

City University of Hong Kong

Course Syllabus

**offered by School of Law
with effect from Semester A 2022/23**

Part I Course Overview

Course Title: Investor-State Dispute Settlement

Course Code: LW6160E

Course Duration: One semester

Credit Units: 3

Level: P6

Medium of Instruction: English

Medium of Assessment: English

Prerequisites:
(Course Code and Title) Nil

Precursors:
(Course Code and Title) LW6142E International Investment Law

Equivalent Courses:
(Course Code and Title) Nil

Exclusive Courses:
(Course Code and Title) Nil

Part II Course Details

1. Abstract

In practice, international investment agreements (IIAs) entail conflicts of interest between the investor and the host state over the nature of the control that could be exercised over the foreign investment. Essentially, the investor’s interest is to control its investment within a stable and predictable legal regime, while the host state seeks to exert its sovereign power to define its policies. Investor–state arbitration is deemed to be a crucial feature of foreign investment protection because it provides access to a neutral forum for the settlement of disputes. Investor–state arbitration is not only an alternative to the domestic courts of the host state, but also a technique that ‘depoliticises’ the disputes, by removing them from the intergovernmental political relationship between the home state and the host state. The course on “*Investor-State Dispute Settlement*” would be more than a course on arbitration. In fact, it is designed as a specialized course which pays attention to the great specificity of *Investor-State Dispute Settlement*.

The principal objective of the course is to familiarize the participants with the negotiation, formulation and interpretation of investment treaties with particular emphasis on dispute resolution, valuation of damages and enforcement. The students will acquire the knowledge of the basics of investment treaty laws, contracts and on how and when to initiate arbitration proceedings against entities that violate investment agreements. The goal is to enable the students to learn the art of creating an investment climate crucial for stimulating economic activity through bilateral investment treaties and investment contracts. At the end of the training students will be equipped to protect and promote the economic and financial interests of private and public stakeholders.

By the end of this course, students will be able to:

- Discuss initial steps in the management of a case
- Learn what must be decided at the first procedural hearing
- Consider the importance of designating a place of arbitration, because in a non-ICSID case the law of the place of arbitration will govern the amount of assistance that local courts will give the arbitration and the applicable set-aside rules
- Consider the appropriate role of a tribunal secretariat in administering arbitral proceedings
- Identify the reasons parties might seek to enjoin arbitral proceedings
- Identify the reasons that parties might seek provisional measures
- Consider the kinds of provisional measures that arbitral tribunals can order
- Consider when and why similar cases should be consolidated

2. Course Intended Learning Outcomes (CILOs)

(CILOs state what the student is expected to be able to do at the end of the course according to a given standard of performance.)

No.	CILOs	Weighting (if applicable)	Discovery-enriched curriculum related learning outcomes (please tick where appropriate)		
			A1	A2	A3
1.	Demonstrate an attitude of discovery and curiosity as related to relevant legal rules pertaining to the theory and practical application of investment treaty law.	40%	✓	✓	✓
2.	Acquire the necessary skills and abilities in order to	40%	✓	✓	✓

	<p>conduct the following:</p> <ul style="list-style-type: none"> ▪ Find and understand relevant legal theories and principles related to investment treaty law in commercial settings. ▪ Identify and analyse the basic principles of international investment law, and the enforcement of these principles. ▪ Explain the functioning of international institutions relevant to this field, especially that of arbitral tribunals such as those under ICSID. ▪ Understand and apply relevant cases in investment law to solve commercial-related problems. ▪ Assess practical problems and identify where potential disputes may arise and how investment law principles may apply to resolve the problems. ▪ Apply the principles to actual and potential legal problems arising from those laws and treaties, including an objective discussion of all relevant arguments. ▪ Conducting legal research independently in relation to investment disputes. 				
3.	<p>Accomplish and present written evidence of the following to demonstrate acquisition of required skills and abilities:</p> <ul style="list-style-type: none"> ▪ Case summary of a relevant investment law case discussed during the course. ▪ Written analysis of a investment treaty-related problem scenario using a prescribed format. ▪ IRAC based analysis of treaty disputes in a commercial setting. This is essentially the final examination. 	20%	✓	✓	✓
		100%			

A1: *Attitude*

Develop an attitude of discovery/innovation/creativity, as demonstrated by students possessing a strong sense of curiosity, asking questions actively, challenging assumptions or engaging in inquiry together with teachers.

A2: *Ability*

Develop the ability/skill needed to discover/innovate/create, as demonstrated by students possessing critical thinking skills to assess ideas, acquiring research skills, synthesizing knowledge across disciplines or applying academic knowledge to self-life problems.

A3: *Accomplishments*

Demonstrate accomplishment of discovery/innovation/creativity through producing /constructing creative works/new artefacts, effective solutions to real-life problems or new processes.

3. Teaching and Learning Activities (TLAs)

(TLAs designed to facilitate students' achievement of the CILOs.)

TLA	Brief Description	CILO No.				Hours/week (if applicable)
		1	2	3	4	
1	Explanation of the main features of international investment law and arbitration through lectures on Dispute Settlement Options – Forum Selection and Consent to Arbitration; Awards and Decisions; Law Applicable in Investment Treaty Arbitration; Tribunal Jurisdiction and the Relationship of Investment Arbitration with Municipal	✓	✓	✓		3

	Courts and Tribunals Arbitrators (Selection, Bias and Ethics); Case Management & Selecting the Place of Arbitration ;Jurisdictional objections and Defenses (Ratione Personae, Ratione Materiae & Ratione Temporis). More practical work and application of what has been learnt at the lectures					
2	In-class legal interpretation and analysis exercises, small-group analysis and evaluation of investment treaties, in-class presentation by students of their drafting and interpretative works, followed by critique and discussions.		✓	✓		
3	Film clips will be shown to sensitise students to various types of investment lawyers' activities (ranging from client's advice to pleading) and stimulate their critical thinking.		✓	✓		
4	In-class exercises, small-group analysis and evaluation of treaties, contracts, and models, in-class presentation by students of their works, followed by critique and discussions.		✓	✓		

4. Assessment Tasks/Activities (ATs)

(ATs are designed to assess how well the students achieve the CIOs.)

Assessment Tasks/Activities	CILO No.			Weighting	Remarks
	1	2	3		
Continuous Assessment: 20%					
In-class Activities: Students need to participate actively in in-class activities such as case study, discussion, and exercises designed to facilitate their understanding of knowledge taught in class. Participation Students' general performance throughout the semester, for instance in analysing and drafting investment treaties activities and discussions in class or on Canvas.	✓	✓	✓	20%	
Examination (duration: 3 hours). Students will be assessed via the examination their understanding of concepts learned in class, textbooks, reading materials and their ability to apply subject related knowledge.	✓	✓	✓	80%	
				100%	

Applicable to students admitted in Semester A 2022/23 and thereafter

This is an open-book exam.

Students must obtain a minimum mark of 50% in the final examination and an overall mark of 50% in order to pass the course.

When University facilities and resources are available, students are required to take a computer-based examination in computer labs. During the examination, students are blocked

from access to files, programme and the Internet.

Applicable to students admitted before Semester A 2022/23

This is an open-book exam.

Students must obtain a minimum mark of 40% in the final examination and an overall mark of 40% in order to pass the course.

When University facilities and resources are available, students are required to take a computer-based examination in computer labs. During the examination, students are blocked from access to files, programme and the Internet.

5. Assessment Rubrics

(Grading of student achievements is based on student performance in assessment tasks/activities with the following rubrics.)

Applicable to students admitted in Semester A 2022/23 and thereafter

Assessment Task	Criterion	Excellent (A+, A, A-)	Good (B+, B)	Marginal (B-, C+, C)	Failure (F)
In-class Activities	Demonstration of understanding of principles, theories and concepts. Demonstration of ability to identify issues. Application of knowledge to specific problems and to discuss questions. Ability to engage in analysis and to offer innovative solutions	High	Significant	Moderate	Inadequate
Examination	Demonstration of understanding of principles, theories and concepts. Demonstration of ability to identify issues. Application of knowledge to specific problems and to discuss questions. Ability to engage in analysis and to offer innovative solutions.	High	Significant	Moderate	Inadequate

Applicable to students admitted before Semester A 2022/23

Assessment Task	Criterion	Excellent (A+, A, A-)	Good (B+, B, B-)	Fair (C+, C, C-)	Marginal (D)	Failure (F)
In-class Activities	Demonstration of understanding of principles, theories and concepts. Demonstration of ability to identify issues. Application of knowledge to specific problems and to discuss questions. Ability to engage in analysis and to offer innovative solutions	Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.	Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.	Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.	Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.	Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.
Examination	Demonstration of understanding of principles, theories and concepts. Demonstration of ability to identify issues. Application of knowledge to specific problems and to discuss questions. Ability to engage in analysis and to offer innovative solutions.	Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.	Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.	Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.	Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.	Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

Part III Other Information (more details can be provided separately in the teaching plan)

1. Syllabus

1.1 Keyword Syllabus

(An indication of the key topics of the course.)

Forum Selection; jurisdiction, *Ratione Personae*; *Ratione Materiae*; *Ratione Temporis*; anti-injunction; interim measures; enforcement; consolidation; bifurcation; confidentiality; third-party participation; treaty-shopping.

1.2 Detailed Syllabus

1. Part I – Commencing Investment Arbitration

Week 1 – Introduction

Week 2 – The Arbitral Procedure

Week 3 - Arbitrators (Selection, Bias and Ethics), Case Management & Selecting the Place of Arbitration

Week 4 – Tribunal Jurisdiction and the Relationship of Investment Arbitration with Municipal Courts and Tribunals

2. Part II – Investment Dispute Management

Week 5 – Law Applicable in Investment Treaty Arbitration

Week 6 – Jurisdictional objections and Defenses (*Ratione Personae*, *Ratione Materiae* & *Ratione Temporis*)

Week 7 – Mid-term revision class

Week 8 - Denial of benefits Clauses

Week 9 – Issues arising during the course of the arbitration: anti-suit injunctions, provisional measures, consolidation, confidentiality, and third-party participation

3. Part III – Challenging and Enforcing Arbitration Awards

Week 10 – Damages and Costs

Week 11 - Enforcement of Awards and Sovereign Immunity

Week 12 - Control Mechanisms

Week 13 - Redesigning Investor-State Dispute Settlement?

2. Reading List

2.1 Recommended Readings

(Additional references for students to learn to expand their knowledge about the subject.)

Textbook

Chaisse, J. (et al.) *Handbook of International Investment Law and Policy - Volume II (Investor-State Dispute Settlement (ISDS): Procedural and Substantial Issues)* (New York: Springer-Nature, 2021) 1,582.

Supplementary Readings

Chaisse, Julien and Nottage, Luke *International Investment Treaties and Arbitration Across Asia* Leiden, Brill Nijhoff 2018

Chaisse, J. (et al.) *Handbook of International Investment Law and Policy - Volumes I, III, and IV*, New York: Springer-Nature 2021 [[available online via CityU library or CityU VPN](#)]

Dolzer, Rudolf and Schreuer, Christoph *Principles of International Investment Law* (2nd ed) Oxford, Oxford University Press 2012

McLachlan, Campbell *International Investment Arbitration: Substantive Principles* (2nd ed) Oxford, Oxford University Press 2017

Nadakavukaren Schefer, Krista *International Investment Law: Text, Cases and Materials* (3rd ed) Cheltenham, Edward Elgar 2020

Radi, Yannick, *Rules and Practices of International Investment Law and Arbitration* (Cambridge University Press, 2020) 580.

Sornarajah, M. *The International Law on Foreign Investment* (4th ed) Cambridge, Cambridge University Press 2021

Subedi, Surya P. *International Investment Law: Reconciling Policy and Principle* (4th ed) London, Hart Publishing 2020

Zachary, Douglas, *The International Law of Investment Claims* Cambridge, Cambridge University Press 2009

Other reading lists and materials will be posted on the course Canvas for each lecture.

- In addition, knowledge of current legal, social and economic events will play a leading role in our discussions of transnational economic problems. Discussions are predicated on an assumption of familiarity with the assigned materials; all readings should therefore be completed before the relevant class session.
- Students will be expected to read the international section of a reputable national newspaper (*Financial Times* and *International Herald Tribune* are recommended) in preparing for weekly classes.
- Students should subscribe to the Social Sciences Research Network (SSRN) (<http://hq.ssrn.com/login/pubsigninjoin.cfm>) in order to access (for free) a wealth of articles and book chapters.

Online Resources

<http://icsid.worldbank.org/ICSID/Index.jsp>

http://www.unctadxi.org/templates/DocSearch_779.aspx (search engine for BITs)

<http://ita.law.uvic.ca>

<http://www.investmentclaims.com>

<http://www.naftaclaims.com>

<http://www.iareporter.com>

<http://www.iisd.org/investment/itn/>

<http://www.ll.georgetown.edu/intl/guides/InternationalInvestmentLaw.cfm>

<http://www.mpil.de/ww/en/pub/library.cfm> (*Library of the Max Planck Institute for Comparative Public Law and International Law, Heidelberg*)

<http://www.ppl.nl/bibliographies/all/?bibliography=investment> (*Bibliography on New Aspects of International Investment Law compiled by the Peace Palace Library, The Hague, The Netherlands*)

<http://www.cityu.edu.hk/lib/eres/ej/index.htm> (CityU Library e-Journals)

<http://libweb.cityu.edu.hk/lbdinst/westlaw.htm> (access to WESTLAW via CityU Library)

Supplementary Materials

Convention on the Settlement of Investment Disputes Between States and Nationals of Other States – History of the Convention, Documents concerning the origin and the formulation of the convention, 4 vols., Washington, D.C.: International Centre for Settlement of Investment Disputes, 1968-1970.

ICSID Reports, Cambridge, Grotius, 1993- (12 vols.)

Investment Laws of the World, International Centre for the Settlement of Investment Disputes (ICSID), Dobbs Ferry, N.Y, Oceana Publications (lose-leaf binders) 1972- (10 vols.)

International investment instruments: a compendium; United Nations Conference on Trade and Development (UNCTAD), Division on Transnational Corporations and Investment. New York: United Nations, 1996-2005 (10 vols.)

International Investment Law: A Changing Landscape, A Companion Volume to International Investment Perspectives, OECD, 2005

James Crawford (ed.), *The International Law Commission's articles on state responsibility: introduction, text and commentaries*; Cambridge: Cambridge University Press, 2002.

Philip Kunig, Niels Lau, Werner Meng (eds.): International economic law – Basic documents; Berlin: W. de Gruyter, 1993.

World Investment Report, United Nations Conference on Trade and Development (UNCTAD), New York: United Nations, 1991-2007

Journals (selected)

Arbitration International

Contemporary Asia Arbitration Journal

European Investment Law and Arbitration Review

Journal of International Arbitration

Journal of International Dispute Settlement

Journal of International Economic Law

