

SIDLEY



The Great Debate: Ad Hoc vs. Administered Arbitration

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MONDAY, OCT. 29, 2018

Debate: 5:30 – 6:30 p.m.
CI Arb NY Branch Fall Kick-Off
Reception: 6:30 p.m.– 8:00 p.m.

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Charts, Quotes and Surveys Collected by

**WILLIAM
HORTON^{G.}**

Commercial Arbitration

“Idea of Arbitration”, Jan Paulsson:

“The idea of arbitration is that of binding resolution of disputes accepted with serenity by those who bear its consequences because of their special trust in chosen decision makers.”

(Oxford, 2014, p. 1)

NEW YORK CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article I

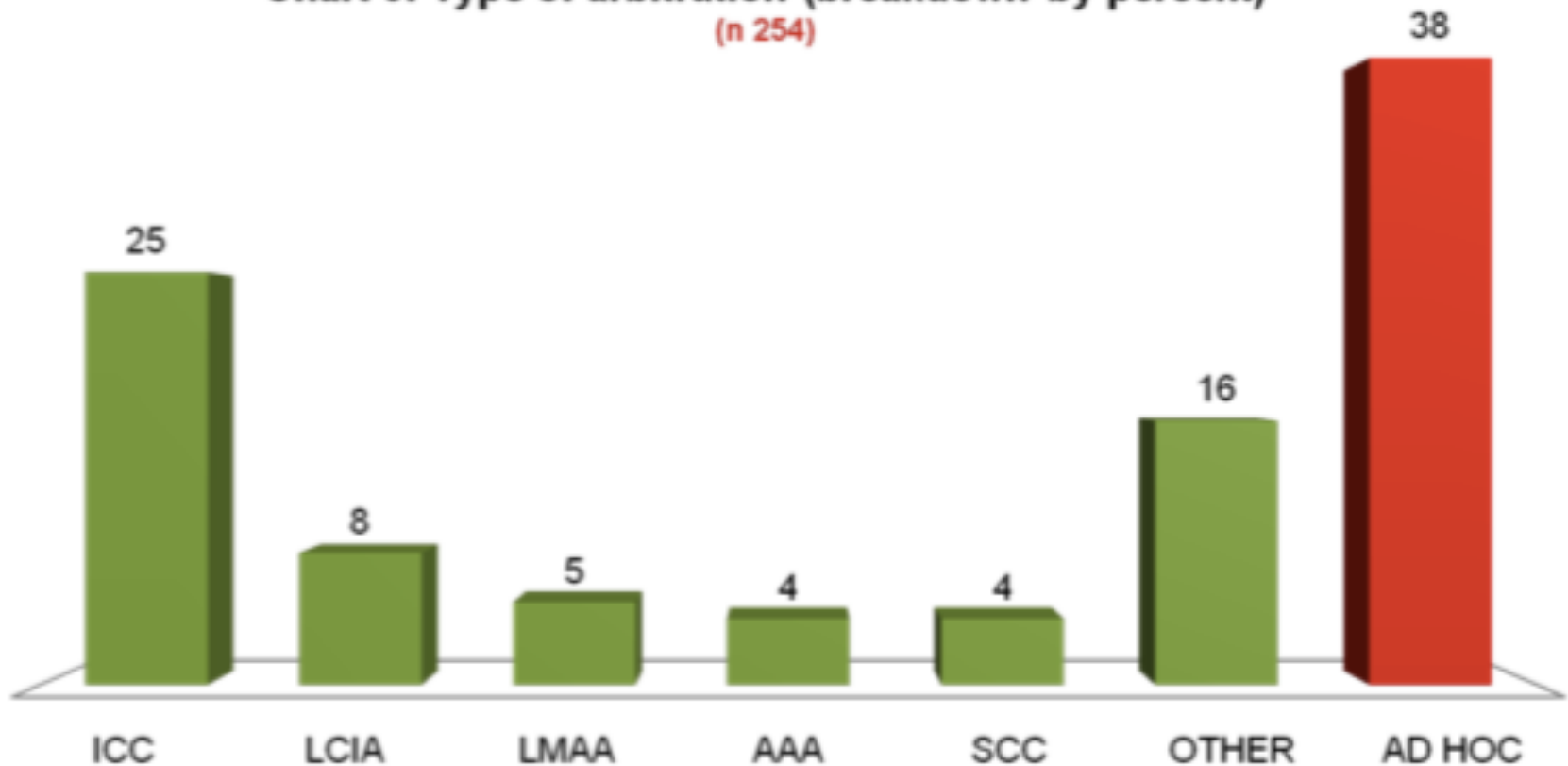
- 1) This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought
- 2) The term “arbitral awards” shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

CIArb 2011: Cost of Arbitration Survey

- The survey consisted of ten questions with multiple sub- categories designed to elicit responses about the amounts parties claimed, the amounts arbitral tribunals awarded and the costs spent on various items.
- Information on 254 arbitrations conducted between 1991 and 2010 was considered to be useful for statistical analysis.
- Over 50% of respondents were from the UK (32%) and the rest of Europe (20%). The remaining 48% came from Asia, the Middle East, Africa, North America, Australasia and other locations.
- Over 20 arbitral institutions were represented in the sample.

CI Arb 2011: Cost of Arbitration Survey

Chart 6: Type of arbitration (breakdown by percent)
(n 254)



CI Arb 2011: Cost of Arbitration Survey

NATURE OF DISPUTE BY INSTITUTION			
Frequency	Construction/ Engineering	General Commercial	Other
ICC	22	33	5
LCIA	1	12	7
LMAA	0	0	13
AAA	4	1	3
SCC	0	3	4
AD HOC	11	20	12

Queen Mary/PwC Survey of International Arbitration 2006

“The 24% of respondents that stated their organisations prefer *ad hoc* arbitration proceedings are primarily from corporations with a gross annual turnover of more than US\$5 billion. In many cases, these corporations have large, sophisticated in-house legal departments with experience of managing arbitration proceedings.” (p.12)

Since 2008, the Queen Mary Survey has not asked how many respondents prefer *ad hoc* arbitration. It has never asked, why respondents favour *ad hoc* arbitration or how satisfied they are with *ad hoc* arbitration.

Stipanowich/Ulrich: Arbitration in Evolution (2014)

Q: Have you served as an arbitrator in an “ad hoc” arbitration, in which the parties were responsible for determining and agreeing on their own arbitration procedures rather than relying on the procedures of an arbitral institution?

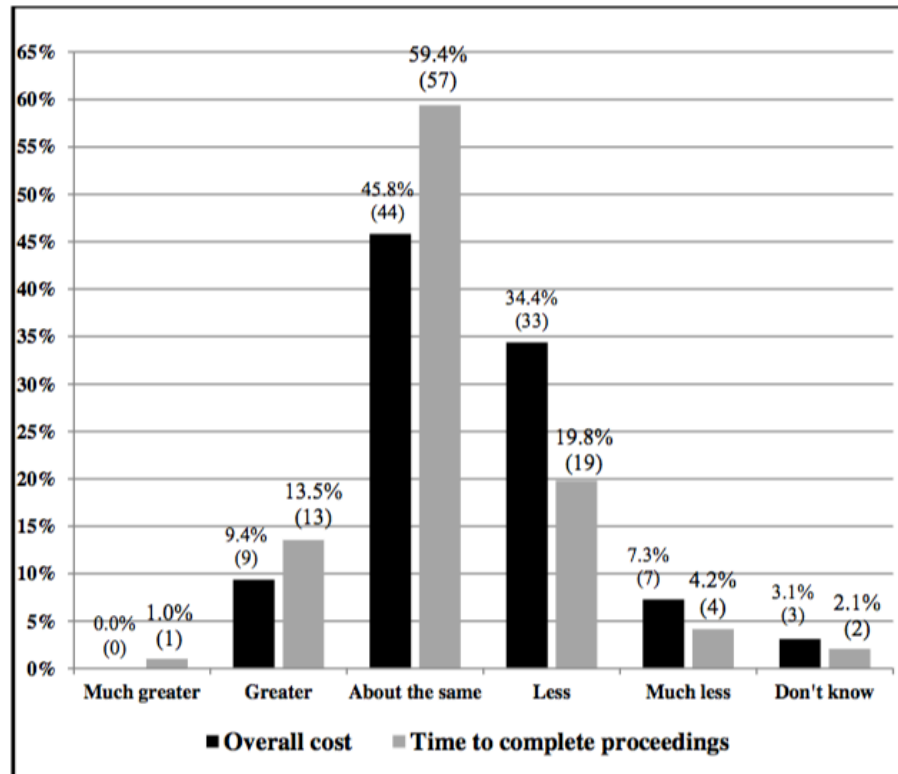
A: 73.3% Yes 26.7% No

Q: Have you served as an arbitrator under “non-administered” arbitration rules (such as, for example, those of CPR or UNCITRAL)?

A: 80.9% Yes 19.1 % No

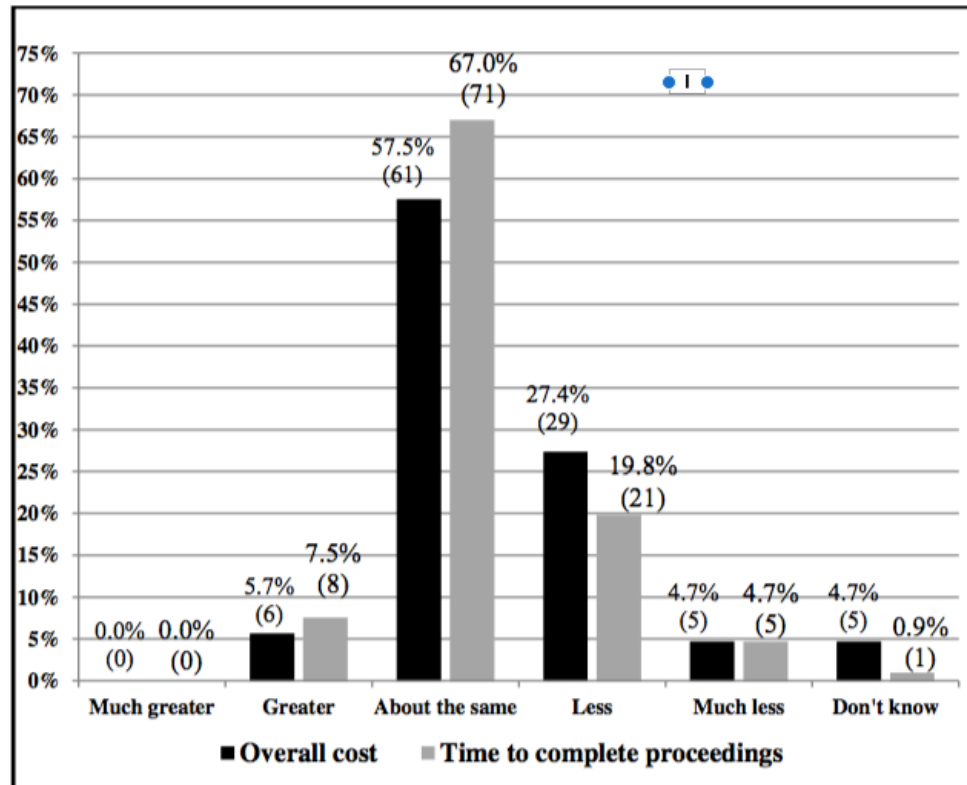
Stipanowich/Ulrich: Arbitration in Evolution (2014)

Q: For those instances where you have served as an arbitrator in an “ad-hoc” arbitration, how did those arbitrations compare to arbitrations conducted under the procedures of an arbitral institution, in terms of overall cost and time to complete proceedings?



Stipanowich/Ulrich: Arbitration in Evolution (2014)

Q: For those instances where you have served as an arbitrator under “non-administered” arbitration rules, how did those arbitrations compare to administered arbitrations in terms of overall cost and time to complete proceedings?



Stipanowich/Ulrich: Arbitration in Evolution (2014)

Table 10. Estimated Usage of ADR Processes in Coming Decade

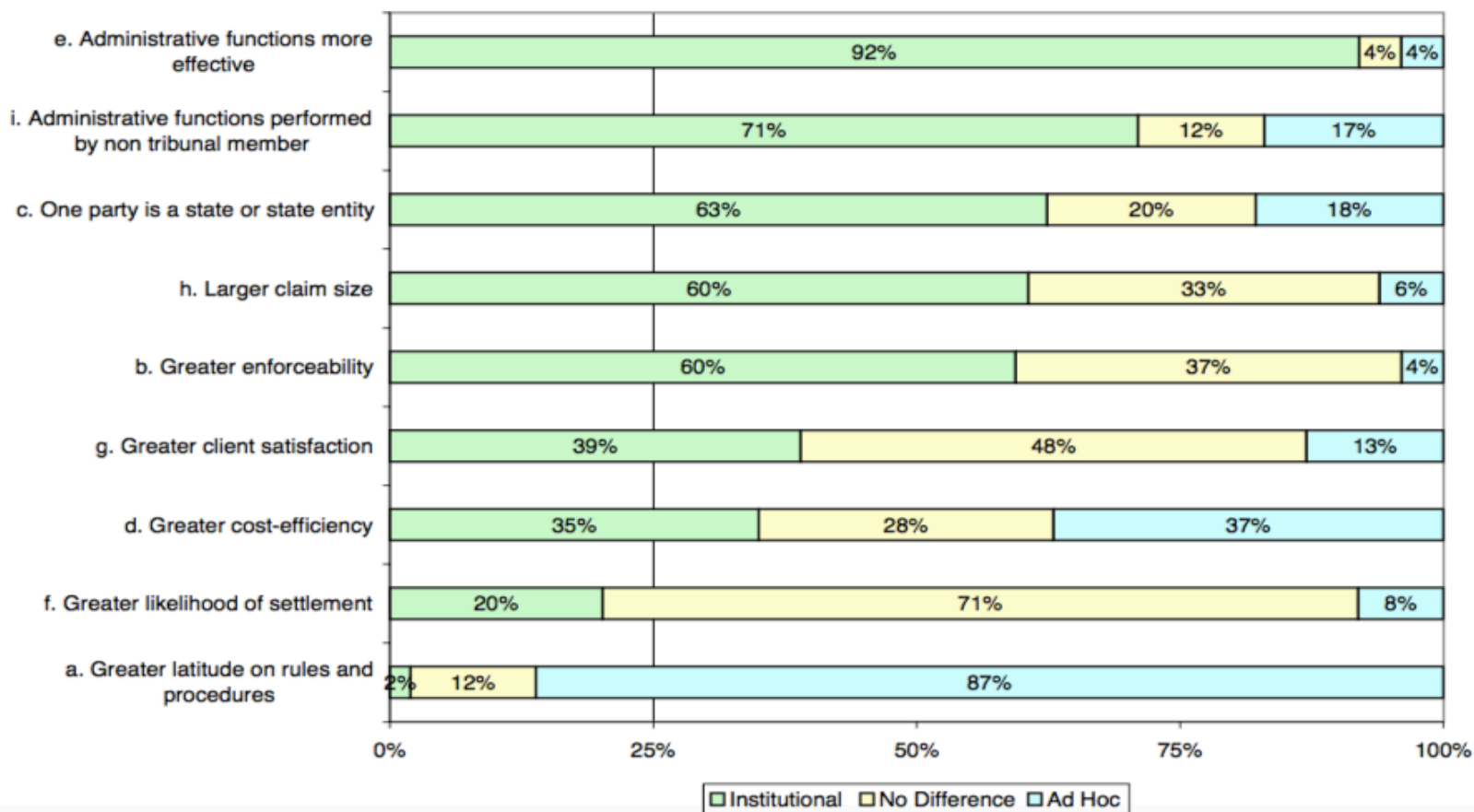
Q: If you had to guess, during the coming decade will the use of each of the following increase, decrease, or stay the same?

	Increase	Stay the same	Decrease	Not sure
Fast track (“streamlined”) arbitration	64.8% (83)	25.8% (33)	0.8% (1)	8.6% (11)
Appellate arbitration processes	45.3% (58)	19.5% (25)	10.2% (13)	25.0% (32)
Med-Arb (with the same neutral playing both roles)	18.0% (23)	31.3% (40)	23.4% (30)	27.3% (35)
Final offer (“baseball”) arbitration	13.3% (17)	39.1% (50)	10.2% (13)	37.5% (48)
Arbitrations before a sole arbitrator	56.3% (72)	33.6% (43)	3.9% (5)	6.3% (8)
Multi-step processes	52.3% (67)	23.4% (30)	1.6% (2)	22.7% (29)
Customized dispute resolution processes (in general)	67.2% (86)	18.8% (24)	3.1% (4)	10.9% (14)
Administered arbitration	26.6% (34)	46.9% (60)	18.8% (24)	7.8% (10)
Non-administered arbitration	36.7% (47)	36.7% (47)	12.5% (16)	14.1% (18)
Online arbitration	50.8% (65)	9.4% (12)	3.1% (4)	36.7% (47)
Mediation	82.8% (106)	13.3% (17)	1.6% (2)	2.3% (3)
Non-binding arbitration	8.6% (11)	29.7% (38)	26.6% (34)	35.2% (35)
Early neutral evaluation	32.8% (42)	35.9% (46)	4.7% (6)	26.6% (34)
Early case assessment	39.1% (50)	26.6% (34)	4.7% (6)	29.7% (38)
B2B (business-to-business) arbitration	43.8% (56)	32.0% (41)	8.6% (11)	15.6% (20)

A Survey of Practitioners in International Commercial Arbitration

Final Report May 6, 2005, *Grace Farrell Roemer Melissa Miller Martha Kovac*

Figure VI.1
Characteristics of Institutional and Ad Hoc Proceedings
(Percentage of Respondents)



Queen Mary/White and Case Survey 2018

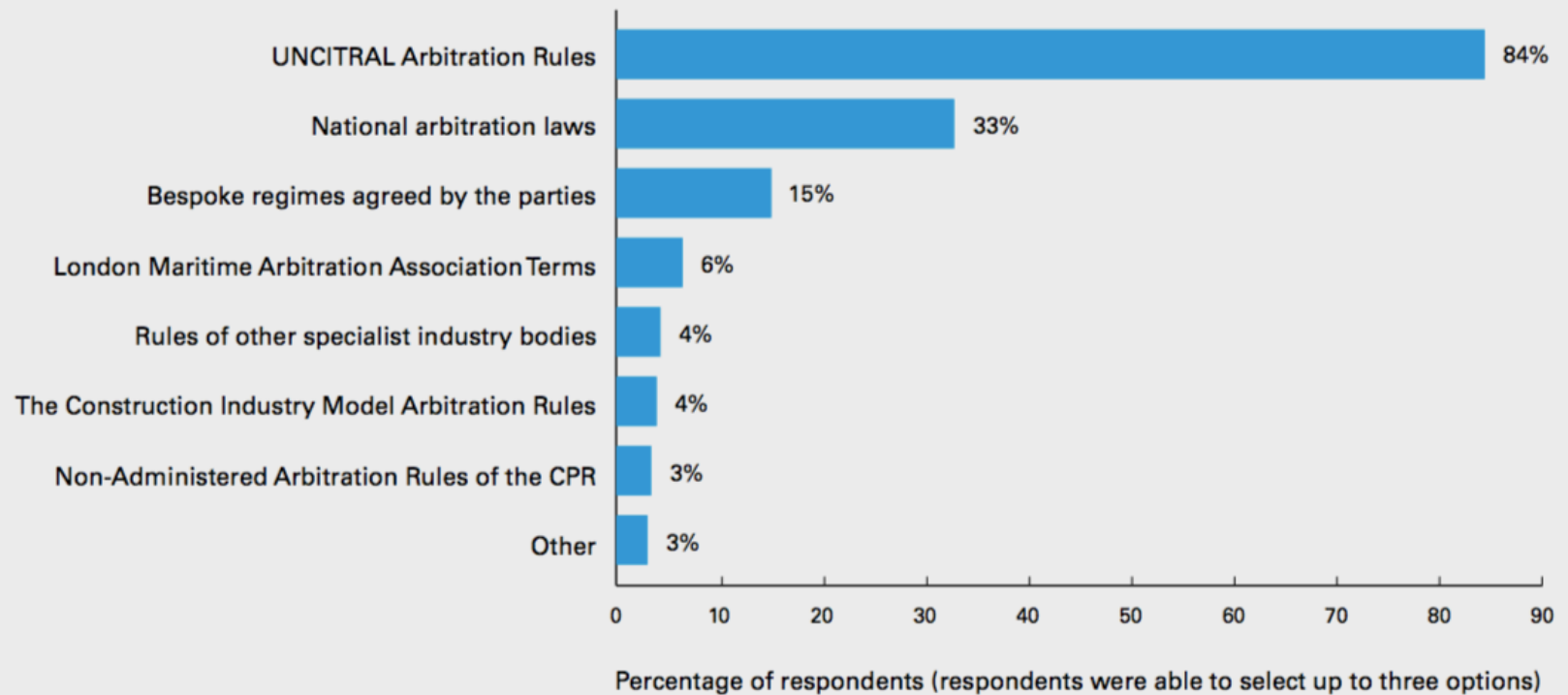
Chart 12: What are your or your organisation's most preferred institutions?

[Percentage of respondents who included the institution in their answer]

- ICC 77%
- LCIA 51%
- SIAC 36%
- HKIAC 27%
- SCC 16%
- ICSID 13%
- ICDR/AAA 13%

Queen Mary/White and Case Survey 2018

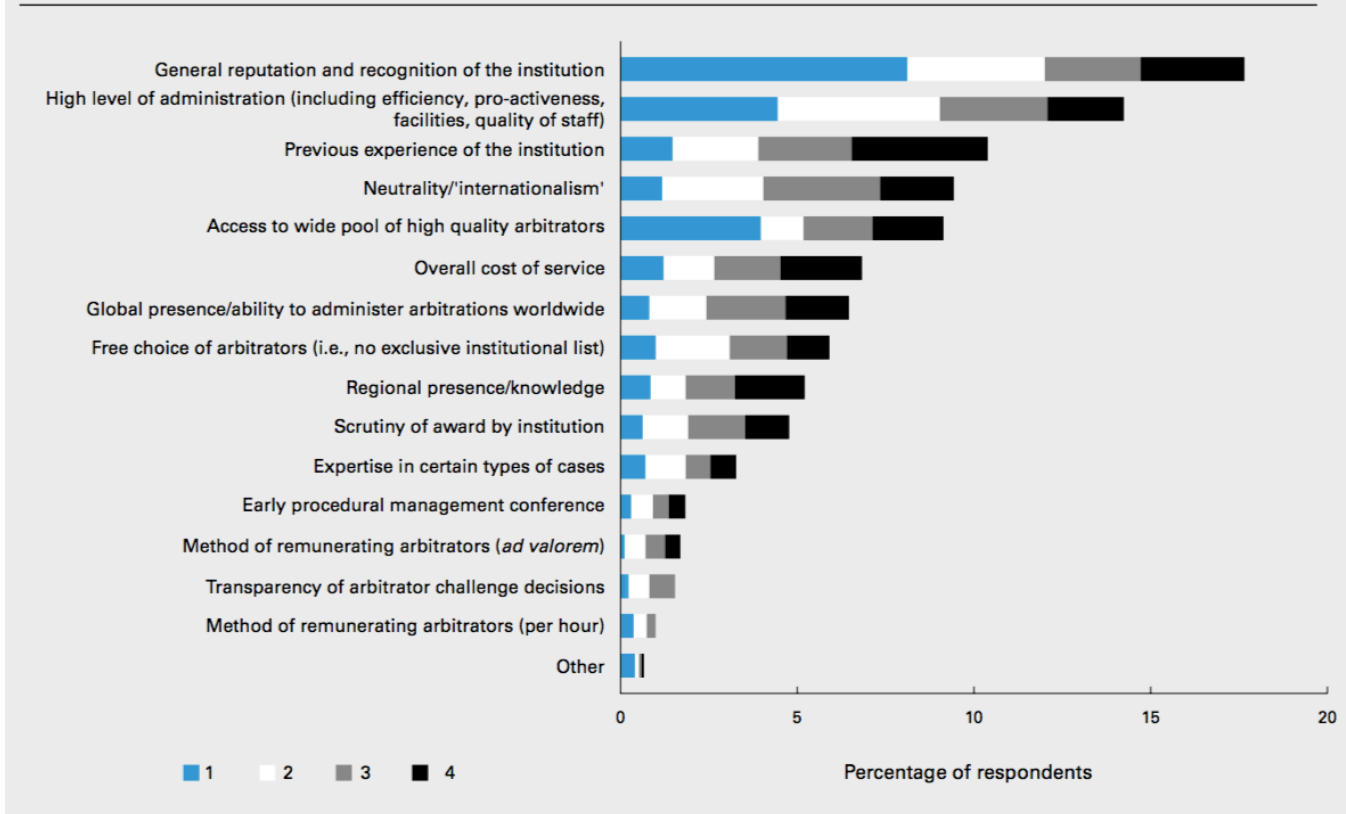
Chart 14: If you or your organisation have selected ad hoc arbitration over the past five years, which of the following procedural regimes have you used the most?



Queen Mary/White and Case Survey 2018

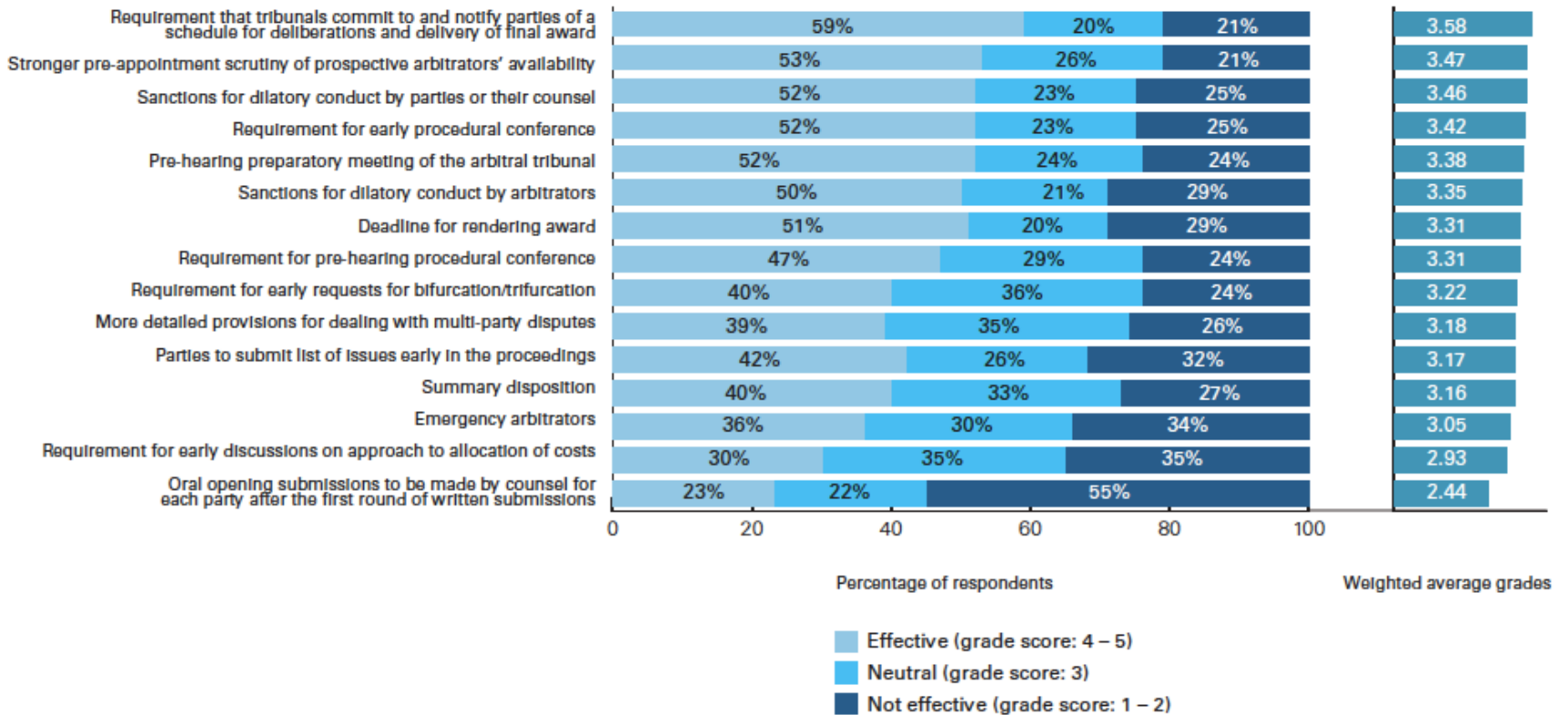
Chart 13: What are the four most important reasons for your preference for certain institutions?

Respondents were asked to rank their selected reasons, with "1" being the most important reason and "4" being the least important.



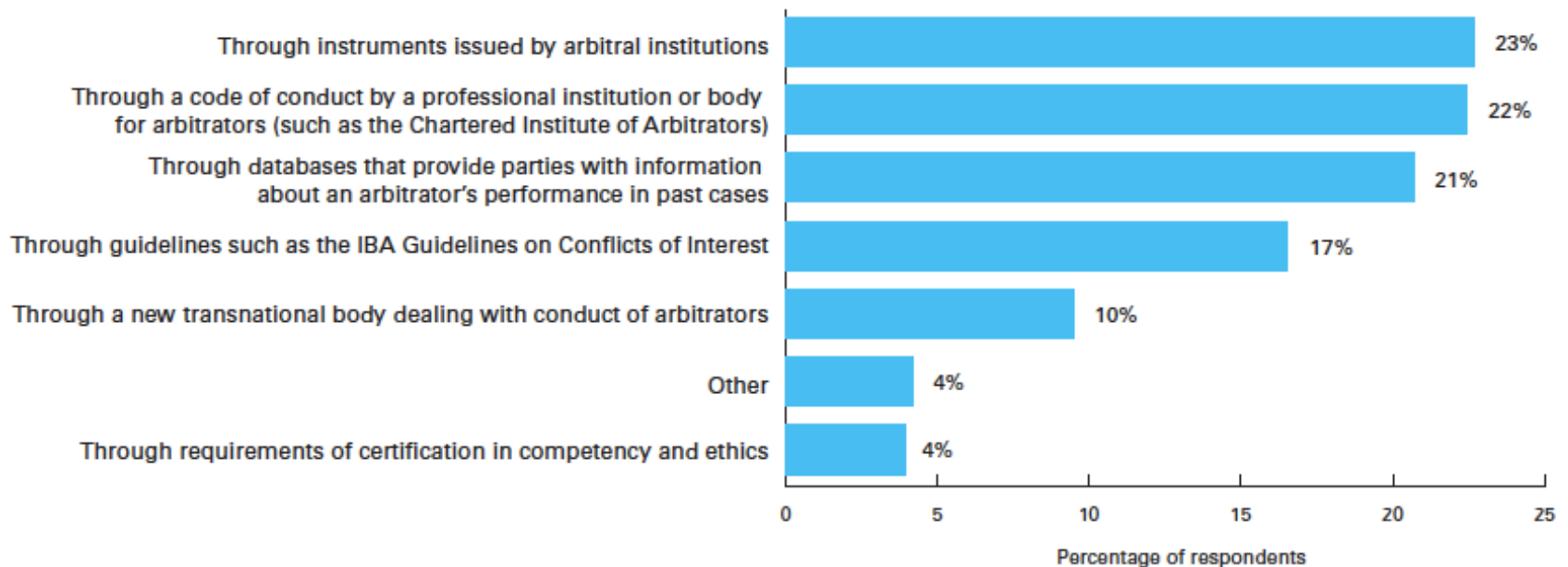
Queen Mary/White and Case Survey 2015

Chart 19: How effective are each of the following innovations that could be included in arbitral rules and procedures to help control time and cost?



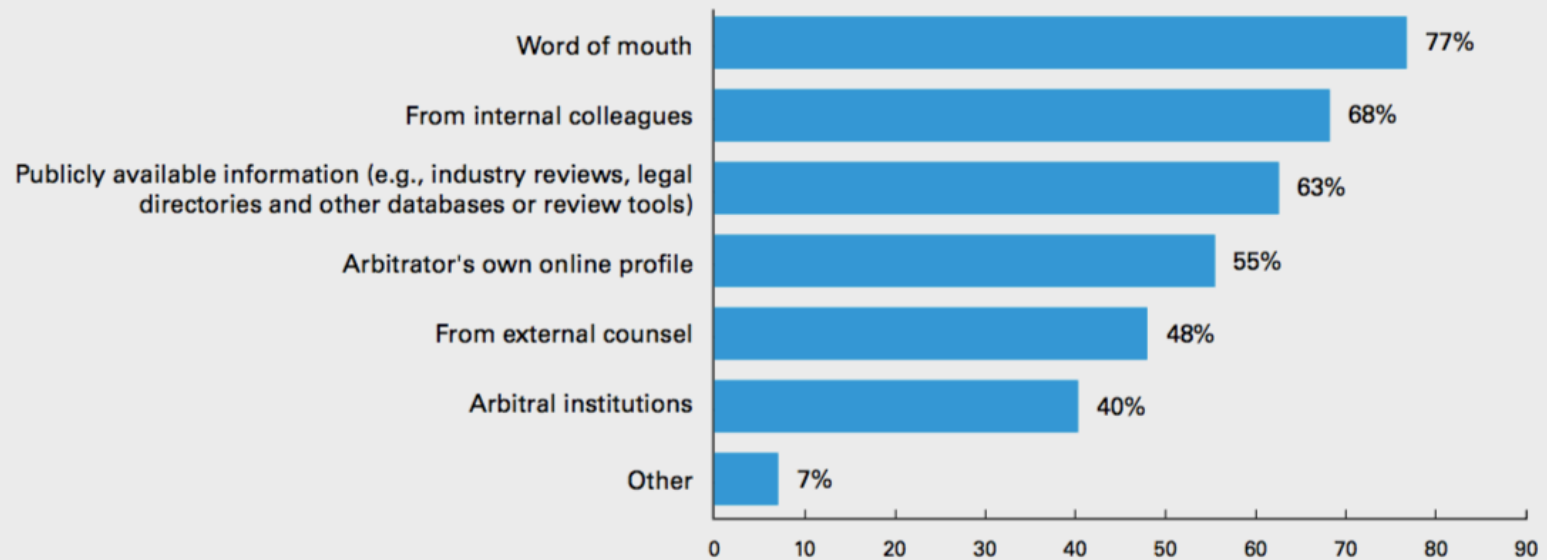
Queen Mary/White and Case Survey 2015

Chart 33: What would be the most effective way to 'regulate' arbitrator conduct?



Queen Mary/White and Case Survey 2018

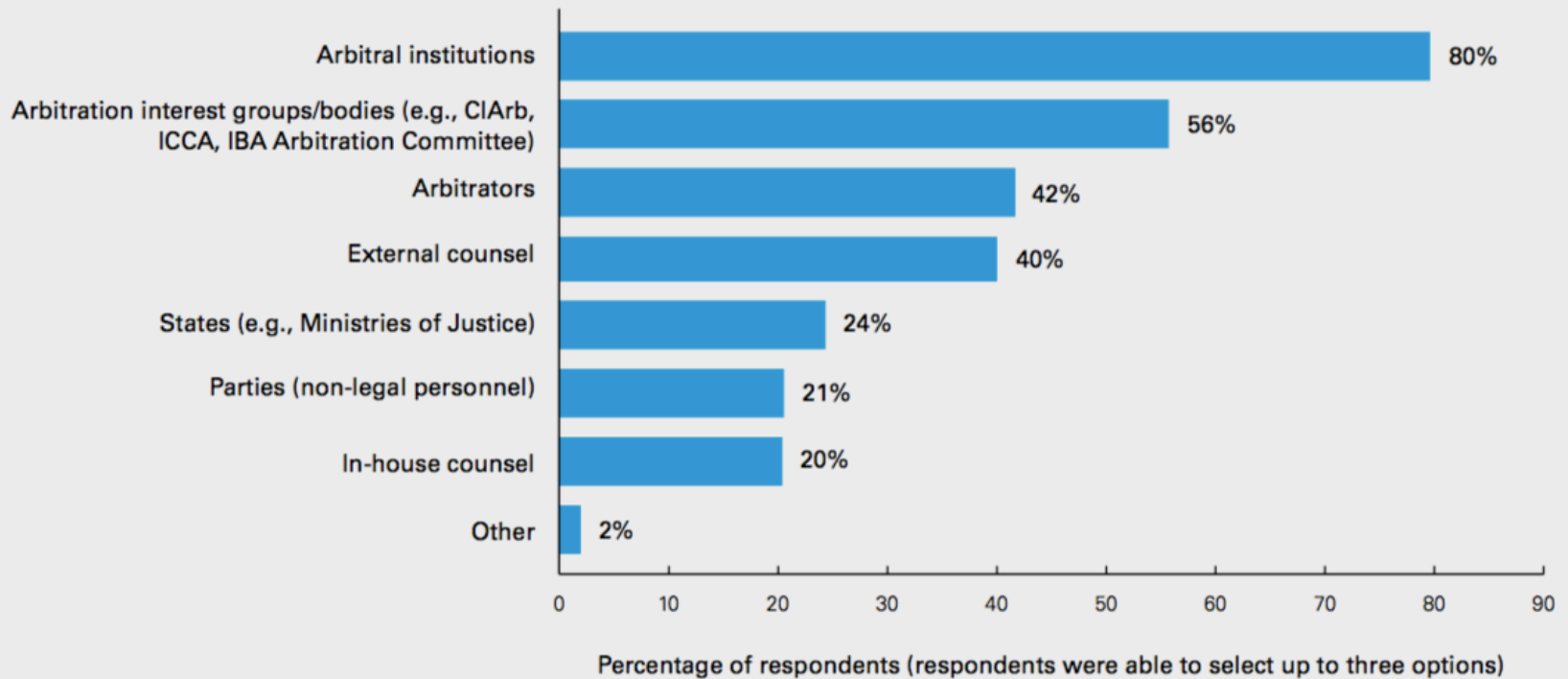
Chart 19: Where do you find your information about arbitrators?



Percentage of respondents (respondents were able to select multiple options)

Queen Mary/White and Case Survey 2018

Chart 39: Which stakeholders are best placed to influence the future evolution of international arbitration?



Malcolm Gladwell: *“David and Goliath”*

“We spend a lot of time thinking about the ways that prestige and resources and belonging to elite institutions make us better off. We don’t spend enough time thinking about the ways in which those kinds of material advantages limit our options.”

Little, Brown & Co, 2013 p.36