



# International Investment Arbitration: Substantive Principles (Oxford International Arbitration Series)

By Campbell McLachlan, Laurence Shore, Matthew Weiniger

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**International Investment Arbitration: Substantive Principles (Oxford International Arbitration Series)** By Campbell McLachlan, Laurence Shore, Matthew Weiniger

Arbitration of overseas investment disputes is one of the fastest growing areas of international dispute resolution. The exponential growth of international investment in recent years has led to the signature of over two thousand Bilateral Investment Treaties (BITs) between foreign states, in addition to a wealth of multilateral treaties and other forms of concession agreements. Disputes that have arisen are often resolved through the forum of international arbitration, and typically involve claims by an investor company for compensation when an investment has been illegally expropriated or adversely affected by the state's activities.

The legal principles that have developed in this area are subject to intense debate, and are still in a state of flux. While tribunals routinely state that they are applying principles of public international law to determine disputes, many of the principles applied have only been developed recently in the context of investment treaty arbitrations, and tribunals are often guided more by the approaches taken by other tribunals, than by pre-existing doctrines of public international law. However, the volume of law created, applied and analyzed by tribunals is such that it is now possible to begin the necessary process of codification.

*International Investment Arbitration: Substantive Principles* is an important step in this process. The book provides a detailed analytical survey of the developing substantive principles which are being applied to disputes by international investment tribunals. It considers the key questions that arise, and provides a clear description of the present state of the law as reflected in tribunal practice. The book examines the main treaties, analyzes published investment awards, and provides in-depth coverage of where investment disputes come from; who is a foreign investor, including nationality issues and foreign control; what is an investment; investor's rights, including admission to territories and State treatment of investors; expropriation; compensation; dispute resolution; transfer, assignment and subrogation; and future trends.

As the volume of international investment arbitration grows, international law

firms are increasingly having to acquire expertise in all aspects of this specialized and rapidly developing field. Written by a leading author team from Herbert Smith and Gibson, Dunn & Crutcher, and benefiting from the public and private international law experience of Professor Campbell McLachlan, this book is an essential reference work for international arbitration counsel, arbitrators, and academics.

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### Review

"This is now the first place for the international lawyer to go when confronting a new problem of relations between States and foreign investors. The subtitle - 'Substantive Principles' -- is important. Much interesting literature has been produced on investment arbitration as a process, but here is an attempt to derive the normative cores of the rapid output of awards during the last decade. The result is all the more valuable because the authors aim for accuracy, not conversion."

-- Jan Paulsson, Head of International Arbitration and Public International Law, Freshfields Bruckhaus Deringer; President, London Court of International Arbitration

"This is an impressive analysis of the principles of international law and practice developing from the growing body of arbitral awards dealing with investor-state disputes. It provides a finely constructed explanation of the current state of investment law as applied by these tribunals, striking a well-judged balance between scholarly and practical discussion. It is a particularly welcome addition to my library."

-- Martin Hunter, Barrister, Essex Court Chambers; Professor of International Dispute Resolution  
Nottingham Law School; FCIArb

"This is an excellent work which will be indispensable to anyone - arbitrator, counsel or academic - concerned with international law on foreign investment."

-- Christopher Greenwood Q.C. CMG, Essex Court Chambers

"For anyone wanting to do serious work in the field of investment arbitration, this book is an essential reference work."

--Richard Happ, Luther Rechtsanwaltsgeellschaft , German Arbitration Journal

"In addition to the first-rate scholarly legal analytical treatise that takes up the major part of the book, these appendices provide a highly practical and unique tool for anyone involved or interested in the topic."

-- Giovanni Cogliandro, International and Comparative Law Quarterly 57 (3)

"Excellent textbook. It covers all essential principles of investment arbitration. It is a very helpful reference for international investment courses. This book is nicely illustrated and these representations are helpful, adequately explained and never needlessly complicated"

--Professor Chaisse, Assistant Professor, Chinese University of Hong Kong

"A useful guide not only for novices in the field of investment law, but also for experienced practitioners since they represent a powerful reference tool. Easy to read and gives a clear and comprehensive presentation of the issues under review. This book proves to be a very useful instrument for both academics and practitioners ingeniously combining theoretical and practical approaches. Anyone interested in international investment law and investment arbitration will find this book of exceptional value. Equally useful for counsel representing investors and states, arbitrators and negotiators of investment treaties, as it contains excellent information and references, as well as pertinent commentaries and stimulating ideas."

--Crina Baltag, Queen Mary University of London

### About the Author

Campbell McLachlan QC is Professor at Law at Victoria University of Wellington, and Barrister, Bankside Chambers (Auckland) & Essex Court Chambers (London). Until his return to New Zealand in 2003, Campbell was a partner in Herbert Smith in London. He led the firm's International Law Practice Group, and conducted many cases involving sovereign states. He has been Rapporteur of the International Law Association Committee on International Civil and Commercial Litigation and Chair of the IBA International Litigation Committee. In 2007 he was appointed by the New Zealand Government to the Panel of Arbitrators of the International Centre for the Settlement of Investment Disputes, succeeding the late Lord Cooke of Thorndon. Laurence Shore is a partner in the New York office of Gibson, Dunn & Crutcher LLP specialising in international arbitration and litigation. He previously practised at Herbert Smith LLP, London; the Office of the Legal Adviser, U.S. State Department and the Washington, D.C. law firm, Williams & Connolly. Matthew Weiniger is a solicitor advocate at Herbert Smith specialising in international arbitration, public and private international law and alternative dispute resolution. He has acted and advised in cases arising from all major industry sectors, and regularly appears as an advocate before arbitral tribunals in many different jurisdictions. He has experience in arbitrations under the auspices of the ICC, LCIA, ICSID, Zurich Chamber of Commerce and ad hoc under the UNCITRAL Rules and the English Arbitration Act. He has also worked on matters involving state entities and matters where the governing law is not English law. He regularly lectures on matters connected to arbitration and public international law. He has recently taught on several LLM programmes at the University of London, and is a Visiting Professorial Fellow in the Centre for Commercial Law Studies, Queen Mary, University of London.

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