Markus Esly

Partner

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PRACTICES Energy Litigation, Offshore Oil and Gas Dispute Resolution, Oil and Gas Litigation, Asia, Europe, Middle East and Africa, International Arbitration, Construction Litigation, Insurance Recovery, Renewable Energy, Traditional Power, Aviation, Hospitality, Technology, Energy Transition, Construction

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Markus Esly is a dispute resolution lawyer who focuses his practice on international arbitration. He has experience arbitrating matters under the major international rules, including ICC and LCIA. Outside of arbitration proceedings, Markus represents clients in adjudications, mediations, and proceedings before all levels of the English courts. He also advises clients in connection with public international law matters, particularly bilateral investment treaty (BIT) disputes and ICSID arbitrations. Markus regularly appears as advocate before international arbitral tribunals and in the English courts.

Markus has considerable experience in resolving complex, high-value disputes relating to energy (including oil and gas/renewables), construction, and infrastructure projects, acting for EPC contractors, energy companies, and other employers. Markus also represents clients in the hotels and hospitality industry, including in disputes under management and franchising agreements.

Clients also turn to Markus to handle contentious IT matters, shareholder disputes, corporate warranty claims, patent licensing disputes, and disputes in the aviation, rail, pharmaceuticals, medical devices, and insurance industries. He also acts in complex commercial disputes in other industries.

Markus is a recommended lawyer in the International Arbitration and Construction: Contentious sections of the UK edition of *The Legal 500* (Legalease) 2022-2024, the international directory of law firms. *Legal 500* reports that “Markus Esly is exceptionally bright and a brilliant strategist. Calm, measured, and an absolute pleasure to work with.” “[Melanie Willems] and Markus Esly are both first-class practitioners, with sound judgement, technical knowledge, and a keen sense of strategy.” Further client comments include “Markus Esly is simply outstanding – a superb lawyer, who is immensely bright, hardworking, dedicated, and an absolute pleasure to work with.”

Markus works on projects located in an exceptionally broad range of jurisdictions across the world. He has handled disputes involving projects in:

- Eastern and Western Europe, including the United Kingdom, Germany, Switzerland, Greece, Romania, Turkey, and Ukraine
- Southeast Asia, including Singapore, Thailand, and Malaysia
- Africa, including Tunisia, Algeria, Morocco, Nigeria, Benin, and Chad
- Russia and Central Asia, including Kazakhstan and Uzbekistan

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- The Middle East, including Kuwait, UAE, and Saudi Arabia.

Professional and Community Activities

- Law Society of England and Wales
- Society for Construction Law

QUALIFICATIONS

EDUCATION

- Law Degree, Magdalene College University of Cambridge, 1998, *First Class Honours;* Norah Dias Prize for Law; Bundy Scholarship

CLERKSHIPS

- Judicial Assistant to Lord Phillips, Master of the Rolls (Court of Appeal), 2001

LANGUAGES

- French
- German

ADMISSIONS

- England and Wales
- Solicitor Advocate, Higher Rights of Audience (Civil)

PUBLICATIONS AND SPEAKING ENGAGEMENTS

- “How to Manage Your International Arbitration Counsel, Beijing Arbitration Commission,” presenter, Beijing, April 20, 2016.
- “The Special Relationship: Why English Law is Still One of Your Best Friends in International Disputes,” presenter, Houston, January 27, 2015.

SELECTED CLIENT REPRESENTATIONS

- *Russian Federation* – Major refinery complex (ICC). Advising a North American engineering company, acting as managing contractor, on disputes concerning a petrochemical / refinery complex commissioned by a Republic of the Russian Federation.
- *Eastern Europe* – "Take-or-pay" gas sales agreement (ICC). Advising in a dispute concerning a long-term gas sales agreement on "take or pay" terms, regarding operation of the contractual price revision mechanism.
- *Thailand/Malaysia* – Dispute concerning a joint venture for natural gas facilities (ICC). Advising on a dispute arising out of an international joint venture project for the construction of a gas separation plant and pipelines in Thailand/Malaysia, including issues under a long-term gas supply contract.
- *Maldives* – ICC arbitration concerning the termination of a luxury resort hotel subject to a long-term management agreement, for one of the largest international hotel operators.

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- *Ukraine* – Shareholder dispute (LCIA). Acting in an LCIA arbitration concerning a claim arising under a shareholder agreement and related investment contracts, concerning one of the largest consumer banks in the Ukraine.
- *United Kingdom* – Petrochemicals plant (ICC). Representing a Japanese EPC contractor in a London ICC arbitration arising out of the design and construction of a petrochemicals plant in northern England.
- *United Kingdom* – IT system in the airline industry (ICC). Acting in an ICC arbitration in London concerning a major IT system used globally by the airline industry for bookings and settlement of transactions.
- *North Sea* – Gas Leak on Operating Platform. Advising on the contractual implications of a gas leak on a North Sea "production utility quarters" platform (Elgin/Franklin) that required a shutdown of a number of fields and gas transportation systems, including issues of force majeure and take-or-pay obligations.
- *United Kingdom* – Long-term contract for rail infrastructure works. Advising one of the world's largest rail manufacturer in connection with a long-term contract for upgrade and improvement works on rail infrastructure and facilities in a major European capital.
- *United Kingdom* – International motor sports venue (High Court, Adjudication). Acting for the employer in a dispute concerning defective facilities for an international motor sports venue, against the "design and build" contractor.
- *United Kingdom* – Standard Chartered Bank v. Pakistan National Shipping Corporation [2002] UKHL 43. Successfully concluded long-running litigation arising out of a fraud under a letter of credit both before the Court of Appeal and the House of Lords, acting for the claimant bank.
- *United Kingdom* – Defects in floating production storage and offloading vessel (Commercial Court). Litigation before the Commercial Court concerning a contract for the supply of an FPSO.
- *United Kingdom* – Defective building foundations due to ground conditions (Arbitration, High Court). Representing a developer as regards claims for defective workmanship and design concerning foundations and piles in a warehouse facility.
- *Germany* – Continuous batch process plant (ICC). Representing a German engineering and construction company in an ICC arbitration and a mediation concerning design and supply of a continuous batch process plant.
- *Switzerland* – Mobile telecommunications (ICC). Acting for a Japanese telecommunications and IT company in a dispute concerning protocols for mobile data transmission (EDGE/GPRS) in an ICC arbitration in Zurich.
- *Greece* – Combined cycle power station (ICC). Advising a French energy company in claims concerning design, construction and operation of a combined-cycle power station in Greece (FIDIC Silver Book).
- *Eastern Europe* – Delayed commissioning of process plant (ICC). Advising on claims made against a contractor for losses due to delayed commissioning of a process plant in Hungary.
- *Russian Federation* – Acquisition of Moscow development (LCIA). Advising a major Russian bank in a dispute concerning the acquisition of a US$350 million development in central Moscow.
- *Russian Federation* – High Court (Commercial Court). Advising a Russian bank regarding exposure to claims in connection with a potential purchase of US$2 billion of shares, title to which was contested in high-profile litigation between oligarchs in the English courts.
- *Ukraine* – Breach of warranty under sale and purchase agreement (LCIA). Acting in an LCIA arbitration concerning a claim for breach of warranties in an acquisition of a Ukrainian bank by European investors.
- *Kazakhstan* – Dispute under Concession Agreement. Advising a Scandinavian oil company in a dispute concerning a concession agreement for the exploration of hydrocarbon reserves in Kazakhstan, including bribery allegations and the effect of unilateral termination and purported transfers of interests to third parties.
- *Kazakhstan* – Exit from Joint Operating Agreement and Transfer of Interests. Advising on the rights and obligations of the parties to a Joint Operating Agreement relating to the Kashagan oil field in

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connection with an early termination, as to reimbursement of historic costs, joint operation and pre-emption rights.

- *Kazakhstan* – Retrospective Taxation of Subsoil Use Operations. Advising in a claim for breach of warranty based on demands by the Kazakh authorities for retrospective tax, following the sale and purchase of an interest in a subsoil use contract.
- *Algeria* – "In Salah" and "In Amenas" LNG Projects. Advising on production sharing agreements, licenses, drilling and EPC contracts concerning major LNG projects in Algeria.
- *Algeria* – Construction of trans-Algerian motorway (ICC). Advising an international contractor on claims arising out of a construction contract for what was then the world's largest road construction project.
- *Kuwait* – Oil refinery dispute. Advising a Japanese EPC contractor on litigation before the Kuwaiti courts arising out of the design and construction of an oil refinery complex commissioned by Kuwaiti state-owned interests, in conjunction with local counsel.
- *Abu Dhabi* – Concrete Manufacturing (LCIA). Acting for a US licensor of manufacturing technology used for the production of high specification concrete (patented processes, sensors, computers and software) in LCIA arbitration proceedings concerning alleged repudiatory breaches of an exclusive licensing agreement.
- *Singapore* – Olefins Project. Advising a main contractor on subcontract terms in a project for the construction of an olefins plant in Singapore.
- *India* – Offshore oil drilling operations (LCIA). Advising a major international oil company on issues arising under a co-operation agreement in respect of drilling and exploration operations in India.

Public International Law Experience

- *Caspian Hyrdrocarbon Reserves* – Dispute between States. Advising on public international law issues concerning contested borders and the entitlement of states (Azerbaijan, Iran) to explore natural resource deposits in a number of Caspian fields.
- *International Convention* – Dispute between States. Advising in a dispute between two Central European states concerning rights under a multi-lateral international convention governing cross-border communications and postal services.
- *World Trade Organisation* – Advising an international manufacturer of consumer goods on a number of legislative measures as regards infringement of GATT, TBT, SPS and TRIPS.
- *Nigeria* – Potential ICSID claims concerning taxation of production sharing agreements. Assisting a European-based energy company with its liability to petroleum tax levied by the Nigerian State on interests held under off-shore Production Sharing Agreements.
- *Uzbekistan* – Expropriation. Advising a North American investor in Uzbekistan as regards bilateral investment treaty/ICSID claims against Uzbekistan following expropriation of the investor’s business and local assets.
- *Romania* – Expropriation. Advising an Austrian steel producer on investment treaty claims arising out of its operations in Romania.
- *South East Asian States* – ICSID claims for failure to provide fair and equitable treatment. Advising an international manufacturer of consumer goods on potential claims under ICSID/bilateral investment treaties.
- *Turkey* – Bilateral Investment Treaty claims after privatisation. Advising an international manufacturing business on claims following the acquisition of a previously state-owned producer of consumer goods and subsequent changes in the local laws that were to the detriment of investors.

AWARDS AND RECOGNITIONS

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- Profiled as one of the leading Dispute Resolution: International Arbitration lawyers in London, *The Legal 500 UK*, Legalease, 2015-2024 and as a leading Construction: Contentious lawyer, *The Legal 500 UK*, Legalease, 2024
- Recognized in *London Super Lawyers*, Thomson Reuters, 2013-2015
- Profiled as an Associate to Watch in London in International Arbitration, *Chambers UK*, Chambers and Partners, 2012-2013; Associate to Watch in London in Construction, 2009-2011
- Profiled as one of the leading solicitors in the UK, *The Legal 500*, Legalease, 2012

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