



Survey on International Dispute Resolution

(October 2013)

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and
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METHODOLOGY

Introduction: Why Conduct The Survey?

We conducted the survey because, with respect to the topic of international dispute resolution, we have long perceived a number of *disconnects* – disconnects between in-house lawyers at Israeli companies and their outside counsel, disconnects between Israeli lawyers active in the international practice of law and their counterparts abroad, and even disconnects within the Israeli “community” of arbitration professionals.

More specifically, it has been our perception that:

- A. In-house Israeli lawyers and outside Israeli counsel often disagree as to (i) the factors for determining whether to include an arbitration clause in an international agreement, and (ii) the criteria for selecting an arbitrator;
- B. Lawyers in Israel are less likely than their counterparts in North America and Western Europe to recommend *institutional* arbitration (as opposed to *ad hoc* arbitration); and
- C. Within the Israeli community of arbitration professionals, there are disagreements as to the factors taken into consideration by corporate decision-makers when deciding whether to arbitrate.

Each question of the survey was designed to address one or more of the above issues.

The “Universe” Of The Survey Population (generally)

The survey was sent, via email,¹ to 311 in-house lawyers employed by Israeli companies that hold themselves out as active in international commerce.

The in-house lawyers were selected regardless of title (General Counsel, Associate General Counsel, Legal Advisor, etc.).

The sources for names of recipients were (a) in-house lawyers known personally by the attorneys at our firm, and (b) biographies available online, primarily through LinkedIn. We assumed that lawyers employed by Israeli companies involved in international commerce would be more likely to list their biographies in LinkedIn than lawyers employed by Israeli companies that are not involved in international commerce.

In order to verify that each recipient lawyer is currently employed by an Israeli company that is active (or holds itself out as active) in international commerce, each online biography was reviewed in the weeks preceding the sending of the invitations to respond to the survey. In a few cases, from the date of the commencement of the compilation of e-mail addresses until the date of completion of that process, recipients changed their employment such that they no longer qualified (*see* below) for inclusion in the survey. When we became aware of such cases, the recipients were removed from our list, and the invitation to answer the survey (or a reminder notice, as the case may be) was not sent to those lawyers.

Criteria for Inclusion of In-House Lawyers (who was included, who excluded)

The invitation to respond to the survey was sent to *every lawyer* who fits the criteria described herein *and* whose email address our law firm was able to obtain.

Lawyers employed at companies that are *unlikely* to be involved in international commerce were *excluded* from the list of recipients for the survey. Examples of such types of companies: real estate development companies (unless their websites or other online descriptions indicate that their international activities are extensive); real estate brokerage companies; providers of healthcare to consumers; and labor unions.

In addition to certain types of companies being excluded, there were other grounds for *excluding* specific types of in-house lawyers:

- A. In-house patent attorneys were *excluded*, unless it was clear from their online biographies that they also have a law degree;
- B. In-house lawyers who work primarily in the immigration field or in the taxation field were *excluded* – due to the assumption that they generally are not involved in the issues addressed in the survey;
- C. Lawyers employed by accounting firms were *excluded* – due to the assumption that they generally are not involved in the issues addressed in the survey; and
- D. Lawyers who work *both* in-house *and* at a private law firm were *excluded* – due to the concern that the lawyer’s views might reflect those of a private law firm instead of in-house counsel (and regardless of the extent of international activities of that company or of that specific lawyer).²

In addition, Israeli lawyers currently employed outside of Israel by non-Israeli subsidiaries (or affiliates) of Israeli corporations were *excluded* – due to the concern that the views of such lawyers might be influenced by recent *non*-Israeli experience (and regardless of the extent of Israeli experience of such lawyers).

Lawyers employed by research and development institutions or by government companies were *included*, *provided that* the online descriptions of such institutions indicate that their international activities are extensive.

Lawyers employed by Israeli companies in the insurance industry were *included* – *unless* their biographies indicate that they deal predominantly with *consumer* claims (such as auto claims, death benefits, etc.).

Lawyers employed by Israeli banks were *included* -- even though there is a perception among lawyers active in alternative dispute resolution that banks are generally averse to arbitration.³

The Respondents, Their Industries, And Their Companies

In the invitation that was sent to each respondent, our law firm *committed not to disclose* the name of the respondent and/or his/her company.

Of the companies represented by the respondents to the survey, six are (by all accounts) the industry leader in Israel. Forty-two percent of the companies represented by the respondents are publicly traded (mostly in the United States), and 19% of the companies represented are government companies or R&D institutions.

The respondents included general counsel and other lawyers at major Israeli companies in the telecommunications, pharmaceutical, software, laser, electronics, defense, airline, jewelry, capital markets, financial services, and biotechnology fields.

Of the 311 recipients of the invitation to respond to the survey, thirty-six responded. Thirteen recipients sent a notification to the hosting company that they “opted out.”⁴ Thus, of those who did not opt out (298), 12% of the recipients responded to the survey.

Of the respondents, 44% have the title “General Counsel,” “Senior Vice President,” “Senior Counsel,” or “Head of Legal Department” or are employed in the same legal department as another respondent who has such title. Among the other respondents, 17% hold a position of Senior Director or the equivalent.

Of those respondents whose full educational biography is available online, 40% have one or more university degrees from a non-Israeli university.

www.sherby.co.il

¹ The hosting company for the survey was Survey Monkey, www.surveymonkey.com.

² It was not always possible to determine, from the online biography, whether a lawyer works *both* in-house *and* at a private law firm.

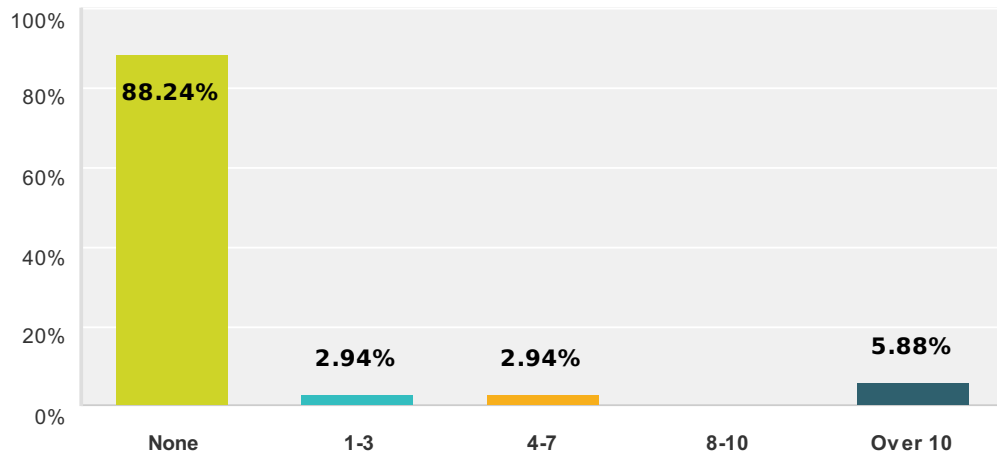
³ No lawyer employed by a bank responded to the survey.

⁴ Some recipients opted out – *before* our invitation was sent – of receiving any emails from the hosting company. Those recipients had apparently received invitations to respond to *other* surveys that were hosted by www.surveymonkey.com and decided that they did not want to receive any such email invitations.

We were told by one senior in-house lawyer at one of Israel’s largest companies in the defense field that lawyers in his company are instructed to *ignore* requests to respond to surveys.

Q1 Over the past 12 months, your company has been a party to how many international arbitrations?

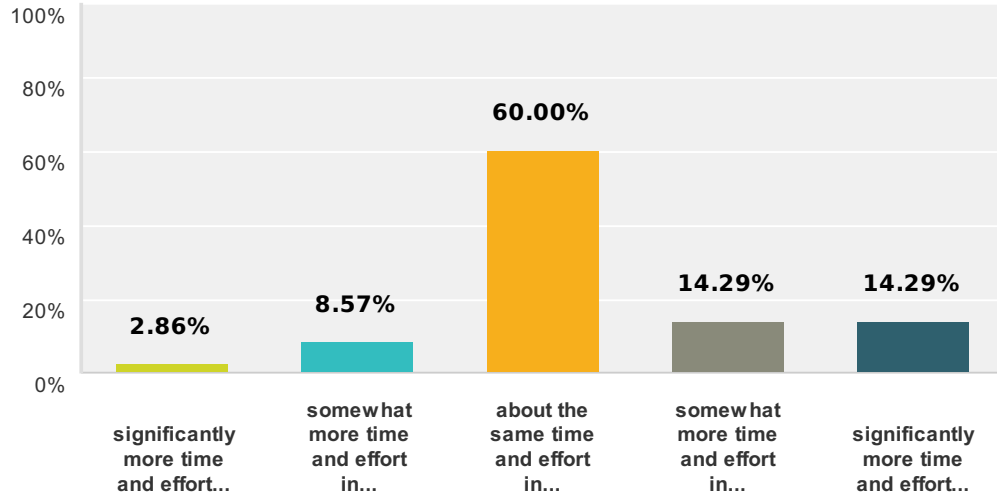
Answered: 34 Skipped: 2



Answer Choices	Responses	
None	88.24%	30
1-3	2.94%	1
4-7	2.94%	1
8-10	0%	0
Over 10	5.88%	2
Total		34

Q2 Please estimate the relative time and effort devoted to the negotiation of choice-of-law clauses and forum selection (including arbitration) clauses in the types of international, business-to-business contracts to which your company is MOST FREQUENTLY a party. In such a situation, your company typically devotes:

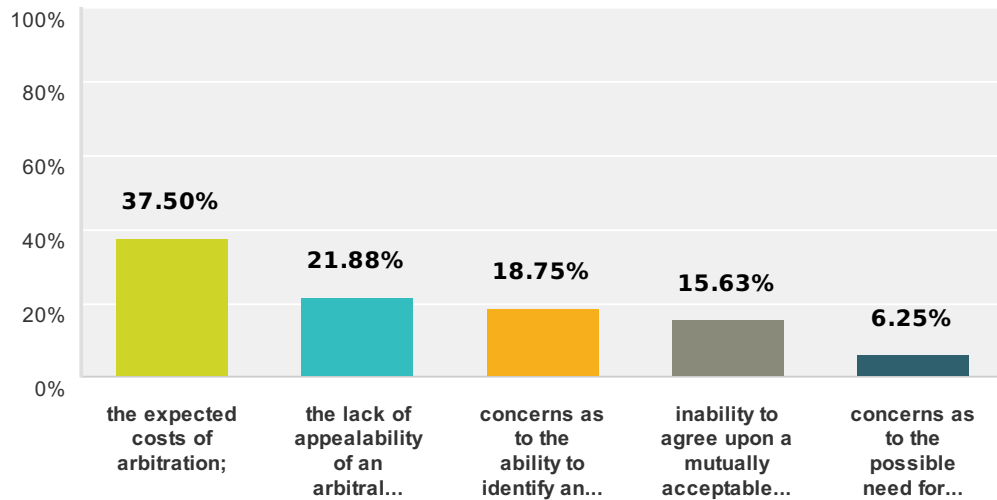
Answered: 35 Skipped: 1



Answer Choices	Responses
significantly more time and effort in negotiating a choice of law clause than it does in negotiating a forum selection (including arbitration) clause.	2.86% 1
somewhat more time and effort in negotiating a choice of law clause than it does in negotiating a forum selection clause.	8.57% 3
about the same time and effort in negotiating a choice of law clause as it does in negotiating a forum selection clause.	60% 21
somewhat more time and effort in negotiating a forum selection clause than it does in negotiating a choice of law clause.	14.29% 5
significantly more time and effort in negotiating a forum selection clause than it does in negotiating a choice of law clause.	14.29% 5
Total	35

Q3 In those cases over the past five years in which your company has been involved in a business-to-business international negotiation, and the issue of including an arbitration clause in the contract was raised but ultimately rejected, the PRIMARY REASON that it was rejected was:

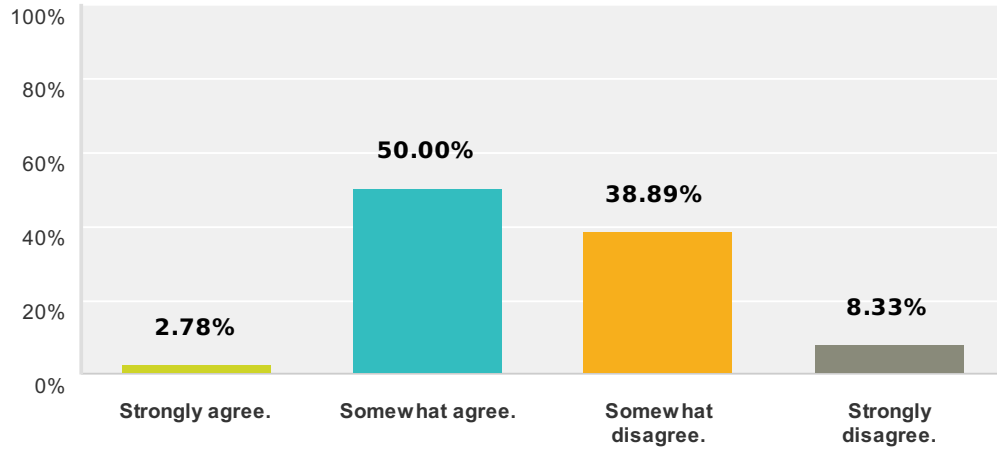
Answered: 32 Skipped: 4



Answer Choices	Responses	
the expected costs of arbitration;	37.50%	12
the lack of appealability of an arbitral award;	21.88%	7
concerns as to the ability to identify an appropriate arbitrator with respect to likely disputes;	18.75%	6
inability to agree upon a mutually acceptable location (situs) of a possible arbitration;	15.63%	5
concerns as to the possible need for injunctive (or other equitable) relief.	6.25%	2
Total		32

Q4 To what extent do you agree with the statement “a retired judge is generally the ideal candidate to serve as an arbitrator in a business-to-business dispute”?

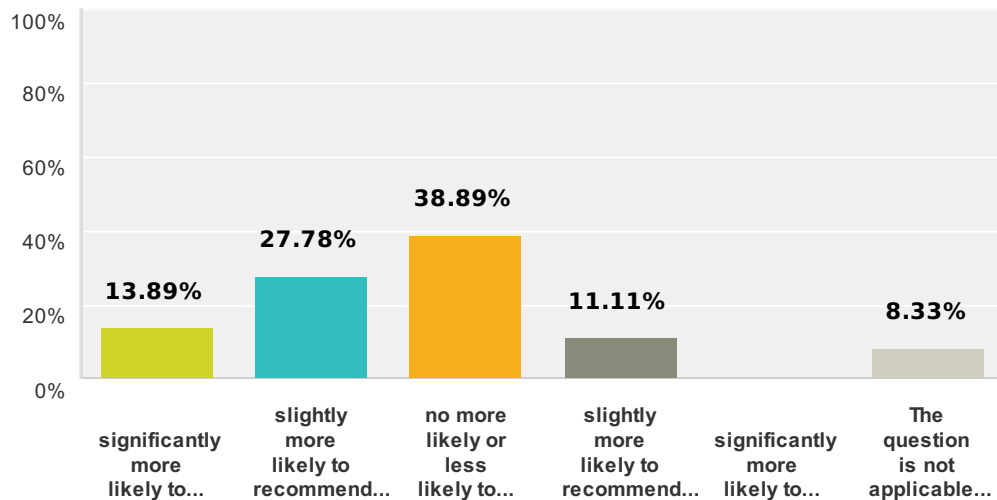
Answered: 36 Skipped: 0



Answer Choices	Responses	
Strongly agree.	2.78%	1
Somewhat agree.	50%	18
Somewhat disagree.	38.89%	14
Strongly disagree.	8.33%	3
Total		36

Q5 This question asks you to estimate the extent (if any) by which your views concerning the inclusion of an arbitration clause in a contract have changed over the past five years. In comparison to five years ago, if asked whether you would recommend to your company to include an arbitration clause in its business-to-business agreements, your current view is that you are:

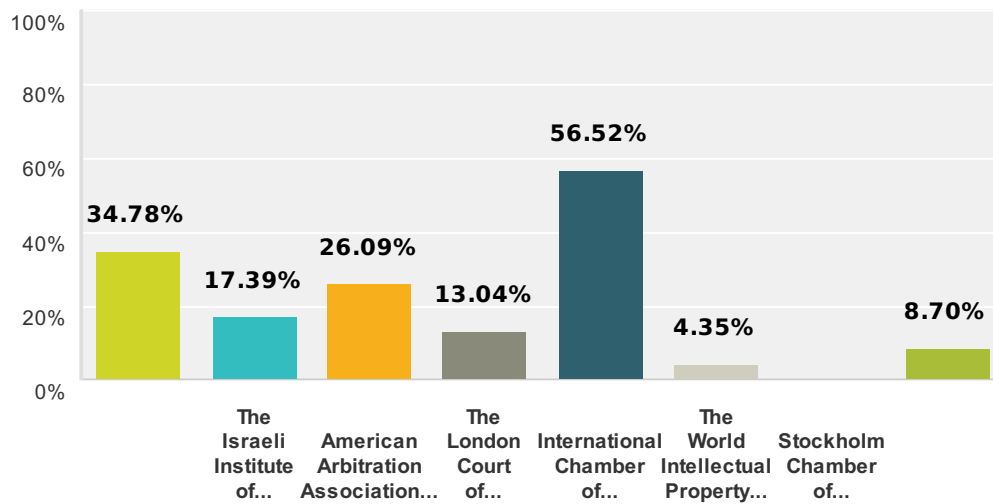
Answered: 36 Skipped: 0



Answer Choices	Responses	
significantly more likely to recommend to your company to include an arbitration clause;	13.89%	5
slightly more likely to recommend to your company to include an arbitration clause;	27.78%	10
no more likely or less likely to recommend to your company to include an arbitration clause;	38.89%	14
slightly more likely to recommend to your company NOT to include an arbitration clause;	11.11%	4
significantly more likely to recommend to your company NOT to include an arbitration clause;	0%	0
The question is not applicable to you, because you were not in-house five years ago.	8.33%	3
Total		36

Q6 With which, if any, of the following arbitration institutions has your company had experience in the past five years?

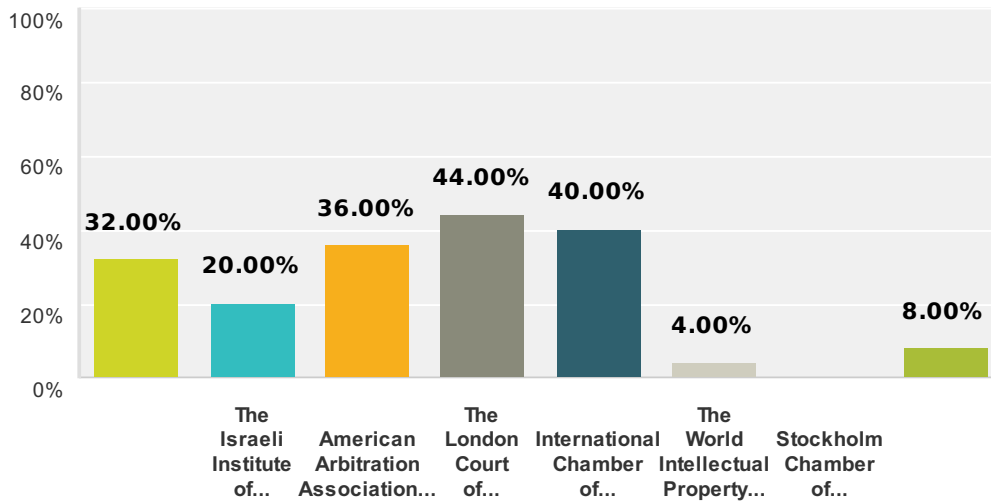
Answered: 23 Skipped: 13



Answer Choices	Responses
The Israeli Bar Association's Arbitration Institute	34.78% 8
The Israeli Institute of Commercial Arbitration (IICA)	17.39% 4
American Arbitration Association (AAA)/ International Centre for Dispute Resolution (ICDR)	26.09% 6
The London Court of International Arbitration (LCIA)	13.04% 3
International Chamber of Commerce (ICC)	56.52% 13
The World Intellectual Property Organization (WIPO)	4.35% 1
Stockholm Chamber of Commerce (SCC)	0% 0
The Singapore International Arbitration Centre (SIAC)	8.70% 2
Total Respondents: 23	

Q7 Which, if any, of the following arbitration institutions would you recommend?

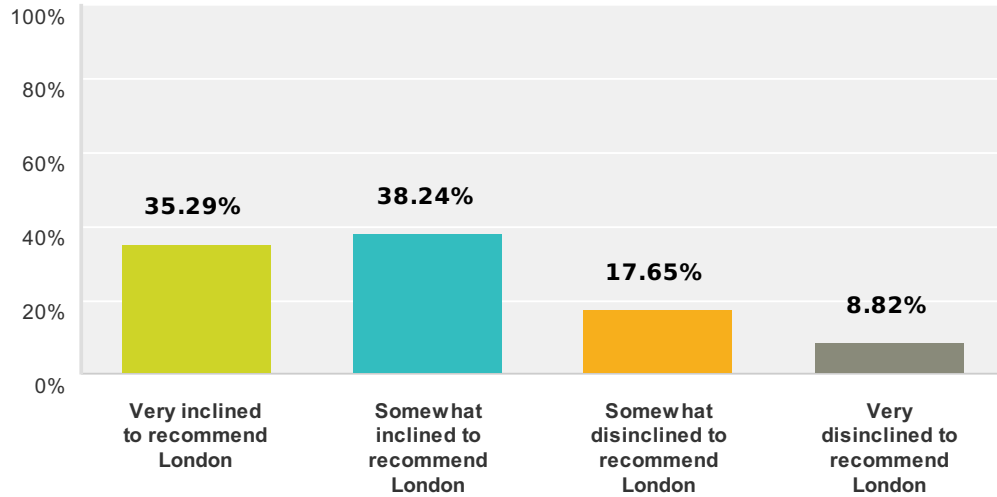
Answered: 25 Skipped: 11



Answer Choices	Responses
The Israeli Bar Association's Arbitration Institute	32% 8
The Israeli Institute of Commercial Arbitration (IICA)	20% 5
American Arbitration Association (AAA)/ International Centre for Dispute Resolution (ICDR)	36% 9
The London Court of International Arbitration (LCIA)	44% 11
International Chamber of Commerce (ICC)	40% 10
The World Intellectual Property Organization (WIPO)	4% 1
Stockholm Chamber of Commerce (SCC)	0% 0
The Singapore International Arbitration Centre (SIAC)	8% 2
Total Respondents: 25	

Q8 In connection with an agreement involving a NON-UK company, if your company would have to choose a non-Israeli seat for arbitration, you would be:

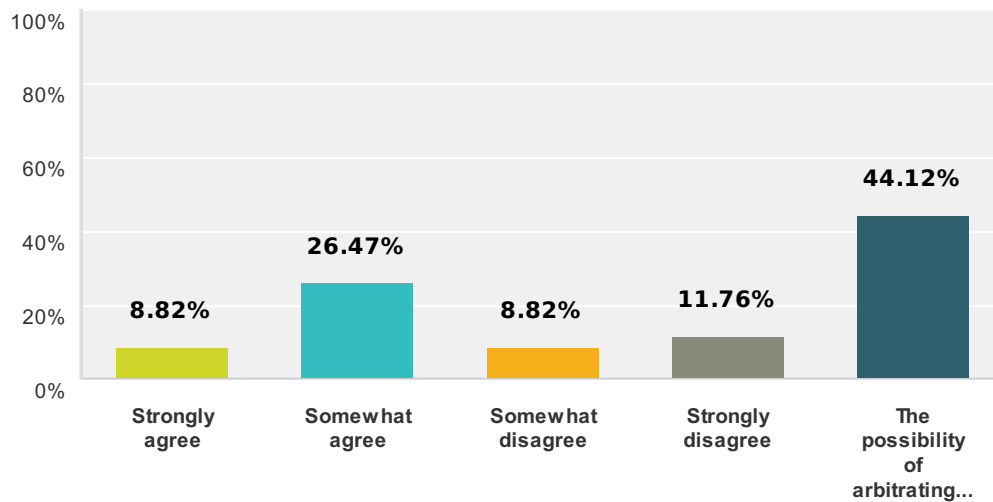
Answered: 34 Skipped: 2



Answer Choices	Responses	
Very inclined to recommend London	35.29%	12
Somewhat inclined to recommend London	38.24%	13
Somewhat disinclined to recommend London	17.65%	6
Very disinclined to recommend London	8.82%	3
Total		34

Q9 To what extent do you agree with the following statement: “In those international negotiations in which the issue of forum selection (litigation) versus arbitration arises, our company’s experience is that a non-Israeli company is more likely to agree to arbitrate before an Israeli arbitrator than to litigate before an Israeli court.”

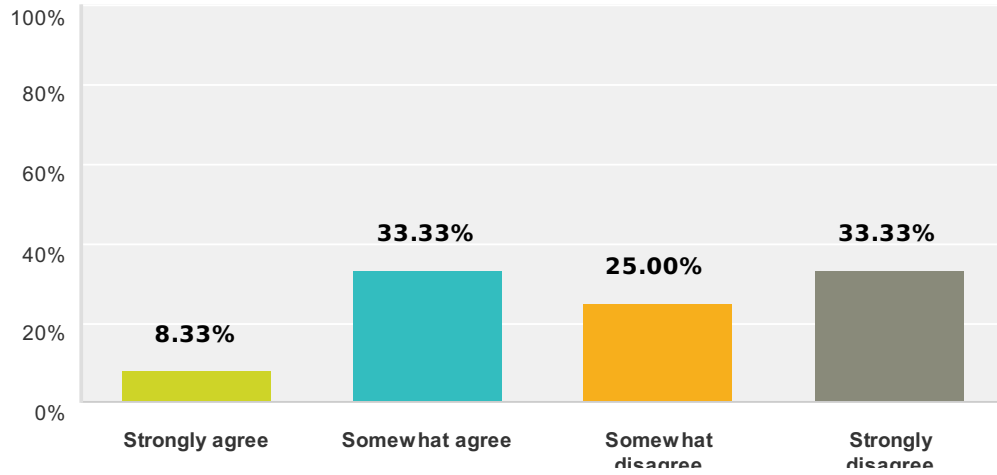
Answered: 34 Skipped: 2



Answer Choices	Responses	
Strongly agree	8.82%	3
Somewhat agree	26.47%	9
Somewhat disagree	8.82%	3
Strongly disagree	11.76%	4
The possibility of arbitrating has not arisen in enough cases for you to form a view	44.12%	15
Total		34

Q10 To what extent do you agree with the following statement: “Any institutional arbitration outside of Israel is so expensive that it does not matter to our company which (non-Israeli) arbitral institution is selected in the contract.”

Answered: 36 Skipped: 0



Answer Choices	Responses	
Strongly agree	8.33%	3
Somewhat agree	33.33%	12
Somewhat disagree	25%	9
Strongly disagree	33.33%	12
Total		36