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## ICSID Publishes Latest Caseload Statistics

The International Centre for Settlement of Investment Disputes (**ICSID**) has recently released its latest statistics concerning the cases brought under its auspices.

The report provides a number of interesting statistics on cases registered by ICSID historically, and in the year 2013, including; the distribution by economic sector; the basis of consent invoked to establish ICSID jurisdiction, the geographic distribution of cases by state party involved and the outcomes of cases decided and settled or otherwise discontinued.

The report is published twice a year and can be found [here](#).

### Overall

The 2013 statistics demonstrate a slight decline in caseload, although given the general numbers of cases brought at ICSID generally, it would be premature to draw any conclusions from this. Investors are increasingly aware of the substantive protections offered by bilateral and multi-lateral investment treaties and the benefits of recourse to ICSID in the event of disputes with the State hosting their investment.

### Sectors

The report demonstrates the broad spread of sectors in which disputes handled by ICSID have arisen. Ten different industries or economic sectors are represented in 87% of the cases registered at ICSID, with an additional category of “other” making up the remaining 13%. As would be expected, disputes concerning the Oil, Gas and Mining industries represent the highest percentage of all cases registered at 26%.

The statistics for cases registered in 2013 are broadly similar to ICSID’s historic sector spread, although there were a higher percentage of cases in the Electric Power & Other Energy sector in 2013 (20% in 2013 compared to 13% in ICSID’s overall history).

### Geographic Distribution of Cases by State Party Involved

The statistics demonstrate a far higher percentage of Western European State

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parties involved in ICSID cases in 2013 compared to ICSID's overall history (13% of all cases registered in 2013 involved a Western European State Party versus 2% of all cases registered at ICSID). Further, the percentage of cases registered in 2013 involving a State Party from the Middle East or North Africa considerably exceeds the overall percentage of such cases in ICSID's history (20% in 2013 compared to 11% overall), reflecting a number of cases. Predominantly, these cases involve Egypt (6 arbitrations registered against Egypt, with one each registered against Jordan and Tunisia).

In contrast, the percentage of cases registered in 2013 against a South American party is far smaller than the overall percentage in ICSID's history (5% of cases in 2013 compared to 27% of ICSID's overall cases). The percentage of cases against a State Party from Sub-Saharan Africa in 2013 is roughly consistent with the overall profile (15% of cases registered in 2013 compared to 16% overall).

The largest number of cases in 2013 was registered against parties in Eastern Europe and Central Asia, with each of Bulgaria, Cyprus, Kazakhstan, the Kyrgyz Republic, and Slovenia facing one claim, Hungary and Croatia facing two claims and Uzbekistan facing four claims.

### Basis for establishing consent to ICSID jurisdiction

The report demonstrates that whilst consent to ICSID jurisdiction in relation to all cases registered under the ICSID Convention and the Additional Facility Rules is established in the main under the bilateral investment treaties (63% of all cases), in a significant proportion of cases consent is established in the Investment Contract between the Investor and the Host State (19% of all cases) and the Investment Law of the Host State (8%), with other bilateral and multi-lateral investment treaties and free trade agreements making up the remainder of the cases.

In relation to cases registered in 2013, a higher percentage of cases were based on the Investment Contract with the Host State (14%) and the Investment Law of the Host State (17%). The only other treaty beside BITs which was relied on in 2013 was the Energy Charter Treaty (which provided the basis for 12% of cases registered in 2013, compared to 5% over ICSID's history).

Whilst the number of bilateral and multilateral agreements is increasing, it remains important for investors to consider all options to secure the benefits of dispute resolution under the ICSID at the time of investing.

### Outcomes

Of the ICSID arbitration cases concluded in 2013, 83% were decided by the tribunal (compared to 64% of ICSID arbitration proceedings over ICSID's history). Of these decided cases, 40% resulted in an award declining jurisdiction, 30% resulted in an award upholding the claim in whole or in part and the remaining 30% resulted in an award dismissing all claims. This latter percentage is marginally higher than the percentage of cases overall in which the investor's claim was dismissed (28%).

### Arbitrators appointed

The statistics show the arbitrators, conciliators and *ad hoc* Committee Members appointed continue to hail from a broad geographical spread but a considerable



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majority (especially where appointed by the parties) are from Western Europe. Indeed, over three times as many arbitrators and conciliators appointed by the parties in 2013 came from Western Europe as came from North America (Canada, Mexico and the US), which was the second highest area represented.

Sub-Saharan Africa, the Middle East and North Africa, and Eastern Europe and Central Asia are all under-represented in both the 2013 statistics and the overall historical picture, in terms of appointment by both the parties and by ICSID.

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