

“Richard Morris, Head of Expert Services at Systech and a Trustee of the Chartered Institute of Arbitrators, said,

The increase in popularity of arbitration in International construction disputes is not surprising, given that the parties will be able to select their Arbitrator or panel of Arbitrators from recognised technical experts in their field rather than using local courts and judges who may not have any previous experience of dealing with disputes involving complex construction projects. In addition to this, the Parties can opt to be bound by arbitration rules that suit the dispute as well as choosing the seat of arbitration, i.e. where the matter will be heard and subject to whichever jurisdiction they chose. The Parties will then have a final resolution of their dispute with the Award enforceable in any of the 153 countries that have signed up to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (aka the New York Convention). We are, however, still seeing a trend towards litigation away from arbitration in the UK where we have the Technology and Construction Court Judges well-versed in construction disputes and who, ironically, are often appointed as arbitration panel members themselves.”

Arbitration tops league as preferred way to resolve international disputes

Ninety per cent of companies now opt to use arbitration to decide cross-border construction disputes, according to research by Queen Mary University London (QMUL) and law firm White & Case.

Arbitration’s popularity has increased significantly since QMUL’s first survey in 2006, when the figure was 73%.

The research also shows that London and Paris continue to be the preferred venues for arbitration over the past five years (45% and 37%, respectively).

However, Hong Kong and Singapore are gaining momentum as Asia becomes ever more important for investment in big infrastructure and large-scale construction projects. Singapore is perceived to be the most improved seat for international arbitration over the past five years, with Hong Kong following closely behind.

The report suggests that the popularity of arbitration over litigation is explained by the enforceability of arbitral awards, the flexibility of the process, the ability to avoid specific legal codes and to choose which lawyer or professional will act as the arbitrators.

Michael Turrini, a White & Case construction partner based in the Middle East, said: “Construction is a particularly technical area of law, constantly evolving and often involving complex design and engineering defects and delay and disruption claims. As such, it sits at the apex of some very complex disciplines.

“Companies that choose litigation run the risk of having a court-appointed judge who may not have a construction background. However, in international arbitration, where parties can select arbitrators with specialist knowledge, there is a likelihood of achieving a more considered result which better reflects the specifics of the issue.

“When the typical value of construction-related claims average \$150m but can be well over \$1bn, it has never been more important to choose the right method of dispute resolution.”

Another factor is the greater number of very large infrastructure schemes in Asia, which are so complex and require resources on such a large scale that disputes are both more common and more costly than run-of-the mill megaprojects. The report comments that this explains the growing importance, and the growing arbitral skill base, in Hong Kong and Singapore.

When respondents were asked to choose their three preferred institutions, 68% included the International Chamber of Commerce in their answer, and more than a third (37%) included the London Court of International Arbitration, mirroring the results from the 2010 International Arbitration Survey.

The Hong Kong International Arbitration Centre and the Singapore International Arbitration Centre came in third and fourth (28% and 21%, respectively). The survey revealed that institutions are primarily chosen due to their high level of administration capacity, their perceived neutrality and “internationalism” and their ability to administer arbitrations worldwide.

Source: <http://www.globalconstructionreview.com/news/arbitration-to2ps-league-pref2erred-way-re5solve/>

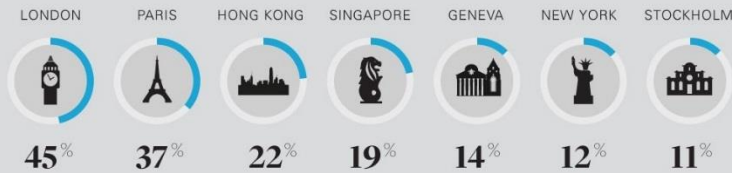
International Arbitration

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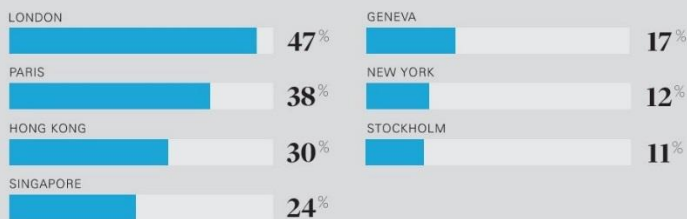
London and Paris lead the way as the most popular venues, with Asian cities closing the gap

90% indicate that international arbitration is their preferred method of dispute resolution

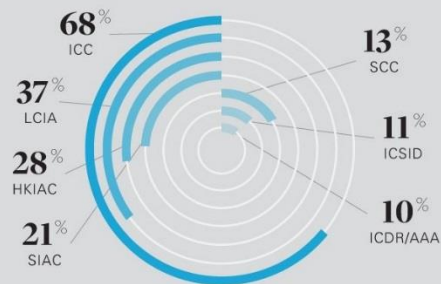
Most used seats



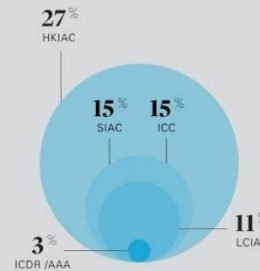
Most preferred seats



Most preferred arbitral institutions



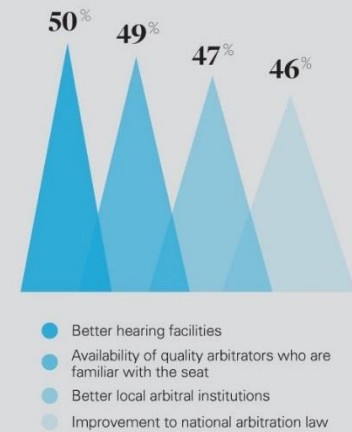
Most improved institutions over the past five years



Most improved seats over the past five years



How have these seats improved?



Room for improvement



A call for more regulation of specific areas

