

ICSID Highlights Transparency, Efficiency In Rule Reform

By **Nicole Narea**

Law360, New York (May 10, 2017, 6:24 PM EDT) -- The International Centre for Settlement of Investment Disputes introduced updates to its rule amendment project Tuesday, highlighting 16 potential areas for rule reform, including third-party funding, allocation of costs and annulment of ICSID Convention decisions, as it strives to further increase transparency and streamline arbitration procedures.

Requiring approval from two-thirds of ICSID's 153 member states, the amendments aim to modernize the process by which the center adjudicates an investment arbitration caseload of more than 600, balancing due process with cost and time savings. The secretariat solicited public comment on suggested amendments in January and anticipates releasing working papers on those proposals by early 2018.

"The changes seen in the last two decades are unparalleled in international law practice," the center said in a statement Tuesday. "The next iteration of the ICSID rules continues this evolution, and will fine-tune the current procedural rules. We look forward to this discussion with stakeholders as an opportunity to continue to offer the most effective dispute mechanism possible to resolve investment disputes."

The amendment process, which was formally launched in October, is the fourth in the institution's history, with the former three concluding in 2006, 2003 and 1984. Significantly, the 2006 process included a number of amendments intended to increase arbitration transparency, including those addressing the publication of awards, open hearings and amicus briefs from non-disputing parties. It also yielded rules allowing for the early dismissal of a case that had no inherent legal merit, reducing arbitration time and costs.

The amendments suggested by the secretariat Tuesday would expand on the 2006 transparency amendments, streamline arbitration procedures, clarify rules regarding arbitrators and aim to improve equitable adjudication of cases. They will be analyzed in the secretariat's white papers, which will explain the reasoning behind changes, provide background considerations, and propose specific language and structure for the amendments.

"The Centre is focusing on all the critical areas that require update to keep up with the changes and developments of the last ten years," Miguel Lopez Forastier, an international arbitration attorney for

Covington & Burling LLP, told Law360 in a Wednesday email. “The process also highlights the limits of the exercise, since some critical areas of the ICSID arbitration system that require update for the system to maintain its primacy would require an amendment of the [ICSID] Convention.”

The secretariat proposed more seamless mechanisms for case consolidation, annulment and allocation of costs, claiming they would cut costs and time and generate fewer reams of hard copy procedural documents.

The amendments also aim to improve transparency: one amendment would require the publication of decisions and orders in order to strengthen available case law and “enhance the potential for consistent awards.” Another would require the disclosure of third-party funding of cases, which some jurisdictions prohibit, in order to check for conflicts of interest.

Furthermore, the secretariat addressed arbitrator appointment, code of conduct and challenges, elaborating on detailed standards of behavior, how to adjudicate costs due to an unsuccessful challenge, and how to determine if an arbitrator is permitted to resign.

The center also said that it plans to flag potential improvements through changes to legal practice and Convention amendments, instead of changes to ICSID rules.

--Editing by Bruce Goldman.

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