

# CLIENT ALERT

## 2022 ICSID Amended Regulations and Rules – What Has Changed?

March 24, 2022

On March 21, 2022, Member States of the International Centre for Settlement of Investment Disputes (“ICSID”) approved amendments to ICSID’s Regulations and Rules (the “Rules”). These amendments are the culmination of five years of consultation with States, legal specialists, and business representatives, and follow the publication of six [Working Papers](#). The 2022 Rules are intended to come into effect on July 1, 2022.

The ICSID Rules have only been updated four other times since ICSID was established over five decades ago, and this promises to be the most extensive revision. David Malpass, President of the World Bank Group (WBG) and Chair of the ICSID Administrative Council said that the “amended rules streamline procedures to enable greater access and speed, increase transparency, and enhance disclosures, with the ultimate goal of facilitating foreign investment for economic growth.” In addition to streamlining the Rules, ICSID was focused on modernizing and simplifying them, while also taking into account the movement towards greater sustainability by reducing the environmental footprint of ICSID proceedings.

Below is a summary of the key changes in the 2022 Rules that practitioners should keep in mind and leverage as they prepare for future ICSID proceedings.

### Improved Time and Cost Efficiencies

The amended Rules now require that all documents and submissions be filed electronically. This is not only more environmentally-friendly, but also results in significant time and cost savings for the parties. Indeed, parties have been relying almost exclusively on electronic filing over the course of the COVID-19 pandemic without incident, and will likely appreciate that this process is now codified in the amended Rules. Moving forward, paper filings will require special justification.

Furthermore, in aid of conducting expeditious and cost-effective proceedings, amended Rule 31 provides that tribunals must hold one or more case management conferences to clarify and narrow the issues in dispute and identify uncontested facts.

### New Expedited Arbitration Rules

A new chapter of the ICSID Arbitration Rules is dedicated to expedited arbitration. These rules allow for significantly shorter timelines if the parties consent to expedite the arbitration. For example, in some instances, the timeframe for arbitrator appointments is reduced by more than half. As noted in [Working Paper #6](#), these rules may be particularly useful in resolving “low value claims.” Facilitating greater expediency results in a reduction in the cost of resolving such claims. This, in turn, makes ICSID arbitration more appealing to a broader set of claimants that otherwise considered such proceedings cost-prohibitive.

## **New Rules for Fact-Finding and Mediation**

The amended Rules also provide an entirely new set of procedural rules for fact-finding and mediation proceedings, which may be used in combination with an arbitration proceeding or on a stand-alone basis. Like the amended Arbitration Rules, these new rules prioritize efficiency. For example, the fact-finding rules set a new 30-day deadline for members of the Fact-Finding Committee to be appointed. With respect to mediation, the amendments respond to requests by States and investors to provide greater mediation capacity and to offer parties a greater breadth of dispute resolution tools outside of arbitration.

## **Enhanced Transparency**

In an effort to improve public access to orders and awards, ICSID's new rules encourage prompt publication of awards and decisions generated in proceedings, while still protecting the parties' confidentiality as applicable to the individual proceeding. This is consistent with ICSID's long-time aim to further "the development of international law in relation to investment," and support legal consistency in tribunal decision making. Notably, the ICSID Convention itself has not been amended, and still requires the consent of both parties to publish an award. The amended rules continue to reflect this requirement. However, under amended Rule 62, consent to publish an award and other documents will be deemed to have been given if no party objects in writing within 60 days after the dispatch of the document. Moreover, absent consent of the parties to publish an award or decision, ICSID will still publish excerpts subject to review and comment by the parties.

## **Obligation to Disclose Third-Party Funding**

Addressing third-party funding for the first time, amended Rule 14 requires parties to disclose the name and address of any non-party from which they are receiving funding, either directly or indirectly. This includes the names of the persons and entities that own and control the entity providing the funding. Parties are also required to disclose any changes to their funding arrangements over the course of the arbitration proceedings.

With the amended ICSID Rules coming into effect in the summer of 2022, ICSID plans to publish further guidance over the coming months to assist parties in navigating any new procedures and encourage them to take advantage of the anticipated efficiencies.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

### **Randa Adra**

Partner – New York

Phone: +1.212.895.4326

Email: [radra@crowell.com](mailto:radra@crowell.com)

### **Andrea Noujeim**

International Associate

Phone: +1.202-624-2954

Email: [ANoujeim@crowell.com](mailto:ANoujeim@crowell.com)

### **Leslie Castello**

Associate – Washington, D.C.

Phone: +1.202.624.2794

Email: [icastello@crowell.com](mailto:icastello@crowell.com)