

The LCIA 2019 Annual Report: An Analysis of the Developments in International Arbitration

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On 19 May 2020 the London Court of International Arbitration (hereinafter the LCIA or the Court) issued its annual casework report for 2019.

This paper aims to present and analyse the numbers revealed in the report. The focus will be on the development of international arbitration in terms of market, diversity and inclusion, and applicable law and seat.

International Arbitration Market

A record number of 406 cases were reported by the LCIA (346 arbitrations administered pursuant to the LCIA Rules). This is the highest number of cases to be ever received by the Court and a 25% increase from 2018. These numbers reflect the consistent popularity of the reliance on international arbitration as a dispute resolution mechanism, also seen in the reports provided by other leading arbitration institutions such as the ICC Court of Arbitration^[fn]The ICC Court announced that 869 new cases in 2019, compared to 842 cases administered by the ICC Court in 2018. The full statistical report for ICC Dispute resolution will be

published in the coming months. See relevant communications [here](#) and [here](#).^[fn] and Singapore International Arbitration Centre (SIAC).^[fn] The SIAC 2019 Annual Report announces a record of 479 new case filings 2019, compared to 402 in 2018 (report available [here](#)).^[fn]

Interestingly, the LCIA also registered that it has provided mediation and other alternative dispute services for 11 cases. This rate represents an increase compared to 9 requests in 2018. As with international arbitration, these numbers suggest a rise in the use of mediations, particularly bearing in mind the recent release of the Singapore Convention of International Commercial Mediation, discussed previously on the blog, which will enter into force on 12 September 2020.

This convention has the potential to become a relevant tool for the applicability of international commercial mediation in avoiding conflicts arising from business relationships, including when affected by the Coronavirus outbreak. An increase in the number of conflicts due to the impossibility or hardship of companies to comply with their contractual obligations is expected, so it will be interesting to see if and how the 2020 Annual Report will reflect the pandemic and the users resorting to international arbitration and mediation.

Diversity and Inclusion

First, the LCIA reported a 29% rate of female arbitrator appointments in LCIA arbitrations (162 out of 566), compared to 23% in 2018.

This gender diversity increase is also a result of the institution's initiatives to promote diversity, since 48% of all arbitrators selected by the LCIA were female arbitrators (5% more than in 2018). Female candidates selected by parties and co-arbitrators also increased to 12% and 30% (from 6% and 23% in 2018), respectively.

Second, there was a rise in the number of appointments by the Court of non-British arbitrators. The LCIA appointed arbitrators from 40 different countries (compared to 34 in 2018), and appointments of British arbitrators dropped from 65% in 2018 to 51% in 2019. In comparison, the parties and the co-arbitrators selected non-British arbitrators 51% and 34% of the time, respectively.

The authors welcome these findings. It suggests an increase in appointments of a number of well-skilled international arbitration professionals coming from jurisdictions which are not among the ones traditionally appointed in respect of international arbitrations.

However, it is important to also highlight that there is room for improvement. It appears that some geographic regions are still misrepresented, such as Latin America and Africa. This can be due to the existing geographic representation in terms of party origin and choice of seat with the LCIA. In any case, considering the growing number of practitioners, professional associations, well-established arbitral institutions and academic courses originals from or/and focusing on Latin America and Africa, it is expected that appointments of international arbitration actors coming from such regions will continue to grow over time.

Third, there was an increase in first-time appointees. 19% of arbitrators appointed in 2019 (105 of 566) in LCIA arbitrations were first-time appointees. This represents an increase from 14% in 2018. For these first-time appointments, the parties selected the arbitrator in 51% of cases, the LCIA in 31% of cases, and the co-arbitrators in 17% of cases.

Moreover, 60% of all arbitrators appointed in LCIA arbitrations in 2019 were only appointed once during the same calendar year, 23% of arbitrators were appointed twice, and 8% of arbitrators three times. The average number of appointments per arbitrator was one, regardless of gender.

This change also evidences efforts to implement diversity in international arbitration. In this case, it relates to diversity in the level of openness of the market for new professionals acting as arbitrators. The relevance of these numbers cannot be understated. As mentioned, the number of international arbitrations is also increasing, so the flexibility of the market to welcome new professionals is crucial for its dynamism and avoidance of the traditional scenario in which well-established arbitrators handle several proceedings. This could compromise procedural efficiency and hinder other well-suited professionals from being able to develop expertise. This is particularly detrimental if we consider the global nature of disputes involved in international arbitration.

Applicable Law and Seat

First, among the 352 agreements under which disputes arose which resulted in LCIA arbitrations in 2019, 62% were entered into between 2015 and 2019.

These numbers show a modest increase in the number of claims based on older agreements, compared to 2018, where 70% of LCIA arbitrations arose from agreements entered into between 2014 and 2018.

Second, English law remained the most frequently chosen *lex causae*, governing 81% of arbitrations administered pursuant to the LCIA Rules (compared to 76% in 2018). Besides this, the LCIA administered 10 cases applying Mexican law, 6 cases with Pakistan law, UAE law in 5 cases, BVI law in 4 cases, and Russian law in 3 cases.

Although arguably showing a less diverse case range, the preference for English law also reflects the relevance of this law in international trade and in some of the sectors represented in the LCIA's caseload, notably banking and finance, which experienced growth in cases from 29% in 2018 to 32% in 2019. Similarly, there was an increase in the number of loan or other facility agreements seen in LCIA arbitrations, representing 30% of all agreements (rising by 8% compared to 2018).^[fn]For a discussion of the factors that lead or influence parties to opt-in or opt-out of certain governing contract laws, see Gustavo Moser, *Rethinking Choice of Law in Cross-Border Sales*, Eleven Publishing, 2018, pp. 93-116.^[/fn]

Third, although users continued to select a range of seats, England remained the most frequently chosen arbitral seat, in 89% of cases under the LCIA Rules (similar to 88% of cases in 2018). However, the LCIA verified a wider range of combination between seats and applicable laws, which demonstrate the parties' willingness to "mix and match" their choice of law and seat.

Looking to the Future

The LCIA report shows an encouraging effort to promote diversity and inclusion by the LCIA, by encouraging gender diversity, geographical diversity and "new blood" in arbitration panels. This effort in maintaining record and statistics of gender and ethnic diversity is welcomed, since it allows for transparent scrutiny from the general public, and demonstrates a conscientious policy regarding appointments, at least from the institution's side. This is in line with the role of arbitral institutions

on this issue.

Moreover, the data also shows that English law and England remained the most chosen applicable law and seat for LCIA users in 2019, despite Brexit preparations. However, the report does not indicate which governing law and seat were selected in the contracts concluded after 23 June 2016, the date of the Brexit referendum.

Of course, only long-term data can confirm whether or not London will be able to rely on the consistency and predictability of English courts, and the wide adoption of English law generally due to the perception of it being contract-friendly.[fn]for a previous reflection on this issue, see *Ana Coimbra Trigo and Gustavo Becker, 'Rethinking Choice of Law and International Arbitration in Cross-Border Contracts: A Roundtable with Stakeholders', in João Bosco Lee and Flavia Mange (eds), Revista Brasileira de Arbitragem, Kluwer Law International 2020, Volume XVII Issue 65 pp. 221 - 223).*[/fn]

Finally, the LCIA also noted on its webpage that in the first quarter of 2020, it experienced a spike in new cases. In addition, it is expected that in the medium-term, the COVID-19 crisis may lead to additional cases. We look forward to the reports that will follow to see how the current crisis may impact international arbitration cases.