International Arbitration Experts Discuss The Major Challenges For Arbitration In 2026

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Commentary

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Mealey's International Arbitration Report recently asked industry experts and leaders for their thoughts on what the major challenges for arbitration in 2026 might be.

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Mealey's: What do you believe will be the major challenges for arbitration in 2026?

Traband: Two challenges arbitrators are facing in 2026 center on the increasing reliance on digital information. First, arbitrators must effectively manage the rapidly increasing use of digital evidence in arbitral proceedings. As disputes continue to involve larger volumes of electronically stored information (ESI), arbitrators must become and remain technically proficient to utilize the ESI, and they must be proactive in addressing the heightened legal and ethical risks associated with data handling and emerging technologies.

A key aspect challenge is data protection. Arbitrations frequently involve participants based in multiple jurisdictions, each subject to different, and sometimes conflicting, data protection and privacy regimes, like the European Union's stringent rules set forth in the General Data Protection Regulation and the California Privacy Rights Act. These frameworks set forth accountability protocols for ESI custodians and impose liability for any violations. Arbitrators must be sufficiently informed about these regulatory frameworks to ensure that proceedings comply with applicable obligations when sensitive data is involved. Arbitrators should be proactive to ensure compliance and data security by implementing procedural protocols for data storage, access, transmission, and retention. The risk of cyberattacks and data breaches is real, and arbitrators must be prepared to mitigate these risks as early in the arbitral process as possible.

Second, the growing use of artificial intelligence in arbitration presents opportunities and challenges. Parties are using AI tools to assist with document review, legal research, and even the drafting of submissions. Complex issues may arise when AI is used, explicitly or implicitly, in the preparation of witness statements, expert reports, or damages models. Arbitrators will be called upon to assess the authenticity, reliability and transparency of such evidence, including understanding the extent to which AI tools were used, the data on which they were trained, and the potential for errors and bias. Specifically, just as expert testimony

and reports must be tested, so too should the outputs generated by AI.

Arbitrators must work to obtain and maintain the level of technological literacy sufficient to ask the right questions and to test evidence critically. Procedural fairness may depend on ensuring that both parties have a clear understanding of how AI has influenced the evidence before the tribunal and whether appropriate safeguards have been applied.

Ultimately, the major challenge for arbitrators will be adapting traditional principles of due process, confidentiality, and evidentiary assessment to a digital and AI-driven dispute resolution environment, while maintaining confidence in the arbitral process.

Richman and Sabbath: We anticipate that major challenges for arbitration in 2026 will arise from (1) the use and regulation of AI in arbitration proceedings, and (2) continuing geopolitical tensions.

Challenges Presented By The Use Of AI

Practitioners are increasingly using AI to review and analyze documents, conduct legal research, translate documents, draft documents, select arbitrators, and even predict arbitration outcomes. This revolutionary technology, however, presents challenges, including the following:

- Reliance on AI content may result in submissions containing inaccurate research or flawed analyses (and correspondingly, arbitral awards may rely on such inaccurate information or it may undermine the credibility of a party and its counsel).
- Certain arbitral institutions allow arbitrators to use AI to assist with issuing awards, which may lead to a greater risk of challenge and vacatur compared to awards rendered without the use of AI.
- AI used to predict arbitration outcomes and select arbitrators may be based on inaccurate, incomplete and/or biased information, potentially resulting in inaccurate conclusions and perpetuating stereotypes and biases.
- Certain AI platforms may reuse data and fail to adequately protect client information.

AI does not threaten arbitration's legal foundation — but its use affects evidence presentation, advocacy, confidentiality, integrity, and procedural legitimacy. These risks, however, are manageable with deliberate attention. Counsel should verify AI-generated citations and assertions carefully while protecting confidentiality, and arbitrators should not delegate reasoning and be transparent about AI usage.

Challenges Presented By Geopolitical Tensions

We also expect that geopolitical tensions will continue to present challenges for arbitration in 2026 and beyond, including the following:

- Sanctions regimes create uncertainty around whether performance has become illegal, whether payment mechanisms are blocked, and whether awards can be satisfied.
- Even where an award is rendered, banks may refuse to process payment, assets may be frozen, and special licenses (e.g., OFAC / EU) or permissions may be required to enforce or receive payment.
- Commercial disputes increasingly intersect with national security concerns, strategic industries (which may include greater regulatory scrutiny), and increased visa challenges.
- Divergence in data localization laws can create challenges relating to confidentiality, cybersecurity, and production of evidence.

It will be important for users of arbitration to treat geopolitical risk not as an *ex post* problem, but rather as a structural feature of modern arbitration, and to manage it at the contract drafting stage, in developing dispute strategy, and in enforcement planning.

Bates and Torres-Fowler: Artificial intelligence is becoming an indispensable part of legal practice — and arbitrators have not been immune to that shift. However, unlike law firms, which have dedicated support staff, associates, and institutional resources to manage the administrative and logistical demands of complex disputes, most arbitrators work independently. The volume of the submissions, procedural correspondence, and case materials that flow through a busy arbitrator's practice is significant and requires arbitrators to devote substantial time and effort to carefully review and analyze these materials. AI has begun to subtly shift that paradigm. Independent arbitrators now have access to tools that can ease the administrative burden associated with a busy practice and can help them focus their efforts on what really

matters. The result is a more efficient process. But the regulatory framework overseeing arbitrators' reliance on AI has not kept pace with this shift, and the resulting gap will become harder to ignore in 2026.

The challenge begins with transparency. Arbitration derives its authority from party confidence in the process. When an arbitrator uses an AI tool to assist with the collection of background information, preparation of chronologies, or document organization, parties generally have no visibility into that process. Existing soft-law frameworks — the CIArb Guidelines (2025), the SVAMC Guidelines (2024), and the AAA-ICDR's guidance issued in March 2025 — have begun to address arbitrator use of AI, but their focus has remained primarily on counsel and, given the pace at which AI has developed, many of the guidelines remain high-level and do not address many of the issues that arise in day-to-day practice. As AI's integration into arbitrator practice deepens, those frameworks are likely to face issues far more nuanced than they were designed to handle, and the guidance that exists today may quickly become obsolete.

Confidentiality presents a second significant challenge for arbitrators. Among arbitration's defining advantages over litigation is the protection of sensitive commercial information. When an arbitrator inputs case materials — submissions, financial data, and witness statements — into an open third-party AI platform, that protection can be compromised. Unlike law firms that can typically deploy proprietary, closed-system tools with robust security protocols, independent arbitrators need to fully appreciate the manner in which third-party open platforms store or process the data they receive.

Finally, there is a due process risk. Even where AI is used only for support — organizing issues, flagging relevant authorities — the risk that algorithmic bias or AI-generated errors quietly influence how an arbitrator frames a dispute may exist. Parties cannot see it, cannot challenge it, and may never know it occurred.

These challenges will not resolve themselves quickly. Drawing the line between acceptable and unacceptable use — across transparency, permissible tools, and confidentiality safeguards — will require time, deliberation, and ultimately consensus among institutions,

practitioners, and arbitrators themselves. As the arbitration world continues to adopt AI in its day-to-day legal practice, questions concerning the efficient and appropriate use of AI will remain a major challenge in 2026 and beyond.

Cooke: International arbitration in 2026 will be shaped both in substantive and procedural terms by systemic stress or change, in particular geopolitical fragmentation, technological disruption and the energy transition.
Sanctions regimes, export controls and the implementation of tariffs all have the potential to create uncertainty in cross-border contracts, increasing the risks of performance being rendered unlawful, commercially impracticable or operationally impossible. We saw these issues arise with increasing frequency in 2025 and this trend will continue in 2026: as a result, questions of illegality, force majeure, frustration, hardship and supervening regulatory intervention have become more commonplace.

Technological disruption will gather apace in 2026. Artificial intelligence promises to streamline efficiencies for the benefit of parties and their advisers. The exponential improvement in AI technologies in 2026 will be felt beyond the use cases for large language models as agentic technologies are deployed with increasing confidence in document review, legal research and drafting. At the same time, however, parties and tribunals will need to grapple with concerns surrounding AI and confidentiality, data security and algorithmic transparency (particularly in the context of document review and production) in order to ensure that procedural fairness is not compromised.

Finally, the energy transition is proving to generate new contractual ecosystems which will bring about new subject matter specialisms. For example, hydrogen supply chains, carbon capture and storage infrastructure, battery manufacturing and grid-scale storage projects will give rise to complex multi-contract disputes which by their nature engage questions around parallel proceedings, joinder and consolidation challenges, and increasingly complex technical quantum assessments. A key challenge moving forward, not only in 2026 but in years to come, will be tribunals' ability to adapt to handle these highly technical, document-intensive disputes.

Fernández: The lifeblood of international arbitration is the movement of capital and goods. In recent years, however, global trade has become increasingly volatile as the United States has erected tariff and non-tariff barriers. This has had a significant impact on supply chains resulting in, among other things, the redirection of investments and trade flows. In parallel, artificial intelligence (AI) is bringing rapid advances in technology. The interplay between these two trends will invariably generate challenges (and opportunities) for international arbitration over the coming year (and more likely than not the following years).

Initially, the most obvious challenges for international arbitration practitioners will come from the growing use of AI. For many years, AI has been used as tool for document review (i.e., predictive coding). Arbitral practice has started to embrace Agentic AI. While there has been much discussion about its use in arbitral proceedings (including the use of AI arbitrators to adjudicated disputes), everything is still in an early stage. This means that there will be significant growing pains.

First, there is the risk that some parties may be tempted to use AI to generate evidence of dubious origins. Because the general proclivity of many arbitrators is to admit evidence, there is a growing risk that decisions will be made on the basis of unauthentic documents and/or recordings. Similarly, there is the further risk that parties will use AI to prepare memorials and submissions without verification, resulting in inappropriate reliance on hallucinated caselaw, etc.

Second, there is a risk to the integrity of the arbitral process stemming from arbitrator use of AI. In that regard, there may be cases where parties challenge awards based on allegations that an arbitrator "outsourced" their reasoning to AI. As a result, national courts may be called to decide on where the line between "AI assistance" ends and "delegation of mandate" begins.

While AI is likely to generate significant challenges for practitioners—and eventually reshape arbitral practice in the medium to long term—the shifts occurring in international trade (i.e., the potential for trade deals that exclude the U.S.) are going to have a significant impact on where disputes arise and as between whom. This may result in new "players" joining the international arbitration area, which will generate friction for a system that has largely enjoyed relative stability.

Cole: I see arbitration's greatest current challenge as what I will call, for want of a catchier term, the ongoing "scientification" of arbitration. Modern arbitration developed in the context of conventional commercial disputes, and while industry understanding was often seen as desirable in an arbitrator, deep technical understanding usually was not—ultimately, that is why there is expert testimony. But as science continues to penetrate every aspect of our lives, it also increasingly shapes the disputes that come before arbitrators.

The most obvious way this is happening in 2026, of course, is artificial intelligence (AI). But while every active arbitrator is now aware that large language models (LLMs) can generate fictitious citations, I would argue that the more fundamental challenge for our field is the attractions of that technology for a profession (arbitrators) that has always been focused on mastering procedure and legal interpretation, rather than on the complexities of modern science.

This is because the risks of AI are subtle, and understanding them properly requires an engagement with the underlying technology of LLMs that few people without a passionate interest in science and computing are likely to prioritize. The practical result of that limitation in a field focused on procedural and legal expertise is that most arbitrators are just not incentivised to develop a strong understanding of how LLMs are trained and how this affects their outputs, let alone what a "transformer" is and the fundamental impact transformers have on the way that LLMs function.

You don't, of course, have to be an AI expert to be a good arbitrator. But an arbitrator aware of the risk of hallucinations, yet unaware that LLMs are designed to generate plausible-sounding outputs that will be accepted by the user, rather than verified true statements, and that an LLM's outputs will unavoidably reflect undisclosed biases embedded in the data on which it is trained, can have unjustified confidence in an AI's output.

And this, I would argue, lies behind the current focus of discussions of AI in arbitration being on the simpler issue of the risk of hallucinations, instead of what I think is actually needed: an honest, open conversation about how LLMs really work, and a shared commitment to making sure that all arbitrators, however small their interest in science, have an

accurate understanding of AI and its risks before its use becomes standard (which it will).

Er: As we move into 2026, international arbitration is entering a period of intense adaptation. The system's greatest strength, its flexibility, is being tested by three distinct pressures: a volatile global economy, the rapid integration of technology, and a steadily rising bar for corporate accountability.

The Volatility Challenge In Commercial Contracts

The most immediate pressure comes from a surge in disputes triggered by sharp global economic disruptions. In 2026, tribunals are confronting a record number of cases in which parties invoke force majeure or hardship clauses to exit agreements destabilized by sudden trade tariffs, geopolitical fragmentation, or supply chain breakdowns. The central difficulty lies in drawing a principled distinction between performance that is genuinely impossible and performance that is merely more burdensome or less profitable. Arbitrators are increasingly called upon to engage with complex economic evidence, market data, and risk allocation frameworks to preserve contractual certainty while responding to extraordinary volatility.

The Human In The Loop Problem With AI

Artificial intelligence is no longer experimental in legal practice; it is becoming foundational. Yet its integration poses significant procedural challenges. When expert reports, legal submissions, or witness statements are substantially shaped by generative tools, questions arise about authenticity, reliability, and procedural fairness. How much AI assistance is compatible with due process? The arbitration community is now grappling with the need for a clear standard of disclosure and transparency, one that safeguards efficiency gains while ensuring that credibility assessments, evidentiary weight, and ultimately the award itself remain grounded in independent human judgment. Without such safeguards, enforcement risks may follow.

The Accountability Gap

Environmental, social, and governance considerations have moved from the periphery of corporate policy to the core of high stakes disputes. As states implement ambitious climate and sustainability measures, investors pursue claims for regulatory interference and lost profits, while governments increasingly rely on arbi-

tration mechanisms to seek redress for environmental harm. The tension between traditional investment protections and evolving climate obligations is generating doctrinal strain. Tribunals must reconcile long-standing principles of investor protection with the emerging consensus around environmental stewardship and public interest regulation.

In 2026, the central task is not simply to preserve neutrality, but to strengthen legitimacy. Arbitration must demonstrate that it can manage economic instability, technological transformation, and shifting societal expectations while maintaining procedural integrity and enforceability. Its future credibility will depend on its ability to adapt without surrendering its core commitment to fairness and reasoned decision making.

Briercliffe and Latasz: Among many challenges facing international arbitration in 2026, two stand out in particular: sanctions and artificial intelligence.

Sanctions: Grappling With Volatile Geopolitics

Sanctions loom large in arbitration, shaping who can arbitrate, what can be decided, and whether awards mean anything.

We expect more investor-State claims brought by sanctioned individuals and entities over measures affecting their assets (such as *Fridman v. Luxembourg* or *Belaruskali v. Lithuania*). If the sanctioned investors succeed, drawn-out enforcement proceedings are likely to ensue. For example, Council Regulation 2025/1494 prohibits courts of EU member states from enforcing ISDS awards relating to measures imposed under the EU's Russia sanctions.

Sanctions are also taking centre stage in commercial arbitrations. As we have seen in the wave of cases brought against Gazprom over gas under-deliveries, these disputes tend to revolve around impossibility, illegality, frustration or force majeure.

Sanctions will also continue to generate procedural challenges. In *Barclays Bank plc v. VEB.RF*, the English court rejected a Russian state-owned bank's argument that sanctions frustrated the arbitration agreement due to alleged difficulties in securing legal representation, paying legal and LCIA fees and in-person hearing attendance. In contrast, in *DRL v. DRK*, a SIAC tribunal terminated arbitration pro-

ceedings, determining that their continuation was "impossible" under Article 32(2)(c) of the UNCITRAL Model Law (and s 3(1) of the local arbitration act) due to insurmountable payment issues created by the claimant being sanctioned.

The ruling of the CJEU in the *Reibel* case is also much anticipated. It will decide on the arbitrability of contractual disputes caught by the "no claims clause" in Article 11(1) of Council Regulation No. 833/2014, which prohibits the satisfaction of claims made by Russian parties regarding transactions affected by EU sanctions.

AI: Opportunities And Risks

The arbitration market is witnessing an AI boom — competing software solutions promise efficiency gains by various means.

But AI is not a silver bullet. It can "hallucinate" leading to fabricated authorities and invented facts. Confidentiality and cybersecurity are also relevant considerations. Absent proper management, the very technology designed to save time could cause procedural dilemmas increasing time exponentially and undermining trust in the system.

Another question is if and to what extent arbitrators can rely on AI. Lessons from cases addressing reliance on tribunal secretaries may be instructive in this regard.

Transparency is also likely to be important, but guidelines on the use of AI by tribunals diverge. For example, the 2025 AAA-ICDR Guidance calls for disclosure where AI "materially impacts the arbitration process", while the CIArb Guidelines push further, encouraging consultation with parties about any tribunal use of AI. ∎