

## WIPO LIST OF NEUTRALS

### BIOGRAPHICAL DATA

John GAFFNEY  
Al Tamimi & Co.  
Abu Dhabi  
United Arab Emirates



Nationality: Irish

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### EDUCATIONAL AND PROFESSIONAL QUALIFICATIONS

Diploma in International Arbitration, National University of Ireland, Dublin, Jan.–June 2002;  
Chartered Institute of Arbitrators, International Arbitration Course, Paris, 1999;  
Master of Laws (LL.M.) *with distinction* in EU & International Trade Law, University of Amsterdam, The Netherlands, 1997 – 1998;  
Università degli studi di Modena e Reggio Emilia, Italy, Jan.– Mar., 1991;  
Diploma, Dublin Institute on International & Comparative Law, University of San Diego at Trinity College, Dublin, Ireland, Summer, 1990;  
Bachelor of Laws (LL.B.), 1991, Bachelor of Civil Law (BCL), 1990, National University of Ireland, Cork.

#### **Bar Admissions:**

Solicitor, Republic of Ireland – 1994;  
Solicitor, England & Wales – 2007.

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### LANGUAGES

English (mother tongue), French (reasonably proficient), Italian (basic proficiency).

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**PRESENT POSITION**

Senior Associate, Arbitration Group, Al Tamimi & Co., Abu Dhabi, UAE.

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**PROFESSIONAL EXPERIENCE BEFORE PRESENT POSITION**

Senior Associate, International Arbitration Group, King & Spalding, Paris, France, July 2011 – September 2013;  
Partner, Donegans Solicitors, Cork, Ireland, May 2010- June 2011;  
Associate, International Arbitration Group, Freshfields Bruckhaus Deringer, Paris, France; October 2009–April 2010;  
Partner, O’Flynn Exhams, Cork, Ireland, April 2008– September 2009;  
Associate, Skadden, Arps, Slate Meagher & Flom (UK) LLP, London, England, July 2007– March 2008;  
Partner, O’Flynn Exhams, Cork, Ireland, August 2003 – May 2007;  
Partner (and previously Associate), William Fry Solicitors, Dublin, Ireland, Dec 1999 – July 2003;  
Associate Legal Officer, United Nations Compensation Commission, Geneva, Switzerland, Jun. 1998–Nov. 1999;  
National University of Ireland, Cork, Oct. 1995 – Jun. 1997 (part-time lecturer in Construction and Engineering Law);  
Trainee Solicitor and, later, Assistant Solicitor, O’Flynn Exhams, Solicitors, Cork, April 1991–August 1997.

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**AREAS OF SPECIALIZATION**

International & Domestic Arbitration.

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**MEMBERSHIP IN PROFESSIONAL BODIES**

WIPO Domain Name Panelists for the “.ie” domain;  
WIPO AGICOA Panel of Neutrals;  
WIPO Film/Media Panel of Neutrals  
China International Economic and Trade Arbitration Commission (CIETAC) Panel of Arbitrators for International Cases;  
Law Society of Ireland, Panel of Arbitrators;  
Panel of International Arbitrators, Kuala Lumpur Regional Arbitration Center;  
Panel of Arbitrators, Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC);  
Panel of Arbitrators, Dubai International Arbitration Centre (DIAC).

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**EXPERIENCE IN INTELLECTUAL PROPERTY**

Advised leading Irish third level education provider on:

- breach of copyright issue involving alleged web-piracy issue;
- software assignment/licencing to third party developer;
- roll out of internet-based student email system;
- protocol for dealing with suspected breaches of a Computer Systems Acceptable Usage Policy;
- various sponsored research agreements with third parties;
- development of sponsored research and confidentiality agreements;

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- artworks exhibition agreement;
  - IT security policy;
  - IPR agreements.

Advised Irish vocational educational body on alleged breach of copyright claim by software developer;  
Advised UK leisure group on Irish trade mark application;

Advised international developer on development of website terms and conditions and privacy policy;

Advised Irish state natural gas undertaking on:

- Systems Access Agreement;
- Electronic Contracting.

Advised leading Irish brewer on a significant trademark issue;

Led Firm's website development;

Advised a number of companies on EU and Irish e-commerce law and regulations;

Drafted e-commerce terms of use, privacy policy and conditions of sale for leading Irish and international companies' websites;

Advised leading Irish ISP on legal and regulatory aspects of establishing an e-commerce B2B portal and drafted and negotiated contractual documentation with software partner;

Member of legal team advising industry consortium on the competition aspects of establishing a B2B portal;

Advised international PC manufacturer on Irish digital signature laws;

Advised biometrics company on aspects Irish, European and US law relevant to its activities, including data protection law and met with Irish Data Protection Commissioner on its behalf;

Advised international law firm on aspects of Irish telecommunications regulation;

Advised international satellite broadcasting company on Irish competition, broadcasting, gambling and data protection law.

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### EXPERIENCE WITH RESPECT TO DOMAIN NAMES

Member of the tribunal in WIPO disputes;

Member of ICC Expert Panel on gTLDs;

Advised leading Irish investment company on the transfer of domain names in the UK and undertook transactional work to that end;

Advised leading Irish multinational on a dispute concerning a .com domain name with particular reference to WIPO procedures and case law;

General advice to clients on domain name issues.

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### MAJOR PUBLICATIONS

#### Books:

Co-Editor, "Comprehensive Economic and Trade Agreement between the European Union and Canada (CETA)", TDM 1 (2016);

National Report on Ireland in World Arbitration Reporter (2016)(with E. Crowley);

Chapter entitled 'European Bilateral Approaches' in International Investment Law: A Handbook (ed. Bungenberg, Griebel et al) (2015) (with Z. Akcay);

Chapter entitled 'How Important Is It To Develop A Coherent Case Law?: The Role Of Judicial Dialogue In Investment Arbitration' in Droit européen (Le) et l'investissement, Colloque (2011);

Chapter entitled 'Going to Pieces without Falling Apart: Wälde's Defence of 'Specialisation' in the Interpretation of Investment Treaties' in Liber Amicorum: Thomas Walde, Law Beyond Conventional Thought, edited by Thomas Wälde, Jacques Werner and Arif Hyder Ali (2009);

Chapter on 'Enforcement' in Practical Aspects Of Arbitrating EC Competition Law (Schulthess, Zurich) (with S. Wade) (2007);

Chapter on 'Ireland' in Transnational Litigation: A Practitioner's Guide, (ed. John Fellas) (co-author with A. Collins and P.A. McDermott) (2006).

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**Recent Articles:**

## Articles

- “The Rule of Law and Alternatives to Investment Arbitration”, *European Investment Law and Arbitration Review (EILARev)*, 2016 (forthcoming);
- “Arbitration Awards as Works of Art”, *Kluwer Arbitration Blog*, June 1, 2016;
- “When is investor-state dispute settlement appropriate to resolve investment disputes? An idea for a rule-of-law ratings mechanism,” *Columbia FDI Perspectives*, June 8, 2015;
- “International Commercial Arbitration - Procedural Approaches: Civil Law versus Common Law”, *Transnational Dispute Management*, January 2015 (with A. Ndong);
- “Cost allocation in investment arbitration: Forward toward incentivization”, *Columbia FDI Perspective No. 123* June 9, 2014 (with J. Nicholson);
- “Achieving sustainable development objectives in international investment: Could future IIAs impose sustainable development-related obligations on investors?”, *Columbia FDI Perspective* (co-author with J. Sarvanantham);
- “Intra-EU BITs: Toothless Tigers Or Do They Still Bite?”, *SchiedsVZ 2013, Heft 2*, 68 (*German Arbitration Journal*) (co-author with J. Schaefer);
- “Should Investment Treaty Tribunals Be Permitted to Request Preliminary Rulings From the Court of Justice of the European Union?”, *Transnational Dispute Management*, Vol. 2 (2013);
- “EU Member State Defends Measures Adverse to Energy Sector Investments on the basis of EU law,” in *King & Spalding Energy Newsletter* (February 2013) (with C. Soule);
- “Case Comment – Slovak Republic v. Eureko B.V., OLF Frankfurt (10 May 2012),” in *The Paris Journal of International Arbitration*, Vol. 4, (2012) (with C. Soule);
- “Threats to Investment Protection in the EU Energy Sector,” in *King & Spalding Energy Newsletter* (August 2012);
- “Non-party Autonomy: Displacing the Negative effect of the Principle of ‘Competence-Competence’ in England?” in *1 Journal of International Arbitration* (2012);
- “How Important is it to Develop a Coherent Case Law?: The Role of Judicial Dialogue in Investment Arbitration” in *Le droit européen et l'arbitrage d'investissement* (2011).
- “Tilting at Windmills?: The Quest for Independence of Party-Appointed Expert Witnesses in International Arbitration,” *Asian Dispute Review*, July 2011 (co-author with G. O’Leary).
- “EC Law and Intra-EU Investment Treaties: AES Summit Generation Limited and AES-Tisza Eromu Kft. v. Republic of Hungary,” *KLRCA Newsletter*, October 2010.
- “Counsel Must Ensure The Right Of Cross-Examination In Arbitration”, *International Litigation Quarterly* (Fall 2010);
- “Abuse of Process in Investment Treaty Arbitration”, *Journal of World Investment & Trade*, Vol. 11 No. 4 (August 2010);
- “West Tankers: Fuelling the Debate on the Position of Arbitration” (co-author with Colm P. McInerney), *The International Litigation Quarterly*, Vol. 25, Issue 3 (Summer 2009);
- “Is an investment treaty tribunal entitled to dismiss a claim where it amounts to an ‘abuse of process?’”, *Kluwer Arbitration Blog*, August 4, 2009;
- “The New York Convention: A Basis For The Enforcement By National Courts Of A Justiciable Liberty Of Decision Of The Arbitral Tribunal,” in *The New York Convention: 50 Years Of Experience*, Mealey’s Executive Summary (Oct. 2008);
- “Precedent in the United Nations Compensation Commission,” *5(3) TDM* (May 2008);
- “The ‘Effective Ordinary Meaning’ of BITs and the Jurisdiction of Treaty-Based Tribunals to Hear Contract Claims,” *Volume 8, No.1 Journal of World Investment & Trade* (Mar. 2007)(with J. L. Loftis);
- “Jurisdiction *ratione temporis* of ICSID Tribunals: Lucchetti and Jan De Nul considered,” *3(5) Transnational Dispute Management* (2006);
- “Immunity of arbitrators from suit,” *IBA Committee D Newsletter*, Vol. XI, No. 1, at 26 (Feb. 2006)(with P. Griffin);
- “European Community Law and International Arbitration: A recent OGEMID discussion,” *Transnational Dispute Management*, Vol. 2, No. 5 (Nov. 2005);
- “Salini v. Jordan - An Important Contribution To ICSID Jurisprudence on Jurisdictional Issues,” *20(4) Int’l Arb. Rep.* 35 (2005);
- “Ireland- Scope of arbitration clause,” *9(2) Arb. & ADR* 62 (2004);
- “The Group of Companies Doctrine and the Law Applicable to the Arbitration Agreement,” *19(6) Int’l Arb. Rep.* 47 (2004);
- “Confidentiality in International Arbitration: A Recent English Decision,” *18(5) Int’l Arb. Rep.* 18 (2003);

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“Ex Parte Measures in International Arbitration,” 17(11) Int’l Arb. Rep. 39 (2002);  
 “Evidentiary privileges in international arbitration – Ireland,” 7(2) Arb. & ADR 36 (2002);  
 “The Bay Hotel Case: Accommodating the Parties’ Wishes,” 17(1) Int’l Arb. Rep. 31 (2002)(with D. Rosenblum);  
 ‘International, Foreign and Domestic Arbitrations and the Granting of Interim Relief in Ireland’, 16(9) Int’l Arb. Rep. 37 (2001) (with O. O’Sullivan).

### **Recent Conferences, Lectures, and Seminars:**

#### Conferences

Panelist, "Rethinking the Role of Courts and Judges in Supporting Arbitration in Africa", Lagos Court of Arbitration Centre, Jun. 2016;  
 Speaker, International Arbitration Symposium, CILS, Salzburg, Jun. 2016;  
 Speaker, EFILA Conference, Paris, Feb. 2016;  
 Moderator, “Queen Mary School of International Arbitration – Inaugural Working Seminar on Group Claims in Arbitration”, Nov. 2015;  
 Moderator & Speaker, "The Confluence of EU Law And International Arbitration—Both Commercial and Investor-State", 10th Annual Conference on International Arbitration and Mediation, Fordham Law School, New York, Nov 2015;  
 Speaker, Energy Disputes, CIArb Centenary Conference, Dublin, Oct. 2015;  
 Speaker ICC PIDA conference, Dubai, 2014;  
 Speaker, McGill University & QMUL, CETA Conference, Montreal, 2014;  
 Speaker, Eighth Dublin Forum on Resolution of International Commercial Disputes, Dublin, 2014;  
 Keynote speaker, CIArb European Branch AGM and Conference, Warsaw, 2014;  
 Panelist, “Non-enforcement of Arbitration Awards as Breaches of Bilateral Investment Treaty (BIT) obligations”, ICC YAF Conference, Bangalore, 2014;  
 Panelist, Inaugural Conference of the CIArb Young Members Group in Dublin on “Investment Arbitration: Fit for purpose?’, Dublin, 2012;  
 Speaker, Journée d’étude/Seminar, Le droit européen et l’arbitrage d’investissement, European Law and Investment Arbitration, Paris, 2010;  
 Speaker, UCC Annual Law Conference, Cork, Ireland, on “The Impact of European Community Law in Irish Litigation”, November 2008;  
 Panelist, Arbitration and ADR Section, International Bar Association Annual Meeting, Singapore, 2007;  
 Panelist, International Arbitration Seminar, Association International de Jeunes Avocats (AIJA) Congress, Geneva, 2006.

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### **EXPERIENCE IN COURT LITIGATION**

Civil and Criminal Litigation in District Court, Civil Litigation in Circuit and High Court, including representation of: two partners in High Court proceedings against another partner concerning a construction project;  
 International developer in defending a High Court challenge to planned five star hotel development (resulting in a withdrawal of the challenge), and subsequently advising on regulatory issues associated with the project;  
 Irish chemicals company in relation to breach of contract/negligence proceedings brought against it in New York State;  
 International ground-handling company in its successful appeal to the national regulator against the former national airport managing body;  
 An electricity supply company in the first ever judicial review of the national energy regulator.

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## PROFESSIONAL TRAINING IN ARBITRATION

Diploma, International Arbitration, National University of Ireland, 2002;  
Chartered Institute of Arbitrators International Arbitration Course, Paris, 1999.

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## EXPERIENCE IN ARBITRATION

As Arbitrator:

- Served on an Expert Panel in three gTLDs cases administered by the ICC Centre of Expertise;
- Served as a panelist in a number of WIPO disputes concerning i.e., domain names;
- Serving as a sole arbitrator in a DIAC arbitration case seated in Dubai, UAE.

As Counsel: Acting solely or as a member of legal team representing and/or advising:

- Abu Dhabi government entity in a dispute with a UAE company concerning the construction of a photovoltaic plant (ADCCAC arbitration, Abu Dhabi seat);
- International industrial service provider in a dispute with a Korean contractor on major infrastructure project in Abu Dhabi (ICC arbitration, Abu Dhabi seat);
- Leading Abu Dhabi property Development Company in numerous ADCCAC arbitrations;
- Abu Dhabi investment bank and asset manager in a BCDR-AAA arbitration;
- French national in a shareholder dispute (ICC mediation/arbitration, DIFC seat);
- Advice to various international and UAE-based clients on arbitration-related matters, including construction, commercial and investment treaty arbitration matters in the UAE;
- A CIS State in an investment treaty case concerning an oil refining facility brought by a Russian investor under a Bilateral Investment Treaty (UNCITRAL Rules, seated in The Hague);
- A leading Russian energy company in an international arbitration against Swedish and Russian companies in relation to the expansion of an existing power plant (ICC arbitration, seated in Zurich);
- An Indian multinational company in a commercial arbitration brought by a US multinational corporation (ICC arbitration, seated in Paris);
- An African State in an investment treaty case brought by a Dutch-incorporated investor under a Bilateral Investment Treaty (ICSID arbitration);
- An Albanian telecommunications company in a dispute with a fixed line operator (ICC arbitration, seated in Paris);
- A Greek industrial group in a dispute concerning a joint venture with a Spanish partner in the Greek energy sector (LCIA arbitration, seated in Vienna);
- A French multinational in a multi-billion construction arbitration relating to a nuclear facility (ICC, seated in Stockholm);
- A Russian investment bank in four concurrent LCIA arbitrations arising from sale and purchase and related agreements in the food sector in a CIS state (London seat);
- A US multinational power company in a multimillion euro arbitration with a Spanish/Japanese consortium concerning the construction of a power plant in southern Spain (Ad hoc, seated in London);
- An Irish luxury goods manufacturer in an international arbitration.

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*Recent Honors:*

- Country Reporter for the UAE, ITA Board of Reporters;
  - ICCA Ambassador - ICCA Congress, Mauritius, May 2016;
  - Reporter for “Commercial and Investment Arbitration and the European Union”, European Parliament Study on Arbitration (conducted by Brunel University, London);
  - Case Notes Editor, *European International Arbitration Review*;
  - Fellow, European Law Institute
  - Associate Editor, *Transnational Dispute Management*;
  - Member of the International Drafting Committee for the 2011 and 2015 Skadden, Arps FDI Moot;
  - Associate Editor and Contributor, *Investment Claims*;
  - Listed in Who's Who Legal 2016, Roster of International Arbitrators - 2nd Edition (Juris Publishing) and Euromoney Guide to Leading Commercial Arbitration Experts.
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**ARBITRATION EXPERIENCE**  
**SUMMARY TABLE**

| Type                       | Administering Institution |                        | Role                 |                 |               |         |
|----------------------------|---------------------------|------------------------|----------------------|-----------------|---------------|---------|
|                            | Name                      | Number of Arbitrations | Presiding Arbitrator | Sole Arbitrator | Co-arbitrator | Counsel |
| International Arbitrations | AAA/BCDR                  | 1                      |                      |                 |               | X       |
|                            | ICC                       | 6                      |                      |                 |               | X       |
|                            | LCIA                      | 5                      |                      |                 |               | X       |
|                            | Ad Hoc                    | 3                      |                      |                 |               | X       |
| Number of cases: sub-total |                           | 15                     |                      |                 |               |         |
| Domestic Arbitrations      | ADCCAC                    | 5                      |                      |                 |               | X       |
|                            | DIAC                      |                        |                      | 1               |               | X       |
|                            | Ad Hoc                    | 6                      |                      | 1               |               | X       |
| Number of cases: sub-total |                           | 41                     |                      | 2               |               |         |
| <b>TOTAL</b>               |                           | <b>43</b>              |                      |                 |               |         |



**MEDIATION EXPERIENCE**  
**SUMMARY TABLE**

| Type                                  | Administering Institution |                      | Role     |         |
|---------------------------------------|---------------------------|----------------------|----------|---------|
|                                       | Name                      | Number of Mediations | Mediator | Counsel |
|                                       | Ad hoc                    |                      |          |         |
| Number of cases:<br>sub-total         |                           |                      |          |         |
| Domestic<br>Mediations<br>(Estimates) | AAA                       |                      |          |         |
|                                       | IEI                       | 1                    |          | X       |
|                                       | RIAI                      | 2                    |          | X       |
|                                       | ADCCAC                    | 2                    |          | X       |
|                                       | Ad Hoc                    |                      |          |         |
| Number of cases:<br>sub-total         |                           | 5                    |          |         |
| <b>TOTAL</b>                          |                           | <b>5</b>             |          |         |