

SIDRA INTERNATIONAL DISPUTE RESOLUTION SURVEY: 2020 FINAL REPORT

Executive Summary

The International Dispute Resolution Survey: 2020 Final Report presents the findings of the Singapore International Dispute Resolution Academy's inaugural examination into the preferences, experiences, practices and perspectives of international dispute resolution users around the globe. The survey examined three major international dispute resolution mechanisms: international commercial arbitration, international commercial mediation, international commercial litigation, as well as hybrid dispute resolution mechanisms such as mediation-arbitration and arbitration-mediation. The survey also inquired into the use of technology in international dispute resolution, such as predictive analytical tools and negotiation support systems, and asked the users to express whether they were satisfied with the use of technology.

The report summarizes findings from each mechanism in turn and explores the key trends drawn from the data, identifying currents of change that impact international dispute resolution. Key findings of the report are set out as follows:

How Choices are Made about Arbitration, Mediation, Litigation and Hybrid Mechanisms

- International commercial arbitration remained the dispute resolution mechanism of choice among respondent users.
- International commercial arbitration was more popular among Legal Users than Client Users.
- Respondents ranked enforceability, neutrality/impartiality and cost as the top three most important factors in their choice of a dispute resolution mechanism.
- Legal Users ranked enforceability as the most important consideration, whereas Client Users ranked neutrality/impartiality as the most important factor in their choice of a dispute resolution mechanism.
- Comparing user satisfaction, a larger proportion of mediation users were satisfied with speed and cost, as compared to arbitration and litigation users.

Investor-State Dispute Resolution

- Almost half of the users who responded to our survey indicated they had been involved in investor-state or multi-lateral investment disputes between 2016 and 2018.
- International arbitration was the dispute settlement mechanism of choice with a majority of users opting for institutional or ad hoc arbitration to resolve investor-state disputes.
- Users selected enforceability, political sensitivity and impartiality as the top three factors influencing their choice of dispute resolution mechanism in investor-state disputes.
- Despite the dominance of arbitration in this field, users indicated an openness to selecting other dispute settlement mechanisms in investor-state matters such as litigation and mediation.
- Users' responses suggest the need for reform in this field.

International Commercial Arbitration

- International commercial arbitration remains the most-used mechanism for international dispute resolution, and was used by 74% of respondents between 2016 and 2018.
- More than 75% of respondents indicated that enforceability, impartiality/neutrality and finality were absolutely crucial or important factors in their choice of arbitration as a dispute resolution mechanism.
- Arbitration remained the dispute resolution mechanism of choice even as users expressed lowered satisfaction with the speed and costs of arbitration.

International Commercial Mediation

- In choosing international commercial mediation, more than 80% of users indicated impartiality/neutrality, speed and confidentiality as absolutely crucial or important factors influencing their choice.
- International commercial mediation users did not rank enforceability very highly on their list of reasons to mediate. This may reflect the current lack of an internationally recognised expedited enforcement mechanism. The new Singapore Convention offers expedited enforceability mechanisms for mediated settlement agreements. In the future, this may attract current users of litigation and arbitration who value enforceability.
- In the choice of mediators, good ethics and dispute resolution experience were most frequently rated as absolutely crucial qualities by users. New regulatory developments such as the Singapore Convention place the spotlight on professional standards for mediation practice and this is congruent with users' priorities.
- Client Users were more likely to recognise specific technologies as extremely useful or useful compared to Legal Users.

International Commercial Litigation

- More than 80% of users consider factors such as enforceability, clarity in rules, neutrality/impartiality as important or absolutely crucial in their choice of litigation as a dispute resolution mechanism.
- Less than 50% of users indicated that they were very satisfied or somewhat satisfied with the speed and costs of litigation.
- In their choice of international commercial courts, more than 80% of respondents indicated that efficiency is an important or absolutely crucial factor, but only 45% of respondents were very satisfied or somewhat satisfied with their experiences. International commercial courts have an opportunity to enhance efficiency to increase their attractiveness as a dispute resolution forum.

Hybrid Dispute Resolution Mechanisms

- Hybrid mechanisms have the potential to reduce the perceived disadvantages of standalone arbitration or mediation.
- Users indicated contractual obligations as the main reason for selecting a hybrid dispute resolution mechanism.
- Client Users are more open to selecting a hybrid process than Legal Users.
- Where preservation of parties' business relationships, efficiency and cost are important factors, users chose hybrid mechanisms as opposed to standalone arbitration.
- Where efficiency, cost and enforceability are important factors, users chose hybrid mechanisms as opposed to standalone mediation.