



# Arbitration from an Institutional Perspective

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# Roadmap

1. Institutional vs Ad hoc Arbitrations
2. Institutional Functions
3. Arbitration Lifecycle: the Institutional Perspective
4. Market Confidence and Legitimacy of Arbitration



# Institutional vs Ad hoc Arbitration

## ◆ Why choose institutional versus ad hoc arbitration?

- ◆ Tried and tested procedural rules
- ◆ Case management support from experienced Secretariat reduces risk of procedural breakdowns and delays
- ◆ Roster of experienced and qualified arbitrators
- ◆ Procedural mechanisms built in – such as emergency arbitration, early determination, consolidation, joinder and deciding challenges to arbitrators
- ◆ Institutional oversight of costs and payments
- ◆ Reduced risk of technical defects in the award

# Institutional vs Ad hoc Arbitration

## Institutional arbitration

- ◆ Administered by the institution
- ◆ Institution assists with appointments, deposits, challenges, administration
- ◆ Predictable framework, i.e., its Rules
- ◆ Institutional brand may support confidence

## Ad hoc arbitration

- ◆ Administered by the parties and tribunal
- ◆ Parties must design or rely on default mechanisms by local laws
- ◆ Potentially more flexible
- ◆ The lack of external assurance places greater weight on party cooperation and tribunal credibility

# Institutional Role

## ◆ Three important distinctions

- ◆ Institutions do not decide the merits of a dispute
- ◆ Arbitral tribunals decide jurisdiction and merits, subject to applicable law and rules
- ◆ Institutions administer arbitrations and may exercise limited but important procedural powers

# Institutional Functions

## Gatekeeping

Commencement, prima facie reviews, jurisdictional thresholds

## Constitutional

Selection, appointment, replacement and challenge of arbitrators

## Procedural Design

Rules, expedited procedures, emergency relief, consolidation and joinder

## Quality Control

Award review, scrutiny, enforceability, procedural regularity

## Market and Legitimacy

Confidence, neutrality, diversity, transparency and reputation

# The LCIA

## Core Services

### ◆ Arbitrations pursuant to the LCIA Arbitration Rules

- ◆ LCIA Rules revised in 2020

### ◆ Schedule of Costs

- ◆ Capped Arbitrator hourly rates – not ad valorem
- ◆ LCIA Secretariat hourly rates
- ◆ Staged Advance Payments for Costs
- ◆ Detailed fee notes from Arbitrators

# The LCIA

## Core Services



- ◆ **Mediation**
  - ◆ **Arbitrations pursuant to the UNCITRAL Arbitration Rules**
  - ◆ **With LCIA consent:**
    - ◆ Fundholding
    - ◆ Holding funds by way of security
    - ◆ Appointments in adjudications, expert determinations and ad hoc arbitrations
    - ◆ Appointing Authority under the UNCITRAL Arbitration Rules
- ...in accordance with the LCIA's Terms and Conditions**



# Arbitration Lifecycle: the Institutional Perspective

# Before the Dispute

## ◆ Clause design

- ◆ Institutions influence transactions through model clauses, guidance notes and user education
- ◆ Poorly drafted clauses create institutional problems: wrong institution name, inconsistent seat, unclear language, defective escalation clause, incompatible rules
- ◆ The institution's first legitimacy role is often remedial: making a workable process out of an imperfect clause

# Commencement of Arbitration

## ◆ Initiating the proceedings

- ◆ Registration and initial administrative review
- ◆ Filing and administrative fees
- ◆ Advance payments for costs
- ◆ Non-payment by one party
- ◆ Communications and service
- ◆ Preliminary issues with non-participating respondent
- ◆ Consolidation

## ◆ Appointing arbitrators

- ◆ Sole arbitrator vs three-member tribunal
- ◆ Party nomination and institutional appointment
- ◆ Default appointments
- ◆ Independence, impartiality, and disclosure
- ◆ Challenge and replacement
- ◆ Diversity and repeat appointments
- ◆ Arbitrators' fees

**84**

Anonymised  
challenged  
decisions

# Transfer of Control to the Tribunal

- ◆ **Before constitution of the tribunal**

- ◆ The role of the institution is central

- ◆ **After constitution of the tribunal**

- ◆ The tribunal takes procedural command

# Institutional Fast-Track Tools

- ◆ Expedited formation of the tribunal
- ◆ Appointment of emergency arbitrator
- ◆ Expedited appointment of a replacement arbitrator
- ◆ Early determination
- ◆ Expedited procedures



# Throughout the Proceedings



# Award Stage

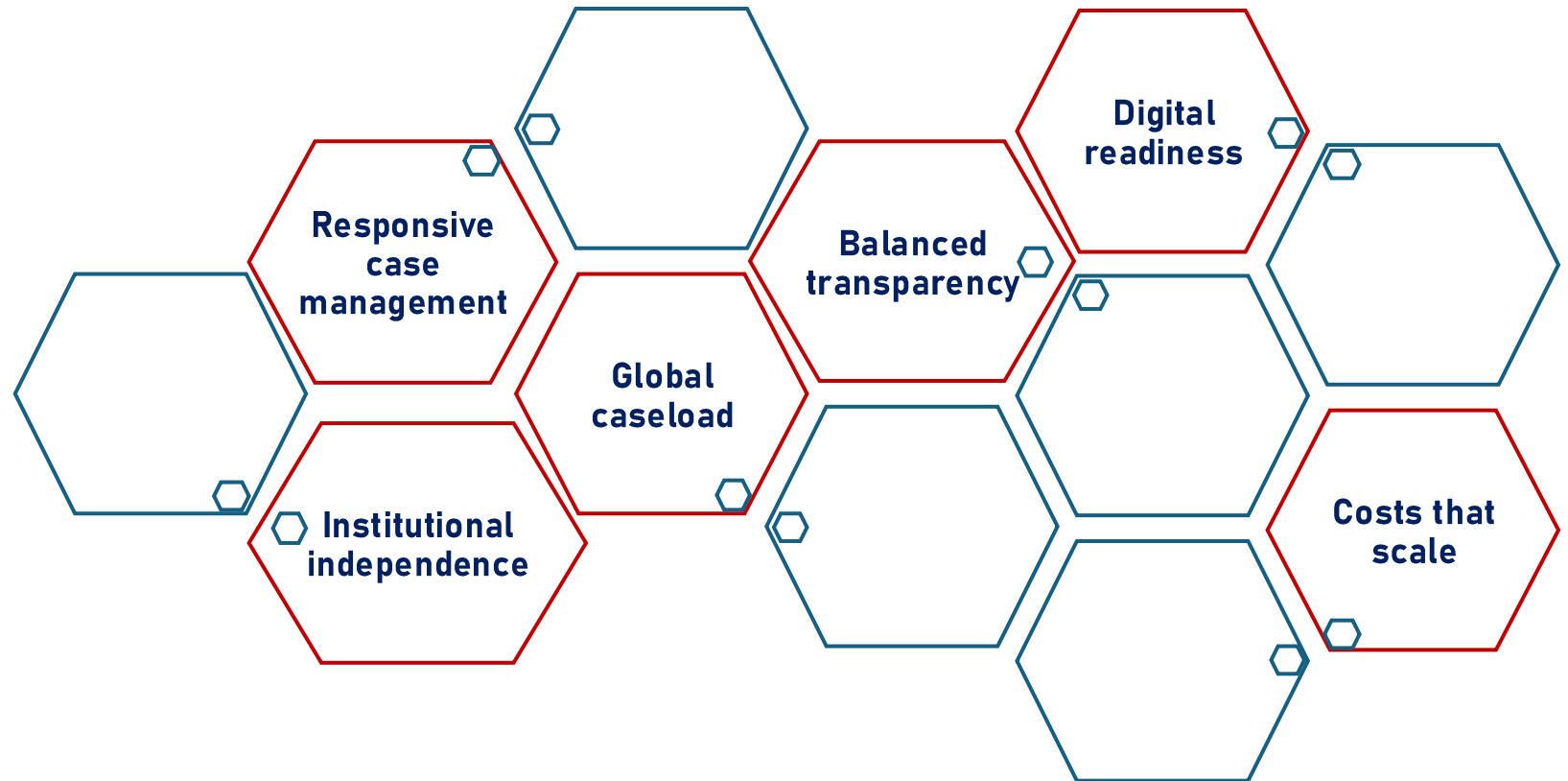
- ◆ Reviewing vs scrutinising the award
- ◆ Time monitoring
- ◆ Arbitration costs
- ◆ Corrections and additional awards
- ◆ Notification and deposit
- ◆ Anonymised publication of awards



# Market Confidence and Legitimacy of Arbitration

# Market Confidence and Legitimacy

Legitimacy is earned case by case, appointment by appointment, decision by decision



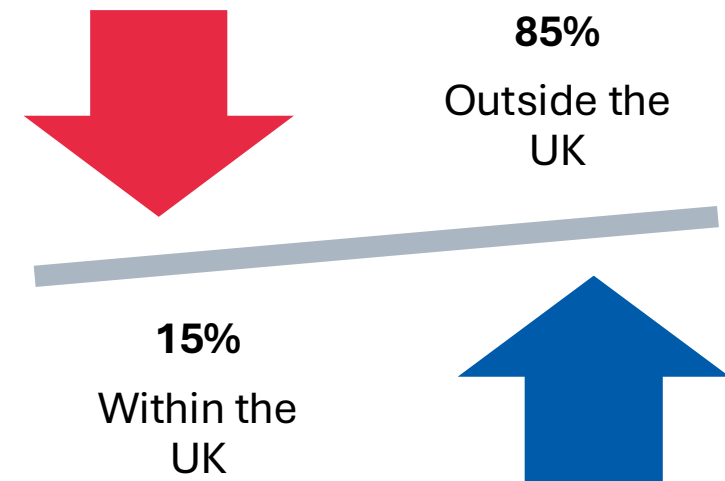
# The Institution's Role

## Beyond Case Management

- ◆ Thought leadership
- ◆ Conferences and events
- ◆ Trainings and capacity building
- ◆ Stakeholder in arbitration projects

# The LCIA by the Numbers

- ◆ More than **130** years of arbitration heritage
- ◆ In the past **7** years the LCIA administered cases involving:



# The LCIA by the Numbers

## The LCIA's Caseload in 2024

362



Referrals

318



Arbitrations

(88%) administered  
under LCIA Rules

35



Fundholding

Where the LCIA  
provided services

5



Mediations

under the LCIA  
Mediation rules

3



Arbitrations

1



Appointment

Appointment only

# The LCIA by the Numbers

## The LCIA's Caseload in 2024 - Parties

◆ Parties from **101** different countries

◆ **95%** of cases are international in nature; **75%** involve only international parties (no UK parties)

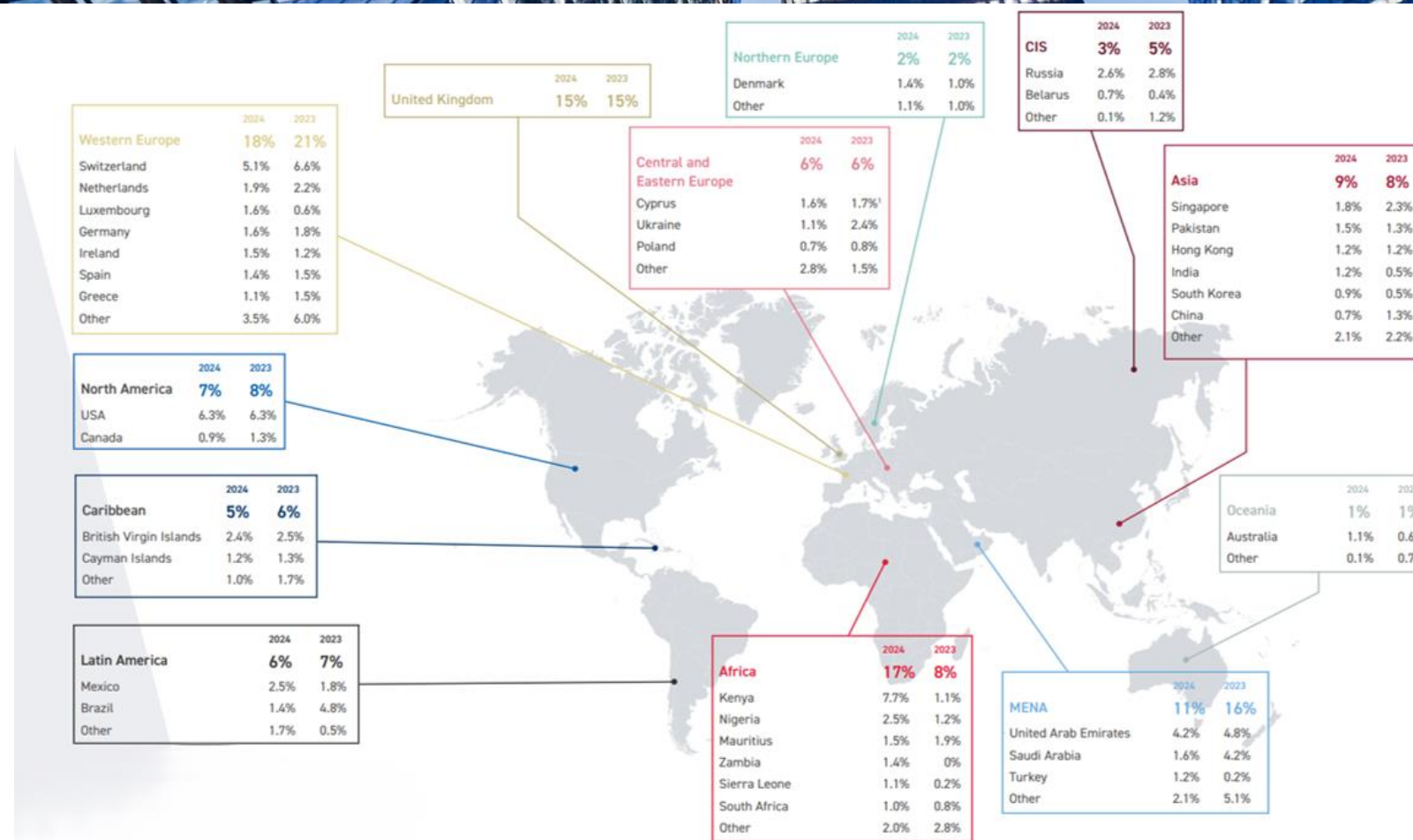
- ◆ High proportion of parties from Western Europe (excluding UK) (18%), especially parties from Switzerland (5.1%), the Netherlands (1.9%), Luxembourg (1.6%) and Germany (1.6%)
- ◆ Africa: 17%
- ◆ MENA region: 11%
- ◆ Asia: 9%
- ◆ North America: 7%
- ◆ Central and Eastern Europe: 6%
- ◆ Latin America: 6%
- ◆ Caribbean: 5%
- ◆ CIS: 3%

# The LCIA by the Numbers



Arbitration and ADR worldwide

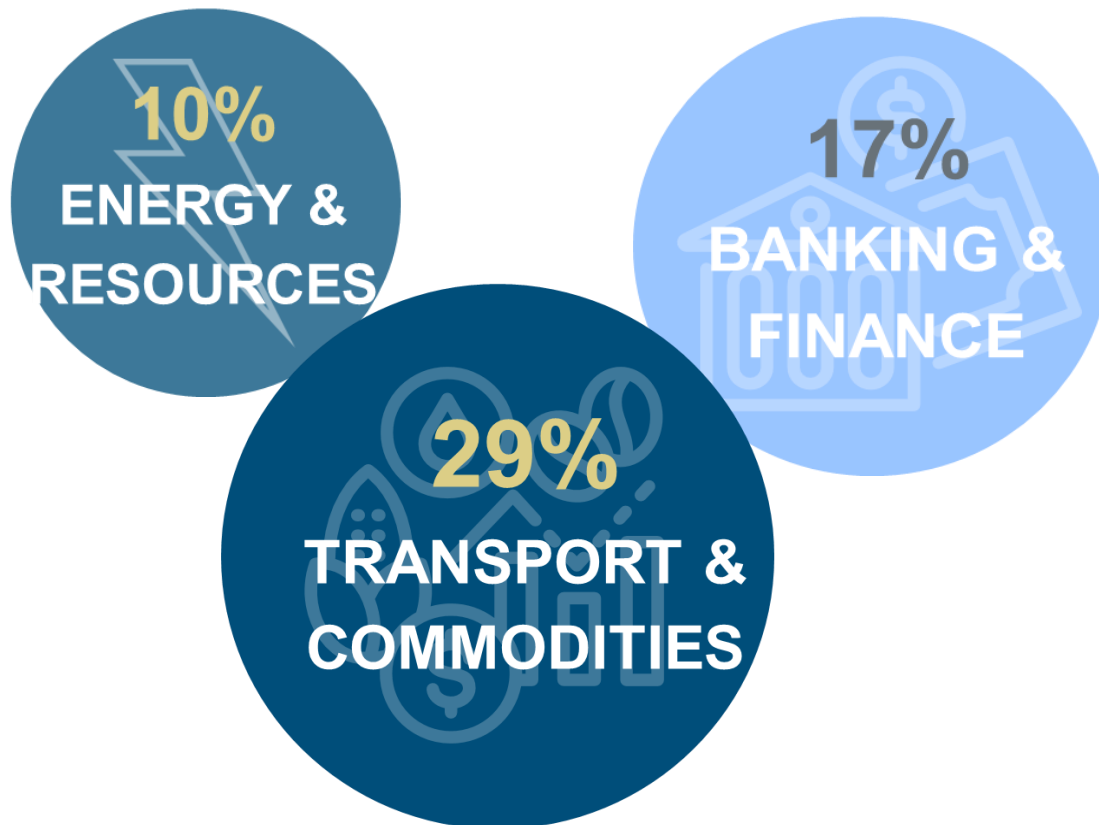
## The LCIA's Caseload in 2024 – Parties Nationalities



# The LCIA by Numbers

## The LCIA's Caseload in 2024 – Industry Sectors and Agreement Types

### • Top Three Industries



### • Top Three Agreement Types



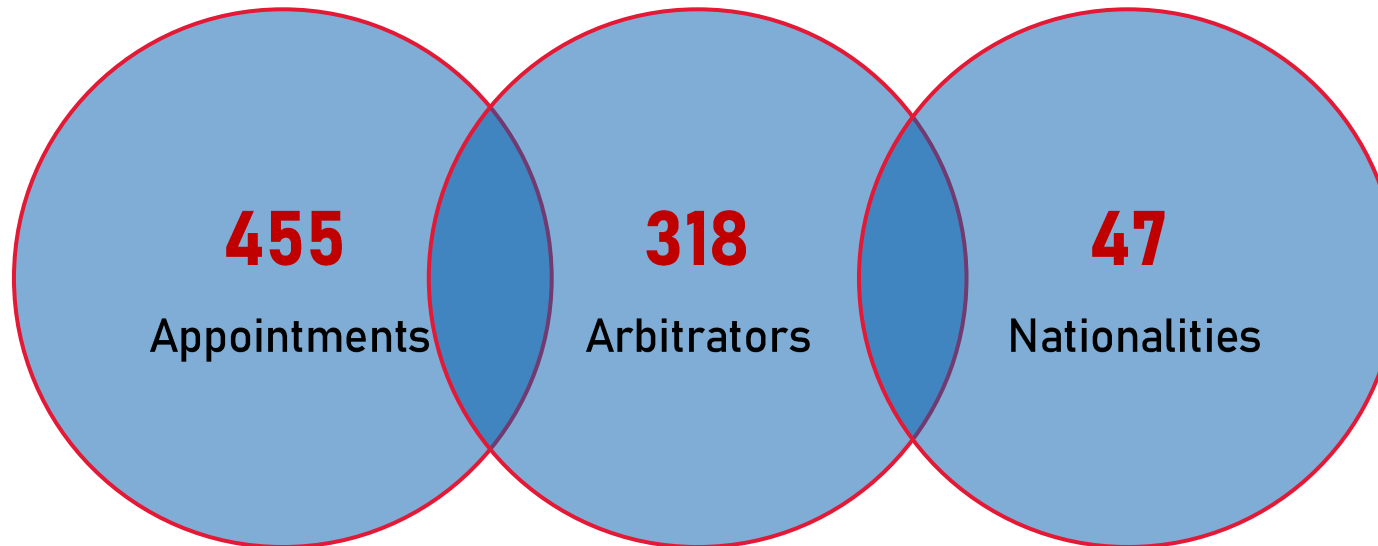
# The LCIA by Numbers

## The LCIA's Caseload in 2024 – Seat and Applicable Law

- ◆ Administered arbitrations across **21** seats and governed by **35** substantive laws
- ◆ **89%** seated in England
- ◆ In **78%** of cases, English law was applicable

# The LCIA by Numbers

## The LCIA's Caseload in 2024 – Tribunal Appointments

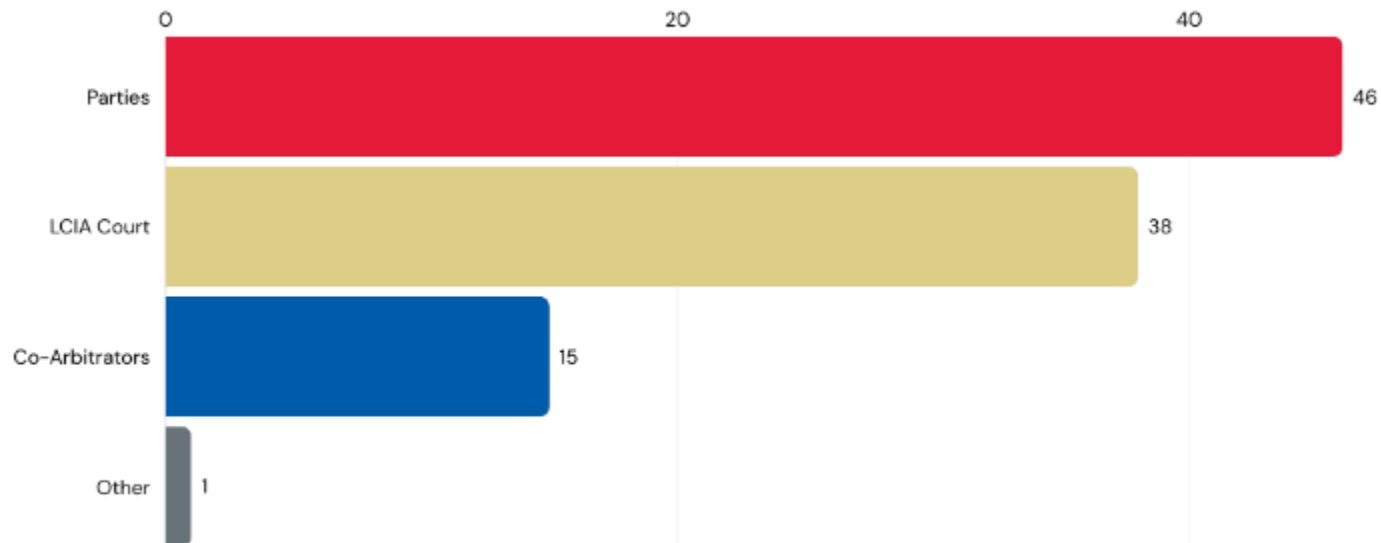


- ◆ **54%** three-member tribunal appointments
- ◆ **46%** sole arbitrators' appointments

# The LCIA by Numbers

## The LCIA's Caseload in 2024 – Tribunal Appointments

- ◆ LCIA Court selected arbitrators in **38%** of appointments
- ◆ Parties and co-arbitrators selected arbitrators in **61%** of appointments



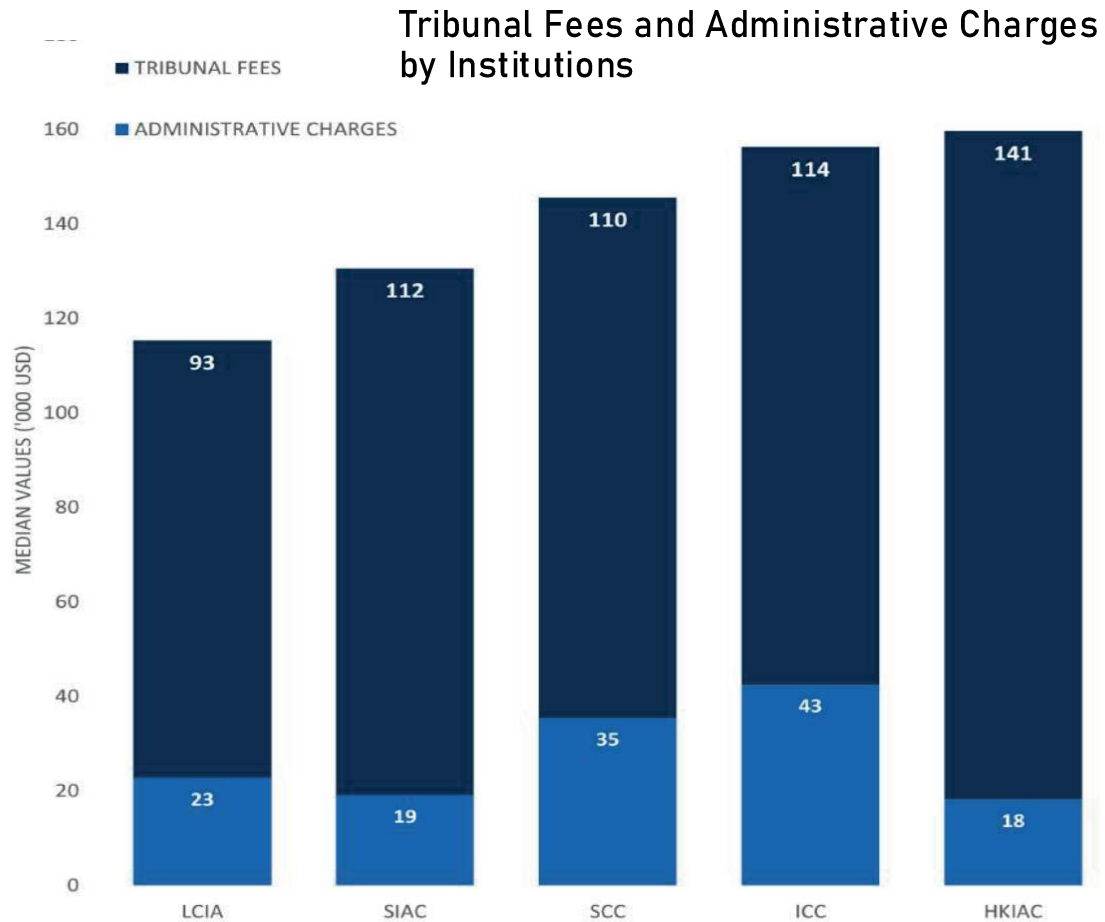
# The LCIA by Numbers

## The LCIA's Caseload in 2024 – Tribunal Appointments

- ◆ **47** different nationalities
- ◆ **45%** of appointments were of non-British arbitrators:
  - ◆ **60%** of appointments by LCIA Court;
  - ◆ **37%** by parties; and
  - ◆ **33%** by co-arbitrators



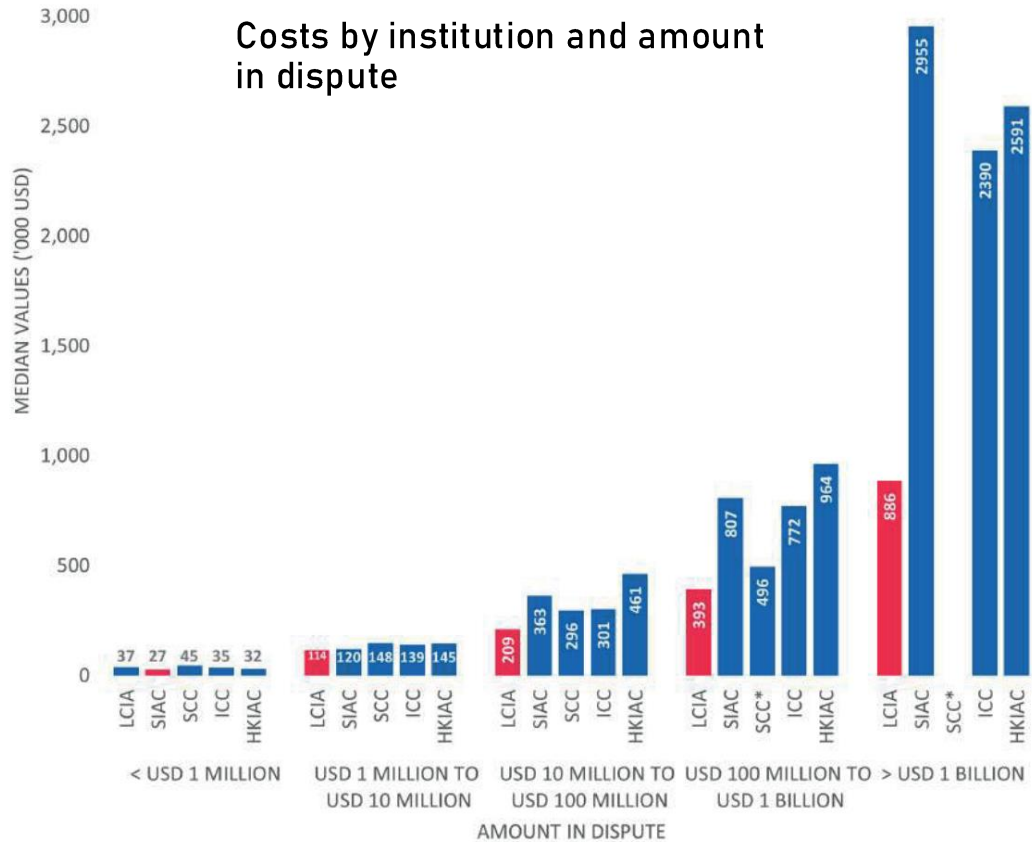
# The LCIA by the Numbers



- ◆ LCIA Arbitration Costs are lower than the estimated costs of comparable institutions across almost all amounts in dispute
- ◆ The median LCIA arbitration cost is **USD 117,653**

# The LCIA by the Numbers

## Costs and Duration Analysis



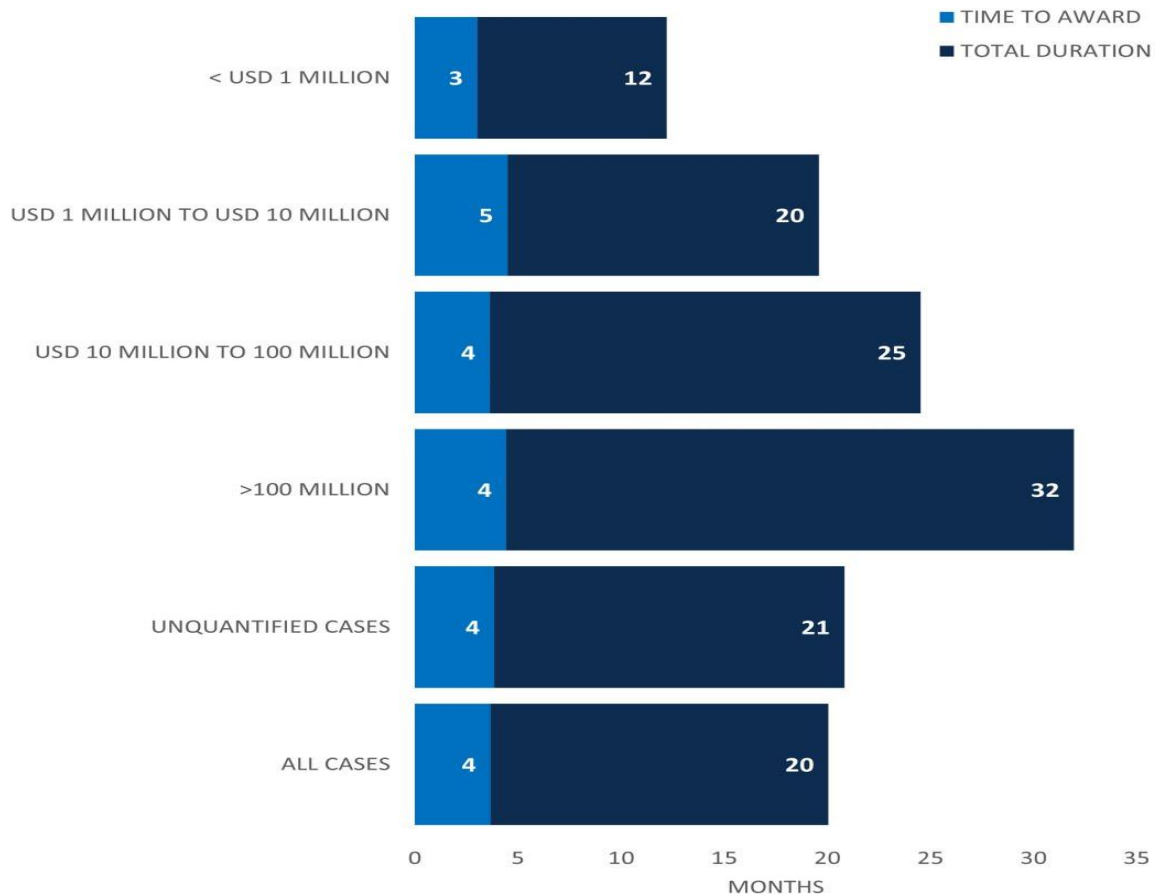
The difference is especially notable for larger cases, with amounts in dispute ranging from **USD 100 million - USD 1 billion, and cases above USD 1 billion** being significantly more expensive at all other institutions studied.

\*SCC's board has discretion over tribunal fees for large amounts in dispute. Therefore, it is not possible to provide data on amounts over USD 1 billion.

# The LCIA by the Numbers

## Costs and Duration Analysis

Total Duration and Time to Award by Amounts in Disputes



◆ The median LCIA arbitration lasts a total of **20 months**

# User Confidence

## ◆ The LCIA is the second most preferred institution in:

- ◆ Africa
- ◆ Latin America & the Caribbean
- ◆ Europe
- ◆ Middle East

## ◆ The LCIA is the third most preferred institution in:

- ◆ North America

Thank you



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