



Skiljedomskommittén

29 november 2023





Mötets öppnande

Rapport från ICC internationellt

Ordf. Therese Isaksson, Partner, Westerberg & Partners
Vice ordf. Patricia Shaughnessy, Docent, Stockholms universitet
Henrik Blomqvist, Policyansvarig, ICC Sverige

Vägledning kring sanktioner från *UIA*

Lars Perhard, CERTA Lars Perhard Advokatbyrå AB

Förebyggande och effektiv konflikthantering

Mike Mcilwrath, skiljedomare och ordförande, ICC Governing Body for
Dispute Resolution Services

Förebyggande och effektiv konflikthantering: företagsperspektiv

Lena Hellman, Senior Group Legal Counsel, Ericsson
David Gräslund, Legal Counsel, Skanska Sverige AB

Diskussion kring förebyggande och effektiv konflikthantering

Nästa möte och avslut



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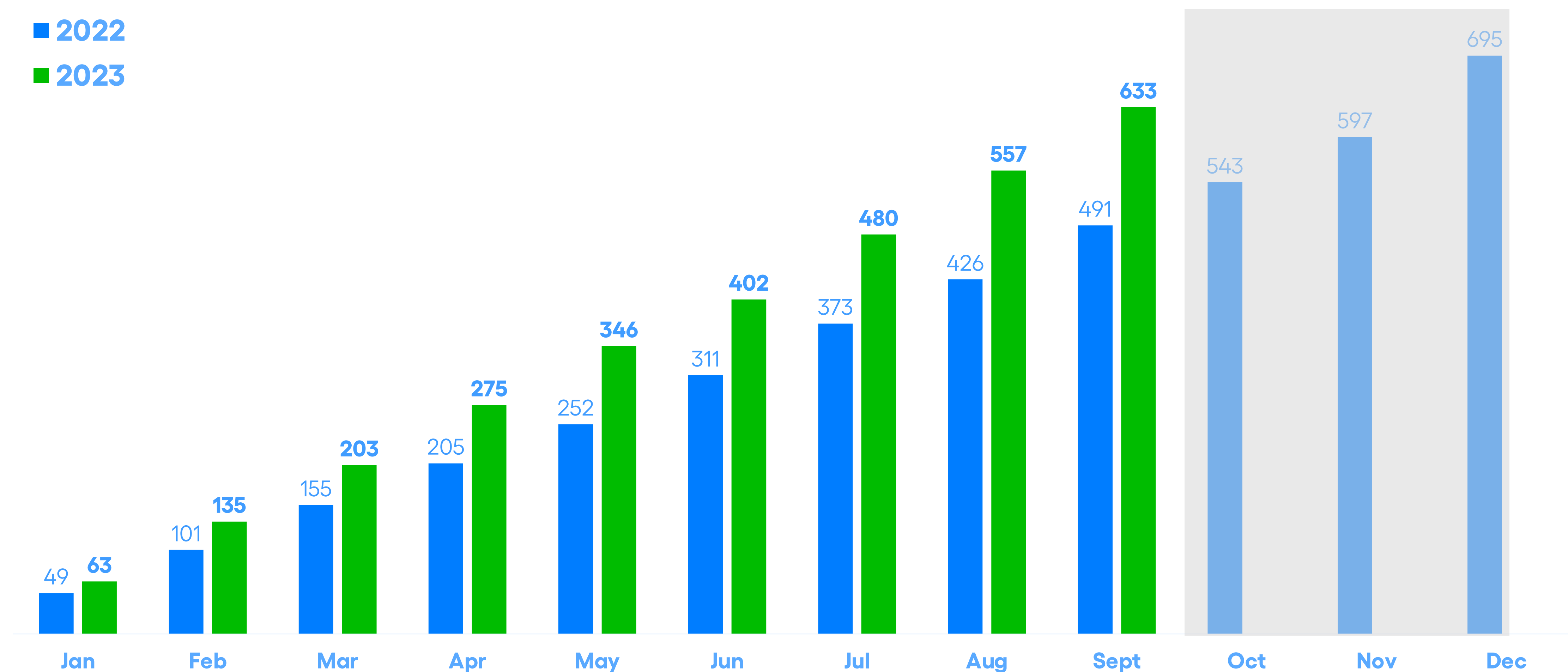




Höjdpunkter från höstens möte i den globala kommissionen

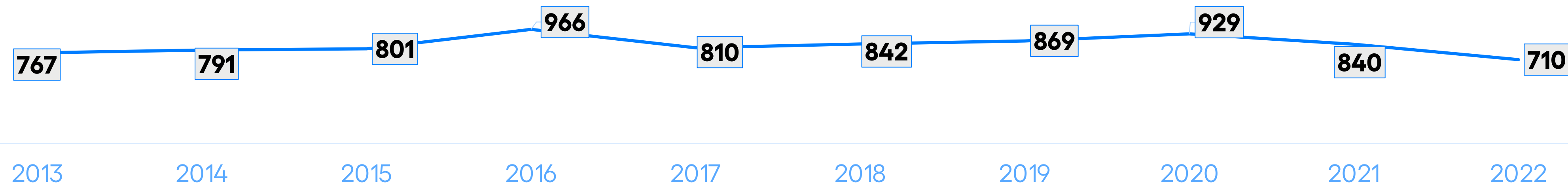
- Task Force “Addressing Issues of Corruption in International Arbitration”
- International Dispute Resolution in a World Pervaded by Artificial Intelligence
- Nyhet: Working Group on Expedited Procedure Provisions

Monthly case filings, 2023 vs/ 2022

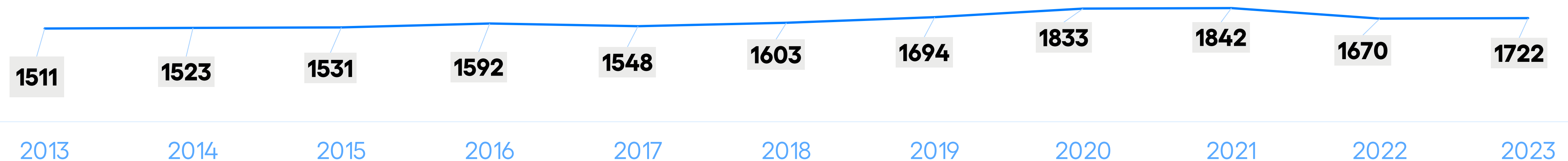


2022 ICC case data: what we know

- ICC case filings lowest in 10+ years:



- Drop did not impact 2022 ICC arbitration revenue
- Most major arbitral institutions saw drop in cases due to extreme economic stress, explained by industry reports as “time lag” before widely-predicted increase in claims materializes
- Number of ICC pending cases is returning to pre-pandemic levels:



- 2023 ICC case filings to date are recovering and on par with 2021 levels; arbitration revenue forecast is on track

2022 ICC case data: what we know

Life cycle of disputes remains **unchanged**

- **16%** of revenue results from transactions done **2 years** ago
- **37%** of revenue results from transactions done **3-5 years** ago
- **33%** of revenue results from transactions done **6-10 years** ago



2022 ICC case data: what we know

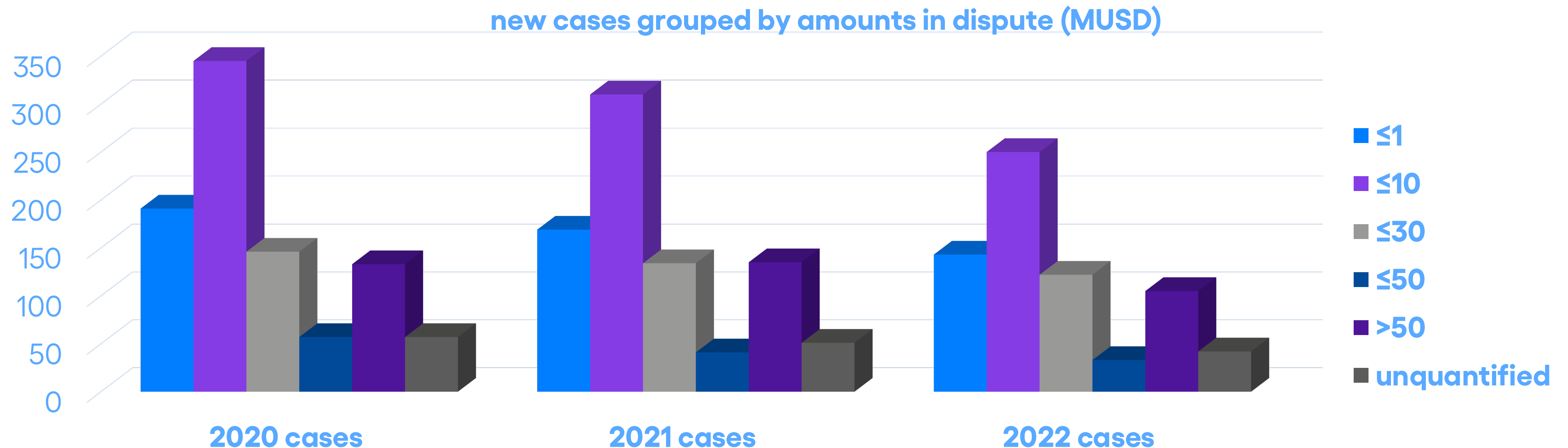
Despite drop in new cases, low, mid and very large disputes were strong segments

Average amount in dispute:

- **grew by 8%** in new cases
- **grew by 25%** in pending cases

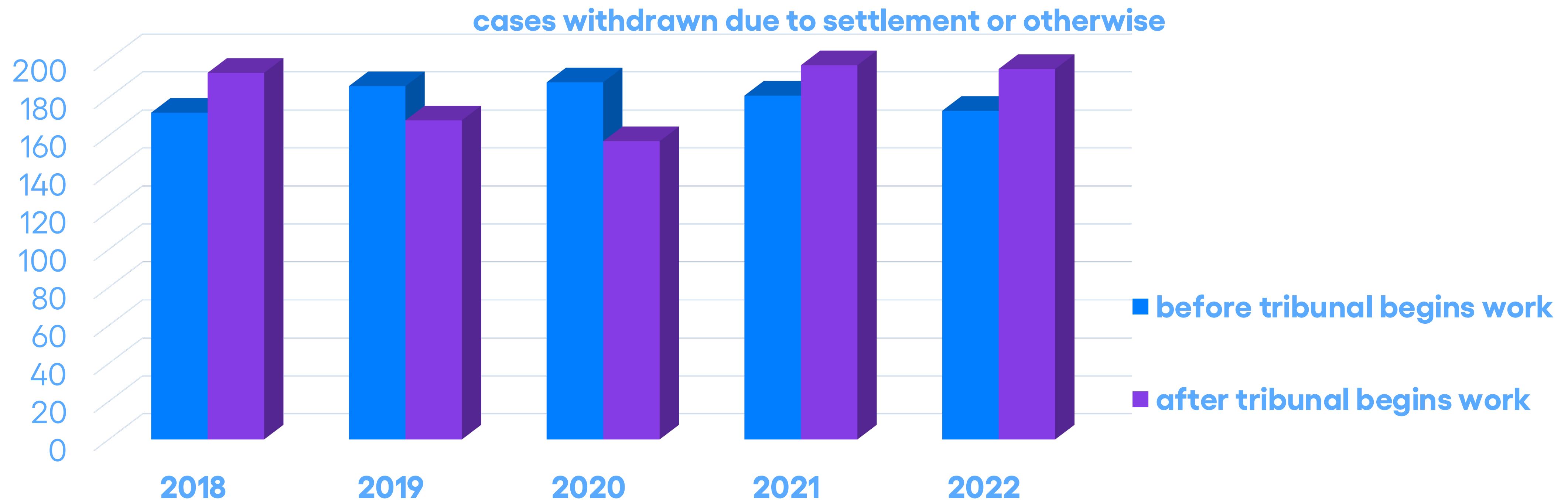
Median amount in dispute:

- remained stable in new cases
- **grew by 11%** in pending cases



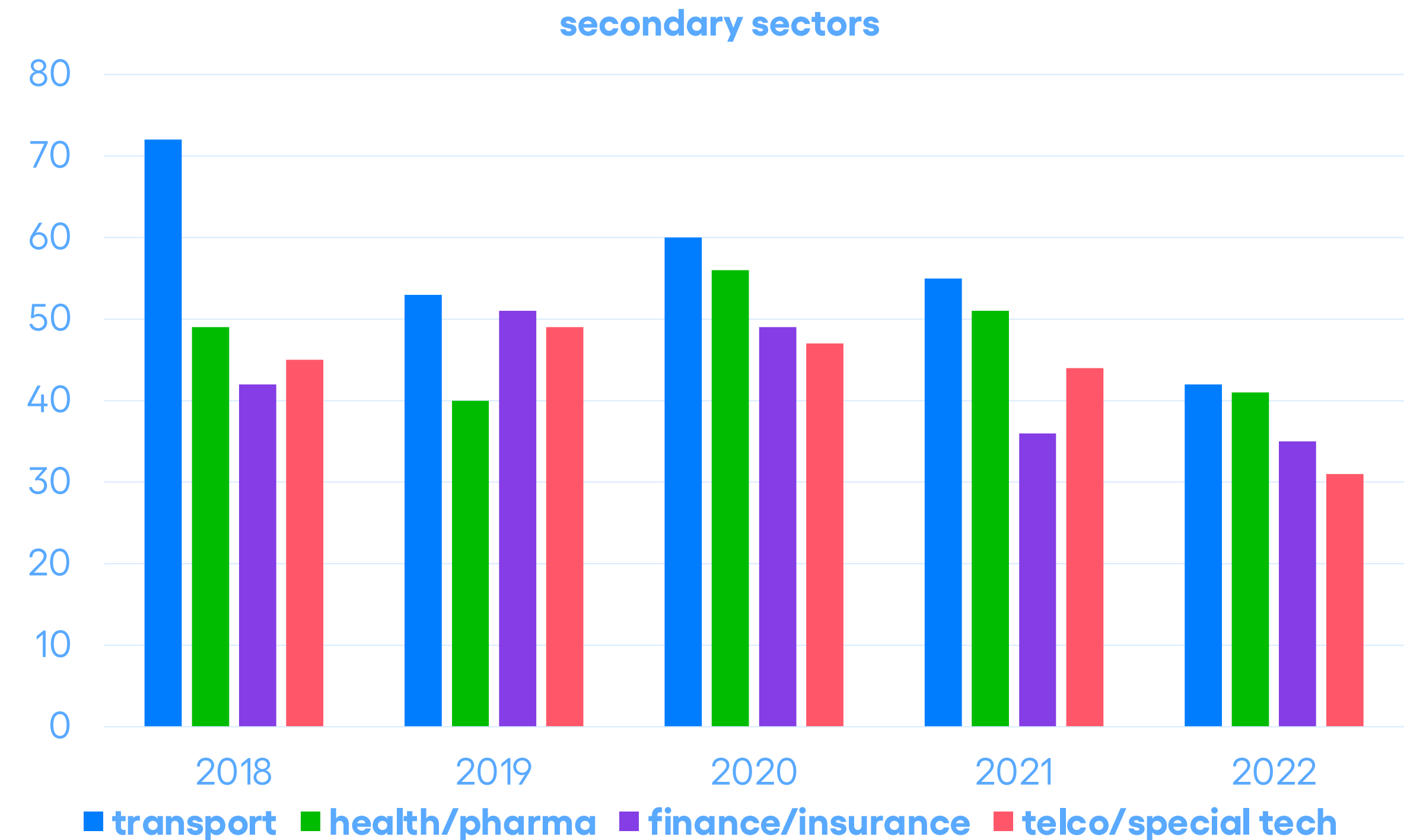
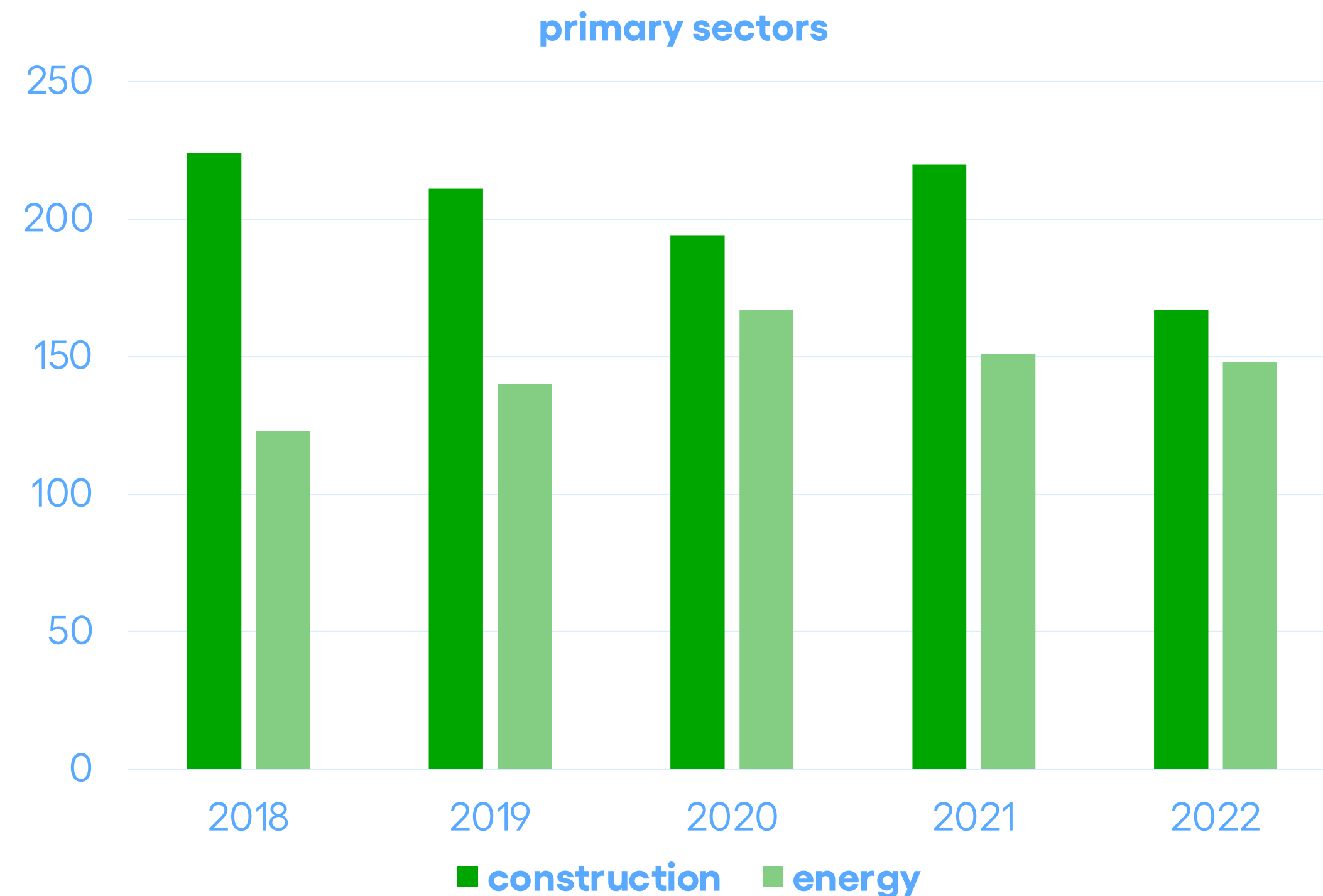
2022 ICC case data: what we know

The volume of cases that settle or otherwise stop prematurely is stable



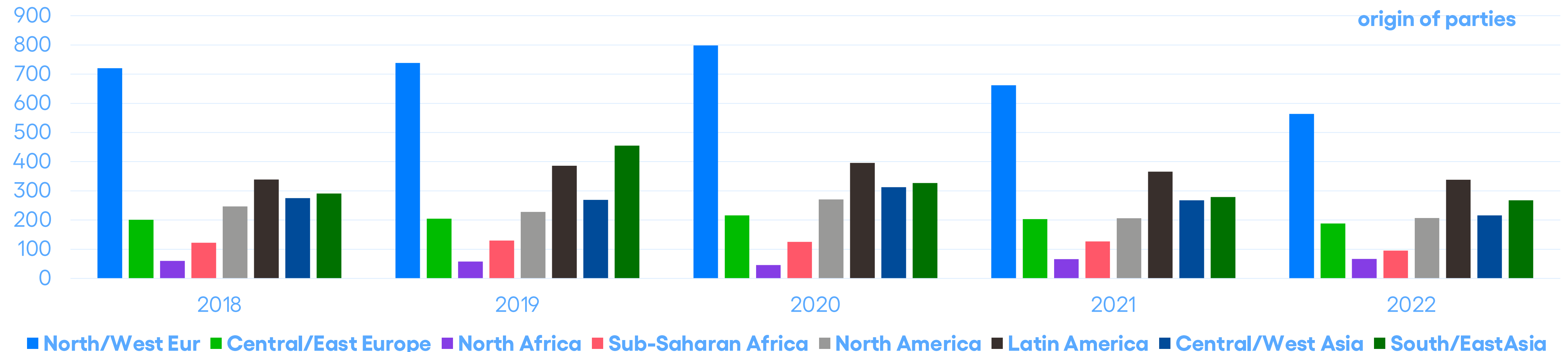
2022 ICC case data: opportunities | sectors

- Disputes from our **primary sectors** expected to grow. They present a high-value opportunity in light of energy transition, coal-to-gas switching, Ukraine war / reconstruction, and other geopolitical tensions
- While numbers in our **secondary sectors** are smaller, market forecasts expect growth in industries where we monitor transactions closely and have significant presence



2022 ICC case data: opportunities | parties and regions

- Number of parties from **North America, South/East Asia and Africa** declined or stayed flat. Growth opportunity exists for high-value matters across our core sectors in these regions



- 2022 drops in **parties from Central/West Asia, North/West Europe, North America and Central/East Europe** are recovering in 2023
- States and SoEs** were parties in a record **25%** of 2022 filings. Growth opportunities identified in Asia, Central/East Europe, Africa and Latin America along key sectors / investment flows
- 30% of 2022 filings involved parties from the same country, especially **Brazil, US and Mexico**. Capturing larger segments of the domestic market in these countries + **India** is a priority



31st VIS Moot

- Världens största rättegångsspel inom skiljedom
- 31:a upplagan äger rum den 21–28 mars 2024 i Wien under ICC:s Skiljedomsgregler
- Anmälan nu öppen för skiljedomare som vill bidra med sin tid och expertis till tävlingen

[För mer information »](#)

Att ha koll på

- Eventuell delegationsresa till ICC:s Skiljedomstol hösten 2024.
Datum TBC
- ICC Case Connect: Möjlighet att ladda upp CV:n på den digitala plattformen
Maila: caseconnect@iccwbo.org
- Mandat för ledamöter i den globala kommissionen ska förnyas våren 2024.
Nästa mandatperiod 1 juli 2024 – 30 juni 2027

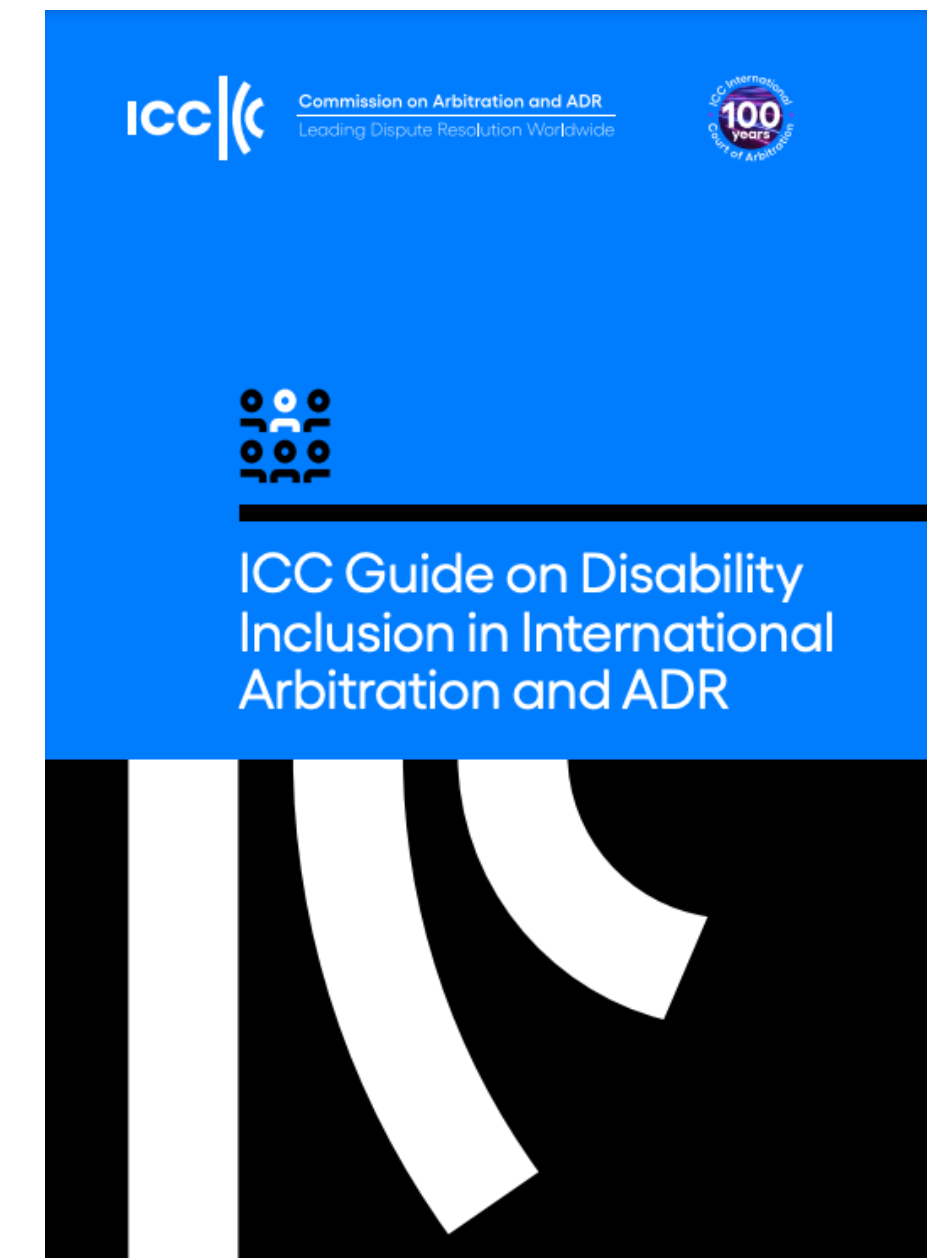
Nya publikationer



[Guide on Effective Conflict Management](#)



[Report on Facilitating Settlement](#)



[Guide on Disability Inclusion](#)

ICC Dispute Resolution Library: [länk »](#)

Kommande skiljedomsevent



20 % rabatt för
ICC-medlemmar
med rabattkoden
SWE-1824

2023

2 december: 6th ICC India Arbitration Day, Delhi

2024

18–19 januari: 12th ITA-IEL-ICC Joint Conference on International Energy Arbitration, Houston

5–10 februari: 19th ICC Mediation Competition, Paris

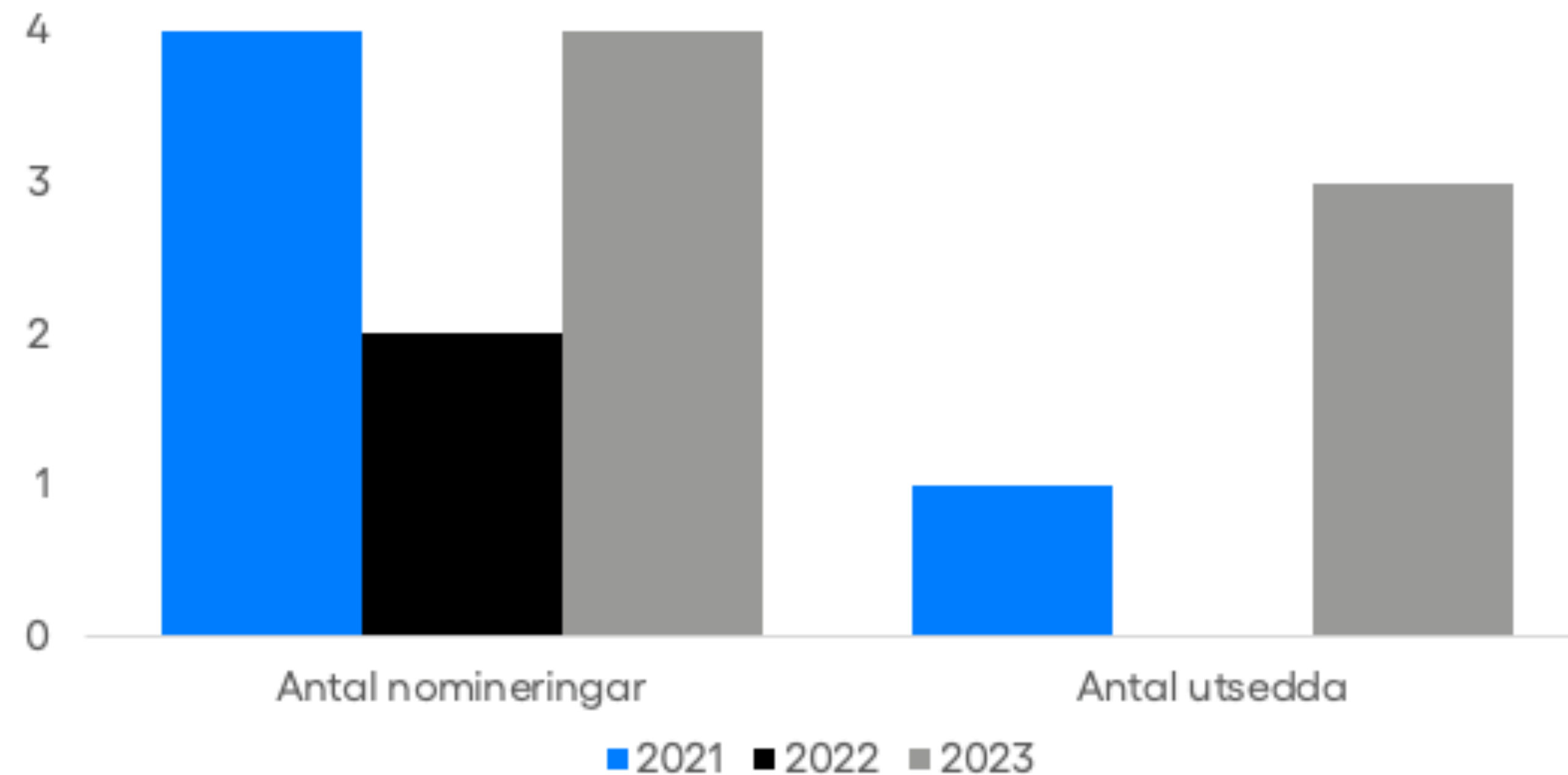
26–27 februari: 12th ICC MENA Conference on International Arbitration, Dubai

18–20 mars: 8th ICC European Conference on International Arbitration, Paris

23 april: 2nd ICC Tokyo Arbitration Day, Tokyo

För en fullständig lista på event, se [ICC Knowledge 2 Go >>](#)

Nomineringar till ICC:s Skiljedomstol



ICC Sveriges nomineringskommitté består av:

Ordf. Maria Nisell, Advokat Maria Nisell AB

Linda Landén, Sandart & Partner Advokatbyrå KB

Stefan Bocker, Mannheimer Swartling Advokatbyrå AB



Vägledning kring sanktioner från *Union Internationale des Avocats*

Lars Perhard, CERTA Lars Perhard Advokatbyrå AB





Förebyggande och effektiv konflikthantering

Mike Mcilwrath, ICC Governing Body for Dispute
Resolution Services



M~D

M~D

MDisputes

Michael Mcilwrath

29 November 2023

A few words about ICC

ICC

Institutional representative of 45 million companies since 1923

Promotes int'l trade, responsible business conduct, global regulation and dispute resolution services

We ensure that the voice of business is heard

Five strategic pillars

“What we want to be famous for”



1

Enabling
global trade



2

Promoting access
to justice, integrity
and respect
for the rule of law



3

Accelerating
sustainability and
climate action



4

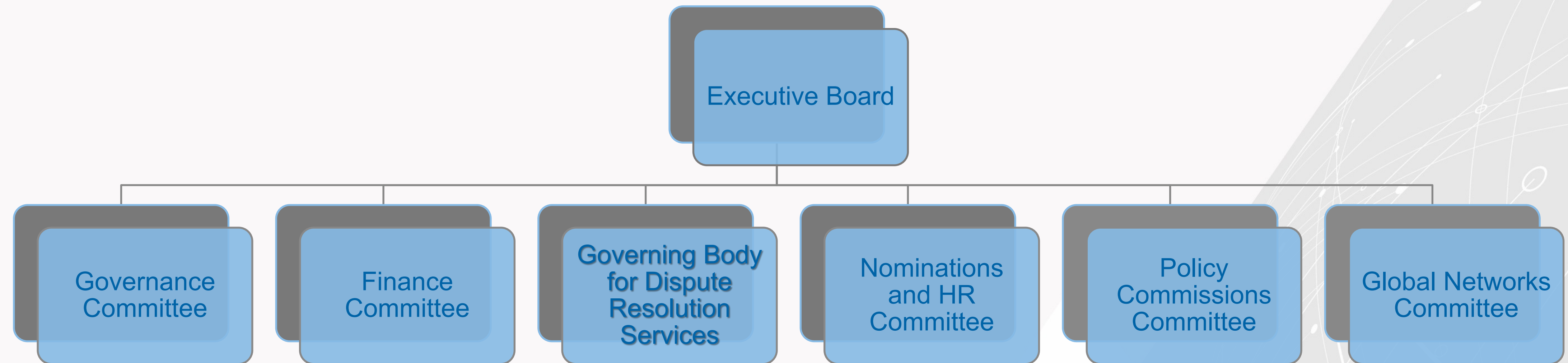
Shaping an open,
trusted and
interoperable
digital economy



5

Strengthening
multilateral
cooperation

ICC GOVERNANCE

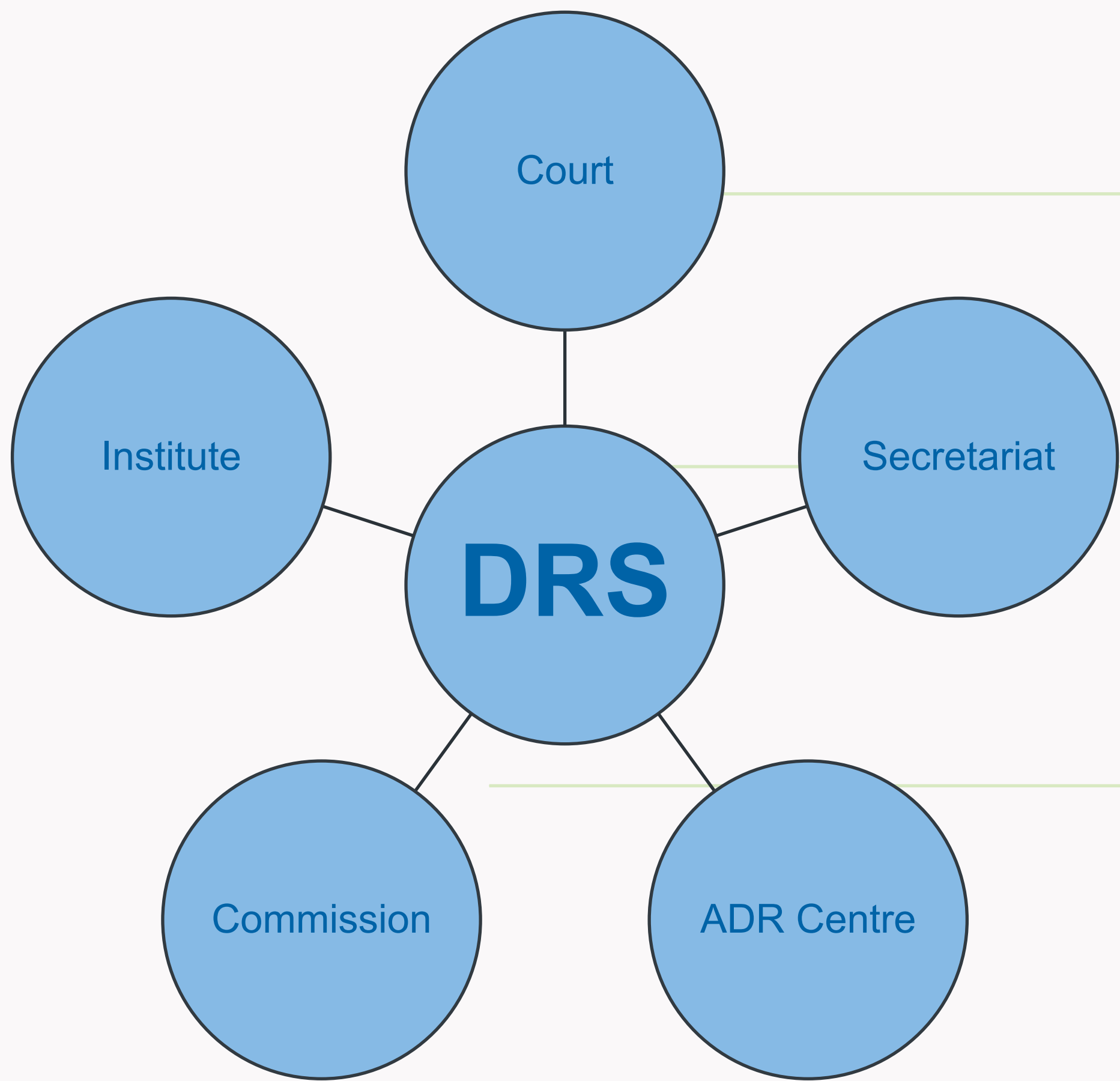


Exec Board subcommittees

Terms of reference by which Exec board delegates authority

Governing Body for Dispute Resolution Services – a committee of the Executive Board.

ICC DISPUTE RESOLUTION SERVICES (DRS)



International Court of Arbitration
175 members, a president, and 17 vice presidents

ICC Secretariat: staff of 130 with 14 case management teams around the world

International Centre for ADR
Part of ICC Secretariat, provides multiple dispute resolution services: mediation, expertise, dispute boards and DocDex procedures.

ICC Commission on Arbitration and ADR
Global “think tank” for dispute resolution, with over 900 members.
Task forces and reports to better support the needs of parties in international commerce

The Commission's First Years



Owen Young
General Counsel,
General Electric

**First Chair of ICC Commission
on Arbitration**

Post World War I – international infrastructure lacking

1919: “Merchants of Peace” found the ICC

1920: ICC Constitution

1920: ICC Commission on Arbitration

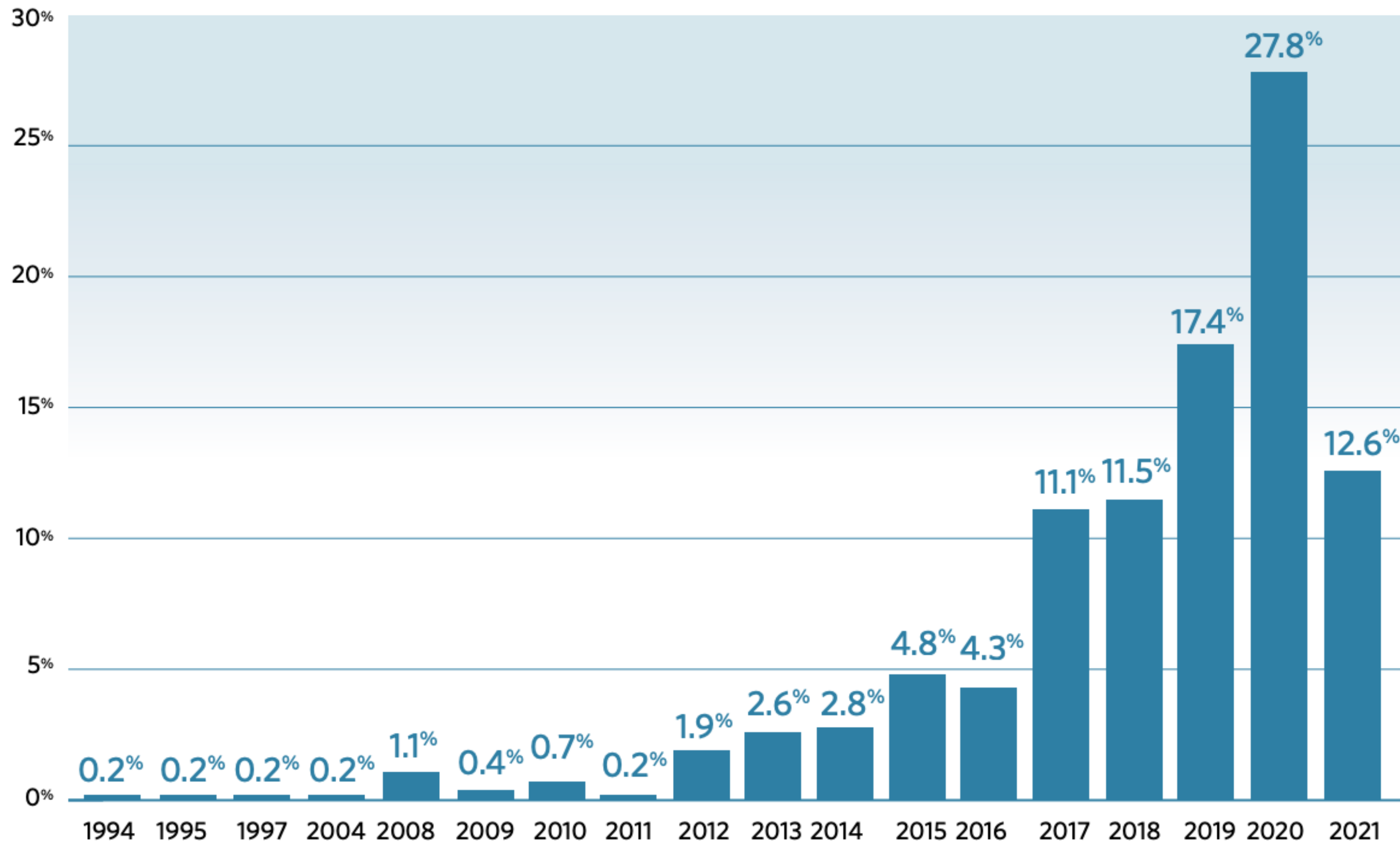
1922: ICC Rules of Arbitration

1923: ICC Court of Arbitration

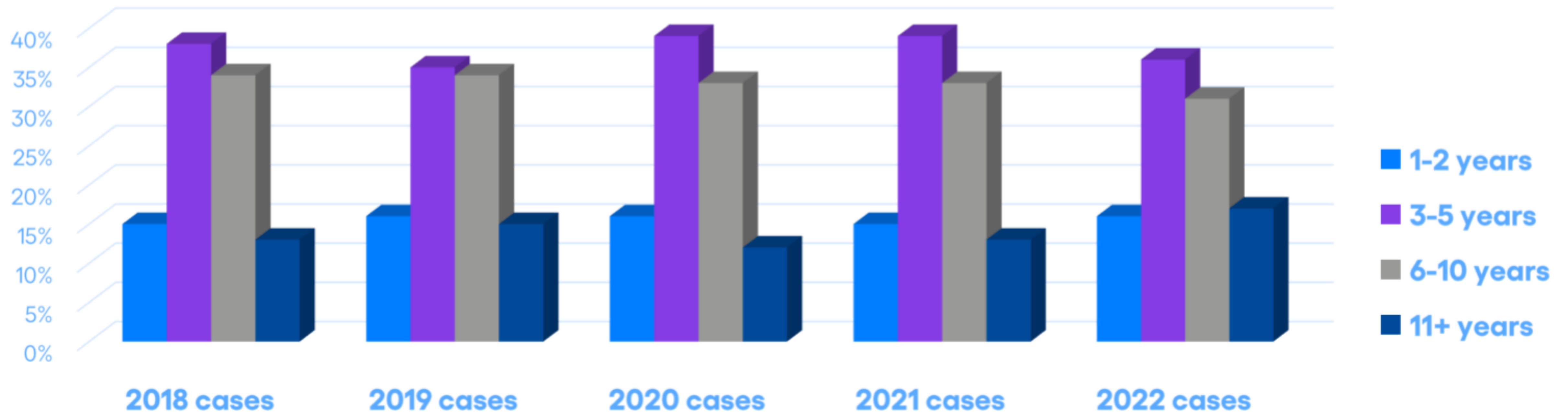
A few words about planting trees

SIAC: from contract signature to RfA

Dates of Contracts for Cases Filed at SIAC in 2021



time between contract conclusion and filing of case



A few words about the important roles played by National Committees

ICC NATIONAL COMMITTEES

Guidance coming soon to help align NCs with ICC DRS objectives

DRS Mission: provide access to justice and rule of law to everyone, every day, everywhere

DRS Vision: be the preferred, one-stop shop for dispute prevention and resolution, meeting the needs of global business

- **Widen the community:** include in-house counsel, decision-makers, and state lawyers
ICC at the negotiating table
- **Communicate ICC expertise**
Lawyers/influencers such as M&A, JVs/shareholders
- **Help SME's with lower value disputes**
Promote Expedited Rules, ADR, more tools to come
- **Expand access to justice and rule of law**
Build court capabilities on arbitrability of disputes
- **Drive awareness of ICC brand and value**
Distinct from courts and other institutions
- **Promote use of ICC Dispute Resolution Library**

ICC NATIONAL COMMITTEES

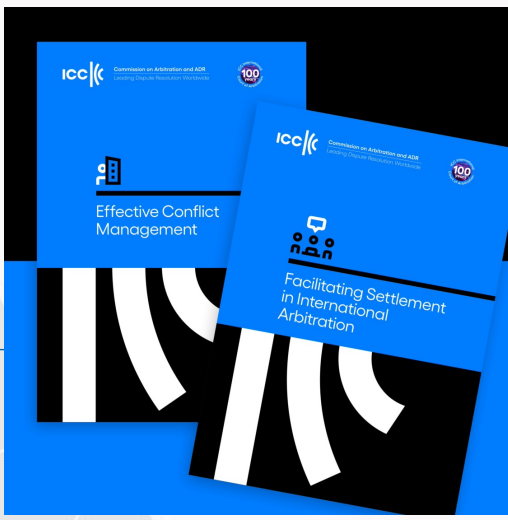
NC's can help with particular industries. Examples:

- Energy transition / renewables
- LNG & energy distribution
- Construction
- Technology
- Transport
- Agribusiness

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A few words on the Task Force on Arbitration & ADR



- **Mandate of the ICC Task Force on “ADR and Arbitration”:**

- 1) Study how different ICC ADR Services are being used and analyse whether they are sufficiently known and tailored to the needs of different type of businesses, including SMEs, and state entities.
- 2) Study how to facilitate settlement within the arbitration process.

- **Two Key Tools:**

- 1) **Guide on Effective Conflict Management**

Includes:

- Pre-action Risk Assessment Tool
- Visual/infographic

- 2) **Report on Settlement Facilitation in International Arbitration**



Objective of the Guide is *‘to provide an easy-to-understand document for business managers, as well as in-house and outside counsel, and state entities who may not be well-versed in all aspects of the currently available ICC ADR Services’* in **two parts**:

- **Proactive Conflict Management** covers the ways in which businesses can approach conflict management **without assistance**.
- **Assisted Conflict Management** covers ICC ADR Services and how and when to effectively use them.

1. Internal company policies and procedures for early dispute management

2. Effective dispute resolution clauses

3. Internal awareness of conflict management

Proactive Conflict Management includes:

1. Developing and implementing internal company policies and procedures for early dispute management.
2. Drafting and deploying effective dispute resolution clauses.
3. Increasing internal awareness of conflict management.

Assisted Conflict Management:

- Conflict management with assistance
 - How and when to effectively use ICC ADR Services:
bleu boxes!
- **Before** commencement of arbitration:
- Mediation
 - ‘Non-binding Evaluation’
 - ‘Binding Expert Determination’
 - Dispute Boards for dispute prevention and resolution
- ADR Services used to facilitate settlement **during** arbitration:
- **Sealed Offers:** Insufficiently known to users but in demand for settlement purposes.
 - **Party Engagement:** Before an arbitration starts and during the arbitration proceedings.

- **Are arbitrators taking steps to facilitate settlement?**

“The debate has now moved from whether arbitrators (and arbitral institutions) should take steps to facilitate settlement, to how that should be done.”

- **Why is arbitrator assistance needed?**

“In-house counsel are therefore looking for assistance so that they can get to mediation more effectively, without the fear of looking weak by proposing it to the other side.”



How should arbitrators help?

- I. Preliminary views on the merits by arbitrators
 - II. Chairing Settlement Conferences
 - III. Access to Mediation
 - IV. Case management techniques helping to facilitate settlement
- The Report does NOT recommend either of them.
 - The Report creates awareness.
 - Report flags the importance of necessary proper training.



CMC I and CMC II

Case management techniques helping to facilitate settlement – ‘indirect effect’

- Raise settlements at the first Case Management Conference (CMC)
- **Mid-stream conference & optimizing the arbitration procedure**

**Finally, a few words from an
old in-house counsel about
expectations in disputes**

“IF YOU ARE MARKETING A PRODUCT AS AN ARBITRATOR, IT IS ESSENTIAL THAT YOU HAVE DIFFERENT PRODUCTS. PRODUCT 1: YOU BUY INTO IT, AND I GIVE YOU AN ANSWER IN 14 DAYS. BUT I HAVE TWO MORE PRODUCTS, WHICH ARE CALLED SIX MONTHS AND ‘LONG AS A PIECE OF STRING’. YOU JUST SIGN UP FOR A, B OR C.”

-- AUSTRALIAN ARBITRATOR/MEDIATOR JOHN WADE



SPEED OF ARBITRATION: *IDEALLY*

Informal survey litigators & managers

1. For a dispute of medium complexity, value of \$5-10 million, how long should an arbitration take?
2. What if it were an *expedited* or fast track arbitration?

VIEWS OF LAWYERS (AUDIO)

Two arbitration specialists, English and Italian:

Arbitration? *“Should take 9 months to one year.”*

Expedited? *“6 months”*

German arbitration lawyer:

Arbitration? *“International arbitration, if conducted very efficiently, could be within 6 months after the Terms of Reference have been signed, but average is probably 2 years.”*

Expedited? *“A fast track should last max. 3 months.”*

Senior in-house counsel (Siemens, Germany):

Arbitration: *“Medium arbitration should not take more than 2 years.”*

Expedited: *“And 6 to 9 months for **expedited** arbitration.”*

LEAD GE LITIGATORS (AUDIO)

Litigation lawyer	Arbitration	Expedited
GE Corp	12 months	6 months
GE Capital	12 months	6 months
GE Corp	12 months	6 months
GE Corp	18 months	6 months
GE Consumer	18 months	6 months
GE Capital	12 months	3 months
NBC/Universal	12 months	3 months
GE Healthcare	12 months	6 months
GE Corp	18 months	3 months
GE Aviation	18 months	6 months
GE Corp	12 months	4 months
GE Capital	12 months	6 months
GE Corp	9 months	3 months
GE Corp	18 months	6 months
GE Capital	12 months	6 months
GE Energy	18 months ("without discovery")	3 months

SENIOR COMMERCIAL MANAGERS

Three business leaders in Doha, Qatar:

1. **Arbitration?** “It takes a *long* time... maybe, could take a couple of months”
Expedited? “1 week or 2 weeks.”
2. **Arbitration?** “2-3 months for medium complexity arbitration, and 1 month for *expedited* arbitration.”
3. **Arbitration?** “For medium arbitration... a couple of months and 3 to 4 weeks for *expedited* arbitration.”

US executive, global business

Arbitration? “Should take only 30 days.”
Expedited? “15 days.”

BUSINESS SCHOOL PROFESSOR

Michael Wheeler, Associate Dean, Harvard Business School:

Arbitration? “If you are talking about a construction example, I think you want to do it in days.”

“In ‘*days*’? From the filing of an arbitration request to an outcome?”

“Yes, in *days*. If you’re trying to put up a skyscraper, I don’t think people want to be sitting around with the whole project stopped because you don’t know where you stand.”

BUSINESS LEADER

General Manager, global business
(>\$200M/year):

Question: “What would you say if I told you your arbitration of a dispute involving \$3-5MM might take **three years** to complete?”

Response: “I’d say that’s absolutely crazy. Why would you file for arbitration at that point? It makes no sense to me.”

Thank you!

I. Preliminary views on the merits by arbitrators:

- Generally, after the taking of evidence
- By joined request of the parties or
- Suggested by the Arbitral Tribunal but not against the will of one party
- Give an offline snapchat view
- Requires good knowledge of the dispute from the tribunal

II. Chairing Settlement Conferences:

- With decision makers of the parties
- Preliminary view turn into a settlement
- NOT a mediation; it is part of the arbitration and due process rules apply – no caucuses



III. Access to mediation:

Using mediation in the course of an arbitration, with a third-party mediator, not with an arbitrator acting as mediator.

Mediation is broadly recognised as a very useful settlement tool, so helping parties to use mediation effectively during an arbitration proceeding is a topic covered in some detail in the report.

- When is the best moment?
- In parallel?
- Should the arbitration be paused?
- Use of Mediation Windows/Protocols?





Förebyggande och effektiv konflikthantering: företagsperspektiv

Lena Hellman, Ericsson

David Gräslund, Skanska Sverige AB





Diskussion kring förebyggande och effektiv konflikthantering



Nästa möte och avslut