

## **Considerations for States in Designating Arbitrators and Conciliators to the ICSID Panels**

ICSID Member States play an important role in designating qualified candidates of the highest caliber to the ICSID [Panels of Arbitrators and of Conciliators](#). In recent years, ICSID has actively encouraged all Member States to designate their full complement of 4 arbitrators and 4 conciliators, and the Chairman has appointed the full complement of 10 Chairman's designees. Regular replenishment of the Panels ensures a diverse and qualified group of arbitrators and conciliators are available to parties to ICSID proceedings.

The Panel lists are used most often for appointment of presiding arbitrators on arbitral tribunals and for members of annulment committees to be appointed by the Chairman of the ICSID Administrative Council under the ICSID Convention. The work of these persons in case proceedings is extremely important from a systemic perspective and is vital to the effective functioning of the international investment arbitral system.

### ***Identifying Candidates***

There is no set process concerning how a Member State should identify candidates for designation to the Panels and each State has discretion to adopt the approach that suits it best. In practice, States have followed various formal and informal approaches, including:

- Consulting with national bar associations or other professional societies;
- Issuing a public request for expressions of interest from potential candidates; or
- Conducting a search through a government agency or department with knowledge of international investment or dispute resolution.

Designees can be identified from a broad range of professional backgrounds and experiences that may include:

- Academics and scholars in law, finance or related fields;
- Legal practitioners with experience in international dispute settlement;
- Judges with experience in domestic or international courts;
- Former government officials and diplomats with experience in international matters.

Once a Government has identified its designees, it simply needs to advise the ICSID Secretariat of the designees and provide their curricula vitae, including current contact details. A [sample letter](#) is available on the ICSID website. The ICSID Secretariat will then acknowledge receipt of the designations, inform the nominees and ask whether they accept their designation. Upon receipt of the designees' acceptance, the Secretariat will add their name to the Panel(s) ([ICSID/10](#)), and invite the designees to complete or update the ICSID curricula vitae for its online database of arbitrators and conciliators. Appointment to specific arbitrations or conciliations is done on a case by case basis, as the need arises.

### *Qualifications*

Article 14 of the ICSID Convention sets out the primary qualifications required of Panel members. All persons nominated must be persons of high moral character, with recognized competence, particularly in law, but also in commerce, industry or finance, and be able to be relied upon to exercise independent judgment.

Additionally, the following attributes are highly desirable for designees given the mandate of Panel members:

- Knowledge of and experience with international investment law – this is the principle area of law applied in ICSID cases, and so such expertise is extremely important;
- Knowledge of and experience with public international law – many international arbitrations raise questions under public international law, particularly international law related to State liability, attribution of conduct to a State, and principles of treaty interpretation;
- Experience and expertise in international arbitration – ICSID arbitrations often involve complex factual situations and numerous procedural issues, as well as complex legal questions. Candidates should have experience in managing arbitration, and experience as a presiding arbitrator is especially helpful;
- Ability to conduct an arbitration and to write an arbitral award in one or more of the Centre’s official languages (English, French and Spanish) – ICSID parties often conduct cases in two of the official languages of the Centre, while witnesses and documents may be in a variety of languages. Although interpretation is always available, parties may request fluency in different languages to reduce costs;
- Ability to conduct proceedings in a timely and cost-efficient manner – ICSID stresses the importance of conducting proceedings in an expedited manner and asks arbitrators to ensure they can devote the time necessary to administer a case expeditiously;
- Ability to act collegially – ICSID arbitrators and conciliators are usually appointed to 3-person bodies and should be able to work collegially with other nominees, counsel and their clients, witnesses, and the ICSID Secretariat;
- Availability to accept appointments in cases as of the date of designation;
- Availability and willingness to travel for the purposes of case proceedings – ICSID proceedings can take place anywhere in the world, although historically the bulk of cases have been heard in Paris, Washington, London and Singapore. Panel nominees should be able to travel to locations as agreed by parties.

Although it is impossible to anticipate whether a Panel nominee might be conflicted in a future case, it is important to name persons who will be able to act independently and impartially. While the ICSID Convention does not prohibit designation of current government officials, their designation may pose a higher risk of challenge based on their employment relationship with a State. Former government officials do not pose a similar risk and have acted frequently in ICSID cases.

### ***Expanding Diversity***

There is no restriction on the nationality of the designees to the Panels. The designees may have the nationality of the designating State or of any other State, including a State that has not yet joined ICSID.

ICSID has actively sought to diversify the profile of candidates for appointment in ICSID cases and encourages designation of qualified persons of any gender, age, or national origin. As of December 15, 2017, the 676 individuals on the Panels were of 133 different nationalities, with women comprising 18%.

The Chairman of the Administrative Council considers similar qualifications and criteria in identifying nominees for the Chairman's Panel designations. In addition, the Chairman names persons representing the principal legal systems of the world and the main forms of economic activity, and considers these criteria when designating persons to the Panels.

Persons interested in being designated to the Panels by a State may wish to bring their interest and qualifications to the attention of government representatives of a Member State with available designations. Persons interested in designation to the Chairman's list may bring their interest and qualifications to the attention of the Secretary-General or Chairman of ICSID's Administrative Council, preferably near the end date of the designations of current nominees.

For information about ICSID Panels more generally, please visit our website at [www.worldbank.org/icsid](http://www.worldbank.org/icsid).