

# ESSEX COURT CHAMBERS

BARRISTERS



## DAVID JOSEPH QC

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## PROFESSIONAL PRACTICE

David Joseph joined Essex Court Chambers in 1985, took silk in 2003, and has acted as counsel and arbitrator in an extremely wide range of high profile and high value commercial disputes.

He is consistently recommended in the top tier in UK and global directories as a leading silk in the field of international arbitration. He is also recommended in general insurance and commercial litigation. In 2014 he was chosen as Silk of the Year in International Commercial Arbitration by both Chambers Directory and the Legal 500. He was also short-listed by Chambers Directory in this category in 2012.

He is the author of *Jurisdiction and Arbitration Agreements and their Enforcement* (Sweet & Maxwell, 2nd Ed November 2010) which in a short period of time has become a standard work of reference in this complex field and has been cited with approval by courts in England, Hong Kong, and Singapore. He is also an author and co-editor with David Foxtan QC of Singapore International Arbitration, Law and Practice (Lexis- Nexis 2014).

He has acted and appeared as Counsel in over 200 complex and lengthy LCIA, ICC, UNCITRAL and other ad hoc arbitrations in London and overseas. In addition he has acted as Counsel in numerous LMAA arbitrations. He has also frequently been appointed to act as arbitrator in both institutional (ICC and LCIA) and ad hoc arbitration.

His arbitration practice covers a wide range of work from joint ventures, shareholder disputes, mobile telephones, satellite television insurance, reinsurance, aerospace, mining, construction and shipbuilding. He has also advised and acted in a series of investment treaty disputes.

In court, his practice covers not only the general range of commercial disputes embraced in his arbitration practice but in addition he has appeared as Counsel in a number of fraud actions involving recovery of stolen property, Ponzi schemes, resolution of disputes between shareholders/ joint venturers, breach of fiduciary duty, tortious conspiracy, professional negligence, structured financial products including Islamic finance. He has also acted in a number of actions giving rise to complex issues as to jurisdiction and the grant of interlocutory relief including anti-suit injunction.

On top of his practice in England, he has a busy international practice appearing in court and arbitration in Singapore, Hong Kong, New York, Paris, Hague, Stockholm, and India.

## **Singapore**

He is one of a number of barristers who have taken rooms in Singapore's dedicated arbitration facility in Singapore, Maxwell Chambers.

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## **AREAS OF EXPERTISE**

- Arbitration & related court applications
- Aviation
- Banking & financial services
- Civil fraud & asset tracing
- Commercial dispute resolution
- Energy & natural resources
- Insurance & reinsurance
- International commercial arbitration
- International trade, transport & commodities
- Public international law
- Shipping & admiralty

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## **WHAT OTHERS SAY**

### **Chambers UK Bar 2016**

*'I have a huge amount of time for him because he is hard-working, clever and a very good team player. His advocacy is very good. He has a very punchy style which works.'*

International Arbitration: General Commercial & Insurance

### **The Legal 500 2015**

*'Very persuasive.'* – Aviation

*'A brilliant, clever, commercial advocate who impresses clients.'* – Commercial Litigation

*'Particularly strong in insurance arbitrations.'* – Insurance and Reinsurance

*'A terrific team player with encyclopaedic knowledge of arbitration law.'* – International Arbitration: Counsel

## **Chambers UK Bar 2015**

*"He is very enthusiastic and hard-working; he's strong on paper and he has got the ear of the judges."*

*International Arbitration*

## **2014**

Noted for his impressive practice in Singapore and Hong Kong, in addition to his work in London. Recent matters handled include fraud cases, major joint venture disputes in the energy field, and claims for intellectual property infringement.

Recent work: Acted for Astro All Asia Networks in a Singapore arbitration against PT First Media relating to the break-up of a joint venture.

## **Legal 500 2014**

*"A great team player with considerable energy and drive"*

*"A great advocate, who is commercially sensible"*

*"Provides great strategic direction"*

*"Excellent preparation and quick on his feet"*

*"A great advocate, who is commercially sensible"*

*Commercial Litigation*

*Jurisdiction and Arbitration Agreements and their Enforcement* 2nd Ed (November 2010) Sweet & Maxwell.

## **Chambers & Partners Directory:**

Chambers & Partners Queen's Counsel of the year 2013 in the category of International Arbitration

Legal 500 Queen's Counsel of the year 2013 in the category of International Arbitration

Short listed by Chambers & Partners as Queen's Counsel of the year in 2011 in the category of International Arbitration

Rated Leading Silk by both Chambers and Legal 500

### **Legal 500 2011**

"David Joseph's fierce intellect and commercial acumen are particularly commended"

### **Chambers and Partners Directory 2010**

"David Joseph is an 'outstanding advocate' hailed for his ability to effectively deal with the most complex legal matters"

### *General Commercial & Insurance*

Rated Leading Silk Band 1 International Arbitration.

Also rated as Leading silk in Commercial Litigation, Insurance and Aviation.

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## **ARBITRATION & RELATED COURT APPLICATIONS**

He has acted and appeared as Counsel and co-counsel in well over 100 complex and lengthy LCIA, ICC, UNCITRAL, SIAC, KLIAC and other international ad hoc arbitrations in London, Paris and Singapore and in other major arbitration venues around the world. He has also acted in numerous disputes concerning the enforcement of awards around the world under the New York Convention. This work covers a wide range of disputes. A number of these disputes have involved claims in excess of a billion dollars and many of these claims are the largest of their type to have been brought in arbitration. In particular:

- A wide variety of joint venture disputes, buyout agreements, company valuation disputes; pre-emption rights; shareholder agreements; IPO obligations and disputes; exclusivity and restrictive covenants; breaches of warranty in sale of business/shares.
- Mobile telecoms (joint venture disputes, flotations and software and hardware disputes). He has acted for leading mobile telephone companies in Singapore, Malaysia and India.
- Satellite television, direct to home television tv and other joint venture disputes.
- Satellite procurement and launch contracts, ground satellite systems; transponder utilisation agreements; tax indemnity provisions, defence system technology and insurance disputes -see

separate section below.

- A wide range of insurance coverage disputes, including Bermuda form disputes with particular reference to the US pharmaceutical industry, medical implants; credit default insurance, industrial explosions and savings and loans.
- Oil and gas – long term supply agreements; LNG and chemical supply contracts; farm out contracts, exploration agreements.
- Mining and energy sector – see separate section below
- Airline leases, engine manufacture, maintenance and booking systems.
- Long term licence and distribution agreements in particular in Europe, Far East and India.
- Internet retail and gaming.
- Construction, infrastructure and development projects (in particular hotels and power plants).
- Shipbuilding, and ship-repair. Disputes concerning breach of warranty/ fitness for purpose, liquidated damages, delayed delivery, application of extension of time provisions for delivery, application of indemnity provisions, indemnity claims against sub-contractors, disputed claims for misrepresentation and collateral contract, exemption clauses (*Stewart Gill v Horatio Myers*), termination provisions, repudiation, expert determination and provisional measures (see further below).
- Jack up rigs (*AV1*) semi-submersibles (*Super Scorpio II*), drill ships, off-shore storage vessels, traditional commercial shipbuilding disputes.
- All aspects of reinsurance and insurance broking.
- Investment treaty cases, has acted for a number of investors in the protection of their investment under bilateral and multilateral investment treaties.

In addition he has successfully acted in a series of arbitration applications for interim measures of protection before arbitrators including; anti suit injunctions; interim preservation of status of directors; preservation and production of e-disclosure.

He has also successfully acted in arbitrations determining the interface between matters properly the subject of expert determination and properly the subject of arbitration.

He has also acted as counsel in numerous LMAA arbitrations covering a wide range of, shipping and cargo related disputes and shipbuilding, ship-sale.

He has also acted as arbitrator (variously as sole, party appointed, and chairman) in a number of ICC, LCIA, LMAA and ad hoc arbitrations in London and other leading centres for international arbitration. He is listed on the major institutional panels such as ICC, LCIA and SIAC.

He is the author of *Jurisdiction and Arbitration Agreements and their Enforcement* (2nd Ed Sweet & Maxwell, November 2010). He has spoken at numerous seminars and conferences on many aspects of international arbitration practice but in particular the enforcement of awards and anti-suit injunction.

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## **BANKING & FINANCIAL SERVICES**

He has acted (both for bank and for customer) in a series of complex high value and high profile banking disputes involving the enforcement of structured and securitised loans; guarantees, letters of credit, derivatives and put options. He has also acted against investment banks in relations to claims arising out of failed flotations and rights issues. Principal cases include *Tenaga v UBS*; *BNP v Karageorgis*; *Proctor and Gamble v Bankers Trust*; *Skandinaviska Enskilda Banken vs APBS*; and *BNP v Jurong Shipyard*; *Menara Maxis vs AT & T and others*).

David's banking practice has also covered disputes involved allegations of negligent portfolio selection, allegations of negligent advice given to private clients; construction of complex derivatives, allegations of mis-selling / alleged duty to advise re suitability of instruments; and contractual waiver of duty of care. He has also acted in a number of cases involving restraint of draw down under letters of credit (e.g. *Group Josi v Walbrook – successfully enforcing draw down of letters of credit in face of alleged fraud of underwriting agents*); enforcement of performance bonds and corporate and governmental guarantee (*Marubeni v Mongolia*). He has also successfully acted in extensive and lengthy litigation for banks in recovery of assets in relation to large scale secured lending and project finance (*Banque Paribas v Karageorgis and Yukong v Rendsburg*).

He is acting for the shareholders of *Bank of Antigua* with regard to the oversight and enforcement of emergency banking powers under the Eastern Caribbean Central Bank Agreement in the light of the insolvency of Stanford International Bank Limited.

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## **CIVIL FRAUD & ASSET TRACING**

David Joseph has acted as Sole or Junior Counsel in a number of complex fraud actions involving inter alia complex interlocutory relief, recovery of stolen property, resolution of disputes between shareholders / partners, allegations of fraud and deceit, breach of fiduciary duty and restraint of use of performance bonds and letters of credit.

He is acting as counsel in England and in Antigua for Allen Stanford and a number of companies in the Stanford Group – see his successful challenge to liquidator's attempt to invoke Cross Border Insolvency Regulation in *Re Stanford International Bank Limited* [2009] EWHC 1441 (Lewison J) and dismissal of liquidator's appeal in [2010] EWCA Civ 692. He is also acting as counsel to Heritage Maritime in *Parbulk v Heritage Maritime* (2011) in relation to ancillary injunctive relief and the *TSB v Chabra* jurisdiction.

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## COMMERCIAL DISPUTE RESOLUTION

David Joseph's commercial litigation practice is in line with the broad range of work undertaken in his international arbitration practice (see above).

He has also acted and appeared in actions concerning:

- Challenges to the jurisdiction of the English courts with particular reference to the Brussels I Regulation; exclusive jurisdiction agreements; provisional measures under Article 31; service out of the jurisdiction.
- Freezing; Search and Disclosure Orders.
- logistics supply contracts.
- Enforcement of judgments and awards
- Court supervision of arbitration
- shareholder/ joint venture disputes, share distribution agreements.
- in a number of cases involving disputes in the film industry; the art world and sports rights.

Reported cases include: *Gill v Meyers* (reasonableness and UCTA), *Films Rover v Cannon Film Sales* (test for grant of mandatory interlocutory injunction), *Standard Chartered Bank v PNSC and others* (for SGS); *Mattis v Toussaint* (acted for defendant in successfully resisting claim for finder's fee in respect of stolen painting), *Yukong Lines v Rendsburg – The Rialto* (tortious conspiracy and ancillary injunctive relief against controller of corporation), *REC v Thames Water* (test for grant of interlocutory injunction in field of electricity supply), *De Molestina and Others v Ponton* (acted for defendant in successfully rescission of share distribution agreements), and *Marubeni Corporation v Government of Mongolia* (claim on state guarantee)

Reported cases on the enforcement of judgments and awards and court supervision of arbitration include: *Astro v FM* (in Singapore and in Hong Kong); *Enercon v EIL* (in English Commercial Court and India); *Dow Chemicals v Kuwait Petroleum Corporation* (English Commercial Court); *BNP v Deloitte* (English Commercial Court); *Parbulk v heritage Maritime* (English Commercial Court).

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## ENERGY & NATURAL RESOURCES

David Joseph has acted as lead counsel in a series of complex arbitrations involving long term mining and exploration contracts in Australia, Indonesia, Middle East and Africa (coal, tantalum, oil, LNG, iron, steel, diamonds) including questions of force majeure, frustration, the valuation of mining rights; exercise of renewal and extension options and evaluation of seismic data. David has also successfully brought in arbitration claims concerning "conflict diamonds" in Africa and

the operation of the Kimberley Process.

David Joseph has also acted as counsel in various arbitrations involving both wind and other renewable energy joint ventures particularly in India.

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## **INSURANCE & REINSURANCE**

David Joseph has acted and appeared in a broad range of insurance and reinsurance litigation in the High Court and in arbitration. He has also acted for various insurers seeking recovery by way of group litigation for alleged stop loss mis-selling at Lloyd's. He has appeared in a number of the leading reported cases in the field of reinsurance including – *Suncorp v Milano* (pool reinsurance); *Group Josi v Walbrook* (non-disclosure of agent's fraud on assured) *Baker & Black Sea and Baltic* (recoverability of defence costs as implied term in proportional reinsurance), *Aneco v Johnson & Higgins* (reinsurance brokers' negligence and measure of loss), *King v Brandywine* (Exxon Valdez reinsurance claims).

### **Liability Insurance and Bermuda Form**

His practice in relation to liability insurance coverage has particularly focussed on Bermuda form and satellite insurance. He has experience acting for both insured and the major Bermuda Form insurers in a series of Bermuda Form arbitrations concerning the pharmaceutical industry; medical implants, industrial accidents/ explosions; savings and loans D & O liability) and credit default insurance.

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## **INTERNATIONAL TRADE, TRANSPORT & COMMODITIES**

Satellite procurement and launch contracts, ground satellite systems; transponder utilisation agreements; tax indemnity provisions, defence system technology and insurance disputes -see separate section below. David has also acted in satellite insurance coverage disputes arising out of the 702 type satellite failure. In aviation work includes arrest and seizure of aircraft; disputes arising under the sale or lease of aircraft, aircraft disasters (manufacturer's liability), liability for stolen cargo, advisory work principally relating to the liability of operators and shippers under the Air Navigation Order. Reported cases include: *Lee Kui Jak v Aerospatiale*; *Malca Amit v British Airways*, and *Quantum v Air France*

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## **PUBLIC INTERNATIONAL LAW**

David Joseph successfully acted for the Claimant, in its judicial review of the Government of



Antigua's attempt to impose retrospective Undeveloped Land Tax – *AVAL vs Government of Antigua and Barbuda* (Judgment 29 April 2009) and his successful challenge to on behalf of Allen Stanford and various corporate entities by way of judicial review of the attempted compulsory acquisition of land conducted by the Government of Antigua and Barbuda (Judgment May 2010).

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## SHIPPING & ADMIRALTY

David Joseph has acted in a broad range of LMAA and High Court litigation arising out of shipbuilding and repair, charterparties, rig construction and repair, luxury yachts, bills of lading, contracts of affreightment and the sale of goods. See specific practice areas in arbitration above. Also disputes arising out of ship financing and valuation and surveyor's negligence. Reported cases include: *The Houda*; *The Seaflower*, *The Lloyd Pacifico*; *Smedvig v Elf Shipping*, *Standard Chartered Bank v PNSC* (successfully defending SGS); *Yukong Lines v Rendsburg – The Rialto*. He has also acted in a number of cases in court and in arbitration with regard to P & I Club insurance coverage.

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## CAREER

2003 Silk

1985 Essex Court Chambers

1984 Call: Middle Temple

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## EDUCATION

1984 Bar Finals London

1983 Law Society Finals, College of Law, Lancaster Gate

1982 BA (Hons) (Law), Pembroke College, University of Cambridge

1978 St Paul's School, London