

Investment Arbitration and Climate Change

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This publication will bridge a gap between international investment law and climate change law, through the lens of international arbitration. Its ambition is to support lawyers involved in international investment arbitration to accelerate and support the climate change transition.

Background

The intersection between climate change and international investment law, with a particular focus on investment arbitration, is growing in importance. States are under pressure to fulfill their international legal obligations to reduce greenhouse gas emissions. At the same time, policy measures necessary to meet emissions targets could trigger liability under investor-protection provisions. This development is already reflected in investment arbitration, with the recently filed cases related to the phase-out of fossil fuels. Other climate change-related claims are expected to follow.

Intended readership

The book's primary target audience is arbitrators, state representatives and counsel involved in international investment arbitration. For such practitioners, many novel issues will arise in climate-related investor-state disputes. The book intends to provide them a deeper understanding of the instruments and principles governing climate law and state climate action, as well as concrete ideas for how to assess and argue claims and defenses related to state climate policies. The book will also provide analysis of key procedural issues, and an understanding of the context in which these disputes arise.

Content

Experienced practitioners, policy-makers, academics and experts from civil society will be invited to contribute to the volume. Authors will be asked to address:

1. Climate change and investor-state arbitration: types of state action leading to climate-related investor claims.
2. Procedural issues: Making room for climate science in investor-state arbitration, using expert witnesses, tribunal-appointed experts, state counterclaims.
3. Assessing climate-related claims: climate issues in contract-based and treaty-based investor-state cases, issues relating to fossil-phaseout regulations, climate justice and emissions trading.
4. Damages: Valuation of fossil assets in a rapidly decarbonizing world
5. Understanding the context: the relationship between investment arbitration and climate regulation ("regulatory chill"), efforts to revise/modernize investment treaties and arbitration, the connection between investor protection and FDI.

Dates

Submission deadline: 30 November 2022
Publication: September 2023