RUNNING THE RULE

SHORTLY BEFORE THE LCIA'S RULE REVISIONS CAME INTO EFFECT ON 1 OCTOBER, THE INSTITUTION'S DIRECTOR GENERAL JACOMIJN VAN HAERSOLTE-VAN HOF MET WITH WILMERHALE PARTNER STEVEN FINIZIO TO DISCUSS HOW ITS PROVISIONS FIT INTO HER VISION FOR THE FUTURE

Steven Finizio, Wilmer Cutler Pickering Hale and Dorr (pictured, below): *The growth of the London Court of International Arbitration (LCIA)'s case numbers has been a notable development in recent years. Why are more and more parties now choosing the institution?*

Jacomijn van Haersolte-van Hof, LCIA (pictured, right): Our overriding – and unique – selling point is the balance we strike between a light-touch approach wherever possible and being more directional only when necessary. If parties are able to take care of themselves, as many are, we look to be in their way as little as we can. It's not a one-size-fits-all style of administration, which is something I experienced as counsel and arbitrator, so it's interesting now to see the philosophy from the other side. We are also increasingly emphasising the truly international character of the LCIA. This is demonstrated not only by hires such as mine, but by the fact that we are now seeing parties choose non-London seats, which people should not forget is possible. We don't want the institution to be perceived as being overly pro-London.

'IT IS FRUSTRATING THAT SOME PEOPLE INVOLVED IN LCIA CASES WANT TO RUN THEM LIKE ENGLISH LITIGATION.'

STEVE FINIZIO, WILMERHALE

Steven Finizio: From an outsider's perspective one of the great strengths of the LCIA, but also a possible weakness, is its connection to London and England, even though the institution has for years emphasised its international perspective. The introduction in the new rules of article 16(2) – which allows the arbitrators to choose a seat other than London where the parties have not otherwise agreed – helps to make that message clearer and is an important development.

Jacomijn van Haersolte-van Hof: In some ways that was a relatively small change, but psychologically it is actually quite significant. That is not to deny that a large number of parties choose the LCIA precisely because arbitrating in London is seen as being attractive. For Russian parties, whether they are incorporated in Moscow, Cyprus or the British Virgin Islands, the fact that they can arbitrate under English law with an English seat is very appealing, even when there is no London connection to the dispute. I don't see that changing in the foreseeable future.

Steven Finizio: *What effect does your international approach have on the LCIA's operations in India, Mauritius and Dubai?*

Jacomijn van Haersolte-van Hof: It complements what we're doing there and reinforces why the LCIA is in those markets – not only because they are in themselves interesting, but because our international reputation is enhanced in the process. Each of those entities is a little bit different in terms of their rules and how the organisation works, so it's certainly been a challenge to get to grips with four offices, albeit one that forces you not to be London-centred. I'm also keen to focus on the regions in which we don't have physical offices – the US and Russia are extremely important – as well as the promotion of international arbitration more generally. For example, we run events including our Tylney Hall-style symposia in jurisdictions where we may not be likely to make a profit but which are part of a longer view regarding the future of arbitration that is not only about the LCIA.

The institution has taken a firmer position on South Korea, a fast-growing economy, which has in the past 18 months also come to be seen as one of Asia's most promising arbitral hubs. While there are as yet no plans for separate Korean rules, or indeed a formal office or registrar, the LCIA has charged a local liaison officer with educating Korean corporates as to the benefits of institutional arbitration. South Korea already houses an arbitral institution: the Korean Commercial Arbitration Board, which opened its doors in 1966 but waited until 2011 for the first case – a shipbuilding dispute between Korean insurer Dongbu and Kiev-headquartered reinsurer Lemma – to be decided under its rules. Yet it is precisely such an industry in which van Haersolte-van Hof sees promise, given that Korean shipping contracts are more often than not governed by English law. 'The message is: we can help,' she says, adding that 'parties don't have to choose London as a seat', given the perception that it can be a more cumbersome and expensive option than arbitrating closer to home.

MANPOWER NEEDED?

Although not entirely unique among institutions, the LCIA – whose nomenclature dates back to 1903, with an operational history stretching back a further two decades – is widely known for an emphasis on accessibility in which parties are encouraged to contact the registrar whenever a question arises. Yet with case filings rising year-on-year, and the 301 requests registered in 2013 representing the institution's highest number to date, is there not a danger that its approachability will be compromised by an ever-growing workload? As such, will the LCIA become a victim of its own success? Those claims are rejected by van Haersolte-van Hof, whose appointment in February saw her become the first female director general in the institution's history.

Jacomijn van Haersolte-van Hof: We are certainly aware that accessibility is perceived to be one of the big advantages of LCIA arbitration and are keen to ensure that users continue to call us when required. We are also rolling out a new website which includes comprehensive information for parties and arbitrators designed to answer their more generic questions in an efficient way, but that will certainly not replace the need for people to speak to us directly. If the case load continues to increase we will consider growing our team of case handlers; we currently have a good balance, but that's certainly not a static thing.

Steven Finizio: *Is the speed of the process affected in any way by that growth? What have you done to quicken arbitration in the past 12 months?*

Jacomijn van Haersolte-van Hof: The average time from filing to award is 15 months, which is pretty fast compared to what I've seen from other institutions, although clearly there will be some cases which take longer, in particular when parties stay the proceedings for long periods. There are also several provisions in the new rules which may look like small changes but in fact give a greater ability both for the LCIA to monitor tribunals and for tribunals to monitor parties. One such requirement is that the tribunal draws up a timetable for the case which will include deadlines for the arbitration, not only for pleadings, the hearing and so on but also for the deliberations. Although it's a small thing, we are doing all we can to ensure that users receive their awards within an acceptable timeframe by encouraging – and, where needed, chasing – arbitrators to keep proceedings on track.

Steven Finizio: One of the things I like most about the LCIA is that its rules are different to those of many other institutions, which are based broadly on the same model. Yet it is frustrating that some people involved in LCIA cases want to run them like English litigation, meaning that you often don't get a timetable – you take one step, schedule the next step, and so on, so addressing that is a positive development. It provides a clearer sense of what the timescale is going to be and moves people towards a more international approach.

Jacomijn van Haersolte-van Hof: Of course it still allows for considerable freedom and flexibility. We simply want lawyers and arbitrators to think about how best to structure the process, and if a case needs tailor-made solutions we would be the last ones to restrict that. But the default position requires a degree of control so that we don't have cases which are going nowhere. We appreciate that may be a greater challenge where both parties are inclined to run the arbitration like they might a High Court case. However, the new rules strengthen the ability of the LCIA – and, more importantly, the arbitrators – to require parties to speed things along. If at least one of the parties sees sense, which they often will, there's enough in the rules to make the process work.

DOUBLE QUICK TIME

'I wasn't appointed on a particular mandate,' says van Haersolte-van Hof, a Dutch national whose career has included stints at a predecessor firm to Benelux giant Loyens & Loeff and Freshfields Bruckhaus Deringer before launching HaersolteHof, a Dutch arbitration boutique, in 2008. 'The board and I have been developing how we see the future for an institution that has grown so much over the last 17 years,' she adds. 'The question is now: in which direction are we going to take it?'

Steven Finizio: *Why did the LCIA introduce the emergency arbitrator provisions? What do you think its benefits will be?*

Jacomijn van Haersolte-van Hof: The decision to introduce emergency arbitrator provisions was made before my appointment, but I am certainly in agreement that it was something the LCIA needed to offer as a full-service arbitration institution. That is in spite of the fact that the courts in London are seen as being well-equipped to deal with such measures. However, when you've persuaded parties that arbitration is better for their case they will rightly expect you to provide a better service than is available in the courts, including the availability of interim measures. We already had an expedited procedure, and indeed there was some discussion around whether the emergency arbitrator provisions were needed. Ultimately, though, they are two different things, and need to be treated – and offered to users – as such.

Steven Finizio: *How do you see the emergency arbitrator system working in practice?*

Jacomijn van Haersolte-van Hof: It has been positioned so as to be flexible and to ensure that there is no need to have a hearing, although my experience is that a hearing can in some cases be efficient in dealing with certain issues. That is going to be at the discretion of the emergency arbitrators; we will also give parties the freedom to request that a measure be issued in the form of an order or an award. From my initial conversations with users and arbitrators there is certainly interest in the fact that we're introducing these provisions. Ultimately, we should be providing a full-service offering. Whether that means a few emergency arbitrator cases a year, or a few dozen, isn't so much the point. We need to be able to offer the option.

'THE NEW RULES STRENGTHEN THE ABILITY OF THE LCIA TO REQUIRE PARTIES TO SPEED THINGS ALONG.'

JACOMIJN VAN HAERSOLTE-VAN HOF, LCIA

Steven Finizio: It is a very good development. You are also right to say it is different from the expedited procedure, although they do overlap to some degree. Even so, it gives users of LCIA arbitration two distinct and valuable offerings, which not every institution can say.

Jacomijn van Haersolte-van Hof: I hope and expect that as the process beds in there will be acceptance by the English and other courts. In the Netherlands, for example, the judiciary increasingly came to accept that they weren't required to interfere in the emergency arbitrator process unless there was an objective need for the court to keep the case – where there was the involvement of third parties, for example. So, while it is important to recognise the limits of the law of the seat, practice will develop and nothing is set in stone.

About the authors

Steven Finizio is a partner at Wilmer Cutler Pickering Hale and Dorr in London. His practice focuses on complex commercial and regulatory disputes, and concentrates primarily on international arbitration. He has advised clients regarding disputes under the rules of most leading international arbitration institutions and in ad hoc proceedings, and also serves as an arbitrator. Steven teaches international arbitration at Pepperdine University Law School and, among other publications, he is co-author of *A Practical Guide to International Commercial Arbitration: Assessment, Planning and Strategy* (Sweet & Maxwell 2010).

Jacomijn van Haersolte-van Hof became director general of the London Court of International Arbitration on 1 July 2014. Previously, she practised as a counsel and arbitrator in The Hague at her boutique HaersolteHof, which she set up after three years as of counsel in the international arbitration group at Freshfields Bruckhaus Deringer in Amsterdam. She was previously with Amsterdam firm De Brauw Blackstone Westbroek and before that Loeff Claeys Verbeke in Rotterdam. She has sat as arbitrator in cases under the ICC, LCIA and UNCITRAL rules, as well as those of the Netherlands Arbitration Institute (NAI). She has also arbitrated cases at the Royal Dutch Grain and Feed Trade Association and the Institute of Transport and Maritime Arbitration, both based in the Netherlands. She is on the ICSID roster of arbitrators.

About Wilmer Cutler Pickering Hale and Dorr

In every area of practice, WilmerHale brings the insight, dedication to excellence, and commitment to client service needed for our clients to achieve their business objectives. Our five-department structure and team approach to service enable us to provide the highest level of responsiveness and access to lawyers with the most appropriate experience.