

XI. ICSID MEDIATION RULES

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XI. ICSID MEDIATION RULES

Introductory Note

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

The ICSID Mediation Rules are supplemented by the ICSID Mediation Administrative and Financial Regulations.

Chapter I General Provisions

Rule 1 Definitions

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

Rule 2 Mediation Proceedings

- (1) The Secretariat is authorized to administer mediations that relate to an investment, involve a State or an REIO, and which the parties consent in writing to submit to the Centre.

- (2) Reference to a State or an REIO includes a constituent subdivision of the State, or an agency of the State or the REIO. The State or the REIO must approve the consent of the constituent subdivision or agency which is a party to the mediation pursuant to paragraph (1), unless the State or the REIO concerned notifies the Centre that no such approval is required.
- (3) The ICSID Mediation Administrative and Financial Regulations shall apply to mediations pursuant to these Rules.

Rule 3 Application of Rules

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

Rule 4 Party Representative

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

Chapter II Institution of the Mediation

Rule 5 Institution of Mediation Based on Prior Party Agreement

- (1) If the parties have agreed in writing to mediate pursuant to these Rules, any party wishing to institute a mediation shall file a Request with the Secretary-General and pay the lodging fee published in the schedule of fees.

- (2) The Request may be filed by one or more requesting parties, or filed jointly by the parties to the mediation.
- (3) The Request shall:
 - (a) be in English, French or Spanish, or in any other language with the approval of the Secretary-General;
 - (b) identify each party to the mediation and provide their contact information, including electronic mail address, street address and telephone number;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) attach proof of any representative's authority to act;
 - (e) be filed electronically, unless the Secretary-General authorizes the filing of the Request in an alternative format;
 - (f) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request, and attach the authorizations;
 - (g) indicate that the mediation involves a State or an REIO, describe the investment to which the mediation relates, and include a brief statement of the issues to be mediated;
 - (h) contain any proposals or agreements reached by the parties concerning the appointment and qualifications of the mediator and the procedure to be followed during the mediation; and
 - (i) attach the agreement of the parties to mediate pursuant to these Rules.
- (4) Any supporting document in a language other than English, French, Spanish or a language approved by the Secretary-General pursuant to Rule 5(3)(a), shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or complete translation of the document.
- (5) Upon receipt of the Request, the Secretary-General shall:
 - (a) promptly acknowledge receipt of the Request to the requesting party; and
 - (b) transmit the Request to the other party upon receipt of the lodging fee.

Rule 6
Institution of Mediation Absent a Prior Party Agreement

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

Rule 7
Registration of the Request

- (1) Upon receipt of:
 - (a) the lodging fee; and

(b) a Request pursuant to Rule 5, or a Request and an agreement to mediate pursuant to Rule 6;

the Secretary-General shall register the Request if it appears, on the basis of the information provided, that the Request is within the scope of Rule 2(1).

(2) The Secretary-General shall notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.

(3) The notice of registration of the Request shall:

(a) record that the Request is registered and indicate the date of registration;

(b) confirm that all correspondence to the parties in connection with the mediation will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Secretary-General; and

(c) invite the parties to appoint the mediator without delay.

Chapter III General Procedural Provisions

Rule 8 Calculation of Time Limits

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

Rule 9 Costs of the Mediation

Unless the parties agree otherwise:

(a) the fees and expenses of the mediator and the administrative charges and direct costs of the Centre shall be borne equally by the parties; and

(b) each party shall bear any other costs it incurs in connection with the mediation.

Rule 10
Confidentiality of the Mediation

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

Rule 11
Use of Information in Other Proceedings

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

Chapter IV
The Mediator

Rule 12
Qualifications of the Mediator

- (1) The mediator shall be impartial and independent of the parties.
- (2) The parties may agree that the mediator shall have specific qualifications or expertise.

Rule 13
Number of Mediators and Method of Appointment

- (1) There shall be one mediator or two co-mediators. Each mediator shall be appointed by agreement of the parties. All references to “mediator” in these Rules shall include co-mediators, as applicable.

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

Rule 14 **Acceptance of Appointment**

- (1) The parties shall notify the Secretary-General of the appointment of the mediator and provide the name and contact information of the appointee.
- (2) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from the appointee.
- (3) Within 20 days after receipt of the request for acceptance of an appointment, the appointee shall:
 - (a) accept the appointment; and
 - (b) provide a signed declaration in the form published by the Centre, addressing matters including the mediator's independence, impartiality, availability and commitment to maintain the confidentiality of the mediation.
- (4) The Secretary-General shall notify the parties of the acceptance of appointment by the mediator and transmit the signed declaration to them.
- (5) The Secretary-General shall notify the parties if a mediator fails to accept the appointment or provide a signed declaration within the time limit referred to in

paragraph (3), and another person shall be appointed as mediator in accordance with the method followed for the previous appointment.

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

Rule 15 Transmittal of the Request

As soon as the mediator has, or both co-mediators have, accepted the appointment(s) and signed the declaration required by Rule 14(3)(b), the Secretary-General shall transmit the Request, any supporting documents, communications received from the parties and the notice of registration to each mediator and notify the parties of the transmittal.

Rule 16 Resignation and Replacement of Mediator

- (1) A mediator may resign by notifying the Secretary-General and the parties.
- (2) A mediator shall resign:
 - (a) on the joint request of the parties; or
 - (b) if the mediator becomes incapacitated or fails to perform the duties required of a mediator.
- (3) Following the resignation of a mediator, the Secretary-General shall notify the parties of the vacancy. A new mediator shall be appointed by the same method used to make the original appointment, except that:
 - (a) the Secretary-General shall fill any vacancy that has not been filled within 45 days after the notice of the vacancy; or
 - (b) if a co-mediator resigns and the parties notify the Secretary-General within 45 days after the notice of the vacancy that they have agreed to continue the

mediation with the remaining co-mediator acting as sole mediator, no new mediator shall be appointed.

Chapter V Conduct of the Mediation

Rule 17 Role and Duties of the Mediator

- (1) The mediator shall assist the parties in reaching a mutually acceptable resolution of all or part of the issues in dispute. The mediator has no authority to impose a resolution of the dispute on the parties.
- (2) The mediator shall conduct the mediation in good faith and in an expeditious and cost-effective manner.
- (3) The mediator shall treat the parties equally and provide each party with a reasonable opportunity to participate in the mediation.
- (4) The mediator may meet and communicate with the parties jointly or separately. Such communication may be in person or in writing and by any appropriate means. Information received by the mediator from one party shall not be disclosed to the other party without authorization from the disclosing party.

Rule 18 Duties of the Parties

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

Rule 19 Initial Written Statements

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

- (2) The Secretary-General shall transmit the initial written statements to the mediator and the other party.

Rule 20 First Session

- (1) The mediator shall hold a first session with the parties within 30 days after the date of the transmittal of the Request pursuant to Rule 15 or such other period as the parties may agree.
- (2) The agenda, method and date of the first session shall be determined by the mediator after consulting with the parties. In preparation for the first session, the mediator may meet and communicate with the parties jointly or separately.
- (3) At the first session, the mediator shall determine the protocol for the conduct of the mediation (“Protocol”) after consulting with the parties on procedural matters, including:
 - (a) the procedural language(s);
 - (b) the method of communication;
 - (c) the place of meetings and whether a meeting will be held in person or remotely;
 - (d) the next steps in the mediation;
 - (e) the treatment of information relating to, and documents generated in or obtained during, the mediation;
 - (f) the participation of other persons in the mediation;
 - (g) any agreement between the parties:
 - (i) concerning the treatment of information disclosed by one party to the mediator by separate communication pursuant to Rule 17(4);
 - (ii) not to initiate or pursue other proceedings in respect of the issues being mediated;
 - (iii) concerning the application of prescription or limitation periods; and
 - (iv) concerning the disclosure of any settlement agreement resulting from the mediation;

- (h) the division of advances payable pursuant to ICSID Mediation Administrative and Financial Regulation 7; and
 - (i) any other relevant procedural and administrative matters.
- (4) At the first session or within such other period as the mediator may determine, each party shall:
- (a) identify a person or entity authorized to negotiate and settle the issues being mediated on its behalf; and
 - (b) describe the process that would be followed to conclude and implement a settlement agreement.

Rule 21 Mediation Procedure

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

Rule 22 Termination of the Mediation

- (1) The mediator, or the Secretary-General if no mediator has been appointed, shall issue a notice of termination of the mediation upon:
 - (a) a notice from the parties that they have signed a settlement agreement;
 - (b) a notice from the parties that they have agreed to terminate the mediation;
 - (c) a notice of withdrawal by any party, unless the remaining parties agree to continue the mediation;

(d) a determination by the mediator that there is no likelihood of resolution through the mediation; or

(e) fulfilment of the requirements of Rule 13(5).

(2) The notice of termination shall contain a brief summary of the procedural steps, any agreement of the parties pursuant to Rule 11, and the basis for termination of the mediation pursuant to paragraph (1).

(3) The notice shall be dated and signed by the mediator or the Secretary-General, as applicable.

(4) The Secretary-General shall promptly dispatch a certified copy of the notice of termination to each party and deposit the notice in the archives of the Centre. The Secretary-General shall provide additional certified copies of the notice to a party upon request.

XII. ICSID MEDIATION ADMINISTRATIVE AND FINANCIAL REGULATIONS

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XII. ICSID MEDIATION ADMINISTRATIVE AND FINANCIAL REGULATIONS

Introductory Note

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

Chapter I General Provisions

Regulation 1 Application of these Regulations

- (1) These Regulations apply to mediations which the Secretariat of the Centre is authorized to administer pursuant to Rule 2 of the ICSID Mediation Rules.
- (2) The applicable Regulations are those in force on the date of filing the Request for mediation pursuant to the ICSID Mediation Rules.

Chapter II General Functions of the Secretariat

Regulation 2 Secretary

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

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the ICSID Mediation Rules applicable to individual mediations and delegated to the Secretary; and
- (b) assist the parties and the mediator with the mediation, including the expeditious and cost-effective conduct of the mediation.

Regulation 3 The Registers

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

Regulation 4 Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
 - (a) all Requests for mediation and communications pursuant to ICSID Mediation Rules 5 and 6;
 - (b) all documents and communications filed in a mediation relating to the appointment of the mediator;
 - (c) the mediation protocol issued pursuant to ICSID Mediation Rule 20; and
 - (d) any notice issued pursuant to ICSID Mediation Rules 7 and 22.
- (2) Subject to the ICSID Mediation Rules and the agreement of the parties to the mediation, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c) and (d) available to the parties.

Regulation 5 Certificates of Official Travel

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

Chapter III Financial Provisions

Regulation 6 Fees, Allowances and Charges

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

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

Regulation 7 Payments to the Centre

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

Regulation 8 Consequences of Default in Payment

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

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

Regulation 9 Special Services

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

Regulation 10 Fee for Lodging Requests

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

Regulation 11 Administration of Mediations

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

Chapter IV
Official Languages and Limitation of Liability

Regulation 12
Languages of Rules and Regulations

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

Regulation 13
Prohibition Against Testimony and Limitation of Liability

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