

ICSID

FACT-FINDING RULES AND REGULATIONS



ICSID

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

ICSID

FACT-FINDING RULES AND REGULATIONS

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ICSID/19
July 2022

INTRODUCTION

The International Centre for Settlement of Investment Disputes (ICSID or the Centre) is established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention or the Convention).

The Administrative Council of the Centre has adopted Fact-Finding Rules authorizing the Secretariat of ICSID to administer fact-finding proceedings. In contrast to conciliation and arbitration proceedings under the ICSID Convention, parties to an ICSID fact-finding proceeding are not required to be a Contracting State or nationals of a Contracting State.

The ICSID Fact-Finding Rules are supplemented by ICSID Fact-Finding Administrative and Financial Regulations.

The Fact-Finding Rules were originally adopted in 1978 as part of the ICSID Additional Facility Rules. They were later amended and adopted as standalone rules in 2022.

Reprinted in this booklet are the ICSID Fact-Finding Rules and the ICSID Fact-Finding Administrative and Financial Regulations as adopted with effect from July 1, 2022.

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ICSID FACT-FINDING RULES

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INTRODUCTORY NOTE

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

The ICSID Fact-Finding Rules are supplemented by the ICSID Fact-Finding Administrative and Financial Regulations.

CHAPTER I GENERAL PROVISIONS

Rule 1 Definitions

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

Rule 2 Fact-Finding Proceedings

- (1) The Secretariat is authorized to administer fact-finding proceedings that relate to an investment, involve a State or an REIO, and which the parties consent in writing to submit to the Centre.
- (2) Reference to a State or an REIO includes a constituent subdivision of the State, or an agency of the State or the

REIO. The State or the REIO must approve the consent of the constituent subdivision or agency which is a party to the fact-finding pursuant to paragraph (1), unless the State or the REIO concerned notifies the Centre that no such approval is required.

- (3) The ICSID Fact-Finding Administrative and Financial Regulations shall apply to proceedings pursuant to these Rules.

Rule 3

Application of Rules

- (1) These Rules shall apply to any fact-finding proceeding conducted pursuant to Rule 2.
- (2) The parties may agree to modify the application of any of these Rules other than Rules 1-7.
- (3) The applicable ICSID Fact-Finding Rules are those in force on the date of filing the Request, unless the parties agree otherwise.

Rule 4

Party Representative

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

CHAPTER II

INSTITUTION OF THE FACT-FINDING PROCEEDING

Rule 5

The Request

Parties wishing to institute a fact-finding proceeding pursuant to these Rules shall file a joint Request with the Secretary-General and pay the lodging fee published in the schedule of fees.

Rule 6

Contents and Filing of the Request

- (1) The Request shall:
 - (a) be in English, French or Spanish, or in any other language with the approval of the Secretary-General;
 - (b) identify each party to the proceeding and provide its contact information, including electronic mail address, street address and telephone number;
 - (c) be signed by each requesting party or its representative and be dated;
 - (d) attach proof of any representative's authority to act;
 - (e) be filed electronically, unless the Secretary-General authorizes the filing of the Request in an alternative format;
 - (f) if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request, and attach the authorizations;
 - (g) indicate that the proceeding involves a State or an REIO, describe the investment to which the proceeding relates, and indicate the facts to be examined and the relevant circumstances;
 - (h) attach the agreement of the parties to have recourse to fact-finding pursuant to these Rules; and
 - (i) contain any proposals or agreements reached by the parties concerning the constitution of a Fact-Finding Committee ("Committee"), the qualifications of its member(s), its mandate and the procedure to be followed during the fact-finding.
- (2) Any supporting document in a language other than English, French, Spanish or a language approved by the Secretary-General pursuant to Rule 6(1)(a) shall be accompanied by a translation into one of those languages. Translation of only the relevant part of a document is sufficient, provided that the Secretary-General may require a fuller or complete translation of the document.

Rule 7

Receipt and Registration of the Request

- (1) The Secretary-General shall promptly acknowledge receipt of the Request.

- (2) Upon receipt of the Request and the lodging fee, the Secretary-General shall register the Request if it appears, on the basis of the information provided, that the Request is within the scope of Rule 2(1).
- (3) The Secretary-General shall notify the parties of the registration of the Request, or the refusal to register the Request and the grounds for refusal.
- (4) The notice of registration of the Request shall:
 - (a) record that the Request is registered and indicate the date of registration;
 - (b) confirm that all correspondence to the parties in connection with the proceeding will be sent to the contact address appearing on the notice, unless different contact information is indicated to the Secretary-General; and
 - (c) invite the parties to constitute a Committee without delay.

CHAPTER III

THE FACT-FINDING COMMITTEE

Rule 8 **Qualifications of Members of the Committee**

- (1) Each member of a Fact-Finding Committee shall be impartial and independent of the parties.
- (2) The parties may agree that a member of a Committee shall have specific qualifications or expertise.

Rule 9 **Number of Members and Method of Constituting the Committee**

- (1) The parties shall endeavor to agree on a sole or any uneven number of Committee members, and the method of their appointment. If the parties do not advise the Secretary-General of an agreement on the number of members and method of appointment within 30 days after the date of registration, the Committee shall consist of a sole member, appointed by agreement of the parties.
- (2) The parties may jointly request that the Secretary-General assist with the appointment of any member at any time.

- (3) If the parties are unable to appoint a sole member or any member of a Committee within 60 days after the date of registration, either party may request that the Secretary-General appoint the member(s) not yet appointed. The Secretary-General shall consult with the parties as far as possible on the qualifications, expertise, nationality and availability of the member(s) and shall use best efforts to appoint any Committee member(s) within 30 days after receipt of the request to appoint.
- (4) If no step has been taken by the parties to appoint the members of a Committee within 120 consecutive days after the date of registration, or such other period as the parties may agree, the Secretary-General shall notify the parties that the fact-finding is terminated.

Rule 10

Acceptance of Appointment

- (1) The parties shall notify the Secretary-General of the appointment of the members of the Committee and provide the names and contact information of the appointees.
- (2) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from the appointee.
- (3) Within 20 days after receipt of the request for acceptance of an appointment, the appointee shall:
 - (a) accept the appointment; and
 - (b) provide a signed declaration in the form published by the Centre, addressing matters including the appointee'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 member and provide the signed declaration.
- (5) The Secretary-General shall notify the parties if an appointee 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 in accordance with the method followed for the previous appointment.
- (6) Each member shall have a continuing obligation promptly to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).

- (7) Unless the parties and the Committee agree otherwise, a member may not act as arbitrator, conciliator, counsel, expert, judge, mediator, witness or in any other capacity in any proceeding relating to circumstances examined during the fact-finding.

Rule 11

Constitution of the Committee

The Committee shall be deemed to be constituted on the date the Secretary-General notifies the parties that each member has accepted their appointment and signed the declaration required by Rule 10(3)(b). As soon as the Committee is constituted, the Secretary-General shall transmit the Request, any supporting documents, communications received from the parties and the notice of registration to each member.

CHAPTER IV

CONDUCT OF THE FACT-FINDING PROCEEDING

Rule 12

Sessions and Work of the Committee

- (1) Each party shall file a preliminary written statement of not more than 50 pages with the Secretary-General within 15 days after the date of constitution of the Committee, unless the parties agree otherwise, and in any event before the first session. The preliminary statement shall address the party's view on the mandate of the Committee, the scope of the inquiry, relevant documents, persons to be interviewed, site visits and any other relevant matters. The Secretary-General shall transmit the preliminary written statements to the Committee and the other party.
- (2) The Committee shall hold a first session with the parties within 30 days after its constitution or such other period as the parties may agree.
- (3) At the first session, the Committee shall determine the protocol for the fact-finding ("Protocol") after consulting with the parties on procedural matters, including:
 - (a) the Committee's mandate;

- (b) the procedure for the conduct of the proceeding, such as the procedural languages; method of communication; place of sessions; whether a session will be held in person or remotely; the next steps in the proceeding; the treatment of information and documents; persons to be interviewed; site visits; and any other procedural and administrative matters;
 - (c) whether the Report to be issued will be binding on the parties; and
 - (d) whether the Committee should make any recommendations in its Report.
- (4) The Committee shall conduct the proceeding in accordance with the Protocol and take all steps necessary to discharge its mandate. To that end, it shall make all decisions required for the conduct of the proceeding.
- (5) Any matters not provided for in these Rules or not previously agreed to by the parties shall be determined by agreement of the parties or, failing such agreement, by the Committee.

Rule 13

General Duties

- (1) The Committee shall treat the parties equally and provide each party with a reasonable opportunity to participate in the proceeding. It shall conduct the proceeding in an expeditious and cost-effective manner and shall consult regularly with the parties on the conduct of the proceeding.
- (2) The parties shall cooperate with the Committee and with one another and shall conduct the proceeding in good faith and in an expeditious and cost-effective manner. The parties shall endeavor to provide all relevant explanations, documents or other information requested by the Committee and participate in the sessions of the Committee. The parties shall use best efforts to facilitate the Committee's inquiry.

Rule 14

Calculation of Time Limits

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

Rule 15

Costs of the Proceeding

Unless the parties agree otherwise:

- (a) the fees and expenses of the Committee and the administrative charges and direct costs of the Centre shall be borne equally by the parties; and
- (b) each party shall bear any other costs it incurs in connection with the proceeding.

Rule 16

Confidentiality of the Proceeding

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

Rule 17

Use of Information in Other Proceedings

A party shall not rely in other proceedings on any positions taken, admissions made, or views expressed by the other party or the members of the Committee during the fact-finding proceeding, unless the parties agree otherwise.

CHAPTER V

TERMINATION OF THE FACT-FINDING PROCEEDING

Rule 18

Manner of Terminating the Proceeding

The proceeding shall terminate upon:

- (a) the issuance of a notice by the Secretary-General pursuant to Rule 9(4);
- (b) the issuance of a Report by the Committee; or
- (c) a notice from the parties that they have agreed to terminate the proceeding.

Rule 19

Failure of a Party to Participate or Cooperate

If a party fails to participate in the proceeding or cooperate with the Committee, and the Committee determines that it is no longer able to discharge its mandate, the Committee shall, after notice to the parties, record the failure of that party to participate or cooperate in its Report.

Rule 20

Report of the Committee

- (1) The Report shall be in writing and shall contain:
 - (a) the mandate of the Committee;
 - (b) the Protocol followed;
 - (c) a brief summary of the proceeding;
 - (d) a recommendation if requested by the parties; and
 - (e) the facts established by the Committee and the reasons why certain facts may not be considered as having been established; or
 - (f) an indication of the failure of a party to participate or cooperate pursuant to Rule 19.
- (2) The Report shall be adopted by a majority of the members and signed by them. If a member does not sign the Report, such fact shall be recorded.
- (3) Any member may attach a statement to the Report if the member disagrees on any of the facts found.
- (4) Unless the parties agree otherwise, the Report of the Committee shall not be binding upon the parties, and the parties shall be free to give any effect to it.

Rule 21

Issuance of the Report

- (1) Once the Report has been signed by the members of the Committee, the Secretary-General shall promptly:
 - (a) dispatch a certified copy of the Report to each party, indicating the date of dispatch on the Report; and
 - (b) deposit the Report in the archives of the Centre.
- (2) The Secretary-General shall provide additional certified copies of the Report to a party upon request.

ICSID FACT-FINDING ADMINISTRATIVE AND FINANCIAL REGULATIONS

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INTRODUCTORY NOTE

The ICSID Fact-Finding Administrative and Financial Regulations apply to fact-finding proceedings pursuant to the ICSID Fact-Finding Rules and were adopted by the Administrative Council of the Centre pursuant to Article 7 of the ICSID Convention and Administrative and Financial Regulation 7.

CHAPTER I GENERAL PROVISIONS

Regulation 1 Application of these Regulations

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

CHAPTER II GENERAL FUNCTIONS OF THE SECRETARIAT

Regulation 2 Secretary

The Secretary-General of the Centre shall appoint a Secretary for each Fact-Finding Committee ("Committee"). The Secretary may be drawn from the Secretariat and shall be considered a member of its staff while serving as a Secretary. The Secretary shall:

- (a) represent the Secretary-General and may perform all functions assigned to the Secretary-General by these Regulations or the ICSID Fact-Finding Rules applicable to individual proceedings and delegated to the Secretary; and

- (b) assist the parties and the Committee with the proceeding, including the expeditious and cost-effective conduct of the proceeding.

Regulation 3 The Registers

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

Regulation 4 Depositary Functions

- (1) The Secretary-General shall deposit in the archives of the Centre and arrange for the permanent retention of:
 - (a) all Requests for fact-finding;
 - (b) all documents and communications filed in a proceeding;
 - (c) any records of meetings or sessions in a proceeding;
 - (d) any Report of the Committee; and
 - (e) any notice from the Secretary-General.
- (2) Subject to the ICSID Fact-Finding Rules and the agreement of the parties to the proceeding, and upon payment of any charges required by the schedule of fees, the Secretary-General shall make certified copies of the documents referred to in paragraph (1)(c)-(e) available to the parties.

Regulation 5 Certificates of Official Travel

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

CHAPTER III

FINANCIAL PROVISIONS

Regulation 6

Fees, Allowances and Charges

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

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

Regulation 7

Payments to the Centre

- (1) To enable the Centre to pay the costs referred to in Regulation 6, the parties shall make payments to the Centre as follows:
 - (a) upon registration of a Request for fact-finding, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the proceeding through the first session of the Committee;
 - (b) upon constitution of a Committee, the Secretary-General shall request the parties to make a payment to defray the estimated costs of the subsequent phase of the proceeding; and
 - (c) the Secretary-General may request that the parties make supplementary payments at any time if required to defray the estimated costs of the proceeding.
- (2) Each party shall pay an equal share of the payments referred to in paragraph (1), unless the parties agree on a different division.
- (3) The Centre shall provide a statement of the case account to the parties with each request for payment and at any other time upon request of a party.

Regulation 8

Consequences of Default in Payment

- (1) The payments referred to in Regulation 7 shall be payable on the date of the request from the Secretary-General.
- (2) The following procedure shall apply in the event of non-payment:
 - (a) if the amounts requested are not paid in full within 30 days after the date of the request, the Secretary-General may notify both parties of the default and give them an opportunity to make the required payment;
 - (b) if any part of the required payment remains outstanding 15 days after the date of the notice in paragraph (2)(a), the Secretary-General may suspend the proceeding until

payment is made, after giving notice to the parties and to the Committee if constituted; and

- (c) if any proceeding is suspended for non-payment for more than 90 consecutive days, the Secretary-General may discontinue the proceeding, after giving notice to the parties and to the Committee if constituted.

Regulation 9 Special Services

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

Regulation 10 Fee for Lodging Requests

The parties wishing to institute a fact-finding proceeding shall pay the Centre a non-refundable lodging fee determined by the Secretary-General and published in the schedule of fees.

Regulation 11 Administration of Proceedings

The Secretariat of the Centre is the only body authorized to administer fact-finding proceedings conducted pursuant to the ICSID Fact-Finding Rules.

CHAPTER IV OFFICIAL LANGUAGES AND LIMITATION OF LIABILITY

Regulation 12 Languages of Rules and Regulations

- (1) The ICSID Fact-Finding Rules and these Regulations are published in the official languages of the Centre, English, French and Spanish.

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

Regulation 13

Prohibition of Testimony and Limitation of Liability

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

DECLARATION

The Declarations printed in this booklet are the versions in effect at the date of printing; users should check the ICSID website for the most up-to-date version.

Fact-Finding Committee Member Declaration

Case Name and No.: _____

Committee member name: _____

Committee member nationality(ies): _____

I accept my appointment as a Committee member in this fact-finding and make the following declarations:

- (1) To the best of my knowledge, there is no reason why I should not serve on the Committee constituted by the International Centre for Settlement of Investment Disputes ("the Centre") in this fact-finding.
 - (2) I am impartial and independent of the parties, and shall discharge my mandate fairly.
 - (3) I shall not accept any instruction or compensation with regard to the fact-finding from any source except as provided in the ICSID Fact-Finding Rules and ICSID Fact-Finding Administrative and Financial Regulations.
 - (4) I understand that I am required to disclose:
 - (a) My professional, business and other significant relationships, within the past five years with:
 - (i) the parties;
 - (ii) the parties' representatives;
 - (iii) the other members of the Committee (presently known); and
 - (b) Other circumstances that might reasonably cause my independence or impartiality to be questioned.
- [Select one]:
- I have disclosures to make under paragraph 4(a) and/or 4(b) and a statement setting these forth is attached.
- I have no such disclosures to make and attach no statement.
- (5) I acknowledge that I have a continuing obligation to disclose any change of circumstances which might cause my independence or impartiality to be questioned, and will promptly notify the Secretary-General of any such circumstances.
 - (6) I shall keep confidential all information coming to my knowledge as a result of my participation in this fact-finding, including the contents of any Report made by the Committee.
 - (7) I will not engage in any *ex parte* communication concerning this fact-finding with a party or its representative.

- (8) I have sufficient availability to perform my duties as a Committee member in an expeditious and cost-effective manner. My availability in the next 24 months, as currently known by me, is indicated below.
- (9) I confirm that I will not accept new commitments that would conflict with or interfere with my capacity to perform my duties in this fact-finding.
- (10) I will adhere to the Memorandum on Fees and Expenses in ICSID Proceedings published by the Centre.
- (11) I attach my current *curriculum vitae*.

Signature
(sign manually or in electronic format)

Date



ICSID

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