

# About the ICSID Rule Amendments

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The ICSID Convention Rules and Regulations were adopted in 1967, and the Additional Facility Rules in 1978.

There have been four rounds of rule changes following the adoption of the rules, the last of which entered into force in April 2006. Those amendments incorporated important improvements to the system, including:

- strengthened disclosure requirements for arbitrators (Arbitration Rule 6(2), Article 13(2) of the Arbitration (Additional Facility) Rules);
- a provision on the possibility to hold open hearings (Arbitration Rule 32(2), Article 39(2) of the Arbitration (Additional Facility) Rules);
- expanded transparency provisions to publish awards as soon as possible (Arbitration Rule 48(4), Article 53(3) of the Arbitration (Additional Facility) Rules);
- the opportunity for non-disputing parties to file submissions (amicus curiae briefs) (Arbitration Rule 37(2), Article 41(3) of the Arbitration (Additional Facility) Rules); and
- the possibility for a respondent to obtain an early dismissal of a case due to manifest lack of legal merit (Arbitration Rule 41(5), Article 45(6) of the Arbitration (Additional Facility) Rules).

These amendments have had far-reaching effects on the practice of investment arbitration, and have been widely emulated in the rules of other arbitral institutions, in newly negotiated investment treaties, and in parts of the Mauritius Convention and the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.

## Current Process

ICSID launched the current amendment process in October 2016 and invited Member States to suggest topics that merited consideration. In January 2017, ICSID issued a similar invitation to the public inviting suggestions for rule amendments.

On November 12, 2021, the ICSID Secretariat published its sixth working paper on proposals for rule amendments (Working Paper #6). The paper builds on the proposals that were originally published in August 2018 (Working Paper #1), March 2019 (Working Paper #2), August 2019 (Working Paper #3) February 2020 (Working Paper #4) and June 2021 (Working Paper #5), and follows extensive consultations with ICSID Member States and the public.

The working papers explain the basis for a proposed change, notes relevant considerations, and suggests the potential wording or structure of amendments.

There are several goals for this round of amendments. First, the changes are intended to modernize the rules based on case experience. Given ICSID's administration of more than 700 cases, a number of lessons can be learned and they should be incorporated into the rules from time to time. Second, the amendments will make the process increasingly time and cost effective while maintaining due process and a balance between investors and States. Third, ICSID hopes that the rule amendments will make the procedure less paper-intensive, with greater use of technology for transmission of documents and case procedures.

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