

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

DISPUTE SETTLEMENT

INTERNATIONAL CENTRE FOR
SETTLEMENT OF INVESTMENT DISPUTES

2.5 Requirements Ratione Materiae



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NOTE

The Course on Dispute Settlement in International Trade, Investment and Intellectual Property consists of forty modules.

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OVERVIEW

This Module deals with the subject-matter for which ICSID was designed. It discusses how the phrase “investment disputes” in the Convention’s title is reflected in the provisions of the ICSID Convention. The key provision is Article 25 which speaks of “any legal dispute arising directly out of an investment”.

This Module looks at the characteristics a dispute must have in order to be subject to ICSID’s jurisdiction. In particular, this it examines what types of transactions may be understood as investments for purposes of the Convention. In addition, it looks at the concept of a legal dispute and at the requirement that it arise directly from an investment. The combination of these elements circumscribe the scope of application of the ICSID Convention as far as its subject-matter is concerned. In other words, they determine the extent of ICSID’s jurisdiction *ratione materiae*.

As in the other Modules on ICSID, the starting point is the text of the Convention. In addition, this Module looks at how the relevant provision was prepared, how it was explained to States at the time of its adoption, how it was relevant to the work of the ICSID Secretariat, and how it has been interpreted by arbitral tribunals in ICSID cases.

This Module will also point out some connections with other aspects of the ICSID Convention and with other instances of international dispute settlement dealing with investment. These include the consent to jurisdiction (see Module 2.3) and the Additional Facility (see Module 2.2).

OBJECTIVES

Upon completion of this Module the reader should be able to:

- Understand the concept of jurisdiction *ratione materiae* or subject-matter jurisdiction.
- Delineate ICSID's subject-matter jurisdiction.
- Describe the concept of investment as used in the context of ICSID's jurisdiction.
- Appreciate the limits of a party agreement concerning the existence of an investment.
- Analyse the significance of definitions of "investment" in BITs and other treaties for ICSID's jurisdiction.
- Identify who makes a decision on jurisdiction *ratione materiae* in ICSID proceedings.
- List typical examples of uncontested instances of investments.
- Explain under what circumstances other activities may qualify as investments.

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