

International Investment Law

Department: Fudan International Summer Session 2025

Date: December 6, 2024

Course Code	LAWS170001						
Course Title	International Investment Law						
Credit	2	Experiment (including Computer) Credit		Practice Credit		Aesthetic Education Credit	
Credit Hours Per Week	9 credit hours per week, 36+3 tutorial hours in total (one credit hour is 45 minutes)	Education on The Hard-Working Spirit Credit Hours		Language of Instruction		Honors Course	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Course Type	<input type="checkbox"/> Core General Education Course <input type="checkbox"/> Specific General Education Course <input type="checkbox"/> Basic Course in General Discipline <input checked="" type="checkbox"/> Others			2+X Major : <input type="checkbox"/> Professional Core Course <input type="checkbox"/> Professional Advanced Course <hr/> Non 2+X Major : <input type="checkbox"/> Professional Compulsory Course <input type="checkbox"/> Professional Elective Course			
Course Objectives	<p>Through the study of this course, students will learn the basic system and main systems of international investment law, especially the legal issues of inbound direct investment and outbound direct investment laws and regulations established in the past 46 years after the <i>Reform and Opening-Up</i> in China and the current practice, including but not limited to the new <i>Foreign Investment Law of China</i> came into effect as from January 1st, 2020 and the <i>Hainan Free Trade Port Law of China</i> came into effect as from June 10th, 2021, the “B&R Initiative”, the RCEP, as well as the sub-globalization paradigm in international investment law. The course shall be instructed in “problem-oriented”, and the case study methodology shall be widely applied to attempt to fill the gaps between the theoretical research and legal practice. The course fosters students’ capabilities to analyze the law and apply the law.</p>						

<p style="text-align: center;">Course Description</p>	<p>The International Investment Law is a professional elective course for undergraduate students (junior/senior grade preferred) and postgraduates majoring in law. The course mainly includes four aspects: (1) the introduction to international investment and international investment law; (2) bilateral investment treaties and multilateral investment agreements; (3) the foreign investment law of China and its practice; (4) the outbound foreign investment law of China and its practice.</p> <p>The instructor will attempt to the interactions between international perspective and domestic perspective. From the international perspective, the instructor shall focus on the recent concluded or negotiated regional free trade agreements (RTAs, such as RCEP, CPTPP and USMCA) or international investment agreements (IIAs, such as the recently completed <i>China-EU Comprehensive Agreement on Investment of 2020</i>, <i>China-Canada BIT of 2012</i> or <i>China-Japan-Korea Triple Investment Agreement of 2012</i>). The recent RTAs and IIAs have incorporated some new issues, not only including pre-establishment treatment, non-conforming measures list, market access and the developments of investment dispute settlement, but also including “investment+” issues, such as investment and competition neutrality, investment and labor, investment and environment, investment and climate change, investment and intellectual property protection, investment and anti-corruption, investment and distortive subsidies and etc.</p> <p>The course also attempts to think about China’s contributions and responsibilities in the new generation of international investment rules.</p> <p>The course plays an important role to build up a “bridge” between the theory and the practice. The instructor will explore the course from the problem-oriented perspective. In order to strengthen the practical value of this course, the instructor shall adopt the methodology of case study, and try to apply case law to interpret the foreign investment law system and outbound foreign investment law system of China closely in combination of case law to deepen the legal understanding.</p>
<p>Course Requirements:</p> <p>No special requirements</p>	
<p>Teaching Methods:</p> <p>The instructor explains the basic theory and main legal system of international investment law, encourage students to preview the required materials before class and discuss their responses in the class. The course encourages the interactions between the instructor and students.</p>	
<p>Course Director's Academic Background:</p>	
<p>Instructor's Academic Background:</p> <p>The instructor is an associate professor of Fudan University Law School, specializing in international</p>	

investment law and international trade law. She obtained L.L.B degree (2001), degree L.L.M (2004) and PhD.in Law degree (2009), and has been a Fulbright Visiting Scholar hosted by Columbia Law School (2018-2019) and a Fox International Fellow hosted by Yale University (2007-2008). She also serves as an arbitrator of Shanghai International Arbitration Center (also named Shanghai International Economic and Trade Arbitration Center).

The instructor has relatively well established in the academic research field of the outbound investment law of China, and has published 5 monographs and over 60 papers in the field of China’s outbound investment, and obtained several prestigious prizes, talent awards and grants. She is good at make comparative study, and can bridge different disciplines and different types of experts to make joint study on a specific question. She has good skills and expertise in teaching, and has been awarded a lot of teaching prizes.

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Members of Teaching Team

Name	Gender	Professional Title	Department	Responsibility
Liang Yong	Female	Associate Professor	Law	Instructor of the course

Course Schedule :

Class 1

Orientation-Greatest Changes in the past century

What has happened to the world?

What have happened to the big powers (U.S., EU and Japan) and emerging powers (“BRICS” or “BASIC” countries)?

What has happened to national security?

What have happened to international investment laws?

What has happened to international investment practice?

1. General Introduction to the International Investment Law

- The inflows and outflows of international investment
- The geography of the inflows and outflows of international investment
- The important concerns of the international investment law

2. The Changing Role of China in International Investment Law

- A brief history of inbound direct investment in China
- A brief history of outbound direct investment in China

Suggested Readings

Norah Gallagher, Chinese Investment Treaties, pages 1-14.

World Investment Report 2024, key messages.

M. Sornarajah, The International Law on Foreign Investment, pages 1-14.

Class 2

History and Nature of International Investment Law

1. The Definition of Foreign Investment
2. The Basic Legal Relationship Among Investors, Host States and Home States
3. The History and Evolution of International Investment Law
4. The Nature of International Investment Law

The Shaping Factors in International Investment

1. The Historical Setting: State Responsibility for Injuries to Aliens
2. Risks in Foreign Investment

Required Readings

Rudolf Dolzer, Principles of International Investment Law, pages 71-80, 86-93.

Suggested Readings

M. Sornarajah, The International Law on Foreign Investment, pages 14-63.

Class 3

Sources of the International Investment Law

1. Unilateral Laws or Regulations: From the prospective of China
2. Features and Characteristics of Recently Promulgated Foreign Investment Laws of China

- Domestic laws of China from the prospective of host states
 - ✧ Countrywide laws and regulations
 - ✧ Pilot free trade zones regulations
- Domestic laws of China from the prospective of home states
 - ✧ Countrywide laws and regulations
 - ✧ Pilot free trade zones regulations

2. Bilateral Treaties

- Bilateral investment treaties
- Mainland-Hong Kong CEPA/Mainland-Macao CEPA/Mainland-Taiwan ECFA
- Double Taxation Treaties
- Mainland-Hong Kong Arrangement for Taxes on Income/Mainland-Macao Agreement for Taxes

on Income

3. Multilateral Agreements

- Global agreements

ICSID Convention/MIGA Convention/TRIMS/GATS/TRIPS/SCM

- Sectoral and Regional agreements

Energy Charter Treaty/EU/USMCA/CPTPP/RCEP

4. Other Sources

- Customary international law
- General Principles of law
- Judicial decisions

Required Readings

Rudolf Dolzer, Principles of International Investment Law, pages 80-85.

M. Sornarajah, *The International Law on Foreign Investment*, pages 103-113.

Suggested Readings

Salacuse and Sullivan, "Do BITs Really Work?: An Evaluation of Bilateral Investment Treaties and Their Grand Bargain", *Harvard International Law Journal*, Vol. 46, 2005, pp.67-130.

2021 UN Model Double Taxation Convention between Developed and Developing Countries

2017 OECD Model Tax Convention

Class 4

Main Forms and Risks of Foreign Investment in China

1. Main Forms of Foreign Investment in China
2. Main Risks of Foreign Investment in China
 - Main risks in admission and establishment phase
 - Main risks in operation phase
 - Main risks in Divesting phase

Open Discussion on Main Risks of Foreign Investment in China
Investment

1. The Definition of Investment
2. New Forms of Investment
 - State property for commercial purposes
 - Sovereign wealth funds

Open Discussion on Criteria of Investment and its Development

Required Readings

IMF: *Balance of Payment Manual* (5th edition), IMF, 1992.

Article 12 of MIGA Convention

Article 21 of United Nations Convention on Jurisdictional Immunity of State and Their Property

Suggested Readings

M. Sornarajah, *The International Law on Foreign Investment*, pages 91-102.

Norah Gallagher, *Chinese Investment Treaties*, pages 14-28

Class 5

Investment (Continued)

1. Criteria for Investment in International Investment Dispute Settlement Practice
2. Criteria for Investment in Existing Laws and Regulations of China

Investor

1. The Definition of Investors
2. Special Investors of China
 - SOE (state-owned enterprises) / SOCB (state-owned commercial bank)
 - SWF (sovereign wealth funds)
 - Chinese Companies Listed in Other Countries (information disclosure obligations)
3. Nationality of Investors (Natural Person/Judicial Person)
4. Nationality Planning
5. Criteria for Investors in International Investment Dispute Settlement

6. Criteria for Investors in Existing Laws and Regulations of China

Required Readings

Rudolf Dolzer, Principles of International Investment Law, pages 105-132.

Suggested Readings

Fedax v. Venezuela, ICSID Case No. ARB/96/3, Decision on Objections to Jurisdiction, July 11, 1997.

CSOB v. Slovak, ICSID Case No. ARB/97/4, Decision on the Tribunal on Objections to Jurisdiction, May 24, 1999

Salini v. Morocco, ICSID Case No. ARB/00/4, Decision on Jurisdiction, July 23, 2001

Joy Mining Machinery Limited v. Arab Republic of Egypt, ICSID Case No. ARB/03/11, Award, August 6, 2004

Class 6

Investment Regulation in Admission and Establishment Phase

1. Introduction to Investment Regulation in Admission and Establishment Phase

- Guarantees against expropriation
- Guarantees relating to dispute settlement
- Tax and non-tax incentives to foreign investors
- Screening of foreign investment entry
- Requirements of local elements (especially in government procurement)
- Capitalization requirements
- Requirements relating to local equity
- Other requirements

2. China's Controls in Admission and Establishment Phase

- Admission Review on Industry
- Admission Review on Concentration of Operators
- Admission Review on National Security of Big Powers

3. National Security Review in CNOOC's bid to acquire UNOCAL/Huawei and Xiaomi's merger and acquisitions were blocked by U.S., Sweden, Australia or Romania.

4. Potential Unilateral Sanctions (Entity List of the BIS, Delisting of Chinese Companies from U.S. Securities Market)

Required Readings

M. Sornarajah, The International Law on Foreign Investment, pages 114-147, 152-171.

Class 7

Investment Regulation in Operation Phase: Investment Treatment

1. National treatment
2. Most-favored-nation treatment
3. Fair and equitable treatment
4. International minimum standard treatment
5. New developments of investment treatment in investment dispute settlement
 - New developments in most-favored-nation treatment
 - New developments in fair and equitable treatment

Investment Regulation in Operation Phrase: Expropriation and Nationalization

1. The Right to Expropriate
2. The Legality of the Expropriation
3. Direct and indirect expropriation
4. Investment+ issues (i.e. investment and climate change, investment and labor)

Required Readings

Rudolf Dolzer, Principles of International Investment Law, pages 174-201, 225-236.

Suggested Readings

Norah Gallagher, Chinese Investment Treaties, pages 105-202

Ioana Tudor, The Fair and Equitable Treatment Standard in the International Law of Foreign Investment, Oxford University Press, 2008

Maffezini v. Spain, ICSID Case No. ARB/97/7, Decision on Jurisdiction (Unofficial English Translation), January 25, 2000.

Siemens v. Argentina, ICSID Case No. ARB/02/8, Award, February 6, 2007

Salini v. Jordan, ICSID Case No. ARB/02/13, Award, January 31, 2006

Plama v. Bulgaria, ICSID Case No. ARB/03/24, Jurisdiction, February 8, 2005

Mondev v. U.S.A., ICSID Case No. ARB(AF)/99/2, Award, October 11, 2002

Tecmed v. Mexico, ICSID Case No. ARB(AF)/00/2, Award, Unofficial English Translation, May 29, 2003

Waste Management v. Mexico, ICSID Case No. ARB(AF)/98/2, Final Award, April 30, 2004

CMS v. Argentina, ICSID Case No. ARB/01/8, Final Award, May 12, 2005.

Norway v. U.S.A, Permanent Court of Justice (1922)

Metalclad v. Mexico, ICSID Case No. ARB(AF)/97/1, Award, August 30, 2000.

Compañía v. Costa Rica, ICSID Case No. ARB/96/1, Award, February 17, 2000

TransCanada Corporation and TransCanada Pipelines Limited v. United States of America (I), ICSID Case No. ARB/16/21 (settled)

TC Energy Corporation and TransCanada Pipelines Limited v. United States of America (II), ICSID Case No. ARB/21/63 (pending)

Westmoreland Mining Holdings LLC v. Government of Canada, ICSID Case No. UNCT/20/3 (pending)

Required Readings

Rudolf Dolzer, Indirect Expropriation: New Development? New York University Environmental Law Journal, Vol. 11, 2002-2003, pp.64-93.

Reisman & Sloane (excerpts), Indirect Expropriation and Its Valuation in the BIT Generation: The British Year Book of International Law, Vol. 74, 2003, pp.115-150.

Class 8

Investment Regulation in Divesting Phrase

1. Liquidation
 2. Investment Insurance
- MIGA

- DFC (the former: OPIC)
- China Export & Credit Insurance Corporation
- 3. Investment Dispute Settlement Mechanism
 - General Introduction to Investment Dispute Settlement
 - 1) State-State Disputes
 - 2) Investor-State Dispute
 - Diplomatic Protection
 - Judicial Settlement
 - Arbitration
 - ICSID investment arbitration
 - Non-ICSID investment arbitration
 - The Permanent Court of Arbitration
 - The Arbitration Institute of the Stockholm Chamber of Commerce
 - International Chamber of Commerce International Court of Arbitration
 - The London Court of International Arbitration
 - Singapore International Arbitration Center
 - Hong Kong International Arbitration Center
 - The Iran-United States Claims Tribunal
 - Ad Hoc Arbitration (i.e. established according to the UNCITRAL Rules)
 - Applicability of MFN Clause

3) The Drawbacks of ISDS in Legal Practice

Required Readings

Rudolf Dolzer, Principles of International Investment Law, pages 249-313.

MIGA Convention

ICSID Convention

2022' ICSID Arbitration Rules

2021' UNCITRAL Arbitration Rules

Class 9

Chinese BITs and Investment Tax Planning

1. Developments of Chinese BITs
2. Typical Chinese BITs
 - First generation: *China-Sweden BIT of 1982/ China-UK BIT of 1986*
 - Second generation: *China-Barbados BIT of 1988/ China-Germany BIT of 2003*
 - Third generation: *China-Canada BIT of 2012/ China-Angola BIT of 2023*
3. Typical Chinese DTTs: *China-U.S. DTT of 1984 / Mainland-HKSAR Tax Arrangement of 2006*

Suggested Readings

Norah Gallagher, Chinese Investment Treaties, pages 28-51

Class 10

Investor-State Dispute Settlement Reforms

1. Unbalanced ISDS

- “Legitimacy Crisis” and Current Situation
 - Historical Thoughts of Drafting ISDS System
 - Fragmented IIAs (fixed provisions but changing facts)
 - Autonomy of the ISDS Tribunal
 - Clear host governments and hidden investors
2. Existing ISDS Reform Models (Commercialization Approach/Judicialization Approach/Politicization Approach)

Approach/Politicization Approach)

- Improved ISDS Model (CPTPP/USMCA)
- ICS Model (CETA)
- ISDS Abandoned Model (India-Brazil Investment Cooperation)---SSDS
- Seesaw Model (Australia)
- High Inclusiveness Model (China)

3. Mediation

- 2022’ ICSID Conciliation Rules/2012’ IBA Investment Mediation Rules/2018’ Singapore Mediation

Convention

- Interactions between international mediation rules and domestic laws related to acknowledgement and enforcement of settlement agreements

4. “One-Hub” Dispute Settlement Center or Diversified Dispute Resolution Mechanism

Class 11

Typical China-Related Cases

1. Typical Cases and Key Issues

- ***AsiaPhos and Norwest v. China (BIT’s coverage on dispute arising out of the amount of compensation concerning expropriation or nationalization, Concluded, in favour of the State)***

- PingAn v. Belgium (BIT application during the transition period, indirect expropriation exception, Concluded, in favour of the state)

- BUCG v. Yemen (SOEs, MFN in dispute settlement, Settled)

- Heilongjiang et al v. Mongolia (restricted coverage for ISDS, MFN in dispute settlement, Concluded, in favour of the state)

- Ekran v. China (government taking land using right in advance, Settled)

- Ansung v. China (time limit, Concluded, in favour of the state)

- ***Zhongshan Fucheng v. Nigeria (the first winning case of Chinese investor and moral damages claims by legal person investor, Concluded, in favour of the investor)***

- Hela v. China (fork-in-the road in dispute settlement, Pending)

- Tza Yam Shum v. Peru (whether a Hong Kong permanent resident constitutes a qualified investor? Concluded, in favour of the investor, annulment)

- Sanum v. Laos (whether a legal entity established in Macao constitutes a qualified investor? Concluded, in favour of the investor, then Sanum v. Laos II)

2. Important Accidents

- Cacocola’s Bid on Huiyuan in 2008 (operator concentration review in *Anti-Monopoly Law of China*)

- Yonghui’s Bid on Zhongbai in 2019 (national security review)

- Forced Division on Tiktok in 2020 (data security, national security concerns)
- Forced Remove Didi Apps in 2021 (information security, data security and etc.)

Class 12

Final Examination

A written exam (two hours) is based on questions from specific topics from the course and reading materials.

The design of class discussion or exercise, practice, experience and so on:

Group discussions may be required. All of the students will be divided into several groups. A list of suggested topics will be provided by the professor by the end of the second week. Students are free to organize groups and to identify their topics.

If you need a TA, please indicate the assignment of assistant:

Grading & Evaluation :

1. Attendance (30%)

Attendance is part of the course. Students are required to join in all of classes and are required to ask for leave in advance if they have due reasons which conflict with the course schedule. Careful preparation and reading of all materials in advance of class is highly recommended.

2. Assignment (30%, including oral presentation, case analysis, discussion, etc.)

The students will be divided into several groups. A list of suggested topics will be provided by the professor by the end of the second week. Students are free to organize groups and to identify their topics. Each member in the same group will share the same score.

3. Final examination (40%)

A written exam (two hours, open-book) is based on questions from specific topics from the course and reading materials.

4. Additional Score (no more than 3%)

Substantially exceeding expectation performance (no more than 3%).

Usage of Textbook: Yes (complete textbook information form below) No

Textbook Information (No more than two textbooks) :

Title	Author	ISBN	Publishing Time	Publisher	Type I	Type II
					<input type="checkbox"/> Self-compiled Textbook (Published) <input type="checkbox"/> Non-mainland Textbook <input type="checkbox"/> Other Textbook (Published)	<input type="checkbox"/> National Planning Textbook <input type="checkbox"/> Provincial and Ministerial Planning Textbook <input type="checkbox"/> School Level Planning Textbook <input type="checkbox"/> Others

					<input type="checkbox"/> Self-compiled Textbook (Published) <input type="checkbox"/> Non-mainland Textbook <input type="checkbox"/> Other Textbook (Published)	<input type="checkbox"/> National Planning Textbook <input type="checkbox"/> Provincial and Ministerial Planning Textbook <input type="checkbox"/> School Level Planning Textbook <input type="checkbox"/> Others
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Teaching References:

English Monographs and Textbooks (Electronic versions will be provided by the instructor)

1. **M. Sornarajah. The International Law on Foreign Investment [M]. Cambridge: Cambridge University Press, 2021.**
2. **Rudolf Dolzer, Christoph Schreuer. Principles of International Investment Law [M]. Oxford: Oxford University Press, 2022.**
3. Kenneth J. Vandavelde. Bilateral Investment Treaties: History, Policy and Interpretation [M]. New York: Oxford University Press, 2010.

Chinese Monographs and Textbooks (Hard copies are available in Fudan libraries)

1. 梁咏. 国际投资与法律实务[M]. 上海: 复旦大学出版社, 2024.
2. 余劲松. 国际投资法[M]. 北京: 法律出版社, 2022.

Journals and Serial Publications (Electronic versions will be provided by the instructor)

1. UNCTAD. World Investment Report [R]. New York and Geneva: United Nations. (2021-2025), <http://unctad.org/en/pages/DIAE/World%20Investment%20Report/WIR-Series.aspx>.
2. ICSID. The ICSID Caseload [R] (2020-2024), <https://icsid.worldbank.org/resources/publications/icsid-caseload-statistics>.
3. Ministry of Commerce of the P. R. China, National Bureau of Statistics, State Administration of Foreign Exchange. Statistical Bulletin of China's Outward Foreign Direct Investment (2020-2023). 商务部, 国家统计局, 国家外汇管理局. 对外直接投资统计公报[R]. 北京: 中国统计出版社 (2021-2024)

Other Resources and References (Electronic versions will be provided by the instructor)

1. *2019 Foreign Investment Law of the People's Republic of China of 2019*, came into effect from January 1st, 2020 (2019年《中华人民共和国外商投资法》, 自2020年1月1日起施行)
2. *2021 Hainan Free Trade Port Law of the People's Republic of China*, came into effect from June 10th, 2021 (2021年《中华人民共和国海南自由贸易港法》, 自2021年6月10日起施行)
3. *2021 Special Administrative Measures for Foreign Investment Access (Negative List) (2021 Edition)* Issued by the National Development and Reform Commission and the Ministry of Commerce, came into effect from January 1st, 2022 (2021年国家发展改革委、商务部《外商投资准入特别管理措施(负面清单)(2021年版)》, 自2022年1月1日起施行)
4. *2021 Special Administrative Measures for Foreign Investment Access in the Pilot Free Trade Zone (Negative List) (2021 Edition)*, came into effect from January 1st, 2022 (2021年国家发展改革委、商务部《自由贸易试验区外商投资准入特别管理措施(负面清单)(2021年版)》, 自2022年1月1日起施行)
5. *2022 The Catalogue of Industries for Encouraged Foreign Investment (2022 Edition)*, came into effect from January 1st, 2023 (2022年国家发展改革委、商务部《鼓励外商投资产业目录(2022年版)》, 自2023年1月1日起施行)

6. *2021 Anti-Foreign Sanctions Law of the People's Republic of China*, came into effect from June 10th, 2021 (2021 年《中华人民共和国反外国制裁法》，自 2021 年 6 月 10 日起施行)
7. *2021 Measures for Blocking Improper Extraterritorial Application of Foreign Laws and Measures*, came into effect from January 9th, 2021 (2021 年商务部《阻断外国法律与措施不当域外适用办法》，自 2021 年 1 月 9 日起施行)
8. *1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States* (1965 年《关于解决国家与他国国民之间投资争端公约》)
9. *1985 Convention Establishing the Multilateral Investment Guarantee Agency* (1985 年《多边投资担保机构公约》)
10. *2020 Regional Comprehensive Economic Partnership* (2020 年《区域全面经济伙伴关系协定》)
11. *2012 U.S. Model BIT* (2012 年美国双边投资协定范本) / *2019 Netherlands Model BIT* (2019 年荷兰双边投资协定范本) / *2021 Canadian Model FIPA* (2021 年加拿大外国投资促进协定)
12. *2018 U.S.-Mexico-Canada Agreement* (USMCA, 2018 年《美墨加协定》)
13. *2018 Comprehensive and Progressive Trans-Pacific Partnership* (CPTPP, 2018 年《全面与进步的跨太平洋伙伴关系协定》)
14. *TTIP Draft of 2015* (2015 年《跨大西洋贸易与投资伙伴协议》草案)、*EU-Canada FTA of 2016* (2016 年欧盟—加拿大自由贸易协定)、*EU-Vietnam FTA of 2016* (2016 年中国—越南自由贸易协定)
15. *China-Canada BIT of 2012* (2012 年中国—加拿大双边投资协定)、*China-Angola BIT of 2023* (2023 年中国—安哥拉 BIT)、2023 年 *China-Korea FTA of 2015* (2015 年中国—韩国自由贸易协定)、*China-Australia FTA of 2015* (2015 年中国—澳大利亚自由贸易协定)
16. *Completed China-EU Comprehensive Agreement on Investment* (已完成的中国—欧盟全面投资协定文本)

Related Websites

<http://www.mofcom.gov.cn>

<http://www.unctad.org>

<http://www.miga.org>

<http://icsid.worldbank.org>

<http://www.wto.org>

<http://www.state.gov/e/eb/ifa/bit/117402.htm> (U.S. Department of State)

<http://www.italaw.com>