



CLIENT BRIEF

International Litigation & Arbitration Practice



Fall – Winter 2005

Investment Treaty Arbitration/Protection and Vindication of International Investment Rights

Introduction

Opportunities for investments and business are truly global and ever-increasing. Businesses invest around the world. Investment is an engine of economic growth. Capital is mobile and seeks out investments wherever anticipated good returns can be found. Investment benefits the investor as well as the countries which attract and host foreign investments. Investment creates a return on capital and jobs. However, with the rewards of such opportunities there are also risks.

One of the risks of investing abroad is the risk of insufficient legal protection of foreign investment in the country where the investment is made. Fair resolution of disputes in the courts of (or arbitration tribunals) in the country in which investments are made present numerous difficulties and thus risk, especially in cases where the dispute is against the government of the country where the investment is made. Additionally, countries where law enforcement is lax and the tradition of fulfilling obligations and enforcement of legitimate contractual rights is still developing chills and deters foreign investment -- to the detriment of both investors and investment-hosting countries.

Bilateral and multilateral investment treaties have mitigated some of the risks, difficulties and costs associated with making (and receiving/hosting) foreign investments. Such treaties afford investors protection in addition to whatever rights and protections they may have under investment contracts. These treaties, which are agreements between states, essentially provide that the country in which a covered investment is made will abide by certain terms, conditions, and international norms such as ensuring that foreign investors are not discriminated against illegally and that foreign investors will be afforded due process in local courts or other legal proceedings .

Investment treaties also provide that disputes arising out of investment treaties or that treaty violations claims will be resolved by arbitration and they spell out the forum where treaty disputes/violation claims will be resolved. The World Bank's International Centre for the Settlement of Investment Disputes (ICSID) in Washington, DC is a forum for the resolution of international investment treaty-based disputes.



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The Eren Law Firm Represents and advises clients in ICSID international arbitration proceedings. However, the greatest value to clients of the lawyers of The Eren Law Firm is at the stage prior to the making of investments.

Prevention of Investment Disputes

At the investment stage, we analyze relevant bilateral investment treaties (between the country of the investor and the country where investments are made) and advise clients on the best way to structure investments to ensure that investment contracts have maximum legal protection. Such measures provide necessary certainty and discipline for all parties and deter and prevent most disputes from occurring.

Resolution of Investment Disputes

In the event that investment contracts provide for resort to ICSID international investment arbitration and disputes cannot be resolved, we represent and advise clients in contentious ICSID arbitration proceedings.

International Litigation & Arbitration Expertise/Practice

- The Eren Law Firm has unparalleled experience and capabilities in international litigation and arbitration.
The Eren Law Firm's international arbitration and litigation team is led by Bruno A. Ristau, a recognized international litigation and arbitration practitioner and expert, and Hal Eren, formerly of the US Treasury Department and a lawyer at Clifford Chance.
- Our lawyers help U.S. and non-U.S. clients protect and vindicate their rights with respect to their investments.
We advise clients on how to ensure maximum legal protection for international investments at the time of contracting for investments and also once a dispute or claim arises. We initially test a case's chances of success and assist clients in making fully-informed decisions with respect to a variety of issues related to arbitration proceedings, including the chances of success, the cost of arbitration and the enforcement of arbitral awards.
- The Eren Law Firm is currently advising and representing a UK arbitration claimant against a major Southeast Asian sovereign in a claim before ICSID for violations of a bilateral investment treaty between the United Kingdom and a Southeast Asian country.



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More About Our International Arbitration Lawyers

Bruno Ristau

From 1963-1981, Mr. Ristau was the Director of the Office of Foreign Litigation at the U.S. Department of Justice, in which position he supervised all suits by or against the United States in foreign courts. Mr. Ristau co-authored the Foreign Sovereign Immunities Act of 1976 and testified before Congress in support of the Act. He served as the U.S. Delegate to The Hague Conference on Private International Law in 1977-1978.

In addition to time devoted to his law practice, since 1984, Mr. Ristau has taught courses on international commercial arbitration, international judicial assistance, international trade, and conflict of laws at the law schools of American University and the George Washington University in Washington, DC. Mr. Ristau is the author of a two-volume treatise entitled *International Judicial Assistance, Civil and Commercial*, published by the International Law Institute in Washington and periodically updated. He is a member of the American Law Institute and the American Society of International Law.

Mr. Ristau has frequently represented foreign governments and international organizations in court and other legal proceedings. See, e.g., *Republic of Argentina v. Amerada Hess Shipping Corp.*, 488 U.S. 428 (1989). Mr. Ristau has served as a sole arbitrator and as a member of AAA and ICC arbitration panels, and he has chaired an ICC panel in a \$200-million transnational commercial dispute. Mr. Ristau is a member of the bars of the District of Columbia, New York, and Ohio. He has a JD degree (Western Reserve University, 1958) and an LLM degree in international law (Georgetown University, 1960). In addition to English, Mr. Ristau is fluent in German and has a working knowledge of French and Spanish. For a list of Mr. Ristau's reported cases, please go to: www.erenlaw.com/lawyers.html#br

Hal Eren

Hal Eren is a principal lawyer at The Eren Law Firm. His practice focuses on corporate transactions and various aspects of international finance, trade, and investments, with a heavy emphasis on banking and finance matters, and related dispute resolution. Mr. Eren advises and represents corporations, governments, and other clients with respect to a variety of financial and trade transactions, investments, credit and other agreements, sovereign debt matters, and on issues implicating economic sanctions, US export controls, US anti-money laundering laws, and US banking laws. He litigates in New York courts, handles arbitration matters before ICSID, and represents clients before the U.S. Treasury, State, and Commerce Departments, the New York State Banking Department, and U.S. federal prosecutors. Mr. Eren's practice also extends to providing legal and strategic advice to U.S. companies seeking to do business in Libya. Between 2000 and 2002, Mr. Eren practiced law at the Washington DC office of



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Clifford Chance where he advised the firm’s financial institution and other clients and Clifford Chance itself on financial and other transactions implicating economic sanctions and anti-money laundering laws.

Between 1992 and 2000, Mr. Eren served in a critical-sensitive position at the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC), the agency that administers US economic and financial sanctions. By country, Libya, Yugoslavia, Cuba and Iran; and by subject matter, cases involving significant trade and complex financial transactions, large-amount frozen assets, and commercial and state-to-state disputes arising out of or related to the imposition of US sanctions constituted the major portion of Mr. Eren’s portfolio at Treasury.

Mr. Eren has more than 10 years of international business experience gained in a variety of settings that he brings to bear to his practice of law. Prior to joining Treasury and entering private practice, Mr. Eren founded and managed a real estate development company which assembled a consortium and developed proposals for a \$1 billion limited- recourse infrastructure project. Mr. Eren has also served as an executive of a U.S. bank. Between 1983 and 1987, Mr. Eren lived in Madrid, Spain where he served as an executive of a merchant bank that sponsored, developed, financed, and executed a variety of trade and investment projects primarily in Europe and the Middle East.

Mr. Eren holds a JD from the American University’s Washington College of Law, and a BA degree in economics, and a BA degree in government and politics from the University of Maryland. Mr. Eren is admitted to the bar in New York, Washington, D.C., and Maryland. He is a member of the American Bar Association (ABA) and a member of the ABA’s Section of International Law and Practice. He speaks French, Spanish, and Turkish in addition to his native English.

Protect Your International Investments/Benefit From Our Experience and Capabilities

The Eren Law Firm invites prospective clients to join the clients of the firm who benefit from the firm’s experience and capabilities in the area of international litigation and arbitration, particularly arbitration of international investment disputes. For more information on The Eren Law Firm and its international arbitration and litigation practice or to learn how The Eren Law Firm may be of assistance to you in protecting your international investment, please visit www.erenlaw.com or contact Mr. Ristau or Mr. Eren in Washington.

For further information and questions regarding FCPA issues, please contact:

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In addition to its practice in the area of areas of economic sanctions, anti-money laundering, bank regulation and supervision, and related enforcement defense, The Eren Law Firm represents clients in connection with disputes involving banking, finance and investment matters. The Firm's select and diverse group of clients includes U.S. and non-U.S. financial institutions, U.S. and non-U.S. companies, and sovereign governments. More information about The Eren Law Firm can be found at: www.erenlaw.com. Recently, in addition to successfully representing clients before US Government agencies, the firm secured successful litigation outcomes for foreign clients in New York courts.

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