

**ICC DISPUTE  
RESOLUTION  
BULLETIN**  
2018 | ISSUE 2

# EXTRACT

## ICC Dispute Resolution Bulletin | 2018 Issue 2

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## 2017 ICC Dispute Resolution Statistics

### News developments in 2017

#### ICC as Observer to the United Nations

2017 began with ground-breaking news for ICC as it became the first business organisation to be admitted as Observer to the United Nations General Assembly. This major achievement marks an important step in ICC's near-centennial history and acknowledges its role as the voice of business.

#### New Arbitration Rules, new practices

In response to calls for greater efficiency and transparency in arbitration, 2017 marked another landmark year for the ICC International Court of Arbitration (the 'Court') through the implementation of significant reform. In this regard, an amended set of Arbitration Rules entered into force on 1 March 2017 (the 'Rules') while an updated version of the Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration (the 'Note') was approved by the Bureau of the Court on 25 October 2017 aiming at providing arbitral tribunals, parties and their counsel a better understanding of the application of the Rules and elaborating on innovative measures and tools in this regard.<sup>1</sup>

To address the demand for further efficiency, the Rules provide for a new, flexible Expedited Procedure that applies to cases where the total amount in dispute is up to US\$ 2 million and the arbitration agreement relied upon is entered into on or after 1 March 2017.

Aside the introduction of the Expedited Procedure, the Rules were amended with regard to the time limit for establishing the Terms of Reference, which has been reduced from two months to one month. The Note was further enhanced with additional guidance on time limits within which the Court expects arbitral tribunals to submit draft awards for the Court's scrutiny, as well as time limits within which the Court is expected to perform such scrutiny. The Note also sets forth the potential financial consequences for arbitrators and the Court in the event of unjustified delays.

In relation to greater efficiency, the Note also provides guidance on the possibility of expedited dismissal of manifestly unmeritorious claims or defences confirming that this procedural remedy is possible under Article 22 of the Rules. Any party may thus apply to the tribunal for the expeditious determination of one or more manifestly unmeritorious claims or defences as a way to increase efficiency in the proceedings.

2017 also witnessed two major steps forward towards transparency: the first is the publication of guidance on the disclosure obligations on impartiality and independence, and the second an enhanced system of communicating reasons for certain decisions taken by the Court. To date, the Court has communicated reasons for seven of its decisions (four challenges, one request for consolidation, and two prima facie decisions pursuant to Article 6(4) of the Rules). These two major steps were implemented following the Court's pioneer initiative to publish on its website information related to the constitution of arbitral tribunals in ICC arbitrations.<sup>2</sup>

Moreover, the Court has embarked on major global research projects to bring greater transparency to international arbitration such as a collaboration with the International Arbitration Institute of the University of Miami School of Law and Dispute Resolution Data (DRD).<sup>3</sup>

#### Expansion of the Secretariat's overseas offices

In addition to its unprecedented global reach attested by a record number of party nationalities (142 nationalities), the Secretariat of the Court also expanded physically in 2017. The Secretariat's third overseas case management office, after Hong Kong and New York, opened in Sao Paulo in September 2017.<sup>4</sup> The office is currently administering its first

1 The 2017 Arbitration Rules and 2014 Mediation Rules are available in 12 languages at <https://iccwbo.org/publication/arbitration-rules-and-mediation-rules>. The Note is available in five languages at <https://iccwbo.org/publication/note-parties-arbitral-tribunals-conduct-arbitration>.

2 Available at <https://iccwbo.org/dispute-resolution-services/arbitration/icc-arbitral-tribunals/>. See also H. J. Samra & C. Azar, 'ICC Ushers in New Era of Transparency', ICC Dispute Resolution Bulletin, issue 2017/1, p.93.

3 On the Miami project, see <https://iccwbo.org/media-wall/news-speeches/icc-court-and-miami-law-international-arbitration-institute-team-up-on-major-cost-study/>. On DRD, see <https://iccwbo.org/media-wall/news-speeches/icc-dispute-resolution-data-enter-agreement-shed-light-arbitration/> and 'The Precedential Effect of Increasing Transparency', M. Ramirez, D. Tagtachian, ICC Dispute Resolution Bulletin, issue 2017/1.

4 See the Note on functioning of the Brazilian office at <https://iccwbo.org/contact-us/contact-sciab-ltda/>.

25 cases (including an Emergency Arbitrator's application) and can also provide its users with one of the most modern Hearing Centres in Latin America.<sup>5</sup>

Moreover, the fourth overseas case management office opened in Singapore in early 2018. The Secretariat's team based in Singapore is currently administering 50 cases with parties from the region. The office will soon occupy space at 'Maxwell Chambers Suites', an expansion of Maxwell Chambers, Singapore's dedicated international arbitration facility which is currently under construction. Together with the Secretariat's case management office in Hong Kong, a representative office in Shanghai and two Regional Directors based in Asia, the Court offers a unique international arbitration platform to users in the region which affords ICC dispute resolution services a peerless global footprint.<sup>6</sup> In 2018, a regional office also opened in Abu Dhabi.<sup>7</sup>

### Statistical records in 2017

The Court set new records in 2017, with 512 awards approved, 1,488 arbitrators appointed or confirmed and, as mentioned above, parties originating from 142 countries in cases registered in 2017.

### ICC as the most preferred arbitral institution

The Court's initiatives, the long-standing acknowledgement of quality, reputation, recognition and global presence of its work alongside the above mentioned results have contributed towards ICC being singled out, for the second time in a row, as the most preferred arbitral institution by a record margin (77%) in the most recent and comprehensive market survey.<sup>8</sup>

## Arbitration

### Caseload

2017 was another busy year for the Court with 810 new cases filed until the end of December. The figure is slightly lower than the 966 cases filed in 2016, which included however 135 cases related to a set of very small claims in a collective dispute.

As of end 2017, 1,578 pending cases were being administered by the Court and over 23,300 cases had been registered since its creation in 1923.

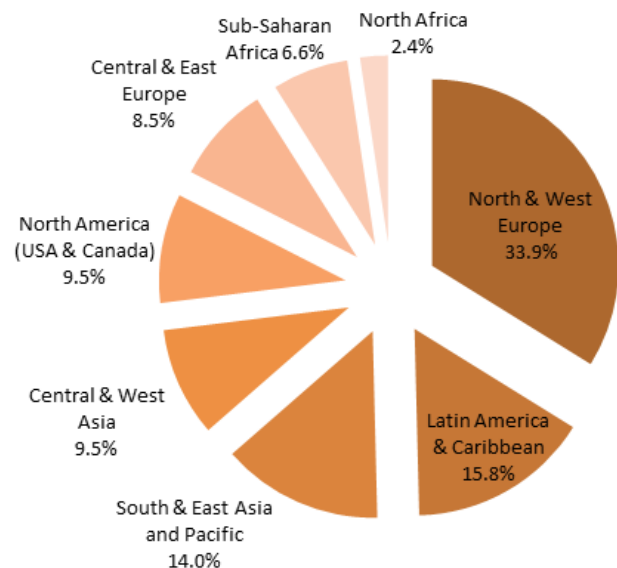
### Parties

Out of the 2,316 parties involved in cases filed in 2017, 47% were claimants and 53% respondents. Over a third of the cases involved multiple parties (37%), the highest figure after 2016, which saw the registration of several claims in a collective dispute. Out of the multiparty cases, 13% involved more than five parties and 3% more than ten parties. The most common configuration in multiparty cases was one claimant versus several respondents (54%) with one case involving as many as 36 respondents.

### Geographical origins

The reported parties in the 2017 filings came from 142 countries and independent territories worldwide. While 2016 showcased a significant rise in parties from Latin America and the Caribbean, 2017 statistics confirmed a significant increase of parties from Sub-Saharan Africa (40% increase) and Central & West Asia (27% increase).

### Breakdown of parties by region



<sup>5</sup> See ICC press release at <https://iccwbo.org/media-wall/news-speeches/new-hearing-centre-brazil-marks-milestone-icc-latam-expansion/>.

<sup>6</sup> See ICC press release at <https://iccwbo.org/media-wall/news-speeches/icc-court-case-management-team-begins-operations-singapore/>.

<sup>7</sup> See ICC press release at <https://iccwbo.org/media-wall/news-speeches/icc-court-establish-mena-representative-office-uae/>.

<sup>8</sup> See ICC press release and link to 2018 QMUL/ White & Case survey: <https://iccwbo.org/media-wall/news-speeches/major-survey-confirms-icc-preferred-arbitral-institution-continent/>.

### Most frequent nationalities among parties

Country of origin	Number of parties	% of total no. of parties in all 2017 filings
USA	194	8.4%
Germany	128	5.5%
France	124	5.4%
Brazil	115	4.5%
Spain	102	4.4%
Italy	73	3.2%
China (including Hong Kong)	69	3.0%
United Kingdom	68	2.9%
South Korea	59	2.6%
Netherlands	57	2.5%
India	56	2.4%
Mexico	55	2.4%
Turkey	49	2.1%
United Arab Emirates	46	2.0%
Switzerland	44	1.9%
Belgium	42	1.8%
Austria	41	1.8%
Qatar	40	1.7%

### Africa

The number of Sub-Saharan nationalities represented in 2017 filings rose to 153, compared to 109 in 2016. The number of cases involving South African parties doubled in 2017, which, due to the presence of multiparty cases, tripled the number of parties from this geographical subdivision. While cases involving parties from Cameroon and the Ivory Coast only amounted to one case in 2016, this figure respectively reached six and eight cases in 2017. The Court also registered a few more cases with parties from Mozambique and Angola. For the first time, one case notably recorded the involvement of a respondent-party from Guinea-Bissau.

Country/Territory	Claimants	Respondents	Total
Algeria	9	10	19
Egypt	2	9	11
Libya	0	3	3
Mauritania	0	5	5
Morocco	7	3	10
Tunisia	4	3	7
<b>North Africa</b>			<b>55</b>
Angola	2	5	7

Benin	1	3	4
Burkina Faso	1	1	2
Burundi	1	1	2
Cameroon	4	7	11
Chad	0	2	2
Congo (Dem. Republic)	3	4	7
Congo Republic	0	1	1
Cote d'Ivoire	8	6	14
Equatorial Guinea	1	2	3
Ethiopia	0	1	1
Gabon	0	5	5
Ghana	3	2	5
Guinea-Bissau	0	1	1
Kenya	2	4	6
Liberia	0	1	1
Madagascar	1	0	1
Mali	0	1	1
Mauritius	4	5	9
Mozambique	2	6	8
Niger	1	0	1
Nigeria	7	7	14
Senegal	4	2	6
Sierra Leone	0	1	1
South Africa	13	12	25
Sudan	0	2	2
Swaziland	1	1	2
Tanzania	1	2	3
Togo	3	1	4
Zambia	1	3	4
<b>Sub-Saharan Africa</b>			<b>153</b>
<b>Africa</b>			<b>208</b>

### Americas

Following the exceptional number of parties from the region recorded in 2016 as a result of a number of a collective dispute, parties from the Americas in 2017 reached approximately the same level as in 2015 and previous years, accounting for roughly 25% of the overall number of parties in ICC Arbitration.

The USA maintained their first rank with 194 parties (amounting to 8% of all parties). The increase of parties from Brazil reported in 2016 was further confirmed in 2017, with a rise of the number of cases involving Brazilian parties from 36 in 2016 to 51 in 2017. Brazil, which is the most represented nationality among parties from Latin America (representing 32% of all Latin American parties), now attracts as many parties as traditional European strongholds such as France and Germany and occupies the fourth place in the ranking of most represented nationalities.

Country/Territory	Claimants	Respondents	Total
Canada	14	12	26
USA	90	104	194
<b>North America</b>			<b>220</b>
Argentina	11	11	22
Bahamas	1	4	5
Barbados	1	0	1
Belize	0	1	1
Bermuda	5	0	5
Bolivia	2	1	3
Brazil	58	57	115
British Virgin Islands	11	11	22
Cayman Islands	16	12	28
Chile	6	6	12
Colombia	8	9	17
Costa Rica	5	4	9
Curaçao	1	1	2
Ecuador	3	2	5
Guyana	0	1	1
Jamaica	0	1	1
Mexico	23	32	55
Panama	12	5	17
Peru	7	7	14
Puerto Rico	1	1	2
Saint Kitts & Nevis	0	1	1
Turcs & Caicos Islands	0	1	1
Uruguay	7	8	15
Venezuela	1	10	11
<b>Latin America &amp; Caribbean</b>			<b>365</b>
<b>Americas</b>			<b>585</b>

### Asia & the Pacific

Following the approximate increase of 20% in parties from South and East Asia in 2016, 2017 recorded an approximate increase of 25% in parties from Central and West Asia, partly due to a rise in the number of Israeli and Qatari parties.

Country/Territory	Claimants	Respondents	Total
Afghanistan	1	3	4
Azerbaijan	0	2	2
Bahrain	4	4	8
Georgia	2	1	3
Iran	5	5	10
Iraq	0	6	6
Israel	14	12	26
Jordan	4	2	6
Kazakhstan	2	7	9
Kuwait	2	1	3
Lebanon	9	3	12
Oman	4	5	9
Palestinian Authority	1	0	1
Qatar	17	23	40
Saudi Arabia	6	16	22
Tajikistan	0	1	1
Turkmenistan	1	0	1
United Arab Emirates	24	22	46
Uzbekistan	0	2	2
Yemen	2	6	8
<b>Central &amp; West Asia</b>			<b>219</b>
Australia	15	12	27
Bangladesh	3	3	6
Cambodia	2	1	3
China*	33	36	69
Chinese Taipei	5	2	7
Cook Islands	0	1	1
India	23	33	56
Indonesia	6	4	10
Japan	10	19	29
Malaysia	4	6	10
Marshall Islands	1	0	1
New Zealand	0	1	1
Pakistan	2	5	7
Philippines	1	4	5
Singapore	9	14	23
South Korea	25	34	59
Thailand	4	2	6
Vietnam	0	3	3
<b>South &amp; East Asia and Pacific</b>			<b>323</b>
<b>Asia &amp; Pacific</b>			<b>542</b>

\* 49 from Mainland China (26 claimants, 23 respondents);  
20 from Hong Kong (7 claimants, 13 respondents).

## Europe

The number of parties from North and West Europe increased by 5% in 2017. The European breakdown remained similar to previous years, with France and Germany maintaining the traditional lead, followed by Spain, Italy, the United Kingdom and the Netherlands.

The overall number of parties from Central and East Europe decreased by 14% in 2017. Turkey remains the most represented nationality within the region.

Country/Territory	Claimants	Respondents	Total
Austria	24	17	41
Belgium	16	26	42
Channel Islands	1	0	1
Denmark	4	3	7
Finland	3	4	7
France	55	69	124
Germany	72	56	128
Gibraltar	3	0	3
Ireland	7	6	13
Italy	37	36	73
Liechtenstein	1	1	2
Luxembourg	18	13	31
Malta	2	1	3
Monaco	1	0	1
Netherlands	28	29	57
Norway	5	6	11
Portugal	5	8	13
Spain	51	51	102
Sweden	3	10	13
Switzerland	28	16	44
United Kingdom	33	35	68
<b>North &amp; West Europe</b>			<b>784</b>
Albania	1	6	7
Bosnia & Herzegovina	0	1	1
Bulgaria	0	3	3
Croatia	2	1	3
Cyprus	7	6	13
Czech Republic	6	5	11
Estonia	2	0	2
Greece	5	12	17
Hungary	1	3	4
Latvia	0	1	1
Lithuania	1	0	1
Macedonia	0	1	1
Moldova	0	1	1

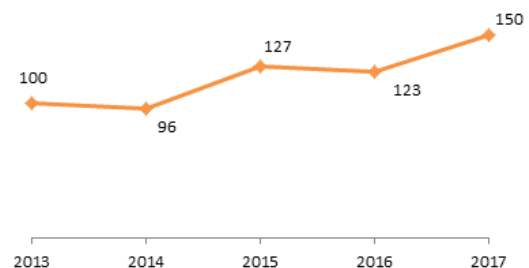
Country/Territory	Claimants	Respondents	Total
Poland	6	9	15
Romania	8	23	31
Russian Federation	8	10	18
Serbia	3	1	4
Slovakia	0	1	1
Slovenia	5	2	7
Turkey	18	31	49
Ukraine	2	5	7
<b>Central &amp; East Europe</b>			<b>197</b>
<b>Europe</b>			<b>981</b>

## International vs domestic cases

Disputes between parties of the same region steadily amount to 38% of the cases while disputes between parties of same nationality to 20%. Overall, the Court received 166 cases involving parties from the same country, and 644 cases involving parties from different countries. These elements testify to the Court's capacity to handle cases involving contrasting cultures and legal traditions, but also show that ICC Arbitration is an attractive solution for domestic disputes. The Latin American region accounted for approximately a quarter of all single-nationality cases (44 cases) filed in 2017, and Brazil alone for 22 cases. The Sao Paulo office *inter alia* aims at administering cases where all parties are of Brazilian nationality.<sup>9</sup>

## State and state-owned parties

The number of states or states entities in ICC arbitrations has shown a steady increase over the years. The number has grown by 50% in the past five years and has doubled in ten years.



<sup>9</sup> See the Note on functioning of the Brazilian office at <https://iccwbo.org/contact-us/contact-sciab-Itda/>.

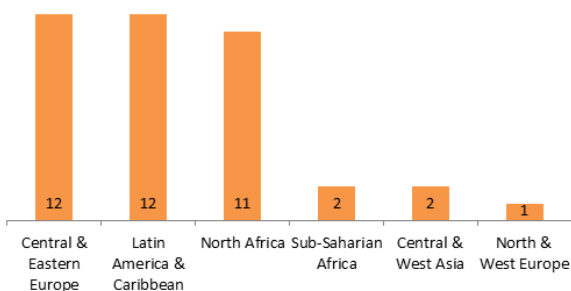
The number of cases filed in 2017 involving states or state entities rose to record levels of over 15%, from 11% in 2016 which is a testament of the suitability of the Rules for both commercial disputes involving states and state entities and investment disputes. The 150 states and parties under state ownership (parastatals) in these cases came from all parts of the world as reflected in the regional distribution shown below.

Region	Number of state and parastatal parties	% of all parties from the region
Central & East Europe	40	20.3%
Latin America & Caribbean	38	10.4%
Sub-Saharan Africa	32	20.9%
Central & West Asia	17	7.8%
South & East Asia & Pacific	10	3.0%
North Africa	9	16.4%
North & West Europe	4	0.5%
North America	0	0%

### Investor-state disputes

In 2017, four cases were filed on the basis of bilateral investment treaties (BIT). Three of the disputes were initiated by MENA investors against countries in the MENA and Eastern Europe. The fourth case was brought by a European investor against an African country. Since 1996, when the first BIT case was registered, ICC has administered 40 cases based on BITs.

### Number of host states by region



### Arbitral tribunals

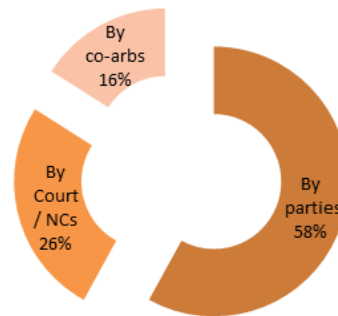
The number of arbitrators acting in ICC cases reached a record level in 2017, with a total of 1,488 appointments and confirmations of 985 individuals from 85 countries.

#### Constitution of the arbitral tribunal

Arbitrators acting in ICC cases are primarily either 1) nominated by the parties or co-arbitrators, or selected in accordance with a specific mechanism agreed by the parties, and then confirmed by the Secretary General of the Court, or 2) appointed by the Court upon a proposal of an ICC National Committee or Group, or directly.

The breakdown below shows that, in 2017, over two thirds of the arbitrators were nominated by the parties and the co-arbitrators.

#### Selection of arbitrators

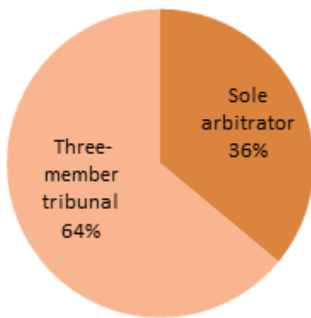


	Sole arbitrators	Co-arbitrators in three-member tribunals	Presidents of three-member tribunals	Total
Nominations by parties, confirmed by Court/Secretary General	63	777	27	867
Nominations by co-arbitrators, confirmed by Court/Secretary General	N/A	N/A	239	239
Appointments by Court upon proposal from ICC National Committee or Group	139	25	83	247
Appointments directly by Court	33	38	62	133
Appointments by an authority other than the Court	0	0	2	2
<b>Total</b>	<b>235</b>	<b>840</b>	<b>413</b>	<b>1488</b>



Arbitral tribunals constituted under the Rules are by and large composed of either one or three arbitrators. A choice as to the number of the arbitrators, either in the arbitration agreement or upon subsequent agreement, was made in 91% of the cases and in the remaining 9% of cases decided by the Court. The Court decided to submit disputes to a three-member arbitral tribunal in 32% of cases and to a sole arbitrator in 68% of cases. Parties, on the other hand, opted for a three-member tribunal in 67% of cases and a sole arbitrator in 33% of cases. As a result, 64% of cases were submitted to a three-member arbitral tribunal and 36% to a sole arbitrator.

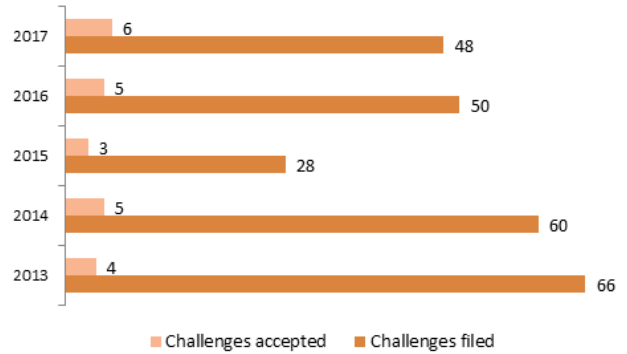
### Constitution of tribunals



Before being confirmed or appointed, prospective arbitrators are invited to complete a statement of acceptance, availability, impartiality and independence. In 2017, 31% of prospective arbitrators made a disclosure before being confirmed or appointed in line with the Court's recent efforts to foster transparency in ICC proceedings and make arbitrators better aware of their disclosure obligations. Moreover, in 2017, the Court did not confirm or appoint 42 prospective arbitrators, 35 of whom had filed qualified statements of independence.

Once an arbitrator has been confirmed or appointed, an objection to his or her impartiality or independence must be filed by way of a challenge. The number of challenges filed in 2017, whether based on an alleged lack of impartiality, independence or otherwise, amounted to 48, out of which 6 were accepted by the Court. In the course of the year, 29 arbitrators resigned. A total of 37 replacements were made, following the resignation or death of an arbitrator, the filing of a successful challenge, at the request of the parties or on the Court's own initiative (replacement of three arbitrators).

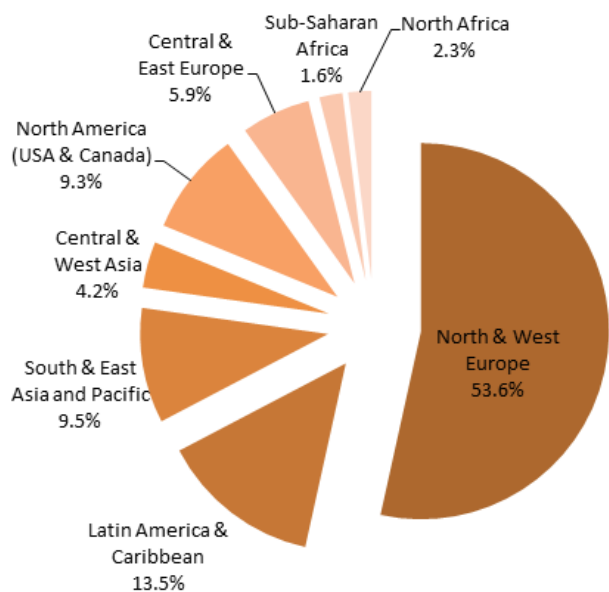
### Challenges filed / accepted



### Geographical origins

Arbitrators appointed and confirmed in 2017 represented 85 different nationalities, ten more than in 2016. The six most frequent nationalities remained unchanged in 2017, with the United Kingdom as the most frequent nationality (219 arbitrators) and France now reaching second place (141 arbitrators) ahead of Switzerland and the USA. British and French arbitrators accounted for over a quarter of all appointments and confirmations made during the year. The breakdown of arbitrators by region shows that 59.5% of all arbitrators originated from Europe, 13.7% from Asia and the Pacific, 13.5% from Latin America and the Caribbean, 9.3% from North America, and 3.9% from Africa.

### Breakdown of arbitrators by region



## Most frequent nationalities

Country of origin	Number of appointments/ confirmations	% of total number of appointments/ confirmations
United Kingdom	219	14.7%
France	141	9.5%
Switzerland	116	7.8%
USA	100	6.7%
Germany	99	6.7%
Brazil	77	5.2%
Mexico	51	3.4%
Spain	44	3.0%
Belgium	43	2.9%
Austria	41	2.8%
Australia	39	2.6%
Canada	39	2.6%

## Breakdown by country of origin and status

	Sole arbitrator	Co-arbitrator	President of tribunal	Total
Algeria	0	3	0	3
Argentina	3	18	5	26
Armenia	0	1	0	1
Australia	12	19	8	39
Austria	10	13	18	41
Belarus	0	2	0	2
Belgium	6	18	19	43
Bosnia & Herzegovina	0	2	0	2
Brazil	3	48	26	77
Brunei	0	2	0	2
Bulgaria	2	1	2	5
Burkina Faso	0	1	0	1
Cameroon	0	2	0	2
Canada	11	9	19	39
Chile	0	5	1	6
China	1	4	1	6
Chinese Tapei	0	4	1	5
Colombia	1	12	8	21
Congo Dem. Republic	0	1	0	1
Costa Rica	0	1	2	3
Cote d'Ivoire	0	2	0	2
Cyprus	0	1	0	1
Czech Republic	0	2	0	2
Denmark	2	0	1	3
Ecuador	2	0	1	3
Egypt	4	15	4	23

	Sole arbitrator	Co-arbitrator	President of tribunal	Total
Finland	0	3	0	3
France	29	79	33	141
Germany	14	56	29	99
Greece	3	9	4	16
Guatemala	1	0	1	2
Hungary	0	0	1	1
India	2	11	3	16
Indonesia	0	4	0	4
Iran	0	5	3	8
Ireland	3	5	4	12
Israel	3	2	1	6
Italy	4	19	6	29
Jamaica	1	0	1	2
Japan	2	0	1	3
Jordan	0	1	1	2
Kazakhstan	0	7	0	7
Latvia	1	3	0	4
Lebanon	8	12	6	26
Lithuania	2	1	0	3
Malaysia	0	6	6	12
Malta	0	1	0	1
Mauritius	0	4	1	5
Mexico	3	31	17	51
Morocco	1	2	0	3
Netherlands	2	14	7	23
New Zealand	6	4	7	17
Nigeria	0	2	1	3
Norway	1	2	0	3
Pakistan	0	1	0	1
Panama	1	0	0	1
Peru	0	5	1	6
Philippines	1	2	0	3
Poland	5	6	3	14
Portugal	2	5	2	9
Qatar	0	1	0	1
Romania	1	7	0	8
Russian Federation	0	5	2	7
Saudi Arabia	2	0	0	2
Senegal	0	2	0	2
Serbia	0	1	0	1
Singapore	7	14	4	25
Slovenia	1	0	1	2
South Africa	1	5	1	7
South Korea	1	3	1	5
Spain	2	35	7	44
Sri Lanka	0	1	0	1
Sweden	4	4	4	12

	Sole arbitrator	Co-arbitrator	President of tribunal	Total
Switzerland	18	52	46	116
Syria	2	2	3	7
Tunisia	2	2	1	5
Turkey	1	14	2	17
Ukraine	0	3	0	3
United Arab Emirates	0	3	0	3
United Kingdom	27	125	67	219
Uruguay	1	1	0	2
USA	13	68	19	100
Venezuela	0	1	0	1
Vietnam	0	2	0	2
Zambia	0	1	0	1

### Gender diversity

In 2017, the number of appointments and confirmations of female arbitrators rose to 249, representing 16.7% of all appointments and confirmations.<sup>10</sup> Although the Court generally appoints 25% of the total arbitrators in place (see section above on the constitution of the arbitral tribunals), it appointed a larger proportion of female arbitrators (45%) – either directly or upon the proposal of an ICC National Committee or Group – than the parties themselves (41%). The remaining female arbitrators were chosen by co-arbitrators as president (13.6%) or by another appointing authority (0.4%).

Female arbitrators were appointed or confirmed, in decreasing order, as co-arbitrators (43%), tribunal presidents (31%) and sole arbitrators (26%). Out of the total of sole arbitrators appointed or confirmed in 2017, 28% were women, whereas 19% of presidents and 13% of co-arbitrators were women.

### Breakdown of male/female arbitrators appointed or confirmed by region

Region	Year	Men	Women
North Africa	2016	18 86%	3 14%
	2017	31 91%	3 9%
Sub-Saharan Africa	2016	10 83%	2 17%
	2017	23 96%	1 4%

<sup>10</sup> For a detailed presentation of ICC gender statistics over several years, see M. Philippe, 'How Has Female Participation at ICC Evolved? ICC Arbitrators, Court Members and Court's Secretariat', *ICC Dispute Resolution Bulletin*, Issue 2017/3.

Region	Year	Men	Women
North America	2016	193 86%	32 14%
	2017	114 82%	25 18%
Latin America & Caribbean	2016	145 88%	19 12%
	2017	165 82%	36 18%
Central & West Asia	2016	46 84%	9 16%
	2017	43 68%	20 32%
South & East Asia and Pacific	2016	109 89%	14 11%
	2017	123 87%	18 13%
North & West Europe	2016	617 86%	103 14%
	2017	679 85%	119 15%
Central & East Europe	2016	64 70%	27 30%
	2017	61 69%	27 31%

It is noteworthy that, by way of an unprecedented move towards complete gender parity, the ICC World Council appointed 88 women and 88 men for the Court's 2018-2021 term.<sup>11</sup> Further inclusion across the board in ICC tribunals is one of the objectives of the Court for this mandate.<sup>12</sup>

### Age

In 2017, the average age of arbitrators confirmed or appointed was 56 years. Arbitrators appointed by the Court (directly or following a proposal by a National Committee) were, in average, five years younger. Eight percent of the individuals confirmed or appointed as arbitrators were below 40.

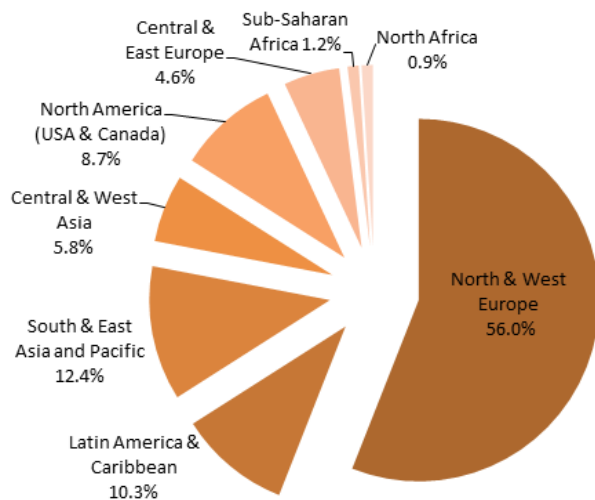
<sup>11</sup> See the ICC press release at <https://iccwbo.org/media-wall/news-speeches/icc-renews-alexis-mourre-president-nominates-court-full-gender-parity-unprecedented-diversity/>. The full list of Court members as of 1 July 2018 is available at <https://iccwbo.org/dispute-resolution-services/icc-international-court-arbitration/court-members/>.

<sup>12</sup> See Message from the ICC Court President, Alexis Mourre, in this issue, p. 5.

## Places of arbitration

In 2017, ICC arbitrations were seated in 104 different cities spread over 63 countries. The frequency with which seats were selected followed a similar pattern to previous years.

### Breakdown of places by region



It should be noted that places within South and East Asia and the Pacific were selected in 12.4% of cases in 2017, compared to 9.7% in 2016. This increase is likely to be confirmed in the next years following the recent opening of the fourth overseas office by the Secretariat in Singapore.<sup>13</sup> Singapore was, in fact, chosen in 38 of 79 new cases seated in South and East Asia, moving up from sixth to fifth most popular seat in ICC Arbitration, preceded by France (121), Switzerland (90), the United Kingdom (73) and the USA (51). Brazil and Mexico are both ranked among the ten first countries selected as places of arbitration and respectively hosted 28 and 18 ICC arbitrations in 2017.

Out of the 58 cases seated in the USA, 28 were in the state of New York, seven in California, six in Miami (Florida), three in Houston (Texas), and one in each of the states of Iowa, Indiana, Nevada, Hawaii, Minnesota, Utah and the District of Columbia. Canadian seats were located in the provinces of Alberta (three cases), British Columbia (two cases), Newfoundland and Ontario (one case each). Hong Kong was the place of arbitration in all 18 cases seated in China (the Mainland and Hong Kong SAR counted as a single unit for statistical purposes).

<sup>13</sup> See ICC press release at <https://iccwbo.org/media-wall/news-speeches/icc-court-case-management-team-begins-operations-singapore/>.

Although in the great majority of cases the place of arbitration is chosen by the parties, the Court fixes the place of arbitration where parties fail to do so. In 2017, the Court fixed the place of arbitration in only 8% of cases, which is lower when compared 2016 (15%) and higher than 2014 (7%).

### Ten most frequently selected cities

City	Number of cases	% of all places of arbitration
Paris	121	18.1%
London	73	10.9%
Geneva	51	7.6%
Singapore	38	5.7%
Zurich	36	5.4%
New York	28	4.2%
Hong Kong	18	2.7%
Vienna	17	2.5%
São Paulo	16	2.4%
Mexico	15	2.2%

### Countries selected as place of arbitration

Country	Place chosen by the parties	Place fixed by the Court	Total
Argentina	5	0	5
Australia	4	0	4
Austria	11	6	17
Bahrain	1	0	1
Belgium	8	2	10
Bermuda	1	0	1
Brazil	28	0	28
British Virgin Islands	0	1	1
Burkina Faso	0	1	1
Cameroon	1	0	1
Canada	6	1	7
Chile	5	0	5
China	15	3	18
Chinese Taipei	2	0	2
Colombia	1	1	2
Czech Republic	1	0	1
Denmark	2	1	3
Egypt	4	1	5
Estonia	1	0	1
France	111	10	121
Germany	22	2	24
Greece	3	0	3
Hungary	1	0	1
India	4	1	5
Indonesia	2	0	2

Country	Place chosen by the parties	Place fixed by the Court	Total
Israel	4	0	4
Italy	2	1	3
Japan	4	0	4
Jordan	0	1	1
Kazakhstan	5	0	5
Lebanon	1	0	1
Luxembourg	0	1	1
Malaysia	2	0	2
Malta	1	0	1
Mauritius	1	0	1
Mexico	17	1	18
Moldova	1	0	1
Netherlands	8	1	9
Norway	0	1	1
Oman	0	1	1
Panama	2	0	2
Peru	5	1	6
Poland	4	0	4
Portugal	2	0	2
Qatar	12	1	13
Romania	12	0	12
Saudi Arabia	1	0	1
Sierra Leone	0	1	1
Singapore	38	0	38
South Africa	3	0	3
South Korea	6	0	6
Spain	13	1	14
Sweden	4	1	5
Switzerland	88	2	90
Tanzania	1	0	1
Thailand	1	0	1
Tunisia	1	0	1
Turkey	8	0	8
United Arab Emirates	9	3	12
United Kingdom	68	5	73
Uruguay	1	0	1
USA	50	1	51
Vietnam	1	0	1

### Choice of law

In 87% of the disputes referred to ICC Arbitration in 2017, parties included a choice-of-law clause in their contracts. In 99% of cases the parties chose national laws, and their choices covered the laws of 104 different nations. The laws of England and USA States remained the most frequent choices, followed by French and Swiss law.

In those contracts in which the parties chose US laws, their choices covered 13 states. The most frequent choice was New York state law, followed by the laws of California and Delaware. Other less frequent choices included the laws of Florida, Illinois, Iowa, Michigan, Nevada, New Jersey, North Carolina, South Dakota, Texas and Utah.

In Canada, parties' choices covered the laws of Alberta, British Columbia, Labrador and Newfoundland and in Australia the laws of Northern Territory, New South Wales, Queensland, Victoria and Western Australia.

In China, the laws of the mainland were chosen almost as often as those of Hong Kong.

Only 1% of contracts provided for the application of rules or instruments other than national laws. These included the UN Convention on Contracts for the International Sale of Goods (five contracts), EU legislation (five contracts), the UNIDROIT Principles of International Commercial Contracts (one contract), lex mercatoria (one contract), 'customary international law' (one contract), 'UNCITRAL Law' (one contract) and the ICC Incoterms (one contract).

### Nature of the disputes

The cases filed in 2017 covered a wide spectrum of business sectors, ranging from agriculture to heavy industry and manufacturing, as well as public sector activities and service industries. Construction and energy generated the largest number of cases in recent years. In particular, construction and engineering accounted for 23% of all new cases in 2017 (186 new cases filed). The energy sector closely followed the above trend with 155 new cases in 2017, representing 19% of the overall new caseload. Sectors related to telecoms and specialised technologies, financing and insurance, general trade and distribution, industrial equipment, and health, pharmaceuticals and cosmetics each amounted to approximately 6% of cases.

### Amounts in dispute

At the end of 2017, 36% of the pending cases involved amounts in dispute below US\$ 5 million, and 24% above US\$ 50 million. The average value of ICC cases pending at the end of 2017 was of US\$ 137,325,630.

It is also worth noting that approximately a third of the cases registered in 2017 involved amounts in dispute below US\$ 2 million. This significant proportion of lower value cases confirms the relevance and necessity of an Expedited Procedure, which as noted above was introduced on 1 March 2017.

Amounts in dispute in cases registered in 2017		% of total number of cases
≤ 50,000		0.7%
> 50,000	≤ 100,000	2.1%
> 100,000	≤ 200,000	3.0%
> 200,000	≤ 500,000	7.3%
> 500,000	≤ 1 million	10.0%
> 1 million	≤ 2 million	9.0%
> 2 million	≤ 5 million	14.3%
> 5 million	≤ 10 million	10.7%
> 10 million	≤ 30 million	15.2%
> 30 million	≤ 50 million	4.7%
> 50 million	≤ 80 million	5.7%
> 80 million	≤ 100 million	1.5%
> 100 million	≤ 500 million	6.5%
> 500 million		1.7%
Not quantified		7.5%

## Expedited Procedure

The introduction of the Expedited Procedure has enabled lower-value cases to be handled with greater efficiency as to time and costs. This procedure, which provides for lower arbitrator fees,<sup>14</sup> applies to all cases filed on the basis of arbitration agreements in contracts entered into on or after 1 March 2017, the date of entry into force of the Expedited Procedure, where the total amount in dispute does not exceed US\$ 2 million (Article 30(2) of the Rules).

The Expedited Procedure is also available for cases where contracts precede their entry into force or exceed the above monetary threshold, provided that the parties expressly opt in.

As an indicator of the suitability and success of this procedure, 46 Expedited Procedure 'opt-in' requests were filed in 2017. Twelve of those requests were agreed to by the adverse party or parties and resulted in being administered under the Expedited Procedure Provisions.

To date, 84 'opt-in' requests have been submitted in total. In most cases, an agreement to 'opt-in' was not reached for a variety of reasons (lack of participation of adverse party, lack of consent, or lack of comments on the application of the Expedited Procedure). In total, 25 cases have been, or are being, conducted under the Expedited Procedure Provisions. Six cases have

<sup>14</sup> The Expedited Procedure provides for a reduced scale of fees <https://iccwbo.org/dispute-resolution-services/arbitration/expedited-procedure-provisions/>. A cost calculator for ordinary or expedited procedures is available at <https://iccwbo.org/dispute-resolution-services/arbitration/costs-and-payments/cost-calculator/>.

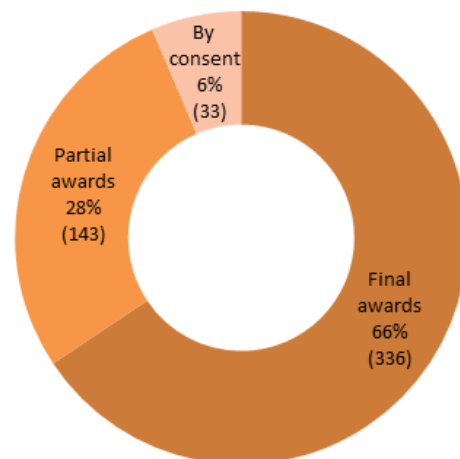
reached a final award, all within the six-month time limit from the case management conference pursuant to Article 4(1) of Appendix VI to the Rules.

The above statistics confirm that the Expedited Procedure is an effective response to the users' legitimate time and costs concerns, which, in addition, remains flexible: on the one hand parties may decide to apply the procedure or not, while on the other hand the Court maintains discretion on assessing the suitability of an expedited determination.

## Awards

A record number of 512 draft awards were approved by the Court during 2017 (i.e. 336 final awards, 143 partial awards and 33 awards by consent).

### Types of awards



All draft awards are submitted to the Court for scrutiny and approval before being rendered. The Rules empower the Court to lay down modifications as to form and draw the tribunal's attention to points of substance when scrutinising draft awards. In 2017, only two out of 512 draft awards were approved by the Court without comments. A further 46 draft awards were returned to the arbitral tribunal for resubmission. Notwithstanding the scrutiny process, requests are sometimes received for awards to be corrected or interpreted by the arbitral tribunal after being rendered. In 2017, 87 such requests were received, out of which 66 led to the subsequent correction or interpretation of the award. When rejecting the other 21 requests, the tribunals sometimes added to their original awards an order relating to the costs of the correction/interpretation proceedings.

### Languages of awards

Awards approved in 2017 were drafted in a total of 13 languages. English remains the predominant language (for 77% of the awards). Other languages used were Spanish (38 awards), French (31 awards), Portuguese (17 awards), German (11 awards), Hebrew and Polish (three awards for each language), Greek and Arabic (two awards for each language), and one award each in Romanian, Korean and Thai. In addition, two bilingual awards were rendered in English and Romanian, and another two awards were rendered in English with a Romanian translation.

### Awards rendered by majority / dissenting opinions

Pursuant to Article 32(1) of the Rules, 'when the arbitral tribunal is composed of more than one arbitrator, an award is made by a majority decision'. Of the 296 awards rendered by three-member tribunals, 85% were decided unanimously, leaving a total of 45 awards rendered by a majority of the tribunal members. Of these, 41 were accompanied by a dissenting opinion, which appeared in the award itself in 12 cases and in a separate document in 29 cases. In all four majority awards rendered without a dissenting opinion, the dissenting arbitrator, who remained unidentified in two cases, signed the award.

Of the 41 awards accompanied by a dissenting opinion, the dissenting arbitrator was generally a co-arbitrator nominated by a party (in 36 awards). In three cases, both co-arbitrators dissented on different issues, and in one case, the dissenting arbitrator was the president. The dissenting arbitrator was not identified in the remaining five majority awards.

### Emergency Arbitrator

Since their introduction in 2012, the use of ICC Emergency Arbitrator Rules was well received, with a total of 70 applications until the end of 2017. The procedure allows parties to seek urgent orders prior to the transmission of the file to the arbitral tribunal, irrespective of whether the party making the application has already submitted its Request for Arbitration. In the vast majority of cases, the application was filed prior to the Request for Arbitration, pursuant to Article 1(6) of Appendix V, but a few applications have been filed, either by claimants or respondents, after the filing of the Request for Arbitration.

21 applications under the ICC Emergency Arbitrator Rules were filed in the course of 2017. Eight of them involved multiparty cases and up to five respondents, while five applications involved states or state entities in commercial disputes.

The ICC Emergency Arbitrator procedure attracts parties worldwide, in a wide range of economic sectors. The cases filed in 2017 involved 58 parties from 31 countries. Since 2012, a majority of parties, and two-thirds of Claimants, originate from Latin American and the Caribbean, as well as North and West Europe. Half of the applications were related to the construction, engineering and energy sectors. Other disputes related to business/industrial sales and services, transportation, telecoms, agribusiness, and involved sales contracts, intellectual property issues, share purchase or joint venture agreements.

The average duration of the proceedings was 15 days. Out of the 21 applications in 2017, ten were granted in full or in part and eight were dismissed, half of which for lack of jurisdiction or inadmissibility. As illustrations of how Emergency Arbitrator proceedings can trigger consent or settlement between the parties, it is to be noted that two applications were withdrawn, one of which leading to a termination order, and for the first time, an Emergency Arbitrator issued an order by consent upon the parties' agreed terms.

### ICC as Appointing Authority

The Court was called upon as an appointing authority on nine occasions in 2017. Six requests were for the appointment of an arbitrator in ad hoc proceedings under the UNCITRAL Arbitration Rules and three requests were for appointments in other ad hoc proceedings. In three other ad hoc arbitration proceedings the Court offered services other than those relating strictly to appointments and challenges when agreed by the parties under the 2004 ICC Appointing Authority Rules. Said Rules were under revision until the end of 2017, resulting in brand new Rules of ICC as Appointing Authority in UNCITRAL or Other Arbitration Proceedings in force as from 1 January 2018 (the 'Appointing Authority Rules').<sup>15</sup> The Appointing Authority Rules significantly expand the range of services the Court may provide to interested parties, such as maintaining the file, assisting the parties with logistical arrangements for meetings and hearings, assisting with the notification of documents and correspondence, administering funds, proofreading draft documents and acting as repository.

<sup>15</sup> Available at <https://iccwbo.org/dispute-resolution-services/appointing-authority/rules-of-icc-as-appointing-authority/>.

The added value of the Appointing Authority Rules is that, on the one hand, they enable the Court to provide services in arbitral disputes lying beyond the traditional sphere of ICC Arbitration whenever parties so agree and, on the other hand, they allow parties to select the specific services they wish the Court and its Secretariat to perform, thus benefitting from a flexible and affordable framework, tailor-made solutions and the Court's vast experience in dispute resolution.

## Mediation

In 2017, the ICC International Centre for ADR ('Centre') registered 30 new filings under the ICC Mediation Rules. The term 'mediation' as used in the Mediation Rules includes not only mediation but any other amicable settlement technique or combination of techniques the parties may prefer. In the 2017 filings, apart from two requests for conciliation, parties overwhelmingly opted for mediation. The 86 parties in the 2017 filings came from 31 countries and independent territories across the world. Parties from the Americas were predominant (representing 41% of all parties) and the USA and Brazil accounted for the highest number of parties (10 parties each).

### Origin of the parties in ICC Mediation

Region/country	Number of parties	% of total number of parties
<b>Africa</b>	<b>8</b>	<b>9%</b>
Algeria	1	
Egypt	1	
Guinea	4	
Tanzania	1	
Tunisia	1	
<b>Americas</b>	<b>35</b>	<b>41%</b>
Brazil	10	
Canada	5	
Cayman Islands	1	
Mexico	5	
Panama	1	
Trinidad & Tobago	1	
USA	12	
<b>Asia &amp; Pacific</b>	<b>18</b>	<b>21%</b>
Australia	1	
Indonesia	1	
Iraq	5	
Kuwait	1	
Saudi Arabia	2	
Singapore	1	
South Korea	2	

Region/country	Number of parties	% of total number of parties
United Arab Emirates	5	
<b>Europe</b>	<b>25</b>	<b>29%</b>
Czech Republic	1	
Finland	1	
France	1	
Germany	3	
Ireland	2	
Italy	5	
Norway	1	
Russian Federation	2	
Spain	3	
Switzerland	1	
United Kingdom	5	

Two of the parties were states or state entities (originating from North Africa, Latin America and the Caribbean).

A total of 17 neutrals of seven different nationalities were nominated by the parties or appointed by the Centre (nine neutrals from the United Kingdom, two neutrals from France and Mexico, and one neutral from each of Germany, Ireland, Italy and Singapore). Four neutrals were women and 13 were men. In those cases settled with the assistance of neutrals during the year, the settlement was achieved within an average of six weeks of the file being transmitted to the neutral.

The disputes concerned a wide range of business sectors. As in ICC arbitration, energy disputes were the most frequent, accounting for almost a third of all cases, followed by disputes relating to telecommunication and construction. In 2017, the value of disputes ranged from US\$ 50,000 to just under US\$ 500 million, thus confirming the suitability of mediation for larger value disputes. The costs of the proceedings in which the mediator was appointed (covering ICC administrative expenses and the fees and expenses of the neutral) were approximately US\$ 23,000 on average.

## Experts

A total of 19 requests for services related to experts were filed with the Centre in 2017. Of these, 11 concerned the proposal of experts, six the appointment of experts, and two the administration of expertise proceedings. Four of the requests for the proposal of experts were made by ICC arbitral tribunals



(for which the service is provided free of charge), one proposal was requested by a non-ICC arbitral tribunal, while all other requests were filed by parties.

Among the requests for appointment, three related to the appointment of dispute board members.<sup>16</sup>

The 33 parties involved in the 2017 filings came from 20 countries. They included 11 states or state entities from different continents and one international organization. As in previous years, the largest demand for the Centre's expert services came from European parties.

### Geographical origins of parties in ICC Expertise

Region/country	Number of parties	% of total number of parties
<b>Africa</b>	<b>4</b>	<b>12%</b>
Algeria	1	
Ethiopia	1	
Mauritania	1	
<b>Americas</b>	<b>7</b>	<b>21%</b>
Brazil	4	
Mexico	1	
USA	2	
<b>Asia &amp; Pacific</b>	<b>4</b>	<b>12%</b>
China	1	
Qatar	1	
Tajikistan	1	
Venezuela	1	
<b>Europe</b>	<b>17</b>	<b>52%</b>
Germany	1	
Greece	6	
Macedonia	1	
Poland	1	
Romania	1	
Russian Federation	2	
Slovakia	1	
Spain	2	
Switzerland	1	
United Kingdom	1	
<b>International Organization</b>	<b>1</b>	<b>3%</b>

The 2017 filings led to the proposal or appointment of 24 experts of 15 nationalities (Armenia, Belgium, Brazil, Canada, France, Germany, Hungary, Italy, Lebanon, the Netherlands, Romania, Spain, Switzerland, United Kingdom, USA).

Over half of the requests filed in 2017 related to technical expertise, with the remainder equally split between financial and legal expertise. The business sectors in which the expertise was requested were wide-ranging. As in other areas of ICC dispute resolution, demand from the construction sector was highest, followed by energy and telecommunications.

### DOCDEX

ICC DOCDEX is a rapid, document-based dispute resolution service for trade finance. It was initially designed for letters of credit, but has since been extended to include other instruments, undertakings and agreements related to trade finance.<sup>17</sup> For proceedings under the DOCDEX Rules, the Centre appoints experts in documentary credits, collections and demand guarantees. A total of 6 requests, involving 18 parties, for a DOCDEX decision were filed with the Centre in 2017. Use of the service has traditionally been stronger in Asia, but has attracted users from different regions in 2017: nine parties from Europe (Denmark, the Netherlands, Turkey, Ukraine and the United Kingdom), five parties from Africa (from Angola, Lesotho, Mauritius and South Africa), three parties from Asia and Pacific (Bangladesh, Maldives and South Korea), and Brazil.

Disputes are decided by a panel of three experts, normally of different nationalities. As an illustration of ICC's broad expert network, 2017 saw 11 experts originated from Europe (Belgium, Czech Republic, Denmark, Finland, Germany, Greece, Italy, Turkey and the United Kingdom), six experts from Asia and Pacific (from Australia, Bangladesh, Hong Kong, India and Singapore), and one expert from the USA.

<sup>16</sup> The Centre may appoint dispute board members either under ICC Expert Rules or ICC Dispute Board Rules. In addition to the service of appointment of dispute board members, under the 2015 ICC Dispute Board Rules and upon parties' request, the Centre may also decide on challenges filed against dispute board members, review their decisions and fix their fees.

<sup>17</sup> For more information on ICC Docdex, see <https://iccwbo.org/dispute-resolution-services/docdex/> and 'Collected DOCDEX Decisions 2013-2016', ICC Publication n.786, <http://store.iccwbo.org/collected-docdex-decisions-2013-2016>.