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2.7 Procedural Issues



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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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TABLE OF CONTENTS

Notes	ii
Overview	1
Objectives	3
Introduction	5
1. Initiation of Arbitration Proceedings	7
<i>a) Commencing the Arbitration</i>	7
<i>b) Registration of the Request by the Secretary-General</i>	9
2. The Arbitral Tribunal	11
<i>a) Constituting the Arbitral Tribunal</i>	11
<i>b) Replacement and Disqualification of Arbitrators</i>	15
3. Conducting the Arbitration	19
<i>a) The Rules of Procedure</i>	19
<i>b) The Tribunal's First Session</i>	20
<i>c) The Written and Oral Procedure</i>	21
<i>d) Dealing with Evidence</i>	22
<i>e) Failure to Present Case and Discontinuance of Proceedings</i>	23
<i>f) Ancillary Claims</i>	23
<i>g) Place of Proceedings</i>	24
4. Provisional Measures	27
5. The Award	29
<i>a) Formal and Substantive Requirements of an Award</i>	29
<i>b) The Publication of Awards</i>	31
<i>c) The Date of the Award</i>	32
6. Costs of the Arbitration	35
Test My Understanding	39
Hypothetical Cases	41
Further Reading	43

OVERVIEW

This Module deals with the most common procedural issues encountered in arbitration proceedings under the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the Convention).

The procedural issues encountered in an ICSID arbitration are likely to be similar to issues encountered in other forms of arbitration. However, the ICSID system is unique in retaining its autonomy and independence from the application of national systems of law or the interference of national courts. As a result, the Convention and its related instruments provide a specific and comprehensive procedural regime for the conduct of ICSID arbitrations, which must be adhered to by the parties to an arbitration.

Arbitration is a consensual process, whereby the parties retain extensive freedom or autonomy to determine the rules of procedure that should govern the arbitration. Proceedings under the Convention are no different, as the parties retain extensive autonomy in this respect. This autonomy is limited, however, by the mandatory provisions of the Convention which provide a framework that governs the arbitral procedure.

In addition, the Administrative Council of ICSID has adopted Administrative and Financial Regulations and Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (Institution Rules). These rules and regulations contain further mandatory provisions that limit the autonomy of the parties.

The majority of the cases that are being brought before ICSID today are cases arising out of international treaties. These tend to take two forms, either bilateral investment treaties entered into between States concerning the promotion and protection of foreign investment (BITs) or multilateral agreements, such as the North American Free Trade Agreement (NAFTA) or the Energy Charter Treaty that contain dispute resolution clauses in favour of ICSID arbitration. Many of these treaties contain mandatory provisions that the parties must abide by in the initiation and conduct of arbitration proceedings.

OBJECTIVES

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

- Describe the initiation of ICSID arbitration.
- Explain the process of constituting the tribunal.
- Define the significance of the Arbitration Rules.
- Summarize the rules governing the place and the costs of proceedings.
- Discuss the procedure before the tribunal.
- Analyse the consequences of non-cooperation by a party.
- Delineate the role of provisional measures in ICSID arbitration.
- Recount the elements that must be contained in awards.

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