THE ICSID CASELOAD –
STATISTICS
(SPECIAL FOCUS:
SOUTH & EAST ASIA & THE PACIFIC)
The ICSID Caseload – Statistics
(Special Focus: South & East Asia & the Pacific Region)

This issue of the *ICSID Caseload – Statistics (Special Focus: South & East Asia & the Pacific Region)* provides an overview of the ICSID caseload involving States in the South & East Asia & the Pacific region (SEAP or SEAP Region; see Annex 1 for a list of the SEAP Region¹). It is based on ICSID cases registered as of October 1, 2014.

This document looks at cases involving a SEAP State as the State Party to an ICSID dispute and illustrates the number of cases registered, the type of cases registered, the basis of consent to ICSID jurisdiction invoked in such cases, the economic sectors involved, and the geographic origin and type of investors involved in such cases. It also contains data on outcomes in arbitration proceedings involving a SEAP State, including further information on disputes decided by tribunals and on settled or discontinued cases.

This document further looks at cases involving investors from a SEAP State and illustrates the number of cases registered, the basis of consent to ICSID jurisdiction invoked in such cases, and the economic sectors concerned in disputes involving SEAP investors. It also contains data on outcomes in ICSID arbitration proceedings involving an investor from a SEAP State, including further information on disputes decided by tribunals and on settled or discontinued cases.

Finally, this document looks at the geographic origins of arbitrators, conciliators and *ad hoc* committee members appointed in all ICSID cases, and includes a breakdown of appointments involving nationals from the SEAP region.

The analysis considers all ICSID cases involving a SEAP State irrespective of their date of registration.

The Secretariat welcomes any comments or suggestions by email at ICSIDsecretariat@worldbank.org.

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2 The data is based on ICSID statistics as at October 1, 2014.
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2. Map of ICSID Contracting States and Other Signatories to the ICSID Convention in the South & East Asia & the Pacific Region (as of October 1, 2014)
3. Geographic Distribution of All ICSID Cases, by State Party Involved*

As of October 1, 2014, ICSID had registered 484 cases under the ICSID Convention and Additional Facility Rules. Thirty-nine (39) of these cases (8%) involved a State Party from the South & East Asia & the Pacific (SEAP) Region. A list of the SEAP Region is attached as Annex 1. For a complete list of cases registered by ICSID involving a State party from the SEAP Region, see Annex 2.

Chart 1: Geographic Distribution of All Cases Registered under the ICSID Convention and Additional Facility Rules, by State Party Involved*:

4. ICSID Cases involving a State Party from the SEAP Region – Further Details

Chart 2: Number of ICSID Cases involving a State Party from the SEAP Region:

The chart below lists each SEAP State and the number of cases in which it has been involved as a party to the dispute. A complete list of ICSID cases involving a State Party from the SEAP Region is attached as Annex 2. In addition, procedural details about each case can be found on the ICSID website at www.worldbank.org/icsid.

<table>
<thead>
<tr>
<th>SEAP State</th>
<th>Number of ICSID Cases</th>
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</thead>
<tbody>
<tr>
<td>1. Bangladesh</td>
<td>5</td>
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<td>2. Cambodia</td>
<td>1</td>
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<td>3. China</td>
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<tr>
<td>4. Indonesia</td>
<td>7</td>
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<tr>
<td>5. Korea, Republic of</td>
<td>2</td>
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<tr>
<td>6. Lao People’s Democratic Republic</td>
<td>1</td>
</tr>
<tr>
<td>7. Malaysia</td>
<td>3</td>
</tr>
<tr>
<td>8. Mongolia</td>
<td>1</td>
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<td>9. New Zealand</td>
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<td>12. Philippines</td>
<td>4</td>
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<tr>
<td>13. Sri Lanka</td>
<td>3</td>
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</table>
Chart 3: Type of Case Registered under the ICSID Convention and Additional Facility Rules involving a State Party from the SEAP Region:

Of the 39 ICSID cases involving a SEAP State, 38 were commenced under the ICSID Convention, and 1 was initiated under the Additional Facility Rules. As of October 1, 2014, no conciliation cases had been registered by ICSID involving a State Party from the SEAP Region.
**Chart 4: Basis of Consent Invoked to Establish ICSID Jurisdiction in Cases Registered under the ICSID Convention and Additional Facility Rules involving a State Party from the SEAP Region:**

Of the 39 ICSID cases involving a SEAP State, the vast majority (63%) asserted ICSID jurisdiction on the basis of a bilateral investment treaty (BIT). Twenty-eight percent (28%) of the cases relied on the State’s consent to arbitrate under investment contracts. The remaining 9% of the cases invoked the State’s consent to ICSID jurisdiction in the ASEAN, the Energy Charter Treaty, and investment laws of the Host-State (each 3%).
Chart 5: Distribution of Cases Registered under the ICSID Convention and Additional Facility Rules involving a State Party from the SEAP Region, by Economic Sector*:

The 39 disputes involving a SEAP State arose in the context of a variety of economic sectors.

Chart 6: Cases Registered under the ICSID Convention and Additional Facility Rules involving a State Party from the SEAP Region – Geographic Origin of Investors:

In the 39 ICSID cases involving a SEAP State, 9 were commenced by investors who reported SEAP nationality at the time of case registration. The remaining 30 cases were commenced by investors from States outside of the SEAP Region.

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3 The data is based on the nationality of investors as reported at the time of registration.
Chart 7: Cases Registered under the ICSID Convention and Additional Facility Rules involving a State Party from the SEAP Region – Type of Investor:

Of the 39 ICSID cases involving a SEAP State, 8% were instituted by individual persons (“natural persons”). A further 90% involved juridical persons. (This term refers to legal entities such as corporations, partnerships, or joint ventures, and includes small, medium, and large enterprises.)
Chart 8: Arbitration Proceedings under the ICSID Convention and Additional Facility Rules involving a State Party from the SEAP Region—Outcomes:

In the concluded arbitrations involving a SEAP State Party, 48% were settled by the parties or discontinued before a final determination of the tribunal. The basis for settlement or discontinuance is indicated in Chart 8a.

The other 52% were resolved by a final award by the tribunal. Where the tribunal rendered a final award, 50% of the awards declined jurisdiction, 21% dismissed all claims, and 29% upheld the claims in part or in full (see Chart 8b).
Chart 8a: Disputes Settled or Proceedings Otherwise Discontinued under the ICSID Convention and Additional Facility Rules involving a State Party from the SEAP Region – Basis:

1. ICSID Arbitration Rule 44. No case concluded to date on the basis of Arbitration (Additional Facility) Rule 50.

2. ICSID Arbitration Rule 43(2). No case concluded to date on the basis of Arbitration (Additional Facility) Rule 49(2).

3. ICSID Arbitration Rule 43(1) and Arbitration (Additional Facility) Rule 49(1).
Chart 8b: Disputes Decided by Arbitral Tribunals under the ICSID Convention and Additional Facility Rules involving a State Party from the SEAP Region – Findings:

- Award declining jurisdiction: 50%
- Award dismissing all claims: 21%
- Award upholding claims in part or in full: 29%
5. ICSID Cases involving Investors with SEAP Nationality – Details

Chart 9: All Cases Registered under the ICSID Convention and Additional Facility Rules – Geographic Origin of Investor:

Investors with SEAP nationality were involved in 4% of registered ICSID cases as of October 1, 2014. The data is based on the nationality of investors as reported at the time of registration.

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4 The data is based on the nationality of investors as reported at the time of registration.
Investors with SEAP nationality relied only on the arbitration mechanism established by the ICSID Convention (100%).

Of the ICSID cases involving an investor with SEAP nationality, 51% were based on an ICSID dispute settlement provision in an investment contract between the investor and the Host-State. Thirty-nine percent (39%) asserted ICSID jurisdiction on the basis of a bilateral investment treaty (BIT). The remaining cases invoked the State’s consent to ICSID jurisdiction in the ASEAN (5%), and the State’s consent found in the investment law of the Host-State (5%).
Chart 11: Distribution of Cases Registered under the ICSID Convention and Additional Facility Rules involving Investors with SEAP Nationality, by Economic Sector*:

The disputes involving an investor with SEAP nationality concerned a variety of economic sectors.

**Chart 12:** Arbitration Proceedings under the ICSID Convention and Additional Facility Rules involving Investors with SEAP Nationality – Outcomes:

In the concluded ICSID arbitrations involving an investor with SEAP nationality, 63% were settled by the parties or discontinued before a final determination of the tribunal. The basis for settlement or discontinuance is indicated in Chart 12a.

The other 37% were resolved in a final award issued by the tribunal. Where the tribunal issued a final award, 33% dismissed all claims and 67% upheld the claims in part or in full (see Chart 12b).
Chart 12a: Disputes Settled or Proceedings Otherwise Discontinued under the ICSID Convention and Additional Facility Rules involving Investors with SEAP Nationality – Basis:

1. ICSID Arbitration Rule 44. No case concluded to date on the basis of Arbitration (Additional Facility) Rule 50.

2. ICSID Arbitration Rule 43(2). No case concluded to date on the basis of Arbitration (Additional Facility) Rule 49(2).

3. ICSID Arbitration Rule 43(1) and Arbitration (Additional Facility) Rule 49(1).
Chart 12b: Disputes Decided by Arbitral Tribunals under the ICSID Convention and Additional Facility Rules involving Investors with SEAP Nationality – Findings:

- Award dismissing all claims: 33%
- Award upholding claims in part or in full: 67%
6. Arbitrators, Conciliators and *ad hoc* Committee Members Appointed in ICSID Cases

**Chart 13:** Arbitrators, Conciliators and *ad hoc* Committee Members Appointed in Cases Registered under the ICSID Convention and Additional Facility Rules – Distribution of Appointments by ICSID and by the Parties (or Party-appointed Arbitrators) by Geographic Region*:

In approximately 71% of the appointments made in ICSID cases, the parties select the appointees (indicated in red, below). A number of such appointees are nationals of a SEAP state. The remaining 29% of appointments were made by ICSID (indicated in blue, below).

Chart 14: State of Nationality of Arbitrators, Conciliators and ad hoc Committee Members with SEAP Nationality Appointed in Cases Registered under the ICSID Convention and Additional Facility Rules:

A number of SEAP nationals served as arbitrators, conciliators or ad hoc Committee members in ICSID cases. In total, about 11% of all appointments made in ICSID cases involved nationals from a SEAP State.
## ANNEX 1 – SEAP Region (as of October 1, 2014)\(^5\)

<table>
<thead>
<tr>
<th>Country</th>
<th>SIGNATURE</th>
<th>ENTRY INTO FORCE</th>
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<tbody>
<tr>
<td>American Samoa</td>
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<tr>
<td>Australia</td>
<td>Mar. 24, 1975</td>
<td>June 1, 1991</td>
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<tr>
<td>Bangladesh</td>
<td>Nov. 20, 1979</td>
<td>Apr. 26, 1980</td>
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<tr>
<td>Bhutan</td>
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<td>Brunei Darussalam</td>
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<td>Oct. 16, 2002</td>
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<td>Cambodia</td>
<td>Nov. 5, 1993</td>
<td>Jan. 19, 2005</td>
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<td>China</td>
<td>Feb. 9, 1990</td>
<td>Feb. 6, 1993</td>
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<td>Fiji</td>
<td>July 1, 1977</td>
<td>Sep. 10, 1977</td>
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<td>French Polynesia</td>
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<td>Guam</td>
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<tr>
<td>Hong Kong SAR, China</td>
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<tr>
<td>India</td>
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<td>Japan</td>
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<td>Lao PDR</td>
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<td>Maldives</td>
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<td>Marshall Islands</td>
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<td>Micronesia, Federated States of</td>
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<td>July 24, 1993</td>
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<td>Mongolia</td>
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<td>Myanmar</td>
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<td>New Caledonia</td>
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<td>Northern Mariana Islands</td>
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<td>Pakistan</td>
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<td>Oct. 15, 1966</td>
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<td>Palau</td>
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<td>Solomon Islands</td>
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<td>Taiwan</td>
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<td>Apr. 20, 1990</td>
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<td>Vanuatu</td>
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<td>Vietnam</td>
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**ANNEX 2 – List of ICSID Cases involving State Parties in the SEAP Region**  
(as of October 1, 2014)

<table>
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<th>Case No.</th>
<th>Claimant(s)</th>
<th>Respondent</th>
<th>Case Status</th>
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<td>1.</td>
<td>ARB/81/1 Amco Asia Corporation and others</td>
<td>v. Republic of Indonesia</td>
<td>CONCLUDED</td>
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<tr>
<td>2.</td>
<td>ARB/84/2 Colt Industries Operating Corporation</td>
<td>v. Republic of Korea</td>
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<tr>
<td>3.</td>
<td>ARB/87/2 Mobil Oil Corporation and others</td>
<td>v. New Zealand</td>
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<td>5.</td>
<td>ARB/87/4 Occidental of Pakistan, Inc.</td>
<td>v. Islamic Republic of Pakistan</td>
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<td>6.</td>
<td>ARB/92/2 Scimitar Exploration Limited</td>
<td>v. Bangladesh and Bangladesh Oil, Gas and Mineral Corporation</td>
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<td>7.</td>
<td>ARB/94/1 Philippe Gruslin</td>
<td>v. Malaysia</td>
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<tr>
<td>8.</td>
<td>ARB/96/2 Misima Mines Pty. Ltd.</td>
<td>v. Independent State of Papua New Guinea</td>
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<td>9.</td>
<td>ARB/99/3 Philippe Gruslin</td>
<td>v. Malaysia</td>
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<td>10.</td>
<td>ARB/00/2 Mihaly International Corporation</td>
<td>v. Democratic Socialist Republic of Sri Lanka</td>
<td>CONCLUDED</td>
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<td>11.</td>
<td>ARB/01/13 SGS Société Générale de Surveillance S.A.</td>
<td>v. Islamic Republic of Pakistan</td>
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<td>12.</td>
<td>ARB/02/2 Impregilo S.p.A.</td>
<td>v. Islamic Republic of Pakistan</td>
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<tr>
<td>13.</td>
<td>ARB/02/6 SGS Société Générale de Surveillance S.A.</td>
<td>v. Republic of the Philippines</td>
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<td>14.</td>
<td>ARB/03/3 Impregilo S.p.A.</td>
<td>v. Islamic Republic of Pakistan</td>
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<td>ARB/03/25 Fraport AG Frankfurt Airport Services Worldwide</td>
<td>v. Republic of the Philippines</td>
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<td>ARB/03/29 Bayindir Insaat Turizm Ticaret Ve Sanayi A.S.</td>
<td>v. Islamic Republic of Pakistan</td>
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<td>17.</td>
<td>ARB/04/3 Cemex Asia Holdings Ltd</td>
<td>v. Republic of Indonesia</td>
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<td>Alstom Power Italia SpA and Alstom SpA</td>
<td>Republic of Mongolia</td>
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<td>Malaysia</td>
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<td>21. ARB/06/10</td>
<td>Chevron Bangladesh Block Twelve, Ltd. and Chevron Bangladesh Blocks Thirteen and Fourteen, Ltd.</td>
<td>People's Republic of Bangladesh</td>
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<td>22. ARB/07/3</td>
<td>Government of the Province of East Kalimantan</td>
<td>PT Kaltim Prima Coal and others</td>
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<td>23. ARB/09/2</td>
<td>Deutsche Bank AG</td>
<td>Democratic Socialist Republic of Sri Lanka</td>
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<td>24. ARB/09/18</td>
<td>Cambodia Power Company</td>
<td>Kingdom of Cambodia</td>
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<td>Niko Resources (Bangladesh) Ltd.</td>
<td>Bangladesh Petroleum Exploration &amp; Production Company Limited (&quot;Bapex&quot;) and Bangladesh Oil Gas and Mineral Corporation</td>
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<td>Bangladesh Petroleum Exploration and Production Company Limited (&quot;Bapex&quot;) and Bangladesh Oil Gas and Mineral Corporation (&quot;Petrobangla&quot;)</td>
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<td>27. ARB/11/8</td>
<td>Agility for Public Warehousing Company K.S.C.</td>
<td>Islamic Republic of Pakistan</td>
<td>PENDING</td>
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<td>28. ARB/11/12</td>
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<td>Republic of the Philippines</td>
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<td>29. ARB/11/13</td>
<td>Rafat Ali Rizvi</td>
<td>Republic of Indonesia</td>
<td>PENDING</td>
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<td>30. ARB/11/15</td>
<td>Ekran Berhad</td>
<td>People's Republic of China</td>
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<td>31. ARB/11/27</td>
<td>Baggerwerken Decloedt En Zoon NV</td>
<td>Republic of the Philippines</td>
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<td>32. ARB/12/1</td>
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<td>Islamic Republic of Pakistan</td>
<td>PENDING</td>
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<td>33. ARB/12/14</td>
<td>Churchill Mining PLC</td>
<td>Republic of Indonesia</td>
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<td>Case No.</td>
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<td>34. ARB(AF)/12/6</td>
<td>Lao Holdings N.V.</td>
<td>v. Lao People’s Democratic Republic</td>
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<td>35. ARB/12/37</td>
<td>LSF-KEB Holdings SCA and others</td>
<td>v. Republic of Korea</td>
<td>PENDING</td>
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<td>36. ARB/12/40</td>
<td>Planet Mining Pty Ltd</td>
<td>v. Republic of Indonesia</td>
<td>PENDING</td>
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<td>37. ARB/13/1</td>
<td>Karkey Karadeniz Elektrik Uretim A.S.</td>
<td>v. Islamic Republic of Pakistan</td>
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<td>38. ARB/13/33</td>
<td>PNG Sustainable Development Program Ltd.</td>
<td>v. Independent State of Papua New Guinea</td>
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<tr>
<td>39. ARB/14/15</td>
<td>Nusa Tenggara Partnership B.V. and PT Newmont Nusa Tenggara</td>
<td>v. Republic of Indonesia</td>
<td>CONCLUDED</td>
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