

ICSID ARBITRATION RULES

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INTRODUCTORY NOTE

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

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

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

CHAPTER I GENERAL PROVISIONS

Rule 1 **Application of Rules**

- (1) These Rules shall apply to any arbitration proceeding conducted under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("Convention") in accordance with Article 44 of the Convention.
- (2) The Tribunal shall apply any agreement of the parties on procedural matters to the extent that it does not conflict with the Convention or the ICSID Administrative and Financial Regulations.

Rule 2 **Party and Party Representative**

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

Rule 3 **General Duties**

- (1) The Tribunal and the parties shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.

- (2) The Tribunal shall treat the parties equally and provide each party with a reasonable opportunity to present its case.

Rule 4

Method of Filing

- (1) A document to be filed in the proceeding shall be filed with the Secretary-General, who shall acknowledge its receipt.
- (2) Documents shall be filed electronically. In special circumstances, the Tribunal may order that documents also be filed in a different format.

Rule 5

Supporting Documents

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

Rule 6

Routing of Documents

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

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

Rule 7

Procedural Languages, Translation and Interpretation

- (1) The parties may agree to use one or two procedural languages in the proceeding. The parties shall consult with the Tribunal and the Secretary-General regarding the use of a language that is not an official language of the Centre. If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.
- (2) In a proceeding with one procedural language:
 - (a) documents shall be filed and hearings shall be conducted in that procedural language;
 - (b) documents in another language shall be accompanied by a translation into that procedural language; and
 - (c) testimony in another language shall be interpreted into that procedural language.
- (3) In a proceeding with two procedural languages:
 - (a) documents may be filed and hearings may be conducted in either procedural language, unless the Tribunal orders that a document be filed in both procedural languages or that a hearing be conducted with interpretation into both procedural languages;
 - (b) documents in another language shall be accompanied by a translation into either procedural language, unless the Tribunal orders translation into both procedural languages;
 - (c) testimony in another language shall be interpreted into either procedural language, unless the Tribunal orders interpretation into both procedural languages;
 - (d) the Tribunal and the Secretary-General may communicate in either procedural language; and
 - (e) all orders, decisions and the Award shall be rendered in both procedural languages, unless the parties agree otherwise.
- (4) Translation of only the relevant part of a supporting document is sufficient, unless the Tribunal orders a party to provide a fuller or a complete translation. If the translation is disputed, the Tribunal may order a party to provide a certified translation.

Rule 8

Correction of Errors

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

Rule 9

Calculation of Time Limits

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

Rule 10

Fixing Time Limits

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

Rule 11

Extension of Time Limits Applicable to Parties

- (1) The time limits in Articles 49, 51 and 52 of the Convention cannot be extended. An application or request filed after the expiry of such time limits shall be disregarded.

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

Rule 12

Time Limits Applicable to the Tribunal

- (1) The Tribunal shall use best efforts to meet time limits to render orders, decisions and the Award.
- (2) If the Tribunal cannot comply with an applicable time limit, it shall advise the parties of the special circumstances justifying the delay and the date when it anticipates rendering the order, decision or Award.

CHAPTER II

ESTABLISHMENT OF THE TRIBUNAL

Rule 13

General Provisions Regarding the Establishment of the Tribunal

- (1) The Tribunal shall be constituted without delay after registration of the Request for arbitration.
- (2) The majority of the arbitrators on a Tribunal shall be nationals of States other than the State party to the dispute and the

State whose national is a party to the dispute, unless the Sole Arbitrator or each individual member of the Tribunal is appointed by agreement of the parties.

- (3) A party may not appoint an arbitrator who is a national of the State party to the dispute or the State whose national is a party to the dispute without agreement of the other party.
- (4) A person previously involved in the resolution of the dispute as a conciliator, judge, mediator or in a similar capacity may be appointed as an arbitrator only by agreement of the parties.

Rule 14

Notice of Third-Party Funding

- (1) A party shall file a written notice disclosing the name and address of any non-party from which the party, directly or indirectly, has received funds for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding ("third-party funding"). If the non-party providing funding is a juridical person, the notice shall include the names of the persons and entities that own and control that juridical person.
- (2) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request for arbitration, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.
- (3) The Secretary-General shall transmit the notice of third-party funding and any notification of changes to the information in such notice to the parties and to any arbitrator proposed for appointment or appointed in a proceeding for purposes of completing the arbitrator declaration required by Rule 19(3)(b).
- (4) The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding pursuant to Rule 36(3).

Rule 15

Method of Constituting the Tribunal

- (1) The number of arbitrators and the method of their appointment must be determined before the Secretary-General can act on any appointment proposed by a party.

- (2) The parties shall endeavor to agree on any uneven number of arbitrators and the method of their appointment. If the parties do not advise the Secretary-General of an agreement within 45 days after the date of registration, the Tribunal shall be constituted in accordance with Article 37(2)(b) of the Convention.

Rule 16

Appointment of Arbitrators to a Tribunal Constituted in Accordance with Article 37(2)(b) of the Convention

If the Tribunal is to be constituted in accordance with Article 37(2)(b) of the Convention, each party shall appoint an arbitrator and the parties shall jointly appoint the President of the Tribunal.

Rule 17

Assistance of the Secretary-General with Appointment

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

Rule 18

Appointment of Arbitrators by the Chair in Accordance with Article 38 of the Convention

- (1) If the Tribunal has not been constituted within 90 days after the date of registration, or such other period as the parties may agree, either party may request that the Chair appoint the arbitrator(s) who have not yet been appointed pursuant to Article 38 of the Convention.
- (2) The Chair shall appoint the President of the Tribunal after appointing any members who have not yet been appointed.
- (3) The Chair shall consult with the parties as far as possible before appointing an arbitrator and shall use best efforts to appoint any arbitrator(s) within 30 days after receipt of the request to appoint.

Rule 19

Acceptance of Appointment

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

- (2) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from the appointee and shall transmit to the appointee the information received from the parties relevant to completion of the declaration referred to in paragraph (3)(b).
- (3) Within 20 days after receipt of the request for acceptance of an appointment, the appointee shall:
 - (a) accept the appointment; and
 - (b) provide a signed declaration in the form published by the Centre, addressing matters including the arbitrator's independence, impartiality, availability and commitment to maintain the confidentiality of the proceeding.
- (4) The Secretary-General shall notify the parties of the acceptance of appointment by each arbitrator and transmit the signed declaration to them.
- (5) The Secretary-General shall notify the parties if an arbitrator fails to accept the appointment or provide a signed declaration within the time limit referred to in paragraph (3), and another person shall be appointed as arbitrator in accordance with the method followed for the previous appointment.
- (6) Each arbitrator shall have a continuing obligation promptly to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).

Rule 20

Replacement of Arbitrators Prior to Constitution of the Tribunal

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

Rule 21

Constitution of the Tribunal

- (1) The Tribunal shall be deemed to be constituted on the date the Secretary-General notifies the parties that all the arbitrators

have accepted their appointments and signed the declaration required by Rule 19(3)(b).

- (2) As soon as the Tribunal is constituted, the Secretary-General shall transmit the Request for arbitration, the supporting documents, the notice of registration and communications with the parties to each member.

CHAPTER III

DISQUALIFICATION OF ARBITRATORS AND VACANCIES

Rule 22

Proposal for Disqualification of Arbitrators

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

Rule 23

Decision on the Proposal for Disqualification

- (1) The decision on a proposal shall be made by the arbitrators not subject to the proposal or by the Chair in accordance with Article 58 of the Convention.
- (2) For the purposes of Article 58 of the Convention:
 - (a) if the arbitrators not subject to a proposal are unable to decide the proposal for any reason, they shall notify the Secretary-General and they shall be considered equally divided;
 - (b) if a subsequent proposal is filed while the decision on a prior proposal is pending, both proposals shall be decided by the Chair as if they were a proposal to disqualify a majority of the Tribunal.
- (3) The arbitrators not subject to the proposal and the Chair shall use best efforts to decide any proposal within 30 days after the later of the expiry of the time limit referred to in Rule 22(1)(e) or the notice in Rule 23(2)(a).

Rule 24

Incapacity or Failure to Perform Duties

If an arbitrator becomes incapacitated or fails to perform the duties required of an arbitrator, the procedure in Rules 22 and 23 shall apply.

Rule 25

Resignation

- (1) An arbitrator may resign by notifying the Secretary-General and the other members of the Tribunal and providing reasons for the resignation.
- (2) If the arbitrator was appointed by a party, the other members of the Tribunal shall promptly notify the Secretary-General whether they consent to the arbitrator's resignation for the purposes of Rule 26(3)(a).

Rule 26

Vacancy on the Tribunal

- (1) The Secretary-General shall notify the parties of any vacancy on the Tribunal.

- (2) The proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.
- (3) A vacancy on the Tribunal shall be filled by the method used to make the original appointment, except that the Chair shall fill the following vacancies from the Panel of Arbitrators:
 - (a) a vacancy caused by the resignation of a party-appointed arbitrator without the consent of the other members of the Tribunal; or
 - (b) a vacancy that has not been filled within 45 days after the notice of vacancy.
- (4) Once a vacancy has been filled and the Tribunal has been reconstituted, the proceeding shall continue from the point it had reached at the time the vacancy was notified. Any portion of a hearing shall be recommenced if the newly appointed arbitrator considers it necessary to decide a pending matter.

CHAPTER IV

CONDUCT OF THE PROCEEDING

Rule 27 **Orders and Decisions**

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

Rule 28 **Waiver**

Subject to Article 45 of the Convention, if a party knows or should have known that an applicable rule, agreement of the parties, or any order or decision of the Tribunal or the Secretary-General has not been complied with, and does not object promptly, then that party shall be deemed to have waived its right to object to that non-compliance, unless the Tribunal decides that there are special circumstances justifying the failure to object promptly.

Rule 29

First Session

- (1) The Tribunal shall hold a first session to address the procedure, including the matters listed in paragraph (4).
- (2) The first session may be held in person or remotely, by any means that the Tribunal deems appropriate. The agenda, method and date of the first session shall be determined by the President of the Tribunal after consulting with the other members and the parties.
- (3) The first session shall be held within 60 days after the constitution of the Tribunal or such other period as the parties may agree. If the President of the Tribunal determines that it is not possible to convene the parties and the other members within this period, the Tribunal shall decide whether to hold the first session solely between the President of the Tribunal and the parties, or solely among the Tribunal members based on the parties' written submissions.
- (4) Before the first session, the Tribunal shall invite the parties' views on procedural matters, including:
 - (a) the applicable arbitration rules;
 - (b) the division of advances payable pursuant to ICSID Administrative and Financial Regulation 15;
 - (c) the procedural language(s), translation and interpretation;
 - (d) the method of filing and routing of documents;
 - (e) the number, length, type and format of written submissions;
 - (f) the place of hearings and whether a hearing will be held in person or remotely;
 - (g) whether there will be requests for production of documents as between the parties and, if so, the scope, timing and procedure for such requests;
 - (h) the procedural calendar;
 - (i) the manner of making recordings and transcripts of hearings;
 - (j) the publication of documents and recordings;
 - (k) the treatment of confidential or protected information; and
 - (l) any other procedural matter raised by either party or the Tribunal.
- (5) The Tribunal shall issue an order recording the parties' agreements and any Tribunal decisions on the procedure within

15 days after the later of the first session or the last written submission on procedural matters addressed at the first session.

Rule 30

Written Submissions

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

Rule 31

Case Management Conferences

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

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

Rule 32

Hearings

- (1) The Tribunal shall hold one or more hearings, unless the parties agree otherwise.
- (2) The President of the Tribunal shall determine the date, time and method of holding a hearing after consulting with the other members of the Tribunal and the parties.
- (3) A hearing in person may be held at any place agreed to by the parties after consulting with the Tribunal and the Secretary-General. If the parties do not agree on the place of a hearing, it shall be held at the seat of the Centre pursuant to Article 62 of the Convention.
- (4) Any member of the Tribunal may put questions to the parties and ask for explanations at any time during a hearing.

Rule 33

Quorum

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

Rule 34

Deliberations

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

Rule 35

Decisions Made by Majority Vote

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

CHAPTER V

EVIDENCE

Rule 36

Evidence: General Principles

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

Rule 37

Disputes Arising from Requests for Production of Documents

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

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

Rule 38

Witnesses and Experts

- (1) A party intending to rely on evidence given by a witness shall file a written statement by that witness. The statement shall identify the witness, contain the evidence of the witness, and be signed and dated.

- (2) A witness who has filed a written statement may be called for examination at a hearing.
- (3) The Tribunal shall determine the manner in which the examination is conducted.
- (4) A witness shall be examined before the Tribunal, by the parties, and under the control of the President. Any member of the Tribunal may put questions to the witness.
- (5) A witness shall be examined in person unless the Tribunal determines that another means of examination is appropriate in the circumstances.
- (6) Each witness shall make the following declaration before giving evidence: "I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth."
- (7) Paragraphs (1)-(5) shall apply, with necessary modifications, to evidence given by an expert.
- (8) Each expert shall make the following declaration before giving evidence: "I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief."

Rule 39

Tribunal-Appointed Experts

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

Rule 40

Visits and Inquiries

- (1) The Tribunal may order a visit to any place connected with the dispute, on its own initiative or upon a party's request, if it deems the visit necessary, and may conduct inquiries there as appropriate.
- (2) The order shall define the scope of the visit and the subject of any inquiry, the procedure to be followed, the applicable time limits and other relevant terms.
- (3) The parties shall have the right to participate in any visit or inquiry.

CHAPTER VI

SPECIAL PROCEDURES

Rule 41

Manifest Lack of Legal Merit

- (1) A party may object that a claim is manifestly without legal merit. The objection may relate to the substance of the claim, the jurisdiction of the Centre, or the competence of the Tribunal.
- (2) The following procedure shall apply:
 - (a) a party shall file a written submission no later than 45 days after the constitution of the Tribunal;
 - (b) the written submission shall specify the grounds on which the objection is based and contain a statement of the relevant facts, law and arguments;
 - (c) the Tribunal shall fix time limits for submissions on the objection;
 - (d) if a party files the objection before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the objection, so that the Tribunal may consider the objection promptly upon its constitution; and
 - (e) the Tribunal shall render its decision or Award on the objection within 60 days after the later of the constitution of the Tribunal or the last submission on the objection.
- (3) If the Tribunal decides that all claims are manifestly without legal merit, it shall render an Award to that effect. Otherwise,

the Tribunal shall issue a decision on the objection and fix any time limit necessary for the further conduct of the proceeding.

- (4) A decision that a claim is not manifestly without legal merit shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 43 or to argue subsequently in the proceeding that a claim is without legal merit.

Rule 42

Bifurcation

- (1) A party may request that a question be addressed in a separate phase of the proceeding ("request for bifurcation").
- (2) If a request for bifurcation relates to a preliminary objection, Rule 44 shall apply.
- (3) The following procedure shall apply to a request for bifurcation other than a request referred to in Rule 44:
 - (a) the request for bifurcation shall be filed as soon as possible;
 - (b) the request for bifurcation shall state the questions to be bifurcated;
 - (c) the Tribunal shall fix time limits for submissions on the request for bifurcation;
 - (d) the Tribunal shall issue its decision on the request for bifurcation within 30 days after the last submission on the request; and
 - (e) the Tribunal shall fix any time limit necessary for the further conduct of the proceeding.
- (4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
 - (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and
 - (c) the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical.
- (5) If the Tribunal orders bifurcation pursuant to this Rule, it shall suspend the proceeding with respect to any questions to be addressed at a later phase, unless the parties agree otherwise.
- (6) The Tribunal may at any time on its own initiative decide whether a question should be addressed in a separate phase of the proceeding.

Rule 43

Preliminary Objections

- (1) A party may file a preliminary objection that the dispute or any ancillary claim is not within the jurisdiction of the Centre or for other reasons is not within the competence of the Tribunal ("preliminary objection").
- (2) A party shall notify the Tribunal and the other party of its intent to file a preliminary objection as soon as possible.
- (3) The Tribunal may at any time on its own initiative consider whether a dispute or an ancillary claim is within the jurisdiction of the Centre or within its own competence.
- (4) The Tribunal may address a preliminary objection in a separate phase of the proceeding or join the objection to the merits. It may do so upon request of a party pursuant to Rule 44 or at any time on its own initiative, in accordance with the procedure in Rule 44(2)-(4).

Rule 44

Preliminary Objections with a Request for Bifurcation

- (1) The following procedure shall apply with respect to a request for bifurcation relating to a preliminary objection:
 - (a) unless the parties agree otherwise, the request for bifurcation shall be filed:
 - (i) within 45 days after filing the memorial on the merits;
 - (ii) within 45 days after filing the written submission containing the ancillary claim, if the objection relates to the ancillary claim; or
 - (iii) as soon as possible after the facts on which the preliminary objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (1)(a)(i) and (ii);
 - (b) the request for bifurcation shall state the preliminary objection to which it relates;
 - (c) unless the parties agree otherwise, the proceeding on the merits shall be suspended until the Tribunal decides whether to bifurcate;
 - (d) the Tribunal shall fix time limits for submissions on the request for bifurcation; and
 - (e) the Tribunal shall issue its decision on a request for bifurcation within 30 days after the last submission on the request.

- (2) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
 - (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and
 - (c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical.
- (3) If the Tribunal decides to address the preliminary objection in a separate phase of the proceeding, it shall:
 - (a) suspend the proceeding on the merits, unless the parties agree otherwise;
 - (b) fix time limits for submissions on the preliminary objection;
 - (c) render its decision or Award on the preliminary objection within 180 days after the last submission, in accordance with Rule 58(1)(b); and
 - (d) fix any time limit necessary for the further conduct of the proceeding if the Tribunal does not render an Award.
- (4) If the Tribunal decides to join the preliminary objection to the merits, it shall:
 - (a) fix time limits for submissions on the preliminary objection;
 - (b) modify any time limits for submissions on the merits, as required; and
 - (c) render its Award within 240 days after the last submission in the proceeding, in accordance with Rule 58(1)(c).

Rule 45

Preliminary Objections without a Request for Bifurcation

If a party does not request bifurcation of a preliminary objection within the time limits referred to in Rule 44(1)(a) or the parties confirm that they will not request bifurcation, the preliminary objection shall be joined to the merits and the following procedure shall apply:

- (a) the Tribunal shall fix time limits for submissions on the preliminary objection;
- (b) the memorial on the preliminary objection shall be filed:
 - (i) by the date to file the counter-memorial on the merits;

- (ii) by the date to file the next written submission after an ancillary claim, if the objection relates to the ancillary claim; or
 - (iii) as soon as possible after the facts on which the objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (b)(i) and (ii);
- (c) the party filing the memorial on preliminary objections shall also file its counter-memorial on the merits, or, if the objection relates to an ancillary claim, file its next written submission after the ancillary claim; and
- (d) the Tribunal shall render its Award within 240 days after the last submission in the proceeding, in accordance with Rule 58(1)(c).

Rule 46

Consolidation or Coordination of Arbitrations

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

Rule 47

Provisional Measures

- (1) A party may at any time request that the Tribunal recommend provisional measures to preserve that party's rights, including measures to:
 - (a) prevent action that is likely to cause current or imminent harm to that party or prejudice to the arbitral process;
 - (b) maintain or restore the status quo pending determination of the dispute; or
 - (c) preserve evidence that may be relevant to the resolution of the dispute.
- (2) The following procedure shall apply:
 - (a) the request shall specify the rights to be preserved, the measures requested, and the circumstances that require such measures;
 - (b) the Tribunal shall fix time limits for submissions on the request;
 - (c) if a party requests provisional measures before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the request so that the Tribunal may consider the request promptly upon its constitution; and
 - (d) the Tribunal shall issue its decision on the request within 30 days after the later of the constitution of the Tribunal or the last submission on the request.
- (3) In deciding whether to recommend provisional measures, the Tribunal shall consider all relevant circumstances, including:
 - (a) whether the measures are urgent and necessary; and
 - (b) the effect that the measures may have on each party.
- (4) The Tribunal may recommend provisional measures on its own initiative. The Tribunal may also recommend provisional measures different from those requested by a party.
- (5) A party shall promptly disclose any material change in the circumstances upon which the Tribunal recommended provisional measures.
- (6) The Tribunal may at any time modify or revoke the provisional measures, on its own initiative or upon a party's request.
- (7) A party may request any judicial or other authority to order provisional measures if such recourse is permitted by the instrument recording the parties' consent to arbitration.

Rule 48

Ancillary Claims

- (1) Unless the parties agree otherwise, a party may file an incidental or additional claim or a counterclaim ("ancillary claim") arising directly out of the subject-matter of the dispute, provided that such ancillary claim is within the scope of the consent of the parties and the jurisdiction of the Centre.
- (2) An incidental or additional claim shall be presented no later than in the reply, and a counterclaim shall be presented no later than in the counter-memorial, unless the Tribunal decides otherwise.
- (3) The Tribunal shall fix time limits for submissions on the ancillary claim.

Rule 49

Default

- (1) A party is in default if it fails to appear or present its case or indicates that it will not appear or present its case.
- (2) If a party is in default at any stage of the proceeding, the other party may request that the Tribunal address the questions submitted to it and render an Award.
- (3) Upon receipt of the request referred to in paragraph (2), the Tribunal shall notify the defaulting party of the request and grant a grace period to cure the default, unless it is satisfied that the defaulting party does not intend to appear or present its case. The grace period shall not exceed 60 days without the consent of the other party.
- (4) If the request in paragraph (2) relates to a failure to appear at a hearing, the Tribunal may:
 - (a) reschedule the hearing to a date within 60 days after the original date;
 - (b) proceed with the hearing in the absence of the defaulting party and fix a time limit for the defaulting party to file a written submission within 60 days after the hearing; or
 - (c) cancel the hearing and fix a time limit for the parties to file written submissions within 60 days after the original date of the hearing.
- (5) If the default relates to a scheduled procedural step other than a hearing, the Tribunal may set the grace period to cure the default by fixing a new time limit for the defaulting party to

complete that step within 60 days after the date of the notice of default referred to in paragraph (3).

- (6) If the defaulting party fails to act within the grace period or if no such period is granted, the Tribunal shall resume consideration of the dispute and render an Award. For this purpose:
 - (a) a party's default shall not be deemed an admission of the assertions made by the other party;
 - (b) the Tribunal may invite the party that is not in default to make submissions and produce evidence; and
 - (c) the Tribunal shall examine the jurisdiction of the Centre and its own competence and, if it is satisfied, decide whether the submissions made are well-founded.

CHAPTER VII

COSTS

Rule 50 **Costs of the Proceeding**

The costs of the proceeding are all costs incurred by the parties in connection with the proceeding, including:

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

Rule 51 **Statement of and Submission on Costs**

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

Rule 52 **Decisions on Costs**

- (1) In allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including:

- (a) the outcome of the proceeding or any part of it;
 - (b) the conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner and complied with these Rules and the orders and decisions of the Tribunal;
 - (c) the complexity of the issues; and
 - (d) the reasonableness of the costs claimed.
- (2) If the Tribunal renders an Award pursuant to Rule 41(3), it shall award the prevailing party its reasonable costs, unless the Tribunal determines that there are special circumstances justifying a different allocation of costs.
 - (3) The Tribunal may make an interim decision on costs at any time, on its own initiative or upon a party's request.
 - (4) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.

Rule 53

Security for Costs

- (1) Upon request of a party, the Tribunal may order any party asserting a claim or counterclaim to provide security for costs.
- (2) The following procedure shall apply:
 - (a) the request shall include a statement of the relevant circumstances and the supporting documents;
 - (b) the Tribunal shall fix time limits for submissions on the request;
 - (c) if a party requests security for costs before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the request so that the Tribunal may consider the request promptly upon its constitution; and
 - (d) the Tribunal shall issue its decision on the request within 30 days after the later of the constitution of the Tribunal or the last submission on the request.
- (3) In determining whether to order a party to provide security for costs, the Tribunal shall consider all relevant circumstances, including:
 - (a) that party's ability to comply with an adverse decision on costs;
 - (b) that party's willingness to comply with an adverse decision on costs;

- (c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim; and
 - (d) the conduct of the parties.
- (4) The Tribunal shall consider all evidence adduced in relation to the circumstances in paragraph (3), including the existence of third-party funding.
 - (5) The Tribunal shall specify any relevant terms in an order to provide security for costs and shall fix a time limit for compliance with the order.
 - (6) If a party fails to comply with an order to provide security for costs, the Tribunal may suspend the proceeding. If the proceeding is suspended for more than 90 days, the Tribunal may, after consulting with the parties, order the discontinuance of the proceeding.
 - (7) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.
 - (8) The Tribunal may at any time modify or revoke its order on security for costs, on its own initiative or upon a party's request.

CHAPTER VIII

SUSPENSION, SETTLEMENT AND DISCONTINUANCE

Rule 54 **Suspension of the Proceeding**

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

- (b) any relevant terms; and
 - (c) a modified procedural calendar to take effect on resumption of the proceeding, if necessary.
- (5) The Tribunal shall extend the period of a suspension prior to its expiry by agreement of the parties.
 - (6) The Tribunal may extend the period of a suspension prior to its expiry, on its own initiative or upon a party's request, after giving the parties an opportunity to make observations.
 - (7) The Secretary-General shall suspend the proceeding pursuant to paragraph (1) or extend the suspension pursuant to paragraph (5) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal. The parties shall inform the Secretary-General of the period of the suspension and any terms agreed to by the parties.

Rule 55

Settlement and Discontinuance by Agreement of the Parties

- (1) If the parties notify the Tribunal that they have agreed to discontinue the proceeding, the Tribunal shall issue an order taking note of the discontinuance.
- (2) If the parties agree on a settlement of the dispute before the Award is rendered, the Tribunal:
 - (a) shall issue an order taking note of the discontinuance of the proceeding, if the parties so request; or
 - (b) may record the settlement in the form of an Award, if the parties file the complete and signed text of their settlement and request that the Tribunal embody such settlement in an Award.
- (3) The Secretary-General shall issue the order referred to in paragraphs (1) and (2)(a) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

Rule 56

Discontinuance at Request of a Party

- (1) If a party requests the discontinuance of the proceeding, the Tribunal shall fix a time limit within which the other party may oppose the discontinuance. If no objection in writing is made within the time limit, the other party shall be deemed to have

acquiesced in the discontinuance and the Tribunal shall issue an order taking note of the discontinuance of the proceeding. If any objection in writing is made within the time limit, the proceeding shall continue.

- (2) The Secretary-General shall fix the time limit and issue the order referred to in paragraph (1) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

Rule 57

Discontinuance for Failure of Parties to Act

- (1) If the parties fail to take any steps in the proceeding for more than 150 consecutive days, the Tribunal shall notify them of the time elapsed since the last step taken in the proceeding.
- (2) If the parties fail to take a step within 30 days after the notice referred to in paragraph (1), they shall be deemed to have discontinued the proceeding and the Tribunal shall issue an order taking note of the discontinuance.
- (3) If either party takes a step within 30 days after the notice referred to in paragraph (1), the proceeding shall continue.
- (4) The Secretary-General shall issue the notice and the order referred to in paragraphs (1) and (2) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

CHAPTER IX

THE AWARD

Rule 58

Timing of the Award

- (1) The Tribunal shall render the Award as soon as possible, and in any event no later than:
 - (a) 60 days after the later of the Tribunal constitution or the last submission, if the Award is rendered pursuant to Rule 41(3);
 - (b) 180 days after the last submission if the Award is rendered pursuant to Rule 44(3)(c); or
 - (c) 240 days after the last submission in all other cases.
- (2) A statement of costs and submission on costs filed pursuant to Rule 51 shall not be considered a submission for the purposes of paragraph (1).

Rule 59

Contents of the Award

- (1) The Award shall be in writing and shall contain:
 - (a) a precise designation of each party;
 - (b) the names of the representatives of the parties;
 - (c) a statement that the Tribunal was established in accordance with the Convention and a description of the method of its constitution;
 - (d) the name of each member of the Tribunal and the appointing authority of each;
 - (e) the date and place of the first session, case management conferences and hearings;
 - (f) a brief summary of the proceeding;
 - (g) a statement of the relevant facts as found by the Tribunal;
 - (h) a brief summary of the submissions of the parties, including the relief sought;
 - (i) the decision of the Tribunal on every question submitted to it, and the reasons on which the Award is based; and
 - (j) a statement of the costs of the proceeding, including the fees and expenses of each member of the Tribunal, and a reasoned decision on costs.
- (2) The Award shall be signed by the members of the Tribunal who voted for it. It may be signed by electronic means if the parties agree.
- (3) Any member of the Tribunal may attach an individual opinion or a statement of dissent to the Award before the Award is rendered.

Rule 60

Rendering of the Award

- (1) Once the Award has been signed by the members of the Tribunal who voted for it, the Secretary-General shall promptly:
 - (a) dispatch a certified copy of the Award to each party, together with any individual opinion and statement of dissent, indicating the date of dispatch on the Award; and
 - (b) deposit the Award in the archives of the Centre, together with any individual opinion and statement of dissent.
- (2) The Award shall be deemed to have been rendered on the date of dispatch of certified copies of the Award.

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

Rule 61

Supplementary Decision and Rectification

- (1) A party requesting a supplementary decision on, or the rectification of, an Award pursuant to Article 49(2) of the Convention shall file the request with the Secretary-General and pay the lodging fee published in the schedule of fees within 45 days after the Award was rendered.
- (2) The request referred to in paragraph (1) shall:
 - (a) identify the Award to which it relates;
 - (b) be signed by each requesting party or its representative and be dated;
 - (c) specify:
 - (i) with respect to a request for a supplementary decision, any question which the Tribunal omitted to decide in the Award;
 - (ii) with respect to a request for rectification, any clerical, arithmetical or similar error in the Award; and
 - (d) attach proof of payment of the lodging fee.
- (3) Upon receipt of the request and the lodging fee, the Secretary-General shall promptly:
 - (a) transmit the request to the other party;
 - (b) register the request, or refuse registration if the request is not filed or the fee is not paid within the time limit referred to in paragraph (1); and
 - (c) notify the parties of the registration or refusal to register.
- (4) As soon as the request is registered, the Secretary-General shall transmit the request and the notice of registration to each member of the Tribunal.
- (5) The President of the Tribunal shall determine the procedure to consider the request, after consulting with the other members of the Tribunal and the parties.
- (6) Rules 59-60 shall apply to any decision of the Tribunal pursuant to this Rule.
- (7) The Tribunal shall issue a decision on the request for supplementary decision or rectification within 60 days after the last submission on the request.

- (8) The date of dispatch of certified copies of the supplementary decision or rectification shall be the relevant date for the purposes of calculating the time limits in Articles 51(2) and 52(2) of the Convention.
- (9) A supplementary decision or rectification under this Rule shall become part of the Award and shall be reflected on all certified copies of the Award.

CHAPTER X

PUBLICATION, ACCESS TO PROCEEDINGS AND NON-DISPUTING PARTY SUBMISSIONS

Rule 62

Publication of Awards and Decisions on Annulment

- (1) With consent of the parties, the Centre shall publish every Award, supplementary decision on an Award, rectification, interpretation, and revision of an Award, and decision on annulment.
- (2) The parties may consent to publication of the full text or to a jointly redacted text of the documents referred to in paragraph (1).
- (3) Consent to publish the documents referred to in paragraph (1) shall be deemed to have been given if no party objects in writing to such publication within 60 days after the dispatch of the document.
- (4) Absent consent of the parties pursuant to paragraphs (1)-(3), the Centre shall publish excerpts of the documents referred to in paragraph (1). The following procedure shall apply to publication of excerpts:
 - (a) the Secretary-General shall propose excerpts to the parties within 60 days after the date upon which either party objects to publication or notifies the Secretary-General that the parties disagree on redaction of the document;
 - (b) the parties may send comments on the proposed excerpts to the Secretary-General within 60 days after their receipt, including whether any information in the proposed excerpts is confidential or protected as defined in Rule 66; and
 - (c) the Secretary-General shall consider any comments received on the proposed excerpts and publish such excerpts within 30 days after the expiry of the time limit referred to in paragraph (4)(b).

Rule 63

Publication of Orders and Decisions

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

Rule 64

Publication of Documents Filed in the Proceeding

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

Rule 65

Observation of Hearings

- (1) The Tribunal shall allow persons in addition to the parties, their representatives, witnesses and experts during their testimony, and persons assisting the Tribunal, to observe hearings, unless either party objects.
- (2) The Tribunal shall establish procedures to prevent the disclosure of confidential or protected information as defined in Rule 66 to persons observing the hearings.

- (3) Upon request of a party, the Centre shall publish recordings or transcripts of hearings, unless the other party objects.

Rule 66

Confidential or Protected Information

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

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

Rule 67

Submission of Non-Disputing Parties

- (1) Any person or entity that is not a party to the dispute ("non-disputing party") may apply for permission to file a written submission in the proceeding. The application shall be made in the procedural language(s) used in the proceeding.
- (2) In determining whether to permit a non-disputing party submission, the Tribunal shall consider all relevant circumstances, including:
 - (a) whether the submission would address a matter within the scope of the dispute;
 - (b) how the submission would assist the Tribunal to determine a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the parties;

- (c) whether the non-disputing party has a significant interest in the proceeding;
 - (d) the identity, activities, organization and ownership of the non-disputing party, including any direct or indirect affiliation between the non-disputing party, a party or a non-disputing Treaty Party; and
 - (e) whether any person or entity will provide the non-disputing party with financial or other assistance to file the submission.
- (3) The parties shall have the right to make observations on whether a non-disputing party should be permitted to file a written submission in the proceeding and on any conditions for filing such a submission.
 - (4) The Tribunal shall ensure that non-disputing party participation does not disrupt the proceeding or unduly burden or unfairly prejudice either party. To this end, the Tribunal may impose conditions on the non-disputing party, including with respect to the format, length, scope or publication of the written submission and the time limit to file the submission.
 - (5) The Tribunal shall issue a reasoned decision on whether to permit a non-disputing party submission within 30 days after the last written submission on the application.
 - (6) The Tribunal shall provide the non-disputing party with relevant documents filed in the proceeding, unless either party objects.
 - (7) If the Tribunal permits a non-disputing party to file a written submission, the parties shall have the right to make observations on the submission.

Rule 68

Participation of Non-Disputing Treaty Party

- (1) The Tribunal shall permit a Party to a treaty that is not a party to the dispute ("non-disputing Treaty Party") to make a submission on the interpretation of the treaty at issue in the dispute and upon which consent to arbitration is based. The Tribunal may, after consulting with the parties, invite a non-disputing Treaty Party to make such a submission.
- (2) The Tribunal shall ensure that non-disputing Treaty Party participation does not disrupt the proceeding or unduly burden or unfairly prejudice either party. To this end, the Tribunal may impose conditions on the making of the submission by the non-disputing Treaty Party, including with respect to the format, length, scope or publication of the submission, and the time limit to file the submission.

- (3) The Tribunal shall provide the non-disputing Treaty Party with relevant documents filed in the proceeding, unless either party objects.
- (4) The parties shall have the right to make observations on the submission of the non-disputing Treaty Party.

CHAPTER XI

INTERPRETATION, REVISION AND ANNULMENT OF THE AWARD

Rule 69 **The Application**

- (1) A party applying for interpretation, revision or annulment of an Award shall file the application with the Secretary-General, together with any supporting documents, and pay the lodging fee published in the schedule of fees.
- (2) The application shall:
 - (a) identify the Award to which it relates;
 - (b) be in a language in which the Award was rendered or if the Award was not rendered in an official language of the Centre, be in an official language;
 - (c) be signed by each applicant or its representative and be dated;
 - (d) attach proof of any representative's authority to act; and
 - (e) attach proof of payment of the lodging fee.
- (3) An application for interpretation pursuant to Article 50(1) of the Convention may be filed at any time after the Award is rendered and shall specify the points in dispute concerning the meaning or scope of the Award.
- (4) An application for revision pursuant to Article 51(1) of the Convention shall be filed within 90 days after the discovery of a fact of such a nature as decisively to affect the Award, and in any event within three years after the Award (or any supplementary decision on or rectification of the Award) was rendered. The application shall specify:
 - (a) the change sought in the Award;
 - (b) the newly discovered fact that decisively affects the Award; and

- (c) that the fact was unknown to the Tribunal and to the applicant when the Award was rendered, and that the applicant's ignorance of that fact was not due to negligence.
- (5) An application for annulment pursuant to Article 52(1) of the Convention shall:
- (a) be filed within 120 days after the Award (or any supplementary decision on or rectification of the Award) was rendered if the application is based on any of the grounds in Article 52(1)(a), (b), (d) or (e) of the Convention; or
 - (b) be filed within 120 days after the discovery of corruption on the part of a member of the Tribunal and in any event within three years after the Award (or any supplementary decision on or rectification of the Award) was rendered, if the application is based on Article 52(1)(c) of the Convention; and
 - (c) specify the grounds on which it is based, limited to the grounds in Article 52(1)(a)-(e) of the Convention, and the reasons in support of each ground.
- (6) Upon receipt of an application and the lodging fee, the Secretary-General shall promptly:
- (a) transmit the application and the supporting documents to the other party;
 - (b) register the application, or refuse registration if the application is not filed or the fee is not paid within the time limits referred to in paragraphs (4) or (5); and
 - (c) notify the parties of the registration or refusal to register.
- (7) At any time before registration, an applicant may notify the Secretary-General in writing of the withdrawal of the application or, if there is more than one applicant, that it is withdrawing from the application. The Secretary-General shall promptly notify the parties of the withdrawal, unless the application has not yet been transmitted to the other party pursuant to paragraph (6)(a).

Rule 70

Interpretation or Revision: Reconstitution of the Tribunal

- (1) As soon as an application for the interpretation or revision of an Award is registered, the Secretary-General shall:
- (a) transmit the notice of registration, the application and any supporting documents to each member of the original Tribunal; and

- (b) request each member of the Tribunal to inform the Secretary-General within 10 days whether that member can take part in the consideration of the application.
- (2) If all members of the Tribunal can take part in the consideration of the application, the Secretary-General shall notify the Tribunal and the parties of the reconstitution of the Tribunal.
- (3) If the Tribunal cannot be reconstituted in accordance with paragraph (2), the Secretary-General shall invite the parties to constitute a new Tribunal without delay. The new Tribunal shall have the same number of arbitrators and be appointed by the same method as the original Tribunal.

Rule 71

Annulment: Appointment of the *ad hoc* Committee

- (1) As soon as an application for annulment of an Award is registered, the Chair shall appoint an *ad hoc* Committee in accordance with Article 52(3) of the Convention.
- (2) Each member of the Committee shall provide a signed declaration in accordance with Rule 19(3).
- (3) The Committee shall be deemed to be constituted on the date the Secretary-General notifies the parties that all members have accepted their appointments.

Rule 72

Procedure Applicable to Interpretation, Revision and Annulment

- (1) Except as provided below, these Rules shall apply, with necessary modifications, to any procedure relating to the interpretation, revision or annulment of an Award and to the decision of the Tribunal or Committee.
- (2) The procedural agreements and orders on matters addressed at the first session of the original Tribunal shall continue to apply to an interpretation, revision or annulment proceeding, with necessary modifications, unless the parties agree or the Tribunal or Committee orders otherwise.
- (3) In addition to the application, the written procedure shall consist of one round of written submissions in an interpretation or revision proceeding, and two rounds of written submissions in an annulment proceeding, unless the parties agree or the Tribunal or Committee orders otherwise.

- (4) A hearing shall be held upon the request of either party, or if ordered by the Tribunal or Committee.
- (5) The Tribunal or Committee shall issue its decision within 120 days after the last submission on the application.

Rule 73

Stay of Enforcement of the Award

- (1) A party to an interpretation, revision or annulment proceeding may request a stay of enforcement of all or part of the Award at any time before the final decision on the application.
- (2) If the stay is requested in the application for revision or annulment of an Award, enforcement shall be stayed provisionally until the Tribunal or Committee decides on the request.
- (3) The following procedure shall apply:
 - (a) the request shall specify the circumstances that require the stay;
 - (b) the Tribunal or Committee shall fix time limits for submissions on the request;
 - (c) if a party files the request before the constitution of the Tribunal or Committee, the Secretary-General shall fix time limits for written submissions on the request so that the Tribunal or Committee may consider the request promptly upon its constitution; and
 - (d) the Tribunal or Committee shall issue its decision on the request within 30 days after the later of the constitution of the Tribunal or Committee or the last submission on the request.
- (4) If a Tribunal or Committee decides to stay enforcement of the Award, it may impose conditions for the stay, or for lifting the stay, in view of all relevant circumstances.
- (5) A party shall promptly disclose to the Tribunal or Committee any change in the circumstances upon which the enforcement was stayed.
- (6) The Tribunal or Committee may at any time modify or terminate a stay of enforcement, on its own initiative or upon a party's request.
- (7) A stay of enforcement shall terminate on the date of dispatch of the decision on the application for interpretation, revision or annulment, or on the date of discontinuance of the proceeding.

Rule 74

Resubmission of Dispute after an Annulment

- (1) If a Committee annuls all or part of an Award, either party may file with the Secretary-General a request to resubmit the dispute to a new Tribunal, together with any supporting documents, and pay the lodging fee published in the schedule of fees.
- (2) The request shall:
 - (a) identify the Award to which it relates;
 - (b) be in an official language of the Centre;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) attach proof of any representative's authority to act; and
 - (e) specify which aspect(s) of the dispute is resubmitted to the new Tribunal.
- (3) Upon receipt of a request for resubmission and the lodging fee, the Secretary-General shall promptly:
 - (a) transmit the request and the supporting documents to the other party;
 - (b) register the request;
 - (c) notify the parties of the registration; and
 - (d) invite the parties to constitute a new Tribunal without delay, which shall have the same number of arbitrators, and be appointed by the same method as the original Tribunal, unless the parties agree otherwise.
- (4) If the original Award was annulled in part, the new Tribunal shall not reconsider any portion of the Award that was not annulled.
- (5) Except as otherwise provided in paragraphs (1)-(4), these Rules shall apply to the resubmission proceeding.
- (6) The procedural agreements and orders on matters addressed at the first session of the original Tribunal shall not apply to the resubmission proceeding, unless the parties agree otherwise.

CHAPTER XII

EXPEDITED ARBITRATION

Rule 75

Consent of Parties to Expedited Arbitration

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

Rule 76

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

- (1) The Tribunal in an expedited arbitration shall consist of a Sole Arbitrator appointed pursuant to Rule 77 or a three-member Tribunal appointed pursuant to Rule 78.
- (2) The parties shall jointly notify the Secretary-General in writing of their election of a Sole Arbitrator or a three-member Tribunal within 30 days after the date of the notice of consent referred to in Rule 75(1).
- (3) If the parties do not notify the Secretary-General of their election within the time limit referred to in paragraph (2), the Tribunal shall consist of a Sole Arbitrator to be appointed pursuant to Rule 77.
- (4) An appointment pursuant to Rule 77 or 78 is an appointment in accordance with the method agreed by the parties pursuant to Article 37(2)(a) of the Convention.

Rule 77

Appointment of Sole Arbitrator for Expedited Arbitration

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

Rule 78

Appointment of Three-Member Tribunal for Expedited Arbitration

- (1) A three-member Tribunal shall be appointed in accordance with the following procedure:
 - (a) each party shall appoint an arbitrator ("co-arbitrator") within 20 days after the notice referred to in Rule 76(2); and
 - (b) the parties shall jointly appoint the President of the Tribunal

within 20 days after the receipt of the acceptances from both co-arbitrators.

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

Rule 79

Acceptance of Appointment in Expedited Arbitration

- (1) An arbitrator appointed pursuant to Rule 77 or 78 shall accept the appointment and provide a declaration pursuant to Rule 19(3) within 10 days after receipt of the request for acceptance.

- (2) An arbitrator appointed to a Tribunal constituted pursuant to Chapter II shall confirm being available to conduct an expedited arbitration within 10 days after receipt of the notice of consent pursuant to Rule 75(3).

Rule 80

First Session in Expedited Arbitration

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

Rule 81

Procedural Schedule in Expedited Arbitration

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

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

- (3) The Tribunal may extend the time limits referred to in paragraph (1) by up to 30 days to decide a dispute arising from requests to produce documents pursuant to Rule 37. The Tribunal shall decide such requests based on written submissions and without an in-person hearing.
- (4) Any schedule for submissions other than those referred to in paragraphs (1)-(3) shall run in parallel with the schedule referred to in paragraph (1), unless the proceeding is suspended or the Tribunal decides that there are special circumstances justifying the suspension of the schedule. In fixing time limits for such submissions, the Tribunal shall take into account the expedited nature of the process.

Rule 82

Default in Expedited Arbitration

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

Rule 83

Procedural Schedule for Supplementary Decision and Rectification in Expedited Arbitration

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

Rule 84

Procedural Schedule for Interpretation, Revision or Annulment in Expedited Arbitration

- (1) The following schedule for written submissions and the hearing shall apply to the procedure relating to an interpretation, revision or annulment of an Award rendered in an expedited arbitration:
 - (a) the applicant shall file a memorial on interpretation, revision or annulment within 30 days after the first session;
 - (b) the other party shall file a counter-memorial on interpretation, revision or annulment within 30 days after the memorial;

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

Rule 85

Resubmission of a Dispute after Annulment in Expedited Arbitration

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

Rule 86

Opting Out of Expedited Arbitration

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