

# International Arbitration: Corporate attitudes and practices 2008





# Introduction



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Two years have passed since PricewaterhouseCoopers sponsored the School of International Arbitration's pioneering research, "*International Arbitration: Corporate attitudes and practices 2006*". We were delighted that those findings were shared around the world and facilitated informed debate between arbitration practitioners, academics and the users of arbitration, particularly those in the business and governmental communities.

In 2006, corporate counsel said that one of the principal advantages of International Arbitration was that it enabled parties to obtain recognition and enforcement of arbitral awards in most countries around the world. While enforcement is a last resort and not the norm, the existence of effective enforcement mechanisms underpinned the finding that International Arbitration is the preferred dispute resolution mechanism for international commercial and investment disputes. Having an effective dispute resolution mechanism is an important safeguard in a corporation's decision to invest or do business internationally. Consequently, PricewaterhouseCoopers was keen to explore whether corporations' perceptions of the effectiveness of enforcement was consistent with their experience.

We were therefore pleased to sponsor additional research by the School of International Arbitration, Queen Mary, University of London to obtain empirical and qualitative data into the perceptions and experience of corporations in enforcing arbitral awards and settling their disputes more generally, both before and after awards had been handed down. The research also gathered useful information on enforcement and settlement from arbitration institutions.

The findings from this research, which covers both commercial and investment treaty arbitration, confirms that International Arbitration is effective. With a small number of exceptions, the process works well and continues to have the support of its users. We expect these findings to be widely analysed and valued by the users and practitioners of International Arbitration. These findings should be useful as the arbitration market develops within an increasingly complex and global economic environment.

Finally, our thanks go to Professor Loukas Mistelis, Crina Baltag and Stavros Brekoulakis from the School of International Arbitration, to the distinguished practitioners who gave invaluable guidance on framing the questions and to the counsel at corporations and arbitration institutions around the world who gave their time and thoughts so generously and enthusiastically.



**Professor Loukas Mistelis**  
Director, School of International  
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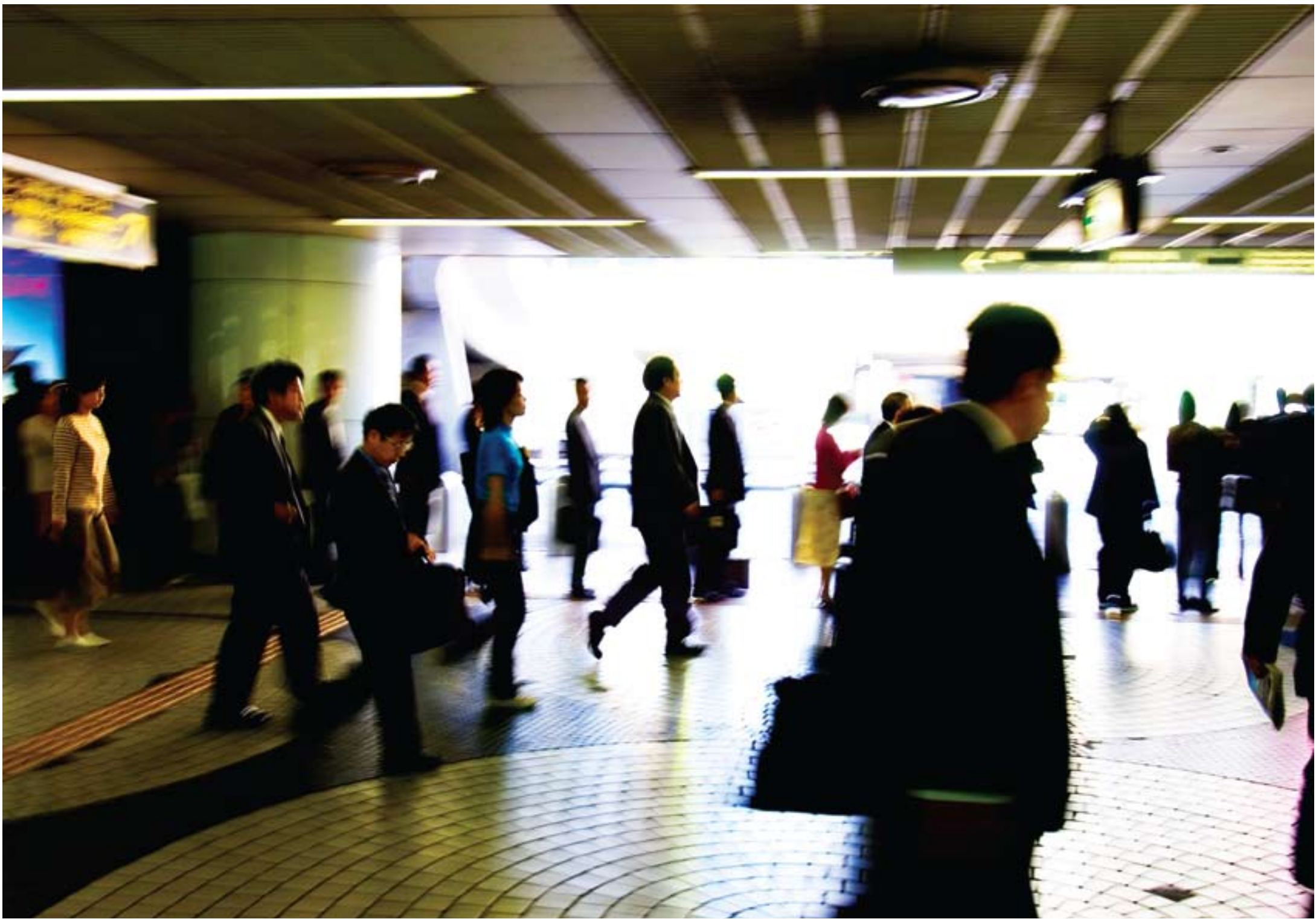
It is well established that International Arbitration is the dispute resolution method of choice for cross-border transactions and disputes relating to foreign direct investment. The bigger the amount in dispute, the more likely it is that the dispute will be referred to arbitration. Up to 2006, such statements would have been based exclusively on anecdotal evidence. That year, however, the School of International Arbitration at Queen Mary, University of London engaged in pioneering research into the attitudes and choices of major international corporations towards the resolution of international commercial disputes. That research provided the necessary empirical backbone to modern arbitration research, offered a bird's eye view, tested perceptions and produced quantifiable data.

Much of the success of International Arbitration is, arguably, due to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards. The convention, now adopted by 142 states, simplifies and accelerates the enforcement of arbitral awards in an unprecedented way. On its 50th anniversary, we decided to explore two themes that go to the core but also beyond the remit of the convention: (a) perceptions and experiences associated

with the enforcement of awards; and (b) settlement in the context of arbitration (before the first hearing, during the proceedings and even after the award was rendered). We also explored the impact on enforcement of the involvement of states as parties in arbitration and collected data from a wide range of arbitration institutions.

We have again focused on corporate views and all corporations involved are major players in their various sectors with experience in International Arbitration. We trust that this large independent statistical survey provides both quantifiable data as well as insights to this "esoteric area of law" and will be the new empirical baseline for many more empirical surveys to follow. This project would not have been possible without the generous and enthusiastic co-operation of the business community, which shared with us information that is not publicly available.

We are also delighted to have been able to co-operate with PricewaterhouseCoopers on this occasion. We trust this co-operation will be on-going and fruitful.



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# Executive Summary

International Arbitration has long asserted its superiority over transnational litigation – not least when it comes to producing an end result. Through the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, it claims to offer prevailing parties a better chance of obtaining enforcement of awards in most countries around the world. But does International Arbitration actually deliver?

Conducted over a six-month period, this study summarises data from 82 questionnaires and 47 interviews. We surveyed major corporations that are users of arbitration services. Its key conclusions are:

- International Arbitration remains companies' preferred dispute resolution mechanism for cross-border disputes
- International Arbitration is effective in practice
- when International Arbitration cases proceed to enforcement, the process usually works effectively.

The first six sections of this study cover the alternative outcomes of International Arbitration. Sections 7 and 8 summarise the findings on arbitrations involving states and the views of the arbitration institutions respectively.

## Overview of International Arbitration

### Significant support for arbitration

- 88% of the participating corporations have used arbitration
- certain industries, such as insurance, energy, oil and gas and shipping, use International Arbitration as a default resolution mechanism.

### Corporate counsel are satisfied with International Arbitration

- 86% of the participating corporate counsel said they are satisfied with International Arbitration
- the enforceability of arbitral awards, the flexibility of the procedure and the depth of expertise of arbitrators are seen as the major advantages of arbitration
- the length of time and the costs of International Arbitration are seen as the disadvantages.

## Outcome

### Overwhelming majority of arbitration cases are successfully resolved

- 25% of cases are settled before an arbitral award is rendered; 7% are settled at this stage with a subsequent award by consent

- 49% of cases end in voluntary compliance with an arbitral award
- 11% of cases result in recognition and enforcement proceedings
- the remaining 8% of cases involved an apparent settlement, or an arbitral award, but this was followed by litigation
- overall, 92% of the arbitration disputes are successfully resolved at some stage through the arbitration proceedings.

## Settlement before an arbitral award

### Settlements most frequently occur before the first hearing

- 43% of the settlements involving the participating corporations were reached before the first (usually procedural) hearing in the arbitration proceedings
- settlement before the first hearing is more likely in institutional rather than ad hoc proceedings.

### Strong desire to preserve business relationships

- In 27% of cases, the participating corporations settled disputes in order to preserve business relationships

- other factors influencing settlement were a weak position in the case and a desire not to incur excessive time and costs before the dispute was resolved.

## Voluntary compliance

### High degree of compliance with arbitral awards

- 84% of the participating corporate counsel indicated that, in more than 76% of their arbitration proceedings, the non-prevailing party voluntarily complies with the arbitral award; in most cases, according to the interviews, compliance reaches 90%
- compliance is highest in the re-insurance, pharmaceutical, shipping, aeronautics and oil and gas industries.

## Settlement after arbitral award

### Corporations often achieve settlement after arbitral awards

- 40% of the participating corporations have negotiated a settlement after the arbitral award was rendered; this usually entailed a discount in return for prompt payment
- almost one in five of the interviewed corporations realised value from the claim or award by selling or assigning it.

### **Corporations settle after the award to save time and costs**

- 56% of the participating corporate counsel who had negotiated a settlement after an award indicated that they did so in order to avoid the time or costs involved in embarking on recognition, enforcement and execution proceedings in a foreign jurisdiction
- for 19% of the participating corporations, maintaining a relationship with the non-prevailing party was an important driver of a settlement.

### **Corporations get at least half the value of an award**

- 19% of the participating corporations were content to settle their claim for between 50% and 75% of the amount awarded by a tribunal
- 35% of the respondents achieved settlements of more than 76% of the value of the award.

### **Enforcement**

#### **Most corporations are able to enforce arbitral awards within one year and usually recover more than 75% of the value of the award**

- 57% of the participating corporations that had experienced recognition and enforcement proceedings said that it

took less than one year for arbitral awards to be recognised and enforced

- 44% of those corporations had recovered the full value of an award from enforcement and execution proceedings
- 84% of those corporations had received more than 75% of the value of an award following the enforcement and execution proceedings.

#### **Lack of assets is the most common problem**

- Most participating corporations revealed no major difficulties in achieving recognition and enforcement of their arbitral awards
- where difficulties were encountered, they usually related to the circumstances of an award debtor, typically a lack of assets or an inability to identify relevant assets
- the place of enforcement and its domestic procedures may also present problems
- 17% of the participating corporations indicated that they have experienced various degrees of hostility from a country to the enforcement of a foreign arbitral award; the hostility did not always result in non-enforcement.

### **Place of enforcement based on the availability of assets of the award debtor**

- Not surprisingly, the most commonly cited reason for choosing the place of enforcement was where the non-prevailing party had sufficient assets
- other major factors taken into consideration when deciding upon the place of enforcement included the local recognition and enforcement mechanisms and the applicability of the 1958 New York Convention.

### **Local enforcement and execution proceedings are the reasons corporations encounter complications**

- 56% of respondents who experienced problems at the place of enforcement had problems with enforcement or execution proceedings; in most cases, the problems were described as “complications”, not insurmountable difficulties
- many corporate counsel cited countries in Africa and Central America, as well as China, India and Russia, as states that they perceive as hostile to enforcement of foreign arbitral awards
- in most cases, however, those perceptions were not matched by actual experiences of hostility

- there is concern that some of the countries cited are fast-growing economies that are expected to experience significant growth and attract large amounts of inward investment in the coming years.

### **States**

#### **Corporations are the main users of International Arbitration**

- 74% of the arbitration proceedings involved private corporations only
- 21% of the disputes involved a state enterprise
- 5% of the disputes were against states; so, investment treaty arbitration still accounts for only a small proportion of the total arbitration market.

#### **Less than one quarter of enforcement proceedings relate to arbitral awards against states or state entities**

- 19% of respondents indicated that they had sought recognition and enforcement of arbitral awards against states and state enterprises
- over half of those respondents had experienced no significant difficulties in enforcing awards against states or state enterprises

- of the minority of participating corporations that had experienced difficulties in enforcing awards against states or state enterprises, the main problems had been in identifying or obtaining access to relevant assets; in particular, there had been difficulties in linking assets to a particular state enterprise or the state itself.

#### **Arbitration institutions do not have a system of monitoring arbitral awards**

- Only 29% of arbitration institutions keep track of their arbitral awards. 29% of the institutions keep track of arbitral awards only when an award is challenged
- while most arbitration institutions interviewed expressed views on the enforcement of awards, most of their comments were based on anecdotal evidence.

#### **Institutions**

##### **Corporations prefer institutional arbitration as opposed to ad hoc arbitration**

- 86% of awards were rendered by arbitration institutions rather than through ad hoc arbitrations
- 67% of arbitrations involving states or state-owned enterprises are conducted through institutional rather than through ad hoc arbitrations
- the ICC, AAA-ICDR and LCIA are the institutions most commonly used by participating corporations
- the popularity of regional arbitration centres is increasing.





# 1

## An overview of International Arbitration

### Finding: there is a strong preference for alternatives to litigation

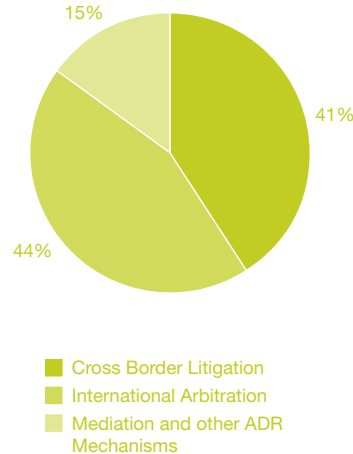
Respondents to the survey displayed a strong preference for International Arbitration and ADR, as an alternative to transnational litigation, to resolve international disputes. Corporate counsel perceive arbitration, as a private and independent system, largely free from external interference. In certain industries, such as shipping, energy, oil and gas or insurance, International Arbitration is the most commonly used dispute resolution mechanism.

88% of corporate counsel have used arbitration at least once. When asked what type of dispute resolution mechanisms they had used to resolve their international disputes, 44% of the participating corporations indicated they mostly used International Arbitration, while 41% mostly used transnational litigation. (The proportion preferring litigation was higher than in 2006.)

15% of counsel said they had used mediation or other ADR mechanisms (for example, conciliation or dispute resolution boards).

More than 30% of the UK and US-based corporations said they had used ADR. Over 10% of the South American corporations employed ADR mechanisms, indicating that alternatives to traditional court proceedings are being used in countries where such mechanisms are relatively new.

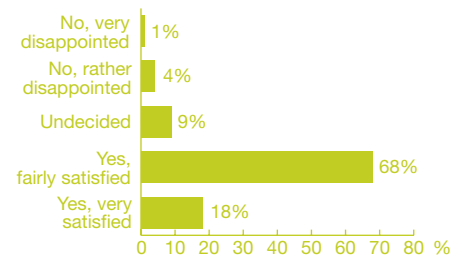
### Does your organisation have experience with the following dispute resolution mechanisms with regard to international disputes?



### Finding: the participating corporations are satisfied with International Arbitration

86% of respondents indicated that they are satisfied with International Arbitration with 18% being very satisfied. Just 5% of counsel are rather or very disappointed with arbitration. Their concerns stemmed from their experience of the increased costs of arbitration and delays to proceedings. However, most counsel spoke of the major benefits of arbitration, particularly the enforceability of arbitral awards, the flexibility of the procedure and the ability to select experienced arbitrators.

### If you have used arbitration in the last ten years, are you satisfied with arbitration as a dispute resolution mechanism?



76% of the arbitration institutions participating in this study reported their view that corporations are satisfied with arbitration as a dispute resolution mechanism. This is lower than the level of satisfaction reflected by the corporations themselves.

### Finding: International Arbitration cases arise most frequently from commercial transactions

Most of the disputes involving interviewed corporations arose from commercial transactions (38%), followed by construction disputes (14%), shipping disputes (11%), joint venture agreement disputes (9%), intellectual property disputes (6%) and insurance disputes (5%). While these results reflect, in part, the profile of the participants, commercial agreements are clearly the main source of disputes in International Arbitration.

This result is consistent with the statistics of the interviewed arbitration institutions: the majority of institutional arbitration cases deal with commercial transactions disputes, followed by construction, intellectual property and joint venture agreement disputes.

## 2



### The outcome of International Arbitration

**Finding: although an arbitration process can lead to an enforced arbitral award, this study reveals that voluntary compliance with an award or settlement is the most common outcome from arbitration procedures**

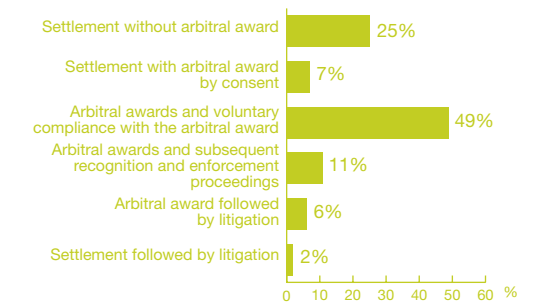
81% of disputes are resolved without the intervention of a national court. Corporations reported that 49% of their arbitration proceedings ended with the arbitral award rendered by the tribunal, followed by voluntary compliance by the opposing party.

However, many disputes were settled during the proceedings. 25% of counsel reported achieving a settlement before receiving an arbitral award, while a further 7% reported

settlements that were followed by an arbitral award by consent. 11% of the participating corporations had to seek recognition and enforcement of their awards.

During interviews, several counsel indicated that they were more likely to settle disputes during arbitration proceedings than when they were involved in proceedings in front of national courts.

**Has your organisation experienced the following outcomes of arbitration?**

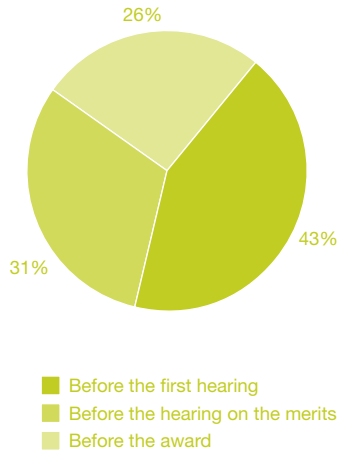


# 3

## Settlement before an award

**Finding: settlement most often occurs before the first hearing or before the hearing on merits**

At what stage of the proceedings have you settled the most?



Almost three quarters of settlements occur before the hearing on the merits of the case. Participants reported that 43% of cases were settled before the first hearing in the arbitration proceedings. 31% of cases were settled after the procedural hearing but before the hearing on the merits of the case.

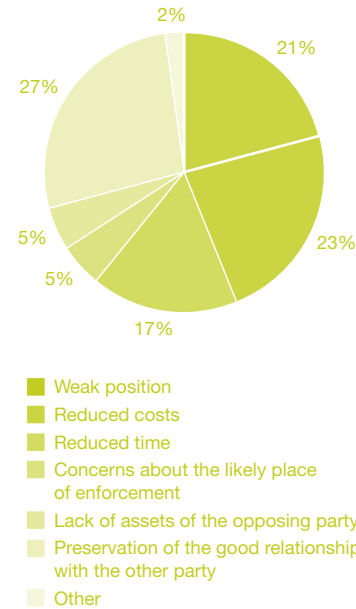
**Finding: desire to preserve business relationships is a strong driver for pre-award settlement**

The four main reasons that motivated corporations to settle were: to preserve business relationships (27%), to avoid high costs (23%), a weak case (21%) and to avoid excessive delay (17%).

The incentive to settle in order to preserve business relationships was particularly evident where the parties had been doing business together for a considerable period of time or where the market did not offer a wide range of alternative suppliers.

Concerns over the likely place for enforcement or the lack of assets of the opposing party were not cited as a major influence on the decision to settle.

What was the reason for reaching settlement rather than having an arbitral award?



*The arbitration institutions surveyed believe that the main factors influencing parties to settle are the savings of time and costs and safeguarding of business relationships. This broadly tallies with the responses given by corporations in this study.*

# 4

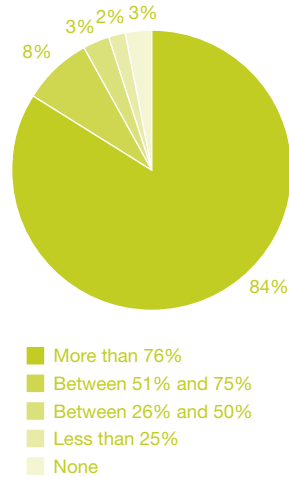
## Compliance with arbitral awards

### Finding: corporations usually comply with the awards rendered in International Arbitration proceedings

Once an award has been rendered, corporations reported high levels of compliance. 84% of respondents indicated that the opposing party had honoured the award in full in more than 76% of cases. Only 3% reported that an award debtor had failed to comply with the award. During the interviews, corporate counsel reported that more than 90% of the awards were honoured by the non-prevailing party.

The principal reason given for compliance with the arbitral awards was to preserve a business relationship. The highest level of compliance appears in the re-insurance, pharmaceuticals, shipping, aeronautics and oil and gas sectors.

How many arbitral awards have been carried out voluntarily by the opposing party?



*The majority of the participating arbitration institutions do not keep records of the arbitral awards after the proceedings are over. However, almost half of the institutions believe that the non-prevailing party complies voluntarily with the award in more than 76% of the cases.*

# 5

## Settlement after an award

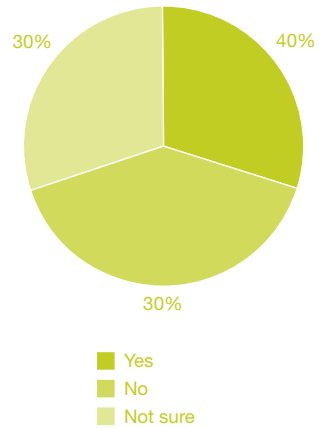
### Finding: settlements are frequently negotiated after an arbitral award has been made

Participants were asked about their experience of settlements agreed after receipt of an arbitral award. Typically, a post-arbitral settlement would alter the award by changing the terms of its performance (for example, by stipulating a different timeframe, agreeing payment in instalments or agreeing a reduced payment, often in exchange for prompt payment). There were some examples of awards being factored to a third party at a discount of 50% to 75% of the award's stated value.

40% of corporate counsel confirmed that they had negotiated a settlement with the opposing party after the arbitral award had been delivered. 30% of respondents indicated that they never negotiated a settlement after the arbitral award had been delivered.



Has your organisation reached settlement after the arbitration award was rendered?

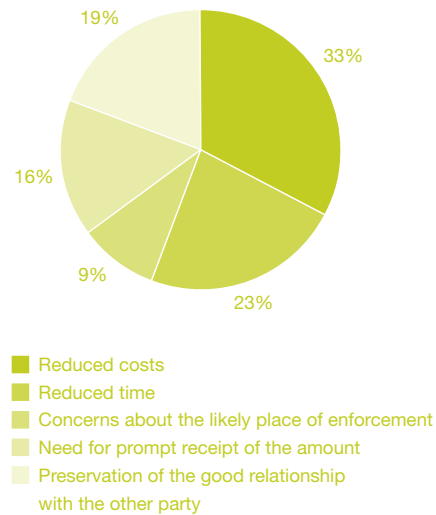


**Finding: corporations choose to renegotiate arbitral awards to save time and money**

Respondents' principal reasons for negotiating a settlement after an arbitral award were to avoid costs (33%), save the time that would be incurred in enforcement (23%), to preserve a working relationship with the other party (19%) and the desire for prompt receipt of the amount (16%).

Not surprisingly, the factors influencing settlement at the post award stage are similar to the factors influencing pre-award settlements, albeit with a slightly different emphasis given the certainty from the award.

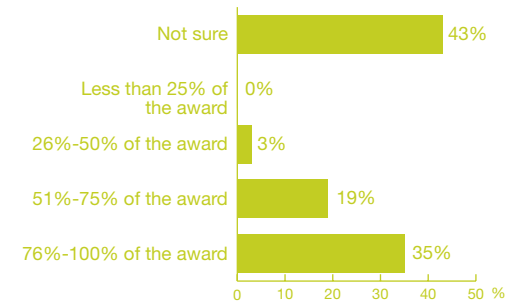
If the settlement was reached post award, what was the reason for settling?



**Finding: more than half of post-arbitral award settlement cases are settled for over 50% of the award**

54% of the corporations surveyed negotiated a settlement amounting to over 50% of the award; 35% settled for an amount in excess of 75% of the award.

If settlement was reached post award, at what percentage of the award was the settlement reached?



# 6



## Recognition and enforcement of arbitral awards

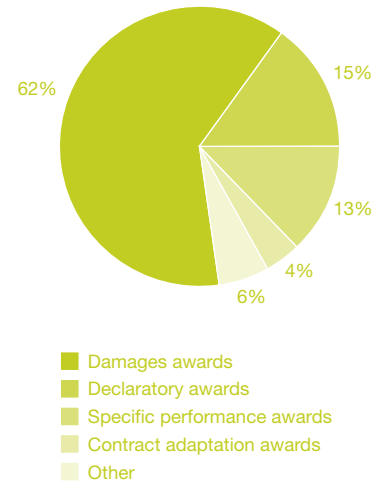
**Finding: most corporations have not encountered major difficulties in recognising and enforcing arbitration awards**

In only 11% of cases did participants need to proceed to enforce an award. The majority of corporations that had enforced awards reported that they had not encountered major difficulties in doing so.

Only 19% of the corporations had encountered difficulties when seeking to recognise and enforce foreign arbitral awards. Most of the difficulties arose with attempts to enforce damages awards, though some problems were also encountered when enforcing declaratory and specific performance awards.

*The participating institutions reported that parties to the arbitration proceedings administered by them experienced a range of difficulties when enforcing arbitral awards, including damages awards, declaratory awards, specific performance awards and contract adaptation awards. In their view, the two main difficulties are the lack of assets of the award debtor and hostility to foreign arbitral awards in the place of enforcement.*

Has your organisation experienced difficulties in recognising and enforcing foreign arbitral awards? What were the remedies covered by the arbitral awards?

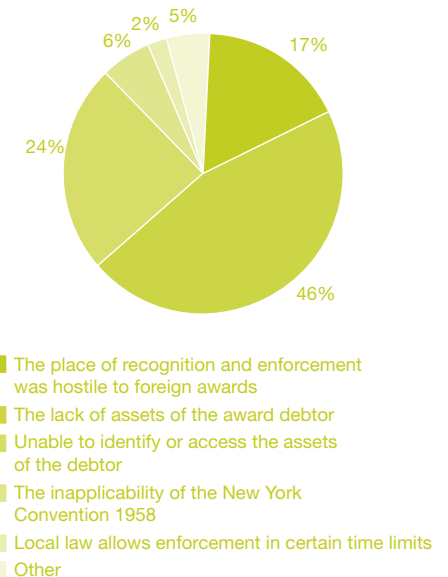


**Finding: most of the problems encountered when enforcing arbitral awards relate to problems identifying, or the lack of, assets of the non-prevailing party**

The participants reported that their difficulties in enforcing an award often arose because of the circumstances of the award debtor rather than deficiencies in the arbitral or legal proceedings. 70% of problems related to

either the debtor's lack of assets or an inability to identify the debtor's assets. Only 6% of participants encountered difficulties because the country of enforcement was not a signatory to the New York Convention 1958.

In recognising and enforcing arbitral awards, how often have you encountered the following difficulties?

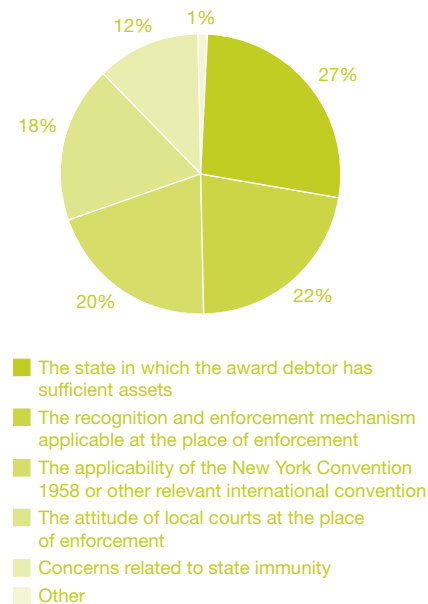


**Finding: the state where the non-prevailing party has most of its assets is the major factor in choosing the place of enforcement of arbitral awards**

The place of enforcement of arbitral awards is usually chosen carefully as this has an impact on the execution of the award.

When invited to identify the main factors affecting their decision on the place of enforcement, 27% of the corporations considered first the country where the non-prevailing party has sufficient assets, while 22% put weight on the recognition and enforcement mechanisms in the country of enforcement. 20% of the participants took into consideration the applicability of the New York Convention 1958.

**Which of the following factors would you consider in choosing the place of enforcement?**

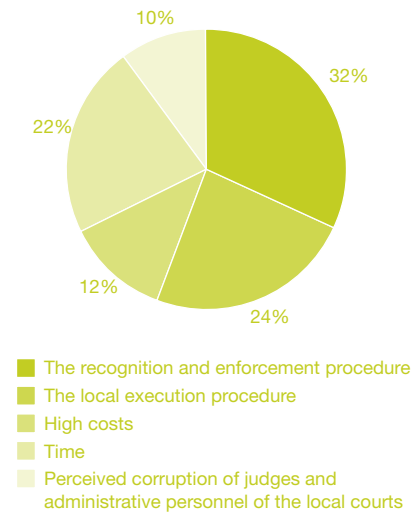


**Finding: a variety of difficulties are encountered at the place of enforcement**

When asked what kind of difficulties they had experienced at the place of enforcement, 56% of counsel cited the recognition and

enforcement procedure or execution proceedings. The majority of counsel linked both these problems with the attitude of the local bureaucrats and courts. 10% of respondents cited difficulties arising from corruption at local courts.

**If you have encountered recognition and enforcement difficulties as to the place of enforcement, what were the particular problems?**



**Finding: the respondents perceived China, India and Russia as the countries that are most hostile to enforcement**

Only a few respondents had actually experienced difficulties in recognising and enforcing foreign arbitral awards. Brazil, China, India and South Korea were each cited more than once.

However, there were wider perceptions about the territories where difficulties are likely to appear in enforcement or execution proceedings. The three most cited regions were Central America, South America and Africa. China was the country cited most often with India and Russia also considered as potentially problematic territories.

Most counsel consider that problems are likely to occur with countries that are not signatories to the New York Convention 1958 or where there is no reciprocity for recognising and enforcing arbitral awards.

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*Arbitration institutions were asked to name the countries where the parties in the arbitration proceedings administrated by their institution encountered significant difficulties in enforcing awards. The most commonly cited countries were China, Turkey and Taiwan.*

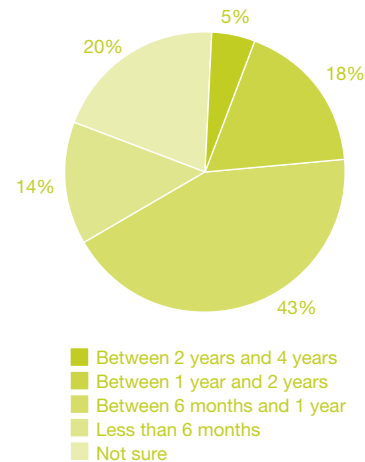
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**Finding: the average time to recognise, enforce and execute arbitral awards is less than one year**

This study discovered that recognition, enforcement and execution proceedings in International Arbitration took less than one year in the majority of cases.

57% of the participants had taken less than one year to enforce and execute their arbitral awards. 14% were successful in less than six months. However, in 5% of cases, the proceedings took between two and four years. Most counsel pointed to the 1958 New York Convention as the principal reason for relatively short proceedings. Lengthy proceedings were usually blamed on local bureaucracy.

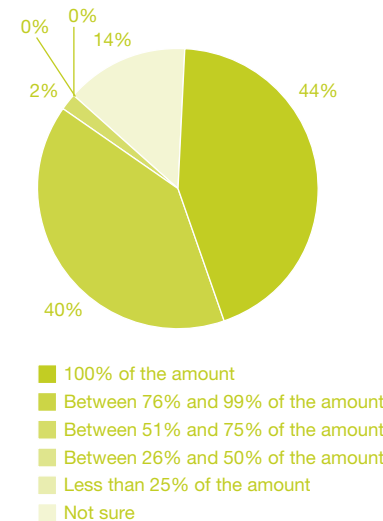
What was the average time to recognise, enforce and execute the arbitral awards in which your organisation prevailed?



**Finding: recovery through recognising, enforcing and executing arbitral awards is high**

44% of the participants reported that they usually recovered 100% of the arbitral award when using recognition, enforcement and execution proceedings. 40% recovered over 75% of the amount awarded. In interviews, most counsel said that the lack of assets of the non-prevailing party was the main reason for the failure to recover the full amount of an award.

What was the average amount recovered by your organisation by recognising, enforcing and executing the arbitral awards?



We asked arbitration institutions whether they were aware of the number of arbitral awards that they had conferred that were subsequently set aside. 65% of the institutions indicated that less than 25% of their awards had been challenged. 29% revealed that none of their awards had been challenged. However, these results must be considered in the context that 42% of the participating institutions do not keep track of their awards after dispatch.





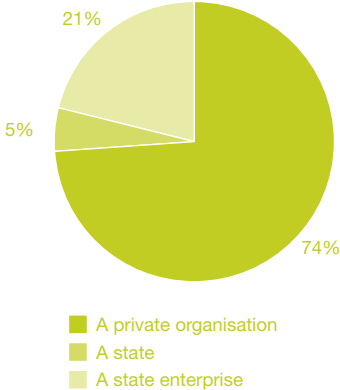
# 7

## States, state enterprises and investment treaties

### Finding: private sector entities are the predominant users of International Arbitration

74% of the corporations indicated they arbitrated against private organisations, while 21% had arbitrated against state enterprises. Only 5% had experience of disputes involving states, although the majority of construction companies participating in the study had experienced state enterprises as opposing parties in arbitration proceedings.

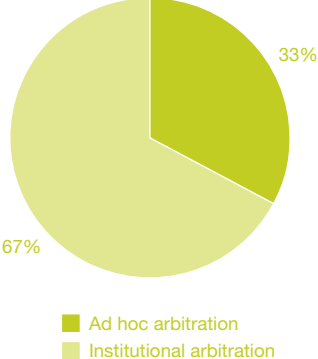
How often has your organisation encountered the following opposing parties?



### Finding: arbitral awards against states or state enterprises are most commonly rendered in institutional arbitration

In the last decade, arbitration against states and in particular investment arbitration increased significantly. Investment arbitration disputes are relying to a great extent on the provisions of bilateral or multilateral investment treaties concluded by states. Disputes are principally brought for adjudication to institutional or ad hoc arbitration, though only 33% of the state /state enterprises arbitral awards have been rendered in ad hoc arbitration proceedings.

In which of the following arbitrations have the arbitral awards against states been rendered?



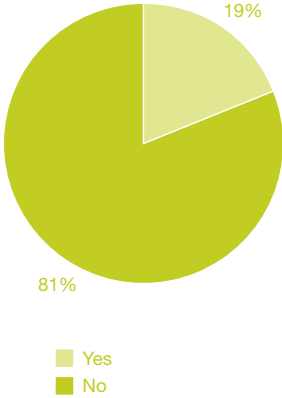
### Finding: states or state enterprises regularly comply voluntarily with arbitral awards or negotiate a settlement

While the number of arbitrations involving states is increasing, these cases represent only a small proportion of the total number of arbitrations. Consequently, many of the participants had not experienced recognition and enforcement of arbitral awards against states. An additional factor is the high degree of voluntary compliance with arbitral awards (90% according to interviews). Compliance often resulted in the renegotiation of contracts between corporations and the state or state enterprises, rather than the state, paying damages to an investor.

During the interviews, several corporations said they did not attempt to enforce awards against states as they considered they would be unsuccessful. In these cases, corporations sometimes sold or assigned the awards to third parties or sold the underlying local business involved in the proceedings to someone prepared to take the risk of obtaining value from an arbitral award.

59% of the participating arbitration institutions indicated that less than 25% of their awards are rendered in proceedings involving states or state enterprises. 24% revealed they never administrated cases involving states or state enterprises.

Has your organisation enforced or sought to enforce against states or state enterprises?



### Finding : corporations experienced fewer significant problems in enforcing arbitral awards against states or state enterprises than in enforcing awards against private sector entities

Of the minority of participants that had experience of enforcing awards against states or state enterprises, over half experienced no significant problems. A small proportion had experienced significant difficulties and the interviews indicated that there was a correlation between countries where corporations experienced broader business issues and the countries where there were difficulties in enforcing arbitral awards.

When asked what type of difficulties these corporations encountered in enforcing awards, the most common issue raised was the difficulty of identifying the relevant assets of the state or state enterprise.

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*Only a few arbitral institutions were aware of problems with enforcing awards against states or state enterprises. 23% of arbitration institutions included in the survey suggested that it is more difficult to enforce arbitral awards against state or state enterprises than against corporations. However, 59% of institutions were unable to comment and 18% felt that there were no difficulties.*

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# 8

## The arbitration institutions

### Finding: institutional arbitration is generally preferred to ad hoc arbitration

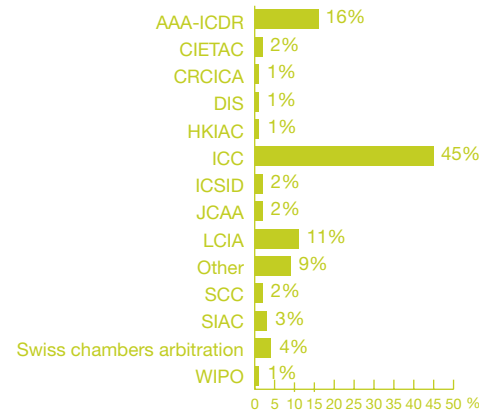
86% of awards that were rendered over the last ten years were under the rules of an arbitration institution, while 14% were under ad hoc arbitrations. These results are consistent with our 2006 study. The corporations indicated that the main reason for using institutional arbitration was the reputation of the institutions and the convenience of having the case administered by a third party.

### Finding: the ICC remains the most popular arbitration institution with the respondents

Arbitration institutions regularly report the number of cases under the institutions' rules (see table). Notwithstanding the reported statistics, 45% of participating corporations said that they preferred to submit their disputes to the ICC, followed by the AAA-ICDR (16%) and the LCIA (11%). In line with the findings of our 2006 study, the participants reported an increased preference for regional arbitration institutions, with several of corporations using the CAM, NAI, FIESPI and KCAB as a viable alternative to the more international institutions.

There is significant support for the ICC, AAA-ICDR and regional institutions coming from South American corporations. Asian corporations prefer to submit their disputes to CIETAC, ICC or LCIA, while US corporations have a preference for AAA-ICDR and HKIAC. Swiss corporations reported that they submitted more disputes to the ICC or AAA-ICDR than the Swiss Chambers.

### Institutional arbitration awards involving your organisation have been rendered under the auspices of which institution?



### Finding: reported statistics from the institutions show that AAA-ICDR is the most frequently used institution, closely followed by ICC

Institution	Type	2003	2004	2005	2006	2007	TOTAL
ICC	International and Domestic	580	561	521	593	599	<b>2,854</b>
AAA/ICDR	International	646	614	580	586	621	<b>3,047</b>
LCIA	International	99	83	110	130	127	<b>549</b>
SCC	International and Domestic	169	123	100	141	170	<b>703</b>
Swiss Chambers	International	0	52	54	50	58	<b>214</b>
HKIAC	International	287	280	281	394	448	<b>1,690</b>
SIAC	International	35	48	45	65	70	<b>263</b>
CIETAC	International	422	462	427	442	429	<b>2,182</b>
DIS	International and Domestic	81	87	72	75	100	<b>415</b>
ICSID		30	27	26	24	35	<b>142*</b>
ICAC (Ukraine)	International and Domestic	389	262	366	323	319	<b>1,659</b>
CICA	International	70	77	72	62	54	<b>335</b>
KCAB	International	38	46	53	47	59	<b>243</b>
VIAC	International	45	50	54	36	40	<b>225</b>
SAKIG	International	46	55	48	40	32	<b>221</b>
NAI	International	32	33	32	29	28	<b>154</b>
WIPO Arbitration and Mediation Centre	International	8	9	22	23	32	<b>94</b>
Chamber of National and International Arbitration Milan	International	15	11	18	20	23	<b>87</b>
Mongolian National Arbitration Court	International	11	13	11	22	12	<b>69</b>
JCAA	International	14	17	10	11	14	<b>66</b>
PCA	International	5	5	6	5	9	<b>30</b>
ACICA	International	1	1	2	2	1	<b>7</b>
<b>Total</b>		<b>3,023</b>	<b>2,916</b>	<b>2,910</b>	<b>3,120</b>	<b>3,280</b>	<b>15,249</b>

\*Including cases submitted under ICSID Additional Facility Rules

**Finding: 42% of arbitration institutions do not keep track of their arbitral awards**

Arbitration institutions were asked whether they keep track of their arbitral awards after they have been rendered.

42% of the arbitration institutions participating in this study reported that they had no monitoring system for awards after they had been dispatched, while 29% confirmed that they did some form of regular monitoring. 29% of the institutions keep track of arbitral awards only when an award is challenged.

A simple system of monitoring the arbitral awards – for example, a questionnaire sent to the parties one year after the completion of the proceedings – might improve the institutions' awareness of how parties fared, which might also assist in the institutions' management of cases and the efficiency of their proceedings.



# Appendices



# Methodology

The research for this study was conducted between 15 November 2007 and 15 April 2008 by **Ms. Crina Baltag**, LLB, MIB, LLM (Stockholm), PricewaterhouseCoopers Research Fellow in International Arbitration, School of International Arbitration, Centre for Commercial Law Studies, Queen Mary, University of London together with **Professor Dr. Loukas Mistelis**, LLB (Hons, Athens), MLE (Magna cum Laude), Dr Iuris (summa cum laude) (Hanover), MCI Arb, Advocate,

Clive Schmitthoff Professor of Transnational Commercial Law and Arbitration; Director, School of International Arbitration, Centre for Commercial Law Studies, Queen Mary, University of London. They were assisted by **Mr. Stavros Brekoulakis**, LLB (Athens), LLM (London), Lecturer in International Dispute Resolution, School of International Arbitration, Centre for Commercial Law Studies, Queen Mary, University of London.

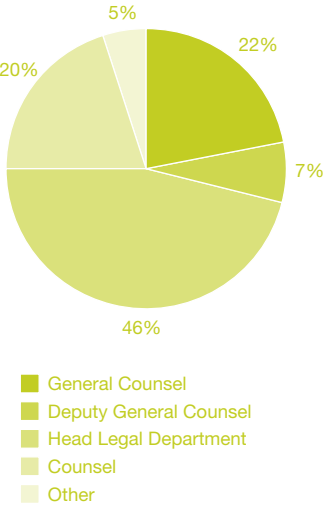
The research was divided into two major streams:

- **the experiences and attitudes of corporations** towards settlement, recognition and enforcement in International Arbitration
- **the experiences and attitudes of arbitration institutions** on settlement, recognition and enforcement in International Arbitration

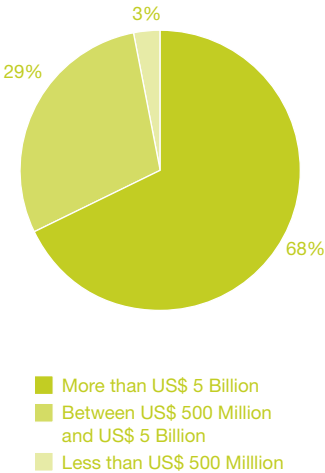
The research involving corporations comprised two phases: a quantitative and a qualitative phase.

- **Phase 1:** an online questionnaire completed by 82 respondents between 15 November 2007 and 28 February 2008. Respondents were general counsel, heads of legal departments or counsel, on the authority of the general counsel.

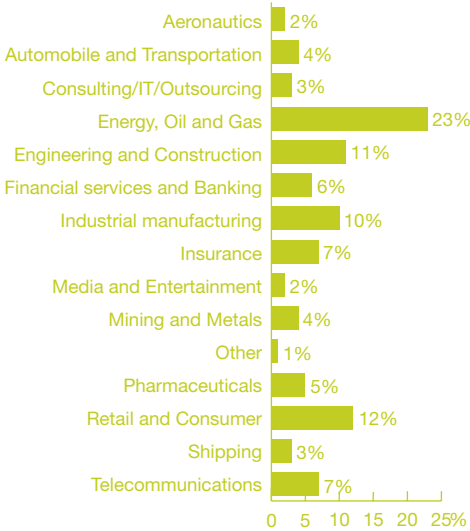
Position of respondents/interviewees



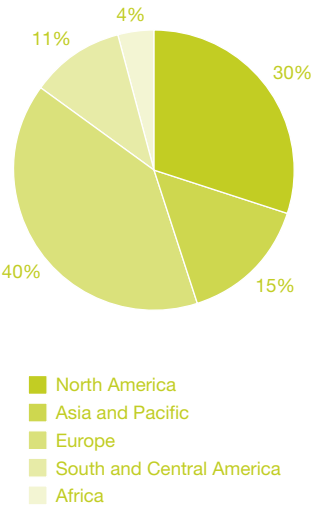
Annual turnover of respondent/interviewee corporations



Respondents by industry sector



Geographic location of respondents/interviewees



- **Phase 2:** 47 face-to-face or telephone interviews with corporate counsel between 1 February and 15 April 2008. Interviews were based on a set of guideline questions and varied from 30 minutes for telephone interviews to two hours for face-to-face interviews. Face-to-face interviews were conducted in the UK, USA, Sweden, Switzerland, Greece, Japan, Mexico and Brazil.

The following arbitration institutions participated in our Study: ICC, AAA-ICDR, LCIA, PCA, JCAA, ACICA, HKIAC, Swiss Chambers, CIETAC, VIAC, NAI, WIPO Arbitration and Mediation Centre, CICA, SAKIG, ICAC (Ukraine), Mongolian National Arbitration Court, CEPANI, DIAC, KCAB and Chamber of National and International Arbitration of Milan.



# Glossary

**AAA-ICDR** – American Arbitration Association, International Centre for Dispute Resolution

**ACICA** – Australian Centre for International Commercial Arbitration

**CAM** – Centro de Arbitraje de Mexico

**CICA** – The Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania and Bucharest

**CIETAC** – China International Economic and Trade Arbitration Commission

**DIS** – The German Institution for Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit)

**FIESPI** – Federation of Industries of the State of São Paulo (Federación de Industrias del Estado de São Paulo)

**HKIAC** – Hong Kong International Arbitration Centre

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

**ICC** – International Chamber of Commerce, International Court of Arbitration

**ICSID** – International Centre for Settlement of Investment Disputes

**JCAA** – The Japan Commercial Arbitration Association

**KCAB** – Korean Commercial Arbitration Board

**LCIA** – The London Court of International Arbitration

**Mongolian National Arbitration Court** – Mongolian National Arbitration Court at the Mongolian National Chamber of Commerce and Industry

**NAI** – The Netherlands Arbitration Institute

**New York Convention 1958** – Convention on the Recognition and Enforcement of Arbitral Awards, New York, 1958

**PCA** – Permanent Court of Arbitration, The Hague

**SAKIG** – Court of Arbitration at the Polish Chamber of Commerce

**SCC** – The Arbitration Institute of the Stockholm Chamber of Commerce

**SIAC** – Singapore International Arbitration Centre

**Swiss Chambers** – Swiss Chambers' Court of Arbitration and Mediation

**VIAC** – International Arbitration Centre of the Austrian Federal Economic Chamber

**WIPO Arbitration and Mediation Centre** – World Intellectual Property Organisation Arbitration and Mediation Centre



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