



TOMAS VAIL FCIARB
Independent Arbitrator

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Vail Dispute Resolution

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Tomas Vail is an international lawyer based in London, with over a decade of arbitration experience. He is fluent in English, French and Russian.

Mr Vail is recognised as a leading arbitration practitioner by Chambers UK, Legal 500 UK, the Private Practice Powerlist UK, Best Lawyers and Who's Who Legal (including being recently listed as one of 15 "Most Highly Regarded" arbitration practitioners in EMEA). He has served in leadership positions of several prominent arbitration organisations and initiatives, including as an Advisory Board member of the Institute for Transnational Arbitration. He serves as a legal specialist to the American Bar Association's Rule of Law Initiative and in this capacity presented to the Supreme Court of Kazakhstan on arbitration matters.

Mr Vail is a Fellow of the Chartered Institute of Arbitrators and is listed on the arbitrator databases of the LCIA, ICC, SCC and SIAC, among others. He regularly speaks and publishes on aspects of international arbitration and public international law. His recent writings include two book chapters: one on the Brčko Arbitration, in a book on non-state actors under international law (Nijhoff Brill); and a second on tribunal-appointed experts, in a commentary on the UNCITRAL Model Law (Cambridge University Press).

Further to his role as arbitrator, Mr Vail has represented clients throughout the world, most frequently in Russia and the CIS, Eastern Europe and Africa, conducting disputes under the LCIA, SCC, ICC, ICSID and UNCITRAL rules and related court litigation. He has particular experience of the petroleum and mining industries, advising on high-value disputes between energy companies and states/state-owned entities. Mr Vail's experience includes independently negotiating aspects of multi-billion dollar disputes and settlements at the highest levels of government, on behalf of both states and investors. He also has experience of complex disputes in the construction, telecommunications, financial services, commodities, consumer goods and manufacturing sectors, including joint-venture and post-M&A disputes.

Admitted

- Solicitor, Senior Courts of England and Wales
- Attorney and Counsellor at Law, New York

Principal areas of practice

- Energy, infrastructure and commodities disputes
- Joint venture, post-M&A and shareholder disputes
- Financial services disputes

Professional work experience

- Vail Dispute Resolution (2019 – present)
- White & Case LLP (2016 – 2019)
- Freshfields Bruckhaus Deringer LLP (2010 – 2016)

Nationalities

- United Kingdom
- United States

Languages

- English (native)
- Russian (native)
- French (fluent)

Appointments as Arbitrator/Neutral

- Emergency Arbitrator in a gaming industry dispute under the SCC Arbitration Rules (English law, Stockholm seat); following an exchange of pleadings, matter resolved by issuing a final decision within one week of the appointment.
- Sole Arbitrator in a petrochemicals industry dispute under the SCC Arbitration Rules (English law, Stockholm seat); first case management conference took place in April 2023, both parties participating in the proceedings.
- Sole Arbitrator in an energy industry dispute under the SCC Arbitration Rules (English law, Stockholm seat); following pleadings from one party, matter resolved by issuing a consent award at the request of both parties reflecting their settlement agreement within 2 months of the appointment.
- Sole Arbitrator in a mining industry dispute under the SCC Arbitration Rules (English law, Stockholm seat); following pleadings from one party, matter resolved by issuing a final award within 3 months of the appointment.
- Sole Arbitrator in a manufacturing/supply dispute under the SCC Arbitration Rules (CISG/English/Kazakh law, Stockholm seat); following pleadings from one party, matter resolved by issuing a final award within 6 months of the appointment.
- Sole Arbitrator in a dispute relating to a supply contract under the SIAC Arbitration Rules, Expedited Procedure (Korean/Belorussian law, Singapore seat); following exchanges of pleadings on jurisdiction and merits, matter resolved by issuing a consent award in English and Russian at the request of both parties reflecting their settlement agreement within 3 months of the appointment.
- Sole Arbitration in a contractual dispute under the Coronavirus Commercial Rent Debt Arbitration Scheme (English law, London seat); matter suspended in 2023 to allow party negotiation.
- Sole Arbitrator in four financial services disputes under the CI Arb Business Arbitration Scheme Rules (English law, London seat); following pleadings from one party, matters resolved by issuing a final award within 3 months of the appointment.
- Sole Arbitrator in fifteen arbitrations as part of a travel industry dispute resolution mechanism, matters resolved by issuing a final award within 1 month of the appointment.
- Neutral adjudicator in respect of a series of high-profile disputes in the financial services sector.

Arbitration Panels/Databases

- London Court of International Arbitration (LCIA)
- International Chamber of Commerce (US and UK National Committees)
- Arbitration Institute of the Stockholm Chamber of Commerce (SCC)
- Singapore International Arbitration Centre (SIAC)
- Asian International Arbitration Centre (AIAC)
- Vienna International Arbitral Centre (VIAC)
- Korean Commercial Arbitration Board (KCAB)
- Chartered Institute of Arbitrators (CI Arb) Business Arbitration Scheme (BAS)

Representative Counsel Experience

- Representing an investor in an investment treaty claim (ICSID) against Belarus under the Lithuania-Belarus BIT regarding construction of a hotel/infrastructure project.
- Representing an investor in an investment treaty claim against Ukraine under the Energy Charter Treaty in the photovoltaic (solar) industry.
- Representing a mining investor in an investment treaty claim (ICSID) against Panama under the Canada-Panama Bilateral Investment Treaty and the Canada-Panama Free Trade Agreement regarding the expropriation of rights in respect of a gold and copper mine.
- Representing a private equity fund in an emergency arbitration under the Rules of the Netherlands Arbitration Institute (“NAI”).
- Representing an individual in an LCIA arbitration initiated by their former employer, a prominent investment fund.

- Representing a Balkan energy company in an SCC arbitration initiated by a Swiss commodities trading company regarding contractual performance.
- Representing the major shareholder of a telecoms company in a corporate dispute under the LCIA rules.
- Representing the contractor in a dispute regarding construction of a floating production storage and offloading (FPSO) vessel under the LCIA rules.
- Representing a consortium of oil majors in a series of high-profile construction, cost recovery, tax and fiscal stabilisation disputes with the Republic of Kazakhstan under the UNCITRAL rules arising out of a production sharing agreement, and negotiating a highly complex US\$2 billion settlement agreement in relation to the Karachaganak gas field.
- Acting for a Moroccan company in relation to enforcement of an arbitral award arising from a contractual dispute regarding a real estate/construction project.
- Advising on ICC expert determination proceedings in relation to construction of a power plant complex in the Middle East.
- Acting for shareholders in a joint-venture dispute under the LCIA rules relating to a refinery, including compelling document production under the Arbitration Act 1996 and obtaining a final award for specific performance.
- Representing a Ukrainian business conglomerate in the telecommunications industry in a post-M&A dispute under the LCIA rules and related litigation in the English court.
- Representing the major shareholder of a bank in a post-M&A dispute under the ICC rules with a Russian investor.
- Advising an investor in an ICSID arbitration against a Baltic state relating to allegations of discriminatory application of financial regulations imposed on a financial institution.
- Representing an oil company in two ICSID arbitrations against an African state arising out of tax/finance provisions of a production sharing agreement (in parallel to domestic tax proceedings).
- Advising a group of investors in an investment treaty claim (ICSID) under the Energy Charter Treaty involving expropriation of a mining asset by an Eastern European state, in an insolvency context.
- Representing an investor in an investment dispute (ICSID) against an Eastern European state relating to expropriation of a container port.
- Advising an investor on claims under a bilateral investment treaty (ICSID) against an Asian state in respect of regulator changes in the consumer goods sector.
- Representing an investor in an investment treaty claim (ICSID) against a state in Southeast Europe involving allegations of expropriation and improper privatisation relating to a coal mining asset.
- Representing the Russian Federation in a US\$14 billion-dollar investment treaty claim commenced by a high-profile “dual-national” individual under the France-Russia BIT (UNCITRAL).
- Representing the Republic of Uzbekistan in two ICSID arbitrations under the Turkey-Uzbekistan BIT.
- Representing an international oil consortium in an ad-hoc dispute with the Nigerian National Petroleum Corporation relating to changes in tax/petroleum regulations to obtain a final award over US\$2 billion.

Qualifications

- SAA/SCC International Diploma course on international arbitration for foreign arbitrators, 2023
- American University Washington College of Law, Juris Doctor, 2009
- Masters studies at Université Paris X Nanterre in International Commercial Arbitration and Private International Law
- Macalester College, Bachelor of Arts, 2005

Professional Associations

- Fellow of the Chartered Institute of Arbitrators (CI Arb)
- Appointed as legal specialist in international arbitration to the American Bar Association’s Rule of Law Initiative
- Advisory Board member of the Institute for Transnational Arbitration (ITA) and 2017-2019 UK Chair of the Young ITA
- Member of 2017-2019 Y-ADR Steering Committee of the International Institute for Conflict Prevention & Resolution (CPR)

- Member of the Executive Committee of the Russian and CIS Arbitration Network (RCAN)
- Member of Association of International Petroleum Negotiators (AIPN), British Russian Law Association (BRLA), Anglo-Russian Law Association (ARLA), Russophone Lawyers in International Commercial Arbitration (RYUMKA)

Selected Speaking Engagements

- “Workshop on Ethics in Arbitration”, 2023: Tel Aviv Arbitration Week, Israel
- “Sovereign & States Disputes and Enforcement”, 2023: ThoughtLeaders4 Disputes, UK
- “Growing your own Dispute Resolution Practice”, 2022: CIArb (webinar)
- “Workshop on Advocacy”, 2022: ICC YAAF / GIAC Arbitration Days, Georgia
- “Perceptions of Investment Treaty Arbitration”, 2022: Young Arbitration Club Finland, Finland
- “Sustainability and Climate Change Disputes”, 2022: Bucharest Arbitration Days, Romania
- “Is witness evidence worth the trouble?”, 2022: Who’s Who Legal Symposium, GAR Live, London UK
- “Assessing Damages in a Stagflation World”, 2022: Paris Arbitration Week, France
- “Views from the East: Updates and trends from Russian and CIS region-related arbitration”, 2021: Paris Arbitration Week, France
- “Insolvency and Investment Treaty Arbitration”, 2020: FIRE Russia, FSU & CEE Virtual
- “More Than Virtual Hearings: Communicating effectively in a digital world” (moderator/host), 2020: Russian and CIS Arbitration Network, UK
- “The Impact of COVID-19 on Contracts”, 2020: Bishkek Arbitration Days, Kyrgyzstan
- “Arbitration Practitioners Coffee Debate”, 2020: Ukrainian Chamber of Commerce and Industry, Ukraine
- “Arbitral Claims by State Entities”, 2020: Russian Institute of Modern Arbitration, Russia
- “The future of arbitration and litigation in light of disruptive technology” (moderator), 2020: LegalTech Forum, UK
- “Toxic Technology”, 2019: GIAC Arbitration Days / ICDR Y&I, Georgia
- “Attempts to Enforce Energy Awards Against the Russian Federation”, 2019: 6th ITA-IEL-ICC Joint Conference On International Energy Arbitration, USA
- “Due Process and Bifurcation under the proposed ICSID Rule Amendments”, 2019: Nordic Arbitration Day, Sweden
- “The ICSID Secretariat’s Proposals for Rule Amendments” (moderator), 2018: Young ITA, UK
- “Investment Treaty Arbitration in the Insolvency Context”, 2018: Grant Thornton / Russian and CIS Arbitration Network, UK
- “Corruption and Investment Treaty Arbitration in the Extractives Industry”, 2018: Extractive Industries Transparency Initiative (EITI) / UCL Laws / UCL Centre for Ethics and Law, UK
- “Update on Arbitration Developments in the UK and Asia”, 2018: 30th Annual ITA Workshop And Annual Meeting, USA
- “Mock Procedural Hearing under CPR Rules for Administered Arbitration of International Disputes” (counsel), 2018: Y-ADR CPR, UK
- “Oil/Gas Arbitration Involving States and State Entities: Selected Procedural and Substantive Issues” (moderator and speaker), 2018: Young ITA, UK
- “Drafting effective international arbitration clauses”, 2018: English Law Summit, Kazakhstan
- “Investment Arbitration in the Oil & Gas Sector”, 2018: ELSA International Conference on Energy Law, UK
- “International Arbitration and Corporate Social Responsibility: Current Issues and Future Innovations”, 2018: ICC YAF, France
- “How to Effectively Use Evidence in International Arbitration Proceedings” (moderator), 2017: Young ICCA, Russia
- Presentation to the Supreme Court of Kazakhstan on “Investment treaty law and practice”, 2017: American Bar Association’s Rule of Law Initiative, Kazakhstan
- “The Importance of Understanding In-House Counsel, featuring Richard Hill (General Counsel, Global Litigation, Shell)” (moderator/host), 2017: CPR Y-ADR, UK
- “Investor Protection in Construction Disputes”, 2017: IBA ECA (Europe Caucasus-Asia) Forum, UK

- “Tax Disputes and Investor Protection”, 2017: 6th IEL-IBA SEERIL International Oil and Gas Law Conference (Institute for Energy Law and the International Bar Association’s Section on Energy, Environment, Natural Resources and Infrastructure Law), UK
- “Document Production in International Arbitration”, 2017: LCIA (YIAG), Russia
- “The call for specialised arbitrators, fora and procedures in energy arbitration” (moderator), 2017: ITA-IEL-ICC Joint Conference on International Energy Arbitration, USA
- Training (5 day) to Turkmenistan Oil/Gas Industry on various topics, including international arbitration, 2016: Turkmenistan
- “The Brčko Arbitration: Exploring the State/Non-State Boundary”, 2016: Conference of the International Law Association (British Branch), UK
- “The role of Amici Curiae in International Arbitration”, 2015: GIAC Arbitration Days / ICDR Y&I, Georgia

Selected Publications

- “Russia’s effective control over eastern Ukraine: implications of the ECHR ruling”, *Global Arbitration Review*, 2023
- “Counsel Ethics in International Commercial Arbitration”, *Mealey’s Arbitration Report*, 2023
- “Who is in control? Russia exercised effective control over eastern Ukraine since May 2014 (Ukraine and the Netherlands v Russia, ECHR)”, *LexisNexis*, 2023
- “International Arbitration Themes to Watch For in 2023”, *Law.com International*, 2023
- “Court Decisions Render Paris Less Appealing for Arbitration”, *Law360*, 2022
- “Arbitration, Russian Sanctions and the Spectre of Sovereign Default”, *Lawyer Monthly*, 2022
- “Nord Stream 2: Sanctions against Russia and the potential for arbitration”, *Global Arbitration Review*, 2022
- “Opposing developments in the Stati Saga”, *Mealey’s Arbitration Report*, 2022
- “Investors May Reconsider Arbitration Seats After ECJ Ruling”, *Law360*, 2022
- “The ECT: The Inconvenient Truth”, *Mealey’s Arbitration Report*, 2021
- “ECJ seeks to conquer new territories after Achmea”, *Global Arbitration Review*, 2021
- “Arbitral Enforcement Takeaways from Kazakh Asset Ruling”, *Law360*, 2021
- “A Boom in Boutique Disputes Firms: Why it is the Ideal Time to Go Solo”, *Law.com*, 2021
- “On the applicability of the Stati case to Kazakhstani business”, *Forbes Kazakhstan*, 2021
- “The Energy Charter Treaty supports investment in renewables”, *EURACTIV*, 2021
- “What do arbitrators know? A comment on Halliburton v Chubb”, *Litigation Futures*, 2020
- “Article 26 - Expert appointed by arbitral tribunal” (with Karim Marley) in Commentary on the UNCITRAL Model Law on International Commercial Arbitration (ed. Ilias Bantekas), Cambridge University Press, 2020
- “The Brčko Arbitration: A Process for Lasting Peace between Non-State Actors” in Non-State Actors and International Obligations: Creation, Evolution and Enforcement (ed. James Summers), Nijhoff Brill, 2018
- “Mitigating investment risk – treaty planning and damages claims against state entities” (with Dipen Sabharwal), *Financier Worldwide*, 2018
- “The English courts’ discretion on foreign policy issues post-Brexit”, *Commercial Dispute Resolution* (with Ed Attenborough), 2017
- “Would World Duty Free v Kenya be decided differently today?”, *Global Arbitration Review*, 2016
- “Arbitrator's award of third-party funding costs upheld by High Court” (with Robert Wheal and Luiz Aboim), *White & Case Alert*, 2016
- “Retention And Advancement Of Women In The Law Firm Environment” (with Janam Nagra), *The Institute for Transnational Arbitration, News & Notes*, 2016
- “Award” (Chapter 9, with Professor Martin Hunter) in Redfern and Hunter on International Arbitration (Sixth Edition), Nigel Blackaby, Constantine Partasides, et al., Oxford University Press, 2015
- “Does The ‘Culture’ Of International Arbitration Serve Its Users?”, *Kluwer Arbitration Blog*, 2015