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The
BOOK
of
JARGON[®]

**International
Arbitration**

**The Latham & Watkins Glossary
of International Arbitration
Terminology and Acronyms**

First Edition

The Book of Jargon®: International Arbitration is one of a series of practice area-specific glossaries published by Latham & Watkins.

The definitions contained in The Book of Jargon® are designed to provide an introduction to the terms often encountered by parties to disputes. These terms raise complex legal issues on which specific legal advice will be required. The terms are also subject to change as applicable laws and customary practice evolve. The information contained herein should not be construed as legal advice.

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are available at LW.com.

AAA: acronym for the American Arbitration Association.

AAA Rules: Arbitration Rules promulgated by the AAA. There are several sets of AAA Rules for different types of Dispute. Examples include the AAA's Commercial Arbitration Rules, Construction Arbitration Rules, Employment Arbitration Rules and International Rules. International cases, regardless of the rules, are administered by the ICDR, the international arm of the AAA.

AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes: the AAA/ABA guidelines on generally accepted standards of ethical conduct for Arbitrators in Commercial Arbitration. Originally produced by a joint committee of the AAA and the ABA in 1977, the Code of Ethics was revised in 2004 by an ABA Task Force and special committee of the AAA. The Code of Ethics aims to preserve the integrity and fairness of the Arbitral process and establishes a presumption of neutrality for all Arbitrators (but provides for specific ethical considerations relating to non-neutral party-appointed Arbitrators), and requires Arbitrators to disclose any facts which might affect their partiality.

ABA: acronym for the American Bar Association.

Abandonment: a party's conduct or lack of conduct in relation to an Arbitration Agreement which indicates that it no longer intends to rely upon or be bound by that agreement. Abandonment may occur if, for example, a party to an Arbitration Agreement commences court proceedings in breach of the Arbitration Agreement or submits to the Jurisdiction of a court in relation to a Dispute within the scope of the Arbitration Agreement. See also Waiver.

Abeyance: suspension (of Arbitration proceedings). Under the ICC Rules the ICC Court may require the payment of administrative expenses as a condition for holding an Arbitration in abeyance. See Stay (of Proceedings or Execution).

Abs-Shawcross Draft Convention: a draft multilateral convention for the protection of private foreign investment, which contained (inter alia) the minimum protections of FET and lawful Expropriation. Dr. Hermann Abs of Germany and Lord Shawcross of the United Kingdom drew up this proposed Treaty in 1959, but it was never adopted.

Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC): an Arbitral Institution based in Abu Dhabi and established in 1993 to solve national and international commercial Disputes.

Abuse of Power: a course of conduct which involves the use of power or authority for purposes other than for which it was conferred.

Abuse of Process: the use of a litigation or Arbitration proceeding, or a particular element thereof, for a purpose or in a way significantly

different from its ordinary and proper use (for example, bringing claims which have or should have been dealt with in a prior proceeding). If conduct amounts to an Abuse of Process it may render a claim, partially or entirely, inadmissible or remove the Jurisdiction of the court or Arbitral Tribunal to determine the claim(s) tainted by the Abuse of Process.

Abuse of Rights: the exercise of a legal right other than in accordance with its intended purpose. In ITA, a Respondent State sometimes raises allegations of Abuse of Rights against a foreign investor in respect of alleged Treaty Shopping.

Accession (to a Treaty): the formal process by which a sovereign State agrees to be bound by the terms of an existing international Treaty. The necessary formalities for Accession vary among States and Treaties.

ACICA: acronym for the Australian Centre for International Commercial Arbitration.

ACICA Rules: Arbitration Rules promulgated by the ACICA.

Action en Inopposabilité: a petition, under French law, for a declaratory court order preventing the automatic Enforcement of a foreign judgment, pending the granting of Exequatur. Under French law this remedy cannot be used with respect to international Arbitral Awards.

Ad Hoc Arbitration: an Arbitration not administered by an Arbitral Institution, in which the parties and/or the Tribunal independently determine the procedure (which may, if the parties agree) be that contained in a national law, such as the English Arbitration Act. Parties often choose the UNCITRAL Rules and this will constitute an Ad Hoc Arbitration unless they also agree (as is common) to the involvement of an Arbitral Institution to administer their Arbitration.

Ad Hoc Committee: a panel formed of three members in accordance with the ICSID Convention to adjudicate a request for the Annulment of an ICSID Arbitration Award on the grounds set out under Article 52(1) of the ICSID Convention.

Additional Award: a further Arbitration Award made by an Arbitral Tribunal (either of its own volition or upon the request of a party) in respect of a matter which was referred to the Arbitral Tribunal but was not dealt with in the Final Award. National laws and Arbitration Rules often provide for Additional Awards when appropriate and subject to time limits.

Additional Party: a party which was not part of the original reference to Arbitration but is later sought to be joined to the proceedings. Arbitration Rules and National Laws have various different approaches to the treatment of Additional Parties.

Adjudicability: whether or not the matter is capable of being resolved by the chosen procedure. For example, Adjudicability can be determined due to the nature of the subject-matter or the lack of capacity of one or more of the parties.

Adjudication: can simply mean the process by which a formal decision is taken but can also refer to specific forms of ADR. For example, for English construction Disputes, Adjudication refers to a procedure provided for by the Housing Grants, Construction and Regeneration Act 1996, whereby Disputes are referred to an adjudicator for resolution pursuant to an Expedited Procedure, following which the adjudicator's decision is final and binding unless the Dispute is referred to Arbitration or litigation within a limited time, or is resolved by agreement between the parties.

Administered Arbitration: an Arbitration conducted with the support of an Arbitral Institution (e.g., the ICC or LCIA) in relation to, for example, the Appointment of Arbitrators, challenges to Arbitrators and the collection of Arbitrators' fees. See also Institutional Arbitration.

Administration of Justice: the legal process through which the rule of law is upheld by way of enforcing public and private rights and responsibilities through courts, Arbitral Tribunals or other mechanisms enabled under the relevant legal system and conducted according to its governing rules and principles.

Administrative Conference: a meeting held under the AAA/ICDR International Arbitration Rules, at the request of any party or upon the AAA's own initiative, to address certain preliminary and administrative matters (e.g., Arbitrator selection, Mediation of the Dispute or the potential exchange of information). See also Case Management Conference.

Administrative Fees: the charges levied by an Arbitral Institution for administering an Arbitration. Administrative Fees may, depending on the Arbitral Institution, be charged either on an hourly basis or by reference to the amount in Dispute.

Administrative Secretary: a person (often a junior lawyer) appointed to provide certain services to the Arbitral Tribunal. The scope of the services that the Administrative Secretary should provide has been the subject of much discussion, given the need to ensure that the Arbitral Tribunal remains the ultimate decision maker. Therefore, whilst assistance in the organization of an Arbitration may be uncontroversial, some parties may object to an Administrative Secretary being involved in researching points of law or the drafting of even the procedural aspects of an Award. In order to provide guidance on the use of an Administrative Secretary, the LCIA has published notes for arbitrators which highlight best practice principles with respect to using an Administrative Secretary. Similarly, the Young ICCA (a world-wide arbitration knowledge network) has published a guide on secretaries in Arbitration. Also referred to as a Tribunal Secretary.

Admissibility: whether a matter should be allowed into the Arbitration by the Arbitral Tribunal such that it may be determined or taken into account. Often referred to in the context of whether the use of particular evidence should be allowed. See Admissibility of Evidence.

Admissibility of Evidence: the question as to whether evidence can be introduced and used in Arbitral proceedings (often contrasted with the question of the weight to be given to that evidence once admitted).

Admission: an acknowledgement of the truth of a fact which is made by or on behalf of a party to a Dispute, whether before or during formal proceedings. An Admission may be made in writing or orally and does not usually require any particular formalities. An Admission may also refer to the procedure in which a foreign qualified lawyer is admitted to appear before a foreign court in circumstances such as if an Award has been challenged.

Admission Clauses: a clause in an Investment Treaty that enables the Host State to refuse admission of certain investors in relation to certain types of investments. Admission Clauses provide a means for Host States to control the entry and establishment of foreign investment.

Admission of Evidence: the decision taken by an Arbitral Tribunal to allow particular evidence to be introduced and used in the proceedings.

Admission Requirements: stipulations which a Host State may impose in its exercise of a policy decision as to whether and, if so, on what basis it will admit foreign investments in its territory.

Certain Investment Treaties limit the admission of foreign investments to some degree or in certain sectors. Some Investment Treaties specify those economic sectors in which foreign investments are permitted, whilst others identify only those in which foreign investments is prohibited (e.g., domestic defence industry, energy sector).

Adoption (of a Treaty): the formal process by which Treaty-making States consent to the final draft text and "adopt" it in that form to be memorialised. In this regard, Article 9 of the VCLT provides that:

- "1. The adoption of the text of a treaty takes place by the consent of all the States participating in its drawing up except as provided in paragraph 2.*
- 2. The adoption of the text of a treaty at an international conference takes place by the vote of two thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule."*

ADR: acronym for Alternative Dispute Resolution or Amicable Dispute Resolution.

ADR Chambers Canada: an Arbitral Institution based in Toronto and established in 2013, which administers both Mediations and Arbitrations.

ADR Institute of Canada: an Arbitral Institution based in Toronto which supports Dispute resolution through Arbitration and ADR, such as Mediation.

Advance on Costs: a sum paid in respect of future fees and expenses of the Arbitral Tribunal and, if applicable, the Arbitral Institution. The sums requested and the timing of the requests for advances on costs depend on the applicable Arbitration Rules. For example, under the ICC Rules the fees of the Arbitrators and the ICC are fixed by reference to a scale depending upon the amount in Dispute, and the advances on costs are taken primarily in two tranches at an early stage in the Arbitration. In contrast, the LCIA Arbitration Rules provide for fees to be calculated according to hourly rates and the advances on costs are requested periodically in order to cover the next stage of the Arbitration.

Adverse Inference: a presumption by an Arbitral Tribunal of a fact which is contrary to the interests of a party due to the conduct of that party. For example, if a party destroys, conceals or fails without good reason to produce evidence subject to its control an Arbitral Tribunal may infer that the evidence in question was adverse to that party's case. See also IBA Rules on the Taking of Evidence.

Adverse Witness: a witness whose evidence an opposing party puts forward to support its case or rebut that of another party.

AFA: acronym for the Association Française d'Arbitrage and also Alternative Fee Arrangement.

AFA Rules: Arbitration Rules promulgated by the AFA.

Affirmation: the formal confirmation of a person that what they are saying, for example in a witness statement, is true. Some National Laws allow the Arbitral Tribunal to require a party or witness to be examined on oath or affirmation.

AFTA: acronym for ASEAN Free Trade Agreement.

Agreement for the Promotion and Protection of Investments (ASEAN): an MIT adopted by all ASEAN member states which provides for certain protections of investments originating from one contracting State in another contracting State. These protections include, for example, an obligation on the Host State to ensure the FET and full security of the investment, and the benefit of the Most-Favored Nation Treatment. The Agreement also contains an ISDS mechanism.

Agreement for the Promotion and Protection of Investments (ASEAN) plus 3: a framework for political, security, economic, financial, and socio-

cultural cooperation between (1) ASEAN, and (2) China, Japan, and South Korea.

Agreement on Trade-Related Investment Measures: an agreement between all members of the WTO which contains, among other legal requirements, a list of measures that member states undertake not to implement, through their domestic laws and regulations, against foreign investors including measures that discriminate against foreign products or that lead to quantitative restrictions.

Agreement to Abandon: a binding agreement between parties to an Arbitration not to continue with arbitral proceedings. See also Abandonment and Waiver.

Agreement to Arbitrate: see Arbitration Agreement.

AIAC: acronym for Asia International Arbitration Centre.

Algiers Declarations: two Declarations and accompanying technical implementation agreements announced by the Government of Algeria in 1981 to resolve the diplomatic crisis between Iran and the United States arising out of the 1979 hostage crisis. Included in the Declarations is each State's reciprocal undertakings and the terms upon which the Iran-United States Claims Tribunal was established.

Algiers General Declaration: a Declaration dated 19 January 1981 setting out the commitments made by the governments of Iran and the United States to resolve the 1979 hostage crisis.

Allocation of Costs: the Arbitral Tribunal's apportionment of sums incurred in relation to the Arbitration. Many Arbitration Rules and therefore Arbitral Tribunals adopt, as a starting point, a rebuttable presumption that the losing party should pay the successful party its reasonable costs. Of course, in many cases there will be a number of issues, not all of which may be decided in favor of one party, in which case some Arbitral Tribunals may divide the responsibility for costs between the parties as they consider appropriate in the circumstances.

Alter Ego: an alternative or secondary personality. A Non-Signatory to an Arbitration Agreement may be bound by its terms if that party can be considered an 'alter ego' of another party which is bound by that Arbitration Agreement. The parties' separate legal forms are disregarded and they are essentially treated as one entity.

Alternative Dispute Resolution (ADR): sometimes refers to forms of Dispute Resolution that are alternatives to litigation (which would therefore include Arbitration) but commonly outside the USA refers only to the alternatives which do not involve any binding decision by a third party, such as Mediation. The confusion in the use of the term has led some to redefine ADR as Amicable Dispute Resolution.

Alternative Fee Arrangement: an arrangement between a law firm and its client in which the client provides compensation to the firm based on a structure other than hourly billing. For example, some fee arrangements are based on a fixed fee and others can be based on a contingency such as success in an Arbitration.

American Arbitration Association (AAA): one of the world's largest Arbitral Institutions. The AAA administers a large number of domestic and international Disputes through its network of US offices. The international branch of the AAA, the ICDR, administers International Arbitrations pursuant to International Rules through centres in New York and Dublin, Ireland.

American Bar Association (ABA): a voluntary professional organization founded in 1878 and headquartered in Chicago, Illinois. The ABA aims to support the legal profession with practical resources, improve the Administration of Justice, accredit law schools and establish model ethical codes.

American Convention on Human Rights (also known as the Pact of San José, Costa Rica): an international human rights convention adopted in 1969 between certain Central and South American countries which establishes general obligations of the State parties to uphold the fundamental rights set forth in the Convention and to adapt their domestic laws to bring them in line with the Convention. The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights are bodies established to oversee compliance with the Convention. Both are organs of the OAS.

American Society of International Law (ASIL): a non-profit organization founded in 1906 and based in Washington, D.C., USA, with the stated objective "to foster the study of international law and to promote the establishment and maintenance of international relations on the basis of law and justice."

Amiable Compositeur: an Arbitral Tribunal empowered to decide a Dispute in accordance with its notions of fairness — *Ex Aequo et Bono* — according to "equity", rather than being bound to decide according to the parties' strict legal rights. The effect of empowering an Arbitral Tribunal to decide the Dispute in this way differs depending upon the Applicable Law. For example, under English law, it might rule out any possibility of an Appeal on a question of law.

Amicable Dispute Resolution (ADR): procedures which seek to resolve Disputes without involving any binding decision by a third party, such as Mediation and Conciliation.

Amici Curiae / Amicus Curiae: a person or organization not party to the Dispute but with a perspective or an interest in interjecting from which an Arbitral Tribunal might benefit in the determination of a Dispute.

A-National Arbitration: a theory that International Arbitration does not need to be governed by a national law / Procedural Laws. See Delocalization.

Ancillary Claim: a claim that is incidental to the primary claim made by a party in that it either arises from the primary claim or is otherwise connected to it.

Annulment / Annulment of Award: an instance in which an Award is nullified or set aside after a successful challenge to its validity. An Award may be annulled in whole or in part. The grounds for Annulment vary between Jurisdictions but common bases include that there is no valid Arbitration Agreement, a party has been denied procedural fairness, the Arbitral Tribunal has exceeded its authority or the Award is contrary to public policy.

Annulment Committee: an *Ad Hoc* Committee comprised of three members selected from the ICSID Panel of Arbitrators and Conciliators for the purposes of deciding on an application for the Annulment of an ICSID Award pursuant to Article 52 of the ICSID Convention. The Annulment Committee may annul an ICSID Award on five grounds:

“(a) that the Tribunal was not properly constituted;

(b) that the Tribunal has manifestly exceeded its powers;

(c) that there was corruption on the part of a member of the Tribunal;

(d) that there has been a serious departure from a fundamental rule of procedure; or

(e) that the Award has failed to state the reasons on which it is based.”

Answer to Request for Arbitration: the Respondent's Response to the Request for Arbitration in, for example, Arbitrations under the ICC Arbitration Rules. Under some other Arbitration Rules, such as the LCIA Arbitration Rules, the equivalent document is called the Response. As well as replying to the factual and legal claims made by the Claimant in the Request for Arbitration, the Answer may need to raise any Counterclaims and/or jurisdictional objections and include the Respondent's Nomination of an Arbitrator.

Antecedent Bias: see Bias.

Anti-Arbitration Injunction: an order a court or Arbitral Tribunal grants that prohibits a party from commencing or continuing Arbitration proceedings. Anti-Arbitration Injunctions are typically sought from courts on the basis that there is no valid Arbitration Agreement or the parties have not agreed to submit the particular claims to Arbitration.

Anti-Arbitration Order: see Anti-Arbitration Injunction.

Anti-Suit Injunction: an order a court or Arbitral Tribunal grants that prohibits a party from commencing or continuing court proceedings in another forum in breach of, or otherwise inconsistent with, the Arbitration Agreement.

Anton Piller Order: a search and seizure order a court or Arbitral Tribunal makes to preserve the subject matter of a claim or evidence related to the claim, by allowing the applicant's lawyers to search another party's premises and seize items covered by the order.

Appeal: a referral of an Award to a national court or, occasionally, another Arbitral Tribunal for reconsideration of the Merits. In many Jurisdictions (including those which have adopted the UNCITRAL Model Law) there is no right of appeal. England and Wales is unusual in providing a limited statutory right to appeal on a question of English law, unless the parties agree otherwise. It is common for parties to International Arbitrations to have excluded any right of Appeal and some of the well-known Arbitration Rules, such as those of the ICC and LCIA (but notably not UNCITRAL) expressly waive any right to appeal. Appeals should not be confused with Challenges, Annulment, or Set Aside.

Appellate Body: a standing body that hears Appeals against reports issued by WTO Panels in Disputes brought by WTO members. The Appellate Body can uphold, modify or reverse the legal findings and conclusions of a WTO Panel.

Applicable Law: a widely used and convenient term which means the law which applies. International Arbitrations may require the application of more than one law. See also Governing Law, *Lex Arbitri*, *Lex Fori*, *Lex Mercatoria*, and Procedural Law.

Application Lists: a matrix in the IBA Guidelines on Conflicts of Interest which provides guidance on the management of conflicts of interest and a non-exhaustive list of the types of circumstances which warrant Disqualification of an Arbitrator and/or which require disclosure of matters which may impact on the Independence or Impartiality of an Arbitrator. See Green List, Orange List, Waivable Red List, and Non-Waivable Red List.

Appointing Authority: a neutral authority, usually an Arbitral Institution or officer within an institution, designated by the parties, or having the power under the Arbitration Rules, to appoint an Arbitrator.

Appointment of Arbitrators / Appointment Procedure: the process by which persons become part of the Arbitral Tribunal. The process for Appointment of Arbitrators may be agreed to by the parties and set out in the Arbitration Agreement or may be designated in the applicable Arbitration Rules.

Apportionment of Costs: see Allocation of Costs.

Arab Investment Agreement: abbreviation for the Unified Agreement for the Investment of Arab Capital in the Arab States. A multilateral Treaty among the member states of the Arab Union, signed on 26 November 1980, with the objective of promoting investment between members of the Arab Union.

Arab Investment Court: a multilateral investment court established by the Arab Investment Agreement for the purpose of settling Disputes *“brought before it by either party to an investment which relate to or arise from application of the provisions of the Arab Investment Agreement.”* The Arab Investment Court is based at the headquarters of the Arab Union in Cairo, Egypt.

Arab Union: abbreviation for the League of Arab States. A regional organization founded in Cairo, Egypt, on 22 March 1945, currently comprised of 22 member states. The main purpose of the Arab Union, as stated in Article 2 of the Pact of the League of Arab States, is to *“draw closer the relations between member states and co-ordinate their political activities with the aim of realizing a close collaboration between them, to safeguard their independence and sovereignty, and to consider in a general way the affairs and interests of the Arab countries.”*

Arbitrability: the question of whether a particular Dispute can be resolved through Arbitration. This is usually a matter of public policy in the relevant State, and which types of Dispute (for example, bankruptcy, matrimonial and criminal matters) it wishes to reserve to the Jurisdiction of its National Courts. If a Dispute is not arbitrable under an Applicable Law (for example, the law of the agreement, the Place of Arbitration or the place of Enforcement) any Award might be unenforceable.

Arbitral: pertaining to Arbitration, such as an Arbitral Tribunal.

Arbitral Award: see Award.

Arbitral Decision: see Award.

Arbitral Institution: an organization which administers Arbitrations, usually dealing with matters such as the Appointment of Arbitrators, challenges to Arbitrators, and the fixing and payment of their remuneration. The Arbitral Institution generally does not decide the merits of the Dispute, which is a matter for the Arbitral Tribunal. Notable examples of Arbitral Institutions are the AAA, CIETAC, DIFC-LCIA, DIS, ICC, LCIA, SCC, SIAC, ICSID, ICDR, and HKIAC.

Arbitral Tribunal: the Arbitrator(s) (usually one or three) appointed to resolve the Disputes between the parties.

Arbitration: a private form of final and binding Dispute resolution by an Impartial Arbitral Tribunal, based upon the agreement of the parties but regulated and enforced by the State.

Arbitration Agreement: a contract between parties to submit their Disputes (existing and/or future) to Arbitration. Whilst such agreement usually consists of a clause(s) within another contract, it is generally deemed by the Applicable Law to be a separate agreement which will, for example, survive the termination of the contract of which it forms a part.

Arbitration and Conciliation Center of the Chamber of Commerce of Arequipa: an Arbitral Institution based in Arequipa, Peru, and established in 1993.

Arbitration and Conciliation Center of the Chamber of Commerce of Guatemala (CENAC): an Arbitral Institution based in Guatemala City, Guatemala.

Arbitration and Dispute Resolution Institute of the Oslo Chamber of Commerce: an Arbitral Institution based in Oslo, Norway.

Arbitration and Mediation Center of Bogotá (Centro de Arbitraje y Conciliación de la Cámara de Comercio de Bogotá): an Arbitral Institution established in 1983 for Arbitration and Mediation, based in Bogota, Colombia.

Arbitration and Mediation Center of the Chamber of Commerce and Industry of Benin: an Arbitral Institution based in Cotonou, Benin, and established in 2003.

Arbitration and Mediation Center of the Chilean-American Chamber of Commerce: an Arbitral Institution based in Santiago, Chile, and established in 1992.

Arbitration and Mediation Center of the Parana Chamber of Commerce (ARBITAC): an Arbitral Institution based in Paraná, Brazil, and established in 1996.

Arbitration and Mediation Centre of Paris (CMAP): an Arbitral Institution based in Paris, France, and established in 1995.

Arbitration Centre of the Chamber of Commerce of Caracas (CACC): an Arbitral Institution based in Caracas, Venezuela, and established in 1989.

Arbitration Centre of the Institute for the Development of Commercial Law and Practice (ICLP): an Arbitral Institution based in Colombo, Sri Lanka, and established in 1996.

Arbitration Centre of the Peruvian American Chamber of Commerce (AMCHAM): an Arbitral Institution based in Lima, Peru.

Arbitration Chamber of Minas Gerais (CAMARB): an Arbitral Institution based in three locations in Brazil, and established in 1998.

Arbitration Court at the Economic Chamber of the Czech Republic: an Arbitral Institution based in Prague, Czech Republic, and established in 1949.

Arbitration Foundation of Southern Africa (AFSA): an Arbitral Institution established in 1996 in Sandton, South Africa offering Mediation and Arbitration services.

Arbitration Institute of the Central Chamber of Commerce of Finland: an Arbitral Institution based in Helsinki and established in 1911, which administers domestic and International Arbitrations.

Arbitration Institute of the Stockholm Chamber of Commerce: an Arbitral Institution established in 1917 and based in Stockholm, Sweden. Commonly referred to by the acronym SCC. The neutral venue of choice for the resolution of East-West trade Disputes during the Cold War era. Since then, the SCC has emerged as a popular forum for both commercial and ISDS Disputes. The vast majority of Disputes are conducted under the SCC Arbitration Rules or the UNCITRAL Rules.

Arbitration Register: a record kept by the Secretary-General pursuant to the ICSID Convention, Chapter IV, Section 1, Art. 36 and Institution Rule 6, listing all accepted requests for Arbitration. Similar registers are kept by other Arbitral Institutions.

Arbitration Rules: the Procedural Rules pursuant to which the Arbitration is conducted.

Arbitrator: an independent person appointed by or on behalf of the parties to resolve their Dispute through Arbitration.

Arbitrator Fees: see Tribunal Fees.

Arbitrator Misconduct: poor behavior by an Arbitrator that may give rise to a challenge under the Applicable Law or Arbitration Rules. For example, many Arbitration Rules contain procedures for removing an Arbitrator based on his/her lack of Impartiality. See IBA Rules of Ethics for International Arbitrators.

Argument: when used in the context of an Arbitration, the reasoning given in support of a position. See also Devil's Advocate.

ASEAN: acronym for Association of Southeast Asian Nations.

ASEAN Free Trade Agreement (AFTA): an FTA signed on 28 January 1992, agreed to among the ASEAN member states with the objective of moving towards tariff-free trade by removing tariff and non-tariff barriers within the ASEAN bloc.

ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA): an FTA between ASEAN, Australia, and New Zealand signed at Cham, Phetchaburi, Thailand on 27 February 2009 by 12 State signatories

(Australia, Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, New Zealand, Philippines, Singapore, Thailand, Vietnam).

Asia International Arbitration Centre: an Arbitral Institution in Malaysia, established in 1978 under the auspices of the Asian-African Legal Consultative Organisation (AALCO). Previously called the Kuala Lumpur Regional Centre for Arbitration (KLRCA) and renamed in 2018.

Asia Pacific Regional Arbitration Group (APRAG): a regional federation of Arbitral Institutions and associations established in 2004, which aims to improve standards and knowledge of International Arbitration.

ASIL: acronym for the American Society of International Law.

Assignment of Arbitration Agreement: the transfer of the rights (and, under some laws, obligations) under an Arbitration Agreement. In English law, it is generally only possible to assign rights, not obligations, although the obligation to arbitrate when enforcing a right may be considered a condition attached to the right itself. There is mixed authority on what happens with regard to an Arbitration Agreement when an underlying contract containing that Arbitration Agreement is transferred. See Separability.

Association Française d'Arbitrage (AFA): an Arbitral Institution based in Paris, France, and established in 1975. In addition to administering Disputes, the AFA aims to promote Arbitration and Mediation in France and abroad.

Association of Southeast Asian Nations (ASEAN): a regional economic and political group established on 8 August 1967, currently comprised of 10 member states (Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam). The stated aims and purposes of ASEAN include to “*accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian Nations.*”

Asymmetric Arbitration Agreement: an Arbitration Agreement in which only one party (or group of parties) has the right or obligation to submit Disputes to Arbitration. See Option Clause and Option to Arbitrate.

Attachment: an Enforcement process by which the affected assets are transferred to the creditor or sold and the proceeds transferred to the creditor in satisfaction of the debt owed.

Attorney-Client Privilege: a rule that exempts certain communications between attorneys and their clients from compulsory Disclosure of Documents in legal proceedings.

Attorneys' Fees: sums charged by lawyers for providing legal services to their clients. In many cases an Arbitral Tribunal may order the unsuccessful party in an Arbitration to pay all or a portion the Attorneys' Fees of the successful party.

Audi Alteram Partem: a legal principle that all parties to a Dispute are entitled to a fair hearing and should be given the opportunity to respond to the evidence against them.

Australian Centre for International Commercial Arbitration (ACICA): an Arbitral Institution established in 1985 in Sydney, Australia to promote and facilitate the efficient resolution of commercial Disputes.

Australian Disputes Centre (ADC): an Arbitral Institution based in Sydney, Australia, and established in 1986.

Authentic Text (of a Treaty): the words of a verified version of a Treaty.

Authentication: the process of verifying or certifying an Arbitral Award. An authenticated or duly certified Award must generally be produced when a party is seeking to enforce a Foreign Award.

Autonomy: see Party Autonomy.

Award: the Award is the decision of an Arbitral Tribunal on the substantive issues (as distinct from the procedural orders or directions given as part of the process leading to the Award). Awards are often referred to as "interim," "partial," and/or "final" Awards, although, confusingly, the term "interim" is also sometimes used to mean "partial." The aptly named Interim Awards have only temporary effect and do not finally decide an issue (which can, accordingly, be revisited by the Arbitral Tribunal at a later stage of the Arbitration). A Partial Award finally decides one or more (but not all) of the issues before the Arbitral Tribunal. A Final Award decides all the issues (or all the remaining issues) and — subject to any corrections — essentially ends the Arbitration.

Bad Faith: generally means dishonest and/or otherwise intentionally unacceptable behavior without justification and/or with an intent to deceive or disrupt, although the precise meaning varies with the Applicable Law and is sometimes defined by contract. Bad faith can also relate to a party's conduct in the Arbitration including with respect to its procedure.

Bahrain Chamber for Dispute Resolution (BCDR): an Arbitral Institution based in Manama, Bahrain, and established in 2010.

Bangladesh Council for Arbitration (BCA) of the Federation of Bangladesh Chambers of Commerce and Industry (FBCCI): an Arbitral Institution based in Dakha, Bangladesh.

Barcelona Arbitration Court (TAB): an Arbitral Institution based in Barcelona, Spain, and established in 1989.

Baseball Arbitration: a type of Arbitration in which each party provides a proposed monetary amount for the claim to the Tribunal before the end of the Hearing and the Tribunal chooses between the alternative options, without the discretion to choose another result.

Beijing Arbitration Commission (BJAC): an Arbitral Institution based in Beijing, China, and established in 1995 to administer contractual and property-related Disputes.

Belgian Centre for Arbitration and Mediation (CEPANI): an Arbitral Institution which provides administrative assistance for Arbitration and Mediation proceedings. The centre is in the offices of the Federation of Belgian Enterprises in Brussels.

Bet the Company Case: a phrase used to describe matters that go to the heart of any organization. Win, and the organization continues. Lose, and the organization goes bankrupt. Sometimes referred to as a "bet the farm" case in North America where risking everything used to (and sometimes still does) mean losing all that one owns, that is, a farm.

Bias: inclination or prejudice for or against someone or something. Allegations of Bias may arise if the Arbitrator has an interest in the outcome of the proceedings, there is some link between an Arbitrator and the parties or their legal counsel or the Arbitrator has previously expressed views on a discrete issue in Dispute giving rise to an apprehension of prejudgment. Bias on the part of an Arbitrator may be grounds for his/her removal from the Arbitral Tribunal, Annulment of an Award or refusal of its Enforcement.

Bifurcated Proceeding: an Arbitration which has been divided so that some issues (such as those relating to Jurisdiction, liability, or Quantum) are determined separately from the other issues.

Bifurcation: the division and separate determination of certain issues in an Arbitration. See Bifurcated Proceeding.

Bilateral Free Trade Agreement: an agreement between two States or trading groups which typically provides each party with trade concessions in respect of goods and/or services and eliminates or limits tariffs, customs duties and other trade barriers.

Bilateral Investment Treaty (BIT): a Treaty between two States seeking to encourage the making of investments by investors of each State in the territory of the other State, including by providing for certain rights and measures of protection to investors of each Contracting State. Common provisions of BITs include guarantees against Expropriation without prompt and adequate compensation, FET, Full Protection and Security,

National Treatment and Most Favored Nations treatment. BITs often contain provisions which permit foreign investors to resolve investment Disputes with Host States through International Arbitration.

Binding Award: an Award which is enforceable by and against the parties. The requirements for an Award to be binding depend on the particular convention or legislation that applies to it.

BIT: acronym for Bilateral Investment Treaty.

BJAC: acronym for the Beijing Arbitration Commission.

BJAC Rules: Arbitration Rules promulgated by the BJAC.

Black Letter Lawyer: a term used to describe a lawyer — or Arbitrator — who adheres strictly to the letter of the law or the contract without being as concerned as some others may be with the commercial consequences. See Splitting The Baby and Commercial Lawyer.

Bona fides: see Good Faith.

British Columbia International Arbitration Centre (BCIAC): an Arbitral Institution located in Vancouver, Canada which provides ADR services including Administered Arbitrations and Mediations.

British Columbia International Commercial Arbitration Centre (BCICAC): an Arbitral Institution based in Vancouver, Canada, and established in 1986.

Brussels Convention: a convention signed by members of the European Economic Community in 1968 regarding Jurisdiction over Disputes and the recognition and Enforcement of judgments in civil and commercial matters.

Brussels Regulation: Council Regulation (EC) No 44/2001 of December 2000 on Jurisdiction and the Recognition and Enforcement of Civil and Commercial Matters. The Brussels Regulation governs which courts within EU member states have Jurisdiction over which Disputes and how judgments from the courts of one EU member state should be recognized and enforced in other EU member states.

Burden of Proof: the obligation under the Applicable Law to demonstrate the required matters to a particular standard (such as on a balance of probabilities) in order to succeed in the Dispute.

CAFTA: acronym for Central America-Mexico Free Trade Agreement.

Cairo Regional Centre for International Commercial Arbitration (CRCICA): an Arbitral Institution located in Cairo, Egypt.

Cairo Rules: the Arbitration Rules governing Arbitrations administered by the CRCICA.

Calderbank Offer: see Sealed Offers.

Calvo Clause: a clause in a contract between a foreign entity and a State or a State-controlled entity which compels the foreign entity to resolve any Dispute before the National Courts of that State and excludes recourse to International Arbitration.

Calvo Doctrine: a policy that Jurisdiction with respect to International Investment Law Disputes lies with the State in which the investment is located, meaning that claims by foreign investors against the Host State are to be made in local courts rather than through diplomatic intervention or International Arbitration.

Canada-EU Comprehensive Economic and Trade Agreement (CETA): an FTA between the EU and Canada signed on 30 October 2016.

Canadian Commercial Arbitration Center (CCAC): an Arbitral Institution based in Montreal, Canada, and established in 1986.

Capacity (legal): the legal ability of a party to, for example, enter into a valid Arbitration Agreement. Some Procedural Laws provide for the non-recognition of an Award, if the Award resulted from an agreement made by a party under some kind of incapacity.

Caribbean Community (CARICOM): a regional economic and political group established on 4 July 1973, currently comprised of 15 member states and five associate member states. CARICOM is founded on four “*main pillars: economic integration; foreign policy coordination; human and social development; and security.*”

CAS: acronym for the Court of Arbitration for Sport.

Case Law: the law as established by decisions of the courts. In common law Jurisdictions such as the United Kingdom and the USA, previous decisions create a precedent which may be binding on future courts if the same issue arises.

Case Management Conference: a procedural meeting between the parties and the Arbitral Tribunal for the purposes of establishing the future timetable and steps to be taken in the Arbitration.

Cautio Judicatum Solvi: the provision of Security for Costs by a foreign Claimant to ensure recourse in the event that the claim does not succeed.

CCJA: acronym for the Common Court of Justice and Arbitration.

CCJA Rules: Arbitration Rules promulgated by the CCJA.

Center for Arbitration, Conciliation and Mediation (CACM): an Arbitral Institution based in Maputo, Mozambique, and established in 2002.

Center for Public Resources (CPR): the old name for the International Institute for Conflict Prevention and Resolution. An independent body established in the USA to promote ADR.

Center of Mediation and Arbitration (CMEA): an ADR centre established by the Paris Chamber of Commerce and Industry in 1994.

Center of National and International Conciliation and Arbitration of the Lima Chamber of Commerce: an Arbitral Institution based in Lima, Peru, and established in 1993.

Central America-Mexico Free Trade Agreement (CAFTA): an FTA between Mexico and the Central American Common Market comprising Guatemala, El Salvador, Honduras, Costa Rica, and Nicaragua. CAFTA was signed on 22 November 2011 and entered into force on 1 September 2013.

Centre Européen d'Arbitrage (European Centre of Arbitration) (CEA): an Arbitral Institution based in Strasbourg, France, and established in 1959. Originally known as the European Court of Arbitration.

Centre for Commercial Arbitration of the Portuguese Chamber of Commerce and Industry: an Arbitral Institution based in Lisbon, Portugal, and established in 1987.

Centre for Effective Dispute Resolution (CEDR): an independent body (based in London) which provides a broad range of services in connection with ADR procedures.

Centro Boliviano de Arbitraje y Conciliación (CEBAC): an Arbitral Institution based in La Paz, Bolivia, and established in 2006.

Centro de Arbitraje de México (CAM): an Arbitral Institution based in Mexico City, Mexico, and established in 1997 with the objective of providing entrepreneurs with an alternative way to resolve commercial Disputes.

Centro de Arbitraje de México Rules: Arbitration Rules promulgated by the Centro de Arbitraje de México.

CETA: acronym for Canada-EU Comprehensive Economic and Trade Agreement.

Chair: the person appointed as the presiding member of the Arbitral Tribunal. The Chair is usually primarily responsible for managing the Arbitral process and communicating with the parties, and will generally have the casting vote in the event that each Arbitrator reaches a different decision. See also Presiding Arbitrator.

Challenge to Arbitrators: the process by which a party seeks to remove an Arbitrator from the Arbitral Tribunal. The grounds for challenge and

the procedure to be followed are often set out in Arbitration Rules and Applicable Law.

Challenge to Award: the procedures, other than an Appeal on the merits, by which Awards can be set aside or annulled in the courts of the Seat of Arbitration under the provisions of its arbitration law(s). Challenges are usually concerned with the Jurisdiction of the Arbitral Tribunal or the procedure followed. In contrast to rights of appeal, most major Jurisdictions provide rights to challenge Awards and, in many cases, the parties cannot waive such rights.

Chamber of National and International Arbitration Milan (CAM): an Arbitral Institution based in Milan, Italy, and established in 1985.

Chapter 11 Tribunals: Arbitral Tribunals constituted pursuant to Chapter 11 of the North American Free Trade Agreement to resolve investment Disputes between investors of a signatory party and the host government of another signatory party.

Charter of Economic Rights and Duties of States: a United Nations charter addressing the fundamentals of international economic relations including the economic rights and duties of States. It affirms the right of States to regulate foreign investment within their Jurisdictions and provides that no States should be compelled to grant "preferential treatment" to foreign investment.

Charter on the Association of Southeast Asian Nations: the founding instrument of the ASEAN which entered into force on 15 December 2008. Member states include Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

Chartered Institute of Arbitrators (CIArb): a not-for-profit UK registered charity which provides training and education for Arbitrators, Mediators, and adjudicators.

Chicago International Dispute Resolution Association (CIDRA): an Arbitral Institution based in Chicago, USA.

China International Economic and Trade Arbitration Commission (CIETAC): an international Arbitral Institution, based in Beijing, China, but with sub-commissions elsewhere in China, with its own rules and panel of Arbitrators.

China Maritime Arbitration Commission (CMAC): an Arbitral Institution based in Beijing, China, and established in 1959, which focuses on maritime disputes.

China-Japan-Korean Trilateral Investment Agreement: agreement between China, Japan and South Korea for the promotion, facilitation and protection of investments signed on 13 May 2012.

Chinese Arbitration Association, Taipei (CAA): an Arbitral Institution based in Taipei, Taiwan, and established in 1955.

Chinese European Arbitration Centre (CEAC): an Arbitral Institution based in Hamburg, Germany, and established in 2008 as a means to foster European trade with China.

Choice of Forum: the selection of the type of Dispute resolution (for example, Arbitration or litigation) and, in litigation, usually also the Jurisdiction in which the Dispute is to be resolved, for example, the parties may agree to confer exclusive Jurisdiction on the National Courts of a particular State.

Choice of Law: the selection of a law to apply, usually as the Governing Law for an agreement. The law may be designated by the parties in their agreement or it may be determined by applying Conflict of Laws Rules or by Voie Directe.

Choice of Law Clause: a clause of a contract which designates the law to apply, usually as the Governing Law of the contract.

Chorzów Factory Principle: principle under international law established by the Permanent Court of International Justice in *Factory At Chorzów, Germany v Poland*, Order, Indemnity, (1928) PCIJ Series A No 17, ICGJ 256 (PCIJ 1928) that a State is subject to an obligation to make full reparation in respect of all harm it has caused by its wrongful acts under international law.

CICA: acronym for the Court of International Commercial Arbitration Attached to the Chamber of Commerce and Industry of Romania.

CICA Rules: Arbitration Rules promulgated by the CICA.

CIETAC: acronym for China International Economic and Trade Arbitration Commission.

CIETAC Rules: Arbitration Rules promulgated by the CIETAC.

CIS: acronym for Commonwealth of Independent States.

CIS Investor Rights Convention: abbreviation for the Moscow Convention on the Protection of the Rights of the Investor.

CJEU: acronym for the Court of Justice of the European Union.

Claim Preclusion: the principle that the effect of an Award is to finally resolve the claims and issues that are the subject of the Award, so that they cannot be determined again. See also *Res Judicata*.

Claimant: the party who commences or initiates the proceeding.

Claims Commission: in international law, an *ad hoc* judicial commission established by Treaty specifically for the purpose of hearing large numbers of legal claims in respect of harm caused by international legal wrongs. Examples include the Iran-United States Claims Tribunal, Eritrea-Ethiopia Claims Commission, and the American-Mexican Claims Commission.

Class Action Arbitration / Class Arbitration: a type of Arbitration recognised in, for example, the United States, in which one or more named Claimants commence an Arbitration on behalf of a group of other similarly situated individuals to pursue related claims against the same Respondent. Class Arbitrations enable a large number of small claims that may not otherwise be economical to pursue individually to be heard and determined efficiently in a single set of proceedings.

Clean Hands Doctrine: the equitable principle that a Claimant may be refused the remedy it is seeking if it has acted improperly.

Closure of Proceedings: the date beyond which parties are not permitted to make further Submissions, submit evidence, or otherwise argue their case.

CoE: acronym for the Council of Europe.

Collateral Estoppel: a doctrine recognised in some Jurisdictions that prevents parties from re-litigating an issue of law or fact that has already been decided.

Coming Into Force: the date or process by which legislation, a Treaty, or other legal instrument attains legal force and effect.

Commercial Arbitration: Arbitration that arises out of commercial transactions, normally between private parties but sometimes also involving States or State-controlled entities (as distinct from Investor-State Arbitration).

Commercial Arbitration Centre for the States of the Co-operation Council for the Arab States of the Gulf: an Arbitral Institution based in Manama, Bahrain, and established in 1995.

Commercial Conciliation and Arbitration Centre of the Chamber of Commerce, Services and Industry of Santa Cruz (CAINCO): an Arbitral Institution based in Santa Cruz, Bolivia, and established in 1993.

Commercial Lawyer: as well as being a generic description of a lawyer who works on commercial matters (rather than, for example, criminal or family matters), the term is often used to describe a lawyer who is believed to advise and/or decide, more than some, in accordance with commercial aims and drivers. See also Splitting The Baby and Black Letter Lawyer.

Commercial Mediation and Arbitration Center at the Argentine Chamber of Commerce (CEMARC): an Arbitral Institution based in Buenos Aires, Argentina, and established in 1992.

Commission for Conciliation, Mediation and Arbitration (CCMA): an Arbitral Institution based in Johannesburg, South Africa.

Common Court of Justice and Arbitration (CCJA): an Arbitral Institution based in Abidjan, Ivory Coast, and established in 1998, which supervises regional Disputes in members of the OHADA.

Common Market for Eastern and Southern Africa (COMESA): a regional economic free trade area among 19 member states in Eastern and Southern Africa. COMESA was founded by way of the COMESA Treaty in December 1994 “as an organisation of free independent sovereign states which have agreed to co-operate in developing their natural and human resources for the good of all their people.” Its secretariat is based in Lusaka, Zambia, and the COMESA Court of Justice is based in Khartoum, Sudan.

Commonwealth of Independent States (CIS): an informal confederation of post-Soviet States established on 8 December 1991 (shortly before the dissolution of the Soviet Union on 25 December 1991), currently comprised of 11 member states (Azerbaijan, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, and Ukraine).

Comparative Public Law: the study of administrative, constitutional, and international law from the perspective of different States, systems, and institutions.

Compensation: generally refers to monetary payment made in respect of losses suffered or omissions of the Respondent.

Compensatory Damages: Damages which seek to make good the loss suffered.

Competence-Competence: the legal doctrine by which an Arbitral Tribunal can decide upon its own Jurisdiction, even if the contract containing the Arbitration Agreement is invalid or has been terminated.

Composite Act: a principle of international law whereby multiple actions or omissions of a State together, in aggregate, can amount to a single wrongful “composite” act in breach of international law.

Compound Interest: interest calculated on the basis of both the principal and the accumulated interest outstanding (*i.e.*, interest on interest).

Comprehensive Investment Agreement (ASEAN): the MIT for ASEAN member states, which entered into force on 29 March 2012. It replaces

the earlier ASEAN investment agreements, including the 1987 ASEAN Agreement for the Promotion and Protection of Investments.

Concession Agreements: agreements, common in the oil and gas sector, whereby private parties are granted the right to operate public services for limited periods.

Concession Contracts: see Concession Agreements.

Conciliation: a form of ADR, similar to Mediation, whereby an independent third party "conciliator" assists the parties in attempting to settle their Dispute. A conciliator cannot force parties to settle but may be requested to express its opinion on the possible outcome of any legal proceedings.

Conciliation and Arbitration Centre of the Argentinian Brazilian Chamber of Commerce of Sao Paulo: an Arbitral Institution based in Sao Paulo, Brazil.

Conciliation and Arbitration Centre of the Chamber of Commerce and Industry of Tegucigalpa: an Arbitral Institution based in Tegucigalpa, Honduras, and established in 2001.

Conciliation and Arbitration Centre of the Chamber of Commerce of Cochabamba: an Arbitral Institution based in Cochabamba, Bolivia.

Conciliation and Arbitration Centre of the Chamber of Commerce of Costa Rica (CICA): an Arbitral Institution based in San José, Costa Rica, and established in 1999.

Conciliation and Arbitration Centre of the Chamber of Commerce of Uruguay (International Court for MERCOSUR): an Arbitral Institution based in Montevideo, Uruguay.

Conciliation and Arbitration Centre of the Chamber of Commerce, Industries and Agriculture of Panama: an Arbitral Institution based in Panama City, Panama.

Conciliation and National and International Arbitration of the Chamber of Commerce and Production of Piura: an Arbitral Institution based in Piura, Peru.

Conciliation Service at the Chamber of Commerce and Production of Santiago: an Arbitral Institution based in Santiago, Dominican Republic.

Conciliation, Arbitration and Amicable Composition Centre of the Chamber of Commerce of Medellín: an Arbitral Institution based in Medellín, Colombia, and established in 1993.

Conciliation, Mediation and Arbitration Commission (CMAC): an Arbitral Institution based in Mbabane, Swaziland, and established in 2001 for the resolution of labour Disputes.

Concurrent Expert Evidence: the presentation or testing at a Hearing of the evidence of both sides' Experts at the same time. See also Hot-Tubbing and Witness Conferencing.

Concurrent Hearings: Hearings in separate Arbitrations which take place at the same time, before the same Arbitral Tribunal.

Concurring Opinion: the view of an Arbitrator that is shared by another member of the Arbitral Tribunal but based on different or additional reasons. See Dissenting Opinion.

Condition Precedent to Arbitration: a step which must be taken or an event which must take place before a Dispute can properly be referred to Arbitration. For example, a Multi-Tiered Dispute Resolution Clause may require the parties first to enter into negotiations or Mediation. Whether matters stipulated as taking place prior to an Arbitration affect the Tribunal's Jurisdiction is often the subject of debate.

Confidentiality: the concept of keeping information within a restricted group, for example, not disclosing it beyond those directly involved in the Arbitration or, sometimes, keeping it within an even more restricted group, such as legal counsel only. Whether the Arbitration is confidential is a matter governed by the Applicable Law and any relevant Arbitration Rules.

Conflicts of Interest: competing or incompatible loyalties, concerns or aims, such that a person may not be Independent or Impartial. See also the IBA Guidelines on Conflict of Interest in International Arbitration as well as Impartiality.

Conflict of Jurisdiction: a clash between the Jurisdiction of two or more legal fora, such as Arbitral Tribunals and National Courts.

Conflict of Laws: the resolution of which law should apply.

Conflict of Laws Rules: the legal rules in each Jurisdiction by which the Applicable Law is determined.

Consecutive Submissions: Pleadings or other oral or written statements made one after the other (with a gap in between) rather than concurrently.

Consent: an expression of agreement.

Consent Award: an Award recording the terms agreed by the parties to settle their Dispute. The principal advantage of obtaining a Consent Award rather than just a Settlement Agreement is that, if not complied with, it may be enforced as with any other award (whereas a settlement agreement is merely a contract).

Consent to Arbitration: the clause or process by which parties indicate their agreement that relevant Disputes be submitted to Arbitration rather than — for instance — National Courts.

Conservatory Measure: an Interim Measure, ordered by a court or Arbitral Tribunal before a Final Award is rendered, ordering a party to preserve certain assets or evidence.

Consolidation: combining two or more Arbitrations into a single proceeding. See also Joinder.

Consolidation Tribunal: in cases in which multiple Disputes exist in relation to the same or related matters (e.g., multiple foreign investors making separate Investment Treaty claims against a Respondent State, each investor alleging breach in respect of the same policy/measure), some Arbitration Rules provide for the claims to be consolidated into a single set of proceedings, heard before a single Arbitral Tribunal, known as the "Consolidation Tribunal."

Constitution of Arbitral Tribunal: the completion of the appointment of the Arbitrators forming the Tribunal.

Contingent Forms of Protection: in the context of BITs, a form of protection that depends upon the Host State's actions in offering protections or treatment to investors. For instance, an investor benefitting from an MFN clause would only be afforded a particular standard of protection to the extent the Host State actually grants preferential treatment to investors from another nation. This protection is accordingly contingent on the Host State's actions.

Continuing Breach: an ongoing contravention of an obligation or duty.

In the context of international law, this can refer to a principle whereby the Continuing Breach of an international legal obligation by a State is deemed to give rise to a remedy from the point that the continuing act is first committed by the State over the entire period during which it continues and remains not in conformity with the international legal obligation.

Continuing-Effects Clause: a Treaty provision that stipulates that certain requirements will still apply even after the Treaty's termination. In the context of BITs, a Continuing-Effects Clause may stipulate that investments made prior to the Treaty's termination will continue to benefit from the Treaty's protections for a certain period. See also Survival Clause.

Continuous Nationality: a principle of international law, both in the law of diplomacy and International Investment Law, that a person (natural or legal) seeking a remedy under international law (either by way of diplomatic protection or with direct locus standi) must enjoy the same nationality at different relevant times.

Contract Claims: claims based on the alleged non-performance of contractual obligations.

Contracting State: a State that is party to a Treaty.

Convention: a Treaty instrument, typically of a multilateral nature, entered into between States (each State often referred to as a high contracting party) in recognition of the exercise of their sovereign treaty-making power (as opposed to contracting on a commercial basis).

Convention on the Law Applicable to Contractual Obligations: see Rome Convention.

Convention on the Recognition And Enforcement of Foreign Arbitral Awards (New York Convention): a convention, adopted on 10 June 1958 and in force since 7 June 1959, providing for the mutual recognition and Enforcement of foreign Arbitral Awards. There are over 150 State parties to the New York Convention.

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention): a Treaty that provides for mutually recognised methods for the service of legal documents in foreign States in civil and commercial matters without the need for the use of diplomatic channels.

Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington Convention) (ICSID Convention): the Convention which underpins ICSID and provides for the administration of Arbitration and Conciliation proceedings under the auspices of ICSID, part of the World Bank in Washington, D.C., USA.

Convertible Currencies: currencies that can be freely exchanged into other currencies. BITs often provide that Damages must be paid in such currencies.

Cooling Off Period: the time after a Dispute has been notified and before the parties may commence Arbitration. A Cooling Off Period is sometimes provided for in a contract or a Treaty on the basis that the parties should use that time to attempt to reach an amicable settlement.

Corporate Liability: liability of a company, corporation or other legal person for the acts and omissions of natural persons employed by it, acting on its behalf, or otherwise under its direction.

Correction of Award: the amendment of an Award, after its publication, to correct clerical mistakes or accidental slips, or to clarify or remove any ambiguity.

Corruption: Fraud, dishonesty, or illegal behaviour, often involving the payment of a bribe, which may taint the basis for a claim and, therefore, depending on its nature and timing, cause an Arbitral Tribunal to dismiss a claim, or otherwise cite the Corruption as affecting the outcome of the Dispute.

Costs Award: an Award concerning the fees and expenses incurred in connection with the Arbitration.

Costs of the Arbitration: the fees and expenses incurred in connection with the Arbitration, such as the fees and expenses of the lawyers, the Arbitral Tribunal, any Arbitral Institution, Experts, witnesses, and the costs of Hearing facilities, interpreters, translators, and reporting services.

Depending upon the Applicable Law, Arbitration Rules, and the discretion of the Arbitral Tribunal, the successful party will often be awarded all or part of its Costs of the Arbitration. Although possible in limited circumstances, parties will not normally recover sums in respect of their management and employee time engaged on the Arbitration.

Costs Sanction: the requirement that a party pay some of the Costs of the Arbitration to penalize it for reprehensible behaviour in connection with the Arbitration.

Costs Submission: a Submission regarding the allocation of some or all of the Costs of the Arbitration.

Council of Europe (CoE): a multilateral regional organization founded by way of the Statute of the Council of Europe, signed in London on 5 May 1949. The CoE is currently comprised of 47 member states, and is headquartered in Strasbourg, France. The ECtHR, which enforces the ECHR, is one of the bodies of the CoE.

Counterclaim: a claim or set of claims the Respondent raises against the Claimant. Any Counterclaim is generally made at the same time as the Statement of Defence, subject to the Arbitration Rules.

Counter-Memorial: a Memorial submitted in response to another Memorial.

Court Assistance: the intervention of a national court in support of an Arbitration. Parties may, for example, seek Court Assistance to constitute the Arbitral Tribunal, obtain evidence, or enforce the Arbitral Tribunal's Award.

Court of Arbitration at the Zurich Chamber of Commerce: an Arbitral Institution based in Zurich, Switzerland, and established in 1911.

Court of Arbitration Attached to the Hungarian Chamber of Commerce and Industry: an Arbitral Institution based in Budapest, Hungary, and established in 1949.

Court of Arbitration for Sport (CAS): an Arbitral Institution which specialises in the resolution of legal Disputes in the sports industry. The CAS, based in Lausanne, Switzerland, was initially created in 1984 (by the International Olympic Committee), and it underwent a major reform in 1994 (pursuant to the agreement concerning the constitution of the International Council of Arbitration for Sport, known as the "Paris Agreement").

Court of Arbitration of the Polish Chamber of Commerce – “Sąd Arbitrażowy przy Krajowej Izbie Gospodarczej” (SAKIG): an Arbitral Institution based in Warsaw, Poland, and established in 1950 to resolve Disputes arising from international trade relations.

Court of Arbitration to the Confederation of Employers and Industrialists in Bulgaria (KRIB): an Arbitral Institution based in Sofia, Bulgaria, and established in 2014.

Court of International Commercial Arbitration Attached to the Chamber of Commerce and Industry of Romania (CICA): an Arbitral Institution based in Bucharest, Romania, and established in 1953 for the settlement of foreign trade Disputes.

Court of Justice of the European Union (CJEU): see European Court of Justice.

Covered Investment: an investment that falls within the scope of a BIT or MIT or agreement.

CPR: acronym for the International Institute for Conflict Prevention & Resolution.

CRCICA: acronym for the Cairo Regional Centre for International Commercial Arbitration.

Creeping Expropriation: over a period of time, a series of acts or omissions by a Host State which, taken together, are of equivalent effect to an Expropriation.

Cross-Examination: the questioning of a witness at a Hearing by the party which did not present the witness.

Crystallization (of a Cause of Action, Claim or Dispute): the point at which all the necessary elements of the Cause, Action, Claim, or Dispute are present. For example, for some torts, the Cause of Action crystallizes when the damage is suffered. In International Investment Law, the benefit of substantive protections under an Investment Treaty may be expressly limited by the Treaty in question to Disputes or claims arising after its Entry Into Force. Consequently, if an investor alleges Continuing Breach by a Respondent State, and a temporal limit applies, the Dispute must have crystallized at the appropriate time in order for the applicable Arbitral Tribunal to have Jurisdiction over the Treaty claim.

Cultural Norms: the social attitudes and behavioral patterns of particular nationalities or groupings. In International Arbitration cultural expectations can affect many parts of the dispute resolution process (from evidence to Hearings to Submissions to interactions with opposing parties, lawyers and arbitrators and even settlement). See International Arbitration Norms.

Curial Law: the Procedural Law.

Customary International Law: one of the sources of international law under the International Court of Justice Statute (Article 38(1)(b)), defined as "evidence of a general practice accepted as law."

Damages: a sum of money claimed by a party or ordered to be paid by an Arbitral Tribunal.

Danish Institute of Arbitration: an Arbitral Institution based in Copenhagen, Denmark, and established in 1981.

Declaration: a decision (for example, in an Award) which merely determines the rights of the parties, without ordering any action or payment to be made by either of them.

Also a treaty instrument by which the parties do not intend to create binding obligations but merely wish to set out certain aspirations, enter into an informal understanding, or use such an instrument to explain how certain (binding) treaty obligations ought to be interpreted.

Also sometimes used to describe non-binding treaties that have evolved to assume binding characteristics under Customary International Law, such as the 1948 Universal Declaration of Human Rights.

Declaratory Relief: the remedy of a Declaration.

Default: a failure to do something that is required. See also Default Award and Default Judgment.

Default Award: an Award rendered against a party who did not participate in the Arbitration or who stopped participating before the end of the Arbitration is sometimes referred to as a Default Award. However, unlike a Default Judgment, in order to obtain any Award, the Claimant must still prove its case, and the fact that a Respondent does not defend the Claim is not enough.

Default Judgment: a judgment a court enters against a Defendant who did not defend the claim against them.

Default Proceedings: an Arbitration that takes place or continues in the absence of one or more parties.

Defence: the Respondent's case in Answer to the claims made against it. See also Statement of Defence.

In Arbitration, the nature and scope of the Defence varies but will typically include both the legal arguments and evidence in support.

Defence to Counterclaim: the Defence of a Claimant to a Counterclaim made by a Respondent.

Defendant: see Respondent. In court proceedings the Respondent is often called the Defendant.

Deliberation: the process through which the Arbitral Tribunal discusses and reaches its decisions.

Delocalization: a theory that seeks to detach the Arbitration proceedings from any national law, in particular the laws of the Seat of Arbitration.

Demand For Arbitration: the document a party submits to commence Arbitration.

Arbitration Agreements, Arbitration Rules, and/or Applicable Law stipulate the requirements for the commencement of Arbitration under the relevant system, and give the document required different names. See also Request for Arbitration and Notice of Arbitration.

Denial of Benefits Clause: a provision in Investment Treaties that allows a Host State to deny the benefits of investment protection to certain investors, for example, if they do not have any substantial business activities in the Host State.

Denial of Justice: a situation in which the judicial process is not properly administered, such that a party is not treated fairly.

Denunciation: the act by which a State announces its withdrawal from a Treaty.

Dépeçage: a situation in which different laws govern different obligations under a contract.

Deposit: a (typically monetary) payment made by one contractual party to a counterparty or third party (the Depositary) in order to guarantee by way of security the performance (by the payor itself or third party) of a contractual obligation, which is subject to forfeit should the payor fail to perform the obligation in question.

A sum paid to an Arbitral Institution as an Advance on Costs is often referred to as a Deposit.

Depositary: a natural or legal person (such as an Arbitral Institution) that holds a Deposit.

Deposition: a process, commonly used in the United States, by which a witness gives testimony (out-of-court or out-of-Hearing) which is reduced to writing for later use in court or Arbitration Hearings.

Designation of Arbitrator: the proposal of an Arbitrator for confirmation or appointment by an Arbitral Institution. See also Nomination of Arbitrator.

Devil's Advocate: a form of Argument in which one adopts a position with which one does not agree simply for the purposes of exploring the other side's position further.

DIAC: acronym for Dubai International Arbitration Centre.

DIAC Rules: Arbitration Rules promulgated by the DIAC.

DIFC-LCIA Arbitration Centre: an Arbitral Institution opened in February 2008 as a joint venture between the LCIA and the Dubai International Financial Centre (DIFC), a separate legal jurisdiction in Dubai.

DIFC-LCIA Rules: Arbitration Rules promulgated by the DIFC-LCIA Arbitration Centre, but heavily based on the LCIA Rules.

Diplomatic Immunity: the Immunity afforded to foreign diplomats and State assets.

Diplomatic Protection: the ability, under international law, for a State to take diplomatic action against another State on behalf of its national who has been injured by that other State.

Direct Control: the close control which an investor may need to have over an investment in order to obtain the benefits of treatment standards under an Investment Treaty.

Direct Damages: losses suffered as a natural and immediate result of a breach of obligation or duty.

Direct Damages are to be distinguished from consequential (sometimes called indirect) Damages.

Direct Examination: the initial questioning of a witness at a Hearing, conducted by the party who has offered the witness. In International Arbitration, normally, the Witness Statement stands largely in lieu of Direct Examination.

Direct Expropriation: Expropriation which is not Creeping Expropriation or Indirect Expropriation.

DIS: acronym for German Institution of Arbitration.

DIS Rules: Arbitration Rules promulgated by the DIS.

Disbursements: another word for costs which is often used to distinguish between the fees for a service and the costs (Disbursements) incurred ancillary to the provision of that service. For example, a lawyer may charge the client an hourly rate (fees) plus Disbursements (such as travel costs).

Disclosure of Documents: the process by which the parties make available to each other certain documents in their possession, custody, or control which are relevant to the Dispute.

There is a range of possibilities as to the extent of Disclosure of Documents (from none to all relevant documents) and, absent agreement of the parties, the order made is usually a matter for the discretion of the Arbitral Tribunal (which may be influenced by the legal traditions of the Jurisdiction to which each Arbitrator belongs — civil law Jurisdictions generally having far more restricted Disclosure of Documents than common law Jurisdictions). The obligation to disclose normally arises whether or not the documents are damaging to the position of the party handing them over. Also referred to as Discovery.

Discontinuance: the ending of an Arbitration or court proceeding before an Award or judgment.

Discounted Cash Flow: an income-based approach to asset valuation involving the sum of future cash flows projected for a certain period of time, to which a discount rate is applied.

Discovery: see Disclosure of Documents.

Dispositive Motions: an application to a court or Arbitral Tribunal which seeks to dispose of a claim, Defence, or issue without the need for further proceedings.

Dispute: an argument or disagreement between parties. In some Jurisdictions, a Dispute has been considered a necessary precondition to Arbitration. There have therefore been many debates as to whether parties are truly in Dispute if, for example, there is clearly a correct answer that can easily be established, such as the winner of a particular race. For this reason, the scope of an Arbitration Agreement is often expressed to cover, for example, disagreements, controversies, or claims, as well as Disputes.

Dispute Resolution Clause: a provision in a contract setting out the mechanisms and terms for the resolution of Disputes.

Disqualification Procedure: in relation to an Arbitrator, the procedure by which the Arbitrator may be removed from the proceedings, for example, due to a lack of Impartiality, Independence, or required qualifications.

Dissenting Opinion: the view of an Arbitrator not shared by the majority of the Arbitral Tribunal.

A Dissenting Opinion is usually attached to an Arbitral Award for the parties' information, although it does not affect the result of the Arbitration, which is determined by the majority (or, in the absence of a majority, the president's) opinion.

Document Production: see Disclosure of Documents and Discovery.

Documents-Only Arbitration: an Arbitration in which there is no in-person Hearing and the Award is rendered by the Arbitral Tribunal based on the documents submitted by the parties.

Doha Round: a series of international negotiations held until 2016 between WTO member states aimed at reforming the international trade system by further lowering trade barriers and revising existing trade rules.

Domestic Arbitration: some Jurisdictions distinguish between "international" and "domestic" Arbitrations, according to criteria such as the nationality or Domicile of the parties, the nature of the Dispute and the place of performance of the underlying contract.

The importance of the distinction lies in the different rules that are applied to the two categories (for example, the distinction sometimes affects the ability of the parties to Set Aside, remit, or Appeal an Award).

Domestic Award: an Arbitral Award made in the territory of a State where the recognition and/or Enforcement of such an Award are sought.

Domicile: the place where a party has its fixed, principal, and permanent home, for legal purposes, as defined by the Applicable Law.

Dominican Republic - Central America Free Trade Agreement (DR-CAFTA): a multilateral FTA signed in August 2004 between the United States, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic, aimed at progressively eliminating most tariffs, customs duties, and other trade barriers on products and services circulating between Contracting States. It also includes an investment chapter. It entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006, for the Dominican Republic in 2007, and for Costa Rica in 2009.

Double Exequatur: a legal requirement that an Award be confirmed in the courts of the Seat of Arbitration (first Exequatur) before it can be recognized and enforced abroad (second Exequatur). The New York Convention eliminates Double Exequatur.

Double Recovery: a situation when a party is compensated for the same damaging event more than once, therefore obtaining compensation in excess of what is required to make it whole.

Draft Articles on Responsibility of States for Internationally Wrongful Acts: a set of rules provisionally adopted by the ILC in 1996 codifying existing rules of international State Responsibility. Further revision led to the unanimous Adoption by the UNGA of the Articles on Responsibility of States for Internationally Wrongful Acts in 2001.

Dubai International Arbitration Centre (DIAC): an Arbitral Institution based in Dubai, UAE, and established in 1994. DIAC is a non-profit institution that is independent in its operations from both the Government of Dubai and the Dubai Chamber of Commerce & Industry.

Dublin International Arbitration Centre: an Arbitral Institution based in Dublin, Ireland.

Due Diligence: the application of the degree of prudence and care to be expected from a reasonable person under the particular circumstances.

Due Process: the proper application of a procedure so as to ensure fair treatment of the parties and, for example, a proper opportunity for each to be heard.

A lack of Due Process may give rise to a right to challenge the procedure being followed or its outcome (such as an Award).

Duress: unlawful pressure exerted upon a person to persuade him/her to act contrary to his/her wishes and/or interests.

In some Jurisdictions, an Arbitration Agreement entered into under Duress may be null and void.

ECHR (Court And Convention Article 1, Protocol 1): acronym for European Convention on Human Rights (formal title: The Convention for the Protection of Human Rights and Fundamental Freedoms).

ECJ: acronym for European Court of Justice.

Economic Integration Agreement: a multilateral agreement among States, typically from a specific geographic region, to reduce and/or abolish tariff and non-tariff measures among signatory States.

Economy and Efficiency: an appropriate balance of time, cost, and quality.

ECT: acronym for Energy Charter Treaty.

ECtHR: acronym for European Court of Human Rights.

EEA: acronym for European Economic Area.

EEX Treaty: abbreviation for the Brussels Convention.

Effet Utile: a principle of statutory and contractual interpretation, which requires that, between alternative interpretations, the legislation should be interpreted so that that the provision achieves the objective of the legislation (by contrast to an interpretation that will render the provision meaningless or superfluous).

EFTA: acronym for European Free Trade Association.

Ejusdem Generis Rule: a rule of interpretation, literally meaning “of the same kind.”

If a list of specific items belonging to the same category is immediately followed by a general descriptor, that general descriptor is treated as applying only to items falling within the same category as the earlier specific items.

For example, applying this principle, “cars, motorbikes, trucks and other motorized vehicles” may not include helicopters on the basis that “other motorized vehicles” in this context refers only to land-based vehicles.

Electa una via: see Fork In The Road Provision.

Electronic Information System for International Law (EISIL): an open database (developed by ASIL) of authenticated primary and other materials across the breadth of international law, dating back to 1906.

Emergency Arbitrator: an Arbitrator appointed by an Arbitral Institution on an urgent basis specifically to deal with an application for Interim Relief which cannot wait for the constitution of the Arbitral Tribunal that is to deal with the substantive Dispute between the parties.

Emirates Maritime Arbitration Centre (EMAC): an Arbitral Institution based in Dubai, UAE, which provides maritime Arbitration services.

Energy Charter Conference: a multilateral inter-governmental organization whose member states convene to discuss matters of energy cooperation under the framework of the 1994 ECT. Chairmanship of the Energy Charter Conference rotates annually among the member states of the Conference.

Energy Charter Secretariat: an administrative body staffed by nationals drawn from the member states of the Energy Charter Conference which monitors implementation of the 1994 ECT, organizes and administers meetings of the Energy Charter Conference, and generally assists the Energy Charter Conference in performing its duties under the ECT. The Energy Charter Secretariat is based in Brussels, Belgium, and is headed by a Secretary-General who holds that position for a maximum term of five years.

Energy Charter Treaty (ECT): a multilateral international Treaty establishing a legal framework for energy trade, transit, and investment within and between its signatories. ECT provides certain protections for investments falling within the scope of the ECT. The ECT was signed in December 1994 and generally entered into force in April 1998.

Enforceability: the potential for forcing compliance with, for example, an Award (in that case, through National Courts).

Enforcement: the process for forcing compliance with, for example, an Award (in that case, through National Courts).

English Arbitration Act of 1996: the primary legislation for England, Wales, and Northern Ireland setting out their Procedural Law for Arbitration. The English Arbitration Act entered into force on 31 January 1997.

Entry Into Force: the point at which something (for example, Arbitration Rules or a contract) becomes operative.

As regards treaties, Article 24 (1) & (2) (*Entry into force*) of the VCLT provides that:

- “1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.*
- 2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.”*

Entry-of-Judgment Clause: a provision, usually in an Arbitration Agreement, by which the parties agree that a judgment upon an Award may be entered in any court having Jurisdiction over the Award.

Equal Treatment: the fair and even-handed application of, for example, Arbitration Rules, as between all the parties to an Arbitration.

For example, Article 18 “Equal Treatment of Parties” of the Model Law provides that the “parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.”

Equality of Arms: each party to a Dispute having an equivalent opportunity to present its case, so as to have a fair balance between the parties. For example, if one party has significantly more resources at its disposal than another, Equality of Arms may be assisted by limiting the Submissions that are permitted.

Equality of Parties: see Equal Treatment.

Equity Clauses: see Amiable Compositeur.

Error of Fact: a mistake of fact, for example made by an Arbitral Tribunal with respect to the facts of the case.

Error of Law: a mistake of law, for example made by an Arbitral Tribunal with respect to the substantive law.

Escalation Clause: see Multi-Tiered Dispute Resolution Clause.

Essential Security: a legal doctrine a State invokes to limit the application of substantive treaty obligations. The Essential Security exception is often examined together with the Customary International Law principle of Necessity.

EU: acronym for European Union.

European Convention on Human Rights (ECHR): a multilateral Treaty signed in Rome, Italy on 4 November 1950 among the members of the CoE, adopted with the aim of “*securing the universal and effective recognition and observance*” of the human rights set forth within the text of the Treaty.

European Convention on International Commercial Arbitration: a multilateral Treaty regulating certain aspects of international Arbitral proceedings, which entered into force in 1964. The Treaty has 31 signatories, including most EU member states and several non-EU members such as the Russian Federation.

European Convention on State Immunity: a Convention that aims to establish common rules relating to the scope of the immunity of a signatory State from the Jurisdiction of the courts of another signatory State. It entered into force in 1976 and its signatories currently include: Austria, Belgium, Germany, Luxembourg, Netherlands (for the European Netherlands), Switzerland, and the United Kingdom.

European Court of Human Rights (ECtHR): a supra-national court established by the CoE and based in Strasbourg, France. This court hears applications alleging that a Contracting State has breached one or more human rights provisions set out in the ECHR. An application can be submitted by an individual or by one of the Contracting States.

European Court of Justice (ECJ): the highest court in the EU, established in 1952 and based in Luxembourg. The Court has three exclusive areas of responsibility: (1) interpretation of the treaties of the EU; (2) final determination on the validity and interpretation of legislative acts of the EU; and (3) determination as to whether an action by (a) any member state, (b) the European Commission, or (c) CoE, is in accordance with EU law.

European Economic Area (EEA): a free trade area among the 28 member states of the EU and three of the four EFTA States (Iceland, Liechtenstein, and Norway), founded on 1 January 1994 by way of the Agreement on the European Economic Area.

European Free Trade Association (EFTA): a regional free trade association formed in 1960 with seven founding members (that increased to a membership of 10 when Finland, Iceland, and Liechtenstein subsequently joined). Only four member states remain — Iceland, Liechtenstein, Norway, and Switzerland — the other States having left EFTA to join the EU.

European Union (EU): a political and economic union of member states that came into being in its present form on 1 November 1993 with the

passing of the Treaty of Maastricht. The organs of the EU include the European Commission (the executive branch, together with the CoE), the European Parliament (the legislative branch), and the ECJ (the judicial branch).

EVEX Convention: a name given to the Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters entered into between the then 15 EU member states in 1988.

Evidentiary Hearing: a Hearing at which the Arbitral Tribunal considers factual matters and witnesses may be cross-examined. Typically the parties' representatives will also make legal Submissions at these Hearings. See, by way of contrast, Jurisdiction Hearing.

Ex Aequo et Bono: a Latin term meaning "*according to the right and good,*" used to describe the concept according to which parties grant an Arbitral Tribunal the power to depart from the strict application of legal rules and decide the Dispute based on what it considers to be fair and equitable in the case at hand. See also Amiable Compositeur.

Ex Officio: a Latin term which literally means "*from the office.*" Ex Officio is sometimes used to describe a situation in which an Arbitral Tribunal, for the purposes of its role in determining a Dispute, acts without the request of any party, for example, applying legal principles or investigating facts on its own.

Ex Parte Application: an application made by one party to the proceedings without notice to the other side (typically because the application seeks urgent Interim Relief which may be thwarted if the other side has notice of it). Whilst common in applications to court for orders freezing assets, for example, *Ex Parte* applications are the exception in Arbitration.

Ex Parte Communications: oral or written communications between a party and, for example, a prospective Arbitrator, without the involvement of the opposing party or parties. *Ex Parte* Communications with an Arbitral Tribunal are generally not permitted.

Ex Parte Orders: an order granted without notice of the application for an order being given to the party against whom the order is made. Whilst common in relation to, for example, court orders freezing assets, *Ex Parte* Orders are generally not permitted in Arbitration.

Exceptions (to Treaty Obligations): an exception to a Treaty has the effect of permitting the State which benefits from the exception to conduct itself in a manner that *but for the exception* would be contrary to the Treaty obligation in question. Treaty exceptions often concern matters of essential security interests, preservation of public health, maintenance of internal stability / public order, or fiscal regulatory measures.

Exchange of Letters / Notes: a formal process by which treaty-making States may express their Consent to be bound by the articles of a Treaty. In this regard, Article 13 of the VCLT provides that:

“The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

- (a) The instruments provide that their exchange shall have that effect; or*
- (b) It is otherwise established that those States were agreed that the exchange of instruments shall have that effect.”*

Exclusion Agreement: an agreement preventing something, for example, an agreement between parties excluding any right to appeal against an Award.

Exclusion of Liability: the removal of legal responsibility that might otherwise exist, often by agreement between the parties to a contract.

Exclusive Jurisdiction Clause: a contractual provision that all claims will be litigated exclusively in the particular forum specified.

Execution: the act by which a party seeks judicial Enforcement of an Arbitral Award through National Courts.

Exemplary Damages: a type of Damages designed to punish the Defendant rather than purely compensate the Claimant for losses suffered. See also Punitive Damages.

Exequatur: a court order by which an Arbitral Award is recognized as binding and enforceable in the court's Jurisdiction.

Exhaustion of Domestic (or Local) Remedies: a principle of international law that requires, before claims are submitted alleging breach of international law by a State, that the remedies available via that State's internal legal order should first be exhausted.

Exhibit: a document or other material object provided for the purposes of proceedings, which is usually referred to in and provided with written Submissions or evidence. For example, a Statement of Case may refer to a contract which is provided at the same time, that contract being termed an Exhibit to the Statement of Case.

Expedited Procedure: a sped up process. Expedited Procedures in Arbitration usually involve either the Appointment of Arbitrators or the process as a whole, in which case the process is normally streamlined and the time for each step reduced.

There is a well-known saying “speed, low cost, quality, pick any two.” For this reason, Expedited Procedures are usually used if compromises on the normal process are appropriate, for example because the Dispute is over a relatively small sum.

Expert: a person or entity appointed by a party or Arbitral Tribunal to provide an impartial opinion on specified matters in Dispute by drawing on their experience and/or qualifications.

Expert Determination: a process by which an Expert resolves a Dispute by giving their opinion on the correct position. Sometimes the determination of the Expert is made binding, in which case it operates as a contractual agreement between the parties to abide by the determination (and so does not benefit from the same Enforceability as an Arbitral Award). Expert Determination is often used for valuations and discrete technical matters, if a relatively quick opinion of an Expert is considered preferable to a judicial determination according to the law.

Expert Determination Clause: a provision for Expert Determination. As there is little or no statutory framework for an Expert Determination, such provisions usually cover the terms of appointment of the expert, the procedure to be followed and the timing and form of the decision to be given.

Expert Hot-Tubbing: see Hot-Tubbing.

Expert Report: the written opinion of an Expert provided as evidence in proceedings.

Expropriation: the taking or destruction of privately owned property by a State.

Extension of Time: an allowance of additional time, for example to complete work on a construction project or for a procedural step to be completed in an Arbitration.

Extinctive / Equitable Prescription: a principle by which an otherwise valid and enforceable legal right or claim becomes unenforceable due to lapse of time.

Extra Petita: a Latin expression used to describe instances in which an Arbitral Tribunal has exceeded its authority.

FAA: acronym for Federal Arbitration Act.

Fair And Equitable Treatment (FET): a substantive standard of protection often included in BITs and MITs, which, depending on the underlying investment protection instrument, may include an obligation for the Host State to respect an investor's Legitimate Expectations, conduct itself in Good Faith, respect principles of transparency, stability, and Due Process, and guarantee to the investor freedom from coercion and harassment.

Fair Market Value: the price at which a buyer would be willing to buy and a seller would be willing to sell in a transaction in the open market.

Fast-Track Arbitration: see Expedited Procedure.

FDI: acronym for Foreign Direct Investment.

Federal Arbitration Act (FAA): a US legislative act passed in 1925, which regulates the Enforcement of Arbitration Agreements and Arbitral Awards in the United States.

FET: acronym for Fair And Equitable Treatment.

Final Award: an Award which deals with all the remaining matters in Dispute in the Arbitration.

A Final Award creates a *Res Judicata* which (subject to any right to appeal or Challenge the Award) prevents the parties from re-opening the Dispute or challenging the findings of law or fact made in the Award in future proceedings. See also Interim Award and Partial Award.

Finality (of Award or Arbitration): the fact that, in contrast to judgments in many court systems, Arbitral Awards cannot generally be subjected to an Appeal.

First Session: an initial session in which the Arbitral Tribunal ascertains the parties' views on procedural issues, for example the Arbitration Rules which apply, the language(s) to be used, and the procedural schedule.

Fiscal Sovereignty: the sovereign power of a State to manage matters of taxation and revenue without interference.

Floating Arbitration: see Delocalization and A-National Arbitration.

Force Majeure: a French legal term that refers to an exceptional circumstance, beyond a person's control, which prevents them from fulfilling their legal obligations.

Foreign Award: an Award made in another State.

Foreign Direct Investment (FDI): an investment made by an investor from one State in a foreign State. Methods of FDI include, for example, the foreign investor establishing business operations in the Host State through a local subsidiary or by acquiring an interest in an existing local company.

Foreign Investment Promotion and Protection Agreement (FIPA): an agreement between States aimed at promoting and protecting reciprocal foreign investment in each State.

Foreign Investment Risk: the risk associated with investing in a particular foreign State. Political, macroeconomic, and environmental factors impact on the risk profile of a particular State and therefore an investment's exposure to uncertain outcomes.

Foreign Judgments (Reciprocal Enforcement) Act of 1933: a law of the United Kingdom that enables monetary judgments of certain foreign

courts (notably Australia, India, Pakistan, Israel, and parts of Canada) to be recognized and enforced in the United Kingdom by registration.

Foreign Sovereigns Immunities Act of 1976: a law of the United States that provides foreign States with immunity from suit or claims brought in United States' courts against them except in specific circumstances. Such circumstances include, for example, instances in which the immunity has been waived or the claim concerns commercial activities conducted by the foreign State in the United States or with a direct effect on the United States.

Foreign Trade Court of Arbitration at the Serbian Chamber of Commerce: an Arbitral Institution based in Belgrade, Serbia, and established in 1947.

Fork In The Road Provision: a clause of an Investment Treaty that requires an investor to make a binding and final choice between National Courts or Arbitration as to the forum in which to pursue a claim against the Host State. A Fork In The Road Provision may prevent an investor from submitting a Dispute to Arbitration if there have been earlier proceedings in the National Courts.

Forum Non Conveniens: Latin for "*not a convenient forum.*" A legal principle that allows a court to refuse to hear a case if there is a more appropriate forum in which to try the claim taking into account private and public factors, including the interests of the parties, the ease of access to evidence, the Enforceability of judgment, the interest of the invoked court to decide the dispute, and the ends of justice.

For example, a court in State A may decline to hear a case because the Dispute arises from events that took place in State B, the evidence (and in particular witnesses) are located in State B, the parties are domiciled in State B or the parties have agreed to resolve Disputes in the courts of State B by including a Forum Selection Clause in their contract.

Forum Selection Clause: a clause designating the legal forum in which the parties agree to resolve claims against each other, such as Arbitration or the National Courts of a particular State.

Forum Shopping: the process of selecting the most advantageous forum in which to commence legal proceedings in circumstances in which there is a choice.

Framework Agreement: an overarching agreement among contracting parties that typically provides for common terms that apply to underlying individual contracts throughout the duration of the Framework Agreement (e.g., price, quality, quantity).

Framework Agreement on The ASEAN Investment Area: agreement among the governments of Brunei, Myanmar, Thailand, Indonesia,

Philippines, Laos, Malaysia, Cambodia, Singapore, and Vietnam for the creation of an ASEAN investment area to attract greater levels of FDI in the southeast Asian region.

Frankfurt International Arbitration Centre (FIAC): an Arbitral Institution based in Frankfurt, Germany, and established in 2005.

Fraud: wrongful deception in pursuit of a gain or to deny a right.

Free Trade Agreement (FTA): an agreement between at least two States or trading groups that typically gives each party trade concessions in respect of goods or services and eliminates or reduces tariffs, customs duties, quotas, and other trade barriers.

Free Trade Commission: a body established by NAFTA to supervise the implementation of NAFTA and to resolve Disputes that arise from its implementation or application. The commission is composed of senior government representatives of the NAFTA signatories.

Free Transfer Provision: a clause of an Investment Treaty that grants a foreign investor the right to transfer funds in or out of the Host State without restriction, including, for example, funds for the initial investment in the Host State and any returns from the investment or proceeds from the sale of the investment. The scope of a Free Transfer Provision differs between Investment Treaties but generally covers the transfer, conversion, and liquidation of any capital, proceeds, payments and profits related to the investment in freely Convertible Currencies at the market rate of exchange existing at the date of the purported transfer.

Frustration: a legal principle excusing parties to a contract from further performance due to an unforeseen event that renders performance impossible, illegal, or radically different from that contemplated by the contract.

FTA: acronym for Free Trade Agreement.

FTC: acronym for United States Federal Trade Commission.

Full Protection and Security: a standard of treatment of investors and investments under Investment Treaties. The standard is generally interpreted as imposing an obligation on a Host State to ensure the physical security of an investment and also, in certain respects, its legal and commercial security.

Full Protection and Security Clause: a clause of an Investment Treaty that provides for provision by the Host State of protection and security in relation to investments.

Functional Jurisdiction: the exercise of a court's Jurisdiction based on designated "functions" within its Jurisdiction, as opposed to a territorial or geographical basis of Jurisdiction.

Functus Officio: Latin for having performed (in the sense of exhausted) a term of office.

An Arbitral Tribunal that has issued its Award becomes *Functus Officio*, meaning that it ceases to have power or authority with respect to the issues decided in the Award (beyond the making of any permitted correction or interpretation).

Gambit: a sports idiom from chess, used to describe a situation (*i.e.* an “opening gambit”) in which something is sacrificed at the outset to unsettle an opponent and gain an initiative right from the start.

GATS: acronym for the General Agreement on Trade in Services.

GATT: acronym for the General Agreement on Tariffs and Trade.

CCC: acronym for Gulf Cooperation Council.

General Agreement on Tariffs and Trade (GATT): a multilateral agreement between more than 160 States for the promotion of international trade through the reduction or elimination of trade barriers such as tariffs or quotas. Signed in 1947, GATT was a precursor to the creation of the WTO in 1995.

General Agreement on Trade in Services (GATS): a multilateral agreement signed under the auspices of the WTO which sets out certain rules for international trade in services. All members of the WTO are parties to GATS.

General Arbitration Tribunal of the Buenos Aires Stock Exchange (BCBA): an Arbitral Institution based in Buenos Aires, Argentina, and established in 1963.

General Principles of Law: a formulation used in non-national Choice of Law Clauses to describe the law applicable to the contract. The precise meaning of General Principles of Law is controversial but it is generally intended to refer to the principles of law common to leading legal systems.

General Principles of Public International Law: a source of international law under Article 38(1)(c) of the Statute of the International Court of Justice. The statute refers to the General Principles of Law recognized by civilized nations including universal principles of fairness and justice.

General Standards: the first part of the IBA Guidelines on Conflicts of Interest sets forth seven “general standards” regarding the Impartiality, Independence, and Disclosure of Documents obligations of Arbitrators and the role of waiver.

Geneva Convention on the Execution of Foreign Arbitral Awards: a Treaty signed in Geneva, Switzerland in 1927 providing for the recognition and Enforcement of certain Foreign Awards in Convention States. The Treaty has largely been superseded by the New York Convention.

Georgian International Arbitration Centre (GIAC): an Arbitral Institution based in Tbilisi, Georgia, and established in 2013.

German Institution of Arbitration (DIS): an Arbitral Institution registered in Berlin, Germany, with its main secretariat offices in Cologne, Germany. In German, the "Deutsche Institution für Schiedsgerichtsbarkeit."

Ghana Arbitration Centre (GAC): an Arbitral Institution based in Accra, Ghana, and established in 1996.

GICAM Arbitration Centre: an Arbitral Institution based in Bonanjo, Cameroon, and established in 1999.

Good Faith: to operate fairly, honestly, and sincerely.

Good Faith Principle: an implied covenant, under some judicial systems, that parties will deal fairly, honestly and sincerely with each other.

Governing Law: the law according to which a contract is to be interpreted.

Green List: a non-exhaustive list of specific situations, under the IBA Guidelines on Conflict of Interest, in which, objectively, there is no appearance of any (and no actual) Conflict of Interest and as a consequence an Arbitrator has no duty to disclose the situation.

Gun Boat Diplomacy: a derogatory phrase for diplomacy that ostensibly relies on the threat of force.

Hague Service Convention: abbreviation for Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

Hague Convention on Choice of Court Agreements: a convention concerning Forum Selection Clauses / Exclusive Jurisdiction Clauses. States that are parties to the Convention agree that their domestic courts will stay proceedings in the face of Exclusive Jurisdiction Clauses related to parties from other States that have ratified the Convention.

Hearing: a meeting with the Arbitral Tribunal during which the parties' representatives may make oral Submissions and witnesses and Experts may be questioned on their evidence.

Hellenic Mediation and Arbitration Centre: an Arbitral Institution based in Athens, Greece, and established in 2006.

High/Low Arbitration: a type of Arbitration in which the parties agree on the minimum and maximum amounts that the Arbitrator can award in the Arbitration. See Baseball Arbitration.

HKIAC: acronym for Hong Kong International Arbitration Centre.

HKIAC Rules: Arbitration Rules promulgated by the HKIAC.

Home State (of the Investor): the State of which a foreign investor is a national.

Hong Kong International Arbitration Centre (HKIAC): an Arbitral Institution based in Hong Kong, China since 1985.

Honourable Engagement: a provision in an Arbitration Agreement (typically found in reinsurance contracts) that purports to empower Arbitrators to resolve a Dispute without strict recourse to legal principles; but instead allows Arbitrators to grant forms of relief, such as equitable remedies, that are not specifically referred to in the Arbitration Agreement.

Host State: in the context of BITs or MITs, the State in which the investment was made.

Host State Obligations: the duties and responsibilities placed upon the Host State regarding its treatment of the investments of foreign investors.

Hot-Tubbing: the questioning of witnesses at a Hearing can sometimes lead them into hot water, and a "hot tub" is a large container of heated water often occupied by two or more persons at a time as a recreational activity. Bringing the two concepts together, "hot-tubbing" is the name given to a range of procedures by which factual or Expert witnesses are questioned together by counsel and/or the Arbitral Tribunal. Also known, rather more seriously, as "concurrent evidence" or "witness conferencing."

Hull Formula: the position in Customary International Law that compensation paid by a State in respect of its Expropriation of the assets of a foreign investor (whether such Expropriation was lawful or otherwise) should be full compensation *i.e.*, prompt, adequate, and effective compensation in respect of all losses suffered by the foreign investor as a result of the act of Expropriation.

IAC: acronym for the International Arbitration Centre, Astana, Kazakhstan.

IBA: acronym for the International Bar Association.

IBA Arbitration Committee: a committee of the IBA that focuses on "*laws, practice and procedures relating to the arbitration of transnational disputes.*"

IBA Ethics: abbreviation for the IBA Rules of Ethics for International Arbitrators 1987. Non-binding guidelines adopted by the IBA concerning ethical obligations of international Arbitrators. The IBA Ethics place emphasis on Impartiality and Independence.

IBA Guidelines on Conflicts of Interest: non-exhaustive principles (commonly accepted as expressive of best practices and so sometimes referred to as "Rules") published by the IBA addressing Conflicts of Interest that may occur in Arbitrations. The guidelines consist of a

Waivable and Non-waivable Red List (describing serious or severe situations), an Orange List (describing situations that give cause for doubting an Arbitrator's Independence or Impartiality), and a Green List (describing situations which should not normally give rise to any concern).

IBA Guidelines on Party Representation: non-binding guidelines adopted on 25 May 2013 by the IBA with a focus on regulating, *inter alia*:

- (1) Communications between party representatives and (i) Arbitrators, and/or (ii) the Arbitral Tribunal;
- (2) Witness Evidence and Expert Evidence; and
- (3) Document Production.

IBA Rules of Ethics for International Arbitrators: non-binding guidelines prepared in 1987 by the IBA for the purposes of ensuring the Impartiality and proper conduct of Arbitrators in international Arbitral proceedings.

IBA Rules on the Taking of Evidence: a set of non-binding rules adopted on 29 May 2010 by the IBA "*intended to provide an efficient, economical and fair process for the taking of evidence in International Arbitrations, particularly those between Parties from different legal traditions.*" If the parties to an Arbitration elect to apply these IBA Rules on the Taking of Evidence, the rules are "*designed to supplement the legal provisions and the institutional, ad hoc or other rules that apply to the conduct of the arbitration.*"

IBRD: acronym for International Bank for Reconstruction and Development.

ICA: acronym for both the International Court of Arbitration of the ICC and the Indian Council of Arbitration.

ICC: acronym for the International Chamber of Commerce.

ICC Council (or ICC World Council): the ICC's main governing body. Representatives from the ICC's national committees sit on the ICC Council and elect the ICC's top officers, including the Chair.

ICC Court: acronym for the International Court of Arbitration of the ICC.

ICC Rules: the Arbitration Rules promulgated by the ICC Court.

ICDR: acronym for International Centre for Dispute Resolution.

ICJ: acronym for International Court of Justice.

ICSID: acronym for the International Centre for Settlement of Investment Disputes.

ICSID Additional Facility Rules: the rules governing Arbitration proceedings under the International Centre for Investment Disputes (ICSID) Additional Facility.

ICSID Administrative and Financial Regulations: regulations made pursuant to the ICSID Convention which address: the procedures of the ICSID Administrative Council; the structure and functions of the ICSID Secretariat; and the financial provisions of ICSID. The ICSID Administrative and Financial Regulations also include provisions that apply in individual cases, such as time limits, immunities, and official languages.

ICSID Administrative Council: a governing body of the ICSID. Each member state has one representative on the Administrative Council. Its main functions are: adopting ICSID Administrative and Financial Regulations for ICSID; passing rules of procedure for cases; approving arrangements for use of World Bank facilities and services; approving the annual reports and budget for ICSID; and electing the ICSID Secretary-General and Deputy Secretary-General. The ICSID Administrative Council plays no role in the administration of individual cases.

ICSID Arbitration Rules: the Arbitration Rules that govern ICSID Arbitration following the registration of a request for Arbitration under the ICSID Convention.

ICSID Arbitrations: Arbitrations conducted pursuant to the ICSID Arbitration Rules.

ICSID Conciliation Rules: the procedure that governs Conciliations administered by the ICSID Secretariat.

ICSID Convention: acronym for the Convention on the Settlement of Investment Disputes between States and Nationals of Other States made at Washington, D.C., USA in 1965 (also referred to as the Washington Convention), which provides for the resolution of investment Disputes.

ICSID Institution Rules: the procedure, most recently amended in 2003, governing the institution of an Arbitration or Conciliation under the ICSID Convention.

ICSID Panel of Arbitrators and Conciliators: lists of Arbitrators and Conciliators that ICSID maintains. The ICSID Convention entitles each member state to designate up to four persons to the Panel of Arbitrators and up to four persons to the Panel of Conciliators. These designees, which may be of any nationality, are available for selection for ICSID Arbitral Tribunals, Conciliation commissions, and Ad Hoc Committees when the parties cannot agree on a nominee.

ICSID Secretariat: the administrative body which carries out the daily operations of ICSID. The Secretariat's main role is to provide support in investor-State dispute settlement and it is involved in all aspects of the

process including: acting as a registrar in proceedings; assisting in the constitution of commissions, Arbitral Tribunals, and Ad Hoc Committees; organizing and assisting at Hearings; administering the finances of each case; and providing other administrative support as requested by commissions, Arbitral Tribunals, and committees.

ILC: acronym for International Law Commission.

ILC Draft Articles on State Responsibility: see Draft Articles on Responsibility of States for Internationally Wrongful Acts.

Illegality: the state of being contrary to the law.

An illegal contract — *i.e.*, a contract, the formation or performance of which will cause any party to the agreement to engage in illegal activity — is unenforceable. See Separability.

Immunity: the legal protection from suit (proceedings) and/or Execution (Enforcement) enjoyed by an entity (such as an Arbitrator or a State and its instrumentalities).

Immunity of Arbitrator: the Immunity given to an Arbitrator, which varies according to the Applicable Law and Arbitration Rules but generally protects Arbitrators from civil liability arising from the normal performance of their role in an Arbitration.

Impartial: unbiased towards or against a party or in relation to the issues in Dispute. Arbitrators must act impartially. If they do not, they may be removed and/or the Award may be challenged or its Enforcement resisted. Many rules and laws emphasize the need for Arbitrators to be Independent and/or Impartial.

Impartiality: to be unbiased towards or against a party or in relation to the issues in Dispute.

Arbitrators must act impartially. If they do not, they may be removed and/or the Award may be challenged or its Enforcement resisted. Many rules and laws emphasize the need for Arbitrators to be independent (*i.e.*, unconnected to the parties) and impartial.

Imputed Bias: Bias which is, by default, assumed from circumstances so as to raise an objective apprehension of Bias.

Inarbitrability: the inability to have a matter resolved by Arbitration.

Some subject matters are precluded from being resolved by Arbitration as a matter of legal policy, for example certain Disputes in the fields of bankruptcy legislation and family law.

Independent: not affiliated with, dependent on, or controlled by another entity. Many rules and laws emphasize the need for Arbitrators to be Independent and/or Impartial.

Indian Council of Arbitration (ICA): an Arbitral Institution based in New Delhi, India, and established in 1965 by the Indian government to promote the resolution of commercial Disputes by means of Arbitration or Conciliation.

Indian Institute of Arbitration and Mediation (IIAM): an Arbitral Institution based in several locations in India, and established in 2001.

Indirect Control: the power to influence through another. In order to obtain the benefits of treatment standards under Investment Treaties, the Treaty in question may permit the investor to hold the investment indirectly, *e.g.*, a parent company may qualify as an investor by virtue of its subsidiary holding the qualifying asset (the "investment") under the Treaty in question.

Indirect Expropriation: Expropriation by means which are not direct. For example, if a State's measures to regulate economic activities within its territory are not directly targeted at a foreign investment but nonetheless affect it such that the State is required to compensate the investor for the damage caused.

Infra Petita: literally less than what was sought, but often used to mean that a Tribunal has not considered all of the issues that have been submitted to it. Under some Procedural Laws this can be a ground for challenging the Award.

Injudicious Remarks: comments showing a lack of judgement.

If an Arbitrator makes such comments the comments may lead to allegations of Bias.

Injunction: an Order or Award that compels a party to perform or restrains a party from engaging in or continuing with specified action(s).

Injunctive Relief: see Injunction.

Institut de Droit International: a non-government organization focused on international law research which meets biannually and puts forward proposals in relation to international law. The institute's membership is made up of individuals who are notable scholars in the field.

Institutional Arbitration: Arbitration administered by an Arbitral Institution. See Administered Arbitration, and by way of contrast see, *Ad Hoc* Arbitration.

Institutional Rules: the rules of an Arbitral Institution for carrying out an Arbitration. See Arbitration Rules.

Inter-American Commercial Arbitration Commission (IACAC): an Arbitral Institution that provides Arbitration and Conciliation services, primarily in Latin American States.

Inter-American Convention on International Commercial Arbitration (Panama Convention): a Treaty on international Commercial Arbitration ratified by 19 American States (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, United States, Uruguay, and Venezuela) in 1975.

Interim Award: an Arbitral Award which has only temporary effect and does not finally decide an issue (which can, accordingly, be revisited by the Arbitral Tribunal at a later stage of the Arbitration).

Sometimes confused with a Partial Award.

Interim Measure: see Interim Relief.

Interim Relief: a temporary measure ordered by an Emergency Arbitrator, Arbitral Tribunal, or court in support of an Arbitration, for example to maintain the current status by preserving property or assets pending the Award.

Interlocutory Award: an Award made during the course of the Arbitration, before the Final Award.

The phrase Interlocutory Award is usually used in relation to procedural matters, such as costs, rather than substantive issues in Dispute.

International Arbitral Centre of the Austrian Federal Economic Charter (VIAC): an Arbitral Institution founded in 1975 as part of the Austrian Federal Economic Chamber based in Vienna, Austria, which handles regional and international commercial Disputes.

International Arbitration: Arbitration with elements arising out of or relating to two or more States, although the precise definition and significance of meeting the criteria differs according to the Procedural Law.

In some States, procedural distinctions are drawn between International and Domestic Arbitration.

International Arbitration Centre, Astana (IAC): an Arbitration and Mediation centre based in Astana, Kazakhstan and operated since 1 January 2018.

International Arbitration Chamber of Paris: an Arbitral Institution based in Paris, France, and established in 1926.

International Arbitration Court of the Juridical Centre (IUS): an Arbitral Institution based in Almaty, Kazakhstan, and established in 1992.

International Arbitration Institute (IAI): an organization based in Paris, France, and established in 2001 to provide an access point to the International Arbitration community.

International Arbitration Norms: a reference to an informal body of practices and procedures that are typically encountered in International Arbitration proceedings. Often recognized by Tribunals and occasionally helpful in resolving procedural disputes (*i.e.* by referring to what usually happens in International Arbitration).

International Bank for Reconstruction and Development (IBRD): the largest development bank in the world, which provides loans, guarantees, risk management products, and advisory services to middle-income and creditworthy low-income States. The IBRD is a cooperative owned by its 189 member states.

International Bar Association (IBA): an international organization of legal practitioners, bar associations and law societies, established in 1947. The IBA aims to promote the exchange of information between legal associations, support the independence of the judiciary, and support human rights for lawyers worldwide.

International Centre for Dispute Resolution (ICDR): the international division of the AAA, which provides Dispute resolution services to businesses in matters involving cross-border transactions.

International Centre for Settlement of Investment Disputes (ICSID): an Arbitral Institution based in Washington, D.C., USA and operating under the auspices of the World Bank. ICSID was established pursuant to the 1965 Convention on the Settlement of Investment Disputes between States and nationals of other States.

International Centre for Settlement of Investment Disputes (ICSID) Additional Facility: a centre that offers the following services: Arbitration, Conciliation, and fact-finding for certain Disputes that fall just outside the scope of the ICSID Convention, such as the Arbitration or Conciliation of Investment Law Disputes between a State and a foreign national, one of which is not an ICSID member state or a national of an ICSID member state; Arbitration or Conciliation of Disputes that do not arise directly out of an investment between a State and a foreign national, at least one of which is an ICSID member state or a national of an ICSID member state; and fact-finding proceedings instituted by any State or a national of any State.

International Chamber of Commerce (ICC): a business organization founded in 1919 in Paris, France. The ICC has three main activities: rule setting, Dispute resolution, and policy advocacy. The ICC Court is the ICC's Dispute resolution body.

International Commercial Arbitration Court (ICAC) at the Chamber of Commerce and Industry of the Russian Federation: an Arbitral Institution based in Moscow, Russia, which succeeded the Foreign Trade Arbitration Commission (originally created in 1932).

International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry: an Arbitral Institution based in Kiev, Ukraine, and established in 1992.

International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Republic of Moldova: an Arbitral Institution based in Chisinau, Moldova, and established in 1994.

International Commercial Court for Mediation, Conciliation and Arbitration (ICCMCA): an Arbitral Institution based in Westerville, USA, and established in 2009, which applies an integrated approach to Mediation and Arbitration.

International Court of Arbitration in Affiliation with the Chamber of Commerce and Industry of the Kyrgyz Republic: an Arbitral Institution based in Bishkek, Kyrgyzstan, and established in 2002.

International Court of Arbitration of the International Chamber of Commerce (ICC Court): an Arbitral Institution and the Arbitration arm of the ICC. The ICC Court was founded in 1923 under the leadership of Etienne Clementel, a former French Minister of Finance. Today, more than 100 members from about 90 States comprise the ICC Court. The ICC Court's headquarters is in Paris, France.

International Court of Justice (ICJ): principal judicial body of the United Nations. The ICJ has two functions: (1) to settle, in accordance with international law, legal Disputes submitted by States, and (2) to give advisory opinions on legal questions referred to it by authorized UN organs and specialized agencies. The ICJ was established in June 1945 by the United Nations Charter and began work in April 1946. The seat of the ICJ is at the Peace Palace in The Hague (Netherlands).

International Institute for Conflict Prevention and Resolution (CPR): an Arbitral Institution established in the US to promote and facilitate Arbitration and ADR.

International Investment Law: law governing transnational investments and the resolution of Disputes between foreign investors and sovereign States.

International Law Association (ILA): international non-governmental organization founded in Brussels, Belgium in 1873 with its objective being *"the study, clarification, and development of international law, both public and private, and the furtherance of international understanding and respect for international law."*

International Law Commission (ILC): commission established by the UNGA in 1947 to undertake the mandate of the UNGA, under article 13(1)(a) of the United Nations Charter, to *"initiate studies and make recommendations for the purpose of ... encouraging the progressive development of international law and its codification."*

International Law Commission's Articles of State Responsibility: see Draft Articles on Responsibility of States for Internationally Wrongful Acts.

International Law Commission's Draft Articles of Diplomatic Protection: draft articles, adopted by the ILC in 2006, which codify *"the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility."*

International Minimum Standard: a rule of Customary International Law, also embodied in certain international Treaties, which provides for a minimum standard of treatment to be observed by States with regard to foreign nationals and their property.

International Public Policy Association (IPPA): a non-profit organization created in 2014. Its goals are to promote scientific research in the field of public policy, contribute to international development, and facilitate the exchange of knowledge and experience.

International Standard Annulments: judicial voiding of an Arbitral Award based on "international grounds," which may prevent the Enforcement of the Award in the forum State and other States. In contrast, "local standard annulments" apply on the bases of "local particularities" and may not prevent the Enforcement of the Award in other States.

Interpleader: equitable proceeding brought by a stakeholder to determine the ownership rights of rival Claimants over assets held by the stakeholder.

Interpretative Declaration: a statement made by a State when it consents to a Treaty to help explain or clarify the meaning, scope, and application of specific provisions of the Treaty. See also Declaration.

Intervention by Third Parties: the involvement of a non-signatory to the Arbitration Agreement or a non-party to the Dispute in the arbitration proceedings before the Arbitral Tribunal.

Intra-EU BIT: a BIT between EU member states.

Invalidation: voiding of an Arbitral Award by a National Court.

Investment Area Council (ASEAN): ministerial body established by the ASEAN economic ministers responsible for overseeing the implementation of the Comprehensive Investment Agreement (ASEAN).

Investment Law: branch of international law consisting of a set of rules and regulations that govern the protection and treatment of international investments.

Certain States have enacted domestic laws relating to the protection and treatment of international investments that are also referred to as investment laws.

Investment Treaty: an international convention under which Contracting States agree on certain reciprocal standards of treatment and protections afforded to the investments of private investors of the Contracting States in each other's Jurisdictions.

Investment Treaty Arbitration (ITA): Arbitration relating to Disputes arising under Investment Treaties.

Investor Obligations: duties to which investors may be subject pursuant to a contract, BIT, or domestic legislation of the Host State.

Investor-State Arbitration: see Investment Treaty Arbitration.

Investor-State Dispute Settlement (ISDS): a general term for any type of neutral, International Arbitration procedure for the resolution of Disputes between foreign investors and Host States.

Iran-United States Claims Tribunal: a standing tribunal established in 1981 pursuant to the Algiers Accords by the Islamic Republic of Iran and the United States of America to resolve certain claims by nationals of one State party against the other State party and certain claims between the State parties. The Tribunal consists of nine members, three appointed by each government and three (third-country) members appointed by the six government-appointed members.

ISDS: acronym for Investor-State Dispute Settlement.

Israeli Institute of Commercial Arbitration (IICA): an Arbitral Institution based in Tel Aviv, Israel, and established in 1991.

Issue Estoppel: see Issue Preclusion.

Issue Preclusion: a doctrine, typically recognized in common law Jurisdictions, that prevents parties from re-litigating an issue of law or fact that they previously contested and which was actually decided. See also Collateral Estoppel.

Istanbul Chamber of Commerce Arbitration Centre (ITOTAM): an Arbitral Institution based in Istanbul, Turkey, and established in 2014.

ITA: acronym for Investment Treaty Arbitration.

Italian Association for Arbitration: an Arbitral Institution based in Rome, Italy, and established in 1958.

JAMS – The Resolution Experts (JAMS): an Arbitral Institution based in Irvine, USA, and established in 1979. JAMS administers Commercial Arbitrations and Mediations.

Japan Commercial Arbitration Centre (JCCA): an Arbitral Institution based in Tokyo, Japan, which administers Commercial Arbitrations and Mediations.

JCCA: acronym for Japan Commercial Arbitration Centre.

Jerusalem Arbitration Center (JAC): an Arbitral Institution based in Jerusalem and established in 2013 as a joint venture of ICC Palestine and ICC Israel.

Joinder: bringing a new party into an ongoing Arbitration. Joinder generally requires the agreement of all of the parties and, if anticipated, a term providing for Joinder should be included in the Arbitration Agreement (thereby providing the Consent to Joinder in advance).

Judge-Arbitrator: a judge of a national court sitting as Arbitrator.

Jura Novit Curia: Latin dictum expressing the rule in civil law systems, which allows a court to determine the relevant law and its application to a particular case without being bound by the parties' arguments.

Juridical Person: a non-human legal entity created by law having distinct identity, legal personality, duties, and rights.

Juridical Seat: see Seat of Arbitration or Place of Arbitration.

Jurisdiction: scope of authority or competence. Jurisdiction often refers to a national legal system but may also be used to describe the scope of an Arbitral Tribunal's power.

Jurisdictional Award: a separate Award dealing only with issues of Jurisdiction, if there are Bifurcated Proceedings.

Jurisdiction Ratione Materiae: a court's or Arbitral Tribunal's Jurisdiction to decide on the subject matter of a particular case. Also known as subject-matter jurisdiction.

Jurisdiction Ratione Personae: a court's or Arbitral Tribunal's Jurisdiction over a party's personal rights, rather than over property interests.

Jurisdiction Ratione Temporis: a court's or Arbitral Tribunal's Jurisdiction to decide a case based on whether the facts giving rise to the Dispute arise within the applicable timeframe for the instrument on which the claims are based. Also known as temporal jurisdiction.

Jurisdiction Ratione Voluntatis: a court's or Arbitral Tribunal's Jurisdiction to hear a case based on the Consent of the parties to submit their Dispute to that authority.

Jurisdictional Nexus: the connection between the party and the underlying facts of a case required to establish Jurisdiction.

Jurisprudence Constante: a legal doctrine by which a series of previous decisions in applying a particular rule of law or legal principle carries weight such that the prior decisions may be determinative in subsequent cases involving similar or identical issues of law.

Jus Cogens: an absolute rule of general international law, defined under Article 53 of the VCLT as:

"a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

Kigali International Arbitration Centre (KIAC): an Arbitral Institution based in Kigali, Rwanda, and established in 2012.

KLRC: acronym for Kuala Lumpur Regional Centre for Arbitration.

Kompetenz-Kompetenz: German for Competence-Competence.

Korean Commercial Arbitration Board (KCAB): an Arbitral Institution established in 1966 with offices within South Korea located in Seoul and Busan.

Kuala Lumpur Regional Centre for Arbitration (KLRC): see Asia International Arbitration Centre (AIAC).

Lagos International Commercial Arbitration Centre: an Arbitral Institution in Nigeria, established in 1989 under the auspices of the Asian-African Legal Consultative Organisation (AALCO).

Lagos Rules: abbreviation of the Rules for Arbitration of the Regional Centre for International Commercial Arbitration – Lagos first drafted in 1999 on the basis of the UNCITRAL Rules of 1976.

Language(s) of the Arbitration: the language(s) in which all matters connected with the Arbitration will be conducted, including the parties' Written Submissions, evidence (whether written or oral), and the Award itself.

LCIA: acronym for the London Court of International Arbitration.

LCIA Arbitration Rules: Arbitration Rules promulgated by the LCIA.

LCIA Court: a group of persons of various nationalities appointed by the Board of Directors of the LCIA to perform various functions, such as to act as an Appointing Authority and to keep under review the LCIA Arbitration Rules and recommend any new Arbitration Rules.

Lebanese Arbitration Centre of the Chamber of Commerce and Industry and Agriculture of Beirut and Mount Lebanon (CCIABML): an Arbitral Institution based in Beirut, Lebanon, and established in 1995.

Legal Adviser: a person who provides legal advice to another.

In Arbitration, parties usually engage Legal Advisers. Arbitrators who are not themselves lawyers may exceptionally appoint Legal Advisers to assist them with legal points, in the same way that they sometimes appoint experts to assist them with technical matters.

Legal Certainty: a principle that legal rules must be clear and foreseeable and that decisions must be made according to those legal rules in order for those who are subject to them to conduct themselves accordingly.

Legal Personality: the legal capacity to bear rights and obligations, to perform legal transactions, and to sue and be sued.

Legitimate Expectations: a legal doctrine according to which a person can rely upon an anticipated practice being followed or a promise being kept.

In investment Arbitration legitimate expectations are sometimes protected under the FET standard.

Lex Arbitri: the Procedural Law that governs the Arbitration. See also Seat of Arbitration and Place of Arbitration.

Lex Contractus: the law applicable to a contract. Sometimes also used as shorthand for *Lex Loci Contractus*. See also Governing Law.

Lex Feranda: a Latin expression that is used in the sense of “*what the law should be*” as opposed to *Lex Lata*.

Lex Fori: the law of the State where the Arbitration takes place.

Lex Fori Regit Processum: basic principle in private international law according to which a court applies its own Procedural Rules.

Lex Lata: a Latin expression that means “*the law as it exists,*” otherwise known as established law.

Lex Loci Arbitri: the law of the State where the Arbitration takes place. See also Seat of Arbitration and Place of Arbitration.

Lex Loci Contractus: the law of the State where a contract was made.

Lex Mercatoria: a set of legal principles based on concepts, found in developed legal systems, which are widely recognized by the international business community. The existence, scope, and application of *Lex Mercatoria* is the subject of much debate. However, it has been successfully invoked in Arbitrations as the basis on which the Arbitral Tribunal should resolve issues in the absence of any clearly Applicable Law.

Lex Societatis: a Latin expression meaning “*the law of the society.*”

Lex Specialis: Latin for a law governing a specific subject matter. According to the doctrine of *lex specialis derogat legi generali*, a specific legal rule overrides the more general one.

Liquidation Value: an asset-based valuation method. It is the net amount that can be realized (after liquidation expenses) in either an orderly or a forced sale of the business assets. See also Fair Market Value.

Lis Pendens: Latin for pending lawsuit. The principle of *lis alibi pendens* generally seeks to prohibit issues which are being litigated or arbitrated in one forum from being simultaneously submitted to a second forum. The rule aims to prevent contradictory judgments. See also Parallel Proceedings.

List Procedure: a procedure for appointing Arbitrator(s) whereby each of the parties receive a list(s) of candidates and then notes which candidate(s) would be acceptable/not acceptable while ranking them in order of preference.

Local Remedies: the redress for harm that is available within a State's domestic legal system. See also Exhaustion of Local Remedies.

Local Remedies Rule: a rule of Customary International Law that requires a party to seek redress from the National Courts of a State before seeking remedies from an international court, committee, or Arbitral Tribunal.

Local Standard Annulments: Annulment of an Award by a competent state court on the basis of local rules that are not in line with contemporary International Arbitration standards. A number of National Courts have favored the Enforcement of an Award although it had previously been set aside on the basis of local standards.

Localization: the act of connecting an Arbitration to a particular State's legal system.

Locus standi: Latin for standing. A party's ability to demonstrate to a court or Arbitral Tribunal sufficient connection to a case to have the right to bring an action.

London Court of International Arbitration (LCIA): an Arbitral Institution established in London, England in 1892. The LCIA is one of the world's leading international institutions for commercial Dispute resolution.

London Maritime Arbitrators Association (LMAA): an Arbitral Institution founded in 1960 and headquartered in London, England, which specializes in the resolution of shipping-related Disputes.

Look-Sniff Arbitrations: a hybrid procedure between Arbitration and Expert Determination, whereby the Arbitrator reaches a decision after looking at and/or smelling the subject matter of the Arbitration (for example, grain).

Loser Pays Principle: the principle that the losing party pays all the costs of the successful party (generally subject to the Tribunal's discretion and ability to take into account successful arguments advanced by the losing party and vice versa and the parties' behavior).

Loss of Right to Object: if a party to an Arbitration fails to object to a matter in the Arbitral proceedings or the Award promptly or within a specified time limit, it may lose the right to object according to national laws such as Section 73 of the English Arbitration Act of 1996 or § 1027 of the German Civil Code.

Lugano Convention: the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters entered into between the then IS EU Member States in 1988.

Madrid Court of Arbitration: an Arbitral Institution based in Madrid, Spain, and established in 1989 by the Madrid Chamber of Commerce as an internal division responsible for administering Arbitral proceedings.

Malta Arbitration Centre: an Arbitral Institution based in Valletta, Malta, and established in 1996.

Mandatory Requirements: those provisions of the Applicable Law that are not subject to any contrary agreement of the parties.

Margin of Appreciation: a doctrine developed by the ECtHR to allow the Court latitude in judging whether a State party to the ECHR should be sanctioned for derogations.

Maritime Arbitral Chamber of Paris: an Arbitral Institution based in Paris, France.

Maritime Arbitrators Association of Nigeria (MANN): an Arbitral Institution based in Lagos, Nigeria.

Mediation: a form of ADR involving an independent third-party Mediator who seeks to facilitate the settlement of the parties' Dispute. A Mediator cannot impose a settlement and tends not to give his/her opinion on the legal merits.

Mediation and Arbitration Center of the Chamber of Commerce, Services and Tourism of the City of Mexico (CANACO): an Arbitral Institution based in Mexico City, Mexico.

Mediation and Arbitration Centre of the Chamber of Commerce and Industry of El Salvador: an Arbitral Institution based in San Salvador, El Salvador.

Mediation and Arbitration Centre of the Chamber of Commerce of Nicaragua: an Arbitral Institution based in Managua, Nicaragua, and established in 2006.

Memorandum of Understanding (MOU): a form of agreement which may be binding or non-binding, often entered into as a precursor to more extensive documentation (for example, following a due diligence exercise).

Memorial: a written Submission containing both legal argument and references to the evidence, which often accompanies the Memorial, including by means of Witness Statements and Expert Reports.

In Investment Treaty Arbitration the word Memorial is often used to describe the Statement of Claim.

Merits: the substantive issues in an Arbitration as opposed to the procedural issues.

MFN: acronym for Most-Favored Nation Treatment.

Minimum Standards of Treatment (NAFTA): rule provided for in Article 1105 of NAFTA according to which each party to the agreement shall accord to investments of investors of another party treatment in accordance with international law, including FET and Full Protection and Security.

Minimum Treatment Standard: standard of protection accorded to foreign investments and investors that is not determined by reference to specific circumstances of application (as opposed to the relative standards embodied in the National Treatment Standard and MFN principle).

MIT: acronym for Multilateral Investment Treaty.

Mixed Arbitration: an Arbitration proceeding between a State on one side and a private individual(s) on the other. To be distinguished from inter-State Arbitration and Private International Arbitration.

Mixed Claims Commission: an *ad hoc* body founded on the basis of an international agreement(s), usually consisting of a majority of nationals of the State parties to the agreement(s) and established with the purpose of settling claims between citizens of different States, between citizens of one State and the other State, or between the States themselves in formal and final proceedings.

Model Arbitration Clause: an example of an Arbitration Agreement. Arbitral Institutions often publish basic Model Arbitration Clauses which can be used by parties or adapted as appropriate for their circumstances.

Model Law: a format for national Arbitration law adopted by UNCITRAL in 1985 and promoted as the basis for the reform and harmonization of Arbitration legislation around the world. To date, the Arbitration laws of at least 40 States have been reformed with regard to the Model Law.

Moral Damages: Damages awarded for a State's actions that imply physical threat, illegal detention or other analogous situations in which some mistreatment contravenes the norms according to which civilized

nations are expected to act, or cause a deterioration of health, stress, anxiety, other mental suffering; and both cause and effect are grave or substantial. Moral Damages claims have become customary in investment Arbitrations, but are granted in exceptional circumstances.

Moscow Convention on the Protection of the Rights of the Investor: an MIT signed on 28 March 1997 in Moscow, Russia among Armenia, Belarus, Moldova, Tajikistan, Kazakhstan, and Kyrgyzstan.

Most-Favored Nation Treatment (MFN): in the context of BITs and MITs, the requirement that a Host State is to treat a foreign investor benefitting from an MFN clause in a manner that is no less favorable than investors of other States.

Most-Favored-Nation Clause: in the context of ITA, a contractual clause commonly found in BITs providing for Most-Favored Nation Treatment.

Multi-Contract Arbitration: an Arbitral proceeding based on multiple contracts between the parties to the proceeding.

Multilateral Agreement on Investment (MAI): draft agreement that was negotiated between members of the OECD between 1995 and 1998. The MAI sought to develop rules that would ensure that international investment was governed in a more systematic and uniform way between States. The MAI has not been adopted by States.

Multilateral Investment Guarantee Agency (MIGA): a member agency of the World Bank group whose mandate is to promote FDI in developing States through the provision of investment guarantees for certain investments.

Multilateral Investment Treaty (MIT): a Treaty made between more than two States that contains provisions to protect investments made by investors in each other's territories.

Multilocalization: refers to: (i) the multiple locations of assets subject to the Arbitration; or, (ii) the delocalized aspect of the Arbitration (*e.g.*, independent from national law / law of Seat of Arbitration).

Multi-Party Arbitration: Arbitration between more than two parties.

Multi-Tiered Dispute Resolution Clause: a provision for distinct stages in resolving Disputes, usually first requiring the parties to attempt an amicable settlement through negotiation and/or Mediation, before resorting to Arbitration or litigation.

NAFTA: acronym for North American Free Trade Agreement.

NAFTA, Chapter 11: part of NAFTA which establishes a framework for foreign investment in Host States including investor protections and Host State Obligations. Chapter 11 also sets out procedures for the resolution of investment Disputes by International Arbitration.

National and International Arbitration Chamber of Venice: an Arbitral Institution based in Venice, Italy, and established in 1990.

National Commercial Arbitration Centre (NCAC): an Arbitral Institution based in Phnom Penh, Cambodia, and established in 2013.

National Court: a State's public forum for Dispute resolution.

National Justice: a State's public system for Dispute resolution.

National Law (or Domestic Law): also known as Domestic Law, law of a State.

National Roster of Arbitrators and Mediators: a list, compiled by the AAA, of qualified Arbitrators and Mediators who meet with the AAA's standards of ethics and experience.

National Treatment (NT): legal standard often found in Investment Treaties that requires a Host State to afford investors of other Contracting States treatment that is not less favorable than that afforded to domestic investors.

National Treatment Standard: see National Treatment.

Nationalization: transfer of property by the State from private ownership to State ownership or control.

Nationalized Property: property transferred from private ownership to State ownership or control.

Necessity: in international law "necessity" or "state of necessity" can refer to exceptional circumstances in which a State is excused from performing an obligation under international law.

"Negative" Choice of Law Clause: a Choice of Law Clause which provides that the law of a certain Jurisdiction will not apply.

Netherlands Arbitration Institute (NAI): an Arbitral Institution established as a foundation in 1949, the NAI (Stichting Nederlands Arbitrage Instituut) operates on a non-profit basis and aims to promote Arbitration and ADR. The NAI is the largest general Arbitral Institution in the Netherlands and is headquartered in Rotterdam, the Netherlands.

Neutral Law: a law that is not connected to any of the parties. Parties may agree upon a Neutral Law so that neither would have an advantage over the other in this regard.

New International Economic Order (NIEO): a set of proposals put forward in the 1970s whose objective was to transform the international economic system to redirect more of the benefits of transnational integration toward developing nations.

New York Convention: see Convention on the Recognition and Enforcement of Foreign Arbitral Awards. See Convention on the Recognition.

Niben Arbitration and Mediation Center (NIBEN): an Arbitral Institution based in Tokyo, Japan.

Nomination of Arbitrator: the proposal of an Arbitrator for appointment or confirmation by an institution. See also Designation of Arbitrator.

Non Liquet: a Latin phrase which refers to circumstances in which the Applicable Law (statute and case law) does not produce a clear answer to the legal issue in question.

Non-Arbitrability: see Inarbitrability.

Non-Disputing Party Participation: the involvement, sometimes through the making of a written Submission, of an individual or entity that is not a party to the proceeding.

Non-Impairment Clause: a provision found in international investment agreements and other Treaties that requires a party, usually the Host State, not to act in a manner that adversely or negatively affects the investors' rights with respect to their investments.

Non-Mandatory Requirements: provisions that are subject to the agreement of the parties to the contrary.

Non-Precluded Measures Clause: a provision of Investment Treaties that absolves States from liability with respect to certain actions taken in response to exceptional circumstances.

Non-Recognition of Arbitral Award: confirmation by a court that an Award is not valid and binding. The grounds of Non-Recognition of Arbitral Award may relate to issues such as the invalidity of an Arbitration Agreement, procedural irregularities, and Inarbitrability.

Non-Signatory: an entity which has not signed an agreement and may therefore not be considered a party to it.

Non-Waivable Red List: a number of situations, set out in the IBA Guidelines on Conflicts of Interest, which are regarded as compromising an Arbitrator's Impartiality and Independence in a manner that cannot be waived by the parties and so act as an absolute prohibition on the individual in question serving as Arbitrator in the relevant matter. See also Imputed Bias.

Nordic Arbitration Centre – Iceland Chamber of Commerce: an Arbitral Institution based in Reykjavík, Iceland.

North American Free Trade Agreement (NAFTA): a free trade agreement which entered into force on January 1 1994 and was signed by Canada, Mexico, and the United States. As part of the agreement, tariffs were eliminated and all duties and quantitative restrictions, with the exception of those which apply to a limited number of agricultural products traded with Canada, were eliminated by 2008. NAFTA also contains an investment chapter, known as NAFTA, Chapter 11.

Notice of Arbitration: a document commencing Arbitration, for example, under the UNCITRAL Rules. See also Request for Arbitration and Demand For Arbitration.

Notice of Dispute: a communication indicating that there is a Dispute. In the Investment Treaty context, this is the written communication to a Host State by which an investor typically starts the negotiation period or Cooling off Period for the resolution of a Dispute arising out of an Investment Treaty. Also known as Request for Consultations or Trigger Letter.

OAS: acronym for Organization of American States.

Oath: a pronouncement swearing the truth of a statement or promise.

Witnesses are sometimes required to swear under Oath that the evidence they shall give will be the truth, the whole truth and nothing but the truth. See also Affirmation.

Objection: a legal challenge, for example, to the Jurisdiction of an Arbitral Tribunal.

Obligation de Moyens: an obligation to apply all appropriate means so that the intended result may be achieved. See in contrast Obligation de Résultat.

Obligation de Résultat: an obligation to achieve a specific result. See in contrast Obligation de Moyens.

Observer Status: a privilege granted by some organizations to non-members of that organization to give them an ability to monitor or participate in the organizations' activities. Observer Status is often granted to international nongovernmental organizations that have an interest in the organizations' activities.

OECD: acronym for the Organisation for Economic Co-operation and Development.

OHADA: acronym for Organization for the Harmonization of Business Law in Africa.

OIC: acronym for Organisation of Islamic Cooperation.

OIC Treaty: an investment agreement between the 57 members of the OIC, which entered into force in February 1988.

Opening Statement: the oral submissions presented by the Claimant's and Respondent's counsel at the start of the Hearing and which allows counsel to present to the Tribunal their case.

Optional Protocol: a Treaty or agreement that complements, adds to, amends, or clarifies an existing Treaty, which may either provide for procedures with regard to the Treaty or address a substantive matter related to the Treaty.

Option Clause: a provision allowing a party to elect to change the stipulated means of dispute resolution from either Arbitration or litigation to the other. If only one party (or group of parties) has this option, this is sometimes called an Asymmetric Arbitration Agreement. These clauses are commonly used in finance documents but can give rise to issues of enforceability in some jurisdictions.

Option to Arbitrate: an Arbitration Agreement drafted such that Arbitration must be chosen in accordance with the terms specified if it is to be the forum for resolution of the dispute. See Option Clause and Asymmetric Arbitration Agreement.

Orange List: non-exhaustive enumeration of specific circumstances that may give rise to doubts about an Arbitrator's Impartiality or Independence in the IBA Guidelines on Conflicts of Interest in International Arbitration.

Order: a formal command or instruction given by a court or Arbitral Tribunal.

Ordre Public International: principles of universal justice that are seen as fundamental, and that allow a national judge to set aside the normally Applicable Law on the basis of a superior public interest that is not reconcilable with the Applicable Law.

Organisation for Economic Co-operation and Development (OECD): an intergovernmental economic organisation established to stimulate economic progress and world trade. The OECD was founded in 1960 and presently has 35 member states.

Organisation of Islamic Cooperation (OIC): an inter-governmental organisation with a membership of 57 States which endeavors to safeguard and protect the interests of its members by promoting international peace and harmony. The OIC has a number of key bodies, which include: the Islamic Summit, the Council of Foreign Ministers (CFM), the General Secretariat, in addition to the Al-Quds Committee, and three permanent committees concerned with science and technology, economy and trade, and information and culture.

Organization for the Harmonization of Business Law in Africa (OHADA):

a body established by the Treaty on the Harmonization of Business Law in Africa signed on 17 October 1993. To date, 17 States are members of the OHADA. They include: Benin, Burkina Faso, Cameroon, Central African Republic, Côte d'Ivoire, Congo, Comoros, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Mali, Niger, the Democratic Republic of Congo, Senegal, Chad, and Togo. The OHADA's mission is to harmonize economic laws and improve the functioning of the judicial systems in order to guarantee legal and judicial security for investors and companies in its member states.

Organization of American States (OAS):

a regional organization of 35 independent States of the Americas, established in 1948. The OAS seeks to achieve an order of peace and justice between its member states, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence.

Outside Influence: factors external to an Arbitration which are capable of influencing an Arbitrator in a manner which jeopardizes his or her neutrality, typically based on his or her relations with the other Arbitrators, counsel, or the parties.

Pacta Sunt Servanda: Latin for "*agreements must be kept*," meaning that the parties to an agreement should abide by the agreement.

Pacta Tertius Nec Nocent Nec Prosunt: Latin for "*treaties neither obligate nor benefit third parties*." This principle is incorporated in Article 34 of the VCLT whereupon a State may not incur obligations or enjoy rights under a Treaty to which it is not a party. More generally refers to the principle that agreements neither bind nor benefit third parties.

Panama Convention: see Inter-American Convention on International Commercial Arbitration.

Parallel Proceedings: two or more related procedures conducted at the same time by different courts or Arbitral Tribunals (or a combination of the two). See also *Lis Pendens*.

Partial Award: an Award which finally decides one or more (but not all) of the remaining issues before the Arbitral Tribunal.

Partiality: being unfairly inclined to favor one party over the other.

Party Autonomy: the parties' freedom of choice (for example, to determine the procedure to be followed).

Party Representatives: the persons, usually lawyers, acting on behalf of a party in an Arbitration.

Party-Appointed Experts: the Expert witnesses appointed by the parties to an Arbitration, as opposed to Experts appointed by the Arbitral Tribunal itself.

Pathological Arbitration Clause: literally, a diseased provision for Arbitration, meaning that the provision is unworkable.

Typically, a clause will be pathological because it provides for conflicting or non-existent matters, such as an Arbitral Institution that does not exist or court and Arbitration proceedings at the same time.

PCA: acronym of Permanent Court of Arbitration.

PCA Optional Conciliation Rules: a set of rules, based on the UNCITRAL Conciliation Rules, adopted by the PCA in 2001 to provide optional practical procedures for the PCA's Conciliation process.

PCA Rules: Arbitration Rules promulgated by the PCA. The PCA Rules cover Arbitration between various combinations of States, international organizations, and private parties.

PCIJ: acronym for Permanent Court of International Justice.

Per Diem Allowance: a daily budget, for example to cover the personal living expenses (including accommodation, meals, transport, and gratuities) of an Arbitrator for the time spent outside his or her usual place of business for the purposes of the Arbitration.

Peremptory Order: an order specifying a time for compliance following which further consequences may follow. Peremptory Orders usually follow a failure to adhere to an original Order, and may take the form of an Unless Order.

Performance Requirements: in an international law context, the measures or stipulations imposed on foreign investors by the Host State requiring them to meet certain specified goals or outcomes with respect to their operations in the Host State.

Permanent Arbitration Court at the Croatian Chamber of Commerce: an Arbitral Institution based in Zagreb, Croatia, and established in 1965.

Permanent Court of Arbitration (PCA): an intergovernmental organization and Arbitral Institution established by Treaty in 1899 and based in The Hague.

The PCA provides a variety of Dispute resolution services. For example, it is the body which, under the UNCITRAL Rules, will designate an Appointing Authority if one is needed and has not been agreed by the parties.

Permanent Court of Arbitration "Dispute Resolution Centre" (DRC): an Arbitral Institution based in Tbilisi, Georgia, and established in 2008.

Permanent Court of Arbitration at the Mauritius Chamber of Commerce and Industry (MCCI): an Arbitral Institution based in Port Louis, Mauritius, and established in 1996.

Permanent Court of Arbitration Attached to the Chamber of Commerce and Industry of Slovenia: an Arbitral Institution based in Ljubljana, Slovenia, and established in 1928.

Permanent Court of International Justice (PCIJ): an international court attached to the League of Nations created in 1920. By a resolution of the League of Nations on 18 April 1946, the court ceased to exist and was replaced by the ICJ.

Permanent Sovereignty over Natural Resources: a resolution passed by the UNGA in December 1962 regarding the sovereign rights of States in respect of natural resources within their territories.

Philippines Dispute Resolution Center (PDRCI): an Arbitral Institution based in Manila, Philippines, and established in 1996.

Place of Arbitration: the legal place of Arbitration or the Seat of Arbitration. It may also indicate where an Arbitration Hearing is physically conducted.

Place of Effective Management: place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made.

Pleading: an oral or written statement in support of a case.

The Pleadings usually refers to the written Submissions of the parties which identify the issues in Dispute and set out the basis of each party's respective position. For example, the Statement of Claim, Defence, and Reply may be referred to, individually or collectively, as the parties' Pleadings.

Pledge: something deposited as security for the fulfillment of a contract, the payment of a debt, or as guarantee of Good Faith. The Pledge is liable to forfeiture in case of failure.

Political Risk Insurance: a type of insurance that can be taken out by businesses, of any size, against political risk, such as that revolution or other political conditions will result in a loss.

Pre-Hearing Conference: a meeting (whether in person or by telephone/ videoconference) held prior to a Hearing in order to address matters (usually procedural) related to that Hearing.

Pre-Hearing Exchange: the mutual service by each party on the other of the documents they intend to present at a Hearing.

Prejudgment (writ of) Attachment: a process seeking to make the subsequent recovery of monetary Damages easier by levying a security interest on the property of the prospective paying party. A writ of attachment is filed to secure a debt or claim of the creditor in the event that a judgment is rendered.

Preliminary Hearing: a Hearing or meeting convened by the Arbitral Tribunal with the parties soon after the constitution of the Arbitral Tribunal for the purpose of discussing how the Arbitration will proceed from that point up until the Hearing. A Preliminary Hearing may be conducted in person or by telephone/videoconference. See also Case Management Conference and First Session.

Preliminary Issue: a matter decided in advance of the main Hearing, usually in an attempt to save time and costs by resolving an important dispute (such as one relating to Jurisdiction) at an early stage.

Preliminary Objections: a matter raised at an early stage of the process which, if upheld, would normally have a substantial impact upon the further proceedings. For example, a preliminary objection to the Jurisdiction of an Arbitral Tribunal.

Preliminary Procedural Consultation: an early discussion (whether in person or by telephone/videoconference) between the Arbitral Tribunal and the parties regarding the procedure to be followed.

Preservation of Evidence: protection of evidence so that its content is not altered or destroyed.

President of the Court: the presiding officer of the decision making body which forms part of an Arbitral Institution. For example, the President of the Court is the most senior officer of the ICC Court.

Presiding Arbitrator: the Arbitrator responsible for leading and managing proceedings in an Arbitration in which there are three Arbitrators. The Presiding Arbitrator is usually chosen by agreement of the parties, by the other two Arbitrators or by the Appointing Authority.

Presumption of Arbitrability: the rebuttable assumption that a matter can be resolved through arbitration (is Arbitrable) and is covered by the relevant Arbitration Clause. See Arbitrability.

Private International Law: the body of law that regulates the relationships between private citizens and entities from different nations.

Privileges: special legal treatment, benefit, advantage, or immunity.

Procedural Fairness: a suitable and balanced approach to the process, which allows each party the appropriate opportunity to present its case and defend against any case made against it.

Procedural Law: the law applicable to the Arbitration proceedings. In many cases, the procedure for the Arbitration will be a mixture of the Arbitration Rules adopted by the parties (often through the incorporation by reference of a recognized set of rules, such as those of the ICC, LCIA, AAA, or UNCITRAL) and any mandatory rules set down by the law of the seat.

Procedural Order: a decision of an Arbitral Tribunal dealing with procedural and administrative aspects of an Arbitration, such as the timetable for the proceedings.

Procedural Rules: the rules governing how an Arbitration is conducted. These vary by Arbitral Institution. For example, the ICC, LCIA, and AAA each have Procedural Rules. See Arbitration Rules.

Procedural Timetable: the schedule set by the Arbitral Tribunal in consultation with the parties which outlines the steps that each party is to take in the Arbitration, such as in relation to the timing of filing written Submissions.

Proof: the evidence or argument which establishes a position taken in a Dispute.

Protocol: an international agreement that amends, supplements, or clarifies a Treaty.

Provisional Advance on Costs: in an Arbitration administered by the ICC, the provisional advance on costs covers the ICC's administrative costs until the completion of the Terms of Reference stage.

Provisional Application: a State giving effect to a Treaty notwithstanding that the Treaty has not yet entered into force and/or has not yet been ratified by that State.

Provisional Measures: orders of a court or Tribunal issued on an interim and temporary basis (e.g., pending the final disposition of a case).

Public Interest: interest of the general public which warrants particular recognition, promotion, and protection by rules of law or particular decisions.

Public International Law: the body of law that regulates the conduct of States and international organizations. See Arbitrability.

Public Policy: a State's notions of justice and public morality. Public Policy considerations may affect whether a Dispute is arbitrable or an Award enforceable.

Public Purpose: a governmental action or direction that purports to benefit the population at large.

Punitive Damages: monetary compensation intended to punish the wrongdoer rather than being limited to that necessary to compensate the injured party.

Qatar International Arbitration and Reconciliation Centre: an Arbitral Institution established in 2006 to facilitate the resolution of Disputes between Qatari enterprises or between them and their foreign counterparts.

Quantum: the amount of money involved. Often experts are engaged to produce expert evidence on the Quantum of a claim.

Rabat International Mediation and Arbitration Centre (CIMAR): an Arbitral Institution based in Rabat, Morocco, and established in 2001, which administers Arbitration and Mediation.

Ratification: act of giving formal Consent to a Treaty, agreement, contract, or other legal instrument.

Reasoned Award: an Award stating the reasons upon which it is based.

Recast Brussels Regulation: replacement for the Brussels Regulation with the aim of further improving and simplifying the conduct of cross-border litigation within the EU.

Receptum Arbitrum: a Latin expression meaning the agreement to hear a dispute.

Reciprocity: in international law, the exchange of rights, privileges and obligations between States for mutual benefit.

Recognition of Award: confirmation by a court that an Award is valid and binding. See also Enforceability.

Rectification: correction (for example, of a contract to reflect what was agreed or of an Award if it contains a mistake). See also Correction of Award.

Red List: see Waivable Red List and Non-Waivable Red List.

Redfern Schedule: a document, in tabular form, which sets out the respective positions of the Claimant, Respondent, and Arbitral Tribunal regarding requests for Disclosure of Documents.

Référé Provision: a procedure common under French and Dutch law enabling local courts to grant sums which are not seriously disputable. To the extent a Référé Provision procedure results in a final determination, it will conflict with the parties' Arbitration Agreement and the New York Convention.

Regional Centre for International Commercial Arbitration (RCICAL): an Arbitral Institution based in Lagos, Nigeria, and established in 1989.

Regional Economic Integration Agreement: international agreement entered into between neighboring States often with the aim of reducing trade barriers fostering economic growth within the region.

Registrar: a senior officer of an Arbitral Institution responsible for the provision of case management and other administrative services through the institution's secretariat. For example, the Registrar of SIAC is responsible for the provision of case management services through that institution.

Registration (of a Treaty; of an Investment): under article 102 of the United Nations Charter, each member of the United Nations must register with the Secretariat all international agreements or Treaties it has entered into. With respect to investments, the requirement to have the investment expressly recognized as such by the Host State.

Registration Fee: a fee to be paid to an Arbitral Institution when initiating Arbitration proceedings.

Rejoinder: for cases in which there are multiple rounds of written submissions exchanged between the parties, the Rejoinder is the second written submission made by the Respondent (in Answer to the Claimant's Reply).

Relief: the legal Remedy claimed.

Remedy: the means by which an Arbitral Tribunal or court gives redress for a claim, such as Damages.

Remission: the reference by a court, upon the application of a party, of an Award back to the Arbitral Tribunal for reconsideration in whole or in part.

Removal of Arbitrator: the dismissal of the Arbitrator from the proceeding.

Replacement Arbitrator: an Arbitrator appointed to replace another Arbitrator who has been recused or removed.

Reply: a Claimant's Response to a Respondent's Statement of Defence.

Request for Arbitration: a document used to commence Arbitration under various Arbitration Rules.

Request for Consultations: see Notice of Dispute.

Request to Produce: the request of one party to the other party to produce evidence, often in the Document Production phase of an Arbitration. See also Disclosure of Documents.

Res Judicata: also known as Claim Preclusion, the Latin term for "*a matter already judged,*" and refers to either of two concepts: in both civil law and common law legal systems, a case in which there has been a final Award or judgment which is no longer subject to appeal; and the legal doctrine meant to bar (or preclude) continued Arbitration or litigation of a case on the same issues between the same parties. In this latter usage, the term is synonymous with "preclusion."

Reservation: in international law, this is defined in Article 2 of the VCLT as "*a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty,*

whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State." Also sometimes referred to as a "declaration," "understanding," "interpretative declaration," or "interpretative statement."

Reserve Seat: if the parties have not designated a Seat of Arbitration, or if the parties have designated two Seats of Arbitration, the less preferred Seat of Arbitration.

Resolution: in international law, the decision of a meeting or any other assembly, such as the UNGA. Resolutions are generally not legally binding.

Respondent: a party against whom a claim is brought by a Claimant.

Response: the Respondent's Answer to the Request for Arbitration in, for example, Arbitrations under the LCIA Arbitration Rules. Under some other Arbitration Rules, such as the ICC Arbitration Rules, the equivalent document is called the Answer. As well as replying to the factual and legal claims made by the Claimant in the Request for Arbitration, the Response may need to raise any Counterclaims and/or jurisdictional objections and include the Respondent's Nomination of an Arbitrator.

Restitution: under common law, restitution means the return to the injured party of the amount by which the party that caused the injury was unjustly enriched.

Right of Access to Court: the right of an individual to seek and obtain a legal remedy through the courts.

Right of Action: the legal right of a party to make a claim for the purposes of enforcing rights and seeking redress.

Right of Establishment: a right which allows a foreign investor to set up and carry on a business presence in a Host State freely and unconditionally.

Right to be Heard: the right to have a proper opportunity to present or defend against a case.

Rome Convention: the Convention on the Law Applicable to Contractual Obligations. This Convention was signed on 19 June 1980 and entered into force in 1991. It sets Conflict of Laws rules to determine the law applicable to contractual obligations.

SADC: acronym for Southern African Development Community.

SADC Investment Protocol: a Protocol to the SADC Treaty which seeks to further the aims of the SADC by providing a code of procedure and practise on macroeconomic, monetary, and fiscal policies, as agreed by the member states of the SADC.

SADC Treaty: a Treaty signed in 1992 to establish the SADC as successor to the Southern African Coordinating Conference. The SADC Treaty outlines the SADC's primary objectives, which include achieving development and economic growth, alleviating poverty, and enhancing the standard of life in Southern Africa.

SAKIG: acronym for the Court of Arbitration of the Polish Chamber of Commerce – "Sąd Arbitrażowy przy Krajowej Izbie Gospodarczej."

SAKIG Rules: Arbitration Rules promulgated by the SAKIG.

Salini Test: criteria applied by the Tribunal in *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4 for determining whether the Claimant can establish that it has made a qualifying investment under Article 25 of the ICSID Convention. The Salini Tribunal identified five criteria indicative of the existence of an investment: (1) a substantial commitment or contribution; (2) a certain duration; (3) an element of risk; (4) a contribution to the economic development of the Host State; and (5) regularity of profit and return.

Sanction: a measure taken against a State or individual, often to compel it to obey international law or to punish it for breach of international law.

SCAI: acronym for the Swiss Chambers Arbitration Institution.

SCAI Rules: Arbitration Rules promulgated by the SCAI.

SCC: acronym for the Stockholm Chamber of Commerce.

SCC Rules: Arbitration Rules promulgated by the SCC.

Schedule of Costs: a table setting out the fees and charges payable by parties to an Arbitral Institution for the Arbitral Tribunal and the administration of the proceedings. A Schedule of Costs will typically outline the applicable fees for filing documents and applications (including commencing the Arbitration), the administrative charges payable (calculated either on an hourly rate or by reference to the amount in Dispute in the proceedings), Deposits/advances on costs and Arbitral Tribunal/Arbitrator fees.

Scott v. Avery Clause: a contract term that provides that both parties agree that any Dispute between them must be submitted to Arbitration before court proceedings can be initiated.

The term is named after the famous case before the English House of Lords in 1865, between Alexander Scott and George Avery. See Arbitration Agreement.

Sealed Offer: an offer to settle a Dispute which, if not accepted, may be shown to the Arbitrator(s) after their decision on the merits and taken into account when determining how to allocate costs between the parties.

In English law, this is commonly referred to as a Calderbank Offer.

Seat of Arbitration: the Jurisdiction in which the Arbitration is deemed, legally speaking, to take place and the Award to be made (regardless of the physical location of the Tribunal). The physical location of an Arbitration Hearing is of little consequence beyond the convenience of the participants. However, the seat is crucially important because it determines which legal system provides the Procedural Law and supervisory courts for the Arbitration, and where the Award is deemed to be made (which can be very important for the purposes of Enforcement, for example, under the 1958 New York Convention).

Secretariat: the operational arm of an Arbitral Institution responsible for carrying out the institution's work program and administering Arbitrations in accordance with applicable rules.

Secretary-General: a senior management position within an Arbitral Institution, responsible for implementing the strategic decisions and policies taken by the board of management of the Arbitral Institution.

Security for Award: an Interim Measure requiring a Party to provide security to cover the amount of Award.

Security for Costs: an Interim Measure requiring Party A to provide security to cover the costs of Party B in the event that Party A is ordered to pay them in due course.

Security Postings: the provision of security to cover the payment of any final judgment which may be rendered in the action or proceeding.

Self-Defence (of States): the right of States under international law to take measures including the use of force, as provided for under Article 51 of the United Nations Charter.

Self-Determination: see *Jus Cogens*.

Separability: the legal doctrine by which the Arbitration clause (agreement) is deemed to be a separate contract from the contract in which it is included (allowing, for example, the Arbitration Agreement to survive the termination or the declaration of nullity of the main contract).

Sequestration of Witnesses: when a witness is not permitted to be present at the Hearing until they give evidence.

Serious Irregularity: one of the grounds upon which a party may challenge an Award under the English Arbitration Act 1996. The serious irregularity in the procedure followed must have caused substantial injustice.

Service of Process: appropriate delivery to the Respondent of the documents starting a legal proceeding.

Set Aside: a court at the Seat of Arbitration denying effect to (*i.e.*, annulling) an Award.

Set-Off: the reduction or elimination of a debt or claim by reference to a countervailing debt or claim.

Settlement: the voluntary resolution of a Dispute by agreement between the parties.

Severability: a principle that a particular clause may be invalid (and severed from the rest of the agreement) without the agreement itself being considered invalid as a result.

Sharjah International Commercial Arbitration Centre (SICAC): an Arbitral Institution based in Sharjah, UAE, and established in 1970.

Sharm el Sheikh International Arbitration Centre (SHIAC): an Arbitral Institution based in Sharm el Sheikh, Egypt.

SIAC: acronym for the Singapore International Arbitration Centre.

SIAC Rules: Arbitration Rules promulgated by the SIAC.

Simultaneous Submissions: written Submissions provided to the Arbitral Tribunal by all parties at the same time, in contrast to Consecutive Submissions.

Singapore Chamber of Maritime Arbitration (SCMA): an independent organization based in Singapore, and originally established by SIAC in 2004 to provide a framework for maritime Arbitration. The SCMA was reconstituted in 2009 as an independent entity.

Singapore International Arbitration Centre (SIAC): an Arbitral Institution established in 1991 and based in Singapore. SIAC has its own Arbitration Rules and will also administer cases under the UNCITRAL Rules.

Single Joint Expert: an Expert appointed or instructed jointly by the parties to give evidence on a particular issue (as opposed to a situation in which the parties instruct separate experts to give evidence on the same issue).

Site Inspection: a visit by the parties and/or Arbitral Tribunal to a place that is relevant to any question arising in the course of the Arbitration.

Slip Rule: the ability of a Arbitral Tribunal to correct minor (for example, typographical or mathematical) errors in its Award.

Soft Law: rules and guidelines that are not themselves binding but which have some legal significance, for example having been drawn up by established professional bodies.

Sole Arbitrator: the name given to an individual who serves as the only Arbitrator forming the Arbitral Tribunal.

Sole Effects Doctrine: this doctrine holds that the only (“sole”) criterion that a tribunal should consider when assessing whether there has been Indirect Expropriation is whether the *damage* caused by the State measure is equivalent to that which the investor would suffer as a result of Direct Expropriation. Any other factor is considered irrelevant to the analysis, *e.g.*, the State’s intentions towards the investor in question, the public policy objectives sought by the State measure, etc.

Southern African Development Community (SADC): a regional economic community comprising of 15 member states: Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. It aims to eradicate poverty and integrate the region with Southern Africa through promoting economic development and fostering peace and security.

Sovereign (or State) Immunity: protection enjoyed by sovereign States and/or their instrumentalities against the Jurisdiction of other States’ courts or Tribunals or from the Execution of any judgment or Award.

Sovereignty (of States): the power of a State to do everything necessary to govern itself including making, executing, and applying laws, engaging in war, imposing and collecting taxes, and forming treaties with other sovereign States.

Spanish Arbitration Society (SEA): an Arbitral Institution based in Madrid, Spain, and established in 1982.

Special Commission of the Hague Conference on Private International Law: a commission responsible for drafting the Hague Conventions and reviewing their operation for the purposes of improving their effectiveness and promoting consistent practices and interpretation.

Special Commissioner: a neutral Third Party appointed to rule on an objection to the request made by a State or a national of a State to institute an inquiry under ICSID’s fact-finding ICSID Additional Facility Rules.

Special Fee: the fee that must accompany an application for an Emergency Arbitrator under Article 9B of the LCIA Rules.

Specific Performance: an order or claim that a party perform its contractual obligations, that is, do what it promised to do.

Splitting the Baby: a phrase used to describe an approach by a court or Arbitral Tribunal which appears to be designed either to please all parties equally or otherwise to split things down the middle.

St. Petersburg International Arbitration Court (SPICAC): an Arbitral Institution based in St. Petersburg, Russia, and established in 1997.

Stabilization Clause: a provision typically found in foreign investment contracts that is designed to secure regulatory stability for the purposes of ensuring predictability for investors.

Standard of Proof: the level of certainty and evidence required to establish a legal claim.

Standing: the fulfilment of the legal criteria necessary to participate in a case in the selected forum.

Stare Decisis: a common law legal principle that a court or Arbitral Tribunal should be guided by precedents in past cases. *Stare decisis* is Latin for “to stand by things decided.”

State: under international law, an entity with (1) a permanent population, (2) a defined territory, (3) a government, and (4) the capacity to enter into relations with other States. A possible fifth criterion is that the entity be recognized by other States.

State-to-State Arbitration: Arbitration relating to Disputes between States. *Cf.* Investor-State Arbitration.

State Aid: a concept under European law defined as “any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.” State Aid is, insofar as it affects trade between EU member states, deemed incompatible with the internal market and therefore prohibited under EU law.

State Attribution: the principles governing the imputation of internationally wrongful acts committed by State agencies or other instrumentalities on States. See also Draft Articles on Responsibility of States for International Wrongful Acts.

State Immunity: see Sovereign (or State) Immunity.

State Responsibility: a principle of Customary International Law that a State is responsible for its internationally wrongful acts, including international wrongs committed by it or its instrumentalities whose actions are attributable to it.

Stateless Award: an Award for which the proceedings were not legally situated in any particular national Jurisdiction.

Statement of Case: a written Submission setting out a party's position.

Statement of Claim: a written Submission setting out the Claimant's full position in detail (usually for the first time).

Statement of Defence: a written Submission setting out the Respondent's Answer to the Claimant's Statement of Claim.

Statement of Defence to Counterclaim: a written Submission setting out the Claimant's Answer to the Respondent's Counterclaim.

Statement of Reply: a written Submission setting out the Claimant's Answer to the Respondent's Statement of Defence.

If the Respondent has made a Counterclaim, the Statement of Reply is usually accompanied by a Statement of Defence to Counterclaim.

State-Owned Company: a legal entity whose share capital is owned by a State or which is subject to the control of a State.

Stay (of Proceedings or Execution): a Procedural Order that temporarily stops the procedure, usually while something else happens.

For example, court proceedings brought in breach of an Arbitration Agreement may be stayed pending the Arbitral Tribunal deciding upon its Jurisdiction, or Enforcement may be stayed pending a Challenge to the Award.

Stenographic Record: a verbatim record of spoken language taken using shorthand. Often used for recording Arbitration Hearings or witness Depositions. See also Transcript.

Stockholm Chamber of Commerce (SCC): see Arbitration Institute of the Stockholm Chamber of Commerce.

Subject Matter Jurisdiction: a subset of Jurisdiction that concerns the authority of a court or Arbitral Tribunal to hear cases of a particular type or relating to a specific subject matter.

Submission: an oral or written communication from a party's representatives to the Arbitral Tribunal making an argument.

Submission Agreements: an Arbitration Agreement in respect of existing Disputes.

Subpoena: a document that orders its recipient to appear before a court or Arbitral Tribunal as a witness or orders its recipient to produce physical evidence before a court or Arbitral Tribunal.

Subrogation: a legal principle that allows a party to assume the legal rights of a person for whom expenses or a debt has been paid by the assuming party. Typically, subrogation occurs when an insurance

company pays a loss on a claim, and then exercises its equitable right of subrogation to stand in the shoes of the insured and seek compensation from a Third Party alleged to have caused the loss.

Substantive Jurisdiction: the authority of a court or Arbitral Tribunal to determine a Dispute. For example, under Section 30 of the English Arbitration Act of 1996, Substantive Jurisdiction is concerned with (a) whether there is a valid Arbitration Agreement, (b) whether the Tribunal is properly constituted, and (c) what matters have been submitted to Arbitration in accordance with the Arbitration Agreement.

Succession of States: a situation in which, under international law, a State with new international Legal Personality assumes State Sovereignty over a territory and population that was previously enjoyed by another State.

Succession of Treaties: the circumstances immediately following a Succession of States in which a successor State is bound or released from Treaty obligations entered into by the predecessor State.

Sui Generis: Latin for “*of its own kind.*” Used to describe a set of circumstances that has no broader application beyond the matter under consideration.

Summary Procedure: a shortened procedure in which the Arbitral Tribunal does not hear full evidence and argument, and sometimes dispenses with an oral Hearing. Summary Procedures are normally best suited to dealing with weak cases if the Dispute is confined to a legal issue, with no evidence requiring a full trial, and/or if there is clearly no viable claims or Defences.

Sunset Clause: see Survival Clause.

Supervisory Jurisdiction: the role of State courts in supporting and ensuring that an Arbitration proceeds in accordance with the agreement of the parties.

Surety: a promise by a guarantor to pay one party (the obligee) a certain amount if a second party (the principal) fails to meet some obligation, such as fulfilling the terms of a contract. The Surety protects the obligee against losses resulting from the principal’s failure to meet the obligation.

Survival Clause: a provision of a Treaty that stipulates certain requirements will continue to apply after the Treaty’s termination. For instance, in the context of BITs, a Continuing-Effects Clause may stipulate that investments made prior to the Treaty’s termination will continue to benefit from the Treaty’s protections. See also Continuing-Effects Clause.

Survivorship of Treaty Obligations: if a Contracting State to a Treaty has validly terminated it, and such Treaty has a Survival Clause, the Treaty remains in force for a specified period after the Treaty’s termination.

Swiss Chambers Arbitration Institution (SCAI): an Arbitral Institution based in Geneva, Switzerland, and established in 2004. The Swiss Chambers Arbitration Institution provides Arbitration and Mediation services for domestic and international cases, under any applicable law.

Talal Abu-Ghazaleh Dispute Resolution Center (TAG Resolution): an Arbitral Institution based in Abu Dhabi, UAE, and established in 2005, which offers Arbitration, Mediation, and early neutral evaluation services.

Tehran Regional Arbitration Centre (TRAC): an Arbitral Institution based in Tehran, Iran, and established in 2005.

Termination (of a Treaty): the point in time at which a Treaty ceases to have effect, subject to any Survival Clauses.

The consequences of the termination of a Treaty are provided for under Article 70 (Consequences of the Termination of a Treaty) of the VCLT:

“1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions of in accordance with the present Convention:

(a) Releases the Parties from any obligation further to perform the treaty;

(b) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.”

Terms of Appointment: the terms on which a person or entity, for example, an Arbitrator or Expert, is engaged to perform their functions. The Terms of Appointment of an Arbitrator may deal with matters including entitlement to fees and expenses, assistance from Third Parties, immunity from suit and consequences of resignation.

Terms of Reference: a document required by the ICC Rules, which sets out the names and addresses of the parties and their representatives, a summary of their claims, the Place of Arbitration, and, if appropriate, a list of the issues to be determined.

Territorial Extension Clause: a clause within a Treaty that extends and applies the instrument to territories over which the signatory State exercises a degree of responsibility in international relations but over which the State does not exercise full sovereignty. For example, the United Kingdom extends the territorial application of certain of its Treaty obligations to Gibraltar, the Channel Islands, and certain Crown Dependencies.

Territorial Jurisdiction: the geographical area over which a State has Jurisdiction, or in respect of which a Treaty applies.

TEU: acronym for Treaty on European Union.

TFEU: acronym for Treaty on the Functioning of the European Union.

Thai Arbitration Institute: an Arbitral Institution based in Bangkok, Thailand, and established in 1990.

The Arab Center for Mediation and Arbitration in Intellectual Property: an Arbitral Institution which administers Mediation and Arbitration in intellectual property, established in 2003 and based in Amman, Jordan.

Third Party: a person or entity that is not a party to the contract or Arbitration (or other matter) in question, whether or not they are affected by it.

Third Party Beneficiary: a person or entity that benefits from a contract or other situation without being a party to it.

Third-Party Funding: the provision of finance for all or part of the legal costs of a party by an entity with no connection to the proceedings. The funding is usually provided in return for a fee which may be linked to and/or payable from the proceeds recovered by the funded party.

Tokyo Maritime Arbitration Commission of the Japan Shipping Exchange (JSE): an Arbitral Institution based in Tokyo, Japan, and established in 1921, which specializes in maritime Arbitration.

TPP: acronym for Trans-Pacific Partnership.

Trade Usages: the terms on which members of a particular business community are accustomed to deal. Under certain Arbitration Rules (notably those of the ICC), the Tribunal is required to take account of any relevant trade usages.

Trade-Related Investment Measures (TRIMs): see Agreement on Trade-Related Investment Measures.

Transatlantic Trade and Investment Partnership (TTIP): a proposed trade and investment agreement between the EU and the United States, which has the aim of promoting trade and economic growth.

Transcript: a verbatim record of spoken language. Often used for recording Arbitration Hearings or witness Depositions. See also Stenographic Record.

Transnational Arbitration: see International Arbitration.

Trans-Pacific Partnership (TPP): a trade and investment agreement between Australia, Brunei, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. It was signed on 4 February 2016 but has not entered into force.

Transparency: the right and means to examine the process of decision making. In Arbitration, there is an inherent tension between the Confidentiality interests of the parties and the systematic interest in promoting Transparency.

Travaux Préparatoires: the materials, such as reports or records of meetings, produced in the process of preparing an international Treaty.

Treaty: *“an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation,”* as defined under the VCLT.

Treaty Claims: a legal action, assertion, or demand made or issued by a party based on a right or obligation under a Treaty.

Treaty of Westphalia: a series of peace treaties signed in 1648 in the Westphalia region of Germany to end the Thirty Years' War in Europe. The Treaty established the modern system of State Sovereignty.

Treaty on European Union (TEU): one of the two primary treaties of the EU, along with the TFEU. It sets out the general principles governing the EU, the governance of its central institutions (such as the Commission, Parliament, and Council), as well as rules on foreign and security policy.

Treaty on the Functioning of the European Union (TFEU): one of the two primary treaties of the EU, along with the TEU. It sets out the organizational and functional details of the EU. It was formerly known as the EC Treaty, the Treaty of Rome, and the Treaty establishing the European Community.

Treaty Shopping: the practice of trying to take advantage of the more favorable Treaty, for example by establishing corporate vehicles in Jurisdictions that are parties to international Investment Treaties in order to benefit from the protections of those Treaties.

Treaty Succession: see Succession of Treaties.

Treaty-Based Arbitration: Arbitration Disputes originating from BITs or MITs.

Treaty-Based Award: an Award issued in an Investor-State Arbitration.

Treaty-Based Obligations: obligations arising out of a Treaty.

Tribunal: see Arbitral Tribunal.

Tribunal Arbitrajodel ICAV (TAV): an Arbitral Institution based in Valencia, Spain, and established in 2008.

Tribunal Secretary: see Administrative Secretary.

Tribunal's Expenses: the expenses incurred by the Arbitral Tribunal as distinct from the fees payable to the Arbitral Tribunal for work undertaken.

Tribunal Fees: the charges for the Arbitral Tribunal's services.

Tribunal-Appointed Experts: subject matter or legal Experts appointed by an Arbitral Tribunal to help the Arbitrators understand a Dispute that requires specialized knowledge.

Trigger Letter: see Notice of Dispute.

Trinidad and Tobago Chamber of Commerce Dispute Resolution Service: an Arbitral Institution based in Port of Spain, Trinidad and Tobago, and established in 1996.

Triple Identity Test: a test used, especially in civil law Jurisdictions, to determine whether *Res Judicata* or Claim Preclusion applies. It requires identity of (1) the object, (2) the grounds on which the claim is based, and (3) the parties. The identity of the object requires that the relief sought in the different proceedings be the same. The identity of the grounds requires that a latter proceeding be based on the same legal basis as a previous claim. The identity of parties prohibits unrelated third parties from benefitting from or being restricted by a prior decision or Award.

Truncated Tribunal: an Arbitral Tribunal in which one or more of the originally appointed members have either been removed, have resigned, or have passed away.

TTIP: acronym for Transatlantic Trade and Investment Partnership.

Umbrella Clause: an obligation under a Treaty by a State to comply with all obligations, undertakings, or commitments it has assumed or entered into towards investments made by investors from the other signatory State or States.

Umpire: a third person brought in to an Arbitration to resolve a deadlock in a Dispute being heard by two Arbitrators that do not agree.

Also a person chosen to be a permanent Arbitrator for the duration of a collective bargaining agreement.

UN International Law Commission (ILC): a UN body established in 1948 that is tasked with the “*promotion of the progressive development of international law and its codification.*” The ILC has been instrumental in the creation of a number of treaties that are foundational to the modern international legal order. ILC codifications are often cited as evidence of general acceptance of legal norms for establishing Customary International Law.

UNCITRAL: acronym for the United Nations Commission on International Trade Law.

UNCITRAL Conciliation Rules: a set of rules adopted by UNCITRAL on 23 July 1980 which parties can adopt in order to seek to resolve disputes between them amicably.

UNCITRAL Model Law: see Model Law.

UNCITRAL Rules: a set of Arbitration Rules widely used to conduct investment and Commercial Arbitration proceedings, especially in *Ad Hoc* Arbitrations. Originally adopted in 1976, the rules have been revised three times, with the latest version being adopted in 2013.

UNGA: acronym for United Nations General Assembly.

UNIDROIT Principles: a system of international contract law rules published by the International Institute for the Unification of Private Law in 1994. The UNIDROIT Principles are based on concepts familiar to many legal systems and are considered in some respects to be reflective of *Lex Mercatoria*.

Unified Agreement for the Investment of Arab Capital: a multilateral Treaty between the Arab Union (Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Syria, Somalia, Sudan, Tunisia, the United Arab Emirates, and Yemen) that entered into force on 7 September 1981.

Unilateral Declaration: a written or oral statement made in public by a State that is addressed to (i) the international community of States as a whole, (ii) a specific State (or group of States), or (iii) a private entity, the effect of which is to bind that State under international law in respect of the terms of the Declaration.

United Nations Charter: the foundational Treaty of the United Nations that entered into force on 24 October 24 1945. All 193 UN members are bound by its articles. Article 103 of the Charter contains a supremacy clause stating that, in the event of conflict, obligations to the United Nations prevail over all obligations under any other international agreement.

United Nations Commission on International Trade Law (UNCITRAL): currently composed of 60 member states elected by the UNGA, UNCITRAL was established in 1966 with the mandate of removing obstacles to international trade.

United Nations Convention on Jurisdictional Immunities of States and Their Property: a multilateral Treaty declaring a comprehensive approach to the question of the immunity of sovereign States from suits in foreign courts. The Treaty embraces a “restrictive theory” of Sovereign Immunity whereby States maintain their immunity when engaged in sovereign activities but are treated as private entities when claims arise from their commercial transactions or “private law” activities. Although adopted by the UNGA in 2004, it has yet to collect the required number of ratifications to enter into force.

United Nations General Assembly (UNGA): a forum in which the member states of the United Nations work together on international issues in accordance with the United Nations Charter, such as development, peace and security, and international law. It is one of the six main organs of the United Nations; the only one in which all member states have equal representation — one nation, one vote.

United Nations Treaty Series (UNTS): a publication produced by the Secretariat of the United Nations containing all treaties and international agreements registered or filed and recorded by the Secretariat since 1945, pursuant to Article 102 of the United Nations Charter.

United States Federal Trade Commission (FTC): a United States government agency created for the purpose of preventing unfair methods of competition in commerce.

Universal Rules: the rules of law that have universal or global acceptance or application.

Universal Succession: principle of Succession of States in which all rights and liabilities of the predecessor State are vested in the successor State.

Unless Order: an Order, usually given after a failure to comply with a previous Order, that a party will suffer certain consequences (such as being precluded from pursuing a claim or Defence) if it does not comply. See also Peremptory Order.

Unmeritorious Challenges: challenges to Arbitrators or Awards that are made, usually for tactical reasons, despite lacking any merit.

Validation Principle: a principle under which an Arbitral Tribunal seeks to apply a law that gives effect to the parties’ Arbitration Agreement.

Valuation: refers to the process of determining the worth of something, such as a company.

VCLT: acronym for Vienna Convention on the Law of Treaties.

Venire Doctrine: short form of the Latin phrase “*venire contra factum proprium*,” i.e., a party cannot contradict its previous actions, particularly if the affected party has relied upon them.

Venue of Arbitration: the physical location where the Arbitration Hearing takes place, which is often the same as but may be different from the Seat of Arbitration / Place of Arbitration.

VIAC: acronym for the Vienna International Arbitral Centre.

VIAC Rules: Arbitration Rules promulgated by VIAC.

Vienna Convention on the Law of Treaties (VCLT): a Treaty concerning the interpretation of treaties, adopted in 1969 and which entered into force on 27 January 1980.

Vienna International Arbitral Centre (VIAC): an Arbitral Institution founded in 1975 as part of the Austrian Federal Economic Chamber. VIAC administers international cases involving at least one party with its place of business or normal residence outside of Austria or cases concerning Disputes with an international character.

Vietnam International Arbitration Centre (VIAC): an Arbitral Institution based in Hanoi, Vietnam, and established in 1993.

Vilnius Court of Commercial Arbitration (VCCA): an Arbitral Institution based in Vilnius, Lithuania, and established in 2003.

Voie Directe: the determination of the Applicable Law on the basis of the facts of the case without reference to Conflict of Laws Rules.

Voie Indirecte: the determination of the Applicable Law using Conflict of Laws Rules.

Waiting Period: see Cooling-Off period.

Waivable Red List: a series of matters in the IBA Guidelines on Conflicts of Interest which are regarded as potentially compromising an Arbitrator's Impartiality and Independence and must therefore be disclosed by a potential Arbitrator but which can be waived by the parties if they wish to do so. See also Impartial and Independent.

Waiver: the release of a right. The conditions required for an effective Waiver vary according to any agreement between parties and the Applicable Law.

Waiver Exception: section 1605(a)(1) of the Foreign Sovereign Immunities Act of 1976 of the United States, which says that foreign States “*shall not be immune from the jurisdiction of courts of the United States or of the States in any case in which the foreign state has waived its immunity either explicitly or by implication.*”

Washington Convention: see ICSID Convention.

WIPO Arbitration and Mediation Centre: an Arbitral Institution based in Geneva, Switzerland, and established in 1994.

WIPO Rules: Arbitration Rules promulgated by the WIPO Arbitration and Mediation Centre.

Witness Conferencing: see Hot-Tubbing.

Witness Examination: the questioning of a witness at a Hearing. See also Direct Examination and Cross-Examination.

Witness of Fact: a person who gives evidence, by way of a Witness Statement and/or orally, as to factual matters within their personal knowledge. A witness of fact is to be distinguished from an Expert witness who gives an opinion based on their expertise, professional qualifications, and/or knowledge.

Witness Statement: the written testimony of a person with knowledge of facts relevant to the Dispute.

World Bank: an international financial institution founded in 1945 that comprises the IBRD and the International Development Association (IDA). The World Bank adopts poverty reduction strategies including by extending loans to developing States.

World Bank Guidelines: rules setting out the World Bank’s policies on procurement and the use of consultants.

When the World Bank provides financing to its member states for investment projects, each project has a loan agreement. One of the key provisions in the loan agreement is that each borrower abides by the World Bank’s procurement policies, as detailed in the Guidelines for Procurement and the Consultant Guidelines. The Guidelines establish the arrangements to be made for procuring the goods and works required for the project.

World Bank Guidelines on the Treatment of Foreign Direct Investment: guidelines issued in 1992 which set out the World Bank’s policies on the admission and treatment of private foreign investment in the territories of its member states. The Guidelines emphasize the value of FDI, and are based on the general premise that “*equal treatment of investors in similar circumstances and free competition among them are prerequisites of a positive investment environment.*”

World Intellectual Property Organisation (WIPO): a specialized agency of the United Nations that was created in 1967 for intellectual property services, policy, information, and cooperation. WIPO currently has 191 member states.

World Trade Center Macau Arbitration Center (WTCM): an Arbitral Institution operating within the World Trade Center Macau.

World Trade Organization (WTO): an intergovernmental organization founded in 1995 that seeks to regulate and foster international trade between participating States by providing a framework for negotiating trade agreements and a Dispute resolution process aimed at enforcing participants' adherence to WTO agreements.

Writ of fieri facias: an application to court for a method of Enforcement which allows the seizure and sale of the debtor's assets.

WTO: acronym for World Trade Organization.

WTO Panel: a panel established by the WTO's dispute settlement body to consider a legal Dispute and examine the relevant evidence. A panel consists of three experts who are chosen from an indicative list of qualified candidates nominated by WTO members.

YIAG: acronym for Young International Arbitration Group.

Young ICCA: a world-wide arbitration knowledge network for young practitioners and students which was established in 2010.

Young International Arbitration Group: an LCIA sponsored association for practitioners, students, and younger members of the Arbitration community (age 40 and under) established in 1997.

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