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Friday, December 4th

States' Claims and Counterclaims in Investment Arbitration (9:00am – 10:30am)

The current ISDS system is considered to be a “one-way” street where, normally, respondent States do not enjoy the same right as investors who file claims against them. In the vast majority of investment treaty arbitrations, by design of those treaties, States adopt the role of respondents to claims submitted by foreign investors. Nonetheless, recent developments in treaty drafting have been changing this “one-way” street.

Newer generations of investment treaties—including free trade agreements (FTAs) and BITs—including, for example, the Comesa Agreement and the Southern African Development Community (SADC), provide for the possibility for States to file claims and/or counterclaims against foreign investors. Whether or not States may file claims and/or counterclaims depends on the relevant investment treaty, the rules of arbitration, e.g. ICSID or UNCITRAL, and the facts of the case.

This Panel will discuss the jurisdictional requirements and the substantive obligations that treaties may include to enable the submission of treaty claims and counterclaims by States. It will also discuss the pros and cons of supplementing the ISDS system with treaties that may impose obligations on States to respect international standards of protection of foreign investors and their investments, but also social corporate responsibility obligations on foreign investors related to minimum labor and environmental standards.

Speakers

Ana María Ordoñez



Ana María Ordoñez is the head of Colombia's international litigation department at the State's Legal Defense Agency. She is a Colombian lawyer from Pontificia Universidad Javeriana with an LL.M. from King's College London. She has acquired experience in international arbitration and litigation through her work in local and global law firms. She began her career in public service in Colombia 8 years ago.

Ricardo Ampuero

Ricardo Ampuero Llerena is President of the Special Commission that represents the Republic of Peru in International Investment Disputes. This inter-agency Commission is in charge of coordinating the legal defense of the State in all stages of investor-State disputes. Previously, he has served as Legal Advisor and Technical Secretary of the Special Commission. He holds a Law Degree from Universidad Peruana de Ciencias Aplicadas, and a Master in Law (LLM) from Columbia University, where he attended as a Fulbright Scholar.



Speakers

José Antonio Rivas



José Antonio Rivas is a Founding Partner of Xstrategy in Washington D.C. and Chair of its Arbitration and International Law practice. He works as international counsel in investment disputes, serves as arbitrator in international and domestic arbitrations, and provides advice in public international law and investment law to sovereign clients, state companies, and investors. He is adjunct professor of Investment Treaty Arbitration, Public International Law and ICJ Landmark Judgements at Georgetown University. Before joining private practice, José Antonio served as Director of Foreign Investment at the Colombian Ministry of Trade. He is also a former Counsel at ICSID.



Moderator

Marinn Carlson



Marinn Carlson, Partner at Sidley Austin LLP in the Washington D.C. Office. Marinn is co-leader of the Sidley's Global Arbitration, Trade and Advocacy practice. She focuses her practice in international investment disputes, with an emphasis on investor-state arbitration. She has represented both cross-border investors as well as respondent governments in ICSID and UNCITRAL arbitrations under investment treaties (BITs) and free trade agreements.



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