CHAPTER 2

Disqualification of Arbitrators under the ICSID Convention and Rules

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1 Introduction

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID Convention") is an international treaty that came into force in 1966. It established the International Centre for Settlement of Investment Disputes ("ICSID" or "the Centre") with the mandate of facilitating dispute settlement between States and foreign investors, thereby stimulating flows of private capital into the host State. Since its creation, ICSID has been the world’s leading facility for international investment disputes. It has hosted roughly 70% of all known international investment arbitrations, and administers cases under the ICSID Convention, the ICSID Additional Facility, and the United Nations Commission on International Trade Law ("UNCITRAL") Arbitration Rules.

This chapter provides an overview of challenges at ICSID, including the qualifications required for ICSID arbitrators, the procedure to bring a challenge, and the standard applied to decide challenges. Parties in an ICSID case may file a proposal to disqualify an arbitrator who manifestly lacks the necessary qualities for appointment or who is otherwise ineligible to be named to a tribunal or ad hoc Committee. To date, only eighty-four of the 1,620 arbitrator and ad hoc Committee member appointments made in ICSID cases have

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1 The text of the ICSID Convention, the arbitration rules under the ICSID Convention and ICSID Additional Facility, and further information about ICSID can be found at www.worldbank.org/icsid. This paper focuses on proposals to disqualify arbitrators under the ICSID Convention and Rules. The procedure for proposals to disqualify under the ICSID Additional Facility Rules is similar to the procedure described in this paper.

been subject to challenge, representing 5.2% of all appointments. The first challenge to an arbitrator under the ICSID rules was not filed until 1982, in *Amco v. Indonesia*. The next challenge was filed 16 years later (in 1998) in *Pey Casado v. Chile*. However, an increasing number of proposals to disqualify an arbitrator have been filed since the early 2000s. The chart below shows that the increasing number of proposals to disqualify is broadly consistent with the general trend of increasing cases, although it does not correlate exactly with the number of cases filed in any given year.

The eighty-four disqualification proposals initiated to date were filed in fifty-seven different cases, reflecting the fact that in some cases, parties challenged more than one arbitrator or sought to disqualify the same arbitrator multiple times. Overall, fifty-seven individuals have been subject to disqualification proposals at ICSID. Fifty-six of the eighty-four challenges have named a

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3 Three disqualification proposals were filed between 1982 and 1999, thirty-seven disqualification proposals were filed between 2000 and 2009, and forty-four disqualification proposals were filed between 2010 and September 1, 2014.

4 *Amco Asia Corp. et al. v. Republic of Indonesia*, ICSID Case No. ARB/81/1, Decision on the Proposal to Disqualify an Arbitrator (June 24, 1982), cited in Decision on Jurisdiction, 1 ICSID Reports 399, ¶ 2 (Sept. 25, 1983).

5 *Victor Pey Casado and President Allende Foundation v. Republic of Chile*, ICSID Case No. ARB/98/2, Decision (Feb. 21, 2006), cited in Award (May 8, 2008).