# International Arbitration and Foreign Investment: Principles and Practice

*by*
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Julien Chaisse is Professor at The Chinese University of Hong Kong (CUHK), Faculty of Law. He is an award-winning scholar of international law with a special focus on the regulation and development of economic globalization. His teaching and research include international trade/investment law, international taxation, law of natural resources, and Internet law. Prior to joining CUHK in 2009, Dr. Chaisse was a senior research fellow at the World Trade Institute (Switzerland). He also held an appointment as lecturer at elite school Sciences Po Aix (France) and served as a diplomat at the Embassy of France in New Delhi (India).

Dr. Chaisse is frequently invited to lecture at many academic institutions and leading universities around the world, including Columbia University (U.S.), University of Oxford (U.K.), Melbourne University (Australia), Tokyo University (Japan), and Tsinghua University (China). Dr. Chaisse has published numerous well-regarded and widely-cited books and articles, such as "The Regulation of Global Water Services Market", Cambridge University Press (2017); "International Economic Law and Governance", Oxford University Press (2016); "Shareholder Protection Reloaded", Stanford Journal of International Law (2016); "Navigating the Expanding Universe of International Treaties on Foreign Investment", Journal of International Economic Law (2015); "Maintaining the WTO's Supremacy in the International Trade Order", Journal of International Economic Law (2013); and "Promises and Pitfalls of the European Union Policy on Foreign Investment", Journal of International Economic Law (2012).

In recognition of his outstanding academic performance, Dr. Chaisse received the CUHK Vice-Chancellor's Exemplary Teaching Award in 2015 and the CUHK Research Award in 2012. Dr. Chaisse has held the appointment of Director of the Centre for Financial Regulation and Economic Development at CUHK Law since 2013, and has established forward-looking legal projects and events at CUHK, including the series of "Asia FDI Forum", which has become the most prominent conference on foreign investment regulation in Asia.

In addition to his professorship, Dr. Chaisse is a well-experienced arbitrator and a leading consultant to international organizations, governments, multinational law firms, and private investors. He is also member of some of the world's foremost organizations, including the World Economic Forum's International Trade and Investment Council and the Internet Corporation for Assigned Names and Numbers (ICANN) in which Dr. Chaisse serves on the Working Group on gTLDs' rights protection mechanisms review and the Accountability and Transparency Review program.

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## Course Objective:

Investment arbitration is a procedure to resolve disputes between foreign investors and host States (also called Investor-State Dispute Settlement or ISDS). The possibility for a foreign investor to sue a host State is a guarantee for the foreign investor that, in the case of a dispute, it will have access to independent and qualified arbitrators who will solve the dispute and render an enforceable award. This allows the foreign investor to bypass national jurisdictions that might be perceived to be biased or to lack independence, and to resolve the dispute in accordance to different protections afforded under international treaties. For a foreign investor to be able to initiate an investment arbitration, a host State must have given consent to this.

Consent to investment arbitration is most commonly given by host States in International Investment Agreements (IIA's), including Bilateral Investment Treaties (BIT's) as well as Free Trade Agreements (FTA's) and multilateral agreements, e.g., The Energy Charter Treaty (ECT). Less frequently, consent to investment arbitration may be found in investment agreements concluded directly between a State and a foreign investor, or it may be contained in a domestic law of the host State, such as a mining or investment law. The United Nations' UNCTAD maintains a list of the vast majority of instruments providing for a host State's consent to investment arbitration, which should be consulted at the outset of any potential dispute to see whether investment arbitration may be envisaged.

This course reviews the main conditions, steps and actors in the practice of investment arbitration.

## Course Outline:

**In this course you will have an opportunity to explore recent developments of key issues such as:**

- Consider why arbitration is often viewed as an attractive alternative to litigation in domestic courts
- Identify the drawbacks to litigating in either home or host state courts
- Identify the advantages investor-state disputes settlement holds over state-state dispute settlement
- Identify the various sources for consent to an investment arbitration
- Review the identity of the most frequent defendants in investment cases
- Learn about "fork-in-the-road" clauses
- Consider the potential overlap between domestic causes of action and international investment law claims
- Examine the waiver of the exhaustion-of-local-remedies rule
- Consider the relationship between choice-of-forum clauses in contracts and the referral to arbitration under an investment treaty
- Consider the advantages of international arbitration vs. national courts

Scan to Calendar

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| Code: | **EVT000000254** | Level: | **Intermediate** |
| Date: | **12 October 2018 (Friday) (Amended)** | Language: | **English** |
| Time: | **09:30 - 12:45 (Amended)**<br>(Reception starts at 09:00) | Accreditation(s): | **LSHK 3.0 CPD Points**<br>**SFC 3.0 CPT Hours** |
| Venue: | **Kornerstone Institute**<br>15/F, Hip Shing Hong Centre<br>55 Des Voeux Road Central<br>Central, Hong Kong | Request for Rerun: | **Please Contact Us for Details** |

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