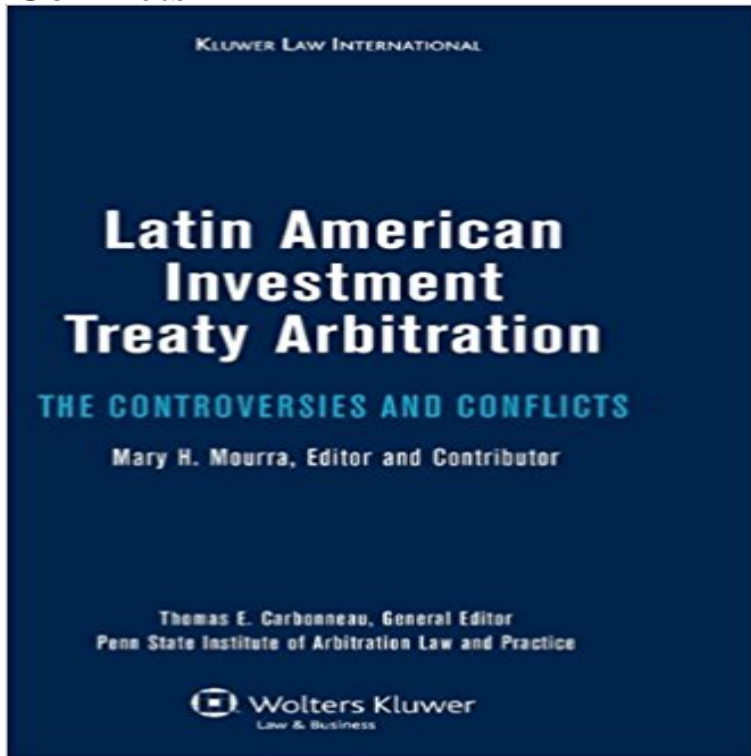


# Latin American Investment Treaty Arbitration: The Controversies and Conflicts



Nowhere in the world has the process of investment treaty arbitration been more volatile or unpredictable than in Latin America. Although the rush of bilateral investment treaties (BITs) entered into by Latin American countries during the 1990s seemed to promise stable guarantees and security for investors, recent years have produced an ever increasing number of arbitrations before international tribunals involving claims by foreign investors amounting to millions and even billions of dollars. In many cases, the disputes have arisen from regulatory measures involving matters of public interest, including the general welfare, health, environment, security, or economy. In five deeply informative and challenging essays by well-known authorities in various aspects of Latin American and/or international investment legal practice, this book investigates the issues affecting arbitration of disputes invoking Latin American BITs. In-depth coverage includes the following:

emerging controversies and conflicts, as well as the serious academic debates regarding varying interpretations of treaty terms by different arbitral tribunals; ICSID cases concluded to date against Latin American States and cases that have been dismissed on jurisdictional grounds; detailed analysis of non-precluded measures provisions, the state of necessity defence, and State liability for investor harms in exceptional circumstances (particularly in connection with water rights); a guide for government officials managing investment treaty obligations and investor-State disputes; procedural and substantive issues that States should consider in connection with their investment obligations and the handling of claims; and options available to address investment treaty provisions that States find troubling and the utility and effectiveness of the recommendations presented. The book demonstrates that

there is a compelling need for States to develop greater awareness of their investment treaty obligations with a view to both diminishing the likelihood of claims and properly managing those that are submitted to arbitration. It describes the stocktaking process that should form part of any States efforts to manage its investment treaty obligations and claims by investors that the State has breached those obligations. With specific recommendations for the effective administration of State obligations and investor-State disputes, the book offers eminently practical utility in addition to its penetrating theoretical analysis, and as such constitutes an enormously valuable resource for all parties concerned in Latin American investment.

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