




DR MATHIAS WITTINGHOFER

PARTNER

[Germany](#)

Dr Mathias Wittinghofer is a Partner in the dispute resolution department in Germany.

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BACKGROUND

Associations

- [Member of P.R.I.M.E. Finance – Panel of Recognized International Market Experts in Finance](#)
- International Bar Association (IBA)
- International Council for Commercial Arbitration (ICCA)
- Deutsche Institution für Schiedsgerichtsbarkeit (DIS) (German Institution for Arbitration)
- Chartered Institute of Arbitrators, Committee of European Branch
- Law Society of England & Wales
- Deutsch-Britische Juristenvereinigung/German-British Jurists Association (DBJV)
- Bankrechtliche Vereinigung (Association for Banking Law)
- Austrian Arbitration Association

- Listed as arbitrator at the Vienna International Arbitration Centre (VIAC)
- Swiss Arbitration Association (ASA)
- Member of Panel of Arbitrators of the Kuala Lumpur Regional Centre for Arbitration

Admission

- England and Wales, United Kingdom (2008)
- Germany (2004)

Education

- Oberlandesgericht Frankfurt am Main (Assessor Exam) (2004)
- Westfaelische Wilhelms-Universitaet Muenster (Referendar Exam) (2000)

Languages

- English
- German

KEY SERVICES

Financial Services Disputes
Commercial Litigation

KEY SECTORS

Banks

EXPERIENCE

Mathias is double-qualified as a Rechtsanwalt in Germany and a solicitor in England and Wales. He is also a Fellow of the Chartered Institute of Arbitrators, where he serves on the Committee of the European Branch. A member of i.a. the German Arbitration Institution, the Austrian Arbitration Institution and the Swiss Arbitration Association and listed as a recognized expert at P.R.I.M.E. Finance as well as a panelist at the Vienna International Arbitration Centre and the Kuala Lumpur Regional Centre for Arbitration. Mathias has over 15 years' experience in handling all kinds of commercial litigations and domestic and international arbitrations, with a special focus on capital markets- and post-M&A disputes, both as counsel and as arbitrator. In addition, Mathias has been acting, both as counsel and as arbitrator, in joint venture disputes, in corporate D&O liability matters and in intellectual property cases, including patents, utility models and designs. Mathias is also representing parties with a view to and advising on follow-on cartel damage claim matters. Mathias' arbitration experience includes serving as an expert on German arbitration law in foreign court proceedings.

Mathias has completed the training required to qualify as a Fachanwalt für Bank- und Kapitalmarktrecht (specialized banking and finance lawyer), published several articles on banking and finance law as well as international arbitration, and has spoken extensively on both topics. Mathias is also a lecturer on International Arbitration at the Goethe University in Frankfurt.

In 2012 and again in 2015, Mathias was awarded the prestigious ILO Client Choice Award as Germany's best litigation counsel, based on a survey among more than 2,000 in-house counsels worldwide.

In Who's Who Legal: Arbitration (2020 and 2021) Mathias is recognised as one of the world's leading commercial arbitrators and counsel, stating: "Mathias Wittinghofer is 'an outstanding colleague with a great attitude', effuse peers who distinguish him as 'an insightful counsel who is always very responsive". In the 2017, 2018 and 2019 editions of the book, Mathias was named a global "Future Leader", with the guide stating: "Mathias Wittinghofer impresses with his impeccable legal skills, outstanding character and great judgment". The guide also says: "Mathias Wittinghofer gains recognition as 'an exceptionally good strategist' who impresses with his 'extremely engaged and client-oriented approach'. Sources comment that he has 'a strong presence, especially in banking, finance and corporate disputes'".

In Who's Who Legal: Germany (2020 and 2021), Mathias is recognised as one of Germany's highest ranked lawyers in arbitration and litigation. He 'is distinguished as a "very hardworking" lawyer who excels when it comes to handling corporate liability, joint ventures and IP disputes.' "Mathias is recognised as a standout figure in the German litigation space thanks to his expert handling of a range of disputes". Since 2018, Mathias has been recognised as one of the top "leading lawyers" in the field of arbitration by Who's Who Legal: Germany, which stated: "The 'very dynamic' Mathias Wittinghofer is internationally recognised for his 'effective, excellent counsel and cogent presentation of facts and law' and is "fast and professional". The guide also recognised him as a leading lawyer in the area of TMT ("Mathias is a disputes guru who is recognised for his invaluable counsel on technology-related matters").

JUVE, the leading German legal directory, lists Mathias as a frequently recommended dispute resolution and litigation expert ("rhetorically strong", "brilliant strategist", "strong counsel in arbitrations", "mastermind", "competent and likable"). The Legal 500 Germany acknowledges Mathias as a 'very experienced' arbitration specialist. Since 2018, Mathias has also been listed by "The Best Lawyers in Germany" and Handelsblatt's "DEUTSCHLANDS BESTE ANWÄLTE" for his litigation work and since 2021 additionally for his work in arbitration and mediation as well as international arbitration.

Mathias' recent experience includes advising and representing:

- a major European telecommunications provider in a Vienna-based ICC arbitration following the acquisition of a cable network operator in CEE country under Austrian law
- one of Germany's largest commercial banks in ICC arbitration against UAE-based borrowers and guarantors under German law multi-million Euro loan agreements.
- a French innovation and engineering consulting firm as purchaser in dispute arising out of purchase of various European subsidiaries in automotive industry from Austrian holding company as defendant and seller resulting from breaches of covenants and guarantees in connection with projects undertaken by target companies.
- a leading European logistics company in a post-merger arbitration against German seller over balance sheet guarantees for Italian targets
- a ad hoc arbitration in shareholder dispute over payment obligations of shareholders in a joint venture in the rubber and tyre industry under the DIS-Supplementary Rules for Corporate Law Disputes 09
- a German multinational in > 100 mio ICC arbitration about turnkey contracts for

combined heat-and-power power plants in three different countries

- a German sickness funds in EUR 260 million dispute over establishing integrated care centres in arbitration and parallel proceedings to have arbitration declared inadmissible by Frankfurt Court of Appeals
- a leading international industrial company in a DIS arbitration over the engineering and construction of a power plant in Germany and Latin America
- in a > €100 mio. post-M&A arbitration and parallel third party expert proceedings about correctness of effective date accounts of target in petrochemical industry*
- in a > €80 mio. post-M&A DIS arbitration about violations of guarantees under SPA regarding divestiture of major subsidiary of a German multinational pharmaceutical company
- a Japanese company in proceedings to have London arbitration award be declared enforceable in Germany
- a Russian company on SCC arbitration in Stockholm against German manufacturers under CISG/German law
- a Russian corporation in dispute with German counterparty with a view to ICC arbitration in Switzerland and to challenging a related injunction sought by same counterparty in German courts against issuer of bank guarantee
- Acting as presiding arbitrator in post-M&A arbitration under DIS Rules about divestiture of transportation and shipping business and subsequent non-compete obligation
- Acting as sole arbitrator in DIS arbitration between a bank and a real estate funds in dispute about validity and operation of debtor warrant
- Acting as arbitrator appointed by institution in DIS arbitration dealing with alleged rights of recourse in the context of an insolvency following an M&A arbitration in the logistics and shipping industry
- Acting as a party-appointed arbitrator in a DIS post-M&A arbitration about post-closing purchase price adjustment in the metals and aluminium business
- Acting as party-appointed arbitrator in ad hoc arbitration concerning the dissolution of a medicinal joint venture
- Acting as party-appointed arbitrator in a DIS post-M&A arbitration concerning inter alia tax and litigation indemnifications and product liability in the automotive and engineering industry
- Acting as party-appointed arbitrator in a DIS post-M&A arbitration concerning subsequent purchase price adjustment following post-closing amendments in applicable corporate

income tax code

- Acting as a party-appointed arbitrator in a multi-party, cross-claim DIS post-M&A arbitration about the validity, applicability and extent of earn-out clauses in the SPA concerning GPS travel and navigational devices
- Acting as party-appointed arbitrator in DIS post-M&A arbitration about the validity of a withdrawal from the SPA, damages for breaches of contract and declaratory relief regarding the acquisition of licenses to use a name or trademark
- Acted as party-appointed expert on German arbitration law before the commercial courts in Thailand
- LBBW in a dispute with a municipal company regarding allegations of misselling in the context of a €295 million CDO portfolio swap transaction in German and English courts ([more information](#))
- a Portuguese government agency in a litigation about the acceleration of a €75 million bond due to alleged cross-defaults and breaches of information covenants under the loan documentation in a litigation about accelerating the maturity of a €75 million bond with reference to cross-default and information clauses ([more information](#))
- a special purpose vehicle and its corporate services management in litigation before the German courts, including the German Supreme Court (Bundesgerichtshof), about the enforceability of a securitization transaction ([more information](#))
- a Russian bank in insolvency and reorganization proceedings of German film distributor and its shareholders
- a Russian investment bank in proceedings obtaining an ex parte order to attach bank accounts in Germany held by an East-European bank to secure a €10+ million claim in parallel with concurrent attachment proceedings in the U.S., the U.K., France and Russia
- a rating agency on potential liabilities under German and EU-law
- a German bank in connection with recourse claims potentially arising out of VAT carousel*
- a major Korean bank in retrieving multi-million Euros amount wrongly paid to commercial customer*
- a US investment bank in its capacity as security trustee in syndicated loan transaction in dispute with Mezzanine lenders following disposal of collateral
- arranger bank in securitization transaction in its additional capacity as swap counterparty and liquidity bank in dispute with originator
- a Czech/Cayman Islands-based private equity fund in freezing action against

nonperforming German borrower to secure collateral and to recover outstanding loan

- a US brokerage firm against misselling claims brought by German investors
- a Swiss investment and portfolio management company against misselling claims raised by corporate investors in over 20 parallel court actions
- a German private equity fund in various parallel and closely-interconnected litigations and arbitrations in Germany, Switzerland, the US and England regarding the distribution of earnings from participations and related claims
- a Korean bank on regulatory issues following termination of managing director of German branch office
- a German bank in the German courts in connection with wide-spread fraud and embezzlement scheme
- an energy multinational in over 3 billion Euros litigation about interests in proceeds stemming from extracting natural resources in Eastern Europe
- a major European manufacturer of trucks and buses in warranty dispute with subsidiary of German railroad operator over alleged defectives of several thousand buses
- a global household name IT hardware and services provider in dispute over design of e-sales platform with multinational engineering conglomerate
- an Austrian-Russian producer of cyanides in bringing a EUR 150 million litigation against a German leading manufacturer of process technology
- a Japanese manufacturer and supplier of air conditioner compressors on contractual claims specification and warranty claims brought by a US-German OEM
- a German mid-sized company against claw-back claims brought by receiver of insolvent customer
- a truck manufacturer in fending off cartel follow-on damage claims following EU Commission's decision on Truck Cartel. ([more information](#))
- a Taiwan-based global manufacturer of childcare equipment in various litigations and injunction proceedings concerning IP rights such as patents, utility designs and designs in Germany, UK and Spain
- a German mid-cap corporate in litigation against former managing directors and their D&O insurer over failure to secure reduction of renewables-related
- a major German bank in pursuing its claims following the disclosure of a large-scale embezzlement scheme with the bank's fleet management

PUBLICATIONS

- Author: "Adjudikation – Mittel der Wahl in Corona-Zeiten?" – Platow Recht, July 2020
- Author: "[Adjukation als Weg zur alternativen Streitbeilegung - Wenn das Projekt weitergehen muss](#)" – LTO, July 2020
- Extensively quoted in: "[Adjudikation – Unbekannte Alternative zum Gerichtsprozess](#)", Handelsblatt, July 2020
- Author: "[One year of Model Declaratory Action in Germany- taking stock and outlook](#)" – Lexology, November 2019
- Co-Author: "[Derivatives Disputes: ISDA revises Arbitration Guide, expanding the model arbitration clauses](#)", 19. December. 2018
- Author, Chapters "Die Beweisaufnahme", "Schiedsverfahren vs Schiedsgutachten" and "England & Wales", in Salger/Trittmann (eds) "Internationale Schiedsverfahren", Beck, 2018
- Co-author, "Ihr Klägerlein kommet?! – Anmerkung zum Urteil des BGH in Sachen *Grauzementkartell II*", NZKart 2018, 334, August 2018
- Author, "[Erste Erfahrungen mit der europäischen Kontenpfändungsverordnung – Sorgfältige Planung und Geduld erforderlich](#)", Die Bank, Zeitschrift für Bankpolitik und Praxis, March 2018
- Author, "Negative interest on existing cash deposits imposed by change in terms and conditions unlawful", International Law Office (ILO) Banking Newsletter, February 2018
- Author, "[The DIS Rules of Arbitration of 2018](#)", Kluwer Arbitration Blog, February 2018
- "[Financial Services Litigation - Germany](#)" in: Getting the Deal Through, Law Business Research, 2017
- "[Alternative Streitbeilegung: Geschwindigkeit zählt](#)", PLATOW Recht, Nr. 57, 17. May 2017
- Author, "'[No Risk, no Fun](#)' – A Counsel's Remarks on Integrity", Schieds VZ 2017, Heft 3
- Author, "[Neue ISDA-Standard-Klausel für Schiedsverfahren bei OTC-Geschäften](#)", Risiko Manager, February 2017

- Author, "Chancen nutzen, Risiken minimieren", Die Bank, Zeitschrift für Bankpolitik und Praxis, January 2017
- Author, "[The Race Towards Predictability](#)", Austrian Yearbook, 2017
- "Financial Services Litigation - Germany" in: Getting the Deal Through, Law Business Research, 2016
- Author, "[A Never Ending Story: Claudia Pechstein's Challenge to the CAS](#)", Kluwer Arbitration Blog, June 2016
- Interview, "[Klagen gegen Aufsichtsbehörden nehmen auch in Deutschland zu](#)", Recht und Kapitalmarkt, Börsen-Zeitung, 28.05.2016
- Author, "[Arbitration and intra-EU BITs – German Bundesgerichtshof weighs in on the discussion](#)", Herbert Smith Freehills - Arbitration Notes Blog, May 2016
- Author, "[The German Federal Supreme Court dismisses claim by bondholders against Greece, denying jurisdiction on grounds of state immunity](#)", Herbert Smith Freehills - Public International Law Blog, April 2016
- Author, "[Germany intensifies fight against corruption abroad and at home](#)", Herbert Smith Freehills - Financial Services Regulation and Corporate Crime Blog, December 2015
- Author, "[Application to Have Arbitration Declared \(In\)Admissible – A German Torpedo to Arbitral Proceedings?](#)", Kluwer Arbitration Blog, November 2015
- Author, "[Arbitrations seated in Germany: Due to the dynamics within arbitral tribunals, an award can be set aside even if only one of the arbitrators was successfully challenged in the German courts and the decision was made unanimously](#)", Herbert Smith Freehills - Arbitration Notes Blog, July 2015
- Author, "[German Federal Supreme Court: No suspension of limitation by generic model applications for conciliation](#)", Herbert Smith Freehills - Dispute resolution e-bulletin, June 2015
- Author, "[CJEU confirms validity of jurisdiction clauses agreed electronically by “click-wrapping”](#)", Litigation Notes Blog, 2015
- Author, "[Argentina cannot evade payments under its government bonds: German Court rejects suggestion of a general rule of international public law obliging all creditors to participate in debt restructuring with states in economic crisis](#)", PIL Notes Blog, 2015
- Author, "German Federal Supreme Court Underlines Non-Intervenistic and International Approach of German Arbitration Law", Kluwer Arbitration Blog, 2014
- Author, "[BGH legt zivilrechtliche Informationspflicht von Banken über Innenprovisionen](#)

[bei Kapitalanlage fest](#)", Herbert Smith Freehills - Dispute resolution e-bulletin, July 2014

- Author, "Finanzbranche entdeckt Schiedsgerichte", Börsen-Zeitung, Recht und Kapitalmarkt, No.201, October 2013
- Author, "Wenn Promis für Anlageprodukte haften," Börsen-Zeitung, No. 20, January 2012
- Author, "Verbietet das AGG die Auswahl von Schiedsrichtern aufgrund ihrer Nationalität?", RIW 2011, 527-531
- Author, "BGH dehnt Haftung ausländischer Brokerhäuser aus" (Federal Supreme Court Extends Liability of Foreign Brokers), NZG, 2010
- Author, "Neue Pflichten für Onlinebroker" (New Duties for Online Brokers), Frankfurter Allgemeine Zeitung, March 2010
- Author, "Zur Berechnung des Schadensersatzes nach Art. 76 UN-Kaufrecht," (On the Calculation of Damages under Art. 76 UN Sales Law), Internationales Handelsrecht, 2010
- Author, "Emmott v. Michael Wilson & Partners Ltd: Der englische Court of Appeal meint es ernst mit der Vertraulichkeit im Schiedsverfahren – oder nicht?" (Emmott v. Michael Wilson & Partners Ltd: The English Court of Appeal is Serious About Confidentiality in Arbitration – Or is it?), SchiedsVZ, 2009
- Author, "Schiedsklauseln in Allgemeinen Geschäftsbedingungen", SchiedsVZ 2005, at 217-229

PRESENTATIONS

- Speaker, "Arbitration, Financial Services and Banking Disputes: An Update" at 9th P.R.I.M.E. Finance Annual Conference, The Hague, 4 February 2020
- Speaker, BRG Conference, London, 17 October 2019: Debating the Upsides and Downsides of Party- or Tribunal-Appointed Experts in Arbitrations
- Speaker, 3rd IBA Litigation Committee Conference on Private International Law – The latest on Brexit, International Commercial Courts and Sanctions, Milan, 25 October 2019
- Speaker, 8th Hanseatischer GmbH-Beratertag, 9 November 2018: The new DIS Rules of Arbitration

- Speaker, Annual Meeting of the German-Korean Legal Association, 27 October 2018: The new DIS Rules of Arbitration
- Speaker, 5th GAR Live Frankfurt, 12 June 2018, "Lies, fraud and deceit – what are counsel's duties in arbitration's defence?"
- Speaker, Working Group Day 2018, German-American Lawyers' Association, 2 March 2018, Frankfurt: "The new 2018 DIS Rules – a comparison with the ICC and the LCIA Rules"
- Chair, Panel "Arbitration for Finance Lawyers" at 7th P.R.I.M.E. Finance Annual Conference, The Hague, 23 January 2018
- Speaker, "Model Disputes in Capital Markets Law – The German Class Action Model", International Bar Association Annual Meeting, Sydney, 12 October 2017
- Speaker, "Arbitration and Iran", 19th Euro Finance Week, 3rd Banking and Business Forum Iran Europe, Frankfurt, 16 November 2016
- Speaker, "[No Risk, No Fun – A Counsel's Remarks on Integrity in International Arbitration](#)", Deutsche Institution für Schiedsgerichtsbarkeit/German Institution of Arbitration, Fall Conference, 28 September 2016
- Speaker, "Sovereign debt and enforcing it in the (German) courts – from Argentina to Greece", Workshop at the European Central Bank, Frankfurt, May 2016
- Speaker, "[Arbitration and the State Courts](#)", Video Post in Observations on Arbitration series, Herbert Smith Freehills - Arbitration Notes Blog, April 2016
- Speaker, "The race for predictability: is it a threat to modern arbitration?", Vienna Arbitration Days, Vienna, 22-23 January 2016
- Chair and Speaker, "[Regional trends in international arbitration](#)", CDR Autumn Arbitration Symposium, London, 2015
- Speaker and Presenter, "Towards a unitary patent law in Europe: The unified patent court and the unitary patent", Samsung Legal Technique Training conference, Seoul, September 2015
- Speaker and Presenter, "Private antitrust enforcement in Europe: The new EU directive on antitrust damages actions", Samsung Legal Technique Training conference, Seoul, September 2015
- Speaker and Presenter, "The uncitral model law – On international commercial arbitration and proceedings under the uncitral regime", 8th Duesseldorf International Arbitration School and Conference, Duesseldorf, September 2015
- Speaker and Presenter, "Pitfalls in M&A arbitration", 8th Duesseldorf International

Arbitration School and Conference, Duesseldorf, September 2015

- Speaker and Presenter, “Arbitration in Banking & Finance Disputes”, Duesseldorf International Arbitration Conference, Panel Discussion, 27 September 2013
- Lecturer “National and International Arbitration”, Goethe-Universität, Frankfurt
- Speaker, “Arbitration and Adjudication in International Construction Projects,” Association of the Turkish Construction Industry (INTES), Ankara, March 2010