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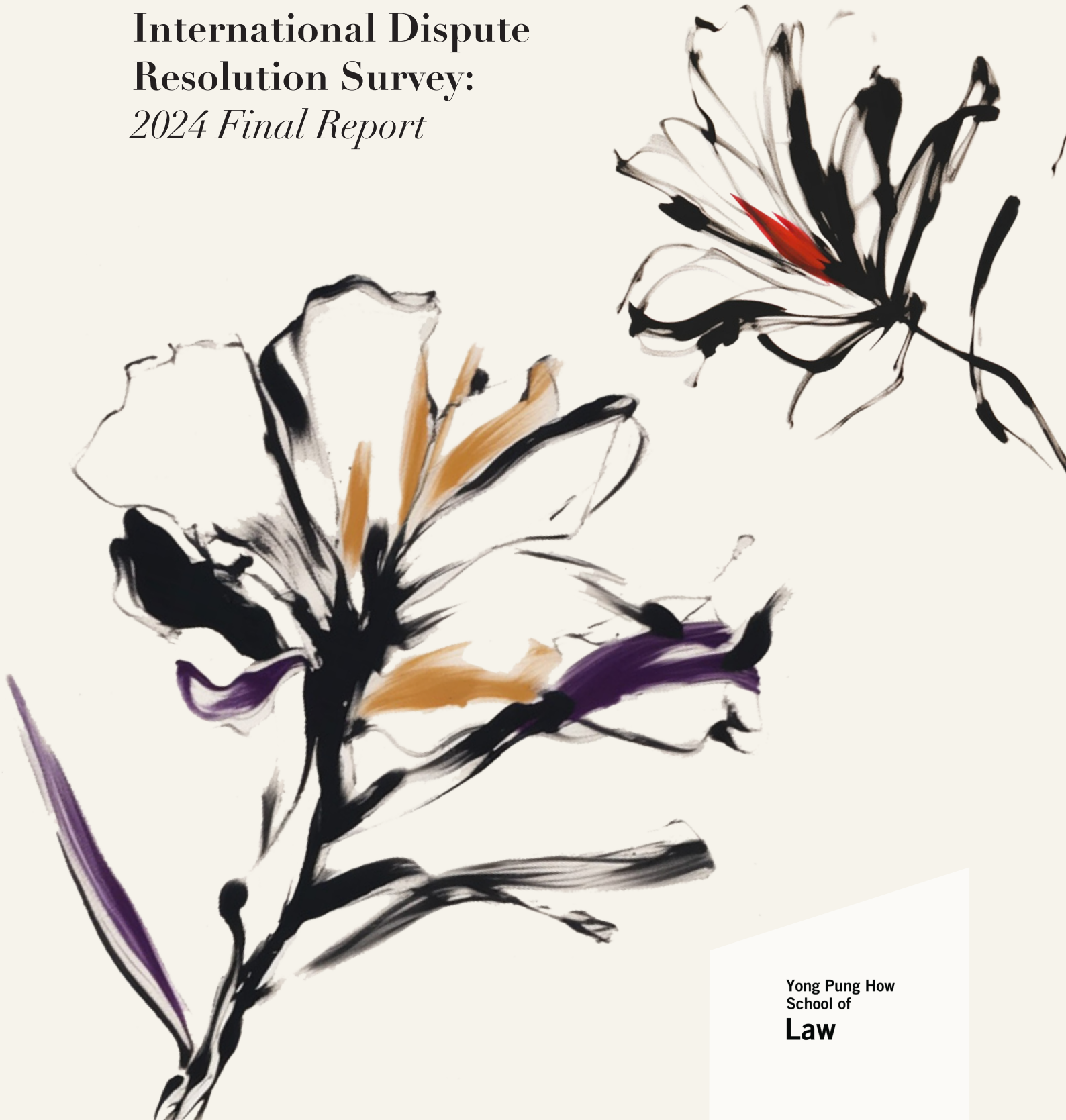
Singapore International Dispute Resolution Academy

SIDRA International Dispute Resolution Survey: *2024 Final Report*



Yong Pung How School of Law

SIDRA
International Dispute Resolution Survey: 2024 Final Report

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Singapore International Dispute Resolution Academy

The Singapore International Dispute Resolution Academy (SIDRA) is a platform for thought leadership in international dispute resolution theory, practice and policy. A research centre at the Singapore Management University School of Law, SIDRA leads the way through projects, publications and events that promote dynamic and inclusive conversations on how to constructively engage with and resolve differences and disputes at global, regional and national levels. In particular, SIDRA differentiates itself through its focus on applied research that has practical impact on industry. Specifically, SIDRA is mandated with three research programs:

- Appropriate Dispute Resolution (ADR) Empirical Research;
- International Mediation and the Singapore Convention on Mediation; and;
- Next Generation Dispute Resolution.

https://sidra.smu.edu.sg/

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FOREWORD

We live in a global world, where webs link individuals and corporations around the world in myriad relationships – personal, political and commercial. Only decades ago, commercial relationships existed mainly within national boundaries, and the resolution of commercial disputes was mainly for national courts. That world is gone. Today commercial relationships may involve multiple players in multiple parts of the world. National courts are no longer the only or the best way to resolve the disputes that inevitably arise.

The legal world has responded to this new reality with energy and imagination. National courts are still important, but they are being supplemented by other institutions and ways of settling differences. International dispute resolution courts have sprung up in diverse parts of the world. Everywhere, arbitration and mediation are providing alternative ways of settling cross-border commercial disputes efficiently and effectively. Protocols that provide for enforcement of judgments and awards anywhere in the world now assure that justice will not only be done in tribunals, but on the ground.

The rapid development of cross-border commercial dispute resolution confronts businesses and their advisors with a host of choices in formulating contractual provisions for dispute resolution and deciding the best options for resolving emerging disputes. The SIDRA Survey, first commissioned by the Singapore Ministry of Law in 2018, was initiated to address the need for information about options. Three surveys have followed, culminating in this one – the 2024 SIDRA Survey.

Unlike other surveys, the SIDRA Survey looks at a broad range of commercial dispute resolution mechanisms and at user experience and perspectives on them, including international commercial litigation, arbitration, investor-state dispute settlement, litigation and mediation. For the first time, the 2024 Survey has broadened its reach to address the important issues of diversity and the use of third party funding, as well as sections on intellectual property and technology.

The 2024 SIDRA Survey will assist commercial actors and their advisors in negotiating the increasingly complex world of modern international dispute resolution, and, more broadly, contribute to the literature on the subject deepening our understanding of how to ensure justice in the world of international commerce.

The Right Honourable Beverley McLachlin, P.C., C.C., CStJ

EXECUTIVE SUMMARY

The International Dispute Resolution Survey: 2024 Final Report sets out the findings of the third iteration of the SIDRA Survey, which was conducted over the course of 2023. The Survey was conducted to better understand user experience and satisfaction with international commercial arbitration, international commercial mediation, international commercial litigation, mixed mode (hybrid) dispute resolution, as well as investor-state dispute resolution mechanisms.

The data gathered from the Survey are summarised below:

INTERNATIONAL COMMERCIAL ARBITRATION

- Direct enforceability and confidentiality continued to be the most important factors for all respondents in choosing to use arbitration as a dispute resolution mechanism.
- With international commercial arbitration taking on a more adversarial character, both Client Users and External Counsels were less satisfied with the preservation of business relationships, indirect costs to client business and costs associated with arbitration. It is possible that Client Users are becoming more cost-sensitive and less tolerant of slow proceedings.
- The top factors respondents considered when deciding whether to use a wholly online platform for arbitration were travel restrictions, lower costs, low dispute value and low complexity of issues.
- More than 70% of respondents understand third-party funding, its implications and how it works but have not used it. Of the respondents who have used third-party funding, 23% have used it for the enforcement of an arbitral award.

INTERNATIONAL COMMERCIAL MEDIATION

- Cost, speed and impartiality were the top three important factors identified by respondents when deciding to use international commercial mediation to resolve disputes. The majority of the respondents were generally satisfied with these three factors. There were more respondents indicating that they were satisfied with speed compared to the number of respondents indicating that they found it an important factor.
- The majority of the respondents identified dispute resolution experience and good ethics as the top two most important factors when choosing a mediator.
- The majority of the respondents chose an online platform where the costs are lower, where there are travel restrictions and where the dispute value is low. External Counsels indicated that they lean more towards an online mediation if they expect experts/witnesses to attend.
- Ethnicity, gender and age were the top three factors that respondents indicated that they would like to see more diversity in. However, the majority of the respondents took a neutral stand about the importance of diversity when choosing a mediator.

INTERNATIONAL COMMERCIAL LITIGATION

- Finality was the most important factor influencing the respondents' decision to choose international commercial litigation as a dispute resolution mechanism. Other important factors include direct enforceability, impartiality and speed.
- Fewer respondents were satisfied with indirect costs to client business and availability of specialist dispute resolution professionals/neutrals in international commercial litigation.
- More respondents preferred local courts over international commercial courts, such as the London Commercial Court and the Singapore International Commercial Court, to resolve cross-border commercial disputes through litigation.
- The majority of respondents said that they understood the applications of third-party funding in international commercial litigation and how it works but have not used it.

MIXED MODE (HYBRID) DISPUTE RESOLUTION

- The top factors that contributed to the respondents' choice to use mixed mode (hybrid) dispute resolution were contractual obligations, client's request and opponent's request.
- Respondents were 'very satisfied' with the confidentiality, procedural flexibility, flexibility in choice of institutions, venues and dispute resolution professionals, clarity and transparency in rules and procedures, preservation of business relationships, impartiality, transparency, direct enforceability and finality associated with mixed mode (hybrid) dispute resolution.
- With respect to choosing arbitrators or mediators in mixed mode (hybrid) dispute resolution procedures, respondents found the following factors to be 'absolutely crucial' or 'important': cost, efficiency, arbitrator or mediator from a third-party country, industry/issue-specific knowledge, dispute resolution experience, formal qualifications, language, good ethics and cultural familiarity.

INVESTOR-STATE DISPUTE SETTLEMENT

- International arbitration continues to be the dispute settlement mechanism of choice of users in resolving investor-state disputes, with majority of the respondents choosing institutional or ad hoc arbitration.
- Clarity and transparency in rules and procedures, followed by direct enforceability and finality were the top considerations in choosing a mechanism for investor-state dispute settlement.
- Respondents indicated that an increased pool of experts as well as the ability to use mediation and mixed mode (hybrid) procedures would improve the dispute resolution procedure for investor-state disputes.
- A majority of the respondents have not used third-party funding in investor-state disputes but understand its applications and how it works.

SECTION 1: INTRODUCTION

The SIDRA International Dispute Resolution Survey: 2024 Final Report contains the findings of the third iteration of the SIDRA Survey, a cross-border, international survey that examined how and why businesses and lawyers make decisions about resolving cross-border disputes. The Report sheds light on user experiences with arbitration, litigation, mediation, mixed mode (hybrid) dispute resolution, and investor-state dispute settlement mechanisms. For this edition of the Survey, we launched two new sections – one on intellectual property disputes and another on technology disputes. The SIDRA Survey is commissioned by the Singapore Ministry of Law.

The 2024 Final Report begins with an overview of the approach and design of the Survey questionnaire followed by the respondent profile according to user type, geographical region and legal system. The findings are structured into seven substantive sections, namely: (1) international commercial arbitration, (2) international commercial mediation, (3) international commercial litigation, (4) mixed mode (hybrid) dispute resolution, (5) investor-state dispute settlement (6) intellectual property disputes and (7) technology disputes. The sections on intellectual property disputes and technology disputes are available only online on the SIDRA website at sidra.smu.edu.sg.

There are five aspects of the SIDRA Survey that make it unique.

First, it is 100% user-centric. All respondents are users and they are identified either as Client Users (corporate executives and in-house counsel) or External Counsels (dispute resolution lawyers and corporate lawyers) who engage in cross-border commercial dispute resolution. Views of neutrals, academics, institutional providers and other non-user stakeholders are not represented in this Survey.

Second, the views are based on user experiences and not just preferences. Respondents were directed to the particular dispute resolution process they have experience with and were then asked to respond to a series of specific questions in relation to that mechanism.

Third, the Survey focuses on dispute resolution mechanisms for cross-border disputes only, and not for domestic disputes. International dispute resolution involves different considerations compared to domestic settings and we did not want to confuse the two.

Fourth, the Survey has been distributed internationally in all six official United Nations ("**UN**") languages: Arabic, Chinese, English, French, Spanish and Russian. Thus, a more diverse selection of users compared to those who primarily work in English was reached.

Finally, no single dispute resolution mechanism was examined in isolation. Dispute resolution developments are increasingly interconnected as the emergence of hybrid dispute resolution mechanisms and international court referrals to other dispute resolution mechanisms show.

The Report features the iris flower which is bright, vibrant and comes in a rainbow of colours. Irises also symbolise hope, wisdom and positive change. With the publication of the 2024 Final Report, we seek to share information and insights gathered from hundreds of lawyers and corporate decision-makers. We express our gratitude for their assistance, which played a crucial role in helping us produce a contemporary and evidence-based report. We hope that these findings contribute to fostering positive change in the field of international dispute resolution.

SECTION 2: APPROACH AND DESIGN

From January to December 2023, Client Users (corporate executives and in-house counsel) or External Counsels (dispute resolution lawyers and corporate lawyers), who engaged in cross-border commercial dispute resolution between the years 2021 and 2022, were asked to respond to the SIDRA Survey.

The Survey was segmented into seven distinct sections: international commercial arbitration, international commercial mediation, international commercial litigation, mixed mode (hybrid) dispute resolution, investor-state dispute settlement, intellectual property disputes and technology disputes. The questions focused on Client Users' and External Counsels' actual decision-making processes in relation to the use of different international dispute resolution mechanisms.

The questionnaire was disseminated globally in all six official UN languages (Arabic, Chinese, English, French, Spanish and Russian).

We have used the dataset as it stood in December 2023. The Survey was answered by a total of 211 respondents[1] from 26 countries.

This Report uses the terms respondent and respondents interchangeably. The data analysis in this Report covers summary statistics and disaggregates responses in primarily two ways:

- By user category: Client Users vs External Counsels; and
- By dispute resolution mechanism: international commercial arbitration, international commercial mediation, international commercial litigation, mixed mode (hybrid) dispute resolution mechanisms.

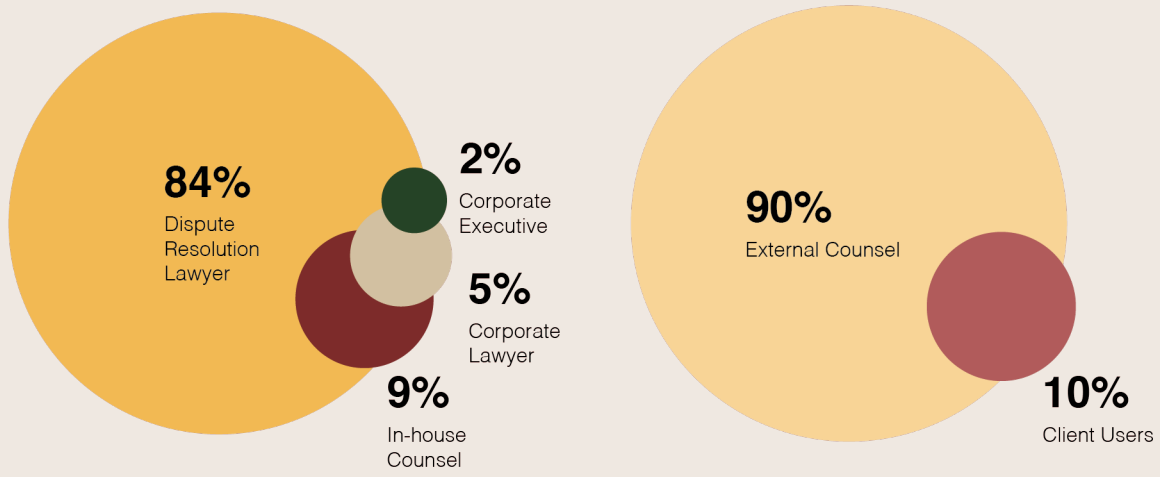
[1] The total number of respondents covers all sections of the Survey, including intellectual property and technology disputes. The data for the intellectual property and technology disputes sections are available online on the SIDRA website at sidra.smu.edu.sg.

SECTION 3: RESPONDENT PROFILE

3.1 The Respondent profile is set out in this section.

EXHIBIT 3.1

RESPONDENT PROFILE

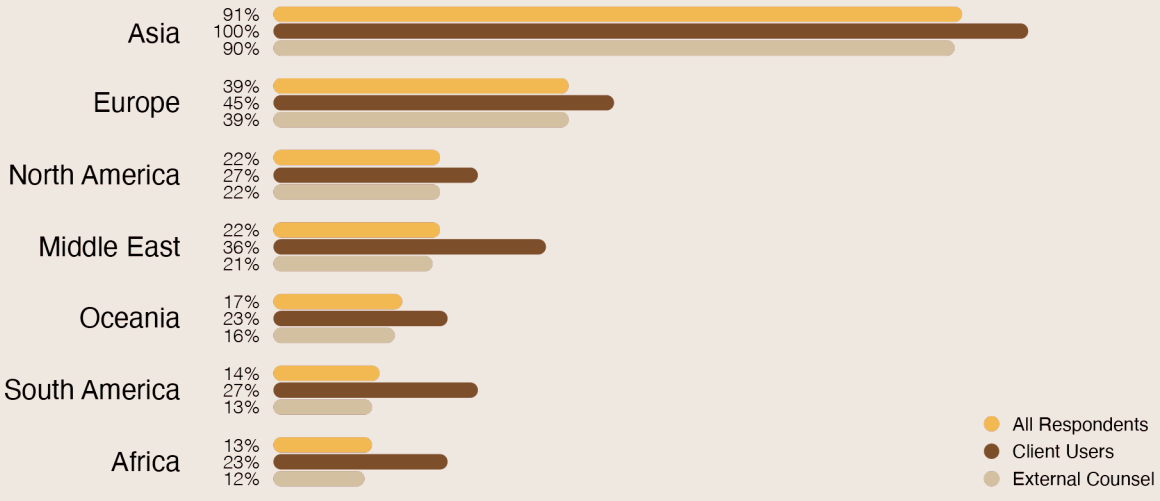


3.2 Among 211 respondents, 10% were Client Users (corporate executives and in-house counsel) and 90% were External Counsels (dispute resolution lawyers and corporate lawyers).

3.3 Out of all the Client Users, 9% were in-house counsel and 2% were corporate executives. As for the External Counsels, 84% were dispute resolution lawyers and 5% were corporate lawyers.

EXHIBIT 3.2

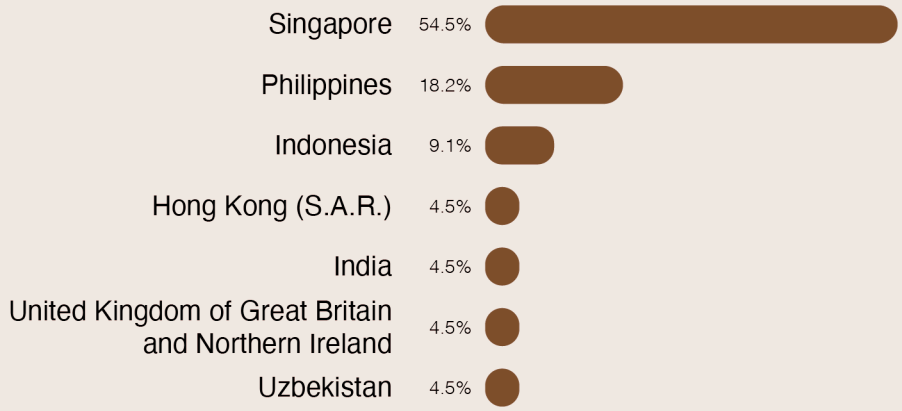
PROPORTION OF RESPONDENTS BY REGION(S) OF PRINCIPAL OPERATIONS



3.4 Respondents operate or practice in different parts of the world, with the majority based in Asia.

EXHIBIT 3.3

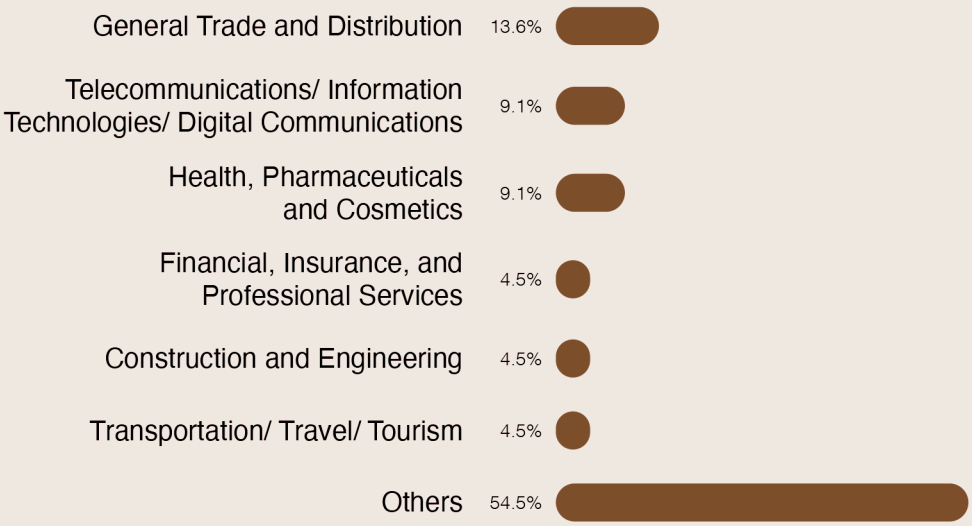
COUNTRIES REPRESENTED BY RESPONDENTS (CLIENT USERS)



3.5 The Client Users work in different regions. More than half of respondents indicated Singapore as the country in which they are based. Other well-represented jurisdictions include the Philippines and Indonesia.

EXHIBIT 3.4

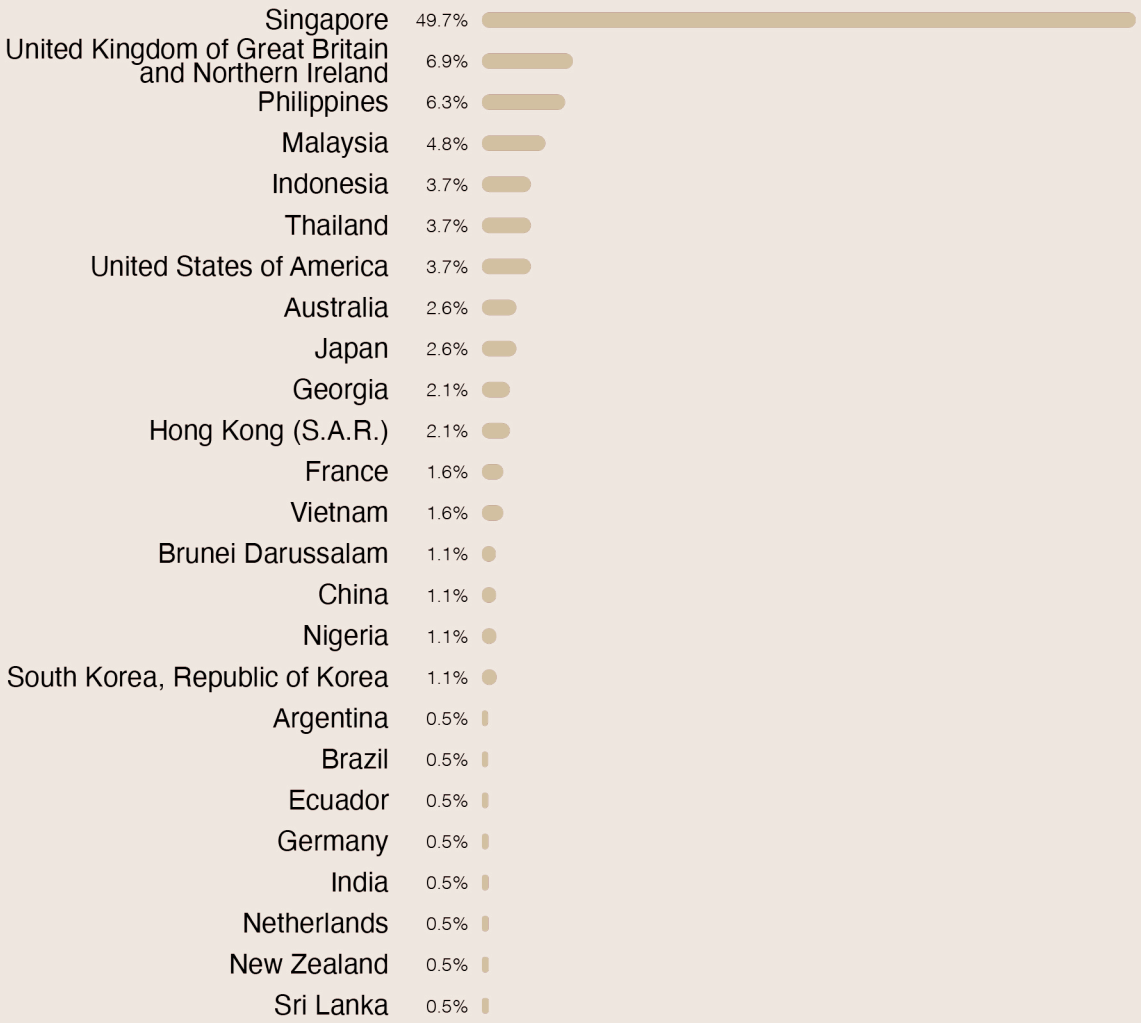
INDUSTRY SECTORS OF CLIENT USERS



3.6 Majority of the Client Users indicated 'Others' as their industry sector (54.5%). Examples of these sectors include agriculture, insurance, fast-moving consumer goods/alcohol/beverages and media and entertainment. This is followed by the general trade and distribution industry (13.6%), telecommunications, information technologies, digital communications (9.1%) and health, pharmaceuticals and cosmetics (9.1%).

EXHIBIT 3.5

COUNTRIES REPRESENTED BY RESPONDENTS (EXTERNAL COUNSEL)



3.7 The External Counsels practise in different parts of the world. They come from 25 countries, with 49.7% based in Singapore, 6.9% based in the United Kingdom of Great Britain and Northern Ireland, and 6.3% based in the Philippines.

3.8 The diversity of the legal systems of the respondent countries is illustrated in Exhibit 3.6.

EXHIBIT 3.6

CLASSIFICATION OF COUNTRY BY LEGAL SYSTEM

COUNTRY	LEGAL SYSTEM
Argentina	Civil Law
Australia	Common Law
Brazil	Civil Law
Brunei Darussalam	Hybrid (Common Law and Sharia)
China	Civil Law
Ecuador	Civil Law
France	Civil Law
Georgia	Civil Law
Germany	Civil Law
Hong Kong (S.A.R.)	Common Law
India	Common Law
Indonesia	Civil Law
Japan	Civil Law
Malaysia	Hybrid (Common Law and Sharia)
Netherlands	Civil Law
New Zealand	Common Law
Nigeria	Hybrid (Common Law and Sharia)
Philippines	Hybrid (Civil Law and Common Law)
Singapore	Common Law
South Korea	Civil Law
Sri Lanka	Hybrid (Civil Law and Common Law)
Thailand	Civil Law
United Kingdom of Great Britain and Northern Ireland	Common Law
United States of America	Common Law
Uzbekistan	Civil Law
Vietnam	Civil Law

3.9 Respondents come from 26 countries. They are distributed among common law, civil law, and hybrid legal systems. The nature of the respondent profiles has influenced the findings contained in this Report.

SECTION 4:
RESPONDENTS' PERSPECTIVES ON FACTOR IMPORTANCE IN CHOICE OF, AND SATISFACTION WITH DISPUTE RESOLUTION MECHANISMS (ARBITRATION, MEDIATION AND LITIGATION)

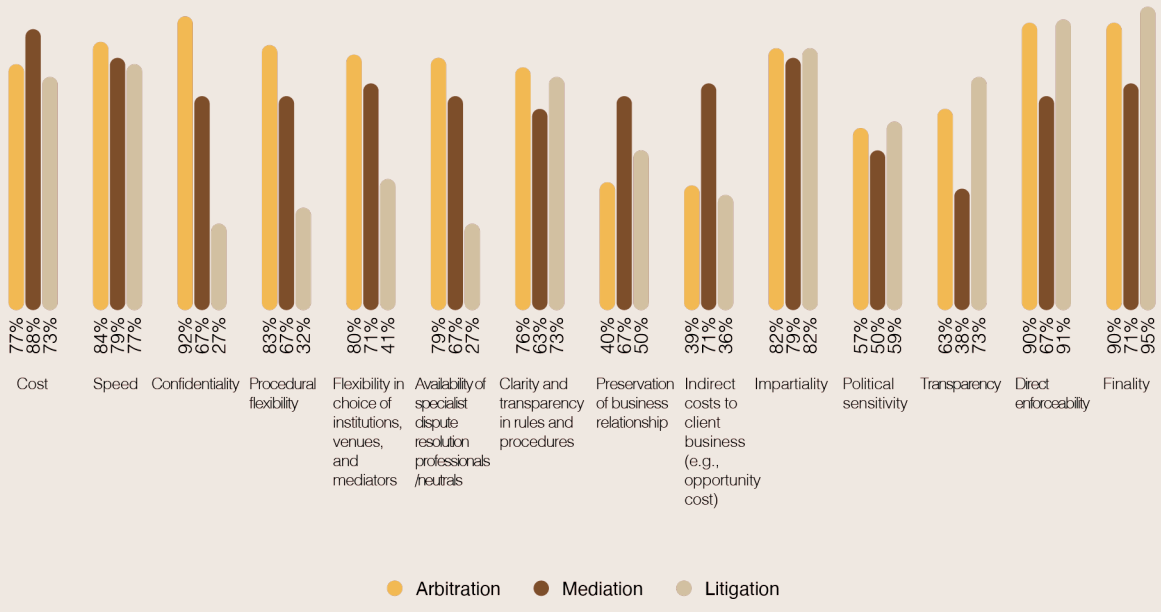
At A GLANCE

- Similar to the SIDRA Survey Final Report 2022, speed and impartiality were the two factors users considered 'absolutely crucial' or 'important' across arbitration, mediation and litigation.
- Speed and cost in arbitration were rated as high in importance but low in satisfaction.
- Satisfaction levels with respect to direct enforceability were not vastly different across arbitration, mediation and litigation. 77% of respondents were satisfied with direct enforceability in arbitration, 73% were satisfied in litigation and 71% were satisfied in mediation.
- More than 50% of all respondents were also satisfied with the clarity and transparency in rules and procedures and impartiality in arbitration, mediation and litigation.

Comparing Respondents' Perspectives of Factor Importance in Choice of Dispute Resolution Mechanism

EXHIBIT 4.1

COMPARING USER PERSPECTIVES OF FACTOR IMPORTANCE



4.1 Exhibit 4.1 compares the respondents' perspectives regarding the importance of a number of factors in arbitration, mediation and litigation. They were asked to indicate which factors they thought were 'absolutely crucial' or 'important' in deciding whether to arbitrate, mediate or litigate a dispute.

4.2 Out of all the factors, speed and impartiality were the two factors that users considered 'absolutely crucial' or 'important' across international commercial arbitration, mediation and litigation. This is consistent with the findings presented in the SIDRA Survey Final Report 2022.[2]

4.3 There were some noteworthy differences in the importance of other factors attributed to the respondents. For example, 92% of respondents found confidentiality in arbitration to be 'absolutely crucial' or 'important', while 67% and 27% found the same 'absolutely crucial' or 'important' in mediation and litigation respectively. More respondents ranked the preservation of business relationships as 'absolutely crucial' or 'important' in mediation (67%) compared to arbitration (40%) and litigation (50%). Fewer respondents found transparency an 'absolutely crucial' or 'important' factor in mediation (38%) compared to arbitration (63%) and litigation (73%). These findings coincide with the key characteristics of litigation, arbitration and mediation.

4.4 Litigation involves a generally public and contentious proceeding, where hearings are conducted in open court and decisions are published. As such, it is understandable why fewer respondents found confidentiality and preservation of business relationships as 'absolutely crucial' or 'important' in litigation. This also explains why more respondents found transparency in litigation 'absolutely crucial' or 'important'.

4.5 Arbitration is a private dispute resolution mechanism, where parties agree to submit their dispute to an arbitrator, a non-governmental decision-maker. Arbitration proceedings tend to be confidential and arbitral awards are not made available to the general public. Thus, it is unsurprising that more respondents find confidentiality in arbitration to be 'absolutely crucial' or 'important'.

4.6 Confidentiality is one of the key characteristics of mediation as it allows parties an opportunity to speak freely about their interests without fear of unfavourable consequences in any future litigation or arbitration. It also encourages effective participation in mediation and allows parties to explore creative ways to resolve their dispute. These are some of the reasons why mediation is known to help parties preserve their business relationships. At the same time, this may also explain why fewer respondents found transparency important in mediation.

4.7 More respondents ranked direct enforceability as 'absolutely crucial' or 'important' when selecting litigation (91%) and arbitration (90%) compared to mediation (67%). This is similar to the data presented in the SIDRA Survey Final Report 2022 and 2020.[3] This illustrates the impact that the Convention on the Recognition and Enforcement of Arbitral Awards (the **"New York Convention"**) has had regarding the enforceability of arbitral awards across different parts of the world. With Timor-Leste acceding to the New York Convention in 2023, it now has 24 signatories and 172 state parties. It is hoped that the Convention on International Settlement Agreements Resulting from Mediation (the **"Singapore Convention on Mediation"**) may influence user selection of dispute resolution mechanisms in the next few years. At the time of writing, the Singapore Convention on Mediation has 57 signatories and 14 state parties, with Iraq signing the Singapore Convention and Sri Lanka ratifying the same in 2024.

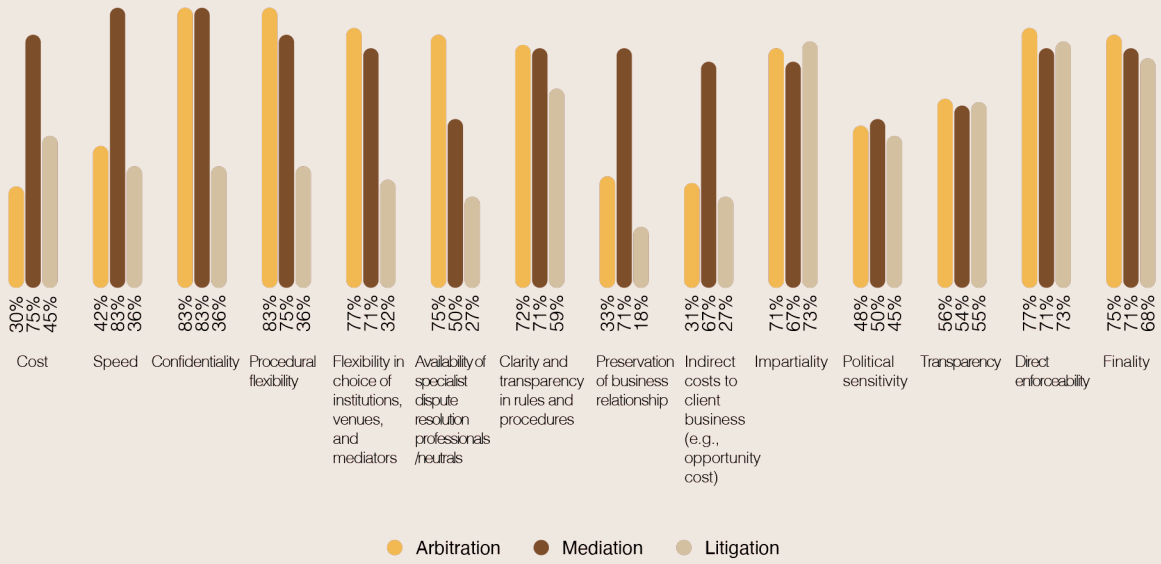
[2] Singapore International Dispute Resolution Academy International Dispute Resolution Survey: 2022 Final Report (hereinafter **"SIDRA Survey Final Report 2022"**), *available at* https://sidra.smu.edu.sg/sites/sidra.smu.edu.sg/files/survey-2022/index.html, at Exhibit 4.1.

[3] Singapore International Dispute Resolution Academy International Dispute Resolution Survey: 2020 Final Report (hereinafter **"SIDRA Survey Final Report 2020"**), *available at* https://sidra.smu.edu. sg/sites/sidra.smu.edu.sg/files/survey/index.html, at Exhibit 4.2.1, SIDRA Survey Final Report 2022 at Exhibit 4.1.

Comparing Respondents' Satisfaction

EXHIBIT 4.2

COMPARING USER SATISFACTION



4.8 Respondents were also asked how satisfied they were with their chosen dispute resolution mechanism. Satisfaction levels varied for the factors presented to respondents and across international commercial arbitration, mediation and litigation.

4.9 While there were differences in the importance levels respondents attributed to direct enforceability in arbitration, mediation and litigation, satisfaction with direct enforceability across the three dispute resolution mechanisms was not vastly different. 77% of respondents were satisfied with direct enforceability in arbitration, 73% were satisfied in litigation and 71% were satisfied in mediation.

4.10 A majority of respondents were satisfied with confidentiality in arbitration and mediation (both at 83%) compared to litigation (36%). This is in line with the essential aspects of arbitration and mediation where parties can opt to keep the entire proceedings or some of the proceedings confidential, while litigation tends to be a more public process.

4.11 More than 50% of all respondents were also satisfied with the clarity and transparency in rules and procedures and impartiality in arbitration, mediation and litigation. This is consistent with the data reported in the SIDRA Survey Final Report 2022 and 2020.[4]

4.12 With respect to cost and speed, there are some interesting comparisons to be made with the SIDRA Survey Final Report 2022. In the 2022 Report, the satisfaction with cost and speed in arbitration were reported to be at 30% and 41% respectively.[5] The satisfaction levels with these two factors in arbitration remain relatively unchanged. Only 30% of respondents were satisfied with costs and 42% were satisfied with the speed associated with arbitration. More respondents were satisfied with the cost and speed of mediation (75% and 83% respectively) as compared to the 2022 Report (72% for cost and 67% for speed).[6] Accordingly, there has been an increase in the number of respondents indicating their satisfaction with cost and speed in relation to mediation. As for litigation, similar to the 2022 Report, less than 50% of the respondents were satisfied with cost (45%) and speed (36%).

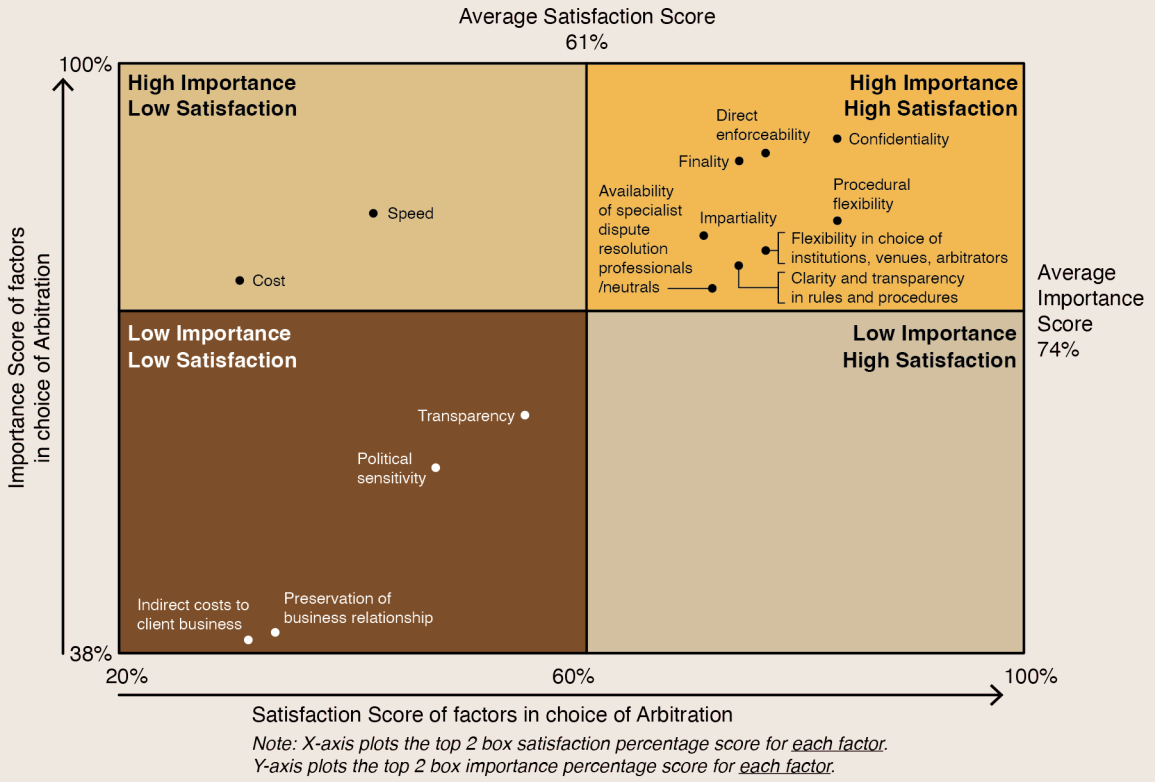
[4] SIDRA Survey Final Report 2022 at Exhibit 4.2; SIDRA Survey Final Report 2020 at Exhibit 4.2.2.
[5] SIDRA Survey Final Report 2022 at Exhibit 4.2.
[6] *Id.*

Factor Importance vs. Satisfaction in Choice of Arbitration, Litigation and Mediation

4.13 The quadrant charts below show the difference between factor importance (respondents' rating of the importance of a specific factor) and respondents' satisfaction (respondents' rating of satisfaction of a specific factor) with respect to their choice of arbitration, mediation or litigation. The charts are divided into four quadrants based on the average importance score and the average satisfaction score. The average scores are the simple averages of the respondents' importance scores and satisfaction scores of all the factors behind their selection of a specific dispute resolution mechanism and satisfaction with their chosen mechanism, respectively. The position of each factor within the quadrants indicates its relative importance and satisfaction levels with respect to the average importance and satisfaction score. The charts demonstrate how to identify areas for improvement based on the position of the factors within the quadrants.

EXHIBIT 4.3

FACTOR IMPORTANCE VS SATISFACTION WITH CHOICE OF ARBITRATION



Note: X-axis plots the top 2 box satisfaction percentage score for each factor.
Y-axis plots the top 2 box importance percentage score for each factor.

Note: Importance Percentage Score refers to the top two box score, i.e., the percentage of respondents who indicated the considerations behind the selection of arbitration were 'Absolutely Crucial' and 'Important'. Satisfaction Percentage Score refers to the top two box score, i.e., the percentage of respondents who indicated they were 'Very Satisfied' and 'Somewhat Satisfied' with factors used in the selection of arbitration.

The average Importance Percentage Score across all factors for arbitration is 74%; The average Satisfaction Percentage Score across all factors for arbitration is 61%.

4.14 In their choice of arbitration, respondents rated direct enforceability, confidentiality, procedural flexibility, finality, impartiality, flexibility in the choice of institutions, venues, and arbitrators, clarity and transparency in rules and procedures and availability of specialist dispute resolution professionals/neutrals as high in importance (rated above 74% in importance scores) and high in satisfaction (rated above 61% in satisfaction scores). This data is similar to what was presented in the SIDRA Survey Final Report 2022.[7]

[7] SIDRA Survey Final Report 2022 at Exhibit 4.3.

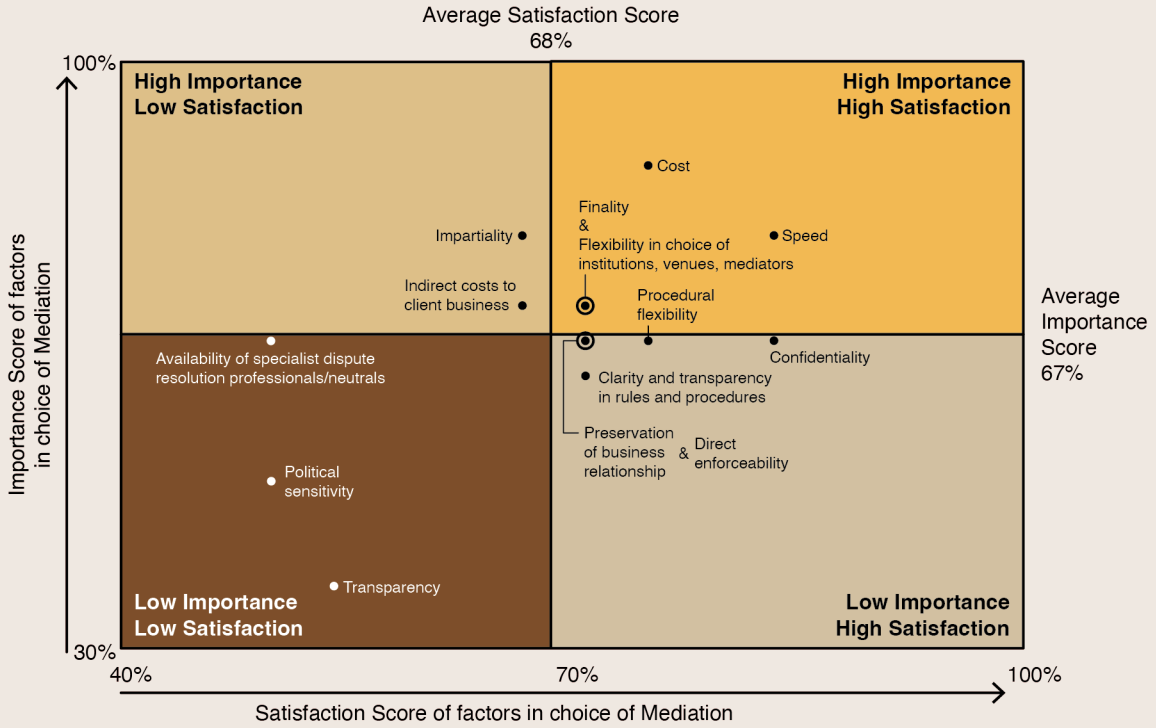
4.15 Speed and cost were rated as high in importance (rated above 74% in importance scores) but low in satisfaction (rated below 61% in satisfaction scores). In the SIDRA Survey Final Report 2022, speed was rated high in importance and low in satisfaction as well, but cost was rated low in importance and low in satisfaction.[8]

4.16 Transparency, political sensitivity, preservation of business relationships and indirect costs to client business were all ranked low in importance and low in satisfaction in arbitration.

4.17 None of the factors in relation to arbitration presented to the respondents were rated low in importance and high in satisfaction.

EXHIBIT 4.4

FACTOR IMPORTANCE VS SATISFACTION WITH CHOICE OF MEDIATION



Note: X-axis plots the top 2 box satisfaction percentage score for each factor.
Y-axis plots the top 2 box importance percentage score for each factor.

Note: Importance Percentage Score refers to the top two box score, i.e., the percentage of respondents who indicated the considerations behind the selection of mediation were 'Absolutely Crucial' and 'Important'. Satisfaction Percentage Score refers to the top two box score, i.e., the percentage of respondents who indicated they were 'Very Satisfied' and 'Somewhat Satisfied' with factors used in the selection of mediation.

The average Importance Percentage Score across all factors for mediation is 67%; The average Satisfaction Percentage Score across all factors for mediation is 68%.

4.18 In their choice of mediation, respondents rated cost, speed, flexibility in the choice of institutions, venues, mediators and finality as high in importance (rated above 67% in importance scores) and high in satisfaction (rated above 68% in satisfaction scores). Cost and speed were also ranked as high in importance and high in satisfaction in the SIDRA Survey Final Report 2022.[9]

[8] *Id.*
[9] SIDRA Survey Final Report 2022 at Exhibit 4.4.

4.19 Preservation of business relationships, procedural flexibility, confidentiality and direct enforceability can be found at the border of the high in importance and high in satisfaction quadrant and the low in importance and high in satisfaction quadrant. Preservation of business relationships and procedural flexibility were previously rated as high in importance and high in satisfaction in the 2022 Report.[10] Perhaps a slightly lower number of respondents are focusing on these factors when selecting mediation yet they are still satisfied with the same. Direct enforceability was previously rated as low in importance and low in satisfaction in the 2022 Report.[11]

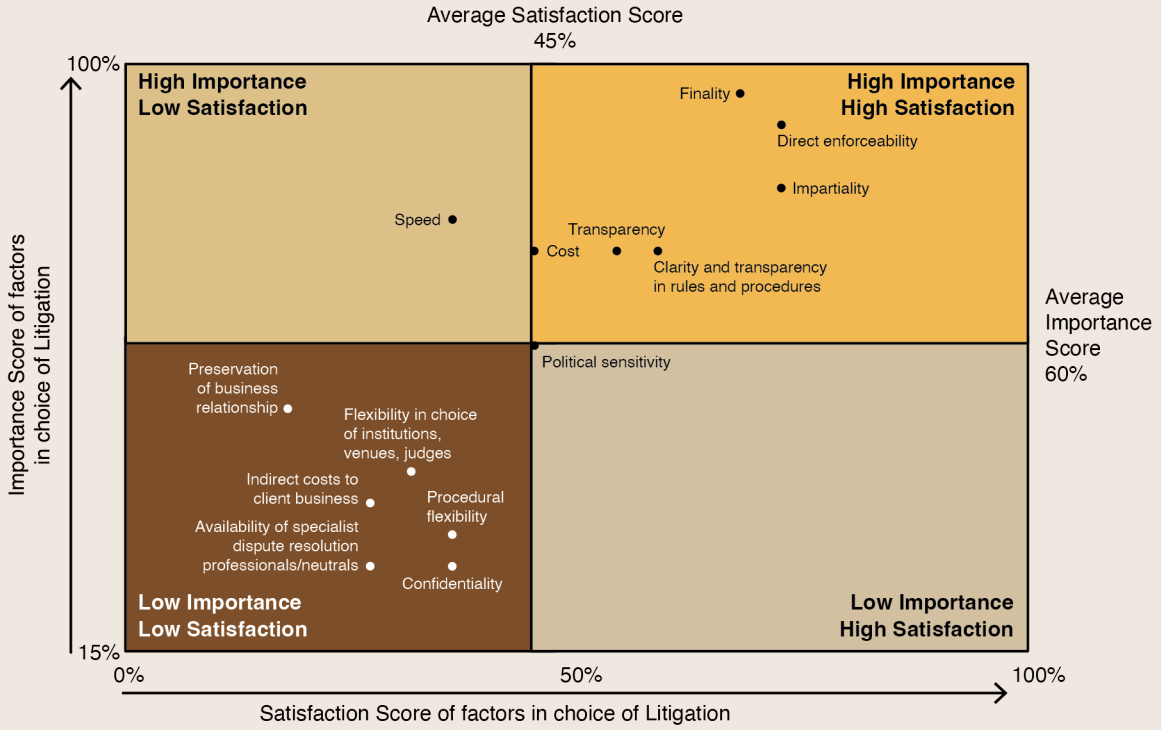
4.20 Clarity and transparency in rules and procedures were rated as low in importance and high in satisfaction. It was rated as low in importance and low in satisfaction in the 2022 Report.[12] This change suggests that while respondents continue to place lesser importance on this factor, their actual experiences have gone over and above their expectations.

4.21 Impartiality and indirect costs to client businesses were rated high in importance (rated above 67% in importance scores) and low in satisfaction (rated below 68% in satisfaction scores).

4.22 Availability of specialist dispute resolution professionals/neutrals, political sensitivity and transparency were rated low in importance (rated below 67% in importance scores) and low in satisfaction (rated below 68% in satisfaction scores). Political sensitivity was rated low in importance and low in satisfaction in the SIDRA Survey Final Report 2022 as well.[13]

EXHIBIT 4.5

FACTOR IMPORTANCE VS SATISFACTION WITH CHOICE OF LITIGATION



Note: X-axis plots the top 2 box satisfaction percentage score for each factor.
Y-axis plots the top 2 box importance percentage score for each factor.

Note: Importance Percentage Score refers to the top two box score, i.e., the percentage of respondents who indicated the considerations behind the selection of litigation were 'Absolutely Crucial' and 'Important'. Satisfaction Percentage Score refers to the top two box score, i.e., the percentage of respondents who indicated they were 'Very Satisfied' and 'Somewhat Satisfied' with factors used in the selection of litigation.

The average Importance Percentage Score across all factors for litigation is 60%; The average Satisfaction Percentage Score across all factors for litigation is 45%.

[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*

4.23 In their choice of litigation, respondents rated finality, direct enforceability, impartiality, clarity and transparency in rules and procedures, transparency and cost high in importance (rated above 60% in importance scores) and high in satisfaction (rated above 45% in satisfaction scores). All these factors save for transparency and cost were also ranked high in importance and high in satisfaction in the SIDRA Survey Final Report 2022. Cost, in the 2022 Report, was rated as high in importance but low in satisfaction.[14] The change in relation to cost in international commercial litigation suggests that respondents' experience with the same since the previous iteration of the SIDRA Survey has improved.

4.24 Respondents rated speed as high in importance (rated above 60% in importance scores) and low in satisfaction (rated below 45% in satisfaction scores). Speed in litigation was in the same high importance and low satisfaction quadrant in the 2022 Report.[15] It was in the low in importance and low in satisfaction quadrant in the SIDRA Survey Final Report 2020.[16] This shows that there is still room for improvement to enhance user experience in international commercial litigation and ensure a speedy process.

4.25 Preservation of business relationships, flexibility in the choice of institutions, venues and judges, procedural flexibility, confidentiality, the indirect cost to client business and availability of specialist dispute resolution professionals/neutrals were all rated as low in importance (rated below 60% in importance scores) and low in satisfaction (rated below 45% in satisfaction scores) in litigation. This seems to suggest that there is less of a focus regarding these factors in litigation.

4.26 Political sensitivity sits on the border of the high importance and high satisfaction quadrant and the low importance and high satisfaction quadrant. 59% of respondents found political sensitivity an 'absolutely crucial' or 'important' factor towards their decision to use litigation and 45% were 'somewhat satisfied' or 'very satisfied' with the same.

[14] SIDRA Survey Final Report 2020 at Exhibit 4.5.
[15] *Id.*
[16] SIDRA Survey Final Report 2020 at Exhibit 4.3.3.

SECTION 5:
INTERNATIONAL COMMERCIAL ARBITRATION

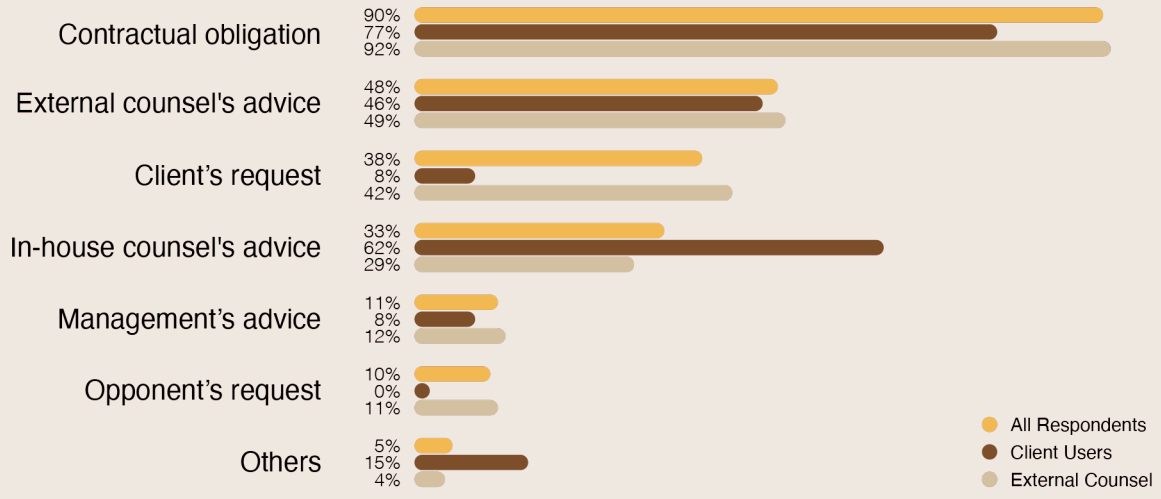
At A GLANCE

- Direct enforceability and confidentiality continued to be the most important factors for all respondents in choosing to use arbitration as a dispute resolution mechanism.
- With international commercial arbitration taking on a more adversarial character, both Client Users and External Counsels were less satisfied with the preservation of business relationships, indirect costs to client business and costs associated with arbitration. It is possible that Client Users are becoming more cost-sensitive and less tolerant of slow proceedings.
- The top factors respondents considered when deciding whether to use a wholly online platform for arbitration were travel restrictions, lower costs, low dispute value and low complexity of issues.
- More than 70% of respondents understand third-party funding, its implications and how it works but have not used it. Of the respondents who have used third-party funding, 23% have used it for the enforcement of an arbitral award.

Factors that Contributed to Respondents' Choice to Use International Commercial Arbitration

EXHIBIT 5.1

FACTORS THAT CONTRIBUTED TO RESPONDENTS' CHOICE TO USE INTERNATIONAL COMMERCIAL ARBITRATION



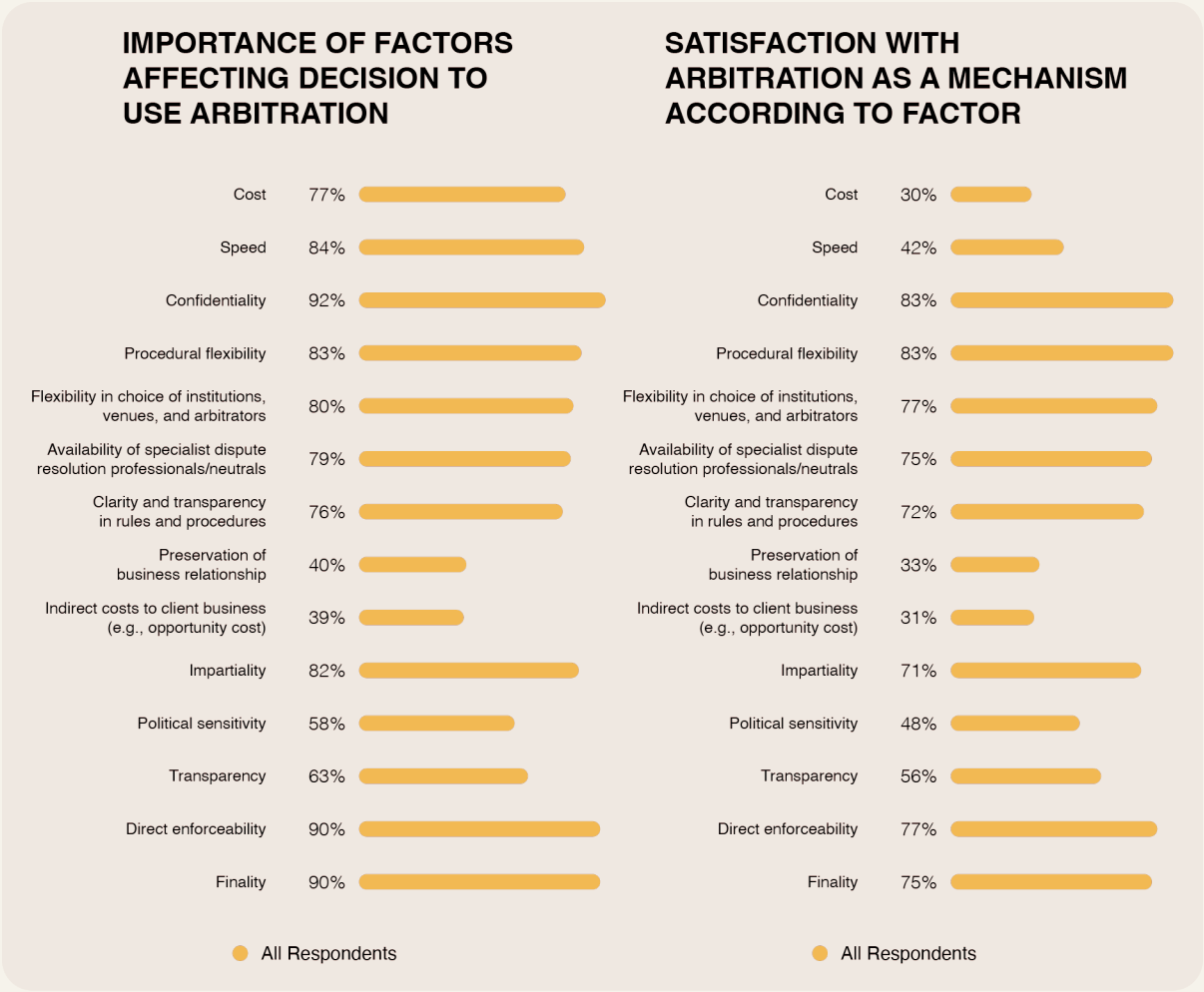
5.1 The top three influences on respondents' choice to use international commercial arbitration were contractual obligation (90%), external counsel's advice (48%) and client's request (38%). This is consistent with the SIDRA Survey Final Report 2022,[17] and continues to reflect the commercial reality that most international commercial arbitration cases arise out of arbitration clauses found within agreements.[18]

[17] SIDRA Survey Final Report 2022 at Exhibit 5.1.
[18] Gary Born, International Commercial Arbitration (2nd ed), Kluwer Law International (2014) at 73.

5.2 Among Client Users, the top three influences were contractual obligation (77%), in-house counsel's advice (62%) and external counsel's advice (46%). Again, this is consistent with the SIDRA Survey Final Report 2022, which suggests that in-house counsels' input has a significant effect on the Client Users' choice of dispute resolution mechanism.

Factors Affecting Respondents' Decision to Use Arbitration and Respondents' Satisfaction With Arbitration as a Mechanism

EXHIBIT 5.2



5.3 Confidentiality (92%), direct enforceability (90%) and finality (90%) were the top three factors contributing to respondents' choice to use arbitration. Also weighing significantly on respondents' minds were speed (84%), procedural flexibility (83%), impartiality (82%) and flexibility in choice of institutions, venues and arbitrators (80%).

5.4 Direct enforceability was consistently one of the top three factors across the years, being the second-ranked factor in this edition of the SIDRA Survey Final Report, and the top-ranked factor in the SIDRA Survey Final Report 2022 and 2020.[19] This demonstrates the importance of the New York Convention to the success of international arbitration.

5.5 Most respondents were satisfied with the following factors: confidentiality (83%), procedural flexibility (83%), flexibility in choice of institutions, venues and arbitrators (77%) and direct enforceability (77%). This is broadly similar to the results from the 2022 and 2020 editions of the SIDRA Survey Final Report.[20]

[19] In the SIDRA Survey Final Report 2020, the equivalent survey choice was phrased as "Enforceability" rather than "Direct Enforceability". SIDRA Survey Final Report 2022 at Exhibit 5.2; SIDRA Survey Final Report 2020 at Exhibit 6.1.1.

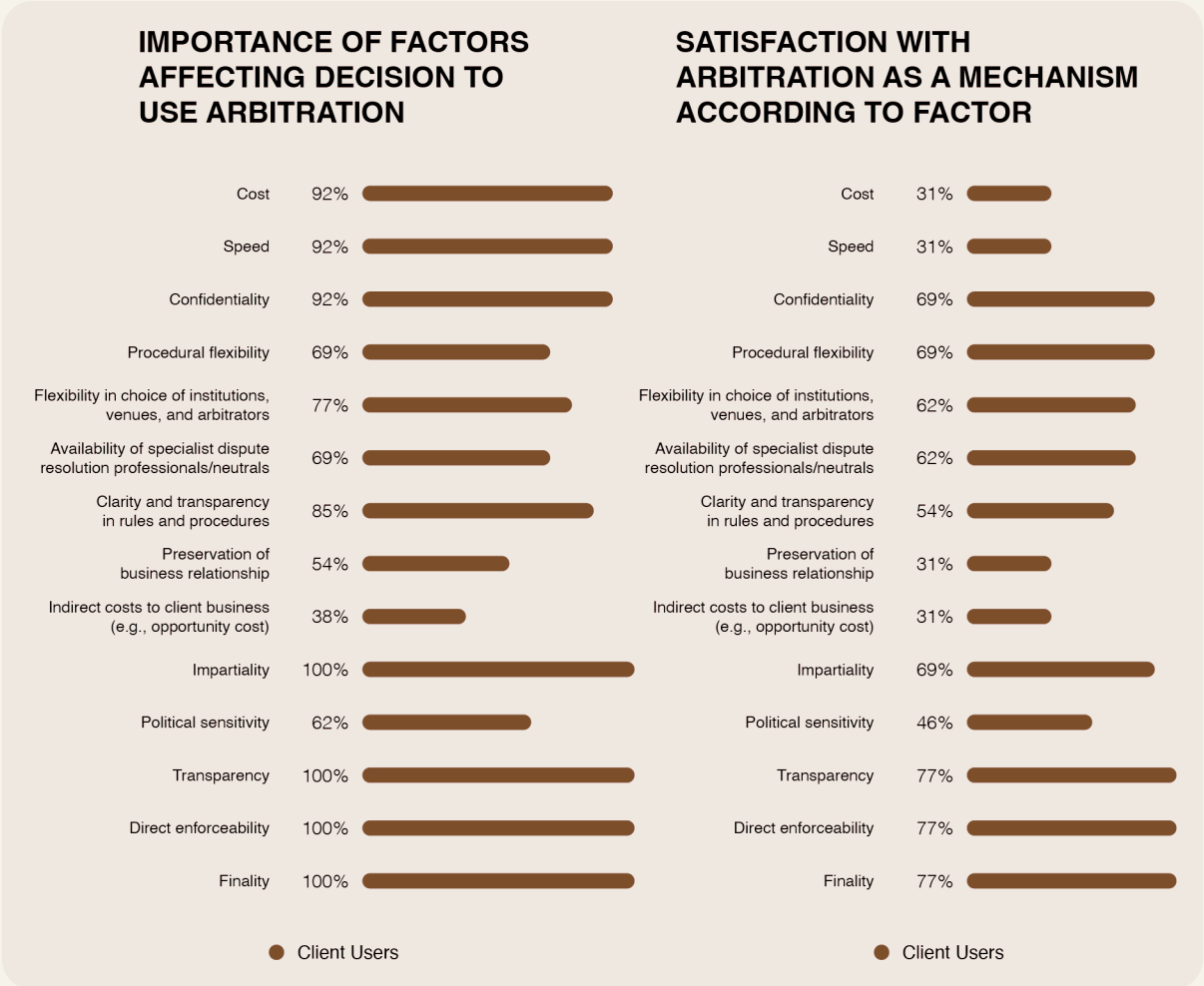
[20] SIDRA Survey Final Report 2022 at Exhibit 5.2; SIDRA Survey Final Report 2020 at Exhibit 6.1.2.

5.6 Also consistent across the years were respondents' satisfaction with the speed and cost of arbitration, with only a minority of respondents 'somewhat satisfied' or 'very satisfied' with these aspects of the process. In this edition of the SIDRA Survey, 42% were satisfied with the speed and 30% with the cost of arbitration. In the SIDRA Survey Final Reports 2022 and 2020, 41% and 30% of respondents were satisfied with the speed of arbitration respectively.[21] The 2022 and 2020 numbers for satisfaction with the cost of arbitration stood at 30% and 25% respectively.[22]

5.7 The consistently low satisfaction with the speed and cost of arbitration is not surprising in light of the increasing complexity of arbitration. However, it is concerning in light of the increasing importance that respondents have placed on these factors. In this iteration of the SIDRA Survey, more than three-quarters of respondents identified speed (84%) and cost (77%) as factors important to their choice of arbitration. This is an increase from the SIDRA Survey Final Report 2022 (79% and 63%) and the SIDRA Survey Final Report 2020 (72% and 67%).[23] Taken altogether, this suggests that despite efforts by arbitral institutions, there remains an increasing concern about the time and cost of arbitration.

5.8 Only a minority of respondents were 'somewhat satisfied' or 'very satisfied' with arbitration's ability to preserve business relationships (33%) and its indirect costs to client business (e.g. opportunity cost) (31%). However, it is likely that respondents knew that these issues were necessary trade-offs when choosing arbitration – only 40% of respondents cited the preservation of business relationships as an 'important' or 'absolutely crucial' factor in choosing arbitration, and 39% cited indirect costs to client business as 'important' or 'absolutely crucial' factors.

EXHIBIT 5.3



[21] *Id.*

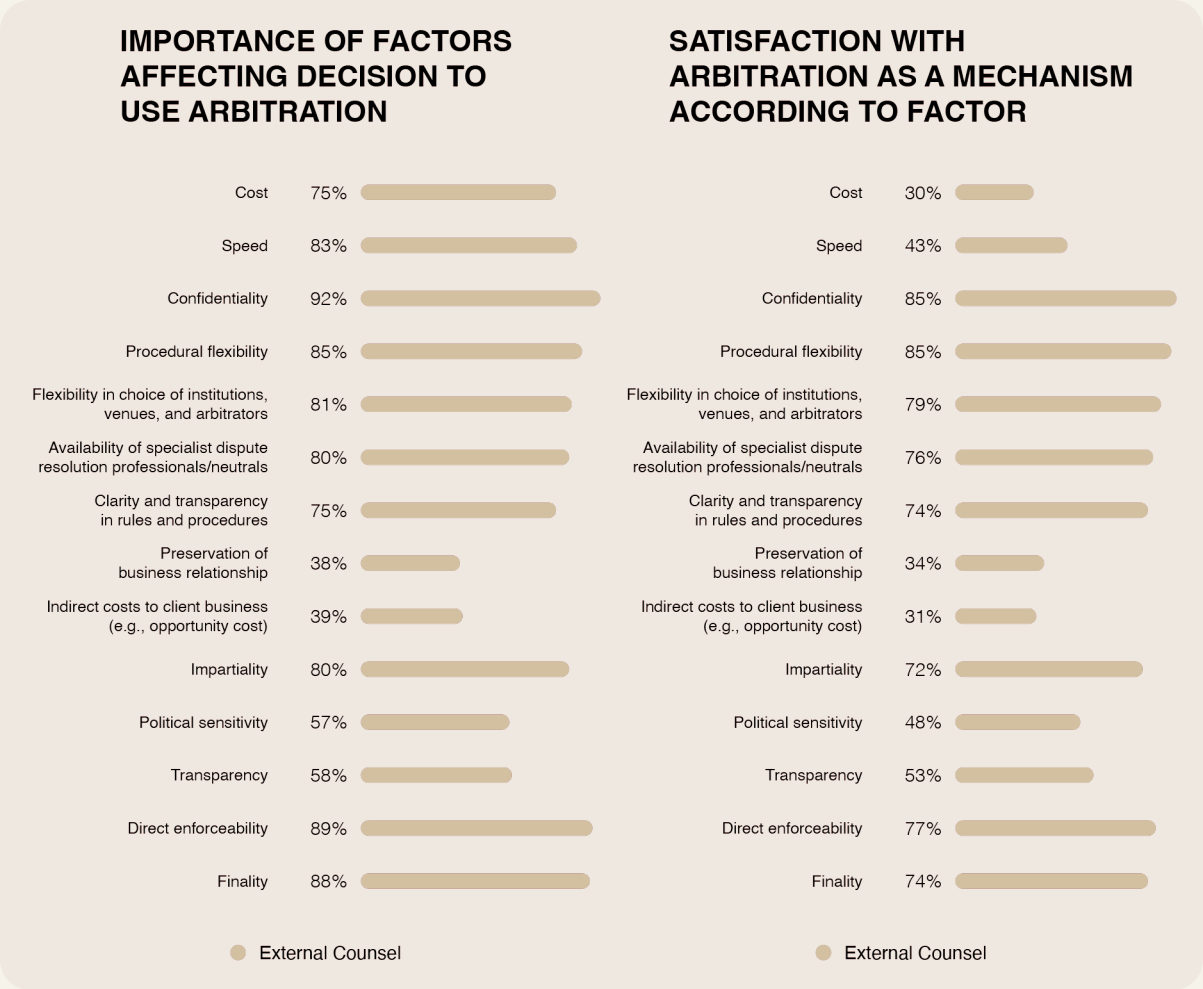
[22] *Id.*

[23] SIDRA Survey Final Report 2022 at Exhibit 5.2; SIDRA Survey Final Report 2020 at Exhibit 6.1.1.

5.9 For Client Users, direct enforceability, finality, transparency and impartiality (all at 100%) were important factors in deciding whether to use arbitration. Speed, cost and confidentiality (all at 92%) were also major considerations.

5.10 Most Client Users were satisfied with the following factors: direct enforceability (77%), finality (77%), transparency (77%), confidentiality (69%), procedural flexibility (69%) and impartiality (69%).

EXHIBIT 5.4



5.11 For External Counsels, confidentiality (92%), direct enforceability (89%), finality (88%) and procedural flexibility (85%) were the most popular factors in deciding whether to use arbitration. This is broadly similar to the SIDRA Survey Final Report 2022, in which direct enforceability (81%), confidentiality (81%), procedural flexibility (79%) and speed (79%) were the most popular factors.[24]

5.12 Only a minority of External Counsels found preservation of business relationship (38%) and indirect costs to client business (39%) to be important factors for choosing arbitration. This continues the trend noted in the SIDRA Survey Final Report 2022, in which the corresponding percentages for the same two factors were both 39%.[25]

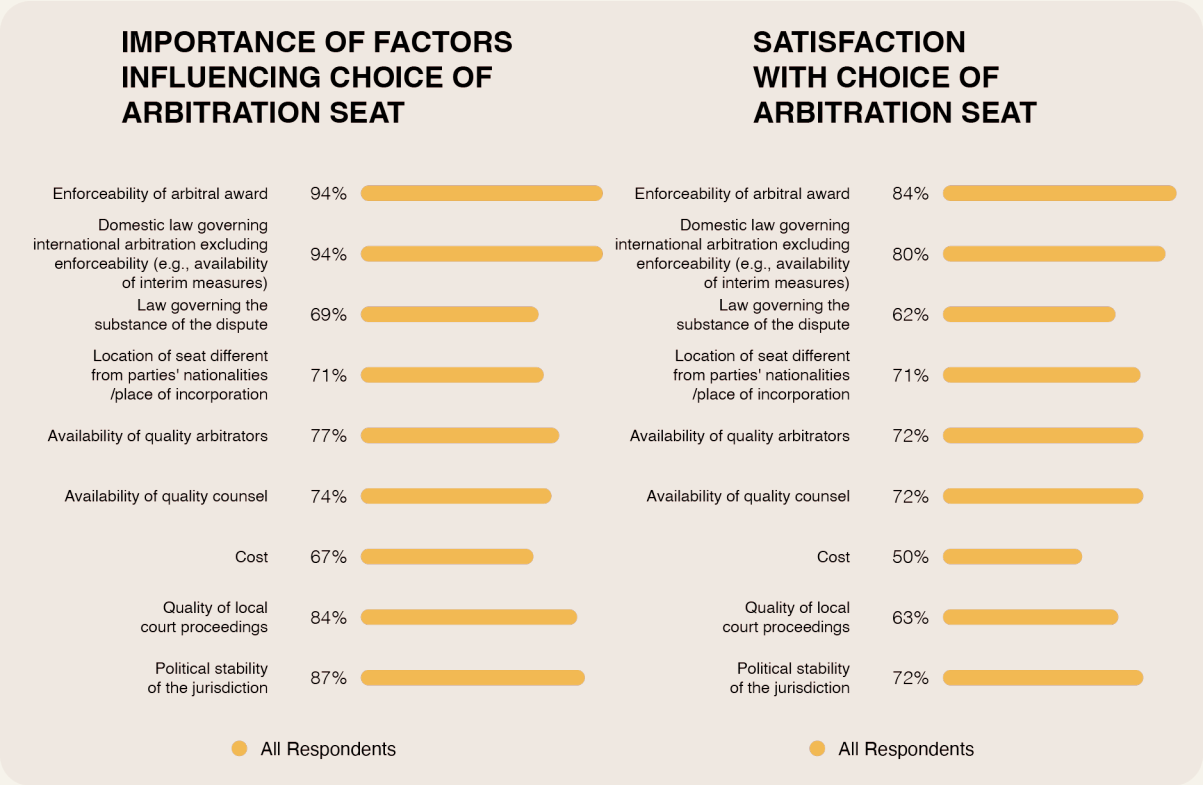
[24] SIDRA Survey Final Report 2022 at Exhibit 5.4.
[25] *Id.*

5.13 Most External Counsels were satisfied with the confidentiality (85%), procedural flexibility (85%), flexibility in choice of institutions, venues and arbitrators (79%) and direct enforceability (77%) of arbitration as a dispute resolution mechanism. Only one-third were satisfied with preservation of business relationships (34%), indirect costs to client business (31%) and cost (30%).

5.14 One notable difference between Client Users and External Counsels emerged from the Survey data. 92% of Client Users considered speed and cost to be important factors for choosing arbitration; however, only 31% of them were satisfied with the speed and cost of arbitration. The gap between expectation and reality seems larger for Client Users as compared to External Counsels - 83% and 75% of External Counsels considered speed and cost to be important considerations for choosing arbitration respectively, and 43% and 30% of them were satisfied with the speed and cost of arbitration respectively.

Factors Affecting Choice of Seat of Arbitration and Respondents' Satisfaction with Seat of Arbitration

EXHIBIT 5.5



5.15 When it comes to choosing the seat of arbitration, an overwhelming 94% of respondents considered the enforceability of the arbitral award, as well as the domestic law governing international arbitration (excluding enforceability), as 'important' or 'absolutely crucial' factors. These two factors have consistently been the top two considerations for respondents in all three editions of the SIDRA Survey Final Report.[26] This reinforces the importance of the seat of arbitration, which determines the domestic legal framework applicable to an arbitration process, as well as procedures for the annulment of arbitral awards. The other significant considerations were the political stability of the jurisdiction (87%) and the quality of local court proceedings (84%).

5.16 Turning to the issue of how satisfied respondents were with their chosen seats of arbitration, the data shows that 84% of respondents were 'somewhat satisfied' or 'very satisfied' with the enforceability of their arbitral awards, and 80% were 'somewhat satisfied' or 'very satisfied' with the domestic law governing international arbitration (excluding enforceability). This suggests that respondents as a whole are quite satisfied with respect to the factors that they deem most important when choosing their seats of arbitration, with domestic laws at the seat appearing to be working well.

[26] SIDRA Survey Final Report 2022 at Exhibit 5.5; SIDRA Survey Final Report 2020 at Exhibit 6.2.1.

Most Commonly Used International Arbitration Seats

EXHIBIT 5.6

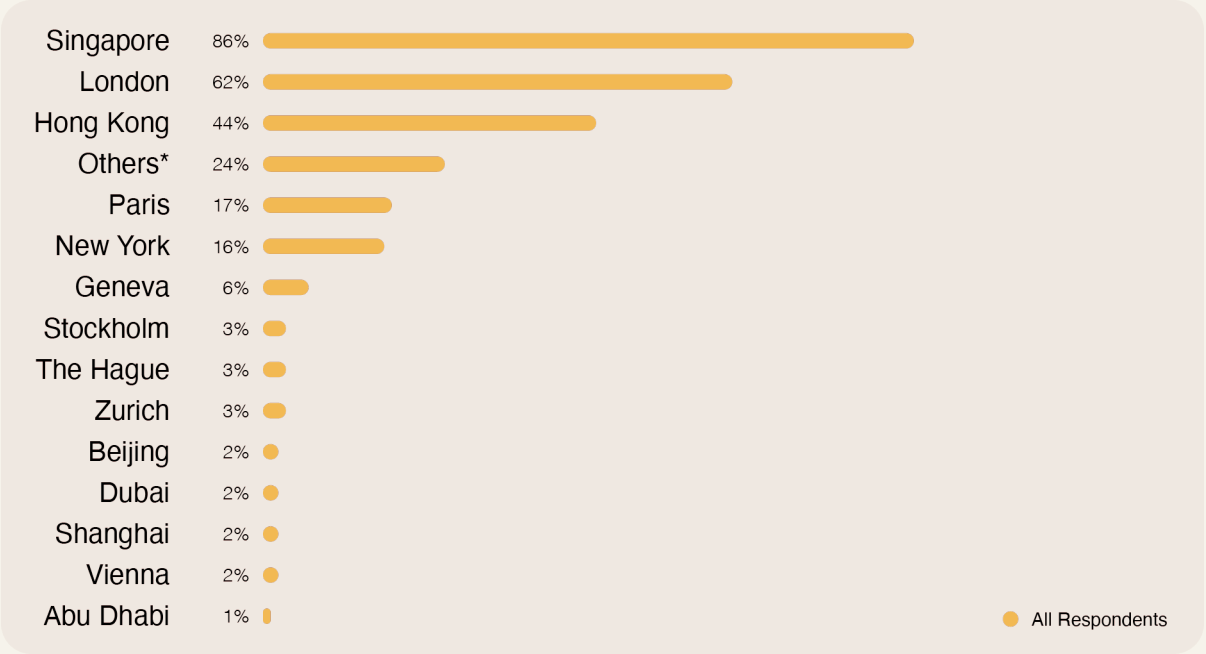


EXHIBIT 5.7

EXHIBIT 5.8

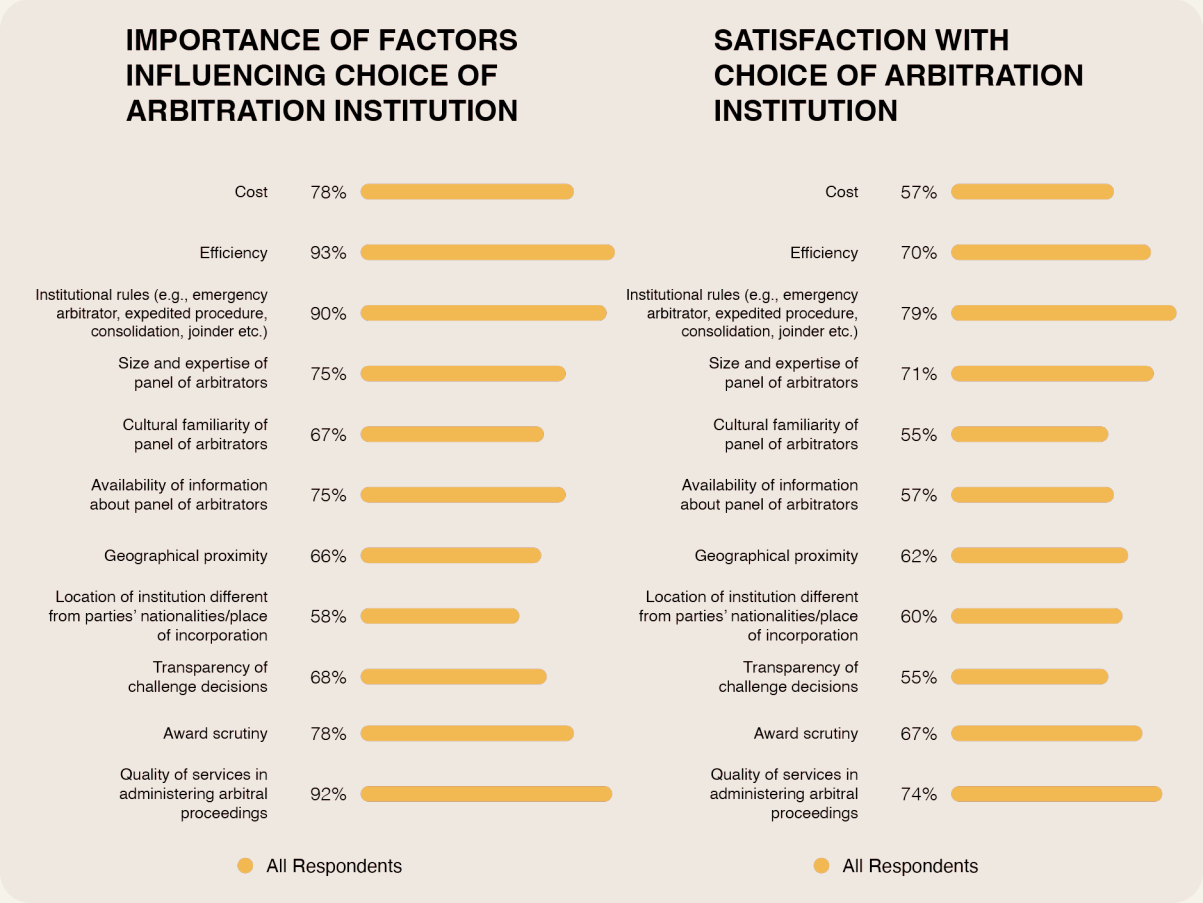
5.17 Respondents were asked to identify their top three most commonly used international commercial arbitration seats. Singapore (86%), London (62%) and Hong Kong (44%) were chosen most frequently, continuing the trend noted in the SIDRA Survey Final Reports 2022 and 2020.[27] This reflects the arbitration-friendly reputations of these three jurisdictions, though it should be noted that these charts likely also reflect the geographic profiles of the respondents, who were mostly from Asia.

5.18 The 'Others' option was the fourth most frequently chosen option (24%), outranking Paris (17%) and New York (16%). Respondents who chose 'Others' listed a variety of seats, reflecting the increasingly global profile of arbitration. These seats included: Bangkok, Bogota, Buenos Aires, Kuala Lumpur, Manila, Santiago, Sydney, Seoul, Tashkent, Tokyo, other cities in the US, India, Vietnam, Nigeria and Indonesia.

5.19 Both the Client Users and the External Counsels used Singapore, London and Hong Kong most frequently as seats. External Counsels used a larger number of seats compared to Client Users, which likely reflects the increasingly international practice of law firms.

Factors Affecting Choice of Arbitration Institutions and Respondent's Satisfaction with Choice of Arbitration Institution

EXHIBIT 5.9



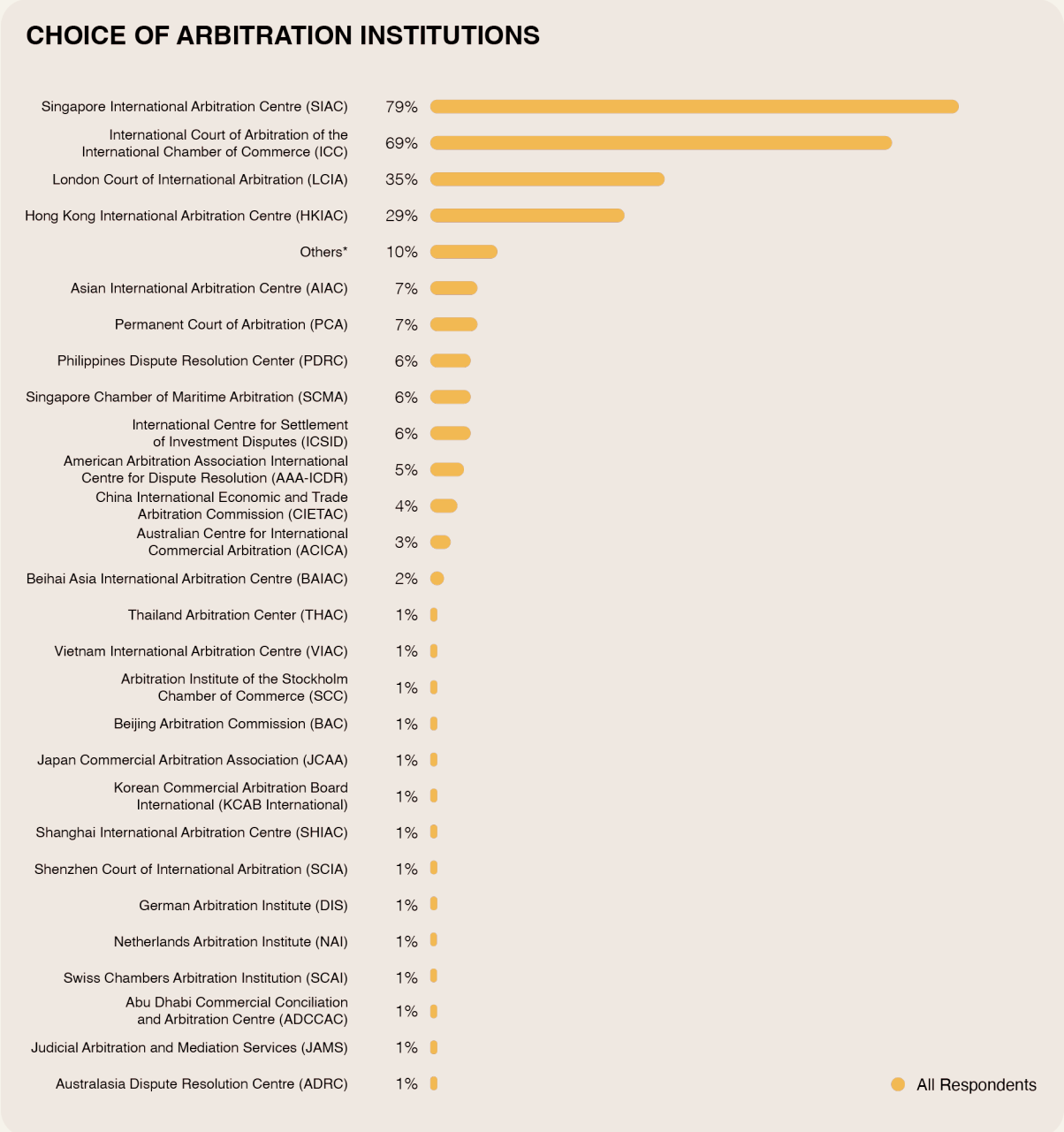
5.20 When choosing an arbitral institution, the top considerations were efficiency (93%), quality of services in administering arbitral proceedings (92%) and institutional rules (e.g., emergency arbitrator, expedited procedure, consolidation, joinder, etc.) (90%). Other significant considerations were cost (78%), award scrutiny (78%), size and expertise of the panel of arbitrators (75%) and the availability of information about the panel of arbitrators (75%).

[27] SIDRA Survey Final Report 2022 at Exhibit 5.6; SIDRA Survey Final Report 2020 at Exhibit 6.2.4.

5.21 The top-ranked factors that respondents were 'somewhat satisfied' or 'very satisfied' with at their chosen arbitration institution were institutional rules (79%), quality of services in administering arbitral proceedings (74%), the size and expertise of the panel of arbitrators (71%) and efficiency (70%). They approximately correspond to the factors that respondents considered important, constituting four of the six factors that respondents considered 'important' or 'absolutely crucial' (as mentioned above).

Choice of Arbitration Institutions

EXHIBIT 5.10

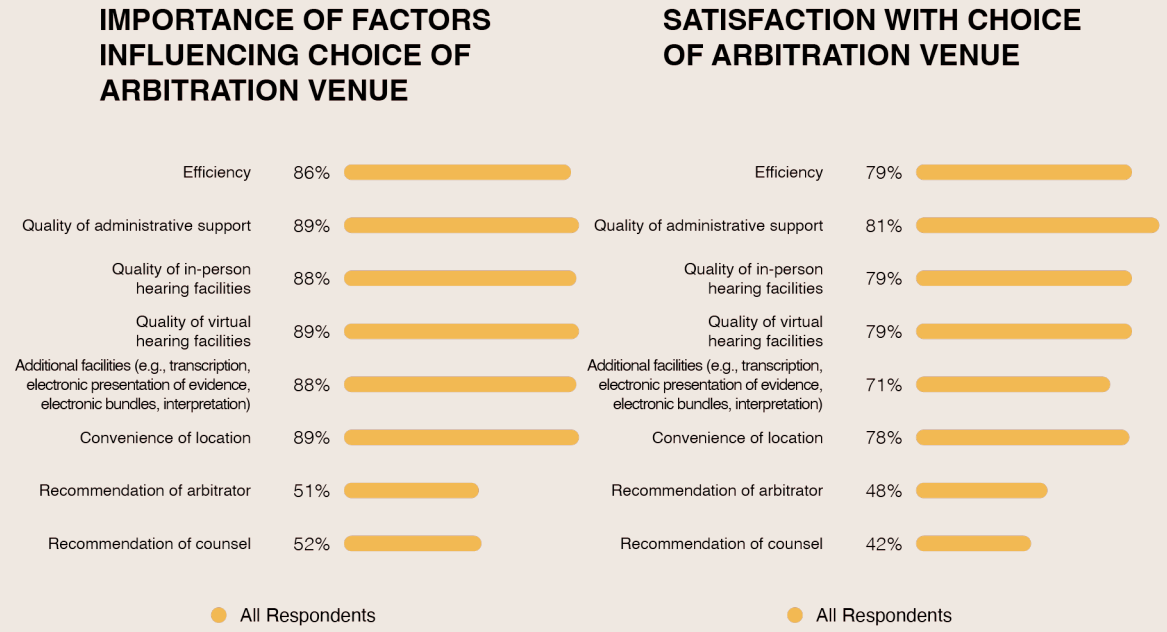


5.22 Respondents were asked to indicate their top three most commonly used international commercial arbitration institutions. The three most commonly used institutions were the Singapore International Arbitration Centre ("**SIAC**") (79%), the International Court of Arbitration of the International Chamber of Commerce ("**ICC**") (69%) and the London Court of International Arbitration ("**LCIA**") (35%). These same institutions were also at the top of the list in the SIDRA Survey Final Reports 2022 and 2020.[28] These institutions are well-known for their progressive institutional rules and diverse panel of arbitrators. The Hong Kong International Arbitration Centre ("**HKIAC**") was also popular with respondents (29%), which is in line with Hong Kong being a frequently used seat of arbitration.

[28] SIDRA Survey Final Report 2022 at Exhibit 5.10; SIDRA Survey Final Report 2020 at Exhibit 6.2.10.

Factors Affecting Choice of Arbitration Venue and Respondents' Satisfaction with Choice of Arbitration Venue

EXHIBIT 5.11



5.23 When it comes to choosing an arbitration venue, 89% of respondents listed the quality of virtual hearing facilities, convenience of location, and the quality of administrative support as 'important' or 'absolutely crucial' factors. Coming close behind were the quality of in-person hearing facilities and the availability of additional facilities such as transcription, electronic presentation of evidence, electronic bundles and interpretation (both at 88%).

5.24 One interesting note is that slightly more respondents viewed the quality of virtual hearing facilities (89%) as an important factor, as compared to those who thought the quality of in-person hearing facilities (88%) was 'important' or 'absolutely crucial'. This was a slight reversal of the data from the SIDRA Survey Final Report 2022, in which 91% of respondents considered the quality of in-person hearing facilities to be 'important' or 'absolutely crucial', as compared to 86% of respondents who thought the same of the quality of virtual hearing facilities.[29] This difference seems to be driven by Client Users, as noted below, and possible explanations include Client Users being conscious of the potential cost savings of having at least some of the proceedings held virtually.

5.25 As a whole, most respondents were satisfied with the quality of administrative support (81%), efficiency (79%), as well as the quality of both virtual (79%) and in-person (79%) hearing facilities.

[29] SIDRA Survey Final Report 2022 at Exhibit 5.11.

Most Commonly Used International Commercial Arbitration Venues and Hearing Centres

EXHIBIT 5.12

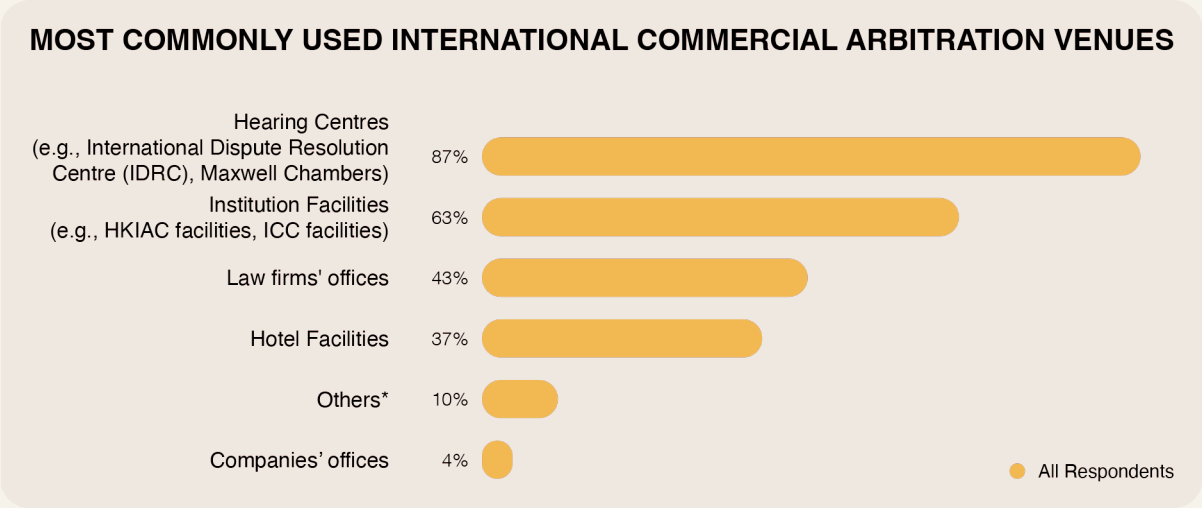
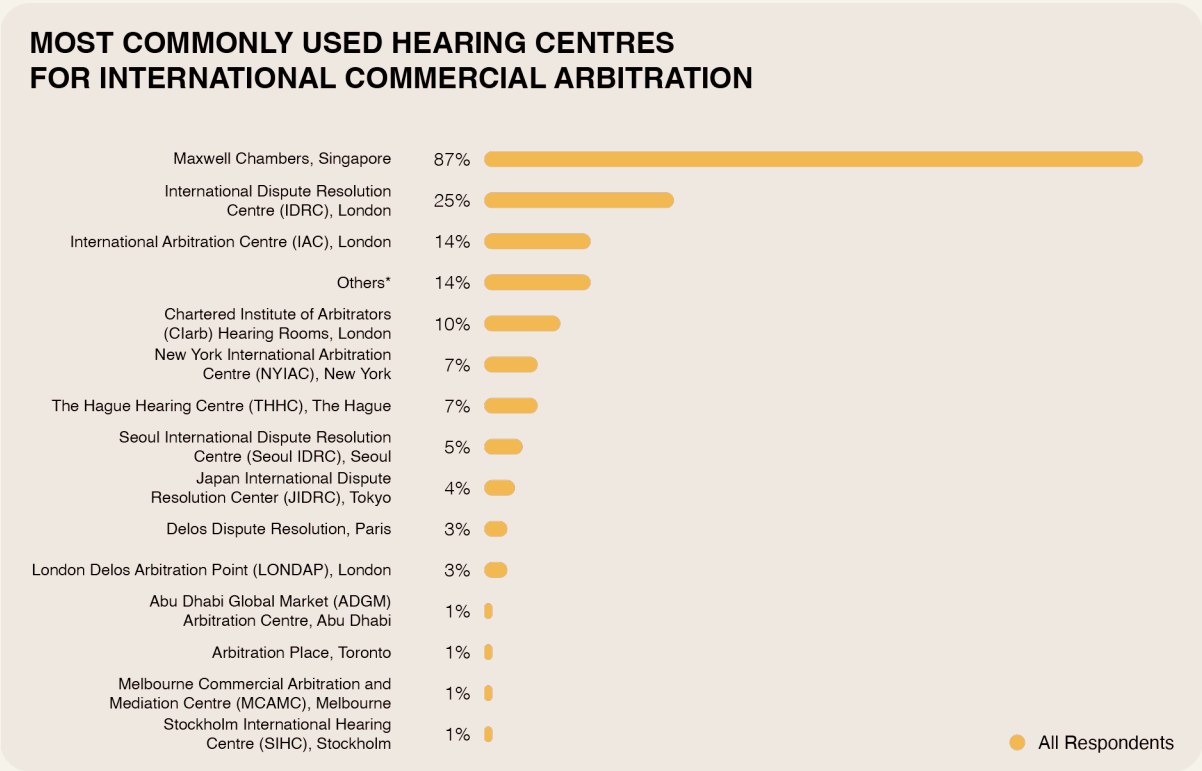


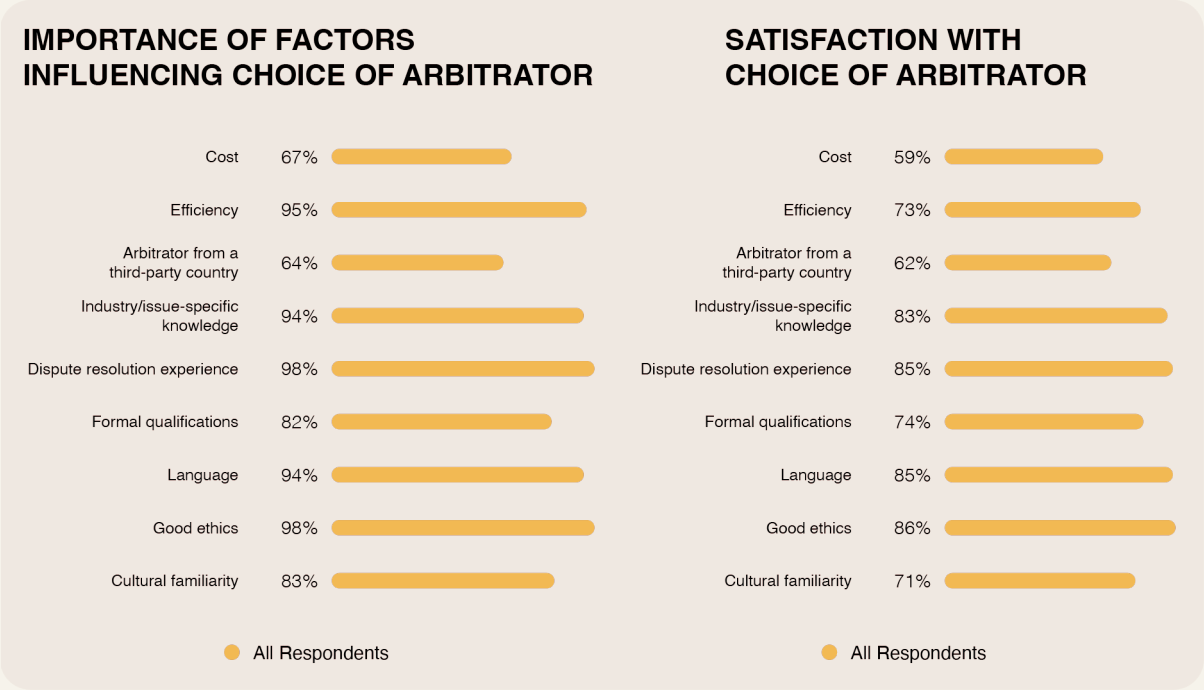
EXHIBIT 5.13



5.26 The top three most commonly used arbitration venues were hearing centres (87%), arbitration institution facilities (63%) and law firms' offices (43%). Maxwell Chambers, Singapore (87%) continues to be the most commonly used hearing centre for international commercial arbitration. The International Dispute Resolution Centre (**"IDRC"**) (36%) and the International Arbitration Centre (**"IAC"**) (14%) facilities were some of the most commonly used hearing centres. Other popular options chosen by the respondents were the HKIAC, ICC and the Permanent Court of Arbitration (**"PCA"**). This suggests that while the majority of the respondents may be Asia-centric, hearing centres and institutions located in other parts of the world are still popular.

Factors Affecting Choice of Arbitrator and Respondents' Satisfaction with Choice of Arbitrator

EXHIBIT 5.14

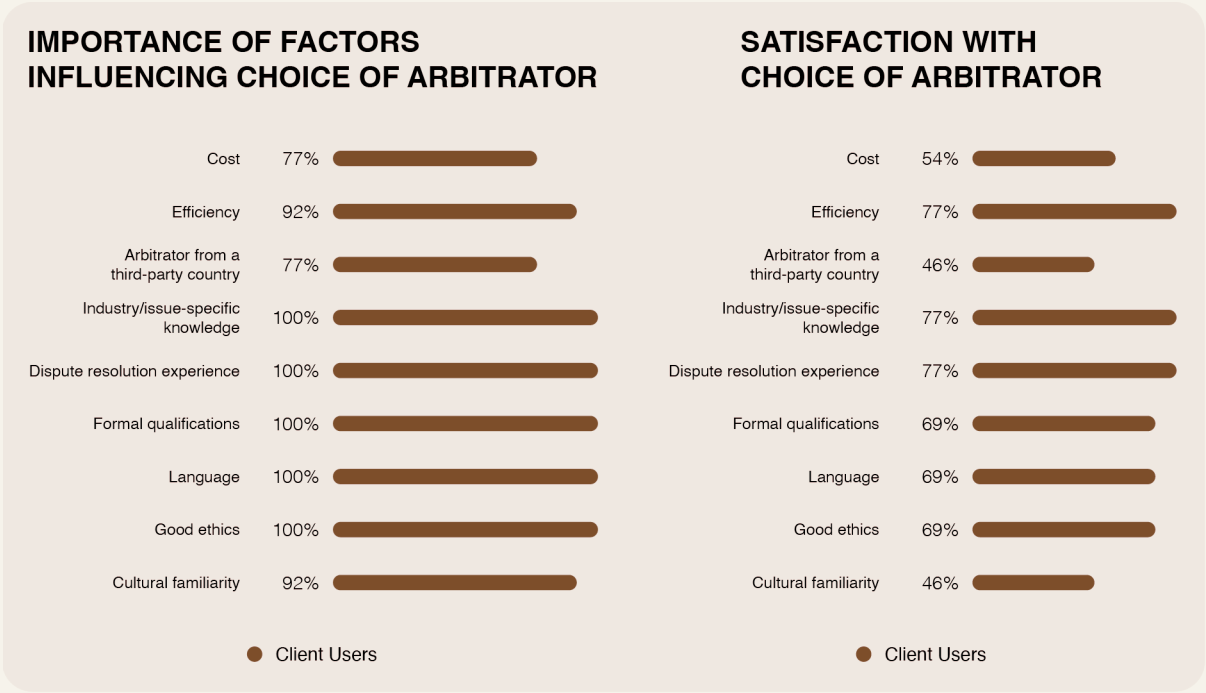


5.27 When choosing an arbitrator, the greatest number of respondents indicated that arbitrators' dispute resolution experience and good ethics (both at 98%) were 'important' or 'absolutely crucial' factors to consider. Slightly smaller numbers of respondents considered efficiency (95%), arbitrators' industry/issue-specific knowledge (94%) and language abilities (94%) to be 'important' or 'absolutely crucial'. These trends were consistent with the SIDRA Survey Final Report 2022 and 2020.[30]

5.28 A large majority of respondents were satisfied with the ethics (86%), dispute resolution experience (85%), language (85%) and industry/issue-specific knowledge (83%) of their chosen arbitrators. The least number of respondents were satisfied with the factor relevant to having the arbitrator come from a third-party country (62%); however, this corresponds to the percentage of respondents (64%) who considered this factor to be 'important' or 'absolutely crucial'.

[30] SIDRA Survey Final Report 2022 at Exhibit 5.14; SIDRA Survey Final Report 2020 at Exhibit 6.3.1.

EXHIBIT 5.15

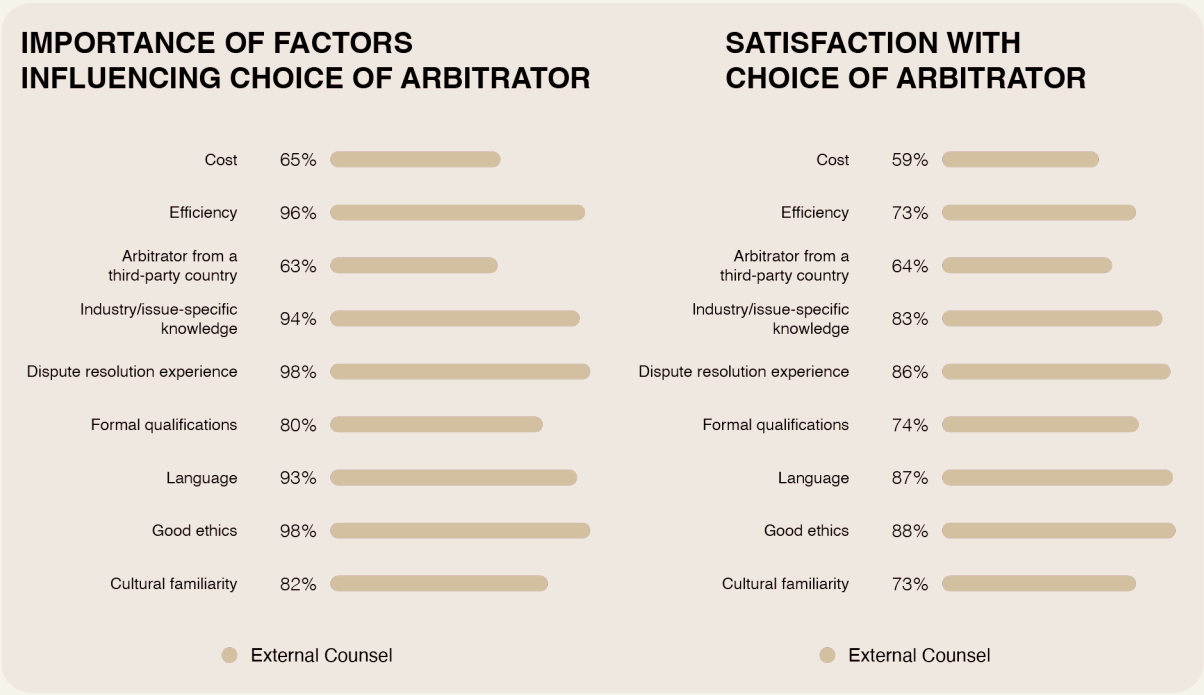


5.29 All Client Users (100%) chose the following as 'important' or 'absolutely crucial' factors in selecting arbitrators: dispute resolution experience, industry/issue-specific knowledge, good ethics, language abilities and formal qualifications. The least number of Client Users indicated cost and having an arbitrator hail from a third-party country (both at 77%) as important factors.

5.30 Of the listed factors, the greatest number of Client Users (77%) were 'somewhat satisfied' or 'very satisfied' with the dispute resolution experience, industry/issue-specific knowledge, and efficiency of their chosen arbitrators. The lowest number of Client Users (46%) were satisfied with the cultural familiarity of their chosen arbitrators and having the arbitrator come from a third-party country. There is a notable gap between that 46% of respondents satisfied with those two factors, and the percentage of respondents who considered these two factors as important – 92% considered cultural familiarity 'important' or 'absolutely crucial', and 77% thought that having an arbitrator hail from a third-party country was 'important' or 'absolutely crucial'. With respect to cultural familiarity, this may also point to a need for a greater diversity of arbitrators.[31] Regarding the engagement of an arbitrator from a third-party country, the Survey results did not reveal which aspects of this factor caused dissatisfaction, and this presents an opportunity for further investigation.

[31] See discussion on diversity in international commercial arbitration at paragraphs 5.33 to 5.38 below.

EXHIBIT 5.16



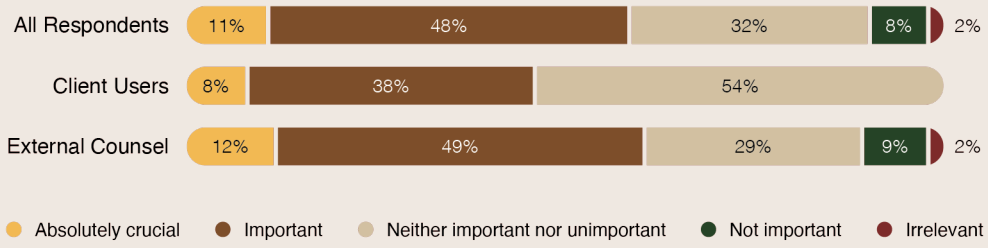
5.31 There is a significant overlap between the factors prioritized by External Counsels and Client Users in choosing arbitrators. Dispute resolution experience and good ethics were selected as 'important' or 'absolutely crucial' factors by 98% of External Counsels surveyed. Other factors that weighed on a vast majority of External Counsels minds were efficiency (96%), industry/issue-specific knowledge (94%) and language abilities (93%).

5.32 Like Client Users, a large majority of External Counsels were 'somewhat satisfied' or 'very satisfied' with the good ethics (88%), dispute resolution experience (86%) and the industry/issue-specific knowledge of their chosen arbitrator (83%). Additionally, 87% of External Counsels were satisfied with their arbitrators' language abilities. The least number of External Counsels were satisfied with the cost of arbitration (59%), but a broadly similar percentage (65%) considered this factor to be 'important' or 'absolutely crucial'.

Importance of Diversity in the Selection of an Arbitrator

EXHIBIT 5.17

IMPORTANCE OF DIVERSITY IN SELECTION OF AN ARBITRATOR
(i.e., gender/ age/ nationality/ ethnicity/ type of legal system or background)



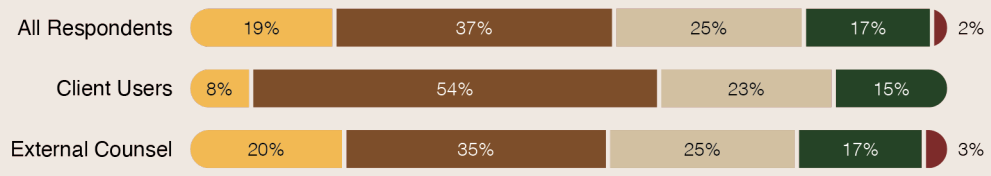
5.33 Respondents were asked about the importance of diversity, in terms of gender, age, nationality, ethnicity, or background, in their selection of arbitrators. 48% of all respondents indicated that diversity was 'important' and 11% considered diversity 'absolutely crucial'. The percentage of all respondents who think of diversity as 'important' or 'absolutely crucial' in this iteration of the SIDRA Survey is 59%, a slight increase from the SIDRA Survey Final Report 2022 (57%).[32]

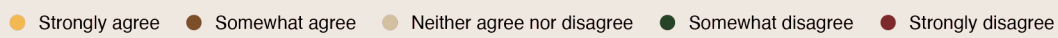
5.34 A lower percentage of Client Users (46%) considered diversity to be 'important' or 'absolutely crucial', compared to External Counsels (61%). None of the Client Users found diversity in arbitrators 'irrelevant' or 'not important'. Comparing this edition's data with that of the SIDRA Survey Final Report 2022, we noted a decrease in the percentage of Client Users who consider diversity 'important' (62% down to 38%), and a corresponding increase in the percentage who think of diversity as 'neither important nor unimportant' (23% up to 54%).[33] A future round of data gathered for the next edition of the SIDRA Survey may shed more light on the trends here.

Limited Diversity in the Choice of International Commercial Arbitrators

EXHIBIT 5.18

RESPONDENTS WERE ASKED TO RATE HOW MUCH THEY AGREED WITH THE FOLLOWING STATEMENT:
There is limited diversity in the choice of international commercial arbitrators available to me.





5.35 In this iteration of the SIDRA Survey, respondents were asked about the extent to which they agreed with the statement, "[t]here is limited diversity in the choice of International Commercial Arbitrators available to me." 19% of respondents strongly agreed with the statement, and 37% somewhat agreed with it (for a total of 56% of respondents). A higher percentage of Client Users (total of 62%) either somewhat agreed (54%) or strongly agreed (8%) with the statement, as compared to the percentage of External Counsel (total of 55%) who either somewhat agreed (35%) or strongly agreed (20%) with the statement.

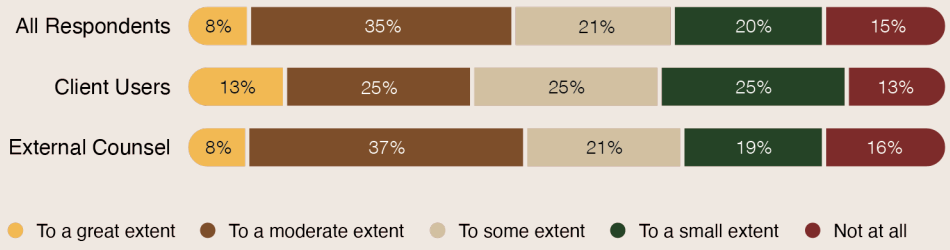
[32] SIDRA Survey Final Report 2022 at Exhibit 5.17.
[33] *Id.*

Extent that Limited Diversity Impacted Satisfaction with Outcomes of International Commercial Arbitration

EXHIBIT 5.19

RESPONDENTS WERE ASKED TO RATE

To what extent limited diversity in the choice of arbitrators impacted their satisfaction with the outcomes of international commercial arbitration



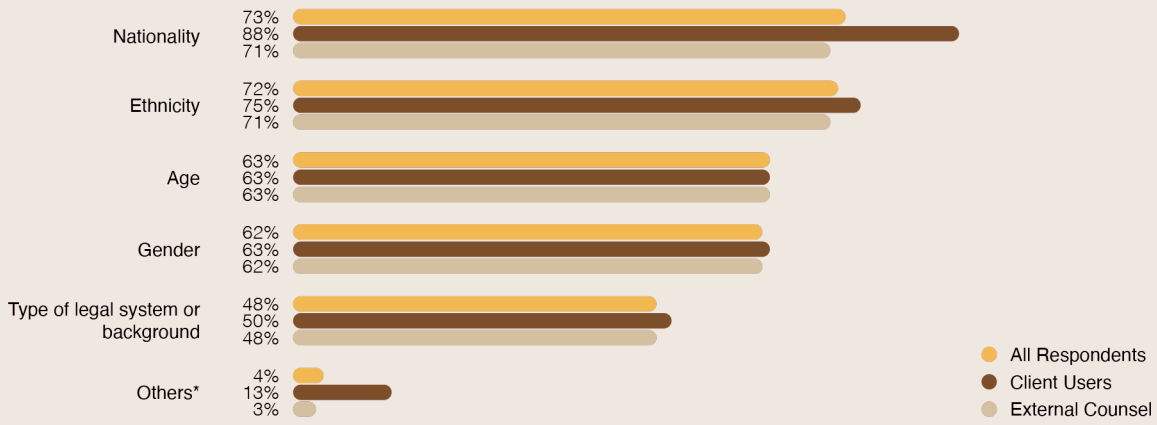
5.36 In another new question introduced in this edition of the SIDRA Survey, respondents were asked about the extent to which they feel that the limited diversity in their choice of arbitrators has impacted their satisfaction with the outcomes of international commercial arbitration. The greatest number of respondents (35%) felt that it impacted their satisfaction to a moderate extent, followed by those who felt their satisfaction had been impacted to some extent (21%), to a small extent (20%), not at all (15%) and to a great extent (8%).

5.37 Client Users appeared to be more evenly divided on this issue in general, with 25% feeling that their satisfaction levels had been impacted to moderate, some and small extents. However, a higher percentage (13%) of Client Users also felt that their satisfaction had been impacted to a great extent, compared to External Counsels (8%).

Improving Diversity in Choice of Arbitrators

EXHIBIT 5.20

IMPROVING DIVERSITY IN CHOICE OF ARBITRATORS



5.38 The greatest number of respondents (73%) would like to see more diversity in the nationality of arbitrators. Large majorities would also like to see more diversity in ethnicity (72%), age (63%) and gender (62%) of arbitrators. This was a slight change from the SIDRA Survey Final Report 2022, in which 79% of respondents wanted more diversity in the gender of arbitrators, followed by 73% who sought more diversity in the nationality of arbitrators and 66% in ethnicity.[34]

[34] SIDRA Survey Final Report 2022 at Exhibit 5.18.

Point of Interest

The 2022 Update of the International Council for Commercial Arbitration (**"ICCA"**) Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings reports that the proportion of women appointed as arbitrator has increased to 26.1% in 2021, as compared to 12.6% in 2015, though this figure does not account for the effect of repeat appointments of the same women to multiple tribunals. The report also notes that women account for 34.8% of first-time arbitral appointments in 2021 (with men making up the other 65.2%), and observes that the two pieces of data "suggest that the pool of experienced arbitrators may be growing more slowly for women than it is for men".[35]

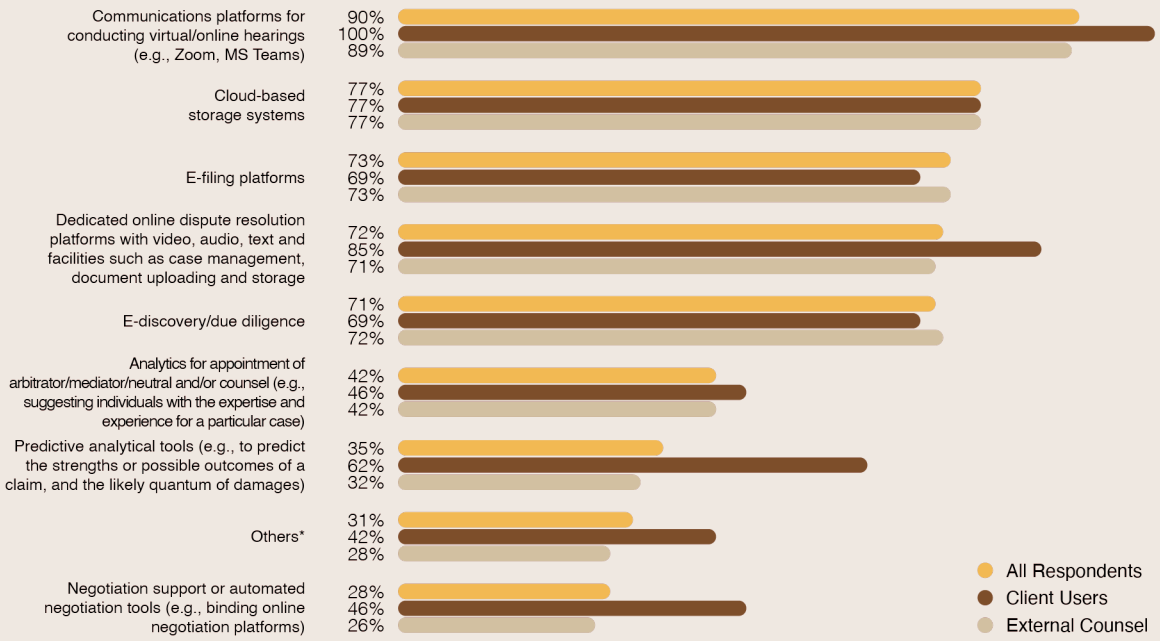
Additionally, the ICCA Cross-Institutional Task Force is starting to address intersectional issues by including data on the nationality of women arbitrators. The 2022 Update shows that of the 268 appointments of women arbitrators made in 2021, 45.5% of the appointments held nationalities from Western Europe and the UK, 18.1% from Asia, 12.9% from Latin America and the Caribbean, 11.2% from the USA and Canada, 4.1% from Australia and New Zealand, 2.5% from Africa and 1.9% from the Middle East.

On a related note, in March 2024, Maxwell Chambers in Singapore launched the "MAXWELL CONNECTher" initiative. It is a directory[36] of women arbitrators residing in Asia who are also listed as arbitrators with the following partner institutions: the Australian Centre for International Commercial Arbitration, the Asian International Arbitration Centre, HKIAC, the Japan Commercial Arbitration Association, the Korean Commercial Arbitration Board and the SIAC. The directory lists the arbitrators' names, places of residence, nationality/geographical origin, jurisdiction of admission and their industries and areas of expertise.

Usefulness of Technology in Supporting an Arbitration Procedure

EXHIBIT 5.21

USEFULNESS OF TECHNOLOGY IN ARBITRATION



[35] International Council for Commercial Arbitration, Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings: 2022 Update, *available at* https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-Report-8u2-electronic3.pdf.

[36] MAXWELL CONNECTher, *available at* https://www.maxwellchambers.com/maxwell-connecther/.

5.39 The SIDRA Survey Final Reports 2020 and 2022, conducted at the starting and acute phases of the COVID-19 pandemic, observed an increasing number of users and institutions incorporating technology in arbitration.[37] With the pandemic now in an endemic phase, the legal industry appears keen to continue enjoying the benefits of technology.

5.40 Large majorities of respondents identified the following technologies as either 'useful' or 'extremely useful': communication platforms for conducting virtual/online hearings (90%), cloud-based storage systems (77%), e-filing platforms (73%), dedicated online dispute resolution platforms (with video, audio, text and facilities such as case management, document uploading and storage) (72%) and e-discovery/ due diligence (71%). The option of dedicated online dispute resolution platforms was a new option added to this iteration of the SIDRA Survey, and its strong showing indicates the appetite for an 'all-in-one' technological solution.

Point of Interest

In recent years, multiple arbitration institutions have launched online case management systems. For example, the Stockholm Chamber of Commerce (**"SCC"**) Arbitration Institute launched its SCC Platform[38] in 2019, and the HKIAC announced HKIAC Case Connect[39] in 2021.

While the ICC has had its own online document repository, NetCase, as early as 2005,[40] it launched a new digital case management platform, ICC Case Connect, in October 2022.[41] Going forward, the ICC encourages all parties to use the platform to file requests for arbitration, and notes that the ICC Secretariat would be communicating primarily through ICC Case Connect,[42] thus consolidating at least one stream of communication therein.

In 2023, the SIAC also announced its own digital case management system, SIAC Gateway.[43] It recently published the Draft 7th Edition of the SIAC Rules[44] for public consultation, which includes new rules concerning the implementation and use of the platform.

[37] SIDRA Survey Final Report 2022 at Exhibit 5.19; SIDRA Survey Final Report 2022 at Exhibits 6.4.1 and 6.4.2.
[38] SCC Arbitration Institute, Log in to SCC Platform, *available at* https://sccarbitrationinstitute.se/en/case-management/scc-platform.
[39] Hong Kong International Arbitration Centre, Case Connect, *available at* https://www.hkiac.org/arbitration/case-connect.
[40] International Chamber of Commerce, Information Technology in International Arbitration – Report of the ICC Commission on Arbitration and ADR, *available at* https://iccwbo.org/news-publications/arbitration-adr-rules-and-tools/information-technology-international-arbitration-report-icc-commission-arbitration-adr/.
[41] International Chamber of Commerce, ICC launches ICC Case Connect: Secure online case management made easy, *available at* https://iccwbo.org/news-publications/news/icc-launches-icc-case-connect-secure-online-case-management-made-easy/.
[42] International Chamber of Commerce, File your Request for Arbitration, *available at* https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/file-a-request/#block-accordion-4.
[43] Opus 2 Insight, SIAC announces SIAC Gateway, a digital solution powered by Opus 2, *available at* https://insight.opus2.com/siac-reveals-digital-solution-powered-by-opus-2.
[44] Singapore International Arbitration Centre, SIAC Announces Public Consultation on the Draft 7th Edition of the SIAC Rules, *at* https://siac.org.sg/wp-content/uploads/2023/08/Press-Release-SIAC-Announces-Public-Consultation-on-the-Draft-7th-Edition-of-the-SIAC-Rules.pdf. The consultation draft is *available at*: https://siac.org.sg/wp-content/uploads/2023/08/Draft-7-Edition-of-the-SIAC-Rules-Consultation-Draft.pdf.

5.41 Consistent with the SIDRA Survey Final Report 2022, fewer respondents found negotiation support or automated negotiation tools (28%) to be 'useful' or 'extremely useful'.[45] Additionally, while a minority of respondents found analytics for appointments of arbitrators/mediators/neutrals/counsel (42%) and predictive analytical tools (e.g. to predict strengths or possible outcomes of a claim, and the likely quantum of damages) (35%) to be 'useful' or 'extremely useful', the percentage of such respondents has increased slightly compared to the SIDRA Survey Final Report 2022 (34% and 26% respectively).[46] It is possible that these percentages will only increase further in the future, as the recent popularity of generative artificial intelligence (**"AI"**) technology, such as ChatGPT and Gemini, will no doubt make both Client Users and External Counsel more aware of the potential of analytics.

Point of Interest

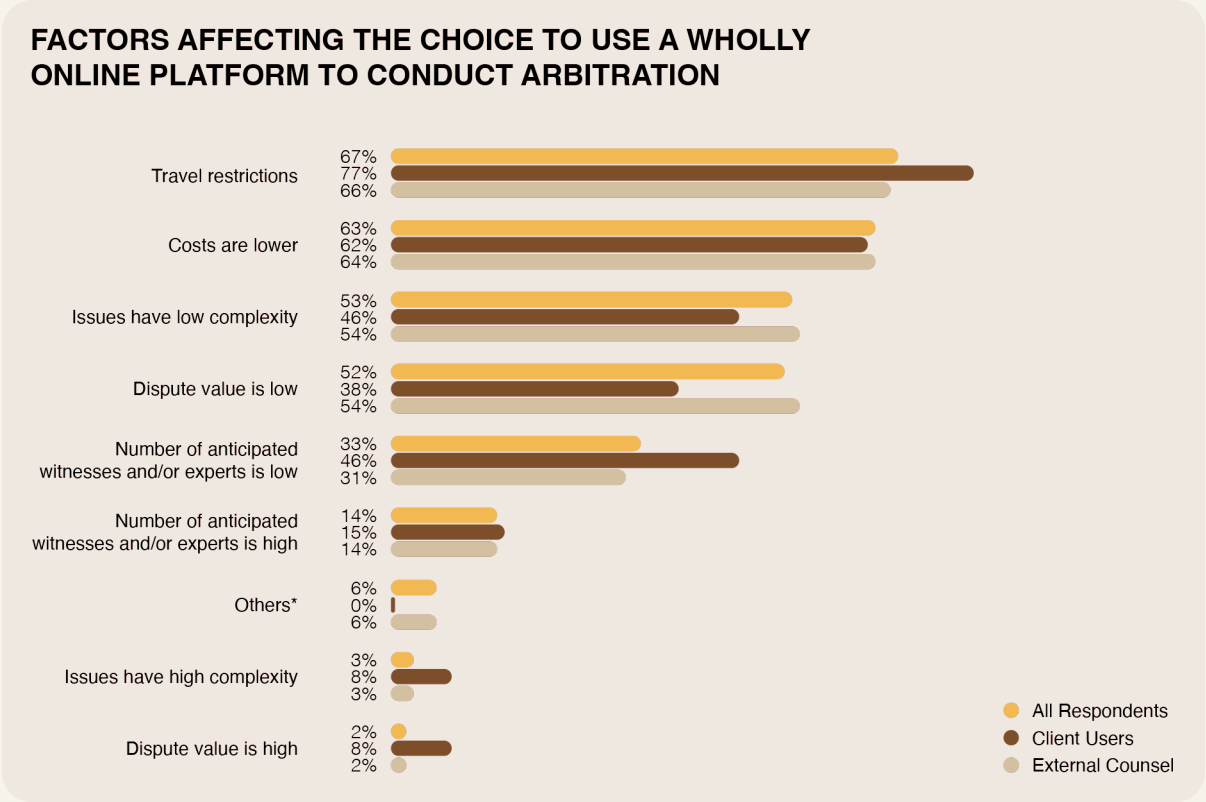
ChatGPT was introduced to the world on 30 November 2022, and the legal industry is grappling with the potential and pitfalls of AI, and in particular generative AI.

A British Institute of International and Comparative Law report on the Use of Artificial Intelligence in Legal Practice[47] identified seven areas where AI technologies are increasingly being used to assist lawyers: (1) legal research and e-discovery, (2) document automation, (3) predictive legal analysis, (4) legal review, (5) case management, (6) legal advice and expertise automation and (7) information and marketing. Some law firms quickl y embraced AI in a bid to reap these benefits, cognisant of the client demand for cost and efficiency savings and aware that the commercialisation of the technology heralded the start of an "arms race".[48]

[45] SIDRA Survey Final Report 2022 at Exhibit 5.19.
[46] *Id.*
[47] British Institute of International and Comparative Law, Use of Artificial Intelligence in Legal Practice, *available at* https://www.biicl.org/documents/170_use_of_artificial_intelligence_in_legal_practice_final.pdf.
[48] Sara Merken, Legal AI race draws more investors as law firms line up, *available at* https://www.reuters.com/legal/legal-ai-race-draws-more-investors-law-firms-line-up-2023-04-26/

Factors Affecting the Choice to Use a Wholly Online Platform to Conduct International Commercial Arbitration

EXHIBIT 5.22



5.42 Respondents were asked to select the top three factors that would make them choose a wholly online platform to conduct their arbitration proceedings. Similar to what was observed in the SIDRA Survey Final Report 2022, a large majority of all respondents (67%) identified travel restrictions as one of their top three factors.[49]

5.43 In the absence of travel restrictions, a significant majority of respondents prefer to use online platforms in situations where the costs are lower (63%). Respondents also opted for online platforms where the issues have low complexity, and the dispute value is low (as evidenced by these options being selected by 53% and 52% of respondents, respectively). In this respect, little has changed since the SIDRA Survey Final Report 2022.[50]

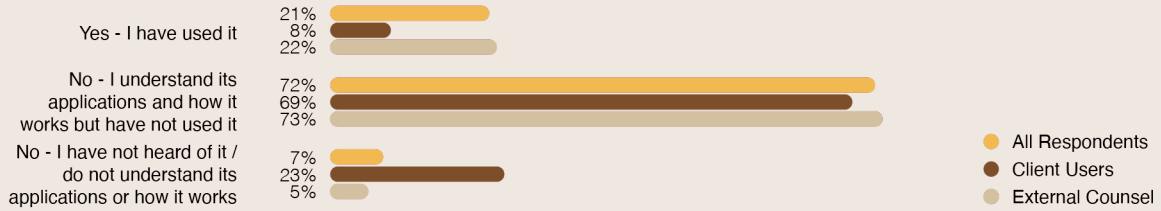
5.44 Client Users' views on the use of online platforms for arbitration were broadly similar to those of External Counsels. A larger percentage of Client Users (46%) as compared to External Counsels (31%) preferred using a wholly online platform where the number of anticipated witnesses/and or experts is low, which may reflect a perception on the part of Client Users that a lower number of witnesses is correlated to a lower complexity of issues.

[49] SIDRA Survey Final Report 2022 at Exhibit 5.20.
[50] *Id.*

Use of Third-Party Funding in International Commercial Arbitration

EXHIBIT 5.23

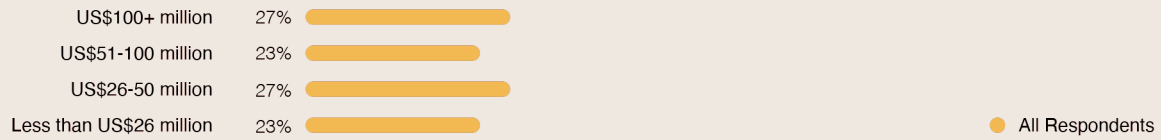
RESPONDENTS WERE ASKED IF THEY HAVE USED THIRD-PARTY FUNDING FOR INTERNATIONAL COMMERCIAL ARBITRATION



5.45 Respondents were asked about their use of third-party funding in international commercial arbitration. The majority of the respondents (72%) have not used it but understand what it is, similar to the results of the SIDRA Survey Final Report 2022.[51] Only 22% of External Counsels and 8% of Client Users have used third-party funding.

EXHIBIT 5.24

RESPONDENTS WERE ASKED WHAT WAS THE AVERAGE VALUE OF EACH DISPUTE IN WHICH THIRD-PARTY FUNDING WAS USED

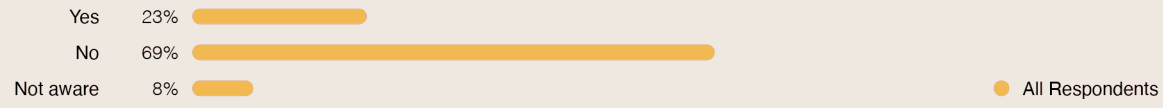


5.46 In a new question introduced in this iteration of the SIDRA Survey, the respondents who had indicated that they had used third-party funding before were then asked about the average value of each dispute in which third-party funding was used (to the nearest million). The responses were fairly evenly distributed. 27% of respondents said the average value was over US$100 million, another 27% said the average value was between US$26-50 million, 23% indicated it was between US$51-100 million, and another 23% noted it was less than US$26 million.

[51] SIDRA Survey Final Report 2022 at Exhibit 5.21.

EXHIBIT 5.25

RESPONDENTS WERE ASKED WHETHER THEY USED THIRD-PARTY FUNDING (AND ITS ASSOCIATED STRATEGIC AND MANAGEMENT SERVICES) FOR THE ENFORCEMENT OF AN ARBITRAL AWARD



5.47 Respondents who had used third-party funding were also asked whether they had used it for enforcement of an arbitral award. 23% of all respondents had done so. 69% of respondents had not.

Point of Interest

While the UK and Australia have long histories of allowing third-party funding in their jurisdictions, Singapore only legalised third-party funding in international arbitration and related court and mediation proceedings in 2017. In 2021, Singapore extended the option of third-party funding to domestic arbitration proceedings, certain proceedings in the Singapore International Commercial Court (**"SICC"**) and related mediation proceedings.[52]

As of 4 May 2022, Singapore also permits the use of Conditional Fee Agreements in arbitration (both international and domestic) and related court and mediation proceedings, as well as SICC proceedings.[53] As the Ministry of Law notes, "[Conditional Fee Agreements] are arrangements in which a lawyer receives payment of the whole or part of his or her legal fees only in specified circumstances; for example, where the claim is successful. They differ from contingency fee agreements, where the lawyer may share in an agreed percentage of the sum recovered by the client with no direct correlation to the work done. Contingency fee agreements continue to be prohibited in Singapore".[54] It should be noted that the existing professional conduct rules against overcharging still apply. The Law Society of Singapore has also published a Guidance Note on Conditional Fee Agreements[55] with more information.

[52] Singapore Ministry of Law, Third-Party Funding to be Permitted for More Categories of Legal Proceedings in Singapore, *available at* https://www.mlaw.gov.sg/news/press-releases/2021-06-21-third-party-funding-framework-permitted-for-more-categories-of-legal-preceedings-in-singapore.

[53] Legal Profession Act 1966, Legal Profession (Conditional Fee Agreement) Regulations 2022.

[54] Singapore Ministry of Law, Framework for Conditional Fee Agreements in Singapore to Commence on 4 May 2022, *available at* https://www.mlaw.gov.sg/news/press-releases/2022-04-29-framework-cfas-in-singapore-commence-4-may-2022/.

[55] The Law Society of Singapore, Council's Guidance Note 5.6.1 of 2022 on Conditional Fee Agreements (1 August 2022).

SECTION 6:
INTERNATIONAL COMMERCIAL MEDIATION

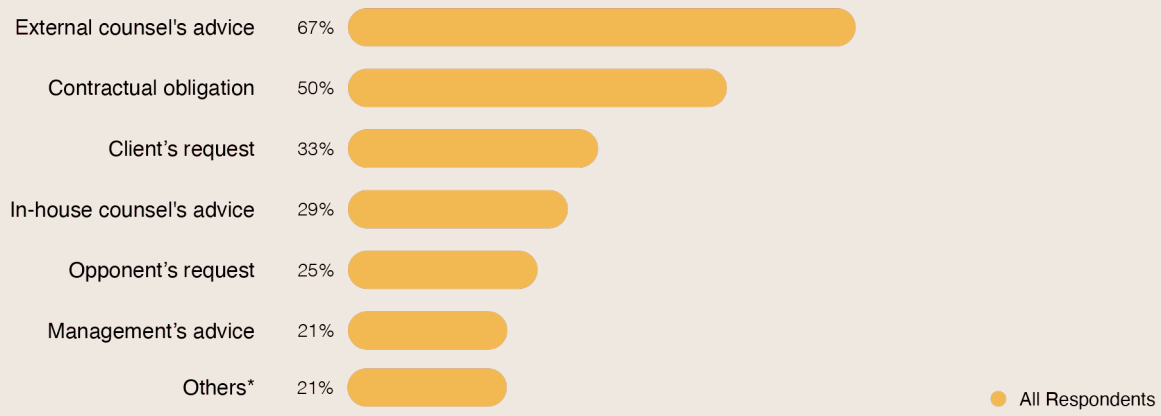
At A GLANCE

- Cost, speed and impartiality were the top three important factors identified by respondents when deciding to use international commercial mediation to resolve disputes. The majority of the respondents were generally satisfied with these three factors. There were more respondents indicating that they were satisfied with speed compared to the number of respondents indicating that they found it an important factor.
- The majority of the respondents identified dispute resolution experience and good ethics as the top two most important factors when choosing a mediator.
- The majority of the respondents chose an online platform where the costs are lower, where there are travel restrictions and where the dispute value is low. External Counsels indicated that they lean more towards an online mediation if they expect experts/witnesses to attend.
- Ethnicity, gender and age were the top three factors that respondents indicated that they would like to see more diversity in. However, the majority of the respondents took a neutral stand about the importance of diversity when choosing a mediator.

Factors that Contributed to Respondent's Choice to Use International Commercial Mediation

EXHIBIT 6.1

FACTORS THAT CONTRIBUTED TO RESPONDENTS' CHOICE TO USE INTERNATIONAL COMMERCIAL MEDIATION



6.1 The top two influences on respondents' choice to use international commercial mediation were contractual obligations (50%) and external counsel's advice (67%).

6.2 Contractual obligations may come in the form of mandatory mediation clauses or mixed mode dispute resolution clauses, and these include mandatory mediation before arbitration proceedings may be commenced. Such clauses have been held to be enforceable in several jurisdictions such as Hong Kong,[56] Australia,[57] Singapore,[58] Qatar[59] and UK[60] courts.

6.3 Mixed mode clauses that incorporate mediation have become more popular, with various dispute resolution centres providing model clauses. There are different combinations of mixed mode clauses, such as the mediation-arbitration clause,[61] the arbitration-mediation clause[62] or the arbitration-mediation-arbitration clause.[63] These mixed-mode clauses are another option for parties to consider for an efficient resolution of disputes.[64]

6.4 External Counsels have also been pushing for parties to adopt mediation as the first step towards dispute resolution, with time and cost savings playing a huge factor in deciding so. Parties who wish to preserve business relationships with their partners are also more willing to listen to external counsels' advice to opt for mediation.

6.5 There has been a trend towards encouraging the use of mediation even in litigation, with more jurisdictions being willing to take a firmer stance against parties who unreasonably refuse to consider mediation or any form of amicable dispute resolution before commencing a case in court. For example, Singapore has recently codified the duty to consider amicable dispute resolution into the Rules of Court 2021. O. 5 r. 1(1) provides that parties now have a duty to *consider* (rather than the previously limited scope of *attempting*) the amicable resolution of the party's dispute before the commencement and during the course of any action or appeal. Further guidelines are given in the Supreme Court Practice Directions 2021[65] and the State Courts Practice Directions 2021.[66]

6.6 Similarly in Australia, the Civil Dispute Resolution Act 2011 obliges parties who commence proceedings in the Federal Courts or the Federal Magistrate Courts to file a "genuine steps" statement "setting out what steps, if any, each party has taken to resolve the dispute, or explaining why no steps have been taken". Australian courts have also held lawyers liable for their failure to file a genuine steps statement.[67]

6.7 The judiciary in Hong Kong has also launched Practice Direction 31 – Mediation in January 2010, with the aim of facilitating the settlement of disputes, either before or after the commencement of formal proceedings in court.[68] This helps to save time and costs, as the parties will have a chance to resolve their dispute without going through a lengthy trial.

6.8 Another example can be found in the United States District Court for the Central District of California. The local rules require for "all civil cases to participate in one of three [alternative dispute resolution] processes: 1) a settlement conference before a magistrate or district judge, 2) an appearance before a neutral selected from the Court's Mediation Panel, or 3) a private dispute resolution proceeding".[69]

[56] *HZ Capital International Ltd v CVE Co Ltd & ors* [2019] HKCFI 2705.
[57] *United Group Rail Services Ltd v Rail Corporation New South Wales (2009)* 127 Con LR 202.
[58] *HSBC Institutional Trust Services (Singapore) Ltd (Trustee of Starhill Global Real Estate Investment Trust) v Toshin Development Singapore Pte Ltd* [2012] 4 SLR 378; see also *International Research Corp Plc v Lufthansa Systems Asia Pacific Pte Ltd* [2014] 1 SLR 130; see also *Maxx Engineering v PQ Builders Pte Ltd* [2023] SGHC 71.
[59] Qatar Investment and Trade Court Case No. 416/2022, *available at* https://www.pinsentmasons.com/out-law/news/qatari-court-affirms-enforceability-of-mediation-clause#:~:text=The%20court%20considered%20the%20issue,or%20double%20the%20court%20fees.
[60] *Emirates Trading Agency LLC v Prime Mineral Exports Pte Ltd* [2014] EWHC 2104 (Comm), unreported; see also *Cable & Wireless Plc v IBM United Kingdom Ltd* [2002] CLC 1319; see also *Ohpen Operations UK Ltd v Invesco Fund Managers Ltd* [2019] EWHC 2246 (TCC).
[61] International Arbitration and Mediation Centre Model Clause for Med-Arb, *available at* https://iamch.org.in/model-clause-for-med-arb; see also Japan Commercial Arbitration Association Med-Arb Clause (Mediation first before Arbitration), *available at* https://www.jcaa.or.jp/en/mediation/agreement.html; see also Chambre de Mediation, de Conciliation et d'Arbitrage d'Occitanie Med-Arb Clause, *available at* https://www.arbitragetoulouse.com/en/med-arb/med-arb-clause.html.
[62] New Zealand International Arbitration Centre Arb-Med Model Clause, *available at* https://nziac.com/arb-med/arb-med-model-clause/.
[63] International Arbitration and Mediation Centre Model Clause for Arb-Med-Arb, *available at* https://iamch.org.in/model-clause-for-arb-med-arb; see also The Singapore Arb-Med-Arb Clause, *available at* https://siac.org.sg/the-singapore-arb-med-arb-clause; see also Vietnam International Arbitration Centre Arb-Med-Arb Protocol, *available at* https://www.viac.vn/en/arb-med-arb-protocol; see also Vienna International Arbitral Centre Model Arbitration, *available at* https://www.viac.eu/en/investment-arbitration/content/viac-rules-of-investment-arbitration-and-mediation-2021-viac-model-arbitration-clause-including-arb-med-arb.
[64] See Section 8 on Mixed Mode (Hybrid) Dispute Resolution.
[65] Singapore Supreme Court Practice Directions 2021, *available at* https://epd2021-supremecourt.judiciary.gov.sg.
[66] Singapore State Courts Practice Directions 2021, *available at* https://epd2021-statecourts.judiciary.gov.sg.
[67] *Superior IP International Pty Ltd v Ahearn Fox Patent and Trade Mark Attorneys* [2012] FCA 282.
[68] General Guide to Practice Direction 31 – Mediation, *available at* https://mediation.judiciary.hk/en/doc/GeneralGuide_PD31-Eng.pdf.
[69] C.D. Cal. R. 16-15.4 (2023).

Point of Interest

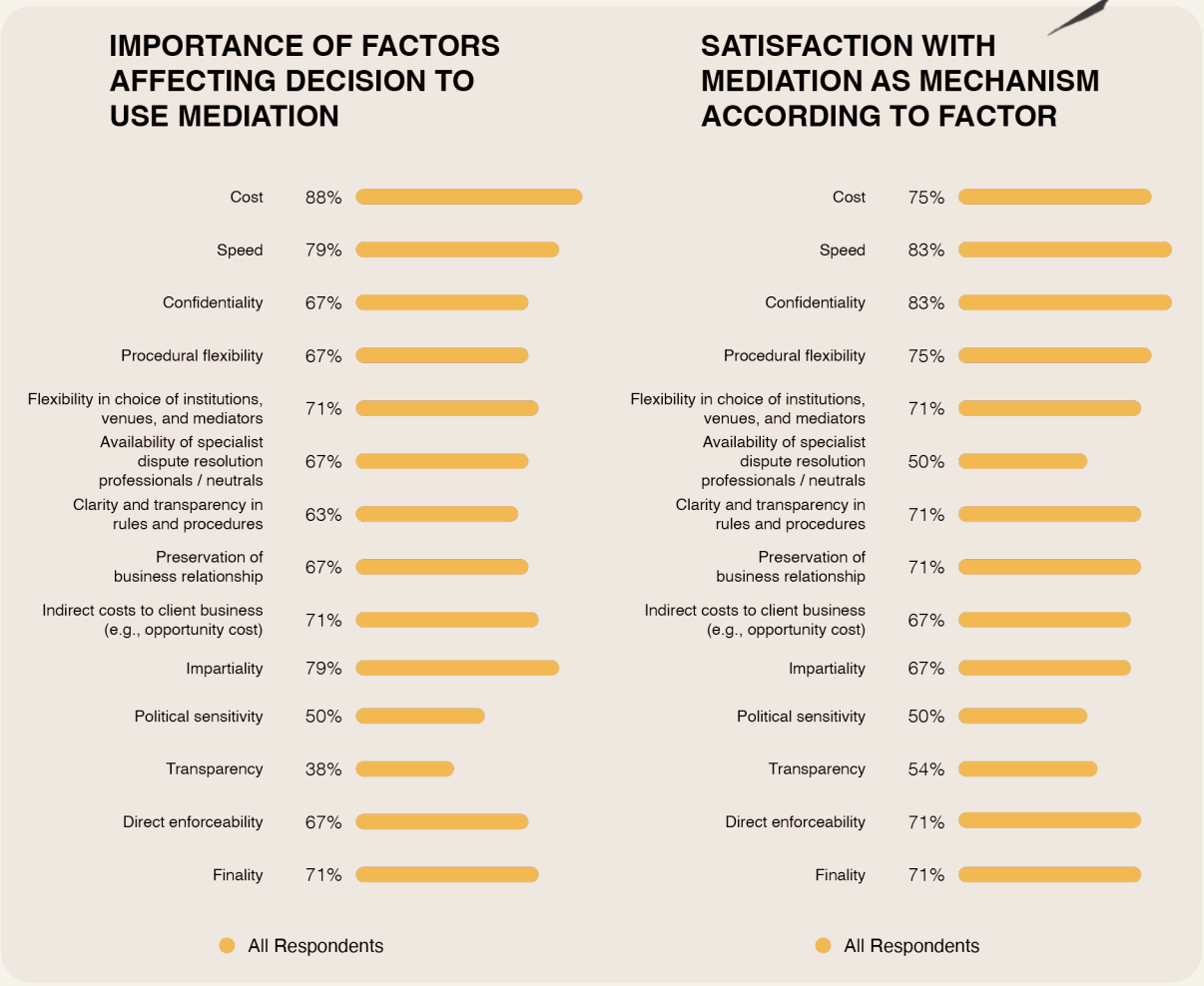
In *Maxx Engineering v PQ Builders Pte Ltd* [2023] SGHC 71, decided by the Singapore High Court, a rather novel legal issue arose. The case revolved around whether the applicant should be granted an order for specific performance to compel the counterparty to perform its contractual obligation to refer the dispute to mediation.

The High Court held that not only were the parties under a legal obligation to refer their dispute to mediation, but it is just and equitable to grant an order for specific performance to compel the counterparty to refer the dispute to mediation.

In granting specific performance to compel the parties to refer the dispute to mediation, the High Court noted that the applicant would not be the sole benefactor. Both parties would have the opportunity to resolve their dispute without incurring further legal costs or substantial delay. The High Court also referred to O. 5 r. 1(1) of the Rules of Court 2021, which empowers the court to order parties to attempt to resolve their dispute via amicable dispute resolution. Interestingly, the court stated that "an order for specific performance in the present case would have been consistent with this trend and preference for amicable dispute resolution".

Factors Affecting the Decision to Use Mediation and Respondents' Satisfaction with Mediation as a Mechanism

EXHIBIT 6.2



6.9 The top three factors that respondents considered in deciding whether to use mediation were cost (88%), speed (79%) and impartiality (79%). It is unsurprising that cost and speed are part of the top two considerations, given that other forms of cross-border dispute resolution mechanisms have faced concerns about the high cost and the long wait for the finalisation of the dispute. Impartiality is also crucial, given that the mediator plays the role of a neutral facilitator between the parties.

6.10 In terms of satisfaction, generally respondents were satisfied with these three characteristics of mediation (75% for cost, 83% for speed and 67% for impartiality). More respondents indicated that they were satisfied with speed as compared to the number of respondents who indicated that speed was an important factor influencing their choice to use mediation. Interestingly, while fewer respondents viewed confidentiality (67%) as an important factor in deciding whether to use mediation, a higher number of respondents were highly satisfied with it (83%).

Point of Interest

Many institutes, including arbitration centres, have stringent rules in place to ensure that mediators are impartial. The core idea of impartiality is similar across jurisdictions.

For example, the HKIAC sets out guidelines in its General Ethical Code.[70] The mediator is to maintain impartiality towards all parties, with the definition of impartiality meaning "freedom from favouritism or bias either by word or by action, and a commitment to serve all mediation participants as opposed to a single party". He or she should also "disclose to the participants any affiliations which the mediator may have or have previously had with any participant and obtain all parties' informed consent to proceed as mediator".

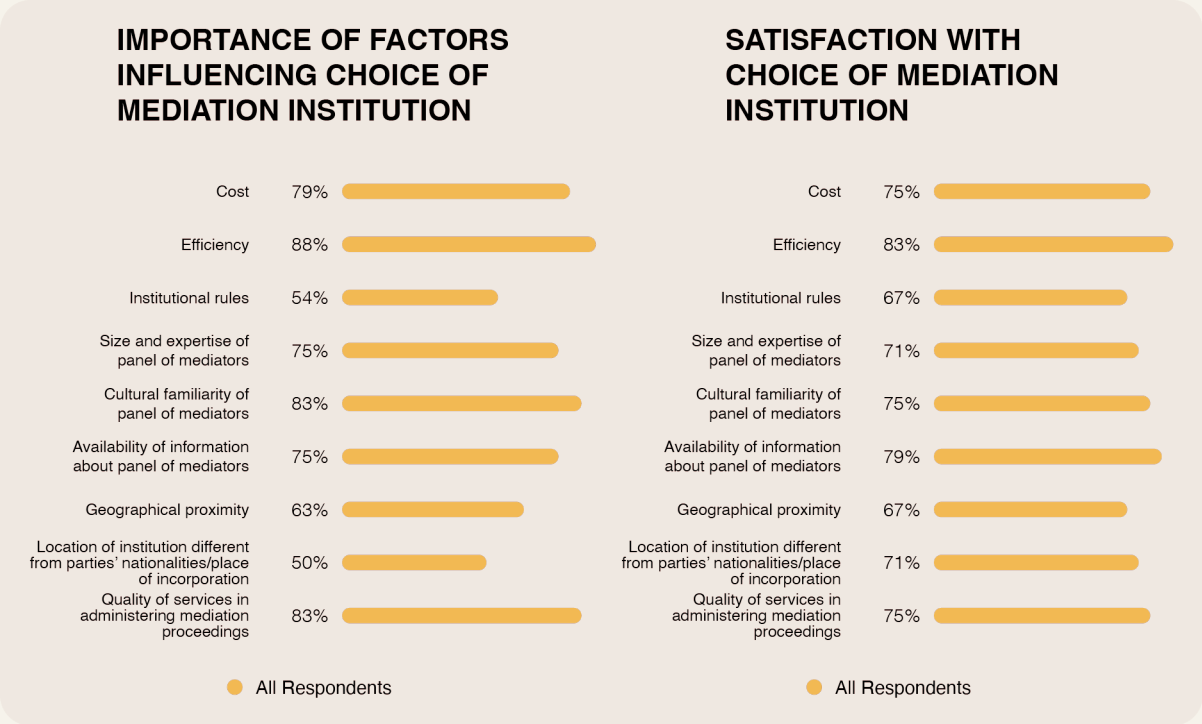
A comparable description can also be found in the Code of Professional Conduct (the **"Code"**) by the International Mediation Institute.[71] The Code even identifies the possible sources of bias or favouritism, listing out examples such as a mediator's personal, professional or financial interests in the subject matter of the dispute, pre-existing relationships with a party, or even a mediator's reaction to the party's background or values.

[70] HKIAC General Ethical Code, *available at* https://www.hkiac.org/mediation/rules/general-ethical-code.

[71] International Mediation Institute Code of Professional Conduct, *available at* https://imimediation.org/wp-content/uploads/2022/02/IMI-Code-of-Conduct-EN.pdf.

Factors Affecting the Choice of Mediation Institutions and Respondents' Satisfaction with Mediation Institutions

EXHIBIT 6.3



6.11 Over 80% of the respondents rated efficiency (88%), cultural familiarity of the panel of mediators (83%) and the quality of services in administering mediation proceedings (83%) as 'absolutely crucial' or 'important'. A majority of respondents indicated that they were satisfied with the efficiency of mediation institutions (83%). A similar percentage, albeit slightly lower, indicated that they were satisfied with the cultural familiarity of the panel of mediators (75%) and the quality of services in administering mediation proceedings (75%).

6.12 Different institutions have aimed to have a variety of mediators on their panel. The list of mediators of institutions is generally made available to the public. For instance, in Singapore, the Singapore International Mediation Centre (**"SIMC"**) has a diverse panel of mediators, with options to select a mediator based on the sector that they are in, the countries where they are active in or originate from and even the language spoken.[72] The Centre for Effective Dispute Resolution (**"CEDR"**) has one of the largest commercial mediation panels in the United Kingdom and around the world.[73] As the institution has been frequently requested to appoint mediators originating from various jurisdictions in international disputes, CEDR established a Global Panel that consists of mediators from over 40 countries and hold different language skills.

[72] SIMC Mediators, *available at* https://simc.com.sg/mediators.
[73] CEDR International Mediator Panel, *available at* https://www.cedr.com/commercial/cedrmediators/int-panel/.

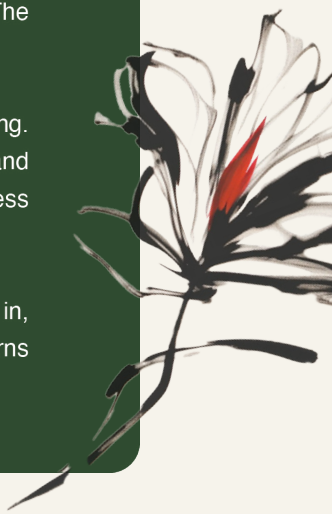
Point of Interest

Standards have been established in different jurisdictions to ensure the competency of mediators. For example, Australia established the Australian National Mediation Standards in 2007 for mediators operating under the national mediator accreditation system (the **"Standards"**).[74] The Standards, which have been updated several times, remain relevant to this day.

The Standards address issues such as power issues, impartiality and ethics, competence and inter-professional relations, amongst other things. Particularly, it is essential for mediators to have the relevant skills and knowledge as part of their competence requirement. They have to seek regular professional debriefing after their mediation sessions, so as to address issues relating to skills development, conceptual and professional matters and ethical dilemmas. The process of debriefing could also help the emotional health of the mediators.

Mediators are also obligated to participate in continuing professional development training. They should also join programs of peer consultation. To ensure a continuing flow of talent and manpower, mediators with more experience should also help train and mentor those less experienced.

The Standards also address areas where mediators should maintain their competencies in, such as knowing how to handle the dynamics of power and violence, communication patterns in conflict and negotiation situations and cross-cultural issues in mediation.



6.13 Some of the factors saw a majority of the respondents finding them important, with an even bigger number of respondents stating that they were satisfied with them, such as institutional rules, availability of information about the panel of mediators, geographical proximity and location of institution different from parties' nationalities/place of incorporation.

6.14 Interestingly, while half of the respondents found the neutrality of the location to be important, 71% of respondents stated that they were satisfied with it. There is a similar trend for institutional rules, with 54% of respondents finding it important and 67% of respondents stating that they were satisfied with the support that the institutional rules have provided. While there are advantages that *ad hoc* mediation brings, such as increased flexibility over the process and reduced costs, there are also benefits provided by institutional mediation such as robust support for the process via established rules and administrative assistance.

6.15 The respondents also found the availability of information about the panel of mediators important (75%) and even more indicated that they were satisfied with it (79%), with this particular factor ranking second under the satisfaction graphs. This might be due to the well set out profiles of the mediators and their contact information that mediation centres make publicly available. For example, the Hong Kong Mediation Centre categorises mediators on their website based on their industry and relevant expertise.[75]

[74] Australian National Mediator Standards, *available at* https://www.ama.asn.au/Final_%20Practice_Standards_200907.pdf.
[75] Panel of Mediators Hong Kong Mediation Centre, *available at* https://www.mediationcentre.org.hk/en/mediators/Panel.php.

6.16 Institutions have taken various steps to train mediators. Programmes vary across different jurisdictions. In civil law jurisdictions, the programme is generally longer in terms of hours and includes a more in-depth academic discussion as compared to common law jurisdictions. However, over the years, there has been cross-fertilisation of training styles and content in various types of legal jurisdictions.

6.17 Training programmes in common law jurisdictions such as the United Kingdom are run by organisations like the London School of Mediation and the Mediator Academy.[76] The workshop is generally conducted over five days, consisting of theory classes and exercises, and intense role-plays based on hypothetical case studies. This is followed by a role-play assessment at the end of the workshop in order to attain accreditation.

6.18 Another example of accreditation programmes in a common law jurisdiction can be found in Singapore, like those run by the Singapore Mediation Centre (**"SMC"**) and the Singapore International Mediation Institute (**"SIMI"**). The SMC provides customised training workshops, as well as programmes that provide varying difficulty levels for interested participants.[77] Interestingly, SMC also provides a judicial mediation training programme that seeks to equip judges with the ability to use mediation for dispute resolution for suitable cases that they are handling. SIMI partners with various organisations to run the "Registered Training Program", with one of the partners being SIDRA.[78] The SIDRA Executive Certificate in Mediation is a three-part course that enables participants to become accredited as both a mediator and a mediation advocate.

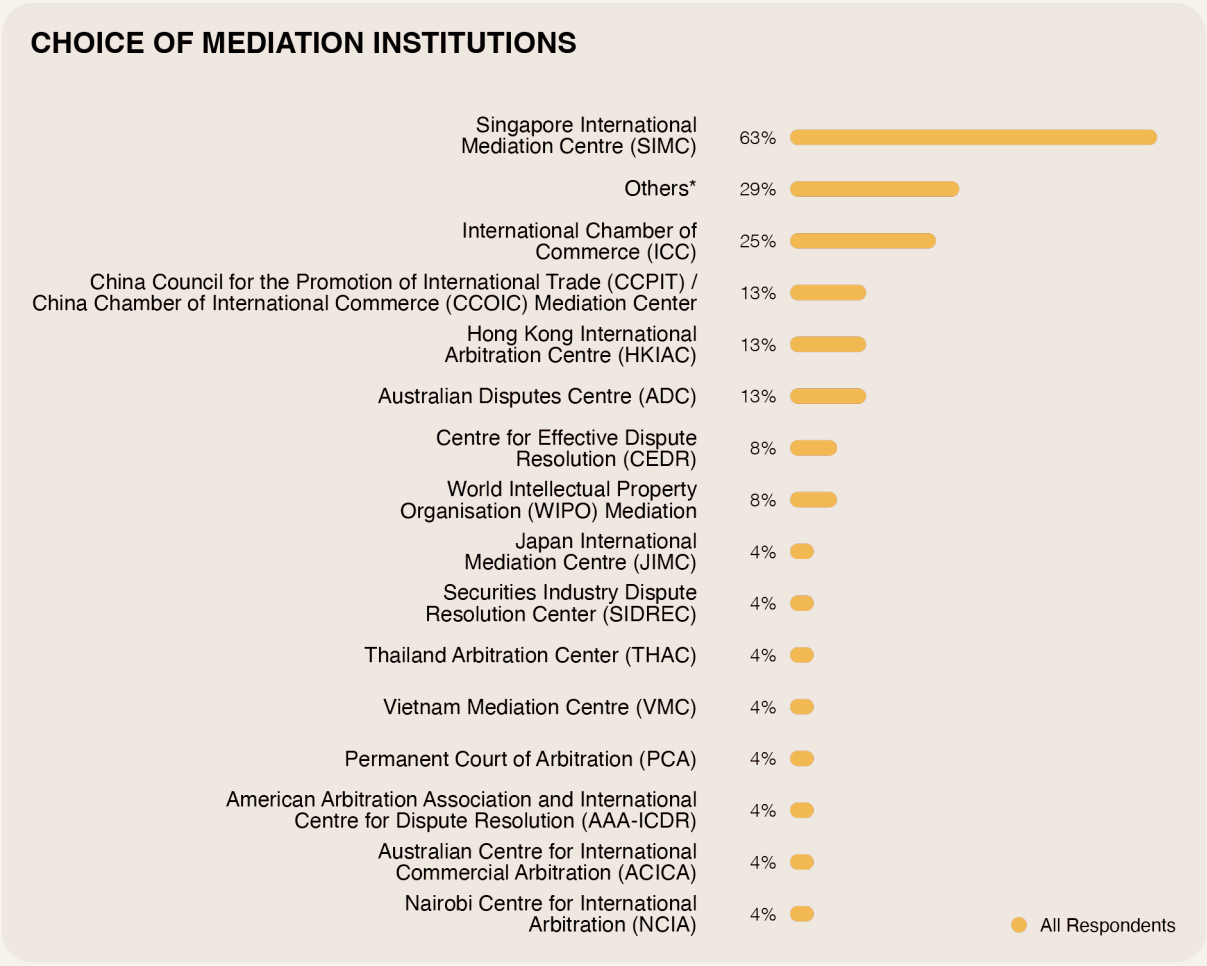
6.19 In civil law jurisdictions like Austria, the accreditation workshop is regulated by the Civil Law Mediation Act and the EU Mediation Law (as and where applicable).[79] The accreditation workshop lasts over 365 hours split into theory and practice sections. While certain aspects of the accreditation workshop are similar to that described above, this particular workshop also delves into personality theories and psychosocial issues, as well as requiring the participant to shadow in the field of mediation.

6.20 Jurisdictions like India have an amalgamation of different legal systems that consist of three primary sources: common law, religious law and civil ('Romanist') law.[80] The Indian Institute of Arbitration and Mediation (**"IIAM"**) carries out a professional mediator training program that spans over 55 hours (seven days) in a hybrid mode, so as to cater to busy professionals who wish to undergo training without disrupting their schedules.[81] The program covers theoretical basics such as understanding the goals and techniques for mediation, as well as the structure of the mediation process. The program also gives an overview of online mediation, and guides the participants through the Peacegate App – India's first dispute resolution app.

[76] London School of Mediation, *available at* https://www.londonschoolofmediation.com; see also Mediator Academy, *available at* https://www.mediatoracademy.com.
[77] Singapore Mediation Centre, *available at* https://mediation.com.sg/smc-training/.
[78] SIDRA Executive Certificate in Mediation (ECIM), *available at* https://law.smu.edu.sg/newsletter/smula-sidra-executive-certificate-mediation-ecim.
[79] Requirements to Become and Be a Mediator in Austria, Mediation Network, *available at* https://mediation.turiba.lv/saturs/Faili%20jauna%20lapa/REQUIREMENTS%20AUSTRIA.pdf.
[80] NCJRS Virtual Library, Indian Legal System, *available at* https://www.ojp.gov/ncjrs/virtual-library/abstracts/indian-legal-system.
[81] IIAM Professional Mediator Training Program, *available at* https://www.arbitrationindia.com/mtp.html.

Choice of Mediation Institutions

EXHIBIT 6.4



6.21 Respondents indicated that their top two most used mediation institutions were the SIMC (63%) and the ICC (25%). These institutions were also the highest ranked mediation institutions in the two previous SIDRA Survey Final Reports.[82]

6.22 The SIMC was by far the most popular institution that the respondents of the Survey used.[83] Recently, the SIMC entered into a Memorandum of Understanding with the Shenzhen Court of International Arbitration (**"SCIA"**).[84] This resulted in the SIMC-SCIA Med-Arb Protocol launched on 25 November 2022. The mechanism improves the enforceability of settlement agreements, entitling settlement agreements that are a product of mediation at the SIMC to be recorded as an SCIA arbitral award. This allows for the settlement agreement to be enforced in China and elsewhere. The Memorandum of Understanding also stipulates that SIMC is one of the recognised mediation institutions under the SCIA, and that where appropriate, SCIA will refer cases to SIMC.

6.23 The China Council for the Promotion of International Trade (**"CCPIT"**) Mediation Centre in China has also signed cooperation agreements and established cooperative relationships with 22 relevant institutions in jurisdictions like Italy, the United States, Canada, Malaysia, Thailand, Singapore, South Korea and Japan.[85] The Mediation Centre has also accepted 12,509 commercial mediation cases in 2023, with 10.18% accounting for overseas-related commercial mediation cases.

[82] SIDRA Survey Final Report 2022 at Exhibit 6.3; SIDRA Survey Final Report 2020 at Exhibit 7.2.6.

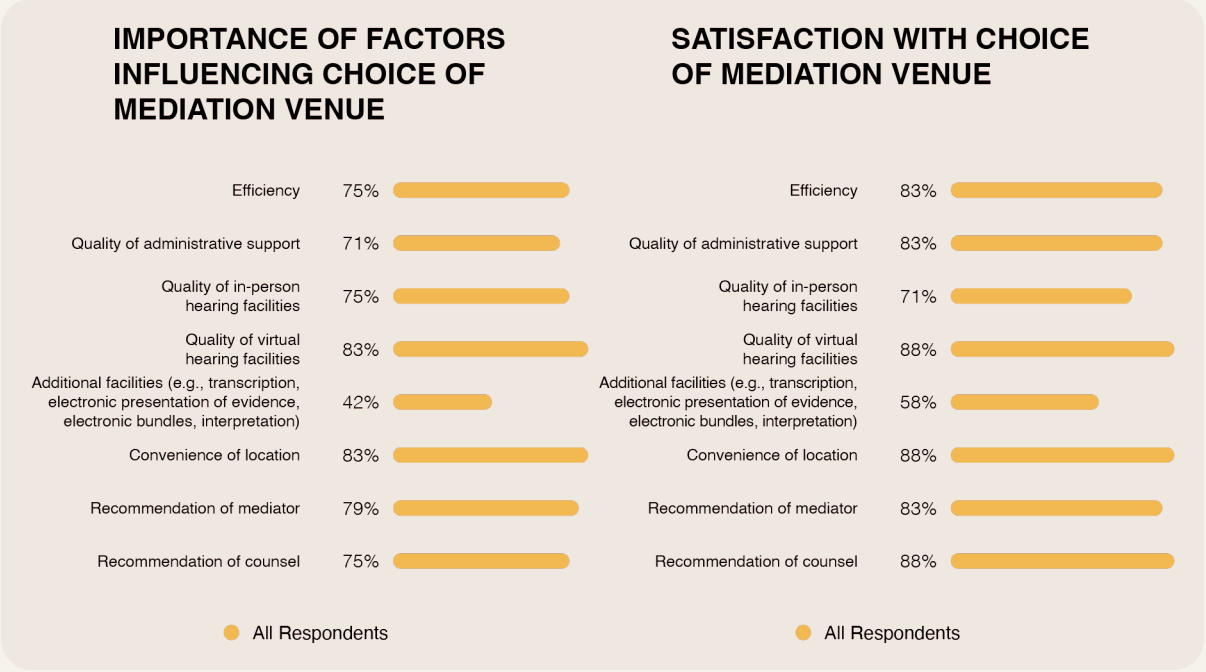
[83] In relation to this finding, it is important to note that the jurisdiction with the highest number of respondents is Singapore.

[84] New Med-Arb Protocol: SIMC Mediation Settlement Agreements to be Enforceable as SCIA Arbitral Awards, *available at* https://arbitrationasia.rajahtannasia.com/new-med-arb-protocol-simc-mediation-settlement-agreements-to-be-enforceable-as-scia-arbitral-awards/.

[85] China accelerates international commercial mediation cooperation, helping domestic and foreign companies resolve disputes, *available at* https://www.globaltimes.cn/page/202401/1304866.shtml.

Factors Affecting the Choice of Mediation Venue and Satisfaction with Mediation Venue

EXHIBIT 6.5



6.24 The top two factors influencing the choice of mediation venue were quality of virtual hearing facilities and convenience of location (both at 83%). The respondents were very satisfied with the quality of virtual hearings and the convenience of location (both at 88%).

6.25 It is highly likely that these two factors have risen to the top choices as a result of the COVID-19 pandemic, where many aspects of our lives have moved to the virtual world. The convenience of virtual and hybrid meetings have not gone unnoticed, and it is thus unsurprising that even in the current run of data collection that respondents are still prioritising virtual or hybrid hearings. As such, the quality of administrative and infrastructure support for virtual and hybrid hearings would be an important deciding factor for respondents in choosing the venue for mediation.

6.26 Where parties prefer to meet physically instead of virtually, the convenience of the location is likely to be important to them. Logistical issues such as flights and accommodations in a foreign land could be a deterrence in choosing certain locations, and parties may then prefer countries that are closer or easier to access.

Most Commonly Used International Commercial Mediation Venues and Hearing Centres

EXHIBIT 6.6

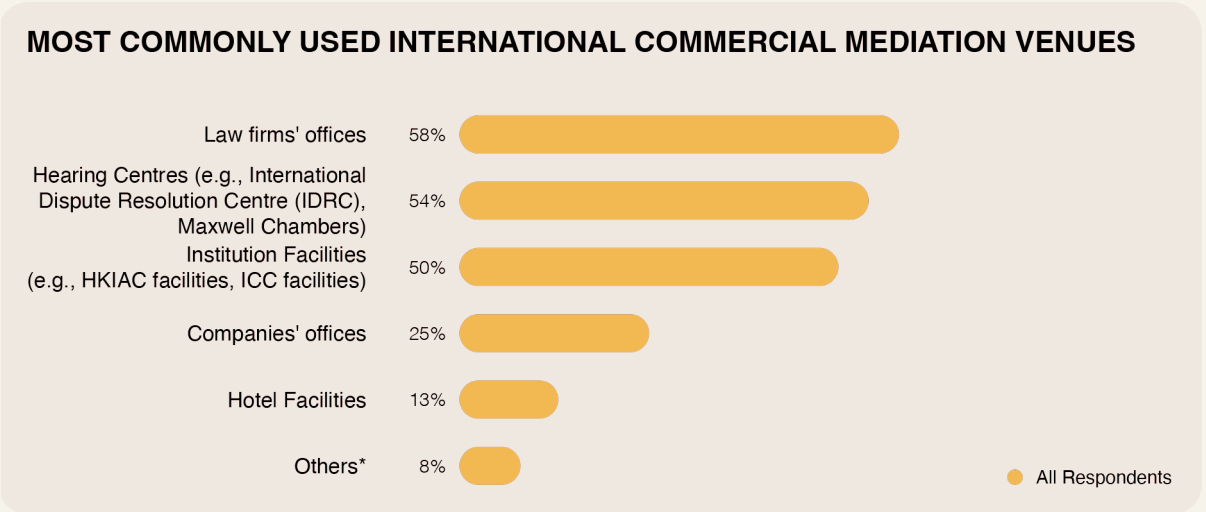
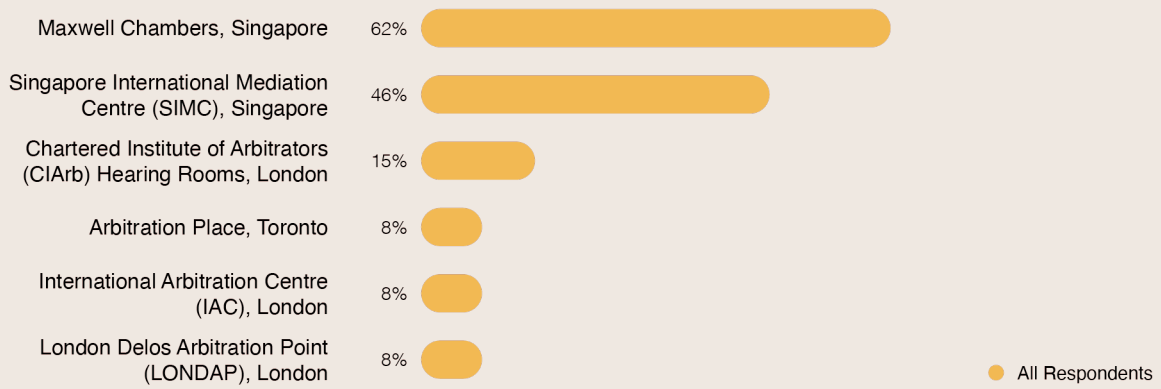


EXHIBIT 6.7

MOST COMMONLY USED HEARING CENTRES FOR INTERNATIONAL COMMERCIAL MEDIATION



6.27 Respondents generally preferred using law firms' offices as mediation venues, with 58% opting for this. This preference was followed by 54% choosing hearing centres (such as IDRC and Maxwell Chambers) and 50% choosing institution facilities (like the HKIAC facilities and ICC facilities).

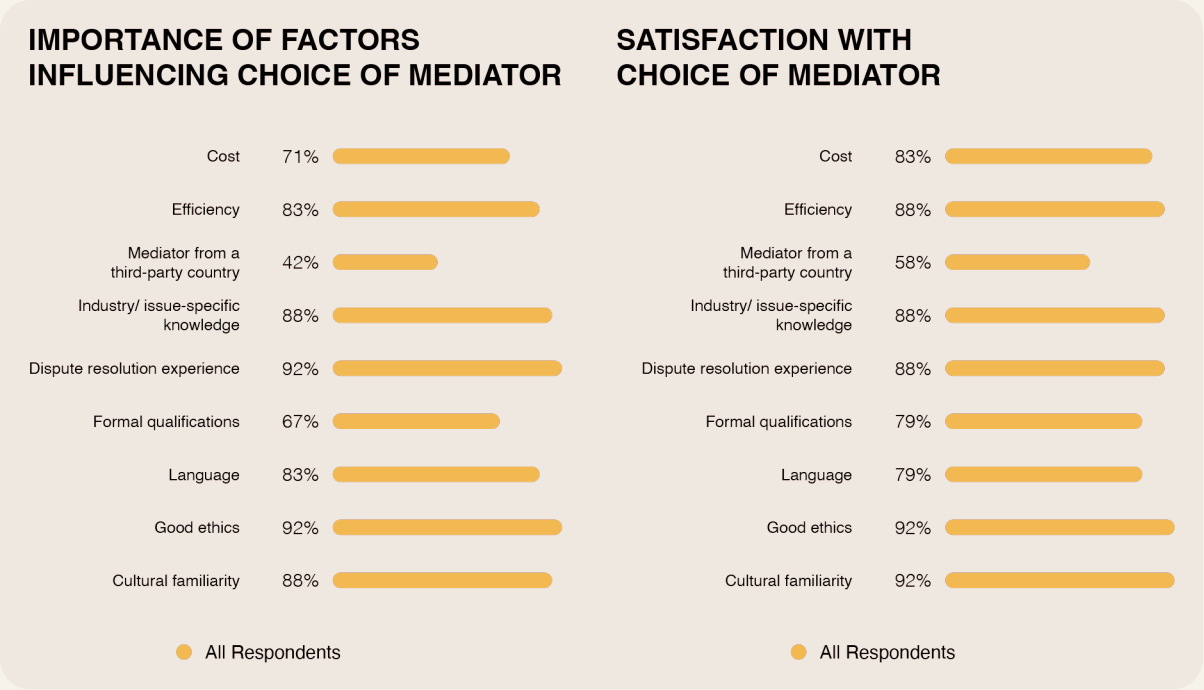
6.28 Respondents may prefer law firms as they may already be familiar with the law firm and the personnel working with them. *Ad hoc* mediations may also see more using law firms as mediation venues as they may not have the same institutional and logistical support as institutional mediations. However, some may instead prefer neutral venues such as hearing centres and institution facilities. Venues such as companies' offices may not give the same impression, which would explain why not many respondents chose this option. Issues of confidentiality and privacy may also add to the reduced popularity of company offices as a mediation venue. Hotel facilitates were less popular (13%), but were still used as a mediation venue.

6.29 Respondents chose Maxwell Chambers, Singapore (62%) and the SIMC (46%) as the top two most commonly used hearing centres for mediation.[86] Institutions like the HKIAC, PCA, CCPIT Mediation Centre in China and Thailand Arbitration Centre are venues that respondents have also used. The choice of hearing centres may also depend on where the parties are located or where the dispute occurs. There are also notable options in London chosen by respondents, with 31% of the respondents indicating so – a not insignificant number. This suggests that while the majority of the respondents may be Asia-centric, hearing centres and institutions in London are still popular as hearing venues.

[86] In relation to this finding, it is important to note that the jurisdiction with the highest number of respondents is Singapore. As this is a multiple response question, the sum of the percentages may exceed 100%.

Factors Affecting the Choice of Mediators and Respondents' Satisfaction with Choice of Mediators

EXHIBIT 6.8



6.30 The top two factors influencing the choice of mediators were dispute resolution experience and good ethics (both at 92%). These were also the top two factors influencing choice of mediators in the SIDRA Survey Final Report 2022 and 2020.[87] Thus, the findings show that users of international commercial mediation continue to value a mediators' dispute resolution experience and good ethics. A mediators' dispute resolution experience may help parties create a creative solution to resolve their dispute. Good ethics is important as parties place considerable trust in mediators to assist them throughout the mediation process.

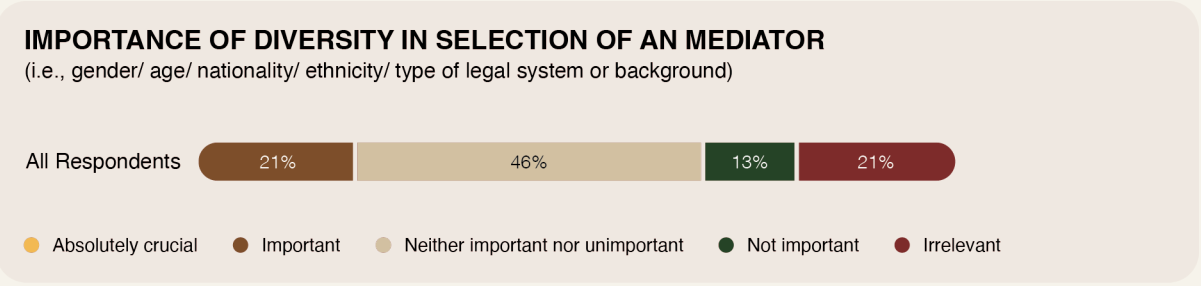
6.31 Similar to the SIDRA Survey Final Report 2022 and 2020, the least number of respondents found whether the mediator is from a third-party country as important (42%).

6.32 Most respondents were satisfied with the top two factors affecting their choice of mediator. 92% of the respondents were satisfied with the good ethics that their mediators possess, and 88% were satisfied with the dispute resolution experience of their mediators.

6.33 It is interesting to note that while 67% of respondents may not view formal qualifications as important as the other factors, they were more than satisfied with it (79%). This may be due to the fact that for some of the mediators, the skills required for an effective mediation do not lie solely on paper qualifications but also depends on their rich and diverse experience in the relevant field. This would help them identify underlying interests and concerns that the parties may not even be cognisant of, and consequently, arrive at a more satisfying outcome.

Importance of Diversity in the Selection of a Mediator

EXHIBIT 6.9



[87] SIDRA Survey Final Report 2022 at Exhibit 6.5; SIDRA Survey Final Report 2020 at Exhibit 7.3.1.

6.34 There are many aspects to diversity, with the mediation section looking at ethnicity, gender, age, nationality and type of legal system or background.

6.35 For 21% of the respondents, diversity was important in choosing the suitable mediator to facilitate their dispute. About half of the respondents (46%) were uncertain about the importance of diversity in selecting a mediator.

6.36 It appears that diversity does not seem to be that important a factor when selecting a mediator. It could be that the respondents are more focused on other factors shown in Exhibit 6.8 above, such as industry-specific knowledge, dispute resolution experience, good ethics and cultural familiarity. This may thus discount the possible effect that diversity might have on a case.

Limited Diversity in the Choice of International Commercial Mediators

EXHIBIT 6.10

RESPONDENTS WERE ASKED TO RATE HOW MUCH THEY AGREED WITH THE FOLLOWING STATEMENT:

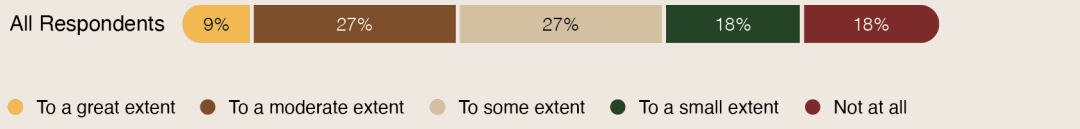
There is limited diversity in the choice of international commercial mediators available to me.

6.37 For 46% of the respondents, they 'strongly agree[d]' or 'somewhat agree[d]' that there was limited diversity in the choice of international commercial mediators. 38% of the respondents neither agreed nor disagreed that there was limited diversity in the choice of international commercial mediators and took a neutral stand.

Extent that Limited Diversity Impacted Satisfaction with Outcomes of International Commercial Mediation

EXHIBIT 6.11

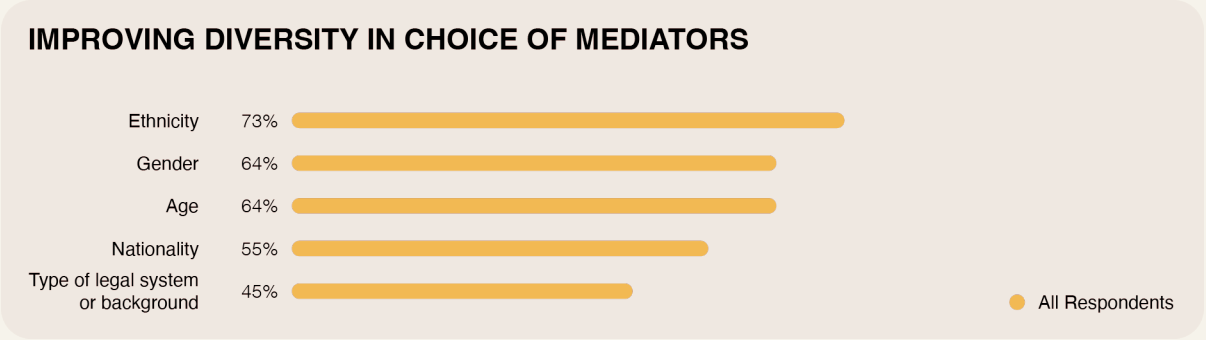
RESPONDENTS WERE ASKED TO RATE TO WHAT EXTENT LIMITED DIVERSITY IN THE CHOICE OF MEDIATORS IMPACTED THEIR SATISFACTION WITH THE OUTCOMES OF INTERNATIONAL COMMERCIAL MEDIATION



6.38 Respondents generally still felt that the limited diversity in the choice of mediators impacted their satisfaction with the outcomes of their international commercial mediations, with 81% indicating that it had a certain degree of impact.

Improving Diversity in Choice of Mediators

EXHIBIT 6.12



6.39 Despite the findings in Exhibit 6.10 above where 46% of the respondents agreed or strongly agreed that there was limited diversity and a smaller percentage took a neutral stand, the majority of respondents wanted to see more diversity in ethnicity (73%), gender (64%) and age (64%).

6.40 Only 45% of respondents wanted to see more diversity in the type of legal system or background of mediators. This may be due to the fact that mediation is a less legalistic process and more flexible, as compared to arbitration or litigation. However, the applicable jurisdictional law may remain relevant to the mediation process.

Point of Interest

One of the more recent initiatives to improve diversity and inclusion in mediation is set up by the CEDR Foundation.[88] They liaise with a working group of mediators, lawyers and users of the dispute resolution mechanism, so as to sieve out the barriers to diversity for gender, race and age in commercial mediation.

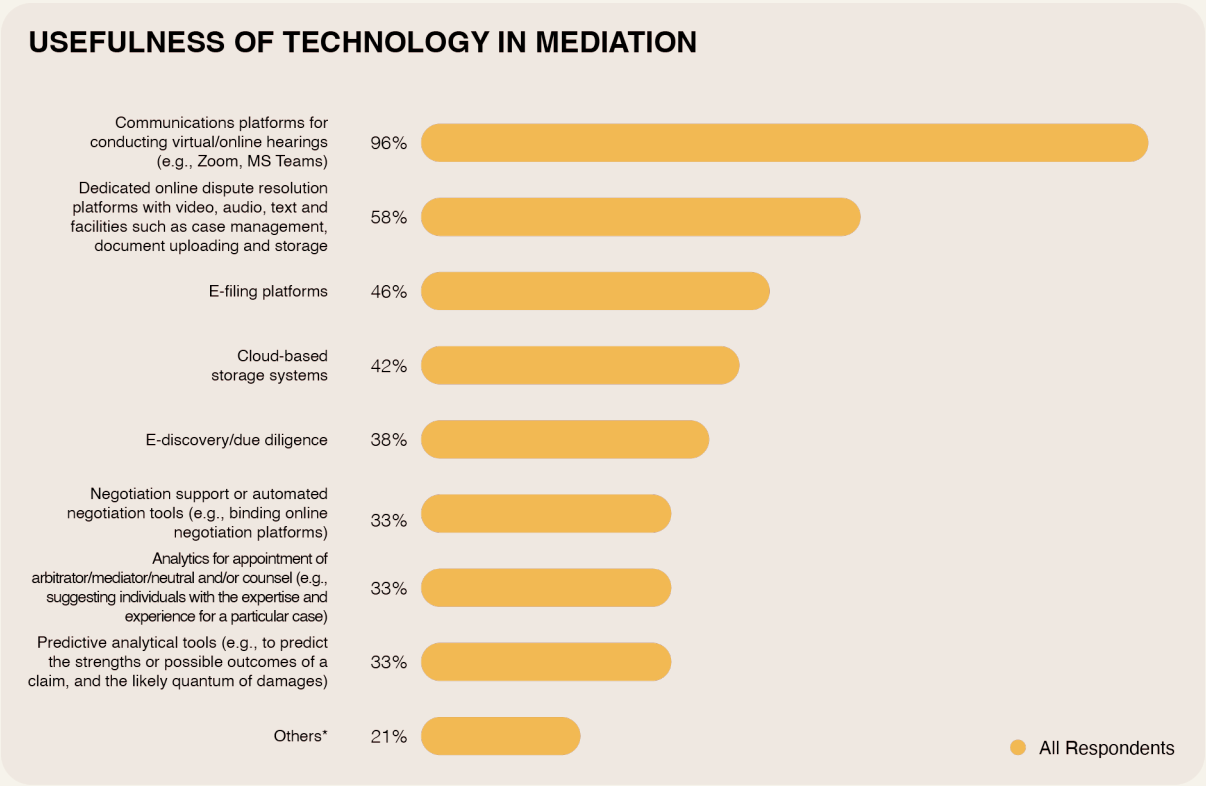
As part of their work, the CEDR Foundation released a report compiling a series of recommendations. Some of their suggestions include:

i. Increasing the use of diverse role models to challenge stereotypes;
ii. Unconscious bias training for mediator assessors, panel selectors and providers;
iii. Commitment to more diverse mediator suggestions from institutions and an increase in the use of blind CVs; and
iv. Mediation institutions and clients should measure and record how diverse the mediator selection is.

[88] CEDR Diversity and Inclusion in Commercial Mediation, *available at* https://www.cedr.com/foundation/currentprojects/diversityinclusion/.

Usefulness of Technology in Supporting a Mediation Procedure

EXHIBIT 6.13



6.41 It comes as no surprise that the respondents indicated that communication platforms for conducting virtual/online hearings (like Zoom/MS Teams) have been the most useful (96%). Respondents have indicated similar responses in the SIDRA Survey Final Report 2022 and 2020.[89] These were the most commonly used platforms during the COVID-19 pandemic, and have proven themselves capable of meeting the demands of the public. Online hearings are now more time and cost efficient, and systematic. Another technology mentioned by respondents as useful was AI mediation simulators.

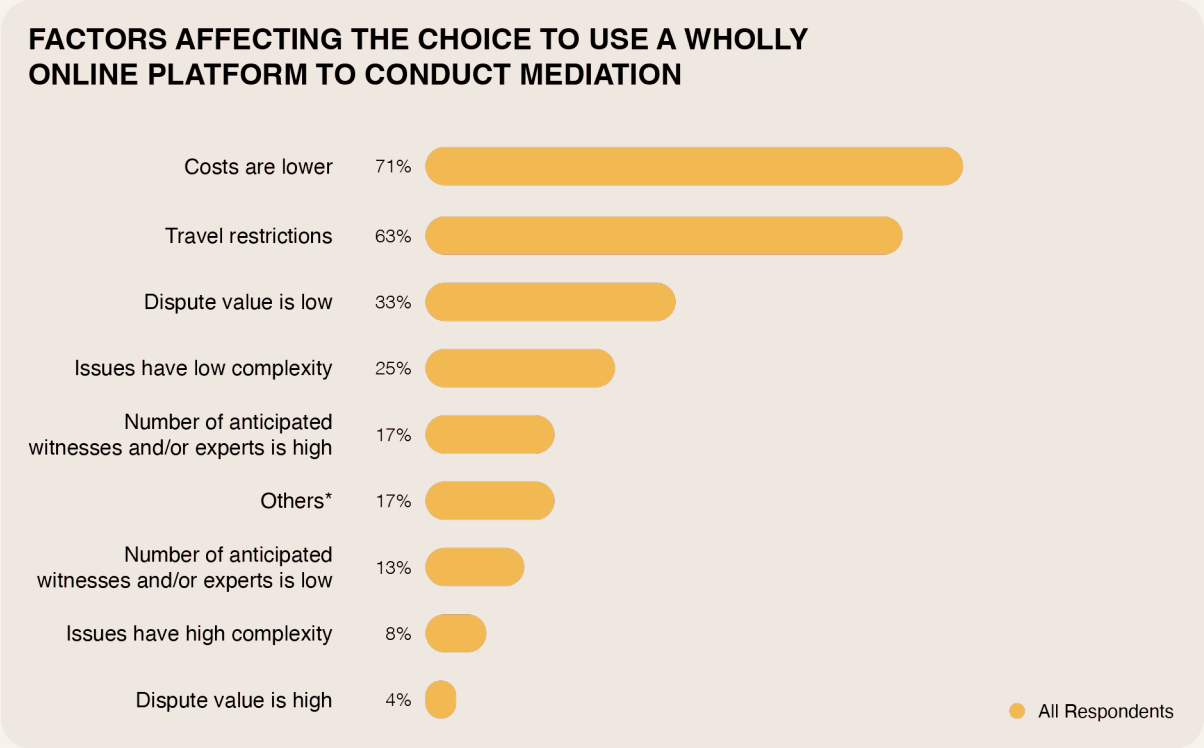
Point of Interest

One example of technology in dispute resolution is the European Online Dispute Resolution ("**ODR**") platform developed by the European Commission to make online shopping safer and fairer by improving access to quality dispute resolution tools. The dispute resolution bodies on the platform are of high quality and independence. If parties fail to resolve their disputes within 90 days, they have the option of attempting resolution with a dispute resolution body of their choosing. They can also choose another form of dispute resolution. Online retailers and traders located in EU, Iceland, Liechtenstein or Norway are obligated under the law to provide consumers with an easily accessible link to the European ODR platform and an email address in order for the European ODR platform to contact them.[90]

[89] SIDRA Survey Final Report 2022 at Exhibit 6.6; SIDRA Survey Final Report 2020 at Exhibit 7.4.1.
[90] Article 14 of the Regulation (EU) No 524/2013.

Factors Affecting the Choice to Use a Wholly Online Platform to Conduct International Commercial Mediation

EXHIBIT 6.14



6.42 The top three considerations for respondents to use a wholly online platform to conduct international commercial mediation were lower costs (71%), travel restrictions (63%) and where the dispute value is low (33%).

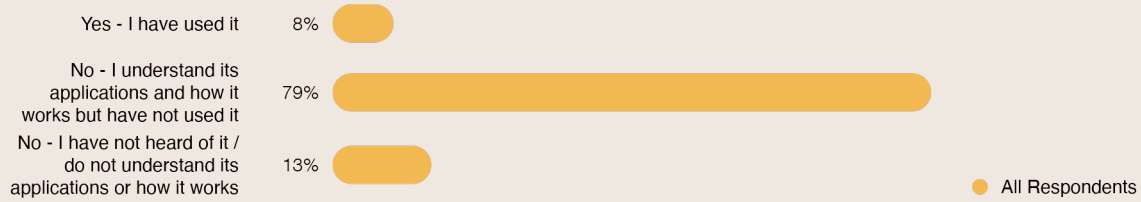
6.43 Some respondents have also indicated that regardless of the number of anticipated witnesses and/or experts, they would choose a wholly online platform. While this may seem contrary initially, it is possible that they have various considerations in both situations that would steer them towards an online platform. For instance, where the anticipated number of witnesses/experts is high, it might be costly to arrange for logistical matters such as flights, accommodations and other preparatory needs for the session. As for where the anticipated number of witnesses/experts is low, it might be easier to arrange for a common time for them to attend the session virtually, and the costs might not be justified to have them come down for a physical session. It may also be that doing so for both situations would cut costs while still being able to obtain the same quality of information.

6.44 Factors like the dispute value and the complexity of the issues are also relevant. While the graphs for dispute value may seem contrary initially (i.e. both low and high value disputes would see respondents preferring an online platform), it is possible that the respondents prefer to use online platforms generally so as to reduce costs. It is also possible that they would use an online platform when the issues are complex, since it is likely that such issues may warrant an extended mediation session to resolve them, and this would mean increased costs. The common thread here is that respondents were more concerned about costs, and factors like the dispute value and the complexity of the issues are not as determinative of whether they choose online platforms or physical meetings.

Use of Third-Party Funding in International Commercial Mediation

EXHIBIT 6.15

RESPONDENTS WERE ASKED IF THEY HAVE USED THIRD-PARTY FUNDING FOR INTERNATIONAL COMMERCIAL MEDIATON



6.45 It is conceivable that third-party funding is used less often in mediation given the lower costs associated with this dispute resolution process. Nevertheless, from an international perspective, there are a growing number of third-party funded mediation cases.[91]

6.46 While there have been instances of third-party funding used for mediation, most respondents in Exhibit 6.15 above have not used third-party funding for international commercial mediation (92%). Out of the 92%, 79% understand how it works but have not used it. 13% of the respondents have not heard of it or do not understand its application. Only 8% of the respondents have used it. This might be because most of the respondents are from Asia. In Asia, third-party funding is still relatively new, with only 21% of the respondents for the arbitration section having used it and only 9% of the respondents for the litigation section indicating the same.[92] In comparison, a greater percentage of respondents have used third-party funding in ISDS disputes (32%).[93]

[91] A New Seat at the Mediation Table? The Impact of Third-Party Funding on the Mediation Process (Part 1), *available at* https://mediationblog.kluwerarbitration.com/2016/12/05/a-new-seat-at-the-table-the-impact-of-third-party-funding-on-the-mediation-process/; see also A New Seat at the Mediation Table? The Impact of Third-Party Funding on the Mediation Process (Part 2), *available at* https://mediationblog.kluwerarbitration.com/2017/04/01/7498/.

[92] See Section 5, Exhibit 5.23 (Arbitration); and Section 7, Exhibit 7.9 (Litigation).

[93] See Section 9, Exhibit 9.20 (Investor-State Dispute Settlement).

Point of Interest

Third-party funding is largely unregulated in countries such as the UK and Australia. On the other hand, countries like Singapore and Hong Kong have started regulating third-party funding in mediation.

Since 2021, Singapore has permitted third-party funding for mediation proceedings related to domestic arbitration proceedings, court proceedings arising from or connected with domestic arbitration proceedings, proceedings commenced in the Singapore International Commercial Court ("**SICC**"), for as long as those proceedings remain in the SICC, and appeal proceedings arising from any decision made in the proceedings commenced and remaining in the SICC.[94] According to the Singapore Ministry of Law, because of the pandemic, there may be a rise in disputes and companies facing the risk of insolvency. As such, extending third-party funding for mediation is meant to provide businesses with another option to fund meritorious claims that they would otherwise forgo because of financial constraints.[95]

In Hong Kong, public consultation on the draft Code of Practice for Third Party Funding of Mediation commenced in August 2021 and ended two months later.[96] At the time of the publication of this Report, the code has been issued and is now named the Code of Practice for Third Party Funding of Mediation (the "**Code**").[97] The Code is to be read in conjunction with the Mediation Ordinance (Cap. 620) and the Arbitration Ordinance (Cap. 609), with part 7A of the Mediation Ordinance and Part 10A of the Arbitration Ordinance providing for third party funding in mediation.[98] The Code requires funders to maintain access to a minimum of HK$20 million of capital. Funded parties are also required to disclose that a funding arrangement has been made and the identity of the funder.

[94] Civil Law Act (Third Party Funding) Amendment Regulations 2021, *available at* https://sso.agc.gov.sg/SL-Supp/S384-2021/Published/20210621?DocDate=20210621

[95] Third-Party Funding to be Permitted for More Categories of Legal Proceedings in Singapore, *available at* https://www.mlaw.gov.sg/news/press-releases/2021-06-21-third-party-funding-framework-permitted-for-more-categories-of-legal-preceedings-in-singapore/.

[96] Public consultation on proposed code of practice for third party funding of mediation starts today, *available at* https://www.info.gov.hk/gia/general/202108/16/P2021081600518.htm.

[97] Proposed Code of Practice for Third Party Funding of Mediation, *available at* https://www.doj.gov.hk/pdf/Proposed_CoP_for_TPF_of_Mediation_e.pdf.

[98] Mediation Ordinance (Cap. 620), *available at* https://www.elegislation.gov.hk/hk/cap620?pmc=1&m=1&pm=0; see also Arbitration Ordinance (Cap. 609), *available at* https://www.elegislation.gov.hk/hk/cap609?pmc=1&m=1&pm=0.

EXHIBIT 6.16

RESPONDENTS WERE ASKED WHAT WAS THE AVERAGE VALUE OF EACH DISPUTE IN WHICH THIRD-PARTY FUNDING WAS USED

6.47 The average of the disputes is either less than US$26 million, or between US$51-100 million. This suggests that the value of the dispute may not be the sole deciding factor in getting third-party funding.

6.48 There may also be other factors that come into play for third-party funders. They may be more inclined to fund certain types of disputes so as to support a particular cause, e.g. climate change.

EXHIBIT 6.17

RESPONDENTS WERE ASKED WHETHER THEY USED THIRD-PARTY FUNDING (AND ITS ASSOCIATED STRATEGIC AND MANAGEMENT SERVICES) FOR THE ENFORCEMENT OF A SETTLEMENT AWARD

6.49 Respondents have indicated both yes and no for instances where they have used third-party funding for enforcement of settlement agreements. While this may not be indicative of the respondents' experience generally, it is suggested that they are still useful findings upon which the Survey can build on for future iterations.

SECTION 7:
INTERNATIONAL COMMERCIAL LITIGATION

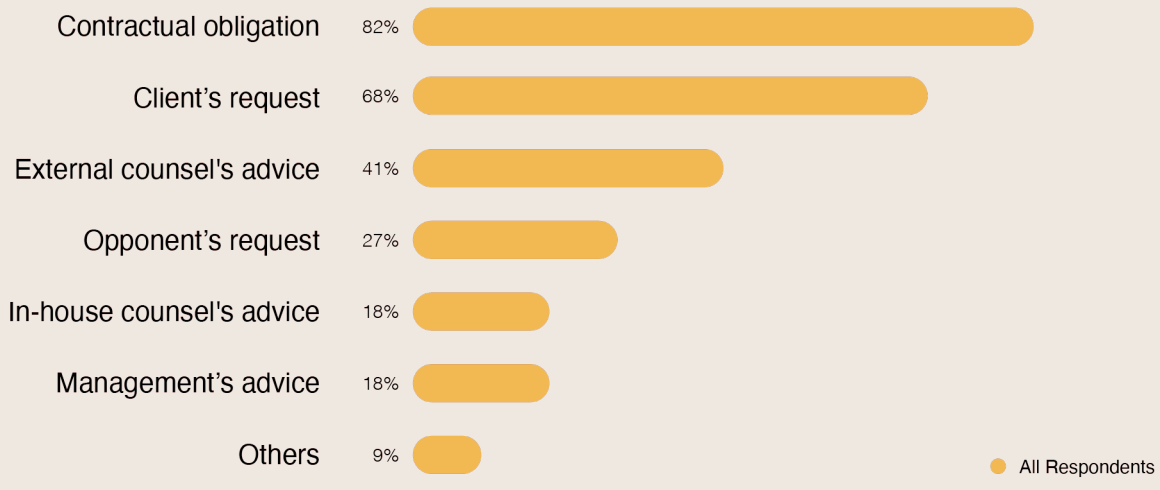
At A GLANCE

- Finality is the most important factor influencing the respondents' decision to choose international commercial litigation as a dispute resolution mechanism. Other important factors include direct enforceability, impartiality and speed.
- Fewer respondents were satisfied with indirect costs to client business and availability of specialist dispute resolution professionals/neutrals in international commercial litigation.
- More respondents preferred local courts over international commercial courts, such as the London Commercial Court and the Singapore International Commercial Court, to resolve cross-border commercial disputes through litigation.
- The majority of respondents said that they understood the applications of third-party funding in international commercial litigation and how it works but have not used it.

Factors That Most Commonly Contributed to the Choice of International Commercial Litigation

EXHIBIT 7.1

FACTORS THAT CONTRIBUTED TO RESPONDENTS' CHOICE TO USE INTERNATIONAL COMMERCIAL ARBITRATION

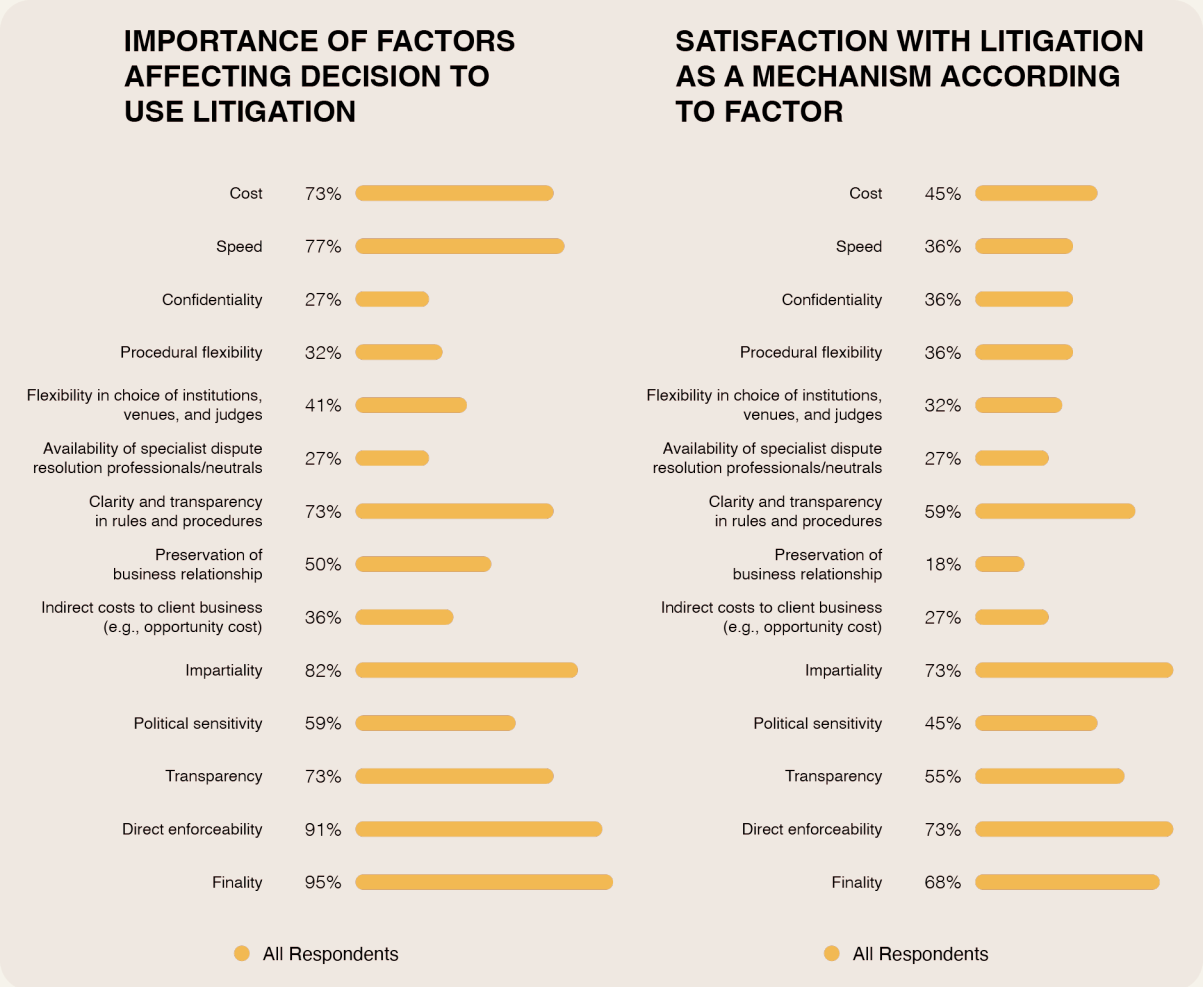


7.1 With respect to the findings on international commercial litigation, it should be noted from the outset that the Survey does not differentiate between international or domestic courts for the purposes of international commercial litigation as long as they are used to decide cross-border commercial disputes. In addition, the Survey does not define what is an "International Commercial Court", noting differences based on their place in national court systems as well as such features as language of litigation, legal representation, nationality and legal background of judges.

7.2 Respondents were asked which factors commonly contributed to their choice to use international commercial litigation to solve cross-border commercial disputes. Contractual obligation (82%) was the top factor influencing such choice. This was followed by client's request (68%) and external counsel's advice (41%). These were also the top three factors influencing the choice to use international commercial litigation to resolve a dispute in the SIDRA Survey Final Report 2022.[99]

Factors Affecting the Decision to Use Litigation and Respondents' Satisfaction with Litigation as a Mechanism

EXHIBIT 7.2



7.3 The top factor affecting the decision whether to take a dispute to international commercial litigation was finality (95%). This was followed by direct enforceability (91%), impartiality (82%) and speed (77%). Similarly, in the SIDRA Survey Final Report 2022, finality was selected by respondents as the most important factor.[100]

[99] SIDRA Survey Final Report 2022 at Exhibit 7.1.
[100] SIDRA Survey Final Report 2022 at Exhibit 7.2.

7.4 Confidentiality (27%) had the least effect on respondents' choice of litigation as a dispute resolution mechanism for cross-border commercial disputes. This tends to be unsurprising as litigation proceedings are generally public in nature. Only 27% of respondents thought that availability of specialist dispute resolution professionals/neutrals was an important factor.

7.5 In terms of satisfaction, most respondents were satisfied with impartiality and direct enforceability (both at 73%), followed by finality (68%), clarity and transparency in rules and procedures (59%) and transparency (55%). In the SIDRA Survey Final Report 2022, respondents were most satisfied with clarity and transparency in rules and procedures and impartiality (both at 66%).[101]

7.6 While a high number of respondents considered finality as 'important' or 'absolutely crucial' factor when deciding to litigate a dispute (95%), only 68% of respondents indicated that they were satisfied in this regard.

Point of Interest

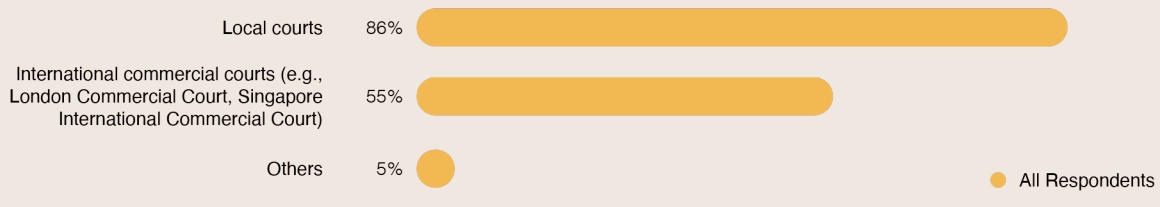
The Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, commonly referred to as the Hague Judgments Convention, facilitates the recognition and enforcement of foreign judgments in civil or commercial matters through a uniform set of rules. This development, along with the potential future ratification of other contracting parties, may affect the dynamics across numerous jurisdictions regarding the enforcement of foreign judgments issued by international commercial courts.

The Hague Convention came into force in the European Union and Ukraine on 1 September 2023, with the United Kingdom signing it on 12 January 2024.

Dispute Resolution Mechanisms Used for International Commercial Litigation

EXHIBIT 7.3

DISPUTE RESOLUTION MECHANISMS USED FOR INTERNATIONAL COMMERCIAL LITIGATION



7.7 The most commonly used dispute resolution mechanism for international commercial litigation was local courts (86%), followed by international commercial courts (55%). This may be because respondents are more familiar with local courts, as compared to international commercial courts.

[101] *Id.*

Point of Interest

On 25 January 2024, the Khmer Times reported the forthcoming establishment of Cambodia's first commercial court. The Cambodian Ministry of Justice said that they hope the commercial court would increase confidence in the transparency and accountability of the Cambodian legal system, a key concern of investors.[102]

Similarly, Uzbekistan and Bahrain are also establishing new international commercial courts.

Under the new scheme in Uzbekistan, business owners and investors no longer bear the burden of proof in showing their case.[103] Instead, government agencies now bear the burden, with any ambiguities resolved in favour of the investors and business owners.

Bahrain's planned international commercial court – the Bahrain International Commercial Court (**"BICC"**) – would mirror the SICC.[104] This is the result of a collaboration between the Bahrain and Singapore courts, with both courts signing a Memorandum of Understanding and a Memorandum of Guidance that seek to strengthen bilateral ties on 11 May 2023.[105] This collaboration is further buttressed by the two countries signing a bilateral treaty on 20 March 2024 that relates to appeals from the BICC.[106] This new treaty will see appeals from the BICC being heard at the SICC.

[102] James Whitehead, Cambodia's first commercial court to improve transparency for foreign investors, *available at* https://www.khmertimeskh.com/501428571/cambodias-first-commercial-court-to-improve-transparency-for-foreign-investors/.

[103] An international commercial court to be set up in Uzbekistan, says president Mirziyoyez, *available at* http://tashkenttimes.uz/national/10960-an-international-commercial-court-to-be-set-up-in-uzbekistan-says-president-mirziyoyev.

[104] Bahrain plans international commercial court based on Singapore model, *available at* https://www.reuters.com/world/bahrain-plans-international-commercial-court-based-singapore-model-2023-05-10/.

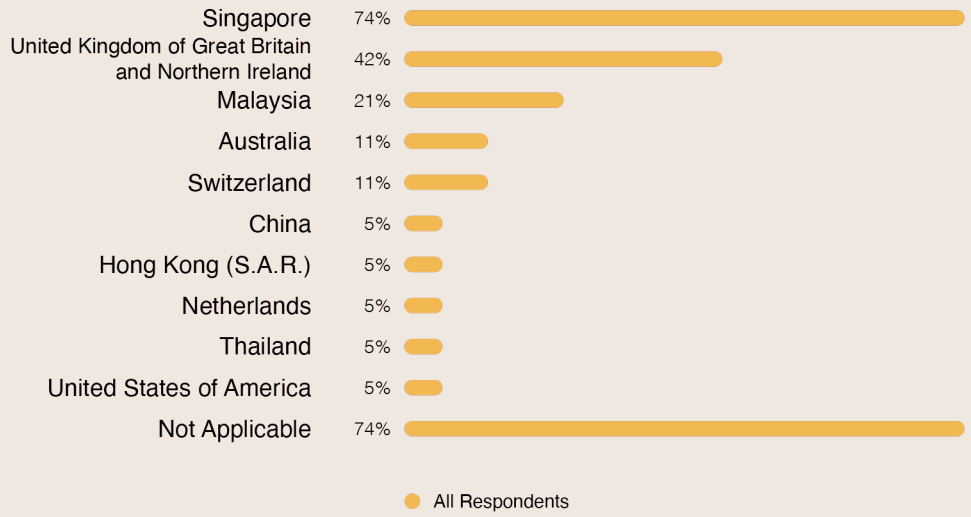
[105] Joint Media Release: Bahrain and Singapore Courts Strengthen Bilateral Ties with Collaboration Framework to Support the Establishment of The Bahrain International Commercial Court, *available at* https://www.judiciary.gov.sg/news-and-resources/news/news-details/joint-media-release-bahrain-and-singapore-courts-strengthen-bilateral-ties-with-collaboration-framework-to-support-the-establishment-of-the-bahrain-international-commercial-court.

[106] Singapore and Bahrain Sign Bilateral Treaty on Appeals from the Bahrain International Commercial Court, *available at* https://www.mlaw.gov.sg/news/press-releases/singapore-bahrain-sign-treaty-on-appeals-from-bicc/.

Most Commonly Used Jurisdictions Where Local Courts Were Used

EXHIBIT 7.4

MOST COMMONLY USED JURISDICTIONS WHERE LOCAL COURTS WERE USED

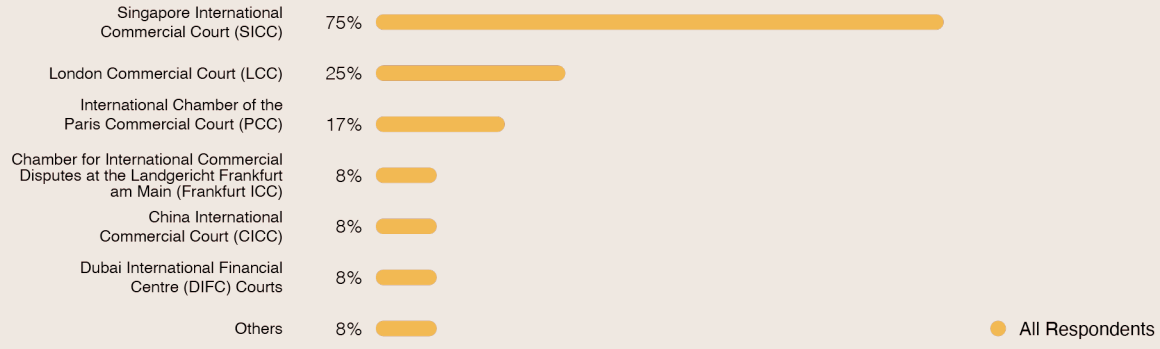


7.8 Where local courts were used for international commercial litigation, Singapore was the most commonly used jurisdiction (74%). This was followed by the UK (42%), Malaysia (21%) and Australia (11%).

Most Commonly Used International Commercial Courts

EXHIBIT 7.5

CHOICE OF INTERNATIONAL COMMERCIAL COURTS



7.9 Of the international commercial courts, the most commonly used was the SICC (75%). This was followed by the London Commercial Court (**"LCC"**) (25%) and the International Chamber of the Paris Commercial Court (**"PCC"**) (17%).

7.10 Comparing the results with those in the SIDRA Survey Final Report 2022,[107] the SICC and the LCC remained as the top two most commonly used international commercial courts among respondents. The PCC replaced the Dubai International Financial Centre (**"DIFC"**) Courts as the third most commonly used international commercial court.

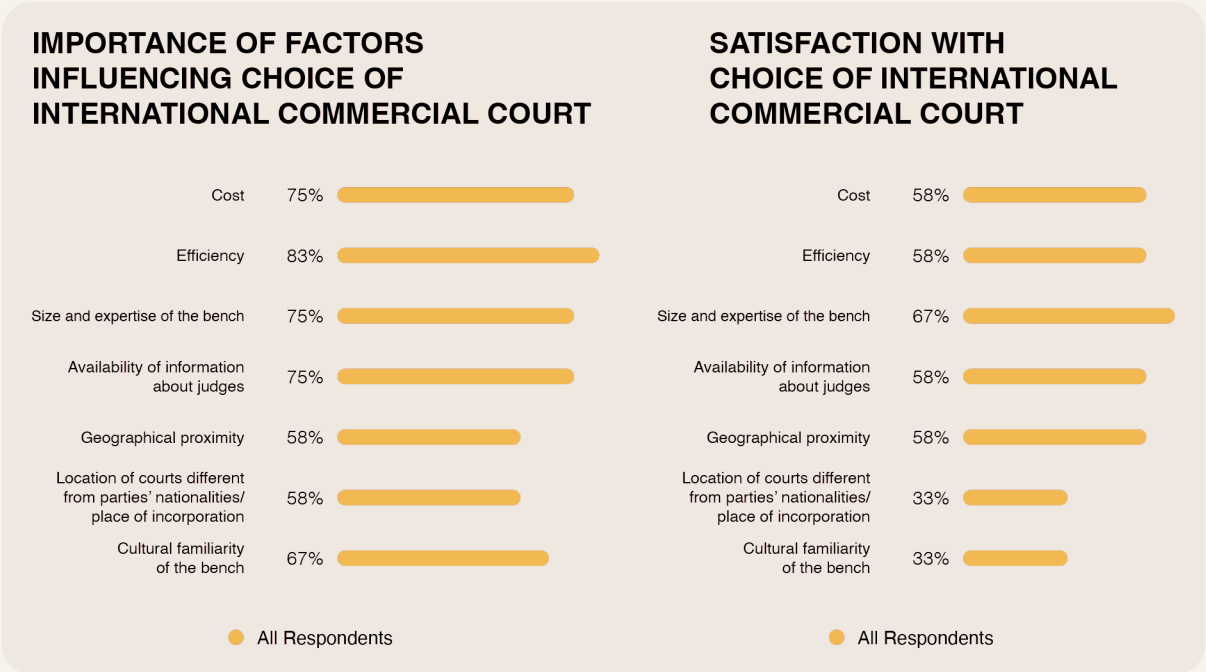
[107] SIDRA Survey 2022 at Exhibit 7.7.

Point of Interest

In 2017, the DIFC Courts, in collaboration with the Dubai Future Foundation, launched the Courts of the Future initiative, a think tank mandated to look into legal technology topics. Thus far, it has launched the Courts of the Blockchain, Court Tech Lab and the Courts of Space projects. The Courts of the Blockchain project is exploring how to aid verification of court judgments for cross-border enforcement. The Court Tech Lab conducts research into how judicial systems can be strengthened through technology such as blockchain-powered initiatives, AI-enabled programmes and cloud-based solutions. Lastly, the Courts of Space aims to achieve three primary goals: (i) forming an international group comprising both public and private sectors, along with space law experts, to delve into legal innovations and future space dispute scenarios; (ii) developing a Space Dispute Guide offering guidelines for handling space-related disputes; and (iii) offering specialised training for judges on space regulations through courses provided by international and regional space agencies, equipping them to become experts in space-related disputes.[108]

Factors Affecting the Choice of International Commercial Courts and Respondents' Satisfaction with International Commercial Courts

EXHIBIT 7.6



[108] Courts of the Future, *available at* https://www.courtsofthefuture.org/.

7.11 The top factors influencing the choice of international commercial court were efficiency (83%), size and expertise of the bench, cost and availability of information about judges (all at 75%). In the SIDRA Survey Final Report 2022, the top factor influencing the choice of international commercial court were size and expertise of the bench (80%), efficiency and geographical proximity (both at 73%).[109]

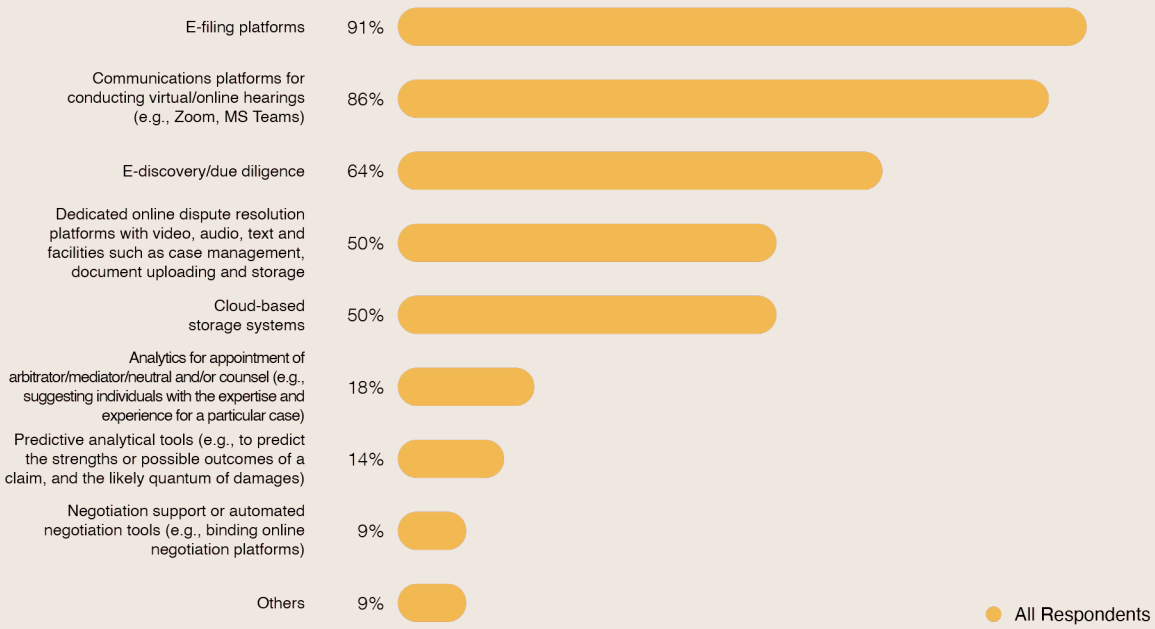
7.12 Of the factors that influenced respondents' choice of international commercial court, the factors most respondents were satisfied with were size and expertise of the bench (67%), cost, efficiency, availability of information about judges and geographical proximity (all at 58%).

7.13 While 83% of respondents indicated that efficiency was an important factor in influencing their choice of international commercial court, only 58% of responses indicated that they were satisfied with the level of efficiency they experienced. This presents as an opportunity for international commercial courts to streamline their procedures to improve efficiency.

Usefulness of Technology in Supporting a Litigation Procedure

EXHIBIT 7.7

USEFULNESS OF TECHNOLOGY IN LITIGATION



7.14 The greatest number of respondents considered e-filing platforms (91%) a useful technology supporting a litigation procedure. This was followed by communications platforms for conducting virtual/online hearings (86%) and e-discovery/due diligence (64%). It appears that the trend of utilizing technology during the pandemic has heightened users' awareness of its efficiency and usefulness.

[109] SIDRA Survey Final Report 2022 at Exhibit 7.8.

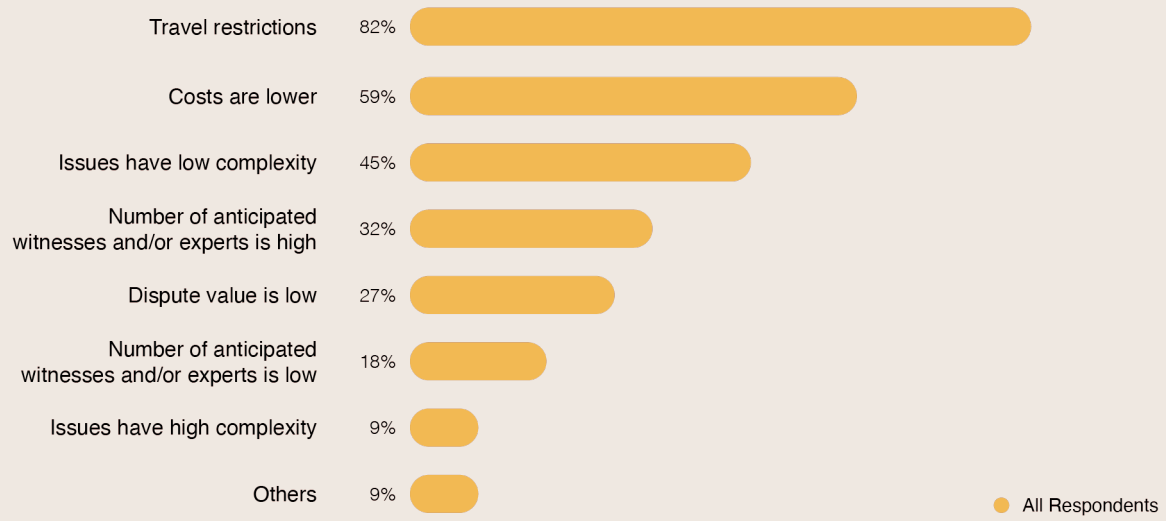
7.15 The fewest number of respondents found predictive analytical tools (e.g., to predict the strengths or possible outcomes of a claim, and the likely quantum of damages) (14%) and negotiation support or automated negotiation tools (e.g., blind bidding platforms) (9%) as useful technology in supporting a litigation procedure. It will be interesting to find out whether these trends change considering there are currently several legal technology initiatives, including the Courts of the Future Initiative of the DIFC Courts.

7.16 Amongst many international commercial courts, the China International Commercial Court (**"CICC"**) has leveraged the use of technology for litigation. The CICC, with locations in Shenzhen and Xi'an, has established a comprehensive one-stop platform for resolving international commercial disputes, featuring live-streaming of court proceedings and a bilingual website for broader accessibility.

Factors Affecting the Choice to Use a Wholly Online Platform to Conduct International Commercial Litigation

EXHIBIT 7.8

FACTORS AFFECTING THE CHOICE TO USE A WHOLLY ONLINE PLATFORM TO CONDUCT LITIGATION



7.17 Respondents were asked to select the top factors that would make them choose a wholly online platform to conduct their litigation proceedings. Similarly to the sections on arbitration and mediation, a majority (82%) of respondents identified travel restrictions as among their top factors that would make them choose a wholly online platform for litigation proceedings. Lower costs (59%) and issues in dispute have low complexity (45%) were also identified as part of their top three factors. Travel restrictions and lower costs were the top two factors respondents considered in choosing to use a wholly online platform to conduct litigation proceedings in the SIDRA Survey Final Report 2022.[110]

[110] SIDRA Survey Final Report 2022 at Exhibit 7.12.

Use of Third-Party Funding in International Commercial Litigation

EXHIBIT 7.9

RESPONDENTS WERE ASKED IF THEY USED THIRD-PARTY FUNDING FOR INTERNATIONAL COMMERCIAL LITIGATION

7.18 77% of respondents said that though they had not used third-party funding for international commercial litigation, they understood its applications and how it works. Less than 10% of respondents indicated that they had used third-party funding in international commercial litigation (9%). 14% of respondents indicated that they had either not heard of third-party funding for international commercial litigation and/or do not understand its application or how it works. Given that most respondents were from Asia, the lack of use of third-party funding is not surprising. It has only recently been regulated in Singapore and Hong Kong.

Point of Interest

Third-party funding in the UK has been largely unregulated. But changes might be forthcoming. In July 2023, the UK Supreme Court ruled in *R (on the application of PACCAR Inc and others) v. Competition Appeal Tribunal and Others*[111] that litigation funding agreements, which allow funders to receive a percentage of damages awarded to a funded party, are a form of damages-based agreements. Thus, such litigation funding agreements are unenforceable unless it complies with Section 58AA of the Courts and Legal Services Act 1990. This decision is perceived to have a huge impact on the UK litigation funding industry.

[111] [2023] UKSC 28.

SECTION 8:
MIXED MODE (HYBRID) DISPUTE RESOLUTION

At A GLANCE

- The top factors that contributed to the respondents' choice to use mixed mode (hybrid) dispute resolution were contractual obligations, client's request and opponent's request.
- Respondents were 'very satisfied' with the confidentiality, procedural flexibility, flexibility in choice of institutions, venues and dispute resolution professionals, clarity and transparency in rules and procedures, preservation of business relationships, impartiality, transparency, direct enforceability and finality associated with mixed mode (hybrid) dispute resolution.
- With respect to choosing arbitrators or mediators in mixed mode (hybrid) dispute resolution procedures, respondents found the following factors to be 'absolutely crucial' or 'important': cost, efficiency, arbitrator or mediator from a third-party country, industry/issue-specific knowledge, dispute resolution experience, formal qualifications, language, good ethics and cultural familiarity.

8.1 The number of respondents for this edition of the mixed mode (hybrid) dispute resolution mechanisms Survey was not significant. A brief summary of the results of the mixed mode (hybrid) dispute resolution mechanisms Survey is presented below.

8.2 For the purposes of the Survey and this Report, mixed mode or hybrid dispute resolution mechanisms are defined as any combination of two or more of the following dispute resolution processes: mediation, non-binding evaluation, arbitration or litigation. It may also involve multiple dispute resolution professionals or a single dispute resolution professional in multiple roles.

8.3 The top factors that contributed to the respondents' choice to use mixed mode (hybrid) dispute resolution were contractual obligations, client's request and opponent's request.

8.4 Cost, speed, confidentiality, procedural flexibility, flexibility in choice of institutions, venues, and dispute resolution professionals, availability of specialist dispute resolution professionals/neutrals, clarity and transparency in rules and procedures, preservation of business relationship, indirect costs to client business, impartiality, political sensitivity, transparency, direct enforceability and finality were all considered to be 'absolutely crucial' or 'important' in choosing to use mixed mode dispute resolution mechanisms to resolve disputes.

8.5 In terms of satisfaction, respondents were 'very satisfied' with confidentiality, procedural flexibility, flexibility in choice of institutions, venues and dispute resolution professionals, clarity and transparency in rules and procedures, preservation of business relationships, impartiality, transparency, direct enforceability and finality.

8.6 Respondents were also asked to indicate which factors were important in choosing mixed mode dispute resolution mechanisms over mediation and over arbitration. Compared to mediation alone, mixed mode dispute resolution was chosen because of procedural flexibility, direct enforceability and finality. Compared to arbitration alone, mixed mode dispute resolution was chosen because of cost, speed, confidentiality, procedural flexibility, flexibility in choice of institutions, venues, and dispute resolution professionals, availability of specialist dispute resolution professionals/neutrals, clarity and transparency in rules and procedures, preservation of business relationships, indirect cost to client business, direct enforceability and finality.

8.7 As for institutions for mixed mode (hybrid) dispute resolution, the following factors were considered to be 'absolutely crucial' or 'important': cost, efficiency, institutional rules, size and expertise of panel of dispute resolution professionals, cultural familiarity of panel of dispute resolution professionals, availability of information about panel of dispute resolution professionals, location of institution different from parties' nationalities/place of incorporation, transparency of challenge decisions and award scrutiny. Respondents were 'very satisfied' or 'somewhat satisfied' with the following factors with respect to their chosen institution for mixed mode dispute resolution: cost, efficiency, size and expertise of panel of dispute resolution professionals, cultural familiarity of panel of dispute resolution professionals, availability of information about panel of dispute resolution professionals, location of institution different from parties' nationalities/place of incorporation, transparency of challenge decisions and award scrutiny.

8.8 With respect to choosing arbitrators or mediators in mixed mode (hybrid) dispute resolution procedures, respondents found the following factors to be 'absolutely crucial' or 'important': cost, efficiency, arbitrator or mediator from a third-party country, industry/issue-specific knowledge, dispute resolution experience, formal qualifications, language, good ethics and cultural familiarity. Except for industry/issue-specific knowledge and language, respondents were 'very satisfied' or 'somewhat satisfied' with the same factors with respect to their chosen arbitrator in a mixed mode procedure. As for their chosen mediators, respondents were 'very satisfied' or 'somewhat satisfied' with the aforementioned factors save for dispute resolution experience.

8.9 Technologies such as e-discovery/due diligence, e-filing platforms, communications platforms for conducting virtual/online hearings were considered to be 'extremely useful' in supporting mixed mode (hybrid) dispute resolution. A majority of respondents also found communications platforms for conducting virtual/online hearings as useful in arbitration, mediation and litigation.[112]

[112] See Section 5, Exhibit 5.21 (Arbitration); Section 6, Exhibit 6.13 (Mediation); Section 7, Exhibit 7.7 (Litigation); Section 9, Exhibit 9.18 (Investor-State Dispute Settlement).

SECTION 9:
INVESTOR-STATE DISPUTE SETTLEMENT

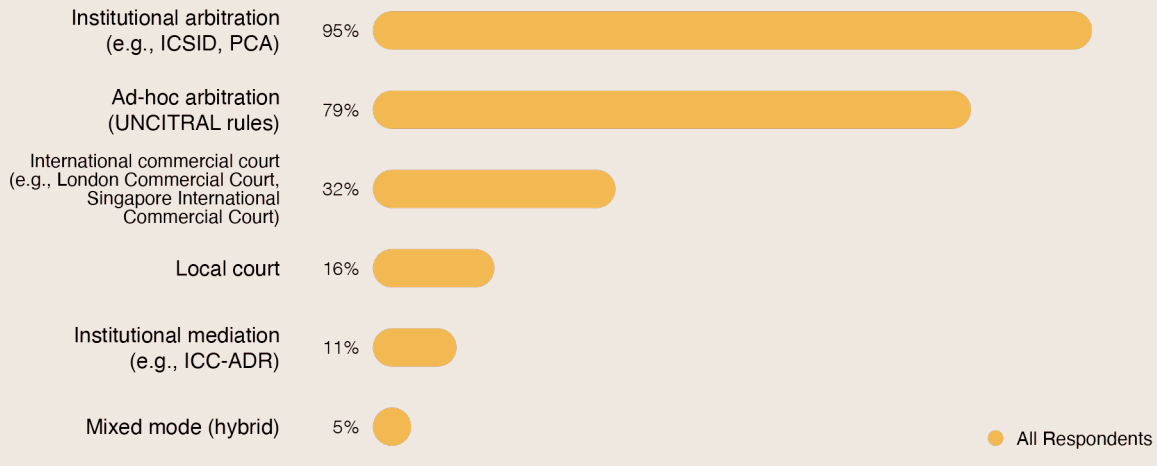
At A GLANCE

- International arbitration continues to be the dispute settlement mechanism of choice of users in resolving investor-state disputes, with majority of the respondents choosing institutional or *ad hoc* arbitration.
- Clarity and transparency in rules and procedure, followed by direct enforceability and finality were the top considerations in choosing a mechanism for investor-state dispute settlement.
- Respondents indicated that an increased pool of experts as well as the ability to use mediation and mixed mode (hybrid) procedures would improve the dispute resolution procedure for investor-state disputes.
- A majority of the respondents have not used third-party funding in investor-state disputes but understand its applications and how it works.

Most Commonly Used Dispute Resolution Mechanisms for Investor-State Disputes

EXHIBIT 9.1

CHOICE OF DISPUTE RESOLUTION MECHANISM FOR INVESTOR-STATE DISPUTES



9.1 Arbitration remained the most commonly used dispute resolution mechanism for investor-state disputes (**"ISDS"**) and multilateral investment disputes across all respondents, followed by international commercial courts and local courts. This comes as no surprise as arbitration clauses continue to be prevalent in investment treaties and contracts. A noteworthy development from the results of the SIDRA Survey Final Report 2022 is the increased preference for international commercial courts (32%) for the resolution of investor-state disputes after arbitration. In the 2022 Report, respondents ranked arbitration first, followed by mediation.[113]

9.2 In arbitration, respondents preferred institutional arbitration (95%) to *ad hoc* arbitration (79%). This may be explained by the multi-facetted assistance institutions offer relating to their institutional rules, procedures, and administration. As of December 2023, the International Centre for Settlement of Investment Disputes (**"ICSID"**), which handles a large number of investor-state arbitration cases, has administered a total of 963 arbitration case s under the ICSID Convention and Additional Facility Arbitration Rules.[114]

9.3 As for mediation, 11% of respondents have indicated that mediation was their most commonly used dispute resolution mechanism for ISDS. In the SIDRA Survey Final Report 2022, 24% of respondents indicated institutional mediation as their commonly used dispute resolution mechanism for ISDS.[115] The lower preference for mediation in ISDS could be explained by several factors. First, investor-state mediation is still at its inception. Therefore, the familiarity and experience in relation to this mechanism might still be relatively low. Second, there is a limited track record of mediation in this area as compared to that of arbitration, as mediation proceedings are generally confidential. This means that less information is available regarding how investor-state mediations occur.

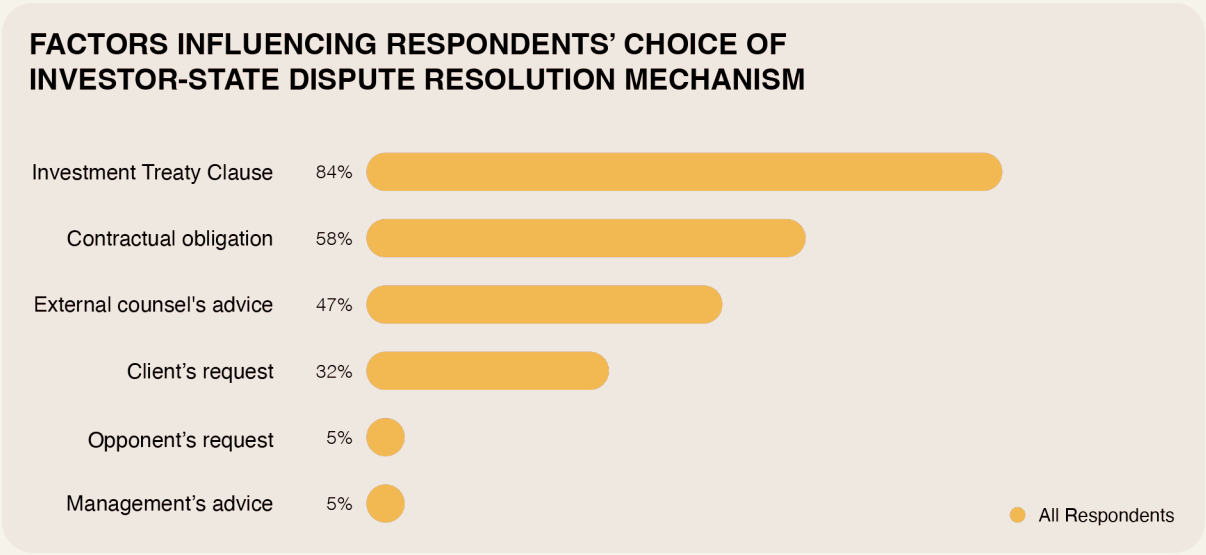
Point of Interest

Stakeholder interest in resolving ISDS through mediation persists. Within its mandate on the Reform of Investor-State Dispute Settlement, the UNCITRAL at its fifty-sixth session in 2023, adopted the UNCITRAL Model Provisions on Mediation for International Investment Disputes and the UNCITRAL Guidelines on Mediation for International Investment Disputes.[116] Both instruments aim to resolve investor-state disputes in a cost-effective manner and assist in preserving relationships between investors and states. The UNCITRAL Model Provisions on Mediation for International Investment Disputes offer treaty language for issues such as availability and commencement of mediation, information required in an invitation to mediate, relationship with arbitration and other proceedings, confidentiality and the settlement agreement.[117]

[113] SIDRA Survey Final Report 2022 at Exhibit 9.1.
[114] ICSID reported that as of 31 December 2023, there were a total of 874 cases registered under the ICSID Arbitration Rules and 79 cases under the ICSID Additional Facility Arbitration Rules. The ICSID Caseload – Statistics (Issue 2024-1), *available at* https://icsid.worldbank.org/sites/default/files/publications/ENG_The_ICSID_Caseload_Statistics_Issue%202024.pdf.
[115] SIDRA Survey Final Report 2022 at Exhibit 9.1.
[116] UNCITRAL Fifty-Sixth Session, Report of the Commission, *available at* https://uncitral.un.org/sites/uncitral.un.org/files/report_of_uncitral_fifty-fifth_session.pdf.
[117] UNCITRAL Model Provisions on Mediation for International Investment Disputes, *available at* https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/model_provisions_e_1.pdf.

Factors Influencing Respondents' Choice of Investor-State Dispute Resolution Mechanism

EXHIBIT 9.2

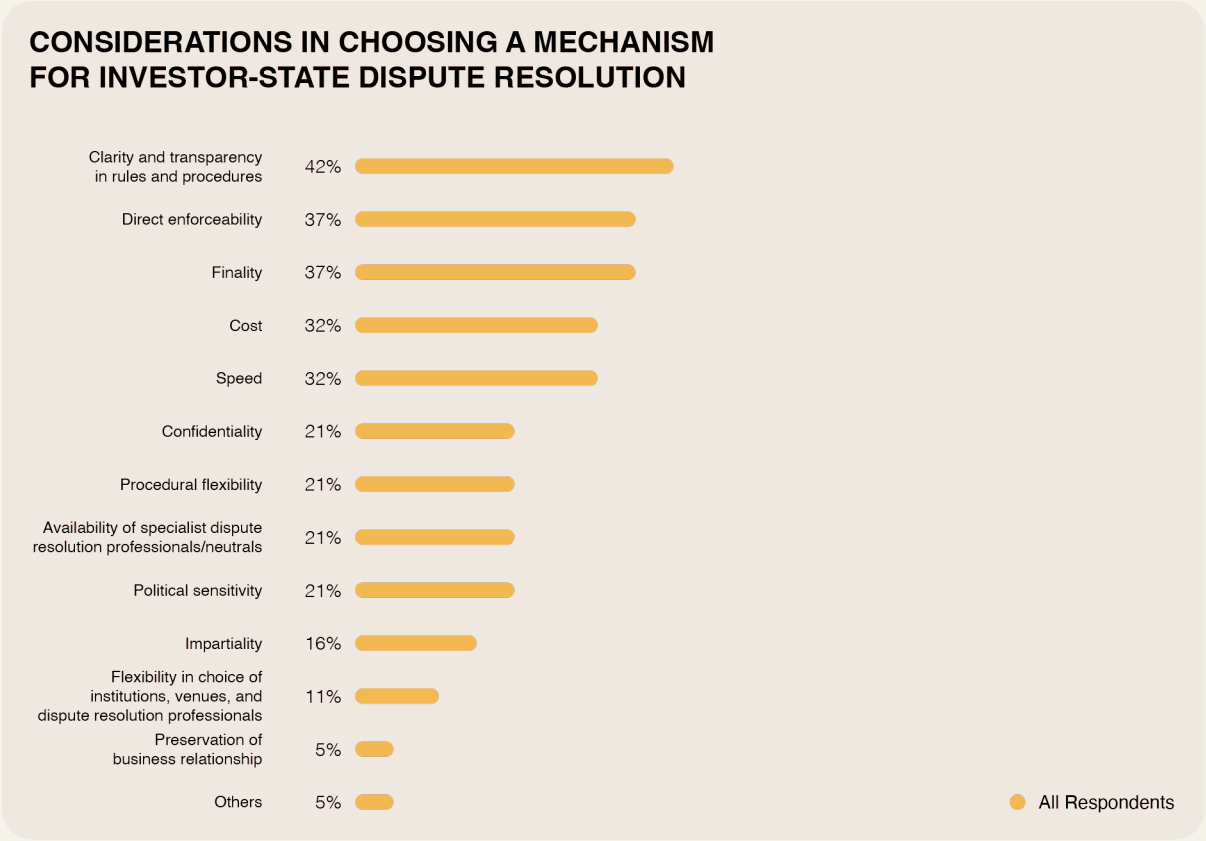


9.4 The top two factors that contributed to the choice of investor-state dispute resolution mechanisms were investment treaty clause (84%) and contractual obligation (58%). This was followed by external counsel's advice (47%). Investment treaty clauses are most commonly applied legal bases to initiate investor-state disputes as they provide contracting states' unconditional consent to dispute settlement mechanisms provided therein, primarily arbitration.

9.5 In the SIDRA Survey Final Report 2022, external counsel's advice was an equal factor to contractual obligations that contributes to the choice of investor-state dispute resolution mechanisms.[118] External counsel's advice now appears as the third most important factor.

Considerations in Choosing A Mechanism for Investor-State Dispute Resolution

EXHIBIT 9.3



[118] SIDRA Survey Final Report 2022 at Exhibit 9.2.

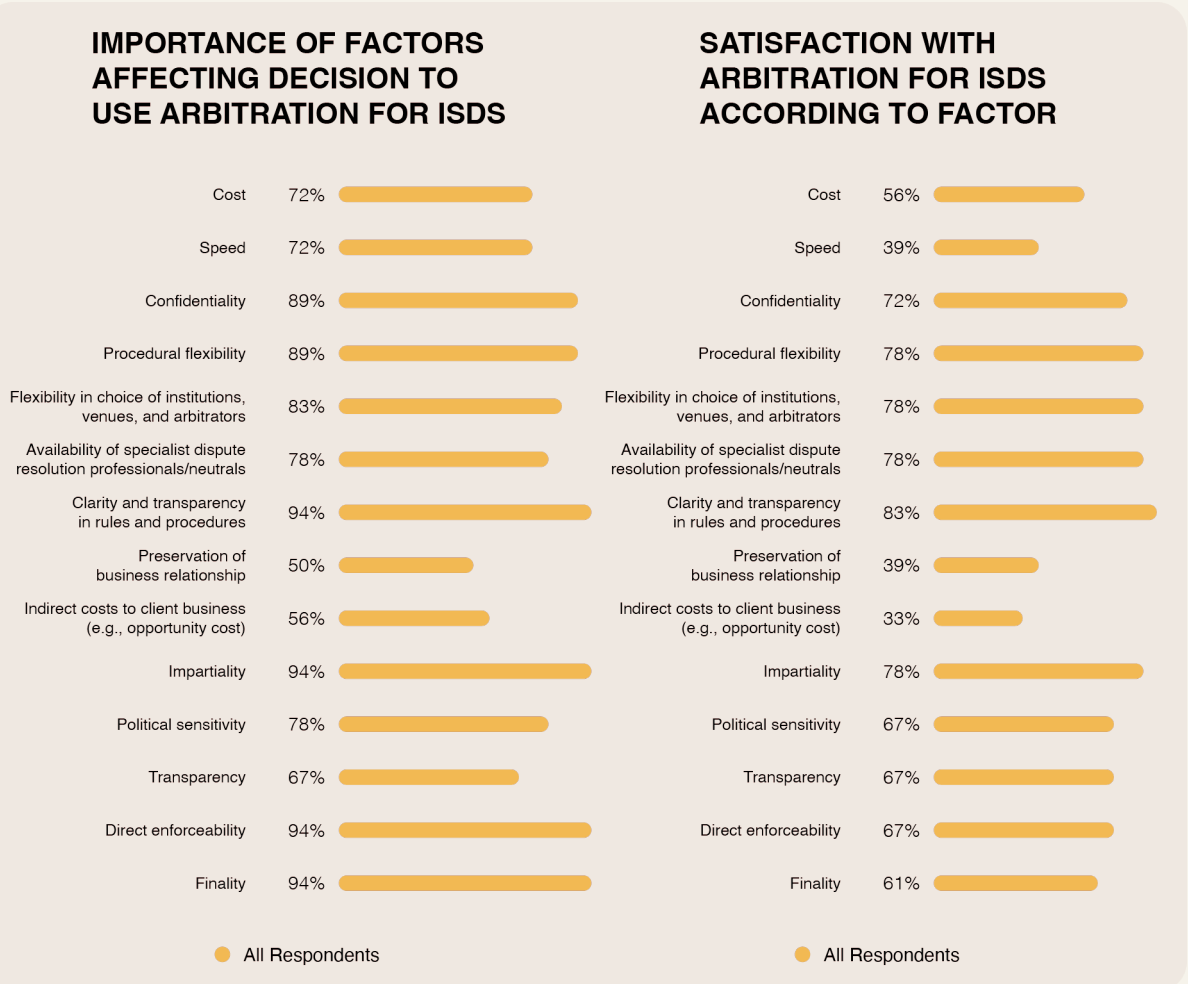
9.6 The top considerations in choosing a mechanism for ISDS were clarity and transparency in rules and procedure (42%), direct enforceability (37%) and finality (37%). While direct enforceability was one of the top considerations in the SIDRA Survey Final Report 2022, clarity and transparency in rules and procedures was ranked quite low (19%).[119] Clarity and transparency in rules and procedures is undoubtedly an important factor as it ensures the efficient conduct of proceedings and trust towards the process, which is crucial for disputes of this calibre. The increased importance of this factor may be explained by the rising awareness of the significance of rules and procedures, particularly following the adoption of the 2022 ICSID Rules and the emphasis on procedural rules reform in the UNCITRAL Working Group III.

9.7 Generally, ISDS awards also amount to massive sums of money and a significant measure of time and costs would also have been incurred during the process of obtaining such awards. Thus, it comes as no surprise that parties place high importance on the direct enforceability of arbitral awards. The same considerations of efficiency and effectiveness of ISDS mechanism may explain the importance of finality as a top factor in choosing an ISDS mechanism. This finding is also interesting in the context of discussions in the UNCITRAL Working Group III regarding ISDS reform options. One of the options suggested is the appellate mechanism, which aims at effectively creating an additional tier in the ISDS process.

9.8 Speed (32%) and cost (32%) remain as important factors in ISDS.

Factors Affecting the Decision to Use Arbitration for Investor-State Disputes and Respondents' Satisfaction with Arbitration

EXHIBIT 9.4



[119] SIDRA Survey Final Report at Exhibit 9.3.

9.9 The top four factors for using arbitration for investor-state disputes are: (1) the finality of the award, (2) the direct enforceability of the award, (3) the clarity and transparency in rules and procedure and (4) impartiality. 94% of respondents rated these factors equally.

9.10 Only 50% of respondents considered preservation of business relationship as 'important' or 'absolutely crucial'. In most cases, investor-state disputes end up in arbitration after the matter has escalated to a full-blown legal dispute and by that time parties have exhausted other more amicable means of dispute resolution. This could explain why the least number of respondents indicated preservation of business relationship as 'important' or 'absolutely crucial'. Alternatively, users do not expect to preserve business relationships once they turn to arbitration.

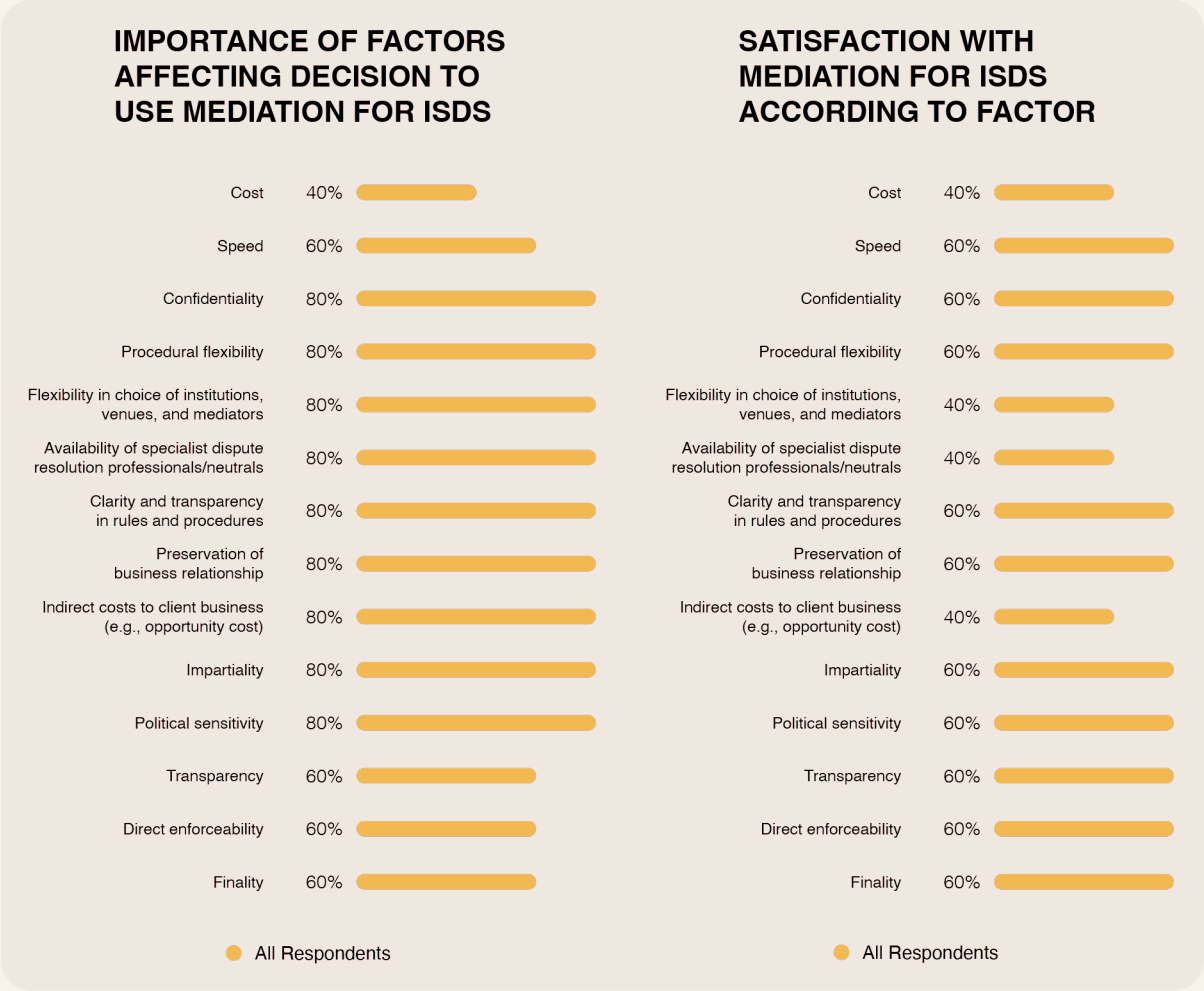
9.11 When it comes to the satisfaction of users with the same factors, 83% of respondents were satisfied with clarity and transparency in rules and procedure. This was followed by procedural flexibility, flexibility in choice of institutions, venues and arbitrators, availability of specialist dispute resolution professionals/ neutrals and impartiality – each rated at 78%.

9.12 A lower number of respondents were satisfied with the speed (39%) and costs (56%) in arbitration proceedings. In the SIDRA Survey Final Report 2022, 37% of respondents were satisfied with speed and cost of arbitration in ISDS, respectively.[120] The difference in relation to costs may reflect an adjustment in users' expectations in this regard. Nevertheless, it still indicates a notably lower satisfaction than with the other aforementioned factors.

[120] SIDRA Survey Final Report 2022 at Exhibit 9.4.

Factors Affecting the Choice to Use Mediation for Investor-State Disputes and Respondents' Satisfaction with Mediation

EXHIBIT 9.5



9.13 The top factors that respondents considered 'important' or 'absolutely crucial' for mediation for investor-state disputes were preservation of business relationships, indirect cost to client business (e.g., opportunity cost), confidentiality, procedural flexibility, flexibility in choice of institutions, venues and mediators, availability of specialist dispute resolution professionals/neutrals, clarity and transparency in rules and procedure, impartiality and political sensitivity. Mediation offers parties an opportunity to compromise and resolve their disputes creatively, as compared to arbitration or litigation. Therefore, in mediation, parties may be able to effectively preserve their business relationships and reduce indirect cost to client business.

9.14 It is worth noting that cost (40%) and speed (60%) were a lesser priority in terms of considerations.

9.15 In terms of satisfaction, respondents were satisfied with most of the factors ranked as important considerations in choosing mediation as a mechanism to resolve investor-state disputes, with the exception of flexibility in choice of institutions, venues and mediators, availability of specialist dispute resolution professionals/neutrals and indirect cost to client business (all at 40%).

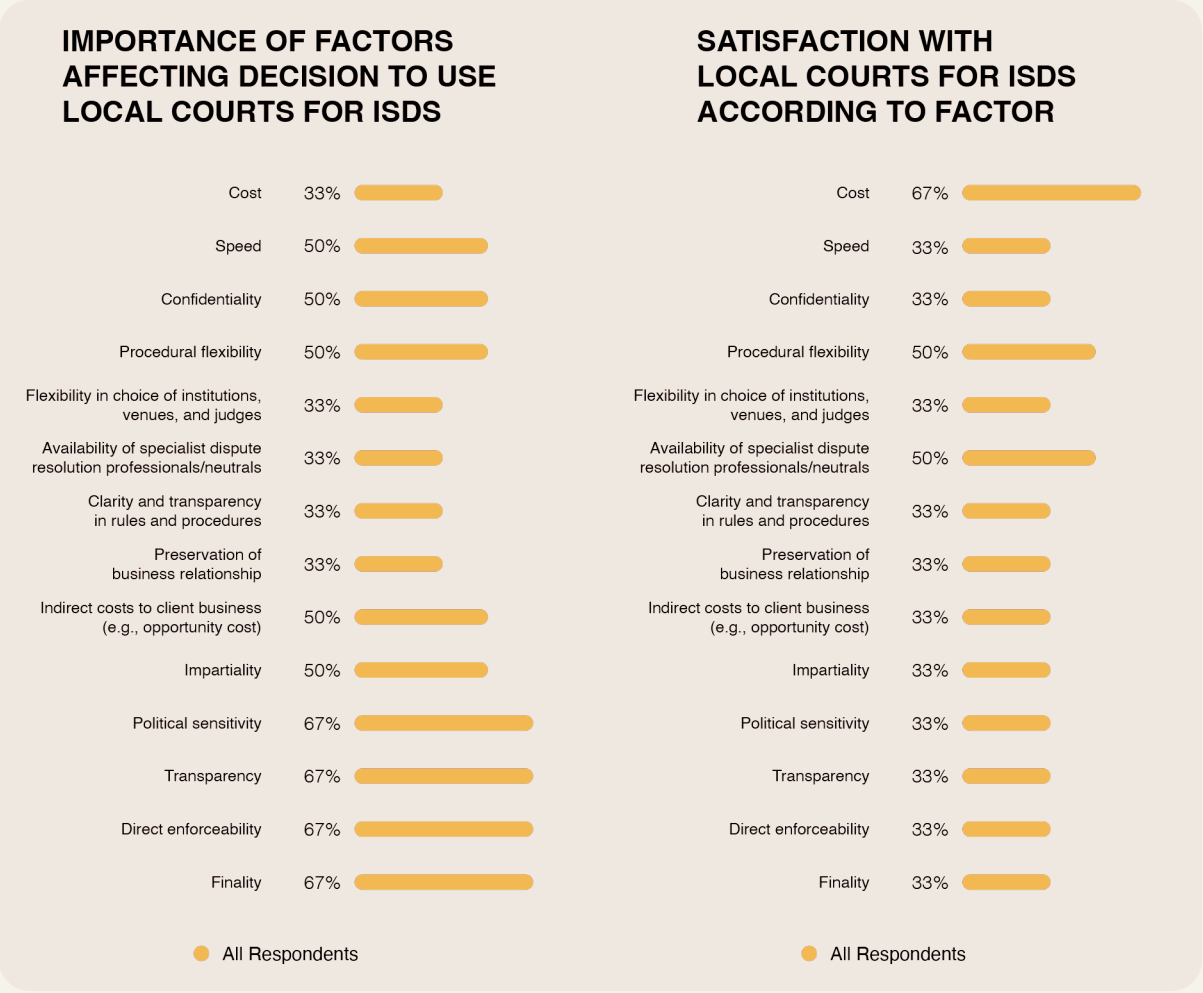
9.16 Respondents have also demonstrated high satisfaction with finality and direct enforceability of mediated settlement agreements (60%). This is a notable difference since the last iteration of the SIDRA Survey Final Report, where respondents rated the said two factors lower – at 20% only. [121]

[121] SIDRA Survey Final Report 2022 at Exhibit 9.5.

9.17 In the past two years since the last iteration of the SIDRA Survey, direct enforcement of mediated settlement agreements has been in the spotlight. The Singapore Convention on Mediation establishes a framework for recognition and direct enforcement of mediated settlement agreements including in investor-state disputes. It is conceivable that differences in findings reflect a changing attitude to the practice of investor-state mediation.

Factors Affecting the Decision to Use Local Courts for Investor-State Disputes and Respondents' Satisfaction with Local Courts

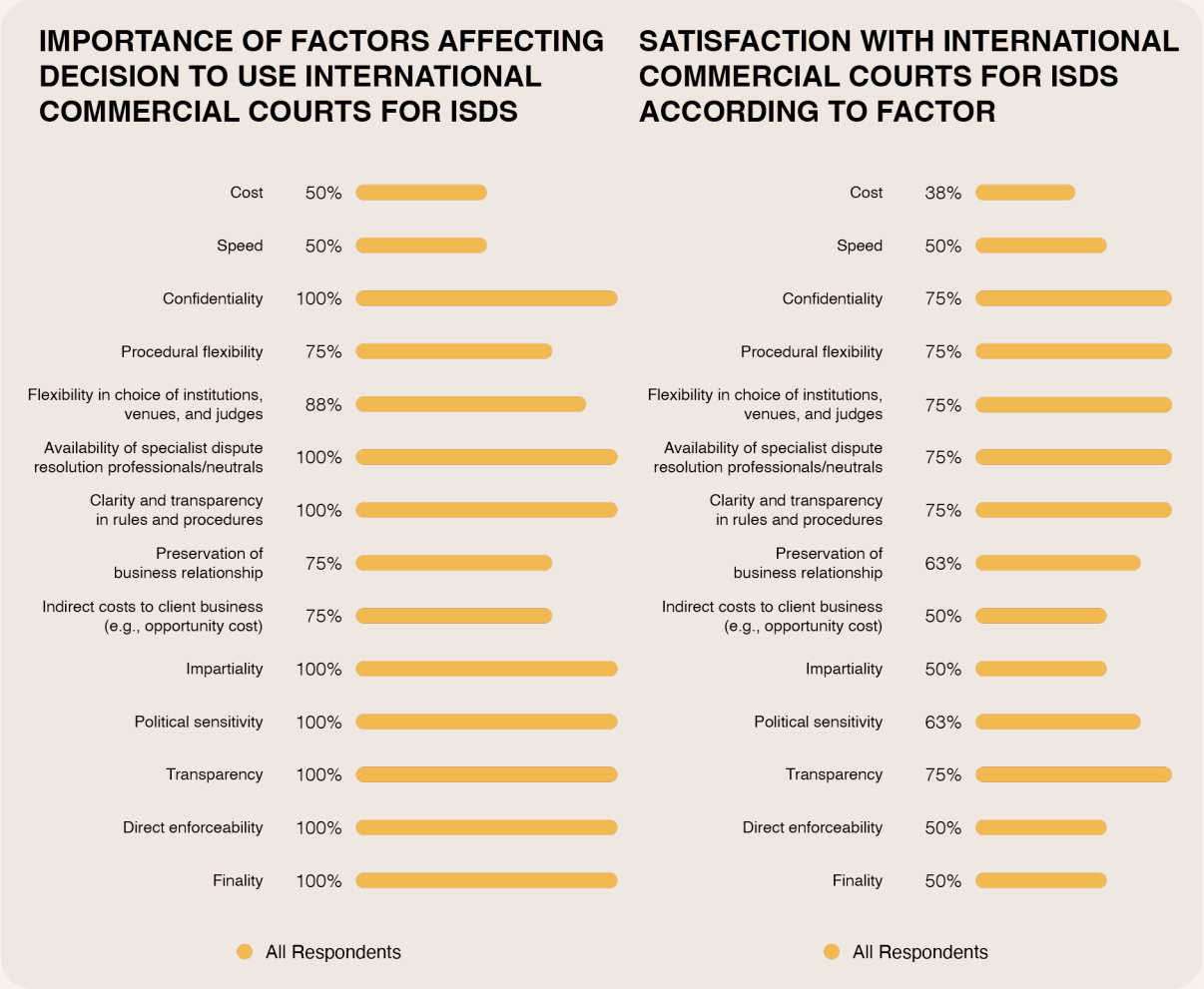
EXHIBIT 9.6



9.18 Decades of ISDS practice show that local courts are the least preferred dispute resolution mechanism for investor-state disputes due to a number of reasons, such as lack of specialised competence, delays and doubts as to the independence and impartiality of the judiciary. Exhibit 9.6 above shows that almost every single characteristic related to local courts resolving an investor-state dispute has been ranked as unsatisfactory. This is the reason why investor-state disputes are typically not resolved within local courts, particularly the local court of the respondent state. This is one factor that has given rise to the growth of international commercial courts.

Factors Affecting the Decision to Use International Commercial Courts for Investor-State Disputes and Respondents' Satisfaction with International Commercial Courts

EXHIBIT 9.7



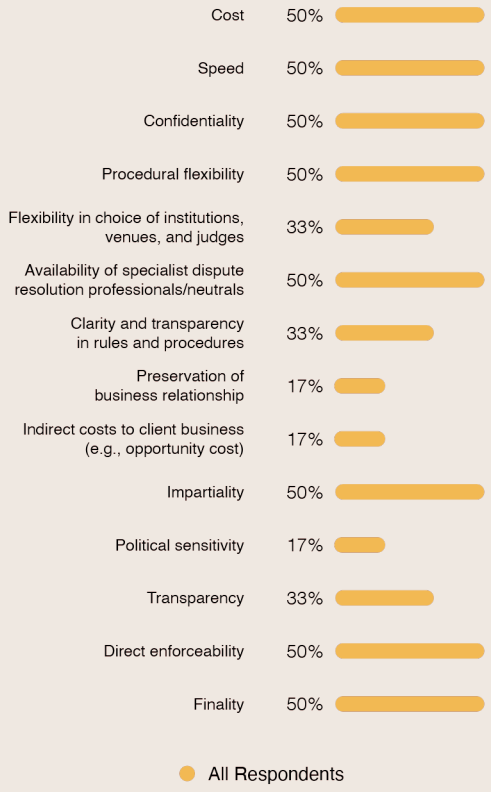
9.19 The Survey results show that the most important characteristics towards deciding whether to use international commercial courts for investor-state disputes include confidentiality, availability of specialist dispute resolution professionals/neutrals, clarity and transparency in rules and procedures, impartiality, political sensitivity, transparency, direct enforceability and finality. Fewer respondents found cost and speed as important.

9.20 Respondents were satisfied with many of the characteristics identified as important in choosing international commercial courts. It is interesting to note that respondents regarded impartiality, direct enforceability and finality as important features for international commercial courts in ISDS (all at 100%) but only 50% of all respondents were satisfied with the same.

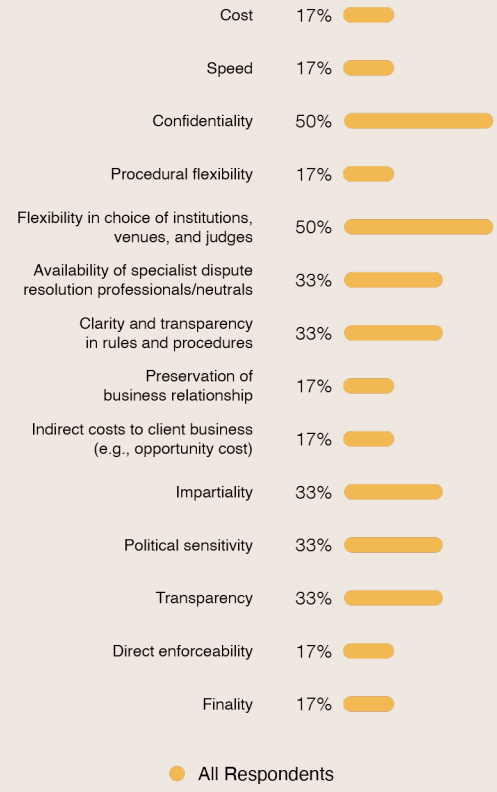
Factors Affecting the Decision to Use Mixed Mode Dispute Resolution for Investor-State Disputes and Respondents' Satisfaction with Mixed Mode Dispute Resolution

EXHIBIT 9.8

IMPORTANCE OF FACTORS AFFECTING DECISION TO USE MIXED MODE DISPUTE RESOLUTION FOR ISDS



SATISFACTION WITH MIXED MODE DISPUTE RESOLUTION FOR ISDS ACCORDING TO FACTOR

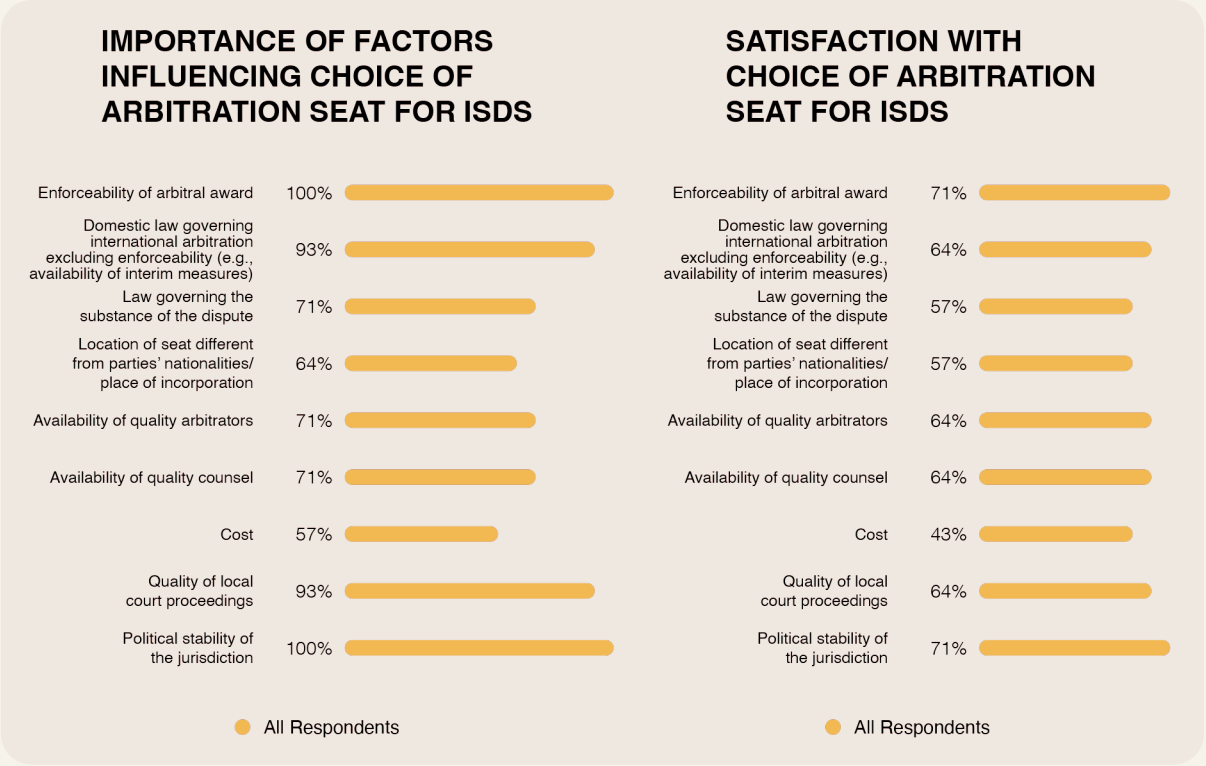


9.21 When comparing factors indicated to be important in choosing mixed mode procedures in ISDS and the level of satisfaction thereto, there are mixed results. 50% of respondents considered cost, speed, procedural flexibility, direct enforceability and finality important characteristics in choosing mixed mode procedure for ISDS, however, only 17% of those respondents expressed satisfaction with these factors. These results could be explained by the fact that the procedural framework for mixed mode mechanisms is not as developed as compared to arbitration or mediation in ISDS. Another consideration might be the perception that if a dispute is not resolved at the first stage of the mixed mode dispute resolution process, the overall costs and time spent in ISDS might be higher. As such, there is certainly room for further development and improvement of mixed mode mechanisms in ISDS for users to embrace the benefits of such a multi-tiered process.

9.22 The level of importance and satisfaction for confidentiality (importance and satisfaction both at 50%), transparency (importance and satisfaction both at 33%) and clarity and transparency in rules and procedures (importance and satisfaction both at 33%) aligned. Interestingly, 33% of respondents found flexibility in choice of institutions, venues and dispute resolution professionals as 'important' or 'absolutely crucial', but 50% of respondents were satisfied with the same.

Factors Affecting the Choice of Seat of Arbitration for Investor-State Disputes and Respondents' Satisfaction with Seat of Arbitration

EXHIBIT 9.9



9.23 The four most important factors in choosing an ISDS seat were enforceability of arbitral award (100%), political stability of the jurisdiction (100%), domestic law governing international arbitration (93%) and quality of local court proceedings (93%). A high number of respondents were satisfied with the same factors.

9.24 The enforceability of arbitral awards is an important consideration to ensure that the arbitration award obtained at the end of the proceedings is effective and is worth the time and costs spent. National courts at the seat of arbitration have an important supervisory authority to review applications for set aside of arbitral awards. The enforceability of arbitral awards is especially important since investor-state arbitral awards are usually huge in quantum.

9.25 The domestic law governing international arbitration would include, among others, the availability of interim measures, the confidentiality of arbitral proceedings and the powers of the court supervising arbitration. These are important considerations because they give parties different options in aid of the arbitration and, in some circumstances, can allow parties to take the necessary measures to preserve and/or protect their rights while arbitration proceedings are carried out.

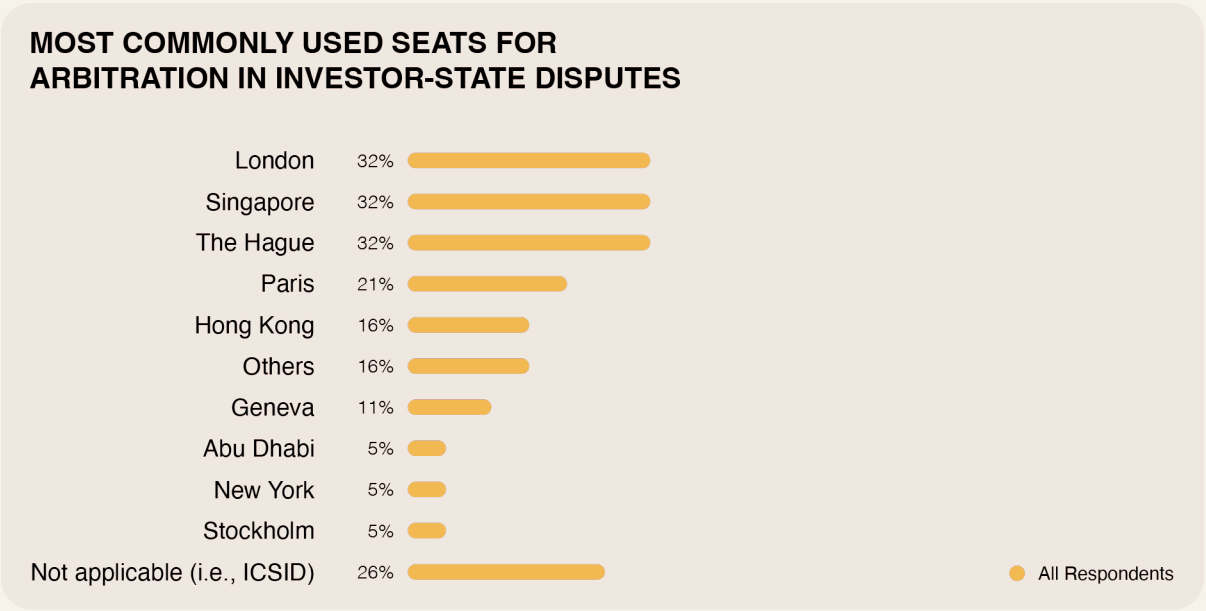
9.26 One of the main reasons why investors prefer to refer their investor-state matters to international arbitration over national courts is the lack of specific expertise and experience of national judiciaries. The same applies to cases of court assistance or intervention in the process of arbitration at the seat of the proceedings, which even though limited in scope, still entails the requisite specificity and importance for the pending arbitration matters.

9.27 A relatively lower number of respondents were satisfied with costs (43%), the law governing the substance of the dispute (57%) and the location of the seat different from parties' nationalities/places of incorporation (57%). The issue of the arbitral seat different from parties' natural or corporate nationality can be easily resolved by conducting actual proceedings at a place other than the seat of arbitration – a rule that is nowadays contained in almost all major arbitration rules.[122]

[122] See, for example, Article 18(2) of UNCITRAL Arbitration Rules, *available at* UNCITRAL Arbitration Rules, Expedited Arbitration Rules and Rules on Transparency in Treaty-based Investor-State Arbitration.

Most Commonly Used Seats for Arbitration in Investor-State Disputes

EXHIBIT 9.10



9.28 The top three seats for investor-state arbitrations were London, Singapore and the Hague (all at 32%). This is in line with the results of the SIDRA Survey Final Report 2022, where the same three places were rated as the most favoured arbitration seats.[123]

9.29 The seat of arbitration is particularly important as the seat determines the efficiency of the arbitration, the enforceability of arbitral award and the impartiality and independence of arbitration proceedings. These features are common between the Hague, London and Singapore.

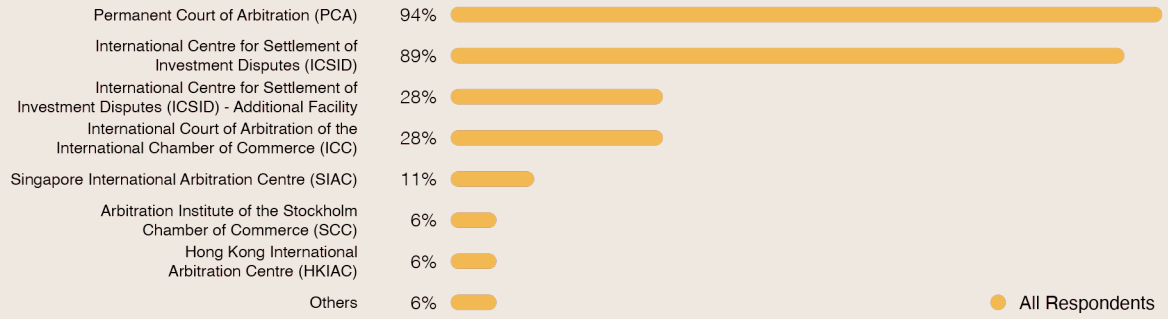
9.30 26% of respondents noted that they do not have a most commonly used international arbitration seat to resolve investor-state disputes. This is because they used options such as arbitration under the ICSID Convention, where arbitrations are self-contained.

[123] SIDRA Survey Final Report 2022 at Exhibit 9.8.

Most Commonly Used International Arbitration Institutions in Investor-State Disputes

EXHIBIT 9.11

MOST COMMONLY USED INTERNATIONAL ARBITRATION INSTITUTIONS IN INVESTOR-STATE DISPUTES



9.31 The PCA (94%) and ICSID (89%) were the most commonly used international arbitration institutions in ISDS. It is not surprising that ICSID is highly ranked as it has specific rules that cater for such specialised disputes and a reputation for handling ISDS cases with care and precision. ICSID also has the support of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States or the ICSID Convention to, among other things, enforce arbitral awards and to ensure that these awards are final and binding.[124]

9.32 The PCA's increasing popularity can be attributed to the hearing facilities and logistical support that are not just available in the Hague, but at various locations around the world. It has offices in Vienna, Buenos Aires, Mauritius, Singapore and Ha Noi.

9.33 As compared to the findings of the SIDRA Survey Final Report 2022 where the two institutions were rated at the same level (83% each),[125] respondents demonstrated a slightly higher preference for the PCA over ICSID. This outcome might be explained by the fact that some states, including Venezuela, who have been subject to a number of arbitration cases, either never signed ICSID Convention or recently withdrew from the Convention. Bypassing the restrictions imposed by Article 25 of ICSID Convention, including in cases of dual nationality issues, might be another reason for favouring other arbitration rules, proceedings under which are administered by the PCA, such as the UNCITRAL Arbitration Rules.

[124] ICSID Convention, Article 53.
[125] SIDRA Survey Final Report 2022 at Exhibit 9.10.

Satisfaction with Enforcement of Outcomes in Investor-State Disputes

EXHIBIT 9.12

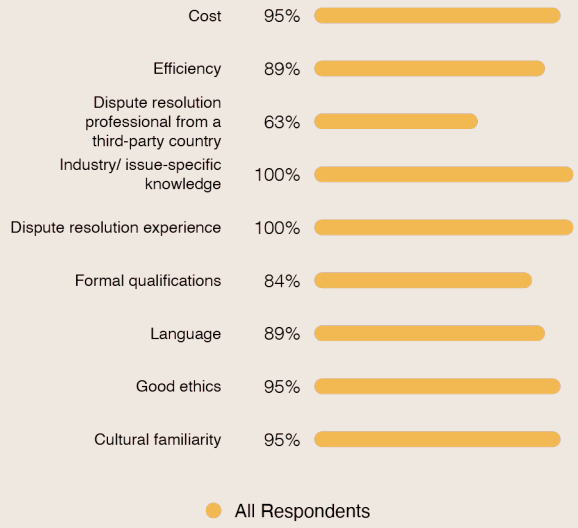
SATISFACTION WITH ENFORCEMENT OF OUTCOMES IN INVESTOR-STATE DISPUTES

9.34 When asked if they were satisfied with the enforcement of outcomes in ISDS, 37% of respondents indicated that they were 'somewhat satisfied' and 32% of respondents rated the same as 'neutral'. In the SIDRA Survey Final Report 2022, 48% of respondents were 'somewhat satisfied' and 38% were 'neutral' about their satisfaction with enforcement of outcomes in ISDS.[126]

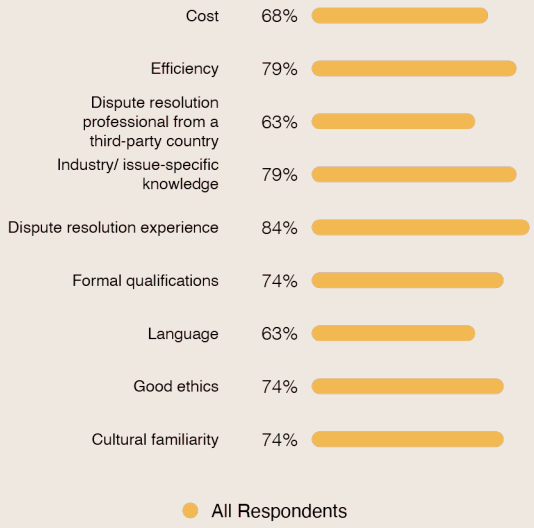
Factors Affecting the Choice of Dispute Resolution Professionals and Satisfaction with Dispute Resolution Professionals

EXHIBIT 9.13

IMPORTANCE OF FACTORS AFFECTING THE CHOICE OF DISPUTE RESOLUTION PROFESSIONALS IN ISDS



SATISFACTION WITH CHOICE OF DISPUTE RESOLUTION PROFESSIONALS IN ISDS



9.35 The top two 'absolutely crucial' or 'important' factors that respondents considered when choosing a dispute resolution professional for their investor-state disputes were industry/ issue-specific knowledge and dispute resolution experience (both at 100%). This was followed by cost, good ethics and cultural familiarity (all at 95%). It is unsurprising that these were the highest ranked factors that respondents looked into when choosing a dispute resolution professional as investor-state disputes usually involve huge sums of money and are matters of public interest.

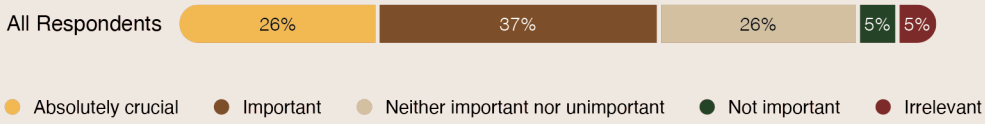
[126] SIDRA Survey Final Report 2022 at Exhibit 9.11.

9.36 The importance levels of the aforementioned factors were not entirely matched by the respective satisfaction levels. In any event, the level of satisfaction of respondents is still significant. Respondents were most satisfied with the dispute resolution experience of their chosen dispute resolution professional (84%). This was followed by industry/issue-specific knowledge (79%), efficiency (79%), formal qualifications (74%), good ethics (74%) and cultural familiarity (74%). As for cost, 68% of respondents were satisfied with the same.

Importance of Diversity in the Selection of Dispute Resolution Professionals in ISDS

EXHIBIT 9.14

IMPORTANCE OF DIVERSITY IN SELECTION OF A DISPUTE RESOLUTION PROFESSIONAL IN ISDS
(i.e., gender/ age/ nationality/ ethnicity/ type of legal system or background)



Absolutely crucial · Important · Neither important nor unimportant · Not important · Irrelevant

9.37 The largest number of respondents considered diversity 'important' (37%). 26% of respondents indicated that diversity was 'absolutely crucial' (26%) in their selection of a dispute resolution professional. Interestingly, 26% also said that diversity was 'neither important nor unimportant'.

Limited Diversity of Dispute Resolution Professionals in ISDS Disputes

EXHIBIT 9.15

RESPONDENTS WERE ASKED TO RATE HOW MUCH THEY AGREED WITH THE FOLLOWING STATEMENT:
There is limited diversity in the choice of dispute resolution professionals available to me for ISDS disputes.

Strongly agree · Somewhat agree · Neither agree nor disagree · Somewhat disagree · Strongly disagree

9.38 Majority of respondents agreed with the statement "there is limited diversity in the choice of dispute resolution professionals available to me for ISDS disputes". 37% of respondents strongly agreed with the statement, while 42% somewhat agreed with the same.

Extent that Limited Diversity Impacted Satisfaction with Outcomes of ISDS

EXHIBIT 9.16

RESPONDENTS WERE ASKED TO RATE

To what extent limited diversity in the choice of dispute resolution professionals impacted their satisfaction with the outcomes of ISDS

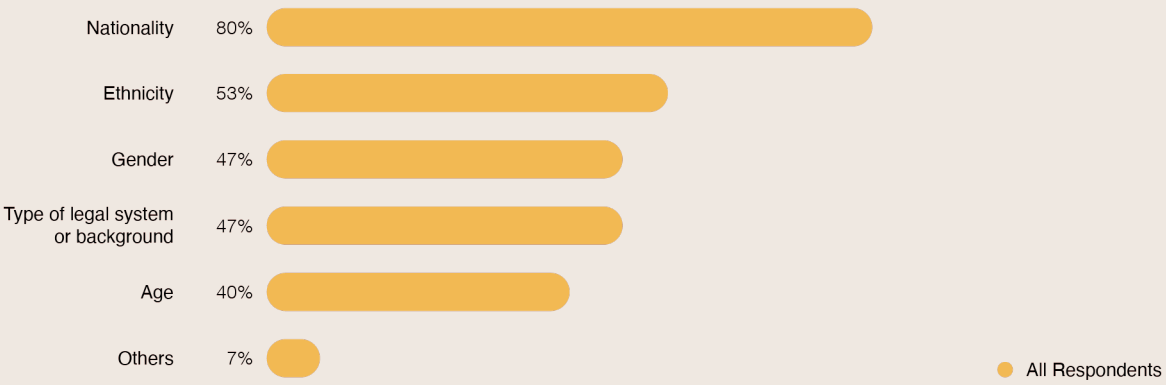
To a great extent · To a moderate extent · To some extent · To a small extent · Not at all

9.39 Respondents were also asked about the extent to which limited diversity in the choice of dispute resolution professionals impacted their satisfaction with outcomes of ISDS. The largest number of respondents thought that it affected their satisfaction to some extent (40%) and some indicated that it affected their satisfaction to a moderate extent (33%). 7% of respondents thought limited diversity affected their satisfaction to a great extent. The same percentage of respondents thought that it did not at all affect their satisfaction with the outcomes of ISDS.

Improving Diversity in Choice of Dispute Resolution Professionals

EXHIBIT 9.17

IMPROVING DIVERSITY IN CHOICE OF DISPUTE RESOLUTION PROFESSIONALS

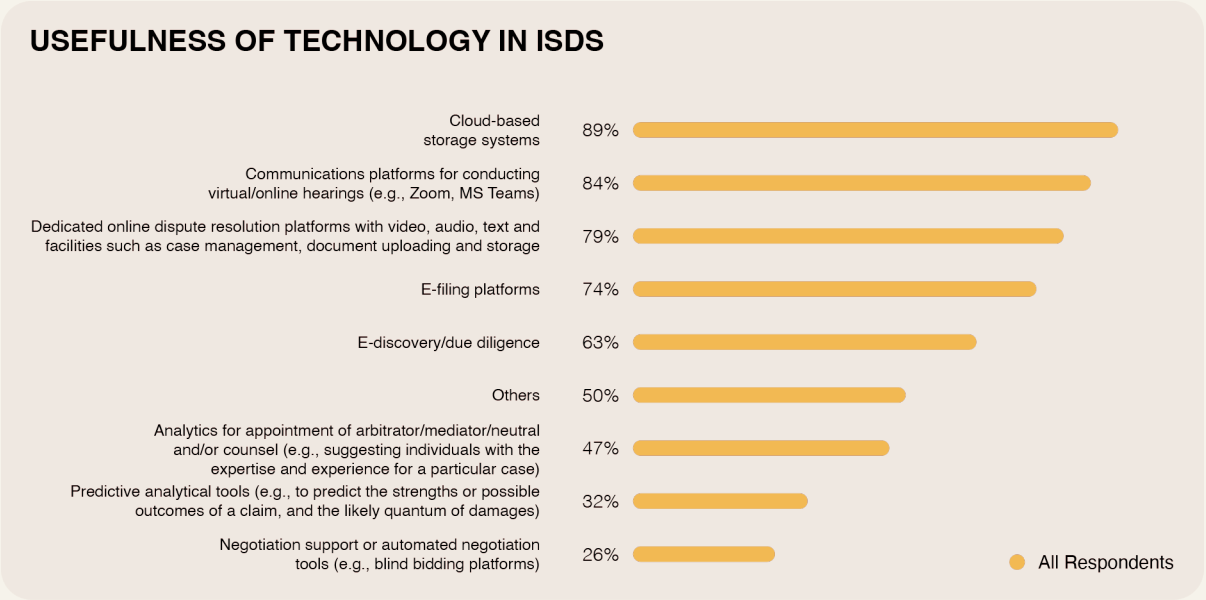


9.40 Respondents were asked in which aspects they would like to see more diversity in the choice of dispute resolution professionals in ISDS. A majority indicated that they would like to see more diversity in nationality (80%) and ethnicity (54%) of available dispute resolution professionals.

9.41 This was followed by gender (47%), type of legal system or background (47%) and age (40%).

Usefulness of Technology in Supporting an ISDS Procedure

EXHIBIT 9.18



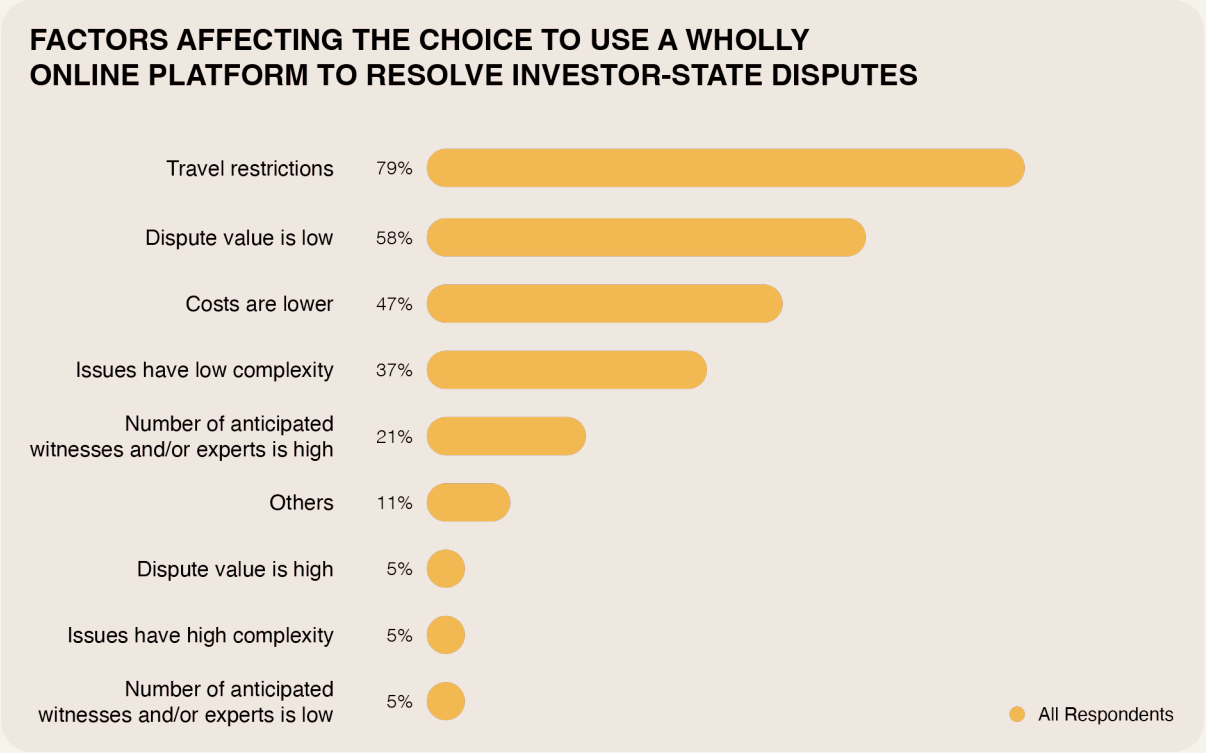
9.42 The most number of respondents indicated that cloud-based storage systems (89%) were useful technology in supporting ISDS procedures. This is unsurprising given that investor-state disputes tend to cover large infrastructure projects that have voluminous records. Cloud-based storage systems make it easier for parties to share documents with internal teams, opposing counsel and with arbitral tribunals or other dispute resolution neutral.

9.43 Communications platforms for conducting virtual/online hearings was rated as the second most useful technology in supporting ISDS proceedings (84%). This was followed by dedicated online dispute resolution platforms with video, audio, text and facilities such as case management, document upload and storage (79%), e-filing platforms (74%) and e-discovery/due diligence (63%).

9.44 Only 26% of respondents found negotiation support or automated negotiation tools such as blind bidding platforms useful in supporting an ISDS procedure. This may be because parties to investor-state disputes prefer to directly negotiate with one another as such disputes are imbued with public interest. Alternatively, it may simply be a matter of unfamiliarity with such technology in investor-state disputes.

Factors Affecting the Choice to Use a Wholly Online Platform to Resolve Investor-State Disputes

EXHIBIT 9.19



9.45 In this post-pandemic period, travel restrictions remain to be the most popular reason for choosing a wholly online platform to resolve investor-state disputes (79%). In the SIDRA Survey Final Report 2022, 71% of respondents ranked travel restrictions as a factor that would make them choose a predominantly virtual platform to resolve investor-state disputes.[127] This means that the consequences of the global pandemic remain to be strong.

9.46 More than half of respondents indicated that they would choose a wholly online platform where the dispute value is low (58%), which suggests that a significant percentage of the respondents are keen to save costs on small disputes with the help of technology by conducting proceedings virtually. Where the dispute value is high, parties are less likely to choose a wholly online platform to resolve the investor-state dispute (5%).

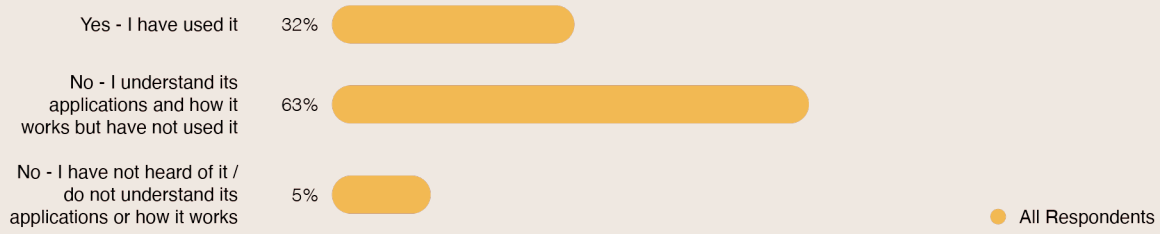
9.47 47% of respondents raised concerns over the costs of the proceedings as a factor that would make them choose a wholly online platform to resolve ISDS disputes. Conducting the entire investor-state dispute online would save on the large amount of costs which would otherwise be incurred in a physical hearing, which include travel expenses for dispute resolution professionals and witnesses, and rental of facilities for in-person proceedings.

[127] SIDRA Survey Final Report 2022 at Exhibit 9.12.

Use of Third-Party Funding in ISDS

EXHIBIT 9.20

RESPONDENTS WERE ASKED IF THEY HAVE USED THIRD-PARTY FUNDING FOR ISDS

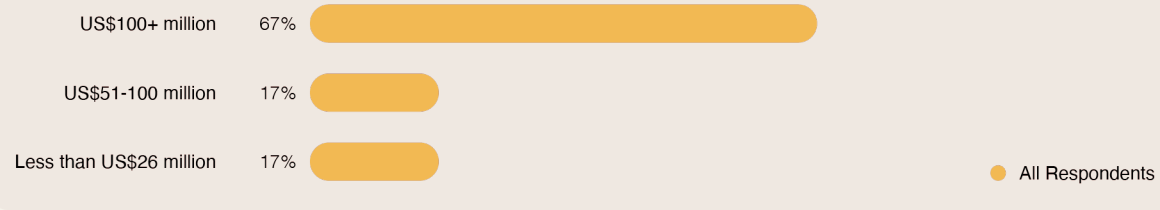


9.48 A majority of respondents indicated that they have not used third-party funding in ISDS but understand how it works (63%). Some respondents stated that they have used third-party funding in ISDS (32%). Only 5% of respondents said that they have not heard of third-party funding and/or do not understand its applications or how it works. This suggests that more and more users of ISDS are becoming aware of how third-party funding can be utilised in an investor-state dispute.

Average Value of Each Dispute where Third-Party Funding was Used

EXHIBIT 9.21

RESPONDENTS WERE ASKED WHAT WAS THE AVERAGE VALUE OF EACH DISPUTE IN WHICH THIRD-PARTY FUNDING WAS USED

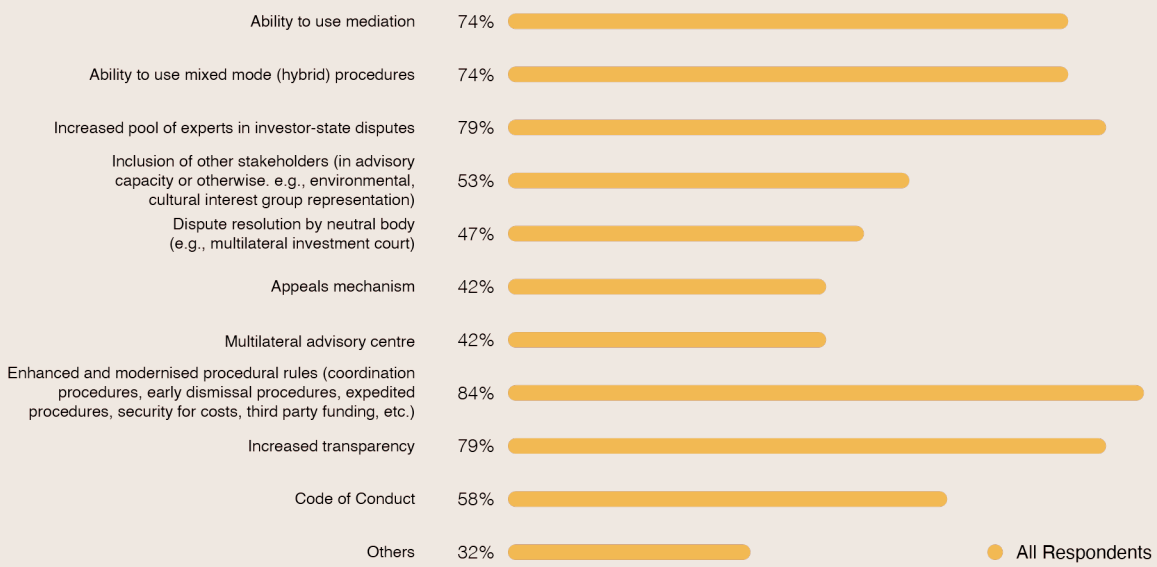


9.49 A majority of respondents indicated that the average value of the disputes in which third-party funding was used was more than US$100 million (67%). Some disputes where third-party funding was used were valued at US$51-100 million and some were less than US$26 million (both at 17%).

Developments That Would Improve the Dispute Resolution Procedure for Investor-State Disputes

EXHIBIT 9.22

DEVELOPMENTS THAT WOULD IMPROVE THE DISPUTE RESOLUTION PROCEDURE FOR INVESTOR-STATE DISPUTES



9.50 Respondents indicated that an enhanced and modernised procedural rules would be useful in improving the dispute resolution procedure for ISDS (84%). Recently, there has been significant moves to revise arbitration rules that govern investor-state disputes.

9.51 Respondents rated increased pool of experts and increased transparency as the next most useful developments in ISDS, each rated at 79%. In the SIDRA Survey Final Report 2022, 76% of respondents thought that an increased pool of experts in investor-state disputes would be a development that would improve ISDS.[128] Having an increased pool of experts would be useful in reinforcing the legitimacy of ISDS as it would ensure more diverse opinions in investment arbitration. An increased pool of experts would help in ensuring parties have more options for dispute resolution professionals, including expert witnesses. With respect to transparency, the changes and reforms in treaty practice and procedural rules in the past decade, especially the adoption of 2014 UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, have significantly increased transparency in investor-state matters. However, more needs to be done to change dispute settlement culture as well as users' behavior and perceptions in favour of greater transparency in ISDS.

9.52 A significant number of respondents have also considered the use of mediation and mixed mode (hybrid) procedures (both at 74%) as a desirable development in ISDS. In the SIDRA Survey Final Report 2022, 62% of respondents thought that the use of mediation and the ability to use mixed mode (hybrid) procedures would improve the dispute resolution procedure for ISDS.[129] The increase in the number of respondents suggesting that mediation and mixed mode procedures could be helpful may reflect the growing number of users who are now more aware of how mediation and mixed mode procedures can work in ISDS and its related benefits.

[128] SIDRA Survey Final Report 2022 at Exhibit 9.13.
[129] *Id.*

9.53 It is also interesting to note that only 42% of respondents endorsed instituting an appeals mechanism and setting up an advisory centre for ISDS as useful developments. This could conceivably reflect concern that such mechanisms might further prolong proceedings and lead to increased delay and costs. For now at least, the potential medium to long-term advantages of harmonising ISDS case law and providing greater predictability of outcomes seem to be insufficient to overcome the potential hit to the pocketbook and the cognitive bias towards maintaining the status quo.

Point of Interest

In the last decade, substantial shifts have taken place in investor-state dispute resolution.

One development is ICSID's significant revision of its rules and procedures in 2022, including its Arbitration Rules. The main changes introduced in the Arbitration Rules include ensuring greater efficiency and effectiveness of arbitration procedures, encouraging the use of technology to make procedures less paper-intense, enhanced early dismissal procedures, procedural tools to deal with multiple disputes, third-party funding and expedited procedures. The UNCITRAL Working Group III, as part of its mandate on ISDS reform, is currently working on draft provisions on procedural and cross-cutting issues in ISDS, which are intended to be included in existing or future international investment agreements. The draft provisions address important issues such as the use of mediation in ISDS, shareholder claims and counterclaims, limitation period, early dismissal of cases, security for costs, third party funding and assessment of damages and compensation.[130]

Some states have also raised concerns regarding the potential causes of lack of impartiality and independence, and of the perception thereof, of arbitrators in ISDS. Some of these issues include repeat appointments, arbitrators having a reputation of being pro-State or pro-investor, conflict of interest and double-hatting, the practice of individuals of switching roles as arbitrator, counsel or expert in different ISDS proceedings.[131] A number of states have also stated that there is a lack of consistency, coherence and predictability of arbitral awards. Some arbitral tribunals have managed to treat similar treaty provisions in vastly different ways. To deal with these issues, the European Union has proposed the creation of a multilateral investment court to serve as a standing body to settle international investment disputes and the creation of an appellate mechanism to ensure correctness and certainty in treaty interpretation. The EU has also concluded trade agreements that include an investment court system with Canada and Vietnam. It has also reached an "agreement in principle" with Mexico on a new EU-Mexico Association Agreement. The "agreement in principle" also includes provisions regarding a permanent investment court, as well as a six-member appeal tribunal.[132]

[130] Possible reform of investor-State dispute settlement (ISDS): Draft provisions on procedural and cross-cutting issues, *available at* https://undocs.org/en/A/CN.9/WG.III/WP.231.

[131] Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-sixth session, *available at* https://undocs.org/en/A/CN.9/964.

[132] More on the EU-Mexico Agreement in Principle can be found here: EU-Mexico Trade Agreement, *available at* https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mexico/eu-mexico-agreement_en.

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