

Q&A With Gibson Dunn's Rahim Moloo

Law360, New York (May 23, 2016, 3:40 PM ET) --

Rahim Moloo is of counsel at Gibson Dunn & Crutcher LLP, where he helps spearhead the firm's U.S. international arbitration practice. He represents clients in some of the world's most complex and high-profile cross-border disputes, including several involving national governments.

Previously, Moloo practiced international arbitration at White & Case and Freshfields. Currently, he is an adjunct professor at Columbia Law School, where he teaches an advanced course on international arbitration, and sits as an arbitrator in international commercial cases. He previously served as co-chairman of the American Branch of the International Law Association's Committee on Disputes Involving States and the Private International Law Section of the American Society of International Law. He is co-authoring a book on procedural law in investment arbitration, which is due to be published by Oxford University Press in 2016.



Rahim Moloo

Q: What attracted you to international arbitration work?

A: It was a confluence of a number of my interests and circumstances that led me to a career in international arbitration. I adopted my father's interest in international affairs at an early age. During high school and college, I spent summers working in developing economies, which gave me first-hand experience of what it is like to do business in the places where my clients now invest. After law school, I began my career at Burnet, Duckworth & Palmer LLP in Calgary, Alberta — my hometown — where I had the opportunity to work with one of the world's leading international arbitrators, David Haigh, QC.

That experience led me to believe that international arbitration was a field that brought my various interests together, so I decided to pursue a graduate law degree at NYU where I had the good fortune of studying with some of the world's leading international lawyers and international arbitration practitioners. It became apparent to me that international arbitration functions as a transnational system through which the world's most interesting and complex disputes — including those involving sovereigns — are resolved. I was sold.

Q: What are two trends you see that are affecting the practice of international arbitration?

A: Most international law firms have only established dedicated international arbitration practices in the last 10 to 15 years. In that time, the practice of international arbitration has changed significantly, and it will continue to do so in many ways. With that caveat, two trends are apparent.

First, as the global economy becomes more interdependent, a trend that will continue to affect the practice of international arbitration is the increase in foreign direct investment (FDI) to developing and transitioning economies. We know that FDI to these countries is increasing both in terms of raw numbers and as a percentage of global FDI. Many (if not most) significant investments in developing and transitioning economies will provide for arbitration as the means to resolve disputes.

International arbitration provides parties to these investments with a reliable and neutral dispute resolution forum. What is more, just as sophisticated investors structure their investments to obtain favorable tax treatment, they are now also structuring their investments to ensure that their investments obtain the protection of investment treaties. These treaties normally provide for the resolution of disputes with the host state through international arbitration. Given that there is a lag between investments being made and disputes arising from those investments, we can reasonably expect an increase in the number of international arbitrations involving such investments in the near to medium term.

Second, third-party funding will continue to affect the practice of international arbitration. We have seen a proliferation of third-party funders looking to fund viable international arbitration claims. Third-party funders are attracted to international arbitration because of the size of the disputes and the ability to enforce an international arbitral award globally. Third-party funding of international arbitration claims is still in its infancy, but as the market for financing claims matures, we will continue to see: (1) a sophistication in the modes of financing claims; (2) a sophistication in the diligence process leading to an investment in a claim; (3) new players in the third-party funding market; and (4) further development of the rules that govern funding arrangements.

Q: What is the most challenging case you've worked on and why?

A: Many of the cases we handle for our clients involve complex international disputes implicating multiple laws and fora. As you might imagine, it is difficult to pinpoint a single dispute among those as being the most challenging!

That said, I am currently representing one of our clients in a multibillion dollar dispute that is particularly challenging. The respondent is a state that is unlikely to pay what is expected to be a sizeable arbitration award in our client's favor. While international arbitration is lauded for the ability to enforce an arbitral award globally, enforcing and executing an award against sovereign states can be tricky in light of sovereign immunity defenses. The law on enforcing arbitral awards against sovereigns and attaching their (or their instrumentalities') assets is still nascent in most jurisdictions. This is not surprising given that most states play by the rules that they have signed up to, and, in any event, the investor-state arbitration boom — and the resulting increase in enforceable arbitral awards against states — has only occurred in the last decade.

This matter, like most of the matters we handle, has required us to work closely with the client to evaluate how the legal strategy complements or impacts other levers that might be available, including negotiations between business teams and media campaigns. Working across practices and multiple jurisdictions, we have been able to come up with innovative solutions that are likely to result in a substantial settlement in our client's favor.

Q: What advice would you give to an attorney considering a career in international arbitration?

A: (1) Keep up to speed on what is happening in the world. You'll be amazed at how often what you read in the news can help your practice. I suggest setting up news alerts for key topics of interest to your clients and reading news from multiple sources including The Economist, The Financial Times, The New York Times and The Wall Street Journal.

(2) Learn about different cultures and legal traditions. International arbitration is a melting pot for the world's dispute resolution lawyers, and you need to be aware of the different perspectives that make up that mix.

(3) Write an article on an aspect of international arbitration. The field will continue to develop quickly in the years to come, and the best in the profession are not just excellent attorneys, they are thought leaders and innovators who started developing and expressing their ideas early in their career.

(4) Work hard. There is no shortcut to success, and achieving the best results (in your career and for your clients) requires determination and a desire to be excellent.

Q: Outside of your firm, name an attorney who has impressed you and tell us why.

A: It is difficult to single out any one person who I've been impressed by, so I'll take the liberty of naming three!

I have always been impressed by Donald Donovan. I first met Donald at NYU where I took his international arbitration class and he supervised my directed research. Donald has balanced a career in which he has excelled as counsel, arbitrator and academic. He has also been very generous with his time whenever I've turned to him for advice.

Professor George Bermann, with whom I teach a class on international arbitration at Columbia Law School, has also impressed me. George is one of the leading arbitrators and international arbitration scholars in the country, and, despite my role as George's co-instructor, I am constantly learning from him.

Finally, I have been impressed with Abby Cohen Smutny. I spent the early years of my career working with Abby, and I learnt from her (and Carolyn Lamm) the rigor that is required to practice law at the highest level. Abby took a chance in hiring me a number of years ago, and I'm not sure I'd be practicing in this field if she didn't.

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