

Investment Arbitration Strategy – Pragmatic Moves and Manoeuvres

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Programme

Recently there has been a marked increase in the number of procedural applications in investment arbitration which may have a significant strategic impact on the direction of an arbitration.

In the light of the increasing use of procedural tools, this event will consider the existing use and prospects for increasing use of the following strategic applications and tactics in investment arbitration:

- applications for security for costs;
- disclosure of third party funding;
- rule 41(5) applications; and
- the use of settlement offers.

Chair:

Sir Daniel Bethlehem KCMG QC, 20 Essex St

Panellists:

Applications for security for costs: **Belinda McRae**, 20 Essex St

Disclosure of third party funding: **Michelle Bradfield**, Dentons

Rule 41(5) applications: **Dr Kate Parlett**, 20 Essex St

The use of settlement offers: **Penelope Nevill**, 20 Essex St

Commentator:

Sir Franklin Berman KCMG QC, Essex Court Chambers

Speaker Biographies



Sir Daniel Bethlehem KCMG QC,
20 Essex St

Daniel Bethlehem specialises in public international law. He also advises on aspects of UK national security law. He accepts instructions as counsel and adviser as well as arbitration, inquiry and expert witness appointments. From May 2006 to May 2011, he was the principal Legal Adviser of the UK Foreign & Commonwealth Office, the first external appointee to this position. Distinct from his counsel work, Daniel has extensive experience as arbitrator (both presiding and party-appointed) in a range of investor-State arbitrations under the framework of the PCA, ICSID, NAFTA, ECT and DRCAFTA. His current appointments are broadly divided between presiding arbitrator, party-appointed arbitrator by the claimant and party-appointed by the respondent.



Sir Franklin Berman KCMG QC,
Essex Court Chambers

Sir Franklin (Frank) Berman joined HM Diplomatic Service in 1965 and was the Legal Adviser to the Foreign & Commonwealth Office from 1991-99. For the past 17 years he has been in practice in Essex Court Chambers specializing in international arbitration and advisory work in international law. He is Visiting Professor of International Law at Oxford and the University of Cape Town. Sir Frank is a member of the Permanent Court of Arbitration, and he was appointed by the British Government in 2004 to the list of Arbitrators under the ICSID Convention. He is currently sitting or has recently sat in five ICSID arbitrations as Chairman and seven as Party-appointed Arbitrator (both claimant and host State), and in five ICSID annulment proceedings, as well as in arbitrations under the ICC, PCA, Stockholm Arbitration Institute and LCIA (sole arbitrator), and ad hoc.



Michelle Bradfield, Partner,
Dentons UKMEA LLP

Michelle is a partner in the Public International Law group at Dentons. The key areas of Michelle's practice include investment treaty arbitrations, boundary disputes, maritime disputes and commercial arbitrations. She has recently represented States such as Australia and China and has worked for claimants in actions against Italy and South Sudan. Prior to working in London, Michelle was a Fellow at the Lauterpacht Centre for International Law at the University of Cambridge. Legal directories have listed Michelle as a "Leading Individual" and have stated that her public international law "pedigree is among the best in London". Michelle has also been named as a "rising star" by Legal Week.

Belinda McRae, 20 Essex Street



Belinda advises on all aspects of commercial and international law, with a particular specialisation in international arbitration (both investment and commercial). She has acted as counsel across a range of sectors (including the mining, electricity, gas production, sale and distribution, and cement production sectors) governed by a variety of arbitration rules (including the ICSID, UNCITRAL, CRCICA, LCIA and ICC Rules). Presently, she is counsel for the Claimants in *China Heilongjiang International Economic & Technical Cooperative Corp (and others) v Mongolia*, a PCA-administered ad hoc arbitration under the China-Mongolia BIT relating to the expropriation of a mining licence. She also appears regularly in the English courts, including the UK Supreme Court. Belinda is currently seconded part-time to the Legal Directorate at the Foreign and Commonwealth Office, where she is working on litigation concerning issues of public international law in the English courts. Before coming to the Bar, Belinda was an associate at Freshfields in Paris, a research assistant for Judge James Crawford and worked at international criminal tribunals in Cambodia and Tanzania. She is a graduate of the University of Queensland (where she was the Law School Valedictorian) and the University of Cambridge (which she attended as a Cambridge Commonwealth Trust Scholar).

Penelope Nevill, 20 Essex Street



Penelope Nevill is a barrister at 20 Essex Street in London. Her practice covers international and domestic litigation and advisory work in the field of public international law, including investment arbitration, law of the sea, territory, delimitation, immunities and jurisdiction, recognition, environment and wildlife law, sanctions and human rights and EU law. Penelope has been involved in investment treaty arbitration for many years, first assisting Sir Elihu Lauterpacht QC on the *Azurix v Argentina* arbitration in 2003, and has taught, written and given talks to State officials on the topic. Penelope has appeared as counsel before the International Court of Justice, the European Court of Human Rights and a Permanent Court of Arbitration tribunal under UNCLOS Annex VII, as well as the English courts. She is a Senior Research Fellow and Affiliated Lecturer at the Transnational Law Institute, King's College London. She has also been a Visiting Lecturer at the University of Auckland convening and teaching the intensive LLM International Dispute Settlement course, and the University of Cambridge in the Law of Armed Conflict (IHL), having previously been a College Lecturer and Fellow at Downing College and the Lauterpacht Centre for International Law.



Dr Kate Parlett, 20 Essex Street

Kate specialises in public international law and international arbitration. She acts for States and private entities on issues including land and maritime boundaries, investment treaty and contract disputes, human rights, law of the sea, State responsibility, treaty obligations, immunities, environmental law, sanctions and international crimes. Kate has acted as counsel in a variety of investment disputes, involving claims under treaties and contracts, across sectors including energy and natural resources, construction, transportation, and telecommunications, in Asia, Europe, and Latin America. She has also advised corporate clients on structuring investments to secure the protection of an investment treaty and on negotiating with States to resolve disputes. Kate has a doctorate and a masters degree in public international law from the University of Cambridge and is widely published, including in international investment law. She has lectured in public international law, international investment and commercial arbitration and international human rights law, at the universities of Cambridge, Geneva, Paris-II (Panthéon-Assas) and Queensland.