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Looking Ahead: Sustainability Opportunities in International Arbitration

With the travel often involved in international arbitration stalled for the past year, its sustainable comeback has been a popular topic. The day-to-day familiarity of life changed with the ongoing pandemic of COVID-19. But thankfully, the changes towards sustainability have continued to advance in 2021 as climate change issues are heard and receiving attention from governments, legislators and regulators. However, despite environmental issues gaining prominence, there is a growing recognition that more must be done to help save our planet. Some changes should outlast the current pandemic. One example is the [Campaign for Greener Arbitrations \(the Campaign\)](#), which aims to significantly reduce the carbon footprint of the arbitration industry.

This objective is encapsulated in the Campaign's [Green Pledge](#) which aims to not only raise awareness about international arbitration's significant carbon footprint, but also to encourage and collaborate with relevant players to promote sustainability. As work from home (WFH) arrangements and remote dispute resolution proceedings become more commonplace, the pledge proposes sustainability measures through a [Framework for the Adoption of the Green Protocols](#) to reduce waste and unnecessary travel in arbitration proceedings. The eight tenets of the Green Pledge include:

1. Creating a workspace with a reduced environmental footprint by looking for opportunities to reduce energy consumption and waste;
2. Corresponding electronically, unless hard copy correspondence is expressly needed in the circumstances, while also being mindful that email has a carbon footprint;
3. Encouraging the use of videoconferencing facilities as an alternative to travel (including for the purposes of conducting fact finding or interviews with witnesses);
4. Avoiding printing, requesting the use of electronic rather than hard copies of documents and promoting

- the use of electronic bundles at hearings;
5. Using, where possible, suppliers and service providers who are committed to reducing their environmental footprint (including for the purposes of arranging an arbitration hearing);
 6. Considering and/or suggesting, where appropriate, that witnesses or experts give evidence through videoconferencing facilities, rather than attend hearings in person;
 7. Avoiding unnecessary travel and using videoconferencing facilities as an alternative; and
 8. Considering and questioning the need to fly at all times, and offsetting carbon emissions for any arbitration-related travel.

Arbitrations in Asia

Looking at arbitration in Asia, this update outlines actions that most arbitration practitioners will be able to follow to aid in this effort. Arbitration proceedings differ in, *inter alia*, size, value and complexity. As such, a generic approach cannot feasibly be implemented across the board. The Green Protocol suggests sustainable measures that the parties or the tribunal can integrate individually or in their entirety, as appropriate. The Energy, Infrastructure & Projects and International Arbitration Practice at [Lee Hishammuddin Allen & Gledhill](#) (LHAG) has been moving towards improved sustainability measures in its arbitration practice by:

- Implementing storage of all documents electronically on a cloud-based secured platform — to ease and enhance collaboration following WFH arrangements;
- Encouraging parties and tribunals to carry out e-discovery or due diligence in electronic formats via virtual data rooms such as Oracle Aconex and Accellion;
- Conducting virtual hearings¹ in line with published guidelines — [ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic](#) and [CIArb's Guidance Note on Remote Dispute Resolution Proceedings](#);
- Conducting electronic documents-only expedited arbitration proceedings in accordance with institutional rules; and
- Minimising printing by increasing usage of electronic documentation in preference to hard copies, and promoting the use of electronic communication whenever possible — the Campaign projected that nearly [20,000 trees](#) are required to neutralise carbon emissions following from a large-scale arbitration.

Arbitration practice in Asia has the potential to depart from

¹

It is reported that there is significant uptake in virtual hearings at various arbitral institutions, including the HKIAC, AIAC, SIAC. HKIAC reported that in 2020, close to 70% of hearings held were either partially or fully virtual.

customary outdated practices and move towards a more environmentally sustainable future should we choose to act. As aptly put by the founder of the Campaign, Lucy Greenwood:² “... one size may not fit all when it comes to adopting more sustainable measures in arbitration. We recognise that regional differences must be taken into account to ensure change is appropriate for users in each region. With the Campaign for Greener Arbitrations, the aim is to educate users on the environmental impact of arbitration and to provide practical guidance on the steps that can be taken to reduce that impact. If everyone starts to make even small changes, we are on the right path to making a bigger impact.” Further, a member of the Steering Committee based in Hong Kong, Kiran Sanghera,³ is confident that practitioners in Asia have the potential to embrace more sustainable behaviours. “What may have begun out of necessity has become acceptable with feedback suggesting the virtual setting might even be preferred, particularly when the cost and environmental benefits are taken into account. Virtual hearings are one component of ‘going green’ but recent experience shows that behavioural change is happening in the region... LHAG’s change in approach is a good example of this.”

Conclusion

The trends in greening the legal industry, as well as other business sectors, indicate no room for complacency or a “business as usual” attitude. Sustainability measures and environmental, social and corporate governance (ESG) factors must be taken into consideration and embraced. LHAG is committed to managing its own carbon footprint and implementing measures that are conducive to a more sustainable world.

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