

INTERNATIONAL
COURT OF
ARBITRATION®

INTERNATIONAL
CENTRE
FOR ADR

LEADING DISPUTE
RESOLUTION
WORLDWIDE

INTERNATIONAL COURT OF ARBITRATION & SECRETARIAT

YAC Copenhagen 20 June 2017

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Counsel
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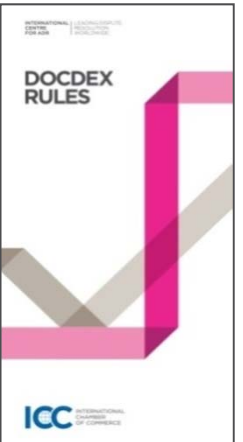


ICC DISPUTE RESOLUTION SERVICES

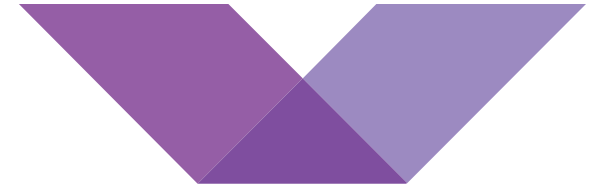


**ICC International Court
of Arbitration**

**ICC International Centre
for ADR**



HISTORY



- ICC founded in 1919 (« the merchants of peace »)
- ICC ICA founded in 1923
- *“a recognition that the lack of an international dispute-resolving mechanism could be a substantial barrier to international trade and investment”*

W. Laurence Craig, *International ambition and national restraints in ICC Arbitration*, Arbitration International, Vol. 1/ n°1, 1985

- **Rules of Arbitration**, different versions since 1922

1998 Rules → 35 articles and 3 appendixes (1st case number: 9 827)

2012 Rules → 41 articles and 5 appendixes (1st case number: 18 744)

Today > 22 000 cases.

1 booklet:

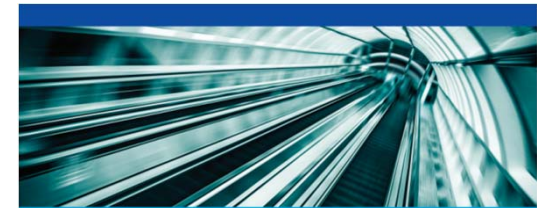
- 2012 Arbitration Rules
- 2014 Mediation Rules

ICC REPUTATION



2015 International Arbitration Survey: Improvements & Innovations in International Arbitration

- 90% international arbitration as preferred dispute resolution mechanism
- 68% chose ICC as preferred institution
- Most valuable characteristic :
 - Enforceability of awards
 - Avoiding specific legal systems
 - Flexibility
 - Selection of arbitrators

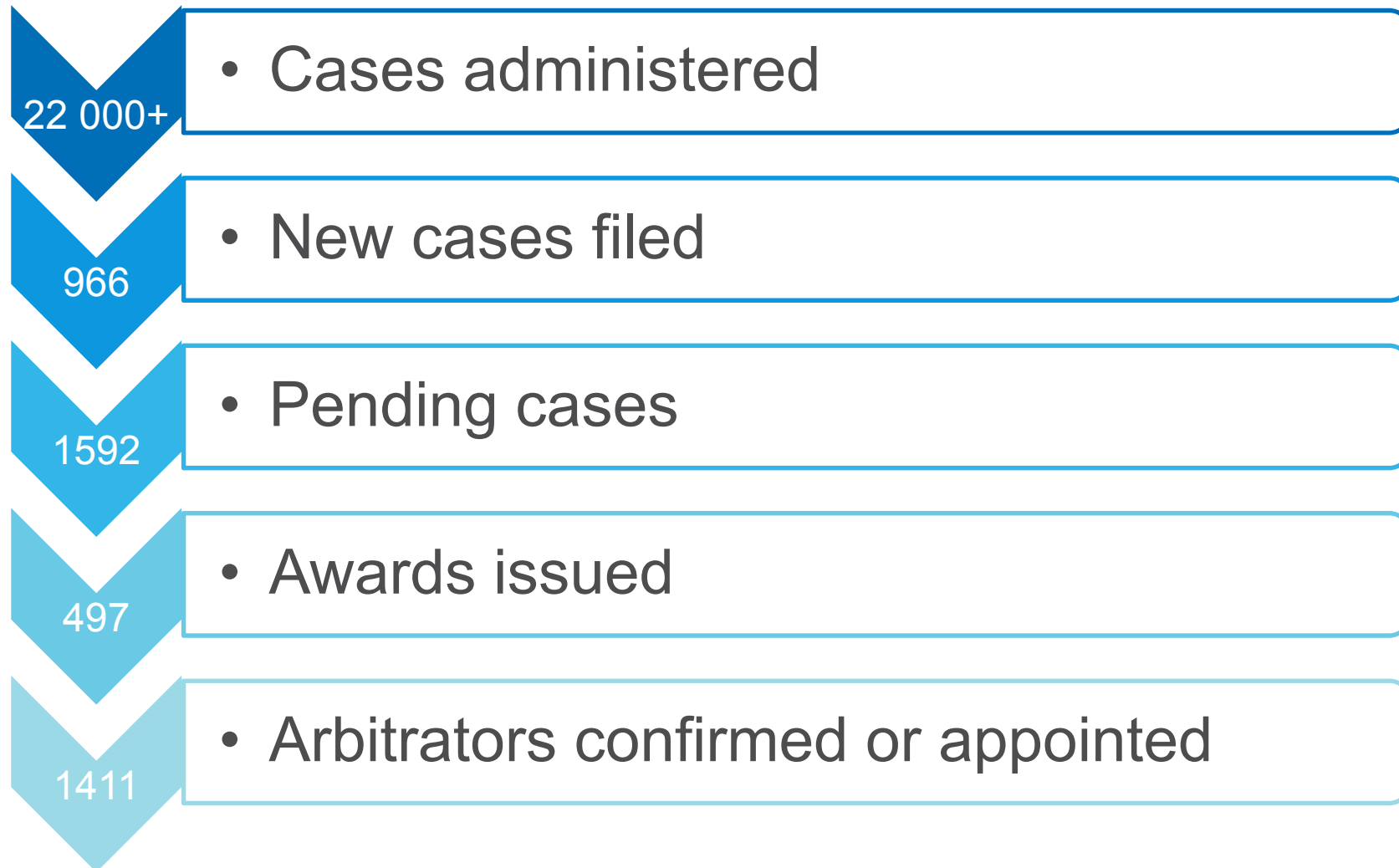


WHITE & CASE

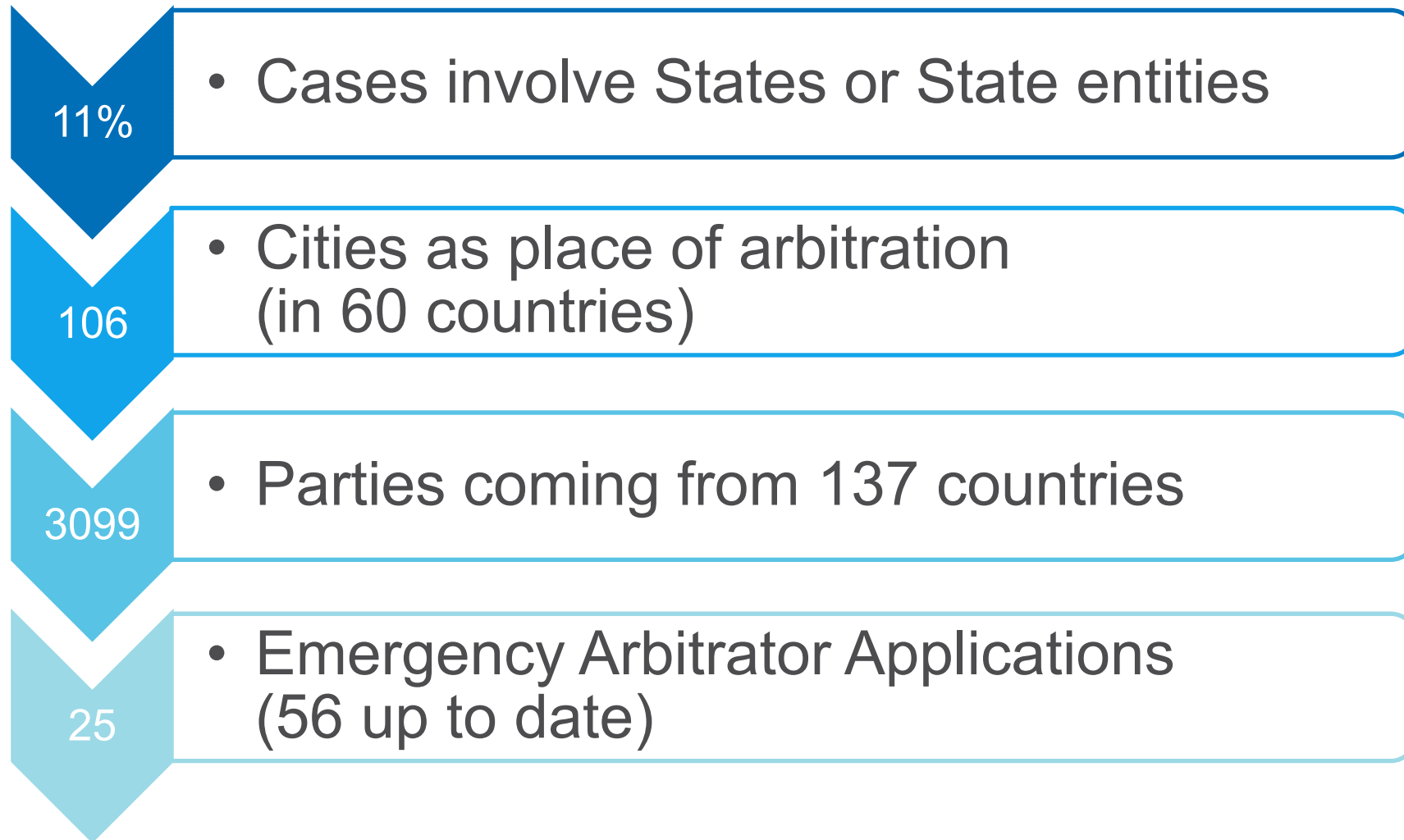
www.arbitration.qmul.ac.uk/research/2015/



GENERAL STATISTICS (2016)



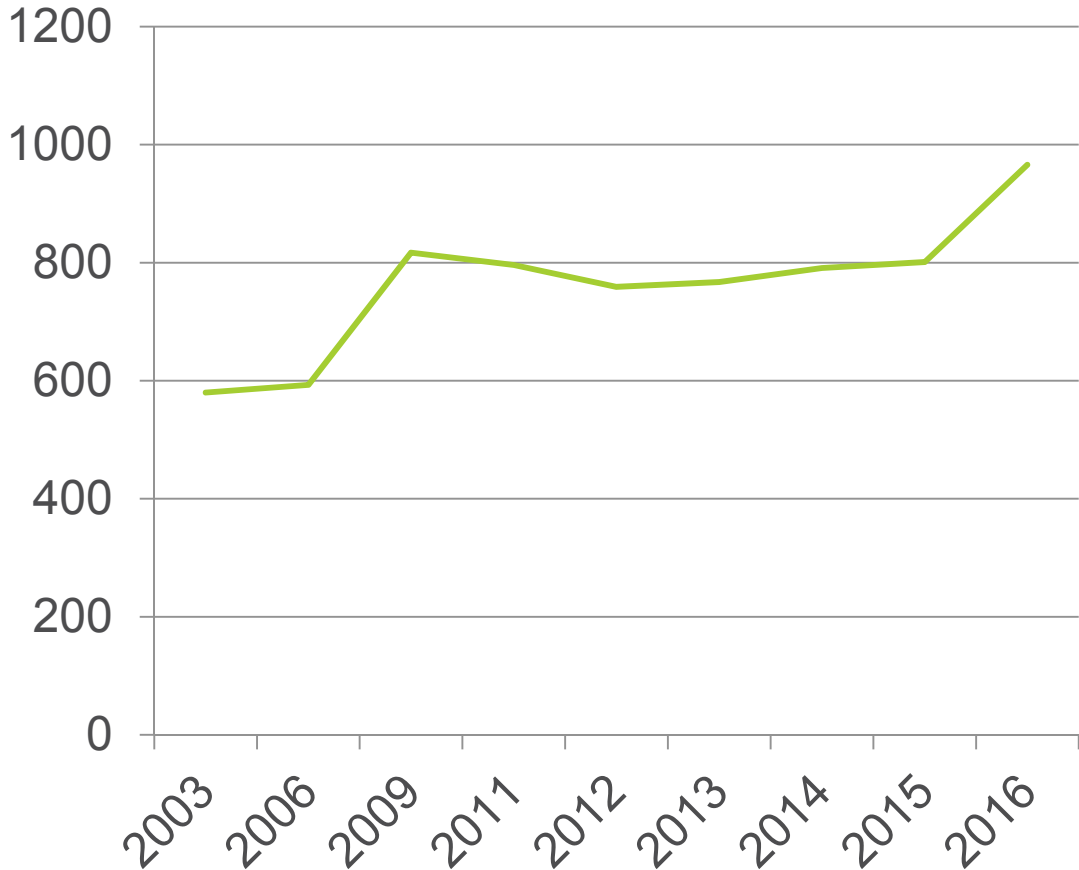
GENERAL STATISTICS (2016)



GENERAL STATISTICS: NUMBER OF CASES



New Cases



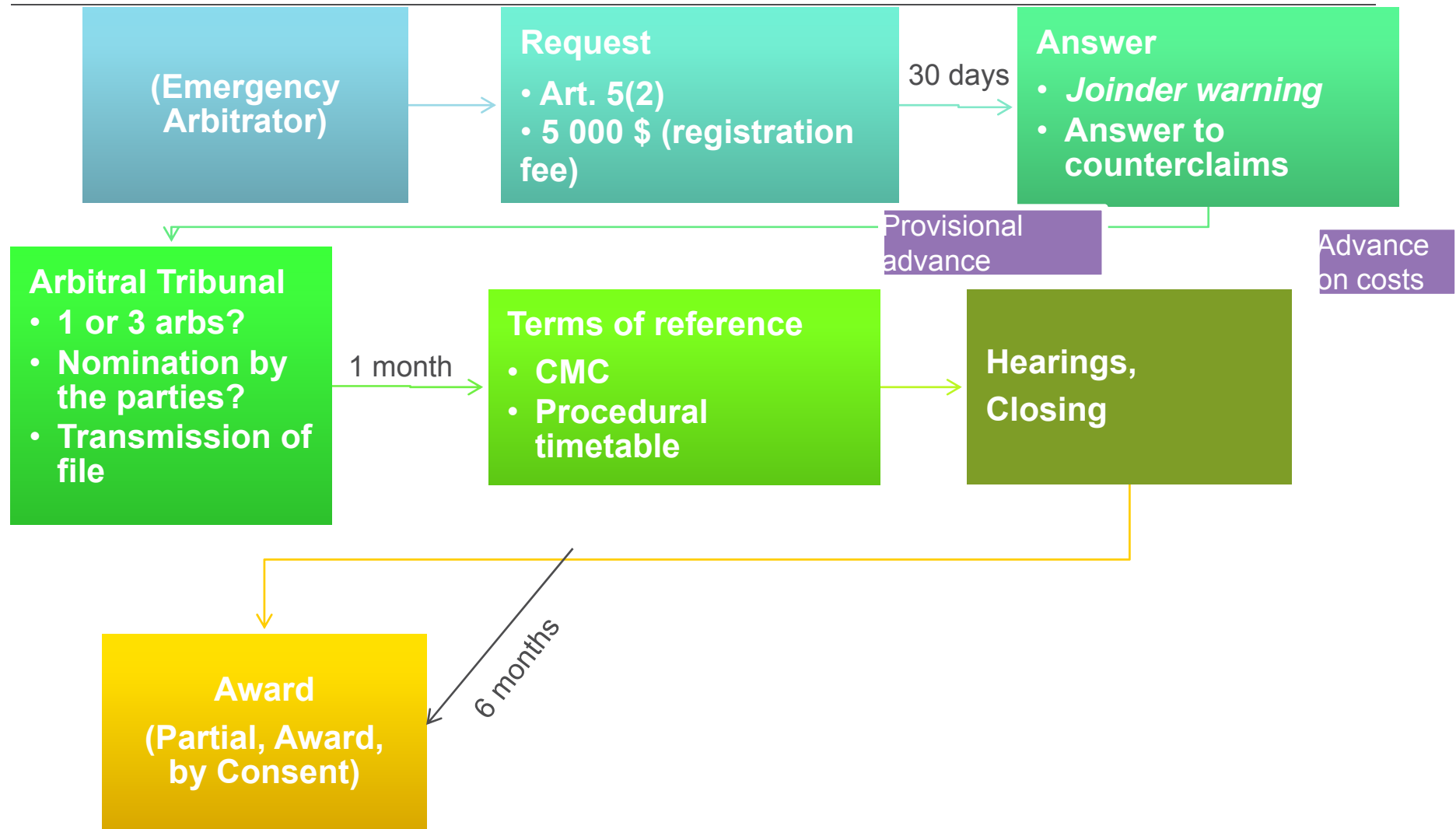
Number of new cases filed in 2016 **966**

Including 25 applications for Emergency Measures

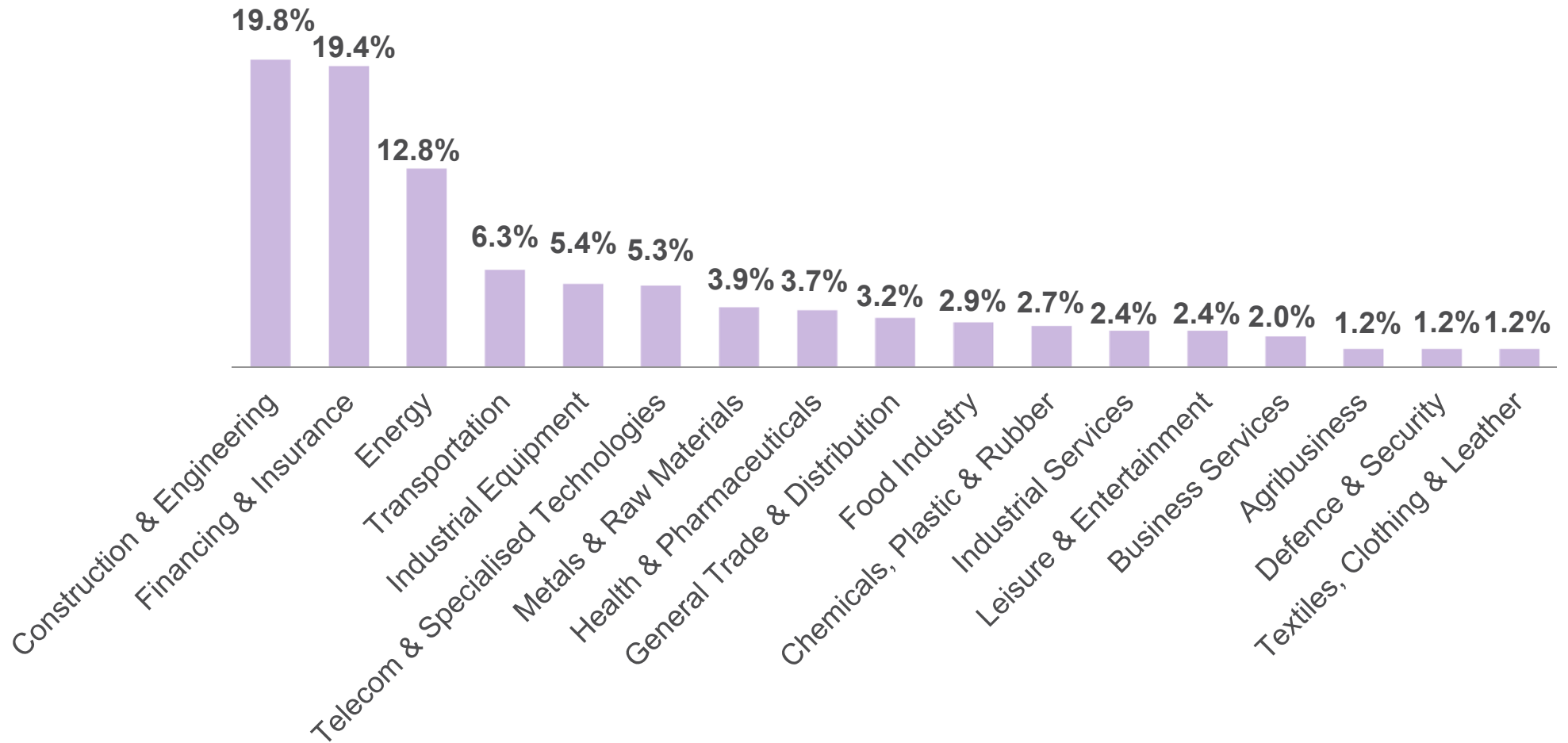
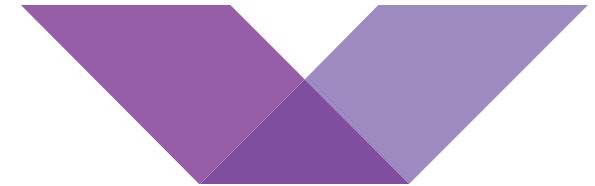
1 592 pending cases

11% of cases involving states or state entities

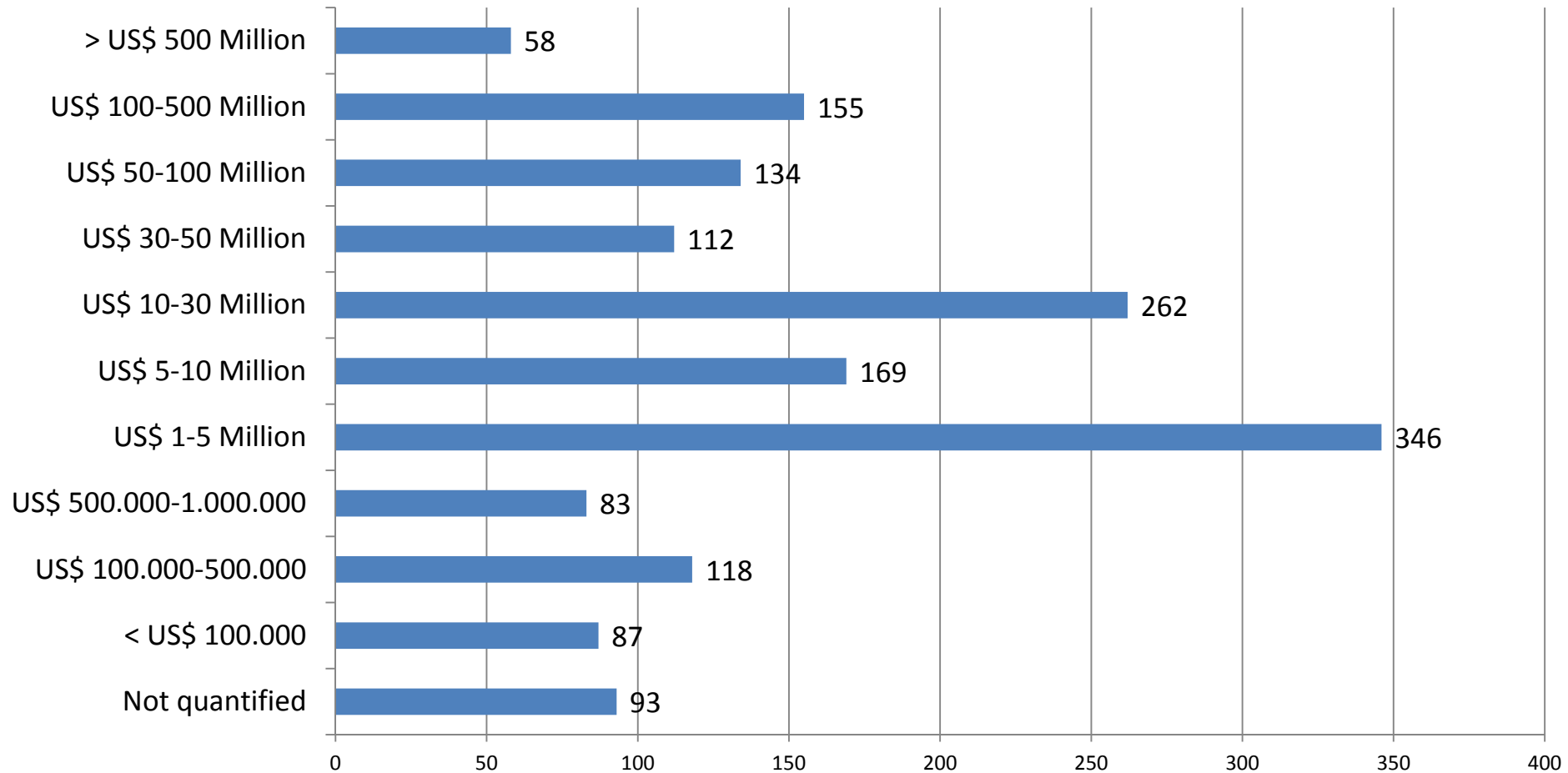
HISTORY OF A CASE



ECONOMICS SECTORS 2016



AMOUNT IN DISPUTE IN PENDING CASES (JANUARY 2017)



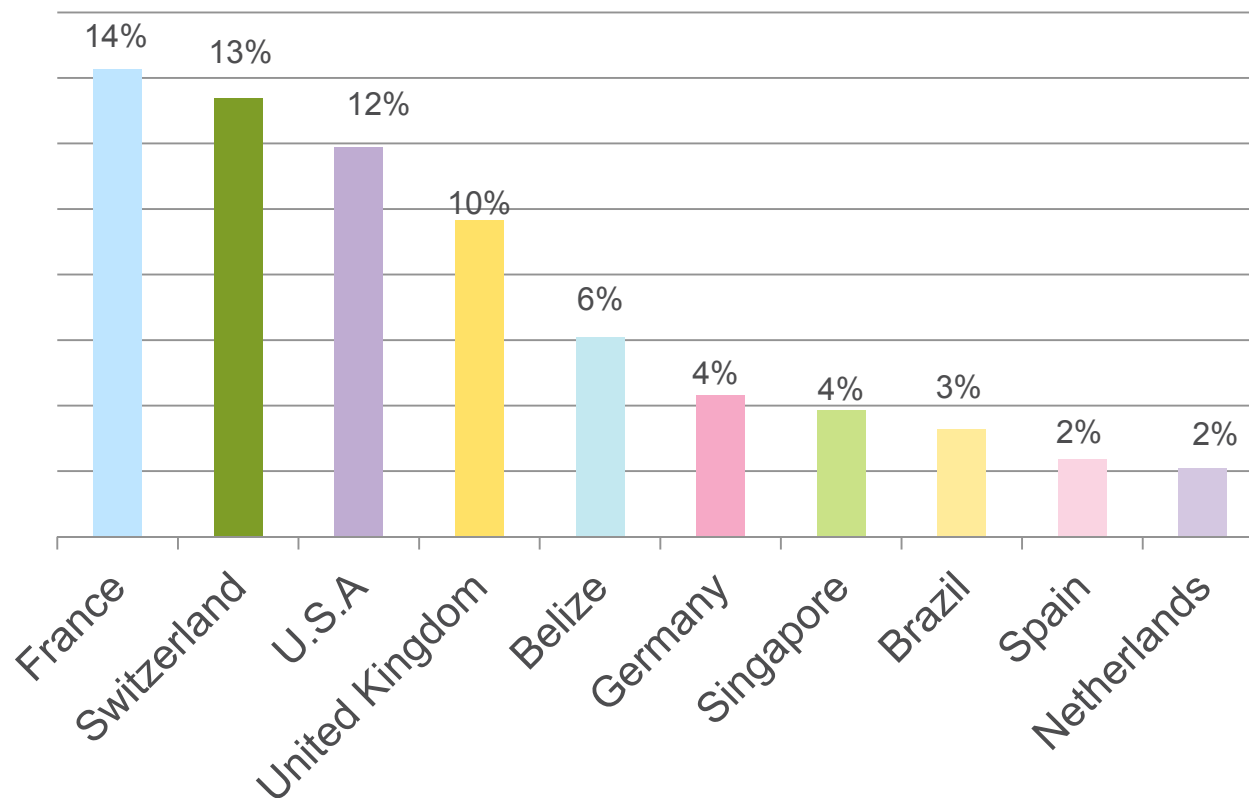
Average amount in pending cases: US\$ 112 259 575

Amount in dispute < US\$ 1 million in 33 % of cases



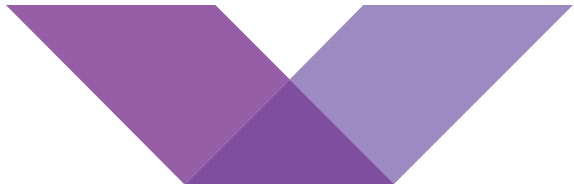
PLACES OF ARBITRATION 2016

- Place of arbitration fixed by the Court in 15% of cases
- Ranking for 10 first countries



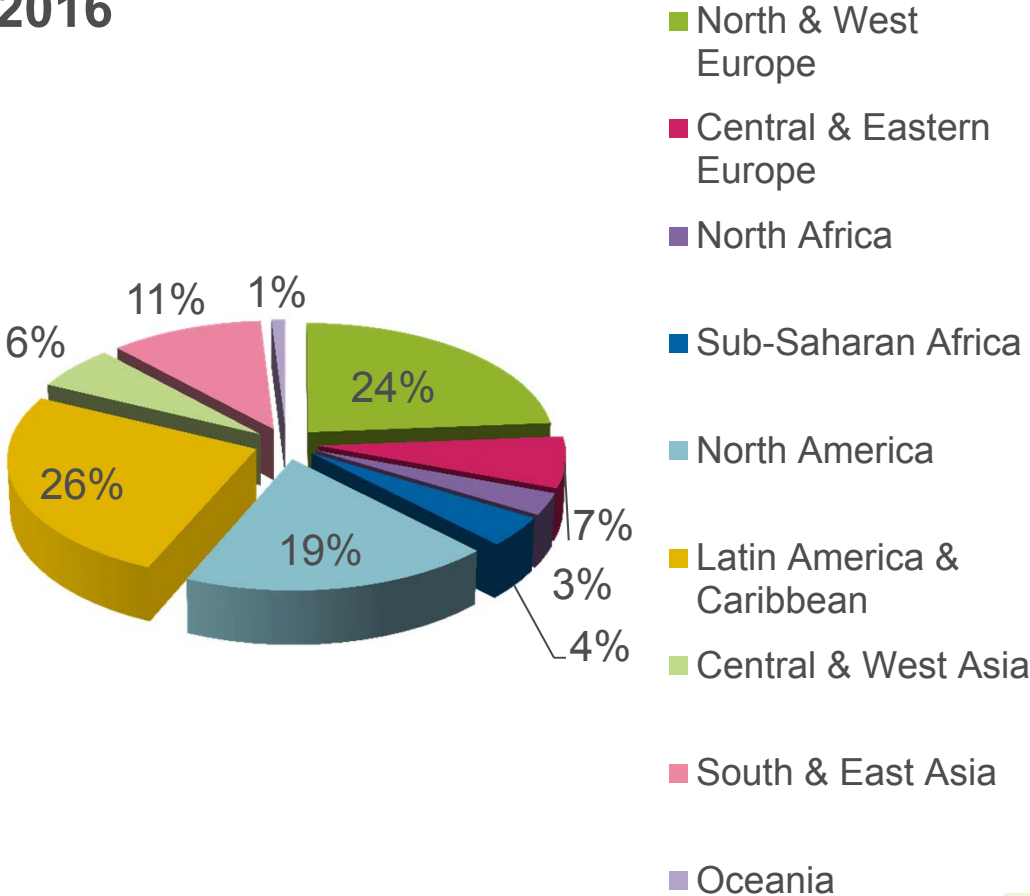
Place of arbitration in 2006
52 countries
89 cities

Place of arbitration in 2016
60 countries
106 cities



DIVERSITY OF ICC ARBITRATION: PARTIES

2016



Number of parties in 2006: 1613 parties

125 countries

Number of parties in 2016: 3099 parties

137 countries

34% of cases with more than two parties
 25% of cases with parties of same nationality

THE INTERNATIONAL COURT OF ARBITRATION



International Court of Arbitration (HQ in Paris)	Arbitral Tribunal (any place in the world)
<ul style="list-style-type: none">- Does not settle itself disputes- <u>Supervises</u> the work of the Arbitral Tribunals and <u>administers</u> the proceedings- Constitution of the Arbitral Tribunal- Control of time limits under the Rules- Award scrutiny- Fixes arbitrator's fees and administrative expenses	<ul style="list-style-type: none">- Decision on the <u>merits</u> of the case- Management of the case in consultation with the parties- Principles of rapid, diligent and contradictory process- Draft the terms of reference, renders procedural orders and awards- Decides on the allocation of costs among the parties

THE INTERNATIONAL COURT OF ARBITRATION



Founded in 1923

To date: 22.000 cases

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

Members of the Court are appointed for renewable 3 year term by the World Council of the ICC

Composition

One President: Alexis Mourre

15 Vice-Presidents

145 Members from 84 countries and territories

Sessions

Committee sessions

Weekly

3 Court members

All type of decisions

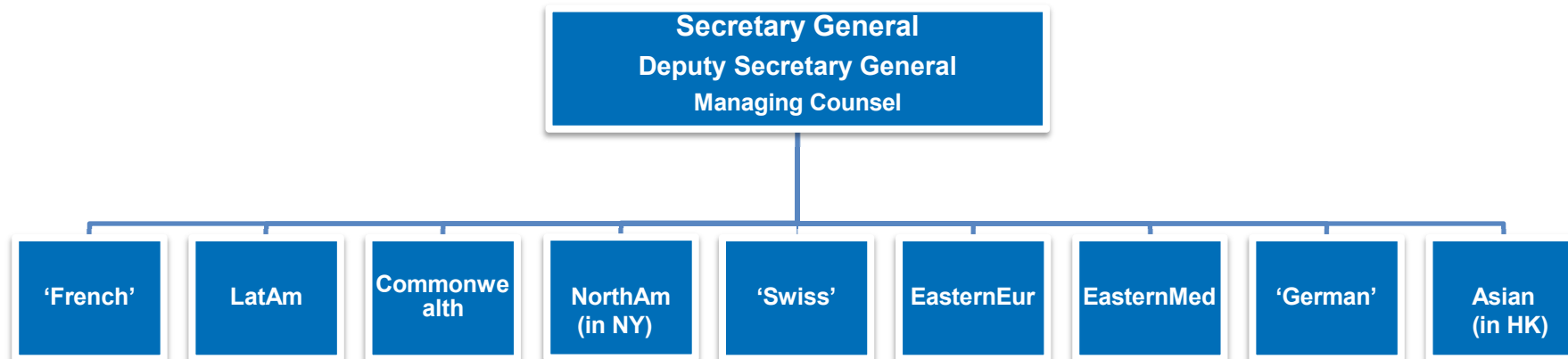
Plenary sessions

Monthly

Open to all Court members

Challenges, majority awards, States

THE ICC SECRETARIAT



Composition

Approx. 80 staff members

Diverse nationalities & languages

One counsel, several deputy counsel per team

Mission

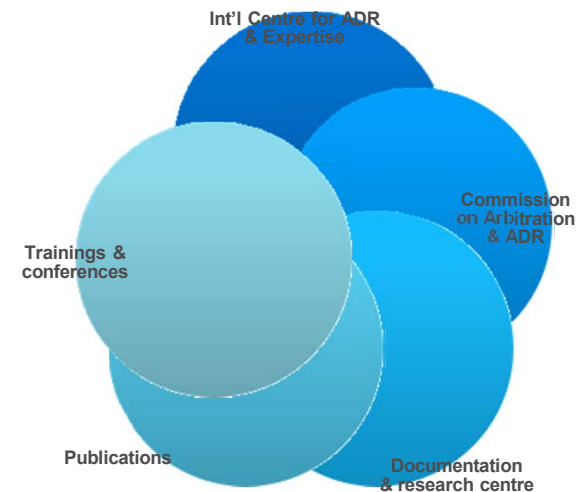
Daily case administration

Contact with parties, arbitrators

Advice on practices, briefings and recommendations to the Court

Communication with parties and arbitral tribunals

General info on application of the Rules



MAIN ASPECTS OF ICC ARBITRATION



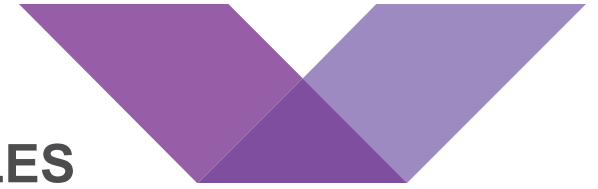
1. **Control over the arbitrators**
 - constitution of AT (confirmation, nomination SG, Court)
 - challenge, replacement

2. **Control over the procedure**
 - jurisdiction: Art. 6 (3)-(4)
 - complexe proceedings: Art. 7-10
 - control of time limits and extensions (TOR, award, modified time limits Art. 38)

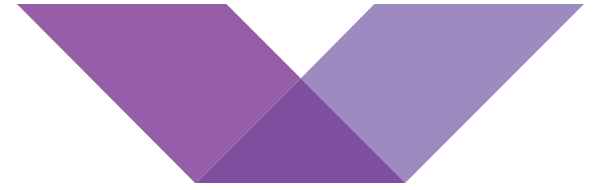
3. **Control over the costs**
 - fixing of advance on costs (arbitrators' fees, expenses, administrative fee)
 - reajustment of the advance on costs (change in the amount in dispute, withdrawal of claims, increased complexity of the case, time spent & efficiency of the arbitrator)
 - separate advance on costs

4. **Control over the award**
 - scrutiny of award
 - approval or non-approval
 - Addendum/ Decision

ICA ADMINISTERS ARBITRATIONS UNDER THE RULES

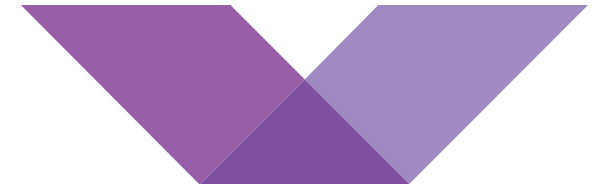


- Prima facie jurisdiction over parties and/or claims (art. 6(4) i) ii))
- Consolidation of cases (art. 10)
- Place of arbitration (art. 18)
- Number of arbitrators/ confirmation/ challenge/ replacement (art. 12-15)
- Advances on costs/ separate aoc/ arbitrators' fees (art. 37 & Appendix III)
- Approval TOR if lack of signature or lack of participation of one party (art. 23(3))
- Scrutiny of award (art. 34)



Arbitrator selection

LEGAL FRAMEWORK



- Constitution of the arbitral tribunal is subject to party autonomy in most arbitration laws and institutional rules
- Such possibility, in particular, the parties' right to select "their" arbitrators is perceived as one of the most important features of arbitration
- Limits of party autonomy regarding arbitrator selection
 - Independence and Impartiality of the arbitrators
 - Equality of the parties' rights in the selection process has to be observed ("Dutco") (eg Article 12(8) of the ICC Rules)

NUMBER OF ARBITRATORS UNDER THE ICC RULES

Number of Arbitrators

- The disputes shall be decided by a sole arbitrator or by three arbitrators. (Article 12(1))

Default

- Where the parties have not agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, save where it appears to the Court that the dispute is such as to warrant the appointment of three arbitrators.
- In such case, the claimant shall nominate an arbitrator within a period of 15 days from the receipt of the notification of the decision of the Court, and the respondent shall nominate an arbitrator within a period of 15 days from the receipt of the notification of the nomination made by the claimant. If a party fails to nominate an arbitrator, the appointment shall be made by the Court. (Article 12(2))

OPTIONS WHEN DRAFTING THE ARBITRATION AGREEMENT



- **Determining the number of the arbitrators**
- **Determining the method of determining the number of arbitrators**
 - Number of arbitrators depending on amount in disputes
- **Determining the method of selection of arbitrators**
 - Who may nominate
 - List procedure – who compiles the list
- **Determining certain requirements / characteristics the members of the arbitral tribunal must fulfil (or must not fulfil)**
 - Nationality
 - Qualification
- **Identifying individuals**
- **After commencement reduced options depending on agreement with the other party/parties**

RELEVANCE OF ARBITRATOR SELECTION FOR PROCEDURE



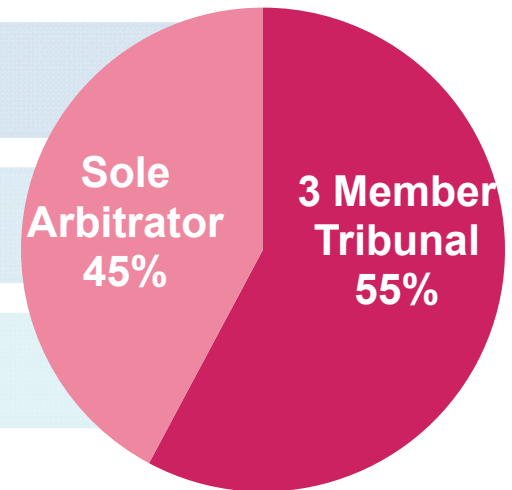
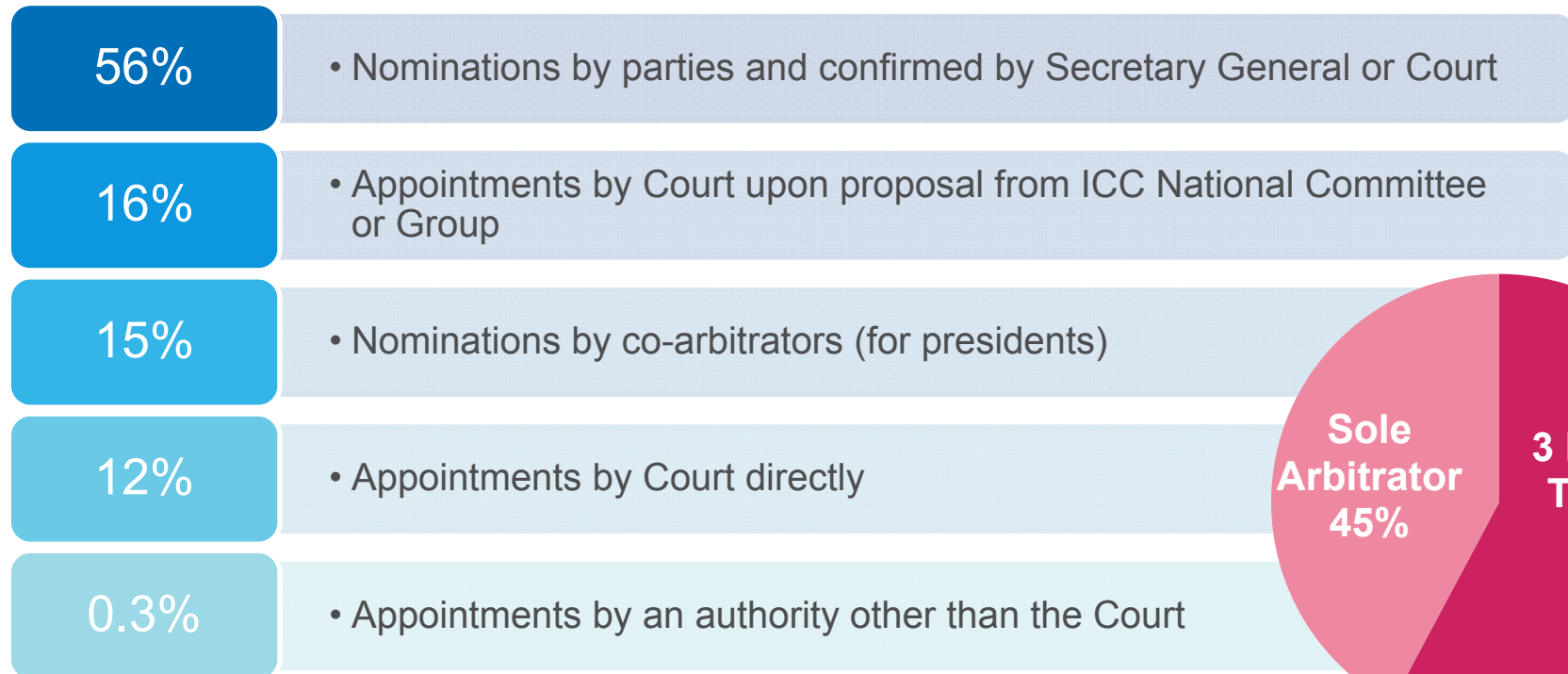
- **Numbers of arbitrators:**
 - Speed / Efficiency of the conduct of the proceedings: 1
 - Costs: 1
 - Minimizing risks of procedural or substantive errors: 3

- **Individual choices:**
 - Style of conduct of proceedings
 - “Civil law style” v “Common law” style
 - Indication of legal assessment of arbitral tribunal in settlement discussions / decisions on taking of evidence
 - Reluctance / Tendency to rely on certain procedural instruments, e.g. cross examination, document production
 - Individual expectations
 - E.g. chess clock
 - **Legal assessment of the case**
 - Certain traditions of contract interpretation / assessment of damages / standard of evidence / legal minded v economically minded

RELEVANCE SELECTION OF ARBITRATORS IN PRACTICE



2016 ICC arbitral tribunals



< 30% appointments by the Court



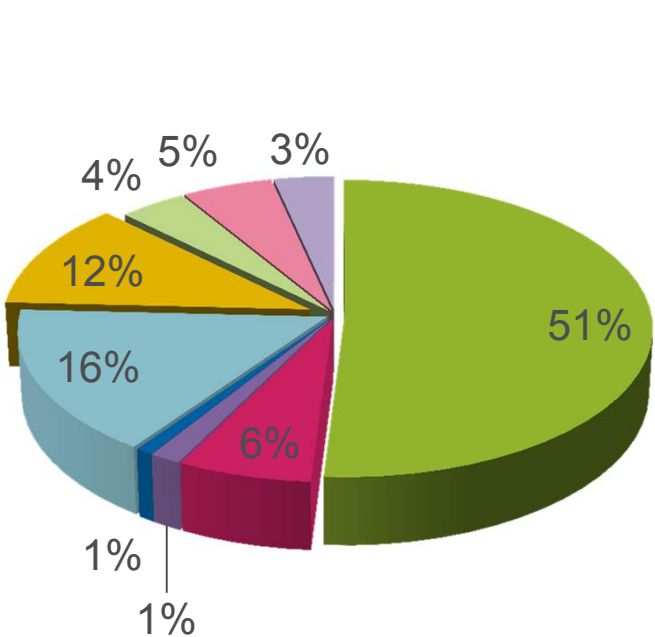
SELECTION OF INDIVIDUALS BY INSTITUTION

- The Court shall make the appointment upon proposal of the National Committee, Article 13(3) of the ICC Rules
 - Appointment of arbitrator's who submit a qualified statement of acceptance?
 - Appointment of arbitrator who have limited availability?
- Direct Appointment, Article 13(3), (4) of the ICC Rules:
 - If NC does not make a proposal in time / no NC existent
 - Participation of state or state entity
 - Other circumstances make a direct appointment necessary
- Restrictions as to nationality, Article 13(5) of the Rules
- General criteria:
 - Qualification, experience/expertise in relevant area
 - Arbitration experience
 - Diversification (avoiding repeat appointments, enlarging the pool)

DIVERSITY OF ICC ARBITRATION: ARBITRATORS

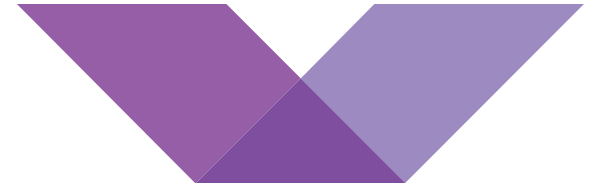


2016



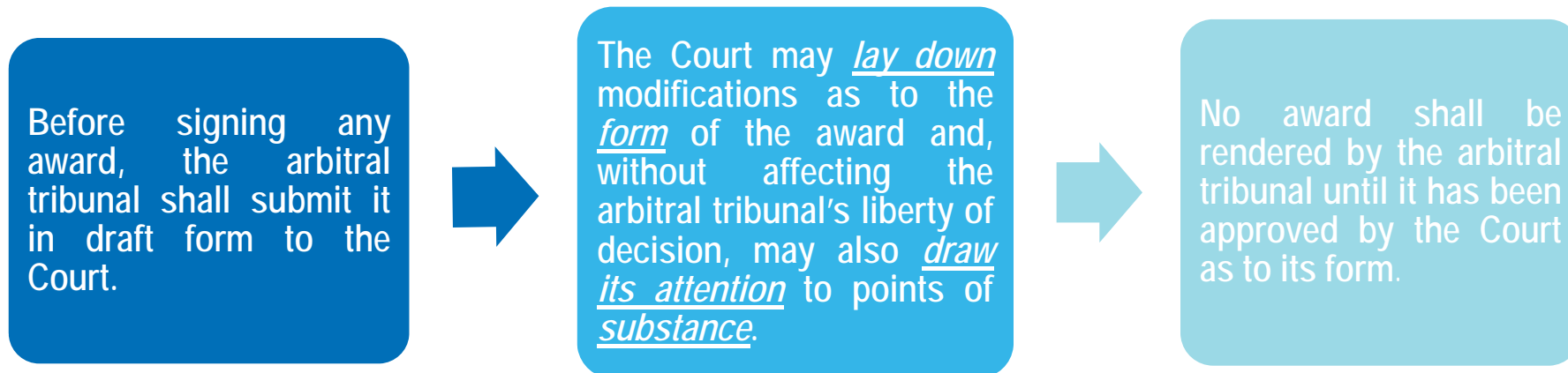
- North & West Europe
- Central & East Europe
- North Africa
- Sub-Saharan Africa
- North America
- Latin America & Caribbean
- Central & West Asia
- South & East Asia
- Oceania

2006	949 arbitrators
	71 countries
2016	1411 arbitrators
	76 countries



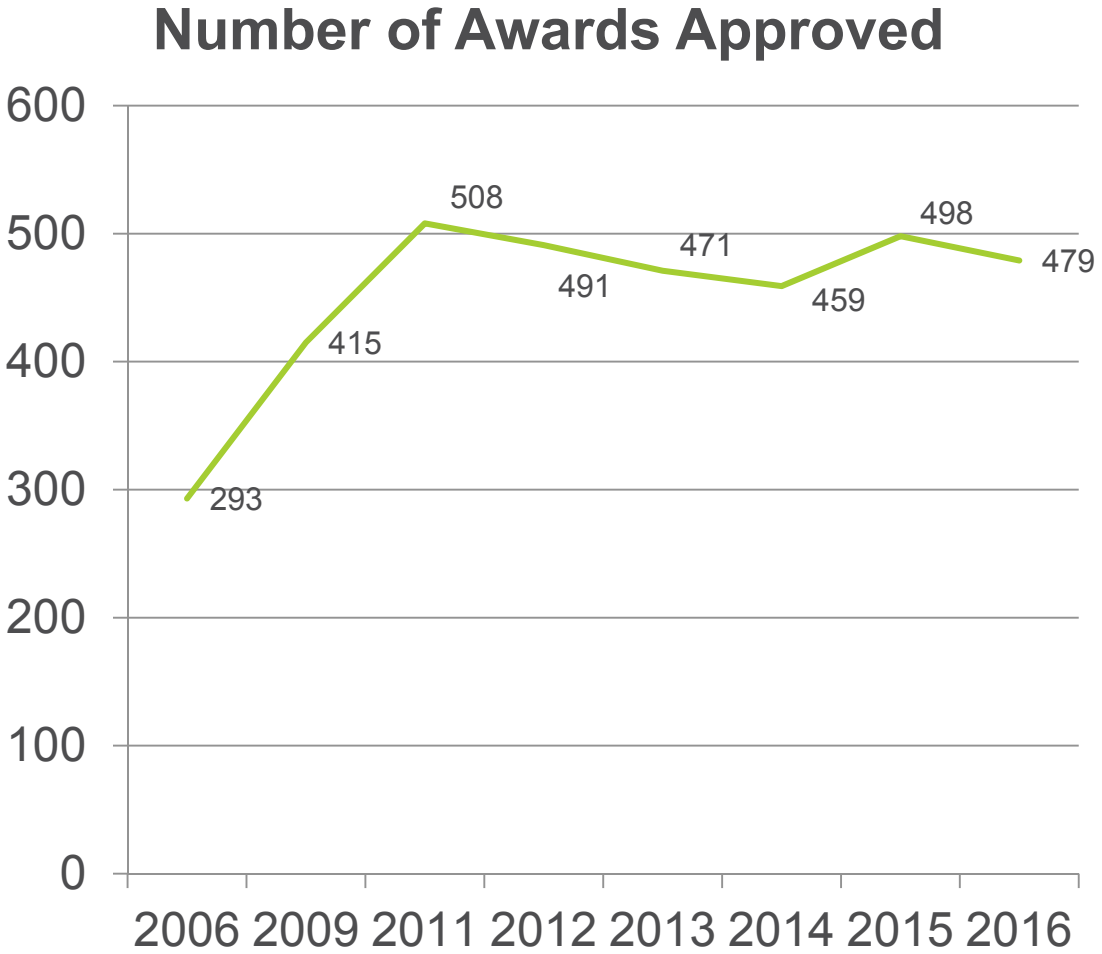
Scrutiny of Awards

SCRUTINY OF AWARD (ART. 34)



- **Art. 32(2):** The award shall state the reasons upon which it is based
- **App. II, Art. 6:** When the Court scrutinizes draft awards, it considers, to the extent practicable, the requirements of mandatory law at the place of the arbitration.
- **Art. 42:** In all matters not expressly provided for the Rules, the Court and the AT shall act in the spirit of the rules and make sure that award is enforceable at law.

GENERAL STATISTICS: AWARDS



Number of Awards Approved in 2016

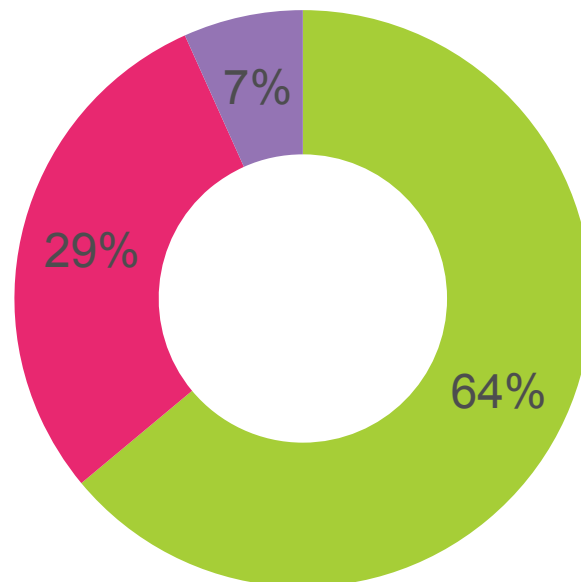
479

2016 AWARDS



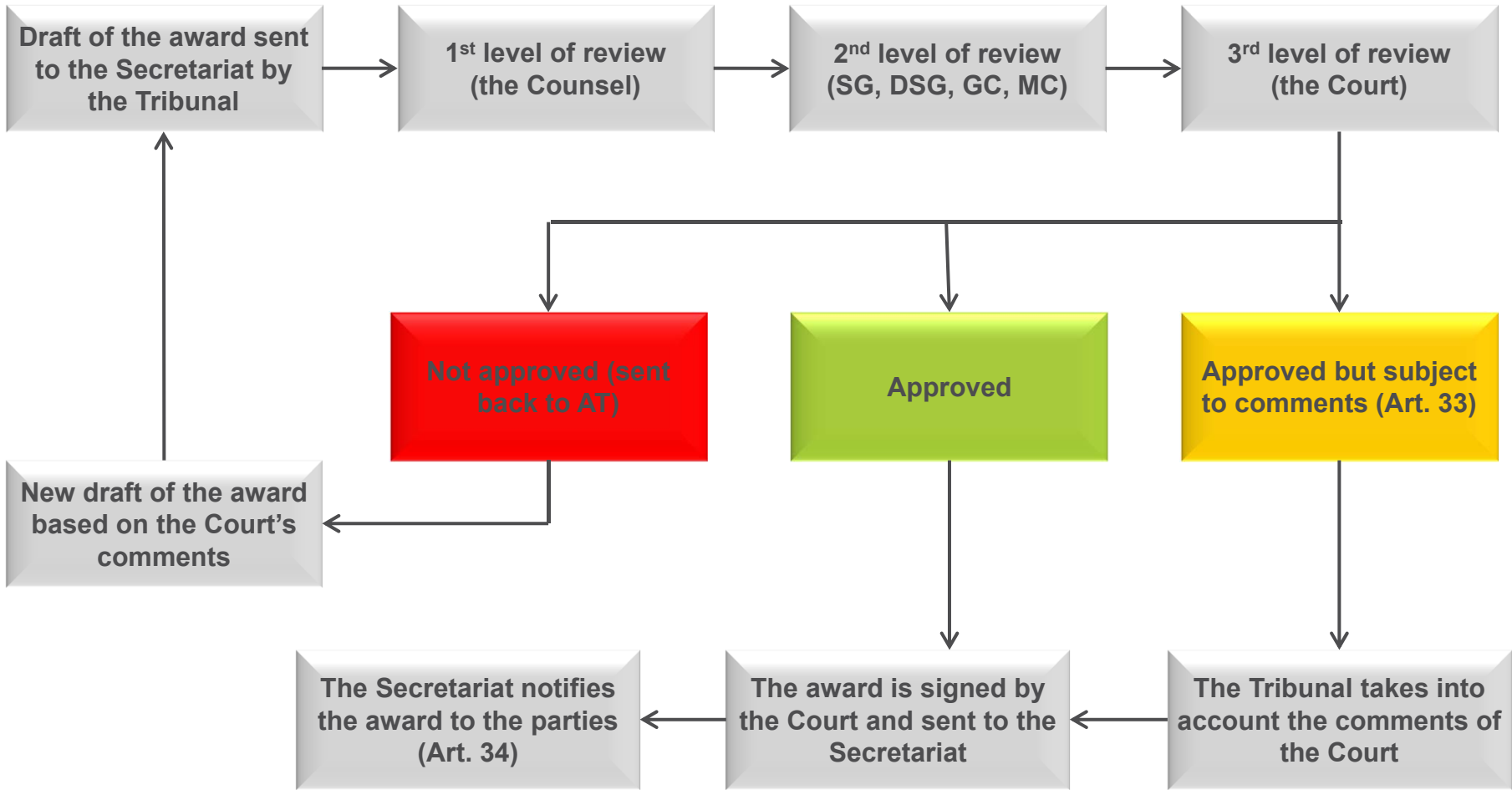
- **Awards:**

- 479 awards approved:
- 99,4 % of the approved awards were approved with comments (“subject to modification”)
- 43 awards not approved (9% of awards)



- Final Awards
- Partial Awards
- Awards by Consent

SCRUTINY OF AWARD (ART. 33)





SCRUTINY OF AWARDS - EXAMPLE

Claimant's request:

Claimants request the Tribunal to grant the following relief:

- a) Respondent shall pay to XY the amount of EUR 14,780,000, in event, to pay this amount to Claimants, plus, in any event, interest at an annual rate of 8% above the Austrian base rate (Basiszinssatz), which, for the time being, is minus 0.12%, from 26 April 2013 until full payment is made;
- b) Respondent shall pay to YZ the amount of EUR 4,179,000, in event, to pay this amount to Claimants, plus, in any event, interest at an annual rate of 8% above the Austrian base rate (Basiszinssatz), which, for the time being, is minus 0.12%, from 26 April 2013 until full payment is made;
- c) Respondent shall pay to YZ Hungary the amount of EUR 623,000, in event, to pay this amount to Claimants, plus, in any event, interest at an annual rate of 8% above the Austrian base rate (Basiszinssatz), which, for the time being, is minus 0.12%, from 26 April 2013 until full payment is made;
- d) Respondent shall compensate Claimants for their costs and expenses in the arbitration on a full indemnity basis in an amount to be specified later together with interest; and
- e) Respondent, as between the Parties, shall bear the entire compensation due to the Arbitral Tribunal and to the ICC and shall compensate Claimants for any amounts that Claimants have paid or will pay to the ICC in relation to the arbitration including, but not limited to Claimants' part of the advance on costs.

Respondent's request:

Respondent requests the Tribunal to:

- a) dismiss Claimants' claims in their entirety; and
- b) order Claimants to pay Respondent all of its costs of these arbitral proceedings amounting to EUR 4,466,689.97.

SCRUTINY OF AWARDS - EXAMPLE



- For these reasons, the Tribunal renders the following

Final Award:

- Claimants' claims are dismissed in their entirety.
- Claimants are to bear the Arbitration Costs fixed by the Court in the amount of EUR 670,000.00, of which EUR 335,000.00 have already been advanced by Claimants. The Tribunal orders Claimants to pay to Respondent EUR 335,000.00 in Arbitration Costs within two weeks from receipt of this Final Award.
- Claimants are to bear the Expert Costs in the amount of EUR 183,357.60, of which EUR 91,678.80 have already been advanced by Claimants. The Tribunal orders Claimants to pay to Respondent EUR 91,678.80 in Expert Costs within two weeks from receipt of this Final Award.
- Claimants are to bear their own Party Costs. The Tribunal orders Claimants to pay to Respondent EUR 2,610,049.18 in Party Costs within two weeks from receipt of this Final Award.
- All other and further prayers for relief and motions the Parties have put forward in this arbitration are dismissed.

TIMING OF THE AWARD



Overlong procedures may render legal protection ineffective

ICC aims at enhancing efficiency in the submission of draft Awards to the Court

- Note to parties & ARBITRAL TRIBUNALS

[...]

86. In this regard, sole arbitrators are expected to submit draft awards within two months and three-member arbitral tribunals within three months after the last substantive hearing on matters to be decided in the award or the filing of the last written submissions concerning such matters (excluding cost submissions), whichever is later (Article 27).



THANK YOU FOR YOUR ATTENTION!

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