

## RUPERT D'CRUZ

Call: 1989



Rupert D'Cruz specialises in commercial and chancery litigation and international arbitration. His principal areas of practice are:

- Commercial Contract Disputes
- Civil Fraud and Asset Tracing
- Company and Shareholder Disputes
- Banking and Securities
- Sale of Goods
- Chancery, Equity and Trust Disputes
- International Arbitration (in particular under LCIA, ICC, SCC Rules and Bilateral Investment Treaty disputes)
- Injunctive Relief
- Private International Law

Rupert has been recognised as a leading barrister in commercial litigation and international arbitration by Chambers and Partners UK, Chambers & Partners Global and The Legal 500 which have commended him as *“very bright” “commercially astute” and “extremely responsive”*. He has been cited in these publications for his *“profound knowledge of the law”* and as *“an excellent draftsman”* who *“stands out for his quick mastery of the law as applied to the facts”*; *“anticipates any pitfalls very effectively”* and is *“very good on detail”*.

Rupert's advocacy has been repeatedly recognised by other lawyers who have worked with him. His peers are recorded in Chambers and Legal 500 as commenting that *“his advocacy is excellent”* and have *“singled him out for his authoritative arguments in court”* and for *“succeeding in obtaining the relevant responses without being aggressive”*.

Rupert's niche expertise in Russian & CIS related disputes is widely recognised. Chambers, Chambers Global and Legal 500 have described him as being *“Extraordinarily knowledgeable on all matters relating to the CIS”* and noted that *“his Russian language skills and substantial understanding of local market practice make him a strong asset in CIS-linked disputes.”* As such, the directories have commended him as *“excellent for CIS work”*, and *“a good choice for cases in need of a cerebral Russian/CIS expert”* He is regularly instructed to provide expert opinions on English law issues for use in CIS court proceedings.

Rupert holds the following positions of responsibility in relation to Russia and the CIS:

- Bar Council International Committee representative for Russia and the CIS
- Secretary of the British-Russian Law Association (BRLA)
- Secretary of the British-Kazakh Law Association (BrKLA)

- Rupert also sits as arbitrator in LCIA arbitrations involving CIS parties.

## Areas of Practice

### Commercial Contract Disputes

Assignments; agency (including commission claims); breach of fiduciary duty; fraud; breach of warranty of authority; subrogation; mistake; misrepresentation; undue influence; illegality; limitation; estoppel; res judicata; abuse of process; enforcement of foreign judgments and arbitral awards.

### Civil Fraud and Asset Tracing

Dishonest assistance; knowing receipt; breach of fiduciary duties (directors, employees agents); conspiracy; deceit; procuring a breach of contract; constructive trusts; unjust enrichment; money had and received; restitution; carousel/vat frauds; jurisdictional disputes (domicile, necessary or proper party, fair trial issues, forum conveniens, lis alibi pendens, anti-suit injunctions); freezing injunctions; interim remedies in support of foreign proceedings; search and seizure orders.

### Company and Shareholder Disputes

Directors' duties (breach of fiduciary duties; conflicts of interest; disclosure duties); joint venture disputes; share issues and transfers (including enforcement of share option agreements); rights of pre-emption; validity of purchases by a company of its own shares; waiver of statutory formalities; s.994 petitions; insolvency (winding-up petitions and related claims and applications).

### Banking/Securities

Duties of care to customers/third parties; payments by mistake; rights and duties of mortgagees, chargees and pledgees; enforcement of guarantees; fraud related claims.

### Sale of Goods

Disputes over title; conversion claims. (waivers, discharges of torts, acquisition of title under the Sale of Goods Act 1979); disputes over quality/fitness for purpose.

### Chancery and Trust Disputes

Breach of trust and fiduciary duties; constructive and resulting trusts; TOLATA claims; estoppel; restitution; undue influence and unconscionability; unjust enrichment.

### International Arbitration

LCIA, ICC and SCC arbitrations (including as arbitrator); challenges to arbitral awards (including in relation to jurisdiction issues and serious irregularities); claims and applications relating to breaches of arbitral agreements (including anti-suit injunctions and claims for damages); bilateral investment treaty disputes (including breaches of the right to fair and equitable treatment and the right to enjoyment of full protection and security in relation to investments and expropriation).

### Russian & CIS Disputes

Joint venture and shareholder disputes; civil fraud; unjust enrichment; restitution; conspiracy; delict; breach of

directors' and agents' duties (under Russian, Ukrainian and Kazakh as well as English law); limitation; abuse of rights; conflict of laws; jurisdictional issues (governing law, domicile, necessary or proper parties, rule of law/fair trial issues); interim remedies in support of CIS proceedings; enforcement of CIS judgments and arbitral awards (including in an insolvency context); Russian/CIS law on corporate/shareholder and commercial fraud claims.

## Recently Reported Cases

***New Media Holdings Ltd v Kuznetsov*** [2016] EWHC 360 (QB) Put Options; Term Sheets; Intention to Create Legal Relations; Supervening Illegality.

***Kishenin (t/a Beiderbecke's Hotel and Restaurant) v Bleach*** [2015] EWCA 1184 Agreements; Certainty; Hotels; Possession; Tenancies.

***PJSC Vseukrainskyi Aktsionernyi Bank v Maksimov*** [2014] EWHC 3771 (Comm); Committal for contempt; Corporate defendants; Disclosure; Disposition of property; Freezing orders; Non-compliance; Shareholders; Share transfers.

***Kagalovsky v Turevych*** [2014] EWHC 2697 (QB); Committal proceedings; Contempt of court; Costs; Disclosure orders; Discontinuance; Discretion; Permission.

***PJSC Vseukrainskyi Aktsionernyi Bank v Maksimov*** [2013] EWHC 3203 (Comm) (worldwide freezing injunction in support of LCIA arbitral proceedings; discharge application; abuse of process; whether service out on a third party under the Chabra jurisdiction is possible in the context of arbitral proceedings)

***PJSC Vseukrainskyi Aktsionernyi Bank v Maksimov*** [2013] EWHC 422 (Comm); (2013) 163 N.L.J. 324 (worldwide freezing injunction; discharge application; test for exercising the Chabra jurisdiction; 'good reason to suppose' test; material non-disclosure)

***Yugraneft v Abramovich, Millhouse Capital (UK) Ltd and Berezovsky*** [2008] All ER (D) 299 (Oct)  
(Proceedings against Russian citizen and English company; alleged fraudulent dilution of shares in Russian company; proper law; dishonest assistance; delict; unjust enrichment; restitution; double actionability; jurisdiction challenge; Judgments Regulations; necessary or proper party; issue estoppel; res judicata; limitation)

***Re OJSC ANK Yugraneft, Millhouse Capital UK Ltd v Sibir Energy plc and others*** [2008] All ER (D) 311 (Oct) (Russian liquidator applying for winding up petition of Russian company and appointment of provisional liquidator in England; company subsequently commencing proceedings against applicants; applicants seeking dismissal of winding up petition)

***Abou-Rahmah v. Abacha & Ors*** [2007] 1 All ER (Comm) 827, 9 ITELR 401 (banking; advance fee fraud; dishonest assistance; money had and received; negligence; duties to third parties; money laundering duties; resulting trust)

***Re Areamas Ltd*** [2007] All ER (D) 56 (Jun) (company, winding up, advertisement, whether bona fide dispute on debt).

***Fresh 'N' Clean (Wales) Ltd v Miah*** (2006) LTL 3/10/2006 (breach of fiduciary duty, dishonest assistance, carousel fraud)

***Fresh 'N' Clean (Wales) Ltd v Miah*** [2005] All ER (D) 368 (Apr) (carousel fraud, civil procedure, application of

CPR Part 14 (judgment on admission))

***Onyeador v. Miss World Ltd*** [2005] All ER (D) 257 (Apr), (commercial contract dispute, assignment, agency, subrogation, constructive trust, illegality)

***Humphreys v. Humphreys*** [2005] 1 FCR 712 (undue influence; misrepresentation, unconscionable bargain; limitation).

## Russia/CIS

Rupert has worked extensively across Russia and the CIS on a number of legal matters. In addition to Russia, his CIS experience has involved work in/in relation to Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Ukraine and Uzbekistan.

He has extensive working knowledge and practical experience of the following areas of local law and practice: Duties of representatives /agents; directors' duties; shareholder rights; delict; unjust enrichment; abuse of rights; limitation; civil procedure in connection with commercial fraud claims; criminal law and procedure relevant to commercial fraud claims; insolvency law (including creditors' rights); rule of law issues.

Recent CIS cases in which he has been involved include:

- *Yugraneft v. Abramovich, Millhouse Capital (UK) Ltd and Berezovsky*
- *Re OJSC ANK Yugraneft, Millhouse Capital UK Ltd v Sibir Energy*
- *Gudavadze, Patarkatsishvili, Zhmotova & Others v. Kay and Patarkatsishvili*
- *BTA Bank v Ablyazov & Ors*
- *Barcat Investment Ltd v Ostapchuk & Ors*
- *Concept Oil Services Ltd v En-Gin UK Ltd & Ors*
- *Vseukrainskiy Aksionerniy Bank v Maksimov & Ors*
- *Kagalovsky v Turevych*
- *Kishenin (t/a Beiderbecke's Hotel and Restaurant) v Bleach & Ors*
- Contractual dispute between Russian parties over the purchase of a yacht
- Corporate dispute between Kazakh and Russian parties relating to the enforcement of a share option agreement
- LCIA arbitration between Russian parties involving a commodities dispute
- LCIA arbitration between Russian parties involving a joint venture dispute
- Fraud dispute between Ukrainian parties relating to the sale and purchase of oil
- Enforcement of an arbitral award involving Russian and English parties
- Enforcement of a Russian court judgment
- Sale of goods dispute between Russian and Indian parties
- LCIA arbitration between Kazakh and Russian parties involving breaches of fiduciary duties by directors and consequential claim for rescission
- Advising on the non-contractual enforcement remedies available to the proposed transferee of the borrower's rights under a \$250 million facility agreement between two Russian parties.
- Advising on jurisdictional issues in relation to a €300 million fraud dispute involving Russian parties
- Winding up petition based on a Russian court judgment
- Contractual dispute between Kazakh and English businesses
- Breaches of a director's duties in relation to a company with Kazakh-based operations

- Banking and fraud dispute involving Russian parties
- Contractual dispute between Georgian and Italian companies
- Corporate/shareholder disputes involving Ukrainian parties
- Ad hoc arbitration involving breach of fiduciary duty in connection with a Kazakhstan based business
- LCIA arbitration involving \$130 million claim for breach of condition precedents in a share purchase agreement between Ukrainian parties
- LCIA arbitration involving alleged breach of a loan agreement between companies owned by Russian shareholders
- Inducing a breach of contract claim relating to the Russian operations of two prominent accountancy firms

## Recent Articles & Lectures

- Freezing Injunctions in support of multi-jurisdictional litigation and arbitration - Practical Tips on Current Practice and Procedure
- Damages in Commercial Litigation
- Relief for Fraud Claims – An Update
- Fraud, Misrepresentation and Deceit – Choosing Your Remedy
- Shareholder Disputes – Obtaining Relief from the English Courts
- Conflicts of Laws in Corporate and Shareholder Disputes
- Disputes Arising from Shareholder Agreements
- Professional Negligence Claims Against Auditors
- Duties of Solicitors and Other Professional Advisers to Third Parties
- Non-Party Cost Orders
- Interim Remedies in Support of Foreign Litigation and Arbitration – How And When English Courts Can Assist
- Litigating Russian and CIS related fraud claims in England: ((i) establishing jurisdiction; (i) conflicts of law issues; and (iii) relevant Russian law issues)
- The Enforcement of Foreign Judgments and Arbitral Awards in England & Wales
- Enhanced Protection of Creditors' Rights – Recent Changes in Russian Insolvency Law
- The Rule of Law in Russia from the Perspective of Foreign Investors
- Recent Legal Developments in Russia Relevant to Business and Commerce
- Enforcing Foreign Judgments and Arbitral Awards in Ukraine
- Enforcing Foreign Judgments in Russia
- Enforcing Foreign Arbitral Awards in Russia

## Recent International Seminar Presentation

**January 2011: Bar Council/British Embassy seminars (St Petersburg and Kyiv): *Litigating and Arbitrating Commercial Disputes in England: Practical Tips for Foreign Lawyers***, Different ways in which jurisdiction can be established in England.

**April 2011: BRLA/British Consulate seminar (Ekaterinburg): *Application of English Law in Russia – (Shareholders Rights and Related Issues)***: Shareholder Disputes – Obtaining Relief from the English Courts

**May 2011: BrKLA/British Embassy seminar (Almaty) on *Transactional Issues and Dispute Resolution***

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**under English and Kazakh Law.** Establishing jurisdiction in England

**June 2011: English Law Week (Moscow):** Arbitrating Russian Disputes in England

**September 2011: American Bar Association CIS Dispute Resolution Conference (Moscow): *Third Annual Conference on Resolving Business Disputes.*** Shareholder Disputes: Protecting Minorities and Joint Venture Partners in Russia, England, the Netherlands and Cyprus

**September 2011: First Legal Forum (Almaty): *Oil & Gas Disputes:*** Choosing between Arbitration and Litigation.

**October 2011: ABA Fall Meeting (Dublin): *Obtaining Interim and Emergency Relief in Support of Arbitration*** – From the English Courts and English Tribunals.

**February 2012: CIS Wealth Planning Conference (Zurich):** Getting your disputes heard in England

**June 2012: White Nights Conference (St Petersburg):** Moderator of session entitled – Law & Justice: Made in the UK

**June 2012: BrKLA/British Embassy seminar (Almaty):** Why foreign clients choose English courts and arbitration.

**July 2012: BRLA/British Consulate seminar (Ekaterinburg): *Managing Contractual Risk under English Law:***The Role of English Law in Promoting Investment

**September 2012: 1<sup>st</sup>Annual Wealth Forum (Cyprus):** The Insider's Guide to Litigation – How to Protect Your Client?

**September 2012: American Bar Association CIS Dispute Resolution Conference (Moscow): *Fourth Annual Conference on Resolving Business Disputes.*** Co-Chair of the conference and moderator of the Moot Applications Session

**October 2012: IBA Mergers & Acquisition in the CIS Conference (Moscow):** Moderated session on Arbitrability of Corporate Disputes in the CIS.

**April 2013: Vedomosti Legal Conference (Moscow):** Why English law is being preferred to Russian law (delivered in Russian)

**May 2013: BrKLA/British Embassy seminar (Almaty):** *Shareholder disputes under English Law*

**July 2013: BRLA/British Consulate seminar (Ekaterinburg): *An Analysis of Common Contractual Terms and Their Application in Practice: Relief for Breach of Contract***

**September 2013: American Bar Association CIS Dispute Resolution Conference (Moscow): *Fifth Annual Conference on Resolving Business Disputes*.** Co-Chair of the conference and moderator of the session on the Cyprus Banking Crisis and CIS Related Disputes.

**November 2013: English Law Week 2013 (Moscow):** Panellist on the case study session on a Russian related arbitration dispute.

**September 2014: American Bar Association CIS Dispute Resolution Conference (Moscow): *Sixth Annual Conference on Resolving Business Disputes*.** Co-Chair of the conference and panellist on the session on "Making CIS Cases 'Stick' in Foreign Jurisdictions".

**September 2014: Sochi Legal:** Panellist on the session on "Opportunities for Developing Arbitration Jurisdictions".