



International Advisory
& Dispute Resolution Unit

Module 3

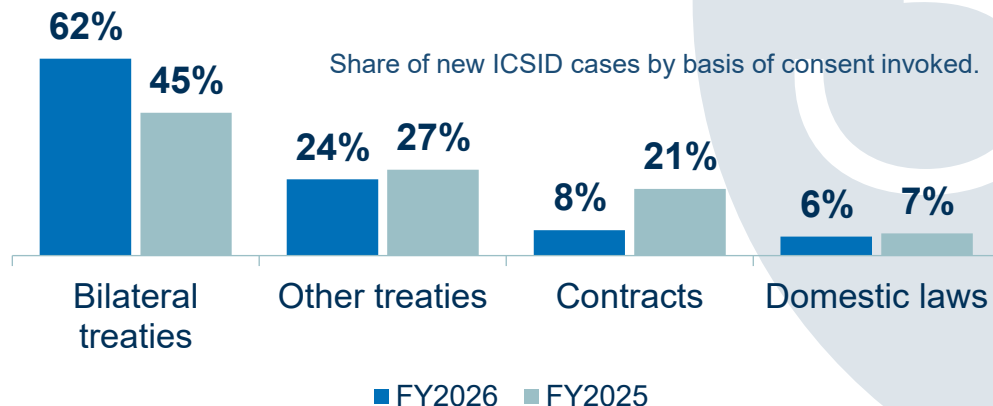
Introduction to Investment Arbitration

Natalie L. Reid | 20 October 2026

What is investment arbitration?

A foreign investor brings a claim directly against a host State before an arbitral tribunal, alleging breach of obligations owed in respect of its investment, on the basis of the State's prior consent to arbitrate such disputes.

Sources of State consent:



Which forum & rules?

ICSID Convention

Both the investor's home State and the host State must be Contracting States

CLOSED SYSTEM

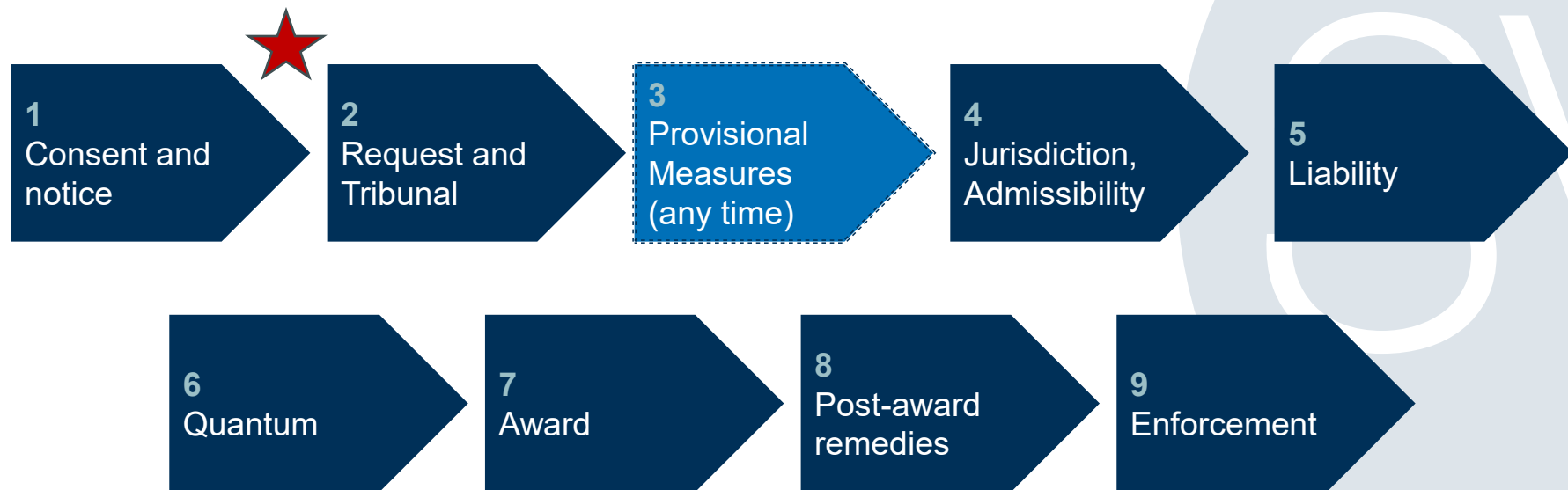
ICSID Additional Facility

- Available where only one of those States is an ICSID Contracting State
- Seat and courts of the seat matter

UNCITRAL and others

- *Ad hoc* or institutional rules
- Seat and courts of the seat matter

The life-cycle of a typical case



How much? Institutional and tribunal fees & charges

US\$25,000

non-refundable
lodging fee

US\$52,000

ICSID administrative
charge per year,
usually split equally

US\$500

per hour for
arbitrators, plus
expense allowances

US\$0.8–1.0M

approx. planning
figure for these costs
in a typical case

- **DOES NOT INCLUDE** fees and costs for counsel, party experts, and other party expenses.
- In any event, even for these costs, complex, long cases can run much higher.



International Advisory
& Dispute Resolution Unit

Early Steps

Consent, notice, registration

Before the case is filed

Consent is fixed by the instrument

Treaty or contract wording decides who can claim what, and when

Local courts and “forks-in-the-road”

Some instruments require local litigation first or bar arbitration after it

Notice and cooling-off

Written notice, then a waiting period (often six months)

Questions for the State:

- Can we avoid arbitration altogether?
- What is our “Day 1” protocol when a notice of dispute is received?

Starting the case

Registration

ICSID screens the request; the case begins on registration

First session

Within 60 days of constitution unless the parties agree otherwise

Constituting the Tribunal

- Parties typically appoint arbitrators
- Some of the most important strategic decisions in entire arbitration

Provisional measures

Any time

Even before the tribunal exists; the Secretary-General sets the briefing schedule

The standard

- Are measures sought “urgent and necessary” to protect party’s rights?
- Tribunal considerations include the potential effect on each party

The clock

Tribunal issues decision within 30 days of constitution or of the last submission, whichever is later

Binding?

Art. 47 says “recommend”; tribunals have long held they may order



International Advisory
& Dispute Resolution Unit

Can the tribunal hear it? Will it?

Jurisdiction & Admissibility

Jurisdiction: four gates

Subject matter (*ratione materiae*)

A legal dispute arising directly out of an “investment”?

Persons (*ratione personae*)

“Investor” of another Contracting State?
(foreign-controlled local companies by agreement)

Consent (*ratione voluntatis*)

Other aspects of scope and conditions of the treaty or contract offer

Time (*ratione temporis*)

Treaty in force? Dispute and measures within its temporal scope?

Early exits & timing of preliminary objections

Early dismissal

- HIGH BAR: “manifest lack of legal merit”
- Must be filed no later than 45 days after tribunal constitution
- Decided within 60 days of constitution or last submission, whichever is later

Preliminary Objections

- Dispute or claim not in ICSID jurisdiction or otherwise not within Tribunal competence
- If filed with bifurcation request: merits paused; if bifurcated, decision within 180 days
- If bifurcation not sought: Object by the counter-memorial; decided with the merits

Admissibility: may it be heard now?

Jurisdiction or admissibility?

- Tribunals have split, and the label changes the consequences (e.g. waiting periods, local remedies)
- Jurisdictional defect ends case; admissibility defect can be cured, waived, or deemed moot or futile



International Advisory
& Dispute Resolution Unit

The merits and the money

Liability and quantum

Liability: what did the State do wrong? which provision(s) breached?

Typical clauses & claims:

**Expropriation
(direct and indirect)**

Fair and equitable treatment

Full protection and security

National treatment and MFN

Umbrella clauses

Free transfers

Quantum of damages: where exposure is set

Traditional standard (*Chorzów Factory*): “Full reparation”

Wipe out the consequences
of the illegal act as far as
possible

Methods

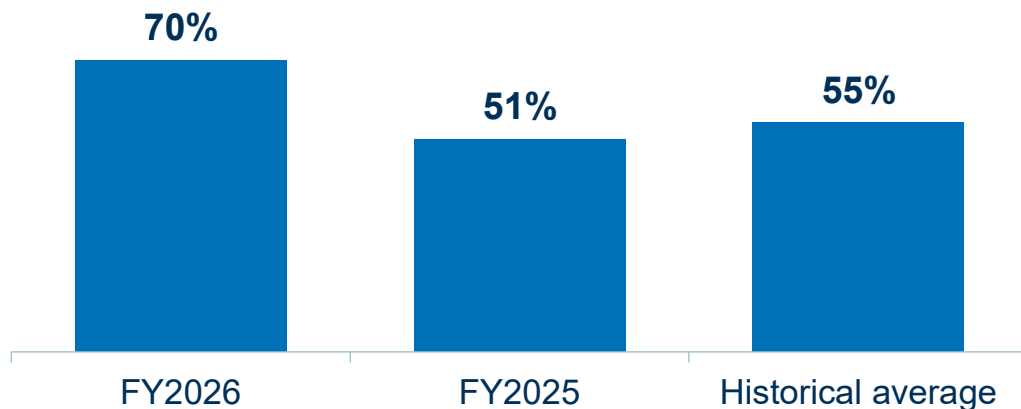
- Accepted valuation methodologies, anchored in case-specific evidence
E.g.: income approach (DCF); market approach (comparables)
- Presented by and through expert submissions

Critical issues

- Selection of inputs (e.g. valuation date(s), discount rate)
- Reasonableness of assumptions in the model
- Evidentiary basis; speculative projections are attacked

How ICSID cases end

Percentage of concluded ICSID arbitrations that ended with no damages awarded



63%

of arbitrations concluded in FY2026 were decided by a tribunal; 37% settled or were discontinued



International Advisory
& Dispute Resolution Unit

After the award

Remedies within ICSID system

Enforcement

The award and post-award tools

Final and binding

- Award disposes of the case
- No appeal on the merits

Timing

Under latest ICSID Rules (2022), 240 days from the last submission to the award in most cases

Available post-award remedies in ICSID system

- **By tribunal:** Supplementary decision, interpretation, and revision
- **By new panel:** Annulment

Annulment is not an appeal on the merits

Grounds:

**Tribunal not
properly
constituted**

**Manifest excess
of powers**

**Corruption of
Tribunal
member**

**Serious
departure from
fundamental
procedural rule**

**Failure to state
reasons**

Potential stay of enforcement of award

Just over half of requests granted to date

Enforcement: winning is not collecting

Recognition

- Every Contracting State must recognise an award as a final domestic judgment
- Efforts to block recognition on immunity-from-suit grounds generally unsuccessful

Execution immunity

- Preserved by the Convention
- Assets used for sovereign purposes are generally safe; “commercial assets” are fair game

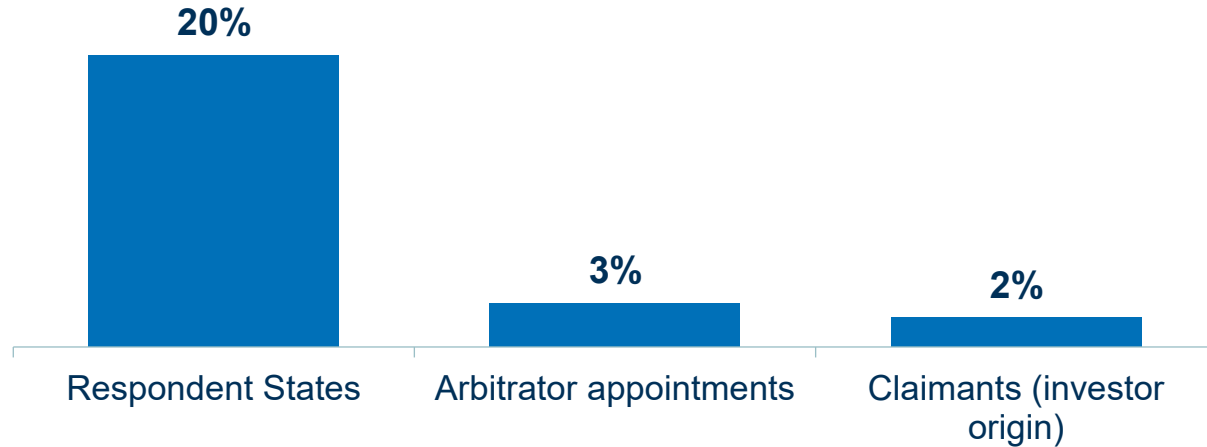
Risks for States

- “Commercial asset” exposure
- Resumption of diplomatic protection by investor’s home State
- Consequences with IFIs, private capital

The African lens

Sub-Saharan Africa in ICSID, FY2026

Sub-Saharan Africa's share of each group in FY2026 (%)



ICSID Caseload Statistics FY2026.

The AfCFTA Investment Protocol

Adopted 19 Feb. 2023

Existing BITs among State Parties to be terminated within five years of entry into force

Disputes

State-to-state under the AfCFTA dispute protocol;
investor-State to start with amicable resolution

Status:

Annex was due Feb. 2024;
reportedly still in process
(June 2026)



International Advisory
& Dispute Resolution Unit

Questions?