

SURVEY FOR ICSID MEMBER STATES ON COMPLIANCE WITH ICSID AWARDS

I. OVERVIEW

Rules Amendment

ICSID launched a process to amend its rules and regulations at the 2016 Annual Meeting of the Administrative Council. Detailed information about the amendment process can be found on ICSID's website.¹

As part of this process, ICSID undertook to conduct a survey concerning compliance with awards of costs, at the request of the Republic of Panama.

The results of the survey are presented in this report. The results are presented in the aggregate, without identifying any specific Member State.

Scope of Survey

The survey data was based on all ICSID Convention and Additional Facility awards and post-award decisions issued between October 14, 1966 and April 1, 2017. This represents 239 arbitration cases involving the 153 Member States that are currently members of ICSID. Two hundred and twenty-nine (229) of these cases were administered under the ICSID Convention, and 10 were administered under the ICSID Additional Facility.

The awards and post-award decisions issued under the ICSID Convention and Additional Facility as at April 1, 2017 include any decision rectifying, supplementing, interpreting, revising, or annulling an award. Awards of compensation or costs rendered during an original arbitration proceeding that were fully annulled by an *ad hoc* Committee during an annulment proceeding were not included. A decision rectifying, supplementing, interpreting, revising, or annulling an award was included only where it awarded compensation or costs to either party. For the purposes of the survey, these rulings are referred to as 'Awards'.

II. PROCESS

The survey was emailed to Administrative Council representatives and designated contacts for the rules amendment process for all 153 ICSID Member States on April 12, 2017 (English) and April 13, 2017 (French and Spanish). Each Member State received a unique link to the online survey with data specific to that recipient State.

The original response date was May 30, 2017, but was subsequently extended to June 30, 2017, and then to July 30, 2017, at the request of Member States.

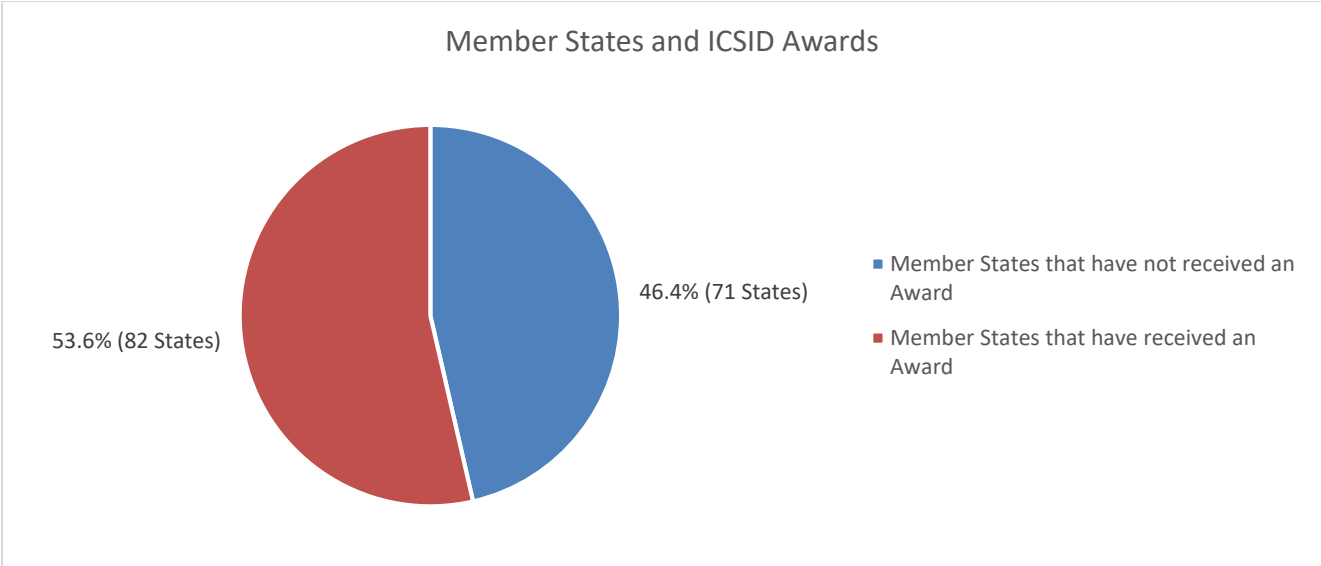
¹ ICSID website, Amendment of ICSID Rules and Regulations, available at < <https://icsid.worldbank.org/en/Pages/about/Amendment-of-ICSID-Rules-and-Regulations.aspx> >.

Five reminders were sent to encourage as many responses as possible from Member States (May 4, 26 and 30, 2017; June 26 (English) and 27 (French and Spanish); and July 18, 2017). As of November 6, 2017, 71 replies have been received from ICSID Member States. The summary of the results is based on the replies of those 71 States.

III. BASELINE INFORMATION

By April 1, 2017, awards involving current Member States were issued in 239 arbitration cases administered under the ICSID Convention (229 cases) and the Additional Facility (10 cases). These include: (i) Awards of Costs and/or Damages in favor of the State; (ii) Awards of Costs and/or Damages in favor of the Claimant; and (iii) Awards that did not order any costs or damages to either party.

The 239 arbitration cases involved 82 Member States as respondents, out of 153 current Member States (53.6%).² The other 71 Member States did not have any cases under the ICSID Convention or Additional Facility that had concluded with an award as at April 1, 2017, and therefore had no outstanding awards of costs or damages in the State’s favor or in the claimant’s favor (46.4%). Nonetheless, these States were invited to complete the survey for any comments that they may have concerning compliance with and enforcement of ICSID awards generally.



ICSID Awards

In 169 of the 239 cases, there was an Award of Costs and/or Damages in favor of a party. In 15 of these cases, there was both an Award in favor of the State and an Award in favor of the Claimant (e.g. in the arbitration proceeding and in the annulment proceeding of the same case). In 70 cases, neither the claimant nor the State was awarded costs or damages.

i. Awards of Costs and/or Damages in favor of the State

In 70 of the 239 cases, there was an Award of Costs and/or Damages in favor of the State. In 15 of these 70 cases, there was also an Award in favor of the other party. These 70 cases involved 35 Member States.

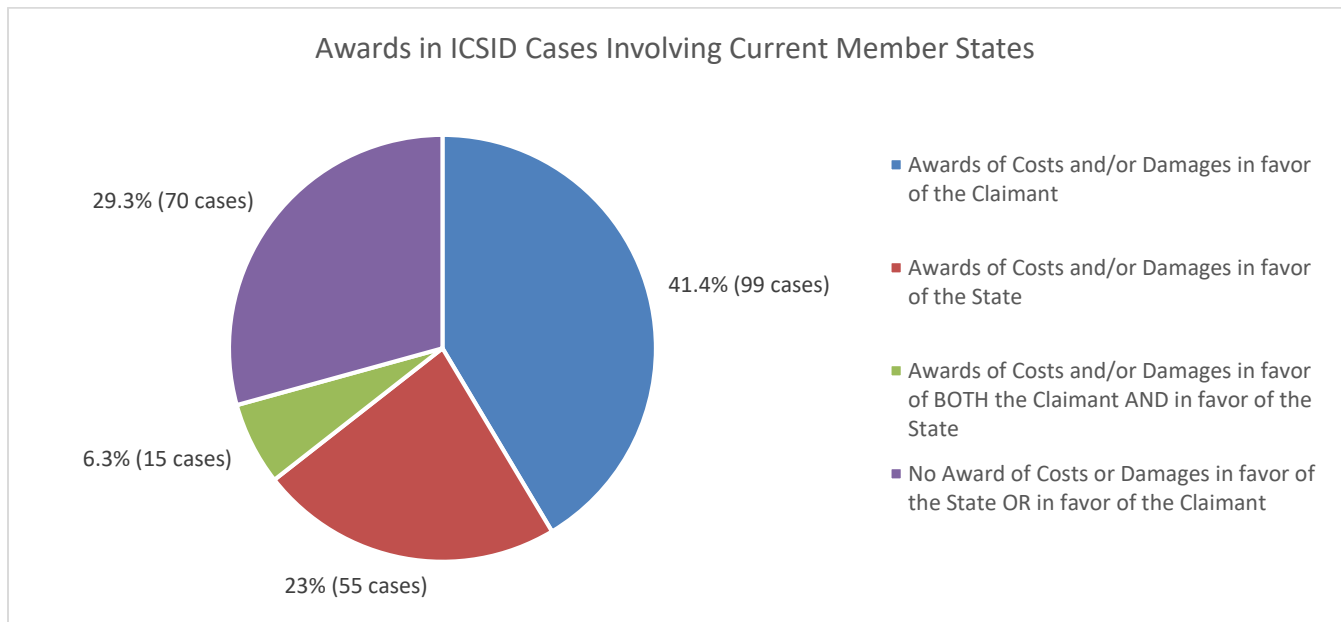
² Information about pending and concluded cases can be found in ICSID’s case database on its website, available at < <https://icsid.worldbank.org/en/Pages/cases/searchcases.aspx> >.

ii. Awards of Costs and/or Damages in favor of the Claimant

In 114 of the 239 cases, there was an Award of Costs and/or Damages in favor of the Claimant. In 15 of these 114 cases, there was also an Award in favor of the other party. These 114 cases involved 55 Member States.

iii. No Awards of Costs or Damages in favor of a party

In 70 out of the 239 cases, neither the claimant nor the State was awarded costs or damages. These cases include, for example, awards dismissing the claims on jurisdictional grounds or on the merits without ordering costs in favor of either party, awards embodying the parties' settlement agreement, awards with findings of liability without ordering monetary damages, and awards of specific performance only. These 70 cases involved 42 Member States.



IV. SURVEY RESULTS

Member State Responses

Out of 153 ICSID Member States, 71 completed the survey. This corresponds to less than 47% of all Member States. Nearly half (35) of the 71 Member States that completed the survey did not have any award under the ICSID Convention or Additional Facility.

Only 36 of the 82 Member States which had Awards responded to the survey (44%).

i. Awards of Costs and/or Damages in favor of the State

The Member States that completed the survey reported information on 34 of the 70 cases where there was an Award of Costs and/or Damages in favor of the State. These 34 cases involved 19 Member States.

The States reported compliance with 18 of the 34 Awards of Costs and/or Damages in favor of the State, and non-compliance with 12 of the 34 Awards of Costs and/or Damages in favor of the State. The States also reported that the compliance status of 4 of the 34 Awards was unknown.

The States reported that enforcement was sought for 7 of the 12 Awards of Costs and/or Damages in favor of the State. Enforcement was unsuccessful for 6 of the 7 Awards and enforcement was successful, in part, for 1 of the 7 Awards. The States reported that enforcement was not sought for 5 of the 12 Awards of Costs and/or Damages in favor of the State.

Awards of Costs and/or Damages in favor of State	
Number of Awards Overall	70
Number of Awards Reported on in Survey Responses	34
Compliance with Awards Unknown	4
Compliance with Awards Reported	18
Non-Compliance with Awards Reported	12
Enforcement Sought	7
Enforcement Unsuccessful	6
Enforcement Successful	1 (partial)
Enforcement Not Sought	5

ii. Awards of Costs and/or Damages in favor of the Claimant

The Member States that completed the survey reported information on 41 of the 114 cases where there was an Award of Costs and/or Damages in favor of the Claimant. These 41 cases involved 22 Member States.

The States reported compliance with 35 of the 41 Awards of Costs and/or Damages in favor of the Claimant. The States also reported that the compliance status of 6 of the 41 Awards of Costs and/or Damages in favor of the Claimant was unknown.

The States did not report enforcement of any of the awards being sought by the claimant.

Awards of Costs and/or Damages in favor of the Claimant	
Number of Awards Overall	114
Number of Awards Reported on in Survey Responses	41
Compliance with Awards Unknown	6
Compliance with Awards Reported	35
Non-compliance with Awards Reported	0
Enforcement Sought	0

V. RELEVANCE TO RULES AMENDMENT PROCESS

A few observations might be made based on the survey responses, including that:

- most awards in favor of States are paid;
- States generally comply with awards in favor of claimants; and
- States do not always seek to enforce awards in their favor that have not been complied with.

Any conclusions to be drawn from the survey should be considered with the caveat that there were a limited number of responses pertinent to compliance with and enforcement of awards of costs and/or damages.

ICSID looks forward to collaborating with Member States on the rules amendment process.