

# City University of Hong Kong

## Course Syllabus

offered by School of Law  
with effect from Semester B 2017/18

---

---

### Part I Course Overview

<b>Course Title:</b>	International Investment Law
<b>Course Code:</b>	LW6142E
<b>Course Duration:</b>	One semester
<b>Credit Units:</b>	3
<b>Level:</b>	P6
<b>Medium of Instruction:</b>	English
<b>Medium of Assessment:</b>	English
<b>Prerequisites:</b> (Course Code and Title)	Nil
<b>Precursors:</b> (Course Code and Title)	LW6144C/LW6144E - International Trade Law LW6130C/LW6130E - Seminar on Advanced Issues in International Law
<b>Equivalent Courses:</b> (Course Code and Title)	LW6143C and LW5542 International Investment Law LW6168E Selected Problems in International Investment Law (Students who have completed LW6143C/LW6142E are not allowed to take LW6168E. Also, students who have completed LW6168E are not allowed to take LW6143C/LW6142E.)
<b>Exclusive Courses:</b> (Course Code and Title)	LW6543C/LW6542E International Investment Law

## Part II Course Details

### 1. Abstract

This course aims to provide students with an overview of international laws and treaties governing international investment activities, protection and issuance, to offer students practical examples in order to understand and apply those laws and treaties and to understand how international investment disputes may be resolved.

### 2. Course Intended Learning Outcomes (CILOs)

(CILOs state what the student is expected to be able to do at the end of the course according to a given standard of performance.)

No.	CILOs	Weighting (if applicable)	Discovery-enriched curriculum related learning outcomes (please tick where appropriate)		
			A1	A2	A3
1.	Identify and analyse the basic principles of international investment law, and the enforcement of these principles		√	√	√
2.	Explain the functioning of international institutions relevant to this field, especially that of arbitral tribunals such as those under ICSID			√	√
3.	Compare the political, historical, and other background to past and present discussions in this field			√	√
4.	Apply the principles to actual and potential legal problems arising from those laws and treaties, including an objective discussion of all relevant arguments		√	√	√
5.	Conduct legal research in this area by identifying and using sources appropriate for high-level professional and academic legal work				√
		100%			

A1: Attitude

*Develop an attitude of discovery/innovation/creativity, as demonstrated by students possessing a strong sense of curiosity, asking questions actively, challenging assumptions or engaging in inquiry together with teachers.*

A2: Ability

*Develop the ability/skill needed to discover/innovate/create, as demonstrated by students possessing critical thinking skills to assess ideas, acquiring research skills, synthesizing knowledge across disciplines or applying academic knowledge to self-life problems.*

A3: Accomplishments

*Demonstrate accomplishment of discovery/innovation/creativity through producing /constructing creative works/new artefacts, effective solutions to real-life problems or new processes.*

### 3. Teaching and Learning Activities (TLAs)

(TLAs designed to facilitate students' achievement of the CILOs.)

TLA	Brief Description	CILO No.					Hours/week (if applicable)
		1	2	3	4	5	
Lectures and seminars (combined)	Students are required to do preparatory readings before class.  Lectures and individual or small-group activities.	√	√	√	√	√	3 hours per week

#### 4. Assessment Tasks/Activities (ATs)

(ATs are designed to assess how well the students achieve the CILOs.)

Assessment Tasks/Activities	CILO No.						Weighting	Remarks
	1	2	3	4	5			
Continuous Assessment: 20%								
Presentations	√	√	√	√	√		10%	
Written Assignment	√	√	√	√	√		10%	
Examination: 80% (duration: 3 hours)								
							100%	

The course leader will announce whether the examination will be closed book or open book.

Students are required to attend at least 70% of the classes (lectures, seminars, presentations). If a student does not meet this requirement, he/she may be disqualified for assessment.

Students must obtain a minimum mark of 40% in both coursework and examination and an overall mark of 40% in order to pass the course.

When University facilities and resources are available, students are required to take a computer-based examination in computer labs. During the examination, students are blocked from access to files, programme and the Internet.

## 5. Assessment Rubrics

*(Grading of student achievements is based on student performance in assessment tasks/activities with the following rubrics.)*

Assessment Task	Criterion	Excellent (A+, A, A-)	Good (B+, B, B-)	Fair (C+, C, C-)	Marginal (D)	Failure (F)
Presentations	Identifying issues and resolving such issues by applying the relevant legal principles and provisions.	Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.	Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.	Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.	Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.	Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.
Written Assignment	Identifying issues and resolving such issues by applying the relevant legal principles and provisions.	Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.	Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.	Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.	Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.	Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.
Examination	Identifying issues and resolving such issues by applying the relevant legal principles and provisions.	Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.	Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.	Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.	Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.	Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

### **Part III Other Information** (more details can be provided separately in the teaching plan)

#### **1. Syllabus**

##### **1.1 Keyword Syllabus**

*(An indication of the key topics of the course.)*

Introduction, The Sources of International Investment Law, Investment Contracts, Admission and Establishment, Expropriation Substantive Standards of Protection, Responsibility of the Host State, Dispute Resolution, The ICSID System, Emerging Issues in Modern Investment Law, Case Study.

##### **1.2 Detailed Syllabus**

The course aims to examine the following issues (but not necessarily in that order):

###### **1. Introduction**

The law of international investment as a part of international law; diplomatic protection; state sovereignty and state acts; relevant institutional structures; the conflicting interests of host countries and investors, political risks and foreign direct investment; international investment and developing countries.

###### **2. The Sources of International Investment Law**

The law of treaties; interpretation of treaties; customary international law of investment; bilateral investment treaties, multilateral treaties, model treaties, guidelines and codes of conduct, national legislations; arbitral awards; regional agreements; relevant international organisations.

###### **3. Jurisdiction and Admissibility**

Principle of consent; the scope of jurisdiction; existence of an investment; nationality of individuals and companies; the distinction between jurisdiction and admissibility; shareholder protection.

###### **4. Expropriation**

Treaty provisions, case law and theory pertaining to expropriation; compensation; valuation of expropriated property; direct and indirect taking of foreign assets; expropriation of contractual rights.

###### **5. Substantive Standards of Protection**

Rights of investor for fair and equal treatment, full protection and security, free transfer of funds, national treatment, most-favoured-nation treatment (MFN), access to justice, protection against arbitrary or discriminatory treatment; umbrella clauses.

###### **6. Responsibility of the Host State**

State responsibility for illegal acts, exhaustion of local remedies and procedures, state immunity; attribution; state entities; necessity, armed conflicts, and emergencies.

## 7. Dispute Resolution

Arbitration; State-State disputes; Investor-State disputes; conciliation; applicable laws; annulment and enforcement of arbitral awards; possible dispute settlement fora.

## 8. The ICSID System

Parties, subject-matter and consent to ICSID arbitration; rules of procedure; ICSID's Additional Facility; annulment proceedings; MFN-clauses relating to dispute settlement; provisional measures; remedies; compensation.

## 9. Emerging Issues in International Investment Law

Recent developments in ICSID practice and procedure; regional, sectoral, and multilateral agreements on investment; investment and environment; investment and human rights; investment and development; good governance; legitimacy and effectiveness of the legal regime for the protection of international investments.

## 10. Case Study

## 2. Reading List

### 2.1 Required Textbook

*(Compulsory readings can include books, book chapters, or journal/magazine articles. There are also collections of e-books, e-journals available from the CityU Library.)*

Rudolf Dolzer, Christoph Schreuer: Principles of international investment law; Oxford: Oxford University Press, 2012.

### 2.2 Recommended Reading

*(Additional references for students to learn to expand their knowledge about the subject.)*

Jeswald W. Salacuse, The Law of Investment Treaties; Oxford University Press, 2015.

Zachary Douglas, Joost Pauwelyn, and Jorge E. Viñuales (eds), The foundations of international investment law: bringing theory into practice; Oxford, Oxford University Press, 2014.

Jonathan Bonnitcha, Substantive protection under investment treaties: A Legal and Economic Analysis; Cambridge University Press, 2014.

R. Doak Bishop, James Crawford, W. Michael Reisman: Foreign investment disputes: cases, materials, and commentary; The Hague: Kluwer Law International, 2014.

Freya Baetens (ed.), Investment Law within International Law: Integrationist Perspectives; Cambridge University Press, 2013

Krista Nadakavukaren Schefer, International investment law: text, cases and materials; Edward Elgar, 2013

Hege Elisabeth Kjos, Applicable Law in Investor-State Arbitration: The interplay between national and international law; Oxford, Oxford University Press, 2013.

Chester Brown (ed), Commentaries on selected model investment treaties; Oxford, Oxford University Press, 2013.

Chester Brown and Kate Miles, Evolution in investment treaty law and arbitration, Cambridge, Cambridge University Press, 2011.

Lucy Reed, Jan Paulsson, Nigel Blackaby: Guide to ICSID arbitration; The Hague: Kluwer Law International, 2010.

M. Sornarajah: The international law on foreign investment; Cambridge, Cambridge University Press 2010.

Zachary Douglas, The international law of investment claims; Cambridge, Cambridge University Press, 2009.

Andrew Newcombe and Lluís Paradell, Law and practice of investment treaties: standards of treatment; The Hague, Kluwer Law International, 2009.

Christopher Dugan, Noah D. Rubins, Don Wallace, Borzu Sabahi: Investor-State Arbitration; Oxford, Oxford University Press, 2008.

Campbell McLachlan, Laurence Shore, and Matthew Weiniger, International investment arbitration : substantive principles; Oxford, Oxford University Press 2007.

Norbert Horn, Stefan Kroell (eds.): Arbitrating foreign investment disputes; The Hague: Kluwer Law International, 2004.

Christoph H. Schreuer: The ICSID Convention: A commentary on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States; Cambridge, Cambridge University Press, 2001.

### 2.3 Online Resources

<http://icsid.worldbank.org/ICSID/Index.jsp>

[http://www.unctadxi.org/templates/DocSearch\\_779.aspx](http://www.unctadxi.org/templates/DocSearch_779.aspx) (*search engine for BITs*)

<http://ita.law.uvic.ca>

<http://www.investmentclaims.com>

<http://www.naftaclaims.com>

<http://www.iareporter.com>

<http://www.iisd.org/investment/itn/>

<http://www.ll.georgetown.edu/intl/guides/InternationalInvestmentLaw.cfm>

<http://www.mpil.de/ww/en/pub/library.cfm> (*Library of the Max Planck Institute for Comparative Public Law and International Law, Heidelberg*)

<http://www.ppl.nl/bibliographies/all/?bibliography=investment> (*Bibliography on New Aspects of International Investment Law compiled by the Peace Palace Library, The Hague, The Netherlands*)

<http://www.cityu.edu.hk/lib/eres/ej/index.htm> (CityU Library e-Journals)

<http://libweb.cityu.edu.hk/lbdinst/westlaw.htm> (access to WESTLAW via CityU Library)

## 2.4 Supplementary Materials

Convention on the Settlement of Investment Disputes Between States and Nationals of Other States – History of the Convention, Documents concerning the origin and the formulation of the convention, 4 vols., Washington, D.C.: International Centre for Settlement of Investment Disputes, 1968-1970.

ICSID Reports, Cambridge, Grotius, 1993- (12 vols.)

Investment Laws of the World, International Centre for the Settlement of Investment Disputes (ICSID), Dobbs Ferry, N.Y, Oceana Publications (lose-leaf binders) 1972- (10 vols.)

International investment instruments: a compendium; United Nations Conference on Trade and Development (UNCTAD), Division on Transnational Corporations and Investment. New York: United Nations, 1996-2005 (10 vols.)

International Investment Law: A Changing Landscape, A Companion Volume to International Investment Perspectives, OECD, 2005

James Crawford (ed.), The International Law Commission's articles on state responsibility: introduction, text and commentaries; Cambridge: Cambridge University Press, 2002.

Philip Kunig, Niels Lau, Werner Meng (eds.): International economic law – Basic documents; Berlin: W. de Gruyter, 1993.

World Investment Report, United Nations Conference on Trade and Development (UNCTAD), New York: United Nations, 1991-2007

## 2.5 Journals (selected)

*Arbitration International*

*Journal of International Arbitration*

*Journal of International Economic Law*

*ICSID Review-Foreign Investment Law Journal (FILJ)*

*Journal of World Investment and Trade*