

ICSID Rules and Regulations 2022

Happ / Wilske

2022

ISBN 978-3-406-75349-7

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ICSID Rules and Regulations 2022

Administrative and Financial Regulations –
Institution Rules – Arbitration Rules –
Conciliation Rules

Article-by-Article Commentary

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2022



Published by

Verlag C.H.Beck oHG, Wilhelmstraße 9, 80801 München, Germany
email: bestellung@beck.de

Co-published by

Hart Publishing, Kemp House, Chawley Park, Cumnor Hill, Oxford, OX2 9PH, United Kingdom
online at: www.hartpub.co.uk

and

Nomos Verlagsgesellschaft mbH & Co. KG, Waldseestraße 3–5, 76530 Baden-Baden, Germany
email: nomos@nomos.de

Published in North America by Hart Publishing

An Imprint of Bloomsbury Publishing 1385 Broadway, New York, NY 10018, USA
email: mail@hartpub.co.uk

Suggested citation:

[Author] in: Happ/Wilske, *ICSID Rules and Regulations 2022*, 2022, p. [#] mn. [#]

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ISBN 978 3 406 75349 7 (C.H.BECK)

ISBN 978 1 5099 6738 4 (HART)

ISBN 978 3 8487 8979 5 (NOMOS)

© 2022 Verlag C.H.Beck oHG,
Wilhelmstr. 9, 80801 München

Printed in Germany by

Westermann Druck Zwickau GmbH,
Crimmitschauer Straße 43, 08058 Zwickau

Typeset by

Reemers Publishing Services GmbH, Krefeld
Cover: Druckerei C.H.Beck Nördlingen



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Preface

The idea for this commentary arose during the Judges Dinner for the 2019 German National Rounds of the Philip C. Jessup International Law Moot Court Competition. It took place in a historical-style restaurant in Hamburg's wonderful *Elbphilharmonie*, the new concert hall on the Elbe river.

We had already known each other for several years from our work in ICSID arbitration and with the German Arbitration Institute (DIS). We both were prolific writers. The distilled beverages at the dinner were stimulating, and our discussion went hither and thither (dealing with Francis Vittoria's and Francis Suarez' respective influence on the history of international public law, Richard Rorty's "*Solidarity, Contingency and Irony*", the legacy of Jean-Michel Basquiat, tragically overlooked rock operas), finally touching upon the issue of the ICSID Rules Revision Project, then scheduled to be concluded in 2020. We wondered whether this would not be an ideal opportunity to publish an article-by-article commentary in the German tradition, a book of interest for both the seasoned ICSID practitioner seeking guidance on the new rules, as well as the first-time ICSID counsel or arbitrator wondering how ICSID is different from ICC or LCIA arbitration.

The evening concluded with a promise to develop a concept and compile a list of authors. The concept was quickly approved and we were then surprised how practitioners from all over the world rapidly agreed to join as authors. As the revised Rules originally had been scheduled to be adopted in late 2020, we had convinced, bribed or extorted the authors to deliver their chapters by early 2020. Little did we know that not only the Rules Revision Project would need much longer, but that a pandemic would also throw a wrench into the works.

Fortunately, ICSID persisted with its project, as did our authors. The delays caused by the pandemic made it possible to expand the scope and include the Conciliation Rules, the Administrative and Financial Regulations and the Institution Rules. Thus, this book is not only the brainchild of our spirited discussion at the *Elbphilharmonie*, but also a child of the pandemic. In its current version, this book would not have been published two years ago. The magic formula for completing this work was taken from the *Glimmer Twins* (and as described by the leading contemporaneous English philosopher and guitar player Keith Richards): "*Creative tension? We rely on it!*"

There are a lot of people without whom this project would never have succeeded. There are, firstly, our authors who are all busy practitioners and who were willing not only to write long chapters, but also to cope in a patient and resilient, but always constructive, manner with our irksome editorial comments. Then there are our two assistant editors, Mathilde Raynal and Ralf Lewandowski. They helped us cope with the administrative part of editorial work, which everyone expects and at the same time massively underestimates. Without their efficient assistance, we might not have managed it.

And of course, everything depended on the patience and magnanimousness of "Our Ladies" in our respective families.

Last but not least, we have to thank the staff of the ICSID Secretariat for their unremitting preparatory work in the Rules Amendment Project. Not losing faith in such a project through two years of pandemic is already a feat itself, but preparing such thorough materials demonstrates a level of persistence seldom seen today.

Preface

Without them, there would be no Rules Amendment Project, and thus no commentary. Honor to whom honor is due.

And now, to finish with a quote from the final song of the neo-noir rock opera *Streets of Fire*, probably the most important cyberpunk movie of its time: “*Let the revels begin, let the fire be started...*”

Hamburg/Stuttgart

Dr. Richard Happ
Dr. Stephan Wilske

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