

Tom Smith QC

QC 2014, Called to the Bar 1999

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Tom specialises in commercial litigation and arbitration, banking and finance, corporate insolvency and restructuring and company law including investment funds. He also practices extensively in the fields of civil fraud and asset recovery, professional negligence and trusts.

Tom is an experienced advocate in both court litigation and arbitrations. He has extensive experience of major commercial trials. He has also been involved in many of the major restructuring and insolvency cases in recent years, including significant Supreme Court, House of Lords and Privy Council decisions in the fields of banking, insolvency and restructuring and investment funds. Tom frequently appears as an advocate both in England and in other jurisdictions including the Cayman Islands, the British Virgin Islands, Dubai and Gibraltar.

Tom is described as being very bright, quick-witted and very approachable. He is named by Chambers and Partners as a leading silk in six areas (banking & finance, chancery: commercial, commercial dispute resolution, company, fraud: civil and restructuring/insolvency).

Insolvency and Restructuring

Major cases include:

- **Lady Moon SPV v Petricca & Co** [2019] EWHC 439 (Ch), winding up of collective investment undertakings
- **BZST v Heis** [2019] EWHC 705 (Ch), power of court to stay proof of debt appeal proceedings
- **Zinc Hotels v Beveridge** [2018] BCC 968, power of court to appoint interim administrators and duties of administrators
- **Davey v Money** [2018] Bus LR 1903, duties of administrators as to realisation of secured property and alleged intermeddling by secured creditor
- **Re Agrokor dd** [2018] BCC 18, recognition of the Agrokor extraordinary administration under the Cross-Border Insolvency Regulations
- **Mitchell v Royal Bank of Scotland** [2017] EWHC 1025 (Ch), claims of conspiracy and unlawful means against administrators, purchasers and lenders arising out of Torex restructuring
- **Shlosberg v Avonwick Holdings** [2017] Ch 210 (CA), rights of a trustee in bankruptcy to access and use documents including privileged material belonging to the bankrupt
- **Re Lehman Brothers International (Europe)** [2016] BCC 239, [2017] BCC 759 the “Waterfall II” litigation dealing with the distribution of the Lehman Brothers estate
- **Re Nortel GmbH; Bloom v The Pensions Regulator** [2014] AC 209 (SC), administration expenses and provable debts
- **Re Comet Group Ltd** [2015] BPIR 1, power under section 236 of Insolvency Act 1986 to order production of information and data
- **Rubin v Eurofinance** [2013] 1 AC 236 (SC), recognition of foreign judgments in insolvency

proceedings

- **Vietnam Shipbuilding Industry Group v Bluecrest** [2013] EWHC 1146 (Comm), stay of proceedings in support of proposed scheme of arrangement
- **Re UK Housing Alliance** [2013] BCC 752, whether payments under sale and leaseback arrangements constitute administration expenses
- **Re Chesterfield United** [2013] 1 BCLC 709, disclosure in support of foreign insolvency under Cross-Border Insolvency Regulations 2006
- **Re Oilexco Northsea** [2010] Ch 187 (CA), grant of anti-suit injunctions in support of insolvency proceedings
- **Re HIH Casualty and General Insurance** [2008] 1 WLR 852 (HL), power of an English liquidator to remit assets to foreign office-holders
- **Re Collins & Aikman Europe** [2007] 1 BCLC 182, power of administrators to make distributions and payments to creditors in accordance with foreign law

Tom has advised and appeared on numerous schemes of arrangement including *Sea Containers*, *Crest Nicholson*, *TI Automotive*, *Rodenstock*, *Fitness First*, *Travelodge*, *CEVA*, *Vietnam Shipbuilding Group* [2014] 1 BCLC 400, *Hibu/Yellow Pages* [2014] EWHC 370 (Ch), [2014] EWHC 1074 (Ch), *Stemcor* [2014] 2 BCLC 373, *Global Resources Lancashire*, *Endeka Ceramics*, *DTEK Finance BV* [2015] EWHC 1164 (Ch), *Torm A/S*, *Stemcor 2* [2016] BCC 194, *Avantgardco*, *Privatbank* [2015] EWHC 3299 (Ch), *DTEK Finance plc* [2016] EWHC 1083 (Ch), *EnQuest* [2016] EWHC 3734 (Ch), *Bibby Offshore* [2017] EWHC 3402 (Ch), *Agrokor*, *Interserve*.

Tom has also advised on many cases involving CVAs particularly to restructure lease liabilities and involving combined financial/operational restructurings: *JJB Sports*, *Focus DIY*, *Blacks Leisure*, *Ten Pin*, *Bowlplex*, *Fitness First*, *Travelodge*, *Café Rouge*, *Mamas and Papas*, *Byron Burgers*, *Jamie's Italian*, *Prezzo*, *Mothercare*, *House of Fraser*, *Homebase*, *Paperchase*

Banking and Finance

Recent cases include:

- **Winterbrook Global Opportunities Fund v NB Ltd** [2019] EWHC 737 (Ch), alleged event of default under bonds issued by Novo Banco
- **Bank of New York Mellon v Essar Steel** [2018] EWHC 3177 (Ch), standing of noteholder and trustee to claim repayment of notes
- **Re Olympia Securities** [2017] EWHC 2807 (Ch), meaning of “financial institution” and ability to close-out under the ISDA Master Agreement where an Event of Default has occurred
- **VR Global Partners LP v Exotix Partners LP** [2017] EWHC 2620 (Comm), validity of exercise of unwind option under LMA debt trade
- **African Export-Import Bank v Shebah Exploration & Production** [2018] 1 WLR 487, validity of anti set-off clause in LMA form loan agreement and application of Unfair Contract Terms Act
- **GSO Credit Partners v Barclays Bank** [2017] 1 All ER (Comm) 421, first judgment in the new Financial List, construction of LMA standard terms in relation to sale of commitment under surety bonds facility

- **Goldman Sachs International v Novo Banco** [2016] EWCA 1092, effect of European Banking Restructuring and Resolution Directive on claims to recover lending under English loan agreements
- **Morgan Stanley v Tael One Partners** [2015] UKSC 12, construction of LMA standard terms for par trade transactions
- **US Bank Trustees Ltd v Titan Europe 2007-I (NHP) Ltd** [2014] EWHC 1189 (Ch), construction of servicing agreement in relation to CMBS securitisation transaction
- **Grupo Hotelero Urvasco v Carey Value Added** [2013] EWHC 1039 (Comm), alleged defaults under loan agreement including material adverse change (MAC) clauses and other default provisions
- **Saltri III v MD Mezzanine SICAR** [2013] 2 BCLC 217, rights and duties of security trustee and duties owed to junior lenders
- **Assénagon Asset Management v Anglo Irish Bank** [2013] 1 All ER 495, abuse of power in relation to consent and exchange offer for subordinated notes
- **Mills v HSBC Trustee (CI)** [2012] 1 AC 804 (SC), effect of the rule in *Cherry v Boulton* applicable in relation to the rights of guarantors
- **Carey Valued Added SL v Grupo Urvasco** [2011] 1 BCLC 352, construction of guarantee as demand guarantee/performance bond
- **Re European Directories, HHY Luxembourg Sarl v Barclays Bank** [2011] 1 BCLC 336 (CA), construction of release provisions in intercreditor agreement
- **Lehman Brothers RASCALS** [2010] EWHC 2914 (Ch), operation of repos/stock loans and the intermediated holding system for securities
- **Satinland Finance Sarl v BNP Paribas Trust Corporation UK** [2010] EWCA Civ 150, construction of terms of subordinated bonds and ability of bondholder to apply for winding up
- **Mills v Sportsdirect.com Retail** [2010] 2 BCLC 143, operation of repos under GMRA and whether securities held on trust
- **Trimast Holding Sarl v Telecolumbus** [2010] EWHC 1944 (Ch), construction of intercreditor agreement
- **Newcastle Building Society v Mills** [2009] 2 BCLC 137, effect of contractual bar on rights of set off in trust deed under the CREST system
- **Re Golden Key** [2009] EWCA Civ 636, payment priorities in relation to structured investment vehicle (SIV)
- **British Energy v Credit Suisse** [2007] 2 Lloyd's Rep 427, dispute over permissibility of the sub-participation of option rights

Commercial Litigation and Arbitration

Recent cases include:

- **Primeo Fund v HSBC**, claims by Madoff feeder fund against its former custodian and administrator for breach of duty and gross negligence
- **Avonwick Holdings Ltd v Castle Investment Fund** [2015] EWHC 3832 (Ch), claims under section 423 Insolvency Act and for unlawful means conspiracy
- **Ipsos SA v Dentsu Aegis Ltd** [2015] EWHC 1171 (Comm), [2015] EWHC 1726 (Comm), fraudulent misrepresentation and breach of warranty claims arising out of share purchase agreement
- **Avonwick Holdings Ltd v Webinvest Ltd** [2014] EWHC 3661 (Ch), acting for claimant in

successful claim to recover US\$200m lending in face of an alleged oral agreement; and also [2014] EWCA Civ 1436, [2014] EWHC 3434 (Ch) and [2014] EWHC 3322 (Ch) regarding the disclosure of “without prejudice” material and documents produced in an arbitration

- **Constantin Medien v Ecclestone** [2014] EWHC 387 (Ch), acting for the second defendant in successful defence of claim concerning Formula One bribery allegations
- **Smithton v Naggar** [2015] 1 WLR 189, de facto/shadow director and breach of duty claims concerning operation of contracts for difference arising out of *Dawnay Day* collapse
- **Tchenguiz v Director of the SFO** [2014] 1 WLR 1476, disclosure of material obtained by SFO search warrants
- **Nomihold Securities v Mobile TeleSystems Finance** [2012] 1 Lloyd’s Rep 6 (CA), scope of court’s ability to grant post judgment freezing order relief
- **Westacre Investments v The State Owned Company Yugoimport** [2009] 1 All ER Comm 780, effect of expiry of time on application for charging/third party debt order
- **Fourie v Le Roux** [2007] 1 All ER 1087 (HL), grant of freezing orders in support of intended legal proceedings

Tom also acted for the Bank of England in the two year trial in *Three Rivers District Council v The Bank of England* in the Bank’s defence of the claim brought by the liquidators of BCCI for misfeasance in public office.

Arbitrations under ICC, LCIA, UNCITRAL and ICSID rules:

- **IX v P** [2019] EWHC 589 (Comm), successful challenge to LCIA Award under section 68 of the Arbitration Act
- LCIA arbitration regarding purchase of Ukrainian agri-business
- LCIA arbitration regarding Black Sea grain terminal including application for section 66 relief
- ICC arbitration regarding arms contract with Middle Eastern state
- LCIA arbitration for defence contractor regarding MoD IT project
- LCIA arbitration for defence contractor regarding MoD armoured vehicle project
- **Nomihold Securities v Mobile TeleSystems Finance** [2012] 1 Lloyd’s Rep 442, anti-suit injunction in relation to arbitration proceedings; [2011] EWHC 2143 (Comm), test for setting aside leave to enforce an arbitration award under section 66 of the Arbitration Act 1996
- **Kernel Holding v Taman Invest** [2012] EWHC 715 (Comm), section 66 injunction in support of arbitration proceedings to restrain business sale

Offshore

Tom has extensive experience of offshore work including in particular in relation to investment funds. Recent cases include:

- **Abraaj Holdings**, acting in relation to the provisional liquidation of this private equity fund group
- **DD Growth Premium 2X Fund v RMF** [2018] 1 BCLC 453, Privy Council, leading case on the clawback claims for redemptions made when a fund is insolvent
- **Pearson v Primeo Fund** [2017] BCC 552, Privy Council, leading case on the ranking of claims by redeeming investors in liquidation of Cayman corporate open-ended investment fund

- **Re Herald Fund SPC** [2015(1) CILR 482], [2016(2) CILR 44], power of liquidator to rectify fund's register of members
- **Primeo Fund v Bank of Bermuda** [2016(2) CILR 353], whether witness statements served in previous proceedings subject to litigation privilege
- **Re Primeo Fund** [2016(2) CILR 388], whether a liquidator required to obtain a letter of request for the purposes of providing discovery in proceedings
- **Primeo Fund v Pearson**, Grand Court of the Cayman Islands, February 2016, alleged invalidity of in specie subscription for shares in investment fund on grounds of mistake
- **Re Harbinger Class PE Holdings** [2015(2) CILR Note 6], ability to wind up a closed Cayman investment fund on loss of substratum grounds
- **Picard v Primeo Fund** [2014(1) CILR 379], ability of foreign officeholder to bring clawback claims under domestic and foreign law

Financial Services

Tom has extensive experience of financial services work, particularly enforcement action on behalf of regulators in the UK and abroad

- Acting for the FSA in relation to Kaupthing Singer & Friedlander
- Acting for the FSA in relation to its intervention in respect of Landsbanki and Heritable Bank
- Acting for Northern Rock in relation to its intervention by the FSA and subsequent nationalisation
- Acting for the FSA on various enforcement matters
- Acting for various overseas regulators: Dubai Financial Services Authority (in relation to Espirito Santo Bankers Dubai), the Gibraltar Financial Services Commission, the Isle of Man Financial Services Authority (in relation to Kaupthing Isle of Man) and the Central Bank of Cyprus (in relation to Bank of Cyprus and Laiki)

Trusts and Property

- **Crociani v Crociani** [2017] JCA 076, claims of breach of trust and liability of trustee to reconstitute trust fund
- **Nolans v Minerva Trust Company** [2014] JRC 078A, dishonest assistance claims against trust company and corporate service provider
- **Freeman v Ansbacher Trustees (Jersey)** [2010] WTLR 569, standing of objects of a power to sue trustees for breach of trust and application of principle of reflective loss to trusts and nominee companies
- **Alhamrani v Russa Management** [2006] WTLR 1551, circumstances in which confidential trust documents can be disclosed to a stranger to the trust
- **Re JC Bamford**, acting in proceedings concerning the disputed will of JC Bamford and in relation to associated actions in Jersey, Switzerland and Bermuda
- **Re Rothfield Investments** [2003] WTLR 593, convening of a claimant to trust property to an application by the beneficiary for the transfer of the property

Awards and Recommendations

Chambers & Partners	<p>Ranked in six categories: Banking and Finance, Restructuring/Insolvency, Chancery: Commercial, Commercial Dispute Resolution, Civil Fraud and Company</p> <p>Comments include:</p> <p><i>"He is an intelligent and focused technical lawyer who is brilliant at handling cases involving complex financial instruments"</i></p> <p><i>"He's really responsive, comes up with ideas and solutions, and is always accessible"</i></p> <p><i>"Quick-witted and very bright, he has a commercial, down-to-earth style which always adds value"</i></p> <p><i>"He is extremely good at distilling complex issues and identifying potential pitfalls in a case"</i></p>
Legal 500	<p>Ranked in five categories: Banking and Finance, Insolvency, Commercial Litigation, Civil Fraud and Company</p> <p>Comments include:</p> <p><i>"User-friendly, very clever and invaluable"</i></p> <p><i>"A banking litigator of choice for us, he is a great leader and team player"</i></p> <p><i>"Has a heavyweight intellect and ability to command the courtroom"</i></p>

Career

- 2017 Called to the Bar of Gibraltar
 - Appointed Queen's Counsel
- 2014 Called to the Bar of the Cayman Islands
 - Registered lawyer, Dubai International Financial Centre Courts
- 2012 Called to the Bar of Northern Ireland (temporary admission)
- 1999 Called to the Bar of England and Wales

Memberships

LCIA
Insolvency Lawyers' Association

Publications

Contributor to ***Cross-Border Insolvency Fourth Edition*** (Sheldon, Bloomsbury, 2015)

Education and Qualifications

1998 Clare College, Cambridge University, LL.M, First Class

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