



Columbia FDI Perspectives

Perspectives on topical foreign direct investment issues

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The launch of a new generation of the ICSID Rules

by
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The regulations and rules of the International Centre for Settlement of Investment Disputes (ICSID) are an important part of international investment law. They are the most used rules of procedure in investor-state dispute settlement (ISDS), having been applied in over 800 cases to date. In late 2016, ICSID embarked on the most comprehensive amendment of the rules in its history—setting in motion a process that is now nearing completion.

Marking a major milestone, the Chair of the ICSID Administrative Council—ICSID’s governing body—asked member states to vote on proposed amendments on January 20, 2022. Votes must be cast by March 21, 2022. If approved, the new rules will come into effect on July 1, 2022.

The request for a vote comes on the heels of [ICSID’s sixth—and final—working paper](#), issued on November 12, 2021. Developed over a period of five years, the ICSID working papers proposed concrete changes to the ICSID rules and anchored the most in-depth and sustained dialogue with member states and the broader public in ICSID’s history.¹

They have also served as the vehicle for developing and reflecting consensus. The first working paper numbered over 900 pages; the sixth came in at 80 pages. This reflects the progressive agreement forged by the six working papers, three in-person consultations with member states, six series of written comments, and hundreds of briefings and events.

The amended ICSID rules are a significant step forward in the discipline of ISDS thanks to the contributions of many individuals. Although the consultation period for these amendments was (necessarily) lengthy, their implementation will be almost immediate. If adopted, disputing parties could be filing cases under the new rules as of July 1, 2022.

Some things have not changed. The amendments remain procedural in nature and do not affect investment treaties, nor do they make structural changes to the institutions of dispute settlement. Similarly, these rules scrupulously retain the balance of the interests of states and investors, a primary objective of the original drafters. As a result, the updated rules will feel familiar to users of the ICSID system.

At the same time, many of the amendments address proposals for procedural reform that have been raised in numerous *fora* in the past decade. These represent a significant change. For example:

- *Further enhanced transparency.* The updated arbitration rules will ensure the increased publication of awards, orders and decisions, while offering parties the opportunity to redact confidential or protected information. Under the ICSID Convention, party consent is needed to publish awards and decisions—and the updated arbitration rules adhere to that requirement. But consent to publish is deemed given unless a party objects in writing within 60 days after an award is issued. Should a party object, the rules allow the Secretariat to prepare legal excerpts of the award. Awards, orders and decisions in proceedings under the Additional Facility will be published with redactions agreed by the parties.
- *Tools to expedite proceedings.* States and investors encouraged ICSID to consider ways to reduce the time of proceedings which—in most cases—will mean a more cost-effective process for countries and investors. These include an option for expedited arbitration, mandatory case management conferences, the potential to consolidate or coordinate related cases, reduced time frames for various steps in the process, and mandatory timeframes for issuing awards and decisions.
- *New disclosure requirements for third-party funding.* Parties are obliged to disclose the name and address of any non-party from which they received funding, directly or indirectly, under the amended arbitration rules. As third-party funding has increased in recent years, this new disclosure requirement serves to avoid inadvertent conflicts of interest—such as between a third-party funder and a member of a tribunal.
- *Broader access to ICSID rules and services.* Amendments to the ICSID Additional Facility Rules for Arbitration and Conciliation enlarge access to ICSID, including where neither the state nor the investor is an ICSID member state or a national of one. This will make the ICSID rules available to disputing parties who otherwise might have been limited to commercial arbitration rules. The amendments to the Additional Facility will also allow Regional Economic Integration Organizations—such as the European Union—to access ICSID arbitration and conciliation under the amended Additional Facility Rules.
- *New rules for mediation and fact-finding.* The proposals include ISDS-specific rules to administer mediation and fact-finding. By increasing the number of dispute-settlement procedures offered by ICSID, parties are given a unique means of resolving disputes and a greater choice in deciding what works best for resolving their disputes.

Once adopted, ICSID will organize a series of presentations for states and practitioners to highlight new aspects of the rules and ensure that disputing parties take advantage of new tools in the rules. ICSID will also publish updated web content—including templates, charts and other demonstrative tools. Member states are encouraged to approve these proposals as early as possible, and to reach out to ICSID if there are any questions on the amended rules or the voting process.

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¹ See [the proposed amendments to the ICSID rules and Working Papers](#), as well as feedback received on the proposals.

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