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FACULTY OF LAW, UNIVERSITY OF HONG KONG

Seminar

**European Union Jurisdiction over
Foreign Investment and the Impact on
Investor State Arbitration**

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**Thursday, 29 October 2009, 1:00 - 2:00 pm
Room 303, 3/F KK Leung Building, HKU**

When the EEC was first formed in 1957 there was no discussion of any possible jurisdiction over the regulation of foreign investment. Indeed it was assumed that this was just one of many matters which were fully within the jurisdiction of the Member States. Hence in the ensuing years Germany, France, the UK and other Member States adopted their own laws and policies regulating foreign investment and signed Bilateral Investment Agreements (BITs) with other states around the world. Fifty years later, the situation has grown much more complex. The European Union (EU) treaties require free movement of persons, services and capital and non-discriminatory treatment of investors from other EU Member States; these investors enjoy a freedom of establishment throughout the EU. While Member States continue to negotiate BITs the Commission has begun to criticise this practice and has successfully taken two Member States to court challenging the capital movement provisions of their BITs. The Commission is moving to propose its own EU model BIT. Further complicating the situation is the fact that several new EU Members including the Czech and Polish Republics have BITs with older EU Members, and the question has arisen in several ICSID arbitral claims (Eastern Sugar, Saluka) as to the continued legal propriety and validity of these "intra-EU" BITs. Finally the Treaty of Lisbon, which will enter into force in a few months, extends the Common Commercial Policy in articles 205 and 206 to include foreign investment. Thus the stage is set for extension of EU jurisdiction over foreign investment, the possible claim by the Commission to negotiate BITs and to participate in investor - state arbitration. What once seemed simple has become very complex for the EU and for other jurisdictions around the world.

About the speaker

Armand de Mestral C.M. is Jean Monnet Professor of Law, McGill University; Member of the Order of Canada; and author, Castel, de Mestral & Graham, *Law and Practice of International trade* and many other books and articles on International Trade Law, Public International Law, EU Law, Comparative Constitutional Law, International Arbitration; and International Arbitrator and Panelist CUFTA, NAFTA, WTO and under domestic legislation.



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