

THE ASIAN TURN IN FOREIGN INVESTMENT

This collection critically discusses the increasing significance of Asian States in the field of international investment law and policy. Consisting of contributions authored by a leading team of scholars and practitioners of international investment law, this volume presents analyses of both national and multilateral investment law rule-making in Asia, including a critical discussion of certain States' approaches to balancing the different tensions between investment protection and the preservation of States' regulatory sovereignty. It also contains thematic chapters on cutting-edge developments which are of relevance to Asia as well as the global community, such as investors' obligations of due diligence, additional transparency in treaty-based investment arbitration responses by the Association of Southeast Asian Nations (ASEAN) Member States to transboundary haze pollution and the relevance of human rights obligations in international investment law. It also contemplates future possibilities for investor–State dispute settlement, including the use of investor–State mediation in view of the Singapore Convention on Mediation.

Mahdev Mohan is the global policy and standards lead for emerging markets at Google LLC and was formerly a faculty member at the Singapore Management University (SMU) School of Law, where he taught public international law and directed SMU's Asian Business and Rule of Law initiative. A former Nominated Member of Parliament of Singapore, he is the executive director of the Society of International Law Singapore, an editorial board member of the *Journal of East Asia and International Law* and *China and WTO Review*, and has written and practised in the fields of public international law, investment arbitration and human rights law in Asia. Mohan was an associate tenant of Temple Garden Chambers within its public international law practice group.

Chester Brown is Professor of International Law and International Arbitration at the University of Sydney Law School; a barrister at 7 Wentworth Selbourne Chambers, Sydney; and an overseas member of Essex Court Chambers, London. He teaches and researches in the fields of public international law, international dispute settlement, international investment law and international commercial arbitration. He also maintains a practice in these fields and has been involved as counsel in proceedings before the International Court of Justice, the Iran–United States Claims Tribunal, inter-State and investor–State arbitral tribunals, as well as in inter-State conciliation proceedings and international commercial arbitrations.

The Asian Turn in Foreign Investment

Edited by

MAHDEV MOHAN

Google, LLC

CHESTER BROWN

Univeristy of Sydney Law School



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press & Assessment
978-1-009-45754-5 — The Asian Turn in Foreign Investment
Edited by Mahdev Mohan , Chester Brown
Frontmatter
[More Information](#)



Shaftesbury Road, Cambridge CB2 8EA, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314-321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India
103 Penang Road, #05-06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment,
a department of the University of Cambridge.

We share the University’s mission to contribute to society through the pursuit of
education, learning and research at the highest international levels of excellence.

www.cambridge.org
Information on this title: www.cambridge.org/9781009457545
DOI: 10.1017/9781108675772
© Cambridge University Press & Assessment 2021

This publication is in copyright. Subject to statutory exception and to the provisions
of relevant collective licensing agreements, no reproduction of any part may take
place without the written permission of Cambridge University Press & Assessment.

First published 2021
First paperback edition 2024

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging-in-Publication data
NAMES: Mohan, Mahdev, editor. | Brown, Chester, 1972– editor.
TITLE: The Asian turn in foreign investment / edited by Mahdev Mohan, Chester Brown, University of
Sydney.
DESCRIPTION: Cambridge, United Kingdom ; New York, NY : Cambridge University Press, 2021. |
Includes index.
IDENTIFIERS: LCCN 2020035141 | ISBN 9781108426596 (hardback) | ISBN 9781108675772 (ebook)
SUBJECTS: LCSH: Investments, Foreign – Law and legislation – Asia. | Investments, Foreign – Law and
legislation – European Union countries.
CLASSIFICATION: LCC KNC747 .A858 2021 | DDC 346.5/092–dc23
LC record available at <https://lcn.loc.gov/2020035141>

ISBN 978-1-108-42659-6 Hardback
ISBN 978-1-009-45754-5 Paperback

Cambridge University Press & Assessment has no responsibility for the persistence
or accuracy of URLs for external or third-party internet websites referred to in this
publication and does not guarantee that any content on such websites is, or will
remain, accurate or appropriate.

Contents

<i>List of Figures</i>	<i>page</i> viii
<i>List of Tables</i>	ix
<i>List of Contributors</i>	x
<i>Acknowledgements</i>	xvii
<i>Table of Cases</i>	xviii
<i>Table of Treaties</i>	xxvi
<i>List of Abbreviations</i>	xliv
 PART I INTRODUCTION	
1 Introduction: The Asian Turn in Foreign Investment Mahdev Mohan and Chester Brown	3
 PART II NATIONAL APPROACHES WITHIN ASIA TO THE REGULATION AND PROTECTION OF FOREIGN INVESTMENT	
2 Investment Agreements and Dispute Settlement in Singapore: Setting Standards Mahdev Mohan	13
3 Pharmaceutical Patents and Expropriation in Indian Bilateral Investment Treaties Prabhash Ranjan	29
4 Out with the Old, In with the New? Unpacking Myanmar’s Consolidated Investment Law Ei Ei Aung, Mahdev Mohan and Aziah Hussin	48
5 China and the Investment Treaty Regime: Rule Taker or Rule Maker? Sheng Zhang	63
6 Procedural Models to Upgrade BITs: China’s Experience Jie (Jeanne) Huang	80

PART III THE REBALANCING OF REGULATORY SPACE AND INVESTOR PROTECTION IN ASIA		
7	Regulatory Power and Investors’ Interests: Striking a Balance in Investment Treaties Concluded by Japan Shotaro Hamamoto	103
8	Investment Agreements and Regulatory Space in Indonesia Antony Crockett	118
9	Regulation of Foreign Investments in India: Analysing India’s 2015 Model BIT Shreyas Jayasimha and Abhimanyu George Jain	136
10	The Regulation of Foreign Investments in Sri Lanka: A Policy-Based Perspective Naazima Kamardeen and Dinusha Panditaratne	160
PART IV MULTILATERAL RULE-MAKING IN ASIA ON TRADE AND INVESTMENT: FROM ASEAN TO THE COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP		
11	The ASEAN Legal Framework for Free Trade and the Promotion and Protection of Foreign Investment Chester Brown and Henry Winter	183
12	ISDS Reform and the EU–Vietnam Investment Protection Agreement: Challenge Accepted! Nguyen Manh Dzung and Dang Vu Minh Ha	199
13	Investment Rule-Making in Asia–European Union Relations: Legal and Policy Considerations Julien Chaisse and Xu Qian	218
14	Reports of TPP’s Death Have Been Greatly Exaggerated C. L. Lim	242
PART V EMERGING ISSUES		
15	The Due Diligence Expansion in International Investment Arbitration Aloysius Llamzon and Jessica Beess und Chrostin	261
16	Combating Haze Pollution through the Enforcement of Investment Treaties and Human Rights Robert McCorquodale and Mark Mangan	279
17	Transparency in Investor–State Arbitration: Where Does Asia Stand? N Jansen Calamita and Ewa Zelazna	293
18	Third-Party Funding in Asia: Developments in Singapore and Hong Kong Ingrid Coinquet and Siraj Shaik Aziz	309

19	Settling Investment Disputes through Mediation: Possibilities and Limitations	327
	Jaemin Lee	
20	The Singapore Convention on Mediation: Origins and Application to Investor–State Disputes	340
	Nadja Alexander and Shouyu Chong	
PART VI WHAT LIES AHEAD?		
21	Reconciling Public Interests with Private Interests in International Investment Arbitration and Securing Effective Remedy for Investment-Related Human Rights Violations	363
	Surya P Subedi QC	
22	Rebalancing Investment Treaties and Investor–State Arbitration in the Asian Region	379
	Luke Nottage	
	Index	399

Figures

5.1	China’s FDI and OFDI from 2004–2016 (unit: 100 million USD)	<i>page</i> 66
10.1	Sri Lanka’s FDI growth, showing BITs with major partners	162
10.2	Sri Lanka’s FDI breakdown	164
10.3	FDI as share of GDP in South and South East Asia versus Sri Lanka, 2000–2016	170
10.4	Sources of FDI to Sri Lanka, 2010–2017	172

Tables

7.1	Relevant provisions of Japan’s ‘new-generation’ treaties	<i>page</i> 111
13.1	Current EU negotiations with Asian economies since 2009 to July 2019	224
13.2	IAs signed by ADB member economies	232
13.3	Sampling Asian treaties quality (BITSel quality indicator)	234
13.4	Non-applicability of the MFN principle to FTAs	238
17.1	Publication of arbitral documents under different Asian investment treaties	298

Contributors

Nadja Alexander is Professor of Law (Practice) at SMU School of Law and Director of the Singapore International Dispute Resolution Academy (SIDRA). She is conjoint Professor at Newcastle Law School, Australia, and Senior Fellow of the Dispute Resolution Institute at Mitchell Hamline School of Law, United States. She sits on mediation panels in Singapore, Hong Kong, Japan, India and Australia. Nadja is a foundation member of the International Advisory Board of the United Nations Office of the Ombudsman, which has oversight of the Global Mediation Panel. Nadja's books include *The Singapore Convention on Mediation: A Commentary* (with Shouyu Chong), *Global Trends in Mediation*, *Singapore Mediation Handbook*, *International Comparative Mediation* and *EU Mediation Law Handbook*.

Ei Ei Aung is Senior Associate and Head of the Corporate Practice at U Tin Yu & Associates, Yangon, Myanmar. Ei Ei received her Bachelor of Laws from Dagon University, Myanmar, and Master of Laws specializing in International Business Law from Assumption University in Bangkok, Thailand. She has experience advising on foreign direct investment trade mark registration and property law, and representing clients in dispute resolution. Together with Stephenson Harwood (U Tin Yu's associated international law firm), she jointly advises international companies on market entry, commercial arrangements, joint ventures and dealing with regulatory bodies in Myanmar, both in Yangon and Nay Pyi Taw.

Jessica Beess und Chrostin is Senior Associate at Covington & Burling LLP's office in New York. Ms. Beess und Chrostin represents clients in international commercial, investment treaty and intra-State arbitration, as well as in international disputes before US courts. She was formerly Adjunct Professor of Law at Vanderbilt Law School, where she taught investment arbitration, and is a frequent writer and speaker on topics relating to international arbitration. Beess und Chrostin holds a JD cum laude from Harvard Law School and a BA cum laude with honours from Columbia University.

Chester Brown is Professor of International Law and International Arbitration at the University of Sydney Law School. He is also a barrister at 7 Wentworth Selborne Chambers, Sydney, and an overseas member of Essex Court Chambers, London. He teaches and researches in the fields of public international law, international dispute settlement, international investment law and international commercial arbitration. He also maintains a practice in these fields and has appeared as counsel in proceedings before the International Court of Justice, the Iran–United States Claims Tribunal, inter-State and investor-State arbitral tribunals, as well as in inter-State conciliation proceedings and international commercial arbitrations.

N Jansen Calamita is Head of Investment Law and Policy, Centre for International Law, and Research Associate Professor (CIL), Faculty of Law, National University of Singapore. Prior to entering academia, Professor Calamita served in the Office of the Legal Adviser in the US Department of State and as a member of the UNCITRAL Secretariat. He began his career in private practice in New York. He is co-editor (with Loretta Malintoppi) of *International Litigation in Practice* (Brill) and a member of the editorial board of the *Yearbook of International Investment Law and Policy* (Oxford University Press).

Julien Chaisse is Professor at the City University of Hong Kong, School of Law. He is an award-winning scholar of international law with a focus on the regulation and development of economic globalization. He has published numerous well-regarded books and articles, and his scholarship has been cited by international courts/tribunals, as well as US courts. Julien served as a senior fellow at the World Trade Institute (Switzerland) and as a diplomat for the Embassy of France in New Delhi (India). He is also an experienced arbitrator and a sought-after consultant/expert to international organizations, governments, law firms and private investors.

Shouyu Chong is a PhD candidate and Visiting Lecturer at the Centre of Construction Law and Dispute Resolution, the Dickson Poon School of Law, King's College London. He is also a Research Fellow at the Singapore International Dispute Resolution Academy. He researches private international law and cross-border dispute resolution mechanisms, including litigation, arbitration and mediation. He is funded by the Centre of Construction Law and Dispute Resolution, as well as the Society of Construction Law, to conduct research on jurisdiction and arbitration clauses.

Ingrid Coinquet is the founder and managing director of Augmenta Group, which is a global connector for clients, investors, lawyers and experts for the recovery of distressed claims, offering dispute strategy and financing access until the actual recovery of the claim. Ingrid has more than fifteen years of extensive experience in cross-border disputes and distressed debt recovery, including ten years as general counsel for investment funds and third-party funders. She has also worked in the Disputes and Banking/Project Finance departments of top-tier law firms, including Baker & McKenzie, where she gained valuable experience in representing multinational companies in international disputes, as well as major financial institutions in banking and project finance. Ingrid is a qualified attorney in the State of New York, USA.

Antony Crockett is a senior consultant with international law firm Herbert Smith Freehills based in Hong Kong. Antony is an international dispute resolution specialist with expertise in international commercial arbitration, investment treaty arbitration and public international law. He is admitted to practice in Australia (Victoria), England and Wales and Hong Kong SAR. Antony holds the degrees LLB (Hons) and BSc (Environmental Science) from the University of Melbourne and an LLM (Dist.) from the London School of Economics and Political Science. An Australian national, Antony has lived and practised in Asia (Hong Kong, Jakarta and Singapore) for almost a decade.

Nguyen Manh Dzong is the founder of Dzongsrt & Associates LLC and an internationally recognized specialist in all areas of maritime law, commercial litigation and international arbitration in Vietnam. Dzong was the first ever Vietnamese member of the ICC Court, and he is also a panel member of the Vietnam International Arbitration Centre. He was a key contributing editorial member of the Drafting Committee of Law on Commercial

Arbitration and Decree on Commercial Mediation of Vietnam. He has presented and lectured extensively on ADR and international commercial arbitration at the Judicial Academy of the Ministry of Justice of Vietnam and the Diplomatic Academy of the Ministry of Foreign Affairs of Vietnam.

Dang Vu Minh Ha is a senior associate of Dzungsrt & Associates LLC. She focuses mainly on commercial arbitration and mediation. Minh Ha obtained her first degree in law with distinction and her LL.M. in International Commercial Law from the University of Leicester, United Kingdom. She is usually involved in drafting legal opinions in both Vietnamese and English; she assists clients in local courts and arbitration in relevant fields. Minh Ha is also co-author of a number of publications on arbitration such as the Vietnam chapter in the 'IBA Country Guides', *Young Arbitration Review*, *Global Arbitration Review*, and the *Vietnam National Report in the ICCA Handbook on Commercial Arbitration*.

Abhimanyu George Jain is a PhD candidate and research associate at the Graduate Institute of International and Development Studies in Geneva. He has been admitted to the practice of law in India and in England and Wales. He has previously worked as a management consultant, as a corporate lawyer and, most recently, as a member of the team of counsels representing India in two investment arbitration disputes.

Shotaro Hamamoto holds the degrees of LL.B. (Kyoto), LL.M. (Kyoto) and Docteur en droit (Paris II). He is Professor of the Law of International Organizations at the Graduate School of Law, Kyoto University. He is the Co-Chair of the International Law Association's Committee on Procedure of International Courts and Tribunals (2016–). He has served as counsel for Botswana in *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius* (ICJ, Advisory Opinion, 2018–2019) and for Japan in the *Whaling in the Antarctic* (ICJ, *Australia v. Japan, New Zealand intervening*, 2010–2014), *Hoshinmaru* (ITLOS, *Japan v. Russia*, 2007) and *Tomimaru* cases (ITLOS, *Japan v. Russia*, 2007). He also served as the assistant for the Spanish government in *Fisheries Jurisdiction* (ICJ, *Spain v. Canada*, 1997–98). He is also the Japanese delegate to UNCITRAL (2010–).

Jie (Jeanne) Huang is an associate professor at the University of Sydney Law School in Australia. She teaches and researches in the fields of law for digital trade, private international law, international litigation and arbitration, international investment law and underwater cultural heritage protection. She has published four books and authored many articles in esteemed law journals, such as the *Journal of International Economic Law* and the *Journal of Private International Law*. Thirteen of her articles are indexed by SSCI. As a chief investigator, she has received funding from China National Social Science Fund (equivalent to the Australian Research Council), China's Ministry of Education, the China Law Society, the Shanghai Philosophy and Social Science Fund, and the Shanghai Government Development and Research Center Fund.

Aziah Hussin (LL.M., (University College London); Advocate & Solicitor (Singapore); Solicitor (Higher Courts, England & Wales), was an adjunct faculty member at the Singapore Management University School of Law, and an International Law Research Consultant for the Singapore International Dispute Resolution Academy where she led research on the Singapore Convention on Mediation.

Shreyas Jayasimha is a founding partner of Aarna Law, which has offices in Bangalore, Delhi and Mumbai, and an advocate, arbitrator and mediator with more than nineteen years of experience in domestic and international dispute resolution across various industry sectors. He has recently established Aarna ADR in Maxwell Chambers, Singapore. Shreyas is a member of the Foundation for International Arbitration Advocacy (FIAA), Geneva, since 2012, the national coordinator for the UNCITRAL National Coordination Committee of India (UNCCI) and a member of the Mumbai Centre for International Arbitration (MCIA) Council. He is also the only India-based representative of the ICC Fraudnet focused on asset tracing and recovery. He has also been the co-counsel for a State party in two significant investment treaty arbitrations.

Naazima Kamardeen is a professor in the Department of Commercial Law in the Faculty of Law, University of Colombo, Sri Lanka. She teaches and has published widely in intellectual property law, international trade and WTO law, international investment law, cultural property law and environmental law. She served on the National Committee that drafted the law on plant variety protection. She obtained her bachelor's degree in law from the University of Colombo, master of laws degree in international legal studies from Georgetown University and doctorate from the University of Colombo. She is also Attorney-at-Law of the Supreme Court of Sri Lanka.

Jaemin Lee is currently Professor of Law at School of Law, Seoul National University in Seoul, Korea. His major areas of teaching and research are public international law, international investment law and international trade law. Upon graduation from SNU College of Law in 1992, he joined the Korean Ministry of Foreign Affairs as a foreign service officer. Between 2000 and 2004, he practised law with Willkie Farr & Gallagher LLP (Washington, DC) as an associate attorney of the firm's international trade group. From 2004 to 2013 he taught international law at the School of Law, Hanyang University in Seoul, Korea.

Chin Leng Lim is the Choh-Ming Li Professor of Law at the Chinese University of Hong Kong. He practises as a barrister from Keating Chambers, London, where his work has included foreign investment and treaty matters. He is Honorary Senior Fellow of the British Institute of International and Comparative Law and a visiting Professor at King's College London. He was, recently, the inaugural Lionel A. Sheridan Visiting Professor at the National University of Singapore. His books include *Lim, Ho and Paparinskis, International Investment Law and Arbitration* (Cambridge, 2018), with a foreword by Gaillard, and the forthcoming *Cambridge Companion to International Arbitration*.

Aloysius Llamzon is a senior associate at King & Spalding's Washington, DC, and New York offices. He represents corporate and sovereign clients in inter-State, investment treaty and commercial arbitrations seated throughout the world. Llamzon was formerly Senior Legal Counsel at the Permanent Court of Arbitration in The Hague and has practised at leading law firms in Hong Kong and Manila. He holds LLM and JSD degrees from Yale Law School, and AB and JD degrees from the Ateneo de Manila University. His book *Corruption in International Investment Arbitration* (Oxford University Press, 2014) is a leading treatise on the subject.

Mark Mangon of Dechert LLP leads the firm's international arbitration practice in Singapore. He has been retained over the last eighteen years to help resolve disputes in Asia and elsewhere. Mark serves as both counsel (more than fifty cases) and arbitrator

(more than fifteen arbitrations). As counsel, Mark represents clients in important and complex matters, often involving a government or political dimension, in the oil and gas, mining, finance, telecommunications, high technology, manufacturing, construction and sports sectors. As arbitrator, Mark has been appointed under the rules of arbitration of Singapore International Arbitration Centre (SIAC), International Chamber of Commerce (ICC), London Court of International Arbitration ('LCIA'), Stockholm Chamber of Commerce (SCC), and Korean Commercial Arbitration Board (KCAB), as well as an ad hoc arbitrator.

Robert McCorquodale is Professor of International Law and Human Rights at the University of Nottingham, a barrister at Brick Court Chambers, London, and the Principal of Inclusive Law, a consultancy on business and human rights. Robert has published extensively on many aspects of public international law, with his current focus being on business and human rights. He has also provided advice, capacity-building, legislative proposals and training to governments, corporations, international organizations, law firms and civil society around the world. He has appeared as an advocate before the International Court of Justice and the United Kingdom Supreme Court.

Mahdev Mohan is the global policy and standards lead for emerging markets at Google LLC and was formerly a faculty member at the Singapore Management University (SMU) School of Law, where he taught public international law and directed SMU's Asian Business and Rule of Law initiative. A former Nominated Member of Parliament of Singapore, he is the executive director of the Society of International Law Singapore, an editorial board member of the *Journal of East Asia and International Law* and *China and WTO Review*, and has written and practised in the fields of public international law, investment arbitration and human rights law in Asia. Mohan was an associate tenant of Temple Garden Chambers within its public international law practice group.

Luke Nottage is Professor of Comparative and Transnational Business Law and Associate Director of the Centre for Asian and Pacific Law at the University of Sydney. His publications include *International Arbitration in Australia* (2010), *Foreign Investment and Dispute Resolution in Asia* (2011) and *International Investment Treaties and Arbitration Across Asia* (2018). Luke has consulted for law firms, the EC, the OECD, the UNDP, ASEAN and the Japanese government, and for Australian parliamentary inquiries into investment treaty ratification. He is on the ACICA Rules committee and listed on the Panel of Arbitrators for AIAC, BAC, JCAA, KCAB, NZIAC, SCIA and TAI.

Dinusha Panditaratne is a specialist in Sri Lanka's foreign policy, with an academic background in international law. Currently the Non-Executive Director of the National Development Bank of Sri Lanka, she has served as head of the Lakshman Kadirgamar Institute of International Relations and Strategic Studies (LKI), the think tank of Sri Lanka's Ministry of Foreign Affairs, from 2015 to 2018. Prior to her role at LKI, Panditaratne was an assistant professor at the Faculty of Law at the Chinese University of Hong Kong and previously worked as a corporate finance lawyer in New York at Milbank, Tweed, Hadley & McCloy LLP. She received her undergraduate degree from Oxford University and her master's and doctorate in law from Yale Law School.

Xu Qian is Associate Professor and “Hundred Talents Program Fellow” at Guanghua Law School, Zhejiang University, with a research focus on alternative dispute resolution and economic, social and cultural rights. Dr QIAN’s academic publications include the research monograph *“Water Services Disputes in International Arbitration”* published by Kluwer Law International in 2020. Her research articles have also been published both top-peer reviewed academic journals (*American Journal of International Law* (Unbound), *Asia Pacific Law Review*, and *Asian Journal of WTO and International Health Law and Policy*) and leading US law reviews (*UC Davis Business Law Journal*, *Wayne Law Review*, and *Georgia Journal of International and Comparative Law*).

Dr Prabhaskar Ranjan is a senior assistant professor at the Faculty of Legal Studies, South Asian University, India. He holds a PhD in law from King’s College London. He was a visiting fellow at the Lauterpacht Centre for International Law, Cambridge University, and a visiting scholar at Brookings India. He has also been the Book Review Editor at the Indian Journal of International Law. He publishes and teaches in the area of international investment law and world trade law with a focus on India’s bilateral investment treaties. His recent book *India and Bilateral Investment Treaties: Refusal, Acceptance, Backlash* was published by Oxford University Press in 2019.

Siraj Shaik Aziz is an advocate and solicitor of the Supreme Court of Singapore. He graduated with a Bachelor of Laws (Hons) from SMU in 2015 and was admitted to the Singapore Bar the following year. At the time of writing, Siraj was a research associate with the Asian Business & Rule of Law Initiative at the Centre for Cross-Border Commercial Law in Asia at SMU’s School of Law with a research focus on international commercial arbitration and investor–state dispute settlement in the region. He has since returned to legal practice and is a CLAS (Criminal Legal Aid Scheme) Fellow with Pro Bono Services Office of the Law Society of Singapore.

Surya P Subedi, QC, DCL, OBE, obtained his DPhil in Law from the University of Oxford in 1993. Since then he has taught at five universities in the United Kingdom, the United States and the Netherlands. He has been Professor of International Law at the University of Leeds since 2004. He also practises law as a Barrister out of Three Stone Chambers, Lincoln’s Inn, London. He was elected to the Institut de Droit International in 2011. He has advised a number of governments on international legal matters and acted as a counsel in cases before the International Court of Justice. He has been appointed to serve on the Panels of Arbitrators of ICSID, the Panels of the Dispute Settlement Body of the WTO and the Panels of International Investment Arbitrators of CIETAC.

Henry Winter is a senior associate in Hogan Lovells’ Singapore office and specializes in international commercial and investor–State arbitration. Henry has experience sitting on both sides of the table, representing multinational corporations, foreign investors and governments in arbitrations under the SIAC, ICC, UNCITRAL and ICSID rules. He is also experienced in commercial litigation and investigations. He has experience dealing with a wide range of disputes, including corporations law, insolvency, financial services, resources, corporate fraud and white-collar crime, construction and antitrust. Henry is ranked as a ‘next generation lawyer’ by Legal 500 and a ‘Future Leader’ by Global Arbitration Review.

Dr Ewa Zelazna is a lecturer in law at the University of Leicester. Zelazna was a visiting research fellow at the Max Planck Institute for International Public Law and Comparative Constitutional Law in Heidelberg, Germany, and the Centre for the EU External Relations Law, T.M.C. Asser Institute in The Hague, the Netherlands. She was a research assistant at the British Institute of International and Comparative Law and completed traineeships at the Court of Justice of the European Union.

Zhang Sheng is Associate Professor of Xi'an Jiaotong University Law School. He is Deputy Secretary-General of the China International Investment Arbitration Forum and Director of the Chinese Society of International Economic Law. He is also an editor of the *Chinese Journal of Comparative Law*. He was a visiting fellow at the Lauterpacht Centre for International Law and a visiting PhD student at the Max-Planck Institute for Comparative and International Private Law. His research focus is on international investment law. He has published in journals such as the *European Journal of International Law*, *Journal of World Investment and Trade*, *ICSID Review*, *Columbia FDI Perspectives* and the *Chinese Journal of Comparative Law*.

Acknowledgements

The economies of China, India and ASEAN are, as a regional bloc, expected to grow at 6.3 per cent per year over the next five years, accounting for about one-third (or 32.1 per cent) of global economic growth. Australia is ranked as one of the world's top five capital-importing economies, with USD 5.1 billion worth of foreign direct investment inflows into the country. Foreign direct investment is at the heart of the Asian growth story. Nonetheless, there is an increased desire to balance this growth with the right of Asian States to set regulatory priorities and to protect legitimate public welfare objectives. Investor–State dispute settlement (ISDS) has stirred debate about the balance which should be struck between safeguarding the State's right to regulate in the public interest, on the one hand, and the need to ensure an adequate level of protection for foreign investment, on the other. There is also a call to reform the ISDS process to ensure consistency, accountability and transparency, which is evidenced in 'next generation' investment-related treaties to which certain Asian States adhere.

In this twenty-two-chapter book, expert contributing authors critically examine the pivot to Asia in foreign investment law and policy, which we term the 'Asian Turn'. We are confident that this volume will make a valuable contribution to the extant literature on the subject in Asia.

The editors acknowledge the funding from the Ministry of Education of Singapore Tier 1 'Category B' Grant Project entitled 'Investment Arbitration in Asia: Reflection, Review and the Regulatory Turn' administered by the SMU School of Law and from the SMU Centre for Cross-Border Commercial Law in Asia where the preparatory academic conferences took place. We are immensely grateful to our former students and research assistants from SMU School of Law and the University of Sydney Law School, who provided excellent support throughout the conception, drafting, editing and publication of this volume. In particular, we would like to thank Alexis Ang, Siraj Shaik Aziz, Rhys Carvosso, Peter Dougherty, Shalini Jayaraj, Jaya Anil Kumar, Claire Lim, Nicolette Oon, Wong Yan Yee, Kartik Singh, Brendan Yeo Yi Sheng, Anuki Suraweera, Chen Li Xin, Yvonne Guo and Aaron Yoong.

Finally, we would like to thank our respective families for their unstinting love and support: Mahdev expresses his sincere appreciation to Vinita and Sahana, and Chester also wishes to note his heartfelt gratitude to Catherine, Caroline and Andrew.

Table of Cases

DECISIONS OF INTERNATIONAL COURTS AND TRIBUNALS

- Abaclat and others (formerly Giovanna a Beccara and others) v. Argentine Republic (ICSID Case No. ARB/07/5, Dissenting Opinion of Georges Abi-Saab of 28 October 2011)
- Achmea B.V. (formerly Eureko B.V.) v. Slovak Republic [I] (PCA Case No. 2008–13, Final Award of 7 December 2012)
- Adel A Hamadi Al Tamimi v. Sultanate of Oman (ICSID Case No. ARB/11/33, Award of 3 November 2015)
- ADF v. United States of America (ICSID Case No. ARB (AF)/00/1, Final Award of 9 January 2003)
- Alasdair Ross Anderson et. al. v. Republic of Costa Rica (ICSID Case No. ARB(AF)/07/31, Award of 29 May 2010)
- Alps Finance and Trade AG v. Slovak Republic, (UNCITRAL, Award of 5 March 2011)
- Amco Asia Corporation and others v. Republic of Indonesia (ICSID Case No. ARB/81/1)
- American Manufacturing and Trading Inc. v. Republic of Zaire (ICSID Case No. ARB/93/1)
- Ansung Housing Co., Ltd. v. People's Republic of China (ICSID Case No. ARB/14/25)
- Apotex Holdings Inc v. United States (Apotex III) (ICSID Case No ARB(AF)/12/1, Award of 25 August 2014)
- Asian Agricultural Products Ltd (AAPL) v. Republic of Sri Lanka (ICSID Case No. ARB/87/3, Final Award of 27 June 1990)
- ATA Construction, Industrial and Trading Company v. Hashemite Kingdom of Jordan (ICSID Case No. ARB/08/2, Award of 18 May 2010)
- ATA Construction, Industrial and Trading Company v. Hashemite Kingdom of Jordan (ICSID Case ARB/8/02, Order Taking Note of the Discontinuance of the Proceeding of 11 July 2011)
- Azurix Corp v. Argentine Republic (ICSID Case No. ARB/01/12, Award of 14 July 2006)
- Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan (ICSID Case No. ARB/03/29, Award of 27 August 2009)
- Beijing Urban Construction Group Co. Ltd. v. Republic of Yemen (ICSID Case No. ARB/14/30, Decision on Jurisdiction of 31 May 2017)
- BG Group plc v. Argentine Republic (UNCITRAL, Award of 24 December 2007)
- Biwater Gauff (Tanzania) Ltd. v. Tanzania (ICSID Case No. ARB/05/22, Procedural Order No. 3 of 29 September 2006)
- Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania (ICSID Case No. ARB/05/22, Award of 24 July 2008)

- Cargill Inc. v. Mexico (ICSID Case No. ARB(AF)/05/2, Award of 18 September 2009)
- Cargill, Incorporated v. Republic of Poland (ICSID Case No. ARB(AF)/04/2, Award of 5 March 2008)
- CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited, and Telcom Devas Mauritius Limited v. Republic of India (PCA Case No. 2013–09, Award on Jurisdiction and Merits of 25 July 2016)
- Champion Trading Company and Ameritrade International, Inc. v. Arab Republic of Egypt (ICSID Case No. ARB/02/9, Award of 27 October 2006)
- Churchill Mining PLC and Planet Mining Pty. Ltd. v. Republic of Indonesia (ICSID Case No. ARB/12/14 and 12/40, Decision on Jurisdiction of 24 February 2014)
- Churchill Mining PLC and Planet Mining Pty. Ltd. v. Republic of Indonesia (ICSID Case No. ARB/12/14 and 12/40, Award of 6 December 2016)
- Churchill Mining PLC and Planet Mining Pty. Ltd. v. Republic of Indonesia (ICSID Case No. ARB/12/14 and 12/40, Decision on Annulment of 18 March 2019)
- CME Czech Republic B.V. (The Netherlands) v. The Czech Republic (UNCITRAL, Final Award of 14 March 2003)
- CME Czech Republic B.V. v. Czech Republic (UNCITRAL, Partial Award of 13 September 2001)
- CMS Gas Transmission Company v Argentine Republic (ICSID Case No ARB/01/8, Award of 12 May 2005)
- Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic (ICSID Case No. ARB/97/3, Award of 20 August 2007)
- ConocoPhillips and Perenco v. Vietnam (UNCITRAL)
- Continental Casualty v. Argentine Republic (ICSID Case No. ARB/03/9, Award of 5 September 2008)
- CSOB v. Slovakia (ICSID Case No. ARB/97/4, Decision on Jurisdiction of 24 May 1999)
- Dangelas and others v. Vietnam (UNCITRAL)
- Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka (ICSID Case No. ARB/09/02, Award of 31 October 2012)
- Deutsche Telekom v. India (PCA Case No 2014–10, Interim Award of 17 December 2010)
- DialAsie SAS v. Vietnam (UNCITRAL, Award of 17 November 2014)
- Duke Energy Electroquil Partners and Electroquil S.A. v. Republic of Ecuador (ICSID Case No. ARB/04/19, Award of 18 August 2008)
- EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S. A. v. Argentine Republic (ICSID Case No. ARB/03/23, Award of 11 June 2012)
- Ekran Berhad v. People's Republic of China (ICSID Case No. ARB/11/15)
- El Paso v. Argentine Republic (ICSID Case No. ARB/03/15, Award of 31 October 2011)
- Eli Lilly and Company v. Canada (ICSID Case No. UNCT/14/2, Notice of Intent to Submit a Claim to Arbitration under NAFTA Chapter Eleven of 7 November 2012)
- Emilio Agustín Maffezini v. The Kingdom of Spain (ICSID Case No. ARB/97/7)
- Enron Corporation and Ponderosa Assets LP v. Argentine Republic (ICSID Case No ARB/01/3, Award of 22 May 2007)
- Eskosol SpA in Liquidazione v. Italian Republic (ICSID Case No. ARB/15/50, Procedural Order No 3 of 12 April 2017)
- Ethyl Corporation v. The Government of Canada (UNCITRAL, Award on Jurisdiction of 24 June 1998)

- EuroGas Inc. and Belmont Resources Inc v. Slovak Republic (ICSID Case No. ARB/14/14, Procedural Order No. 3 of 23 June 2015)
- Feldman v. Mexico (ICSID Case No ARB(AF)/99/1, Award of 16 December 2002)
- Flemingo Duty Free Shop Private Limited v. Republic of Poland (UNCITRAL, Award of 12 August 2016)
- Fraport AG Frankfurt Airport Services Worldwide v. Republic of Philippines (ICSID Case No. ARB/11/12, Award of 10 December 2014)
- Fraport AG Frankfurt Airport Services Worldwide v. Republic of Philippines (ICSID Case No. ARB/03/25, Award of 16 August 2007)
- Fraport AG Frankfurt Airport Services Worldwide v. Republic of Philippines (ICSID Case No. ARB/03/25, Dissenting Opinion of Mr. Bernardo M. Cremades of 16 August 2007)
- Glamis Gold v. United States of America (UNCITRAL, Award of 8 June 2009)
- Gustaf F.W. Hamester GmbH & Co KG v. Republic of Ghana (ICSID Case No. ARB/07/24, Award of 18 June 2010)
- Hela Schwarz GmbH v. People's Republic of China (ICSID Case No. ARB/17/19)
- Hesham Talaat M. Al-Warraq v. Republic of Indonesia (UNCITRAL)
- Hulley Enterprises (Cyprus) Limited, Yukos Universal Limited (Isle of Man) and Veteran Petroleum Limited (Cyprus) v. Russian Federation (PCA Case Nos. AA226-228, Final Awards of 18 July 2014)
- Impregilo S.p.A. v. Argentine Republic (ICSID Case No. ARB/07/17, Award of 21 June 2011)
- Inceysa Vallisoletana v. Republic of El Salvador (ICSID Case No. ARB/03/26, Award of 2 August 2006)
- Indian Metals & Ferro Alloys Ltd (India) v. Republic of Indonesia (PCA Case No 2015-40, Award of 29 March 2019)
- Inmaris Perestroika Sailing Maritime Services GmbH and others v. Ukraine (ICSID Case No. ARB/08/8, Award of 1 March 2012)
- International Thunderbird Gaming v. Mexico (UNCITRAL, Award of 26 January 2006)
- Ioan Micula and others v. Romania (ICSID Case No. ARB/05/20, Award of 11 December 2013)
- Ioannis Kardassopoulos and Ron Fuchs v. Georgia (ICSID Case Nos. ARB/05/18 and ARB/07/15, Award of March 3, 2010)
- Ioannis Kardassopoulos v. Georgia (ICSID Case Nos. ARB/05/18, Decision on Jurisdiction, of 6 July 2007)
- Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt (ICSID Case No. ARB/04/13, Award of 6 November 2008)
- Joseph Charles Lemire v. Ukraine (ICSID Case No. ARB/06/18, Award of 28 March 2011)
- Joseph Charles Lemire v. Ukraine (ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability of 14 January 2010)
- Joy Mining Machinery Ltd. v. Arab Republic of Egypt (ICSID Case No. ARB/03/11, Award on Jurisdiction of 6 August 2004)
- Les Laboratoires Servier, SAS., Biofarma, SAS., Arts et Techniques du Progres v. Republic of Poland (UNCITRAL, Award of 14 February 2012)
- LG&E v. Argentine Republic (ICSID Case No ARB/02/1, Decision on Liability of 3 October 2006)
- Louis Dreyfus Armateurs SAS v. The Republic of India (PCA Case No. 2014-26, Award of 11 September 2018)

- Malaysian Historical Salvors SDN BHD v. Malaysia (ICSID Case No. ARB/05/10, Decision on Application for Annulment of 16 April 2009)
- Metal-Tech Ltd. v. Republic of Uzbekistan (ICSID Case No. ARB/10/3, Award of 4 October 2013)
- Metalclad v. Mexico (ICSID Case No. ARB(AF)/97/1, Award of 30 August 2000)
- Methanex Corporation v. United States of America (UNCITRAL, Final Award on Jurisdiction and Merits of 3 August 2005)
- Michael McKenzie v. Vietnam (UNCITRAL, Award of 11 December 2013)
- Mihaly International Corp. v. Democratic Socialist Republic of Sri Lanka (ICSID Case No. ARB/00/2)
- Mondev v. United States of America (ICSID Case No. ARB (AF)/99/2, Award of 11 October 2002)
- MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile (ICSID Case No. ARB/01/7, Award of 25 May 2004)
- MTD Exports Sdn Bhd and MTD Chile SA v. Republic of Chile (ICSID Case No. ARB/01/7, Decision on Annulment of 21 March 2007)
- Muhammet Çap & Sehil İnşaat Endustri ve Ticaret Ltd Sti v. Turkmenistan (ICSID Case No. ARB/12/6, Procedural Order No. 3 of 12 June 2015)
- Mytilineos Holdings SA v. Serbia and Montenegro and Serbia (UNCITRAL, Partial Award on Jurisdiction of 8 September 2006)
- Nordzucker AG v. Poland (UNCITRAL, Partial Award of 10 December 2008)
- Nusa Tenggara Partnership B.V. and PT Newmont Nusa Tenggara v. Republic of Indonesia (ICSID Case No. ARB/14/15, Order of the Secretary-General Taking Note of the Discontinuance of the Proceeding of 29 August 2014)
- Occidental Exploration and Production Company v. Republic of Ecuador (LCIA Case No. UN3467, Final Award of 1 July 2004)
- Oleovest v. Republic of Indonesia (ICSID Case No. ARB/16/26)
- Olguin v. Paraguay (ICSID Case No ARB/98/5, Award of 26 July 2001)
- Parkerings-Compagniet AS v. Republic of Lithuania (ICSID Case No. ARB/05/8, Award of 11 September 2007)
- Patrick Mitchell v. Democratic Republic of the Congo (ICSID Case No. ARB/99/7, Excerpts of Dissenting Opinion of Mr. Yawovi Agboyibo of 9 February 2004)
- Peter A. Allard v. The Government of Barbados (PCA Case No. 2012–06, Award of 27 June 2016)
- Philip Morris Asia Limited (Hong Kong) v. Australia (PCA Case No. 2012–12, Award on Jurisdiction and Admissibility of 17 December 2015)
- Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay (ICSID Case No. ARB/10/7, Award of 8 July 2016)
- Philippe Gruslin v. Malaysia (ICSID Case No. ARB/99/3, Award of 27 November 2000)
- Phoenix Action, Ltd. v. Czech Republic (ICSID Case No. ARB/06/5, Award of 15 April 2009)
- Ping An Life Insurance Company of China, Limited and et al v. Belgium (ICSID Case No. ARB/12/29, Decision on Jurisdiction of 30 April 2015)
- Plama Consortium Ltd v. Republic of Bulgaria (ICSID Case No ARB/03/24, Award of 27 August 2008)
- Pope and Talbot v. Canada (UNCITRAL, Interim Award of 26 June 2000)
- PSEG Global Inc. and Konya Ilgin Elektrik Üretim ve Ticaret Limited Sirketi v. Republic of Turkey (ICSID Case No. ARB/02/5, Award of 19 January 2007)

- Quasar de Valores SICAV v. Russia (SCC Case No. 24/2007, Award of 20 July 2012)
- Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia (ICSID Case No. ARB/06/2, Decision on Jurisdiction of 27 September 2012)
- Raymond Charles Eyre and Montrose Developments (Private) Limited v. Democratic Socialist Republic of Sri Lanka (ICSID Case No. ARB/16/25, Procedural Order No. 1 of 1 June 2017)
- Recofi SA v. Vietnam (UNCITRAL)
- Romak SA (Switzerland) v. Uzbekistan (PCA Case No. AA280, Award of 26 November 2009)
- Ronald S. Lauder v. Czech Republic (UNCITRAL, Final Award of 3 September 2001)
- RosInvestCo UK Ltd. v. The Russian Federation (SCC Case No. V079/2005, Award on Jurisdiction of October 2007)]
- RSM Production Corporation v. Grenada (ICSID Case No. ARB/05/14, Order of the Committee Discontinuing the Proceeding and Decision on Costs of 28 April 2011)
- RSM v. Saint Lucia (ICSID Case No. ARB/12/10, Decision on Saint Lucia's Request for Security for Costs of 13 August 2014)
- Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan (ICSID Case No. ARB/05/16, Award of 29 July 2008)
- Rusoro Mining Ltd. v. The Bolivarian Republic of Venezuela (ICSID Case No. ARB(AF)/12/5, Award of 22 August 2016)
- S.D. Myers Inc. v. Government of Canada (UNCITRAL, Partial Award of 13 November 2000)
- Saba Fakes v. Republic of Turkey (ICSID Case No. ARB/07/20, Award of 14 July 2010)
- Salini Costruttori S.p.A. and Italstrade S.p.A. v. Hashemite Kingdom of Jordan (ICSID Case No. ARB/02/13, Decision on Jurisdiction of 29 November 2004)
- Salini Costruttori S.P.A. and Italstrade S.P.A. v. Kingdom of Morocco (ICSID Case No ARB/00/4, Decision on Jurisdiction of 16 July 2001)
- Saluka Investments BV v. The Czech Republic (UNCITRAL, Partial Award of 17 March 2006)
- Sanum Investments Limited v. Lao People's Democratic Republic (PCA Case No. 2013–13, Award on Jurisdiction of 13 December 2013)
- Sempra Energy International v. Argentine Republic (ICSID Case No ARB/02/16, Award of 28 September 2007)
- Señor Tza Yap Shum v. The Republic of Peru (ICSID Case No. ARB/07/6, Decision on Jurisdiction and Competence of 19 June 2009)
- SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan (ICSID Case No. ARB/01/13)]
- SGS Société Générale de Surveillance S.A. v. Republic of the Philippines (ICSID Case No. ARB/02/6, Decision on Jurisdiction of 29 January 2004)
- Shin Dong Baig v. Vietnam (ICSID Case No. ARB(AF)/18/2)
- Siemens A.G. v. Argentine Republic (ICSID Case No. ARB/02/8, Award of 6 February 2007)
- South American Silver Limited (Bermuda) v. Bolivia (PCA Case No. 2013–15, Procedural Order No. 10 of 11 January 2016)
- Spyridon Roussalis v. Romania (ICSID Case No. ARB/06/1, Award of 1 December 2011)
- Técnicas Medioambientales Tecmed S.A. v. United Mexican States (ICSID Case No. ARB(AF)/00/2, Award of 29 May 2013)
- Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. The Argentine Republic (ICSID Case No. ARB/09/1, Decision on Jurisdiction of 21 December 2012)

- Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. The Argentine Republic (ICSID Case No. ARB/09/1, Award of 21 July 2017)
- Tenoch Holdings Limited, Mr Maxim Naumchenko and Mr Andre Poluektov v. The Republic of India (PCA Case No 2013–23)
- Tidewater Investment SRL and Tidewater Caribe, C.A. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/10/5, Award of 13 March 2015)
- Tokio Meksiko Sigorta v. Ukraine (ICSID Case No. ARB/02/18, Decision on Jurisdiction of 29 April 2004)
- Total SA v. Argentine Republic (ICSID Case No. ARB/04/01, Decision on Liability of 27 December 2010)
- Tradex Hellas SA (Greece) v. Republic of Albania (ICSID Case No. ARB/94/2, Decision on Jurisdiction of 24 December 1996)
- Trinh Vinh Binh and Binh Chau Joint Stock Company v. Socialist Republic of Viet Nam (UNCITRAL, 2014)
- Urbaser S.A. v. Argentina (ICSID Case No. ARB/07/26, Award of 8 December 2016)
- Vodafone International Holdings BV v. Government of India [I] (PCA Case No. 2016–35, Notice of Arbitration of 17 April 2014)
- Walter Bau AG v. Thailand (UNCITRAL, Award of 1 July 2009)
- Wena Hotels Ltd v. Arab Republic of Egypt (ICSID Case No. ARB/98/4, Award of 8 December 2000)
- Werner Schneider, acting in his capacity as insolvency administrator of Walter Bau Ag (In Liquidation) v. The Kingdom of Thailand (UNCITRAL, Award of 1 July 2009)
- White Industries Australia Limited v. Republic of India (UNCITRAL, Final Award of 30 November 2011)
- Yaung Chi Oo Trading Pte Ltd v. Government of the Union of Myanmar (ASEAN ID Case No ARB/01/1, Award of 31 March 2003)]
- Decisions of Other International Courts and Tribunals
- A and others v. UK (European Court of Human Rights App. No. 25599/94, Judgment of 19 February 1999)
- Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica) (Judgment) [2015] ICJ Rep 665
- Ergi v. Turkey (European Court of Human Rights App. No. 23818/94, Judgment of 28 July 1998)
- Fadeyeva v. Russia (European Court of Human Rights App. No. 55723/00, Judgment of 5 April 2007)
- James and Others v. United Kingdom (European Court of Human Rights App. No. 8793/79, Judgment of 21 February 1986)]
- Legality of the Threat or Use of Nuclear Weapons [1996] ICJ Rep 226
- LFH Neer & Pauline Neer v. Mexico, 4 UNRIAA 60 (US-Mexico General Claims Commission, 1926)
- Loizidou v. Turkey (European Court of Human Rights App. No. 15318/89, Decision on Preliminary Objections of 23 March 1995)
- López Ostra v. Spain (European Court of Human Rights App. No. 16798/90, Judgment of 9 December 1994)
- Mellacher and Others v. Austria (European Court of Human Rights App. No. 10522/83, 11011/84, 11070/84, Judgment of 19 December 1989)
- Opinion 2/15 of the Full Court (European Court of Justice, Opinion of 16 May 2017)

- Pressos Compañía Naviera and Others v. Belgium (European Court of Human Rights App. No. 17849/91, Judgment of 20 November 1995)
- Prince Hans-Adam II of Liechtenstein v Germany (Liechtenstein v. Germany) (European Court of Human Rights App. No. 42527/98, Judgment of 12 July 2001)
- Pulp Mills (Argentina v. Uruguay) (Judgment) [2010] ICJ Rep 14
- Slovak Republic v. Achmea B.V (Case C-284–16) (Court of Justice of the European Union, Judgment of 7 March 2018)
- Social and Economic Rights Action Centre for Economic and Social Rights v. Nigeria (African Commission on Human and Peoples' Rights Communication No. 155/96, Decision of 27 May 2002)
- Starrett Housing Corporation v. Islamic Republic of Iran (1983) 4 Iran-US CTR 122
- Status of Eastern Carelia (Finland v. U.S.S.R) PCIJ Ser B (No. 5) (1923)
- The Mayagna (Sumo) Awas Tingni Community v. Nicaragua (IACHR Series C No 79, Judgment of 31 August 2001)
- Timurtas v. Turkey (European Court of Human Rights App. No. 23531/94, Judgment of 13 June 2000)
- Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran v. Islamic Republic of Iran (1984) 6 Iran-US CTR 219
- Vélásquez Rodríguez v. Honduras (1989) 28 ILM 294
- Young, James and Webster v. United Kingdom (European Court of Human Rights, App. Nos. 7601/76 and 7806/77, Judgment of 13 August 1981)
- Decisions of National Courts
- AIG Capital Partners Inc & Anor. v. Kazakhstan [2005] EWHC 2239 (Comm)
- Akai Holdings Ltd. v. Ho Wing On Christopher [2009] 5 HKLRD K2
- Bayer Corporation v. Natco Pharma. Ltd (Intellectual Property Appellate Board of India, Order No. 45/2013 of 2013)
- Bayer Corporation v. Union of India (Petition for Special Leave to Appeal (C) No. (S). 30145/2014, 12 December 2014)
- Benvenuti and Bonfant Srl v. Banque Commerciale Congolaise (French Cour de cassation, Decision of 21 July 1987)
- Cannonway Consultants Ltd v. Kenworth Engineering Ltd [1995] 1 HKC 179
- Choc v. Hudbay Minerals Inc. 2013 ONSC 1414
- Essar Oilfields Services Limited v. Norscot Rig Management Pvt Limited [2016] EWHC 2361 (Comm)
- Excalibur Ventures LLC v. Texas Keystone Inc and others [2016] EWCA Civ. 1144
- Geoffrey L Berman (In His Capacity as Trustee of The Lender Trust) v. Spf Cdo I, Ltd And Others [2011] 2 HKLRD 815
- Government of the Lao People's Democratic Republic v. Sanum Investments Ltd [2015] SGHC 15
- Liberian Eastern Timber Corp. v. Government of Republic of Liberia, 650 F.Supp. 73 (S.D. N.Y. 1986)
- Otech Pakistan Pvt Ltd v. Clough Engineering Ltd [2007] 1 SLR (R) 989
- Re Co. A [2015] HKEC 2089
- Re Cyberworks Audio Video Technology Ltd [2010] 2 HKLRD 1137
- Re Vanguard Energy Pte Ltd [2015] SGHC 156
- Sanum Investments Limited v. The Government of the Lao People's Democratic Republic [2016] SGCA 57

Song Mao v. Tate & Lyle Industries Limited (Claim No. 2013 Folio 451 in the English High Court, 28 March 2013)

Southern Pacific Company v. Jensen, 244 U.S. 205, 222 (1917)

Unruh v. Seeberger [2007] 2 HKLRD 414

Vedanta Resources plc v. Lungowe [2019] UKSC 20

Table of Treaties

BILATERAL INVESTMENT TREATIES

- Additional Protocol Between the Government of the People’s Republic of China and the Government of the People’s Republic of Bulgaria concerning the Reciprocal Encouragement and Protection of Investments, signed 26 June 2007 (entered into force 10 November 2007) (China–Bulgaria Protocol)
- Additional Protocol between the Government of the People’s Republic of China and the Government of the Slovak Republic to the BIT signed in 2005 (China–Slovakia Protocol)]
- Additional Protocol to the Agreement between the Government of the People’s Republic of China and the Government of Romania on the Mutual Promotion and Protection of Investments signed in 2010) (China–Romania Protocol)
- Agreement between Canada and Mongolia for the Promotion and Protection of Investments, signed 8 September 2016 (entered into force 24 February 2017) (Mongolia–Canada BIT)
- Agreement between Canada and the Czech Republic for the Promotion and Protection of Investments, signed 6 May 2009 (entered into force 22 January 2012) (Canada–Czechia BIT)
- Agreement between Canada and the Slovak Republic for the Promotion and Protection of Investments, signed 20 July 2010 (entered into force 14 March 2012) (Canada–Slovakia BIT)
- Agreement between Japan and the Hashemite Kingdom of Jordan for the Promotion and Protection of Investment, signed 27 November 2018 (not yet in force) (Japan–Jordan BIT)
- Agreement between Japan and the Islamic Republic of Iran on Reciprocal Promotion and Protection of Investment, signed 5 February 2016 (entered into force 26 April 2017) (Japan–Iran BIT)
- Agreement between Japan and the Kingdom of Cambodia for the Liberalisation, Promotion and Protection of Investment, signed 14 June 2007 (entered into force 31 July 2008) (Japan–Cambodia BIT)]
- Agreement between Japan and the Kingdom of Saudi Arabia for the Promotion and Protection of Investment, signed 20 April 2013 (entered into force 7 April 2017) (Japan–Saudi Arabia BIT)
- Agreement between Japan and the Lao People’s Democratic Republic for the Liberalisation, Promotion and Protection of Investment, signed 16 January 2008 (entered into force 3 August 2008) (Japan–Laos BIT)
- Agreement between Japan and the Oriental Republic of Uruguay for the Liberalisation, Promotion and Protection of Investment, signed 26 January 2015 (entered into force 14 April 2017) (Japan–Uruguay BIT)