MAITLAND

+44 (0)20 7406 1200

SIMON NESBITT KC

CALL: 2015 **KC:** 2015
snesbitt@maitlandchambers.com



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 wide 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 is fluent in French and Italian, and dual-qualified in English law and French law. Before joining Maitland Chambers, he was Global Co-Head of International Arbitration at the worldwide law firm Hogan Lovells. In 2015, Simon was one of only five solicitors to be appointed Queen's Counsel (now King's Counsel), and joined Maitland Chambers the same year. He is a Fellow of the Chartered Institute of Arbitrators.

Experience as Arbitrator

Simon has extensive experience of arbitrations in a wide range of industry sectors, including: energy, oil and gas; projects and construction; mining; pharmaceutical; media and telecommunications; banking and financial services; hotels and hospitality; aviation; and manufacturing and trade.

His work in the energy sector extends to highly technical aspects of upstream operations, including reservoir and seismic interpretation, drilling, completion, pipeline construction, production and shut-off activities, and environmental issues, as well as costs recovery, accounting and cash-calls as between operator and non-operators. He has also dealt with disputes involving electricity and other utility concessions.

Examples of Simon's recent experience as arbitrator in these industry sectors include the following:

ENERGY, OIL & GAS

- Co-arbitrator in a USD 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.

- Co-arbitrator in an ***ad hoc*** arbitration under the UNCITRAL 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 and involving claims of improper accounting under the participation agreement.
- Chair in an ICC arbitration seated in London between a Swiss multinational electrical engineering corporation and a Japanese multinational conglomerate, under an SPA relating to the sale of the claimant's power grid automation and integration business, in which it sought ***inter alia*** orders for the assignment and novation of certain project contracts to the counterparty. The counterparty counterclaimed declarations and indemnities in respect of the claimant's alleged breaches of various warranties under the SPA.

- Co-arbitrator in an arbitration seated in Mauritius under the LCIA-MIAC Rules between the UAE-based owner of electricity generating powerships in various jurisdictions, and a state-owned power company located in Zambia, concerning a claim for USD 115 million under a triparty power purchase agreement.

- 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.

- 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 Paris between a Cayman company and an Eastern European state utility company arising from the termination of a power purchase agreement for the construction of 1,000 MW AC of solar energy capacity, involving claims for USD 1.4 billion.

- Chair in an ICC arbitration seated in London of claims for breach of environmental warranties and indemnities under a USD 2.6 billion agreement for the sale of shares representing oil and gas assets in Peru, between a major Chinese energy corporation and a major Brazilian energy corporation.

- Co-arbitrator in an LCIA arbitration in London of claims and counterclaims between a Singaporean company and a UK company relating to an agreement for the conduct of geotechnical surveys and borehole drilling in the construction of an offshore windfarm.

- Co-arbitrator in USD 3 billion ***ad hoc*** arbitration in Stockholm under the UNCITRAL rules between a sovereign state and a consortium of hydrocarbons companies arising out of a production sharing agreement for a field located in Eastern Europe.

- Co-arbitrator in an ***ad hoc*** arbitration seated in London under the UNCITRAL rules between a

Panamanian company and two Norwegian oil companies, relating to a claim for royalty payments in connection with an oilfield located in the Republic of Yemen.

- Co-arbitrator in an ***ad hoc*** arbitration under the UNCITRAL Rules in London between a US oil company and a Cameroonian company arising under a joint operating agreement governed by Texas law for the development and commercialisation of a gas block in Cameroon, involving claims for the payment of a sole risk premium and for breach of joint venture accounting provisions. The proceedings involved several applications for interim measures seeking to restrain a party from dealing with joint venture funds.
- Co-arbitrator in an LCIA arbitration in London between a major UK commodities trading company and a Spanish energy company specialising in the trading and supply of LNG, arising under a 15-year LNG sale and purchase agreement, in which the claimant sought damages for an alleged failure to deliver minimum monthly contractual quantities.

TELECOMMUNICATIONS & MEDIA

- Chair in a USD 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.
- Chair 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.
- Co-arbitrator in an arbitration under the DIFC-LCIA Rules in Dubai between the Swedish and Luxembourg subsidiaries of an international telecommunications and media group, and a UAE state-owned telecommunications group, in a dispute concerning the entitlement to reverse earn-out payments under a share purchase agreement.

PROJECTS & CONSTRUCTION

- Co-arbitrator in a USD 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. This high-value arbitration was on a large scale, involving 77 separate witness statements from 32 different witnesses of fact, 80 separate expert reports from 26 different experts, and culminating in a six-week final hearing and a 1,200 page Award.
- Sole arbitrator in a USD 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 fair and equitable treatment under

customary international law.

- Co-arbitrator in an ICC arbitration seated in London under a subcontract between a Thai subcontractor and Spanish main contractor parties, relating to the expansion of a hydrocracking and hydroprocessing facility in Singapore, in which the claimant sought declarations, including for the deemed issuance of a provisional acceptance certificate, and damages in excess of USD 39 million; and the respondents in turn sought declarations and damages, including liquidation damages, backcharges and missing materials.

- 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 governed by Romanian law for the rehabilitation of 41 railway bridges.
- Co-arbitrator in an LCIA arbitration seated in London between a Bulgarian construction group, as main contractor, and a US-Turkish joint venture, as subcontractor, concerning the design and drilling of 13 wells and other construction works for the expansion of an underground gas storage facility.

- Co-arbitrator in an LCIA arbitration in London between a UK-based hotel provider and operator and two UK providers of non-life insurance relating to the interpretation of a contractor's professional indemnity policy in the context of combustible insulation used in hotel construction and refurbishment.

- Co-arbitrator in an ***ad hoc*** arbitration seated in Mauritius under the UNCITRAL rules between a consortium of French construction companies and the airports authority of an East African state, in a dispute arising under an EUR 55 million agreement for the rehabilitation of facilities at an international airport, including the enforcement of Dispute Board decisions.

- Co-arbitrator in a USD 400 million ICC arbitration seated in Paris between a Nigerian company and an East African state in a claim arising under a settlement agreement in connection with a project for the construction of a major hydroelectric power plant, and including counterclaims of USD 382 million brought by the state for damages arising from allegedly corrupt conduct, together with claims for exemplary damages.

BANKING, FINANCIAL SERVICES & INVESTMENT

- Sole arbitrator in an USD 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.

- 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.

- Chair 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.

- Co-arbitrator in an LCIA arbitration seated in London of claims arising under a Share Purchase Agreement between a US-based financial services group and a Canadian bank for the acquisition of the latter's EMEA asset management business. The dispute concerned the effect of certain provisions relating to responsibility for a distribution shortfall arising from restrictions imposed by the UK Financial Conduct Authority.
- Chair 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.
- Chair 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.
- 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.
- Co-arbitrator in a SIAC arbitration seated in Singapore between a German bank and a Russian aluminium smelter arising under a USD 190 million deed of guarantee.

PHARMACEUTICAL

- Sole arbitrator in an ICC arbitration seated in Milan between an Italian manufacturer of pharmaceutical products and a large UK-based pharmaceutical multinational relating to claims for breach of warranties and indemnities under a business purchase agreement.
- Co-arbitrator in two consolidated ICC arbitrations between Indian and Canadian pharmaceutical companies arising under a collaboration agreement for the research, development, manufacturing and marketing of a generic drug, involving ***inter alia*** issues relating to FDA approval.
- 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.

MINING

- 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 ICC arbitration seated in Bucharest between two offshore companies concerning a dispute over the ownership of mines in Romania.
- Co-arbitrator in an LCIA arbitration in London between a Luxembourg trading and investment company and Russian and Hong Kong companies arising under a loan facility agreement and involving a pledge over shares in iron ore mines located in Russia. The case included claims for both breach of contract and

fraudulent misrepresentation and involved extensive mining and share valuation expertise, resulting in three successive awards.

- Co-arbitrator in an LCIA arbitration in London between a US company and a Saudi company, involving claims and counterclaims arising out of an agreement for the distribution of chemical products used in the mining industry.
- Sole arbitrator in an ICC arbitration in Paris between the Mauritanian subsidiary of a major Canadian gold and silver mining company, and a French logistics company, arising out of an agreement for the provision of transport and logistics services in respect of a gold mine located in Mauritania.

AVIATION

- 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.
- Co-arbitrator in an LCIA arbitration in London between a manufacturer of aircraft machinery and components and a US purchaser.
- Co-arbitrator in an LCIA arbitration in London between a US-based multinational engaged in the design, manufacture and sale of aircraft, and a German facilities management and support services provider, relating to a claim arising from damage caused to an aircraft.

MANUFACTURING & TRADE

- Co-arbitrator in a GPB 160 million ICC arbitration seated in London of claims and counterclaims between a Swiss company and a luxury car manufacturer under a Funding Agreement relating to the development, manufacture and sale of so-called "supercars".
- Chair in a USD 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 ***ad hoc*** arbitration in London between Thai and Ghanaian commodities trading companies, on the one hand, and a Pakistani bank, on the other, in respect of claims arising under a series of promissory notes.
- 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 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.

HOTELS & HOSPITALITY

- Co-arbitrator in an ICC arbitration in Paris between a leading US hotel and hospitality group (as manager), and an Egyptian hotel and tourism operator (as owner), arising under a lease/management agreement in respect of a luxury Cairo hotel and involving allegations of mismanagement and wrongful termination.
- Sole arbitrator in an ***ad hoc*** arbitration between a US hotel franchisor and Italian franchisee of claims that a hotel failed to meet minimum franchise standards, and counterclaims for wrongful termination of a franchise agreement.
- Co-arbitrator in an ICC arbitration in Zurich between a major international hotel group (as manager) and two Polish companies (as owner) under a suite of agreements governing the management, provision of services, and licensing of trademarks to a luxury hotel located in Warsaw. The dispute also involved counterclaims for numerous alleged breaches of maintenance obligations, and culminated in a 400-page award.
- Co-arbitrator in an ***ad hoc*** arbitration in London between a French hotel operator against a US owner for alleged breach of a hotel management and operating agreement in connection with the owner's sale of the hotel to a third party.

EXPERIENCE AS COUNSEL

As arbitrator, Simon brings to bear his many years of experience as counsel and advocate in a wide range of international arbitrations, including the following major cases:

- An LCIA arbitration in London on behalf of the Nigerian subsidiary of an oil major claiming USD 200 million in respect of the sale of oil mining interests and defending counterclaims of USD 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 USD 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 two international oil companies and a state oil company, in a USD 1 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 USD 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 USD 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 USD 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 USD 600 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

- 1990: M.A. Hons. (First Class) Pembroke College, University of Oxford
- 1992: Law Society Final Examinations, College of Law, York
- 1997: Paris Bar Examinations, Ecole Nationale des Barreaux, Paris

PROFESSIONAL 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

LANGUAGES

- English (native)
- French (fluent)
- Italian (fluent)

NATIONALITIES

- United Kingdom
- Ireland

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)

SELECTED PUBLICATIONS

- ***Safe Ports for Arbitral Storms,*** (Parts I, II and III) ClArb 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