



**Asia-Pacific
Economic Cooperation**

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Session 3

Perspectives of Stakeholders on Dispute Settlement Mechanisms in Trade Agreements

Submitted by: ICC International Court of Arbitration



**Workshop on Current Trends on Dispute
Settlement Mechanisms in Trade Agreements
Chiang Mai, Thailand
25 August 2022**

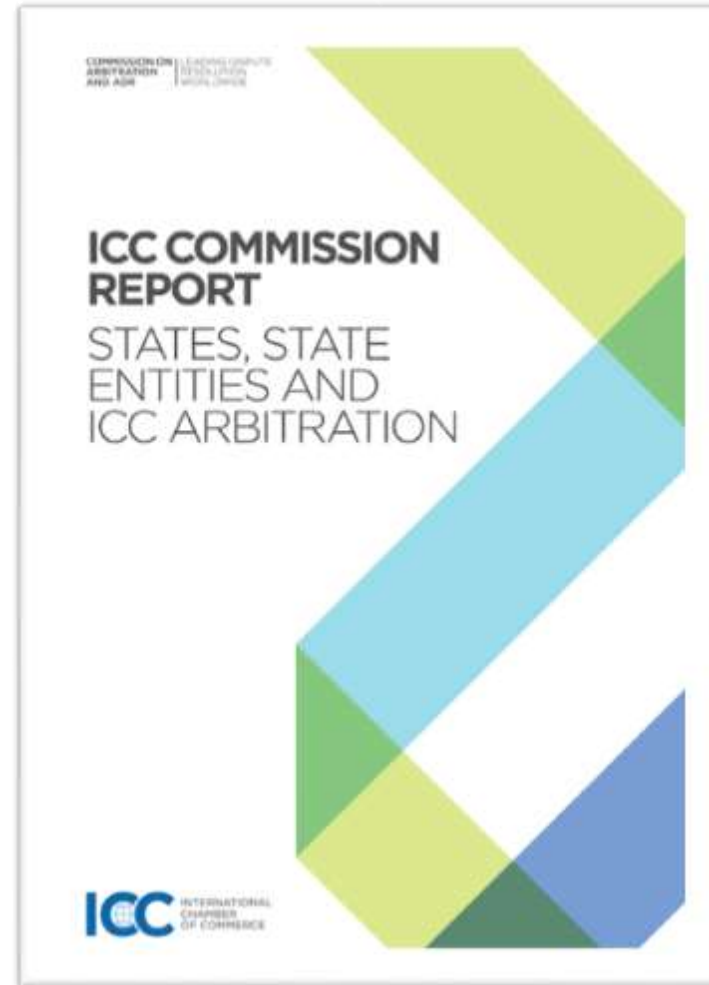
APEC Workshop on Current Trends on Dispute Settlement Mechanisms in Trade Agreements

Perspective of stakeholders on Dispute Settlement Mechanisms in Trade Agreements

25 August 2022 | Thailand

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HOW STATE AND STATE ENTITIES CAN USE ICC RULES



STANDARD ICC ARBITRATION CLAUSE

*"All disputes arising out of or in connection with the present contract shall be finally settled under **the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules**".*

Suggestions:

- Place of arbitration
- Language of arbitration
- Applicable law
- Number of arbitrators
- Confidentiality Provisions
- Mediation

GENERAL STATISTICS (2021)

- In 2021, 21.4% of cases involved **State or State entities**

- 840 new cases filed (27000+ till date)
- 2,206 parties from 143 members
- 1,842 pending cases

Cases

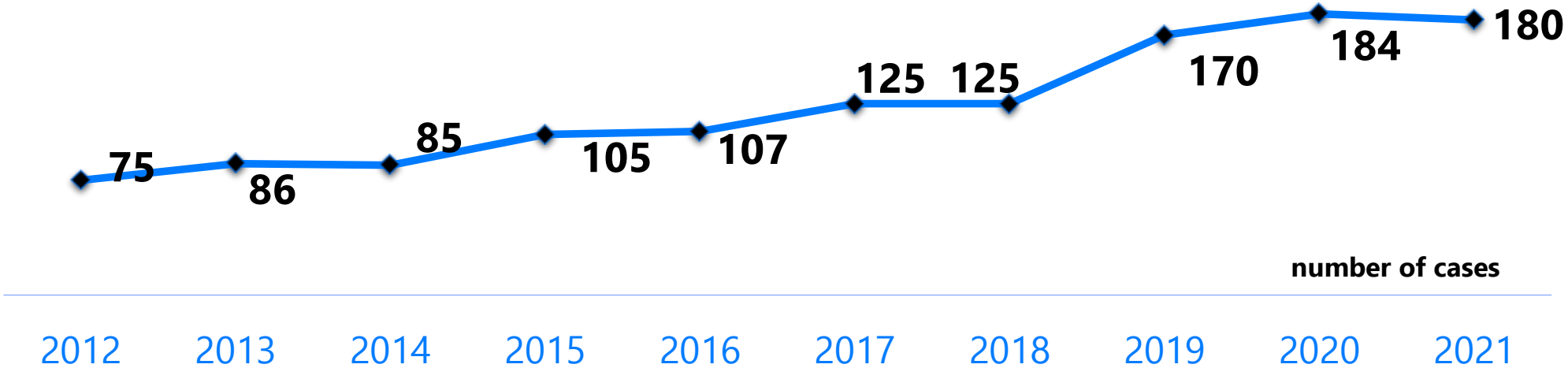
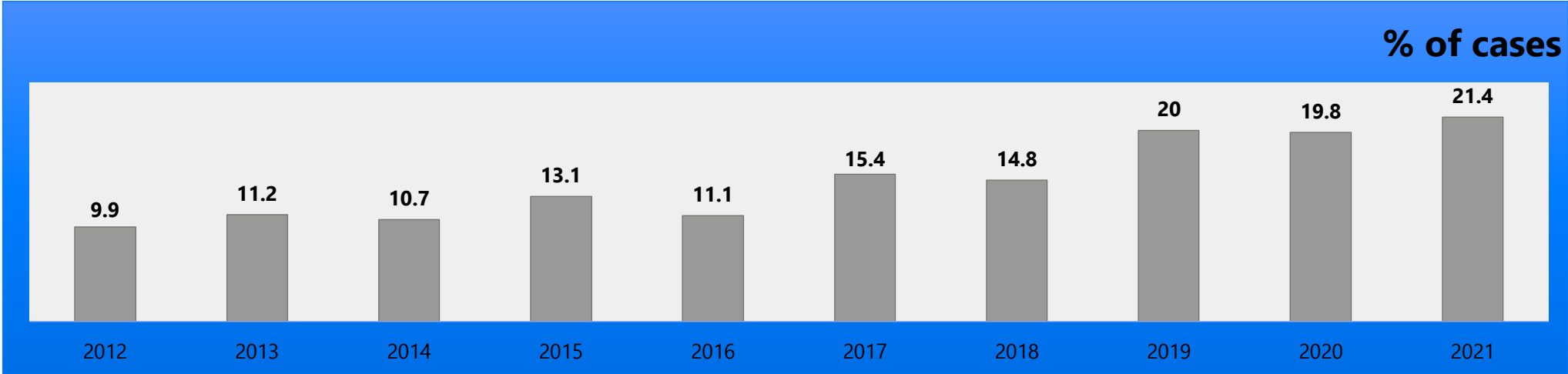
- 1,525 appointments, 1060 individuals, 99 nationalities
- 71 members, 127 cities
- 630 awards issued

Tribunals

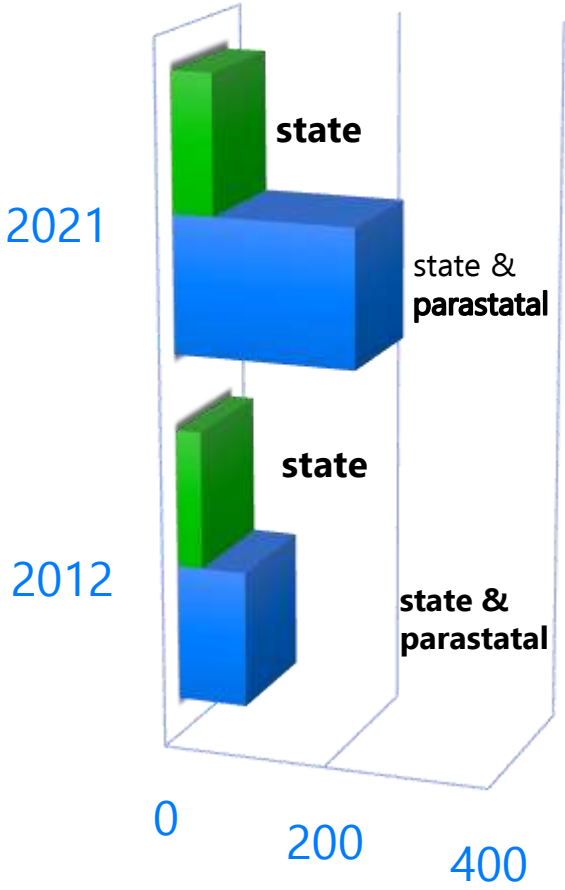
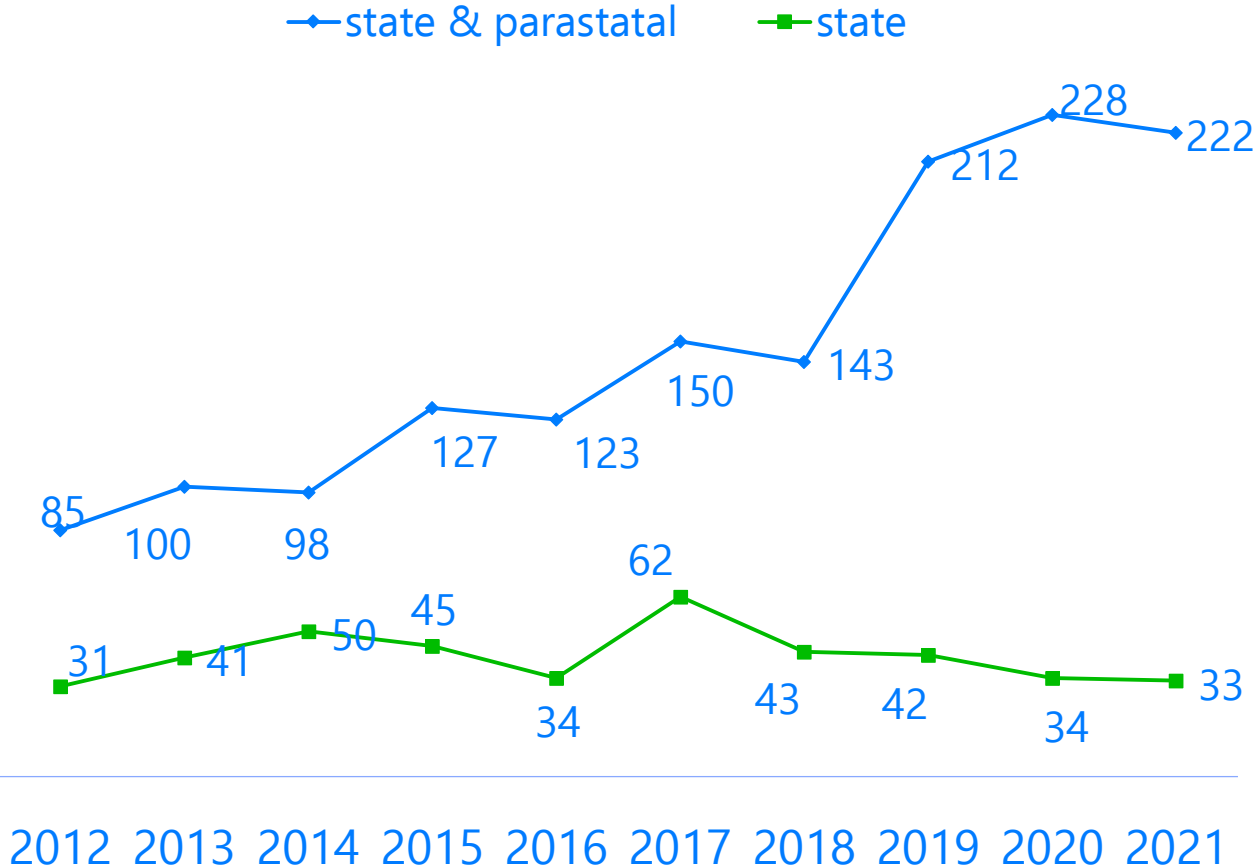
- USD 9500 to USD 27 billion
- <30% within USD 1-5 million
- USD 5.7 million was the median amount

Claims

STATES AND STATE ENTITIES IN CASES

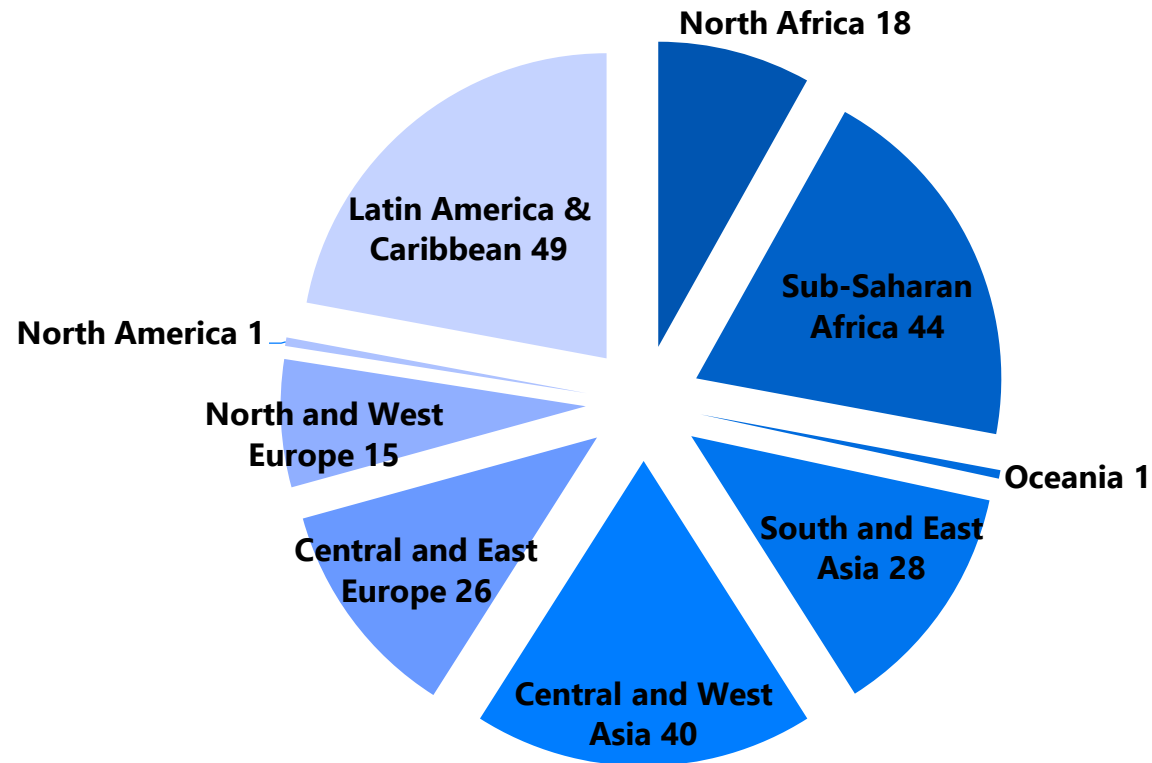


STATES AND STATE ENTITIES AS PARTIES



ORIGIN OF STATES AND STATE ENTITIES IN ICC CASES

As of 2021



ICC RULES – SCOPE OF APPLICATION RELEVANT TO DISPUTES INVOLVING STATES AND STATE ENTITIES

ICC ARBITRATION RULES 2021 – SCOPE OF APPLICATION RELEVANT TO DISPUTES INVOLVING STATES AND STATE ENTITIES

Scope

- 2021 Rules refer to disputes rather than business disputes (Article 1(2))

Appointment

- Possibility of direct appointment by the Court in cases involving states or entities claiming to be state entities (Article 13(4)(a))
- No default rule in favor of appointing a certain nationality when a party fails to nominate a co-arbitrator (former Article 12(2), Article 12(3), Article 12(4), and Article 12(5))

Impartiality

- Explicitly included regarding confirmation and appointment as well as challenge or arbitrators (Article 13(2) and Article 14(1))

Applicable law

- Takes into account that there may not be a contract OR TRADE USAGES (Article 21(2))

Confidentiality

- No express provision; arbitral tribunal can make orders in this regard (Article 22(3))

ICC GENERAL PRACTICES IN CASES INVOLVING STATES AND STATE ENTITIES

Number of Arbitrators

- General practice of considering a three-member Arbitral Tribunal **unless** the Parties agree to a Sole Arbitrator.

Time limits

- May be extended by agreement, but Court and Secretariat often grant extensions in cases involving State parties or entities

Plenary sessions

- Draft Awards involving States generally are referred to a Plenary Session of the Court
- Court members from the State involved are excluded from this and all other decisions in the case hence ensuring impartiality and independence.

Reasons for challenges

- Suggestion that Court may agree to provide reasons for its decisions as to the disputed confirmation, non-confirmation, replacement and challenge of arbitrators if the parties agree thereto, particularly in investment arbitrations

Referral of Jurisdictional decisions to the Court?

- Involvement of state or state entity may be considered by the Secretary General (Article 6)

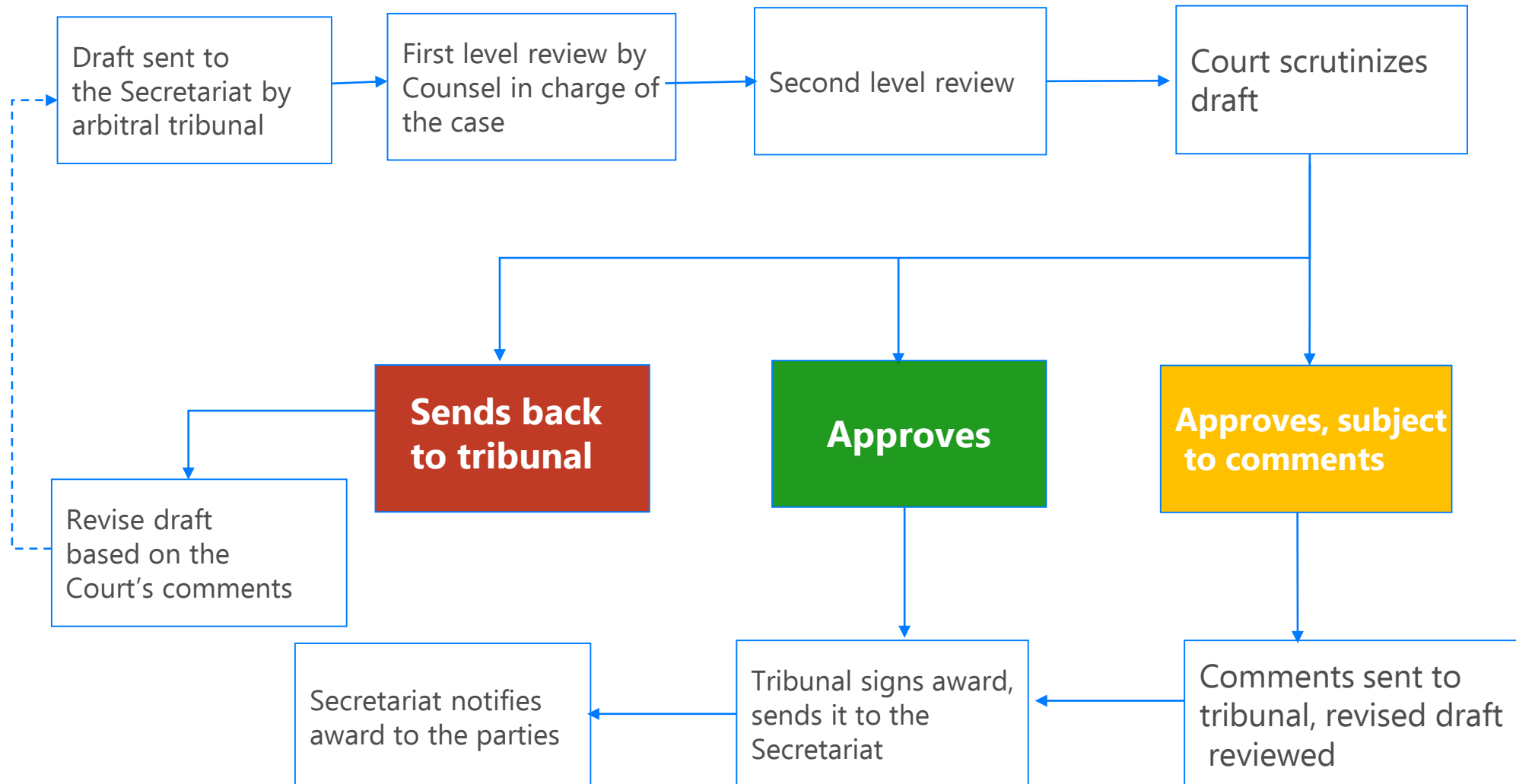
Fixing place of arbitration

- In absence of parties agreement on the place of arbitration, the Court will decide on the matter (Article 18(1)).
- It is the Court's practice to fix the place of the arbitration in cases involving states or state entities in a neutral location situated in a country that has ratified the New York Convention. for ease of enforceability of the arbitral award.

ICC SCRUTINY – DISTINGUISHING FEATURE

ICC SCRUTINY OF DRAFT AWARD – ONE OF A KIND

(*Article 34 of ICC Arbitration Rules 2021)



ICC DISPUTE RESOLUTION SERVICES

ICC DISPUTE RESOLUTION SERVICES

ICC International Court of Arbitration



ICC International Centre for ADR



Thank You!

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