

Mark Arnold KC

KC 2013, Called to the Bar 1988

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Mark is an experienced advocate with more than 30 years' experience, who specialises in domestic and cross-border restructuring and insolvency law, banking and finance, commercial law and company law.

He has appeared or advised in major restructurings and insolvencies and other substantial matters in many sectors, including energy (Yunneng Wind Power, Bulb Energy, TXU), oil and gas (Seven Energy, Paragon Offshore, Prospector and others), entertainment (Cineworld), banking and financial services (MF Global, ARM Asset backed Securities, SAAD, Lehman, Kaupthing, BCCI and others), pensions (Silentnight, Box Clever, Lehman: Storm Funding, and Dana), retail (Steinhoff, Stripes, Card Protection Plan, Woolworths), shipping (Northsea Base Investments Group and others, principally Chinese and Korean shipbuilders), telecommunications (Phones4U, Hellas Telecommunications, Dolphin and others) and logistics (Syncreon).

Mark is a contributor to *Company Directors: Duties, Liabilities and Remedies* (Mortimore, OUP, 3rd edition 2017: chapters on directors' duties), of the forthcoming 4th edition of which he is editor. He also contributed the chapter on the EU Insolvency Regulation in *Cross-Border Insolvency Fourth Edition* (Sheldon, Bloomsbury, 2015).

The leading guides to the UK Bar have variously described Mark as "a very, very good advocate who is easy to deal with and liked by clients. His written work is top drawer", "very thorough, extremely intelligent and very good to work with" and "diligent, calm, well-organised and a pleasure to deal with".

Company, Insolvency and Restructuring

Recent or significant cases include:

- **Yunneng Wind Power Co., Ltd** [2023] EWHC 2111 (Ch) (Michael Green J, convening; sanction 22 August 2023): Part 26A restructuring plan in respect of a Taiwanese company, incorporated for the purpose of constructing and operating the Yunlin offshore wind farm off the coast of Western Taiwan.
- **Cineworld Group Plc** (Leech J, 31 July 2023): Pre-pack administration order sought and made in the context of implementing the Chapter 11 Plan confirmed by the United States Bankruptcy Court on 28 June 2023)
- **Bulb Energy Ltd** [2021] EWHC 3755 (Ch), Adam Johnson J: first application for an energy supply company administration order and for the appointment of special administrators. The proposed Special Administrators sought and obtained directions to enter into a funding agreement with the Government for the provision of ongoing funding to Bulb of £1.69 billion.
- **Steinhoff International Holdings NV** [2020] EWHC 3455 (Ch) (Sir Alastair Norris, convening); [2021] EWHC 184 (Ch) (Adam Johnson J, sanction): scheme of arrangement,

opposed by a non-scheme creditor

- **Goldtrail Travel Limited (in liquidation) v Grumbridge** [2021] EWHC 1713 (Ch): director's breach of fiduciary duty; whether limitation period postponed pursuant to s. 32(1)(a) or (b) Limitation Act 1980 (fraud or deliberate concealment)
- **Silentnight: The Pensions Regulator v HIG Group and others** (2020): proceedings before the Determinations Panel to determine whether the HIG target parties were susceptible to contribution notices under the Pensions Act 2004
- **Dundee Pikco Limited (Doncasters)** [2020] EWHC 89 (Ch) (Zacaroli J, convening); [2020] EWHC 1059 (Ch), Zacaroli J, sanction): scheme of arrangement in relation to debt governed by English law (originally New York law) owed and guaranteed by the company and members of the Doncasters group of companies
- **Seven Energy International Limited** [2019] EWHC 3391 (Ch) (Morgan J): pre-pack administration order in relation to a Mauritian company with its COMI in England, being the holding company of a group carrying on business in the oil and gas sector, mainly in S.E Nigeria, in advance of a pre-pack sale to Savannah Group
- **Syncreon Group BV and Syncreon Automotive (UK) Ltd** [2019] EWHC 2068 (Ch) (Falk J, convening order); [2019] EWHC 2412 (Ch) (Falk J, sanction): schemes of arrangement in relation to debt governed by English law owed and guaranteed by members of the Syncreon group of companies
- **Granada UK Rental & Retail Ltd & Others v The Pensions Regulator** [2019] EWCA Civ 1032 (**Box Clever**) (CA): The association of certain Granada companies with relevant companies in the Box Clever group of companies was not severed for the purposes of the Financial Support Direction provisions of the Pensions Act 2004 by the appointment of administrative receivers to their respective parent companies, and neither automatically nor upon notice upon the occurrence of a declared default. *Unidare v Cohen* [2006] Ch 489 disapproved
- **Stripes US Holding Inc.** [2018] EWHC 2912 (Ch) (Zacaroli J, convening order); [2018] EWHC 3098 (Ch) (Marcus Smith J, sanction): scheme of arrangement in relation to debt governed by English law owed by a US Corporation (part of the Steinhoff group), with a registered establishment in the UK
- **MF Global UK Limited: Heis & Others v Financial Compensation Scheme Limited & Another** [2018] BCC 921, [2019] Bus. L.R. 1 (Hildyard J); [2019] Bus. L.R. 40 (CA): whether the terms of the MF Global UK CVA permitted and required the Administrators to make a value judgment that the CVA was precluded from becoming effective following the unexpected submission of a significant contingent claim against it
- **Paragon Offshore plc**: administration order made in the context of Chapter 11 proceedings, on application of the company's directors. Subsequent proceedings for the Administrators' release [2020] EWHC 1945 (Ch); summary dismissal of an application to review the release decision [2020] EWHC 2740 (Ch); summary dismissal of Rule 14.11 application [2021] EWHC 2275 (Ch).
- **Phones4U**: sealing confidential documents on the Court file; appointment of a concurrent administrator to manage potential conflicts
- **Lehman Brothers International (Europe) v Lehman Brothers Holdings Inc** [2015] Ch 1, priority of subordinated debt and statutory interest and other proof issues (Waterfall)
- **Storm Funding** [2014] Bus. L.R. 454, [2014] Pens. L.R. 73, extent of aggregate liability to contribute under the Pensions Act 2004, section 48(2) (Lehman Quantum (Pension))
- **Card Protection Plan Limited** [2015] BCC 20 (Ch) (scheme of arrangement to address possible claims by up to c 7 million consumers in relation to the mis-selling of certain insurance products, sanctioned in January 2014)

Other significant cases include *Butters v BBC Worldwide*, (anti-deprivation principle); *Re OJSC ANK Yugraneft; Millhouse Capital and Abramovich v Sibir Energy*; *SISU Capital Fund v Tucker* (CVA challenge), *TXU*, *Nortel*, *Dana*, *Schefenacker*, *Boo.com*, *Eurotunnel* and *BCCI*.

Banking and Finance

Recent or significant cases include:

- ***PA Resources Group***, bank security and enforcement issues
 - ***Walzmühle***, security/finance construction issues
 - ***Travis Coal Restructured Holdings LLC v Essar Global Fund Ltd***, security and US judgment enforcement issues
 - ***Omicron Investment Management GmbH v US Bank Trustees Ltd***, removal of investment manager
 - ***Virgin Money v MBNA Europe Bank***, credit card joint venture
 - ***Venturion Vulcan v UBS London Branch***, alleged misrepresentation and duty of good faith
 - ***Kaupthing Singer & Friedlander; Credit Suisse Securities (Europe) v Mills***, appeal against rejection of a proof in respect of a failed trade
 - ***LB Re Financing No 3 v Excalibur Funding No 1 (Lehman)*** [2011] EWHC 2111 (Ch), construction of securitization documents
 - ***Elliott International v Law Debenture Trustees*** [2006] EWHC 3063 (Ch), construction of commercial documents (Eurotunnel)
 - ***Beximco Pharmaceuticals v Shamil Bank of Bahrain EC*** [2004] 1 WLR 1784 (CA), construction of governing law clause in Islamic banking agreements
 - ***HSBC Bank v Liberty Mutual Insurance Company*** [2002] EWCA Civ 691, construction of insurance bonds, guarantees, subrogation
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Offshore

Recent or continuing cases include:

- Advising liquidators of a Jersey investment company on potential claims against directors for breaches of fiduciary duty; resolved through mediation
- Advising creditors of Korean shipbuilders in relation to the consequences of recognition of rehabilitation proceedings under the CBIR 2006
- Advised creditor of a Manx company in liquidation in respect of funds subject to an overseas restraint order registered in England
- ***PA Resources Group***, bank security and enforcement issues
- ***Walzmühle***, security/finance construction issues
- ***Travis Coal Restructured Holdings LLC v Essar Global Fund Ltd***, security and US judgment enforcement issues
- ***SAAD Investments Company; Akers v Emirates NBD***, Cross Border Insolvency Regulations 2006, provision of information
- ***Value Discovery Partners***, solvent dissolution of a BVI limited partnership

- **Re Maximus Centre; Deutsche Bank AG v Feale** (District Court of Warsaw, Commercial Division), expert opinion in relation to the legal status of a branch under English law
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Expert Evidence

- **Re Prospector:** expert opinion prepared in draft for use in US proceedings, relating to the approach taken to the characterisation / recharacterisation of sale and lease-back agreements as secured lending agreements, under English law - 2018 (matter settled)
 - **Re Maximus Centre; Deutsche Bank AG v Feale** (District of Warsaw, Commercial Division): expert opinion in relation to the legal status of a branch of a bank, under English law - December 2012 and February 2013
 - **Re TXU Europe Limited: Wallace v Merrill Lynch Capital Services Inc** (Supreme Court of the State of New York): the effect of certain provisions of the Company Voluntary Arrangement entered into and implemented by TXU Europe Limited, under English law - 2006 (matter settled)
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Pro Bono

Case reviewer for the Bar Pro Bono Unit (1999-2017)

Awards and Recommendations

Chambers & Partners	<p><i>"He is an extraordinarily high-quality barrister."</i></p> <p><i>"He's responsive, works well in a team and is very thorough."</i></p> <p><i>"He's a very, very good advocate who is easy to deal with and liked by clients. His written work is top drawer."</i></p> <p><i>"He has a fantastic ability to deal with difficult situations and understands the need to be commercial and find solutions accordingly."</i></p> <p><i>"The depth of his intellectual penetration is brilliant."</i></p> <p><i>"He takes a very technical approach and brings gravitas to proceedings which clients and instructing solicitors both appreciate and benefit from. Every aspect of Mark's work exudes excellence."</i></p>
Legal 500	<p><i>"Mark is exceptionally thorough and extremely clear in his advocacy - definitely someone you want on your side."</i></p> <p><i>"His attention to detail is prodigious."</i></p> <p><i>"Diligent, calm, well organised and a pleasure to deal with."</i></p> <p><i>"His submissions always carry weight with the judge."</i></p> <p><i>"Very conscientious and considered in his advice, and an absolute gent to deal with."</i></p>

Career

2017-2022 Joint Head of Chambers, South Square

2013 Appointed King's Counsel
1988 Called to the Bar of England and Wales

Memberships

- Commercial Bar Association (COMBAR)
 - Chancery Bar Association
 - INSOL and INSOL Europe
 - Insolvency Lawyers' Association (ILA)
 - International Insolvency Institute (III)
 - RISA
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Publications

- *The Creditors' Duty comes of age (Sequana)*, with Mark Phillips KC and Rabin Kok, South Square Digest, December 2022
- *Avoidance Provisions in England and Australia: a historical introduction* with Farid Assaf SC, South Square Digest, March 2022
- *The Mountainer's Knee: scope of the professional adviser's duty of care explored*, South Square Digest, November 2021
- *Granada UK Rental & Retail Ltd & Others v The Pensions Regulator* [2019] EWCA Civ 1032 (*Box Clever*), case note, South Square Digest, July 2019
- *India's Revised Insolvency Framework: too fast from too slow?* With Cyril Shroff and Dhananjay Kumar of Cyril Amarchand Mangaldas, and Matthew Abraham, South Square Digest, March 2019
- *Form v Function: Recharacterisation of contracts in the UK and US*, with Mark Lawford, Peter Isakoff, Alinta Kemeny and others from Weil Gotshal & Manges. South Square Digest, October 2018
- *Banking on Brexit: the potential impact of Brexit on UK credit institutions in the context of the insolvency regime*, with Antony Zacaroli QC, South Square Digest, June 2017
- *Navigating Singapore's restructured restructuring and insolvency framework*, with Smitha Menon and Stephanie Yeo of WongPartnership, Singapore, and Matthew Abraham, South Square Digest, March 2017
- *Brexit - What next?* with Matthew Abraham, South Square Digest, August 2016
- *Salford or the BVI? The effect of arbitration agreements on winding up proceedings*, South Square Digest, March 2016
- *Anti-suit Injunctions to protect the Insolvency Process: Stichting Shell Pensioenfonds v Krys* [2014] UKPC 1, *Insolvency Intelligence* 2015, 28(2), 17-20
- *Directors' duties in the zone of insolvency - recent developments*, South Square Digest, February 2015
- *The 'purview' doctrine: a trump card for guarantors?* South Square Digest, August 2014
- *Contingent Liabilities Revisited: In re Nortel; In re Lehman*, *Business Law International*, vol 15, no 2, May 2014 (with Hannah Thornley)
- *Truth or Illusion? COMI migration and Forum Shopping under the EU Insolvency Regulation*, *Business Law International*, vol 14, no 3, September 2013

- *The Insolvency regulation: a Service or an Overhaul*, South Square Digest, February and May 2013
 - *Fraud on the bankruptcy laws in the 21st Century*, South Square Digest, February 2010
 - Contributor to *Company Directors: Duties, Liabilities and Remedies* (Mortimore, OUP, 3rd edition 2017) (chapters on directors' duties)
 - Contributor to *Cross-Border Insolvency* (Sheldon, Bloomsbury, 4th edition 2015) (chapter on EU Insolvency Regulation)
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Lectures and Seminars

- University of Aarhus, Denmark: *Schemes of Arrangement* (May 2019)
 - Chancery Bar Association: *Wrongful trading and the new power to make compensation orders: a coherent whole?* (November 2018)
 - Cyril Amarchand Mangaldas thought leadership initiative, Delhi: *Directors' duties in the twilight zone: an English perspective* (September 2018)
 - Insolvency Lawyers' Association: *Coherence of directors' duties in England after Ralls Builders and the SBEE Act 2015*, with Charlotte Cooke (April 2018)
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Education and Qualifications

1987 Downing College, Cambridge University, MA (1990) (Exhib)