

Protection of Foreign Investment in Africa

Presented by the Department of Public Law, University of Pretoria in collaboration with Cliffe Dekker Hofmeyr (CDH)

13–17 May 2019

A first-of-its-kind short course in foreign investment law on the continent, the **Protection of Foreign Investment in Africa** course is aimed at assisting investors make the most of increasingly attractive opportunities in Africa. The course is structured to provide theoretical and practical insight to executives, business leaders and professionals who are considering investments in particular African jurisdictions. The course is further intended to introduce those who are currently involved in projects, operations or business ventures on the African continent to the various elements of investment protection in Africa and how to enhance investment protection.

The course brings local, regional and international experience and expertise, with guest lecturers from several leading institutions, law firms, government agencies and consultancy agencies.

Cliffe Dekker Hofmeyr Inc (CDH) is a leading corporate and commercial law firm in South Africa with a track-record spanning over 165 years. The firm's Africa practice combines the resources and expertise of leading business law firms across the continent that have direct experience gained from acting for governments, state agencies and multinational organisations.



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Course content

What is international investment law

- o Common principle which underpin investment protection
- o The principles of investment laws and treaty protection
- o Relevance of public international law to investment law

The basic features of investment law

- o Bilateral investment treaties
- o Multilateral investment treaties
- o Investment agreements
- o Domestic laws

Ambit of protection

- o Qualifying Investor
 - Individuals – protection of dual nationality
 - Corporations – foreign control
 - Restructuring of nationality
 - Treaty shopping and forum shopping
- o Qualifying investments
 - The role of domestic law in determining whether an investment constitutes a qualifying investment
 - Time issues as to when the investment was made, investments made before the treaty came into effect, when the investment came to an end

Substantive protection

- o Minimum standard of protection under customary international law
- o Diplomatic protection
- o Fair and equitable treatment
- o Full protection and security
- o National treatment
- o Most-favoured nation treatment
- o Nationalisation or expropriation

Compensation for regulatory measures by host states

- o International law standard for compensation for expropriation/nationalisation

- o Determining the amount of compensation for expropriation
- o Compensation for other breaches of treaties such as fair and equitable treatment

Dispute resolution

- o Typical dispute provisions in investment treaties
- o Specific issues to consider:
 - Pre-requirements
 - Litigation before state courts
 - Investor-state arbitrations

Learning outcomes

After successfully completing this course, you will have acquired an understanding of the international investment framework applicable to foreign investments, and the associated protection mechanisms (i.e. investment structuring, investor state arbitration) available to such investors. Also, you will have a better understanding of the international investment framework applicable to foreign investments, particularly as it applies to investments in Africa.

Who should enrol?

This course is ideal for executives, business leaders professionals who are considering investments in particular African jurisdictions or are currently involved in projects, operations or business ventures on the African continent to the various elements of investment protection in Africa or how to enhance investment protection, as well as government agencies involved in decision-making in respect of investments in host countries.

Programme fees

R15 000.00 per delegate (VAT incl.)

Course fees include all course material, refreshments and other materials.

[US \$1 150 for the participants from other Africa jurisdictions.]

Course fees must be paid in full 14 days prior to course start dates. Proof of payment can be submitted to enrolments@enterprises.up.ac.za.

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Accreditation and certification

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Registration and enquiries

Course coordinator

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Course leader

Leon Gerber
Department of Public Law

Course presenters



Jackwell Feris

Jackwell is director at CDH and has been a practising attorney in South Africa for over a decade. He has extensive academic and practical experience in the field of international investment law, particularly as it applies to mining, energy and infrastructure matters. He

is part of CDH's international arbitration, mining and minerals, energy and regulatory sector groups. In respect of protection of investment, he has, amongst others, advised various multinational corporations on the international investment law implications of policy and/or regulatory measures by host governments in Sub-Saharan Africa. This forms part of his dispute resolutions, risk advisory and regulatory services rendered to corporations operating or intending to operate in other African jurisdictions.

He holds an LLB (NWU), a LLM in Corporate Law (Wits), a Certificate in Economics for Law (Wits), a Certificate in International Commercial Arbitration (American University, Washington College of Law), and a Certificate International Investment Treaties and Investor State Arbitration (International Law Institute – Washington D.C in cooperation with Georgetown University).

He identified the need have a dedicated programme on investment protection focused on Africa, and in collaboration with Leon Gerber of

the University of Pretoria, developed this unique first-of-its-kind short course in Sub-Saharan Africa, which intends to provide academic and practical insight and understanding of the investment protection regime in Africa.



Leon Gerber

Leon is a Senior Lecturer in the Department of Public Law at the University of Pretoria, and the Programme Director for the Faculty of Law's 'Extractive Industries Law in Africa' suite of postgraduate programmes. His expertise is in mineral- and resources law and

policy, with his research and teaching activities relating to the regulation and sustainable governance of mineral resource development.

Prior to joining the University of Pretoria, he held the position of Rio Tinto Research Fellow in the CEPMLP at the University of Dundee (UK) for five years, preceding which, he was engaged in private legal practice. He has produced and delivered various corporate and government training seminars across Africa, including for the African Development Bank, African Legal Support Facility, the Ghana Minerals Commission, and the Malawi Ministry of Mines. He has also participated in various funded research projects under the auspices of the UK Department for International Development, the European Union Framework 7 Programme, the Scottish Government-Malawi Development Programme, and the South Africa Department of Environmental Affairs.

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Course presenters



Ndanga Kamau

Ndanga is an independent international law practitioner and arbitrator. She specialises in investor-state dispute resolution, international commercial arbitration and public international law. Her practice focuses on disputes in African jurisdictions – involving African

and other parties, and disputes involving African parties – in African, and other jurisdictions.

Prior to setting up her independent practice, she worked in international law firms in Switzerland and the United States, an arbitral institution in Mauritius, international organisations in Kenya, and an international law research institute in the United Kingdom. She regularly speaks at conferences and gives guest lectures on international dispute resolution and international law.

Ndanga is committed to the development of cross-border dispute settlement mechanisms in Africa, and has been involved in several initiatives to this end. Ndanga is a vice president of the ICC International Court of Arbitration, President of the ICC Africa Commission, and a vice chair of the IBA Arbitration Committee.



Pauline Mcharo

Pauline is Deputy Chief State Counsel, International Law Division, at the Office of the Attorney General and Department of Justice, Kenya. Her current assignments include representing Government in international investment and commercial disputes and assisting in resolution of

Territorial and Maritime Delimitation disputes.

She holds a Master's degree in International Law from the Graduate Institute, Geneva, LLM in International Trade and Investment Law in Africa from the University of Pretoria and LLB from the University of Nairobi.

In addition to the professionals that will be presenting on the course, a number of other prominent speakers from leading international institutions will contribute to discussions on select topics. This enriched curriculum will ensure an Africa-focussed approach that takes into consideration international insights and understanding of the unique nature of investment protection on the continent.

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