

CCCL Guest Seminar: “The Home State as the True Complainant: Political Risk Insurance Claims and Investor–State Arbitration”

On 21 October 2025, the School of Law Research Centre for Chinese and Comparative Law (CCCL), City University of Hong Kong, hosted a hybrid academic seminar titled “The Home State as the True Complainant: Political Risk Insurance Claims and Investor–State Arbitration.”

The event featured Professor Wolfgang Alschner from the University of Ottawa, with Professor Julien Chaisse and Professor Yu Chen from CityU Law School serving as moderator and discussant.

Building on his ongoing research, Professor Alschner explored how state sponsored political risk insurance (PRI) is reshaping the intersection between private investor claims and public international law. He outlined the historical evolution of state backed investment protection programs—including those administered by the U.S. Development Finance Corporation, Germany’s Investment Guarantees, and Japan’s NEXI—from instruments designed to promote national exports into mechanisms that now play an active role in international arbitration. His presentation identified three principal modes of interaction among home state insurers, investors, and host governments within this evolving landscape.

First, Professor Alschner noted that when a home state insurer compensates an investor for political losses, it acquires the right to recover against the host state through subrogated investor–state dispute settlement (ISDS) claims. This effectively allows the insurer—and, by extension, the home state—to act as the real claimant. Second, in some cases, insurers may instruct the insured investor to conduct the arbitration as an agent, maintaining a formal façade of private litigation while representing public financial interests. Third, the home state may use diplomatic channels or state to state arbitration in parallel with investor-based claims, which blurs the conceptual boundary between depoliticized legal adjudication and diplomatic protection.

Based on a systematic analysis of published ISDS cases involving state backed PRI, Professor Alschner identified a gradual shift in the political economy of international arbitration, whereby capital exporting states regain influence in a process originally designed to separate investment protection from geopolitics. His slides illustrated how the growing role of insurers and export credit agencies reintroduces political considerations into disputes, raising questions about legitimacy, transparency, and accountability. He argued that home states’ strategic use of PRI could lead to a “re politicization” of ISDS, challenging the long held myth of its neutrality.

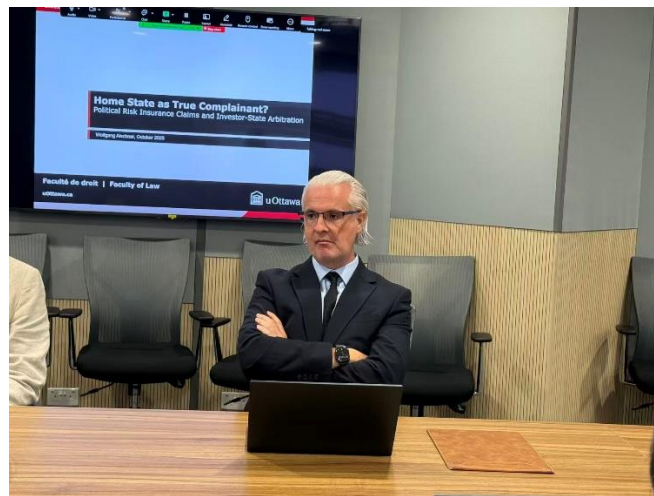
Professor Alschner further discussed how tribunals have handled issues of standing and consent in PRI related disputes. He showed that while some tribunals accept the insurer’s right to pursue claims through assignment or subrogation, others express concerns about contradicting the depoliticized rationale of the ISDS system. He concluded that the existing treaty framework remains under theorized regarding the participation of state sponsored insurers, which calls for clearer treaty drafting or policy guidance.

In the discussion that followed, Professor Julien Chaisse commented on the implications of this phenomenon for sovereign accountability and future treaty reform, while Professor Yu Chen reflected on the balancing of public and private interests in the governance of cross border investment risks. Participants raised questions on whether this development could lead to new hybrid forms of dispute resolution or transform the global investment insurance landscape.

The seminar provided rich insights into the overlapping worlds of law, finance, and international politics. It illuminated how instruments originally designed to depoliticize investment disputes—such as ISDS—may inadvertently create new avenues for state involvement. The CCCL continues to serve as a leading academic hub for interdisciplinary discussions on international law, arbitration, and the evolving dynamics of global governance in the post reform era.



Professor Wolfgang Alschner



Professor Julien Chaisse



Professor Yu Chen