RATIFICATION OF ICSID CONVENTION IS GAINING MOMENTUM IN AUSTRALIA

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There are over 90 parties to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), and Australia will soon be one of them.

Australia signed the Convention on 24 March 1975, but is only now moving to ratify it. The policy of the Australian government is not to ratify an international convention until implementing legislation is in place. The Australian Parliament passed the ICSID Implementation Act 1990 late last year, and the law received the Royal Assent on 18 December 1990. It has been proclaimed to commence on 1 June 1991. Consequently, as the legislation is now in place, the government is moving to ratify the Convention.

The Act inserts a new Part IV into the International Arbitration Act 1974 to give effect to the ICSID Convention. As a result, the International Arbitration Act now contains three international conventions and laws—the 1958 New York Convention, the UNCITRAL Model Law, and the ICSID Convention.

Part IV of the International Arbitration Act comprises Sections 32-38, and the text of the ICSID Convention is set out in Schedule III. Section 32 provides that Chapters II to VII of the Investment Convention have the force of law in Australia. By Section 33(1), an award is binding on a party to the investment dispute to which the award relates. Subsection (2) provides that an award is not subject to any appeal or to any other remedy, other than in accordance with the Convention.

Section 34 excludes other laws relating to the recognition and enforcement of arbitral awards. By Section 35, the Supreme Court of each State and Territory is designated for the purposes of Article 54 of the Convention (which deals with recognition and enforcement of an award in the territories of a Contracting State by furnishing to "a competent court . . . which such State shall have designated for this purpose a copy of the award certified by the Secretary-General").

The generous provisions for representation in international arbitrations, which were enacted in conjunction with the UNCITRAL Model Law, are duplicated in relation to the ICSID Convention. Section 37 provides that a party appearing in conciliation or arbitration proceedings may appear in person and may be represented: (a) by himself or herself; (b) by a duly qualified legal practitioner from any legal jurisdiction of the party's choice; or (c) by any other person of the party's choice. Article 25 of the Convention, which deals with the jurisdiction of the International Centre for Settlement of Investment Disputes, applies to any legal dispute directly arising out of an investment between a Contracting State (or any constituent, subdivision or agency of a Contracting

State designated to the Centre by that State) and a national of another Contracting State, which the parties agree in writing to submit to the Centre.

In the debates in Parliament, the Attorney-General indicated that Australia proposed to designate those Australian States that agreed to such designation. He indicated that all States except Western Australia have indicated their agreement to be designated. The opposition supported the legislation in Parliament, although Senator Hill pointed out certain limitations of the Convention, including its inability to cover multiparty arbitration.

Australia's International Role Expands

According to theAttorney-General, ratification of the ICSID Convention by Australia will be a further important step in advancing the government's objective of developing Australia's role in international commercial dispute resolution. Australia's federal legislation on international arbitration can now be viewed as both extensive and hospitable to international arbitration.

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