



clerks@erskinechambers.com

James Potts KC

Call: 1995 Silk: 2013

Appointed Silk in 2013, James has over 25 years' experience of all aspects of corporate, insolvency, banking, partnership, financial services and general commercial law.

James' work is predominantly contentious dealing with all forms of corporate disputes, including arbitration, appellate work and overseas disputes (he has rights of audience in overseas jurisdictions). He is particularly sought out for his expertise in joint venture and shareholder disputes, contentious insolvency matters, claims against directors, and disputes arising out of business acquisitions. He also maintains a strong corporate advisory practice including contested schemes of arrangement.

He is a CEDR Accredited Mediator.

James is known for his client-friendly approach and his ability to provide clear, concise and commercial advice to clients.

Litigation

- Shareholder disputes
- Joint venture disputes
- LLP / partnership disputes
- Professional negligence
- Breach of fiduciary duty / misfeasance
- Breach of warranty claims
- Civil fraud and asset recovery
- Interim remedies
- Mediation and expert determination
- Registered Societies

Significant recent cases and transactions include:

Saxby v UDG Healthcare (UK) Holdings Ltd [2021] EWHC 144 (Ch) Acted at trial for defendant successfully resisting fraudulent misrepresentation claim relating to missed earn-out target on a share sale.

Organic Grape Spirit Ltd v Nueva IQT SL [2020] EWCA Civ 999 Review by Court of Appeal of authorities on when a fledgling business will be permitted by the 'ordinary and proper course of business' exception to develop a new business in the context of a freezing order.

Re Profile Partners Ltd [2020] EWHC 1473 (Ch) Acted for successful Petitioner (leading Andrew Blake) obtaining injunction to restrain use of company monies to fund defence and counterclaim in context of unfair prejudice petition.

Re Sturgeon Central Asia Balanced Fund Ltd (in liquidation) [2020] EWHC 123 (Ch) Acted for successful applicant terminating recognition order made under Cross-Border Insolvency Regulations 2006 in favour of Joint Provisional Liquidators of Bermuda company in context of just and equitable winding-up.

Re Inmarsat Plc [2019] EWHC 3470 (Ch) Acted for the successful bidder in contested members' scheme of arrangement relating to takeover of UK mobile satellite company.

Stobart Group Ltd v William Stobart & Or [2019] EWCA Civ 1376

Acted for successful Defendant resisting claims under SPA based on failure to serve compliant notice.

Burnden Holdings (UK) Ltd v Fielding & Or [2019] EWHC 1566 (Ch)

Acted for successful Defendants resisting claims based on alleged unlawful distribution and grant of security.

PJSC Commercial Bank Privatbank v Kolomoisky & Ors (2018)

Acted for successful applicant resisting attempts to stay disclosure orders under worldwide freezing order.

Cool Seas (Seafoods) Ltd v Interfish & Ors [2018] EWHC 2038 (Ch)

Acted for successful Respondents in opposing unfair prejudice petition and obtaining (by counterclaim) order for sale of Petitioners' shareholding with compensation for breaches of duty.

Autonomy Corporation Ltd v Lynch and Hussain

Acting for HP entities in relation to a claim against former directors of Autonomy in a £3bn breach of fiduciary duty and deceit claim.

Restructuring & Insolvency

- Winding up
- Administration
- CVAs
- Receivership
- Contentious insolvency
- Cross-border issues
- Director' disqualifications
- Misfeasance
- Company charges

Significant cases and transactions include:

Recently advising HMRC on insolvency and commercial issues arising out of a very high value dispute and also advising directors on challenge to recognition of Bermuda winding-up order under UNCITRAL Model law.

Re Sturgeon Central Asia Balanced Fund Ltd (in liquidation) [2020] EWHC 123 (Ch) Acted for successful applicant terminating recognition order made under Cross-Border Insolvency Regulations 2006 in favour of Joint Provisional Liquidators of Bermuda company in context of just and equitable winding-up.

Burnden Holdings (UK) Ltd v Fielding & Or [2019] EWHC 1566 (Ch)

James Potts KC

Acted for successful Defendants resisting claims by liquidator based on alleged unlawful distribution and grant of security. Consideration of duty to consider interests of creditors, Eurosail insolvency test and scope of transactions defrauding creditors.

Carillion

Ongoing representation of former Finance Director of Carillion plc – Directors Disqualification Proceedings

Corporate

- Reductions of capital
- Cross-border M&A
- Schemes of arrangement
- Takeovers
- Conduct of meetings
- Company advisory
- Shareholder disputes
- Joint venture dispute

Significant cases and transactions include:

Re Inmarsat Plc [2019] EWHC 3470 (Ch) Acted for the successful bidder in contested members' scheme of arrangement relating to takeover of UK mobile satellite company.

Re Dee Valley [2017] EWHC 184 (Ch)

High profile contested scheme of arrangement – acted for seven individual shareholders opposing the sanction of the scheme.

International & Offshore

James frequently acts or advises in overseas matters, including in relation to the Dubai International Financial Centre, Hong Kong, Turks & Caicos Islands, Antigua, Cayman, BVI, Bermuda, Jersey and Guernsey, Gibraltar and he has provided expert evidence on English law for foreign courts.

Arbitration

Counsel in Fulham Football Club (1987) Ltd v Richards [2011] EWCA Civ 85, leading case on arbitrability of shareholder disputes.

Examples of cases as lead advocate:

Acted for successful minority shareholder in DIFC-LCIA arbitration in claims for breaches of a shareholders' agreement, articles of association and the DIFC Companies Law, and for relief from unfair prejudice, in connection with management of a MENA-based technology company.

LCIA arbitration (Dubai Seat) shareholder dispute (unfair prejudice) in relation to very high value tech company.

Arbitrations of partnership (including LLP) disputes (ad hoc and LCIA) in respect of various firms of solicitors.

James Potts KC

LCIA arbitration (Singapore Seat) in relation to validity of drag rights.

UNCITRAL arbitration (London Seat) joint venture Caribbean oil company dispute.

LCIA (London Seat) investor dispute relating to Cayman registered fund including application for emergency formation.

Memberships and publications

Member of the Bar of the BVI. Called ad hoc to bar of Gibraltar and TCI.

COMBAR

Chancery Bar Association

ILA

INSOL

Contributor to Buckley on the Companies Acts, Practice and Procedure of the Companies Court; Company Directors: Law and Liability; podcasts for CPDCast; Contributor to FromCounsel

Ranked in

Chambers & Partners –

Company, Restructuring & Insolvency, Commercial Dispute Resolution, Chancery: Commercial

Legal 500 –

Company & Partnership, Commercial Litigation, Insolvency

Who's Who Legal –

Global Leader in Restructuring and Insolvency, National Leader at UK Bar in Civil Fraud, Company and Partnership and Restructuring and Insolvency.