WHITE & CASE

2025 International Arbitration Survey

The path forward: Realities and opportunities in arbitration

Queen Mary University of London

SIA School of International Arbitration

Contents

2025 International Arbitration Survey – The path forward: Realities and opportunities in arbitration

The 2025 International Arbitration Survey, entitled "The path forward: Realities and opportunities in arbitration", investigates current trends in user preferences and perceptions, and opportunities to shape the future innovation and development of the practise of international arbitration. It explores how users of international arbitration view pressing issues such as how to tackle inefficiencies, the competing interests of confidentiality and transparency in relation to disputes involving public interest issues, trends in enforcement of awards and the transformative potential of technology.

This edition saw the widest ever pool of participants (2,402 questionnaire responses received and 117 interviews conducted), almost double the number who participated in our previous survey. Views were sought from a diverse pool of participants, including in-house counsel from both public and private sectors, arbitrators, private practitioners, representatives of arbitral institutions and interest groups, academics, tribunal secretaries, experts and third-party funders. The survey provides a breakdown of some results by categories of respondents, such as by their primary role or the geographic regions in which they principally practise or operate, providing unique insight into the range of views expressed by different stakeholders across the international arbitration community.

White & Case is proud once again to have partnered with the School of International Arbitration at Queen Mary, University of London. The School has produced a study that provides valuable empirical insights into what users of international arbitration want and their expectations for the future. We are confident that this survey will be welcomed by the international arbitration community.

We thank Norah Gallagher, Dr. Maria Fanou and Dr. Thomas Lehmann (White & Case Postdoctoral Research Associate) for their outstanding work, and all those who generously contributed their time and knowledge to this study.

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It is fascinating to see how quickly the international arbitration community moves on. It only seems like yesterday that we were conducting a Survey in the middle of a global pandemic. COVID-19 did warp our perception of time yet the speed with which things have changed since is remarkable. International geopolitics has shifted significantly, resulting in an increased awareness of challenges when arbitrating a dispute when sanctions have been imposed on either party. The responses to these questions in the survey on public interest reflect the current geopolitical status. There has been a significant increased acceptance and reliance on Artificial Intelligence (AI). This is perhaps one of the most surprising elements of this survey. The international arbitration community expect AI use to grow rapidly in the coming years.

This is the 14th empirical survey conducted by the School of International Arbitration, Queen Mary University of London and the sixth in partnership with White & Case LLP. We are grateful for their continued support with this important empirical research. We rely entirely on the goodwill of the international arbitration community to complete the questionnaire. This is the only way we can ensure we get the most comprehensive data. This survey involved the largest number of respondents to date with over 2,400 globally. Dr. Thomas Lehmann, our White & Case Postdoctoral Research Associate at QMUL, also interviewed 117 respondents to add colour and context to the quantitative stage.

Norah Gallagher
Director, School of International Arbitration Centre for Commercial Law Studies, Queen Mary University of London

Executive summary

The 2025 International Arbitration Survey questionnaire was completed by 2,402 respondents, nearly doubling the response rate from the previous survey held in 2021. This is the largest and most representative pool of participants yet.

Experiences and preferences

- An overwhelming majority (87%) of respondents continue to choose international arbitration to resolve cross-border disputes, either as a standalone mechanism (39%) or with Alternative Dispute Resolution (ADR) (48%). There has been a slight decline in preference for arbitration combined with ADR compared to previous surveys.
- The five most preferred seats for arbitration are London, Singapore, Hong Kong, Beijing and Paris. London and Singapore rank among the top five seats for each of the six regions in which respondents principally practise or operate.
- The five most preferred sets of arbitral rules are the ICC Rules, HKIAC Rules, SIAC Rules, LCIA Rules and UNCITRAL Rules. The ICC Rules are in the top three choices for each of the six regions.
- Geopolitical or economic sanctions impact arbitration proceedings in various ways: 30% of respondents chose a different arbitral seat; 27% faced administrative and payment challenges; 25% experienced difficulty finding counsel or arbitrators able to participate, raising concerns about access to justice.

Enforcement

- Award debtors generally voluntarily comply with arbitral awards, particularly when they are private parties rather than States or state entities. Unsurprisingly, the highest level of voluntary compliance is seen with consent awards, with only 8% of respondents reporting they are 'never' or 'rarely' complied with.
- The majority of respondents (61%) consider that awards annulled at the seat should not be enforceable in other jurisdictions. Still, many suggest it might be advisable to allow enforcement of an award that was annulled.

Efficiency and effectiveness

- The behaviours that most negatively impact efficiency in arbitration include adversarial approaches by counsel (24%), lack of proactive case management by arbitrators (23%) and counsel over-lawyering (22%). Respondents called for greater proactivity and courage from both counsel and arbitrators to address inefficiencies.
- The most effective mechanisms for enhancing efficiency were expedited arbitration procedures (50%) and early determination procedures for manifestly unmeritorious claims or defences (49%). While expedited procedures are particularly useful in less complex cases, their success depends on the tribunal's readiness to make swift decisions.
- Respondents enjoyed excellent experiences with mechanisms for expediting arbitrations, such as expedited arbitration procedures embedded in arbitral rules and paper-only arbitration. Most would be willing to use them again. They also acknowledged the need to balance efficiency with procedural fairness.
- The decision to choose expedited procedural mechanisms is driven by pragmatic concerns, principally the desire to minimise costs (65%) and ensure rapid resolution (58%), particularly for disputes of lower value or complexity.

Public interest in arbitration

- Only one third of our respondents have encountered any of the various categories of public interest issues in their arbitrations. There is, however, an expectation that environmental and human rights issues will increasingly become present in both purely commercial arbitrations and disputes involving States or state entities.
- The primary advantages of international arbitration for resolving disputes involving public interest issues include the ability to select arbitrators with relevant experience or knowledge (47%) and to avoid specific legal systems or national courts (42%).
- The most significant challenges in arbitrating disputes involving public interest issues include balancing confidentiality and transparency (47%) and the lack of arbitral tribunal power over third parties (46%).
- Confidentiality of arbitration in this context can be viewed as both beneficial for delicate or reputation-sensitive disputes, and problematic for the potential to shield improper conduct of state entities from public scrutiny.
- Respondents are divided on whether international arbitration proceedings should be 'open' to the public. The vast majority favour maintaining confidentiality, especially in commercial arbitration. There is, however, greater support for publication of redacted awards, especially for disputes involving States or state entities.

Arbitration and AI

- Use of AI is expected to grow significantly over the next five years, driven by the potential for efficiencies. Principal current uses of AI include factual and legal research, data analytics and document review. AI assistance in drafting and in evaluating legal arguments is also expected to increase, but significant concerns persist about accuracy, ethical issues and AI's ability to handle complex legal reasoning.
- The principal drivers for the increased use of AI in international arbitration are saving party and counsel time (54%), cost reduction (44%) and reduction of human error (39%).
- The principal obstacles to the greater use of AI in international arbitration are concerns about errors and bias (51%), confidentiality risks (47%), lack of experience (44%) and regulatory gaps (38%).
- Respondents largely approve of the use of AI by arbitrators to assist in administrative and procedural tasks. There is strong resistance, however, to its use for tasks requiring the exercise of discretion and judgment, which are fundamental aspects of the mandate given to arbitrators.
- The general consensus is that, over the next five years, international arbitration and its users will adopt, and adapt to, AI. Respondents predict that arbitrators will increasingly rely on AI (52%) and that new roles to work with AI will emerge (40%). The enthusiasm for greater use is tempered, however, by the desire for transparency, clear guidelines and training on the use of AI.

Experiences, preferences and enforcement

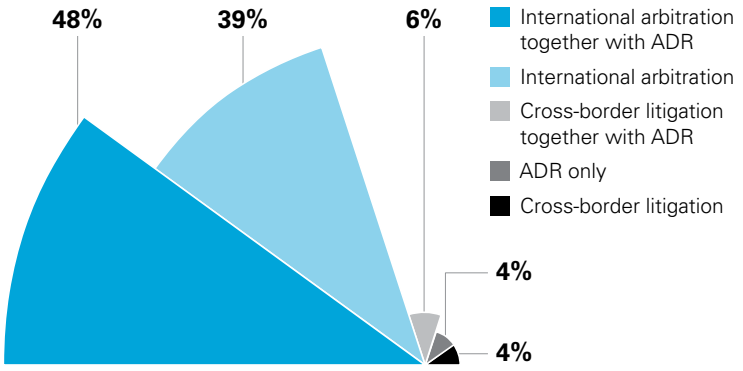
Arbitration reigns supreme, with or without ADR

We asked respondents for their preferred method of resolving international disputes out of five options: 'international arbitration together with ADR', 'cross-border litigation together with ADR', 'international arbitration' as a standalone option, 'ADR only', or 'cross-border litigation' as a standalone option.[1]

In past surveys conducted by Queen Mary University of London (QMUL), arbitration, as either a standalone option or in conjunction with ADR, was consistently selected as the preferred dispute resolution mechanism for cross-border disputes.[2] In this latest survey, an overwhelming majority (87%) of respondents once again favour solving international disputes through international arbitration, either together with ADR (48%) or as a standalone mechanism (39%).

Interviewees confirmed that international arbitration remains the preferred mechanism for international disputes. They highlighted their appreciation of the flexibility, expertise, overall speed and efficiency of arbitration, and, most importantly, the enforceability of arbitral awards globally. This survey shows, however, a notable decline in preference for ADR. Previous surveys indicated a steady rise in support for international arbitration combined with ADR (with partiality for that option increasing from 34% in 2015 to 49% in 2018 and peaking at 59% in 2021). This year marks a reversal of that trend. International arbitration as a standalone mechanism was selected by 8% more of the total respondent pool than in our 2021 survey, while the preference for international arbitration with ADR declined by 11% compared to 2021.

Chart 1: What is your preferred method of resolving international disputes?



Summary

- An overwhelming majority (87%) of respondents continue to choose international arbitration to resolve cross-border disputes, either as a standalone mechanism (39%) or with Alternative Dispute Resolution (ADR) (48%). There has been a slight decline in preference for arbitration combined with ADR compared to previous surveys.
- The five most preferred seats for arbitration are London, Singapore, Hong Kong, Beijing and Paris. London and Singapore rank among the top five seats for each of the six regions in which respondents principally practise or operate.
- The five most preferred sets of arbitral rules are the ICC Rules, HKIAC Rules, SIAC Rules, LCIA Rules and UNCITRAL Rules. The ICC Rules are in the top three choices for each of the six regions.
- Geopolitical or economic sanctions impact arbitration proceedings in various ways: 30% of respondents chose a different arbitral seat; 27% faced administrative and payment challenges; 25% experienced difficulty finding counsel or arbitrators able to participate, raising concerns about access to justice.
- Award debtors generally voluntarily comply with arbitral awards, particularly when they are private parties rather than States or state entities. Unsurprisingly, the highest level of voluntary compliance is seen with consent awards, with only 8% of respondents reporting they are 'never' or 'rarely' complied with.
- The majority of respondents (61%) consider that awards annulled at the seat should not be enforceable in other jurisdictions. Still, many suggest it might be advisable to allow enforcement of an award that was annulled.

Some interviewees expressed concerns that ADR mechanisms, such as expert determination or dispute boards, could be used in a way that challenges the strengths of the opposing party's case. Others considered ADR to be a "waste of time".[3] Notwithstanding these concerns, most interviewees acknowledged that using ADR can help reduce costs, especially in the context of continuous contractual relationships and in industries such as shipping or construction, where mechanisms such as dispute adjudication boards are common and are generally considered to be cost-effective.

Preference for ADR may also, to some extent, be influenced by cultural factors. Respondents who principally practise or operate in Europe tend to favour standalone arbitration (51%) over arbitration combined with ADR (42%), whereas respondents from the Asia-Pacific region show a preference for a more collaborative approach to dispute resolution, opting for arbitration with ADR (50%) more than standalone arbitration (37%).[4] This finding is echoed in the concern of Asia-Pacific respondents about the negative impact of counsel adopting adversarial rather than collaborative approaches.[5]

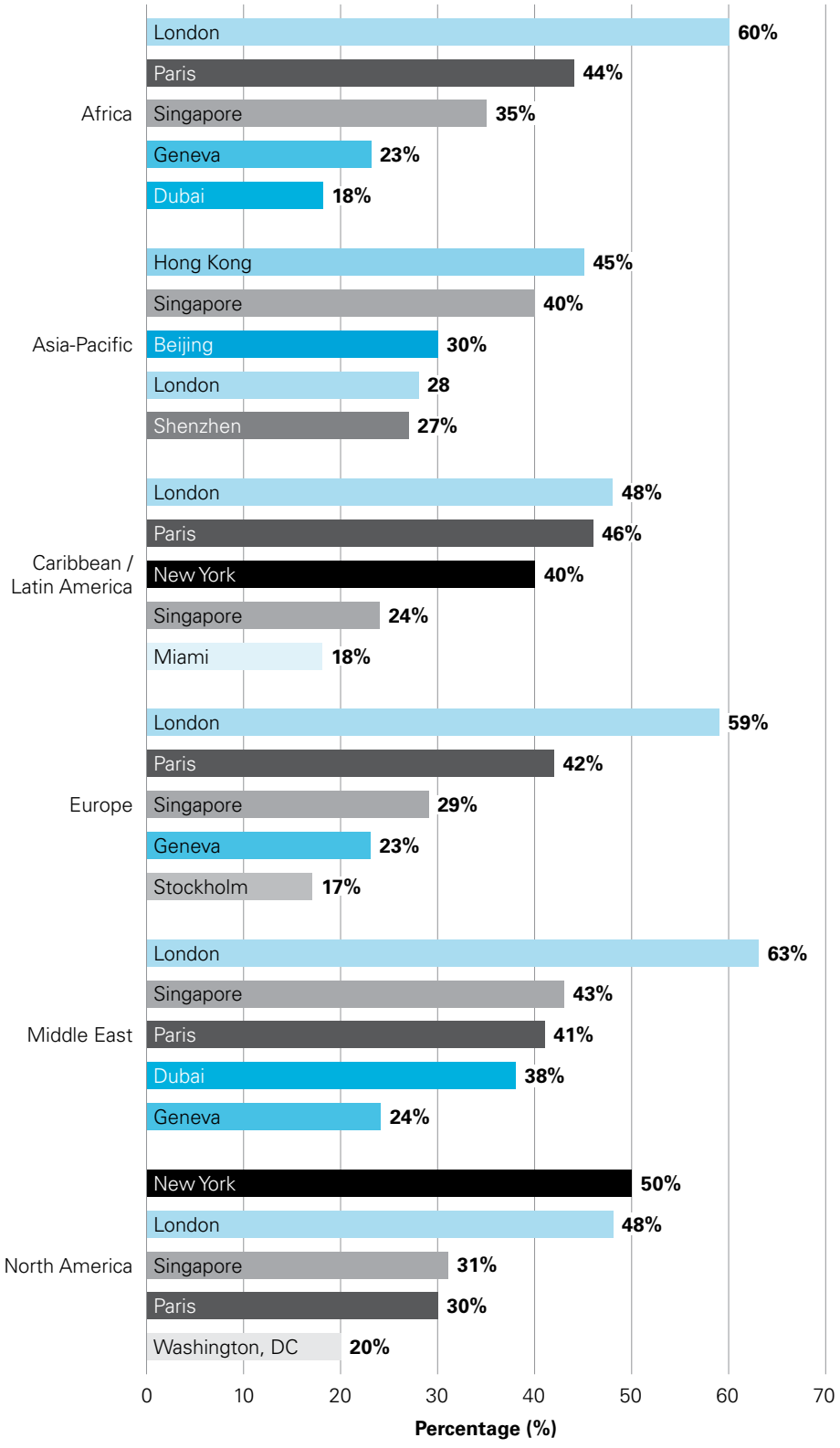
Some interviewees suggested that, where use of ADR has not yielded as positive an experience, this may be more due to concerns about the efficiency of specific ADR processes rather than calling into question the overall value of a more collaborative approach to resolving disputes. This may, in part, explain why the option of international arbitration together with ADR has slightly lost favour among respondents.

Preferred arbitral seats: The global picture

The arbitral seat can significantly impact the conduct of arbitration proceedings and the enforcement of arbitral awards. QMUL has explored seat preferences since the 2010 survey,[6] offering valuable insights into where arbitration users prefer to arbitrate international disputes and the reasons for their choices.[7] This year, we again aimed to explore the seats most preferred by respondents or their organisations, asking

Chart 2: Top five most preferred seats by region

Respondents were asked to specify up to five seats

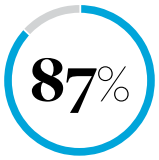


respondents to select up to five seats. Choices could be made from a drop-down list[8] or by designating other seats in a free text box. Respondents cited no fewer than 117 diverse seats from across the world,[9] including, for example, Astana, Dublin, Ho Chi Minh City, Kigali, Mumbai, Rio de Janeiro, Riyadh and Vancouver.

The factors influencing preference for seats, as confirmed by interviewees, were consistent with those singled out by respondents to our previous surveys. These include support for arbitration by local courts, neutrality and impartiality of the local legal system and national arbitration law and a strong enforcement track record.[10]

No place like home

Analysing seat preferences by regional subgroups where respondents principally practise or operate reveals an interesting dual trend of some seats being selected by respondents across multiple regions, while other seats are particularly favoured by respondents in the regions where those seats are located.



of respondents prefer to resolve cross-border disputes through **international arbitration**

London is ranked first in four out of the six regions and appears in the top four for each regional subgroup. Singapore is also ranked in the top four for each region.

Paris is ranked in the top four of all regions except Asia-Pacific. This demonstrates the pan-global influence of each of these seats. Apart from these seats, we see stark differences across the regions.

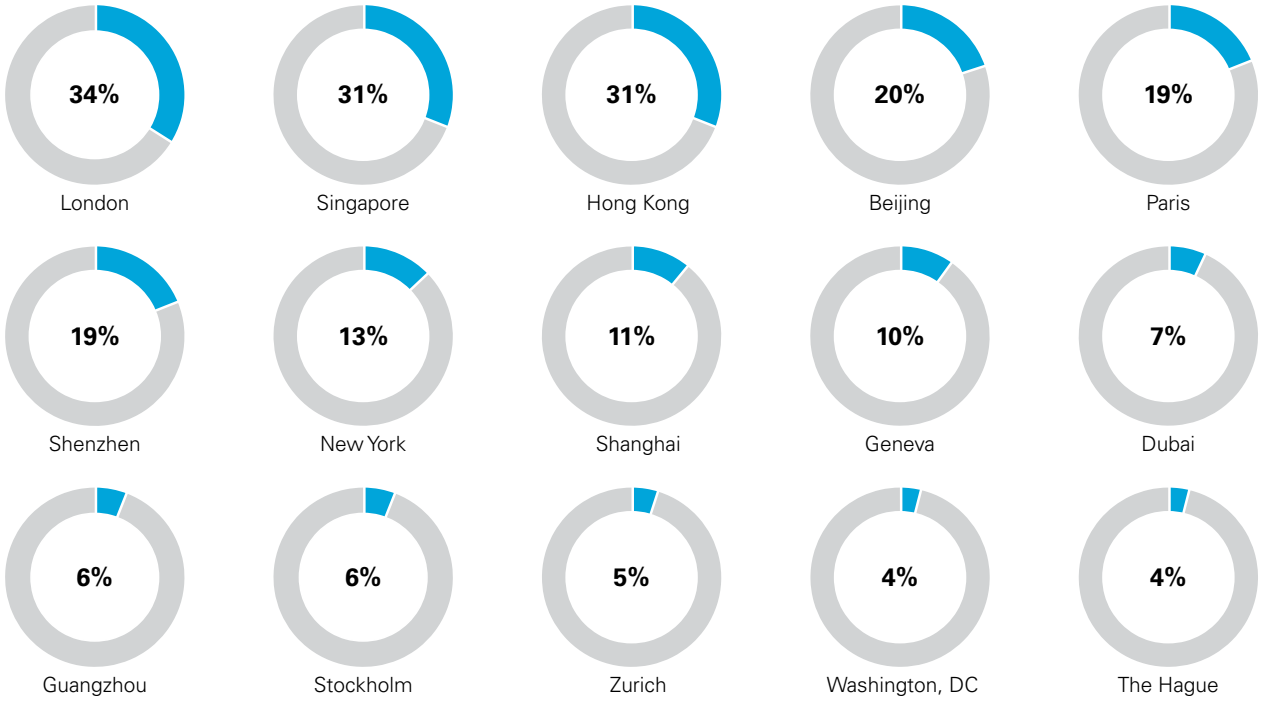
Respondents in both Europe and Asia-Pacific show strong preferences for seats in their respective regions. In Europe, Geneva and Stockholm feature among the top five preferred seats; as in the 2021 survey, Singapore is the only non-European seat listed in the top five.[11] In Asia-Pacific, London is the only non-Asian seat to make the top five, with Hong Kong, Singapore, Beijing and Shenzhen (which replaces Paris compared to the rankings in the 2021 survey[12]). This suggests that arbitration users in both regions prefer to arbitrate under the laws of jurisdictions closer to home.

A similar trend of preferring seats in respondents' own geographical regions may be observed among North American respondents, although it is less marked. New York now ranks first in the region, compared to third in the 2021 and 2018 surveys, while Washington, DC appears in the top five for the first time.

In other regions, there is less marked preference for regional seats. Caribbean and Latin American respondents appreciate New York and Miami (which is seen as a "gateway seat" for Latin American disputes). Of seats located in Latin America, São Paulo has moved down from its fourth spot in the 2021 survey to ninth place, on par with Washington, DC; Lima is the second most cited seat located in the region, and the 14th most popular seat overall of those chosen by Caribbean / Latin American respondents. For Middle East-based respondents, Dubai ranks fourth among their top five seats, with interviewees asserting confidence in the jurisdiction, notwithstanding the impact of abolishing the DIFC-LCIA and consequent uncertainties for arbitration in the region. In Africa, Dubai again makes a strong entry as the fifth preferred seat, with Beijing, Shenzhen and Lagos also appearing in the top ten for Africa-based respondents.

Chart 3: Most preferred seats globally

Respondents were asked to specify up to five seats



Established hubs and new entrants

London remains the most preferred seat globally, chosen by 34% of all respondents. Interviewees praised its reliable track record in upholding arbitral awards, consistent pro-arbitration approach and the efficiency of the judiciary. Despite some concerns raised in the 2018 survey that Brexit might impact the preference of London as a seat,[13] both our 2021 survey and our latest findings signal that confidence in London remains high among arbitration users globally.[14]

Singapore's global appeal has been confirmed again, chosen in second place with 31% of the selections by respondents.[15] Interviewees singled out the political endorsement of international arbitration in Singapore, with heavy investment in formal legal infrastructure,[16] but also judicial support for awards, efficiency and smoothness of procedures "even in cases of complex enforcement proceedings". One interviewee enthused that they had "never found Singapore to be unpredictable".

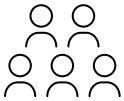
Hong Kong once again features in the top three, with 31% of respondents including the seat in their answer.[17] Interviewees praised the judicial support of the Hong Kong courts and the overall strength and depth of arbitration culture in Hong Kong. Interviewees also noted Hong Kong's privileged status as the "gateway to mainland China", appreciating the ability to enforce Hong Kong-issued awards in mainland China.

Paris ranks fifth. It continues to enjoy strong endorsement globally, although dropping one place from its fourth position in the 2021 survey. The majority of interviewees deemed Paris a "highly reputable", reliable and safe seat, noting the strong pro-arbitration history and approach of the jurisdiction. Some, however, highlighted challenges relating to upholding or enforcing arbitral awards, with a number mentioning recent "controversial annulment decisions" concerning awards made in disputes involving allegations of corruption.

> **Considering the ever-growing practice of arbitration in Asia-Pacific, one interviewee suggested that "arbitration is moving east"**

34%

London is the most preferred seat **globally**



London and **Singapore** are the only seats in the top five **in all regions**

The message from respondents is that consistency is key when assessing how attractive they find a seat. Users want to be sure that they will get what they expect when they choose where to arbitrate their disputes. While these four seats continue to enjoy global favour, however, the overall percentage of respondents that favour each of these seats dropped significantly as compared to our previous surveys. This is accompanied by a rise in popularity of certain other seats that make it to the top ten this year.

Beijing has now risen to fourth place, ahead of Paris, moving up from seventh place in our 2021 survey.[18] Shenzhen, for the first time, has reached sixth place, and Shanghai is now eighth, joining Beijing in the top ten most preferred seats globally. These three seats were primarily endorsed by respondents practising in Asia-Pacific. Of Asian seats, Hong Kong and Singapore were both in the top ten preferred seats chosen by respondents whose principal regions of practise or operation were outside Asia-Pacific.[19] Interviewees noted the increased pro-arbitration stance of the judiciary, the growing levels of experience in arbitration in these regional centres and the increased commercial power of parties from the region. In recognition of this, some Europe and North America-based interviewees indicated they are open to the possibility of considering seats in that region. Others remained more hesitant, noting concerns regarding enforcement in mainland China. Overall, though, considering the ever-growing practice of arbitration in Asia-Pacific, one interviewee suggested that "arbitration is moving east".

The seats that complete the global top ten are New York, Geneva and Dubai. Other popularly chosen seats following the top ten include Guangzhou, Stockholm, Zurich, Washington, DC, The Hague, Miami, Vienna, Frankfurt, Madrid, Houston and New Delhi.[20]

Which arbitration rules are preferred?

We asked respondents to indicate their or their organisation's most preferred sets of arbitration rules from a drop-down list[21] or in a free text form. They could specify up to five different sets of rules. Respondents cited 66 different sets of ad hoc, administered institutional and non-administered institutional rules, indicating the diversity of choice enjoyed by users of arbitration.[22]

The regional outlook

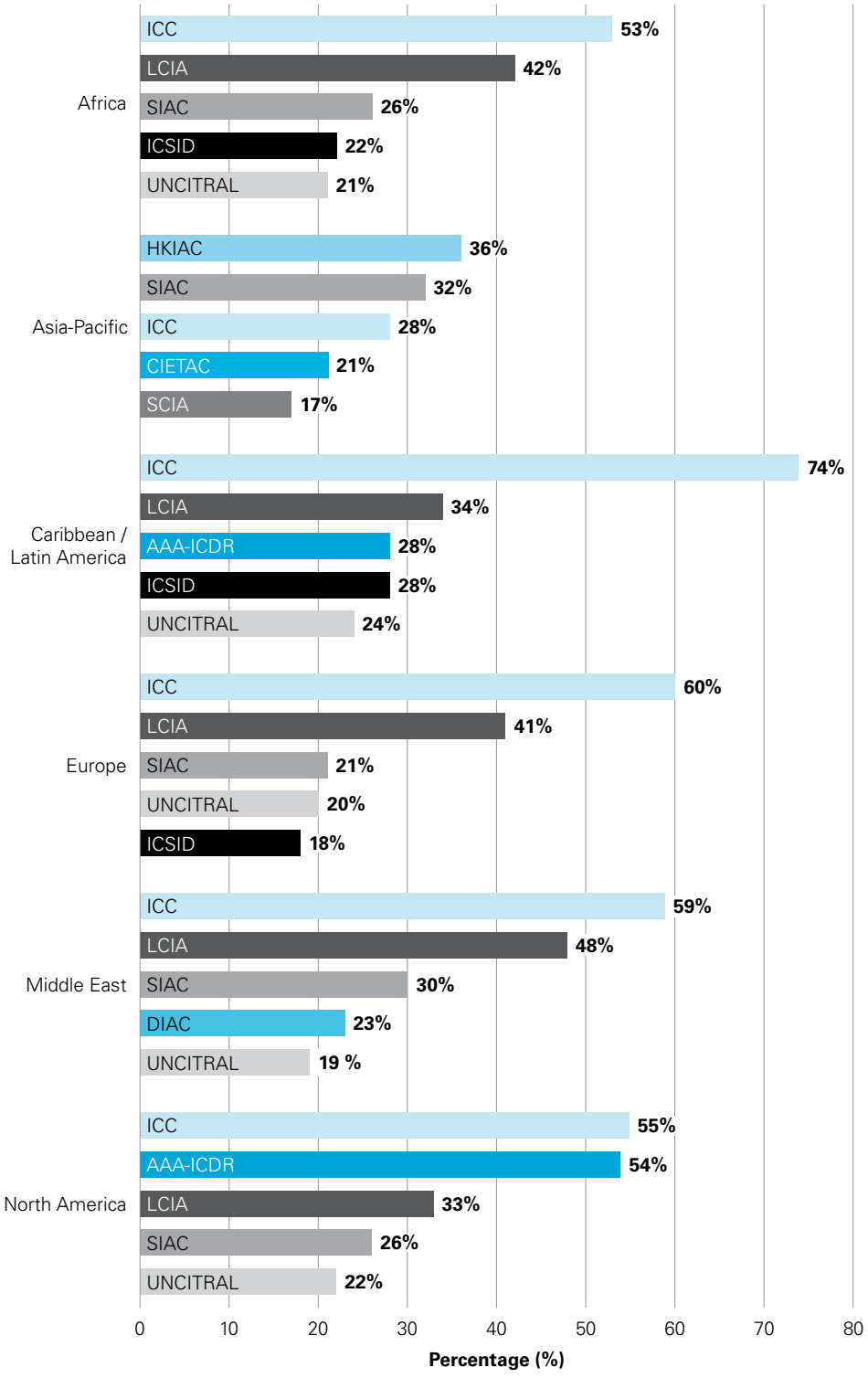
Breaking down the results by the regions in which respondents principally practise or operate leads to interesting discoveries. While some sets of rules appear in the top five for respondents in multiple regions, others are more endorsed by respondents in the regions where the providers of those rules are based.

The ICC Rules are the only ones represented in all regions, taking the top position in all apart from Asia-Pacific. The SIAC Rules rank in the top five for all regions apart from the Caribbean / Latin America. The UNCITRAL Rules and the LCIA Rules also enjoy global popularity, both appearing in the top five for all regions apart from Asia-Pacific. The ICSID Rules rank in the top five for Africa, Caribbean / Latin America and Europe-based respondents.

Asia-Pacific respondents offer a marked preference for rules of providers based in the region. The HKIAC Rules have gained in favour among Asia-Pacific respondents as compared to the

Chart 4: Top five most preferred sets of arbitration rules by region

Respondents were asked to specify up to five seats



institutional rules preferred by Asia-Pacific respondents in our 2021 Survey, where the HKIAC Rules ranked third, behind the SIAC and ICC Rules and on a par with the LCIA Rules.[23] The CIETAC Rules and SCIA (Shenzhen) Rules are also particularly favoured by Asia-Pacific users.

Also notable is the prevalence of the AAA/ICDR Rules for both North American and Caribbean / Latin American respondents, while the DIAC Rules are in the top five choices for Middle East respondents.

A diverse global menu of choices

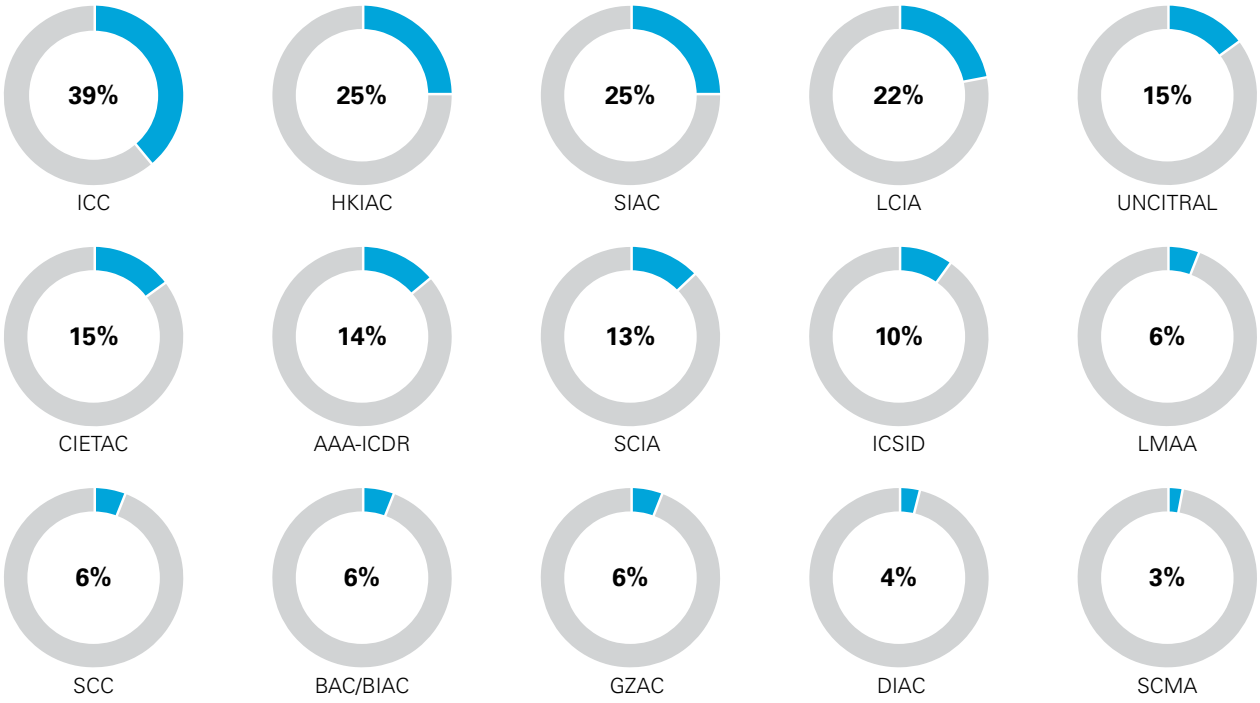
Globally, the ICC Arbitration Rules top the ranking with 39% of all respondents including it as one of their choices, closely followed by the HKIAC Rules and SIAC Rules (each attracting votes from 25% of respondents). The LCIA Rules and the UNCITRAL Arbitration Rules close out the top five. As in our previous surveys, interviewees confirmed that reasons for preferring specific institutional rules were influenced by the general reputation of the institution and level of administration.[24] Choices of sets of ad hoc rules were, again, inspired by their flexibility and the ability to customise options to user needs.[25]

The ICC Arbitration Rules are highly regarded, with many interviewees highlighting their established reputation and ease of use for arbitrators and counsel, as well as the support of the Secretariat. Some interviewees expressed reservations regarding the monetary limit for expedited arbitration and the advance on costs, suggesting that these could be based on overstated claim values.

The SIAC Rules were lauded for being innovative, responsive to user needs and, by some, for making arbitration confidential by default. The efficiency of the emergency arbitration process was also praised. Others, however, expressed concerns more generally about a degree of "formalisation" which had a negative impact on the speed of proceedings.

Chart 5: Most preferred sets of arbitration rules globally

Respondents were asked to specify up to five sets of rules



Interviewees commended the sense of innovation in the HKIAC Rules, as well as the "light touch" approach of the HKIAC Secretariat and its ability to perform its administrative functions, especially in relation to sanctions-related disputes.[26] Some indicated that they did not perceive particular advantages in selecting the HKIAC Rules over others, unless they had a need to enforce awards or interim measures in mainland China.

The LCIA Rules come in fourth, with interviewees describing them as self-explanatory, "more literate and better written" and "straightforward". Some judged the institution positively for its hourly-rate basis for case administration and arbitrators' fees, although others found this system less favourable for complex disputes.

Other institutional rules were generally well received, with numerous interviewees indicating a degree of "parallelism" between these and the rules offered by more prominent and 'global' institutions, in that they did not perceive significant differences between them. A few interviewees, however, expressed regret for the resulting lack of diversity.

The UNCITRAL Rules finished fifth overall.[27] Many respondents confirmed their flexibility, suitability for state-related disputes and the option to have disputes administered by institutions, including the PCA, which was praised for its expert handling of UNCITRAL proceedings.

Certain industries have long preferred ad hoc arbitration or specialised sets of arbitration rules tailored to the needs of industry participants. Some of those selected by respondents, and positively mentioned by interviewees, include the London Maritime Arbitrators Association Terms, the Society of Maritime Arbitrators New York Rules, the Singapore Chamber of Maritime Arbitration Rules, and other specialist rules such as the Grain and Feed Trade Association Rules, World Intellectual Property Organization Rules, and Nordic Offshore and Maritime Arbitration Association Rules.

The **ICC Rules** are among the top five preferred rules in all regions. Each of the **SIAC, LCIA** and **UNCITRAL Rules** ranks in the top five for five regions.

Arbitration amid sanctions: Access denied?

We asked respondents whether geopolitical or economic sanctions imposed on a party or other participant have had an impact on their arbitration proceedings. Respondents were provided with a range of different types and degrees of impact and were asked to select as many as applied; there was also an 'other' option with a free text box. While many respondents had no experience of sanctions affecting their proceedings, or answered that there had been 'no significant impact' (28%),[28] the responses from practitioners who did have such experiences provide intriguing insights.

30% of respondents who answered the question said they chose a different seat to ensure that their dispute could be arbitrated. Many interviewees highlighted Dubai, Hong Kong and Singapore as increasingly preferred arbitral seats for disputes impacted by sanctions. Some also cited difficulties in

arbitrating such disputes in popular European and US seats in particular, such as challenges related to banking restrictions, non-responsive respondents and the potential for anti-suit injunctions being acquired in sanctioned jurisdictions by adverse parties.

27% of respondents said they faced administrative challenges. A primary issue was the inability to participate in proceedings, particularly due to the difficulty in obtaining approval from banks to receive money from, or pay money to, a party subject to, or from a state under, sanction. Respondents highlighted that, even when a licence or exemption is obtained, the obstacles to arbitrating or participating in an arbitration with a sanctioned party can still be substantial. Arbitrators and counsel highlighted the challenges of taking on cases due to factors such as nationality, banking restrictions and especially the potential reputational risks.

Respondents encountered a range of obstacles when it came to satisfying awards or settling disputes: 18% noted the difficulty of obtaining interim relief as an effect of sanctions, while 16% experienced challenges in enforcement against award debtors. Interviewees were concerned about the potential risk that domestic courts may exercise discretion in enforcing awards that were issued in jurisdictions they consider 'unfriendly'. Even where parties were inclined to be cooperative, 14% of respondents found it was more difficult for award debtors to voluntarily satisfy awards, and 12% said it was more difficult to agree settlement terms.

Only 17% of respondents said they had chosen different arbitral rules, while 12% found the institution or appointing authority was unable to accept the mandate. It was noted, however, that some arbitral institutions had helpfully obtained licences or exemptions from authorities in the jurisdictions in which they are based (or, in some cases, from the EU) to handle disputes impacted by sanctions.

66

different sets of arbitral rules were selected

Perhaps one of the most far-reaching impacts was the difficulty experienced by 25% of respondents in finding counsel to represent a sanctioned party. Respondents who principally practise or operate in Europe (32%) encountered the most difficulty in this regard. Some interviewees expressed the view that arbitrations involving sanctioned parties should not take place at all and indicated that they would decline arbitrator appointments or advisory requests. Many others did, however, raise concerns about derogation from the principles of access to justice and equality of arms in situations where counsel declines to represent a party due to sanctions-related and reputational concerns. As one interviewee put it, "Governments do not think of arbitration when drafting sanctions. We must comply with the rule of law even when it is a 'necessary evil'".

Chart 6: How have sanctions imposed on a party or participant impacted the arbitration proceedings?

Respondents were asked to select all that apply

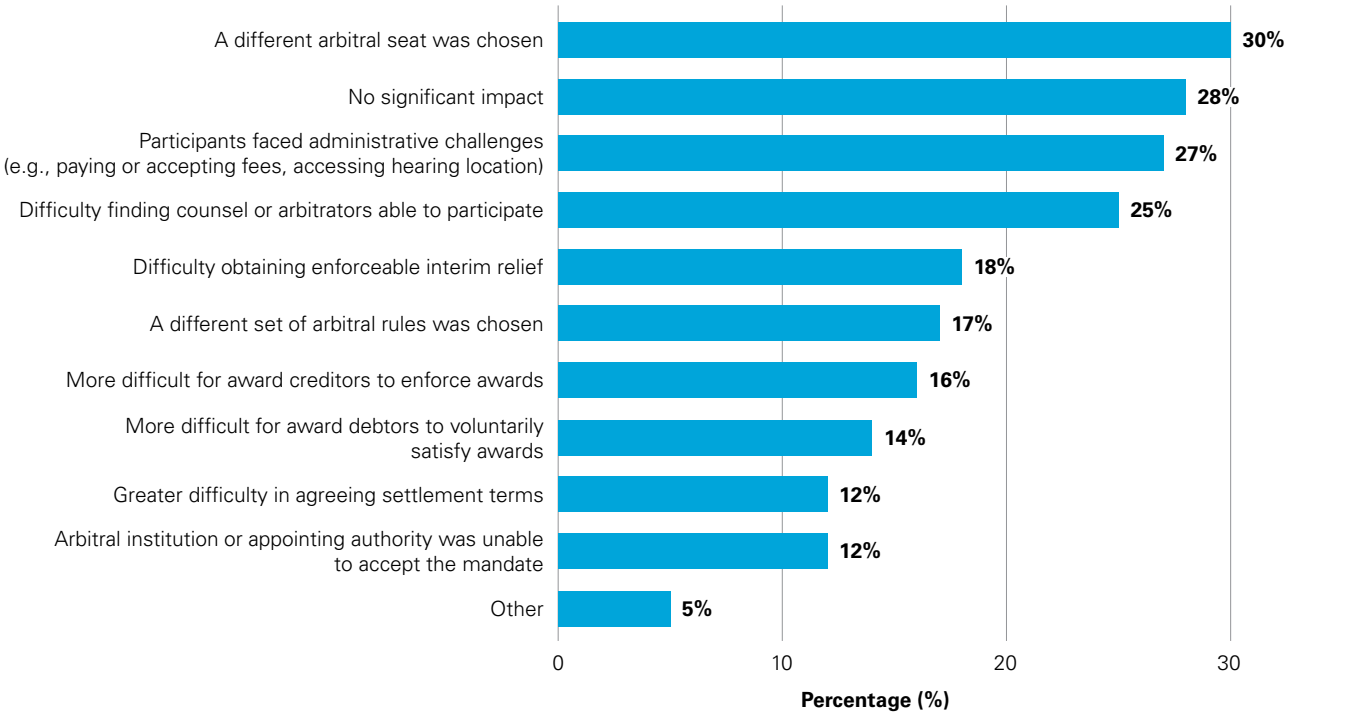
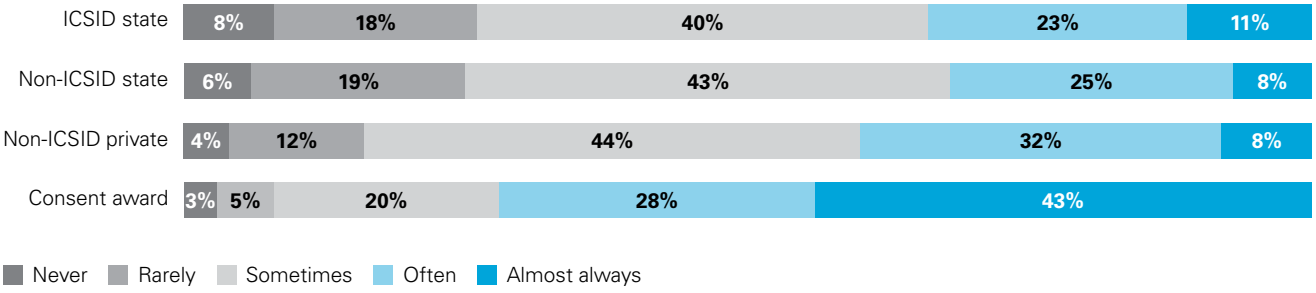


Chart 7: How often do award debtors voluntarily comply with arbitral awards?



Governments do not think of arbitration when drafting sanctions. We must comply with the rule of law even when it is a 'necessary evil'

Voluntary compliance with awards: Reality v. myth?

Enforceability of arbitral awards has long been considered one of the most valuable characteristics of international arbitration.[29] While enforcement can be pursued using a variety of mechanisms, depending on factors such as where and under which regimes awards are issued and subsequently sought to be enforced, we aimed to explore respondents' experiences in practice with voluntary compliance by award debtors. We asked respondents to describe their experience of voluntary compliance in four different circumstances: in ICSID arbitrations when the award debtor is a State; in non-ICSID arbitrations when the award debtor is a State or state entity; in non-ICSID arbitrations when the award debtor is a private entity or individual; and when the award was a consent award.[30] Respondents ranked their experiences of degree of voluntary compliance on a five-point scale from 'never' to 'almost always'.

We distinguished between award debtors that are private parties and those that are States or state entities, due to enforcement hurdles against the latter, such as the availability of state immunity.

For ICSID arbitrations involving State award debtors, voluntary compliance was seen reasonably frequently: 11% of respondents said States 'almost always' comply and 23% found it happens 'often', although 40% put the occurrence of voluntary compliance no higher than 'sometimes'. The outlook was decidedly less rosy, however, for almost a quarter of respondents: 18% found States 'rarely' complied voluntarily and 8% answered that States 'never' comply, with some interviewees noting an increase in non-compliance in ICSID arbitrations.

The rates of voluntary compliance seen in non-ICSID arbitrations when the award debtor is a State or state entity are strikingly similar to the findings for ICSID arbitrations. This is despite the difference in enforcement mechanisms used when the award debtor chooses not to voluntarily satisfy the award.[31]

For non-ICSID cases when the award debtor is a private entity or individual, experience of voluntary compliance appears to be greater than where a State is the debtor. Only 12% found voluntary compliance happened 'rarely' and 4% 'never.' This suggests private entities are more inclined to voluntarily comply with awards. Interviewees noted that voluntary compliance often indicates a mutual interest in reaching an outcome quickly, with one stating, "If compliance is voluntary, it shows that both parties are interested in a quick resolution and sufficiently mature to do away with the delay." Another pointed out that it "all depends on how well versed the companies are in international arbitration" and "how expensive it is to fight the award".

The results suggest that voluntary compliance with arbitral awards is more common in cases where the award debtor is a private entity or individual. State entities, whether in ICSID or non-ICSID settings, tend to show slightly lower levels of voluntary compliance. An interviewee observed that, "Some government officials would rather go through resisting enforcement than simply comply with the award." A few pointed out the challenges of enforcing awards against state entities in their own domestic courts. Others suggested that States or state entities may be more open to negotiating the award amount than to negotiate a pre-award settlement.

of respondents chose **a different seat** due to sanctions

If compliance is voluntary, it shows that both parties are interested in a quick resolution and sufficiently mature to do away with the delay

In cases of consent awards, it is perhaps unsurprising that 43% of respondents reported that debtors 'almost always' comply and 28% said they 'often' comply. Even then, and despite this purported mutual consent, voluntary compliance is not always assured with a few finding it 'rarely' (5%) or 'never' (3%) occurred.

The results should, to some extent, be read in the context of the fact that, although respondents were instructed to answer the question based on experience, some interviewees admitted that their answers were influenced by their perceptions rather than actual experience. Even single instances of non-compliance could significantly colour their overall assessments. The findings reflect, perhaps, the frustration felt by award creditors who are faced with additional hurdles to collect on awards. Consequently, the actual rate of voluntary compliance may be higher than respondents perceive it to be.

A majority believes that the seat rules the award

We asked whether awards set aside, annulled or suspended at the seat should be enforceable in other jurisdictions.

The outcome of the 'vote' is overwhelmingly against the proposal. The majority of counsel (70%), in-house counsel for governments (76%) and for private entities (65%) oppose the proposal. Arbitrators also oppose being able to enforce awards annulled at the seat (58%). Other subgroups across the respondent pool are equally torn between the two sides of the debate: academics and tribunal secretaries marginally support the proposition (51% and 53%, respectively) but only 49% of arbitral institution staff back it. Interestingly, 64% of respondents who operate mainly in Asia-Pacific were against the proposal, compared to 54 – 58% in other regions. The only region where there was marginally more support in favour of the proposal was Caribbean / Latin America (52%).

Respondents opposing enforceability of awards annulled at the seat present arguments in line with a territorial understanding of international arbitration, where the validity of an award is determined by the laws of the seat where it was rendered. They stress that parties are able to deliberately choose the seat, and it would be an integral part of their "risk analysis" to "put themselves at the mercy of potential setting aside actions". One interviewee regarded the non-enforceability of annulled decisions as the "greatest policy issue", cautioning that being able to challenge annulments in other jurisdictions would incur substantial costs and make cases extremely lengthy. While many interviewees acknowledged the risk of questionable annulment decisions, another stated that, "The price to be paid for having a functioning system is that you accept that a few accidents happen".

Respondents favouring the ability to enforce awards notwithstanding their annulment at the seat highlight legal and practical considerations. Many interviewees argued that an award, once rendered, becomes a transnational instrument that is not 'tied' to the seat of the arbitration. Accordingly, annulment at the seat should not affect the parties' ability to enforce the award in other jurisdictions. Others emphasised pragmatic considerations, noting that users ultimately want their awards enforced. Some mentioned party autonomy, arguing that users have ousted the jurisdiction of domestic courts to the benefit of autonomous arbitration. Many believed that granting autonomy to an arbitral award is advantageous to international arbitration in the long run. Fascinatingly, respondents with more experience were somewhat more likely to support the enforceability of annulled awards although, overall, the greater number was still against the proposition.[32]

Remarkably, proponents on both sides of the debate cited the 1958 New York Convention in support of their view. Many interviewees also noted that, in some cases, it might be advisable to allow enforcement of an award that was annulled under questionable circumstances. The prevailing view of interviewees was that they would have preferred an "it depends" option, citing certain circumstances in which "fundamental fairness" may call for a different answer.

> **The price to be paid for having a functioning system is that you accept that a few accidents happen**

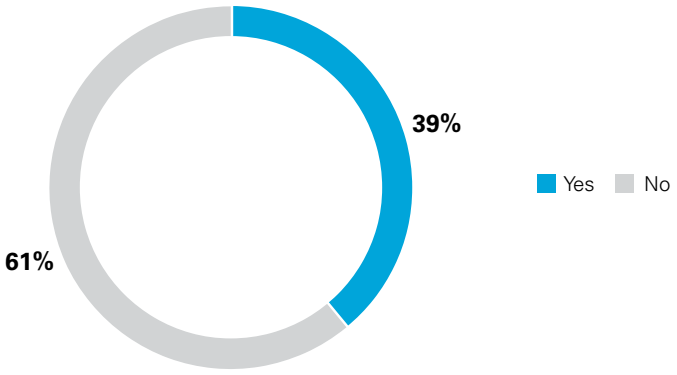
92%

of respondents said consent awards are **generally complied with**

70%

of **counsel** think annulled awards should **not be enforceable**

Chart 8: Should awards that are set aside, annulled or suspended at the seat be enforceable in other jurisdictions?



Efficiency and effectiveness

Arbitral inefficiency: Who is to blame?

Arbitration is commonly praised for its flexibility and ability to meet the needs of its users. Yet concerns persist about delays and inefficiencies throughout the arbitral process. Time and cost of the proceedings consistently arise among the most significant drawbacks for users.[33] In our 2021 survey, we explored whether respondents would be willing to forgo certain common procedural options if this would lead to swifter and cheaper resolution of their disputes.[34] To better understand factors contributing to users' frustrations, this time we sought to explore the perceived impact on efficiency of behaviours exhibited by participants in arbitrations that were criticised by respondents to our previous surveys.[35]

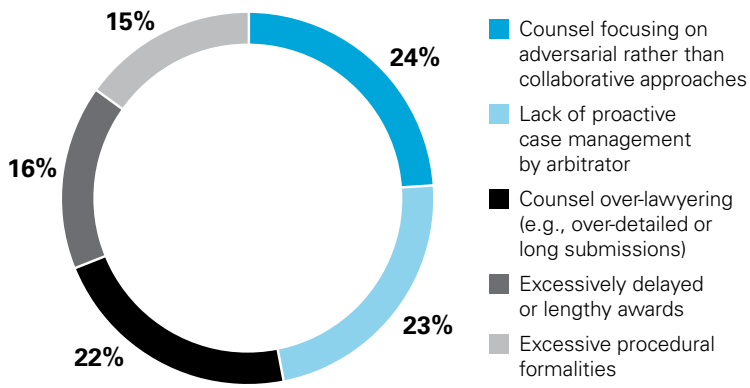
We asked, 'Which behaviour has the most negative impact on the efficiency of arbitration proceedings?' Respondents could choose one out of five options: 'Counsel focusing on adversarial rather than collaborative approaches'; 'Lack of proactive case management by arbitrators'; 'Counsel over-lawyering (e.g., over-detailed or long submissions)'; 'Excessively delayed or lengthy awards'; or 'Excessive procedural formalities'.

The top three selections were adversarial approaches adopted by counsel (24%), lack of proactive case management by arbitrators (23%), and over-lawyering (22%). Excessively delayed awards (16%) and excessive procedural formalities (15%) were viewed as less significant causes of inefficiencies. In other words, opinion was closely divided as to whether counsel or arbitrator behaviour is primarily to blame: 46% of respondents attribute the most negative inefficiencies to counsel behaviour, while 39% attribute it to arbitrators' lack of proactivity during or after the proceedings. Excessive procedural formalities (15%) could be attributed to either or both sets of actors, but a number of interviewees opined that it mainly stems from the procedural rules and arbitral institution staff.

Summary

- The behaviours that most negatively impact efficiency in arbitration include adversarial approaches by counsel (24%), lack of proactive case management by arbitrators (23%) and counsel over-lawyering (22%). Respondents called for greater proactivity and courage from both counsel and arbitrators to address inefficiencies.
- The most effective mechanisms for enhancing efficiency were expedited arbitration procedures (50%) and early determination procedures for manifestly unmeritorious claims or defences (49%). While expedited procedures are particularly useful in less complex cases, their success depends on the tribunal's readiness to make swift decisions.
- Respondents enjoyed excellent experiences with mechanisms for expediting arbitrations, such as expedited arbitration procedures embedded in arbitral rules and paper-only arbitration. Most would be willing to use them again. They also acknowledged the need to balance efficiency with procedural fairness.
- The decision to choose expedited procedural mechanisms is driven by pragmatic concerns, principally the desire to minimise costs (65%) and ensure rapid resolution (58%), particularly for disputes of lower value or complexity.

Chart 9: Which behaviour has the most negative impact on the efficiency of arbitration proceedings?



Arbitration is commonly praised for its flexibility and ability to meet the needs of its users

Curiously, less experienced respondents[36] consider procedural formalities and delayed awards to have the most negative impacts on efficiency, with one interviewee criticising arbitration as "rigid, costly and slow". For more experienced or frequent arbitration users, however,[37] their concerns shift towards counsel behaviour during the proceedings: they found over-lawyering (28%) and adversarial counsel conduct (27%) to be most responsible for inefficiencies.

Concerns over adversarial rather than collaborative approaches are most significant for Asia-Pacific and North American respondents. Many interviewees commented negatively on counsel behaviour, including a tendency to produce "often baseless and alternative defences or arguments", which in turn undermined their credibility and impacted the speed, cost efficiency and effectiveness of the proceedings. Other interviewees noted that adoption of litigation-style approaches, 'guerilla' tactics and formalised styles of advocacy were detrimental to the practice of arbitration. A few interviewees, including from North America, expressed particular resentment at what they perceived as an "Americanisation" of international arbitration proceedings, in particular excessive disclosure requests and sometimes "aggressive" adversarial conduct. Many interviewees suggested that clients can feel sidelined by counsel when they should be fully involved in decisions concerning the cost and speed of proceedings. Some suggested it would be good practice for clients to participate in case management conferences.

Arbitrators (35%) were most critical of over-lawyering. Many interviewees, both arbitrators and counsel, expressed clear frustration with excessive submissions, repetitive second or third rounds of memorials, and post-hearing briefs of questionable utility and purpose. Some drew a direct correlation between the quality of argumentation and the length of submissions, pithily concluding that "less is more". One arbitrator noted that, "Counsel should resist client pressure to overload post-hearing briefs with repetitive arguments." Another advised that, "It is not impossible to distil most cases down to something that is not flabby, repetitive and over-long." A note of caution was, however, struck by a few arbitrator interviewees, who warned that an under-lawyered case is also unhelpful as it may be "dodging the point".

Both **counsel** and **arbitrators** are responsible for behaviour that **negatively impacts efficiency**

Counsel, on the other hand, were more concerned with arbitrators' lack of proactivity (28%), reflecting their reliance on arbitrators to keep proceedings efficient. A number of counsel, arbitrators and other users opined that arbitrators should be more "decisive and courageous", in particular in reaching procedural decisions.[38] Another source of frustration regularly aired during interviews by counsel and other users was that "some arbitrators are too busy to be proactive". Arbitrators taking on too many appointments was considered a primary issue. In-house counsel (both private sector and government) also expressed dissatisfaction over delayed awards (23% for each group), with interviewees confirming a desire for arbitrators to better manage their availability and conduct matters expeditiously.

Adoption of litigation-style approaches, 'guerilla' tactics and formalised styles of advocacy were detrimental to the practice of arbitration

The overall message from the full pool of respondents is clear: addressing efficiency concerns requires greater courage, both from counsel and from arbitrators.

Express lane to efficiency

We asked respondents to identify the procedural mechanisms they believed would most enhance the efficiency of arbitration proceedings. They were asked to select up to three options from a list or suggest 'other' mechanisms in a free text box.

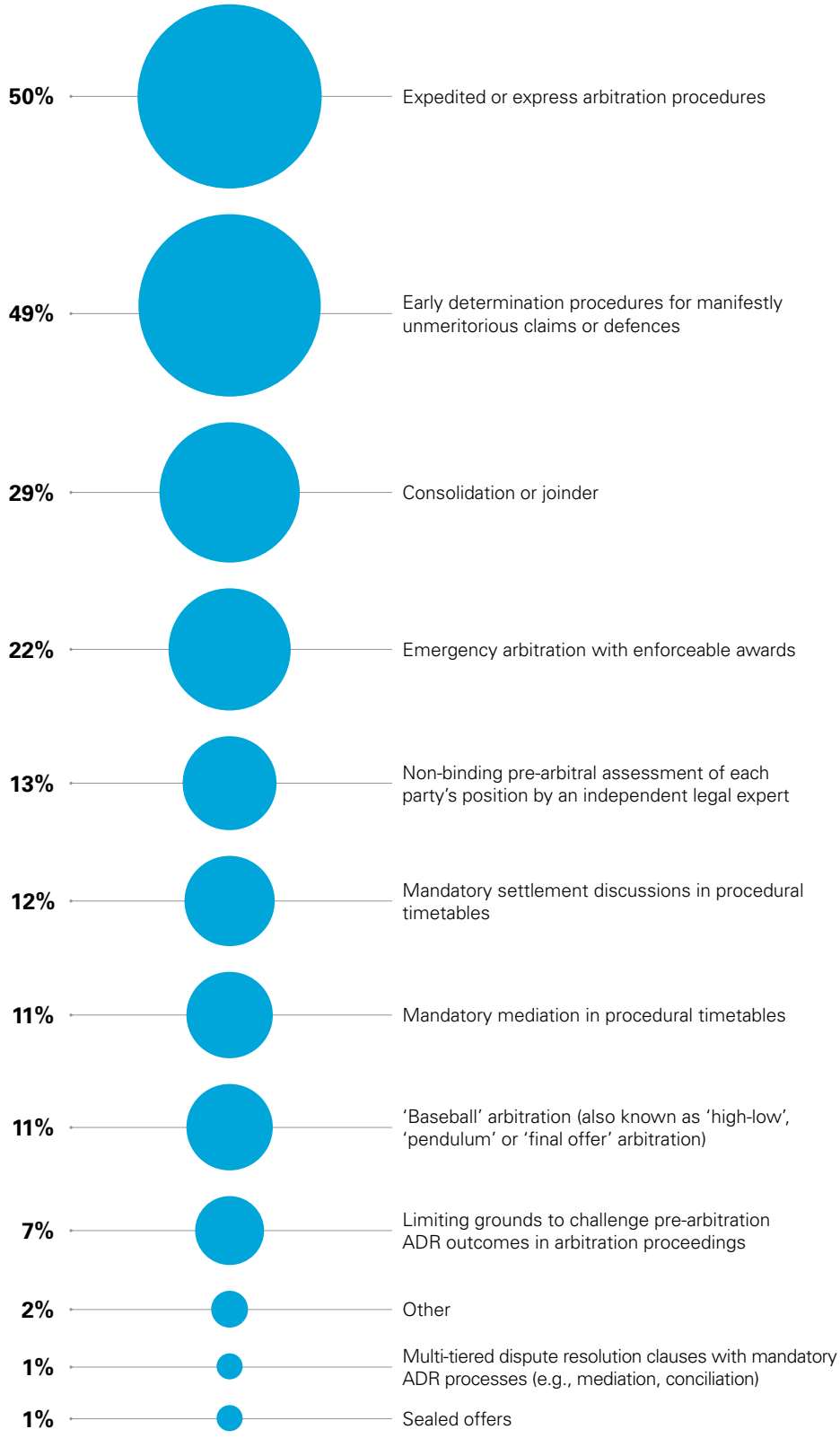
The most favoured mechanisms were expedited arbitration procedures (50%) and early determination procedures for manifestly unmeritorious claims or defences (49%). By contrast, less commonly seen mechanisms, such as baseball arbitration and sealed offers, saw little support among respondents. One interviewee suggested this may be due to a lack of familiarity rather than a perceived lack of usefulness.

Arbitration institution staff and arbitrators strongly support the use of expedited arbitration procedures. Most interviewees found expedited arbitration procedures and rules (such as those commonly seen in many ad hoc arbitration regimes, rules tailored to particular industries or sectors and, increasingly, institutional arbitration rules) to be particularly useful in less complex cases. Their effectiveness, however, depends on the tribunal's availability and willingness to make courageous and quick decisions. Some believe expedited processes should be used more frequently, while others argue they work best when parties are well-prepared, and client expectations are managed. A few questioned the monetary limit institutions impose to access express arbitration, some suggesting that the level of complexity rather than monetary value of the dispute should be the decisive factor.

Many interviewees agreed that a mechanism for early determination for unmeritorious claims is theoretically appealing but may lead to complex procedural issues in practice. While early determination was viewed as a "useful means to dismissing weak claims" and to streamline proceedings, concerns over due process were significant. A number of interviewees called on supervisory courts to offer robust support by declining to annul awards on the sole grounds that claims were struck out on a summary or early determination basis. Others opined that in complex cases, early or summary disposition is useful

Chart 10: Which of the following processes would most improve efficiency?

Respondents were asked to select up to three options



only for discrete issues such as jurisdiction or limitation periods. While some interviewees noted that frivolous applications for early determination can amount to abuse of process, many agreed that tribunals could and should act more decisively at an early stage.

Consolidation or joinder (29%) was viewed as particularly beneficial for disputes in sectors prone to multi-party or multi-agreement disputes, supply chains or intricate projects and contractual structures, such as in the construction and maritime industries. In disputes arising from complex infrastructure projects, interviewees noted that consolidating arbitrations reduces the risk of contradictory decisions from different tribunals; as one interviewee put it, when done properly, consolidation is "not just about efficiency, but about understanding responsibilities across multiple parties."

Interviewees noted that non-binding pre-arbitral assessment may be very useful in helping avoid a full-blown arbitration or, at least, honing focus on the key issues. One interviewee recounted a positive experience of a mock hearing allowing the parties to assess their positions afresh and prompting them to settle. It was also suggested that non-binding pre-arbitral assessments be conducted by external legal experts, as they offer an objective perspective. Others, however, warned that pre-arbitral assessments may add time and costs without always leading to meaningful discussions or resolutions.

Mandatory mediation is similarly seen as "a step in the right direction" for prompting settlements, allowing parties to assess their opponent's position before full arbitration. Some interviewees, however, doubted the possibility of engaging in meaningful deliberations without disclosing key arguments. As for mandatory settlement discussions within procedural timelines, this mechanism was deemed potentially more effective than waiting for parties to initiate negotiations. A number of interviewees generally favoured arbitrators proactively inviting parties to negotiate during the proceedings.

Perhaps most surprisingly, given respondents' generally favourable view of combining arbitration with ADR,[39] the option of multi-tiered dispute resolution clauses with mandatory ADR processes was included by fewer than 1% of respondents as one of their three picks. To some interviewees, ADR adds an unnecessary procedural layer. Others question the utility: "If parties have reached arbitration, it is because they have not found another way to settle their difference".

Excellent experience of expedited arbitration

Respondents were asked about their experience with selected procedural mechanisms for expediting arbitrations, whether they found them more efficient than standard processes, and whether they would use them again.

Expedited or other express-type arbitration procedures embedded in arbitral rules were experienced by more than two-fifths of respondents (42%), with 84% of these respondents finding them more efficient than non-expedited processes and 76% willing to use them again. Paper-only arbitration was also frequently experienced (36%), with 82% of those with experience considering it more efficient and 75% open to future use. Bespoke expedited processes (27%) and expedited tribunal formation (26%) were less frequently encountered but had high perceived efficiency (85% and 81%, respectively) and likelihood of reuse (76% and 74%).

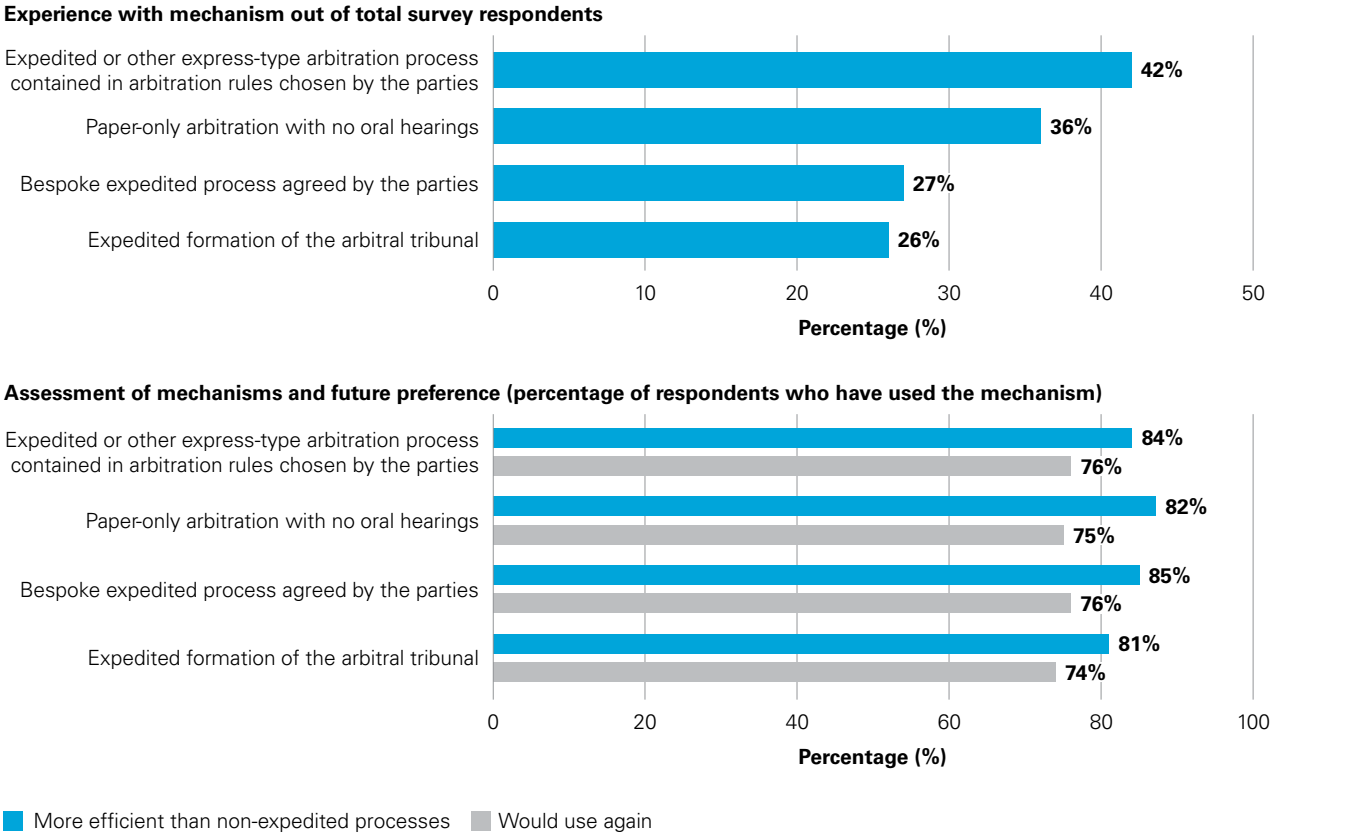
Expedited processes under arbitration rules were deemed to work well; experienced users appreciated being able to design bespoke expedited procedural frameworks for their disputes. In the experience of some respondents, many delays stemmed from arbitrator appointments, conflicts and challenges. For them, expedited formation of the tribunal is key in addressing these issues, and appointing authorities and administrating bodies can be of great assistance in this regard. Respondents also warned of the need to balance procedural fairness with the quest for efficiency. For example, it was pointed out that claimants may have an unfair advantage when arbitrating in compressed timeframes, as respondents may struggle to prepare and respond within the time allocated.

100%

of **in-house counsel** for governments or state entities would use bespoke expedited arbitration and expedited formation of the tribunal again

Opinions on paper-only arbitration were largely positive, given the obvious potential for costs savings when no oral hearings take place. Interviewees found the paper-only approach particularly effective for lower value or relatively less complex disputes, particularly where no witness evidence was required: "Why have a hearing? The arbitrators rarely push for it." Successful adoption of paper-only arbitrations requires

Chart 11: Have you used the following procedural mechanisms to expedite arbitrations in the past five years?



a high degree of confidence in the tribunal: "If you trust the arbitrators to read everything, it works. Otherwise, a hearing is necessary."

Numerous interviewees within the maritime sector emphasised that it is standard practice within that industry for arbitrations to be conducted without oral hearings. These disputes may not be of lower complexity or monetary value, but specialised and experienced maritime arbitrators are confident in dealing with them on a paper-only basis. The approach taken in maritime, commodities and trade arbitrations, often encapsulated within specialised sets of arbitral rules, provides for cost-efficient and effective resolution. Many interviewees also highlighted the potential for paper-only arbitration in financial, mining and insurance sectors, and for post-M&A disputes, regardless of the monetary value of a claim. But many rejected the suitability of using paper-only arbitration in the construction, infrastructure and energy sectors, while others cautioned that complex disputes involving multiple fact and expert witnesses are more likely to require oral witness testimony and examination at oral hearings. As summarised by one interviewee, "In simple cases, paper arbitration is more efficient, but there's no golden rule. It depends on the case."

The clear trend, overall, is that those who have used expedited arbitration mechanisms widely regard them as effective and are willing to use them again.

The need for speed

Respondents were asked to identify the primary reasons they had chosen, or would choose, an expedited procedural mechanism. Respondents could choose three out of a list of options or add 'other' options in a free text box.

The most cited reason was the desire to minimise costs (65%), highlighting the financial appeal of expedited mechanisms. Speed of resolution was the second most significant factor (58%). Low complexity (50%) and dispute value (34%) were also key factors, indicating that expedited mechanisms are preferred for more straightforward and lower-value disputes. Counterparty enforcement risks (26%) and the preservation of business relationships (18%) were not deemed to be as important to the decision to expedite proceedings.

Cost minimisation was the dominant reason to adopt an expedited mechanism by most categories of participants, in particular arbitrators and counsel. The general opinion was that expedited arbitration reliably lowers costs, for example where arbitrators or counsel operate on a capped or fixed-fee basis, and where no oral hearing takes place. Interviewees mentioned that parties often refrain from including extensive, or even any, document production phases in expedited arbitration schedules, which also significantly saves costs. For some, expedited arbitration is more about cost efficiency than true speed, particularly when dealing with non-responsive parties. Many emphasised the importance of choosing an arbitrator in these cases who is available, responsive and willing to make decisions quickly.

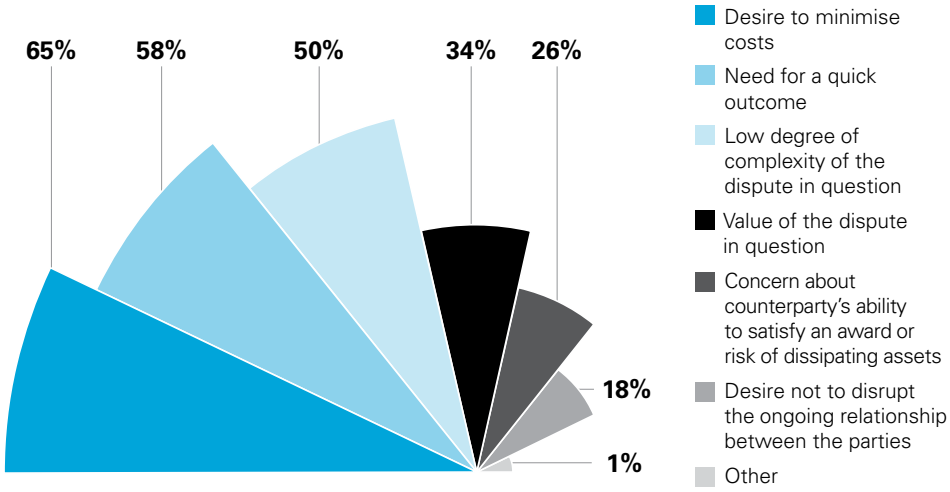
Interestingly, in-house counsel ranked the speed of resolution as a crucial factor—as significant as cost efficiency—when deciding to expedite arbitrations (58% for in-house counsel in government and 61% for the private sector). This reflects a commercial drive for quick decision-making. One in-house counsel advised that parties should push for expedited arbitrations to obtain a quicker outcome. Others would be willing to "compensate [arbitrators] for efficiency" if it meant reaching quicker decisions, suggesting a range of options from fee scaling to "bonus and penalty" schemes which would incentivise arbitrators to take on fewer arbitrations, and to prioritise resolving disputes they are hearing rather than their counsel work. As one interviewee noted, "Businesses are not in the business of arbitration—they are in the business of doing business" and reaching a quick decision allows them to "get on with their lives".

Interviewees stressed that preserving ongoing relationships is crucial for parties in long-term commercial partnerships. This includes, for example, the energy sector, where they seek to maintain stability, and sectors where the pool of economic players is more concentrated, such as state-related enterprises. The risks of not being able to collect on awards appears crucial in financial or high-risk sectors (e.g., cryptocurrency, offshore or sanctioned entities), or where the counterparty may dissipate assets.

Overall, expedited arbitration is driven by pragmatic concerns. One interviewee outlined what they saw as the best circumstances in which expedited arbitration is ideal: "Low-complexity disputes, typically under US$10 million, where witness evidence is unnecessary, and hearings add little value".

Chart 12: What are the main reasons for choosing an expedited procedural mechanism?

Respondents were asked to select up to three options



Expedited procedures are chosen to minimise **costs** (65%) and **delays** (58%)

Public interest in arbitration

Public interest: From peripheral to central issues?

Respondents were asked whether they had been involved in arbitrations where specific public interest issues were raised (including white collar crime,[40] environmental,[41] corporate social responsibility,[42] public health[43] or human rights[44]). They were then invited to identify the types of arbitration in which these issues emerged: investor-state disputes with a State or state entity (ISDS); commercial arbitration with a State or state entity (commercial-State); and/or commercial arbitration with private parties. Respondents could select more than one type of arbitration where applicable.

Fewer than a third of respondents indicated encountering these specific public interest issues in their arbitrations. White collar issues were the most encountered (32%), followed by environmental issues (30%), corporate social responsibility (26%), public health (20%) and human rights (15%). The data indicates that commercial arbitration is the type of arbitration in which public interest issues are most frequently encountered by respondents.

> **Commercial arbitration is the type of arbitration in which public interest issues are most frequently encountered by respondents**

Many interviewees mentioned facing allegations of corruption and other white collar offences in arbitration proceedings. 68% of respondents who encountered these issues stated they experienced them in commercial arbitration, and less so in commercial-State (34%) and ISDS (26%).[45] Interestingly, interviewees suggested that arbitration allows the parties to resolve the commercial implications of fraudulent behaviour.

Summary

- Only one third of our respondents have encountered any of the various categories of public interest issues in their arbitrations. There is, however, an expectation that environmental and human rights issues will increasingly become present in both purely commercial arbitrations and disputes involving States or state entities.
- The primary advantages of international arbitration for resolving disputes involving public interest issues include the ability to select arbitrators with relevant experience or knowledge (47%) and to avoid specific legal systems or national courts (42%).
- The most significant challenges in arbitrating disputes involving public interest issues include balancing confidentiality and transparency (47%) and the lack of arbitral tribunal power over third parties (46%).
- Confidentiality of arbitration in this context can be viewed as both beneficial for delicate or reputation-sensitive disputes, and problematic for the potential to shield improper conduct of state entities from public scrutiny.
- Respondents are divided on whether international arbitration proceedings should be 'open' to the public. The vast majority favour maintaining confidentiality, especially in commercial arbitration. There is, however, greater support for publication of redacted awards, especially for disputes involving States or state entities.

Chart 13: In the past five years, have you been involved in arbitrations where any of the following public interest issues have been raised?

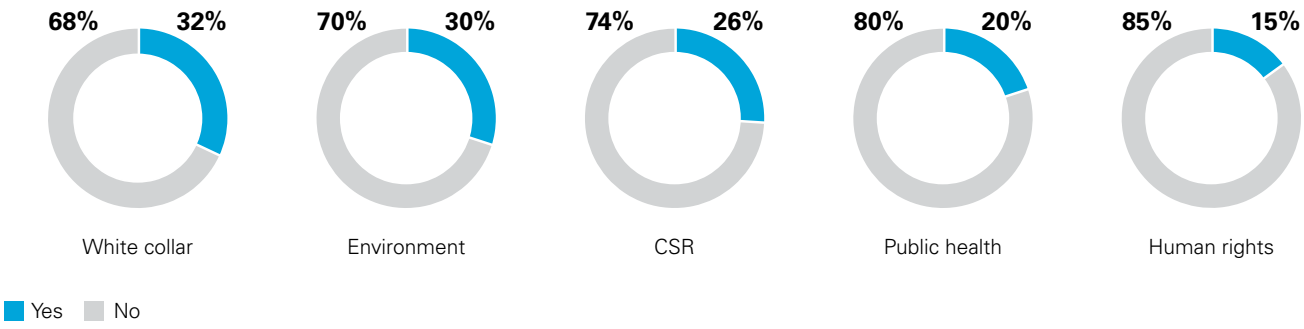
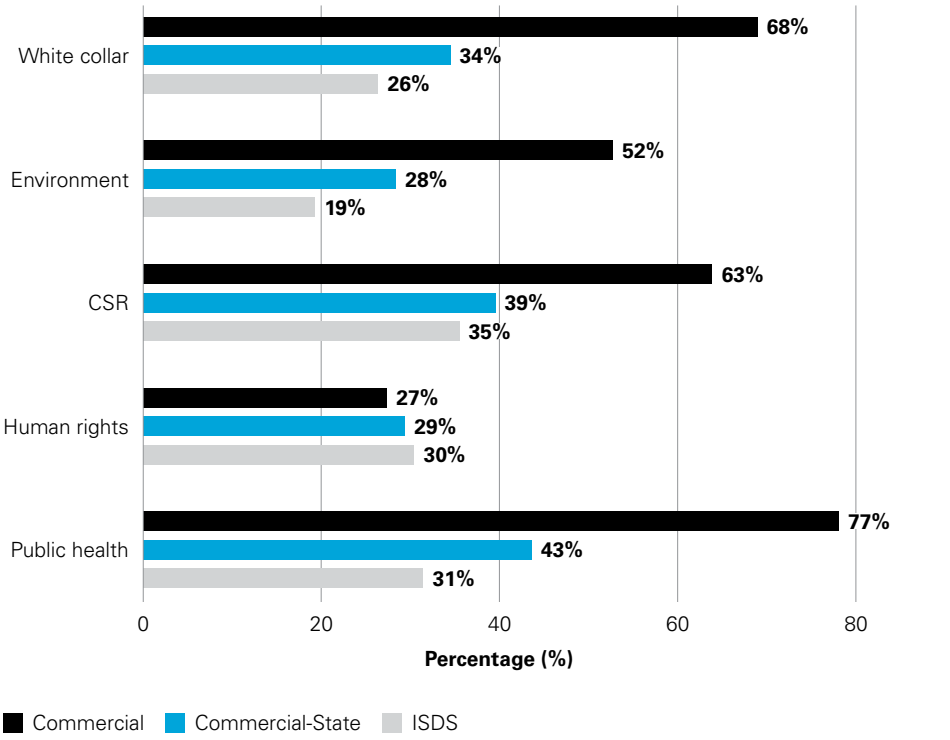


Chart 14: In what type(s) of arbitration were the public interest issues raised?

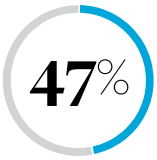


As one respondent noted, "Most cases with white collar crime issues settle. You rarely get an award on it". Some interviewees emphasised that the standard of proof for corruption in arbitration is typically lower than in domestic criminal proceedings, often relying on circumstantial evidence and red flags rather than full legal investigations. Interviewees also discerned that arbitrators gave particular attention to allegations of corruption in arbitrations involving States and state entities.

Interviewees observed that there has been a dramatic rise in instances of environmental issues being raised in arbitrations: "Twenty years ago, no one was paying attention to environmental topics. Today, they are getting more important by the day". New energy and construction projects in particular see an increasing number of environmental claims. Several interviewees also noted that the misrepresentation of ESG credentials can trigger post-M&A, shareholder and regulatory disputes. Some respondents surmised that, due to heightened sensibility to environmental issues, environmental claims could be used strategically to influence a tribunal. For many, this raises the question whether allegations relating to environmental issues should "factor into legal determinations or remain outside the four corners of the contract". Others mentioned renegotiations of investment treaties due to climate change concerns, alongside an evolving body of jurisprudence: "ISDS judgments have made it clear that these issues must be taken into account".

Public health concerns arose mainly in disputes following the COVID-19 pandemic. Separately, a few interviewees noted public health issues being raised increasingly in ISDS but also in the construction sector. In the latter context, interviewees also noted a growing trend to include explicit compliance requirements in contracts: "You now regularly find a section on compliance clauses, modern slavery and human rights. These were not in construction contracts before."

Looking ahead, interviewees expect public interest issues, in particular environmental and human rights, to increasingly feature in arbitration. They observed that claims relating to these issues are becoming central rather than peripheral parts of disputes. While these issues have long been seen in disputes involving state parties, it is most interesting to see that many respondents now commonly face them in purely commercial arbitrations.



Ability to select arbitrators is the main advantage to arbitrating public interest issues

Arbitrating public interest issues: The advantages

Respondents were asked to identify the most significant advantages of international arbitration for resolving disputes involving issues of public interest. They could select three options from a list of nine perceived advantages or suggest 'other' options in a free text box.

The most significant benefit according to respondents (47%) is the ability to select arbitrators with relevant experience or knowledge. One interviewee noted, "Arbitration allows the combination of commercial and public interest issues to be dealt with in one proceeding, but with an experienced arbitrator." Others emphasised that arbitrators with subject-matter expertise can challenge weak or abusive claims: "Experienced arbitrators clearly see whether certain assertions are trustworthy or not."

Twenty years ago, no one was paying attention to environmental topics. Today, they are getting more important by the day

Avoiding specific legal systems or national courts was another advantage, selected by 42% of respondents. Many expressed concerns that national courts tend to prioritise public policy considerations over commercial interests, which can create imbalances in decision-making.

The ability to handle both commercial and public interest issues simultaneously was cited by 35% of respondents. Many interviewees underlined efficiency as a key advantage of being able to deal with all aspects of a dispute in a single setting. As one respondent declared, "The beauty of arbitration is the concentration of all disputes in a single forum. Not to have adjudicators dealing with different sets of disputes."

Confidentiality, identified by 34% of respondents as a key factor, is particularly relevant in cases involving corporate social responsibility, corruption or harassment allegations. Many respondents highlighted the importance of confidentiality in delicate disputes with state entities or in reputation-sensitive cases.

> **The beauty of arbitration is the concentration of all disputes in a single forum. Not to have adjudicators dealing with different sets of disputes**

The enforceability of arbitral awards was selected by 32% of respondents. Interviewees appreciated the ability to choose different jurisdictions for enforcement, where an award dealing with public interest issues might trigger regulatory or public policy hurdles in some.

Neutrality was highlighted by 28% of respondents, with interviewees remarking that domestic courts in certain jurisdictions may be subject to external pressures. One respondent opined that arbitrators who are not of the nationality of any stakeholder can reach better and more objective rulings: "It is much easier to have arbitrators not involved in the national context if one party is to claim there was corruption."

21% of respondents chose flexibility, contemplating that arbitration allows for greater adaptability, enabling arbitrators to tailor proceedings to deal with the particularities of any public interest issue raised, for example, by requesting further expert evidence. Finally, 18% of respondents noted that arbitration is well suited for handling the international nature of public interest issues.

Chart 15: What are the most significant advantages of international arbitration for resolving disputes involving issues of public interest?

Respondents were asked to select up to three options

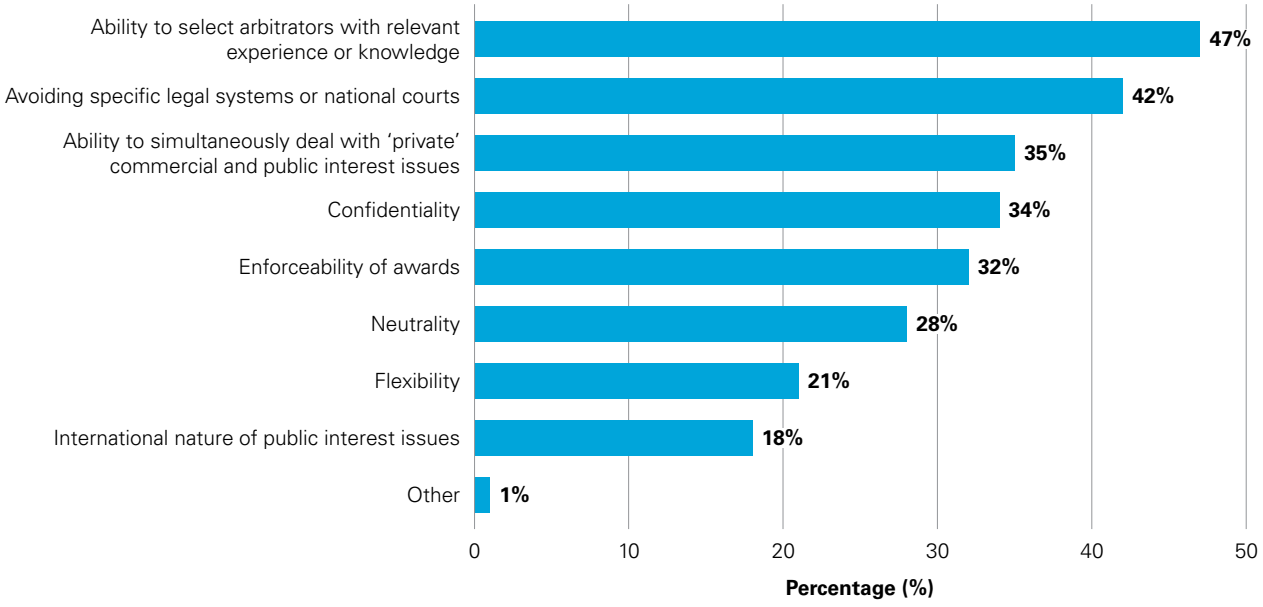
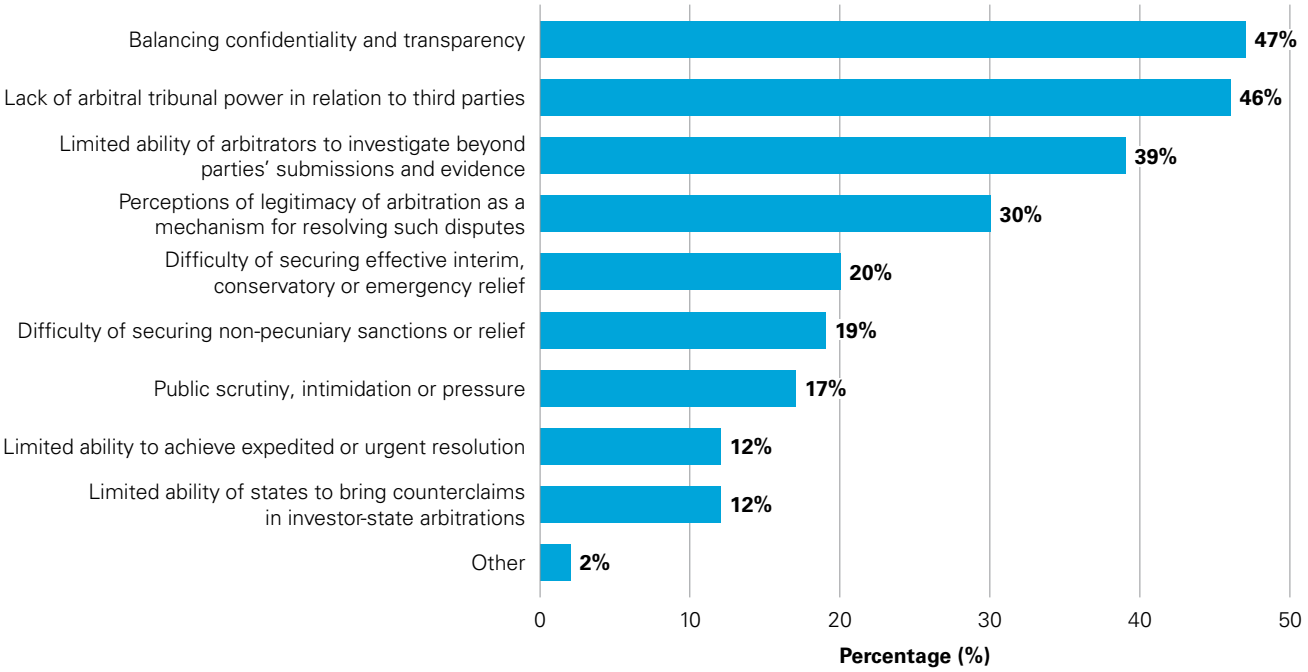


Chart 16: What are the most significant challenges to arbitrating disputes involving issues of public interest?

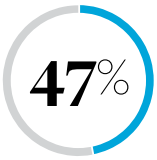
Respondents were asked to select up to three options



Arbitrating public interest issues: The disadvantages

Respondents were asked to identify the most significant challenges in arbitrating disputes involving issues of public interest. They could select up to three options from a list of nine perceived disadvantages or suggest 'other' options in a free text box.

The most frequently cited challenge was balancing confidentiality and transparency (47%). Respondents noted that, while confidentiality is key in arbitration,[46] transparency can be necessary when public interest is involved. As one respondent put it: "Confidentiality might allow parties to resolve disputes without reputational damage, but it can also shield improper conduct [of state entities] from public scrutiny." The role of media and public perception was also discussed, with concerns that arbitration proceedings could be unfairly perceived as "secret courts" and thus seen as less legitimate, particularly in the context of ISDS. However, others mentioned that if arbitration proceedings are not confidential, this may weaken the perceived standing of arbitration as an appropriate mechanism to resolve sensitive disputes.



Balancing confidentiality and transparency is the main challenge to arbitrating public interest issues

The lack of arbitral tribunal power in relation to third parties was of similar concern (46%). Respondents highlighted that arbitration is an inherently consensual process, and that arbitrators cannot compel third parties to participate or provide evidence. The limitation on tribunals being able to invite third-party participation can be problematic in cases involving public interest issues, for instance in environmental and human rights contexts, where regulatory bodies or affected communities may wish to be involved. One interviewee observed: "Whenever you have a state-owned entity in a commercial arbitration, you are dealing with taxpayer money. Public-private arbitration raises issues that courts would normally address, but arbitrators do not have that authority."

The limited ability of arbitrators to investigate beyond parties' submissions was the third most selected answer (39%). Since arbitrators rely on the submissions and evidence presented by the parties, and do not have the same powers to investigate, or to compel evidence or testimony, as national courts generally do, some respondents pointed out that arbitrators may lack the ability to thoroughly examine all relevant aspects of a dispute. As one interviewee explained, "An arbitrator operates in a hermetically sealed environment; they can only work with the evidence parties provide."

> **Arbitration allows for greater adaptability, enabling arbitrators to tailor proceedings to deal with the particularities of any public interest issue raised**

Concerns over perceptions of the legitimacy of arbitration as a mechanism for resolving disputes involving public interest issues were also significant (30%). Some respondents noted that national courts may provide a degree of public accountability that arbitration generally lacks: "Arbitration was designed for commercial disputes between private parties. When state interests are involved, questions arise about whether it is the right forum."

On the difficulty of securing effective interim, conservatory or emergency relief (20%) or non-pecuniary sanctions and relief (19%), several interviewees mentioned greater challenges in arbitration compared to court proceedings, especially when public interest concerns are involved.

The risk and effects of public scrutiny and intimidation were not a major concern for most respondents (17%). A number of interviewees did express their disquiet over the pressure that arbitrators may face, particularly in politically sensitive cases.

The limited ability of States to bring counterclaims against investors was selected by only 12% of respondents, but was noted as a significant shortcoming by interviewees involved in ISDS disputes: "States need better mechanisms to bring counterclaims, particularly for environmental and social harm."

Should international arbitration proceedings be 'open' to the public?

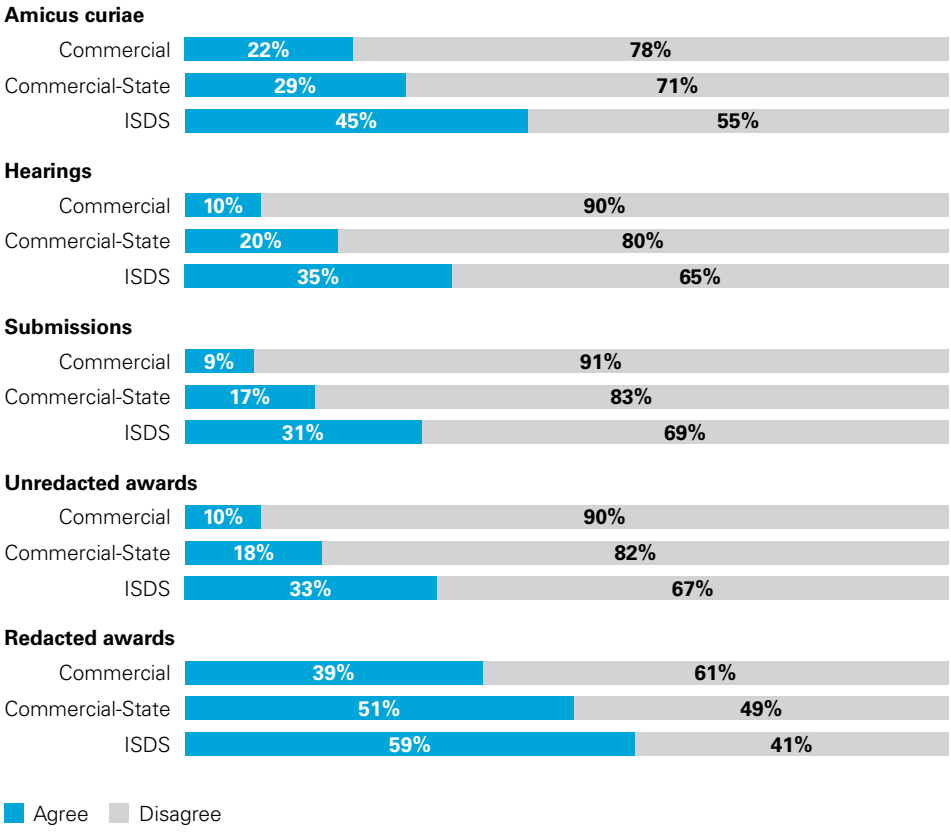
Given the challenges of balancing confidentiality and transparency in resolving disputes, we then asked respondents whether international arbitration proceedings should be 'open' to the public, and, if so, to what extent. Respondents indicated whether they thought amicus curiae participation, hearings, submissions and evidence, redacted or unredacted awards should be available to the public in each of ISDS, commercial-State and commercial arbitration proceedings. Respondents were instructed to assume for the purposes of this question that the existence of the arbitration and the identity of the parties is publicly known.

> **Arbitration is an inherently consensual process, and arbitrators cannot compel third parties to participate or provide evidence**

The results demonstrate a deep divide between those advocating for confidentiality and those in favour of transparency. The first group views arbitration as inherently private. As one interviewee opined, "If arbitrators become aware of a crime or offence against public policy, they should report it to the police—but that does not mean proceedings should be public." In-house counsel representing States or state entities in particular were the most strident in preferring confidentiality. Conversely, as one interviewee from the second group noted, "There is no less reason for the public to evaluate the fairness of the dispute simply because it is in arbitration. Sunshine is the best disinfectant." The overall picture, however, was in favour of the status quo: the significant majority of respondents were against greater openness other than in the ISDS context.

of respondents support publishing **redacted awards** in **ISDS cases**

Chart 17: Should international arbitration proceedings be 'open' to the public?



Should arbitral awards be made public? For redacted awards, the majority said no in commercial arbitration but yes for ISDS cases, and the views were evenly split for commercial-State arbitration. There was less support for providing fully unredacted versions, particularly outside the ISDS sphere. In ISDS, 59% supported redacted awards, while 33% would also be in favour of unredacted versions. This trend was also seen for commercial-State arbitrations (51% redacted, 18% unredacted) and commercial arbitration (39% redacted, 10% unredacted). Perhaps surprisingly, counsel were generally more in favour of publishing redacted awards than arbitrators.

A range of thoughtful views were expressed regarding the desirability and ramifications of publishing awards, whether in redacted or unredacted form. One interviewee pragmatically noted that, in some jurisdictions, many awards become public at the enforcement stage such that "keeping proceedings private is an illusion". Many interviewees (across multiple roles, including in-house and external counsel, arbitrators and academics) were of the view that publishing awards in both commercial and ISDS cases could improve the development of arbitration. However, one interviewee argued that, "Without the pressures of public disclosure [in cases involving States or state entities], arbitration remains a fairer and more neutral process."

A high level of support was observed for amicus curiae participation by third parties in ISDS, supported by 45% of respondents, compared to only 29% in commercial-State disputes and 22% in purely commercial arbitration. One respondent remarked, "An arbitrator should have the best possible information before them." While the public interest in ISDS was acknowledged by respondents, some interviewees expressed scepticism regarding intervention by NGOs in such cases.

> **An arbitrator should have the best possible information before them**

The greatest resistance to transparency was recorded in relation to access to submissions and evidence. One respondent stressed that "If parties want confidentiality, they should be entitled to it." Others feared that public disclosure of submissions could politicise proceedings, particularly in ISDS cases or commercial-State arbitrations.

There was also significant resistance to opening hearings to the public. Counsel interviewees noted that in an ISDS case, opening hearings may be "futile" and "unnecessary"; another mentioned that it may entail disclosure of sensitive information in commercial arbitration.

For commercial arbitration, the great majority continue to prioritise parties' desire for confidentiality over other interests. The public interest aspect where disputes involved States or state entities, however, was a recurring theme in interviews, with many supporting greater transparency for this reason. Some respondents argued that arbitration proceedings involving States or public money should be made public. Another suggested that the behaviour of state entities should be subject to public scrutiny. Others warned against unintended consequences, with one interviewee cautioning that, "Opening up proceedings may weaponise arbitration, transforming a legal issue into a matter of public perception."

Arbitration and AI

Use of AI: Beginning to boom

In our 2018 Survey, 78% of respondents agreed that AI should be used more often in international arbitration, although 68% admitted they 'never' or 'rarely' used it.[47] In our 2021 Survey, respondents continued to express some reservations about using AI, with 59% disclosing they 'never' or 'rarely' did so.[48] We sought to explore whether there have been any changes in both perceptions and actual, or expected, usage of AI. Respondents were asked about their past and expected future use of AI tools and technology to assist with six different categories of tasks commonly carried out in arbitration. The clear message is that AI usage will boom in the next five years. Even those who have never used AI for arbitration tasks largely expect to incorporate it into their future practice.

In the past five years, respondents have most commonly used AI for conducting factual and legal research (64%), and the vast majority (91%) expect to use AI for this purpose over the coming five years. Many respondents acknowledged AI's potential in this area; nonetheless, concerns were raised about accuracy, with some highlighting perceived linguistic or cultural biases with some AI platforms and the risk of uncertain quality of both data sources and AI-generated content, put by one interviewee in terms of "garbage in, garbage out". One respondent cautioned that large language model-based AI (LLMs) should not be relied upon blindly since it is designed to produce only predictive text: "It is not Wikipedia on steroids—It is predictive text on steroids."

The ability to use AI to review and analyse vast numbers of documents efficiently was widely acknowledged, with respondents predicting there will be increased reliance on this function: 19% of respondents expect to "almost always" use AI for this in the coming five years. It was noted that AI document review tools help to expeditiously manage immense amounts of data that would otherwise take weeks to process. Confidentiality, however, remained a concern with open-source AI, and while interviewees agreed that AI is helpful for document summaries, they urged arbitral tribunals to be cautious.

While AI adoption in data analytics has been more moderate, respondents expect to use it significantly more going forward. AI was seen as an "efficiency booster", particularly for organising large datasets and identifying trends. One counsel recounted their experience of using a proprietary tool utilising AI semantics to analyse the experience sections of arbitrators' résumés, which resulted in a significant decrease in the time required to prepare a list of potential candidates.

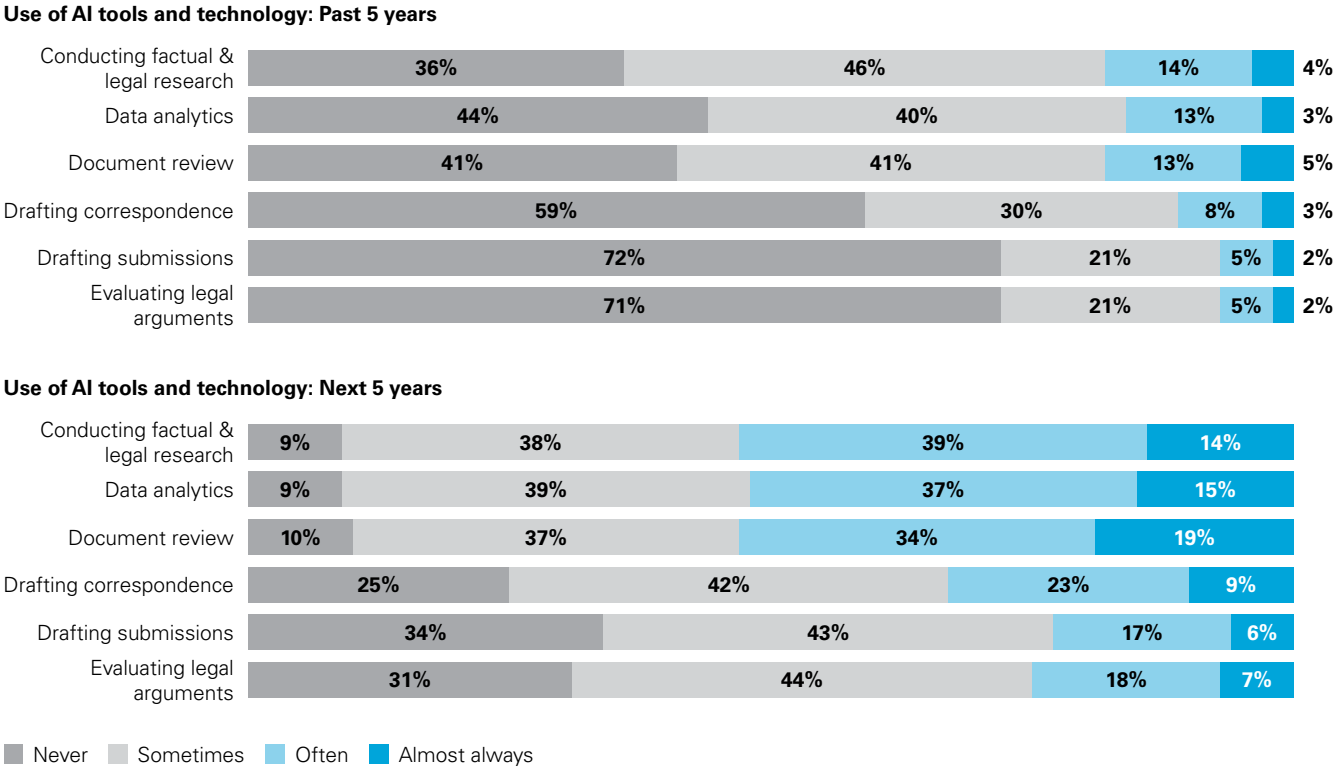
AI has been used sparingly for drafting correspondence, with 59% of respondents stating they have never used AI for this task, although 75% expect to do so in the future.

Summary

- Use of AI is expected to grow significantly over the next five years, driven by the potential for efficiencies. Principal current uses of AI include factual and legal research, data analytics and document review. AI assistance in drafting and in evaluating legal arguments is also expected to increase, but significant concerns persist about accuracy, ethical issues and AI's ability to handle complex legal reasoning.
- The principal drivers for the increased use of AI in international arbitration are saving party and counsel time (54%), cost reduction (44%) and reduction of human error (39%).
- The principal obstacles to the greater use of AI in international arbitration are concerns about errors and bias (51%), confidentiality risks (47%), lack of experience (44%) and regulatory gaps (38%).
- Respondents largely approve of the use of AI by arbitrators to assist in administrative and procedural tasks. There is strong resistance, however, to its use for tasks requiring the exercise of discretion and judgment, which are fundamental aspects of the mandate given to arbitrators.
- The general consensus is that, over the next five years, international arbitration and its users will adopt, and adapt to, AI. Respondents predict that arbitrators will increasingly rely on AI (52%) and that new roles to work with AI will emerge (40%). The enthusiasm for greater use is tempered, however, by the desire for transparency, clear guidelines and training on the use of AI.

AI was seen as an "efficiency booster", particularly for organising large datasets and identifying trends

Chart 18: How often have you used, and do you expect to use, AI tools and technology?



Some counsel found it helpful for generating first drafts but noted limitations, including difficulty in AI capturing "the particular tone necessary in arbitration". In a similar vein, one respondent described AI-generated drafts as "too bombastic". Nevertheless, some arbitral institution staff found that AI was highly effective at preparing and formatting standard correspondence.

The great majority of respondents (72%) reported never using AI for drafting submissions, citing concerns about accuracy and reasoning. Despite this, 66% of respondents expect to use AI for this purpose at least sometimes in the next five years. One counsel touched on one of the challenges of using AI for complex legal drafting, stating, "AI can do a first draft of a submission, but it should not evaluate legal arguments."

91%

of respondents expect to use AI for **research** and **data analytics**

Others warned that current LLMs may be prone to hallucinations or may be unsuitable for complex and sophisticated legal drafting. In interviews, junior counsel and institution staff appeared more inclined to use AI for first drafts, whereas more seasoned counsel and arbitrators were more resistant, citing quality control, reputational risk or a wholesale rejection of delegating tasks requiring human judgment to AI tools.

Evaluating legal arguments was an equally uncommon use of AI with the vast majority (71%) never having tried it out, although 69% expect to do so at least sometimes in the next five years. Many interviewees again highlighted the risks of AI oversimplifying complex legal reasoning: "Legal arguments are a jungle—AI might make them briefer, but not necessarily better". Others worried that current AI applications lack reasoning capabilities.

The findings indicate a clear shift towards greater adoption of AI in arbitration. While AI is at present primarily used for research, document review, and data analytics, future adoption is expected to expand across all surveyed tasks. However, concerns about accuracy, confidentiality, and ethical implications endure. As one respondent summarised, "AI is a tool, period. It should assist but not replace human judgment."

Why AI?

We asked what respondents considered to be the principal drivers for greater use of AI in international arbitration. They were invited to select up to three options from a list, with a free text 'other' option.

The most selected reason was the potential to save party and counsel time (54%). Respondents highlighted successfully using AI to assist with labour-intensive tasks, such as producing chronologies and summarising witness statements and depositions, as well as document management and review processes. Notably, interviewees speculated on the potential to use AI in place of junior legal staff for these kinds of tasks, and the associated time and cost savings. As one respondent put it, "Certain things are labour-saving; maybe AI can save money and equalise resources." Several interviewees remarked that arbitral institution staff also benefitted from efficiency gains, for instance by saving time in arbitrator selection processes or drafting routine correspondence.

Reduction of costs was the second most selected driver, with 44% of respondents citing this benefit. An arbitrator observed, "AI can make the whole process of dispute resolution much more economical and faster, assuming it is done in a proper way." The prospect of using AI for competitive benefit by reducing legal fees was also mentioned by interviewees.

> **AI can make the whole process of dispute resolution much more economical and faster, assuming it is done in a proper way**

54%

Saving time is the principal driver for use of AI

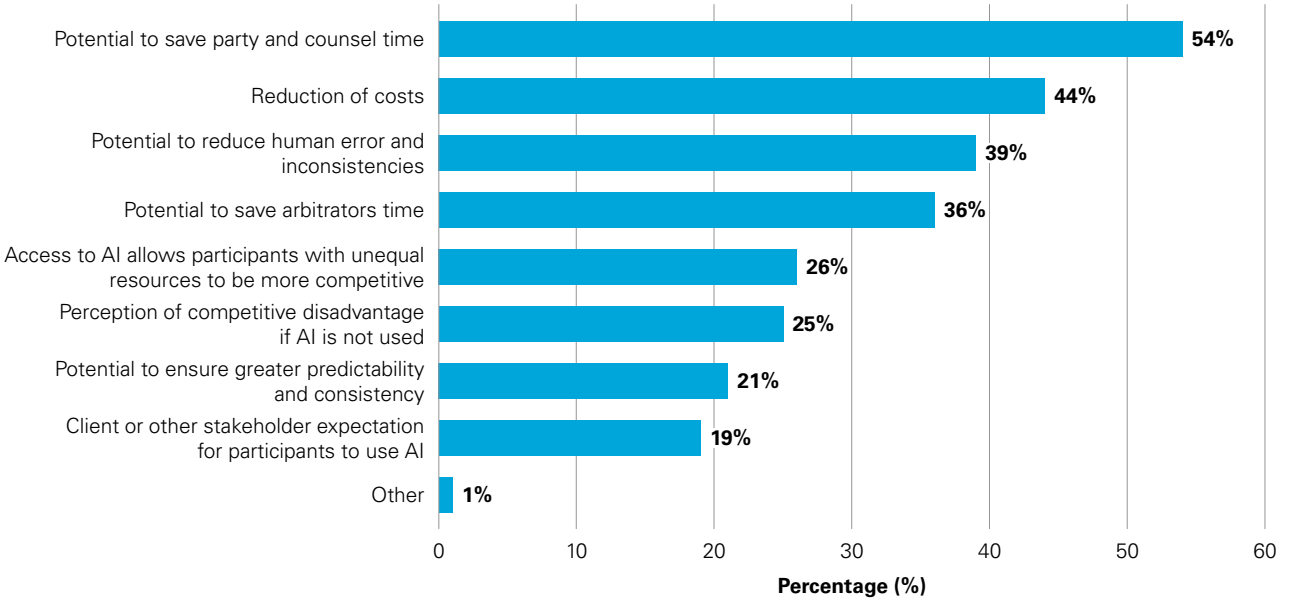
The potential to reduce human error and inconsistencies was selected by 39% of respondents. In a similar vein, the possibility to ensure greater predictability and consistency in arbitration was selected by 21%. Some believed that increased use of, and familiarity with, AI tools would yield more predictable and consistent results "by reducing subjective variations". One arbitrator predicted, "There will be a moment when confidentiality issues are alleviated, and AI becomes a commercial advantage for parties allowing for faster organisation and reduction of human oversight errors."

Saving arbitrators' time was also seen as a key driver (36%). One arbitrator opined that AI tools, "Will revolutionise the way we work. What used to take hours now takes seconds." Another interviewee highlighted the potential to save time by using AI to prepare procedural backgrounds, especially if a tribunal secretary is checking rather than crafting the first draft.

Access to AI as a means for participants with unequal resources to be more competitive was chosen by 26% of respondents. Interviewees remarked on how this could increase choice of counsel for clients.

Chart 19: What drives the greater use of AI by participants in international arbitrations?

Respondents were asked to select up to three options



Another observed that in document or evidence-heavy arbitrations, such as in construction disputes, AI can help speed up the process and "ensure an equality of arms".

By contrast, a perception of competitive disadvantage if AI is not used was selected by 25%. As one participant stated, "Either you adapt to the tools, or the market will leave you behind." Others interestingly felt that the pressing issue is not about whether to use AI products but, rather, how to adapt business models to reflect the impact of such use: "The challenge will be adjusting billing structures as clients insist on efficiency and fixed fees."

Similarly, client or other stakeholder expectations for AI use were cited by 19% of respondents. Interviewees shared their experiences of clients increasingly asking whether they used AI, with cost a key consideration. Others anticipate that information security concerns will lead to client demand for use of closed AI tools rather than open-source models.

51%

The main obstacle to using AI is the risk of **undetected AI errors** and **bias**

Adopting AI: Roadblocks ahead

We asked respondents to identify the principal obstacles to the greater use of AI in international arbitration, selecting up to three options from a list or adding 'other' options in a free text box.

The most significant obstacle cited was the risk of undetected AI errors and bias, selected by 51% of respondents. Concerns were frequently raised about the risk of hallucinations. Interviewees also highlighted that AI lacks the ability to independently verify results. One noted that "AI is only as smart as the lawyer asking the question", another adding, "If you ask the wrong question, you get the wrong answer."

The risk of confidentiality or data breaches is also considered to be a major obstacle (47%). Participants repeatedly expressed concerns about data security when AI tools process confidential arbitration materials and risks inherent in AI's data processing capabilities, emphasising the dangers of using open-source AI tools without adequate safeguards.

A lack of knowledge or experience with AI was also a significant impediment (44%). Many users of arbitration are unfamiliar with AI's capabilities, leading to hesitation in its adoption. Respondents stressed the need for training and guidelines as the AI landscape continues to evolve. Without this, they fear that users may unknowingly misuse AI.

Respondents expressed the need for clear frameworks and standard practices governing AI's role in arbitration, particularly regarding transparency

Chart 20: What deters greater use of AI by participants in international arbitrations?

Respondents were asked to select up to three options

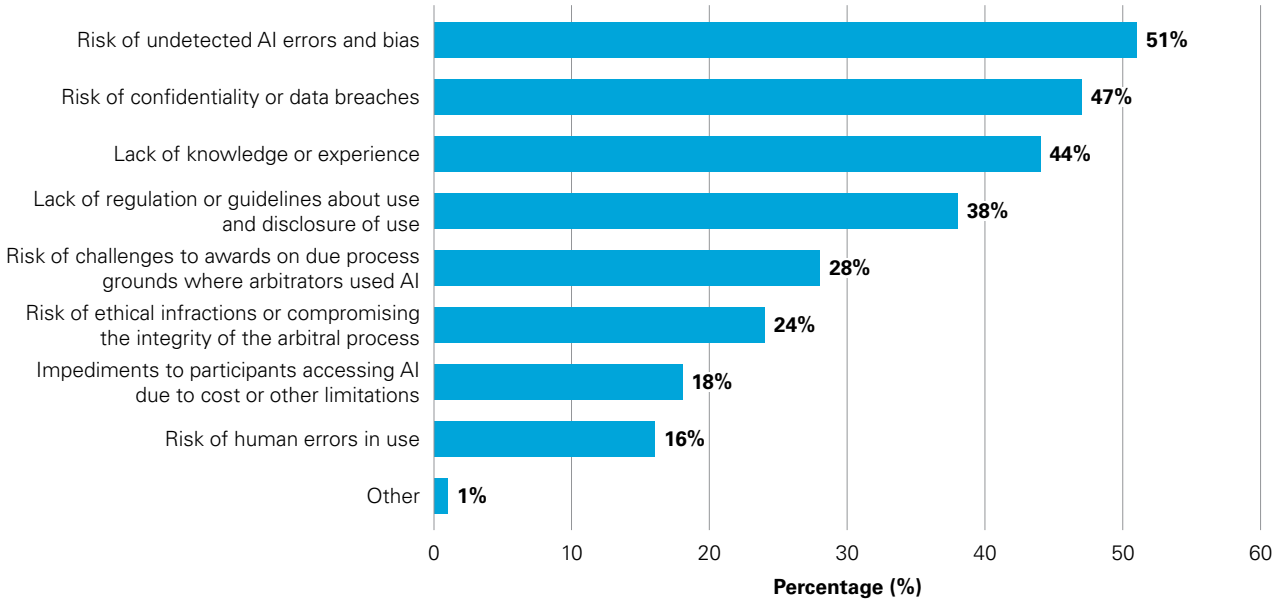
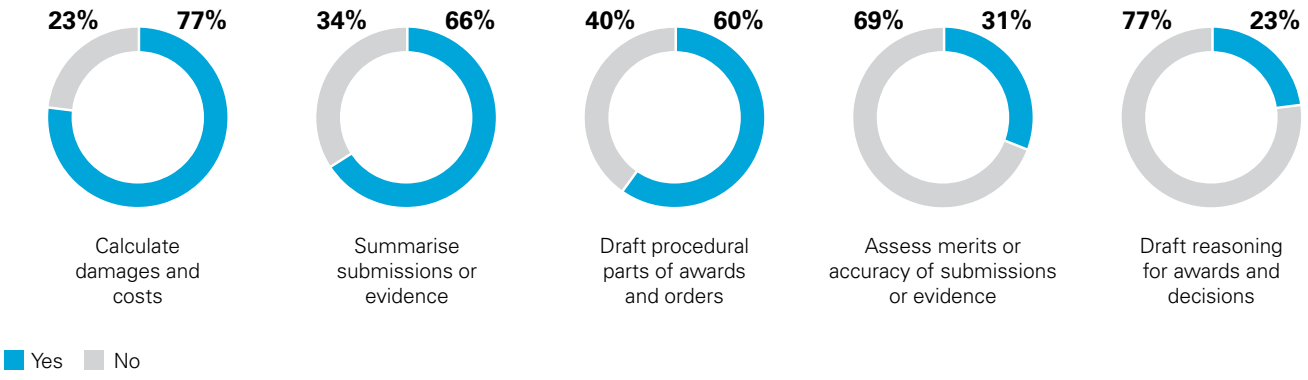


Chart 21: Do you think it is appropriate for arbitrators to use AI to assist with performing the following tasks?



These apprehensions are also reflected in the large number of respondents (38%) who selected lack of regulation or guidelines about AI use and disclosure. Respondents expressed the need for clear frameworks and standard practices governing AI's role in arbitration, particularly regarding transparency. The issue of fairness was also raised, particularly when one party in an arbitration may rely on AI in putting forward its case but not all participants have access to the underlying data.

The risk of challenges to awards based on due process concerns was another key obstacle (28%). Participants feared that if AI is used even in part to generate awards, this could lead to post-award challenges—indeed, some had witnessed this phenomenon in litigation. Interviewees overwhelmingly called for transparency not only on the fact of use of AI, but also how it was used and for what tasks. This was considered to be particularly important when AI was used by arbitrators in the drafting of awards.

Ethical infractions or compromising the integrity of arbitration were the next greatest perceived risk (24%). Some respondents worried that reliance on AI could erode fundamental principles such as due process, equality of arms and responsibility for decision-making: "An arbitrator must know their case better than anyone else. AI cannot replace that fundamental duty."

of **arbitrators** and

of **counsel** object to the use of AI to **draft reasoning parts of awards**

Impediments to accessing AI due to cost or other limitations were cited in 18% of responses. Participants noted that small law firms and businesses, as well as developing countries, might struggle to meet the price of premium legal AI products. They warned that higher costs of accessing AI may create divisions between the "haves and the have-nots".

Other concerns included the risk of human errors in AI use (16%), where respondents warned of misapplication due to inadequate understanding of the technology. One arbitrator remarked, "Many practitioners are conservative about AI. Some reject it outright based on extreme malpractice cases, which does not reflect the technology's true potential."

AI's potential benefits are tempered by serious concerns regarding accuracy, confidentiality, data quality, lack of guidelines, and ethical considerations. The role of AI in decision-making and potential impact on procedural fairness also remain contentious. Critical to respondents was responsible use to avoid AI becoming a "Wild West" in arbitration.

AI and arbitrators: What's appropriate?

The survey asked participants whether it is appropriate for arbitrators to use AI for a number of different tasks. In each case, respondents were instructed to assume that the arbitral tribunal would both oversee the process and review the output.

A strong majority (77%) found it appropriate for arbitrators to use AI to assist in calculating damages, costs and interest to be awarded. Supporters emphasised that this task is primarily mathematical, requiring precision rather than discretionary judgment. However, all interviewed quantum experts expressed profound reservations about relying on AI with no transparency as to the underlying methodology or assumptions used by a tool to perform damages quantum calculations, explaining, "AI doesn't work like a computer. It is a 'black box' with no possibility for a human to check the methodology."

An arbitrator must know their case better than anyone else. AI cannot replace that fundamental duty

The use of AI to summarise submissions or evidence was also widely accepted (66%). Many saw AI as a cost-efficient tool to process large volumes of material, but concerns remained about accuracy and bias. Some arbitrators welcomed this use, while others expressed a lack of confidence and reminded that judgment calls should be made by humans, not AI: "Summarising the facts is part of the cognitive process of decision-making."

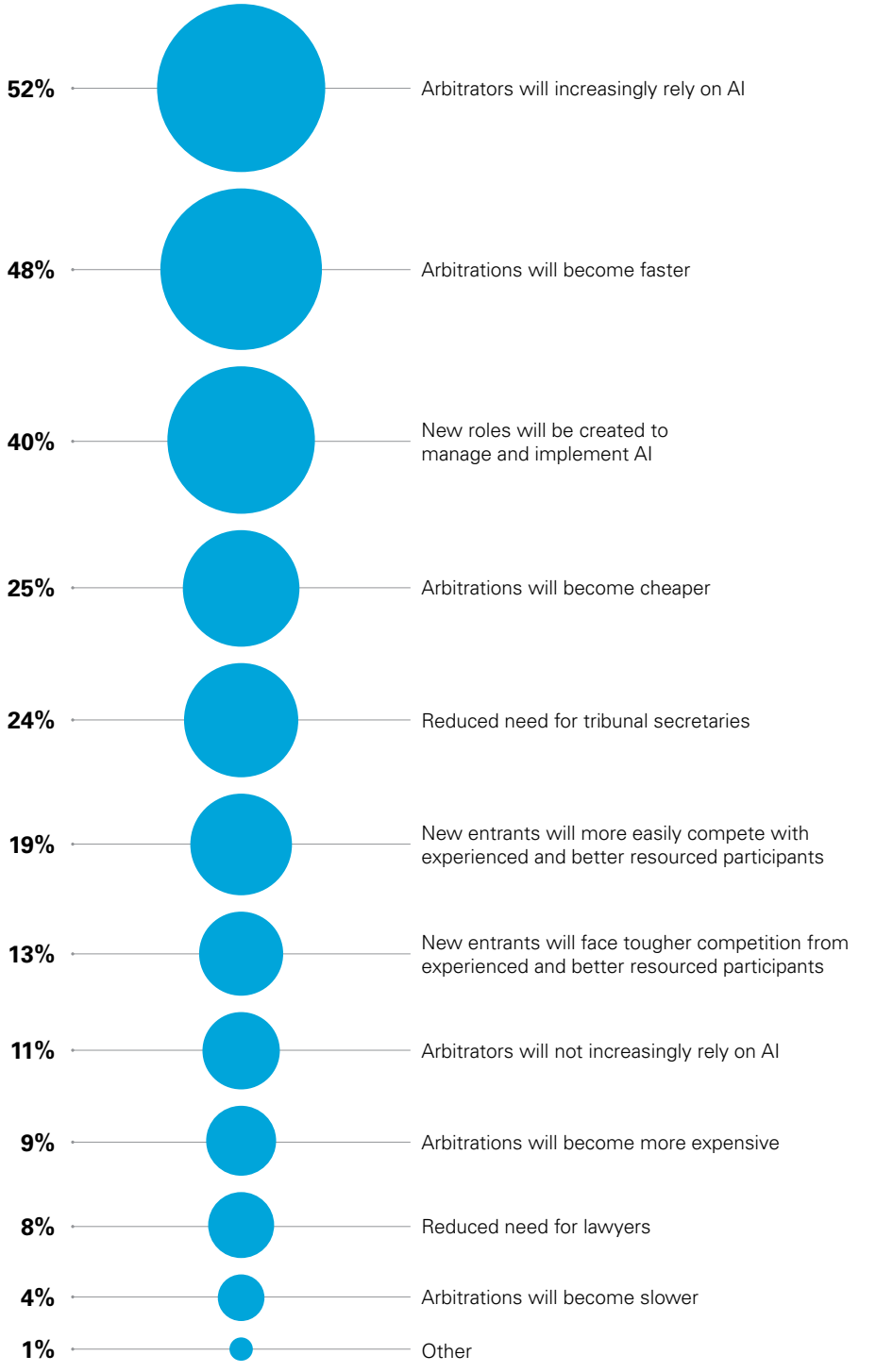
There was also general acceptance of arbitrators using AI to assist in drafting procedural orders and non-dispositive portions of awards or decisions, with 60% in favour.[49] Some respondents saw AI as useful for tasks such as compiling procedural histories; others were more wary, stressing that AI should be used cautiously for any kind of drafting.

The strongest opposition was to AI being used to draft legal reasoning portions of awards or decisions, with only 23% approval. AI usage was also viewed with great scepticism when it came to assessing the merits or accuracy of party submissions or evidence, although 31% were in favour. Many respondents were concerned that AI would interfere with the arbitrator's fundamental role to fulfil their mandate. Others added that the rationale behind an LLM-generated text cannot be reliably ascertained. The prevailing sentiment was that reasoning must remain an arbitrator's responsibility. Citing Henry Kissinger, one interviewee cautioned that using AI in place of human reasoning would signal "the end of the age of enlightenment".

Overall, the responses reflect enthusiasm for the potential efficiency where arbitrators use AI, especially as a secondary tool to "check the work done". The survey results suggest that use of AI by arbitrators is largely accepted for procedural and administrative functions. However, it faces strong

Chart 22: How do you expect AI to impact the practice of international arbitration over the next five years?

Respondents were asked to select up to three options



resistance for tasks involving the exercise of discretionary judgment, with scepticism regarding reliability and concern about ethical implications. There is an overall expectation that acceptance and use of AI by arbitrators may grow, but only when disclosed and under well-regulated and transparent conditions.

The path towards Arbitration 2.0?

How do respondents expect AI to impact the practice of international arbitration over the next five years? They were asked to choose three options from a list, including an 'other' option with a free text box.

More than half of respondents (52%) think that arbitrators will increasingly rely on AI. Appropriate use of AI by arbitrators for efficiency and cost-reduction is increasingly expected. Indeed, one counsel asserted that there is a "duty for arbitrators to keep up with the times".

48% of respondents believe AI will make arbitration faster; this was especially so in the opinion of respondents based in Asia-Pacific (55%), while those based in Europe were less sure (30%). Some emphasised that the range of available AI tools to assist with different aspects of arbitration work could allow for shorter procedural timeframes, especially for written submissions. One interviewee, however, warned that, "Arbitration will not necessarily become faster—you may have a new layer of procedure in which lawyers object about the use of AI!"

The creation of new roles to manage and implement AI was also frequently chosen (40%). Some observed this is already happening, together with a growing expectation for lawyers to be trained in using AI.

Respondents also expect arbitrations to become cheaper (25%). As one respondent noted, "People are investing a lot in AI—they will want to see results." One interviewee even mused whether, in the future, parties will turn to AI instead of relying on counsel.

Conversely, some respondents expressed scepticism about AI's role in arbitration in the near future, although they were generally in the minority. Only 11% of respondents believed arbitrators will not increasingly rely on AI, while 9% expected arbitrations to become more expensive, with respondents notably concerned about the financial cost of premium AI products.

Similarly, 24% of respondents anticipated a reduced need for tribunal secretaries. One respondent opined, "Once there will be secured platforms where AI can summarise in a way that is trustworthy, savvy arbitrators will be using this sort of tool." Interviewees worried about the ramifications of this, particularly the impact on training the next generation of arbitrators. It was suggested that the role of tribunal secretary may have to adapt, shifting towards supporting arbitrators in using AI.

As for how access to AI may impact competition among participants in arbitration, there were mixed views. 19% of respondents believed new entrants will more easily compete with experienced and better-resourced participants, but 13% expected new entrants to face tougher competition instead. While some interviewees expected that larger or better resourced law firms would be able to "staff up internally to take advantage of the new technology", others believed wider access to AI would make arbitration "[more] available and open to smaller companies and law firms", allowing them to compete more effectively.

Respondents ultimately expect that the path forward may be bumpy, but international arbitration and its users will, most certainly, both adopt, and adapt to, AI.

> **International arbitration and its users will, most certainly, both adopt, and adapt to, AI**

of respondents expect the creation of **new roles to work with AI**

Endnotes

1 We defined ADR as including, for example, mediation, conciliation, adjudication and disputes boards, but excluding cross-border litigation or international arbitration.
2 2021 International Arbitration Survey, p.5: 90% of respondents showed a clear preference for arbitration as their preferred method of resolving cross-border disputes, either as a standalone method (31%) or in conjunction with ADR (59%). In the 2018 International Arbitration Survey (pp.5-6), 97% of respondents chose arbitration as their preferred method of resolving cross-border disputes, either as a stand-alone method (48%) or in conjunction with ADR (49%); see also 2015 International Arbitration, p.5.
3 See below pp. 17-18 and Chart 10; despite the apparent (although waning) popularity of international arbitration in combination with ADR, only 1% of respondents favoured multi-tiered dispute resolution processes with mandatory ADR as a means of efficiently resolving disputes.
4 Respondents were asked to identify the region(s) in which they principally practice or operate. They could specify multiple regions. Results cited for regional groups include the responses of all respondents who selected that region, some of whom may also have selected other regions.
5 See below p.16; 23% of Asia-Pacific respondents consider that the most negative behaviour impacting efficiency is counsel focusing on adversarial rather than collaborative approaches.
6 2010 International Arbitration Survey, p.19.
7 These findings reflect the views of respondents to the survey and do not purport to reflect the number of arbitrations held at any given seat.
8 Each seat included in the drop-down list was selected by at least 1% of respondents in the 2021 International Arbitration Survey (question 10).
9 An increase from the 2021 International Arbitration Survey, p.6; more than 90 seats were cited that year.
10 See 2021 International Arbitration Survey, p.8 (Chart 4); 2018 International Arbitration Survey, p.10-11 (Chart 8); see also 2015 International Arbitration Survey, p.14 (Chart 10); 2010 International Arbitration Survey, p.18 (Chart 14).
11 2021 International Arbitration Survey, p.7 (Chart 3).
12 2021 International Arbitration Survey, p.7 (Chart 3).
13 2018 International Arbitration Survey, pp.11-12 (Chart: 9), a minority of 37% of respondents feared Brexit would have a negative impact on the use of London as a seat.
14 London received 54% of all selections in the 2021 survey, 64% in 2018 and 47% in 2015. See 2021 International Arbitration Survey, p.6 (Chart 2), 2018 International Arbitration Survey, p.9 (Chart 6), 2015 International Arbitration Survey, p.12 (Chart 8).
15 Singapore came on par with London in equal first place in 2021 (54% of respondents), third in 2018 (39% of respondents), and fourth in 2015 (19% of respondents). See 2021 International Arbitration Survey, p.6 (Chart 2), 2018 International Arbitration Survey, p.9 (Chart 6), 2015 International Arbitration Survey, p.12 (Chart 8).
16 Judicial and political ability to adapt to changing user needs was noted as a desirable trait for seats in our 2021 International Arbitration Survey, p.8.
17 Hong Kong was third in 2021 (50%), fourth in 2018 (28%), and third in 2015 (22%). See 2021 International Arbitration Survey, p.6 (Chart 2) 2018 International Arbitration Survey, p.10 (Chart 7); 2015 International Arbitration Survey, p.12 (Chart 8).
18 See 2021 International Arbitration Survey, p.6 (Chart 2).
19 See also pp.6-7 and Chart 2 above on seat preferences by regional subgroups, and p.38, Chart 26 below for percentages of respondents who selected each region as one in which they principally practise or operate.
20 The respective percentages are as follows: Guangzhou, China: 6%; Stockholm, Sweden: 6%; Zurich, Switzerland: 5%; Washington, DC, USA: 4%; The Hague, Netherlands: 4%; Miami, USA: 3%; Vienna, Austria: 3%; Frankfurt, Germany: 3%; Madrid, Spain: 2%; Houston, USA: 2%; New Delhi, India: 2%.
21 Each set of arbitration rules included in the drop-down list was selected by at least 1% of respondents in the 2021 International Arbitration Survey (questions 12 and 13).
22 These findings reflect the views of respondents to the survey and do not purport to reflect the number of arbitrations carried out under any given set of rules.
23 2021 International Arbitration Survey, p.11 (Chart 7).
24 2021 International Arbitration Survey, p.10; 2018 International Arbitration Survey, pp.13-14; 2015 International Arbitration Survey, p.18.
25 2021 International Arbitration Survey, p.9; 2018 International Arbitration Survey, p.15.

26 For instance, in taking advances on costs from parties, or paying out fees to arbitrators. See further p.11.
27 In our previous surveys, the UNCITRAL Rules consistently ranked first among ad hoc arbitration rules: 2021 International Arbitration Survey, p.9 (Chart 5); 2018 International Arbitration Survey, p.15 (Chart 14).
28 Some interviewees clarified that they had selected this answer option to indicate that their arbitrations did not involve any sanctions-related circumstances, as opposed to meaning that any sanctions-related circumstances that existed did not impact the conduct of the proceedings.
29 2018 International Arbitration Survey, p.7 (Chart 3); 2015 International Arbitration Survey, p.6 (Chart 2).
30 We distinguished between ICSID arbitrations and proceedings under other arbitral rules due to the specific enforcement mechanism for ICSID awards compared to other, general enforcement mechanisms (such as the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards) which are not limited to, or associated with, specific sets of arbitral rules.
31 In ICSID arbitrations, 8% of respondents found States 'almost always comply', 25% chose 'often' and 43% said it happens 'sometimes'. Again, almost a quarter of respondents found States 'rarely' (19%) or 'never' (6%) complied.
32 Only 35% of respondents who have limited recent experience of arbitration proceedings (0 to 10 arbitration proceedings in the past five years) were in favour of the proposal, compared to 45% of respondents with significant experience of arbitration proceedings (30 and more in the last five years).
33 2018 International Arbitration Survey, p.8 (Chart 4); 2015 International Arbitration Survey, p.7 (Chart 3).
34 2021 International Arbitration Survey, p.13 (Chart 9): "If you were a party or counsel, which of the following procedural options would you be willing to do without if this would make your arbitration cheaper or faster?"
35 See 2021 International Arbitration Survey, p.13 (Chart 9); 2018 International Arbitration Survey, p.7 (Chart 3), p.8 (Chart 4); 2015 International Arbitration Survey, p. 6 (Chart 2), p.7 (Chart 3).
36 For these purposes, respondents who have experience of 0-2 arbitrations over the past five years (see p.37, Chart 24).
37 For these purposes, respondents who have experience of 30+ arbitrations over the past five years (see p.37, Chart 24).
38 The desire for arbitrators to adopt proactive case management styles in order to discourage dilatory or inefficient behaviour was also reflected in 2021 International Arbitration Survey, p.12; 2018 International Arbitration Survey, p.27; 2015 International Arbitration Survey, p.10; 2010 International Arbitration Survey, p.25.
39 See above pp.5-6 and Chart 1.
40 E.g., bribery, corruption, fraud, money laundering.
41 E.g., use of natural resources, pollution, climate change, energy use, waste management.
42 Excluding environmental and human rights issues but including, e.g., child and forced labour, labour and working conditions, responsible sourcing, charities, community relations.
43 E.g., pandemic prevention and response, consumer product safety.
44 E.g., human trafficking and modern slavery, displacement of indigenous peoples, destruction of cultural heritage sites, racial, ethnic or religious discrimination.
45 Environmental issues appeared most frequently in commercial arbitration (52%), followed by commercial-State disputes (28%) and ISDS (19%). Corporate social responsibility issues were primarily encountered in commercial arbitration (63%), featuring less prominently in commercial-State (39%) and ISDS (35%). Public health issues followed a similar trend, with commercial arbitration (77%) being the dominant setting, while less frequently seen in commercial-State (43%) and ISDS (21%). Human rights issues, on the other hand, were encountered evenly across all forums: commercial arbitration (27%), commercial-State (29%) and ISDS (30%).
46 See also p.23 and Chart 15 above and 2018 International Arbitration Survey, pp.27-28.
47 2018 International Arbitration Survey, pp.32-33 (Charts 35 and 36).
48 2021 International Arbitration Survey, pp.21-22 (Chart 13).
49 Interestingly, in our 2015 International Arbitration Survey (p.43, Chart 39), 75% of respondents thought it was appropriate for tribunal secretaries to prepare drafts of procedural orders and non-substantive parts of awards.

Appendices

Methodology

The research for this study was conducted from September 2024 to March 2025 by the School of International Arbitration, (SIA), QMUL. Dr. Thomas Lehmann was the White & Case Postdoctoral Research Associate at the SIA Centre for Commercial Law Studies, Queen Mary University of London. The academic leads (investigators) of the project were Norah Gallagher, Director, SIA, and Dr. Maria Fanou, Director of the Comparative and International Dispute Resolution (CIDR) LLM Programme at the SIA. An external focus group composed of senior in-house counsel, private practitioners, arbitrators, academics and senior representatives of arbitral institutions provided valuable feedback on the draft questionnaire.

The research was conducted in two phases: the first quantitative and the second qualitative.

- **Phase 1**: An online questionnaire of 28 questions (of which 18 were substantive in nature) was completed by 2,402 respondents between 8 October 2024 and 21 December 2024.

- Views were sought from a wide range of users of arbitration globally, with all interested stakeholders able to participate. The respondent group consisted of private practitioners (35%), full-time arbitrators (17%), practitioners who split their time equally between acting as arbitrators and counsel (14%), arbitral institution staff (9%), academics (8%), in-house counsel from the private sector and government entities (7% and 3%, respectively), tribunal secretaries, experts (over 1% each), and other professional roles.

- Respondents were invited to identify the geographic region(s) in which they principally practise or operate. Respondents could choose multiple regions. 47% of respondents included Asia-Pacific as a region in which they principally practise or operate, followed by Europe with 21%, North America with 10%, and the Middle East with 9%, while the Caribbean / Latin America and Africa represented 7% and 6% of selections, respectively.

- In terms of experience, more than 73% of all respondents stated they have been personally involved in more than three arbitrations in the past five years. More experienced or frequent users involved in 11 to 30 arbitration cases in the past five years make up 18% of respondents, and 17% of respondents have been involved in more than 30 arbitration cases in the past five years.

Chart 23: What is your primary role?

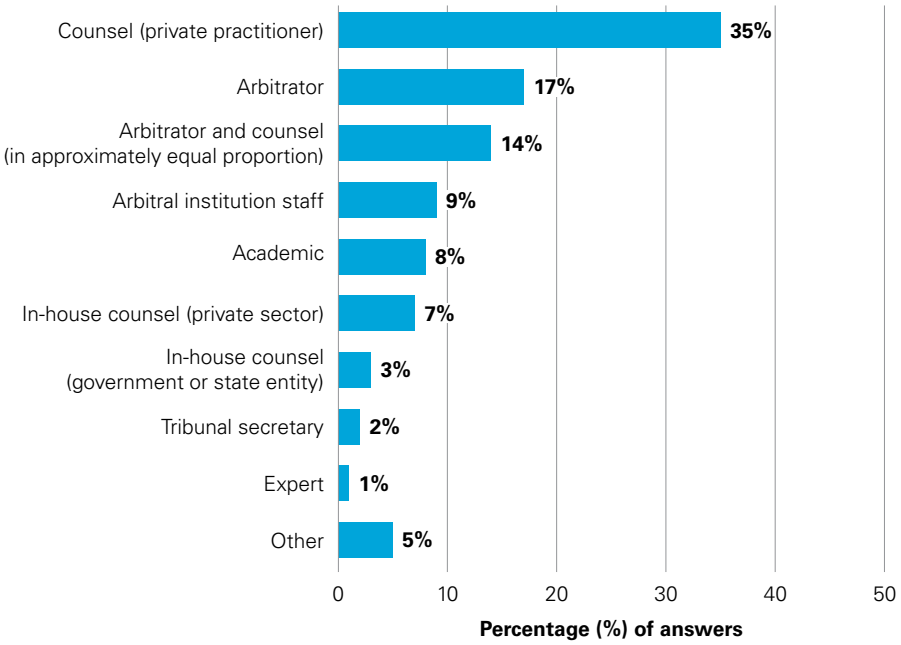
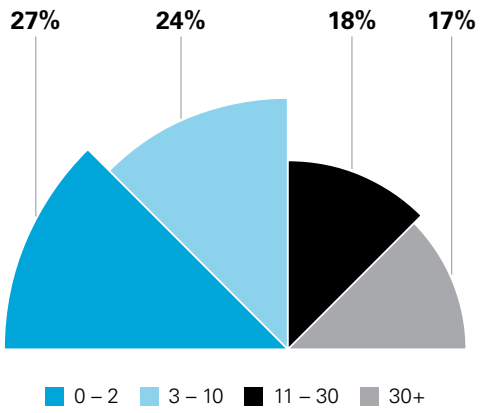


Chart 24: Over the past five years, approximately how many international arbitrations have you been involved in?



- The questionnaire responses were analysed using data analytics methods to generate the statistics presented in this report. A reference to 'respondents' in the report refers to those respondents who answered that particular question. Each of the substantive questions was answered by more than 82% of respondents. Due to rounding up/down of individual figures, the aggregate of the percentages shown in some charts may not equal 100%.

- **Phase 2**: 117 in-person, video or telephone interviews, ranging from 15 to 90 minutes, were conducted between October 2024 and March 2025. The qualitative information gathered during the interviews was used to supplement the quantitative questionnaire data. It nuanced and further explained the findings on particular issues covered in the survey. Interviewees were based in 37 countries and 45 cities across all continents (except Antarctica). The pool of interviewees reflected all categories across the diverse respondent group. Interviewees were primarily contacted on the basis of their consent in the questionnaire, while a few contacted us directly requesting an interview.

- The following charts illustrate the composition of the respondent pool by primary role; geographic region of primary practise or operation; industry in which they or their organisation operate; and experience in international arbitration.

Chart 25: Industry in which you or your organisation operates

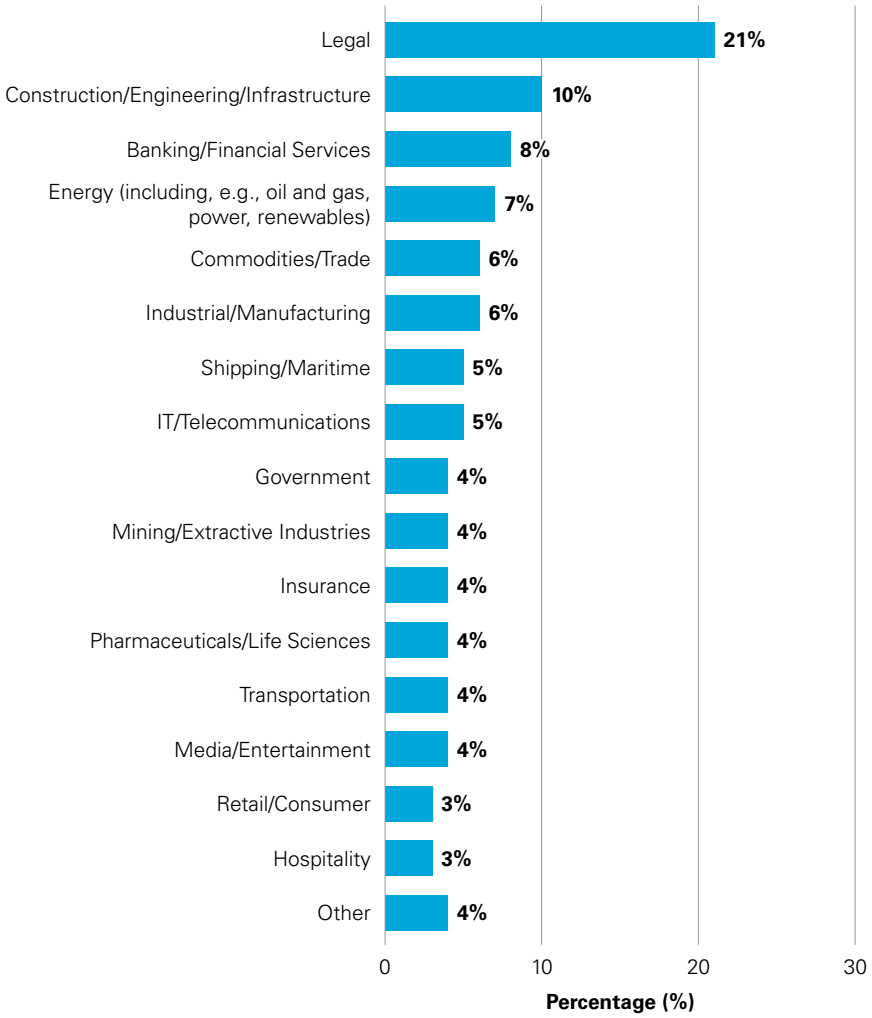
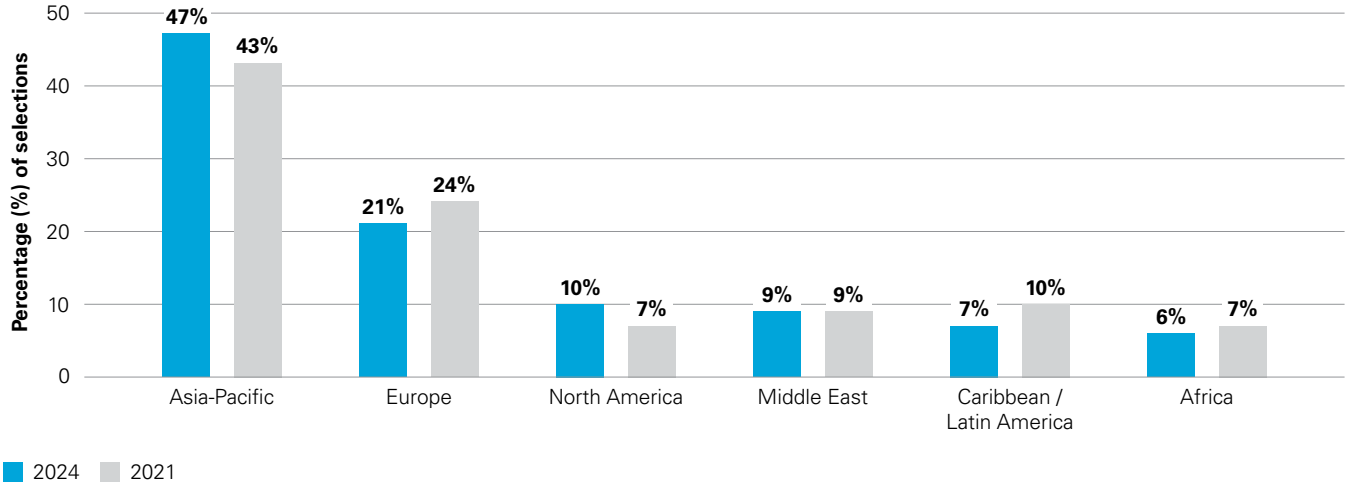


Chart 26: In which region(s) do you principally practise or operate

Respondents could select multiple regions



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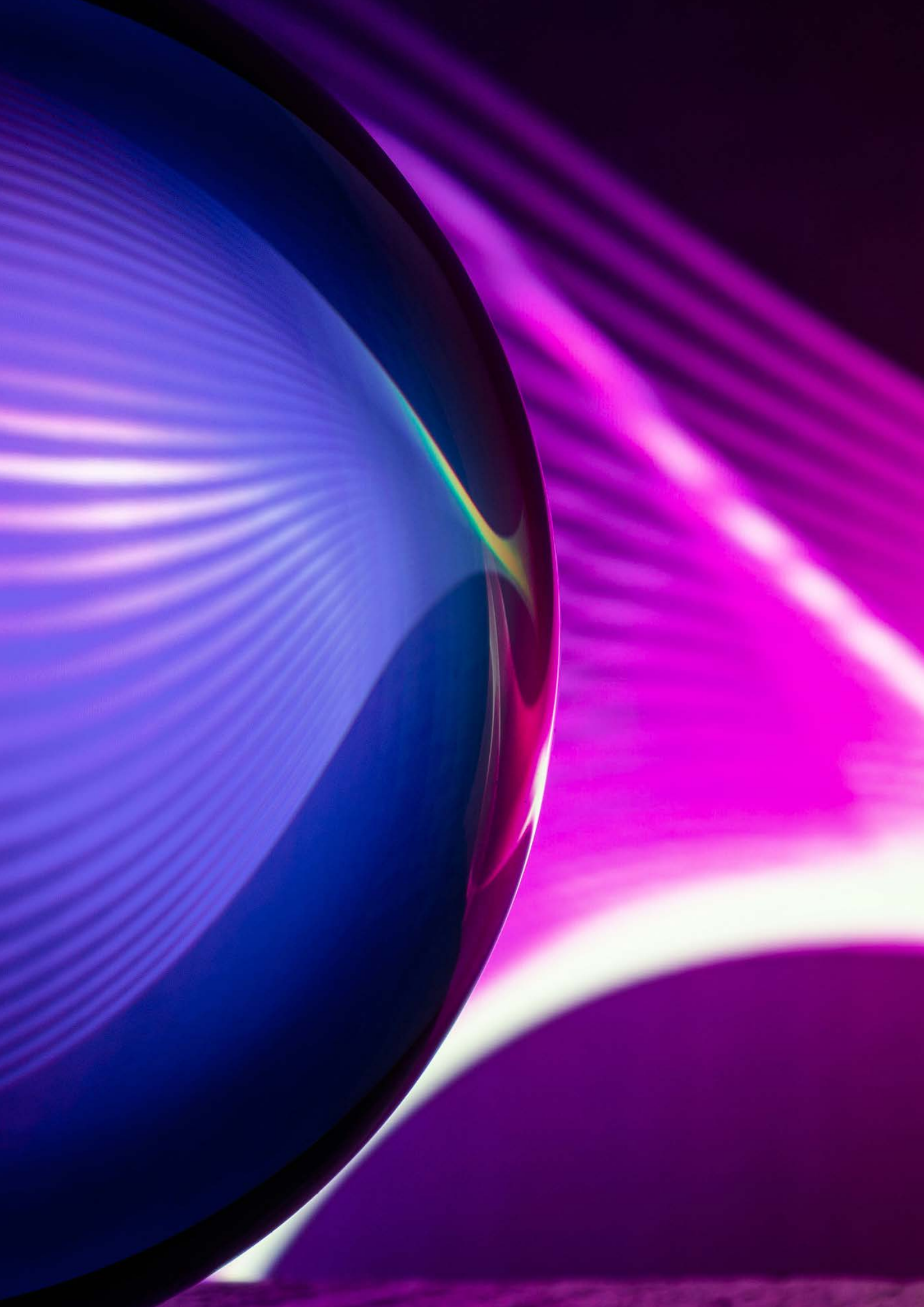

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