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Regulation & Investment Disputes: *Asian Perspectives*

Research Workshop (4 August 2016)

Summary

China, India and ASEAN are expected to grow at 6.3% per year over the next five years, accounting for about one-third (or 32.1%) of global growth. Australia is ranked as one of the world's top 5 host economies, with USD 5.1 billion worth of foreign direct investment inflows into the country. Foreign direct investment is at the heart of the Asian growth story. Yet, there is an increased desire to balance this with the inherent right of Asian States to regulate and resolve to preserve the *flexibility* to set legislative and regulatory priorities, safeguard public welfare, and protect legitimate public welfare objectives, such as public health, safety, the environment, the conservation of living or non-living exhaustible natural resources, and the integrity and stability of the financial system. There is also a call to reform the investor-state dispute settlement process to ensure consistency, accountability and transparency. The proposed research workshop is designed to examine these novel issues, make policy-relevant recommendations and result in a co-edited volume which will make a valuable contribution to the extant literature on investment arbitration in Asia.

Format

It is proposed that participants of the scoping workshop will contribute a chapter/article each to a volume/special issue co-edited by **Ast/Prof. Mahdev Mohan (PI) & Prof. Chester Brown** (collaborator). Scholars and scholar-practitioners who will present papers, and ultimately pen chapters, include:

Part I: Introduction (9.00am – 9.15am)

Prof Chester Brown & Ast/Prof Mahdev Mohan

Part II: “Striking the Balance” (9.15am – 10.45am)

Chairs: Prof. Julien Chaisse (Chinese University of Hong Kong)

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Prof. Luke Nottage (University of Sydney)
Rebalancing Investment Treaties and Investor-State Arbitration in Asia and Australia

Prof. Shotaro Hamamoto (Professor, Kyoto University)
Regulatory Power of States & Investors' Interests: Striking a Balance in Asia

Olga Boltenko (Senior Associate, Clifford Chance LLP)
Expropriation and regulatory carve-outs

Morning Coffee & Snacks (10.45am – 11.15am)

Part III: Cross-cutting Sectoral and Jurisdictional Issues (11.15am – 12.45pm)

Chair: Prof. Chester Brown (University of Sydney)

Prof. Lim Chin Leng (Professor, University of Hong Kong)
Fragrant Harbour and Oyster Mirror: Some Strange Questions of Regulatory Autonomy under the Investment Treaties of the People's Republic of China

Dr. Sam Luttrell (Counsel, Clifford Chance LLP)
Green multilateralism and the environment in the TPP

Ast/Prof. Prabhash Ranjan (Assistant Professor, South Asian University)
Intellectual Property Rights and the New Indian Model BIT: A Critical Appraisal

Lunch: 12.45pm – 2.15pm

Part IV: Views from the Region (2.15pm – 3.45pm)

Chair: Prof. Jaemin Lee (Seoul National University)

Nguyen Manh Dzung (Managing Partner, Dzung & Associates LLC)
The EU-Vietnam FTA and ISDS in Vietnam

Antony Crockett (International Counsel, Hiswara Bunjamin & Tandjung, Jakarta (on secondment from Herbert Smith Freehills))
The development of investment agreements and regulatory space in Indonesia

Ei Ei Aung (Head of the corporate practice, U Tin Yu & Associates, Myanmar)
The future of investment arbitration in Myanmar

Part V. Conclusion and Close of Proceedings (3.45pm – 4.00pm)

Asst. Prof. Mahdev Mohan and Prof. Chester Brown