

WACH UND MECKES



Dr. Karl J. T. Wach

Partner

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| Qualifications | <ul style="list-style-type: none">• PhD on futures trading law, University of Munich 1986.• Admission to the bar (<i>Rechtsanwalt</i>) 1983.• Law studies at the Ludwig-Maximilians-University of Munich, Germany. |
| Professional | <ul style="list-style-type: none">• Partner at WACH + MECKES LLP since 2009.• Partner at Ashurst LLP, Litigation/Arbitration Group, Munich, (Head of the German Litigation/Arbitration Group and of the Munich office), May 2001 – May 2009.• Partner and associate at <i>Linklaters, Oppenhoff & Rädler</i>, Litigation/Arbitration Group, Munich (and its German predecessors), 1983-2001 (partner since 1989). |
| Memberships | <ul style="list-style-type: none">• German Lawyers' Association (<i>Deutscher Anwaltverein e.V., DAV</i>).• German Banking Law Association (<i>Bankrechtliche Vereinigung e.V., BrV</i>).• German Institution of Arbitration (<i>Deutsche Institution für Schiedsgerichtsbarkeit e.V., DIS</i>).• Alumni Association of The Academy for American and International Law of the South-Western Legal Foundation, Dallas, Texas, U.S. |
| Expertise | <ul style="list-style-type: none">• Post-M&A and corporate disputes, liability (banks and financial service providers, D&O, lawyers, tax advisors and auditors), commercial disputes (including international trade, sales and distribution as well as sports marketing), financial and capital markets disputes and cartel damages.• Counsel and arbitrator in domestic and international arbitration. |
| Languages | <ul style="list-style-type: none">• German• English |
| Listed in | <ul style="list-style-type: none">• JUVE Handbook 2012/2013: Frequently recommended lawyer in the areas “Corporate and Commercial Litigation” and “Arbitration and Mediation”.• Best Lawyers 2012: Lawyer of the Year, Litigation, Munich.• Best Lawyers 2012: Arbitration und Mediation.• Chambers Europe 2012: Dispute Resolution.• European Legal Experts 2012: Dispute Resolution. |
| Publications | <ul style="list-style-type: none">• <i>Wach</i>, Schiedsverfahren bei Vierpersonenverhältnissen (<i>Arbitration proceedings in four parties constellations</i>), in: Kölner Schrift zum Wirtschaftsrecht 2.13, 2013.• <i>Wach/Meckes</i>, M&A-Streitigkeiten im Zeichen des Abschwungs (<i>M&A disputes in the current economic downturn</i>), in: Deutscher AnwaltSpiegel 01, 7 May 2009.• <i>Wach/Meckes</i>, Tactics in M&A Arbitration, October 2008.• <i>Wissenschaftlicher Gesprächskreis Schiedsrecht München</i>, Taktik im Schiedsverfahren (<i>Tactics in arbitration proceedings</i>), 2008. |

- *Wach/Kern, Der Tatsachenstoff im Berufungsverfahren: Ist die Tatbestandsberichtigung bei unvollständigem Tatbestand des Ersturteils überflüssig? (The factual basis submitted for decision in German appeals proceedings)*, in: NJW 2006, 1315-1320.
- *Wach, Der Terminhandel in Recht und Praxis (Futures trading in law and practice)*, 1986.

Recent talks

- Panel member Alternative Dispute Resolution Day of the Munich Bar Association, Arbitration in the Lawyers' Practise: discussion on „Arbitration Law: Business area with future“, July 2012.
- Talk „Current developments in the liability legislation“ (*Aktuelle Entwicklungen in der Haftungsrechtsprechung*), EUROFORUM, Conference on security paper prospect law (*Wertpapierprospektrecht*), April 2012.
- Warsaw Conference on Dispute Resolution in M&A Transactions - Tactics, Challenges, Defences: Moderation of Panel: „Settlement of Post Closing Disputes: A Different Pace?“, Warsaw, May 2010.
- Talk „Claims of third parties in M&A transactions and arbitration proceedings“ (*Drittforderungen beim Unternehmenskauf und Schiedsverfahren*), Arbitration Round Munich (*Gesprächskreis Schiedsrecht München*), July 2009.
- Talk „Claims of third parties despite guarantee – buyers of a company between all seats?“ (*Drittanspruch trotz Garantie – Unternehmenskäufer zwischen allen Stühlen?*), German Institution of Young Arbitrators (*DIS 40*), Munich, May 2008.
- Talk „Modern conflict management – economy mediation and arbitration proceedings“ (*Modernes Konfliktmanagement – Wirtschaftsmediation und Schiedsverfahren*), Chamber of Commerce Munich, November 2006.
- Conference „New arbitration law in Poland (*Neues Schiedsrecht in Polen*)“ Warsaw, November 2005.

Recent appointments as arbitrator / mediator

- Presiding arbitrator in proceedings under DIS arbitration rules in English language (post-M&A-dispute); since 2012.
- Party-appointed arbitrator in proceedings under DIS arbitration rules (contractual dispute); since 2012.
- Party-appointed arbitrator in proceedings under DIS arbitration rules (contractual dispute); since 2012.
- Party-appointed arbitrator in an ICC arbitration (contractual dispute); since 2012.
- Party-appointed arbitrator in ad hoc-arbitration proceedings (contractual dispute); 2012.
- Acting as conciliator (corporate dispute); 2011.
- Party-appointed arbitrator in arbitration proceedings under DIS arbitration rules (contractual dispute); 2010 - 2012.
- Party-appointed arbitrator in arbitration proceedings under DIS arbitration rules (post-M&A-dispute); 2010 – 2011.
- Party-appointed arbitrator in arbitration proceedings under DIS arbitration rules (post-M&A-dispute); 2009 – 2011.
- Party-appointed arbitrator in arbitration proceedings under DIS arbitration rules (post-M&A-dispute); 2009.
- Sole arbitrator in an ad-hoc arbitration in the media business; 2008.

- Party-appointed arbitrator in arbitration proceedings under ICC arbitration rules between a French and a Chinese company; 2006 – 2010.

Recent Matters**Post-transactional disputes:**

- Advising a German holding company in a dispute with a technologies company arising from a transaction.
- Advising and representing a German automotive supplier in the assertion of claims arising from and in connection with the sale of the business by way of an asset deal.
- Advising a private equity investor in a dispute with a management and investment company regarding payments from an escrow in accordance with a share purchase agreement.
- Advising the seller of a law firm in a dispute with the purchasers.
- Advising and representing a private equity investor regarding its claim for compensation from a failed M&A transaction.
- Acting for a listed English holding company and its German subsidiaries in a dispute with a German broker in relation to an M&A transaction.
- Defending a holding company in a post-M&A Arbitration under DIS arbitration rules against claims of the seller of a company for alleged violation of the SPA.
- Acting for a listed English holding company and its German subsidiaries against the sellers of a German group of companies in relation to a dispute arising from the M&A transaction (violation of contractual guarantees and balance sheet fraud by the seller and by third parties).
- Advising and representing the seller of a company against a claim of the buyer for indemnity from social security costs arising from a change of a service contract into a contract for the supply of temporary workers.
- Advising an international investment corporation as a seller against claims of a buyer of a company for damages and annulment of the SPA due to an alleged deliberate omission to disclose underperformance of one of the target's subsidiaries.
- Advising sellers of a German real estate company regarding a claim brought by the buyer for damages and annulment of the SPA due to an alleged deliberate omission to disclose material liabilities of the target company in the negotiations of the SPA.
- Advising an international catering company in a dispute arising from an M&A transaction regarding an indemnity claim against the seller for social security costs.
- Advising an international catering company in a dispute arising from an M&A transaction regarding an indemnity claim against the seller for pension liabilities.
- Acting for a UK-based distribution company regarding claims made by a German company on the basis of a non-compete provision in an SPA as well as damage claims.
- Advising a German Holding company regarding the defence against claims for alleged breach of representations and warranties in an SPA.
- Advising a German real estate company regarding a claim against a potential buyer due to the breach of an exclusivity agreement in the course of an M&A transaction.
- Advising and representing a British company in a dispute with the seller regarding an earn-out payment to the seller from an M&A contract.

- Acting for a large German holding company engaged in document business in relation to disputes arising from a share purchase agreement and balance sheet fraud by seller and third parties (appeal and law enforcement).
- Advising a German Holding Company and its shareholder re professional negligence claims in connection with the sale of a GmbH.

Banking, finance and capital market disputes:

- Advising and representing the guarantor in a dispute with a large German bank in connection with alleged obligations under the guarantee.
- Advising and representing a former chairman of a listed German industrial group in his defence against civil claims asserted by international institutional investors regarding the takeover of another listed German industrial group.
- Advising a custodian bank with regard to its civil claims and exposure in connection with so-called "cum-/ ex-trades" performed by the bank's customers.
- Advising and representing an asset management company in a dispute with an employers' association regarding the reimbursement of withholding tax.
- Advising an investor in asserting his claims against a bank arising from the bank's failure to inform the client about fee repayments to the bank in connection with the subscribing to a fund.
- Advising an investor regarding his claim against an international bank for faulty advice on tax issues and for unauthorized transactions.
- Advising an investor on negotiations with an international bank with regard to misselling.
- Advising an international law firm against a potential recourse and a respective third-party notice by a bank arising from the bank being confronted with claims from clients regarding Homm-certificates.
- Advising and representing an international private equity fund and one of their portfolio companies in a dispute with their senior facility lenders regarding an alleged event of default and a proposed transfer of the loans by the lenders to several hedge funds.
- Defending a private commercial bank against an alleged claim by an international commercial bank for payment of the purchase price for US-securities deemed worthless under Chapter 11 US Bankruptcy Code (first instance and appellate proceedings).
- Advising and representing an American brokerage firm against a compensation claim for alleged faulty investment advice by the introducing broker (appellate proceedings).
- Advising and representing investors in disputes relating to US-real estate investments.
- Defending a private wealth administrator against claims brought by the heir of a former client.
- Advising and representing an investor in a dispute against her bank in relation to faulty investment advice.
- Advising an international bank regarding the insolvency of a borrower and various subsidiaries and the validity of loan security.
- Advising an Austrian syndicate of banks regarding the loss of securities for a loan and professional negligence.
- Acting for a private client against a bank regarding the unwarranted cancellation of a promised loan for the acquisition of a hotel.
- Defending an international investment bank against claims by a subsidiary of a

listed German corporation under a guarantee in relation to the existence of a promissory note by a Southeast Asian issuer.

- Advising an investor regarding faulty investment advice.
- Advising an American investment company regarding the distribution of interests in a Cayman Islands fund in Germany.
- Advising English investment companies regarding the distribution of interests in an English fund in Germany.
- Advising US investment companies regarding the distribution of interests in an English fund in Germany.
- Advising an Austrian Bank regarding loans secured by a foreign life insurance.
- Advising an English investment company regarding the distribution of interests in a Luxemburg fund in Germany.
- Advising and representing several investment companies in (imminent) law suits concerning the recovery of securities given on the basis of void loan contracts.
- Advising an investment bank in relation to the restructuring of a listed German media company.
- Acting for a group of private and institutional investors in connection with participation certificates issued by a mortgage bank.

Cartel damage claims:

- Expert Opinion: Outline of the legal framework for the enforcement of cartel damage claims against members of national or cross-border cartels.
- Advising an international investment bank in connection with the possible securitisation of damage claims asserted in the scope of the cement cartel proceedings.
- Advising an alleged member of a cartel regarding possible damage claims vis-à-vis the other alleged members of the cartel, vis-à-vis retailers and end-consumers in relation to its own products as well as vis-à-vis retailers and end-consumers in relation to the products of the other cartel members.
- Defending a pharmaceutical company against three court actions for damages under an alleged cartel violation.

Directors' liability:

- Advising and representing a former managing director of a German solar industry company in his defence against alleged civil claims of companies of the respective group in connection with his former position.
- Advising and representing a former managing director of a German public listed company in his defence against alleged civil claims in connection with his former position.
- Advising and representing a former board member of a bank in a three-digit number of parallel civil proceedings regarding amongst others ad-hoc publicity and an M&A transaction.
- Advising and representing a former managing director of a bank in his defence against the bank's alleged claim for damages from an M&A transaction.
- Advising and representing a former managing director of a bank in his defence against the bank's alleged claim for damages resulting from losses in securities transactions.
- Defending a former board member of the listed German media company EM.TV

AG (now Constantin Medien AG) against claims based on alleged directors' and officers' liability regarding an M&A-transaction and the financing of a stage show.

- Advising and representing a former board member of the listed German media company EM.TV AG (now Constantin Medien AG), a listed German media company, as a third party in proceedings initiated by the company regarding damages in connection with an M&A-transaction.

White collar crime related disputes:

- Advising an investor with respect to potential damage claims against investment companies as well as individuals acting for this group of companies.
- Advising and representing a Greek politician in connection with white collar crime investigations relating to a German corporation.
- Advising an international catering company in relation to the investigation of possible fraudulent actions by former directors.
- Advising an international agency in investigations regarding alleged advertising for illegal gambling.
- Advising an international ferry services provider with respect to criminal investigation against one of its customers.
- Advising an international financial group in connection with the misuse of their name and trademark by fraudsters.
- Acting for a Norwegian bank regarding the international enforcement of a Norwegian Judgement against one of its customers and advising in relation to the tracing of assets.
- Advising a managing director in connection with criminal investigations against him regarding the bankruptcy of another company.
- Acting for the operator of automated teller machines in a dispute with its service bank and its service provider regarding cash discrepancies.

Product liability:

- Advising a manufacturer of marine distress signals in relation to a claim against one of its suppliers for damages due to supply of a faulty product.
- Advising a manufacturer of automotive parts regarding possible safety deficiencies of a product and the respective grounding actions (vis-à-vis a co-producer who possibly caused the safety deficiency, the customers as well as the competent authorities).
- Advising a manufacturer of automotive parts regarding possible product liability claims.

Professional liability:

- Advising a holding company regarding a claim for professional liability against their former legal advisors in an M&A transaction.
- Advising a German textile manufacturer and its shareholders with regard to potential claims against the tax advisor arising from faulty legal and tax advice.
- Advising a power plant operator on the enforcement of its claim against its legal advisors due to breach of contract.

Corporate and commercial disputes:

- Advising a private equity investor in a dispute with a consulting company with regard to the payment of a commission for allegedly brokering and investment opportunity.

- Advising a distressed debt fund management company with respect to the purchase of damage claims from a South African company.
- Advising a patent attorney law firm in drafting their articles of partnership.
- Advising and representing a petrochemical manufacturer in dispute with its energy supplier regarding the reimbursement of renewable energy-surcharges.
- Advising and representing a professional golf player in a dispute with a sports marketing agent regarding a management contract.
- Advising a company doing business in medical diagnostics in a dispute arising from a contract for service and supply.
- Advising and representing two resigned partners of a patent attorney law firm with regards to claims in connection with their resignation from the law firm.
- Advising and representing a German manufacturer of components for railroad and commercial vehicles regarding the cancellation of a delivery contract.
- Advising and representing a German publishing company in asserting claims in connection with the withdrawal of the publishing company as shareholder of a distribution company for print media.
- Advising an international consulting company in a conflict with a software company regarding a faulty software.
- Advising an English healthcare company regarding claims for payment under a contract for delivery against a German business partner.
- Advising an international bank on the enforcement of a Swiss arbitration award in Germany.
- Advising a German association on a procedural strategy in order to challenge a value added tax regulation which is considered to violate EU law.
- Advising and representing an American professional sports team in the appellate proceedings against an agent claiming commission payments for sponsorship deals (further appeal to the Federal Supreme Court).
- Acting for a global consulting firm in relation to disputes with shareholders regarding their withdrawal.
- Advising and representing a Middle East private airline in a dispute regarding the outfitting of a widebody aircraft.
- Advising partners of a professional services firm in a dispute with other partners of that firm.
- Advising a cigarette producer in relation to obligations regarding retention of documents.
- Advising and representing a German food producer in an action against notices by the customs authorities ordering the client to pay back export refunds.
- Advising a German co-ordinator of shows in a corporate dispute with his co-shareholder.
- Advising an international agent for sports rights licenses in connection with a remuneration claim regarding the exploitation of TV-rights to the UEFA EURO 2008.
- Advising a US real estate company regarding the termination of several contracts by its contractors.
- Advising and representing a managing director of a company in connection with his position as managing director and shareholder.
- Advising a transport services provider on options to terminate a framework agreement with an automobile manufacturer.

- Advising an English supplier of automotive parts and machinery regarding claims against a Chinese automotive company and the defence against claims by a German manufacturer of machinery.
- Advising an overseas car importer regarding its compensation claims after termination of a contract.
- Representation of an international agency in connection with the unjustified extraordinary notice of an agency agreement by one of their clients.
- Representation of an Austrian law firm regarding the enforcement of their fee claim against a German client.
- Advising a German food producer in connection with the provision of securities for cross-border delivery of goods.
- Advising a German listed Corporation in an arbitration initiated by shareholders to challenge the adequacy of the exchange ratio of shares of two merged companies.
- Advising a German Sports Club regarding the defence against claims for alleged commissions for the marketing of TV rights (first instance and appellate proceedings).
- Advising a shareholder concerning the sale of his registered shares with restricted transfer.
- Advising a Dutch Holding company and its European subsidiaries in relation to the termination of a framework delivery agreement.
- Advising a Japanese car manufacturer regarding professional negligence claims against an international law firm in connection with advice regarding the termination of a distribution agreement.
- Advising a manufacturer of plastics regarding competition of a minority shareholder.
- Acting for a petrochemical manufacturer in an UNCITRAL-arbitration with its energy supplier regarding the allocation of costs for CO2 emission allowance certificates.
- Advising an Italian airline regarding the termination of a service agreement.
- Advising a Swiss company regarding claims against a German agent.
- Advising a petrochemical manufacturer regarding damage claims arising from the shutdown of a supplier's production plant.
- Advising a manufacturer of automotive parts regarding the outsourcing of logistic services in several jurisdictions (Europe/Asia), especially regarding liability of the carrier/freight forwarder.
- Advising a Brazilian distribution company re termination of a contract with a German brewery group.
- Advising a Japanese Corporation regarding claims arising from a joint venture with an insolvent German company.
- Defending a German paper manufacturer against claims based on an alleged distribution agreement with a Belgian company.
- Acting for a shareholder in the enforcement of claims under a guarantee agreement against the other shareholders of the company.
- Acting for a shareholder of a German construction company in an ad hoc arbitration re the validity of certain shareholder resolutions.
- Acting for an initiative of the German Government and the German industry in a dispute with a PR-agency.

- Acting for a shareholder of a German construction company in an ad hoc arbitration regarding his compensation for the withdrawal from the company for good cause.
- Advising a shareholder of a German construction company re the dissolution of the company.
- Advising an Italian manufacturing company regarding contractual claims against a German purchaser being in liquidation and against the purchaser's parent company.
- Defending a German company against former intra-group claims.
- Acting for a private client re damage claims against a bank due to remarks compromising the client's creditworthiness.
- Acting for former shareholders of a manufacturing company against a German city regarding the compensation for real estate development costs of the factory premises acquired from the city.
- Advising an oil company regarding the failure of a proposed financing agreement and fraud by a German company.
- Advising a German holding company in a DIS-arbitration against a US corporation regarding claims for net equity adjustment, release of an escrow amount and delivery of closing date accounts resulting from sale of shares of a GmbH.
- Advising an international IT company as a defendant in a court action in Germany.
- Advising an individual with regard to the purchase of a rare car and review of the available documentation.

Litigation support in corporate and finance transactions:

- Advising an international investment fund in connection with the possible acquisition of a share in a German bank regarding litigation risks.
- Advising a Japanese automotive supplier in connection with the possible acquisition of a group of German producers of automotive parts.
- Advising an investor in connection with the possible acquisition of an office building in Frankfurt a.M. regarding litigation risks arising from a dispute between the current owner and tenant.
- Advising an international commercial bank in connection with the possible acquisition of a German bank regarding litigation, compliance, regulatory risks of the target.
- Advising an international investment bank in connection with the possible acquisition of a German bank regarding litigation risks of the target.
- Advising an international Private Equity company in connection with the acquisition of nursing homes regarding litigation risks of the target.
- Advising an international consortium of banks in relation to the financing of the acquisition of a German group of telecommunication providers regarding litigation risks.
- Advising an international commercial bank in connection with the possible acquisition of a German bank regarding litigation, compliance, regulatory risks of the target as well as regarding guarantee clauses in the share purchase agreement.