

**From:** [Meijer, Gerard](#)  
**To:** [ICSID Ideas](#)  
**Cc:** [Fritschy, Pieter](#)  
**Subject:** Suggestion for Amendment of the ICSID Arbitration Rules  
**Date:** Monday, October 22, 2018 1:43:58 PM

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Dear Madams/Sirs,

In response to your invitation to file suggestions for potential amendments to the ICSID Arbitration Rules, we respectfully submit the following suggestion for a new Rule:

*"If a serious jurisdictional defense is put to an arbitral tribunal, the mandate of all members of this arbitral tribunal (except, where more than one, its chairman) shall be terminated upon rendering a decision on this issue, unless parties agree otherwise. New arbitrators shall be appointed in accordance with the rules which governed the appointment of the arbitrators whose mandate has been terminated." \**

The rationale behind this Rule is that allowing the same arbitrators to decide both on jurisdiction and on the merits of a dispute implies that rendering a negative judgment on jurisdiction will adversely affect what those arbitrators stand to gain (both financially and otherwise) from the arbitral proceedings as a whole. Problematically, this fact in itself can (appear to) constitute a *pro tanto*-reason to render a positive judgment on any jurisdictional question raised - and it can thereby (be perceived to) constitute an obstacle to an unimpaired, objective decision on such questions.

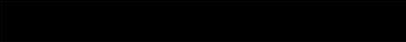
This proposal should be seen as only one example of a critical self-evaluation of the system of international (commercial) arbitration by its professional practitioners, aimed at improving and rejuvenating it or otherwise making it as transparent and ethical as possible. Especially considering the increased criticism (investment) arbitration has encountered in recent years, we believe that this self-evaluation is not merely desirable, but indeed necessary.

\* We note that this proposal will be published in the Special Issue of the CIArb's Academic Journal on "Transparency, Diversity and Ethics in International Arbitration" (eds. Professor Mohamed Abdel Wahab & Dr. Emilia Onyema), forthcoming 2019.

Yours sincerely,

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Pieter Fritschy

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