

# Kluwer Arbitration Blog

## Arbitral Seats: Choices and Competition

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Numbers often speak better than words: international arbitration is nowadays a well-established mechanism for the settlement of commercial disputes; according to published institutional statistics the number of cases in 2009 is three times the number of cases in 1992.

According to the 2010 Survey ([www.arbitrationonline.org](http://www.arbitrationonline.org)) of the School of International Arbitration sponsored by White and Case LLP amongst the various choices parties to arbitration agreements have to make the seat of arbitration is quite important. According to in-house lawyers this is the second most important choice they have to make, often in consultation with outside counsel. The most important choice is that of the law governing the contract: it is obvious that contracting parties choose a law to make sure that their contract works but also have to plan for an escape route in case things go wrong (a sort of a “pre-nuptial agreement”). It is no surprise that for arbitration lawyers it is the choice of seat (and the choice of arbitration institution) that captures their interest.

Participating corporations were asked to indicate their preferred seat of arbitration and the reason for their preference. According to the responses, London is most commonly preferred (30%), followed by Geneva (9%) and Paris, Tokyo and Singapore (each 7%) and New York (6%). Tokyo featured high because of a rather large Japanese sample. Respondents also referred to a broad range of other seats, suggesting that parties may be increasingly looking beyond the ‘traditional’ seats of arbitration.

We asked questionnaire respondents to rate the importance of a list of factors in influencing their corporations’ choices about the seat of arbitration. The most important factor is the formal legal infrastructure at the seat (62%), including both the national arbitration law but also the track record in enforcing agreements to arbitrate and arbitral awards in that jurisdiction and its neutrality and impartiality. The law governing the substance of the dispute (46%) came second: a rather bizarre outcome as the law governing the arbitration is typically distinct from the law governing the substance of the dispute. Convenience is also an important factor (45%) including location, industry specific usage, prior use by the organisation, established contacts with lawyers in jurisdiction, language and culture and the efficiency of court proceedings. As with the choice of governing law, corporations are focused on both the technical and practical issues when they choose a seat. As was the case with the choice of governing law, the location of the relevant people involved in the arbitration and the recommendations of external counsel are the least important factors.

We also asked respondents to further specify which aspects of formal legal infrastructure, general infrastructure, convenience and the location of people most influence the choice of seat. The neutrality and impartiality of the jurisdiction (34%) and the “arbitration friendliness” of a seat (25%) are the aspects of “formal” legal infrastructure that most influence choice of seat. Also important is whether the country concerned is a signatory to the New York Convention (20%), a factor that might be expected to be a higher priority for corporations, but given the wide acceptance of the New Convention internationally it appears to be expected in most countries. Whether the national arbitration law is based on the UNCITRAL Model Law, the ability to join third parties and the availability of appeals against awards are relatively unimportant compared to these factors.

Cost is the most important aspect of general infrastructure that influences that choice of seat (42%), followed by good transport connections (26%) and hearing facilities (including translators, interpreters and court reporters) (21%). Respondents also listed safety and the absence of bribery as important factors. Efficiency and promptness of court proceedings is the most important aspect of the convenience of a seat (20%), followed by language (16%), good contacts with specialised lawyers operating at the seat (15%) and the location of the parties (11%). Cultural familiarity is also an important factor (10%). Interestingly, previous experience of the seat is not a particularly important factor (7%), nor is the location of the arbitrators (6%).

The most commonly referred to (and used) seat was London (45 respondents). 29% of respondents rated London ‘excellent’ and 40% rated it ‘very good’, i.e. at least 70% was very happy with their choice and use of London seat. Some of the main reasons parties used London were its reputation as a neutral and impartial jurisdiction, the law governing the substance of the dispute and established contacts with specialist lawyers; language and cultural familiarity were also mentioned. Paris was the second most referred to (and used) seat (28 respondents). 18% rated it as ‘excellent’ and 64% said it was ‘very good’, i.e. at least 82% rated Paris at least as very good place to arbitrate, overall achieving a higher satisfaction rate than London. The main reasons parties came to Paris were its reputation as a neutral and impartial jurisdiction, its ‘arbitration-friendliness’ and more practical aspects such as hearing facilities and transport connections. New York was referred to (and used) by 23 respondents, 17% of which rated it as ‘excellent’ and 39% as ‘very good’, i.e. at least 53% had high praise for New York as arbitral seat. The attractions of New York were factors such as transport connections, language, location of arbitrators and other key participants in the arbitration and established contacts with specialist lawyers.

17 respondents mentioned Geneva, 24% rating it as ‘excellent’ and 59% as ‘very good’, i.e. 83% rated Geneva at least very good. The two key factors for Geneva are its reputation as a neutral and impartial jurisdiction and its ‘arbitration-friendliness’ I wonder what exactly they mean by reputation as ‘neutral and impartial jurisdiction’, both here and in Paris/London above – is there anything more to read in this? Because this is a very general comment possibly applicable to a great number of other jurisdictions too. Singapore was the next most commonly referred to (15 respondents), 27% rating it ‘excellent’ and 20% as ‘very good’, i.e. 47% rated Singapore very good or excellent as an arbitral seat. Respondents identified a broad range of factors that led them to select Singapore as a seat. Other seats mentioned by respondents included Stockholm, Vienna, Hong Kong, Zurich, Tokyo and Mainland China.

In the 2006 SIA/PwC survey (also available at [www.arbitrationonline.org](http://www.arbitrationonline.org)) the most popular seats were London, Paris and Geneva, followed by New York and Tokyo. Singapore is a new entry and it appears that the promotion of Singapore as an arbitral seat with conferences, the active

involvement of more arbitral institutions (such as ICC and AAA-ICDR) has paid dividends and Singapore clearly emerges as the regional popular seat in Asia. It is worth mentioning that the percentages the top three seats received as indeed very similar to the 2006 ones and the conclusion can be drawn that these seats have solidified their reputations as leading arbitral seats. The only one which appears not to have hold its position is Tokyo.

In the 2010 Survey participants were invited to rank up to five seats that they and their organisation have not used before, based on their perception of that seat. The options were ‘excellent’, ‘very good’, ‘good’, ‘adequate’ or ‘poor’. Moscow was the lowest rated in terms of perception – all 9 respondents rated it ‘poor’. Mainland China was rated as ‘poor’ by 9 respondents and ‘adequate’ by 4 respondents. Highest rated was Singapore – 3 respondents rated it ‘excellent’, 4 respondents rated it ‘very good’ and 3 respondents ‘good’. Following Singapore was Hong Kong – 2 respondents rating it ‘excellent’, 3 ‘very good’, 2 ‘good’ and one each ‘adequate’ and ‘poor’.

Three rather sketchy comments can be made here with some certainty.

First, of the traditional seats, London is the one that does best over the last five years period according to the surveys and institutional statistics. Paris and New York starting lagging behind. The reason for London’s popularity must be the dominance of English languages, the accessibility of English law (because most cases are widely publicized and discussed and because England attracts the highest number of foreign graduate law students – London alone has annually more than 2000 LLM students), the enduring appeal amongst Commonwealth countries and the appeal of London amongst “new arbitration markets”. i.e. Russia and Middle East. It seems that almost in one in four new cases in the LCIA both parties are Russian and in some one third of the cases, one party is Russian. Arab users also show their preference for London.

Second, regional arbitration centres solidify their position. We should specifically observe the strong positions of Hong Kong and Singapore and also the good position of Cairo and Dubai. There seems to be no regional leader in Latin America or in Africa apart from Northern Africa.

Third, although it is commonplace that the UNCITRAL Arbitration Model Law in its 1985 and 2006 versions represents international standards, it appears that two thirds of arbitration cases are seated in non-Model Law countries. There are more than 65 jurisdictions which have adopted the Model Law. It seems, that the Model Law alone is not sufficient to establish a country (or city) as a seat of arbitration. One cannot underestimate not only the importance of local judiciary, legal and ancillary professions and general infrastructure such as hotels, transport links and hearing rooms, but also of sustained marketing through conferences, tax incentives and promotion through arbitration institutions. And the competition is rather fierce! This must be good news for users of arbitration services.

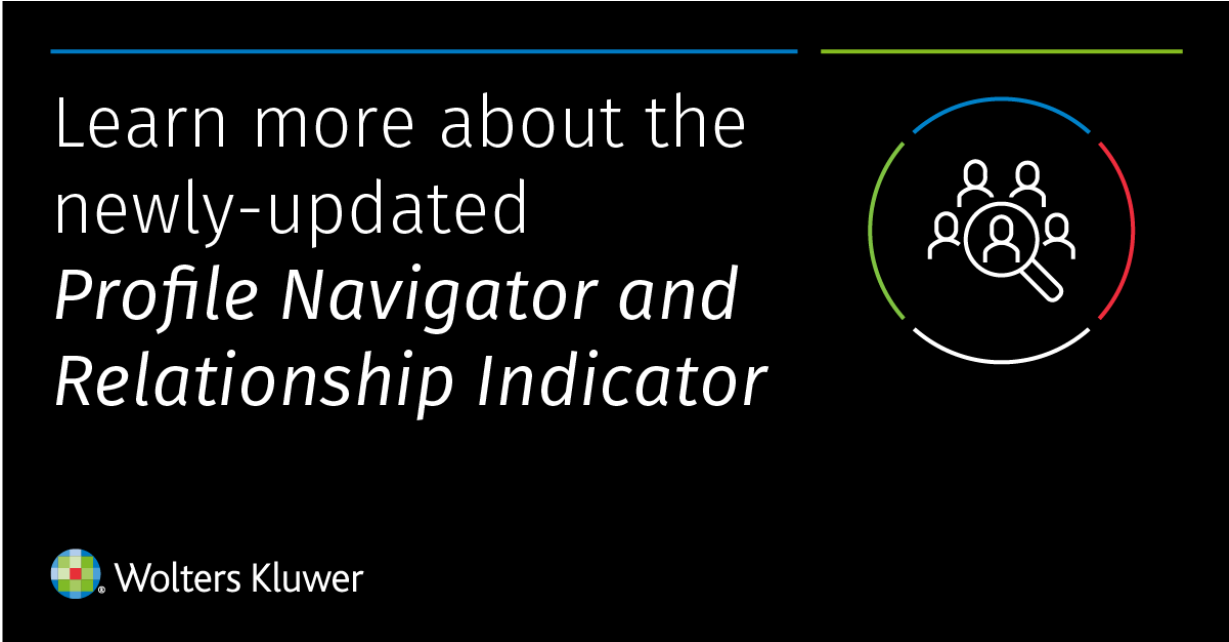
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