

Fiona Cain in Law.com International: London Remains No. 1 for Resolving International Commercial Disputes

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The Commercial Court in London heard cases involving parties from 72 countries in the year ending in March 2020, and the London Court of International Arbitration was referred 406 cases from 138 different countries last year.

Reports on London's Commercial Court and from major arbitration institutions have confirmed London as the most popular forum for international dispute resolution, with English law remaining the top choice for the resolution of international disputes.

English law is commonly preferred for governing law clauses in international contracts because it is based on well-founded principles, transparent and provides predictability of outcome, legal certainty and fairness. English law respects parties' freedom to contract and is supportive of commerce, which is reflected in its popularity.

The Commercial Court in London deals with complex cases arising out of national and international business disputes commonly relating to insurance and reinsurance, banking and financial markets, commodities, shipping and arbitration. The court's international appeal was confirmed in the 2020 Portland Report. In the year to March 2020, the Commercial Court heard cases involving parties from 72 countries with the top nationalities being Kazakhstan, Russia, United States, Cyprus and Singapore.

London is also home to well-established arbitral institutions and organizations such as the London Court of International Arbitration (LCIA) and continues to be the most selected seat for International Chamber of Commerce (ICC) arbitrations.

The LCIA is one of the oldest and leading arbitral institutions in the world. A record 406 cases were referred to the LCIA in 2019, by parties from 138 different countries and addressing disputes covering all aspects of international commerce, with the banking and finance, energy and resources, and transport and commodities sectors accounting for almost 70% of cases according to their Annual Casework Report 2019. Over 80% of these new cases had a governing law clause providing for English law and/or England as the arbitral seat, reflecting the predominance of London and the importance of English law in international trade.

Despite being located in Paris, ICC arbitration is commonly conducted in London. The ICC 2019 Statistics Report shows that the disputes are from a wide range of sectors although 40% of disputes come from the construction, engineering and energy sectors. They also record that the parties to ICC arbitrations in 2019 were located in 147 countries, a growing number, but nearly 80% of awards were given in English and as well as London being the preferred seat, English law was the most popular choice of law.

Response to the Global Pandemic

The approach of the English courts to the pandemic, wherever possible, has been "business as usual." For commercial disputes, this was possible because the English Commercial Court has long

had the power to hold hearings remotely, although previously this was generally limited to some witnesses who were abroad, giving video evidence, use of electronic bundles, and for some interlocutory matters. The logistical impact of the pandemic on parties worldwide quickly led to the transition to remote hearings, which has generally been smooth. Almost all of the Commercial Court's work is said by them to have been conducted on time, with only limited significant adjournments. The first virtual hearing took place in the Commercial Court the same week as the lockdown started in the U.K., illustrating the quick response.

The use of videoconferencing was also not new in international arbitration proceedings, but again arbitral proceedings were not typically conducted with each participant in a separate location. The ICC and LMAA have both now issued guidance to address some of the unique challenges of virtual hearings including their own checklists and guidelines for such hearings. It has been suggested that more arbitrations were postponed than court hearings in response to the restrictions on travel nationally and internationally. This may, however, partly be due to the consensual nature of arbitration, although some adjourned arbitrations are now proceeding virtually due to the ongoing restrictions and the success of remote hearings.

It is also noteworthy that many arbitrations are determined on the documents only (i.e., without a hearing), and so will have been largely unaffected by the pandemic. This approach is particularly popular for London Maritime Arbitration Association (LMAA) arbitrations, which are commonly used by international parties to resolve commercial shipping and shipbuilding disputes as well as disputes related to the offshore oil and gas sector. According to its former president, Ian Gaunt, 80% of LMAA arbitrations are normally dealt with in this manner.

Future

The Commercial Court and LMAA have both indicated that they expect that, given how well users have adapted to virtual hearings, there will not be a complete return to conventional style hearings in the future. There is no doubt that some aspects of virtual hearings will be considered going forward, and it may be beneficial to have hybrid hearings which could make hearings more streamlined, efficient and cost-effective, although at the expense of not seeing all witnesses in person. While the future remains uncertain in these unprecedented times, parties will hopefully benefit from the lessons learned and will continue to keep London and English law their top choice for arbitration and litigation.

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