

ADMISSIBILITY OF SHAREHOLDER CLAIMS UNDER INVESTMENT TREATIES

This book addresses a growing problem in international law: overlapping claims before national and international jurisdictions. Its contribution is, first, to revisit two pillars of investment arbitration, that is, shareholders' standing to claim for harm to the company's assets and the contract/treaty claims distinction. These two ideas advance interrelated (and questionable) notions of independence: first, independence of shareholder treaty rights in respect of the local company's national law rights and, second, independence of treaty claims in respect of national law claims. By uncritically endorsing shareholder standing in indirect claims and the distinctiveness of treaty claims, investment tribunals have overlooked substantive overlaps between contract and treaty claims. The book also proposes specific admissibility criteria. As opposed to strictly jurisdictional approaches to claim overlap, the admissibility approach allows the consideration of a broader range of legal reasons, such as risks of multiple recovery and prejudice to third parties.

Gabriel Bottini is Adjunct Professor of Public International Law, University of Buenos Aires and Partner at Uría Menéndez. As Argentina's Director of International Disputes, Gabriel Bottini was involved in over sixty investment arbitrations brought following the country's 2001 economic collapse. These cases mark a crucial, catalytic moment in the history of investment arbitration. Bottini engages with a fundamental notion stemming from these cases: shareholder standing under investment treaties.

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Gabriel Bottini
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GABRIEL BOTTINI

*University of Buenos Aires
Partner, Uría Menéndez*



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To Teté, Simón, Ana, and León.
To Cristina and Gustavo.

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