# International Investment Law

**Department: Fudan International Summer Session**

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<th>Course Code</th>
<th>LAWS170001</th>
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<tr>
<td>Course Title</td>
<td>International Investment Law</td>
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<tr>
<td>Credit</td>
<td>2</td>
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<td>Course Nature</td>
<td>□Specific General Education Courses □Core Courses ☑General Education Elective Courses in General Discipline □Basic Courses in General Discipline □Professional Compulsory Courses □Professional Elective Courses □Others</td>
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<td>Course Objectives</td>
<td>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 40 years after the reform and opening up in China and the current practice, the newly promulgated Foreign Investment Law of China to come into effect as from January 1st 2020, the processing China-EU BIT and RCEP as well as the interaction between foreign investment law and international treaties and agreements. The course will foster students’ capabilities to analyze the law and apply the law.</td>
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<td>Course Description</td>
<td>The International Investment Law is an elective course for undergraduate students (junior/senior grade preferred) 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 for regulating international investment and its future development; (3) the foreign investment law of China and its practice; (4) the outbound investment law of China and its practice. The lecture will attempt to the interactions between international perspective and domestic perspective. From the international perspective, the lecture shall follow up the TTIP negotiations, the NAFTA renegotiations, the trends and developments of CPTPP, and as well as the RCEP, Sino-U.S. BIT (suspended), Sino-EU BIT and China-Japan-Korea FTA negotiations with the involvement of China, and concentrates on the new issues including the pre-establishment treatment, non-conforming measures list (“Negative List”), competition neutrality, environmental standards, labor protection and etc. Furthermore, the</td>
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lecture shall pay special attention to the international investment arbitration mechanism and feasibility of international court system, the “B&R Initiative” of China, the establishment of new generation of international investment rules, from the adaptor or user of existing international investment rules to the contributor or founder of the new generation of international rules.

In order to strengthen the practical value of this course, the instructor shall adopt the methodology of case analysis, and try to use case law to interpret the foreign investment law system and outbound investment law system of China closely in combination of case law to deepen the legal understanding.

Course Requirements:
No special requirements

Teaching Methods:
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 lecture encourages the interactions between the instructor and students.

Instructor's Academic Background:
The instructor is an associate professor of Fudan University Law School, specializing in international investment law and international trade law. She obtained L.L.B degree (2001), L.L.M degree (2004) and PhD in Law (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).

The instructor is relatively well established in the academic research field of the outbound investment law of China, and has published 3 monographs and over 30 papers in the field of China's outbound investment, and obtained several prestigious prizes, talent awards and grants. She is good at making comparative study, and can bridge different disciplines and different types of experts to make joint study on a particular question. She has good skills and expertise in teaching, and has been awarded a lot of teaching prizes.

Course Schedule:

**Week 1**

Class 1
Orientation
1. General Introduction to the International Investment Law
   
   
   Video from United Nations Audiovisual Library of International 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


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 1-11, 19-27

Suggested Readings

Class 3
Sources of the International Investment Law
1. Unilateral Laws or Regulations: From the prospective of China
   • Domestic laws of China from the prospective of host states
   • Domestic laws of China from the prospective of home states
2. Bilateral Treaties
   • Bilateral investment treaties
   • Mainland-Hong Kong CEPA/Mainland-Macau CEPA/Mainland-Taiwan ECFA
   • Double Taxation Treaties
   • Mainland-Hong Kong Arrangement for Taxes on Income/Mainland-Macau 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/NAFTA/ASEAN/APEC
4. Other Sources
   • Customary international law
- General Principles of law
- Judicial decisions

Required Readings
Rudolf Dolzer, Principles of International Investment Law, pages 12-19
M. Sornarajah, The International Law on Foreign Investment, pages 79-97

Suggested Readings

Week 2
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 phrase
   • Main risks in operation phrase
   • Main risks in Divesting phrase
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
Article 12 of MIGA Convention
Article 21 of United Nations Convention on Jurisdictional Immunities of State and Their Property

Suggested Readings
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)
   • SWF (sovereign wealth funds)
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
   Open Discussion on the Special Investors of China (SOE and SWF)
   Required Readings
   Rudolf Dolzer, Principles of International Investment Law, pages 44-60
   Suggested Readings
   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
   Amco Asia Corp. and others v. Republic of Indonesia, ICSID Case No. ARB/81/1, Decision on Jurisdiction, September 25, 1983
   Société Quest Africaine des Bétons Industriels v. Senegal, ICSID Case No. ARB/82/1, Decision on Jurisdiction, August 1, 1984
   Tokios Tokelês v. Ukraine, ICSID Case No. ARB/02/18, Decision on Jurisdiction, April 29, 2004; Dissenting Opinion Attached to the Decision of Jurisdiction, April 29, 2004
   The Loewen Group Inc. and Raymond L. Loewen v. United States of America, ICSID Case No. ARB (AF)/98/3 (NAFTA), Decision on Hearing of Respondent’s Objection to Competence and Jurisdiction, January 5, 2001.

Class 6
Investment Regulation in Admission and Establishment Phrase
1. Introduction to Investment Regulation in Admission and Establishment Phrase
   • Guarantees against expropriation
   • Guarantees relating to dispute settlement
   • Tax and non-tax incentives to foreign investors
   • Screening of foreign investment entry
   • Requirements of local coloration
   • Capitalization requirements
   • Requirements relating to local equity
   • Other requirements
2. China’s Controls in Admission and Establishment Phrase
   • Admission Review on Industry
   • Admission Review on Concentration of Operators
   • Admission Review on National Security
3. National Security Review in CNOOC’s bid to acquire UNOCAL
   Required Readings
M. Sornarajah, The International Law on Foreign Investment, pages 97-116

**Week 3**
Class 7
Investment Regulation in Operation Phrase: 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

Required Readings
Rudolf Dolzer, Principles of International Investment Law, pages 98-126, 130-160, 198-212

Suggested Readings
Norah Gallagher, Chinese Investment Treaties, pages 105-202
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
CMS v. Argentina, ICSID Case No. ARB/01/8, Award, May 12, 2005
Reisman & Sloane (excerpts), Indirect Expropriation and Its Valuation in the BIT

Class 8
Investment Regulation in Divesting Phrase
1. Liquidation
2. Investment Insurance
   • MIGA
   • 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 International Chamber of Commerce
           • The London Court of International Arbitration
           • The UNCITRAL Rules
           • The Iran-United States Claims Tribunal
           • The Permanent Court of Arbitration
   • Applicability of MFN Clause
3) The Latest Developments of ISDS
Required Readings
Rudolf Dolzer, Principles of International Investment Law, pages 232-244
MIGA Convention
ICSID Convention
ICSID Additional Facility
2010’ UNCITRAL Arbitration Rules

Class 9
Chinese BIs and Investment Tax Planning
1. Developments of Chinese BIs
2. Typical Chinese BIs
<table>
<thead>
<tr>
<th>Year</th>
<th>Agreement Type</th>
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<tr>
<td>1982</td>
<td>Sino-Sweden BIT</td>
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<tr>
<td>1986</td>
<td>Sino-UK BIT</td>
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<tr>
<td>1998</td>
<td>Sino-Barbados BIT</td>
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<tr>
<td>2003</td>
<td>Sino-Germany BIT</td>
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<tr>
<td>2012</td>
<td>Sino-Canada BIT</td>
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3. Typical Chinese DTTs
- 1984 Sino-U.S. DTT
- 2006 Mainland-HKSAR Tax Arrangement

Suggested Readings
Norah Gallagher, Chinese Investment Treaties, pages 28-51

### Week 4

**Class 10**
**Final Examination**
A written exam (two hours) is based on questions from specific topics from the course and reading materials.

**Class 11**
**Case Analysis and Oral Presentation**
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.

1. National Security Review (for instance, CNOOC’s bid on UNOCAL, CNOOC’s acquisition on Nexen)
2. Indirect Expropriation and Police Power (for instance PingAn-Fortis Case)
3. An ISDS Case Analysis
4. The Latest Developments ISDS and China’s (or Any Other Country’s) Choice
5. How to Balance the Interests of Foreign Investors and Interests of the Host State in the Foreign Investment Law System
6. The “B&R” Initiative and the Construction of International Trade and Investment Rules
7. How to Prevent Commercial Risks and Non-Commercial Risks in Outbound Investment
8. The Corporate Social Responsibility of China’s Outbound Investment
9. Risk Prevention and Legal Protection in Different Investment Vehicles (take one kind of investment vehicle as the example)

**Class 12**
**Course Summary and Open Discussion**

**The design of class discussion or exercise, practice, experience and so on:**
An oral presentation and a joint group discussion are 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. Each member in the same group will share the same score. The joint group report (2000-3000 words) accounts for 15% of the total course score, and each member in the same group shares the same score.

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 definitely expected.
2. Assignment (30%, including oral presentation and the summary)
   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.
   The joint group report (2,000~3,000 words count in English) accounts for 10% of the total course score, and each member in the same group shares 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 5%)
   Substantially exceeding expectation performance (no more than 5%).

There will be no make-up test.

Teaching Materials & References:
English Monographs and Textbooks
Chinese Monographs and Textbooks

Journals and Serial Publications
1. 陈安. 国际经济法论丛 [J]. 北京: 法律出版社
7. 《中华人民共和国外商投资法》 (Foreign Investment Law of the People’s Republic of China of 2019, effective from January 1st, 2020)
8. Convention on the Settlement of Investment Disputes Between States and Nationals of Other States
9. Convention Establishing the Multilateral Investment Guarantee Agency
10. The Agreement on Trade-Related Investment Measures
11. China-ASEAN Investment Agreement
12. 2012 U.S. Model BIT
13. Comprehensive and Progressive Trans-Pacific Partnership
14. TTIP Draft of 2015
EU-Canada FTA of 2016 EU-Vietnam FTA of 2016


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/ifd/bit/117402.htm (U.S. Department of State)
   http://www.italaw.com