



ICSID Regional Training Workshop 2019

26-28 September 2019

Meeting room, 10th floor The Berkeley Hotel Pratunam, Bangkok, Thailand

26 September 2562	Session
08.30 – 09.00	Registration
09.00 – 09.30	Opening remarks by ITD and ICSID : ITD Executive Director & Meg Kinnear
09.00 – 10.30	ISDS: Overview and legal foundations <i>This session provides an overview of international investment law, sources of legal obligations and international law defenses. In particular, it will cover the substantive content of international investment agreements and include a review of investment arbitration cases from the Asia-Pacific region.</i> : Meg Kinnear & Nicky Balani
10.30 – 10.45	Coffee break
10.45 – 12.00	ISDS: Overview and legal foundations (cont.) : Michael Ewing-Chow & Robert Kirkness
12.00 – 13.00	Lunch
13.00 – 14.30	Investor-State dispute prevention and amicable settlement mechanisms <i>Negotiation, expert determination, conciliation and mediation are all viable options for dispute prevention and amicable settlement. The experts provide an analysis of these less costly mechanisms to arbitration; including, its incorporation into the overall framework for the settlement of foreign investment complaints and disputes. Guidance is given on factors that promote the efficacy of these alternative mechanisms for the settlement of investment treaty disputes.</i> : Meg Kinnear & Michael Ewing-Chow

14.30 – 14.45	Coffee break
14.45 – 17.00	<p>Introduction to ICSID</p> <p><i>ICSID is a leading institution for administering international investment disputes having registered 706 foreign investment related cases until the end of 2018. ICSID's primary purpose is to provide facilities and support services for conciliation and arbitration of international investment disputes.</i></p> <p><i>This session provides an overview of the ICSID Convention, ICSID Secretariat, procedural rules, scope of services and briefly touches on the ongoing reforms at ICSID. The Secretary-General of ICSID will also share her insights into the role of ICSID and how this has evolved over the years.</i></p> <p>: Meg Kinnear</p>
27 September 2562	Session
09.00 – 10.30	<ul style="list-style-type: none"> ● ICSID's jurisdiction <p><i>ICSID's substantive jurisdiction is prescribed under Article 25 of the ICSID Convention. This provision was drafted textually open without an exhaustive definition of a qualifying foreign investor and foreign investment. This session provides an analysis of Article 25 as well as the other jurisdictional hurdles and tests in satisfying ICSID's jurisdictional requirements.</i></p> <p>: Meg Kinnear</p> ● Initial process of an ICSID arbitration <p><i>The initial phases of an ICSID arbitration include, registration of a case, selection and appointment of arbitrators, the first session and procedural order 1. The experts will provide guidance on how to prepare for each one of these critical early steps in an ICSID arbitration.</i></p> <p>: Meg Kinnear</p>
10.30 – 10.45	Coffee break
10.45 – 12.00	<p>Other procedures in an ICSID arbitration</p> <p><i>The other possible procedures that may arise in an ICSID arbitration include, application for provisional measures and security for costs, counterclaim, arbitrator challenges and preliminary objections. The experts discuss each one of these procedures and explain its strategic implications.</i></p> <p>: Meg Kinnear & Nicky Balani</p>
12.00 – 13.00	Lunch

13.00 – 14.45	<p>Document production in investment treaty arbitration</p> <p><i>The costs and burden for locating and producing a large number of responsive documents for an arbitration must be balanced with its indispensability to the fact-finding process. The experts discuss the stages involved in document production, treaty obligations and its challenges. Guidance is provided to states on what to expect and how national law and international law interplay for particular objections in relation to document production.</i></p> <p>: Robert Kirkness</p>
14.45 – 15.00	<p>Coffee break</p>
15.00 – 16.00	<p>Treaty mechanisms for State party interpretation and intervention of non-disputing parties</p> <p><i>ISDS may have an impact on the rights and interests of third parties. Non-disputing treaty parties may have a right conferred by the treaty to make submissions on the interpretation and application of treaty obligations. There is a fine line however between non-disputing third party participation and intervention; the latter is not based solely on assisting the tribunal, but it is where the non-disputing third party has an interest in the outcome of the dispute. To account for this, procedural rules have to strike a right balance between assisting the tribunal and ensuring a fair and efficient arbitration for the disputing parties. This session looks at the balance between the interests of disputing parties and non-disputing third parties in order to promote the legitimacy of outcomes.</i></p> <p>: Meg Kinnear & Nicky Balani</p>
16.00 – 17.00	<p>Written and oral phases of an ICSID arbitration</p> <p><i>The written and oral phases of an arbitration are critical to the arbitrators' deliberations for the award. Written briefs and oral hearings are essential to identifying the areas of dispute, factually and legally, between the parties. The experts will identify what states can expect in supporting outside or government counsel to defend an investment treaty arbitration as well as provide participants with a checklist of matters that need to be prepared in advance of a hearing.</i></p> <p>: Meg Kinnear</p>

28 September 2562	Session
09.00 – 10.00	<p>Award and post-award remedies for an ICSID arbitration and the recognition and enforcement of ICSID awards</p> <p><i>The ICSID Convention provides a self-contained system for post-award remedies. An ICSID award is final and binding and not subject to review by domestic courts. Issues of recognition and execution where competing international law obligations cannot be reconciled present difficult questions of law for domestic courts. The experts will provide an overview of ICSID's post-award remedies, its benefits and difficult questions of international law that may arise.</i></p> <p>: Meg Kinnear</p>
10.00 – 10.30	<p>Criticisms of the current ISDS regime</p> <p><i>The current state of the ISDS regime has come under intense scrutiny and criticism for inconsistent awards, lack of diversity, excessive costs, lack of transparency, failure to account for the public interest, etc. These criticisms have been shaped by individual experiences of states faced with investment treaty claims. Criticisms of the ISDS regime have led to a legitimacy deficit that has fueled reform proposals at the state, regional and inter-governmental levels. The experts canvass the criticisms and challenges common to Asia-Pacific states.</i></p> <p>: Meg Kinnear & Nicky Balani</p>
10.30 – 10.45	<p>Coffee break</p>
10.45 – 11.15	<p>Third party funding in investment treaty arbitration</p> <p><i>Third party funding in support of arbitral proceedings has increased in recent years. Claimants may rely on third party funding to finance the costs of the arbitration or to shift costs of the claim off their accounting books. Third party funding raises critical questions of privilege, confidentiality, exclusivity and recovery of costs. The potential for an 'arbitral hit-and-run' from the inability to enforce an award against the third party funder leads to an asymmetric inequality between parties. As the public are residual risk-bearers of adverse awards for damages, an important question addressed in this session is whether the proper balance for third party funding has been struck without denying access to justice for claimants that lack financial means.</i></p> <p>: Meg Kinnear & Robert Kirkness</p>

11.15 – 12.00	Managing investment treaty arbitrations <i>Managing investment treaty arbitrations for respondent states is an important facet of any investor - State arbitration. This session considers the critical preparatory steps states can take, such as designating a responsible government agency or committee, procedures for considering settlement offers, communicating with the media and selection of outside counsel.</i> : Meg Kinnear
12.00 – 13.00	Lunch
13.00 – 14.30	ISDS: Stocktaking of treaties, trends and reform proposals <i>ISDS reforms at ICSID</i> <i>This session focuses on the ongoing rule amendment process to modernize ICSID's procedural rules. ICSID's Secretary-General will walk through the key proposals and the implications they will have in practice.</i> : Meg Kinnear
14.30 – 14.45	Coffee break
14.45 – 16.45	<ul style="list-style-type: none"> ● ISDS: Stocktaking of treaties, trends and reform proposals : Nicky Balani, UNCITRAL ● ISDS reform within UNCITRAL and UNCTAD Wider ISDS reform proposals are taking shape at the inter-governmental level; within Working Group III of UNCITRAL and through the roadmap for IIA Reform prepared by UNCTAD. These proposals are wide-ranging, from clearly defined treaty obligations to a permanent investment court. Representatives from these respective institutions will weigh in on the purpose and direction of the reform agenda. : Elisabeth Tuerk UNCTAD
16.45 – 17.00	Closing remarks and presentation of certificates : ITD Executive Director & Meg Kinnear