement.

They may be held after the first round of pleadings to guide the parties on document production, the scope of issues to be addressed in the second round of pleadings or to agree on a chronology of facts. They may also be held in conjunction with procedures arising throughout a proceeding such as a request for bifurcation, provisional measures or hearing preparation.

- f. **AR 62-66 on Transparency and Confidentiality:** The 2022 ICSID Rules and Regulations provide for greater public access to ICSID caselaw while fine-tuning procedures to protect confidential information. AR 62-66 provide the relevant architecture.

In practice, the Secretariat, in consultation with the tribunal, will circulate a proposed draft Procedural Order No. 2 for consideration by the parties. It is attached as [Annex B](#). This draft order proposes provisions related to transparency in every aspect of an ICSID arbitration, *e.g.*, publication of party submissions, transcripts, orders, and the award. It also allows the parties to detail what information is confidential and the procedures to protect such information from disclosure. All provisions may be customized by the parties to address case-specific needs. Draft Procedural Order No. 2 forms part of the agenda at the first session and may be finalized thereafter.

III. Conciliation Rules

ICSID received one request for conciliation in the first year of the 2022 ICSID Rules and Regulations. The 2022 ICSID Conciliation Rules are available at [this link](#).

IV. Administrative and Financial Regulations

As of July 1, 2022, the 2022 [Administrative and Financial Regulations](#) (“AFR”) are applicable to all pending ICSID Convention proceedings, including those pending under prior versions of the ICSID Rules. The 2022 AFR apply equally to Additional Facility proceedings pending under prior rules, but not to Additional Facility proceedings under the 2022 Additional Facility Rules, which contain their own, dedicated regulations.

- a. **Regulations 15 and 16 Payments to the Centre and Default:** Upon registration of a Request, claimants are now required to advance funds to defray costs from registration through the first session. The respondent must pay its share

following the constitution of the tribunal. Presently, each side's share of the first advance averages USD150,000.

By providing for an earlier advance payment from the claimants, there will be no delay due to lack of funds in the initial procedures of a case such as the first session and any pending requests to the tribunal, *e.g.*, provisional measures.

The consequence of non-payment, known as default, is set out in AFR 16. Under this regulation, the Secretary-General may suspend or discontinue the proceeding in case of non-payment. The Secretary-General has discretion to make this determination on a case-by-case basis and to consider factors such as the stage of the proceeding and partial payment.

Two cases have been suspended under this regulation: [*Astronergy Solar Netherlands B.V. v. Republic of Bulgaria* \(ICSID Case No. ARB/22/32\)](#) and [*Sepadeve International LLC v. United Mexican States* \(ICSID Case No. ARB/23/6\)](#).

Additional Facility Proceedings and Other Mechanisms

I. Additional Facility Rules and Regulations

The [Additional Facility Rules](#) include the [\(Additional Facility\) Arbitration Rules](#). All Additional Facility cases registered since July 1, 2022 are administered under the 2022 Additional Facility Rules, even if the date of consent predates July 1, 2022.

In this first year of implementation, there were three arbitration cases registered under the 2022 Additional Facility Rules and Regulations. Incidentally, these were the first three cases filed under any of the 2022 ICSID Rules. One *ad hoc* arbitration is also administered under these rules.

There are three important changes to the Additional Facility Rules. First, there is now expanded access to the Additional Facility. In accordance with Article 2 of the Additional Facility Rules, the Secretariat is now authorized to administer proceedings arising out of an investment between an investor and a State or Regional Economic Integration Organization. This is so, even if neither party to a dispute is a Contracting State or a national of a Contracting State.

Second, disputes brought to the Additional Facility mechanism must arise out of an investment. Previously, the Additional Facility Rules provided for resolution of disputes not arising out of an investment; this option was deleted from the current rules (and indeed, no case had ever been registered under the Additional Facility Rules on this basis).

Third, "approval of access", a required first step to initiate an Additional Facility proceeding under prior versions of these rules, has been eliminated. One requesting party under the 2022 Additional Facility Rules and Regulations sought "approval of

access” out of an abundance of caution. Given that this procedure has been eliminated, the Secretariat registered the Request without the need to first “approve access” to the facility.

II. Fact-Finding Rules and Regulations

ICSID has not yet received a request for fact finding. The 2022 ICSID Fact Finding Rules are available [at this link](#).

III. Mediation Rules and Regulations

To date, ICSID has received one request for mediation under the [ICSID Mediation Rules](#). The Centre anticipates increased use of the Mediation Rules, which may apply prior to the registration of a claim at ICSID, during the pendency of a proceeding, or even after an Award is issued as explained in the Centre’s [Background Paper on Investment Mediation](#).

In pending cases, tribunals may take note in Procedural Order No. 1 that the parties may seek amicable settlement of all or part of a dispute, including through mediation under the ICSID Mediation Rules.² If the parties settle an ICSID Convention dispute in full, they may ask the Tribunal to embody their settlement in an award, thereby reaping the recognition and enforcement protections of the ICSID Convention. They may also seek to enforce mediated settlements pursuant to the [United Nations Convention on International Settlement Agreements Resulting from Mediation](#), known as the Singapore Convention, if applicable.

Investor and State representatives are availing themselves of mediation training. ICSID’s [mediation page](#) contains a multitude of content including an FAQ and recordings of prior events, and model clauses. ICSID’s [news and event page](#) posts announcements related to future mediation trainings.

In parallel, the [Draft UNCITRAL Guidelines on Investment Mediation](#) speak to the flexibility of mediation to aid in the resolution of investment disputes. The Guidelines state, “Mediation allows the parties to exercise control over the process, to reach a self-tailored outcome and to preserve their relationship.” Indeed, these Guidelines refer to ICSID’s Mediation Rules and Regulations for use in investor-State mediation.

² e.g., [Tayeb Benabderrahmane v. State of Qatar](#) (ICSID Case No. ARB/22/23), Procedural Order No. 2 of April 11, 2023 at Section 25.

**ANNEX A:
LIST OF CASES UNDER ICSID 2022 RULES (TO JUNE 30, 2023)**

(In chronological order by date of registration)

1. *José Alejandro Hernández Contreras v. Republic of Costa Rica* (ICSID Case No. ARB(AF)/22/5)
2. *Nacato N.V. and others v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB(AF)/22/6)
3. *PowerChina HuaDong Engineering Corporation and China Railway 18th Bureau Group Company Ltd v. Socialist Republic of Vietnam* (ICSID Case No. ARB(AF)/22/7)
4. *PowerChina HuaDong Engineering Corporation and China Railway 18th Bureau Group Company Ltd v. Socialist Republic of Vietnam* (ICSID Case No. ADM/23/1)
5. *Ascent Resources Plc and Ascent Slovenia Ltd v. Republic of Slovenia* (ICSID Case No. ARB/22/21)
6. *Encavis AG and others v. French Republic* (ICSID Case No. ARB/22/22)
7. *Tayeb Benabderrahmane v. State of Qatar* (ICSID Case No. ARB/22/23)
8. *Doups Holdings LLC v. United Mexican States* (ICSID Case No. ARB/22/24)
9. *Doba Pipeline Investment Inc., Petronas (E&P) Overseas Ventures Sdn. Bhd, et Petronas Carigali Chad Exploration & Production Inc. v. Republic of Cameroon* (ICSID Case No. ARB/22/27)
10. *Suffolk (Mauritius) Limited, Mansfield (Mauritius) Limited and Silver Point Mauritius v. Portuguese Republic* (ICSID Case No. ARB/22/28)
11. *Bank of Nova Scotia v. Republic of Peru* (ICSID Case No. ARB/22/30)
12. *UAB Arctic Fishing v. Kingdom of Norway* (ICSID Case No. ARB/22/31)
13. *Astronergy Solar Netherlands B.V. v. Republic of Bulgaria* (ICSID Case No. ARB/22/32)
14. *Naftiran Intertrade Co. (NICO) Limited v. Kingdom of Bahrain* (ICSID Case No. ARB/22/34)
15. *Canal Extensia, S.A.U. v. Republic of Colombia* (ICSID Case No. ARB/23/1)
16. *JLL Capital, S.A.P.I. de C.V. v. Republic of Honduras* (ICSID Case No. ARB/23/3)

17. *Goldgroup Resources, Inc. v. United Mexican States* (ICSID Case No. ARB/23/4)
18. *Ruby River Capital LLC v. Canada* (ICSID Case No. ARB/23/5)
19. *Sepadeve International LLC v. United Mexican States* (ICSID Case No. ARB/23/6)
20. *SIA Baltjura-Serviss v. Kingdom of Norway* (ICSID Case No. ARB/23/7)
21. *China Machinery Engineering Corporation v. Republic of Trinidad and Tobago* (ICSID Case No. ARB/23/8)
22. *EMS Shipping & Trading GmbH v. Republic of Albania* (ICSID Case No. ARB/23/9)
23. *Scatec ASA v. Republic of Honduras* (ICSID Case No. ARB/23/12)
24. *Norfund and KLP Norfund Investments AS v. Republic of Honduras* (ICSID Case No. ARB/23/13)
25. *Suntech Power International Ltd. v. Italian Republic* (ICSID Case No. ARB/23/14)
26. *Access Business Group LLC v. United Mexican States* (ICSID Case No. ARB/23/15)
27. *Kurt Harald Grüninger, Alexandra Grüninger, and Sascha Spittel v. Republic of Costa Rica* (ICSID Case No. ARB/23/16)
28. *Juan Carlos Arguello and Ernesto Arguello v. Republic of Honduras* (ICSID Case No. ARB/23/17)
29. *Zenith Energy Africa Ltd., Zenith Overseas Assets Ltd. and Compagnie du Désert Ltd. v. Republic of Tunisia* (ICSID Case No. ARB/23/18)
30. *Korea National Oil Corporation, KNOC Nigerian West Oil Company Limited, and KNOC Nigerian East Oil Company Limited v. Federal Republic of Nigeria* (ICSID Case No. ARB/23/19)
31. *Gruppo Officine Piccini S.p.A. v. Republic of Cameroon* (ICSID Case No. ARB/23/21)
32. *Enerflex US Holdings Inc. and Exterran Energy Solutions, L.P. v. United Mexican States* (ICSID Case No. ARB/23/22)
33. *Basel LLC and Ronald Waldmann v. Georgia* (ICSID Case No. ARB/23/23)

**ANNEX B:
TEMPLATE OF DRAFT ORDER ON TRANSPARENCY AND CONFIDENTIALITY**

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

[...]
Claimant

v.

[...]
Respondent

(ICSID Case No. [...])

**PROCEDURAL ORDER No. [...]
On Transparency and Confidentiality**

Members of the Tribunal

Secretary of the Tribunal

[date]

I. PROCEDURAL BACKGROUND

1. On [...], the Tribunal circulated a draft of this order (“Draft PO2”) for discussion by the Parties.
2. On [...], the Parties commented on Draft PO2.
3. On [...], the first session was held. During the first session, the Parties and the Tribunal discussed the Parties’ comments on Draft PO2 and the draft procedural order no. 1.
4. This Procedural Order No. 2 contains the Parties’ agreements and the Tribunal’s decisions concerning the transparency regime governing this case.

II. LEGAL FRAMEWORK

5. The legal framework applicable to these proceedings is determined by the [relevant instrument of consent], the ICSID Convention, and the 2022 ICSID Arbitration Rules. [Insert here any provisions on transparency/confidentiality foreseen in the instrument of consent, if any]. [ICSID Arbitration Rules 62-66 contain provisions concerning the publication of the award, orders and decisions, other documents filed in the proceedings, transcripts and recordings of hearings, open hearings and the definition of confidential or protected information].
6. In accordance with ICSID Arbitration Rule 1(2), the Parties may agree on other rules governing transparency and confidentiality of this proceeding.
7. [In this case, the [instrument of consent] is silent with respect to transparency /confidentiality. Therefore, the applicable provisions are those set out in Article 48(5) of the ICSID Convention and ICSID Arbitration Rules 62-66 [as amended/supplemented by Section III of this Order].
8. In accordance with ICSID Arbitration Rule 66 confidential or protected information is information which is protected from public disclosure:
 - (a) by the instrument of consent to arbitration [*Note: Check if instrument of consent has definition and include that definition instead*];
 - (b) by the applicable law or applicable rules;
 - (c) in the case of information of a State party to the dispute, by the law of that State;
 - (d) in accordance with the orders and decisions of the Tribunal;
 - (e) by agreement of the parties;
 - (f) because it constitutes confidential business information or protected personal information;
 - (g) because public disclosure would impede law enforcement;

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

III. TRANSPARENCY RULES

9. The Tribunal adopts the following transparency and confidentiality rules governing the proceedings.

A. AWARD (ICSID Arbitration Rule 62)

10. For the purposes of Article 48(5) of the ICSID Convention and ICSID Arbitration Rule 62, the Parties consent to publication of the Award by ICSID on its website [, with any redactions agreed by the Parties.³ The Parties shall provide ICSID with their jointly redacted text within 60 days after the dispatch of the Award.]

11. If the Parties do not agree on a jointly redacted text, they shall, within 60 days after the dispatch of the Award, inform ICSID and provide their respective proposals for redaction.

12. In accordance with ICSID Arbitration Rule 62(4), if the Parties disagree on redactions, ICSID shall prepare excerpts of the Award within 60 days after receipt of the Parties' notice under paragraph 11, taking into account each Party's proposed redactions as far as possible. The Parties may comment on the proposed excerpts within 60 days after their receipt, including whether any information in the proposed excerpts is confidential or protected. ICSID shall consider any comments received on the proposed excerpts and publish the excerpts within 30 days after the expiry of the time limit for the Parties' comments on the proposed excerpts.

B. Orders and Decisions (ICSID Arbitration Rule 63)

13. ICSID shall publish the orders and decisions of the Tribunal, with any redactions agreed by the Parties or decided by the Tribunal, in accordance with Section G below.

C. Written Submissions (ICSID Arbitration Rule 64)

14. ICSID shall publish the Parties' main written submissions ([request for arbitration, memorial, counter-memorial, reply and rejoinder]), with any redactions agreed by the Parties or decided by the Tribunal, in accordance with Section G below.

15. The Parties may agree that ICSID will publish other written submission not falling within paragraph 14 above within [...] days from the filing of the relevant submission. These

³ Pursuant to ICSID Arbitration Rule 72(2) this procedural order shall continue to apply to an interpretation, revision or annulment proceeding with necessary modifications, unless the Parties agree or the Tribunal or Committee orders otherwise.

submissions will be published with any redactions agreed by the Parties or decided by the Tribunal in accordance with Section G below.

OR

16. ICSID shall not publish the Parties' written submissions [unless the Parties agree otherwise no later than [...] days from the filing of the relevant submission].

D. Supporting Documents (ICSID Arbitration Rule 64)

17. Supporting documents, including exhibits, legal authorities, witness statements and expert reports (including annexes, appendices or exhibits thereto) shall not be published by ICSID, [unless the Parties agree otherwise].

E. Open Hearings (ICSID Arbitration Rule 65(1)-(2))

18. Hearings shall be open to the public. The Tribunal shall establish a protocol governing public access to a hearing and the non-disclosure of confidential and protected information addressed during the hearing at the latest at the pre-hearing organizational conference.

OR

19. Hearings shall not be open to the public, unless the Parties agree otherwise at the latest [by date/at step – minimum two months before the hearing]. If the Parties agree that the hearings shall be open to the public, the Tribunal shall establish a protocol governing public access to a hearing and the non-disclosure of confidential and protected information discussed during the hearing at the latest at the pre-hearing organizational conference.

F. Transcripts and Recordings of Hearings (ICSID Arbitration Rule 65(3))

20. ICSID shall publish transcripts or recordings, with any redactions agreed by the Parties or decided by the Tribunal in accordance with Section G below.

OR

21. Transcripts and recordings of hearings shall not be published by ICSID, [unless both Parties agree otherwise no later than [...] days from the time limit for corrections to a transcript.]

G. Procedure for redactions - Non-disclosure of Confidential or Protected Information (ICSID Arbitration Rule 66)

22. With respect to publication pursuant to Sections B, C, D and F above, any confidential or protected information as defined in [ICSID Arbitration Rule 66 / relevant treaty/additional definition agreed by Parties] that is submitted to the Tribunal shall be protected from disclosure and publication in accordance with the procedure set forth below:

23. Within [...] days from the date of a decision or order, a written submission, or the date of transmittal of a final transcript or recording, a Party shall give written notice to the Tribunal and the other Party that it requests the non-disclosure of certain information it considers confidential or protected. Absent such a notice within the [...] day timeline, and unless the

Tribunal determines on its own initiative that certain information is not to be made public in accordance with [the applicable framework/ ICSID Arbitration Rule 66], the Tribunal will authorize ICSID to publish the document or recording without redactions from the Parties.

24. Within [...] days of receipt of the notice referred to in paragraph 23, the other Party may raise objections to the proposed redactions.
25. If no objections are raised within the deadline established in paragraph 24, the Tribunal will authorize ICSID to publish the document or recording at issue with the requested redactions.
26. If objections are raised within the deadline established in paragraph 24, the Parties shall confer and seek to agree on redactions within [...] days of receipt of the objections to the proposed redactions. If the Parties reach an agreement, the Tribunal will authorize ICSID to publish the document at issue with the agreed redactions.
27. If objections remain unresolved, the disputed redaction requests and the objections thereto shall be submitted to the Tribunal in the form of the Transparency Schedule set out in Annex A to this Order.
28. If information is to be redacted from a document or recording in accordance with paragraphs 25, 26 or 27, the Parties shall provide a redacted version of the document. Upon receipt of the redacted document, the Tribunal will ask ICSID to publish the document.
29. [*Note: If instrument of consent (e.g., treaties following US model BIT) provides for withdrawal of documents insert this clause: If the Tribunal decides that information filed by a Party for which protection is sought is not protected or confidential information and should be published, the Party that filed the document or submission shall be permitted to withdraw all or part of the document from the record within [*] days of the Tribunal's decision.*]

On behalf of the Tribunal,

President of the Tribunal

Date:

**ANNEX TO PROCEDURAL ORDER NO. [...]
TRANSPARENCY SCHEDULE**

[insert Party]	Request [1]
Information sought to be protected from disclosure	
Legal basis for protection	
Comments	
Reply by opposing Party	
Decision	

ICSID is the world's leading institution devoted to international investment dispute settlement. It has extensive experience in this field, having administered the majority of all international investment cases. States have agreed on ICSID as a forum for investor-State dispute settlement in most international investment treaties and in numerous investment laws and contracts.

ICSID was established in 1966 by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention). The ICSID Convention is a multilateral treaty formulated by the Executive Directors of the World Bank to further the Bank's objective of promoting international investment. ICSID is an independent, depoliticized and effective dispute-settlement institution. Its availability to investors and States helps to promote international investment by providing confidence in the dispute resolution process. It is also available for State-State disputes under investment treaties and free trade agreements, and as an administrative registry.

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