

Litigation Opinion

The choice of seat of arbitration: can London defend its crown?

London has long occupied a dominant position as a preferred seat of international arbitration. This is due to a number of factors including, the pro-arbitration stance of the English courts, its reputation as a neutral jurisdiction, the certainty and predictability of English law, and the ease of enforceability of awards. In recent years, however, rival seats such as Singapore and Hong Kong have gained significant ground on London due to reforms of their arbitration legal framework and institutional rules for arbitration, so much so that London now **shares the top spot** for the most preferred seat of arbitration with Singapore. In addition, regional seats such as Cairo, Mumbai, and Madrid continue to grow in popularity and have emerged as serious competitors within their regions.

With competition heating up, what can London do to maintain its pre-eminence as a top seat for international arbitration?

London could enhance its attractiveness and reputation as a leading seat of arbitration by implementing reforms to the English Arbitration Act 1996, which governs arbitrations seated in London. Work on reforming the Act is already underway following the launch of consultation processes by the Law Commission of England and Wales in September 2022 and March 2023. The proposed reforms include the introduction of a non-mandatory provision granting arbitrators the power to dispose of claims summarily, granting extra powers to the courts to support arbitral proceedings, a change to the standard of review to be applied by the English courts in challenges to jurisdiction, and a new rule to the effect that the law of the arbitration agreement is the law of the seat, unless the parties expressly agree otherwise in the arbitration agreement itself. Many practitioners see the proposed amendment regarding the law of the seat as essential for maintaining London's place as a top seat of arbitration because it would remove the current uncertainty under English law as to which law governs an arbitration agreement.

Although the proposed reforms represent an important evolution in the UK's legislative framework for arbitration, London will need to do more to prepare itself for the changes that generative AI will bring to arbitration and the legal system more widely. The rapid progress of AI systems, in particular, the new "large language models" that power Chat GPT, could increase the efficiency of dispute resolution processes dramatically.

For example, Chat GPT can conduct research, summarise documents, and draft simple agreements in a matter of minutes. While the output remains prone to errors and glitches, which means the results need to be checked carefully, the new AI systems can provide useful assistance to lawyers working towards tight deadlines and free up time to focus on other tasks. Further, the new AI systems have the potential to act as an effective "judicial assistant" to judges and arbitrators by providing them with analytical tools that will allow them to resolve disputes quicker.

As Sir Geoffrey Vos, the Master of the Rolls, recently **observed**, "*it is here that generative AI may be able to help. It may be that the power of AI could identify, from a mass of complex facts and transactions, the real issues that divide the parties and that require resolution. If that could be done, the actual resolution process itself could become shorter and less costly...*". While the use of generative AI presents opportunities for dispute resolution, it also creates challenges around transparency and the accuracy of the output. Stakeholders should therefore start discussing and developing a rulebook on the use of new AI systems for resolving disputes in order to ensure that AI is used effectively, transparently, and fairly.

London can also look to steal a march on its competitors by positioning itself as a place for resolving disputes arising out of blockchain technology and cryptocurrencies. The ecosystem

around blockchain and cryptocurrencies has expanded rapidly in the last few years. Trading in cryptocurrencies increased sixfold (from an estimated US\$6.8bn per day in late 2017 to US\$48.6bn per day in May 2021), multinational corporations are leveraging blockchain technology to improve their operations, and financial services and products are being **built on public blockchains that do not require intermediaries** (decentralised finance).

Unsurprisingly, we are starting to see an increase in disputes relating to cryptocurrencies, a trend which is likely to increase as the number of players in this field increases, including mainstream financial institutions. London can seek to capitalise on this trend by continuing to develop its industry expertise and adapting its legal framework to cater for these new types of disputes and the needs of the participating parties.

In the short term, London looks set to remain a leading seat of international arbitration thanks to the proposed modernisation of the English Arbitration Act and innovations such as the new Digital Dispute Resolution Rules designed for resolving disputes relating to digital assets and related technology. To retain its status as a go-to arbitration seat, London will need to prepare for the next wave of commercial disputes and maximise the use of new AI systems, especially in light of the UK's stated aim of becoming a global AI superpower in the next ten years.

Ronan O'Reilly is a special counsel at Jenner & Block

By **The Lawyer** 19 May 2023 09:00
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