

SIMON NESBITT KC

CALL: 2015 KC: 2015



OVERVIEW

Simon Nesbitt KC practises exclusively in the field of international arbitration and is regularly appointed as arbitrator in some of the world's largest and most high-profile disputes.

He has extensive experience of arbitrations under all of the major institutional rules including the ICC, LCIA, SIAC, SCC, HKIAC, Swiss and ICSID rules, as well as ad hoc arbitrations, often under the UNCITRAL rules. He has, in particular, dealt with many cases in Africa and involving African parties.

Simon has extensive experience of arbitrations in the following areas:

- oil and gas
- projects and construction
- international trade
- commodities
- banking and financial services
- food and beverage
- aviation
- telecommunications
- pharmaceutical
- international investments and joint ventures

Simon is fluent in French and Italian, and dual-qualified in English law and French law. Before joining Maitland Chambers, Simon was Global Co-Head of International Arbitration at the worldwide law firm Hogan Lovells. In 2015, he was one of only five solicitors to be appointed Queen's Counsel. He moved to Maitland Chambers later that same year, qualifying as a barrister.

ARBITRATION

SIMON'S RECENT EXPERIENCE AS ARBITRATOR INCLUDES THE FOLLOWING:

- Co-arbitrator in a US\$8.4 billion ICC arbitration between a Middle Eastern owner and a Korean contractor, seated in Doha and governed by the laws of Qatar, arising under an agreement for the engineering, procurement and construction of offshore platforms and undersea pipeline facilities for an offshore natural gas field, including claims based upon the civil law concept of decennial liability.
- Chairman in a US\$32 million LCIA arbitration seated in London between a Mauritanian company and a Chinese company of disputes arising under a contract for the provision of monitoring, field and maintenance and support services to the claimant's mobile telecommunications network, and claims for the cost of replacing services and telecommunications equipment including core, RAN, RNC, BTS and OCS.
- Co-arbitrator in a US\$2.65 billion ICC arbitration seated in London between Swiss and Russian joint venture partners relating to the construction, development and operation of a major commodities terminal in Russia.
- Co-arbitrator in an arbitration under the UNCITRAL Arbitration Rules in London between a US oil company and a BVI company arising under a participation agreement relating to an oil and gas concession in Central Africa.
- Chairman in an LCIA arbitration between a leading media and entertainment company in Central and Eastern Europe, and a multi-play telecoms and media provider in South-East Europe, arising under an agreement for the purchase of certain media assets in Croatia and Slovenia and involving competition and regulatory issues.
- Sole arbitrator in a US\$20 million ICC arbitration between a Canadian design and construction company and a Eurasian state, arising under an agreement to finance, design and build three multi-use dual-hall sports palaces, including claims for expropriation and FET under customary international law.
- Co-arbitrator in an LCIA arbitration seated in London of claims by Austrian and Maltese banks against a Russian borrower and UK assignor under a subordinated loan agreement, including determining two anti-suit injunction applications brought by the claimants to restrain one of the respondents from pursuing proceedings in a foreign court.
- Chairman in an LCIA arbitration seated in London of claims brought by an Austrian bank against two Russian guarantors in respect of the non-payment of substantial loans under a facilities agreement.
- Sole arbitrator in an ICC arbitration seated in London between an Italian manufacturer of pharmaceutical equipment and its Indian distributor, for breach of a distribution agreement governed by Italian law.
- Co-arbitrator in an ICC arbitration seated in London of claims between a Swiss product designer and a Portuguese manufacturer of kitchen and household items, relating to the manufacture and supply of allegedly defective goods.
- Co-arbitrator in an ICC arbitration seated in Geneva of claims between a Taiwanese company and the Swiss subsidiary of a major US oil and gas, power, water and engineering group, arising out of an agreement for the provision of consulting services in relation to nuclear, thermal and hydro power plants, and involving claims of alleged corrupt practices.
- Chairman in an LCIA arbitration seated in London of claims by a Russian bank against a consortium of international investors under a shareholders agreement, seeking transfer to the claimant of valuable

shares in a Russian energy company, by way of enforcement of security for various loans.

- Co-arbitrator in a SIAC arbitration seated in Singapore of consolidated claims arising under three contracts for the sale and purchase of commodities between an English company and a Singaporean company.
- Chairman in a US\$200 million LCIA arbitration seated in London between a leading Indian retail company and the Dutch and Swiss subsidiaries of a major US footwear group, arising under two related shareholders' agreements and concerning the exercise of an option to acquire shares in the relevant joint venture companies.
- Sole arbitrator in an US\$18 million LCIA arbitration seated in London between two off-shore SPVs, owned, respectively, by an international finance group and a team of East African investors, concerning claims for fraudulent misrepresentation and breach of contract arising in connection with a suite of acquisition and investment agreements relating to a major commercial land development in Kenya.
- Chairman in an ICC arbitration seated in Vienna of claims arising under a share sale agreement governed by English law between US claimants and a Polish respondent, relating to the purchase of shares in a Romanian bank.
- Sole arbitrator in an ICC arbitration seated in Bucharest of claims brought by German and Austrian construction companies against a government agency responsible for administration and maintenance of the public rail infrastructure, arising under a contract for the rehabilitation of 41 railway bridges.
- Sole arbitrator in an LCIA arbitration seated in London of claims brought by a national power company under a Power Purchase Agreement against a state-owned entity and the national government, concerning the operation of an electricity power generation plant.
- Co-arbitrator in an ICC arbitration seated in London, concerning claims and counterclaims arising under a services agreement entered into between an Australia-based international mining company and a Mozambique respondent, and involving issues of Mozambique tax law and practice.
- Sole arbitrator in an LCIA arbitration seated in London between a Spanish bank and a UK-based asset management company, concerning claims for alleged breach of warranties and negligent misrepresentation in connection with a share subscription agreement.
- Sole arbitrator in an ICC arbitration seated in Bucharest between two offshore companies concerning a dispute over the ownership of real estate in Romania.
- Sole arbitrator in an LCIA arbitration seated in London of claims under two Airbus aircraft leasing agreements between two offshore claimants and a West African airline for damages for unpaid rental, loss of income and breach of aircraft maintenance obligations.

Simon's experience as counsel in international arbitrations includes the following major cases:

- An LCIA arbitration in London on behalf of the Nigerian subsidiary of an Italian oil major claiming US\$200 million in respect of the sale of oil mining interests and defending counterclaims of US\$500 million relating to deep offshore oil well drilling, completion, production and shut-off activities.
- An ICC-rules arbitration, administered by SIAC in Singapore, between power company Alstom against PRC company Insigma Technology, resulting in a US\$27 million award for misuse of a pollution control technology used in the construction of coal-fired power plants.
- An ad hoc arbitration between the Nigerian subsidiaries of US and Norwegian international oil companies and a state oil company, in a US\$2 billion claim for damages for breach of the terms of an off-shore production sharing contract.
- An ICC arbitration in Geneva between a Hungarian oil and gas company and an Austrian oil and gas

company, involving claims by the purchaser for breach of tax warranties under an agreement for the purchase of shares in an aviation fuel business.

- A US\$6 billion ad hoc arbitration between a privately-held UAE oil and gas company and a Middle Eastern state oil company in a claim for damages for failure to perform a long-term gas supply contract.
- A US\$75 million ICC arbitration between the Gabonese subsidiary of a major international oil and gas group and a major customer, arising out of alleged breaches of a pipeline transportation and purchasing agreement.
- An LCIA arbitration in London concerning a \$1 billion joint venture dispute between three Ukrainian businessmen relating to the ferroalloys industry in the Ukraine.
- An ICC arbitration in Paris between two Channel Islands investment funds and an international hotel group under a "strategic partnering agreement" governed by French law relating to a sale and leaseback transaction. The tribunal was mandated to decide as amiables compositeurs.
- A US\$800 million ad hoc arbitration under Nigerian law, seated in Nigeria, between a major international oil company against a Nigerian state entity, relating to a costs allocation and cargo lifting dispute under a Production Sharing Contract.
- An ICC arbitration between two major international brewing groups relating to their respective interests in Kenya, arising out of breach of a joint venture agreement, and advising on related proceedings in Uganda.
- An ICC arbitration between a major Italian foodstuffs producer and a Hong Kong counterparty, arising under a manufacturing and distribution contract dispute in connection with a substantial investment in Ghana.
- An ad hoc arbitration under the 1976 UNCITRAL Rules between a US oil company and the Chinese subsidiary of an international oil company concerning claims for breach of a Joint Operating Agreement relating to the former's right to back in to a sole risk exploration project.
- Obtaining pre-arbitral court injunctions for international brewer SABMiller against East African Breweries Limited to prevent acquisition of a rival brewery in Tanzania in breach of a joint venture, and representing SABMiller in a subsequent ICC arbitration in London.

QUALIFICATIONS

- 1994 Admitted as Solicitor (England & Wales)
- 1997 Admitted as Avocat à la Cour (France)
- 2001 Appointed Fellow of the Chartered Institute of Arbitrators
- 2015 Appointed Queen's Counsel
- 2015 Admitted as Barrister

LANGUAGES

- English (native)
- French (fluent)

- Italian (fluent)

DIRECTORY QUOTES

"Particularly talented" and "a superb advocate: steady, convincing, always alert to every nuance, exceptionally good on both paper and on his feet"

Legal 500 ()

"Sources comment that "it is an absolute pleasure working with Simon" due to his dedication to client service; and peers say he is "terrific – charming yet deadly"

Chambers UK ()

"The "excellent" Simon Nesbitt is praised for his advocacy skills. He recently acted on a number of complex proceedings in the energy sector, and has been praised for his approach. Grateful clients say he is "remarkable" and can "take a calculated risk and goes in exactly as far he should go, but not a step more."

Chambers UK ()

"Much of Simon Nesbitt's practice over the last year has centred on disputes arising in Asia and Africa. He is commended for his breadth of sector expertise, having handled arbitrations in relation to oil and gas, banking and financial services, commodities trading, pharmaceutical and telecoms issues." It also praises his "client-friendly, practical approach and energetic, humorous style"

Chambers UK ()

"A "meticulous and measured" arbitration specialist with particular expertise in the energy space. His recent clients include an international oil entity in East Africa and a major beverages company in Asia."

Chambers Global (Dispute Resolution: International Arbitration – UK)

"Simon Nesbitt ... is an esteemed international arbitration specialist. He is noted for his work in Nigeria and in the oil and gas sector. "He's tough, hard-working and very clever," said one source."

Chambers Global (Dispute Resolution – Africa-wide)

QUALIFICATIONS

- M.A. Hons. (First Class) Pembroke College, University of Oxford
 - Law Society Final Examinations, College of Law, York
 - Paris Bar Examinations, Ecole Nationale des Barreaux, Paris
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SELECTED PUBLICATIONS

- Safe Ports for Arbitral Storms, (Parts I, II and III) CI Arb Journal, 2015 - 2018
- The 2014 LCIA Rules: a commentary, ed. Prof Loukas Mistelis, Kluwer
- International Arbitration: bestriding the narrow world, PLC Magazine
- The Status and Operation of Unilateral or Optional Arbitration Clauses in 22(1) Arbitration International 133
- International Arbitration: A Handbook, ed. Prof Phillip Capper (contributing author)
- What to do with a reluctant witness, The European Lawyer
- Le contentieux et ses modes de résolution, Guide des affaires en Grande-Bretagne (French Chamber of Commerce)
- International Arbitration: achieving uniformity on the global stage, In Brief