



AIMERY de SCHOUTHEETE
Senior Partner

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Aimery de Schoutheete has 30 years experience in Business Law in the Belgian law firm Liedekerke Wolters Waelbroeck Kirkpatrick.

He has extensive experience in drafting and negotiating commercial contracts, with particular focus on distribution agreements, and in handling litigation and arbitration before the Belgian courts, foreign EU jurisdictions and both national and international arbitration tribunals (ICC, CEPANI, Swiss Chambers, ad hoc procedures). In the past 10 years, he has regularly been nominated as an arbitrator in proceedings before the ICC and CEPANI, whether as a sole arbitrator or as chairman of the tribunal.

His focus is directed towards the natural resources (upstream and downstream), petro-chemical, commodities and agribusiness industries. Aimery also has significant experience in the hospitality, automotive, and financial sectors.

Aimery de Schoutheete is a recognised specialist in the field of distribution law, as is evidenced by his several publications in this field. For a period of 12 years (2002 -2014), he was a member of the editorial committee of the *Revue de Droit Commercial*, in charge of general commercial law (including distribution law and arbitration matters). He is currently a member of the peer review committee of the *Revue de Droit Commercial*.

He is recognised as a specialist in the field of arbitration in the leading legal guides (Chambers, Legal500), as confirmed by recent appointments such as a 2012 World Bank mission to Kinshasa, during which Aimery de Schoutheete and Liedekerke partner Joe Sepulchre headed working sessions of the DRC Joint House-Senate Economic Committee regarding the New York Convention of 1958 on the enforcement of foreign arbitral awards and OHADA arbitration law. These workshops led the DRC to signing and ratifying the New York Convention in 2013. Further, Aimery de Schoutheete is a member of the ICC commission on emergency arbitration.

Aimery de Schoutheete joined Liedekerke Wolters Waelbroeck Kirkpatrick in 1986 and was named a Partner in 1995. He was the firm's *Managing Partner* between 2001 and 2010. Subsequently he headed, until the end of 2012, the *Commercial Contracts & Litigation Practice Group* within Liedekerke, regrouping both the "Litigation and Arbitration" and the "Commercial

Contracts” teams of the firm. Since 1 January 2013 and to date, Aimery holds the position of

Senior Partner of Liedekerke. He is the chair of Liedekerke’s *International Committee* as well as head of the Liedekerke’s *Spanish Desk, Italy Desk and Africa Desk*. He is also the Chairman and main driving force of Liedekerke Africa, the firm’s subsidiary established in Kinshasa, DRC.

Aimery de Schoutheete holds a law degree (1983) as well as a degree in philosophy (1984) from the University of Louvain-la-Neuve (UCL).

PRACTICE AREAS

- Commercial contracts
- Litigation and Arbitration

LANGUAGES

French, English, Dutch,
Spanish

PROFESSIONAL MEMBERSHIPS

- CEPANI
- FRANCARBI
- U.I.A.
- ICC Belgian committee

SAMPLES of ASSIGNMENTS – DISTRIBUTION

- Acted as counsel in an automobile distribution dispute involving claims in excess of EUR 100.000.000.00 in the broader context of the adoption of the latest EU Block Exemption Regulation. The initial claim was brought by the Belgian exclusive importer against the foreign manufacturer which had terminated the contract after a long-lasting relationship. The distribution contract covered several countries and the issues at stake related to (i) the territorial application of the Belgian Act of 27 July 1961 on exclusive distributorships and (ii) the assessment of the indemnities possibly due under said Act. The dispute was finally resolved through an amicable settlement at a very small fraction of the original claim.
- Represented the Belgian subsidiaries of an American bank and insurer in a series of claims brought by terminated banking- and insurance agents. This series of disputes in front of the Belgian courts stretched during more than 12 years. Typically, the agents were agent for both the banking aspect and the insurance aspect whilst there were two distinct principals (a bank subsidiary and an insurance subsidiary). The agents were claiming that (i) the termination of the contractual relationship by the bank subsidiary was entailing the automatic termination of the agency agreement relating with the insurance subsidiary, (ii) substantial goodwill indemnities were due as per the Belgian law enacting the 1986 European Directive, (iii) additional indemnities were due for the loss of business and/or as per Section 21 of the Belgian Act on Commercial Agency Agreements (that allows the courts to grant additional remedy where the maximal goodwill indemnity provided by law is insufficient) and (iv) arrears of commissions on revolving contracts that continued after the termination. Some of the cases are still pending but the majority of them came to an end either because the courts finally rejected the claims or through settlement agreements. The last active case culminated in a series of questions to the EU Court of Justice (re *Beobank vs; Quenon*).
- Acted as “expert counsel” (that is, not as lead-counsel in court but as second counsel to the client and adviser to the client’s counsel in court) in a matter of termination of a commercial agency agreement in the gas supply sector. The main issue related to the treatment of revolving commissions on contracts signed by the agent and renewed on a yearly basis after the termination. The amount at stake was limited but the matter in principle was very substantial

given the number of agency agreements to which the judgment would become applicable. The court eventually ruled in favour of the client.

- Represented an American paper and cardboard manufacturer against substantial claims brought by its terminated European commercial agent. Belgian law was applicable and the matter required extensive data collection work in order to correctly assess the would-be indemnities as well as an analysis of the duty of information resting on the principal. The case was made tricky due to the fact that the parties had reached (according to the principal) or not reached (according to the agent) a final settlement agreement before proceedings started.
- Represented a large foreign car manufacturer in a multi- jurisdiction arbitration proceedings against several European country importers after the termination of the distribution contracts of these importers. The claim was brought by the Belgian exclusive importer and its subsidiaries in various countries of Central Europe and the Balkans. The main contract was governed by Belgian law. The issues at stake related to the (i) territorial application of the Belgian Act of 27 July 1961 on exclusive distributorships and (ii) the assessment of the possible indemnities owed to the foreign subsidiaries. The case was finally settled at a fraction of its original amount.
- Frequently acted as counsel to a major oil company with respect to disputes against service station managers in Belgium who contended to be commercial agents. The main issues at stake related to the qualification as commercial agent under Belgian law as well as to the pre-contractual disclosure obligations.
- Advised a highly reputed Italian manufacturer of spirits in a pre-litigation matter relating to the termination of its exclusive distributorship agreement with the Belgian sole importer. The contract covered Belgium and the Grand-Duchy of Luxemburg and had lasted for several decades. The contract included a pathological clause regarding the applicable law (seeming to indicate Belgian law) and no jurisdiction clause. By referring to the general sale conditions of the supplier, a declaratory proceedings were initiated by the supplier in Italy which prevented the distributor from starting an action in Belgium.
- Regularly acts as counsel to several companies active in the brewing business in pre-litigation matters as well as in the discussions and negotiations concerning various distribution and agency agreements.
- Acted as lead counsel to a major player in the sugar industry in setting up a distribution network in several foreign jurisdictions (Korea, Oman, U.A.E., Singapore, Thailand, Vietnam, USA, Canada, etc).
- Assisted a Belgian insurance agent against its foreign principal pursuant to the termination of the agency agreement, which included various allegations of fraud and money-laundering.
- Represents a European chemicals reseller/agent in disputes against its former principals. One matter involves a Thai supplier for chemical products distributed in the Benelux and Poland. The other matter involves a Belgian supplier for chemical products distributed in Poland, Hungary and Romania.

SAMPLES of ASSIGNMENTS – ARBITRATION

- Successfully represented an African OHADA member state in a major Swiss Chambers of International Arbitration proceedings (claim in excess of USD 150.000.000 was entirely rejected; agribusiness commodity sector and harbour sector);
- Represents, as lead counsel, an African OHADA member state in major ICC arbitration proceedings (initial claim worth in excess of USD 750.000.000; consultancy services sector);
- Represented a major African corporation in a dispute relating to the application of a shareholder agreement and preference rights (claim in excess of 60 M USD; amicable settlement reached);
- Represented a large foreign car manufacturer in a multi- jurisdiction arbitration proceedings against several European country importers after the termination of the distribution contracts of these importers. The claim was in excess of 5 M € and was rebutted;
- Represented a large corporation active in the agribusiness in *ad hoc* arbitration proceedings regarding failure in the anti-fire protection system of large components of a factory;

- Represented terminated commercial agents in different sectors (industrial printing sector; chemistry) in CEPANI proceedings;
- Regularly represents a major mining company in arbitration proceedings (ICC usually) in relation to commodity trading disputes or disputes relating to the application of mining joint-venture agreements;
- Acted as sole arbitrator in an ICC proceedings regarding a dispute between shareholders of a Mauritius Holding Company, which itself held interests in several African subsidiaries controlling local uranium exploration licences (French, Mauritius and Namibia laws applicable) ;
- Acted as sole arbitrator in an ICC proceedings regarding the termination of a franchise agreement (Swiss law applicable);
- Acted as sole arbitrator in ICC proceedings regarding the sale of goods by a Dutch seller to a Spanish purchaser (French law applicable);
- Acted as sole arbitrator in an ICC proceedings regarding the termination of a consultancy agreement between Italian and Russian parties (Italian law applicable);
- Acted as sole arbitrator in ICC proceedings regarding the sale of a 40M € airplane (French law applicable);
- Acted as chair of a 3-arbitrator panel (CEPANI proceedings) in a dispute between shareholders regarding the termination of several management agreements;

KEY PUBLICATIONS

- Soon to be published: « *L'Acte uniforme relatif au droit de l'arbitrage* », in 2ème édition (à paraître) de « *Le droit de l'OHADA : son insertion en République Démocratique du Congo* » (1ère édition parue en 2012) sous la direction scientifique de Patrick De Wolf et Ivan Verougstrate;
- “*D.R. Congo*”, in *Global Legal Insights - International Arbitration*, ed. Joe Tirado, 1st ed., Global Legal Group, 2015, p. 68 and seq;
- « *Le livre X du nouveau Code de droit économique* » – ‘*Les nouveautés en matière d’information précontractuelle*’ » with Olivier Vanden Berghe, *Revue de Droit Commercial*, 2014, p. 739 and seq.;

- « *Manquement grave de l'agent et préavis : état de la question* », note of comments regarding the judgment of EU Court of Justice of 8 October 2010, *Revue de Droit Commercial*, 2013, p. 93 and seq.;
- Belgian sections on commercial law and coordination of the whole Belgian chapter in the 2012 edition of the *Lex Mundi Guide to Doing Business in Belgium*;
- « *Le caractère autolimité de la loi du 13 avril 1995 relative au contrat d'agence commerciale* », with Paul Vandepitte, *Revue de Droit Commercial*, 2012, p. 241 and seq.;
- « *De wet van 27 juli 1961 (betreffende de éézijdige beëindiging van de voor onbepaalde tijd verleende concessies van alleenverkoop) is een autolimitatieve wet* », with Paul Vandepitte, *Revue de Droit Commercial*, 2007, p. 164 and seq.;
- « *Concession de vente et 'obligations importantes'* », *Revue de Droit Commercial*, 2003, p. 506 and seq.;
- « *Faute grave et manquement contractuel en matière de concession de vente* », *Revue de Droit Commercial*, 2003, p. 514 and seq.;
- « *Détermination in concreto ou in abstracto de l'indemnité de rupture visée à l'article 2 de la loi du 27 juillet 1961* », *Revue de Droit Commercial*, 2003, p. 537 and seq.;
- *Manuel des contrats de distribution commerciale*, with Claude Verbraeken and the collaboration of Prof. Jules Stuyck, Kluwer, 1997.;
- « *Le champ d'application territorial de la loi du 27 juillet 1961 sur les concessions de vente exclusive* », with Paul Vandepitte, *Journal des Tribunaux*, 1990, p. 725 and seq.;
- « *L'anatocisme* », with Claude Verbraeken, *Journal des Tribunaux*, 1989.

RECENT CONFERENCES

- « *Code de droit économique : le baptême du feu* », 24 April 2014.
- « *L'arbitrage en République Démocratique du Congo* » ; Conference given at the Lubumbashi chamber of commerce (2013).
- « *La rédaction et les pièges dans les contrats commerciaux internationaux* » ; teaching sessions (1 ½ day) given in Lubumbashi (DRC) in January 2013.
- « *Contrats de distribution : théorie et pratique* » (Conference organised by AWEX for Belgian exporters, octobre 2012- février 2013).
- « *Pitfalls in international commercial contracts* » (Seminar organized by the AWEX for Walloon export businesses, February 2012)

MARKET RECOGNITION

- Aimery de Schoutheete was listed as a « *Leading Individual* » in the « *Dispute Resolution* » sections of *Legal 500* for the years 2013 to 2015.
- Brussels-based lawyer Aimery de Schoutheete heads Liedekerke Wolters Waelbroeck Kirkpatrick's African desk and is highly visible on Congolese mandates. He advises on commercial matters, with a focus on the mining and natural resources sector, and is also active on contentious matters. - *Chambers 2014*
- "Aimery de Schoutheete is an experienced disputes lawyer described by sources as "calm, focused and unflappable." His strategic skills are also noted." - *Chambers 2014*.
- Aimery de Schoutheete is praised by clients who appreciate that "he has the ability to understand a particular situation very quickly, a strong knowledge of our industry and excellent contacts in the legal world" - *Chambers 2012*