

國際仲裁實務

張詩芸律師

主講人介紹



張詩芸 律師

+86 10 5878 5206

+86 186 1826 5930

+886 975 193 195

alison.chang@cn.kwm.com



學歷



美國哥倫比亞大學法學碩士



國立臺北大學法學碩士



國立臺灣大學國際企業學系學士



工作經歷

KING & WOOD
MALLESONS
金杜律師事務所

金杜律師事務所資深律師

前寰瀛法律事務所
Formosan Brothers, Attorneys-at-Law

前寰瀛法律事務所律師

臺灣臺北地方法院
Taiwan Taipei District Court

前臺灣臺北地方法院法官

主講人介紹



張詩芸 律師

+86 10 5878 5206

+86 186 1826 5930

+886 975 193 195

alison.chang@cn.kwm.com



執業資格



美國紐約州



其他資格



CIArb
evolving to resolve

英國特許仲裁學會資深會員 (FCIArb)
英國特許仲裁學會東亞分會台灣支會
青年會員組織 (YMG) 負責人
英國特許仲裁學會國際仲裁培訓講師



香港國際仲裁中心認證仲裁庭秘書



中華民國仲裁協會仲裁人



SINGAPORE INTERNATIONAL
MEDIATION CENTRE

新加坡國際調解中心中國調解專家

目錄



01

仲裁與其他
爭議解決機
制的比較

02

仲裁模式的
選擇

03

仲裁的費用

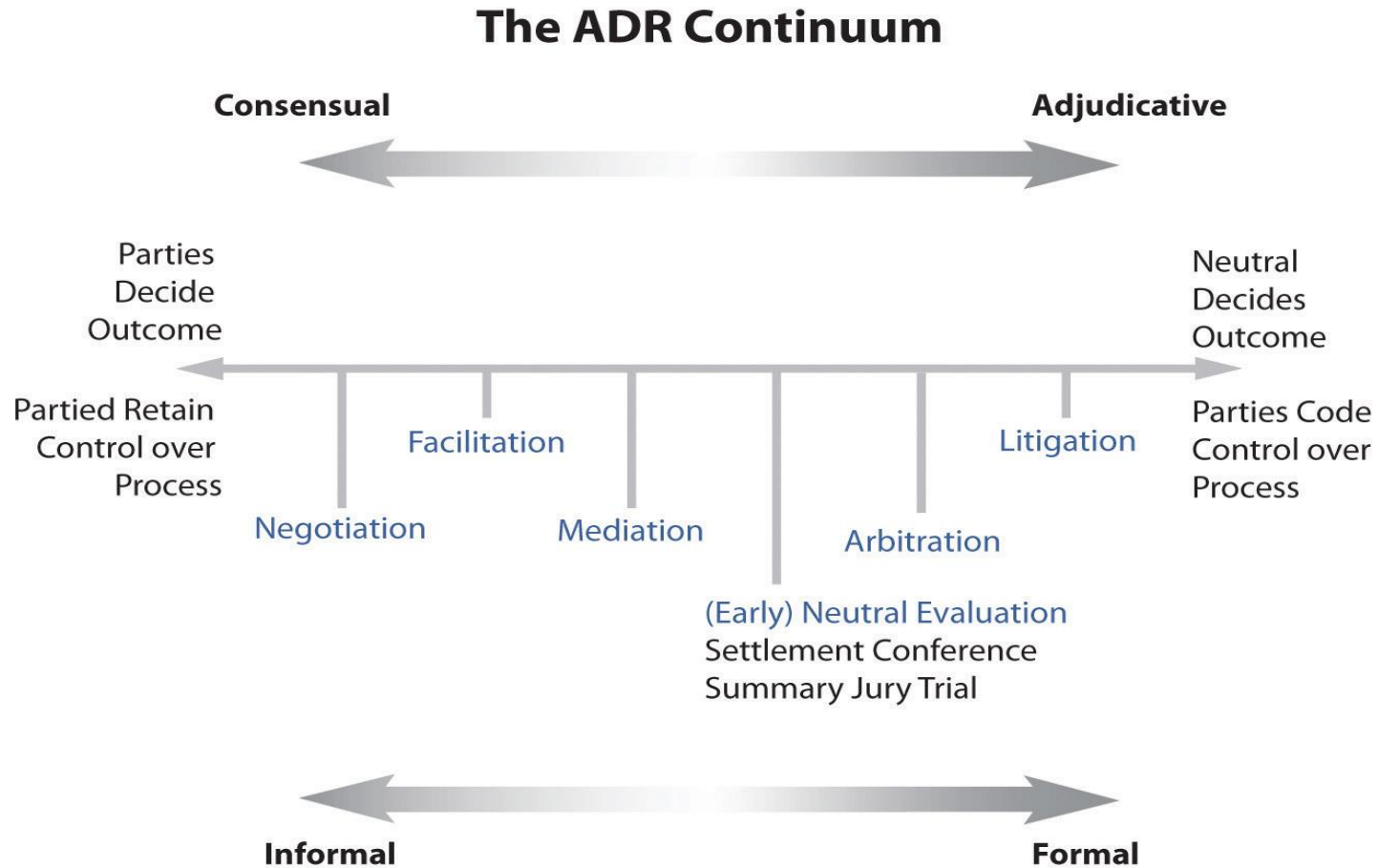
04

仲裁流程與
主要仲裁環
節介紹

05

英國特許仲
裁學會介紹

仲裁與其他爭議解決機制的比較



Source: Adapted from New York State Unified Court System,
www.nycourts.gov/ip/adr/images/continuum2.jpg

仲裁的優勢

- **Neutrality & Party Autonomy**
(中立& 當事人自主)

- **Confidentiality**
(保密性)

- **Technically**
(技術性)

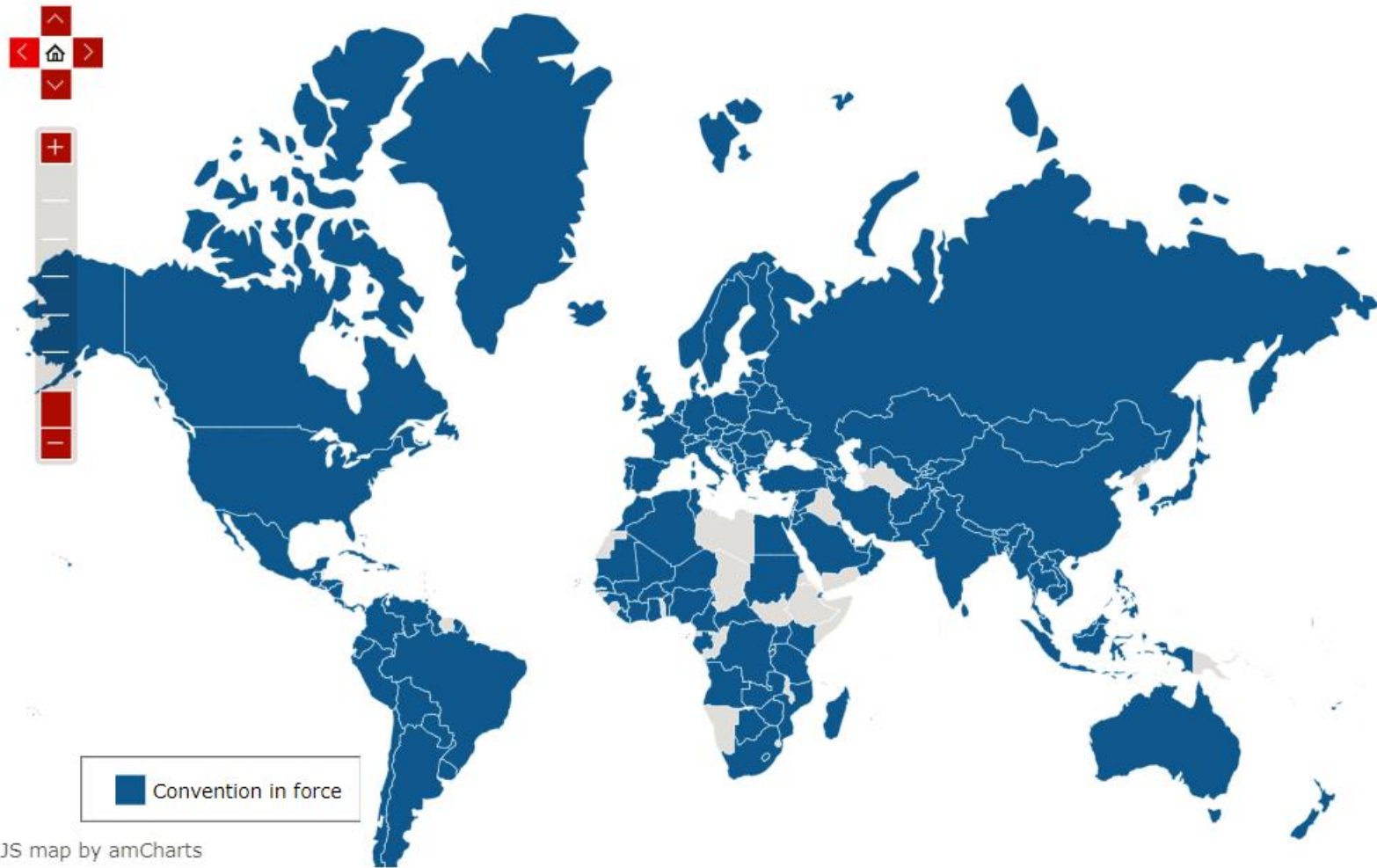
- **Enforceability**
(執行性)

- **Finality**
(終局性)

- **Flexibility**
(靈活性)

- **Efficiency**
(高效性)

仲裁的國際執行 — 1958紐約公約



Source: http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status_map.html

1958紐約公約 — 159個簽署會員

最新簽署會員：

- Bhutan (不丹) 25/09/2014
- Guyana (圭亞那) 25/09/2014
- Democratic Republic of the Congo (剛果) 05/11/2014
- State of Palestine (巴勒斯坦) 02/01/2015
- Comoros (科摩羅) 28/04/2015
- Andorra (安道爾) 19/06/2015
- Angola (安哥拉) 06/03/2017
- Cabo Verde (維德角) 22/03/2018
- Sudan (蘇丹) 24/06/2018

仲裁的基礎 — 有效的仲裁協議



書面性

- 仲裁協議必須以書面作成
- 電子或其他形式記錄仲裁協議



表明仲
裁意思

- 表明就特定範圍事項以仲裁解決爭議的意願



可仲裁性

- 爭議事項必須是可用仲裁解決的紛爭

有效的仲裁協議（續）

■ 紐約公約第2條第1款、第2款：

*“Each Contracting State shall recognize an agreement **in writing** which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them **in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.**”*

“The term “agreement in writing” shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.”

有效的仲裁協議（續）

- 聯合國國際貿易法委員會國際商事仲裁示範法 (UNCITRAL Model Law on International Commercial Arbitration) 第7條第1款 (1985年版本)：

*“Arbitration Agreement is an agreement by the parties to submit to arbitration **all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.** An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.”*

有效的仲裁協議（續）

- 聯合國國際貿易法委員會國際商事仲裁示範法 (UNCITRAL Model Law on International Commercial Arbitration) 第7條第2段 (1985年版本)：

“The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.”

有效的仲裁協議（續）

“Any dispute, controversy, difference or claim arising out of, in connection with or relating to this contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of, in connection with or relating to it shall be referred to and finally resolved by arbitration *[administered by [insert name of the arbitration center]]* under the *[insert name of the arbitration rules]* in force when the notice of arbitration is submitted.

The seat/place of arbitration shall be *[insert place of arbitration]*.

[The Tribunal shall consist of *[insert one or three]* arbitrator(s).]

[The language of arbitration shall be *[insert language]*].”

仲裁協議 — 善用機構提供的示範條款



香港國際仲裁中心
Hong Kong International
Arbitration Centre

[Belt & Road](#) | [Events](#) | [Facilities & Services](#) | [News](#) | [HK45](#) | [Users' Council](#) | [About Us](#) | [Contact Us](#)

[简体](#) | [繁體](#) [Q](#)

[Arbitration](#)

[Mediation](#)

[Domain Name Disputes](#)

[Adjudication](#)

[Why HKIAC?](#)

[The Process](#)

[Model Clauses](#)

[Rules & Practice Notes](#)

[Guidelines](#)

[Fees](#)

[Arbitrators](#)

[Tribunal Secretaries](#)

[Appointment of Experts](#)

[What is Arbitration?](#) | [Costs & Duration](#)

Arbitration

Our Administered Arbitration Rules

Review HKIAC's innovative arbitration rules to understand how they facilitate the quick and efficient resolution of international disputes, particularly those arising out of complex transactions.

HKIAC Suggested Clauses

Access HKIAC's suggested model clauses. Adopt the recommended language in one of the model clauses to effectively incorporate HKIAC's Rules or Procedures.

Appoint an HKIAC Arbitrator

Choose an arbitrator from HKIAC's Panel or List of Arbitrators comprising experienced members of the arbitration community from around the world.

仲裁協議 — 善用機構提供的示範條款

SIAC
Singapore International Arbitration Centre

Model Clauses

Where The World Arbitrates

Home About Us Rules Arbitrators **Model Clauses** Fees Resources Events FAQs YSIAC

SIAC Events

06 September 2018
SIAC Tokyo Conference
Tokyo, Japan

06 September 2018
YSIAC Tokyo Workshop 2018
Tokyo, Japan

07 September 2018
SIAC Academy Tokyo 2018
Tokyo, Japan

27 September 2018
SIAC and Institutional Arbitration module at NUS
Island Shangri-La, Hong Kong

06 October 2018
SIAC Academy Mumbai 2018
Mumbai, India

08 October 2018
SIAC Mumbai Conference
Mumbai, India

12 October 2018

Model Clauses

A poorly-drafted applicable law clause or a poorly-drafted arbitration clause can undermine the smooth progress of an arbitration. They can often be the cause of a dispute by themselves, in addition to the substantive dispute between the parties.

Parties to international transactions should always include a well-drafted applicable law clause and a well-drafted arbitration clause.

The applicable law clause applies to the contract as a whole, but the arbitration clause deals specifically with the arbitration aspect. The two sets of clauses are usually included in different parts of the contract, although often in close proximity to each other.

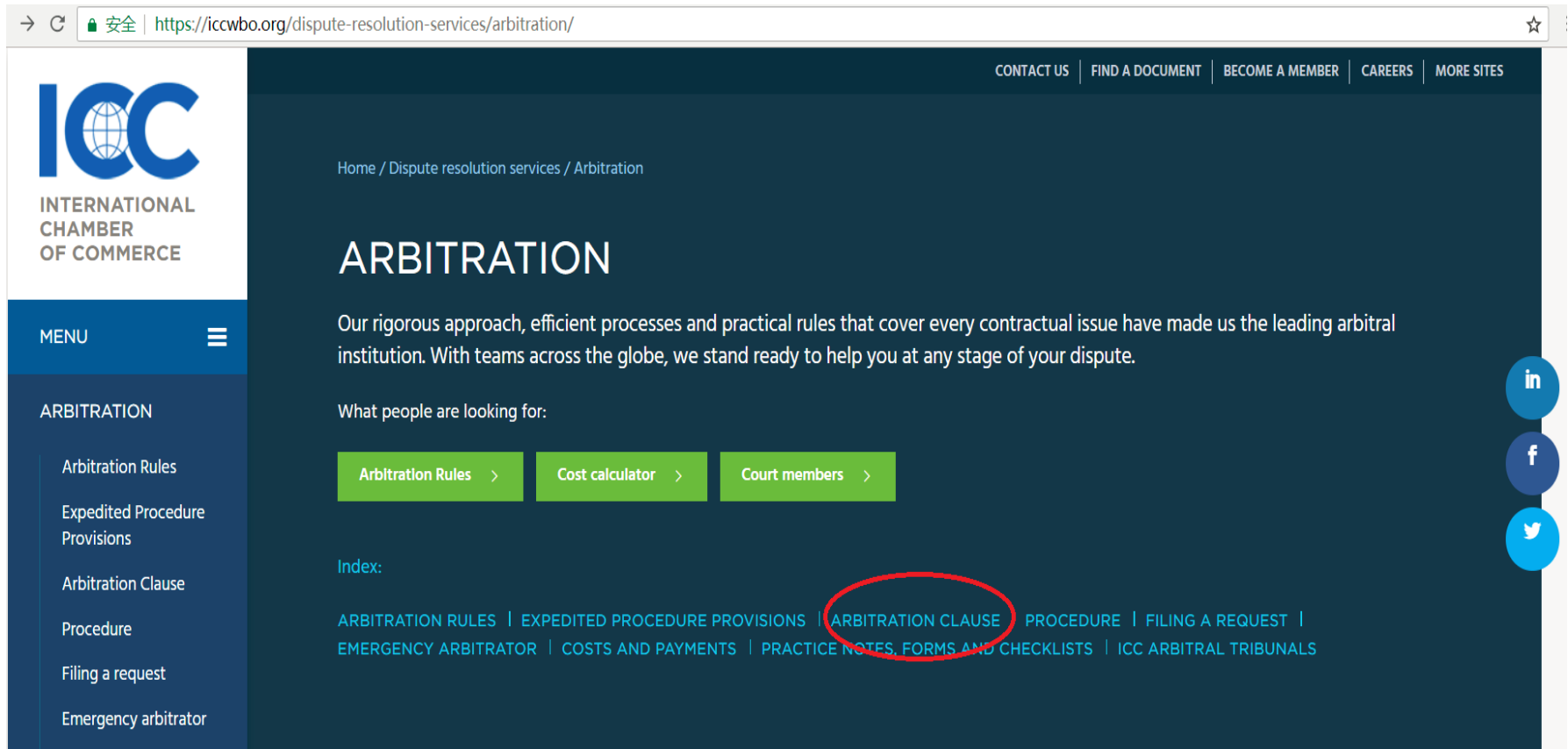
We encourage you to consider using the model clauses provided in this section, as they are applicable, in your contracts.

SIAC MODEL CLAUSE

In drawing up international contracts, we recommend that parties include the following arbitration clause:

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time

仲裁協議 — 善用機構提供的示範條款



The screenshot shows the ICC Arbitration website. The browser address bar displays "https://iccwbo.org/dispute-resolution-services/arbitration/". The ICC logo is in the top left, with the text "INTERNATIONAL CHAMBER OF COMMERCE". A navigation menu on the left lists "ARBITRATION" and its sub-items: "Arbitration Rules", "Expedited Procedure Provisions", "Arbitration Clause", "Procedure", "Filing a request", and "Emergency arbitrator". The main content area features a breadcrumb "Home / Dispute resolution services / Arbitration", the title "ARBITRATION", and a paragraph: "Our rigorous approach, efficient processes and practical rules that cover every contractual issue have made us the leading arbitral institution. With teams across the globe, we stand ready to help you at any stage of your dispute." Below this, it says "What people are looking for:" followed by three green buttons: "Arbitration Rules", "Cost calculator", and "Court members". An "Index:" section lists various links, with "ARBITRATION CLAUSE" circled in red. On the right side, there are social media icons for LinkedIn, Facebook, and Twitter. A top navigation bar includes links for "CONTACT US", "FIND A DOCUMENT", "BECOME A MEMBER", "CAREERS", and "MORE SITES".

安全 | https://iccwbo.org/dispute-resolution-services/arbitration/

CONTACT US | FIND A DOCUMENT | BECOME A MEMBER | CAREERS | MORE SITES

Home / Dispute resolution services / Arbitration

ARBITRATION

Our rigorous approach, efficient processes and practical rules that cover every contractual issue have made us the leading arbitral institution. With teams across the globe, we stand ready to help you at any stage of your dispute.

What people are looking for:

[Arbitration Rules](#) > [Cost calculator](#) > [Court members](#) >

Index:

[ARBITRATION RULES](#) | [EXPEDITED PROCEDURE PROVISIONS](#) | [ARBITRATION CLAUSE](#) | [PROCEDURE](#) | [FILING A REQUEST](#) | [EMERGENCY ARBITRATOR](#) | [COSTS AND PAYMENTS](#) | [PRACTICE NOTES, FORMS AND CHECKLISTS](#) | [ICC ARBITRAL TRIBUNALS](#)

Arbitration Rules
Expedited Procedure Provisions
Arbitration Clause
Procedure
Filing a request
Emergency arbitrator

in
f
t

目錄



01

仲裁與其他
爭議解決機
制的比較

02

仲裁模式的
選擇

03

仲裁的費用

04

仲裁流程與
主要仲裁環
節介紹

05

英國特許仲
裁學會介紹

機構仲裁 v. 臨時仲裁

Ad hoc arbitration...
“may be shaped to
meet the wishes of
the parties and the
facts of the
particular dispute.”

-- D.A. Redfern, “Why arbitrate
transnational disputes? Should
institutional or ad hoc
arbitration procedure be
provided?”



考慮臨時仲裁時應注意事項

中華人民共和國 仲裁法第16條

- 仲裁協議包括合同中訂定的仲裁條款和以其他書面方式在糾紛發生前或者發生後達成的請求仲裁的協議。
- 仲裁協議應當具有下列內容：
 - （一）請求仲裁的意思表示；
 - （二）仲裁事項；
 - （三）**選定的仲裁委員會。**

最高人民法院關於適用中華人民共和國 仲裁法若干問題的解釋 第16條

- 對涉外仲裁協議的效力審查，適用當事人約定的法律；**當事人沒有約定適用的法律但約定了仲裁地的，適用仲裁地法律**；沒有約定適用的法律也沒有約定仲裁地或者仲裁地約定不明的，適用法院地法律。

考慮臨時仲裁時應注意事項（續）

中華民國仲裁法第37條第1項：「**仲裁人之判斷**，於當事人間，與法院之確定判決，有同一效力。」

臺灣高等法院99年度非抗字第122號裁定

- 「...是仲裁法第37條賦與仲裁人之判斷，於當事人間，與法院之確定判決有同一效力，並可逕向法院聲請強制執行，自應由在國家監督下成立之仲裁機構，制定相關程序規則，俾能確保仲裁判斷之公正性與正確性，方得承認其具有確定力及執行力...經查，系爭仲裁判斷係由藍瀛芳、戴森雄及余烈等三名仲裁人組成專案仲裁庭，而非由報經內政部徵得法務部會商各該事業主管機關同意後許可之仲裁機構所作成，揆諸上揭說明，**自不應賦與系爭仲裁判斷與確定判決有同一效力之執行力**。原法院以系爭仲裁判斷既非依仲裁法之規定所組成仲裁機構所為，自不具確定力及執行力，適用法規並無錯誤。」

臺灣承認、執行境外臨時仲裁的先例

高雄地院
86仲聲2

臺中地院
87仲聲1

臺南地院
87聲83

國際主要仲裁機構介紹

The screenshot shows the ICC website's Arbitration page. The browser's address bar at the top indicates the page is viewed in Internet Explorer. The website's header includes navigation links: CONTACT US, FIND A DOCUMENT, BECOME A MEMBER, CAREERS, and MORE SITES. The ICC logo, featuring a globe and the letters 'ICC', is prominently displayed on the left, with the text 'INTERNATIONAL CHAMBER OF COMMERCE' below it. A dark blue sidebar menu on the left contains a 'MENU' button and a list of arbitration-related items: ARBITRATION, Arbitration Rules, Expedited Procedure Provisions, Arbitration Clause, Procedure, and Filing a request. The main content area has a dark blue background with the breadcrumb 'Home / Dispute resolution services / Arbitration' and the title 'ARBITRATION' in large white letters. Below the title, a paragraph states: 'Our rigorous approach, efficient processes and practical rules that cover every contractual issue have made us the leading arbitral institution. With teams across the globe, we stand ready to help you at any stage of your dispute.' Underneath, the text 'What people are looking for:' is followed by three green buttons with white text and right-pointing chevrons: 'Arbitration Rules', 'Cost calculator', and 'Court members'. At the bottom of the main content area, the word 'Index:' is followed by a horizontal list of links: 'ARBITRATION RULES | EXPEDITED PROCEDURE PROVISIONS | ARBITRATION CLAUSE | PROCEDURE | FILING A REQUEST | PRACTICE NOTES, FORMS AND CHECKLISTS'. On the right side of the page, there are three circular social media icons for LinkedIn, Facebook, and Twitter.

國際主要仲裁機構介紹

www.hkiac.org



[Belt & Road](#) | [Events](#) | [Facilities & Services](#) | [News](#) | [HK45](#) | [Users' Council](#) | [About Us](#) | [Contact Us](#)

[简体](#) | [繁體](#)



[Arbitration](#) | [Mediation](#) | [Domain Name Disputes](#) | [Adjudication](#)



HKIAC for Belt and Road Disputes



Play Video

Arbitration

A flexible, efficient and confidential method of

Mediation

A consensual dispute resolution process

Belt and Road Resource Centre

Understand more about China's Belt and Road

File Domain Name Complaints

Use HKIAC's domain name services for



國際主要仲裁機構介紹



The header of the SIAC website features a blue background with a world map. On the left is the SIAC logo (Singapore International Arbitration Centre). To the right are social media icons for WhatsApp and LinkedIn, and a search bar. Below the logo is a paragraph: "SIAC, which commenced operations in 1991 as an independent, not-for-profit organisation, has a proven track record in providing quality, neutral arbitration services to the global business community." To the right of this text is the slogan "Where The World Arbitrates". At the bottom is a dark navigation bar with links: Home, About Us, Rules, Arbitrators, Model Clauses, Fees, Resources, Events, FAQs, YSIAC.



A promotional banner for the SIAC Academy. It features a stylized city skyline on the left. The text reads: "MUMBAI 6 - 7 Oct 2018" and "BEIJING 13 - 14 Oct 2018". On the right is the SIAC logo and the text "ACADEMY SAVE THE DATE 2018".

SIAC Events

06 September 2018
SIAC Tokyo Conference
Tokyo, Japan

06 September 2018

Highlights

17 May 2018
The Honourable the Chief Justice Sundaresh Menon: Keynote Address delivered at the SIAC Congress 2018

At the SIAC Congress 2018 held in Singapore on 17 May 2018. The Honourable the Chief Justice

國際主要仲裁機構介紹

www.cietac.org



中国国际经济贸易仲裁委员会
CHINA INTERNATIONAL ECONOMIC AND
TRADE ARBITRATION COMMISSION

原网站 首页 网站地图 English

仲裁指南 规则 仲裁员 多元服务 新闻 专题活动 资料 研究 关于我们

新闻中心

MORE



美国知名争议解决专家对话贸仲裁研讨会... [2018-07-03]

贸仲裁代表团应邀参加在联合国举办的纪念《纽约公约》... [2018-06-30]

贸仲裁代表团访问美国仲裁协会并走访昆鹰律师事务所 [2018-06-30]

海外投资项目国际合规管理及风险防控和经贸摩擦应对培... [2018-06-28]

请输入您要搜索的内容



中国仲裁的国际品牌
International Brand of Chinese Arbitration

国际仲裁的中国经验
Chinese Experience of International Arbitration



重要提示 示范条款 视频资料 热点聚焦 近期活动 MORE

中国国际贸易促进委员会（中国国际贸易促进委员会）关于重组中国国际经济贸易仲裁委员会华南分会、中国国际经济贸易仲裁委员会上海分会的决定

中国国际贸易促进委员会关于重组中国国际经济贸易仲裁委员会华南分会、中国国际经济贸易仲裁委员会上海分会的公告

最高法院就贸仲裁华南分会、上海分会条款案件的管辖及裁决的司法监督审查问题作出批复

- 申请仲裁
- 域名争议解决
- 仲裁规则
- 网上仲裁
- 费用快算
- 贸仲出版物
- 仲裁员查询
- 贸仲简报
- 数据统计
- 研究报告
- 报酬查询

活动发布 中国国际经济贸易仲裁委员会



目錄



01

仲裁與其他
爭議解決機
制的比較

02

仲裁模式的
選擇

03

仲裁的費用

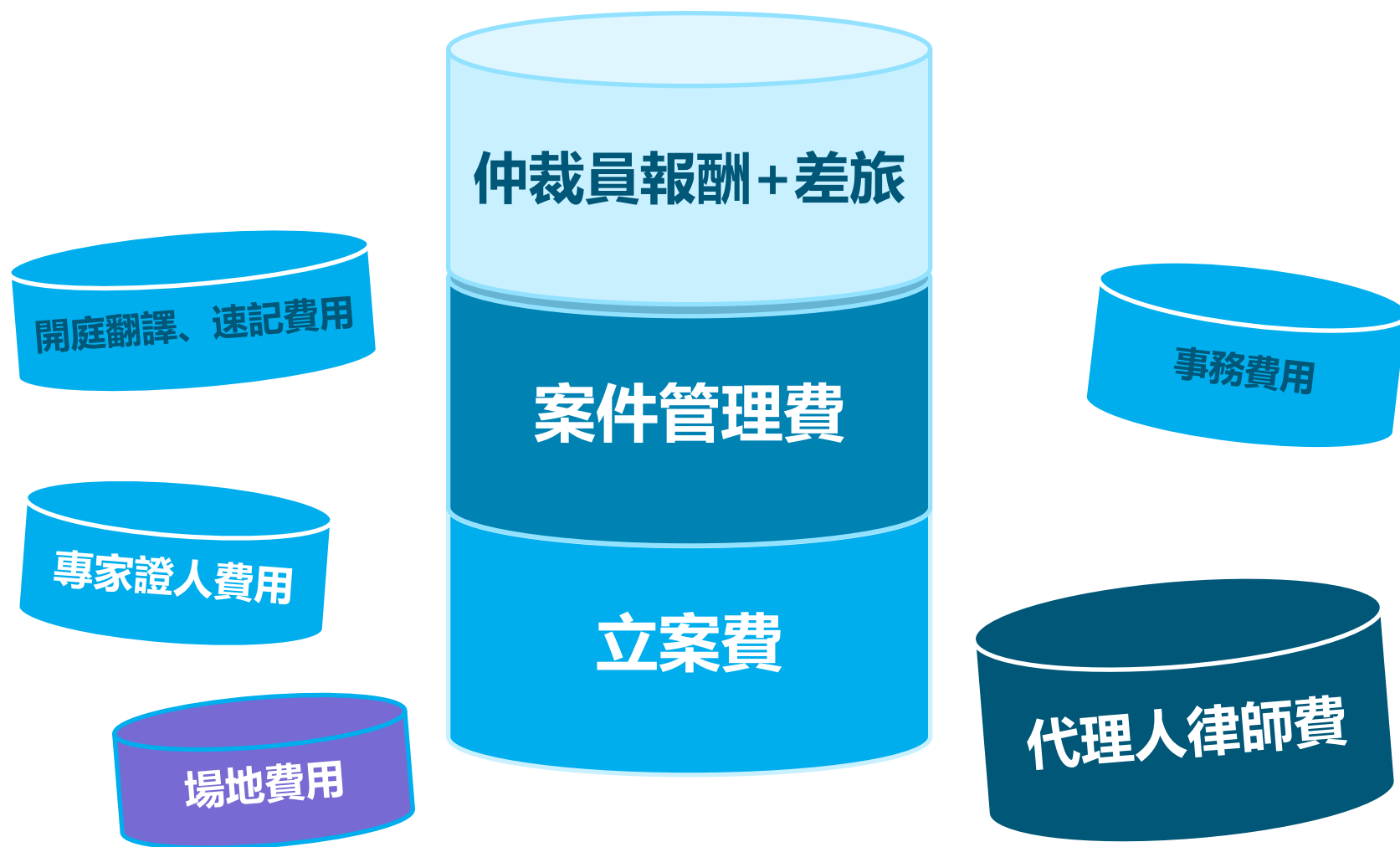
04

仲裁流程與
主要仲裁環
節介紹

05

英國特許仲
裁人學會介
紹

仲裁費用的組成



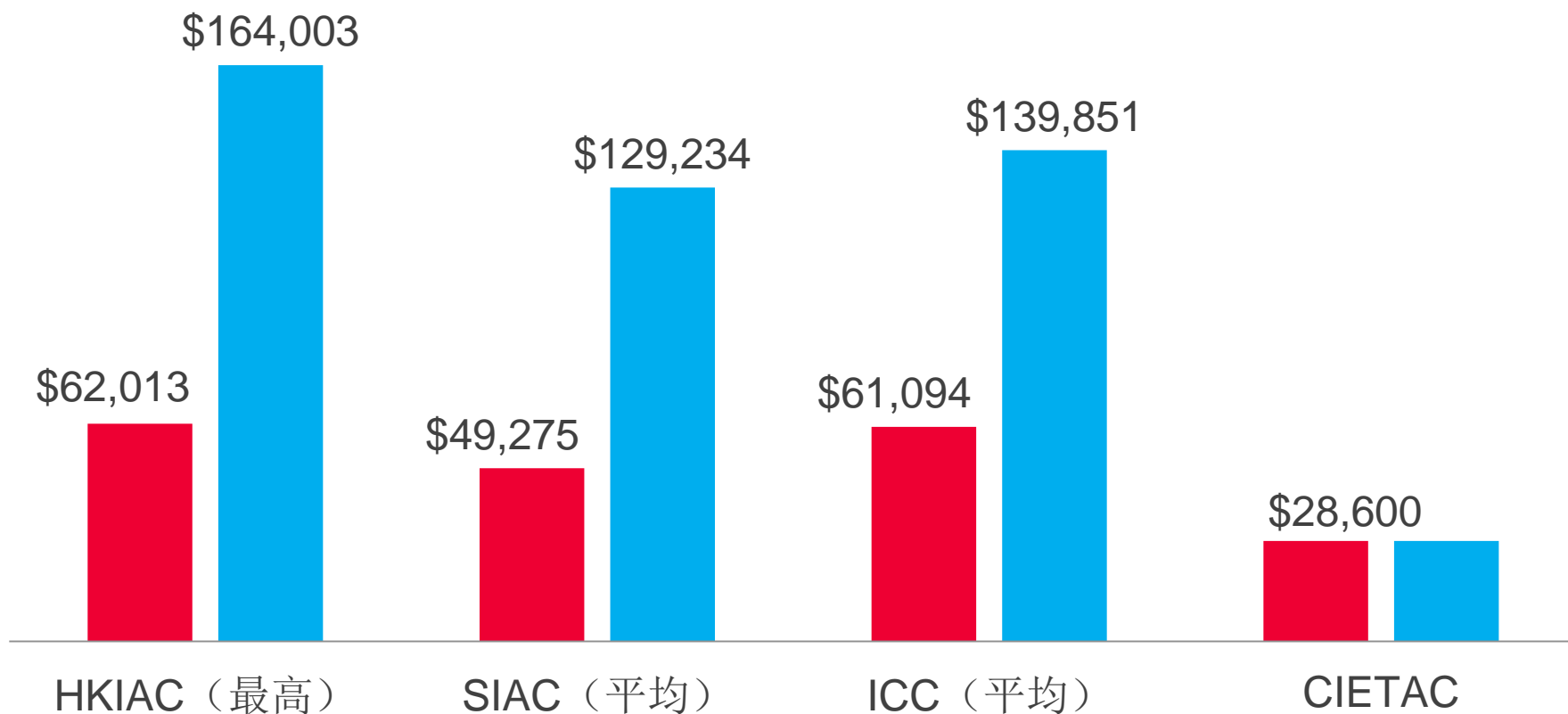
各機構收費比較 — 基準說明

機構名稱	適用規則 生效日	費用表生效日	基準貨幣
CAA	2003/01/22	2003/01/22	新台幣
CIETAC	2005/01/01	2005/01/01	人民幣
HKIAC	2013/11/01	2015/02/01	港幣
SIAC	2016/08/01	2016/08/01	新幣
ICC	2012/01/01	2012/01/01	美元

爭議標的金額：一百萬美元

■ 一人仲裁費用+行政費用

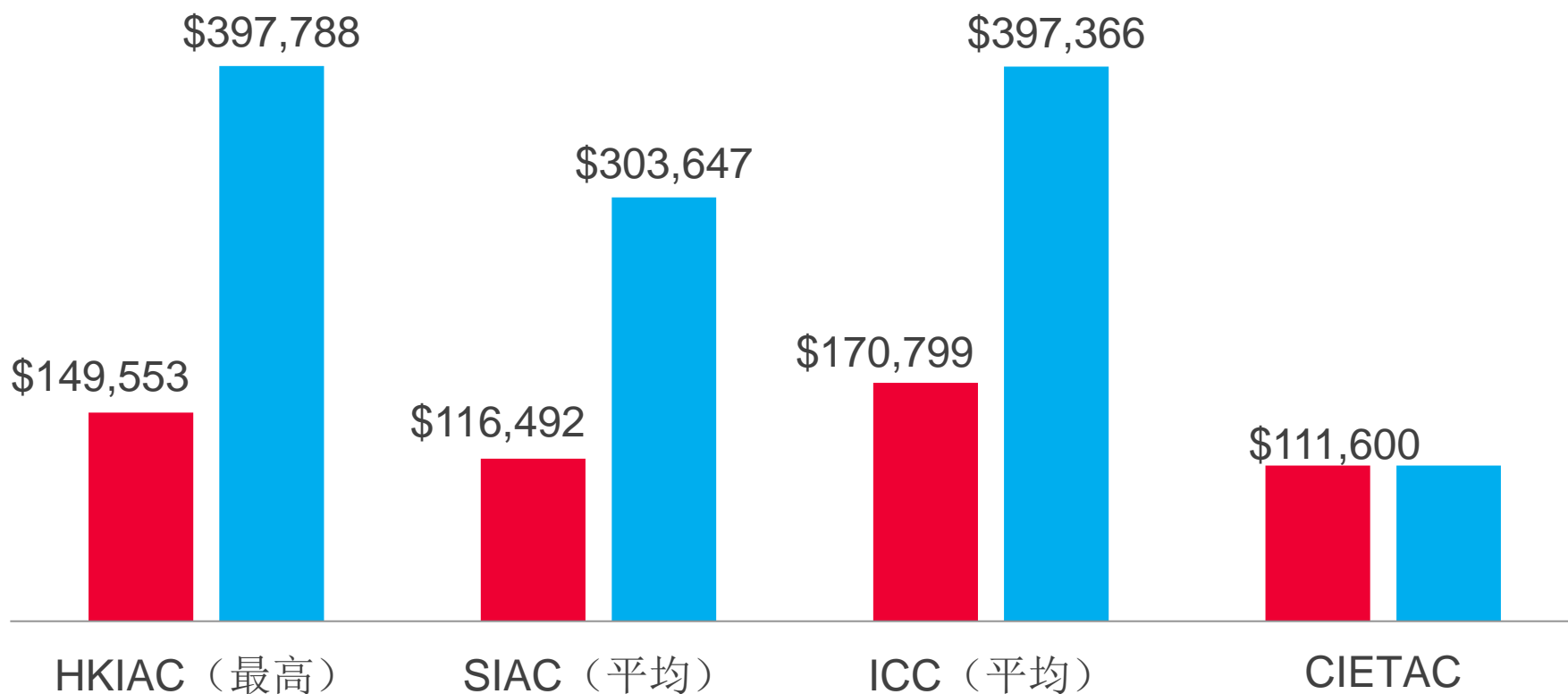
■ 三人仲裁費用+行政費用



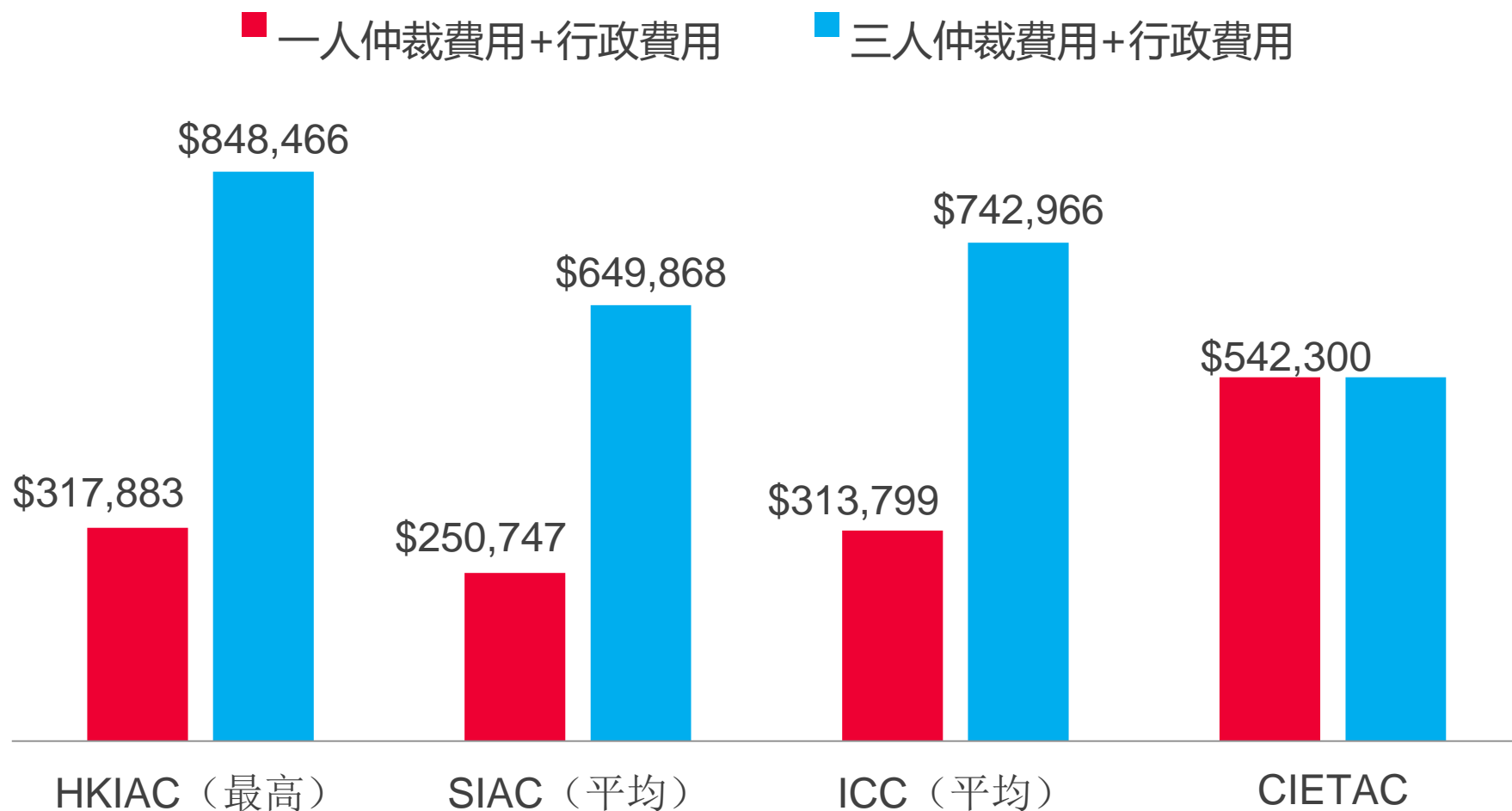
爭議標的金額：一千萬美元

■ 一人仲裁費用+行政費用

■ 三人仲裁費用+行政費用



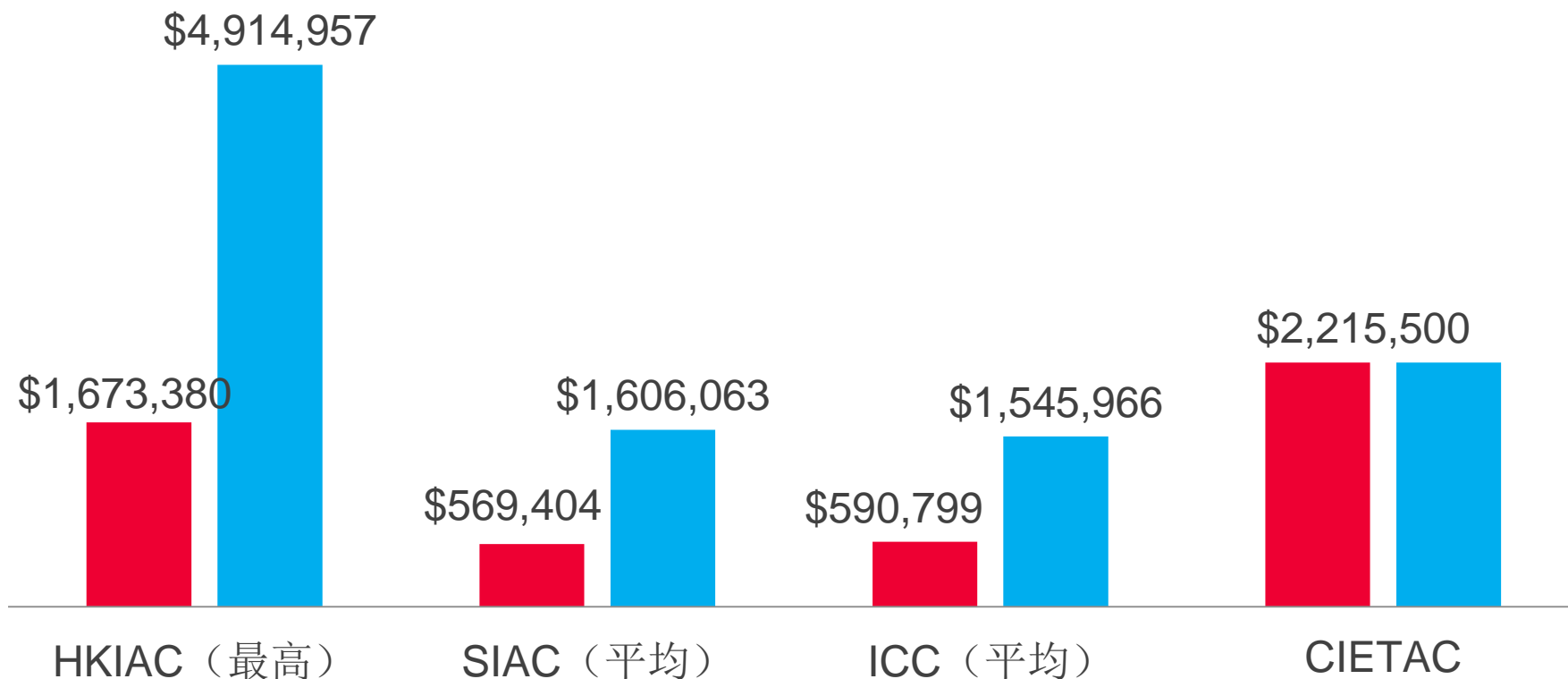
爭議標的金額：一億美元



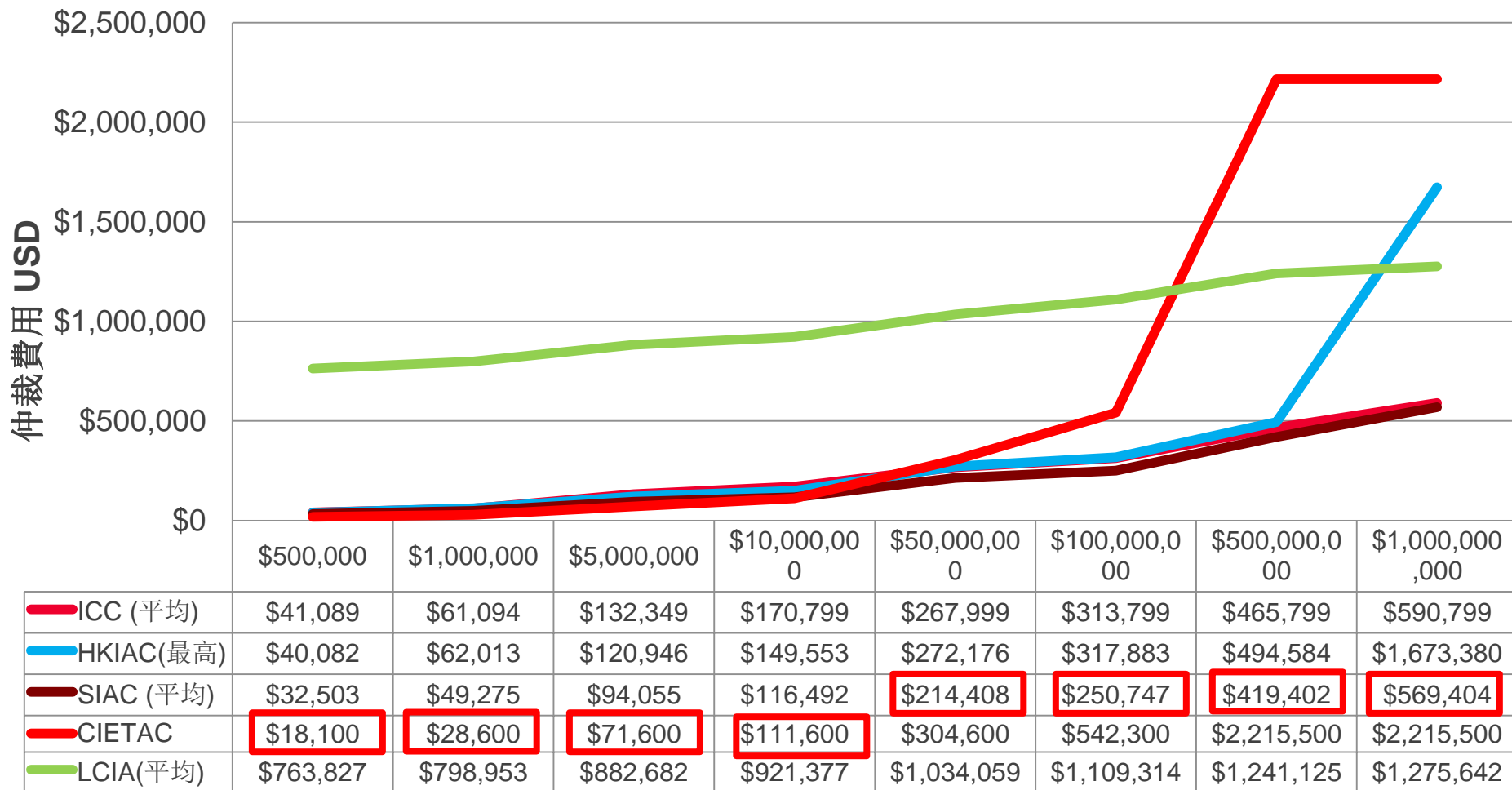
爭議標的金額：十億美元

■ 一人仲裁費用+行政費用

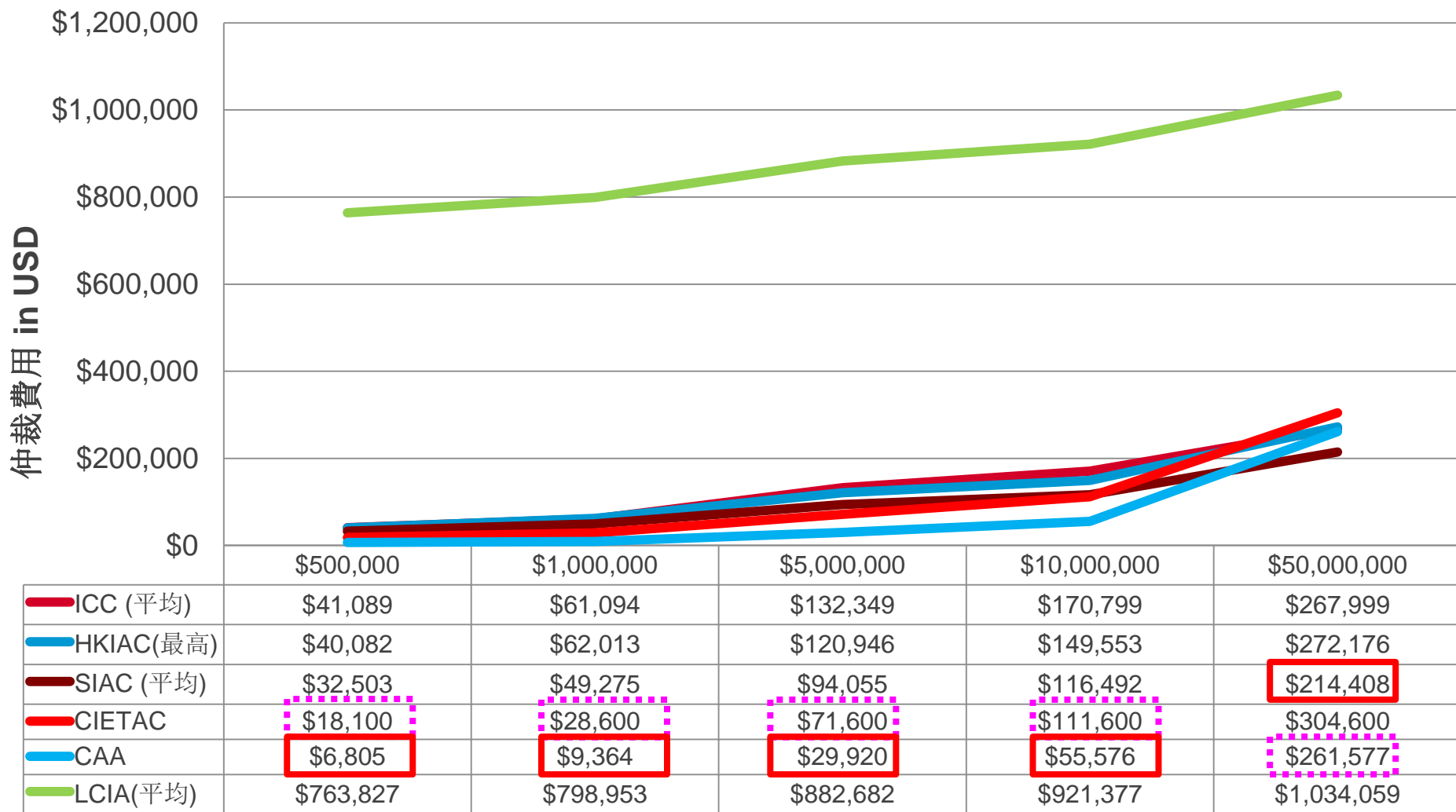
■ 三人仲裁費用+行政費用



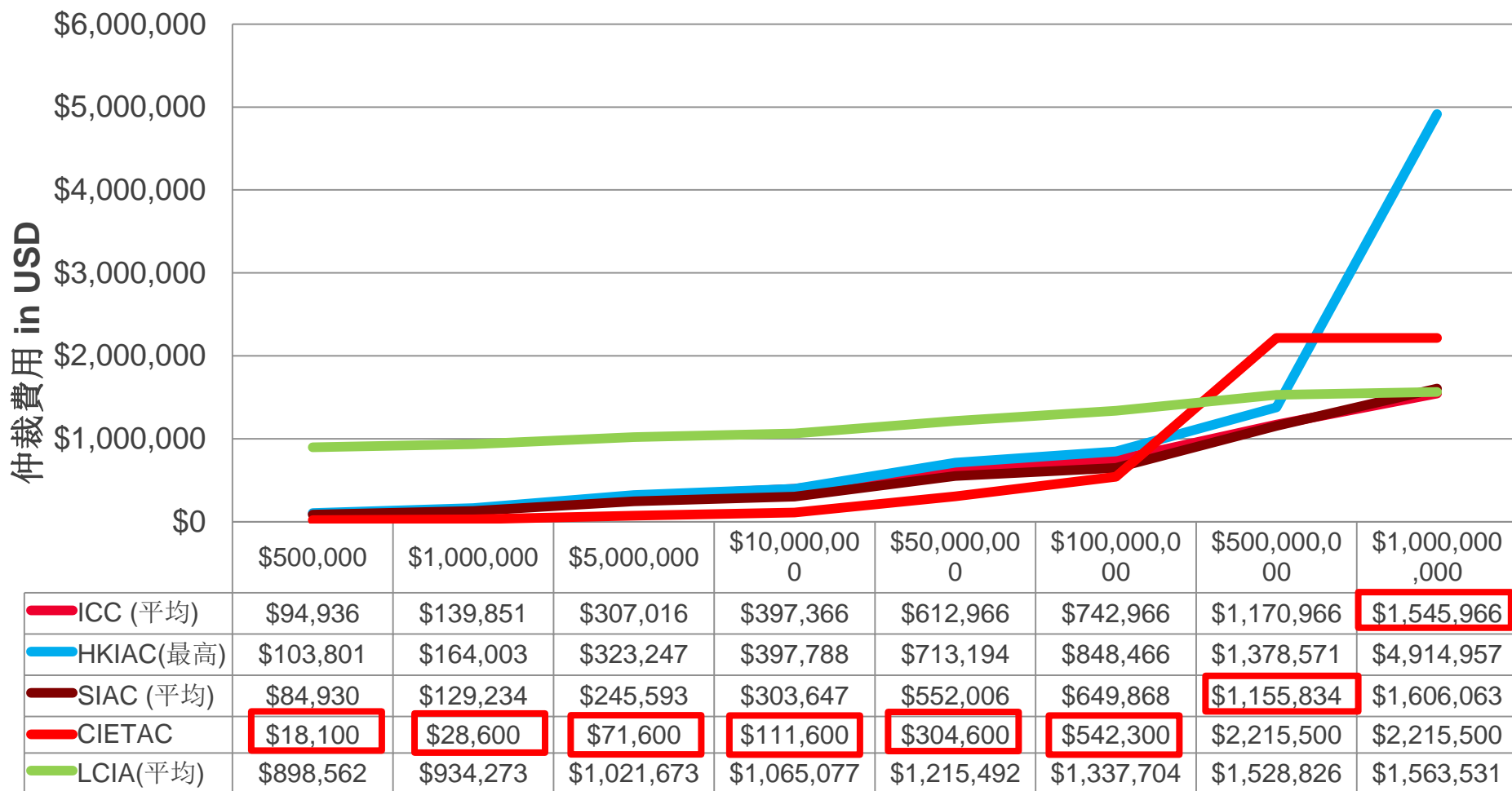
費用比較 — 獨任仲裁員



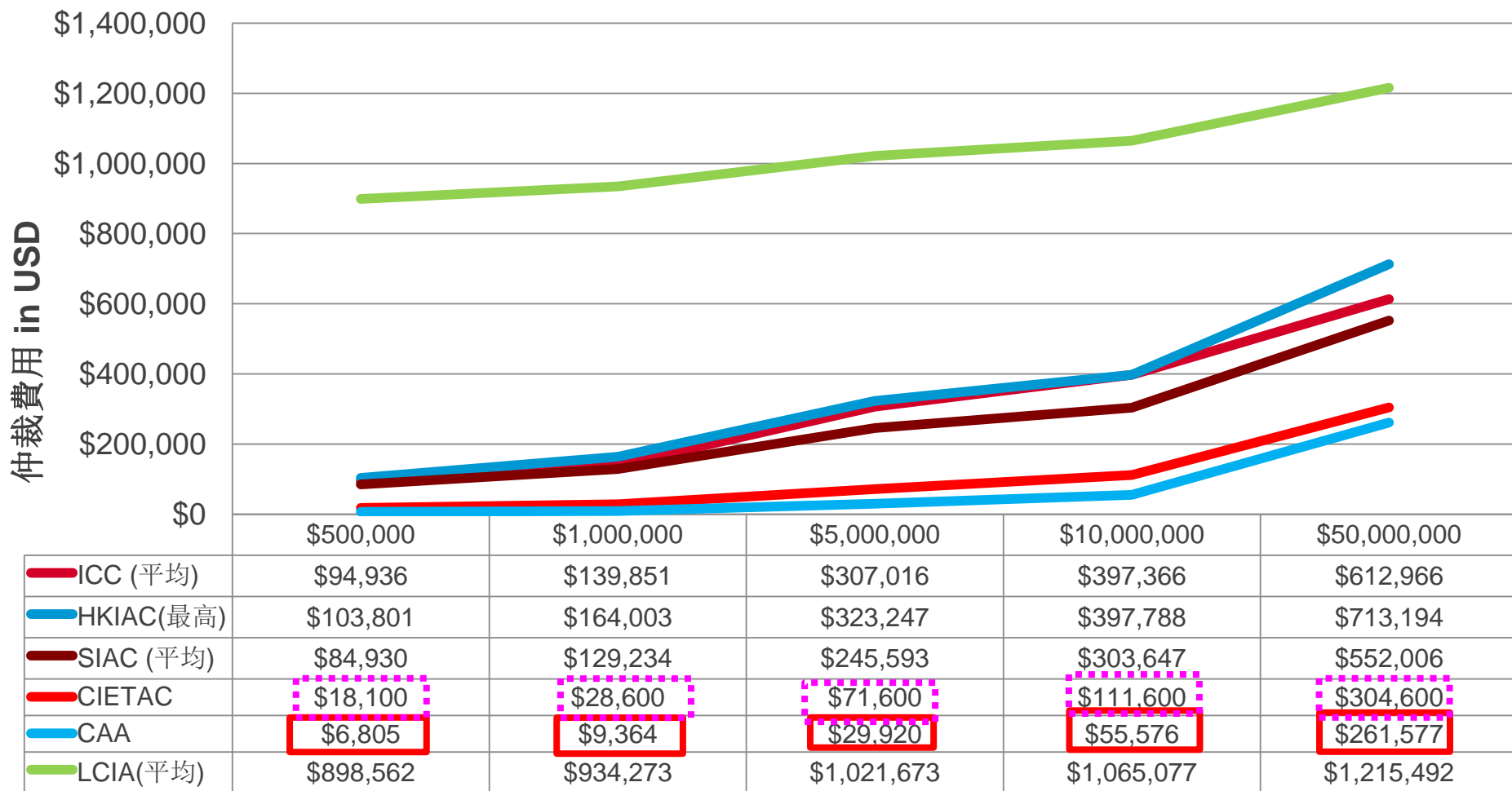
費用比較 — 獨任仲裁員



費用比較 — 三位仲裁員



費用比較 — 三位仲裁員



目錄



01

仲裁與其他
爭議解決機
制的比較

02

仲裁模式的
選擇

03

仲裁的費用

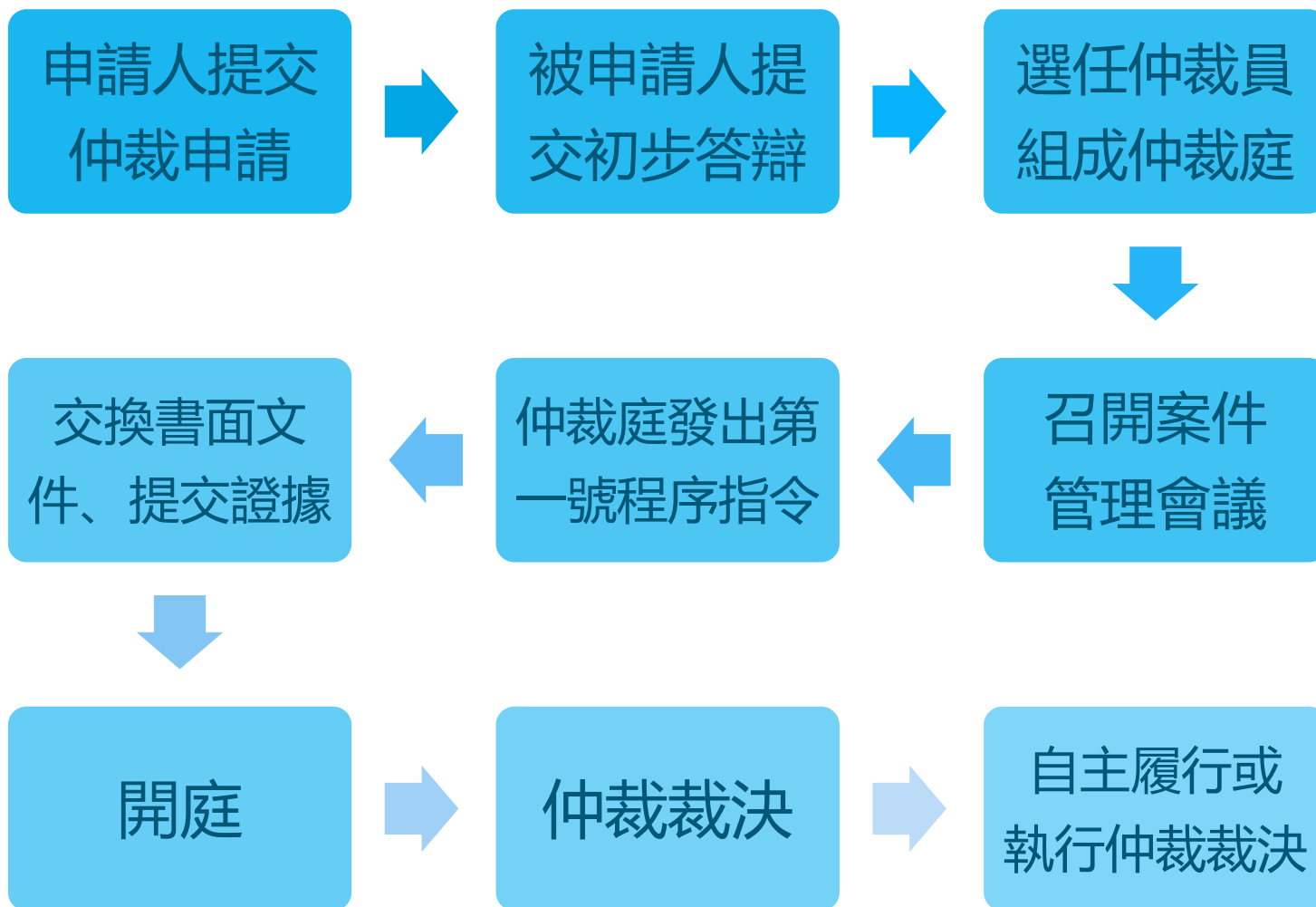
04

仲裁流程與
主要仲裁環
節介紹

05

英國特許仲
裁學會介紹

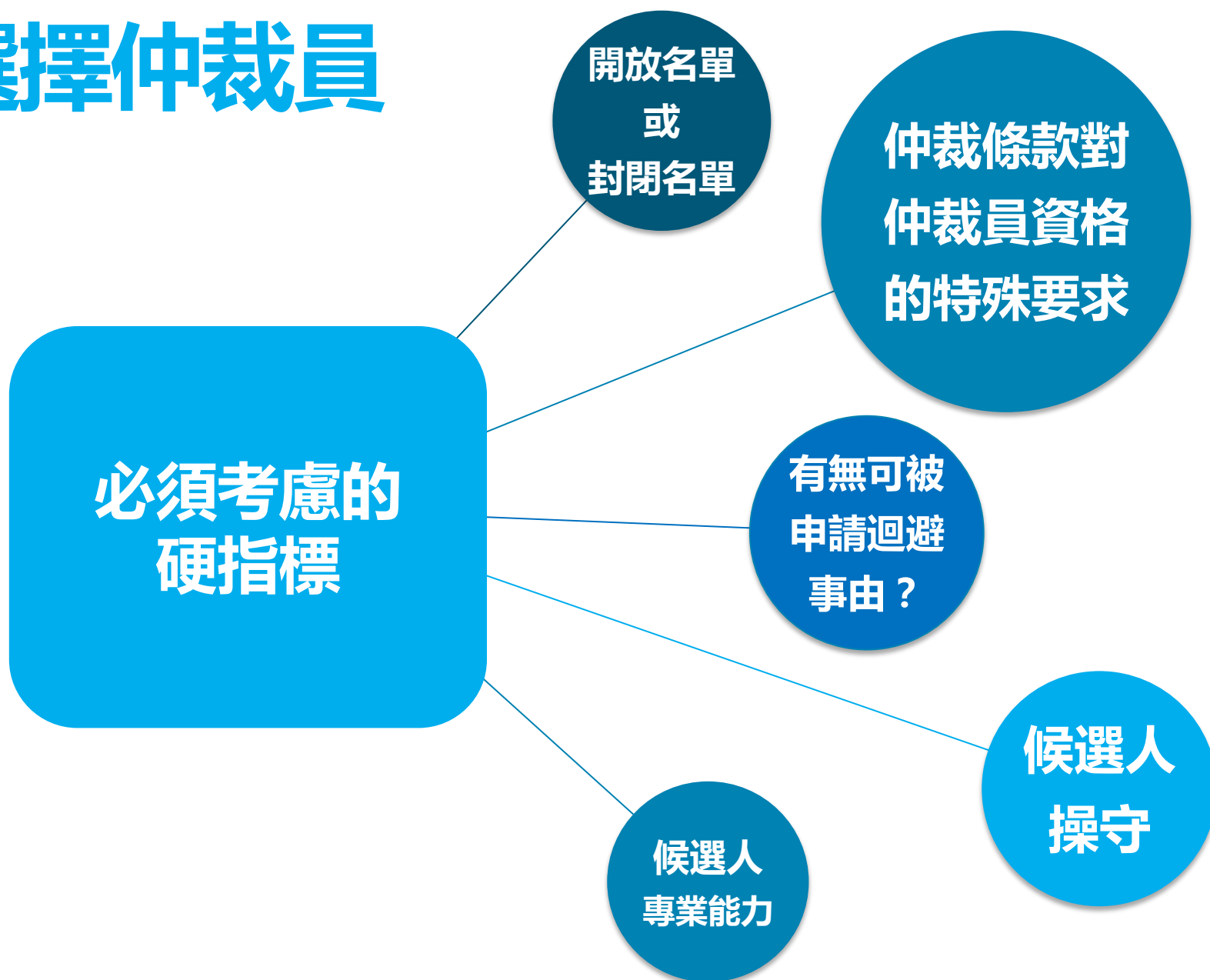
仲裁流程鳥瞰



選擇仲裁員

Arbitration is as good as its arbitrators.

選擇仲裁員



選擇仲裁員—其他待考慮因素

之前被選 定次數	之前被 撤仲記錄	仲裁地
業界分量	專業領域 切合度	知名度
對仲裁庭成 員的影響力	準據法	
仲裁人 費率	其他人的 評價	仲裁人 檔期
仲裁語言	國籍	
對特定議 題的態度	性別	

選擇仲裁員

英國特許仲裁學會國際
仲裁實務指南：面試
仲裁員候選人



Chartered
Institute of
Arbitrators

CIArb

INTERNATIONAL ARBITRATION PRACTICE GUIDELINE

**Interviews for Prospective
Arbitrators**

Chartered Institute of Arbitrators

面試仲裁員

CIArb Interviews for Perspective Arbitrators

第2條：委任之前的面試可以討論的問題

- 面試中將要討論的問題應在事先交換的議程中清楚列出並達成一致。在任何情況下，面試的內容均應限制在以下方面：
 - i. 以往在國際仲裁的經驗以及對於仲裁程序一般性事務的態度；
 - ii. 在該爭議事項上的專業性；
 - iii. 是否有時間處理仲裁案件，包括程序的預計時間表以及預計的開庭時間和時長；和/或
 - iv. 在非機構 (ad hoc) 仲裁中，仲裁員候選人的合理費用和其他與委任有關的條款，但須為可適用的規則或法律所允許。

面試仲裁員

CIArb Interviews for Perspective Arbitrators

第3條：不應討論的問題

- 以下事項不應被直接或間接討論：
 - i. 導致爭議發生的具體事實或情況；
 - ii. 當事人的立場和爭點；
 - iii. 案件的實體情況；和/或
 - iv. 仲裁員候選人對於案件實體情況、當事人的爭點和/或主張的觀點。

申請仲裁員迴避



IBA Guidelines on Conflicts of Interest in International Arbitration

Adopted by resolution
of the IBA Council
on Thursday 23 October 2014



案件管理會議 (CMC)

案件流
程管理



確立審
理範圍

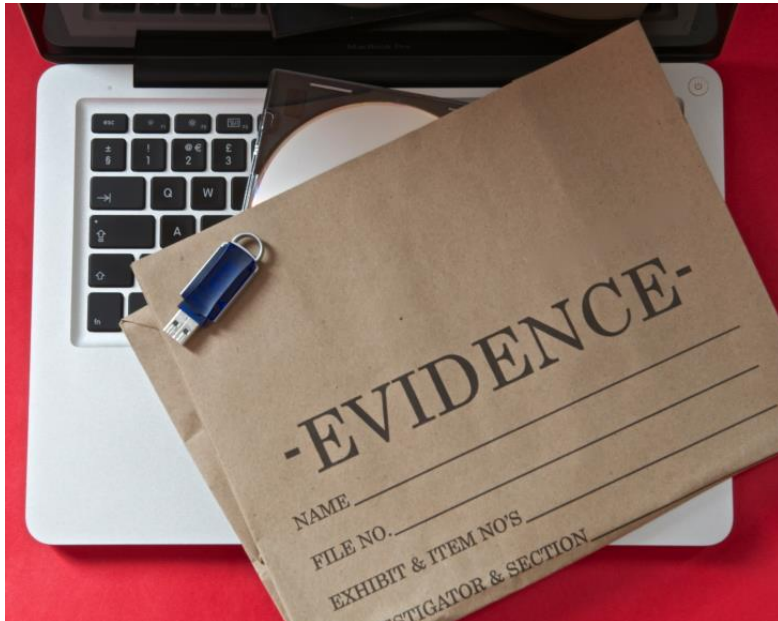
訂定
時間表



初步爭
點整理

準備下
程序指
令

證據提交



IBA Rules on the Taking of Evidence in International Arbitration

*Adopted by a resolution of
the IBA Council
29 May 2010
International Bar Association*



the global voice of
the legal profession

證據開示 — Redfern Schedule

No.	Requesting Party	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
			Ref. to Submissions	Comments			

目錄



01

仲裁與其他
爭議解決機
制的比較

02

仲裁模式的
選擇

03

仲裁的費用

04

仲裁流程與
主要仲裁環
節介紹

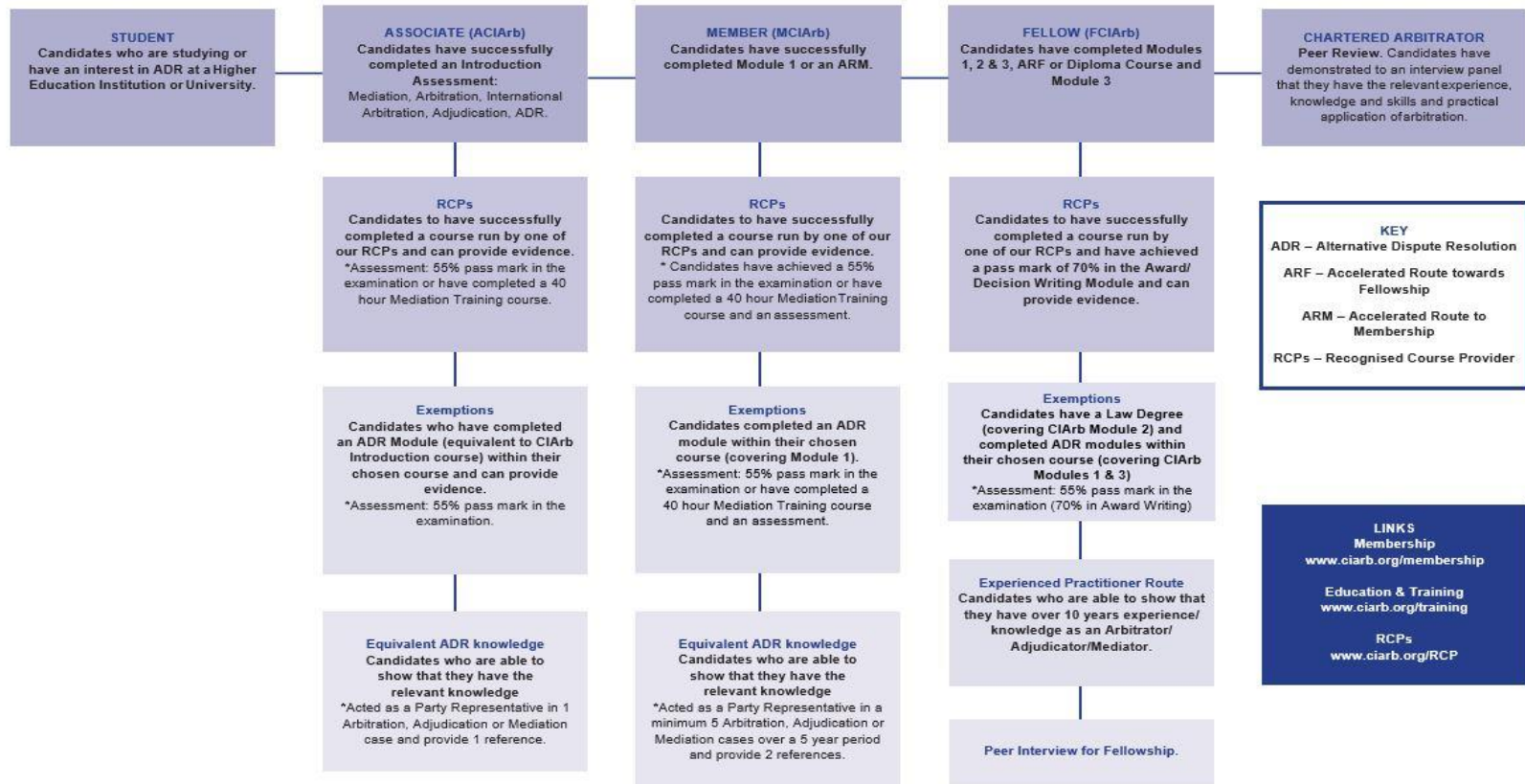
05

英國特許仲
裁學會介紹

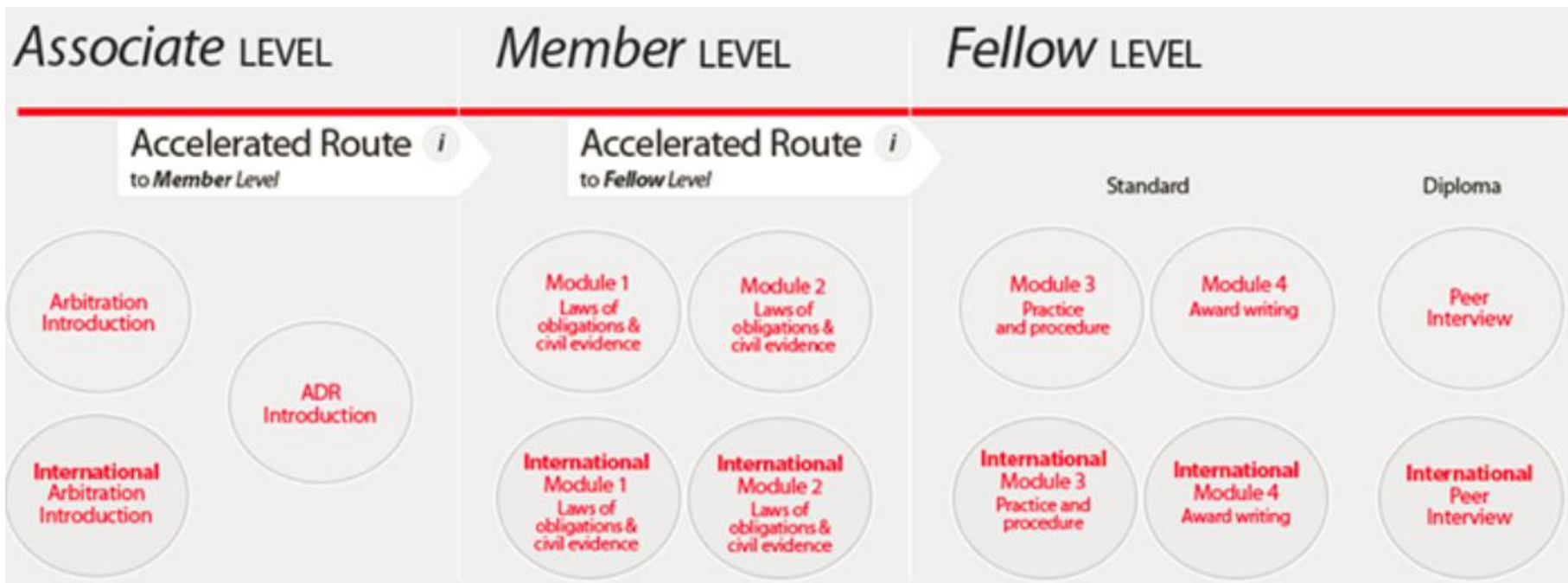
英國特許仲裁學會會員類型

Routes to CIArb Membership

*The final awarding of membership grade is at the discretion of CIArb Membership team



英國特許仲裁學會會員類型





Alison Chang @... 

北京 朝阳



感謝聆聽!