

# ESSEX COURT CHAMBERS

## BARRISTERS



### RICKY DIWAN QC

Call: 1998 | Silk: 2015

[rdiwan@essexcourt.com](mailto:rdiwan@essexcourt.com)

24 Lincoln's Inn Fields, London WC2A 3EG, UK

T +44 (0)20 7813 8000

F +44 (0)20 7813 8080

DX 320 Chancery Lane

E [clerksroom@essexcourt.com](mailto:clerksroom@essexcourt.com)

[www.essexcourt.com](http://www.essexcourt.com)

## PROFESSIONAL PRACTICE

Ricky Diwan QC practices in the field of commercial litigation (domestic and international) and international commercial and investment arbitration. He has substantial experience in multi-jurisdictional disputes involving both arbitration and litigation and related applications for interim and interlocutory relief both before arbitral tribunals and the English High Court. He has also argued numerous cases concerning enforcement of arbitral awards under the New York Convention (1958) and the equivalent domestic procedure under s.66 of the Arbitration Act 1996.

He appears as Counsel before the English Courts at all levels, before Foreign Courts and as Counsel and Arbitrator in international commercial and investment arbitrations both in London and abroad under a wide variety of laws and arbitral rules (including ICC, LCIA, SIAC, UNCITRAL) and spanning a wide array of subject matters. He also sits as an arbitrator in international arbitrations. Being an OCI (Overseas Citizen of India) he regularly visits India and is able to provide services to Indian clients in India at short notice (given the absence of visa requirements or restrictions).

He co-drafted the Mauritian International Arbitration Act 2008 and advised on the LCIA-MIAC arbitration rules. He co-authored (with VV Veeder QC) the ICCA International Handbook on Commercial Arbitration for England & Wales published in December 2015. He is also a senior lecturer at King's College London, where he teaches the LLM course in international commercial arbitration.

He has been consistently recommended in leading legal guides in international arbitration. In the

2017 Who's Who Legal UK Bar he was described as: “*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”*”. In the 2016 Who's Who Legal UK Bar it was said: “*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.*” In 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.*”

Recent work has included:

- Acting as counsel in a major oil and gas related arbitral dispute, Turkish seat, Turkish substantive law, ICC Rules;
- Applying for injunctive relief under s.44 of the Arbitration Act 1996 raising novel issues concerning the interaction of the LCIA Rules (emergency powers) and s.44 of the Arbitration Act 1996 (*Gerald v Timis Trust*);
- Challenging an investment treaty award under s.67 of the Arbitration Act 1996;
- Acting in High Court litigation involving the Libyan Investment Authority raising the question of who is the government of Libya and related foreign relations law issues;
- Challenging an commercial arbitral award under s.67 of the Arbitration Act 1996 on jurisdictional grounds involving a retrial on issues concerning whether or not an agreement was signed including issues of forgery;
- Advising on BIT claims under the Ukraine-Russian BIT arising out of the annexation of Crimea;
- Acting as counsel in ICC arbitral proceedings (Paris seat) concerning franchise arrangements in the Middle East and raising issues of French law “group of companies” doctrine and trade mark issues;
- Acting as counsel in LCIA arbitral proceedings under a guarantee and raising legal issues relating to good faith as a matter of English law.

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.

---

## AREAS OF EXPERTISE

- |  |   |
|--|---|
| ■ Commercial Litigation                        | ■ Mobile Telecommunications             |
| ■ Conflict of laws & private international law | ■ Oil & Gas, Energy & natural resources |

- Injunctive relief and enforcement proceedings
  - International Commercial and Investment Arbitration and related court applications
  - International Trade & Transport
  - Public international law
  - Technical Engineering Projects
- 

## WHAT OTHERS SAY

### Chambers & Partners (2016)

Arbitration:

*“Completely unflappable.” “One of the phenomenal things about Ricky is that he just has this ability to pick things up and is willing to get into the technical bits.”*

### In Legal 500 (2016):

Arbitration:

*“Exceptional across the board and a very easy decision for the QC panel.”*

### Whos Who Legal (UK Bar 2015)

Arbitration:

*“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 UK (2015):

International Arbitration:

*“He has great knowledge of arbitration matters and knows the ICC rules inside-out. He identifies the strong points in a case and he brings them to the fore – he is just outstanding.”*

### Chambers and Partners UK (2014), top 100

*“Prompt, efficient, clear and user-friendly,” he is a lawyer who “has a brilliant legal mind,” and who offers “top class presentation both on paper and orally”.*

---

## EXAMPLES OF NOTABLE CASES

### Court applications related to arbitration

**Gerald v Timis Trust** [2016] EWHC 2327. Application under section 44 of the Arbitration Act 1996 raising issues of the interaction of the court's powers under section 44 and the emergency powers under the LCIA Rules.

**A v B** [2015] 2 ALL ER (Comm) 85 (Teare J). Jurisdictional rehearing under section 67 of the Arbitration Act 1996 concerning issues of signing of agreement and construction of agreement.

**Y v S** [2015] 1 Lloyd's Rep 703 (Eder J). Application for recognition and enforcement of an arbitral award under section 66 of the Arbitration Act 1996 raising issues of the interpretation of CPR 62.18 in the context of the New York Convention and related issues as to the court's powers to order security.

**Wilson v Assaubayevs** [2015] CP Rep 10 (Court of Appeal) (Lady Justice Black, Lord Justice Aikens, Lord Justice Clarke). *Raising issues as to the scope of the doctrine of arbitrability and the case management of arbitrable and non arbitrable claims under section 9 of the Arbitration Act.*

**Travis Coal Restructured Holdings LLC v Essar Global Fund Ltd** [2014] 2 Lloyd's Rep 494 (Mr Justice Blair). Resisting recognition and enforcement of an international arbitration award under the New York Convention, raising issues of New York law and the circumstances in which it was appropriate to grant security.

**Polski Koncern v Yukos International** [2013] Folio 736 (Comm) (His Honour Judge Mackie QC). Successful application on paper pursuant to O8.8 of the Commercial Court Guide applying on paper to dismiss an application under section 68 of the Arbitration Act 1996.

**Enercon GMBH v Enercon (India) Ltd** [2012] EWHC 3711 (Comm) (Mr Justice Cooke). Application for the appointment of an arbitrator raising issues as to the interpretation of an arbitration clause, and in particular the seat of the arbitration, and parallel English and Indian proceedings.

**Assaubayevs v Wilson** [2012] EWHC 350 (Comm) (Mr Justice Field). Successful application for anti-arbitration injunctive relief under the court's inherent jurisdiction.

***Petrochemical Industries Co (KSC) v Dow Chemical Company*** [2012] EWHC 2739 (Comm) (Mr Justice Andrew Smith). Resisting application under section 68 of the Arbitration Act 1996 challenging an arbitral award on the grounds that the tribunal failed to address an 'issue' raised; meaning of the term 'issue' for the purposes of section 68 of the Arbitration Act 1996.

***Dowans Holding SA & Dowans Tanzania Ltd v Tanzania Electric Supply Co Ltd*** [2011] 2 Lloyd's Rep 475 and 2012 [EWHC] 350 (Comm) (Mr Justice Burton). Application for recognition and enforcement of an international arbitration award and cross-application for security, raising issues as the meaning of the term 'binding' under the New York Convention, Tanzanian law and evidential issues as to assets.

***Tamil Nadu Electricity Board v ST-CMS Electric Company*** [2008] 1 Lloyd's Rep 93 (Mr Justice Cooke). Trial of a s.72 application as to whether or not a London arbitration clause should be displaced on the basis of alleged mandatory provisions of Indian electricity law to the effect that the capital costs of a power plant built by my client had to be assessed mandatorily by a Tamil Nadu State Board (under the Indian Electricity Act 2003) in preference to the London arbitration clause 5

***Elektrim v Vivendi*** [2007] 2 Lloyd's Rep 8 (Mr Justice Aikens). Resisting application for anti arbitration injunctive relief pursuant to s.37 of the Supreme Court Act. Raised issues as to the scope of the Court's powers under s.37 in light of s.44 of the Arbitration Act 1996

***IPCO (Nigeria) Ltd v Nigerian National Petroleum Corporation*** [2005] 2 Lloyd's Rep 326 (Mr Justice Gross). Applications for enforcement of an international arbitral award alternatively security, under the New York Convention, raising issues as to the proper approach as to the interpretation of the New York Convention and the grounds for resisting enforcement.

---

## INTERNATIONAL COMMERCIAL AND INVESTMENT ARBITRATION AND RELATED COURT APPLICATIONS

### International Commercial Arbitration

- Counsel for Swiss commodities company relating to claims under a guarantee: LCIA Rules.
- Counsel for a Kuwaiti company relating to franchise arrangements: ICC Rules, Paris seat.
- Counsel for oil companies raising decommissioning issues and allocations of expenditure: ad hoc arbitration.
- Counsel for a Caribbean government in a substantial joint venture dispute with a South American aluminium company relating to the engineering, design and construction of an aluminium smelter and downstream facilities pursuant to a long term joint venture agreement raising issues of fact, jurisdiction and DCF valuation issues: ICC Rules, Miami seat

and London seat (two related arbitrations). Claims in excess of USD 100 million.

- Counsel for a mining company against an African government relating to a long term concession for natural resources raising issues as to the interpretation of a stabilisation clause in a production supply agreement (PSA), and international law issues (included issues of Fair and Equitable Treatment): UNCITRAL Rules, London seat. Claims in excess of USD 400 million.
- Counsel for an Indian company in dispute with a German company relating to the supply of high tech manufacturing equipment raising complex engineering issues: ICC Rules, Singapore seat. Claims in excess of USD 40 million.
- Counsel for a company being part of a Swiss insurance group, relating to its acquisition of a Russian insurance company, raising issues of Russian law, and warranty and indemnity claims: LCIA Rules, London seat.
- Counsel for a mobile telecom operator relating to a loan agreement governed by New York law: LCIA Rules, London seat. Claims in excess of USD 400 million.
- Counsel on behalf of a Malaysian company relating to the acquisition of an Indian mobile telecommunication operator: SIAC Rules, Singapore seat. Claims in excess of USD 250 million.
- Counsel on behalf of a Caribbean government in a dispute relating to the supply of military vessels raising factual and technical issues relating to the accuracy of the military hardware: ICC Rules, London seat. Claims in excess of USD 70 million.
- Counsel on behalf of an African government in an oil pipeline related dispute pursuant to a long term concession agreement raising Sudanese law issues: UNCITRAL, London seat. Claims in excess of USD 1 billion.
- Counsel against an African government relating to an emergency power supply agreement raising inter alia issues of state responsibility: ICC Rules, Tanzanian seat. Claims in excess of USD 65 million.
- Counsel for a French mobile operator against a German mobile operator in contractual and tortious disputes under Polish law: VIAC, Vienna seat. Claims in excess of Euro 2 billion.

#### International Investment Arbitration

- Counsel currently advising on investment treaty claims arising out of the Russian annexation of Crimea;
- Counsel in an UNCITRAL arbitration relating to natural resources raising issues of fair and equitable treatment and interpretation of stabilisation clauses;
- Counsel advising on claims arising under the Energy Charter Treaty.

## International Commercial Litigation

- Counsel currently acting in the context of a dispute concerning the Libyan Investment Authority raising the question as to who is the government of Libya and related issues of foreign relations law and justiciability. See ***Bouhadi v Breish*** [2016] EWHC 602; ***Libyan Investment Authority v Societe Generale*** [2015] EWHC 1720 and [2015] EWHC 1925.

## Arbitration related court applications – summary:

- ***New York Convention***: applying for or resisting recognition enforcement under the New York Convention and cross-applications for security: ***Travis Coal Restructured Holdings LLC v Essar Global Fund Ltd*** [2014] EWHC 2510 (Comm) (Blair J); ***Dowans Holding SA & Dowans Tanzania Ltd v Tanzania Electric Supply Co Ltd*** [2011] 2 Lloyd's Rep 475 and 2012 [EWHC] 350 (Comm) (Burton J); ***IPCO (Nigeria) Ltd v Nigerian National Petroleum Corporation*** [2005] 2 Lloyd's Rep 326 (Gross J)
- **Section 66, Arbitration Act 1996, issues arising under CPR 62.18 and related questions of security**: ***Y v S*** [2015] EWHC 612 (Comm) (Eder J)
- **Section 67 and Section 68 Applications, Arbitration Act 1996: A v B** (2015) EWHC 1944 (Teare J); ***Polski Koncern v Yukos International*** [2013] Folio 736 (Comm) (Judge Mackie QC); ***Petrochemical Industries Co (KSC) v Dow Chemical Company*** [2012] EWHC 2739 (Comm) (Andrew Smith J). Presently acting in two section 67 applications involving a complete rehearing of factual and expert issues relating to jurisdiction.
- **Injunction applications under section 44 of the Arbitration Act 1996 and section 37 of the Senior Courts Act 1981**: ***Assaubayev v Wilson*** [2012] EWHC 350 (Comm); ***Elektrim v Vivendi*** [2007] 2 Lloyd's Rep 8
- **Section 9 of the Arbitration Act, arbitrability and the court's inherent jurisdiction**: ***Assaubayev v Wilson*** [2014] EWCA Civ 1491, [2015] CP Rep 10 (Aikens LJ, Black LJH, Christopher Clarke LJ)

---

## 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, B & 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