

ASA Annual Conference 2016 - Commercial Arbitration Involving States: Public Interests and Private Justice?

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Recent investment disputes have brought into sharp focus the public interest aspects of investor-state arbitration. From sovereign debt restructuring, to regulations touching on cigarette packaging, to windfall taxation of energy sector profits, to Native American lands and the environment, through to the phasing out of nuclear energy, the subject matter of modern investment disputes has evolved considerably from the classic paradigm of a direct discriminatory expropriation of a foreign investor's property without payment of adequate compensation.

This evolution has brought with it controversy and criticism. Investor state dispute resolution is under attack like never before. This criticism risks spilling over to international commercial arbitration involving states more generally. Commercial arbitration has a distinguished history of resolving disputes involving state participants in commercial contracts: from the Libyan nationalisations of the 1970s; to famous cases such as *Aminoil v Kuwait*; to the Indonesian independent power project arbitrations that accompanied the Asian financial crisis of the late 1990s. But how will it fair with the greater scrutiny that has been attracted by investor state dispute settlement?

The 2016 ASA Conference will examine this question. It will look beyond investor-state arbitration to focus on commercial arbitrations involving state parties. It will examine whether the process is procedurally fit for purpose. It will explore the substantive issues that recur. It will examine the state enforcement issues that arise at the end of the process. Ultimately, it will consider the legitimacy of arbitration as a method of resolving state disputes.

WilmerHale Partner Rachael Kent will be a speaker on the panel "Setting the Scene: Commercial Arbitration Involving States - Successes and Failures of the Process."

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Speakers



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