



Bird & Bird & First for Disputes

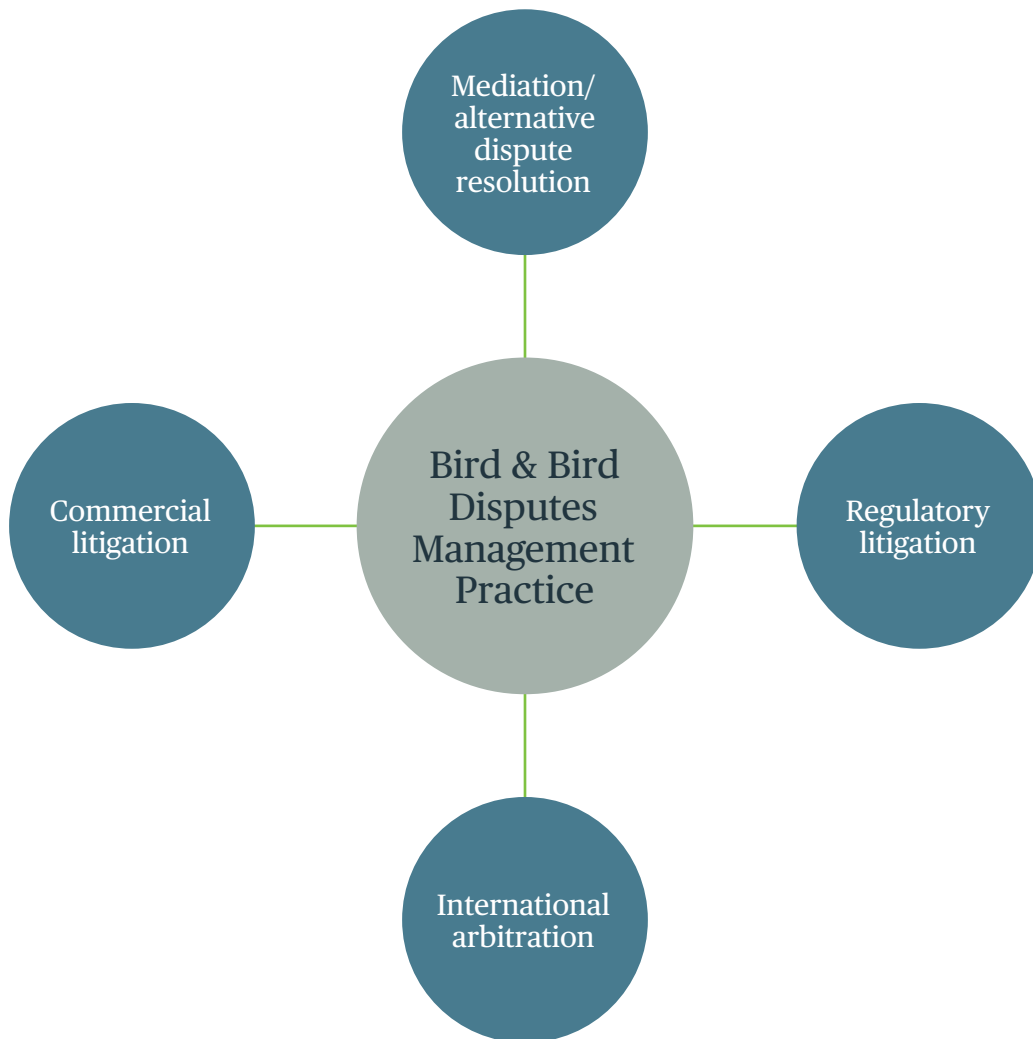
Our banking and financial services
dispute resolution group

Our dispute management practice

Our business is resolving disputes in the manner which serves the best interests of our clients, whether this is through negotiated settlement, mediation, arbitration or litigation.

We aim to do this in a cost effective way by placing the right team on the job and with the most appropriate fee structure for the case and the client whether this is hourly rates, fixed or capped fees, CFAs, DBAs, blended rates, fee smoothing or a hybrid of these.

Our dispute resolution lawyers in London do not work in isolation; we are part of the Financial Services sector group which includes banking & finance, regulatory & commercial lawyers from across our international offices. We work as a cross-discipline, international team where the matter requires this.



Demonstrates strength in high-value disputes in its sector specialisms of IT and telecommunications, energy and financial services. Works seamlessly alongside colleagues in other departments and jurisdictions in order to provide a full-service offering to corporate clients.

Bird & Bird LLP 'operates at a very high level, and is extremely good value for money'

Legal 500 2013

Our Banking and Financial Services Dispute Resolution Group

Sector focus

Bird & Bird has considerable expertise in the banking and financial services sector including a dedicated banking and financial services dispute resolution group. We advise a broad range of clients, including financial institutions and their counterparties, and our deep industry knowledge, international reach and, in many cases, absence of conflicts, means we are well placed to advise on complex disputes including those involving structured products and derivatives.

- **Large group of institutional shareholders** in a £3.5 billion claim against RBS for alleged misrepresentation in its prospective breach of section 90 FSMA arising from RBS's rights issue in June 2008
- **Leading global investment bank:** defence of an \$800 million claim for alleged mis-selling and misrepresentation in respect of various CDOs/CDSs
- **Forsta AP-fonden:** successfully representing the Swedish pension fund against the Bank of New York Mellon relating to a \$27 billion structured investment vehicle, which collapsed in 2008
- **Elisa Oyj:** acting for a Finnish telecoms company, in connection with the \$60 million High Court proceedings issued by investment bank UBS arising out of a credit restructuring transaction using complex derivative products together with related cross-claims
- **Global bank:** acting for a global bank (headquartered in Pakistan) in proceedings in England and other jurisdictions for the recovery of \$60 million against various guarantors including an action to set aside a property transaction under the Insolvency Act 1986
- **Bayerische Landesbank:** acting in the successful defence of Commercial Court fraud proceedings for one of the largest financial institutions in Germany in relation to a dispute with Norwegian bank, Sparebanken Øst
- **Investment bank** in £100 million breach of contract and negligence claim brought against it as sponsor on the launch of an investment fund and as financial adviser
- **The Lehman Chapter 11 Bankruptcy:** advising on disputes surrounding the close out of swaps and other derivative products both under ISDA and non-ISDA agreements

Building on Bird & Bird's renowned status as a leader in the fields of IT, IP, outsourcing, telecoms and life sciences, this dispute resolution group has developed a formidable reputation in these core areas and in a broad spectrum of high-calibre contentious commercial and banking-related matters.

Chambers Europe 2013

Full range of clients

Bird & Bird acts for many of the world's leading financial institutions. Where disputes have an international element, our lawyers are able to rely upon a highly integrated international team, providing our clients with an extensive cross-border dispute resolution capability, particularly in Europe and Asia. This, coupled with our distinctive sector based approach, sets us apart from our competitors, many of whom are increasingly precluded from acting for high profile banking sector clients, for reasons of conflict. Our clients include:

- Asset management companies
- Credit management services companies
- Hedge funds
- High-net-worth individuals
- Institutional shareholders
- Investment banks
- Pension funds
- Public authorities
- Regulators
- Retail banks

Clients comment that Bird & Bird's banking & finance team offer "responsive, detailed, thorough advice, delivered with a businesslike approach."

Chambers and Partners 2011

- **Hedge fund:** acting in a dispute concerning the provision of a top-level guarantee (secured on fund shareholdings) as an alternative to the provision of collateral under a derivatives transaction entered into by a fund vehicle with a major bank
- **Investment bank:** acting for the UK arm of a Canadian investment bank in relation to proceedings brought by a US investment bank in relation to a disputed commodities option and forward trade
- **Public authority:** acting for the City of Bergen, Norway in a dispute with RBS arising out of a NOK500 million extendable interest rate swap agreement
- **Electronic payment provider:** acting for Paypal in relation to claims for breach of contract and negligence
- **Payment collections company:** advising in relation to claims for breach of duty and misrepresentation in relation to interest rate swaps
- **Investment bank:** advising on the close out and netting of currency swaps



Full range of banking and finance dispute management services

We provide disputes advice on a full range of banking and financial service matters including:

- Disputes in relation to structured finance products including CDOs, credit linked notes, swaps and other derivative transactions
- The obligations and duties of banks, including claims relating to breach of mandate, the duty of confidentiality and constructive trusts
- Distressed and sovereign debt trading disputes
- The recovery of loan monies and the enforcement of security
- Fraud and the tracing and recovery of assets
- Claims against professional advisers including reporting accountants
- Regulatory compliance issues under the Financial Services and Markets Act
- Primary and secondary loan syndications
- Note/bond issues whether acting for different classes of noteholders or the trustee and paying agent
- Responding to regulatory investigations and enforcement actions

“Bird & Bird has extensive experience in banking disputes and specific expertise relating to investment funds and distressed debt.”

Chambers and Partners 2014

- **Three major financial institutions:** in connection with a cross-border fraud perpetrated by borrowers including securing and maintain freezing orders against the defendants based in the UK and the UAE
- **High-profile financial services client:** acting in a range of complex international litigation matters in multiple jurisdictions including seeking and obtaining injunctive relief, contempt proceedings, pursuing substantial outstanding payments, responding to potential judicial review proceedings as well as substantial intellectual property and employment proceedings
- **Regulated persons:** advising in relation to a regulatory investigation and enforcement proceedings brought by the (then) FSA
- **International bank:** acting in relation to proceedings brought against guarantors in the UK, Dubai and Pakistan
- **Europe’s leading credit management services company:** in relation to an ongoing dispute with an internationally well known, Spanish based, financial institution before the Madrid courts in relation to an alleged breach of a purchase and assignment credit portfolio agreement entered into between the parties



International reach

We have offices in Abu Dhabi, Beijing, Bratislava, Brussels, Budapest, Copenhagen, Düsseldorf, The Hague, Hamburg, Helsinki, Hong Kong, Frankfurt, London, Lyon, Madrid, Milan, Munich, Paris, Prague, Rome, Shanghai, Singapore, Skanderborg, Stockholm and Warsaw. Where disputes have an international element, our lawyers are able to rely upon a highly integrated international team, providing our clients with an extensive cross-border dispute resolution capability, particularly in Europe and Asia. Being a truly integrated international team, we are able to provide genuine local knowledge and understanding of a variety of systems of laws and procedures.

- **Leading Bavarian commercial bank:** dispute with a Norway-based regional bank in relation to the role and duties of a Facility Trustee in a syndicated loan
- **Middle-East Islamic investment bank:** disputes arising from a Retakaful investment business
- **Nordic bank:** professional negligence claims against advisers concerning loan facility made in connection with a real estate transaction
- **National Spanish bank:** in relation to a derivatives disputes concerning the rights and liabilities of the parties following the termination of a swaption contract
- **Canadian-based international financial services company:** tax indemnity claim against a major international bank in relation to the acquisition of the shares in the bank's life insurance subsidiary in the Philippines
- **Executive director of an HK listed company:** in relation to breach of HKSE listing rules through share dealings in black out period and subsequent SFC investigation
- **Mauritius registered bank:** in respect of loan sums overdue under a facility agreement. We successfully defeated a jurisdiction challenge and this judgment has been referred to as authority for the proposition that the English Courts will enforce an asymmetric jurisdiction clause
- **Italian-based bank:** in English High Court litigation over reliance on a reference

Notable experience in Italian and European asset management and finance services regulations.

Chambers Global 2013

Bird & Bird LLP earned significant instructions from German banks undertaking larger, more complex transactions, ... 'extremely high-quality lawyers: knowledgeable, responsive and professional'.

Legal 500 2013

Continues to capitalise on its strong reputation for advising some of the largest domestic banks. Recently the firm assisted its clients on the gamut of financial issues, from restructuring to complex derivative litigation.

Chambers Europe 2013 (Poland)



Financial regulatory disputes

We provide advice and support to financial institutions faced with investigations or enforcement actions by the financial and other relevant regulators including in respect of market abuse, anti-money laundering, and anti-bribery and corruption systems and controls.

- Representing a bank in an FCA investigation into insider dealing
- Representing a bank in an HMRC investigation into potential tax evasion by senior officers
- Advising a bank in an anti-money laundering investigation and subsequently as a witness in a criminal fraud trial

Arbitration expertise

Recent years have seen an increase in the use of arbitration in the financial sector, including in relation to privately negotiated or over-the-counter (OTC) derivative transactions. Bird & Bird's International Arbitration Group is a cross-border, integrated, multi-disciplinary team with an in-depth knowledge of arbitration as a dispute resolution mechanism and comprehensive understanding of key industry sectors. The group is truly international practising out of our offices in the world's key arbitral centres including London, Paris, Stockholm, Hong Kong and Singapore under the rules of the world's leading arbitral institutions (ICC, LCIA, AAA/ICDR, CIETAC, UNCITRAL, ICSID, WIPO). Our arbitration expertise has been at the forefront of helping to resolve many complex disputes in the financial services sector.

- **5 SPV companies** that were the claimants in \$160 million LCIA arbitration proceedings relating to investments made by the claimants in development contracts in Qatar, and involves serious allegations of fraud, deceit and allegations relating to the operation of a ponzi scheme
- **US asset finance company:** in arbitration proceedings in connection with disputes against the trustee and various minority shareholders regarding the redemption of shares
- **Leading global supplier of financial trading systems:** an UNCITRAL arbitration with an Asian stock exchange in a US\$107 million ICC arbitration over the supply of a derivatives trading system
- **International financial payments company:** an ICC arbitration seated in London arising from the shipment of a major consignment of banknotes to Nigeria
- **Leading Polish bank:** arbitration proceedings against an investor in relation to the assigned remuneration of a construction company
- **Major Swiss bank:** in a LMAA arbitration in relation to a claim for damages for breach of contract including allegations of fraud and dishonesty
- **Major US Fund Manager:** co-counsel in an international arbitration against an internet service provider (ISP) relating to stock purchase options
- **Spanish Bank:** high value LCIA arbitration involving a complex insurance claim against Lloyd's syndicates
- **Leading global investment bank** in challenging in the English courts, the commencement in the US of a National Futures Association arbitration in relation to a disputed commodity futures trade

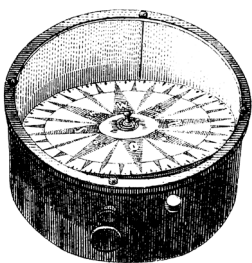
Technology disputes in the banking and financial services sector

We anticipate a rise in claims where technology plays a significant part. Given technology's central role in the financial services sector (both in respect of its trading and other activity and for compliance with ever increasing regulatory demands), inevitably there are, and will be increasingly, disputes and contentious regulatory issues arising from its use. It is an area where jurisdictional and cross-border issues frequently come into play. The successful resolution of these issues will require an in-depth understanding of the technology sector which is what the Firm is renowned for internationally and has been central to many of the largest, most complex and innovative technology projects of recent years.

- **Germany's largest banking corporation:** dispute arising from the bank's termination of a licence agreement for the provision of a complex IT system
- **PayPal:** in relation to a Norwich Pharmacal application brought by Microsoft seeking customer account details and other confidential information from PayPal
- **International financial services company:** proceedings brought in both Cyprus and England regarding the wrongful downloading of proprietary software critical to a company's business and the obtaining of injunctions in both jurisdictions
- **Bloomberg LP:** complex technology licensing dispute involving two sets of expedited proceedings in the Commercial Court and Chancery Division respectively
- **High profile financial services company:** in a claim for the delivery up of company technology equipment containing confidential and commercially sensitive information
- **Global French investment bank:** We have advised for several years on a range of front and back office technology procurements, including market data arrangements, trading platform arrangements and technology systems to manage the international deployment of personnel
- **Major international bank:** advising on data protection and other legal issues relating to the implementation of social media sites across 47 jurisdictions
- **Global business consulting firm** in contractual dispute arising out of a professional services agreement with the London Stock Exchange for the writing of a program setting interface services for LSE's customers.
- **International business and technology consulting firm** in dispute with major bank in relation to "matching engine" software supplied to RBS between 2007 and 2010

Bird & Bird is an obvious choice for high-calibre commercial and banking disputes, particularly those involving elements of IP, IT, outsourcing, telecoms and life sciences.

Chambers Global 2013



The following is a non-exhaustive, alphabetical list of the subject matter of cases we have been involved in:

Commercial Mortgage Backed Securities (CMBS)

- Misrepresentation and negligence claims regarding inaccuracies in projected revenue streams
- Enforcement of rights under a CMBS transaction
- Credit reviews for bondholders to protect interests on restructuring

Contentious Insolvency

- Investigating for creditors, events leading up to the insolvency of a company, conduct of its board of directors and challenges to transactions (including to defraud creditors)
- Investigating conduct of Administrator pre and post appointment
- Challenging on behalf of creditors a COMI shift to England from creditor friendly jurisdiction
- Defending against liquidators' claims to set aside reviewable transactions (including transactions at an undervalue, preferences and transactions defrauding creditors)

Contentious Regulatory and Disputes under Financial Services Markets Act 2000 ('FSMA')

- market abuse - insider dealing investigations for financial institutions
- tax evasion - representing financial institution on investigation into senior employees by HMRC
- anti-money laundering - supporting a bank as third party in money laundering trial; investigating use of bank for money laundering
- internal investigation for bank into use of its Eastern European branches in a corporate customer tax fraud
- systems & controls for complying with anti-bribery and corruption legislation
- data security
- Investor claims against financial institutions under s.90 FSMA

Debt and equity financing - intercreditor agreements

- Representing mezzanine creditor interests against senior creditors
- Challenging the rights of hedging parties & generally advising on effectiveness of subordination
- Enforcing turnover provisions
- Enforcing security
- Impact of borrower insolvency (effectiveness of Intercreditor Agreement to amend effects of insolvency regime)

Derivatives

- Alleged mis-selling and misrepresentation in respect of various CDOs/CDSs
- Operation of Total Return Swap transaction
- The closing out of derivatives, set off & conflicts of laws
- Effect of ISDA Master 2(a)(iii) on English law governed currency swaps in a US bankruptcy
- The interpretation of ISDA schedules including where no Master Agreement executed
- The consequences of ratings downgrade including triggering credit events

Investment trusts (various types) and funds

- Representing sponsor defending claim from company for breach of contract and negligent advice on launch of investment trust including in respect of listing particulars
- Representing investment managers in misrepresentation and negligent advice claims
- Representing a Fund invested through what was ultimately a fraudulent vehicle including recovery of funds, defending claw back claims and investor claims and asset tracing.

Note/bondholder disputes/litigation

- Tensions between different creditor groups e.g. between senior and subordinated noteholders and exercise of voting rights
- Conflicts between different roles of, and positions taken by, parties to the notes e.g. by an institution being invested across the note classes or by holding in another part of the institution/group contrary investment positions, for instance, through CDS positions
- Removal of Trustee, including where no replacement Trustee willing to act and notes held in global note form requiring issuer to be compelled by court to issue definitive notes to allow noteholders to act on the notes
- Protecting subordinated noteholders on restructuring
- Representing noteholders on a creditors committee appointed to assist Administrators investigating the issuer and the events leading to the total loss of value in the subordinated notes
- Representing a Trustee and Paying Agent in connection with a worldwide freezing order made against the Issuer including the assessment of alternative structures proposed by the Issuer for meeting principal and interest payments
- General issues over interpretation of underlying documentation.

Syndicated lending

- Conflicts between majority and minority lender interests
- Borrower defaults and enforcement of security/guarantees
- Counterparty default
- Agent & security trustee representations
- Representing purchasers of distressed debt in borrower restructuring.

Trade Finance

- Bringing and defending claims in respect of letters of credit/performance bonds and standby letters of credit.



Our reputation in the market

“They are not acting as outsiders, but help us as if they are the real owners of the problem and provide us with the best possible solution. They are concentrated on finding solutions rather than creating problems.”

Chambers and Partners 2014 (What clients say)

Manages massive pieces of litigation seemingly effortlessly.

Chambers and Partners 2013

“One of the things that I most admire is their availability. Whenever needed, even at the most bizarre times, the team members, including the partner, are always available.”

Chambers and Partners 2014 (What clients say)

“Commercial, quick to identify the issues and get to the heart of the matter.”

Chambers and Partners 2014

This dispute resolution group has developed a formidable reputation... interviewees praise the team as being “very thorough and knowledgeable” and highly “user friendly”.

Chambers and Partners 2013

“Determined but pragmatic”

Chambers and Partners 2013

The dispute resolution team at this firm is praised by sources for the quality of its litigation work, and has been receiving instructions in a wide range of cross-border matters.

Chambers and Partners 2013

Continues to impress, advising on cross-border disputes and arbitrations, and major white-collar crime and securities investigations.

Legal 500 EMEA 2012

‘Outstanding’ team ... Bird & Bird is ‘commercially minded and gives concise advice’, and is exceptionally good at ‘anticipating changes in the legal environment’

Legal 500 EMEA 2012

Clients are full of praise for our sector based dispute resolution practice, noting that the “smart, attentive and service orientated” lawyers have “specific industry knowledge in addition to the legal skills required”.

Chambers and Partners, 2012



Getting to know us

Bird & Bird is a truly international firm, organised around our clients. We connect our passion and practical insight with our clients' vision, to achieve real commercial advantage.

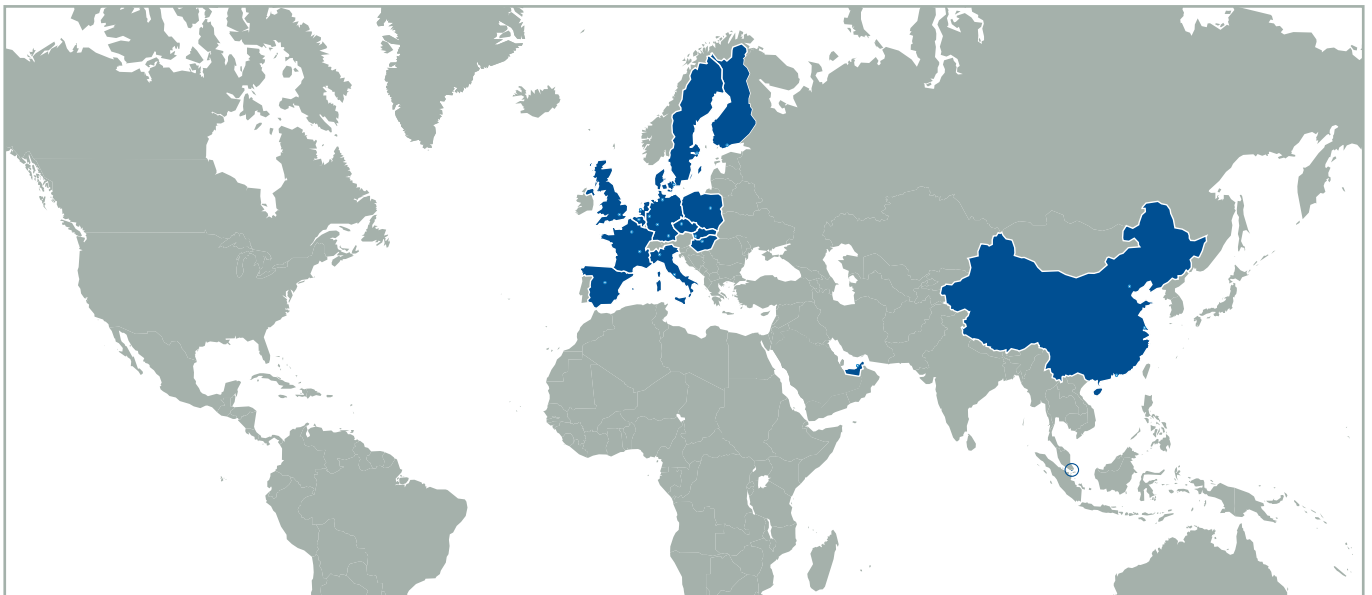
With over 1,000 lawyers in 25 offices worldwide, we specialise in combining leading expertise across a full range of legal services, including advice on commercial, corporate, EU and competition, intellectual property, dispute resolution, employment, finance and real estate matters.

Our clients build their businesses on technology and intangible assets, and operate in regulated markets. The key to our success is our sector focus. We have developed deep industry understanding of these sectors, including aviation & aerospace, communications, electronics, energy and utilities, financial services, information technology, life sciences, media and sports. Our deep industry knowledge gives us:

- Expertise in the law and regulatory framework relating to each sector
- A practical, commercial approach to navigating the sector, supported by advisors who have worked for decades in these specific industries

Most of our work is cross-border and multi-jurisdictional. We excel at managing complex projects across multiple regions with a seamless one-firm approach.

We have offices in key business centres across Europe, the Middle East and Asia, including in Abu Dhabi, Beijing, Bratislava, Brussels, Budapest, Copenhagen, Düsseldorf, Frankfurt, The Hague, Hamburg, Helsinki, Hong Kong, London, Lyon, Madrid, Milan, Munich, Paris, Prague, Rome, Shanghai, Singapore, Skanderborg, Stockholm and Warsaw. We also have a dedicated group focusing on India and close ties with firms in other key jurisdictions in Europe, the Middle East, Asia and the United States. We offer local expertise within an international context.



Contacts



Steven Baker
Partner

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Steven Baker is described by sources as “a perfect fit for Bird & Bird.” He is an experienced technology, telecoms and financial services litigator.

Chambers UK 2013

Steven Baker’s ‘unflappable presence is a boon in any big case’.

Legal 500 2011

Steven “is thorough, well respected and effective, and his judgement is excellent.”

Legal 500 2010



Michael Brown
Partner

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Michael Brown is described by sources as “organised and very diligent.”

Chambers UK 2013

Steven specialises in acting in and advising upon complex commercial contract disputes.

Steven is a partner in the Dispute Resolution Practice Group in London. He joined us in early 2012 from Olswang, where he headed the Commercial Dispute Resolution Group from 2007-2010.

He has a wealth of experience in litigation, international arbitration and other forms of dispute resolution, primarily focused on the technology, telecoms, financial services and energy sectors.

Steven has significant experience in UK and cross-border litigation and international arbitration, including arbitrations under ICC, LCIA, SIAC, UNCITRAL and ad hoc rules and also under a variety of systems of law.

Steven also has substantial experience of conducting competition and regulatory litigation in the High Court and Competition Appeal Tribunal.

Ranked in Chambers for his banking litigation work, Michael has over 20 years’ experience of advising financial institutions on contentious matters in both an in-house and private practice capacity.

Michael is a partner in our Dispute Resolution practice, based in London.

He represents banks and financial institutions in retail, wholesale and investment banking, and has advised and is advising on some of the most high profile disputes in the sector. In the retail and commercial banking sector, Michael has advised on and represented banks in disputes concerning syndicated facilities and the enforcement of security, cheque and electronic payment and clearing disputes, mis-selling and misrepresentation claims in respect of investment and hedging products and trade finance disputes, particularly in relation to documentary credits and standby letters of credit. He has protected bank client interests as third parties to customer fraud and money laundering and has undertaken tracing and asset recovery actions on behalf of banks and other financial institutions.

Michael represents clients in contentious matters involving the Financial Conduct Authority and the Serious Fraud Office and has also provided advice and guidance on anti-bribery and corruption policies and procedures to various corporations in light of the UK Bribery Act 2010.

Michael is a solicitor advocate with rights of audience in all courts and in all proceedings since 2003.



Martin Sandler
Partner

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Martin has a highly transactional and commercial mindset.

Martin is a partner in our Financial Services Group, based in London.

He is a financial services lawyer with first-rate experience covering regulatory, transactional, investment banking and global markets.

Martin has an in-depth understanding and knowledge of FS law and regulation and its impact upon business.

Before joining us, he was head of UK legal at NYSE Euronext, during a period of significant market change. Prior to that, he was co-head equity counsel and global markets regulatory counsel at Bank of America Merrill Lynch where, based on the largest trading floor in Europe, he gained “front line” legal, regulatory and transactional experience across a wide range of business lines and geographies.

Martin was admitted as a Solicitor in England and Wales 1994.



Jeremy Sharman
Partner

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Jeremy Sharman is a partner in the Dispute Resolution Group at Bird & Bird. Prior to joining Bird & Bird in 2000, he was a dispute resolution partner at Allen & Overy in Hong Kong. He has wide experience of general commercial disputes with a particular focus on disputes in the banking and finance sector. Much of his recent work has centred on disputes involving structured finance products including CDOs, credit linked notes, credit default swaps and other derivative transactions.

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Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses. Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority. Its registered office and principal place of business is at 15 Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.

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