Annulment of ICSID Arbitration Awards

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INTRODUCTION

ICSID arbitral awards are intended to be final and binding, with no ordinary appeal. Unlike most commercial arbitration awards that can be challenged in national courts, ICSID awards are insulated from domestic judicial review because the ICSID system is self-contained. The ICSID Convention provides that awards 'shall not be subject to any appeal' – instead, the only recourse for a dissatisfied party is the limited annulment mechanism under Article 52. This annulment process is not an appeal on the merits; it is a special, narrowly defined remedy to address fundamental flaws in the arbitral process. As one ad hoc committee observed, annulment protects against errors that 'threaten the fundamental fairness of the arbitral process (but not against incorrect decisions)'. In practice, annulments are rare – only a small percentage of ICSID awards have ever been annulled (fully or partially) – underscoring that the bar for success is high.

This chapter examines the legal framework for annulment of ICSID awards and hopefully offers practice-orientated insights. It begins with a brief comparative note that distinguishes annulment from ICSID's other post-award remedies of interpretation and revision, followed by the grounds for annulment under Article 52 of the ICSID Convention and the corresponding ICSID Arbitration Rules (notably Rules 69 and 71–74 of the 2022 ICSID Rules). It then discusses how ad hoc committees have interpreted these grounds in leading decisions, highlighting the high threshold applied in practice. Finally, the article provides some considerations for practitioners, covering timing and procedural requirements, to navigate ICSID annulment proceedings successfully.

ANNULMENT V. INTERPRETATION AND REVISION: A NOTE OF DISTINCTION

For context, it is helpful to distinguish ICSID annulment from two other post-award remedies in the ICSID system: interpretation and revision. These remedies, provided in Articles 50 and 51 of the ICSID Convention, are often mentioned alongside annulment but serve different purposes:

Interpretation (ICSID Convention Article 50)

If there is a dispute between the parties about the meaning or scope of an award, either party can request an interpretation. This is decided by the original tribunal (or a reconstituted tribunal, if needed). Interpretation does not change the award, instead clarifies what the

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tribunal intended on points that were ambiguous or unclear. For example, if an award orders a state to pay compensation by a certain date but the parties disagree on how interest is to be calculated, they might seek an interpretation. This is a narrow remedy, essentially asking 'what did the award mean by X?' and it does not question the validity of the award.

Revision (ICSID Convention Article 51)

A party may request revision of an award if it discovers some new fact that could decisively affect the award, which was unknown to the tribunal and the applicant at the time of the original proceedings. This is similar to an extraordinary appeal for new evidence. Revision is also decided by the original tribunal (reconvened). There are strict time limits, requiring the request to be made within 90 days of discovering the new fact and within three years of the award. If granted, the tribunal can revise the award in light of the new fact, although revision is extremely rare and requires something significant, such as the discovery of a key document or fraud, hat would have changed the outcome.

The key differences relative to annulment are:

a interpretation and revision are handled by the original tribunal, not by an ad hoc committee;

b they do not involve any accusation of flaw or invalidity in the original process (interpretation just clarifies the award, revision considers new evidence); and

c they do not result in voiding the award except to the extent the original tribunal might alter the outcome through revision.

Annulment, by contrast, is an external check by a new body (the ad hoc committee) focusing on the integrity of the original proceedings and award. Practically, annulment is about nullifying an award for serious procedural/jurisdictional errors, whereas interpretation and revision are about refining or reconsidering an award under certain conditions. All three are exclusive ICSID remedies that address their respective needs, and do not grant any role to the national courts. It is worth noting that a party cannot use interpretation or revision to fix what are essentially complaints about the tribunal's reasoning or process – those belong in an annulment application. Conversely, an annulment committee will not entertain issues of ambiguity or newly found evidence – those belong to interpretation or revision processes.

Annulment is the primary mechanism to challenge an ICSID award, and it does so on fundamentally different grounds from interpretation or revision. This comparative context reinforces why annulment is strictly limited: it is neither a re-examination of the merits (as revision might be in light of new facts) nor an opportunity to question the tribunal (as interpretation provides). Rather, it is a remedy designed to ensure the fundamental fairness and procedural integrity of the arbitral process.

LEGAL FRAMEWORK UNDER THE ICSID CONVENTION AND ARBITRATION RULES

Article 52 of the ICSID Convention: grounds for annulment

Article 52(1) of the ICSID Convention exhaustively lists five grounds on which either party may seek annulment of an award:

a the tribunal was not properly constituted;

b the tribunal manifestly exceeded its powers;

c there was corruption on the part of a tribunal member;

d there was a serious departure from a fundamental rule of procedure; and
e the award failed to state the reasons on which it is based.

These are the only grounds for annulment; ad hoc committees cannot invent new grounds or review an award beyond this scope. The intent is to correct serious legal or procedural defects, not to relitigate the merits. Accordingly, committees have emphasised that they are 'not a court of appeal' and will not revisit a tribunal's factual findings or legal interpretations unless they implicate one of the Article 52(1) grounds.

The Convention also imposes strict time limits. An annulment application must be made within 120 days of the date of the award, except that in cases of alleged corruption (ground 3), an application may be filed within 120 days of discovering the corruption, but no later than three years from the award. These deadlines are mandatory – a late application is not admissible.

Once an application is filed, Article 52(3) provides for the appointment of an ad hoc committee of three members by the chair of ICSID's Administrative Council. The committee members must be drawn from the ICSID Panel of Arbitrators and cannot have served on the original tribunal, ensuring an independent review. Importantly, filing for an annulment does not automatically stay enforcement of the award. Under Article 52(5), the applicant may request a stay of enforcement, and if the request is made in the application, enforcement is provisionally stayed pending a decision by the ad hoc Committee. The committee will then decide whether to continue the stay during the annulment proceedings.

Article 52(6) addresses the outcome, if the committee annuls the award (in whole or part), either party may request that the dispute be resubmitted to a new tribunal for a fresh decision on the merits of the annulled portions. Annulment thus nullifies the affected award but does not terminate the underlying dispute – it may be reheard by a newly constituted tribunal if either party so desires.

In summary, the ICSID Convention establishes annulment as a narrowly tailored remedy for fundamental procedural or jurisdictional errors. It is an exceptional measure to uphold the integrity of the arbitration process, without undermining the finality of awards in the vast majority of cases. As such, committees have repeatedly stated that annulment is not a remedy for mere dissatisfaction or arguable mistakes in an award, but only for grave issues that fall within the exclusive Article 52 grounds.

ICSID Arbitration Rules 69 and 71–74: procedural framework

The ICSID Arbitration Rules (updated in 2022) provide further detail on the annulment procedure, complementing the Convention. A summary of the procedural framework established in these articles is provided below.

Rule 69 – application for annulment

The party seeking annulment must file a written application with the ICSID secretary-general identifying the award in question, the date of the application, and the specific ground(s) invoked. The application should include a brief statement of the facts and law supporting each ground and must be accompanied by the prescribed lodging fee (US$25,000). If a stay of enforcement is sought, it should be requested in the application. The secretary-general will register the application if it meets the formal requirements, at which point the annulment proceeding formally begins.

Rule 71 – appointment of ad hoc committee

Upon registration of an annulment application, ICSID promptly moves to constitute the three-member ad hoc committee. The ICSID Secretariat will propose candidates (ensuring no conflict with the original case), and the ICSID Administrative Council's chairman formally appoints the committee. Typically, each committee member is of a different nationality from the parties and is a seasoned arbitrator or jurist. Once the committee is constituted, ICSID notifies the parties, and the committee holds a first session to set the timetable.

Rule 72 – procedure in annulment proceedings

Rule 72 clarifies that, except as otherwise provided, the usual ICSID Arbitration Rules apply *mutatis mutandis* to annulment proceedings. In other words, the ad hoc committee conducts the case much like an arbitral tribunal would: there are written submissions, possibly an oral hearing, and decisions are taken by majority vote. The 2022 Rules also encourage efficiency – for instance, an indicative timeline suggests the committee should strive to issue its decision within 120 days after the final submission, though in practice, complex cases may take longer.

Rule 73 – stay of enforcement

This rule implements the ICSID Convention's stay provisions. It confirms that a party may request a stay of enforcement of the award at the time of application or thereafter. If the stay is requested in the application, enforcement is automatically stayed provisionally. The ad hoc committee will then, as one of its first tasks, decide whether to continue the stay until the annulment decision. Rule 73 does not mandate any security for granting a stay (the Convention is silent on that), but the committee has discretion to impose conditions (e.g., requiring a guarantee) if it deems appropriate.

Rule 74 – resubmission of dispute after annulment

If an award is annulled, this rule governs the process for resubmitting the dispute to a new tribunal. A resubmission is initiated by a request to ICSID, leading to a new case registration and a new tribunal constituted under the normal ICSID arbitration provisions. The rule essentially gives effect to the ICSID Convention's Article 52(6), ensuring that a party can obtain a new decision on the merits after annulment. In a resubmission proceeding, prior conclusions that were annulled are not binding, but any portions of the original award that were not annulled remain final. Rule 74 thus provides continuity: annulment is not the end of the road, and the parties can ultimately still get a binding resolution of their dispute, namely through a new award. In practice, the ICSID Convention and Rules work together to make annulment proceedings relatively expedited and procedurally straightforward.

INTERPRETING THE GROUNDS: KEY PRINCIPLES FROM ANNULMENT DECISIONS

Over the years, ICSID ad hoc committees have rendered dozens of annulment decisions, providing guidance on the meaning of each ground stated in Article 52(1). Below is an analysis of each ground and, when possible, illustrative decisions.

Ground (a): tribunal not properly constituted

This ground addresses whether the arbitral tribunal was formed in accordance with the ICSID Convention and the parties' agreement. It can be invoked for serious issues in the tribunal's composition – for example, if an arbitrator lacked the qualifications required by the parties, if there was a failure to follow the agreed appointment procedure, or if a significant conflict of interest or bias on the part of an arbitrator tainted the tribunal's integrity. Essentially, the award can be annulled if the tribunal itself was fundamentally defective from the start.

Historically, this ground was rarely successful, but a notable recent case underscored its significance. In *Eiser Infrastructure Ltd v. Spain* (2020),[2] an ICSID award was annulled in its entirety due to the improper constitution of the tribunal. After the award, Spain discovered that the claimants' appointed arbitrator had failed to disclose a close professional relationship with an expert witness used in the case. The ad hoc committee concluded that this non-disclosure violated the arbitrator's obligation of independence and impartiality, and that the presence of an arbitrator who would have been disqualified if the truth were known, meaning the tribunal was not properly constituted.

The *Eiser* case demonstrates that Article 52(1)(a) can be a powerful ground where arbitrator conflicts or bias arise. However, the threshold is high: the issue must be serious (e.g., a clear conflict or a direct violation of the agreed appointment procedure); minor or debatable issues (such as a party feeling an arbitrator was unqualified despite being accepted initially) are unlikely to meet this standard.

Committees also take into account whether the complaining party objected during the arbitration – if an issue was known but not raised then, a committee may view such an annulment argument with scepticism later. In sum, this ground is about safeguarding the basic legitimacy of the tribunal; it comes into play only for important and serious circumstances undermining the tribunal's impartiality or the validity of its appointment.

Ground (b): manifest excess of powers

'Manifestly exceeded its powers' is one of the most invoked annulment grounds, often encompassing issues of jurisdiction and applicable law. This ground can arise in two principal ways:

a Jurisdictional excess: the tribunal overstepped the boundaries of the parties' consent to arbitrate – for instance, by asserting jurisdiction over a dispute or party not covered by the arbitration agreement/treaty, or conversely by failing to exercise jurisdiction where it did exist (i.e., refusing to decide a matter that was properly before it). In other words, the tribunal either decided something it had no power to decide or declined to decide something it was obliged to decide.

b Excess related to applicable law or authority: the tribunal may have applied the wrong law or legal standard, or acted *ultra vires* to the authority granted to it by the parties or the ICSID framework. For example, if the parties' treaty says the tribunal must apply certain treaty provisions and international law, but the tribunal instead bases its decision on a completely extraneous legal source, that could be an excess of powers.

The excess must be 'manifest', meaning obvious or clear. Committees have interpreted the term 'manifest' as at least readily discernible on the face of the award or through a short

2 *Eiser Infrastructure Ltd v. Spain* (2020), www.italaw.com/cases/5721.

analysis, and also as implying a substantial impact (trivial excesses are not enough). There is some debate whether 'manifest' refers to the clarity of the excess or the magnitude, but in practice, committees often require a showing that the tribunal's error was self-evident and serious.

A famous example of manifest excess of powers is *Sempra Energy v. Argentina* (2010).[3] In that arbitration, Argentina had invoked the defence of necessity under its investment treaty with the United States. However, the tribunal analysed Argentina's necessity defence primarily under customary international law (the general international law doctrine of necessity) rather than under the specific treaty article. Hence, the ad hoc committee annulled the award, holding that the tribunal had manifestly exceeded its powers by applying the incorrect law. The applicable law was the bilateral investment treaty (BIT) and customary international law only to the extent incorporated, yet the tribunal treated custom as controlling, effectively ignoring the treaty's requirements. This constituted a clear and serious departure from the mandate as the parties had not empowered the tribunal to decide on the basis of any law it pleased; it had to apply the BIT, which it failed to do. This case demonstrates the committee's willingness to annul awards if tribunals are seen as straying from the agreed legal framework. At the same time, the committee clarified that it was not judging the correctness of the result per se, but the tribunal's adherence to its mandate.

Another facet of manifest excess is when a tribunal refuses to decide an issue squarely within its jurisdiction. An example is the first *Vivendi v. Argentina* annulment decision (2002).[4] The tribunal had jurisdiction under a BIT over claims concerning a provincial authority's actions, but it declined to address those claims, reasoning they were essentially contractual matters for local courts. The ad hoc Committee held that the tribunal's failure to exercise jurisdiction (which it in fact had under the BIT) was a manifest excess of powers, an abdication of power that the tribunal was obligated to use. The relevant portion of the Vivendi award was annulled, allowing a new tribunal to consider the merits of those claims.

Not every error of law or fact amounts to an excess of powers, let alone a manifest one. Many annulment applicants argue that a tribunal 'ignored the applicable law' or 'misinterpreted the treaty', but committees often reject these arguments as attempts to appeal the merits. For instance, in *Azurix v. Argentina*,[5] Argentina contended the tribunal exceeded its powers by applying international law wrongly (from Argentina's perspective). The committee disagreed, emphasising that even if a tribunal makes a legal mistake, that does not equal an excess of powers – it must be shown that the tribunal fundamentally went outside the legal framework or clearly refused to apply the proper law. In summary, a manifest excess of powers exists when a tribunal has clearly acted beyond the scope of authority given by the parties or the ICSID Convention. To win on this ground is not enough to argue the tribunal misapplied the correct law; the excess must be clearly shown as a fundamental wrong turn.

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3 *Sempra Energy v. Argentina* (2010), www.italaw.com/cases/1002.

4 *Vivendi v. Argentina* (2002), https://jusmundi.com/en/document/decision/en-compania-de-aguas-del-aconquija-s-a-and-vivendi-universal-s-a-formerly-compania-de-aguas-del-aconquija-s-a-and-compagnie-generale-des-eaux-v-argentine-republic-i-decision-on-annulment-wednesday-3rd-july-2002.

5 *Azurix v. Argentina,* www.italaw.com/cases/118.

Ground (c): corruption of a tribunal member

This ground is invoked if an arbitrator or arbitrators were corrupt, for example, if an arbitrator accepted a bribe or was influenced by fraud. It is a straightforward concept: corruption strikes at the heart of the tribunal's integrity, and thus any award obtained by corruption cannot stand. In practice, however, proving corruption is exceptionally difficult, and as far as we are aware, to date no ICSID award has been annulled on the ground (c).

Essentially, a corruption ground requires evidence of conduct such as bribery, which typically holds a high threshold to prove. If corruption is alleged, ICSID Arbitration Rule 69 rests the burden of proof on the applicant to indicate the date on which the corruption became known, given the special timing allowance for this ground. A genuine corruption scenario might involve, for example, a whistleblower or law enforcement revealing after the award that an arbitrator was paid off by one party. In such a case, an annulment committee would almost certainly suspend the credibility of the award pending investigation, as corruption would undermine the entire proceeding. The difficulty is that, in the absence of concrete evidence (emails, bank transfers, etc.), a claim of corruption remains speculative. Without solid evidence, a committee will not cancel an award simply because one party suspects corruption. If evidence does emerge (even years later), the Convention's three-year outer limit gives a window to act, reflecting that corruption might be hidden for some time.

In summary, ground (c) has not been successfully applied in practice, it remains available for the truly extraordinary case where an arbitrator's corruption can be demonstrated. In any annulment strategy, unless there is tangible proof of corrupt behaviour, it is wiser to focus on other grounds.

Ground (d): serious departure from a fundamental rule of procedure

Ground (d) is concerned with the fairness of the arbitral procedure. It requires two elements:

a the procedural rule breached must be fundamental, and

b the departure must be serious (meaning it mattered to the outcome or deprived a party of justice).

Fundamental procedural rules include principles such as the right to be heard, equal treatment of the parties, proper deliberation by the tribunal, and other basic due-process guarantees. Non-fundamental rules would be minor or discretionary procedures. A classic fundamental rule is the right to be heard (*audi alteram partem*) – each party must have an opportunity to present its case and respond to the other's case. If a tribunal denies a party that opportunity in a significant way, it could be a serious departure.

The seriousness requirement generally means the violation could have affected the award. Some committees have applied a 'material impact' test – would the procedure breach potentially have made a difference in the result? If yes (or if it is impossible to know because the party was shut out), then it is serious. If the breach had no bearing on the outcome, committees may deem it not serious enough to warrant annulment. One leading case on this ground is *Fraport v. Philippines* (2010).[6] There, the tribunal had accepted certain evidence (internal Philippine government documents) late in the proceedings and used that evidence to decide against jurisdiction, without giving Fraport a meaningful chance to rebut it. The ad hoc committee found that this undermined Fraport's right to be heard on a critical issue

6 *Fraport v. Philippines* (2010), www.italaw.com/cases/456.

and was a serious departure from a fundamental procedure rule. In explaining seriousness, the committee noted that the evidence in question was decisive to the outcome; had Fraport been able to challenge or contextualise it, the jurisdictional decision might have differed.

On the other hand, committees have rejected ground (d) when the procedural complaints were not deemed fundamental or not shown to be prejudicial. In *Azurix*,[7] Argentina argued that the tribunal's refusal to order certain document production was a serious procedural violation. The committee held that while the right to present one's case is fundamental, there is no absolute right to any specific evidence – the tribunal's management of evidence fell within its discretion and did not amount to a denial of due process. Similarly, if a party claims the tribunal was biased in how it questioned witnesses or weighed evidence, committees usually require clear evidence that the party was prevented from presenting its case, not just that the tribunal was unpersuaded by it.

Another fundamental rule is the requirement that all arbitrators deliberate and participate in decision-making. If, say, one arbitrator was excluded or failed to discharge their duties, that could qualify as a serious departure and might also fit under improper constitution. However, proving how deliberations were conducted is challenging unless an arbitrator voices a concern.

In sum, ground (d) is about ensuring procedural justice in ICSID cases. To succeed, an applicant must identify a concrete procedural incident that (1) violated a basic fair trial right and (2) was not merely technical but had the potential to affect the award. Common scenarios that have succeeded involve denial of the right to be heard or denial of an opportunity to present or rebut crucial evidence. If a party had notice of an issue, made its arguments, and simply lost, it cannot claim a fundamental procedural breach just because it disagrees with how the tribunal handled the proceedings. As a practitioner, one should use ground (d) to target truly egregious procedural irregularities – it is often combined with other grounds (such as (a) or (e)) when building an annulment case for maximum effect.

Ground (e): failure to state reasons

Article 52(1)(e) provides for annulment if 'the award has failed to state the reasons on which it is based'. This ground stems from Article 48(3) of the ICSID Convention, which obliges tribunals to deal with questions raised and state reasons. The rationale is that a party is entitled to understand the logical basis of the tribunal's decision. However, committees interpret this ground in a very specific and limited way. It does not mean that the reasons have to be correct or convincing – only that reasons must be given. In practice, an award fails to state reasons if:

a it contains no reasoning on an essential issue; or

b the reasons given are so unclear or incoherent that no logical sense can be made of the tribunal's conclusion; or

c the reasons are internally contradictory to the point that they cancel each other out.

As long as an award enables the reader to follow the tribunal's reasoning from point A to point B, ground (e) is usually considered satisfied, even if the party or committee thinks the reasoning is weak or erroneous. A case illustrating this ground is *Maritime International Nominees Establishment (MINE) v. Guinea* (1989).[8] The tribunal in *MINE* had given conflicting explanations for how it calculated interest on damages – one part of the award

7 *Azurix v. Argentina,* www.italaw.com/cases/118.

8 *Maritime International Nominees Establishment (MINE) v. Guinea* (1989), www.italaw.com/cases/3361.

suggested simple interest, another implied compound interest, leading to confusion. The ad hoc committee found that these contradictory statements left the award without a clear, reasoned basis for the interest calculation, constituting a failure to state reasons. The interest portion of the award was annulled, while the rest (where the reasoning was adequate) was left intact.

Under Article 52(1)(e), neither the quality nor the correctness of reasons is relevant; an annulment is not warranted just because a party believes the tribunal's analysis was inadequate or wrong. On the other hand, if a tribunal summarily disposes of an issue without any reasoning, it risks annulment according to ground (e).

For practitioners, ground (e) can be a useful add-on argument, one often argues an excess of powers or serious procedural breach and, in the alternative, that the award failed to address or explain a particular issue. However, it is difficult to base an annulment solely on a lack of reasons unless there is a glaring gap or contradiction in the award's text. In crafting an annulment application on this ground, one should point to specific questions the tribunal was required to address (by the parties' submissions or by necessary implication) and show that the award is silent or unintelligible on those points. If the tribunal's reasoning can be pieced together, committees are likely to eject the Article 52(1)(e) claim even if the party thinks the reasoning was scarce or illogical.

BRIEF PRACTICAL INSIGHTS FOR ANNULMENT PROCEEDINGS

Annulment proceedings, though not appeals, are high-stakes matters that require careful strategy. Practitioners advising on ICSID annulment – whether for an award-creditor defending the award or an award-debtor seeking to annul – should consider, among others, the following basic practical points:

Timing and application

An annulment application must be filed within 120 days of the award or within the special timeline for corruption. This period is short; a party should begin evaluating potential annulment grounds as soon as the award is rendered. Missing the deadline extinguishes the right to annulment, so timely internal decisions are critical.

Formal requirements

The application (as per Rule 69) should identify the award and state the grounds clearly. It is advisable to include a concise summary of the factual and legal basis for each ground. It is also key to remember to pay the lodging fee (and include proof of payment) – ICSID will not register the application without it. An incomplete application (missing fee or requisite information) can lead to delays or non-registration, which can be fatal if the deadline passes.

Stay of enforcement request

If you represent the award-debtor and want to prevent the other side from enforcing the award during the annulment, request a stay of enforcement in the application to benefit from the automatic provisional stay. If you wait until after filing, enforcement could theoretically proceed before a stay is in place. From the award-creditor's perspective, be prepared that a stay is likely to be in effect upon registration if requested; you will have a chance to argue against its continuation once the committee is formed.

Provisional stay handling

If a stay of enforcement was requested, the committee typically addresses it early. The committee may invite written submissions on whether the stay should continue and might hold a short procedural hearing on this issue. Award-debtors should be ready to demonstrate harm they would suffer without a stay, and possibly offer security. On the other hand, award-creditors should show prejudice from the delay and argue the annulment lacks merit (without fully arguing the case).

Record of the arbitration

The committee will have access to the case record (pleadings, transcripts, evidence) from the original arbitration, but it is up to the parties to use or cite parts of that record as needed for their arguments. New evidence is typically not admissible except in connection with specific annulment issues (e.g., evidence of an arbitrator's undisclosed conflict or proof of corruption). The focus is on the award and the arbitration's conduct, not re-proving the underlying facts of the dispute.

In practical terms, once the committee is in place, counsel should adjust to arguing before a new trio of arbitrators who know only what the award and the parties tell them. It is a fresh audience: everything crucial in the arbitration that relates to the grounds will need to be explained once more. This is a chance to reshape the narrative around the identified flaws, but also a risk if something is not presented clearly – the committee was not there throughout the case, as the original tribunal was.

Outcome of annulment

Once the ad hoc committee deliberates, it will issue a written decision on annulment. This decision will either:

a reject the application for annulment in its entirety; or
b annul the award, in full or in part, specifying the extent.

If annulment is refused, the award becomes fully final and binding as if no annulment had been filed. Any stay of enforcement that was in place is lifted. The award-creditor can proceed to seek enforcement under Article 54 of the Convention. The annulment proceeding ends, and generally, the committee will address costs. For the applicant, this is the end of the road within ICSID – there is no appeal from a denied annulment. At that point, the focus shifts to compliance or negotiation of payment terms if the award is large.

If the award is fully annulled, the entire award is rendered null. It is as if the award never existed and, thus, there is no enforceable decision on the merits. Either party (most likely the original claimant in the arbitration) can request resubmission of the dispute to a new ICSID tribunal (under Rule 74). The dispute would then effectively be reheard from scratch by a new tribunal, potentially using the evidentiary record of the first arbitration but without being bound by the annulled tribunal's findings. In practice, a full annulment often leads the parties to consider settlement – given the time and expense of re-arbitrating, they might find a mutually acceptable compromise. If not, a new case proceeds and could take a few more years to reach a fresh award. From the state's perspective, a full annulment is a victory in nullifying the original liability or damages, but it may be temporary if the investor can refile and possibly win again (albeit, the second tribunal might take guidance from the committee's reasoning on what went wrong the first time).

If the award is partially annulled, the committee will specify which parts are annulled. For example, it might annul the damages portion but uphold the findings of liability. In such a case, the unannulled parts of the award remain binding (liability stands), but the issues covered by the annulled part (damages) can be resubmitted. A new tribunal on resubmission would then only address the open issues (e.g., recalculate damages) while accepting the rest as given.

Costs of the annulment

In the annulment decision, committees allocate the costs of the proceeding. There is no fixed rule – often, if the applicant loses, the committee may order it to bear all or most costs (both ICSID fees and the other side's legal costs) as a deterrent against unjustified challenges. If the applicant wins annulment, typically each party bears its own costs, or occasionally the respondent (now losing party) may be asked to bear costs. Some committees have split costs if they felt the application raised legitimate issues, even if ultimately unsuccessful.

CONCLUSION

Annulment under the ICSID Convention is a remedy of last resort – exceptional, narrowly confined, but crucial for upholding the fundamental fairness and legitimacy of ICSID arbitration. The legal framework of Article 52 of the ICSID Convention and Rules 69 and 71–74 provides a self-contained review mechanism that is limited to specific grounds (jurisdictional issues, tribunal integrity, procedural fairness and basic reasoning requirements) and procedurally streamlined (with strict deadlines and a separate ad hoc committee) to prevent abuse of the process.

The tone of countless annulment decisions reinforces that ad hoc committees are not appellate courts for investment disputes, but rather guardians of the integrity of the arbitral process. An annulment application is worthwhile only if one can point to a grave flaw in the original proceeding – something that strikes at the tribunal's jurisdiction, impartiality, due process or the logical coherence of the award. If such a flaw exists, the ICSID annulment mechanism offers a chance to correct or remove the tainted award. If not, pursuing an annulment is likely to be a costly detour with little prospect of success.

On the other side, an investor who has won an award should be prepared to defend it by highlighting the robustness of the original process and the deference that committees consistently give to tribunals on substantive matters. Many states have attempted annulment as a reflex, but the overall annulment success rate remains very low. Consequently, this attests to the efficacy of ICSID's design: finality is the rule, and annulment is a rare exception. Ultimately, the annulment mechanism, when used properly, safeguards the integrity of ICSID arbitration, maintaining confidence that, while awards are final, there is recourse if, and only if, a fundamental legal departure occurred. This balance is what the drafters of the ICSID Convention intended, and decades of annulment practice have borne out its importance to both investors and states engaged in investment arbitration.

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