The London courts had a record year.

Russia and Kazakhstan continued to dominate in court but are now joined by Ukraine.

This year’s report reviewed the 258 cases heard in the London Commercial Courts between March 2018 and March 2019. Portland’s litigation consultants’ analysis reveals that:

1. The London courts had a record year.
2. Russia and Kazakhstan continued to dominate in court but are now joined by Ukraine.
3. Civil fraud, investigations and arbitration challenges saw a dramatic increase.
4. New commercial courts have the opportunity to leapfrog ahead.

The number of different nationalities and litigants using the London courts, and the number of judgments the courts produced, were all at record highs this year when compared to the previous five years.

Over the past year, the courts heard 258 cases. While there has been a steady upward trend over previous years, this is a 63 per cent increase from 2017/18.

The number of nationalities of litigants using the courts also increased significantly. Seventy eight countries were represented, up from 69 previously. In total, non-UK litigants accounted for 60 per cent of users.

A surge in litigants from Europe drove this year’s growth, more so than previous years (see Chart A). While the proportion of litigants coming from Asia also increased, the gulf between the two regions has almost doubled.

The Americas and Africa maintained their steady ties. Both regions remain disproportionately represented by a small number of countries: the US, Mauritius, Angola, Egypt and Libya.

Finally, the total number of litigants who used the courts surpassed 1,000 in 2018/19.

These figures demonstrate that the London Commercial Courts have upheld their strong reputation among foreign and domestic litigants alike.

A. LITIGANTS BY REGION*

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*of known nationality
A small number of countries have been consistently prominent in the London courts over the years. This trend has continued in 2018/19. Russian litigants continue to loom large in joint fourth position, joined by Kazakhstan at third place. Ukraine, notably, has entered the top ten litigants by nationality for the first time since 2014 (see Chart B).

This year saw 25 Ukrainian litigants in the London Commercial Courts, with 20 of those relating to civil fraud and investigations. In a majority of these, Ukrainian individuals were the defendants in high-profile cases. These include politically connected persons such as Igor Kolomoisky, who was the defendant in three separate cases.

The UK Government has increased the scrutiny of high-profile Russian, Kazakh and Ukrainian nationals. Despite this, London clearly remains the forum of choice for litigants from these jurisdictions. Cases continue to involve oligarchs and billionaires often residing in London. Unlike cases involving other nationalities, the majority of such litigants are individuals rather than companies or governments. Some of these individuals face worldwide freezing orders and jurisdiction challenges.

It has been an interesting year for worldwide freezing orders in other respects. In CMOC v Persons Unknown, the courts approved a worldwide freezing injunction against ‘persons unknown’ for the first time. The case considered unknown individuals who had committed large-scale international fraud online. It was considered a step forward in tackling online crime.

The US, meanwhile, continues to rank highly in terms of the number of litigants. Germany is the highest-ranking European Union member for the second year running.
The second most popular litigation type was arbitration challenge cases. Arbitration challenges increased by 56 per cent this year. As Chart E indicates, this trend has been building for the past two years. In 2016/17 the courts only heard four cases. This is an example of the Commercial Courts’ role in supporting London as a global arbitration centre.

Litigants from a small number of countries drove the rise in arbitration-related cases. After the UK, the top non-UK nationalities launching arbitration challenges were Cyprus, Pakistan, India and Singapore. These countries accounted for over half the litigants heard in arbitration challenges 2018/19 (see Chart F).

This year recorded a 45 per cent increase in civil fraud and investigation cases from 2017/18. It is now the third most common type of litigation (see Chart D).

The UK and Kazakhstan dominate as the litigants in civil fraud and investigation cases, with 115 and 27 litigants respectively. The 27 Kazakh litigants were spread across just four cases, which were all brought forward by Kazakh claimants. Of these cases, three were against other Kazakhs.

The UK Government’s more aggressive approach to white-collar crime has driven the increase in civil fraud and investigations cases. Tougher regulations such as the Criminal Finances Act (2017) have also resulted in a number of law firms investing heavily in white-collar crime practices. These figures suggest these investments may be paying off.

The number of challenges under the Arbitration Act 1996 have increased despite the unlikelihood of the judge deciding in the challenger’s favour. As Chart E demonstrates, the courts have consistently found in the defendant’s favour since 2015.

While both Cyprus and Singapore ranked in the top five last year, this year marked the first Indian arbitration-related case recorded by Portland and the first Pakistani case since 2015/16. Overall, India experienced a record number of litigants, ranking joint third out of all non-UK nationalities with 29 litigants. Over half of these were within ‘Banks, Financial Services and Insurance’ sector, for which the country ranked joint first with the US. A particularly high-profile case was between state banks and well-known businessman Dr Vijay Mallya. Dr Mallya is currently facing extradition to India on economic charges.
Portland conducted interviews with commercial courts globally and undertook research into those that have opened in the past fifteen years to assess the trends driving their success and growth.

There are now four internationally recognised commercial courts aside from London, as well as many other national commercial courts.

Despite this, the London courts continue to dominate English-language dispute resolution. This is, perhaps, unsurprising considering it has been operating since 1895. Establishing a world-class court system takes time.

The amount of time needed is, however, getting shorter. The London court system has provided other courts with an opportunity. Knowledge sharing, transplanting legal systems and employing experienced judges have allowed and will potentially allow new courts to leapfrog ahead and become recognised courts more quickly.

This, as well as significant investments made in recognition of the difficulty in becoming established, allows countries to position themselves as financial and business hubs where disputes are resolved quickly and consistently.

**NEW COMMERCIAL COURTS HAVE THE OPPORTUNITY TO LEAPFROG AHEAD**

**G. HOW LONG DOES IT TAKE TO LAUNCH A NEW COMMERCIAL COURT?**

Singapore, Qatar and other courts employ world-class judges to ensure quality in their judgments and the expertise required to manage complex commercial cases. Qatar is pushing to attract more international litigants, having made an agreement recently with the Qatar Free Zones Authority (QFZA) to expand its jurisdiction to cover entities operating within the QFZA.

China has established two new international commercial courts to ease the resolution of disputes related to its flagship Belt and Road Initiative. The courts have also launched an English language website in efforts to drive international companies to the courts.

Since 2017, five European courts have announced the launch of an English-speaking commercial court. So far, only two of these have opened and heard their first case. This highlights the complexity of opening English-speaking courts in non-English speaking countries with different legal systems. A spokesperson for the High Court of the Canton of Zurich noted in an interview with Portland that the “implementation of procedures in international commercial disputes only in English requires not only the adaptation of cantonal and federal laws but would also entail considerable expenses.”

The opening and expansion of commercial courts globally demonstrates the importance given to effective dispute resolution by emerging international business hubs. Some have speculated that the opening of international commercial courts should serve as a warning sign of the potential decline of the London courts, especially with the uncertainty of Brexit. This has yet to be seen. It will be important to follow the development and growth of these international courts in comparison to foreign litigant use of the London courts over time. It seems likely that, while more countries try to take a slice of the pie, the pie will continue to grow.
METHODOLOGY AND SOURCES

Portland’s Commercial Courts Report 2019 analysed data provided by The Lawyer’s Litigation Tracker database for the period from March 2015 to March 2019. This data includes double counts for multiple judgments and hearings. Research from primary and secondary sources supplemented our analysis.

Portland would like to thank the representatives from the international courts for their support and cooperation throughout the research process.

Please contact Portland’s Disputes practice for additional data and analysis, or to use the findings in this report.


2 Source: Zurich spokesperson, Andrea Schmidheiny Konic in email exchange with Portland