

Arbitrating and Mediating Disputes

Benchmarking Arbitration and Mediation Regimes for Commercial Disputes Related to Foreign Direct Investment

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Abstract

An effective commercial arbitration regime matters for foreign investors. It gives parties the autonomy to create a dispute resolution system tailored to increasingly complex disputes. Foreign investors view arbitration as a way to mitigate risks by providing legal certainty on enforcement rights, due process, and access to justice. The Arbitrating and Mediating Disputes indicators assess the legal and institutional framework for commercial arbitration, mediation, and conciliation regimes in 100 economies. All surveyed economies recognize arbitration as a tool for resolving commercial disputes and only nine economies have not acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In the Arbitrating and Mediating Disputes indicators, High Income OECD and Eastern Europe and Central Asia are the regions that reformed their laws on alternative dispute resolution the most between 2011

and 2012. The data also show that, globally, arbitration proceedings take 326 days on average, while recognition and enforcement proceedings of foreign arbitral awards take 557 days on average. The Arbitration and Mediating Disputes indicators are significantly correlated with perception data on the importance of alternative dispute resolution, as well as other measures such as total foreign direct investment inflows and inflows per capita, the Doing Business 2013 Enforcing Contracts data, the World Bank Group's Governance Indicators, the World Economic Forum's Global Competitiveness Indicators, and the Multilateral Investment Guarantee Agency's World Investment and Political Risk data. The paper concludes by identifying several opportunities for improvement, such as greater flexibility for domestic arbitration regimes, faster arbitration proceedings, and better domestic court capabilities.

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1. Introduction

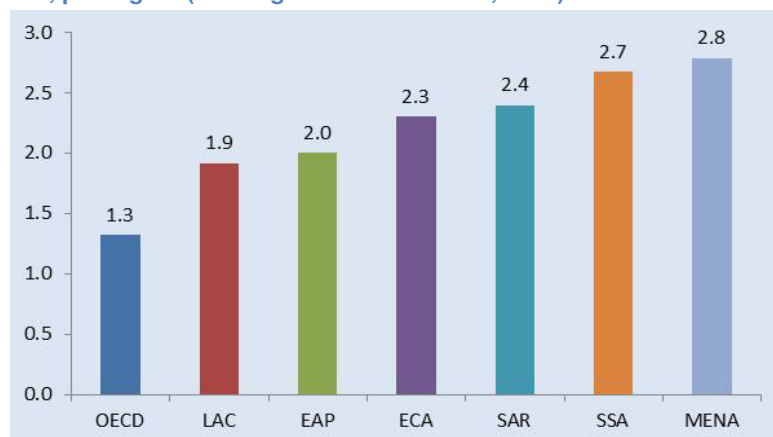
In Indonesia, it takes more than two years to enforce a foreign arbitral award on average. The proceedings will be held before the Central Jakarta District Court, which is not a specialized court. In addition, the foreign investor must comply with several obligations and provide a substantial number of original documents, specifically, a letter from his diplomatic representation stating that his country has a bilateral relationship with Indonesia and is bound by a convention on the recognition and enforcement of foreign arbitral awards. In contrast, in the neighboring Philippines, the process would take only nine months. The time frame of the proceedings before the Regional Trial Court is strictly defined and the documentation requested is less burdensome, as the investor must provide only a copy of the arbitration agreement and the appointment of the arbitral tribunal, along with a certified translation, if necessary.

The difference between the ease of recognition and enforcement of foreign arbitral awards in Indonesia and the Philippines is critical for a foreign investor who is looking for economies which can offer business opportunities, but also legal certainty and time efficiency, in case of the need to enforce an arbitral award. It is also critical because, more generally, foreign investors often take into consideration whether the economy they choose to invest in is supportive of Alternative Dispute Resolution (ADR).

ADR consists of specific procedures for settling disputes outside of court litigation. It includes commercial arbitration, mediation and conciliation.²

The Arbitrating and Mediating Disputes (AMD) study has collected data and, to a limited extent, views, of lawyers, law professors, representatives of ADR institutions and government's regulators in each of the 100 surveyed economies. It has been able to identify the regions where the legal framework on ADR is perceived as a moderate to severe obstacle to foreign direct investment (FDI). Figure 1 shows that the Middle East and North Africa (MENA), South Asia (SAR), Sub-Saharan Africa (SSA) and Eastern Europe and Central Asia (ECA) are the regions in which the legal framework on ADR is perceived as a moderate to minor obstacle to

Figure 1. Perception of the legal ADR framework as an obstacle to FDI, per region (FDI Regulations Database, 2012)



Note: The AMD Perception score measures the average perception of contributors, based on a scale from 1 to 5, of the extent to which their legal framework on ADR is an obstacle to FDI. The highest scores indicate the regions where the obstacle is perceived as bigger.

FDI. In comparison, this perception decreases in East Asia and the Pacific (EAP) and Latin America and the Caribbean (LAC) and is very low in high-income OECD economies (OECD).

² Through commercial arbitration, the parties agree to submit their dispute to an independent and impartial arbitrator or arbitral tribunal which issues a final and binding arbitral award. Mediation is a structured and interest-focused process enabling the parties, facilitated by one or more mediators, to agree on the resolution of their dispute through a mediation agreement. Conciliation is a process where the parties are assisted in their attempt to reach an amicable settlement of their dispute.

The AMD indicators measure ADR regimes relevant for FDI across 100 economies across seven regions, providing comparable and actionable information about this regulatory space (Annex 1). They serve as a critical tool in order to track the evolution of ADR regimes worldwide and capture the new reforms and best practices. They measure the ease with which foreign investors can submit a dispute arising out of the commercial relationship they have with a local party and how easy it is for the appointed arbitral tribunal to conduct the proceedings. They also look at whether foreign investors can enforce a foreign arbitral award with the support of domestic courts.

2. Context and importance of an effective Alternative Dispute Resolution system for foreign investors

ADR provides tailored dispute resolution mechanisms that are particularly useful tools for complex commercial transactions, such as foreign direct investments. Commercial arbitration enables the parties to create systems tailored to their dispute and to guarantee the necessary confidentiality to protect their commercial secrets and their reputation. It also allows them to select arbitrators who are experienced professionals with a particular expertise relevant to the dispute.

Hence, ADR is now widely recognized as the preferred dispute resolution mechanism for many investors and entrepreneurs (McLaughlin, 1979). Even if no systematic evidence has been found regarding the impact of ADR on FDI (Governance and Social Development Resource Centre, 2013), authors recognize that economies should improve their ADR regimes and allow for flexible and faster dispute settlement in order to attract FDI. Studies find that more than two-thirds of multinational corporations prefer commercial arbitration over traditional litigation, either alone or in combination with other alternative dispute resolution mechanisms, to resolve cross-border disputes (PriceWaterhouseCoopers and Queen Mary University, 2006).

Commercial arbitration is considered to provide a neutral forum for the settlement of disputes related to FDI, which can often be sensitive and, hence, limits the risks associated with FDI (Schwartz, 2009). Even if domestic courts could be considered as treating foreign companies fairly, domestic firms often have an advantage over foreign investors, as they are more familiar with local court procedures and can use their own lawyers and language (PriceWaterhouseCoopers and Queen Mary University, 2006).

Moreover, a robust ADR framework, including laws and private institutions that provide ADR services, contributes indirectly to the rule of law. Because ADR is particularly attractive for foreign investors, it is usually an incentive for greater accessibility to the legal system, online and in English, thus attracting the international business community. It also contributes to the training of judges and lawyers, as many of them serve as arbitrators and mediators and their obligations often include obtaining a certification and placing emphasis on ethics, impartiality, and independence.

Arbitration is becoming recognized as a “growth industry” (Zaiwalla, 2013) and benefits the reputation of an economy in the international arena. For instance, Singapore is now a recognized hub for arbitration, and is often chosen by foreign investors as a place where they can have their disputes settled. Two factors explain this achievement: Singapore has consistently amended its legislation on international arbitration and is now able to offer dynamic and reliable arbitration services (Box 1).

Hence, policy reforms that remove barriers for investors to settle their disputes are crucial. For instance, practitioners such as the Secretary General of the International Chamber of Commerce's (ICC) Court of Arbitration recognize the need to have a faster way to settle disputes and to enforce arbitral awards to attract FDI (*Bangkok Post*, 2012). Some stated that "if you are to bring in more FDI you need fast-track arbitration," that is, time-bound arbitration where arbitrators have to observe specific time limits (Zaiwalla, 2013). Others have also indicated the need to guarantee that foreign investors can freely appoint their lawyers. The Chair of the Commission on arbitration for the ICC in Thailand suggested that "granting short-term work permits or business visas for foreign lawyers" could be an option (*Bangkok Post*, 2012).

Box 1. Singapore, a hub for arbitration (FDI Regulations Database, 2012)

In Singapore, international arbitration is regulated by the International Arbitration Act of 1994, which is frequently amended (see the International Arbitration Amendment Act 2012, No. 12 of 2012) in order to become more user-friendly and for Singapore to gain prominence as a seat for international arbitration (Wallace and Rosen, 2012). Among others, the legal reforms include a wider definition of an arbitration agreement, clarify the courts' power to award simple or compound interests, and provide more support for emergency arbitrators and interim orders (Choo, 2012). A number of these amendments were aimed at aligning the legislation with UNCITRAL Model Law on International Commercial Arbitration. In the last ten years, the Singapore International Arbitration Centre has become a hub for arbitration. In 2010 and 2011, according to a survey from the ICC, Singapore has ranked 5th in the list of preferred seats of arbitration out of 98 cities, following Paris, London, Geneva and Zurich (ICC, 2012).

There is, thus, a need to assess ADR and to provide comprehensive and substantive information on why and how ADR regimes can be reformed. In an interdependent and interconnected world, where FDI inflows are vital to economic growth, economies need to have an attractive investment climate. This means that economies should be able to answer the growing and more complex needs of the business community. This supposes, in particular, that economies should offer up-to-date, stable and predictable ADR regimes in order to better attract FDI. This is precisely what the AMD indicators attempt to do by identifying and measuring good practices, and developing a preliminary quantitative analysis of the data, showing that the AMD indicators are significantly correlated with several outcomes of specific interest for FDI.

3. Design of the Arbitrating and Mediating Disputes indicators

The AMD research includes three sets of indicators, as explained below, providing comprehensive information and analysis on ADR in the surveyed economies. These indicators look exclusively at commercial arbitration—originating from the agreement of the parties³—and do not cover investment arbitration.⁴ They look at all types of commercial arbitration involving all kinds of parties, whether

³ This is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them out of a defined legal relationship.

⁴ Investment arbitration is based on either a) an investment treaty, such as the 1965 multilateral Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID), b) a bilateral treaty (BIT), which provides for particular and limited standards of protection of foreign investors such as, expropriation, c) an investment law issued by the host state, which protects foreign investors, or d) in some cases, an investment agreement. In practice, investment arbitration is typically brought under the ICSID Convention or *ad hoc*, using

private, state, or state entities involved in commercial relationships with private parties. The AMD research also examines a variety of arbitration cases, whether administered by private arbitration institutions, such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) or ad hoc arbitrations.⁵

The first set of indicators, AMD 1, measures the strength of ADR laws and institutions, covering and including:

1. The domestic laws and regulations on ADR (Box 2), their accessibility, and whether or not they are considered to follow the United Nations Commission on International Trade Law (“UNCITRAL”) Model Laws on International Commercial Arbitration and on International Commercial Conciliation⁶ that states have the possibility to incorporate in their domestic legislation; it also covers the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the New York Convention);
2. Data on ADR private institutions, whether they exist in the surveyed economies and follow specific rules, such as the UNCITRAL Arbitration Rules of 1976, revised in 2010;
3. Reporting on the specific ADR services available, such as fast-track or online arbitration.

Box 2. Key laws measured by the AMD indicators (FDI Regulations Database, 2012)

- National ADR laws (including civil code provisions) on commercial arbitration, mediation and conciliation;
- National civil codes, civil procedure codes/rules, regulations;
- Ratification of New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

The second set of indicators, AMD 2, looks at the ease of process, before and after initiating arbitration proceedings:

1. Before initiating arbitration proceedings, it measures whether or not an arbitration agreement can be easily concluded, and whether or not the economy surveyed allows for a distinction between domestic and international arbitration;
2. It also looks at possible restrictions that parties may face when appointing their arbitrators and counsels, and when conducting the arbitral process, for instance, freedom to choose the language of the proceedings or the arbitrating institution. In addition, it measures the ease of process once arbitration proceedings are initiated, and through a standard case study (Box 3), the usual length of arbitration proceedings;

UNCITRAL Arbitration Rules. Differences between commercial and investment arbitration exist when it comes to the legal framework and applicable law, the selection of arbitrators, the type of jurisdictional issues that can be addressed, the case management, and the confidentiality and transparency of proceedings and the application of the New York Convention. See Böckstiegel, Karl-Heinz. 2012. "Commercial and Investment Arbitration: How Different are they Today? (Lalive Lecture 2012)", in *Arbitration International 2012*, Vol.28, Issue 4.

⁵ Ad hoc arbitration allows the parties to determine and agree on their own arbitration procedure, rather than having a procedure imposed by a private arbitration institution.

⁶ The UNCITRAL Model Law on International Commercial Arbitration, adopted in 1985 and amended in 2006, aims at harmonizing national laws on international commercial arbitration. The UNCITRAL Model Law on International Commercial Conciliation was adopted in 2002 and aims to harmonize national laws on international commercial conciliation. Please note that the FDI Regulations project only reports contributors' explanations on whether their domestic laws follow UNCITRAL Model Laws. More information on the status of enactment of such Model Laws can be found on UNCITRAL's website: <http://www.uncitral.org>.

3. It captures judicial assistance during arbitration proceedings: whether domestic courts refer parties to arbitration when they have a valid arbitration agreement, and whether there are other measures they could offer in support of arbitration proceedings.

The third set of indicators, AMD 3, deals with judicial assistance in recognizing and enforcing foreign arbitral awards:

1. All steps of the recognition and enforcement process are measured, whether or not there are specialized courts and to what extent these courts review the arbitral award;
2. Through a standard case study (Box 3), the length of the usual recognition and enforcement proceedings for foreign arbitral awards is established.

It is important to note that the data were gathered and reviewed from late 2011 through mid-2012. Subsequent reforms to alternative dispute resolution regimes are not captured by the AMD indicators.

Box 3. The AMD case studies on the length of proceedings (*FDI Regulations Database, 2012*)

The AMD indicators rely on two case studies:

- Case study on the length of arbitration proceedings: contributors are asked to give an estimate where a hypothetical party is in breach of a supply agreement and the other party seeks to recover US\$100,000 through arbitration, without asking for assistance from the domestic courts;
- Case study on the length of judicial proceedings related to foreign arbitral awards: contributors are asked to give an estimate of a hypothetical foreign arbitral award rendered in the amount of US\$100,000, to be recognized and enforced in the surveyed economy.

4. AMD Results

AMD results on the strength of ADR laws and institutions⁷

Arbitration laws, statutes or provisions

Because of its numerous advantages, commercial arbitration is important to the investment climate of an economy. For this reason, it should be more widely recognized and made comprehensively accessible, in order to facilitate access to information for foreign investors. Thus, it is critical to make all the substantial and procedural provisions regulating commercial arbitration incorporated available in one single source of information, either a law incorporated in a code or a specific statute.

All the economies surveyed recognize arbitration is, in one way or another, a mechanism for dispute resolution. The AMD indicators show that 93% of the economies surveyed have a specific commercial arbitration statute or a chapter in a civil code setting out provisions governing arbitration in their economy. The remaining seven economies have some provisions scattered throughout civil codes or other laws, but which do not provide sufficient regulation of arbitration. These economies are: Albania, Argentina, Bosnia and Herzegovina, Burundi, Ethiopia, Iraq, and Montenegro. Iraq is the economy which has the most limited framework for commercial arbitration, in that it has no consolidated law or provisions.

⁷ For detailed data on each economy measured, please see Annex 2.

Online access of arbitration laws

To facilitate access to information, arbitration laws should be available online. As technology continues to develop, ease and speed of access to information is becoming paramount for foreign investors and the investment climate of these economies in general.

About 93% of the economies surveyed were able to provide websites where these laws could be found. However, many of these sites were not official government sources, but rather websites of private law firms. Among the economies where arbitration laws are not accessible (Box 4), five are located in Sub Saharan Africa (SSA): Burkina Faso, Chad, Ethiopia, Ghana and Sierra Leone. In Eastern Europe and Central Asia (ECA) and Middle East and North Africa (MENA), only Cyprus and Yemen do not have arbitration laws accessible online.

Box 4. Percentage of countries where ADR laws are not accessible online, by region (FDI Regulations Database, 2012)

Sub Saharan Africa	71.5
Eastern Europe and Central Asia	14.25
Middle East and North Africa	14.25
OECD	0
East Asia and the Pacific	0
South Asia Region	0
Latin America and the Caribbean	0

Arbitration laws following the UNCITRAL Model Law on International Commercial Arbitration

The fact that the law on commercial arbitration follows the UNCITRAL Model Law on International Commercial Arbitration is a good indication of the degree of an economy's support for arbitration.

The UNCITRAL Model Law aims to harmonize the discrepancies that can exist in domestic laws, regarding various aspects of the arbitration process, notably how arbitrators are selected and appointed, or how the arbitral tribunal can conduct arbitral proceedings. Economies that follow the UNCITRAL Model law reduce the uncertainties that the parties can face while choosing commercial arbitration instead of traditional litigation of their dispute. The main guiding principles on which the UNCITRAL Model Law is based are the following: party autonomy, freedom to agree on the conduct of arbitration proceedings, competence of arbitral tribunals to decide on their own jurisdiction, judicial support to arbitration coupled with restraint from undue interference.

Seventeen economies which do not rely on the UNCITRAL Model Law on International Commercial Arbitration, according to our contributors, are: Albania, Algeria, Angola, Argentina, Bosnia and Herzegovina, Burundi, Ecuador, Ethiopia, France, Iraq, Italy, Montenegro, Pakistan, Papua New Guinea, Saudi Arabia, Sierra Leone and the United States. However, since some of these economies have sophisticated regimes and pro-arbitration domestic courts, such as France, they do not follow the UNCITRAL Model Law but are still based on the same guiding principles mentioned above.

New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Given the extent of cross-border transactions in today's world, as well as the numerous locations for holding assets, recognition of a foreign arbitral award can be a very important stage in the arbitration process. In that respect, the AMD indicators look at the New York Convention, a powerful instrument for the recognition and enforcement of foreign arbitral awards.⁸

The New York Convention is critical to a good legal framework on commercial arbitration, as it requires national courts to recognize foreign arbitral awards, i.e., to grant them the same validity as a judgment.

⁸ Foreign arbitral awards are not considered to be domestic awards in the economy where the recognition and enforcement of the arbitral award is sought.

As a result, it also means that domestic courts must enforce foreign arbitral awards in the case where a debtor refuses to abide by its terms.

Nine economies have still not acceded to the New York Convention.⁹ The latest surveyed economy to access to the New York Convention was Rwanda in 2008; Democratic Republic of Congo is the most recent party to the Convention, as of June 2013.

Mediation and conciliation laws

Mediation and conciliation services are not widely used. Indeed, 54% of the economies surveyed do not have a consolidated law encompassing substantially all aspects of commercial mediation or conciliation. Out of the 46% economies that do have a consolidated law, only half are considered by our contributors to follow the UNCITRAL Model Law on International Commercial Conciliation.

However, 64% of the economies surveyed do have laws that provide for court referral of cases to mediation or conciliation in commercial disputes where court proceedings have been initiated. Some of these laws can be restrictive and narrow down the type of cases that may be submitted to mediation or conciliation services under certain conditions. For example, in Colombia, conciliation is a prerequisite before litigation in commercial, family, and administrative law cases. During commercial trials, there is a special preliminary hearing for the purpose of conciliation, in which the judge acts as a conciliator. In addition, according to the 2010–2011 statistics provided by the Colombian Ministry of Justice Website, some 50% of the cases referred to conciliation are settled, highlighting the importance of such practices.

Arbitration and mediation institutions

The vast majority of the surveyed economies have arbitration institutions. These arbitration institutions are crucial, as very often the parties decide that their arbitration case should be administered by an institution which will provide both the necessary support and control of the arbitral tribunal.

Only five economies do not have arbitration institutions administering arbitration cases: Angola, Brunei Darussalam, Jordan, Pakistan, and Papua New Guinea. However, four of these economies have mediation institutions. Only Angola and Brunei Darussalam have neither an arbitration nor a mediation institution.

In 86 economies, these institutions operate under their own rules. Only a limited number of institutions—in Azerbaijan, Cyprus, Egypt, Malaysia, Mozambique, Singapore, Senegal, and Zambia—follow the UNCITRAL Arbitration Rules, which make a comprehensive set of regulations related to arbitration proceedings available to parties who wish to use them.¹⁰

Arbitration institutions are encouraged to offer a roster of arbitrators or mediators, provided that the parties can remain free to choose arbitrators or mediators which are not on the roster. This is particularly useful for foreign investors, who are not familiar with the host economy, and who have to appoint an arbitrator from that economy, either because it is required by the law, or for practical reasons, such as the necessity to appoint an arbitrator familiar with some local industrial, technical, or environmental aspects of the dispute. Eighty-seven economies have ADR institutions which provide for a roster of arbitrators or mediators. However, 20 of these arbitration institutions have rosters where

⁹ Angola, Burundi, Chad, Ethiopia, Iraq, Kosovo, Papua New Guinea, Sierra Leone and Yemen.

¹⁰ However, some economies have arbitration institutions that also host arbitration under UNCITRAL Arbitration Rules, in addition to their own rules (for instance, Germany).

fewer than 10% of the arbitrators are women, and 20 arbitration institutions have rosters where fewer than 10% of the arbitrators are foreign nationals.

Only a limited number of economies possess ADR institutions which offer attractive services for foreign investors, such as fast-track or online arbitration. Indeed, 39 economies host an arbitration institution which offers fast-track arbitration services, enabling the parties to opt for time-bound arbitration proceedings—in practice, usually six months renewable once—which the arbitrators must duly respect. Only 17 economies have ADR institutions which offer online arbitration services, allowing the parties to carry out the arbitration proceedings online, including the initial filing of the request for arbitration, the appointment of the arbitrator(s), oral hearings if needed, and the rendering of the arbitral award. For example, some arbitration centers have created specific rules for fast-track arbitration, such as the Bangladesh International Arbitration Center, which finalized and adopted its Rules of Procedure in April 2012.

Last but not least, only four economies: Bangladesh, Burundi, Uganda, and Zambia have arbitration institutions that do not have an official website.

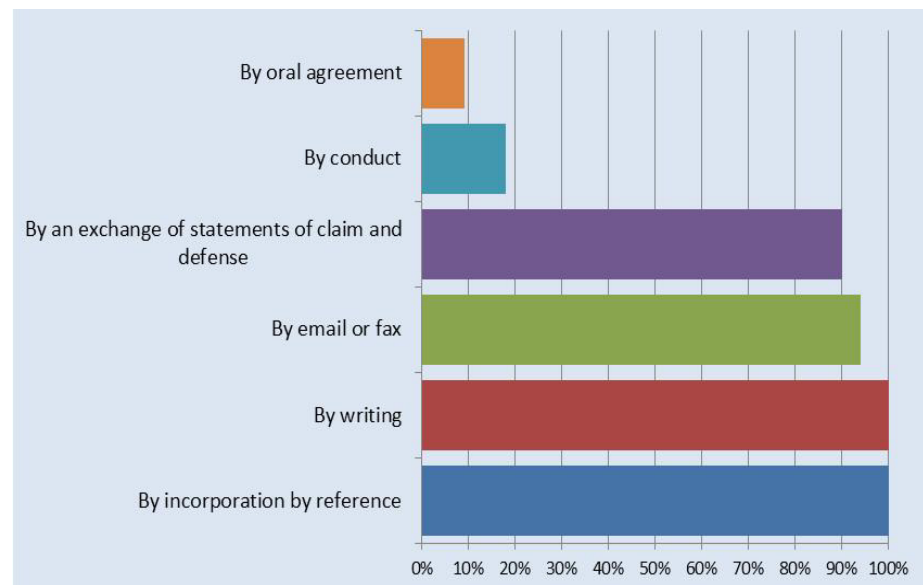
AMD results on the ease of initiating and conducting arbitration proceedings

Entering into an arbitration agreement

Before initiating arbitration proceedings, the parties must first consent, through an arbitration agreement, to submit their dispute to arbitration instead of taking it to domestic courts.

This arbitration agreement, which serves as the basis of the parties' consent to arbitration, must follow certain formal requirements. The parties can conclude the arbitration agreement in writing, by email or fax, by a reference in another document, an exchange of statements of claim and defense in the course of the proceedings, by oral agreement, or by their conduct. In this respect, some economies are

Figure 2. Accepted methods of concluding an arbitration agreement, in % (FDI Regulations Database, 2012)



more restrictive than others when it comes to particular methods of concluding an arbitration agreement (Figure 2). In only four economies are parties unable to conclude an arbitration agreement by email: Afghanistan, Ethiopia, Haiti and Mali. In addition, only 18 economies allow parties to enter into an arbitration agreement by conduct (i.e., recognizing the arbitration through the behavior of the parties); in only nine economies can the parties conclude the agreement orally.

Arbitration agreements must also deal with disputes which can be submitted to arbitration, that is, disputes considered arbitrable according to the domestic laws of the economy.

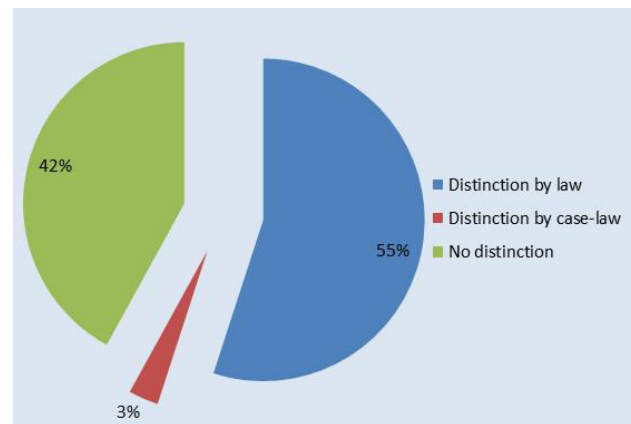
The most frequent commercial disputes are generally considered arbitrable and only a few economies have specific restrictions. For instance, finance and banking activities are not arbitrable in only three economies; patent law or other intellectual property disputes are not considered arbitrable in six economies and intra-corporate disputes are not arbitrable in nine economies. However, disputes involving rights over immovable property are not arbitrable in twenty economies.

The ease of process before initiating arbitration proceedings

In terms of commercial arbitration, economies can be categorized into two groups: a) those which recognize two types: domestic and international, and b) those with no distinction.

The distinction between international and domestic arbitration is key, as it shows to what extent an economy is willing to offer foreign parties a regime which is flexible and answers their specific needs during the course of the arbitration proceedings. The AMD indicators show that 58 economies distinguish between domestic and international arbitration, in their laws or in case law (Figure 3).

Figure 3. Economies which make a distinction between international and domestic arbitration, in % (FDI Regulations Database, 2012)



For these economies, the AMD indicators compare the two regimes and show that laws on international arbitration offer more flexibility to the parties than laws on domestic arbitration (Figures 4 and 5).

As shown in these figures, economies recognizing international arbitration have few restrictions on how international arbitration proceedings are conducted; for example, the nationality of the appointed arbitrators, the language of the proceedings, and the seat of the proceedings. However, economies, such as Saudi Arabia, Sierra Leone, and Vietnam have restrictions regarding the language of domestic arbitration proceedings. Saudi Arabia, Sierra Leone, and Sri Lanka also place restrictions on the seat of domestic arbitration proceedings.

Figure 4. Restrictions on the appointment of arbitrators and foreign counsels (FDI Regulations Database, 2012)

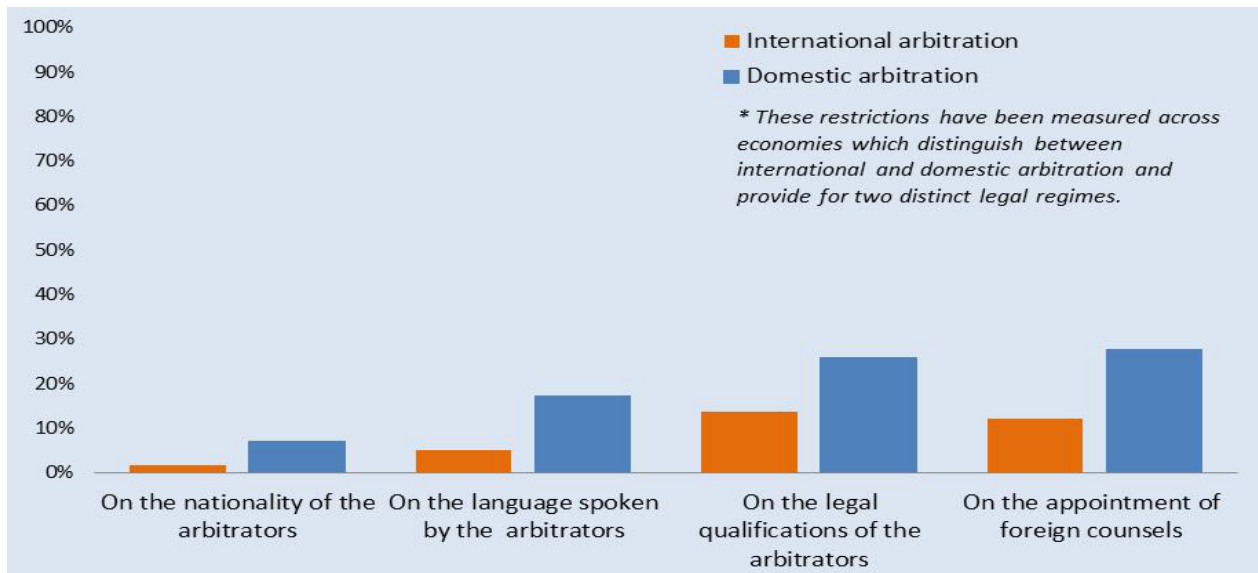
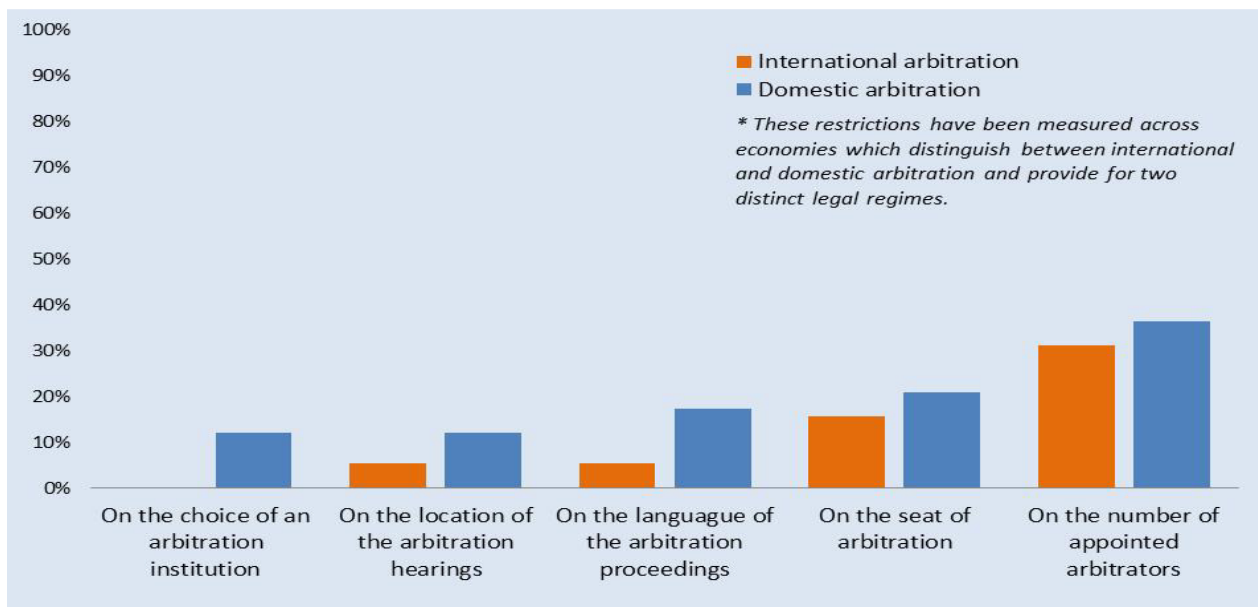


Figure 5. Restrictions on the rules of procedure of the arbitration (FDI Regulations Database, 2012)

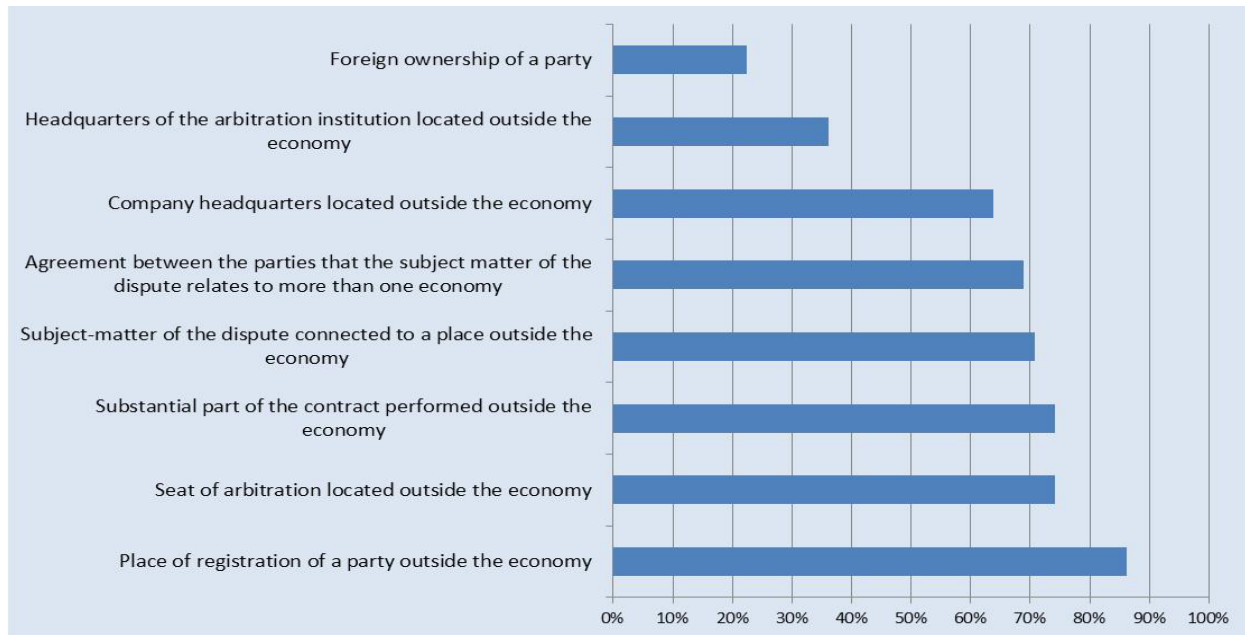


Of these 58 economies, only 28 rely on an economic definition of international arbitration, according to which the arbitration is considered international if international trade interests are at stake (Figure 6). This broad definition allows the parties involved in a commercial relationship with an international component to benefit from the laws on international arbitration.

Of these 58 economies, some specific criteria, such as whether the place of registration of a party is abroad or not, or whether substantial part of the obligations of the commercial relationship is performed outside of the economy, could be enough to make the arbitration qualify as international. Hence, 52 economies recognize an arbitration dispute as international, if one of the parties is registered

in a foreign economy. However, only 14 economies consider a commercial arbitration to be international, if one of the parties is a company with foreign ownership (Figure 6).

Figure 6. Factors by which arbitration is recognized as international, in % (FDI Regulations Database, 2012)



Length of arbitration proceedings

While it is important for foreign investors to rely on a comprehensive legal framework on commercial arbitration allowing them to tailor their disputes according to their needs, it is also important to assure them that arbitration proceedings will be conducted in a timely manner.

In 2012, based on one of the case studies mentioned in Box 3, it takes an average of 326 days to conduct arbitration proceedings. Arbitration proceedings can also take longer, as in Brazil (560 days), India (569 days), Croatia (679 days), and Iraq (910 days).

Box 5. Average length of arbitration proceedings by region, in weeks (FDI Regulations Database, 2012)	
Eastern Europe and Central Asia	36 weeks
East Asia and the Pacific	41 weeks
Latin America and the Caribbean	41 weeks
High-Income OECD	48 weeks
Middle East and North Africa	58 weeks
South Asia Region	63 weeks
Sub Saharan Africa	65 weeks

As shown in Box 5, Eastern Europe and Central Asia (ECA) is the region where arbitration proceedings are the fastest and Sub Saharan Africa the region where they take the longest, although there is very limited data available for SSA.

AMD results on the ease of recognition and enforcement of foreign arbitral awards

Specialized judicial assistance

Since commercial arbitration is based on consent, when an arbitral award is rendered, the parties usually voluntarily comply with the decision and no further action is necessary. However, if the debtor refuses to pay, the winning party may bring enforcement proceedings in the local courts.

The AMD indicators look at foreign arbitral awards only, in order to measure whether economies comply with the New York Convention, as foreign investors rely on it often when they need to enforce an arbitral award. Foreign arbitral awards are those which are rendered in arbitration proceedings conducted outside of an economy and, when applicable, awards rendered within an economy which are not considered as domestic according to national laws.

In a case where the debtor refuses to comply with the foreign arbitral award, the foreign investor must request judicial enforcement of the award. In such an event, economies which have courts with specific jurisdiction over the recognition and enforcement of foreign arbitral awards are more familiar with arbitration and provide greater security to foreign investors. Only 23 economies have specialized courts with specific jurisdiction to recognize and enforce arbitral awards. In addition, 78 economies allow for an appeal. Some of these appeal courts are judicial, but they can also be administrative or constitutional courts.

Length of recognition and enforcement proceedings for foreign arbitral awards

As mentioned above, foreign investors take into consideration the length of the proceedings that they would potentially have to conduct in a particular economy.

In 2012, based on one of the case studies mentioned in Box 3, it takes an average of 557 days or 80 weeks to recognize and enforce foreign arbitral awards in the surveyed economies. As shown in Box 6, recognition and enforcement proceedings are the fastest in the East Asia and the Pacific region, whereas they take longest in South Asia; once again, there is very limited data available for SAR.

Box 6. Average length of recognition/enforcement proceedings by region, in weeks (FDI Regulations Database, 2012)	
East Asia and the Pacific	39 weeks
High-Income OECD	43 weeks
Sub Saharan Africa	65 weeks
Middle East and North Africa	68 weeks
Eastern Europe and Central Asia	75 weeks
Latin America and the Caribbean	90 weeks
South Asia Region	386 weeks

The length of recognition and enforcement proceedings is affected by different factors, such as the number of steps required to execute the foreign arbitral award in the economy. In 71 economies, parties are required to apply for recognition of a foreign arbitral award prior to its enforcement before the competent court. The recognition phase is the conversion of the arbitral award into a court judgment. However, some economies, such as Belarus, Georgia, and the Philippines allow for this phase to be conducted simultaneously with the enforcement phase.

Contributing to the longer procedure are the many requirements imposed to prove the consent to arbitration and the validity of the arbitration proceedings. For instance, in Albania, the requesting party must provide the competent court with confirmation from the arbitral tribunal that the arbitral award is final, if necessary with a notarized translation (as mentioned by our contributors). In India, the entire contract would have to be produced and, if in a foreign language, translated, in the event that the arbitration agreement is a provision within the original contract between the parties.

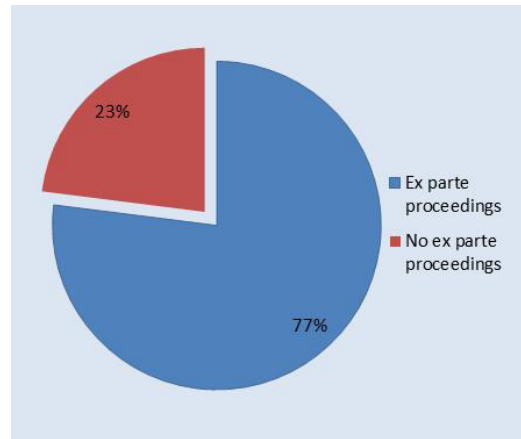
However, some requirements serve as a guarantee of greater legal certainty and are therefore necessary. The type of evidence usually required by courts, in support of a request to recognize and enforce a foreign arbitral award include the production by the requested party of a certified copy of the original foreign arbitral award (93 economies), and a certified copy of the arbitration agreement (94 economies).

Only six economies: Burundi, Haiti, Morocco, Papua New Guinea, Sierra Leone, and Zambia do not require any of these.

Finally, some legal provisions can facilitate recognition and enforcement proceedings.

An example is the possibility of conducting *ex parte* proceedings: e.g., if the losing party refuses to attend the hearings, the domestic courts may still be able to make a decision. As shown in Figure 7, only 23% of economies do not provide for the possibility for a party to conduct *ex parte* proceedings.

Figure 7. Economies recognizing *ex parte* proceedings, in % (FDI Regulations Database, 2012)

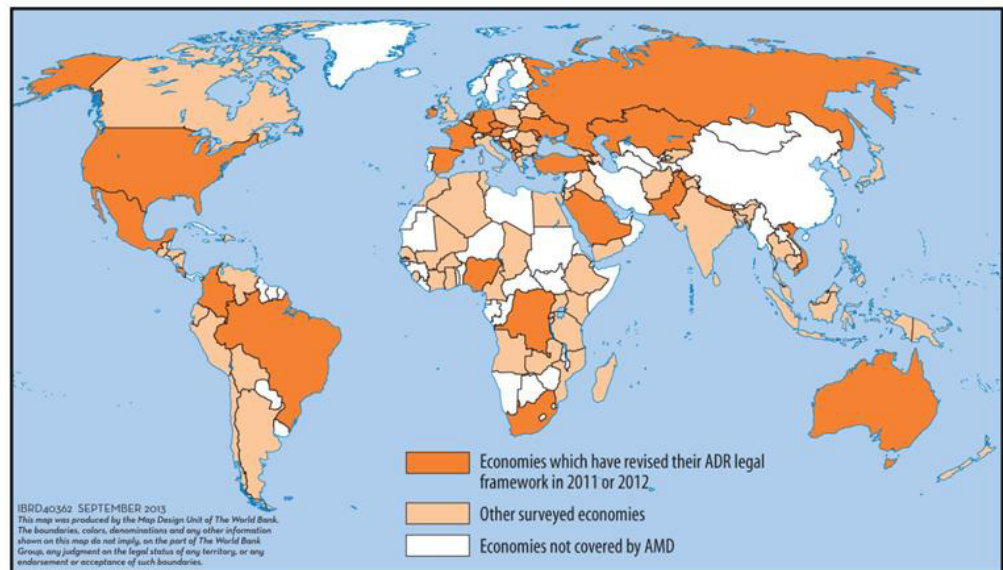


5. Trends for ADR in 2011 and 2012

In 2011 and 2012, 59% of OECD economies and 43% of ECA economies have amended, adopted, or are about to adopt new laws/provisions on international commercial arbitration, mediation, or conciliation. On the other hand, only 11% of Middle East and North Africa (MENA) and 12.5% of Sub Saharan Africa (SSA) economies have reformed their laws in that time period.

Figure 8 shows, in bright orange, the 31 economies which have revised their ADR regime in 2011 or 2012.¹¹ These economies are: Albania; Australia; Austria; Brazil; Brunei Darussalam; Colombia; Congo, Dem. Rep.; Costa Rica; Croatia; Czech Republic; France; Germany; Hong Kong SAR, China; Ireland; Kazakhstan; Mexico; Moldova; Nepal; the Netherlands; Nigeria; Pakistan; Russian Fed.; Saudi Arabia; Serbia; Singapore; South Africa; Spain; Turkey; Ukraine; United States and Vietnam.

Figure 8. Economies which have revised their ADR laws in 2011–2012 (FDI Regulations Database, 2012)



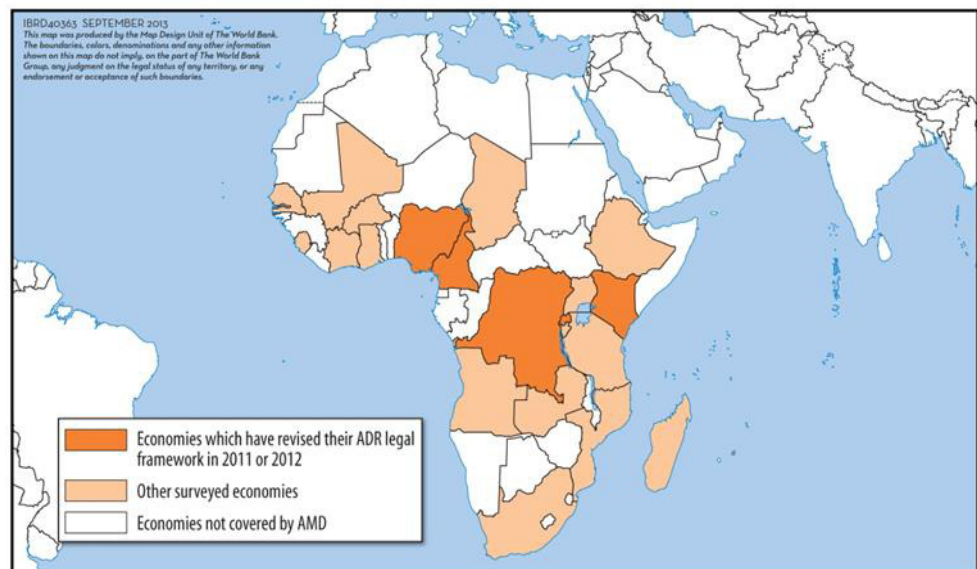
¹¹ The AMD topic collected data in 2012, and does not cover changes which have occurred after September 2012. It is worth mentioning that Mauritius amended its International Arbitration Act (IAA) on May 25, 2013, further reinforcing its Mauritius’ pro-arbitration approach.

Among them, three economies, Colombia, Congo, Dem. Rep. and Saudi Arabia, have adopted a pro-arbitration approach through new laws on commercial arbitration in 2012:

1. In Colombia, the new National and International Arbitration Statute (Law 1563/2012), enacted on July 12, 2012, appears to be based on the UNCITRAL Model law and governs both domestic and international arbitration;¹²
2. Saudi Arabia enacted a new law on arbitration (the 2012 Law) which came into force on July 8, 2012;
3. Finally, Congo, Dem. Rep., signed the Treaty on the Harmonization of Business Law in Africa in 2012 and joined the organization for the Harmonization of Business Law in Africa (OHADA). As a result, all OHADA Uniform Acts are part of the Congolese legal framework, including the Uniform Act on Arbitration of 1999.

As shown in Figure 9, Sub-Saharan Africa has witnessed a significant increase in the number of arbitration, mediation, and conciliation institutions. SSA economies colored in bright orange have created new arbitration institutions in 2011 or 2012. These economies are: Cameroon, Congo, Dem. Rep., Kenya, Mauritius, Nigeria, and Rwanda. Light orange is for SSA economies which have not created new arbitration institutions over the past two years.

Figure 9. Sub-Saharan African economies which have created ADR institutions in 2011–2012 (FDI Regulations Database, 2012)



In 2011 and 2012, the following private ADR institutions were created or launched in these economies:

1. Cameroon: the Permanent Centre for Arbitration and Mediation (*Centre Permanent d'Arbitrage et de Médiation*), launched in April 2012 by the African Centre for Law and Development;

¹² AMD contributors have indicated that the new Colombian law broadly follows UNCITRAL Model law. However, it excludes the UNCITRAL Model Law's provision which states that arbitration is "international" when the place of arbitration is situated outside the state in which the parties have their places of business. It defines it more broadly, by stating that parties can agree on an international arbitration if the dispute referred to arbitration affects the interests of international commerce. This last definition incorporates the economic criterion of internationality, recognizing arbitration as international when international trade interests are at stake, and follows in that sense a few other economies which have adopted the same broad definition of international arbitration, for example France, in its Article 1504 of the Code of Civil procedure.

2. Congo, Dem. Rep.: as a new member State of OHADA, Congo has now access to the Common Court of Justice and Arbitration of OHADA;
3. Kenya: the Nairobi Centre for Arbitration Act was approved by the President of Kenya in January 2013 and is expected to become the second largest arbitration institution in the East Africa Community, along with the Kigali International Arbitration Center;
4. Mauritius: the LCIA-MIAC Arbitration Centre, established in 2011 and fully operational since October 2012, with the support of the London Court of International Arbitration, the Mauritius International Arbitration Centre and the government of Mauritius;
5. Nigeria: the Lagos Court of Arbitration launched in November 2012, with the support of the Lagos State government;
6. Rwanda: the Kigali International Arbitration Centre, launched in May 2012, on the initiative of the Private Sector Federation in partnership with the government of Rwanda.

6. Correlation analysis of AMD indicators

The results presented thus far have been primarily descriptive in nature. This section presents preliminary quantitative analysis of the data, demonstrating that the AMD indicators at the economy level are significantly correlated with outcome indicators of interest. It should be stressed that these correlations do not imply causality, and more rigorous econometric analysis will be necessary to better understand the relation between the AMD data and these and other economic variables. Nonetheless, these correlations provide a useful starting point by showing that the indicators are significantly associated with measures of economic performance.

The AMD data that was used for the quantitative analysis below relies on the results of three AMD sub-indicators, which are scored on a scale from 0 to 1, with higher values corresponding to better outcomes:

1. AMD indicators on the strength of laws and institutions (AMD 1)
2. AMD indicators on the ease of initiating and conducting arbitration proceedings (AMD 2)
3. AMD indicators on the ease of recognition and enforcement of foreign arbitral awards (AMD 3).

In the following analysis, the AMD sub-indicators 1, 2 and 3 have been most of the time averaged across the surveyed economies to measure potential correlations of the overall quality of alternative dispute resolution regimes with other economic variables.

These variables, considered as relevant for the investment climate, are the following:

1. AMD indicators on the perception of contributors of the quality of the legal framework on ADR of their economy (AMD Perception)
2. Total FDI inflows
3. FDI inflows per capita
4. Doing Business 2013 Enforcing Contracts data
5. World Bank Group's World Governance Indicators
6. World Economic Forum's Global Competitiveness Indicators
7. MIGA's World Investment and Political Risk.

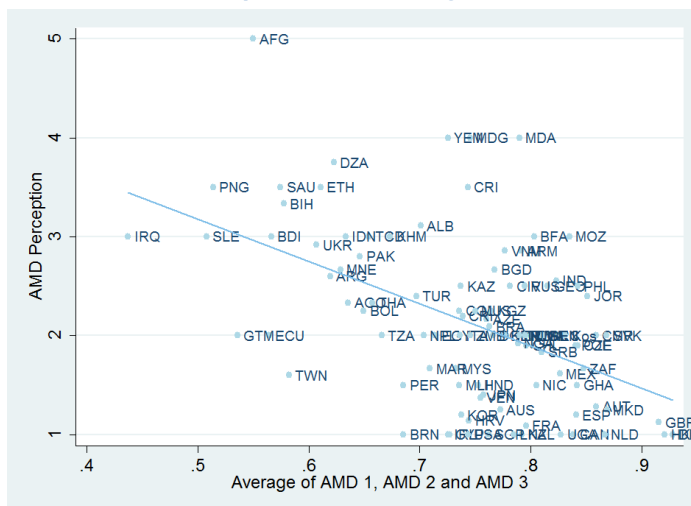
AMD correlations with AMD Perception indicators

One of the first interesting correlations found was between the average of AMD 1, 2 and 3 and the AMD perception indicators (Figure 10).

The AMD perception score indicates the extent to which contributors perceived that the quality of the legal framework on ADR in their economy could be an obstacle to foreign direct investment. Their perception of the legal framework on ADR is reported as: 1 = no obstacle, 2 = minor obstacle, 3 = moderate, 4 = heavy, 5 = severe. This outcome variable shows a strong negative correlation with the average of the three input variables.

As shown in Figure 10, the perceived obstacle of the ADR regime decreases in economies with higher-quality arbitration frameworks and practices as measured by the AMD indicators.

Figure 10. ADR regimes in economies with higher average AMD indicators are perceived as being less of an obstacle



Note: The Pearson correlation is very strong (-0.499) and highly significant at conventional levels.

A strong negative correlation was also identified between AMD 1 and the AMD perception indicators.

AMD correlations with total FDI inflows and FDI inflows per capita

This second set of correlations finds that economies that score better on the AMD indicators tend to receive more FDI inflows.

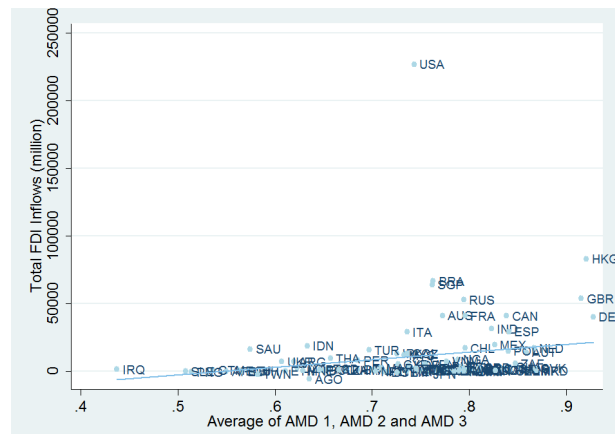
A strong and positive correlation was found between the average of AMD 1, 2 and 3 and actual FDI inflows (millions), as shown in Figure 11. Similar and somewhat stronger results are obtained when the average of the three input variables are correlated with a five-year average of FDI inflows per capita (Figure 12). These correlations clearly indicate that there is a relationship between ADR regimes and FDI.

However, as noted above, the correlations do not imply causation. For example, the high correlation between AMD indicators and FDI inflows per capita may be partially capturing the effects of a higher stage of development (as reflected in a higher income per capita) on the overall quality of a country's legal framework.

More robust quantitative research will be needed to better understand the relationship between alternative dispute resolution mechanisms and global FDI flows.

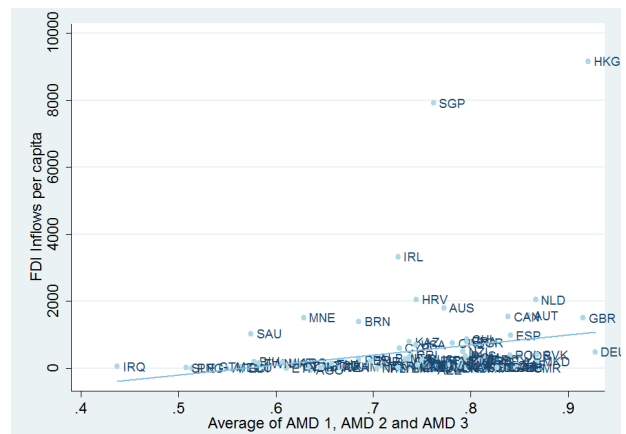
Strong positive correlations have also been identified between AMD 1 and these two output variables.

Figure 11. Correlation of AMD indicators 1, 2, and 3 with total FDI inflows



Note: The Pearson correlation is 0.202 and significant at the 5% level. This correlation becomes stronger after controlling for outlier economies after controlling for outlier (the United States). Source: UNCTADstat for FDI data.

Figure 12. Correlation of AMD indicators 1, 2, and 3 with FDI inflows per capita over a five-year average



Note: The Pearson correlation is 0.225 and significant at the 5% level. The correlation exists, even if a little bit weaker, after controlling for outliers (Hong Kong SAR, China and Singapore). Source: UNCTADstat for FDI data.

AMD correlations with 2013 Doing Business Enforcing Contracts

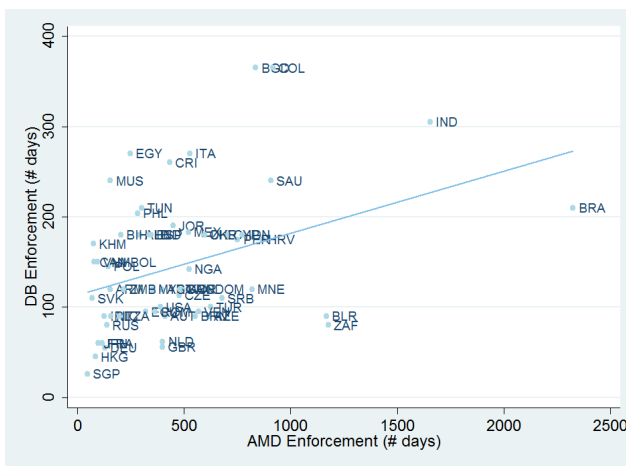
The AMD research shows that economies where the time to enforce a contract in court is shorter are economies where the time to enforce an arbitral award is also shorter (Figure 13).

The World Bank’s Doing Business assesses the efficiency of the judicial system yearly, with the Enforcing Contract indicators¹³. The indicators follow the evolution of a commercial sale dispute over the quality of goods and track the time, cost, and number of procedures involved from the moment the plaintiff files the lawsuit up until payment is received. This includes the time to file the lawsuit, to serve the case, to issue and enforce a judgment.

The AMD indicators have collected data on the length of judicial proceedings related to the recognition and the enforcement of a foreign arbitral award. This data has been collected on the basis of a case study mentioned in Box 3.

A strong positive correlation has been evidenced, after controlling for outlier economies, between AMD data on the length of recognition and enforcement proceedings (measured in days) and Doing Business Enforcing Contracts data (measured in days).

Figure 13. Correlation on the length of enforcement proceedings



Note: The Pearson correlation is 0.407 and significant at the 1% level. The correlation is strong also after controlling for outlier (Pakistan).

¹³ <http://www.doingbusiness.org/data/exploretopics/enforcing-contracts>

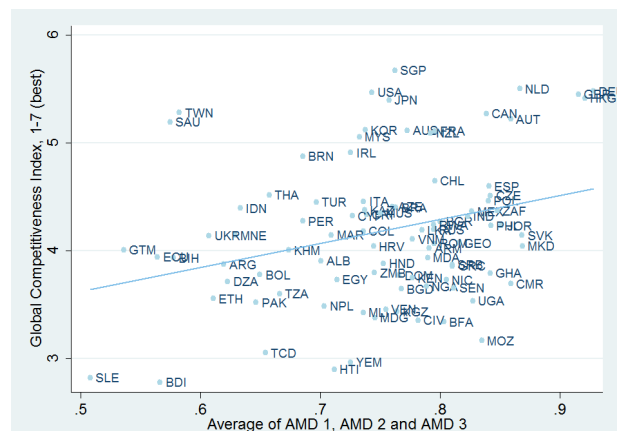
AMD correlations with the World Economic Forum’s Global Competitiveness Indicators

The AMD data correlated with the data provided by World Economic Forum’s yearly report on Global Competitiveness show that economies which are more competitive, and particularly economies which have good public and private institutions, also tend to have better ADR regimes.

The Global Competitiveness report provides an assessment of the competitiveness of 144 economies¹⁴. In order to measure the drivers of these economies’ productivity and prosperity, the report relies on the Global Competitiveness Index (GCI), which covers both macroeconomic and micro/business aspects of competitiveness. The GCI includes economic indicators divided into several different broad categories capturing aspects of the quality of institutions, the macroeconomic environment, skills and education, the efficiency of markets, business sophistication and Innovation, among others.

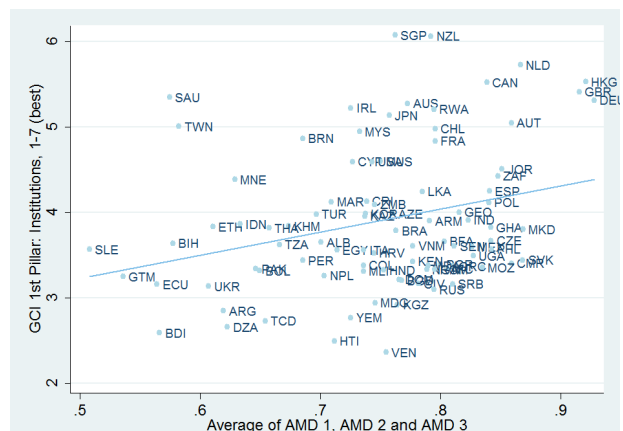
Positive correlations have been identified with the GCI (Figure 14) and, more specifically, with those variables captured under its “institutions” component (Figure 15). These correlations are strong and their level of significance is robust. In addition, the same positive correlations have also been identified with the following specific variables: judicial independence, efficiency of legal framework in settling disputes, and efficiency of legal framework in challenging regulations.

Figure 14. Correlation between the average of AMD 1, AMD 2 and AMD 3 and the Global Competitiveness Index 2012-2013



Note: The Pearson correlation is 0.295 and significant at the 1% level.

Figure 15. Correlation between the average of AMD 1, AMD 2 and AMD 3 and the GCI 1st Pillar on Institutions



Note: The Pearson correlation is 0.289 and significant at the 1% level.

AMD correlations with MIGA’s World Investment and Political Risk data

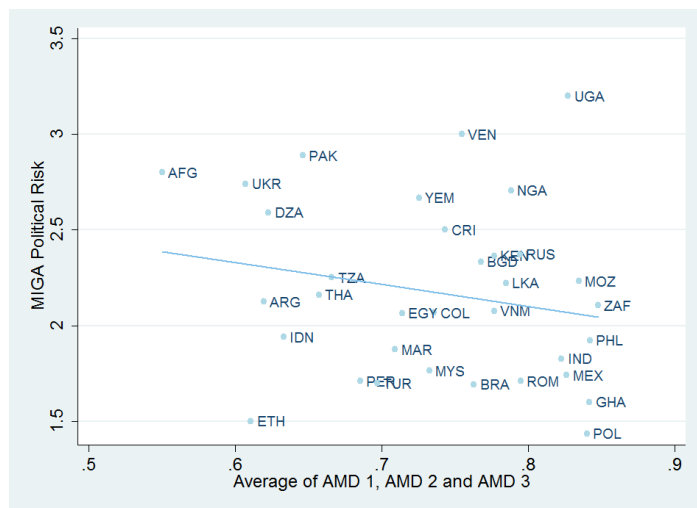
The AMD quantitative analysis shows that, in the 36 countries surveyed by the Multilateral Investment Guarantee Agency (MIGA) in 2009, companies perceive that political risks are higher in the countries where the ADR framework is weaker.

¹⁴ <http://www.weforum.org/issues/global-competitiveness>

MIGA, whose mission is to promote FDI into developing countries by insuring eligible projects against certain risks, publishes a yearly report examining perceptions of political risk and risk-mitigation strategies¹⁵. The World Investment and Political Risk Report published in 2009 looks, in particular, at companies' overall perception of the political risks related to investing in certain emerging markets (and it allocates high scores to economies where the political risk is perceived as high).

This data shows that there is a negative correlation between the average of AMD indicators 1, 2 and 3 and the fact that some companies perceived political risks in a certain numbers of countries (Figure 16).

Figure 16. Correlation between the average of AMD 1, AMD 2 and AMD 3 and the perception, by companies, of political risks



Note: The Pearson correlation is 0.207.

This analysis is relative, and has to be put into perspective, given that this data reflects perceptions from a limited number of companies. However, it is consistent with the other correlations that have been identified and reinforce the fact that a well-functioning ADR regime is an indicator of a good business climate.

AMD correlations with the Worldwide Governance Indicators

Finally, another correlation was identified between AMD sub-indicators 1 on the quality of the legal framework and some governance indicators developed by the Worldwide Governance Indicators (WGI) project¹⁶ of the World Bank.

The WGI project reports aggregate and individual governance indicators for 215 economies over the period 1996–2011, for six dimensions of governance: a) Voice and Accountability, b) Political Stability and Absence of Violence, c) Government Effectiveness, d) Regulatory Quality, e) Rule of Law and f) Control of Corruption.

These aggregate indicators combine the views of a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. Just as AMD indicators, they are scored with higher values corresponding to better outcomes (but scaled differently depending on individual data sources).

Strong positive correlations have been identified between AMD 1 on the strength of ADR laws and institutions and the following relevant issues measured by the WGI:

1. the Control of Corruption indicators, which captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests (Figure 17);

¹⁵ <http://www.miga.org/resources/index.cfm?stid=1866>

¹⁶ <http://info.worldbank.org/governance/wgi/>

7. Conclusion: Policy implications

Foreign investors, when facing a dispute, need to be able to rely on effective and updated ADR regimes. AMD data identifies those economies which have adopted generally accepted good practices, including consolidated ADR laws, regulations following the UNCITRAL Model Law on International Commercial Arbitration and laws encompassing substantially all aspects of commercial mediation and conciliation. The data also identify where functional ADR institutions exist to assure the efficient conduct of the arbitration proceedings, a greater likelihood that time limits assigned by the arbitral tribunal will be respected and greater certainty that the arbitral award will withstand the scrutiny of a domestic court.

Several opportunities for improvement also arise out of the AMD data. First is greater flexibility in domestic arbitration regimes, through the recognition of international arbitration. The AMD indicators find that when an economy provides for two distinct regimes for domestic and international arbitration—either through its laws or case law— international arbitration laws are less restrictive than domestic arbitration laws. This affects rules on the appointment of arbitrators and counsels, the choice of the seat of the arbitration, the choice of the language of the arbitration proceedings, etc., which in turn affects the desirability for firms to use domestic ADR services. Access to domestic courts is also key -- domestic court regulations in many jurisdictions do not adequately support arbitrator(s) when they need to obtain, through the courts, the production of witnesses or documents or certain enforcement measures (for example, the freezing of assets or ordering interim payments).

In addition, the length of arbitration proceedings can be significantly reduced in many parts of the world. Online arbitration can be especially effective for small commercial disputes, making them shorter and less administratively demanding and cheaper than international disputes. One potential area of reform in many economies would be to offer such services through state agencies or by supporting private initiatives.

A final policy implication from the AMD data applies to domestic court capabilities. Given the technical nature of arbitral awards, specialized courts have been most effective in a variety of jurisdictions. These are high-level courts or specially designated courts with the capacity and experience to deal with commercial arbitral awards. These economies have also acceded to the New York Convention to recognize and enforce arbitral awards.

Reforms to ADR regimes allow economies to offer a more attractive investment climate to foreign investors. With commercial contracts becoming more and more complex, it is important that economies not only recognize and offer alternative dispute resolution mechanisms but also constantly adapt their laws and regulations to reflect the best practices in alternative dispute resolution.

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Annex 1. Methodology and coverage of the AMD indicators (100 economies across 7 regions)

The Arbitrating and Mediating Disputes (AMD) indicators were developed using data gathered about alternative dispute resolution laws, regulations, and practice relevant for FDI through a standard questionnaire of arbitration, mediation and conciliation experts in 100 economies, including lawyers, law professors, arbitrators, members of arbitration and mediation institutions, and government regulators, on a pro-bono basis. The questionnaire was distributed in late 2011, with responses received through mid-2012. The questionnaire was partly based on standard case studies so that responses can be comparable across economies. The responses were reviewed and harmonized and supplemented with desk research.

Coverage of the AMD indicators: 100 economies across 7 regions (FDI Regulations Database, 2012)	
East Asia and Pacific 11 economies	Brunei Darussalam; Cambodia; Hong Kong SAR, China; Indonesia; Malaysia; Papua New Guinea; Philippines; Singapore; Taiwan, China; Thailand; Vietnam
Eastern Europe and Central Asia 21 economies	Albania; Armenia; Azerbaijan; Belarus; Bosnia and Herzegovina; Bulgaria; Croatia; Cyprus; Georgia; Kazakhstan; Kosovo; Kyrgyz Republic; Macedonia, FYR; Moldova; Montenegro; Poland; Romania; Russian Federation; Serbia; Turkey; Ukraine
Latin America & Caribbean 15 economies	Argentina; Bolivia; Brazil; Chile; Colombia; Costa Rica; Dominican Republic; Ecuador; Guatemala; Haiti; Honduras; Mexico; Nicaragua; Peru; Venezuela, R.B.
Middle East and North Africa 8 economies	Algeria; Egypt, Arab Rep.; Iraq; Jordan; Morocco; Saudi Arabia; Tunisia; Yemen, Rep.
High Income OECD 17 economies	Australia; Austria; Canada; Czech Republic; France; Germany; Greece; Ireland; Italy; Japan; Korea, Rep.; Netherlands; New Zealand; Slovak Republic; Spain; United Kingdom; United States
South Asia Region 6 economies	Afghanistan; Bangladesh; India; Nepal; Pakistan; Sri Lanka
Sub-Saharan Africa 22 economies	Angola; Burkina Faso; Burundi; Cameroon; Chad; Congo, Dem. Rep.; Cote d'Ivoire; Ethiopia; Ghana; Kenya; Madagascar; Mali; Mauritius; Mozambique; Nigeria; Rwanda; Senegal; Sierra Leone; South Africa; Tanzania; Uganda; Zambia

General presentation of the methodology

The AMD indicators quantify three aspects of ADR regimes that are important for companies seeking to resolve commercial disputes outside of domestic courts. These factors are the strength of an economy's commercial arbitration laws (including adherence to international conventions on commercial arbitration); the ease of process for the parties initiating and conducting arbitration proceedings in that economy; and the extent to which domestic courts assist the arbitration process, both during the proceedings and regarding the enforcement of foreign arbitral awards. These three factors also measure, to a certain extent, other elements of alternative dispute resolution (ADR), that is to say mediation and conciliation. These elements are considered essential to the operation of an effective arbitration regime that prioritizes predictability, transparency, efficiency, due process and party autonomy.

These indicators look exclusively at commercial arbitration—originating from the agreement of the parties—and do not cover investment arbitration. They look at all types of commercial arbitration involving all kinds of parties, whether private, state, or state entities involved in commercial relationships with private parties. It also examines a variety of arbitration cases, whether administered

by private arbitration institutions, such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) or ad hoc arbitrations.

There are two types of questions asked in the Arbitrating and Mediating Disputes indicators:

- Legal questions, measuring the quality of laws and regulations applicable to foreign-owned companies in the respective economy. Responses to these survey questions are based on the provisions of the laws, regulations and judicial precedents, if applicable. These questions are therefore *de jure*, meaning that they measure what the law states.
- Procedural questions, measuring the duration and difficulty of arbitration related procedures. Responses to these survey questions are based on the contributors' practical experience. These questions are *de facto*, meaning that they measure what exists in fact, or in other words, practice on the ground.

This Annex presents a brief overview of the AMD indicators' methodology. A complete methodology with question details for each sub-indicator is available from the author upon request.

Presentation of the methodology for the AMD indicators

There are three sets of indicators, providing comprehensive information and analysis on ADR in the surveyed economies:

1. AMD indicators on the strength of laws and institutions (AMD 1)
2. AMD indicators on the ease of initiating and conducting arbitration proceedings (AMD 2)
3. AMD indicators on the ease of recognition and enforcement of foreign arbitral awards (AMD 3).

The first set of indicators, AMD 1, measures the strength of ADR laws and institutions, covering and including:

1. The domestic laws and regulations on ADR, their accessibility, and whether or not, according to contributors, they follow the United Nations Commission on International Trade Law ("UNCITRAL") Model Laws on International Commercial Arbitration and on International Commercial Conciliation that states have the possibility to incorporate in their domestic legislation; it also covers the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the New York Convention);
2. Data on ADR private institutions, whether they exist in the surveyed economies and follow specific rules, such as the UNCITRAL Arbitration Rules of 1976, revised in 2010;
3. Reporting on the specific ADR services available, such as fast-track or online arbitration.

AMD 1 compares the strength of economies' ADR regimes by examining the laws and regulations that an economy relies on to regulate its domestic and international arbitrations, as well the economy's adherence to specific international conventions. Specifically, AMD 1 focuses on:

- (a) what laws on alternative dispute resolution are in place, whether different laws apply to domestic and international arbitrations taking place in that economy, and whether the economy has entered into leading international conventions on arbitration, specifically the New York Convention;
- (b) whether the economy hosts arbitration and mediation institutions, and if yes, what is their structure, and if they offer specific services such as fast-track or online arbitration.

The second set of indicators, AMD 2, looks at the ease of process, before and after initiating arbitration proceedings:

1. Before initiating arbitration proceedings, it measures whether or not an arbitration agreement can be easily concluded, and whether or not the economy surveyed allows for a distinction between domestic and international arbitration;
2. It also looks at possible restrictions that parties may face when appointing their arbitrators and counsels, and when conducting the arbitral process, for instance, freedom to choose the language of the proceedings or the arbitrating institution. In addition, it measures the ease of process once arbitration proceedings are initiated, and through a standard case study, the usual length of arbitration proceedings;
3. It captures judicial assistance during arbitration proceedings: whether domestic courts are willing to enforce an arbitration agreement by recognizing that they do not have jurisdiction, and whether there are other measures they could offer in support of arbitration proceedings.

AMD 2 compares the ease of parties to design arbitration proceedings in their chosen manner and conduct fair and predictable arbitrations in the economy that respect due process. Specifically, it looks at several concepts:

- (a) Form of the arbitration agreement: whether the law restricts the form that an arbitration agreement can take in order to be legally binding on the parties;
- (b) Arbitrability: whether the law restricts the subject matter of commercial disputes being submitted to arbitration;
- (c) Party autonomy: this is an essential value underpinning arbitration as a dispute resolution tool, and laws may enshrine it by providing parties with the freedom to select integral elements of the arbitration process including, any seat of arbitration, any particular ADR institution, any arbitrators and foreign counsel;
- (d) Judicial assistance: how domestic courts assist the arbitral process; whether domestic courts support arbitration and have articulated a “pro-arbitration” policy, as well as upholding the parties’ agreement that the arbitration tribunal can rule on its own jurisdiction, whether the law expressly provides for courts to assist the arbitration process by ordering interim relief, the production of documents and the appearance of witnesses;
- (e) Practice: practitioners’ estimates regarding the average period of time to establish an arbitral tribunal in the economy’s most used arbitration institution.

The third set of indicators, AMD 3, deals with judicial assistance in recognizing and enforcing foreign arbitral awards:

1. All steps of the recognition and enforcement process are measured, whether or not there are specialized courts and to what extent these courts review the arbitral award;
2. Through a standard case study (Box 3), the length of the usual recognition and enforcement proceedings for foreign arbitral awards is established.

AMD 3 compares the ease of the recognition and enforcement of foreign arbitral awards across economies. It includes:

- (f) *de jure* and *de facto* questions relating to how domestic courts assist parties in the recognition and enforcement process of a foreign arbitral awards;
- (g) Practice: practitioners' estimates regarding the average period of time to enforce an arbitral award in a local court of the surveyed economy.

The case studies used to measure the length of arbitration proceedings and the length of the recognition and enforcement of foreign arbitral awards is standard. In both cases, contributors are asked to give an estimate where a hypothetical party is in breach of a supply agreement and the other party seeks to recover US\$100,000 through arbitration, either by initiating arbitration proceedings or by initiating recognition and enforcement proceedings concerning a foreign arbitral award rendered in the same amount.

Limitations of the AMD indicators

The methodology of Arbitrating Disputes indicators is primarily limited to analyzing verifiable data, such as the legal framework and most common practices in each economy. The survey uses a specific methodology that consists of mostly "Yes" or "No" questions and has few perception-based questions. Practice is therefore covered in a limited manner, given the survey methodology and the nature of arbitration, which is private and confidential.

There is no such thing as a "one size fits all" arbitration regime. However, by asking a standardized set of questions in our survey, we aim to identify good practices that can assist countries in benchmarking the quality of their arbitration regimes.

The AMD indicators represent a rather extensive measurement of economies' alternative dispute resolution frameworks with a focus on commercial arbitration. However, the indicators do not cover many other issues related to dispute resolution such as:

1. Evaluation of arbitration clauses in bilateral investment treaties, investment chapters of free trade agreements, investment treaty arbitrations and enforcement of ICSID arbitration awards;¹⁷
2. Level of awareness and acceptance of arbitration practices by the economies' legal and business community;
3. Level of training of economies' arbitration practitioners and judges;
4. Effectiveness of arbitral institutions;
5. Extent to which arbitration is preferred over other dispute resolution tools in each economy;
6. Effectiveness of commercial litigation (already measured by the World Bank Group's Doing Business Enforcing Contracts indicator).

Annex 2. AMD Dataset

¹⁷ The surveys follow the methodology of the World Bank Group's Doing Business legal indicators and consist mostly of "yes" or "no" questions that ask whether or not a certain law or regulation exists in the countries' framework. Countries have different numbers of BITs from other countries and even the BITs signed by a single country have differences in the texts of their substantive and dispute resolution clauses. Therefore, this methodology is not suitable to measure the quality of countries' Bilateral Investment Treaty frameworks.

AMD 1 on the strength of ADR laws and institutions - Data and Score

Economy	Consolidated law on commercial arbitration	UNCITRAL Model Law on International Commercial Arbitration	Scattered provisions on commercial arbitration	Provisions on procedural aspects of commercial arbitration	Government-supported website	Adhesion to the New York Convention	Consolidated law on commercial mediation or conciliation	UNCITRAL Model Law on International Commercial Conciliation	Court referrals of cases to mediation /conciliation	Domestic ADR private institution	Online ADR	Fast-track arbitration	AMD 1 on the strength of ADR laws and institutions - Score
Brunei Darussalam	1	1	0	1	1	1	0	N/A	1	0	0	0	0.55
Cambodia	1	1	1	1	1	1	0	N/A	0	1	0	0	0.64
Hong Kong SAR (China)	1	1	0	1	1	1	0	N/A	1	1	1	1	0.82
Indonesia	1	1	1	1	1	1	1	0	1	1	0	0	0.75
Malaysia	1	1	1	0	1	1	0	0	0	1	1	0	0.58
Papua New Guinea	1	0	0	1	1	0	1	1	1	1	0	0	0.58
Philippines	1	1	1	1	1	1	1	0	1	1	0	0	0.75
Singapore	1	1	0	0	1	1	0	N/A	1	1	1	1	0.73
Taiwan, China	1	1	0	0	1	N/A	0	N/A	1	1	0	1	0.60
Thailand	1	1	1	0	1	1	0	N/A	1	1	0	0	0.64
Vietnam	1	1	1	1	1	1	0	N/A	1	1	0	0	0.73
East Asia/Pacific Regional Average													0.67
Albania	0	0	1	0	1	1	1	1	1	1	0	0	0.58
Armenia	1	1	0	1	1	1	0	N/A	0	1	0	0	0.55
Azerbaijan	1	1	1	1	1	1	0	N/A	0	1	0	0	0.64
Belarus	1	1	1	1	1	1	0	1	1	1	0	1	0.83
Bosnia and Herzegovina	0	N/A	1	1	1	1	1	1	1	1	0	0	0.73
Bulgaria	1	1	1	1	1	1	1	1	1	1	1	1	1.00
Croatia	1	1	0	1	1	1	1	1	1	1	0	0	0.75
Cyprus	1	1	0	1	0	1	0	N/A	0	1	0	1	0.55
Georgia	1	1	0	1	1	1	0	N/A	0	1	0	1	0.64
Kazakhstan	1	1	1	1	1	1	1	0	1	1	0	0	0.75
Kosovo	1	1	1	0	1	0	1	1	1	1	0	0	0.67
Kyrgyz Republic	1	1	1	1	1	1	0	N/A	0	1	0	1	0.73
Macedonia	1	1	1	1	1	1	1	1	1	1	0	0	0.83
Moldova	1	1	0	1	1	1	1	0	0	1	0	0	0.58
Montenegro	0	N/A	1	1	1	1	1	1	1	1	0	0	0.73
Poland	1	1	1	0	1	1	1	0	1	1	0	1	0.75
Romania	1	1	1	1	1	1	1	0	0	1	1	1	0.83
Russian Federation	1	1	1	1	1	1	1	1	1	1	0	0	0.83
Serbia	1	1	0	1	1	1	1	1	1	1	0	0	0.75
Turkey	1	1	1	1	1	1	0	N/A	0	1	0	0	0.64
Ukraine	1	1	0	1	1	1	0	N/A	0	1	0	0	0.55
Europe/Central Asia Regional Average													0.71

NB: The data presented should be read as: "1=yes" and "0=no". The final score is an average of the answers collected for each data point.

AMD 1 on the strength of ADR laws and institutions - Data and Score

Economy	Consolidated law on commercial arbitration	UNCITRAL Model Law on International Commercial Arbitration	Scattered provisions on commercial arbitration	Provisions on procedural aspects of commercial arbitration	Government-supported website	Adhesion to the New York Convention	Consolidated law on commercial mediation or conciliation	UNCITRAL Model Law on International Commercial Conciliation	Court referrals of cases to mediation /conciliation	Domestic ADR private institution	Online ADR	Fast-track arbitration	AMD 1 on the strength of ADR laws and institutions - Score
Argentina	0	N/A	1	1	1	1	1	0	1	1	0	0	0.64
Bolivia	1	1	0	0	1	1	1	1	1	1	0	0	0.67
Brazil	1	1	1	0	1	1	0	N/A	0	1	0	1	0.64
Chile	1	1	1	0	1	1	0	N/A	1	1	1	0	0.73
Colombia	1	1	1	1	1	1	1	0	1	1	0	1	0.83
Costa Rica	1	1	1	1	1	1	1	0	0	1	0	0	0.67
Dominican Republic	1	1	1	1	1	1	0	N/A	1	1	0	0	0.73
Ecuador	1	0	1	1	1	1	1	0	1	1	0	0	0.67
Guatemala	1	1	0	1	1	1	1	0	1	1	0	0	0.67
Haiti	1	1	1		1	1	0	N/A	0	1	0	0	0.60
Honduras	1	1	0	1	1	1	1	1	1	1	0	0	0.75
Mexico	1	1	1	1	1	1	1	0	1	1	1	1	0.92
Nicaragua	1	1	0	1	1	1	1	1	1	1	0	1	0.83
Peru	1	1	0	0	1	1	0	N/A	0	1	0	0	0.45
Venezuela	1	1	1	1	1	1	0	N/A	0	1	0	1	0.73
Latin America/Carib. Regional Average													0.70
Algeria	1	0	0	0	1	1	1	0	1	1	0	0	0.50
Egypt	1	1	0	1	1	1	0	N/A	0	1	0	0	0.55
Iraq	0	N/A	0	1	1	0	0	N/A	0	1	0	0	0.30
Jordan	1	1	0	1	1	1	1	0	1	1	0	0	0.67
Morocco	1	1	0	0	1	1	1	1	0	1	0	0	0.58
Saudi Arabia	1	0	0	1	1	1	0	N/A	0	1	0	0	0.45
Tunisia	1	1	1	0	1	1	0	N/A	0	1	0	0	0.55
Yemen	1	1	1	0	0	0	0	N/A	0	1	0	1	0.45
Middle East/N. Africa Regional Average													0.51
Australia	1	1	1	0	1	1	0	N/A	1	1	0	1	0.73
Austria	1	1	1	1	1	1	1	0	0	1	0	1	0.75
Canada	1	1	0	0	1	1	1	1	1	1	1	1	0.83
Czech Republic	1	1	1	1	1	1	0	N/A	1	1	1	1	0.91
France	1	0	0	0	1	1	1	0	1	1	1	1	0.67
Germany	1	1	1	0	1	1	0	N/A	1	1	1	1	0.82
Greece	1	1	1	1	1	1	1	0	1	1	0	0	0.75
Ireland	1	1	0	0	1	1	0	N/A	1	1	0	0	0.55
Italy	1	0	1	0	1	1	1	0	1	1	1	1	0.75
Japan	1	1	0	0	1	1	1	0	1	1	0	1	0.67
Korea	1	1	0	0	1	1	0	N/A	1	1	0	1	0.64

NB: The data presented should be read as: "1=yes" and "0=no". The final score is an average of the answers collected for each data point.

AMD 1 on the strength of ADR laws and institutions - Data and Score

Economy	Consolidated law on commercial arbitration	UNCITRAL Model Law on Int. Com. Arbitration	Scattered provisions on commercial arbitration	Provisions on procedural aspects of commercial arbitration	Government-supported website	Adhesion to the New York Convention	Consolidated law on com. mediation or conciliation	UNCITRAL Model Law on Int. Com. Conciliation	Court referrals of cases to mediation /conciliation	Domestic ADR private institution	Online ADR	Fast-track arbitration	AMD 1 on the strength of ADR laws and institutions - Score
Netherlands	1	1	0	0	1	1	0	N/A	0	1	1	1	0.64
New Zealand	1	1	0	1	1	1	0	N/A	1	1	0	1	0.73
Slovak Republic	1	1	1	1	1	1	1	1	1	1	0	1	0.92
Spain	1	1	0	1	1	1	0	N/A	0	1	1	1	0.73
United Kingdom	1	1	0	1	1	1	0	N/A	1	1	1	1	0.82
United States	1	0	1	0	1	1	0	N/A	0	1	1	1	0.64
High Income OECD Regional Average													0.74
Afghanistan	1	1	0	0	1	1	1	1	0	1	0	0	0.58
Bangladesh	1	1	1	1	1	1	0	N/A	1	1	0	1	0.82
India	1	1	1	1	1	1	1	1	1	1	1	1	1.00
Nepal	1	1	0	1	1	1	1	0	1	1	0	0	0.67
Pakistan	1	0	1	1	1	1	0	N/A	1	1	0	0	0.64
Sri Lanka	1	1	1	1	1	1	1	0	1	1	0	1	0.83
South Asia Regional Average													0.76
Angola	1	0	1	0	1	0	0	N/A	0	0	0	0	0.27
Burkina Faso	1	1	0	1	0	1	0	N/A	1	1	0	1	0.64
Burundi	0	N/A	1	0	1	0	0	N/A	0	1	0	0	0.30
Cameroon	1	1	1	1	1	1	0	N/A	1	1	0	0	0.73
Chad	1	1	0	1	0	0	0	N/A	0	1	0	0	0.36
Congo, D.R.	1	1	1	0	1	1	0	N/A	0	1	0	0	0.55
Côte d'Ivoire	1	1	1	0	1	1	0	N/A	0	1	0	1	0.64
Ethiopia	0	N/A	1	1	0	0	0	N/A	0	1	0	0	0.30
Ghana	1	1	1	0	0	1	1	0	1	1	0	1	0.67
Kenya	1	1	1	1	1	1	0	N/A	1	1	0	0	0.73
Madagascar	1	1	0	0	1	1	0	N/A	1	1	0	0	0.55
Mali	1	1	1	0	1	1	0	N/A	1	1	0	0	0.64
Mauritius	1	1	1	1	1	1	1	0	1	1	0	0	0.75
Mozambique	1	1	1	1	1	1	1	1	1	1	0	0	0.83
Nigeria	1	1	0	1	1	1	1	1	1	1	0	0	0.75
Rwanda	1	1	0	0	1	1	1	1	1	1	0	0	0.67
Senegal	1	1	1	1	1	1	0	N/A	0	1	0	0	0.64
Sierra Leone	1	0	1	1	0	0	0	N/A	0	1	0	1	0.45
South Africa	1	1	1	1	1	1	0	N/A	0	1	0	1	0.73
Tanzania	1	1	0	1	1	1	0	N/A	1	1	0	0	0.64
Uganda	1	1	0	0	1	1	1	1	1	1	0	0	0.67
Zambia	1	1	0	0	1	1	0	N/A	1	1	0	0	0.55
Sub-Saharan Africa Regional Average													0.59

NB: The data presented should be read as: "1=yes" and "0=no". The final score is an average of the answers collected for each data point.

AMD 2 on the ease of initiating and conducting arbitration proceedings - Data and Score

Economy	How arbitration agreements are concluded *	Types of arbitrable disputes *	Economic definition of international arbitration **	Elements that, if foreign, make the arbitration international* **	Freedom of the parties to choose arbitrators*	Freedom of the parties to choose foreign counsels	Legislated arbitrator independence	Legislated arbitrator impartiality	Legislated use of interim measures by arbitrators	Freedom of the parties to choose the modality of the arbitration proceedings *	AMD 2 on the ease of initiating and conducting arbitration proceedings - Score
Brunei Darussalam	0.67	0.78	1	0.88	1	0	1	1	0	0.93	0.72
Cambodia	0.67	0.33	0	0.88	0.75	0	1	1	0.5	0.86	0.60
Hong Kong SAR (China)	0.67	0.89	N/A	N/A	1	1	1	1	1	1	0.94
Indonesia	0.67	0.67	0	0.13	0.75	1	1	1	0.5	0.79	0.65
Malaysia	0.67	1	0	0.63	1	1	1	1	1	1	0.83
Papua New Guinea	1	No data	N/A	N/A	1	0	0	0	No data	0.00	0.33
Philippines	0.67	0.78	1	0.75	1	1	1	1	1	1	0.92
Singapore	0.67	0.89	0	0.75	1	1	1	1	0.5	0.93	0.77
Taiwan, China	0.67	0.75	0	0.38	1	1	1	1	0	0.86	0.66
Thailand	0.67	0.44	N/A	N/A	1	0	1	1	0	0.86	0.62
Vietnam	0.67	0.56	N/A	N/A	0.75	1	1	1	1	0.57	0.82
East Asia/Pacific Regional Average											0.72
Albania	0.50	0.78	0	0.63	1	0	1	1	1	0.71	0.66
Armenia	0.67	0.67	N/A	N/A	1	1	1	1	1	0.86	0.90
Azerbaijan	0.67	0.33	1	0.88	1	1	1	1	0	1	0.79
Belarus	0.67	0.11	1	0.13	1	1	1	1	0.5	0.93	0.73
Bosnia and Herzegovina	0.67	0.44	N/A	N/A	0.50	0	0	0	0	0.71	0.29
Bulgaria	0.83	0.22	1	0.13	0.75	1	1	1	0.5	0.79	0.72
Croatia	0.67	0.67	0	0.50	1	0.5	1	1	0.5	0.79	0.66
Cyprus	0.67	0.67	1	0.13	1	1	1	1	0.5	1	0.80
Georgia	0.67	0.67	N/A	N/A	1	1	1	1	1	1	0.92
Kazakhstan	0.67	0.44	0	0.25	0.75	1	1	1	0.5	0.79	0.64
Kosovo	0.67	0.67	N/A	N/A	1	1	1	1	1	0.86	0.90
Kyrgyz Republic	0.50	0.56	N/A	N/A	0.75	1	1	1	1	1	0.85
Macedonia	0.67	0.67	1	0.88	1	1	1	1	0.5	0.79	0.85
Moldova	0.67	0.67	1	1	1	1	1	1	0.5	0.86	0.87
Montenegro	0.67	0.33	0	0.13	1	1	0	0	0	0.85	0.40
Poland	0.67	0.78	N/A	N/A	1	1	1	1	1	1	0.93
Romania	0.67	0.33	1	0.50	0.88	0.5	1	1	1	0.79	0.77
Russian Federation	0.67	0.33	1	0.63	0.88	1	1	1	1	0.86	0.84
Serbia	0.83	0.67	0	0.88	1	1	1	1	0.5	0.64	0.75
Turkey	0.67	0.44	0	1	1	0.5	1	1	0.5	0.57	0.67
Ukraine	0.67	0.22	1	0.88	0.88	1	1	1	0.5	0.86	0.80
Europe/Central Asia Regional Average											0.75
Argentina	0.50	0.56	N/A	N/A	1	0	0	0	0	1	0.38
Bolivia	0.50	0.44	0	0.50	0.88	0	1	1	0.5	0.86	0.57
Brazil	0.67	0.56	N/A	N/A	1	0	1	1	1	0.86	0.76
Chile	0.67	0.50	1	0.75	0.75	0.5	1	1	0.5	0.64	0.73
Colombia	0.50	0.78	1	0.63	0.63	0.5	1	1	0.5	0.43	0.70
Costa Rica	0.67	0.78	1	0.75	0.75	0.5	1	1	0	0.71	0.72
Dominican Republic	0.83	0.78	0	0.38	1	1	1	1	0.5	1	0.75
Ecuador	0.50	0.67	1	0.63	0.75	0	0	0	0.5	0.86	0.49

NB: The data presented should be read as: "1=yes" and "0=no". The final score is an average of each data point.

* Average of the scores collected for each sub-question. ** Score only for economies recognizing international arbitration.

AMD 2 on the ease of initiating and conducting arbitration proceedings - Data and Score

Economy	How arbitration agreements are concluded *	Types of arbitrable disputes *	Economic definition of international arbitration **	Elements that, if foreign, make the arbitration international** **	Freedom of the parties to choose arbitrators*	Freedom of the parties to choose foreign counsels	Legislated arbitrator independence	Legislated arbitrator impartiality	Legislated use of interim measures by arbitrators	Freedom of the parties to choose the modality of the arbitration proceedings *	AMD 2 on the ease of initiating and conducting arbitration proceedings - Score
Guatemala	0.67	0.56	1	0.75	1	1	1	1	1	0.93	0.89
Haiti	No data	No data	N/A	N/A	0.75	1	1	1	No data	0.80	0.91
Honduras	0.83	1	0	0.88	0.88	0	1	1	0	0.93	0.65
Mexico	0.67	0.33	0	0.63	1	1	1	1	0.5	0.93	0.71
Nicaragua	0.67	0.44	1	0.75	0.75	1	1	1	0.5	0.86	0.80
Peru	0.83	0.67	0	0.63	1	1	1	1	0.5	1	0.76
Venezuela	0.67	0.56	0	0.75	0.75	1	1	1	1	0.79	0.75
Latin America/Carib. Regional Average											0.70
Algeria	0.67	0.44	1	0.63	0.38	1	1	0	0.5	0.93	0.65
Egypt	0.67	0.56	1	N/A	1	1	0	1	1	0.75	0.77
Iraq	0.67	0.67	N/A	N/A	1	0	0	0	0	1	0.42
Jordan	0.67	1	N/A	N/A	1	1	1	1	1	1	0.96
Morocco	0.67	0.78	1	0.50	1	1	1	1	0.5	0.86	0.83
Saudi Arabia	1	1	0	0.25	0.63	1	1	1	1	0.07	0.69
Tunisia	0.83	0.71	1	0.88	1	1	1	1	0.5	0.86	0.88
Yemen	0.67	1	N/A	N/A	1	1	1	1	No data	1	0.95
Middle East/N. Africa Regional Average											0.77
Australia	0.67	0.78	0	0.75	1	1	1	1	0.5	1	0.77
Austria	0.67	0.67	N/A	N/A	1	1	1	1	1	0.86	0.90
Canada	1	1	0	0.75	1	0.5	1	1	1	1	0.83
Czech Republic	0.67	0.56	N/A	N/A	1	1	1	1	0	0.86	0.76
France	1	0.67	1	0.25	1	1	1	1	0.5	0.86	0.83
Germany	0.83	0.89	N/A	N/A	1	1	1	1	1	1	0.97
Greece	0.83	0.89	0	0.88	1	1	1	1	0	0.93	0.75
Ireland	0.67	0.89	0	0.75	1	1	1	1	0.5	0.93	0.77
Italy	0.67	0.67	N/A	N/A	1	1	1	1	0	1	0.79
Japan	0.67	0.89	N/A	N/A	1	0	1	1	1	1	0.82
Korea	0.67	0.33	N/A	N/A	0.75	0	1	1	1	1	0.72
Netherlands	0.83	0.89	N/A	N/A	1	1	1	1	1	0.86	0.95
New Zealand	1	0.67	0	0.75	1	1	1	1	0.5	1	0.79
Slovak Republic	0.67	0.67	N/A	N/A	1	1	1	1	1	0.71	0.88
Spain	0.83	0.78	1	0.63	1	1	1	1	0.5	0.93	0.87
United Kingdom	1	1	N/A	N/A	1	1	1	1	1	1	1.00
United States	1	0.89	N/A	N/A	1	1	0	0	1	1	0.74
High Income OECD Regional Average											0.83
Afghanistan	0.33	0.89	1	0.88	0.50	0	1	1	0	0.57	0.62
Bangladesh	0.67	0.56	0	0.75	1	0	1	1	0.5	1	0.65
India	0.67	0.56	0	0.38	0.88	1	1	1	0.5	0.86	0.68
Nepal	0.67	0.50	N/A	N/A	1	1	1	1	1	0.71	0.86
Pakistan	0.67	0.67	0	0.25	1	1	0.5	0	0.5	0.58	0.52
Sri Lanka	0.50	0.67	N/A	N/A	1	0	1	1	1	0.71	0.74
South Asia Regional Average											0.68

NB: The data presented should be read as: "1=yes" and "0=no". The final score is an average of each data point.

* Average of the scores collected for each sub-question. ** Score only for economies recognizing international arbitration. 34

AMD 2 on the ease of initiating and conducting arbitration proceedings - Data and Score

Economy	How arbitration agreements are concluded *	Types of arbitrable disputes *	Economic definition of international arbitration **	Elements that, if foreign, make the arbitration international* **	Freedom of the parties to choose arbitrators*	Freedom of the parties to choose foreign counsels	Legislated arbitrator independence	Legislated arbitrator impartiality	Legislated use of interim measures by arbitrators	Freedom of the parties to choose the modality of the arbitration proceedings *	AMD 2 on the ease of initiating and conducting arbitration proceedings - Score
Angola	0.67	0.89	1	1	1	1	1	1	1	1	0.96
Burkina Faso	0.67	0.89	N/A	N/A	1	1	1	1	1	0.86	0.93
Burundi	1	1	N/A	N/A	1	1	1	1	1	0.86	0.98
Cameroon	0.67	0.89	N/A	N/A	1	1	1	1	1	0.86	0.93
Chad	0.67	1	N/A	N/A	1	No data	1	1	1	0.86	0.93
Congo, D.R.	0.67	0.67	N/A	N/A	1	1	1	1	1	0.86	0.90
Côte d'Ivoire	0.67	1	N/A	N/A	1	1	1	1	1	0.71	0.92
Ethiopia	0.33	0.89	N/A	N/A	0.75	0	1	1	1	1	0.75
Ghana	0.67	0.78	N/A	N/A	1	1	1	1	1	1	0.93
Kenya	0.67	0.67	0	0.63	1	1	1	1	0.5	1	0.75
Madagascar	0.67	0.89	1	1	1	1	1	1	0.5	1	0.91
Mali	0.50	0.89	N/A	N/A	0.75	No data	1	1	1	0.86	0.86
Mauritius	0.67	0.89	0	0.38	1	0.5	1	1	0	0.64	0.61
Mozambique	0.67	0.67	1	0.88	1	1	1	1	0.5	0.79	0.85
Nigeria	0.67	0.67	0	0.75	1	1	1	1	0.5	1	0.76
Rwanda	0.67	1	1	1	1	1	1	1	1	1	0.97
Senegal	0.67	1	N/A	N/A	1	1	1	1	1	0.86	0.94
Sierra Leone	0.67	0.56	N/A	N/A	1	1	0	0	0	0.00	0.40
South Africa	0.67	1	N/A	N/A	1	1	1	1	1	1	0.96
Tanzania	0.67	0.89	0	0.13	0.63	1	0.5	1	0.5	0.62	0.59
Uganda	0.67	1	N/A	N/A	1	1	1	1	1	1	0.96
Zambia	1	0.67	N/A	N/A	1	0	1	1	1	1	0.83
Sub-Saharan Africa Regional Average											0.85

NB: The data presented should be read as: "1=yes" and "0=no". The final score is an average of each data point.

* Average of the scores collected for each sub-question. ** Score only for economies recognizing international arbitration.

AMD 3 on the ease of recognition and enforcement of foreign arbitral awards - Data and Score

Economy	Specialized court for arbitration cases	Possible appeal against a judgement on an arbitration agreement or award	Courts decline to hear a case where there is valid arbitration agreement	Courts control only the validity of the arbitration agreement and not the merits of the case	Recognition of the principle of kompetenz-kompetenz	Possibility for the courts to appoint an arbitrator when a party is defaulting	Possibility for the courts to assist during arbitration proceedings by ordering: the production of documents; the appearance of witnesses or the appearance of experts *	In practice, courts issuing injunctions to assist the arbitration process	Possibility for the courts to order interim measures to assist the arbitration process	In practice, courts ordering interim measures to assist the arbitration process	Possibility for a party to request enforcement of an arbitral award granting interim relief	Existence of a specialized court for the recognition or enforcement of foreign arbitral awards	In practice, courts apply the New York Convention	In practice, courts favorable to the recognition and enforcement of foreign arbitral awards	AMD 3 on the ease of recognition and enforcement of foreign arbitral awards - Score
Brunei Darussalam	0	1	1	1	1	0	1	1	1	1	1	0	1	1	0.79
Cambodia	1	1	1	0	1	1	1	1	1	1	1	0	1	0	0.79
Hong Kong SAR (China)	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Indonesia	0	1	1	1	1	1	0	0	0	0.5	0.5	0	1	0	0.50
Malaysia	0	1	1	0	1	1	1	1	1	1	1	0	1	1	0.79
Papua New Guinea	1	No data	1	0	No data	1	1	No data	No data	1	No data	0	No data	0	0.63
Philippines	0	1	1	1	1	1	1	1	1	1	1	0	1	1	0.86
Singapore	0	1	1	1	1	0	1	1	1	1	1	0	1	1	0.79
Taiwan, China	0	1	1	1	1	0.5	0.5	0	0.25	0.5	0	0	0	1	0.48
Thailand	0	1	1	0	1	1	1	1	1	1	1	0	0	1	0.71
Vietnam	0	1	1	1	1	1	1	1	1	1	1	0	1	0	0.79
East Asia/Pacific Regional Average															0.74
Albania	0	1	1	1	1	1	1	0	1	1	1	1	1	1	0.86
Armenia	1	1	1	1	1	1	1	1	1	1	1	0	1	1	0.93
Azerbaijan	1	0	1	1	1	1	1	1	1	1	1	1	0	1	0.86
Belarus	1	1	1	1	1	0	0.67	0	1	1	1	0	1	1	0.76
Bosnia and Herzegovina	1	1	1	1	1	1	1	0	1	1	1	0	0	0	0.71
Bulgaria	1	1	0	1	1	0	0.5	0	1	1	1	0	1	1	0.68
Croatia	1	1	1	0	1	1	1	1	1	0.5	1	0	1	1	0.82
Cyprus	0	1	1	1	1	1	1	1	0.75	1	1	0	1	1	0.84
Georgia	1	0	1	1	1	1	1	1	0.5	1	1	1	1	1	0.89
Kazakhstan	0	1	1	1	1	0	0.5	1	1	1	1	1	1	1	0.82
Kosovo	1	1	1	1	1	1	1	1	1	1	1	1	0	1	0.93
Kyrgyz Republic	1	1	1	1	1	0	0	0	0	1	1	1	1	1	0.71
Macedonia	1		1	1	1	1	1	1	1	1	1	0	1	1	0.92
Moldova	1	1	1	1	1	1	1	0	1	1	No data	1	No data	1	0.92
Montenegro	0	1	1	0	1	1	0.67	0	1	1	1	1	1	1	0.76

NB: The data presented should be read as: "1=yes" and "0=no". The final score is an average of each data point.

* Average of the scores collected for each sub-question

AMD 3 on the ease of recognition and enforcement of foreign arbitral awards - Data and Score

Economy	Specialized court for arbitration cases	Possible appeal against a judgement on an arbitration agreement or award	Courts decline to hear a case where there is valid arbitration agreement	Courts control only the validity of the arbitration agreement and not the merits of the case	Recognition of the principle of kompetenz-kompetenz	Possibility for the courts to appoint an arbitrator when a party is defaulting	Possibility for the courts to assist during arbitration proceedings by ordering: the production of documents; the appearance of witnesses or the appearance of experts *	In practice, courts issuing injunctions to assist the arbitration process	Possibility for the courts to order interim measures to assist the arbitration process	In practice, courts ordering interim measures to assist the arbitration process	Possibility for a party to request enforcement of an arbitral award granting interim relief	Existence of a specialized court for the recognition or enforcement of foreign arbitral awards	In practice, courts apply the New York Convention	In practice, courts favorable to the recognition and enforcement of foreign arbitral awards	AMD 3 on the ease of recognition and enforcement of foreign arbitral awards - Score
Poland	0	1	1	1	1	1	1	1	1	1	1	0	1	1	0.86
Romania	0	1	1	0	1	1	1	1	1	1	1	0	1	1	0.79
Russian Federation	0	1	1	1	1	0	0	1	1	1	0	1	1	1	0.71
Serbia	1	1	1	0	1	1	1	1	1	1	1	1	1	1	0.93
Turkey	0	1	1	0	1	1	1	1	1	1	1	0	1	1	0.79
Ukraine	0	1	1	1	1	0	0.17	0	0	0.5	0	0	1	1	0.48
Europe/Central Asia Regional Average															0.81
Argentina	0	1	1	1	1	1	1	1	1	1	1	0	1	1	0.86
Bolivia	0	0	1	1	1	1	1	1	0	1	1	1	1	0	0.71
Brazil	0	1	1	1	1	1	1	1	0.5	1	1	1	1	1	0.89
Chile	1	1	1	1	1	1	1	1	1	1	1	0	1	1	0.93
Colombia	0	1	1	1	1	1	0	0	0	0.5	1	1	1	1	0.68
Costa Rica	1	1	1	0.5	1	0.5	0.17	0.5	1	1	1	1	1	1	0.83
Dominican Republic	0	1	1	1	1	1	1	1	0.5	1	1	0	1	1	0.82
Ecuador	0	0	1	1	1	0	0	0	1	0.5	1	0	1	1	0.54
Guatemala	1	0	1	1	1	1	1	0	1	0.5	1	0	1	1	0.75
Haiti	0	1	1	1	No data	No data	0	No data	1	No data	No data	0		1	0.63
Honduras	0	1	1	1	1	0	1	1	1	1	1	1	1	1	0.86
Mexico	0	1	1	1	1	1	1	1	1	1	1	0	1	1	0.86
Nicaragua	0	1	1	1	1	1	0	0	1	1	1	1	1	1	0.79
Peru	1	0	1	1	1	0	1	1	0.75	1	1	1	1	1	0.84
Venezuela	0	1	1	1	1	1	1	0	1	1	1	0	1	1	0.79
Latin America/Carib. Regional Average															0.78
Algeria	0	1	0.5	1	0.5	1	1	0	1	1	1	0	1	1	0.71
Egypt	1	0	0.5	1	1	1	1	1	1	1	1	0	1	1	0.82
Iraq	0	1	1	1	1	1	0.33	1	1	1	0	0	0	0	0.60
Jordan	1	1	1	1	1	1	1	1	1	1	1	0	1	1	0.93
Morocco	0	1	1	1	1	1	0	0	1	1	1	0	1	1	0.71

NB: The data presented should be read as: "1=yes" and "0=no". The final score is an average of each data point.

* Average of the scores collected for each sub-question

AMD 3 on the ease of recognition and enforcement of foreign arbitral awards - Data and Score

Economy	Specialized court for arbitration cases	Possible appeal against a judgement on an arbitration agreement or award	Courts decline to hear a case where there is valid arbitration agreement	Courts control only the validity of the arbitration agreement and not the merits of the case	Recognition of the principle of kompetenz-kompetenz	Possibility for the courts to appoint an arbitrator when a party is defaulting	Possibility for the courts to assist during arbitration proceedings by ordering: the production of documents; the appearance of witnesses or the appearance of experts *	In practice, courts issuing injunctions to assist the arbitration process	Possibility for the courts to order interim measures to assist the arbitration process	In practice, courts ordering interim measures to assist the arbitration process	Possibility for a party to request enforcement of an arbitral award granting interim relief	Existence of a specialized court for the recognition or enforcement of foreign arbitral awards	In practice, courts apply the New York Convention	In practice, courts favorable to the recognition and enforcement of foreign arbitral awards	AMD 3 on the ease of recognition and enforcement of foreign arbitral awards - Score
Saudi Arabia	1	1	1	0	0	1	1	1	1	1	1	0	1	0	0.71
Tunisia	1	1	1	1	1	1	1	0.5	0.75	1	1	1	1	1	0.95
Yemen	0	1	1	1	1	1	1	0	1	1	1	0		1	0.77
Middle East/N. Africa Regional Average															0.78
Australia	0	1	1	1	1	0.5	1	1	1	1	1	0	1	1	0.82
Austria	1	1	1	1	1	1	1	1	1	1	1	0	1	1	0.93
Canada	0	1	1	1	1	1	1	1	1	1	1	0	1	1	0.86
Czech Republic	0	1	1	1	1	1	1	1	1	1	1	0	1	1	0.86
France	1	1	1	1	1	1	1	1	0.5	1	1	0	1	1	0.89
Germany	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Greece	1	1	1	1	1	1	1	1	1	1	1	0	1	1	0.93
Ireland	1	0	1	1	1	1	1	1	1	1	1	0	1	1	0.86
Italy	0	1	1	1	1	1	0.33	0	1	1	0	0	1	1	0.67
Japan	0	1	1	1	1	1	1	1	1	1	1	0	0	1	0.79
Korea	0	1	1	1	1	1	1	1	1	1	1	0	1	1	0.86
Netherlands	0	1	1	1	1	1	1	0	1	1	1	0	1	1	0.79
New Zealand	1	1	1	1	1	1	1	1	1	1	1	0	0	1	0.86
Slovak Republic	0	1	1	No data	1	1	1	1	0.5	1	1	0	1	1	0.81
Spain	1	1	1	1	1	1	1	1	1	1	1	0	1	1	0.93
United Kingdom	1	1	1	1	1	1	1	1	1	1	1	0	1	1	0.93
United States	0	1	1	1	1	1	1	1	1	1	1	0	1	1	0.86
High Income OECD Regional Average															0.86
Afghanistan	1	0	0	0	No data	1	1	No data	1	0.5	0	0	No data	No data	0.45
Bangladesh	1	1	1	1	1	1	1	1	1	1	1	0	1	1	0.93
India	0	1	1	1	1	1	1	1	1	1	1	0	0	1	0.79
Nepal	0	1	1	1	1	1	1	0	0	1	1	0	No data	No data	0.67
Pakistan	0	1	1	1	0	1	1	1	1	1	1	1	1	0	0.79
Sri Lanka	1	1	1	0	1	1	1	1	1	1	1	0	0	1	0.79
South Asia Regional Average															0.73

NB: The data presented should be read as: "1=yes" and "0=no". The final score is an average of each data point.

* Average of the scores collected for each sub-question

AMD 3 on the ease of recognition and enforcement of foreign arbitral awards - Data and Score

Economy	Specialized court for arbitration cases	Possible appeal against a judgement on an arbitration agreement or award	Courts decline to hear a case where there is valid arbitration agreement	Courts control only the validity of the arbitration agreement and not the merits of the case	Recognition of the principle of kompetenz-kompetenz	Possibility for the courts to appoint an arbitrator when a party is defaulting	Possibility for the courts to assist during arbitration proceedings by ordering: the production of documents; the appearance of witnesses or the appearance of experts *	In practice, courts issuing injunctions to assist the arbitration process	Possibility for the courts to order interim measures to assist the arbitration process	In practice, courts ordering interim measures to assist the arbitration process	Possibility for a party to request enforcement of an arbitral award granting interim relief	Existence of a specialized court for the recognition or enforcement of foreign arbitral awards	In practice, courts apply the New York Convention	In practice, courts favorable to the recognition and enforcement of foreign arbitral awards	AMD 3 on the ease of recognition and enforcement of foreign arbitral awards - Score
Angola	0	1	1	1	1	1	1	1	0.5	1	1	0	0	0	0.68
Burkina Faso	0	1	1	1	1	1	1	No data	1	1	1	0	1	1	0.85
Burundi	1	0	1	0	No data	0	0	0	No data	1	1	0	0	1	0.42
Cameroon	1	1	1	1	1	1	1	No data	1	1	1	0	1	1	0.92
Chad	0		1	1	1	1	1	0	1	1	No data	0	0	1	0.67
Congo, D.R.	0	1	1	1	1	1	1	1	1	1	1	0	0	1	0.79
Côte d'Ivoire	1	1	1	0	1	1	1	1	1	1	1	0	1	0	0.79
Ethiopia	0	1	1	1	1	1	1	1	1	1	1	0	0	1	0.79
Ghana	1	1	1	1	1	1	1	1	1	1	1	0	1	1	0.93
Kenya	1	1	1	0	1	1	1	1	1	1	1	0	1	1	0.86
Madagascar	1	1	1	1	0	1	1	0	1	1	1	0	1	1	0.79
Mali	0	0	1	1	1	1	1	0	1	1	1	0	1	1	0.71
Mauritius	1	1	1	0	1	1	1	1	0.5	1	1	1	1	1	0.89
Mozambique	1	1	1	1	1	1	1	0	1	0.5	1	1	0	1	0.82
Nigeria	0	1	1	1	1	1	1	1	1	1	1	0	1	1	0.86
Rwanda	0	1	1	1	1	1	1	0	1	0.5	1	0	1	1	0.75
Senegal	1	1	1	1	1	1	1	0	1	1	1	0	1	1	0.86
Sierra Leone	1	1	1	1	No data	1	1	0	0	1	0	0	No data	1	0.67
South Africa	0	1	1	1	1	1	1	1	1	1	1	0	1	1	0.86
Tanzania	1	1	0.5	0	0.5	1	1	1	1	1	No data	0	1	1	0.77
Uganda	1	1	1	1	1	1	1	1	1	1	1	0	1	0	0.86
Zambia	1	1	1	0	1	1	1	1	1	1	1	0	1	1	0.86
Sub-Saharan Africa Regional Average															0.79

NB: The data presented should be read as: "1=yes" and "0=no". The final score is an average of each data point.

* Average of the scores collected for each sub-question

Average of AMD 1, 2 and 3

Economy	Average of AMD 1, AMD 2 and AMD 3
Brunei Darussalam	0.69
Cambodia	0.67
Hong Kong SAR (China)	0.92
Indonesia	0.63
Malaysia	0.73
Papua New Guinea	0.51
Philippines	0.84
Singapore	0.76
Taiwan, China	0.58
Thailand	0.66
Vietnam	0.78
East Asia/Pacific Regional Average	0.71
Albania	0.70
Armenia	0.79
Azerbaijan	0.76
Belarus	0.78
Bosnia and Herzegovina	0.58
Bulgaria	0.80
Croatia	0.74
Cyprus	0.73
Georgia	0.82
Kazakhstan	0.74
Kosovo	0.83
Kyrgyz Republic	0.76
Macedonia	0.87
Moldova	0.79
Montenegro	0.63
Poland	0.84
Romania	0.80
Russian Federation	0.79
Serbia	0.81
Turkey	0.70
Ukraine	0.61
Europe/Central Asia Regional Average	0.76
Argentina	0.62
Bolivia	0.65
Brazil	0.76
Chile	0.80
Colombia	0.74
Costa Rica	0.74
Dominican Republic	0.77
Ecuador	0.56
Guatemala	0.54

Average of AMD 1, 2 and 3

Economy	Average of AMD 1, AMD 2 and AMD 3
Haiti	0.71
Honduras	0.75
Mexico	0.83
Nicaragua	0.81
Peru	0.69
Venezuela	0.75
Latin America/Carib. Regional Average	0.73
Algeria	0.62
Egypt	0.71
Iraq	0.44
Jordan	0.85
Morocco	0.71
Saudi Arabia	0.57
Tunisia	0.79
Yemen	0.73
Middle East/N. Africa Regional Average	0.68
Australia	0.77
Austria	0.86
Canada	0.84
Czech Republic	0.84
France	0.80
Germany	0.93
Greece	0.81
Ireland	0.73
Italy	0.74
Japan	0.76
Korea	0.74
Netherlands	0.87
New Zealand	0.79
Slovak Republic	0.87
Spain	0.84
United Kingdom	0.92
United States	0.74
High Income OECD Regional Average	0.81
Afghanistan	0.55
Bangladesh	0.80
India	0.82
Nepal	0.73
Pakistan	0.65
Sri Lanka	0.78
South Asia Regional Average	0.72

Average of AMD 1, 2 and 3

Economy	Average of AMD 1, AMD 2 and AMD 3
Angola	0.68
Burkina Faso	0.80
Burundi	0.57
Cameroon	0.86
Chad	0.65
Congo, D.R.	0.74
Côte d'Ivoire	0.78
Ethiopia	0.61
Ghana	0.84
Kenya	0.78
Madagascar	0.75
Mali	0.74
Mauritius	0.75
Mozambique	0.83
Nigeria	0.79
Rwanda	0.79
Senegal	0.81
Sierra Leone	0.51
South Africa	0.85
Tanzania	0.67
Uganda	0.83
Zambia	0.75
Sub-Saharan Africa Regional Average	0.74

AMD data on the length of arbitration proceedings and of recognition and enforcement proceedings

Economy	AMD length of arbitration proceedings (# days)	AMD length of recognition and enforcement proceedings (# days)
Cambodia	90	75
Hong Kong (SAR)	361	83
Indonesia	200	773
Malaysia	482	353
Philippines	278	281
Singapore	336	47
Taiwan, China	259	479
Thailand	450	No data
Vietnam	154	93
East Asia/Pacific Regional Average	290	273
Albania	210	292
Armenia	118	153
Azerbaijan	337	615
Belarus	213	1168
Bosnia and Herzegovina	232	204
Bulgaria	241	551
Croatia	679	869
Cyprus	347	706
Georgia	212	No data
Kazakhstan	196	No data
Kosovo	74	No data
Kyrgyz Republic	89	No data
Macedonia	164	No data
Moldova	180	No data
Montenegro	313	818
Poland	304	143
Romania	294	365
Russian Federation	119	138
Serbia	325	678
Turkey	449	625
Ukraine	141	598
Europe/Central Asia Regional Average	249	528
Argentina	343	395
Bolivia	228	221
Brazil	560	2,325
Chile	496	592
Colombia	316	917
Costa Rica	162	433
Dominican Republic	185	616
Ecuador	320	320
Guatemala	341	No data
Honduras	112	336
Mexico	254	521
Nicaragua	116	157

AMD data on the length of arbitration proceedings and of recognition and enforcement proceedings

Economy	AMD length of arbitration proceedings (# days)	AMD length of recognition and enforcement proceedings (# days)
Peru	317	752
Venezuela	246	567
Latin America/Carib. Reg. Average	285	627
Egypt	540	247
Iraq	910	No data
Jordan	435	448
Morocco	226	No data
Saudi Arabia	229	906
Tunisia	249	300
Yemen	280	No data
Middle East/N. Africa Reg. Average	410	475
Austria	410	410
Canada	495	77
Czech Republic	158	477
France	386	116
Germany	332	128
Greece	377	482
Ireland	238	126
Italy	385	527
Japan	289	96
Korea	252	494
Netherlands	281	400
New Zealand	340	No data
Slovak Republic	355	68
Spain	226	345
United Kingdom	431	397
United States	403	388
High Income OECD Regional Average	335	302
Bangladesh	278	836
India	569	1654
Pakistan	479	5610
South Asia Regional Average	442	2700
Congo, D.R.	307	No data
Ethiopia	571	No data
Kenya	172	No data
Mali	525	No data
Mauritius	526	155
Mozambique	536	No data
Nigeria	521	523
Senegal	201	No data
South Africa	528	1178
Tanzania	515	196
Uganda	583	No data
Zambia	No data	217
Sub-Saharan Africa Regional Average	453	454