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The international journal of
commercial and treaty arbitration

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The guide to specialist
arbitration firms **2014**

Fully revised and updated
7th annual edition

Curtis Mallet-Prevost Colt & Mosle LLP

People in <i>Who's Who</i> :	5
Pending cases as counsel:	57
Value of pending counsel work:	US\$100 billion
Treaty cases:	29
Current arbitrator appointments:	8 (of which 2 are as sole or chair)
No. of lawyers sitting as arbitrator:	5

The go-to firm for states had another remarkable year

Curtis Mallet-Prevost Colt & Mosle has made a name for itself recently as a knight in shining armour for states facing serious claims under investment treaties.

That is in part down to a deliberate policy of representing only sovereigns in such claims, never investors. According to the international arbitration group co-chair, George Kahale III, it is not feasible for a single arbitration group to represent both claimants and states in similar proceedings because of the recurring legal issues. He thinks that governments now believe this too.

The growth of Curtis' practice suggests he is right. A recent US scorecard ranked Curtis second only to Freshfields Bruckhaus Deringer in terms of number of big-ticket cases (investment and commercial). The firm is currently acting in 16 different cases at ICSID alone – largely thanks to the firm's long-standing relationship with the government of Venezuela, which it represents in the bulk of its investment disputes. But the firm also counts Algeria, Kazakhstan, Turkmenistan, Uganda and (most recently) India as arbitration clients.

Kahale, who is also the firm's chairman and former managing partner, began as a transactional attorney. A US publication dubbed him "the Oil Baron" in 2008 for his work on behalf of state oil companies such as Kazakhstan's KazMunayGas. These days, he's an increasingly vocal critic of the investor-state arbitration system. "In the vast majority of cases, you have a pretty good idea what your chances are just by who's on the tribunal," he said at a GAR Live event in 2012. "Often the case is effectively over as soon as the tribunal is constituted."

Although strongly identified with BIT work, the firm also has a presence in Paris, where the other practice co-chair, Peter Wolrich, resides. Wolrich has strong links with the ICC, having been chair of its commission on arbitration and ADR for 11 years (he stepped down in 2013). He also oversaw the latest revisions to the ICC arbitration rules.

The firm is taking its commercial arbitration practice increasingly seriously. In 2013, the Paris office announced it had hired Jean-Claude Najar, formerly general counsel for General Electric in France. Najar is one of the more prominent corporate counsel on the arbitration conference circuit and has been fêted by the International Bar Association for his efforts in making sure clients' perspectives on the process are heard.

Najar's hire followed that of Nadia Darwazeh, a German-Jordanian former ICC counsel for Europe, the Middle East and Africa,



Claudia Frutos-Peterson

who joined in Paris in 2012. She was recently appointed secretary general of the Jerusalem Arbitration Centre, a new institution that will resolve disputes between Israeli and Palestinian businesses.

Another recent arrival is Tullio Treves in Milan, a public international law consultant who's sitting on some high-profile boundary disputes and other interstate matters at the Permanent Court of Arbitration.

Other names to know are Miriam Harwood (New York), Galileo Pozzoli (Milan), Gabriela Alvarez-Avila (Mexico City) and Claudia Frutos-Peterson (Washington, DC). The latter two are former ICSID counsel. Kate Brown de Vejar, also in Mexico City, is a member of the Australian delegation to the UNCITRAL working group on transparency in investor-state arbitration.

Network

The practice is concentrated in Paris, Milan, Mexico City, New York and Washington, DC, though it also has boots on the ground in Almaty and Astana (Kazakhstan), Ashgabat (Turkmenistan), Istanbul and Buenos Aires.

Who uses it?

States, states and more states. Turkmenistan has retained it on some 20 matters. The firm is representing Venezuela in around 12 cases, and Algeria and its government-owned oil company, Sonatrach, in matters worth several billion. Another client is Uganda, which has retained it for an UNCITRAL dispute with Canada's Heritage Oil over capital gains tax; and Ghana, which is using it for an ICC case brought by a mining company.

The firm also represents state entities such as PDVSA of Venezuela, Mexico's Pemex, Kazakhstan's KazMunayGas and the Nigerian National Petroleum Company.

Track record

Although many of their ICSID cases still have some way to run, the firm has scored some notable results. For example, in June 2012, it won the dismissal of a billion-dollar ICSID claim against Kazakhstan brought by Kazakh-registered entity Caratube. The tribunal declined jurisdiction, holding there was insufficient proof that the claimant was under "foreign control".

The Curtis team has also helped Venezuela knock out a series of ICSID claims brought under the country's 1999 domestic law on foreign investment. A succession of panels have found that the law doesn't offer an independent consent to arbitrate at ICSID – resulting in the complete dismissal of claims by Taiwanese oil investor OPIC Karimun and US telecoms investor Brandes and partial dismissal of other claims by Mobil, Cemex and Tidewater.

Indeed, the firm has proved adept at significantly lowering the amount of money at stake in certain cases even where it loses on liability. In an ICSID case brought by ConocoPhillips, a panel found Venezuela liable for expropriation under an investment treaty in 2013 but rejected other claims under the treaty and the 1999 law – meaning the company now stands to collect much less than the US\$30 billion it was seeking.

In another case for Venezuelan state entity PDVSA, an ICC tribunal awarded ExxonMobil subsidiary Mobil Cerro Negro US\$908 million – a far cry from the US\$12 billion it initially asked for. PDVSA says that, after deductions, the final pay-out is more like US\$250 million. In Mobil's parallel ICSID case, Curtis also persuaded the tribunal to exclude a sizeable chunk of the US\$10 billion claim that related to events pre-dating a corporate restructuring.

In addition, the firm has enjoyed success before US and UK courts: it put paid to the US\$12 billion freezing order granted by the High Court in London in support of Mobil's ICC claim; and it defeated a petition for section 1782 discovery brought by Caratube against Kazakhstan.

In 2012, Curtis also succeeded in settling a cluster of claims against Turkmenistan brought by Russian telecoms operator Mobile Telesystems. The company signed a new agreement with the government to operate in the country, withdrawing a US\$800 million ICSID claim and three ICC claims. The firm continues to represent Turkmenistan in several other ICSID claims.

Recent events

The past year brought a spate of new instructions from India, victories in cases for Turkmenistan, Kazakhstan and Venezuela, with setbacks in a couple of others.

India has retained the firm to defend it in a number of new investment treaty cases relating to the telecoms sector, including a US\$1.4 billion claim by Khaitan Holdings and a US\$400 million claim by Russian and Cypriot shareholders in local mobile operator Bycell. The Khaitan case arises from the Indian Supreme Court's cancellation of 122 mobile 2G spectrum licences in 2012 after it emerged that the telecoms ministry granted some at discounted rates.

In addition, Curtis was tapped to defend India in a US\$1.6 billion treaty claim brought by US-backed telecoms company Devas Multimedia over a failed satellite joint venture with India's state-owned space research organisation. Skadden Arps Slate Meagher & Flom are acting for the claimants. Curtis has already won an early procedural round of that case by successfully challenging Devas's appointed arbitrator, Francisco Orrego Vicuña, on the basis of his previously expressed views on certain treaty provisions. It is thought to be the first time in an investment case that an arbitrator has been disqualified for seeming to have pre-judged a legal issue.

Curtis brought home a win for Turkmenistan in July, when an ICSID panel refused jurisdiction over claims by Turkish construction company Kılıç İnşaat. A tribunal chaired by J William Rowley QC found that the claimant had failed to submit its dispute to local courts in compliance with an investment treaty provision and couldn't use a most-favoured-nation (MFN) clause to bypass that requirement.

But around the same time, Curtis failed to knock out a different claim against Turkmenistan by engineering firm Garanti Koza under a

treaty with the UK. A majority of the panel upheld jurisdiction thanks to a differently worded MFN clause. The case will now proceed to the merits.

The summer also brought a win for Curtis client Kazakhstan in a claim by poultry investor Ruby Roz – one of a number of cases that are said to relate to a bitter feud between Kazakh president Nursultan Nazarbayev and his estranged son-in-law. A panel ruled in August that it had no jurisdiction to hear the claim under a contract or a foreign investment law, following dramatic hearings that saw three of the claimant's witnesses refuse to appear after being accused of murder.

Venezuela was once again a happy client in 2013, after an ICSID panel declined jurisdiction over claims brought by OPIC Karimun, a subsidiary of Taiwan's state petroleum company, under Venezuela's 1999 investment law. However, the panel took a dim view of Venezuela's failure to produce supporting documents that might have aided the claimant's case.

Another ICSID claim by Barbadian oil services investor Tidewater partly cleared the jurisdictional phase in early 2013. That panel dismissed claims under the 1999 law but said it could hear others brought under a treaty.

ConocoPhillips' ICSID case against Venezuela took a novel procedural twist after a majority of the panel found that the state liable for negotiating in bad faith with Conoco over compensation for expropriated oil assets. Following a complaint by Curtis, the tribunal has since agreed to new hearings to decide whether it has the power to "reconsider" that ruling, in light of evidence of the state's good faith found in US diplomatic cables published by Wikileaks.

In Milan, Tullio Treves continues to be in demand as an arbitrator in boundary disputes and other sensitive state-to-state matters. He's now chairing a panel at the Permanent Court of Arbitration that will decide whether a treaty between Australia and East Timor carving up oil reserves is void because of alleged espionage conducted by the Australian security services during the negotiations.

However, Treves had to step down from another PCA panel hearing a boundary case between Bangladesh and India, when Curtis' instructions by India on other cases created the perception of a conflict of interests.

The firm hired two new counsel to its office in Muscat, Oman: New Zealand-qualified Simon Ward and UK-qualified Jamie Kellick. In New York, associate Bernardo Cremades Jr left to become a partner at his father's firm in Madrid.