Kluwer Arbitration Blog

What Do Users Want From Seats and Institutions?

Dipen Sabharwal (White & Case LLP) and Mona Wright (White & Case) · Monday, November 2nd, 2015

The results of the 2015 Queen Mary and White & Case International Arbitration Survey were launched on 6 October 2015. Titled "Improvements and Innovations in International Arbitration", the survey seeks to explore how recent efforts to improve international arbitration are faring, and the arbitration community's assessment of other innovations to the arbitral process. Views were sought from a comprehensive range of stakeholders drawn from across the international arbitration community, through a questionnaire completed by 763 respondents, followed by 105 personal interviews. This makes the survey the largest empirical study of its kind.

One of the key topics addressed by the survey is the evolution and emergence of arbitral seats and institutions: which seats and institutions do users choose and why?

The results reveal that 'traditional' seats and arbitral institutions with long-established reputations continue to be favoured by users. London was found to be both the most used and the most preferred seat (by 45% and 47% of users respectively), followed by Paris (37% and 38%). Geneva, New York and Stockholm also featured in the top seven. The dominance of these Western jurisdictions was strongly challenged, however, by Hong Kong (in third place, with 22% and 30%) and Singapore (in fourth place, with 19% and 24%).

Singapore was also considered to be the most improved seat over the past five years (24%), closely followed by Hong Kong (22%).

A similar story emerged in relation to favoured arbitral institutions. Respondents were asked to name their, or their organisation's, three preferred institutions. 68% selected the ICC amongst their picks, followed by the LCIA (37%). The SCC, ICSID and ICDR/AAA also featured in the top seven. Once again, third and fourth place went to Asian centres: HKIAC (28%) and SIAC (21%).

In another parallel to the findings on most improved seats, institutions based in Asia were also heralded as most improved over the past five years: HKIAC (27%) followed in joint second by SIAC and the ICC (each with 15%).

These results clearly indicate an impressive growth in popularity of key Asian arbitration hubs, particularly when compared to results from the equivalent survey in 2010. But is this really surprising? The key factors identified by respondents as influencing their choices of seats and

institutions suggest otherwise.

The most frequently cited reason for selecting a seat was, by some margin, the "reputation and recognition of the seat" (65%). As to why respondents prefer certain seats over others, most pointed to features which relate to the formal legal infrastructure of the seat, such as (1) neutrality and impartiality of the local legal system; (2) the national arbitration law; and (3) its track record for enforcing arbitration agreements and awards. The quality of a seat's formal legal infrastructure is clearly in itself relevant to that seat's reputation: good legal infrastructure enhances a seat's reputation. The survey posits by extension the possibility that seats may initially have been preferred because of the quality of their formal legal infrastructure, and that their popularity is then perpetuated because of their resulting reputation and recognition.

By these measures, Singapore and Hong Kong's success in the 2015 Survey is unsurprising: both seats have long-standing, well-established reputations rather than being new locales that have experienced drastic transformations. As for the selection of Singapore and Hong Kong as the most improved seats over the past five years, they have built on and improved their respective existing reputations over that period.

This can be seen from the results of the survey's enquiry into the ways in which respondents thought their selected seat had improved. In contrast to the focus on legal infrastructure as a reason for why seats are selected and preferred by users, areas in which improvements were noted related more to physical local convenience: (1) better hearing facilities at the seat; (2) availability of quality arbitrators who are familiar with the seat; and (3) better local arbitral institutions. Improvements to the national arbitration law of the seat only came in fourth.

The survey suggests that factors of convenience therefore become more important to users after a seat's formal legal infrastructure reaches a certain threshold of quality. In other words, the quality of the formal legal infrastructure is the primary criteria that a seat needs to meet; once that is achieved to a sufficient level, other considerations – such as convenience factors – can elevate further the attractiveness of a seat. This could be said to be reflected in the growth in popularity of Hong Kong and Singapore, both of which have made significant investments in support of arbitration, and have gained increasing recognition amongst global users of arbitration.

"Reputation and recognition" was also the most often cited reason for why users select arbitral institutions (chosen by 62% of respondents), followed by "previous experience of the institution" (52%). The seat chosen for the arbitration was some way behind in third (36%). This emphasis on track record was also seen in the reasons for respondents' preferences for certain institutions. Users revealed that they look for (1) a high level of administration; (2) neutrality/'internationalism'; and (3) global presence/ability to administer arbitrations worldwide.

The same factors were cited by respondents when asked to name the institutions they felt had improved the most in the past five years and in what ways. The top three reasons were: (1) reputation and recognition; (2) greater efficiency; and (3) higher level of administration. Interviewees noted that an institution has to achieve a certain level of credibility before parties will consider using their services. In this context, it is therefore perhaps unsurprising that the institutions considered by users to have improved the most (HKIAC, SIAC, ICC, LCIA and ICDR/AAA) are already well-known, long-established entities with global presence and caseloads.

The message emerging from the survey, therefore, is that when it comes to both seats and

institutions, reputation and recognition are key for attracting both new custom and repeat business.

What does this also tell us about the prospects for emerging seats and arbitral institutions which are gaining traction, particularly with local or regional users, but have not yet hit the heights of global recognition and reputation enjoyed by the seats most often singled out by survey respondents?

At first glance, the results appear to suggest that it is difficult for new entrants to establish themselves on the global scene. For newer, regional institutions in particular, the preference for institutions with global presence (3rd out of 14 cited reasons for choosing an institution) over regional presence and knowledge (8th out of 14) may impact on those institutions' ability to achieve widespread market reputation and recognition. Institutions based in relatively less popular seats also have less opportunity to capitalise on synergies between the reputation of the institution and of the seat.

However, another key theme that permeates responses throughout the survey is that users of arbitration also value choice. In reality, the market for international arbitration services is more than big enough to support a myriad of institutions and seats, including localised or industry-specialised service providers. As the survey reveals, 90% of respondents indicated that international arbitration is their preferred method of resolving cross-border disputes. Whilst it may take time and sustained efforts for a seat or institution to build an established track record and user base, there is plenty of arbitration pie to go around, whatever the size of the slice.

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This entry was posted on Monday, November 2nd, 2015 at 12:01 am and is filed under Uncategorized
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