Kluwer Arbitration Blog

Interviews with Our Editors: Insights from Dr Jacomijn van Haersolte-van Hof, Director General of the LCIA, During London International Disputes Week

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Thank you for joining us on the Kluwer Arbitration Blog, Dr van Haersolte-van Hof! We appreciate that the LCIA is quite busy this week as a Supporting Institution of the inaugural London International Disputes Week (LIDW19). We are honored to have this opportunity to gain insight from your perspective and highlight for our readers the LCIA's role as a leader among global arbitral institutions.

1. ***You've had a particularly unique path toward becoming Director General of the LCIA, with a career spanning two decades and experience acting as counsel and sitting as arbitrator in global disputes in affiliation with multiple law firms, big and small. How do these experiences shape your vision for the LCIA?***

It is a great pleasure to contribute to the Kluwer Arbitration Blog, in particular during this inaugural London International Disputes Week.

I was fortunate to sit first as tribunal secretary and then as arbitrator almost from the outset of my career as a practitioner. This is one of the attractions of arbitration from my perspective; practitioners often combine the roles of counsel and arbitrator, which contributes to the quality of the process and enhances one's skills both as counsel and as arbitrator. I was able to apply these skills as a teacher of arbitration later in my career, as well.

I was active within the LCIA for many years, acting as counsel and arbitrator, serving as one of the original YIAG Co-Chairs and a frequent attendee of the Tylney Hall symposia. My involvement with the institution as well as my experience working for various firms, both large and small, has positioned me well to understand the legal side of the role, the casework component and the types of thought leadership that the institution can produce.

When the opportunity arose to join the LCIA as Director General, I realised that this would be a unique opportunity to add a further perspective to my arbitration practice, and to help continue the momentum of the LCIA from a venerable, but small institution to a key key player in international arbitration.

2. ***One of your first activities as the Director General of LCIA was to oversee the release of the LCIA's 2014 Arbitration Rules. Do you see a further update of the Rules in the LCIA's near future? If so, what are the top three areas you would focus on?***

My joining the LCIA coincided with the launch of the 2014 LCIA Arbitration Rules. While it was a steep learning curve, the arrival of the new Rules formed a unique opportunity to connect and meet with many users and discuss the substantive issues triggered by the new Rules.

Indeed, I expect some further changes to the Rules to be introduced. We are not anticipating a complete overhaul, but we are looking forward to more of an update to be released later in the spring. Areas where updates could be made would be to confirm the existing powers to expedite the arbitration process. It may also be an opportunity potentially to introduce GDPR and other regulatory language.

As a coincidence, I look forward to mid-June when the LCIA will welcome its first Deputy Director General, Jamie Harrison, who will help steward these updates, as well.

3. ***Despite continuing increase in the number and types of arbitral institutions established globally, your Annual Reports confirm that the LCIA – and London by association – continues to maintain a steady market share. What kinds of parties and disputes does LCIA appeal to, and what qualities help you to maintain your leadership status?***

London is and will undoubtedly remain the preeminent forum to meet commercial, business and legal needs. This is especially true in certain sectors, which is reflected in the LCIA's caseload. 2018 saw a significant rise in the number of disputes in the banking and finance sector, reaffirming the LCIA's position as the world's premier arbitral institution for complex financial disputes. Energy and resources and transport and commodities also remain important industry sectors of the LCIA.

It is interesting to note that in the banking and finance sector, parties act significantly more frequently as claimant than as respondent.

Looking at the types of agreements we frequently see at the LCIA, loan agreements and shareholders' agreements are the number one and two.

It is also important to note that parties frequently choose English law and London as the seat even though 80% of the parties are from outside of the UK. This is a reflection

of the importance of London as a commercial, business and legal centre where users are either based themselves, or where they are comfortable making use of the infrastructure.

4. ***LCIA has launched an online database containing anonymised decisions of the LCIA Court on challenges made to arbitrators, beginning in 2010. How does this initiative reflect best practices in light of debates on transparency, conflicts, and arbitral integrity?***

One of the unique features of LCIA arbitration is the confidential nature of the arbitration proceedings. In investment arbitration in particular there is a noticeable trend towards transparency. For now, LCIA users continue to value confidentiality as one of the key advantages. It is therefore not for the LCIA to publicise awards issued by LCIA arbitrators.

Transparency is of course a broader concept than publishing awards and transparency of other aspects of the procedure may contribute to the well-being of the system. Arbitrator appointments and in particular challenges are vital to the integrity of the arbitral process.

Several years ago, the LCIA therefore decided not only to provide reasoned challenge decisions, but also to publish anonymised digests of the LCIA Court's challenge decisions. Interestingly, the number of challenges, let alone the number of successful challenges is very limited (approximately six per year over the last few years, with a caseload of approximately 300 cases per year). I like to think that this is attributable to the robust procedure, which dissuades frivolous challenges but provides a solid platform for potentially meritorious procedures.

5. ***The role of tribunal secretaries (sometimes known as the Fourth Arbitrator) has been a hot topic in the field for some years now. In response to these debates, in 2017, the LCIA analysed the issue and revised its Notes to Arbitrators, having recently concluded a Roadshow on the topic. Do you anticipate seeing increased use of tribunal secretaries in the future? Are there ideal qualities that a tribunal secretary should possess?***

Tribunal secretaries are a feature of arbitration, albeit that they do not figure in every case. Given this reality it is better to accommodate and facilitate such usage, rather than turn a blind eye to it, especially for an institution which should be capable of meeting the needs of users and arbitrators in a wide range of cases and procedures. The LCIA guidelines are prescriptive when it comes to procedure, safeguarding standards of independence and impartiality, scoping the secretary's mandate and remuneration, but not prescriptive when it comes to identifying the tasks which the tribunal secretary may perform. The guidelines are designed to facilitate a rational discussion of the tribunal secretary's tasks to prevent surprises and potentially disappointment and disgruntled parties at a later stage of the proceedings.

The launch of the Tribunal Secretary Roadshow has been and continues to be one of the most satisfying series of events in which I have been involved. Discussing the role of tribunal secretaries inevitably leads to a discussion of more general and sometimes quite profound issues such as how a tribunal anticipates dealing with evidence, how the internal decision-making process amongst tribunal members works and what they expect from the parties.

People often feel strongly about the use of tribunal secretaries, which is not only a reflection of personal preferences, but also often driven by cultural perspectives. There is not a "one size fits all" solution, but hopefully the guidelines on tribunal secretaries will lead to a greater understanding of the versatility of the instrument, of the benefits it can bring and the restrictions that may apply.

6. ***Over the past few years, many (including authors on our Blog) have speculated on the impact of Brexit on London as an international arbitration hub. What are your thoughts?***

Brexit will ultimately not affect London as an international arbitration hub. The key legal instrument, the New York Convention, is a truly global instrument and the Arbitration Act is solid and robust. Arguably, compared with court litigation arbitration may become a more attractive option as litigation is likely to be affected more profoundly when the Brussels Regulation ceases to apply to the UK. Then again, the real challenges of Brexit are perhaps not the strictly legal developments, but psychological or emotional factors, not in the least caused by the lengthy and uncertain process. Competing hubs and practitioners will not hesitate to try to bank on these sentiments, unjustified as that may be.

What is certain, and this is not something to be celebrated, but still a factor to be reckoned with in our industry, is that Brexit is undoubtedly going to lead to an increase in disputes, at least for some time.

London was a centre for international disputes and international arbitration long before the European Union and I am convinced it will remain so in time to come.

7. ***Congratulations on the LCIA's role as a Supporting Institution for the inaugural London International Disputes Week – it must be quite the effort! Can you tell us about the impetus for this initiative and how it intersects with the current global focus on the UK?***

The prospect of Brexit, albeit that the precise timing and format uncertain at this stage, was one of the drivers for the LIDW. It was also a good opportunity to bundle a number of new as well as existing successful and important events, including the biannual LCIA Tylney Hall symposium on 9 May.

With a focus on both arbitration and litigation, LIDW will undoubtedly celebrate London as a key centre for a variety of disputes. The city's key position in this regard

is due to a combination of English law, a wide pool of lawyers and its facilities and services (court reporters, hearing venues, etc.).

With such a robust agenda, it is going to be a busy week and I am looking forward to it! I expect many users from London and from overseas will attend events as well as set up meetings on the side. I look forward to seeing many readers of the blog in person over the next couple of days.

Thank you for this opportunity. We wish continued success to both you and the LCIA!

This interview is part of Kluwer Arbitration Blog's coverage of the inaugural London International Disputes Week (LIDW19), further posts available here. It is also a part of our "Interviews with Our Editors" series – past interviews are available here.

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