

L I N D S A Y

LITIGATION | ARBITRATION



Timothy J. Lindsay LLB (First Class Hons)
Director

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Timothy Lindsay leads the practice at specialist litigation and arbitration firm Lindsay having spent nearly a decade in London, most recently as a partner in leading US law firm Dechert LLP, specialising in international arbitration.

An experienced trial lawyer, Tim has acted in a wide range of high profile and high value commercial disputes across a range of major industries. He also takes appointment as arbitrator. Tim is internationally recognised for his “*great reputation*”, as an “*outstanding advocate*” and for his “*total commitment*” to his clients. He has been described as “*possess[ing] great practical judgement*”, “*respected for his experience in both commercial and investment treaty disputes*”, and “*a first-class practitioner who combines great charm and skill with extraordinary tenacity.*”

One of the leading arbitration lawyers in the Asia-Pacific, in 2018 Tim was named one of the five most highly regarded arbitration lawyers under 45 in the ‘Rest of the World’ (outside America and Europe) by *Who’s Who Legal* and *Global Arbitration Review*. As counsel, he has appeared in some of the most high-profile commercial, investment treaty and public international law arbitrations in the past decade, including *Microsoft v Samsung* (patent royalties/technology collaboration, ICC (Tokyo)), *Perenco v Ecuador* and *Burlington v Ecuador* (multi-billion dollar investment treaty claims by foreign oil companies, ICSID), *Vivendi v Deutsche Telekom* (at the time the largest ICC claim made, ICC (Geneva)) and the ground-breaking *Abyei Arbitration* (PCA, The Hague).

Tim is an immediate past New Zealand representative to the ICC Court of Arbitration and the ICC Commission on Arbitration, fulfils various leadership roles in the international disputes community and is a regular speaker and lecturer on dispute resolution issues.

Areas of expertise

- Arbitration & Related Court Applications
- Antitrust/Competition/Fair Trading
- Conflict of Laws & Private International Law
- Contract
- Corporate & MA
- Energy & Natural Resources
- Intellectual Property
- International Commercial Arbitration
- Investment Arbitration & PIL
- Restructuring & Insolvency
- Shareholder Disputes
- White Collar & Regulatory Defence

Representative matters as counsel

Tim is regularly instructed in ‘bet the company’ arbitrations and litigations and has a depth and breadth of experience across a range of major industries. Examples of Tim’s case as counsel (at LLA and prior firms) include:

Corporate, M&A and Shareholder Disputes

- Representing the plaintiffs in a ~ \$280m litigation claim against their former co-shareholders alleging the unlawful taking of their shares in an infant milk formula venture.
- Representing a leading international cloud computing technology and services company in litigation proceedings arising out of the sale and purchase of a foreign cloud computing company, involving alleged pre-contractual misrepresentations and post-completion breaches of warranty.
- Representing a New York-based hedge fund in LCIA arbitration proceedings arising out of a high-profile and high-value distressed asset investment in Russia.
- Representing Russian interests in parallel \$2 billion-dollar LCIA arbitration claims in London and related litigation proceedings in Cyprus, concerning a substantial shareholder and financing dispute arising out of a major real estate and investment project in Moscow.
- Representing a global forex and derivatives trading house in a multi-billion-dollar LCIA arbitration in London, and multiple related court litigation proceedings in the London High Court, concerning a shareholder dispute arising out of a global forex and derivatives trading joint venture in Hong Kong, London and the Middle East.
- Representing Russian shareholders in a \$400m Stockholm Chamber of Commerce (SCC) arbitration concerning the attempted exercise of a put option for shares under a shareholder agreement relating to a substantial Moscow property development company, including claims of breach of shareholder and project management obligations.
- Litigating a \$30m shareholder dispute (finance company), including allegations of breach of contract and fraud.
- Representing a private equity owned independent oil and gas exploration company in an ICC arbitration concerning a post-acquisition “locked box” accounting dispute.

Banking & Finance

- Representing an investor in relation to their investments in a commercial property financing company.
- Representing a party to an LCIA arbitration claim in excess of \$100m arising out of an ISDA Master Agreement currency swap and alleged early termination of that transaction.
- Representing a majoring international mining company and related interests as borrowers and guarantors in a series of 16 LCIA arbitration claims seeking recovery under two \$500m internationally syndicated facility agreements.
- Representing parties defending an application for worldwide freezing orders in the English courts, and similar injunctive relief in other foreign courts in Europe and Asia, in support of arbitration proceedings.
- Representing an Eastern European State in an investment treaty dispute seeking damages of \$150m in relation to the investor’s banking interests in that country, brought under the auspices of ICSID.

- Acted for successful plaintiff in contract dispute relating to one of the country's largest ever contributory mortgage schemes, which also involved secret commissions and securities issues.
- \$NZ30m finance company shareholder dispute, including allegations of breach of contract and fraud
- Various proceedings against borrowers and guarantors arising from loan agreements.
- Advising parties in relation to litigation relating to interest rate swaps.
- Investment banks and clients in numerous disputes and arbitrations arising from the payment of "success fees" under investment banking mandates

Regulatory & White Collar Litigation

- Defending a leading Australasian retailer against a criminal prosecution brought by the Commerce Commission under the Fair Trading Act 1986
- Acting for the plaintiff battery technology company in a successful action against former CEO and director for breach of fiduciary duties, and associated parties for knowing receipt, arising out of various capital raises.
- Assisting as a junior team member in representing an international credit-card company in price fixing proceedings brought by the New Zealand Commerce Commission in relation to the setting of interchange fees.
- Assisting as a junior team member in representing defendants in insider trading proceedings brought by New Zealand's securities regulator.
- Advising New Zealand and international corporates on competition/anti-trust, consumer protection, securities and financial markets issues, including in response to regulatory investigations in respect of alleged price fixing, anti-competitive behaviour, breaches of the Fair Trading Act 1986, breaches of the Takeovers Code, and NZX's continuous disclosure rules.

Energy & Natural Resources

- Representing the Republic of Ecuador in the multi-billion-dollar *Perenco v Ecuador* investment treaty arbitration at ICSID.
- Representing the Republic of Ecuador in the multi-billion-dollar *Burlington v Ecuador* investment treaty arbitration at ICSID.
- Successfully obtaining emergency relief in one of the first "Emergency Arbitrations" under the ICC's 2012 Emergency Arbitrator Rules.
- Representing a private equity owned independent oil and gas exploration company in an ICC arbitration concerning a post-acquisition "locked box" accounting dispute.
- Representing a New York-based hedge fund in LCIA arbitration proceedings arising out of a high-profile and high-value distressed asset investment in Russia in the oil & gas industry.
- Acting for one of the world's leading mining and metals companies in dozens of arbitration and litigation proceedings globally.

Telco, Technology & Intellectual Property

- Representing a leading international cloud computing technology and services company in multi-million dollar litigation proceedings arising out of the sale and purchase of a foreign cloud computing company, involving alleged pre-contractual misrepresentations and post-completion breaches of warranty.
- Defending a leading multi-national retailer in High Court proceedings brought by a multi-national clothing manufacturer alleging copyright infringement.

- Defending a large-format retail chain against claims of copyright infringement by a substantial New Zealand company in relation to popular consumer goods.
- Representing one of the world's leading technology companies in multi-billion-dollar ICC arbitration and parallel litigation proceedings against another leading global technology company, concerning patent licenses and business collaboration disputes.
- Representing one of Europe's largest telecommunications companies in a multi-billion Euro ICC arbitration seated in Switzerland (at the time the largest ICC arbitration ever commenced), relating to Eastern European telecommunications assets.
- Represented a leading telecommunications company in arbitral proceedings against competitor telco relating to the supply of wholesale telecommunications services.
- Representing one of the world's largest telecommunications companies in separate related LCIA arbitrations seated in London worth several hundred million dollars, concerning a complex post-acquisition dispute over emerging market telecommunications assets.
- Acted for technology joint venture (between various international airlines) in litigation proceedings relating to a well-known airline computer reservation software system.
- Acted for plaintiff battery technology company in a successful action against former CEO and director for breach of fiduciary duties, and associated parties for knowing receipt, arising out of various capital raises.
- Acted for plaintiff POS technology company in negligence claim against German liquidator, involving complex cross-border insolvency and private international law issues.

Infrastructure, Engineering & Real Estate

- Represented Russian shareholders in a \$400m Stockholm Chamber of Commerce (SCC) arbitration concerning the attempted exercise of a put option for shares under a shareholder agreement relating to a substantial Moscow property development company, including claims of breach of shareholder and project management obligations.
- Represented an Emirati Government in a multi-hundred-million-dollar infrastructure dispute under the ICC Rules relating to the development of a deep-sea port and related onshore infrastructure.
- Represented a shopping centre developer in judicial review proceedings, arising out of grant of resource consent for significant retail shopping centre development

Other

- Defending a non-profit society in High Court proceedings arising out of the sale and purchase of a significant asset, involving complex contract and fraud issues.
- Acted for successful defendants in aircraft option contract dispute.
- Acted for claimant syndicate of investors in an ICC arbitration claim of several hundred million dollars arising out of a major international film project.
- Represented fruit exporter in High Court litigation arising out of alleged breaches of fruit supply agreements, and related insolvency proceedings

Investment Arbitration & Public International Law

- Representing the Republic of Ecuador in the multi-billion-dollar *Perenco v Ecuador* investment treaty arbitration at ICSID.
- Representing the Republic of Ecuador in the multi-billion-dollar *Burlington v Ecuador* investment treaty arbitration at ICSID.
- Representing an Eastern European State in an investment treaty dispute brought under the auspices of ICSID.
- Representing the Sudan People's Liberation Movement/Army (SPLM/A) in its widely publicised arbitration at the Permanent Court of Arbitration against the Government of Sudan, concerning the disputed oil-rich Abyei region in Sudan (recognised by industry peers as the 2009 arbitration award of the year).
- Advising hedge funds and distressed investors in relation to potential investments in companies/investments subject to state measures and with contingent claims under investment treaties

Policy and leadership

- ICC Court of Arbitration (alternate member for New Zealand) (2017 – 2018)
- ICC Commission on Arbitration, New Zealand alternate representative (2009-2017)
- ICC Commission on Arbitration, Task Force on Arbitration and Financial Institutions, work stream leader (Sovereign Finance) (concluded)
- ICC Commission on Arbitration, Task Force on Witness Evidence in Arbitrations, member (ongoing)
- ICC Commission on Arbitration, Task Force on Costs in Arbitration, member (concluded)
- International Swaps and Derivatives Association (ISDA) Arbitration Committee, member (ongoing)
- AMINZ, Arbitration Rules Drafting Committee, member (ongoing)
- London Arbitration Club, Finance Arbitration Committee, member (ongoing)
- Association of Independent Petroleum Negotiators (AIPN), Dispute Resolution Committee, member (concluded)
- New Zealand Law Students' Association, Past President
- Otago Law School, Past Student President
- Regular panellist and speaker at major international arbitration conferences, such as the IBA, ICC, LCIA and ISDA
- Regular adjunct lecturer on arbitration and dispute resolution topics at leading international law schools
- AMINZ Rules 2017, drafting committee member

Professional

- Lindsay, Director (2017-present)
- Lowndes Jordan, Partner (2016-2017)
- Dechert LLP, London, Partner (2010-2016)
- Wilmer Cutler Pickering Hale & Dorr LLP, London, Senior Associate (2008-2010)
- Lowndes Jordan, Senior Solicitor (2004-2008)
- Bell Gully, Solicitor (2003-2004)

Bar admissions

- England & Wales (current)
- New Zealand (current)

Education

- University of Otago, LLB (First Class Hons)
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