

## Top 10 Services Provided by the ICC Court and Secretariat

**Ashleigh Brocchieri (Expert Counsel) and Ulrich Kopetzki (Acting Director for Europe) at ICC Dispute Resolution Services shed light on the 10 most valuable services offered by the ICC International Court of Arbitration ('ICC Court') and its Secretariat. While some of these services are well-recognised, others may not be known. These services form an extensive support system that assists parties and arbitrators throughout the ICC Arbitration process.**

The ICC Court administers the resolution of disputes by arbitral tribunals in accordance with the [ICC Arbitration Rules](#) ('Rules') (Article 1(2)). The ICC Court is supported by the Secretariat (Article 1(5)), which communicates both with the parties and the arbitrators. The Secretariat has twelve case management teams, with seven based in Paris and others in key global locations such as New York, Hong Kong, Singapore, Sao Paolo, and Abu Dhabi. Each arbitration case is assigned to a team, which then handles the day-to-day management of the case.

Although the Rules define the roles and responsibilities of the ICC Court and the Secretariat within the arbitration process, they do not describe all of the services and support provided. This article describes the top 10 services that the ICC Court or the Secretariat can provide. Parties seeking further assistance may look to the [ICC Note to Parties and Arbitral Tribunals on the Conduct of Arbitration](#) ('ICC Note'), a valuable resource offering practical tips on conducting arbitrations under the Rules and outlining ICC Court's practices. Other resources are available in the [ICC Dispute Resolution Library](#).

Some services are available at the request of just one party; others require agreement from all parties. In all cases, these services invariably enhance the experience of the arbitration process and facilitate a swift resolution of the parties' dispute.

### 1. Provide expert guidance and support: Assistance throughout the process

When you participate in ICC Arbitration, you benefit from the Secretariat's team of dedicated professionals and their wealth of expertise. This team serves as a valuable resource and is available to assist from the moment you start drafting a dispute resolution clause right through to the enforcement of an award. While the Secretariat remains impartial and does not provide legal advice, it is always ready to answer queries on the application of the Rules<sup>1</sup> and provide additional

information pertinent to your arbitration. Do not hesitate to contact your case management team. Their knowledge is an indispensable asset to ensure the smooth and efficient resolution of your dispute.

Here are some ways you can utilise the Secretariat's guidance effectively:

- > Consult with the Secretariat on drafting an ICC arbitration agreement tailored to your needs.
- > Request details on the application of specific provisions of the Rules.
- > Seek clarification on deadlines, such as when the Answer to the Request for Arbitration is due and whether an extension can be granted.
- > Request status updates on the arbitration, such as the timeline for the ICC Court's decision-making process.

**What next?** To receive guidance in ongoing cases, contact your case management team – you can call them or send them an email. Contact details can be found on the case information distributed to the parties at the outset of the arbitration, in the header of all correspondence, and at <https://iccwbo.org/contact-us/>. For general guidance, contact [arb@iccwbo.org](mailto:arb@iccwbo.org).

### 2. Facilitate the selection of arbitrators: Aid in the arbitrator nomination process

The Secretariat and the ICC Court offer comprehensive support during the arbitrator selection process, aiming to facilitate a streamlined and efficient process for all parties. The ICC Court or its Secretary General confirm arbitrators nominated by the parties; and when parties do not nominate an arbitrator, the ICC Court steps in to appoint a suitable candidate (Article 13 of the Rules).

Typically, parties conduct their own research and identify suitable candidates for nomination. However, the process can be personalised and the ICC Court or the Secretariat can be requested to assist in identifying potential candidates for nomination. This allows parties

<sup>1</sup> All ICC Rules, Reports and Practice Notes are available <https://iccwbo.org/dispute-resolution/dispute-resolution-services>, in the ICC DRS app and ICC Dispute Resolution Library.

to make innovative use of the Secretariat's and ICC Court's expertise while maintaining control over the outcome.

Here are a few ways the Secretariat and the ICC Court can assist, all upon joint agreement by the parties:

- > If parties or co-arbitrators require assistance in identifying potential candidates for nomination, the Secretariat or ICC Court can provide a list of names for consideration.
- > The Secretariat can initiate communication with potential arbitrators, inviting them to communicate their experience, availability, and potential conflicts of interest.
- > Parties can agree on a list procedure, where the Secretariat establishes a list of candidates for the parties to consider, allowing them to strike off a certain number of candidates and rank the remaining in order of preference.
- > In case of a tie following a list procedure, the ICC Court can step in. If the parties consent, the ICC Court can decide which tied candidate should be appointed, and if needed, even flip a coin to resolve the tie.

This collaborative approach to arbitrator selection ensures a transparent and well-informed process that respects party-autonomy and is tailored to the parties' unique needs and preferences.

**What next?** For support with the arbitrator selection process, contact your case management team.

### 3. Customise appointments: Appoint arbitrators based on party criteria

When the ICC Court appoints an arbitrator, it usually relies on proposals from an ICC National Committee (Article 13(3) of the Rules) or, under certain conditions, directly appoints (Article 13(4)). In the selection process, the ICC Court considers various factors, such as the prospective arbitrator's nationality, residence, relationships with the countries of the parties or other arbitrators, availability, and the ability to conduct the arbitration according to the Rules (Article 13(1)). The ICC Court always seeks to identify the most suitable candidate, often considering the candidate's arbitration experience, language abilities, familiarity with the applicable law, and industry expertise.

While the Rules do not require consultation with the parties during this process, the ICC Court does offer a flexible and cooperative approach upon the joint request of the parties. For instance, parties can agree

that the ICC Court will consider their input when appointing an arbitrator. In this case, parties might rely to the Secretariat agreed criteria that the arbitrator should meet, such as specific nationality or language proficiency. The ICC Court will then endeavour to appoint a candidate in accordance with these agreed criteria. However, the more detailed the criteria, the longer it may take to find an arbitrator who fulfills all requirements. To avoid delays, parties can agree on certain 'hard' criteria that are non-negotiable (such as nationality or language requirements) and 'soft' criteria that are preferred but not mandatory (like specific industry experience).

For example, parties might agree that the ICC Court-appointed arbitrator:

- > Shall be a national of either country A, B or C, but not country D;
- > Must have previous experience as a sole arbitrator or president in an ICC Arbitration; or
- > Ideally, should possess experience with similar disputes in the relevant industry (e.g. in construction disputes in the renewable energy sector).

This collaborative strategy ensures a transparent and well-informed arbitrator selection process that respects party-autonomy and caters to parties' unique needs and preferences.

**What next?** Address any requests regarding the criteria that should be used when the ICC Court appoints an arbitrator to your case management team.

### 4. Encourage transparency: Communicate reasons for the ICC Court's decisions

Pursuant to Article 5 of Appendix II to the Rules, any party has the right to request that the ICC Court communicate the reasons behind specific decisions, fostering an environment of transparency. This includes decisions on:

- > prima facie jurisdiction;
- > consolidation;
- > arbitrator challenges; and
- > replacements of arbitrators.

For arbitrations under the 2017 or 2021 Rules, a request from a single party suffices for the ICC Court to communicate its reasoning. However, for arbitrations conducted under older versions of the Rules, the request must be jointly made by all parties. It should be noted that, under exceptional circumstances, the ICC Court

may decide against communicating its reasons. In all cases, the request must precede the relevant ICC Court decision.

**What next?** A request for communications of reasons of the ICC Court's decision should be addressed to the case management team as soon as the parties become aware of a forthcoming ICC Court decision (e.g. when the Secretariat invites the parties to comment ahead of the decision).

## 5. Bridge communication gaps: Facilitate seamless interaction between parties and arbitral tribunals

The Secretariat's role extends far beyond merely administrative tasks. It serves as an impartial third party that can facilitate effective communication between the disputing parties and the arbitral tribunal. This is especially beneficial when a party is reluctant to directly discuss certain issues with the tribunal, such as:

- > concerns regarding the amount in dispute and the arbitrators' fees;
- > delays in proceedings; and
- > case management challenges.

By encouraging open communication and enabling parties to express their concerns, the Secretariat can uphold a positive and cooperative atmosphere between the parties and the arbitral tribunal throughout the arbitration process. This is a significant benefit of ICC over ad-hoc arbitration, where parties may struggle to resolve such issues independently. The involvement of the Secretariat helps ensure efficient resolution of any issues, avoiding unnecessary conflict or jeopardising a party's relationship with the arbitral tribunal.

**What next?** Do not hesitate to communicate with your case management team regarding any issue. If you want the Secretariat to maintain confidentiality about your contact with them vis-à-vis the arbitral tribunal, inform them accordingly and discuss whether such confidentiality can be maintained in your specific case.

## 6. Administer finances: Act as a depository of funds

In addition to the ICC Court's role as depository of the advance on costs in arbitrations administered under the Rules, the Secretariat can provide escrow services to parties in other circumstances. The Secretariat is well-placed and available act as an escrow for:

- > **VAT.** The advance on costs fixed by the ICC Court during the arbitration does not include VAT, taxes, charges or imposts applicable to arbitrators' fees, which is a matter between an arbitrator and the relevant party. While these amounts may be invoiced by the arbitrator(s) and paid by the parties after the conclusion of the arbitration, arbitrators may wish advance payments to be made into an escrow account.
- > **Experts.** The advance on costs fixed by the ICC Court does not include fees of any expert appointed by the arbitral tribunal. Arbitral tribunals can request parties to make such advance payments into a neutral escrow account.
- > **Other arbitration funds.** Parties may be required to secure an escrow for other funds related to the arbitration, for example where an order for security for costs is made.

The authority to request the opening of a deposit account, calling deposits, and making payments from the amounts deposited lies solely with the arbitral tribunal. The account is maintained either in euros, in US dollars, or in Brazilian Real for cases administered from the Secretariat's office in Brazil (SCIAB),<sup>2</sup> and the service is available globally. At the end of the arbitration, the Secretariat will seek instructions from the arbitral tribunal to close the deposit account. The Secretariat then shuts the deposit accounts and returns any remaining funds to the respective party or parties.

Escrow services are also available to parties involved in a non-ICC administered arbitration through the use of the [ICC Appointing Authority Rules](#). To facilitate and ensure a smooth administration of the arbitration, ICC provides an efficient and reliable solution to the administration of funds related, inter alia, to arbitrators, administrative secretaries, experts, and escrow accounts (Articles 8(d) and 8(e), ICC Appointing Authority Rules).

**What next?** If you need escrow services, refer to Section XXII of the [ICC Note](#) for further information or contact your case management team for tailored guidance.

<sup>2</sup> <https://iccwbo.org/contact-us/contact-sciab-Itada/>. See also the [Note on the Functioning of the Brazilian Office of the Secretariat of the Court \(SCIAB Note\)](#).

## 7. Safeguard important documents: Serve as a depository of documents

Parties may wish a neutral entity to temporarily hold documents before these are shared with the other party (or parties) or the arbitral tribunal. The Secretariat, upon request, can accept documents, store them securely, and release them only when instructed by the arbitral tribunal. Moreover, with the launch of [ICC Case Connect](#), managing such documents is fast, simple and secure.

Examples include:

- > confidential handling of sealed offers;
- > facilitating simultaneous exchange of submissions; and
- > providing secure custody for any other important document.

The Secretariat offers a specific sealed offer service. Prior to or during the proceedings, a party may wish to offer the opposing party terms for settlement of the claim on a without prejudice save as to costs basis, commonly referred to as a sealed offer. These offers should not be provided to the arbitral tribunal until it has decided on the merits of the dispute. Although the arbitral tribunal is not bound by the contents of the sealed offer, the arbitral tribunal may take into account an unreasonable refusal of such offer when deciding on the allocation of costs incurred in the proceedings. The Secretariat will hold any sealed offers or counter-offers in escrow and ensure they are only released to the arbitral tribunal at the appropriate time.

**What next?** To obtain the Secretariat's assistance with sealed offers or the handling of other documents, follow the procedure for sealed offers in Section XXIV-C of the [ICC Note](#), or contact your case management team for tailored guidance.

## 8. Streamline logistics: Ease the burden for parties

The Secretariat can help streamline the logistics of conducting the arbitration. Leveraging its global footprint, the Secretariat can assist with tasks such as managing hearings, identifying appropriate venues, ensuring seamless document sharing, and handling travel requirements.

- > **ICC Case Connect.** An integral tool for parties and arbitrators in ICC Arbitration, ICC Case Connect offers a free, secure platform for document sharing. It ensures streamlined communication, centralised storage of all case documents, and efficient file-sharing among parties, arbitral tribunals, and the Secretariat's case management teams.
- > **Appointment of experts.** Upon request, the [ICC International Centre for ADR](#) can recommend one or more experts specialised in a particular field. This service is free of charge for arbitral tribunals in ICC Arbitrations who seek to identify a tribunal-appointed expert.
- > **Visa issuance and authorisation.** The Secretariat may issue support letters for visa applications or other travel authorisations for individuals who need to travel for an ICC Arbitration hearing or meeting.
- > **ICC Hearing Centre and virtual hearings.** The [ICC Hearing Centre](#) – an essential part of ICC's offering – will reopen in 2024 for in-person hearings at a new location in the heart of Paris. The ICC Hearing Centre team remains available to offer (i) virtual and hybrid hearings and meetings in cases from any institution or ad hoc cases and across time zones; and (ii) guidance and assistance on a number of alternative venues from the reservation process until the completion of the hearing.
- > **Other hearing services.** ICC has partnerships with hearing facilities around the globe and can help parties find suitable venues for hearings and meetings. In addition to assist in organising case management conferences and virtual hearings in collaboration with the Hearing Centre, the Secretariat can aid in identifying court reporting and translation services. For accommodation, it can provide details of hotels offering preferential rates in Paris and selected other venues.

**What next?** For ICC Case Connect assistance, contact the ICC Case Connect helpdesk at [caseconnect@iccwbo.org](mailto:caseconnect@iccwbo.org). For visa assistance, contact your case management team. For virtual hearing assistance and hearing services' requests, contact the ICC Hearing Centre team at [info@hearingcentre.com](mailto:info@hearingcentre.com).

## 9. Advance notice of award notification

Once the arbitral award has been received, a party may need to make announcements, inform internal and external stakeholders and take other such action. While the precise timing of an award's arrival is usually not disclosed, parties can agree to receive an advance alert when the notification of an award is imminent. In such scenario, the Secretariat would inform the parties once the original award is ready for notification, providing them with some time to prepare before the award is actually notified.

The Secretariat can also accommodate other requests related the notification of the award, for example:

- > Parties may jointly request that the award should be notified on a certain weekday or after a specific time, e.g. after market close.
- > Parties may also agree that the Secretariat should inform the parties a certain number of days before notifying the award.
- > Each party may also request that an electronic advance copy of the award should be sent not only to the lawyers but directly to the parties.

**What next?** To receive notification before an award is issued or for any other requests related to the notification of the award, contact your case management team.

## 10. Support enforcement: Address post-awards needs

ICC's commitment to supporting parties in the resolution of their dispute does not end with the issuance of an award. Parties can rely on the Secretariat's comprehensive support for any post-award formalities necessary for enforcing the award.

These services include:<sup>3</sup>

- > Issuing certified copies of awards, Terms of Reference, correspondence, or any other document issued or approved by the Secretariat or the ICC Court;
- > Notarisation of signatures of Secretariat members who certify document copies, executed by a notary public in Paris;
- > Providing certificates for the award or any other document requiring certification;

- > Offering non-certified copies of documents from the case file (with limitations on size and number);
- > Sending letters reminding parties of their obligation to comply with the award.

**What next?** For assistance with post-award enforcement matters, contact your case management team.

For further details of any of the services discussed in this article or for requests for services not covered, please contact your case management team or [arb@iccwbo.org](mailto:arb@iccwbo.org).

<sup>3</sup> Para. 271, ICC Note to Parties and Arbitral Tribunals on the Conduct of Arbitration.