

## **SUGGESTIONS FOR ICSID RULES AND AMENDMENTS.**

### **1) Disqualification of Arbitrators and Conciliators Pursuant to Article 57 of the Convention and under Rules 9 of the ICSID Arbitration and Conciliation Rules and Article 15 of Arbitration (Additional Facility) Rules.**

May I humbly suggest the amendment of these rules and sub-rules at 9(2), 9(3) and 9 (4) to remove the responsibility of determining the validity of the disqualification/challenge of an arbitrator in any given case, from other members of the same Tribunal. I believe other arbitrators on the ICSID Panel who have no connection with the case in question (similar to an ad hoc Committee of three constituted for annulment proceedings) should consider such challenges either in conjunction with the Secretary General or with the Chairman of the Administrative Panel as already provided. Some challenges come in much later at a stage of the proceedings when members of a tribunal may have formed a close working relationship and a special rapport geared towards resolving the case in hand.

The problem is there may well be perceptions of bias and where such a relationship has been formed. Even if not, in my personal view and from experience, for other members of a tribunal to consider the validity of a challenge against another member of their tribunal undoubtedly, puts other members of the tribunal in a difficult and awkward position. The LCIA in London I believe, has a model that works in this manner and they (the LCIA) went on to publish the outcomes of such challenges in a Special Challenges Issues collated in *Arbitration International*, Vol. 27 No.3 2011. The same should also apply to the appointment of conciliators under Rule 9 of the Conciliation Rules. If such an amendment is accepted may I suggest the anonymised publication of such outcomes for the guidance and information of other panelists and institutions.

In my view the same amendment could be extended to the appointment of arbitrators and conciliators under Article 15 of the Additional Facility Rules. In my view the problem of perception of bias is not eradicated or minimised even if the decision is taken in the absence of the challenged arbitrator or conciliator.

### **2) Time Frames for Applying for Annulment Proceedings based on Corruption.**

Article 52 (2) of the ICSID Convention and Rule 50 (2)(ii) of the Rules provide time frames within which to seek annulment of proceedings based on corruption as being within 120 days after discovery or in any event within 3 years. In countries with transparent developed political and socio-economic infrastructures in place those time frames maybe

ideal. But in third world countries or underdeveloped countries where there is an acute and perhaps deliberate lack of transparency and lack of the necessary infrastructure it may take longer to find out such information particularly in countries ruled by either repressive military or other forms of authoritarian rulers. It may take a considerable length of time to discover such corrupt practices. Were it not for wiki-leaks most citizens in such countries were blissfully unaware of how far involved their rulers and members of the elite in those countries were neck deep in corrupt practices. May I therefore suggest, a time frame of 240 days and 6 years within which to seek the annulment of the proceedings after the discovery of corruption.

Thank you for your time.

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London.