

McDermott  
Will & Emery

# International Dispute Avoidance & Resolution

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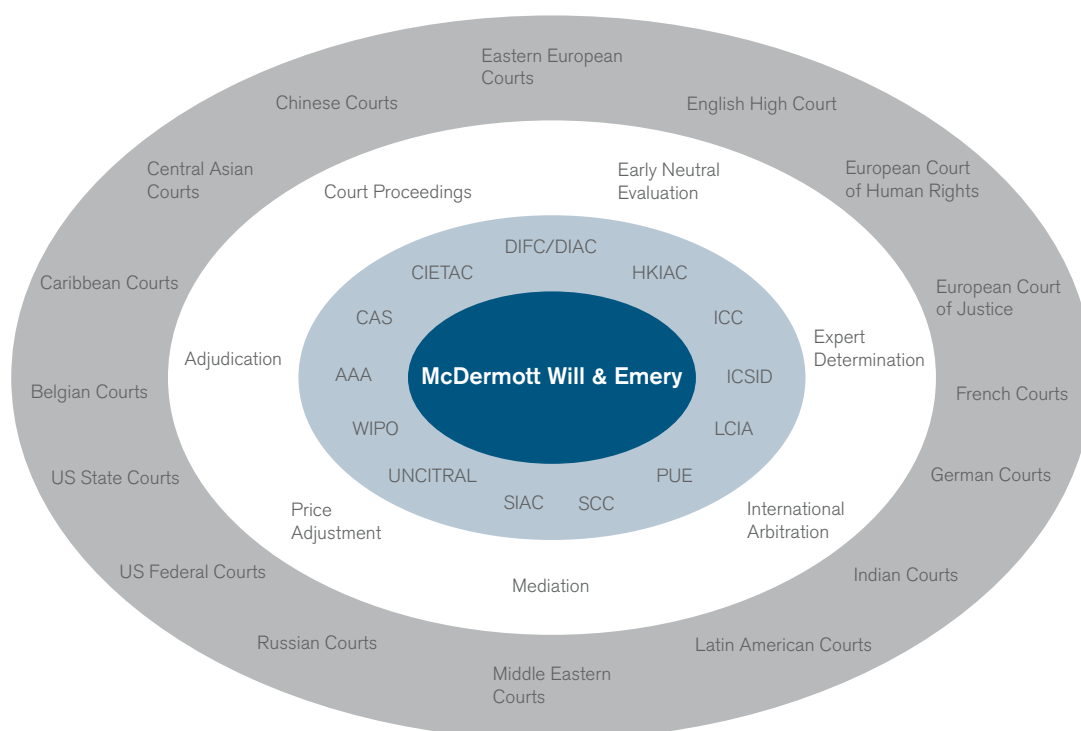


# Why McDermott Will & Emery?

McDermott Will & Emery's International Dispute Avoidance & Resolution Practice Group does not wait until a dispute has arisen to advise clients. We are there from the beginning. It is of the utmost importance to anticipate possible disputes before they happen. This is why we advise our clients how to structure transactions to avoid disputes and also to ensure they have maximum leverage if a dispute arises. Our overall aim is always to help our clients meet their commercial objectives while minimising risk.

Once a dispute looks likely, we do not approach the problem as an abstract exercise. We work side-by-side with our clients to analyse the particulars of the dispute together with their economic imperatives. This allows us to tailor a strategy that is determined by realities and that will work for our clients. We keep our clients ahead of the curve when a dispute is unfolding and never lose focus on the possibility of early resolution.

If a dispute is unavoidable, our practice is to steer clients through the maze of an international dispute in a clear and efficient manner. When an international dispute requires full firepower, we do not hesitate to use it. On the other hand, if a more subtle approach is needed, perhaps because of cultural sensitivities, we take that route. Whichever path is required, our global team distinguishes itself from other firms by our uncommon perspective on our clients' business and our ability to translate that perspective into tenacious and creative advocacy of our clients' position. This is why our International Dispute Avoidance & Resolution Practice Group is so effective.



## World-Class Advisors

McDermott Will & Emery's International Dispute Avoidance & Resolution Practice Group is composed of professionals situated across three continents, including lawyers practising with MWE China Law Offices in Shanghai, which has a strategic relationship with McDermott. Our lawyers are proficient in the full host of dispute avoidance and resolution techniques. Whether in North America, Europe, China or elsewhere, our group is able to provide the highest quality co-ordinated solutions in complex, cross-border disputes that involve a wide range of commercial and legal issues. For further information please contact us at [idar@mwe.com](mailto:idar@mwe.com).

# Our Approach to International Dispute Avoidance and Resolution

<b>NON-CONTENTIOUS ADVISORY</b> <b>STRUCTURING A TRANSACTION TO AVOID DISPUTES</b>	<b>CONFLICT MANAGEMENT</b> <b>MANAGING PROBLEMS EARLY TO AVOID A DISPUTE</b>	<b>DISPUTE RESOLUTION</b> <b>A HEAVY HITTING TEAM</b>
<p><b>PRIVATE INTERNATIONAL</b></p> <ul style="list-style-type: none"> <li>▪ Where are the parties?</li> <li>▪ Governing law?</li> <li>▪ Dispute resolution possibilities:               <ul style="list-style-type: none"> <li>– Litigation</li> <li>– Arbitration</li> <li>– Expert determination</li> </ul> </li> <li>▪ Include negotiation/mediation step?</li> <li>▪ Consider place of the dispute resolution procedure</li> <li>▪ Assess ultimate enforcement of judgment or award</li> <li>▪ For international arbitration, consider:               <ul style="list-style-type: none"> <li>– <i>Ad hoc</i> or institutional arbitration</li> <li>– Scope of arbitration clause</li> <li>– Number of arbitrators</li> </ul> </li> <li>▪ Consider contract terms for potential dispute risks and limit liabilities</li> </ul>	<ul style="list-style-type: none"> <li>▪ Identify our clients' commercial objectives</li> <li>▪ Manage the commercial relationship</li> <li>▪ Analyse pre-dispute tactics</li> <li>▪ Assess strengths and weaknesses of case</li> <li>▪ Systemise pre-dispute behaviour:               <ul style="list-style-type: none"> <li>– Implement codes of conduct</li> <li>– Establish guidelines and best practices for members of the organisation</li> <li>– Document management</li> </ul> </li> <li>▪ "Front-end" the dispute by considering:               <ul style="list-style-type: none"> <li>– Evidentiary issues</li> <li>– Potential legal hurdles</li> <li>– Multi-jurisdictional issues</li> <li>– Engage local counsel if necessary</li> <li>– Enforcement issues</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ What is the objective?               <ul style="list-style-type: none"> <li>– Recovery of money</li> <li>– Recovery of assets</li> <li>– Restrain behaviour</li> <li>– Start a negotiation</li> <li>– Protect reputation</li> </ul> </li> <li>▪ Design strategy to achieve the objective:               <ul style="list-style-type: none"> <li>– Consider bifurcation of liability from damages</li> <li>– Commence court or arbitration proceedings</li> <li>– Choose arbitrator to fit disputes</li> <li>– Apply for interim measures</li> <li>– Apply or respond to discovery application</li> <li>– Consider jurisdictional issues or objections</li> <li>– Identify key witnesses and evidence</li> <li>– Consider options unique to the <i>locus</i></li> </ul> </li> </ul>
<p><b>PUBLIC INTERNATIONAL</b></p> <ul style="list-style-type: none"> <li>▪ Where are the parties?</li> <li>▪ Are the states involved contracting states to the Washington Convention?</li> <li>▪ Is there an applicable investment protection treaty (BIT or MIT like NAFTA, ECT)?</li> <li>▪ Consider political risks:               <ul style="list-style-type: none"> <li>– Expropriation, nationalisation or confiscation</li> <li>– Regulatory interference</li> <li>– Currency risk</li> <li>– Civil disturbance</li> <li>– Corruption</li> <li>– Breach of state contracts</li> <li>– Trade restrictions</li> </ul> </li> <li>▪ Would a contractual dispute resolution mechanism be appropriate?</li> </ul>	<ul style="list-style-type: none"> <li>▪ Consider commencement of claim/request for arbitration as a tactical advantage</li> <li>▪ Consider negotiation, mediation or conciliation avenues</li> <li>▪ Evaluate cultural and reputational issues</li> <li>▪ Estimate costs of potential dispute</li> <li>▪ Review whether insurance protection is appropriate</li> <li>▪ Review availability of third party funding</li> </ul>	<ul style="list-style-type: none"> <li>▪ Consider opponent's vulnerabilities</li> <li>▪ Analyse client's vulnerabilities</li> <li>▪ Tough does not mean obnoxious               <ul style="list-style-type: none"> <li>– Keep case on track</li> <li>– Progress case with common sense</li> <li>– Gain respect and confidence of judges or arbitrators</li> </ul> </li> <li>▪ Face the economic realities of the dispute               <ul style="list-style-type: none"> <li>– Analyse quantum in dispute</li> <li>– Field the most efficient and effective team</li> </ul> </li> <li>▪ Provide creative written and oral advocacy               <ul style="list-style-type: none"> <li>– Less is more</li> <li>– Communicate arguments in simple terms</li> <li>– Bridge international legal and cultural difficulties</li> </ul> </li> <li>▪ One team: build an effective client and McDermott collaboration</li> <li>▪ Fight tenaciously to achieve the objective</li> </ul>

# International Dispute Avoidance & Resolution Experience

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## INTERNATIONAL ARBITRATION

- Acted for Azpetrol International Holdings B.V., Azpetrol Oil Services Group B.V. and Azpetrol Group B.V. in their Energy Charter Treaty International Centre for Settlement of Investment Disputes (ICSID) claim against Azerbaijan
- Acted for the European Bank of Reconstruction and Development (EBRD) in an arbitration subject to English procedural law and Czech substantive law. This arbitration was governed by the United Nations Commission on International Trade Law (UNCITRAL) rules and had the London Court of Arbitration (LCIA) as appointing authority
- Acted for the Government of Georgia in its successful defence in an ICSID arbitration, subject to Georgian Law, commenced by a consortium of international construction and project finance companies in relation to the construction and operation of a hydro power station outside Tblisi, Georgia
- Acted for a major international diamond corporation in relation to a Stockholm seat UNCITRAL arbitration, subject to Russian and English law, relating to a dispute as to exploration rights in Russia
- Acted for EBRD in an arbitration subject to English procedural law and Bulgarian substantive law. This arbitration was governed by the UNCITRAL rules and had the LCIA as appointing authority
- Acted for an oil major in an arbitration governed by the rules of the LCIA and subject to English law in relation to disputes arising under a partnership agreement
- Acted for Hunter Fan Company in an arbitration subject to English procedural law and New York substantive law. This arbitration was *ad hoc* and governed by the UNCITRAL Rules
- Acted for a large Swedish conglomerate in an arbitration governed by the rules of the London Maritime Arbitrators Association (LMAA) and subject to English procedural and substantive law
- Acted for an oil company operating in Kazakhstan in a high value arbitration subject to English procedural and substantive law, governed by the UNCITRAL Rules and administered by the LCIA
- Acted for a Nevis offshore international trade company in an *ad hoc* arbitration subject to English substantive law and Swiss procedural law
- Acted for a leading US construction company in an arbitration governed by the LCIA rules and subject to English procedural and substantive law
- Acted for a multinational petrochemicals company in an arbitration subject to English substantive law and Singaporean procedural law relating to a dispute over misuse of confidential information
- Acted for a US chemical company in a US\$270 million arbitration concerning the sale by a European chemical company of a plant in the United States
- Acted as lead counsel for an Eastern European government-owned energy company in respect of a shareholders dispute subject to a Stockholm seat UNCITRAL arbitration
- Acted for a US private equity client, in an arbitration award directing the minority shareholders of a Chinese company to transfer a majority of the company's stock to the client, following an arbitration hearing conducted in Hong Kong under the rules of the Hong Kong International Arbitration Centre
- Acted for a US subsidiary of a German company, in an American Arbitration Association (AAA) arbitration hearing in New York, in a case involving the breach of an indemnification provision in a stock purchase agreement

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- Acted for a French company, where the client received an award of US\$36 million (and the dismissal of US\$30 million in counterclaims against the same client) following an International Chamber of Commerce (ICC) arbitration held in New York, in a case involving breaches of representation and warranties in an aircraft-component company acquisition agreement
- Acted for a New Jersey glassware manufacturer in an ICC arbitration in Zurich, Switzerland
- Acted in an arbitration under the Deutsche Institution für Schiedsgerichtsbarkeit (DIS) rules and subject to German law in a dispute arising under a share purchase agreement between South African and German parties
- Acted in an arbitration under the Netherlands Arbitration Institute (NAI) rules and subject to German law in relation to an international sales agreement between Dutch and German parties
- Acted for a major Austrian company in an arbitration under the ICC rules and subject to German law in a dispute arising under a share purchase agreement between Austrian, French and German companies

## LITIGATION

- Acted for an investment bank in complex English High Court proceedings arising from a US\$2 billion collateral debt obligation (CDO) transaction
- Acted for a bulk liquid storage company in a dispute with the UK Government regarding damage caused to their facilities following the Government's use of the facilities for the storage of tallow rather than the usual hydrocarbon products
- Acted for a leading spirits manufacturer in a shareholder dispute in the Caribbean courts and then on appeal to the Privy Council from the Eastern Caribbean Court of Appeal
- Acted for a US company to recover US\$10 million stolen in an international fraud. The client obtained a worldwide freezing injunction and an interim search order
- Defended a New York subsidiary of an investment bank against a claim in the English High Court. The client successfully brought a jurisdictional challenge which concluded the proceedings
- Acted for UEFA in a third-party European Court of Justice action regarding the scope of television rights
- Acted for a leading oil company in English High Court proceedings to enforce an ICC award against two defendants
- Defended an energy company in an English High Court case resulting from the collapse of Enron and regarding a dispute over certain licenses to develop onshore gas fields in the United Kingdom
- Acted for Juventus Football Club S.p.A in English High Court proceedings to enforce a Court of Arbitration for Sport (CAS) award against a Premiership club
- Acted for a leading oil company on dispute avoidance and resolution tactics relating to a drilling programme in the North Sea and including renegotiating all agreements with a drilling contractor
- Acted for Formula One Administration Limited in its English High Court claim against a Canadian company in respect of unpaid promotional fees
- Acted for a Greek shipping company in a contractual dispute with a Qatari government entity relating to the chartering of ships for the Doha Athletic Games
- Acted for an investment management company in its dispute with Lehman Brothers (in administration) over the interpretation of terms of an International Swaps and Derivatives Association (ISDA) Master Agreement

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- Acted for an Italian distributor on jurisdictional defences to a claim brought by an English clothing manufacturer
- Acted for an international sports promotion company in a trade mark and passing off claim in the English High Court
- Acted for a Korean company in a New York state court action, in which the Supreme Court granted summary judgment in favour of the client, ordering the defendant to pay the client over US\$110 million in damages on a loan guarantee, as well as to reimburse the client's legal fees
- Acted for a Korean company, in the dismissal of claims totaling more than US\$10 million against the client, following an ICC arbitration held in London, in a case that involved the termination of a Korean distributorship by a major US apparel company
- Acted for a Korean company in a New York federal court action, in which the court granted summary judgment victory in favour of the client, dismissing claims in excess of US\$50 million asserted by a consortium of multinational banks
- Advising UN Secretary General's Special Adviser on the Cyprus dispute, Alexander Downer, on property restitution, a critical issue in resolving the dispute between the Greek and Turk Cypriots
- Acting for Swiss and Italian private banks and investors against Argentina in litigation in New York federal courts regarding Argentina's bond default. In the last three years, have achieved three final judgments against Argentina
- Acting for the National Council of the Union of Burma, the largest pro-democracy coalition, including on the US JADE sanctions bill, at the International Labour Organisation, the European Commission and the UN
- Acting for a UK client in resolving an ADR dispute with a former subsidiary and as a creditor in a US bankruptcy, both regarding a billion dollar environmental cleanup. In 2007-2008, advised the same client in a mediation regarding the same cleanup
- Acted for a client in the successful defence of a legal action based on an alleged infringement of his duties as managing director prior to insolvency proceedings and obtained unconditional dismissal of the action
- Acted for a US manufacturer of heavy handling machines in a legal action and comprehensive enforcement proceedings against a German import-export business to receive the purchase price which was secured by a Swiss letter of credit and won all instances
- Acted for a US company's German subsidiary in proceedings in the Berlin Regional Court. Obtained unconditional dismissal of all claims exerted against client's subsidiary by former owner of subsidiary based on alleged purchase-price related commission agreement
- Acted for a manufacturer of autoclavable soap and disinfectant dispensers in a successful legal action based on alleged infringement of 3-dimensional trade marks, patents, design patents as well as unfair competition and obtained dismissal of the action
- Acted for one of Germany's major online-ticket vendors in its successful defence against joint infringement claims raised by six of Germany's top football clubs of the Bundesliga, *inter alia* FC Bayern München and FC Schalke 04



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