

AFFAKI



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Overview of the Firm

AFFAKI is an independent law firm specialising in international dispute resolution, banking and finance law and regulation, and law reforms in transition economies.

Combining leading positions in international organisations and academic institutions, Professor Dr Georges Affaki offers his clients transversal, creative and high-quality expertise in international commercial, financial, and investment law. Georges Affaki is admitted to practice as an *avocat* before the Court of Appeal of Paris and Matthew Rogier is an attorney admitted to practice before the courts of the State of New York and the United States District Court for the Southern District of New York.

The firm's professional services are offered in English, French, and Arabic. AFFAKI specialises in civil law, international law, comparative Arab law, and United States law. Georges Affaki is an empanelled arbitrator with the leading arbitration institutions in Europe, Asia, MENA, Oceania, and the Americas.

Our clients include international financial institutions, multilateral organisations, and global businesses across five continents undertaking their activities in all sectors of finance, trade, and industry.

AFFAKI's culture of excellence is shared with a network of leading independent firms from around the world, with which we work to ensure the highest level of service to our clients' cross-border interests.

AFFAKI is proud of its pro bono commitment and is 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
- Defence 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 English, French, and Arabic for a high-profile, international client base in arbitral proceedings that take place around the world.

The Firm is listed by *Chambers and Partners* in Dispute Resolution, and its Senior Partner, Georges Affaki, is listed amongst the Most in Demand Arbitrators – France. The Firm 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 treaty or contract-based arbitral proceedings involving long term energy supply contracts, construction projects, property development, financial services, telecom services and investments, transportation, defence and military procurement, humanitarian relief, distribution and franchising agreements, investments, commodity trading, joint ventures, and other sectors, 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 Union 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 characterisation 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 monetary debts arising in the matter of a sale of goods contract backed by an Islamic finance *musharakah*.
- 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, D.C.).

- 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 empanelled:

- Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC);
- ADGM Arbitration Center ;
- 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;
- 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);
- Japan Commercial Arbitration Association (JCAA) ;
- Jerusalem Arbitration Centre (JAC);
- Korean Commercial Arbitration Board (KCAB);
- Lebanese Arbitration and Mediation Center (LAMC).
- 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, national and international banking institutions, and financial market regulatory authorities. The team's experience includes leading cross-border, complex claims, defences, or enforcement proceedings involving conflicts of laws, jurisdictional challenges, parallel proceedings, asset tracing, and enforcement actions.

Our Firm specialises 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 has recommended our Firm in Commercial Litigation – France. *Chambers and Partners* has listed our Firm in Dispute Resolution: Litigation – France.

A Snapshot of Our Significant Cases:

- Leading an international counsel team consisting of three law firms in the PRC and France in relation to the retrial of an international banking case before the Supreme People's Court of the People's Republic of China under Article 200 of the Civil Procedure Law. [(2020) Zui Gao Fa Min Shen No. 6932, and (2020) Zui Gao Fa Min Shen No. 6923]
- Leading an international counsel team composed of three law firms in different jurisdictions to successfully arguing in Italy the lack of jurisdiction of local courts in relation to a provisional injunction over high value counter-guarantees, while simultaneously asserting *lis pendens* before English courts as to the merits under article 29 of the Brussels 1 Regulation (recast). Injunction dismissed with prejudice and the award of costs. [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 US\$ 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*).
- Successfully arguing 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 Union 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 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](#)]
- Directing the strategy of and leading enforcement actions for an investment arbitral award in an Arab country, as well as resisting a demand for the payment of bank guarantees before a European court and brokering a global settlement.
- Acting as lead counsel in the matter of a wrongful dishonour of an interbank reimbursement agreement in relation to a multi-million euro documentary credit subject to UCP 600, involving multiple summary judgement, trial and regulatory proceedings in Algeria. [[KBC v/ Natixis, Algiers \(Harrache\), 15/06766](#)]
- Acting as international banking law and practice expert 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.
- As in-house counsel, overseeing and coordinating over a period of five years a major international bank’s 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 economic sanctions 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 of over EUR 150 million. The case ended with a settlement of US\$ 9 billion.

Other Litigation-related Activities include:

- Acting as Rapporteur on International Law Association Resolution No. 3/2012 on “*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 held in Sofia, Bulgaria, 26 to 30 August 2012.

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 has 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 French *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 organisation'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 Organisation

AFFAKI has considerable experience in preventing and resolving difficulties encountered by multinational companies and financial institutions. The leading position that our members have 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 of both permanent and periodic internal control regulatory requirements.

International Secured Finance

Combining academic 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.

Project, Trade, and Commodity Finance

AFFAKI has widely acknowledged expertise in project, trade and commodity financing, advising banking institutions and companies around the world on secured financing in 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 French banking regulations in relation to Internal Controls, 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 the filing of memoranda and oral argument before the French bank regulator.

- Advising a Swiss bank on the legal effect of sovereign debt rescheduling on bank financing, including cases of national debt moratoria and IMF-approved currency and capital control.
- As Chair of the ICC Banking Commission Legal Committee, leading group works 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 credit 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.
- As in-house counsel, representing a major bank in a regulatory audit by ACPR under French banking regulation No. 97-02 on 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 meet the eligibility requirement to benefit from the protection of investment treaties.
- Leading a number of international rule-setting projects resulting in globally-accepted rules under the aegis of ICC and other international organisations, 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 Corporate 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 allows us to lead complex compliance investigation with confidence and help guide our clients through complex enforcement proceedings. Our professional services comprise the establishment and direction 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 full 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 obtainment of 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 establishing 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 and, where relevant, their *Shari'a* sources.

When 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 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 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 Université Paris Dauphine and a regular speaker at international conferences and seminars on Islamic finance. His research papers are regularly published in leading publications.
- He sat as arbitrator in multiple, high-value, institutional and *ad hoc* proceedings under *Shari'a* as applicable law to the merits or to the procedure, and 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 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 has led rule-drafting projects that resulted in globally accepted standards in the relevant sectors and are which are now used in trade and secured finance both in the developed and developing world. The international background of our team allows us to bridge cultural and legal gaps between the developing and developed world, with a particular focus on the MENA region.

Representative missions include:

- As a consultant to the World Bank's International Finance Corporation (IFC), conducting an independent assessment of the secured transaction law reform project in Morocco, involving the analysis of the existing legislative system, its benchmarking against international standards, multiple meetings with the local and the international stakeholders and issuing a final neutral opinion.
- 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 (adopted 15 December 2010 in Lomé).
- 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 to the International Trade Centre (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, and counsel in disputes arising out of sovereign debt rescheduling and international debt recovery by investment funds. As a result of this work, he is considered a leading expert in advising sovereign States and creditors on such complex proceedings.



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Professor Dr Georges Affaki is a Professor of law at the Université de 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.

He 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 and Partners* as 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, which he founded. Professor Dr Affaki is a member of the Board of Governors of the UNIDROIT Foundation and a Council member of the ICC Institute. He has led or participated in several law reforms in transition economies.

Georges 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 on international jurisdiction over foreign bank branches, and chaired a Paris Europlace working group on Islamic Finance.

He is the author or editor of several books and over 80 articles and case notes on international arbitration and litigation, international banking, economic sanctions, cross-border insolvency, and Islamic finance.

He is fluent in Arabic, English and French. He was appointed by Decree a Foreign Trade Counselor of France in recognition for his expertise in international trade and dispute resolution.

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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Matthew Rogier is an attorney-at-law admitted in the State of New York. He has passed the equivalency exam for foreign lawyers in France and expects to take the oath as an *avocat* at the Paris Bar in early 2021.

Prior to joining AFFAKI, Matthew was an associate for seven years in the international arbitration group of a major international law firm in Paris and New York, where he worked on high-profile arbitration and enforcement matters primarily in relation to energy, construction, post-M&A and telecommunications disputes.

Matthew obtained his *juris doctor (cum laude)* from Duke University in Durham, North Carolina, his master's degree in *droit économique* from Sciences Po Paris and his bachelor's degree (*summa cum laude*) from Butler University in Indianapolis, Indiana. He is a citizen of the United States and France and works both in English and French.

What they say about us ...

- Georges Affaki *“is brilliant, very knowledgeable and humble at the same time.”*
Chambers and Partners, Dispute Resolution: Financial Services Regulation – France.

- *“Dr. Georges Affaki is an incontestable authority in his field.”*
The co-Chair of the 2nd Dutch Arbitration Day, introducing Professor 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 Professor Dr Affaki as main speaker at the Oslo Conference.

- *“Georges Affaki is highly regarded for his financial services regulation practice, within which he is frequently seen on multi-jurisdictional matters. Clients appreciate that ‘he uses clear, logical steps to understand an issue from all angles before advising,’ adding that he is ‘detail-oriented and therefore capable of foreseeing areas of difficulty or challenges and address them proactively.’”*
Chambers and Partners, Banking and Finance: Financial Services Regulation – France.

- *“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.

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