

Non-Disputing Party Submission - ICSID Convention Arbitration

[ICSID](#) > [Process](#) > Non-Disputing Party Submission - ICSID Convention Arbitration

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Tribunals may accept submissions by non-disputing parties after consulting both parties ([Arbitration Rule 37\(2\)](#)).

A non-disputing party is an individual or entity that is not a party to the dispute, but asks the Tribunal's permission to file a written submission in the case.

The non-disputing party's role is to assist the Tribunal in deciding the dispute by providing a perspective different from that of the parties, via the submission of a written brief.

When considering whether to grant the request, the Tribunal takes into account factors such as ([Arbitration Rule 37\(2\)](#)):

- whether the submission would assist the Tribunal by providing a perspective different from the disputing parties;
- whether the submission would address a matter within the scope of the dispute, and
- whether the non-disputing party has a significant interest in the proceeding.

Some treaties address the right of non-disputing parties to participate in an arbitration and the criteria applicable to such participation (see e.g. statement of the Free Trade Commission on Non-Disputing Party participation, October 7, 2003).

- Maciej Zachariasiewicz, *Amicus Curiae in International Investment Arbitration: Can It Enhance the Transparency of Investment Dispute Resolution?*, *Journal of International Arbitration*, Vol. 29, No. 2, p. 205 (2012)
- Eric de Brabandere, *NGOs and the "Public Interest": The Legality and Rationale of Amicus Curiae Interventions in International Economic and Investment Disputes*, *Chicago Journal of International Law*, Vol. 12, No. 1, p. 85 (2011)
- Eugenia Levine, *Amicus Curiae in International Investment Arbitration: The Implications of an Increase in Third-Party Participation*, *Berkeley Journal of International Law*, Vol. 29, p. 200 (2011)
- ICSID Review—Foreign Investment Law Journal, Vol. 22, No. 2 – Special Focus Issue on The Amicus Curiae in International Disputes (2007):
 - Brigitte Stern, *Civil Society's Voice in the Settlement of International*

- Economic Disputes*, pp. 280-348
- Eloïse M. Obadia, *Extension of Proceedings Beyond the Original Parties : Non-Disputing Party Participation in Investment Arbitration*, pp. 349-379
 - Jorge E. Viñuales & Florian Grisel, *L'amicus curiae dans l'arbitrage d'investissement*, pp. 380-432
 - J. Anthony VanDuzer, *Enhancing the Procedural Legitimacy of Investor-State Arbitration Through Transparency and Amicus Curiae Participation*, McGill Law Review, Vol. 52, No. 4, pp. 681–723 (2007)

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