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BOOK REVIEW

Thomas Schultz, Information Technology and Arbitration: A Practitioner's Guide, Kluwer Law International, 2006, Paperback.

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Arbitration has often been promoted as providing a faster and more cost-effective dispute resolution alternative as compared to traditional litigation. Yet, complicated procedural motions, discovery disputes and multi-day hearings have resulted in arbitration increasingly replicating formalistic court-like procedures. Users of arbitration fear that excessive “judicialisation” or “legalisation” of arbitration could render the supposed benefits of arbitration rather illusory. While this is inevitable to a certain extent considering the increasing complexity of disputes submitted to arbitration, many of the advantages of arbitration over other forms of dispute resolution can be reclaimed by adopting measures targeted at increasing the efficiency of the arbitral process.¹

Information technology (IT) tools can help address many of the recent complaints levelled against arbitration by reducing the time and costs of arbitral proceedings. The use of IT aids in arbitration could substantially enhance the efficiency of arbitration – without, it must be stressed, sacrificing procedural guarantees or affecting the quality of justice. For instance:

- (i) Online filing sites can provide convenient, safe and reliable repositories for all documents filed in an arbitration;

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¹ This issue has engaged the attention of the ICC which has set up a Task Force on Reducing Time and Costs in Arbitration which has prepared a succinct report setting out a large number of techniques that could be used in organising arbitral proceedings and controlling their duration and cost. See *Techniques for Controlling Time and Costs in Arbitration- Report from the ICC Commission on Arbitration* (2007).

- (ii) E-mails can provide a reliable, fast and secure means of party-tribunal communications;
- (iii) Videoconferencing provides an alternative to traditional in-person hearing when such a hearing would be disproportionately expensive, inconvenient or impractical; and
- (iv) Realtime transcription tools enable transcripts of hearings to be immediately accessible to all participants at a hearing, which may then be used to cross-examine witnesses or experts.

The last decade has seen the legal world engage with IT in a way never seen before, and although the use of IT in arbitration is still in its infancy, one can sense a perceptible shift of momentum in this regard. Three of the world's leading arbitral institutions, namely the International Court of Arbitration of the ICC, the AAA, and the Arbitration and Mediation Centre of the WIPO have in the last couple of years focussed on increasing the efficiency of arbitral procedures with IT solutions. Without over-egging the pudding, it would be safe to say it appears inevitable that the emergence and development of IT tools for dispute resolution will radically change the conduct of commercial arbitration in the near future.

In this context, a work addressing the manner in which IT solutions can enhance the quality of arbitration proceedings, is of huge relevance to the arbitration practitioner. Thomas Schultz, the author of two previous books on information technology in dispute resolution², seeks to address a number of issues concerning the interface between IT and arbitral processes in *Information Technology and Arbitration*:

- The arguments in favour of greater reliance on IT in arbitration;
- The various forms of IT that are available and suitable for use in arbitration, as also the manner in which they could, or are, being used in arbitral proceedings;

² *Online Dispute Resolution: Challenges for Contemporary Justice* (with Gabrielle Kaufmann-Kohler, Kluwer Law International, 2004) and *Réguler le commerce électronique par la résolution des litiges en ligne* (Bruylant and L.G.D.J., 2005).

- The main concerns relating to the use of IT in arbitration – the security and efficiency of reliance on IT solutions, and their implications for the procedural rights of the parties; and
- The institutionalisation of IT in arbitration by their incorporation in arbitration agreements and procedural orders.

These issues find detailed examination in the seven chapters of the book, where the author focuses on examining the virtues of “commonplace IT solutions” such as discussion lists, online filing, case management websites, real time transcription software, videoconferencing and even e-mails. The author also looks at the current state of play in the use of these IT tools by the leading arbitral institutions.

Chapter 1 is an introductory chapter that traces the general evolution of IT usage in dispute resolution, and discusses the general benefits of using IT solutions to improve the conduct of arbitral proceedings.

Chapter 2 then looks at the most significant IT tools that are likely to be most widely used in arbitration, namely case management websites (or virtual case rooms), video-conferencing, live note applications used by court reporters which allow a complete reproduction of verbal exchanges to be contemporaneously accessible on computer screens in real time, and global ODR platforms. The coverage of video-conferencing (pp.34-63) is particularly comprehensive and thorough. The technology underlying each tool is discussed, alongwith an explanation of its properties and uses. The author also finally discusses the main issues and concerns raised by each tool, especially in their impact on the procedural rights of the parties.

Chapter 3 provides an overview of how the arbitration world has taken advantage of IT tools to date and surveys the current usage of IT at the ICC, the AAA and the Arbitration and Mediation Centre of the WIPO. It also summarises the ICC’s guidelines on the use of IT in arbitration.

Chapter 4 contains an analysis of the main issues that IT usage raises with respect to arbitration law, particularly due process issues and the preservation of confidentiality. Violation of due process rights constitute grounds for annulment

of an arbitral award, and the author discusses potential irregularities that an arbitral tribunal should steer well clear of in adopting IT tools in the arbitral process.

The rest of the book (Chapters 5,6 and 7) set out practice guidelines to be used as a convenient reference tool in practice. It also addresses concerns of legal practitioners in relation to the use of electronic communication technologies in arbitral proceedings.

Schultz is no advocate of technological overkill, and adopts a balanced approach in recommending a simple three-fold test to evaluate the usefulness of technology in any given context:

- (a) Does the use of IT tools make the process more effective, i.e., is the quality of the outcome enhanced?
- (b) Does recourse to IT make the process more efficient, i.e., does it lead to an appreciable reduction in cost and/or expense?
- (c) And lastly, does the use of IT improve convenience?

It is only when the answer to one or more of the questions is in the affirmative that recourse to IT solutions would be beneficial.

Although more of an academic scholar than a practitioner, the author acquits himself admirably in producing a practitioner's guide that is resolutely practical in its approach. The book handles a challenging topic in a clear and accessible manner, with anecdotes and interesting examples enlivening the text. The author has also taken pains to make the book accessible to "ordinary" lawyers, and not particularly to lawyers who are computer buffs.

The book succeeds in its stated aim of providing the arbitration community with an informed insight into the IT toolbox available to make arbitration more efficient and effective, and is hence recommended as a useful read for arbitration community. I heartily concur with Prof. Gabrielle Kaufman-Kohler's endorsement in the foreword to the book, when she comments that the author:

“does an outstanding job of providing the arbitration practitioner with good reasons to resort to IT solutions, while offering sufficient advice for everyone to make up his or her own mind about which type of technology to use in a given situation and providing useful considerations on the way to use them.”

Sooner rather than later, parties will expect more than mere legal expertise from their counsel and arbitrators – they would also expect them to operate with maximum efficiency by recourse to state-of-the-art techniques and technologies. This book is therefore an invaluable attempt to help legal practitioners gain adequate awareness of the advantages and stumbling blocks of IT in their practice.