ICSID
INTERNATIONAL CENTRE FOR
SETTLEMENT OF INVESTMENT DISPUTES

THE ICSID CASELOAD – STATISTICS

SPECIAL FOCUS:

SOUTH & EAST ASIA & THE PACIFIC

(OCTOBER 2016)

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The ICSID Caseload – Statistics

Special Focus: South & East Asia & the Pacific Region

(October 2016)

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 States from the SEAP Region[1]). It is based on ICSID cases registered as of October 1, 2016.

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

[1] The classification of the SEAP region is based on the World Bank's regional system, available at http://databank.worldbank.org/data/views/variableselection/selectvariables.aspx?source=world-development-indicators, and also includes World Bank donor countries.

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[2] The data is based on ICSID statistics as at October 1, 2016.

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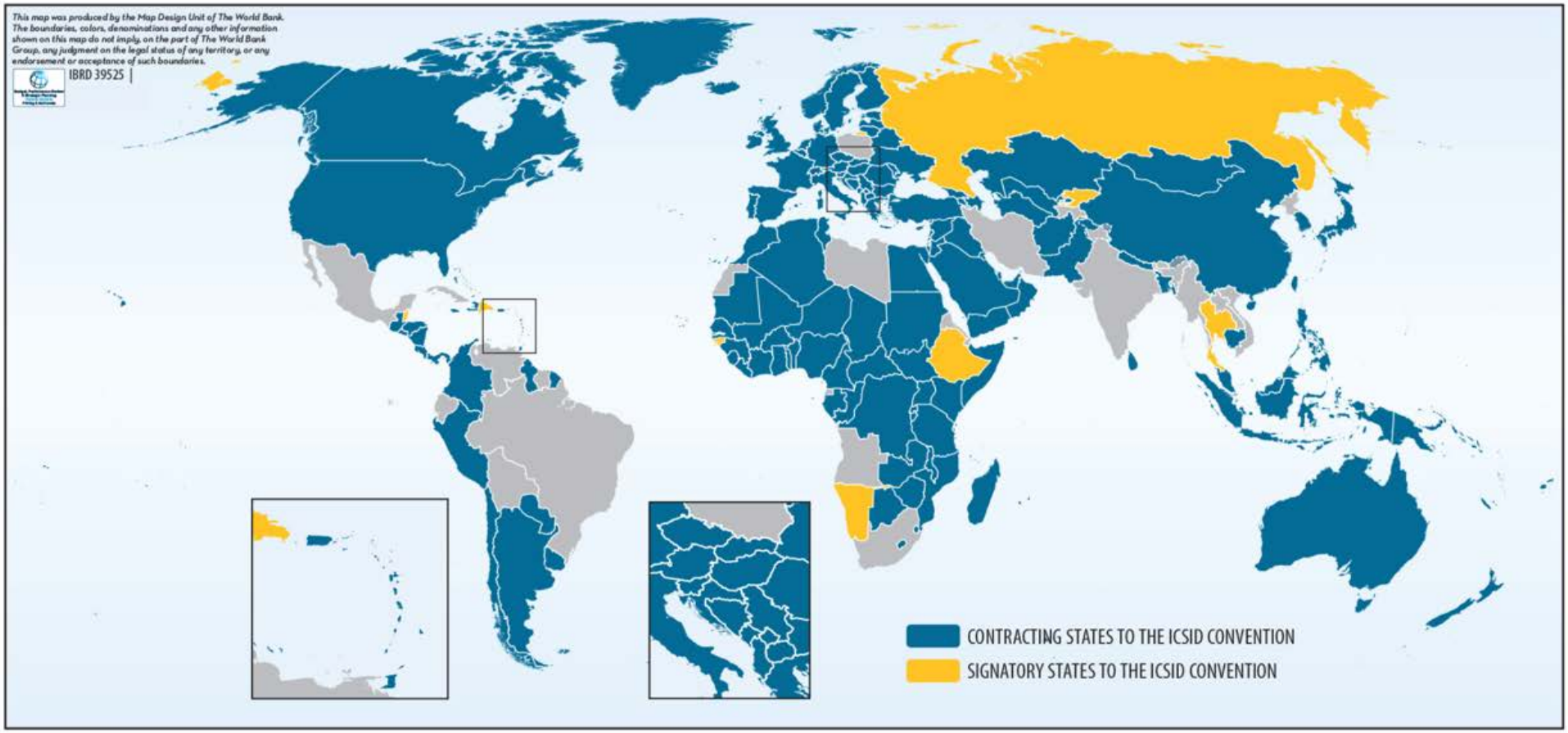
1. Map of ICSID Contracting States and Other Signatories to the ICSID Convention (as of October 1, 2016)

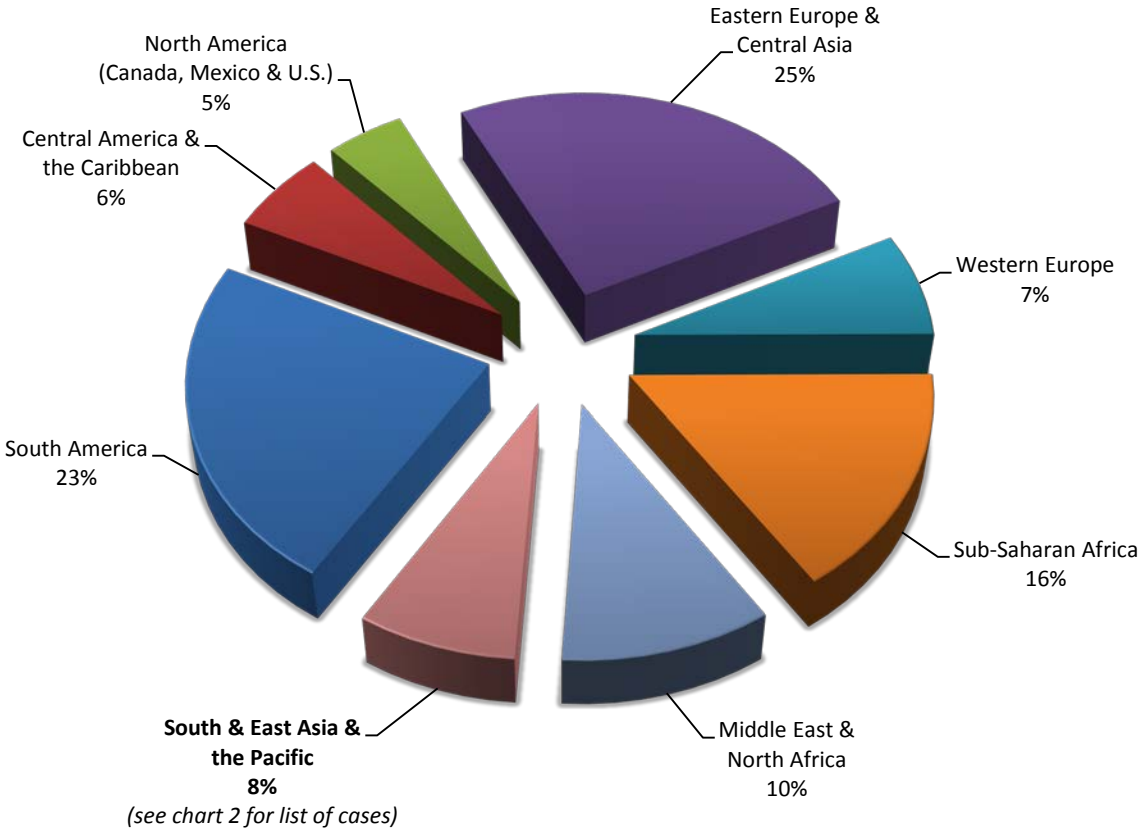


2. Map of ICSID Contracting States and Other Signatories to the ICSID Convention in the South & East Asia & the Pacific Region (as of October 1, 2016)

3. Geographic Distribution of All ICSID Cases, by State Party Involved*

As of October 1, 2016, ICSID had registered 586 cases under the ICSID Convention and Additional Facility Rules. Forty-six (46) of these cases (8%) involved a State Party from the South & East Asia & the Pacific (SEAP) Region. A list of the States from 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*:



* The classification of the geographic regions above is based on the World Bank's regional system, available at http://databank.worldbank.org/data/views/variableselection/selectvariables.aspx?source=world-development-indicators, and also includes World Bank donor countries.

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 ICSID 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.

	SEAP State	Number of ICSID Cases
1.	Indonesia	8
2.	Pakistan	8
3.	Bangladesh	5
4.	Philippines	5
5.	Sri Lanka	4
6.	Korea, Republic of	3
7.	Malaysia	3
8.	China	2
9.	Lao People's Democratic Republic	2
10.	Papua New Guinea	2
11.	Cambodia	1
12.	Mongolia	1
13.	New Zealand	1
14.	Timor-Leste, Democratic Republic of	1

Chart 3: Type of Case Registered under the ICSID Convention and Additional Facility Rules involving a State Party from the SEAP Region:

Of the 46 ICSID cases involving a SEAP State, 44 were commenced under the ICSID Convention, and 2 were initiated under the Additional Facility Rules. As of October 1, 2016, no conciliation cases had been registered by ICSID involving a State Party from the SEAP Region.

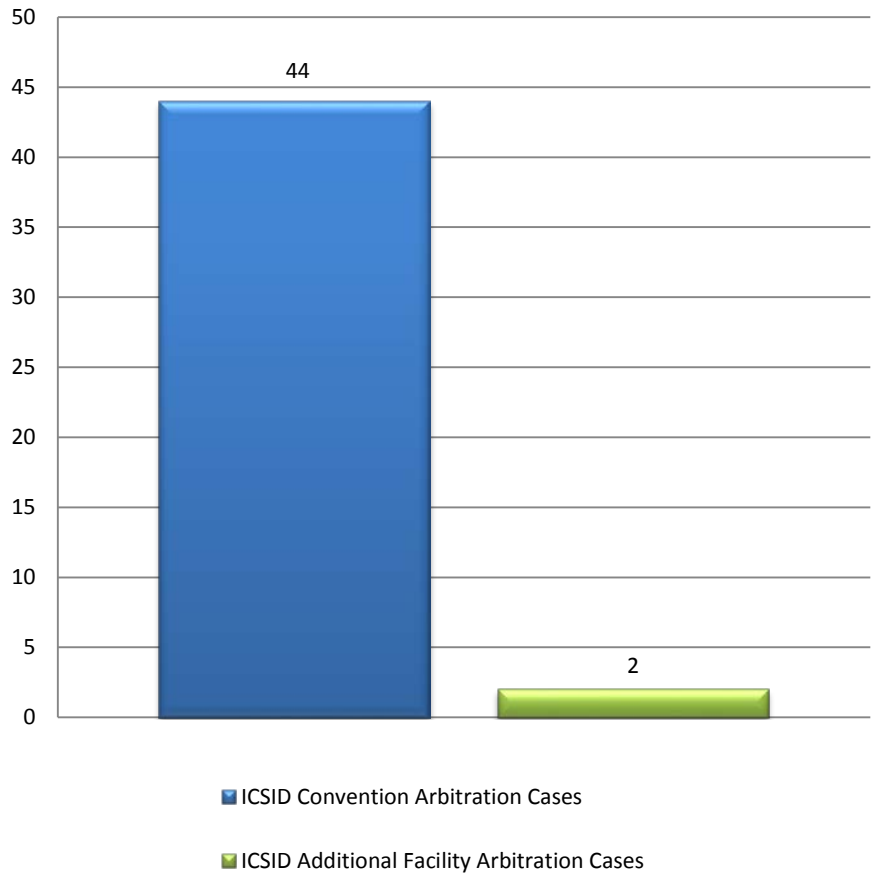


Chart 4: Basis of Consent Invoked to Establish ICSID Jurisdiction in Cases Registered under the ICSID Convention and Additional Facility Rules involving a State Party from the SEAP Region:

Of the 46 ICSID cases involving a SEAP State, the vast majority (65%) asserted ICSID jurisdiction on the basis of a bilateral investment treaty (BIT). Twenty-seven percent (27%) of the cases relied on the State's consent to arbitrate under investment contracts. A further 4% of the cases relied on the State's consent in an investment law to assert ICSID jurisdiction. The remaining 4% of the cases invoked the State's consent to ICSID jurisdiction in the ASEAN and the Energy Charter Treaty (each 2%).

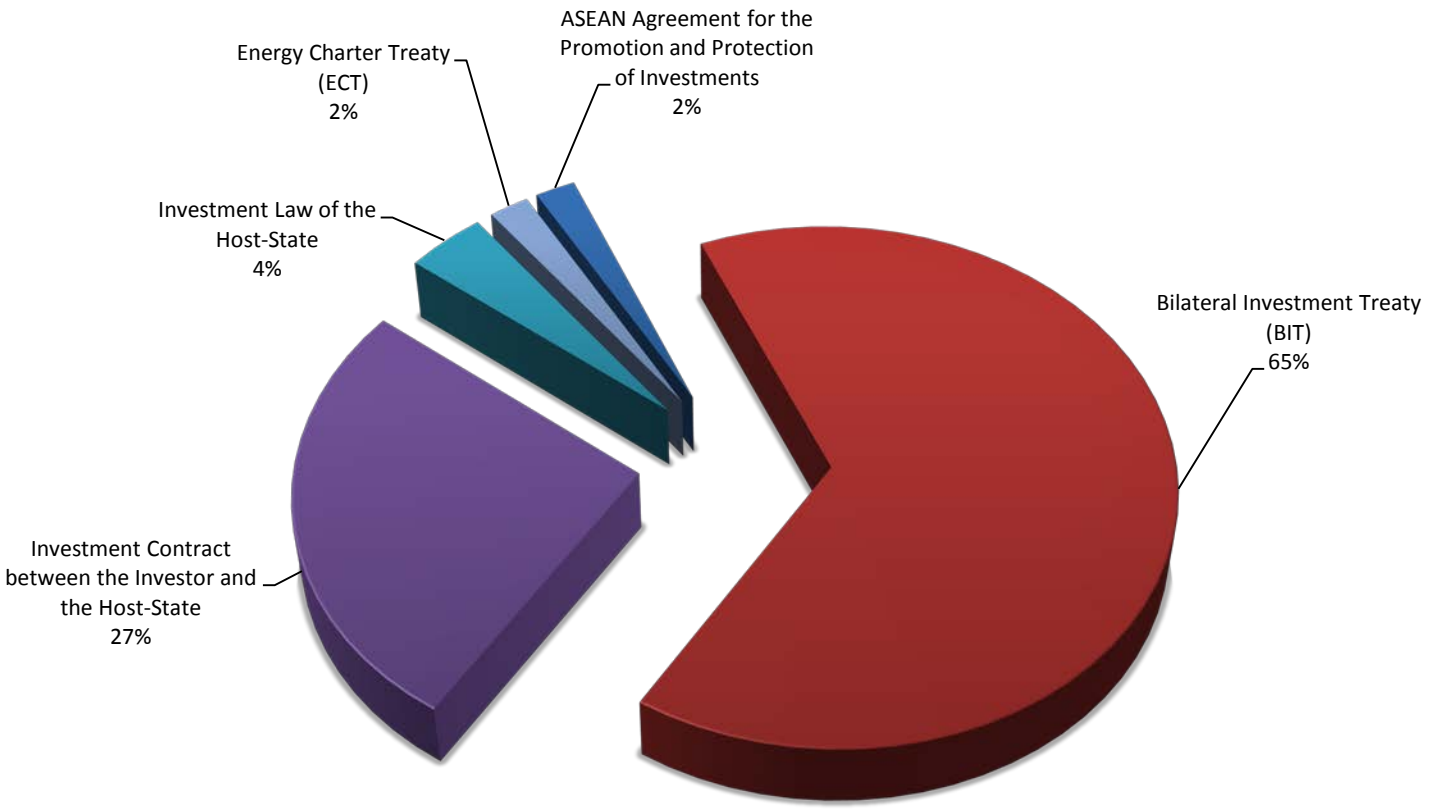
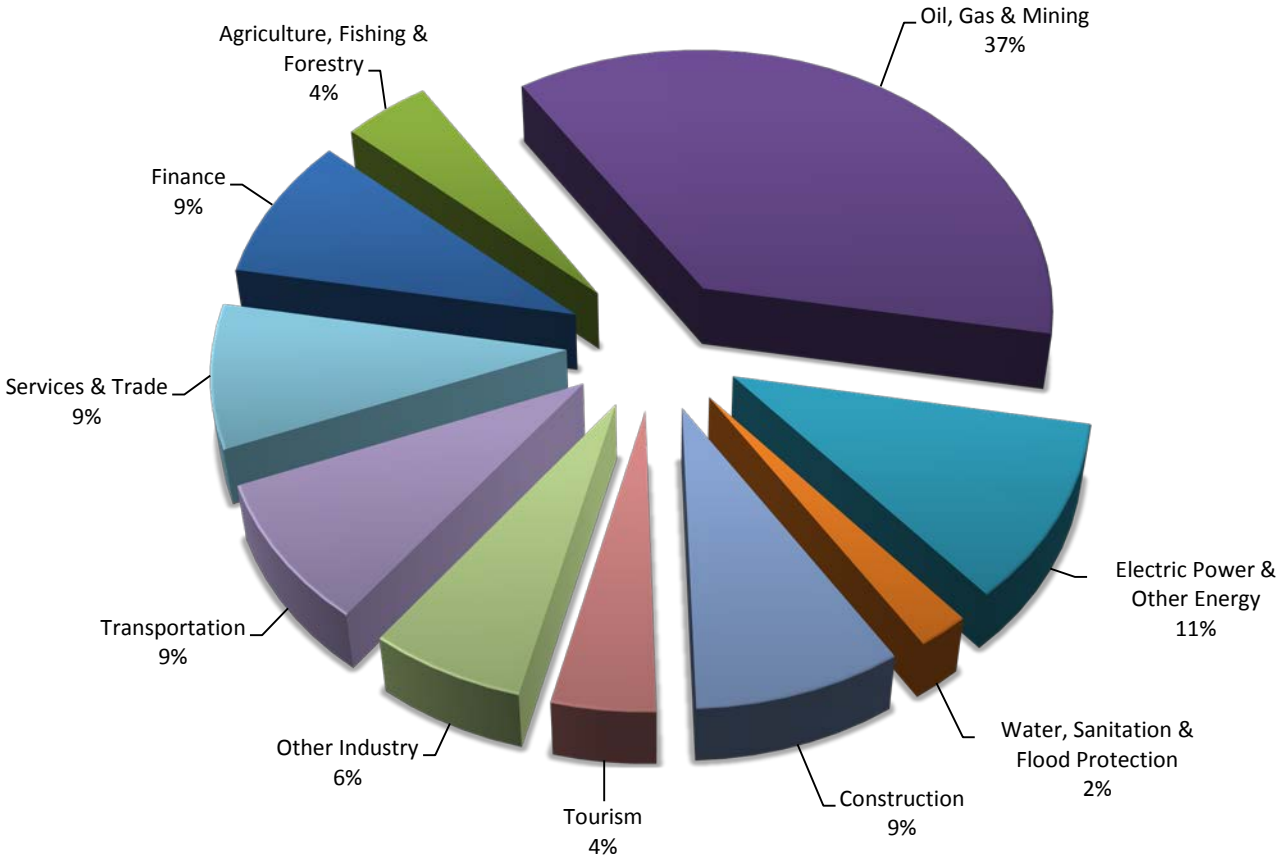


Chart 5: Distribution of Cases Registered under the ICSID Convention and Additional Facility Rules involving a State Party from the SEAP Region, by Economic Sector*:

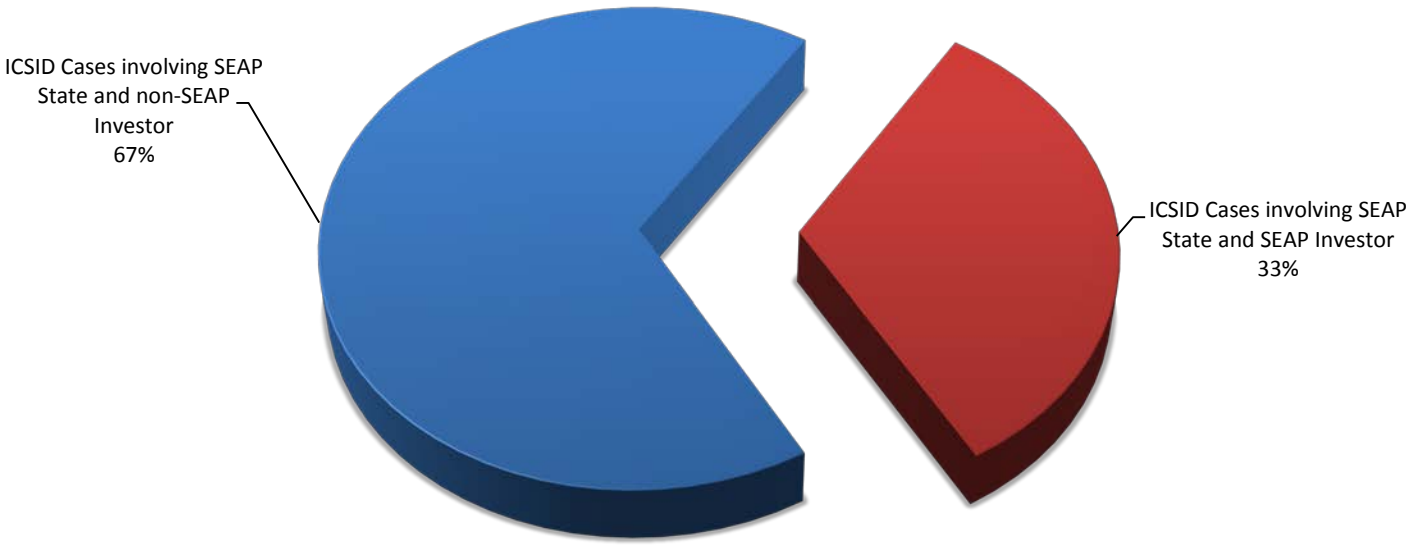
The 46 disputes involving a SEAP State arose in the context of a variety of economic sectors.



* This sector classification is based on the World Bank's sector codes, available at http://siteresources.worldbank.org/PROJECTS/Resources/SectorCodesLists.pdf.

Chart 6: Cases Registered under the ICSID Convention and Additional Facility Rules involving a State Party from the SEAP Region – Geographic Origin of Investors[3]:

In the 46 ICSID cases involving a SEAP State, 15 involved investors who reported SEAP nationality at the time of case registration. The remaining 31 cases involved investors from States outside of the SEAP Region.



[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 46 ICSID cases involving a SEAP State, 9% were instituted by individual persons ("natural persons"). A further 91% involved juridical persons. (This term refers to legal entities such as corporations, partnerships, or joint ventures, and includes small, medium, and large enterprises.)

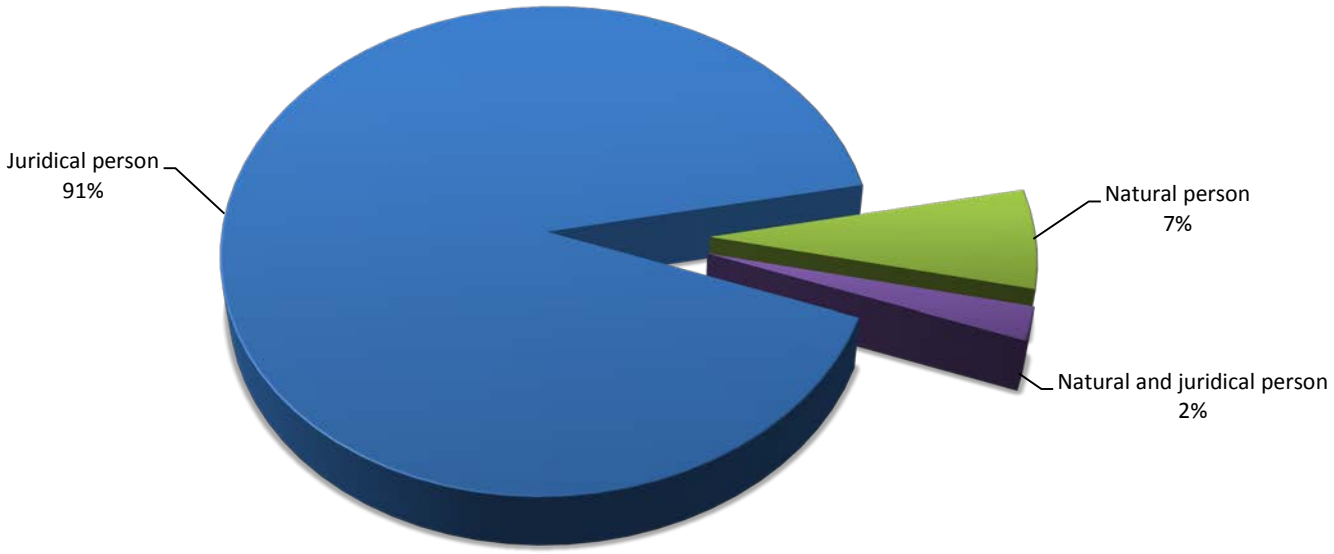


Chart 8: Arbitration Proceedings under the ICSID Convention and Additional Facility Rules involving a State Party from the SEAP Region – Outcomes:

In the concluded arbitrations involving a SEAP State Party, 45% 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 55% were resolved by a final award by the tribunal. Where the tribunal rendered a final award, 53% of the awards declined jurisdiction, 18% dismissed all claims, and 29% upheld the claims in part or in full (see Chart 8b).

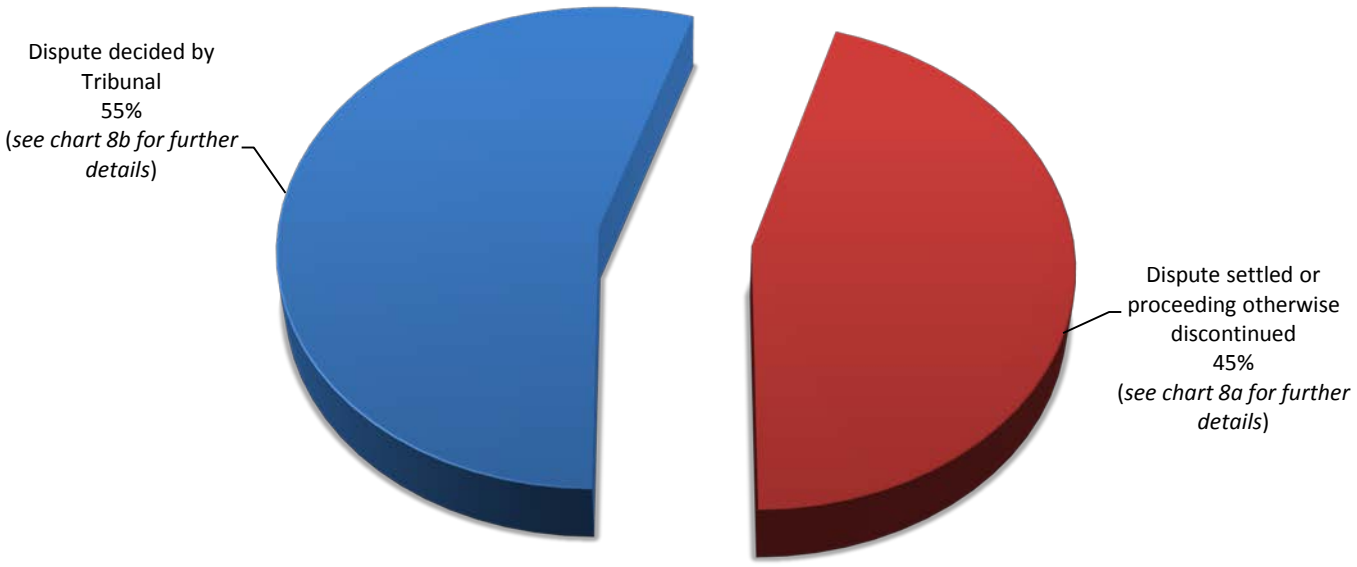
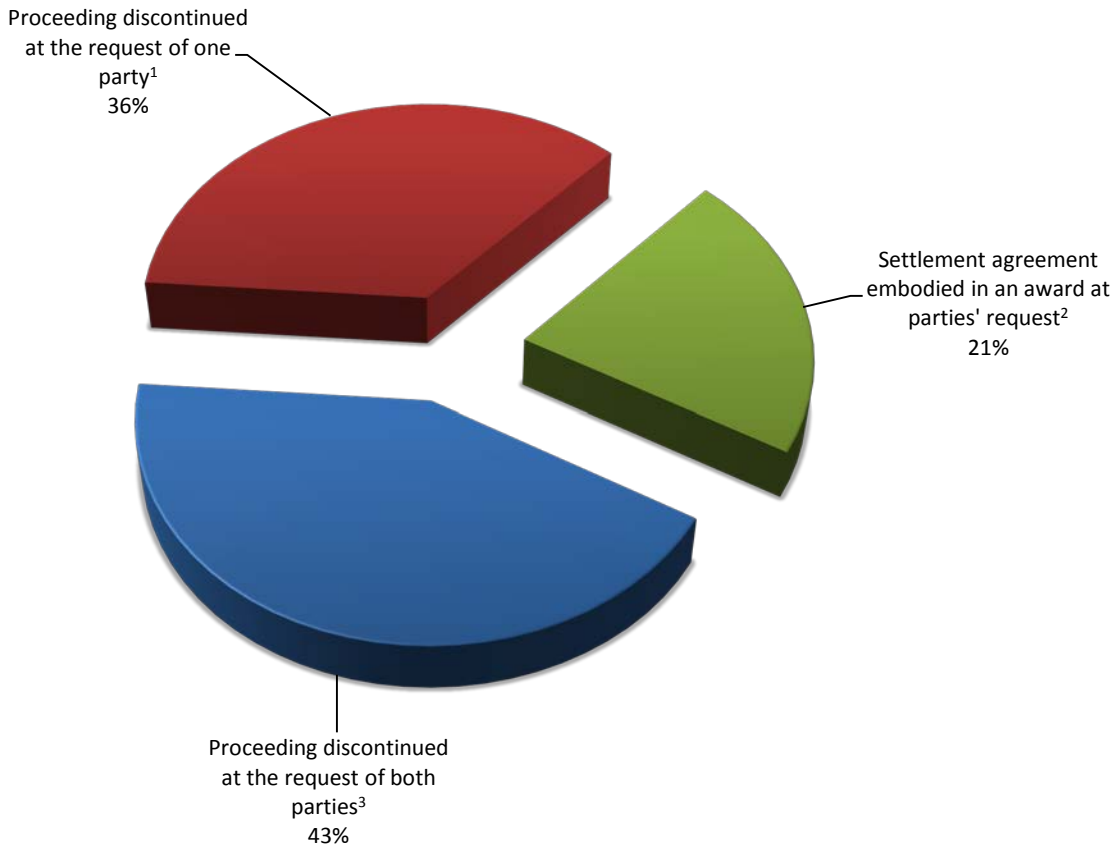
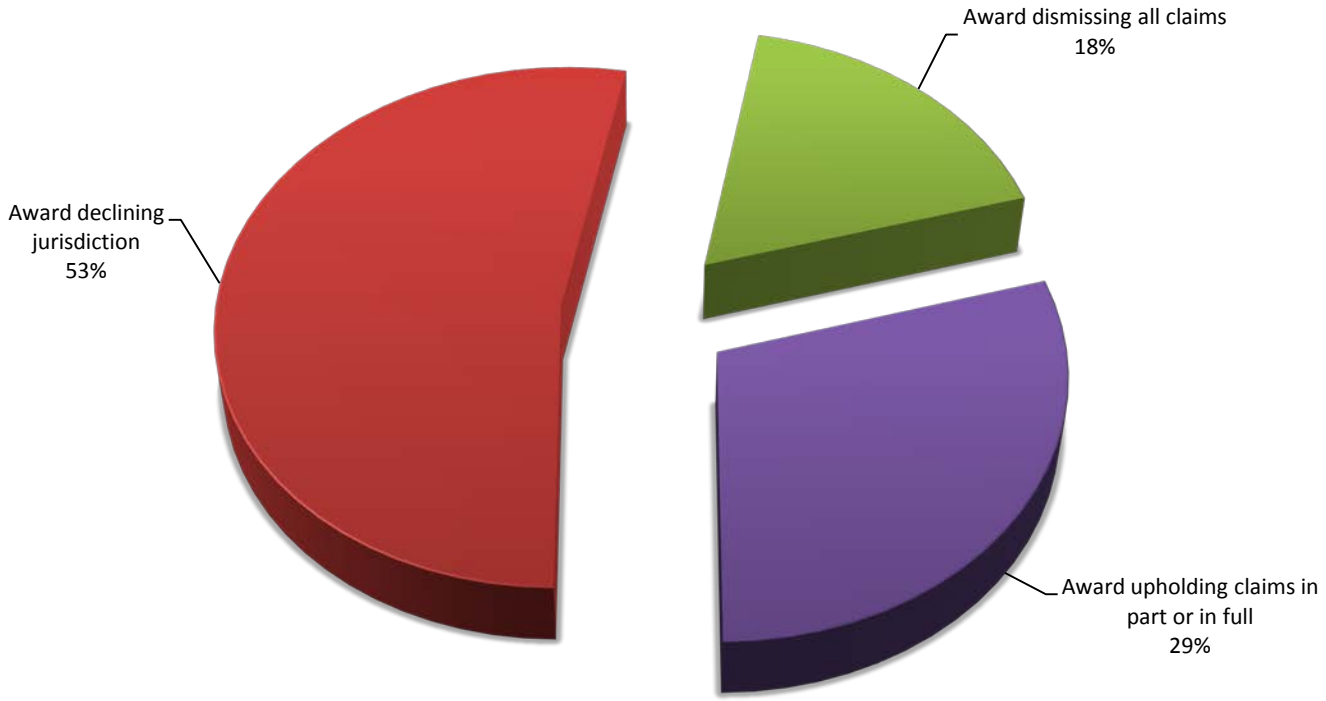


Chart 8a: Disputes Settled or Proceedings Otherwise Discontinued under the ICSID Convention and Additional Facility Rules involving a State Party from the SEAP Region – Basis:



[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).

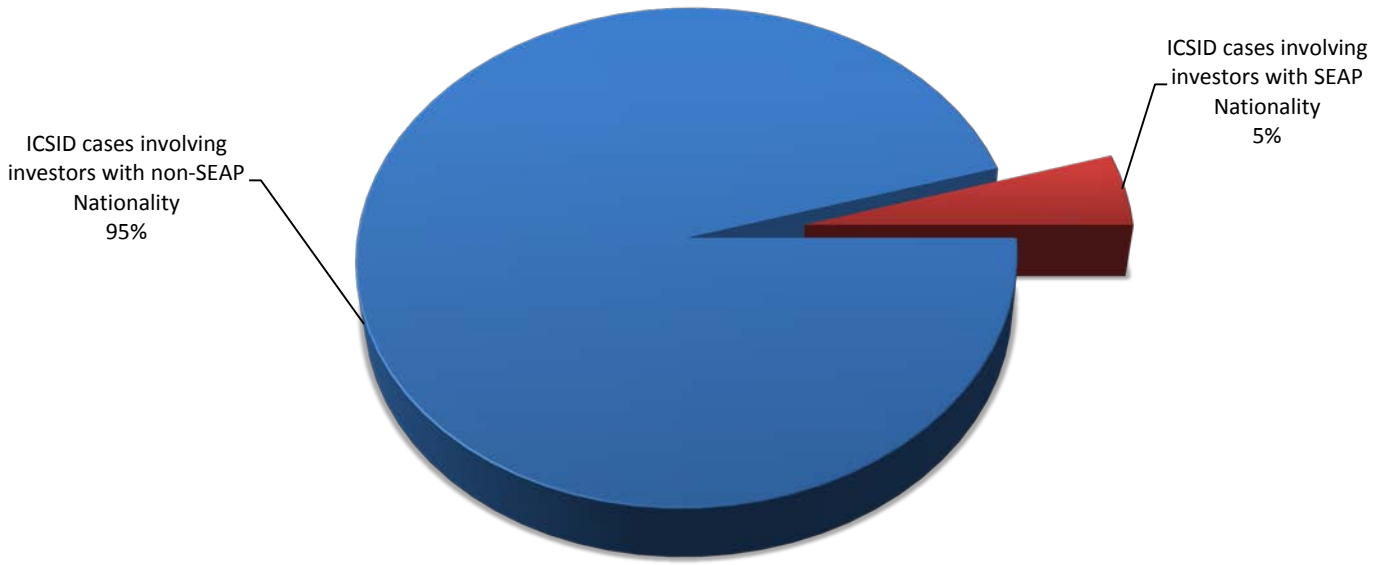
Chart 8b: Disputes Decided by Arbitral Tribunals under the ICSID Convention and Additional Facility Rules involving a State Party from the SEAP Region – Findings:



5. ICSID Cases involving Investors with SEAP Nationality – Details[4]

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

Investors with SEAP nationality were involved in 5% of registered ICSID cases as of October 1, 2016. The data is based on the nationality of investors as reported at the time of registration.



[4] The data is based on the nationality of investors as reported at the time of registration.

Chart 10: Basis of Consent Invoked to Establish ICSID Jurisdiction in Cases Registered under the ICSID Convention and Additional Facility Rules involving Investors with SEAP Nationality:

Investors with SEAP nationality relied only on the arbitration mechanism established by the ICSID Convention.

Of the ICSID cases involving an investor with SEAP nationality, 44% were based on an ICSID dispute settlement provision in an investment contract between the investor and the Host-State. Thirty-eight percent (38%) relied on the State's consent to arbitrate in a bilateral investment treaty (BIT). A further 9% invoked the State's consent contained in an investment law. The remaining cases invoked the State's consent to ICSID jurisdiction in the Energy Charter Treaty (6%) and in the ASEAN (3%).

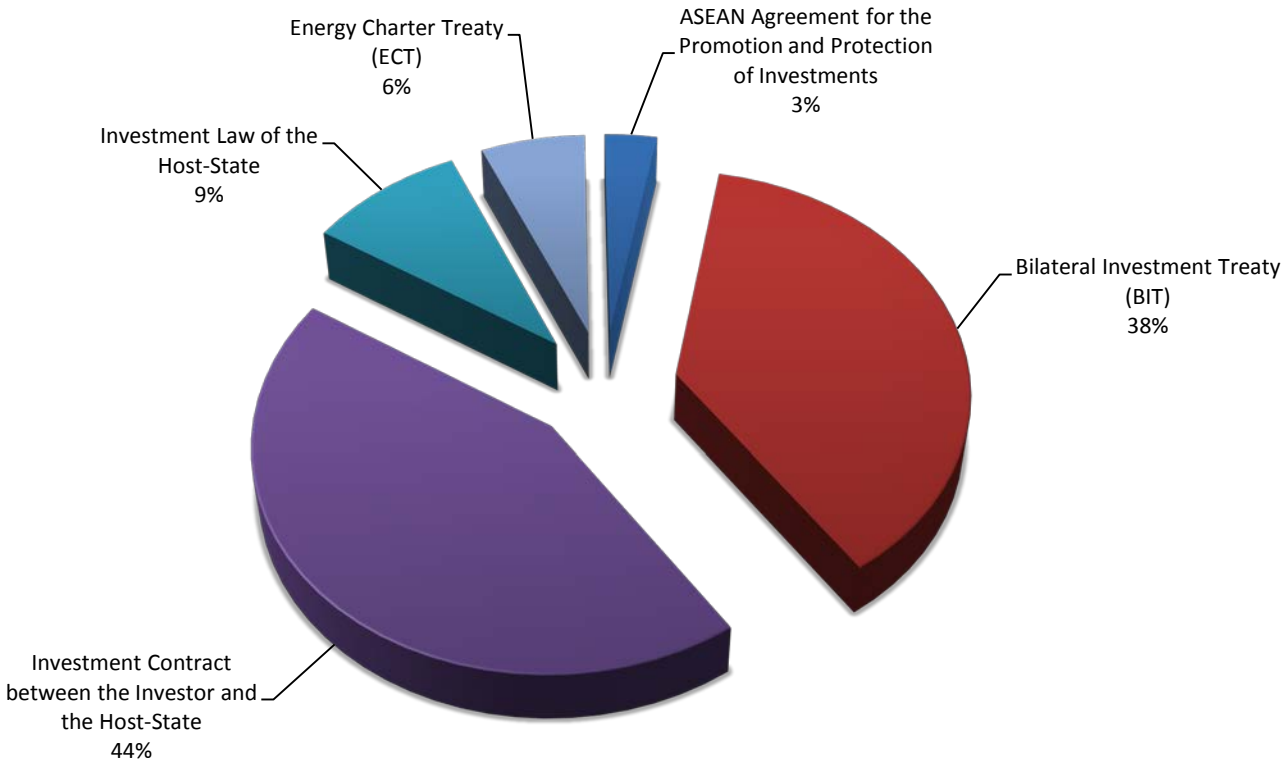
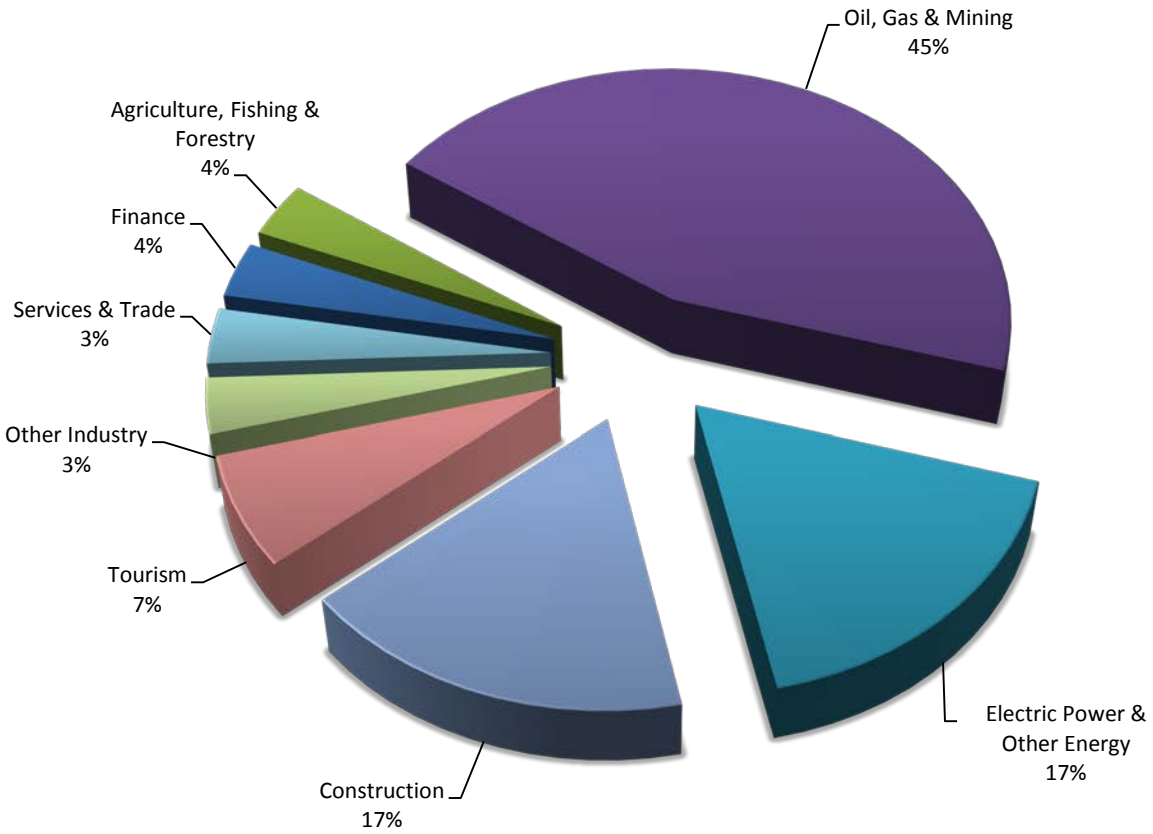


Chart 11: Distribution of Cases Registered under the ICSID Convention and Additional Facility Rules involving Investors with SEAP Nationality, by Economic Sector*:

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



* This sector classification is based on the World Bank's sector codes, available at http://siteresources.worldbank.org/PROJECTS/Resources/SectorCodesLists.pdf.

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, 35% 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 65% were resolved in a final award rendered by the tribunal. Where the tribunal rendered a final award, 18% dismissed all claims and 55% upheld the claims in part or in full. A further 27% of the awards declined ICSID jurisdiction (see Chart 12b).

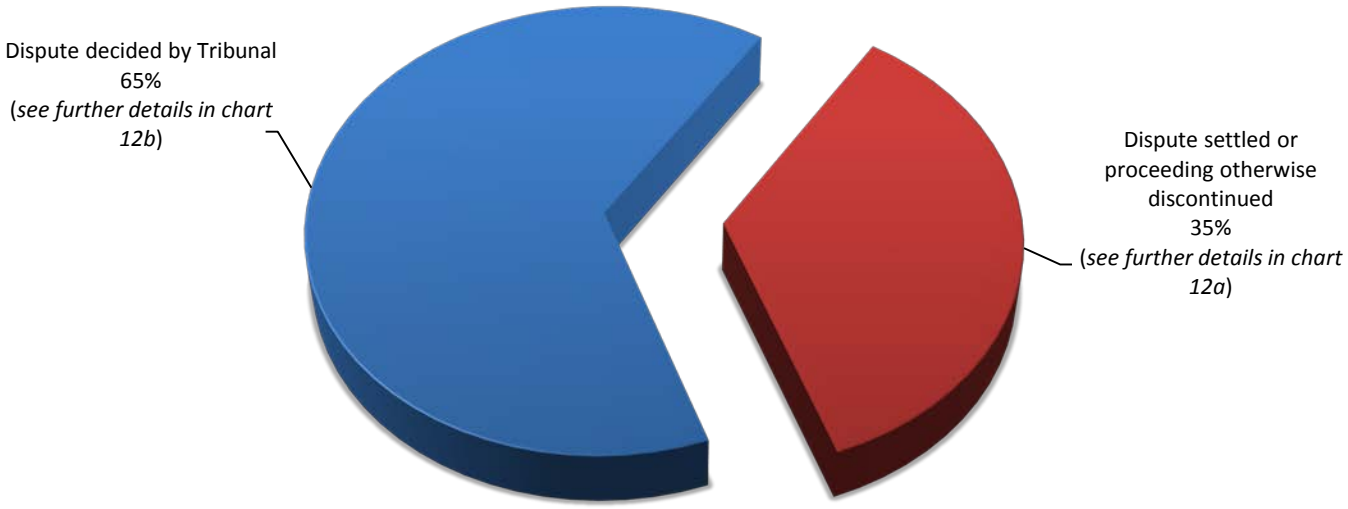
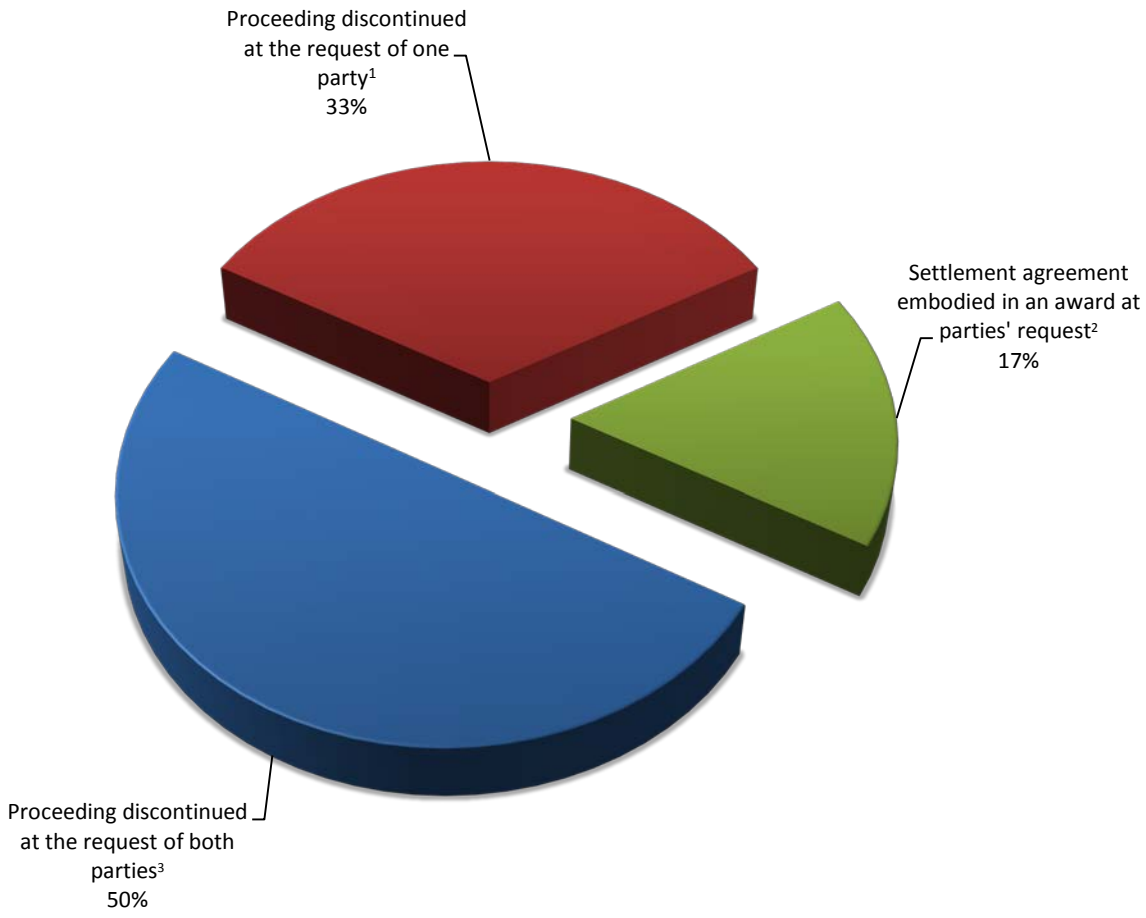


Chart 12a: Disputes Settled or Proceedings Otherwise Discontinued under the ICSID Convention and Additional Facility Rules involving Investors with SEAP Nationality – Basis:

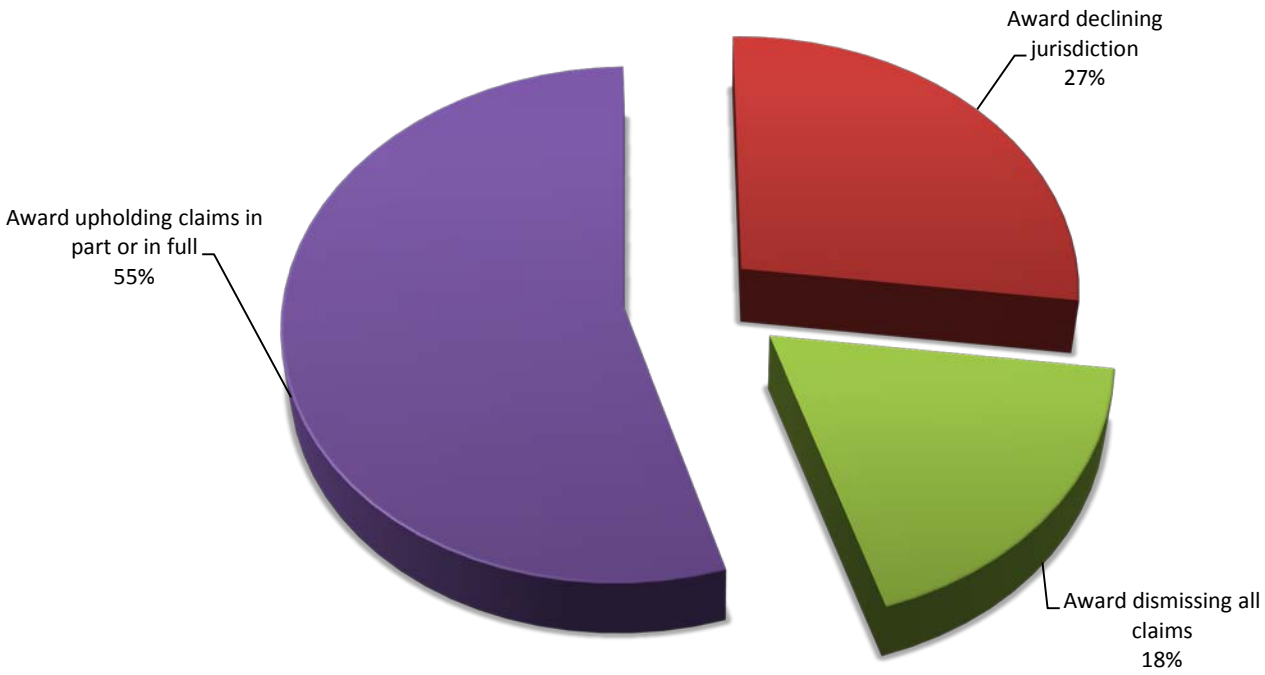


[1] ICSID Arbitration Rule 44. No case concluded to date on the basis of Arbitration (Additional Facility) Rule 50.

[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).

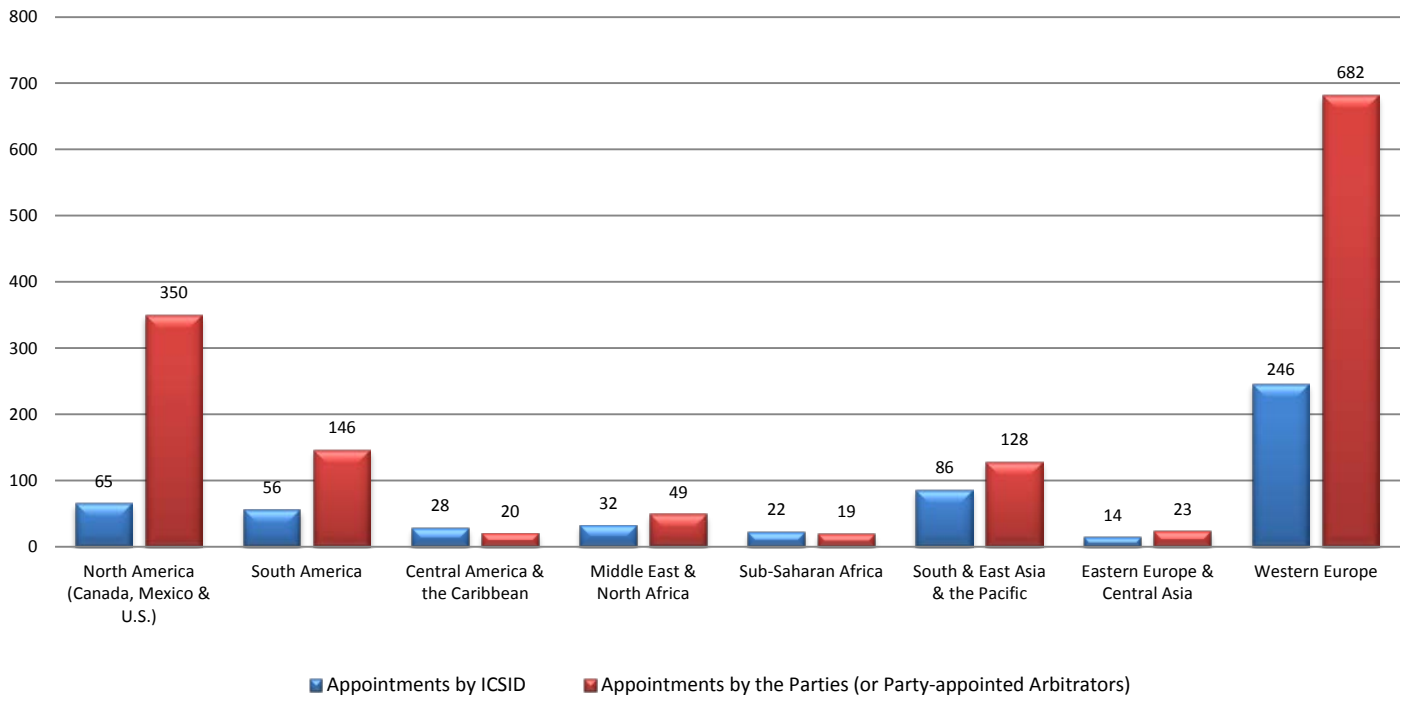
Chart 12b: Disputes Decided by Arbitral Tribunals under the ICSID Convention and Additional Facility Rules involving Investors with SEAP Nationality – Findings:



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*:

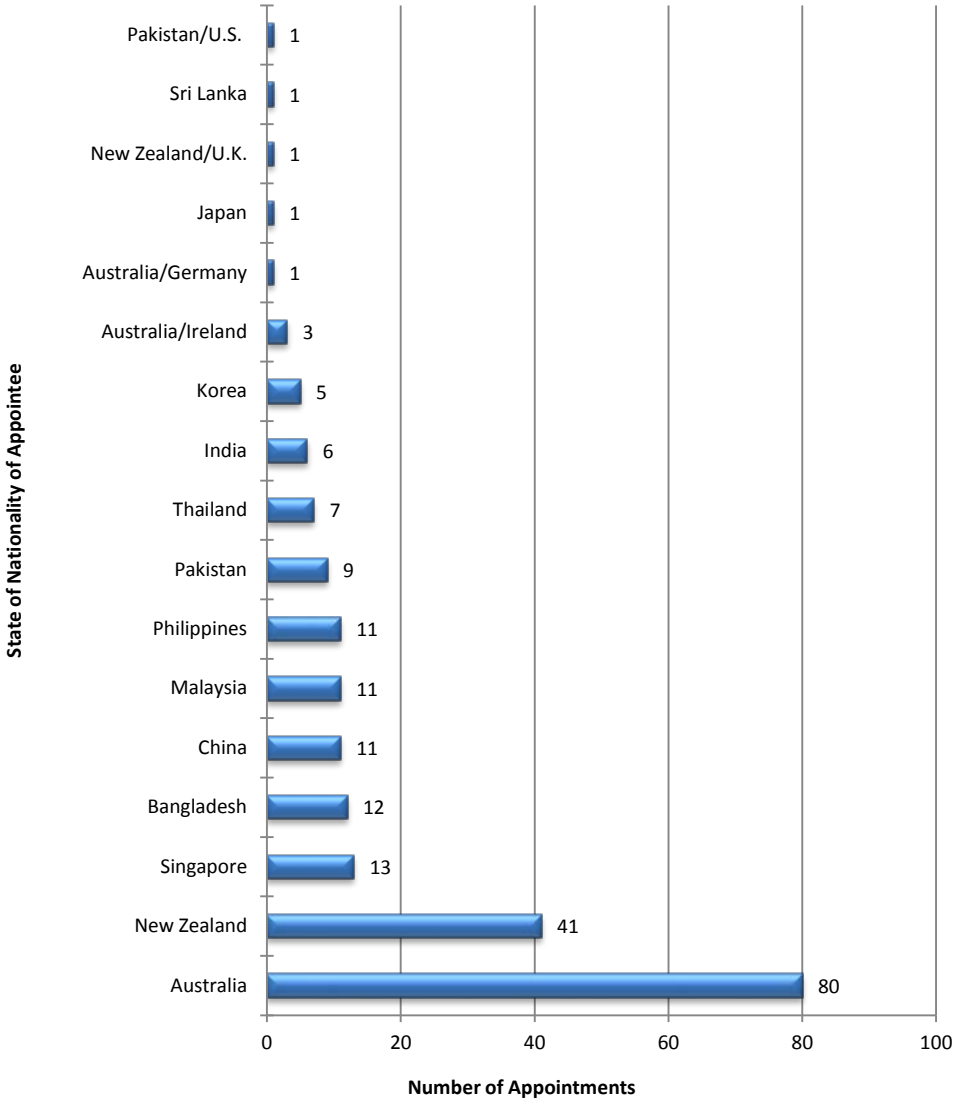
In approximately 72% of the appointments made in ICSID cases, the parties select the appointees (indicated in red, below). A number of such appointees are nationals of a SEAP state. The remaining 28% of appointments were made by ICSID (indicated in blue, below).



* The classification of the geographic regions above is based on the World Bank's regional system, available at http://databank.worldbank.org/data/views/variableselection/selectvariables.aspx?source=world-development-indicators, and also includes World Bank donor countries. The chart reflects appointments made to Tribunals and *ad hoc* Committees constituted until October 1, 2016.

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, as of October 1, 2016, about 11% of all appointments made in ICSID cases involved nationals from a SEAP State.



ANNEX 1 – SEAP Region (as of October 1, 2016)[5]

	SIGNATURE	ENTRY INTO FORCE
Afghanistan	Sep. 30, 1966	July 25, 1968
American Samoa		
Australia	Mar. 24, 1975	June 1, 1991
Bangladesh	Nov. 20, 1979	Apr. 26, 1980
Bhutan		
Brunei Darussalam	Sep. 16, 2002	Oct. 16, 2002
Cambodia	Nov. 5, 1993	Jan. 19, 2005
China	Feb. 9, 1990	Feb. 6, 1993
Fiji	July 1, 1977	Sep. 10, 1977
French Polynesia		
Guam		
Hong Kong SAR, China		
India		
Indonesia	Feb. 16, 1968	Oct. 28, 1968
Japan	Sep. 23, 1965	Sep. 16, 1967
Kiribati		
Korea, Democratic Republic of		
Korea, Republic of	Apr. 18, 1966	Mar. 23, 1967
Lao PDR		
Macao SAR, China		
Malaysia	Oct. 22, 1965	Oct. 14, 1966
Maldives		
Marshall Islands		

[5] The classification of the SEAP region is based on the World Bank's regional system, available at http://databank.worldbank.org/data/views/variableselection/selectvariables.aspx?source=world-development-indicators, and also includes World Bank donor countries.

	SIGNATURE	ENTRY INTO FORCE
Micronesia, Federated States of	June 24, 1993	July 24, 1993
Mongolia	June 14, 1991	July 14, 1991
Myanmar		
Nauru	Apr. 12, 2016	May 12, 2016
Nepal	Sep. 28, 1965	Feb. 6, 1969
New Caledonia		
New Zealand	Sep. 2, 1970	May 2, 1980
Northern Mariana Islands		
Pakistan	July 6, 1965	Oct. 15, 1966
Palau		
Papua New Guinea	Oct. 20, 1978	Nov. 19, 1978
Philippines	Sep. 26, 1978	Dec. 17, 1978
Samoa	Feb. 3, 1978	May 25, 1978
Singapore	Feb. 2, 1968	Nov. 13, 1968
Solomon Islands	Nov. 12, 1979	Oct. 8, 1981
Sri Lanka	Aug. 30, 1967	Nov. 11, 1967
Taiwan		
Thailand	Dec. 6, 1985	
Timor-Leste	July 23, 2002	Aug. 22, 2002
Tonga	May 1, 1989	Apr. 20, 1990
Tuvalu		
Vanuatu		
Vietnam		

ANNEX 2 – List of ICSID Cases involving State Parties in the SEAP Region (as of October 1, 2016)

	Case No.	Claimant(s)		Respondent	Case Status
1.	ARB/81/1	Amco Asia Corporation and others	v.	Republic of Indonesia	CONCLUDED
2.	ARB/84/2	Colt Industries Operating Corporation	v.	Republic of Korea	CONCLUDED
3.	ARB/87/2	Mobil Oil Corporation and others	v.	New Zealand	CONCLUDED
4.	ARB/87/3	Asian Agricultural Products Limited	v.	Democratic Socialist Republic of Sri Lanka	CONCLUDED
5.	ARB/87/4	Occidental of Pakistan, Inc.	v.	Islamic Republic of Pakistan	CONCLUDED
6.	ARB/92/2	Scimitar Exploration Limited	v.	Bangladesh and Bangladesh Oil, Gas and Mineral Corporation	CONCLUDED
7.	ARB/94/1	Philippe Gruslin	v.	Malaysia	CONCLUDED
8.	ARB/96/2	Misima Mines Pty. Ltd.	v.	Independent State of Papua New Guinea	CONCLUDED
9.	ARB/99/3	Philippe Gruslin	v.	Malaysia	CONCLUDED
10.	ARB/00/2	Mihaly International Corporation	v.	Democratic Socialist Republic of Sri Lanka	CONCLUDED
11.	ARB/01/13	SGS Société Générale de Surveillance S.A.	v.	Islamic Republic of Pakistan	CONCLUDED
12.	ARB/02/2	Impregilo S.p.A.	v.	Islamic Republic of Pakistan	CONCLUDED
13.	ARB/02/6	SGS Société Générale de Surveillance S.A.	v.	Republic of the Philippines	CONCLUDED
14.	ARB/03/3	Impregilo S.p.A.	v.	Islamic Republic of Pakistan	CONCLUDED
15.	ARB/03/25	Fraport AG Frankfurt Airport Services Worldwide	v.	Republic of the Philippines	CONCLUDED
16.	ARB/03/29	Bayindir Insaat Turizm Ticaret Ve Sanayi A.S.	v.	Islamic Republic of Pakistan	CONCLUDED
17.	ARB/04/3	Cemex Asia Holdings Ltd	v.	Republic of Indonesia	CONCLUDED
18.	ARB/04/10	Alstom Power Italia SpA and Alstom SpA	v.	Republic of Mongolia	CONCLUDED
19.	ARB/05/7	Saipem S.p.A.	v.	People's Republic of Bangladesh	CONCLUDED
20.	ARB/05/10	Malaysian Historical Salvors, SDN, BHD	v.	Malaysia	CONCLUDED
21.	ARB/06/10	Chevron Bangladesh Block Twelve, Ltd. and Chevron Bangladesh Blocks Thirteen and Fourteen, Ltd.	v.	People's Republic of Bangladesh	CONCLUDED
22.	ARB/07/3	Government of the Province of East Kalimantan	v.	PT Kaltim Prima Coal and others	CONCLUDED
23.	ARB/09/2	Deutsche Bank AG	v.	Democratic Socialist Republic of Sri Lanka	CONCLUDED

	Case No.	Claimant(s)		Respondent	Case Status
24.	ARB/09/18	Cambodia Power Company	v.	Kingdom of Cambodia	CONCLUDED
25.	ARB/10/11	Niko Resources (Bangladesh) Ltd.	v.	Bangladesh Petroleum Exploration & Production Company Limited ("Bapex") and Bangladesh Oil Gas and Mineral Corporation	PENDING
26.	ARB/10/18	Niko Resources (Bangladesh) Ltd.	v.	Bangladesh Petroleum Exploration and Production Company Limited ("Bapex") and Bangladesh Oil Gas and Mineral Corporation ("Petrobangla")	PENDING
27.	ARB/11/8	Agility for Public Warehousing Company K.S.C.	v.	Islamic Republic of Pakistan	CONCLUDED
28.	ARB/11/12	Fraport AG Frankfurt Airport Services Worldwide	v.	Republic of the Philippines	CONCLUDED
29.	ARB/11/13	Rafat Ali Rizvi	v.	Republic of Indonesia	CONCLUDED
30.	ARB/11/15	Ekran Berhad	v.	People's Republic of China	CONCLUDED
31.	ARB/11/27	Baggerwerken Decloedt En Zoon NV	v.	Republic of the Philippines	PENDING
32.	ARB/12/1	Tethyan Copper Company Pty Limited	v.	Islamic Republic of Pakistan	PENDING
33.	ARB/12/14	Churchill Mining PLC	v.	Republic of Indonesia	PENDING
34.	ARB(AF)/12/6	Lao Holdings N.V.	v.	Lao People’s Democratic Republic	PENDING
35.	ARB/12/37	LSF-KEB Holdings SCA and others	v.	Republic of Korea	PENDING
36.	ARB/12/40	Planet Mining Pty Ltd	v.	Republic of Indonesia	PENDING
37.	ARB/13/1	Karkey Karadeniz Elektrik Uretim A.S.	v.	Islamic Republic of Pakistan	PENDING
38.	ARB/13/33	PNG Sustainable Development Program Ltd.	v.	Independent State of Papua New Guinea	CONCLUDED
39.	ARB/14/15	Nusa Tenggara Partnership B.V. and PT Newmont Nusa Tenggara	v.	Republic of Indonesia	CONCLUDED
40.	ARB/14/25	Ansung Housing Co., Ltd.	v.	People's Republic of China	PENDING
41.	ARB/15/2	Lighthouse Corporation Pty Ltd and Lighthouse Corporation Ltd, IBC	v.	Democratic Republic of Timor-Leste	PENDING
42.	ARB/15/17	Hanocal Holding B.V. and IPIC International B.V.	v.	Republic of Korea	CONCLUDED
43.	ARB(AF)/16/2	Lao Holdings N.V.		Lao People’s Democratic Republic	PENDING
44.	ARB/16/22	Shell Philippines Exploration B.V.		Republic of the Philippines	PENDING
45.	ARB/16/25	Raymond Charles Eyre and Montrose Developments (Private) Limited		Democratic Socialist Republic of Sri Lanka	PENDING
46.	ARB/16/26	Oleovest Pte. Ltd.		Republic of Indonesia	PENDING