



GLOBAL POUND  
CONFERENCE SERIES

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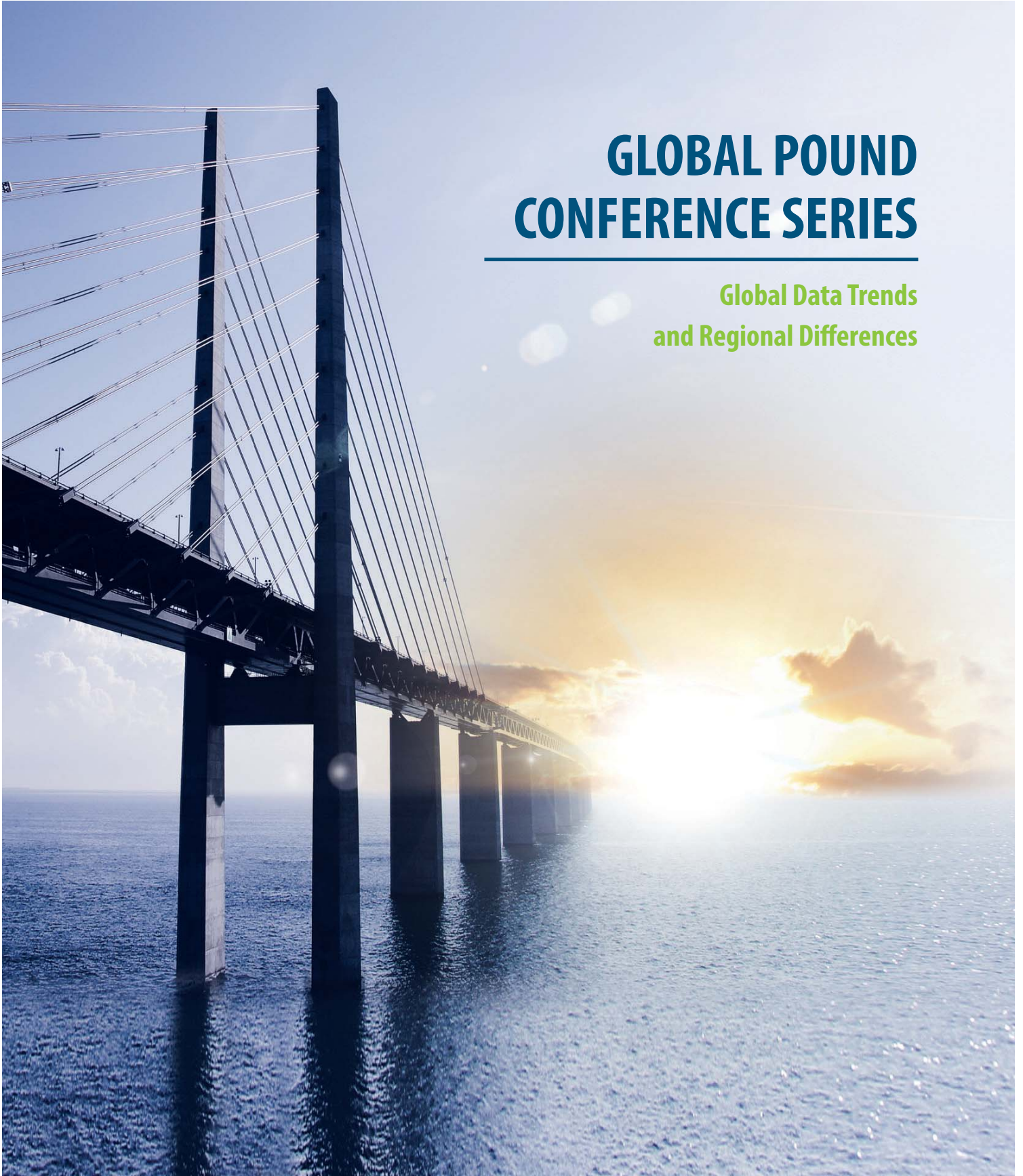
HERBERT  
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# GLOBAL POUND CONFERENCE SERIES

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**Global Data Trends  
and Regional Differences**



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# Chairman's Introduction

I am delighted to welcome you to this important report. It analyses, for the first time, the voting data captured at the Global Pound Conference (GPC) Series.

The GPC Series has been unique in terms of scale and ambition. The idea of surveying thousands of stakeholders engaged in dispute resolution in a standardised way at interactive conferences was conceived in 2014 by the International Mediation Institute (IMI). This was developed throughout 2015 and came to reality between March 2016 and July 2017 through 28 conferences at locations across the globe. The conferences were followed by an international online survey.

This project focuses on the needs of Users (both corporate and individual) of civil and commercial dispute resolution services. In doing so, it has prompted a much needed global conversation about how conflict can and should be managed in the 21st Century.

Pervasive disruptors like technology and globalisation have changed the business landscape almost beyond recognition. Yet dispute resolution processes have simply not caught up. This project has generated actionable data to question the status quo. It has armed us with a mandate for change and the outputs are already informing public policy making and private dispute resolution choices around the world.

The GPC Series has rebooted the discussion about dispute resolution and engaged all stakeholders to the debate. It is for this reason that the Global Pound Conference has evolved through its journey to become the Global Pound Conversation. A wealth of online resources continues to evolve to facilitate this ongoing conversation.

I hope you enjoy this report. As an in-house counsel responsible for managing a worldwide docket of disputes, I believe it provides new and practical insights. It is a springboard for more research and conversations over the years to come.

I urge you to visit the website at [www.globalpound.org](http://www.globalpound.org) and join the Global Pound Conversation.



**Michael McIlwrath**  
GPC Series Chair  
Global Chief Litigation Counsel,  
Litigation, GE Oil & Gas, Director of IMI

## Executive Summary

The GPC Series convened more than 4,000 people at 28 conferences in 24 countries across the globe in 2016 and 2017. Those delegates – and hundreds more who contributed data online – voted on a series of 20 Core Questions to gather data to inform the future of dispute resolution. This report summarises the results of the first analysis of the global data, and identifies four Key Global Themes and four notable Regional Differences<sup>1</sup>. The GPC provides an opportunity for extensive research in the years to come and conversations between stakeholders. These early insights show the potential of the GPC data to inform those studies and discussions.

## The **four Key Global Themes** we identify are:



### **Efficiency is the key priority of Parties<sup>1</sup> in choice of dispute resolution processes**

Efficiency means different things to different stakeholders but this throws down a challenge to the way in which traditional dispute resolution processes meet the needs of the Parties seeking dispute resolution services. Finding the most efficient way to resolve a dispute may not always be the fastest or cheapest but it requires thought and engagement to bring appropriate resolution in acceptable timeframes and at realistic costs.



### **Parties expect greater collaboration from Advisors in dispute resolution**

Parties using dispute resolution services seek greater collaboration from their external lawyers when interacting with them and their opponents. This represents a potential challenge to traditional notions of how lawyers should represent clients in disputes.



### **Global interest in the use of pre-dispute protocols and mixed-mode dispute resolution (combining adjudicative and non-adjudicative processes)**

As global understanding of and interest in non-adjudicative dispute resolution processes grows, there is near universal recognition that Parties to disputes should be encouraged to consider processes like mediation before they commence adjudicative dispute resolution proceedings and that non-adjudicative processes like mediation or conciliation can work effectively in combination with litigation or arbitration.



### **In-house counsel are the agents to facilitate organisational change. External lawyers are the primary obstacles to change**

The data shows a broad consensus that in-house counsel should encourage their organisations to consider their dispute resolution options more carefully, including using non-adjudicative processes like mediation and conciliation. External lawyers are reported to be – and perceive themselves to be – resistant to change, but a new generation of in-house counsel will challenge this resistance.

<sup>1</sup> See page 6 for definitions

<sup>2</sup> The raw data for these votes as provided by the technology provider, PowerVote, can be found here:

<http://globalpound.org/wp-content/uploads/2017/11/2017-09-18-Final-GPC-Series-Results-Cumulated-Votes-from-the-GPC-App-Mar.-2016-Sep.-2017.pdf>

## The **four Regional Differences** we identify are:



### **Desire for increased regulation in Asia**

Stakeholders in the Asian jurisdictions voted consistently in ways that highlighted the role of legislation or international conventions to promote the enforcement and recognition of settlements. Since practical experience rarely reveals difficulties with enforcement, this regional trend may be an indicator that a more developed regulatory framework would assist acceptance and use of non-adjudicative dispute resolution processes like mediation and conciliation.



### **Efficiency the priority – except in Asia**

When the global data was segmented by regions it was clear that efficiency was the key priority in all regions except Asia, where the key priority was the certainty and enforceability of outcomes. This may indicate an important underlying difference about how stakeholders in Asia perceive non-adjudicative dispute resolution processes.



### **Continental Europe marches to a different beat**

Delegates at the Continental European conferences voted differently to all other regions when it came to the relationship between in-house counsel and external lawyers in changing dispute resolution habits. This revealed a conundrum in Continental Europe where delegates indicated that in-house counsel were looking to drive change in corporate attitudes to conflict prevention while battling with a lack of knowledge of dispute resolution options to effect that change. There was less emphasis on collaboration in this region too.



### **The legacy of the Woolf Reforms – visible in the UK**

Lord Woolf's ground-breaking reforms to the civil justice system in England and Wales in the late 1990s embedded the role of ADR in the case management of civil litigation. Nearly 20 years on, the data from the London GPC Series finale reveals well-informed in-house counsel familiar with dispute resolution processes, focused on collaboration and efficient dispute resolution using non-adjudicative processes in pre-action protocols and mixed-mode dispute resolution.



## About the GPC Series

**The GPC Series takes its name from the original Pound Conference in St Paul, Minnesota, USA in 1976. Named in honour of Roscoe Pound, the reforming Dean of Harvard Law School in the 1920s and 30s, the theme was "Agenda for 2000 AD – The Need for Systematic Anticipation". This event led to many changes in the US justice system, including the creation of the 'multi-door courthouse' and the advent of alternative dispute resolution processes like mediation.**

Forty years on from the original 1976 Pound Conference, dispute resolution has reached an impasse. The stakeholders in the dispute resolution field around the world are fragmented and there is a lack of reliable, comparative and actionable data to enable the supply side of the dispute resolution market to fully meet Parties' needs, both locally and transnationally. The GPC Series represented a timely opportunity to reassess the dispute resolution landscape and ask stakeholders all across the world what they think needs to change.

The entire dispute resolution industry was represented at the conferences including commercial parties, lawyers, experts, chambers of commerce, academics, judges, arbitrators, mediators, conciliators, policy makers and government officials. Using a bespoke voting and feedback App, including multiple choice and open text questions, delegates gave their views on what Users of dispute resolution need and want locally and globally. The series generated considerable data and created an opportunity to identify trends and preferences in a way that has not been possible previously.

The GPC Series was conceived and led by the International Mediation Institute (IMI), a non-profit public interest initiative which seeks to promote and improve the use of mediation worldwide. The GPC Series' Founding Diamond Global sponsors were Herbert Smith Freehills and the Singapore International Dispute Resolution Academy (SIDRA). PwC was a Global Platinum sponsor, with JAMS a Global Gold sponsor, and AkzoNobel, the American Arbitration Association/ICDR, the Beijing Arbitration Commission (BAC), the China International Economic and Trade Arbitration Commission (CIETAC) and Shell all Global Silver sponsors. They were joined by 54 Global Partners and over 100 organisations who supported the GPC Series locally.

### Global Sponsors

#### Diamond sponsors:



#### Platinum sponsors:



#### Gold sponsors:



#### Silver sponsors:



# Delegates, the Core Questions and Voting

**While the GPC Series was about much more than data gathering, the heart of each conference was the delegates voting on 20 multiple choice Core Questions. These were developed with the assistance of the GPC Academic Committee (see Appendix 1 for its members).**

Voting was on a weighted multiple choice basis – most questions offered delegates five or six options and delegates selected up to three choices with their first choice scoring 3 points, their second choice 2 points and their third choice 1 point. As a result, the voting results were expressed as a percentage of the total number of points available to a given answer.

A response with a score of 100% equates to every voting delegate choosing that option as their first choice. In reality, no response achieved this score; the most important responses achieved a score of 60% or more, with a variance of 10% between responses marking a significant difference in opinion across stakeholder groups.

Before voting, delegates were required to identify themselves as coming from one of five stakeholder groups so that their primary professional focus could be captured in the voting preferences.

**The five stakeholder groups were:**

## **1) Parties**

end-users of dispute resolution, generally  
in-house counsel and executives

## **2) Advisors**

private practice lawyers and other  
external consultants

## **3) Adjudicative Providers**

judges, arbitrators and their supporting institutions

## **4) Non-Adjudicative Providers**

mediators, conciliators and their  
supporting institutions

## **5) Influencers**

academics, government officers, policy makers



Each conference was organised around four interactive sessions looking at both the demand and supply sides of the dispute resolution market. The sessions provided the structure for the voting on the Core Questions and discussion of the results. They were:

- **Access to Justice & Dispute Resolution Systems: What do Parties want, need and expect?**
- **How is the market currently addressing parties' wants, needs and expectations?**
- **How can dispute resolution be improved? Overcoming obstacles and challenges.**
- **Promoting better access to justice: What action items should be considered and by whom?**

The delegates at conferences were self-selecting in that they chose to participate in person or online. As a consequence, the data gathering was never intended to replicate the conditions for the gathering of academic data. Nevertheless, the voting population was truly global, covering all continents, common and civil law systems, jurisdictions well known for highly developed dispute resolution systems, and jurisdictions which are developing ADR procedures to complement existing mechanisms. It provides a fascinating and unique global insight into dispute resolution today.

The voting took place at each conference live among the delegates using the App<sup>3</sup>. The questions were also opened up to online voting after the last event in London in July 2017, until 31 August 2017. In addition to the voting on the Core Questions, a wealth of additional data was collected at each event through:

- Delegate registration questionnaires.
- Responses (via the App) on a series of open text questions in each session, which were discussed by the panels and delegates during the events.
- Input into four Word Clouds which sought to capture the key words reflecting delegates' views. (Selected Word Clouds are highlighted later in this report to give a sense of the differing views and priorities around the world).
- Questions and comments collected in the App as each session unfolded, which other delegates could "like", thus ranking by popularity with other delegates.

Consequently, GPC collected a great deal of data on the thoughts, wishes and perspectives of the delegates. The focus of this report is to review and interpret the key responses that emerge from the multiple choice Core Questions only. There remains a huge body of material still awaiting analysis. It is available for further investigation and research in discussion with IMI and the Academic Committee. Please feel free to contact Jeremy Lack or Barney Jordaan in the first instance to discuss.

<sup>3</sup> For France, India, the Netherlands and Spain (Barcelona), there was some variation in the voting procedure.

"The scale of the GPC is unique and valuable, and the insights it offers merit further analysis and discussion. In terms of geographical reach and scale, there are no comparable academic or other studies in the field of dispute resolution.

Of course, while all care was taken to ensure the integrity of the data gathering process and rigour in the formulation of the survey questions and analysis of data, the project was not intended to be primarily an academic project, nor does the data gathering process represent a pure data collection environment. Any use of the GPC data must therefore be undertaken with this in mind.

Nevertheless, the preliminary analysis of the Core Questions provided by this report shows global trends that offer immediate insights and scope for further detailed local, regional and international analysis. The complete data set is available online on the GPC's website, and all academics and researchers are welcome to analyse, critique and comment on it.

In addition to the quantitative voting data, the qualitative discussion data captured at the events is a further rich source waiting to be mined by academics and others in years to come. We have at this stage only scratched the surface of the research potential of GPC. It has the ability to help shape the future of dispute resolution at both local and international levels."



**Prof. Barney Jordaan**  
GPC Academic Committee Chair  
Professor of Management Practice,  
Vlerick Business School, Belgium

# Global Voting Data – Key Themes and Observations

The global voting data provides a wide range of insights into the topics raised in the Core Questions. Herbert Smith Freehills, PwC and IMI and have analysed the data to draw out some key themes, which can be split into two groups: Key Global Themes emerging from the voting data; and observations on Regional Differences.

## Key Global Themes



Efficiency is the key priority of Parties in choice of dispute resolution processes.



Parties expect greater collaboration from Advisors in dispute resolution.



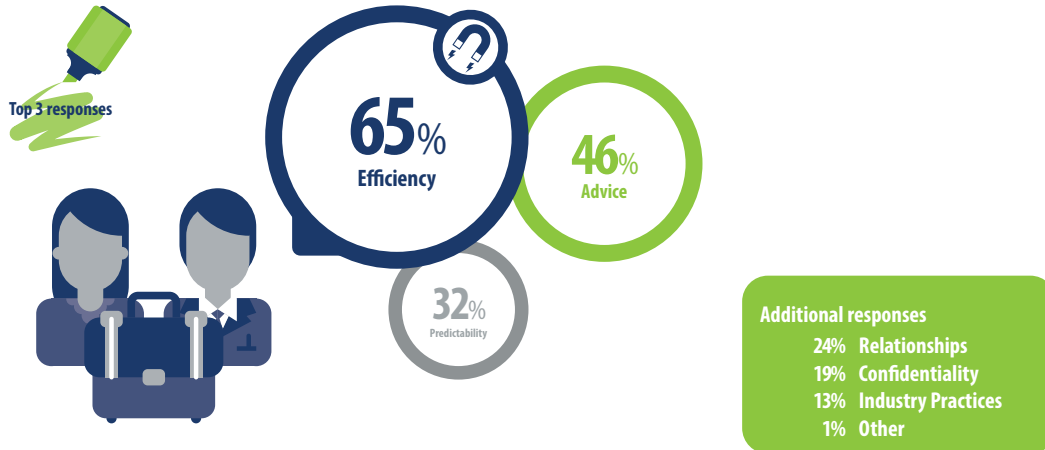
Global interest in the use of pre-dispute protocols and mixed-mode dispute resolution (combining adjudicative and non-adjudicative processes).



In-house counsel are the agents to facilitate organisational change.  
External lawyers are the primary obstacles to change.

## 1. Efficiency is the key priority of Parties in choice of dispute resolution processes

Q1.2 When parties involved in commercial disputes are choosing the type(s) of dispute resolution process(es) to use, which of the following has the most influence?<sup>4</sup>

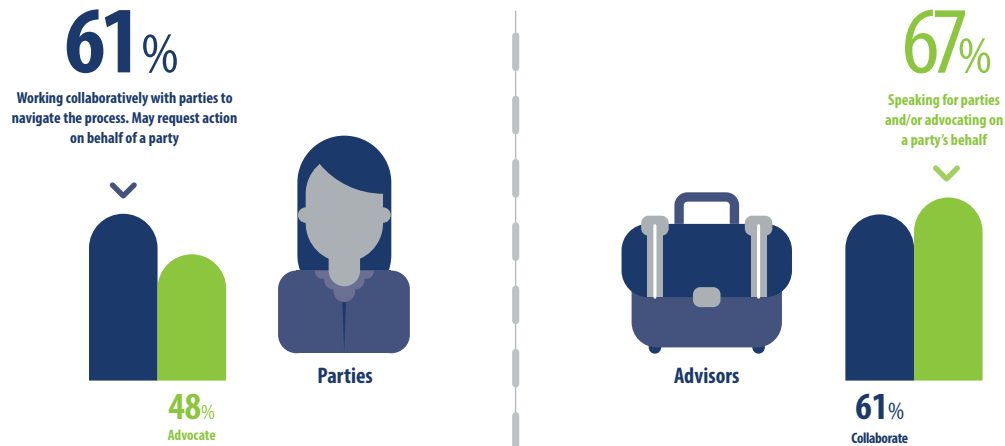


- This represents a challenge to traditional adversarial dispute resolution models, whether public (domestic courts) or private (institutional and ad hoc arbitration). Parties are looking not just for justice and resolution of their disputes, but an efficient journey to resolution.
- Efficiency in the resolution of commercial disputes will not always be as simple as the quickest and cheapest route to resolution (although cost and speed will always be important). Inherent to efficiency is the avoidance of waste, be that time, money, effort or other factors – and avoiding waste requires thought and flexibility among the dispute resolution stakeholders.
- Understanding what efficiency really means in terms of changing the behaviour of stakeholders requires further discussion:
  - Parties may need to communicate their priorities, expectations and underlying interests to Advisors and other stakeholders more clearly.
  - Advisors can challenge themselves to focus relentlessly on their clients' interests, being prepared to initiate or facilitate non-traditional dispute resolution with combinations of adjudicative and non-adjudicative processes.
- Providers (neutrals) may reflect that arbitration rules and mediation procedures are not ends in themselves but exist among a range of tools to assist parties in resolving disputes. Flexibility, pragmatism and listening to Parties will likely translate to sustainable success. Providers can take more of a role in helping Parties and Advisors to consider routes allowing greater efficiencies.
- Influencers can acknowledge that the resolution of commercial disputes is a commercial endeavour in which each stakeholder seeks to prosper and exercise (where possible) choice about forum and process to further the ends of Parties. A greater range of issues can also be considered in each case, beyond the merits of the case, the time to outcome or the costs of the process.
- Technology can drive efficiency. This is not limited to electronic discovery and electronic filing in litigation. Dispute management tools and online dispute resolution (ODR) have the capacity to change fundamentally the way disputes are resolved over the next decade. We are already seeing how artificial intelligence (AI) can automate the work of lawyers and adjudicators, paving the way for decision-making robots.

<sup>4</sup> Based on the votes of Parties only.

## 2. Parties expect greater collaboration from Advisors in dispute resolution

Q1.5 What role do parties involved in commercial disputes typically want lawyers (ie in-house or external lawyers) to take in the dispute resolution process?



- One of the key discrepancies to emerge in the voting data was between how Parties said they wanted their lawyers to behave in dispute resolution processes and how those lawyers, the Advisors, saw their own role.
- The key difference in the voting was that Parties indicated that they wanted to see greater collaboration from their Advisors in dispute resolution processes, whereas Advisors consistently reported that they saw their role as advocates for their clients.
- Are these positions inconsistent? Are lawyers out of step with their clients' needs? These are complex issues but some initial perspectives on these data are:
  - The GPC Parties were a sophisticated group of delegates. GPC Parties are more likely than the average disputant to know what they want, and be more familiar with and skilled in the use of ADR processes – all of which informs the expectations and approach of their legal advisors.
  - The Advisors who attended GPC events are, similarly, likely to be a more sophisticated group in terms of ADR knowledge and usage than their peers. But even taking this into account, why were the GPC Advisors' votes so clearly out of step with the GPC Parties' votes? The answer may lie in the fact that most Advisors will have clients reflecting a spectrum of experience, from the most sophisticated to relatively unsophisticated clients who are only rarely involved in disputes and therefore rely heavily on advice from their lawyers as to process choice, behaviour towards counterparties and strategy.
  - Whether or not these differences reflect different experiences between Parties and Advisors, there is a clear challenge to the legal community to listen to clients and discuss whether collaboration is wanted and what that really means in a given situation (particularly when disputes are acrimonious or thought to be unmeritorious). This may be a genuine challenge to the traditional notion of zealous advocacy where every point and position is argued on behalf of the client.
  - Parties will need to speak up and reassure lawyers that they wish them to try a different approach. A rigorous attention to the law, of course, but also an approach to dispute resolution that is flexible and open to using different processes. One that acknowledges risks where they exist and is focused on efficient outcomes, not unnecessarily expensive or drawn out journeys to resolution. If Parties wish to promote efficiency in dispute resolution they may need to encourage their lawyers to focus on the core issues and discourage fighting points for their own sake.

"Greater emphasis on collaboration between in-house and external lawyers, and between disputing parties, will lead the way for more efficient resolution of commercial disputes. Most dispute resolution still has as its frame of reference an adversarial process based on asserted legal rights. But this can be inconsistent with the aspirations of the parties for quick, consensual resolution.

An early case assessment is a good example of how closer collaboration can increase efficiency, with in-house counsel and external lawyers working together to review the wider interests and risks. The results can in turn help inform a more resolution-focused approach with counterparties.

Technology also has a role to play. Social tools and online platforms are making it easier than ever for lawyers to work more closely with each other and with their clients. Advancement in data analysis enables advisors and legal teams to review and investigate large

amounts of data quickly and assess risk in more sophisticated ways. Conventional views on the role of confidentiality are being challenged. This should facilitate the earlier use of consensual processes like mediation, in advance of, or in parallel with, or even integrated into litigation or arbitration. The global data indicates a mandate for change in attitudes and approach."



**Alexander Oddy**

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### 3. Global interest in the use of pre-dispute protocols and mixed-mode dispute resolution (combining adjudicative and non-adjudicative processes)

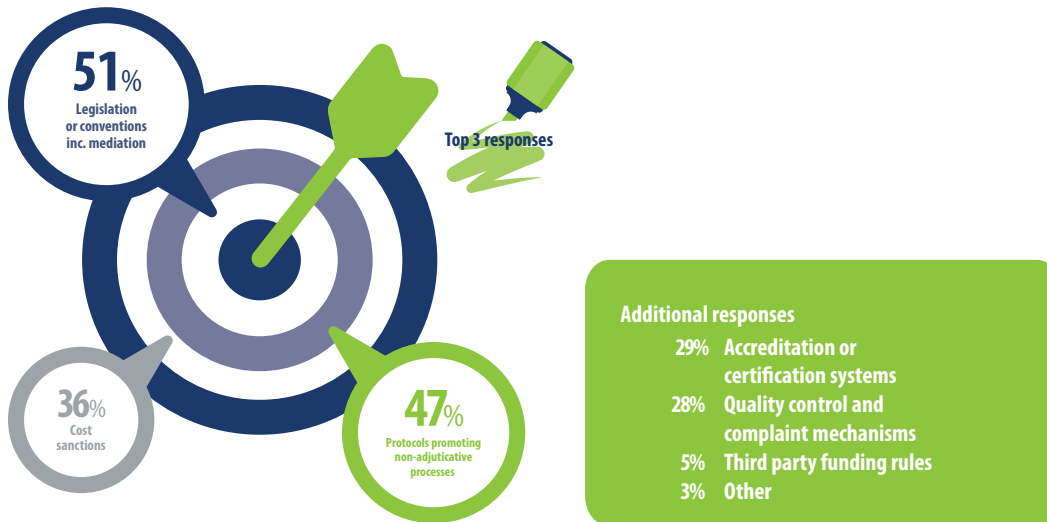
Q3.2 To improve the future of commercial dispute resolution, which of the following processes and tools should be prioritised?



- One of the striking areas of congruence across the GPC events and all stakeholder groups was the interest in two closely linked phenomena. First, the use of protocols to encourage the use of non-adjudicative dispute resolution processes like mediation or conciliation before adjudicative processes such as litigation or arbitration. Second, the use of non-adjudicative

processes in combination with adjudicative processes, whether this is at the encouragement of a court or arbitration body/tribunal or by agreement of the parties. Such "mixed-modes" of dispute resolution can be done sequentially, in parallel, or integrated with one another.

### Q3.3 Which of the following areas would most improve commercial dispute resolution?

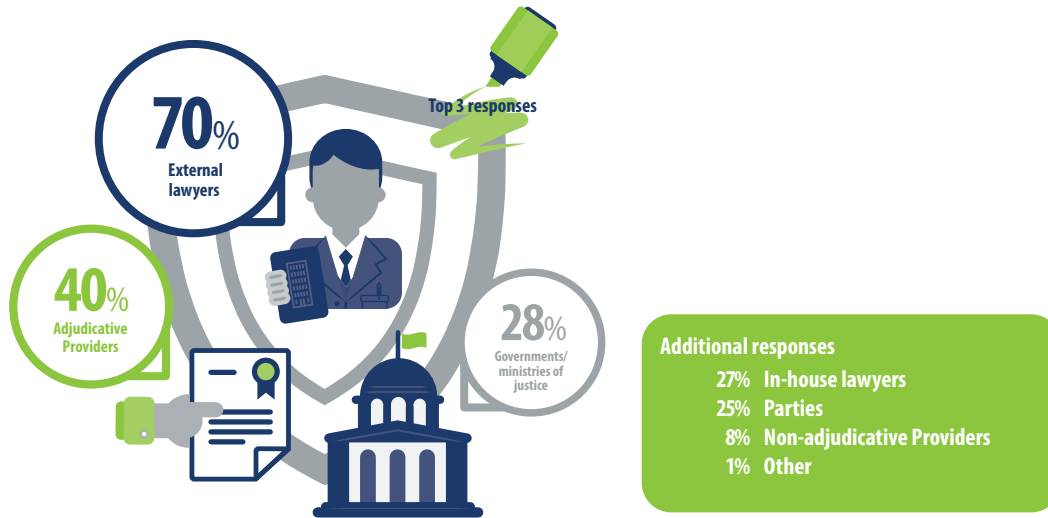


- There seems to be near universal recognition that before parties embark on adjudicative processes – which are typically expensive undertakings of significant duration – they should be at least encouraged (and potentially compelled) to explore less costly non-adjudicative options. This could be achieved through the development of pre-action protocols to be followed before court proceedings can be commenced (save where limitation or tolling periods are required or a particular remedy like an injunction is needed), or through arbitration clauses and rules encouraging parties to consider alternatives before a tribunal is constituted.
- Adjudicative processes also need to provide occasions and opportunities for the disputing parties to step away from the heat of the battle and engage with each other in a different manner (through mediation or another non-adjudicative process). This can be achieved through judicial case management or through changes to domestic rules of civil procedure or to arbitration rules where referrals to non-adjudicative processes exist on an opt-out basis.
- There seems to be a clear consensus that combining processes, or mixed-mode dispute resolution, is the way forward. The challenge is to find ways to achieve this efficiently and quickly, recognising that there will inevitably be resistance to change in many quarters. It is critical in this development that Parties are vocal in their demands and that Advisors, Providers of all types and Influencers are open-minded. Self-interest, familiarity and the comfort zone need to give way to a relentless focus on efficiency, supported by collaboration<sup>5</sup>.

<sup>5</sup> IMI, the College of Commercial Arbitrators (CCA) and the Straus Institute for Dispute Resolution at Pepperdine School of Law have responded to this data by initiating a tri-partite Mixed-Mode ADR taskforce, involving six different working groups. For more information about this taskforce or to join one of its working groups, see: <http://www.imimmediation.org/about-imi/who-are-imi/mixed-mode-task-force/>.

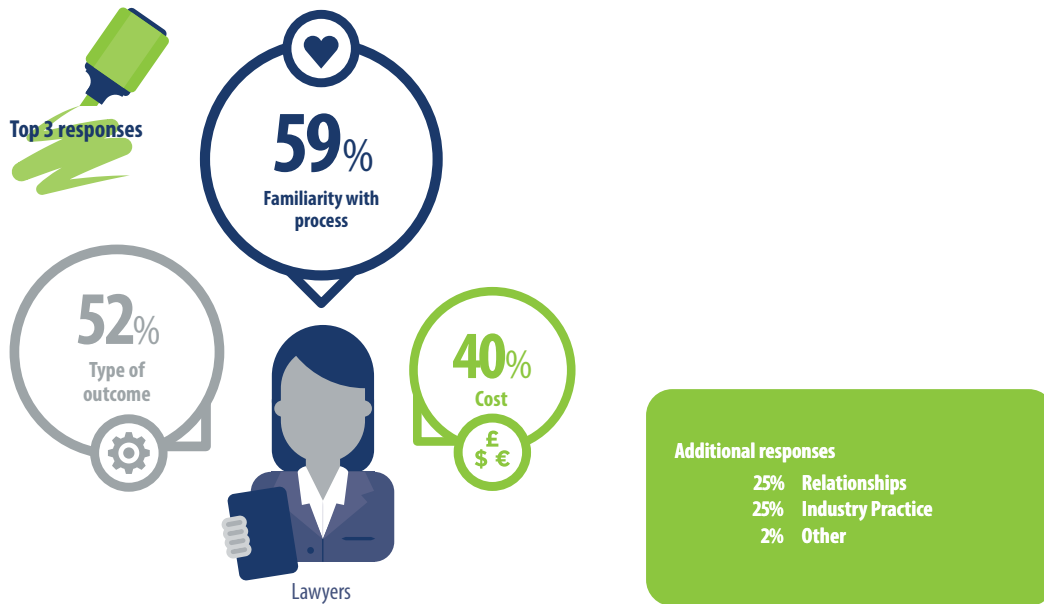
#### 4. In-house counsel are recognised as the agents to facilitate organisational change. External lawyers are the primary obstacles to change

Q3.4 Which stakeholders are likely to be the most resistant to change in commercial dispute resolution practice?



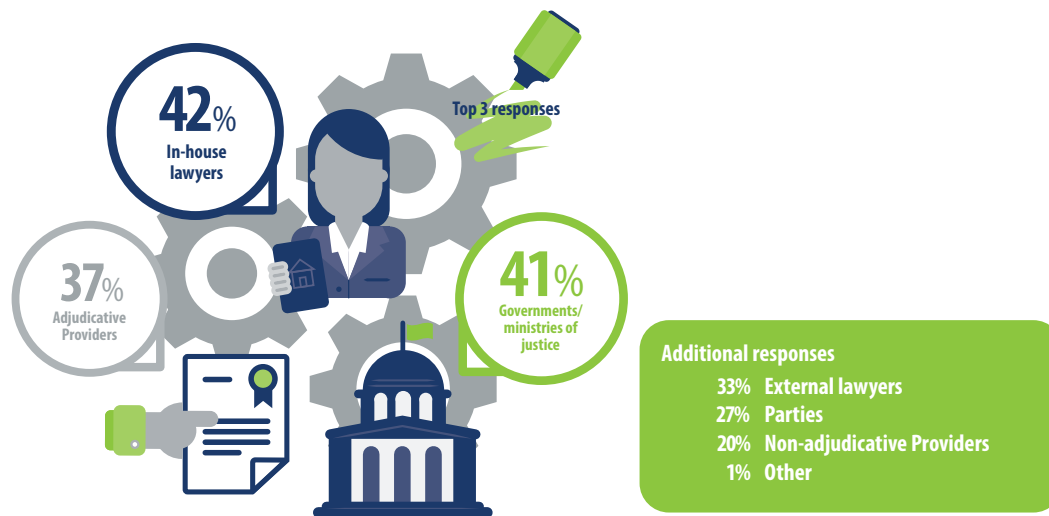
- Recognising that the GPC data and experience throws down a challenge to all stakeholder groups to listen and respond, the voting data reveals some stark messages about the obstacles to and agents of change.
- All stakeholder groups identify Advisors (predominately private practice lawyers) as the primary obstacle to change in commercial dispute resolution practice. The lawyers showed the self-awareness to also identify themselves as the group most resistant to change.
- But why should that be the case? The Core Questions explored whether Advisors might be making recommendations for dispute resolution process choice based on the potential to earn (or not to earn) fees. But the voting data [Session 1, Q3 – see over] suggested that this was not a major factor – or at least it was far less significant than factors like the type of outcome required or familiarity with a dispute resolution process.

Q1.3 When lawyers (whether in-house or external) make recommendations to parties about procedural options for resolving commercial disputes, which of the following has the most influence?



- Rather than rehearsing tired arguments about lawyers not promoting ADR for fear of its impact on their revenues, the data suggests that the underlying issue is more closely linked to something beyond training and education – familiarity. Have law schools and professional training regimes prepared today's dispute resolution lawyers adequately for the role that Parties wish them to perform? Are Providers and Influencers creating sufficient incentives for lawyers to gain real mediation or conciliation experience post qualifying? More fundamentally, what are the cultural expectations around what it is to be a lawyer, advocating for a client?
- This circles back to the discussion about the challenge to traditional notions of the zealous advocate, fighting her client's corner tenaciously. The 21st Century dispute resolution lawyer needs to deliver (or to work with others to deliver) what Parties want: dispute resolution process design, collaboration to pursue efficient outcomes, as well as traditional tough representation when called for.

Q3.5 Which stakeholders have the potential to be most influential in bringing about change in commercial dispute resolution practice?<sup>6</sup>



- Who can facilitate and drive change? Parties are clear that they have a key role to play, identifying in-house lawyers as the group with the potential to be most influential in bringing about change in commercial dispute resolution practice. The stakeholder groups overall are less clear in identifying this opportunity, yet when asked what innovations and trends are going to have the most significant influence on the future of commercial dispute resolution, they are quick to recognise changes in corporate attitudes to conflict prevention.
- How might such changes be effected? An emphasis on the critical role of in-house counsel seems like a sound place to start and research from long before the GPC provides insights into how organisations can change, and the critical role in-house counsel have in driving that change<sup>7</sup>.
- Of course many parties to commercial disputes will not have the benefit of in-house legal resources, so they will need to rely on a new generation of lawyers to assist them, trained in the right skills as law school syllabuses evolve. With the lawyers of generation Y, millennials and generation Z growing into positions of influence within corporates and throughout the dispute resolution community, the concept of collaboration in a way that would have been unthinkable to litigators of a generation ago may already be an accessible reality to a community grown up on crowd-funded solutions and sharing through social media.
- For example, traditional notions of confidentiality that underpinned arbitration and ADR processes may have far less significance for generations that have grown up professionally and personally with a technology-driven information-sharing culture. The willingness to engage in formal dispute resolution processes over periods of years (particularly in jurisdictions based on extensive discovery/disclosure) may be challenged by decision-makers who are used to proceeding with business and life at an ever faster pace.

<sup>6</sup> Based on the votes of Parties only.

<sup>7</sup> "The Inside Track – How blue chips are using ADR", Herbert Smith (legacy), 2007, available at <http://hsfnotes.com/adr/key-adr-publications>.

"The GPC Series was a fantastic opportunity for us to gather truly global perspectives on what changes need to be made to improve dispute resolution. One of conclusions is that while the need for change is recognised, most people think someone else has to make the change happen. So who is going to make the change happen?

In my view, In-house counsel is best placed to facilitate this change, as they own the problem. Disputes are generally not an academic exercise but are about protecting corporate value. In-house counsel has the right to demand change as custodian of this value and they also have the ability to drive change as they hold the purse strings. They represent a key link between the legal world and the commercial one, balancing the need for effective dispute resolution with the hard-earned experience of how best to get results.

As in-house counsel rethink how they resolve disputes, there is an opportunity to embrace the acceptance that collaboration brings results. That means drawing on the skills, experience and perspectives of different people to design optimal solutions. It also means considering alternative resolution approaches rather than the traditional adversarial one.

Our expectation is that a new generation of lawyers who have grown up in an information sharing culture will embrace such an approach and that dispute resolution will become more cost effective, flexible, faster and fairer."



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## Regional Differences

The cumulative global voting data on the Core Questions has already revealed some surprising insights and perspectives. However, the great potential of the GPC has always been to dig deeper into the data and seek to understand whether views are genuinely homogeneous on a global basis or, as intuition might suggest, subject to regional variations.

We identified some regional groupings to see if any trends emerged. Our initial data analysis shows some fascinating differences which provides the platform for more detailed investigations.

The **regional groupings** analysed were:

North  
America

USA (Baltimore, Austin, Los Angeles, Miami, New York, San Francisco) and Canada (Toronto)

Asia

Singapore, Hong Kong, Thailand (Bangkok) and India (Chandigarh)

UK

London<sup>7</sup>

Oceania

Australia (Sydney) and New Zealand (Auckland)

Continental  
Europe

France (Paris), Germany (Berlin), Italy (Florence), Netherlands (Amsterdam), Poland (Warsaw), Spain (Barcelona and Madrid) and Switzerland (Geneva)

Africa/  
Middle East

Nigeria (Lagos), South Africa (Johannesburg), UAE (Dubai)

Latin  
America

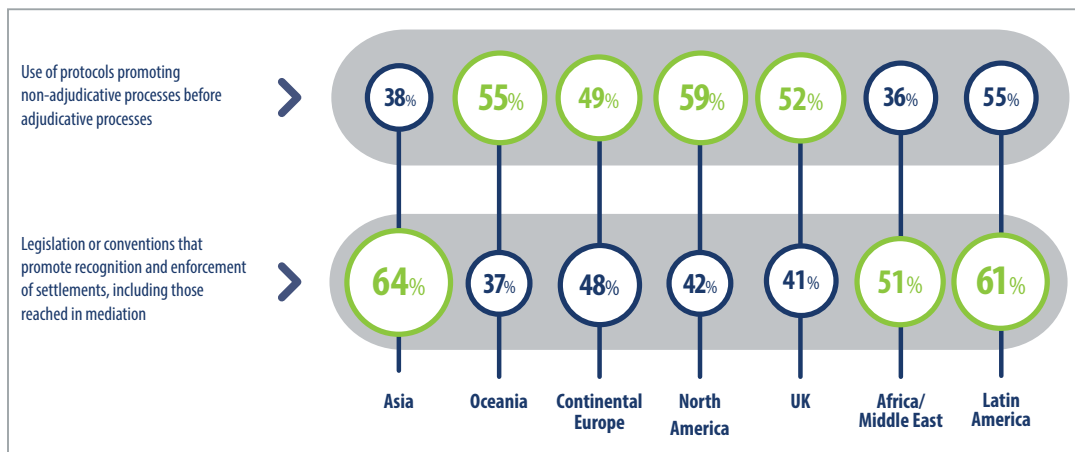
Brazil (Sao Paulo), Guatemala (Guatemala City), Mexico (Mexico City)

<sup>7</sup> The UK sits in a unique position as a pro-ADR common law jurisdiction yet (currently) part of the EU and exposed to civil law influences.

## 1. Desire for increased regulation in Asia

Delegates were asked about the areas which would most improve commercial dispute resolution. Globally, the two top choices (with virtually identically weighted votes) were (i) the use of legislation or conventions that promote recognition and enforcement of settlements, including those reached in mediation and (ii) the use of protocols promoting non-adjudicative processes before adjudicative processes.

Q3.3 Which of the following areas would most improve commercial dispute resolution?



- However, when the voting data was segmented along regional lines, some significant differences emerged. The votes in Asia were massively concentrated in favour of legislation or conventions, scoring far higher than the use of protocols promoting non-adjudicative processes. Africa/Middle East and Latin America seemed to also prefer legislation to promote enforcement, but less strikingly. The remaining regions show a starkly different picture, with the use of protocols strongly preferred to legislation (save in Continental Europe, where the votes were about equal).
- This triggers some interesting questions, not least because the near universal experience in practice is that agreements reached at mediation are only exceptionally not performed. If that is the case, why would Asian delegates be in favour of legislation and the need for enforcement of mediated settlements? A possible answer is that the data reveals more about attitudes to ADR, particularly non-adjudicative

processes, in Asia, than it does about issues of enforcement. While there have been significant initiatives to promote ADR usage in the region with Hong Kong's Practice Direction 31 of 2010, and major investments in Singapore to develop domestic and international mediation bodies, there may be an underlying question about whether non-adjudicative ADR like mediation has yet become a sufficiently robust way of resolving disputes. That enforcement of mediated settlement agreements could help optically to evidence the status and value of mediation, is perhaps the key point.

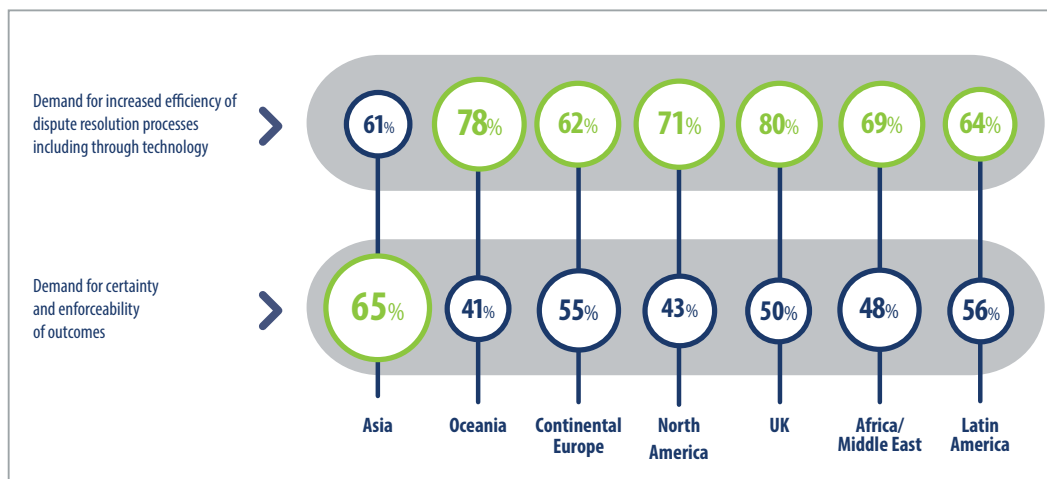
8 ADR in Asia Pacific series (Herbert Smith Freehills 2015-2017) <https://www.herbertsmithfreehills.com/latest-thinking/adr-in-asia-pacific-spotlight-series>. These explore, through interviews and market surveys, the developing trends in Hong Kong, Singapore and Indonesia.

## 2. Is efficiency the priority everywhere?

**Delegates were asked which of a range of underlying demands will have the most significant impact on future policy-making in commercial dispute resolution.**

- On the cumulative global results, there was a clear winner – the demand for increased efficiency of dispute resolution processes including through technology. Yet when the results were sorted regionally, a major difference of priorities emerged. All regions except Asia chose efficiency as their top demand and by a significant margin. This included the common law regions (UK, North America, Oceania) and the civil law region of Continental Europe.
- In Asia, the leading choice was again the demand for certainty and enforceability of outcomes. Is this a reflection of the regional desire for legislation and a convention on enforcement of settlements, identified above? Or is the demand for legislation and a convention a reflection of a deeper regional (and perhaps cultural) preference for a dispute resolution process that gives a clear answer? Do negotiation-based processes like mediation pose particular challenges in Asia where decision-making hierarchies and the desire not to lose 'face' make it culturally and practically more difficult to engage with the flexibility of mediation?
- In reality, consensual processes like mediation and conciliation are commonplace in civil law Asian countries, and they are supported in Asia's key common law jurisdictions too. The premium on enforceability may go more to the credibility and robustness of the process. UNCITRAL's proposed convention on the enforceability of mediated settlement agreements will, it seems, be welcomed in Asia. Systems that recognise outcomes internationally reassure parties embroiled in cross-border disputes that the outcome will be simple to enforce. This is being put in ever sharper focus as China's Belt and Road Initiative gathers pace, where one proposal on the table is for disputes arising under the initiative to be mediated first, before proceeding to arbitration.

Q4.4 Which of the following will have the most significant impact on future policy-making in commercial dispute resolution?



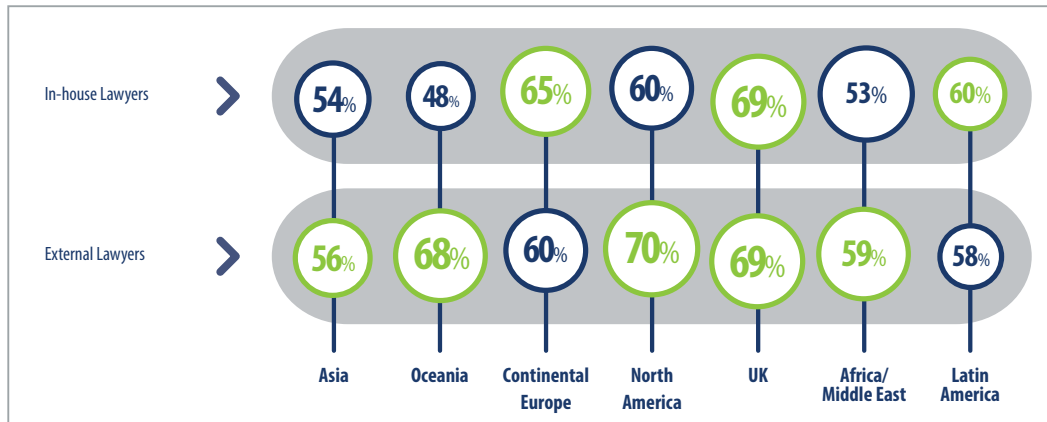
### 3. Awareness and Attitudes in Continental Europe

**A regional analysis of a series of related questions indicate an interesting potential divergence in attitudes to conflict resolution in Continental Europe as compared with other regions.**

- Delegates in Continental Europe identified that the stakeholders primarily responsible for ensuring parties involved in commercial disputes understand their dispute resolution process options are in-house lawyers.

In all other regions, save for Latin America which is also a civil law region, delegates identified external lawyers as equally or more responsible for this critical role.

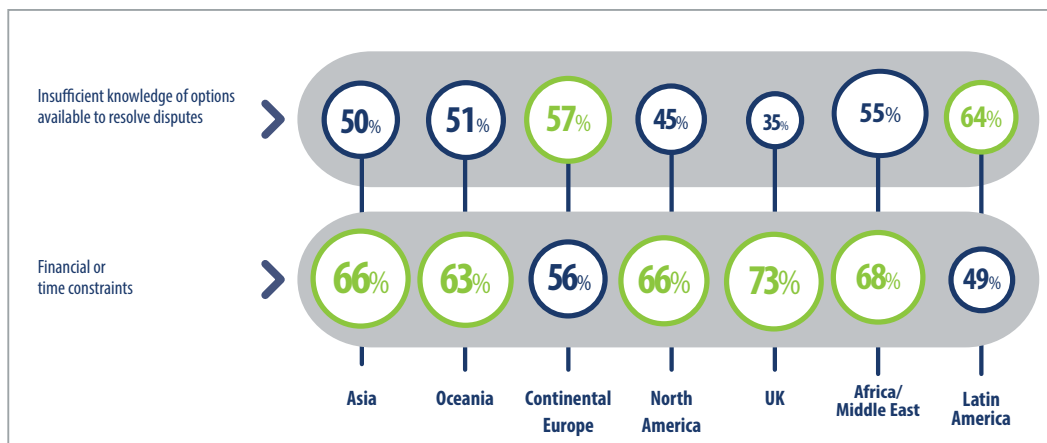
Q2.4 Who is primarily responsible for ensuring parties involved in commercial disputes understand their process options, and the possible consequences of each process before deciding which one to use?



- Building on this, when in **Session 3, Q1** delegates were asked about the main challenges or obstacles parties face when seeking to resolve commercial disputes, the delegates in Continental Europe and Latin America again stood out. They identified insufficient knowledge of options available to resolve disputes as the most significant challenge, where

delegates in all other regions were clear that financial or time constraints were the main obstacles. This may reflect the fact that adjudicative dispute resolution in the public courts of civil law jurisdictions is relatively less expensive than in many other jurisdictions (certainly common law jurisdictions).

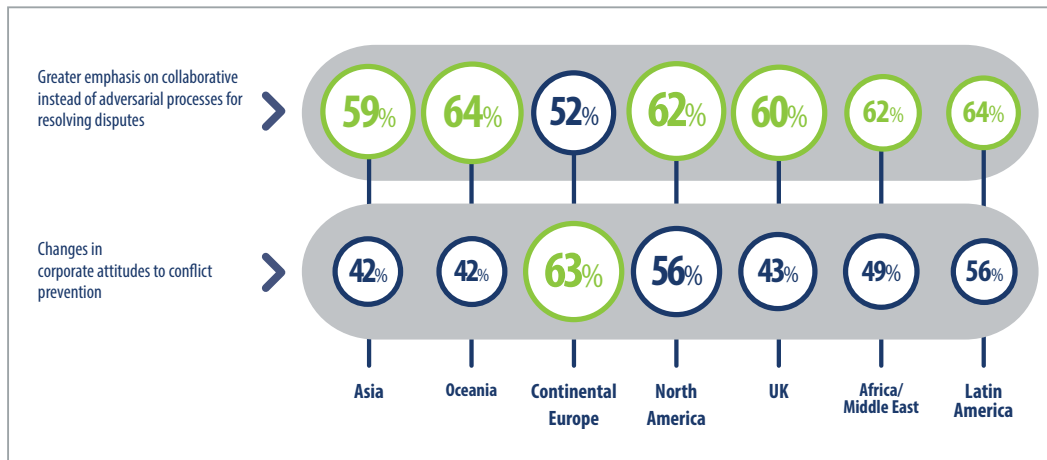
Q3.1 What are the main obstacles or challenges parties face when seeking to resolve commercial disputes?



- When the delegate responses to **Session 4, Q5** are analysed, (what innovation/trends are going to have the most significant influence on the future of commercial dispute resolution?) the Continental European delegates again stand out. In all regions other than Continental Europe the message is clear: a greater emphasis on collaboration rather than adversarial processes is

required. In Continental Europe, however, by far the most significant innovation is identified as changes in corporate attitudes to conflict prevention. The fact that Latin America voted differently to Continental Europe suggests that this is not a civil law versus common law issue.

#### Q4.5 What innovations/trends are going to have the most significant influence on the future of commercial dispute resolution?



- Pulling these points together, a picture emerges of Continental Europe marching to a different beat to other regions. It seems to be looking for in-house lawyers to drive change in corporate attitudes to conflict prevention. Yet these lawyers are simultaneously battling with a lack of knowledge of dispute resolution process options to effect that change. All the while the global drive for more collaboration seems to be at its weakest in Continental Europe. The experience of relatively

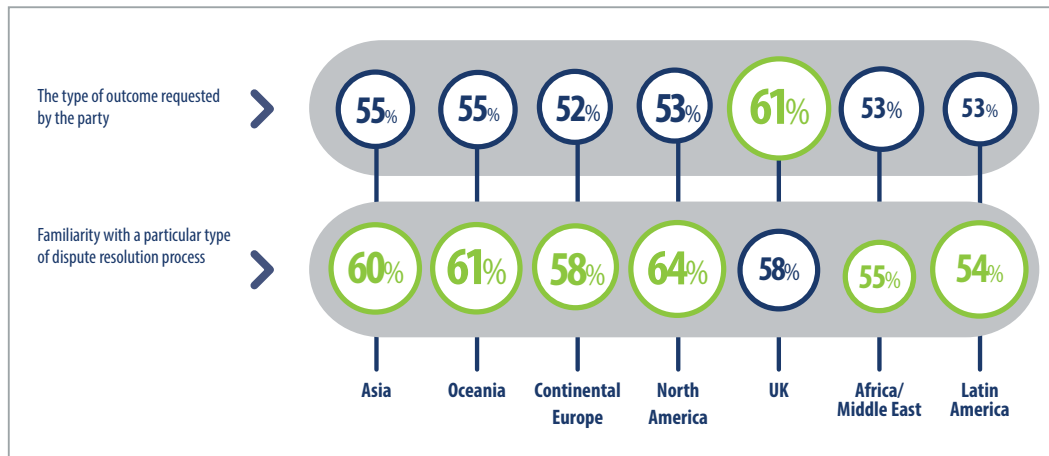
cheap (but often slow) litigation in the public courts of civil law jurisdictions in Continental Europe may have driven delegates away from voting for efficiency and collaboration. It may also be a reflection on the different weight given to legal departments in some civil law jurisdictions, where greater emphasis is placed on the difference between jurists and external lawyers.

## Perspectives in the UK – the legacy of the Woolf Reforms?

A series of questions showed that the delegates at the GPC series finale in London in July 2017 held some significantly progressive views. It may be that as the 20th anniversary of Lord Woolf's sweeping reforms to the English civil justice system arrives, the effects of a generation of Parties brought up with ADR embedded in the fabric of commercial dispute resolution are in evidence.

- When lawyers recommend dispute resolution procedural options to parties [Session 1, Q3], London delegates found the type of outcome requested by the party most influential, unlike all other regions which reported familiarity with a particular type of process as the most influential factor.

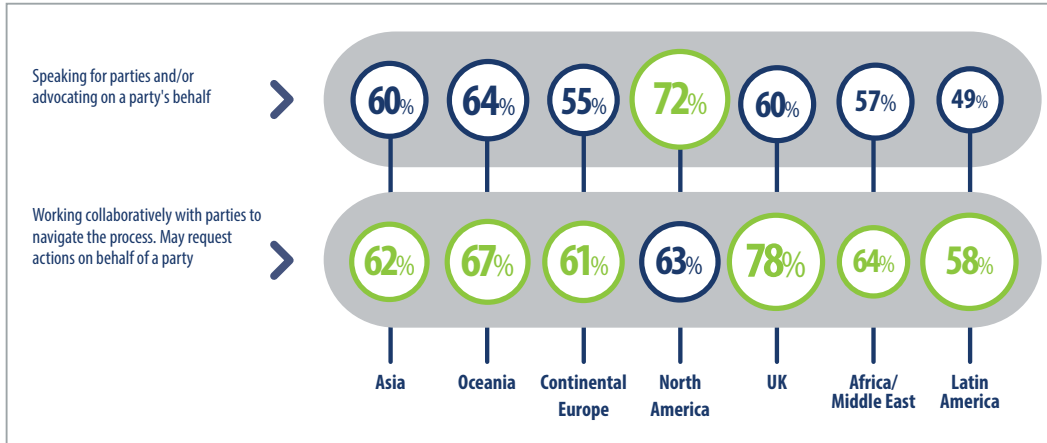
Q1.3 When lawyers (whether in-house or external) make recommendations to parties about procedural options for resolving commercial disputes, which of the following has the most influence?



- Delegates in London were by far the clearest in identifying that the parties to commercial disputes typically want lawyers to work collaboratively with parties to navigate the dispute resolution process [Session 1, Q5]. In other regions delegates viewed the role of lawyers as advocates as being of broadly equivalent significance, except for North America where the tradition of zealous advocacy on behalf of clients was readily apparent in the preference for lawyers advocating on behalf of clients.

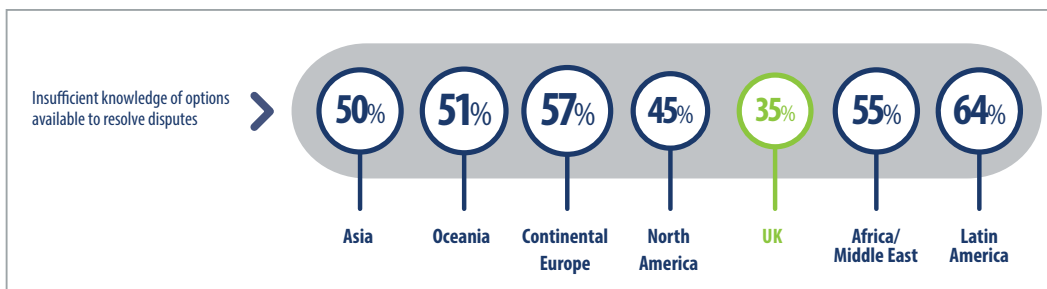


Q1.5 What role do parties involved in commercial disputes typically want lawyers (i.e., in-house or external lawyers) to take in the dispute resolution process?



- When delegates were asked about the main obstacles or challenges parties face when seeking to resolve commercial disputes, insufficient knowledge of the options available was far lower in the UK than in other regions

Q3.1 What are the main obstacles or challenges parties face when seeking to resolve commercial disputes?

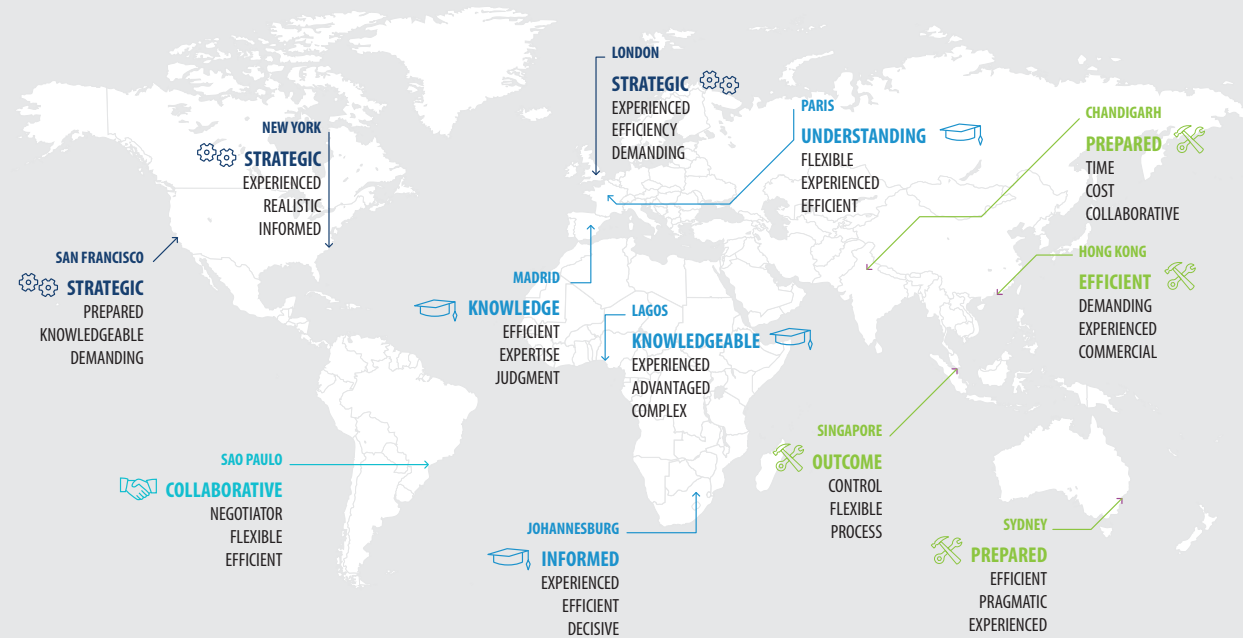


- While the Woolf Reforms have been widely celebrated as an enlightened step forward in the administration of civil justice, it seems the GPC data may be providing some real evidence of how changes in civil procedure to promote ADR can bring about progressive attitudes among a generation of Parties.

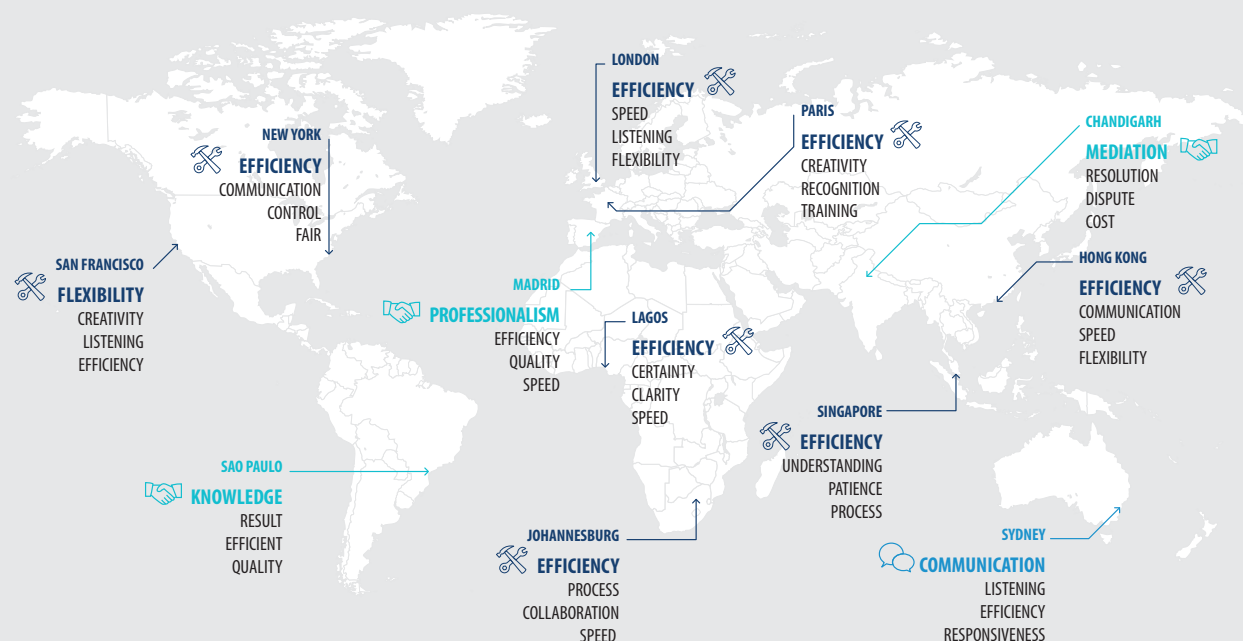
# Word Clouds from around the Globe

An analysis of the word clouds generated at selected GPC events gives a sense of the different priorities and moods of the delegates.

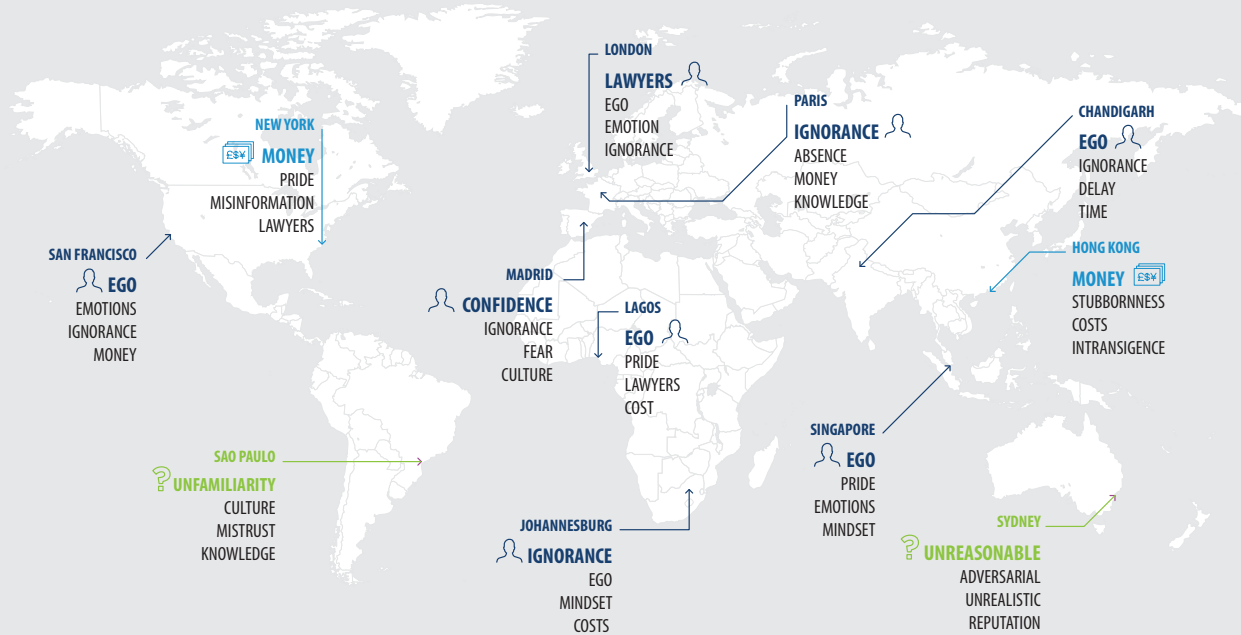
Session 1: What words would you use to describe a sophisticated commercial party?



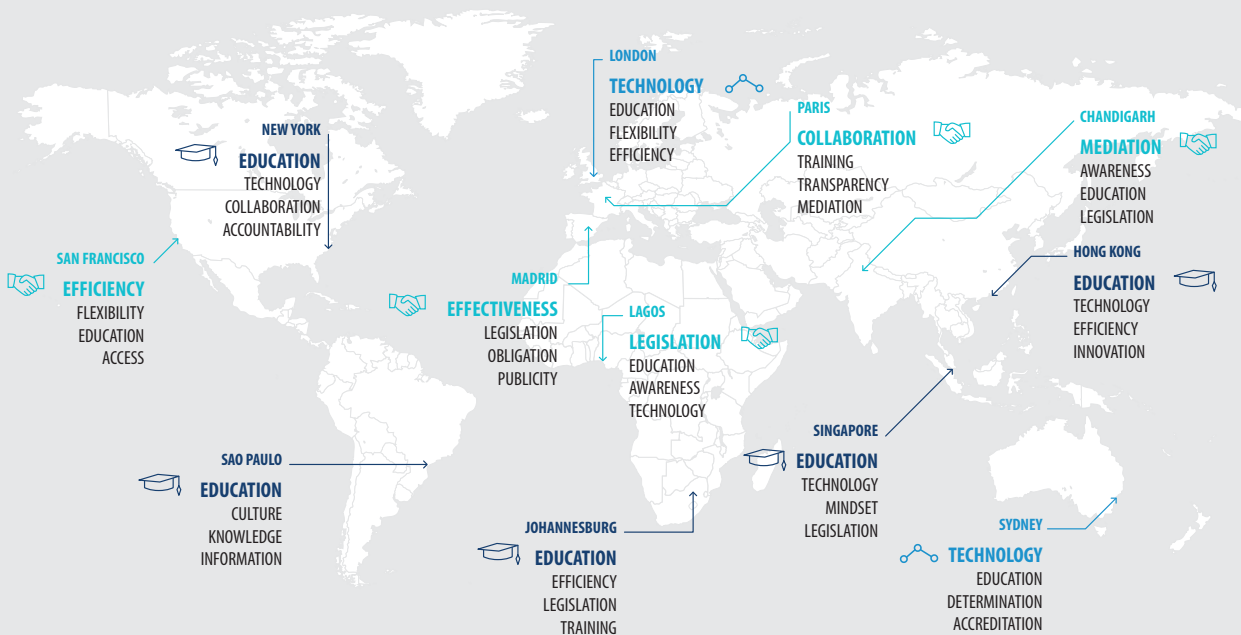
Session 2: What words would you use to describe what can be done to exceed parties' expectations?



Session 3: What words would you use to describe the most common impediments that keep parties from resolving their disputes?



Session 4: What words would you use to describe the changes to focus on in the future?



# Appendix 1

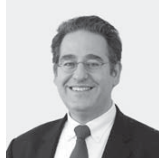
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