

Arbitration and Renegotiation of International Investment Agreements

Second Revised and Enlarged Edition

by

Wolfgang Peter

with the assistance of Jean-Quentin de Kuyper and
Bénédict de Candolle for the second edition

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TO THE MEMORY OF MY MOTHER

PREFACE AND ACKNOWLEDGMENTS

This book is intended to be essentially a reference handbook for legal practitioners. Its purpose is to analyse a variety of increasingly important questions concerning international investment agreements that come under pressure for change by one of the contracting parties, either a transnational corporation or a host country government. The 7 case studies and the analytical chapters which follow are based on the author's research and the assistance of corporate and government officials, experts of the United Nations and other international organizations and members of various academic research institutes.

The author is indebted to so many contributors who have agreed to be interviewed and to provide unpublished documentation, that all of them cannot possibly be acknowledged in this short space.

Special thanks to Louis Wells, David Smith and Malcom Gillis from Harvard's Business School, Law School and Institute for International Development and to Oscar Schachter and Steven Kobrin, respectively of Columbia University and of New York University. I am also much indebted to members of numerous leading law firms in the United States and officials of major oil and mineral corporations, as well as banks involved in project financing. Many of these individuals were business executives and lawyers who were personally involved in renegotiations and arbitration and mostly preferred to remain anonymous.

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In Switzerland I am grateful to the generous assistance and cooperation of Nestlé company executives and to Klaus Huber of Union Bank of Switzerland, as well as officials of the Swiss Federal Government in the Ministries of Economics and Foreign Relations. I also want to express my gratitude to the

Swiss National Fund for Scientific Research which contributed to the financing of field research.

Finally, I owe a special debt of gratitude to my law firm's American legal counsel, Jacques Jones for his generous and patient assistance in revising the manuscript, and to Sylvie Valaizon, who spent countless hours editing the manuscript.

Wolfgang Peter

PREFACE AND ACKNOWLEDGMENTS TO THE SECOND EDITION

Since 1986, year of the first edition, the issue of contract change has increasingly challenged the business community and legal practitioners. The worldwide recession may have accelerated the need of securing contractual relationships by reasonable flexibility. While it still remains controversial, the subject of contract change is leaving the realm of pioneer exploration and is about to be promoted to fashion. All those involved in arbitration are regularly confronted with the issue. Personally, I have always been intrigued by a question which, more than many others, is at the crossroads of the economic, political, legal and social debates. Therefore I wished to renew the initial effort by offering the interested reader a fully-revised second edition. Two additional case studies and updating of all relevant information and discussion has proven a far greater task than anticipated. All sources were reviewed, new legal and economic developments had to be explored. The revision had to encompass new institutions such as MIGA as well as analysis of new trends from contract drafting to arbitration and legislative policies to economic developments.

With respect to certain critical observations on the first edition, I wish to point out that the central perspective of the study is contract change and renegotiation. All other subject areas, however important they may be, have been addressed with this special focus. Whenever possible, I have attempted to provide the reader with references to specialized studies and materials. Nevertheless, I hope that despite its concision, the discussion of the various fields related to contract change proves useful.

The author is again indebted to so many contributors, who kindly accepted to provide documentation, that they cannot be acknowledged in this preface.

I particularly express my gratitude to Jean-Quentin de Kuyper and Bénédict de Candolle. Their year-long close cooperation has made this second edition possible.

Finally I am deeply indebted to Sylvie Valaizon who despite endless changes and restructurings never lost her patience in editing the manuscript.

Wolfgang Peter

LIST OF ABBREVIATIONS

AAA	American Arbitration Association
AFDI	<i>Annuaire Français de Droit International</i>
AID	Agency for International Development
AJIL	<i>American Journal of International Law</i>
<i>Am. J. of Comp. L.</i>	<i>American Journal of Comparative Law</i>
ASDI	<i>Annuaire Suisse de Droit International</i>
BGHZE	<i>Entscheidungen des Bundesgerichtshof in Zivilsachen</i>
BYIL	<i>British Yearbook of International Law</i>
CERDS	Charter of Economic Rights and Duties of States
CIPEC	Conseil International des Pays Exportateurs de Cuivre
COFACE	Compagnie Française d'Assurance pour le Commerce Extérieur
<i>Colum. J. Transnat'l L.</i>	<i>Columbia Journal of Transnational Law</i>
<i>Colum. L. Rev.</i>	<i>Columbia Law Review</i>
<i>Denver J. of Int'l L. and Policy</i>	<i>Denver Journal of International Law and Policy</i>
DPCI	<i>Droit et Pratique du Commerce International</i>
FCN	Friendship Commerce and Navigation Treaty
FDI	Foreign Direct Investment
FIDIC	Fédération Internationale des Ingénieurs Conseils
GYIL	<i>German Yearbook of International Law</i>
<i>Harv. Int'l L. J.</i>	<i>Harvard International Law Journal</i>
<i>Harv. L. Rev.</i>	<i>Harvard Law Review</i>
IBA	International Bar Association
ICC	International Chamber of Commerce
ICCA	International Council for Commercial Arbitration
ICJ	International Court of Justice
ICLQ	<i>International and Comparative Law Quarterly</i>

ICSID	International Centre for Settlement of Investment Disputes
<i>ICSID Review</i>	<i>ICSID Review. Foreign Investment Law Journal</i>
IDI	Institut de Droit International
<i>ILM</i>	<i>International Legal Materials</i>
<i>ILR</i>	<i>International Law Review</i>
IMF	International Monetary Fund
<i>Int'l Org.</i>	<i>International Organization</i>
IPT	Investment Protection Treaty
<i>J. Bus. L.</i>	<i>Journal of Business Law</i>
<i>JDI</i>	<i>Journal du Droit International</i>
<i>J. Int'l Arb.</i>	<i>Journal of International Arbitration</i>
<i>JWTL</i>	<i>Journal of World Trade Law</i>
LDC	Less-Developed Country
MNC	Multinational Corporation
MIGA	Multinational Investment Guarantee Agency
<i>Nat. Resources J.</i>	<i>Natural Resources Journal</i>
<i>Nat. Resources F.</i>	<i>Natural Resources Forum</i>
NFI	New Forms of Investment
NIEO	New International Economic Order
<i>NJW</i>	<i>Neue Juristische Wochenschrift</i>
<i>NYIL</i>	<i>Netherlands Yearbook of International Law</i>
OPEC	Organization of Petroleum-Exporting Countries
OPIC	Overseas Private Investment Corporation
PCIJ	Permanent Court of International Justice
PSONR	Permanent Sovereignty over Natural Resources
<i>RabelsZ</i>	<i>Rabels Zeitschrift</i>
<i>RBDI</i>	<i>Revue Belge de Droit International</i>
<i>RCADI</i>	<i>Recueil des cours de l'Académie de Droit International</i>
<i>RDA</i>	<i>Revue de l'Arbitrage</i>
<i>RGDIP</i>	<i>Revue Générale de Droit International Public</i>
<i>RIW</i>	<i>Recht der internationalen Wirtschaft</i>
TNC	Transnational Corporation
UNCITRAL	United Nations Commission on International Trade Law

UNCTAD	United Nations Conference on Trade and Development
UNCTC	United Nations Centre on Transnational Corporations
UNECE	United Nations Economic Commission for Europe
UNGAOR	<i>United Nations General Assembly Official Records</i>
<i>Vand. J. of Transnat'l L.</i>	<i>Vanderbilt Journal of Transnational Law</i>
<i>YCA</i>	<i>Yearbook Commercial Arbitration</i>
<i>ZaöRV</i>	<i>Zeitschrift für ausländisches öffentliches Recht und Völkerrecht</i>

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