

LCIA RELEASES COSTS AND DURATION DATA

TOOLS TO FACILITATE SMART AND
INFORMED CHOICES



The London Court of International Arbitration



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INTRODUCTION

The LCIA has undertaken a comprehensive analysis of cases to provide users with information on the average costs and duration of an LCIA arbitration. The LCIA is providing these facts to assist users in making informed choices.

The importance of institutions providing users with such information has been underlined by the recent findings in the 2015 Queen Mary and White & Case International Arbitration survey, in which users expressed a strong interest in institutions publishing such data. In particular, respondents to the survey expressed concern about the costs of the arbitration, and were of the view that institutions could contribute to the improvement of international arbitration by publishing data on the average length of their cases. Users should indeed be encouraged to rely on actual data to inform their choices, and the LCIA sees it as its responsibility to contribute to informed decision-making by providing transparency in relation to costs and duration.

For a costs comparison, users can at least to some extent rely on costs calculators provided by institutions operating on an ad valorem basis to obtain insight as to the likely costs of an arbitration. For institutions such as the LCIA operating on an hourly basis, actual data is required to provide any insight. As this analysis will show, the LCIA's hourly system is competitive with the costs schedules provided for by institutions operating on an ad valorem basis. Currently, no comparative analysis of the duration of proceedings is possible with the institutions for which costs were compared, as they do not provide comparable statistics.

The data published here reflects the results of actual cases administered by the LCIA under the LCIA Rules. The analysis identified all cases in which a final award was issued in the period between 1 January 2013 and 15 June 2015. For each case, the duration was measured and the arbitration costs as determined by the LCIA Court were recorded. The results contained in this analysis are therefore an aggregate of individual cases.

This analysis only covers arbitrators' fees and institutional costs which in reality are the least significant costs component and are generally said to comprise approximately 20% of the total costs incurred in arbitration proceedings.

THE LCIA SYSTEM

- *Default system is that the LCIA Court selects and appoints a sole arbitrator (Article 5.8):* in practice, in approximately 60% of all appointments, parties nominate arbitrators themselves and approximately 40% of all tribunals appointed comprise a sole arbitrator and 60% of tribunals comprise three members.
- *Costs are calculated on an hourly rate system:* an hourly rate system is the main alternative to an ad valorem system, in which the costs of the arbitration are generally based on the value of the claim. The claim value is not irrelevant in an hourly rate system, as the circumstances of the case, including the value of a claim, will be taken into account in specifying the maximum hourly rate. Conversely, time spent may also be a component in an ad valorem system when fixing the costs of the arbitration within the limits provided by the costs scales.

- *The maximum hourly rate that an arbitrator can charge is capped:* the current hourly rate is capped at £450 per hour and the LCIA's administrative charges are also largely calculated on the basis of hourly rates, directly or indirectly.
- *Staged deposits:* a practical consequence of an hourly rate system is that the LCIA is able to direct the parties to lodge staged deposits as the case develops, rather than requiring the parties to pay the full costs of the arbitration upfront.
- *Costs are controlled by the LCIA Court:* the LCIA requires arbitrators to provide fee notes which include details of the time spent on a case, for review by the LCIA Court.

COSTS AND DURATION ANALYSIS

Analysis of duration of LCIA arbitrations

The following methodology was used to analyse the average duration of an LCIA arbitration:

- All arbitrations in the period 1 January 2013 to 15 June 2015, which progressed to a final award¹ were identified.
- Duration was recorded as the full period between the date on which the Request for Arbitration was

¹ Cases that progressed to a final award were defined as cases where the tribunal rendered a final award on the costs of the arbitration and/or cases where the tribunal rendered a final award on merits save as to costs, and the parties later settled on the costs of the arbitration. The following cases were excluded from the data sample: cases where the tribunal found that it did not have jurisdiction or a claim was inadmissible, cases in which a consent award was issued and cases in which the claim was withdrawn.

received by the LCIA and the date of the final award.²

- Duration was calculated to be inclusive of any stay periods, either informal or formal.

Average duration can be expressed by both mean and median numbers.³ For completeness sake both numbers are presented below. The more meaningful and robust value, given the distribution of the data concerned, is the median value,⁴ showing:

- The median duration of an LCIA arbitration is 16 months.

The table below displays a breakdown of the results:

Type of Tribunal	Mean duration (months)	Median duration (months)
All tribunals	20	16
Sole arbitrator	18.5	15
Three member tribunal	21	19

² Any meaningful comparison should relate to the entire duration of the arbitration, and not be based on any more subjective start date, such as finalisation of the appointment of the tribunal.

³ The mean is the sum of all of the values in the data sample, divided by the number of values. The median is the middle number of the set of values, that is, 50% of the values in the data set will be above the median, and 50% will be below the median.

⁴ The median is the more robust value here given the predominance of cases with shorter duration over cases with longer duration. A factor skewing the mean value is long stays, explaining some of the long “outlier” cases.

Analysis of LCIA arbitration costs

Next, an analysis of the average costs of an LCIA arbitration was produced using the following methodology:

- All arbitrations in the period 1 January 2013 to 15 June 2015 which progressed to a final award and were for a quantified claim were identified.
- For each arbitration, the costs of the arbitration were recorded.⁵

As with duration, the analysis of the average costs of an LCIA arbitration considered both the mean and median arbitration costs of the cases analysed. Similarly to duration, the data sample of arbitration costs was not evenly (i.e. “normally”) distributed, making the median result the more robust indicator of the average costs of an LCIA arbitration. The results showed that:

- The mean costs of an LCIA arbitration is US\$ 192,000.
- The median costs of an LCIA arbitration is US\$ 99,000.

Costs comparison with other institutions

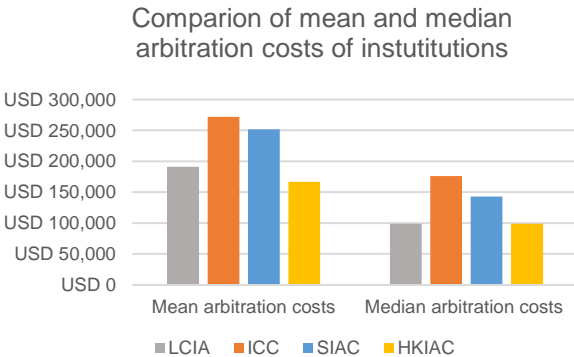
A comparison of the LCIA’s arbitration costs with a selection of other institutions primarily operating

⁵ Arbitration costs included the LCIA’s administrative charges (including the registration fee), the fees of the tribunal (including any fees incurred in issuing a memorandum of correction) and, where relevant, the fees of a tribunal secretary, any cancellation charges and the fees of a division of the LCIA Court appointed to determine a challenge. Expenses and VAT were excluded.

on an ad valorem basis was subsequently undertaken, as follows:

- The amount in dispute for each LCIA case analysed was input into the costs calculators made available by the ICC, SIAC and HKIAC⁶ to obtain an estimate for arbitration costs if the same arbitration was administered by those institutions, using the average value under the relevant costs calculators, where multiple values were provided.⁷
- The comparison assumed that the ICC, HKIAC and SIAC would appoint a tribunal of the same composition as the LCIA in a dispute with the same amount at stake.

The below chart displays an *overall* comparison of the mean and median arbitration costs of the LCIA, ICC, HKIAC and SIAC for the cases analysed:



⁶ It should be noted that HKIAC does provide an option for an hourly rate system, however, as no data has been disclosed, no comparison can be made.

⁷ To compare arbitration costs, the amount in dispute and the total LCIA arbitration costs in each case were converted into US Dollars using the exchange rate at the date of the final award in each case.

This analysis confirms that, based on an overall comparison of arbitration costs, the costs of LCIA arbitration are (i) substantially below those of the ICC and SIAC, and (ii) comparable to those of HKIAC when using median values.

The second prong of this analysis involved trying to determine the turning point based on the amount at stake when the various institutions are comparably more or less cost effective. The analysis relied on the cases as used in the comparison above; however, the cases were split into two categories based on the amount in dispute. US\$ 1 million was selected for the analysis as it was the smallest amount in dispute that resulted in a statistically significant subset of data. For each category, the actual LCIA's arbitration costs were compared with the costs generated for each case using the costs calculators provided by the other institutions.

This additional comparison shows that for cases of less than US\$ 1m the costs of LCIA arbitration are comparable with ICC and SIAC but higher than HKIAC; over US\$ 1m, while comparable with HKIAC, LCIA costs are lower than ICC and SIAC.

The results are displayed in the table below:

Arbitral costs compared	Overall	Amount in dispute	
		≤ US\$ 1m	> US\$ 1m
ICC vs LCIA	LCIA costs are lower	Comparable costs	LCIA costs are lower
SIAC vs LCIA	LCIA costs are lower	Comparable costs	LCIA costs are lower
HKIAC vs LCIA	Comparable costs	LCIA costs are higher	Comparable costs

CONCLUSION

The LCIA is pleased to provide the above data, which shows the cost effectiveness of LCIA arbitration in comparison with the largest institutions operating on an ad valorem basis. The data discussed above will possibly give food for thought for those who might have expected an hourly-based system only to be cost effective in the very largest cases. While having an ad valorem system may have the superficial advantage of reasonable certainty of the likely costs that can be expected, the knowledge that these costs will end up higher than they would have been under an hourly rate system is likely to make users think again.

As to duration, the LCIA hopes that other institutions will follow its example and provide comparable data allowing further analysis for the benefit of potential users.

For the future, the LCIA is confident that its system, including the latest revisions in the 2014 Arbitration Rules, provides users with adequate tools for efficient and effective arbitrations.