



# The arbitration elite

## In a league of their own

Laurena Oledimmah reveals <sup>PLC</sup>Which lawyer?'s top 20 arbitration specialists and examines the ever expanding nature of the work they undertake.



International arbitration is seen by many as the glamorous side of arbitration work, because the stakes are often higher than in the domestic arena, and the field is so specialised that lawyers find it difficult to break into.

Based on research undertaken for the fifth edition of the <sup>PLC</sup>*Cross-border Dispute Resolution Handbook* and <sup>PLC</sup>*Which lawyer?*, this article:

- Highlights the increasing variety of disputes that are being referred to international arbitration; and

- Reveals the world's leading lawyers in this field (*see box, <sup>PLC</sup>Which lawyer?'s top 20 arbitration specialists*).

### Investment treaty disputes

The single most important development in the international arbitration arena over the past few years has been the rise in the number of investment treaty claims brought before the International Centre for the Settlement of Investment Disputes (ICSID) (*see also The Global Counsel Top 10: arbitration specialists at [www.practicallaw.com/4-101-7427](http://www.practicallaw.com/4-101-7427)*). This can be attributed to the continuing growth of international investment, particularly in emerging mar-

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## PLC Which lawyer? top 20 arbitration specialists

The lawyers listed alphabetically below have all made strong contributions to the international arbitration community and are recognised for the strength of their personal practices as well as that of their firms.

The results are based on research undertaken for the fifth edition of the *PLC Cross-border Dispute Resolution Handbook* and *PLC Which lawyer?* and additional interviews with in-house counsel, fellow lawyers and barristers.

| Arbitration specialist  | Commentary   |
|---|--|
| Mark Baker, Fulbright & Jaworski, Houston                     | Recent appointments include as counsel and arbitrator in IP-related disputes. As counsel he represented a multinational energy company in an UNCITRAL arbitration against the Salvadorian governmental energy agency.  |
| Doak Bishop, King & Spalding, Houston                         | Acts for the world's top energy companies and is renowned for his ICSID experience.  |
| Matthieu de Boisséson, Darrois Villey Maillot Brochier, Paris | Instructed in matters relating to a wide range of industry sectors, from aerospace and defence to telecoms. He is also active in post-M&A and international restructuring arbitrations.  |
| Stephen Bond, White & Case, Paris                             | Specialises in the field of international commercial arbitration. Predominantly serves on disputes relating to the oil and gas sectors, and international joint ventures.  |
| Gary Born, WilmerHale, London                                 | One of the world's leading arbitrators - continues to be in high demand as both counsel and arbitrator.  |
| Donald Francis Donovan, Debevoise & Plimpton, New York        | Forms part of a superstar double act with David W. Rivkin ( <i>see below</i> ). Workload involves BITs and sovereign debt, and power and energy disputes. The team's involvement in BIT-related work has led to some of the largest awards obtained from sovereigns.   |
| Emmanuel Gaillard, Shearman & Sterling, Paris                 | Chairman of Shearman & Sterling's international arbitration practice in the Paris office. He is currently representing the majority shareholders in Yukos Oil Co in a series of three arbitrations against the Russian Federation. Shareholders are asking for US\$33 billion, making it the largest investment treaty arbitration ever. |
| Judith Gill, Allen & Overy, London                            | Firmly established in the international arbitration market; recently active in LCIA arbitration proceedings from the London office.  |
| Gabrielle Kaufmann-Kohler, Schellenberg Wittmer, Geneva       | Possibly the busiest and most high profile arbitrator in Switzerland. Focuses on ICSID matters.  |
| Richard Kreindler, Shearman & Sterling, Frankfurt             | Has handled construction, infrastructure and investment arbitrations under the rules of US, European and other institutional arbitration regimes.  |
| Carolyn Lamm, White & Case, Washington DC                     | Has earned plaudits for her work on ICSID disputes; standout work for the year includes <i>PIATCO v Republic of the Philippines</i> (valued at over US\$1 billion).  |
| Michael Moser, O'Melveny & Myers, Hong Kong                   | Currently sitting as arbitrator in Stockholm and London under ICC, AAA and UNCITRAL rules. He is a noted authority on China-related disputes.  |
| Jan Paulsson, Freshfields Bruckhaus Deringer, Paris           | His name has become synonymous with the reputable brand of international arbitration offered at Freshfields. He has extensive experience with international organisations, and was lead counsel to the government of Bahrain in its land and maritime border dispute with Qatar.   |
| Daniel Price, Sidley Austin, Washington DC                    | Practice chair at Sidley Austin. Has been praised for his high-profile work in investment treaty arbitrations.   |
| Michael Pryles, Clayton Utz, Sydney                           | Now acting as a consultant at Clayton Utz. Has remained active and is also an arbitrator at 20 Essex Street, London.   |
| Lucy Reed, Freshfields Bruckhaus Deringer, New York           | Has built impressive public law credentials, as well as acting as counsel and arbitrator in international arbitrations. She is one of five arbitrators on the Eritrea-Ethiopia Claims Commission.  |
| David W. Rivkin, Debevoise & Plimpton, New York/London        | Has handled international arbitrations throughout the world before virtually every major arbitration institution. This includes the successful representation of Occidental Petroleum Corporation in winning US\$75 million in damages.  |
| Audley Sheppard, Clifford Chance, London                      | The pre-eminent member of Clifford Chance's international arbitration team. Renowned for UNICTRAL arbitrations and BIT arbitrations concerning the Government of India.  |
| John Townsend, Hughes Hubbard, Washington DC                  | Described as the anchor of the firm's DC office, he has been involved in international arbitration on a policy level in addition to acting as counsel and arbitrator.  |
| VV Veeder, Essex Court Chambers, London                       | Described by fellow professionals as "the complete lawyer", VV Veeder remains a global figure of excellence throughout the industry.   |

kets, as well as the proliferation of bilateral and multilateral investment treaties (BITs and MITs) designed to protect the flow of that investment (*see Investment treaties: taking advantage of the protections on offer, in this issue*). Many BITs and MITs provide for the referral of disputes to ICSID arbitration.

The vast majority of investment treaty claims arise out of investment in developing countries such as those in Latin America and Eastern Europe. Lawyers interviewed highlighted Venezuela and Bolivia as sources of future investment claim work. For example, Bolivia's recent announcement that the country's state energy company would take control of all energy operations and set gas prices has already triggered a wealth of work for arbitration lawyers.

David W. Rivkin, litigation partner at the New York office of *Debevoise & Plimpton*, comments, "Fortunately for investors, Bolivia and Venezuela are parties to a number of BITs with capital-exporting nations who are keen to protect their investments. Under such BITs, private companies are able to pursue claims directly against the relevant host state, without becoming embroiled in the national court system of that country. In addition, they would have reasonable prospects of enforcing any award obtained in a BIT arbitration."

Fellow *Debevoise & Plimpton*, partner Donald Francis Donovan adds that investment work in these regions looks likely to continue, "It is not only the nationalisation of its natural gas resources that will bring significant disputes work; nationalisations of other industries like mining would warrant redress by investors."

### Other growth areas

In addition to investment treaty disputes, arbitration experts commented that international arbitration is increasingly being used to resolve environmental, shareholder and even competition law claims. In relation to the latter, Gary Born of *WilmerHale* in London observes that privatisations in Europe are generating work in relation to international competition and market entrance disputes, especially in the telecommunications and pharmaceuticals industries.

Wendy Miles, another *WilmerHale* London partner, added that the arbitration of non-commercial disputes, for example border disputes and power-sharing relationships, will continue to generate work,

as will the arbitration of extra-contractual and regulatory issues including competition law and patent disputes.

### The potential of China

China, with its rapidly expanding economy and legal market, was also singled out by many experts as a country to watch, both as a source of future arbitration work and a potential developing centre for international arbitration.

However, at the present time, those contemplating arbitrating in China need to be aware of some unusual features of the system there. In particular, arbitrations must be conducted under the rules of an arbitration body and cannot be ad hoc (*Arbitration Act 1994*). In addition it is not clear whether Chinese law recognises arbitral decisions made by bodies based outside China, such as the International Chamber of Commerce (ICC).

Currently, the largest arbitration body in China is the China International Economic and Trade Arbitration Commission (CIETAC), which has a virtual monopoly over arbitrations conducted in the country. However, it is beginning to face competition from local bodies such as the Beijing Arbitration Commission and the Shanghai Arbitration Commission.

In the past, CIETAC has been criticised for its restrictive requirements (for instance, arbitrators could only be chosen from an official panel of arbitrators). However, in May 2005 the body reformed its rules to allow, for example, parties to:

- Choose a non-CIETAC arbitrator if both parties agree.
- Amend CIETAC's rules, again, if both parties agree.

*O'Melveny & Myers* partner Michael Moser, based in the firm's Hong Kong office, believes that although the changes to CIETAC's rules have improved the conduct of arbitrations in China, the Arbitration Act still obstructs the process and needs to be reformed.

Another issue for parties arbitrating in China is the difficulty involved in enforcing foreign arbitral awards locally. While the courts have introduced reforms to redress this problem, commentators argue that CIETAC needs to deal with this issue as well.

Therefore, it remains to be seen whether

China will produce a world-class arbitration centre to rival cities such as London, Paris, Geneva and Zurich, which are based in jurisdictions with flexible rules on international arbitration and have long been important venues for the resolution of international disputes. Competition remains fierce and is increasing as new potential venues enter the fray. As Fabian von Schlabrendorff, of *Clifford Chance* in Frankfurt, explains, "There has been a certain shift of arbitration activities from Paris to London, or rather stronger growth in London, for example with regard to disputes involving Russian parties." He also contends that Germany is gaining ground as an arbitration centre.

Richard Kreindler, a partner at *Shearman & Sterling* in Frankfurt, confirms that other arbitration venues are increasing in popularity as a result of progressive changes in legislation or simply as commercial relations evolve. He cites cities such as Miami, Houston, Vienna, Singapore and Dubai as examples.

### Entering the mainstream

As well as the specific growth areas identified above, experts also remarked on a more general trend among multinational companies and investors to increasingly resolve disputes by way of international arbitration, partly driven by the fact that arbitration awards can be easier to enforce than court judgments (*see Enforcing awards or judgments: why winning is only half the battle at www.practicallaw.com /3-201-2127*).

As a result, international arbitration work is entering the mainstream. As Abby Cohen Smutny of *White & Case* in Washington DC explains, "International arbitration is not a unique sub-speciality anymore, just an important part of dispute resolution efforts".

And while this type of work has traditionally been linked with a select number of firms, other firms are gaining a foothold. As Eric Schwartz, a partner at *Freshfields Bruckhaus Deringer* in Paris and former Secretary General of the ICC notes, "There is a lot more diversity than one might expect - there are a large number of people involved in the arbitration process."

This said, there are undoubtedly certain firms and individuals that continue to excel in the field. These are identified in the <sup>PLC</sup>*Which lawyer? top 20 arbitration specialists* (see box).