

# SPECIAL FEATURES AND BENEFITS OF ICSID MEMBERSHIP

## I. SPECIAL FEATURES OF ICSID

### ICSID IS THE LARGEST AND MOST EXPERIENCED INSTITUTION IN THE FIELD

- ICSID has 155 Member States and 8 signatory States. It is the world's only international organization dedicated to investment dispute resolution.
- ICSID is the world's leading and most experienced facility for arbitration and conciliation of investor-State disputes (ISDS). It has administered about 70% of all known ISDS cases.

### ICSID IS SPECIFICALLY DESIGNED FOR INVESTMENT DISPUTES

- ICSID was designed by States to reflect the unique characteristics of international investment disputes, with a view to maintaining a careful balance between the interests of investors and host States.
- ICSID is the only institution that can administer the major sets of rules offered for investment arbitration and conciliation in investment treaties, contracts and legislation (ICSID Convention and Rules, ICSID Additional Facility Rules, UNCITRAL Arbitration Rules and *ad hoc* procedures). No other institution has authority to administer cases under the ICSID Convention or the ICSID Additional Facility.
- ICSID has several features designed to filter out frivolous claims or address otherwise unmeritorious cases.
- ICSID reviews requests for arbitration and registers them only if the dispute is not manifestly outside its jurisdiction.

- ICSID's rules offer an expedited procedure for the dismissal of disputes that are manifestly without legal merit.
- ICSID is a self-contained dispute resolution system, meaning that proceedings are delocalized from domestic procedures and local courts do not intervene in the ICSID process.
- The ICSID Convention has a specialized and simplified enforcement mechanism, which saves time and money, and ensures predictability.
- An award rendered under the ICSID Convention is enforceable as a final judgment of courts in every ICSID Member State. Awards rendered under other rules, including under the ICSID Additional Facility, are enforceable under the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, known as the New York Convention, which envisages review/set aside process in local courts.
- ICSID is the only institution with experience administering post-award remedy proceedings, including on the grounds for annulment provided in Article 52 of the ICSID Convention.
- Participants in cases governed by the ICSID Convention enjoy immunity from legal process in the conduct of the proceedings.

### ICSID PROVIDES SERVICES WITH A COST-EFFECTIVE FEE STRUCTURE

- As a non-profit international organization, ICSID is the most cost-effective option for investment dispute settlement, including:
  - A fixed rate of USD 42,000 per year (USD 21,000 per party) for the Secretariat's extensive services and specialized staff supporting each case, including counsel, paralegals, hearing organizers and archivist.

- A capped rate of USD 3,000 per day or USD 375 per hour for arbitrators' fees. This rate is lower than the rates applied in non-ICSID administered UNCITRAL arbitration for example, which have no cap and are usually two or three times higher than the ICSID rate.

- This fee structure is transparent, and parties know it in advance. Detailed information is published on ICSID's website in the Schedule of Fees and Expenses.

- ICSID offers state-of-the-art hearing and meeting facilities at no rental charge for ICSID administered cases. ICSID hearings can take place anywhere in the world through the network of World Bank offices. ICSID has also developed partnerships with numerous arbitration institutions (26 to date) to complement its ability to offer hearings facilities around the world.

- Funds in ICSID cases are held in an interest-bearing escrow account managed securely and at no cost by the World Bank Treasury.

### **ICSID PROMOTES DIVERSITY IN TRIBUNALS AND IN THE INSTITUTION**

- When called upon to appoint the president of the tribunal, ICSID will propose a list of names to assist the parties in agreeing on a mutually suitable candidate. In drawing up this list, ICSID looks at such criteria as expertise in international investment law, international public law, international arbitration, absence of conflict of interest, availability, and language skills.

- The ICSID Panels include the world's most experienced conciliators and arbitrators and provide a useful resource for parties in the appointment process. The Panels are jointly comprised of several hundred designees.

- ICSID has approximately 70 staff specialized in ISDS from over 30 States. Many staff are fluent in two or all three of the Centre's official languages – English, French and Spanish, and in many other languages.

### **ICSID ENCOURAGES TRANSPARENCY AND HELPS PROMOTE THE RULE OF LAW**

- ICSID was the first arbitral institution to adopt rules governing access to documents, open hearings and non-disputing party participation.

- If the Mauritius Convention transparency regime applies between the parties in a proceeding, those rules will govern transparency in proceedings between those parties.

- Where there is no specific applicable treaty and no case specific agreement on the matter, the ICSID Rules on transparency will apply.

- ICSID's trilingual and expansive website contains a wealth of easily accessible information on all topics related to ISDS and ICSID proceedings.

- ICSID provides online case registers for all cases, with a description of each case, up-to-date listings of the steps taken in the case and links to the award and other case materials.

- ICSID also encourages the dissemination of knowledge in the field by webcasting hearings and through the publication of decisions and awards (with the parties' consent).

- The Secretariat has also developed tables of decisions in ICSID cases on various procedural and substantive topics, including: decisions on manifest lack of legal merit, decisions on disqualification, decisions on provisional measures, decisions on non-disputing party participation, decisions on place of arbitration and decisions on annulment.

- ICSID provides extensive technical assistance in: (i) ISDS and investment law; (ii) arbitration; and (iii) mediation. It also offers specialized training to officials, practitioners, and the wider public on ISDS.

- ICSID maintains an extensive program of publications on investment law and dispute resolution procedure, including the leading independent *ICSID Review-Foreign Investment Law Journal*.

## II. SPECIAL BENEFITS OF ICSID MEMBERSHIP

In addition to ICSID's special features discussed above, participation in the ICSID Convention offers many unique benefits to Member States. Key advantages include:

### NO COST FOR MEMBERSHIP

- The ICSID Convention is open for signature on behalf of all World Bank Group Member States.
- While other organizations charge an annual fee for membership, or require a proportional contribution to the organization's budget, there is no cost for States to join ICSID and ICSID States have never been asked to contribute to its costs.

### PARTICIPATION IN A MULTILATERAL CONVENTION

- ICSID Member States participate in the governance of ICSID through equal representation on the Administrative Council.
- The Administrative Council adopts ICSID's annual budget, elects the Secretary-General and Deputy Secretaries-General, and approves the annual report.
- ICSID Member States have the right to propose and vote on amendments to the ICSID Convention and rules.
- This is important not only for the conduct of ICSID arbitrations and conciliations. In addition, as the global leader in investment dispute settlement, the ICSID rules also influence those of regional and domestic arbitration institutions.
- ICSID Member States designate the members of the ICSID Panels of Arbitrators and of Conciliators from which adjudicators can be drawn in ICSID cases. This gives States a vital role in ensuring the quality and diversity of these panels.

- ICSID Member States make designations and notifications under the ICSID Convention for the purposes of implementing the Convention.
- ICSID Member States create a world-wide network of courts for enforcement of ICSID Convention awards through designations pursuant to Article 54 of the Convention.
- This ensures a very high level of compliance with ICSID awards, giving States and investors confidence in the system.

### ACCESS TO SPECIALIZED PROCEEDINGS AND CONTINUOUS SUPPORT BY THE ICSID SECRETARIAT

- ICSID Member States have access to specialized international investment dispute settlement under the ICSID Convention and the ICSID Additional Facility Rules, and all of the special features described above in Section I.
- ICSID Member States gain expertise in international investment dispute settlement through participation in ICSID Secretariat training courses for government officials provided around the world on topics including dispute prevention, alternative dispute resolution mechanism, and case management.
- ICSID Member States receive continuous support from the ICSID Secretariat in all matters relating to membership – from initial expressions of interest, through signing, and as Contracting States.

### ICSID'S MEMBERSHIP WITHIN THE WORLD BANK GROUP

- As one of the five organizations of the World Bank Group, ICSID helps to strengthen investment climates and make international investment more secure by offering impartial and effective dispute settlement services. This contributes to the World Bank's efforts to maximize finance for development by encouraging private investment and stable investment climates.

- ICSID Membership signals a State's commitment to: (i) attract foreign investment; (ii) impartial dispute settlement; and (iii) full implementation of investment treaty obligations.
- ICSID's availability to investors and States is designed to promote international investment by providing confidence in the dispute resolution process.
- ICSID membership is considered as a positive factor in MIGA's risk assessment for political risk insurance, guarantees and in the WBG's overall assessment of the country's investment climate.

### **ICSID HELPS PROMOTE FOREIGN DIRECT INVESTMENT (FDI) FLOWS**

- The majority of empirical studies show that International Investment Agreements (IIAs) as part of a comprehensive investment incentive regime have a positive impact on the flow of Foreign Direct Investment (FDI) (see UNCTAD, IIA Issues Note – 'The Impact of IIAs on FDI: An Overview of Empirical Studies 1998-2014' (2014) and OECD Working Papers on International Investment 2018/01 – 'Societal benefits and costs of IIAs' (2018)).
- There is also ongoing research on the impact that IIAs have on the retention of FDI inflows to host States (see WBG, Roberto Echandi, Jana Krajcovicova and Christine Zhenwei Qiang, 'The Impact of Investment Policy in a Changing Global Economy' (October 2015)).
- The inclusion of ISDS provisions in IIAs has been seen as a contributing factor to the positive impact of IIAs on FDI. ICSID arbitration, under the Convention or Additional Facility, is the most common option featured in IIAs, and is included in over 90% of all known treaties.
- ICSID's availability to investors and States is designed to promote international investment by providing confidence in the dispute resolution process.