

CONTENTS

<i>List of Figures and Table</i>	<i>page</i>	viii
<i>Foreword</i>	<i>ix</i>	
<i>Acknowledgements</i>	<i>xi</i>	
<i>Table of Cases</i>	<i>xiii</i>	
<i>List of Selected Abbreviations</i>	<i>xxi</i>	
Introduction	1	
1 The Legal Landscape	6	
Host State National Courts	7	
Home State National Courts	8	
International Arbitration	10	
2 The Four Models	19	
The Direct Claims Model	19	
Direct Claims (I) Model	19	
Direct Claims (II) Model	23	
Direct Claims (III) Model	24	
A Role for the Host State	25	
The Long Shadow of Diplomatic Protection	25	
The Boundaries of State Behaviour	30	
Attribution versus Jurisdiction	32	
The ICSID Convention	34	
Arbitration Rules	38	
The Espousal Model	42	
The Host State as Espouser	42	
Two ICSID Cases	50	
Conclusion	54	

The <i>Qui Tam</i> Model	55
The Hybrid Model	66
Summary of the Four Models	68
Consolidation of Models	70
The Four Models and the International Centre for Settlement of Investment Disputes	71
‘investment’	72
‘arising directly’	73
‘legal dispute’	76
‘between a Contracting State . . . and a national of another Contracting State’	76
‘which the parties to the dispute consent in writing to submit to the Centre’	77
Two Rules of Diplomatic Protection	77
Nationality of Claims	77
Exhaustion of Local Remedies	79
3 Jurisdiction <i>Ratione Personae</i>: The Foreign Investor	82
Host State Investment Law	82
Contract Models	85
Treaty Models	87
The Host State’s Contingent Consent	87
Jurisdiction without Privity	90
A Harmonisation Mechanism	93
4 Mass Proceedings and Settlement Agreements	98
5 Jurisdiction <i>Ratione Materiae</i>: The Substantive Rights	108
Choice of Law as the Starting Point	109
General Considerations Favouring a Broad Substantive Scope	113
The Uncertain Status of Host State Counterclaims	116

CONTENTS

vii

Promoting Access to Recourse	118
Duplication, Fragmentation, or Excessive Burden	120
Thresholds and Due Diligence Obligations	123
Defining the Right-Holder	125
Areas of Law for Possible Incorporation	127
Human Rights	127
Labour Rights	131
Environmental Rights	139
Indigenous Peoples' Rights	144
Anti-corruption	147
6 Enforcement	152
The ICSID Convention	152
The New York Convention	154
The Role of the <i>Lex Arbitri</i>	155
The Requirement of an 'Agreement in Writing'	157
The 'Commercial' Reservation	161
Conclusion	168
Conclusion	169
<i>Annex: The Model Texts</i>	172
<i>Index</i>	191