

FACTS AND FIGURES

# COSTS AND DURATION: 2013-2016



The London Court of International Arbitration



## ABOUT THE LCIA

### **The LCIA is one of the world's leading international institutions for commercial dispute resolution.**

The LCIA provides efficient, flexible and impartial administration of arbitration and other ADR proceedings, regardless of location and under any system of law.

The LCIA provides access to the most eminent and experienced arbitrators, mediators and experts, with diverse backgrounds, from a variety of jurisdictions, and with the widest range of expertise and industry experience. The LCIA's dispute resolution services are available to all contracting parties, with no membership requirements.

In order to ensure cost-effective services, the LCIA's administrative charges and the fees charged by the arbitrators it appoints are not based on the value of the dispute. Instead, a fixed registration fee is payable with the Request for Arbitration, and the arbitrators and LCIA apply hourly rates for services.

In addition to its dispute administration services, the LCIA conducts a worldwide program of conferences, seminars, and other events of interest to the arbitration and ADR community, operates a membership program for over 2,200 members from over 80 countries, and sponsors the Young International Arbitration Group (YIAG), a group for members of the arbitration community aged 40 or younger, with over 10,000 members.

### **Cost and time efficient arbitration**

- This report builds on the 2015 LCIA costs and duration report, the first report from a leading arbitral institution to provide actual costs and duration figures for transparent analysis.
- For this second, updated, report, the LCIA has engaged The Brattle Group (**Brattle**) to ensure that the statistics are consistent and adhere to best practice, and will be readily comparable to other institutions should they also provide their data to Brattle.
- The longer time period covered by this report has allowed for more detailed analysis, such as time to award figures.
- As cases get bigger, the incremental duration increase is attributable to the parties. The time required by tribunals to produce an award does not increase.
- On average, arbitrators take 3 months to produce awards.
- An average LCIA arbitration lasts a total of 16 months and costs USD 97,000.
- Cases with amounts in dispute under USD 1 million are swiftly resolved, with a median duration of 9 months, and over 70% decided within 12 months.
- Three-member tribunals tend to handle larger cases. Three-member tribunal cases are not, however, proportionally more expensive or lengthy.
- The introduction of LCIA Arbitration Rules (2014) Article 15.10 appears to have triggered or at least facilitated faster production of final awards.
- LCIA arbitration costs are lower than the estimated costs of the compared institutions across all amounts in dispute. This difference is especially notable for larger cases: cases with less than USD 1 million in dispute are on average 14% more expensive at the compared institutions; cases with over USD 100 million in dispute are on average 225% more expensive.
- LCIA tribunal fees are on average 50% less than the tribunal fees for the compared institutions; administrative charges are on average 40% less.

## INTRODUCTION

In 2015 the LCIA released the first costs and duration analysis conducted by a leading arbitral institution. The analysis was released to promote transparency, to ensure that discussions regarding costs and duration were conducted using actual data rather than impressions, and ultimately to allow users to make informed choices.

The LCIA led the charge in releasing actual costs and duration data partly because the LCIA charges most of its arbitrator fees and administrative charges at an hourly rate. As a result, users are not able to obtain an estimate of arbitration costs on the basis of the amount in dispute, as they can with institutions that operate on an ad valorem system and provide cost calculators. However, by providing actual data the LCIA was able to give a greater insight into costs, and show the cost effectiveness of LCIA arbitration in comparison with institutions operating on an ad valorem basis.

For this updated costs and duration report, the LCIA has engaged consulting firm The Brattle Group to update the LCIA's statistics, and provide additional comfort to users about the accuracy and robustness of the data. The report presents statistics in relation to all cases administered under the LCIA Rules that reached a final award in the four years between 1 January 2013 and 31 December 2016. The larger dataset has allowed for a more detailed analysis, and has revealed a trend towards cheaper and faster arbitration at the LCIA, even as amounts in dispute continue to increase.

Since 2015, various institutions have seen the value in providing actual data about their caseloads, and have answered the LCIA's call to publish reports setting out costs and duration statistics for their own cases. However, a direct and comprehensive comparison between institutions cannot presently be conducted, as the reports provide insufficient data and information about their methodology to account for differences in caseload between institutions.

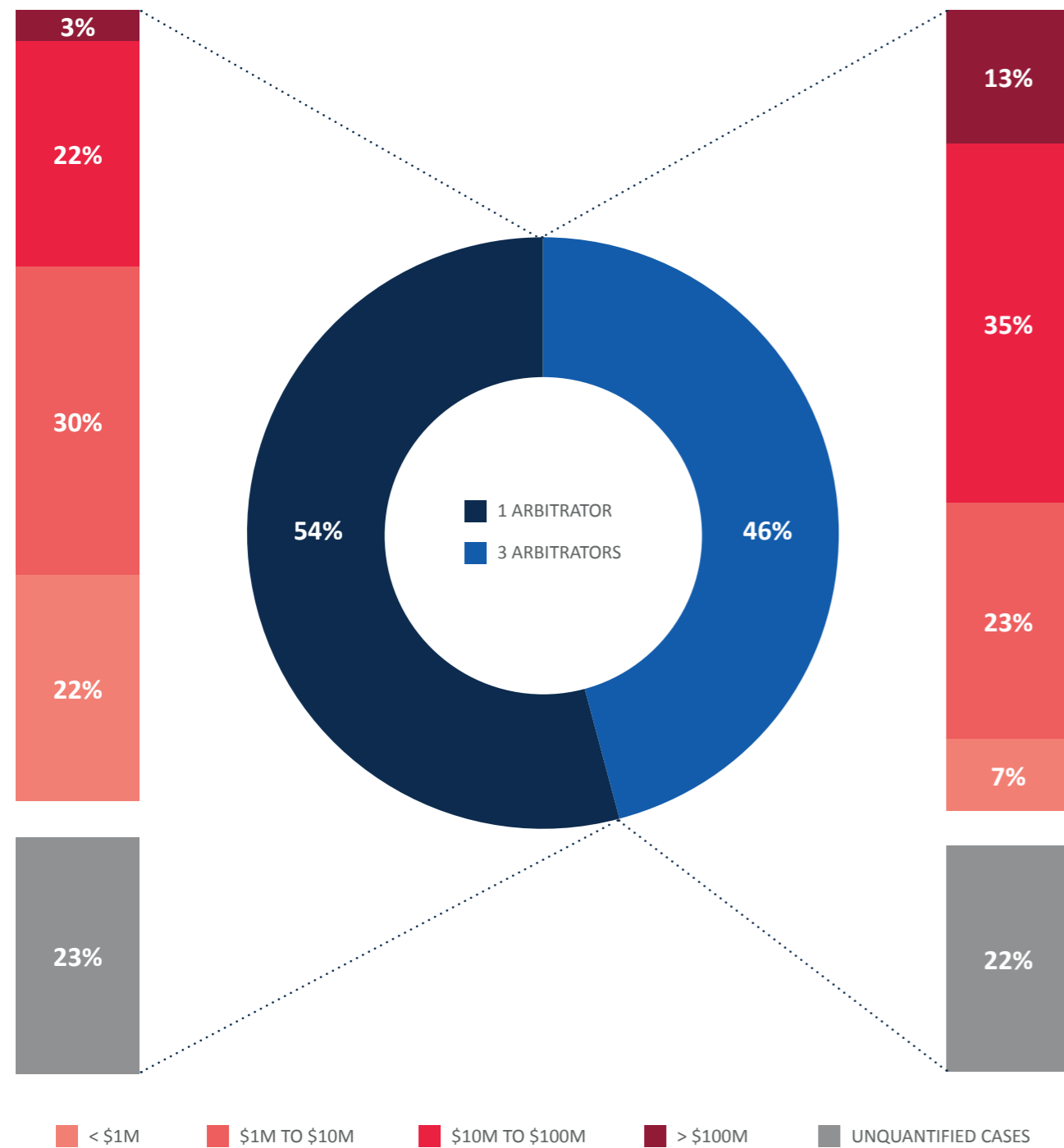
By involving Brattle as an independent party the LCIA hopes to improve further the quality of the discussion about costs and duration. To this end, the LCIA invites other institutions to use Brattle as a conduit to create a neutral platform for discussion of users' needs and preferences. Such a discussion is opportune given the recent adoption of fast-track proceeding mechanisms by several institutions.

Until such time, and using the methods encouraged by other institutions to arrive at cost estimates, this report provides tools to users by performing a comparison between the actual costs of cases at the LCIA and the estimated costs that would have been incurred at other institutions for those same cases. The question that this comparison answers is therefore simply: were users better off agreeing to arbitration administered by the LCIA under the LCIA Rules than they would have been had they gone to a different institution? In the vast majority of cases, the answer is a resounding yes.

# THE CASES

The statistics presented in this report relate to all cases administered under the LCIA Rules that reached a final award in the four years between 1 January 2013 and 31 December 2016, a total of 224 cases. Of these, 171 had a quantified amount in dispute, while 53 were unquantified.

## CASES BY NUMBER OF ARBITRATORS AND AMOUNT IN DISPUTE



As set out in the **LCIA's Facts and Figures – 2016: A Robust Caseload Report**, there are fluctuating preferences for one and three-member tribunals, which is reflected in the relatively even split between one and three-member tribunals over the four years reviewed.

In terms of amounts in dispute, there is a clear tendency for larger amounts in dispute to be dealt with by three-member tribunals, with over 60% of quantified three-arbitrator cases having an amount in dispute over USD 10 million, compared to just over 30% of sole-arbitrator cases.

The total of all amounts in dispute for the 171 quantified cases is USD 8.1 billion. As discussed in the costs section below, the LCIA calculates the majority of tribunal and administrative fees by reference to time spent. This is different from the other major institutions considered in this report, which calculate tribunal and administrative fees based on the amount in dispute. As the exact value does not dictate the total fees in LCIA arbitrations, the LCIA does not force parties to be as specific about the monetary value of their claims as in value-based institutions. Correspondingly, the LCIA caseload also has a significant number of unquantified claims, especially in comparison with these other institutions.

# DURATION

## Methodology

The **total duration** of an LCIA case is the full time between the LCIA registering a case (typically on the day a Request for Arbitration is received by the LCIA) and the final award. This period is not artificially shortened by recording only from the date of arbitrator appointment, and is not corrected for stay periods, whether formal or informal.

For this updated analysis, a “time to award” statistic is also provided. The **time to award** is the time between the parties’ final submissions on the merits of the dispute (whether written or by hearing) and the final award dealing with the merits of the dispute.<sup>1</sup> This is important information to provide as it allows for a much more sophisticated analysis. Arbitration is a process in which parties and arbitrators each play a role. Knowing what contributions each makes to the overall duration allows for informed discussion about whether remedial steps are necessary.

Mean figures are higher than median figures for almost all subsets of the data, indicating a small number of unusually lengthy cases. Accordingly, median figures are used throughout the analysis to minimise the skewing effects of outliers and provide a truer picture of the duration of a typical LCIA case.

## Analysis

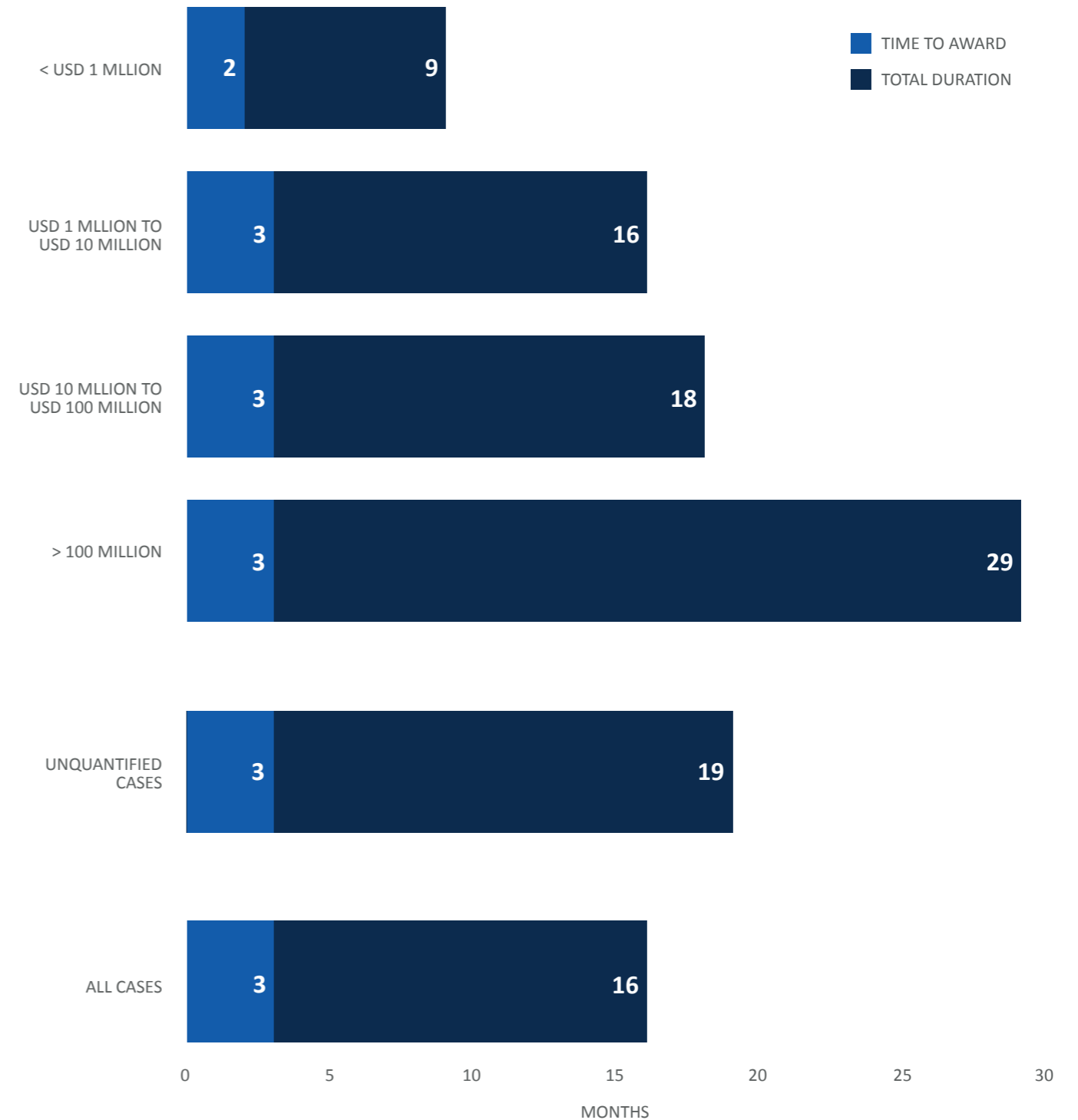
Across all 224 cases, the median total duration is sixteen months, and the median time to award is three months. In other words, an average LCIA arbitration lasts sixteen months, three months of which is the time taken by the tribunal to issue an award once the parties have completed their submissions.

Cases with larger amounts in dispute typically have a longer duration. This may be because the amount in dispute is a proxy for the factual and legal complexity of the case. Conversely, cases with smaller amounts in dispute tend to be resolved far quicker: over 70% of cases with an amount in dispute of below USD 1 million reach a final award within a year.

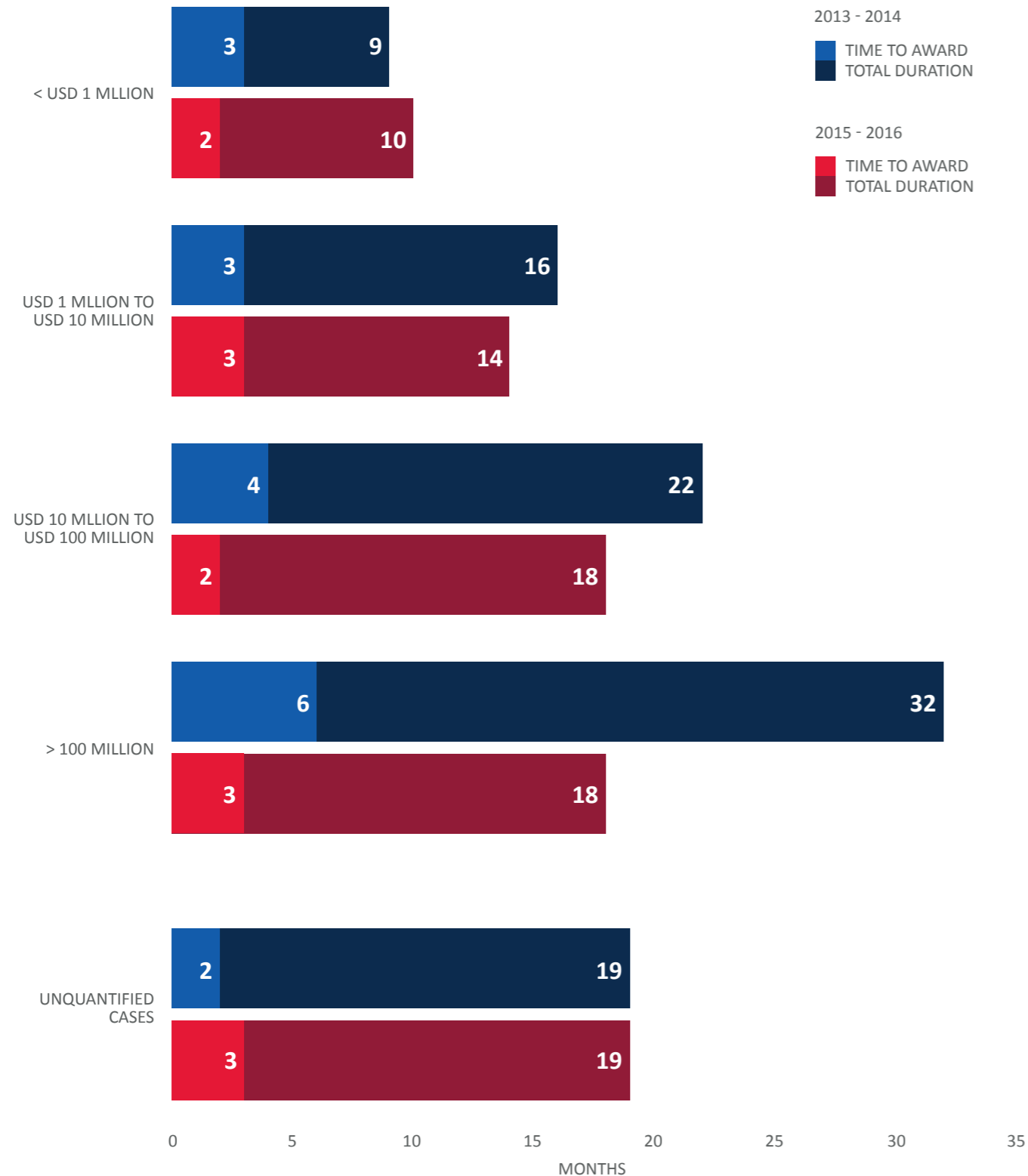
Unlike total duration, time to award is consistent for all cases over USD 1 million. The longer duration of higher-value cases is due to the additional time taken by the parties to make their submissions, rather than the time taken by arbitrators to draft the award. For cases with amounts in dispute of up to USD 1 million, the time to award is even shorter, at only two months. Arbitrators are, on the whole, consistently performing their core task swiftly and efficiently.

<sup>1</sup> In a substantial number of LCIA cases, arbitrators choose to deal with costs after an award on the merits of the dispute is issued – this often results in savings due to parties settling on costs. For such cases, the time to award will precisely indicate the time taken for the tribunal to decide the merits of the dispute. Where a final award deals with both costs and merits, the time to award starts running from when the final merits submissions were made (even if separate and subsequent costs submissions were made and the tribunal did not actually begin working until those costs submissions were made) and ceases when the final award was made. In such cases, the time to award figure will reflect the time taken for the tribunal to decide the merits of the dispute plus the time taken to decide costs. The time to award statistics presented in this report are therefore lengthier than they would be if it were possible to identify precisely the time taken for the tribunal to decide merits alone for all cases.

## TOTAL DURATION AND TIME TO AWARD BY AMOUNTS IN DISPUTE



**TOTAL DURATION AND TIME TO AWARD: 2013-2014 VS 2015-2016**



Overall, total duration has seen a slight increase. For cases which reached an award in 2013 or 2014, the total duration is 16 months, compared with 17 months for cases which reached an award in 2015 or 2016. However, for cases with an amount in dispute over USD 1 million, total duration has fallen. This change is particularly significant for the largest cases.

While the total duration for cases with an amount in dispute of less than USD 1 million has increased slightly (from nine months to ten months), the time to produce awards for such cases has actually decreased (from three months to two months).

Time to award has either fallen or remained stable for all amounts in dispute. It is possible that this change was triggered or at least facilitated by the introduction of the LCIA Arbitration Rules (2014), in particular Article 15.10, which emphasises the need for tribunals to make a final award as quickly as reasonably possible, provide a timetable to the parties and the LCIA, and set aside time for deliberations.

There has been much discussion about users' desire for speedy resolution of disputes, and associated concern about arbitrators delaying proceedings. However, the LCIA's numbers dispute that: time to award is low, consistent across amounts in dispute, and has reduced over time, indicating that any increases in duration appear to be attributable to parties rather than arbitrators.

Given the extent to which the duration is attributable to the parties, it is not clear how realistic or indeed desirable it is to seek a further reduction in duration. In large, international cases, parties must have sufficient time to put forward both written and oral submissions. Few parties or arbitrators would consider it desirable to sacrifice quality in the pursuit of speed.

**Methodology**

For the purpose of the following analysis, **arbitration costs** are the sum of tribunal fees and LCIA administrative charges:

- a) **Tribunal fees** are comprised of the hourly rates charged by arbitrators, cancellation fees, any fees for issuing a memorandum of correction, and where a tribunal secretary is appointed and charges for their services, the tribunal secretary’s hourly fees.
- b) **LCIA administrative charges** are comprised of the registration fee that must be provided with a request for arbitration (currently set at £1,750), the hourly charges of the LCIA secretariat, and an additional fee equal to 5% of the total tribunal fees.

The arbitrators’ hourly rates are set by the LCIA Court in accordance with the Schedule of LCIA Arbitration Costs. The hourly rate is set having regard to the circumstances of the case, and is capped at £450 per hour.

Arbitration costs are ultimately controlled by the LCIA Court, which makes a final determination of the total arbitration costs in accordance with Article 28 of the LCIA Rules. To make its final determination, the LCIA Court reviews the detailed fee notes provided by the arbitrators, and calculates the fees “by reference to the work done”, as per the LCIA’s Schedule of Arbitration Costs. LCIA administrative charges are reviewed and set in the same manner.

All figures in this section are in US dollars. Where currency conversion was required for a particular case, the exchange rate published by the European Central Bank on the date the claim was quantified was used. As with duration, median costs figures are used to minimise the skewing effects of outliers.

**Analysis**

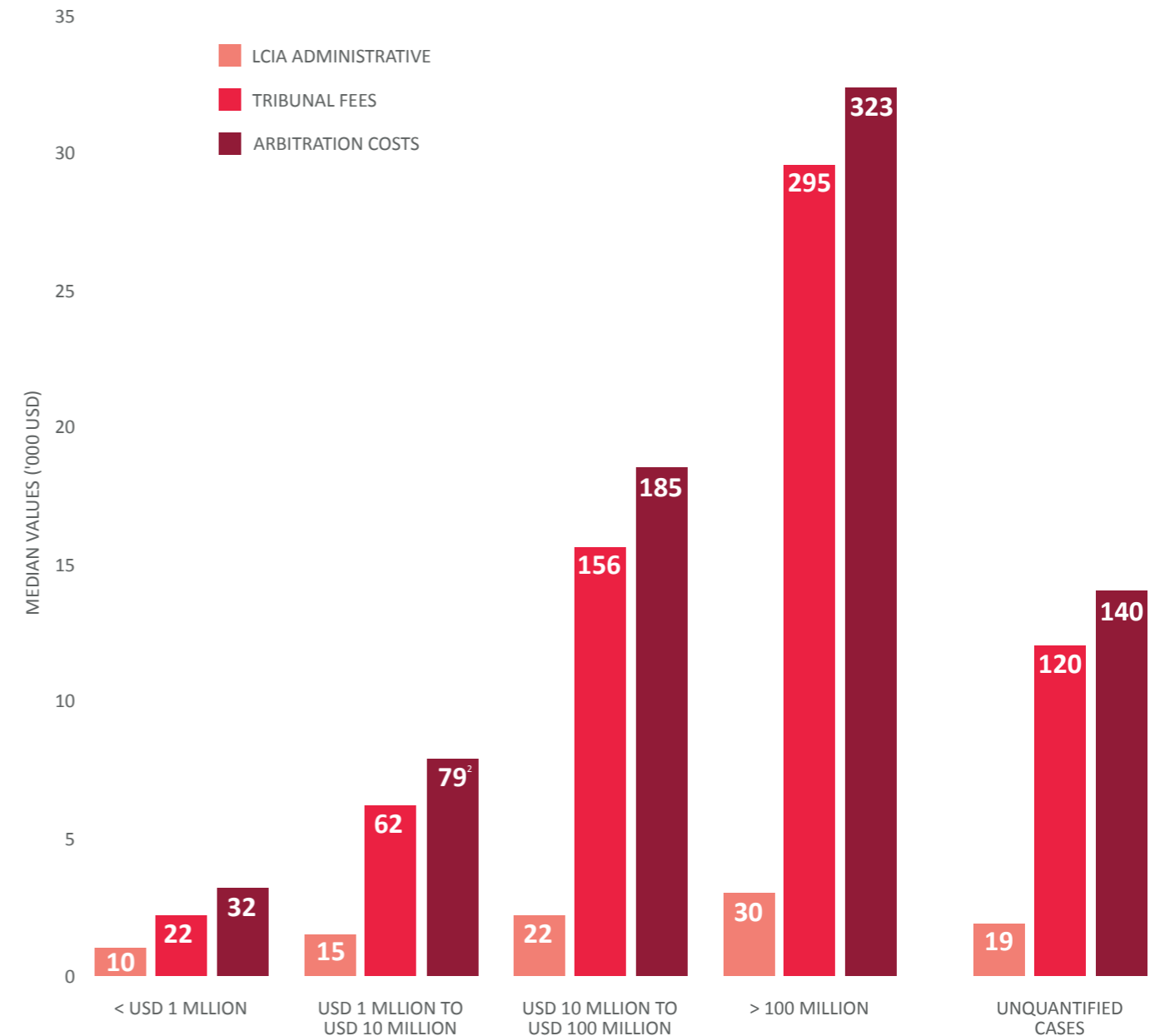
Across all 224 cases, the median arbitration costs are USD 97,000, with median tribunal fees of USD 82,000 and median LCIA administrative charges of USD 17,000.

The LCIA’s administrative charges thus make up a small proportion of the overall arbitration costs in comparison to tribunal fees. As will be seen in the costs comparison below, LCIA administrative charges are also significantly smaller than those of other institutions.

While the analysis focuses on tribunal fees and LCIA administrative charges, it is important to note that these combined costs are generally only a small proportion of the total costs parties will incur in an arbitration. More significant are the costs that institutions have no involvement with or control over, such as the cost of engaging counsel and experts. However, as parties often settle in respect of such costs (i.e. they are not dealt with in an award), it is not currently possible to provide detailed statistics in relation to these costs.

Arbitration costs relate to duration as would be expected: longer duration arbitrations will (barring any significant stay periods) involve arbitrators spending more hours working on the arbitration, resulting in higher arbitration costs.

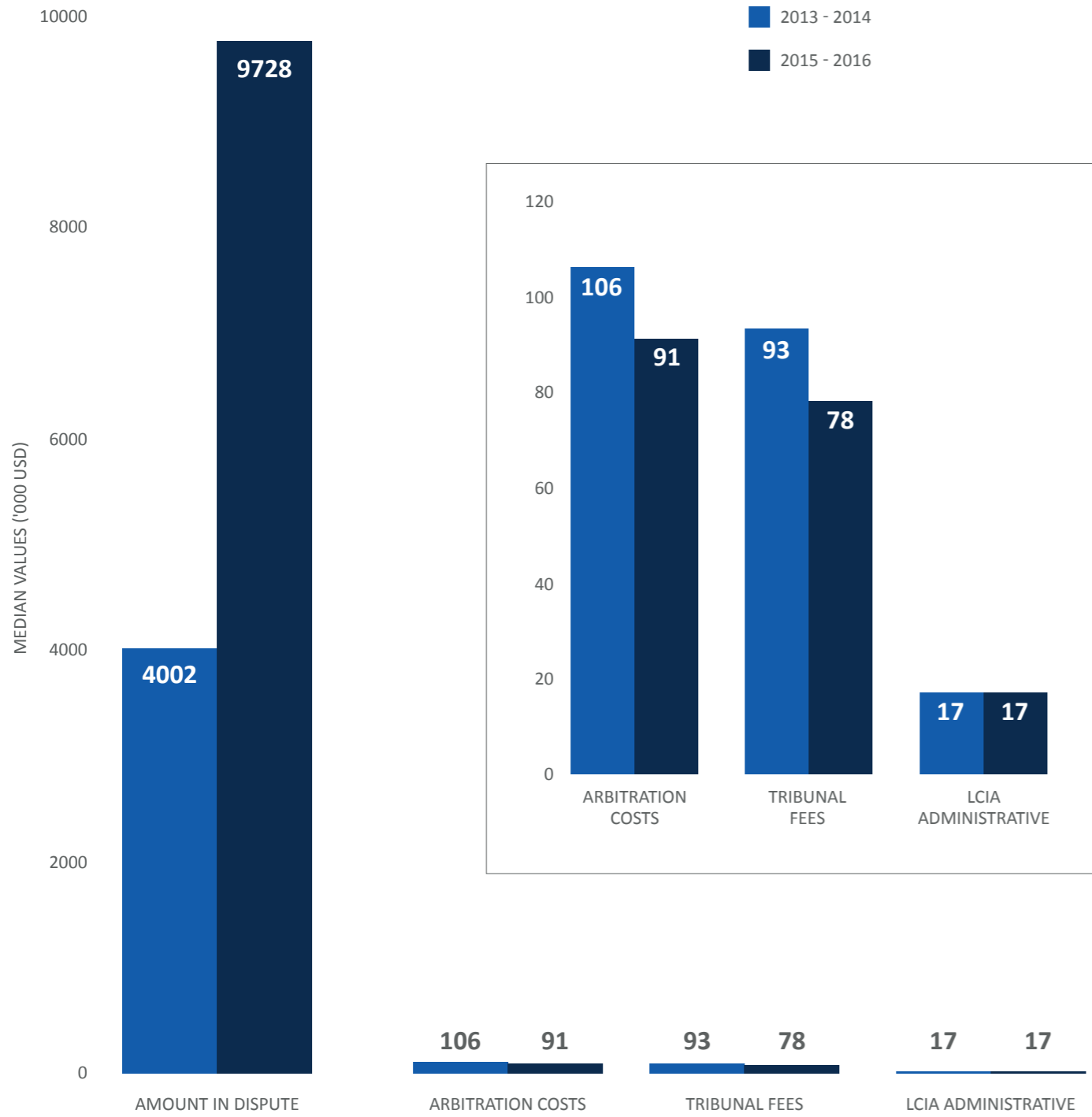
**COSTS BY AMOUNT IN DISPUTE**



Arbitration costs increase with amount in dispute, predominantly as a result of increases in tribunal fees. LCIA administrative charges make up a smaller percentage of the total arbitration costs as amount in dispute increases – the hourly rate system used by the LCIA reveals that the administrative burden of higher-value disputes is not significantly larger than that of lower-value disputes.

<sup>2</sup> Due to the way in which medians are calculated, the median arbitration costs are not equal to the sum of the median LCIA administrative charges and median tribunal fees.

COSTS: 2013-2014 VS 2015-2016



As shown in the chart above, arbitration costs have decreased over time, despite a significant increase in the median amount in dispute.

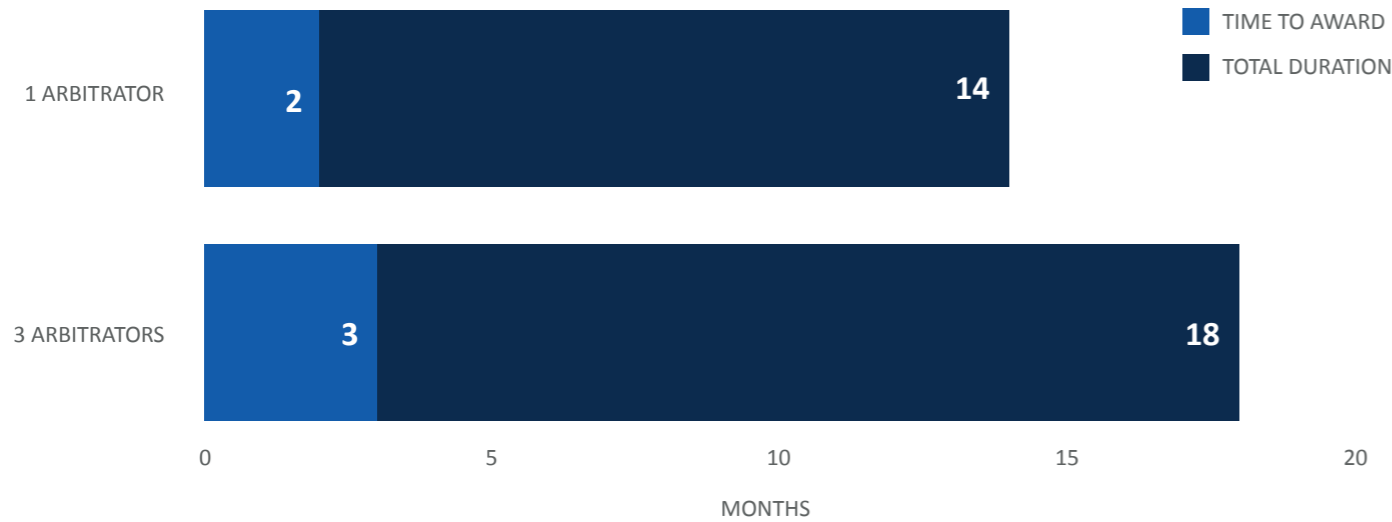




## NUMBER OF ARBITRATORS

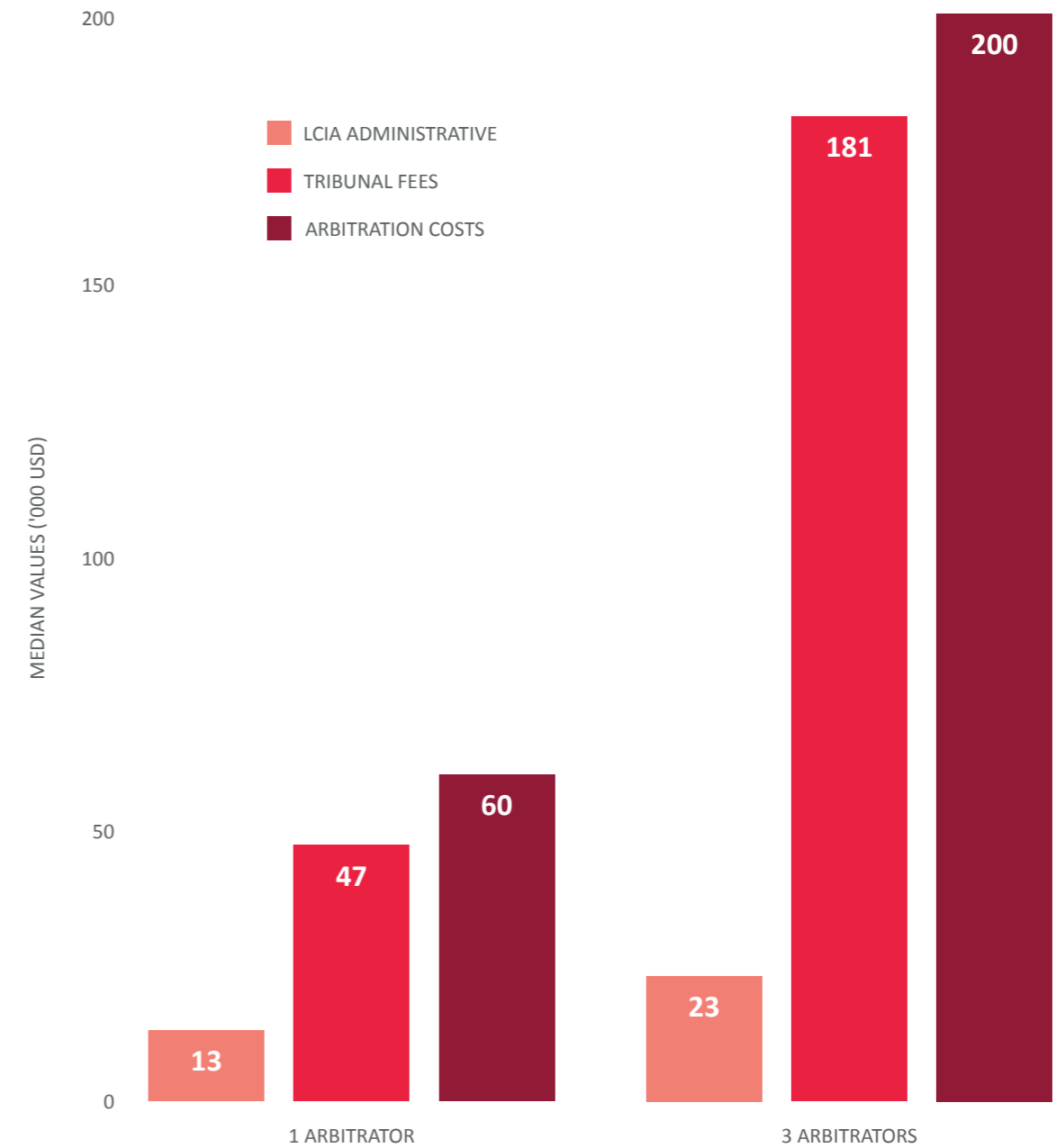
The average characteristics (most notably amount in dispute) of sole-arbitrator cases and three-arbitrator cases differ substantially. The statistics below do not control for these characteristics, and therefore cannot be used to estimate the duration or costs of a given case were it to be conducted by a sole arbitrator or a three-member tribunal.

### TOTAL DURATION AND TIME TO AWARD BY NUMBER OF ARBITRATORS



Given the significant (five times) difference in the median amount in dispute between sole-arbitrator and three-arbitrator cases, there is not a proportional increase in the median duration of such cases.

### COSTS BY NUMBER OF ARBITRATORS



The median three-arbitrator case is more costly than the median sole-arbitrator case. However, the median amount in dispute of a three-arbitrator case is over five times greater than that of a sole-arbitrator case, compared to only around three times greater arbitration costs.

Appointing additional arbitrators does not necessarily lead to greater arbitration costs. Rather, appointing more arbitrators is often a sign of complexity (of which amount in dispute may be a proxy) – this being the factor which leads to higher arbitration costs.

## COST COMPARISON BETWEEN INSTITUTIONS

### Methodology

The makeup of the LCIA's arbitration costs are set out in detail above. Like the LCIA, other arbitral institutions charge fixed registration fees, but unlike the LCIA, most other institutions operate on an ad valorem system for both tribunal fees and administrative charges, meaning that the majority of their arbitration costs are calculated by reference to the amounts in dispute.

Because of this method of charging, where the number of arbitrators and total amount in dispute for an arbitration is known, an estimate of the total arbitration costs at other institutions can be calculated by reference to the amount in dispute, the number of arbitrators, and the schedules of costs. Most institutions embed calculators on their websites to allow users to perform this calculation.

For each of the 171 LCIA cases in the dataset for which the amount in dispute was quantified, an estimate of what the case would have cost at other institutions has been calculated.<sup>3</sup> These estimates can be compared with the actual costs figures for the LCIA cases. How the estimates for the other institutions are derived is set out in the table below.

	SCC	SIAC	HKIAC	ICC
Cost schedule	2015	2016 <sup>4</sup>	2013	2012
Method	Average, derived from costs schedule.	Average, derived from website costs calculator.	Maximum, derived from website costs calculator. <sup>5</sup>	Average, derived from costs schedule.

The result of this comparison gives an estimate of what the LCIA's quantified cases would have cost had they been conducted at other arbitral institutions. By comparing the LCIA's caseload between institutions, it bypasses difficulties which arise due to differences in caseload between the LCIA and the other institutions.

As above, median figures are used throughout to minimise the skewing impact of outliers and present a truer comparison of costs between institutions.

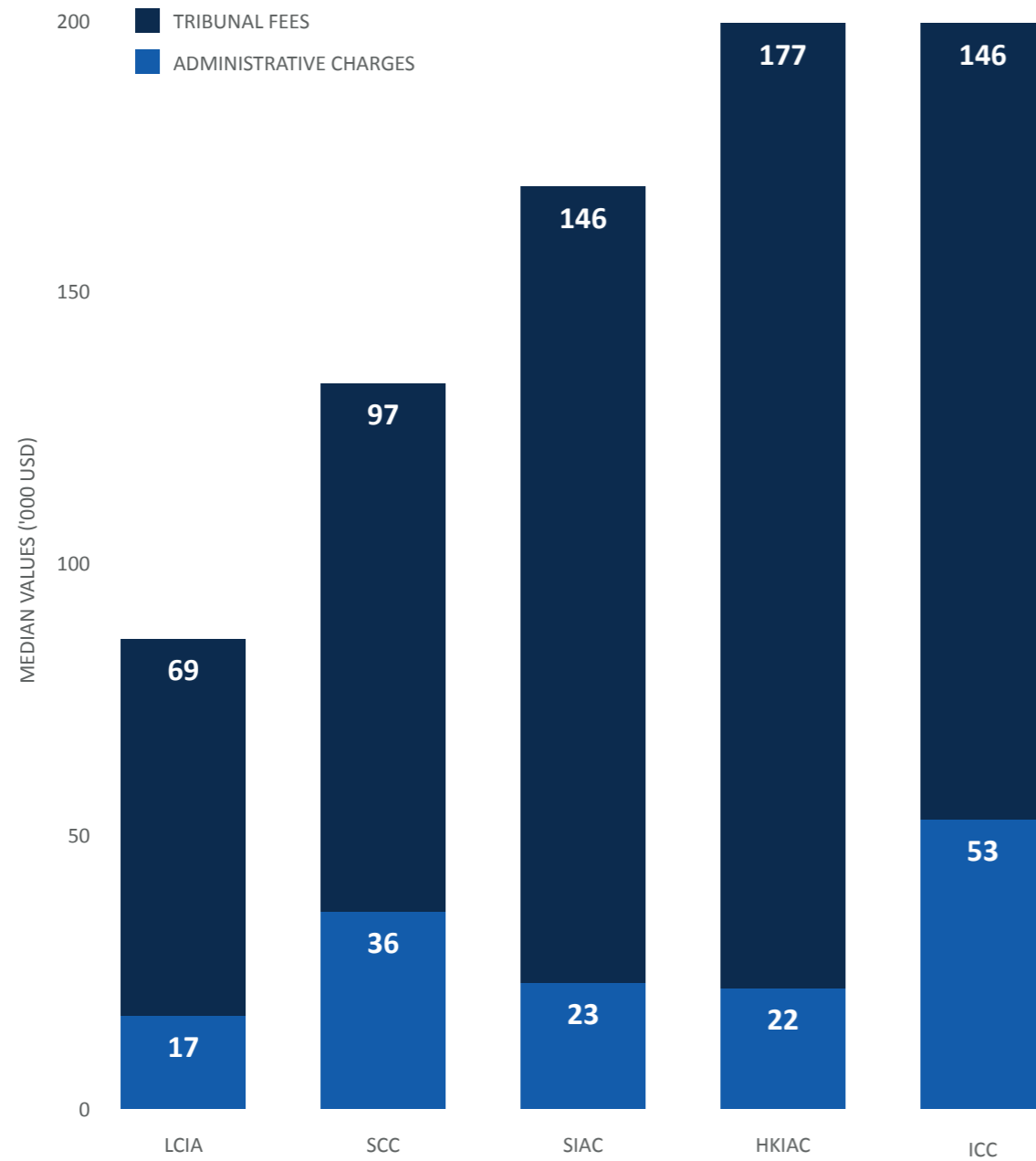
<sup>3</sup> Where currency conversion was required, the exchange rate published by the European Central Bank on the date the claim was quantified was used. As the cost schedules indicate costs for a single arbitrator, in cases with three-member tribunals the amount set out in the cost schedule for arbitrator fees was multiplied by three, except for the SCC which provides that for co-arbitrators a factor of 60% should be applied for each additional arbitrator. The other institutions compared do not indicate in their rules or schedules of costs that such a factor is applied.

<sup>4</sup> While the SIAC 2014 cost schedule covered most of the relevant period, the schedule and its associated calculator were no longer accessible on SIAC's website.

<sup>5</sup> Neither the HKIAC costs schedule nor the costs calculator provide an average figure. This should be borne in mind when comparing HKIAC costs to those of the other institutions.

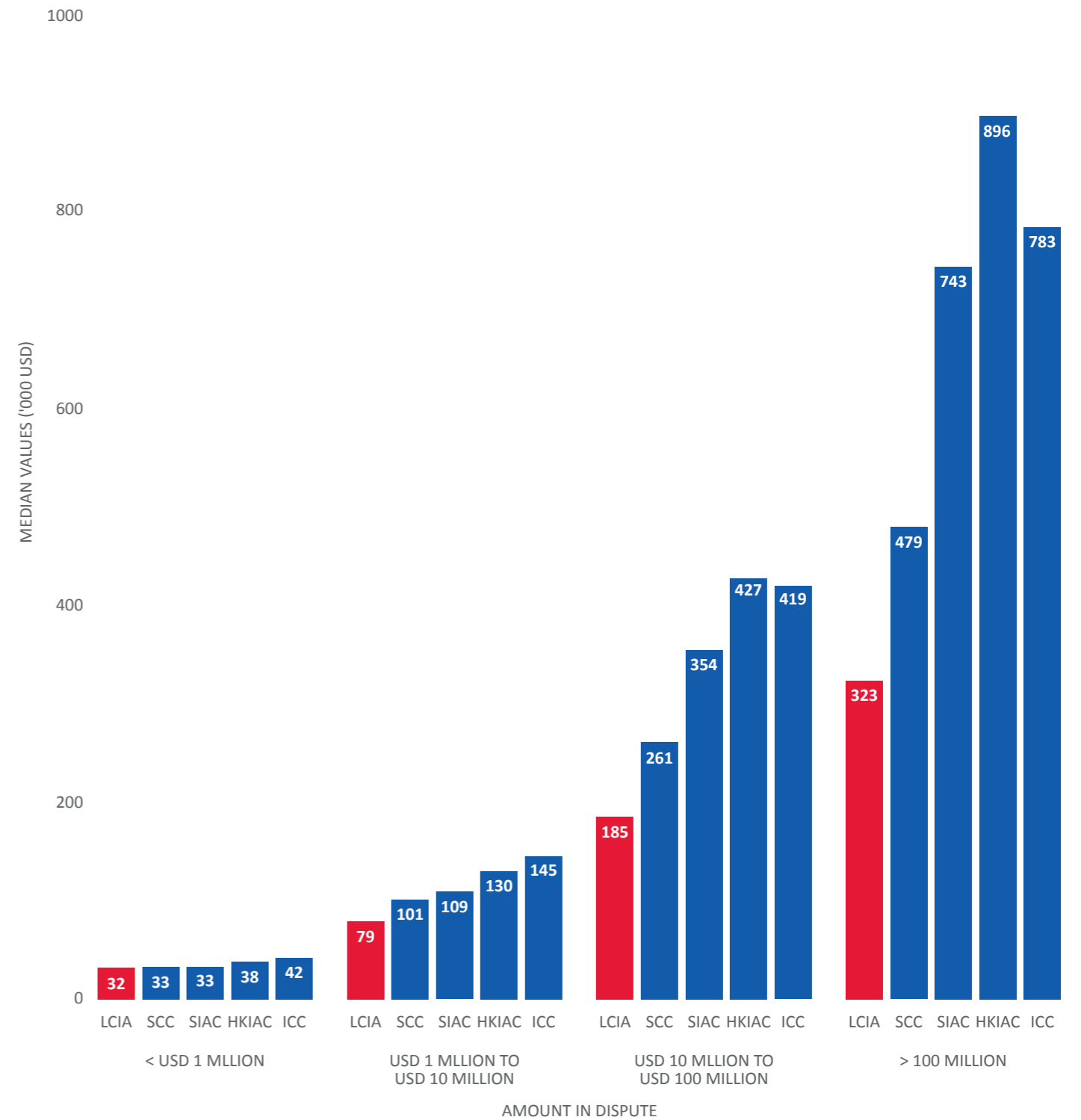
## Analysis

### TRIBUNAL FEES AND ADMINISTRATIVE CHARGES BY INSTITUTION



The LCIA's tribunal fees and administrative charges are the lowest of all institutions. Despite the HKIAC statistics being based on an estimate of the maximum arbitration costs, the ICC is equally as expensive, with by far the highest administrative charges.

### COSTS BY INSTITUTION AND AMOUNT IN DISPUTE



Comparing arbitration costs by amount in dispute produces similar results.

## CONCLUSION

For each range of amount in dispute, the LCIA has the lowest median arbitration costs. The difference is most pronounced in cases with higher amounts in dispute: the LCIA is less than half as expensive as the ICC for cases with amounts in dispute over USD 10 million.

As set out above, the LCIA figures provided for comparison are figures from actual LCIA arbitrations, while the figures for other institutions are estimates, based on the other institutions' own documentation. Such estimates provide a tool for potential users, but it is important to note that they are subject to substantial caveats.

Foremost amongst these is the fact that the schedules of costs provide either a range or a maximum amount. At the ICC, for an arbitration with an amount in dispute over USD 500,000 the maximum tribunal fees are almost five times the minimum. A substantial (three times) gap exists even for the lowest value arbitrations. While it is likely that institutions have internal guidelines prescribing how to set fees, this process is opaque to users, leading to far less certainty over fees for an individual case than cost calculators might suggest.

While the above comparison is a good tool for comparing LCIA cases, users should also attempt to compare costs more generally. Caseloads between institutions may differ substantially due to the inherent differences in the markets in which each operates, the proportion of domestic cases each administers, and the relative complexity of the legal and factual issues of cases at each institution. However, until leading institutions provide properly detailed and comparable statistics, it will remain difficult for users to account for these differences in caseload and make fair comparisons.

Finally, users should bear in mind that when making comparisons between institutions, costs and duration are simply two factors amongst many. Whether an institution is best placed to administer a particular case is a nuanced question, and one that should always be answered with careful consideration of all relevant circumstances.






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