

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

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

SAS au capital de 305 562 euros
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RCS Paris B 313 975 237
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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.