

ICSID Rules and Regulations 2022

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relating to translations. The comments received by the Working Group advocated for either an expanded choice of languages or a restriction on the use of more than one language.²⁴⁰ In the end, party autonomy prevailed, albeit the number of procedural languages was limited to two.

III. Interpretative commentary

1. Paragraph 1

English, French and Spanish are the **official languages** of the Centre and are the 5 working languages of the ICSID Secretariat.²⁴¹ The Arbitration Rules and the Administrative and Financial Regulations are published in these three equally authentic official languages.²⁴² In the present Rules, ICSID resolved language inconsistencies identified in the different languages of the previous Rules and switched to gender-neutral language.²⁴³ In the event of a **conflict** between the three language versions of the Arbitration Rules and the Administrative and Financial Regulations, Tribunals would be guided by the **customary rules of interpretation**.²⁴⁴

These three official languages also serve as the default procedural languages for ICSID 6 proceedings, but the **parties may freely choose any procedural language(s)** (limited in number to two). The use of a language other than one of the three official languages of the Centre requires consultation with the Tribunal and the Secretary-General to ensure that the Tribunal can work and the Secretariat can assist in that language.²⁴⁵ The submission of a Request for Arbitration in one of the three official languages does not prejudice the selection of a different procedural language at a later stage of the proceedings.

Any **request** to the Centre, including a Request for Arbitration, absent the parties' 7 agreement on a procedural language(s), must be filed in one of the official languages of the Centre and be accompanied by supporting documentation originally in or translated into one of the official languages.²⁴⁶

If the **parties do not agree** on one or more of the procedural languages, each party 8 may select one of the official languages of the Centre and the proceedings may as a result have two procedural languages. The choice of two procedural languages occurs in practice, with English and Spanish being most used, followed by English and French.²⁴⁷ Whenever more than one procedural language is selected, English most commonly is selected as one of such procedural languages and ultimately the "**lead language**," i.e., the language used for the conduct of the proceedings. If all arbitrators have a working proficiency in the procedural languages selected by the parties, the parties typically

²⁴⁰ ICSID Working Paper #2, para. 84.

²⁴¹ → Regulation 32 Administrative and Financial Regulations mn. 1 et seq.

²⁴² → Regulation 32 mn. 1–2, 6.

²⁴³ → Regulation 32 mn. 3–4.

²⁴⁴ Article 33(4) Vienna Convention on the Law of Treaties (1969), reflective of such customary rules, provides that all authentic version of the treaty shall have the same meaning and in the presence of a divergence, the meaning that best reconciles the texts, having regard to the object and purpose of the treaty, shall prevail.

²⁴⁵ ICSID Working Paper #1, para. 157.

²⁴⁶ → Rule 1 Institution Rules mn. 10, → Rule 2 Institution Rules mn. 20.

²⁴⁷ For the examples of bilingual proceedings, see *Total S.A. v. Argentine Republic*, ICSID Case No. ARB/04/1, Decision on Objections to Jurisdiction, 25 August 2006; *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Decision on Jurisdiction, 16 June 2006; *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004. Additionally, most of the currently pending and concluded arbitrations against Spain with regard to its reduction of support for renewable energy generation are conducted in both Spanish and English.

agree to file documents in the procedural language of their choice to save costs. If the Tribunal members are proficient in only one of the procedural languages, such language is often selected as a lead language, with documents filed in that language only – again – to save costs. The parties also often agree to exchange *inter partes* correspondence in the lead language only.

2. Paragraph 2

- 9 In proceedings with **one procedural language**, all documents (or the relevant excerpts thereof), hearings and testimony should be filed and done in the procedural language or be translated into the procedural language if the original language is different.

3. Paragraph 3

- 10 In an arbitration with **two procedural languages**, the proceeding is conducted in two procedural languages.
- 11 In such cases each document may be submitted, and hearings may be conducted, in either of the two languages.²⁴⁸ The Tribunal may order a party to file requests, written submissions, observations and communications in both procedural languages, if necessary, and conduct a hearing with interpretation into both procedural languages. **Both languages would be necessary** when a Tribunal member is “not proficient in a procedural language, or when the other party (or its counsel) is at a linguistic disadvantage.”²⁴⁹ The parties often agree or the Tribunal orders that a submission in one procedural language would be sufficient for the purposes of meeting the applicable time limits, with a translation into the other language(s) to follow shortly thereafter. In the absence of such determination, a submission of requests, pleadings, observations and communications in all procedural languages is necessary before the expiration of the relevant time limit in order for the submission to be considered timely.
- 12 In the event the hearing is conducted in both procedural languages, “full transcripts will be made in both [languages] (including interpretations into those languages).”²⁵⁰ In practice, the parties usually have access to the recording of the original language spoken at the hearing regardless of the language of the hearing. The ICSID Secretariat maintains a **recording** of the “floor,” which records the language spoken in the hearing room, including any language other than the official language of the proceedings that could be spoken by the experts and witnesses. In a virtual hearing setting, however, the “floor” recording is not available. Instead, the parties should ensure to arrange for a recording of the original language spoken to later address any potential translation errors.
- 13 Documents or testimonies in a language other than the procedural languages must be accompanied by a **translation** or interpreted into one of the procedural languages, unless the Tribunal orders a translation or interpretation into both procedural languages.
- 14 **Communication from the Tribunal and the Secretary-General** may be done in either procedural language. The ICSID Secretariat claims to have multilingual capacity and to be able to accommodate multiple procedural languages, including those that are not the official languages of the Centre.²⁵¹

²⁴⁸ See, e.g., *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 1, 30 November 2017, para. 12.

²⁴⁹ ICSID Working Paper #1, para. 164.

²⁵⁰ *ibid.*, para. 167.

²⁵¹ ICSID Working Paper #2, para. 97.

Orders and decisions of the Tribunal, as well as the **award** itself, must be issued in both languages, with both versions being equally authentic.²⁵² The parties, however, may agree otherwise to save costs associated with translation, in which case the language of the proceeding may differ from the language of the decisions, orders and the Tribunal's award.

4. Paragraph 4

In practice, under the previous edition of the Rules, with respect to **lengthy documents**, especially legal authorities, which are relevant only in part, the parties usually agreed and the Tribunal ordered that it was sufficient to translate only the relevant parts.²⁵³ Paragraph 4 reflects this practice, adding that the Tribunal may order the provision of lengthier or even complete translation.

The **relevance** of a particular portion of a document is usually originally determined by the counsel proffering the document, unless the parties agree on a procedure for determination of "relevance." As a practical matter, it is advisable to provide not only the translation of the exact sentence that is relied upon by the party in its submission, but also the context. As such, the parties often provide a translation of a paragraph or a page where the relevant portion of the document appears.

As regards the **costs of translations**, subject to the ultimate cost allocation decision, the parties usually bear the translation costs of their own submissions and share the cost of translation of Tribunal orders, decisions and the final award.

In the event the translation of a document is disputed, the Tribunal may order the provision of a **certified translation**. The ICSID Working Group has rejected a request to issue guidelines for the certification of translations. Instead, the Secretariat relies on Tribunals to provide such guidance to the parties if the translation is disputed. In particular, the Tribunal may propose a selection of qualified translators to issue certification for the disputed translation.²⁵⁴

With the increasing prevalence of computer-assisted and **AI-powered translation tools**, procedural orders may properly authorize the use of such technologies for the translation of pleadings and supporting documents as a means of promoting efficiency and cost savings. Parties should, however, be required to disclose when AI translation tools have been utilized, both to promote transparency and enable the other party or the Tribunal to assess the reliability of translations provided. Application of soft-law guidelines on the use of computer-assisted and AI-powered tools as part of a wider use of technology may be referenced in procedural order to promote integrity of the proceedings.²⁵⁵

For documents that are particularly important to the resolution of the dispute, or where the accuracy of a computer-assisted translation is challenged, parties should provide **verified or certified human translations**. This approach maintains the balance between procedural efficiency and the need for accuracy, ensuring that AI technologies supplement but do not replace reliable translations for crucial evidence or contested materials.

²⁵² See, e.g., *FEDAX N.V. v. The Republic of Venezuela*, ICSID Case No. ARB/96/3, Award, 9 March 1998, para. 10 (the proceedings were conducted in Spanish, whereas the orders, decisions and award were issued in English, to be translated into Spanish).

²⁵³ Regulation 30(3) ICSID Administrative and Financial Regulations (2006); ICSID Draft Procedural Order No. 1, para. 11.5.

²⁵⁴ ICSID Working Paper #2, para. 89.

²⁵⁵ → Rule 3 mn. 20, 22–23.

Rule 8 Correction of Errors

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

I. General matters

- 1 The Rule provides the possibility to correct accidental party errors in submissions. **No time limit** is imposed on the parties for the correction, aside from stating that the corrections should be done promptly upon discovery of the error and prior to the rendering of the final award.²⁵⁶ Only disputed corrections should be addressed to the Tribunal.

II. History of the Rule

- 2 Rule 8 of the present Rules incorporates and adds to Rule 25 of the 2006 edition.
- 3 The first version of the Rule also provided that the Secretary of the Tribunal, upon noticing a deficiency in a filing, could bring it to the attention of the party and invite the party to correct the deficiency.²⁵⁷ The second version additionally provided for a right of the Secretary-General to correct a deficiency rather than to refer it back to a party, which could have been more practical.²⁵⁸ In the final version, the paragraph containing such provision was deleted.
- 4 The earlier drafts of the Rules provided that errors could be corrected by the Secretariat with the consent of the other party or by leave of the Tribunal.²⁵⁹ The later and the final versions reflect a concern that the Secretary-General must be limited in its ability to correct deficiencies.²⁶⁰ In practice, the Secretary-General typically requests the relevant party to rectify any accidental errors.²⁶¹

III. Interpretative commentary

- 5 “**Accidental errors**” (*erreurs matérielles*) are clerical errors, mislabeling of exhibits, typographical errors, obvious miscalculations, misnomers, and “any other inadvertent error” that ‘could include a translation error.’²⁶² Such errors may be corrected by the parties promptly upon discovery and prior to the rendering of the award. In practice, the party that wishes to make a correction seeks to introduce an *errata* sheet containing the

²⁵⁶ One Member State proposed to impose a time limit on the correction of an accidental error. The proposal was however rejected, as in practice the errors are corrected promptly and do not cause difficulties. ICSID Working Paper #2, para. 91.

²⁵⁷ ICSID Working Paper #1, para. 70.

²⁵⁸ ICSID Working Paper #2, para. 92.

²⁵⁹ *ibid.*, para. 93.

²⁶⁰ ICSID Working Paper #3, para. 40.

²⁶¹ *ibid.*

²⁶² ICSID Working Paper #1, para. 169; ICSID Working Paper #4, para. 33; ICSID Arbitration Rules (1968), Rule 24, Note, p. 95.

corrections²⁶³ or a corrected submission.²⁶⁴ Moreover, witnesses and experts are also allowed to make corrections to accidental errors at the hearing prior to their testimony.²⁶⁵ Tribunals almost always allow such corrections,²⁶⁶ as long as the proposed corrections stay within the scope of an “accidental” error.²⁶⁷

Rule 9 Calculation of Time Limits

(1) References to time shall be determined based on the time at the seat of the Centre on the relevant date.

(2) Any time limit expressed as a period of time shall be calculated from the day after the date on which:

- (a) the Tribunal, or the Secretary-General if applicable, announces the period; or
- (b) the procedural step starting the period is taken.

(3) A time limit shall be satisfied if a procedural step is taken or a document is received by the Secretary-General on the relevant date, or on the subsequent business day if the date falls on a Saturday or Sunday.

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I. General matters

The Rule makes the seat of the Centre in Washington, D.C. the default time zone for the purposes of calculating time limits. All references to time and date by default refer to the time and date in Washington, D.C.

II. History of the Rule

Rule 9 is a new addition to the Rules that originates in Administrative and Financial Regulation 29 and Rule 26 of the 2006 edition of the Arbitration Rules. As ICSID noted

²⁶³ See, e.g., *Vannessa Ventures Ltd v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/04/6, Errata Sheet to Claimant’s Rejoinder on Jurisdiction, 27 April 2007.

²⁶⁴ See, e.g., *OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v. Kingdom of Spain*, ICSID Case No. ARB/15/36, Award, 6 September 2019, para. 52.

²⁶⁵ See, e.g., *David R. Aven, Samuel D. Aven, Carolyn J. Park, Eric A. Park, Jeffrey S. Shiolen, Giacomo A. Buscemi, David A. Janney and Roger Raguso v. The Republic of Costa Rica*, ICSID Case No. UNCT/15/3, Transcripts of Hearing- Day 7, 7 February 2017, 2240:6–11.

²⁶⁶ ICSID Working Paper #1, para. 169.

²⁶⁷ In the *Abaclat* arbitration, for example, the Claimants attempted to add or withdraw certain Claimants, as well as to correct certain Claimants’ related information, under Rule 25. The Respondent objected. The Tribunal ruled that the changes and corrections to the contact information of some Claimants and/or to other supporting information were admissible under Rule 25. *Abaclat and others (formerly Giovanna A. Beccara and others) v. Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011, para. 677.

in its First Year of Practice Report, for cases pending under the 2006 Arbitration Rules there is now no default calculation of time limits provision, unless the relevant procedural order expressly addresses the issue.²⁶⁸ The original version of the present Rule further directed the parties to account for the holidays observed by 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.²⁶⁹

III. Interpretative commentary

1. Paragraph 1

- 3 **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.”²⁷⁰ 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.”²⁷¹ In practice, **expiration** of the relevant time is marked at midnight Eastern Time.
- 4 It is not uncommon for **parties to agree**, with the Tribunal’s endorsement, to calculate time limits based on a time zone other than that of the Centre – particularly where both parties and the Tribunal are located in the same or similar time zone that differs from Washington, D.C. While this practice may enhance convenience and reflect the practical realities of the participants’ locations, it can give rise to **complications** under paragraph 3 of Rule 9, which provides that documents are considered submitted on time only when “received” by the Secretary-General.
- 5 Where the **default time zone is altered by party agreement**, parties are advised to specify in the procedural order that the time of submission shall correspond to the time the document is sent – rather than when it is received by the Centre – to avoid inadvertent late filings resulting from time zone discrepancies.²⁷² Explicit consensus on this point can help ensure clarity and procedural certainty for all participants.

2. Paragraph 2

- 6 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**.
- 7 During public consultations, the Argentine Republic noted that “[n]o event should trigger a time limit if it is unknown to the parties.”²⁷³ It is therefore stated that the

²⁶⁸ ICSID Secretariat, ‘The First Year of Practice Under the 2022 ICSID Rules’ (August 2023), 6.

²⁶⁹ ICSID Working Paper #3, para. 42.

²⁷⁰ ICSID Working Paper #1, Rule 7(2).

²⁷¹ See ICSID Draft Procedural Order No. 1, para. 13.6, available at <https://icsid.worldbank.org>; *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.

²⁷² See, e.g., *Goldgroup Resources, Inc. v. United Mexican States*, ICSID Case No. ARB/23/4, Procedural Order No. 1, para. 14.7 (“The official date of receipt of a pleading or written communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.”).

²⁷³ ICSID Compendium of Comments on Rule Amendment, 15 March 2019, p. 92 (Comments from the Argentine Republic of 28 December 2018).

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.²⁷⁴

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.²⁷⁵

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 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.

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.²⁷⁶ 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.²⁷⁷ 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.²⁷⁸

By default, under Rule 9(3), an **electronically filed document** satisfies the relevant time limit only if it is received by the Secretary-General within the prescribed period. The time of receipt by the Centre, rather than the time of sending, is determinative unless the parties agree otherwise and confirm in a procedural order. Parties should be mindful of possible delays in electronic transmission and allow sufficient time to ensure receipt by the Centre before the applicable cut-off.

Procedural orders often 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.²⁷⁹ The parties therefore must test the technical capabilities of

²⁷⁴ Article 49 ICSID Convention (1965); Regulation 29(1) Administrative and Financial Regulations (2006).

²⁷⁵ 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.”).

²⁷⁶ See Regulation 29(2) ICSID Administrative and Financial Regulations (2006).

²⁷⁷ 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.

²⁷⁸ 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, 6 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).”).

²⁷⁹ 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.

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.

- 13 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.²⁸⁰ 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.

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

- 1 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. As noted above, the deletion of the time-calculation provision from the Administrative and Financial Regulations and its incorporation into the current edition of the Arbitration Rules (Rule 9) creates a lacuna for proceedings that continue under the 2006 Arbitration Rules: in such legacy cases, there is no longer a default rule on the calculation of time limits, unless the issue is addressed in the relevant procedural order.²⁸¹

²⁸⁰ *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.").

²⁸¹ → Rule 9 mn. 2.