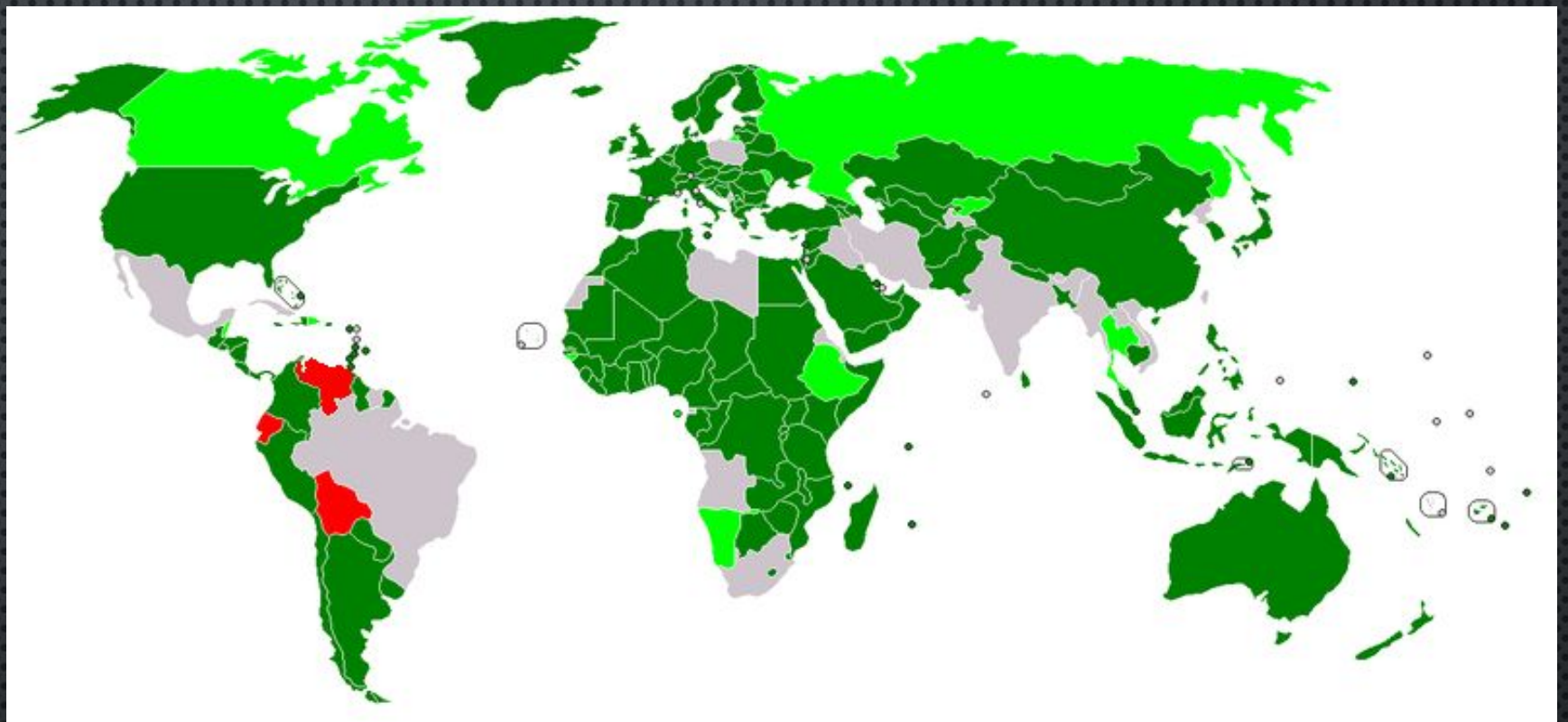




ICSID

**The International Centre for Settlement
of Investment Disputes**

Formation	1966
Type	Dispute resolution organization
Legal status	Treaty
Purpose	International arbitration
Headquarters	Washington, D.C., United States
Membership	161 countries (signatory and contracting states) 153 countries(contracting states only)
Secretary-General	Meg Kinnear 
Parent organization	World Bank Group
Website	icsid.worldbank.org












Dark Green: ICSID in force

Red: Former members, withdrawn

Light Green: ICSID signed, ratification pending

Non-contracting signatories

-  Belize (1986)
-  Dominican Republic (2000)
-  Ethiopia (1965)
-  Guinea-Bissau (1991)
-  Kyrgyzstan (1995)

-  Namibia (1998)
-  Russia (1992)
-  Thailand (1985)
-  Mexico (2018)

Conduct of an ICSID Arbitration



The Request for Arbitration – Institution Rules

- Filed by the Claimant – usually the investor; could be the State (or in some circumstances, a subdivision or agency of a State)
- Claimant pays a non-refundable lodging fee of 25,000 USD – helps prevent frivolous claims
- ICSID reviews the request in light of the Convention and the instrument of consent
- The request is registered unless it is “manifestly outside the jurisdiction of the Centre” (Article 36(3) ICSID Convention)

Constitution of the Tribunal - Process

1. Determine the number of arbitrators and the method of their appointment
2. Selection and appointment of Tribunal members
3. Acceptance of appointment and constitution of the Tribunal

Tribunal Selection and Appointment

Parties can select anyone who meets qualifications in Article 14:

- High moral character
- Recognized competence
- Independent judgment

Nationality:

Art. 39, Rule 1(3)

Majority shall be nationals of States other than the State party to dispute and the State of investors' nationality (unless parties otherwise agree)

Acceptance of Appointment & Declaration – Constitution of the Tribunal

- ❑ ICSID seeks acceptance from appointees (Arbitration Rule 5(2))

As soon as he has received the fee for lodging the request, the Secretary-General shall transmit a copy of the request and of the accompanying documentation to the other party

- ❑ Declaration of Arbitrator (Arbitration Rule 6):

- ✓ To keep information confidential
- ✓ To judge fairly as between the parties
- ✓ Statement of relationship with parties or other circumstance if needed
- ✓ Continuing obligation to disclose any such relationship or circumstance that arises subsequently

Commencement of Arbitration

ICSID notifies
parties of
arbitrators'
acceptance



Tribunal is
constituted
and
proceeding
begins



Once Tribunal is constituted:

First advance payment

First Session held
within 60 days

30-day limit to file
Preliminary Objection
under Rule 41(5)

First Session of the Tribunal – Practical Considerations

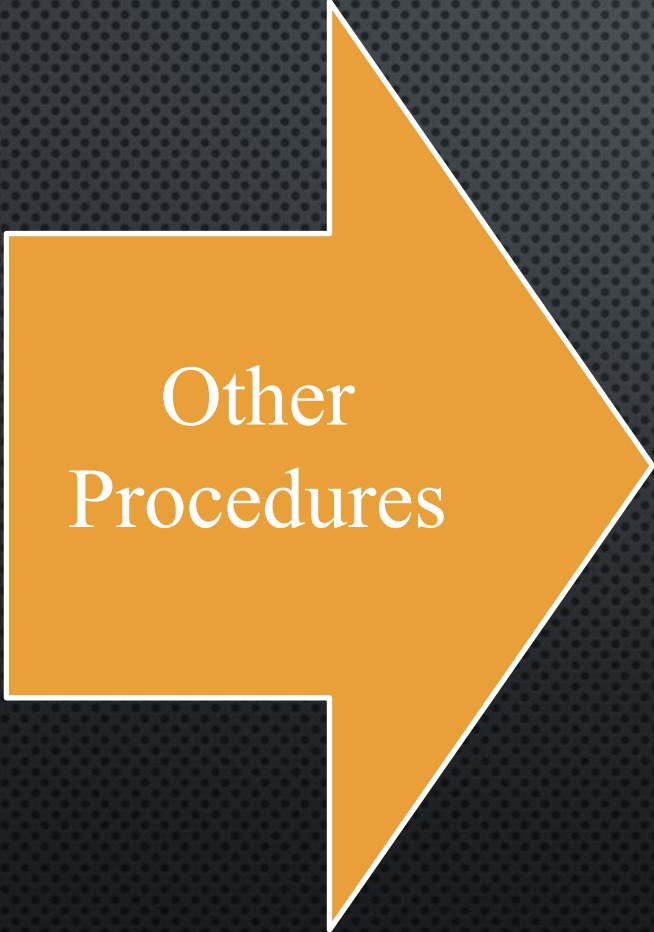
- To be held within 60 days from Tribunal constitution (unless otherwise agreed)
- Date fixed by Tribunal in consultation with the parties and Secretary-General
- Held in any venue agreed by parties – (Washington, D.C. as default)
- ICSID encourages parties to consider video or teleconference to reduce costs

First Session – Procedural Matters

- ❑ • Parties are provided a draft agenda and draft Procedural Order No. 1 for comments ahead of the session

- ❑ • Main items discussed include:

- ✓ Applicable arbitration rules
- ✓ Procedural language(s)
- ✓ Place of proceedings
- ✓ Procedural calendar
- ✓ Written and oral pleadings
- ✓ Public access to documents and hearings



Other Procedures

- Disqualification
- Expedited Preliminary Objections
- Preliminary Objections
- Bifurcation
- Provisional Measures
- Production of Documents
- Non-disputing Parties

Written Pleadings

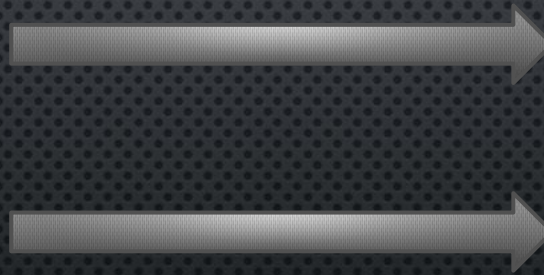
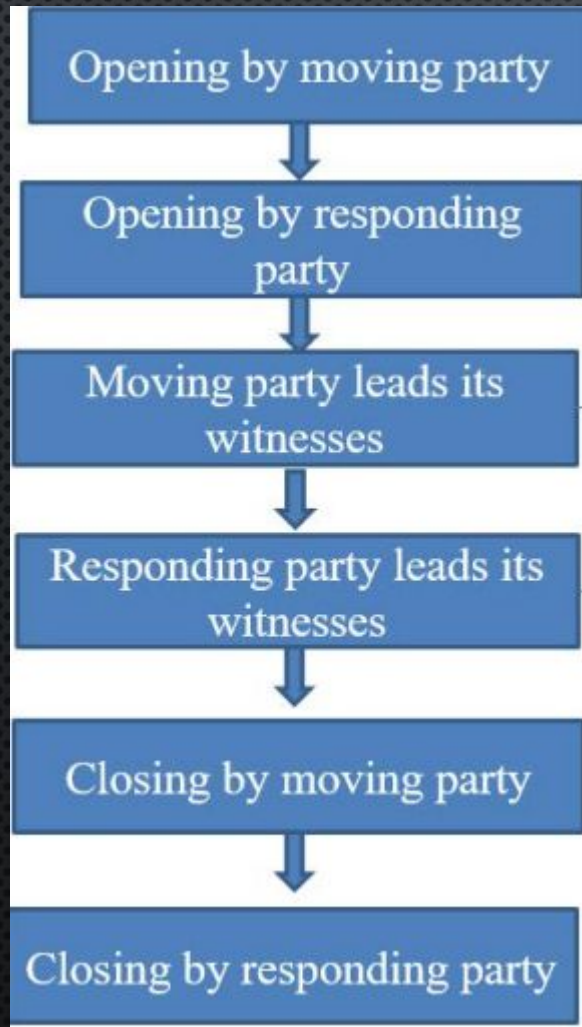
- Normally two rounds of pleadings:
 - Claimant's Memorial
 - Respondent's Counter-memorial
 - Claimant's Reply
 - Respondent's Rejoinder

- Same structure for jurisdiction, merits and quantum phases

Non-disputing Party Participation – Arb. Rule 37(2)

- ❑ Any person or entity that is not a party to the dispute can request to participate and file an amicus curiae submission
- ❑ Tribunal discretion to accept the submission based on whether:
 - ❑ The submission will assist in determination of a factual or legal issue by bringing a different perspective, particular knowledge or insight
 - ❑ The submission addresses a matter within the scope of the dispute
 - ❑ The non-disputing party has a significant interest in the proceeding


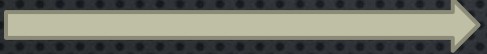

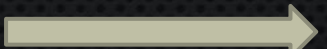
The Hearing



Examination of witnesses and experts:

- Direct
- Cross
- Re-direct

Discontinuance of the Proceeding

- Arbitration Rule 43  • On settlement or agreement on discontinuance by the parties
- Arbitration Rule 44  • On request of a party if there is no objection by the other party
- Arbitration Rule 45  • For failure of the parties to act
- Regulation 14(3)(d) and (e)  • For failure of the parties to pay advances

The Award

Relevant Provisions

□ ICSID Convention Article 48

Section 4 The Award

Article 48

(1) The Tribunal shall decide questions by a majority of the votes of all its members.

(2) The award of the Tribunal shall be in writing and shall be signed by the members of the Tribunal who voted for it.

(3) The award shall deal with every question submitted to the Tribunal, and shall state the reasons upon which it is based.

(4) Any member of the Tribunal may attach his individual opinion to the award, whether he dissents from the majority or not, or a statement of his dissent.

(5) The Centre shall not publish the award without the consent of the parties.

□ ICSID Arbitration Rules

46-48

Rule 47 **The Award**

- (1) The award shall be in writing and shall contain:
 - (a) a precise designation of each party;
 - (b) a statement that the Tribunal was established under the Convention, and a description of the method of its constitution;
 - (c) the name of each member of the Tribunal, and an identification of the appointing authority of each;
 - (d) the names of the agents, counsel and advocates of the parties;
 - (e) the dates and place of the sittings of the Tribunal;
 - (f) a summary of the proceeding;
 - (g) a statement of the facts as found by the Tribunal;
 - (h) the submissions of the parties;
 - (i) the decision of the Tribunal on every question submitted to it, together with the reasons upon which the decision is based; and
 - (j) any decision of the Tribunal regarding the cost of the proceeding.
- (2) The award shall be signed by the members of the Tribunal who voted for it; the date of each signature shall be indicated.
- (3) Any member of the Tribunal may attach his individual opinion to the award, whether he dissents from the majority or not, or a statement of his dissent.

Chapter VI **The Award**

Rule 46 **Preparation of the Award**

The award (including any individual or dissenting opinion) shall be drawn up and signed within 120 days after closure of the proceeding. The Tribunal may, however, extend this period by a further 60 days if it would otherwise be unable to draw up the award.

Rule 48 **Rendering of the Award**

- (1) Upon signature by the last arbitrator to sign, the Secretary-General shall promptly:
 - (a) authenticate the original text of the award and deposit it in the archives of the Centre, together with any individual opinions and statements of dissent; and
 - (b) dispatch a certified copy of the award (including individual opinions and statements of dissent) to each party, indicating the date of dispatch on the original text and on all copies.
- (2) The award shall be deemed to have been rendered on the date on which the certified copies were dispatched.
- (3) The Secretary-General shall, upon request, make available to a party additional certified copies of the award.
- (4) The Centre shall not publish the award without the consent of the parties. The Centre shall, however, promptly include in its publications excerpts of the legal reasoning of the Tribunal.

Special Features of ICSID Convention Awards

- Awards are final and binding
- Annulment – no appeal in local courts
- Member States must recognize monetary awards without further process
- Monetary award enforceable as a final judgment in any Contracting State

Costs of Arbitration

Parties' expenses

- Cost of legal representation
- Witnesses
- Experts
- Any other cost relating to the presentation of a party's case

Arbitrators' Fees and expenses

- 3,000 USD per day (\$375/hour)
- Plus:
 - Direct expenses reasonably incurred, travel expenses and subsistence allowance (when traveling)

Centre's administrative charges

- 42,000 USD/yearly usually shared by parties (21,000 USD each)
- Includes:
 - Hearing facilities at the World Bank, services of the Tribunal Secretary and case team, and financial administration

ICSID System is Self-Contained

- • No domestic court review of decisions or awards

- • Post-award remedies under the ICSID Convention:
 - Article 49(2) Rectification/ Supplementary Decision

 - Article 50 Interpretation

 - Article 51 Revision

 - Article 52 Annulment

Annulment Article 52 of the ICSID Convention

When?

- 5 grounds for annulment, Article 52(1)(a) to (e)

Time limits

- 120 days after the award is rendered
- In case of corruption of a Tribunal member, 120 days after discovery and within 3 years of award

Who decides?

- Ad hoc Committee of 3 members appointed from Panel of Arbitrators

Stay of enforcement

- Stay of enforcement may be granted during proceeding

Decision

- Decision on annulment can annul award in full or in part

Annulment – Grounds

- The Tribunal was not properly constituted
- The Tribunal has manifestly exceeded its powers
- Corruption on the part of a Tribunal member
- A serious departure from a fundamental rule of procedure
- The award fails to state the reasons on which it is based

Annulment is not Appeal

Article 53 of the ICSID Convention

- Limited & extraordinary remedy
- Maintains integrity of the process
- Can annul the original award in its entirety or in part
- Either party may resubmit the dispute to a new Tribunal

Compliance with ICSID Awards

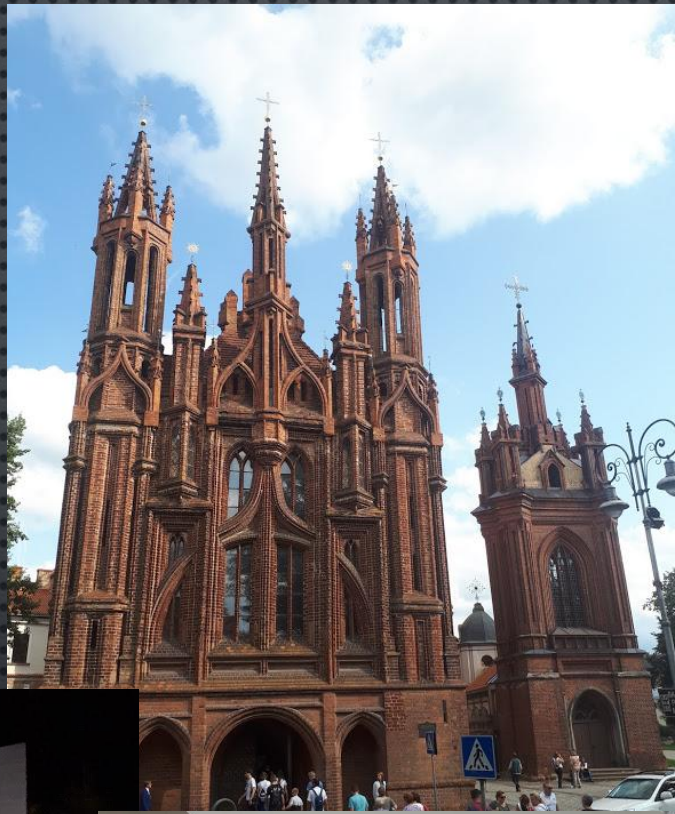
- Compliance is important to maintain confidence in the process
- Could be considered by providers of political risk insurance
- Non-compliance is a breach of ICSID Convention and could lead to a State-to-State dispute for treaty violation before the ICJ



LOVE
HATE

What we love/hate in Lithuania





thank you for
attention