

# 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 158 Member States and 7 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, conciliation, and mediation 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 account for the unique characteristics of international investment disputes.
- ICSID procedures maintain a careful balance between the interests of investors and host States.
- 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.
- 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 rules 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.
- 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 COST-EFFECTIVE SERVICES

- 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) is charged for the Secretariat's extensive services and specialized staff supporting

each case, including counsel, paralegals, hearing organizers and archivist.

- ICSID has a capped rate of USD 500 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 50-80% higher than the ICSID rate.
- The ICSID 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 also has extensive experience with remote and hybrid hearings.
- ICSID has also developed partnerships with over 30 arbitration institutions 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 over seven hundred designees.
- ICSID has approximately 70 staff specialized in ISDS from 28 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 PROMOTES THE RULE OF LAW**

- ICSID was the first arbitral institution to adopt rules governing access to documents, open hearings and non-disputing party participation.
- 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 each case, with a description of the case, up-to-date listings of the steps taken in the case and links to the award and other case materials.
- ICSID 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 publishes tables of decisions in ICSID cases on various procedural and substantive topics, including: decisions on manifest lack of legal merit, disqualification, provisional measures, non-disputing party participation, place of arbitration and annulment.
- ICSID offers 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 by 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.
- 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.

- ICSID Membership signals a State's commitment to: (i) attract and retain 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 FLOWS**

- 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.
- There is also 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 contributes 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.