

## **The ICSID Convention 55 Years Later: *Can Emerging Market Economies Benefit from ICSID Membership?***

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Next month, the International Center for the Settlement of Investment Disputes (“ICSID”) will celebrate the 55<sup>th</sup> anniversary of the opening for signature by States of the ICSID Convention. Since March 1965, of the 189 States who are automatically eligible to sign the Convention by way of their membership to the International Bank for Reconstruction and Development, 154 States, predominantly emerging market economies, have signed and ratified the Convention, and nine others have signed but not yet ratified it.

While some States may fear that joining the ICSID will hinder their regulatory autonomy, there are important benefits to consider. First, as a mitigating factor, it is important to note that ICSID membership only creates procedural obligations. In addition, signatories can remove classes of disputes from the ICSID’s jurisdiction and require exhaustion of local remedies as a prerequisite to commencement of arbitration.

Second, the availability of binding ICSID arbitration, the leading institution for investor-state disputes, would increase investor confidence in a host country.

Finally, in October 2016, the ICSID Secretariat launched a consultation process with Member States and the public on amendment proposals to the ICSID Rules. Following these consultations, the ICSID published a series of working papers detailing the basis for the proposed changes, noting relevant considerations and suggesting the potential wording or structure of amendments. The proposed amendments incorporate increased protection for States, particularly for emerging market economies, including provisions on disclosure of [third-party funding](#) and on [security for costs](#), which we discussed in previous bulletins.

With these amendments expected to enter into force in 2020, the moment seems opportune for countries who have not yet signed the ICSID Convention to assess how they could benefit from ICSID membership.

Tereposky & DeRose LLP regularly provides advice and counsel on investor-state dispute settlement matters. Should you have any questions, we are at your disposal.

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