Adam Al-Attar KC

KC 2024, Called to the Bar 2007
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Adam has a split practice divided between insolvency and restructuring, and commercial matters, in particular, banking, financial services and the law of trusts.

Adam has substantial experience of bank and fund insolvencies. In the period 2009 to 2019, he has acted in the insolvencies of Lehman Brothers, MF Global and certain Madoff feeder funds, appearing in many of the leading cases in that decade.

He has a substantial restructuring practice in the UK and in offshore jurisdictions. Adam has appeared in many of the leading contested restructuring cases including IMO Car Wash, APCOA, Ocean Rig, Lehman, Adler, McDermott and Aggregate. Other notable restructuring cases include New Look, Travelodge, KCA Deutag, Castle Trust, Nero Holdings, Amigo 2, NMC and Link Fund.

Adam's commercial work involves cases in the Commercial Court and the Chancery Division. He was part of the team that restored the world-wide freezing injunction in *Privatbank v Kolomoisky*. Recent cases include *Banco San Juan v PDVSA*, in which Adam acted for the bank on its summary judgment application against the Venezuelan state oil company, and *IS Prime v TF Global Markets (UK) Limited*, in which Adam acted for the claimant broker. The case produced a series of judgments concerning the Arbitration Act 1996, the 'passing on' defence in unjust enrichment and when a fiduciary duty is owed between brokers transacting in currency and index swaps.

Adam is ranked in Band 1 in Chambers Global for restructuring and insolvency, and in Tier 1 in the Legal 500 for insolvency and for his offshore work. He is also ranked by Chambers Global and Legal 500 in commercial ligation and dispute resolution, chancery commercial, banking and finance and offshore. In 2014 and again in 2021, he was recognised as the Insolvency and Restructuring Junior of the Year at the UK Bar Awards.

His entry in the 2024 edition of Chambers Global lists Adam a Star Individual "*exhibiting great strength in bank and fund insolvencies. He regularly attracts instructions in headline cases and demonstrates notable skill in contested restructurings. He also has considerable experience in cases concerning trusts law, and banking and financial services.*"

"Adam is brilliant. You expect to see him on all of the large global restructuring/ insolvencies. He's great on his feet."

"Adam is conscious of client care, really very easy to deal with, and a very smart guy with a lot of

confidence in the restructuring space."

In relation to his commercial work, the 2024 edition describes Adam as "*Exceptionally good. He has a very calm, considered and persuasive advocacy style, and displays real gravitas in court. He's excellent on his feet, has first rate skills of analysis and is easy to work with." "Adam is exceptionally good. He is very calm and considered, and has a persuasive advocacy style."*

Insolvency and Restructuring

Insolvency

Cases of note include:

- ***Lehman Brothers International Europe***, acted for and advised various counterparties including in relation to subordinated debt and statutory interest; acted for the administrators on discrete issues including third party set-off; acted for GLG in relation to client money issues; currently acting for Wentworth in relation to the ***Waterfall II*** applications to distribute the surplus in the estate.
- ***MF Global***, retained to advise the special administrators including in relation to the close-out of exchange traded and OTC derivatives, the transfer of open positions, the settlement of DVP trades, and the operation of clearing house and exchange default rules.
- ***Primeo***, retained by the joint official liquidators of Primeo Fund in relation to the trial of preliminary issues on the Madoff trustee's claim for relief under US and Cayman Islands insolvency law to set aside antecedent transactions: ***Picard v Primeo Fund,*** Cause FSD 275 of 2010, 14 May 2013. The Cayman Court of Appeal handed down judgment on part of the appeal in April 2014: CICA 1/2013 and 2/2013. In a further aspect of the Primeo litigation, Adam was instructed to oppose an appeal in the Privy Council; the Board upheld the Cayman Court of Appeal and rejected the submission that the liquidator had a wide power to rectify the register of members in the light of the Madoff fraud.
- ***Monarch Airlines***, instructed by the companies to pursue the administration applications, and retained by the administrators on various issues arising out of the airline administration
- ***DD Growth***, appeared in the Privy Council for the liquidators of a Cayman fund on a dispute as to the legality of redemption payments funded from the share premium account at a time when the fund was insolvent and had a negative NAV.
- ***Travelodge Hotels Ltd v Prime Aesthetics Ltd***, instructed by the company to restrain the presentation of a petition based on an admitted, liquidated debt. The injunction was granted in the light of the COVID-19 pandemic and the anticipated enactment of the Corporate Insolvency and Governance Bill.
- ***NMC Healthcare***, instructed by the administrators of the UK plc and the ADGM companies continued in the ADGM for the purposes of rescuing the business of the group following the discovery in 2020 of a sustained and systematic fraud in which in excess of $4 billion of liabilities were concealed.

  Other cases include:

- ***Rollings v O'Connell*** [2014] EWCA Civ 639, consideration by the appellate court of the power under paragraph 71 of Schedule B1 to override the consent of a fixed charge-holder
- ***AIB Group (UK) v St John Spencer*** [2012] EWHC 2317 (Ch), contested application to appoint an administrator under paragraph 35 of Schedule B1
- ***Rawlinson & Hunter Trustees v Kaupthing Bank*** [2011] 2 BCLC 682, jurisdictional challenge under the Credit Institutions Winding Up Regulations to a claim by Kaupthing in the Commercial Court
- ***Byers v Yacht Bull Corporation*** [2010] 2 BCLC 169, jurisdictional challenge to a tracing claim to assets in France asserted by the liquidator of Madoff's UK company

Restructuring

Recent cases include *Punch Taverns*, *Cattles*, *FU JI Food & Catering Holdings*, *The Co-operative Bank*, *PHS, LDK Solar, SAB Miller, CHC Group*, *Algeco Scotsman*, *Frigoglass, Steinhoff, New Look*, *Travelodge*, *PizzaExpress*, *KCA Deutag*, *Matalan*, *Castle Trust*, *Nero Holdings* and *Amigo 2*.

Contested restructurings include:

- ***Bluebrook*** [2010] 1 BCLC 338, which sets out the proper approach to the valuation of distressed company debt.
- ***Maltby Investments*** [2012] EWHC 4 (Ch), in which the court rejected Terra Firma's application for pre-action disclosure of valuations relied on for the pre-pack sale of EMI.
- ***Drydocks Dubai LLC v Monarch Master Funding***, in which the Dubai entities obtained injunctive relief in support of CVAs sanctioned under Dubai law.
- ***Co-Operative Bank*** [2013] EWHC 4074 (Ch), a scheme of arrangement to recapitalise a bank which had failed its capital requirement tests and was threatened with resolution by the PRA.
- ***Apcoa*** [2015] 4 All ER 572, the leading UK scheme case on the validity of change of law schemes and the imposition of new obligation via a scheme.
- ***Ocean Rig***, 15 September 2017, Grand Court of the Cayman Islands, the first cross-border Cayman Islands led restructuring involving a COMI-shift to facilitate recognition under Chapter 15 of the US Bankruptcy Code.
- ***Steinhoff*** [2021] EWHC 184 (Ch), a disputed scheme to restructure the financial debt of Steinhoff – a South Africa's largest retailer – following the discovery of an accounting fraud. It enabled the linked operational restructurings in the Netherlands and South Africa.
- ***New Look*** [2021] Bus LR 915, the disputed CVA which effected the operational restructuring of New Look and led to Zacaroli J's seminal judgment as to what can constitute a fair restructuring.
- ***Nero Holdings*** [2021] BPIR 1324 and [2022] BPIR 189, an expedited trial to determine whether the directors of Caffe Nero had breached their duties in rejecting a late bid by EG Group (the Issa brothers) to acquire Caffe Nero for £400m.
- ***Amigo 2*** [2022] EWHC 549 (Ch) and [2022] EWHC 1318 (Ch), the successful second restructuring of the distressed high-cost credit lender to resolve its consumer redress claims and to recapitalise its business.

Bankruptcy and Personal Insolvency

Notable cases include:

- ***Davis v Price*** [2014] BPIR 494, CA, an appeal which considered the "cut off" date for IVA

claims

- ***Smith-Evans v Smailes*** [2013] EWHC 3199 (Ch), an appeal in which the court held that the failure to obtain a debtor's consent to a modification did not render an IVA a nullity
- ***Windhorst v Levy*** [2021] EWCA Civ 1802), acting for a German industrialist in his appeal to the Court of Appeal to overturn the refusal to stay the execution of a German judgment subject to an insolvency plan

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Commercial and Financial Services Litigation

Notable cases include:

- ***Libyan Investment Authority v Maud***[2016] EWCA Civ 788, an appeal which considered the application of the Libyan sanctions regime to the payment of a commercial guarantee.
- ***Citibank N.A. London Branch v Oceanwood Opportunities Master Fund*** [2018] EWHC 305 (Ch) and [2018] EWHC 448 (Ch), an expedited trial to determine the control of a bond issuer and, therefore, who could vote under the indenture terms.
- ***Sumitomo Mitsui Banking Corporation Europe Ltd v Euler Hermes Europe SA (NV)*** [2019] EWHC 2250 (Comm), an expedited claim by SMBCE to call a performance and retention bond in connection with a PFI contract.
- ***Privatbank v Kolomoisky*** [2020] 2 WLR 993, CA, an appeal which restored, at the time, the largest world-wide freezing injunction granted in the Chancery Division. The appeal considered several important points, including the constraints upon the use of the 'anchor' defendant jurisdiction to sue alleged co-conspirators in the UK and the approach to evidence at an interlocutory stage, in particular, in connection with a fraud claim.
- ***Banco San Juan v PDVSA*** [2020] EWHC 2145 (Comm) and [2020] EWHC 2937 (Comm), an application by a bank for summary judgment application against the Venezuelan state oil company. The case produced two useful judgments: first, a judgment on the efficacy of contractual services clauses; secondly, a judgment on the relevance of foreign (US) law sanctions to an English loan contract to be repaid in the foreign jurisdiction in question.
- ***IS Prime v TF Global Markets (UK) Limited***, which has produced a series of judgments to date:
- [2021] Bus LR 493, the defendant's application, pursuant to section 9 of the Arbitration Act, to stay a broker's claim in the Commercial Court for a breach by the client of the broker's exclusivity terms. The case is noteworthy because the Florida arbitration was expressly "non-binding" and thus the Commercial Court had to consider the meaning of an "arbitration agreement" under section 6 of the 1996 Act and its relationship with section 58 of the same Act.
- [2022] EWHC 605 (Comm), the defendant's application to strike out part of the claimant's claim for loss in connection with index swaps traded under the 2002 form ISDA Master Agreement.
- [2022] EWHC 1004 (Comm), the claimant's application to strike out the defendant's counterclaim for its A-book loss based on its allegations of deceit, breach of fiduciary duty and conspiracy. The case affirmed the existence of the 'passing on' defence to unjust enrichment claims and held that a 'prime of prime' broker did not owe a fiduciary duty to its retail broker

client.

Financial Services

Client Money:

- ***MF Global UK Ltd*** *(Client Money Resolution Application)*, application by client money trustee to sanction compromise including claims for breach trust to enable closure of trust fund
- ***MF Global UK Ltd*** *(Client Money Distribution Application)* [2013] EWHC 1655 (Ch), application by client money trustee to distribute client money on assumed facts in the light of unknown claims
- ***MF Global UK Ltd*** *(Shortfall Application)* [2014] 1 BCLC 91, acted for the administrators of MF Global on their application to consider the extent of clients' shortfall claims against the general estate resulting from a breach of the client money trust
- ***MF Global UK Ltd*** *(Hindsight Application)* [2013] EWHC 92 (Ch), acted for the administrators of MF Global on their application to determine the scope of the hindsight principle
- ***Re Lehman Brothers International (Europe) (No 2)*** [2012] 1 BCLC 487 (SC); [2011] 2 BCLC 184 (CA); [2010] 2 BCLC 301, acting for GLG on behalf of segregated clients at all levels of the Lehman Brothers client money litigation under CASS 7
- ***Re Global Trader Europe Ltd*** [2009] 2 BCLC 18

Client Assets:

Acting for the special administrators of *MF Global* in relation to the 30.7 litigation, which considered, amongst other things, the efficacy of title transfer arrangements in a claim for US$600m of US treasury bills.

Retained by the special administrators of ***Hartmann Capital*** and ***SVS Securities plc*** [2020] EWHC 1501 (Ch) in relation to their client asset distribution plans.

Offshore

Has experience in the following jurisdictions: the BVI, the Cayman Islands, Hong Kong, the Isle of Man, Dominica, St Kitts and Nevis, Anguilla, Guernsey, St Vincent and the Grenadines and Dubai.

Appeared before the Dubai World Tribunal in 2013.

Career

2024Appointed King's Counsel
2016Called to the Bar of St Vincent and Grenadines
2014Called to the Bar of the Cayman Islands (ad hoc)
2007Called to the Bar of England and Wales
Adam is registered as an advocate in the Dubai International Financial Centre (DIFC) and has been

admitted to the bar in the British Virgin Islands (2011). Adam has also appeared in the Courts of the Abu Dhabi Global Market (ADGM).

Publications

Contributor to ***Company Directors: Duties, Liabilities and Remedies*** (third edition, OUP, 2017)
Contributor to ***European Debt Restructuring Handbook*** (first edition, Global Business Law, 2013)
Contributor to ***Cross-Border Insolvency*** (fourth edition, Bloomsbury, 2015)
Contributor to ***Rowlatt on Principal and Surety*** (sixth edition, Sweet and Maxwell, 2011)
Contributor to ***The Law and Practice of Restructuring in the UK and US*** (second edition, OUP, 2017)

Education and Qualifications

2006Oxford University, BCL
2005Oxford University, BA Jurisprudence