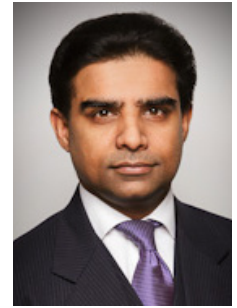

RUPERT D'CRUZ

Call: 1989



Rupert D'Cruz specialises in commercial and chancery litigation and international arbitration. He is recognised as a leading commercial barrister and a leader in his field in Chambers and Partners and The Legal 500 in which he has received the following commendations:

"very bright"; Legal 500 2009

"calm and thorough"; Legal 500 2009

"highly responsive"; Legal 500 2009

"advocacy is excellent"; Legal 500 2011

"succeeds in obtaining the relevant responses without being aggressive"; Legal 500 2011

"heavily involved in commercial litigation and arbitration related to the CIS"; Chambers 2012

"singled out for his authoritative arguments in court"; Chambers 2012

Rupert's principal areas of practice are:

- **Commercial Contract Disputes**
- **Civil Fraud and Asset Tracing**
- **Company and Shareholder Disputes**
- **Russian & CIS Litigation**
- **Banking and Securities**
- **Sale of Goods**
- **Chancery, Equity and Trust Disputes**

Further details of his specific experience in these areas can be found on the "Commercial" page.

Rupert, a Russian speaker, has particular expertise in Russian/CIS related litigation and an extensive working knowledge and practical experience of local law and practice.

He 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 (BRLA)
- Member of the City UK Russia Committee (responsible for promoting UK financial and related business services in the Russian Federation)
- Chairman of (and UK representative on) the Eastern European (PECO) Committee of the Society of European Bars (CCBE)

He is also the co-ordinator of Littleton's recently established **CIS Group**

Further details of Rupert's Russian/CIS experience can be found on the "Russia & the CIS" page below.

Rupert's commercial litigation and arbitration experience encompasses the following areas:

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; winding-up petitions and related claims and applications.

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; Russian/CIS law on corporate/shareholder and commercial fraud claims.

Banking/Securities

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

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.

Recently reported cases

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:

2008

- *Yugraneft v. Abramovich, Millhouse Capital (UK) Ltd and Berezovsky*
- *Re OJSC ANK Yugraneft, Millhouse Capital UK Ltd v Sibir Energy*

2009

- *Gudavadze, Patarkatsishvili, Zhmotova & Others v. Kay and Patarkatsishvili*
- 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

2010

- 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

2011

- 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

Recent articles and lectures

- 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
- 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
- Anti-suit Injunctions
- 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 and Russia
- 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
- The Enforcement of Foreign Judgments and Arbitral Awards in Ukraine

Recent international seminar presentations

July 2009: Bar Council/British Embassy seminar (Moscow): *Commercial Dispute Resolution in England & Wales*. Litigating CIS-related fraud cases in England & Wales; various ways in which jurisdiction can be established; the applicable governing law in such cases; Russian causes of action available in fraud cases and relevant issues of Russian procedural law.

January 2010: BRLA/British Embassy seminar (Moscow): *Cross Border Co-Operation between England & Wales and Russia: interim remedies and the enforcement of foreign judgments and arbitral awards*. The situations in which the English courts can grant interim remedies in support of litigation and arbitrations in Russia.

September 2010: American Bar Association Conference (Moscow): *Cross-Border Dispute Resolution*. How private international law issues relating to the service of proceedings, interim remedies, obtaining evidence and the enforcement of court judgments and arbitral awards are applied in England & Wales, Russia and the United States of America.

October 2010: Littleton Chambers 2010 Commercial Law Lecture: *Making the Fraudster Pay*, Obtaining freezing injunctions (and other relevant interim remedies) against a defendant to a fraud claim (both litigation and arbitration) brought abroad.

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: BKLA 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 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, the London Court of International Arbitration and English Tribunals generally.