

Personal details

Date and place of birth: 21 May 1979, Heidelberg, Germany
Nationality: New Zealand
Languages: English (native speaker); German (reading fluency)
Email address: robert.kirkness@chambers.co.nz

Education

LLM (with first class honours), *University of Auckland*
LLB, *University of Auckland* (Senior Prize in Law)
BA, *University of Auckland* (Senior Scholarships in Classical Studies and Ancient History)

Employment

Barrister , <i>Thorndon Chambers (New Zealand)</i>	January 2019 to present
Counsel , <i>Freshfields Bruckhaus Deringer LLP (Paris/Singapore)</i>	November 2011– December 2018
Associate Crown Counsel , <i>Crown Law Office (New Zealand)</i>	September 2008 – August 2011
Solicitor , <i>Russell McVeagh (New Zealand)</i>	February 2006 – September 2008

Professional recognition

I am ranked in all major legal directories for international arbitration:

- Ranked as “Most Highly Regarded Lawyer (Barristers/Non-partners) in the Asia-Pacific Region” by *Who’s Who Legal: International Arbitration* (2019)
- Ranked as a “Future Leader in International Arbitration” by *Who’s Who Legal: International Arbitration* (2016-2019) (“bound to be a star”; “excellent advocacy skills”)
- Ranked as “Up and Coming” for international arbitration by *Chambers and Partners* (2018-2019) (“a future star in the arbitration world”; “smart, hard-working and always appears calm even in the most high-pressure situations”; “relentless in seeking to secure the best outcome for his clients”)
- Ranked as a “Next generation lawyer” for international arbitration by *Legal 500* (2016- 2019) (“a rising star”; “able to synthesise complex ideas and materials in a clear, concrete and simple manner”)

Experience

I have appeared as counsel at all levels of the New Zealand court system, including as sole counsel in proceedings before the District Courts and High Court of New Zealand and as junior counsel in several leading cases before the New Zealand Court of Appeal and Supreme Court of New Zealand. Those matters include general commercial litigation, as well as public law matters.

I also have represented corporate and sovereign clients in international arbitrations under all major arbitral rules and systems of law, including in some of the most complex and high-value matters submitted to arbitration over the past decade. Those matters have related to a broad-range of sectors with a particular focus on oil & gas, including price review arbitrations, and post-M&A disputes.

In addition to my work as counsel, I regularly advise clients on matters of international law, including treaty drafting and interpretation, international investment law, structuring of investments to obtain investment treaty protection, due diligence advice on potential investment treaty claims for third-party funders and advice for States on defending claims brought by foreign investors. I also maintain an active *pro bono* practice focusing on international human rights matters.

Investment treaty arbitration

Highlights include (all information anonymised unless in the public domain):

- *Elliott Associates, LP v. The Republic of Korea* (until 31 December 2018). Representing the Republic of Korea in an investment treaty arbitration under the 2013 UNCITRAL Rules brought by a US-based hedge fund under the Korea-United States Free Trade Agreement.
- *Mohammad Reza Dayyani & Ors v. The Republic of Korea*. Representing the Republic of Korea in an investment treaty arbitration brought against it by Middle Eastern investors under the 1976 UNCITRAL Rules. The dispute arises out of alleged political interference in a failed M&A transaction.
- *UNCITRAL investment treaty arbitration arising out of alleged confiscation of real estate assets*: Representing a Southeast Asian State in an investment treaty arbitration under the 2010 UNCITRAL Rules brought against it by a dual national and related entity.
- *Ampal-American Israel Corporation & Ors v. The Arab Republic of Egypt* (ICSID Case No. ARB/12/11). Representing a consortium of US and German investors in an ICSID arbitration against the Arab Republic of Egypt under the US-Egypt and Germany-Egypt bilateral investment treaties regarding the destruction of the Peace Pipeline Project for the long-term supply of Egyptian natural gas to Israeli customers. The arbitration is one of four parallel investment treaty and contract arbitrations.
- *Yosef Maiman & Ors v. The Arab Republic of Egypt* (PCA Case No. 2012-26). Representing a consortium of Polish and Israeli investors in an arbitration under the 2010 UNCITRAL Rules against the Arab Republic of Egypt under the Poland-Egypt bilateral investment treaty regarding the destruction of the Peace Pipeline Project for the long-term supply of Egyptian natural gas to Israeli customers. The arbitration is one of four parallel investment treaty and contract arbitrations.
- *Rusoro Mining Ltd v. Venezuela* (ICSID Case No. ARB(AF)/12/5). Representing Rusoro Mining Ltd, a Canadian investor, in an ICSID Additional Facility arbitration against the Bolivarian Republic of Venezuela under the Canada-Venezuela BIT regarding Venezuela's failure to compensate Rusoro for the nationalisation of its gold mining assets.

ROBERT KIRKNESS—CURRICULUM VITAE

International commercial arbitration

Highlights include (all information anonymised):

- *UNCITRAL arbitration under joint venture agreement.* Representing a Chinese State-owned entity in an international commercial arbitration brought against it by a Canadian-listed oil and gas company pursuant to a joint venture agreement for the exploration and development of a natural gas field in the East China Sea.
- *ICC arbitration under share sale and purchase agreement.* Representing a French conglomerate in an international commercial arbitration brought against it by a Mauritian investment company for its alleged breach of an agreement for the sale and purchase of shares in a Korean entity.
- *CRCICA arbitration under a long-term gas supply agreement between Egyptian State-owned entities and an Egyptian company.* Representing an Egyptian company in an international commercial arbitration brought against it by two Egyptian State-owned entities under the CRCICA Rules alleging various breaches of a long-term contract for the supply of natural gas. My client counterclaimed for repudiation of the agreement. The arbitration is one of four parallel investment treaty and contract arbitrations.
- *ICC arbitration under a tripartite agreement between Egyptian State-owned entities, an Egyptian company and an Israeli State-owned entity.* Representing an Egyptian company in an international commercial arbitration under the ICC Rules against two Egyptian state entities and an Israeli state entity alleging repudiation of a tripartite agreement guaranteeing the supply of natural gas from Egyptian state entities to an Israeli state entity. The arbitration is one of four parallel investment treaty and contract arbitrations.
- *ICC arbitration under two related joint venture agreements.* Representing a US-based automotive company in negotiations with a Central Asian State-owned entity and parallel international commercial arbitration proceedings under the ICC Rules regarding the alleged breach of the parties' joint venture agreement.
- *ICC arbitration under joint venture agreement.* Representing a leading Australian investment bank and several Korean pension funds in an arbitration under the ICC Rules regarding the alleged failure by a Korean media company to comply with the exercise of drag options under a joint venture agreement.
- *SIAC arbitration under joint venture agreement in the pharmaceutical sector.* Representing a German pharmaceutical company in an arbitration under the SIAC Rules regarding the alleged failure to comply with a non-compete provision in a joint venture agreement.
- *SIAC arbitration under joint venture agreement in the technology sector.* Representing a Cypriot company in an arbitration under the SIAC Rules regarding the alleged failure to make payments under a joint venture agreement for the manufacture and supply of smartphones.
- *Gas price review under a long-term agreement for the cross-border supply of natural gas.* Representing a Southern European importer of natural gas in its price review negotiations with a natural gas exporter and parallel international commercial arbitration concerning the price of natural gas under a long-term gas supply contract.
- *ICC arbitration under a long-term agreement for the cross-border supply of natural gas.* Representing a leading German gas importer in an international commercial arbitration under the ICC Rules regarding the value of natural gas.
- *ICC arbitration over rights to use world famous trademark:* Representing a US-based manufacturer in an international commercial arbitration against an Indian company under the ICC Rules concerning the geographic allocation of the right to make, use and distribute products bearing a world famous trademark.

ROBERT KIRKNESS—CURRICULUM VITAE

Litigation

Highlights include:

- *Attorney-General v. Tamil X & Anor* [2009] NZCA 48, [2010] 2 NZLR 73 (CA); [2010] NZSC 107 (SC). Junior counsel for the Attorney-General in both the Court of Appeal and Supreme Court in judicial review proceedings regarding the circumstances in which a refugee claimant is excluded from the Refugee Convention on the grounds of suspected complicity in international crimes.
- *Couch v. Attorney-General* [2010] NZSC 27, [2010] 3 NZLR 149 (SC). Junior counsel for the Attorney-General in the Supreme Court on an application to strike out a claim for exemplary damages.
- *Abdula v. The Queen* [2011] NZSC 130, [2012] 1 NZLR 534 (SC). Junior counsel for the Crown in a criminal appeal before the Supreme Court regarding whether the interpreting assistance provided to the appellant during his trial met the standard required under the the New Zealand Bill of Rights Act 1990.
- *The Queen v. Steigrad* [2011] NZCA 304, [2011] 10 NZCLC 264,862. Junior counsel for the Crown in a criminal appeal before the Court of Appeal seeking to reinstate certain charges under the Securities Act.
- *Commerce Commission v. Air New Zealand & Ors* (CA 714/09). Junior counsel for the Attorney-General (as intervener) in the Court of Appeal in a case arising out of the Commerce Commission’s investigation of alleged price-fixing by a number of airlines.
- *Vilceanu & Ors v. Minister of Immigration* [2008] NZCA 486 (CA). Junior counsel for the Minister of Immigration in the Court of Appeal.
- *Fisi’peau v. Minister of Immigration* (High Court, Wellington, CIV 2010-485-000179, 14 May 2010). Counsel for the Minister of Immigration in an appeal from a decision of the Deportation Review Tribunal to deport the appellant.
- *Forrest v. Attorney-General (on behalf of the Department of Corrections)* (High Court, Christchurch, CIV 2008-404-006358, 30 March 2008): Counsel for the Attorney-General in an appeal before the High Court concerning the District Court’s decision not to exercise its discretion to allow a claim for breach of the New Zealand Bill of Rights Act 1990 to proceed out of time.
- *Slade v. Attorney-General (on behalf of the Police)* (District Court, Manukau, CIV 2008-092-6044, 10 March 2010): Counsel for the Attorney-General in a civil trial before the District Court.
- *Weatherhead v. CMC Markets Ltd* (High Court, Auckland, CIV 2007-404-000008, 24 August 2007). Junior counsel for CMC Markets Ltd in breach of contract claims brought by a CFD trader.
- *Paape v. Fahey* (2005) 9 NZCLC 263, 813 (HC). Junior counsel for three company directors before the High Court defending charges of reckless trading and related professional negligence claims brought by those directors against a leading law firm.

Publications

- Lucy Reed and Robert Kirkness, ‘Old Seeland, New Netherland and New Zealand: Some Thoughts on the Possible “Discovery” of Investment Treaty Arbitration in New Zealand’ [2012] 43 VUWLR 687.