



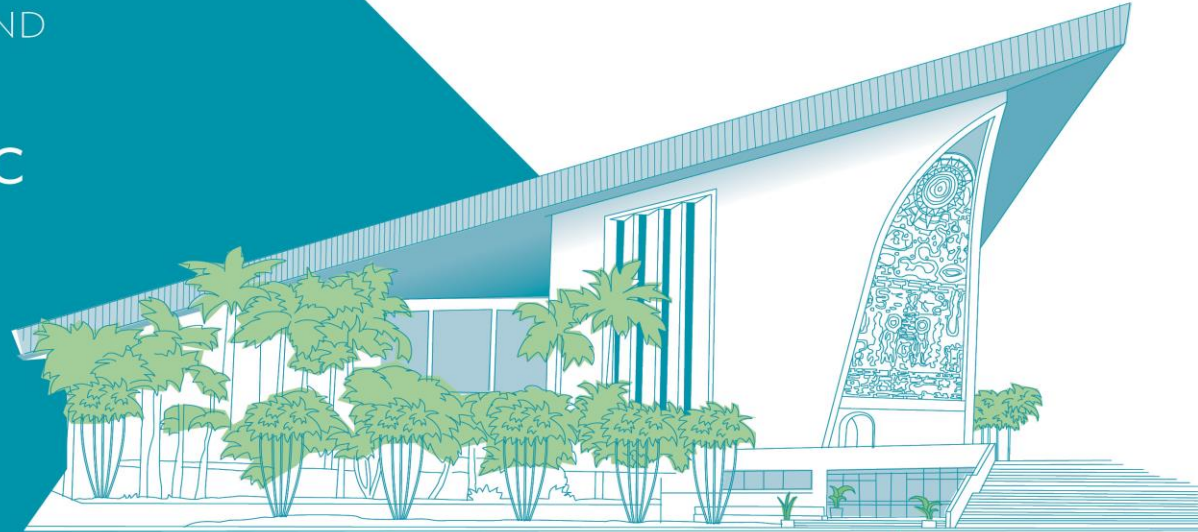
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INTERNATIONAL MEDIATION AND
ARBITRATION CONFERENCE

2nd South Pacific International Arbitration Conference

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



NEW DEVELOPMENTS IN DISPUTE RESOLUTION

Abhinav Bhushan

Director, South Asia, ICC Arbitration & ADR

25-26 March 2019

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COST PREDICTABILITY SAFEGUARDS

Parties can agree to time limits

Average arbitration = **18 months**

DRAFT AWARD DEADLINE

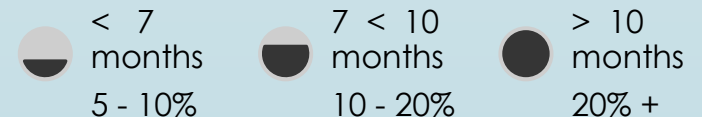
- **Sole arbitrators** are expected to submit draft awards within **two months** and **three-member arbitral tribunals** within **three months** after the last substantive hearing
- Article 27

FINAL AWARD DEADLINE

- **Award must be rendered within six months** from Terms of Reference, the Court may extend the term
- Article 30

FEE ADJUSTMENTS

- **The Court may fix the arbitrators fees at a figure higher or lower** than that which would result from the application of the relevant scale should this be deemed necessary
- Article 37



COST PREDICTABILITY SAFEGUARDS

ICC to cut own fees if delays in scrutiny process

Alison Ross • Wednesday, 13 July 2016 (15 hours ago)

The ICC International Court of Arbitration has introduced new steps in the award scrutiny process to keep parties and tribunals informed and said that administrative fees payable by the parties will be cut by up to 20 per cent if there are unjustifiable delays.



**As reported in the
Global Arbitration
Review...**



NEW POLICIES ON ARBITRATOR TRANSPARENCY

Key information on acting arbitrators will be published on the ICC website

- Including, (i) name, (ii) nationality, (iii) role within a tribunal, (iv) the method of their appointment, and (v) whether the arbitration is pending or closed

Broad grounds for arbitrators to disclose a conflict or personal connection

- Continuous duty to disclose, ensures that challenges to the award based on the independence of arbitrators are minimized

ICC will communicate reasons for its decision on an arbitrator challenge or replacement at parties' request

- This gives parties necessary insight into arbitrator challenges or replacements

ARBITRATORS: PUBLICATION OF NAMES



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ICC Arbitral Tribunals

The chart below is prepared pursuant to section III.B of the ICC Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration pursuant to the ICC Rules.

The chart refers to arbitrators in ICC Arbitration cases which were registered as of 1 January 2016 and where Terms of Reference have been established. It is updated monthly.


The "Case ID" identifies the composition of each arbitral tribunal. It is generated for publication purposes only and does not reflect the actual ICC case number. Arbitrators with the same "Case ID" belong to the same arbitral tribunal.

The year and month in the second left-hand column identify the time when the Terms of Reference in the case were transmitted to, or approved by, the ICC Court.

The "appointment method" identifies whether arbitrators were appointed by the Court or by an appointing authority, nominated by the parties or the co-arbitrators, or otherwise. In case of an appointment by the Court, the arbitrator has been appointed by the Court either directly or upon the proposal made by an ICC national committee. In case of a nomination by the parties or by the co-arbitrators, the arbitrator will then have been confirmed by the ICC Court or the Secretary General.

The name of the arbitrator will appear in each case as it figures on the *Curriculum Vitae* form completed by the arbitrator for that particular case.

Case ID	Date	Name	First Name	Nationality	Role	Appointment method	Arbitrator status	Case status
1	Jun-2016	Willems	Jane	France	Sole Arbitrator	Court	Active	Pending
2	Jun-2016	Rombach	Annett	Germany	Sole Arbitrator	Court	Active	Pending
3	Jun-2016	Fathallah	Raëd	Canada; Lebanon	Sole Arbitrator	Parties	Active	Pending
4	Jun-2016	Gabriel	Simon	Switzerland	Sole Arbitrator	Court	Active	Pending
5	Jun-2016	Madumere	Chikwendu	Nigeria	Sole Arbitrator	Court	Active	Pending
6	Jun-2016	Sacco	Sabina	Chile; El Salvador; Italy	Sole Arbitrator	Parties	Active	Pending




GREATER TRANSPARENCY UNDER UPDATED PRACTICE NOTE

1. Disclosures by arbitrators and perspective arbitrators

- Note clarifies that disclosure should be made not only with respect to the parties and their affiliates, **but also to non-parties having an interest in the outcome of the arbitration**. In this regard, the Note highlights the practice of the Secretariat to identify, at the outset of the arbitration, a list of “**relevant entities**”.

2. Additional services in respect of the constitution of arbitral tribunals

- Parties or co-arbitrators may jointly seek the Secretariat's assistance to propose a prospective sole arbitrator or presiding arbitrator, and to contact prospective arbitrators to obtain information on their experience, availability and possible conflicts of interest.
- Parties may agree that the appointment procedure be made in consultation between the parties and the Secretariat. For example, parties may agree that the default appointment of a sole arbitrator or presiding arbitrator may be made using a list procedure.



GREATER TRANSPARENCY UNDER UPDATED PRACTICE NOTE

3. Enhanced transparency during and after proceedings: publication of case data and awards

- ▶ For arbitrations registered from 1 July 2019, the ICC Court will publish information relating to (a) the sector of industry involved and (b) counsel representing the parties in the arbitration.
- ▶ All ICC awards made from 1 January 2019 may be published no less than two years after their notification on an opt-out basis. Parties may agree to a longer or shorter time period, or may at any time before publication object to publication or require that any award be redacted or anonymised wholly or in part.

4. Data Protection

- ▶ A new section of the Note is devoted to compliance with the European Union General Data Protection Regulation (GDPR). Parties, their representatives, arbitrators, the administrative secretary, witnesses, experts and any other individuals that may be involved in any capacity in the arbitration are deemed to accept that their personal data will be collected, transferred, archived and published by agreeing to participate in an ICC arbitration.



GREATER TRANSPARENCY UNDER UPDATED PRACTICE NOTE

5. Increased transparency and scrutiny for investor-state arbitrations

- ▶ Prospective arbitrators are encouraged to disclose in their curriculum vitae a complete list of treaty-based cases in which they participated as arbitrator, expert or counsel.
- ▶ Parties may agree to apply the UNCITRAL Rules on Transparency in full or partially, and the Secretariat may act as repository of information published as a consequence.
- ▶ Awards may be published six months after their notification as opposed to the usual two years applicable for other awards, unless a party objects.
- ▶ The arbitral tribunal has the power under Article 25(3) of the Rules to hear amici curiae submissions upon consulting the parties.
- ▶ Additionally, investor-state arbitration awards will undergo scrutiny by Vice-Presidents of the Court and Court members with specific investment arbitration experience.

6. Duties of administrative secretaries

- ▶ The revised Note clarifies that administrative secretaries may, under the control of the arbitral tribunal, perform tasks such as drafting correspondence and sending it on behalf of the tribunal, and preparing for the tribunal's review drafts of procedural orders as well as of factual portions of the award, such as the summary of the proceedings, the chronology of facts and the summary of the parties' positions.



ICC'S CONTRIBUTION TO OVERCOME UNDER REPRESENTATION

Founded in 1923

To date: 23.300 cases

The Court sessions are in French and English but can sometimes be in Spanish or German

Members of the Court are appointed for a renewable three-year term by the World Council of the ICC

Composition

One President: Alexis Mourre

17 Vice-Presidents (9 Women and 8 Men)

176 Members (88 Men and 88 Women)

Sessions

Committee sessions

Weekly

3 Court members

All type of decisions

Plenary sessions

Monthly

Open to all Court members

Challenges, majority awards, States

ICC NOMINATIONS 2010-17

Nominations	2010	2011	2012	2013	2014	2015	2016	2017
Men & Women	1331	1341	1301	1329	1327	1313	1411	1488
Women	96	103	102	119	129	136	209	249
Percentage of Women	7.2%	7.7%	7.8%	9.0%	9.7%	10.4%	14.8%	16.7%



ROLE ON THE TRIBUNAL - 2017

Numbers including men & women	Men	Women
Role within the tribunal: sole	170	65
Role within the tribunal: president	336	77
Role within the tribunal: co-arbitrators	733	107



Thank you!

Questions?



Abhinav Bhushan
Director, South Asia
ICC Arbitration & ADR
International Court of Arbitration, ICC

Tel: + 65 6814 0244
Email: abhinav.bhushan@iccasia.org

32 Maxwell Road #02-11, Maxwell Chambers, Singapore 069115