



# DAVID J. A. CAIRNS

## INTERNATIONAL ARBITRATOR

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DAVID  
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### OVERVIEW

David is a leading independent arbitrator, having previously been a partner at B. Cremades y Asociados in Madrid, Spain.

He has been acting for many years as sole, chair or party-appointed arbitrator under the rules of ICSID, UNCITRAL, ICC, AAA, LCIA, WIPO, the Arbitration Foundation of South Africa, the Madrid Court of Arbitration, and the Court of Arbitration for Sport in a variety of seats including London, Madrid, New York, Paris, Washington DC, The Hague, Miami and Geneva.

His expertise includes investor-State, construction & infrastructure projects, and commercial disputes as well as intellectual property, mergers & acquisitions and joint venture disputes.

He is an accredited UK mediator and a former member of the ICSID Panel of Conciliators.

David has been based in Madrid for over 20 years and has a particular focus on disputes in Spain and Latin America. Earlier in his career he practised in New Zealand, specialising in intellectual property and regulatory litigation, and in London.

He is fluent in Spanish and English and is a national of New Zealand and the United Kingdom.

### INVESTMENT ARBITRATION

David J.A. Cairns acts as arbitrator in investor-state disputes arising from bilateral investment treaties or investment agreements. His work has covered, amongst other issues, treaty interpretation, the definition of 'investment', standards of treatment in international investment law (expropriation, fair and equitable treatment, legitimate expectations), illegality in investment, denial of justice, the protection of intellectual property in international law, disputes between state entities and joint venture parties, the interface of investor rights and the power to regulate, international trusts, the relationship between contractual and treaty rights, compensation, annulment, and procedural questions relating to the interpretation and application of the ICSID Convention and Arbitration Rules.

David has been appointed as the presiding arbitrator in two ICSID arbitrations arising from infrastructure projects in Peru (*Metro de Lima Línea 2 S.A. v. Republic of Peru* (ICSID Case No. ARB/17/3; *Desarrollo Vial de los Andes S.A.C. v. Republic of Peru* (ICSID Case No ARB/20/18)), as well as in an investor-State

arbitration pursuant to the Kuwait-Turkey BIT administered by the Permanent Court of Arbitration pursuant to the UNCITRAL Arbitration Rules (*Waleed Y J H Aljarallah v TMSF & Ministry of Justice/ The Republic of Turkey* (PCA Case No. 2020-04)).

He has also been appointed as a member of the tribunal in a NAFTA arbitration pursuant to the ICSID Additional Facility Rules (*Lion Mexico Consolidated L.P. v. United Mexican States* (ICSID Case No. ARB(AF)/15/2)) and in another PCA-administered arbitration pursuant to the Switzerland-Bolivia BIT (*Zurich Insurance Company Ltd & Zurich South America Invest AB v. Plurinational State of Bolivia* (PCA Case No. 2020-04)). He has previously acted as an arbitrator in an investment arbitration pursuant to the Spain-Cuba BIT.

Earlier in his career he also acted as counsel in an ICSID arbitration arising from an infrastructure project in Honduras (*Elsamex SA c. Republic of Honduras* ICSID Case No. ARB/09/4), and in ICSID annulment proceedings in relation to concession contracts in Argentina (*Compañía de Aguas del Aconquija SA y Vivendi Universal c. Republic of Argentina*, ICSID Case No. ARB/97/3) and Venezuela (*Blue Bank International & Trust (Barbados) Ltd. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/12/20)).

David was a member of the ICSID Panel of Conciliators from 2011 to 2017.

## PRACTICE AREAS

- Investor-State
- Construction & Infrastructure Projects
- Commercial
- Intellectual Property
- Mergers & Acquisitions
- Joint Venture Disputes

## ARBITRAL APPOINTMENTS

### As Arbitrator

- President of an ICSID tribunal in an arbitration relating to a highway concession in Peru (*Desarrollo Vial de los Andes S.A.C. v. Republic of Peru* (ICSID Case No ARB/20/18));
- President of an ICSID tribunal appointed by the Parties in an arbitration arising from a DFBOT (design-finance-build-operate-transfer) concession contract for a major transport infrastructure project in Lima (*Metro de Lima Linea 2 S.A. v Republic of Peru* (ICSID Case No. Arb/17/3));
- President of an Investor-state tribunal established pursuant to the Kuwait-Turkey Bilateral Investment Treaty and the UNCITRAL Arbitration Rules (PCA Case No. 2020-04: *Waleed Y J H Aljarallah v TMSF & Ministry of Justice/ The Republic of Turkey*);
- President of an ICC tribunal in an arbitration arising from the acquisition of a Spanish banking entity, with the seat at Madrid and subject to Spanish law;
- President of an ICC tribunal in an arbitration arising from a joint venture to develop the technology for a concession in Mexico, with the seat at New York and subject to the laws of New York and the State of Delaware;
- President of an ICC tribunal in a dispute between Mexican and North American parties under New York law arising from a real estate joint venture in Mexico;
- President of an ICDR-AAA tribunal in a licensing and distribution dispute subject to New York law between US and Chilean parties and relating to the telecommunications sectors in various Latin American jurisdictions;
- President of an Arbitral tribunal established pursuant to the rules of the Arbitration Foundation of South Africa (AFSA) relating to a supply contract for a thermal power plant in Ghana, subject to English law and with a seat in Johannesburg;

- President of an ICC tribunal in a dispute between Mexican and Italian parties arising from a joint venture in the manufacturing sector in Mexico;
- President of an Arbitral tribunal pursuant to the rules of the Madrid Court of Arbitration in a construction arbitration relating to a biomass plant in Huelva;
- President of an ICC tribunal in a dispute arising from a pharmaceuticals joint venture under Spanish law;
- President of an ICC tribunal in a dispute arising from an acquisition transaction in the insurance sector under Spanish law;
- President of an ICC tribunal in an arbitration arising from a warranty insurance policy in relation to the acquisition of a Spanish corporation by a Dutch investor;
- President of an Arbitral tribunal under the rules of the Madrid Court of Arbitration in an arbitration relating to the termination of a distribution contract in the consumer healthcare sector under Spanish law;
- Arbitrator appointed in an LCIA arbitration arising from the sale and purchase of a nickel mining company in the Dominican Republic, subject to English law but also raising complex issues of local law;
- Arbitrator appointed pursuant to the Switzerland-Bolivia Bilateral Investment Treaty and the UNCITRAL Arbitration Rules (PCA Case No. 2021-05 - *Zurich Insurance Company Ltd & Zurich South America Invest AB v. Plurinational State of Bolivia*);
- Arbitrator appointed pursuant to the ICSID Additional Facility Rules in relation to NAFTA claims arising from real estate developments in Mexico (*Lion Mexico Consolidated L.P v United Mexican States* (ICSID Case No. ARB (AF)/15/2));
- Arbitrator in an ICC arbitration arising from the modernization of the Talara Refinery in Peru, subject to Spanish law and with the seat in Miami;
- Arbitrator in an investment arbitration pursuant to the Spain-Cuba BIT arising from a joint venture between an investor and a state entity;
- Sole arbitrator in two ICC arbitrations involving financial derivatives under Spanish law;
- Arbitrator in two LCIA arbitrations relating to long-term supply contracts in the renewable energy sector under English law;
- Sole arbitrator in an LCIA arbitration in a dispute arising from a Chinese investment in a Canadian technology corporation subject to the law of British Columbia;
- Sole arbitrator in an ICC arbitration relating to a joint venture contract governed by Spanish law for the participation in a major public works contract in Qatar;
- Sole arbitrator in an ICC arbitration involving an international carriage of goods between German and Spanish companies;
- Sole arbitrator in an arbitration arising from a management buy-out contract between Swedish and Spanish parties pursuant to the rules of the Madrid Court of Arbitration;
- Sole arbitrator in a dispute arising from the acquisition by an Italian investor of a Spanish corporation in the pharmaceutical sector;
- Sole arbitrator in a dispute under Spanish law between a foreign investor and a prior-owner of mining rights in relation to the re-opening of a major Spanish mine;
- Sole arbitrator in an arbitration relating to the termination of a real estate joint venture in Cape Verde pursuant to the rules of the Madrid Court of Arbitration;
- Arbitrator appointed by the Court of Arbitration for Sport in ten CAS arbitrations, particularly relating to football disputes involving transfer agreements, agents' remuneration, training compensation, and football club insolvency;
- Sole arbitrator in four arbitrations relating to domain name rights pursuant to the WIPO Expedited Arbitration Rules.

### **As Counsel**

- Counsel to a Spanish constructor in an ICSID arbitration arising from an infrastructure project (highway reconstruction) in Honduras (*Elsamex S.A. c. República de Honduras*, ICSID Case No. ARB/09/4);
- Counsel in two ICSID annulment proceedings (*Blue Bank International & Trust (Barbados) Ltd. v Bolivarian Republic of Venezuela* (ICSID Case No. Arb/12/20) and *Compañía de Aguas del Aconquija SA y Vivendi*

- Universal v. República Argentina*, ICSID Case No. ARB/97/3);
- Representing the owner of a heavy fuel oil plant in El Salvador in DAB hearings and subsequent ICC arbitrations arising from disputes with a European contractor/operator arising pursuant to EPC (FIDIC Yellow Book) and Operation & Maintenance contracts (English law; New York);
  - Representing a Spanish investor in Panama in two ICC arbitrations arising from the construction of a hydroelectric plant (FIDIC Silver Book; Panamanian law);
  - Representing a Spanish constructor in ICC arbitrations in New York arising from two turnkey contracts for the construction of heavy plants in the Netherlands and Argentina (Dutch & Argentine law; New York);
  - Representing a Swiss contractor in an ICC arbitration in Paris relating to two turnkey contracts for the construction of fish canning plants in Libya (Libyan law; Paris);
  - Representing Spanish suppliers in an ad hoc arbitration involving a Middle Eastern state construction company arising from the procurement contracts for an industrial plant (Iranian law);
  - Counsel in an ICC arbitration between French and Spanish telecommunications companies relating to the excavation of a fibre-optics communication trench in Spain (Spanish law; Madrid);
  - Representing a Spanish bank in an ICC arbitration arising from the call on performance bonds of a Spanish supplier to a petrochemical construction project in Nigeria (French/Spanish law; Paris);
  - Representing a New Zealand state corporation in an ad hoc arbitration with an English constructor arising from civil engineering works for railways and telecommunications infrastructure (New Zealand law; Wellington).

## **MEDIATION & DISPUTE BOARDS**

David is an accredited UK mediator, and a former member of the ICSID Panel of Conciliators. He has acted as a mediator pursuant to the ICC ADR Rules in a dispute arising from an international distribution contract between US and Spanish parties, and has advised clients in mediation and dispute board proceedings.

He received his mediation training in London (Chartered Institute of Arbitrators), Madrid (ISDE-Instituto Superior de Derecho y Economía) and Geneva (WIPO Workshop for Mediators in Intellectual Property Disputes).

## **DIRECTORIES AND LEGAL PUBLICATIONS**

David J. A. Cairns is listed in **Who's Who Legal** Arbitration 2020 as a Global Leader.

## **PROFESSIONAL AND ACADEMIC QUALIFICATIONS**

### **Professional**

- 2002, Madrid, Abogado
- 2001, England and Wales (Solicitor-Advocate, Civil)
- 1984, New Zealand, Barrister & Solicitor, Non-practising

### **Academic**

- Universidad San Pablo-CEU, Diploma-Spanish law for EU lawyers, 2006
- University of Cambridge, Ph.D, 1995 (Senior Research Scholar, Pembroke College)
- University of Toronto (Commonwealth Scholar), LLM, 1986
- University of Canterbury, LLB (Hons), 1982

## **PROFESSIONAL ASSOCIATIONS**

- Fellow and Chartered Arbitrator, Chartered Institute of Arbitrators, London

- Member, London Court of International Arbitration
- Madrid International Arbitration Centre (MIAC)
- ICC National Committees, United Kingdom & New Zealand
- Member of the ICDR Panel of International Arbitrators
- List of Arbitrators of the American Chamber of Commerce of Peru
- Panel of Arbitrators of the Singapore International Arbitration Centre
- Panel of International Arbitrators, KCAB International
- Panel of Arbitrators of the Arbitration Foundation of South Africa (AFSA)
- Society of Construction Law, London
- Australia-Spain Business Association, Madrid
- Club Español del Arbitraje, Madrid
- Club de Derecho de la Construcción y la Ingeniería (CDCI), Madrid
- Universidad Carlos III de Madrid: Masters in International Advocacy programme

## PUBLICATIONS

David J. A. Cairns writes and speaks regularly on arbitration related topics. His writing includes the national report on Spanish arbitration law for the ICCA Handbook, and a consolidated translation of the Spanish Arbitration Act.

David J. A. Cairns is author or co-author of the following publications:

### Books

- *The Remedies for Trademark Infringement*, Carswell & Co, Toronto, 1988;
- *Advocacy and the Making of the Adversarial Criminal Trial*, Oxford University Press, 1998.

### Articles/Book Chapters

#### Spanish Arbitral Law and Practice

- *Arbitral Legitimacy and Spanish Financial Regulation* Spain Arbitration Review, N° 31/2018, pp.53-71;
- *National Report-Spain* in The ICCA International Handbook on Commercial Arbitration (KluwerLaw International, 2017) Supplement N° 112, October 2020;
- *Spain's Consolidated Arbitration Law (2012)* Spain Arbitration Review, N° 13, 49-73 (translation of Ley 60/2003 de 23 de diciembre with 2009 and 2011 legislative amendments; previously published as Spain's New Arbitration Act [2004] 7 International Arbitration Law Review 39-48; (2004) ASA Bulletin 695-721;
- *The Spanish Application of the UNCITRAL Model Law on International Commercial Arbitration (2006)* 22 Arbitration International 573-595.

#### Investment Arbitration

- *Contract and Treaty Claims and Choice of Forum in Foreign Investment Disputes* in Bernardo M. Cremades and Julian D.M. Lew (ed) *Parallel State and Arbitral Procedures in International Arbitration* (ICC Publication 692, 2005) at 13-41 (also published in Spanish as *La seguridad jurídica de las inversiones extranjeras: la protección contractual y de los Tratados*);
- *The Brave New World of Global Arbitration* (2002) 3 The Journal of World Investment 173-210 (also published in Spanish as *El Arbitraje en la Encrucijada entre la Globalización y sus Detractores*);
- *Supreme Decree N° 28701: President nationalises all aspects of production and sale of hydrocarbons in Bolivia* [2006] 9 International Arbitration L. R. N37-N42;
- *Introductory Note to Salini Costruttori S.p.A v The Hashemite Kingdom of Jordan, Decision on Jurisdiction* 44 ILM 569-572 (2005);
- *Confidentiality and State Party Arbitrations* (2002) New Zealand Law Journal 125.

## International Commercial Arbitration

- *Transnational Public Policy and the Internal Law of State Parties* Arab Journal of Arbitration, Vol.10, September 2007, pp. 27-36; Transnational Dispute Management, March 2009, Volume 6, Issue 1;
- *Corruption, International Public Policy and the Duties of Arbitrators* Dispute Resolution Journal, November 2003, 100-107;
- *Transnational Public Policy in International Arbitral Decision-Making: The Cases of Bribery, Money laundering, and Fraud* in Kristine Karsten and Andrew Berkeley (ed) Arbitration: Moneylaundering, Corruption and Fraud (ICC Publication 651, 2003) at 65-91 (also published in Spanish as *Orden Público Transnacional en el Arbitraje Internacional (Cohecho, Blanqueo de Capitales y Fraude Contable)*);
- *Introductory Note to European Court of Justice: Allianz SpA v West Tankers Inc*; 48 ILM 485 (2009).

## Arbitral Practice & Advocacy

- *The Premises of Witness Questioning in International Arbitration* in Andrea Menaker ed. International Arbitration and the Rule of Law: Contribution and Conformity (ICCA Congress Series N° 19, Kluwer Law International, The Netherlands, 2017) pp. 302-321;
- *Expertise in International Arbitration* TDM 4 (2013), [www.transnational-dispute-management.com](http://www.transnational-dispute-management.com);
- *Advocacy and the Functions of Lawyers in International Arbitration* in M. Á. Fernández-Ballesteros & David Arias Liber Amicorum Bernardo Cremades (Wolters Kluwer España, 2010) pp. 291-307;
- *Oral Advocacy and Time Control in International Arbitration* en A. J. Van den Berg ed. Arbitration Advocacy in Changing Times (ICCA Congress Series N° 15, Kluwer Law International, The Netherlands, 2011) pp. 181-201;
- *Preparation for Cross-Examination* Revista de Arbitragem e Mediação, Vol. 34, 2012, pp.337-349;
- *Cross-Examination in International Arbitration: Is it Worthwhile?* in Lawrence W. Newman & Ben H. Sheppard Jr. eds. Take the Witness: Cross-Examination in International Arbitration (Juris, 2010) pp. 223-242;
- *England's Procedural Revolution and Procedures Under Woolf* (2000) New Zealand Law Journal 323 and 395.