

SUBSTANTIVE ASPECTS OF INVESTMENT TREATY ARBITRATION

COURSE OUTLINE

In the last decade or so investment treaty arbitration (ITA) – a system of dispute resolution where private investors bring claims against sovereign states challenging their sovereign functions as treaty violations at international arbitration forums (investor-state disputes) - has proliferated rapidly. From 1998 till the end of 2008, the number of such investor-state disputes had increased to 317. This increase is significant especially when seen in light of the fact that from 1987 to April 1998, only 14 investor-state disputes were reported. The massive proliferation of ITA, which has witnessed a conflict between normative values like investment protection, on the one hand and the sovereign power of host nations to protect non-investment objectives, on the other, has generated intense debate, across the globe, about the nature and character of ITA. Although ITA is based on the model followed in international commercial arbitration (ICA) to settle disputes, it differs in many ways from ICA.

This course will expose the students to the nature of ITA (which should not be confused as just another form of ICA) and to the substantive law that the tribunals apply to resolve ITA disputes. This substantive law is contained in the numerous International Investment Agreements (IIAs) – treaties signed at the bilateral, regional or multilateral level by two or more countries to protect investments made by one country's investors in the other country. The course will give an overview of four such substantive principles – most favoured nation, expropriation, non precluded measures and capital transfer provisions. The course will not study the procedural law related to ITA.

KEY READINGS

- G Van Harten (2007), *Investment Treaty Arbitration and Public Law* (OUP: New York).
- P. Ranjan (2010) Indian Investment Treaty Programme in light of Global Experiences, 45 (7) *Economic and Political Weekly*, 68.
- P Muchlinski, F Ortino and C Schreuer (eds.) (2008), *The Oxford Handbook of International Investment Law* (OUP: Oxford).
- R Dolzer and C Schreuer (2008), *Principles of International Investment Law* (OUP: Oxford).
- Susan Franck (2005), The legitimacy Crisis in Investment Treaty Arbitration: Privatizing Public International Law Through Inconsistent Decisions, 73 *Fordham Law Review*, 1521.

DURATION

The course will be offered from 20-25th July 2010. The course will include 12 hours of classroom teaching and will be covered in six classes of two hours each.

ATTENDANCE

Attendance is compulsory and only those students who attend all the six classes will be eligible to be considered for award of certificate for successful completion of the credit course. Students opting for the course shall demonstrate high degree of commitment and discipline in doing the course. They should have read the relevant course material before coming to the class and will be required to participate in the classroom discussions.

ASSESSMENT

The assessment for the course will be done on the basis of an open-book examination of 2 hours (additional 15 minutes of reading time). The question paper will contain two problem questions and two essay questions and students will be required to answer one problem and one essay question. The examination may either be conducted along with other university exams or at any other time convenient to the university.

WHO SHOULD OPT FOR THIS COURSE

This course will prove very useful to all those who are interested in making a career in international economic law (international trade law, international competition law, international investment law and international monetary law) or in international commercial arbitration or even domestic arbitration. It will also be useful to those who are interested in working as commercial lawyers (especially domestic investment laws) or are interested in public international law. Those who are interested in non-commercial laws such as human rights and environment will also find this course interesting as at the heart of the course is the question of how ITA addresses the conflict between investment protection (rights of foreign investors and obligations of host states towards foreign investors) and other non-investment values such as environment, public health, monetary policies etc.

For any query regarding the course – please contact Prabhash Ranjan at pranjan1278@gmail.com