

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

DISPUTE SETTLEMENT

INTERNATIONAL CENTRE FOR
SETTLEMENT OF INVESTMENT DISPUTES

2.4 Requirements Ratione Personae



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NOTE

The Course on Dispute Settlement in International Trade, Investment and Intellectual Property consists of forty modules.

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OVERVIEW

This Module deals with the question of who may be a party to proceedings under the Convention on the Settlement of Investment Disputes between States and Nationals of other States. These are called the requirements *ratione personae*. Most prominent among these are issues of nationality.

The Convention is designed for the settlement of investment disputes between host States and foreign investors. The Convention allows nationals of Contracting States (i.e. States Parties to the ICSID Convention) to bring claims against other Contracting States. It also allows Contracting States to bring claims against nationals of other Contracting States.

The requirements *ratione personae* are critical for ICSID's jurisdiction. If these requirements are not met there is no jurisdiction. Compliance with these requirements is initially screened by the Secretary-General of ICSID in the process of registering a request for arbitration or conciliation. The final determination of whether these requirements are met is with the tribunal. In actual practice the requirements *ratione personae* have repeatedly led to detailed discussions before the tribunals.

To further encourage settlement of investment disputes, the Additional Facility was created in 1978. It allows the settlement of a dispute between a State and a foreign national even if only the State that is a party to the dispute or the State of the private party's nationality is a Contracting State.

OBJECTIVES

Upon completion of this booklet the reader should be able to:

- Describe the parties to ICSID arbitration.
- Tell who may institute ICSID arbitration.
- Define the role of constituent subdivisions and agencies in ICSID arbitration.
- Compare the nationality requirements for individuals and for corporations.
- Identify the consequences of host State nationality.
- Analyse the situation of a locally incorporated company that is under foreign control.
- Discuss the requirement of ratification of the ICSID Convention for jurisdiction.
- Appreciate the importance of the Additional Facility.

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