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## ARTIFICIAL INTELLIGENCE IN INTERNATIONAL ARBITRATION: MYTH OR REALITY?

**Abstract:** We are in the midst of the fourth industrial revolution. We are seeing technology shift its identity: where it was previously used by us as a blunt instrument, it now replaces us, simply waiting for the correct instructions. This is why we hear about “disruptive” tech. When artificial intelligence has the power to perform relatively sophisticated lawyerly skills, we know it will become pervasive, but we think it’s time to put to bed those conspiracy theories about “robo-lawyers”; Artificial intelligence is the reality to be embraced – the only future.

Accordingly, this article will try to argue about the present potential use of artificial intelligence, namely in International Arbitration and will examine pros and cons that the arbitration community might get from implementing artificial intelligence in their day to day course of work. The article will also question the challenges that the arbitration community might face due to such innovative approach and equally the benefits it could achieve from it.

**Keywords:** Artificial intelligence, digitalization, arbitration, risks, benefits, publication of awards, cost efficiency, intelligent data.

**Аннотация:** Данная статья направлена на выявление ныне существующих призывов в области международного арбитража, связанных с возможной имплементацией искусственного интеллекта в процесс рассмотрения споров, разработки и подачи необходимых документов, включая свидетельские показания и экспертные заключения, а также в процесс выбора арбитров на основе анализа посредством микро данных и цифровизации публично доступных решений международных арбитражных судов.

**Ключевые слова:** искусственный интеллект, цифровизация, арбитраж, риски, преимущества, публикация арбитражных решений, эффективность затрат, умные данные.

**Аннотация:** Ушбу мақола сунъий интеллектнинг халқаро арбитраж соҳасида эҳтимолли қўлланилиши билан боғлиқ бўлган, хусусан, низоларни қўриб чиқиш жараёни, тешиги хужжатларни, шу жумладан гувоҳлик кўрсатмалари ва эксперт хулосаларини ишлаб чиқиш ва уларни тақдим этиш, шунингдек оммага очиқ бўлган халқаро арбитраж судлари қарорларининг микро маълумотлар ҳамда рақамлаштириш асосида ўтказиладиган таҳлили ёрдамида арбитражни тайинлашга алоқадор бўлган долзарб маълумотларни ўрганишга қаратилган.

**Калит сўзлар:** сунъий интеллект, рақамлаштириш, арбитраж, ижобий ва салбий жиҳатлар, халқаро арбитраж судлари қарорларининг очиқ оммага тақдим этилиши, харажатларнинг самарадорлиги, аклли маълумотлар.

### I. Is it real in International Arbitration?

While people seemingly never tire of shouting about artificial intelligence, the granular, real-world applications can sometimes go missing in their commentary. All we need to know to understand artificial intelligence is that it contributes to software which can search and interpret documents, perform accurate risk assessments, sharpen

the interpretation of documents based on precedent, and draft contracts and legal opinions.

In that vein, in the last few years, the international arbitration community has started to engage in discussions on the digital transformation of dispute resolution and on artificial intelligence. Scholars and arbitration practitioners have been speculating on how artificial intelligence might be used in arbitral proceedings and the potential impact it might have on the arbitral process from an administration of justice perspective.

So far, these discussions have almost exclusively focused on the (immediate and distant) future rather than the present. Very little has been said about the current state of affairs of artificial intelligence tools used in international arbitration.

The world is undergoing a technological revolution that will dwarf the industrial revolution and will disrupt virtually every aspect of our business and personal lives, including the manner in which disputes arise and are resolved. The centerpiece of the current stage of the technological revolution is artificial intelligence, which will affect the manner in which:

- Business is conducted (including block chain, and other disruptive technologies);
- Transactions are entered into (including smart contracts, bitcoin and other distributive mechanisms);
- Disputes are raised and resolved.

In these days of rising concerns about the resources and time it takes to decide disputes, artificial intelligence has the potential not only to reduce the time and cost of resolving disputes, but by increasing predictability and reducing risk, also to discourage unmeritorious claims and to create incentives to settle early.

However, at the same time, concerns are raised about the impact that artificial intelligence will have on decision making and access to justice depending on who has access to its benefits, the transparency of, and control over, the arbitral data and algorithms, including publication of awards and potential risks to confidentiality and personal data protection, to name a few.

The debate over how artificial intelligence is implemented in international arbitrations raises some of the same concerns as the wider debate over the benefits versus the risks of transparency versus confidentiality generally and of award publication specifically, but the opportunities created by the widespread application of artificial intelligence to international arbitration will bring this tension to the fore in new and challenging ways.

But What Do We Exactly Mean by Artificial Intelligence? Artificial intelligence, or “AI,” is the term coined to describe the general process whereby large amounts of data are combined with powerful iterative data processing systems and intelligent algorithms, thereby enabling the software to learn automatically from patterns or features in the data. The term artificial intelligence is often used loosely, and encompasses many subjects including machine learning, deep learning, neural pathways, BOTs, cognitive computing, and natural language processing, but it is the software’s ability to learn automatically from patterns or features in the data that makes it “intelligent.”

At its current stage of development, the efficacy of artificial intelligence is highly dependent on the quality of the data processed and the algorithm applied, which dependencies are key to understanding both the potential benefits and risks from applying artificial intelligence to international arbitration. With digitalization, virtually every piece of information addressed in a typical arbitration exists in a

digital form. This is true of the communications between the parties; between the parties and the institution; among the arbitrators and/or the institution; the evidence (including email communications); the names and details of expert and fact witnesses and their testimony, the transcript, the communications among the arbitrators, draft awards, etc.

The settlement of disputes by robots is undoubtedly one of the greatest causes of concern. There are systems that claim to provide solutions to lawsuits, such as the Siarelis robot, implemented by the Colombian government's Superintendencia de Sociedades de Colombia for the resolution of corporate disputes. This system, in the words of that authority, makes a number of questions to the judge and to his team on the merits of the case to be resolved and automatically gives them its opinion. Besides telling them whether or not they should accept the claimant's petitions, it also shows them the most relevant judgments for similar past judgments.

## II. Risks and Benefits.

For the time being, this robot acts as a guide for the judge, but it is not beyond belief that in the near future it will dislodge the judge completely and that the same will happen with international arbitrators. One of the hefty obstacles to this happening, however, lies in the fact that the decisions these systems produce, even though they may be correct, are not founded. In other words, the robot simply decides but does not explain the reasons for its conclusion, in understandable language, which is unacceptable in all judicial systems.

This is because people need to know the reasons why their case was decided one way or another, especially if the decision finds against them, because this is the only way they may challenge that decision, if there is any room for doing so.

Another barrier to robot arbitrators coming into use is that, in principle, machines do not have feelings, empathy, or any idea of justice that goes beyond the processed data and precedents. This may lead to our having correct but unfair decisions.

And moreover, we cannot forget that justice is not a simple algorithm, it is a real human virtue, which to be put into practice needs a complex analysis of the situations and circumstances surrounding a specific case as well as of the facts and application of the law, to be able to strike a balance at the company. So, for the time being, the likelihood of a robot being able to exercise a virtue of this kind, and to do away with human input completely in the resolution of a dispute appears to be remote.

The main use of artificial intelligence in arbitration today is to review increasingly vast amounts of digital arbitral micro-data held by parties and their counsel in order to determine what is relevant to the case and then to analyze that data and present it in a more effective manner. This use of artificial intelligence to process arbitral micro-data has, and will increasingly, help to correct the cost and time problem created by the digital data at issue in complex disputes today – hence, as is often the case, technology may eventually help solve the problem it largely created because of digitization. But the gateway to having these benefits is having access to the systems, the data, and the ability and processing power to use them.

Looking forward, one new frontier contemplates expanding the use of artificial intelligence to analyze arbitral awards to undertake actual legal reasoning and to provide reasoned advice about how companies and legal argu-

ments have fared in the past, how arbitrators have decided issues, and how damages have been approached. This means that, for example, artificial intelligence offers the potential of predicting results in advance including, for example:

- Chances of success generally, and with a particular decision maker;
- Likely range of damages generally, and with a specific decision maker;
- Timing to decision before a particular institution, and before a particular decision maker;
- Likely costs to be incurred;
- Likely range of a cost award generally, and with a particular decision maker;
- Facts about opposing counsel, including their experience in particular matters and before particular decision makers.

When they come to fruition, the common benefit in all of these more advanced uses of artificial intelligence to predict results in arbitration is that they will reduce the uncertainty inherent in any dispute resolution process. While there are obviously other non-economic factors at play in disputes, reducing the uncertainty about the outcome will both reduce the pursuit of unmeritorious claims and allow disputes to be settled more quickly when they do arise, with the consequent positive economic and social impact. When arbitration ensues, artificial intelligence also holds out the promise of changing the way that cases are prepared, including, among other things, enabling parties to:

- Pick arbitrators based on likely results;
- Make arguments that are more likely to be successful with those arbitrators;
- Reduce the time and cost of legal research and data analytics, and
- Plan more realistic budgets, among many other things.

One of the hallmarks of international commercial arbitration is that arbitral awards in commercial cases are not published. In contrast, in investor-state arbitration before the International Centre for the Settlement of Investment Disputes (ICSID), maritime arbitration by the Society of Maritime Arbitrators (SMA), and sports arbitration by the Court of Arbitration for Sport (CAS), unredacted awards are published in many instances.

This means that, while full unredacted awards would obviously be preferable for artificial intelligence, data protection and other concerns may favor redaction of personal data. However, even if the names of the parties and any individuals were omitted, the predictive ability of artificial intelligence would be greatly enhanced if awards were available including the full reasoning and the names of the arbitrator(s), counsel, and experts, who typically could give their permission in advance to disclosure.

Of course, parties would have to be able to refuse publication, and public access to awards including arbitrator names raises many other issues, including the potential for increasing the time and cost of award drafting, issue conflict creeping into commercial arbitration, procedural paranoia increasing and impacting the written product, and further risks of unintentional release of confidential information and data protection concerns.

The lack of an easily accessible data set, decentralized decision making, and other characteristics of international arbitration may increase the upfront and on-going costs and time required to use artificial intelligence to predict outcomes in international arbitration. This may slow the

adoption rate for artificial intelligence for international arbitration as service providers grapple with these issues, making it less accurate at least at the outset, and more expensive.

### III. Conclusion.

Whether we like it or not, artificial intelligence is going to play a major role in international arbitration in the near future. The amounts at issue are too high and the benefits from artificial intelligence too great to avoid it.

As it has significant potential benefits for international arbitration, but as members of the international arbitration community and as consumers of legal services through the prism of international arbitration we must ask ourselves for whom, at what cost, and how this might impact international arbitration more generally in ways that may not be obvious.

Leaving aside whether artificial intelligence may replace us further down the line, we would now be taking the wrong track by failing to appreciate the advantages and facilities that this technology offers, especially since the developments described bring enhanced efficiency and transparency to international arbitration, which is certainly more than welcome.

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### ЎЗБЕКИСТОН РЕСПУБЛИКАСИ ҲУКУМАТИ БИЛАН ТУЗИЛАДИГАН ИНВЕСТИЦИЯ ШАРТНОМАСИНИНГ ЎЗИГА ХОС ХУСУСИЯТЛАРИ

**Аннотация:** Мазкур мақолада мамлакатдаги фаол инвестициявий муҳит - ташқи савдо фаолиятининг 2019 йил якунлари бўйича келтирилган маълумотлар асосида умумлаштирилди ҳамда Ўзбекистон Республикаси Ҳукумати билан тузиладиган инвестиция шартномасига оид масалалар кўриб чиқилди. Шунингдек, илмий ишда мазкур турдаги инвестиция шартномасининг ўзига хос хусусиятлари Ўзбекистон Республикасининг "Инвестициялар ва инвестициявий фаолият тўғрисида"ги Қонун нормалари асосида таҳлил қилинди.

**Калит сўзлар:** инвестиция, инвестиция лойиҳаси, қўшимча кафолатлар ва қўллаб-қувватлаш чоралари, Ўзбекистон Республикаси Ҳукумати билан тузиладиган инвестиция шартномаси.

**Abstract:** This article, based on the data on the foreign trade activity of Uzbekistan for 2019, summarizes the state of the investment climate in the country and considers the issues of the Investment Agreement with the Government of the Republic of Uzbekistan. Besides, the scientific work analyses the features of this type of investment agreement by the norms of the Law of the Republic of Uzbekistan "About investments and investment activities".

**Keywords:** investment, investment project, additional guarantees and support measures, Investment agreement with the Government of the Republic of Uzbekistan.

**Аннотация:** В данной статье, на основе с данными о внешнеторговой деятельности Узбекистана за 2019 год, обобщается состояние инвестиционного климата в стране и рассматриваются вопросы Инвестиционного договора с Правительством Республики Узбекистан. Также, в научной работе были проанализированы особенности инвестиционного договора в соответствии с нормами Закона Республики Узбекистан «Об инвестициях и инвестиционной деятельности».

**Ключевые слова:** инвестиция, инвестиционный проект, дополнительные гарантии и меры поддержки, Инвестиционный договор с Правительством Республики Узбекистан.

Халқаро иқтисодий муносабатлардаги глобаллашув ва Ўзбекистон Республикасининг жаҳон савдо айланмасига интеграциялашуви — мамлакат иқтисодиётида инвестициялар, хусусан хорижий сармояларга бўлган эътиборни кучайтиради. Ўз навбатида, инвестициялар ҳисобига ишлаб чиқаришлар техник ва технологик жиҳатдан қайта янгиланади, стратегик ва муҳим аҳамиятга эга бўлган инвестиция лойиҳаларини амалга ошириш орқали эса иқтисодиётни ривожлантириш, аҳоли бандлиги, уларнинг турмуш даражаси ва сифати оширилишга эришиш, мумкин бўлади.

Жорий йилнинг 15 январь куни Ўзбекистон Республикаси Президенти Шавкат Мирзиёев раислигида экспорт, инвестиция ва маҳаллийлаштиришни кенгайтириш масалаларига бағишланган видеоселектор йиғилишида ҳам ушбу