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Comparing Timelines: What do statistics reveal about the length of international commercial arbitration vs. U.S. federal litigation?

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Arbitration is sometimes touted as a more effective dispute resolution mechanism than litigation. In the U.S., one of the main reasons businesses build arbitration clauses into their contracts is the desire to avoid the lengthy and costly process of litigation. The American Arbitration Association (AAA) suggests that the average AAA arbitration (for domestic and commercial disputes) is resolved within 11.6 months, while the average U.S. federal court case can take 24 months just to get to trial. But is this true for cross-border disputes? Is international arbitration truly a faster form of dispute resolution? What sort of timelines should businesses realistically expect when considering international arbitration? These are the questions we answer in this article. (In answering these questions, we focus on international commercial arbitration, which is different from investment treaty arbitration involving sovereign states).

Expectations vs. Real Life Experiences

Surveys regularly conducted by The School of International Arbitration of Queen Mary University of London since 2006 reveal an interesting paradox: While users of international arbitration cite greater efficiency as a key driver behind their decision to include arbitration clauses in their business contracts, the same users consistently name time/delays and cost as the main drawbacks of international arbitration. This suggests a disconnect between businesses' expectations about the duration of arbitration at the outset, and their lived experiences once arbitration proceedings are under way.

So, what do statistics reveal about the duration of an international commercial arbitration?

Median duration of an international commercial arbitration at major international arbitration institutions

In the past decade, international arbitral institutions have started releasing data regarding the duration of international commercial arbitrations; most of the time, the median duration was used as an indicator.

The duration of an arbitration will vary based on the parties' conduct and their procedural choices. Further, because of variations in methodology (e.g., inclusion/exclusion of expedited arbitrations, sample sizes etc.), it is difficult to draw direct comparisons between institutions. Nonetheless, the below statistics provide helpful estimates on the median duration of international arbitrations at major arbitral institutions.

Arbitral Institution	Median Duration of International Arbitration (months)	Methodology/Factors that may impact comparison
LCIA	16	Excludes expedited arbitrations (which do not exist under the LCIA rules).
ICC	22	Includes expedited arbitrations. Median value of ICC cases is higher than other institutions.
ICDR (AAA)	13.1	Excludes expedited arbitrations.
SCC	13.5	Excludes expedited arbitrations.
SIAC	11.7	Includes expedited arbitrations.
HKIAC	15	Includes expedited arbitrations.

The London Court of International Arbitration (LCIA): In 2015, the LCIA became the first leading arbitral institution to release a cost and duration analysis. The LCIA provided an update in 2017 with its "Facts and Figures – Costs and Duration: 2013-2016" report, which was compiled independently by a third party (the Brattle Group). That report reviewed all proceedings administered under the LCIA Rules that reached a final award between 2013 and 2016, and found that the median duration of an LCIA arbitration was **16 months**.

On a more granular level, the report also found that the median time it took a tribunal to issue an award once the parties had completed their submissions was three months. Moreover, the report found that the duration of the proceedings was influenced by the amount in dispute. Cases that concerned USD one million or less were resolved with a median duration of nine months, and over 70% were decided within 12 months.

The International Chamber of Commerce (ICC): Every year the ICC releases a "Dispute Resolution Statistics" report setting out *inter alia* the duration of arbitration proceedings. According to the 2020 edition of the report (released August 2021), the median duration of arbitrations that reached a final award in 2020 was 22 months.

The value of many ICC arbitrations is higher than at other institutions, which may in part explain the longer median duration for ICC arbitrations. Furthermore, two distinguishing features of ICC arbitration that might explain longer timelines are the drafting of terms of reference at the front end and the scrutiny of arbitral awards at the back end. Award scrutiny is an ICC procedure designed to ensure that awards meet certain quality standards and are enforceable. It involves a unique multi-step review process of draft awards prior to its publication. The use of "terms of reference" under the ICC Rules is mandatory. Terms of reference are a document, signed by the parties and the tribunal at the outset of the case, that provides a framework for the entire arbitration. Terms of reference contain e.g., a summary of the parties' claims, the scope of the tribunal's mandate (including the questions to be decided), and any agreement with

respect to the applicable rules. While agreeing terms of reference may slow down the start of an arbitration, it may result in cost savings by forcing parties to define the dispute early and increasing chances of settlement.

The International Centre for Dispute Resolution (ICDR): The ICDR is the international division of the American Arbitration Association (AAA). The ICDR published a "Time and Cost" report in 2018, based on cases closed between January 1, 2015 and December 31, 2017, regardless of filing date. That report reveals that the median duration of an ICDR arbitration in that period was 13.1 months. Interestingly, the ICDR report also reveals the median time from filing to settlement for ICDR proceedings is nine months, and that as many as 72% of ICDR arbitrations settle prior to an award. This may in part be the effect of the ICDR policy of encouraging parties to arbitration proceedings to engage in parallel mediation.

The Arbitration Institute of the Stockholm Chamber of Commerce (SCC): In 2016, the SCC also published a report analyzing the duration of SCC Rules arbitrations. That report looked at 80 awards issued between 2007 and 2014, and found that the median duration of an SCC arbitration was 13.5 months.

The Singapore International Arbitration Centre (SIAC): SIAC released its most recent "Costs and Duration" study in 2016, which considered 98 cases administered by SIAC under the 2016 SIAC Rules between April 2013 to July 2016. The SIAC study found that the median duration of these arbitrations was a mere 11.7 months – lower than the other arbitral institutions surveyed.

The Hong Kong International Arbitration Center (HKIAC): The HKIAC released a report in 2023 on the costs and duration of arbitrations administered by the HKIAC. This report summarized data on all HKIAC cases that reached a final award in the 10-year period between November 2013 and April 2023. The HKIAC report found that the median duration of an arbitration was 15 months. (However, approximately about a quarter of the arbitrations in the sample studied were expedited or emergency arbitrations, which helps lower the average).

In short, while it is difficult to draw direct comparisons between institutions, international arbitrations typically last **between 11 and 22 months** from filing of a request for arbitration to issue of a final arbitral award.

Is it quicker to resolve an international commercial dispute through arbitration or litigation in U.S. federal courts?

To get a sense of the duration of U.S. federal court litigation, one might look to the data collected by U.S. District Courts for civil cases registered between April 2021 and March 2022. Specifically, Courts tracked the median time from filing to disposition for 209,568 recorded civil cases in federal court.¹

The data shows that, where a case is not resolved before trial, the median time between filing and resolution at trial is **29.8 months**. This does not include time between trial and issuance of a decision, which can add several months. Nor does it include any appeals procedures.

It is also of note that this median duration of American federal court litigation includes federal courts in jurisdictions which do not typically handle a high volume of complex and cross-border commercial disputes (such as Idaho)—which helps lower the median. The median durations for District Courts known for handling such disputes is much longer: **35 months for SDNY, 40.6 months for Delaware, and 38.5 months for DC**.

In short, litigation in U.S. federal courts can take **much longer** than international arbitration.

However, the above figures do not give the full picture. In U.S. litigation, the overwhelming majority of cases do not reach trial. In fact, Official statistics show that less than 2% of all contract disputes filed in federal court do so. For

comparison, a [study](#) by Dispute Resolution Data of 3,750 international commercial arbitrations across various institutions showed that 35% reach a final award.

è Therefore, while international arbitration tends to be much faster than litigation for proceedings that run their course, a court case is more likely than an international arbitration to end via (early) settlement or dismissal as the result of a dispositive motion.

How can parties reduce the overall duration of their international arbitration proceeding?

Regardless of the relative shorter duration of international arbitration as compared to U.S. federal litigation, there are tools that can help avoid undue delay in arbitration proceedings.

In 2018, the ICC published its "[Arbitration Commission Report on Techniques for Controlling Time and Costs in Arbitration](#)", which was intended to assist parties and the tribunal "in arriving at procedures that are efficient and will reduce both cost and time." The ICC's report recommended some of the following techniques to reduce the duration of a proceeding:

- **Arbitration clauses:** Keeping arbitration clauses simple and clearly drafted in order to minimize time disputing their meaning.
- **Fast-track procedures:** Setting out fast-track procedures in the arbitration clauses (if appropriate), such as shortening time limits and specifying a time limit for when the final award needs to be issued.
- **Selection of counsel:** Selecting counsel with sufficient experience to handle an arbitration, and who has sufficient time to devote to the case.
- **Appointment of arbitrator:** Making sufficient enquiries into a prospective arbitrator's availability, and informing the ICC of any particular need for speed so that it can take that need into account when making any appointments.
- **Avoiding challenges:** Giving careful thought to the appointment of the arbitrator in order to avoid challenges to an arbitrator's independence or impartiality.
- **Virtual conferences:** Conducting virtual case management conferences and making effective use of technology.
- **Documentary evidence:** Carefully considering the scope of document production (if any) actually needed.
- **Expert evidence:** Avoiding the use of experts unless they are needed to inform the arbitral tribunal on key issues in dispute, and considering having both parties jointly appoint a single expert.

Conclusion

Litigation in U.S. federal courts tends to resolve more quickly than arbitration because cases are often dismissed or withdrawn far earlier in the proceedings. However, for matters that run their course, the median length of an arbitration in each of the major international arbitral institutions is significantly shorter than litigation in the U.S. federal courts. Consulting experienced international arbitration counsel can help parties minimize surprises and reduce delay in international arbitrations.

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References

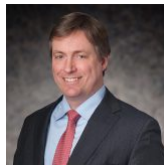
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- 1 Every American state has state courts as well as federal courts, but, because of the preference of sophisticated litigants for federal court and American rules concerning the jurisdictions of federal and state courts, the majority of international disputes tend to end up in federal court. ^

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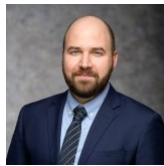
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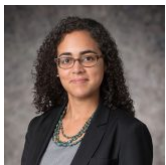
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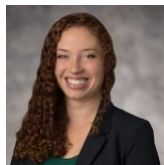
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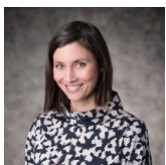
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