

# Mark Tushingam

CALL: 2012 (NEW ZEALAND); 2016 (ENGLAND AND WALES)

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Languages: Spanish (conversational)



## Overview

Mark has a broad practice in commercial law, international arbitration and investment arbitration. He has acted for corporations and State-owned entities in a wide variety of disputes at all levels of the English courts and in arbitrations under all major institutional rules.

Since 2019, Mark has acted for the Guaidó Board of the Central Bank of Venezuela in extensive and high-profile litigation arising out of Venezuela's constitutional and political crisis and the battle for control of Venezuela's gold reserves at the Bank of England, which has led to numerous hearings in the Commercial Court, Court of Appeal and Supreme Court (*Maduro Board v Guaidó Board*).

Mark also recently acted for the successful appellant in an appeal to the Privy Council (from the Court of Appeal of the Cayman Islands) which concerned the arbitrability of disputes between shareholders in the context of just and equitable winding up proceedings (*FamilyMart v Ting Chuan*).

Mark is ranked by *The Legal 500* (International Arbitration: Tier 3) and *Chambers and Partners* (Commercial Dispute Resolution: Band 5), where he is described as "one of the best juniors around" who "comes up with fantastic ideas which nobody else thinks of". He is also ranked as a Future Leader in *Who's Who Legal: Arbitration 2024*.

Before joining Chambers, Mark practised as a barrister in New Zealand at a leading commercial set. He also worked as a law clerk for two leading international arbitrators, where he gained exposure to many international commercial arbitrations and investment

## Publications

- Co-author of 'Recalibrating the Balance Between Protecting Foreign Investments and Protecting the Environment: Is Asia Taking the Lead?' (2018) [Asian Dispute Review](#)
- Co-author of 'The application of the *Henderson v Henderson* rule in International Arbitration' (2014) 26 [Singapore Academy of Law Journal](#)

## Professional memberships

- The Commercial Bar Association
- Young ICCA
- Young International Arbitration Group

## Education

- 2016: BPP University, Bar Transfer Test
- 2015: University of Oxford: Bachelor of Civil Law, Distinction
- 2012: University of Auckland: LLB (Hons), Senior Scholar
- 2012: University of Auckland: BCom (Accounting)

treaty arbitrations. He is a graduate of the University of Oxford and the University of Auckland.

## Career

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- 2017: Tenant at 20 Essex Street following completion of pupillage
- 2016: Called to the Bar (Lincoln's Inn)
- 2015-2016: Law Clerk to Dr Michael J Moser
- 2012-2014: Barrister, Bankside Chambers
- 2012: Admitted as a Barrister and Solicitor of the High Court of New Zealand
- 2011-2012: Law Clerk to Sir David A R Williams QC

## Major awards / prizes / scholarships

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- 2016: Directed Studies Course, Private International Law, Hague Academy of International Law
- 2016: Oxford Law Faculty Prize in International Law of the Sea
- 2015: FMB Reynolds Scholarship in Law to Oxford
- 2012: Semi-finalist, Philip C Jessup International Moot Court Competition, Washington DC

## Examples cases

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- *Guaidó Board v Maduro Board* [2023] EWHC 1942 (Comm), [2023] EWCA Civ 742, [2022] EWHC 2040 (Comm), [2021] UKSC 57, [2020] EWCA Civ 129, [2020] EWHC 1721: acting for the Guaidó Board of the Central Bank of Venezuela in expedited proceedings in the Commercial Court, Court of Appeal and Supreme Court to determine which board of directors has authority to control Venezuela's gold reserves at the Bank of England and other assets located in England (with Andrew Fulton KC).
- *FamilyMart China Holding Co Ltd v Ting Chuan (Cayman Islands) Holding Corp* [2023] UKPC 33: acting for the successful appellant in its appeal to the Privy Council (from the Court of Appeal of the Cayman Islands) concerning the arbitrability of disputes raised in a petition by a shareholder to wind up a company on just and equitable grounds (with Charles Kimmins KC and Toby Landau KC).
- *Discovery Global LLC v The Slovak Republic* (ICSID Case No. ARB/21/51): acting for the claimant in a US\$500 million+ investment treaty arbitration concerning oil and gas exploration in Slovakia.

## Arbitration

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- *Guaidó Board v Maduro Board* [2023] EWHC 1942 (Comm), [2023] EWCA Civ 742, [2022] EWHC 2040 (Comm), [2021] UKSC 57, [2020] EWCA Civ 129, [2020] EWHC 1721: acting for the Guaidó Board of the Central Bank of Venezuela in expedited proceedings in the Commercial Court, Court of Appeal and Supreme Court to determine which board of directors has authority to control Venezuela's gold reserves at the Bank of England and other assets located in England (with Andrew Fulton KC).
- *FamilyMart China Holding Co Ltd v Ting Chuan (Cayman Islands) Holding Corp* [2023] UKPC 33: acting for the successful appellant in its appeal to the Privy Council from the Court of Appeal of the Cayman Islands concerning the arbitrability of disputes raised in a petition by a shareholder to wind up a company on just and equitable grounds (with Charles Kimmins KC and Toby Landau KC).
- *G v A* (2022): acting for two Romanian businessmen in a London-seated LCIA arbitration concerning an agreement for the sale and purchase of shares in a company and a claim to recover an overpayment of capital gains tax, including issues as to the arbitrability of tax claims (sole counsel).
- *ARI v WXJ* [2022] EWHC 1543 (Comm), [2022] Bus LR 714: acting for the defendant in an application to determine whether the defendant had validly appointed an arbitrator in a London-seated LMAA arbitration (with Paul Key KC).
- *Katanga Contracting Services SAS v Tenke Fungurume Mining SA* (2020-2021): acting for the claimant in two related ICC

arbitrations against the owner of a mine in the Democratic Republic of Congo, recovering a substantial award in favour of the claimant and resisting counterclaims raising serious allegations of corruption and bribery (with Charles Kimmins KC).

- *Tenke Fungurume Mining SA v Katanga Contracting Services SAS* [2021] EWHC 3301 (Comm): successfully resisting an application under s 68 of the Arbitration Act 1996 to challenge an ICC award on grounds relating to the Tribunal's award of funding costs and its procedural decision to decline to adjourn the arbitrations on COVID-19 grounds (with Charles Kimmins KC).
- *STA v OFY* [2021] EWHC 1574: successfully resisting an application by a Government of a State for an extension of time to bring a challenge under section 68 of the Arbitration Act 1996 to a Final Award in favour of the claimant for sums in excess of US\$ 134 million (with Charles Kimmins KC).
- *A v B Bank* (2019): acting for a foreign mining company in four related London-seated LCIA arbitrations under a facility agreement and a joint venture agreement in the mining sector, including a substantial jurisdiction challenge in one arbitration (with Paul Lowenstein KC and Tamara Oppenheimer).
- *S v L* (2019): acting for the claimants in related HKIAC and ICC arbitrations in a billion dollar private equity dispute involving allegations of fraud and sham (with Charles Kimmins KC and Luke Pearce (now KC)).
- *Commodities & Minerals Enterprise Ltd v CVG Ferrominera Orinoco CA* (2017-2019): acting for the claimant in five related arbitrations seated in different jurisdictions (under the ICC Rules, LMAA Rules and SMA Rules) against a Venezuelan state-owned entity in the commodities and mining sectors, securing arbitral awards of over US\$250 million in a dispute which raised serious allegations of fraud and corruption (with Charles Kimmins KC, Philip Riches (now KC) and Luke Pearce (now KC)).

## Banking and financial services

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- *Northern Borealis Shipping Ltd v PayrNet Limited* (2023): acting for the claimant in proceedings against an electronic money institution in a claim for damages for failure to comply with claimant's payment instructions (with David Lewis KC).
- *Guaidó Board v Maduro Board* [2023] EWHC 1942 (Comm), [2023] EWCA Civ 742, [2022] EWHC 2040 (Comm), [2021] UKSC 57, [2020] EWCA Civ 129, [2020] EWHC 1721: acting for the Guaidó Board of the Central Bank of Venezuela in expedited proceedings in the Commercial Court, Court of Appeal and Supreme Court to determine which board of directors has authority to control Venezuela's gold reserves at the Bank of England and other assets located in England (with Andrew Fulton KC).
- *A v B Bank* (2019): acting for a foreign mining company in related LCIA arbitrations under a facility agreement involving claims under a guarantee and issues relating to appropriation and share valuation following the enforcement of a share pledge (with Paul Lowenstein KC and Tamara Oppenheimer).
- *X v Citibank* (2018-2021, County Court): acting for Citibank defending numerous claims brought by consumers in connection with alleged PPI Policy mis-selling, including allegations of deliberate concealment of commissions and reliance upon section 32 of the Limitation Act 1980 (sole counsel).
- *Bou-Simon v BGC Brokers LP* [2018] EWCA Civ 1525: acting for a trader in an appeal to the Court of Appeal in respect of a claim brought by his former employer to recover a sign-on bonus, involving the implication of terms into a commercial loan agreement.

## Civil fraud and asset tracing

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- *Gorbachev v Guriev* (2018-2022, Commercial Court): acting for a Russian businessmen in a multi-billion dollar civil fraud claim against his former business partner to recover his interests in respect of an LSE-listed Russian fertiliser business, involving claims of fraudulent breach of trust, set down for a six week trial commencing in January 2023 (with Paul Stanley KC).
- *J v X* (2018-2020, Chancery Division): acting for a fund and asset management company in claims to recover funds misappropriated by a former employee, involving a successful application for a freezing injunction against ten respondents and various related applications (with Tony Beswetherick (now KC)).
- *Green v Hurst* [2020] EWHC 937 (Ch): acting for the respondents successfully resisting an application for permission to bring contempt proceedings under CPR Part 81 (sole counsel).
- *S v L* (2019): acting for the claimants in related HKIAC and ICC arbitrations and in proceedings in the Nevis courts in a private equity dispute involving serious allegations of fraud (with Charles Kimmins KC).

## Energy and infrastructure

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- *Discovery Global LLC v The Slovak Republic* (ICSID Case No. ARB/21/51): acting for the claimant in a US\$500 million+ investment treaty arbitration concerning oil and gas exploration in Slovakia.

- *A v B* (2023): advising shareholders of a Canadian mining company in connection with a joint venture dispute relating to a mining project in South America.
- *Katanga Contracting Services SAS v Tenke Fungurume Mining SA* (2020-2021): acting for the claimant in two related ICC arbitrations against the owner of a mine in the Democratic Republic of Congo, recovering a substantial award in favour of the claimant and resisting counterclaims raising serious allegations of corruption and bribery (with Charles Kimmins KC).
- *A v B Bank* (2019): acting for a foreign mining company in related LCIA arbitrations under a facility agreement and a joint venture agreement in the mining sector, including a substantial jurisdiction challenge in one arbitration (with Paul Lowenstein KC and Tamara Oppenheimer)
- *Commodities & Minerals Enterprise Ltd v CVG Ferrominera Orinoco CA* (2017-2019): acting for the claimant in five related arbitrations seated in different jurisdictions (under the ICC Rules, LMAA Rules and SMA Rules) against a Venezuelan state-owned entity in the commodities and mining sectors, successfully securing arbitral awards of over USD 250 million in a dispute which raised serious allegations of fraud and corruption (with Charles Kimmins KC, Philip Riches (now KC) and Luke Pearce (now KC)).

## Jurisdiction, conflicts and enforcement

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- *Evison Holdings Ltd v International Company Finvision Holdings LLC* [2020] EWHC 239 (Comm): acting for a Russian businessman in a jurisdiction challenge in connection with committal proceedings for contempt, raising allegations of material non-disclosure and issues relating to the Hague Service Convention (with Paul Lowenstein KC).
- *P v I* (2020): advising foreign entities in relation to the application of the *lis pendens* rules contained in the Brussels I (Recast) Regulation in connection with proceedings in different EU Member States (with Paul Lowenstein KC).

## Public international law

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- *Guaidó Board v Maduro Board* [2023] EWHC 1942 (Comm), [2023] EWCA Civ 742, [2022] EWHC 2040 (Comm), [2021] UKSC 57, [2020] EWCA Civ 129, [2020] EWHC 1721: acting for the Guaidó Board of the Central Bank of Venezuela in expedited proceedings in the Commercial Court, Court of Appeal and Supreme Court to determine which board of directors has authority to control Venezuela's gold reserves at the Bank of England and other assets located in England (with Andrew Fulton KC).
- Advising a foreign government in connection with issues of immunity *ratione personae* (with Sir Daniel Bethlehem KC).
- Advising foreign investors in connection with the benefits and risks of a corporate restructuring in order to obtain protection under various bilateral investment treaties (with Philip Riches (now KC)).

## Shipping

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- *SFL Ace 2 Company Inc v Allseas Global Management Ltd* (2023): acting for owners in a Commercial Court claim under a guarantee in respect of charterers' obligations under a charterparty (with Julian Kenny KC).
- *C v M* (2019-2022): acting for owners in an LMAA arbitration in a dispute regarding redelivery of the vessel under a bareboat charterparty.
- *A v T* (2020): acting for owners in an LMAA arbitration in a dispute regarding overpaid hire under a charterparty.
- *A v D* (2018-2019): acting for owners of three vessels in a substantial LMAA arbitration concerning the ownership of shares in an offshore company and the termination of ship management agreements, involving allegations of fraud and issues of Liberian corporate law (with Timothy Hill KC, Blair Leahy (now KC) and Alex Carless).
- *H v U* (2018-2019): acting for owners of a chemical tanker in an LMAA arbitration to recover an indemnity from charterers arising out of the contamination of cargo.

## Recommendations

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Mark is one of the best juniors around. His knowledge of law and an ability to produce concise advice fast is very impressive. Mark is an exceptional writer: his written advocacy is extremely persuasive and eloquent. Excellent and incisive oral advocacy. [The Legal 500 UK Bar 2024](#)

Extremely bright, very user-friendly and good with clients. [Chambers UK Bar 2024](#)

Mark has an ability to understand the key issues and find the killer legal point. He is a very good analytical barrister who sees the big picture. [Chambers UK Bar 2024](#)

Very smart, professional and co-operative. [Chambers UK Bar 2024](#)

Comes up with fantastic ideas which nobody else thinks of. His drafting is also very good and extremely fast. [Chambers UK Bar 2023](#)

Brilliant legal brain [The Legal 500 UK Bar 2023](#)

Comes up with fantastic ideas which nobody else thinks of. His drafting is also very good and extremely fast. [Chambers UK Bar 2022](#)

His knowledge of the law is phenomenal and nothing is too much effort for him. [Chambers UK Bar 2021](#)

He is excellent and has a great understanding of the legal issues. [Chambers UK Bar 2021](#)

Mark gets to grips with the documents and his drafting is fantastic. [Chambers UK Bar 2021](#)