Investment Arbitration

Academic Year: (2019 / 2020) **Review date: 20-04-2020**

Department assigned to the subject: Private Law Department

Coordinating teacher: PERALES VISCASILLAS, MARIA PILAR

Type: Electives ECTS Credits : 3.0

Year : 1 Semester : 2

OBJECTIVES

BASIC SKILLS

CB6 Possess and acquire knowledge that provides a basis or opportunity to be original in the development and/or application of ideas, often in a research context.
CB7 Make the students able to apply the knowledge acquired, and their ability to solve problems in environments that are new or little known within broader contexts (or multidisciplinary) related to their field of study.
CB8 Make the students able to integrate knowledge and face the complexity of exercising judgment from information that, being incomplete or limited, includes reflections over the social and ethical responsibilities linked to the application of their knowledge and judgments.
CB9 Make the students capable to communicate their conclusions and the knowledge and ultimate reasons that support those conclusions, to a public that may be specialized or non-specialized in a clear and unambiguous manner.
CB10 Make the students possess the learning skills that allow them to continue studying in a way that will, to a great extent, have to be self-directed and autonomous.

GENERAL SKILLS

CG1 Understand the multidisciplinary nature of the legal order and the necessarily interdisciplinary approach to legal problems, especially from an international perspective.
CG2 To integrate, manage, identify, organize and analyze information of a legal nature.
CG3 To formulate critical judgments, evaluate them, and communicate their conclusions in a clear and orderly manner.
CG4 To evaluate the development of personal and collective actions, identifying rigorous and well-finished work, as well as mistakes, making arguments, and proposing alternative solutions to improve processes and outcomes.
CG5 To acknowledge the growing importance of teamwork and show initiative, creativity and sense of responsibility, maintaining a lively interest during the whole process.
CG6 To adapt and blend into different working groups, keeping fluid relationships and communication, respecting ideas and solutions proposed by others with an attitude of cooperation and tolerance, sharing responsibilities and issuing and receiving instructions.
CG7 To develop professional works in interdisciplinary and international teams, with the ability to integrate diverse contributions in diverse and multicultural legal environments, all towards a common goal.
CG8 To acquire an adequate and correct attitude at an international level, especially in the context of legal compliance and the management of conflicts of interest in the negotiation of contracts and their performance, as well as in the dispute resolution stage.
CG9 Ability to understand the advisory role in the broader transnational environment.
CG10 Ability to apply in new and multidisciplinary environments the concepts, principles, theories or models related to the globalization and internationalization of the law.

SPECIAL SKILLS

CE1 To be able to draft legal documents in Spanish and English in the context of contract negotiation, the execution of transnational transactions, as well as in international conflictual contexts.
CE2 To understand the different types of conflicts present in every negotiation or dispute resolution activity in the context of international legal practice and to analyse its influence in the development of the legal service to be rendered with regard to the parties involved: businesses, the State, or physical persons.

CE3 To negotiate to resolve and/or avoid situations of legal conflict, which will permit the lawyer to improve the efficiency of its work.
CE7 To learn the key legal concepts and institutions in other jurisdictions, especially those coming from a common law system, and their comparison and contrast with the main legal institutions of civil law.
CE8 To learn the key legal principles and institutions in Transnational Law and Public International Law, and to understand the channels through which the interests protected by the different branches of the law can be interwoven and interrelated, either through the transfer of principles or lessons learned, or through the conflict between them, and the need to achieve complex equilibria.
CE9 Capacity to understand the economic implications of legal decisions, and the financial perspective when evaluating a client or a project.
CE10 Capacity to understand commercial companies in terms of the diversity of interests that are present in them, their points of confluence, and of conflict, as well as the diversity of agency problems that can arise, and the mechanisms, arising from the law or from party autonomy, for their solution.
CE11 Capacity to extrapolate the interests at stake in business transactions to a cross-border environment, where the preferences of the different parties may vary, and the legal mechanisms to solve the conflicts may be different, so that it becomes possible to understand each party¿s priorities in each context.
CE12 Capacity to put together the contractual perspective, which is subject to party autonomy, and bilateral negotiation, with the multi-lateral perspective, and the public interest perspective, as reflective of a different agency, and to reconcile the interests not present in the negotiating process, and the limits to party autonomy.
CE13 Capacity to understand the main tax aspects that need to be taken into account in the context of a cross-border activity, particularly those that arise from international treaties and international tax planning.
CE14 Capacity to reconcile perspectives of legal interpretation with economic and accounting perspectives to design the transactions and structures that reconcile tax optimization with the most scrupulous compliance with legality.
CE15 To know the steps that form the different arbitral and judicial proceedings at an international level.
CE16 Capacity to integrate the understanding of the different stages of international proceedings in a sequential perspective, where the different scenarios are anticipated, in order to prepare the best strategy for the proceedings.
CE17 Advanced skills for the transnational execution and coordination of actions for the practice of evidence, especially the production of documents, witness testimonies and expert evidence in complex situations.
CE18 To know and be able to integrate the defence of the interest of the client within the framework of international protection systems.
CE19 Capacity of critical analysis of contractual and procedural documents and legal texts with an international origin for their correct interpretation and execution.
CE20 Capacity to draw common criteria from diverse sources from different legal traditions, and to formulate proposals and positions not based on arguments of authority, but of consistency.
CE21 To advice in matters of legal compliance, or corporate law, contract law, procedural law, labour law, administrative law or tax law from the perspective of international advocacy.

LEARNING RESULTS

-Know the more usual proceedings in an international environment, both judicial as well as arbitral, as well as their different stages and requirements.
-Be able to draft procedural briefs and documents corresponding to judicial and arbitral proceedings at an international level.
-To know how to evaluate the risks and to plan the strategies that arise in international negotiation or mediation with the goal of reaching an agreement between the parties involved.
-To know and explain the main human and fundamental rights and their protection in the main international instruments.
-To know the main legal situations and issues that arise in the transnational mobility of workers, persons and citizens, as well as those arising from family and succession law at an international level.
-To put in practice the essential elements of international advocacy in a way sensitive to the different substantive areas where transnational practice takes place.

After taking this course the student will be able to:

-Interact in a team with other individuals, through her insertion in multidisciplinary teams: dealing with peers, other lawyers, or clients, as well as learning familiarity with the international practice of the law.
-To know how to approach specific legal issues that require specialized international advice and the assumption of responsibilities by the student
-To familiarize the intern with the workings of international institutions related with the transnational

practice of advocacy
To develop the skills necessary for the student to undertake the tasks typical of a transnational lawyer in the are of the law where she takes her internship: drafting of legal documents, preventive advice on risks or litigation, undertaking of negotiation, mediation or arbitration activities, development of relationships with legal players and other professionals

DESCRIPTION OF CONTENTS: PROGRAMME

Investment Arbitration

1.- General aspects

a) Distinction from other types of arbitration and arbitral institutions.
b) Investment protection treaties.
c) Regulatory aspects of principal sectors.
d) Transactional aspects of the deals giving rise to investment disputes.

2.- Starting the proceedings

a) Jurisdiction: immunities and breach by a ¿State¿.
b) Standing: definition of ¿investor¿ and ¿investment¿.
c) Admissibility of claims.

3.- The procedure and the law

a) Specificities of the investment arbitration procedure.
b) Substantive law (I): analysis of sectoral rules.
c) Substantive law (II): standards of protection.

4.- The award

a) The award: structure and contents.
b) The annulment of the award.
c) The enforcement of the award.

LEARNING ACTIVITIES AND METHODOLOGY

TEACHING ACTIVITIES BY MATTER

AF1	Lecture
AF2	Practice/Case
AF3	Lecture-plus-practice
AF6	Group work
AF7	Students¿ individual work

TEACHING METHODOLOGIES BY MATTER

MD1: Lecture in class by the professor aided by computer and audiovisual tools, in which the course¿s main concepts will be developed, and the main literature will be provided.
MD2: Critical reading of the texts recommended by the course¿s professor: press articles, reports, manuals and/or academic articles, for their discussion in class, or to expand and consolidate the lessons of the course.
MD3: Resolution of cases, problems, etc, provided by the professor, individually or in group.
MD4: Exposition and discussion in class, moderated by the professor, on topics regarding the contents of the course, as well as practical cases.
MD5: Making of Works and reports individually or in group.

ASSESSMENT SYSTEM

EVALUATION SYSTEMS BY MATTER

SE1	Participation and engagement in class
SE2	Individual or group Works done during the course
SE3	Final exam

Evaluation systems	Minimum weigh (%)	Maximum weigh (%)
SE1	20%	30%
SE2	40%	60%
SE3	40%	40%

The master in International advocacy is a master's degree that is taught in person. Therefore, students are required to attend all the theoretical and practical classes that the master has programmed. A student may only be absent for no reason from a maximum of 15 per cent of the classroom hours (i.e. not the sessions or days) in each subject. In case of excused absences, the total maximum will be 25%. If the student hold an absence greater than those indicated, a "0" will be computed on the continuous evaluation rating. Likewise, the absences lower than those percentages may be taken into account when it comes to modulate downward the qualification of the continuous evaluation, especially if it includes a participation note.
In the extraordinary call the weight will be: Final examination: 60% and continuous evaluation: 40%.

% end-of-term-examination:	40
% of continuous assessment (assigments, laboratory, practicals…):	60

BASIC BIBLIOGRAPHY

- DOLZER, Rudolf; SCHREUER, Christoph Principles of International Investment LAw , Oxford: Oxford University Press, , 2008, 433 pages.
- GAILLARD, E./BANIFATEMI, Y Annulment of ICSID Awards, Juris Publishing, Inc, 2004
- SORNARAJAH, M. The International Law on Foreign Investment , Cambridge University Press, Third edition, 2010
- SORNARAJAH, M. The International Law on Foreign Investment , Cambridge University Press, Third edition, 2010
- WAIBEL, M/KAUSHAL, A/CHUNG/BALCHIN, C. he Backlash Against Investment Arbitration: Perceptions and Reality, Kluwer Law International., 2011
- kANTOR, M. Valuation for Arbitration: Compensation Standards, Valuation Methods and Expert Evidence, Kluwer Law International., 2008

ADDITIONAL BIBLIOGRAPHY

- McLachlan, Campbell International investment arbitration: substantive principles, Oxford, 2007
- Muchlinski/Ortino/Schreuer The Oxford Handbook of International Investment Law, OUP, 2008

BASIC ELECTRONIC RESOURCES

- . Georgetown International Investment Law Research Guide: http://www.ll.georgetown.edu/guides/internationalinvestmentlaw.cfm
- . Investment Treaty Awards: http://ita.law.uvic.ca/investmenttreaties.htm
- . ICSID Caselaw database and ICSID Rules: http://icsid.worldbank.org/ICSID/Index.jsp