

# Commercial Courts Report 2023

*With a foreword from Lord Neuberger of Abbotsbury*

Portland's annual Commercial Courts Report analyses judgments from the London Commercial Courts to identify notable trends – including the number of cases, litigants, nationality of parties involved in litigation and perceptions of the London courts internationally.

Between April 2022 and March 2023, **257 judgments** were handed down in the London Commercial Courts with a new record set for the highest number and proportion of foreign litigants ever seen.

Portland's proprietary **polling and data analysis** also examines London's attractiveness to international litigants and the future of ESG and climate litigation.

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## A record year for international litigants in the London Commercial Courts.

Sixty per cent of litigants in the past year were not from the UK. This is the highest proportion and number of international litigants ever recorded.

The diversity of litigants' nationalities also had a record year, with 78 countries appearing in the Courts.

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## The US, Russia, Singapore and India make the top five – after the UK.

US and Russian dominance was further cemented, while Singapore and India's presence sharply increased.

Portland's polling shows that, although opposition has softened since last year, a majority of the UK public remains against law firms providing legal services to Russian clients.

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## UK public overwhelmingly supports climate litigation, with ESG cases on the rise.

Almost 90% of respondents think that companies owe citizens a duty of care to cut their emissions in line with global climate goals.

Polling reveals overwhelming support for courts to require companies to meet more ambitious climate targets.

### INCLUDES EXPERT OPINION FROM:



#### Lord Neuberger of Abbotsbury

Former President of the UK Supreme Court, currently practising as an arbitrator and mediator

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#### Lawson Caisley

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#### Natalia Selyakova

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#### Laura Clarke OBE

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### KEY FINDINGS:

78

COUNTRIES APPEARED IN THE COURTS – HIGHEST NUMBER RECORDED



257

JUDGMENTS HANDED DOWN 11% INCREASE FROM PREVIOUS YEAR



1120

LITIGANTS 23% INCREASE FROM PREVIOUS YEAR



40:60

SPLIT UK V. NON-UK LITIGANTS



# Foreword to Portland's Commercial Courts Report 2023



**Lord Neuberger  
of Abbotsbury**

**Former President of the UK Supreme Court and Master of the Rolls,  
currently practising as an arbitrator and mediator**



The international standing of the common law and of UK Judges and lawyers (solicitors, counsel, arbitrators and mediators) is uniquely high. As a result, London remains the global centre for commercial dispute resolution. One only has to walk around the City to appreciate this: there are a remarkable number of buildings occupied by solicitors. The point is further demonstrated by the many contracts with an English law and/or English jurisdiction clause despite having limited, or even no connection to the UK and despite involving no party based in this country.

London's role as the global leading legal centre is important for this country, both domestically and internationally. Domestically, it reinforces the rule of law and drives the economy, both directly and indirectly. Internationally, it represents an important factor in the UK's position in the world, which, unlike many soft power features, has not been harmed by Brexit.

The Commercial Court is absolutely central to this achievement. Its Judges lay down and develop the common law, a function which is vital for business in a fast-changing world; they also uphold and support the high standards generally achieved in the legal profession; and of course, they resolve disputes which are otherwise intractable, as well as providing a vital backstop and support for arbitration and ADR.

There is an increasing number of potential competitors – perhaps especially in Europe and the Far East – for the international commercial legal work which currently comes to London. It is, therefore, vital to do all we can to maintain the valuable and impressive standing and popularity of the Commercial Court. In that connection, information about and from stakeholders, as well as users of the Court is essential. Portland's Commercial Courts annual reports, which provide so much valuable information and analysis – play a significant part in maintaining and supporting the UK's leading international legal role.

I am therefore very pleased to welcome the 2023 edition of the Report. This year's Report, which is of course mainly based on data gathered during the 2022 calendar year, has a great deal of interesting and useful information. The findings confirm the importance of London as the world's centre for commercial law, the quality of the Commercial Court's judgments, and the international reach and appeal of the Court. Although the 2020 pre-Covid level of activity is yet to be achieved, there have been significantly more judgments than in 2020, involving over 1,000 litigants. There has been a record proportion of international litigants: only forty per cent of litigants were from the UK, which is a substantial reduction from the previous year.

By contrast, the number of litigants from the US, Russia, India, and Singapore have substantially increased from the previous year. I am surprised by the increase in Singaporean and Indian litigants: it appears to be a particular compliment to London, given the keenness of the Singaporean courts and arbitration institutions to attract southern Asian international dispute resolution to Singapore. It will be interesting to see the Singaporean figures for next year – and with the imposition of sanctions following the invasion of Ukraine in February 2022, it will also be interesting to see how many Russian litigants there are in 2023.



# 1 A record year for international litigants appearing in the London Commercial Courts

**The London Commercial Courts have never been so international.** The number of non-UK litigants, and their proportion compared to British litigants hit a record high this year, along with record diversity of nationalities appearing in the courts.

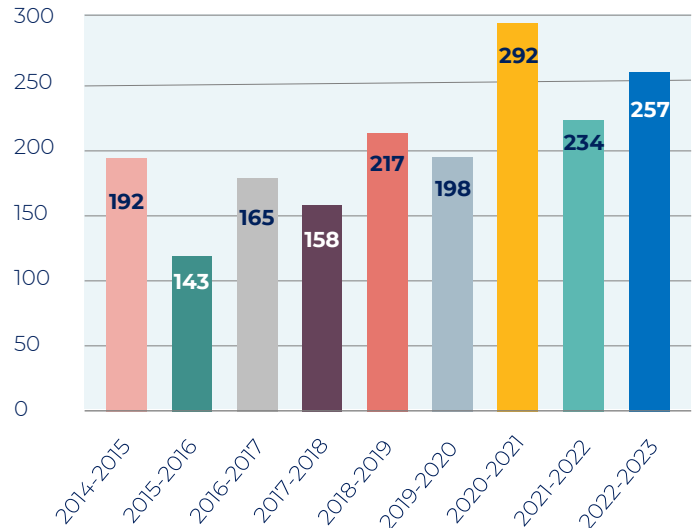
London has faced increased competition from other jurisdictions seeking to attract disputes traditionally adjudicated in the City. Yet, these findings may assuage concerns about threats to London’s standing as an international litigation hub.

Portland’s exclusive polling reveals that public opinion aligned with London’s popularity amongst international parties. **87% of respondents agreed that “the English courts and English law have an important impact on the UK’s international reputation”.**

Activity in the Commercial Courts also recovered from last year’s notable dip, with **the number of judgments handed down increasing by ten per cent.** This correlated with a 23% increase in the number of litigants, with over 1,000 litigants appearing in the Courts.

Portland also recorded the highest proportion of litigants from the European Union (EU) since 2018 (15.3%). This is a potential sign that EU countries have not wholly reduced their reliance on English institutions, despite the enforceability difficulties presented by the UK’s non-accession to the Lugano Convention.

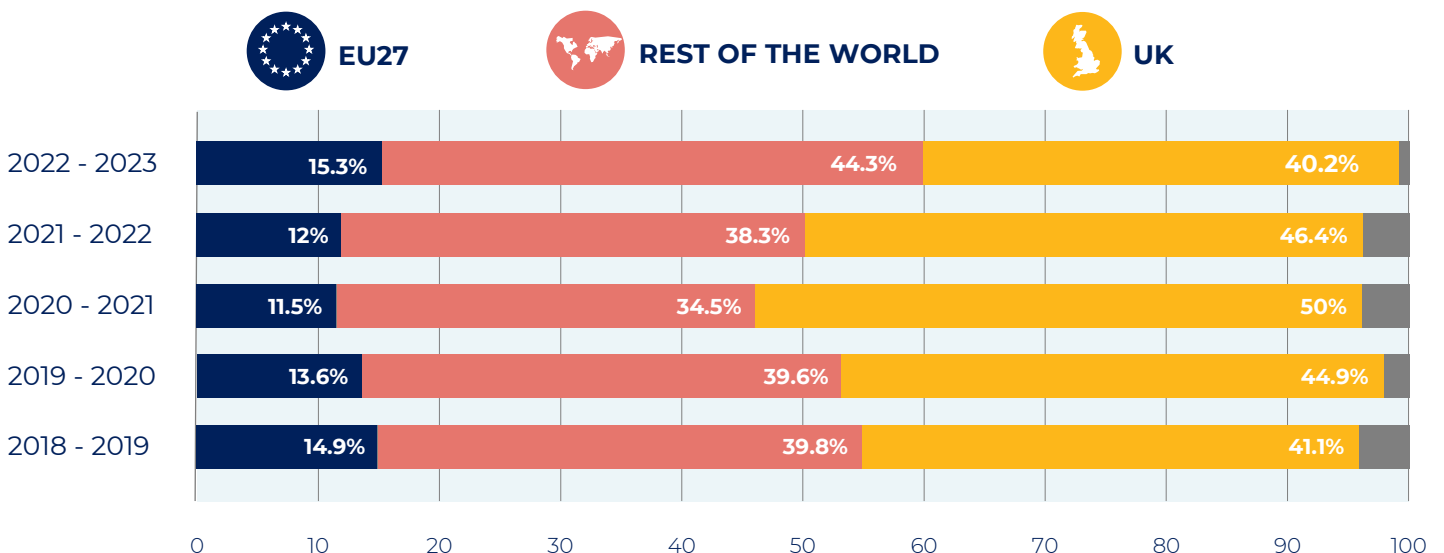
## A. Number of judgments handed down by the London Commercial Courts



The 2019 Hague Judgments Convention could, however, solve some of the cross-border enforcement issues presented by Brexit. The UK Government initiated consultations on introducing it into domestic law in January 2023.[1]

However, it is noteworthy that **this is the first year an EU member state has not featured in the top five litigant nationalities in Portland’s analysis.**

## B. Proportion of EU27, UK and rest of the world litigants 2018-2023



\*of known nationality. Unknown nationalities shown in grey.

## C. Top five litigants by nationality



Sixty per cent of the litigants appearing in the Commercial Courts in the past year were from outside the UK, constituting the highest proportion of international litigants ever recorded.

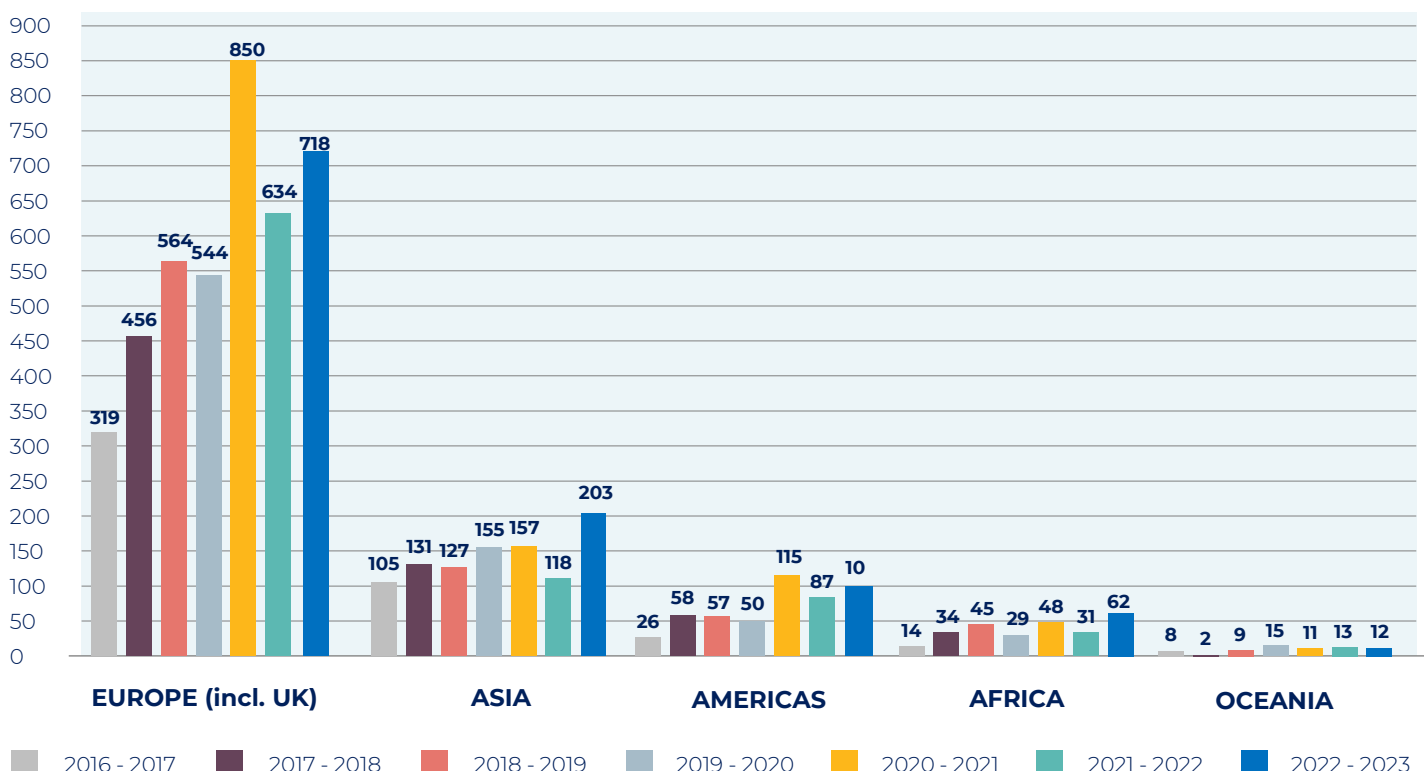
These **litigants originated from a record 78 different jurisdictions**, reflecting London's increasingly strong reputation as the world's leading hub for foreign litigants. Serbia, Bolivia and the Ivory Coast were among the nationalities appearing for the first time.

The dramatic rise in litigants from Asia (figure D) was driven by record numbers of appearances for both Singaporean and Indian litigants (figure C) who ranked among the five top users this year. **Please find an in-depth analysis into Singapore's and India's presence on pages 11 and 13.**

The 98% increase in litigants from the African continent marked the region's highest ever showing in the Commercial Courts. This surge can be partly attributed to the 21 Nigerian litigants appearing this year across six judgments, a ten-fold increase in Nigerian appearances from last year. Other nationalities from the region frequently appearing were Liberia (10 litigants) and Mozambique (6 litigants).

Several countries' presence in the top ten nationalities has remained steady. Despite Switzerland being pushed out of this year's top five, its presence increased slightly (26 litigants). Similarly, Ireland maintained its presence in the top ten with 20 litigants appearing this year, half of which were involved in aviation disputes. Kazakhstan has also dropped out of the top ten for the first time in Portland's analysis, seeing its presence decrease by 81% in three years, recording just eight litigants this year.

## D. Litigants of known nationality by region

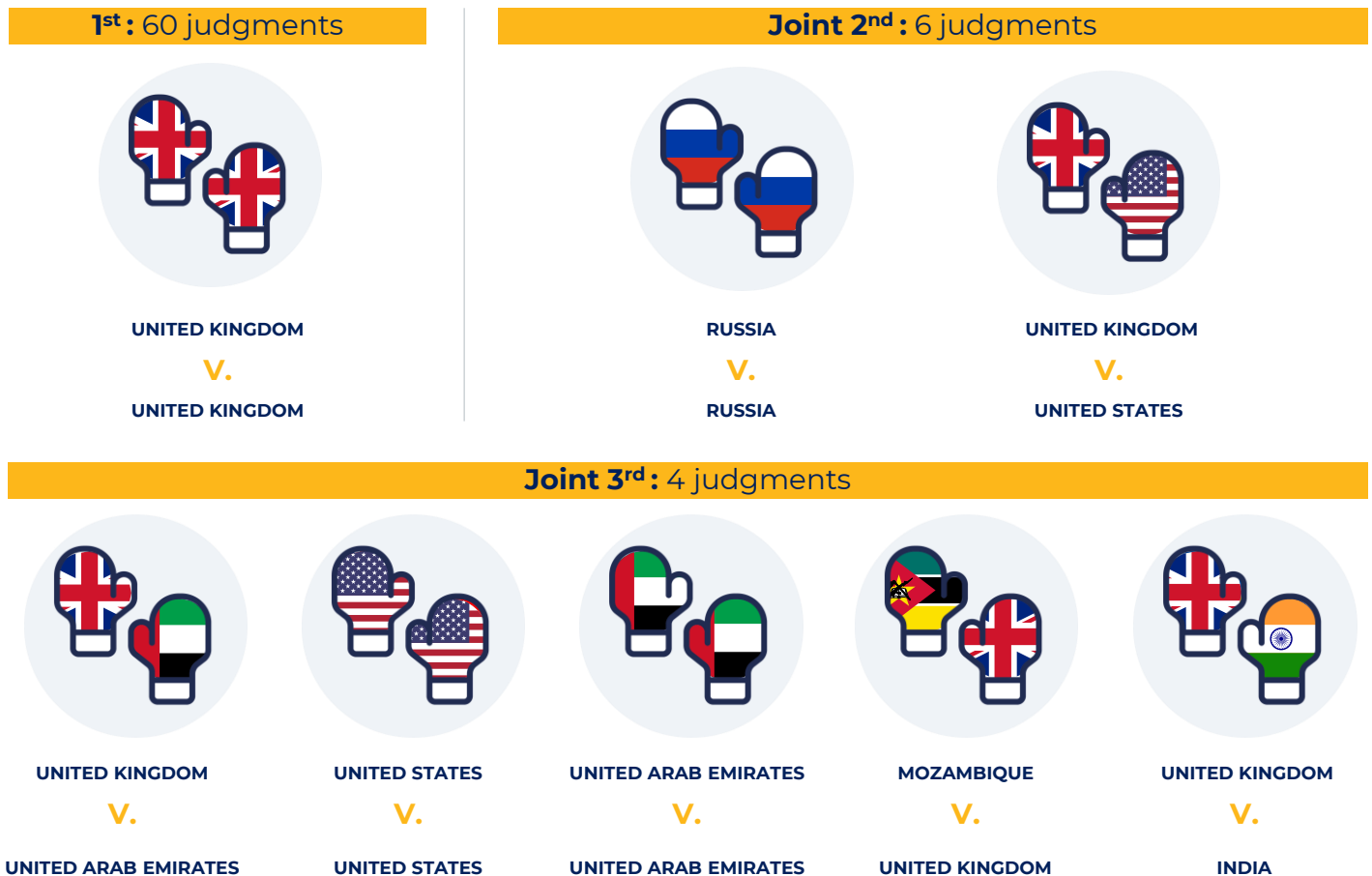


## FACE-OFF: RECORD NUMBER OF NON-UK PARTY PAIRINGS

April 2022 to March 2023 saw the **highest number of intercontinental party pairings** in cases ever recorded. This was also the second consecutive year that no EU27 countries appeared in the eight most frequent pairings, despite the number of EU litigants returning to 2018 levels.

Of note is Russia v Russia cases ranking joint second – with both sanctioned entities and individuals appearing in the Courts. **Please find an in-depth analysis into Russia's presence on page 9.**

### D. Top Eight Party Pairings by Nationality\*



\*Displayed order of nationalities does not reflect position of a party as claimant or defendant in the case.

This is the first year where more than three different continents are represented in the top eight face-offs.

Mozambique v. United Kingdom ranked in joint third place alongside four other pairings. This can be attributed to the Republic of Mozambique's frequent appearances in the Commercial Courts this year, regarding procedural matters related to its landmark claim against Credit Suisse International and others over the 'Tuna Bonds' scandal in which the bank was fined \$475 million by global financial regulators. (*Republic of Mozambique v Credit Suisse International & Ors*). [2]

The United Arab Emirates (UAE) v. UAE pairing maintained its presence as one of the most common nationality face-offs. Emirati litigants increased their appearances in the Commercial Courts by a notable 146%. This could partly result from a Directive issued on 13 September 2022 by Dubai's Ministry of Justice which facilitates the enforcement of English Court judgments in the UAE. [3]

This year also saw cases between lead US litigants break into the top pairings for the first time, consolidating their presence in the Commercial Courts for yet another year.

Although the number of UK litigants increased by four percent this past year, **judgments between lead UK litigants (litigants appearing as the first defendant or claimant) decreased by six percent, reflecting the increasing use of the Commercial Courts for disputes between UK and non-UK litigants.** This is the second year in a row where cases between UK litigants has decreased.

## 2 The US, Russia, Singapore and India make the top five – after the UK.

### US LITIGANTS IN THE TOP THREE FOR THIRD YEAR IN A ROW

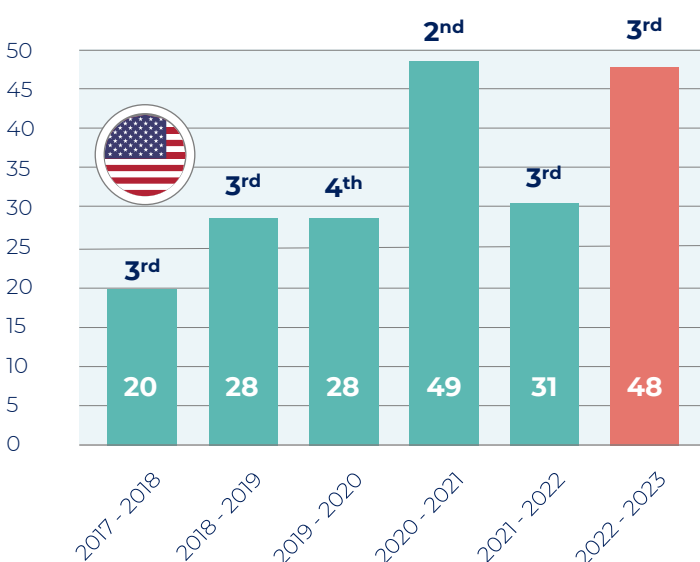
The UK's 'special relationship' with the US continues to be reflected in commercial litigation trends.

**US litigants ranked as the third most common nationality behind the UK and Russia – the third year in a row they have appeared in this position.** American businesses and individuals have consistently appeared in the top five most common litigant nationalities since 2016.

The number of US litigants appearing in the Courts increased this year following a dip in appearances recorded in Portland's 2022 report. Eighty-two per cent of these litigants were companies, with a third providing financial advisory services, such as banks, investment firms and crypto financial services. Other sectors represented included airlines (*Virgin Aviation TM Ltd & Anor v Alaska Airlines Inc*) and renewable energy (*Hays & Ors v Bloomfield Investments LLC*).

There were 16 cases involving US litigants in the London Commercial Courts between April 2022 and March 2023. These cases were against a total of five different countries: China, Nigeria, Taiwan, India and the UK. This is a 50% decrease in the diversity of nationalities which US litigants faced in the Commercial Courts as recorded in Portland's 2022 Commercial Courts Report.

#### E. Number of US litigants and ranking



One notable case returning to the Commercial Courts for the second year was the Federal Republic of Nigeria's £1.4 billion lawsuit against US bank JP Morgan (*The Federal Republic of Nigeria v JP Morgan Chase NA*). Nigeria claimed that the bank had acted negligently in sending over £700 million to an account linked to convicted money launderer and former Nigerian Oil Minister Dan Etete. Mrs Justice Sara Cockerill dismissed Nigeria's claim, ruling that they had failed to prove fraud had actually taken place. [4]

**A large portion (38%) of disputes involving US litigants also involved UK litigants.** The proportion of judgments between UK and US litigants was the same as last year's report, the most of any nationality. In fact, UK litigants have been the most recurrent nationality to face US litigants in the English Commercial Court every year, since Portland began collecting data in 2012. One significant transatlantic dispute was between Alaska Airlines and Virgin, regarding the former's yearly licensing fee for the latter's trademark, which the Court ruled Alaska Airlines should continue to pay (*Virgin Aviation TM Ltd & Anor v Alaska Airlines Inc*). [5]

**Data analysis also shows an increase in the number of judgments between US claimants and defendants.** Four judgments in the past year involved All-American litigants. This is a significant increase as there were no judgments of this character in the previous year. This is also the first year since Portland began collecting data with more than one judgment involving All-US litigants.

The spike in All-American litigants is largely due to *Moss & Ors v Martin & Anor*, which appeared in the Courts three times in the past year, more than any other involving US litigants. The case relates to a dispute between former business partners over their YouTube channel. The claimants brought an action on judgments that they had obtained against the Defendants in proceedings in Texas courts, which totalled several million dollars. [6]

## English Commercial Court continues to attract high number of US litigants



**Lawson Caisley**

**White & Case Partner, Head of the firm's Commercial Disputes in London**

The enduring popularity of the English Commercial Court as a dispute resolution forum for US litigants is likely to be due to a mixture of legal and practical considerations depending upon the particular circumstances of the case.

An important general point to note is that England and the US remain by far the most popular jurisdictions globally for governing law and jurisdiction clauses in significant commercial contracts. As a result, US litigants tend to be more comfortable with litigating before the English courts than before most other non-US courts. This is reflected by the US consistently ranking as the first or second foreign country with the highest number of litigants appearing in the Commercial Courts over the past three years.

From a legal point of view, certain aspects of the English litigation machinery can be appealing to US litigants. For example, the 'loser pays' principle acts as a disincentive against unmeritorious or frivolous litigation, and the lack of jury trials or jury involvement in commercial disputes can result in a greater degree of certainty and predictability in relation to judgments and damages awards.

In addition, the English Commercial Court judges are respected internationally for their quality and political impartiality, and the English civil procedure (in relation to issues such as disclosure) is generally regarded as reasonable and proportionate.

The overwhelming presence of companies amongst US parties appearing in the London Courts – making up 82% of all US litigants this year – is a testament to the Courts' popularity for American corporates.



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Whilst the above aspects of the English Commercial Court may in themselves be attractive to US litigants (as demonstrated by the existence of judgments involving all-US litigants), the enduring popularity of the English Commercial Court to US litigants is also driven by certain practical and commercial factors.

When negotiating jurisdiction clauses, commercial parties will take into account practical issues such as the location of the counterparty and its assets, and the ease of enforcement of any court judgment that might be obtained against the counterparty in the future.

A US company may therefore conclude that, should it become necessary to sue a UK-based contractual counterparty, proceedings in the English Commercial Court with the attendant ease of enforcement of any resulting judgment against the counterparty's UK assets may offer significant practical advantages over insisting on a US jurisdiction clause.

The influence of such practical considerations is borne out by the fact that nearly 40% of judgments involving US litigants also involved UK litigants, and that UK litigants have consistently been the most prominent nationality to come against US litigants in the English Commercial Court.

# RUSSIA STILL THE SECOND MOST COMMON LITIGANT NATIONALITY, WHILE UKRAINIAN LITIGANTS DROP TO ZERO

**In line with last year's report findings, Russia continues to dominate rankings as the second most common nationality of litigants in the Commercial Courts, after the UK.**

Russian litigants using the Courts increased by 41% this year, with 58 litigants listed. This number has increased every year since Portland began collecting Commercial Courts data, and has increased by 81% in three years. Nearly two thirds of Russian litigants appearing in the Commercial Courts this year were individuals (38), along with 19 companies and the Russian Federation itself.

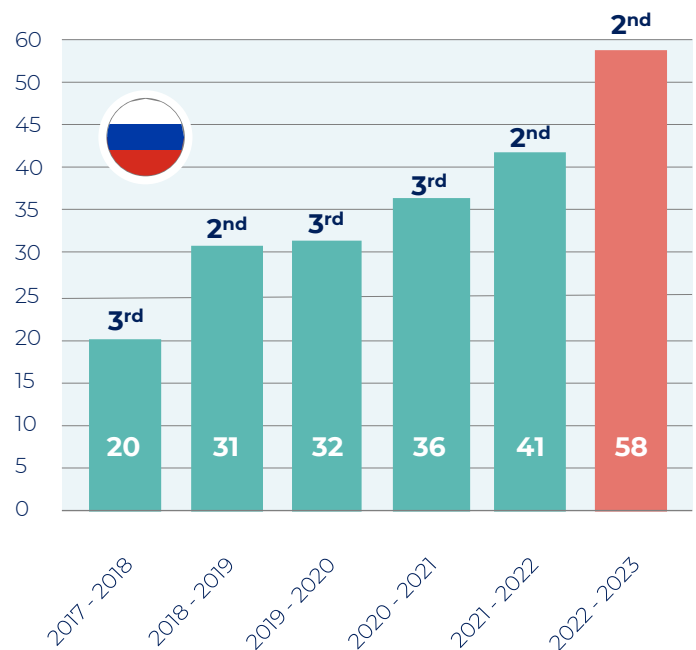
Some of these litigants include entities on the UK Government sanctioned list, such as claimant PJSC Bank Otkritie Financial Corporation. The Court's judgment in *PJSC National Bank Trust & Anor v Boris Mints & Ors* addressed a sanctioned person's ability to pursue litigation in England.

One case involved the Russian Federation, which appeared as a defendant in an arbitration challenge in *Hulley Enterprises Ltd & Ors v The Russian Federation*. Overall, close to 70% of Russian litigants appeared as defendants in the Courts.

Portland's exclusive polling reveals **that 51% of the UK public thinks that it is negative that the English courts are being used by Russian litigants.** This is a slight increase from 49% this time last year. One year into the war, it is interesting that these number have remained high.

Half of respondents (51%) think less favourably of law firms who provide legal services to Russian individuals or companies, while 27% said that they view these firms neither more nor less favourably. This is down slightly on last year, where 55% of the population said they would think less favourably of such a law firm.

## F. Number of Russian litigants and ranking



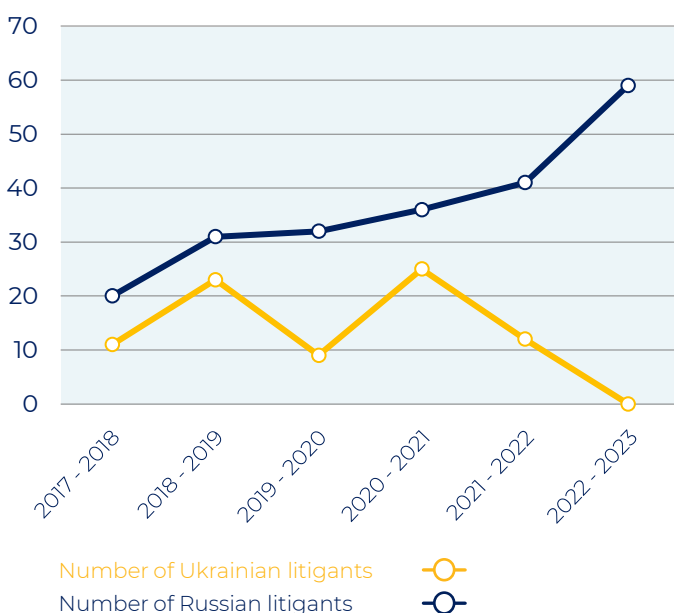
**Since reaching a peak in numbers with 25 appearances between April 2020 to March 2021, there have been no Ukrainian litigants in the Commercial Courts since July 2021.**

Russia's invasion has impacted Ukrainian parties' ability to access the Courts. Joshua Rozenberg QC noted in last year's Commercial Courts Report that contact between lawyers in London and clients in Ukraine would continue to be a major issue due to the war. With the delay between claims being filed and judgments handed down, it remains too early to tell if this year's figure can be attributed to the war.

In Portland's 2020 Commercial Courts report, Ukraine v Russia was the joint second most common nationality pairing in judgments. One of these judgments concerned the seizing of assets by Ukraine from a Russian company, Tatneft, following Russia's invasion (*PAO Tatneft v Ukraine*).

Should we see an end to the conflict, further cases of this nature are likely to resume, or be brought before the Commercial Courts.

## G. Comparing Russian and Ukrainian litigants





# Sanctions work helps retain Russia's dominance in the commercial courts, but for how long will it last?



**Catherine Baksi**

**Freelance journalist writing for The Times and former barrister.**

Contrary to expectations, Russia retained its ranking as the second most common nationality of litigants in London's Commercial Courts, after the United Kingdom.

Over the past three years, the number of Russian litigants has increased by 85%, but it had been anticipated that Vladimir Putin's invasion of Ukraine in February 2022 would have caused a precipitous decline in their representation.

However, the upward trend continued last year when the number of Russian litigants rose to 59 – up by 10 from 49 in the previous 12 months.

In the 18 judgments given between April 2022 and March 2023, six had Russian parties on both sides and the litigants in nearly two thirds were individuals, including the oligarchs Boris, Dmitry, Alexander, and Igor Mints and Igor Antoshin.

The UK government imposed sanctions on oligarchs alleged to be close associates of Putin, who have kept the London courts busy over recent years. And firms across the capital dropped their Russian clients, even if they were not on the sanctions list – in a knee-jerk response that some now regard as excessive. Issues related to sanctions provides one reason why the number of Russian judgments has held up.

Three rulings related to one case – *PJSC National Bank Trust & Anor v Mints & Ors* case. Boris Mints and his sons Dmitry, Alexander and Igor are being sued by National Bank Trust, which is 99% owned by the Central Bank of Russia, on behalf of Bank Otkritie, once Russia's largest private lenders before it collapsed in 2017.

The court ruled that Mints, a prominent businessman and outspoken critic of Putin, cannot pause an \$850 million fraud claim brought by two Russian banks, despite one of the banks being subject to British sanctions. The unsuccessful application, which will now be considered by the Court of Appeal, is one of the first legal tests of Britain's sanctions regime in relation to Russia.

The Russian Federation also appeared as a defendant in an arbitration challenge in *Hulley Enterprises Ltd & Ors v The Russian Federation*.

The claimants argued that the recent sanctions against Russia made it more likely that state-owned assets will be removed from Britain and Mr Justice Butcher lifted a stay on proceedings to allow former shareholders of defunct oil giant Yukos to apply for enforcement of a \$50 billion arbitration award.

Another reason for the continued dominance of Russian litigants is due to the period covered by the judgments, which were delivered in the year that followed the Russian invasion. Many of the cases concern long-running disputes and relate to claims that pre-date the invasion.

In the introduction to the Commercial Court's own annual report, published in April, the judge in charge, Mr Justice Foxton, notes that the court "has had to deal with various challenges arising from the Russia-Ukraine crisis".

This, he said, necessitated the adjournment of trials or hearings in which one party was unable to pay for legal representation in an ongoing case because of the effects of sanctions, expedited hearings in which parties affected by sanctions sought urgent determinations of their effects on ongoing transactions, and insurance claims relating to aircraft leased to Russian operators.

In a speech at Lincoln's Inn in April, the Master of the Rolls, Sir Geoffrey Vos, told lawyers that the invasion and subsequent sanctions "have had a dramatic effect on the Russian oligarchs that used to litigate so intensively in London and on their litigation".

No statistics are available on the number of claims lodged since the invasion, but as most London law firms continue to eschew Russian clients, it is likely that the full impact of war on the activity of the courts will become more apparent in the next 12 months.

# The future of Ukrainian litigants in the London courts (and elsewhere?)



**Natalia Selyakov**  
Partner, Dentons



**Artem Lukyanov**  
Senior Associate, Dentons

Ukrainian business traditionally was an active player on the global markets, which always required for the parties to opt for appropriate dispute resolution forum. Historically, arbitration was the most popular tool to resolve cross-border disputes with Ukrainian counterparties.

However, recent legislative developments may enhance litigation activity in foreign courts (and English courts in particular) with Ukrainian counterparties:

## ***Choice-of-court agreements under Ukrainian law***

In October 2022 the Law of Ukraine "On amending certain laws of Ukraine in connection with the Ratification of the Convention on Choice of Court Agreements" (the "Law") came into effect.

The Law introduces the concept of choice-of-court agreement (in Ukrainian – ugodna pro vybir sudu). Under such agreements parties may opt for resolution disputes in foreign courts, except for cases which are subject to exclusive jurisdiction of Ukrainian courts (e.g., disputes in respect of real estate located in Ukraine, disputes in respect of registration/liquidation of legal entities registered in Ukraine, bankruptcy cases, etc.). Ukrainian courts, under general rules are obliged to recognize and enforce the choice-of-court agreements.

## ***Hague Convention of June 30, 2005 on the Choice of Court Agreements.***

By passing the Law, Ukraine has formally completed the ratification process of the Hague Convention on the Choice of Courts Agreements ("Convention"). This Convention is an international instrument strengthening the effectiveness of forum selection agreements and the enforcement of foreign court judgments in the states parties to the Convention (EU, Denmark, Mexico, Montenegro, Singapore, and the UK).

The Convention is not yet operational for Ukraine with some formalities pending. Nevertheless, parties still may submit their disputes to foreign courts based on the choice-of-court agreement as provided by the Law.

## ***Convention of July 2, 2019, on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters ("Enforcement Convention").***

On 1 July 2022 Ukraine ratified the Enforcement Convention which provides for the recognition and enforcement of judgments that fall within the scope of the Enforcement Convention (mainly in civil and commercial matters) and are handed down by a court of one party to the convention in another state party.

Under the general rules, the recognition and enforcement of foreign court judgments will be possible either in cases based on international treaties to which Ukraine is a party, or based on the reciprocity principle.

Although Ukraine is currently party to a few bilateral treaties, there is however already some established court practice in the country with regard to the recognition and enforcement of foreign court decisions based on the reciprocity principle.

With the Enforcement Convention entering into force soon (September 1, 2023), court judgments issued by the courts of states-parties to the Enforcement Convention could be recognized in accordance with Enforcement Convention rules.

While the UK is not a party to the Enforcement Convention, it was ratified by the EU, thus making it a strong international tool in the sphere of cross-border litigation.

English court judgments should be allowed to be recognised and enforced by Ukrainian courts in accordance with the Convention's rules, which differ from the Ukrainian Civil Procedural Code requirements, when the Convention comes into operation in Ukraine and on the basis of reciprocity principle (as the case may be).

## SINGAPOREAN LITIGANTS HIT RECORD HIGH AS SINGAPORE INTERNATIONAL COMMERCIAL COURTS SEES DECREASE IN NUMBERS

**This year, the number of Singaporean litigants appearing in the London Commercial Courts soared by 240%. Singapore ranks as the fifth most common nationality in the courts, with a total of 35 litigants.**

Since 2020, all Singaporean litigants have been companies, with no individuals appearing in the London Commercial Courts. This year was no exception. This could indicate that individuals of Singaporean nationality may prefer using alternative forums to litigate.

In two cases, all litigants were exclusively Singaporean parties (*Trafigura Maritime Logistics PTE Ltd v Clearlake Shipping PTE Ltd* and *Trafigura Pte Ltd v TTK Shipping Pte Ltd*). These were both maritime disputes.

Analysis of cases involving Singaporean parties shows that London's legacy as the prime destination for resolving maritime disputes continues to hold. The number of Singaporean shipping companies appearing in the Commercial Courts more than doubled over the past year, with seven different Singaporean shipping companies appearing in the courts.

These findings also underline the opportunity for Singapore to attract a greater share of Asia's maritime legal market and ensure more litigants turn to their own international courts.

Established in 2015, the Singapore International Commercial Court (SICC) is a growing centre for international financial disputes in Asia. This reflects the government's efforts to promote Singapore as a leading financial hub in the region.

Analysis and legal commentators have long perceived the Singapore International Commercial Courts as a challenger to the London's Commercial Courts. This is due to Singapore's commercial proximity and commercial operations and supply chains in the Asia-Pacific region, and its strong rule of law. Notably, the SICC's rules also allow foreign lawyers to appear, plead and represent parties in proceedings. [7]

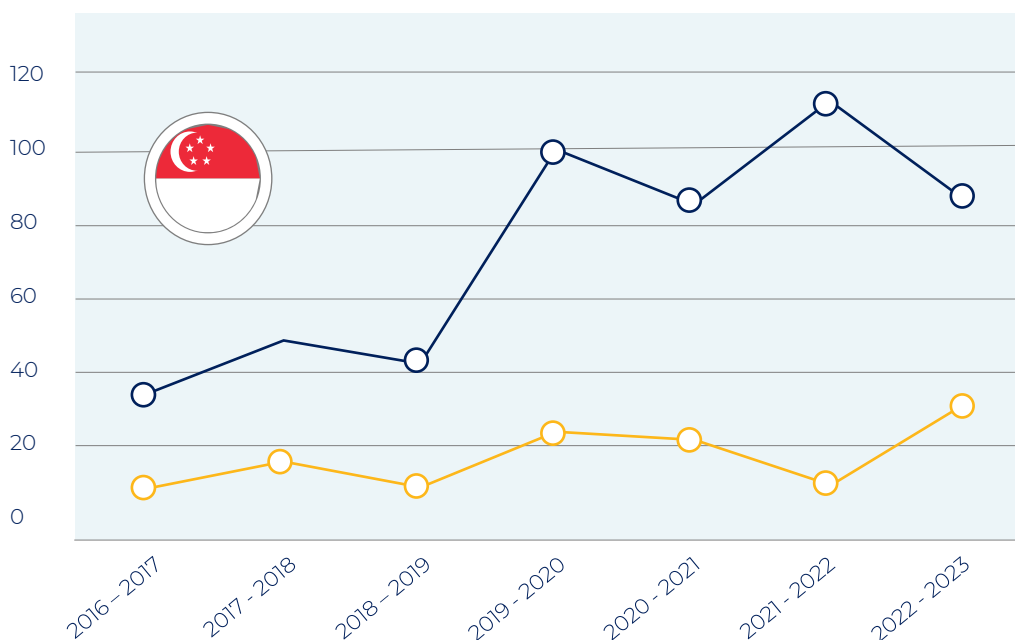
This year's increase in the number of Singaporean litigants in the London Commercial Court was also mirrored by a decrease in the number of litigants in the judgments handed down by the SICC.

Just 85 litigants appeared from April 2022 to March 2023 in SICC, marking a 32% drop from the previous year. The number of judgments being handed down also dropped by 17%.

Interestingly, the reverse trend could be observed last year. The SICC marked a record number of litigants from April 2021 to March 2022, which corresponded to a 50% decrease in Singaporean litigants in London's Commercial Courts.

The SICC recently expanded its jurisdiction to hear insolvency matters and this year launched a model clause for arbitration-related matters. It is therefore expected that despite the dip in both litigants and judgments, the numbers might recover next year. [8]

### H. Comparing Singapore and London's Commercial Courts



Litigants in the Singapore International Commercial Courts

Singaporean litigants in the London Commercial Courts

Source: Singapore International Commercial Courts website ([www.sicc.gov.sg](http://www.sicc.gov.sg)) and Bailii ([www.bailii.org](http://www.bailii.org)).

## No room for complacency: Singaporean litigants before the English courts and competition from the SICC



**Emilie Jones**  
Legal Director (Barrister), Pinsent Masons

The data underscores continued experience that the London Commercial Courts remain a highly popular venue for the resolution of commercial disputes between international parties. Singaporean litigants are among the jurisdictions which were most represented in the Courts. The English court system is held in high regard in Singapore, and indeed has in some respects been a source of inspiration – as well as judicial talent – for Singapore’s own International Commercial Court (the SICC).

Beyond this, however, it is difficult to draw firm conclusions from the increase in Singaporean litigants appearing in judgments given by the London Commercial Courts in the past year. The number of Singaporean litigants in the Courts have fluctuated back and forth over recent years, while always remaining significant.

The figure may also be heavily influenced by judgments being handed down in one or more matters in which there are multiple Singaporean parties, like the *Bank of Baroda v GVK Coal Developers (Singapore) Pte Ltd & ors.* litigation, in which judgments were given this year. This high-value banking dispute involved six Indian banks bringing proceedings against GVK Coal Developers and nine related companies based in Singapore and India, over alleged defaults on facility agreements to finance Australian infrastructure projects.

The increase in Singaporean litigants in judgments of the London Commercial Courts at the same time as a decrease in the number of litigants before the SICC does not necessarily suggest a move away from the SICC in favour of the London Commercial Courts. In particular, the SICC is still – comparatively speaking - in its infancy, with relatively low numbers of cases overall, so that a fairly small drop in litigant numbers can translate into a percentage reduction which on its face appears more substantial.

The English courts should not be complacent about the competition posed by international commercial courts such as the SICC. Many of these courts, the SICC included, have benefited from considerable investment in infrastructure, offering litigants efficient processes as well as a high-quality judiciary, often including former English High Court judges.



Singapore’s association with the Singapore Convention on Mediation has also helped to further raise its profile as a leading player in the international dispute resolution landscape.



Those responsible have also done much to raise the profile of these courts and encourage parties to agree, either in their contracts or when disputes arise, to use them.

Examples include the October 2022 expansion of the SICC to cover international commercial restructuring and insolvency matters. In January 2023, the SICC also launched a model clause for parties to designate the Court as having supervisory jurisdiction in respect of Singapore-seated international arbitrations.

These form part of a wider drive to cement Singapore’s position as a leading centre for commercial dispute resolution in all its forms, including mediation and “mixed mode” dispute resolution. Recognising the value of mediation in the context of international commercial litigation, the SICC and the Singapore International Mediation Centre (SIMC) have recently collaborated to establish a litigation-mediation-litigation protocol under which cases commenced before the SICC may be referred to mediation at the SIMC.

Singapore’s association with the SIMC has also helped to further raise its profile as a leading player in the international dispute resolution landscape. The Convention aims to provide a harmonised framework for the enforcement of international settlement agreements resulting from mediation. Many jurisdictions have either signed up or (as in the case of the UK) propose to do so shortly.

Continued investment in the London Commercial Courts – both in terms of infrastructure and procedural efficiency – will therefore remain important if they are to maintain the reputation they currently enjoy with international litigants.

# RECORD NUMBER OF INDIAN LITIGANTS APPEARING IN THE COMMERCIAL COURTS

India has increased its prominence in the London Commercial Courts this past year, re-entering the top five after a significant decrease in appearances the previous year.

After four consecutive years in the top ten, just five litigants from India used the Court between March 2021 and April 2022. This year however, India formed the fourth largest group in the Commercial Courts, with 44 litigants appearing.

Banks made up 35% of all Indian litigants appearing in the Commercial Courts this year, with Indian banks' appearance in the London courts dating back to 2019 prior to this year. One notable case involved six Indian banks bringing proceedings against Singaporean company GVK Coal Developers, over alleged defaults of more than \$1 billion worth of loans and credits (*Bank of Baroda & Ors v GVK Coal Developers (Singapore) Pte Ltd & Ors*). [9]

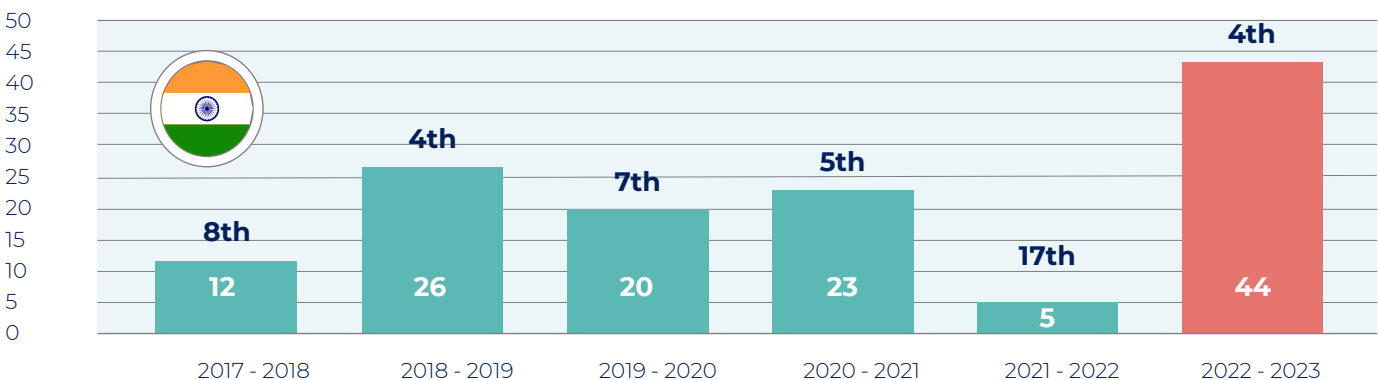


**This year saw the highest number of Indian litigants recorded since Portland began collecting Commercial Courts data.**

Despite more Indian litigants than ever using London's Commercial Courts, the Government of India has taken gradual steps to improve India's own attractiveness as a hub for dispute resolution. Starting its own Commercial Courts at the district level in 2015 and establishing the Indian Council of Arbitration in 2019 were among the ambitious measures undertaken by Narendra Modi's government to respond to the country's fast-growing economy, which has inevitably put pressure on its commercial disputes landscape.

The effects of its judicial revamp have already started to take shape, with the disposal time for commercial cases reducing by 50% from 2020 to 2022 according to Indian Law Ministry data. [10]

## I. Number of Indian litigants and top 10 ranking



**The 44 Indian litigants appearing this year constituted the joint-highest number of litigants from Asia ever recorded**, tied with the 44 Kazakhstani litigants who featured in Portland's 2020 Commercial Courts Report.

A notable party returning for the third consecutive year in the courts was Indian businessman Bavaguthu Raghuram Shetty. His dispute with Abu Dhabi Commercial Bank PJSC arose from the collapse of his healthcare company NMC Health in 2020, when debts worth \$4 billion which had been hidden from its balance sheet were discovered. This was one of the largest frauds ever alleged against a FTSE 100 company. The Court found that although NMC was listed on the London Stock Exchange, the alleged wrongdoing and damages all occurred in the UAE, and the UAE was therefore the most appropriate forum to hear this case (*Abu Dhabi Commercial Bank PJSC v Shetty & Ors*).

# Predominance of Indian litigants in the London Commercial Courts: A norm in the making?



**Shankh Sengupta**

## Head of the Dispute Practice at Trilegal

India reclaimed its predominant presence before the London Commercial Court this year, with a staggering 44 in number of litigants, up from merely 5 in the previous year. India's strong representation as a nationality in the Commercial Court aligns with findings made prior to 2021, and reflects the expansion by many Indian businesses of their UK-based activities.

The reasons why the London Commercial Courts are chosen as a forum by and against litigants from Commonwealth legal cultures like India are manifold – from the jurisprudential certainty and predictability of English contract law, impartial reputation and adeptness of the judges in dealing with complex commercial disputes, to the quality, certainty and efficiency of procedures followed and the revamped legal infrastructure offering remote hearings to litigants around the world.

A review of the cases suggests that not only banks and businesses in the UK, but also Indian businesses located in the EU and India tend to have the UK as a preferred choice of forum to have their disputes adjudicated against other foreign entities. This is also helped by the global presence of London based arbitral institutions such as the LCIA and LMAA.



The increasing presence of Indian parties choosing courts in UK is also a result of, and intertwined with the fact, that London is increasingly attracting Indian business, talent and capital.



The confidence infused by a favourable outcome for an Indian party in the Essar Oilfields case (*Essar Oilfield Services Ltd v. Norscot Rig Management Pvt Ltd*) has carried over, as another major case this year saw six Indian banks initiating proceedings against an Australian entity for alleged defaults of loans and credits (*Bank of Baroda v. GVK Coal Developers (Singapore) Pte Ltd & Ors*).



Indian entities and individuals have more assets in the UK than ever before, which is an instrumental factor for initiating proceedings in cases of recovery and enforcement of awards.



Besides the obvious reasons, such as the English language being the *lingua franca* in commercial dealings as well as in courts, and that UK and India having similar legal and accounting systems, the increasing presence of Indian parties choosing courts in the UK is also a result of and intertwined with the fact that London is increasingly attracting Indian business, talent and capital.

Indian businesses are consistently increasing their presence in the UK, with an evident increase of Indian banks and companies setting up shops in diverse sectors. [11]

Curiously, this current of an increasing presence of Indian businesses has braved the tide of Brexit, the Russia-Ukraine conflict and fall in the pound sterling value, with India continuing to be second largest FDI investor in the UK. [12]

Consequently, this ensures that Indian entities/individuals have more assets in the UK than ever before, which is an instrumental factor for initiating proceedings in cases of recovery and enforcement of awards, as was witnessed last year in the cases brought against Indian entities/individuals. [13]

In conclusion, especially with India and UK now having entered into the Enhanced Trade Partnership, the predominance of Indian litigants may be expected to become a norm and cease to be an unc customary phenomenon.

### 3 Public opinion overwhelmingly supports climate litigation, as ESG cases increase

**Portland’s exclusive polling of a nationally representative sample of 1,000 adults reveals overwhelming support among the UK public for lawsuits that seek to ask organisations to reduce their emissions and improve their environmental practices.**

Environmental lawsuits have snowballed in the past eight years, with litigation increasingly being used to influence the practices of businesses and governments.

The Intergovernmental Panel on Climate Change (IPCC) 2023 Synthesis Report recognises climate litigation as a mechanism for raising awareness and, in some cases, influencing the outcome and ambition of climate governance. [14] While few climate disputes have made their way into the London Commercial Courts so far, the recorded number of all climate change-related cases grew by 300 globally between 2020 and 2022. [15]

Until recently, climate change lawsuits brought in England and Wales have almost exclusively been judicial review proceedings, seeking to challenge government policies and decisions for breaching the Paris Agreement, or the Climate Change Act 2008. [16]

It is only a matter of time, however, until the growing wave of litigation against corporates reaches the Commercial Court, as claiming parties become increasingly creative with the legal mechanisms they can use to hold organisations accountable for environmental damage and social malpractice.

Portland polling reveals that the **British public views legislation as the best way to hold companies to account for failing to take action to curb climate change, closely followed by lawsuits and boycotting these companies.** Online petitions and social media campaigns were deemed to be the least effective way to hold organisations accountable.

Actors involved in corporate climate litigation cases, and the types of litigation being used to bring proceedings are becoming increasingly diverse. [15]

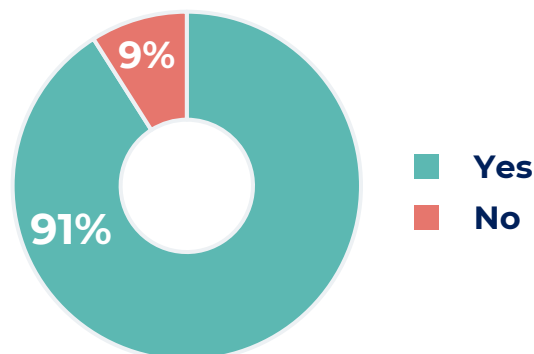
As these cases diversify, moving away from being filed largely against the Carbon Majors, and in the US, the range of courts which hears such disputes will no doubt expand.

#### FORUM-SHOPPING AND PARENT COMPANY RESPONSIBILITY

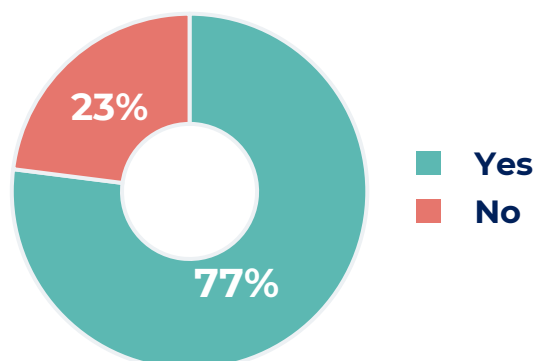
One notable legal development in climate litigation cases is the ability to bring proceedings against a parent company over the actions of its subsidiary. In *Municipio de Mariana v BHP Group Plc*, the Court of Appeal overturned the Technology and Construction Court’s decision and allowed group litigation brought by over 200,000 Brazilian claimants against a UK-domiciled parent company to proceed. This decision reflects the increasing trend of forum shopping in international litigation, including in corporate governance claims.

Portland’s polling shows that the public is overwhelmingly supportive of this judicial stance, **with 91% of respondents agreeing that UK companies should be held accountable for damage to the environment caused by one of their subsidiaries.**

**J. % of people who believe that UK companies should be held accountable for damage to the environment caused by their subsidiaries**



**K. % of people who believe that an increased number of court cases brought for environmental damage is a positive development**



## COMPANIES' CONTRIBUTIONS TO CLIMATE CHANGE

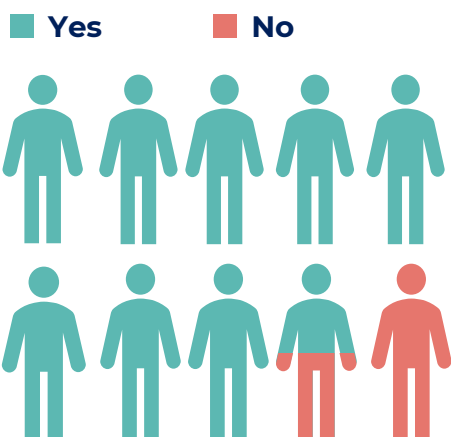
The increase in lawsuits brought against companies for their contributions to climate change is a global phenomenon. In November 2015, a claim was brought in the German Courts against an energy company over its alleged contribution to the potential collapse of two glaciers into a lake in Peru, which could cause significant flooding in the region of Huaraz (*Luciano Lliuya v RWE AG*). Last year, judges and experts visited the area to assess the risk and level of damage to the area caused by the melting of glaciers.

A similar case was filed by four Indonesian citizens in Switzerland earlier this year. The claimants are seeking compensation against a cement company for its contribution to climate-change related damages (*Asmania v Holcim*). With these cases still ongoing, **the judgments are expected to set landmark precedents for climate litigation.**

Portland's polling reveals that public opinion in Britain is strongly in favour of judicial intervention on climate-related claims, with 81% of respondents agreeing that the "UK Courts should be prepared to intervene to force private companies to meet more ambitious climate change-related targets."

**86% of respondents** also think that "companies owe citizens a duty of care to cut their emissions in line with global climate goals" and that "companies should be held liable and made to pay damages if they fail to reduce their negative contribution to climate change."

**L. Do the UK public think companies should be held liable and made to pay damages if they fail to reduce their negative contribution to climate change?**



**81% agree** that **“The UK Courts should be prepared to intervene to force private companies to meet more ambitious climate change-related targets.”**

## GREENWASHING

Climate disinformation has increasingly become a target of climate-related litigation. Since 2016, at least 20 greenwashing cases have been filed in courts across the US, Australia, France, and the Netherlands. Non-judicial oversight bodies have received 27 more instances (such as advertising standards boards) [17].

In the UK, the Advertising Standards Authority (ASA) has been busy with greenwashing cases against big organisations like FIFA in recent years (*New Weather Institute v. FIFA, 2022*). These are only expected to increase, with the new Digital Markets, Competition, and Consumer Bill targeting deceptive environmental claims. Under this new law, big businesses found to be in violation of consumer law risk civil penalties of up to 10% of their global sales.

The UK Competition and Markets Authority (CMA) is also investigating greenwashing allegations against several corporates in the FMCG and retail industries for misleading consumers.

Portland's polling reveals public support towards this trend, with **82% of respondents viewing the increased number of companies being sued for greenwashing as a positive development.**

Greenwashing claims are gaining ground in Europe as well, with a number of new laws being introduced aimed at tackling Greenwashing. For instance, the French Climate and Resilience Law, is set to take effect in 2023, and the European Union's proposed Unfair Commercial Practices Directive, is slated for 2024-25.

Greenwashing claims have wide-reaching negative reputational implications for companies. **Sixty-eight per cent of the polled individuals stated that they would view a company negatively if it was being sued for greenwashing.**



# Taking climate action makes good business sense



**Laura Clarke OBE**

Chief Executive Officer of ClientEarth

I am pleased to read in this report that **the UK public appreciates the power of legislation and litigation in holding companies to account for their climate change commitments.** The law determines how society functions, so working across the whole life cycle of the law – informing, implementing, and enforcing – enables us to drive the systemic change needed to protect our environment.

**The fact that 81% of people agree that UK Courts should intervene if private companies are not delivering on climate goals makes it clear: people expect businesses to act, and to be held to account.** We see this in the steep rise in climate litigation with over 2,000 cases recorded globally, and with governments and state actors backing climate-change class actions. Consider for example last year's decision by the City of Vancouver to allocate funds toward a future class action lawsuit as part of the Sue Big Oil campaign [18].



The fact that 81% of people agree that UK Courts should intervene if private companies are not delivering on climate goals makes it clear: people expect businesses to act, and to be held to account.



This type of litigation ranges from the impact of plastic pollution, to unlawful net zero plans and goals, fiduciary duties, human rights and much more besides. This will only increase as new legislation comes online, such as the EU Corporate Sustainability Due Diligence Directive, which will require companies in the EU to analyse their value chains to identify any harmful impacts that their operations, subsidiaries or products have on the environment and human rights. Failure to do so may mean legal action.

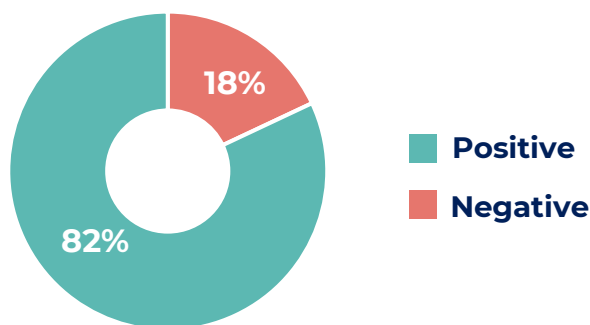


Taking swift climate action isn't just critical for our survival, it makes good business-sense. Smart corporate leaders understand that climate change brings material risk for all businesses, which need to be mitigated in order to secure long-term viability and company value.

**The report also shows strong support (82%) for companies being sued for greenwashing, showing increasing awareness of the pernicious effect of greenwashing practices, which mislead consumers, deflect scrutiny and delay the urgent climate action needed.**

We believe the law is the best tool we have to secure a liveable future for all life on Earth – in the interests of our economy, society and future generations. It is heartening to see quite how many people in the UK agree.

**M. Public opinion towards the increase in companies being sued over 'greenwashing' issues**



## Methodology and sources

Portland's Commercial Courts Report 2023 analysed data published on the British and Irish Legal Information Institute (BAILII) and on the Singapore International Commercial Court website. This ongoing data analysis process is periodically revised to minimise duplication, rectify data omissions and remove anomalies. Research from primary and secondary sources supplemented our litigation analysis.

Portland would like to thank Lord Neuberger of Abbotsbury, Lawson Caisley, Catherine Baksi, Natalia Selyakova, Artem Lukyanov, Emile Jones, Shankh Sengupta and Laura Clarke OBE for their contributions to this year's report.

The report was produced by: Klara lochem, Jude Ryan-Gray, Izzie Weller, Chris Simmons and Konrad Graboswki. With special thanks to Katie Emms, Charles McKeon and Katie Greenslade for their input.

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This report includes exclusive data from Portland's proprietary polling on issues relating to climate change litigation, perceptions of the courts and of law firms acting for Russian clients. Portland polled 1,000 adults online, between 6th and 7th April. Results have been weighted to nationally representative standards, based on ONS figures. Portland's polling methodology is accredited by the British Polling Council.

Please contact Portland's Litigation and Disputes practice at [disputes@portland-communications.com](mailto:disputes@portland-communications.com) for additional data and analysis, or to use the findings in this report.



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### GET IN TOUCH: Philip Hall, Managing Director and Head of the Litigation and Disputes practice

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