

INTRODUCTION TO THE ICC INTERNATIONAL COURT OF ARBITRATION, THE SECRETARIAT & ICC RULES OF ARBITRATION

October 2022

Overview

- I. How is the ICC organised
- II. Statistics
- III. Arbitration Proceedings under the ICC Rules
- IV. 2021 ICC Rules of Arbitration – Key Features of ICC Arbitration and what's new



International Court of Arbitration & Secretariat

Leading Dispute Resolution Worldwide

ICC DISPUTE RESOLUTION SERVICES (DRS)

The International Chamber of Commerce – the World Business Organization

Created 1919 after WWI by a handful of entrepreneurs to

- expand international trade
- represent business all over the world

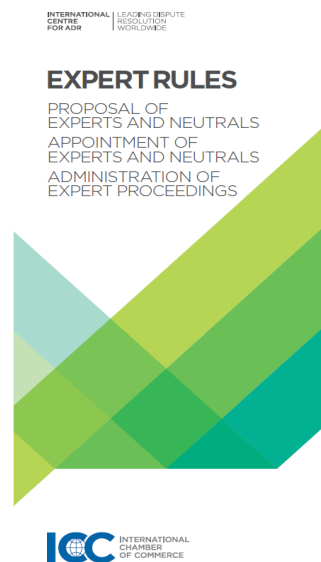
ICC's mission today still is to promote international trade and investment as vehicles for inclusive growth and prosperity

Active in a wide variety of fields:

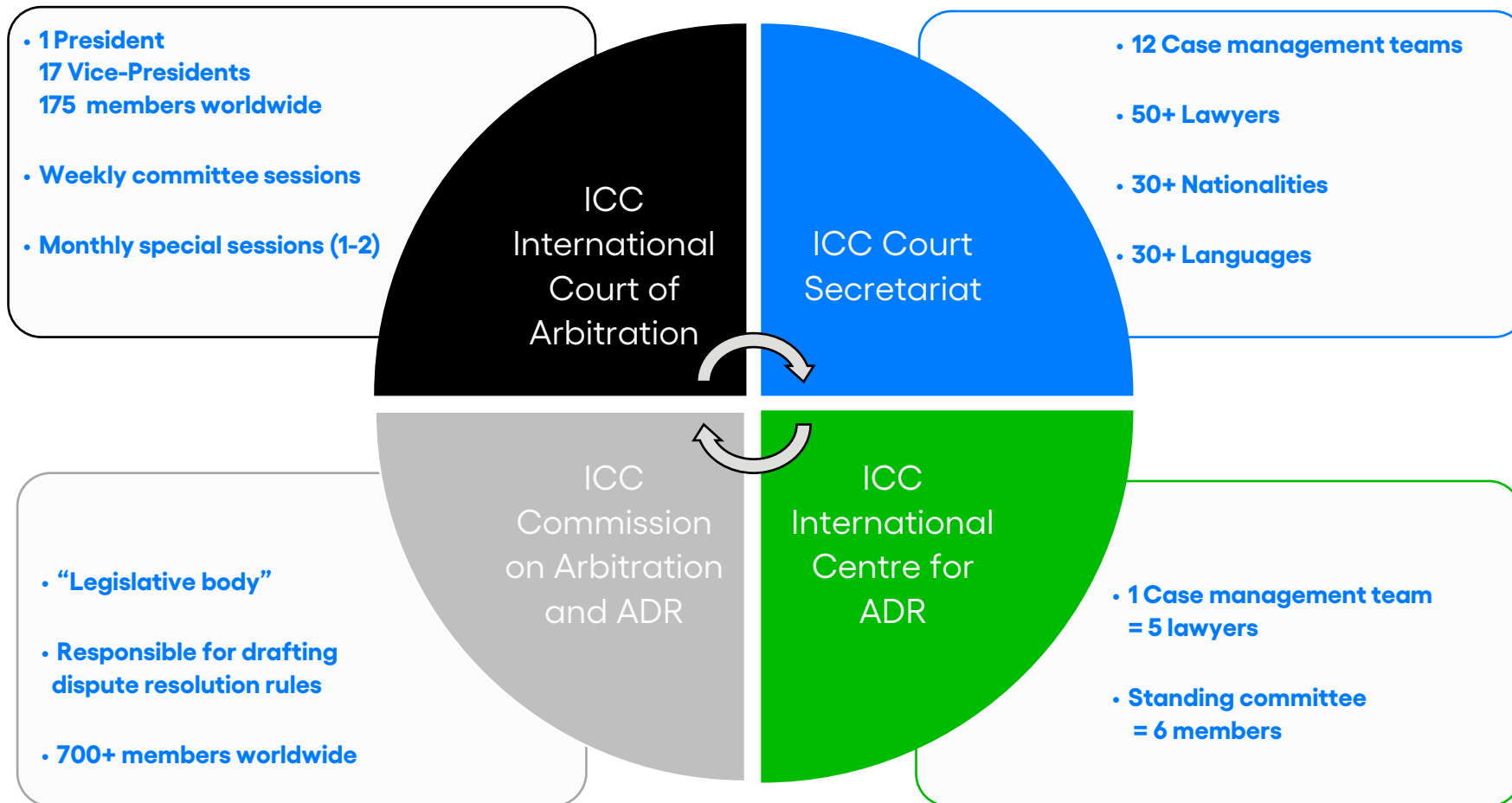
- rule setting: Incoterms
- policy advocacy: representing business at the WTO, UN and other *fora*
- **dispute resolution services: Arbitration / ADR**

ICC DISPUTE RESOLUTION SERVICES

ICC International Court
of Arbitration



HOW IS THE ICC DRS ORGANIZED



ICC COURT VS ARBITRAL TRIBUNALS

What is the difference between the ICC Court and an Arbitral Tribunal working under the ICC Rules?

Possible aspects to consider:

- Who is in charge of deciding on the merits of the case?
- Who appoints the arbitrators?
- Who decides on the place of arbitration in the absence of an agreement by the parties?
- Who scrutinizes the award at the end of the proceedings?
- Other possible differences?



The Court does not itself settle disputes. It administers the resolution of disputes by arbitral tribunals, in accordance with the Rules of Arbitration of ICC (the “Rules”).

Article 1(2) of the Rules

ICC COURT VS ARBITRAL TRIBUNALS

INTERNATIONAL COURT OF ARBITRATION (HQ IN PARIS)

- Does not settle disputes itself
- Supervises the work of the Arbitral Tribunals and administers the proceedings
- Constitution of the Arbitral Tribunal
- Controls time limits under the Rules
- Scrutinizes awards
- Fixes arbitrator's fees and administrative expenses

ARBITRAL TRIBUNAL (ANY PLACE IN THE WORLD)

- Decision on the merits of the case
- Management of the case in consultation with the parties
- Principles of expeditious dispute resolution and due process
- Establishes the terms of reference, renders procedural orders
- Drafts the award(s)
- Decides on the allocation of costs among the parties

THE INTERNATIONAL COURT OF ARBITRATION

Composition

One President: Claudia Salomon (since 1 July 2021)

17 Vice-Presidents

175 Members from 116 countries and territories

Members of the Court are appointed for a renewable three-year term by the World Council of the ICC on the proposal of ICC National Committees or Groups

THE INTERNATIONAL COURT OF ARBITRATION

Sessions

Committees

Weekly sessions

3 Court members

All type of decisions

Special Committees

Monthly session or twice a month

Open to all Court members: 1 President and at least 6 other members

Challenges, awards with dissenting opinions,
States involved

Single-member Committees

Scrutiny of awards in cases under the Expedited
Procedure Provisions

Plenary of the Court

During its annual working session or when
convened by the President



THE INTERNATIONAL COURT OF ARBITRATION

The ICC Court of Arbitration

- The function of the ICC Court is to **ensure the application of the Rules** of Arbitration of ICC, and it has all the necessary powers for that purpose. (Article 1 Appendix I)
- The ICC Court is the **only body** authorized to administer arbitrations under the Rules, including the scrutiny and approval of awards rendered in accordance with the Rules. (Article 1(2))

FUNCTIONS OF THE COURT

-1-determining the place
of the arbitration;

-2-assessing whether
there is a *prima facie* ICC
arbitration agreement

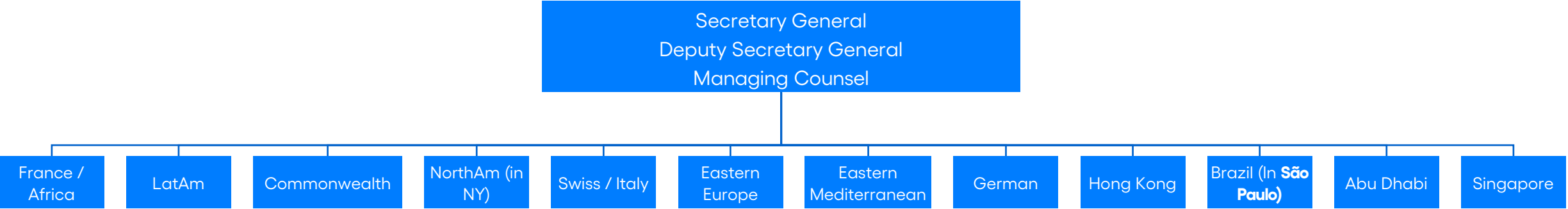
-3-confirming, appointing,
and replacing arbitrators

-4-monitoring the arbitral
proceedings

-5-scrutinizing and
approving arbitral awards

-6-managing and
modifying the costs of
arbitration

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



STATISTICS

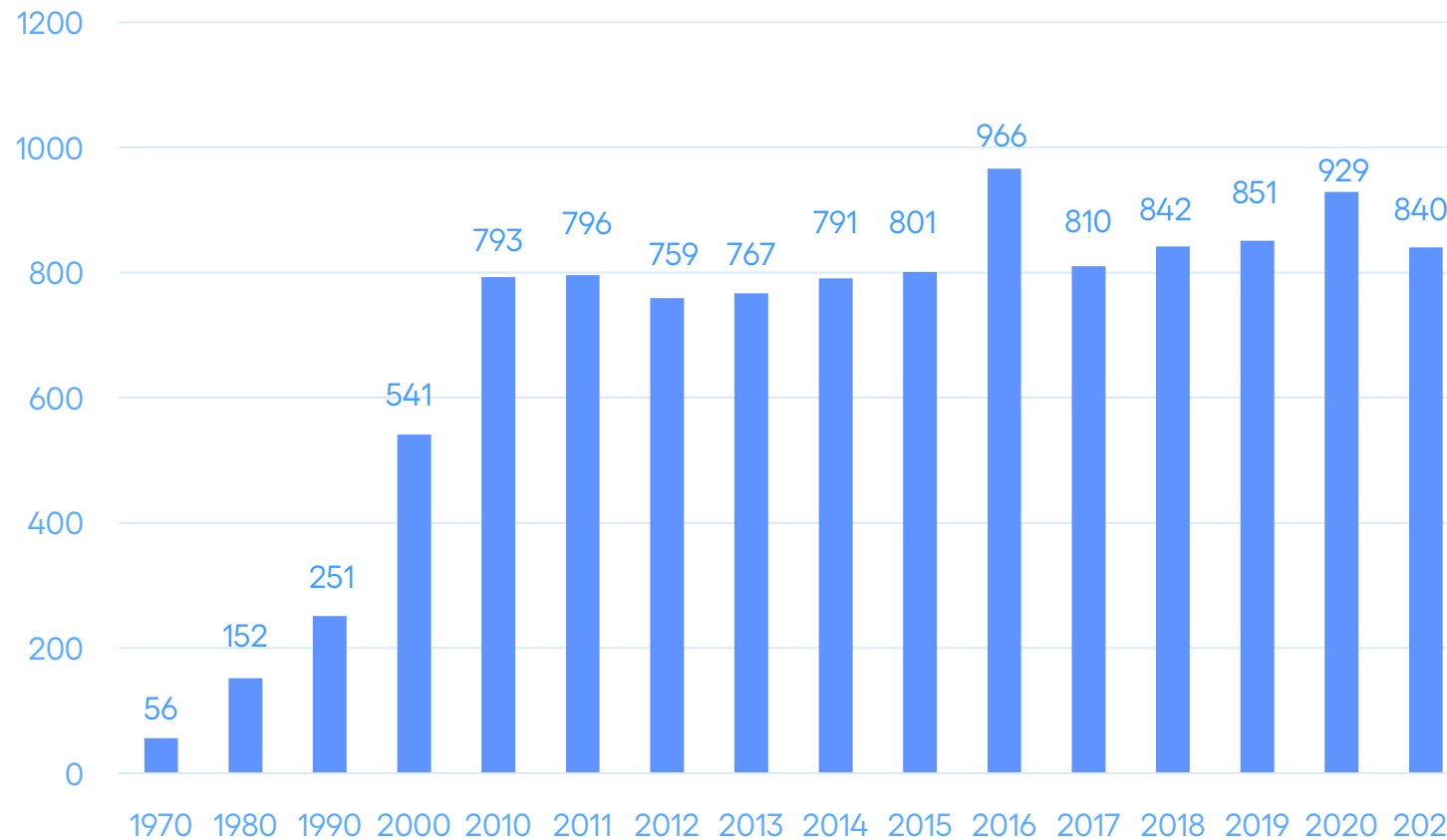
Statistics are a helpful “yardstick” that improves transparency and informs reform.

What do you estimate ... ?

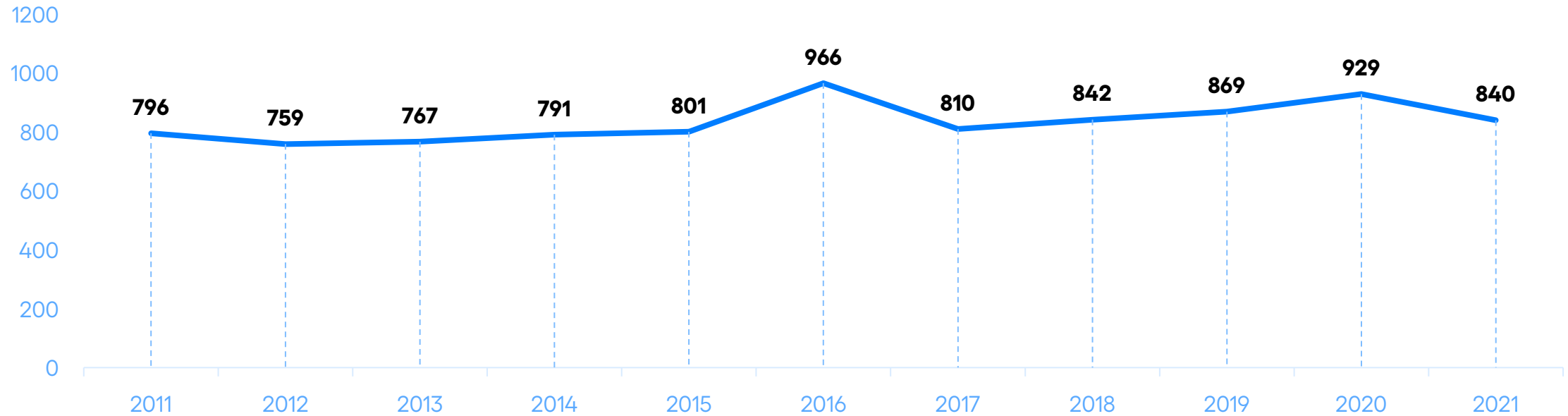
- ▶ How many **new cases** were registered last year at the ICC?
- ▶ Which **economic sectors** have had the highest demand of arbitration proceedings?
- ▶ What is the average **amount in dispute** in pending ICC cases (USD)?
- ▶ Where do most **parties** in ICC cases **originate** from?
- ▶ What is the most preferred **place** of arbitration?

ICC ARBITRATION IN NUMBERS

Number of cases registered by year



REGISTERED CASES PER YEAR

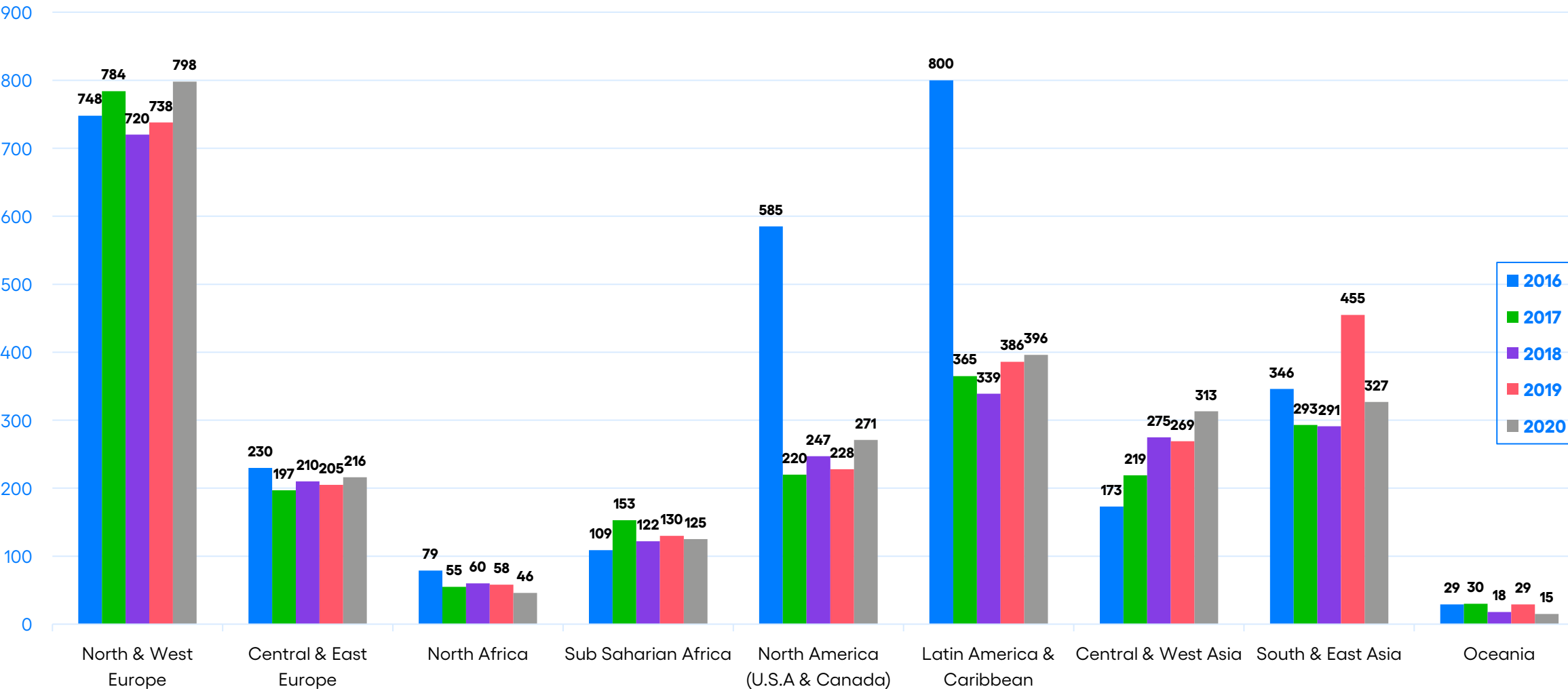


- 2020 second best year in newly-registered arbitration cases in DRS history

1842 pending cases

21,4% of cases involving states or state entities

YEARLY BREAKDOWN OF ICC ARBITRATIONS BY REGIONAL ORIGIN OF PARTIES



GENERAL STATISTICS (2021)

27 000+

• Cases administered

840

• New cases filed

1842

• Pending cases

630

• Awards issued

1525

• Arbitrators confirmed or
appointed

GENERAL STATISTICS (2021)

21,4%

- Cases involving States or State entities

127

- Cities as place of arbitration (in 71 countries)

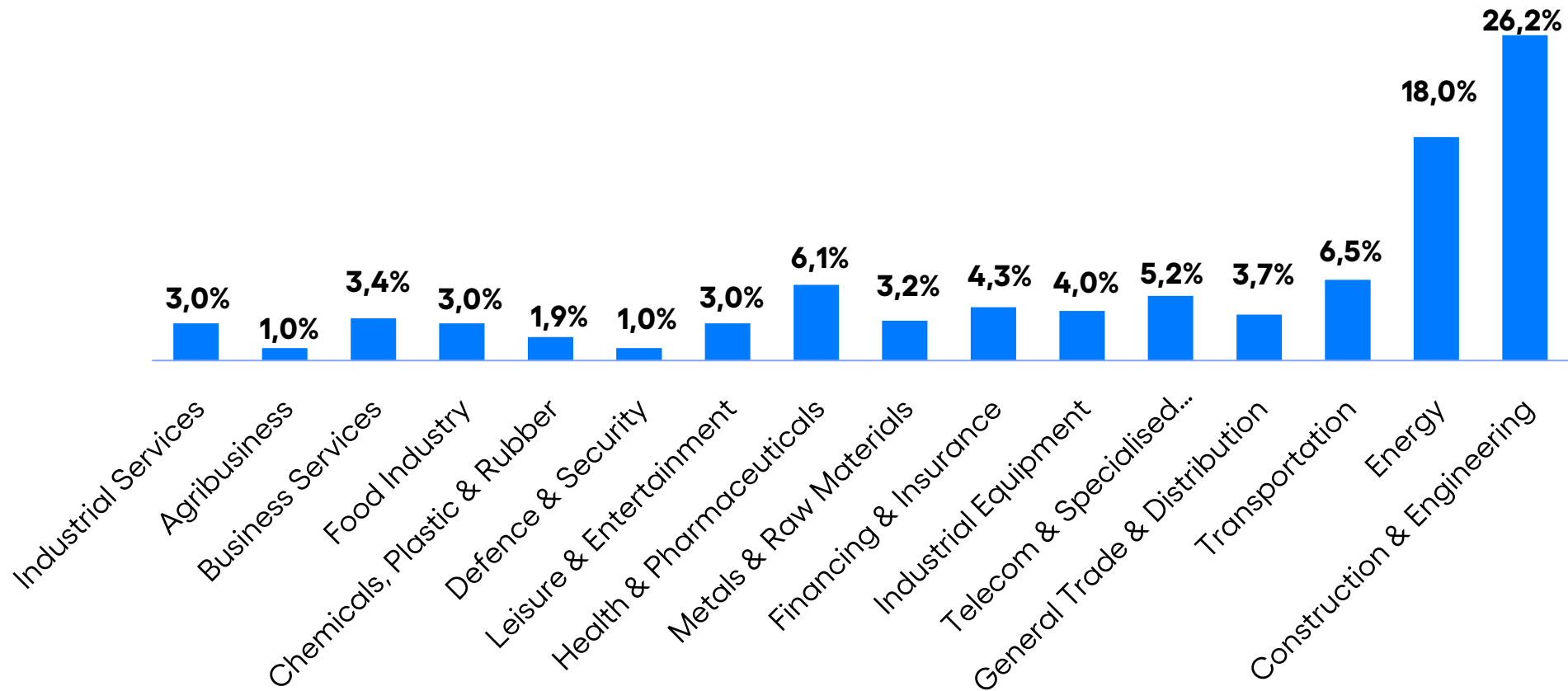
2 206

- Parties from 143 countries

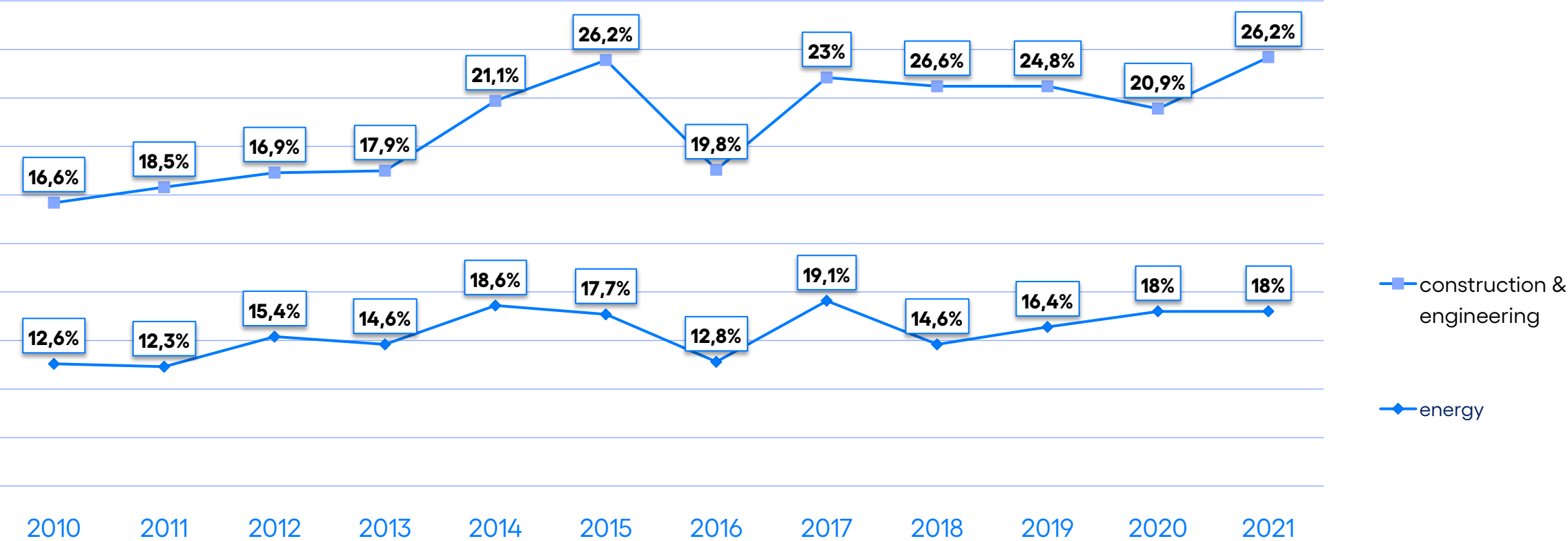
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- Emergency Arbitrator Applications

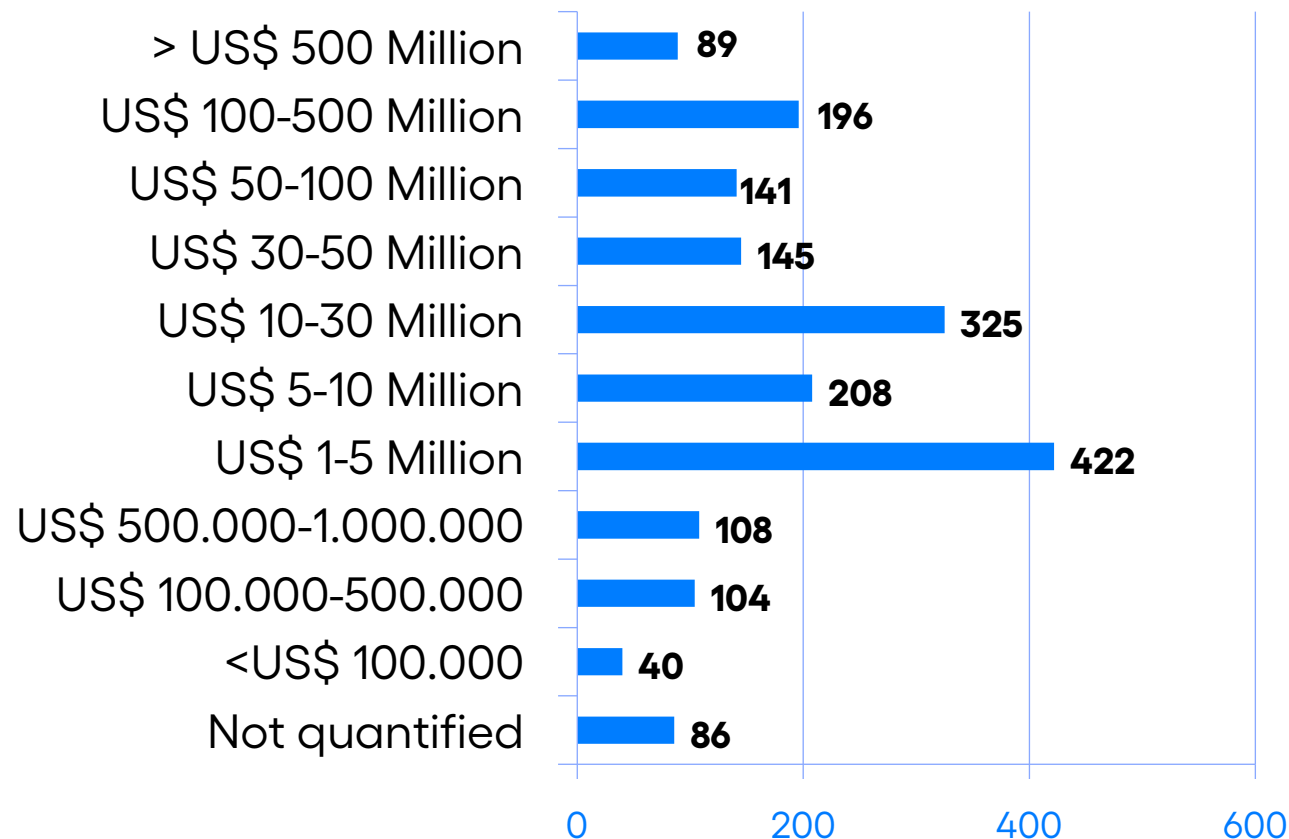
BREAKDOWN OF 2021 ICC ARBITRATIONS BY ECONOMIC SECTOR



MAIN SECTORS – TRENDS



AMOUNTS IN DISPUTE IN PENDING CASES (2021)



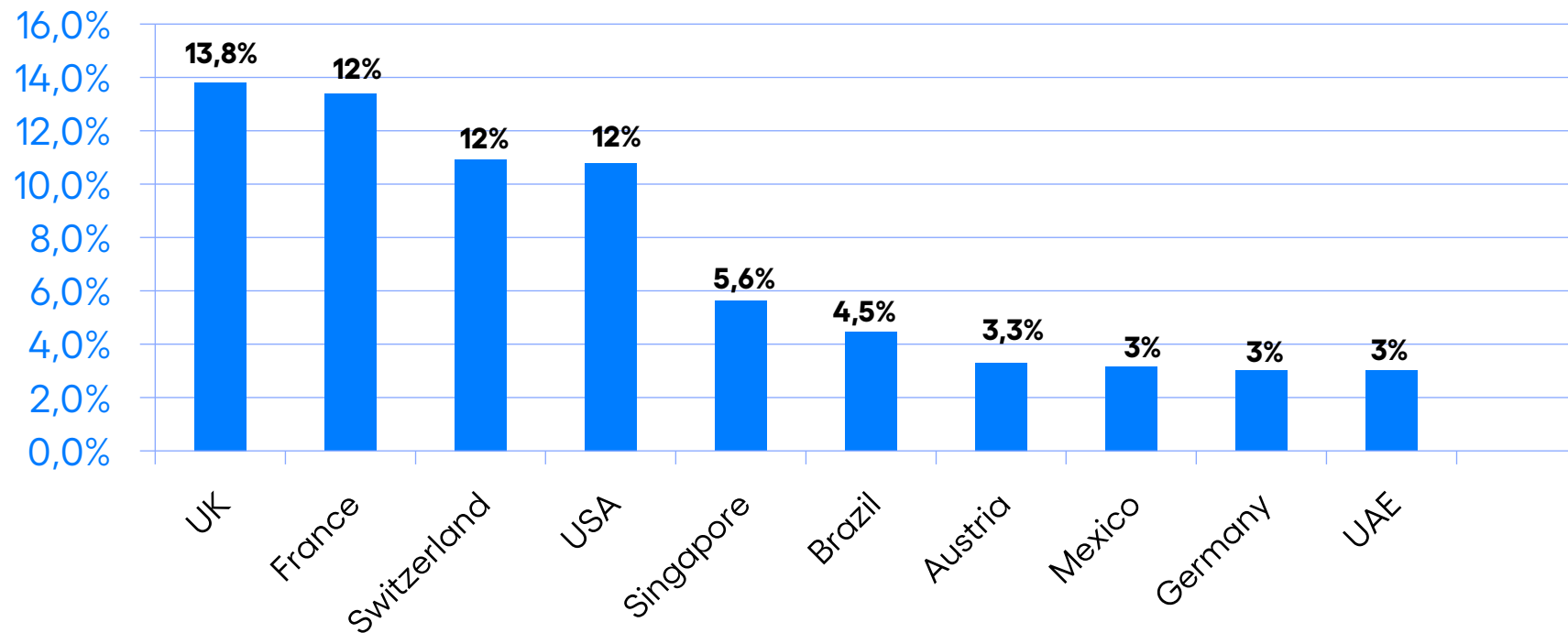
For 2021, the amount in dispute in a single new case ranges from just above **US\$ 9,500** at the low end to above **US\$ 27 billion** at the high end.

Expedited Procedure Provisions:

- 261 cases conducted under EPP
- 178 cases where EPP applied automatically
- 291 requests to opt-in the EPP, of which 83 agreed by the other party(ies)

PLACES OF ARBITRATION IN 2021 ICC ARBITRATIONS

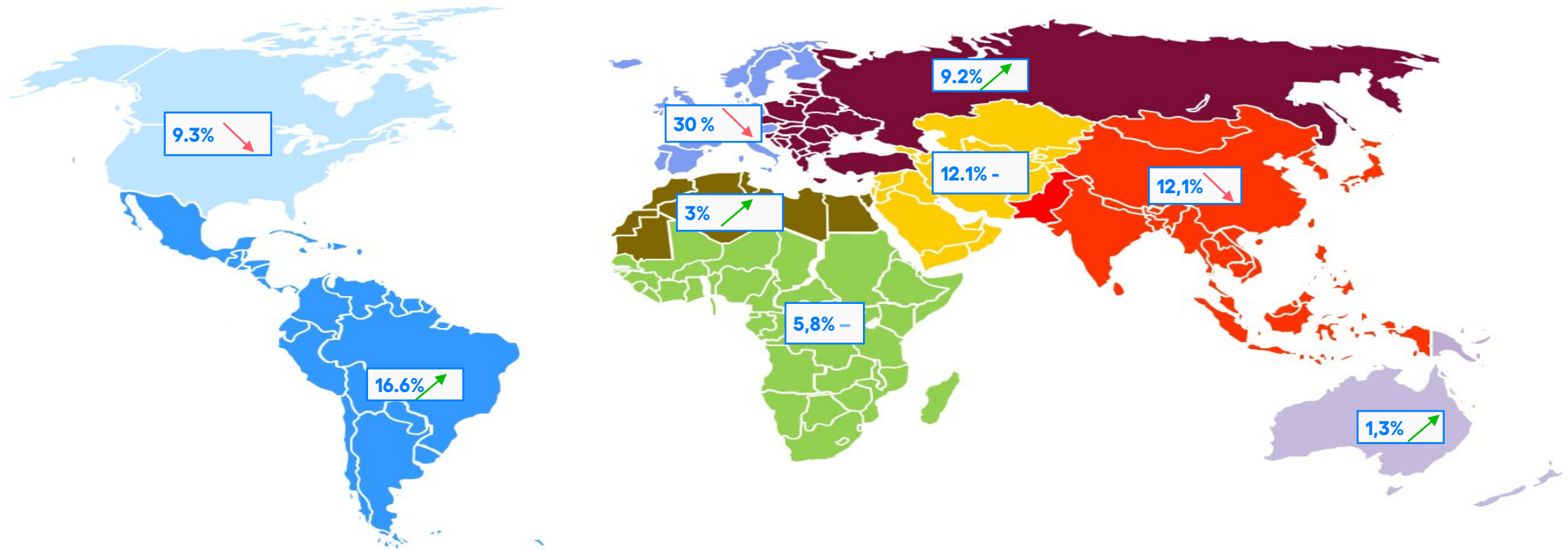
- Place of arbitration fixed by the Court in 10% of cases
- Ranking of top 10 countries



Place of arbitration in **2010** **53** countries
98 cities

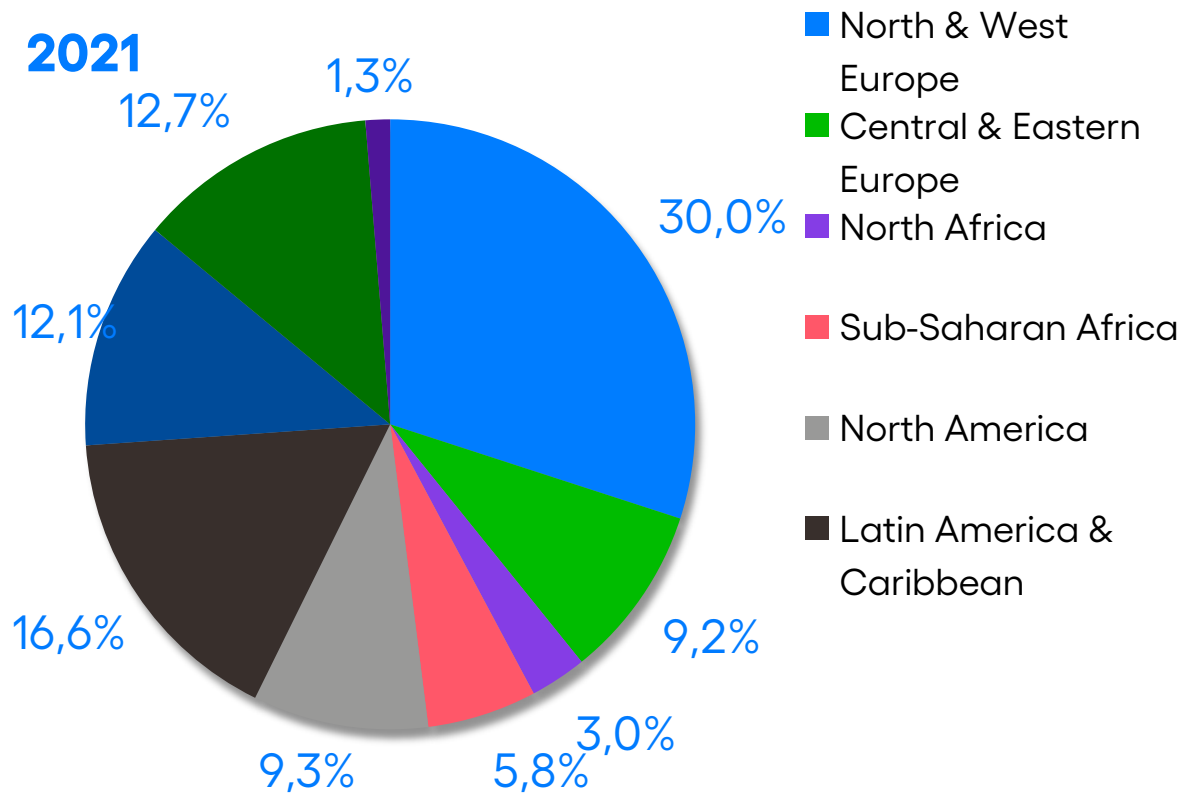
Place of arbitration in **2021** **71** countries
127 cities

PARTIES



2020	2,206 parties 2,507
2019	143 countries 145
	25 % of cases involve parties from same country 31%
	21% of cases involve States or SoEs 20%

ORIGINS OF PARTIES IN ICC ARBITRATIONS



Number of parties in **2010** **2145** parties

140 countries

Number of parties in **2021** **2206** parties

143 countries

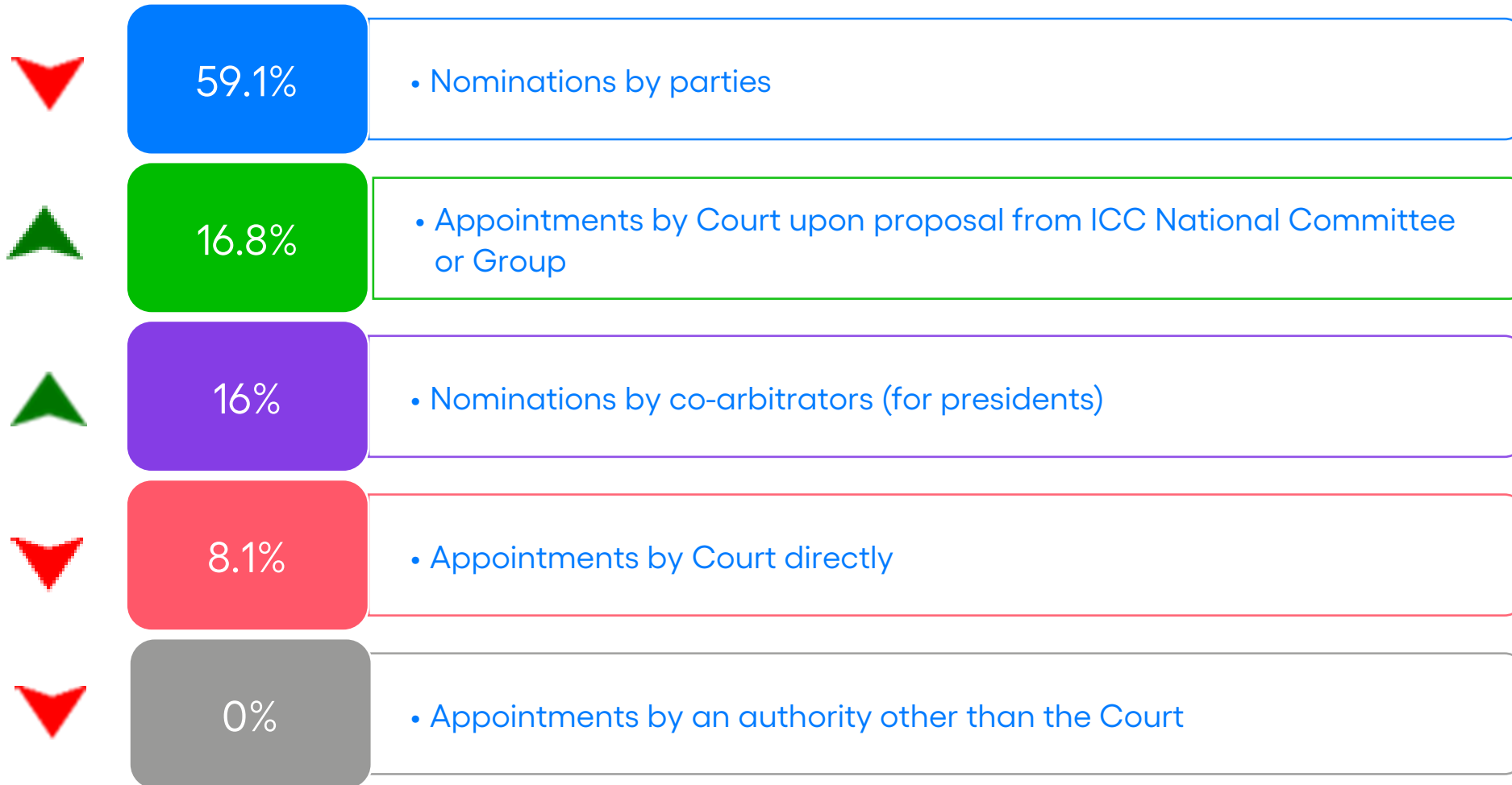
32% of cases with more than two parties

25% of cases with parties of same nationality

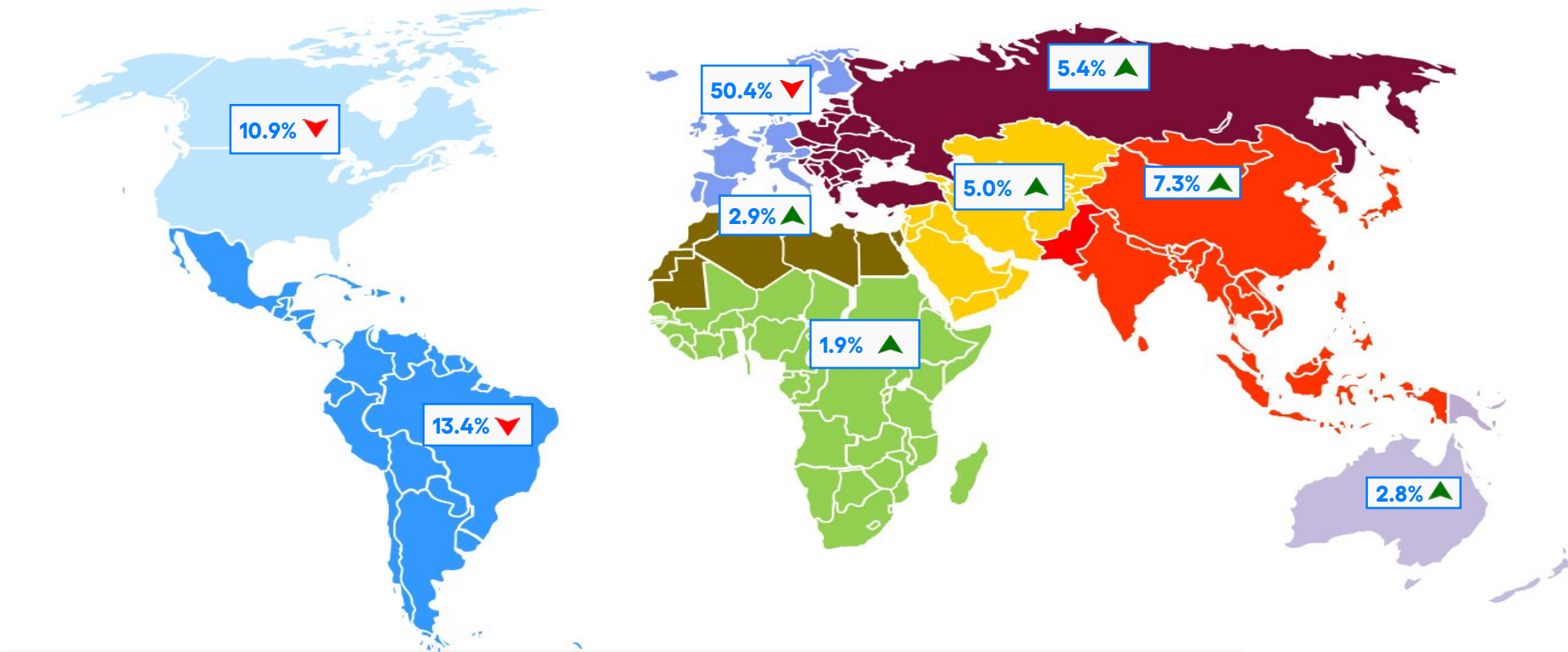
ORIGINS OF PARTIES: TOP 10 GENERAL RANKING

2019			2020			2021		
1	USA	196	1	USA	232	1	USA	162
2	India	147	2	Brazil	150	2	Brazil	119
3	Brazil	133	3	Spain	125	3	Spain	111
4	France	126	4	France	112	4	United Arab Emirates	94
5	China PR (+HK&M)	105	5	Italy	112	5	Mexico	91
6	Germany	97	6	UAE	90	6	France	87
7	Spain	87	7	Germany	83	7	Germany	87
8	Italy	84	8	China PR (+HK)	80	8	China PR (+HK)	73
9	UAE	78	9	India	79	9	India	71
10	United Kingdom	78	10	Mexico	78	10	Italy	71

CONSTITUTION OF TRIBUNALS (2021)

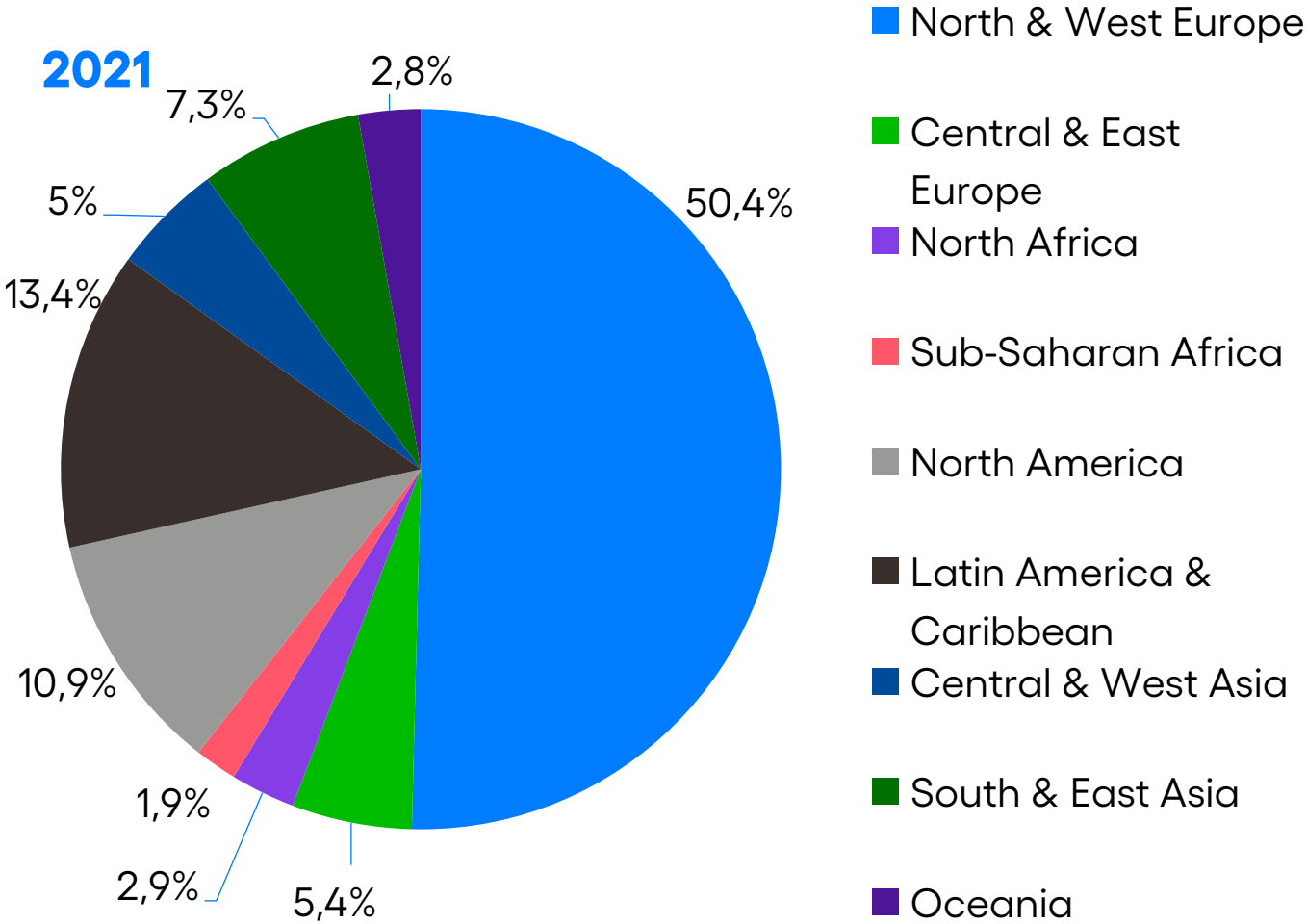


ARBITRATORS




2021	1,525 appointments and confirmations	1,520 ▲
2020	1,060 individuals	1,008 ▲
	99 countries	92 ▲

DIVERSITY OF ICC ARBITRATION: ORIGINS OF ARBITRATORS



2011	1341 arbitrators
	78 countries
2021	1525 arbitrators
	99 countries



How to arbitrate? Arbitration proceedings under the ICC Rules

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STANDARD ICC ARBITRATION CLAUSE

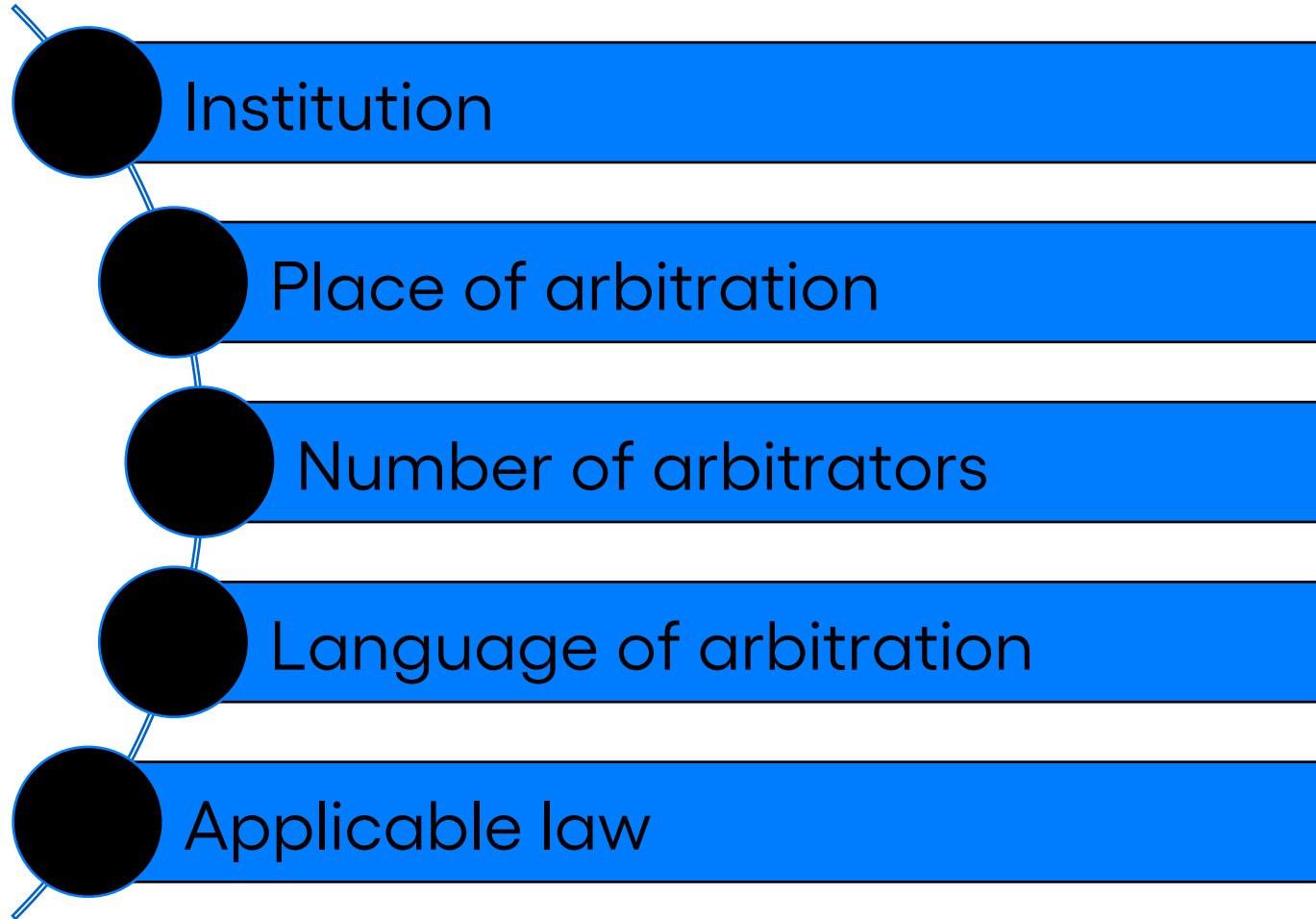
*“All disputes arising out of or in connection with the present contract shall be finally settled under **the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules**”.*

Suggestions:

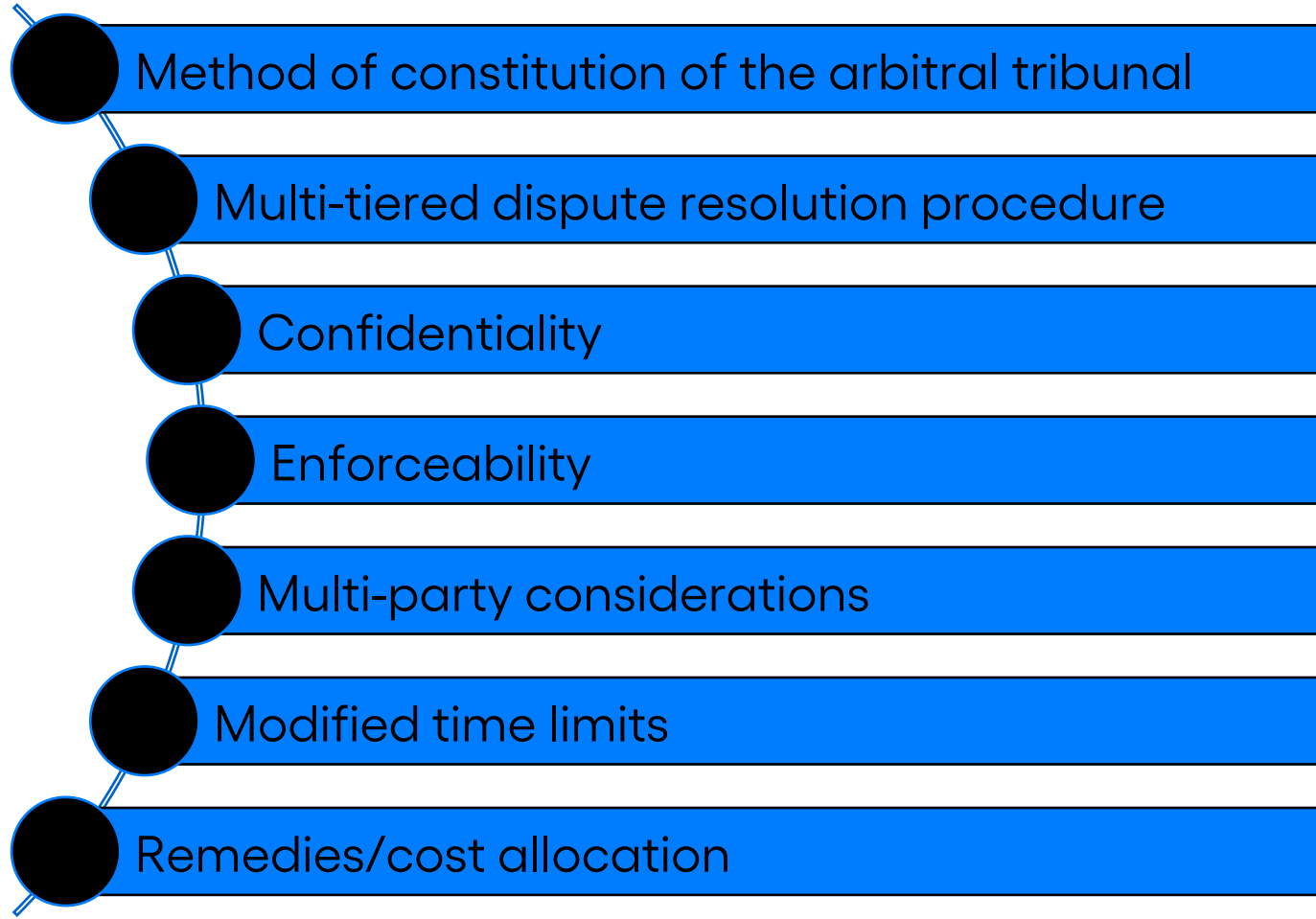
- Place of arbitration
- Language of arbitration
- Applicable law
- Number of arbitrators (1 or 3)

Emergency Arbitrators and Expedited Procedure Provisions apply according to conditions provided by the Rules.

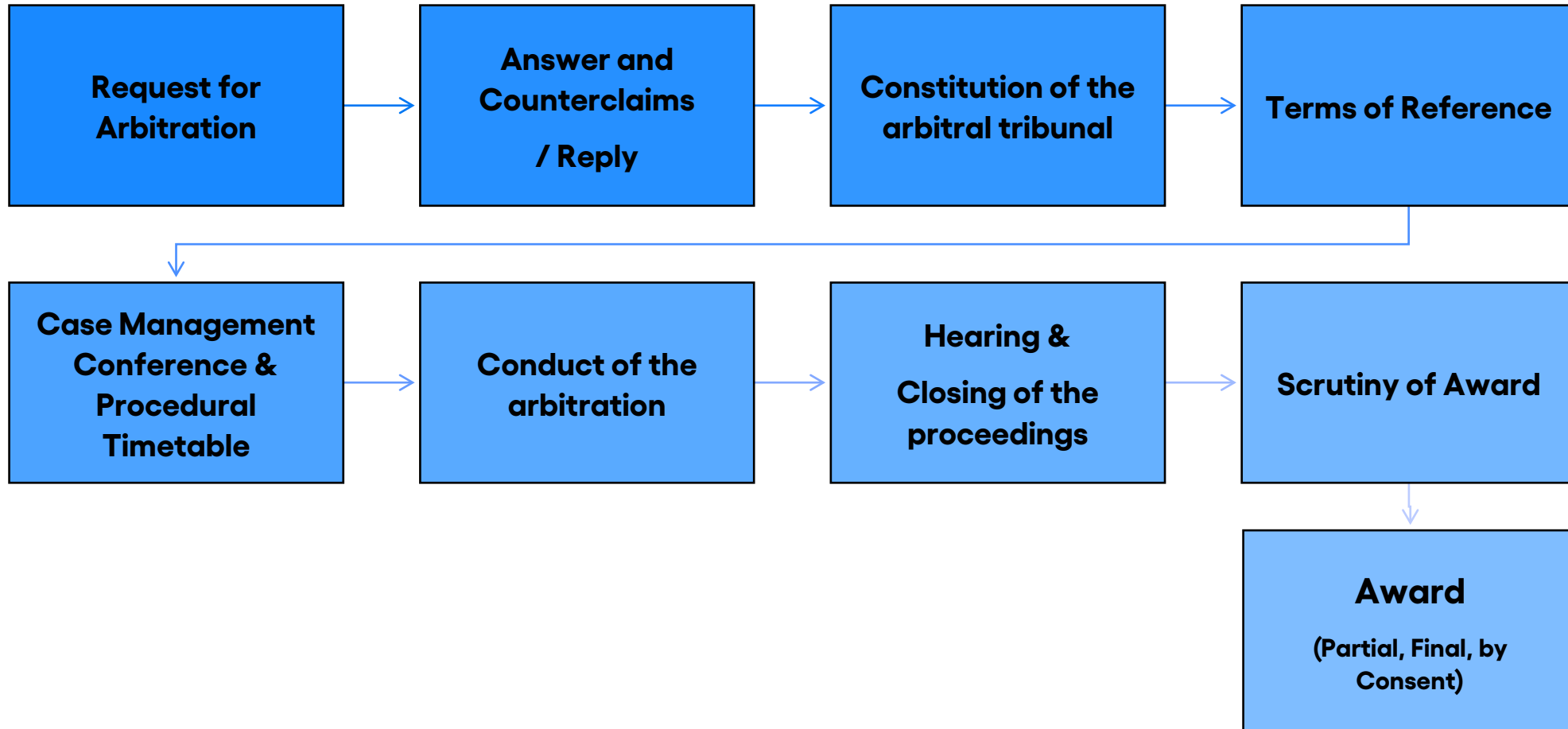
BASIC OPTIONS



ADVANCED OPTIONS



ICC PROCEEDINGS A-Z



THE REQUEST FOR ARBITRATION (ART. 4)

Organization Required Elements

- Filing fee of US\$ 5000
- Number of copies required by Article 3(1)

Other elements needed before transmitting the Request

- Respondents' addresses (physical or electronic)
- Relevant agreements, in particular the arbitration agreement(s)

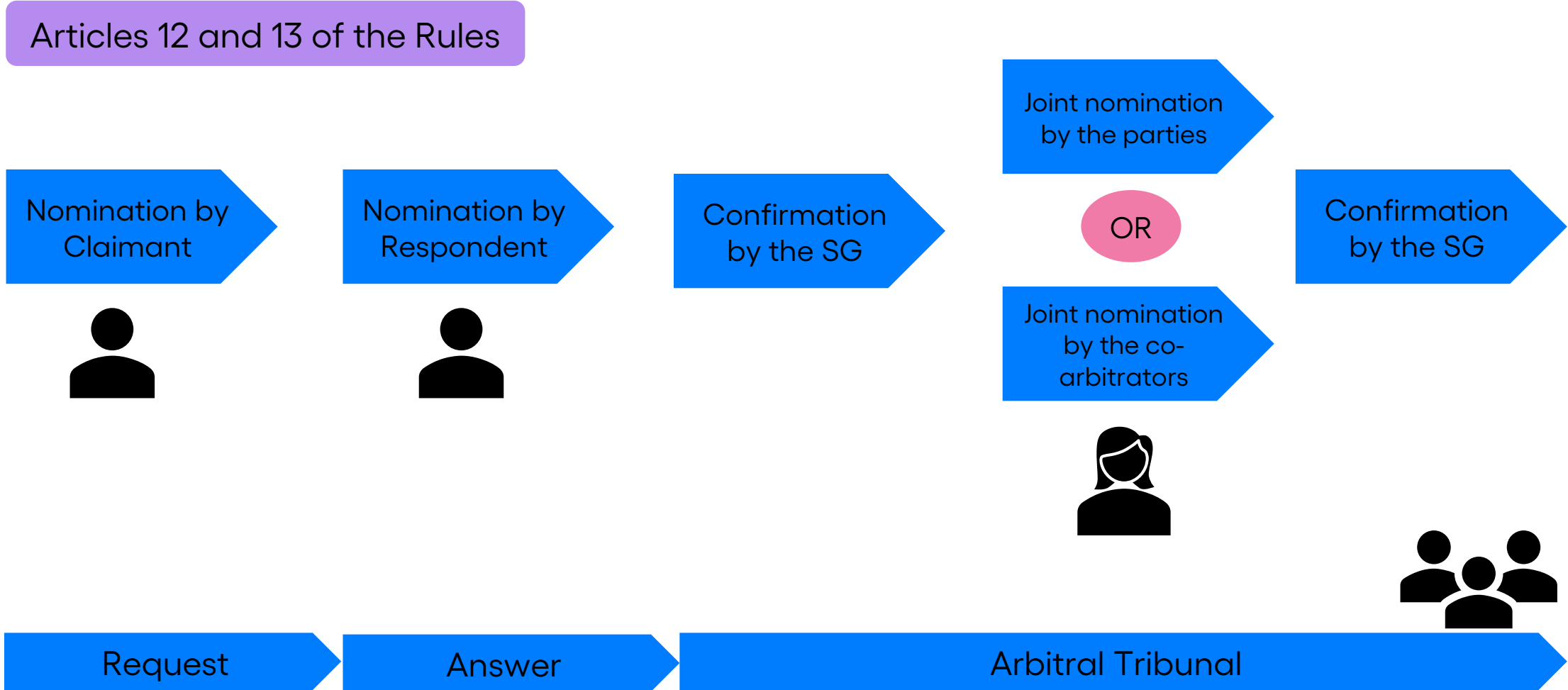
Additional elements

- Quantification of amount in dispute/monetary value of other claims
- Contact details of Claimants' representatives
- Observations concerning the number of arbitrators and nomination when relevant
- Observations on the place of arbitration, applicable law and language
- Additional documents

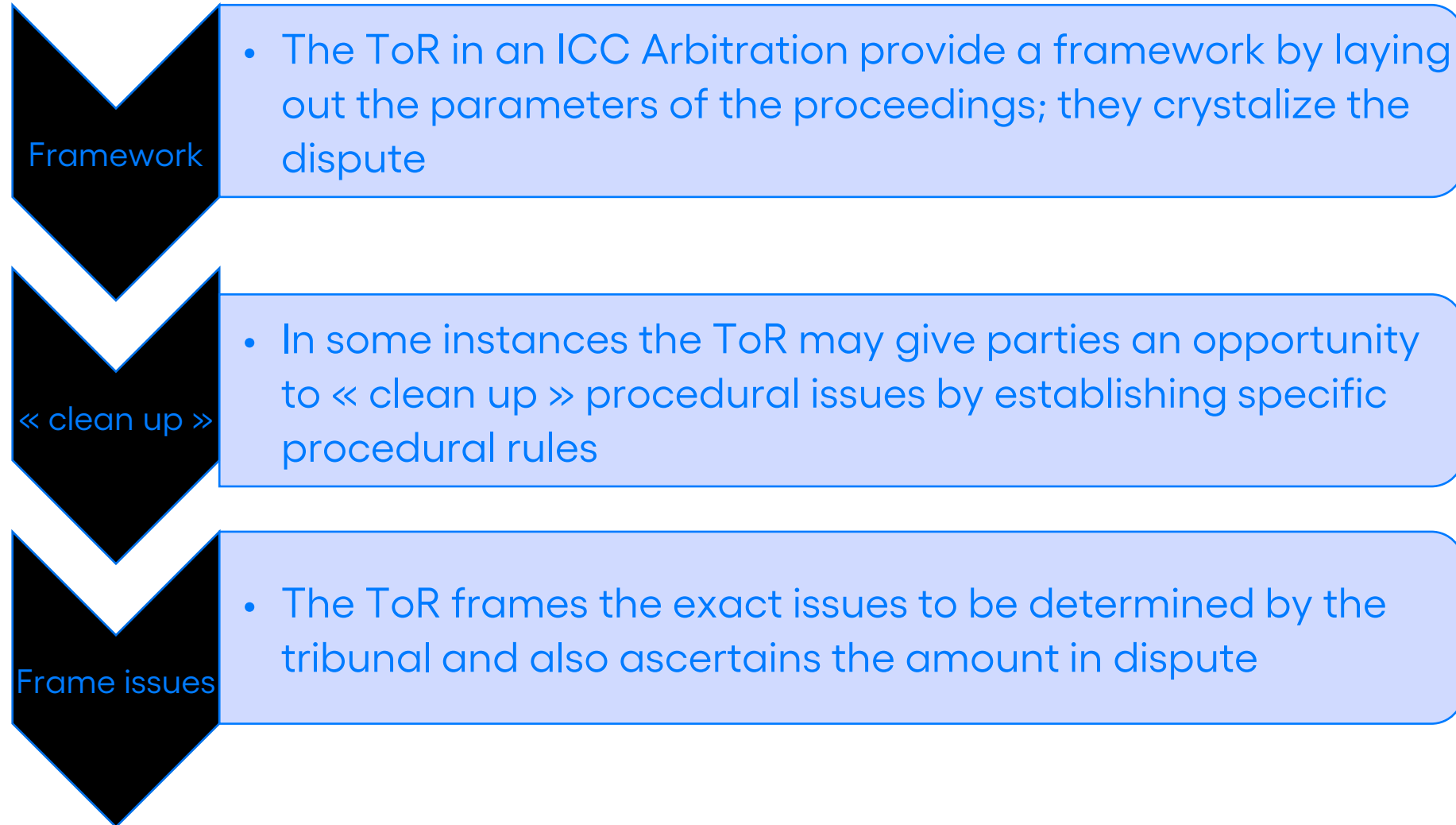
THE ANSWER TO THE REQUEST (ART. 5)

- Submission of the Answer within 30 days
(extension of time pursuant to Article 5(2)
possible)
- Transmission of the Answer to Claimant
- Counterclaims → Reply to Counterclaims
(Article 5(6))

CONSTITUTION OF A THREE-MEMBER ARBITRAL TRIBUNAL



TERMS OF REFERENCE (Article 23)

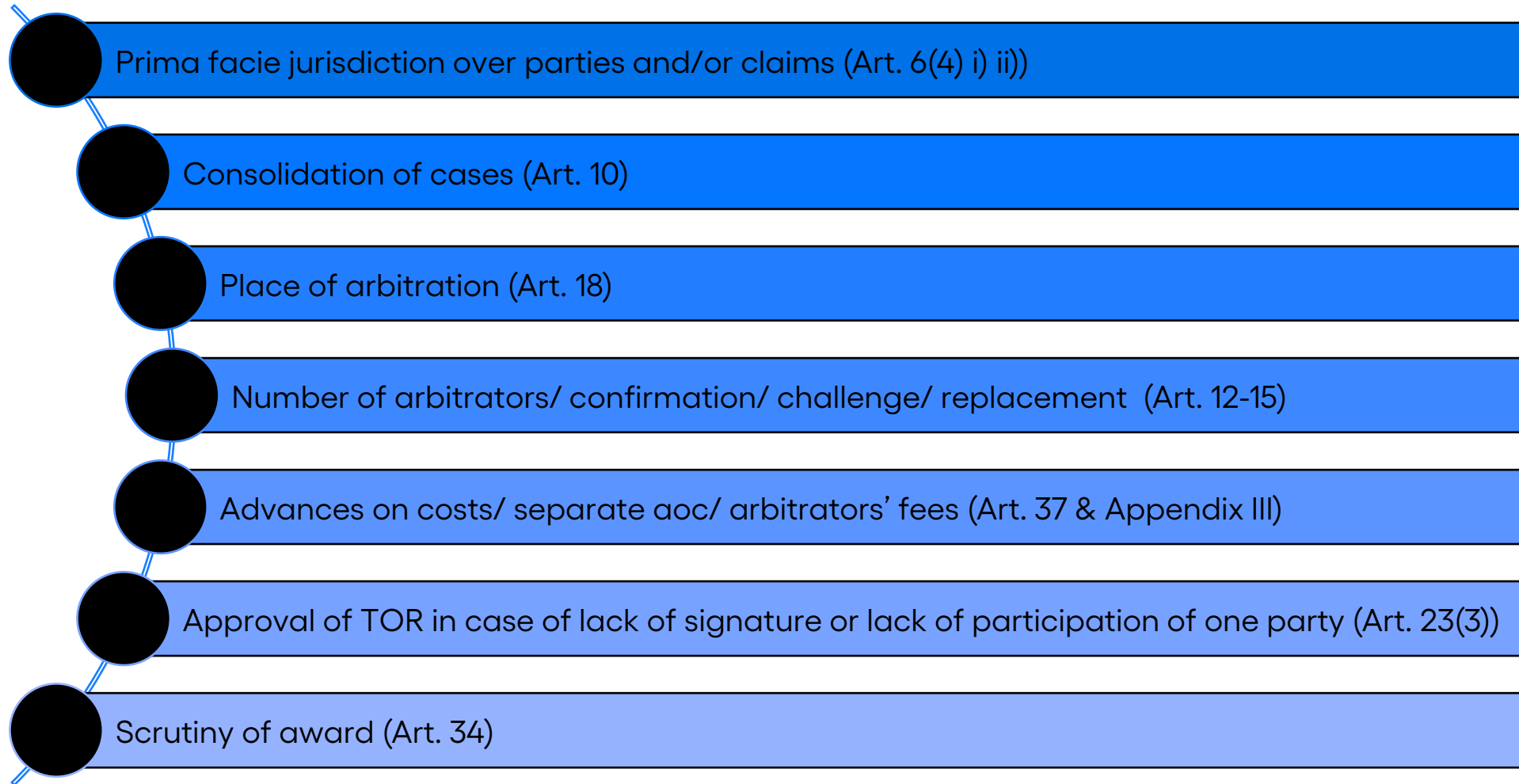


ROLE OF THE ICC DURING THE PROCEEDINGS

What does the ICC Court and Secretariat actually do during an arbitration?


- ▶ Monitoring the financial aspects of the case
- ▶ Providing support to arbitrators
- ▶ Monitoring that time limits are complied with
- ▶ Monitoring that the case is being handled diligently and efficiently
- ▶ Dealing with Court decisions

ICC ADMINISTERS ARBITRATIONS UNDER THE RULES



THE COMPETITIVE FEATURES OF THE ICC ARBITRATION RULES

- ▶ The supervised system of constitution of the arbitral tribunal
- ▶ Complex arbitration proceedings: multi-contract, multi-party arbitrations, joinder and consolidation
- ▶ The Emergency Arbitration proceedings (or "EA")
- ▶ The Expedited Procedure Provisions (or "EPP")
- ▶ The unique scrutiny of arbitral awards process



Key features of the 2021 ICC Rules & scrutiny of arbitral awards

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ICC RULES OF ARBITRATION: 2021

ICC Rules Revisions



2021 ARBITRATION RULES: WHAT'S NEW?

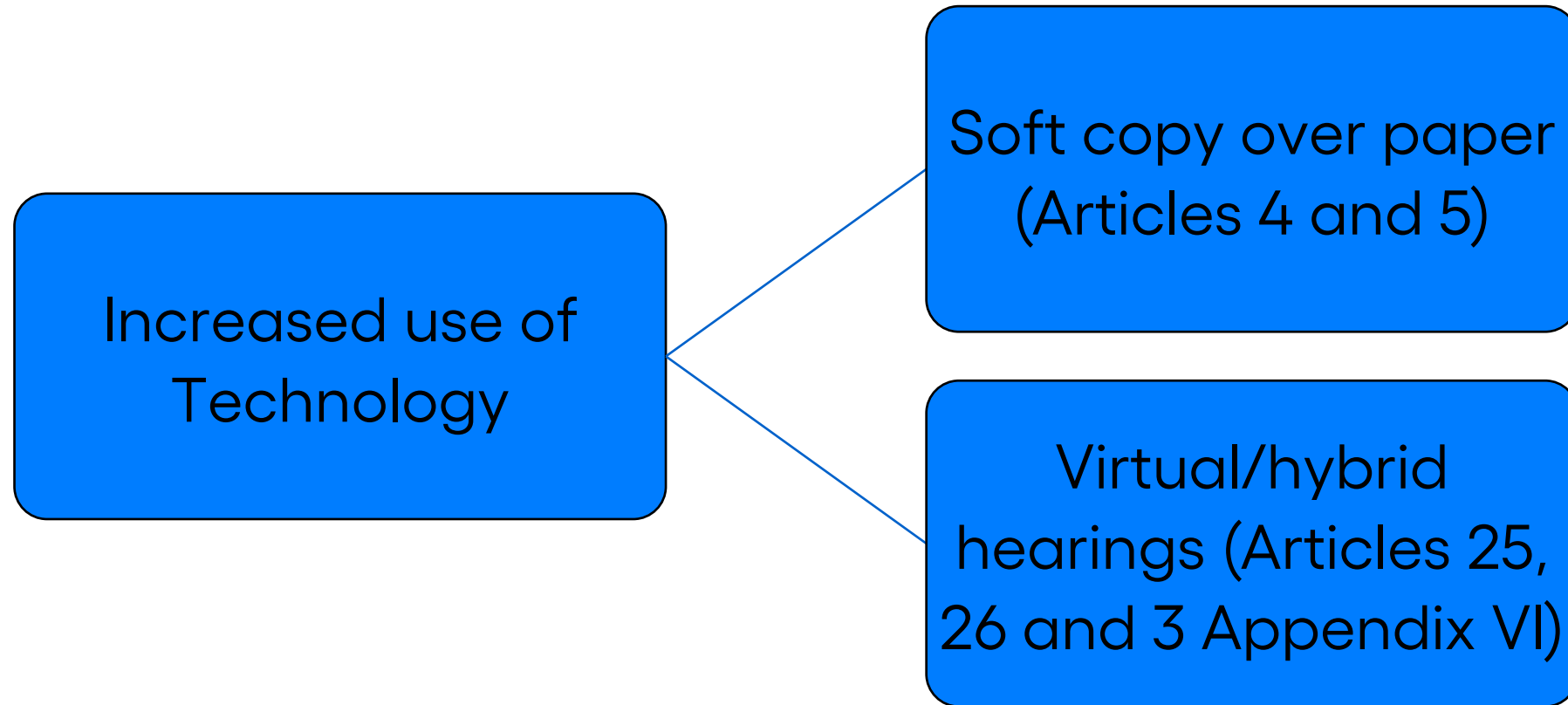
General
efficiency

Complex
arbitrations

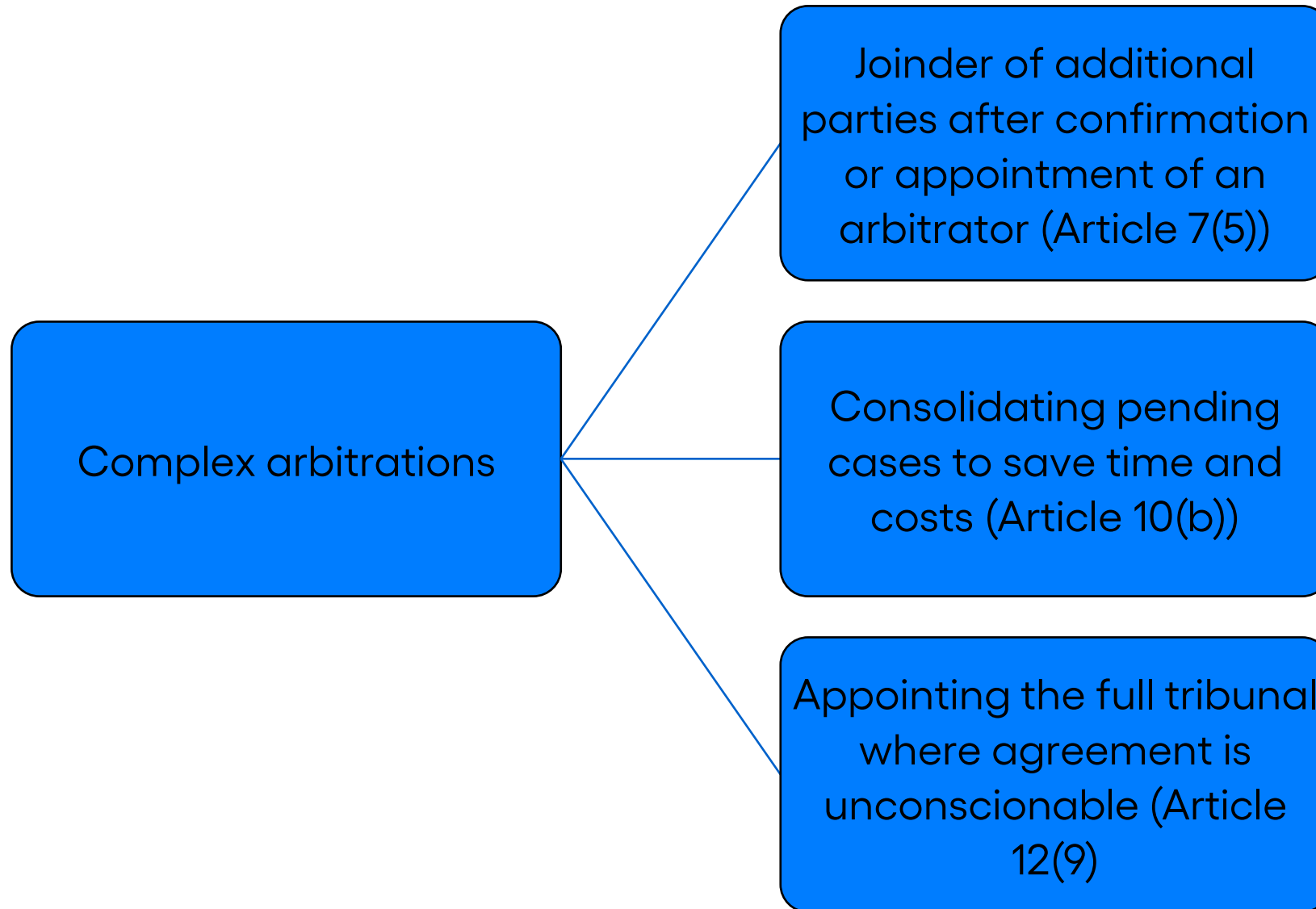
Conduct of
arbitration

Transparency

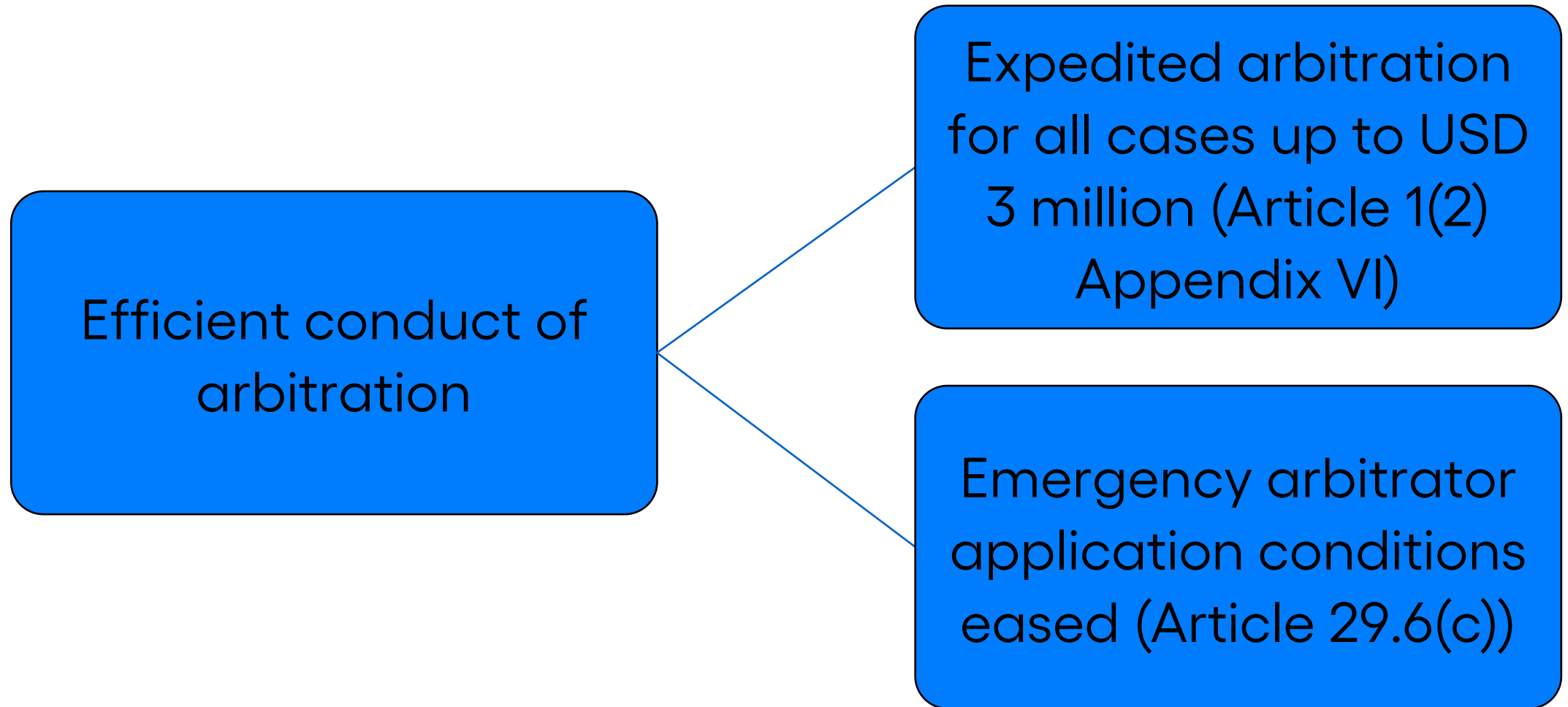
2021 ARBITRATION RULES: WHAT'S NEW?



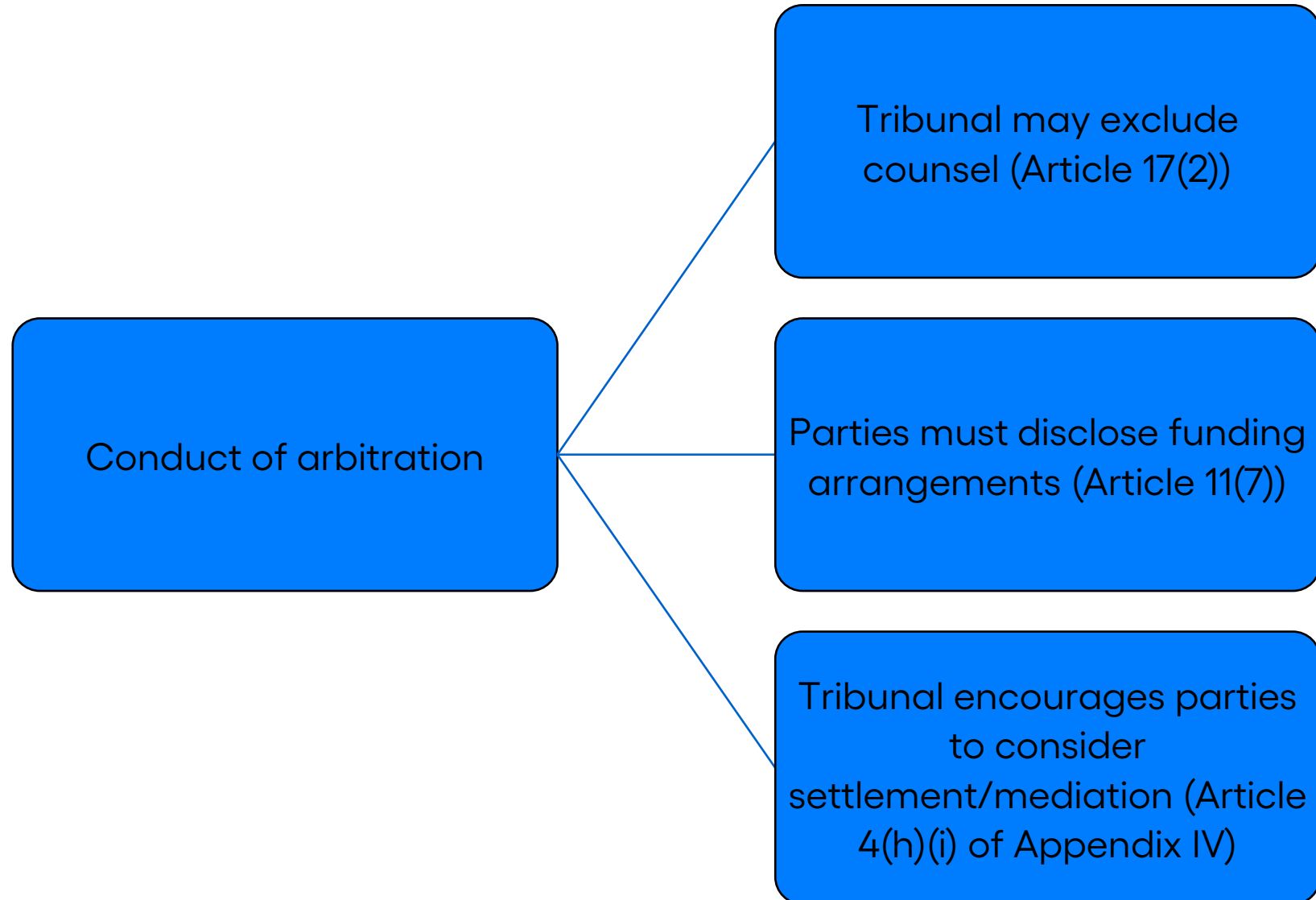
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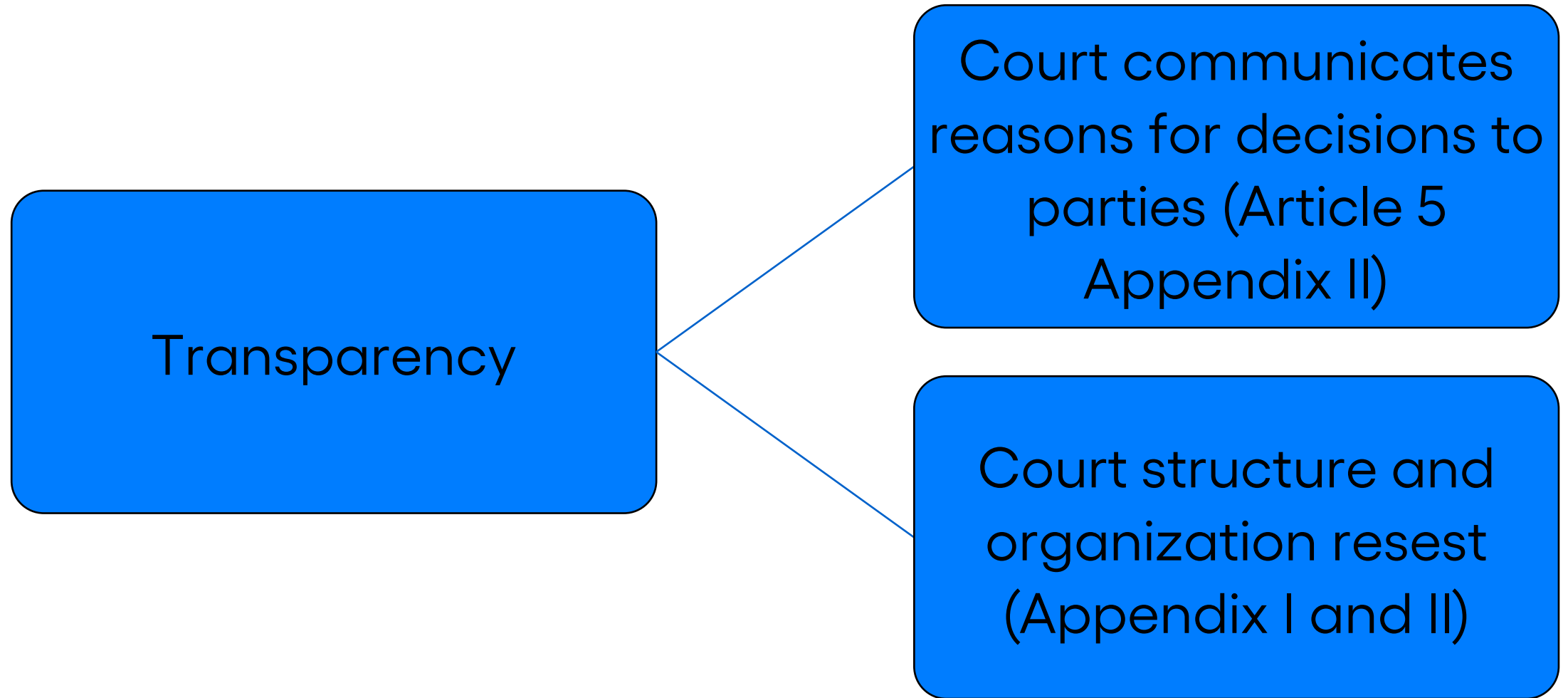
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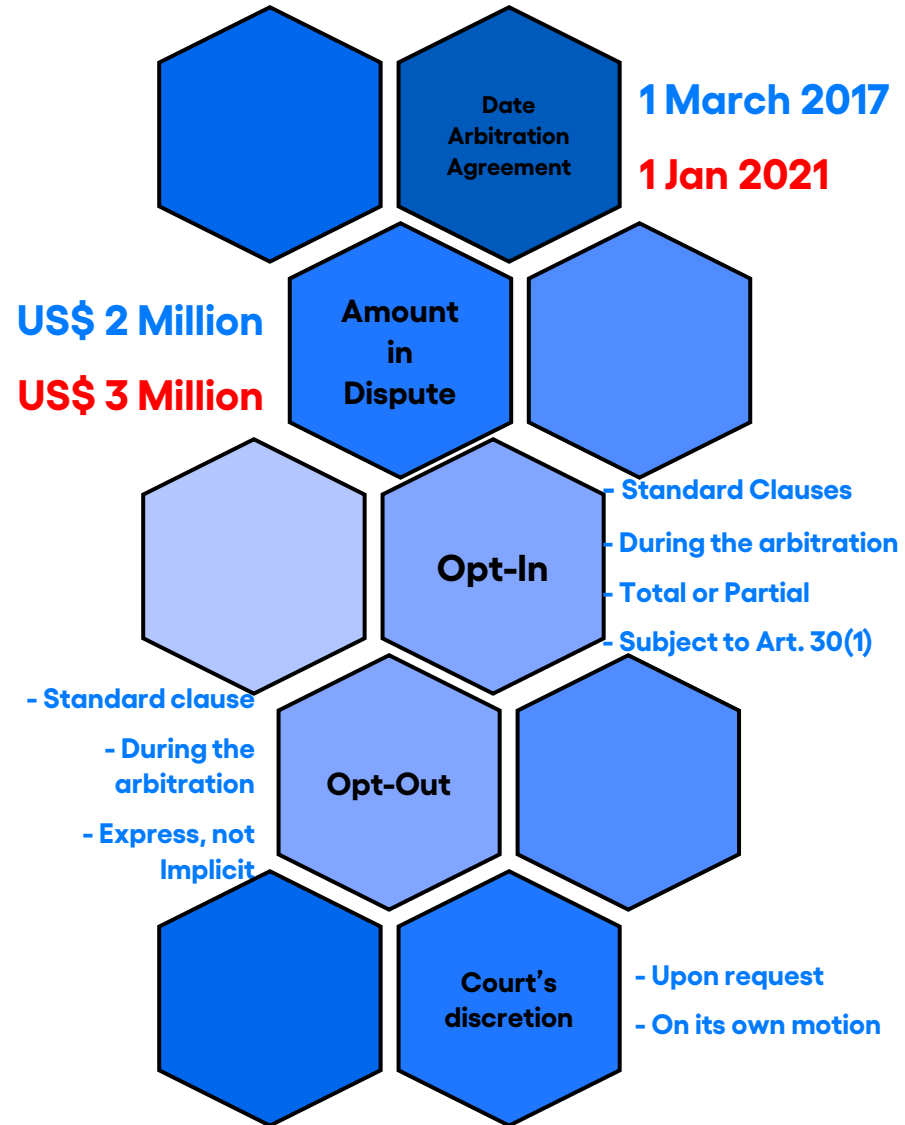
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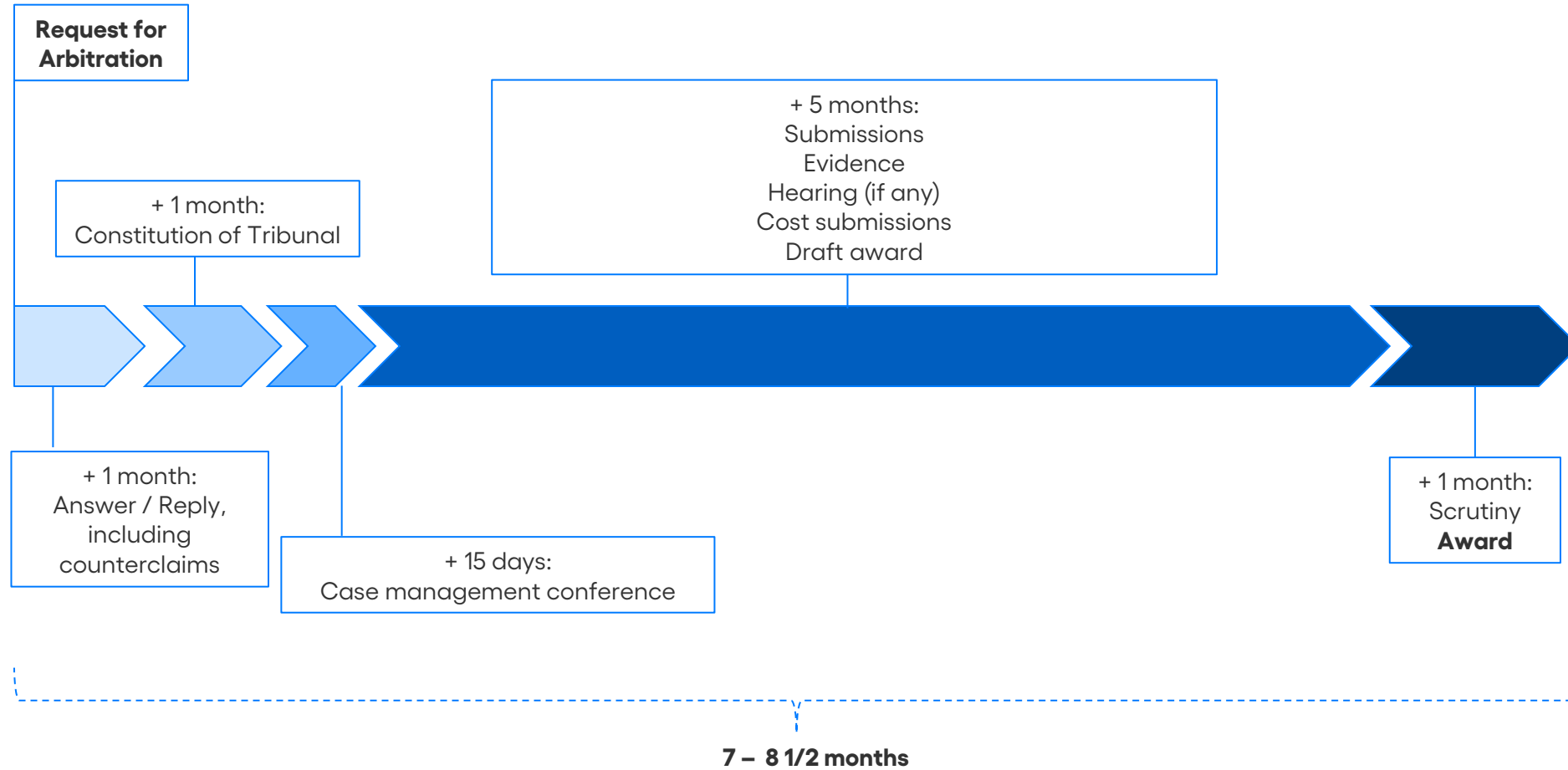
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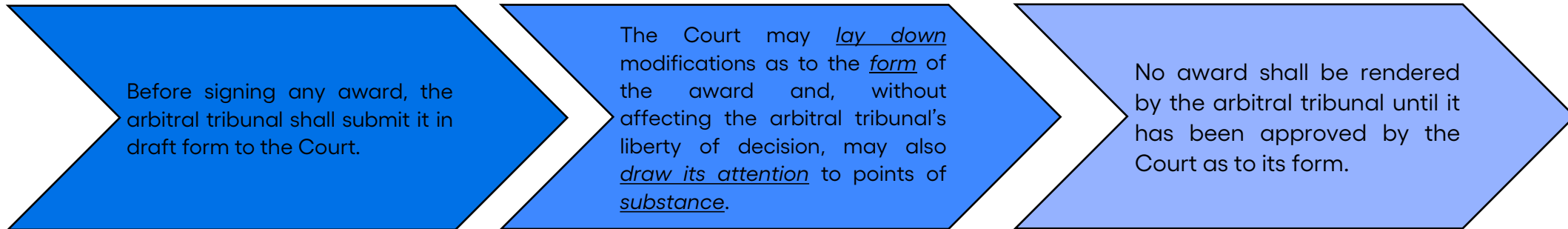
Expedited Procedure Provisions



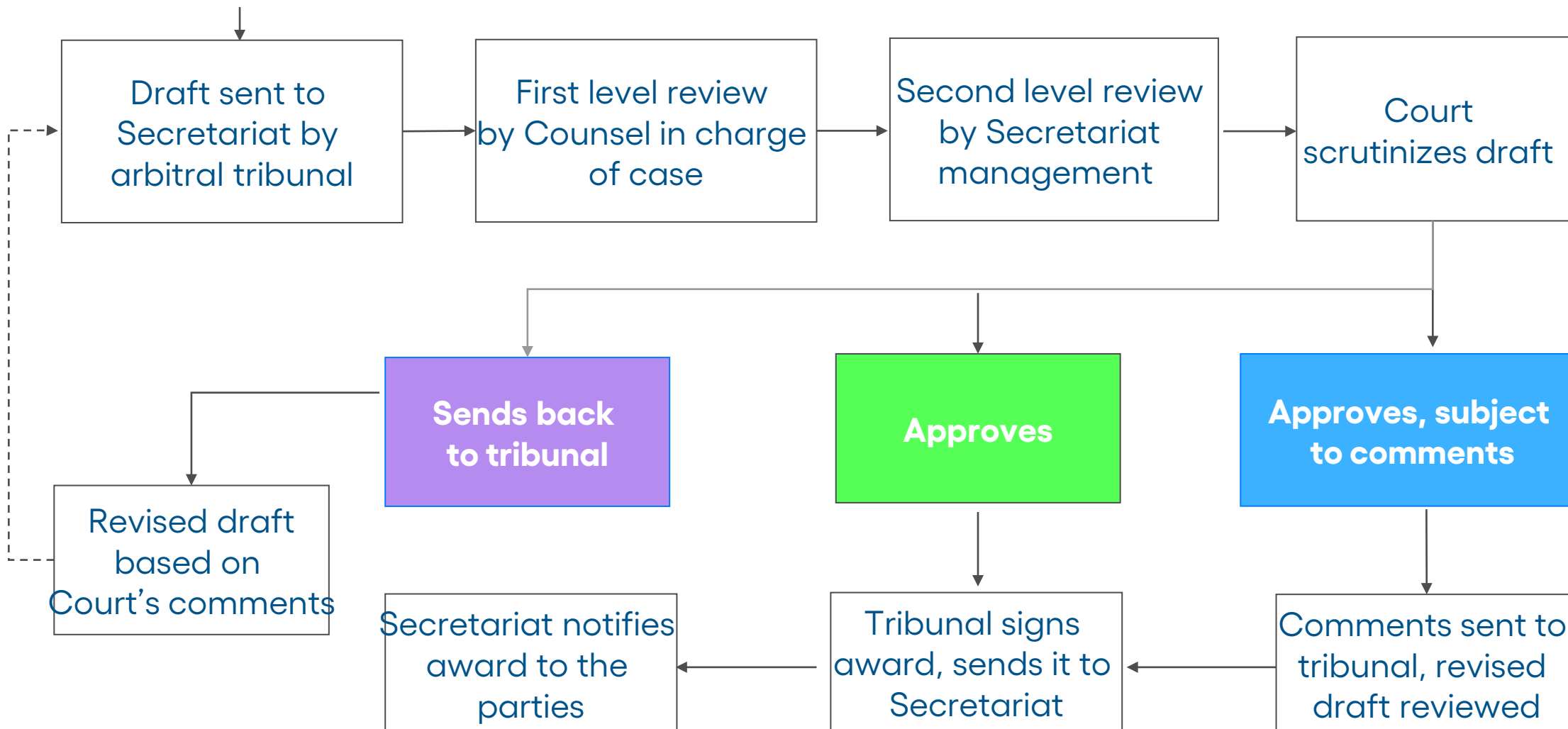
Expedited Procedure Timeline



SCRUTINY OF AWARD (ART. 34): PROCEDURE



- **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.



USEFUL RESOURCES

- ▶ More information on www.iccarbitration.org
 - > Events, trainings & online learning
 - > ICC Young Arbitrators Forum (ICC YAF)
 - > Careers & internships
- ▶ ICC Digital Library <https://library.iccwbo.org/>
 - > Material available upon both free access & subscription
- ▶ ICC DRS App www.iccwbo.org/drsapp
 - > Useful material