

PwC 2013 International Arbitration Survey

Choice of dispute resolution mechanisms:

- ▶ Businesses prefer arbitration over litigation for transnational disputes, although concerns remain about costs of arbitration.
- ▶ Arbitration is most popular in energy and construction industries.

Choice and role of outside counsel:

- ▶ The two most influential factors are previous experience of the firm/lawyer and personal knowledge of the lawyer.
- ▶ Slight preference for arbitration specialists over industry specialists.
- ▶ Directory rankings are not very influential.

Internal decision-making on arbitration matters:

- ▶ 57% of disputes were settled by direct negotiation or mediation. Of those not settled, only 32% were referred to arbitration or litigation.
- ▶ In deciding whether to arbitrate, the most important factors were the strength of the legal position, strength of evidence and recoverable damages. Costs were not cited as an important factor.

Funding:

- ▶ Once a decision is made to arbitrate, only 11% withdraw because of funding difficulties.
- ▶ Most corporations have used alternative fee structures: primarily capped fees and discounted rates with success fee.
- ▶ Pure contingency fees and third-party funding are rare.

Cost, delay and the fear of "judicialisation" of arbitration:

- ▶ Many concerns were expressed over costs and delays.
- ▶ Lack of arbitrator availability was not cited as one of the most important factors when selecting arbitrators. It was more important to appoint the arbitrator best suited to the case than one who could complete it faster.
- ▶ The most important factors in the appointment of arbitrators were the individual's commercial understanding of the industry, knowledge of the law applicable to the contract and arbitration experience.
- ▶ Concerns were expressed over the "judicialisation" of arbitration, and increased formality of proceedings, with associated costs and delays.