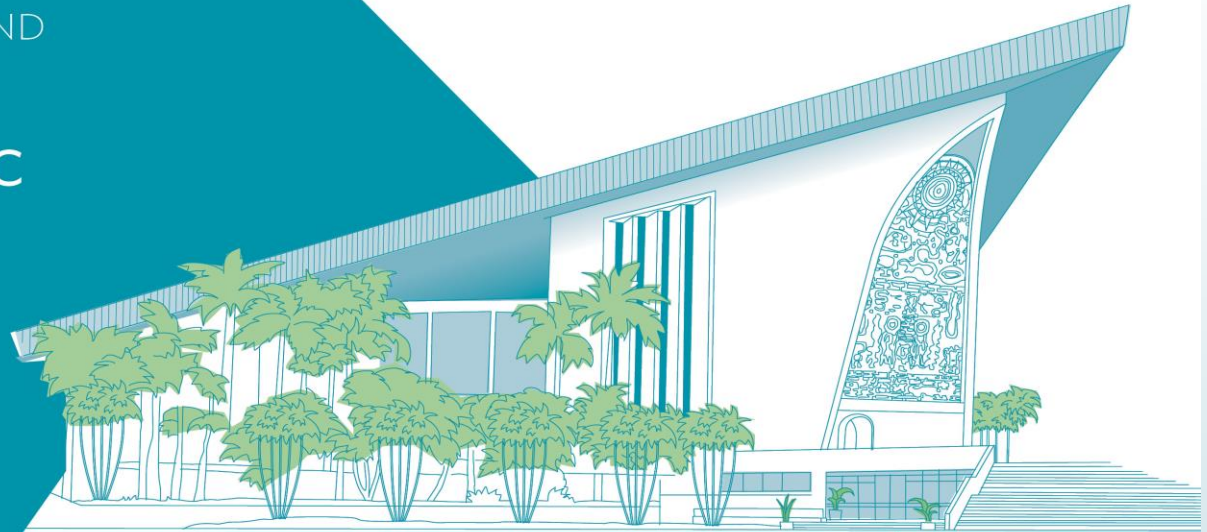




INTERNATIONAL MEDIATION AND
ARBITRATION CONFERENCE

2nd South Pacific International Arbitration Conference

25–26 March 2019
Stanley Hotel, Port Moresby
Papua New Guinea



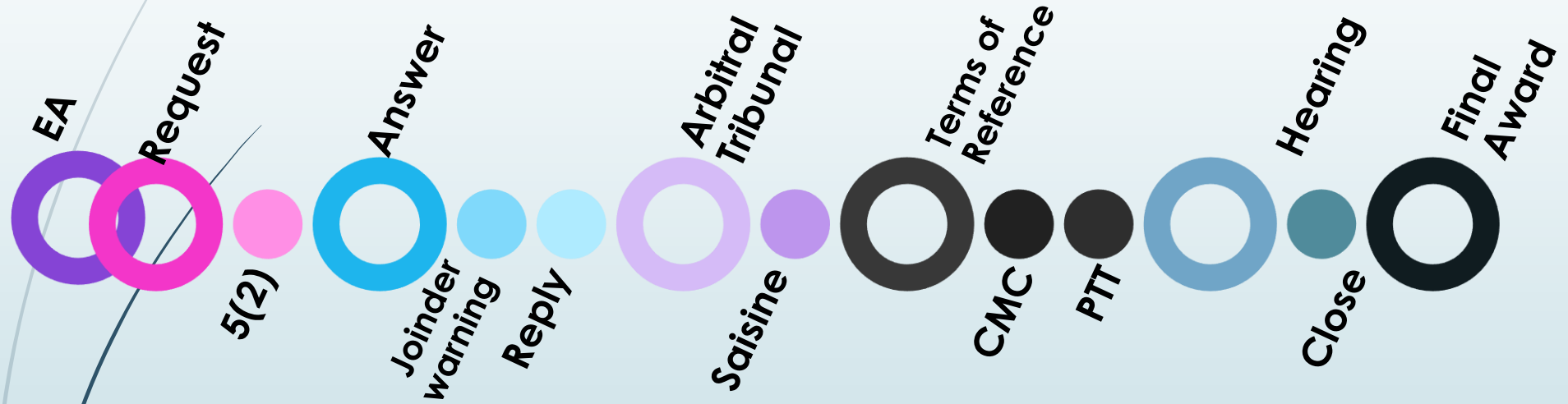
Session 3: Introduction to International Commercial Arbitration

THE ANATOMY OF INTERNATIONAL ARBITRATION

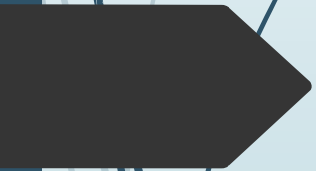
Abhinav Bhushan

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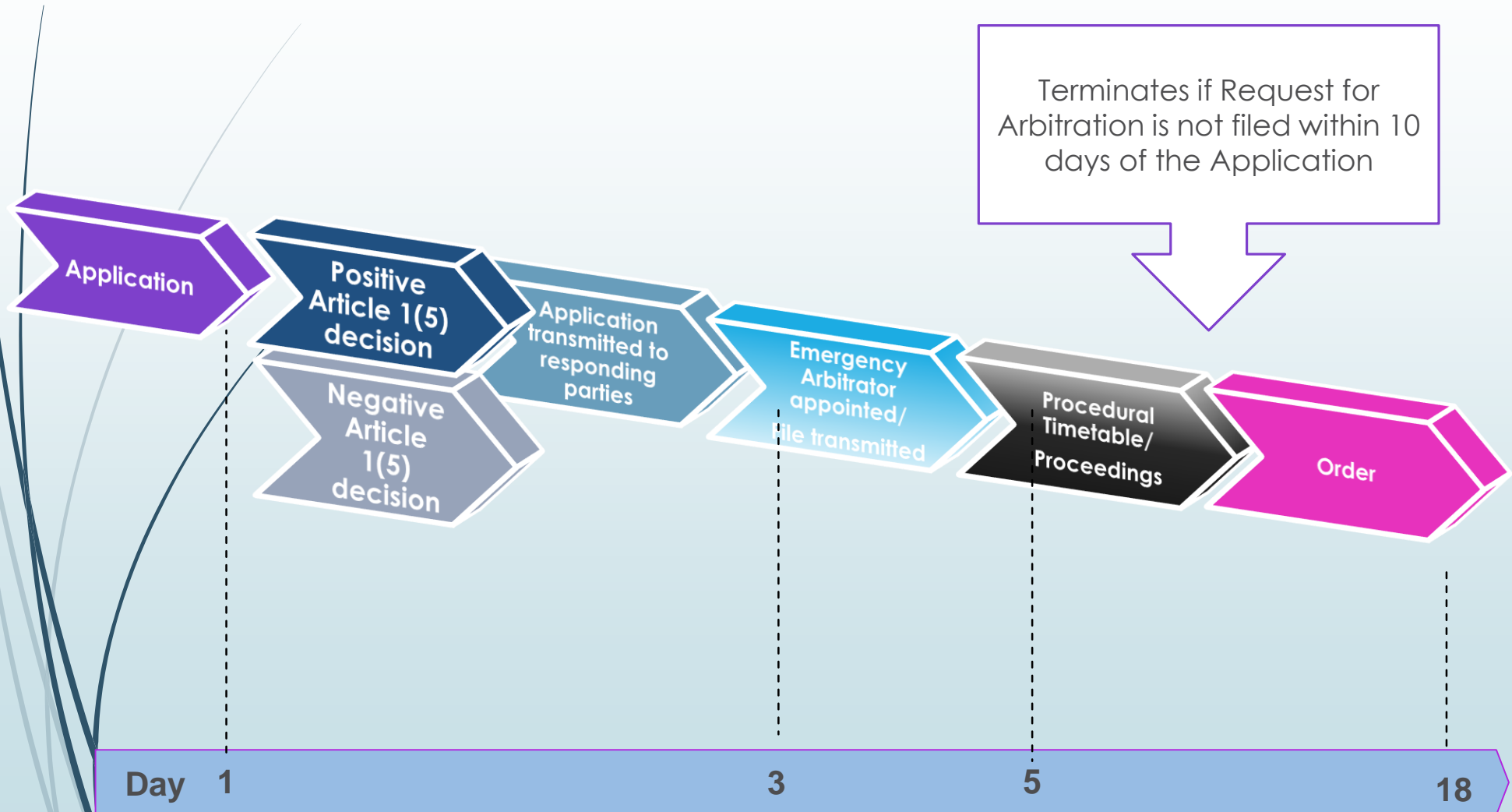
Standard Arbitration Process



ICC Emergency Arbitration



Emergency Arbitration



Expedited Procedures

Emergency Arbitrator

Purpose

- Need for “urgent and interim or conservatory measures that cannot await the constitution of an arbitral tribunal”.

Timeline

- Before a request for arbitration is filed;
- Or simultaneously;
- Before an arbitral tribunal is constituted.
- 2 days for nomination of EA (signature of SAAll, challenge possible)
- Shall not act as arbitrator in an arbitration relating to the dispute
- Order rendered 15 days after transmission of file

The Emergency Arbitrator procedure does not apply if:

- The AT is already constituted;
- Parties are neither signatories to the arbitration agreement nor successors;
- The arbitration agreement is concluded before 01/01/2012;
- Opt-out;
- If another pre-arbitral procedure was agreed.

The Emergency Arbitrator Procedure is terminated when:

- Request for Arbitration not filed within 10 days of the receipt of the Application by the Secretariat or any time frame decided by the EA;
- Failure to pay the filing fee.

ICC's Expedited Rules – Article 30

- Applicable if the amount is less than **USD 2,000,000** and the arbitration agreement was concluded after 1 March 2017 (unless the parties voluntarily choose it) – and involves:

Appointment of a sole arbitrator by the Court notwithstanding the clause

The tribunal may decide the case on documents only

The tribunal may limit document production and submission otherwise

No requirement to establish Terms of Reference

A six-month time limit to render the final award from the CMC (CMC takes place within 15 days from SA)

Reduced fees for the expedited procedures

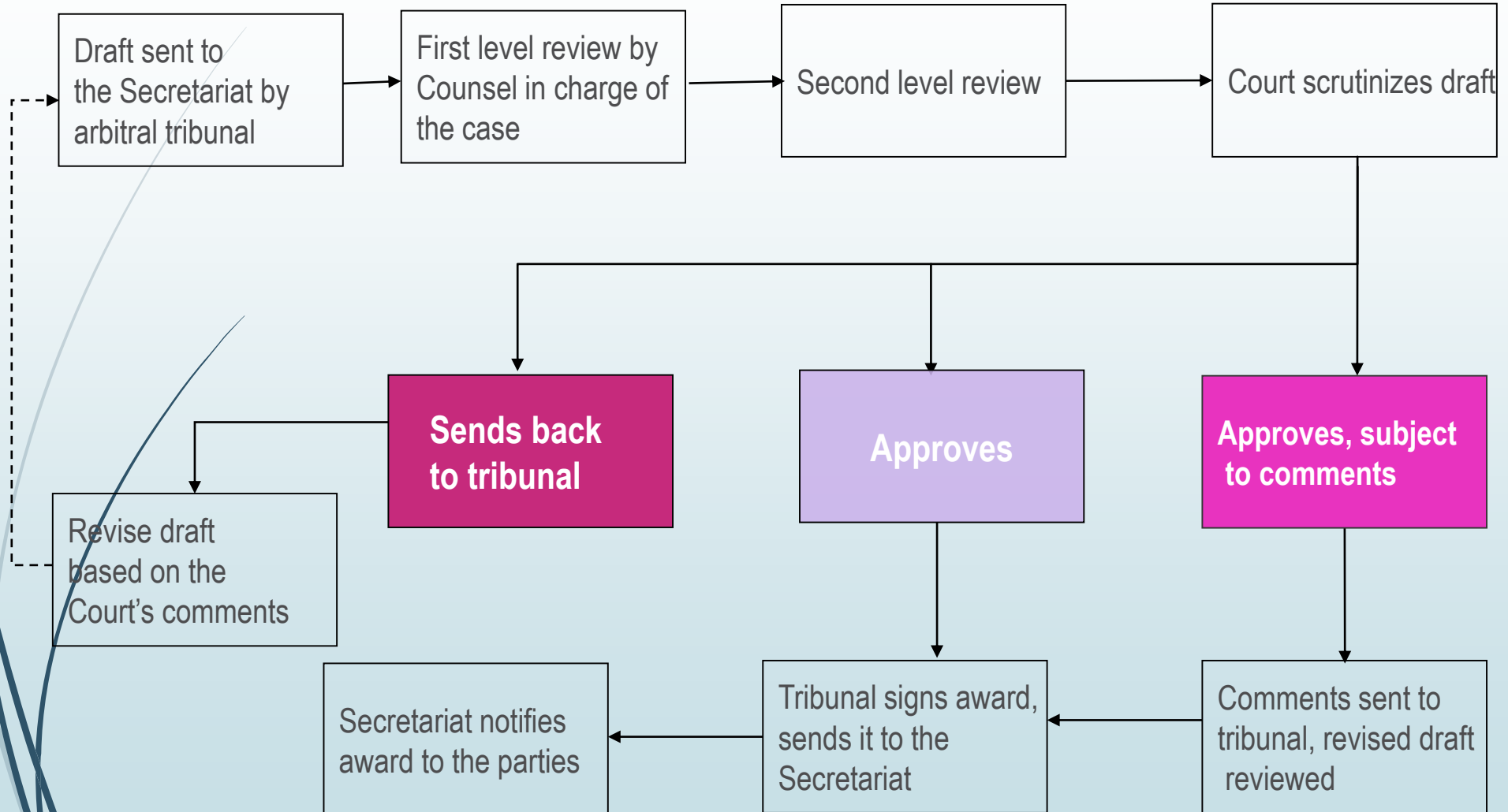
- Parties may opt out and the Court may on its own motion or party's request decide that the Expedited Provisions no longer applies

Designing the Ideal Arbitration for an Indian Party

Designing Your Arbitration



The Scrutiny Process



Common Issues Addressed

- 1 • Dispositive
- 2 • Due process
- 3 • Consistency/Sufficiency of reasoning
- 4 • Issues with Applicable Law
- 5 • Calculations
- 6 • Interest and Costs
- 7 • Checklist