

Investment Arbitration 101: A Primer (Virtual Edition)

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Investment Arbitration, involving the resolution of disputes between host States and foreign investors, is a developing area which is gaining increasing relevance to practitioners, against a changing global landscape. Designed as a primer, this two-day course will provide an introduction and overview of the investment arbitration legal framework, key substantive principles and concepts for interested arbitration practitioners and in-house counsel.

FACULTY



Dr Claudia Annacker
Member, SIAC
Court of
Arbitration;
Partner, Dechert
(Paris) LLP



Mr Nigel Blackaby QC
Member, SIAC
Court of
Arbitration;
Partner, Freshfields
Bruckhaus
Deringer US LLP



Mr Albert Marsman
Partner, De
Brauw
Blackstone
Westbrook,
Singapore Pte.
Ltd.



**Mr Salim Moollan
QC**
Barrister, Brick
Court Chambers



Mr Philippe Pinsolle
Member, SIAC
Court of
Arbitration;
Partner, Quinn
Emanuel Urquhart
& Sullivan, LLP



**Ms Abby Cohen
Smutny**
Member, SIAC
Court of
Arbitration;
Partner, White &
Case LLP



Ms Charis Tan
Partner, Peter &
Kim

Course Schedule

22 March 2022 (Tuesday) 9.00am – 9.05am (SGT): Welcome Remarks by Ms Qian Wu, Counsel, SIAC

Session 1: 22 March 2022 (Tuesday) 9.05am – 10.30am (SGT)

Lecturer: Ms Abby Cohen Smutny, Member, SIAC Court of Arbitration; Partner, White & Case LLP

- Investment Arbitration – Key features and Comparison with International Commercial Arbitration
 - Arbitration without Privity
 - Consent in Investment Arbitration
 - Sources of law
- Bilateral Investment Treaties (BITs), Multilateral Investment Treaties, Foreign Investment Laws
- Interpreting BITs – Vienna Convention on the Law of Treaties (VCLT) Article 31(3)(c) and VCLT Article 32
- Applicable Laws in Investment Arbitration - *lex causae*, *lex arbitri*, *lex loci arbitri*

Session 2: 22 March 2022 (Tuesday) 11am – 12.30pm (SGT)

Lecturer: Mr Albert Marsman, Partner, De Brauw Blackstone Westbrook, Singapore Pte. Ltd.

- Prerequisites to Arbitration
- Objections to Jurisdiction versus Admissibility
- Cooling off requirements
- Parallel Proceedings
- Treaty and Contract claims
- Fork-in-the-Road clauses
- Waiver of alternative options
- Prior resort to Local Remedies
- Umbrella Clauses

Session 3: 22 March 2022 (Tuesday) 2pm – 3.30pm (SGT) and 4pm – 5.30pm (SGT)

Lecturer: Mr Salim Moollan QC, Barrister, Brick Court Chambers
Assisted by Ms Emilie Gonin

- Protected "Investor"
 - Nationality requirement; Individuals and Corporations
 - Denial of benefits clause
 - Treaty and forum shopping issues
- Protected "Investments"
 - Timing issues – when is an investment made
 - Impact of the law of the host State in defining "investment" – effect of illegality upon investment
 - Indirect investment – claim for losses suffered by direct subsidiary; minority shareholders' rights; claims by holding companies
- Fair and Equitable Treatment
 - Denial of justice
 - Subsequent changes in host State law
 - Review of administrative action (legitimate expectations)
- Full Protection and Security

Session 4: 23 March 2022 (Wednesday) 9am – 10.30am (SGT)

Lecturer: Mr Nigel Blackaby QC, Member, SIAC Court of Arbitration;
Partner, Freshfields Bruckhaus Deringer US LLP

- Expropriation
 - Direct Expropriation
 - Indirect Expropriation – Creeping expropriation
 - Lawful expropriation (conditions)
- National Treatment and Non-Discrimination
- Most-Favoured-Nation (MFN) Treatment – application to procedural and substantive rights

Session 5: 23 March 2022 (Wednesday) 11am – 12.30pm (SGT)

Lecturer: Ms Charis Tan, Partner, Peter & Kim

- Defences and Exceptions in Investment Arbitration, including:
 - Circumstances precluding wrongfulness
 - ILC Article 25 (Necessity)
 - ILC Article 27 (Consequences of invoking a circumstance precluding wrongfulness)
- Remedies and Compensation
 - Compensation for Expropriation
 - Compensation for Violations of Other Treaty Standards
 - Moral and Punitive Damages
 - Mitigation

Session 6: 23 March 2022 (Wednesday) 2pm – 3.30pm (SGT)

Lecturer: Mr Philippe Pinsolle, Member, SIAC Court of Arbitration;
Partner, Quinn Emanuel Urquhart & Sullivan, LLP

- Provisional Measures in Investment Arbitration
- Challenging Investment Arbitration Awards
- Enforcement of Investment Arbitration Awards

Session 7: 23 March 2022 (Wednesday) 4pm – 5.30pm (SGT)

Lecturer: Dr Claudia Annacker, Member, SIAC Court of Arbitration; Partner, Dechert (Paris) LLP

- Potential Issues with Investment Arbitration and the Future of Investment Arbitration
 - Arbitrators in Investment Arbitration and Double-Hatting
 - Termination of BITs
 - Proposals for a Multilateral Investment Court
- SIAC Investment Arbitration Rules
 - Jurisdictional criteria
 - List procedure for appointment of sole or presiding arbitrator
 - Opt-in mechanism for appointment of Emergency Arbitrator
 - Challenges to arbitrators
 - Early dismissal of claims and defences
 - Written submissions by non-disputing parties
 - Third-party funding arrangements
 - Confidentiality and publication of key information relating to dispute

Registration Fee

Standard Rate – SGD 300*
Early Bird Rate (register by 8 March 2022) – SGD 240*
SIAC Academy Alumni are entitled to a 10% discount on listed course fees
*Excludes 7% GST

Supporting Organisations



CHINA INTERNATIONAL ECONOMIC AND
TRADE ARBITRATION COMMISSION

