

BOTH POSSIBLE AND IMPROBABLE—COULD COVID-19 MEASURES GIVE RISE TO INVESTOR-STATE DISPUTES?

*Julien Chaisse**

This Article explores the role of investment law and investment arbitration in (and after) the COVID-19 crisis in the context of transnational health policy. This Article discusses a technical possibility (COVID-19 measures can give rise to investor-state disputes) and explains why most of these claims will probably not be successful (most COVID-19 measures are covered by international defenses). Through a comprehensive survey of measures adopted across 50 jurisdictions, the Article shows that most of these measures are in line with the World Health Organization regulations. Furthermore, these domestic measures could be subject to a number of international law exceptions, allowing States to justify the potential violations. Nevertheless, the Article identifies a minority of measures that may have the potential to lead to successful claims. Paradoxically, the most problematic measures (such as taxation measures and sovereign debt increase) only indirectly address the pandemic.

* Professor, School of Law, City University of Hong Kong and Advisor & Partner to the United Nations ARTNET on FDI. This research is based on a comprehensive survey of COVID-19 Government Measures adopted by 50 countries worldwide from December 31, 2019 to April 30, 2020 and the Article was written between April 27 and May 4, 2020. I would like to express my thanks to my research assistants Mr Arjun Solanki, Ms Anushka Tanwar, and Mr Arthur Lui. Thanks also to Georgios Dimitropoulos, Bryan Druzin, Surya Deva, Prabhath Ranjan, Sufian Jusoh, Mia Mikic, Wesley Pang, Xu Qian, Thomas Lehmann, Xueliang Ji, and Joel Slawotski who provided quick and incisive feedback on earlier ideas and drafts. I would also like to thank the anonymous peer reviewers who provided generous and constructive comments on a draft of this article. The usual disclaimers apply. I am also grateful to the editors and staff at the *Contemporary Asia Arbitration Journal* for their hard work and skillful editing. All errors are my own. The author can be reached at: julien.chaisse@cityu.edu.hk.

KEYWORDS: ISDS, investment treaties, investor-state arbitration, exceptions, taxation, sovereign debt

