

Arbitrators

AT 24 LINCOLN'S INN FIELDS



Ricky Diwan QC

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Ricky Diwan QC has a wide-ranging practice in the fields of international commercial litigation, international commercial arbitration and international investment arbitration, as well as arbitration applications before the courts. He appears both before the English Courts, foreign Courts and in international arbitrations in London and abroad and has substantial experience in dealing with multi-jurisdictional disputes.

He has acted in arbitrations under a wide variety of international arbitration rules including HKIAC, ICC, ICSID, LCIA, SCC, SIAC, UNCITRAL and VIAC. He has vast experience of arbitration applications before the Court (including applications under s.67, s.68 and recognition and enforcement under the New York Convention) and has acted in a number of cases giving rise to important judgments. This includes *Griffin v Poland* [2018] 1 Lloyd's Rep 410, where he acted for the investor in successfully setting aside an investment award on jurisdictional grounds, being the first investor state award to be set aside by the English High Court (for which he was nominated for an award by GAR in 2019); *Kabab-Ji v Kout Food Group* [2020] EWCA Civ 6, where he acted for the Respondent before the Court of Appeal in successfully resisting recognition and enforcement of ICC arbitral award (the case is presently pending before the Supreme Court); *Montrose & Eyre v Democratic Republic of Sri Lanka* (ICSID Case No. ARB/16/25) where he successfully resisted an investment claim on jurisdictional grounds both before the originally constituted tribunal and the annulment committee (decision rendered on 2 December 2020); *PAO Tatneft v Ukraine* [2020] EWHC 3161, where he successfully enforced a USD 81 million award under the New York Convention.

He also regularly sits as arbitrator in international arbitrations (both as co-arbitrator, sole arbitrator and chair) in commercial and investment arbitration and is presently appointed in arbitrations under the ICC Rules, LCIA Rules and SIAC Rules.

He is a member of HKIAC and SIAC Panel of Arbitrators, and a member the UK ICC Committee and co-authored the ICCA International Handbook on Commercial

Arbitration for England & Wales (2015). He also co-drafted the Mauritian International Arbitration Act 2008, advised on the LCIA-MIAC arbitration rules and sits on the advisory board of the Mauritian International Arbitration Centre.

He is highly recommended in leading legal guides in which he has been described as “*exceptionally sharp and extremely pleasant to work with*”, “*widely recognized and recommended figure in the market*” and that “*his understated but powerful performance at hearings is advocacy at its best*”. He was short listed for the silk of the year in international arbitration by Chambers & Partners (2020) and short listed for the GAR Awards (2019) for his successful setting aside of an investment arbitral award (the first time an investment award has been set aside in this jurisdiction). He has lectured in international arbitration at King’s College, London, and regularly speaks at international arbitration events.

Prior to being called to the bar and joining Essex Court Chambers in 1998, he was admitted to the New York Bar and practiced as a qualified attorney-at-law at Debevoise & Plimpton (New York) between 1995 and 1997.

Recent Arbitrator Experience

- Chair arbitrator in a dispute relating to services in respect of the supply of submarines to a State (LCIA, London seat);
- Co-arbitrator in a dispute in respect of a share purchase agreement and leakage claims relating thereto (ICC, Hong Kong seat);
- Co-arbitrator in dispute over a gas transportation pipeline project (LCIA, London seat);
- Co-arbitrator in dispute over the development and operation of a hotel chain (SIAC, Singapore seat);
- Co-Arbitrator in dispute relating to a Master Lease Agreement in the mobile telecommunications sector (LCIA, London seat).

Recent Cases as Counsel

- Counsel in the Court of Appeal in New York Convention proceedings resisting recognition and enforcement of an arbitral award (ICC, Paris seat);
- Counsel on behalf of the Democratic Republic of Sri Lanka in ICSID tribunal and annulment proceedings;
- Counsel on behalf of the Republic of Korea in a jurisdictional rehearing before the English Commercial Court with respect to an investment award;
- Counsel in international commercial arbitration proceedings relating to major infrastructure projects in Africa and the Middle East;
- Counsel in international commercial arbitration proceedings in respect of a long-term gas supply contract entered into with a State entity.

What others say

- Chambers & Partners (2020)
"He's a very strong advocate, extremely bright and completely straightforward." "He glues the attention of the court in a very understated and efficient manner."
- Chambers & Partners (2019)
"Ricky's understated but powerful performance at hearings is advocacy at its best. He has a real willingness to exchange ideas and does very careful and detailed analysis."
- Chambers & Partners (2018)
"Highly regarded for his international arbitration practice, which concentrates on commercial and investment issues."
- Legal 500 (2019)
"Exceptionally sharp and extremely pleasant to work with."
- Legal 500 (2018)
"An excellent silk who lives and breathes arbitration."
- Who's Who Legal UK Bar (2019)
"Widely recognised and recommended figure in the market."
- Who's Who Legal UK Bar (2017)
"Draw[ing] praise for the rate at which he has developed a very strong practice in both international commercial and investment arbitration with one source claiming, "He is one of the best young silks around"
- Who's Who Legal UK Bar (2016)
"Outstanding Ricky Diwan QC emerges as one of the leading lights in our research and specializes in international commercial arbitration both in London and abroad under a range of laws."
- Chambers and Partners (2017) he was ranked in the field of international arbitration and described as *"meticulous, extremely hard-working and always on top of all the detail."*

Examples of Notable Cases

INTERNATIONAL LITIGATION

Counsel in the litigation concerning the question as to who is the government of Libya (following the fall of the Gaddafi regime) and related issues of foreign relations law and justiciability: *Bouhadi v Breish* [2016] EWHC 602; *Libyan Investment Authority v Societe Generale* [2015] EWHC 1720 and [2015] EWHC 1925.

INTERNATIONAL COMMERCIAL ARBITRATION

Acted as counsel in large scale arbitrations under a wide variety of institutional and ad hoc arbitration rules including HKIAC, ICC, ICSID, LCIA, SCC, SIAC, UNCITRAL and VIAC. Substantial experience in making interim and emergency applications and regularly makes submissions under a variety of laws) including Angolan law, French law, Indian law, Iranian law, Kuwait law, Libyan law, New York law, Polish law, Sudanese law and Turkish law).

Joint ventures, shareholder agreements, share purchase agreements, partnerships, franchises, consortia and other arrangements: acted as counsel in disputes covering a wide variety of subject matters (including those set out below).

Mobile telecommunications: acted in three interconnected large-scale arbitrations involving a dispute between a French and German mobile operator (claims in excess of Euro 2 billion); acted for a Malaysian company in a dispute involving the acquisition of an Indian mobile operator (claims in excess of USD 250 million).

Natural resources and infrastructure: acted in major natural resource and infrastructure disputes (including mining and power projects) in Africa (including Angola, Egypt and Tanzania) and the Caribbean. Examples include dispute respect of exclusion from a power project (claims in excess of USD 300 million) and mining venture (claims in excess of USD 1 billion).

Oil & Gas arbitrations: acted in oil & gas disputes (and associated technical disputes relating to pipelines and other infrastructure) involving major oil and gas companies and involving countries such as Iran, Nigeria, Russia, Turkey and Sudan. Examples include a pipeline dispute (claims in excess of USD 1 billion); a dispute with respect to a long-term gas supply contract (claims in the billions); a dispute with respect to a hedging arrangement. Technical/engineering arbitrations: acted in complex engineering and technical disputes including high tech manufacturing equipment and military equipment. Examples include a joint venture relating to the engineering, design and construction of an aluminum smelter and downstream facilities (claims in excess of USD 100 million); contract for the supply of military vessels raising issues as to accuracy of the military hardware (claims in excess of USD 70 million); contract for the supply of high tech manufacturing equipment raising complex engineering issues (claims in excess of USD 40 million).

INVESTMENT ARBITRATION

Montrose v Democratic Socialist Republic of Sri Lanka (ICSID) raising jurisdictional issues including trust/beneficiary issues and substantive issues of alleged expropriation.

Republic of Korea v Dayyanis [2019] EWHC 3580 raising jurisdictional issues as to the meaning of an investment, asset, and questions of standing and attribution.

GPF GP SARL v Republic of Poland [2018] 1 Lloyd's Rep 410 raising issues as to the interpretation of a treaty arbitration clause and consideration of the forms of expropriation. UNCITRAL proceedings raising issues as to the interpretation of a stabilization clause, tax treatment and related issues of fair and equitable treatment.

Dual international commercial and investment arbitration proceedings arising out of the same venture with an African State (UNCITRAL).

Advised on investment treaty claims (jurisdiction and substance) arising out of the Russian annexation of Crimea (UNCITRAL).

Advised on the jurisdictional implications of the ECJ judgment in *Slovak Republic v Achmea* (C-248/16).

ARBITRATION APPLICATIONS BEFORE THE COURT

New York Convention (enacted in section 100 et seq. of the Arbitration Act 1996)

- *PAO Tatneft v Ukraine* [2020] EWHC 3161 (Comm)
- *Kabab-Ji v Kout Food Group* [2020] EWCA Civ 6 and *J v K* [2019] EWHC 899 (Comm)
- *Travis Coal Restructured Holdings LLC v Essar Global Fund Ltd* [2014] 2 Lloyd's Rep 494
- *Dowans Holding SA & Dowans Tanzania Ltd v Tanzania Electric Supply Co Ltd* [2011] 2
- Lloyd's Rep 475 and 2012 [EWHC] 350 (Comm)
- *IPCO (Nigeria) Ltd v Nigerian National Petroleum Corporation* [2005] 2 Lloyd's Rep 326

Section 67 (Jurisdiction rehearing)

- *Republic of Korea v Dayyanis* [2019] EWHC 3580 (investment arbitration)
- *GPF GP SARL v Republic of Poland* [2018] 1 Lloyd's Rep 410 (investment arbitration)
- *Petroleum Company of Trinidad & Tobago v Samsung Engineering* [2017] EWHC 3055 (international commercial arbitration)
- *A v B* [2015] 2 ALL ER (Comm) 85 (international commercial arbitration)

Section 68 (Procedural irregularity)

- *Polski Koncern v Yukos International* [2013] Folio 736 (Comm)

- *Petrochemical Industries Co (KSC) v Dow Chemical Company* [2012] EWHC 2739 (Comm)

Section 66 (enforcement of an English award)

- *Y v S* [2015] 1 Lloyd's Rep 703

Section 44 (court powers in support of arbitral proceedings) and section 37 of SCA 1981

- *Gerald v Timis Trust* [2016] EWHC 2327
- *Assaubayevs v Wilson* [2012] EWHC 350 (Comm)
- *Elektrim v Vivendi* [2007] 2 Lloyd's Rep 8

Section 18 (appointment of an arbitrator)

- *Enercon GMBH v Enercon (India) Ltd* [2012] EWHC 3711 (Comm)

Section 9 (stay of court proceedings)

- *Wilson v Assaubayevs* [2015] CP Rep 10 (Court of Appeal)

Section 72

- *Tamil Nadu Electricity Board v ST-CMS Electric Company* [2008] 1 Lloyd's Rep 93

Career

- Called to the Bar of England & Wales: 1998
- Admitted as an Attorney and Counsellor at Law by the State of New York: 1996

Education

- Cambridge University, Trinity College (1991-1994) BA (Law), First Class Honours (Parts 1A, 1B & Part II) Trinity College Senior and Junior Scholarships
- Van Heyden Prize for Academics
- ECS Wade Prize for Administrative Law
- Harvard Law School, Cambridge Massachusetts, USA (1994-1995)
- LL.M. (1994)
- Holland Fund Scholarship awarded by Trinity College, Cambridge University for study at Harvard Law School
- Inns of Court School of Law, Lincoln's Inn, London (1997-1998)
- Lord Denning Scholarship, Lincoln's Inn
- Lord Mansfield Scholarship, Lincoln's Inn
- Bar Association Prize for Commerce, Finance & Industry CCH Editions Prize for Company Law
- Finalist of the Robert Wright Mooting Competition