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Harbour View

International arbitration

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Featuring topical articles by guest authors and the Harbour Team.

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Contents

International arbitration
All change, all change

By Dominic Afzali, Associate Director Litigation Funding, Harbour

Arbitration is a crucial tool in dispute resolution due to the flexibility and confidentiality it can offer. It is, however, not always the cheaper alternative to litigation. Companies have to bear the costs of the arbitrator(s) and the institutional costs, above their own legal fees. But funders can help by taking the risk and cash flow burden.

Funding arbitrations is an intrinsic part of our business, and devoting an entire edition of Harbour View to arbitration seemed an obvious step to take.

Such an edition would not be complete without reviewing the potential implications of the *Achmea* judgment on investment treaty arbitration. Professor Nikos Lavranos, EFILA, offers his observations.

The arbitral world is not immune to demands to use technology to encourage efficiency, save time and indeed costs. Two obvious areas for arbitral tribunals to consider the use of technology are e-bundling and video-conferencing. We asked Dame Elizabeth Gloster, who presided over *Berezovsky* – a $4 billion trial using cloud-based electronic bundle technology to deal with 5,000+ documents in multiple languages – for her views.

Another much heard demand relates to the need to open up the process around arbitrator selection. Philippa Charles from Stewarts looks at several proposals that may help shine a light on this dark art and compares this to the information parties effectively gather and how they do so.

We can all agree that effective enforcement holds the key to a successful arbitration. It should be remembered that arbitral awards are not directly enforceable and, in the absence of voluntary compliance, judicial remedies will be required. James Ramsden QC, 39 Essex, and Nick Connon, Quintel, discuss the hurdles that can cause delay and offer solutions to reduce enforcement risk.

If we look what is happening worldwide, change shows its face in many guises.

At the beginning of August 2018, ICSID issued a **Working Paper** related to its proposals for amendment of the ICSID Rules with a view to continue modernisation, simplify the rules, reduce time and cost and reduce the paper burden. Written comments by the public and Member States should be submitted by 28 December 2018.

The Hong Kong Department of Justice released the draft **Code of Practice for Funders** early September and opened this up for consultation, ending 30th October. Once this code has been approved, third party funding in arbitration will be a reality in Hong Kong.

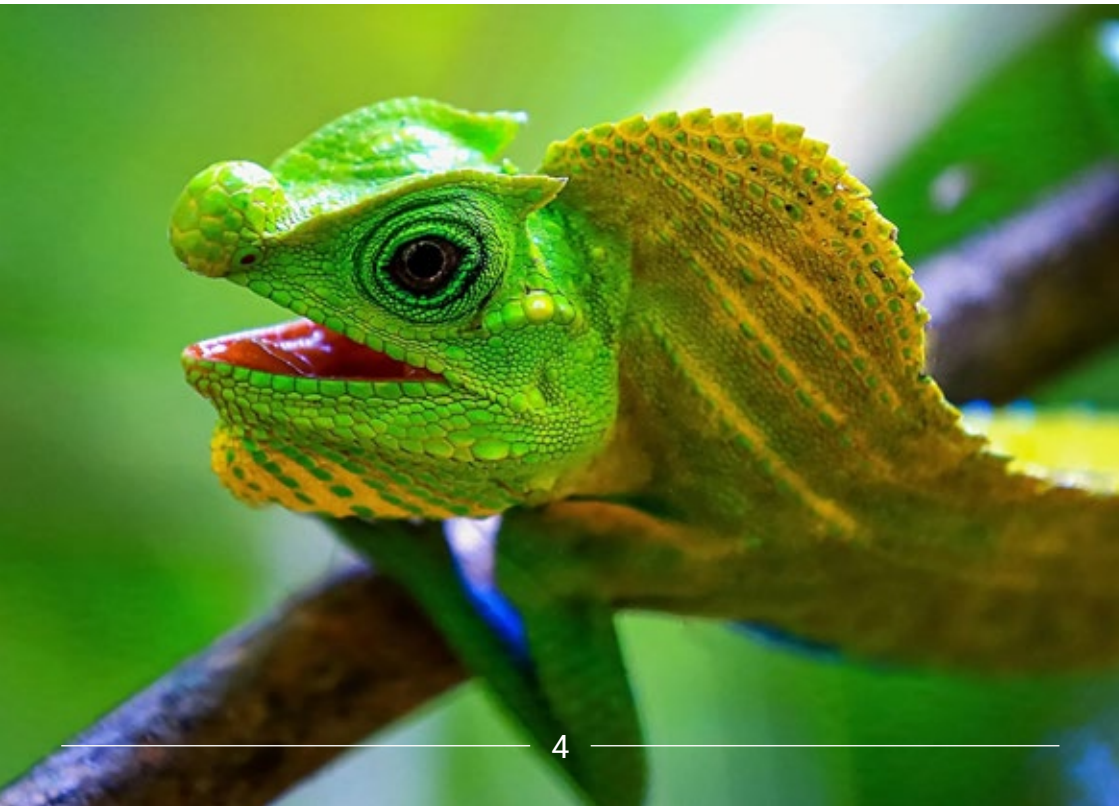
The establishment of international commercial courts continues, offering an alternative dispute resolution mechanism globally. With the newest additions opened in China, it is worth reviewing what this means for international arbitration. It is key for commercial parties to understand the differences, and Nicholas Lingard, Kate Apostolova and Sophie Ryan from Freshfields identify several such differences. But is it just about competition? Could they co-exist in harmony?

With a view to attract foreign investment into India, the 2015 Amendments to the Arbitration Act specified, among other things, that the award shall be made within twelve months from the date the arbitral tribunal enters upon reference. Sherina Petit, Norton Rose Fulbright LLP, and Nosherwan Vakil, High Court Bombay, discuss the state of play three years since time limits were introduced.

The time could be ripe for third party funding becoming a reality in Brazil. João Eduardo Cerdeira de Santana and Renata Duarte de Santana, CSI Associados, explain the circumstances which allow TPF to flourish there.

Last but not least, one of the major challenges for the arbitration community as a whole is to progress diversity in gender, age and ethnicity. How can it attract young talent? Can it move beyond the "male, pale and stale" stigma? Whom better to discuss this with than Amanda Lee, Global Chair of the Chartered Institute of Arbitrators' (CIArb) Young Members' Group (YMG).

Enjoy the edition!



The *Achmea* judgment
The end of investment treaty arbitration?

By Prof. Nikos Lavranos, Secretary General of EFILA

The long-awaited Achmea judgment rendered by the Court of Justice of the EU (CJEU) last March sent shockwaves across the arbitration community. While its wider consequences for Bilateral Investment Treaties (BITs) are still unclear, I present my observations on its potential implications.

The *Achmea* case

Achmea, a Dutch health insurance company, initiated arbitration proceedings against Slovakia based on the Netherlands-Czechoslovakia BIT of 1991, after Slovakia had adopted legislation which re-nationalised the health insurance sector and thus effectively expropriated Achmea. Frankfurt was the seat of the arbitration.

In 2012, Achmea won the arbitration proceedings and was awarded €22 million plus interest. Subsequently, Slovakia initiated setting aside proceedings before the Frankfurt Court, claiming that the arbitral tribunal lacked jurisdiction – this intra-EU BIT no longer being applicable since Slovakia's accession to the EU – and in any case, EU law prohibits the use of international arbitration within the EU.

The Frankfurt Court rejected said application, which Slovakia then appealed before the Bundesgerichtshof. Not convinced by the Slovak arguments, it nonetheless felt obliged to request a preliminary ruling from the CJEU to answer the question on the (in)compatibility of international arbitration based on intra-EU BITs with EU law.

The CJEU declared the arbitration provision in the BIT incompatible with EU law. The main reason being that arbitral tribunals operate "outside" the domestic legal system of the Member States and therefore cannot request preliminary rulings from the CJEU whenever EU law is at issue.

In other words, arbitral tribunals operate outside the control of the CJEU, which might endanger the uniformity and consistency of EU law and undermine the final authority of the CJEU. It is worth noting that the CJEU in Achmea did not make any distinction between UNCITRAL and ICSID arbitral awards. Neither did the CJEU distinguish between arbitral tribunals seated within the EU – as was the case in Achmea – and arbitral tribunals seated out-side the EU.

The implications

It should be emphasised that the CJEU did not declare the whole Netherlands-Czechoslovakia BIT incompatible with EU law, but solely the particular arbitration provision contained therein. Neither did the CJEU say anything more general regarding the other 190 existing intra-EU BITs. Despite the announcement of, for example, the Netherlands that it is now obliged to terminate all its intra-EU BITs, no termination

of intra-EU BITs following the *Achmea* judgment has ostensibly taken place so far.

Accordingly, European investors are still able to bring cases against EU Member States based on intra-EU BITs. This is particularly so since the arbitration provisions in the other intra-EU BITs differ from the one that has been declared incompatible with EU law.

Beyond intra-EU BITs, the *Achmea* judgment has been used by several states to annul or set aside awards rendered under the Energy Charter Treaty (ECT). In particular, Spain, which is facing more than 30 intra-EU ECT claims, has been attempting to use the *Achmea* judgment to annul or set aside awards that have been rendered against it. Various ECT arbitral tribunals have not been impressed by Spain's attempt and concluded that the *Achmea* judgment has no bearing on their ECT cases, but the Stockholm Court has reportedly asked preliminary questions to the CJEU. Essentially, it wants to know whether the arbitration provision in the ECT is compatible with EU law. Depending on the CJEU's conclusion, the impact for European investors could be significant. A reliance on domestic courts in the EU Member States would be less than ideal because of their perceived lack of independence and impartiality.

Finally, the *Achmea* judgment (and the *Micula* case, still pending before the CJEU) could have negative implications for the recognition and enforcement of investment treaty awards within the EU. A domestic court in an EU Member State, asked to recognise and enforce an award that has presumably been rendered on the basis of an incompatible dispute resolution clause, would most likely refuse such a request.

While only the coming years will provide clarity on how the domestic courts in the EU Member States will handle this issue, it seems safe to assume that the recognition and enforcement of awards within the EU is facing increasing difficulties.

The end?

It is tempting to conclude that the end of investment treaty arbitration within the EU is near. While too early to call it a day, it is clear that investment treaty arbitration proceedings will become a less attractive option for investors/claimants. One must look for alternatives, for example by structuring investments outside the EU and thus making use of non-EU BITs, as well as seeking recognition and enforcement of awards outside the EU.

Investment treaty arbitration in the EU will become more complicated, and possibly more costly, but certainly not impossible.

"It is tempting to conclude that the end of investment treaty arbitration within the EU is near."

Technology in commercial arbitration
Time to throw away the comfort blanket?

By Dame Elizabeth Gloster

In its **Report on the Use of Information Technology** in International Arbitration published in October 2017 the ICC Commission and Task Force wrote:

"As work on this report progressed, the lack of reliable and statistically significant information concerning the frequency and sophistication of IT use in international arbitration became apparent. Despite the availability of 'war stories' and anecdotes (which are often interesting but might have been shared to show that the arbitrator or lawyer who shared them is 'IT savvy'), 'hard' data was scarce. Ironically, this dearth of information is probably good news. Given that bad experiences are often reported immediately to the arbitration community, the absence of negative data and anecdotes in relation to IT use suggests that IT is not disruptive and has not created new procedural hurdles or difficulties that would be worth mentioning."

IT can be of tremendous assistance in international commercial arbitration, as indeed it is in commercial litigation, to parties and decision makers alike. We know that the use of email communication, videoconferencing and hyperlinked e-briefs is frequent and ubiquitous; and that digitalised document handling and processing and exhibit organization and display can, in appropriate cases, significantly contribute to the efficiency of the arbitral process or judicial determination[1] or indeed save costs.

But what would be interesting – and useful to have – is hard data to provide a basis for research as to whether the leopard has indeed changed his spots.

Have counsel in witness-heavy arbitrations really abandoned the comfort blanket of hard copy marked-up lever arch files for the delights of the digitally high-lighted e-bundle when it comes to a lengthy cross-examination of a difficult – if not mendacious – witness? Does the arbitrator – on the side – print out hard copies of all the documents that he or she thinks relevant to the case? Can counsel as effectively cross-examine a witness by video-link? Is an arbitral tribunal able adequately to judge credibility of a witness by seeing that witness "perform" on screen? Should a losing party feel resentful that he has not had a fair hearing where all or part of the arbitral process has been conducted in a remote virtual environment as opposed to in person?

Of course, one answer to all these questions is that it depends on the type of arbitration, the issues involved and the requirements of the particular case. While the ICC Task Force in its report "enthusiastically" recommended the use of IT in international arbitration whenever appropriate and expressed the view that:

"At least based on anecdotal evidence, our sense is that generally available IT solutions probably are not used to save time and costs as effectively

as they could be. For example, despite the advent of readily available means of videoconferencing (e.g. Skype; FaceTime), some tribunals and parties remain reluctant even for minor witnesses to testify by video…"

it nonetheless acknowledged that use of specific IT was a matter for the parties and the tribunal to decide and that:

"Whether and how IT may be appropriate to a particular case will depend on many factors, including, for example, communication and storage security requirements, the parties' agreements and preferences, the tribunal's preferences, the amount in dispute, the parties' respective budgets, the disputed issues in the case, and the technology available to the parties and the tribunal. Thus, the Task Force does not suggest whether, when, or how IT should be applied in any particular case, and this report does not attempt to define 'rules' concerning IT."

With the hope that they will not be characterised as "war horse" tales – since they largely derive from my recent experiences as a Commercial Court and Court of Appeal judge and those further-off days as a commercial QC – I would venture to express the following (non-prescriptive!) views, subject to the caveats already stated.

E-bundling

E-bundling in a document heavy case, so far as a tribunal is concerned, is a necessity not a luxury. But the files have to be appropriately tabulated, organised and paginated in the same way that a hard-copy bundle would be, so that they are easily identifiable and searchable. Being invited to go to page 2473 of 4769 in one long unnamed pdf file is not an attractive request to an arbitrator.

And if the tribunal is supplied with an e-bundle, I personally don't want also to be provided with a hard copy version – often still the norm. If I want, I can print off the critical provisions of the contract or other critical documents.

If witness statements (often the creation of the legal imagination of the relevant party's lawyer… but that is another story) refer to documents, they should be hyperlinked as a matter of course.

I have mixed views as to whether it is really feasible for counsel to cross-examine effectively from an electronic bundle in a document-heavy case. Maybe the next – and more e-savvy – generation of lawyers will be able to do so, but my experience is that counsel still prefers the comfort blanket of the hard copy, which involves the trolley load of files being wheeled into the hearing room at the start of the day.

Why is this? I think that it has a lot to do with sight lines. Counsel needs to maintain relatively continuous eye to eye contact with the witness and indeed with members of the tribunal. That is difficult to achieve if counsel is having to locate the relevant document, and the relevant passage, on the computer. And time can be wasted searching for the document electronically.

Likewise, the informed witness, who is being cross-examined, may well ask to have the documents available in a hard-copy bundle as it is often easier to flick forward to see what document is coming next and so be prepared for the next question! It might be a bold tribunal who would refuse a witness that facility and I have never seen it done.

Video-conferencing

I share the ICC Commission's view that it is desirable that IT solutions should be used more frequently to save time and costs, but a tribunal nonetheless needs to be conscious of the possible limitations of a video-conference hearing.

While some, perhaps minor, witnesses can usefully be cross-examined in a virtual

environment, where a substantive challenge is mounted to a witness' evidence, both the tribunal and cross-examining counsel may need to have the witness there in person. That is not only so that the tribunal can more adequately assess credibility and reliability, but also so that counsel can maintain the impact and momentum of cross-examination. Both can be lost where cross-examination is conducted remotely.

Likewise, although a video-conference hearing may be suitable for a procedural or directions hearing or some substantive hearings even where witnesses are involved, in a case where complex issues need to be resolved by the tribunal it may often be more efficient and cost effective for the hearing to take place in person with all members of the tribunal and the parties' legal representatives present.

What will be the correct combination of virtual hearing or in person hearing, and the extent of the IT assistance required, will always, as I have emphasised, depend on case-specific factors and the requirements of the parties. But while, as an arbitrator, one can enthusiastically embrace the huge assistance that IT affords to the dispute resolution process, it is critical to remember that any solution will need, above all, to ensure that the respective parties are fairly treated and are perceived to have been so treated.

The Rt Hon Dame Elizabeth Gloster, until 31 May 2018 a Lady Justice of the Court of Appeal of England and Wales and Vice-President of the Court of Appeal, Civil Division; now an arbitrator at One Essex Court, Temple, EC4Y 9AR.

1 See as an example of the utility of IT paragraph 1250 of my judgment in *Berezovsky v Abramovich* (Rev 1) [2012] EWHC 2463 (Comm) (31 August 2012; **http://www.bailii.org/ew/cases/EWHC/Comm/2012/2463.html**

Arbitrator selection
Shining light on a dark art

By Philippa Charles, Partner and Head of International Arbitration, Stewarts

Of the many Dark Arts associated with the practice of international arbitration, one of the darkest is the process by which arbitrators are selected and nominated by parties. Recently, "intelligence" initiatives have been introduced with the aim of shining a light into this dark process. These tools are marketed as being of assistance to help parties or advisers who are not steeped in arbitration lore to make better-informed proposals. A further goal is, perhaps, to encourage greater diversity in arbitrator appointments by making better information available about candidates, to parties who are looking for arbitrators to appoint.

The IBM principle

Instinctively, many practitioners feel more comfortable nominating an arbitrator already known to them, either from a previous case or from the "conference circuit". Equally, many will prefer to nominate an arbitrator who shares (or whom they believe will share) an approach to the law in a particular area. Another important factor – particularly in nominating a three-person tribunal – is the influence it is thought that the party-nominee may wield in the tribunal as a whole.

The result in many cases is that arbitrator selection proceeds on the "IBM principle" – the idea that one can never go wrong picking a known quantity with brand recognition. This has led to the perception that dominance of the appointment market by a small group of well known arbitrators makes it hard for younger or more diverse candidates to be appointed, as well as generating a sense of arbitration being a closed shop, and further that there are no objective mechanisms to verify how well an arbitrator's brand matches their performance.

How much assistance are the new tools in addressing these perceptions? And how much store does the arbitration practitioner community set by this type of transparency initiative?

Proposed intelligence offerings

Biographical information about an arbitrator gives little by way of insight into their likely approach either to the substance or to the procedure of the arbitration. That gap is most often filled by "inside information". Indeed many practitioners in large firms will cite their collective market knowledge and experience as a clear advantage to their instructing client.

GAR's Arbitrator Research Tool aims to give a nominating party access to those who can provide a level of insider knowledge about a proposed nominee by providing details of the co-arbitrators, and the counsel who have appeared before an arbitrator. Without it, a nominating party would not have access to that experience.

"Puppies or kittens" is a concept used in an article first published in early 2016 in the Austrian Yearbook of International Arbitration by Lucy Greenwood, Michael McIlwrath and Ema Vidak-Gojkovic. Their proposal was that arbitrators could be asked – by way of a questionnaire – to give an in-principle view about various aspects of the procedural conduct of the process, which would then provide valuable information to nominating parties as to what to expect from those nominees in terms of, for example, their preference when it comes to disclosure, and the use of a tribunal secretary. When discussed by a panel of well-known arbitrators at a GAR conference in 2016, there was deep resistance to the idea that arbitrators should commit in advance to a binary preference on these matters, instead of proceeding on a case by case basis by reference to the needs of the particular process. GAR's own report on the conference noted the irony that whilst the arbitrators present were reluctant to commit to a position in the way proposed in the "puppies or kittens" article, they nevertheless expressed strong views on some of the relevant aspects of procedure in the course of their remarks at that event.

Another proposal takes the form of post-hearing feedback, either to the institution, or to a third-party aggregator of the feedback, to provide access to views on an arbitrator's performance in a particular case. The horror of a "TripAdvisor for arbitrators" is deep amongst arbitrators, many of whom express concern that it is inevitable that the views of the arbitrator(s) provided by a losing party will be influenced by the party's success (or lack thereof) in the proceedings. Institutions also say that they rarely get post-hearing feedback from the parties such that it is hard to build a database of useful information.

A more neutral feedback option may be supplied by Arbitrator Intelligence (developed by Professor Catherine Rogers with Wolters Kluwer) designed to bridge the knowledge gap by combining a range of objective and subjective feedback on an arbitrator to produce a report on that arbitrator based on a sufficient volume of the data to be a fair assessment of their conduct of proceedings. Arbitrator Intelligence works by asking participants in arbitration to fill in a questionnaire concerning the experience of working with a particular arbitrator(s), and states that its process will avoid the "TripAdvisor" problem by moderating the report by reference to the respondent's role in the arbitration (and, where possible, by reviewing the award itself).

Intelligence required

In the 2018 survey of international arbitration users, conducted by Queen Mary University of London and global law firm White & Case, 39% of the respondents to the survey cited the ability to select tribunal members as a key feature of importance to them in their choice of international arbitration.

"The horror of a 'TripAdvisor for arbitrators' is deep amongst arbitrators…"

Though 70% of respondents said they had sufficient information to make a decision about nomination of arbitrators, primary sources remained "word of mouth", "colleagues' experience of the nominees" and only then publicly available information.

Whilst in the abstract it is a truth generally acknowledged that participants need more published information to improve transparency and diversity of arbitrator selection, the reality is that participants are ambiguous at best as to its effect on the process and as to the benefit which is to be obtained from transparency initiatives. Anecdotal (and almost certainly highly subjective!) views from their own colleagues remain a firm favourite.

A majority of respondents were uncertain whether a diverse arbitration panel improves the quality of the decision making in an arbitration process. Moreover, although nearly half of respondents felt that progress had been made on increasing gender diversity in the formation of tribunals, less than a third considered that there had been progress on issues such as geographic, age or ethnicity diversity in panels. On the assumption that improving diversity in appointments is a desirable attribute of arbitration, respondents were asked who is best placed to drive such change. Their answer: the arbitral institutions, followed by the parties, and lastly by the parties' counsel. More on that in the interview with Amanda Lee, Global Chair of the CIArb's Young Members' Group, elsewhere in this edition.

In relation to diversity, interestingly, studies showed that using a "blind CV" system – and therefore reducing transparency – significantly improves the rate of appointment of diverse candidates. This suggests that the preferred sources of information used by those nominating are in reality unlikely to generate candidates with the most apposite qualifications and experience (the metrics by which a blind CV process operates) – taking us into the realm of the effects of unconscious bias on the nomination process – perhaps a subject for another day!

Conclusion

One could argue that the respondents to the survey are a self-selecting group of experienced arbitration practitioners, and further that their reliance on inside information reflects the relatively juvenile state of the information offerings, both of which are true. However, the quest for transparency will depend on participants in arbitration sharing their anecdotal knowledge for the benefit of the community as a whole, and agreeing that a transparent approach benefits all in ways which may improve diversity too.

Enforcing arbitral awards
Can hurdles be overcome?

By James Ramsden QC, Barrister, 39 Essex Chambers and Nick Connon, CEO, Quintel Intelligence Ltd

"Before long the principle of arbitration may win such confidence as to justify its extension to a wider field of international differences." – Henry Campbell-Bannerman

Arbitration has continued to grow globally over the past 20 years, both in number and value of claims. With the increase in international business transactions, individuals, businesses and sovereign states are well accustomed to arbitration's benefits, with many flocking to established arbitral jurisdictions such as New York, London, Paris, Singapore and Hong Kong.

The power of enforcement

The 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the New York Convention (NYC) is the key enforcement mechanism in international commercial arbitration. The NYC provides the power of enforcement, allowing awards made in one jurisdiction to be enforced in co-operating foreign jurisdictions. It is assisted by relevant domestic arbitration laws which are largely based on the UNCITRAL Model Law on International Commercial Arbitration (the Model Law).

Unlike litigation, the successful party must rely on voluntary compliance with the award or apply to the Court of the relevant jurisdiction for enforcement. This may be met with either a formal challenge to enforcement or an informal attempt to dissipate assets in frustration of the award.

The hurdles

Delay caused by application for enforcement to the local Court can present a problem for parties looking to benefit from their arbitral awards. The delay can provide an opportunity to those disgruntled with the outcome, to begin dissipating their assets.

This problem is enhanced for international assets. Parties seeking to enforce their awards in foreign jurisdictions often face slow Court systems and the various administrative – and possibly unfamiliar – hurdles of foreign jurisdictions. If assets are ultimately no longer available, this clearly jeopardises enforcement.

Applicants in this position can find some support in the form of security and injunctive relief. However, if the rules under which the arbitration is governed do not make express provision for these reliefs, then the parties must again resort to the Courts in the relevant arbitral jurisdiction. When time is of the essence, these delays can be costly, not only making enforcement difficult but perhaps pointless if there are no assets left against which to enforce.

A shadow of uncertainty

A further, although less significant, barrier to enforcement is the legal challenges that can be brought against enforcement itself. The grounds on which this can be done are contained in Article V of the NYC. This lists seven limbs under which a domestic Court may refuse to recognise or enforce an award. This right to challenge will always threaten the certainty of enforcement.

Cases such as *Good Challenger Navegante SA v Metalexportimport SA [2003] EWCA* and *Diag Human SA v Czech Republic [2013] EWHC 3190 (Comm)* remind us of this ever-present hindrance. Both concerned the Secondary Court's disregard for the arbitral judgements made in the primary jurisdictions in which they were awarded. The potential to successfully challenge enforcement essentially casts a shadow of uncertainty around enforcement in international arbitrations.

It should be noted that, ultimately, it is unusual to see challenges to enforcement based on Article V. There remains a strong common desire among NYC signatories to preserve the doctrine of finality as an intrinsic part of the arbitral regime. The recent case of *RBRG Trading (UK) Limited v Sinocore International Co. Ltd [2018] EWCA Civ 838* helps illustrate this commitment. In this case, the UK Courts reinforced their position that a restrictive approach to interpretation of specific grounds of appeal under Article V is necessary. This was echoed in *National Iranian Oil Company v Crescent Petroleum Co International Ltd [2016] EWHC 510 (Comm)*. Awards preventing enforcement will not be awarded lightly in preservation of the pro-arbitration doctrine of finality.

The solutions

At the very heart of resolving the issue of dissipation of assets is effective and well-timed preparation. As mentioned earlier, agreeing a form of security with the other party in advance can serve to mitigate any future problems with dissipation and enforcement.

In addition, carefully selecting the rules by which the arbitration will be governed is paramount. The tribunal should have powers to grant interim relief. This will give parties access to methods that can curb attempts at dissipation. Powers should also include the ability to appoint an Emergency Arbitrator for situations where the substantive tribunal has yet to be formed. This would achieve further certainty regarding enforcement. Institutional arbitral rules such as the ICC, LCIA, ICDR, SIAC and SCC have and are increasingly including powers relating to the appointment of emergency arbitrators to hear interim matters and are increasingly sympathetic to interim orders intended to secure future compliance with any award, but it remains an unusual exercise of jurisdiction.

Where dissipation is a real possibility, clients should ensure they remain ahead of their opponents. It can often be beneficial to work with private forensic investigatory firms, not only in the proceedings but also in fast, targeted action when it comes to selecting jurisdictions for enforcement. Further the asset base can be better monitored to identify possible signs of dissipation.

Clients need to understand the opponent's assets in as wide a context as possible. Historically, identification of assets for enforcement has focussed on homes, vessels and aircraft. These assets are often well obscured through trusts and opaque ownership structures. Whilst determination of the Ultimate Beneficial Owner is very possible using disclosure orders, this naturally takes time and increases costs. Clients should not be intimidated to consider new world assets such as IP or Crypto Currencies which hold real world value and can be successfully enforced against.

Clients need to consider a proactive approach in preparation. Beginning an asset search post-judgement is likely to take longer and cost more and is often too late. Done properly and at the

right time this can prove an invaluable tool in arbitral proceedings where time and quick action are of the essence.

Effective and early scoping of enforcement and asset recovery is a key part of the due diligence required by litigation funders. It should be at the top of every lawyer's check-list, whether the claim is funded or not. Prospects of recovery are every bit as important as prospects of success.

Ultimately defending a challenge to enforcement should be unproblematic given that most relevant jurisdictions are keen to preserve finality. Ensuring the correct processes are followed in the jurisdiction of enforcement is however a must, which means local expert advisors must be appointed. Parties could also benefit from third party funding in these scenarios.

Conclusion

Ultimately, arbitration is an excellent and efficient way of resolving disputes. The finality it provides can be very appealing to clients looking for quick resolutions. There are some challenges around enforcement, but solutions are available.

"Beginning an asset search post-judgement is likely to take longer and cost more and is often too late."

Courting choice

The impact of international courts

By Nicholas Lingard, Partner, and Kate Apostolova, Senior Associate at Freshfields, Singapore

The last several years have witnessed the proliferation of international commercial courts. Despite their "international" moniker, these courts sit wholly within, and are products of, domestic legal regimes, and they apply municipal law.

The newest additions are in China. On 1 July 2018, the *Regulations of the Supreme People's Court on Certain Issues Concerning the Establishment of International Commercial Courts* came into effect, setting out the scope and operation of two new such courts: the China International Commercial Courts or CICCs. The CICCs are a bold innovation, seeking to provide an alternative international dispute resolution mechanism for disputes arising out of President Xi Jinping's Belt and Road Initiative.

But the CICCs are far from the first of their kind. Launched in 2015, their more developed Asian cousin – the Singapore International Commercial Court (SICC) – enjoys a healthy docket of cases transferred from Singapore's line commercial courts. Similar courts exist in Dubai, Qatar and Abu Dhabi – and there are plans for others in Europe.

What does this mean for commercial parties? First and foremost, it means more choice – a fuller suite of dispute-resolution options for commercial parties.

Differences

International arbitration is well-established as the dominant mode of resolution of cross-border commercial disputes. With the emergence of international commercial courts, it is important to understand key differences between arbitration and dispute resolution before those courts. We identify several.

Enforceability

First, given the international character of the CICCs and the SICC, judgments from those courts may need to be enforced abroad.

Being part of their respective domestic legal systems, judgments of the CICCs and the SICC enjoy the same status as judgments of the Supreme People's Court of China and the Supreme Court of Singapore, respectively. As such, the prospect of success will depend on the available mechanisms for enforcement of foreign court judgments, including any applicable treaties the domestic court's State has with the foreign State.

For example, Chinese court judgments may be enforced in Hong Kong under the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap 597). For SICC judgments, Singapore is a party to the 2005 Hague Convention on Choice of Court Agreements, a treaty requiring State

parties to recognise and enforce each other's judgments when it applies.

China is a signatory to the 2005 Hague Convention on Choice of Court Agreements but has yet to ratify it. There are reports that such ratification may be imminent. China is also said to be actively negotiating the Hague Convention on the Recognition and Enforcement of Foreign Judgments to improve the enforceability of its court judgments.

In comparison, as is well-known, awards rendered by arbitral tribunals seated in a New York Convention State may be enforced in any of the more than 150 States that are party to the New York Convention. This is the bedrock of the dominance of international arbitration, and undoubtedly provides a greater level of certainty of enforceability of an arbitral award.

In practice, of course, many parties voluntarily comply with awards and judgments – and that is a factor sophisticated parties will need to weigh in choosing between arbitration and an international commercial court.

Party autonomy

There is also a difference in the autonomy afforded to parties in international commercial courts as compared to arbitration. Autonomy – and the control it entails – is often a major appeal of arbitration.

While the CICCs Regulations and the SICC Practice Directions are tailored to international commercial disputes, their position within broader local court contexts necessarily limits their flexibility.

For example, SICC proceedings ultimately defer to the Singapore Rules of Court, meaning that, while parties can apply to replace domestic court rules of evidence with others, or to determine questions of foreign law on the basis of submissions instead of proof, the outcome is ultimately out of their hands. At present, the CICCs are even more restrictive: the language of proceedings is limited to Chinese, as are the procedural law and eligible judges. Parties can also only be represented by lawyers qualified in Chinese law.

More broadly, parties choosing to submit their disputes to the CICCs or SICC will surrender control over the identity of their decision-makers. This distinction – the party autonomy that is characteristic of international arbitration – should serve as an incentive to those active in arbitration to take advantage of its potential flexibility. In many cases, parties and counsel follow the ordinary course, fighting an arbitration as they would a state-court litigation, leaving flexibility and party autonomy as theoretical benefits.

The emergence of international commercial courts should encourage arbitrators and arbitration counsel to tailor the arbitral process, affirmatively choosing from a limitless menu of options:

- considering issues for preliminary determination;
- having more assertive arbitrators give procedural directions earlier and more frequently; and
- having preliminary oral argument long before the final merits hearing, so issues begin to crystallise earlier.

At the same time, it is worth noting that the CICCs and the SICC judges do maintain an international element – SICC judges include highly regarded international jurists, and the CICCs are supported by an International Expert Committee comprised of foreign experts.

Litigation benefits

The above-mentioned restrictions posed by international commercial courts are tempered by the broader options they afford due to their litigious roots.

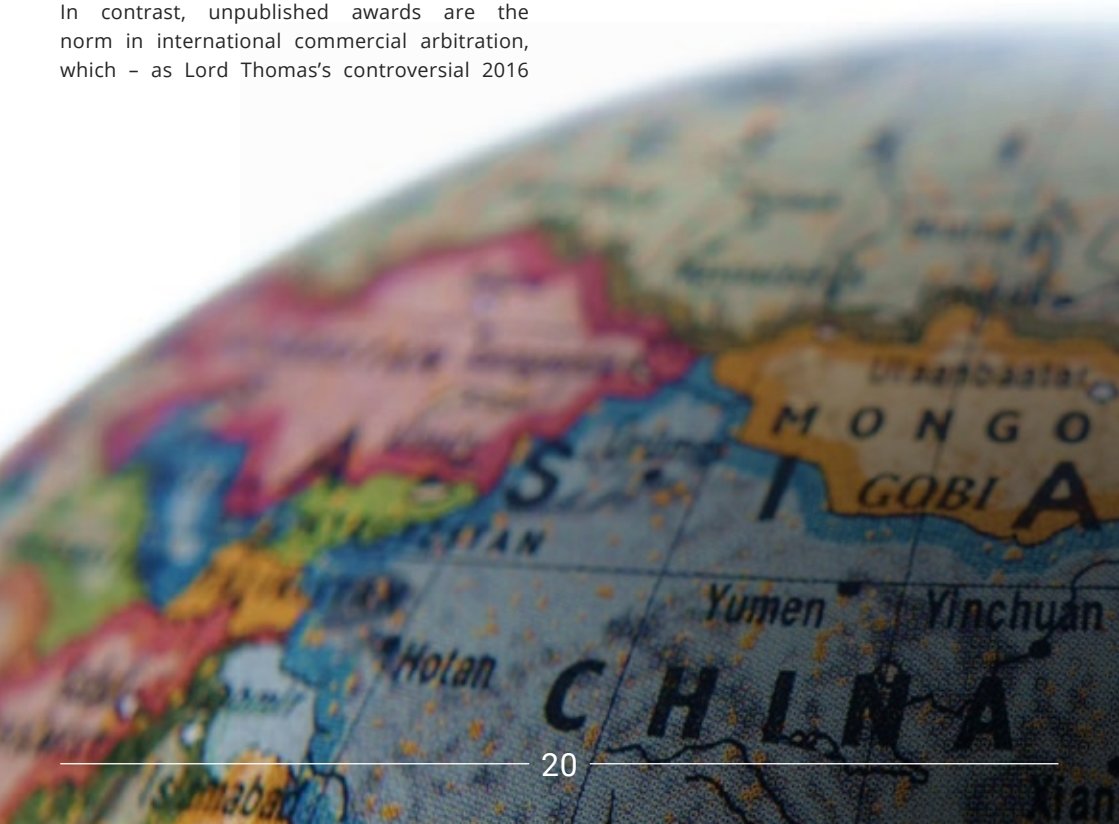
Importantly, it is much easier to join third parties to cases, as compared to the frequent inability of arbitrators in multiparty disputes to join all relevant parties. Judges have greater enforcement powers within proceedings, whereas arbitrators can encounter difficulties ensuring compliance with their procedural orders. SICC judgments are also appealable (unless parties have agreed otherwise) and CICC parties may, in accordance with the Civil Procedure Law, "apply to the main body of the Supreme People's Court for a retrial of a legally effective judgment, ruling or conciliation statement made by the International Commercial Court".

More broadly, international commercial courts may allow greater convergence of procedural and substantive commercial law, and hence more certainty, through developing consistent jurisprudence.

In contrast, unpublished awards are the norm in international commercial arbitration, which – as Lord Thomas's controversial 2016 speech suggested – arguably makes developing consistent jurisprudence difficult (Lord Thomas's "wrong turning" to arbitration over litigation).

Harmony?

International commercial courts can be seen as complementing, rather than competing with, international arbitration. For example, under the SICC rules, parties may submit international arbitration-related cases to the SICC, including enforcement of international arbitration agreements or arbitral awards. The SICC is particularly appropriate to hear cases involving issues related to international arbitral awards because of its international character, including international judges who may have particular expertise in the law governing the underlying dispute and its flexible procedural rules.



There are also opportunities for collaboration between international commercial courts and arbitral centres. For the CICCs, a specific framework of collaboration is envisaged. Article 11 of the Regulations *calls* for coordination with international commercial arbitration and mediation institutions to make the CICCs a "one-stop" international commercial dispute resolution platform. Specifically, the Supreme People's Court of China seeks to "link" mediation, arbitration and litigation. When a dispute is referred to the CICCs, the parties will be given a choice between mediation, arbitration and litigation. If the parties choose mediation and come to a mediation agreement, the CICCs may issue a judgment based on that mediation agreement and thereby convert it into a binding judgment. If the parties choose arbitration, it is envisioned that the parties may seek interim measures from the CICCs or apply to the CICCs to set aside or enforce the arbitral award.

It is unclear which mediation and arbitration institutions will be "linked" with the CICCs. Commentators have suggested that they may be limited to domestic rather than foreign institutions. Currently, there is no guidance on how this collaboration will be implemented and as such, realising this goal will likely take time.

Nonetheless, the endorsement of cross-institutional collaboration speaks to broader opportunities for achieving harmony, rather than discord, among international dispute-resolution institutions.

More fundamentally, the emergence of international commercial courts should contribute to cross-pollination between and among diverse dispute resolution options, encouraging each to innovate.

The authors thank Sophie Ryan for her excellent assistance with this article.

"Autonomy – and the control it entails – is often a major appeal of arbitration."

Trends in focus – India

Time limits for an arbitration award

Sherina Petit, Partner and Head of India Practice, Norton Rose Fulbright LLP and Nosherwan Vakil, Advocate, High Court Bombay

India is a land of *plenty – plenty of population, plenty of litigation*. Sadly, this is not replicated in the infrastructure of the courts or the number of judges. This is why arbitration entered the foreground in India – to provide some respite to frustrated litigants and to attract more foreign investment.

India has been ranked at 178 out of 189 nations in the world for non-enforcement of contracts as per the *World Bank's Ease of Doing Business* study. Unlike in the UK, anyone and everyone files a suit in India, even for the most trivial matter. Indian judges therefore have a heavy burden cast upon them to dispose of matters expeditiously.

The Arbitration Act, 1996

The initial Arbitration Act, 1996 (the **Act**) had no provisions for a time limit within which claims had to be disposed of. The length of Indian arbitrations was similar to that of the Indian Courts. Without restrictions, parties prolonged arbitrations for many years at a stretch. This was one of the main reasons that foreign investors refrained from venturing into India.

Commercial transactions suffer when a law suit is kept pending in the courts: money and rights stagnate in limbo for an uncertain duration. This uncertainty leads to the most asked queries received by lawyers being, how long will the claim take to conclude? And how long will it take to pass the judgment / award? In the event of litigation, there is almost always an uncertain answer to both questions. With the 2015 amendments to the Act, however, it was hoped that parties could feel more confident about the time it might take to resolve the dispute by opting-in for arbitration, as opposed to the inherent uncertainty in litigation.

The 2015 amendments

On 23 December 2015, the Rajya Sabha (the Upper House of the Parliament of India) passed the *Arbitration and Conciliation (Amendment) Bill 2015*, with effect from 23 October 2015. To grow arbitration in India, change had to be introduced so parties could get their claims heard and disposed of in an expedited, time-bound and efficient manner.

An amendment was introduced pursuant to section 29A of the Act, the important highlights, *inter alia,* being:

a. The award shall be made within twelve months from the date the arbitral tribunal enters upon reference.
b. In the event the tribunal passes the award within six months from the date of their reference, the tribunal is entitled to receive an additional fee as may be agreed by the parties.
c. The parties by consent may extend the twelve months' time to an additional six months to render the award.

d. If the award is not made within the above stipulated period, the arbitrators' mandate would be terminated, unless the Court has, prior to or after the expiry of the specified period, extended the same.
e. The extension of time may be made by any of the parties for sufficient cause and on such terms and conditions imposed by the Court. This application shall be endeavoured to be disposed of within sixty days from the date of service of notice to the other party.
f. In the event that the Court finds the tribunal responsible for a delay, its fees would be deducted for each month of the delay.
g. The Court has the discretion to impose actual or exemplary costs on the parties.

Initially, parties and jurists were overwhelmed by these amendments, and rightly so, as this was a huge progress to curb the delaying litigating tactics used by parties in Indian litigation.

This amendment sought to caution litigants from filing frivolous claims in court with the purpose of prolonging the matter and keeping it in limbo – and therefore, prevented delays in rendering the final award. This was also an attempt to positively portray that arbitrated claims would be disposed of in a time bound manner. It would project India as an investor friendly country, with an expeditious legal operational framework.

In reality, the timeline put a huge onus on the arbitrator to complete the arbitration within the stipulated time. It seemed rather unfair to the arbitrator, as the conduct of the parties could be a reason for the delay in finalising and passing the award. Several senior arbitrators refrained from taking up arbitrations, as they feared they would be put in an uncomfortable position to comply with the new timelines. Nonetheless, it created an opportunity for young arbitrators from diverse backgrounds to be appointed as arbitrators to comply with the new timeline. This had a positive side effect. With the introduction of the younger generation sitting as arbitrators, it removed the negative assumption that only senior arbitrators could be appointed, namely retired judges. This expanded the bench of arbitrators and caused the rise of a nascent and slowly developing arbitration bar.

Another important amendment was in section 29B of the Act, i.e., the incorporation of a fast track procedure to arbitration proceedings, structured in a similar fashion to the procedure followed in international arbitrations.

This was seen as a progressive step by the legislature providing the parties an option to fast track their cases. Although this amendment is at a relative nascent stage, and may take some time for some counsels to adapt to, it is a prudent tool to attract foreign investment and offers assurance to the parties that their disputes have the potential of being settled in an efficient and timely manner.

The 2018 Amendment

On 10 August 2018 the Lok Sabha passed the *Arbitration and Conciliation (Amendment) Bill 2018* (the Bill). The Bill proposes additional amendments to the Act in section 29A to further encourage arbitration as a forum for settling disputes, in a user-friendly, cost effective and expeditious manner.

Section 29A of the Act has been further modified to incorporate a twelve-month time frame to issue an award from the date of completion of the pleadings, rather than from the date of the appointment of the arbitrators. This amendment further restricts the time limit only to domestic arbitrations, as it excludes international arbitrations from the twelve-month time frame.

The advantage is that it puts the arbitrators in a more comfortable position by removing the onus cast upon them to pass an order within twelve months the date of their appointment. It also reinstates the arbitrators' confidence in their

> **"...this was a huge progress to curb the delaying litigating tactics used by parties in Indian litigation."**

ability to conclude proceedings in twelve months from the date of completion of the pleadings.

The potential drawback is that it is unlikely that all cases are suitable to be concluded within this time frame. Several factors need to be taken into consideration, such as the volume and complexity of the matter, evidence of the parties etc. The time frame could be misused to file an appeal if the matter suggests that it was not possible for it to have an award passed in the twelve-month period.

The amendment also provides an opportunity of a hearing to the arbitrators, in the event that their fees are to be reduced. This is a positive proviso to ensure that the arbitrator is given the benefit of an explanation not to pass an order within the stipulated time frame.

It is rather surprising that this amendment has excluded international arbitrations from the time frame. Indeed, international arbitration is at an extremely nascent stage in India, but more efforts should be incorporated to improve the situation.

India is now finally being exposed to international arbitration through the support of both the central and state governments, which are proactively endorsing the opening of new international arbitral institutions, such as the Mumbai Centre for International Arbitration (MCIA), and the New Delhi International Arbitration Centre (NDIAC), which could over time contribute to the rise of foreign investment in India and establish India as a hub for international arbitration.

This article is limited only to the time limit for passing an arbitral award in accordance with the 2015 amendments and the proposed 2018 amendments to the Arbitration Act 1996.

Trends in Focus

Arbitration in Brazil: is TPF a reality?

By João Eduardo Cerdeira de Santana and Renata Duarte de Santana, CSI Associados

Some factors have contributed to the development of arbitration in Brazil in recent years. Possibly the most important has been the courts' real understanding that a sound legal framework for decisions offers foreign investors legal certainty.

In May 2015, the legislation for arbitration in Brazil – Law 9.307 of September 23, 1996 (the Arbitration Law) – was amended. Law 13.129/15 made it possible to use arbitration to resolve disputes involving public administration and reduced the number of annulments of arbitration awards. Arbitration is now permitted for PPP agreements, concessions in general and public partnership investment contracts.

Undoubtedly, the arbitration framework was further strengthened by the new Code of Civil Procedure which contains some provisions relating to arbitration, such as keeping arbitration proceedings confidential.

The result of this well-conceived law, and the legal certainty provided to companies by the Brazilian courts' willingness to respect arbitral tribunals, has led to an exponential increase in the use of arbitration in the country.

Economic significance

The 2016 International Chamber of Commerce Ranking lists Brazil in 5th place of countries or territories with the largest number of parties involved in arbitration, behind the US, US Virgin Islands, Belize and France. The National Committee of the ICC in São Paulo says that the amounts under dispute are in excess of US$6 bn.

A recent survey of the growth of arbitration in the six major Brazilian chambers shows that in 2010 there were 128 new cases of arbitration. In 2016, that number rocketed with more than 95%. The amounts involved in arbitration more than doubled between 2015 and 2016 – from R$10,7bn to R$24,2 bn. This figure is expected to rise further as a result of the amendments highlighted above.

Legal framework for TPF

When major economic lawsuits in Brazil require financing by the parties, traditionally the lawyers and law firms offer funding, collecting both legal fees and success fees. This has obvious drawbacks, in particular when the cases involve publicly-held companies with strict compliance practices.

The fact a law firm represents a party while at the same time having a financial interest in the outcome of the case can lead to a loss of objectivity, which is forbidden by the regulations of the Brazilian Bar Association.

There have also been cases where the anticorruption investigators in Brazil suspect

these agreements have been vehicles for money-laundering. As a result, compliance departments no longer allow such agreements to be executed by their managers.

In these circumstances, the funding of litigation by third parties has arisen as a possibility, provided that the lenders are recognised as such and operate according to Brazilian legal and ethical standards. There is nothing in the law that prevents a third party from financing arbitration.

Most questions raised by counterparties relate to the basic principles of arbitration itself, namely the adversary principle, the equality of the parties, the impartiality and independence of the arbitrators and the duty of confidentiality (Art 21, p1 of the Arbitration Law).

The arbitration panel would analyse conflicts of interest. The view generally taken by Brazilian arbitrators is that such questions can be settled, once the identity of the investor is known.

The Arbitration Centre of the Brazil-Canada Chamber of Commerce (CAM-CCBC), which handles the largest number of cases, passed a resolution in 2016 on how to proceed if there is a third party providing the funding, so as to avoid conflicts of interest.

Art. 3 The existence of a third-party lender may give rise to reasonable doubt as to the impartiality and independence of the arbitrators, due to a possible previous or current relationship between an arbitrator and the lender.

Art. 4 In order to avoid possible conflicts of interest, CAM-CCBC recommends that the parties give notice of the existence of third party funding to CAM-CCBC at the earliest possible opportunity. This notification must give full details of the lender.

Art. 5 Once it has this information, CAM-CCBC will invite the arbitrators to check for conflicts of interest and reveal any fact that might raise a reasonable doubt as to their independence or impartiality. The details of the funding must also be provided to the other party.

Conclusion

TPF is already a reality in Brazil, but the number of players remain very small. We think it is only a matter of time, a very short time, before this type of activity flourishes in Brazil.


“Young practitioners have a significant role to play in creating a future in which diversity is the norm – as it should be.”

In conversation
The Generation Game

Harbour View spoke to Amanda Lee FCIArb who sits as an arbitrator and practices as a Consultant at Seymours. As the Global Chair of the Chartered Institute of Arbitrators' (CIArb) Young Members' Group (YMG) she is well placed to tackle challenging topics such as diversity, gender balance and how the arbitration world can attract young talent.

What attracted you to the world of arbitration?

Perhaps less a case of attraction but more one of delegation. My first arbitration was an *ad hoc* domestic arbitration involving a paper recycling plant. I found the scope for procedural innovation and adaptation an attractive alternative to the relative rigidity of the various sets of court rules.

The arbitral world seems to be having a #metoo moment. A lot of the discussion focuses on the underrepresentation of female arbitrators.

Diversity is a broad and complicated topic and, while the arbitration world has not forgotten to discuss its wider remit, there is a perception that most progress has been made in respect of gender diversity. That progress to date is the hard-won result of years of work by organizations such as ArbitralWomen and initiatives such as The Pledge and GQUAL. 59% of respondents to the Queen Mary/White & Case International Arbitration Survey 2018 agreed that progress has been made in respect of gender diversity.

Do we forget to discuss the wider remit of diversity?

Quoting the same survey, 39% of the respondents disagreed that progress has been made in respect of age diversity in the last five years, with 37% disagreeing that progress has been made in respect of ethnic diversity. That is a sharp contrast. This tells me that a great deal remains to be done to achieve true diversity and, importantly, inclusivity.

In my view, the scope of the discussion must be broadened. Young practitioners have a significant role to play in furthering this dialogue and creating a future in which diversity is the norm – as it should be.

What about offering the new generation an opportunity to shine?

Disappointingly little data is available about the appointment of young arbitrators by institutions, for example. The ICC statistics for 2017 indicate that only 8% of those confirmed or appointed as arbitrators were below 40 and the average age of arbitrators was 56. This is despite young arbitrators being more likely to have significant time and energy to devote to parties' disputes than their more established colleagues.

Publications often talk about the rift between Millennials and the Baby boomers/Generation X. Do you experience that?

In my experience, practitioners from different generations adopt different approaches to the problems that face their clients or which arise when they sit as arbitrator. Some problems can be resolved by embracing technology, which is where Millennials often have an advantage. Others are better managed by developing solutions based on years of practical and academic experience. Such differences of opinion can lead to frustration at all levels, particularly when combined with the significant level of competition and the challenges faced by new arbitrators seeking to carve their niche.

What can be done to bridge it?

I strongly believe in the benefits of mentoring. I encourage the students and young practitioners that I mentor to get involved in the arbitration world and contribute to the debate.

It is also important for each generation to recognize that one has important lessons to teach the other. Arbitration has long recognized the importance of innovation and Millennials are ideally placed to exploit the benefits of new technology. Building better professional and personal relationships is key to better understanding what each generation brings to the table and to bridging such gaps as exist.

Mentoring schemes, either offered by firms or arbitral organizations, tick a lot of the boxes when it comes to networking, creating dialogue and sharing knowledge.

Can the industry make itself attractive to young talent?

I think the industry is doing a good job of attracting young talent. There is no shortage of young practitioners seeking to make their name in international arbitration; quite the contrary. However, it is important to be realistic about the opportunities available for those wanting to succeed the "older guard". It is a challenging field to enter and success can be hard to achieve.

How can it secure succession to the "older guard"?

Through internships the industry identifies young talent while offering aspiring practitioners an insight into practice and how they can build the skills needed to succeed the "older guard".

Success requires academic vigour, excellence in written and oral advocacy, impressive networking and business development skills and the ability to work as part of a team. To attract and retain young talent, firms need to provide real opportunities for professional and personal development and encourage those wishing to develop their skills to act as arbitrators. After all, there are key benefits to "double-hatting" as counsel and arbitrator.

Are there pressure points that make it challenging?

Definitely. There are many new entries to the market and insufficient roles for them to fill. It is vital that the next generation's talent can be identified and properly utilised.

Ultimately it is a matter for the client who presents their case, which can limit opportunities for young practitioners to develop their advocacy skills.

Stakeholders need to be able to be confident that candidates for appointment as arbitrator are properly trained, have sufficient experience and will do a good job. Organisations such as the CIArb play a vital role in equipping aspiring arbitrators with practical skills.

Developing public confidence in young talent is vital if they are to secure appointments as arbitrators and take some of the pressure off the "older guard".

The lack of a track record – more easily available for established arbitrators – makes it difficult for new and younger arbitrators with burgeoning reputations to gain a foothold. It is vital that parties have access to reliable information about younger talent. Services such as Arbitrator Intelligence intend to address this problem. Firms also have a role to play in putting forward the names of new arbitrators when appropriate disputes arise.

What do the institutions do to assist?

Institutions have a key role to play in promoting diversity at both counsel and arbitrator level. Much remains to be done to address the "chicken and egg" problem faced by young aspiring arbitrators: parties and institutions are reluctant to appoint those who have never been appointed before.

There are a few institutional initiatives on foot at present: SIAC has a reserve panel of younger arbitrators. CPR has incorporated a "Young Lawyer" Rule into its Arbitration Rules, to provide young lawyers with greater scope to conduct advocacy at hearings. Similar rules applied by federal judges in New York have increased speaking opportunities for female and ethnic minority lawyers. Tribunal secretary opportunities provide an insight into the process but can be difficult for many aspiring arbitrators to secure, as secretaries are often chosen by arbitrators – not institutions.

Broadening the pool of arbitrators would reduce the pressure on the "older guard", improving the efficiency of the arbitral process. There is therefore an incentive for institutions to act to improve age diversity.

You are Global Chair of the Chartered Institute of Arbitrators' Young Members' Group. Tell us more.

Together with the YMG Global Steering Committee, I am responsible for promoting the interests of over 4,000 young CIArb members worldwide. The CIArb recognizes that members of all ages have a valuable contribution to make. I serve on the CIArb's Board of Management and work closely with the Executive to support and promote young members and provide training, networking, speaking and publishing opportunities.

Any particular initiatives that you are proud of?

Earlier this year we launched the YMG Ambassador Initiative, giving young members in locations without a local YMG presence the opportunity to contribute to the work of the CIArb and broaden their networks. The enthusiasm for this initiative has been inspiring. We have already appointed YMG Ambassadors for Brazil, Ghana, Indonesia and Zambia, to name but a few. In addition, I am proud of the YMG's tradition of providing a platform for female keynote speakers at its Annual Conferences, and of our collaborations with others such as Young ArbitralWomen Practitioners and Aspiring Solicitors.

Any last words?

I strongly believe that each generation understands the sheer amount of hard work and dedication required to succeed in the field of arbitration and wants to support its overall success as an effective method of dispute resolution. More unites us than divides us!

Harbour news

In September we moved into our splendid new home on Lower Regent Street with more and better meeting room space and larger offices for our growing team. On that note, Dominic Afzali, previously at Allen & Overy in Hong Kong, and Oliver Way, previously at Slaughter and May joined Harbour as Associate Director and Director of Litigation Funding respectively. They bring further extensive expertise in international arbitration and complex, high-profile litigation to the investment team.

Our new address is 8 Waterloo Place, 4th floor, London SW1Y 4BE. All of our individual phone numbers remain the same, as does our general number, 020 3829 9320.

We hope to welcome you there.

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