

2018 Investment Arbitration & Trans-Pacific Transactions Conference

Maxwell Chambers, 32 Maxwell Road #03-01, Singapore 069115

Planning Committee

SECTION CHAIR 2017-18

Steven M. Richman • Clark Hill PLC • Princeton, NJ

PLANNING COMMITTEE

Christopher Bloch • Singapore International Arbitration Center • Singapore
Chester Brown • University of Sydney • Sydney, Australia
Jansen Calamita • Center for International Law at NUS • Singapore
Whitney Debevoise • Arnold Porter Kaye & Scholer LLP • Washington, DC
Stephen Denyer • Law Society of England and Wales • London, United Kingdom
Kirstin Dodge • Homburger AG • Zurich, Switzerland
Pieter de Ridder • Mayer Brown LLP • Singapore
Judith Gill • Allen & Overy LLP • London, United Kingdom
William Greenlee • DFDL Myanmar Limited • Yangon, Myanmar
Hanim Hamzah • ZICOLaw Network • Singapore
Alex Hao • JunHe • New York, NY
Alexander A. Jeglic • PPP Canada Inc. • Ottawa, Canada
Hermann Knott • Andersen Tax & Legal • Cologne, Germany
Mickaël Laurans • Law Society of England and Wales • London, United Kingdom
Thomas C. Malayil • TCM Property Advisory • Los Angeles, CA
Malcolm McNeil • Arent Fox LLP • Los Angeles, CA
Kevin Nash • Singapore International Arbitration Center • Singapore
Delissa Ridgway • US Court of International Trade • New York, NY
Bhalinder Rikhye • Bartlett McDonough & Monaghan LLP • New York, NY
José Antonio Rivas • Arnold & Porter Kaye Scholer LLP • Washington, DC
Marcy Stras • Cozen O'Connor • Washington, DC
Yu-Jin Tay • Mayer Brown JSM • Singapore
Roland Trope • Trope & Schramm LLP • New York, NY
Deanne Wilson • Resolutions LL • Mendham, NJ
Mark E. Wojcik • The John Marshall Law School • Chicago, IL

CLE Information

The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, MN, MS, MO, MT, NH, NM, NV, NY, NC, ND, OH, OK, OR, PA, PR, SC, TN, TX, UT, VT, VA, VI, WA, WI, and WV. These states sometimes do not approve a program for credit before the program occurs. This course is expected to qualify for 18.0 CLE credit hours including 1.5 ethics hours in 60-minute states, and 19.5 credit hours including 1.5 ethics hours in 50-minute states. This transitional program is approved for both newly admitted and experienced attorneys in NY. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. For more information about CLE accreditation in your state, visit our meeting website or contact Thomas.Happell@americanbar.org.

A limited number of registration fee reductions are available for this program upon application. The fee-reductions will be determined on a one-time only, case-by-case, first-come first-serve basis. Requests must be received at least three weeks before the program start date. You will be notified prior to the program if your application is approved. A minimal fee may be charged on all approved applications to defray expenses. For programs with tuition costs of \$500 or more, qualifying attorneys will receive at least a 50% reduction in the course fee(s) only. To apply, send a letter outlining the basis for your request of a fee reduction to intlawmeetings@americanbar.org.

Sponsors
Platinum Partner

Arnold & Porter

Reception Sponsor

Smart in your world®
Arent Fox

Luncheon Sponsor



Cooperating Entities



KOREAN BAR ASSOCIATION



Union Internationale des Avocats
International Association of Lawyers
Unión Internacional de Abogados



Japan Federation of Bar Associations



HONG KONG BAR ASSOCIATION
香港大律師公會



American Society
of International Law

AMCHAM



SOUTH CHINA



SINGAPORE
INTERNATIONAL
DISPUTE
RESOLUTION
ACADEMY



EST. 1958

INTERNATIONAL
LAW INSTITUTE



LAWASIA
THE LAW ASSOCIATION FOR
ASIA AND THE PACIFIC
FOUNDED IN 1966



NAPABA

National Asian Pacific American Bar Association

SIAC

Singapore International Arbitration Centre

Schedule of Events

Thursday, May 10, 2018

7:30 AM – 8:30 AM

Registration & Breakfast | Stamford - Raffles (3rd Floor)

8:30 AM – 8:35 AM

Welcome Remarks

Steven M. Richman, Chair, Section of International Law | Clemenceau - Sheares (4th Floor)

8:35 AM – 9:00 AM

Introductory Remarks

Lucien Wong, Attorney-General of the Republic of Singapore | Clemenceau - Sheares (4th Floor)"

9:00 AM – 10:30 AM

State Experience in The Prevention of Investment Treaty Disputes and the Improvement of State Readiness for Investment Arbitration | Clemenceau - Sheares (4th Floor)

In connection with ongoing research at the Centre for International Law at the National University of Singapore, this panel will discuss the approaches that States have taken in attempting to prevent investment disputes or minimize investment arbitrations, including capacity building of State officials with powers over foreign investment, stocktaking of economic sectors potentially or historically susceptible to investment disputes, early warning systems for differences that may escalate to full-fledged investment disputes, and prevention programs implemented by some States. The panel will also discuss alternative means for prevention of investment arbitration from an investor's perspective including, for example, dispute boards and ombudsmen for investment disputes.

Concerning State readiness for investment arbitration, panelists will address the steps that States may take, and the administrative structures they may consider implementing, to manage an investment arbitration Respondent efficiently and to ensure the State's responsiveness with respect to the issues raised by the investors both prior to and during arbitration proceedings.

Panel Chair:

José Antonio Rivas, Arnold & Porter Kaye Scholer, Georgetown University Law Center, Washington, DC

Speakers:

Daphne Hong, Attorney-General's Chambers, Singapore

N. Jansen Calamita, Centre for International Law, National University of Singapore

Lee Caplan, Arent Fox LLP, Washington, DC

10:30 AM – 10:45 AM

Networking Break | Stamford - Raffles (3rd Floor)

10:45 AM – 12:15 PM

Choice of Rules for Resolution of Investment Disputes | Clemenceau - Sheares (4th Floor)

This panel will feature experts — on the rules of arbitration of the International Centre for Settlement of Investment Disputes (ICSID), the United Nations Commission on International Trade Law (UNCITRAL), the International Chamber of Commerce (ICC), and the Singapore International Arbitration Centre (SIAC) — who will explain those rules, and any other rules of common usage in the resolution of investment disputes. Panelists will focus on the distinctive elements making the respective rules a particularly attractive choice for States and/or investors.

Panel Chair:

Kevin Nash, Singapore International Arbitration Center (SIAC), Singapore

Speakers:

Meg Kinnear, Secretary-General ICSID, Washington, DC

Anna Joubin-Bret, Director, International Trade Law Division, UNCITRAL, Vienna

Abhinav Bhushan, Director, South Asia, ICC, Singapore

Henry Winter, Hogan Lovells, Singapore

12:15 PM – 1:45 PM

Lunch and Keynote Address | Stamford - Raffles (3rd Floor)

Mr. V K Rajah SC, Essex Court Chambers Duxton and Former Attorney-General, Singapore

1:45 PM – 3:10 PM

Preliminary and Jurisdictional Objections | Clemenceau - Sheares (4th Floor)

This panel will discuss the preliminary objections available to Respondent States under applicable rules of arbitration (e.g. Article 41(5) of the ICSID Rules of Arbitration, Article 45 of the ICSID Additional Facility Rules of Arbitration, Article 26 of the SIAC Investment Arbitration Rules, and Article 29 of the SIAC Rules of Arbitration) and the strategic pros and cons of formulating those objections (akin to summary judgment motions) at the early stages of arbitration proceedings. Panelists also will address the jurisdictional objections that may be available to Respondent States to seek dismissal of an investment case for lack of jurisdiction.

Panel Chair:

Toby Landau QC, Essex Court Chambers, London, United Kingdom

Speakers:

Swee Yen Koh, Wong Partnership LLP, Singapore

Whitney Debevoise, Arnold & Porter Kaye Scholer, Washington, DC

Elodie Dulac, King & Spalding, Singapore

3:15 PM – 4:40 PM

Regulatory Powers and Defenses on The Merits Concerning Claims of Expropriation and Violation of Fair and Equitable Treatment | Clemenceau - Sheares (4th Floor)

Investment arbitration, as a body of international law, has been under close scrutiny by States, civil society, and commentators for the limitations — whether real or perceived — that investment treaties impose on States' regulatory powers with a view to ensure international standards of treatment of foreign investors. Recent treaties (e.g. the CETA between the EU and Canada, and the EU-Singapore FTA) have recognized the State's right to regulate and adopt measures necessary to pursue legitimate policy objectives such as social, environmental, security, public health and safety, and the promotion and protection of cultural diversity. This panel will discuss Respondent States' potential defenses against claims of indirect expropriation, and violations of fair and equitable treatment, and the current breadth of protection of investors as recognized by case law and influenced by the evolution of investment treaties. Panelists will also address the broad scope of FET protection for investors in spite of investment treaty evolution.

Panel Chair:

David Baron, Crowell Moring, Washington, DC

Speakers:

Anton Ware, Arnold & Porter Kaye Scholer, Shanghai, China

Rob Kirkness, Freshfields Bruckhaus Deringer, Singapore

Amanda Lees, Simmons & Simmons, Singapore

Mahdey Mohan, Providence Law Asia/Singapore Management University, Singapore

4:40 PM – 4:55 PM

Networking Break | Stamford - Raffles (3rd Floor)

4:55 PM – 6:20 PM

**Quantum as Part of The State's Strategy to Articulate an Effective Defense in Investment Arbitration
Clemenceau - Sheares (4th Floor)**

Quantum — following jurisdiction and the merits — constitutes the phase in which the investor seeks to quantify the Respondent's liability in the form of a damages award. For the State, by contrast, even if a Tribunal rules that a Respondent State is internationally liable for breach of investment treaty obligations, the State may effectively articulate a defense based on lack of causation, or on the speculative nature of the alleged damages. This panel will discuss the perspectives, assumptions, and arguments typically made by counsel and damages experts, for investors and for States.

Panel Chair:

Natalie Morris-Sharma, Director, International Legal Division, Ministry of Law, Singapore

Speakers:

Cavinder Bull SC, Drew & Napier LLC, Singapore

Claudia Frutos-Peterson, Curtis Mallet-Prevost, Colt & Mosle LLP, Washington, DC

Shreyas Jayasimha, Aarna Law, Bengaluru, India

Miguel A. Nakhle, Compass Lexecon, Houston, TX

6:20 PM – 6:30 PM

Closing Remarks | Clemenceau - Sheares (4th Floor)

6:30 PM – 7:30 PM

Reception at Maxwell Chambers | Stamford - Raffles (3rd Floor)

7:30 PM

Dinners on Your Own

Friday, May 11, 2018

8:00 AM – 9:00 AM

Registration | Stamford - Raffles (3rd Floor)

9:00 AM – 10:30 AM

Concurrent Sessions

Track 1: International Arbitration

Track 2: Challenges to Cross-Border High Tech Transactions

Defense Models for States in Investment Arbitration | Clemenceau (4th Floor)

Depending on several factors - including legal culture and tradition, expertise in international law and investment arbitration, number of cases, and priorities, States have adopted different models of defense in investment arbitration ranging from appointing in-house counsel to represent the State in investment disputes, to appointing outside international counsel by hiring practitioners specialized in investment arbitration. This panel will discuss a range of models and factors that States may wish to consider in choosing a particular defense model, and how those models may or may not influence counsel for the investor's strategic decisions during the course of the arbitration

Panel Chairs:

Chester Brown, University of Sydney, Essex Court Chambers, Sydney, Australia
Monty Taylor, Arnold & Porter, London

Speakers:

Bill Campbell, Office of International Law, Attorney General's Department, Australia
George Pothan, Ministry of External Affairs, New Delhi, India

Cybersecurity Due Diligence and Cyber Risks in M&A Transactions | Sheares (4th Floor)

Cybersecurity has become a significant factor in M&A transactions, exemplified by the experience of Verizon in acquiring the internet business of Yahoo! and dealing with the security breaches Yahoo! suffered. This panel will discuss how to avert the next Yahoo!/Verizon and minimize the potential for destructive kinetic attacks (like Petya malware) that could seriously disrupt an M&A deal by modifying, damaging, or making inaccessible high-value digital assets.

Panel Chair and Moderator:

Sajai Singh, J. Sagar Associates, Bangalore, India

Speakers:

Devottam Sengupta, Louis Dreyfus Company (LDC) Group, Singapore
Elizabeth Cole, Jones Day, Singapore
Matt Staples, Wilson Sonsini Goodrich & Rosati, Seattle, WA
Bryan Tan, Pinsent Masons, Singapore
Lily Tsen, Amcor Flexibles Asia Pacific, Singapore

10:30 AM – 11:00 AM

Networking Break | Stamford - Raffles (3rd Floor)

11:00 AM – 12:30 PM

Concurrent Sessions

**State Representation in International Arbitration and Matters of Public International Law
Clemenceau (4th Floor)**

Representing or providing legal advice to sovereign States before the ICJ or before international commercial or investment arbitration tribunals entails various challenges for counsel. Under customary rules on international responsibility and the principle of the unity of the State, the acts of all State organs are attributable to the State — including acts of organs at the federal, state and provincial levels, acts of the executive, legislative and judiciary, and acts of any other State organ. In practice, acts of certain State organs (e.g., acts of a province or acts of the judiciary) may not be coordinated with the central government and might sometimes not be consistent with international obligations. In addition, because the State assigns different competencies to different organs, flawless coordination between State organs is not achieved, which may pose challenges to counsel representing the State before international tribunals. Those challenges include, among others, coordination, interaction, and consultations between counsel and the various agencies involved in the case at issue (including the organ that allegedly acted contrary to international law). This panel will discuss the difficulties that are generally encountered while providing advice to States in international matters or while representing States before international tribunals, and practical ways to address those challenges.

Panel Chair:
Loretta Malintoppi, 39 Essex Chambers, Singapore

Speakers:
Rodman Bundy, Eversheds Harry Elias LLP, Singapore
Timothy Feighery, Arent Fox, Washington, DC
Promod Nair, Arista Chambers, Bangalore, India
Michael Owen, Trade Law Bureau, Ontario, Canada

**Negotiating IP Rights and Cybersecurity Issues in IoT Technologies for Connected Vehicles
Sheares (4th Floor)**

This panel will discuss the challenges and risks that developers of Internet of Things devices face from hackers; the panelists will also discuss the negotiation of intellectual property rights related to software and inventions embodied in IoT devices.

Panel Chair:
Roland Trope, Trope and Schramm LLP, New York, NY

Moderator:
Pavan Duggal, Pavan Duggal Associates, New Delhi, India

Speakers:
May-Ann Lim, Asia Cloud Computing Association & National University of Singapore, Singapore
Arun Prabhu, Cyril Amarchand Mangaldas, Mumbai, India
Anshu Shrivastava, Akamai Technologies APJ Pte Ltd, Singapore
Roland Trope, Trope and Schramm LLP, New York, NY

12:45 PM-2:00 PM

Networking Luncheon | Stamford - Raffles (3rd Floor)

Lucy Reed, Director of the Centre for International Law (CIL), National University of Singapore (Invited)

2:30 PM – 4:00 PM

Concurrent Sessions

Task Force:

Potential Guidelines and Best Practices for Prevention and Defense of Investment Disputes – Focus on Prevention | Clemenceau (4th Floor)

A draft paper on potential guidelines will be distributed in advance that will address issues of prevention of investment disputes, defense models relied upon by Respondent States, readiness for investment arbitration, and best practices for State defense.

Participants will include government officials, practitioners with experience as counsel for investors and for States, arbitrators and academics. In this session the Working Group will focus on discussing matters of prevention of investment disputes.

Panel Co-Chairs:

Chester Brown, University of Sydney, Essex Court Chambers, Sydney, Australia

N. Jansen Calamita, Centre of International Law, National University of Singapore

Speaker:

Marcus Bartley Johns, Trade and Competitiveness Senior Specialist, World Bank Group, Singapore

Regulation of Foreign Direct Investment Sheares (4th Floor)

The panel will survey national security reviews by the Committee on Foreign Investment in the US (CFIUS) and similar reviews by other countries' regulatory agencies.

Panel Chair and Moderator:

Gopika Pant, Indian Law Partners, New Delhi, India

Speakers:

Alex Hao, JunHe LLP, New York, NY

Syeda Kazim, Georgetown University Law Center, Washington, DC

Roland Trope, Trope and Schramm LLP, New York, NY

Lawrence Ward, Dorsey & Whitney LLP, Seattle, WA

Ruth Wedgwood, Johns Hopkins University, Washington, DC

4:00 PM – 4:30 PM

Networking Break | Stamford - Raffles (3rd Floor)

4:30 PM – 6:00 PM

Concurrent Sessions

Task Force:

Potential Guidelines and Best Practices for Prevention and Defense of Investment Disputes – Focus on Readiness and Defense Clemenceau (4th Floor)

In this session the Working Group will focus on issues related to defense models relied upon by Respondent States, readiness for investment arbitration, and best practices for State defense.

Participants will include government officials, practitioners with experience as counsel for investors and for States, arbitrators and academics.

Panel Chair:

José Antonio Rivas, Arnold & Porter Kaye Scholer, Georgetown University Law Center, Washington, DC

Speaker:

Pierre-Olivier Savoie, Savoie Arbitration, Paris, France

Averting and Responding to Corporate Ethical Crises (Ethics) | Sheares (4th Floor)

This panel of experts will discuss the ethical responsibilities of Boards and professional legal ethical duties of counsel in recent ethical crises by management, Boards, and General Counsel at multi-national enterprises such as VW, Rolls Royce, Wells Fargo, Equifax, and Uber, and best practices for averting such crises.

Panel Co-Chairs:

Roland Trope, Trope and Schramm LLP, New York, NY

V. Lakshmikumar, Lakshmikumar & Sridharan, New Delhi, India

Moderator:

V. Lakshmikumar, Lakshmikumar & Sridharan, New Delhi, India

Speakers:

Elizabeth Cole, Jones Day, Singapore

Gopika Pant, Indian Law Partners, New Delhi, India

Steven Richman, Clark Hill LLC, Princeton, NJ

Roland Trope, Trope and Schramm LLP, New York, NY

6:00 PM – 6:10 PM

Closing Remarks

Steven M. Richman, Chair, Section of International Law