

EMERGING TRENDS IN ARBITRATION IN A TECHNOLOGY WORLD

There has been a recent blaze in the development and application of technological facilities in almost all the spheres of human endeavors ranging from formal to informal activities.

In the same vein, there has been a rapid growth in the use of alternative dispute resolution (“ADR”) mechanisms such as Mediation and Arbitration, particularly in the commercial sector. Usage of technological facilities now extends to and enhances the arbitration procedures in several ways.

Our newsletter for April does an overview of the emerging trends of the impacts of technology in arbitration:

- Evaluating the need for technology in arbitration
- Conducting Technology-Enabled Arbitration
- Data Analytics and Tools for Dispute Resolution
- The Use of Technology by Arbitral Institutions
- Vice Versa: Arbitration in the Technological World

➤ **Evaluating the Need for Technology in Arbitration**

The impacts of technology in international arbitration have become more undeniable and significant in recent times and more so, it seems needed more than it has ever been. Ranging from location, time, physical resources, evidence and the likes, there seem to be a crucial need for the use of technological facilities in the conduct and actualization of arbitration.

[Kimberly Chen Jones](#) discussing on emerging issues and trends in international arbitration enumerated some key factors to consider while contemplating international arbitration which includes the choice of law governing the substance of the dispute, arbitral institutions, seat of arbitration, overall cost and delay, confidentiality and flexibility (this is not restricted to international arbitration alone).

Considering some of these factors in line with recent trends speaks volume on the need for technological facilities to enhance arbitral processes, putting in mind the peculiar advantages of technology like speed, simplification of task, data storage and publication, amongst others.

➤ **Conducting Technology-Enabled Arbitration**

One of those significant areas is [online dispute resolution and Telepresence](#). The technology is known for making people feel as if they are in a place other than their actual location while they could still carry out the actual activity meant for that location. This is possible because most arbitral rules permits parties to decide on the location, Arbitral procedure, panel amongst others.

Participants in a mock arbitration concerning Homer's The Iliad were located in San Jose, Buenos Aires, Toronto, Washington, New York, Dublin, London, Paris, Brussels, Dusseldorf, Zurich, Vienna, Florence, Madrid, Hong Kong and Singapore. During the mock arbitration, tribunal members sat in three different locations, witness statements were transferred instantly using document sharing software and documents were also translated via Google Translate..

There are, however, concerns as to the cost of implementation of technological facilities, confidentiality and data privacy.

By and large, the impact of technology has been felt in the conduct of arbitration.

➤ **Data Analytics and Tools for Dispute Resolution**

The [decision-making process](#) involves the use of data analytic tools which are used to predict the outcome of a legal or Arbitral process. A well-known tool designed for this purpose is [Arbitral Intelligence](#) which is aimed at enhancing transparency, accountability and diversity in the process of selecting an arbitrator by giving information about an arbitrator's past decisions. This is not without its own criticism particularly as to the accuracy and credibility of arbitral award. Another example is the Context by LexisNexis.

There are also programs that are available which serve as platform to host, transfer and otherwise manage voluminous documents in arbitration. The most basic platforms are [cloud-based systems](#) that serve as repositories for arbitration data, allowing users to upload, label, and share arbitration pleadings and exhibits with others through a single, centralised location that all parties and tribunal members can access.

➤ **The Use of Technology by Arbitral Institutions**

Going forward, a way that most Arbitral Institutions have given room for the employment of technology in the Arbitral process is the clause that is usually contained in their protocols which accords the parties the privilege to choose the Arbitral Tribunal themselves or allow the institution to do so on their behalf. In this connection, either the parties or the institution will consider the nature of the dispute in determining the choice of the Arbitral Tribunal. This leverage enables both the parties as well as the institutions to employ viable means to ensure due resolution of the dispute.

A good example is the [Expedited Arbitration Rules](#) which is a procedural framework established by WIPO enhancing the incorporation of technological facilities in Arbitral proceedings. It has been considered as particularly useful for parties who consider time to be of essence. WIPO Expedited Arbitration may be appropriate where the value in dispute does not justify the cost of more extensive procedures, or where the number of issues in dispute is limited.

In 2004, the [ICC Commission on Arbitration](#) and the Task force on the use of arbitration made the first report on the use of technology and its acceptance has substantially increased. Following the report, the ICC Rules now encompasses provision giving room for the parties to agree to use IT and also provides for the power of the tribunal to give directions on the use of IT flowing from Articles 19, 22, and 24 of the ICC Rules. Example is the File Transfer Protocol which involves transferring information via readily-available bulk file hosting services like Dropbox, Google Drive etc. Also, in 2005, the ICC launched its innovative case management product known as "NetCase" to enhance access to pleadings, correspondence and other submissions continuously and in real time.

➤ **Vice Versa: Arbitration in the Technological World**

Arbitration as an alternative means of dispute resolution has been seen as a viable tool for resolving technology industry dispute. It has been canvassed severally that lack of expert decision makers in litigation is one of the reasons why arbitration is preferred above litigation because it allows for independent choice of arbitrator which give the parties opportunity to appoint a trusted hand in the resolution of their dispute. This is particularly important to technology disputes having regards to the

complex technical and scientific circumstances that may surround it, especially as novel issues emerge. It could also help companies to save time and cost with respect to the fact that arbitral awards, except in stringent circumstances, cannot be appealed against and this saves the resources that the parties would have expended on appeal.

Arbitration has also been helpful in protecting trade secrets due to its confidential nature. Companies, therefore, in the bid to protect their business in the face of impending public disclosure welcomes arbitration as preferred means of resolving their dispute.

CONCLUSION

The rise of technology, expansion in commercial trends, the need to save time and cost amongst many others are trends that have promoted the influence of technology in arbitration and vice versa. Parties and arbitral institutions are therefore constantly encouraged to embrace ground-breaking technology to facilitate arbitration procedures.