

Rupert D’Cruz

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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.

RECOMMENDATIONS

“Extraordinarily knowledgeable on all matters relating to the CIS”

Chambers Global and Legal 500

AREAS OF LAW

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

Bestolov v Povarenkin [2017] EWHC 1968 (Comm): Disputing the Court's jurisdiction; Article 4 of Brussels (recast) (domicile); the position of the family; the relevance of investment visas.

JSC Mezdunarodniy Promyshlenniy Bank v Pugachev [2017] EWHC 1936 (Ch): Discretionary Trusts; Real Property; Beneficiaries rights; Right of sale and terms of sale.

St Vincent European General Partner Ltd v Robinson [2016] EWHC 2920 (Comm): Disputing the Court's jurisdiction; Exclusive jurisdiction clause (Article 25 of Brussels (recast)); obligation to recognise a member state court's decision on jurisdiction; (Article 33 of Brussels recast). Estoppel and abuse.

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:

- Bestolov v Povarenkin
- JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev
- 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 Abyazov & Ors
- Barcat Investment Ltd v Ostapchuk & Ors
- Concept Oil Services Ltd v En-Gin UK Ltd & Ors
- Vseukrainskiy Aktsionerniy Bank v Maksimov & Ors
- Kagalovsky v Turevych
- Kishenin (t/a Beiderbecke's Hotel and Restaurant) v Bleach & Or
- Defending enforcement of a PCA Award on behalf of CIS State
- Defending injunction preventing a CIS-State company from drawing down under a performance bond in an ICC arbitration
- Defending contractual claim in relation to a large construction project on behalf of a Russian company in an LCIA Arbitration
- LCIA claim for return of a deposit paid under a share purchase agreement between two Russian companies
- 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 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: 1st 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".
