

Derek Johnston

Commercial Barrister and Arbitrator

derek.johnston@chambers.co.nz
DDI: +64 4 460 0639 | M: +64 27 446 6848
Thorndon Chambers
6th Floor, Maritime Tower, 10 Customhouse Quay
PO Box 1530, Wellington 6140
www.thorndonchambers.com

Derek Johnston is a Commercial Barrister based in Wellington, New Zealand. He provides specialist independent legal advice in the company, commercial, financial markets, mergers and acquisitions, and competition law fields. He is sought out for his ability to think strategically and to develop commercial solutions to complex legal issues. Derek has advised various multinationals, many leading New Zealand companies, the Crown and Government Ministers.

He has been involved in advising on, and negotiating and documenting, a number of the more significant commercial transactions undertaken in New Zealand. He has significant experience in the energy, telecommunications and IT, and financial markets sectors.

Derek also sits as an arbitrator, principally in relation to commercial disputes. He holds a Diploma in International Commercial Arbitration and is a Fellow and Arbitration Panellist of a number of international arbitration institutions.

Derek was formerly an independent member and Chair of NZX's Regulatory Governance Committee. Prior to that he chaired the New Zealand Markets Disciplinary Tribunal (2011–2014).

AREAS OF SPECIALIST EXPERTISE

- Corporate and commercial law
- Acquisitions and cross-border investment
- Long term contracts
- Financial markets
- Competition law
- Energy
- Telecommunications and Information technology

ACADEMIC & PROFESSIONAL QUALIFICATIONS

- Diploma in International Commercial Arbitration, CIArb (2014)
- Doctor of Juridical Science, University of Toronto (1982)
- Master of Jurisprudence (with Distinction), University of Auckland (1981)
- Bachelor of Laws (Honours), University of Auckland (1979)
- Admitted to New Zealand Bar (1979)

APPOINTMENTS

- Independent (non-director) member and Chair of NZX Regulatory Governance Committee (December 2014 - August 2017)
- Member (2004 - 2014) and Chair (2011- 2014) of NZ Markets Disciplinary Tribunal

MEMBERSHIPS

- New Zealand Bar Association (Member)
- New Zealand Law Society (Member)
- Institute of Directors (Member)
- Law and Economics Association of New Zealand (Member)

ARBITRATION MEMBERSHIPS & PANEL APPOINTMENTS

- Chartered Institute of Arbitrators (Fellow)
- Arbitrators and Mediators Institute of New Zealand (Fellow)
- Australian Centre for International Commercial Arbitration (Fellow and Panellist)
- Singapore International Arbitration Centre (Reserve Panellist)
- Asian International Arbitration Centre (Panellist)
- London Court of International Arbitration–Asia Pacific Users Council (Member)
- International Council for Commercial Arbitration (Member)
- Hong Kong International Arbitration Centre Users Council (Member)
- ICC International Arbitration Committee (NZ) (Member)

PRESENTATIONS & PUBLICATIONS

Presentations to numerous national and international fora, including:

- Paper on *Regulatory Action in New Zealand - Moving Beyond the Courts* at Arbitrators and Mediators Institute of New Zealand (AMINZ) Annual Conference 2016
- Paper on *20 Years of the Arbitration Act 1996* at AMINZ Arbitration Day (2016)
- New Zealand Law Society Takeovers Intensives (2013, 2007 and 2005)
- NZ Bar Association Seminar – Commerce and the Regulators (2013)
- AMINZ breakfast meetings, Wellington (2013) and Auckland (2012)
- Annual University of South Australia Trade Practices Workshops, Barossa Valley (2007 and 2005)
- 5th Annual Competition Law and Regulation Review, Wellington (2005)

Authored various papers and publications, including the New Zealand chapters of:

- *The International Arbitration Review* (7th and 8th eds) Law Business Research (2016 & 2017)
- Data Protection: Laws of the World (Sweet & Maxwell)

ENDORSEMENTS & AWARDS

Endorsement in international directories, including:

- Best Lawyers International *Best Lawyers in New Zealand*:
 - Corporate Law (2015 - 2018)
 - Energy Law (2012 - 2018) including Energy Lawyer of the Year–Wellington (2012)
 - Capital Markets Law (2015 - 2018) including Capital Markets Law Lawyer of the Year - Wellington (2016)
- Who's Who Legal. Technology, Media and Telecommunications (2015)
- Practical Law Company. Which Lawyer? (New Zealand: Mergers and Acquisitions)

New Zealand Law Awards: Capital Markets Deal of the Year (2014)

Massey University School of Management: Thomson Reuters Prize for Arbitration (2011)

CAREER HISTORY

2011–present	Commercial Barrister & Arbitrator, Thorndon Chambers, Wellington
1985–2011	Partner, Russell McVeagh, Auckland and Wellington
1979–1981 & 1982–1985	Solicitor/Associate, Russell McVeagh, Auckland

Legal experience

CORPORATE & COMMERCIAL

Significant experience in advising on a broad range of company law and commercial issues and arrangements, including:

- corporate governance
- share issues and buybacks
- directors' duties, liability and indemnities
- amalgamations and schemes of arrangement
- procurement processes and contracts
- listing rule requirements

Has advised extensively on structuring alternatives, advantages and disadvantages of alternative corporate and investment entities, and the best structure for constitutional arrangements to meet the competing requirements of various stakeholders

Extensive experience and involvement in negotiation and documentation of commercial contracts and arrangements, including:

- supply agreements
- service contracts
- joint venture agreements
- franchise agreements
- distribution agreements
- tender documents
- procurement contracts

Experienced in advising on managing breakdown of contractual relationships and dealing with non-performance of contractual obligations

ACQUISITIONS & CROSS-BORDER INVESTMENT

Involvement in numerous high profile and nationally significant acquisitions and cross-border transactions, including:

- ANZ Banking Group Limited's NZ\$2.1 billion acquisition of ING Group's controlling interest in the ING Australia and ING New Zealand joint ventures
- National Australia Bank's acquisition of Bank of New Zealand from the New Zealand Government and private interests
- the acquisition of New Zealand Rail Limited from the New Zealand Government by a consortium of United States and private interests
- the acquisition of a controlling interest in Glasgow Prestwick Airport by Infratil Investments Limited, including the documentation of complex shareholder arrangements in relation to the investment
- the acquisition of a controlling interest in Sky Network Television Limited by a consortium comprising Bell Atlantic, Ameritech, Time Warner and TCI, and providing ongoing advice in relation to the investment
- renegotiation of complex joint venture, technology licensing and offtake arrangements between Mobil Oil and Fletcher Challenge Limited on the purchase by Fletcher Challenge Limited from the New Zealand Government of its majority interest in the Motunui synthetic fuels plant
- the sale by Mobil Oil of its interests in the Motunui synthetic fuels plant to Fletcher Challenge Limited and the contemporaneous purchase of the plant by Methanex Corporation from Fletcher Challenge Limited
- The Australian Gas Light Company's disposal of its 66% shareholding in NGC Holdings Limited to Vector Limited
- Bank of New Zealand's disposal of its investment management business to AXA

LONG TERM CONTRACTS

Involvement in the negotiation and drafting of a number of significant long term contracts, including:

- the Crown's renegotiation of its long term Maui Gas Contract and downstream gas user contracts
- New Zealand Oil & Gas Limited's long term Kupe gas supply contract with Genesis Energy Limited
- an offtake agreement between New Zealand Synthetic Fuels Corporation and Mobil Oil New Zealand Limited for the supply of synthetic gasoline from the Motunui synthetic fuels plant
- Telecom New Zealand's partnering and outsourcing agreement with Alcatel-Lucent for the development, establishment and operation of Telecom's Next Generation Network
- the Integrated Directories Services Agreement between Telecom New Zealand and the Yellow Pages Group (YPG)

FINANCIAL MARKETS

Extensive involvement in capital and financial markets transactions and issues, including:

- acting on a number of significant initial and secondary public offerings, for example:
 - advising in relation to aspects of the Crown's initial public offers for sale of shares in Mighty River Power Limited, Meridian Energy Limited and Genesis Energy Limited on New Zealand, Australian and other markets
 - the initial public offer made by Telecom Corporation of New Zealand Limited, on New Zealand, United States and international markets
 - the initial public offer and the secondary public offers made by and in respect of Tranz Rail Holdings Limited, on New Zealand and United States markets
- advising in relation to the sale process adopted for the partial sell down of the Crown's shareholding in Air New Zealand
- advising ANZ National Bank Limited on its involvement in the public offer made in conjunction with ING (New Zealand) Limited for the purchase of units from investors in the DYF and RIF frozen funds
- advising on takeover offers for securities in listed companies made in compliance with the Takeovers Code
- advising on insider trading and market manipulation issues and substantial security holder disclosure and continuous disclosure requirements
- representing a party in the Securities Commission insider trading enquiry in relation to Fortex
- assisting the Financial Markets Authority (FMA) with development of its *Guidance Note: Effective Disclosure*
- advising on the registrability of a proposed Kiwisaver scheme
- assisting in development of various exemptions under the Securities Act 1978, the Financial Reporting Act 1993 and the Financial Markets Conduct Act 2013
- representing clients in relation to alleged breaches of the Securities Act 1978
- advising clients regarding compliance with the Financial Markets Conduct Act 2013 and other financial markets legislation

COMPETITION LAW

Significant experience in relation to competition law issues, including:

- advising extensively on compliance of contracts, arrangements and pricing practices with competition law requirements
- advising on the need for, and seeking and obtaining, merger clearances
- seeking authorisations for joint venture and other arrangements that might otherwise have breached applicable competition laws

ENERGY

Acting for and advising many clients in the energy sector for more than 25 years, including:

- The New Zealand Government in relation to its Maui gas interests, including renegotiation of the long term Maui Gas Contract and downstream gas user contracts
- New Zealand Oil and Gas Limited for more than 20 years in relation to all aspects of its exploration and development activities, including the Kupe and Tui oil and gas developments and the negotiation of its long term Kupe gas supply contract with Genesis Energy Limited
- Mobil Oil New Zealand Limited in relation to all aspects of its involvement in the New Zealand wholesale and retail petroleum markets
- Conoco Inc., OilFields No Liability, Mercury Energy Limited and Mobil New Exploration Ventures Inc. in relation to petroleum exploration activities and ventures in New Zealand
- The Electricity Governance Board in the development of, and its successful application to the Commerce Commission for authorisation of, the Rulebook to govern the operation of the electricity market and that subsequently formed the basis for the current electricity market rules

Extensive experience in drafting and advising on joint venture operating agreements, farm in agreements, drilling agreements and gas supply agreements

Former Executive Committee Member of the New Zealand Energy and Natural Resources Law Association

TELECOMMUNICATIONS & INFORMATION TECHNOLOGY (IT)

Former lead external adviser to Telecom New Zealand Limited for a number of years. Advised it in relation to a wide range of commercial arrangements, including:

- its outsourcing arrangements with EDS and its e-solutions online alliance with EDS and Microsoft
- interconnection and wholesale arrangements with TelstraClear
- various mobile voice and web portal arrangements
- its partnering and outsourcing arrangements with Alcatel-Lucent

Wide ranging involvement in IT arrangements for more than 25 years, including:

- acting for computer system suppliers and integrators, and advising extensively on computer software licences and system contracts
- drafting and negotiating numerous technology licences and joint ventures
- assisting a major New Zealand bank to document the outsourcing of its transaction processing and other IT functions to its Australian parent in compliance with Reserve Bank outsourcing requirements
- acting for a major bank on the procurement of a cheque imaging system, the establishment of a data centre warehousing arrangement and its Telecommunications Services Agreement

INTELLECTUAL PROPERTY (IP)

- Doctorate (University of Toronto) with particular focus on IP law
- Wide ranging involvement in IP protection and commercialisation
- Advised extensively on ownership and rights to exploit IP rights
- Involvement in the preparation and negotiation of numerous technology licences and joint ventures