

Introduction to International Investment Arbitration

Four-hour course for the AIFC Academy of Law

Course Description and Expected Learning Outcomes

Date: 5 February 2020
Time: 15.00 – 19.00
Venue: AIFC
Speakers: Prof. Dr. iur. Marc Bungenberg, LL.M., Director of the Europa-Institute (Germany)
Mr. Adilbek Tussupov, LL.M.

I. Course Description

The World is undergoing constant integration in all spheres of people's lives and states' interactions. A high degree of inter-connection has taken place in the international business community. Businesses are no longer restricted to national borders and they have promising opportunities all around the globe, which is why foreign direct investments ("**FDIs**") have been on the rise during the last decades.

Together with the growth of the FDIs, it has become necessary for investors and states of their origin to ensure that their investments would not be expropriated or discriminated in the territories of host states. This is a primary reason for the conclusion of various bilateral and multilateral international agreements between states for protection and promotion of foreign investments, which gave rise to the system, now known as International Investment Law ("**IIL**").

At the same time and in connection with significant cross border economic developments, arbitration has become one of the principal means of resolving major international disputes between individuals, companies and states. While there is an established rule in public international law stating that under the principle of sovereign equality, a State cannot be held responsible by a non-state party against its will, the IIL has evolved in structuring its own dispute settlement mechanism where an investor is entitled to bring a dispute against a State to an international arbitral tribunal. This is what is called International Investment Arbitration or the Investor-State Dispute Settlement mechanism ("**ISDS**").

During this course you will be provided with a background, an overview and objectives of the IIL. We will go over several bilateral and multilateral investment treaties and their scope *inter alia* relating to Kazakhstan.

You will then be introduced to various stages and formats of the ISDS proceedings. This would also include prerequisites for foreign investors and investments to be able to bring a claim against a host State before an arbitral tribunal.

We will be covering some important procedural tools that an arbitral tribunal possesses for the review of investment disputes and requirements that a tribunal shall take into account when delivering its decision (i.e. an arbitral award).

After a decision has been taken by a tribunal, the question arises as to how to recognize and enforce such a decision. This question is (normally) regulated by international agreements, such as the New York Convention and the ICSID Convention, which we will discuss during the course at the AIFC.

Finally, we will undertake a case study on a couple of landmark ISDS arbitral awards.

II. Expected Learning Outcomes

The participants of the course at the AIFC could expect the following:

- Obtaining knowledge on the main protections that foreign investors enjoy under the IIL;
- Becoming aware of the mechanism of dispute settlement between a foreign investor and a State;
- Understanding the main prerequisites for foreign investors and investments to be eligible for international arbitration against a State;
- Getting acquaintance with the investment arbitration procedure;
- Learning how international arbitral awards are enforced globally.