

**International Centre for the Settlement
of Investment Disputes - Rules of
Procedure for the Institution of
Conciliation and Arbitration Proceedings
- Entered into force October 14, 1966**

International Centre for Settlement of Investment Disputes (ICSID)

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Rules for Procedure for the Institution of Conciliation and Arbitration Proceedings

Entered into force October 14, 1966

International Centre for the Settlement of Investment Disputes

Rules of Procedure for Conciliation

Chapter

Rule 1 - The Request

(1) Any Contracting State or any national of a Contracting State wishing to institute conciliation or arbitration proceedings under the Convention shall address a request to that effect in writing to the Secretary-General at the seat of the Centre. The request shall indicate whether it relates to a conciliation or an arbitration proceeding. It shall be drawn up in an official language of the Centre, shall be dated, and shall be signed by the requesting party.

(2) The request may be made jointly by the parties to the dispute.

Rule 2 - Contents Of the Request

(1) The request shall:

(a) designate precisely each party to the dispute and state the address of each;

(b) state, if one of the parties is a constituent subdivision or agency of a Contracting State, that it has been designated to the Centre by that State pursuant to Article 25(1) of the Convention;

(c) indicate the date of consent and the instruments in which it is recorded, including, if one party is a constituent subdivision or agency of a Contracting State, similar data on the approval of such consent by that State unless it had notified the Centre that no such approval is required;

(d) indicate with respect to the party that is a national of a Contracting State:

(i) its nationality on the date of consent; and

(ii) if the party is a natural person:

(A) his nationality on the date of the request; and

(B) that he did not have the nationality of the Contracting State party to the dispute either on the date of consent or on the date of the request; or

(iii) if the party is a juridical person which on the date of consent had the nationality of the Contracting State party to the dispute, the agreement of the parties that it should be treated as a national of another Contracting State for the purposes of the Convention, and 17

(e) contain information concerning the issues in dispute indicating that there is between the parties, a legal dispute arising directly out of an investment. 18

(2) The information required by sub-paragraphs (l)(c) and (l)(d)(iii) shall be supported by documentation. 19

(3) "Date of consent" means the date on which the parties to the dispute consented in writing to submit it to the Centre; if both parties did not act on the same day, it means the date on which the second party acted. 20

Rule 3 - Optional Information in the Request 21

The request may in addition set forth any provisions agreed by the parties regarding the number of conciliators or arbitrators and the method of their appointment, as well as any other provisions agreed concerning the settlement of the dispute. 22

Rule 4 - Copies of the Request 23

(1) The request shall be accompanied by five additional signed copies. The Secretary-General may require such further copies as he may deem necessary. 24

(2) Any documentation submitted with the request shall conform to the requirements of Administrative and Financial Regulation 30. 25

Rule 5 - Acknowledgment of the Request 26

(1) On receiving a request the Secretary-General shall: 27

(a) send an acknowledgment to the requesting party; 28

(b) take no other action with respect to the request until he has received payment of the prescribed fee. 29

(2) As soon as he has received the fee for lodging the request, the Secretary-General shall transmit a copy of the request and of the accompanying documentation to the other party. 30

Rule 6 - Registration of the Request

31

(1) The Secretary-General shall, subject to Rule 5(1)(b), as soon as possible, either:

32

(a) register the request in the Conciliation or the Arbitration Register and on the same day notify the parties of the registration; or

33

(b) if he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre, notify the parties of his refusal to register the request and of the reasons therefor.

34

(2) A proceeding under the Convention shall be deemed to have been instituted on the date of the registration of the request.

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Rule 7 - Notice of Registration

36

The notice of registration of a request shall:

37

(a) record that the request is registered and indicate the date of the registration and of the dispatch of that notice;

38

(b) notify each party that all communications and notices in connection with the proceeding will be sent to the address stated in the request, unless another address is indicated to the Centre;

39

(c) unless such information has already been provided, invite the parties to communicate to the Secretary-General any provisions agreed by them regarding the number and the method of appointment of the conciliators or arbitrators;

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(d) invite the parties to proceed, as soon as possible, to constitute a Conciliation Commission in accordance with Articles 29 to 31 of the Convention, or an Arbitral Tribunal in accordance with Articles 37 to 40; and

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(e) be accompanied by a list of the members of the Panel of Conciliators or of Arbitrators of the Centre.

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Rule 8 - Withdrawal of the Request

43

The requesting party may, by written notice to the Secretary-General, withdraw the request before it has been registered. The Secretary-General shall promptly notify the other party, unless, pursuant to Rule 5(1)(b), the request had not been transmitted to it.

44

Rule 9 - Final Provisions

45

(1) The texts of these Rules in each official language of the Centre shall be equally au-

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thetic.

(2) These Rules may be cited as the “Institution Rules” of the Centre.

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Rules of Procedure for Arbitration Proceedings

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Chapter I - Establishment of the Tribunal

49

Rule 1 - General Obligations

50

(1) Upon notification of the registration of the request for arbitration, the parties shall, with all possible dispatch, proceed to constitute a Tribunal, with due regard to Section 2 of Chapter IV of the Convention.

51

(2) Unless such information is provided in the request, the parties shall communicate to the Secretary-General as soon as possible any provisions agreed by them regarding the number of arbitrators and the method of their appointment.

52

(3) Except if each member of the Tribunal is appointed by agreement of the parties, nationals of the State party to the dispute or of the State whose national is a party to the dispute may be appointed by a party only if appointment by the other party to the dispute of the same number of arbitrators of either of these nationalities would not result in a majority of arbitrators of these nationalities.

53

(4) No person who had previously acted as a conciliator or arbitrator in any proceeding for the settlement of the dispute may be appointed as a member of the Tribunal.

54

Rule 2 - Method of Constituting the Tribunal in the Absence of Previous Agreement

55

(1) If the parties, at the time of the registration of the request for arbitration, have not agreed upon the number of arbitrators and the method of their appointment, they shall, unless they agree otherwise, follow the following procedure:

56

(a) the requesting party shall, within 10 days after the registration of the request, propose to the other party the appointment of a sole arbitrator or of a specified uneven number of arbitrators and specify the method proposed for their appointment;

57

(b) within 20 days after receipt of the proposals made by the requesting party, the other party shall:

58

(i) accept such proposals; or

59

(ii) make other proposals regarding the number of arbitrators and the method of their appointment;

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(c) within 20 days after receipt of the reply containing any such other proposals the requesting party shall notify the other party whether it accepts or rejects such proposals. 61

(2) The communications provided for in paragraph (1) shall be made or promptly confirmed in writing and shall either be transmitted through the Secretary-General or directly between the parties with a copy to the Secretary-General. The parties shall promptly notify the Secretary-General of the contents of any agreement reached. 62

(3) At any time 60 days after the registration of the request, if no agreement on another procedure is reached, either party may inform the Secretary-General that it chooses the formula provided for in Article 37(2)(b) of the Convention. The Secretary-General shall thereupon promptly inform the other party that the Tribunal is to be constituted in accordance with that Article. 63

Rule 3 - Appointment of Arbitrators to a Tribunal Constituted in Accordance with Convention Article 37(2)(b) 64

(1) If the Tribunal is to be constituted in accordance with Article 37(2)(b) of the Convention: 65

(a) either party shall in a communication to the other party: 66

(i) name two persons, identifying one of them, who shall not have the same nationality as nor be a national of either party, as the arbitrator appointed by it, and the other as the arbitrator proposed to be the President of the Tribunal; and 67

(ii) invite the other party to concur in the appointment of the arbitrator proposed to be the President of the Tribunal and to appoint another arbitrator; 68

(b) promptly upon receipt of this communication the other party shall, in its reply: 69

(i) name a person as the arbitrator appointed by it, who shall not have the same nationality as nor be a national of either party; and 70

(ii) concur in the appointment of the arbitrator proposed to be the President of the Tribunal or name another person as the arbitrator proposed to be President; 71

(c) promptly upon receipt of the reply containing such a proposal, the initiating party shall notify the other party whether it concurs in the appointment of the arbitrator proposed by that party to be the President of the Tribunal. 72

(2) The communications provided for in this Rule shall be made or promptly confirmed in writing and shall either be transmitted through the Secretary-General or directly between the parties with a copy to the Secretary-General. 73

Rule 4 - Appointment of Arbitrators by the Chairman of the Administrative Council

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(1) If the Tribunal is not constituted within 90 days after the dispatch by the Secretary-General of the notice of registration or such other period as the parties may agree, either party may, through the Secretary-General, address to the Chairman of the Administrative Council a request in writing to appoint the arbitrator or arbitrators not yet appointed and to designate an arbitrator to be the President of the Tribunal.

75

(2) The provision of paragraph (1) shall apply mutatis mutandis in the event that the parties have agreed that the arbitrators shall elect the President of the Tribunal and they fail to do so.

76

(3) The Secretary-General shall forthwith send a copy of the request to the other party.

77

(4) The Chairman shall, with due regard to Articles 38 and 40(1) of the Convention, and after consulting both parties as far as possible, comply with that request within 30 days after its receipt.

78

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

79

Rule 5 - Acceptance of Appointments

80

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

81

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

82

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

83

Rule 6 - Constitution of the Tribunal

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

85

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

86

“To the best of my knowledge there is no reason why I should not serve on the Arbitral Tribunal constituted by the International Centre for Settlement of Investment Disputes with respect to a dispute between ... and

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

“I shall judge fairly as between the parties, according to the applicable law, and shall not accept any instruction or compensation with regard to the proceeding from any source except as provided in the Convention on the Settlement of Investment Disputes and in the Regulations and Rules made pursuant thereto.

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

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

Rule 7 - Replacement of Arbitrators

At any time before the Tribunal is constituted, each party may replace any arbitrator appointed by it and the parties may by common consent agree to replace any arbitrator. The procedure of such replacement shall be in accordance with Rules 1, 5 and 6.

Rule 8 - Incapacity or Resignation of Arbitrators

(1) If an arbitrator becomes incapacitated or unable to perform the duties of his office, the procedure in respect of the disqualification of arbitrators set forth in Rule 9 shall apply.

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

Rule 9 - Disqualification of Arbitrators

(1) A party proposing the disqualification of an arbitrator pursuant to Article 57 of the Convention shall promptly, and in any event before the proceeding is declared closed, file its proposal with the Secretary-General, stating its reasons therefor.

(2) The Secretary-General shall forthwith:

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

or to a majority of the members of the Tribunal, to the Chairman of the Administrative Council, and

(b) notify the other party of the proposal. 101

(3) The arbitrator to whom the proposal relates may, without delay, furnish explanations to the Tribunal or the Chairman, as the case may be. 102

(4) Unless the proposal relates to a majority of the members of the Tribunal, the other members shall promptly consider and vote on the proposal in the absence of the arbitrator concerned. If those members are equally divided, they shall, through the Secretary-General, promptly notify the Chairman of the proposal, or any explanation furnished by the arbitrator concerned and of their failure to reach a decision. 103

(5) Whenever the Chairman has to decide on a proposal to disqualify an arbitrator, he shall take that decision within 30 days after he has received the proposal. 104

(6) The proceeding shall be suspended until a decision has been taken on the proposal. 105

Rule 10 - Procedure during a Vacancy on the Tribunal 106

(1) The Secretary-General shall forthwith notify the parties and, if necessary, the Chairman of the Administrative Council of the disqualification, death, incapacity or resignation of an arbitrator and of the consent, if any, of the Tribunal to a resignation . 107

(2) Upon the notification by the Secretary-General of a vacancy on the Tribunal, the proceeding shall be or remain suspended until the vacancy has been filled. 108

Rule 11 - Filling Vacancies on the Tribunal 109

(1) Except as provided in paragraph (2), a vacancy resulting from the disqualification, death, incapacity or resignation of an arbitrator shall be promptly filled by the same method by which his appointment had been made. 110

(2) In addition to filling vacancies relating to arbitrators appointed by him, the Chairman of the Administrative Council shall appoint a person from the Panel of Arbitrators: 111

(a) to fill a vacancy caused by the resignation, without the consent of the Tribunal, of an arbitrator appointed by a party; or 112

(b) at the request of either party, to fill any other vacancy, if no new appointment is made and accepted within 30 days of the notification of the vacancy by the Secretary-General . 113

(3) The procedure for filling a vacancy shall be in accordance with Rules 1, 4(4), 4(5), 5 and, *mutatis mutandis*, 6(2). 114

Rule 12 - Resumption of Proceeding after Filling a Vacancy 115

As soon as a vacancy on the Tribunal has been filled, the proceeding shall continue from the point it had reached at the time the vacancy occurred. The newly appointed arbitrator may, however, require that the oral procedure be recommended, if this had already been started. 116

Chapter II - Working of the Tribunal 117

Rule 13 - Sessions Of the Tribunal 118

(1) The Tribunal shall hold its first session within 60 days after its constitution or such other period as the parties may agree. The dates of that session shall be fixed by the President of the Tribunal after consultation with its members and the Secretary-General. If upon its constitution the Tribunal has no President because the parties have agreed that the President shall be elected by its members, the Secretary-General shall fix the dates of that session. In both cases, the parties shall be consulted as far as possible. 119

(2) The dates of subsequent sessions shall be determined by the Tribunal, after consultation with the Secretary-General and with the parties as far as possible. 120

(3) The Tribunal shall meet at the seat of the Centre or at such other place as may have been agreed by the parties in accordance with Article 63 of the Convention. If the parties agree that the proceeding shall be held at a place other than the Centre or an institution with which the Centre has made the necessary arrangements, they shall consult with the Secretary-General and request the approval of the Tribunal. Failing such approval, the Tribunal shall meet at the seat of the Centre. 121

(4) The Secretary-General shall notify the members of the Tribunal and the parties of the dates and place of the sessions of the Tribunal in good time. 122

Rule 14 - Sittings Of the Tribunal 123

(1) The President of the Tribunal shall conduct its hearings and preside at its deliberations. 124

(2) Except as the parties otherwise agree, the presence of a majority of the members of the Tribunal shall be required at its sittings. 125

(3) The President of the Tribunal shall fix the date and hour of its sittings. 126

Rule 15 - Deliberations Of the Tribunal 127

(1) The deliberations of the Tribunal shall take place in private and remain secret. 128

(2) Only members of the Tribunal shall take part in its deliberations. No other person shall be admitted unless the Tribunal decides otherwise. 129

Rule 16 - Decisions of the Tribunal 130

(1) Decisions of the Tribunal shall be taken by a majority of the votes of all its members. Abstention shall count as a negative vote. 131

(2) Except as otherwise provided by these Rules or decided by the Tribunal, it may take any decision by correspondence among its members, provided that all of them are consulted. Decisions so taken shall be certified by the President of the Tribunal. 132

Rule 17 - Incapacity Of the President 133

If at any time the President of the Tribunal should be unable to act, his functions shall be performed by one of the other members of the Tribunal, acting in the order in which the Secretary-General had received the notice of their acceptance of their appointment to the Tribunal. 134

Rule 18 - Representation of the Parties 135

(1) Each party may be represented or assisted by agents, counsel or advocates whose names and authority shall be notified by that party to the Secretary-General, who shall promptly inform the Tribunal and the other party. 136

(2) For the purposes of these Rules, the expression “party” includes, where the context so admits, an agent, counsel or advocate authorised to represent that party. 137

Chapter III - General Procedural Provisions 138

Rule 19 - Procedural Orders 139

The Tribunal shall make the orders required for the conduct of the proceeding. 140

Rule 20 - Preliminary Procedural Consultation 141

(1) As early as possible after the constitution of a Tribunal, its President shall endeavour to ascertain the views of the parties regarding questions of procedure. For this purpose he may request the parties to meet him. He shall, in particular, seek their views on the following matters: 142

- (a) the number of members of the Tribunal required to constitute a quorum at its sittings; 143
 - (b) the language or languages to be used in the proceeding; 144
 - (c) the number and sequence of the pleadings and the time limits within which they are to be filed; 145
 - (d) the number of copies desired by each party of instruments filed by the other; 146
 - (e) dispensing with the written or the oral procedure 147
 - (f) the manner in which the cost of the proceeding is to be apportioned; and 148
 - (g) the manner in which the record of the hearings shall be kept. 149
- (2) In the conduct of the proceeding the Tribunal shall apply any agreement between the parties on procedural matters, except as otherwise provided in the Convention or the Administrative and Financial Regulations. 150

Rule 21 - Pre-Hearing Conference 151

- (1) At the request of the Secretary-General or at the discretion of the President of the Tribunal, a pre-hearing conference between the Tribunal and the parties may be held to arrange for an exchange of information and the stipulation of uncontested facts in order to expedite the proceeding. 152
- (2) At the request of the parties, a pre-hearing conference between the Tribunal and the parties, duly represented by their authorised representatives, may be held to consider the issues in dispute with a view to reaching an amicable settlement. 153

Rule 22 - Procedural Languages 154

- (1) The parties may agree on the use of one or two languages to be used in the proceeding, provided, that, if they agree on any language that is not an official language of the Centre, the Tribunal, after consultation with the Secretary-General, gives its approval. If the parties do not agree on any such procedural language, each of them may select one of the official languages (i.e. English, French and Spanish) for this purpose. 155
- (2) If two procedural languages are selected by the parties, any instruments may be filed in either language. Either language may be used at the hearings, subject, if the Tribunal so requires, to translation and interpretation. The orders and the award of the Tribunal shall be rendered and the record kept in both procedural languages, both versions being equally authentic. 156

Rule 23 - Copies Of Instruments

157

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

158

(a) before the number of members of the Tribunal has been determined: five;

159

(b) after the number of members of the Tribunal has been determined: two more than the number of its members.

160

Rule 24 - Supporting Documentation

161

Supporting documentation shall ordinarily be filed together with the instrument to which it relates, and in any case within the time limit fixed for the filing of such instrument.

162

Rule 25 - Correction of Errors

163

An accidental error in any instrument or supporting document may, with the consent of the other party or by leave of the Tribunal, be corrected at any time before the award is rendered.

164

Rule 26 - Time Limits

165

(1) Where required, time limits shall be fixed by the Tribunal by assigning dates for the completion of the various steps in the proceeding. The Tribunal may delegate this power to its President.

166

(2) The Tribunal may extend any time limit that it has fixed. If the Tribunal is not in session, this power shall be exercised by its President.

167

(3) Any step taken after expiration of the applicable time limit shall be disregarded unless the Tribunal, in special circumstances and after giving the other party an opportunity of stating its views, decides otherwise.

168

Rule 27 - Waiver

169

A party which knows or should have known that a provision of the Administrative and Financial Regulations, of these Rules, of any other rules or agreement applicable to the proceeding, or of an order of the Tribunal has not been complied with and which fails to state promptly its objections thereto, shall be deemed - subject to Article 45 of the Convention - to have waived its right to object.

170

Rule 28 - Cost of Proceeding

171

(1) Without prejudice to the final decision on the payment of the cost of the proceeding, the Tribunal may, unless otherwise agreed by the parties, decide:

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(a) at any stage of the proceeding, the portion which each party shall pay, pursuant to Administrative and Financial Regulation 14, of the fees and expenses of the Tribunal and the charges for the use of the facilities of the Centre;

173

(b) with respect to any part of the proceeding, that the related costs (as determined by the Secretary-General) shall be borne entirely or in a particular share by one of the parties.

174

(2) Promptly after the closure of the proceeding, each party shall submit to the Tribunal statement of costs reasonably incurred or borne by it in the proceeding and the Secretary-General shall submit to the Tribunal an account of all amounts paid by each party to the Centre and of all costs incurred by the Centre for the proceeding. The Tribunal may, before the award has been rendered, request the parties and the Secretary-General to provide additional information concerning the cost of the proceeding.

175

Chapter IV - Written and Oral Procedures

176

Rule 29 - Normal Procedures

177

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

178

Rule 30 - Transmission of the Request

179

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

180

Rule 31 - The Written Procedure

181

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

182

(a) a memorial by the requesting party;

183

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

184

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

185

(c) a reply by the requesting party; and 186

(d) a rejoinder by the other party. 187

(2) If the request was made jointly, each party shall, within the same time limit determined by the Tribunal, file its memorial and, if the parties so agree or the Tribunal deems it necessary, its reply; however, the parties may instead agree that one of them shall, for the purposes of paragraph (1), be considered as the requesting party. 188

(3) A memorial shall contain: a statement of the relevant facts; a statement of law; and the submissions. A counter-memorial, reply or rejoinder shall contain an admission or denial of the facts stated in the last previous pleading; any additional facts, if necessary; observations concerning the statement of law in the last previous pleading; a statement of law in answer thereto; and the submissions. 189

Rule 32 - The Oral Procedure 190

(1) The oral procedure shall consist of the hearing by the Tribunal of the parties, their agents, counsel and advocates, and of witnesses and experts. 191

(2) The Tribunal shall decide, with the consent of the parties, which other persons besides the parties, their agents, counsel and advocates, witnesses and experts during their testimony, and officers of the Tribunal may attend the hearings. 192

(3) The members of the Tribunal may, during the hearings, put questions to the parties, their agents, counsel and advocates, and ask them for explanations. 193

Rule 33 - Marshalling of Evidence 194

Without prejudice to the rules concerning the production of documents, each party shall, within time limits fixed by the Tribunal, communicate to the Secretary-General, for transmission to the Tribunal and the other party, precise information regarding the evidence which it intends to produce and that which it intends to request the Tribunal to call for, together with an indication of the points to which such evidence will be directed. 195

Rule 34 - Evidence: General Principles 196

(1) The Tribunal shall be the judge of the admissibility of any evidence adduced and of its probative value. 197

(2) The Tribunal may, if it deems it necessary at any stage of the proceeding: 198

(a) call upon the parties to produce documents, witnesses and experts; and 199

(b) visit any place connected with the dispute or conduct inquiries there. 200

(3) The parties shall co-operate with the Tribunal in the production of the evidence and in the other measures provided for in paragraph (2). The Tribunal shall take formal note of the failure of a party to comply with its obligations under this paragraph and of any reasons given for such failure. 201

(4) Expenses incurred in producing evidence and in taking other measures in accordance with paragraph (2) shall be deemed to constitute part of the expenses incurred by the parties within the meaning of Article 61(2) of the Convention. 202

Rule 35 - Examination of Witnesses and Experts 203

(1) Witnesses and experts shall be examined before the Tribunal by the parties under the control of its President. Questions may also be put to them by any member of the Tribunal. 204

(2) Each witness shall make the following declaration before giving his evidence: 205

“I solemnly declare upon my honour and conscience that I shall speak the truth, the whole truth and nothing but the truth.” 206

(3) Each expert shall make the following declaration before making his statement: 207

“I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.” 208

Rule 36 - Witnesses and Experts; Special Rules 209

Notwithstanding Rule 35 the Tribunal may: 210

(a) admit evidence given by a witness or expert in a written deposition; and 211

(b) with the consent of both parties, arrange for the examination of a witness or expert otherwise than before the Tribunal itself. The Tribunal shall define the subject of the examination, the time limit, the procedure to be followed and other particulars. The parties may participate in the examination. 212

Rule 37 - Visits and Inquiries 213

If the Tribunal considers it necessary to visit any place connected with the dispute or to conduct an inquiry there, it shall make an order to this effect. The order shall define the scope of the visit or the subject of the inquiry, the time limit, the procedure to be followed and other particulars. The parties may participate in any visit or inquiry. 214

Rule 38 - Closure of the Proceeding

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

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

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Chapter V - Particular Procedures

218

Rule 39 - Provisional Measures

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(1) At any time during the proceeding a party may request that provisional measures for the preservation of its rights be recommended by the Tribunal. The request shall specify the rights to be preserved, the measures the recommendations of which is requested, and the circumstances that require such measures.

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(2) The Tribunal shall give priority to the consideration of a request made pursuant to paragraph (1).

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

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(4) The Tribunal shall only recommend provisional measures, or modify or revoke its recommendations, after giving each party an opportunity of presenting its observations.

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(5) Nothing in this Rule shall prevent the parties, provided that they have so stipulated in the agreement recording their consent, from requesting any judicial or other authority to order provisional measures, prior to the institution of the proceeding, or during the proceeding, for the preservation of their respective rights and interests.

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Rule 40 - Ancillary Claims

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(1) Except as the parties otherwise agree, a party may present an incidental or additional claim or counter-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 is otherwise within the jurisdiction of the Centre.

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

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(3) The Tribunal shall fix a time limit within which the party against which an ancillary claim is presented may file its observations thereon. 228

Rule 41 - Objections to Jurisdiction 229

(1) Any 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 shall be made as early as possible. A party shall file the objection with the Secretary-General no later than the expiration of the time limit fixed for the filing of the counter-memorial, or, if the objection relates to an ancillary claim, for the filing of the rejoinder - unless the facts on which the objection is based are unknown to the party at that time. 230

(2) The Tribunal may on its own initiative consider, at any stage of the proceeding, whether the dispute or any ancillary claim before it is within the jurisdiction of the Centre and within its own competence. 231

(3) Upon the formal raising of an objection relating to the dispute, the proceeding on the merits shall be suspended. The President of the Tribunal, after consultation with its other members, shall fix a time limit within which the parties may file observations on the objection. 232

(4) The Tribunal shall decide whether or not the further procedures relating to the objection shall be oral. It may deal with the objection as a preliminary question or join it to the merits of the dispute. If the Tribunal overrules the objection or joins it to the merits, it shall once more fix time limits for further procedures. 233

(5) If the Tribunal decides that the dispute is not within the jurisdiction of the Centre or not within its own competence, it shall render an award to that effect. 234

Rule 42 - Default 235

(1) If a party (in this Rule called the “defaulting party”) fails to appear or to present its case at any stage of the proceeding, the other party may, at any time prior to the discontinuance of the proceeding, request the Tribunal to deal with the questions submitted to it and to render an award. 236

(2) The Tribunal shall promptly notify the defaulting party of such a request. Unless it is satisfied that that party does not intend to appear or to present its case in the proceeding, it shall, at the same time, grant a period of grace and to this end: 237

(a) if that party had failed to file a pleading or any other instrument within the time limit fixed therefor, fix a new time limit for its filing; or 238

(b) if that party had failed to appear or present its case at a hearing, fix a new date for the 239

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

(3) After the expiration of the period of grace or when, in accordance with paragraph (2), no such period is granted, the Tribunal shall resume the consideration of the dispute. Failure of the defaulting party to appear or to present its case shall not be deemed an admission of the assertions made by the other party.

(4) The Tribunal shall examine the jurisdiction of the Centre and its own competence in the dispute and, if it is satisfied, decide whether the submissions made are well-founded in fact and in law. To this end, it may, at any stage of the proceeding, call on the party appearing to file observations, produce evidence or submit oral explanations.

Rule 43 - Settlement and Discontinuance

(1) If, before the award is rendered, the parties agree on a settlement of the dispute or otherwise to discontinue the proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, shall, at their written request, in an order take note of the discontinuance of the proceeding.

(2) If the parties file with the Secretary-General the full and signed text of their settlement and in writing request the Tribunal to embody such settlement in an award, the Tribunal may record the settlement in the form of its award.

Rule 44 - Discontinuance at Request of a Party

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

Rule 45 - Discontinuance for Failure of Parties to Act

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

Chapter VI - The Award

249

Rule 46 - Preparation of the Award

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The award (including any individual or dissenting opinion) shall be drawn up and signed within 60 days after the closure of the proceeding. The Tribunal may, however, extend this period by a further 30 days if it would otherwise be unable to draw up the award.

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Rule 47 - The Award

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

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(a) a precise designation of each party;

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(b) a statement that the Tribunal was established under the Convention, and a description of the method of its constitution;

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(c) the name of each member of the Tribunal, and an identification of the appointing authority of each;

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(d) the names of the agents, counsel and advocates of the parties;

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(e) the dates and place of the sittings of the Tribunal;

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(f) a summary of the proceeding;

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(g) a statement of the facts as found by the Tribunal;

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(h) the submissions of the parties;

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(i) the decision of the Tribunal on every question submitted to it, together with the reasons upon which the decision is based; and

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(j) any decision of the Tribunal regarding the cost of the proceeding.

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(2) The award shall be signed by the members of the Tribunal who voted for it; the date of each signature shall be indicated.

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(3) Any member of the Tribunal may attach his individual opinion to the award, whether he dissents from the majority or not, or a statement of his dissent.

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Rule 48 - Rendering of the Award

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

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(a) authenticate the original text of the award and deposit it in the archives of the Centre, together with any individual opinions and statements of dissent; and

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(b) dispatch a certified copy of the award (including individual opinions and statements

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of dissent) to each party, indicating the date of dispatch on the original text and on all copies.

(2) The award shall be deemed to have been rendered on the date on which the certified copies were dispatched. 270

(3) The Secretary-General shall, upon request, make available to a party additional certified copies of the award. 271

(4) The Centre shall not publish the award without the consent of the parties. The Centre may, however, include in its publications excerpts of the legal rules applied by the Tribunal. 272

Rule 49 - Supplementary Decisions and Rectification 273

(1) Within 45 days after the date on which the award was rendered, either party may request, pursuant to Article 49(2) of the Convention, a supplementary decision on, or the rectification of, the award. Such a request shall be addressed in writing to the Secretary-General. The request shall: 274

(a) identify the award to which it relates; 275

(b) indicate the date of the request; 276

(c) state in detail; 277

(i) any question which, in the opinion of the requesting party, the Tribunal omitted to decide in the award; and 278

(ii) any error in the award which the requesting party seeks to have rectified; and 279

(d) be accompanied by a fee for lodging the request. 280

(2) Upon receipt of the request and of the lodging fee, the Secretary-General shall forthwith: 281

(a) register the request; 282

(b) notify the parties of the registration; 283

(c) transmit to the other party a copy of the request and of any accompanying documentation; and 284

(d) transmit to each member of the Tribunal a copy of the notice of registration, together with a copy of the request and of any accompanying documentation. 285

(3) The President of the Tribunal shall consult the members on whether it is necessary for the Tribunal to meet in order to consider the request. The Tribunal shall fix a time limit for 286

the parties to file their observations on the request and shall determine the procedure for its consideration.

(4) Rules 46-48 shall apply, mutatis mutandis, to any decision of the Tribunal pursuant to this Rule. 287

(5) If a request is received by the Secretary-General more than 45 days after the award was rendered, he shall refuse to register the request and so inform forthwith the requesting party. 288

Chapter VII - Interpretations Revisions and Annulment of the Award 289

Rule 50 - The Application 290

(1) An application for the interpretation, revision or annulment of an award shall be addressed in writing to the Secretary-General and shall: 291

(a) identify the award to which it relates; 292

(b) indicate the date of the application; 293

(c) state in detail; 294

(i) in an application for interpretation, the precise points in dispute; 295

(ii) in an application for revision, pursuant to Article 51(1) of the Convention, the change sought in the award, the discovery of some fact of such a nature as decisively to affect the award, and evidence that when the award was rendered that fact was unknown to the Tribunal and to the applicant, and that the applicant's ignorance of that fact was not due to negligence; 296

(iii) in an application for annulment, pursuant to Article 52(1) of the Convention, the grounds on which it is based. These grounds are limited to the following: 297

- that the Tribunal was not properly constituted; 298

- that the Tribunal has manifestly exceeded its powers; 299

- that there was corruption on the part of a member of the Tribunal; 300

- that there has been a serious departure from a fundamental rule of procedure; 301

- that the award has failed to state the reasons on which it is based; 302

(d) be accompanied by the payment of a fee for lodging the application. 303

(2) Without prejudice to the provisions of paragraph (3), upon receiving an application and the lodging fee, the Secretary-General shall forthwith: 304

- (a) register the application; 305
- (b) notify the parties of the registration; and 306
- (c) transmit to the other party a copy of the application and of any accompanying documentation. 307
- (3) The Secretary-General shall refuse to register an application for: 308
- (a) revision, if, in accordance with Article 51(2) of the Convention, it is not made within 90 days after the discovery of the new fact and in any event within three years after the date on which the award was rendered (or any subsequent decision or correction); 309
- (b) annulment, if, in accordance with Article 52(2) of the Convention, it is not made: 310
- (i) within 120 days after the date on which the award was rendered (or any subsequent decision or correction) if the application is based on any of the following grounds: 311
- the Tribunal was not properly constituted; 312
- the Tribunal has manifestly exceeded its powers; 313
- there has been a serious departure from a fundamental rule of procedure; 314
- the award has failed to state the reasons on which it is based; 315
- (ii) in the case of corruption on the part of a member of the Tribunal, within 120 days after discovery thereof, and in any event within three years after the date on which the award was rendered (or any subsequent decision or correction). 316
- (4) If the Secretary-General refuses to register an application for revision, or annulment, he shall forthwith notify the requesting party of his refusal. 317

Rule 51 - Interpretation or Revision: Further Procedures 318

- (1) Upon registration of an application for the interpretation or revision of an award, the Secretary-General shall forthwith: 319
- (a) transmit to each member of the original Tribunal a copy of the notice of registration, together with a copy of the application and of any accompanying documentation; and 320
- (b) request each member of the Tribunal to inform him within a specified time limit whether that member is willing to take part in the consideration of the application. 321
- (2) If all members of the Tribunal express their willingness to take part in the consideration of the application, the Secretary-General shall so notify the members of the Tribunal and the parties. Upon dispatch of these notices the Tribunal shall be deemed to be reconstituted. 322

(3) If the Tribunal cannot be reconstituted in accordance with paragraph (2), the Secretary-General shall so notify the parties and invite them to proceed, as soon as possible, to constitute a new Tribunal, including the same number of arbitrators, and appointed by the same method. as the original one. 323

Rule 52 - Annulment: Further Procedures 324

(1) Upon registration of an application for the annulment of an award, the Secretary-General shall forthwith request the Chairman of the Administrative Council to appoint an ad hoc Committee in accordance with Article 52(3) of the Convention. 325

(2) The Committee shall be deemed to be constituted on the date the Secretary-General notifies the parties that all members have accepted their appointment. Before or at the first session of the Committee, each member shall sign a declaration conforming to that set forth in Rule 6(2). 326

Rule 53 - Rules of Procedure 327

The provisions of these Rules shall apply mutatis mutandis to any procedure relating to the interpretation, revision or annulment of an award and to the decision of the Tribunal or Committee. 328

Rule 54 - Stay Of Enforcement of the Award 329

(1) The party applying for the interpretation, revision or annulment of an award may in its application, and either party may at any time before the final disposition of the application, request a stay in the enforcement of part or all of the award to which the application relates. The Tribunal or Committee shall give priority to the consideration of such a request. 330

(2) If an application for the revision or annulment of an award contains a request for a stay of its enforcement, the Secretary-General shall, together with the notice of registration, inform both parties of the provisional stay of the award. As soon as the Tribunal or Committee is constituted it shall, if either party requests, rule within 30 days on whether such stay should be continued; unless it decides to continue the stay, it shall automatically be terminated. 331

(3) If a stay of enforcement has been granted pursuant to paragraph (1) or continued pursuant to paragraph (2), the Tribunal or Committee may at any time modify or terminate the stay at the request of either party. All stays shall automatically terminate on the date on which a final decision is rendered on the application, except that a Committee granting the partial annulment of an award may order the temporary stay of enforcement of the unannulled portion in order to give either party an opportunity to request any new Tribunal 332

constituted pursuant to Article 52(6) of the Convention to grant a stay pursuant to Rule 55(3).

(4) A request pursuant to paragraph (1), (2) (second sentence) or (3) shall specify the circumstances that require the stay or its modification or termination. A request shall only be granted after the Tribunal or Committee has given each party an opportunity of presenting its observations.

(5) The Secretary-General shall promptly notify both parties of the stay of enforcement of any award and of the modification or termination of such a stay, which shall become effective on the date on which he dispatches such notification.

Rule 55 - Resubmission of Dispute after an Annulment

(1) If a Committee annuls part or all of an award, either party may request the resubmission of the dispute to a new Tribunal. Such a request shall be addressed in writing to the Secretary-General and shall:

(a) identify the award to which it relates;

(b) indicate the date of the request;

(c) explain in detail what aspect of the dispute is to be submitted to the Tribunal; and

(d) be accompanied by a fee for lodging the request.

(2) Upon receipt of the request and of the lodging fee, the Secretary-General shall forthwith:

(a) register it in the Arbitration Register;

(b) notify both parties of the registration;

(c) transmit to the other party a copy of the request and of any accompanying documentation; and

(d) invite the parties to proceed, as soon as possible, to constitute a new Tribunal, including the same number of arbitrators, and appointed by the same method, as the original one.

(3) If the original award had only been annulled in part, the new Tribunal shall not reconsider any portion of the award not so annulled. It may, however, in accordance with the procedures set forth in Rule 54, stay or continue to stay the enforcement of the unannulled portion of the award until the date its own award is rendered.

(4) Except as otherwise provided in paragraphs (1)-(3), these Rules shall apply to a proceeding on a resubmitted dispute in the same manner as if such dispute had been submitted pursuant to the Institution Rules.

Chapter VIII - General Provisions

348

Rule 56 - Final Provisions

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

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(2) These Rules may be cited as the “Arbitration Rules” of the Centre.

351

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