

# SPOTLIGHT ARTICLE: THIERRY TOMASI

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Legal Briefings - By **Thierry Tomasi**

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Partner, Thierry Tomasi, joined our Paris arbitration practice in October 2017. Here he discusses his move to HSF, working in four different languages across multiple continents and his predictions for future trends in arbitration.

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**Thierry, you joined HSF last year from a Boutique law firm. What is different about working in a firm like HSF?**

A firm like HSF is a global business, and the whole environment is different: the scale of everything is different, the sheer number of people working for the firm and strength of the network is astonishing. A particularly important and noticeable difference for me though has been diversity. I am relishing the diversity of background and cultures in the people that I work with day-to-day in Paris but also across the global practice. It is so important to have that breadth in a practice like international arbitration. Diversity in background, culture and experience translates into diversity in hard and soft skills. It is great to be able to harness all these different skills from across the global arbitration practice and channel them into work for my clients.

**"A particularly important and noticeable difference for me though has been diversity"**

What isn't different between my old firm and HSF is the level of dedication that I see being put into the work we do for our clients. From that perspective, it feels very familiar and comfortable.

**One of the things that is instantly apparent on talking to you is that you speak English like a native. How have you come to speak English so well, and what other languages do you speak?**

I was raised bilingual in French and Italian. I also went to an international school from the age of 6 to 18 and I spoke English there. All the children at my school came from different backgrounds and myriad nationalities. You learn to get along with all of these children, find out about their lives and their homes and that makes you curious about the world. It made me want to travel and experience different cultures, learn different languages and live life with an international mindset. My English was probably rounded off in terms of fluency when I spent time studying a Masters in private international law and arbitration in London after I did my Masters degrees in Paris.

**In addition to French, Italian and English you also speak Spanish and Portuguese. Did you learn Portuguese at school? Do you work on Portuguese language cases for your clients within your international caseload?**

Portuguese has been a more recent acquisition as a language. I have been working for Brazilian clients for about 10 years now, travelling out to Brazil to work with them and to arbitrate Brazil-related disputes. I'm a member of the Brazilian arbitration committee and go out to Brazil to attend and speak at conferences there. I've picked up Portuguese language skills during that time and am now fluent.

In terms of my cases, yes, I work on a number of Portuguese language cases, mostly related to Brazil in one way or another. Brazil is by far the largest Portuguese language market for arbitration and it is growing incredibly quickly. But the lusophone African market is also growing. Angola became the 157th contracting state to the New York Convention last year, and I was recently invited to speak at an ICC conference there. I sensed a genuine interest from the Ministry of Justice in making Angola an arbitration-friendly jurisdiction, and in drawing on the experience of lusophone arbitration specialists.

I've been really pleased with how quickly I've been able to draw on the resources available to me at HSF and form a team who have the necessary Portuguese language skills and background for these cases. The future looks exciting for HSF's lusophone arbitration practice.

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**Does arbitrating in Brazil look and feel like it would anywhere else in the world, or are there differences?**

I would say that arbitrating in Brazil can be very different to your standard international arbitration. Arbitration has grown very quickly in Brazil to resolve domestic disputes first and foremost, so the procedure is still influenced by the country's litigation culture and perhaps less by the international models. Knowledge of the Brazilian way of doing things is definitely a plus for arbitrating in Brazil or with Brazilian parties.

That said, a fair number of Brazilian practitioners have a solid experience of international cases and are well known as arbitrators, and they bring more international practice home with them.

**You obviously have a number of regional focuses in your practice. Some arbitration practitioners have particular sector focuses. What about you, are there particular sectors you are most interested in?**

I really enjoy having a varied caseload across a variety of different sectors. I've got very broad commercial experience, having worked on cases in aerospace, defence, rail equipment and infrastructure, energy, and mergers & acquisitions disputes. The type of dispute you get is very different between sectors and I enjoy mastering the different issues that arise. Obviously, you develop a client base and with that client base you develop additional skills in particular fields and sectors. In my case, I have particular expertise in civil and military aerospace and rail. I also teach Investment Treaty arbitration at Université Catholique de Louvain in Belgium and given my academic interest in this area, I'd be keen to grow my practice here too.

**Which trends do you see affecting commercial arbitration in near future?**

The biggest trend for me must be the further globalisation of the arbitration community and a move towards diversity in every respect: in gender, geography and culture. We've already seen the growth of Asia as an arbitration centre and that looks set to continue. Arbitration in Latin America is already thriving- Brazil is one of the largest countries as origin of parties in ICC and the ICC has opened office there- but I think it will also gain more of an international presence. All the efforts of some African jurisdictions to position themselves as centres of arbitration excellence may gather speed. In terms of gender diversity of arbitration practitioners and arbitrators, while we in no way have gender parity at the moment, I'm extremely positive about the up-and-coming generation of arbitrators. I hope very much to see a far more representative set of arbitrators on every tribunal in a few years' time. Diversity can only be a good thing.

I am also noticing an increasing interconnection between arbitration and criminal laws, as well as issues of compliance. Commercial disputes can sometimes be accompanied by difficult discussions with regulators or a financial prosecutor and their investigations can, in turn, have strong repercussions on commercial disputes. I also see this increasing link at the post award stage where parties seeking to have the award annulled or avoid enforcement raise issues related to criminal law, in the form of fraud or breach of public policy allegations, or make criminal complaints to hinder the enforcement. This can be challenging for a commercial lawyer but is fertile ground for us to focus our minds on new solutions.

**Talking of enforcement, you recently discussed the French approach to enforcement of awards annulled at the seat at a "GAR Live Inquisition" in Paris. Do you think ease of enforcement remains the main concern of clients choosing arbitration?**

The French approach to the enforcement of awards annulled at the seat of arbitration has been a hot topic in arbitration for some time now. French courts have taken a liberal approach to this issue, which consists in allowing, as a matter of principle, the enforcement of an award annulled by the courts of the seat of the arbitration, provided that the award otherwise satisfies the basic requirements set by French law for recognition and enforcement. This approach remains isolated from a comparative standpoint, and often comes as a surprise to clients.

In terms of client concerns regarding enforcement, unless there is a regional system of mutual recognition of judgments exists (such as within the EU), an arbitral award remains, by and large, easier to enforce than a judgment. But while it is "easier" that doesn't mean it is always easy. While the New York Convention certainly makes enforcement possible around the world, there are still hoops to jump through and domestic procedures to follow. We sometimes need to set more reasonable expectations for our clients about the time it may take to enforce, and the prospects of success of enforcement against certain types of counterparties. For example, state-owned entities in transitioning economies or against state owned assets in other jurisdictions (including France, after the recent enactment of a law regulating enforcement on sovereign assets).

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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