

# Duncan Matthews QC

SILK: 2002 | CALL: 1986

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Languages: French (proficient); Italian (proficient); German (conversational)



## Overview

Duncan is joint Head of Chambers. He is a leading trial advocate with a broad practice in international and domestic commercial dispute resolution.

He helps clients in English higher court proceedings and overseas. He also has a large international arbitration practice, with experience of a wide range of arbitral institutions including the HKIAC, ICC, JCAA, LCIA, LMAA, UNCITRAL and SIAC (ad hoc).

Duncan accepts arbitral appointments and has been appointed sole arbitrator and as chairman of three-member tribunals.

He is a registered foreign lawyer with the Singapore International Commercial Court. He is also admitted to the Bars of the Turks and Caicos Islands (ad hoc), British Virgin Islands, St Kitts and Nevis (ad hoc), and East Caribbean Supreme Court.

Duncan is ranked in the leading legal directories for civil fraud, commercial dispute resolution, energy and natural resources, international arbitration, shipping and commodities, and as an arbitrator.

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## Professional memberships

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- Anglo-Russian Law Association
- British German Jurists Association
- British Italian Law Association
- Civil Mediation Council
- Council of the Inns of Court Trustee
- Commercial Bar Association
- Commercial Fraud Lawyers Association
- Franco British Lawyers Society
- Gray's Inn: Bencher and member of Management Committee
- London Common Law and Commercial Bar Association
- LCIA: Director on Board
- LMAA: Chairman, Supporting Members Liaison Committee
- LMAA: Supporting Member
- Singapore Chamber of Maritime Arbitration

## Lectures / talks

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List is available on request.

## Education

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- University of Oxford, Magdalen College: MA (1996)
- University of Oxford, Magdalen College: BA Hons (1984)

## Example cases

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- *MOG Holding Ltd v Abkhare and others*: lead counsel in ongoing multi-jurisdictional fraud claim arising out of share purchase agreement in respect of a Middle Eastern enterprise.
- *Deutsche Bank AG v Sebastian Holdings Inc and Mr Alexander Vik*: acting for Alexander Vik in connection with ongoing proceedings in multiple jurisdictions brought by Deutsche Bank AG against Mr Vik's former company, Sebastian Holdings Inc; this case has produced a number of reported judgments.
- *Euro-Asian Oil SA v Dan Igniska, Abilo (UK) Ltd, Real Oil Development Inc and Credit Suisse AG* (Court of Appeal): instructed to respond to appeal of the Euro-Asian judgment and to cross-appeal as to quantum; the original claim filed against the bank was in the region of US\$15 million relating to alleged fraud under sale contracts for diesel.
- *Natixis SA v Marex Financial Ltd*: US\$32 million claim by a bank against a commodities broker for breach of a conditional repo agreement in relation to a metal spot purchase contract, involving fraudulent warehouse receipts.
- *OMV Petrom SA v Glencore International AG* [2017] EWCA Civ 195: relating to the appropriate rate of enhanced interest to be awarded on the judgment sum and on the costs following the rejection by the defendant Glencore International AG of the claimant's Part 36 offer. This followed on from a successful claim for US\$100 million (nil interest) for fraudulent supply of blended oil and gas ([2015] EWHC 666 (Comm)).
- Lead counsel in a US\$700 million rig construction dispute with LMAA proceedings.
- *Brillante Virtuoso*: claim by Piraeus Bank AE as a mortgagee co-insured under a war risks insurance policy on a vessel that became a constructive total loss after explosions caused when it was boarded by armed men in the Gulf of Aden.
- Lead counsel in a US\$400 million upstream dispute concerning a royalty agreement in respect of oil blocks in Angola; ICC arbitration.
- *Sino Channel Asia Ltd v Dana Shipping & Trading PTE Singapore* [2017] EWCA Civ 1703: Court of Appeal decision concerning whether a notice of arbitration passed to a counterparty's agent can be effective service on that counterparty if the agent is not expressly authorised to receive the notice.
- Lead counsel in ongoing arbitration hearing concerning US\$300 million UNCITRAL proceedings arising from a long-term drilling contract.
- *JSC BTA Bank v Mukhtar Ablyazov and others* [2014] 1 Lloyd's Rep 195: appeal by the bank against the judgment of Christopher Clarke J ([2012] EWHC 1819 (Comm)), refusing to include the right to draw down on a loan facility within a freezing injunction.

## Banking and financial services

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Duncan has extensive experience in landmark heavy commercial banking disputes often with a civil fraud dimension in London and in offshore jurisdictions, such as BVI, The Turks and Caicos and Nevis, and in international arbitrations in jurisdictions around the world.

Case examples:

- *Deutsche Bank AG v (1) Sebastian Holdings Inc. (2) Mr Alexander Vik* - acting for Alexander Vik in ongoing proceedings brought by Deutsche Bank AG (against Mr Vik's former company, Sebastian Holdings Inc. Duncan is leading all aspects of the litigation including in relation to committal proceedings which the bank is seeking to issue against Mr Vik for allegedly lying during cross-examination on SHI's assets and ongoing non-party costs proceedings in the English court. Duncan appeared in the Turks and Caicos in 2017 in a jurisdiction challenge to a range of claims of breach of fiduciary duty, fraud, constructive trusts in relation to investment vehicles and funds related to this case and in particular a claim brought by purported Receivers appointed by the Commercial Court in respect of assets of SHI. This case has produced a

number of reported judgments including: *Deutsche Bank AG v Sebastian Holdings Inc* [2016] EWHC 3222(COMM) where Duncan successfully resisted an application for permission to service out a committal application against an officer of SHI, Mr. Alexander Vik, outside the jurisdiction.

- *Euro-Asian Oil SA v 1) Dan Igniska 2) Abilo (UK) Limited 3) Real Oil Development Inc and 4) Credit Suisse AG* (Court of Appeal) – instructed in this to respond to appeal of the Euro-Asian judgment handed down on 21 December 2016 and to cross-appeal as to quantum. The original claim filed against the bank was in the region of USD15m related to alleged fraud under sale contracts for sulphur. Current ongoing instruction advising and representing Enforcement Receivers in proceedings to identify and recover the property of a defendant under a confiscation order obtained by the Serious Fraud Office.
- *Shalabayev v JSC BTA Bank* [2016] EWCA Civ 987 – appeal against whether the judge was right to refuse the application to intervene in the bank’s application for a final charging order in respect of a property and to have the ownership issue determined.
- *Kaupthing Singer & Friedlander Ltd v UBS AG* [2014] EWHC 2450 (Comm) – USD65m was mistakenly paid to the wrong entity shortly before the entity became insolvent. The funds could no longer be recovered and the administrators sought to get the USD65m.
- *JSC BTA Bank v Mukhtar Ablyazov & Ors* [2014] 1 Lloyd’s Rep. 195 – appeal by the bank against the judgment of Christopher Clarke J ([2012] EWHC 1819 (Comm)), refusing to include the right to draw down on a loan facility within a freezing injunction.

## Commercial dispute resolution

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Duncan is instructed as lead advocate in all aspects of commercial litigation: jurisdictional challenges; anti-suit injunctions; recognition and enforcement of foreign judgments; banking and financial services; commercial fraud actions; and joint venture disputes.

Case examples:

- *Deutsche Bank AG v (1) Sebastian Holdings Inc. (2) Mr Alexander Vik* – acting for Alexander Vik in ongoing proceedings brought by Deutsche Bank AG (against Mr Vik’s former company, Sebastian Holdings Inc – Duncan is leading all aspects of the litigation including in relation to committal proceedings which the bank is seeking to issue against Mr Vik for allegedly lying during cross-examination on SHI’s assets and ongoing non-party costs proceedings in the English court. Duncan appeared in the Turks and Caicos in 2017 in a jurisdiction challenge to a range of claims of breach of fiduciary duty, fraud, constructive trusts in relation to investment vehicles and funds related to this case and in particular a claim brought by purported Receivers appointed by the Commercial Court in respect of assets of SHI. This case has produced a number of reported judgments including: *Deutsche Bank AG v Sebastian Holdings Inc* [2016] EWHC 3222(COMM) where Duncan successfully resisted an application for permission to service out a committal application against an officer of SHI, Mr. Alexander Vik, outside the jurisdiction.
- *Euro-Asian Oil SA v 1) Dan Igniska 2) Abilo (UK) Limited 3) Real Oil Development Inc and 4) Credit Suisse AG* (Court of Appeal) – instructed to appear in the Court of Appeal and to respond to appeal of the Euro-Asian judgment handed down on 21 December 2016 and to cross-appeal as to quantum. The original claim filed against the bank was in the region of USD15m related to alleged fraud under Sale Contracts for sulphur.
- *Natixis SA v Marex Financial Limited* – USD32m claim by a bank against a commodities broker for breach of a conditional repo agreement in relation to a metal spot purchase contract. Involves fraudulent warehouse receipts.
- *OMV Petrom SA v Glencore International AG* [2017] EWCA Civ 195 – relating to the appropriate rate of enhanced interest to be awarded on the judgment sum and on the costs following the rejection by the defendant Glencore International AG of the claimant’s Part 36 offer.
- *Petrosaudi Oil Services Ltd v Novo Banco S.A. and others* [2017] EWCA Civ 9 – appeal as to whether Petrosaudi was entitled to call for payment of USD129 million under a standby letter of credit issued by Banco Espírito Santo S.A. which was later transferred to Novo Banco.
- *Sino Channel Asia Limited v (1) Dana Shipping & Trading Pte Singapore Ltd & Anr (A3/2016/2375)* – successful Court of Appeal action governing the enforcement of an arbitration award in respect of a dispute under a contract of affreightment. The key issue was whether a notice of arbitration passed to a counterparty’s agent can be effective service on that counterparty, if the agent is not authorised to receive the notice of arbitration.

## Civil fraud and asset recovery

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Duncan has extensive experience in landmark commercial disputes with a civil fraud dimension in London and offshore jurisdictions such as BVI, Turks and Caicos and Nevis, and in international arbitrations in jurisdictions around the world. His engagement as lead defence counsel in the substantial Mukhtar Abylyazov litigation is demonstrative of an ability to analyse complex freezing orders, receiverships, and matters of contempt and disclosure.

Case examples:

- *Deutsche Bank AG v (1) Sebastian Holdings Inc. (2) Mr Alexander Vik* – acting for Alexander Vik in ongoing proceedings brought by Deutsche Bank AG (against Mr Vik’s former company, Sebastian Holdings Inc – Duncan is leading all aspects of the litigation including in relation to committal proceedings which the bank is seeking to issue against Mr Vik for allegedly lying during cross-examination on SHI’s assets and ongoing non-party costs proceedings in the English court. Duncan appeared in the Turks and Caicos in 2017 in a jurisdiction challenge to a range of claims of breach of fiduciary duty, fraud, constructive trusts in relation to investment vehicles and funds related to this case and, in particular, a claim brought by purported Receivers appointed by the Commercial Court in respect of assets of SHI. This case has produced a number of reported judgments including: *Deutsche Bank AG v Sebastian Holdings Inc* [2016] EWHC 3222(COMM) where Duncan successfully resisted an application for permission to service out a committal application against an officer of SHI, Mr. Alexander Vik, outside the jurisdiction.
- *Euro-Asian Oil SA v 1) Dan Igniska 2) Abilo (UK) Limited 3) Real Oil Development Inc and 4) Credit Suisse AG* – instructed in this to respond to appeal of the Euro-Asian judgment handed down on 21 December 2016 and to cross – appeal as to Quantum. The original claim filed against the bank was in the region of USD15m related to alleged fraud under sale contracts for sulphur. Current ongoing instruction advising and representing Enforcement Receivers in proceedings to identify and recover the property of a defendant under a confiscation order obtained by the Serious Fraud Office.
- *OMV Petrom SA v Glencore International AG* [2017] EWCA Civ 195 – and *Petrom v Glencore* [2016] LLOYD’S REP.432 – acting for Petrom in this mammoth energy fraud litigation brought by the Romanian oil company OMV Petrom against Glencore. Petrom’s claim succeeded, awarding damages in excess of USD40m (plus interest in a similar amount). The judgment contains an interesting discussion of the law of damages for deceit, and an analysis of the controversial decision of the Court of Appeal in *Bence Graphics v Fasson* [1998] QB 87.
- *JSC BTA Bank v Mukhtar Abylyazov & Ors* [2010 -2014] – engaged as lead defence counsel in the substantial Mukhtar Abylyazov litigation – over the course of four years this case resulted in 14 reported judgments from 1st Instance to Court of Appeal on complex freezing orders, receiverships, and matters of contempt and disclosure

## Energy and natural resources

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Duncan has a substantial international dispute resolution practice spanning upstream, midstream, and downstream disputes in the energy and natural resources sector. He has been engaged as counsel for LNG, long term gas supply, on and offshore oil and gas drilling-related disputes, offshore energy construction, international trade, carriage of goods and commodities disputes in the energy sector, as well as joint venture shareholder and partnership disputes in relation to development and operation of projects at the upstream level.

Work examples:

- Lead counsel in on-going arbitration hearing, concerning a USD300m UNCITRAL proceedings arising from a long-term drilling contract – disputes as to supply of a drill ship, drill package and associated drilling services. Various claims including the applicable day rate, and ‘pay now argue later’ provisions under a long-term Venezuelan Law drilling contract.
- Lead counsel in on-going LMAA arbitration rig construction dispute against entity in petroleum and natural gas production in Angola. The dispute focusses on the construction and delivery of a drilling rig as well as issues of contractual construction.
- Lead counsel on a USD400m upstream dispute concerning a royalty agreement in respect of oil blocks in Angola. There is a dispute with the counterparty concerning the sale of an oil block and in particular the procedure dealing with the determination and payment of compensation.
- *OMV Petrom SA v Glencore International AG* [2017] EWCA Civ 195 – and *Petrom v Glencore* [2016] LLOYD’S REP.432 – acting for Petrom in this mammoth energy fraud litigation brought by the Romanian oil company OMV Petrom against Glencore. Petrom’s claim succeeded, awarding damages in excess of USD40m (plus interest). The judgment contains an interesting discussion of the law of damages for deceit, and an analysis of the controversial decision of the Court of Appeal in *Bence Graphics v Fasson* [1998] QB 87.
- Appointed as an expert to give evidence on English Law on a dispute concerning intra group sales of Crude Oil. The South African tax authorities have challenged the passing of property under the intra group agreements and the corresponding profits.
- Lead Counsel in an ICC arbitration concerning contract for design and construction of power plant in India.
- Lead counsel in a USD700m rig construction dispute – LMAA proceedings. Acting for Korean builders against the owners,

builders are claiming the owners have repudiated the contract and the owners are claiming breach of contract.

## Insurance and reinsurance

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Duncan has thirty years of experience in insurance and reinsurance cases, and has acted for assureds, insurers, reinsureds and reinsurers in many cases, involving diverse types of insurance.

Case examples:

- *Brillante Virtuoso* – claim by Piraeus Bank AE as a mortgagee co-insured under a War Risks insurance policy on a vessel which became a constructive total loss after explosions caused when the vessel was boarded by armed men in the Gulf of Aden.
- *Allianz Insurance Co Egypt v Aigaion Insurance Co SA* [2008] EWCA Civ 1455; [2009] 2 All E.R. (Comm) 745; [2008] 2 C.L.C. 1013; [2009] Lloyd’s Rep. I.R. 533; Times, January 20, 2009 – Certainty – Contract terms – Electronic mail – Insurance premiums – Marine insurance – Offer and acceptance – Reinsurance contracts.
- *AIG Group (UK) Ltd v Ethniki* [2000] Lloyd’s Rep IR 343 – Reinsurance – Brussels Convention 1968, Arts 5(1) and 17 – Alleged breach of claims control clause – Other claims made against reinsured – Reinsurers seeking declaratory relief in England – Reinsured domiciled in Greece – Determination of “obligation in question” – Place of performance of obligation in question – Whether claims could be fragmented – Whether jurisdiction clause in original policy incorporated into reinsurance agreement.

## International arbitration and related court applications

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Duncan is regularly instructed as lead advocate in arbitrations under ARIAS (UK), HKIAC, ICC, LCIA, LMAA, SIAC, UNCITRAL rules and “ad hoc” submissions: jurisdiction challenges under s.68 Arbitration Act 1996; applications for permission to appeal under section 69 Arbitration Act 1996; injunctive relief in support of arbitrations. regularly instructed as lead advocate in arbitrations under LCIA, ICC, UNCITRAL, HKIAC and SIAC rules and “ad hoc” submissions: jurisdiction challenges under s.68 Arbitration Act 1996; applications for permission to appeal under section 69 Arbitration Act 1996; injunctive relief in support of arbitrations.

He has been appointed as arbitrator under ARIAS (UK), HKIAC, ICC, JCAA, LCIA, LMAA, SIAC and UNCITRAL Rules.

Work examples:

- Lead counsel in on-going arbitration hearing, concerning a US\$300m UNCITRAL proceedings arising from a long-term drilling contract – disputes as to supply of a drill ship, drill package and associated drilling services.
- Lead counsel in a US\$700m Ship Rig construction dispute – LMAA proceedings. Acting for Korean builders against the owners, builders are claiming the owners have repudiated the contract and the owners are claiming breach of contract.
- Lead Counsel in a US\$400m upstream dispute concerning a royalty agreement in respect of oil blocks in Angola. Dispute with the counterparty concerning the sale of an oil block and in particular the procedure dealing with the determination and payment of compensation. ICC Arbitration, seated in London and governed by English Law.
- Lead Counsel in SIAC arbitration concerning dispute under a distributorship agreement between Hong Kong manufacturer and international distributors (Value US\$70m).
- Lead Counsel in an LCIA arbitration concerning dispute under a shareholder’s agreement between partners of international vodka business (US\$400m).
- Lead Counsel in an ICC arbitration concerning contract for design and construction of power plant in India.
- Lead Counsel in an SIAC arbitration concerning purchase by French multinational of interest in Indian company and dispute under Share Holding Agreement.

## Shipping and commodities

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Duncan’s practice covers both advisory and disputes work in shipping, commodities, shipbuilding, upstream oil and gas (offshore energy), construction, mining and insurance. His shipping practice covers dry bulk and tanker charter parties, long term contracts of affreightment, bills of lading, cargo claims, and ship arrest. In the commodities sector, he has advised on and arbitrated on a wide range of disputes.

## Work examples:

- *Sino Channel Asia Ltd v Dana Shipping & Trading PTE Singapore* [2017] EWCA Civ 1703 – concerning whether a notice of arbitration passed to a counterparty's agent can be effective service on that counterparty if the agent is not authorised to receive the notice. The Court of Appeal made it clear that this is a 'rare' and 'most unusual case' in Gross LJ's judgment.
- Lead counsel in on-going arbitration hearing, concerning a US\$300m UNCITRAL proceedings arising from a long-term drilling contract – disputes as to supply of a drill ship, drill package and associated drilling services. Various claims including the applicable day rate, and 'pay now argue later' provisions under a long-term Venezuelan Law drilling contract.
- Lead counsel in on-going LMAA arbitration concerning a rig construction dispute against entity in petroleum and natural gas production in Angola. The dispute focusses on the construction and delivery of a drilling rig as well as issues of contractual construction.
- Leading counsel in US\$700m Ship Rig construction dispute. Acting for the builders against the owners, builders are claiming the owners have repudiated the contract and the owners are claiming breach of contract.
- Lead counsel in confidential arbitration proceedings – allegations of negligent misrepresentation leading to the collapse of a business to provide ferry services between Columbia and Panama. Ongoing high value US\$17m dispute comprising three consolidated arbitrations with two anti-suit injunctions in support of proceedings so far.
- LMAA arbitration on builder's liability in relation a disputed claim to refund of the first instalment due under a ship finance agreement following a purported rescission. Claim involves advice on strategy for builder's losses and on the demand under the refund guarantee.

## Recommendations

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One of the most sought after silks, he has a big brain, has great attention to detail, and is a persuasive advocate. [The Legal 500 UK Bar 2020](#)

His measurement of the court, intellectual ability and cross-examination make him a phenomenal package. [Chambers UK Bar 2020](#)

An excellent seasoned advocate with a wealth of experience. [The Legal 500 UK Bar 2020](#)

He's both charming and ruthless; he's very personable and clients love him. You've got to be on your game when he's on the other side. [Chambers UK Bar 2020](#)

A strong silk for shipping and energy matters. [The Legal 500 UK Bar 2020](#)

Duncan Matthews QC has gravitas, and provides lay clients with the assurance that they are in the very safest of hands. [Chambers UK Bar 2020](#)

Has a powerful intellect and is able to lend his experience as an advocate to the deliberations of a commercial arbitration tribunal. [The Legal 500 UK Bar 2020](#)

A commanding and persuasive presence. [Chambers UK Bar 2020](#)

His tenacity and determination are legendary. [Chambers UK Bar 2020](#)

An impressive advocate whose delivery commands the attention of the tribunal. [The Legal 500 UK Bar 2020](#)

He has a fantastic presence when he stands up in court. He is highly respected. [Chambers UK Bar 2020](#)

A silk with excellent skills and a great personality. [The Legal 500 Asia Pacific 2020: The English Bar](#)

Sharp and incisive, he has done very well as the head of chambers. [The Legal 500 UK Bar 2020](#)

He has an ability to not let the detail overwhelm a case and plays it well in front of the court. [Chambers UK Bar 2020](#)

At the absolute top of his game. [The Legal 500 UK Bar 2020](#)

He is very courageous under fire; what is impressive is his willingness to roll his sleeves up and really get into the detail. [Chambers UK Bar 2020](#)

He brings a good strategic and commercial mind to the game. [The Legal 500 UK Bar 2020](#)

Duncan knows his stuff, he's brilliant. [Chambers UK Bar 2020](#)

He can crystallise the issues with the perfect amount of precision, fluidity and charm. [Chambers UK Bar 2019](#)

In a class of his own, a master tactician, and immensely impressive in court [The Legal 500 UK Bar 2018](#)

An authoritative advocate. When he speaks, courts listen. [Chambers UK Bar 2019](#)

The Plato of the Commercial Bar, at once a dynamic orator and a considered thinker. [Chambers UK Bar 2018](#)

He is in total command when he's in court. Very assured and very patient. He has a remarkable determination to get the right result for the client. [Chambers UK Bar 2018](#)