

NYSBA – Montreal Seasonal Meeting, 24-26 October 2018

Outline : Panel 5 – Stephen L. Drymer on “Amendment of the ICSID Arbitration Rules”

The ICSID Arbitration Rules and Regulations were adopted in 1967, and the Additional Facility Rules were adopted in 1978. The rules were amended in 1984, 2003 and 2006. The first two amendment processes resulted in modest changes. The third, in 2006, introduced important innovations on transparency, arbitrator declarations and early dismissal of claims.

ICSID launched the current amendment process in October 2016. ICSID Member States and the public were invited to suggest topics for rule amendments. The result was a list of 16 potential topics. In August 2018 ICSID published a working paper and other materials that explain the concerns identified, current practice and ICSID’s proposed amendments. Written comments on these proposals are invited from Member States and the public by the end of this year.

According to ICSID, the “philosophy” motivating the current amendment process is that States and investors should have a range of dispute settlement options available to them. ICSID has also identified a number of “core objectives”, including: modernization; simplification; efficiency (reducing time & costs); and “going green” (reducing reliance on paper).

Important updates are proposed for the rules governing ICSID arbitration, mediation, conciliation and fact-finding, as well for expanded access to the ICSID “Additional Facility”.

Specific amendments proposed for the ICSID Arbitration Rules include:

- An obligation by the parties to disclose whether they have third-party funding, and if so, the source of the funding.
- A party will be deemed to consent to publish awards, decisions and orders unless it objects in writing within 60 days.
- An express rule allowing bifurcation.
- A new, stand-alone rule concerning security for costs.
- An enhanced declaration of independence and impartiality for arbitrators combined with a revised procedure for challenging arbitrators.
- New timelines for issuing awards.
- Newly drafted rules for expedited proceedings.

The aim of the session will be to review the amendment process and to discuss these and other proposals with members of the audience, with a view hopefully to encouraging participants to engage in the ongoing process of amending the ICSID Rules.

ICSID amendments webpage: <https://icsid.worldbank.org/en/amendments>