



## **INTERNATIONAL INVESTMENT DISPUTE SETTLEMENT**

SPRING 2019

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**Number of Credits:** 6 credit hours  
**Course Code:** LLM 611  
**Office Hours:** By appointment  
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### **I. GENERAL DESCRIPTION AND OBJECTIVES OF THE COURSE**

This course is focused on the study of legal aspects of international investment dispute settlement. As the number of multimillion-dollar investment arbitration cases filed by investors against host states, including Kyrgyzstan, is increasing, the comprehension of this field of law has become essential. Classes are aimed at providing students with the knowledge and critical understanding of key issues surrounding international investment dispute settlement. The course is focused primarily on international investment arbitration and covers topics ranging from the drafting of an arbitral agreement to the holding of arbitral proceedings and enforcement of awards. Special attention is paid to the analysis of leading arbitration cases under the rules of the UN Commission on International Trade Law (UNCITRAL) and International Centre for the Settlement of Investment Disputes (ICSID). At the same time, attention is also dedicated to alternatives to investment arbitration, including but not limited to international investment mediation.

As the course is interactive and practice-oriented, there are a number of practical assignments, such as an international investment arbitration simulation. Course activities allow students not only to apply the substantive knowledge gained in practice, but also help improve their proficiency in verbal and written communication as well as their analytical and problem-solving skills.

### **II. PROGRAM AND COURSE LEARNING OUTCOMES**

#### **LAW PROGRAM LEARNING OUTCOMES**

Graduates of the Law Program should have the following competencies:

1. carry out professional activities in good faith on the basis of developed legal consciousness, legal thinking, and legal culture and with observation of ethical principles of the legal profession;
2. apply professional judgment, perform quality legal analysis, conduct legal research, and solve legal problems;
3. be able to speak and write in an argumentative, logical, and clear way in the legal context, have skills necessary to draft legal documents, be fluent in the English language at the level of professional communication;

4. draft normative legal acts and carry out their legal expertise in the field of professional activity;
5. interpret and apply substantive and procedural norms, provide qualified legal opinions and consultations in concrete types of legal activity;
6. demonstrate leadership qualities, active citizenship, take and develop initiatives aimed at promotion of civil society and welfare state;
7. understand the essence and significance of information in the development of modern society and law, master the basic methods of working with information and information technologies in the professional sphere.

### **COURSE LEARNING OUTCOMES**

Upon successful completion of the course students will be able to:	Law Program Learning Outcomes
- gain understanding of international investment dispute settlement mechanisms;	1,2,7
- comprehend the international investment arbitration system starting from consent to arbitration to the recognition and enforcement of foreign arbitral awards;	1,2,7
- prepare arbitration agreements and procedural documents related to international investment arbitration proceedings;	2, 3, 7
- analyze investment laws, agreements, contracts and arbitral awards;	2, 3, 4, 7
- advance proposals on the improvement of the national legislation related to investment arbitration;	2,3, 4, 7
- draft legal opinions and provide legal consultation on issues related to investment arbitration;	2, 3, 5, 7
- acquire skills to serve as an arbitrator, lawyer and expert as part of international investment arbitration proceedings.	1, 2, 3, 5, 6, 7

### **III. TEACHING METHODS**

During this course a variety of teaching methods are employed, including but not limited to the Socratic method, in-class written reflections, lectures, guest lectures, showing and discussion of investment dispute settlement related video, presentations, pyramid discussions, role plays, use of buzz groups, and a debate competition.

### **IV. COURSE REQUIREMENTS AND POLICY**

- (1) There are two class sessions per week. Class sessions are a mixture of lectures and interactive student-focused activities. Students are expected to come to classes prepared and be ready to discuss the assigned materials.

- (2) Students must be ON TIME for classes. If a student comes to class late and the instructors have already marked him/her as absent, the student is considered to be absent for the whole class.
- (3) CLASS ATTENDANCE is required.
- (4) Each student is required to be enrolled in the e-course system ([www.e-course.auca.kg](http://www.e-course.auca.kg)). The purpose of the e-course system is to allow students to get access to course materials, upload their course assignments, and benefit from a variety of interactive learning opportunities.
- (5) WRITTEN ASSIGNMENTS must be submitted by the set deadline and by the means specified by the instructors. Late submissions are NOT allowed. ***This rule applies to any student who was aware or should have been aware of an assignment and the deadline no matter whether he was sick or had any other excuse on the date of the deadline.***
- (6) The student has to follow the AUCA Academic Honesty Code and the Law Division's Policy on Plagiarism. All types of **cheating** (plagiarism, etc.) are strictly prohibited. If a student fails to observe this requirement, the instructor may assign an "F" grade for the work or an "F" grade for the whole course depending on the type of assignment and other circumstances.
- (7) CELL PHONES and any other electronic devices should be turned off or kept on a silent mode and are allowed to be used only for academic purposes unless restricted by the instructor.

**Please, note that this syllabus is subject to change. Any changes to the syllabus will be announced in class, and the updated version of the syllabus will be available in the e-course. It is students' duty to stay informed of any adjustments made.**

## V. GRADING

The final grade will be determined based on the following components:

- Class participation and attendance – 10%
- Written assignments – 15%
- Presentation and other oral assignments – 15%
- Mid-term examination – 20%
- Investment arbitration simulations – 20%
- Final examination – 20%

### Grading Scale of the LL.M. Program

A	94-100%	C	68-73%
A-	90-93%	C-	64-67%
B+	86-89%	D+	60-63%
B	80-85%	D	54-59%
B-	77-79%	D-	50-53%
C+	74-76%	F	below 50%

## VI. COURSE OUTLINE

**Notice:** All homework assignments and reading materials for each week are posted in the e-course. Select reading materials are distributed in a hard copy format in class.

Weeks	Topics
<b>1</b> <b>January 16, 17</b>	Introduction to International Investment Dispute Settlement. Institutional Framework. Methods of Investment Dispute Resolution. Negotiation, Diplomatic Protection, and Mediation.
<b>2</b> <b>January 23, 24</b>	The Nature of International Investment Arbitration. International Investment Arbitration Types. Ad Hoc Arbitration. Institutional Arbitration. ICSID. UNCITRAL Rules.
<b>3</b> <b>January 30, 31</b>	Students' Presentations on Institutional Arbitration. Consent to Arbitration. Arbitration Agreements. Jurisdiction and Admissibility.
<b>4</b> <b>February 6, 7</b>	International Investment Arbitrators. Conflict of Interest in International Investment Arbitration.
<b>5</b> <b>February 13, 14</b>	Bringing of Evidence in Arbitration. Types of Admissible Evidence. Basic Notions of International Arbitration Process.
<b>6</b> <b>February 20, 21</b>	Introduction to the Moot. Explanation of the Assignments. Division of Roles. Moot Arbitration Hearing. Rendering of the Award under Moot Arbitration. Enforcement of the International Arbitration Award.
<b>7</b> <b>February 27, 28</b>	
<b>8</b> <b>March 6, 7</b>	
<b>9</b> <b>March 13, 14</b>	<b>MID-TERM EXAM REVIEW SESSION. MID-TERM EXAMINATION.</b>
<b>10</b> <b>March 20, 21</b>	<b><i>SPRING BREAK</i></b>
<b>11</b> <b>March 27, 28</b>	Guest Lecture. Recognition and Enforcement of Foreign Arbitral Awards. ICSID Convention. NY Convention. Sovereign Immunity.
<b>12</b> <b>April 3, 4</b>	Recognition and Enforcement of Foreign Arbitral Awards ( <i>continuation</i> ). Annulment under ICSID Convention.
<b>13</b> <b>April 10, 11</b>	An Overview of Select Problems related to Jurisdiction and Admissibility of Claims. Experts in Investment Arbitration. Costs. Compensation and Damages.
<b>14</b> <b>April 17, 18</b>	Claims and Defenses (Fair and Equitable Treatment, National Treatment, Most-Favored-Nation Treatment, Expropriation).

	Examination of Investment Arbitration Cases. Preparation for the International Investment Arbitration Simulation.
<b>15</b> <b>April 24, 25</b>	International Investment Arbitration Simulation.
<b>16</b> <b>May 1, 2</b>	Modern Challenges to International Investment Arbitration and Calls for Reform. A Special Case of Transparency in Investment Proceedings. Alternatives to Investment Arbitration. The Future of International Investment Dispute Settlement.
<b>17</b>	<b>Final Exam</b>

## VII. COURSE MATERIALS

You will be required to read handouts, articles, book excerpts that will be posted or provided in hard copy to you in class weekly. In addition, you may refer to the following list of recommended materials for further reading:

- Schreuer, Christoph et al., ed., *The ICSID Convention: A Commentary*. New York: Cambridge University Press, 2009;
- Paulsson, Jan, *The Idea of Arbitration*. New York: Oxford University Press, 2013;
- Bungenberg, Marc et al., ed., *International Investment Law: A Handbook*. Baden-Baden, Germany: Nomos Verlagsgesellschaft, 2015;
- Segger, Marie-Claire et al., ed., *Sustainable Development in World Investment Law*. Netherlands: Kluwer Law International, 2011;
- Kulick, Andreas. *Global Public Interest in International Investment Law*. New York: Cambridge University Press, 2012;
- Dolzer, Rudolf and Christoph Schreuer. *Principles of International Investment Law*. New York: Oxford University Press, 2012;
- Subedi, Surya. *International Investment Law: Reconciling Policy and Principle*. USA: Hart Publishing, 2012;
- Marc Krestin, Rebecca Mulder, "Third-Party Funding in International Arbitration: To Regulate or Not to Regulate?" December 12, 2017, link: <http://arbitrationblog.kluwerarbitration.com/2017/12/12/third-party-funding-international-arbitration-regulate-not-regulate/> ;
- Anna Lanshakova, "Economic Crime and International Investment Law: Current Issues," June 19, 2017, link: <http://arbitrationblog.kluwerarbitration.com/2017/06/19/economic-crime-international-investment-law-current-issues/>;
- Raul Pereira de Souza Fleury, "Closing the Umbrella: a Dark Future for Umbrella Clauses?" October 13, 2017, link: <http://arbitrationblog.kluwerarbitration.com/2017/10/13/closing-umbrella-dark-future-umbrella-clauses/>;
- Mathew Knowles, "Third Party Funding in International Arbitration: Disclosure and Costs Liability," August 2, 2017, link: [https://www.lexology.com/library/detail.aspx?g=fbbd8a01-c222-47c8-b665-c5c7cb01bbc2](https://www.lexology.com/library/detail.aspx?g=fbbd8a01-c222-47c8-b665-c5c7cb01bbc2;);

- Larry P. Schiffer, "Ex Parte Communications and Vacating an Arbitration Award," August 22, 2016, link: <https://www.lexology.com/library/detail.aspx?g=9c358bd8-59cc-476c-9a53-4846d8d4e249>.