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The guide to specialist  
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# Curtis Mallet-Prevost Colt & Mosle

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People in Who's Who Legal	6
Pending cases as counsel	105
Value of pending counsel work	US\$108 billion+
Treaty cases	34
Current arbitrator appointments	11 (of which 9 are as sole or chair)
Lawyers sitting as arbitrator	5

## Led Indonesia and Turkmenistan to triumph at ICSID

This New York-based firm has made a name for itself as a knight in shining armour for governments facing serious claims under investment treaties.

That is partly down to a deliberate policy of only representing sovereigns in such claims, never investors. According to the international arbitration group co-chair, George Kahale III, it is not feasible for the same practice to represent both claimants and states because of the recurring legal issues. He thinks that governments now believe this too. The firm's ever-expanding roster of state clients suggests he may be right. Members of the firm are also forbidden from acting as arbitrators in investor-state cases.

Kahale, who is also the firm's chairman and former managing partner, began as a transactional attorney and built his reputation representing state oil companies of Kazakhstan, Mexico and Venezuela. These days, he's also an increasingly vocal critic of the investor-state arbitration system, which he regards as "seriously flawed".

Although strongly identified with BIT work, the firm takes its commercial arbitration offering equally seriously. It has a presence in Paris, where the other practice co-chair, Peter Wolrich, resides. Wolrich has strong links with the ICC, having formerly chaired its commission on arbitration and ADR for 11 years and overseen the latest revisions to the ICC arbitration rules.

Other names to know include Miriam Harwood, Ben Preziosi and Mark O'Donoghue in New York, Geoffroy Lyonnet in Paris, Galileo Pozzoli in Milan, Gabriela Alvarez-Avila in Mexico City and Claudia Frutos-Peterson (head of the practice in Washington, DC). The latter two are former ICSID counsel.

## Network

The practice is concentrated in Paris, London, Milan, Mexico City, New York and Washington, DC, though it also has boots on the ground in Almaty, Astana, Ashgabat, Geneva and Buenos Aires. It has around a dozen disputes lawyers in Dubai and Muscat, and one counsel based in Beijing.

## Who uses it?

States, states and more states. Venezuela and Turkmenistan have used the firm in more than 20 cases each, while Kazakhstan and Libya are frequent clients. It's acting for India in several major telecoms-related

treaty cases with a combined value in the billions. Indonesia retained it for a pair of ICSID claims over mining licences, with happy results.

Uganda and Ghana have turned to the firm for disputes in the extractive industries, while in recent years, instructions have come from Russia, Albania, Cyprus, Vietnam, Laos, Algeria, Tanzania and Cameroon. In 2015, it was also added to China's panel of preferred counsel for investment disputes.

In addition, the firm represents state entities such as PDVSA of Venezuela, Algeria's Sonatrach, Mexico's Pemex, Kazakhstan's KazMunayGas and the Nigerian National Petroleum Corporation.

## Track record

A recent example of the firm's prowess was the complete dismissal of a pair of ICSID claims worth US\$1.3 billion against its client Indonesia in December 2016. The Curtis team persuaded the tribunal that the mining licences underpinning the investment of London-listed claimant Churchill Mining had likely been forged by a local business partner. The state was also awarded US\$9 million in costs.

Another satisfied client is Uganda. The firm helped it to defeat a US\$400 million tax-related claim brought by Canada's Heritage Oil in 2015 (and obtain US\$4 million in costs) and settle another tax dispute with Tullow Oil that saw the company agree to pay over US\$250 million to the state. Meanwhile the firm has helped Ghana see off a US\$200 million ICC claim by a mining investor.

In 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". A follow-up claim is pending.

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 three cases and partial dismissal of other claims.

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.

The firm pulled off a similar trick in ExxonMobil's ICSID claim against Venezuela. At the jurisdictional stage, Curtis lawyers persuaded the tribunal to exclude a sizeable chunk of Exxon's US\$10 billion claim that related to events preceding a corporate restructuring. A final award in 2014 ordered Venezuela to pay US\$1.6 billion – but that figure was offset by US\$908 million that the state had already paid to satisfy a related ICC award.

In the same vein, it reduced a US\$250 million ICSID claim by US-based oil services company Tidewater against Venezuela to an award of just US\$56 million, with the panel ruling that the state had committed a lawful expropriation.

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 Exxon's ICC claim; and it

defeated a petition for section 1782 discovery brought by Caratube against Kazakhstan.

Curtis has also done good work for Turkmenistan: it won the dismissal of an ICSID claim by Turkish construction company Kılıç İnşaat in 2013, a year after helping the state settle a US\$800 million ICSID claim and three ICC cases brought by Russia's Mobile Telesystems. It also saw off a US\$175 million treaty claim against the state from a group of unrelated investors at the jurisdictional stage in 2015.

## Recent events

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Apart from the victory for Indonesia in the *Churchill* case already mentioned, the firm notched up two good results for Turkmenistan at ICSID in 2016. In one, it got a US\$570 million claim by Turkish construction group İçkale İnşaat dismissed as "entirely without merit", again winning costs for the state. In the other, the state was held liable in a US\$40 million dispute over the construction of bridges but was only ordered to pay US\$2.5 million.

However, in another case the firm failed to persuade an ICSID committee to annul an award requiring Turkmenistan to compensate an investor in a poultry farm.

There was also success in a commercial arbitration, with the firm helping French chemicals producer Arkema defeat a €310 million ICC claim by Swiss chemicals group Klesch and prevail on a €74 million counterclaim.

In a high-stakes case for India related to a cancelled satellite deal, the firm persuaded a majority UNCITRAL panel in 2016 that a treaty exception for "essential security interests" meant that the claimants can only be compensated for 40% of their investment. An award on quantum is pending. But a related ICC case ended in a US\$672 million award against its client, Indian state satellite company Antrix (the claimant had sought as much as US\$1.4 billion).

Curtis helped Venezuela defeat an ICSID claim by lubricants investor Venoklim at the jurisdictional stage in 2015. However, the state was rebuffed in its request for summary dismissal of an application by Venoklim to annul the award.

Meanwhile the firm defended PDVSA against an ICC claim by Conoco spin-off Phillips 66, which sought a US\$244 million price adjustment on crude oil deliveries. In August 2016, the tribunal

awarded Phillips 66 an adjustment of only US\$67 million and ordered it to pay some of the state entity's costs.

PDVSA has also retained the firm to bring an ICC claim against Paraguay's national oil company, Petropar, to recover US\$265 million in unpaid debts relating to crude oil imports.

Other new instructions have come from Albania in a US\$257 million tax dispute with a Canadian oil company; and Tanzania in a contract-based ICSID claim by the Hong Kong arm of UK bank Standard Chartered.

It is also assisting Daman Real Capital Partners in a challenge to a US\$266 million DIAC award relating to the termination of a building project. In late 2016, a special committee ruled that the challenge should be heard by the Dubai courts rather than the courts of the emirate's financial freezone, the DIFC.

In Paris, partner Jean-Claude Najar left for Lazareff Le Bars three years after he joined from General Electric, citing conflicts of interest affecting his arbitrator practice. The firm promoted Justin Jacinto and Borzu Sabahi in Washington, DC, to partner. It also set up a new office in Geneva, relocating counsel Fuad Zarbiyev from New York and Dori Yoldi from Mexico City. In Ashgabat, it promoted Bahar Charyyeva to counsel.

## Client comment

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A former adviser to a state oil company client says the firm's "superior knowledge of the industry has been a clear advantage". He says Curtis "goes all the way up to eleven" in terms of response times, service and legal knowledge.

The operations director at an engineering consultancy says Curtis is the only firm where "every single lawyer you meet, from the most junior to the most senior, is always one of the best you have encountered in their field." They appreciate the wider social and economic effects of their cases, and blend this understanding with the most appropriate and thorough defence.

He singles out Ben Preziosi – "one of the very best advocates in formal proceedings I have seen" – and says Miriam Harwood has a "great facility with the law in many jurisdictions." Ali Gursel is able to "see the trends in changing circumstances and adapt the strategy of the team to achieve the best outcome".