



David Foster

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David Foster is a partner in O'Melveny's London office. He is one of the founders of the Firm's dispute resolution practice in London, which he now leads. His practice focuses on complex and high-value commercial arbitration and litigation cases, usually involving a significant international element. Many of his cases have required the management of proceedings in multiple jurisdictions. He has conducted numerous international arbitrations under a variety of institutional rules (including LCIA, ICSID, ICC, WIPO, AAA, VIAC, HKIAC, SIAC) as well as *ad hoc* arbitrations conducted under the UNCITRAL and LMAA Rules. He also accepts appointments as an arbitrator in international commercial arbitrations.

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David has particular experience handling disputes in the technology, professional services and financial services sectors. He also has expertise in investment treaty law and arbitration, having acted for the Indian Government in two major treaty arbitrations, and advises clients on the structuring of investments to obtain the benefit of investment treaty protection as well as the conduct of treaty arbitration claims.

David is recognised regularly as a leader in his field by *Chambers Global* and *Chambers UK*. The 2015 edition of *Chambers UK* highlights David's "repeat instructions from governments facing disputes", and notes that "sources appreciate his strategic and tactical acumen". O'Melveny's arbitration team is also cited as a leading practice in London by Legal 500 UK.

Illustrative Professional Experience

- Defending the Government of India in the US\$1.6 billion investment treaty arbitration (under the India-Mauritius bilateral investment treaty) commenced by GE and Bechtel as a result of the Dabhol power station project. This was one of the highest profile investment treaty disputes in the world



at the time, and involved allegations against the Indian Government that it had breached international law by expropriating investors' interests in the power project. The arbitration was seated in London and conducted under the UNCITRAL Rules.

- Acting for the Government of India in a related investment treaty arbitration with a value of more than US\$4.5 billion brought in relation to Enron's 80% interest in the Dabhol power station project under the India-Netherlands bilateral investment treaty.
- Acting for one of the world's leading technology companies in a multi-billion dollar dispute with Microsoft Corporation in ICC arbitration proceedings seated in Tokyo, Japan, and subject to the substantive laws of New York. The dispute concerned royalty payments claimed by Microsoft in return for the right to use its patent rights in android devices.
- Acting for the Government of the Republic of Ecuador in HKIAC arbitration proceedings against a Chinese shipyard arising from a disputed termination of a shipbuilding contract.
- Acting for one of the world's largest online gaming software companies in a series of four consolidated WIPO arbitrations seated in London, conducted under the WIPO Expedited Arbitration Rules. The case, which was governed by the substantive laws of the Isle of Man, involved numerous claims and counterclaims and a factual enquiry covering more than 10 years.
- Acting for Vivendi Universal to uphold an LCIA arbitration award in excess of €1.7 billion against Polish telecoms company Elektrim SA. After awards were rendered in favour of Vivendi on jurisdiction, liability and quantum, Vivendi successfully defeated several challenges to the awards made in the Commercial Court in London. This led to several high profile reported cases, which are now leading authorities on challenges to London arbitration awards: *Elektrim v Vivendi (No 1)* [2007] EHC 11



(Comm); *Elektrim v Vivendi (No 2)* [2007] EWHC 571 (Comm); *Syska & Elektrim v Vivendi* [2008] EWHC 2155 (Comm); *Syska & Elektrim v Vivendi* [2009] EWCA Civ 677.

- Acting for Moscow Oil Refinery in a US\$300 million LCIA arbitration in London. The arbitration was conducted on a fast-track timetable that required an award to be rendered within 3 months of the tribunal being appointed. The dispute arose as a result of a turnkey contract for the design and construction of a polypropylene processing facility in Russia. Moscow Oil Refinery succeeded in defending the claim on liability, and then successfully defeated an attempt to challenge the award in the English Commercial Court under s.69 of the Arbitration Act 1996.
- Representing a Greek shipping group in an *ad hoc* arbitration in London concerning the sale and purchase of a US\$100 million very large crude carrier (VLCC), and ancillary proceedings in the Commercial Court seeking injunctive relief under s.44 of the Arbitration Act 1996.
- Acting for a Dutch shipping group to defend a US\$50 million claim in an LMAA London arbitration arising from the termination of a sale and purchase contract for a fleet of 12 container vessels. After obtaining an interim and then a final award in its favour, the Dutch client recovered its 10% payment deposits for vessels not delivered at the time of termination, defeating a large counterclaim. The client then successfully prevented a challenge to the award under s.69 of the Arbitration Act 1996.
- Acting for a German company to defend a London-seated arbitration under the ICC Rules threatened by a company based in Saudi Arabia. The dispute related to a contract for the design and construction of a production facility for smart cards in Saudi Arabia.
- Acted for a US technology company in arbitration



proceedings against a manufacturing company based in Slovenia. The dispute concerns a contract for the supply of professional services and equipment in order to establish a facility in Slovenia for the production of smart cards. The arbitration is seated in London and conducted under the ICDR Rules of the American Arbitration Association.

- Acting for a well-known US company generating revenue from advertising from an internet search engine in an intellectual property arbitration. The dispute involved two parallel ICC arbitrations, one seated in Tokyo and one in New York.
- Representing a Norwegian company in ICC arbitration proceedings in London against the other shareholders of a UK company. The dispute concerned alleged breaches of a shareholders agreement governed by English law. After a one-week hearing before a sole arbitrator, the Norwegian client was successful on all issues.
- Acting for an Australian online gaming software producer in an ad hoc arbitration seated in London conducted under the UNCITRAL Rules. The dispute was governed by the substantive laws of New South Wales, and concerned disputed payments due under a joint-venture agreement.
- Acting for a large steel production company based in the Middle East to defend claims valued at US\$15 million in a contractual dispute arising from a long-term contract of affreightment. The dispute is being conducted under the LMAA Rules and is ongoing.
- Acting for an online gaming business to bring claims against its joint-venture partner as a result of a sale of the joint-venture business in breach of alleged pre-emption rights. The dispute, worth approximately US\$20 million, was conducted under the UNCITRAL Rules, with well known arbitrator J J Veeder QC



sitting as sole arbitrator.

- Acting for a German bank in a US\$10 million claim against the Solicitors Indemnity Fund to recover losses resulting from the allegedly fraudulent activities of a firm of English solicitors. The case, brought in ad hoc arbitration proceedings, concerned the test for “dishonesty” in the SIF indemnity policy and under English civil and criminal law authorities, as well as the proper construction of the SIF policy limit.
- Acting for a Private Equity fund in LCIA arbitration proceedings seated in London against a Panamanian company arising from an alleged breach of a Participation Agreement.
- Acting for a US-based investment fund in LCIA arbitration proceedings seated in London against an Italian subsidiary of a large Qatar-based fund. The value of the dispute, which arose from the sale and purchase of a group of hotels, was US\$25 million.

Education

Brasenose College, Oxford University, MA (Oxon)

Professional Activities

Member, Law Society of England & Wales; London Court of International Arbitration; British Institute of Comparative Law; Chartered Institute of Arbitrators; IBA

Author, “International Alternative,” Legal Week (July 2006);

“Umbrella Clauses — a Retreat from the Philippines?”

International Arbitration Law Review (August 2006); “Necessity

Knows No Law!”: LG&E v Argentina, International Arbitration

Law Review (December 2006); “Internationalisation” —

Contractual Claims in BIT Arbitrations, European Arbitration

Review (2007); Challenges to Arbitrators, European & Middle

Eastern Arbitration Review (2008); C v D - The English Court of

Appeal Upholds an Anti-Suit Injunction in Support of Arbitration



Proceedings, *International Arbitration Law Review* (April 2008);
The Effects of Insolvency on Arbitration Proceedings, *European
& Middle Eastern Arbitration Review* (2009); *European Law and
International Arbitration*, *European & Middle Eastern Arbitration
Review* (2010); Co-author of chapter on Challenge to and
Replacement of Arbitrators, *Arbitration in England* (Kluwer,
2013 Edition, edited by Julian Lew QC); *Asymmetric Arbitration
Agreements: Are They Worth the Risk?* *European & Middle
Eastern Arbitration Review* (2014)