



Arbitration Germany

Dusseldorf, Hamburg, Munich



Hamburg



Dusseldorf



Munich



Arbitration Hub Germany

Being Europe's largest economy, Germany attracts considerable trade and business activities besides being the third largest exporter of goods in the world. More than 30 companies of the Global Fortune 500 are headquartered in Germany. Naturally, Germany is also a hub for international disputes.

Our offices in Hamburg, Dusseldorf and Munich have significant experience in complex international and domestic arbitrations (ICC, LCIA, DIS, SIAC, SCC, AAA, LMAA, GMAA, ad hoc) and across various industry sectors. Besides commercial arbitrations, we advise investors on investment protection and represent them in investment arbitrations (ICSID, UNCITRAL and ad hoc) when their investments abroad are at stake. We support our clients in jurisdictional disputes, arbitrator challenges, setting-aside and enforcement of arbitral awards. Our clients include corporate investors, financial institutions, private individuals, governments, states and state-owned entities.

The lawyers of our three German offices work closely with damage, forensic or technical experts in order to argue complex cases and to achieve the best possible outcome. We have extensive experience in oral advocacy and cross examinations of both factual and expert witnesses. Moreover, we routinely handle extensive document production and e-discovery, preparation of witness statements, familiarisation of witnesses with the arbitral process as well as large scale

virtual and in-person hearings. We have the manpower and expertise to handle arbitrations no matter what size or complexity.

The lawyers of Clyde in Germany not only act as counsel in complex and high value disputes but also regularly sit as arbitrators – making them better advocates. Our German offices work closely with our European arbitration teams in London, Paris and Madrid as well as with our 50+ offices worldwide to provide our clients with dispute advice and representation around the globe and around the clock.

As part of our daily work, we closely follow developments in the arbitration world, such as important judgements, changes to arbitration rules or guidelines, developments on the use of technology etc. We share these developments and insights on a regular basis with our clients and colleagues through our Arbitration & Litigation Quarterly Update Germany.

We, at Clyde & Co, are committed to diversity and inclusion. As part of this commitment, we participate in the DIS-ERA Pledge Gender Champion Initiative to ensure greater diversity in international arbitration.

A global commercial and investor state arbitration practice

One of the largest disputes practices in the world:

- ▶ USD 45 billion case value
- ▶ Largest user of the LCIA
- ▶ Third largest user of the ICC
- ▶ Top 25 Global arbitration firm according to GAR 100

Arbitration

Key Competencies

International arbitrations can be complex, both in terms of facts and law. We routinely handle high stakes arbitrations involving large teams across several offices, external experts, local co-counsel in foreign jurisdictions, extensive document production, large number of fact witnesses, dispute funding, jurisdictional challenges and parallel proceedings.

Jurisdictional Challenges, Setting-Aside and Enforcement

The German arbitration law is codified in the 10th Book of the Code of Civil Procedure (CCP) and is almost a verbatim adoption of the UNCITRAL Model Law (Model Law). Against this background, conducting arbitrations seated in Germany does not come with any unwelcome surprises for parties and arbitrators accustomed to jurisdictions based on the Model Law. The 10th book of the CCP is arbitration friendly and gives deference to the powers of arbitral tribunals whilst ensuring effective interim relief and support on evidentiary matters through domestic courts.

The German CCP offers certain helpful additions to the Model Law, as it allows parties to seek a declaratory judgement from the Higher Regional Court, where the arbitration is seated, on the admissibility or inadmissibility of the arbitral proceedings prior to the constitution of the tribunal (section 1032 CCP). This allows parties to obtain a decision on the jurisdiction of a tribunal in a fast and efficient way and possibly allows them to avoid future costs. Proceedings under section 1032 CCP cannot stop the other party or the tribunal from pursuing or continuing the arbitration in the meantime. Moreover, section 1050 CCP allows parties, with the consent of the tribunal or the sole arbitrator, to seek assistance on evidentiary matters in support of the arbitration.

For the recognition and enforcement of foreign arbitral awards, the CCP refers solely and explicitly to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (The New York Convention).

The lawyers from our German offices have significant experience advising clients in jurisdictional challenges, setting-aside proceedings, enforcement of international arbitral awards and obtaining assistance from state courts in support of ongoing arbitrations (e.g. section 1050 CCP). Advising clients in this regard may start as early as from the stage of the drafting of the arbitration agreement that will, subsequently, ensure an enforceable arbitral award. Given the specific needs and interests of the case, the client may opt for a plain model clause of a certain arbitral institution or even for an escalation clause, if interested in a multi-tiered process or if confronted with a complex multi-contract/multi-party situation. In each case, we are there to advise in order to ensure enforceability, legal certainty and procedural efficiency.

Oral Advocacy

Unlike oral hearings before domestic courts in most civil law countries, arbitration hearings play a significant and often decisive part in the overall procedure. Generally, the counsel lays out the facts, the evidence and argues jurisdiction, merits and damages in the opening and closing pleadings. Oral hearings in international arbitration are not ancillary to the exchange of written submissions but a culmination of the proceedings directly leading the arbitrators into their deliberations. In arbitration, oral hearings do make the difference. Our lawyers have pleaded extensively in international arbitrations conducted under all major institutional rules.

Witnesses & Cross-Examination

In international arbitration proceedings, the parties often submit factual witness statements pertaining to circumstances that could not be sufficiently covered by documentary evidence, to explain technical documents or to simply provide background information. Civil law restrictions, for example preventing a party (or its employees, managers) to be a witness in its own case, do not apply to arbitration. Parties regularly submit witness evidence by its directors, managers or other employees as they have the most intimate knowledge of the project or transaction. Interviewing witnesses and assisting in the preparation of written witness statements is crucial to a clear presentation of the relevant facts. Our lawyers also work with external providers to familiarise key witnesses with the process of the cross-examination. Respectively, cross examining witnesses or technical experts is a skill that can only be acquired through experience. At Clyde & Co, we do have that experience.

Damage & Technical Experts

Most cases involve complex technical issues as well as intricate damage calculations that are reviewed and evidenced by external experts. We work closely with experts to guide them through the facts of the case and facilitate the information exchange with the client. We strongly believe that counsel must be in a position to make the party appointed experts' arguments before the arbitral tribunal with confidence rather than simply outsourcing the work. This also gives us the technical capability and knowledge to cross examine the opposing experts and scrutinise their arguments to the fullest extent possible.

Document Production and Discovery

The possibility to request the production of certain documents or categories of documents (Document Production) is well accepted in international arbitration proceedings. Tribunals and parties often seek guidance from the IBA Rules on the Taking of Evidence in International Arbitration for the conduct of the document production phase.

Obtaining documents currently in possession of the opposing side can make your case more coherent, consistent and convincing. On the other hand, extensive document production requests can be burdensome and time consuming to handle. Failure to produce certain documents without providing accepted grounds for withholding the documents may lead to disadvantageous inferences.

We have extensive experience in drafting document production requests and raising specific objections against requests made by the opposing side (e.g. legal privilege, business secrets or technical confidentiality, relevance and materiality etc.). Often, requests entail the necessity or obligation to conduct electronic searches based on keywords provided by the other party or the tribunal. We work with the client to identify so called data custodians within their company and, if necessary, retrieve electronic documents with the assistance of external providers as well as using data review platforms to enable a cost efficient search.

Disputes Funding

In a funded dispute you pay nothing towards legal fees as the case progresses – these are paid by a third-party lender who has no direct interest in the litigation. When the case is successful, the lender receives its investment back, plus a pre-agreed margin that reflects the risk incurred. You get all the rest. If the case is unsuccessful, the lender gets nothing. Besides reducing the financial risks, funding preserves the company's cash flows, removes the dispute costs from the P&L and balance sheet "drag" is eliminated. Funding also protects against unpredictable adverse costs.

Our lawyers have experience with all major funders in complex litigation and arbitration cases, particularly investment arbitration. We advise clients on the suitability of funding, the selection of the funder and advise in the negotiation stage of the funding terms. Moreover, we provide first and second opinions on the merits of a case and the associated risks.

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Investment Protection & Investor State Dispute Resolution

Germany is the cradle of investment protection. In 1959, it concluded the first ever bilateral investment treaty (BIT) with Pakistan in order to protect German investors abroad. Around 130 more BITs followed. Today, more than 2500 BITs are in force worldwide. Besides BITs, there are several multilateral investment treaties (MITs) that also contain investment guarantees as well as the possibility to commence arbitration against the host state. These include, for example, the Energy Charter Treaty (ECT) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). In addition to investment treaties, some national investment laws and regional treaties also provide for specific protections and arbitration.

Following the Treaty of Lisbon, the EU has attained competence to conclude investment agreements with third parties. Currently, the EU has signed investment agreements with the United Kingdom, Vietnam, Singapore, Japan, and Canada. Most of these treaties have been signed but are not yet in force.

Investment treaties provide substantive protections that can be invoked through Investor State Disputes Settlement (ISDS), i.e. arbitration.

The lawyers of our German offices advise investors around the globe seeking to protect their investments against, amongst others, expropriation without compensation and ensuring Fair and Equitable Treatment (FET), full protection and security as well as the free transfer of the investment and funds. In particular, the FET standard protects investors against arbitrary, unfair or discriminatory actions of the host state.

We advise parties in the pre-investment phase (treaty planning, investment registration, conclusion of stabilisation clauses), during their investment (treaty compliance) and in contentious investment arbitrations under the auspices of the International Centre for Settlement of Investment Disputes (ICSID) as well as in ad hoc proceedings (UNCITRAL).



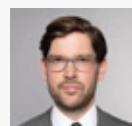
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This practice has deep experience, and the team is highly intelligent and tactically adept in a practical way

Legal 500

Arbitration team

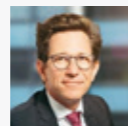
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The firm has disputes in its DNA – particularly international ones.

Global Arbitration Review

Sector Knowledge



Energy

Our Energy Group is renowned for advising and representing clients across the power (Gas, coal, nuclear) and renewables (Wind, PV, CSP, Hydropower) sector worldwide combining multidisciplinary expertise across a number of areas. Our specialists are fully equipped to provide legal support on disputes regardless of the generation type. We advise clients throughout the life cycle of their project on dispute avoidance and dispute resolution. Recent experience includes the representation of a German logistics service provider for offshore wind parks under a BIMCO Supplytime contract as well as under the contract for work and services with the network operator. Delays in the execution of the contract led to contract terminations and large-volume claims for damages, including the initiation of LMAA proceedings. Other highlights include advising and representing a Malaysian energy company in disputes, during the execution phase of a contract for the transport and installation of 80 monopile foundations for the construction of an offshore wind farm in Taiwan.



Trade & Commodities

Within the Trade & Commodities sector we specialise in hard and soft commodities, oil, gas, LNG and power, as well as newer disciplines such as carbon trading. Our clients include governments, producers, trading companies, logistics groups, refineries, banks and insurers. Recent experience includes the representation of several Indian seed and grain exporters confronted with numerous court actions and out-of-court damage claims brought by European customers due to the alleged supply of contaminated sesame seeds.



Insurance

Our insurance team handles claims across every line of insurance and reinsurance business, from the smallest claim to the largest and most complex loss. We also have dedicated corporate, commercial and regulatory insurance teams working across the globe who advise clients at every stage of their case. Recent experience includes representing reinsurers in ad hoc arbitration regarding follow-the-settlements and claims aggregation issues, CAR insurers regarding coverage claims relating to construction damages to a windfarm and, in another case, an insurer in an ICC arbitration regarding a claim made under a W&I insurance policy for alleged defects of a building in Austria.



Commercial & Corporate

Clyde & Co provides expert guidance on contracts and agreements across the private and public sectors, ensuring clients have commercial arrangements that minimise risk and maximise profitability. We represent clients in all disputes arising out of commercial contracts. Moreover, we provide wide-ranging and detailed advice on corporate matters to clients operating in key sectors in mature and emerging markets across the globe. We advise, in particular, on joint venture and post M&A arbitrations.

Corporate

Recent experience includes the representation of a German producer of road construction equipment in a complex Post M&A ICC arbitration involving a cross border acquisition and a post M&A arbitration relating to a North Sea wind park.

Commercial

Recent experience includes advising and representing an operator of an onshore wind farm in Costa Rica bringing claims against one Costa Rican and three German entities in two ICC arbitration proceedings and parallel litigation proceedings in Germany. Moreover, representing a worldwide transport and logistics leader in a complex DIS arbitration involving an ambitious transport project relating to the expansion of existing power plants.



Marine

Our global marine group provides transactional and disputes advice to clients throughout the entire maritime industry: owners, charterers, P&I clubs and insurers, shipbuilders, salvors, financiers, port authorities and governments. Recent experience includes advising the owner of a cargo of wind turbines in relation to its claims against the shipowner under a charterparty and bills of lading for late delivery of the cargo following catastrophic damage to the ship's rudder. Clyde & Co worked closely with our French colleagues to appoint a court expert and initiate evidentiary proceedings in France to ensure the preservation of important evidence to be deployed in GMAA arbitration.



Aviation

Clyde & Co has one of the world's top aviation & aerospace practices that allows us to act in relation to disputes across the industry whether regarding leases, sales/purchase agreements, repossessions or aviation and aerospace product manufacturing, including manufacturers of engines, fastening systems, satellite solar arrays and experimental aircraft. Clyde & Co has successfully represented clients in arbitrations and trials throughout the world.

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Clyde & Co currently has more than 400 active arbitrations on its books, more than any other firm in the GAR 100

A truly global law firm

With an impressive international reach, we operate on a global basis, from our own offices, our associated offices or through long term correspondent relationships with leading local firms in other jurisdictions.

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