International arbitration: Which institution?
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The majority of international arbitration users favour institutional rather than *ad hoc* arbitration. However, when deciding which institution to select, there are several to choose from, but little guidance to assist in the selection process.

This Quickguide aims to provide such guidance, covering:

- the differences between institutional and *ad hoc* arbitration, and why institutional arbitration is favoured;
- the key factors parties should consider when choosing an arbitral institution; and
- a comparison of the rules, style, and perceived advantages and disadvantages of the leading arbitral institutions.

**Institutional vs *ad hoc* arbitration**

The two broad forms of arbitration are institutional arbitration and *ad hoc* arbitration.

**Institutional arbitration**

In choosing institutional arbitration, contracting parties are agreeing to adopt the procedural rules of a particular institution and to have that institution administer and supervise the conduct of any arbitration that is commenced under the arbitration agreement. Specifically, this involves the institution, depending on the particular institutional rules, administering the appointment of arbitrators (confirmation, default appointment, challenges, etc.), determining the fees payable to the arbitrator (often by reference to a fixed methodology set out in the institution’s rules), overseeing the taking of deposits and making of payments to the arbitrators, assisting in logistics for hearings (hearing rooms, transcript services, etc.), and sometimes even scrutinising draft awards to ensure enforceability.

**Ad hoc arbitration**

*Ad hoc* arbitration, on the other hand, is arbitration which the parties manage themselves. It is conducted under rules adopted for the purpose of the specific arbitration, without the involvement of any arbitral institution. The parties can draw up the arbitral rules themselves, leave the rules to the discretion of the arbitrators or, as is more common, adopt rules specially written for *ad hoc* arbitration, for example, the UNCITRAL Rules.\(^1\) They then proceed to conduct the arbitration in conjunction with the arbitrator directly. In other words, the appointment of arbitrators and associated issues are managed by the parties, arbitrators' fees are negotiated directly with the arbitrator and paid directly by the parties, parties must arrange all logistics for the hearing, and there is no supervision of awards.

**Why institutional arbitration is often favoured**

A survey of international arbitration users in 2015 found that 79 per cent of the arbitrations they were involved in over the previous five years (2010-2015) were institutional arbitrations.\(^2\)

There are several reasons for this preference for institutional arbitration. An institution can lend political or moral weight to awards. More practically, because institutional rules are designed to regulate the proceedings comprehensively from beginning to end, the institutions are better suited to cater for contingencies that might arise, even if (as sometimes happens) a party fails or refuses to cooperate. By incorporating an institution’s rules into the contract, contracting parties also avoid the time and expense of drafting a suitable *ad hoc* clause.

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1. The United Nations Commission on International Trade Law Arbitration Rules (as revised in 2010). Please note that UNCITRAL is not an arbitral institution and does not administer arbitrations.
2. 2015 *International Arbitration Survey: Improvements and Innovations in International Arbitration* by the School of International Arbitration at Queen Mary University of London. The survey is available on the QMUL’s website.
As noted above, the institution will also assume administrative responsibility for the arbitration, and take care of fundamental aspects of the arbitration procedure. The fees and expenses of the arbitration are, with varying degrees of certainty, regulated, and some arbitral institutions independently vet awards to ensure enforceability.

*Ad hoc* arbitration lacks the "support net" of an institution and depends for its full effectiveness on a spirit of co-operation between the parties, which is usually lacking by the time disputes have arisen. The potential problems of arbitration more generally, such as the ability to delay proceedings, are more likely to arise in *ad hoc* arbitration.

Having said that, the additional layer of bureaucracy imposed by institutional arbitration may cause delay and, inevitably, additional fees are payable. Although the arbitrators' fees are reduced because they have less administration to do, the fees of the institution can add a significant amount to the overall costs of the arbitration. This is particularly so where large amounts are in dispute and the fees are calculated by reference to the value of the claims (see further below). Users of *ad hoc* arbitration also value the procedural flexibility it offers, which they feel enhances party autonomy when compared with institutional arbitration. *Ad hoc* arbitration is also favoured in certain sectors, e.g. the shipping and commodities sectors, or by contracting parties who are sophisticated users of arbitration.

**Key factors to consider in choosing an arbitral institution**

Having decided to select institutional arbitration, the first question in a party's mind is "which institution?"

There are many institutions to choose from. As a general rule, newly formed institutions or institutions without a proven track record should be avoided. That aside, there is no magic formula for choosing between them. Increasingly, institutions and institutional rules are offering similar processes with little to distinguish them. An example is the widespread introduction of mechanisms such as emergency arbitration, once a key distinguishing feature of only certain leading institutions. Such similarity leads parties to look to more subjective factors in deciding which institution to use: the institution's reputation, previous experience with an institution, the depth and breadth of arbitrators, the quality and consistency of the institution's staff and costs, with some willing to consider lesser known institutions for a more competitive price.

Another key consideration for parties is the chosen seat of arbitration. Selection of the seat is generally viewed as more important than selection of institution as it determines the procedural law of the arbitration, the courts responsible for applying the procedural law, and the "nationality" of the award for enforcement purposes. A reputable institution based in the parties' chosen seat will often be viewed favourably because of its perceived association with and knowledge of how things work in that seat, as well as its geographic proximity. That said, there is nothing stopping parties from choosing an institution in a jurisdiction that differs from the seat of the arbitration and the governing law (it is sensible to align governing law and the seat).

The above considerations are important, but are often personal to the parties involved. There are, however, some clear objective differences between the various institutions and their rules which parties can consider. We deal with these below, and in appendix 1, where further guidance by way of a comparison table of the leading arbitral institutions is provided.

It is important to recognise that institutional arbitration rules provide only a framework for the procedure of the arbitration. The way in which the arbitration is conducted will be determined by the specific approach of the arbitrators. Factors such as their degree of experience in international arbitration, legal background and training, and views on the legal issues for determination in the

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3 According to the 2021 International Arbitration Survey: Adapting Arbitration to a Changing World, available on [QMUL's website](https://www.qmul.ac.uk/).  
4 See the 2021 International Arbitration Survey: Adapting Arbitration to a Changing World by the School of International Arbitration at Queen Mary University of London, which recorded the reasons for respondents' preference for certain institutions. The survey can be found on [QMUL's website](https://www.qmul.ac.uk/).
arbitration will influence their approach. It is therefore essential to consider carefully the approach you want the tribunal to take when selecting your arbitrator.

**Level of institutional involvement**

Arbitral institutions have varying levels of involvement in managing and administering arbitrations. Institutions such as the Hong Kong International Arbitration Centre (HKIAC), for example, promote their "light touch" approach with rules emphasising party autonomy and entrusting the arbitrators with the primary decision-making power. Other institutions, such as the International Court of Arbitration of the International Chamber of Commerce (ICC), are known for more intensive involvement in arbitrations.

One practical example of these contrasting approaches is in respect of scrutiny of arbitral awards. Institutions like the ICC and the Singapore International Arbitration Centre (SIAC) engage in a mandatory scrutiny and approval of draft awards of the tribunal. The ICC Court performs the scrutiny process and may lay down modifications as to the form of the award and, without affecting the tribunal's liberty of decision, may also draw the tribunal's attention to points of substance. The idea is to prevent the award suffering from defects in form or substance that could give rise to difficulties at the enforcement stage.

Many other institutions, such as the HKIAC, London Court of International Arbitration (LCIA), and the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), do not scrutinise or approve awards, leaving it to the tribunal to render a valid award. This difference reflects the varying views about the value of the scrutiny process: some parties consider the additional quality assurance to be a benefit, while others see it as imposing unnecessary delay and expense.

**Costs of the arbitration**

Perhaps one of the most distinguishing features between the various institutions is their methodology for calculating arbitrators' fees and administrative fees and, ultimately, the typical costs for an arbitration administered by them.

Many institutions (such as the ICC, SCC and SIAC) calculate both their administrative fees and arbitrators' fees on an ad valorem basis; that is, by reference to the amount in dispute. Others, like the LCIA, calculate administrative and arbitrator fees based on time spent and capped hourly rates. It should be noted, however, that time spent may still be factored into an ad valorem system by fixing costs within minimum and maximum limits. Conversely, the claim value can be relevant in an hourly rate system, as the circumstances of the case, including the value of a claim, are often factored in when determining the maximum hourly rate.

Those institutions charging on an ad valorem basis helpfully provide cost calculators on their websites to allow parties to obtain an insight, in advance of the arbitration, into the likely costs of their arbitration. For those charging based on time and hourly rates, parties are reliant on actual data produced by the institution itself to obtain such an insight. Increasingly, institutions are publishing data on both costs and duration of arbitration by reference to value of the claim. However, the different methodologies used can make comparisons difficult.

**Privacy**

Privacy of arbitral proceedings is one of the key advantages of arbitration. The seat of the arbitration will often determine what level of privacy and confidentiality is provided and, where confidentiality is regarded as important, contracting parties should cater for it in their arbitration agreement. That said, the approach of the institution towards confidentiality may also be a factor when choosing the arbitral institution; not all institutions provide for it as a default rule.

The LCIA and DIFC-LCIA Arbitration Centre (DIFC-LCIA) rules, for example, require the parties to keep confidential all awards in the arbitration, as well as all materials created for the purposes of the arbitration, and all other documents produced by a party in the proceedings not otherwise in the public
domain.\textsuperscript{5} Deliberations of the tribunal also remain confidential, and neither institution publishes awards without the prior written consent of the parties and the arbitral tribunal.

The ICC Rules, on the other hand, do not automatically oblige parties to keep awards, materials and documents confidential, but simply empower the tribunal, upon the request of a party, to make orders concerning the confidentiality of proceedings or any other matters in connection with the arbitration. Further, its Rules do not expressly prohibit publication of awards, and the ICC regularly publishes anonymised excerpts from awards.\textsuperscript{6} From 1 January 2019 the ICC has adopted an opt-out approach to publication of its awards: unredacted awards may be published within 2 years of notification, unless a party objects or requests redaction.\textsuperscript{7}

**Expertise in certain types of cases or industries**

Another distinguishing feature that parties may look for is whether the institution has expertise in the particular type of case likely to arise under their contract or in the particular industry in which they operate.

A number of specialist institutions have been set up to handle disputes in particular areas and industries. Examples include:

- the Panel of Recognised International Market Experts in Finance (P.R.I.M.E. Finance), an institution offering mediation, arbitration and other dispute resolution services to the finance sector;
- the World Intellectual Property Organisation (WIPO) Arbitration and Mediation Center, which caters for intellectual property and technology disputes;
- the Court of Arbitration for Sport (CAS), which administers sports-related arbitrations; and
- the Chambre Arbitrale Maritime de Paris which administers and supervises maritime arbitrations.

These institutions publish rules tailored to the types of disputes they deal with, and maintain rosters of arbitrators who specialise in those types of disputes. Most of the major arbitral institutions (like the ICC and LCIA) do not specialise in this way; the argument being that there is no need for the institution to be specialised as long as the selected arbitrator is a specialist, or is permitted by the institution's rules to appoint experts and/or rely on expert evidence from party-appointed experts. Nevertheless, parties may feel more comfortable dealing with an institution that specialises in its field.

**Fast-track arbitration and early determination**

In a survey of international arbitration users, 92 per cent of respondents were in favour of the adoption of a simplified "fast track" arbitration procedure for claims under a certain value.\textsuperscript{8} Certain institutions provide for expedited arbitration, which can be on a documents-only basis and before a sole arbitrator. For example, under the SIAC Rules, the expedited procedure can be applied for where the aggregate amount in dispute does not exceed SGD 6 million, the parties agree to use the procedure, or in cases of exceptional urgency. The SCC also has separate expedited rules which the parties can agree to use. As from 1 March 2017, the new ICC expedited procedure will automatically apply to ICC arbitrations where the amounts in dispute are below USD 2 million. Parties can choose to use the procedure for higher value cases. If contracting parties want to have the flexibility to adopt a fast-track procedure, this should be taken into consideration.

\textsuperscript{5} This rule is subject to disclosure that may be required of a party by legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a state court or other legal authority.

\textsuperscript{6} The Internal Rules of the International Court of Arbitration empower the President or Secretary General of the Court to authorise researchers to acquaint themselves with awards. The researchers must undertake to respect confidentiality and to refrain from publishing anything based upon the award without having previously submitted the text for approval to the Secretary General of the Court.

\textsuperscript{7} Paragraphs 40-46 of the ICC’s updated Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration.

\textsuperscript{8} 2015 International Arbitration Survey: Improvements and Innovations in International Arbitration by the School of International Arbitration at Queen Mary University of London. Its 2018 survey, The Evolution of International Arbitration, also reflected this preference, with increased expedited procedures for claims regarded as one the key improvements that would lead to greater use of international arbitration across all industries and sectors. Both surveys are available on the QMUL’s website.
One of the criticisms of arbitration is the inability to have a claim determined or dismissed at an early stage. This is often cited as the reason why financial institutions prefer national court litigation over international arbitration. However, the SIAC in its 2016 Rules, the SCC in its 2017 Rules, the HKIAC in its 2018 Rules, and the LCIA in its 2020 update to its Rules, introduced a mechanism for summary disposal/early determination of disputes. The ICC in 2017 clarified the procedures already available under the general case management provisions of its Rules for summary dismissal applications. An institution's approach to these applications is another factor to be considered by contracting parties when choosing their institution.

Note to parties and arbitral tribunals on the conduct of the arbitration under the ICC rules of arbitration.
## Comparison of the major arbitral institutions

<table>
<thead>
<tr>
<th>Institution</th>
<th>Particular suitability for...?</th>
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<tbody>
<tr>
<td>Australian Centre for International Commercial Arbitration (ACICA)</td>
<td>International arbitrations of all types. The rules (e.g. on confidentiality) are well suited to Australian Arbitration Legislation and therefore make it a good choice for Australian-seated arbitration.</td>
</tr>
<tr>
<td>DIFC-LCIA Arbitration Centre (DIFC-LCIA)</td>
<td>International arbitrations of all types. Often used in disputes involving a Middle East counter party.</td>
</tr>
<tr>
<td>Hong Kong International Arbitration Centre (HKIAC)</td>
<td>International arbitrations of all types, and is a common choice for transactions involving a party from the People’s Republic of China.</td>
</tr>
<tr>
<td>International Court of Arbitration of the International Chamber of Commerce (ICC)</td>
<td>International arbitrations of all types, particularly where the parties come from very different backgrounds or those where administrative support or guidance is of benefit.</td>
</tr>
<tr>
<td>London Court of International Arbitration (LCIA)</td>
<td>International arbitrations of all types. Often used in disputes involving either a Russian and/or CIS-related party and/or a party ultimately controlled by a Russian/CIS entity.</td>
</tr>
<tr>
<td>Arbitration Institute of the Stockholm Chamber of Commerce (SCC)</td>
<td>Due to its perceived neutrality, SCC arbitration may be appropriate where parties are sensitive to issues of partiality, or are unable to agree on the appointment of another major institution. Often used for disputes involving East v West and Russian and CIS counterparties. The SCC’s pool of potential arbitrators includes several who are fluent in Russian. Also perceived as being easier to enforce SCC awards in those jurisdictions.</td>
</tr>
<tr>
<td>Singapore International Arbitration Centre (SIAC)</td>
<td>Due to its perceived neutrality, SIAC arbitration may be appropriate where parties are sensitive to issues of partiality, or are unable to agree on the appointment of another major institution. Popular for disputes involving an Indian counterparty and increasingly popular for disputes involving a Chinese counterparty.</td>
</tr>
<tr>
<td>Australian Centre for International Commercial Arbitration (ACICA)</td>
<td>DIFC-LCIA Arbitration Centre (DIFC-LCIA)</td>
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<tr>
<td><strong>Key advantages</strong></td>
<td>Established over 30 years ago, ACICA has a well-established brand.</td>
</tr>
<tr>
<td></td>
<td>Regarded as a reliable and cost-effective alternative to arbitrating in other major financial centres in the Asia Pacific region. The Rules reflect international best practice including expedited arbitration.</td>
</tr>
<tr>
<td></td>
<td>Distance and the time zone issues often cited as disadvantages. Not as well-known overseas and has a smaller case load.</td>
</tr>
<tr>
<td><strong>Key disadvantages</strong></td>
<td>Australia’s geographical distance from other countries: Distance and the time zone issues often cited as disadvantages. Not as well-known overseas and has a smaller case load.</td>
</tr>
<tr>
<td><strong>Method of commencing arbitration</strong></td>
<td>By notice given to ACICA.</td>
</tr>
<tr>
<td>Australian Centre for International Commercial Arbitration (ACICA)</td>
<td>DIFC-LCIA Arbitration Centre (DIFC-LCIA)</td>
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<td>---------------------------------------------------------------</td>
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</tr>
<tr>
<td><strong>Number of arbitrators</strong></td>
<td>In the absence of agreement between the parties, one, unless the LCIA decides three is appropriate.</td>
</tr>
<tr>
<td><strong>Nationality of arbitrators</strong></td>
<td>Unless the parties have agreed otherwise in writing, if the parties are of different nationalities, a sole or presiding arbitrator must not have the same nationality as any of the parties.</td>
</tr>
<tr>
<td><strong>Appointment of arbitrators</strong></td>
<td>Where one arbitrator is to be appointed, in the absence of party agreement, ACICA will appoint. Where three arbitrators are to be appointed, each party appoints one arbitrator and the two arbitrators choose the chairperson. In default of appointment by either party or agreement by the arbitrators on the third, ACICA will appoint.</td>
</tr>
<tr>
<td>Challenges to the jurisdiction of the tribunal</td>
<td>Made to the tribunal.</td>
</tr>
<tr>
<td>Privacy and confidentiality</td>
<td>Unless agreed otherwise in writing, all hearings take place in private and are treated as confidential. Unless certain circumstances apply, the parties, tribunal and ACICA shall not disclose any matter relating to the arbitration to a third party.</td>
</tr>
<tr>
<td>Australian Centre for International Commercial Arbitration (ACICA)</td>
<td>DIFC-LCIA Arbitration Centre (DIFC-LCIA)</td>
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<tr>
<td><strong>Procedure</strong></td>
<td>Subject to the ACICA Rules, the arbitral tribunal has a broad discretion on how to conduct the arbitration, provided that the parties are treated equally and that each party is given a reasonable opportunity of presenting its case.</td>
</tr>
<tr>
<td><strong>Multiple parties, joinder and consolidation</strong></td>
<td>The Rules provide for claims between multiple parties and joinder of additional parties (provided that the additional parties are bound by the same arbitration agreement). There is also a mechanism for consolidation.</td>
</tr>
<tr>
<td><strong>Time frame for preparation of award</strong></td>
<td>No time limit under the Rules. Under ACICA’s Expedited Arbitration Rules, four months from the date the arbitrator is appointed (if there is no counterclaim or claim relied on for the purpose of a set-off), or within 5 months in all other cases.</td>
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<tr>
<td>Review of the award</td>
<td>None.</td>
</tr>
<tr>
<td>Costs:</td>
<td></td>
</tr>
<tr>
<td>(a) Administration fee</td>
<td>Ad valorem.</td>
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<tr>
<td>(b) Arbitrators’ fees</td>
<td>As agreed between the parties and the arbitrators or, failing agreement, as determined by ACICA having regard to the nature of the dispute, the amount in dispute and the standing and experience of the arbitrators.</td>
</tr>
<tr>
<td>(c) Scope for security for costs</td>
<td>The arbitral tribunal has power to order interim measures of protection including security for costs.</td>
</tr>
<tr>
<td>Emergency arbitration procedure/ expedited formation of tribunal</td>
<td>Australian Centre for International Commercial Arbitration (ACICA)</td>
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<tr>
<td>A party may apply for the appointment of an emergency arbitrator to provide emergency interim measures of protection. The decision is not binding on the tribunal.</td>
<td>A party may request appointment of an emergency arbitrator to provide emergency relief prior to the constitution of the tribunal. Orders made by the emergency arbitrator will not bind the tribunal. A party may apply for expedited formation of the tribunal in cases of &quot;exceptional urgency&quot;.</td>
</tr>
<tr>
<td>Fast track arbitration or summary disposal</td>
<td>Disputes can be referred to arbitration under the ACICA Expedited Arbitration Rules where the amount in dispute is less than AUD 5 million, the parties agree, or it is a case of exceptional urgency.</td>
</tr>
<tr>
<td>Australian Centre for International Commercial Arbitration (ACICA)</td>
<td>DIFC-LCIA Arbitration Centre (DIFC-LCIA)</td>
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<tr>
<td><strong>Waiver of rights of appeal unless otherwise agreed</strong></td>
<td>Yes.</td>
</tr>
<tr>
<td><strong>Other points of note</strong></td>
<td>The default seat is the Dubai International Financial Centre unless the parties agree otherwise or unless the tribunal determines otherwise. Where parties intend for the DIFC to be the seat, it is important that their arbitration agreement clearly specifies the DIFC rather than Dubai.</td>
</tr>
</tbody>
</table>
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