

International Arbitration

ICSID Annual Report 2022 – An update



Introduction

The Secretary-General of ICSID published its annual report on activities during the ICSID 2022 fiscal year, including information on developments in its membership and caseload. The 2022 report can be found [here](#).

Israel is a member state of ICSID, with approximately 35 Bilateral Investment Treaties (BITs) in force, including relatively recent BITs with Japan and the UAE. Israel has also made public that it is negotiating to enter into BITs with additional Abraham Accords states, namely Bahrain and Morocco, which aims to increase investment activities between these countries.

Background

BITs generally provide investors of one state certain protections when investing in the territory of the other state. One such protection mechanism is the direct access provided to investors from one state to arbitration against the other state in which it invested in cases the investor claims that its protections under the BIT were violated.

For instance, many BITs allow for arbitration to be pursued at the International Center for Settlement of Investment Disputes (ICSID) at the World Bank. Israel's BITs generally include dispute resolution provisions, allowing the investor to initiate arbitration against the relevant state. In fact, recent BITs signed by Israel (with Japan in 2017, with the UAE in 2020) both refer to ICSID as one of the relevant fora for resolving disputes and a majority of Israeli BITs provide for arbitration under ICSID.

ICSID's database shows five cases under ICSID arbitration rules that have an Israeli party – all as claimants. Three of these cases have concluded, and two are pending against Croatia and Bulgaria.

There has to date never been an arbitration filed under ICSID *against* Israel.

The Israeli-related cases listed on the ICSID database do not include cases whereby Israeli individuals or companies are - or have been - involved in investment arbitration through their non-Israeli subsidiaries, of which there have been several reported. This statistical omission means that the number of Israel related cases is larger than the five listed on the ICSID website.

ICSID publishes new arbitration rules

In 2022, ICSID updated its [rules](#), which have been revised to reduce the time and cost of cases, including by instituting mandatory timeframes for rendering orders and awards. New expedited arbitration rules are also available under the amended rules for Parties that have expressly consented to apply Arbitration Rule 75(1), which aims to shorten case times in half.

In addition, the general move towards transparency of arbitration proceedings is further enhanced by new processes for publishing orders, decisions, and awards, which is meant to promote legal consistency in decision-making. At the same time, the rules assist parties in identifying confidential information and specify that protected personal information cannot be publicly disclosed.

Finally, for the first time, the ICSID arbitration rules explicitly address third party funding. Specifically, under the new rules, disputing parties have an ongoing obligation to disclose third party funding - including the name and address of the funder - to avoid conflicts of interest that may arise out of such financing arrangements. The Rules include, under the third-party funding disclosure requirement, funds "*in return for remuneration dependent on the outcome of the proceeding*", which some commentators interpret to also refer to contingency fees, a fee arrangement in which an attorney or firm agrees that the payment of legal fees will be contingent upon the successful outcome of the case.

ICSID 2022 in numbers

A total of 346 ICSID cases were administered in 2022, an increase from 332 cases in the previous fiscal year. This is the largest number of cases ever administered at ICSID in a single year.

77 proceedings were concluded in 2022: 56 arbitrations, 20 post-award proceedings, and one conciliation proceeding. During the year, 30 awards were rendered, and 478 decisions and procedural orders were issued.

The Centre publishes these rulings on its website with the parties' consent. Even where a party withheld consent, ICSID published excerpts of the legal reasoning of the tribunal or ad hoc committee, as required by the ICSID Rules, or included bibliographic references to rulings made public by other sources on ICSID's website and in its publications.

In 2022, the majority of cases continue to be in the oil and gas and energy sectors. 24% of new cases involved electric power and other energy sources, and 22% related to the oil, gas and mining industries. The construction sector accounted for 12% of disputes. These were followed by disputes related to information and communication (10%); water, sanitation and flood protection (8%); finance and transportation (6% each); and tourism (4%).

As in previous years, countries from all regions of the world were represented amongst new cases, though most regions saw their percentage of new cases drop, except for Central and South American and the Middle East and North African (MENA) regions. The largest share in 2022 involved States in South America (22%) and Eastern Europe and Central Asia (20%). States in the MENA, Central America and the Caribbean, and Sub-Saharan Africa each accounted for 12% of new cases, the South and East Asia/Pacific and Western Europe regions each accounted for 8%, and North America for 6%.

Every six months, ICSID [publishes](#) statistics about the number of cases, geographic and economic sector distribution of cases, outcomes of proceedings, and the nationality of arbitrators and conciliators. The January 2023 statistics, which reflect the trends identified in the 2022 report, can be found [here](#).

* This update is designed to provide general information only, it is not a full or complete analysis of the matters presented, and may not be relied upon as legal advice.



Nir Keidar, Partner
nirke@gornitzky.com



Dr. Myriam Feinberg, Associate
myriamf@gornitzky.com

