

## Terms of Reference

### **Selection Committee of the President of the International Court of Arbitration of the International Chamber of Commerce**

The second mandate of Alexis Mourre, President of the International Court of Arbitration of the International Chamber of Commerce (ICC Court), will end on 30 June 2021. The ICC Executive Board has instituted a process for finding a replacement.

The ICC Chairmanship shall appoint a Selection Committee.

#### **I. Mandate**

1. The mandate of the Selection Committee shall be to recommend an individual for the position of President of the ICC Court to the Nominations and Human Resources Committee of the ICC Executive Board.
2. The Chair of the Governing Body for Dispute Resolution Services shall act as Chair of the Selection Committee.

#### **II. Selection Committee Membership**

3. Upon recommendation of the ICC Governing Body for Dispute Resolution Services, the ICC Chairmanship appointed the Selection Committee composed of Voting members, Observers and a Secretary.

##### a. Voting members:

Voting members comprise ex-officio and appointed members

Ex Officio members

- Michael McIlwrath (Chair Governing Body for Dispute Resolution Services)
- John Denton, ICC Secretary General

Appointed members

- Mohamed S. Abdel Wahab
- Juliet Blanch
- Justin D'Agostino
- Emmanuel Gaillard
- Maria Fernanda Garza

- Ndanga Kamau
- Gabrielle Kaufmann-Kohler
- Vladimir Khvalei
- Loretta Malintoppi
- Ciccù Mukhopadhaya
- Eric Schwartz
- Philippe Varin
- Eduardo Zuleta

b. Observers:

- the President of the International Court of Arbitration
- the Secretary General of the International Court of Arbitration
- the Chair of the ICC Commission on Arbitration and ADR
- the Chair of the ICC Institute of World Business Law

Observers participate in the work of the Selection Committee without voting rights. They are bound by the obligations provided for under these Terms of Reference for Voting members, in particular with regard to confidentiality, disclosure and conflicts.

c. Secretary

The ICC General Counsel

### III. Disclosure and Conflicts

4. Before appointment and on an ongoing basis, each Voting member and Observer of the Selection Committee shall immediately disclose in writing to the Secretary:
  - a. Any personal or professional relationships with any of the candidates; and
  - b. Any interests in any institution or entity providing dispute resolution services or acting as arbitration funder, including employment, patrimonial or shareholding interests, as well as any position as member of such entity's court, operational or supervisory boards, board of trustees, foundation, or other similar bodies.
5. The Chair or the Secretary of the Selection Committee may request any member to excuse himself/herself from all or part of the Committee's deliberations with regard to any perceived conflict of interest. Should any Voting member or Observer fail to make the required disclosure or to excuse himself/herself, the Chair of the Selection Committee may request that such individual resign from the Selection Committee.
6. No Voting member or Observer of the Selection Committee shall apply for the position of President of the ICC Court.

#### **IV. Work of the Selection Committee**

7. The Selection Committee shall meet upon convocation notice of its Chair. It may deliberate in person or via audio or video conferencing, or in writing.
8. In case of an in-person meeting, at least half of the Selection Committee Voting members shall be present for the meeting to be validly held. In case of an audio or video conferencing meeting, at least half of the Selection Committee Voting members shall participate for the meeting to be validly held. In case of a meeting held exclusively in writing, at least two-third of the Selection Committee Voting members shall participate for the meeting to be validly held.
9. In case of a vote, decisions shall be made by participants representing at least two-third of the Voting members participating in the meeting, the Chair of the Selection Committee having a casting vote.

#### **V. Confidentiality of the work of the Selection Committee**

10. The work of the Selection Committee, the contents of its discussions, as well any information pertaining to the candidates and their profile, shall be kept strictly confidential by all those involved in its work, all of whom undertake to ensure the reasonable security of their communications and electronic mail systems. Voting members and Observers may not delegate tasks or any of the work of the Selection Committee.
11. Each Voting member and Observer of the Selection Committee who is not an ICC employee shall sign the Non-Disclosure and Data Protection Agreement communicated by the Secretary.
12. All Voting members and Observers of the Selection Committee shall refrain from communicating with any of the candidates with respect to the Selection Process provided for in these Terms of Reference. All Voting members and Observers are however allowed to encourage potential candidates to apply. In such a case, Voting member or Observer shall not disclose the substance of the Selection Committee's discussions, the process or the manner in which the evaluation criteria are applied by the Selection Committee, and shall report such communication to the Chair or the Secretary of the Selection Committee.
13. Any question as to the process that a candidate may have shall be forwarded to the Chair of the Selection Committee at the Selection Committee's dedicated email address. The Chair shall report to the Selection Committee on questions received from candidates.

#### **VI. Inability to Serve, Withdrawal and Replacement**

14. If the Chair of the Selection Committee is temporarily unable to chair a meeting or to discharge his/her duties, the Chair shall appoint a replacement. Should this be impossible the Chair of ICC in consultation with the President of the ICC Court and the Secretary General of ICC shall appoint a temporary replacement. Should the Chair resign, or be

definitively unable to chair a meeting or to discharge his/her duties, the ICC Chairmanship should appoint a replacement.

15. If a Selection Committee Voting member withdraws therefrom or is unable to discharge his/her duties, such Voting member may be replaced by a person proposed by the Chair of the Selection Committee and appointed by the ICC Chairmanship. The ICC Chairmanship may refrain from appointing a replacement and may decide that the Selection Committee shall complete the process without replacing the departed Voting member.

## **VII. Criteria for Candidate Selection**

16. The successful candidate shall:

- a) be an internationally recognized arbitration practitioner of impeccable reputation and high professional ethics, with diverse and practical experience and familiarity with other ADR techniques;
- b) not be the subject of disciplinary or criminal sanctions;
- c) be fluent in English, other language skills being strongly desired;
- d) have strong communication skills, including intercultural communication, as well as management skills and strategic sensitivity;
- e) be ready and willing to devote a very substantial part of his/her or time to the work as President of the ICC Court;
- f) be able to ensure a frequent presence at the ICC Headquarters and offices for ICC Court meetings and other ICC Court activities, as well as to ensure the desired proximity between the President of the ICC Court and the ICC Court Secretariat's management and teams;
- g) be ready and willing, if required to do so, to serve for two consecutive terms;
- h) be ready and willing to travel frequently overseas, including long distances and for long periods of time;
- i) be ready, as provided by the Rules, to discontinue his/her participation in any capacity in any ICC case as from the beginning of his/her term of office;
- j) commit to refrain from accepting any position, during his/her tenure as President, in any institution or entity providing dispute resolution services or acting as arbitration funder, and refraining from holding any interest in any such institution;
- k) commit to refrain from acting, during his/her tenure as President, as counsel in investor/State arbitration proceedings.

17. The Selection Committee will assess whether the candidate's other activities and professional positions, in particular in the case of a candidate being a partner in a large

law firm with a significant arbitration practice, as well as his/her professional commitments, are such as to create an appearance of influence or otherwise harm the ICC Court's integrity or independence, be negatively perceived by the public, or be inconsistent with the candidate's duty to comply with his/her duties, as described above.

18. The Selection Committee will also assess whether the candidate is in a position to interact with parties, arbitrators, ICC Court members, ICC National Committees and Groups for reasons pertaining to their nationality or location.

## **VIII. Selection Process**

19. The envisaged Selection Process shall be as follows:

### **A. Solicitation of candidates**

- i. Candidates are required to make any application by 1 July 2020 at the latest;
- ii. Applications shall be made in the form of a motivation letter including a detailed personal statement explaining the reasons why the candidate believes to be a suitable President of the ICC Court, including his/her vision for the Presidency and future development of the ICC Court;
- iii. Any application shall be accompanied by:
  - a. a detailed CV;
  - b. a full and complete disclosure of any fact and circumstances, including professional positions in other institutions or entities and political or other membership or mandates, that could either create a conflict of interest or be detrimental to the ICC, the ICC Court's interests and reputation;
  - c. the full list of his/her ongoing professional commitments, including the number and the nature of cases (ICC, other institutional and ad hoc) in which he/she is sitting as an arbitrator, mediator, or expert and the number of cases (ICC, other institutional, ad hoc and State court proceedings) in which he/she is participating as counsel;
  - d. endorsement letters by at least three highly reputable arbitration practitioners from different countries (who are not members of the Selection Committee).
- iv. Applications shall be sent to the following dedicated email address: [courtpresidentapplications@iccwbo.org](mailto:courtpresidentapplications@iccwbo.org) and communicated without delay by the Secretary of the Selection Committee to the Voting members and Observers of the Selection Committee.

### **B. Pre-Selection**

- i. The Selection Committee shall conduct a thorough evaluation of all applications received taking into account the identified required attributes for the position. The Selection Committee shall establish a reduced list of candidates to be interviewed. Should the Selection Committee consider that no suitable candidates could be listed, the application process shall be reinitiated. Candidates who are not listed shall be informed of the termination of their application process in writing, without delay by the Chair of the Selection Committee. There would be no public dissemination of the names of candidates who were not chosen, such information being confidential.

#### ***C. Interviews***

- ii. The pre-selected candidates shall be interviewed by the Selection Committee. The Selection Committee may decide to interview candidates more than once.

#### ***D. Deliberations***

- iii. The Selection Committee shall deliberate once all interviews have taken place. Deliberations may require one or more meetings.

#### ***E. Selection***

- iv. Once the deliberations are completed, the Selection Committee shall vote to select a candidate by secret ballot. Candidates shall be ranked by the number of votes received. The Candidate ranked first shall have received the approval of at least two thirds of all Selection Committee Voting members. Should no candidate receive the approval of at least two thirds of all Selection Committee Voting members, a second vote by secret ballot on the three candidates having received the highest number of approvals during the first vote shall be organized. Should no candidate receive the approval of at least two thirds of all Selection Committee Voting members during the second vote, the Selection Committee may decide to reinitiate the Selection Process by soliciting new applications from candidates or may decide that the candidate having received the highest number of votes shall be ranked first.
- v. The name of the candidate having received the highest number of approvals shall be recommended by the Selection Committee for the position of President of the ICC Court. Such name shall be communicated expeditiously by the Secretary to the Nominations and Human Resources Committee of the ICC Executive Board.

### **IX. Terms of Service**

20. The President of the ICC Court shall be an independent consultant of the ICC. The proposed terms of his/her consultancy agreement shall be communicated confidentially,

under a non-disclosure agreement, to the pre-selected candidates. The Secretary General of ICC, and the President of the ICC Court as appropriate, may enter into discussions with the pre-selected candidates concerning their proposed terms of engagement.

## **X. Envisaged Timeline**

21. The following non-binding timeline is envisaged:

-March/April 2020:

- o adoption and publication of the Terms of Reference;
- o first meeting of the Selection Committee;
- o call for applications by way of a publication in selected media and information sent to the ICC global network.

-June/July 2020: candidates pre-selection.

-July/ August conference call(s) to discuss criteria for the interviews and how such interviews should be conducted. Two hours will be blocked for these calls. Since we do not know the number of candidates or the number we may shortlist, it would be prudent to schedule a second date in July/August as a reserve date for any carry-over.

-September/October 2020: candidates interviews and deliberations.

-End October 2020: vote and recommendation to be submitted to the Nominations and Human Resources Committee of the ICC Executive Board.

-End 2020: decision of the ICC Executive Board as to the name of the candidate to be recommended for the position of President of the ICC Court to the ICC World Council.

-June 2021: Election of the President of the ICC Court by the ICC World Council.

## **XI. Transparency**

22. The composition of the Selection Committee and its Terms of Reference shall be published on the ICC website.

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