

Rewriting the Arbitration Playbook: Honduras' ICSID Withdrawal and What's at Stake

In February 2024, Honduras announced its withdrawal from the ICSID Convention, a forum that the World Bank provides for resolving disputes between governments and foreign investors. This decision raises significant concerns about the country's approach to foreign investment dispute resolution. Triggered by a major claim from a special economic zone (SEZ) developer, the withdrawal has broader implications for critical sectors such as ports, logistics, and transport, where neutral arbitration mechanisms like ICSID are crucial for investor confidence. With ICSID no longer available, investors now face uncertainty about the enforceability and neutrality of alternative forums, such as UNCITRAL or the Permanent Court of Arbitration (PCA). This article explores the ramifications for ongoing and future investment projects, the impact on bilateral investment treaties (BITs), and the broader consequences for Honduras' reputation as an investment destination. In the absence of ICSID, the need for diversified arbitration options and mutual consent clauses in contracts becomes critical to maintaining stability and investor confidence.

This paper is the third installment in Dr. Kent's *For the Beauty of Logistics* series, a collection of short papers that explore how logistics principles intersect with economic, policy, and infrastructural systems to drive innovation, optimize complex processes, and reveal deeper insights into global dynamics. Previous papers in the For the Beauty of Logistics Series include:

[Gaza's Port to Prosperity: Building a Sustainable Future Amidst Conflict - Monument Economics Group](#)

[From Nobel Laureates to the Cellular Supply Chain: Unveiling Logistics Concepts to Foster Wider Understanding of Scientific Research - Monument Economics Group.](#)

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In February 2024, Honduras made the surprising decision to withdraw from the International Centre for Settlement of Investment Disputes (ICSID), a World Bank-administered forum for resolving disputes between governments and foreign investors. This move is significant, as Honduras currently has eight pending cases with ICSID¹, the second-highest number of cases globally, after Mexico².

The decision was sparked by a \$11 billion claim from Próspera, a developer of a charter city in Honduras' Zone for Employment and Economic Development (ZEDE – Honduras' version of a special economic zone) located on the island of Roatan.³ The 2021 claim argues that changes in Honduran law, including a partial repeal of the ZEDE framework⁴, caused significant damage to its investment. This legal conflict, which accounts for nearly two-thirds of Honduras' annual budget⁵, has placed the country's arbitration policies in the spotlight.

Honduras' departure from ICSID raises concerns that go beyond special economic zones (SEZs). Key industries such as ports, logistics, and transport, which rely on clear legal frameworks and neutral arbitration, are now facing a period of uncertainty. Large-scale investments in these sectors—like port concessions and infrastructure projects—often depend on trusted forums like ICSID to resolve disputes efficiently. Without ICSID, investors are left wondering whether alternative mechanisms will offer the same level of neutrality and predictability.

While Honduras is still involved in other international arbitration frameworks like the United Nations Commission on International Trade Law (UNCITRAL), the Permanent Court of Arbitration (PCA), and regional arbitration centers, the ICSID withdrawal may hurt its reputation for honoring long-established agreements. It also introduces questions about whether future arbitration decisions will be as enforceable or as unbiased as those handled by ICSID.

¹ See listing of pending and past cases at ICSID/International Centre for Settlement of Investment Disputes, available at:

https://icsid.worldbank.org/search?f%5B0%5D=content_type%3Acase&f%5B1%5D=languages%3Aen&search=honduras&page=0, accessed 11 March 2024.

² ICSID/International Centre for Settlement of Investment Disputes, “The ICSID Caseload – Statistics”, Issue 2024-1, 2024, available at:

https://icsid.worldbank.org/sites/default/files/publications/ENG_The_ICSID_Caseload_Statistics_Issue%202024.pdf

³ ICSID/International Centre for Settlement of Investment Disputes, “The ICSID Caseload – Statistics”, Issue 2024-1, 2024, available at:

https://icsid.worldbank.org/sites/default/files/publications/ENG_The_ICSID_Caseload_Statistics_Issue%202024.pdf

⁴ See U.S. News and World Report, “Honduras Moves to Exit World Bank Arbitration Body”, 1 March 2024, available at: <https://www.usnews.com/news/world/articles/2024-03-01/honduras-moves-to-exit-world-bank-arbitration-body>.

⁵ International Monetary Fund, *Honduras 2023 Article IV Consultation and Requests for an Arrangement Under the Extended Fund Facility and an Arrangement Under the Extended Credit Facility – Press Release; Staff Report; and Statement by the Executive Director for Honduras*, IMF Country Report No. 23/337, September 2023; available at <https://www.imf.org/en/Publications/CR/Issues/2023/09/22/Honduras-2023-Article-IV-Consultation-and-Requests-for-an-Arrangement-Under-the-Extended-539367>.

Ramifications for Investment Projects

The impact of ICSID withdrawal extends beyond SEZs to crucial sectors like ports and transport infrastructure. Port concession agreements, which often involve complex, long-term contracts with significant financial commitments, could now be at risk. Disputes between the government and terminal operators may need to be resolved in local courts or alternative arbitration forums, raising concerns about fairness and unpredictability. Investors in transport infrastructure—including freight corridors, highways, and rail—could face higher risks if disputes are handled in venues that lack the neutrality and finality of ICSID rulings.

Similarly, the logistics industry, which depends on transparent and reliable processes, may see reduced foreign direct investment (FDI) if Honduras is perceived as a riskier environment. This shift could disrupt plans to develop logistics hubs, freight corridors, and the IT arrangements connecting them, particularly as companies become more sensitive to supply chain risks and emissions regulations. Without a dependable dispute resolution mechanism like ICSID, potential investors may be deterred.

Impact on Arbitration as a Whole

The broader issue is how Honduras' ICSID withdrawal disrupts the reliance on a globally respected arbitration system. ICSID decisions are unique in that they cannot be challenged in national courts, which has provided significant assurance to foreign investors. Without this safeguard, Honduras must now prove that alternative arbitration methods—like those offered by UNCITRAL or PCA—can offer the same level of trust and neutrality.

This is especially critical for politically sensitive projects such as port operations and infrastructure development, where economic development and national security concerns often intersect with foreign investment. Ensuring that these disputes are handled in a neutral, predictable manner is key to maintaining investor confidence.

Honduras' Current Arbitration Landscape

Foreign investors often avoid dispute resolution systems that allow national courts to challenge arbitral awards due to concerns about bias. ICSID stood out because its rulings were final and could not be contested in national courts, giving investors peace of mind.

Other arbitration frameworks, such as the International Chamber of Commerce (ICC), offer well-established processes, but their awards can still be challenged in national courts under the New York Convention, which governs the enforcement of arbitration decisions in over 160 countries. This means that while ICC rulings are typically binding, their enforcement depends on the national legal system where the ruling is being applied.

In addition to the ICC forum, Honduras still has access to mechanisms like UNCITRAL and PCA as well as regional arbitration centers such as the Centro de Conciliación y Arbitraje in Tegucigalpa. Honduras can also opt for *ad hoc* arbitration, where rules and procedures are agreed upon by the parties involved. However, like the ICC, these alternatives are subject to the national legal systems where enforcement is sought, which may raise concerns about neutrality and effectiveness.

ICSID's Six-Month Window

A critical aspect of ICSID withdrawals is the six-month grace period during which investors can still file claims under ICSID's jurisdiction. According to Article 71 of the ICSID Convention, a withdrawal takes effect six months after a country submits notice. During this time, investors whose contracts specify ICSID as the arbitration forum can file claims and ensure that ICSID remains the governing arbitration body for their disputes, even after the country's official exit.

Although Honduras' six-month window has already expired, this provision is essential for other countries that might withdraw from ICSID. Filing a claim within this window locks in the protections provided by ICSID, such as immunity from challenges in national courts. Once the six months expire, ICSID jurisdiction is no longer available unless both parties agree to retain it or renegotiate the arbitration forum.

For investors, this window offers an opportunity to safeguard their rights and avoid uncertainty. If no claims are filed within this period, disputes may need to be resolved through alternative forums such as UNCITRAL or PCA, which as stated earlier are often subject to national legal systems. This change can introduce unpredictability and increase the risk of bias, especially if the case is heard in a national court.

Investors who anticipate potential disputes or want to secure a neutral forum for future conflicts may strategically file claims during this period to ensure that ICSID's well-established protections apply, even after a country's official withdrawal.

Impact on Existing Contracts

Many investment agreements in Honduras stipulate the use of ICSID for dispute resolution. However, withdrawing from ICSID does not automatically invalidate these agreements. Contracts that include ICSID clauses remain binding unless both parties agree to renegotiate or terminate them. For example, port concession contracts like those with terminal operator ICTSI will remain in effect unless the arbitration forum is specifically renegotiated. If changes are required, the parties must modify the contract to specify an alternative arbitration forum.

Future Agreements and Bilateral Investment Treaties (BITs)

Honduras' withdrawal from ICSID will also affect future investment agreements. Parties may opt for alternative arbitration options during negotiations, such as **UNCITRAL**, **PCA**, or regional arbitration centers. This situation similarly impacts **bilateral investment treaties (BITs)** Honduras has signed, such as the Honduras-Netherlands BIT, which identifies ICSID as the arbitration forum. Many BITs already offer UNCITRAL as a secondary option for dispute resolution. To unwind or amend treaties, Honduras would likely have to follow a process of negotiation, amendment, and ratification involving diplomatic and legislative approvals.

Lessons Learned

Honduras' withdrawal from ICSID underscores the importance of stable and neutral arbitration mechanisms in investment agreements. The availability of alternative forums could introduce unpredictability, particularly when national courts are involved, making investors wary. Moreover, the possibility of having disputes resolved through Honduras' national courts could deter foreign investors from engaging in new projects or renegotiating existing agreements.

Conclusion and Future Outlook

The partial repeal of the ZEDE law in Honduras shows how political and legislative changes can significantly impact investment projects. Investors must anticipate such shifts by including provisions in their contracts that address changes in the legal framework. Flexibility in structuring agreements, coupled with mutual consent for selecting dispute resolution mechanisms, will be key to maintaining investor confidence and legal certainty.

For countries withdrawing from ICSID, the six-month window following the withdrawal notice offers a critical opportunity for investors to secure the forum's protections. In Honduras' case, this window has already closed, but it serves as an important reminder for investors operating in other nations where ICSID withdrawals may occur. During this period, investors can file claims to retain ICSID's neutrality and finality, safeguarding their rights amid potentially uncertain future arbitration environments.

Honduras' decision to leave ICSID has broader implications for its appeal as an investment destination. While alternative arbitration options exist, concerns about neutrality and potential challenges in national courts may affect future investment decisions. Investors in SEZs, ports, logistics, and transport industries will need to reassess their approach to dispute resolution. Governments and private companies alike should consider including multiple arbitration options and mutual consent clauses in contracts to mitigate risks, ensuring that future disputes are handled fairly and effectively.