

AFFAKI

— Société d'avocats —



AVOCATS . ARBITRATORS . MEDIATORS

PARIS

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Overview of the Firm

AFFAKI is an independent law firm specializing in international arbitration and litigation, banking and finance law and regulation, investment in the Arab world, and law reforms in transition economies.

Our clients include international financial institutions, multilateral organizations and commercial companies across five continents, undertaking their activities in all sectors of trade and industry. We perceive our clients' confidence as one of our most important assets.

Combining leading positions in international organizations and academic tenures at the leading universities of France, the Firm's members offer their clients their transversal, creative and high quality expertise in international commercial, financial and investment law. All attorneys are admitted to practice as avocats before the Court of Appeal of Paris or as solicitors before the Senior Courts of England & Wales.

The Firm offers its professional services around the world in common law, civil law and Islamic law, in three languages: Arabic, English and French. Its members are empaneled arbitrators with the leading arbitration institutions in Europe, Asia, MENA and the Americas.

We share our culture of excellence with a network of leading independent firms from around the world with which we work to service our clients' cross-border interests.

We are proud of our pro bono commitment and are actively engaged in charitable and community projects.

Practices

- International Arbitration and Litigation
- International Banking and Finance
- Arab Laws and *Shari'a*
- Economic Sanctions
- International Contracts
- Regulatory Investigation
- International Investment
- Law reforms in emerging markets

Sectors

- Commodities
- Construction
- Energy
- Financial Services
- Industry
- Defense and Military Procurement
- Telecoms
- Transportation

Our Expertise in International Arbitration

Combining International Expertise and Efficient Strategy

AFFAKI has extensive experience in international arbitration and acts in Arabic, English and French for a high-profile, international client base in arbitral proceedings taking place around the world.

The Firm is listed by Chambers and Partners in Dispute Resolution and its Senior Partner, Georges Affaki, amongst the Most in Demand Arbitrators – France. It is consistently ranked in the Euromoney Guide to the World's Leading Experts in Commercial Arbitration, the international legal market's leading guide to the top legal practitioners in commercial arbitration.

AFFAKI has acted in international arbitral proceedings involving long term energy supply contracts, construction projects, property development, financial services, telecom services and investments, transportation, defense and military procurement, humanitarian relief, distribution agreements, investments, commodity trading, joint ventures, etc., under a broad variety of applicable laws, seats and institutional rules or *ad hoc* proceedings.

A Snapshot of Our Significant Cases:

- In relation to the enforcement of an investment arbitral award, setting the strategy and simultaneously leading enforcement actions in an Arab country, resisting before a European member state court a demand for payment of bank guarantees by the respondent and, ultimately, brokering a global settlement.
- Permanent Court of Arbitration Case 2012/11, successfully arguing the characterization of a complex, high-value series of bank guarantees as a qualifying investment under the applicable treaty leading to a comprehensive indemnification from the host State.
- Advising in the matter of an arbitral claim involving non-signatory parties in relation to the recovery of a monetary debt arising in the matter of a sale of goods contract backed by an Islamic finance *mucharaka*.
- Chairing an International Working Group organized under the ICC Arbitration Commission drafting a comprehensive report on Financial Institutions and International Arbitration (adopted unanimously on 17 September 2016, Washington DC).

- Advising the International Swaps and Derivatives Association (ISDA) on the amendment of its Master Agreement on Derivatives to introduce an arbitration mechanism.

Georges Affaki, the Firm's Senior Partner, is a Chartered Arbitrator, a Fellow of the Chartered Institute of Arbitrators, a member of the ICC International Court of Arbitration and a member of the Panels of Arbitrators and of Conciliators of ICSID. He has served as chairman, panel, and sole arbitrator in investment and in international commercial arbitral proceedings under the rules of the leading institutions where he is empaneled:

- Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC);
- Asian International Arbitration Centre (AIAC);
- Australian Centre for International Commercial Arbitration (ACICA);
- Bahrain Chamber for Dispute Resolution (BCDR-AAA);
- Cairo Regional Centre for International Commercial Arbitration (CRCICA);
- Chartered Institute of Arbitrators (CIArb);
- DIFC-LCIA Arbitration Centre (DIFC-LCIA);
- Dubai International Arbitration Centre (DIAC);
- Hong Kong International Arbitration Centre (HKIAC);
- International Centre for Dispute Resolution (ICDR);
- International Center for Settlement of Investment Disputes (ICSID);
- International Chamber of Commerce (ICC);
- Jerusalem Arbitration Centre (JAC);
- Korean Commercial Arbitration Board (KCAB);
- London Court of International Arbitration (LCIA);
- Pacific International Arbitration Centre (PIAC);
- Permanent Court of Arbitration (PCA);
- P.R.I.M.E. Finance;
- Russian Arbitration Association (RAA);
- Saudi Centre for Commercial Arbitration (SCCA);
- Singapore International Arbitration Centre (SIAC);
- Tehran Regional Arbitration Centre (TRAC);
- Thailand Arbitration Centre (THAC);
- Vienna International Arbitration Centre (VIAC); and
- World Intellectual Property Organization (WIPO).

Our Expertise in Litigation

Masterminding and executing creative global litigation strategies to win the clients' case

AFFAKI assists and represents its clients before courts, and national and international banking institutions and financial market regulatory authorities. The team's experience includes leading cross-border, complex claims, defenses or enforcement proceedings involving conflicts of laws, jurisdictional challenges, parallel proceedings, asset tracing and enforcement actions.

Our Firm specializes in offering international corporations legal and strategic advice in relation to crisis management, international litigation with regulatory implications, and the taking of evidence in cross-border disputes. We also counsel or provide guidance to senior directors or board members on personal liability arising in the course of their employment or fiduciary duties.

Legal 500 recommended our Firm in Commercial Litigation – France. Chambers and Partners listed our Firm in Dispute Resolution: Litigation – France.

A Snapshot of Our Significant Cases:

- Leading an international counsel team consisting of several law firms in different jurisdictions in Europe and Asia, successfully arguing in Italy the lack of jurisdiction of local courts in relation to high value counter-guarantees, while simultaneously asserting *lis pendens* before English courts as to the merit under article 29 of the Brussels 1 Regulation (recast). [Tribunale Civile, N.R.G. 2016/39181]
- French law Counsel on French and European financial regulation, acting on behalf of the Libyan Investment Authority (LIA) in relation to a USD 2.1 billion claim. [High Court of Justice, Queen's Bench Division, Commercial Court, Claim No. 2014 Folio 260] (listed in *The Lawyer's Top 20 Cases in 2017*).
- Arguing successfully a motion to dismiss before French courts in relation to a bank fraud case, on the basis of the EU Regulation on Jurisdiction, and obtaining damages for abusive proceedings. [Tribunal de Commerce de Nanterre, Aff. 2015F00183]

- Representing an international bank against a French bank before the Paris Court of Appeal in relation to a liability claim under financial instruments impacted by European Sanction Regulations. [Appeal No. 17/26558]
- Acting as lead counsel, devising the strategy and coordinating the work of local counsel in Ukraine, Austria, the United States and Belgium in relation to the recovery of a high value monetary debt arising in the matter of a fraudulent transaction, involving conflicting arbitration and litigation jurisdictions, regulatory, criminal and civil proceedings before multiple jurisdictions, both *ex parte* and on the merits. [Antwerp Court, A/14/11063]
- In relation to the enforcement of an investment arbitral award, setting the strategy and simultaneously leading enforcement actions in an Arab country, resisting before a European court a demand for the payment of bank guarantees and brokering a global settlement.
- Acting as lead counsel in the matter of a wrongful dishonor of an interbank reimbursement agreement in relation to a multi-million euro documentary credit, involving multiple summary judgements, trial and regulatory proceedings in Algeria. [KBC v/ Natixis, Algiers (Harrache), 15/06766]
- Acting as international banking law and practice counsel in support of counsel work in the matter of the global enforcement of multiple bank guarantees and counter-guarantees before various jurisdictions in the Middle-East and North Africa.
- Overseeing and coordinating over a period of five years BNP Paribas' response to multiple investigations commenced by national regulators, law enforcement authorities and congressional committees in the United States and Europe in relation to the bank's compliance with US economic sanction regulations. The case involved the coordination of simultaneous investigations and enforcements in the United States, France, Italy, the United Kingdom, Switzerland, Singapore and Dubai and the management of a global budget in excess of €200 million. The case ended with a settlement of USD 9 billion.

Other Litigation-related Activities include:

- Acting as Rapporteur on Resolution No. 3/2012 Principles of Jurisdiction over Foreign Bank Branches in the Matter of Extraterritorial Attachment and Turnover. The resolution was sponsored by the Committee on International Monetary Law (Mocomila) and unanimously adopted at the 75th Conference of the International Law Association.

Our Expertise in International Banking and Financial Market Regulation

Making the Rule in Global Banking

With the broad experience of its members, spanning in-house legal responsibilities and external counsel regulatory advice and litigation support, as well as occupying leading positions in international organizations active in bank regulatory works, AFFAKI provides its clients with comprehensive legal services covering financial institutions and their clients' needs in French, European and international banking and financial regulation, as well as comprehensive legal services at every stage of a financing transaction or project, from the key structuring stage to the perfection of the security package, along with any recovery and enforcement action required.

Chambers and Partners listed AFFAKI in Banking & Finance: Financial Service Regulation – France.

International, European and French Bank Regulation

AFFAKI has extensive regulatory experience, assisting and advising clients on the bank regulatory process. The Firm is experienced in advising financial institutions and multinational companies on international, European and French bank regulatory matters, including in relation to new activity and product licensing, regulatory requirements in the wake of Brexit, compliance with economic sanctions and anti-money laundering regulations, and representing its clients in regulatory audit and disciplinary proceedings before the *Autorité des marchés financiers* and the *Autorité de contrôle prudentiel et de résolution*.

Georges Affaki is a founding member of the ICC Financial Crime Risk and Policy Group and, as Chairman of the Legal Committee of ICC Banking Commission, has led the Organization's global effort to issuing market standards on Sanction Clauses in Trade Finance Instruments, the Bank Recovery and Resolution Directive, and the Capital Requirement Regulation (CRR/CRD IV).

Bank Restructuring, Internal Control and Legal Department Organization

AFFAKI has considerable experience in preventing and resolving difficulties encountered by multinational companies and financial institutions. The leading position that our members held at the helm of the legal department of international financial institutions puts AFFAKI in a unique position to advise on corporate restructuring and

the control of legal risks as part both of permanent and periodic internal control regulatory requirements.

International Secured Finance

Combining academic tenures and professional experience in international banking and finance, the team is highly experienced in structuring complex, cross-border secured financing in civil law, common law, and Islamic legal systems. Members of the Firm have been involved in the drafting of domestic and international laws, legislative guides and restatements in relation to secured transactions and guarantees in several countries.

Trade and Commodity Financing

AFFAKI enjoys a broadly acknowledged expertise in trade and commodity financing, advising banking institutions and companies around the world on secured financing in the emerging markets, involving structuring countertrade, borrowing bases, warehouse financing, pre-payment, pre-financing and deferred payment secured financing structures and associated letters of credit, guarantees and other cross-border trade finance instruments. Georges Affaki has led or participated in trade finance-related standard-setting, including URDG 758, UCP 600, and the UNCITRAL Model Law on Secured Transactions. His advice is sought by banking institutions, businesses and regulators worldwide.

Representative Experience:

- Representing a leading international financial institution in relation to a dispute with a European exporter under a series of high value, complex bank undertakings as concerns the application of European financial sanctions regulations, conflict of laws and a large spectrum of disputed contractual issues. The dispute involves parallel arbitration/court litigation processes.
- Representing a French bank in a regulatory audit by ACPR under the French banking regulation in relation to Internal Control, involving extensive coordination with the bank supervisor regulatory audit unit, multiple submissions on behalf of the examined bank, and overseeing the bank's response to the audit report and the implementation of its findings.
- Representing a Chinese leading bank in the bank regulatory aspects of a criminal investigation, involving filing memoranda and presenting oral arguments before the French bank regulator.

- Advising a Swiss bank on the legal effect of sovereign debt rescheduling on bank financing, including in case of national debt moratoria and IMF-approved currency and capital control.
- As Chair of the ICC Banking Commission Legal Committee, leading work on the Capital Requirements Regulation and Directive – CRR/CRD IV including, in particular, credit mitigation techniques under article 194 of Regulation (EU) No 575/2013 (CRR), as well as on the EU Bank Recovery and Resolution Directive (BRRD) including, in particular, contractual recognition of bail-in in certain agreements pursuant to article 55.
- Advising an international bank in relation to the application of EU Sanction regulations in relation to a complex set of counter-guarantees governed by different laws.
- Advising an on-line gold bullion exchange on complex bank and financial market regulation and disclosure requirements in relation to anti-money laundering laws.
- Representing a major bank in a regulatory audit by ACPR in relation to internal control, involving extensive coordination with the bank supervisor regulatory audit unit, multiple submissions on behalf of the examined bank and overseeing the bank's response to the audit report and the implementation of its findings.
- Drafting and implementing a comprehensive secured financing set of terms and conditions for an international bank in relation to its commodity and trade financing operations.
- Advising and issuing regulatory opinions on the risk treatment of credit mitigation techniques under article 194 of Regulation (EU) No. 575/2013 (CRR).
- Advising an international bank on the structuring and the drafting of payment undertakings in relation to a series of complex refinancings of commodity-related documentary credits.
- Advising on the structuring of off-balance sheet financial undertakings to be eligible to the benefit of the protection of investment protection treaties.
- Leading a number of international rule-setting projects resulting in globally-accepted rules under the aegis of ICC and other international organizations, including in relation to demand guarantees, documentary credits, standby letters of credit and trade finance dispute resolution.
- Advising on complex Islamic finance transactions, including the identification of appropriate contracts in *fiqh* and their adaptation into conventional legal systems.

Our Expertise in Compliance and Risk Investigations

Protecting Your Interests in a World of Extraterritorial Norms and Overriding Mandatory Rules

AFFAKI has extensive expertise in advising financial institutions and international companies on compliance matters, including French, European and international bribery, economic sanctions and market conduct compliance standards, and the relating investigations and enforcement actions.

Our experience spanning both in-house and external counsel roles allow us to lead with confidence complex compliance investigation and the corporate answer to enforcement proceedings. Our professional services comprise the setting up and the leading of multidisciplinary in-house, external counsel and consultant teams in charge of conducting internal investigations, voluntary disclosures and the management of parallel international proceedings. We offer our proven expertise and focused advice in relation to conflicting actions by national and foreign regulatory agencies and law enforcement authorities in the respect of blocking statutes and data protection laws.

We possess a complete familiarity with cross-border economic sanctions, know-your-customer diligence and data protection which we offer our clients around the world.

Representative Experience:

- Advising the French branch of a foreign bank in the matter of complex criminal proceedings involving opposing a subpoena issued by a French Court seeking to obtain protected data held abroad, and successfully arguing the case for an international voluntary initiative leading to obtaining the sought data through a bilateral mutual legal assistance treaty.
- Leading an internal investigation in several affiliates of a leading financial institution in relation to alleged breaches of US economic sanction regulations, leading to a global settlement agreement and a deferred prosecution agreement.
- Regularly advising financial institutions, trading firms and industrial companies on foreign and international sanction-related issues, including setting-up and auditing global compliance systems.

Our Expertise in Comparative Arab Laws and in Islamic Finance

Bridging the Cultural Divide

With a significant international client base whose activities span the Arab world and a network of trusted legal counsel correspondents throughout the MENA region, AFFAKI has an intimate understanding of the business and legal environment in which its clients operate. This, combined with the full range of the Firm's capabilities and the fluency of members of the Team in Arabic, ensures that clients receive full professional services that cover all of their needs in relation to their projects involving the Arab world.

In addition, AFFAKI offers full legal services in Arabic, English and French, including negotiation, advocacy, drafting and implementing transactional documents. The team is intimately familiar with, and has substantial experience advising on Arab law matters.

Where necessary, we combine our expertise with that of our correspondents amongst the leading independent firms in the Arab world to service our clients.

AFFAKI also assists and advises clients on Islamic law and finance. The Firm's Senior Partner, Georges Affaki, has a comprehensive understanding and an unrivalled expertise in France in advising and structuring complex Islamic finance transactions on behalf of both French and international clients.

AFFAKI aims to develop and foster new and innovative products for the Islamic finance industry. Our experience with and knowledge of *shari'a*-compliant products and documentation is second to none:

- Dr Georges Affaki has notably chaired the Working Group on Applicable Law and Dispute Resolution in Islamic Finance at Paris EUROPLACE resulting in a report presented to the French Government in 2009, also translated into Arabic and English.
- He is also a lecturer on Islamic finance at University Paris Dauphine and a regular speaker at international conferences and seminars on Islamic finance. His research papers are regularly published in leading publications.
- He has appeared as an expert on Islamic law before several international arbitral tribunals.

Our Expertise in Law Reforms in Transition Economies

Matching Legal Traditions and Efficiency

AFFAKI has a long-standing experience in law reforms in transition economies. Throughout his career combining academic teaching, corporate responsibilities and advocacy, Georges Affaki led numerous international law reforms projects. He led rule-drafting works that resulted in globally-accepted standards in the relevant sectors and are used in the developed and in the emerging economies. The international career of our team allows us to bridge cultural and legal gaps between the developing and the developed world, with a particular focus on the Arab world.

Representative missions include:

- As a consultant to the World Bank, conducting the reform project of the secured transaction chapter in the Moroccan Civil Code.
- As a consultant to the World Bank's Foreign Investment Advisory Services (FIAS), advising on the drafting and the enactment of the OHADA Uniform Act on Secured Transactions.
- As a member of the UNCITRAL Working Group VI, co-drafting a model law on secured transactions.
- As Chair of the ICC Task Force on Guarantees, chairing the drafting group for the Uniform Rules for Demand Guarantees (URDG), which are universally applied today.
- As a consultant for the International Trade Center (WTO/UNCTAD), drafting a report on the access to credit in transition economies and a report on trade finance (awarded the European Prize for Interdisciplinary Research).

Both in his academic research and his professional practice, Professor Dr Georges Affaki has acted as an arbitrator, expert or counsel in disputes arising out of sovereign debt rescheduling and international debt recovery by investment funds, resulting in him being considered a leading expert in advising sovereign States and creditors on such complex proceedings.



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Prof. Dr. Georges Affaki is a Professor of law at the University of Paris II and an Avocat admitted to practice before the Court of Appeal of Paris, France. He is a Chartered Arbitrator, a member of the ICC International Court of Arbitration and of the ICSID Panels of Arbitrators and Mediators. He served as chairman, panel and sole arbitrator in investment and in international commercial arbitral proceedings under the rules of the leading institutions.

Prof. Affaki is a Fellow of the Chartered Institute of Arbitrators and a Fellow of the Australian Centre for International Commercial Arbitration (ACICA). He is consistently ranked by Euromoney in the Guide to the World's Leading Experts in Commercial Arbitration and is listed by Chambers both amongst France's Most in Demand Arbitrators and for his expertise in financial regulation and in litigation.

He is Chairman of ICC France Banking Commission and chairs the Legal Committee of the ICC Banking Commission that he founded. Professor Affaki is a member of the Board of Governors of the UNIDROIT Foundation and a Council member of the ICC Institute. He led or participated in several law reforms in transition economies.

Professor Affaki co-chaired the ICC Task Force on Financial Institutions and International Arbitration. He also chaired the French Arbitration Committee working group on Arbitration in Banking and Financial Matters. He acted as Rapporteur in relation to the International Law Association Resolution No. 3/2012 on international jurisdiction over foreign bank branches, and chaired a Paris Europlace working group on Islamic Finance whose recommendations were released in a report titled *Applicable Law and Dispute Resolution in Islamic Finance*.

He is the author or editor of several books, including "Trade Finance", ITC Publishing (awarded the European Prize on Interdisciplinary Research); "Cross-border insolvency and conflicts of jurisdictions", Bruylant; "Increasing Access to Credit – Reforming Secured Transaction Law", ITC Publ.; "The Guide to ICC Uniform Rules for Demand Guarantees" (with Sir Roy Goode), ICC Publ. No. 702; "Jurisdictional Choices" (with Horacio Grigera Naon), ICC Publ. No. 755, and over 80 articles and case notes on international arbitration and litigation, international banking, economic sanctions, cross-border insolvency, and Islamic finance.

Prof. Affaki is fluent in Arabic, English and French.

He holds trustee positions in a number of non-profit organisations and is actively engaged in community projects. He was awarded the European Prize for Interdisciplinary Research.



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Kate Gonzalez joined AFFAKI in 2018 as an Associate in the international dispute resolution group where she deals with banking and finance, construction, energy and information technology-related disputes. Kate also regularly acts as an administrative secretary to arbitral tribunals in international proceedings and is familiar with a variety of rules (including ICC, HKIAC, DIAC, OHADA CCJA and UNCITRAL).

Kate is a dual qualified lawyer who is admitted to the Paris Bar as an Avocate and is also a Solicitor of England & Wales. Prior to joining AFFAKI, Kate practised for a number of years in both London and Paris in international dispute resolution (arbitration, litigation and mediation) where she was involved in proceedings relating to mining, oil and toxic waste spills, telecommunications, aviation, construction and general commercial matters before a number of jurisdictions. Kate also focuses on business and human rights and has in-depth knowledge of Africa having been involved in proceedings relating to disputes arising in Nigeria, Ivory Coast, Zambia, Mali and Burkina Faso.

Education

Kate was admitted as a Solicitor of the Senior Courts of England & Wales in 2012 and to the Paris Bar as an Avocate in 2018. Kate holds an LLB with a French law degree from the University of Birmingham, a Diploma in French Legal Studies obtained at the University of Robert Schuman in Strasbourg and a Masters in Business Law from Panthéon-Sorbonne University.

Memberships

- Paris Bar
- The Law Society of England and Wales
- Franco-British Lawyers Society (FBLS)
- Young International Arbitration Group (YIAG)
- ICC Young Arbitrators Forum (ICC YAF)

Languages

- English (native)
- French (fluent).

What they say about us ...

- *“AFFAKI AVOCATS provides “an outstanding level of expertise and strategic insight” in litigation. The Firm is “excellent in international litigation”. It enjoys a reputable expertise in trade finance and in international regulatory investigations in the banking sector. The Firm advises major French and international banking institutions. It has recently represented National Bank of Kuwait in international proceedings, as well as the Libyan Investment Authority in a financial market-related lawsuit before the High Court of Justice. Georges Affaki “fully understands his clients’ needs” and provides “valuable and relevant advice”.¹”*

Legal 500, Commercial Litigation – France

- *“Georges Affaki of AFFAKI AVOCATS is highly recommended for his practice. Sources report that he is “extremely knowledgeable in the field of arbitration, especially in connection with financial services.” He is an experienced arbitrator under a range of rules, and is regarded as “sharp and diligent” in his approach.”*

Chambers and Partners, Dispute Resolution: Most in Demand Arbitrators – France.

- *“Dr. Georges Affaki is an incontestable authority in his field.”*
The co-Chair of the 2nd Dutch Arbitration Day, introducing Dr Affaki as Chairman of the Panel on Financial Services Arbitration, Amsterdam
- *“Dr. Georges Affaki is one of the world’s foremost experts on bank guarantees, the author of the leading textbook on the URDG, and an acknowledged international arbitrator and expert.”*

Anette Stavem Høgmoen, Chair of the Norwegian ICC Banking Commission, introducing Dr Affaki as main speaker at the Oslo conference

- *“Georges Affaki, an expert in both fields, has contributed the most to the rapprochement of banking and arbitration.”*

The Chairman of Le Café des Arbitres, introducing Georges Affaki as speaker

¹ Free translation, Original French : “Affaki Avocats apporte ‘un remarquable niveau de connaissance et de stratégie’ dans les dossiers. Le cabinet est ‘excellent en matière de contentieux international’. Il possède une forte expertise dans le domaine du *trade-finance* et des investigations internationales dans le secteur bancaire. Le cabinet conseille de nombreuses banques françaises et internationales. Il a récemment représenté National Bank of Kuwait », « ainsi que Libyan Investment Authority ». “Georges Affaki ‘comprend parfaitement les besoins de ses clients’ et fournit ‘des conseils adaptés et pertinents’”.

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