

(暫定)

## 課程簡介

### 國際投資法及國際投資爭端調解技巧培訓課程

2018年10月15日至21日

(以英語授課)

#### 第一天: 2018年10月15日(星期一)

08:30 – 12:30	投資仲裁的基本原則：從征收到承擔國家責任	Ms Olga Boltenko
12:30 – 14:00 (午膳)	本節旨在簡介投資條約法，以及投資者與東道國之間的仲裁，特別針對投資保護、投資法的歷史、投資條約下的實質保護、投資法的起源與條約詮釋、東道國的責任和歸屬，以及投資者與東道國爭端解決機制的其他範疇。課堂上將引用案例，闡述東南亞在徵用問題上及/或公平和公平待遇上所面對的挑戰。	Professor Jeffrey Waincymer
14:00 – 18:00		



Olga Boltenko is a partner with Fangda Partners in Hong Kong. She is an investment and trade lawyer with over 10 years' experience representing investors and sovereign states in investor-state disputes and in investment advisory matters. She has acted as counsel in investor-state arbitration proceedings under the auspices of the World Bank, the Permanent Court of Arbitration, as well as under the LCIA, SCC, ICC auspices and in UNCITRAL and ad hoc proceedings. Olga advises Chinese and international clients on investment structuring from the international law protection point of view, as

well on investment recovery and dispute avoidance matters. Olga is qualified to practice law in the Russian Federation and is experienced in Russia-related contentious and non-contentious work. Olga is an adjunct lecturer at the University of Hong Kong where she teaches a post-graduate programme in arbitration and dispute resolution. She is listed as arbitrator on the HKIAC, SIAC, CIETAC, and AIAC panels, and she is registered as a foreign lawyer in Hong Kong.



**Jeffrey Waincymer** is a qualified legal practitioner, arbitrator and mediator, practicing solely in the fields of arbitration, international trade and investment, customs law, trade remedies and mediation. He is also currently an adjunct Professor at the Faculty of Law, National University of Singapore. He is on the HKIAC, SIAC, KLRCA and ICDR arbitration panels and is an honorary Fellow of CIArb. Jeff was previously an Australian Government Nominee as a panelist for the WTO and ICSID. He has also been a consultant to the Australian Law Reform Commission, the Administrative Review Council, and a number of Federal and State Departments and agencies. He is the author of Procedure and Evidence in International Arbitration (Kluwer); WTO Litigation: Procedural Aspects of Formal Dispute Settlement (Cameron May), and Australian Income Tax: Principles and Policy (2nd ed Butterworths) and a joint author of A Guide to the New UNCITRAL Arbitration Rules (Cambridge University Press), A Practical Guide to International Commercial Arbitration (Oceana) and International Trade Law: Commentary and Materials (2nd ed Law Book Company) as well as numerous scholarly articles.

## 第二天: 2018年10月16日(星期二)

<b>08:30 – 12:30</b>	<b>國際投資爭端解決機制: 概覽與改革方向</b>  在解決國際爭端中，儘管投資仲裁成為最矚目的和解管道，但近來的批評亦日益倍增，甚至有建議對其進行徹底改革。在這背景下，本課程先概述現有投資者與東道國爭端解決的制度，並針對（a）擬議的投資法院體制和（b）修訂國際投資爭端解決中心的規則的提案（2018年8月發佈），解釋現時對國際投資爭端解決中心的體制與改革提案的憂慮。講座亦會探討投資者與東道國爭端解決機制下的反訴問題。	<b>Dr Tomoko Ishikawa</b>
<b>12:30 – 14:00</b>	午膳	
<b>14:00 – 18:00</b>	<b>重新考慮投資公約仲裁的損害賠償及仲裁費用</b>  Matthew Hodgson 將就其有關投資公約仲裁的最新研究作出演講，包括分析當中涉及的仲裁費用、仲裁過程所需時間、成功率、審裁處就仲裁費用的攤分及可追討的金額等等。最新研究詮釋共324宗公開的裁決及52宗廢止裁決的資料，是 Matthew Hodgson 原本在2012年的研究的一個全面更新。	<b>Mr Matthew Hodgson</b>
	<b>貪污</b>  本節課程將會涵蓋貪污的定義、貪污的舉證責任、法律條文的要求，以及投資公約中與貪污有關的其他條款，以決定在投資公約仲裁中，貪污是屬於管轄或案情的議題。此外，亦會審視主要投資公約案件中，牽涉有關投資者、東道國或協力廠商的貪污案例。講者會具體探討投資法庭上處理貪污指控所採用的不同測試，並以反腐倡議調查作為總結。	<b>Mr Romesh Weeramantry</b>



**Tomoko Ishikawa** is Associate Professor at Nagoya University in Japan. She is a member of the ICSID Panel of Conciliators, appointed by the Chairman of the ICSID Administrative Council, a member of the Legal Advisory Committee of the Energy Charter Treaty and a member of Investment Treaty Forum of the British Institute of International and Comparative Law. Her professional experiences include serving as a Judge at Tokyo District Court and holding the position of Deputy Director at the International Legal Affairs Bureau of the Ministry of Foreign Affairs of Japan, where she worked on bilateral/trilateral investment treaties, Free Trade Agreements and WTO dispute settlement. Her recent publications include: *Asia's Changing International Investment Regime: Sustainability, Regionalization, and Arbitration* (Springer 2017, co-edited with Julien Chaisse and Sufian Jusoh); *The Protection of Energy Investments under the ECT: an extra-EU country's perspective*, 2 *European Investment Law and Arbitration Review* (2017); *Case Comment: Marco Gavazzi and Stefano Gavazzi v. Romania - A New Approach to Determining Jurisdiction over Counterclaims in ICSID Arbitration?* *ICSID Review* (2017); *Restitution as a 'Second Chance' for Investor-State Relations: Restitution and Monetary Damages as Sequential Options*, 3 *McGill Journal of Dispute Resolution* (2016-2017) and *Provisional Application of Treaties at the Crossroads between International and Domestic Law*, 31(2) *ICSID Review* (2016).



**Matthew Hodgson** specialises in international arbitration. Since joining Allen & Overy in 2005, he has acted as counsel and advocate in commercial arbitrations under all major arbitral rules. He is qualified as a solicitor in England & Wales and Hong Kong, and as an attorney in New York. Matthew has particular experience of disputes relating to energy and infrastructure / construction projects, joint ventures, distribution agreements, financial instruments and post M&A matters, and has represented clients in a large number of investment treaty disputes worldwide including several claims valued in excess of US\$1 billion. On the investor side, he acted for Deutsche Bank in its successful claim against Sri Lanka and Belgian dredging company, BDC, in the first successful ICSID claim against the Philippines. States he has represented include Azerbaijan, the Kyrgyz Republic, Pakistan and Poland.



**Romesh Weeramantry** works at Clifford Chance in Singapore. He specializes in investment treaty disputes and cross-border commercial arbitrations. His previous positions involved work at the United Nations Compensation Commission (Geneva) and at the Iran-United States Claims Tribunal (The Hague). His publications include *Treaty Interpretation in Investment Arbitration* (Oxford UP 2012); and *International Commercial Arbitration: An Asia-Pacific Perspective* (Cambridge UP 2011). He is a General Editor of the *Asian Dispute Review*, a General Arbitration Editor of the *Hong Kong White Book* and is a Visiting Research Consultant at the Centre for International Law, National University of Singapore. He also serves on the Editorial Board of the *ICSID Review* and the IBA Subcommittee on Investment Treaty Arbitration.

第三天: 2018年10月17日(星期三)

08:30 – 12:30	國際投資爭端解決程式  概述國際投資爭端解決中心的仲裁程式，並從廣義角度 評論國際投資爭端，以及國際投資爭端的調解。	Ms Meg Kinnear
12:30 – 14:00		Ms Frauke Nitschke
(午膳)		Dr Alejandro Carballo- Leyda
14:00 – 18:00		



**Meg Kinnear** is currently the Secretary-General of the International Centre for Settlement of Investment Disputes (ICSID) at the World Bank. She was formerly the Senior General Counsel and Director General of the Trade Law Bureau of Canada, where she was responsible for the conduct of all international investment and trade litigation involving Canada, and participated in the negotiation of bilateral investment agreements. In November 2002, Ms. Kinnear was also named Chair of the Negotiating Group on Dispute Settlement for the Free Trade of the Americas Agreement. From October 1996 to April 1999, Ms. Kinnear was Executive Assistant to the Deputy Minister of Justice of Canada. Prior to this, Ms. Kinnear was Counsel at the Civil Litigation Section of the Canadian Department of Justice (from June 1984 to October 1996) where she appeared before federal and provincial courts as well as domestic arbitration panels. Ms. Kinnear was called to the Bar of Ontario in 1984 and the Bar of the District of Columbia in 1982. She received a Bachelor of Arts (B.A.) from Queen's University in 1978; a Bachelor of Laws (LL.B.) from McGill University in 1981; and a Master of Laws (LL.M.) from the University of Virginia in 1982. Ms. Kinnear has published numerous articles on international investment law and procedure and is a frequent speaker on these topics. She is a co-author of *Investment Disputes under NAFTA* (published in 2006 and updated in 2008 & 2009). She also co-authored texts on Canadian legal procedure including *Federal Court Practice* (1988-1990, 1991-1992, and 1993-2009 annually) and *1995 Crown Liability and Proceedings Act Annotated* (1994).



**Frauke Nitschke** is a senior counsel at the International Centre for Settlement of Investment Disputes (ICSID). Frauke serves as the team lead for ICSID staff handling proceedings conducted in English. Frauke also serves as Secretary of tribunals, conciliation commissions and *ad hoc* committees in investor-State proceedings conducted pursuant to the ICSID Convention and the ICSID Additional Facility Rules involving a variety of economic activities and legal instruments. Frauke further leads ICSID's investor-State mediation activities, including the drafting of the proposed Additional Facility Mediation Rules. Prior to joining ICSID in 2003, Frauke served in the World Bank's Legal Vice Presidency and the Inspection Panel. Frauke is admitted to the D.C. and New York State Bar and holds a law degree from the Freie Universität Berlin, an LLM from Georgetown University Law Center, and a Master's Degree in Psychology from the FernUniversität Hagen.



**Alejandro Carballo-Leyda** is the General Counsel of the International Energy Charter and head of its Conflict Resolution Centre, which provides good offices and mediation support to investors and governments. He coordinates the discussions on the Model Investment Dispute Management Protocol and the modernisation of the Energy Charter Treaty. Alejandro participated in the working groups of UNIDROIT Principles of International Commercial Contracts and Hague Conference Principles on Choice of Law in international contracts. Alejandro was the Rapporteur of the ILA Study Group on The Use of Domestic Law Principles in the Development of International Law. He edited the book on *Asian Conflict of Laws* (Wolters Kluwer, 2015).

#### **第四天: 2018年10月18日(星期四) (投資者與東道國調解員培訓第一天)**

<b>08:30</b> – <b>18:00</b>	投資者與東道國調解員首天培訓將延續前一天的講座內容，概述投資者與東道國爭端的背景。參與者將探討投資者與東道國調解及程式設計方案所需考慮的一系列特定事項，並將扮演調解員以設計合適的調解程式。此環節亦將介紹由兩名調解員共同調解的原則及其對投資者與東道國調解的適用性。	<b>Ms Frauke Nitschke</b>  <b>James South</b>  <b>Dr Alejandro Carballo-Leyda</b>  <b>Wolf von Kumberg</b>  <b>Danny McFadden</b>
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#### **第五天: 2018年10月19日(星期五) (投資者與東道國調解員培訓第二天)**

<b>08:30</b> – <b>18:30</b>	<p>投資者與東道國調解員第二天培訓將深入探討投資者與東道國調解的不同層面。培訓的首部份將討論持份者分析及如何製作分析圖。參與者將為數個案例進行持份者分析及製作分析圖。</p> <p>其後，培訓將論述跨文化溝通能力。參與者將檢討文化溝通能力框架及如何運用技巧以協助各爭議方應對文化差異問題。參與者將集中論述國際投資爭端的主要調解技巧，例如管理投資者與東道國之間的互動、探索不同的調解方式、如何促進建議提案、應對和解障礙及促成突破。此環節也將論述調解員在處理國際投資爭端時的道德問題及調解員操守。參與者將檢視利益衝突情況，與及調解員在其後或同時進行的仲裁或訴訟程式中所扮演的角色。此環節亦將探索如何應對欺詐或貪污的指控、及如何遵守相關的國內反賄賂及反貪污法律。</p>	<b>Ms Frauke Nitschke</b>  <b>James South</b>  <b>Dr Alejandro Carballo-Leyda</b>  <b>Wolf von Kumberg</b>  <b>Danny McFadden</b>
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#### **第六天: 2018年10月20日(星期六) (投資者與東道國調解員培訓第三天)**

<b>08:30</b> – <b>17:30</b>	投資者與東道國調解員第三天培訓讓參與者將前幾天所學的技巧和知識學以致用。參與者將扮演調解員，從富有經驗的培訓員獲得回饋，亦可飽覽不同的調解風格。	<b>Ms Frauke Nitschke</b>  <b>James South</b>  <b>Dr Alejandro Carballo-Leyda</b>  <b>Wolf von Kumberg</b>  <b>Danny McFadden</b>
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第七天: 2018年10月21日(星期日) (投資者與東道國調解員培訓第四天)

08:30 – 17:00	投資者與東道國調解員第四天培訓讓參與者將前幾天所學的技巧和知識學以致用。參與者將扮演調解員，從富有經驗的培訓員獲得回饋，亦可飽覽不同的調解風格。	<b>Ms Frauke Nitschke</b> <b>James South</b> <b>Dr Alejandro Carballo-Leyda</b> <b>Wolf von Kumberg</b> <b>Danny McFadden</b>
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**James South** is the Managing Director of the Centre for Effective Dispute Resolution (CEDR). As a mediator, facilitator, consultant and trainer, James has amassed 20 years of experience of working with individuals, organisations and public institutions to prevent, manage and resolve conflict effectively. James is known as an expert in mediating disputes between individuals and organisations or in disputes where there is a perceived or actual power imbalance and a difficult relationship between the parties. James is a fluent Spanish speaker and trains in cross-cultural issues in mediation. He is also experienced in mediating cross-border and cross-cultural disputes most notably related to international development projects. In addition to his mediating experience, James combines his mediating, training and consultancy skills to provide facilitation and neutral chairing services particularly for groups, which find themselves in conflict. With experience of working in approximately 40 countries, James' recent clients have included the World Bank Group, European Bank for Reconstruction and Development and the Council of Europe. James is admitted as a Barrister and Solicitor of the High Court of New Zealand and holds a Master's degree in Dispute Prevention and Resolution.



**Wolf von Kumberg** brings over 30 years of international legal and business experience to the practise of ADR. Having served as Legal Director and Assistant General counsel to Northrop Grumman Corporation and before that to Litton Industries Inc., he has unique knowledge related to the Aerospace, Defence and High Tech Industries. His practise involved most regions of the World and included, commercial, government and state entities. He is now applying this accumulated knowledge

to the field of global commercial conflict avoidance and resolution. Wolf is a certified CEDR mediator and an arbitration Fellow of the Chartered Institute of Directors. He has mediated numerous types of commercial disputes and has been involved in a variety of domestic and international arbitrations. He sits on the mediation panels of CEDR, KLRCA and the AAA/ICDR. In addition, he is a member of arbitration panels at AAA/ICDR, KLRCA, LCIA and the DIFC. He is a founding panellist of the Aerospace/Security panel of the AAA and has assisted in the development of Investor State Mediation Guidelines for the Energy Charter Treaty Secretariat.



**Danny McFadden** is CEDR Director and is dually qualified as a lawyer both in Australia and the United Kingdom. He has been involved in negotiation, conflict resolution training, mediation and international business for over 20 years. After completing his Masters in Commercial Law, he specialized in dispute resolution and international trade. Danny speaks Mandarin Chinese fluently and mediates regularly in Hong Kong and China using both English and Mandarin. He has worked with people of all nationalities and has a clear understanding of the dynamics of mediating and arbitrating across national boundaries.