

**ICC ARBITRATION**  
**ITS UNIQUE FEATURES**  
**AND SPECIAL**  
**CHARACTERISTICS**

ADR VIETNAM CHAMBERS LLC  
INDEPENDENT INSTITUTION & REGULATOR

*Hanoi, 9<sup>th</sup> January 2020*

**NGUYEN MANH DZUNG**  
 • MEMBER | ICC INTERNATIONAL COURT OF ARBITRATION  
 • DIRECTOR | ADR VIETNAM CHAMBERS LLC

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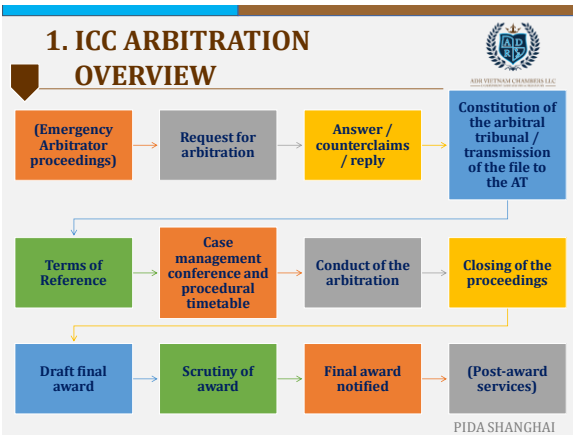
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### 2. FEATURES AND CHARACTERISTICS

1. Term of Reference (TOR)
2. Scrutiny of award (ICC Court)
3. Selection and Appointment of Arbitrators (Challenge)
4. Case Management Conference (CMS)

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### 3. ICC ICA PLENARY SESSION



- 1. Challenges
- 2. Partial Awards
- 3. Final Awards

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### 4. PUBLICATION OF ARBITRATORS' NAME



**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-arbitrator, 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-arbitrator, 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	Wilens	Jane	France	Sole Arbitrator	Court	Active	Pending
2	Jun-2016	Rambach	Arndt	Germany	Sole Arbitrator	Court	Active	Pending
3	Jun-2016	Fanuloh	Rafel	Canada/Laos/Lao	Sole Arbitrator	Parties	Active	Pending
4	Jun-2016	Gabriel	Simon	Switzerland	Sole Arbitrator	Court	Active	Pending
5	Jun-2016	Mabumere	Chikwendu	Nigeria	Sole Arbitrator	Court	Active	Pending
6	Jun-2016	Sacco	Sabrina	Chile/El Salvador/Italy	Sole Arbitrator	Parties	Active	Pending

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### 5. TRANSPARENCY & DIVERSITY



**ICC INTERNATIONAL CHAMBER OF COMMERCE**

vietnam X

Case ID	Date	Name	First Name	Nationality	Role	Appointment
718	Apr-2018	Dang	Xuan Hop	Vietnam	Co-arbitrator	Claimant(s)
718	Apr-2018	Nguyen Ngoc	Bich	Vietnam	Co-arbitrator	Respondent(s)

Some items might be hidden. [Include these in your search](#)

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### 6. CONSTITUTION OF ARBITRAL TRIBUNAL



- Nominations by parties and confirmation by Secretary General or Court
- Nominations by co-arbitrators (for presidents)
- Appointments by Court upon proposal from ICC National Committee or Group
- Appointments by Court directly

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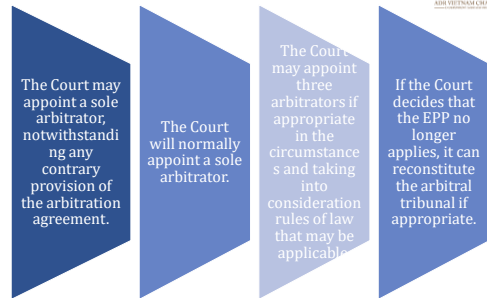
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### 7. CONSTITUTION OF ARBITRAL TRIBUNAL



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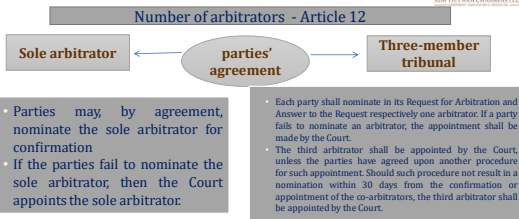
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### 8. CONSTITUTION OF THE ARBITRAL TRIBUNAL



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.

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### 9. THE COURT'S OPTIONS - APPOINTMENT



The Court Appoints

The sole arbitrator or president shall be of a nationality other than those of the parties

Upon proposal of NC/Group of ICC that it considers appropriate, if it accepts the proposal made

Directly, if

However, in suitable circumstances and if no party objects within the time fixed by the Court, they may be chosen from a country of which any of the parties is a national

One or more of the parties is a state or claims to be a state entity

It considers that it would be appropriate to appoint an arbitrator from a country or territory where there is no NC/Group

President of the Court certified to the Court that circumstances exist which make direct appointment necessary and appropriate

It does not accept the proposal from NC/Group or if the NC/Group fails to propose within the time limit fixed by the Court

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### 10. THE ARBITRATORS



#### The Forms

• Before appointment or confirmation, a prospective arbitrator shall sign a statement of acceptance, **availability, impartiality** and independence. (Article 11(1))

#### Disclosure by prospective arbitrators

• The prospective arbitrator shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to **call into question the arbitrator's independence in the eyes of the parties**, as well as any circumstances that could **give rise to reasonable doubts as to the arbitrator's impartiality**.  
• The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them. (Article 11(2))

#### Continuing disclosure

• An arbitrator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature to those referred to in Article 11(2) concerning the **arbitrator's impartiality or independence** which may arise during the arbitration. (Article 11(3))

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### 11. CONSIDERATIONS



Nationality

Residence

Other relationships with the countries of which the parties or the other arbitrators are nationals

Availability

Ability to conduct the arbitration in accordance with the Rules

Common considerations for decisions on confirmation/appointment

- Independence
- Impartiality
- Availability
- Language ability
- Ability to conduct the proceedings

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## 12. CONTROL OF THE ARBITRATORS



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- **Article 11(1):** "Every arbitrator must be and remain impartial and independent of the parties involved in the arbitration."
- **Challenge - Article 14:** "A challenge of an arbitrator, whether for an alleged lack of impartiality or independence, or otherwise, shall be made by the submission to the Secretariat of a written statement specifying the facts and circumstances on which the challenge is based."
- **Replacement - Article 15:** An arbitrator shall be replaced:
  - (i) "upon death, upon acceptance by the Court of the arbitrator's resignation, upon acceptance by the Court of a challenge, or upon acceptance by the Court of a request of all the parties" or
  - (ii) "on the Court's own initiative when it decides that the arbitrator is prevented de jure or de facto from fulfilling the arbitrator's functions, or that the arbitrator is not fulfilling those functions in accordance with the Rules or within the prescribed time limits."

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## 13. ARBITRATORS: CHALLENGE



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## 14. REASONS FOR COURT'S DECISIONS



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**Note, paras 11 - 13**

- Challenges
- Decisions to initiate replacement proceedings
- Decisions to replace an arbitrator
- Reasons for decisions pursuant to Article 6(4)
- Reasons for decisions pursuant to Article 10

**Conditions**

- Any request for the communication of reasons must be made in advance of the decision in respect of which reasons are sought
- The Court has full discretion to accept or reject a request for communication of reasons

**Experience in 2018 so far**

- on challenges in 6 cases
- on 6(4) decisions twice (both cases under 2017 Rules)
- on consolidation in one case

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### 15. THE COMPETENT AND RIGHT ARBITRATOR?



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#### Information about potential arbitrator:

- Difficult to obtain information;
- Recommendation by experienced arbitration lawyers (pros and cons)
- Interviewing prospective arbitrator[s] (pros and cons)
- Arbitrator's fees/charges (little or no relevance to ICC arbitration) (danger of being misguided)
- Conflict of interest?

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### 16. SELECTION AND APPOINTMENT OF THIRD/PRESIDING ARBITRATOR (CONT.)



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- ICC National Committee?
- Name(s) known to both co-arbitrators;
- Agreed to be in consultation with nominating party : Take-out unsuitable name [as parties know more about the case]; Party-autonomy; Longer process; Combined list of candidates to be weighed by parties in order of preference; etc.

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### 17. CASE MANAGEMENT CONFERENCE: ART. 24



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- Objectives: to (1) consult the parties on procedural measures to achieve general obligation of cost-efficiency, and (2) establish the procedural time table
- Timing: (1) when drawing up the Terms of Reference or as soon as possible thereafter, and (2) at other appropriate stages to ensure continued effective case management
- Means: meeting in person or by electronic means
- Participants: Arbitral Tribunal and parties' representatives. The Arbitral Tribunal can request the attendance of the parties (in person or through internal representative) and may request the parties to submit proposals

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### 18. CREATING A FRAMEWORK



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- Case Management Conference
- Procedural Order No. 1
  - Communications
  - Written Submissions
  - Witnesses
  - Experts
  - Hearing
- Procedural Timetable
  - Event
  - Parties Involved
  - Date [Number of days from the previous event]
- Additional CMCs/Procedural Orders

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### 19. TIME AND COST SAVING TECHNIQUES



ASIAN-VIETNAM CHAMBER OF COMMERCE (AVCC)

- Bifurcating the proceedings or rendering one or more partial awards on key issues
  - Identifying issues that can be resolved by agreement between the parties or their experts
  - Identifying issues to be decided solely on the basis of documents rather than through oral evidence or legal argument at a hearing
  - Production of documentary evidence
  - Limiting the length and scope of written submissions and written and oral witness evidence
  - Using telephone or video conferencing for procedural and other hearings
  - Organizing a pre-hearing conference with the arbitral tribunal
  - Settlement of disputes
- \* See Appx 4, ICC Rules, ICC Commission Report on Controlling Time and Costs in Arbitration

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### 20. CASE MANAGEMENT CONSIDERATIONS



ASIAN-VIETNAM CHAMBER OF COMMERCE (AVCC)

- Should your client attend?
- Is there a need for a physical meeting?
- Extent of agreement on facts and issues?
- Bilingual arbitration?

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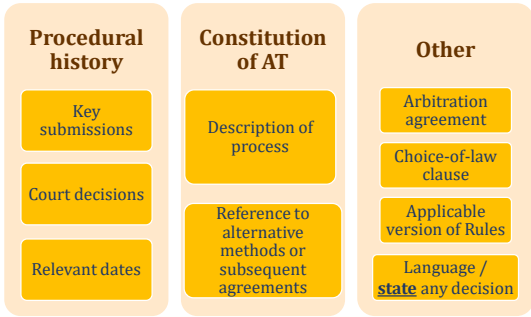




## 24. CONTENTS OF TOR - ADDITIONAL



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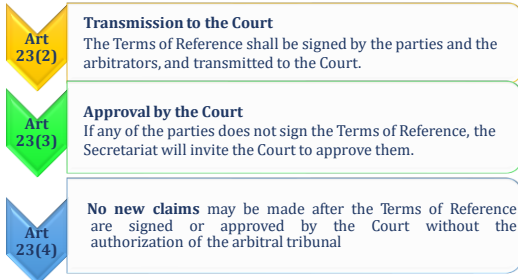
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## 25. TERMS OF REFERENCE



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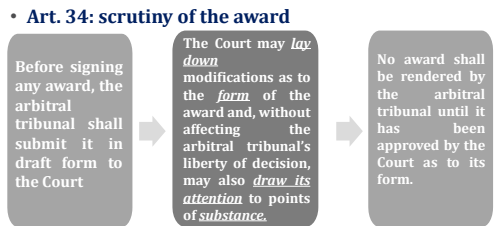
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## 26. SCRUTINY OF THE AWARD



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• **Article 32: The award shall state the reasons upon which it is based**

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## 27. SCRUTINY OF THE AWARD



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<b>Purpose</b>	<ul style="list-style-type: none"> <li>To maximize legal effectiveness</li> <li>To improve the quality and accuracy</li> <li>To avoid setting aside</li> </ul>
<b>Which awards?</b>	<ul style="list-style-type: none"> <li>Partial awards</li> <li>Interim awards</li> <li>Awards by consent</li> <li>Final awards</li> </ul>
<b>The possible comments that may affect the award</b>	<ul style="list-style-type: none"> <li>Tribunal acted <i>ultra petita/infra petita</i></li> <li>Reasons are not provided</li> <li>Errors in calculations of the costs</li> <li>Due process respected</li> </ul>

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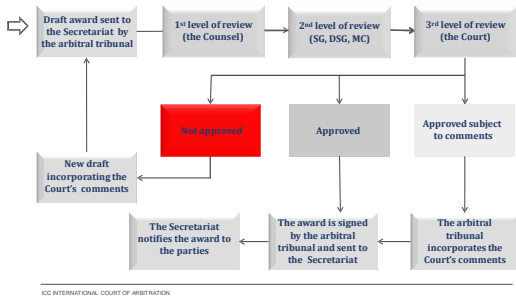
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## 28. SCRUTINY OF THE AWARD



AVR VIETNAM CHAMBERS LLC



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## 29. QUESTIONNAIRES



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1. How to build up the Claimant/Respondent's Strategy in a particular case?
2. How to select a candidate for the appointment to be confirmed by the Court and Can a confirmed arbitrator be challenged again?
3. What are differences between a Request for Arbitration and a Statement of Claim or an Answer to the Request and a Statement of Defence?
4. The importance of scope of representative's authority in ICC arbitration proceedings?
5. Etc.

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## REFERENCE



ADR VIETNAM CHAMBERS LLC

1. The ICC International Court of Arbitration and its Secretariat on 11/05/2018;
2. ICC Practice Note: <https://iccwbo.org/dispute-resolution-services/arbitration/practice-notes-forms-checklists/>
3. ICC Commission's publications: <https://iccwbo.org/dispute-resolution-services/commission-on-arbitration-and-adr/>

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## THANK YOU FOR YOUR ATTENTION!



ADR VIETNAM CHAMBERS LLC

INDEPENDENT ARBITRATORS & MEDIATORS

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