



**FOREIGN DIRECT INVESTMENT OPERATIONS AND INVESTMENT  
DISPUTES IN THE AFRICAN EXTRACTIVE SECTOR :**

**CHALLENGES AND OPPORTUNITIES FOR AFRICA'S GROWTH &  
DEVELOPMENT**

**14 DECEMBER 2017**

**DUBAI INTERNATIONAL ARBITRATION CENTRE  
BANIYAS ROAD, DEIRA/UAЕ**

**PARTNERS:**



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Africa's economic output has tripled in the past decade. In 2017, economic activity in Africa remained strong due to external demand and healthy increases in both private and public investments. International investment agreements have played a key role in Africa's development; African States are party to numerous bilateral and multilateral investment treaties which have traditionally offered protection to foreign investors and which have permitted recourse to arbitration to settle investment disputes, under the auspices of the International Centre for Settlement of Investment Disputes (ICSID) or similar fora.

African States increasingly participate in investment arbitration, in cases where foreign investors challenge the legality of regulatory measures decided in various areas. In 2016, sub-Saharan Africa accounted for 15% of all registered ICSID cases; 129 ICSID cases have involved African parties, mostly as respondent States. The number of investment arbitrations filed in 2016 remain in line with previous years, continuously relating to oil, gas and mining operations.

This prevalence of disputes relating to the extractive sector can be explained in particular by the complexity of foreign direct investment (FDI) operations in this sector. This complexity is notably due to the heterogeneity of interests at hand in these operations as well as to the diversity of instruments, both domestic and international, which regulate this sector. The legal and regulatory framework may include several pieces of domestic legislation (including the Constitution, mining or petroleum codes and tax laws) as well as international treaties (international investment agreements and double taxation treaties). Often, the details of investor-State partnerships are enshrined in specific contracts or licenses.

This complexity is a challenge; yet, understanding FDI operations in the extractive sector is of a fundamental importance as they are key for Africa's development and growth. In this respect, the Conference is intended to contribute to a better understanding of the challenges raised by FDI operations in the African extractive sector and also of the contribution they can make to Africa's development and growth. In light of the specifics of the sector and also of current arbitration and treaty practices, the Conference will shed light on the protection of foreign investors in the African extractive sector as well as on the protection of the numerous 'public interests' at stake in this sector.



8.30-9.30	Registration
9.45-10.30	Opening and Keynote Speeches
	<ul style="list-style-type: none"> <li>• <i>Dr. Habib Al Mulla FCI Arb, Chairman of the DIAC Board of Trustees, Chairman of Habib Al Mulla Baker Mackenzie</i></li> </ul>
10.30-12.00	Panel 1: Key Features of FDI Operations in the African Extractive Sector
	<p>Chair: <i>Prof. Dr. Tarek F. Riad, Chairman of the DIAC Executive Committee, Managing Partner, Kosheri, Rashed and Riad (Cairo)</i></p> <ul style="list-style-type: none"> <li>• <b>FDI operations in the African extractive sector: A historical perspective</b> - <i>Andrew Mackenzie, Counsel, Hogan Lovells (Dubai)</i></li> <li>• <b>Stabilization in oil and gas contracts: Evidence and implications</b> - <i>Joseph Campbell, Associate, Shearman &amp; Sterling LLP (Abu Dhabi)</i></li> <li>• <b>Public-private partnerships</b> - <i>Dr. Khaled Attia, Partner, Sarie Eldin &amp; Partners (Cairo)</i></li> <li>• <b>Recurrent problems and legal questions concerning FDI operations in the African extractive sector</b> - <i>Hery Frédéric Ranjeva, Partner, Foley Hoag (Paris)</i></li> </ul>
12.00-13.30	Networking Lunch
13.30-15.15	Panel 2: The Protection of Foreign Investors in the African Extractive Sector
	<p>Chair: <i>Robert Volterra, Senior Partner, Volterra Fietta (London)</i></p> <ul style="list-style-type: none"> <li>• <b>The protection of foreign investors in conflict situations</b> - <i>Prof. Dr. Yannick Radi, Professor of International Law, University of Louvain</i></li> <li>• <b>The relationship between the FET standard and the minimum standard of treatment</b> - <i>Thomas Snider, Partner, Head of Arbitration, Al Tamimi &amp; Co (Dubai)</i></li> <li>• <b>Legitimate expectations</b> - <i>Clément Fouchard, Managing Associate, Linklaters (Paris)</i></li> <li>• <b>Shedding Light on International Expropriation in the African Extractive Sector</b> - <i>Dr. Ismail Selim FCI Arb, Director, The Cairo Regional Centre for International Commercial Arbitration</i></li> <li>• <b>Umbrella clauses</b>- <i>Saadia Bhatti, Counsel, Gide Loyrette Nouel (London)</i></li> </ul>



15.15-15.45	Coffee Break
15.45-17.00	Panel 3: The Protection of 'Public Interests' in the African Extractive Sector
	<p>Chair: <i>Prof. Dr. Yannick Radi, Professor of International Law, University of Louvain</i></p> <ul style="list-style-type: none"><li>• <b>States' obligations to protect 'sustainable development' objectives</b> – <i>Anne K Hoffmann, Legal Director, Clyde &amp; Co (Dubai)</i></li><li>• <b>Investors' obligations to comply with laws and regulations</b> – <i>Alain N. Farhad, Partner, Squire Patton Boggs (Dubai)</i></li><li>• <b>Corporate social responsibility of foreign investors</b> - <i>Dr. Ana Gerda de Borja Mercereau MCI Arb, University-Paris XIII (Paris)</i></li></ul>
17.00-17.30	Coffee Break
17.30-18.00	Concluding Remarks
	<ul style="list-style-type: none"><li>• <i>Prof. Blaise Tchikaya, First Honorary President of The African Union Commission on International Law</i></li><li>• <i>Dr. Fidèle Masengo, Secretary General of the Kigali International Arbitration Centre (KIAC)</i></li><li>• <i>Dr. Jean-Baptiste Harelimana, Lawyer, President of Orientation Committee, IAM (Paris)</i></li></ul>
18.30-20.00	Cocktail



SPEAKERS

OPENING AND KEYNOTE SPEECHES

**Dr. Habib Al Mulla, FCI Arb**  
*Chairman of the DIAC Board of Trustees, Chairman of Habib Al Mulla Baker Mackenzie (Dubai)*



Dr. Habib Mohammad Al Mulla is one of the UAE's most highly respected legal authorities. He has over 27 years' experience in UAE law and has drafted many of the modern legislative structures in place in Dubai today. Dr Al Mulla is a strong advocate for the improvement and modernisation of UAE laws. He is a frequent commentator on the legislation and economy of the UAE and is often consulted to draft and advise on federal and Emirate level laws. Dr Al Mulla focuses his practice on litigation and arbitration. He is Vice Chairman of the board of trustees for the Dubai International Arbitration Centre (DIAC), and is Chairman of the UAE Committee of the CI Arb (Chartered Institute of Arbitrators).

PANEL 1: KEY FEATURES OF FDI OPERATIONS IN THE AFRICAN EXTRACTIVE SECTOR

**Prof. Dr. Tarek F. Riad, Chairman of the DIAC Executive Committee, Managing Partner, Kosheri, Rashed and Riad (Egypt)**



Prof. Dr Tarek F. Riad is the Managing Partner of Kosheri, Rashed and Riad Law Firm (Cairo) and Professor and Head of the Department of Commercial and Business Law at the German University in Cairo (GUC). Prof. Riad has more than 32 years' experience in International Arbitration, Litigation and Corporate Law. He has acted as counsel, co-arbitrator, Chairman or sole arbitrator in numerous arbitrations, whether *ad hoc* or through institutions including the Abu Dhabi Arbitration Center, the Cairo Regional Centre for International Commercial Arbitration (CRCICA), the Dubai International Arbitration Centre (DIAC) and the International Chamber of Commerce (ICC). Prof. Riad has acted as counsel for numerous domestic and multinational corporations such as Four Seasons, Caterpillar, Colgate, Samsung



and Lockheed Martin. Prof. Riad is an Alternate Member of the ICC International Court of Arbitration and Member of the Scientific Council of the ICC World Business Law Institute, in addition to being Member of the ICC Commission on Arbitration, Designated Member of ICSID Panel of Arbitrators (May 2017), a Member of the International Council for Commercial Arbitration (ICCA) and Chairman of the DIAC Executive Committee.

***Mr. Andrew Mackenzie, Counsel, Hogan Lovells (Dubai)***

**Mr. Andrew Mackenzie** is a Solicitor Advocate and arbitration law specialist. He works extensively across Africa, the Middle East and Asia, acting for governments and international corporations on complex commercial disputes under a variety of civil and common law systems. Andrew handles construction, engineering and energy disputes, while also advising clients on insurance litigation including professional negligence, construction all risk and coverage disputes, specialising in mega infrastructure projects. Andrew has tried cases in all of the major arbitration forums including ICC, LCIA, ICSID, SIAC, UNCITRAL and DIAC. He also holds full rights of audience for the DIFC Courts, sits as an arbitrator and has written and presented at a number of international conferences on arbitration and dispute resolution.



***Mr. Joseph Campbell, Associate, Shearman & Sterling LLP (Abu Dhabi)***

**Mr. Joseph Campbell** is an associate in Shearman & Sterling's International Arbitration Group, based in Abu Dhabi. He is qualified in Canada and England and Wales. He focuses on construction, oil and gas and engineering disputes, and has advised and represented multinational clients in ad hoc and institutional arbitrations seated in London, Paris, Geneva, Stockholm and Singapore. In particular, he has recently acted for an Asian oil & gas company against a sovereign African state in a dispute which arose in connection with a sale and purchase agreement and a joint operating agreement concerning an oil exploration and exploitation project in North Africa.







***Dr. Khaled Attia, Partner, Sarie Eldin & Partners (Egypt)***

Dr. Khaled Attia has 15 years of experience in the legal field. Dr. Attia is a leading reference in Egypt in relation with competition. Dr. Attia was the Executive Director of the Egyptian Competition Authority (2006-2010). Dr. Attia represented Egypt in several international occasions, including the meetings of the Common Market for Eastern and Southern Africa (COMESA) concerning the drafting and adoption of regional competition rules and regulations. Dr. Attia had worked as a Chief prosecutor in the Office of the Prosecutor General of Egypt, Office for International Cooperation (2000-2006). During that time he worked as a part time legal advisor to the Minister of Trade (2000-2004) and then to the Minister of Finance (2004-2006). As a legal advisor, he participated in drafting several laws and regulations and advised various legal matters related to special economic zones law, the promotion of small enterprises law, the competition law, amendments to investment law, amendments to capital market law, the income tax law, and issues related to PPP.



***Mr. Hery Frédéric Ranjeva, Partner, Foley Hoag (France)***

Mr. Hery Frédéric Ranjeva is a partner in Foley Hoag's Paris office. Hery Frédéric concentrates his practice on international law, international litigation and arbitration matters, and frequently represents sovereign states, companies and individuals before French and Malagasy national courts and tribunals. He has experience assisting with all aspects of institutional (ICC, ICSID, LCIA) and ad hoc commercial arbitrations, from commencement through enforcement. He counsels foreign investors operating in Madagascar. He also acted as counsel and advocate to a sovereign state in an International Court of Justice (ICJ) case.



***PANEL 2: THE PROTECTION OF FOREIGN INVESTORS IN THE AFRICAN EXTRACTIVE SECTOR***

***Robert Volterra, Senior Partner, Volterra Fietta (UK)***

Mr. Robert Volterra is Head of the firm's Public International Law Group. He advises and represents governments, international organisations and private clients on a wide range of contentious and non-contentious public international law and international dispute resolution issues, including: international investment agreements and BITs; ICSID; NAFTA; the Energy Charter Treaty;





international arbitration and litigation; boundaries and territorial integrity; UNCLOS; State responsibility; international organisations; treaty interpretation and drafting; the laws of war; human rights; diplomatic and consular law; trans-boundary resources and pipelines; joint-development zones and straddling resource regimes; attribution; privileges and immunities; resource concessions; Statehood; and sanctions. He has acted as counsel and advocate before the International Court of Justice and ad hoc international arbitration tribunals, including under the Permanent Court of Arbitration, ICSID, ICC, SCC, LCIA, UNCITRAL, WTO and UNCLOS rules. He regularly sits as an arbitrator on international arbitral tribunals, including ICSID, UNCITRAL, ICC and LCIA arbitrations. Robert is a Visiting Professor of International Law at University College, University of London (UCL).

***Prof. Dr. Yannick Radi, Professor of International Law, University of Louvain (UCL) (Belgium)***

Prof. Dr. Yannick Radi is a Professor of International Law at the University of Louvain (UCL) and a Consultant in public international law. His areas of expertise include international arbitration, the law of treaties, the law of State responsibility, business and human rights, sustainable development and international investment law. He has developed a cutting-edge expertise in the interplay between international investment law and other international law regimes, e.g. environmental law, human rights law, the law of armed conflicts and cultural heritage. Yannick has written on a wide range of topics in these areas. He is notably the author of a forthcoming textbook on international investment law and arbitration by Cambridge University Press. He is also Editor-in-Chief of the Brill Research Perspectives in International Legal Theory and Practice and a member of various international scientific committees and research projects, in particular, the International Committee of the International Law Association on the 'Rule of Law and International Investment Law'. Yannick holds a Ph.D. and an LL.M. from the European University Institute. He also holds an LL.M. in international law from the University Paris II Panthéon-Assas where he specialised in international commercial law and arbitration, private international law and public international law.







**Mr. Thomas Snider, Partner, Head of Arbitration, Al Tamimi & Co (Dubai)**



**Mr. Thomas R. Snider** is a Partner and the Head of Arbitration at Al Tamimi & Co. in Dubai. He has represented clients in a wide range of matters involving state-to-state arbitration, international commercial arbitration, international investment disputes, and U.S. court litigation. From 2001 to 2009, he was a member of the legal team that represented the Ethiopian Government before the Eritrea-Ethiopia Claims Commission, an international arbitral tribunal that adjudicated claims for loss, damage, and injury arising during an international armed conflict. Mr. Snider was recently recognized in the inaugural edition of *Who's Who Legal's Future Leaders – Arbitration*, a listing of the world's leading international arbitration practitioners under the age of 45. Mr. Snider received his B.A. from the University of Notre Dame and his J.D. from Harvard Law School.

**Mr. Clément Fouchard, Managing Associate, Linklaters (France)**



**Mr. Clément Fouchard** is a managing associate in the Linklaters' Litigation and Arbitration team in Paris, specialised in international commercial and investment arbitration. Clément has more than ten years of experience advising on major litigation and arbitration proceedings. He has regularly acted for French and international clients in arbitrations seated across the globe and has particular experience in construction, energy and infrastructure, mining, defence, distribution and general commercial disputes as well as considerable experience of joint ventures and post-acquisitions disputes. In addition to his experience as counsel, Clément has also acted as secretary to arbitral tribunals and as an arbitrator in domestic and international arbitrations. Clément is a Co-Chair of the Comité Français de l'Arbitrage below 40, and the ICC YAF Representative for France, Belgium and Luxembourg. He holds Master's degrees from Université de Paris II (Panthéon-Assas) and LLM from Queen Mary, University of London.



**Dr. Ismail Selim FCIArb, Director, The Cairo Regional Centre for International Commercial Arbitration (Egypt)**

Dr. Ismail Selim is the Director of the Cairo Regional Centre for International Commercial Arbitration, CRCICA. He graduated from Cairo University in 1997 with an LL.B., where he also obtained an LL.M in International Business Law from the I.D.A.I in 1999. He then earned his Master's degree in Public Administration from the E.N.A, in Paris in 2001. He also earned a Certificate in International Commercial Arbitration from Queen Mary University of London in 2005. In 2007, he accomplished an internship program at the ICC Court of International Arbitration. In 2009, he earned his PhD from Burgundy University (France). Dr. Selim started off his carrier at the judiciary, until he joined Zulficar & Partners in 2009 as a Partner. Further, in May 2015, Dr. Selim joined Nour and Selim in association with Al Tamimi and Company as Partner and Head of Dispute Resolution. Dr. Selim teaches Private International Law at the IDAI since 2011. He has been constantly appointed as Presiding arbitrator, Sole Arbitrator and Co-Arbitrator and has acted as a Counsel in various ad hoc and institutional cases under various rules such as CRCICA, Swiss Rules, UNCITRAL, the ICC and the DIFC-LCIA. Dr. Selim was recognized as "Leading Individual" by Legal 500 and has published several articles in learned Egyptian and International journals and regularly speaks in international conferences in the field of arbitration and investment.



**Mr. Saadia Bhatti, Counsel, Gide Loyrette Nouel LLP (UK)**

Ms. Saadia Bhatti is an attorney qualified in New York, and a graduate from Harvard Law School, the Ecole Normale Supérieure in Paris and the Université Paris 1 Sorbonne. She is currently Counsel in the international arbitration group of Gide Loyrette Nouel in London. She advises and represents States and private entities on a wide range of contentious and non-contentious international dispute resolution law matters, in particular in international commercial and investment arbitrations and other public international law matters. Prior to joining Gide in London, Saadia was an associate in the international arbitration and public international law groups of Clyde & Co in London, Chadbourne & Parke in New York and Gide in Paris, where she acted as counsel in investment and commercial arbitration proceedings conducted under the rules of various institutions (ICSID, ICC, HKIAC, LCIA) as well as ad hoc proceedings under the UNCITRAL Rules, dealing





with the laws of both civil law and common-law jurisdictions (including Algeria, France, Chile, China, Republic of Congo, Gabon, Italy, Switzerland, Sénégal, Morocco, Pakistan, U.S, U.K and Yemen) in particular in the energy, oil & gas, construction and manufacturing sectors, in both English and French.

**PANEL 3: THE PROTECTION OF 'PUBLIC INTERESTS' IN THE AFRICAN EXTRACTIVE SECTOR**

**Ms. Anne K Hoffmann, Legal Director, Clyde & Co (Dubai)**

**Ms. Anne K Hoffmann** is a Legal Director in Clyde & Co's international arbitration team based in Dubai. A lawyer qualified to practice both in Germany as well as England & Wales, Anne's practice focuses on international commercial and investment arbitration where she regularly acts as counsel in disputes arising under all major rules (in particular ICC, LCIA, ICSID, Swiss Rules, DIAC, UNCITRAL) as well as in ad hoc proceedings, involving disputes from a great variety of sectors. Anne has particular experience in investment arbitrations – she advises and represents parties concerning all issues arising out of bilateral and multilateral investment treaties and acts as an arbitrator in investment arbitration proceedings. Prior to working in Dubai, Anne practiced in Switzerland and the UK. She is recognised as one of the leading arbitration lawyers in the UAE (GAR Who is Who Legal 2015, 2016, 2017 and 2018). Anne is also a visiting lecturer at Humboldt University Berlin and regularly speaks and publishes on arbitration issues.



**Mr. Alain N. Farhad, Partner, Squire Patton Boggs (Dubai)**

**Mr. Alain N. Farhad** is a partner in Squire Patton Boggs's International Dispute Resolution Group. He acts as legal counsel in international disputes arising out of commercial contracts and investment protection treaties. He has acted in over 40 international arbitration proceedings conducted under the ICC, ICSID, DIAC and UNCITRAL rules. He is also regularly appointed to act as sole arbitrator, co-arbitrator or chairman of arbitral tribunals in a variety of international arbitration proceedings.





**Dr. Ana Gerdau de Borja Mercereau, MCIArb, Université Paris-XIII (France)**

Dr. Ana Gerdau de Borja Mercereau specialises in international disputes, having represented clients in more than 20 arbitrations. She has acted as counsel before international arbitration tribunals, including under the ICSID, the ICC, and the ICDR/AAA rules. She has also acted under the most important Brazilian institutions' rules (CAM-CCBC, CCMA CIESP/FIESP, CAMARB, Câmara FGV, CAM-BM&FBOVESPA and CMA from São Paulo's Instituto de Engenharia). Her cases have included large infrastructure projects (in construction, renewable energy, oil & gas and transportation), M&A deals, and projects for mining research and exploration. She was an associate at Cleary Gottlieb Steen & Hamilton, Paris (2015-2017), and at Wald, São Paulo (2010-2015), a Legal500 1st tier Brazilian law firm. She was a member of the ICC Task Force on the Revision of ADR, Expert and Dispute Board Rules (2013-2014). She holds a Ph.D. and an LL.M. from the University of Cambridge. She features on global and regional panels of arbitrators and teaches the master course on private international law at Université Paris-XIII.



**CONCLUDING REMARKS**

**Dr. Fidèle Masengo, Secretary General of the Kigali International Arbitration Centre (KIAC) (Rwanda)**

Dr. Fidèle Masengo is an outstanding lawyer with significant arbitration experience. He holds a PhD from the University of Antwerp (2010), a Master degree in economic law from the University of Louvain (2003), and an LLB from the University of Rwanda (1998). Besides his experience as a legal consultant, he has lectured on arbitration at various universities in Rwanda and East Africa, and has served as an *ad hoc* arbitrator and has represented parties as counsel in arbitration. He has been a member of the first Board of Directors of the Kigali International





Arbitration Centre (KIAC) since its establishment in January 2012 up to September 2017. Since August 2015 he has acted as KIAC's Chief Executive, now its Secretary General. Prior to joining KIAC, Dr. Fidèle Masengo was a Party Deputy Chief in a USAID Land Project between 2012 and 2015. He also served as Head of the Legal Department of Rwanda's Utilities Regulation Agency between 2005 and 2006. He was the Director of Administration of Justice and of Public Prosecution Services of Rwanda's Ministry of Justice. He is widely published in arbitration and regularly speaks in arbitration conferences.

***Dr. Jean Baptiste Harelimana Senior Associate in DGL Avocats (France)***

**Dr. Jean Baptiste Harelimana** is a Senior Associate at DGL Avocats, a law firm focusing on the 17 OHADA Member States in West and Central Africa. His main areas of practice are Mining, Energy, Banking & Finance, Corporate and Dispute Resolution. He is currently the President of the Advisory Committee of Institut Afrique Monde, where he oversees and coordinates the scientific work of the Institute. He advises and represents parties concerning all issues arising out of bilateral and multilateral investment treaties. He has developed an in-depth expertise in the interplay between international investment law and other international law regimes, such as environmental law, human rights law and cultural heritage. He is the author of several publications in these fields, notably *De la fragmentation à la cohérence de l'ordre juridique international* (From Fragmentation to Coherence in the International Legal System, 2015); a forthcoming textbook on international economic law in Africa, 2017; and forthcoming books entitled *Un demi-siècle africain au CIRDI : regards rétrospectifs et prospectifs*, 2017 (co-editor); and *Foreign Direct Investment and Investment Disputes in the African Extractive Sector*, 2018 (co-editor). He holds a Ph.D. and an LL.M. in international commercial law and public international from the Jean Moulin Lyon 3 University. He also holds a law degree with a specialization in European law (Grenoble 2004) and is widely published in these areas.

