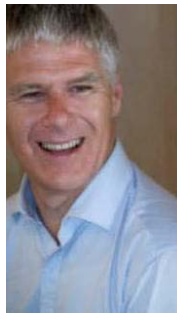


Derek Johnston

Barrister



Thorndon Chambers

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PROFESSIONAL OVERVIEW

- Highly regarded corporate and securities law specialist who has advised many leading New Zealand and international corporates
- Specialist knowledge in mergers and acquisitions and capital markets
- Chairman of the New Zealand Markets Disciplinary Tribunal
- Highly respected ability to provide strategic advice and find commercial solutions to complex legal issues
- Able to communicate complex legal concepts in a manner that is understandable and relevant

AREAS OF SPECIALISATION

- Corporate and Commercial
- Securities and Capital Markets
- Mergers and Acquisitions
- Competition law
- Energy
- Intellectual Property and Information Technology

QUALIFICATIONS

- 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)
- Currently studying towards a Graduate Diploma in Business Studies (Dispute Resolution) at Massey University
- Admitted to New Zealand Bar 1979

EXPERIENCE

Corporate and Commercial

Derek has had extensive 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

Derek has advised extensively on structuring alternatives, the advantages and disadvantages of use of alternative corporate and investment entities and the manner in which constitutional arrangements are best structured to meet the competing requirements of various stakeholders.

Derek advised a major New Zealand bank on the development of its constitution to meet the competing requirements of its foreign shareholder, the Reserve Bank of New Zealand and its own commercial objectives.

Derek has been involved in the structuring, negotiation and documentation of a wide range of commercial contracts and arrangements.

He was responsible for the preparation of the Integrated Directories Services Agreement entered into between Telecom and the Yellow Pages Group at the time of sale of Yellow Pages Group in early 2007, under which YPG was granted a licence for use of the Telecom customer database for the preparation of telephone directories and provision of directory assistance services and assumed responsibility for performance of certain of Telecom's Kiwi Share obligations.

Derek has extensive experience in drafting franchise and distribution agreements, tender documents and procurement contracts.

Derek has advised on the establishment of joint venture and inter-shareholder arrangements. For example, he:

- Acted for Mobil Oil New Zealand Limited in negotiating new joint venture arrangements in relation to the Motonui synthetic fuels plant at the time of the sale by the Crown of its majority stake to Fletcher Challenge
- Assisted Infratil with the documentation of complex shareholder arrangements governing its investment in, and its acquisition of, Glasgow Prestwick Airport

Derek advised Telecom on aspects of its Separation Undertakings and assisted Telecom in the preparation of internal corporate policies and protocols to give effect to aspects of the Undertakings.

Mergers and Acquisitions

Derek has been involved in numerous high profile and nationally significant transactions, including acting for:

- National Australia Bank in relation to its acquisition of BNZ
- The successful bidder for New Zealand Rail
- Infratil, in relation to its acquisition of a controlling interest in Glasgow Prestwick Airport
- Meridian Energy, in connection with its acquisition of the South Island client base of On Energy
- The Australian Gas Light Company, on the disposal of its 66% shareholding in NGC Holdings pursuant to a Takeover Code compliant offer
- BNZ, on the sale of its investment management business to AXA
- ANZ National Bank, on the New Zealand aspects of its \$2.1 billion purchase from ING Group of its controlling interest in the ING Australia and ING New Zealand joint ventures.

Securities and Capital Markets

Derek regularly advises on Securities Act and Securities Markets Act issues and has acted on a number of significant initial and secondary public offerings, including IPOs for:

- Telecom Corporation of New Zealand, on New Zealand, United States and international markets
- Tranz Rail Holdings, on New Zealand and United States markets
- Pike River Coal, on New Zealand, Australian and international markets

In 2009 Derek advised ANZ National Bank in relation to its involvement in the offer made in conjunction with ING (New Zealand) Limited for the purchase of units from investors in the DYF and RIF frozen funds.

Derek assisted CMC Markets to obtain authorisation as a futures dealer for the offering of derivatives online.

In addition to assisting clients to obtain exemptions from the Securities Act, Derek has:

- Advised on insider trading issues and substantial security holder disclosure requirements
- Appeared before the Securities Commission on the insider trading enquiry concerning Fortex
- Represented clients in relation to other alleged breaches of the Securities Act
- Advised extensively in relation to the application of the NZX Listing Rules and assisted clients with obtaining waivers and rulings under these Rules

Competition Law

Derek has significant experience in relation to merger and trade practices issues arising under the Commerce Act 1986. He has:

- Advised regarding the need for merger clearance, liaised with the Commerce Commission where acquisitions were proceeding without clearance and assisted clients with applications for merger clearances, including :
 - Advising Mobil Oil New Zealand on the clearance application made by Shell New Zealand in connection with its purchase of Mobil's aerostop network
 - Acting for IAG in its successful application for clearance in connection with the purchase of Mike Henry Travel Insurance
- Assisted clients seeking authorisations in relation to joint venture and other arrangements that might otherwise have breached the Commerce Act, including acting for:
 - The Electricity Governance Board in its successful application to the Commerce Commission for authorisation of the Rulebook that was intended to govern the operation of the electricity market
 - The Power Company Limited and Electricity Invercargill Limited on its application for authorisation of the PowerNet joint venture

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- Advised extensively regarding compliance of contracts and arrangements and of pricing practices with the requirements of the Commerce Act.
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Energy

Derek has been involved in energy sector matters for more than 20 years and is a former Executive Committee Member of the Energy and Natural Resources Law Association.

He has acted for and advised many clients in the energy sector, including:

- Mobil New Zealand in relation to all aspects of its involvement in the wholesale and retail petroleum markets
- Mobil in connection with the sale by the Crown of its interest in the Motunui synthetic fuels plant to Fletcher Challenge in 1990 (including the negotiation of new joint venture and technology licensing arrangements) and the subsequent sale by Mobil in 1993 of its interest in the plant to Fletcher Challenge coupled with the contemporaneous sale of the plant by Fletcher Challenge to Methanex Corporation
- NZ Oil and Gas, for more than 20 years, including in relation to the Kupe and Tui oil and gas developments and NZOG's negotiation of its long term Kupe gas supply contract with Genesis
- The Treasury in relation to its Maui gas interests, including acting for it on the renegotiation of the Maui Gas Contract and downstream gas user contracts in 2004
- Conoco Inc, OilFields No liability, Mercury Energy Limited and Mobil New Exploration Ventures Inc in relation to petroleum exploration activities in New Zealand

In the course of advising these clients, Derek has had extensive experience in drafting and advising on joint venture operating agreements, farm in agreements, drilling agreements and gas supply agreements.

Intellectual Property and Information Technology

Derek has a doctorate in intellectual property law from the University of Toronto and has had a wide ranging involvement in intellectual property protection and commercialisation for more than 25 years. He has:

- Been involved in the preparation and negotiation of numerous technology licences and joint ventures
- Assisted a major New Zealand bank in documenting the outsourcing of its transaction processing and other IT functions to its Australian parent in compliance with Reserve Bank outsourcing requirements
- Advised on and been involved in drafting of sponsorship arrangements, including the initial sponsorship arrangement between Meridian and Canterbury Rugby Football Union for sponsorship of the Crusaders
- Advised NZ Post on its arrangements for NZ Post franchised outlets
- Been involved in advising on and documenting proposed cross border transactions involving the sale and licence back of key brands by major corporates

For many years, Derek acted for computer system suppliers and integrators and has advised extensively in relation to computer software licences and system contracts.

He acted for Westpac on the procurement of a cheque imaging system, the establishment of a data centre warehousing arrangement and its 2005 Telecommunications Services Agreement.

Derek has advised Telecom New Zealand in relation to a wide range of commercial arrangements including:

- Its outsourcing arrangements with EDS and the 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

**MEMBERSHIPS
AND AFFILIATIONS**

- Institute of Directors (Member)
- NZ Markets Disciplinary Tribunal (Chairman)
- Arbitrators and Mediators Institute of New Zealand (Affiliate Member)
- Rotary Club of Wellington (Member)

**PRESENTATIONS,
PUBLICATIONS
AND REFERENCES**

Presented at numerous national and international fora, including:

- 5th Annual University of South Australia Trade Practices Workshop, Barossa Valley, 2007
- NZLS Takeovers Intensive , Auckland and Wellington 2007
- 3rd Annual University of South Australia Trade Practices Workshop, Barossa Valley, 2005
- NZLS Takeovers Intensive, Auckland and Wellington, 2005
- 5th Annual Competition Law and Regulation Review, Wellington, 2005
- Computer Law Association Conference, Hawaii, 1997
- NZ Petroleum Industry Conference, 1995
- NZ Petroleum Industry Conference, 1991
- World Computer Law Congress, Los Angeles, 1991
- Computer Law Section, International Bar Association Conference, Singapore, 1985

Co-taught *Major Commercial Transactions* honours seminar at Victoria University Law School, Wellington, for 2 years (1996 & 1998).

Author of various papers and publications, including the New Zealand chapter of "*Data Protection Laws of the World*".

Endorsed in various international directories, including:

- Who's Who Legal. *The International Who's Who of Internet and E-Commerce Lawyers*. 2008.
- Practical Law Company. *Which Lawyer?* (Endorsed lawyer for New Zealand: Mergers and Acquisitions.)

CAREER HISTORY

- Barrister, 2011 - present
 - Partner, Russell McVeagh, Auckland and Wellington, 1985-2011
 - Solicitor/Associate, Russell McVeagh, Auckland, 1979-1981, 1982-1985
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