School of International Arbitration and ICC Institute of World Business Law

35th Annual Joint Symposium of Arbitrators

London, 24 February 2020

Venue: Herbert Smith Freehills LLP, Exchange House,
Primrose St, London EC2A 2EG

STATES AND STATE ENTITIES IN INTERNATIONAL ARBITRATION

PROGRAMME

Joint Chair. **Julian Lew**, QC, Head, School of International Arbitration & 20 Essex St
Yves Derains, Chairman, ICC Institute of World Business Law

09:00 – 9:30 *Registration and coffee*

09.30 - 09.45 Welcome address
Julian Lew, QC, Head, School of International Arbitration & 20 Essex St
Craig Tevendale, Partner and Head of the International Arbitration group in London and Head of Energy, UK, Herbert Smith Freehills

09.45 – 11.15 **State Involvement in International Business and Trade and International Arbitration**

Issues to be addressed:

- How are States and State Entities involved in International Business and Trade, and International Arbitration; Consent for arbitration in disputes involving States and State Entities: concession agreements, investment contracts, public-private partnerships, joint ventures, privatization contracts, government guarantees and assurances
- States' standing and jurisdictional objections to arbitration for lack of States' proper representation and ratification of arbitration agreements
- Sovereign immunity:
  - Under treaty
  - Agreed arbitration for dispute settlement.

Chair: **Karyl Nairn,** QC, Partner and European co-head of the International Litigation and Arbitration Group, Skadden

Speakers:

- **Ali Malek**, QC, 3 Verulam Buildings

- **Andrew Cannon**, Partner, Herbert Smith Freehills
- **Carmen Nuñez-Lagos**, International Arbitrator and Founding Partner, Nunez-Lagos Arbitration

11.15-11.30 *Coffee Break*

11.30-13.00 **Representing States and State Entities**

Issues to be addressed:

- Procurement and selection of counsel for representing States and State Entities
- Differences between representing States and representing State Entities
- Ensuring State and State Entity representatives are properly authorised to represent the State and State Entity in international arbitration
- Difficulties in representing States and State Entities, including in collecting evidence, communicating with State representatives, collaborating with in-house Government and State Entities lawyers, budget constraints
- Entering into settlement agreements for States and State Entities

Chair: **Stavros Brekoulakis**, Director School of International Arbitration, & 3 Verulam Buildings

Speakers:

- **Paolo Di Rosa**, Partner & Global Head of International Arbitration at Arnold & Porter
- **Will Thomas**, Partner, Freshfields Bruckhaus Deringer LLP
- **Christina Hioureas**, Counsel, International Litigation & Arbitration Department and Chair, United Nations Practice Group at Foley Hoag LLP (New York)
- **Eduardo Silva Romero**, Partner, Dechert LLP

13.00-14.15 *Lunch*

14.15-15.45 **Representing Private Sector Parties against States and State Entities**

Issues to be addressed:

- Corruption related matters
- States' failure to participate in the arbitration procedure
- States' potential efforts to interfere with the arbitration procedure
- Collecting evidence against States and State Entities

- Entering into settlement agreements with States and State Entities
- Enforcing awards against States and State Entities.

Chair: **Constantine Partasides**, QC, Partner, Three Crowns

Speakers

- **Ina Popova**, Partner, avocat à la cour, Debevoise & Plimpton LLP
- **Sabine Konrad**, Partner, Morgan Lewis
- **Epaminontas Triantafilou**, Partner, Quinn Emanuel Urquhart & Sullivan, LLP
- **Sarah Vasani**, Partner, International Arbitration and Head of Investor State Disputes, Addleshaw Goddard

15.45-16.00 *Coffee break*

16.00-17.30 **Investment vs Commercial Arbitration against States and State Entities**

A panel discussion will address the following considerations as to whether to commence commercial or investment arbitration against States and State:

- Jurisdiction
- Tribunal, Evidence and Procedure
- Applicable law
- Liability
- Damages
- Enforcement of Arbitral Awards
- Possibility of Parallel Proceedings
- Transparency/Confidentiality /Publicity
- Non-legal Considerations: the role of public opinion, media pressure, change in governments and broader political considerations.

Chair: **Phillip Capper**, Partner and Co-Head of International Arbitration, White & Case LLP London, and Nash Professor of Engineering Law, King's College London

Speakers

- **Michael Schneider**, Founding Partner, LALIVE
- **Monica Jimenez Gonzalez**, Secretary General, Ecopetrol S.A
- **Norah Gallagher**, School of International Arbitration, QMUL
- **Massimo Benedettelli**, Partner Arblit

17.30-17.45 **Conclusion**

Yves Derains, Chairman, ICC Institute of World Business Law