

# ICSID Rules and Regulations 2022

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the Secretariat. The reference to holidays, however, was removed, allowing the parties and the Tribunal to account in the procedural calendar for any holidays that apply to them.<sup>233</sup>

### III. Interpretative Commentary

#### 1. Paragraph 1

References to time in the Rules and the procedural calendar are references to the time at the seat of the Centre in Washington, D.C. on the relevant date, unless agreed otherwise. The original draft of the amended Rule suggested that “[a] time limit expire[d] at 11:59 p.m. at the seat of the Centre on the relevant date”.<sup>234</sup> ICSID Draft Procedural Order No. 1, commonly followed by arbitral Tribunals, suggests that the briefs are deemed timely if submitted “by midnight, Washington, D.C. time, on the relevant date”.<sup>235</sup> In practice, expiration of the relevant time is marked at midnight Eastern Time.

#### 2. Paragraph 2

When calculating time limits the date on which the time limit is communicated, or the procedural step taken, is excluded from the calculation. Instead, the following day starts the running of the time limit.

During public consultations, the Argentine Republic noted that “[n]o event should trigger a time limit if it is unknown to the parties”.<sup>236</sup> It is therefore stated that the relevant date starts running from the day following announcement of the relevant period or the day otherwise predetermined in the ICSID Convention, Rules and/or procedural calendar. For instance, the day after the date on which the award is dispatched to the parties (rather than issued) starts the running of the mandatory time limits for application for interpretation, revision or annulment of the award.<sup>237</sup>

As in the previous paragraph, the following day is a reference to the day at the seat of the Centre in Washington, D.C., unless agreed otherwise. The Rule does not specify whether the references to “day” or “date” refers to calendar or business days. In practice, the time periods are often calculated in calendar days, unless stated otherwise.<sup>238</sup>

#### 3. Paragraph 3

A time limit is satisfied if the procedural step is taken on the relevant date or the subsequent business day, if the relevant date falls on Saturday or Sunday, at

<sup>233</sup> ICSID Working Paper #3, para. 42.

<sup>234</sup> ICSID Working Paper #1, Rule 7(2).

<sup>235</sup> See ICSID Draft Procedural Order No. 1, para 13.9, available at <https://icsid.worldbank.org/en/Documents/process/Draft%20Procedural%20Order%20No%201.pdf> (last accessed on 28 March 2022); *Poštová banka, a.s. and Istrokapital SE v. Hellenic Republic*, ICSID Case No. ARB/13/8, Procedural Order No. 1, 20 December 2013, para. 13.5; *Adel A Hamadi Al Tamimi v. Sultanate of Oman*, ICSID Case No. ARB/11/33, Procedural Order No. 1, 13 July 2012, para. 11.10; *Fouad Alghanim & Sons Co. for General Trading & Contracting, W.L.L. and Mr. Fouad Mohammed Thunyan Alghanim v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/13/38, Procedural Order No. 1, 16 October 2014, para 13.11.

<sup>236</sup> ICSID Compendium of Comments on Rule Amendment, 15 March 2019, p. 92 (Comments from the Argentine Republic of 28 December 2018).

<sup>237</sup> ICSID Convention (1965), Article 49; Administrative and Financial Regulations (2006), Regulation 29(1).

<sup>238</sup> See e.g., *Bay View Group LLC and The Spalena Company LLC v. Republic of Rwanda*, ICSID Case No. ARB/18/21, Procedural Order No. 1, 12 December 2018, para. 13.11 (“Official holidays and non-business days occurring during the running of the period of time are included in calculating a period of time.”).

the seat of the Centre in Washington D.C. The Rules do not explicitly address the delivery of hard copies in light of Rule 4(2) that sets electronic filing as the default method of filing.

- 8 In practice, a hard-copy document is considered delivered to the Secretary-General or another relevant addressee if it is received at the seat of the Centre or the relevant address before close of business on the relevant date or the following business day, if the relevant date falls on Saturday, Sunday, holiday or a day with a restricted mail delivery schedule.<sup>239</sup> The parties often agree, and such agreement is reflected in the first procedural order, that hard copies of the pleadings (and usually a USB file) will be couriered or “couriered by dispatch” within a certain period of time – usually three to five business days – after the electronic filing of the pleading.<sup>240</sup> The courier by dispatch method of delivery ensures that the shipment containing the pleading leaves the courier facility no later than the relevant date, which could be significant in cases where the parties are located in different countries and use different courier services with irregular shipping schedules.<sup>241</sup>
- 9 Procedural orders usually also specify that the official date of receipt of a pleading or communication is the day on which the electronic version is “sent by email” to the Secretary of the Tribunal.<sup>242</sup> The parties therefore must test the technical capabilities of their mail servers to ensure that their email to the Secretariat is sent without interruptions and technical difficulties by the relevant date and time. Parties often break down their electronic email submissions into several emails to ensure that ICSID’s server capacity can handle the size of the sent files. In such circumstances, all emails constituting the party’s pleading or communication should be sent by the relevant time, unless the parties agree otherwise. It is advised to discuss at the first session the practice of submitting pleadings or communications via email and decide on the meaning of a “timely” submission in such context.
- 10 The Rule does not account for public holidays observed in the countries of the parties or Tribunal members. Parties and the Tribunal may account for any specific holidays that apply to them when establishing their procedural calendar.<sup>243</sup> The parties are occasionally asked to provide a list of the official holidays in their respective jurisdictions for the Tribunal and the parties’ reference during the proceedings and when establishing the procedural schedule. Typically, when the last day of a fixed time limit does not fall on a business day, the time limit is satisfied if the electronic submission is received on the subsequent business day before midnight.

<sup>239</sup> See ICSID Administrative and Financial Regulations (2006), Regulation 29(2).

<sup>240</sup> See e.g., *Bay View Group LLC and The Spalena Company LLC v. Republic of Rwanda*, ICSID Case No. ARB/18/21, Procedural Order No. 1, 12 December 2018, para. 13.2.

<sup>241</sup> In other circumstances, the Tribunals specify that the relevant date is the date when the hard copies and USBs must reach the relevant addressee. See e.g., *ACP Axos Capital GmbH v. Republic of Kosovo*, ICSID Case No. ARB/15/22, Procedural Order No. 4, 06 October 2017, para. 31 (“For the avoidance of doubt, the date specified in this paragraph is the date by which the USB must reach the recipients (not the date of dispatch).”).

<sup>242</sup> See e.g., *Peteris Pildegovics and SIA North Star v. Kingdom of Norway*, ICSID Case No. ARB/20/11, Procedural Order No. 1, 12 October 2020, para. 13.6.

<sup>243</sup> *Bay View Group LLC and The Spalena Company LLC v. Republic of Rwanda*, ICSID Case No. ARB/18/21, Procedural Order No. 1, 12 December 2018, para. 13.11 (“If the last day of the relevant period of time granted is an official public holiday or a non-business day in the United States of America, the Republic of Rwanda, or the United Kingdom, the period of time shall expire at the end of the first following business day. For the purpose of these proceedings, Saturdays and Sundays should be considered non-business days. Official holidays and non-business days occurring during the running of the period of time are included in calculating a period of time.”).

## 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.

### I. General Matters

The Rule reiterates the Tribunal's power to fix and amend time limits that are not mandatory or prescribed by the Arbitration Rules. The time limits prescribed by the Arbitration Rules may be extended only by party agreement or by the Tribunal in special circumstances per Rule 11. The Secretary-General has the power to fix time limits at the initial stage of the proceedings, prior to the constitution of the Tribunal.

### II. History of the Rule

Rule 10 incorporates, with some additions, Rule 26(1) of the 2006 Arbitration Rules. It was originally part of a provision on the time limits applicable to the parties. The Rule was ultimately split in view of the many comments the ICSID Secretariat received during the consultation process<sup>244</sup> and supplemented by the last two paragraphs in the latest draft of the Rules.

### III. Interpretative Commentary

The Tribunal or the Secretary General fixes the time limits that are not otherwise prescribed by the ICSID Convention and the Arbitration Rules. The Tribunal may delegate the power to fix time limits to its President according to paragraph 3 of the Rule.

In practice, the parties often propose a procedural timetable to the Tribunal, which is discussed at the first session or prior to it and is either approved or modified by the Tribunal.<sup>245</sup> The second paragraph reflects this common practice and was added to enable consideration of "*holidays and other contingencies*" that may be unique to a particular party or Tribunal member.<sup>246</sup>

The parties and the Tribunal (or the Secretary-General, if applicable) must follow the mandatory time limits set out in Articles 49(2) (Request for Supplementary Decision and Rectification) of the ICSID Convention, 51(2) (Application for Revision) and 52(2) (Application for Annulment) of the ICISD Convention.<sup>247</sup> The rest of the time limits, contained in the Arbitration Rules and applicable to the parties, are subject to change by party agreement.

<sup>244</sup> ICSID Working Paper #2, para. 100.

<sup>245</sup> See ICSID Working Paper #2, para. 102.

<sup>246</sup> ICSID Working Paper #4, para. 37.

<sup>247</sup> See ICSID Working Paper #2, para. 103 (setting out, in a form of a consolidated table, the time limits applicable to the parties prescribed by the ICSID Convention or the Arbitration Rules).

**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.

Contents	
	mn.
I. General Matters.....	1
II. History of the Rule.....	3
III. Interpretative Commentary.....	5
1. Paragraph 1.....	5
2. Paragraph 2.....	7
3. Paragraph 3.....	10
4. Paragraph 4.....	15

**I. General Matters**

- 1 The Rule sets out three categories of time limits that may or may not be amended by the parties and/or the Tribunal or the Secretary-General, where applicable. These categories are: (i) mandatory time limits that are not subject to extension (Articles 49, 51 and 52 of the ICSID Convention) in paragraph 1, (ii) time limits prescribed under the ICSID Convention and the Arbitration Rules (other than the mandatory time limits set out in paragraph 1) that may be extended by party agreement in paragraph 2, and (iii) time limits fixed by the Tribunal or the Secretary-General that may be extended by agreement of the parties or the Tribunal, or the Secretary-General.
- 2 As the parties are prohibited under Rule 11(1) from extending the time limits set out in Articles 49, 51 and 52 of the ICSID Convention, any application or request made after the expiry of these time limits would be disregarded.<sup>248</sup> For all other time limits, if a procedural step is taken or document received after the expiry of the time limit, it can be considered with the consent of the parties or agreement of the Tribunal.

<sup>248</sup> See e.g., *Víctor Pey Casado and President Allende Foundation v. Republic of Chile*, ICSID Case No. ARB/98/2, Decision on the Application for Annulment of the Republic of Chile, 18 December 2012, paras. 345–346.

## II. History of the Rule

Rule 11 incorporates, with some additions, Rule 26 of the 2006 edition.

Paragraph 2 originally excluded the Tribunal and the Secretary-General from any decision concerning the admission of a document received or acknowledging a procedural step taken after the relevant time limit set out in the ICSID Convention, the Arbitration Rules or the party agreement. It was submitted that the Tribunal and the Secretary-General had no authority to change time limits they had not set.<sup>249</sup> Therefore, an objection of one party to a late admission of a document or a procedural step taken after the relevant time limit was deemed dispositive.<sup>250</sup> The later iterations of the Rule, however, reflected a sentiment that “*there should be some Tribunal discretion to extend time limits*”, thus a provision was introduced empowering the Tribunal to accept late submissions and procedural steps in “*special circumstances*”.<sup>251</sup>

## III. Interpretative Commentary

### 1. Paragraph 1

The time limits which cannot be extended by agreement of the parties or by the Tribunal relate to post-award remedies. Article 49 of the ICSID Convention sets out a time limit of 45 days for either party to make a request for the Tribunal to decide any question which it had omitted to decide in the award. Article 51 of the ICSID Convention sets out the time limits for either party to make an application to request revision of the award on the ground that some fact has been discovered of such a nature as to decisively affect the award. This application should be made within 90 days after the discovery of such a fact and in any event within three years after the award was rendered. Finally, Article 52 of the ICSID Convention sets out a time limit of 120 days for either party to request annulment of the award.

Aside from the time limits mentioned above, the parties are free to agree any other time limit applicable to them, including the time limits fixed by the Tribunal.

### 2. Paragraph 2

Save for the mandatory time limits, the parties may extend by agreement all other party time limits prescribed by the ICSID Convention or the Rules.<sup>252</sup> Such time limits are<sup>253</sup>:

<sup>249</sup> ICSID Working Paper #2, para. 108.

<sup>250</sup> *ibid*, para. 109.

<sup>251</sup> ICSID Working Paper #4, para. 39.

<sup>252</sup> For example, the time limits prescribed by the Rules related to the constitution of the Tribunal and the first session may be extended by party agreement. See e.g., ICSID Arbitration Rules (2022), Rules 15 (2), 18(1), 22, 29(3).

<sup>253</sup> See also *infra* Interpretative Commentaries to Rule 14(2), Rule 15(2), Rule 22(1)(a), Rule 22(1)(c), Rule 22(1), Rule 41(2)(e), Rules 41(2)(a), Rule 42(3)(a), Rule 43(2), 44(1)(a), Rule 45(b), Rule 48(2), Rule 49(3), Rule 62(3), Rule 62(4)(b), Rule 63(1), Rule 69(3).

Rule	Event	Time limit
Rule 14(2)	Filing the notice of third-party funding	Upon registration or immediately upon concluding a third-party funding arrangement after registration.
Rule 15(2)	Advising of the agreement on the method of appointing the Tribunal	Within 45 days after the date of registration.
Rule 22(1)(a)	Filing a proposal for disqualification of an arbitrator	Within 21 days after the later of: <ul style="list-style-type: none"> <li>– the constitution of the Tribunal; or</li> <li>– 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.</li> </ul>
Rule 22(1)(c)	Filing a response to a proposal for disqualification	Within 21 days after receipt of the proposal.
Rule 22(1)(e)	Filing the final written submissions on the proposal for disqualification	Within 7 days after the earlier of receipt of the statement or expiry of the time limit referred to in Rule 22(1)(d).
Rules 41(2)(a)	Filing an objection that a claim is manifestly without legal merit	No later than 45 days after the constitution of the Tribunal.
Rules 42(3)(a)	Filing a request for bifurcation (not relating to preliminary objections)	As soon as possible.
Rule 43(2)	Notification of an intent to file a preliminary objection	As soon as possible.
Rule 44(1)(a)	Filing preliminary objections with a request for bifurcation	<ul style="list-style-type: none"> <li>– Within 45 days after filing the memorial on the merits;</li> <li>– within 45 days after filing the written submission containing the ancillary claim, if the objection relates to the ancillary claim; or</li> <li>– as soon as possible after the facts on which the preliminary objection is based become known to the party, if those facts were unknown to that party on the dates referred to in the preceding paragraphs.</li> </ul>

Rule	Event	Time limit
Rule 45(b)	Filing the memorial on preliminary objections without a request for bifurcation	<ul style="list-style-type: none"> <li>– By the date to file the counter-memorial on the merits;</li> <li>– by the date to file the next written submission after an ancillary claim, if the objection relates to the ancillary claim; or</li> <li>– as soon as possible after the facts on which the objection is based become known to the party, if those facts were unknown to that party on the dates referred to in the preceding paragraphs.</li> </ul>
Rule 48(2)	Filing the memorial on ancillary claims	An incidental or additional claim – no later than in the reply, and a counterclaim – no later than in the counter-memorial.
Convention Article 45(2), Rule 49(3)	Default	Grace period not exceeding 60 days.
Rule 62(3)	Publication of awards & decisions on annulment	Within 60 days after dispatch of the award or decision on annulment, if no party objects in writing.
Rule 62(4)(b)	Filing comments on the publication of excerpts of awards & decisions on annulment	Within 60 days after receipt of the excerpts of the award or decision on annulment proposed by the Secretary-General.
Rule 63(1)	Publication of Orders & Decisions or submission of objections	Publication – within 60 days after issuance of the order or decision (with redactions agreed by the parties), or Reference to the Tribunal – if a party submits its disagreement with the proposed redactions.
Convention Article 50, Rule 69(3)	Filing an application for interpretation	Any time after dispatch of the award.

The parties may also deviate from the default rule and agree that a procedural step taken or document received after the expiry of such time limits would not be disregarded and provide the Tribunal with an authority to extend the time limits set by the parties. Notably, absent such agreed deviation, the current edition of the Rules, in stark contrast to the earlier version, would preclude the Tribunal from amending the time limits set by the parties absent special circumstances.

Late submission or procedural steps must be disregarded absent a party agree- 8  
ment to the contrary and subject to Rule 49 addressing a party in default.<sup>254</sup> The Tribunal may, however, accept late submissions or procedural steps in “*special circumstances*”. The ICSID Secretariat intended to preserve flexibility in the interpretation of “special circumstances” and rejected a proposal to set out an exhaustive list of criteria in the Rules. It did, however, provide an example of a “special circumstance” in the event “*a technical problem in the dispatch of an electronic*

<sup>254</sup> ICSID Arbitration Rules (2022), Rule 49.

document” that prevented a party from making a timely submission or taking a procedural step.<sup>255</sup> Such technical problem may deal with an email server malfunction on the party’s or the Secretariat’s end, a temporary blackout or the unavailability of electronic means of communication.

- 9 Late filings arise frequently in arbitration. Typically, and under the guidance of the previous editions of the Rules, Tribunals were flexible in admitting electronic submissions received by the Secretariat shortly after the relevant deadline.<sup>256</sup> This flexibility does not apply to mandatory time limits set out in Articles 49, 51 and 52 of the ICSID Convention. The early drafts of the Rule, indeed, allowed the Tribunal to accept late submissions, unless the other party objected.<sup>257</sup> The final version of the Rules eliminated this provision, suggesting that (unless the parties explicitly agree otherwise), the Tribunal must reject late submissions, absent “*special circumstances*”. Consequently, under the default Rule, the parties are well advised to accompany their late submissions with a justification of special circumstances that may have prevented their timely filing even if the delay is insignificant.

### 3. Paragraph 3

- 10 The Tribunal has authority to extend the time limits it set out (but not the time limits set by the parties) and typically exercises such authority upon request. The request must be made prior to the expiry of the relevant time limit and must be substantiated.<sup>258</sup> If the Tribunal grants a request for an extension, it also grants the other party a corresponding extension to ensure a fair proceeding.
- 11 Tribunals sometimes specify that a request for an extension must be made prior to the expiry of the relevant time limit “*or, where this is impossible, immediately after the event preventing a Party from complying with the deadline*”.<sup>259</sup> The expiration of the time limit results in preclusion. The Tribunal may decide to allow the late filing if “*special circumstances*” exist and after giving the other party an opportunity to file its observations. The Tribunal is authorised to grant an extension even to the time limit set by the parties, granted “*special circumstances*” exist. Accordingly, if a party fails to specify “*special circumstances*” or the Tribunal does not accept the justification as “*special circumstances*”, the request will be denied.<sup>260</sup>
- 12 The Rules do not identify “*special circumstances*” that justify late filings, and the decisions are made on a case-by-case basis, making sure that equal treatment of the parties is preserved. Thus, if the Tribunal decides to accept a late submission, witness statement or objection, it should grant the other party an opportunity to respond, absent “*special circumstances*”. As stated earlier, the ICSID Secretariat provided some limited guidance on what “*special circumstances*” are, suggesting that such circum-

<sup>255</sup> ICSID Working Paper #2, para. 110.

<sup>256</sup> See Frutos-Peterson and Umerov, ‘Chapter 17, Special Provisions Relating to Proceedings, Regulation 29 – Time Limits’, in Fourret, Gerbay, and Alvarez (eds), *The ICSID Convention, Regulations and Rules: A Practical Commentary* (2019), 955 (956), 17.01 (17.05).

<sup>257</sup> See ICSID Working Paper #2, Rule 10(4).

<sup>258</sup> ICSID Working Paper #1, para. 31 (“*After consulting with the Parties, [...] the Tribunal extended the deadline for the Parties to submit new documents; fixed a procedural calendar for the filing of the Parties’ subsequent submissions [...]*”).

<sup>259</sup> See e.g., *EuroGas Inc. and Belmont Resources Inc. v. Slovak Republic*, ICSID Case No. ARB/14/14, Procedural Order No. 1, 01 April 2015, para. 6.3; *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador (II)*, ICSID Case No. ARB/06/11, Procedural Order No. 1 of the *ad hoc* committee, 10 April 2013, para. 7.3.

<sup>260</sup> See e.g., *S.A.R.L. Benvenuti & Bonfant v. People’s Republic of the Congo*, ICSID Case No. ARB/77/2, Award, 8 August 1980, para. 1.12.