

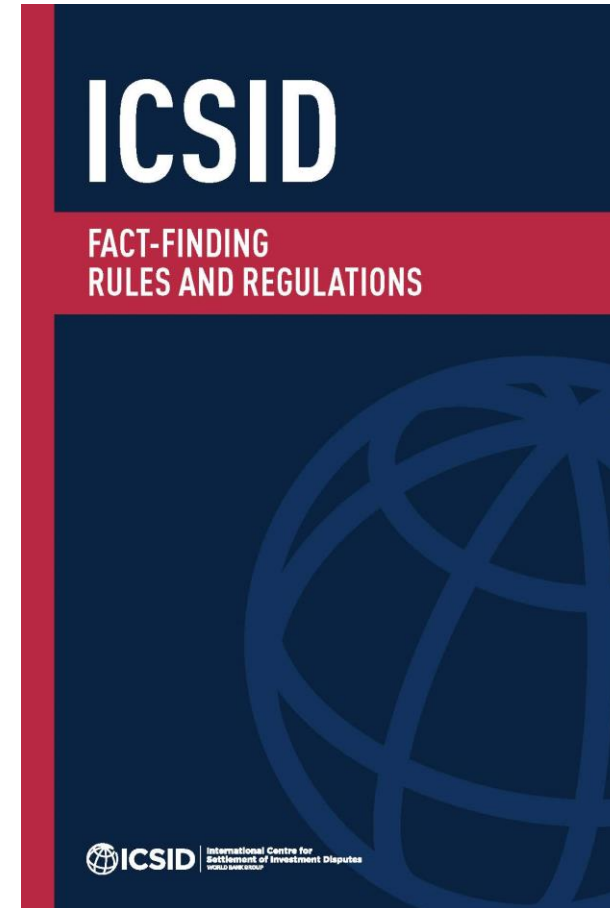
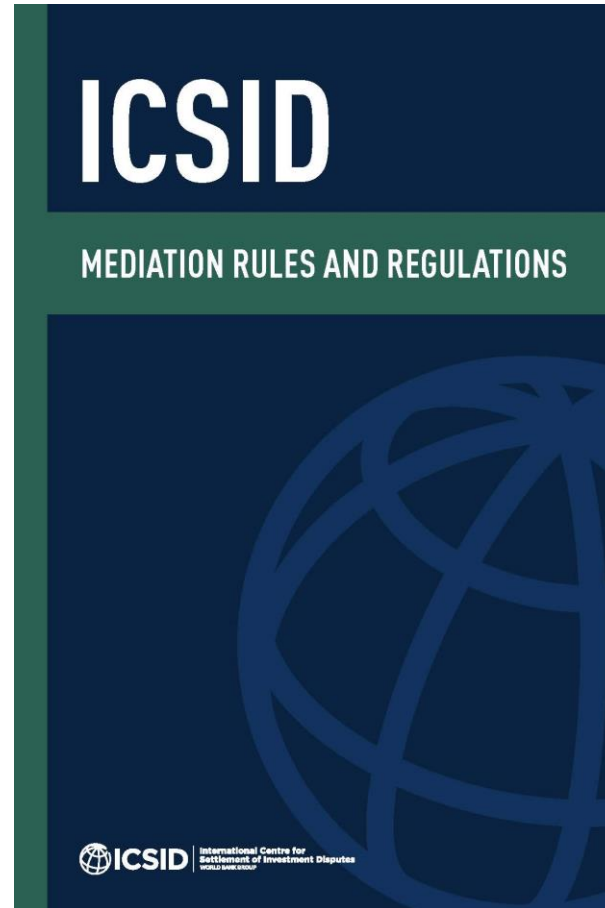
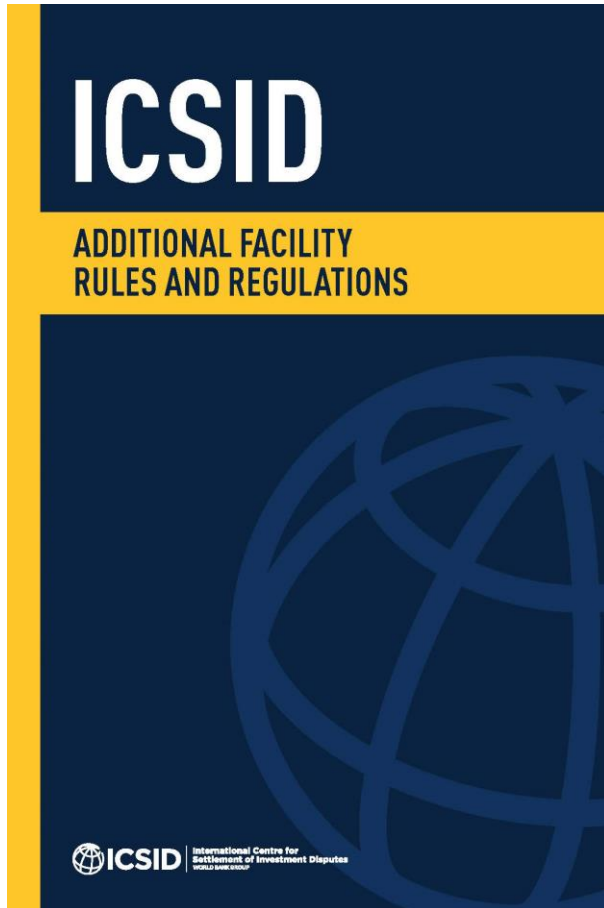
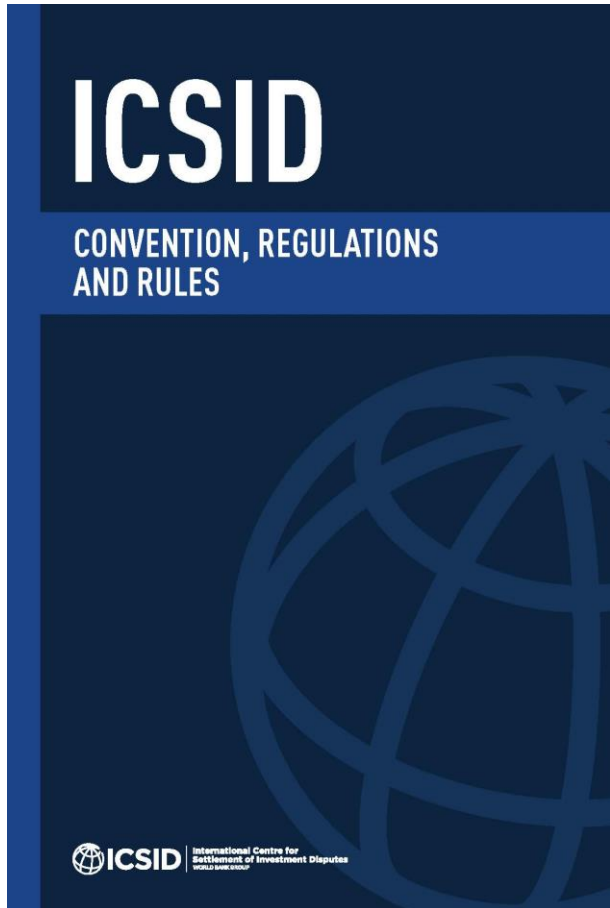
# ICSID Perspective

**Aurélia Antonietti**  
**ICSID Legal Adviser**

**7<sup>th</sup> Intersessional Meeting**  
**UNCITRAL WGIII**  
**March 7, 2024**

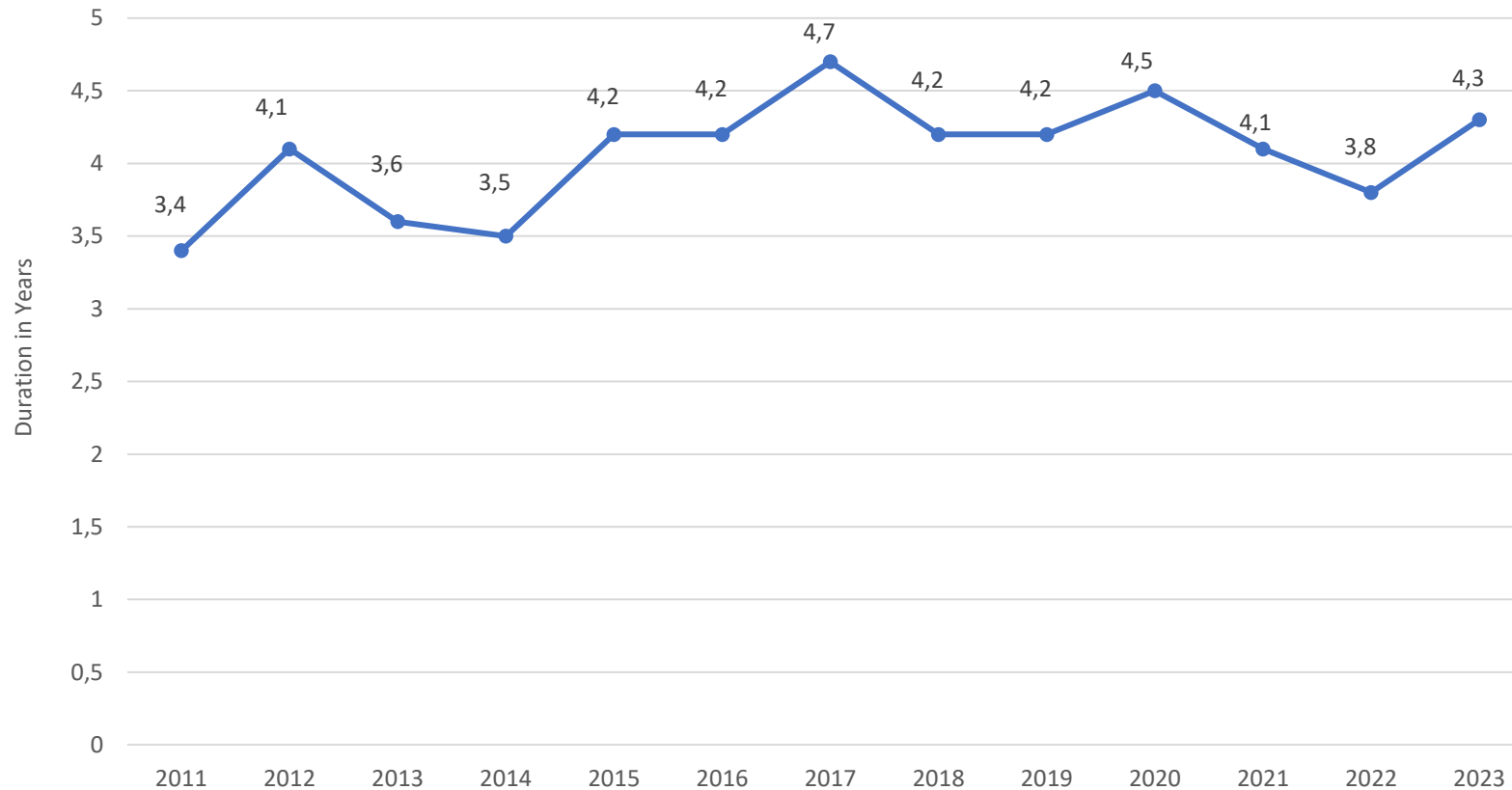


# ICSID Dispute Settlement Mechanisms



# Additional Facility Duration

## Average Duration of Concluded ICSID Original Arbitrations (2011-2023)



## Reduce Time and Cost

- Expeditious and cost-effective conduct required by all participants
- Availability commitment by arbitrators in their Declaration
- Encourages pro-activity by Tribunals (e.g., mandatory case management conference in arbitration cases)
- Time limits for parties + clear rules on extensions of time
- Time limits for Tribunal decisions and the Award & concrete process to extend those times

# Costs

- Clarify relevant factors in costs Awards

## **Rule 52** **Decisions on Costs**

- (1) In allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including:
  - (a) the outcome of the proceeding or any part of it;
  - (b) the conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner and complied with these Rules and the orders and decisions of the Tribunal;
  - (c) the complexity of the issues; and
  - (d) the reasonableness of the costs claimed.
- (2) If the Tribunal renders an Award pursuant to Rule 41(3), it shall award the prevailing party its reasonable costs, unless the Tribunal determines that there are special circumstances justifying a different allocation of costs.
- (3) The Tribunal may make an interim decision on costs at any time, on its own initiative or upon a party's request.
- (4) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.

## Costs - Dismissal for Manifest Lack of Legal Merit (MLLM)

- Clarifies that an MLLM objection can relate to jurisdiction and adds detail concerning the procedure
- If the Tribunal dismisses the claim for MLLM, the prevailing party is awarded its reasonable costs, unless special circumstances justify a different allocation

### **Rule 41** **Manifest Lack of Legal Merit**

- (1) A party may object that a claim is manifestly without legal merit. The objection may relate to the substance of the claim, the jurisdiction of the Centre, or the competence of the Tribunal.

### **Rule 52** **Decisions on Costs**

- (2) If the Tribunal renders an Award pursuant to Rule 41(3), it shall award the prevailing party its reasonable costs, unless the Tribunal determines that there are special circumstances justifying a different allocation of costs.

# Third-Party Funding

- Upon registration, parties must disclose the name and address of the funder, and of the persons and entities that own and control the funder



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## Rule 14 Notice of Third-Party Funding

- (1) A party shall file a written notice disclosing the name and address of any non-party from which the party, directly or indirectly, has received funds for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding ("third-party funding"). If the non-party providing funding is a juridical person, the notice shall include the names of the persons and entities that own and control that juridical person.
- (4) The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding pursuant to Rule 36(3).

## Security for Costs (SfC)

- Express provision on SfC available to a Party defending a Claim or Counter-Claim
- Includes circumstances to be considered by the Tribunal in determining whether to order SfC

### **Rule 53** **Security for Costs**

- (1) Upon request of a party, the Tribunal may order any party asserting a claim or counterclaim to provide security for costs.
- (3) In determining whether to order a party to provide security for costs, the Tribunal shall consider all relevant circumstances, including:
  - (a) that party's ability to comply with an adverse decision on costs;
  - (b) that party's willingness to comply with an adverse decision on costs;
  - (c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim; and
  - (d) the conduct of the parties.



# Transparency

- Increased transparency focused on publication of Awards (with consent and any agreed redactions), and Orders and Decisions (with any agreed redactions)
- Confidential and Protected Information are redacted
- New detailed provisions on submissions of NDPs and NDTPs
- An NDTP may file a submission as of right in a treaty-based arbitration and may be invited to do so by a Tribunal



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## Rule 63

### Publication of Orders and Decisions

- (1) The Centre shall publish orders and decisions, with any redactions agreed to by the parties and jointly notified to the Secretary-General within 60 days after the order or decision is issued.
- (2) If either party notifies the Secretary-General within the 60-day period referred to in paragraph (1) that the parties disagree on any proposed redactions, the Secretary-General shall refer the order or decision to the Tribunal to decide any disputed redactions. The Centre shall publish the order or decision in accordance with the decision of the Tribunal.
- (3) In deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 66.

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## **ICSID**

1818 H Street, NW

Washington, DC 20433, USA

Tel: +1 (202) 458-1534

Fax: +1 (202) 522-2615

Email: [icsidsecretariat@worldbank.org](mailto:icsidsecretariat@worldbank.org)

<https://icsid.worldbank.org/>