

International Centre for Settlement of Investment Disputes (ICSID)

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A. Description

- 1 The International Centre for Settlement of Investment Disputes (ICSID) is an intergovernmental institution established by treaty. It is closely aligned with the →*International Bank for Reconstruction and Development (IBRD)*. It is designed to promote the settlement of disputes between States and private foreign investors. Its aim is to contribute to the promotion of economic development. ICSID is not an international court or tribunal but merely provides an institutional framework that facilitates conciliation and arbitration. The actual settlement of disputes takes place mainly through arbitral tribunals that are constituted on an *ad hoc* basis for each dispute.

B. Historical Background and Establishment

- 2 ICSID was created through the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the ICSID Convention) of 1965. It was drafted between 1961 and 1965 in the framework of the →*International Bank for Reconstruction and Development (IBRD)*. The Convention's text was adopted by the IBRD's Executive Directors on 18 March 1965. It entered into force on 14 October 1966. It created the International Centre for Settlement of Investment Disputes (ICSID). This is why the Convention is commonly referred to as the ICSID Convention. For the text of the Convention see: 575 UNTS 159; 4 ILM 524 (1965).
- 3 The purpose of the ICSID Convention, as expressed in its Preamble, is to stimulate economic development through the promotion of private international investment. The recognition that private foreign investment is an important element in development has led many countries to strive to create conditions that attract foreign investors. An important part of a favourable legal framework for foreign investment is the availability of appropriate mechanisms for the settlement of disputes.
- 4 In the absence of international mechanisms, dispute settlement between a State and a foreign investor takes place in the host State's domestic courts. Foreign investors frequently do not perceive the courts of the host State as sufficiently impartial to settle investment disputes. In addition, domestic courts are bound to apply domestic law even if that law should fail to protect the investor's rights under international law. Domestic courts of States other than the host State are usually not available since they will either lack territorial jurisdiction over investment operations taking place in another country or be prevented from exercising jurisdiction by the host State's sovereign immunity. A further factor militating against the use of domestic courts is the often complex nature of →*investment disputes* necessitating specialized knowledge.
- 5 The traditional international method to pursue the rights of foreign investors is →*diplomatic protection* by the investor's country of nationality against the host State of the investment. Diplomatic protection carries several disadvantages. Before diplomatic protection may be given, the investor must have exhausted all local remedies in the host country (→*Local*

Remedies, Exhaustion of). Moreover, diplomatic protection is discretionary and the investor has no guarantee that it will be granted. Even if granted, the investor loses control over its claim. Diplomatic protection is also likely to cause irritation between the States concerned and is unattractive, especially for developing countries.

- 6 International →*arbitration* provides an attractive alternative to the traditional methods for the settlement of investment disputes. It avoids the disadvantages of litigation in domestic courts and of diplomatic protection. It offers the parties the opportunity to select arbitrators who enjoy their confidence and who have the necessary expertise in the field.
- 7 Investment arbitration need not take place in the framework of ICSID. The parties to →*investment disputes* may agree on *ad hoc* arbitration. But ICSID arbitration carries certain advantages: it offers standard clauses and rules of procedure, provides institutional support for the conduct of proceedings, assures the non-frustration of proceedings and facilitates the award's recognition and enforcement.
- 8 ICSID arbitration offers advantages to the investor as well as to the host State. The advantage for the investor is obvious: it gains direct access to an effective international forum should a dispute arise. The advantage for the host State is twofold: by offering arbitration it improves its investment climate and is likely to attract more international investments. In addition, by consenting to ICSID arbitration the host State shields itself against diplomatic protection (Art. 27) and protects itself against other forms of foreign or international litigation (Art. 26).
- 9 ICSID had a slow start. During its early years it had very few cases. Over the years ICSID has become very successful and now has to handle a large caseload. A major contributing factor is the possibility to base jurisdiction on consent clauses in treaties.

C. Membership and Structure

- 10 By mid 2009 144 countries were parties to the ICSID Convention. An additional 12 countries, including Canada and the Russian Federation, have signed but not yet ratified the Convention. Nearly all major industrialized countries are parties. Most African countries and the majority of Arab countries are parties. Most Asian countries, including China, are parties. In 2007 Bolivia declared its denunciation of the Convention. In 2009 Ecuador denounced the Convention. For a full list of participating States see: <http://icsid.worldbank.org/ICSID/Index.jsp>
- 11 ICSID consists of an Administrative Council and a Secretariat. It maintains a Panel of Conciliators and a Panel of Arbitrators. The seat of ICSID is the principal office of the →*International Bank for Reconstruction and Development* (IBRD). ICSID has full international legal personality (Art. 18).
- 12 The Administrative Council is composed of one representative from each State party to the ICSID Convention. In practice, it has the same composition as the World Bank's Board of Governors. The functions of the Administrative Council include:
 - the adoption of administrative and financial rules, of rules for the institution of proceedings and of rules of procedure for conciliation and arbitration proceedings (Art. 10(1));
 - approval of arrangements with the Bank for the use of the Bank's administrative facilities and services (Art. 10(1));
 - adoption of the budget (Art. 10(1));
 - moving the seat of the Centre (Art. 2);
 - election of the Secretary-General and Deputy Secretary-General (Art. 10(1));

- adoption of rules for the apportionment of the Centre's expenditures (Art. 17);
 - decision on a proposal to amend the Convention (Art. 66(1));
 - invitation to non-Members of the World Bank to sign the Convention (Art. 67);
 - appointment of committees (Art. 6(2));
 - establishment of a simplified voting procedure (Art. 7(4)); and
 - other powers and functions necessary for the Convention's implementation (Art. 6(3)).
- 13 The basic rule on voting in the Administrative Council is that decisions will be made by a simple majority of the votes cast unless the Convention provides otherwise (Art. 7(2)). Several provisions of the Convention require that certain matters are to be decided by a two-thirds majority of the members of the Administrative Council.
- 14 The President of the World Bank is *ex officio* Chairman of ICSID's Administrative Council. The functions of the Chairman include:
- the nomination of the Secretary-General and Deputy Secretary-General of ICSID for election by the Administrative Council (Art. 10(1));
 - the designation of up to ten persons each to the Panels of Conciliators and Arbitrators (Art. 13(2));
 - the appointment of conciliator(s) or arbitrator(s) in the case of failure by the parties to do so (Arts. 30, 38);
 - the appointment of members of *ad hoc* committees (Art. 52(3));
 - the appointment of a conciliator or arbitrator in case of a resignation of a party-appointed conciliator or arbitrator without the consent of the commission or tribunal (Art. 56(3));
 - the decision on a proposal to disqualify a conciliator or arbitrator under certain defined circumstances (Art. 58).
- 15 The ICSID Secretariat consists of a Secretary-General and a Deputy Secretary-General as well as legal and non-legal staff. The Secretary-General and Deputy Secretary-General are elected by the Administrative Council. Until 2008 the General Counsel of the World Bank was elected as Secretary-General of ICSID but the two positions have since been separated.
- 16 The Secretary-General of ICSID keeps a list of Contracting States that contains all information relevant to their participation in the Convention. In addition, the Secretary-General maintains lists of the Panels of Arbitrators and Conciliators, a register for requests for arbitration containing all significant procedural developments and archives containing the original texts of all instruments and documents in connection with any proceeding.
- 17 The functions of the Secretariat include giving administrative support in arbitral proceedings. This support includes provision of a place for meetings and translations and interpretations. The Secretary-General also appoints an experienced member of ICSID's legal staff as Secretary for each tribunal. The Secretary of the tribunal makes the necessary arrangements for hearings, keeps minutes of hearings and prepares drafts of procedural orders. (S)he also serves as the channel of communication between the parties and the arbitrators.
- 18 The Panels of Conciliators and Arbitrators consist of persons designated by member States. In addition, the Chairman of the Administrative Council may designate up to ten persons. Arbitral tribunals are constituted separately for each case, primarily by the parties to the dispute. The parties to the dispute are not restricted to persons listed on the Panels when appointing arbitrators or conciliators. But the Chairman of the Administrative Council when making appointments to tribunals or to *ad hoc* committees must appoint members of the Panel of Arbitrators Arts. 40(1), 52(3).

D. Finances

- 19 ICSID charges the parties certain administrative fees in accordance with its regulations and rules. The balance of ICSID's expenditures is borne by the World Bank.
- 20 The cost of individual conciliation and arbitration proceedings are borne by the parties to these proceedings. The Secretary-General determines the fees of arbitrators. The Secretary-General receives advance payments from the parties and makes the payments necessary for the conduct of proceedings. In a particular proceeding, the Secretary of the tribunal administers this system on behalf of the Secretary-General.
- 21 The costs of a particular proceeding consist of three elements: the charges for the use of the facilities and expenses of ICSID, the fees and expenses of the arbitrators and the expenses incurred by the parties in connection with the proceedings. Of these three categories, the third, consisting mainly of the costs for legal representation, is typically by far the largest.
- 22 The ICSID Convention leaves it to the tribunal's discretion by whom these costs are to be paid, unless the parties agree otherwise (Art. 61(2)). In many cases the tribunals found that the fees and expenses of the Centre and of the arbitrators were to be shared equally and that each party had to bear its own expenses. More recently, tribunals have shown a growing inclination to adopt the principle that costs follow the event.

E. Activities and Jurisdiction

- 23 The settlement of →*investment disputes* is not carried out by ICSID itself but by conciliation commissions or arbitral tribunals which are constituted on an *ad hoc* basis for each individual dispute. The method most often chosen is arbitration by a tribunal of three independent arbitrators. →*Conciliation* is also foreseen in the ICSID Convention but rarely used. Conciliation is a flexible and informal method that is designed to assist the parties in reaching an agreed settlement. Therefore, this method depends on the willingness of both parties to cooperate. →*Arbitration* is a more formal and adversarial process leading to a binding award which is subject to enforcement.
- 24 The jurisdiction of ICSID over a dispute requires that there is a legal dispute arising directly out of an investment between a State Party to the ICSID Convention and a national of another State Party to the ICSID Convention. In addition, the parties to the dispute (i.e. the host State and the investor) must have consented in writing to submit the dispute to ICSID (Art. 25).
- 25 Therefore, ICSID dispute settlement is restricted to →*investment disputes*. The concept of "investment" is not defined in the Convention. But many bilateral investment treaties (BITs) and multilateral treaties contain definitions of "investment". These definitions are typically very broad and are not necessarily identical with the concept under the ICSID Convention. In the practice of tribunals the concept of "investment" under the ICSID Convention has been given a wide meaning. A variety of activities in a large number of economic fields have been accepted as investments. These include pure financial instruments and civil engineering contracts. Decisive criteria applied by tribunals are a substantial commitment, a certain duration, the presence of an economic risk, as well as relevance for the host State's development.
- 26 Proceedings under the Convention are always mixed. One party (the host State) must be a Contracting State to the Convention. The other party (the investor) must be a national of another Contracting State to the Convention. Either party may initiate the proceedings. States may also authorize constituent subdivisions or agencies to become parties in ICSID proceedings on their behalf.

- 27 The investor may be an individual (natural person) or a company or similar entity (juridical person). Both types of persons must meet the nationality requirements under the Convention. Both the host State and the investor's State of nationality must be Contracting Parties, that is, they must have ratified the ICSID Convention by the time proceedings are instituted. In addition there is a negative nationality requirement: the investor must not be a national of the host State.
- 28 Participation in the ICSID Convention does not, by itself, constitute a submission to the Centre's jurisdiction. For jurisdiction to exist, the Convention requires separate consent in writing by the parties.
- 29 Consent to the Centre's jurisdiction may be given in several ways. Consent may be contained in a direct agreement between the investor and the host State such as a concession contract. Alternatively, the basis for consent can be a standing offer by the host State which may be accepted by the investor in appropriate form. Such a standing offer may be contained in the host State's legislation. A standing offer may also be contained in a treaty to which the host State and the investor's State of nationality are parties. Most bilateral investment treaties (BITs) contain clauses offering access to ICSID to the nationals of one of the parties to the treaty against the other party to the treaty. The same method is employed by a number of regional multilateral treaties such as the North American Free Trade Agreement (NAFTA) and the Energy Charter Treaty (ECT) which also contain such offers. Most of the recent cases that have come before ICSID were based on consent through a general offer by the host State in a treaty which was later accepted by the investor, often simply through instituting proceedings.
- 30 Consent expressed through treaty clauses is not uniform. Some expressions of consent are wide and refer to all disputes arising from investments. Other clauses are narrower and offer consent only in respect of violations of the rights guaranteed by the treaty. Yet other offers of consent are narrowly defined and may be restricted to the amount of compensation in the case of an expropriation.
- 31 Some consent clauses contained in treaties are qualified by procedural requirements. A common requirement is that an amicable settlement must be attempted for a certain period of time. A typical waiting period under BITs is six months.
- 32 The ICSID Convention does not require the exhaustion of local remedies unless a State makes its consent subject to this condition (Art. 26). But some BITs provide that before bringing a dispute to ICSID the investor must seek a settlement through the host State's domestic courts for a certain period of time, most often 18 months.
- 33 In a number of cases the respondents argued that an expression of consent to arbitration should be construed restrictively. Most tribunals have rejected this argument. The vast majority of tribunals have favoured a balanced approach that accepts neither a restrictive nor an expansive approach to the interpretation of consent clauses.
- 34 Consent by the parties to arbitration under the Convention is binding. Once given by both parties, it may not be withdrawn unilaterally. A party may not determine unilaterally whether it has given its consent to ICSID's jurisdiction: the decision on whether jurisdiction exists is with the tribunal.
- 35 Once consent to ICSID arbitration has been given, a party may no longer resort to another remedy (Art. 26). Unless the parties have agreed otherwise, domestic courts are no longer available for disputes that have been submitted to ICSID arbitration.

F. Additional Facility and other Activities of ICSID

- 36 In 1978 the Administrative Council of ICSID created the Additional Facility which is available if only the host State or the investor's State of nationality but not both is a party to the Convention. The Additional Facility Rules also provide for arbitration and conciliation. Additional Facility proceedings are also administered by ICSID.
- 37 The ICSID Convention is not applicable to Additional Facility proceedings. This means, in particular, that unlike ICSID awards, awards rendered under the Additional Facility are subject to review by domestic courts. It also means that the provisions on enforcement in the ICSID Convention are not applicable to Additional Facility awards. Rather, the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (330 UNTS 38, 7 ILM 1047) applies.
- 38 The Additional Facility plays an important role in investment arbitration under the NAFTA since neither Mexico nor Canada is a party to the ICSID Convention.
- 39 Parties to existing or potential disputes that fall neither under the ICSID Convention nor the Additional Facility may designate the Secretary-General as appointing authority to facilitate the constitution of arbitral tribunals.
- 40 ICSID has occasionally provided administrative services for proceedings taking place under the UNCITRAL Rules ranging from limited assistance with the organization of hearings and fund-holding to full secretariat services in the administration of cases.

G. Special Legal Problems

1. Procedure

- 41 ICSID provides institutional support in the selection of arbitrators and in the conduct of arbitration proceedings. The Secretary-General of ICSID exercises a screening power over requests for arbitration and will refuse to register a request that is manifestly outside ICSID's jurisdiction (Art. 36(3)).
- 42 Arbitration proceedings are to be conducted in accordance with the Convention and, except as the parties otherwise agree, in accordance with the Arbitration Rules in effect on the date on which the parties consented to arbitration. The Arbitration Rules are adopted by the Centre's Administrative Council. The Arbitration Rules are supplemented by Institution Rules as well as Administrative and Financial Regulations.
- 43 Any question of procedure not covered in this manner is to be decided by the Tribunal (Art. 44). Therefore, ICSID proceedings are self-contained and denationalized, i.e. they are independent of any national law including the law of the tribunal's seat. Domestic courts do not have the power to intervene.
- 44 ICSID proceedings are initiated by a request for arbitration directed to the Secretary-General of ICSID. The request may be submitted by either the investor or the host State. In practice, the investor is nearly always the claimant. The request must be drafted in one of ICSID's official languages (English, French and Spanish). A non-refundable lodging fee of US\$25,000.- is due with the request.
- 45 Tribunals are nearly always composed of three arbitrators. Tribunals consisting of a sole arbitrator are rare. Under the standard procedure for the appointment of arbitrators each party appoints one arbitrator and the third, who is the tribunal's president, is appointed by agreement of the parties (Art. 37(2)(b)). A different mode of appointment may be agreed by the parties. Sometimes the two party-appointed arbitrators are charged with the appointment

of the tribunal's president. If the tribunal is not constituted after 90 days, either party may request the Chairman of the Administrative Council to make any outstanding appointments (Art. 38).

46 Proceedings involve a written phase followed by an oral one. The written phase is opened by a memorial of the claimant followed by a counter-memorial of the respondent. In most cases there is another round of written exchanges termed reply and rejoinder.

47 If the respondent raises objections to the tribunal's jurisdiction, the proceedings on the merits are suspended. Such an objection is to be submitted not later than at the time the counter-memorial is due. Typically, the proceedings are then bifurcated, i.e. the jurisdictional question is heard first, followed, if the tribunal finds that it has jurisdiction, by a resumption of the proceedings on the merits. Alternatively, the tribunal may decide to join the jurisdictional question to the merits. In most cases the procedure dealing with jurisdiction also consists of a written and of an oral phase.

48 Default, i.e. non-participation of an uncooperative party, will not stall the proceedings. If one party fails to present its case, the other party may request the tribunal to proceed and render an award. Before doing so, the tribunal will give the non-appearing party another chance to cooperate. The appearing party's assertions will not be accepted just because the other party does not cooperate and hence does not contest them. Rather, the tribunal has to examine all questions of jurisdiction and competence and decide whether the appearing party's submissions are well-founded in fact and in law (Art. 45).

49 Awards are rendered in writing and are signed by the members of the tribunal. Most awards are rendered unanimously, but majority decisions are possible. A member of the tribunal may attach a dissenting opinion or a declaration. Awards must deal with all questions submitted to the tribunal and contain a full statement of reasons. The award is dispatched promptly to the parties.

2. Confidentiality and Transparency

50 The issue of confidentiality and transparency has been the object of intensive discussion. In principle, proceedings take place in private. In some cases tribunals have permitted the submission of *amicus curiae* briefs by non-disputing parties. Under a procedure introduced in 2006 the tribunal may, after consulting the parties, allow an entity that is not a party to file a written submission regarding a matter within the scope of the dispute. Also since 2006 there is the possibility for tribunals to authorise the attendance at hearings of third-party observers unless either party objects.

51 The Secretary-General is under an obligation to publish information about the existence and progress of pending cases. ICSID will publish awards only with the consent of both parties. The parties are free to release awards and other decisions for publication unless it is otherwise agreed. Since 2006 the Centre is under an obligation to publish excerpts of the legal reasoning of each award.

3. Applicable Law

52 The ICSID Convention does not contain any substantive rules. It merely offers a procedure for the settlement of →*investment disputes*. But the ICSID convention contains a rule on applicable law. It directs tribunals primarily to decide in accordance with any choice of law made by the parties (Art. 42(1)).

- 53 The parties to the dispute, that is the host State and the investor, may agree on the governing law. Some contracts governing investments simply refer to the host State's domestic law. The choice of the law of the investor's home country or of the law of a third State is rare, but sometimes occurs in the context of loan contracts. In the majority of cases agreements between the parties on applicable law include international law as well as host State law.
- 54 Many of the treaty provisions that offer investor/State arbitration also contain provisions on applicable law. By taking up the offer of arbitration, the investor also accepts the choice of law clause contained in the treaty's dispute settlement provision and the treaty's provision on applicable law becomes part of the arbitration agreement. Some clauses in treaties governing the applicable law in investment disputes refer exclusively to international law. This is the case under the NAFTA (Art. 1131(1), the ETC (Art. 26(6)) and some BITs. Other BITs, in provisions dealing with applicable law, combine the host State's domestic law with international law.
- 55 In the absence of an agreement on applicable law, Art. 42(1) directs the tribunal to apply the law of the host State and international law. Therefore, in most cases the applicable substantive law in investment arbitration combines international law and host State law. In the majority of cases tribunals have, in fact, applied both systems of law. Where there was a contradiction between the two, international law had to prevail. It is left to the tribunals to identify the various issues before them to which international law or host State law is to apply.

4. Annulment

- 56 ICSID awards are not subject to setting aside or any other form of scrutiny by domestic courts. Rather, the ICSID Convention offers its own self-contained system for review. Under this procedure, an *ad hoc* committee may annul the award upon the request of a party (Art. 52). The *ad hoc* committee consists of three persons, appointed by the Chairman of ICSID's Administrative Council. Roughly one out of ten cases leads to annulment proceedings.
- 57 Annulment is different from an appeal. Annulment is concerned only with the legitimacy of the process of decision but not with its substantive correctness. Annulment merely removes the original decision without replacing it. The idea to create an appeals facility was canvassed at one point but has been shelved for the time being.
- 58 The grounds for annulment under the ICSID Convention are listed exhaustively in Art. 52(1):
- (a) that the Tribunal was not properly constituted;
 - (b) that the Tribunal has manifestly exceeded its powers;
 - (c) that there was corruption on the part of a member of the Tribunal;
 - (d) that there has been a serious departure from a fundamental rule of procedure; or
 - (e) that the award has failed to state the reasons on which it is based.
- 59 Annulment is restricted to these five grounds. Therefore, annulment under the ICSID Convention offers a review process that is limited to a few fundamental standards of a mostly procedural nature. Only three of the grounds for annulment listed above, (b), (d) and (e) have played a practical role.
- 60 An excess of powers occurs where the tribunal deviates from the parties' agreement to arbitrate. This would be the case if a tribunal makes a decision on the merits although it does not have jurisdiction or if it exceeds its jurisdiction. Jurisdiction is determined by Article 25 of the Convention as described above. Therefore, there will be an excess of powers if there is no legal dispute arising directly out of an investment. Similarly, if the nationality requirements under the ICSID Convention are not met there is no jurisdiction and a decision

on the merits would be an excess of powers. Absence of a valid consent to arbitration would also mean that there is no jurisdiction and an award on the merits would be an excess of powers. Failure to exercise a jurisdiction that does exist also constitutes an excess of powers.

61 The ICSID Convention does not, in express terms, provide for annulment for failure to apply the proper law. But the provisions on applicable law are an essential element of the parties' agreement to arbitrate. Therefore, the application of a law other than that agreed to by the parties may constitute an excess of powers and can be a valid ground for annulment. On the other hand, an error in the application of the proper law, even if it leads to an incorrect decision, is not a ground for annulment.

62 Under the ICSID Convention, a violation of a rule of procedure is a ground for annulment only if the departure from the rule was serious and the rule concerned is fundamental. The seriousness of the departure requires that it is more than minimal and that it must have had a material effect on a party. A rule is fundamental only if it affects the fairness of the proceedings. An example for a fundamental rule of procedure is the right to be heard.

63 ICSID tribunals are under an explicit obligation to state the reasons for their awards (Art. 48(3)). Therefore, a total absence of reasons is extremely unlikely. But requests for annulment have repeatedly alleged the absence of reasons on particular points. In addition, complaints were directed at insufficient and inadequate reasons, contradictory reasons or a failure to deal with every question before the tribunal. If reasons on a particular point are missing, an *ad hoc* committee may reconstruct missing reasons. It is accepted that contradictory reasons may amount to a failure to state reasons since they will not enable the reader to understand the tribunal's motives.

64 A decision by an *ad hoc* committee upholding a request for annulment invalidates the original award. But it does not replace it with a new decision on the merits. If the award is annulled the dispute may be submitted to a new tribunal at the request of either party (Art. 52(6)).

5. Binding Force and Enforcement

65 ICSID awards are binding and final (Art. 53). The binding force of awards is limited to the parties. It does not extend to other cases before different tribunals and does not create binding precedents. Tribunal have emphasized that they are not bound by previous decisions but have also stated that they will take due account of previous cases when making their own decisions.

66 The award debtor is under an obligation to comply with an award. In case of non-compliance with the award by the host State the right to diplomatic protection by the investor's home State revives. Compliance with ICSID awards is also facilitated by the strong institutional link of ICSID to the World Bank. Most States will find it unwise to jeopardize their good standing with the Bank through noncompliance with an ICSID award.

67 Overall compliance with ICSID awards has been good. Starting in 2007 one State has resisted compliance with awards arguing that the investor would first have to seek their enforcement in the host State's courts.

68 Awards are to be recognized as binding and their pecuniary obligations are to be enforced like final domestic judgments in all States parties to the Convention (Art. 54(1)). Therefore, recognition and enforcement may be sought not only in the host State or in the investor's State of nationality, but in any State that is a party to the ICSID Convention.

69 The procedure for the enforcement of ICSID awards is governed by the law on the execution of judgments in each country. The Contracting States are to designate a competent court or authority for this purpose (Art. 54(2)(3)). There is no review of ICSID awards by domestic

courts in the course of proceedings for their recognition and enforcement. Therefore, the domestic court or authority may not examine whether the ICSID tribunal had jurisdiction, whether it adhered to the proper procedure or whether the award is substantively correct. It may not even examine whether the award is in conformity with the forum State's *→ordre public*. The domestic court or authority is limited to verifying that the award is authentic.

- 70 The obligation to enforce the pecuniary obligations arising from ICSID awards does not affect any immunity from execution that a State may enjoy (*→Immunity, Sovereign*) (Art. 55). State immunity is regulated by customary international law and by national legislation. State immunity from execution is merely a procedural bar to the award's enforcement but does not affect the obligation of the State to comply with it. Therefore, a successful reliance on State immunity does not alter the fact that non-compliance with an award is a breach of the ICSID Convention.

H. Evaluation

- 71 Enthusiasm about investment arbitration in general and about ICSID in particular is not undivided. Some States have become weary of the possibility of being sued. This trend is particularly marked in Latin America. Several countries have taken defensive steps. Bolivia and Ecuador have denounced the Convention.
- 72 Some investors have become concerned about the complex nature, duration and cost of the procedure for the registration of requests for arbitration. In addition, the growing incidence of requests for annulment has raised concerns about the finality and cost of ICSID proceedings.
- 73 Another concern is the consistency of the case law. Tribunals composed of different arbitrators are constituted for each case. Although most tribunals take careful note of earlier decisions, there are several areas in investment law that have developed divergent lines of authority.
- 74 Despite these difficulties, ICSID has been a success. It is now the preferred forum for the settlement of investment disputes.

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ICSID Convention, Regulations and Rules

List of Contracting States

Additional Facility Rules

List of ICSID Cases

Schedule of Fees

All documents listed above are available at: <http://icsid.worldbank.org/ICSID/FrontServlet>