International Arbitration Survey
Key findings

Choices about international arbitration

- 68% of corporations have a dispute resolution policy. Whether or not they have a policy, corporations generally take a reasonably flexible approach to negotiating arbitration clauses. They have strong preferences regarding confidentiality and language and reasonably strong preferences regarding governing law and seat

  See Page 5 and Chart 1 of the Report

- The law governing the substance of the dispute is usually selected first, followed by the seat and then the institution/rules. 68% of respondents believe that the choices made about these factors influence one another, particularly in relation to the governing law and seat

  See Page 8 and Charts 4, 5 and 6 on Page 9 of the Report

- The general counsel is usually the lead decision-maker on arbitration clauses (33%), although the legal department may only be brought into negotiations at a late stage. A number of interviewees referred to the difficulties of ensuring arbitration clauses are considered early in the negotiation process. Many referred to it as the "2am clause" or similar and described how often they are brought into negotiations late and expected to conclude dispute resolution with minimal negotiation because the commercial terms are settled

  See Page 10 and Chart 7 of the Report

Choice of law governing the substance of the dispute

- 40% of respondents use English law most frequently, followed by 17% who use New York law

  See Page 14 and Chart 11 of the Report

- Choice of governing law is mostly influenced by the perceived neutrality and impartiality (66%) of the legal system with regard to the parties and their contract, the appropriateness of the law for the type of contract (60%) and party's familiarity with the law (58%) *

  See Pages 11 and 12 and Chart 8 on Page 12 of the Report

- The use of transnational laws and rules to govern disputes, at least partially, is reasonably common (approximately 50% have used them at least 'sometimes'), but varies according to the source and nature of the law or rules

  See Page 15 and Chart 12 of the Report *

- The interviews suggested that familiarity is a powerful influence. A number of interviewees said that if they cannot adopt their own national law as the governing law, they will seek

* These are weighted percentages and represent the top scoring reasons.

alternatives that have a similarity with their law (this might include a law on which their national law has been modelled e.g. Swiss law for Turkish companies, or a law from the same broad legal tradition, e.g. common law or civil law)

See Page 11 of the Report

- 53% of respondents thought that an extensively drafted contract can limit the impact of the governing law 'to some extent.' 29% thought that the impact could be limited 'to a great extent.' This suggests that corporate counsel do seek to cover off at least some substantive legal issues in their contracts

See Page 16 and Chart 13 of the Report

Choice of the seat of arbitration

- Choice of seat is mostly influenced by 'formal legal infrastructure' (62%), the law governing the contract (46%) and convenience (45%) *

See Page 17 and Chart 14 on Page 18 of the Report

- London is the most preferred seat of arbitration (30%), followed by Geneva (9%), Paris, Tokyo and Singapore (each 7%) and New York (6%). The top three preferred seats are consistent with those chosen in the 2006 School of International Arbitration / PricewaterhouseCoopers survey. In the 2010 results it appears that the wider sample has diluted some of the preferences for more 'traditional' seats, reflecting the broad range of preferences regarding seat

See Page 19 and Chart 15 of the Report

- London, Paris, New York and Geneva are the seats that were used most frequently by respondents over the past five years. The level of user satisfaction for these seats is very high: for all four seats a majority of users described them as either 'excellent' or 'very good'

See Pages 19 and 20 of the Report

- Singapore has emerged as a regional leader in Asia. Although the respondent sample from Asia was slightly higher in this year's survey, the findings suggest that Singapore has grown as a regional leader since the 2006 survey. It appears that the promotion of Singapore as an arbitral seat with the active *involvement of more arbitral institutions (such as ICC and AA/ICDR) have paid dividends and Singapore clearly emerges as the most popular Asian seat. Its movement is evidence of the trend towards regionalisation in arbitration identified in the 2006 survey

See Page 20 of the Report

- Respondents have the most negative perception of Moscow and Mainland China as seats of arbitration

See Page 20 of the Report

* These are weighted percentages and represent the top scoring reasons.

Choice of arbitration institution

- The most important considerations in the choice of arbitration institution are neutrality/'internationalism' (66%) followed by reputation and recognition (56%) *

  See Page 21 and Chart 16 on Page 22 of the Report

- The ICC is the most preferred and widely used arbitration institution (50%), followed by the LCIA (14%), AAA/ICDR (8%) and SIAC (5%), although there was a perception amongst a majority of interviewees that ICC arbitration is too expensive and that arbitration institutions in general are costly

  See Pages 23 and 21 and Chart 17 on Page 23 of the Report

- ICC, LCIA and AAA/ICDR are the institutions used most frequently by respondents over the past five years*. For all three institutions, a majority of users described them as either 'good' or 'better.'

  See Pages 23 and 24 and Chart 18 on Page 23 of the Report

- Respondents have the most negative perception of CRCICA, DIAC and CIETAC

  See Page 24 of the Report

Appointment of arbitrators

- Open-mindedness and fairness (66%), prior experience of arbitration (58%), quality of awards (56%), availability (55%), reputation (52%), knowledge of the applicable law (51%) are the key factors that most influence corporations' choices about co-arbitrators (as opposed to sole arbitrators or Chairs of tribunals) *

  See Page 26 and Chart 19 of the Report

- 50% of respondents have been disappointed with arbitrator performance. The main reasons for this were 'a bad decision or outcome' (20%), followed by excessive flexibility or failure to control the process (12%). 11% said the arbitrator caused delays and 9% each said that there was poor reasoning in the award and the arbitrator lacked knowledge and expertise in the subject matter of the dispute. 8% said that the arbitrator was tardy in rendering the award. Lack of independence, bias and awarding oneself excessive fees were also other concerns expressed by respondents *

  See Page 26 and Chart 20 of the Report

- 75% want to be able to assess arbitrators at the end of a dispute. Of these, 76% would like to report to the arbitration institution (if any). 30% would like to be able to submit publicly available reviews

  See Page 28 and Chart 23 of the Report

* These are weighted percentages and represent the top scoring reasons.

Confidentiality

- Anecdotally, it has been suggested that confidentiality is the single most important factor that leads parties to arbitration. The survey indicates that confidentiality is very important to respondents (62%), but it is not the essential reason for recourse to arbitration

  See Pages 29 and 30 and Chart 25 on Page 29

- 50% of respondents erroneously believe that arbitration is confidential even where there is no specific clause to that effect in the arbitration rules adopted or the arbitration agreement and a further 12% did not know whether arbitration is confidential in these circumstances

  See Page 29 and Chart 26 of the Report

- 38% of corporations surveyed would still use arbitration if it did not offer the potential for confidentiality

  See Page 30 and Chart 27 of the Report

- A number of interviewees noted the various obligations of corporations to report to shareholders, make disclosures in their annual accounts and reports, and otherwise announce significant information to the market (for publicly listed companies) that may cut across confidentiality in its strictest sense

  See Page 29 of the Report

Time and Delay

- Disclosure of documents, written submissions, constitution of the tribunal and hearings are the main stages of the arbitral process that continue to suffer delay

  See Page 32 and Chart 30 of the Report

- According to respondents, parties contribute most to the length of proceedings, but it is the tribunal and the arbitration that should exert control over them to keep the arbitral process moving quickly

  See Page 32 of the Report