

BACKGROUND INFORMATION ON THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES (ICSID)

1. What is ICSID?

ICSID is the leading institution for the resolution of international investment disputes. It was established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention), which is a multilateral international treaty. The ICSID Convention entered into force on October 14, 1966. To date, it has been signed by 157 States and ratified by 147 States.

The primary purpose of ICSID is to provide facilities for the conciliation and arbitration of international investment disputes. Arbitration and conciliation under the Convention are entirely voluntary and require consent of both the investor and State concerned. Once such consent is given, it cannot be withdrawn unilaterally and it becomes a binding undertaking.

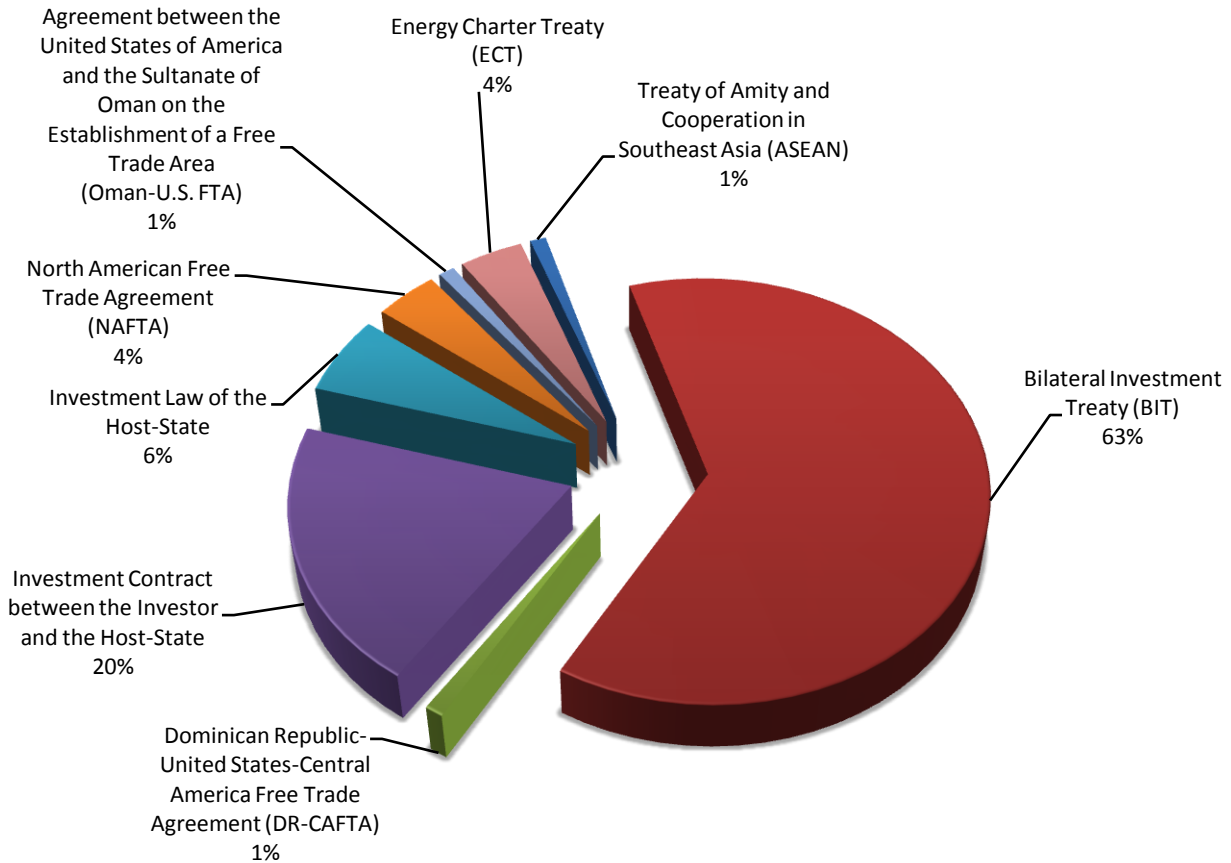
ICSID is a neutral facility and it does not decide the cases. The independent arbitrators and conciliators appointed to each case hear the evidence and determine the outcome of the dispute before them.

2. What is Investor-State Dispute Settlement?

Investor-State dispute settlement (ISDS) is a form of resolution of disputes between foreign investors and the State that hosts their investment. ISDS allows foreign investors to initiate dispute settlement proceedings against a host State. Both the foreign investor and the host State must consent to ISDS before a proceeding may commence. Usually, the consent of the State is contained in international investment agreements between States. These agreements can be bilateral (between 2 countries), or multilateral (between more than 2 countries). In many cases, free trade agreements contain investment chapters that provide for ISDS in the event of an investment-related dispute. There are currently more than 2,700 international agreements providing for ISDS. Consent to ISDS can also be found in the domestic investment laws of some States and in specific contracts between a foreign investor and a State (or a State-affiliated agency).

As the chart below shows, the majority of ICSID cases to date have been initiated on the basis of ISDS provisions in an investment treaty. The remainder have been based on ISDS provisions in domestic investment legislation or contracts.

BASIS OF CONSENT FOR REGISTERED ICSID CASES (TO DECEMBER 31, 2011)



3. How is ICSID Connected to the World Bank?

ICSID is an independent international institution and is one of the five organizations that make up the World Bank Group.

The governing body of ICSID is the ICSID Administrative Council. Each Member State has one seat on the ICSID Administrative Council and each Member State has one vote. The Administrative Council plays no role in individual cases.

The ICSID Secretariat is separate from the ICSID Administrative Council and administers individual disputes on a day-to-day basis. It consists of roughly 40 staff members from more than 27 different countries. The ICSID staff are expert in ICSID procedure and assist the parties and tribunals to ensure an expeditious and cost-effective process.

ICSID cases are decided by neutral, expert arbitrators on the basis of the facts and law presented by each of the parties. These proceedings are separate and independent from the work of the World Bank Group.

4. How Does ICSID Facilitate the Settlement of Investment Disputes?

ICSID does not conciliate or arbitrate the disputes. Rather, it provides the institutional facility and procedural rules for independent conciliation commissions and arbitral tribunals constituted in each case.

The ISDS provisions in international agreements usually allow the investor to select the applicable procedural rules. These may include the ICSID Convention and Rules, the ICSID Additional Facility Rules, the rules of the United Nations Commission on International Trade Law (UNCITRAL), or other arbitration rules.

ICSID has two sets of procedural rules that may govern the initiation and conduct of proceedings under its auspices. These are: (i) the ICSID Convention, Regulations and Rules; and (ii) the ICSID Additional Facility Rules. ICSID also administers investment cases under other rules such as the UNCITRAL rules.

5. Who Decides ICSID Arbitrations?

ICSID arbitration proceedings are decided by independent and impartial tribunals. ICSID arbitrators are esteemed international jurists from all over the world. In most instances, the tribunals consist of three arbitrators: one arbitrator appointed by the investor, one arbitrator appointed by the State, and the third, presiding arbitrator appointed by agreement of both parties. When a party fails to make an appointment or when the parties do not agree on a tribunal president, ICSID may be asked to make the missing appointments.

ICSID maintains a list of individuals who may be named as arbitrators in ICSID proceedings. This list is known as the ICSID Panel of Arbitrators. Each ICSID Member State may designate four arbitrators to the Panel. The ICSID Panel provides a source from which the parties to ICSID arbitrations may select conciliators and arbitrators, but parties may select any person they wish.

7. What are the Usual Steps in an ICSID Arbitration Proceeding?

An ICSID Convention arbitration is initiated by submitting a Request for Arbitration to the Secretary-General of ICSID. The Request outlines the facts and legal issues to be addressed.

The next procedural step is constitution of the arbitral tribunal. Proceedings are deemed to have begun once the tribunal is constituted. The tribunal holds a first session, typically within 60 days of its constitution. Preliminary questions of procedure are dealt with by the tribunal at the first session.

Subsequently, the proceeding usually comprises two distinct phases: a written procedure followed by in-person hearings. After the parties present their case, the tribunal deliberates and renders its award.

Once an ICSID Convention award is rendered, it is binding and not subject to any appeal or other remedy except those provided by the Convention. The Convention allows the parties to request a supplementary decision or rectification of the award, or to seek the post-award remedies of annulment, interpretation or revision.

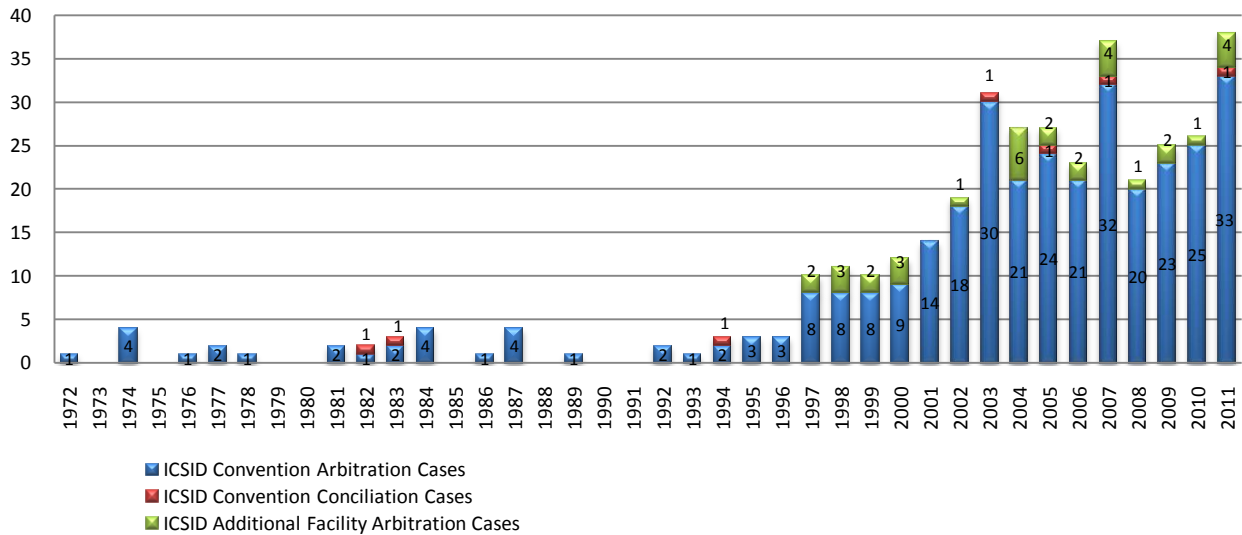
STEPS IN AN ICSID CONVENTION ARBITRATION



8. How Many Cases Are At ICSID?

The ICSID caseload has increased in the last 15 years. This reflects the substantial growth in cross-border investment in the last two decades and the increased number of international investment agreements offering ISDS. The graph below shows the ICSID caseload from 1972 to 2011.

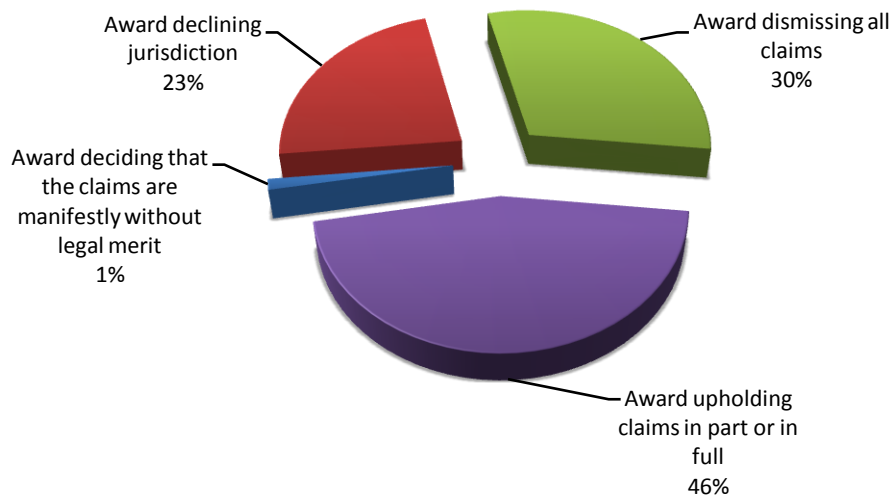
ICSID CASELOAD (1972 – 2011)



9. What are the Outcomes of ICSID Arbitration Cases?

Roughly 40% of ICSID cases are settled or discontinued before a final ruling is made. In addition, in those cases to date where a tribunal made an award, it partially or fully upheld the investors claims in roughly 50% of the cases. These outcomes are shown in the chart below.

OUTCOMES IN DISPUTES DECIDED BY ARBITRAL TRIBUNALS IN ICSID CONVENTION AND ADDITIONAL FACILITY CASES (TO DECEMBER 31, 2011)



10. Where are ICSID Proceedings Held?

Parties may agree to hold an ICSID proceeding in any location. To date, most ICSID hearings have been held in Washington, D.C. or Paris, France. ICSID also has standing arrangements to hold hearings at the following arbitration centres:

- Australian Centre for International Commercial Arbitration at Melbourne;
- Australian Commercial Disputes Centre at Sydney;
- Centre for Arbitration and Conciliation at the Chamber of Commerce of Bogota
- German Institution of Arbitration;
- Gulf Cooperation Council Commercial Arbitration Centre at Bahrain;
- Hong Kong International Arbitration Centre;
- Maxwell Chambers, Singapore;
- Permanent Court of Arbitration at The Hague;
- Regional Arbitration Centres of the Asian-African Legal Consultative Committee at Cairo, at Kuala Lumpur and at Lagos;
- Singapore International Arbitration Centre;

11. Where can Further Information about ICSID be Found?

General and statistical information about ICSID can be found on its website at <http://www.worldbank.org/icsid>. In addition, ICSID is unique in making caseload information widely available. Under the ICSID Convention, Rules and Regulations, the Centre publishes information on the registration and termination of cases, along with the procedural details of cases, the subject matter of the dispute, the names of the arbitrators determining the dispute, and the awards or extracts of awards issued in each case. This information can also be found on the ICSID website.

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