Radcliffe Chambers



# Martin Ouwehand

Call: 2002

## Barrister

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**Martin Ouwehand** has substantial experience and expertise in commercial litigation, contentious insolvency, company law and shareholder disputes. He is extremely versatile, both as an adviser and an advocate, having acted for a wide range of clients such as individuals, SMEs, financial institutions and insolvency practitioners.

Martin is also experienced in cross-border matters, and matters of an international nature, from having practised offshore for six years in Bermuda with Appleby. He is accustomed to dealing with multi-jurisdictional issues and working alongside legal advisers from different jurisdictions. Martin is able to draw upon his experience as a Solicitor before joining the Bar for a practical perspective.

He is ranked as a leading junior in The Legal 500 UK Bar.  He has been described as "very bright", "an exceptional technician" and "commercially focused" and providing "clear, practically-minded advice and [being] very easy to work with."

### COMMERCIAL DISPUTES

Martin has substantial experience in general commercial dispute resolution in a variety of contexts including in arbitrations and mediations. His practice has included disputes involving:

- complex commercial issues
- share sale agreements
- the supply of goods or services
- partnership
- constructive/resulting trusts
- urgent injunctive relief

Some of his work has included:

Complex commercial disputes

- Acting for the defendants to claims by a vendor under share sale

agreements and guarantees in the London Circuit Commercial Court involving counterclaims for breach of warranty, breach of directors' duties and knowing receipt and issues as to the construction of guarantees and equitable set off. Also appearing at the hearing of an application for summary judgment.
- Acting in complicated proceedings arising out of a dispute over the beneficial ownership of shares and investment properties. The proceedings included claims to possession of commercial premises, a declaration that a lease was a sham, declarations as to the beneficial ownership of properties on the basis of resulting trusts/proprietary estoppel, an injunction to restrain a breach of a partnership agreement and declarations as to the ownership of shares.
- Acting for the defendant in respect of a claim under a commercial services agreement and the counterclaim for an account of profit and equitable compensation on the grounds of breach of agency and fiduciary duties.
- Advising in respect of a complex dispute arising out of the termination of an outsourcing/services agreement. The dispute included questions as to the contractual standard for the provision of accounting services, including with respect to the application of accounting standards, the materiality of the alleged breaches and estoppel by convention.
- Acting in a complex arbitration relating to a distribution agreement in the beverage industry under the London Court of International Arbitration rules.
- Acting as junior counsel in a trial of certain issues arising out of substantial insurance related litigation including issues relating to the accrual of causes of action under contractual indemnities and principles governing amendments to include statute-barred claims: *Cape Distribution Ltd v Cape Intermediate Holdings plc; Cape Intermediate Holdings plc v Aviva plc* [2016] EWHC 1786 (QB); [2017] Lloyd's Rep. I.R. 1.
- Acting whilst in Bermuda for the defendant auditors in a substantial claim for professional negligence brought by the liquidators of fund companies. The claim covered 9 audit years and six areas of audit responsibility.
- Acting whilst in Bermuda in an UNCITRAL international arbitration claim for breach of an executive employment agreement seeking over USD100m in salary, share options and other benefits.

Share sale disputes

- Advice in relation to an application in the High Court in London to set aside default judgment for over £500,000 and stay enforcement. The claim arose out of a share sale agreement.
- Advising in relation to dispute over a breach of warranty in an agreement for the sale of shares, specifically the valuation of loss.
- Advising vendors in respect of a share sale agreement relating to a Guernsey funds company and their dispute with the purchaser, involving issues as to the set off of deferred consideration against warranty/indemnity claims.
- Acting whilst in Bermuda in proceedings seeking damages of USD10m arising out of breaches of warranties as to the value of a life insurance business under a share sale agreement.
- Acting for the claimant in a claim to restrain breach of non-competition covenants in a share sale agreement including an application for urgent relief.

Disputes relating to the supply of goods or services

- Advice in relation to a claim against a manufacturer and broker of automated equipment on the grounds of breach of collateral warranty in respect of its quality and performance.
- Advising in respect of a dispute concerning the manufacture and supply of defective automated equipment which included issues as to existence and breach of collateral warranties arising from representations as to efficiency and reliability.

- Advising in relation to a multi-party proceeding concerning issues of contribution/indemnity, bailment and negligence arising from the destruction of manufacturing equipment.
- Advising the defendant to a claim for breach of warranties in relation to the manufacture and supply of equipment. Acting for it in a successful application to dismiss the claim pursuant to Art. 25 of the Judgment Regulation 1215/2012 as a consequence of the incorporation of a jurisdiction clause in the supplier's standard terms and conditions in favour a foreign court.
- Acting for the supplier to major UK retailers in proceedings for breach of its warehousing agreement with its freight forwarding provider.

Urgent injunctive relief

- Acting for the claimant in the High Court in London in an application for a Worldwide Freezing Injunction pursuant to s.25(1) of the *Civil Jurisdiction and Judgments Act 1982* in aid of substantive proceedings taking place before the Hong Kong Court of First Instance regarding a claim for HK$34m against a former director on the grounds of the alleged misappropriation of monies.
- Acting for the applicant trustee-in-bankruptcy in High Court proceedings for urgent injunctive relief to restrain the dissipation of interests in an estimated £52m, UK wide property portfolio.

## COMPANY

Martin is very experienced in shareholder disputes, unfair prejudice disputes and issues arising from directors' duties, companies legislation, articles of association and shareholder agreements. His work has included:

- Acting for the respondent director/shareholders in defence of an unfair prejudice claim arising from the exclusion of the petitioner from management.
- Acting as junior counsel for a respondent director/50% shareholder in defence of an unfair prejudice claim alleging the payment of excessive remuneration, the making of unauthorised loans, the writing off of loans and the non-payment of dividends.
- Acting while in Bermuda for a US hedge fund/minority shareholder in a minority oppression (i.e., unfair prejudice) claim in relation to a Singapore publicly listed company. The claim concerned the Company's entry into a licence agreement which permitted a third party to use the Company's business to continue to supply materials to another company in the group. The transaction was a response to minority shareholders exercising a veto under the listing rules preventing interested party transactions.
- Acting while in Bermuda for the directors and majority shareholders of a Bermuda investment advisory company in respect of claims relating to a past shareholder's entitlement to deferred consideration and a claim by a minority shareholder.
- Advising on a director's exploitation of corporate opportunities and assets, and their breach of restrictive covenants, arising out of them trading in competition with the company.
- Advising a corporate group in relation to issues concerning contingent liabilities under indemnities and an application to restore companies to the register.
- Advising in relation to a dispute between director/shareholders concerning the exercise of a call option agreement to acquire shares and the rights of access to information for the purposes of an expert determination of consideration.

## INSOLVENCY

Martin has considerable experience of a whole range of corporate and personal insolvency matters having acted for, or advised, insolvency practitioners, creditors and debtors from a wide variety of backgrounds.  He has been described as *"very*

*bright*", *"an exceptional technician"* and *"commercially focused"* and providing *"clear, practically-minded advice and [being] very easy to work with.*"

He is experienced in:

- Directors' duties and transaction avoidance
- Contested winding up and bankruptcy petitions
- Various kinds of insolvency applications, including applications for injunctions, examination or disclosure under s.236 of the Insolvency Act 1986, administration orders, rescission orders, orders for permission under paras 71 and 72 of Sch. B1 to the Act and directions as to issues in the insolvency proceedings
- Advice in relation to schemes of arrangement
- Cross-border or offshore insolvency or matters with an international element

His work has included:

- Advising and appearing on behalf of administrators in the High Court in relation to applications for declarations to resolve ownership interests in relation to parts of a biomass energy plant and for permission under para. 72 of the Sch. B1 to the Insolvency Act 1986 to dispose of an asset subject to a hire purchase agreement in order to transfer certain rights to energy incentive payments to a purchaser of the business and its assets.
- Advising, and appearing in the High Court for, the joint administrators of The House Crowd group of companies. The group was involved in the peer-to-peer lending of secured loans for property developments and its holding company is regulated by the Financial Conduct Authority. The administration concerns the realisation of over £27m in loans and over 2,000 investor accounts.
- Appearing in the High Court to oppose an application for a Moratorium pursuant to section A4 of Part A1 of the Insolvency Act 1986 in respect of a EUR 200m fundraising process of a renewable energy/sustainable housing business.
- Acting for defendants in relation to claims by a liquidator for alleged unlawful dividends, transactions at an undervalue and preference payments and claims under s423 (putting assets beyond reach of creditors).
- Appearing for the respondent joint administrators to an application challenging the validity of their appointment: *Perhar v Freestone* [2023] EWHC 2065 (Ch).
- Appearing in the High Court as junior counsel for the joint administrators of The House Crowd group upon their application for directions as to the interpretation of contractual provisions governing investments, whether the proceeds of loan and security agreements were held on trust and upon their application for *Berkeley Applegate* relief.
- Appearing in the High Court for the joint administrators of The House Crowd Limited at the 2-day hearing of their application to vary their remuneration and expenses pursuant to the *Berkeley Applegate* order which was contested by representative investor respondents.
- Appearing in the High Court for the respondent at a 3-day hearing of applications to set aside a statutory demands which raised issues as to whether an order for an interim payment of costs was an order for a "liquidated sum", whether there was mutuality for the purposes of a "cross-demand" under the *Insolvency (England and Wales) Rules 2016* based on the debtors' claims against other parties insured by the creditor and whether the statutory demands had been issued for an improper purpose of obtaining some collateral advantage: *King v Bar Mutual Indemnity Fund* [2023] EWHC 1408 (Ch); [2024] 1 W.L.R. 637; [2023] BPIR 1386.
- Successfully appearing for the Foreign Representative under the *Cross-Border Insolvency Regulations 2006* in respect of a Caribbean property development company seeking the production of electronic documents

under Art. 21 of Sch.1 to the Regulations/ss 234 and 236 of the Insolvency Act 1986. The court ordered that there be production of millions of documents from forensic images of servers used for various group companies regardless of whether the documents might not be related to company's business and approved a scheme for production using search terms that sought to preserve the legal professional privilege of others: *Re Harlequin Property (SVG) Ltd; Glasgow v Ames* [2022] EWHC 2834 (Ch).

- Successfully defending an application for injunctions to restrain investors from commencing winding up proceedings. The dispute involved the enforceability of deeds of guarantees: *Signature Living Hotel Ltd v Sulyok* [2020] EWHC 257 (Ch); [2020] Bus. L.R. 588.
- Acting in an application to annul an English bankruptcy order on the grounds that the court had no jurisdiction on the basis of the bankrupt's foreign domicile.
- Acting for a creditor in successfully modifying the stay which comes into effect upon the recognition of main proceedings under the *Cross-Border Insolvency Regulations 2006*. The court permitted the issue of an award in arbitration proceedings, in which the creditor claimed in excess of USD17m, in advance of any vote by creditors in relation to restructuring proceedings in Singapore: *H&C S Holdings Pte Ltd v Glencore International AG* [2019] EWHC 1459 (Ch).
- Preparation of an application in an offshore jurisdiction for the appointment of provisional liquidators to a company which was held out as a broker in foreign exchange transactions and was promoted to investors in the Middle East. The application was made on the grounds of serious mismanagement of the company's affairs and the need to protect the company's funds and its creditors' interests in a European jurisdiction.
- Advising and acting for (as junior counsel) the Foreign Representative under the Cross-Border Insolvency Regulations 2006 in respect of a Caribbean property development company including at the trial of an application for the determination of security and proprietary rights over the company's funds of approximately £7.8m: *Glasgow (the bankruptcy trustee of Harlequin Property SVG Ltd) v ELS Law Ltd and others (Bar Council of England and Wales intervening)* [2017] EWHC 3004 (Ch); [2018] 1 WLR 1564.
- Advising in relation to English law issues arising out of a long running liquidation in Australia and complex substantial litigation on foot before the Western Australia Supreme Court.
- Acting while in Bermuda for a consortium of European banks in their enforcement of US$74 million in loans outstanding under a facility with a Bermuda company, secured by intellectual property rights in films and leading to the appointment of joint provisional liquidators and proceedings under Chapters 15 of the US Bankruptcy Code.
- Acting while in Bermuda for the liquidators of a substantial fund involving major US bank counterparties and advising in relation to their administration of the estate including the implementation of a Scheme of Arrangement, the avoidance of transactions and the adjudication of claims governed by ISDA documentation.

## INTERNATIONAL

Martin is very familiar with cross-border matters, particularly from his time offshore. He has worked alongside advisors from different jurisdictions, including leading firms in London, New York, Australia, Singapore and Hong Kong. This gives him a valuable understanding of the challenges facing clients and their foreign advisors in cross-border contexts. While practicing in Bermuda, Martin advised on high value corporate transactions and schemes of arrangement in addition to his practice in the areas of commercial litigation, company and shareholder disputes and insolvency. He was also ranked as a "Leader in his Field" by Chambers Global 2015 and described as "thoughtful with a good understanding of complex issues."

Martin contributes to *Insolvency Litigation: A Practical Guide, Sweet & Maxwell, (2nd ed)* in relation to Cross-Border issues.

His work has included:

- Acting for the claimant in the High Court in London in an application for a Worldwide Freezing Injunction pursuant to s.25(1) of the *Civil Jurisdiction and Judgments Act 1982* in aid of substantive proceedings taking place before the Hong Kong Court of First Instance regarding a claim for HK$34m against a former director on the grounds of the alleged misappropriation of monies.
- Preparation of an application in an offshore jurisdiction for the appointment of provisional liquidators to a company which was held out as a broker in foreign exchange transactions and was promoted to investors in the Middle East. The application was made on the grounds of serious mismanagement of the company's affairs and the need to protect the company's funds and its creditors' interests in a European jurisdiction.
- Acting for a creditor in successfully modifying the stay which comes into effect upon the recognition of main proceedings under the Cross-Border Insolvency Regulations 2006. The court permitted the issue of an award in arbitration proceedings, in which the creditor claimed in excess of USD17m, in advance of any vote by creditors in relation to restructuring proceedings in Singapore: *H&C S Holdings Pte Ltd v Glencore International AG* [2019] EWHC 1459 (Ch).
- Advising and acting for (as junior counsel) the Foreign Representative under the Cross-Border Insolvency Regulations 2006 in respect of a Caribbean property development company including at the trial of an application for the determination of security and proprietary rights over funds of approximately £7.8m: *Glasgow (the bankruptcy trustee of Harlequin Property SVG Ltd) v ELS Law Ltd and others (Bar Council of England and Wales intervening)* [2017] EWHC 3004 (Ch).
- Advising in relation to English law issues arising out of a long running liquidation in Australia and complex substantial litigation on foot before the Western Australia Supreme Court.
- Acting while in Bermuda for a consortium of European banks in their enforcement of US$74 million in loans outstanding under a facility with a Bermuda company, secured by intellectual property rights in films and leading to the appointment of joint provisional liquidators and proceedings under Chapters 15 of the US Bankruptcy Code.
- Acting while in Bermuda for the liquidators of a substantial fund involving major US bank counterparties and advising in relation to their administration of the estate including the implementation of a Scheme of Arrangement, the avoidance of transactions and the adjudication of claims governed by ISDA documentation.
- Acting while in Bermuda for a US hedge fund/minority shareholder in a minority oppression (i.e., unfair prejudice) claim in relation to a Singapore publicly listed company. The claim concerned the Company's entry into a licence agreement which permitted a third party to use the Company's business to continue to supply materials to another company in the group. The transaction was a response to minority shareholders exercising a veto under the listing rules preventing interested party transactions.
- Acting while in Bermuda for the claimant in a UNCITRAL international arbitration claim for breach of an executive employment agreement seeking over USD100m in salary, share options and other benefits.
- Advising, while in Bermuda, a major Brazilian bio-fuels group of companies in the restructuring of USD150million of New York law governed senior convertible notes including the preparation and implementation of a Scheme of Arrangement in conjunction with Brazilian restructuring proceedings. The transaction involved the exchange of interests in the notes of the Bermudan entity for convertible notes in the Brazilian entity of the group. Advising in conjunction with New York attorneys.
- Advising, while in Bermuda, a multinational satellite operator in the restructuring of USD425million of claims including the preparation and implementation of a Scheme of Arrangement in conjunction with restructuring proceedings under Chapter 11 of the US Bankruptcy Code. The restructuring involved the compromise of senior secured notes and

senior secured loans. Advising in conjunction with New York attorneys.
- Acting for the defendants in a High Court application to stay English proceedings on the basis of forum non conveniens and involving the question of the practical enforcement of injunctions restraining the harassment of a company and its employees in Arizona: *Inter-Tel Inc v Ocis plc* [2004] All ER (D) 142 (Oct) (Tugendhat J).

## PUBLICATIONS

Martin's publications include:

- Contributor to *Insolvency Litigation: A Practical Guide*, *Sweet &* Maxwell, (2nd) (Chapter 10 on Cross-Border issues)
- Case Reporter (2022) 2 CRI 64: *Re Ipagoo LLP* regarding whether the Electronic Money Regulations 2001 created a statutory trust upon the insolvency of an e-money provider
- *Ramsay Health Care Australia Pty Ltd v Compton* [2017] HCA 28, Going Behind Judgments: The Australian High Court Reviews The Test*, Corporate Rescue and Insolvency Journal*,*April 2018* (2018) 2 CRI 65
- Case Reporter (2017) 5 CRI 184: *Re Lemos* regarding the extent of a bankruptcy trustee's powers to deal with privileged material belonging to a bankrupt
- Case Reporter (2017) 3 CRI 111: *Armstrong v Onyearu* regarding the "equity of exoneration" in the context of the realisation of a debtor's interest in a property of co-habiting couple'Friends and Benefits': An Overview of the Apportionment of Contribution between Directors Guilty of Misfeasance, *Corporate Rescue and Insolvency Journal, April* 2016 (2016) 2 CRI 53
- The Availability of the Unfair Prejudice Remedy for Activist Shareholders of Public Companies, *Journal of International Banking & Financial Law, March 2016* (2016) 3 JIBFL 146
- Scheme of arrangement jurisdiction—providing for a sufficient connection (*Re Codere Finance (UK) Ltd*) *LexisPSL Restructuring and Insolvency,*24 February 2016
- Litigation remedies and rights: some key differences between Bermuda and the UK, *The Lawyer,* December 2013
- Bermuda – The Cambridge Gas in offshore restructuring and insolvency: not fit for all purposes, *Euromoney's Global Insolvency & Restructuring Review, 2012/2013*
- Litigation and Dispute Resolution: Bermuda, *Global Legal Insights (1st edition) 2012*
- Offshore, but not Off-Centre: The Determination of COMI under Chapter 15, *The Bankruptcy Strategist, March 2012*

## RECOGNITION

- "Martin is very detailed and thorough in his trial preparation. When at trial Martin is impressive. He advocates concisely and clearly and is very good at adroitly getting his point across." (Insolvency, *Legal 500 UK Bar 2025*)
- *"Martin is thorough and knowledgeable."* (Insolvency, *Legal 500 UK Bar 2024*)
- "Martin is an exceptional technician. He is a very careful and thoughtful barrister who drafts brilliantly." (Insolvency, *Legal 500 UK Bar 2023*)
- "*Martin provides clear, practically-minded advice and is very easy to work with.*"(Insolvency, *Legal 500 UK Bar 2022*)
- *"He is very bright and gives clear, measured advice. He is also wonderfully thorough and will stress test all aspects of your case before heading to court."* (Insolvency, *Legal 500 UK Bar 2021*)
- *"Very practical and commercially focused."* (*Legal 500 UK Bar 2020*)
- *"He is very practical and commercially focused." (*Insolvency*, Legal 500 UK Bar 2019)*
- *"Thoughtful with a good understanding of complex issues." (Chambers Global 2015)*

## QUALIFICATIONS

- Bachelor of Laws (Honours)
- Bachelor of Economics
- Public Access
- Barrister, England and Wales
- Attorney, State of New York and Southern District of New York (non-practising)
- Barrister and Attorney, Bermuda (non-practising)
- Barrister and Solicitor, Victoria, Australia (non-practising)

## ADMISSIONS

- Barrister, England and Wales
- Attorney, State of New York and Southern District of New York (non-practising)
- Barrister and Attorney, Bermuda (non-practising)
- Barrister and Solicitor, Victoria, Australia (non-practising)

## POLICIES AND OTHER DETAILS

Read Martin's Privacy Notice, Data Protection Policy and Disposal Policy.

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