

ICSID arbitration

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What is the ICSID?

The International Centre for Settlement of Investment Disputes (ICSID), which is based in Washington DC, was established in 1966 by Article 1(1) of the Convention on the Settlement of Investment Disputes between States and Nationals (ICSID Convention).

The ICSID Convention is a multilateral treaty which was formulated by the executive directors of the World Bank to further its objective of promoting international investment. ICSID is an independent, neutral and effective dispute settlement institution. Its availability to investors and states helps to promote international investment by providing confidence in the dispute resolution process. It is also available for state-state disputes under investment treaties and free trade agreements, and as an administrative registry.

ICSID provides for the settlement of disputes by conciliation, arbitration or fact finding. The ICSID process is designed to take into account the special characteristics of international investment disputes and the parties involved, maintaining a careful balance between the interests of investors and host states. An independent conciliation commission or arbitral tribunal considers each case after hearing evidence and legal arguments from the parties. A dedicated ICSID case team is assigned to each case and provides expert assistance throughout the process. To date, ICSID had administered more than 600 cases.

ICSID is the world's leading institution devoted to international investment cases. States have agreed on ICSID as a forum for investor-state dispute settlement in most international investment treaties and in numerous investment laws and contracts.⁽¹⁾

Who uses ICSID arbitration?

The purpose of ICSID is to provide facilities for the conciliation and arbitration of investment disputes between contracting states and nationals of other contracting states in accordance with the ICSID Convention (Article 1(2)).

ICSID's jurisdiction extends to any legal dispute arising out of an investment between a contracting state (or any constituent subdivision or agency of a contracting state designated to ICSID by that state) and a national of another contracting state, which the parties to the dispute consent in writing to submit to ICSID (Article 25(1)).

What is the ICSID arbitration process?

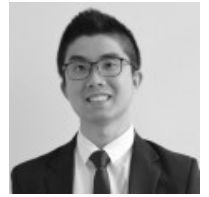
Any contracting state or its nationals wishing to institute arbitration proceedings must address a request to that effect in writing to the ICSID secretary general, who will send a copy of the request to the other party outlining the facts and legal issues to be addressed. Once requested, the case will be registered unless the dispute is manifestly outside ICSID's jurisdiction (Article 36).

Next, an arbitral tribunal is constituted and a first session is held to deal with preliminary questions of procedure. From there, 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. Parties may agree to hold an ICSID proceeding in any location. Where suitable, hearings and sessions are conducted by phone or video conference to reduce the cost and increase the efficiency of proceedings (Articles 37 to 43).

The tribunal will publish its award in writing (Article 48(2)).

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How are ICSID awards enforced?

An ICSID award is binding on the parties and will not be subject to an appeal or any other remedy except those provided for in the ICSID Convention. Each party must abide by and comply with the terms of the award except to the extent that enforcement has been stayed pursuant to the ICSID Convention (Article 53(1)). Each contracting state must recognise an award rendered pursuant to the ICSID Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that state (Article 54(1)).

A contracting state with a federal constitution may enforce an ICSID award in or through its federal courts and may provide that such courts must treat the award as if it were a final judgment of the courts of a constituent state (Article 54(1)).

A party seeking recognition or enforcement in the territories of a contracting state must provide a copy of the award certified by the secretary general to a competent court or other authority which the state has designated for this purpose. Each contracting state must notify the secretary general of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation (Article 54(2)).

The execution of an ICSID award will be governed by the laws concerning the execution of judgments in force in the state in whose territories such execution is sought (Article 54(3)).

For further information on this topic please contact [Lee Xin Div](#) at Gan Partnership by telephone (+603 7931 7060) or email (xindiv@ganlaw.my). The Gan Partnership website can be accessed at www.ganlaw.my.

Endnotes

(1) Further information is available [here](#).

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