

2018 International Arbitration Survey: The Evolution of International Arbitration



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2018 International Arbitration Survey: The Evolution of International Arbitration

The 2018 International Arbitration Survey, entitled “The Evolution of International Arbitration,” identifies the principal drivers and stakeholders that the arbitration community expects to influence the future direction of international arbitration. Trends investigated in earlier empirical studies have also been revisited in order to ascertain changes in user preferences and perceptions. Views were sought from a diverse pool of participants in the international arbitration sphere, including in-house counsel, arbitrators, private practitioners, representatives of arbitral institutions, academics, experts and third party funders.

The survey presents a breakdown of results by categories of respondents, such as by their primary role or the geographic regions in which they principally operate or practise, providing unique insight into the range of views expressed by different stakeholders of international arbitration.

White & Case is proud once again to have partnered with the School of International Arbitration. The School has produced a study which provides valuable guidance as to what users want and expect, and the factors that may motivate change and drive forward the evolution of international arbitration. I am confident that this survey will be welcomed by the international arbitration community.

We thank Professor Stavros Brekoulakis, Mr Adrian Hodis (White & Case Research Fellow) and Professor Loukas Mistelis for their outstanding work, and all those who generously contributed their time and knowledge to this study.



Paul Friedland
Head of International Arbitration Practice Group, White & Case LLP

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It is my great privilege to present the 2018 International Arbitration Survey on “The Evolution of International Arbitration.” This is the eighth empirical survey conducted by the School of International Arbitration at Queen Mary University of London and the fourth in partnership with White & Case LLP.

In the last 30 years, the field of international arbitration has evolved on a great scale and in a number of ways, including in terms of legislation, jurisprudence and practice. Timely, thus, the 2018 survey aimed to undertake an empirical assessment of the evolution of international arbitration, and identify key areas of development through the lens of a wide and diverse pool of stakeholders. Importantly, the survey sought to identify key innovations and factors that may impact on the future development of international arbitration, including the role of information technology, the potential impact of Brexit and the way that arbitration should address important claims for diversity.

The findings of the survey draw from an unprecedented 922 questionnaire responses and 142 in-person or telephone interviews. These sheer numbers, as well as the wide geographical spread of contributing users, make this survey by far the most comprehensive empirical study the School has ever conducted. We believe the findings will provide unique insight into the continuously evolving processes surrounding arbitration, and we hope that they will lead to a better understanding of the drivers behind arbitration’s development.

We are grateful to everyone who contributed to this survey—private practitioners, arbitrators, in-house counsel, academics, experts and other stakeholders.

We hope the survey will be useful to you and your practice, and we expect it to invite further in-depth research and discussions in the field.



Professor Stavros Brekoulakis
Professor in International Arbitration, School of International Arbitration Centre for Commercial Law Studies, Queen Mary University of London

A handwritten signature in black ink, appearing to read 'S Brekoulakis'.

Executive summary

International arbitration: The status quo

- 97% of respondents indicate that international arbitration is their preferred method of dispute resolution, either on a stand-alone basis (48%) or in conjunction with ADR (49%).
- “Enforceability of awards” continues to be perceived as arbitration’s most valuable characteristic, followed by “avoiding specific legal systems/national courts”, “flexibility” and “ability of parties to select arbitrators”.
- “Cost” continues to be seen as arbitration’s worst feature, followed by “lack of effective sanctions during the arbitral process”, “lack of power in relation to third parties” and “lack of speed”.
- An overwhelming 99% of respondents would recommend international arbitration to resolve cross-border disputes in the future.

The evolution of seats and institutions

Seats

- Once again, the five most preferred seats of arbitration are London, Paris, Singapore, Hong Kong and Geneva.
- Preferences for a given seat continue to be primarily determined by its “general reputation and recognition,” followed by users’ perception of its ‘formal legal infrastructure’: the neutrality and impartiality of its legal system; the national arbitration law; and its track record in enforcing agreements to arbitrate and arbitral awards.
- More than half of the respondents think that Brexit will have no impact on the use of London as a seat. They believe that its ‘formal legal structure’ is likely to remain unchanged and to continue to support arbitration.
- 70% speculate that Paris will be the seat to benefit the most from any negative impact of Brexit on London.

Institutions

- The five most preferred arbitral institutions are still the ICC, LCIA, SIAC, HKIAC and SCC.
- Respondents continue to prefer given institutions primarily for their general reputation and recognition. Preferences are also decisively shaped by an assessment of the quality of administration and of the institutions’ previous experience.
- The UNCITRAL Arbitration Rules are the most popular choice for ad hoc arbitration.

Arbitrators


- Respondents were unsure whether there is any causal connection between the diversity across a panel of arbitrators and the quality of its decision-making, or even whether this is a relevant enquiry to make.
- Whilst nearly half of respondents agreed that progress has been made in terms of gender diversity on arbitral tribunals over the past five years, less than a third of respondents believe this in respect of geographic, age, cultural and ethnic diversity.
- Arbitral institutions are considered to be best placed to ensure greater diversity across tribunals, followed by parties (including their in-house counsel) and external counsel.
- To encourage diversity, all stakeholders should expand and diversify the pools from which they select arbitrators; more education and awareness is required about the need for, and advantages of, diversity; and legal education and professional training in less developed jurisdictions should be improved to lead to a larger, more diverse pool of arbitrators.
- 70% of respondents stated that they have access to enough information to make an informed choice about the appointment of arbitrators. The most used sources of information about arbitrators include “word of mouth”, “internal colleagues” and “publicly available information”.
- Respondents would like to have access to arbitrators’ previous awards, know more about their approach to procedural and substantive issues and have a clear picture of their availability to take on new cases.
- 80% of respondents would like to be able to provide an assessment of arbitrators at the end of a dispute. Nearly 90% would do so by reporting to an arbitral institution.

Funding, efficiency and confidentiality

- 97% of respondents are aware of third party funding in international arbitration. The majority of respondents have a generally 'positive' perception of third party funding, particularly those who have actually used third party funding.
- 85% of respondents are aware of other types of external funding in international arbitration and most perceive such funding in a 'neutral' or 'positive' light. Most of those who have used other types of external funding hold a more 'positive' perception.
- Respondents are almost evenly split as to whether a successful party who is in receipt of external funding should be able to recover any contingency or success fees as part of a costs order in their favour (52% say "yes" and 48% say "no").
- "Due process paranoia" continues to be one of the main issues that users believe is preventing arbitral proceedings from being more efficient. Respondents also believe that an increased use of technology would lead to more efficiency in the conduct of arbitration proceedings.
- 87% of respondents believe that confidentiality in international commercial arbitration is of importance. Most respondents think that confidentiality should be an opt-out, rather than an opt-in, feature.

The future

- Respondents believe that the use of international arbitration is likely to increase in the Energy, Construction/Infrastructure, Technology, and Banking and Finance sectors.
- 66% of respondents think that the use of international arbitration to resolve investor-State disputes will increase in the future.
- Technology is widely used in international arbitration, and an overwhelming majority of respondents favour the greater use in the future of "hearing room technologies," cloud-based storage, "videoconferencing," "AI" and "virtual hearing rooms."
- A large majority of respondents (77%) expressed that existing sets of arbitration rules "contain about the right level of prescription" in terms of the guidance they offer on how to conduct proceedings. Only 5% believed that these rules are "too prescriptive".
- Respondents think that arbitration rules should include provisions dealing with arbitrator conduct in terms of both standards of independence and impartiality and efficiency (or lack thereof).
- A significant majority of respondents (80%) consider "arbitral institutions" to be best placed to influence the future evolution of international arbitration.
- More than half of respondents (61%) think that "increased efficiency, including through technology" is the factor that is most likely to have a significant impact on the future evolution of international arbitration.

The background is a dark, almost black, abstract composition. It features a grid of thin, light-colored lines that create a sense of depth and perspective. The lines are slightly blurred and have a soft glow, giving the impression of a digital or architectural space. In the center of the image, there is a white rectangular area where the text is located. The text is in a clean, sans-serif font and is centered within the white area. The overall aesthetic is modern and professional.

In the last 30 years, the field of international arbitration has evolved on a great scale and in a number of ways, including in terms of legislation, jurisprudence and practice. Timely, thus, the 2018 survey aimed to undertake an empirical assessment of the evolution of international arbitration, and identify key areas of development through the lens of a wide and diverse pool of stakeholders.

International arbitration: The status quo

International arbitration is still the preferred method of resolving cross-border disputes—with a twist

Previous surveys by Queen Mary University of London have confirmed that arbitration is by far the preferred dispute resolution mechanism for cross-border commercial disputes. As was the case with our previous 2012 and 2015 international arbitration surveys, private practitioners, full-time arbitrators, in-house counsel, experts and other stakeholders were invited to complete our questionnaire. An overwhelming majority of this diverse respondent group (97%) showed a clear preference for arbitration as their preferred method of resolving cross-border disputes, either as a stand-alone method (48%) or in conjunction with ADR (49%).¹

These trends are consistent with the results of the 2015 survey,² which found that an aggregate of 90% of respondents preferred international arbitration, either as a stand-alone mechanism (56%) or together with ADR (34%). Both in 2015 and this year, only 4% of respondents

expressed that they would rather opt for commercial litigation to resolve a cross-border dispute.

Compared to the 2015 findings, there has been a significant increase in the overall popularity of arbitration combined with ADR: almost half of respondents expressed their preference for this combination as opposed to only 34% in 2015.

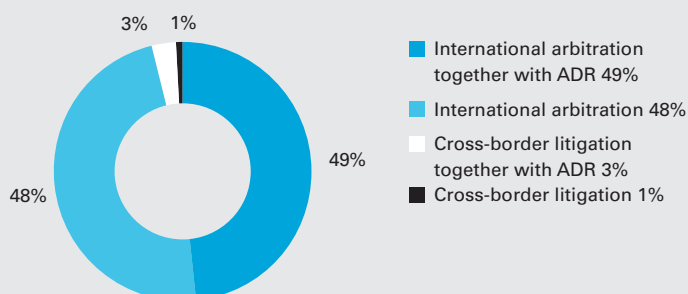
An analysis of the subgroups of respondents based on their primary role reveals some interesting variations. Private practitioners and full-time arbitrators show a slight preference for international arbitration as a stand-alone method over international arbitration together with ADR.

The in-house counsel subgroup, however, reflects a clear preference for international arbitration together with ADR (60%) over international arbitration as a stand-alone (32%). In contrast, only 8% of this subgroup reported a preference for cross-border litigation in conjunction with ADR while no in-house counsel opted for cross-border litigation as

Summary

- 97% of respondents indicate that international arbitration is their preferred method of dispute resolution, either on a stand-alone basis (48%) or in conjunction with ADR (49%).
- “Enforceability of awards” continues to be perceived as arbitration’s most valuable characteristic, followed by “avoiding specific legal systems/national courts,” “flexibility” and “ability of parties to select arbitrators”.
- “Cost” continues to be seen as arbitration’s worst feature, followed by “lack of effective sanctions during the arbitral process,” “lack of power in relation to third parties” and “lack of speed”.
- An overwhelming 99% of respondents would recommend international arbitration to resolve cross-border disputes in the future.

Chart 1: What is your preferred method of resolving cross-border disputes?

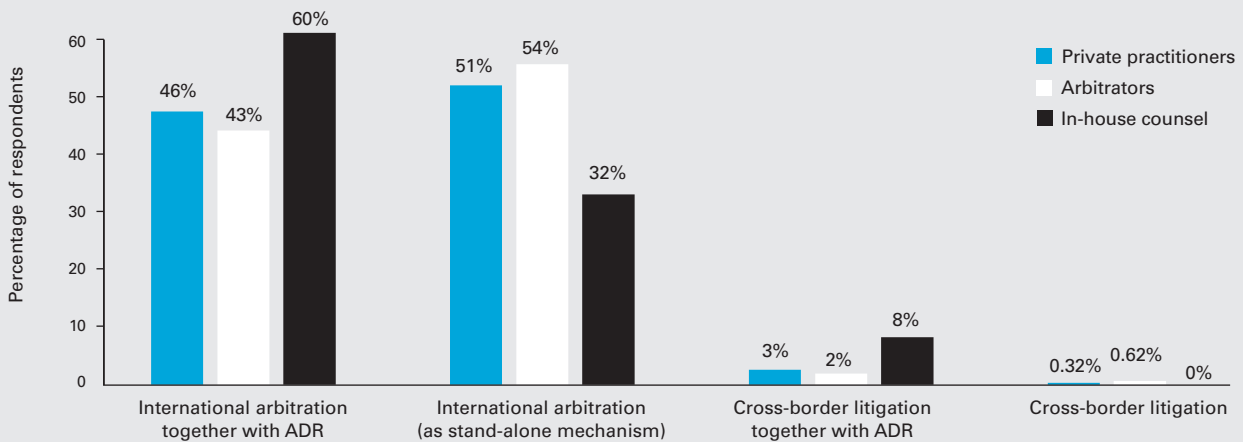


97%

of respondents expressed that **international arbitration** is their preferred method of resolving cross-border disputes

a stand-alone. The significance of this particular finding is twofold, as interviews have revealed. First, this confirms that corporations (through their in-house counsel) display an overwhelming preference for international arbitration (either as a stand-alone method or in conjunction with ADR) over litigation. However, it also suggests that, even though arbitration continues to be the go-to dispute resolution mechanism, parties are increasingly resorting to various forms of ADR in the hope that a swifter and more cost-efficient resolution can be found to disputes before having them resolved by arbitration.

Chart 2: Preferred method of resolving cross-border disputes – subgroups based on primary role



The escalating use of international arbitration in conjunction with ADR

Most interviewees admitted that, in this context of using ADR in conjunction with international arbitration, ADR is generally resorted to only in cases where there is a contractual mandate to do so, i.e., through multi-tiered escalation clauses. Interviewees expressed various perceptions of this type of dispute resolution clause.

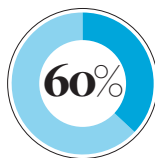
On one end of the spectrum, the majority of interviewees shared the view that escalation clauses are beneficial for the overall process of resolving a given dispute: going through one form of ADR or another before commencing arbitral proceedings, or sometimes even after these proceedings have been initiated, helps the parties crystallise their respective positions. By doing so, the chances of parties reaching a settlement increase exponentially—so much so, in fact, that several counsel interviewees reported that most of their cases in which the dispute resolution is triggered by an escalation clause are settled outside arbitration.

On the other end of the spectrum, however, several interviewees pleaded against the use of such escalation clauses, arguing that parties often tend to see their duty to exhaust all of the preliminary steps provided for in the clauses as a burden. In many instances, once a dispute has arisen, parties have little, if any, incentive



92%

of in-house counsel prefer **international arbitration** for resolving cross-border disputes



of in-house counsel prefer **international arbitration together with ADR**

to effectively attempt its amicable resolution by resorting to any of the available ADR methods. Rather, they are likely to go through ADR in a superficial fashion, knowing that ‘final and binding’ arbitration awaits at the end of the multi-step process. Seen from this perspective, interviewees confirm that, instead of saving time and resources, this arbitration-ADR mix ends up being more costly and time-consuming than simply resolving disputes through arbitration only. The suggestion, therefore, is that the insertion of such clauses in international business transactions should be done with greater care and only in circumstances where the relationship between the parties to the transaction calls for it.

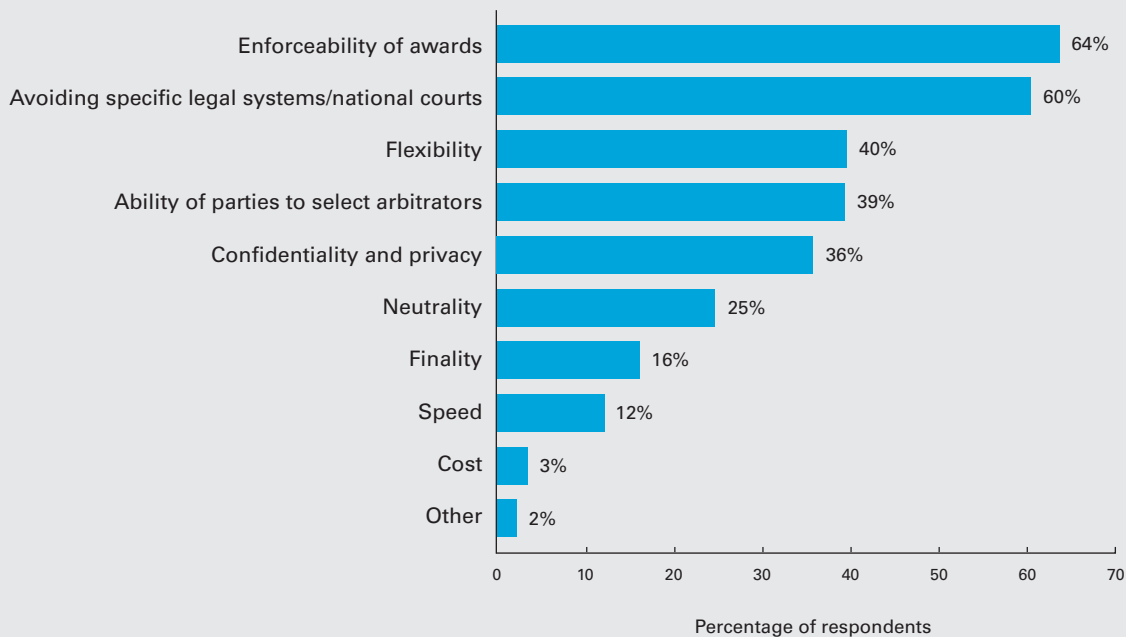
Another recurrent theme in these discussions was the position arbitrators tend to assume with regard to ADR. The vast majority of interviewed respondents reported that, in their experience, unless the dispute resolution clause compels the parties to attempt amicable resolution, arbitrators will not refer the parties to ADR at any stage of the proceedings. The reason that interviewees cited the most for this is that arbitrators take the view that they have been given a mandate to resolve the dispute before them through arbitration and thus they do not feel it falls within their prerogatives to persuade parties to seek other avenues.

A number of interviewees, however, both counsel and arbitrators, mentioned several instances in which this was nevertheless the case. One interviewee, for example, reported a case in which, before closing the proceedings, the arbitral tribunal, knowing that it would render an award that would not satisfy either party, suggested that the parties reach a settlement instead. Other interviewees pointed to institutional arbitration rules which contain provisions asking arbitrators to instruct the parties to attempt settlement of their dispute, and task the arbitrators



Unless the dispute resolution clause compels the parties to attempt amicable resolution, arbitrators will not refer the parties to ADR at any stage of the proceedings

Chart 3: What are the three most valuable characteristics of international arbitration?



with the verification of whether meaningful attempts to settle were made by the parties. A number of interviewees confirmed yet another trend that constitutes an exception to the general rule (i.e., that arbitrators do not recommend ADR on their own accord). They observed that arbitrators coming from a number of select civil law jurisdictions such as Switzerland, Germany or Austria do have a tendency to display such proactive approach. Some argued that this presumably stems from judicial practices in those jurisdictions since local civil procedural rules demand that litigants attempt mediation before filing a civil law suit.

The most valuable characteristics of arbitration

To understand better the reasons why respondents prefer arbitration to other dispute resolution processes, we asked them to identify the characteristics of international arbitration that they find most valuable.

The two most frequently selected options were “enforceability of



64%

of respondents indicated that “**enforceability of awards**” is the most valuable characteristic of arbitration



46%

of in-house counsel selected “**confidentiality and privacy**” among the top 3 most valuable characteristics of arbitration

awards” (64%) and “avoiding specific legal systems/national courts” (60%). This reinforces the continued success of the New York Convention and the benefit to parties of eluding the potential biases and specificities of domestic courts. The third and fourth spots were taken by “flexibility” (40%) and “ability of parties to select arbitrators” (39%), respectively, followed in fifth place by “confidentiality and privacy” (35%).

The 2015 survey results were almost identical: the exact same five characteristics were chosen by respondents as the most valuable features of arbitration, with very similar percentages. This consistency suggests that these five characteristics have come to be regarded as the true central pillars of the entire arbitral system and that they are likely to continue to be seen as its most significant strengths in the future as well.

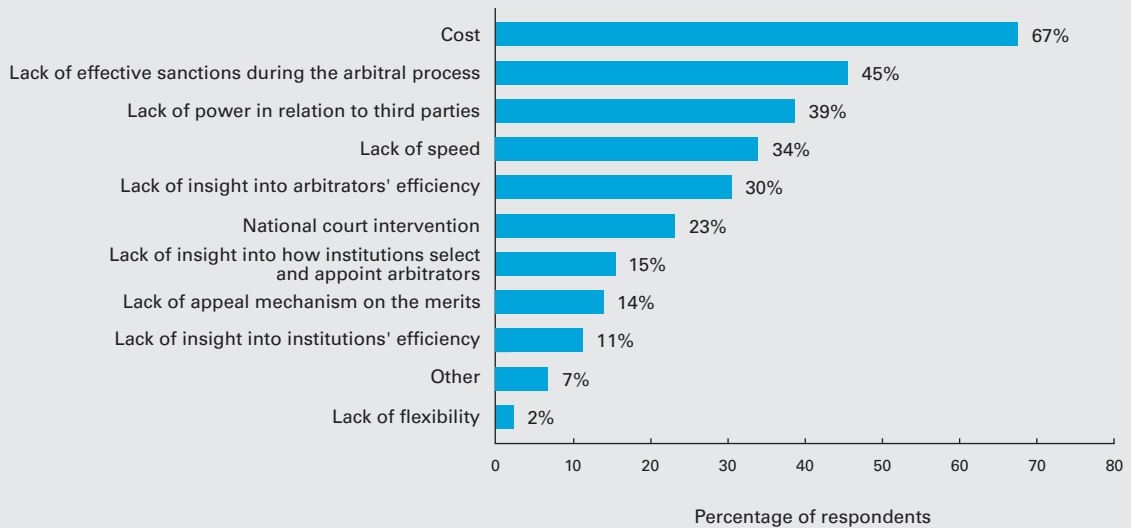
These outcomes remain largely unchanged across the subgroups based on primary role, with one notable difference among the in-house counsel subgroup, for whom “confidentiality and privacy”

is the third most selected option. This result suggests that, from a commercial perspective, the ability to keep arbitrations away from the public eye in general, and competitors in particular, continues to be a highly valued feature of arbitration.³ We explore this further below at pp. 27–28.

The worst characteristics of arbitration

Respondents were also questioned about what they see as the worst characteristics of arbitration. Previous surveys by the School dating as far back as 2006⁴ have shown that users are most discontent with the “cost” of arbitration. The current survey continues to confirm this trend as “cost” is yet again the most selected option, and by a significant margin. Interviews revealed that this outcome partly explains our earlier finding that the dispute resolution method preferred by 49% of respondents is international arbitration not as a stand-alone, but rather in conjunction with ADR. A considerable number of interviewees

Chart 4: What are the three worst characteristics of international arbitration?



pointed out that, while it is true that recourse to various forms of ADR is on most occasions contractually mandated (multi-tier clauses), parties are usually incentivised to make good use of them precisely because cost-wise arbitration is not always the most “commercially sensible” way to resolve a dispute.

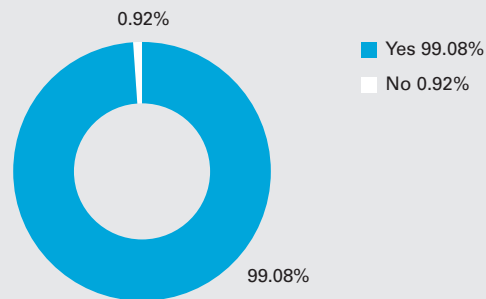
The second most selected option, namely “lack of effective sanctions during the arbitral process” is entirely consistent with the answers provided by respondents to a separate question about efficiency (see below at page 27). In particular, respondents complained about the various dilatory tactics employed by counsel that go unsanctioned either because the arbitrators are reluctant to order appropriate sanctions⁵ or because they do not possess the right instruments to do so. This was also the second most common complaint after “cost” for respondents to our 2015 survey.⁶ Therefore, despite recent efforts by arbitral institutions to include new or more developed mechanisms to address this issue, user perception nevertheless continues to suggest that these tools are not being sufficiently utilised.

Compared to the 2015 findings, the most notable change relates to the “lack of power in relation to third parties” which has seen a significant increase in the number of votes and is now the third most selected



39% of respondents think that “**lack of power in relation to third parties**” is now among the top 3 worst characteristics of arbitration

Chart 5: Are you likely to choose or recommend international arbitration to resolve cross-border disputes in the future?



characteristic. We saw earlier that international arbitration has cemented its position as the premier method of dispute resolution for international business (Chart 1). This finding is indicative of the fact that, as cross-border commercial transactions are becoming increasingly complex, international arbitration as a system is expected to respond to what its users want; this also means developing new mechanisms to better deal with disputes involving multiple contracts, jurisdictions, parties and third parties.

Will arbitration be the choice for the future?

Consistent with the overwhelming general preference shown for arbitration, when asked whether they would choose or recommend international arbitration to resolve cross-border disputes in the future, more than 99% of respondents replied affirmatively. This ratio is virtually unchanged across all subgroups based on primary role. Despite the fact that international arbitration as a system is not without its flaws, it remains the best available option in the view of its users.

The evolution of seats and institutions

Which seats are preferred?

We sought to identify both the seats that are most preferred by respondents and the reasons for their preferences.

First, we asked respondents to indicate their or their organisations' most preferred seats, allowing them to list up to five seats. As a result, we received more than 140 distinct entries of cities and countries across all continents (except Antarctica). This reflects the truly global nature of international arbitration, as well as the amount of choice users enjoy.

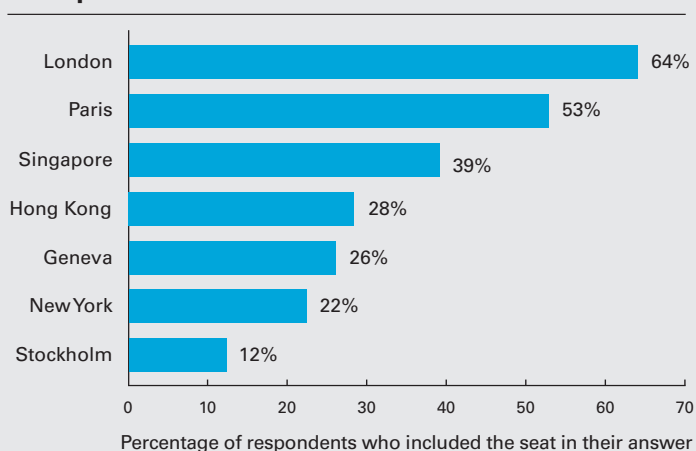
The seats which come out on top may not come as a surprise, given that these same seven seats were the ones that stood out in our 2015 survey,⁷ and five of them also ranked highly in our 2010 survey.⁸ Compared to the 2015 results, the only change reflected in the current ranking is that Singapore and Hong Kong have switched places, with a margin of 10% between them. This consistency is a clear indication of the fact that these seven seats

have cemented a solid reputation among users.

Indeed, our analysis of the results of the 2015 survey predicted that it would be unlikely that the dominance of these seven seats would be seriously challenged in the near future.⁹ London and Paris particularly continue to reinforce their leading positions on the market, with London surging even further ahead of Paris by a margin of more than 10%. With Brexit looming on the horizon, however, the dynamic between this established duo could potentially change, as is explored further on in this chapter.

Similar to our 2015 findings, Switzerland also stands out once again as a particularly popular jurisdiction given that 38% of respondents included at least one Swiss city or Switzerland itself in their answers. Apart from Geneva, Zürich was listed as among the most preferred seats by 8% of respondents thus making it the second most popular Swiss seat.

Chart 6: What are your or your organisation's most preferred seats?



Summary

Seats

- Once again, the five most preferred seats of arbitration are London, Paris, Singapore, Hong Kong and Geneva.
- Preferences for a given seat continue to be primarily determined by its “general reputation and recognition,” followed by users’ perception of its ‘formal legal infrastructure’: the “neutrality and impartiality of its legal system;” the “national arbitration law;” and its “track record in enforcing agreements to arbitrate and arbitral awards.”
- More than half of the respondents think that Brexit will have no impact on the use of London as a seat. They believe that its ‘formal legal structure’ is likely to remain unchanged and to continue to support arbitration.
- 70% speculate that Paris will be the seat to benefit the most from any negative impact of Brexit on London.

Institutions

- The five most preferred arbitral institutions are still the ICC, LCIA, SIAC, HKIAC and SCC.
- Respondents continue to prefer given institutions primarily for their “general reputation and recognition.” Preferences are also decisively shaped by an assessment of the quality of administration and of the institutions’ previous experience.
- The UNCITRAL Arbitration Rules are the most popular choice for ad hoc arbitration.

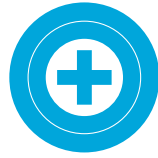
The regional picture

An analysis of the preferences of subgroups based on the regions where respondents principally practise or operate revealed a number of interesting fluctuations but also consistencies.¹⁰ London, for example, was selected as the most preferred seat in all regions. Paris is another case of constant trend: the French capital made the top four in all regions.¹¹

Apart from London and Paris, a number of other popular seats ascended to the top four in the regional subgroups: Geneva was the third most preferred seat in Europe and Africa, and the fourth in the Middle East; results for Asia-Pacific put Singapore in second place and Hong Kong in third; and in North America, New York came third, followed very closely by Singapore.

Perhaps most notably, Latin America reported a striking popularity of São Paulo which took fourth place in that region and also came eighth in the overall ranking. Largely fuelled by the high number of Latin American respondents, the global data pool also shows user preference for Rio de Janeiro¹² and Miami,¹³ which, although a US city, enjoys a reputation as the ‘gateway’ between the two Americas.

Two slightly different trends can also be identified for the two Asian seats which once again scored



38%

of respondents indicated a preference for Swiss seats



London was selected as the most preferred seat by respondents in all regions

highly amongst respondents. Singapore was ranked in the top four most preferred seats in all regions, except Latin America where it occupied the sixth position. Hong Kong came third in Asia-Pacific and ranked outside the top seven only in Latin America. Overall, then, both seats have cemented their popularity, with particular global appreciation for Singapore. Their status was also reflected in the 2015 survey which put these two seats in the spotlight for taking the first and second place, respectively, in a ranking that sought to identify the most improved seats over the preceding five years.¹⁴

What makes a seat popular?

We asked respondents to indicate the four most important reasons why they prefer given seats, and to rank those reasons in order of importance.

“General reputation and recognition of the seat” was the top reason (14%), closely followed by “neutrality and impartiality of the local legal system” (13%), “national arbitration law” (12%) and “track record in enforcing agreements to arbitrate and arbitral awards” (11%).

The last three reasons can be summed up in what we previously called the ‘formal legal structure’ at the seat.¹⁵ These three reasons suggest that, by looking at the systemic legal traits of a seat, arbitration users will prefer a certain seat if the local legal apparatus provides them with sufficient assurances that they will be treated neutrally and impartially by its courts and that their recourse to arbitration will be unhindered. These factors could perhaps be said to complement notions of general reputation and recognition of the seat: it could be argued that a seat is deemed to

Chart 7: Top four most preferred seats by region

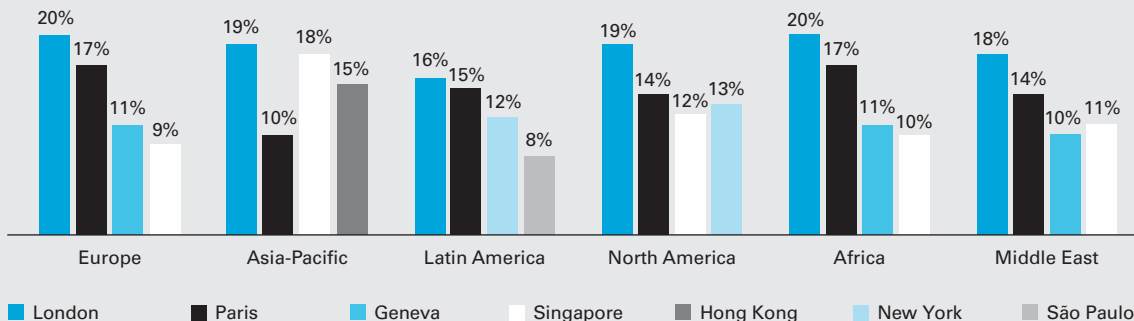
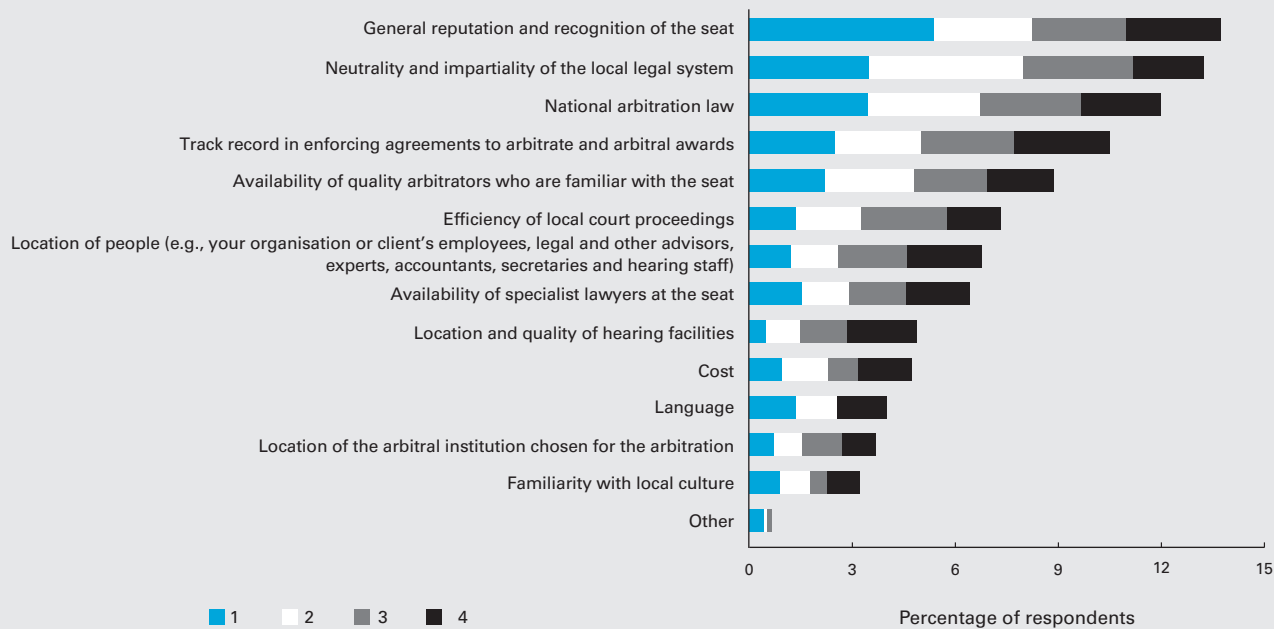


Chart 8: What are the four most important reasons for your preferences for certain seats?

Respondents were asked to rank their selected reasons, with “1” being the most important reason and “4” being the least important.



enjoy a good reputation when it is largely known for actively promoting the underpinning values of the other three factors.

This outcome should not be surprising in light of the fact that these perceptions have been previously observed in the 2010 survey¹⁶ and subsequently confirmed in the 2015 study as well.¹⁷ It can therefore be inferred that respondents consistently attach a certain degree of durability to these core features that seem to determine the user preference for certain seats.

Indeed, this consistency in the findings confirms that a seat’s reputation and recognition are not built overnight and are thus unlikely to suffer major shifts in user perception over a short period of time. Furthermore, neutrality and impartiality of the local legal system, as well as the national legislative and judicial approach to arbitration seem to reflect an equally intrinsic, and therefore stable, nature that users look for and evaluate when selecting a seat.

Will Brexit impact the use of London as a seat?

On 29 March 2017, the process of the UK’s withdrawal from the European Union was formally triggered. Since London is consistently one of the most popular, if not the most popular, arbitration seat worldwide (Chart 6),¹⁸ we asked respondents whether they thought Brexit will affect the use of London as a seat. Users were asked their view of the likely impact on a scale of 1 (negative) to 5 (positive).

A small majority of respondents (55%) were of the opinion that Brexit is unlikely to bring about any change as far as the use of London as a seat is concerned. The second most popular opinion, however, is that the use of London as a seat will suffer, to a higher or lesser degree, due to Brexit (an aggregate of 37% of respondents). Significantly fewer respondents found reasons to believe that the British capital city will see positive change as a result of Britain’s exit (an aggregate of 9% of respondents).¹⁹



“General reputation and recognition of the seat” is the most important reason why respondents prefer given seats



55%

of respondents think that **Brexit** is unlikely to impact the use of London as a seat

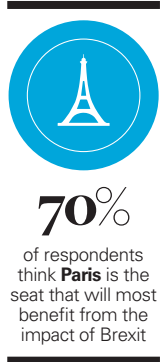
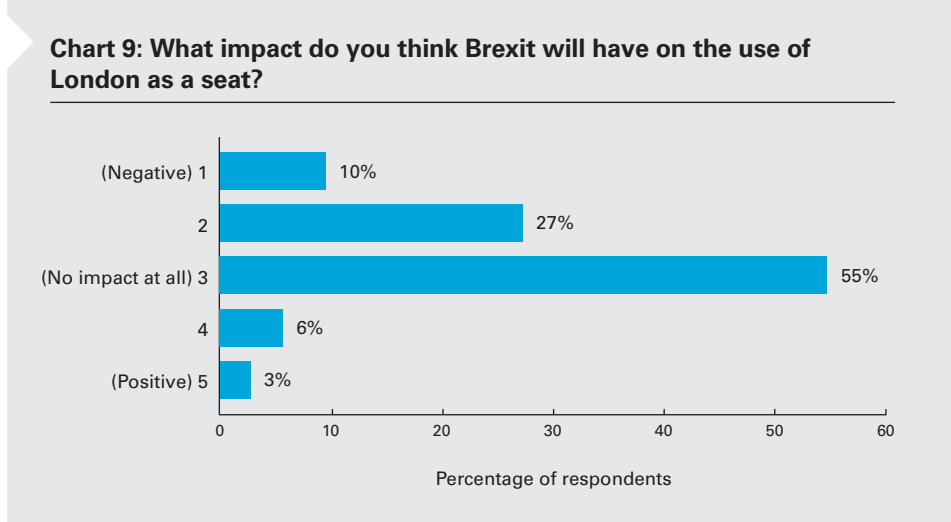
We added another layer to this analysis by asking respondents to provide us with some insight on the chief reasons for grading the impact of Brexit the way they did. To that end, respondents were provided with a list of 13 options to choose from and were also free to add other reasons.

Perhaps unsurprisingly, the three most selected factors were: (1) “The English legal system will continue to be perceived as neutral and impartial”; (2) “The legislative framework applicable to arbitration and the English courts will continue to be supportive of arbitration”; and

(3) "The UK will continue to be a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards". All of these reasons reflect the predominant view that the use of London as a seat is not likely to be affected by Brexit. On the contrary, respondents appear to believe that the 'formal legal structure' that they find critical to the selection of seats (Chart 8) is essentially likely to remain unchanged and to continue to be supportive of arbitration.

Those who expressed a less optimistic view also indicated why they feel this way: options ranked fourth to sixth show that a fair share of respondents are concerned by the uncertainties over the impact that Brexit will have on English law and the English legal system; they also feel that London's commercial reputation and its appeal as a situs of arbitration may decline to the benefit of other seats.

It seems appropriate, then, that we concluded our Brexit analysis by asking those respondents who thought Brexit would have a negative impact on the use of London as a seat to speculate as to which other seat(s) would benefit as a result. Respondents were free to list any number of seats in their responses.



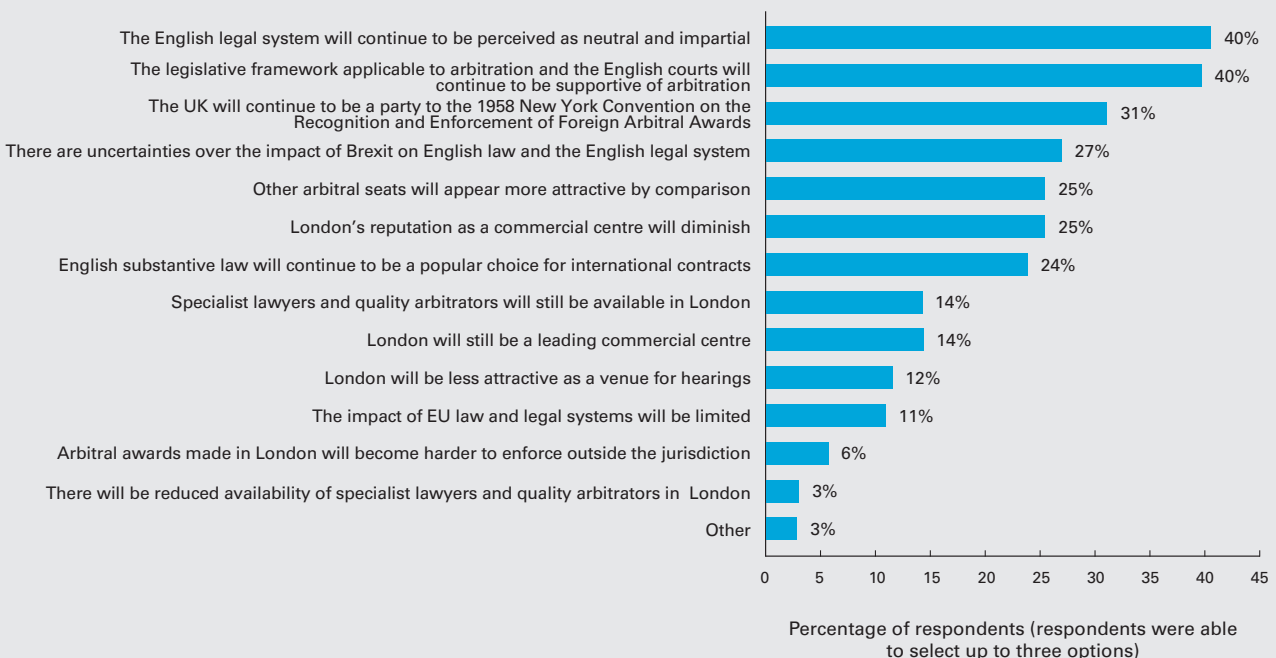
More than 330 respondents weighed in and, out of all the entries, the following seven most nominated seats emerged: Paris (70%), Geneva (22%), Singapore (22%), Hong Kong (15%), Stockholm (13%), New York (12%) and Zürich (6%).

The fact that Paris is the top choice in this enquiry is not unexpected in light of the fact that Paris was consistently ranked among the top three most popular seats in both the current survey (Chart 6),

and our previous 2010 and 2015 surveys.²⁰ What is perhaps surprising is the rather significant gap of nearly 50% between the preference expressed for the French seat and the other seats in the higher part of the ranking (i.e., Geneva, Singapore and Hong Kong).

The popularity that Switzerland and its seats enjoy in the arbitration community is apparent once again. In fact, no less than 33% of respondents listed Geneva, Zürich

Chart 10: What are the principal reasons for your answer?



or Switzerland in response to this question. Therefore, while the French capital may still be the undisputed leader in this scenario, the second spot is in effect held by Swiss seats.

Which arbitral institutions are preferred?

We asked respondents to indicate their preferred arbitral institutions, allowing them to specify a maximum of five different entries. This has generated a list of more than a hundred distinct institutions across the globe—a strong indication that while certain institutions are chosen time and again, users also appreciate a wide degree of choice of institutions, as they do seats.

Of all the nominations, the ICC stands out as the most preferred institution by a significant margin (77%), followed by the LCIA (51%), SIAC (36%) and HKIAC (27%). As far as the top two choices are concerned, the ICC and the LCIA have been the acknowledged market leaders for well over a decade,²¹ and the current numbers suggest that this is not going to change anytime soon.

Our 2015 survey highlighted a considerable preference of arbitration users for the HKIAC and SIAC. These two institutions have fared similarly well in our current research, with the SIAC and HKIAC taking the third and fourth place, respectively, but this time with a noticeable increase in the percentage of respondents who selected the SIAC.²²

The regional response

An analysis of the subgroups based on the regions where respondents principally practise or operate revealed that the top three preferred institutions are largely the same across most of these subgroups. Slight variations can be observed, for example, in the European subgroup where the SCC and ICSID edge the HKIAC to take the fourth and fifth place, respectively. Notably, CAM-CCBC, although ranked outside the top seven in the global standings (eighth), takes third place in the Latin American subgroup. As far as the ICC-LCIA leading duo is concerned, Asia-Pacific is the only region in which the LCIA drops to the third position and the SIAC climbs to the second position.

Chart 11: If you think Brexit will have a negative impact on the use of London as a seat, which seat(s) do you think will benefit from this?

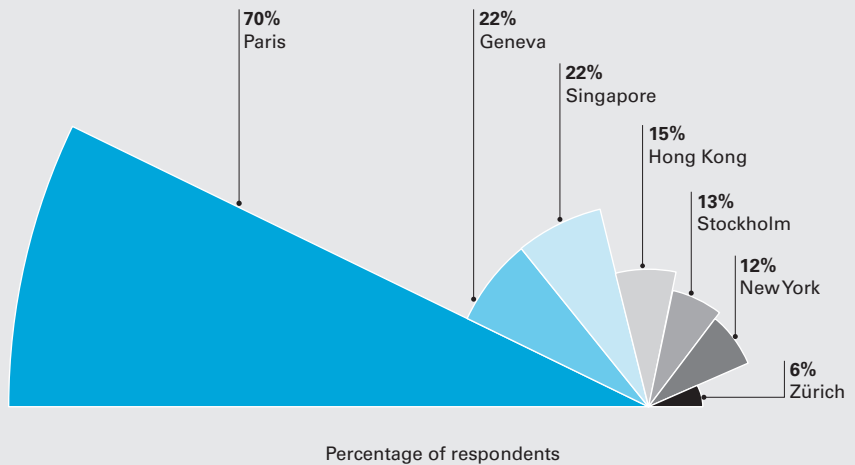
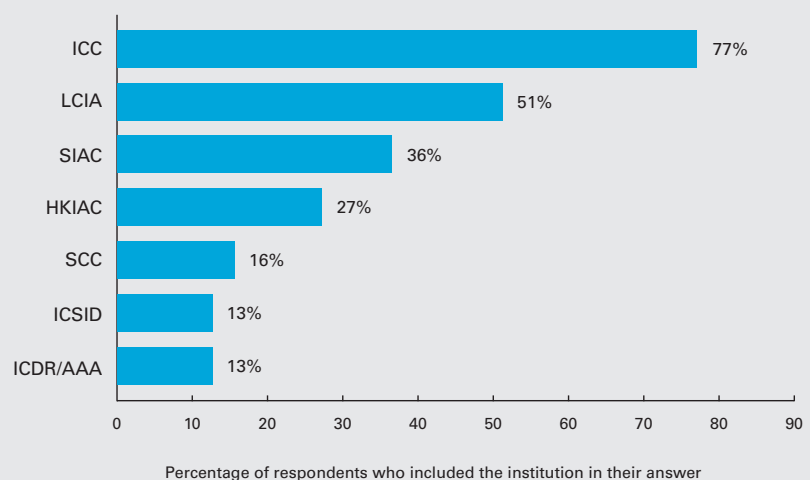


Chart 12: What are your or your organisation's most preferred institutions?



More region-based variation can be noticed outside the top four. Two trends are worth mentioning here: (1) the LMAA²³ appeared in the rankings of two subgroups, namely Asia-Pacific (sixth) and the Middle East (seventh); and (2) several regional institutions made the top seven in their respective regions, for example, SCAI and VIAC in Europe (seventh and eighth, respectively), CIETAC in Asia-Pacific (eighth) and the Lagos Court of Arbitration in Africa (sixth).²⁴

What makes an arbitral institution popular?

We asked respondents to indicate the four most important reasons why they prefer given institutions, and to rank those reasons in order of importance.

As in our 2015 survey, the three most important reasons show that, when it comes to preferring one institution over another, arbitration users tend to look at them from a macro perspective, rather than measuring specific aspects of their administration of cases. Effectively

mirroring the most important reason for choosing a certain seat, the chief factor for preferring an institution is its “general reputation and recognition.” The second (“high level of administration”) and third (“previous experience of the institution”) reasons are both in line with the same global perspective and amplify the perception of favourable reputation and recognition of an institution being critical to its success.

The fourth (“neutrality/ ‘internationalism’”) and fifth (“access to wide pool of high quality arbitrators”) most important reasons provide some insight into why certain institutions are more popular than, and therefore preferred to, others. In the 2015 survey, “neutrality/ ‘internationalism’” was also ranked in the top four most important reasons for preferring certain institutions, thus reflecting a recurrent trend.²⁵

Interviews for the current study have revealed that respondents



Parties are likely to select an institution that is capable of handling arbitrations that are to be conducted in a multitude of locations around the world

tended to read this option in conjunction with “global presence/ ability to administer arbitrations worldwide”²⁶ and thus think of several factors that would contribute to the perception of how ‘international’ a given institution appears. Some Latin American interviewees, for instance, commended the efforts made by the ICC to open an office in Brazil, noting

that, in their view, this expansion has led to a high number of arbitrations being administered by the institution in the region. The ICC’s operations, interviewees noted, take into account the specific needs and preferences in the region (e.g., language of proceedings) while also assuring users that their services are provided with the same standards of quality regardless of geographic location.

Chart 13: What are the four most important reasons for your preference for certain institutions?

Respondents were asked to rank their selected reasons, with “1” being the most important reason and “4” being the least important.

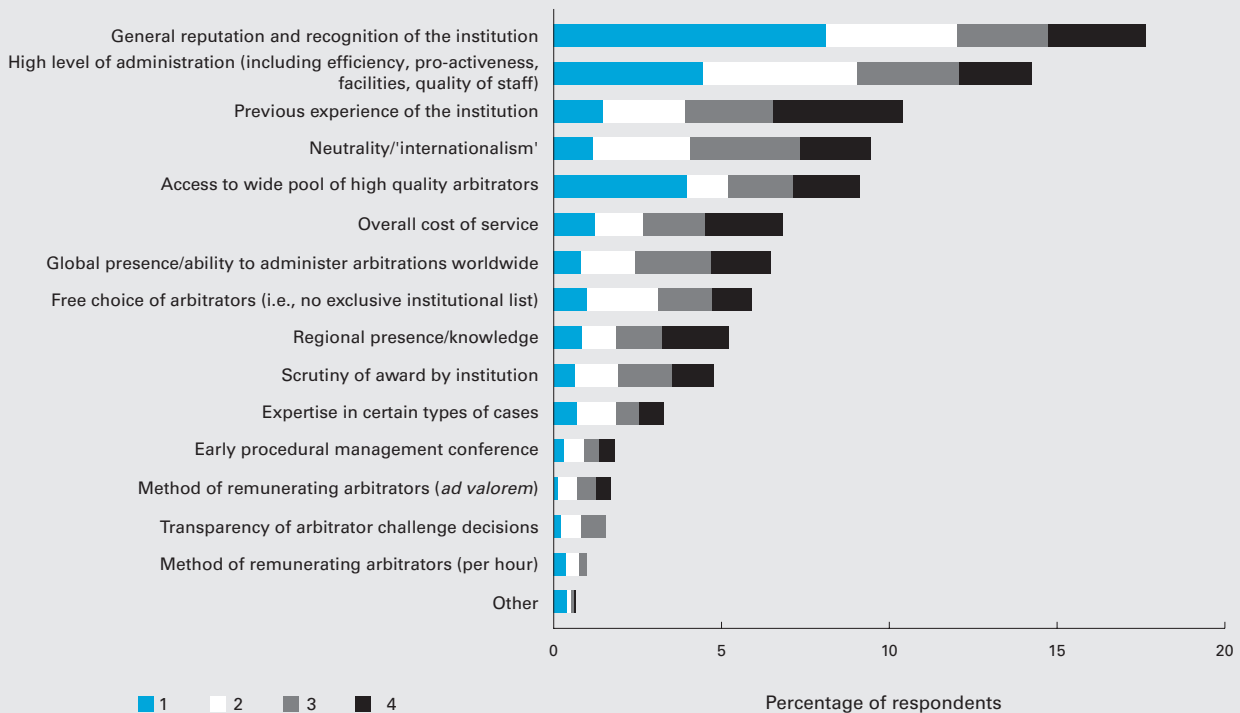
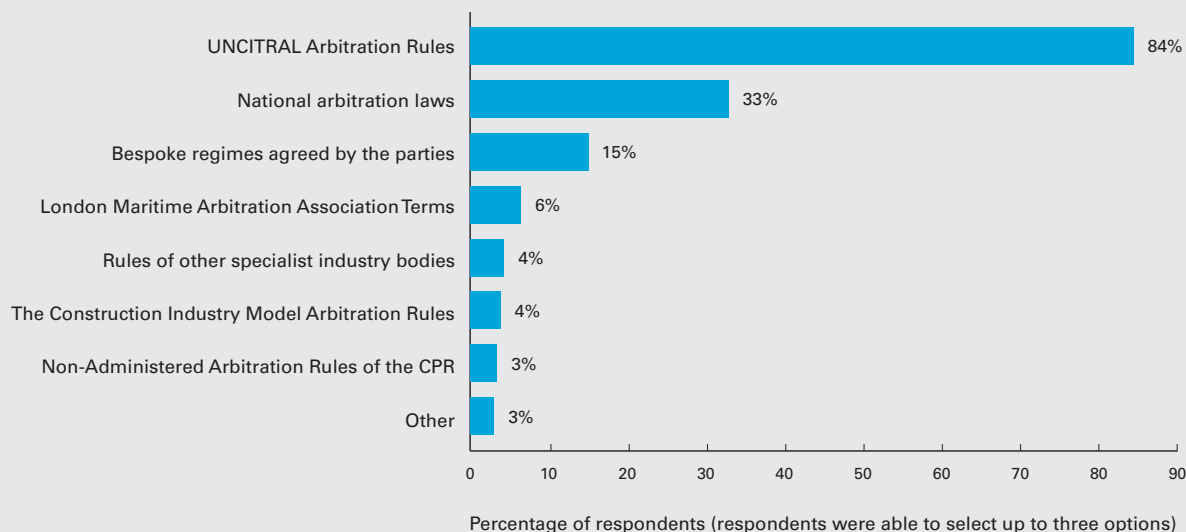


Chart 14: If you or your organisation have selected ad hoc arbitration over the past five years, which of the following procedural regimes have you used the most?



Interviewees also expressed that a sophisticated customer will usually look into empirical data regarding the geographical variety of cases administered by an institution. This analysis, they argue, helps create a picture of the users that tend to solicit its services: the richer the geographical background of parties in arbitrations administered by that institution, the more ‘international’ the institution will be perceived to be. Almost as important a consideration for users is that, in opting for certain institutions, they feel assured that those institutions will be able to consider a broad and diverse pool of proficient arbitrators if called upon to do so.

Other more specific institutional features seem to preoccupy respondents to a significantly lesser extent. Although they have been addressed at length in the arbitration community, reasons such as the method of remunerating arbitrators (ad valorem/per hour) or insistence on early procedural management conferences were ranked substantially lower.

The analysis of the preferences of subgroups based on primary role has largely shown the same patterns, with the same top four reasons as indicated above in the overall ranking. However, an interesting exception arose in the in-house counsel subgroup where “global presence/ability to administer arbitrations worldwide” outranked “neutrality/‘internationalism’” to take fourth place. Given that companies are increasingly expanding their businesses across the globe, this suggests that parties (through their in-house counsel) are likely to select an institution that is capable of handling arbitrations that are to be conducted in a multitude of locations around the world.

Which ad hoc procedural regimes have been used the most?

We asked respondents who have opted for ad hoc arbitration in the last five years to indicate the procedural regimes they have used in those proceedings.

The single most outstanding result in this enquiry is that the UNCITRAL Arbitration Rules were chosen by

more than 84% of respondents. The UNCITRAL Rules were followed by “national arbitration laws”, “bespoke regimes agreed by the parties” and the LMAA Terms.

A considerable number of interviewees underlined the fact that, despite its perceived lack of exposure as compared to institutional arbitration, ad hoc arbitration is used to resolve a significant amount of disputes, particularly in the maritime industry and various commodity markets.

Interestingly, when asked about the efficiency of arbitral proceedings, one interviewee practising as a full-time arbitrator was quick to express his dissatisfaction with the way in which some arbitral institutions operate. Based on his past experience with certain institutions, he argued that they sometimes take too long to respond to requests from parties and their counsel and that clients often question the justification for the rather high fees that they levy, given that their performance is sometimes unsatisfactory. In light of this, he rhetorically asked: “is it time to go (back) to ad hoc arbitration?”

Arbitrators

The diversity dilemma

Arbitration has evolved to become a profoundly international practice: an ever larger number of high-stakes disputes are being resolved across multiple jurisdictions, in virtually all existing legal systems, and involving parties from all over the world. It should therefore follow that the group of decision-makers called to resolve these disputes reflects the colourful fabric of the community of arbitration users. However, statistics on arbitral appointments seem to bear out the general sentiment within this community that this is hardly the case. In a time of intense debate in the field on the subject of diversity, we wished to explore user perceptions in terms of whether and to what extent arbitration has evolved in this respect, as well as what needs to be done further and by whom.

Diversity and decision-making: is there a connection?

Few, if any, would disagree that the international arbitration community as a whole benefits from diversity across all its members. We sought to explore this sentiment further in

relation to diversity across tribunals. In particular, is there any causal relationship between diversity across a multi-member tribunal and the quality of its decision-making?

The most popular answer, chosen by a quarter of respondents, was that the effect of diversity across a panel of arbitrators on the quality of that tribunal's decision-making "depends on the particularities of the dispute in question". 22% of respondents think that diversity brings about "some improvement in quality" while 18% take the view that diversity leads to a "significant improvement in quality". A similar number (19%), meanwhile, deem this enquiry to be irrelevant because they consider diversity to be inherently valuable in and of itself. The views that diversity does not make an appreciable difference in quality or can even reduce the quality of the decision-making were less adhered to. It is noteworthy that no single viewpoint attracted a significant majority of supporters.

This spread of views was replicated across those interviewed on this issue, who insisted that a nuanced approach is necessary in this context. A clear example of how

Summary

- Respondents were unsure whether there is any causal connection between the diversity across a panel of arbitrators and the quality of its decision-making, or even whether this is a relevant enquiry to make.
- Whilst nearly half of respondents agreed that progress has been made in terms of gender diversity on arbitral tribunals over the past five years, less than a third of respondents believe this in respect of geographic, age, cultural and ethnic diversity.
- Arbitral institutions are considered to be best placed to ensure greater diversity across tribunals, followed by parties (including their in-house counsel) and external counsel.
- To encourage diversity, all stakeholders should expand and diversify the pools from which they select arbitrators; more education and awareness is required about the need for, and advantages of, diversity; and legal education and professional training in less developed jurisdictions should be improved to lead to a larger, more diverse pool of arbitrators.
- 70% of respondents stated that they have access to enough information to make an informed choice about the appointment of arbitrators. The most used sources of information about arbitrators include "word of mouth", "internal colleagues" and "publicly available information".
- Respondents would like to have access to arbitrators' previous awards, know more about their approach to procedural and substantive issues and have a clear picture of their availability to take on new cases.
- 80% of respondents would like to be able to provide an assessment of arbitrators at the end of a dispute. Nearly 90% would do so by reporting to an arbitral institution.



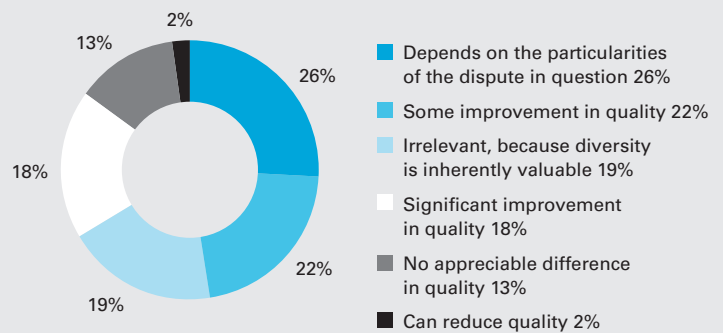
While the international arbitration community undoubtedly benefits from diversity across its members, there is no clear causal relationship between diversity across a tribunal and the quality of its decision-making

this can manifest is the view that the effect of diversity on tribunal decision-making “depends on the particularities of the dispute in question”. Some respondents, for example, may consider diversity helpful where there is synergy between a facet of the dispute before the tribunal and a particular aspect of diversity embodied across the panel; however, the same people may consider that it would be irrelevant for that aspect of diversity to be reflected on the tribunal for a different dispute. So, whilst on the surface this answer choice may seem on the whole to take a positive view of the question posed, it does not do so without qualification.

Another example of the nuanced and disparate perspectives adopted by respondents was highlighted by a number of interviewees through the lens of age diversity. While most interviewees agreed that gender diversity, for example, is invariably desirable and therefore of less relevance to this enquiry, some advanced the idea that age diversity does not always improve the quality of a tribunal’s decision-making. Some interviewees, both counsel and arbitrators, stressed the fact that the nature of some disputes, particularly in investment treaty arbitration, calls for arbitrators with a sufficient breadth of relevant experience that cannot easily be found among the younger generations of arbitrators. The issue, they argue, is therefore not age itself but rather the relevant previous experience that can only be acquired through continued practice over a long period of time.

By contrast, others observed that, in general, they felt younger arbitrators display a particular drive to perform well in arbitrations, hoping that their proficient conduct will be noticed and that they will therefore attract more appointments in the future. Moreover, interviews revealed no general consensus as to who would qualify as a “young” arbitrator in this context. While most interviewees think that an arbitrator under 40 years of age is commonly considered as “young”, a small number of interviewed respondents expressed that they would also consider “young” an arbitrator under 50 years of age, particularly in light

Chart 15: What effect do you think diversity across a panel of arbitrators has on the overall quality of the tribunal's decision-making?



“Substantial development in diversity is not something that can be forced or achieved overnight”

of their perception that the average arbitrator is likely to be well in his or her sixties.

Perhaps the most arresting observation to be drawn from the responses to this question, then, is the most obvious: there are no easy answers on this topic and certainly no single one. As one interviewee put it, “this is a very difficult discussion to have and, in any event, substantial development in diversity is not something that can be forced or achieved overnight.”

Has progress been made in tribunal diversity?

Even where there is a lack of consensus as to whether there is a causal link between diversity and quality of decision-making and, if so, to what effect, interviewees acknowledged and affirmed the general position that diversity should be encouraged.

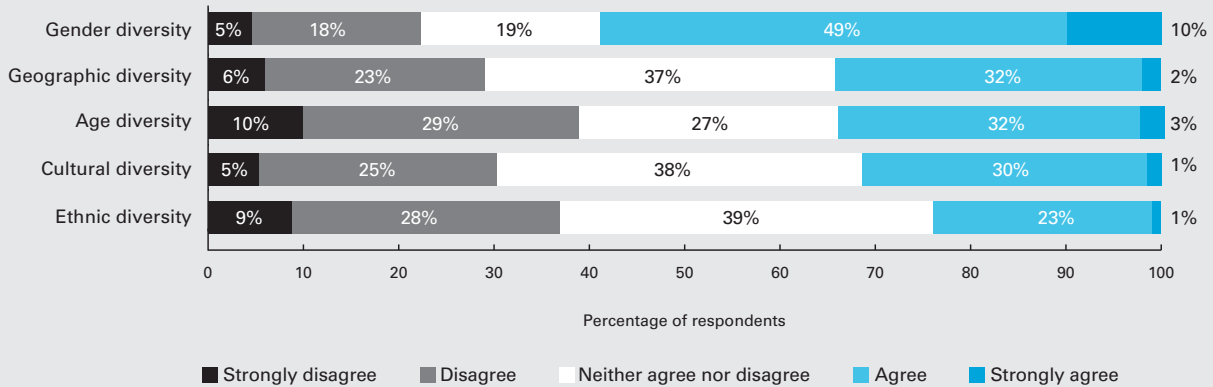
Calls for greater diversity, especially in relation to the appointment of arbitrators, have been prevalent for

some time across the international arbitration space, and increasingly so in recent years. Respondents were therefore asked whether, and to what extent, they agree or disagree with the proposition that progress has been made in the last five years with regard to various examples of aspects of diversity (gender, geographic, age, cultural and ethnic) in terms of arbitral appointments.

Very few respondents expressed either strong agreement or disagreement in relation to any of the five listed aspects of diversity. That said, the results show that for geographic, age, cultural and ethnic diversity, less than a third of respondents positively agreed in each case that progress has been made in recent years. This finding contrasts sharply with the results on gender diversity, in relation to which a majority expressed agreement with the statement, as discussed further below.

Interviewees stressed that while they welcomed the increased focus

Chart 16: Do you agree with the statement that progress has been made in the following aspects of diversity on arbitral tribunals over the past five years?



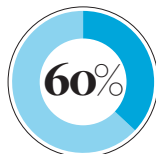
on gender diversity issues, the discussion about diversity among arbitrators should be broadened to also include other aspects of diversity. Ethnic diversity, in particular, emerged as an area where interviewees thought that there is a distinct need for improvement. This finding is reflected in the questionnaire responses, too, as the statement that recent progress has been made in ethnic diversity was met with the least agreement among the five listed aspects of diversity (only 24%). Furthermore, this trend is consistent with the fact that 37% of respondents expressed their disagreement with the same statement (second only to age diversity). Clearly, key stakeholders across the international arbitration community recognise that there is a significant deficiency here that needs to be addressed.

A more positive sentiment emerged in relation to gender diversity: a majority of respondents (nearly 60%) agree or strongly agree



37%

of respondents disagree that progress has been made in recent years in relation to **ethnic diversity**



of respondents agree that progress has been made in recent years in relation to **gender diversity**

with the proposed statement. This pattern is entirely consistent with the view taken by a significant number of interviewees. Many confirmed that, when it comes to diversity, the perception is that gender disparity receives the most focus and this is largely thanks to the highly acclaimed global organisations and initiatives that are being increasingly fostered (e.g., ArbitralWomen and The Pledge). As noted above, interviewees hoped to see similar progress in relation to other aspects of diversity.

Who is best placed to ensure greater diversity across tribunals?

The lack of diversity across arbitral tribunals having been clearly identified, respondents were asked which participants in the international arbitration community are in the best position to address this. This question was to be answered by ranking four suggested options: arbitral institutions, external counsel, the parties (including their in-house counsel) and co-arbitrators (if asked to jointly select the presiding arbitrator).

Arbitral institutions were voted by nearly half of respondents (45%) to be the best placed stakeholders to ensure greater diversity across tribunals. This is consistent with other findings in this study which highlight the perception among users that arbitral institutions wield the most influence over the future direction of international arbitration in many aspects (Charts 17 and 39 below).

A significant majority of interviewees confirmed this opinion and emphasised the various ways in

which they believe institutions can affect the arbitrator appointment process in furtherance of diversity objectives. The most obvious way in which they can assert this influence is when they are called upon by parties to select tribunal members, especially where arbitrators are to be appointed by institutions without nominations from the parties.

As some explained, although most arbitrator selections are made by parties rather than institutions, it is the institutions that possess the most information about arbitrators. Others pointed out in a similar vein that, even when parties are able to nominate candidates of their choice, parties often nonetheless resort to institutional lists of recommended arbitrators²⁷ from which they may end up choosing their (co-)arbitrators. Equally, both counsel and arbitrators reported that institutions are frequently called upon to appoint the presiding arbitrator, either from the outset as a default position or in instances where the parties or co-arbitrators have been unable to reach an agreement on this aspect.

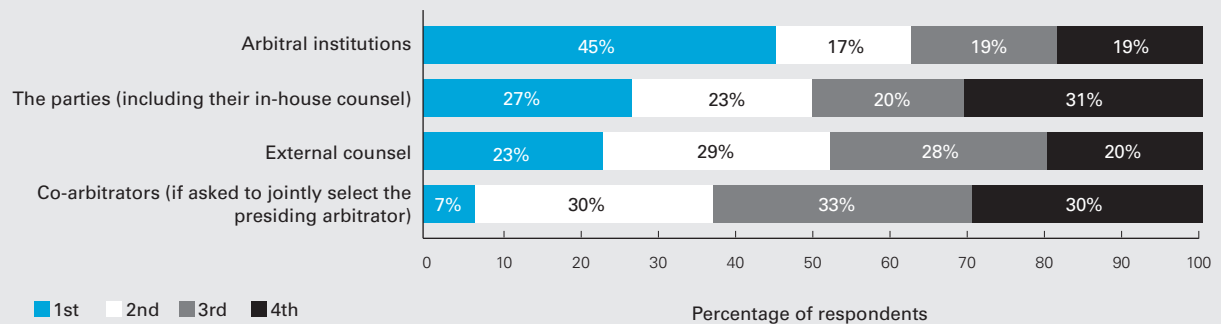
Representatives of various arbitral institutions expressed their views from a slightly different perspective. While most of them confirmed that increasing diversity across tribunals is high up on their agenda, they nonetheless felt compelled to remind that most arbitrator appointments are not made by them. Thus, they underline the crucial role that parties, or rather their counsel, play in ensuring a greater diversity among appointed arbitrators.



When it comes to diversity, the perception is that gender disparity receives the most focus

Chart 17: Who is best placed to ensure greater diversity across arbitral tribunals?

Respondents were asked to rank their selected options, with “1” being the option which can have the most impact and “4” the least impact.



Indeed, a vast majority of interviewees across all subgroups based on primary role provided a clear indication of the fact that diversity meets its fiercest resistance from parties and, by extension, their in-house or external counsel, rather than arbitral institutions. In this context, it is interesting to see that compared to the 45% of respondents who think arbitral institutions are in the driving seat, only 27% of respondents take the view that diversity can be best ensured by parties through their choice of (co-)arbitrators while 23% are of the opinion that it is rather the external counsel who is best placed to promote a diverse composition of an arbitral tribunal. Only 7% of respondents consider co-arbitrators to have the most influence over the constitution of a diverse tribunal by contemplating a presiding arbitrator who can bring more diversity to the existing panel. These patterns are largely the same across the subgroups based on primary role.

Perhaps the most striking conclusion in this analysis therefore relates to the following dichotomy: on the one hand, there is a strong consensus among respondents and interviewees alike, regardless of their primary role, that most appointments are made by the parties themselves; yet, on the other hand, almost half of our respondents believe that it is the arbitral institutions that are best placed—and indeed bear the greater responsibility—to ensure greater diversity across arbitral tribunals.



45%

of respondents think that **arbitral institutions** are best placed to ensure greater diversity across tribunals

What more can be done to encourage diversity?

We concluded our analysis on the topic of diversity among arbitrators by inviting respondents to offer their own suggestions on how to encourage diversity. As this was an open question, respondents could contribute freely.

Out of hundreds of individual entries, a few main threads emerged. The most common suggestion, provided by more than a quarter of respondents, related to the need for more commitment from all stakeholders involved in the arbitration process to expand and diversify the pools from which they shortlist and appoint arbitrators. Moreover, a significant number of respondents and interviewees from the counsel subgroup drew attention to the fact that, although in some instances databases with more ‘diverse’ lists of arbitrators are already being circulated internally within their law firms, actual appointments still fail to reflect the larger pool of available arbitrators and rather continue to perpetuate the nomination of repeat players.

The second most popular idea, advanced by nearly a fifth of respondents, reflected another perspective. In essence, respondents argued that, in order to attain greater diversity across tribunals, the arbitration community needs to educate and raise awareness among its members about the need for, and advantages of, diversity. Equally, respondents and interviewees take the view that the many arbitration-related conferences, symposiums and networking events that usually take place during the year should make sure that their lists of speakers and moderators reflect the rich diversity (of all kinds) in the social fabric of the arbitration community.

Along the same lines, by acknowledging the success that some diversity-related initiatives have enjoyed in recent times, a number of respondents and interviewees made a case for expanding those projects beyond their initial scope. For example, many have suggested that initiatives such as The Pledge could be used as a template to promote diversity beyond the gender imbalance concern.



Diversity meets its fiercest resistance from parties and, by extension, their in-house or external counsel, rather than arbitral institutions

The third most cited suggestion relates to legal education. Some respondents and interviewees have argued that improving legal education and professional training, including through capacity building programmes, in less developed jurisdictions will ultimately lead to a larger, more diverse pool of arbitrators. More mentorship programmes for young professionals undertaken by senior practitioners and arbitrators were also cited as being desirable.

Where do you find information about arbitrators?

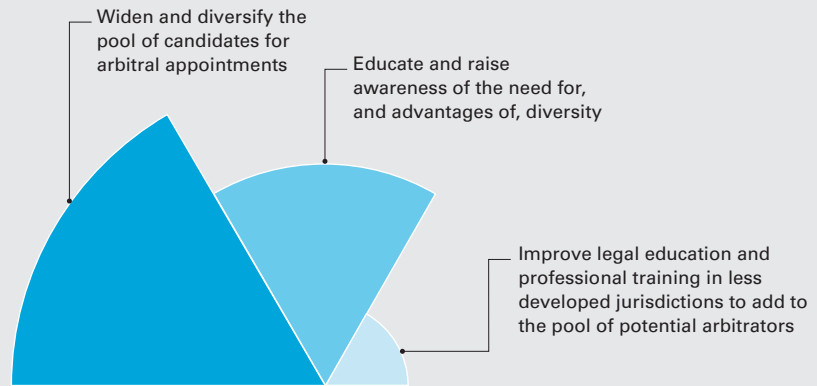
Arbitrator selection is undoubtedly one of the most important stages in an arbitration. Respondents were asked to indicate their sources of information about arbitrators. In an effort to ascertain the most commonly used sources, respondents were provided with a list of six options and were also free to add other sources.

The most selected source of information about arbitrators was “word of mouth” (77%), followed by “from internal colleagues” (68%) and “publicly available information (e.g., industry reviews, legal directories and other databases or review tools)” (63%).

The top choice shows just how important it is for parties and their in-house or external counsel to be part of a sophisticated network of peers so that all relevant information is potentially just a few phone calls away. This is consistent with the finding in our 2010 survey that in-house counsel tend to be heavily reliant on their external counsel for this kind of information.²⁸ Indeed, the in-house counsel subgroup here reflects a very similar result by indicating “from external counsel” as the primary source of information about arbitrators for its members (80%).

Perhaps unsurprisingly, then, the second most selected source (“internal colleagues”) suggests that private practitioners working in large-scale international law firms with an established internal network of lawyers practising in multiple jurisdictions across the globe are likely to obtain most of the information they need about arbitrators almost entirely from internal resources. In fact, a number of interviewees fitting this profile confirmed that their firms’ internal intelligence is indeed the primary, if not the exclusive, source

Chart 18: What more can be done to encourage diversity?



In-house counsel tend to be heavily reliant on their external counsel as their primary source of information about arbitrators

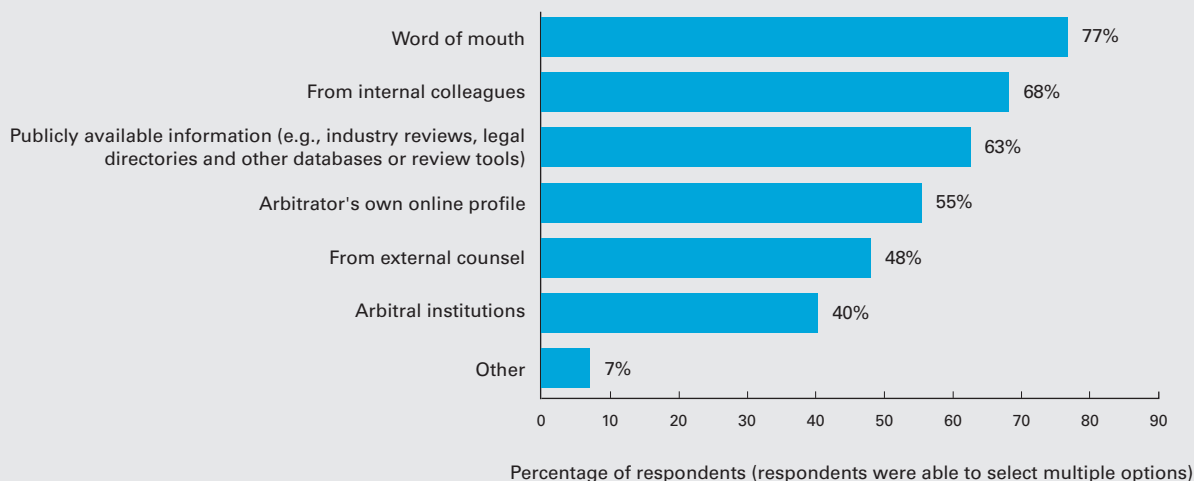
of information they think of when considering an arbitrator.

Both of these inferences provide a strong indication that there is a significant information asymmetry between, on the one hand, users who can solicit information about arbitrators from their well-informed peers, and, on the other hand, less well-placed users who, for any given reason, do not have access to relevant information through such readily available channels. This may explain why the third most selected source was “publicly available information” (63%). Indeed, many respondents and interviewees stressed the utility of publicly available platforms providing information on arbitrators (e.g., GAR’s Arbitrator Research Tool) and expressed great interest in other such tools that have been launched recently (e.g., Arbitrator Intelligence) or that are set to be launched in the near future.

Level of access to information about arbitrators

The long-running debate on the need for more information about arbitrators has sparked serious interest in the arbitration community. The sustained popularity of international arbitration as the premier commercial dispute resolution mechanism has given rise to an increasingly acute need for more proficient arbitrators. To satisfy this need, arbitration users are compelled to look beyond the global and regional clubs of ‘usual suspects’. It is argued by many in the arbitral community that, in this quest for arbitrators, access to sufficient information about arbitrators’ profiles is problematic for some, and that lawyers practising in jurisdictions which are considered to be major arbitral hubs are in a better place to obtain all the information they need on a particular arbitrator. But is that really the case?

Chart 19: Where do you find your information about arbitrators?



In this enquiry, we posed the question: do you have access to enough information about arbitrators? Perhaps reflecting the large numbers of counsel²⁹ amongst the total respondent pool, a resounding majority (70%) of respondents declared themselves satisfied with the information they have access to when considering the appointment of arbitrators. The full-time arbitrators' subgroup reported a particularly high level of satisfaction: more than 80% indicated that they have access to enough information about their peers.

Notably, however, merely 57% of in-house counsel replied "yes" to this question,³⁰ which is indicative of the fact that the scarcity of information about arbitrators and the need for more transparency in this regard is particularly apparent in the in-house counsel subgroup. This suggests again that the information asymmetry referred to above will only be combatted by more information on arbitrators becoming publicly available. Even then, however, it may be difficult to achieve public disclosure of some of the information that is most sought by users, as we discuss further below.

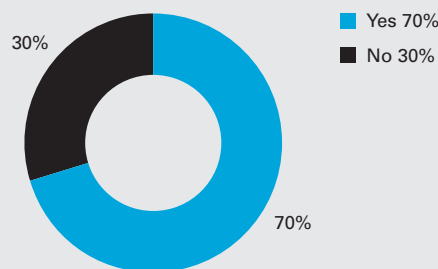
What other information do users want?

We invited respondents to provide us with the types of information about arbitrators that they would like to have, or would like to have more of. As this was an open question, respondents could contribute freely.



77%
of respondents use "word of mouth" as the source of information about arbitrators

Chart 20: Do you have access to enough information to make an informed choice about the appointment of arbitrators?



Out of the hundreds of individual answers we received, a few recurrent themes surfaced. Most of these entries revolve around current and past professional activity of the arbitrators.

Firstly, previous decisions and awards rendered by arbitrators appear to be the pieces of information respondents would like to have. Respondents tend to find awards relevant particularly for the data they contain on procedural approaches. For example, users wish to know more about individual arbitrators' case management skills and preferences, their degree of proactiveness, and other details of their level of involvement in the decision-making process.

Not many suggestions were made as to how this kind of data could

realistically be made available. Apart from having access to (redacted) awards, respondents tended to point towards arbitral institutions for further assistance. Some contended that institutions are in the best position to publish data on arbitrators' procedural approaches but advanced no practical suggestions as to how this kind of knowledge could be gathered in the first place.

Secondly, interest was also shown in how substantive issues were dealt with: respondents wish to learn more about the legal issues that arbitrators have grappled with in past proceedings. Equally, several responses mentioned the users' need to gain more insight into the approach arbitrators take with respect to the merits of disputes. For example, does their reasoning reflect what

a respondent called a ‘black letter’ approach or are they likely to adopt a more ‘commercial’ stance?

Many opined that publishing awards is likely to provide valuable insight into individual arbitrators’ general approaches, even where a degree of redaction is to be expected. Others, however, acknowledged that, at least in some niche industries with a scarcity of players in the market, the tension between the desire to make arbitral awards available to users and the need to keep the identities of the parties confidential would likely render the publication of arbitral awards virtually impossible.

Thirdly, respondents are concerned with all relevant data that would indicate the degree of arbitrators’ availability. Specifically, users would appreciate knowing the number of, and more information on, their ongoing cases, including how many proceedings they are presiding over. Respondents also showed interest in data regarding the overall efficiency of arbitrators. Mentions of the time spent on each previous arbitration (or the average duration thereof) and of the amounts of time elapsed between the closing of the proceedings and the rendering of the awards (or the average duration thereof) were particularly recurrent in the responses. Once again, arbitral institutions would appear to be the key sources for much of this data, but there is no equivalent repository in respect of ad hoc arbitrations which are not administered by a specific body.

Finally, other information such as access to arbitrators’ scholarly papers or data that would enable users to identify potential conflicts of interests were mentioned less often.

Arbitrators—to assess or not to assess?

As part of a two-step analysis on the issue of assessment of arbitrators, respondents were first asked whether they would like to be given the option of evaluating arbitrators at the end of proceedings. The overwhelming majority of respondents (80%) indicated that they would.

A look across the subgroups based on primary role reveals some slight variations. Only 65% of full-time arbitrators, for instance, expressed their preference for providing an assessment of their peers. On the other hand, nine out of ten in-house



57%

of in-house counsel have access to enough information about arbitrators



Publishing awards is likely to provide valuable insight into individual arbitrators’ approaches on procedural and substantive issues

counsel said that they would like to be able to provide an evaluation of arbitrators at the end of a dispute. The 2010 survey, which measured corporate views, undertook a similar investigation and the results were highly comparable: 75% of respondents expressed that they would like to have the possibility of assessing arbitrators while only 13% said that they could do without this.³¹

Almost a decade later, the current results show that corporations (through their in-house counsel) have an even stronger wish to become involved in this process. While several institutions have already taken steps in this direction and are

now inviting feedback on arbitrators, it remains to be seen whether this will turn into a broader trend and, if so, how that might manifest in the case of ad hoc arbitrations.

If yes, how?

We concluded the analysis by asking those respondents who responded affirmatively to the previous question, to indicate how would they like to provide such assessment of arbitrators. They were given three methods to choose from, as well as the possibility to specify other ones.

The overall results show that reporting to an arbitral institution, provided that the arbitration was

Chart 21: What other information do users want?

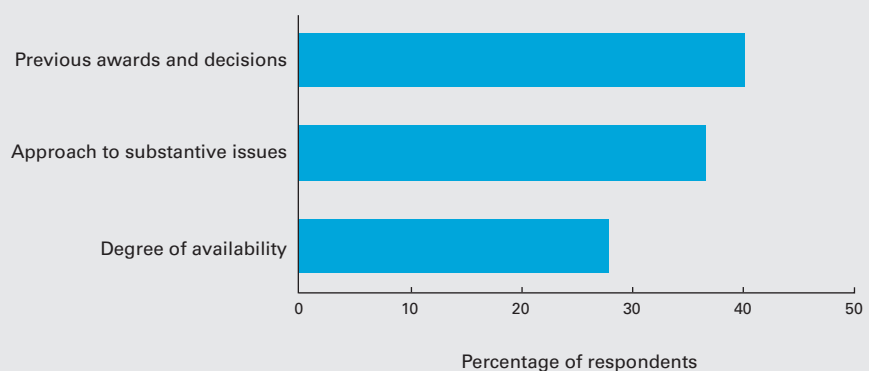
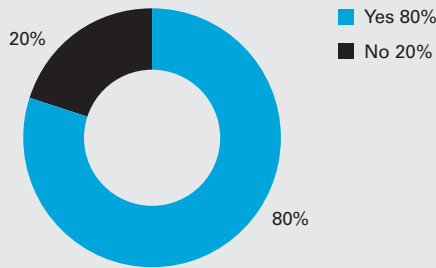
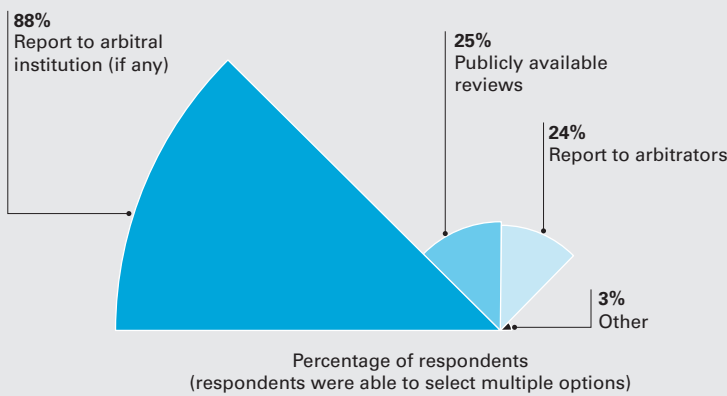


Chart 22: Would you like to be able to provide an assessment of arbitrators at the end of a dispute?



Users increasingly expect the role and duties of arbitral institutions to evolve in accordance with changing trends and user needs

Chart 23: If yes, how?



administered by that institution, would be by far the preferred method of providing an assessment of arbitrators (88%). Approximately a quarter of respondents said that they would submit their feedback either for publication in publicly available reviews or directly to arbitrators.

Subgroups based on primary role show slightly different results: full-time arbitrators would rather report to their fellow panellists than submit feedback to a public review; private practitioners and in-house counsel, on the other hand, would prefer reporting their assessment to a publicly available review rather than submitting it to the arbitrators. All subgroups, however, clearly reflect that the top choice is reporting to an arbitral institution.

This finding confirms and further underscores the results of the 2010

survey which found that 76% of its pool of corporate respondents would like to submit a report to the arbitration institution. This longstanding trend adds to the perception that arbitral institutions occupy a central position in the arbitration framework, which also suggests that users' expectations from them are accordingly high. It seems that the users increasingly expect the role and duties of arbitral institutions to evolve in accordance with changing trends and user needs, such as the desire for more transparency on arbitrator performance, based on both measurable and intangible metrics.

In relation to those less obviously measurable metrics of performance, a small number of respondents interviewed for the 2010 study were sceptical of the reliability of reports



89%
of in-house counsel would like to be able to provide an evaluation of arbitrators at the end of a dispute

on arbitrators submitted by inherently biased parties (even regardless of whether or not they were successful in the arbitration), while others alluded to the fact that review forms could potentially be designed with a more objective assessment in mind, asking for data on issues such as case management style, duration of proceedings and costs.³²

While similar thoughts were expressed in interviews conducted for this study as well, a few interviewees noted that steps towards more objective and therefore more reliable arbitrator review systems have been made in recent years both by arbitral institutions, as well as through various initiatives that are expected to gain more popularity in the near future (e.g., the Arbitrator Intelligence Questionnaire).

Funding, efficiency and confidentiality

Perceptions of non-recourse third party funding

There is hardly any arbitration-related event taking place today that does not have a panel on third party funding. It was very much in the spotlight when our 2015 survey was conducted, and it is perhaps even more so today. We therefore took this opportunity to revisit our 2015 findings³³ in order to assess whether there has been any shift in the users' perceptions of third party funding over the last three years.

Similar to the 2015 analysis, we first sought to measure the familiarity of respondents with the concept of non-recourse third party funding.

Results show that 42% of respondents have encountered non-recourse third party funding in practice either by having used it themselves (16%) or by having seen it used (26%). When compared to the 2015 results, these figures do not reflect any significant development: while the percentage of respondents who have seen

third party funding being used in practice is virtually the same, there has been a slight increase of 4% in the percentage of respondents who have used it in practice.

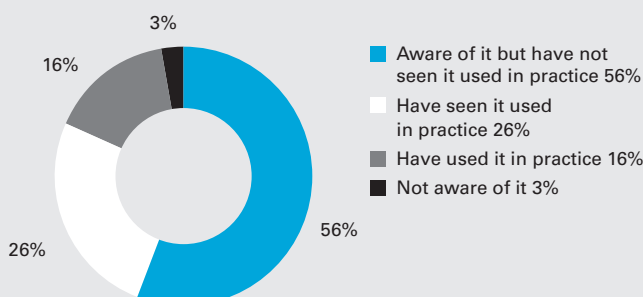
56% of respondents report that, despite not having seen it used in practice, they are nonetheless aware of non-recourse third party funding. The most telling finding, then, is that very few respondents remain unaware of third party funding of parties in international arbitration: from 9% of respondents in 2015, only 3% of respondents today are unfamiliar with the concept.

We then asked respondents to rate their perception of this type of third party funding of parties on a scale of 1 (negative) to 5 (positive). The response shows that in the three-year span since our previous survey, perception of third party funding has seen a clear shift from neutral to positive: while around a third of respondents expressed a 'neutral' perception,³⁴ more than half of the respondent group indicated a 'positive' perception.

Summary

- 97% of respondents are aware of third party funding in international arbitration. The majority of respondents have a generally 'positive' perception of third party funding, particularly those who have actually used third party funding.
- 85% of respondents are aware of other types of external funding in international arbitration and most perceive such funding in a 'neutral' or 'positive' light. Most of those who have used other types of external funding hold a more 'positive' perception.
- Respondents are almost evenly split as to whether a successful party who is in receipt of external funding should be able to recover any contingency or success fees as part of a costs order in their favour (52% say "yes" and 48% say "no").
- "Due process paranoia" continues to be one of the main issues that users believe is preventing arbitral proceedings from being more efficient. Respondents also believe that an increased use of technology would lead to more efficiency in the conduct of arbitration proceedings.
- 87% of respondents believe that confidentiality in international commercial arbitration is of importance. Most respondents think that confidentiality should be an opt-out, rather than an opt-in, feature.

Chart 24: How familiar are you with third party funding (non-recourse, i.e., linked to the outcome of the dispute) of parties in the context of international arbitration?



The more users encounter third party funding in practice, the more favourably they tend to perceive it

Only 13% indicated their perception was 'negative'.³⁵ When corroborated with the earlier findings about familiarity with third party funding, this trend may be seen as an indication that the more users encounter third party funding in practice, the more favourably they tend to perceive it.³⁶

What is more, the subgroup of respondents who have actually used third party funding in practice confirms this trend by reflecting an even more positive view: no less than 75% of this subgroup perceives third party funding positively while most of those left in the subgroup take a neutral stance. This pattern is very much in line with the 2015 findings related to this subgroup; if anything, there is now an even greater tendency towards a positive perception.

Perceptions of other external funding products

We also sought to measure the familiarity respondents have with other types of external funding of parties in international arbitration, such as various types of insurance products. The use of such products is perceptibly less spread than the type of non-recourse 'third party funding' discussed above (28% compared to 42%). Overall awareness of other types of external funding also lags behind: 14% of respondents were not aware of such products, as opposed to only 3% in relation to non-recourse third party funding.

We then asked respondents to rate their perception of such types of external funding in international arbitration on the same scale of 1 (negative) to 5 (positive). Around half of respondents adopted a 'neutral' view; a likely explanation for this is the relatively low number of respondents who have actually encountered such types of external funding in practice. The second most popular perception appears to incline towards a 'positive' view (41%).

The subgroup based on respondents who have actually used such types of external funding tells a rather different story. 66% of this subgroup expressed a 'positive' perception and only 29% had a 'neutral' view. As with non-recourse third party funding, the more practitioners resort to other external

Chart 25: Please indicate your perception of non-recourse third party funding of claimants in international arbitration

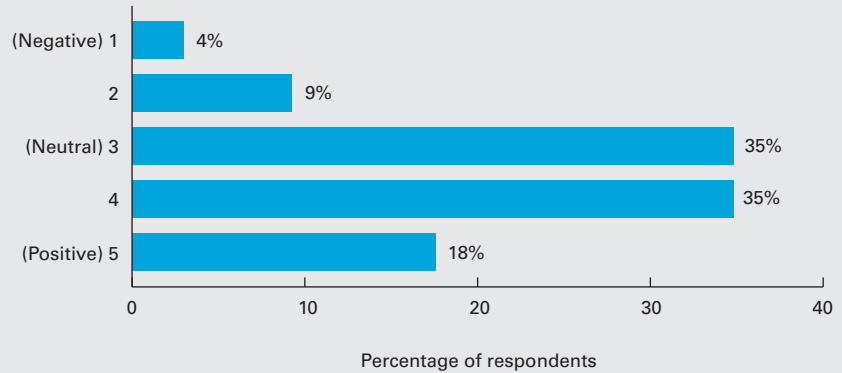


Chart 26: Perception of non-recourse third party funding in international arbitration by respondents who have used it

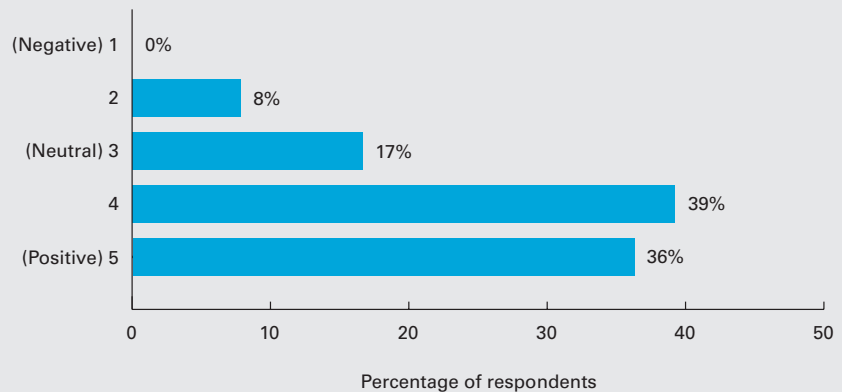


Chart 27: How familiar are you with other types of external funding (e.g., liability insurance, before the event insurance, after the event insurance) of parties in the context of international arbitration?

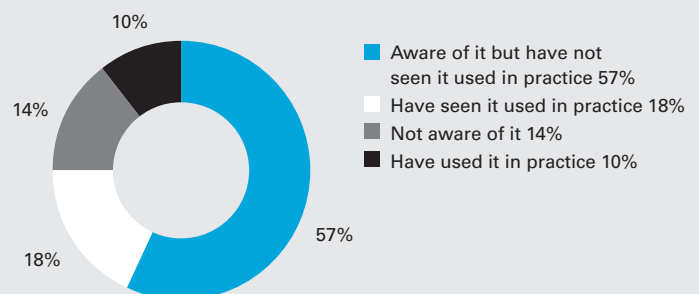
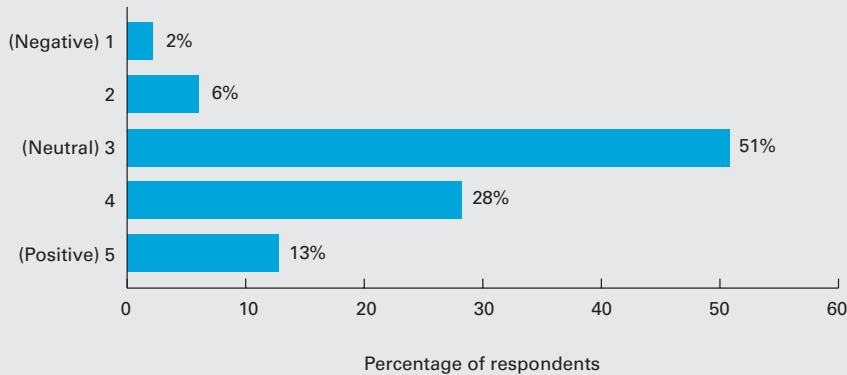


Chart 28: Please indicate your perception of such types of external funding of claimants in international arbitration



funding products or see them used in practice, the more favourably they seem to perceive them.

This may be an example, then, of success begetting success: the more that different kinds of third party funding products are made available and used, the more they may be in demand, particularly as the cost of arbitration continues to be a matter of concern for users.

Should a successful party in receipt of external funding be able to recover any contingency/success fees?

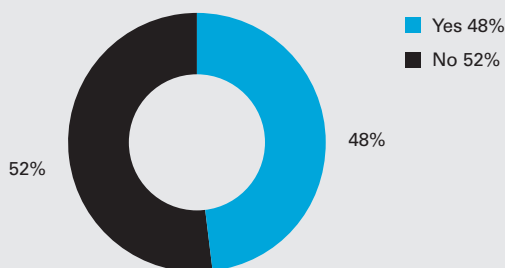
We end our analysis of external funding in international arbitration by inviting respondents to weigh in

on yet another highly contentious matter: should a successful party in receipt of external funding be able to recover any contingency or success fees as part of a costs order in their favour?

The overall results are almost evenly split: 48% of the respondent group said “yes” while 52% said “no.”

The subgroups based on primary role show a more nuanced result, however. Nearly 60% of full-time arbitrators believe that recovery should not be possible while just over 40% believe that it should. The trend in the in-house counsel subgroup is largely similar but shows a slightly larger gap: north of 60% of this subgroup do not think

Chart 29: If a successful party is in receipt of external funding from a non-party to the arbitration (e.g., non-recourse third party funding, insurance), should they be able to recover any contingency or success fees as part of a costs order in their favour?



that recovery should be allowed while less than 40% think that it should. By contrast, 51% of the private practitioners’ subgroup take the view that recovery should be available in this case while 49% think that it should not, broadly reflecting the overall result.

Compared to the data collected for our 2015 survey,³⁷ our current findings clearly show that external funding is now enjoying even more awareness and is generally perceived in a positive light. These upward trends, coupled with an increase in the use of various forms of external funding, may help to explain why a large number of respondents believe that it would be fair to recover funding costs. This view may be even more strongly held in relation to cases where recourse to external funding is a matter of necessity, i.e., access to justice would be precluded were it not for the external funding.

User ideas to make arbitral proceedings more efficient

Respondents were asked to suggest a change which could improve efficiency. This open question allowed respondents to contribute freely, resulting in a plethora of ideas on a wide range of aspects of arbitral proceedings.

Some respondents and interviewees insist on the practical importance of having an early case management conference; they emphasised the need for both arbitrators and counsel to “get creative” at the outset of a case and tailor the proceedings according to its specific needs, rather than using a standardised template for the initial (and subsequent) procedural orders. In another train of thought, a number of both arbitrators and counsel took the opportunity to point out that more often than not arbitrators allow too many rounds of submissions, which are sometimes too lengthy and lack focus on the key disputed issues. They argue that arbitrators should limit, on a case-by-case basis, both the number of pages of a given submission and the number of rounds of submissions.

Another aspect that was repeatedly mentioned in both questionnaires and interviews was the increased use of technology. Interviewees explained that this is chiefly related



Arbitrators need to adopt a bolder approach to conducting proceedings and, if need be, apply monetary sanctions for dilatory tactics

to the ability of participants to an arbitral proceeding to conduct a hearing via modern electronic means of communication, which saves substantial amounts of time and money that would otherwise be spent on travelling to a given location for an in-person meeting of the parties and arbitrators. We discuss at length the impact of technology in arbitration in the final chapter of this report.

The theme that stood out the most, however, is centred on the conduct of arbitrators during proceedings. A considerable number of respondents pleaded for the broadening of arbitrators' powers related to arbitral proceedings, as well as encouraging them to make better use of these powers. More to the point, many users believe that arbitrators need to adopt a bolder approach to conducting the proceedings and, if need be, apply monetary sanctions for the various dilatory tactics employed by counsel.

A number of respondents and interviewees referred to what the 2015 survey called the "due process paranoia" of arbitrators as a probable reason for this continued lack of proactiveness.³⁸ This phenomenon continues to be a source of concern to many. On a related note, both the 2015 survey³⁹ and the current survey (Chart 4) found that the "lack of effective sanctions during the arbitral process" is seen as the second worst characteristic of arbitration. Interviews for both studies nuanced this finding by revealing that many users are of the opinion that the bigger problem is that arbitrators do not make sufficient use of the sanctioning powers they already possess.⁴⁰

This year, however, the legitimacy of this "due process paranoia" phenomenon was vigorously



87%

of respondents consider confidentiality to be of importance

contested by a number of counsel and arbitrators. It was argued that explaining arbitrators' conduct by referring to this 'paranoia' is misleading because arbitrators should be confident enough that the courts at the seat would support arbitration. Some went on to explain that the popularity of 'arbitration-friendly' jurisdictions stems partly from the fact that local courts have no trouble deferring to arbitrators as far as the approach to conducting the arbitral proceedings is concerned. If this is indeed the case, then perhaps the phenomenon might arise more where arbitrators are conscious that their awards may need to be enforced in jurisdictions where the support of the local judiciary for arbitration may not be so assured.

Confidentiality in international commercial arbitration

We saw earlier that in-house counsel find "confidentiality and privacy" to be of particular value (p. 7).⁴¹ We asked respondents to rate the degree of importance they attach to confidentiality in international commercial arbitration.

The given options ranged from "very important" to "not important at all".

87% of respondents attach some degree of importance to confidentiality, ranging from "very" to "somewhat" important. Unsurprisingly, the in-house counsel subgroup of respondents place more importance on confidentiality than the wider group as a whole: more than half of in-house counsel (57%) rate confidentiality as being "very important" and 26% as "quite important". This is also consistent with the finding that the same subgroup rated "confidentiality and privacy" as the third most valuable characteristic of international arbitration.

The 2010 survey additionally revealed that 50% of corporate respondents erroneously believed that arbitration is confidential even where there is no specific clause to that effect in the arbitration rules adopted or the arbitration agreement.⁴² This seemed to suggest an implied expectation that arbitrations would by default be confidential. With this in mind, this survey set out to ask respondents whether confidentiality should be



The popularity of 'arbitration-friendly' jurisdictions stems partly from the fact that local courts have no trouble deferring to the arbitrators' approach to conducting the arbitral proceedings

an opt-in (i.e., the default position is that proceedings will *not* be confidential unless the parties choose otherwise) or an opt-out feature (i.e., the default position is that proceedings *will* be confidential unless the parties choose otherwise). A decisive majority of 74% of the respondent group believed that confidentiality should be an opt-out feature while only 26% thought that confidentiality should not be presumed by default. The figures for the in-house counsel subgroup were not significantly different: 69% of the subgroup expressed that confidentiality should be an opt-out feature while 31% would prefer the default rule to be opt-in.

Clearly, then, confidentiality remains a matter of some degree of importance for many, if not most, in-house counsel. This is, however, tempered by the qualification that, as discussed in the 2010 survey⁴³ and confirmed by the current study, confidentiality is not of itself the single biggest driver behind the choice of arbitration by the parties who use it.



69%
of in-house
counsel think
confidentiality
should be an
opt-out feature



57%
of in-house
counsel rate
confidentiality
as being "very
important"

Chart 30: How important is confidentiality in international commercial arbitration?

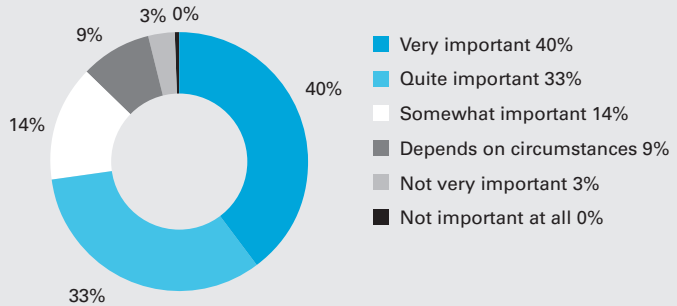
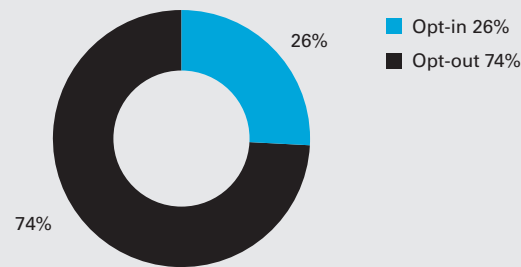


Chart 31: Should confidentiality be an opt-in or an opt-out feature?



Confidentiality remains a matter of some degree of importance for many, if not most, in-house counsel. However, confidentiality is not of itself the single biggest driver behind the choice of arbitration

The future

The appeal of arbitration in different sectors

We saw earlier that, when it comes to resolving cross-border disputes, international arbitration continues to enjoy a great deal of success in the legal community (Chart 1). Historically, however, international arbitration has not been received with the same degree of enthusiasm in all industries and sectors. By way of example, the 2013 survey found that, while arbitration was cited as the preferred method of dispute resolution in the Energy and Construction sectors by some margin, respondents were more likely to litigate, rather than arbitrate, disputes in the financial industry even though they did not consider arbitration to be inherently unsuitable for resolving disputes in this particular sector.⁴⁴

Against this background of mixed perceptions, the current survey aimed to reassess the likelihood of resolving disputes through arbitration in a number of industries. Respondents were invited to express their views with regard to four select industries and sectors: Energy (including Oil & Gas), Construction/Infrastructure, Technology and Banking and Finance.

Overall, the results show that there is an expected uptick in all four sectors, as a majority of respondents voted each of them “likely” to see increased use of arbitration in the future.

It is widely known that arbitration is very prominent in the Energy sector and our finding strongly confirms that trend: a large majority of 85% of the respondent group believe that the use of international arbitration is likely to increase even more in the future. Respondents took a similar view in relation to other sectors—82% of respondents expect the resolution of cross-border Construction/Infrastructure disputes by arbitration to increase, and 81% believe that disputes in the Technology sector are likely to follow the same path.

As mentioned above, the Banking and Finance sector is one of the few sectors in which arbitration has historically appeared to be less popular among users. However, a small majority of respondents (56%) also anticipate an increased use of arbitration in this sector. Measured against previous statistics relating to the use of arbitration in the Banking sector,⁴⁵ this latest finding can be read as a clear indication that financial institutions and their counsel are contemplating arbitration with much greater interest than ever before. Interviews with representatives of prominent arbitral institutions confirmed that this is indeed an expected trend and that arbitration centres are making every effort to enhance their arbitral rules with a view to better accommodating finance disputes in the arbitration setting, as we shall see next.

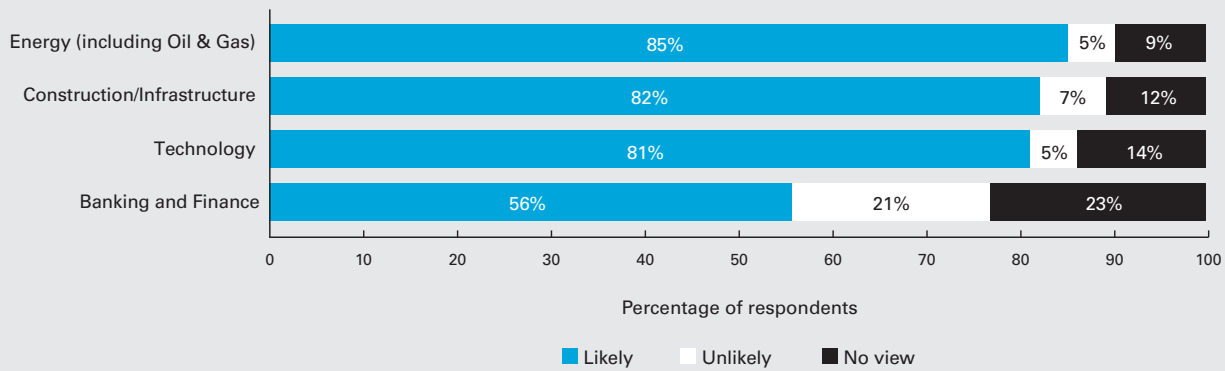
Summary

- Respondents believe that the use of international arbitration is likely to increase in the Energy, Construction/Infrastructure, Technology, and Banking and Finance sectors.
- 66% of respondents think that the use of international arbitration to resolve investor-State disputes will increase in the future.
- Technology is widely used in international arbitration and an overwhelming majority of respondents favour the greater use in the future of “hearing room technologies,” “cloud-based storage,” “videoconferencing,” “AI” and “virtual hearing rooms.”
- A large majority of respondents (77%) expressed that existing sets of arbitration rules “contain about the right level of prescription” in terms of the guidance they offer on how to conduct proceedings. Only 5% believed that these rules are “too prescriptive.”
- Respondents think that arbitration rules should include provisions dealing with arbitrator conduct in terms of both standards of independence and impartiality and efficiency (or lack thereof).
- A significant majority of respondents (80%) consider “arbitral institutions” to be best placed to influence the future evolution of international arbitration.
- More than half of respondents (61%) think that “increased efficiency, including through technology” is the factor that is most likely to have a significant impact on the future evolution of international arbitration.



Financial institutions and their counsel are contemplating arbitration with much greater interest than ever before

Chart 32: In your view, how likely is it that the use of international arbitration for resolving cross-border disputes will increase in relation to the following industries and sectors?



What would make arbitration more appealing for these sectors?

The survey then scrutinised the same four industries from a different perspective: we provided respondents with a list of six potential improvements and innovations, to discover which ones respondents thought, if implemented, would make arbitration a better fit for each sector. Respondents were asked to select all options that in their view applied for each of the listed industries and sectors.

Interestingly, there was a similar degree of appreciation for all of the suggested measures across all sectors.

Of those respondents who selected “summary determination procedures” for any of the four industries, 30% chose this option for the Banking and Finance sector while 28% of those who expressed views in relation to “expedited procedures for claims” selected the same sector. In fact, the financial sector received the most votes from respondents who considered both these options in relation to each of the four listed industries and sectors.

Both “rosters of arbitrators with industry-specific experience,” and “more industry-specialised arbitral institutions,” are expected to have a lesser impact on the appeal of arbitration for this particular sector. This is somewhat unexpected, given the findings of our 2013 study, which



Users operating in the financial industry are particularly concerned about the speed and flexibility with which financial disputes can be resolved

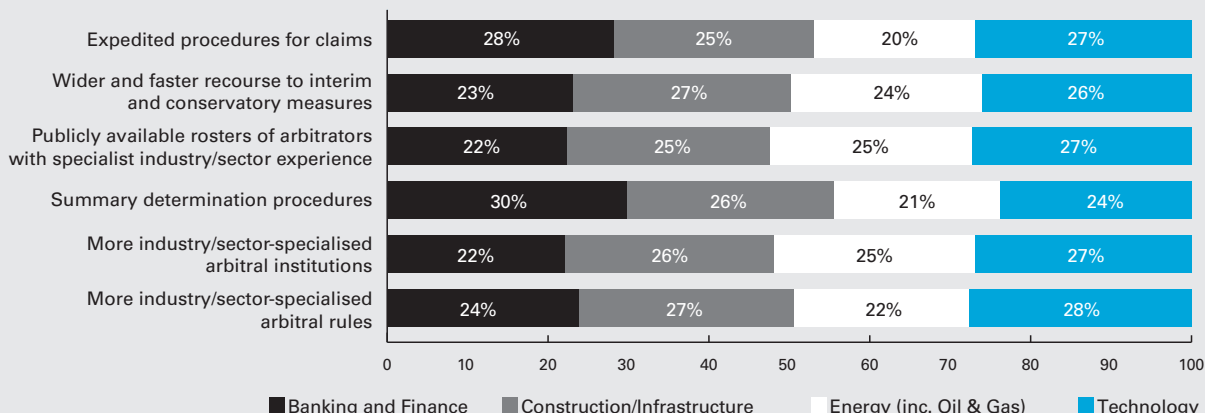
revealed that respondents found the “expertise of the decision-maker” to be the principal benefit of arbitration in the financial services sector.⁴⁶ The key finding in the current data, however, is that users operating in this industry are particularly concerned about the speed and flexibility with which financial disputes can be resolved.

As for the Construction/Infrastructure industry, of the users who expressed views in relation to “wider and faster recourse to interim and conservatory measures” and “more industry/sector-specialised arbitral rules,” 27% think that these

two improvements are likely to determine an increased use of arbitration for construction disputes. These results are likely justified not only by the highly technical nature of construction disputes but also by the distinct need of parties to such disputes to be granted effective access to interim and conservatory measures that would halt, accelerate or otherwise impact the progress of the underlying construction projects.

In the Energy sector, respondents primarily think that “publicly available rosters of arbitrators with specialist industry/sector experience” and “more industry/sector-specialised

Chart 33: Which of the following improvements and innovations would make international arbitration more suitable for resolving cross-border disputes in these industries and sectors?



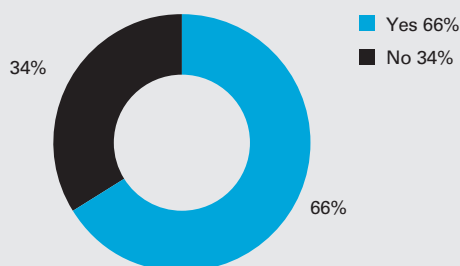
arbitral institutions” would make international arbitration more appropriate for energy disputes. These findings underscore the ever-increasing complexity of energy disputes. For a satisfactory dispute resolution process, then, users feel the need to have ease of access to databases with arbitrators boasting significant experience in this field. Equally, they wish the administering institutions to be well-versed in dealing with energy disputes and their corresponding particularities (e.g., the possibility of having arbitrators travel to certain locations for on-site inspections).

Finally, respondents expect the Technology industry to become more inclined to arbitrate disputes if “more industry/sector-specialised arbitral rules” are introduced (28%). Users therefore tend to expect that the applicable arbitral rules be reflective of the specificities of disputes in this sector (e.g., enhanced rules regarding confidentiality of proceedings and of proprietary information). “Expedited procedures for claims,” “publicly available rosters of arbitrators with specialist industry/sector experience” and “more industry/sector-specialised arbitral institutions” were also seen as key improvements likely to lead to arbitrating more technology disputes.

Is international arbitration the way forward in investor-State disputes?

Having decided to look into what the future may have in

Chart 34: In your view, will the use of international arbitration to resolve investor-State disputes increase in the future?



store for investment arbitration, we challenged respondents with a thorny question: will the use of international arbitration to resolve investor-State disputes increase in the future?

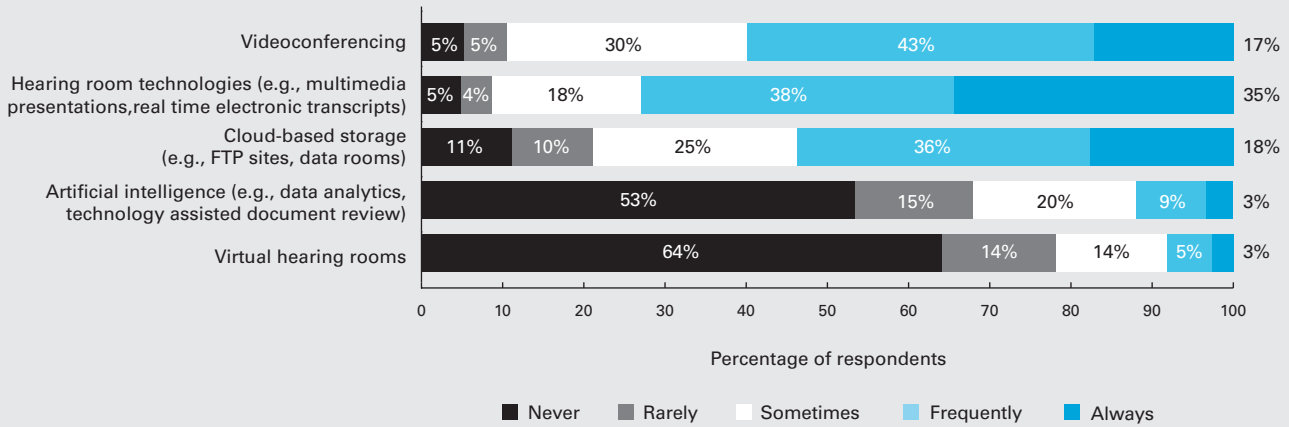
Against a background of many uncertainties regarding the fate of the international investment landscape, it is interesting that 66% of respondents believe that “yes,” international arbitration will be used more often to decide investor-State disputes while only 34% thought otherwise. This prediction is consistent with the rise in numbers of known investor-State disputes over the past two decades.⁴⁷ What remains to be seen, perhaps, especially in the current climate, is the shape which investor-State dispute settlement mechanisms might take in the future.

Current and future use of IT in international arbitration

We discussed above that a significant number of respondents believe that arbitral proceedings could become more efficient through an increased use of technology (pp. 26-27). This view was reflected in our subsequent findings on the factors which are most likely to drive the future evolution of arbitration (Chart 40).

Firstly, though, we set out to investigate in more detail the parameters of current usage of information technology (IT) in the arbitration setting. Respondents were asked to indicate how often they have used five different forms of IT in international arbitrations: videoconferencing, hearing room technologies, cloud-based storage, artificial intelligence (AI) and virtual hearing rooms.

Chart 35: How often have you used the following forms of information technology in an international arbitration?



“Hearing room technologies” was the most commonly used form of technology, with 73% of users claiming that they “always” or “frequently” use these aids and a further 18% saying they “sometimes” utilise such products. The relatively small percentages of respondents who “never” or “rarely” use hearing room technologies suggest they have become almost ubiquitous.

Other forms of IT that are used “frequently” are “videoconferencing” (43%) and “cloud-based storage” (36%). As with hearing room technologies, proportionately few respondents have “never” or “rarely” made use of these aids. On the other side of the spectrum, 53% of the respondent group stated that they have “never” used AI while 64% of respondents said that they have “never” utilised “virtual hearing rooms.”

In the second phase of this analysis, we asked respondents to weigh in on whether these forms of IT should be used more often in an arbitration context.

An overwhelming majority believe that “videoconferencing” (89%), “cloud-based storage” (91%) and “hearing room technologies” (98%) are tools that arbitration users should make use of more often. Even the tools that scored less highly nonetheless saw positive results by sizeable majorities: 66% of respondents suggested an increased



73%

of respondents claim that they “always” or “frequently” use “hearing room technologies”

use of “virtual hearing rooms” and 78% indicated that “AI” is a form of IT worth using more. These trends clearly reflect not only that respondents are highly optimistic about the role of technology in streamlining the process of arbitration but also a firm expectation that IT should be used more often and more effectively in the arbitral setting.

Interviewees further explained that to make better use of technology in arbitration is to make arbitration a more efficient process. They stressed that one of the most notable advantages of technology that is already very much exploited in international arbitration is the ability of

participants to conduct hearings and meetings via videoconferencing or, generally, through any other means of communication that do not require physical presence. Understandably, many highlighted the substantial savings in terms of time and money that ensue from resorting to such forms of technology.

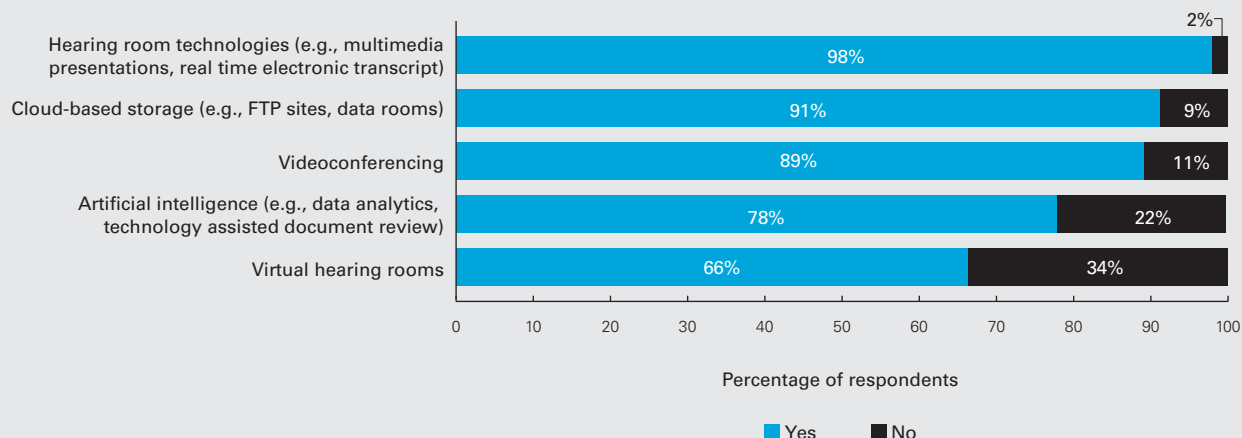
On the other hand, a considerable number of both counsel and arbitrators took the opportunity to nuance this view. Most notably, some of them expressed reservations as to the effectiveness of conducting cross-examinations of witnesses or delivering and hearing the parties’ closing arguments through a videoconference. In particular, some arbitrators mentioned that for such instrumental hearings, they systematically insist on the physical attendance of all involved.

Interviews also revealed that the main reason for the lesser use of IT such as AI and virtual hearing rooms is lack of familiarity. In turn, this lack of familiarity can be traced back to the issue of cost. As some interviewees explained, most of these technologies are fairly new to the market and are therefore still very expensive. In many cases, counsel admit that they are not able to justify to their clients the high cost of using such technologies. As far as AI is concerned, the lack of familiarity translates into a fear of allowing technology to interfere



To make better use of technology in arbitration is to make arbitration a more efficient process

Chart 36: Should the following forms of information technology be used more often in international arbitration?



excessively with the adjudication function, which is supposed to be, as one interviewee put it, “inherently human.”

Are existing sets of arbitration rules too prescriptive?

In recent years, multiple sets of procedural rules have evolved to include new features and mechanisms in an attempt to reflect latest trends and respond to user demands relating to the conduct of proceedings. At the same time, “flexibility” remains a highly valued characteristic of arbitration (Chart 3). We considered whether these two opposing user demands—prescription on one hand and flexibility on the other—can be reconciled.

First, we asked respondents to provide an assessment of existing sets of arbitration rules (both institutional and ad hoc) from the perspective of the guidance they offer on how to conduct arbitral proceedings.

A large majority of respondents believe that “they contain about the right level of prescription” (77%) while 18% think that “they are not prescriptive enough.” Only 5% of respondents consider existing sets of arbitration rules to be “too prescriptive.” An analysis of the subgroups based on primary role revealed no change in these standings.



77%
of respondents think that arbitral rules contain “about the right level of prescription”

The data generated by this enquiry should be read with caution, however. Although there seems to be a general agreement that existing arbitral rules contain a satisfactory level of prescription in terms of conducting arbitral proceedings, the next chart will provide more insight into whether or not respondents believe that specific elements in the proceedings should be (further) addressed in institutional or ad hoc rules.

Areas for evolution in arbitral rules

Recent arbitral practice has highlighted a number of recurrent issues that some users feel should be subject to a more focused regulation through arbitral rules. For example, the myriad grounds on which counsel base their arbitrator challenges beg for clear standards of arbitrator independence and impartiality; the increased use of tribunal secretaries has prompted the need to better define their duties and the limits thereof; the increasing



As far as AI is concerned, the lack of familiarity translates into a fear of allowing technology to interfere excessively with the adjudication function, which is supposed to be “inherently human”

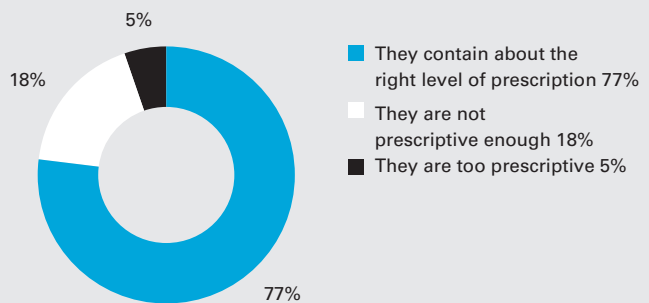
role of expert witnesses in arbitral proceedings has led to users pondering whether experts should be held against the same standards of independence and impartiality as arbitrators.

In light of these developments, we asked respondents whether they think that arbitral rules, both institutional and ad hoc, should include express provisions specifically dealing with several issues that are of particular relevance in international arbitration. Respondents were invited to say “yes” or “no” with regard to any of a list of fifteen issues.

Conduct of arbitrators

Results show that most users would welcome provisions regulating the conduct of arbitrators: a large majority of about 80% of respondents think that arbitration rules should address “standards of independence and impartiality for arbitrators,” “consequences for delay by arbitrators” and “deadlines for issuing awards.” The popularity of the last two issues should not come as a surprise: the 2015 survey reported that around half of respondents

Chart 37: In general, how prescriptive are existing sets of arbitration rules (whether institutional or ad hoc) in terms of the guidance they offer on how to conduct proceedings?



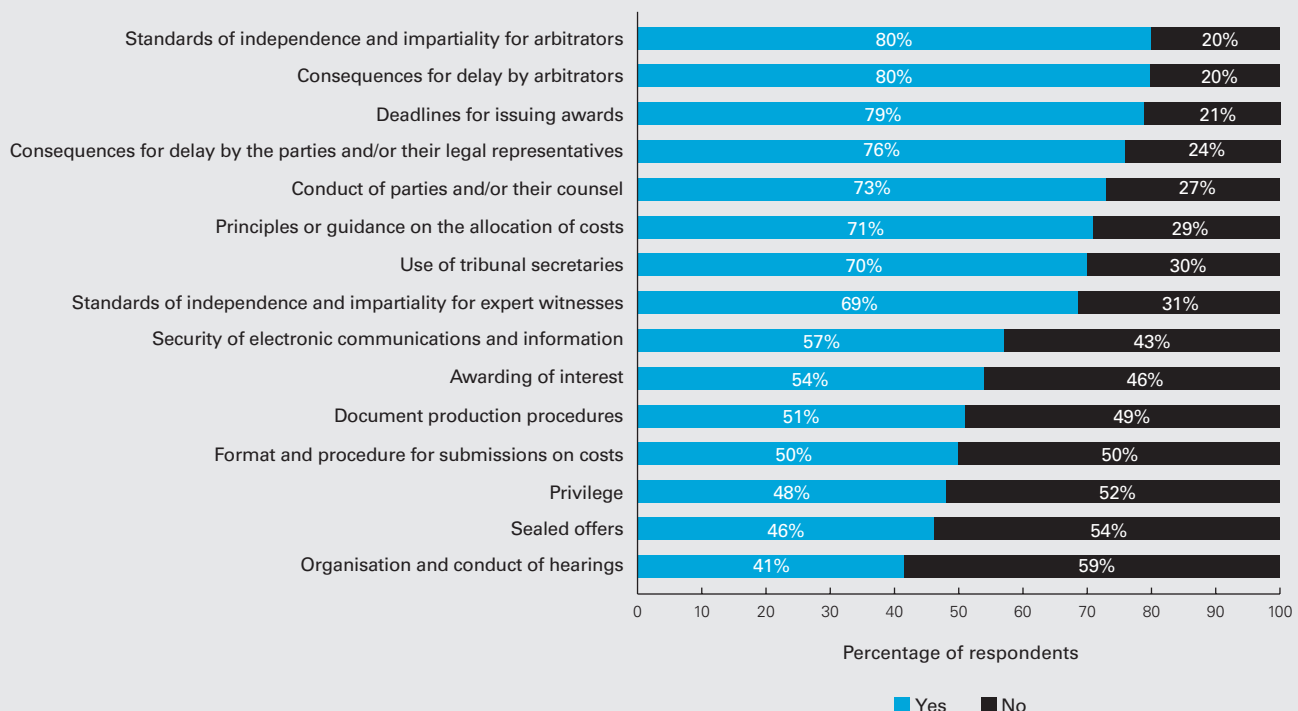
identified them as effective time- and cost-saving procedural innovations.⁴⁸ As the current survey further reinforces these trends, a clear need to address these issues is easily apparent.

As far as dilatory arbitrator conduct is concerned, interviews revealed that of the multiple forms it can take, two are most often met: delays

caused by the limited availability of all members of an arbitral panel to convene a hearing and delays in the drafting of arbitral awards.

Some interviewees argued that inefficient conduct of this kind by arbitrators should not go unsanctioned and that arbitral institutions should entertain with more interest the idea of

Chart 38: Should arbitration rules (whether institutional or ad hoc) include provisions dealing with each of the following issues?



applying strict sanctions in cases of unreasonable delays. As for the appropriate sanction, various views were expressed. A number of interviewees were of the opinion that pecuniary sanctions should be put in place. Others were reluctant as to their effectiveness, arguing that the busiest, most sought-after arbitrators are likely to be the ones least deterred by such measures.

Yet another group of interviewees proposed that arbitrator profiles made available to users by arbitral institutions should include performance indicators such as the average time a certain arbitrator has spent on an arbitration. The counterargument advanced by others was that the relevance of such data is rather limited since every arbitration has its own particularities. That being said, there was a consensus among interviewed respondents that arbitration rules should indeed contemplate a more efficient mechanism for sanctioning delays by arbitrators.

In line with the efforts of better dealing with, and preventing, delays caused by arbitrators, the idea of imposing “deadlines for issuing awards” enjoyed a similar popularity among interviewees. Some even suggested that “the default mindset that an arbitration would last for up to 18 months should be challenged” as parties in factually and legally uncomplicated cases have a desire for a more rapid resolution.⁴⁹ In any event, a significant number of interviewees recommended that such deadlines should be discussed and agreed upon at the outset of the proceedings and that arbitrators should keep in mind that their compliance with these deadlines is a legitimate expectation of the parties.⁵⁰ Our 2010 study showed that, although respondents believed that the parties contribute most to the length of proceedings, it was the arbitral tribunal that was seen to be in the best position to ensure a reasonable brevity of proceedings through a strict enforcement of the agreed-upon timetable.⁵¹

Conduct of parties and their counsel

Over 70% of respondents expressed that the conduct of the parties (and/or their legal representatives) and their counsel, generally, and the



80%

of respondents would welcome arbitration rules regulating the **conduct of arbitrators**



“The default mindset that an arbitration would last for up to 18 months should be challenged”

consequences for their various dilatory tactics, in particular, should also be subject to specific arbitration rules. This finding is consistent with the results of the 2012 survey, which reported that a large majority of respondents believed that improper conduct by a party or its counsel during the proceedings should be taken into account by the arbitral tribunal when allocating costs.⁵²

Many interviewees, both full-time arbitrators and counsel, took the opportunity to point out the multiple ways in which the parties through their counsel resort to various delaying procedural tactics that ultimately lead to prolonged proceedings. Some interviewees expressed that lengthy submissions and frivolous motions, for instance, should not be tolerated by arbitrators; instead, arbitral tribunals should be equipped with, and make frequent use of, appropriate procedural tools to prevent unreasonable delays. Others believed that the effective prevention of delays by the parties and their counsel might not necessarily lie in the drafting of more normative provisions but rather in the approach arbitrators have towards this type of dilatory conduct. A similar view was identified in the 2015 survey: some interviewees then suggested that the issue was not so much a “lack of effective sanctions during the arbitral process”⁵³ but rather a “lack of effective use of sanctions” by arbitrators.⁵⁴

Evolution not revolution

The overall results reveal an interesting contrast when read in conjunction with the previous enquiry: while a clear majority of respondents believe that, in general, there is a sufficient level of prescription in the existing sets of arbitral rules, a significant share of the same sample would nevertheless welcome more prescription in relation to specific issues. A similar trend was apparent in the 2015 survey as well: 70% of respondents believed arbitration is adequately regulated⁵⁵ but at the same time, a large majority also called for further regulation of specific actors (e.g., tribunal secretaries and third party funding).

Furthermore, based also on our previous findings showing that arbitration is by far the preferred method of dispute resolution (Chart 1) and that there is a very high likelihood that respondents would choose or recommend the use of arbitration for resolving future disputes (Chart 5), the emerging sentiment is that, overall, users seem to be satisfied with the general framework and concept of international arbitration, but when faced with various procedural aspects of it, they find much room for improvement in many specific areas. It may be argued that these two concepts are not necessarily antagonistic: an inherently adaptable arbitral system is one that is sensible to the ever-changing needs of its users. It remains to be seen how arbitral institutions will respond to these perceived needs.



73%

of respondents think that the **conduct of the parties and their counsel** should be subject to specific arbitration rules

Who will direct the future evolution of international arbitration?

We conclude our survey by taking a two-step look at the road ahead for international arbitration. Respondents were asked to express their views on who is best placed to influence the future evolution of international arbitration. They were provided with a list of seven different stakeholders and were also able to identify other stakeholders of their choice.

A clear majority of respondents (80%) indicated that “arbitral institutions” are best placed to make an impact on the future evolution of international arbitration, followed by “arbitration interest groups/bodies” (56%), “arbitrators” (42%) and “external counsel” (40%).

Interviews confirmed that, thanks to their position and prerogatives, arbitral institutions have access to multiple avenues through which they can shape the future of international arbitration. By way of example, and as discussed above, nearly half of respondents believe that arbitral institutions are indeed best placed to ensure greater diversity across arbitral tribunals (Chart 17). A number of interviews also stressed the important role institutions play in raising awareness and educating users around the world about the benefits



Overall, users seem to be satisfied with the general framework and concept of international arbitration, but they find much room for improvement in many specific procedural areas

of arbitration. Others emphasised that arbitral institutions are also best placed to promote the advantages of arbitration among judges in jurisdictions considered less friendly to this method of dispute resolution.

Interviewees also mentioned the role played by arbitration interest groups/bodies in influencing the future of international arbitration, including through promulgation of soft regulations and guidelines. In a similar vein, our 2015 survey found that the IBA Rules on the Taking of Evidence in International Arbitration and the IBA Guidelines on Conflicts of Interest enjoyed wide usage and recognition.⁵⁶

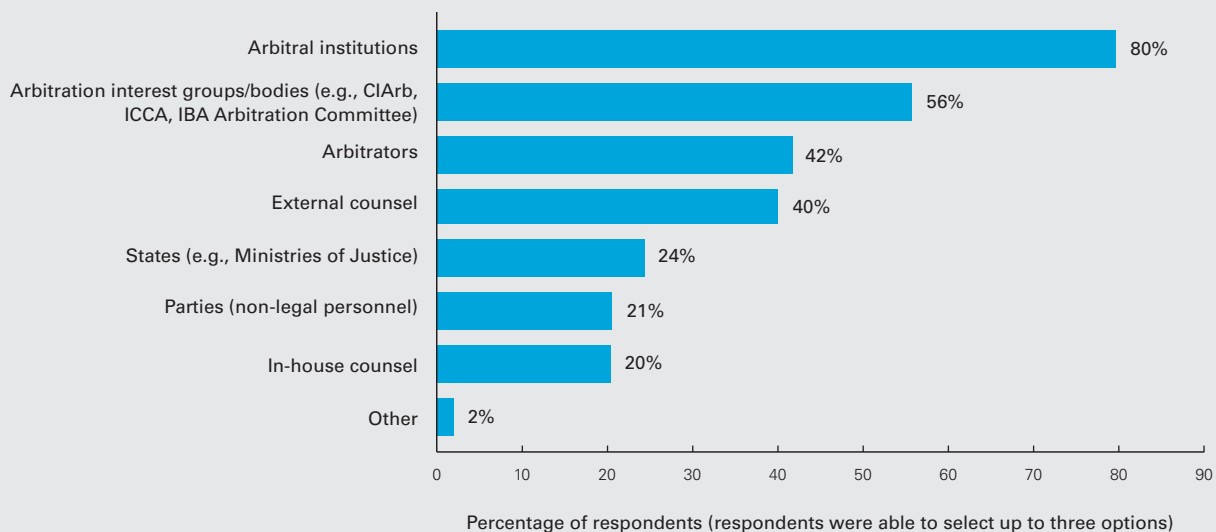
Indeed, respondents interviewed for the current study confirmed

that these two instruments, in particular, continue to be frequently used in international arbitrations. Among the soft law instruments that are expected to be made available to users in the near future, the Report of the ICCA-QMUL Third Party Funding Taskforce was anticipated with particular interest among interviewees who frequently deal with arbitrations where at least one party is in receipt of external funding.

While the overall results show that “arbitrators” have a slight edge over “external counsel,” some interesting variations could be observed in the subgroups based on primary role.

The private practitioners’ subgroup showed that “external

Chart 39: Which stakeholders are best placed to influence the future evolution of international arbitration?



counsel” (52%) were perceived to be noticeably better placed than “arbitrators” (40%) to influence the future evolution of international arbitration. Conversely, almost half of the full-time arbitrators’ subgroup believed that “arbitrators” are better placed than “external counsel” (28%) to make an impact on the future of international arbitration. Stakeholders such as in-house counsel or states were chosen less often across all of the subgroups, with one notable exception: the in-house counsel subgroup selected “States (e.g., Ministries of Justice)” as the third best placed stakeholder (31%) to influence the future evolution of international arbitration.

The fact that the ultimate users of arbitration (i.e., the parties themselves) have not been perceived as wielding the greatest influence over its evolution may come as a surprise to some. However, even the in-house counsel subgroup chose “external counsel” (25%) and “arbitration interest groups/bodies” (57%) above themselves (24%) or their employers (20%). Perhaps this may suggest that it is the stakeholders whose existence is essentially symbiotic with the system of international arbitration who are seen to have the ultimate stewardship of it, for the mutual benefit of all who participate in the international arbitration community.

Which factors will have the most significant impact on the future evolution of international arbitration?

We concluded our analysis by soliciting respondents’ perceptions as to which individual factors they believe will have the most significant impact on the future evolution of international arbitration. Respondents were provided with a list of eight options, and they were also free to add other factors.

More than 60% of respondents indicated that “increased efficiency, including through technology” would have the most significant impact on the future evolution of international arbitration. Interviews confirmed that improving the overall efficiency of arbitral proceedings should indeed be a top concern for all stakeholders involved. Additionally, both the 2015 survey⁵⁷ and our current findings

reflect a similar view by listing “lack of effective sanctions during the arbitral process” and “lack of speed” in the top four worst characteristics of international arbitration (Chart 4). The role of technology in making arbitral proceedings more efficient is addressed in more detail above at pp. 26-27.

Interestingly, “greater certainty and enforceability of awards” was selected as the second most likely factor to have a significant impact on international arbitration in the future. It should be noted here that “enforceability of awards” was consistently ranked the most valuable characteristic of international arbitration both in the 2015 survey⁵⁸ and in the current survey (Chart 3). The fact that 43% of respondents take the view that greater certainty and enforceability of awards is likely to have a significant impact on the future of international arbitration may be indicative of a perceived gap between the theoretical ease of award enforcement promoted by the provisions of the New York Convention and potentially less successful practical experiences of respondents seeking to enforce arbitral awards in various jurisdictions.



80%

of respondents believe that “**arbitral institutions**” are best placed to make an impact on the future evolution of international arbitration

A number of interviewees also alluded to the fact that arbitration is ultimately “only as good as the courts allow it to be.” Taking note of the seeming expansion of arbitration in less developed jurisdictions, several interviewed respondents identified the need for local courts to become more familiar with the awards recognition and enforcement mechanisms provided by the New York Convention, which would, in turn, lead to a more protective stance towards arbitration.

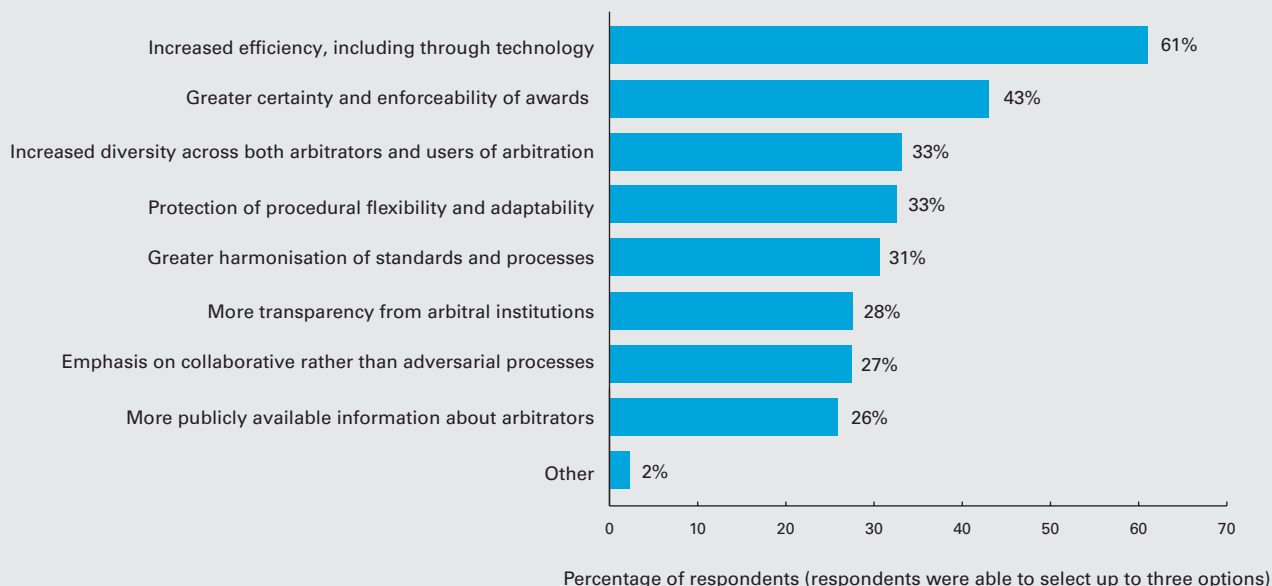
Reinforcing findings in other parts of the survey, respondents picked “increased diversity across both arbitrators and users of arbitration” and “protection of procedural flexibility and adaptability” as the third most likely factors to have a significant impact on the future of international arbitration.

The emphasis on diversity is reflective of the general recognition that the international arbitration community continues to reach more potential users who bring different views, backgrounds and experiences to arbitral discourse—a hugely positive and desirable phenomenon. It is equally desirable that that rich diversity be reflected across tribunals as well as the wider community of users, as discussed further above at pp. 16-20.



It is the stakeholders whose existence is essentially symbiotic with the system of international arbitration who are seen to have the ultimate stewardship of it

Chart 40: In your view, which of the following factors will have the most significant impact on the future evolution of international arbitration?



“Flexibility” was found to be the third most valuable characteristic both in the 2015 survey⁶⁹ and in the current survey (Chart 3). As explained in the preceding chapter at p. 26, there is a notable dissatisfaction among users with respect to the “lack of creativity” shown by both arbitrators and counsel when it comes to tailoring the structure of the proceedings according to the specific needs of the case before them. The importance placed on these issues by users may explain why so many of them expect their desire for “procedural flexibility and adaptability” will have a significant impact on the future evolution of arbitration.

Overall, other factors such as “more publicly available information about arbitrators” or “more transparency from arbitral institutions” were chosen slightly less often. However, an analysis of the subgroups

based on primary role revealed some interesting results, perhaps commensurate with the interests and motives specific to those subgroups. The full-time arbitrators’ subgroup, for example, ranked “emphasis on collaborative rather than adversarial processes” as the second most likely factor to have a significant impact on the future evolution of international arbitration (40%), while the in-house counsel subgroup reflected a marked preference for “more publicly available information about arbitrators” as the second most selected option (45%).

It thus appears that international arbitration has, to date, evolved largely in response to needs identified by its users. It will be interesting to see whether, and to what extent, the expectations and drivers articulated by the respondents to this survey will have a similar impact on the future evolution of arbitration.

Endnotes

- 1 Please note that due to rounding, some percentages shown in the survey charts may not equal 100%.
- 2 2015 International Arbitration Survey, p. 5.
- 3 In 2015, “confidentiality and privacy” was the second most selected valuable characteristic for in-house counsel (2015 International Arbitration Survey, p. 6).
- 4 2006 International Arbitration Survey, pp. 6-7; 2015 International Arbitration Survey, p. 7.
- 5 This perceived reluctance, coined “due process paranoia” by an interviewee for our 2015 survey, is addressed in greater detail in at p. 27.
- 6 2015 International Arbitration Survey, p. 7.
- 7 2015 International Arbitration Survey, p. 12 (Chart 8).
- 8 London, Geneva, Paris, Singapore and New York were among the most preferred seats in the 2010 International Arbitration Survey (p. 19).
- 9 2015 International Arbitration Survey, p. 11.
- 10 These subgroups reflect the data collected from users who have stated that they principally practise or operate in a particular region, or in a multitude of regions that includes the particular region on which the subgroup is based.
- 11 In fact, Paris was the second most preferred seat in all regions, except Asia-Pacific, where it took fourth place.
- 12 Rio de Janeiro came 14th in the global ranking of seats and eighth in the Latin American subgroup.
- 13 Miami ranked 12th in the global ranking and was the seventh most preferred seat in the Latin American subgroup.
- 14 2015 International Arbitration Survey, p. 15.
- 15 2010 International Arbitration Survey, p. 17.
- 16 2010 International Arbitration Survey, p. 18 (Chart 14).
- 17 2015 International Arbitration Survey, p. 14 (Chart 10).
- 18 2015 International Arbitration Survey, p. 12; 2010 International Arbitration Survey, p. 19.
- 19 These overall trends were confirmed across the regional subgroups, too, as no major shift in user perception was identified.
- 20 2010 International Arbitration Survey, p. 19.
2015 International Arbitration Survey, p. 12.
- 21 2006 International Arbitration Survey, p. 12; 2010 International Arbitration Survey, p. 23 (Chart 17); 2015 International Arbitration Survey, p. 17.
- 22 The HKIAC attracted a steady 28% of respondents in 2015 who included it among their three preferred institutions, and 27% who selected it amongst their top five picks in the current study. The 2015 figure for the SIAC was 21% of respondents, rising significantly in the current study to 36% of respondents.
- 23 Even though the LMAA is not formally classified as an arbitral institution, for ease of reference the current analysis refers to it as if it were an arbitral institution in the common sense of the word, reflecting its nomination by respondents to this question.
- 24 The 2015 survey noted a similar trend whereby interviewees often showed preference for an arbitral institution in the region in which they were based, alongside appreciating widely recognised global institutions such as the ICC (2015 International Arbitration Survey, p. 17).
- 25 2015 International Arbitration Survey, p. 18.
- 26 This option was ranked third in the 2015 study.
- 27 Even in the case of institutions that do not publish lists of recommended arbitrators, their suggestions and assistance in the appointment process are often asked for by the parties.
- 28 2010 International Arbitration Survey, p. 27.
- 29 Although, as noted above, it cannot be assumed that all private practitioners enjoy the same level of access to the same amount and quality of information about arbitrators.
- 30 In-house counsel were instructed to assume that they do not have any information from external counsel.
- 31 2010 International Arbitration Survey, p. 28 (Chart 23).
- 32 2010 International Arbitration Survey, p. 28.
- 33 2015 International Arbitration Survey, pp. 45-47.
- 34 The charts reflect a ‘neutral’ perception using grade score 3, a ‘negative’ perception using grade scores 1-2 and a ‘positive’ perception using grade scores 4-5.
- 35 The 2015 survey reported that 46% of respondents had a ‘neutral’ perception, 28% indicated a ‘positive’ view and 26% expressed that their perception was ‘negative’ (p. 46, Chart 42).
- 36 The data collected for the 2015 survey suggested a similar trend (2015 International Arbitration Survey, p. 47).
- 37 2015 International Arbitration Survey, pp. 45-46.
- 38 2015 International Arbitration Survey, p. 10.
- 39 2015 International Arbitration Survey, p. 7.
- 40 2015 International Arbitration Survey, p. 10; 2018 International Arbitration Survey, p. 8.
- 41 The 2015 survey found that “confidentiality and privacy” was the second most frequently listed valuable characteristic of arbitration in the in-house counsel subgroup (p. 6).
- 42 2010 International Arbitration Survey, p. 29 (Chart 26).
- 43 2010 International Arbitration Survey, p. 30.
- 44 2013 International Arbitration Survey, pp. 7-9.
- 45 The 2013 International Arbitration Survey reported that 82% of respondents preferred court litigation for financial disputes, compared to 23% who expressed a preference for arbitration (p. 7).
- 46 2013 International Arbitration Survey, p. 8.
- 47 See, e.g., Special Update on Investor-State Dispute Settlement: Facts and Figures [IIA Issue Note, No. 3, 2017], p. 2, fig. 1, showing the number of known treaty-based investor-State Dispute Settlement cases between 1987 and 31 July 2017.
- 48 2015 International Arbitration Survey, p. 25.
- 49 The problem of arbitration’s perceived “lack of speed” has been repeatedly confirmed not only in the current study (Chart 4), but also in the 2015 survey, which reported that it was considered the fourth worst characteristic of arbitration at the time of the research (p. 7).
- 50 The 2012 survey reported that 67% of respondents believed that sole arbitrators should issue their awards within three months after the closing of the proceedings, while 78% expressed that three-member tribunals should render their awards either within three months (37%) or in three to six months (41%) (p. 39).
- 51 2010 International Arbitration Survey, p. 32.
- 52 2012 International Arbitration Survey, p. 41.
- 53 Both the current survey (Chart 4) and the 2015 survey (p. 7) showed that this feature ranked second among the worst characteristics of arbitration.
- 54 2015 International Arbitration Survey, p. 10.
- 55 2015 International Arbitration Survey, p. 34.
- 56 2015 International Arbitration Survey, p. 35.
- 57 2015 International Arbitration Survey, p. 7.
- 58 2015 International Arbitration Survey, p. 6.
- 59 2015 International Arbitration Survey, p. 6.

A close-up, low-angle shot of a dark, glossy car body panel. The surface is highly reflective, showing bright highlights and deep shadows. In the upper right corner, a portion of a honeycomb grille is visible. The overall tone is dark and moody, with a focus on the texture and curves of the car's exterior.

Appendices

Methodology

The research for this study was conducted from October to December 2017 by Mr Adrian Hodis, LLB, LLM, attorney registered with the Cluj Bar, White & Case Research Fellow in International Arbitration, School of International Arbitration, Centre for Commercial Law Studies, Queen Mary University of London, together with Professor Stavros Brekoulakis, LLB (Athens), LLM (London), Professor in International Arbitration, School of International Arbitration, Centre for Commercial Law Studies, Queen Mary University of London. Professor Loukas Mistelis, Clive Schmitthoff Professor of Transnational Commercial Law and Arbitration, and Director, School of International Arbitration at Queen Mary University of London, was also instrumental in designing the questionnaire.

An external focus group comprised of senior in-house counsel, senior representatives of arbitral institutions, private practitioners and arbitrators provided valuable feedback on the draft questionnaire.

The research was conducted in two phases: the first quantitative and the second qualitative.

Phase 1: an online questionnaire of 53 questions (of which 43 were of substantive nature) was completed by 922 respondents between 10 October 2017 and 17 December 2017. The survey sought the views of a wide variety of stakeholders in international arbitration. 66% of respondents (and 78% of the organisations they represent or with which they are connected) declared that they have been involved in more than five international arbitrations over the past five years. The respondent group consisted of private practitioners (47%), full-time arbitrators (10%), in-house counsel (10%), “arbitrator and counsel in approximately equal proportion” (12%), and others⁶⁰ (21%). A reference to “respondents” in the report refers to those respondents who answered that particular question. The questionnaire responses were analysed to produce the statistical data presented in this report.



922
respondents to the questionnaire



142
face-to-face or telephone interviews

Phase 2: 142 face-to-face or telephone interviews, ranging from 10 to 100 minutes long, were conducted between 1 November 2017 and 18 December 2017. Interviewees were drawn from a diverse group based on primary role, seniority, experience in international arbitration and geographical location. Respondents from 30 countries and 42 cities across all continents (except Antarctica) were interviewed. The qualitative information gathered during the interviews was used to supplement the quantitative questionnaire data, to nuance and further explain the findings on particular issues covered in the survey.

The charts in this section illustrate the composition of respondents by: primary role, geographic region of primary practise or operation, primary industry, and experience in international arbitration.

Chart 41: What is your primary role?

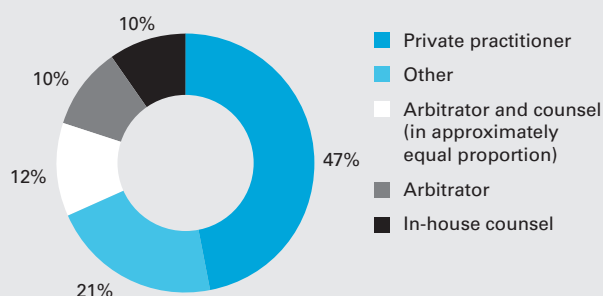
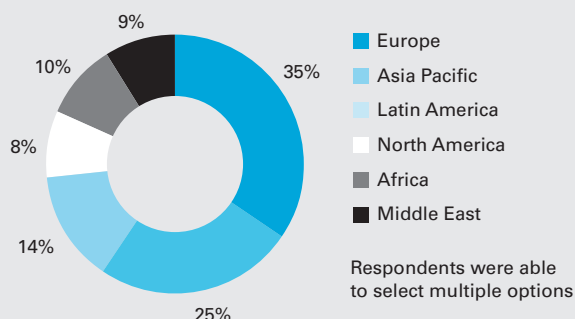


Chart 42: In which region(s) do you principally practise or operate?



60 This included, for example, academics, judges, third party funders, government officials, expert witnesses, economists, entrepreneurs, law students and respondents who did not specify their position.

Chart 43: Primary industry in which your organisation operates

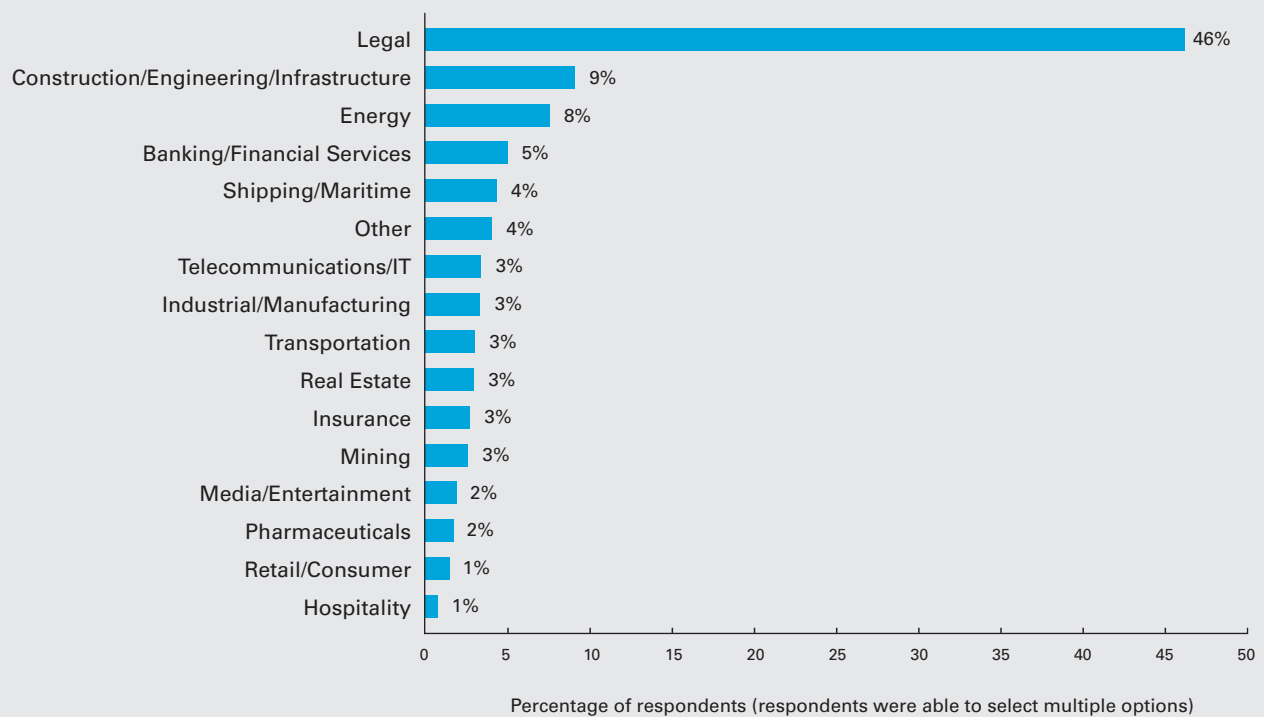
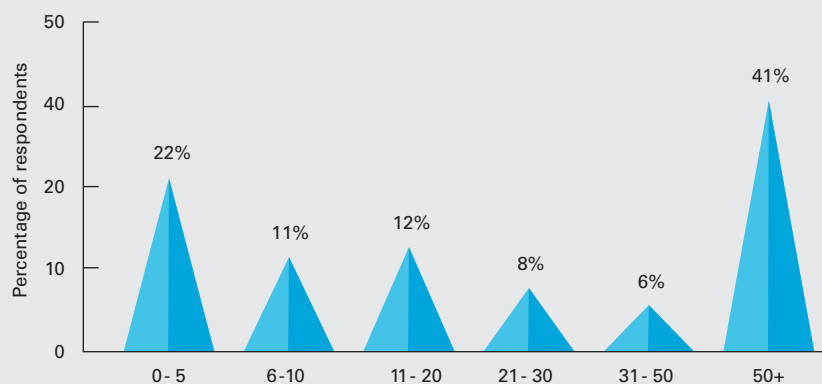


Chart 44: Over the past five years, approximately how many international arbitrations have you personally been involved in?



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