

Richard Hayler

Senior Managing Director – Economic & Financial Consulting

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EDUCATION

Diploma in Company Direction
(IoD)

B.Sc. (Hons) Biochemistry with
Molecular Biology and
Biotechnology, Bristol University

CERTIFICATIONS

Chartered Accountant
(Singapore)

Chartered Accountant (England
& Wales)

Chartered Alternative
Investment Analyst (CAIA)
Charterholder

PROFESSIONAL AFFILIATIONS

Fellow of the Institute of
Directors (IoD)

Chartered Institute of Arbitrators
(CI Arb)

Singapore Institute of
Arbitrators (SI Arb)

Richard Hayler is a Senior Managing Director in FTI Consulting's Economic and Financial Consulting segment, specialising in the assessment of quantum, financial and accounting issues in contentious matters and challenging commercial situations.

Before joining FTI Consulting, Mr. Hayler spent eight years in the audit, corporate finance and financial advisory groups of two big four accountancy firms. Mr. Hayler was also formerly the Technical Director of a Life Science consultancy company.

In addition to commercial work Mr. Hayler has been appointed more than fifteen times as both a valuation and accounting expert witness and has testified in arbitrations and court. He has been recognised in Who's Who Legal for Asset Recovery (2015, 2016), Quantum of Damages (2016, 2017), Forensic Accounting (2016, 2017) and an Arbitration Expert Witness (2018), in which he is described as "*an eminent practitioner in the region and stands out as for his 'excellent valuation work'*" and "*a well-known figure in the Singaporean market, and is recognised as a top-tier accounting expert in the region*".

Mr. Hayler has led, managed or consulted on a diverse array of issues including valuation, financial instruments and markets, loss of profits, shareholder and contractual disputes, accounting treatment and irregularities, financial implications of contractual terms, patent infringement and royalty rates, market manipulation, alleged misappropriation, asset tracing and fraud investigations.

Mr. Hayler's litigation and arbitration case experience includes the U.K. High Court, Singapore High Court, Singapore International Commercial Court, Tokyo District Court, Cayman Grand Court, Australian Federal Courts, U.S. Supreme Court and various arbitral tribunals under ICC, LCIA, UNCITRAL and SIAC rules.

He is both a Chartered Accountant ("ICAEW" and "ISCA") and Chartered Alternative Investment Analyst ("CAIA"). He also holds a first class honours degree in Biochemistry with Molecular Biology and Biotechnology from Bristol University and a Diploma with distinction in Company Direction from the Institute of Directors ("IoD").

In 2015, Mr. Hayler was appointed to the Singapore International Mediation Centre's first Panel of Experts for Accountancy. He has also sat on the Board of Directors of the Chartered Institute of Arbitrators in Singapore since 2012 and holds the office of Honorary Treasurer.

Professional Experience

Litigation and International Arbitration

- **Green energy project:** Appointed to value a number of large operating, in construction, and planned green energy projects in various locations for a green energy company. (Current)
- **Multinational FMCG manufacturer valuation:** Engaged by the parties, at the direction of the Singapore High Court, to act as the expert determiner of a multinational dairy business, following the determination of liability by the Court. (Current)
- **Agriculture valuation:** Engaged to perform a valuation of a minority stake in a joint venture agriculture company as part of a debt recovery engagement. (Current)
- **Utilities contract valuation:** Engaged by the Respondent, a government, to assess the Claimant's claim for losses arising from alleged changes in the interpretation of certain contractual terms of the utilities concession. (Current)
- **Shipping post-acquisition dispute:** Engaged by the vendor to the implications for an earn-out agreement resulting from a change in accounting policies and functional currency. Role as technical / reviewing partner.
- **Medical devices post-acquisition dispute:** Engaged by the purchaser to assess losses arising from a breach of representations and warranties in the medical devices sector. Role as technical / reviewing partner. (Current)
- **Damages claim in the green energy sector:** Appointed by the claimant, a state owned solar company, as the expert to assess a damages counterclaim, for losses in excess of USD150m, relating to production standards in an ICC arbitration. [Testified]
- **Damages claim in the construction industry:** Appointed as the expert to opine on the interest rate and cost of capital applied by the Claimant for a major infrastructure dispute in this Middle East based ICC arbitration. [Testified]
- **Audit negligence in financial services:** Engaged by a Malaysian bank to review and opine as to whether a Big 4 accounting firm had obtained sufficient appropriate audit evidence to conclude that the financial statements were free from material misstatement in this High Court case. (Current)
- **Damages claim in the construction industry:** Appointed as the expert to assess the reasonableness of the Claimant's assessment of damages from a financial perspective for a major real estate project in Malaysia. (Current)
- **Accounting and valuation in a minority oppression dispute in the waste management industry:** Appointed to as the expert assess the appropriateness of the accounting treatment applied by the majority shareholder and resulting impact on value of the minority shares. [Testified] [Suit No 387 of 2015: [2017] SGHC 212]
- **Loss of profits calculation in Singapore High Court:** Appointed as the expert to determine the loss of profits arising from a contractual breach relating to the leasing of premises for a furniture retailer. [Settled]
- **Loss arising from changes in contractual terms:** Appointed as the expert to determine the loss arising from changes to the contractual terms existing between a government controlled pipeline company and two oil & gas majors, with the claim exceeding US\$100m. [Testified]
- **Impact of share price manipulation:** Appointed as joint expert to assess the impact on share price arising from the sale of shares pledged under a loan agreement, with the claim being in excess of US\$100m, in a Singapore International Commercial Court case. [Testified]
- **Damages claim in the consumer goods sector:** Appointed as joint expert to assess a damages claim, including recall costs, loss of profits and losses arising from early termination, between two multinationals arising from a contamination incident, with the claim exceeding US\$1bn. [Testified]
- **Brand valuation in the hospitality sector:** Appointed as the expert to assess the brand value of a well-known hospitality provider in relation to a claimed breach of warranties in a sale and purchase dispute. [Settled]

- **Valuation of a minority interest in private group:** Appointed as the expert to assess the value of a minority shareholding in a group of companies with activities in the apparel and property sectors. The case was moved from the Court to mediation before returning to the Court. [Settled]
- **Breach of contract in the energy sector:** Engaged by the respondent, a major Chinese government controlled entity, to provide an expert report on whether, based on its finances and operations, its subsidiaries acted as a single economic entity or separate discrete entities, following an attempt by the claimants to lift the corporate veil in this multibillion dollar windfarm project claim.
- **Assessment of the value of an oil and gas operation in Australia:** Engaged by a group of shareholders to assess the valuation, both as a going concern and in liquidation, of the business, where the administrators considered the shares held no value.
- **Assessing the veto of a series of M&A transactions in the education sector:** Advising the Claimant, a private school group, who allege that the respondents inappropriately vetoed a series of transactions to reduce group profits and activate a contractual ratchet clause.
- **Initial assessment of loss in relation to a nitrate fertiliser plant:** Advising the Claimant, on the loss arising from the sale of shares in a nitrate facility that were held as collateral in a financing arrangement.
- **Valuation advice in a shareholder dispute:** Advising the Plaintiff in a shareholder dispute in the beverages industry, to be heard before the High Court of Singapore. The matter requires, inter alia, the valuation of shares in a private company at a range of dates.
- **Misrepresentation in an acquisition in the fast-moving consumer goods sector:** Engaged by the acquirer to identify and assess the impact alleged inappropriate accounting treatment and business practices on normalised EBITDA and the value of the target enterprise. Consulted on both forensic accounting and valuation aspects of the case. Asahi (client) -v- PEP, UNITAS & others in the Federal Court, Melbourne, 2013-2014.
- **Valuation of losses in an OEM supply agreement in the electronics industry:** Advising the Respondent in a SIAC arbitration relating to alleged breaches of agreements to supply OEM machinery for resale under the Claimant's brand.
- **Indian joint venture dispute in the pharmaceuticals sector:** SIAC arbitration for an injunction in relation to cash flow management and the need for a capital injection. Secondary claims brought included inappropriate accounting treatment in the financial statements and damages for value destruction by management.
- **Multibillion dollar banking litigation:** A derivative financial instruments dispute between a hedge fund and a global bank in the U.K. High Court and U.S. Supreme Court arising out of the financial crisis. The primary focus was on quantum of loss, accounting irregularities, margining, hedge fund strategy and performance benchmarking. Deutsche Bank (client) -v- Sebastian Holdings in the High Court, London, 2012-2013.
- **Manufacturing claim arising out of the Arab Spring:** Advised on the valuation methodology, commercial considerations and calculation of an appropriate discount rate for a loss of stake damages claim in this UNCITRAL BIT arbitration.
- **Multibillion dollar mining sector litigation:** Advised the legal team on financial aspects of this U.K. High Court case including valuation methodologies and calculations, accounting treatments, cashflows and asset tracing. The role included review and commentary on factual and expert witness statements, witness preparation, cross examination strategy and general litigation support. Berezovsky -v- Abramovich (client) in the High Court, London, 2011-2012.
- **Manufacturing sector patent infringement litigation:** This U.K. High Court dispute required the calculation of an appropriate royalty rate, royalty base and discount rates for damages arising from the breach of a series of patents covering machine manufacture.
- **Breach of covenants claim in the consumer products sector:** A U.K. High Court dispute between the private equity owners of the furnishings company and their debt providers regarding certain alleged debt covenant breaches.

- **Shareholder dispute in the healthcare sector:** A U.K. High Court litigation between the original inventor and shareholder and the venture capital investors. Covert dilution of their shareholding and collusion to remove the inventor was alleged.
- **Pharmaceutical sector trade mark infringement litigation:** In this U.K. High Court case the claimants alleged damages resulting from a loss of profits arising from the sale of their products sourced in one country, transmitted via a Turkish pharmacy, through the U.K. to U.S. customers.
- **Infrastructure sector joint venture dispute:** A U.K. High Court case related to the alleged misappropriation of funds in a joint venture company holding an oil terminal in Georgia. An accounting records reconstruction was required followed by an asset tracing exercise to determine the source and destination of missing funds.

Financial Advisory

- **Valuation in the travel and leisure sector:** Engaged by the board to perform a valuation of an international hotels and hospitality group for the purposes of a capital raising exercise.
- **Modelling review in the heavy engineering sector:** Engaged to develop a model for a major government plant and equipment tender on behalf of a major international manufacturer. Role as technical / reviewing partner. (Current)
- **Implications of contractual terms:** Explaining the implications of certain contractual terms under IFRS in relation to discussions between shareholders on the appropriate accounting for certain transactions. Role as technical / reviewing partner. (Current)
- **Mediation in the financial services sector:** Provided advice to a party in mediation regarding the appropriate accounting treatment for certain transactions following a sale and purchase dispute.
- **Due diligence in the logistic sector:** Engaged by the prospective investor to provided targeted due diligence looking at specific areas of concern and performing a high level review for red flags.
- **Takeover price review in the insurance sector:** Engaged by a minority shareholder to assess the reasonableness of the proposed takeover price in this multibillion dollar transaction.
- **Fund accounting and portfolio risk assessment:** Provided advice regarding accounting treatment and investment risk in relation to specific assets for an international fund managing in excess of USD1bn.
- **Benefits analysis for a South East Asian pro-bono organisation:** Provided a quantification of the benefits, both short and long-term, resulting from the organisations efforts in the region. The reporting focused on the return on investment, need for continuing investment and network effects.
- **Aviation revenue recognition:** Provided a comparison of revenue recognition policies and their implications under U.K. GAAP and IFRS for a major airline as part of settlement negotiations in a contract dispute.
- **Business services sell side valuation:** Prepared valuation calculations (DCF), comparable company and comparable transaction analysis, liaised with the client and M&A team to assist in the management sale of a marketing consultancy company.
- **Consumer products buy side valuation:** Prepared comparable company, comparable transaction and market analysis to support a takeover bid for a well-known fashion house.
- **Financial services sell side valuation:** Prepared market, economic, comparable company and comparable transaction analysis to support the divestment of the collateralised debt arm of a global bank.
- **Construction sector:** Prepared detailed comparable company analysis to calculate appropriate valuation multiples as part of the valuation of a property development and management company.
- **Broadcast media consulting:** Fair, reasonable and non-discriminatory (FRAND) licensing terms, calculations and consultancy regarding the recharge arrangements for service recharges on a major new entertainment platform. Consideration of the cost base, usage metrics, benefit and ability to pay.
- **Consumer products restructuring:** Administration of a major high street chain (Woolworths) in the U.K. Specifically the retention of title claims, including leading the negotiation of pence in the pound settlements for small and medium size contractual retention of title claims.

- **Sugar pricing review:** Led a Comité Européen des Fabricants de Sucre (CEFS) pricing team which analysed sugar production using a cost card methodology for British Sugar Plc with submission to the European Union.
- **Buy side due diligence:** Limited additional purchaser due diligence at KuDOS pharmaceuticals before the takeover by AstraZeneca.
- **Drug pricing review:** Assessment of drug pricing and profit margins under the U.K.'s Pharmaceutical Price Regulation Scheme (PPRS) and submission to the Department of Health for a major pharmaceutical company.
- **Japanese SOX:** Planning for JSOX implementation at Takeda Pharmaceutical's U.K. subsidiaries.
- **Sarbanes Oxley Act (SOX):** Walkthroughs, testing and late stage implementation of SOX404 controls and procedures for AstraZeneca.

Financial Investigations

- **Forensic accounting investigation:** Investigating, on behalf of a financial institution, its own business conduct and relationship with the directors of a customer who have been convicted of fraud. Review is focusing on whether red flags were missed and whether KYC, AML and other procedures were followed. (Current)
- **Provision of a fraud training series:** Appointed to prepare and deliver an internal fraud training series to the front, middle and back office employees of a major Singaporean company involved in the financial services sector.
- **Hospitality industry financial irregularities review:** Assessed the possibility of accounting manipulation in relation to a post-acquisition dispute at a large Chinese restaurant chain. Report used to successfully apply for a Mareva Injunction (freezing order).
- **Pharmaceutical industry financial irregularities review:** Assessed the possibility of accounting manipulation in relation to a post-acquisition dispute involving a major Chinese pharmaceutical company. Report used to successfully apply for a Mareva Injunction (freezing order).
- **Mineral exploration abuse of control:** Investigated potential non-arm's length activity, including asset transactions and the provision of services, between a listed Australian company and companies with links to certain board members.
- **Breach of contract relating to an oil and gas exploration contract in Africa:** Engaged by the claimants in relation to an arbitration to provide a forensic review of accounting records and to identify losses incurred, on a cost accounting basis, as a result of the breach.
- **Logistics industry minority oppression and related party transactions dispute:** Engaged by a minority shareholder to prepare an investigation expert report for this logistics industry dispute. This entailed an investigation into claims of value stripping and accounting irregularities, focusing on related party transactions by the directors.
- **Multibillion dollar financial institution fraud:** The son-in-law of this affluent Saudi family was alleged to have fraudulently raised and misappropriated tens of billions of dollars through various mechanisms from over 100 financial institutions worldwide. Issues included complex trade finance and financial instrument fraud, accounting irregularities, valuation irregularities and asset tracing through multiple offshore shell companies. Cases were heard in the Grand Cayman Court, U.S. Supreme Court, U.K. High Court and in Arbitration. Ahmad Hamad Algosaibi & Brothers Co. (client) -v- Maan Al-Sanea in the Grand Court of Cayman, 2009-2011.
- **Financial services asset tracing:** Consulted on the asset tracing approach to be applied for a major government body to recover assets hidden by defaulting property magnates after the financial crisis.
- **Financial services accounting manipulation fraud:** Provided technical accounting expertise and asset tracing advice in relation to an accounting manipulation fraud for an institutional investor in an offshore venture capital fund.
- **Manufacturing expenses fraud:** An expenses fraud investigation in France for a large multinational manufacturing company. Due to the limited documentation available, a novel and highly successful numeric analysis was devised to search for inconsistencies.

Audit Engagements

Pharmaceuticals: Statutory audits and interim accounting reviews under the relevant GAAP for:

- AstraZeneca group;
- UCB CellTech;
- Takeda Pharmaceutical U.K. subsidiaries; and
- Mixis Genetics (a subsidiary of Pliva DD).

Chemicals: Statutory audits and interim accounting reviews under the relevant GAAP for:

- Silver Spoon (a subsidiary of ABF Plc);
- British Sugar (a subsidiary of ABF Plc); and
- Air Products Plc.

Financial services: Interim accounting reviews under the relevant GAAP for:

- Alliance Capital;
- Prudential; and
- Britannic Insurance.

Other sectors: Statutory audits under the relevant GAAP for:

- Stratic Energy;
- Westmill Foods (a subsidiary of ABF Plc);
- Stafford University; and
- Bristol Novelty.

Public Speaking

- **Singapore Management University (Singapore):** School of Accountancy industrial talk: Common methods of manipulating, historical and prospective, financial information (March 2018).
- **MIArb National Arbitration Conference 2018 (Malaysia):** Solving Arbitration's Woes Through Expert and Other ADR Processes (KLRCA, February 2018)
- **Offshore Law Firm Seminar (Singapore):** Invited to speak on minority discounts, the information required for a valuation, hindsight and valuation date (two sessions: November and December 2017).
- **Law Society Seminar (Singapore):** Key Legal and Damages Assessment Issues in Disputes Involving Breach of Fiduciary Issues and Minority Oppression (October 2017).
- **Southeast Asia Venture Capital & Private Equity Conference 2017 (Malaysia):** Investments & Exits in Uncertain Times, speaking on M&A Cross Border Opportunities (Securities Commission, May 2017).
- **SIAC Jakarta Conference (Indonesia):** Multiplicity in Arbitration: Multi-Party and Multi-Contract Arbitrations under the SIAC Rules 2016 (November 2016).
- **Law Society Seminar (Singapore):** Joint Ventures, Shareholder Disputes and Valuations (November 2016).
- **Magic Circle Law Firm Symposium (Indonesia):** Invited to speak about dealing with Experts in Arbitration: managing the process effectively (August 2016).
- **CIArb YMG 1st Regional Conference (Malaysia):** The Role of an Expert, Common Challenges for Experts in Arbitration and the use of Shadow Experts (KLRCA, August 2016).
- **Foundation for International Arbitration Advocacy "FIAA" (Hong Kong):** The lawyer's role in the preparation of the expert report and preparing the expert to testify (HKIAC, March 2016).
- **SIAC Jakarta Conference (Indonesia):** The use of Experts in Oil & Gas Disputes (September 2015).