

Kluwer Arbitration Blog

Survey Says: Institutions Could Do A Lot To Improve

Michael McIlwrath (MDisputes) · Monday, October 12th, 2015



Respondents want arbitration institutions to be less opaque

The [2015 International Arbitration Survey](#) is out. Subtitled “Improvements and Innovations in International Arbitration,” the most recent effort by Queen Mary / White & Case has a lot to say about efforts to date to improve the practice and what more can be done.

The survey’s methodology and sample size have themselves been the subject of constant improvement over the years. This year’s iteration gathers results from an online questionnaire of 80 questions that was completed by 763 respondents, enhanced by 105 follow up interviews. While it is possible to quibble with some of the questions and responses, they cannot be ignored.

The need for better information about institution and arbitrator performance is a topic that is frequently debated in international arbitration practice, and has been covered from various perspectives here on the Kluwer blog.*

The survey’s respondents thought there were several steps institutions could take to improve things. Rather than comment, I quote page 22 in full, and pose the following question: *what changes will institutions adopt to show they are listening?*

What could arbitral institutions do to improve international arbitration?

In light of user appetite for greater transparency and information, we asked respondents what institutions could do to improve international arbitration.

A recurring theme throughout the interviews was users’ discontent with the lack of insight provided into institutions’ efficiency and arbitrator performance, and the lack of transparency in institutional decisionmaking in relation to the appointment of, and challenges to, arbitrators.

Interviewees felt that more information about the average length of time of institutions’ cases would allow them to make more informed choices. They acknowledged, however, that such statistics are difficult to standardise because of the different variables involved and the lack of clear yardsticks in terms of measuring points. For the same reasons, interviewees were concerned that this data might be open to manipulation, although that could be mitigated by the data being collated by

an independent organisation.

Similar concerns were articulated regarding the suggestion that institutions should publish the time arbitrators took from their appointment to the rendering of the award in previous cases at that institution. Nonetheless, due to the perceived lack of insight into arbitrators' performance, interviewees expressed the need for a higher degree of accountability of arbitrators. They argued that institutions were generally in the best position to provide the necessary information to create this accountability.

The suggestion that institutions should publish awards in a redacted form (and/or as summaries) was accordingly not only favoured for its academic value and usefulness when arguing a case, but also often named as a method to gain more insight into arbitrator performance and to encourage arbitrators to write high-quality awards.

Respondents generally consider that increased transparency in institutional decisionmaking would be a positive development. In particular, they would appreciate the publication of reasoned decisions on arbitrator challenges and more insight into the drivers behind arbitrator selection by institutions.

Interviewees suggested that institutions could inform parties of the selection criteria they used when selecting an arbitrator. Published reasoned disqualification decisions would, it was thought, give parties due process comfort because they would know that their application had been properly considered. There would also be a benefit for the arbitral community as a whole because this would provide insight into the circumstances on which meritorious challenges might be founded.

* Examples of Kluwer posts on the subject: [Arbitrator Intelligence: The Pilot Project and Beyond](#); [A Step toward Greater Transparency: The UN Transparency Convention](#); [The Efficiency Train Has Left the Station: Transparency As the Next Destination](#)

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