

ICC DISPUTE RESOLUTION BULLETIN

EXTRACT | 2019 | ISSUE 1

ICC Dispute Resolution Bulletin | 2019 Issue 1

Quarterly e-journal of the International Chamber of Commerce (ICC)
Périodique numérique trimestriel de la Chambre de commerce internationale

Editors-in-Chief | Rédacteurs en chef

Julien Fouret
Samaa Haridi

Editorial Board | Comité de rédaction

Cecilia Azar
Chiann Bao
Utku Cosar
Valeria Galindez
Rémy Gerbay
Daniel Kalderimis
Tejas Karia
Swee Yen Koh
Yasmine Lahlou
Reza Mohtashami QC
Sara Nadeau-Séguin
Ziad Obeid
Ucheora Onwuamaegbu
Dámaso Riaño
Othmane Saadani
Sabina Sacco
Galina Zukova
Alberto Zuleta

Filiale à 100 % de la Chambre de commerce internationale (ICC)

SAS au capital de 305 562 euros
SIREN 313 975 237
RCS Paris B 313 975 237
Président, directeur de la publication: John Denton

Head Office
33-43 avenue du Président Wilson
75116 Paris, France

Directeur général, directeur adjoint de la publication:
Emmanuel Jolivet

Copyright © 2019
International Chamber of Commerce (ICC)

All rights reserved. No part of this work may be reproduced, distributed, transmitted, translated or adapted in any form or by any means except as permitted by law without the written permission of the ICC. Authors should request the permission of ICC prior to any reproduction or subsequent publication of an article (electronic or print). Permission can be requested from ICC through copyright.drs@iccwbo.org.

Tous droits réservés. Il est interdit de reproduire, de distribuer, de transmettre, de traduire ou d'adapter tout ou partie de cet ouvrage, sous quelque forme ou par quelque procédé que ce soit, en dehors des exceptions prévues par la loi, sans l'autorisation écrite de la Chambre de commerce internationale. Toute demande d'autorisation est à adresser à copyright.drs@iccwbo.org.

Disclaimer

Except where otherwise indicated, the views expressed and statements made herein are those of their authors and should not be construed as creating any duty, liability or obligation on the part of the ICC and its constituent bodies, including the International Court of Arbitration, the International Centre for ADR and their respective Secretariats.

Sauf indication contraire, les points de vue et les commentaires exprimés dans la présente publication sont ceux de leur(s) auteur(s) et ne sauraient créer aucun devoir, ni aucune responsabilité ou obligation à la charge de la Chambre de commerce internationale ou de ses organes, y compris la Cour internationale d'arbitrage, le Centre international d'ADR et leurs secrétariats respectifs.

Trademarks

ICC, the ICC logo, CCI, International Chamber of Commerce (including Spanish, French, Portuguese and Chinese translations), World Business Organization, International Court of Arbitration and ICC International Court of Arbitration (including Spanish, French, German, Arabic and Portuguese translations) are all trademarks of the ICC, registered in several countries.

ICC, le logo ICC, CCI, International Chamber of Commerce (y compris des traductions en espagnol, français, portugais et chinois) World Business Organization, International Court of Arbitration et ICC International Court of Arbitration (y compris des traductions en espagnol, français, allemand, arabe et portugais) sont des marques de la Chambre de commerce internationale et ont été enregistrées dans plusieurs pays.

Subscriptions/Individual issues

publications@iccwbo.org

The ICC Dispute Resolution Bulletin is available :

- ICC Store at www.storeiccwbo.org

- ICC Digital Library at <http://library.iccwbo.org/>

Dispute Resolution Services Publications

Stéphanie Torkomyan, Publications Manager
Claire Héraud, Senior Publications Assistant

Articles for publication should be sent to the Editors-in-Chief, members of the Editorial Board, or to the Publications Manager (stn@iccwbo.org). Suggestions for book reviews are also welcome.

ICC Publication No. @19BUL1
ISBN: 978-92-842-0553-0
ISSN: 2520-6052

Price | Prix

Subscription | abonnement: 180 euros (excl. VAT | hors TVA)

Per issue | par numéro: 49 euros (excl. VAT | hors TVA)

Publication date | Date de parution

June 2019 / juin 2019

Published by | Édité par

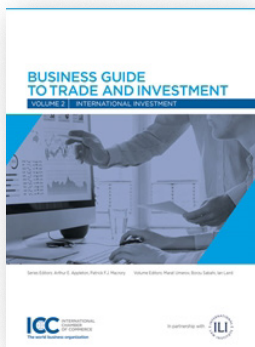
ICC Services
Wholly-owned affiliate of the International Chamber of Commerce

BOOK REVIEW

'Business Guide to Trade and Investment': A Practical Guide for the Business Community and Governments

Matthieu Grégoire

Barrister, 4 New Square Chambers, London



Business Guide to Trade and Investment Volume 2, International Investment

Series Editors: Arthur E. Appleton, Patrick F.J. Macrory
Volume Editors: Marat Umerov, Borzu Sabahi, Ian Laird

ICC, 2018
220 pages
ISBN: 978-92-842-0477-9

The second volume of the series *Business Guide to Trade and Investment*,

which focuses on International Investment,¹ is an indispensable tool for the business community and in-house or government counsel considering making or dealing with foreign investments. It endeavors to assist them in better understanding the types of protection provided by international investment agreements and investment contracts. It is structured in a user-friendly manner, sign-posting the reader through the various stages of an arbitration process. Each chapter, drafted by a leading practitioner in this field, sets out in clear terms the fundamental aspects of investment protection. The Guide is peppered with useful and concise business guidance set forth in shaded boxes. Case descriptions and brief legal analyses also appear in text boxes. For readers who wish to explore certain points further, legal references and cases are provided in endnotes that follow each chapter.

The Guide is a comprehensive overview of the international rules applicable to foreign investments and their protection. It is structured to assist the reader in considering the measures to be taken both prior to making an investment and once a dispute has arisen.

The Guide begins with an overview of the history of the emergence of Bilateral Investment Treaties ('BITs'), the development of institutional rules and addresses some of the criticisms of international investment agreements (Chapter 1).

The Guide then examines pre-investment issues that any organisation contemplating a foreign investment should consider. Chapter 2 then provides a checklist of host country regulations to be investigated before planning investments in a foreign country. Chapter 3 explains how the investor's home state regulations governing economic sanctions must be considered by all investors contemplating foreign investment. Chapter 4 focuses on addressing two major concerns that frequently arise when businesses and investors derive income from a foreign country: (i) the potential double taxation and (ii) the impact of transfer pricing rules. Chapter 5 examines political risk insurance, an important tool for protecting investments abroad.

Chapters 6 and 7 consider the two most common sources of investors' rights: Chapter 6 examines the basic features of international investment agreements ('IIAs'), consisting of Bilateral Investment Treaties ('BITs') and Free Trade Agreements ('FTAs'). This chapter includes nationality requirements, pre-establishment protection, exceptions and carve-outs in IIAs. Chapter 7 analyses the important features of international investments contracts (commercial contracts entered into by state-owned entities, usually relating to a particular project).

¹ Volume 1 'International Trade' and Volume 2 'International Investment' of the *Business Guide to Trade and Investment* are available at <http://store.iccwbo.org/business-guide-to-trade-and-investment-volume-2>.

Chapters 8 and 9 seek to identify the ‘investors’ rights’, by providing an overview of substantive rights generally available under IIAs. Chapter 8 covers fair and equitable treatment, the protection against expropriation, umbrella clauses and protection and security. Chapter 9 explores the two non-discrimination obligations found in virtually all IIAs: national treatment and the most-favoured-nation treatment. Chapters 10 to 12 deal with the question of whether an arbitration tribunal has jurisdiction over a particular matter, examining issues that frequently come up in investment arbitrations (i.e. consent, nature of investment, nationality, temporal issues, taxes, fork-in-the-road provisions).

Chapters 13 to 25 deal with the resolution of investment disputes between investors and states. The reader is guided through the arbitration process. The Guide explains the importance of selecting appropriate counsel, selecting and challenging arbitrators, and considering third-party funding, which is increasingly prevalent in investor-state arbitrations. It then presents predictable stages in international investment arbitrations, considering conciliation and mediation, interim relief, bifurcation, evidence, counterclaims and damages and valuation. Finally, it considers the annulment and set-aside of awards, as well as their recognition and enforcement. Chapter 26 deals with transparency in investment arbitration, summarising the various transparency regimes available to users.

In light of the increasing application of international investment agreements to international disputes involving state and state entities, the Guide is timely. It is a comprehensive, useful and practical roadmap to the substantive and procedural matters that arise in investment arbitration at a time where challenges to global trade call for an ever-greater awareness of the rules applicable to foreign investment.