

INVESTMENT ARBITRATION MASTERCLASS

PROVISIONAL AGENDA

Monday 6 November 2017

9:00 – 10:20

Introduction to the International Energy Charter

Marat Terterov, Knowledge Centre Coordinator, Energy Charter Secretariat
Alejandro Carballo, General Counsel, Energy Charter Secretariat

(short coffee break in between sessions)

10:30 – 12:30

Determination of damages: practical issues (with mock exercises)

Travis Taylor, Director, Navigant
Chris Tune, Director London Office, Navigant
Herfried Wöss, Partner, Wöss & Partners Arbitration - Damages - Infrastructure

- Introduction; What are damages? The arbitration process
- The triallagmatic synallagma and income generating contracts, assets or investments, and its influence on damages analysis
- The measure of damages in international law and comparative law: expectation interest and the but-for premise or differential hypothesis, reliance interest or sunk investment, FMV, Chórzow, damnum emergens, lucrum cessans
- The difference in compensation between lawful and unlawful expropriation
- The Factory of Chorzów case: Date of valuation in investment arbitration and the rationale of the Chorzów case (Yukos, ADC)
- The framing of damages in case of partial illegality in case of discrimination or violation of FET (Murphy v. Ecuador)
- The role of contractual liquidated damages clauses in investment arbitration (Mobil v. Venezuela)

12:30 – 14:00

Lunch

14:00 – 17:00

Determination of damages: methods of calculation with a mock case

Travis Taylor, Director, Navigant
Chris Tune, Director London Office, Navigant
Herfried Wöss, Partner, Wöss & Partners Arbitration - Damages - Infrastructure
(short coffee break in between sessions)

- What is a damages expert? The role(s) of an expert – key tasks; Engaging an expert;
- Information required – documentation, evidence, etc.
- An overview of damages calculation – frameworks and tools
- Comparing methods adopted in recent arbitral decisions
- Description of a hypothetical case; Mock exercise

Tuesday 07 November 2017

9:00 – 12:30

PCA investment arbitration practice and procedure (with interactive exercises)

Dirk Pulkowski, Senior Legal Counsel, Permanent Court of Arbitration

Lisa Bingham, Legal Counsel, Permanent Court of Arbitration & Deputy Executive Director, International Council for Commercial Arbitration (ICCA)

Niuscha Bassiri, Partner, Hanotiau & Van Den Berg

Christophe Bondy, Cooley LLP, (former lead counsel to Canada on NAFTA claims and Counsel on the Canada-EU CETA negotiations)

Erica Stein, Partner, Dechert Price & Rhoads, Brussels
(short coffee break in between sessions)

- Notice of Arbitration
- Appointment of arbitrators/constitution of the Tribunal
- Procedural and logistical choices at the beginning of the process
- Arbitrator challenges

12:30 – 14:00

Lunch

14:00 – 17:00

PCA investment arbitration practice and procedure (with interactive exercises)

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Erica Stein, Partner, Dechert Price & Rhoads, Brussels
(short coffee break in between sessions)

- Interim procedural decisions
- Evidence
- Preparation and conduct of the hearing
- Costs of arbitration
- Award and post-award remedies



Wednesday 08 November 2017

9:00 – 10:00

Opening and introduction into investment arbitration

Speakers:

Alison Tibell, Legal Counsel, SCC Arbitration Institute

Natalia Petrik, Legal Counsel, SCC Arbitration Institute

Comments:

Dmitri Evseev, Partner, Arnold & Porter Kaye Scholer LLP, London

Christer Söderlund, Advokat, Senior Counsel, Advokatfirman Morssing & Nycander, Stockholm

Erica Stein, Partner, Dechert Price & Rhoads, Brussels

Ginta Ahrel, Advokat, Advokatfirman Lindahl KB, Stockholm

- Investment Arbitration
- How institutional arbitration works: organization, decision-making, secretariats;
- Initial exchange of briefs: specifics of investment proceedings;
- Referral to tribunal

10:00-11:00

10 things to consider when faced with an investment treaty claim

Speaker:

Dmitri Evseev, Partner, Arnold & Porter Kaye Scholer LLP, London

Comments: Christer Söderlund, Erica Stein, Ginta Ahrel

(short coffee break)

11:30-12:30

Jurisdictional objections in investment arbitration

Speaker:

Christer Söderlund Advokat, Senior Counsel, Advokatfirman Morssing & Nycander, Stockholm

Comments: Dmitri Evseev, Erica Stein, Ginta Ahrel

12:30 – 13:00

Constitution of the Tribunal and commencement of proceedings

Speakers:

Alison Tibell, Legal Counsel, SCC Arbitration Institute

Natalia Petrik, Legal Counsel, SCC Arbitration Institute

Comments: Dmitri Evseev , Christer Söderlund, Erica Stein, Ginta Ahrel

- Who are arbitrators;
- How are they appointed;
- Specifics of challenges in investment cases and at the SCC;
- How are their fees decided;
- Advance on costs vs final costs in investment cases;
- Pre-award relief and emergency arbitration under the SCC Rules

13:00 – 14:00

Lunch



14:00 – 14:50

Mock case with a request for appointment of an emergency arbitrator, development of emergency proceedings, emergency decision

Facilitators: Erica Stein and Ginta Ahrel (Parties) Christer Söderlund (Emergency Arbitrator)

(short coffee break)

15:15 – 16:00

Mock case with request for arbitration, requests for extension of time, answer, jurisdictional objections

Facilitators: Erica Stein and Ginta Ahrel

16:00 – 17:30

Award ceremony and family photo

During the 3 days, Energy Charter Secretariat officials will also contribute to discussions :

- **Ruslan Galkanov**, Legal Assistant
- **Iryna De Meyer**, Junior Legal Assistant
- **Vitali Hiarlouski**, Legal Coordinator for the Knowledge Centre