



Director General's report

March 2011

In the news

Jivraj v Hashwani

We reported, in the last edition of LCIA News, the LCIA's submissions in support of the parties' application for leave to appeal in the case of *Jivraj v Hashwani*. Leave to appeal has been granted, as has permission to the LCIA to intervene in the appeal.

Dallah v The Government of Pakistan

Among many arbitration-related decisions of the Courts of various jurisdictions, the case of *Dallah v The Government of Pakistan* stands out as of particular interest; touching, as it does, most directly on the competence of arbitral tribunals to determine their own jurisdiction.

DIFC | LCIA

DIFC-LCIA were delighted to welcome Nizar Fadhlouli to the role of permanent Counsel, in November last year.

In a landmark case for DIFC-LCIA, and for the new protocol between the DIFC Courts and the Courts of Dubai, the Dubai Court of First Instance, in a recent judgment, ordered the recognition and enforcement of a DIFC-LCIA Arbitration Award. The Respondent resisted the application.

The seat of the arbitration was London, and the application was made under the New York Convention, which came into effect under UAE law in December 2006.

Although a First Instance decision, and open to appeal, this may be seen as an important step in the development of international arbitration in the UAE.

DIFC-LCIA will be the co-host, with the LCIA Arab Users' Council, of a conference in Beirut in April; and of a symposium in Dubai on the occasion of the IBA conference in October.

LCIA India

LCIA India continues to make good progress, focusing on a programme of meetings and symposia, aimed at promoting institutional arbitration in India and the wider region, and already administering its first cases.

The inaugural LCIA India Arbitration Lecture was given on 12 February, in New Delhi, by Fali Nariman, one of the most highly

respected members of the international arbitration community, on the subject "*10 steps to salvage arbitration in India*". The lecture will be published in a future edition of *Arbitration International*.

We, and LCIA India, are most grateful to Fali Nariman, and to AZB & Partners and to ELP for their generous sponsorship of this prestigious event.

Casework 2010

Referrals

As the global economy has continued its sometimes-faltering recovery, so the LCIA has experienced something of a deceleration in case referrals, though it has to be said not such a sharp decline as had been anticipated, and with particularly positive signs for the coming year in the rate of referrals in the latter part of 2010, and the first weeks of 2011.

Thus, a total of 246 disputes were referred for arbitration in 2010 (plus a further 21 for mediation or some other form of non-binding ADR); a decrease of 9.5% in the number of arbitrations, as between 2010 and 2009.

The 552 disputes referred during our most recent biennial monitoring period (2009/2010) represent an increase of 9% as compared to the previous 24 month period, despite the decline in 2010.





Nature of contracts

The agreements out of which the LCIA's 2010 referrals arose included contracts for aircraft leasing; construction; insurance; loan and other financial agreements; oil exploration; management services; the sale and purchase of shares; and the supply of a variety of commodities.

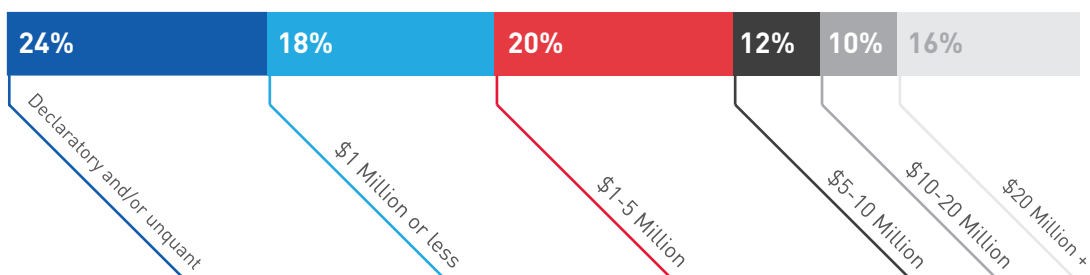
A shift in the economic scene might be discerned in the areas in which the most significant number of disputes arose in 2010, compared to 2009. Thus, commodity transactions (in steel and carbon products in particular) accounted for just 6% of 2010 referrals, as against around 20% in 2009; loan or other financial agreements, including guarantees, accounted for 11.5% of 2010 referrals, as against 17.5% in 2009; and joint ventures and shareholders' agreements accounted for 23% of 2010 referrals, as against 13% in 2009.

Sums in issue

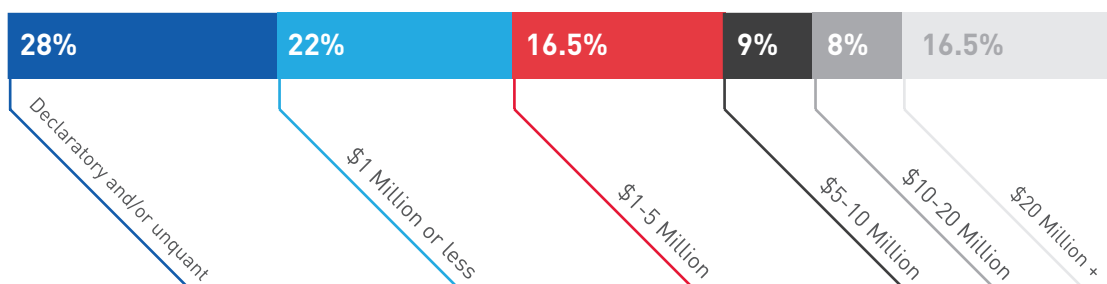
The number of referrals in which Claimants did not quantify their claim in the Request for Arbitration, and/or sought declaratory relief, increased slightly, from 24% in 2009 to 28% in 2010, as did the percentage of claims valued at US\$1million or less, from 18% to 22%, and, at the other end of the spectrum, claims valued at US\$20million or more, up just 0.5% at 16.5%.

There were decreases in all other value brackets; with claims in the range US\$1million-to-US\$5million down from 20% to 16.5%; US\$5million-to-US\$10million down from 12% to 9%; and US\$10million-to-US\$20million down from 10% to 8%.

2009



2010

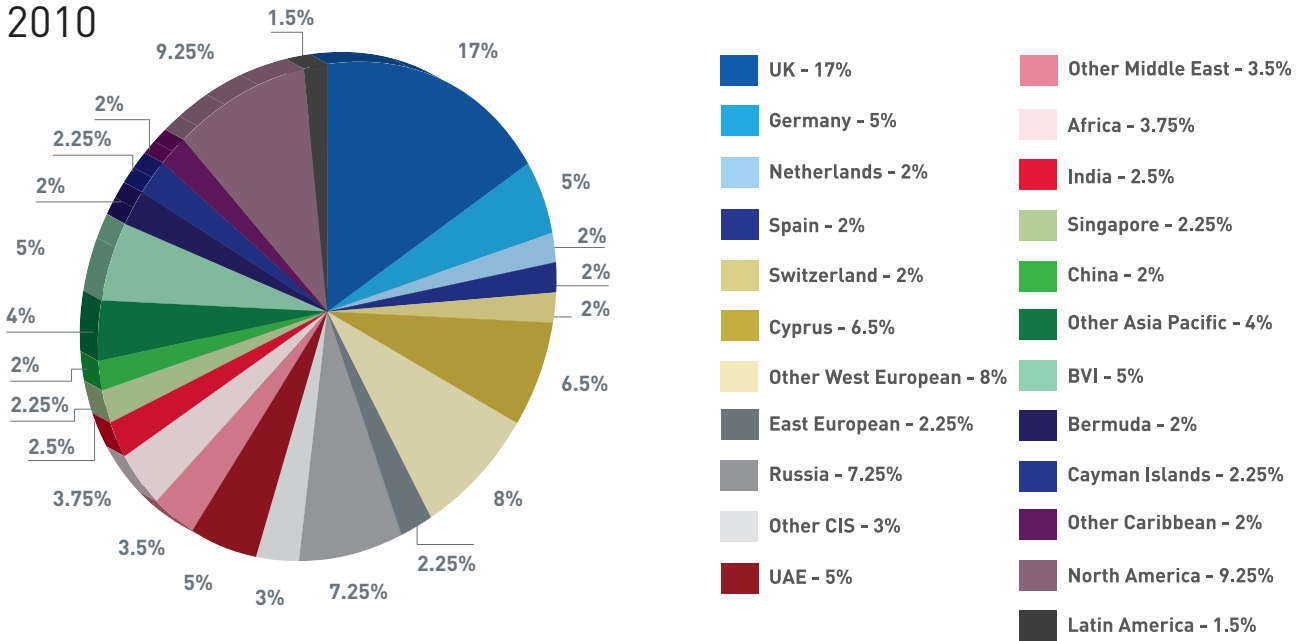




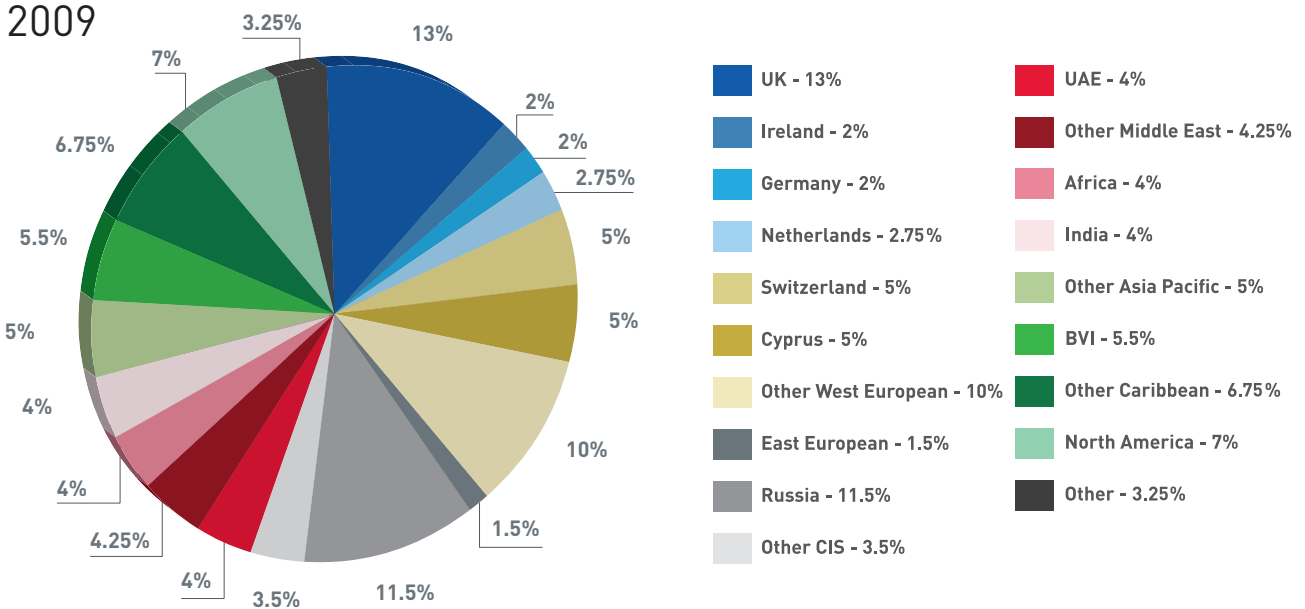
The parties

The usual diversity of nationalities in the parties bringing their disputes to the LCIA in 2010 is shown in the following chart¹, with 2009 statistics also shown for comparison.

2010



2009



Movement in the nationalities of parties between the two years has generally been relatively minor, though another increase in the number of UK parties (representing 17% of the total in 2010) is worthy of note. It is difficult to ascertain whether this is a function of the nature of the disputes fuelled by the economic downturn, but we shall monitor the situation to ascertain whether it is a blip or a trend.

¹ Two multi-party disputes involving a total of 65 UK parties have been reduced to only one party on each side to avoid skewing the figures.

The Tribunals

[2009 figures are shown in square brackets for comparison.]

During the course of 2010, the LCIA Court made a total of 344 [502] individual appointments of arbitrators, to a total of 168 [220] tribunals, of which 81 [79] comprised of a sole arbitrator and 87 [141] of three arbitrators¹. 35 of these tribunals were appointed in cases that had been referred to arbitration in 2009. The remaining 133 tribunals were appointed to cases commenced in 2010.

Of the 344 [502] individual appointments, 206 (60%) [323 (64%)] were UK nationals, of whom 107 (52%) were selected by the parties, 73 (35.5%) by the LCIA Court and 26 (12.5%) by the co-arbitrators. Of the remaining 138 (40%) [179 (36%)] individuals who were not UK nationals, 33 (24%) were selected by the parties; 95 (69%) by the LCIA Court; and 10 (7%) by the co-arbitrators.

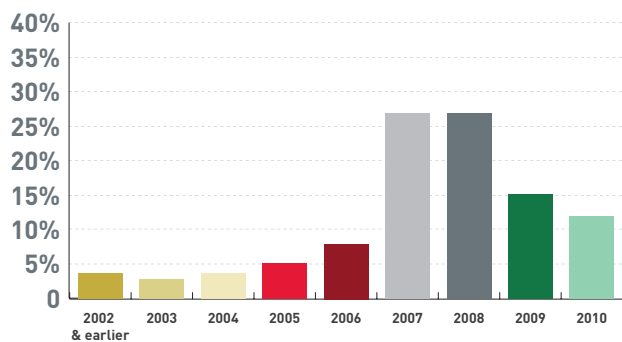
In 2009, the ratio of three member tribunals to single member tribunals was two thirds to one third, but, with an almost 50/50 split in 2010, we revert to the sort of ratio with which we had been more familiar prior to 2009.

The nationalities of arbitrators other than UK were Argentinean; Australian; Austrian; Bahamian; Belgian; Canadian; Colombian; Dutch; Egyptian; Finnish; French; German; Greek; Indian; Irish; Lebanese; Mauritian; New Zealand; Nigerian; Russian; Serbian; Singaporean; Slovenian; South African; Spanish; Swedish; Swiss; Ukrainian and US.

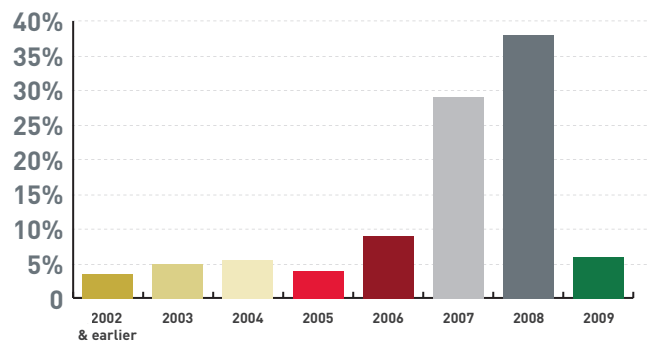
Contract dates

The dates of the contracts in dispute in cases filed in 2010 (where known), and the parallel dates for 2009, are shown in the following two charts.

2010



2009



2011

I must acknowledge the dreadful suffering of the people of New Zealand and of Japan caused by the earthquakes that struck those countries earlier this year, and by the catastrophic tsunami that followed the Japanese quake. Such terrible events of nature remind us of how fragile all our endeavours are.

I am hesitant, in the circumstances, to report on such trivial matters as the following, but members may wish to know that we shall be expanding our staff and office space in 70 Fleet Street during this year, to ensure that we are able to maintain our standards and responsiveness in the services that we provide to the growing number of users of the LCIA's services.

We hope also to see DIFC-LCIA and LCIA India going from strength to strength in the coming months, in the service of the business and legal communities in their respective regions.

We look forward to welcoming many of our members at one or other of the conferences and symposia that we shall be putting on in another busy programme this year.



Adrian Winstanley

¹ The arithmetical disparity between individual appointments and tribunals is accounted for by replacement appointments.