

Commencing Arbitration at ICSID

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Kiev Arbitration Days

ICSID PROCEEDINGS

Convention

(Both disputing parties from ICSID Contracting States)

- **Conciliation**
- **Arbitration**

Additional Facility

(One disputing party from Contracting States)

- **Conciliation**
- **Arbitration**
- **Fact-finding**

Other

(Need not be from Contracting State)

- **Case administration under other Rules or Treaties** (e.g.: UNCITRAL investment cases; State-to-State cases)
- **Other functions on consent of parties** (e.g.: Fact-finding, Mediation)

SPECIAL FEATURES OF ICSID

- Self-contained
- Immunity for participants
- Cost-effective
- Expertise of Secretariat
- Transparent

SPECIAL FEATURES OF ICSID - AWARDS

- State obligation to comply with awards
- Member States must recognize monetary awards without further process
- Monetary award enforceable as a final judgment in any Contracting State

IS ICSID AVAILABLE? CONTRACT, TREATY OR LAW

Example of a BIT arbitration clause:

Article 25(1) U.S. Model BIT 2012

“Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Treaty.”

CONDITIONS FOR ICSID JURISDICTION - Article 25(1) of the ICSID Convention

- Legal Dispute
- Arising Directly out of an Investment
- Between a Contracting State
- And National of another Contracting State
- Consent in Writing

PRACTICAL CONSIDERATIONS

- Budget
- Legal & client team
- Collect documents/identify witnesses
- Settlement considerations

FILING THE REQUEST FOR ARBITRATION

- The process of filing a request is governed by the Institution Rules
- May be filed by the investor or the State (or in some circumstances a subdivision or agency of a State)
- A non-refundable lodging fee of 25,000 USD is paid by the requesting party

CHECKLIST OF REQUIRED INFORMATION

1. Name and contact details of all parties
2. Nationality of the requesting party on the date of consent
3. Individual must confirm that he/she does not have the nationality of the State party to the dispute

CHECKLIST OF REQUIRED INFORMATION

4. Company with host State nationality must evidence the parties' agreement to treat it as a national of another State

5. If one of the parties is a constituent subdivision or agency of a State, evidence that it has been designated to ICSID and that the State has approved its consent

CHECKLIST OF REQUIRED INFORMATION

6. Date of consent and instrument(s) in which it is recorded
7. Information concerning the issues in dispute
8. Evidence that the requesting party has taken all necessary action to authorize the request
9. Power of Attorney for counsel

ON RECEIPT OF A REQUEST FOR ARBITRATION:

- ICSID sends an acknowledgement to the requesting party
- ICSID transmits a copy of the Request to the other party after lodging fee is paid

REVIEW OF THE REQUEST

- ICSID reviews the request
- The dispute is registered unless it is “**manifestly outside**” **the jurisdiction** of the Centre (Article 36(3) ICSID Convention)



REGISTRATION OF A REQUEST

- The Secretary-General must issue a notice of registration or refuse to register
- Registration process usually takes less than 4 weeks
- No appeal against the registration decision

No Agreement of the Parties – Timeline Article 38 of the ICSID Convention and Arbitration Rule 4(1)

- If the Tribunal is not constituted within 90 days after registration of the request, either party can request that the Chairman appoint the arbitrator(s) not yet appointed

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