

REGIONAL SEMINAR

Investment dispute management and prevention

26-27 June 2018
Cairo, Egypt

In cooperation with and hosted by:
The Cairo Regional Centre for International Commercial Arbitration
(CRCICA)



Agenda

**EU-OECD PROGRAMME ON
PROMOTING INVESTMENT
in the Mediterranean**

■ Context

The EU-OECD Programme on Promoting Investment in the Mediterranean, launched in October 2016 in Tunis, aims at supporting Southern Mediterranean countries in implementing sound and attractive investment policies and establishing effective institutions. Its goal is to help the region attract quality investments, create job opportunities and foster local development, economic diversification and stability.

The Programme is governed by an Advisory Group, co-chaired by the European Commission and the OECD, with the participation of representatives of beneficiary countries, the Secretariat of the Union for the Mediterranean and other regional partners.

■ Objectives

The objective of this seminar is to build capacities of participating government representatives to deal with and to prevent disputes between foreign investors and the State. The seminar will take stock of investor-State dispute settlement (ISDS) trends and challenges in the Mediterranean region and review related provisions in national laws and international investment agreements, against global developments. A session on the main steps of the dispute settlement process will be conducted with practitioners, followed by a peer-learning session on the establishment of policies and mechanisms for the prevention of investment disputes, to avoid escalation into judicial or arbitration cases, building upon countries' experiences.

■ Participants

Participants are government officials – policy makers and legal experts – involved in the management and prevention of investment disputes from the Ministry of Investment, the Ministry of Justice, and other relevant Ministries and agencies, including investment promotion agencies. Peers from EU countries, international legal experts and representatives of the private sector will also participate.

■ Background paper

Draft paper on “Stocktaking of investment dispute management and prevention in the Mediterranean region”, with a focus on global and regional trends, legal provisions, management and prevention.

■ Venue

The Cairo Regional Centre for International Commercial Arbitration, CRCICA
1 Al Saleh Ayoub St. Zamalek 11211
Cairo, Egypt



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Tuesday 26 June 2018

08:30-09:00 Welcoming and registration

09:00-09:30 **Opening session**

- **H.E. Judge Mostafa El Behebity**, Deputy Minister of Justice for Arbitration and International Disputes, Egypt
- **Mr. Angel Gutierrez Hidalgo de Quintana**, First Counsellor, Head of the Economic Cooperation Section, EU Delegation to Cairo
- **Dr. Ismail Selim**, Director, Cairo Regional Centre for International Commercial Arbitration (CRCICA)
- **Dr. Marie-Estelle Rey**, Senior Advisor, MENA-OECD Competitiveness Programme, OECD

09:30-10:00 **Keynote address: The Role of the Ministerial Committee for Settlement of Investment Disputes as a mechanism settling disputes between Egyptian government & investors**

- **H.E. Judge Mostafa El Behebity**, Deputy Minister of Justice for Arbitration and International Disputes, Head of Technical Secretariat of Ministerial Committee for Settlement of Investment Disputes, Egypt

Introduction: International investment dispute settlement at the global level – trends and challenges

10:00-11:00

International investment disputes are on the rise and Investor-State Dispute Settlement (ISDS) mechanisms raise concerns and challenges for countries. Recurring concerns involve – among others – inappropriate interference with policy choices of host states, lack of trust in the impartiality and independence of the system, and increasing costs for the resolution of investment disputes. At the same time, investment treaties and ISDS can make an important contribution to the confidence of treaty-covered investors. In this context, in parallel to negotiations of international trade and investment agreements, debates on ISDS and how it could be improved or reformed are being pursued at the national, regional and international levels. This session will provide an overview of these debates and the issues at stake.

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Moderator: Dr. Ismail Selim, Director, Cairo Regional Centre for International Commercial Arbitration, CRCICA

- ▶ Trends, risks and challenges of ISDS
 - **Dr. Mohamed Abdel Wahab**, Founding Partner & Head of International Arbitration, Chair, Private International Law and Professor of Dispute Resolution, Cairo University
- ▶ Recent trends in the global debate on ISDS
 - **Ms. Klara Kanska**, Head of Section for Trade, Science and Enterprise, EU Delegation to Egypt
 - **Mr. Benjamin Herisset**, Associate Expert, International Trade Law Division, UNCITRAL
 - **Ms Tihana Bule**, Economist / Policy Analyst, Responsible Business Conduct, Investment Division, OECD

11:00-11:30 **Coffee break** (group picture)

Session 1: Round table on investment dispute in the Mediterranean region – trends and impact

11:30-13:00 *This session will focus on ISDS in the Mediterranean countries. After an introduction on the recent trends and the legal investment commitments in domestic law, international investment agreements and state contracts, participants will discuss ISDS trends and implications for their countries.*

Moderator: Dr. Mohamed Abdel Wahab, Founding Partner & Head of International Arbitration, Chair, Private International Law and Professor of Dispute Resolution, Cairo University

- ▶ Introduction: ISDS trends in the Mediterranean region and legal sources
 - **Ms. Diane Pallez**, Policy Analyst, MENA-OECD Competitiveness Programme
- ▶ Countries' presentation on ISDS trends and challenges:

Each country delegation will be invited to briefly respond to the below questions:

- What are the ISDS trends in your country (number of cases, sectors, contract- or treaty-based?)
- How did your country manage the cases? What are the institutions in charge of dealing with ISDS cases?

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- Do you think ISDS cases affect your country as an investment destination?
- Do you think Bilateral Investment Treaties (BITs) are important? What are the most important provisions in your country's BITs?
- What lessons has your country learned from ISDS cases?

► Perceptions of the private sector :

- **Mr. Hani Abo Samra**, General Counsel, Shelf Drilling Group, Egypt

13:00-14:00

Lunch break

14:00-17:00

Session 2: Main steps in investment dispute settlement process

Investment dispute resolution provisions in domestic law, contracts and treaties usually state a preference for amicable settlements, and provide that such efforts are a precondition to the commencement of a claim. This session will review the different steps of the dispute settlement process, and discuss lessons learnt based on ISDS cases in the Mediterranean region over the last decade.

- Moderator: **Ms. Diana Ruiz Truque**, OECD Legal Consultant

Speakers : State attorneys, lawyers and arbitrators involved in investor-state arbitral proceedings

- **Ms. Claudia Pharaon**, Associate, Obeid Law Firm, Beirut
- **Ms. Laurie Achtouk-Spivak**, Cleary Gottlieb Steen & Hamilton LLP
- **Mr. Filippo Fontanelli**, Senior Lecturer, School of Law, University of Edinburgh, member of the support team to the Italian Ministry of Foreign Affairs for ECT-based arbitration

Chronology of a case

- Amicable settlement (consultation, negotiation, mediation) and cooling-off period
- "Fork-in-the-road" provision - The one-way choice for an investor between local court, domestic or international arbitration
- Managing investment arbitration cases: institutional arrangements to defend a case, including internal coordination mechanisms, investor counsel, choice of arbitration institution and appointing authority, appointment of the arbitral tribunal, the arbitration procedure (including transparency in ISDS proceedings) and the arbitral award.

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Wednesday 27 June 2018

Session 3: Effective investment dispute prevention policies – good practices and experiences from other countries

09:30-11:30

This session aims at sensitising the audience to the establishment and use of dispute prevention policies. Practices and experiences from Mediterranean and other countries will be shared before discussing options for dispute prevention mechanisms.

Moderator: **Ms. H  l  ne Fran  ois**, Legal Advisor, Investment Division, OECD

- ▶ Introduction: the policy framework for dispute prevention policies
 - **Dr. Marie-Estelle Rey**, Senior Advisor, MENA-OECD Competitiveness Programme, OECD
- ▶ Experience of other dispute prevention mechanisms
 - **Ms Tihana Bule**, Economist / Policy Analyst, Responsible Business Conduct, Investment Division, OECD
- ▶ Cases studies from Mediterranean countries, other countries and “good practices”: the experience of Egypt and Algeria
 - **Dr. Eman Mansour**, Director of the Center of investment disputes, GAFI, Egypt
 - **Ms. Fatma Zohra Touati**, Directrice Centrale, Banque d’Alg  rie, Doctorante en droit international des affaires, Institut Sup  rieur de Gestion et de Planification

11:30-12:15

Light lunch

Session 4: Practical exercises in groups

12:15-14:45

This session will allow participants to take part in practical exercises in groups according to their expertise and institutional affiliation.

Group discussions tutored by key experts on:

- ▶ Drafting of ISDS provisions
Experts:
 - **Ms. Claudia Pharaon**, Associate, Obeid Law Firm, Beirut
 - **Mr. Filippo Fontanelli**, Senior Lecturer, School of Law, University of Edinburgh, member of the support team to the Italian Ministry of Foreign Affairs for ECT-based arbitration

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- ▶ Organising internal ISDS coordination mechanisms
Expert:
 - **Ms. Laurie Achtouk-Spivak**, Cleary Gottlieb Steen & Hamilton LLP

- ▶ Setting up dispute prevention mechanisms
Expert:
 - **Ms. Diana Ruiz Truque**, OECD Legal Consultant

Results of the group work and key-take aways

14:45-15:00

Conclusions – Wrap up and way forward

- ▶ EU
- ▶ OECD

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