

Rules and Regulations Reform - Expedited Procedures for Small Claims

Although ISDS is meant to enable investors of all sizes to protect their investments, the reality is that the system is designed for large claims. Following developments in the commercial arbitration world, ICSID might consider expedited procedures or a “small claims” mechanism in the investor state context. Proposals for ‘small-claims’ procedures might seem counter-intuitive in light of opposition to some newly ISDS proposed mechanisms, under the TPP and CETA. Yet there are good reasons to seriously explore the idea. A well-functioning system for small investors, or investors with small claims, would assist in the expeditious resolution of a broad range of investment disputes. It could address lower value claims, and effectively cut costs through a streamlined process with one arbitrator.

I am currently working on an article that makes the case for such mechanism, with the thesis being that a procedure that reigns in expenses, provides expedited processes for arbitration, and preserves the rights of third parties to make submissions, would be a win-win, and attractive to states as well. A variety of institutions might be able to provide such a mechanism, including the PCA or commercial arbitration centers, however given ICSID’s central place in the investor state dispute resolution infrastructure, it would be ideally placed to be at the forefront of such a move.

I would be delighted to discuss this idea further in response to your invitation to propose changes to ICSID rules and regulations.

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