



The international journal of
commercial and treaty arbitration



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ARBITRATION COSTS COMPARED

Last year, a team led by Louis Flannery, head of international arbitration at Stephenson Harwood, compared the costs of arbitrating at 18 major arbitral institutions using ad valorem rates – building on previous comparisons published in GAR in 2010 and 2013

We first published “Arbitration costs compared” in *GAR* seven years ago. Four years ago, we published a sequel, comparing the costs of arbitrating at 10 major international arbitration institutions on an “ad valorem” basis.

Since then, international arbitration has continued to be a popular method for the resolution of disputes arising out of cross-border economic activity. While it is difficult to obtain a complete statistical picture given the confidential nature of arbitration, as practitioners, we see the number of cases continuing to increase. Notwithstanding this, the cost of arbitrating remains a crucial concern for practitioners and their clients.

International arbitration continues to thrive in another way: new arbitration centres are springing up across the globe. An update of our cost comparison is therefore due, not least so we can include data from some of those new institutions, such as the Mumbai Centre for International Arbitration and the Russian Arbitration Association.

We hope that this comparison will be of interest to arbitration practitioners and their clients – as those who pay the costs – as well as to arbitrators, who get paid. It may also be of assistance to new institutions considering an ad valorem basis for the calculation of their costs and to existing institutions that might be considering revising their fees.

THE INSTITUTIONS FEATURED

In addition to the 10 institutions we considered in 2012, we have included a further eight institutions in this latest

comparison, from Brazil, Germany, India, Italy, Malaysia, Russia, Spain and Ukraine.

We have not included the London Court of International Arbitration (LCIA) in our graphs below for the simple reason that its costs are only ever calculated on the basis of an hourly rate for each tribunal member. The LCIA has, however, kindly provided us with a schedule setting out the tribunal fees and administration charges in 86 LCIA cases from January 2013 to June 2015, in ascending order of the sums in dispute.

With the benefit of this schedule, we have incorporated occasional paragraphs to give you an idea as to how the LCIA’s costs compare with the institutions considered in this article.

Our comments regarding the LCIA are made with the important caveat that the LCIA calculates its costs on an hourly basis. Direct comparison therefore has limited statistical value and is simply undertaken for the interest of practitioners and arbitrators.

As for the Hong Kong International Arbitration Centre (HKIAC), the centre’s 2013 Administered Arbitration Rules offers parties a choice to pay arbitral tribunals’ fees either on a capped hourly rate basis or according to an ad valorem-based scale. In the first published version of this article, the HKIAC was included in the charts on the basis of the ad valorem fee scale accessible on the institution’s website. In light of the fact that the vast majority of the HKIAC tribunals are paid on an hourly rate basis, we have now incorporated our analysis of HKIAC’s costs, where data is available, into the commentary in the same manner as we have done for the LCIA.

LIST OF INSTITUTIONS (ALPHABETICAL)

Arbitration Institute of the Stockholm Chamber of Commerce (SCC)

Asian International Arbitration Centre (AIAC)

Brazil-Canada Chamber of Commerce (BCCC)

Cairo Regional Centre for International Commercial Arbitration (CRCICA)

China International Economic and Trade Arbitration Commission (CIETAC)

Dubai International Arbitration Centre (DIAC)

German Institute of Arbitration (DIS)

International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (ICAC Ukraine)

International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation (ICAC Russia)

International Court of Arbitration of the International Chamber of Commerce (ICC)

Madrid Chamber of Commerce and Industry (MCCI)

Milan Chamber of Arbitration (Milan Chamber)

Mumbai Centre for International Arbitration (MCIA)

Russian Arbitration Association (RAA)

Singapore International Arbitration Centre (SIAC)

Swiss Chambers Arbitration Institute (SCAI)

Vienna International Arbitration Centre (VIAC)

THE AMOUNTS IN DISPUTE AND NUMBER OF ARBITRATORS

We have continued our practice of comparing the costs of arbitration when nine different amounts are in dispute ranging from US\$100,000 to US\$1 billion. The amounts are:

- US\$100,000;
- US\$500,000;
- US\$1 million;
- US\$5 million;
- US\$10 million;
- US\$50 million;
- US\$100 million;
- US\$500 million; and
- US\$1 billion.

The costs of case have been calculated on the basis of a tribunal consisting of either one or three arbitrators.

CALCULATION OF ARBITRATION COSTS

As with our previous surveys, we have proceeded on the basis that arbitration costs generally comprise the following.

- Registration fees: which are sometimes payable by both claimant and counter-claimant (if there is one) and may or may not be counted towards the administrative costs by the institution.
- Administrative costs: which are the fees charged by the institution to run and manage the case, and which are often, but not always, capped. Most, but not all, institutions calculate administrative costs by reference to a formula or scale.
- Arbitrators' fees: which are the remuneration of the sole-arbitrator or the arbitral tribunal. Most, but not all, institutions also calculate arbitrators' fees by reference to a formula or scale.

The majority of the institutions that we have surveyed have an online calculator on their website, while the remaining institutions have published their schedule of fees online.

CAVEATS

Before setting out our findings, we should emphasise five key caveats regarding the figures in this article and their implications.

Currency fluctuations

Not all institutions use the US dollar, which is the currency we have chosen for our comparison. All non-US dollar amounts have therefore been converted to US dollars at exchange rates

obtained in mid-2017. The exchange rates may have varied since.

Source of data

This survey is based on data from the institutions' arbitration rules, fee schedules and from the calculators available on their websites. We have not taken into account anecdotal practices at certain institutions, such as allowing the parties or the tribunal to negotiate fees.

Average versus maximum fees

The Mumbai Centre for International Arbitration (MCIA) only provides the "maximum" fee payable to arbitrators. It was therefore not possible to calculate the costs on the basis of an "average" fee (between minimum and maximum). This significantly skews the data in relation to this institution.

CIETAC

China's oldest arbitration provider has identical fees for sole arbitrators and three-member tribunals, while the other institutions usually show a significant increase in fees for disputes with three-member tribunals. For China International Economic and Trade Arbitration Commission (CIETAC), we have used the fees applicable in mainland China for the purpose of our comparison, which include arbitrators' fees in the arbitration and handling fees. It is worth noting that CIETAC in Hong Kong has a different fee schedule and separates arbitrators' fees from its other fees.

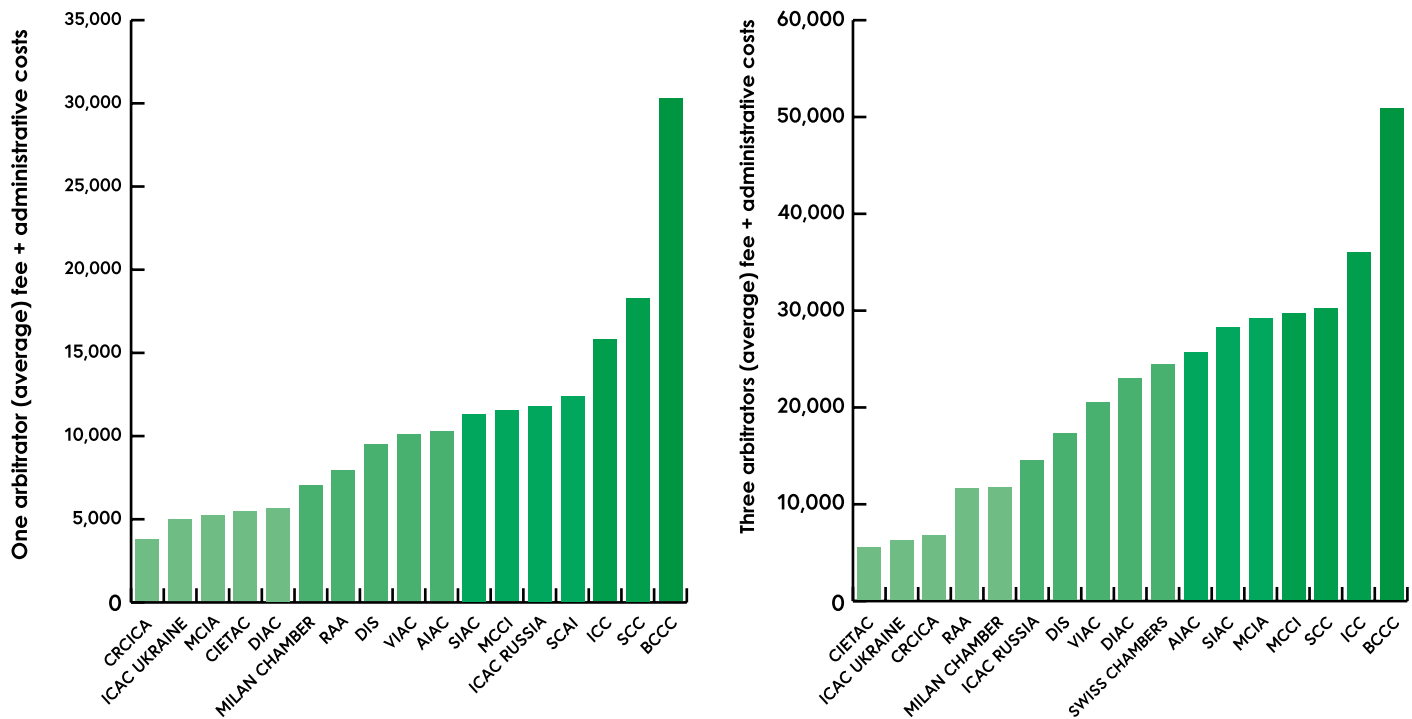
Lawyers cost the most

Practitioners will be only too aware that the combination of the tribunal's fees and the institution's administrative expenses are usually a fraction of the combined legal costs of the parties. Indeed, it has been suggested that tribunal and institution fees may account for as little as 10% to 15% of the parties' combined legal costs.

As to the International Court of Arbitration of the International Chamber of Commerce (ICC), we also note that it provides an unparalleled level of scrutiny of awards, which has an impact on costs.

Finally, we emphasise that the ad valorem basis of calculating arbitration costs is, while common, not the only method of calculation. As seen above, tribunal costs in major institutions such as the LCIA or HKIAC (as well as others, including the American Arbitration Association/International Centre for Dispute Resolution) are (or in the case of HKIAC almost always are) calculated on an hourly rate basis.

GRAPH 1 – AMOUNT IN DISPUTE: US\$100,000



Our first charts (**Graph 1**) for the lowest value disputes show that the Cairo Regional Centre for International Commercial Arbitration (CRCICA), International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (ICAC Ukraine), the MCIA and China International Economic and Trade Arbitration Commission (CIETAC) are the cheapest institutions for sole arbitrator tribunals. The same institutions, save for the MCIA, are also the cheapest for three-member tribunals. The Arbitration Institute of the Stockholm Chamber of Commerce (SCC) and Brazil-Canada Chamber of Commerce (BCCC) are the most expensive institutions for both sole arbitrator and three-member tribunals.

The German Institute of Arbitration (DIS), Vienna International Arbitration Centre (VIAC), Dubai International Arbitration Centre (DIAC), the Swiss Chambers Arbitration Institute (SCAI) and the Asian International Arbitration Centre (AIAC) are in the middle of the chart for three-member tribunals. They are in a similar position for sole arbitrators, save for the SCAI, which is more expensive and sits further to the right.

As explained, the results for the MCIA are somewhat skewed as these institutions only provide “maximum” fees for arbitrators, not average ones (this is also the case in all subsequent charts in this comparison).

At the LCIA, the schedule unsurprisingly shows that the total cost of arbitration for lower value disputes in the region of

US\$100,000 tends to be more expensive than at the ad valorem institutions, although there is a tremendous variation in the figures for individual cases.

The LCIA costs for one dispute worth US\$106,000 with a three-member tribunal was US\$70,472, which would make the LCIA the most expensive institution by a large margin. However, for vastly greater sums in dispute, the LCIA’s figures can be significantly lower. For example, one dispute valued at US\$1.95 million generated costs of almost precisely the same amount (US\$70,687), which would be approximately a third of the cost of a dispute under the ICC rules for the same amount.

At the LCIA, the schedule unsurprisingly shows that the total cost of arbitration for lower value disputes in the region of US\$100,000 tends to be more expensive than at the ad valorem institutions.

Our second charts (Graph 2) show the CRCICA is the cheapest institution for cases worth US\$500,000, irrespective of the size of the tribunal. ICAC Ukraine is the second cheapest for a sole-arbitrator tribunal and is on par with the CRCICA for a three-member tribunal.

The ICC is the most expensive across the board. DIAC, the AIAC, VIAC and the BCCC are in the middle for sole arbitrator cases and the BCCC, VIAC and DIAC are also in the middle for three-member tribunals. However, the AIAC has become comparatively more expensive for three-member tribunals.

For the LCIA, the schedule indicates that two sole-arbitrator disputes averaging almost precisely US\$500,000 average out at US\$32,025 per case, which would place the institution just above SIAC.

The CRCICA is the cheapest institution for sole-arbitrator cases worth US\$1 million (Graph 3) and ICAC Ukraine is the cheapest for three-member tribunals. The ICC is once again the most expensive for both sole-arbitrator and three-member tribunals. The MCIA is, however, almost as expensive as the ICC for three-member tribunals. It is also on the high side for sole-arbitrator tribunals (although slightly cheaper than the SCAI).

There is a significant difference between ICAC Ukraine (the cheapest) and the ICC (the most expensive) for three-member tribunals.

CIETAC, the CRCICA, the International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation (ICAC Russia) and the Russian Arbitration Association (RAA) are on the lower end for three-member tribunals.

In the HKIAC schedule, there are four sole arbitrator cases worth around US\$1.08 million, US\$1.13 million, US\$1.29 million and US\$1.3 million – an average of US\$1.202 million. The average total cost was US\$58,176, which would place HKIAC towards the right of the chart as the second most expensive, just to the left of the ICC. In the LCIA schedule, there are three arbitrator cases worth US\$0.97 million, US\$1.01 million and US\$1.1 million – an average of US\$1.04 million.

The average total cost was approximately US\$98,000, which would place the LCIA towards the middle of the chart, just to the left of DIAC.

The most affordable institution for disputes worth US\$5 million (Graph 4) is ICAC Ukraine for both sole arbitrator and three-member tribunals by a significant margin. The costs of the RAA, ICAC Russia, CIETAC and the BCCC are on the lower side of the spectrum for both types of arbitrations.

The SCAI, MCIA and ICC are the most expensive across the board. The gulf between the cheapest and most expensive institution continues to widen particularly for

three-member tribunals. For instance, there is a difference of around US\$270,000 between the cost of arbitrating at the ICAC Ukraine and the cost of arbitrating at the ICC for three-member tribunals.

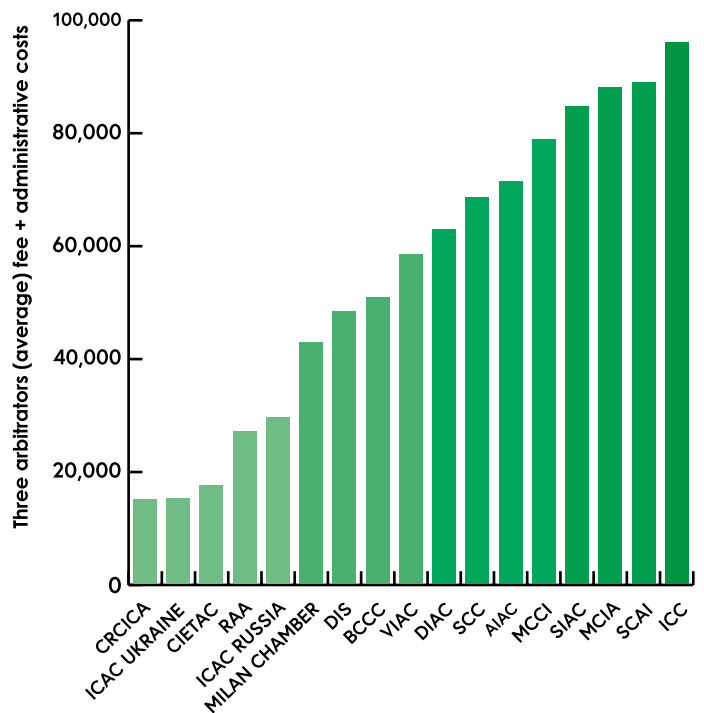
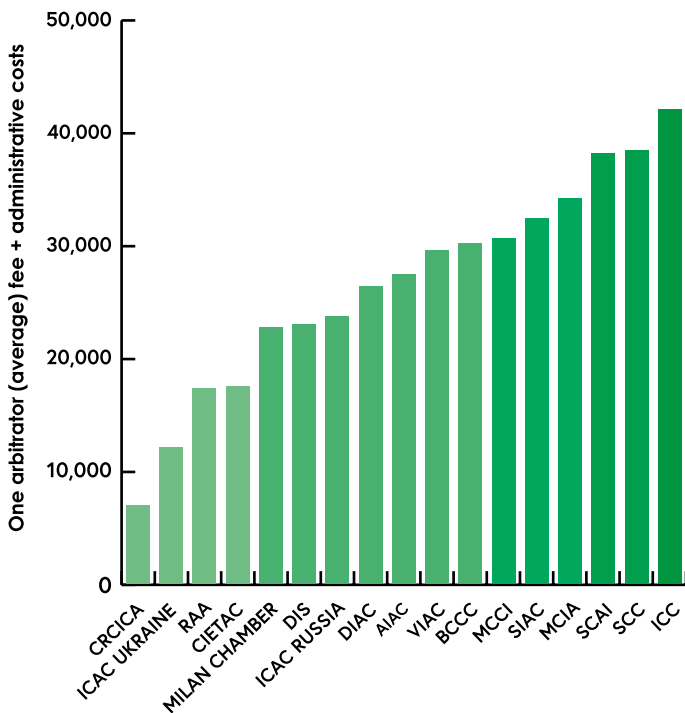
As for those institutions in the middle of the chart, fees range from US\$161,957 (Milan Chamber) to US\$223,525 (AIAC) for three-member tribunals. The SCC is becoming comparatively cheaper in contrast to its position for disputes of lesser amounts.

Interestingly, the CRCICA, which was consistently one of the cheaper institutions for disputes worth US\$1 million and less, now sits at the middle of the chart for three-member tribunals.

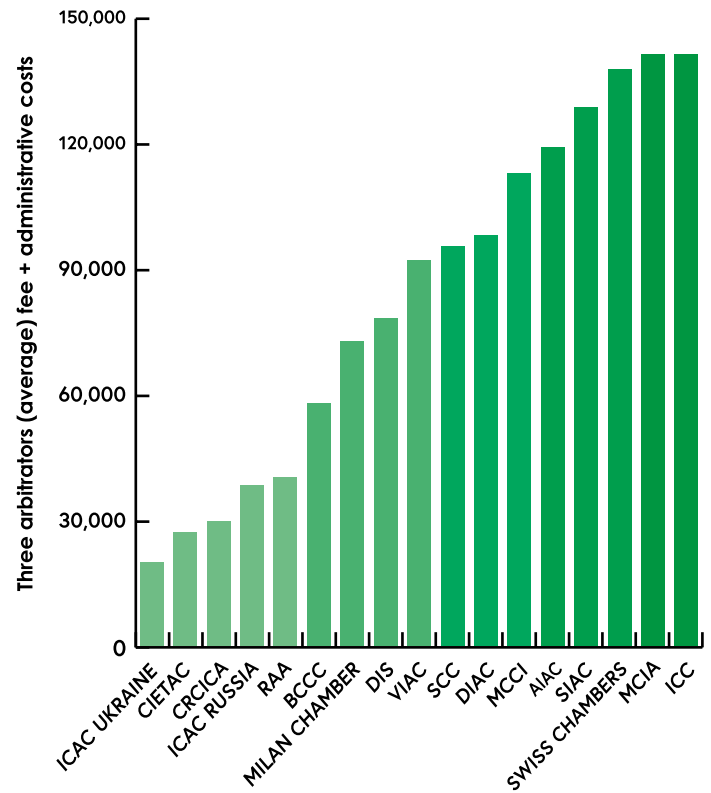
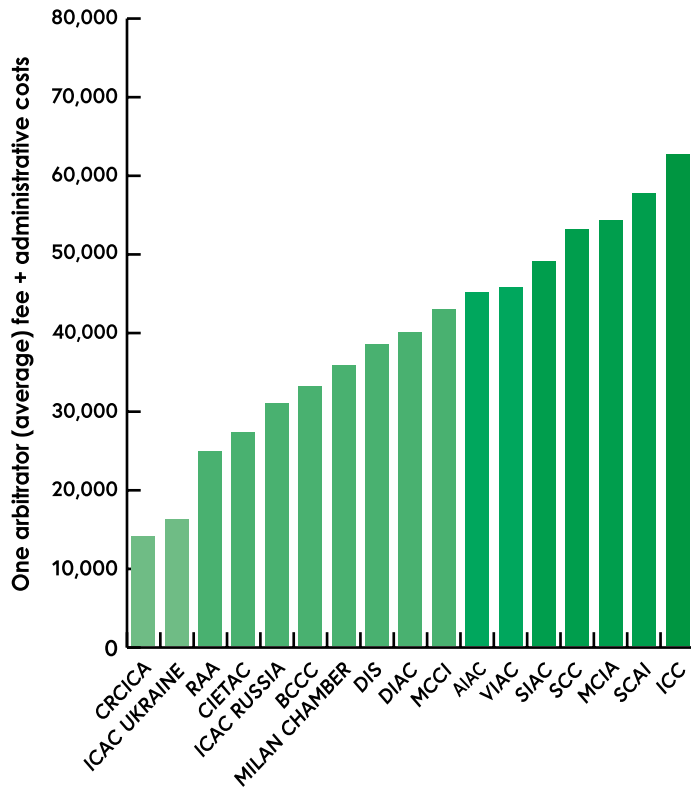
In the HKIAC schedule, four sole-arbitrator cases were for amounts in dispute of around US\$4 million, US\$5.2 million, US\$5.6 million and US\$6.4 million – an average of US\$5.3 million. The total cost of these disputes on average was approximately US\$71,000, which would put HKIAC between CIETAC and CRCICA as one of the most competitively priced institutions.

In the LCIA schedule, three three-arbitrator cases were for amounts in dispute of US\$4 million, US\$4.8 million and US\$6.8 million – an average of US\$5.2 million. The average total cost of these disputes was approximately US\$93,000, which would put the LCIA between the RAA and BCCC on the left of the chart.

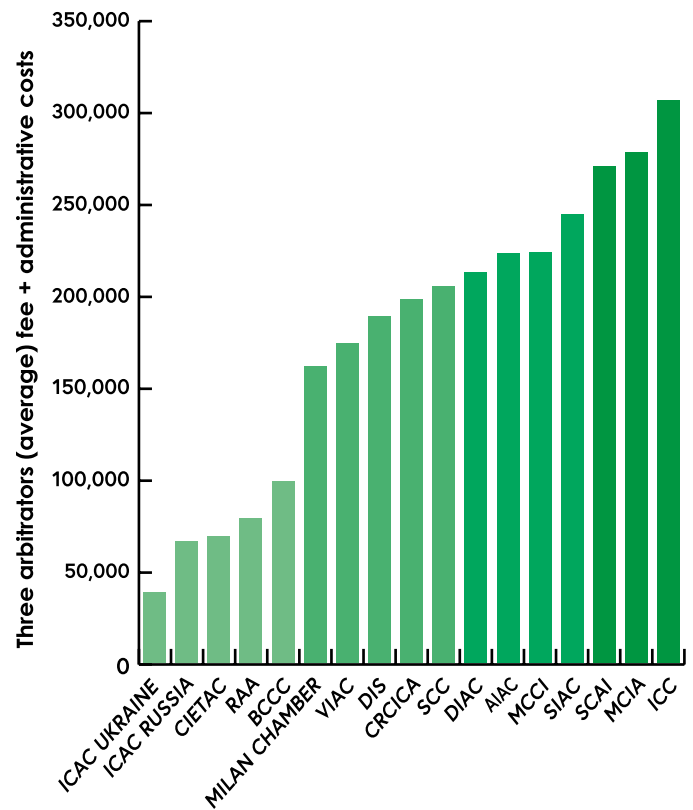
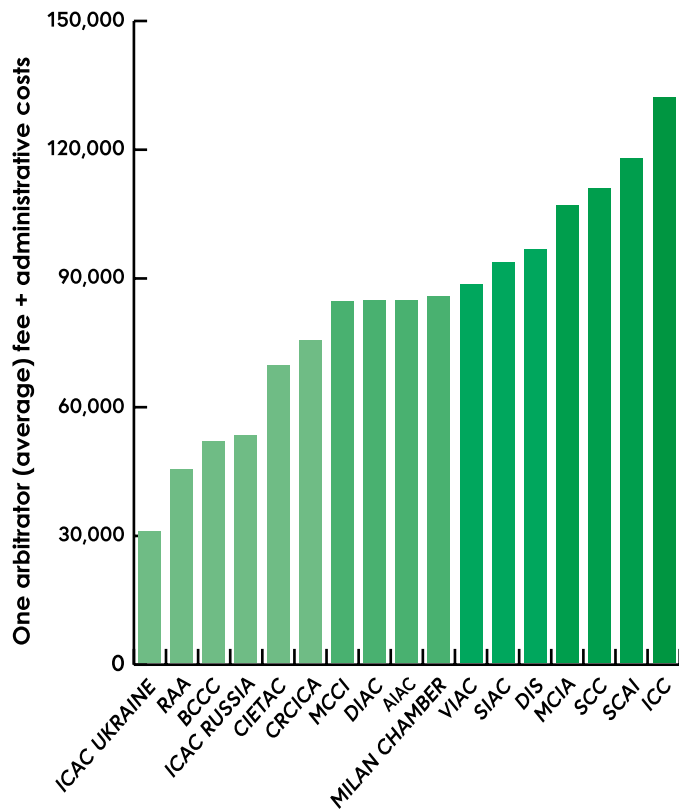
GRAPH 2 – AMOUNT IN DISPUTE: US\$500,000



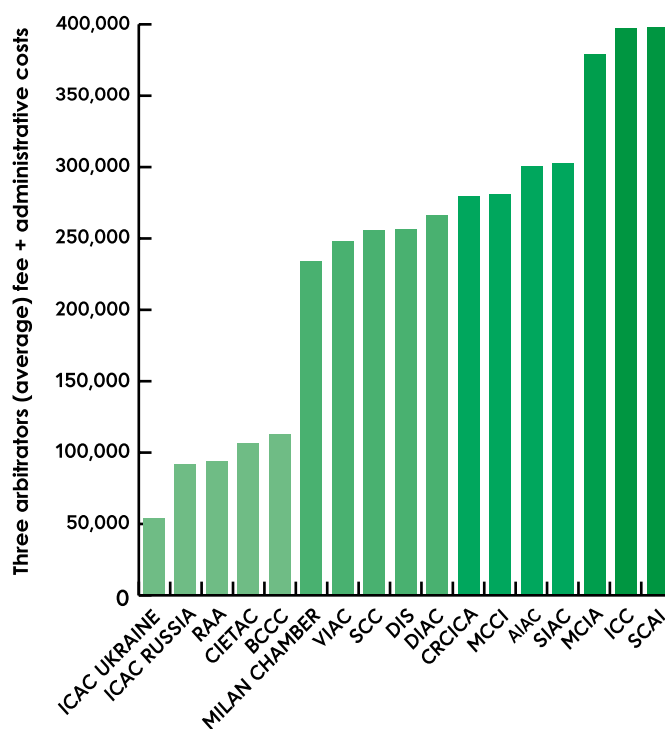
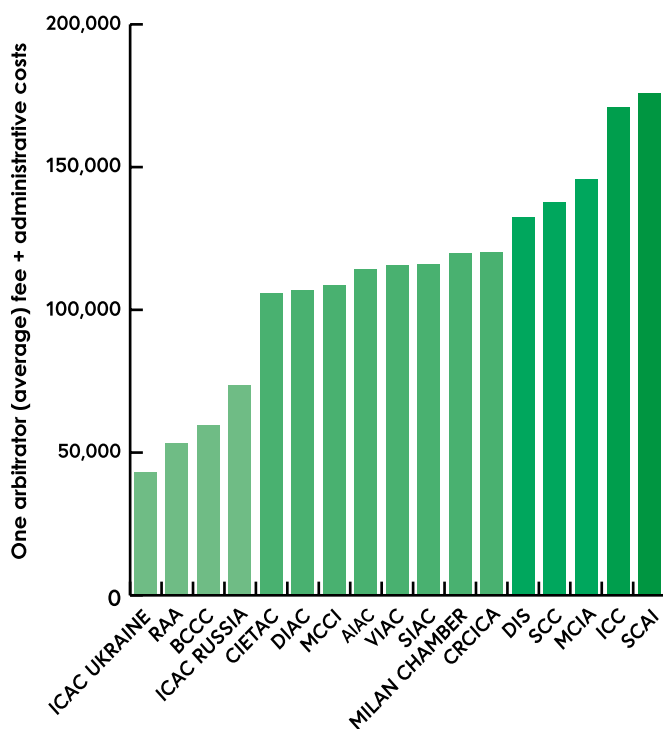
GRAPH 3 – AMOUNT IN DISPUTE: US\$1 MILLION



GRAPH 4 – AMOUNT IN DISPUTE: US\$5 MILLION



GRAPH 5 – AMOUNT IN DISPUTE: US\$10 MILLION



Where the value of the dispute is US\$10 million (**Graph 5**), ICAC Ukraine continues to be the cheapest institution by a significant margin for three-member tribunals. While it is also the cheapest for sole-arbitrator cases, the difference in its costs and those of the RAA (as the second cheapest) is not as wide. The RAA, ICAC Russia, CIETAC and the BCCC occupy the cheaper end of the chart for both types of tribunals.

The SCAI is the most expensive institution across the board, followed closely by the ICC. While SIAC is also on the high side for three-member tribunals, it occupies the middle of the chart for sole-arbitrator cases.

The SCC, which was slightly on the higher side of the scale for three-member tribunals, now sits firmly in the middle. The CRCICA continues to be more expensive in comparison to its position in disputes of lesser amounts. The AIAC, which is in the middle of the chart for sole-arbitrator disputes, sits towards the more expensive end for three-member tribunals. In fact, it has occupied a similar position for all amounts in dispute that have been considered so far in the context of three-member tribunals.

In the HKIAC schedule there are three three-arbitrator cases for approximately US\$7.8 million, US\$10.6 million and US\$11.1 million – an average of

US\$9.84 million. The average total cost was US\$236,231, which puts it close to the middle of the chart between the Milan Chamber of Arbitration (Milan Chamber) and VIAC.

In the LCIA schedule, there are five three-arbitrator cases for approximately US\$8.1 million, US\$10 million, US\$10.3 million, US\$11.1 million and US\$11.4 million – an average of US\$10.2 million. The average total cost of these five disputes was US\$346,453, which would put the LCIA towards the right of the chart, between SIAC and the MCIA.

The dispute is now worth US\$50 million (**Graph 6**). RAA has displaced ICAC Ukraine as the cheapest institution for sole arbitrator cases, although ICAC Ukraine is still the second most affordable in this category.

For three-member tribunals, ICAC Ukraine remains the most affordable institution by a wide margin, followed by the RAA, ICAC Russia, the BCCC and CIETAC. The SCC has become comparatively cheaper when viewed against its position for disputes of lesser amounts.

The MCCI and SCAI are the most expensive for three-member tribunals. For sole arbitrator cases, the most expensive is the MCCI followed by CIETAC, the SCAI and the ICC. You will recall that the CIETAC was

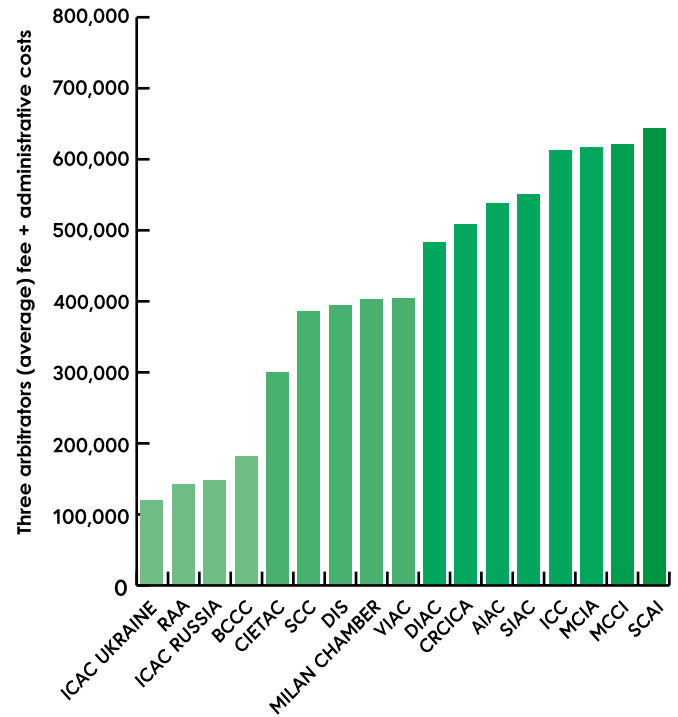
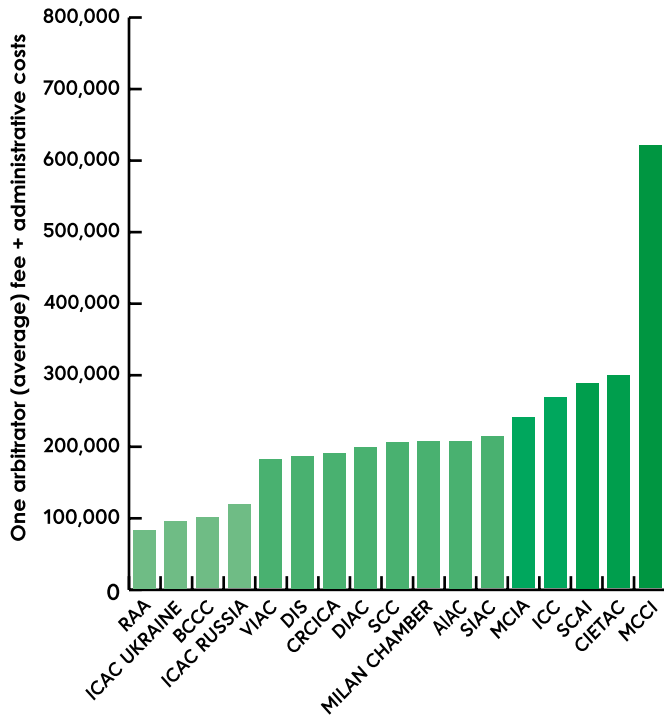
consistently one of the most affordable institutions for disputes of lesser amounts.

The LCIA schedule features five three-arbitrator cases worth US\$42.37 million, US\$44.4 million, US\$47.05 million, US\$57.15 million and US\$58.54 million – an average of US\$49.2 million. The average total cost was approximately US\$404,000, which would put the LCIA in the middle of the chart, between VIAC and DIAC.

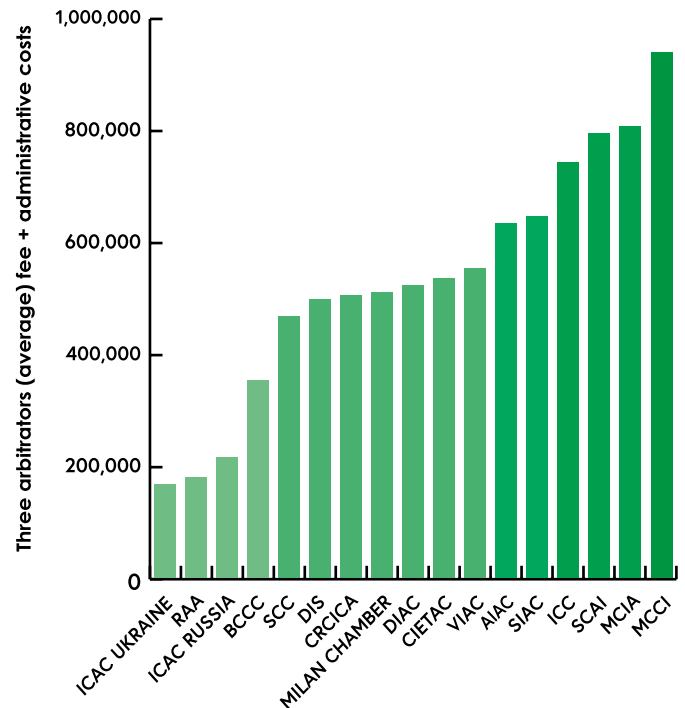
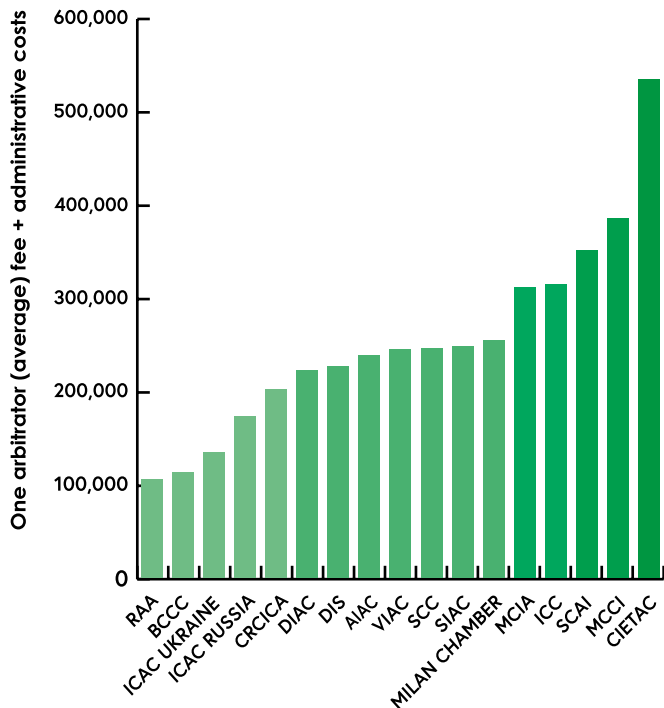
The RAA continues to be the most affordable institution for sole arbitrator cases worth US\$500 million, followed closely by the BCCC, ICAC Ukraine and ICAC Russia. CIETAC is now the most expensive institution despite being one of the most affordable for disputes of lesser values. DIAC, DIS, the AIAC, VIAC, the SCC and SIAC occupy the middle ground.

For three-member tribunals, ICAC Ukraine is the cheapest, followed by the RAA and ICAC Russia. The SCC is now firmly on the cheaper end of the spectrum, although there is a significant difference in costs (around US\$250,000) between the SCC and ICAC Russia. The MCCI, MCIA, SCAI and ICC have fees at the top end of the scale. DIS, the CRCICA, the Milan Chamber, DIAC, CIETAC and VIAC occupy the middle ground for three-member tribunals.

GRAPH 6 – AMOUNT IN DISPUTE: US\$50 MILLION



GRAPH 7 – AMOUNT IN DISPUTE: US\$100 MILLION



In the HKIAC schedule, there are five three-arbitrator cases where the amounts in dispute were approximately US\$95.36 million, US\$96.03 million, US\$99.31 million, US\$101.36 million and US\$109.24 million – an average of almost exactly US\$100 million (Graph 7). The average total cost

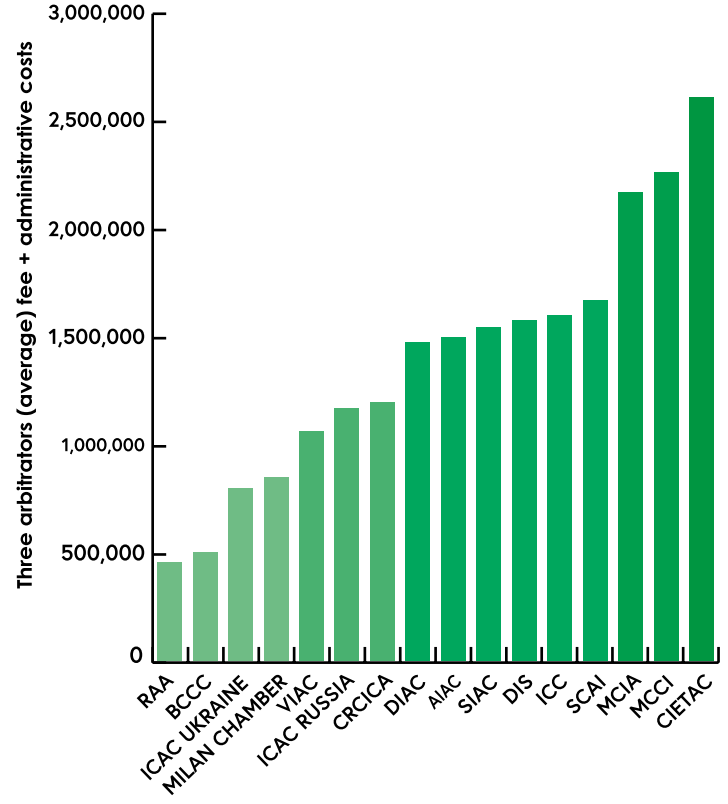
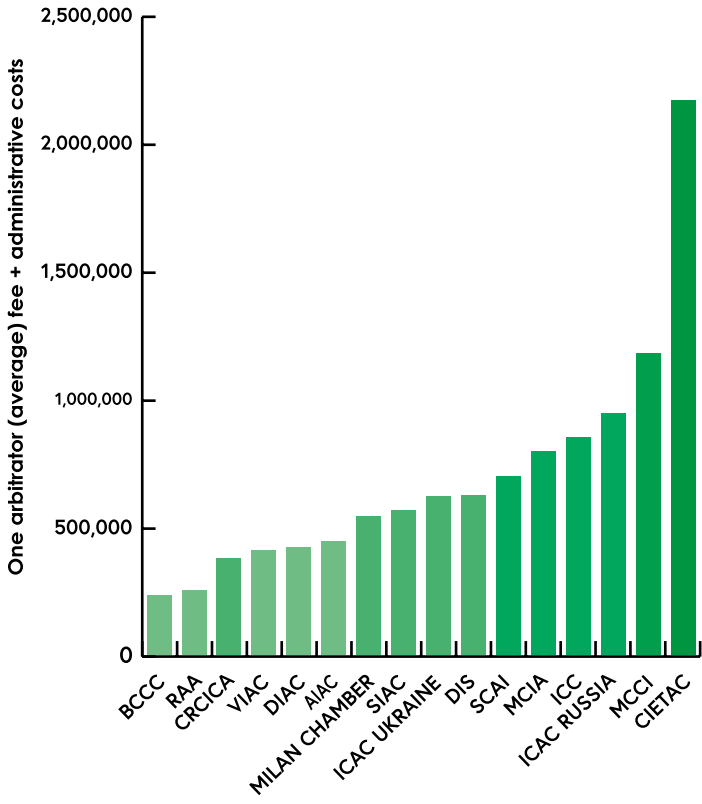
was US\$300,075, which would place HKIAC between ICAC Russia and BCCC as the fourth most competitive institution.

In the LCIA schedule, there are three three-arbitrator cases where the amounts in dispute were US\$103.63 million, US\$127 million and US\$147.22 million – an average

of US\$125.95 million. The average total cost was US\$413,776, which would make the LCIA fifth cheapest, just to the right of the BCCC (ignoring the 25% bigger average amount in dispute).

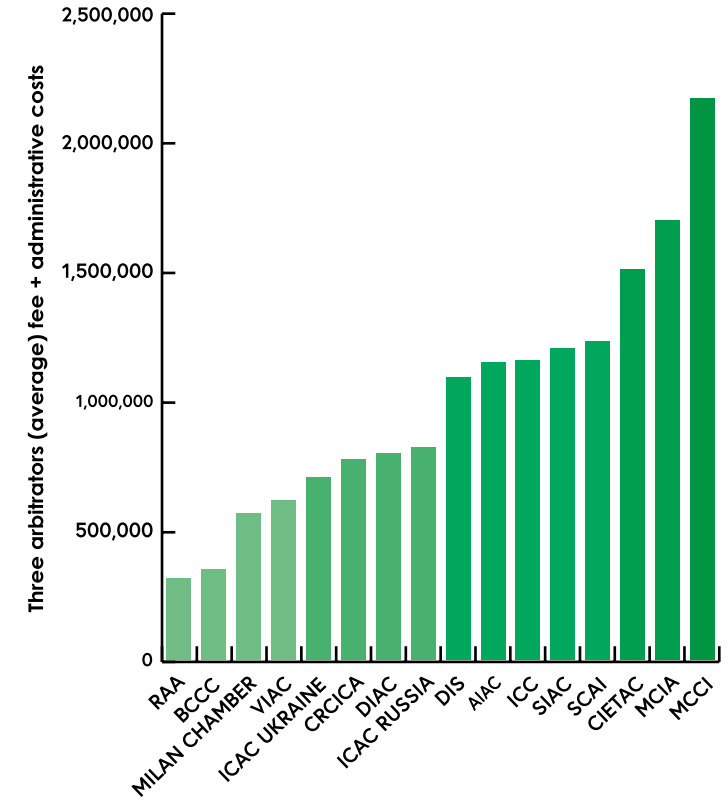
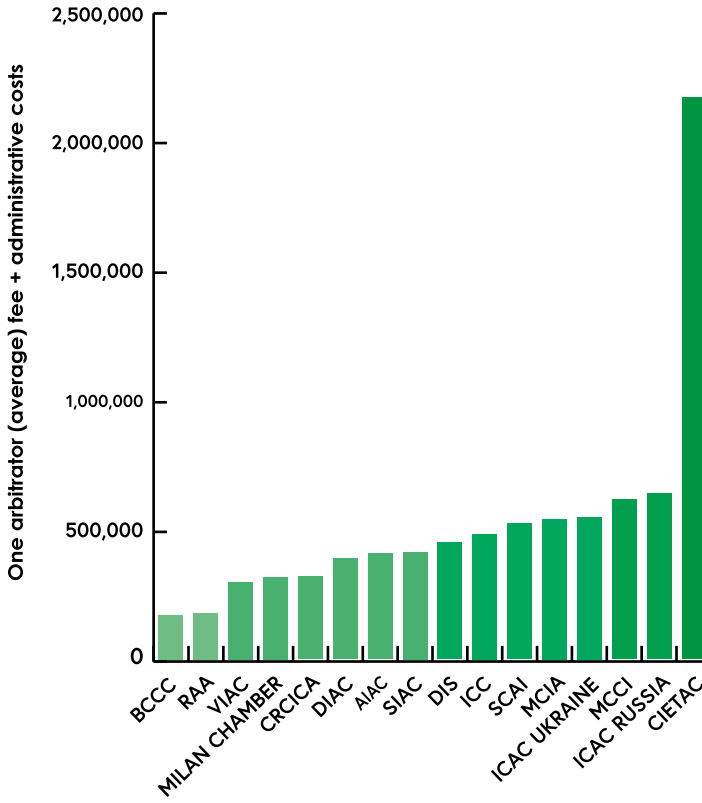
GRAPH 8 – AMOUNT IN DISPUTE: US\$500 MILLION

SCC not applicable (board decides)



GRAPH 9 – AMOUNT IN DISPUTE: US\$1 BILLION

SCC not applicable (board decides)



The BCCC, RAA, CRCICA, VIAC and DIAC are the most affordable for sole arbitrator disputes worth US\$500 million (**Graph 8**), although there is a significant difference in fees between the BCCC and the RAA (the first and second cheapest) and the CRCICA (the third cheapest).

ICAC Ukraine is now in the middle in contrast to its previous consistent position as one of the cheapest. CIETAC is the most expensive by a spectacular margin in comparison to its previous position as one of the more affordable institutions for lower value disputes.

For three-member tribunals, CIETAC is again the most expensive by a significant margin, followed by the MCCI, MCIA, SCAI and ICC. DIS has also become comparatively more expensive, having overtaken SIAC.

As anticipated, the RAA, BCCC and ICAC Ukraine are the most affordable. The Milan Chamber and VIAC are now on the cheaper

side in comparison to their previous position in the middle of the chart.

The two biggest LCIA cases in the schedule (both three-arbitrator panels) were disputes for US\$517.47 million and US\$1.06 billion – an average of US\$761,735. The average total cost of the two cases was US\$1,046,384. Putting this figure (allowing for conversion rates) into the DIAC and SIAC costs calculators would put the LCIA between those two institutions – around the middle of the chart. However, given that there are only two LCIA cases in this value range, the result can hardly be considered scientific.

At the SCC, the board decides the costs of disputes of this amount (over €100 million) on a case-by-case basis – so it has not been included in our comparison.

Finally, we reach disputes worth US\$1 billion (**Graph 9**). For sole arbitrator cases, the BCCC is the cheapest, followed by

the RAA, VIAC and the Milan Chamber. CIETAC is again the most expensive. ICAC Russia and ICAC Ukraine have also become comparatively more expensive. In practice, however, we consider it extremely unlikely that a sole-arbitrator would determine a US\$1 billion dispute.

For three-member tribunals, the RAA is the cheapest, followed by the BCCC, Milan Chamber and VIAC (the latter two of which have moved from their traditional middle positions to the cheaper end of the chart). The MCIA and MCCI are the most expensive. The ICC, on the other hand, is only marginally more expensive than the AIAC and now sits in the middle.

The LCIA's costs for a dispute worth US\$1.06 billion were US\$1,206,080, which would place the LCIA in between DIAC and ICAC Russia at the lower end of the scale.

ENORMOUS VARIATION

This number-crunching exercise has demonstrated the quite enormous variation in fees at every level. Indeed, in every chart, the value of the fee for the most expensive institution was at least four or five times that of the cheapest institution.

The data offers no real guidance as to where parties should hold their arbitration (assuming that, all other factors being equal, they have a geographical choice). This is simply because there is no way of knowing at the time of contracting when and how a dispute might arise and

what value it may have for the purposes of calculating the tribunal's and institution's fees. Nor would we suggest that commercial parties choose the seat of arbitration by reference to the tribunal's and institution's fees. That would be a foolhardy step, at best.

As stated, however, it will likely be of interest for those who pay and get paid, as well as for institutions embarking on fee revisions, or even entering the market for the first time and deciding where to pitch its fees (if considering an ad valorem approach).

This research was conducted by Louis Flannery, his former associate Gautham Chandrakumar – now at Quinn Emanuel Urquhart & Sullivan in London – and Stephenson Harwood trainees Krystal Lee and Alastair Kwan.

The authors are grateful for the assistance of Vasylyna Odnorih of VKP Office in Kiev for obtaining the data for ICAC Ukraine; LCIA director general Jackie van Haersolte-van Hof for providing statistics for that institution; and Sarah Grimmer and Joe Liu of HKIAC for providing a schedule of HKIAC cases, which resulted in that institution being removed from the charts.

This research was conducted independently of GAR and the publication takes no responsibility for its findings.