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LCIA's 2021 Annual Casework Report: what is going on across the Channel?

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On 17 May 2022, the London Court of International Arbitration ("LCIA") released its 2021 Annual Casework Report.

The 2021 LCIA Annual Casework Report contains a detailed look into the LCIA's arbitration statistics including breakdowns by industry, region, figures for state and state-owned parties, place of arbitration, the geographical origins of arbitrators and parties, and statistics relating to gender diversity.

Overall, the Annual 2021 Report confirms that the LCIA remains a leading arbitral institution that is chosen by parties from all over the world and from varying industry sectors. It shows that the LCIA seeks to offer swift dispute resolution services, adapted to the parties' changing needs, all while working to promote diversity and equality in the field of international arbitration.

Reduced caseload in 2021

The 2021 Annual Report reveals that, much like many other arbitral institutions, the LCIA saw a substantial decrease (21%) in its 2021 caseload after the record high numbers of 2020. The LCIA received 387 referrals, including 322 referrals for arbitrations pursuant to the LCIA Rules in 2021, down from the 444 referrals it received in 2020. While these numbers will likely stabilise in the long-term and be more closely aligned to those of 2019, the LCIA anticipates that the ongoing war in Ukraine and the resulting sanctions will adversely impact the LCIA's caseload.

With the launch of the new 2020 LCIA Rules, claimants can now submit a composite request for arbitration to commence multiple arbitrations against one or more respondents. Thanks to this new provision of the LCIA Rules 2020, the LCIA received 29 composite requests in 2021, which commenced 96 arbitrations.

The LCIA also registered an increase in referrals for other services: it received 8 referrals for the administration of arbitrations pursuant to the UNCITRAL Rules, 10 referrals to act as the appointing authority, and 34 referrals for fundholding services. The LCIA also provided mediation services in 3 cases and received 7 referrals for the appointment of an adjudicator.

Industry sectors and agreement types remain steady

Similar to previous years, the LCIA's caseload concerned three main industry sectors: banking and finance (26%), energy and resources (25%), and transport and commodities (14%). Together, these three industries represented 65% of LCIA's caseload in 2021. These sectors generally reflect the industry sectors of claimants and respondents, however unlike previous years, in 2021, there were a high number of individuals as respondents for whom no industry was assigned.

With regards to the agreements at stake in arbitration proceedings conducted under the LCIA Rules, sale of goods agreements, service agreements, loans or other loan facilities, and shareholders/share purchase/joint venture agreements remain the four most predominant types of agreements in 2021. Between them, they made up 82% of all agreements in 2021.

2021 also saw an increase in the number of arbitrations involving disputes arising out of more than one agreement, which increased from 5.4% in 2020 to 8.4% in 2021.

Parties to LCIA arbitrations

Parties to the 2021 filings came from 90 countries and independent territories worldwide. As was the case last year, 85.2% of parties in arbitrations administered pursuant to the LCIA Rules came from countries other than the United Kingdom, with more than one fifth of the parties coming from Western Europe.

The percentage of parties from the United Arab Emirates in 2021 (9.5%) is more than double that of 2020 (4.3%) and following the March 2022 Decree of the Government of the Dubai, this percentage is projected to increase. However, the percentage of parties from Africa decreased from 11.7% in 2020 to 6.6% in 2021. The caseload from Russia also declined from 6.8% of parties in 2020 to 2.1% in 2021, and with the current geopolitical developments in Ukraine and Russia, this number is only expected to decrease.

Moreover, for the first time, the LCIA is able to provide figures on arbitrations involving states or state-owned entities, which were involved in 5.7% of all cases in 2021.

Finally, in 2021, 24% of arbitrations commenced pursuant to the LCIA Rules involved more than two parties, down from 31% of multi-party arbitrations in 2020.

Seat and Applicable Law

In 2021, LCIA arbitrations were seated in 16 countries and the laws of 31 different countries were chosen by parties as the applicable law in arbitrations.

England continues to be the most popular seat for parties with 85% of LCIA arbitrations being seated in England. The parties also chose to apply English law in 76% of LCIA arbitrations.

Arbitral appointments

Similar to 2020, there was also an almost even split in 2021 between three-member tribunals (52%) and tribunals constituting of a sole arbitrator (48%). In 2021, the LCIA continued to fulfill one of its key roles in arbitrations pursuant to the LCIA Rules, and selected arbitrators in 42% (45% in 2020) of appointments in arbitrations pursuant to the LCIA Rules.

The LCIA Court selected non-British arbitrators for 47% of the arbitral appointments, in comparison to the parties selecting a non-British arbitrator 28% of the time and co-arbitrators 33% of the time. Overall, the number of non-British arbitrators appointed increased from 37 % in 2020 to 41% in 2021. The non-British arbitrators came from 46 different countries, notably USA (5%), Canada (4%), Ireland (3%), and France (2%).

In 2021, the LCIA reaffirmed its continued commitment to appointing diverse candidates to tribunals. Indeed, a higher percentage of women (47%) were appointed by the LCIA in arbitrations pursuant to the LCIA rules, an increase from 45% in 2020. The overall number of appointments of women also remained stable at 32% in 2021, compared to 33% in 2020. Nevertheless, the percentage of women appointed by the parties decreased from 22% in 2020 to 16% in 2021.

The percentage of first-time appointees in arbitrations pursuant to the LCIA Rules increased to 17% in 2021 from 14% in 2020.

Express provisions

The LCIA Annual Casework Report also reports that parties are increasingly making use of the tools provided in the 2020 LCIA Rules. For example, the LCIA received 8 applications for the appointment of an emergency arbitrator pursuant to Article 9B of the LCIA Rules, compared with 5 in 2020. Parties to LCIA arbitrations also filed 15 applications, 2 more than in 2020, for expedited formation of the tribunal pursuant to Article 9A of the LCIA Rules.

The LCIA's 2021 Annual Casework Report is available to the public free of charge here:
<https://www.lcia.org/media/download.aspx?MediaId=890>