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**J Chaisse, L Choukroune and S Jusoh**  
**Handbook of International Investment Law and**  
**Policy (Springer, 2021)**  
**ISBN: 9789811336164, €519,99 (hardback)**

*Z.J. Jennifer Lim\**

**1 Introduction**

International investment law has grown in prominence in line with the substantial expansion of the world stock of foreign direct investment (FDI) since the 1950s. Recognising that FDI can be an important driver of economic growth and development, governments liberalised their FDI regimes and adopted open investment policies to attract foreign investors. During this time, bilateral investment treaties proliferated. However, in recent years, the global economic landscape has undergone significant changes and challenges. “Traditional” host States are becoming major and even net capital exporters. The financial crisis of 2007–2008 and the COVID-19 pandemic have exposed the economic fragility in several markets. Stakeholders are questioning whether investment treaties in fact lead to increased FDI, and whether, even if they do, this is at the cost of unduly constraining a State’s ability to regulate in the public interest, including: (i) responding quickly and decisively to financial and other crises; (ii) taking measures to comply with other international law obligations; and (iii) safeguarding against the potential risks of FDI, such as natural resource depletion, profit repatriation, and displacement of local producers. As a result, international investment law and policy have come under intense scrutiny, giving rise to lively and ongoing discussions of proposals to reform or even abandon the current international investment regime.

As countries reconsider their individual and collective approaches to international investment law and policy, this new book, titled *Handbook of International Investment Law and Policy*, is a timely contribution to the literature on this field. Prepared as a one-stop reference source, the book provides a

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\* Counsel, Sidley Austin LLP. The views expressed are solely those of the author; they do not reflect the views of her law firm. Any errors are the author’s alone.

comprehensive review of all aspects of international investment law and policy. The book combines depth and breadth, covering a wide range of topical issues and even areas outside of international investment law that nevertheless frequently interact with it. Furthermore, the book not only analyses and critiques the existing issues and doctrines, but also charts the course for how this area might develop in the future.

The book features more than 100 chapters written by leading experts working in academia, private practice, and government. These chapters are organised into four volumes, examining in detail the substantive standards in international investment law (Volume I), investor-State dispute settlement (Volume II), the interaction between international investment law and other fields of international law (Volume III), and the trends and challenges for international investment law and policy (Volume IV).

## 2 Volume I: International Investment Substantive Law

Volume I is titled “Definitions and Standards of Investment Law”, and its chapters examine the standards of treatment, promotion and protection found in international investment agreements, the scope of these standards, and the extent to which these standards have become settled or are continuing to be modernised and developed.

After the introductory chapter by the book’s editors, Volume I opens with a chapter by Muthucumaraswamy Sornarajah titled “Resistance to Dominance in International Investment Law”, which traces the history of the current investment treaty system, helping readers understand the background and context of the existing international investment regime. Unlike most other areas of public international law, international investment law is an area of public international law in which non-State actors are key stakeholders, whether directly (for example, foreign investors who benefit from the investment protections) or indirectly (for instance, host State populations who are intended to benefit from the FDI and whose interests may be affected when their governments are ordered to pay damages to foreign investors). While it has come a long way since the early days of gunboat diplomacy and Treaties of Friendship, Commerce, and Navigation, international investment law is still an evolving area of law and continues to attract significant attention and controversy because of its broader policy implications.

In addition to chapters on the classic investment protection standards of national treatment, fair and equitable treatment, most favoured nation treatment, full protection and security, and expropriation, Volume I includes

chapters addressing the intersection of these investment protection standards and emerging legal issues, such as Sheng Zhang's chapter on "Protection of Cross-Border Data Flows Under International Investment Law: Scope and Boundaries" and Nathalie Bernasconi-Osterwalder's chapter on "Inclusion of Investor Obligations and Corporate Accountability Provisions in Investment Agreements".

This volume will serve its readers well as a useful first port of call on key issues of substantive international investment law.

### 3 Volume II: The Investor-State Dispute Settlement System

Volume II, titled "Investor-State Dispute Settlement System: Procedure, Cases, and Issues", is a critical appraisal of the existing investor-State dispute settlement (ISDS) system, including issues that frequently arise in practice (e.g., arbitral procedure, anti-arbitration injunctions by national courts, public participation and costs allocations), as well as reform proposals to address the criticisms levied against ISDS. One response to the backlash against ISDS is a pivot to mediation as a precondition to arbitration or a stand-alone mechanism for resolving investor-State disputes.

The viability and effectiveness of mediation as a tool to resolve investor-State disputes is addressed through a case study of the Asia-Pacific Regional Mediation Organization in Chang-fa Lo's chapter titled "Past and Future of Mediation for Investment Disputes: The Case for the Asia-Pacific Regional Mediation Organization (ARMO)".

There are several other case studies in this volume. Some have a geographical focus, such as G. Matteo Vaccaro-Incisa's chapter on China's treaty policy and practice regarding arbitration clauses that are limited to compensation due to expropriation, and Rumana Islam's chapter on the ISDS regime in Bangladesh. Others analyse specific cases and instruments, such as the Southern Africa Development Community Finance and Investment Protocol 2006, the IBA Guidelines on Conflicts of Interest in International Arbitration, *Bilcon v Canada*, and *Gabriel Resources v Romania*. Volume II also covers topics that are of increasing importance in theory and practice, such as third-party funding in investment arbitration, corruption, and human rights and environmental counterclaims in investment arbitration.

Academics, practitioners and students alike will benefit from this volume's illuminating analyses and comprehensive coverage of ISDS issues and proposed reforms.

#### 4 **Volume III: The Interaction between International Investment Law and Other Fields of International Law**

Volume III addresses the interaction between international investment law and other fields of international law. Titled “Regime Interaction in International Law: Investment and ...”, this volume draws attention to a relatively understudied aspect of international investment law, namely its interaction and interconnectedness with multiple other areas of law.

Given the broad impact of FDI on States and their populations, international investment law cannot be studied in isolation. Indeed, international investment law is intertwined with other areas of international law, such as human rights law, environmental law, intellectual property law, regional supranational laws, trade law, and international tax law. These regime interactions help to inform international investment policies.

Various chapters in this volume explore highly topical issues that straddle multiple fields of law. For example, Elizabeth Sheargold and Andrew D. Mitchell’s chapter on “Public Health in International Investment Law and Arbitration” analyses the extent to which investor protections in international investment treaties may limit the ability of States to implement legitimate public health regulations. While not dealing with the COVID-19 pandemic specifically, this chapter may serve as useful background in light of possible ISDS claims that may be brought in response to States’ responses to the COVID-19 pandemic. Lukas Vanhonnaeker’s contribution on “Intellectual Property Rights in International Investment Agreements” is also topical given the rise of digital assets as investments.

Other chapters in this volume analyse classic and perennial questions in international investment law through the lens of other adjudicatory bodies, such as the International Court of Justice, and explore relatively uncharted issues such as Elsa Sardinha’s chapter on the relevance of cultural heritage law and considerations in investment treaty disputes. However, as the book’s editors point out in their introductory chapter to this volume, the existing ISDS regime limits a tribunal’s ability to take into account non-investment concerns when adjudicating an investor-State dispute. Consequently, there is a need for greater integration and coherence among international investment law and other fields of law, and this volume is an important step in that direction by identifying the potential avenues of regime interaction.



## 5 Volume IV: The Future of International Investment Law and Investor-State Dispute Settlement

Volume IV on “Trends in International Investment Rulemaking and Investor-State Dispute Settlement” focuses on new developments and trends in international investment rulemaking at the national, regional and international levels.

In light of what has been described as the “legitimacy crisis” of the current ISDS regime, States are experimenting with various proposals and solutions, which range from incremental changes to address specific criticisms to systemic reforms to an overhaul of the existing ISDS regime. There is at present no consensus as to the correct approach that should be taken, and reform proposals remain disparate. Consequently, in this volume certain ideas are explored from different perspectives. For instance, there are multiple chapters dedicated to: (i) analysing the effects of implementing an investment court system in South East Asia and Europe; (ii) homing in on the European Union’s international investment agreements in terms of both law and policy; and (iii) examining China’s past experiences with ISDS and the difficult choices it has to navigate in the future in regard to its FDI regime and attitude towards ISDS. This volume contains several chapters on Asia and in particular China, reflecting the increased importance of China’s role in the global community in driving developments and innovations in international investment law. In addition, Volume IV features case studies in Africa, Latin America, and Europe.

These chapters will be of great assistance to any reader wishing to gain a better understanding of a specific region’s approach to international investment law and policy. In future editions of this book, it may be helpful to include other geographical regions such as the Middle East and North America, in order to provide more complete geographical coverage.

## 6 Conclusion

In conclusion, the book *Handbook of International Investment Law and Policy* is at present one of the most comprehensive statements of the current state of international investment law and policy and how they may develop going forward. I would highly recommend this book as a reference source for anyone who may be interested in this field, including policy-makers, arbitrators, practitioners, academics, and students.