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SEAN WILKEN QC

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Areas of Practice

- Energy & Natural Resources
- Infrastructure & Utilities
- Construction & Engineering
- Commercial
- International Arbitration
- Shipping & Commodities
- Procurement
- Banking & Finance
- Insurance
- Sport
- PFI

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Practice Overview

Sean Wilken QC has practised in high profile, complex, international and domestic litigation for over 20 years. His caseload has included: the major litigation arising from the 1990's UK domestic property collapse; the consequences of 9/11 and 7/7 domestically and internationally; the international consequences of the 2008 collapse; as well as various international, environmental and commercial crises. He has advised and acted in major disputes dealing with practical and legal ramifications of disease outbreaks; toxic spills; terrorist incidents; local and international lockdowns and no fly orders. He acted in one of the most recent large scale force majeure disputes before the English Courts dealing the impact of border disputes on charterparties.

He has detailed experience resolving or litigating disputes in the financial; energy; infrastructure; insurance; commodities and construction sectors. His extensive domestic caseload ranges from North Sea energy disputes; to large scale PFI Projects (M6 Toll Road; Olympics infrastructure; the National Programme for Infrastructure in IT; numerous schools, hospitals, roads, prisons and light rail systems); to the application of UN sanctions in domestic law; to RIPA; to high value property developments in the UK; to the 2012 Olympics; to national security and telecoms issues.

Internationally, his case load has recently included: acting as counsel for Leighton

Contractors Asia in the Shatin-Central Link Public Inquiry in Hong Kong; a US\$5bn dispute over block allocation in the energy sector in Africa; a £1bn dispute over infrastructure in the Middle East; a US\$50m dispute over the funding of oil fields offshore Africa; a US\$400m dispute over offshore drilling in Africa; disputes totalling over £1.5bn in the UAE; a HK\$3bn dispute over infrastructure; a US\$1.5bn dispute over energy in the Middle East; a BIT dispute over inbound investment; as well as major mutual and bank collapses in the Caribbean.

In addition to the above, Sean has been instructed in multiple other cases in Hong Kong including: disputes over the design and construction of social housing; a dispute over the renovation of the water systems for Kowloon and Mong Kok; potential disputes over the financial issues arising from the redevelopment of properties in Sha Tin as well as advising on numerous property based HKSE issues.

He has advised and acted in numerous international investment and trade disputes covering international investment treaties, Bilateral Investment Treaties, sovereign guarantees and international financial instruments as well as World Bank, WTO and GATT issues. He also has extensive experience in crisis management in multiple jurisdictions from the Far to the Middle East to Africa.

Sean has experience in all domestic courts and tribunals as an advocate or arbitrator. His institutional experience embraces (in no particular order) the ICC; LCIA; HKIAC; SIAC; DIAC; ICSID; SCC and UNCITRAL as well as ad hoc arbitrations. Sean's recent arbitral experience includes: six ad hoc arbitrations; two SCC arbitrations; two DIAC arbitrations; HKIAC arbitrations; SIAC arbitrations; four ICC arbitrations; two LCIA arbitrations; 3 UNICTRAL Arbitrations in the energy and projects sectors.

Sean has sat as an arbitrator and as Chair of the Appellate Panel on sports arbitrations arising out of the Winter and Summer Olympics (2010; 2012 and 2018). Sean has also acted as an expert witness on English law before foreign courts and as an examiner taking depositions for US Courts.

As well as being a silk at the English Bar, Sean is licensed to appear before the Singapore International Commercial Court (SICC).

Since taking silk in 2010, Sean has earned plaudits as a "heavyweight silk" (The Lawyer) who is "fantastically efficient and exceptionally user friendly" and whose intellectual capabilities and understanding of technically important details are widely recognised (Chambers & Partners). He is listed in Chambers and Partners and Legal 500 as a leading silk in Energy, Construction and International Arbitration. Sean was shortlisted for Construction and Energy Silk of the Year at the Legal 500 UK Awards 2018.

Sean was consistently named as a leading lawyer in International Arbitration (Counsel) and Construction Law by Legal 500 and by Chambers & Partners and in Legal Experts 2002-2015. He had been rated as a Leading Junior in Administrative and Employment Law by The Lawyer and Legal Business on three occasions and as one of the top 80 barristers under the age of 40 by Legal Business.

"Bright, unbelievably quick and someone who knows the sector both legally and technically."

fChambers UK Bar 2019

Energy & Natural Resources

Sean has long-standing experience and expertise in the oil and gas and energy sector. His work covers all aspects of upstream and downstream work: treaty issues; block allocation disputes; FOA/JOA issues; rig and pipeline construction and deployment; long term supply contracts; rig and pipeline deployment; transportation issues; the design, construction, financing and operation of power stations (coal, gas, WTE and nuclear) and grid connection issues. He has further knowledge and expertise in the regulation of nuclear materials and reactors, reprocessing, control and security.

Sean has been instructed in energy disputes throughout the world but with particular emphasis on the Middle and Far East and the former Soviet Union. He was instructed in the *Seadrill Ghana Ltd v Tullow Ghana Ltd* [2018] EWHC 1640 (Comm) case and also instructed by the world's largest oil futures trading company in a dispute arising from the treatment of gasoline cargos afloat. He has been instructed in major insurance and reinsurance claims in the nuclear industry. He was also lead counsel in the case of *Shell v HMRC* a leading case on the taxation and interpretation of long term oil and gas sale contracts in the North Sea. In addition he was junior counsel in the case of *Scottish Power v Britoil*, the leading case concerning the proper construction for long term oil and gas supply contracts.

Infrastructure & Utilities

In his recent practice, Sean has been heavily involved in high value cases emanating from large scale infrastructure and projects disputes across the Middle East and Asia involving – the KRI; UAE; Syria; Pakistan; the PRC and Hong Kong.

Sean has experience in rail and light rail disputes. He has acted:

- For Leighton Contractors Asia Ltd in the Shatin-Central Link Public Inquiry;
- for Croydon Tramlink against Transport for London in a long running series of cases;
- in a multi-party dispute over the construction of rail facilities for the London Olympics;
- for Virgin Rail in disputes over railway operations and infrastructure upgrades;
- against Network Rail in further disputes over financing and infrastructure upgrades;
- for a major financing house in arbitration and before the Commercial Court and the Court of Appeal relating to the provision of and financing for upgraded rolling stock in the UK.

Other items in Sean's recent work load has included –a £1bn UAE dispute; an HKIAC Arbitration over the HK\$3bn redevelopment of the Kowloon water supply; disputes over financing and security issues in Iraq; oilfield developments offshore Nigeria; oilfield development offshore Kenya; next generation electricity generation in Eastern Europe; a €4bn M&A dispute over the acquisition of chemical and energy plants worldwide; international commodity and transport disputes involving Russia and Canada; international commodity and shipping disputes involving US, West Africa and Eastern Europe; international aircraft sales between Russia, Germany and Switzerland and commercial and insolvency disputes in Hong Kong.

“A truly creative silk, his strategic thinking and advice is often many steps ahead of his opposing parties.”

Legal 500 UK 2018

Construction & Engineering

Sean's construction practice covers domestic and international large scale development, infrastructure and energy projects. From early experience in the Carlton Gate Property Development litigation through the provision of infrastructure for the Olympics to social housing under the PFI regime, he has acted in all types of disputes for all sides of the industry. Recent instructions include acting for Leighton Contractors Asia Limited in the 12 month Sha Tin – Central Link Public Inquiry; a US\$1bn dispute over the provision of infrastructure in Dubai; a HK\$3bn dispute over the provision of water supplies; several disputes over the construction and operation of WTE plants and power station construction.

Sean has advised on and litigated all forms of contracting and the standard forms of contract with particular experience in NEC, EPC, project management, financing and insurance issues. He has extensive international arbitration experience.

Sean has been involved in construction and engineering litigation for all of his career, including:

- luxury developments (Carlton Gate and PointWest) in London;
- signature buildings (No 1 Poultry, London);
- the construction of large scale infrastructure (roads, railways, schools, hospitals and docks); and
- complicated engineering projects (LNG facilities, chemical works and large scale water supply and sewage systems).

His experience of complicated engineering works includes:

- retaining wall design and construction for a large port;
- slab reinforcement design and construction for factories, docks and motorway facilities;
- large scale floating slab design and construction for a residential development; and
- groundworks and ground conditions disputes.

Construction, Infrastructure and Projects Finance

Sean has been involved in financing and securitisation of large projects for over 25 years – dovetailing with his commercial, banking and insurance expertise. He has extensive experience (litigating; arbitrating and advising) of:

- M&A;
- bonds; warranties; guarantees and letters of credit. Sean appeared in the two most recent cases to consider bond wordings – *Multiplex v R&F (One)* and *Yuanda v Multiplex & ANZ*.
- equity injections; refinancing; calculations; pay outs and buy outs;
- insurance arrangements covering the risks arising from financial volatility; financing issue; insolvency; market collapse and lender failure;
- securitisation and collateralisation of risks; and
- Islamic Finance.

Commercial

Particular expertise in:

- energy – particularly upstream oil and gas including JOAs, PSAs/PSCs, tariffs, pricing, field allocation as well as nuclear energy, the handling and transport of nuclear materials, decommissioning;
- international trade, GATT and WTO as well as FTAs and BITs;
- company and insolvency law; directors' and fiduciaries' duties;
- corporate restructuring, M&A's, due diligence, indemnity and warranty claims, financing;
- banking/finance;
- bonds;
- warranties and guarantees;
- insurance and reinsurance;
- financial regulation, anti-money laundering, FCPA, Bribery Act and sanctions;
- telecoms, emergent and convergent technologies;
- aviation: aircraft supply, purchase and leaseback; slot allocation disputes; domestic and international regulatory issues;
- private and public international law – including all aspects of conflicts of laws; international treaty interpretation and application; the law of war; control of nuclear energy and materials and UNCLOS III.

Recent cases include a US\$5bn dispute over oil allocations offshore Africa; a US\$0.5bn oil exploration dispute offshore Africa; a US\$300m rig chartering dispute; a US\$2bn rig joint venture dispute; a £20m regulatory dispute over licensing and approvals of commercial waste water disposal; a £3m rail regulatory dispute.

Additional expertise in: restitution; economic torts; relevant EU law including State Aids.

International Arbitration

Sean has acted as Counsel in international arbitrations for over 20 years. His experience covers all the major bodies and sets of rules including: LCIA; ICC; DIAC; HKIAC; SCC; SIAC; UNCITRAL and ICSID as well as ad hoc arbitrations with seats in London, Paris, Geneva, Dubai, Singapore, Hong Kong and Lagos.

Sean's arbitral practice covers disputes arising from all areas of his practice – from finance to commodities to large scale infrastructure to energy. Examples of arbitrations he has acted in include: a HK\$3bn dispute over infrastructure; a US\$1bn dispute over developments in the UAE; a US\$200m commodities dispute; a US\$50m dispute over telecoms in Asia; a £50m dispute over

a high end development in London; and various inbound and outbound international investment treaty, BIT, FTA, sovereign guarantee, WTO and GATT disputes.

One specific aspect of Sean's practice is in the energy sector. Here Sean has acted in arbitrations involving deep water, high cost: block allocation, field exploration, development and production. This includes: funding (JOAs and FIA/FOAs); debates with host governments and NOCs; PSAs and PSCs; offtake and gas sales; allocation of production and reserves; border disputes, unitization, equity determinations and redeterminations. He also has acted in pipeline, rig and FPSO operation and construction arbitrations. He has in depth knowledge of the associated international law, security and sanctions issues. His experience covers oil and gas issues ranging from Alaska to the N Sea, Russia, Africa, the Middle East, the Bay of Bengal and Australia working for majors, governments and new entrants into the oil and gas sectors.

Sean acted as arbitrator and Chair of the Arbitral Panel on sports arbitrations arising out of the 2010 and 2018 Winter and 2012 Summer Olympics and is listed with the LCIA and ICC as an arbitrator. Sean also accepts ad hoc appointments.

- LCIA Arbitration 2020 - US\$25m dispute over the financing of power projects in Africa
- Ad Hoc Arbitration 2016-17 - disputes over offshore field allocation
- Ad Hoc Arbitration 2015 - a US\$5bn disputes over offshore field allocation
- UNCITRAL Arbitration 2015 - a US\$240m dispute over copper mining in Africa
- ICC Arbitration 2014 - a US\$50m dispute over oil field cash calls
- LCIA Arbitration 2014 - a US\$60m dispute over infrastructure in the Middle East
- Section 67 Arbitration Act 1996 Appeal - an appeal against an LCIA award in a £100m privatisation dispute
- DIAC Arbitration 2013 - a US\$1.5bn dispute over infrastructure in the Middle East
- DIAC Arbitration 2013 - a US\$100m dispute over office development in the Middle East
- LCIA Arbitration 2012 - a US\$150m dispute over oil field development in Iraq
- HKIAC Arbitration 2012 - a HK\$3bn dispute over infrastructure
- ICC Arbitration 2012 - a US\$20m dispute over oil field cash calls

Shipping & Commodities

Sean has advised and acted in a wide range of commodity disputes including: international metals and rare earth trading; oil futures; long term oil and gas sales contracts; trading afloat; take and/or pay; and energy put and call options.

Sean's dry shipping experience runs alongside his commodities practice dealing with the transport of commodities by sea, rail and road under the various sets of standard terms as well as the associated private and public international law issues. By way of example, from 2006 – 2011, Sean was extensively involved in the largest class action ever arising from the handling of oil cargoes afloat involving claims and litigation in five countries embracing issues of shipping, environmental, insurance, private international, public international and criminal law. Sean has in-depth litigation and arbitration experience before all the relevant Courts and bodies – the English Courts, ICC, LCIA, HKIAC, SIAC, DIAC, UNCITRAL, SCC and ICSID – and is licenced in Singapore and registered with the Singapore International Commercial Court.

“A specialist in the high-profile and complex, both at home or abroad.”

Legal 500 UK 2020

Administrative, Public & Procurement

Particular expertise in:

- statutory appeals;
- commercial judicial review;

- public procurement, PFI, PPP and government contracts;
- education and sporting bodies;
- local government finance, CCT and associated issues;
- national security.

Additional expertise in EU and public international law.

Recent cases include: an international border and force majeure dispute; a £20m commercial judicial review challenging the removal of water disposal licences and approvals and large rail regulatory dispute involving complex issues of public and commercial law.

Banking & Finance

Sean has extensive experience of advising on and litigation all types of financial instruments (particularly relating to the financing of infrastructure and energy projects and international trade) including letters of credit, guarantees and bonds. He has advised on and litigated derivatives and swaps disputes including forex and interest rate transactions as well as pool facilities, CDOs and CDSs.

He has dealt with international and domestic accounting standards disputes from the earliest days of his practice ranging from a large scale property investment collapse in Hong Kong (Carrian) to HKSE issues through to regulation by the FRC and the Accounting Standards Board (as was) as well as auditor's negligence.

He has advised and acted in all aspects of domestic and international financial regulation and compliance including FCPA; Bribery Act, AML and sanctions issues. He has acted in several complex, international banking and finance frauds including the associated spin off tracing and asset recovery claims. He has experience of Islamic Finance disputes. He is currently instructed in relation to the investigation of a large banking collapse in the Caribbean.

Insurance

Over the last 20 years, Sean has dealt with all types of insurance disputes: brokerage disputes; coverage issues; insurance frauds; and reinsurance treaties in the UK, USA and worldwide.

Sean has advised on and acted in insurance and reinsurance issues covering: nuclear incidents; the transport and refining of oil; the financial cover for large property developments; environmental incidents and accidents; aircraft supply and purchase; terrorism; financial services coverage and reinsurance; and insurance regulation.

Sport

- Chairing two Team GB selection Arbitrations for the 2018 Winter Olympics;
- Advising and acting for British Ski and Snowboard in relation to disputes over the appointment and removal of directors and officials;
- Acted for Team GB in the selection disputes for the 2012 Olympics;
- Sat as the legal member resolving Olympic and selection disputes in seven cases in 2010;
- Instructed by a prominent international test cricketer to challenge the ECB's Rules on qualifying cricketers;
- UK Representative on the Federation International du Ski Legal & Safety Committee. UK FIS delegate (2016).

PFI

Sean has been involved in PFI disputes for over 20 years. His experience includes the following projects:

- the M6 Toll Road;
- the 2012 Olympics;
- the National Programme for Infrastructure in IT;
- the TfL Oyster card programme;
- Croydon Tramlink;
- Nottingham City Trams;
- the Portsmouth City Urban Regeneration Programme;
- the Sha Tin – Central Link, Hong Kong;
- Dudley Hospital;
- Central Manchester Hospital;

- W Mercia Hospital;
- Papworth Hospital;
- Multiple BSF projects;
- Waste Projects (including recycling and WTE);
- Numerous other hospitals, schools, social housing projects, IT projects and roads.

His has experience acting for central government; local authorities; project cos; contractors and financiers covering all issues from defects to PayMechs to equity refinancing to project failure and handback.

All major PFI projects have a multi-tier dispute resolution procedures involving adjudication or expert determination. Sean has therefore been involved in multiple adjudications/expert determinations.

Many PFI projects have design and workmanship issues over fire protection and Sean has encountered these in more than 10 projects – particularly hospitals and schools. Sean has therefore dealt with all types of fire protection issues from design to fire stopping to whether materials, fixtures and fittings reach the required standards of fire resistance.

Recent Reported Cases

- Yuanda v Multiplex & ANZ [2020] EWHC 468 (TCC)
- Multiplex v R&F One (UK) Ltd [2019] EWHC 3463
- Acting for Leighton Contractors (Asia) Ltd in the 3 month Sha Tin - Central Link Public Inquiry, Hong Kong - <http://www.coi-hh.gov.hk>
- Seadrill Ghana Ltd v Tullow Ghana Ltd [2018] EWHC 1640 (Comm)
- Motto & Ors v Trafigura [2009-2011]
- Dana Gas v Woodside Exploration [2010]
- Shell UK v Revenue & Customs Commissioner (Sp Comm) 2 August 2007 Lawtel 28 August 2007
- Tramtrack Croydon Ltd v London Bus Services Ltd (QBD) 31 January 2007 [2007] EWHC 107 (Comm)
- London Bus Services Ltd v Tramtrack Croydon Ltd (QBD) 19 December 2006 [2006] EWCA Civ 1743
- RWE Nukem Ltd v AEA Technology Plc (CA) 20 October 2005 [2005] EWCA Civ 1192
- Thames Trains v Network Rail Infrastructure Ltd [2004]
- Masons (A Firm) v WD King Ltd & Anor, Court of Appeal - TCC [2003] EWHC 3124 (TCC)
- Bedfordshire County Council v Fitzpatrick Contractors Ltd (QBD) (2001) BLR 226; 62 Con LR 64; (1998) CILL 1440
- Carmichael & Leese v National Power Plc 18 November 1999 IRLR 301; 1 WLR 2042
- Scottish Power v Britoil Exploration (CA) TLR 2/12/1997
- Secretary of State for the Foreign and Commonwealth Office v (i) Percy Thomas Partnership; (ii) Kier International Ltd (QBD) 22 January 1998 (1998) 65 Con LR 11
- Mitsui Babcock v John Brown Engineering (QBD) 11 September 1996 (1997) 51 Con LR 129

Education & Professional Career

Tenant - Keating Chambers, 2019 to date

Head of Chambers in 39 Essex Street International, Maxwell Chambers, Singapore, 2012-2014

Queen's Counsel, 2010

HM Attorney General's Junior Counsel, 2003-2010

Tenant - 39 Essex Chambers, 1993-2019

Called to the Bar, 1991

City University, London – Diploma in Law (Distinction), 1989-90

Université d'Aix Marseille III – ISCL Diplome in French, 1989

Brasenose College, Oxford – Double First in English, 1986-89

Seminars & Publications

Author of Wilken & Ors *The Law of Waiver, Variation, and Estoppel* (Wiley then OUP) 1998; 2002; 2012 Eds 1-3

Contributor to works on construction, commercial and media law

Interviewed by In House Lawyer on more than one occasion, by Legal Networks Television and writes for *The Lawyer*, *Commercial Lawyer* and *Legal Business*

Advisor to several Bar Council Committees

Taught at the LSE, at St Edmund Hall, Oxford and on the LLM in Advanced Litigation at Nottingham Law School. Frequently lectures on commercial and public law.

Appointments

LCIA Member and listed Arbitrator

CEDR Accredited Mediator

ACI Mediator

LawWorks Mediator

Legal Member of the Great Britain Selectors Panel (Skiing) for the 2010 Winter Games

UK Member of the Federation International du Ski Legal Committee

Languages

French, German and some Spanish

Additional Information

Other than spending time with my family and our dog, I ski (and am a qualified ski coach); dive (I am a rescue diver); fence; hike; run and climb. I also blog and am trying to write a children's book.