ANNUAL ARBITRATION SURVEY 2023

AI in IA

The Rise of Machine Learning

AI in IA
THE RISE OF MACHINE LEARNING

Welcome to the results of our Arbitration Survey 2023 on the use of Artificial Intelligence in International Arbitration.

In keeping with this year's survey topic, we asked a generative AI tool to compose an introductory paragraph for this report. This is the result:

> The use of AI tools in international arbitration is a topic of growing interest and debate among arbitration practitioners. AI tools can offer many benefits to the arbitration process, such as enhancing efficiency, reducing costs, improving quality, and facilitating access to justice. However, AI tools also pose significant challenges and risks, such as ethical, legal, and technical issues, as well as potential impacts on the roles and responsibilities of arbitrators, counsel, and parties. Therefore, the use of AI tools in international arbitration requires careful consideration and regulation to ensure that they are compatible with the principles and values of arbitration, such as fairness, impartiality, transparency, and party autonomy.

A large language model tool produced this paragraph by amalgamating data available from the internet. That tool remains, of course, a machine. It cannot understand the meaning of foundational concepts such as party autonomy and justice. Perhaps more importantly, the statement was created with regard to neither the reader's expectations on the results of the survey nor the reader's interest in how AI may impact the future of international arbitration and possibly the rule of law.

In contrast, the rest of this report is the result of the work, generosity and talent of a large number of human beings. It combines the insight and intelligence of over 200 arbitration practitioners who have shared their personal opinions and experiences on the use of AI in IA. The report captures the views of an incredibly diverse pool of members of the global international arbitration community. These views relate to the extent to which AI tools are used to perform tasks in international arbitration, the benefits and challenges that they create as well as possible measures intended to address risks stemming from the use of AI in IA.

We hope that the results of this year's survey and the analysis provided in this report provide a useful contribution to the on-going debate about the use and regulation of AI in IA.

We would like to thank all those who responded to the survey, on whose contribution these surveys depend. We would also like to thank our media partners ArbTech, SVAMC, TDM/OGEMID, Jus Mundi and ITechLaw for their support.

GEORGE BURN
Co-Head of International Arbitration

CLAIRE MOREL DE WESTGAVER
Partner, International Arbitration

VICTORIA CLARK
Knowledge Counsel, International Arbitration

WHAT WE A?KED

The survey covered the following issues:

▶ The extent to which AI tools are used to perform tasks in IA.
▶ Whether respondents have reservations over using AI tools for specific tasks.
▶ The perceived benefits of using AI tools.
▶ The perceived risks of using AI tools.
▶ The need for transparency over how AI tools make decisions.
▶ The need for disclosure of the use of AI tools.
▶ The use of AI tools by arbitrators.
▶ The technical capability of arbitrators to give directions concerning the use of AI tools.
▶ The impact of AI tools on the integrity of evidence.
▶ Whether regulation is needed and, if so, who should take the lead.

WHO WE ASKED

→ Lawyers at law firms
→ In-house counsel
→ Arbitrators
→ Arbitral institutions
→ Experts
→ Academics
→ Legal technology service providers
→ Litigation funders

We received **221** responses to the survey.[1] Respondents included lawyers at law firms, in-house counsel, arbitrators, staff at arbitral institutions, experts, academics, litigation funders and legal technology service providers. The geographical regions covered include Central and South America, North Africa, Western Europe, East and South East Asia, Australasia, the Middle East, the Caribbean, Eastern Europe (including Russia and CIS), West and East Africa and North America. **57%** of respondents were from a common law background, **13%** were from a civil law background and **23%** from both. **7%** of respondents did not have a legal background. Our respondents are involved in disputes across a wide range of sectors including construction and engineering, energy and natural resources, technology, international trade and commodities, and banking and financial services. For the first time, we asked respondents to provide an indication of their age in order to assess the impact (if any) that age has on perceptions of the use of AI in IA. We are very grateful that all **221** respondents were prepared to provide this information.

KEY FINDINGS

USE OF CHATGPT
28% of respondents had used ChatGPT in a professional context, **72%** had not.

USE OF AI TOOLS IN IA
30% of respondents had used AI tools for document review and production.

30% of respondents had used AI tools for text formatting and editing.

62% thought AI tools should not be used for the generation of text for use in arbitral awards.

53% thought AI tools should not be used for the generation of text for use in legal submissions.

BENEFITS OF AI TOOLS
85% of respondents ranked saving time as the most or the second most important benefit.

60% of respondents ranked cost effectiveness as the most or the second most important benefit.

65% of in-house counsel respondents ranked saving time as the most or the second most important benefit.

RISKS OF AI TOOLS
88% of respondents were concerned about AI Hallucination.

87.5% of respondents were concerned about breach of confidentiality.

86% of respondents were concerned about deepfake.

81% of respondents were concerned about improper delegation.

UNDERSTANDING AI
We asked respondents how important they think it is to understand how AI tools make decisions.

90% of respondents gave this an importance rating of 7 or above.

69% of respondents rated their confidence in understanding AI decision making at 5 or below.

TRANSPARENCY AND DISCLOSURE
60% of respondents thought there was a need for greater transparency over the use of AI tools by parties in arbitration.

72% of respondents thought parties should be required to disclose the use of AI tools for drafting expert reports.

65% thought parties should be required to disclose the use of AI tools for document review and production.

62% thought parties should be required to disclose the use of AI tools for translation of documents.

50% thought disclosure should be given to all parties involved in an arbitration.

AI AND ARBITRATORS
We asked respondents to indicate their level of confidence in the technical capability of arbitrators to give directions concerning the use of AI tools in arbitration.

79% of respondents rated their confidence in the technical capability of arbitrators at 5 or below.

73% of arbitrator respondents rated their confidence in their own technical capability at 5 or below.

76% of respondents thought there is a need for greater transparency over the use of AI tools by arbitrators.

71% thought arbitrators should be required to disclose the use of AI tools for any purpose in an arbitration.

AI AND THE INTEGRITY OF EVIDENCE
49% of respondents were concerned about the adverse impact that the use of AI tools may have on the integrity of evidence.
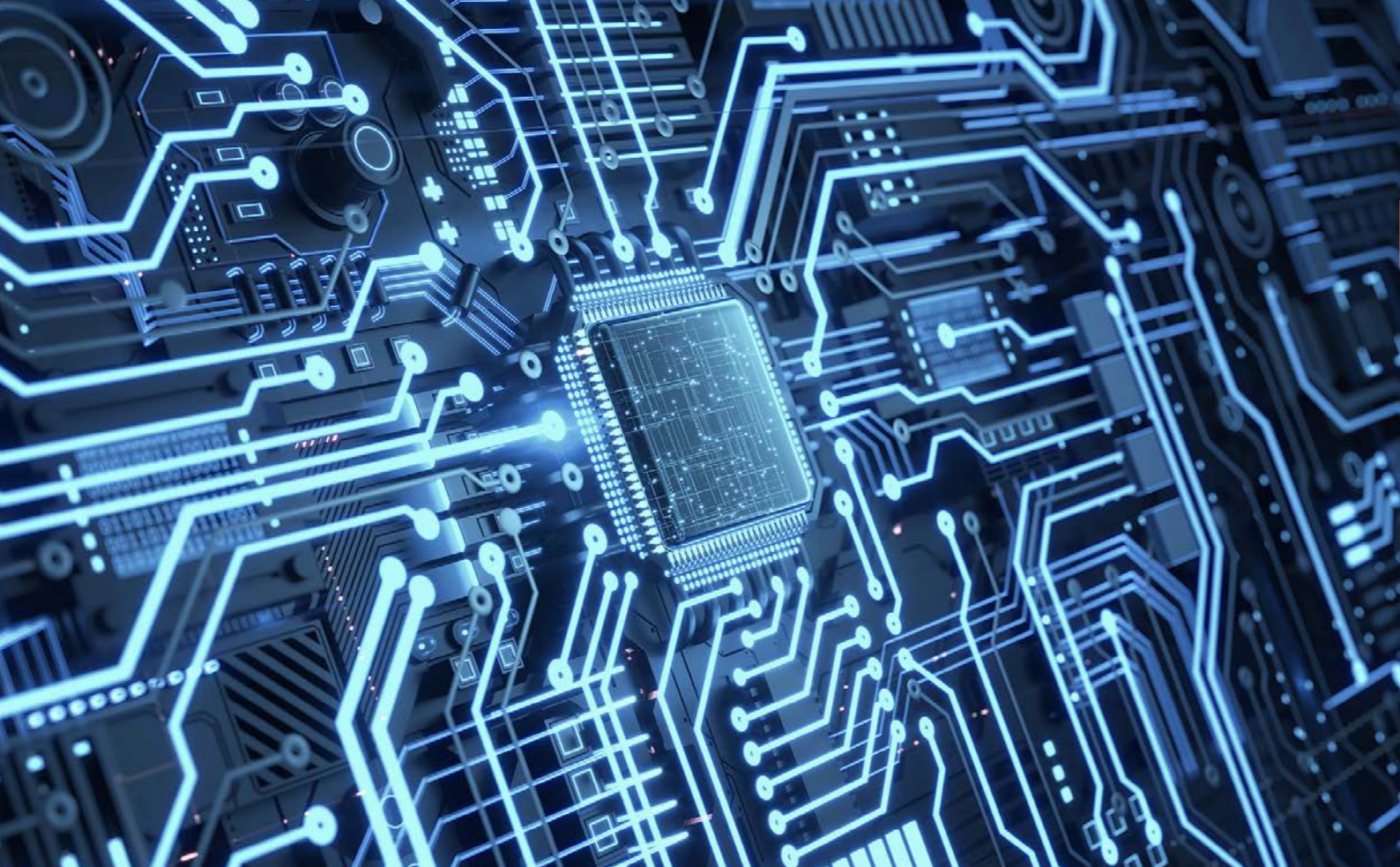
REGULATION
63% of respondents were in favour of the regulation of the use of AI tools in arbitration.

39% of respondents favoured regulation through "soft law" guidelines.
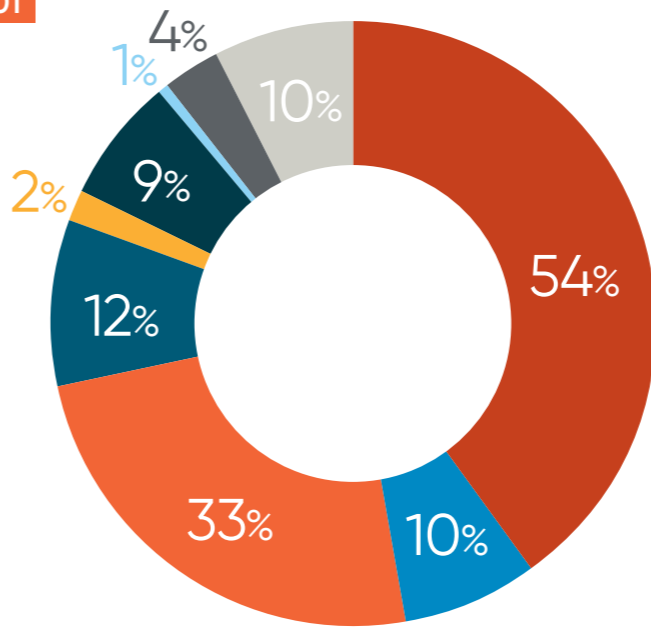
26% of respondents favoured regulation through arbitration rules.

13% did not think that regulation was needed.

Q01 WHAT IS THE NATURE OF YOUR INVOLVEMENT IN INTERNATIONAL ARBITRATION?

- 54%
- 33%
- 12%
- 10%
- 9%
- 4%
- 2%
- 1%

Legend:
- Lawyer at law firm
- In-house counsel
- Arbitrator
- Expert witness
- Work at an arbitral institution
- Academic
- Litigation funder
- Legal technology services provider
- Other

*Percentages don't add up to 100 as the respondents were given the option to select as many options as were appropriate.

DEFINING AI

Defining AI is not straightforward, as bodies seeking to regulate the use of AI across all sectors have discovered. There is no standard definition of what AI involves and it is a constantly evolving field. For the purposes of this survey, we adopted a defin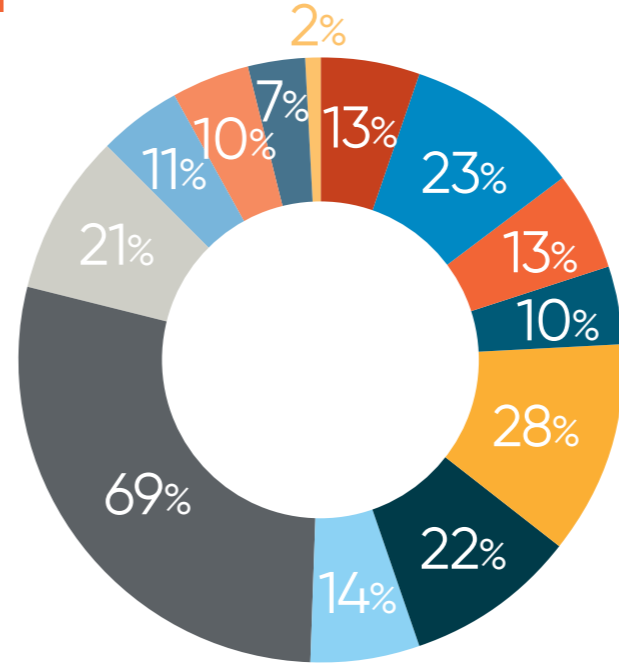ition of AI that includes systems using technologies such as text mining, computer vision, speech recognition, natural language generation, machine learning and deep learning to gather and/or use data to predict, recommend or decide, with varying levels of autonomy, the best action to achieve specific goals.

Q02 IN WHAT REGION(S) DO YOU WORK?

- 2%
- 13%
- 23%
- 13%
- 10%
- 28%
- 22%
- 14%
- 69%
- 21%
- 11%
- 10%
- 7%

Legend:
- Central and Southern Asia
- East and South East Asia
- Asia (other)
- Australasia
- Middle East
- North America
- Latin America and the Caribbean
- Western Europe
- Eastern Europe (including Russia and CIS)
- North Africa
- West Africa
- East Africa
- Other

*Percentages don't add up to 100 as the respondents were given the option to select as many options as were appropriate.

> " While the 2020 pandemic has accelerated the digital transformation within the arbitration community, whether with virtual hearings or more generally the awareness of the power of IT tools that it has brought with it, AI today has as much disruptive power as Internet 1.0 or smartphones have had over the last 20 years. With the exponential increase in computing power being made available to organisations, and the growing use of large language models (LLM) that enable machines to understand the complexity of human language, we are at the dawn of a radical transformation in the way arbitration professionals conduct their business. "

Sebastian Partida
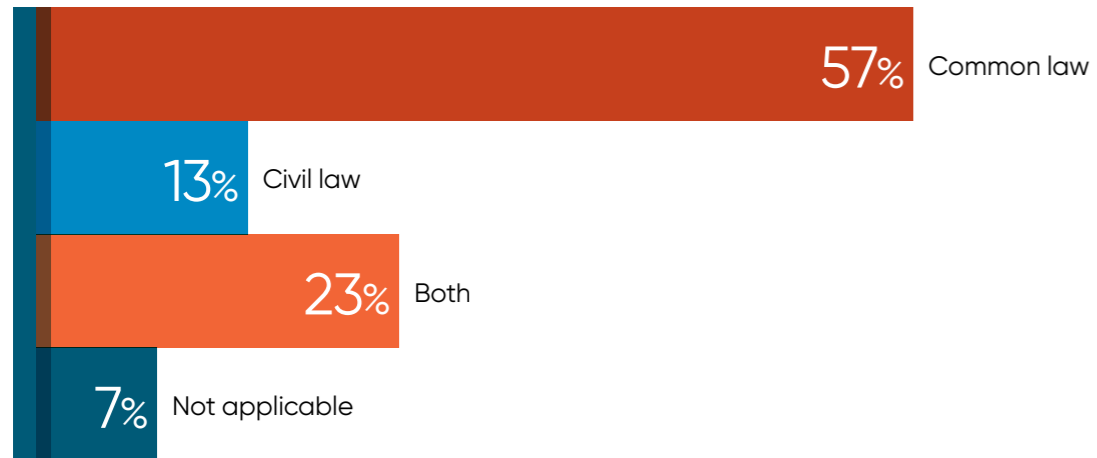Senior Counsel, Hewlett Packard Enterprise

IS YOUR LEGAL TRAINING IN A COMMON LAW SYSTEM OR A CIVIL LAW SYSTEM?

57% Common law

13% Civil law

23% Both

7% Not applicable

HOW OLD ARE YOU?

4% Under 25

21% 26 – 35

35% 36 – 45

20% 46 – 55

11% 56 – 65

9% 66+

IN WHAT SECTOR(S) DO DISPUTES YOU ARE INVOLVED IN TEND TO ARISE?

11% 35% 62% 53% 15% 19% 38% 29% 13% 18% 12% 38%

- Banking and financial services
- Construction and engineering
- Energy and natural resources
- Hotels and hospitality
- Insurance and reinsurance
- International trade and commodities
- Manufacturing
- Maritime and shipping
- Pharmaceuticals
- Sports and entertainment
- Technology
- Other

*Percentages don't add up to 100 as the respondents were given the option to select as many options as were appropriate.
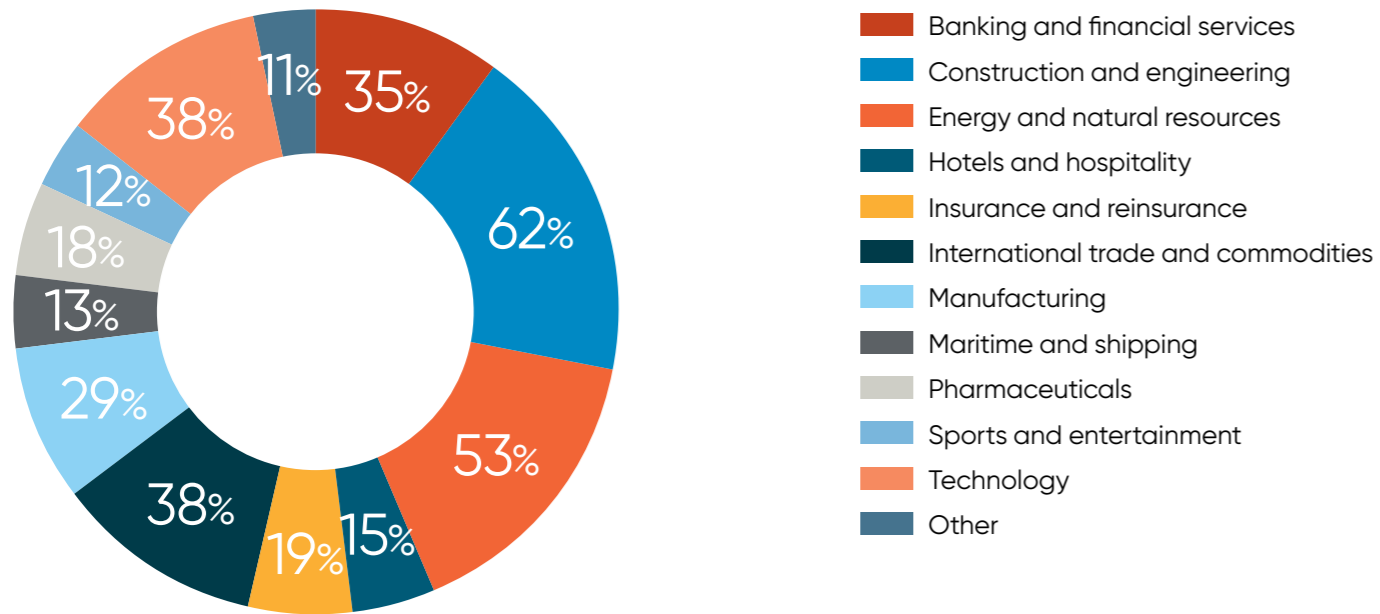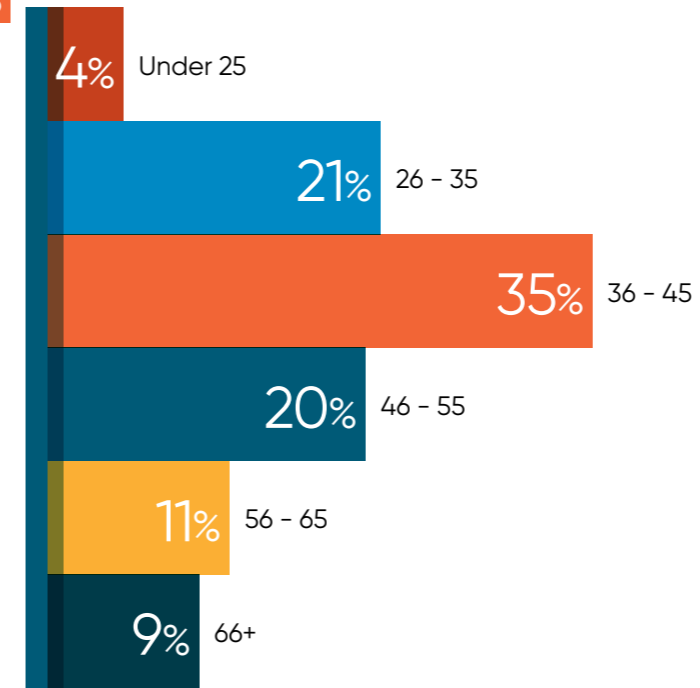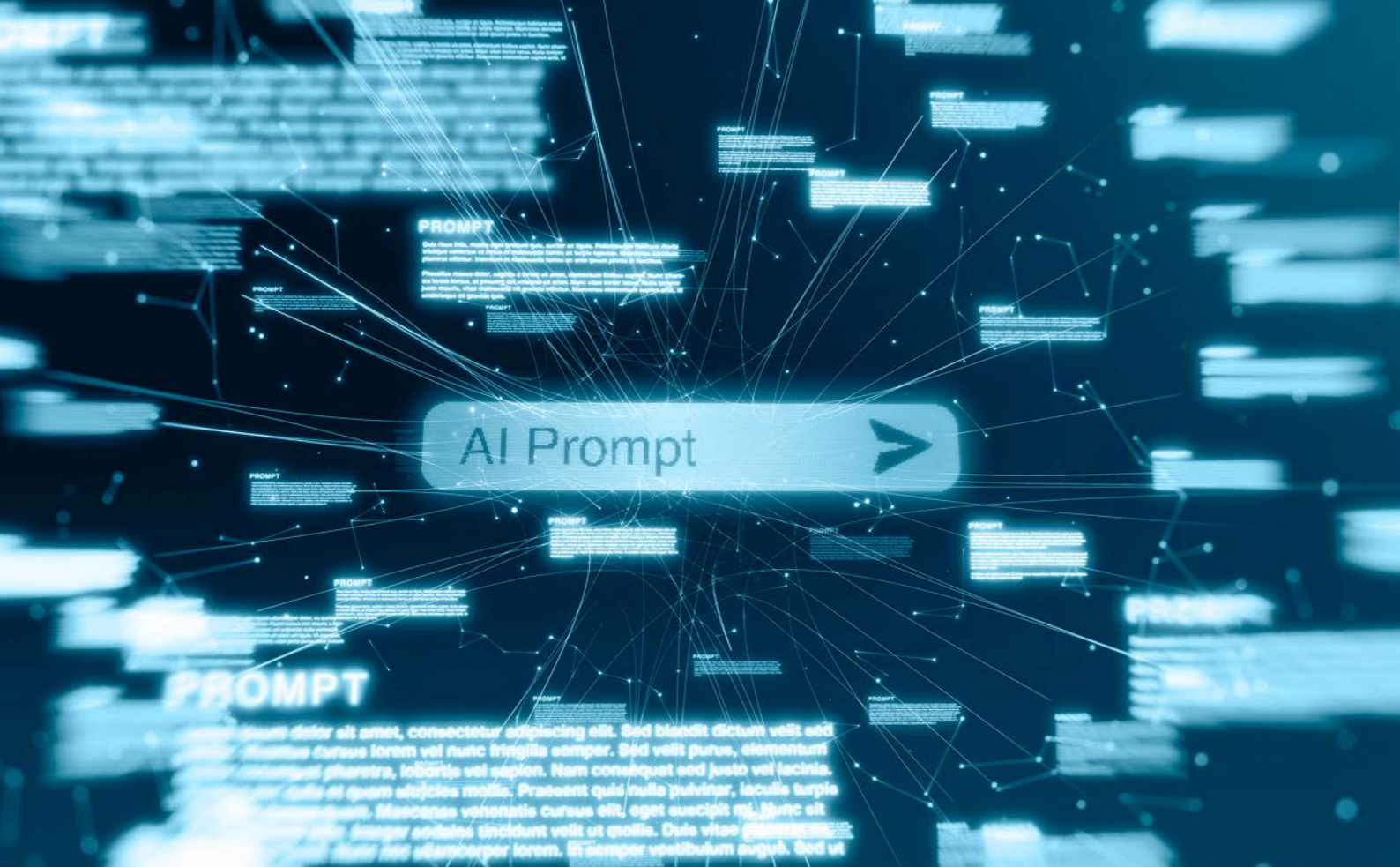
IMPACT OF CHATGPT

AI tools have been used in arbitration in some form (notably for document review and translation) for several years. However, the launch of ChatGPT, OpenAI's much publicised advanced AI language model, in November 2022 was a watershed moment: opening the door to a range of generative AI tools that can draft text and answer complex questions in real time. ChatGPT has been described as a revolutionary advance in AI technology, but concerns have been raised about its use in a professional context.

Information shared with ChatGPT, and similar tools becomes part of the system's database, which creates risks to the security of confidential information. The systems can be unreliable, generating inconsistent answers to the same question. They can also be prone to AI hallucination, generating fictitious responses to questions due to contradictory, incomplete or false training data. For these reasons, human quality control is essential to check and validate the responses provided. This is particularly important for legal professionals as failure to do so may violate the rules of professional conduct and ethical standards to which they are subject. For example, in June 2023, two lawyers in the US were sanctioned for abandoning their responsibilities to check their work, after filing a legal brief that included six fictitious case citations generated by ChatGPT.

We asked respondents whether they had used ChatGPT in a professional context and, if so, for what tasks.

HAVE YOU USED CHATGPT IN A PROFESSIONAL CONTEXT?

28% of respondents had used ChatGPT in a professional context, **72%** had not.

The table below shows that the age of respondents had a minimal impact on this result. The percentages were fairly consistent across the 26-35, 36-45, 46-55 and 56-65 age ranges. The percentages diverged at both upper and lower age ranges with only **11%** of under 25s and only **16%** of 66+ respondents having used ChatGPT in a professional context.

AGE	HAVE USED CHATGPT IN A PROFESSIONAL CONTEXT	HAVE NOT USED CHATGPT IN A PROFESSIONAL CONTEXT
Under 25	11%	89%
26-35	28%	72%
36-45	33%	67%
46-55	23%	77%
56-65	36%	64%
66+	16%	84%

Respondents had used ChatGPT for a range of tasks including:

Legal research. Several respondents said that they had tested ChatGPT to see whether it could find applicable case law, provide summaries of foreign law or answer general questions about law or arbitration. These respondents all noted the limitations of ChatGPT as a legal research tool highlighting inaccuracies and lack of appropriate source material.

Legal drafting. Several respondents had used ChatGPT to produce first drafts of standard documents and simple correspondence, and for reviewing and fine-tuning drafting.

Preparing summaries. Several respondents had used ChatGPT to summarise complex text or to generate summaries of case law.

Non-legal drafting. Several respondents noted that they found ChatGPT helpful in the context of creative drafting. Respondents had used it to draft articles, social media posts, press releases, and to create presentations for use in internal training, conferences and seminars.

> ❝The BCLP survey represents a comprehensive and timely assessment of current attitudes towards AI in the arbitration community. ❞
>
> Dmitri Evseev
> Independent Arbitrator &
> Legal Tech Entrepreneur
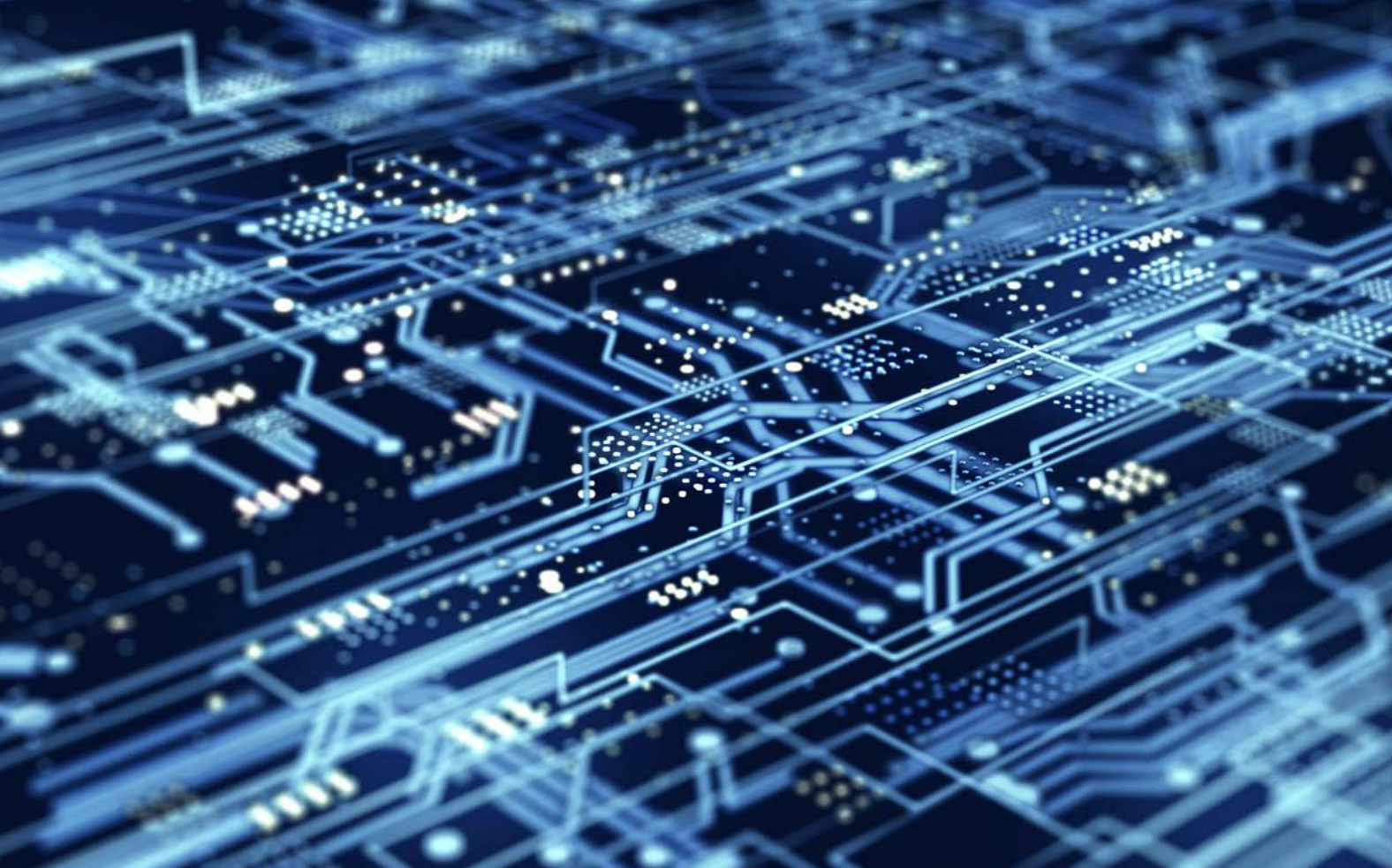
USE OF AI TOOLS IN IA

We wanted to explore the levels of awareness of AI tools, the extent to which practitioners currently use or would use AI tools to perform certain tasks and where they would draw the line.

The results of the survey demonstrate a high level of awareness of the range of AI tools that are available to perform different tasks. Over **90%** of respondents were aware that AI tools existed that could perform a range of tasks in international arbitration. **37%** of respondents had used AI tools for the translation of documents; **30%** for document review and production; **30%** for text formatting and editing; and **23%** for document analysis (extracting and organising data from documents).

A significant majority of respondents indicated that they would have no objection to the use of AI tools to perform a range of tasks in arbitration. **73%** of respondents would use AI tools to generate factual summaries; **65%** for document analysis; **65%** for text formatting and editing; and **80%** for detecting whether AI has been used to generate materials including text and images.

In terms of where respondents would draw the line on the use of AI tools, the majority of respondents expressed reservations over the use of AI tools for the generation of text in legal submissions, expert reports or arbitral awards. **62%** of respondents thought that AI tools should not be used for the generation of text for use in arbitral awards. **58%** thought they should not be used for the generation of text for use in expert reports. **53%** thought they should not be used for the generation of text for use in legal argument/legal submissions.

> ❝ AI can assist legal practitioners with a range of tasks including legal research, document analysis, data extraction, e-discovery, and drafting. However, it remains imperative for legal professionals to consistently check and validate the responses provided by AI since it is not intended to replace their expertise. ❞
>
> Monica Crespo
> Head of Product, Jus Mundi

WHAT ARE YOUR VIEWS ON THE USE OF AI TOOLS TO PERFORM TASKS IN INTERNATIONAL ARBITRATION?

TASK	I HAVE USED/ PERMITTED THE USE OF AN AI TOOL TO PERFORM THIS TASK	I WOULD HAVE NO OBJECTION TO THE USE OF AN AI TOOL TO PERFORM THIS TASK	I DON'T THINK AN AI TOOL SHOULD BE USED TO PERFORM THIS TASK	I WAS NOT AWARE THAT AN AI TOOL EXISTED THAT COULD PERFORM THIS TASK
Legal research into the law of a jurisdiction in which you are qualified	17%	56%	20%	7%
Legal research into the law of a jurisdiction/s in which you are not qualified	13%	46%	35%	6%
Document review and production of documents requested by another party and/or ordered by the tribunal	30%	52%	16%	2%
Document analysis (extracting and organising data from documents)	23%	65%	11%	1%
Translation of documents	37%	53%	9%	1%
Real-time interpretation	16%	57%	22%	5%
Generation of factual summaries (e.g. timelines, chronologies, lists of authorities)	12%	73%	11%	4%
Text formatting and editing (e.g. grammar and spelling, footnotes)	30%	65%	3%	2%
Legal drafting: generation of text for use in argument/ submissions	6%	37%	53%	4%
Generation of text for use in expert reports/opinions	3%	33%	58%	6%
Arbitral awards: Generation of text for use in arbitral awards	2%	31%	62%	5%
Detecting whether AI has been used to generate materials including text and images	7%	80%	4%	9%

HAVE YOU USED AN AI TOOL IN ARBITRATION FOR ANY TASKS OTHER THAN THOSE LISTED ABOVE?

10% of respondents had used AI tools in arbitration for other tasks

Those tasks included:
→ Conducting research on arbitrator candidates through predictive analytics;
→ Summarising and synthesising case law for articles;
→ Preparing notes of meetings;
→ Transcription services;
→ Creating demonstrative exhibits; and
→ Mathematical modelling to determine damages.

WHAT ARE THE MAIN PERCEIVED BENEFITS OF USING AI TOOLS IN ARBITRATION?

PERCEIVED BENEFITS	MOST IMPORTANT	MOST OR SECOND MOST IMPORTANT
Saving Time (all respondents)	62%	85%
Saving Time (In-house counsel)	48%	65%
Cost Effectiveness	16%	60%

62% of respondents ranked saving time as the main perceived benefit of using AI tools. **85%** of respondents ranked saving time as the most or the second most important benefit.

16% of respondents ranked cost effectiveness as the most important perceived benefit and **60%** of respondents ranked cost effectiveness as the most or the second most important benefit.

In-house counsel also ranked saving time as the main perceived benefit of using AI tools. **48%** of in-house counsel respondents ranked saving time as the most important and **65%** as the most or the second most important benefit. **30%** of in-house counsel ranked the ability to perform legal work in-house without out-sourcing as an important benefit, ranking it 3rd or 4th in their order of preference.

> The rapid advancement of long-established technologies, which either incorporate some AI features or are primarily AI-driven, presents a range of highly tangible and current opportunities for in-house lawyers. From the perspective of a General Counsel, it is clear that there is a significant, and currently under-exploited, ability to carry out significant work in-house before engaging external advisors and arbitrators. The outcome of this is likely to be that arbitration becomes increasingly cost-effective, and arbitrators will have greater scope to provide the human-generated and human-centric nuances and applied thought that gives clients real value.

Harry Borovick
General Counsel, Luminance

ARE THERE ANY OTHER BENEFITS OF USING AI TOOLS IN ARBITRATION?

Respondents identified the following as other benefits of using AI tools: the ability to synthesize voluminous information, the ability to deal with sheer volumes of documents quickly and identify key areas for investigation, identifying issues from data-dump disclosure that might be missed by human review, and identifying research outcomes that might be missed by human research.

TO WHAT EXTENT ARE YOU CONCERNED ABOUT THE FOLLOWING RISKS ASSOCIATED WITH THE USE OF AI TOOLS IN ARBITRATION?

The responses indicated a high degree of knowledge and awareness of the risks posed by the use of AI tools in arbitration. **88%** of respondents were very concerned or somewhat concerned about cybersecurity. **88%** of respondents were very concerned or somewhat concerned about AI Hallucination (the risk of AI generating fictitious responses). **87.5%** of respondents were very concerned or somewhat concerned about breach of confidentiality. **86%** of respondents were very concerned or somewhat concerned about deepfake (the use of AI tools to falsify or tamper with evidence). **81%** of respondents were very concerned or somewhat concerned about improper delegation.

> Arbitration practitioners need to be mindful of the potential risks that can be involved with using GenAI for legal research – including hallucinations. We've spoken with clients who have had previous encounters with generative AI tools that hallucinated references to arbitration-related sources on Kluwer Arbitration that do not exist.

Yael Hollander De Groot
Senior Product Manager, Wolters Kluwer Legal & Regulatory US

	VERY CONCERNED	SOMEWHAT CONCERNED	NEUTRAL	NOT CONCERNED	DON'T KNOW
Cybersecurity	38%	50%	8%	3.5%	0.5%
Breach of confidentiality	45.5%	42%	8%	4%	0.5%
Lack of transparency about the internal working of the technology	41.5%	37%	16%	5%	0.5%
Bias in the internal working of the technology	39%	35%	19%	6%	1%
AI Hallucination: risk of the technology conjuring up fictitious information	55%	33%	7%	3%	2%
Inconsistency: risk that the technology may not produce the same answer twice to the same question	30%	41%	18%	10.5%	0.5%
Lack of accountability: concern that the technology is not subject to ethical duties and has no liability for errors	45%	30%	14%	10.5%	0.5%
Deepfake: risk of the technology being used to create false evidence or to tamper with evidence	60%	26%	6%	7%	1%
Improper delegation: risk of technology being used to perform tasks that are personal in nature and fall within the mandate of legal counsel, expert or arbitrator	42%	39%	11%	7%	1%
Validity and enforcement of awards: risk of award being deemed invalid or unenforceable if AI is prohibited in relevant jurisdiction(s)	33%	41%	17%	5%	4%

UNDERSTANDING AI DECISION MAKING

A number of the risks associated with the use of AI tools arise from a lack of transparency and/or understanding of how AI tools learn to make decisions based on data sets and algorithms. We asked respondents to indicate how important they thought it was to understand how AI tools make decisions and how confident they were that they did understand this.

> " It is clear that AI is already playing a very significant role in International Arbitration and its importance will only increase. This survey is a timely reminder of the importance to clients, counsel and arbitrators of learning to harness AI promptly and positively. There is no doubt that AI offers very significant time and costs savings, particularly in relation to disclosure and document management. The results show that there is a very clear need for everyone involved in International Arbitration rapidly to develop a better understanding of the various ways in which AI functions. "
>
> Nic Fletcher KC
> Arbitrator, 4 New Square

**Q 12** HOW IMPORTANT DO YOU THINK IT IS TO UNDERSTAND HOW AI TOOLS MAKE DECISIONS?

We asked respondents to rate importance on a scale of 1–10, with 1 being not important at all and 10 very important. **46%** of respondents gave this an importance rating of 10. **90%** of respondents gave this an importance rating of 7 or above.

NOT IMPORTANT AT ALL									VERY IMPORTANT
1	2	3	4	5	6	7	8	9	10
5%	0.5%	1%	0.5%	1.5%	1.5%	11%	21%	12%	46%

90%
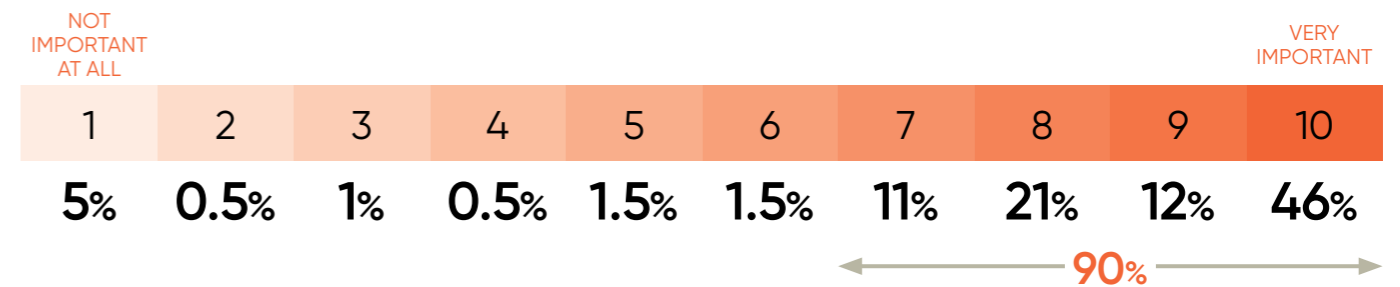
Q 13 HOW CONFIDENT ARE YOU THAT YOU UNDERSTAND HOW AI TOOLS MAKE DECISIONS?

We asked respondents to rate their confidence on a scale of 1–10, with 1 being not confident at all and 10 very confident. The results indicate that a significant majority of respondents are not confident that they understand how AI tools make decisions. **69%** rated their confidence at 5 or below. Only **2%** of respondents rated their confidence at 10 and only **15%** of respondents rated their confidence at 8 or above.

NOT CONFIDENT AT ALL									VERY CONFIDENT
1	2	3	4	5	6	7	8	9	10
13%	13%	16%	12%	15%	10%	6%	8%	5%	2%

69%
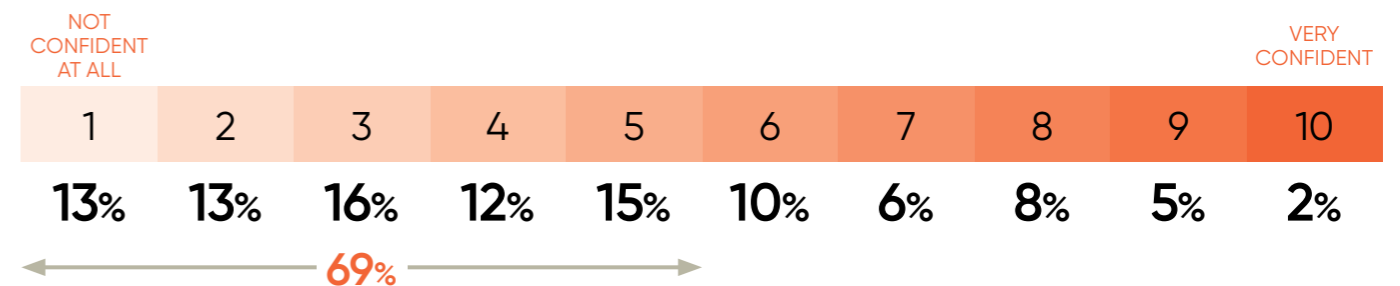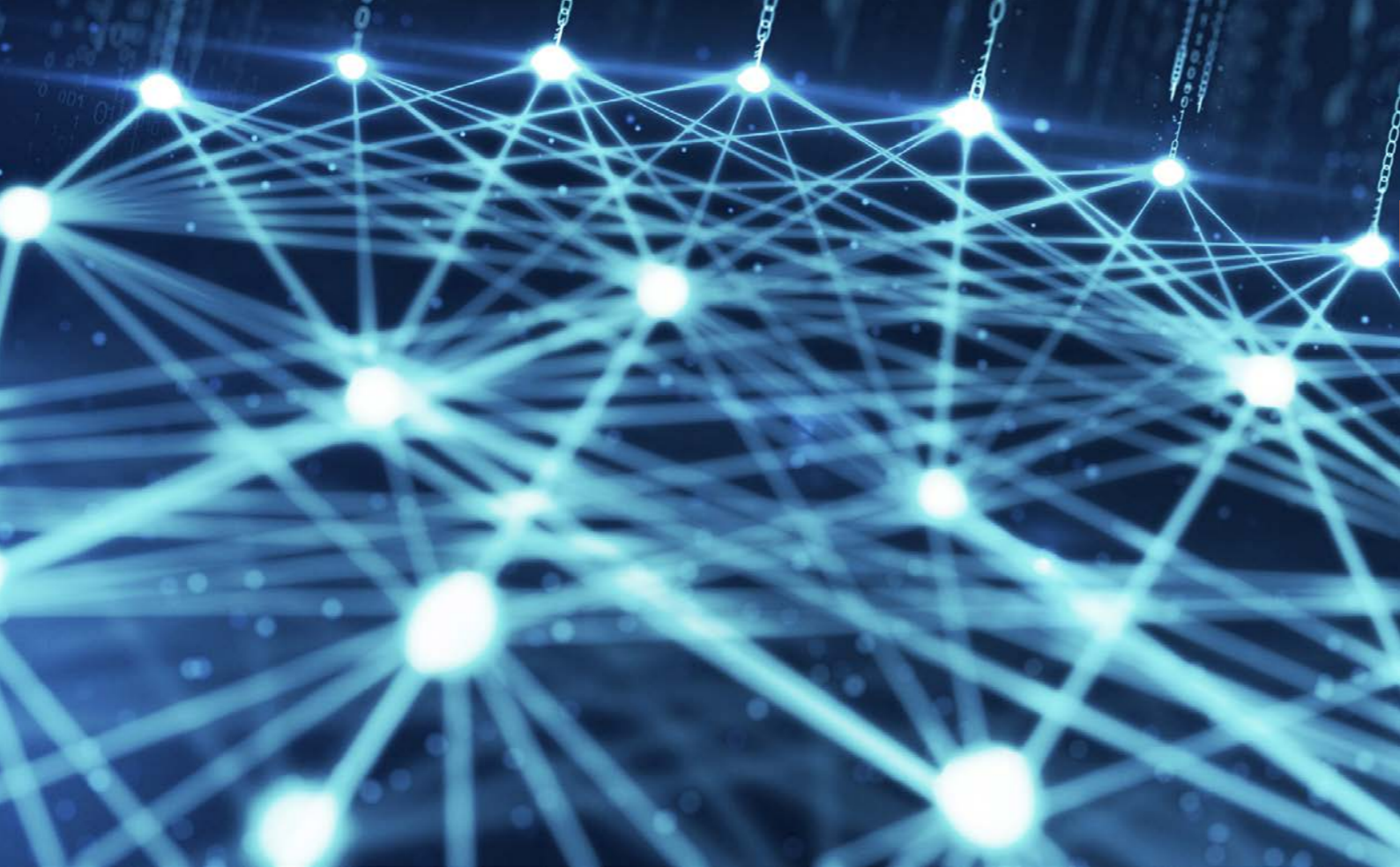
DISCLOSURE OF THE USE OF AI TOOLS

The rapid development and increased use of AI tools in dispute resolution generally raises the question of whether parties should be required to disclose the fact that an AI tool has been used in the preparation of materials filed with the court or in arbitration.

In June 2023, the Court of King's Bench of Manitoba, Canada issued a practice direction on the use of AI in court submissions providing that: *"...when artificial intelligence has been used in the preparation of materials filed with the court, the materials must indicate how artificial intelligence was used."*

One of the respondents to the survey provided us with an order from court proceedings in Denver, Colorado. The order provides that any submission containing text drafted with the assistance of an AI program based on natural language prompts must be accompanied by a disclosure notice that identifies the program used and the specific portions of the text that has been so drafted.

We asked respondents whether they thought there was a need for greater transparency over the use of AI tools by parties in arbitration. We also asked respondents whether they thought that parties should be required to disclose the use of AI tools in arbitration.

WHAT ARE YOUR VIEWS ON THE PRIVATE USE OF AI TOOLS BY PARTIES (I.E. FOR THEIR OWN PURPOSES AS OPPOSED TO FOR COMMON USE) IN ARBITRATION?

60% of respondents agreed or strongly agreed that there is a need for greater transparency over the use of AI tools by parties in arbitration.
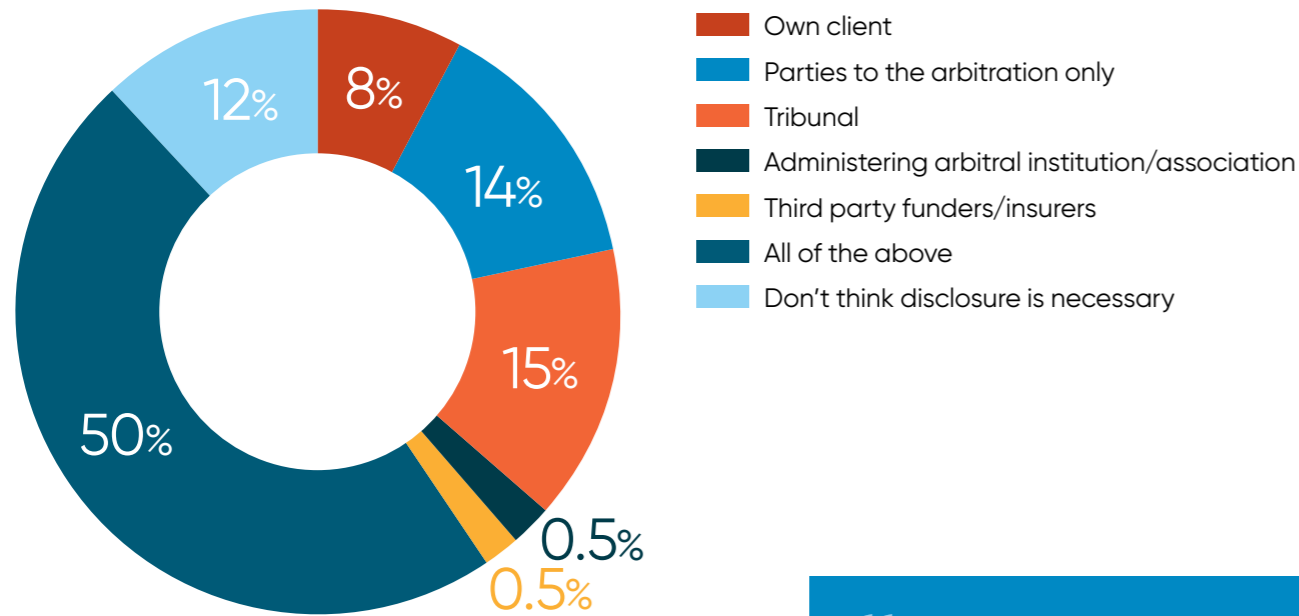
We asked whether parties should be required to disclose the use of AI tools in arbitration. The responses to this varied depending on the nature of the task for which an AI tool is being used. **72%** of respondents agreed or strongly agreed that parties should be required to disclose the use of AI tools for drafting expert reports. **65%** of respondents agreed or strongly agreed that parties should be required to disclose the use of AI tools for document review and production. **62%** of respondents agreed or strongly agreed that parties should be required to disclose the use of AI tools for the translation of documents submitted into the arbitration record. **40%** of respondents agreed or strongly agreed that parties should be required to disclose the use of AI tools for legal research.

	STRONGLY AGREE	AGREE	NEITHER AGREE OR DISAGREE	DISAGREE	STRONGLY DISAGREE
There is a need for greater transparency over the use of AI tools by parties in arbitration.	23%	37%	26%	10%	4%
Parties should be required to disclose the use of AI tools for any purpose in an arbitration.	25%	22%	21%	22%	10%
Parties should be required to disclose the use of AI tools for legal research.	23%	17%	23%	26%	11%
Parties should be required to disclose the use of AI tools for document review and production of documents requested by another party and/or ordered by the tribunal.	32%	33%	13.5%	16%	5.5%
Parties should be required to disclose the use of AI tools for document analysis (extracting and organising data from documents).	25%	25%	18%	24%	8%
Parties should be required to disclose the use of AI tools for the translation of documents submitted into the arbitration record.	29%	33%	13%	19%	6%
Parties should be required to disclose the use of AI tools for the generation of factual summaries (e.g. timelines, chronologies, lists of authorities).	28%	30%	15%	22%	5%
Parties should be required to disclose the use of AI tools for legal drafting (i.e. the generation of text used legal argument/legal submissions).	34%	22%	18%	19%	7%
Parties should be required to disclose the use of AI tools for drafting expert reports (i.e. the generation of text used in expert opinions).	47%	25%	14%	10%	4%

Q15 TO WHOM SHOULD DISCLOSURE BE GIVEN?

50% of respondents thought that disclosure should be given to all those involved in an arbitration, including own client, parties to the arbitration, the tribunal, the administering institution or association and third party funders/insurers. **12%** of respondents thought that disclosure was not necessary.

- Own client — 8%
- Parties to the arbitration only — 14%
- Tribunal — 15%
- Administering arbitral institution/association — 0.5%
- Third party funders/insurers — 0.5%
- All of the above — 50%
- Don't think disclosure is necessary — 12%

> Based on the survey's results, it would be difficult to say that the arbitration community currently has a clear, shared view on AI disclosures. Indeed, the parties may not agree on whether AI usage in arbitration should be disclosed. Given the differing expectations of the parties, it is essential that arbitrators foster open dialogue with the parties in the early stages of arbitration. That will allow them to understand the parties' expectations and to ensure that everyone subscribes to the same rules.

Ema Vidak Friedman
Independent Arbitrator

Q16 DO YOU HAVE EXPERIENCE OF A TRIBUNAL REFUSING TO ALLOW THE USE OF AN AI TOOL IN ARBITRATION?

None of our respondents had experience of a tribunal refusing to allow the use of an AI tool in arbitration.

> As the use of AI tools becomes more ubiquitous in arbitration, we are likely to see a greater dialogue between the parties and the tribunal over AI usage. In many cases parties will reach a consensus on AI usage but, in cases where they can't, arbitrators will need to decide whether the tool should be used and give appropriate directions for its use. In some cases, that may result in a tribunal refusing to allow the use of a specific AI tool if it considers it would unreasonably increase time and/or costs or compromise the integrity of the proceedings.

Siobhan Abraham
Senior Associate, Bryan Cave Leighton Paisner

AI TOOLS AND ARBITRATORS

Technological competence has become an important consideration in the selection of arbitrators. Increasingly, arbitrators are expected to have an understanding of the role of technology in arbitration and to demonstrate familiarity with and the ability to use specific technology tools. They also need to have the ability to handle procedural issues, including issues of cybersecurity and data privacy, arising from the use of technology in an arbitration.

We asked respondents how confident they were in the technical capability of arbitrators to give directions concerning the use of AI tools in arbitration.

> 66
> There is a growing expectation that arbitrators should be able to identify and navigate any risks associated with the use of AI tools in international arbitration. Looking ahead, given the speed with which AI technology is developing, arbitrators will undoubtedly require more advanced training and assistance with respect to AI technology and its implications for the conduct of arbitration. 99
>
> Claire Morel de Westgaver
> Arbitrator and Partner
> Bryan Cave Leighton Paisner

Q 17 HOW CONFIDENT ARE YOU IN THE TECHNICAL CAPABILITY OF ARBITRATORS TO GIVE DIRECTIONS CONCERNING THE USE OF AI TOOLS IN ARBITRATION?

All Respondents

We asked respondents to indicate their level of confidence in the technical capability of arbitrators to give directions concerning the use of AI tools in arbitration. Respondents rated their confidence on a scale of 1–10 with 1 being not confident at all and 10 being very confident.

79% of respondents rated their confidence in the technical capability of arbitrators at 5 or below.
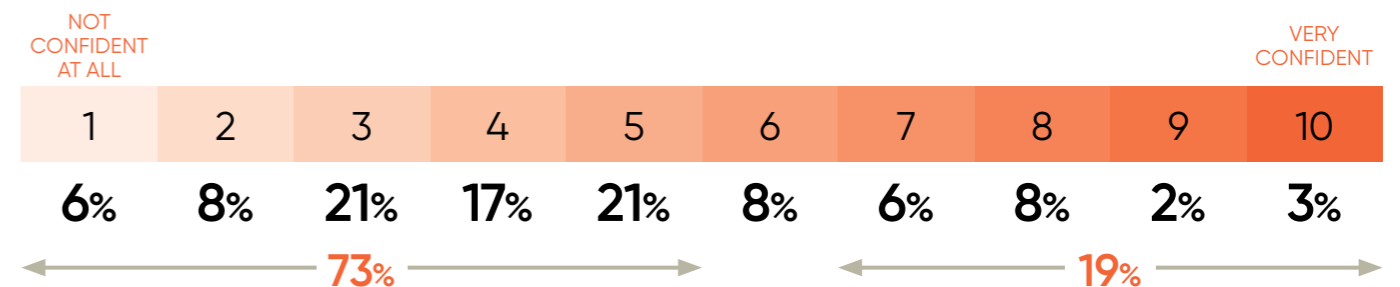
Only **1.5%** of respondents rated their confidence in the technical capability of arbitrators at 10. **15%** of respondents rated their confidence in the technical capability of arbitrators at 7 or above.

NOT CONFIDENT AT ALL | | | | | | | | | VERY CONFIDENT

1	2	3	4	5	6	7	8	9	10
12%	11%	22%	14%	20%	6%	7%	6%	0.5%	1.5%

← 79% → ← 15% →
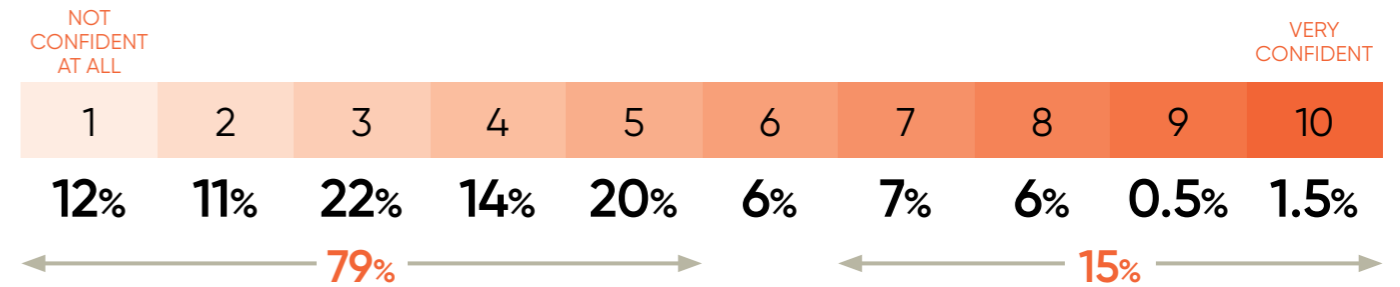
Arbitrator Respondents

The responses to this question from arbitrators showed a slightly higher level of confidence in their own technical capabilities.

73% of arbitrators rated their confidence in their own technical abilities at 5 or below. **3%** of arbitrators rated their confidence in their own technical abilities at 10. **19%** rated their confidence in their own technical abilities at 7 or above.

NOT CONFIDENT AT ALL | | | | | | | | | VERY CONFIDENT

1	2	3	4	5	6	7	8	9	10
6%	8%	21%	17%	21%	8%	6%	8%	2%	3%

← 73% → ← 19% →

Q 18 WHAT ARE YOUR VIEWS ON THE USE OF AI TOOLS BY ARBITRATORS?

76% of respondents agreed or strongly agreed that there is a need for greater transparency over the use of AI tools by arbitrators. A significant majority of respondents thought that arbitrators should be required to disclose the use of AI tools. **71%** of respondents agreed or strongly agreed that arbitrators should be required to disclose the use of AI tools for

any purpose in an arbitration. **59%** of respondents agreed or strongly agreed that arbitrators should only use AI tools with the prior approval of the parties. **74%** of respondents agreed or strongly agreed that arbitrators should not use AI tools to formulate or draft adjudicatory elements of an award.

|	STRONGLY AGREE	AGREE	NEITHER AGREE OR DISAGREE	DISAGREE	STRONGLY DISAGREE
There is a need for greater transparency over the use of AI tools by arbitrators.	37%	39%	16%	5%	3%
Arbitrators should be required to disclose the use of AI tools for any purpose in an arbitration.	44%	27%	14%	11%	4%
Arbitrators should only use AI tools with prior approval of the parties.	34%	25%	17%	19%	5%
Arbitrators should not use AI tools to formulate or draft adjudicatory elements of an award [i.e. analysis of findings as to fact and evidence and application of law.].	50%	24%	14%	10.5%	1.5%

AI TOOLS AND THE INTEGRITY OF EVIDENCE

One of the perceived risks of the use of AI tools in arbitration is that it could be used to create false evidence or to tamper with evidence – so-called deepfake. In response to Q.11, 86% of respondents were very concerned or somewhat concerned about the risk of deepfake.

We asked respondents to rate their level of concern about the adverse impact that the use of AI tools may have on the integrity of evidence and whether they had any experience of the integrity of evidence being compromised as a result of the use of AI in arbitration.

Q 19

HOW CONCERNED ARE YOU ABOUT THE ADVERSE IMPACT THAT THE USE OF AI TOOLS MAY HAVE ON THE INTEGRITY OF EVIDENCE ADDUCED IN ARBITRATION?

Respondents indicated their level of concern about the adverse impact that the use of AI tools may have on the integrity of evidence adduced in arbitration using a rating scale of 1-10, with 1 being not concerned at all and 10 very concerned.

12% of respondents were very concerned about the adverse impact that the use of AI tools may have on the integrity of evidence. **49%** rated their concern at 7 or higher. Only **3%** of respondents were not concerned at all about this.

NOT CONCERNED AT ALL | | | | | | | | | VERY CONCERNED

1	2	3	4	5	6	7	8	9	10
3%	5%	9%	6%	15%	13%	16%	14%	7%	12%

← **49%** →
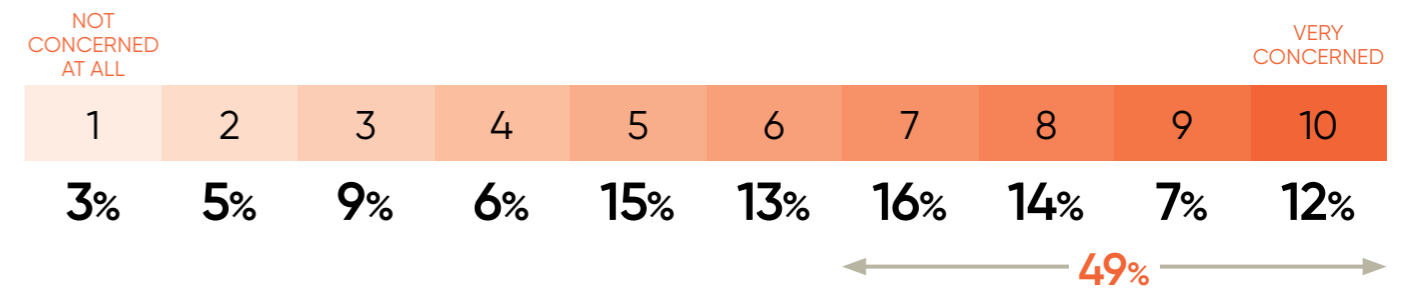
Q 20

DO YOU HAVE EXPERIENCE OF THE INTEGRITY OF EVIDENCE BEING COMPROMISED AS A RESULT OF THE USE OF AI TOOLS IN ARBITRATION?

3%
of respondents had experience of the integrity of evidence being compromised as a result of the use of AI tools in arbitration

Whilst the percentage itself is low, this number is significant as it indicates that there is a real risk of AI tools affecting the integrity of evidence adduced in arbitration. The responses to Q.19 indicate that respondents are concerned about the adverse impact that the use of AI tools may have on the integrity of evidence and this could well become a more significant issue as the use of generative AI tools increases.

" Whilst various forms of artificial intelligence have been used for some time now, recent developments, such as ChatGPT, are indicators of a new era where businesses are expected to rely on it increasingly. As arbitration and expert witnesses will undoubtedly follow suit, it will be essential that the evidence submitted, for example a quantum expert's valuation based on an AI model, does not escape the scrutiny of proceedings and can be adequately tested by all parties involved. "

Anthony Theau-Laurent
Partner, Accuracy

> " The legal landscape is witnessing unprecedented changes with the integration of cutting-edge artificial intelligence tools. These developments underscore the pressing need to raise awareness of AI limitations, ensuring its responsible and practical implementation in the field of dispute resolution. The goal of Guidelines for the use of AI in International Arbitration is to foster a safe environment where AI can be used appropriately, offering clear guidance for participants in arbitration, while regulating potential misuse. "

Sarah Reynolds
CEO, Silicon Valley Arbitration and Mediation Center
Partner, Goldman Ismail

REGULATION OF THE USE OF AI TOOLS

In 2022, the Council of Bars and Law Societies of Europe issued a Guide on the use of AI-based tools by lawyers and law firms in the EU highlighting the risks to professional obligations that may arise from the use of AI tools. In August 2023, the American Bar Association announced the creation of the ABA Task Force on Law and Artificial Intelligence to examine the impact of AI on law practice and the ethical implications for lawyers. The EU is considering far reaching legislation on AI including its impact on the administration of justice and the rule of law.

The arbitration community has historically adopted a "light touch" approach to the regulation of the use of technology in arbitration. It is up to the parties and the tribunal to decide how they want to regulate its common use. For example, as noted in the 2022 ICC Report Leveraging Technology for Fair, Effective and Efficient International Arbitration Proceedings, there are currently no rules or guidance on whether a party intending to use predictive coding in the context of a search for responsive documents must disclose that fact to other parties or the tribunal. Nor is there any guidance on whether the use of predictive coding must be agreed by other parties or approved by the tribunal.

However, that approach has its limitations particularly when it comes to technology used privately by one party that might affect the proper course of the arbitral process and/or result in an unfairness for the other party.

The Silicon Valley Arbitration and Mediation Center (SVAMC) is one of the arbitration organisations that has recognised the challenges posed by the development of cutting-edge AI tools such as ChatGPT. In July 2023, SVAMC formed an AI Task Force to draft guidelines on the use of artificial intelligence in international arbitration and the draft Guidelines were released for public consultation on 31 August 2023.

We wanted to canvas views on whether there is a need for regulation over the use of AI tools in arbitration and, if so, how regulation might best be achieved.

> " We are in the early days of AI development – tools and usages will surely multiply going forward. I doubt regulation today will remain effective tomorrow. "

Mark Kantor
Arbitrator and Adjunct Professor,
Georgetown University Law Center

Q21 DO YOU THINK THE USE OF AI TOOLS IN ARBITRATION SHOULD BE REGULATED?

63% of respondents were in favour of the regulation of the use of AI tools in arbitration. Several respondents commented that not all AI tools required regulation, citing the fact that AI tools for document review have been in use for many years. The use of AI tools for drafting legal submissions, expert reports, or the adjudicatory elements of awards were highlighted as particular areas of risk where some regulation would be desirable.
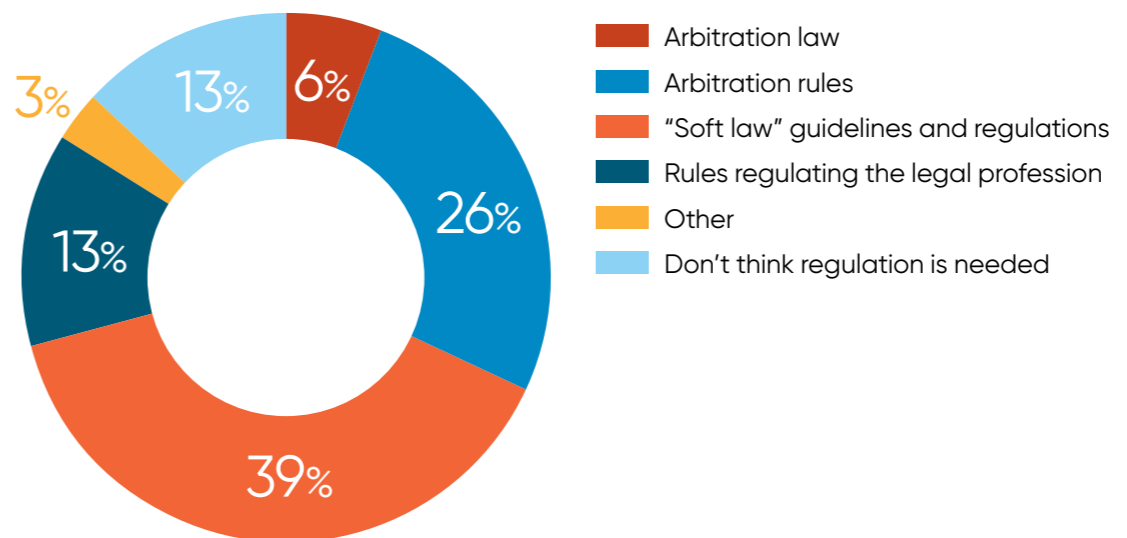
Several respondents noted that, in such a fast evolving field, effective regulation of AI tools and usages is difficult to achieve with the attendant risk that regulation today will not be effective tomorrow. One respondent suggested that the only practical solution was a pragmatic one, whereby parties using AI tools should do so at their own risk and take full responsibility for the output.

18%
19%
63%

■ Yes   ■ No   ■ Don't know
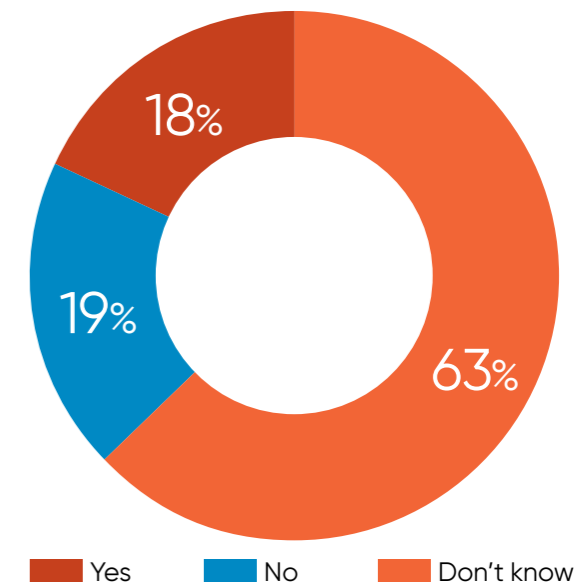
Q22 HOW SHOULD THE USE OF AI TOOLS IN ARBITRATION BE REGULATED?

39% of respondents favoured the use of "soft law" guidelines to regulate the use of AI tools in arbitration, with UNCITRAL and the IBA suggested as relevant bodies to deal with this. **26%** of respondents favoured regulation through arbitration rules that the parties can choose to adopt. Several respondents highlighted the interface between arbitration rules and guidelines and the rules regulating the legal profession. These respondents suggested that a combined response on this would be useful, particularly in an international context, where rules of professional practice may vary by jurisdiction.

3%   13%   6%
26%
13%
13%
39%

■ Arbitration law
■ Arbitration rules
■ "Soft law" guidelines and regulations
■ Rules regulating the legal profession
■ Other
■ Don't think regulation is needed

SELECT 3 WORDS THAT BEST DESCRIBE YOUR VIEWS ABOUT THE USE OF AI TOOLS IN ARBITRATION?

The top 3 words or phrases selected by respondents to describe their views about the use of AI tools in arbitration were "Inevitable", "Cost effective" and "Opportunity."

Redundancy
Transformative
Efficient
Empowering
Risky
Cost effective
Inevitable
Scary Opportunity Unreliable
Overwhelming Confused
Hype Challenging Harmful
Exciting Expensive Unpredictable

BCLP'S INTERNATIONAL ARBITRATION GROUP

Over the last 12 years we have conducted a number of surveys on issues affecting the arbitration process:

- The reform of the Arbitration Act 1996 (2022)
- Expert Evidence in International Arbitration (2021)
- Rights of appeal (2020)
- Cybersecurity in arbitration proceedings (2019)
- Unilateral arbitrator appointments (2018)
- Increasing diversity on tribunals (2017)
- The use of tribunal secretaries (2015)
- Choice of seat (2014)
- Document production (2013)
- Delay (2012)
- Conflict of interest (2010)

The report on each of those studies can be found on our International Arbitration practice page here.

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- Asia
- India and Pakistan

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- Digital and IT Infrastructure Projects
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- Media
- Hotel and Hospitality
- Healthcare
- Transport and Electronic Vehicles
- Public Contracts and International Trade
- FinTech and Cryptocurrency
- Telecommunications
- Insurance
- Mining and Commodities
- Industrial Products and Manufacturing
- Food and Agriculture
- Sport and Entertainment

We have a strong track-record of successfully resolving different types of disputes, covering a broad range of areas, including:

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- Intellectual Property

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