



Global confidential

Arbitration will continue to increase its share of the global disputes market.

“There is an arbitration boom at the moment, no doubt about that,” reflects Sir Bernard Eder, a former High Court judge and now a full-time arbitrator. Such sentiments are widely shared. Despite some concerns that the quality of practitioners and procedural rigour cannot keep up with its global growth, the decades-spanning surge in arbitration is set to proceed and likely even accelerate through the 2020s.

Underlining this are some indications of cross-border parties turning to arbitration over the courts, though this shift will not be sufficient to slow growth in litigation at major centres. Confidentiality, choice of forum and credible enforcement options remain the primary benefits driving arbitration’s popularity, with many GCs saying that the supposed cost and time benefits often prove illusory.

Christopher Bogart, chief executive of the largest disputes funder, Burford Capital, notes a long-term shift from litigation to arbitration: “It’s not as efficient and inexpensive as billed, but every time a company finds itself mired in a decade-long piece of litigation, with multiple levels of appeal and lots of frolics and detours, that’s a company likely to think hard about arbitration the next time. I certainly see the shift to arbitration as a continuing trend.”

The rapid growth of arbitral facilities across the developing world will further establish the market, while some GCs believe jurisdictional uncertainty in the wake of Brexit may divert activity from the English courts to arbitration. Inevitable backlogs in many civil courts thanks to the pandemic will likewise encourage some disputes to shift to arbitration, which has easily adapted to online hearings. Litigation funders, meanwhile, are increasingly turning their attention to the sector.

Arbitration will end the decade with a bigger slice of the global disputes market than ever.

This is an excerpt from an HFW report on the future of dispute resolution. To read the rest of the report, which includes a series of 30 interviews with senior in-house counsel and other leading figures from across the global disputes industry, as well as insights from our expert litigators, visit: www.hfw.com/litigation

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