Empirical Analysis of Challenges to Arbitral Awards in Singapore

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METHODOLOGY

This study has analysed twenty five applications filed to challenge arbitral awards heard by the Singapore Courts from 01st January, 2021 to 31st December 2021. The study covers awards under Section 48 of the Singapore Arbitration Act ("AA") which covers domestic arbitration cases, as well as Section 24 of the International Arbitration Act, 1994 ("IAA") which covers reported decisions of international arbitration cases.

This study has endeavoured to account for, and examine every such application that was finally decided and disposed in the said time frame. The authors have extracted this data from reported decisions from the High Court and the Court of Appeal of Singapore (the "Singapore Courts" or simply, the "court").

The applications examined as part of the study should not be treated as an exhaustive list of all the Section 48 and Section 24 applications during the period between 01st January, 2021 to 31st December, 2021. The data entry has been done by a dedicated team of research assistants under the guidance of the authors.

INTRODUCTION

This report presents empirical data pertaining to applications under Section 48 of the AA, 2001, as well as Section 24 of the IAA, which seek to set aside arbitral awards, filed before Singapore Courts between 01st January, 2021 to 31st December, 2021. The aim of the study is to provide an overview of, inter alia, the outcomes of such challenges and grounds on which the Singapore Courts have set aside arbitral awards. The report also presents data on the average timeline for the disposal of these applications before the Singapore Courts.

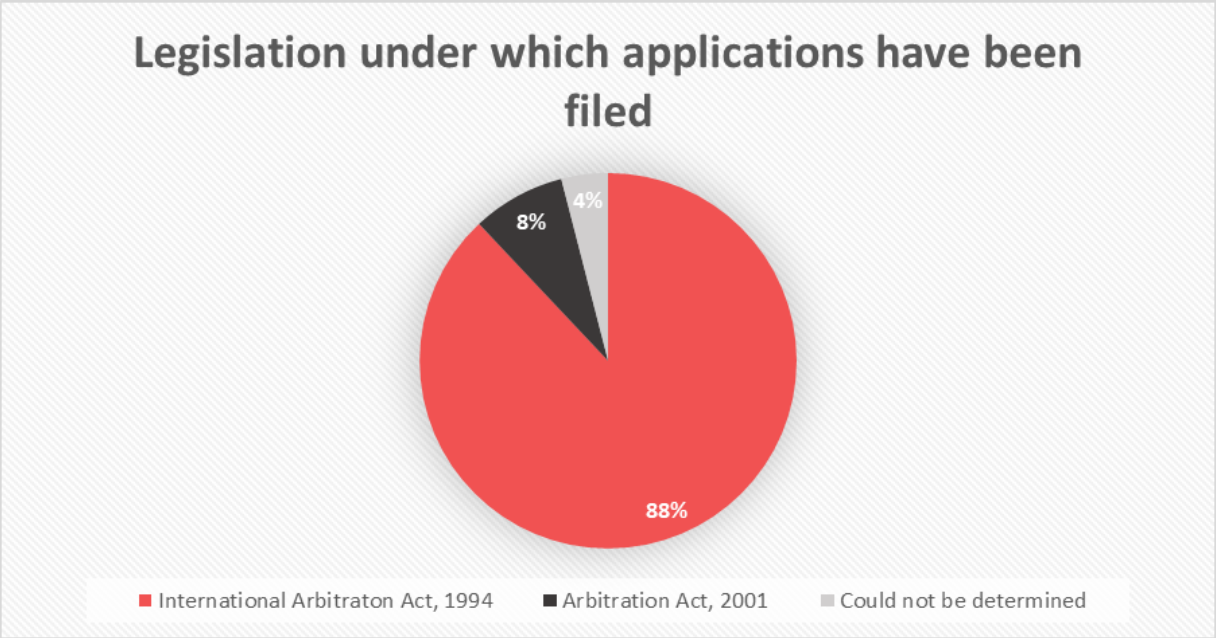
Section 48 of the AA and Section 24 of the IAA outline the grounds on which an arbitral award may be challenged by an aggrieved party. Both sections are largely modelled on Article 34 of the UNCITRAL Model Law on International Commercial Arbitration, 1985 (the "Model Law"). The only deviations from the Model Law are the additions of two further grounds for the vitiation of an award: vitiation on the basis of 1) fraud and corruption and 2) breach of rules of natural justice.

Both the AA and the IAA grant supervisory jurisdiction to the Singapore Courts with respect to arbitral awards. Like the Model Law, Section 48 of the IAA and Section 24 of the AA do not empower a court to modify or vary an arbitral award. Further, an award may only be set aside either in whole, or in part under the limited grounds specified. In doing so, the court is not empowered to review the substantive reasoning or merits of the award. Additionally, both enactments stipulate a period of 3 months for the aggrieved party to apply for setting aside the award. The enactments also enable the Court to remit an award back to the arbitral tribunal to eliminate the grounds for setting aside the award.

Interestingly, under the AA, a party may appeal the award of an arbitral tribunal to the Court on a question of law arising out of an award. On the other hand, the only recourse against an award under the IAA is to set it aside.

Singapore's judicial system is divided into two tiers. The first and lower tier comprises of State Courts which entertain disputes smaller in scale. The second tier is a Supreme Court, which comprises a High Court and a Court of Appeal, both of which exercise appellate and original jurisdiction. The Court of Appeal is the highest judicial body in the Country.

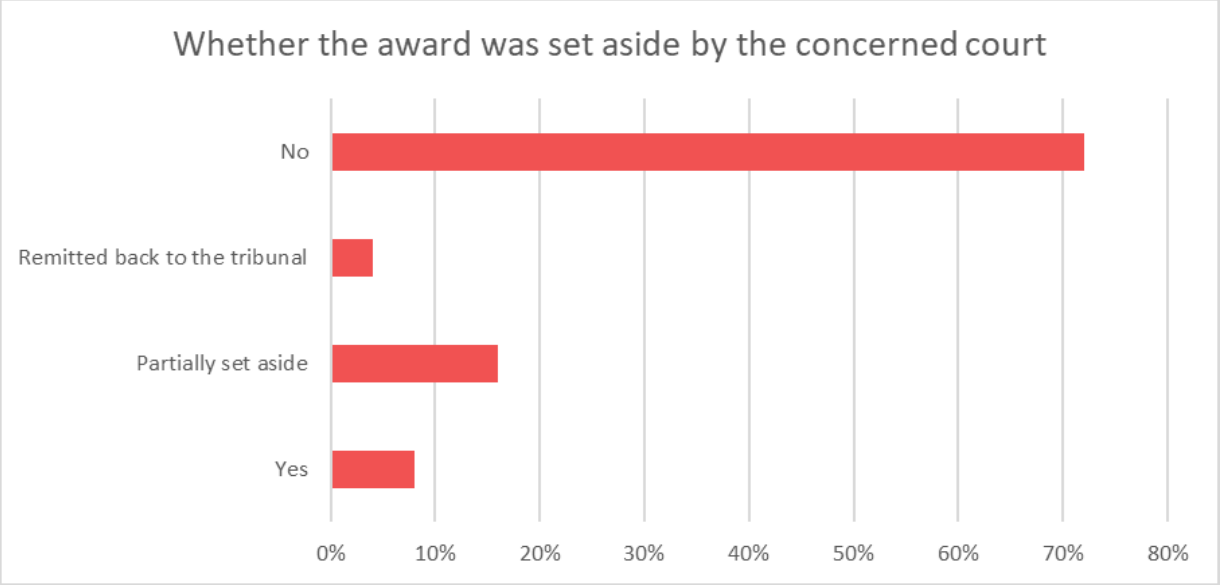
LEGISLATION UNDER WHICH THE APPLICATIONS WERE MADE



Out of the two arbitration legislations of Singapore, it can be observed that an overwhelming majority of 92% of the total set-aside applications before the court were preferred under the International Arbitration Act, 1994. Only two of the total applications, amounting to 8% of the total cases heard by the Court, were made under the Arbitration Act, 2001.

The overwhelming number of applications under the IAA as opposed to the AA, present a conclusion in conformity with the Queen Mary's White & Case Report of 2021, wherein Singapore and the SIAC were clear favourites among the individuals surveyed.

PROBABILITY OF SETTING ASIDE OF AWARD

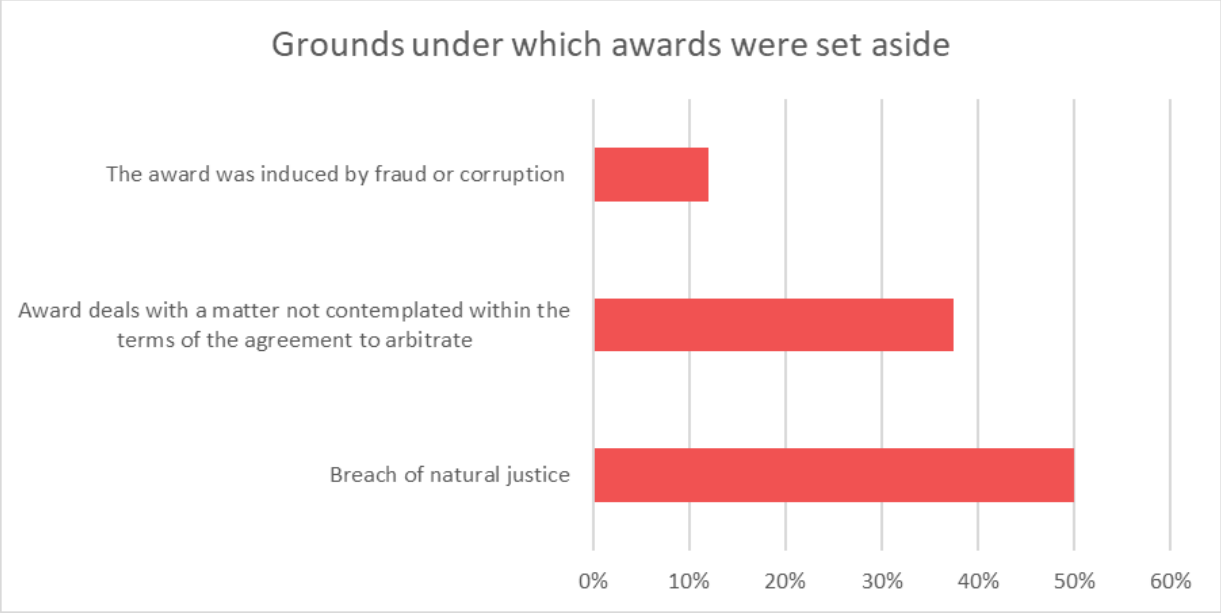


The data collected from the applications made between the period 01st January 2020 to 31st December 2021 depicts that the Singapore Courts refused to set aside challenges to an arbitral award in approximately 75% of all applications. From the remaining applications, the court partially set aside the awards in 16% of the total cases and completely set aside arbitral awards in 8% of the cases in the aforementioned time period. Only a single case, amounting to 4% of the applications, was remanded back to the arbitral tribunal for reconsideration. Therefore, in an overwhelming majority of cases, the challenge to the arbitral award failed.

From the first graph, the two cases that were heard under the Arbitration Act, 2001 were unsuccessful and the court refused to set aside the award.

Out of the remaining cases that were heard under the International Arbitration Act, 2001, 70% of the challenges were unsuccessful. Further, in 17% of the applications, the award was partially set aside while only 8% of applications resulted in the award being completely set aside. In a singular exceptional case, the court ordered that the award remitted back to the arbitral tribunal for reconsideration.

GROUNDS UNDER WHICH AWARDS WERE SET ASIDE

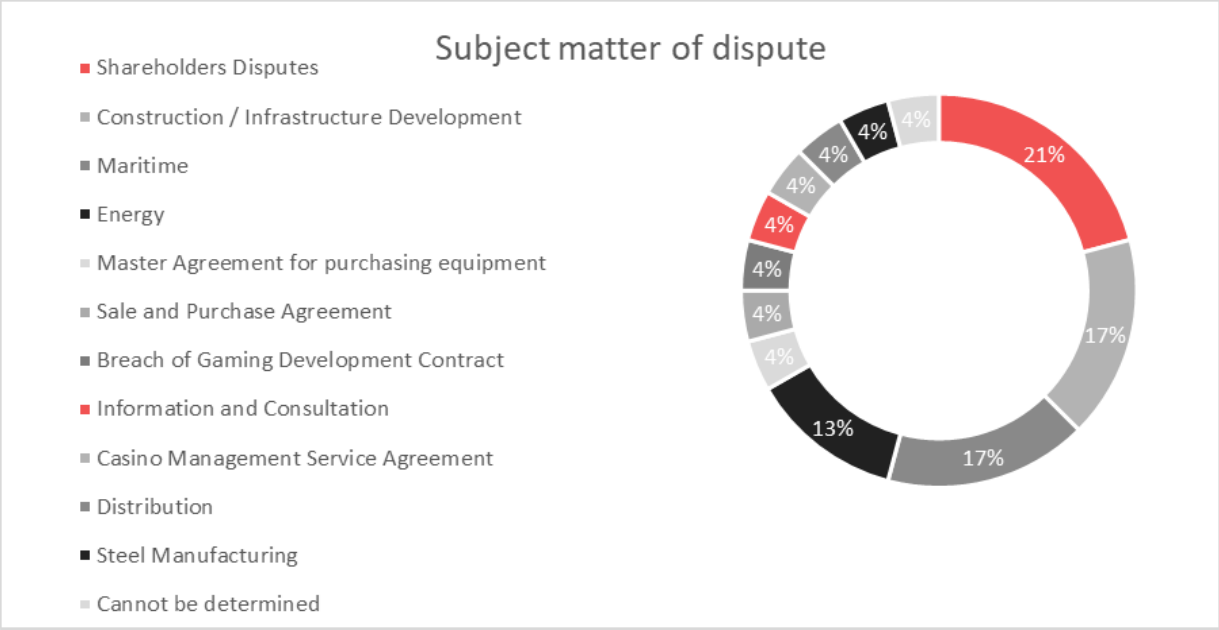


In 32% of the cases wherein the arbitral award was set aside, the challenge was successful on grounds of breach of natural justice under Section 24(b) of the IAA. Further, 28% of the successful challenges to the awards succeeded because the award dealt with disputes not contemplated by the agreement to arbitrate under Section 34(2)(a)(iii) of the UNCITRAL Model Law, which is incorporated in Singaporean law by virtue of Section 24 of the IAA.

16% of the challenges succeeded on the grounds that the award was contrary to the public policy of Singapore under Section 34(2)(b)(ii) of the UNCITRAL Model Law. Lastly, 8% of the challenges succeeded under Section 24(a) of the IAA, on the finding that the award was induced or affected by fraud or corruption.

With the majority of successful applications falling under the grounds of breach of natural justice under Section 24(b) of the IAA, the Singapore Court of Appeal has elaborated in the case of BZV vs BZW and Another [(2022) SGCA 1] that a breach of natural justice occurs when a decision is "manifestly incoherent", demonstrating that the tribunal has failed to understand or deal with the case, and the parties had not been accorded a fair hearing.

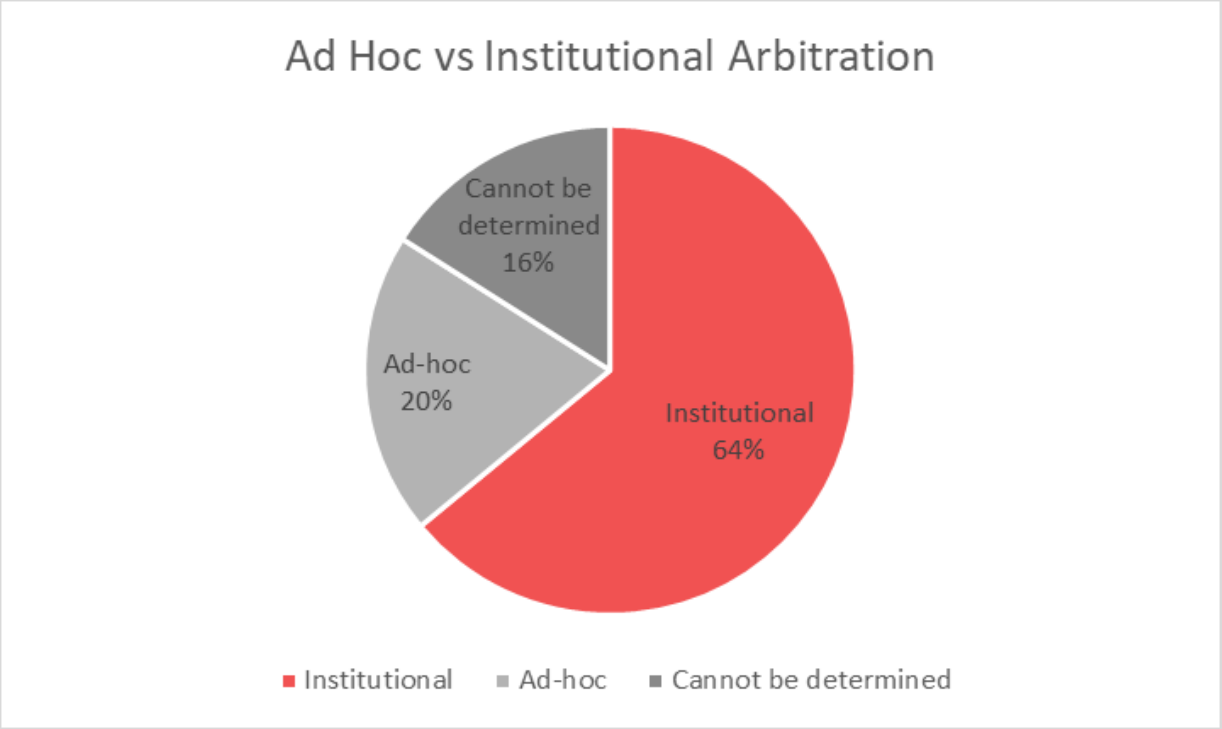
SUBJECT MATTER OF DISPUTE



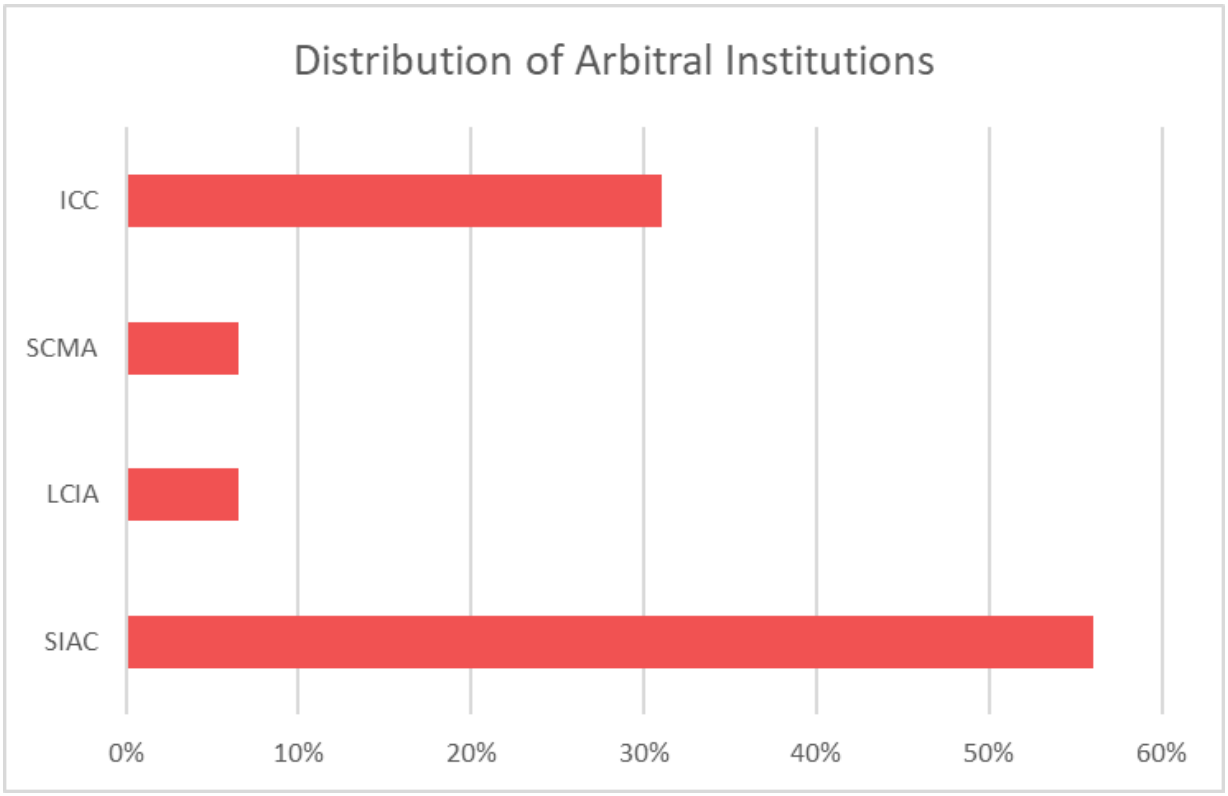
From the above graph, it may be observed that the Singapore Courts have dealt with set-aside applications arising out of arbitrations involving a wide array of disputes. While a strict compartmentalization cannot be made for the entire dataset, Shareholder Disputes, Construction / Infrastructure Development, Maritime Agreements and Energy Disputes emerged slightly more frequently. With respect to Shareholder Disputes, all the applications were unsuccessful while Construction / Infrastructure Development Disputes saw three applications being denied by the Courts and one application being remitted to the tribunal. Maritime Disputes saw the greatest diversity in the Court's approach with two unsuccessful applications, one application resulting in the award being completely set aside and another application resulting in a partial set-aside. For Energy Disputes, all three applications were unsuccessful.

This graph should not be used for the identification and analysis of trends given that each category is made up of a minimal number of cases. It merely serves to present the sheer breadth of subject matter in disputes entertained by arbitral tribunals, practitioners and institutions.

AD-HOC VS INSTITUTIONAL ARBITRATION

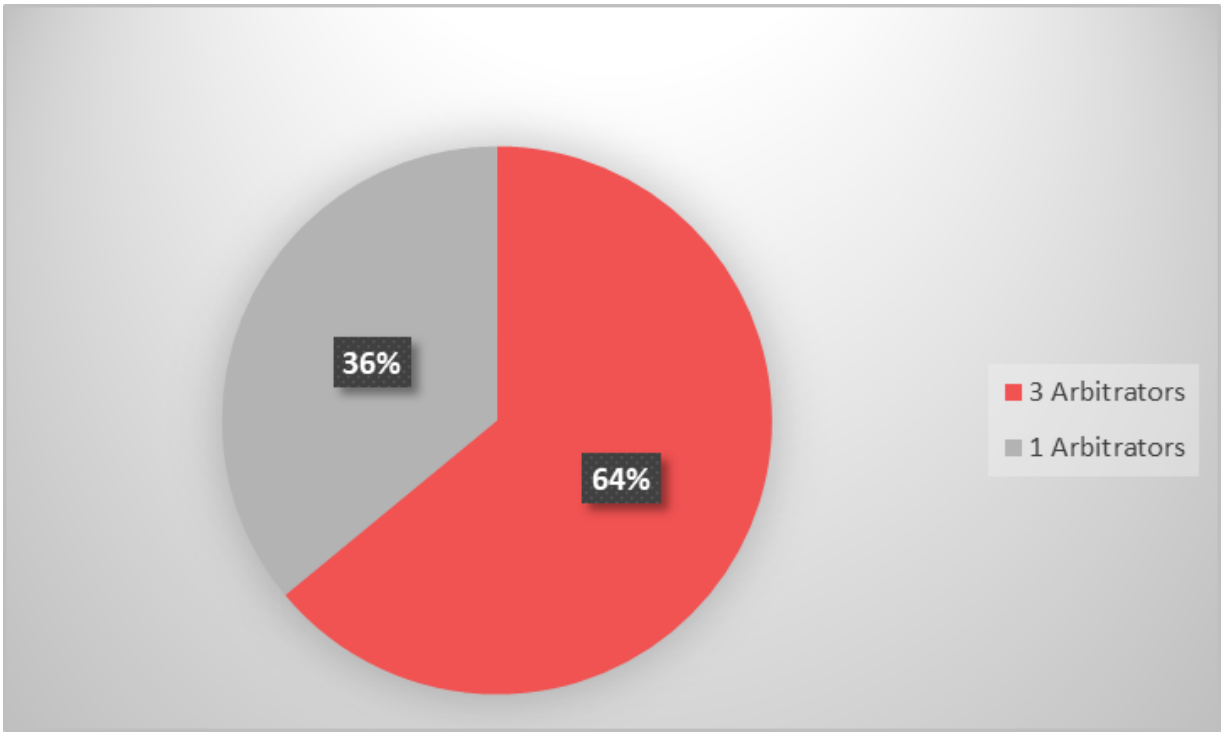


Keeping up with the growing preference for institutional arbitration, the majority of applications before the Singapore courts were against awards arising out of arbitrations administered by arbitral institutions. Constituting the majority, 64% of the applications arose out of institutional arbitration, while 20% were ad-hoc.



From the arbitral awards that came out of institutional arbitration, 56% of the disputes were administered by the Singapore International Arbitration Centre ("SIAC"), 31% of the disputes were administered by the International Chamber of Commerce ("ICC"), 6.5% of the disputes were administered by the London Court of International Arbitration ("LCIA") and the remaining 6.5% of the disputes were administered by the Singapore Chamber of Maritime Arbitration ("SCMA").

NUMBER OF ARBITRATORS



From an analysis of the applications to set aside an award, the tribunal was composed of three arbitrators in 64% of all the cases. Only in 36% of all cases, was the tribunal presided over by a sole arbitrator. This is in stark contrast to ArbDossier's findings in its counterpart report for the Bombay High Court. In the latter, 69% of the applications before the Court concerned awards passed by a sole arbitrator, while 27% of the applications arose from a three member tribunal's award and the remaining 4% of the challenged awards were attributed to a five member tribunal.

25% of the awards passed by a sole arbitrator were challenged successfully, whereas 20% of the awards passed by a tribunal of three were challenged successfully.