



## Advanced Seminar on: “Damages” in International Arbitration

- ◆ Analysing, framing and proving a damages claim under different rules of law
- ◆ The principle of full compensation and the *but-for premise* or *differential hypothesis* and its application in practice
- ◆ Measures of damages under different rules of law
- ◆ How to instruct and guide financial and economic experts
- ◆ What not to do: Typical errors in damages claims and arbitral awards
- ◆ Risk mitigation through liquidated damages and damages formulas
- ◆ From theory to practice: Case studies on damages claims:
  - International sales contract
  - Turnkey construction contract
  - Joint Venture Agreement
  - Post M&A dispute
  - Concession Agreement
  - Oil & gas project dispute

with among others

**Adriana San Román, Mexico; Simon Rainey QC, London; Herfried Wöss, Mexico & Vienna;  
Gerold Zeiler, Vienna;**

**24. + 25. May 2018**

**24 May: 2.00 pm – 6.00 pm    25 May: 9.00 am – 5.00 pm**

Hotel Regina, Rooseveltplatz 15, 1090 Vienna, Austria

## Target Group

- ◆ General Counsel
- ◆ Attorneys at law
- ◆ Arbitrators and Counsel
- ◆ Financial and Economic Experts
- ◆ Project-, Contract- and Claim-Managers

## Background & Objective

**„Damages” - have arguably become one of the most important and complex issues in international arbitration, and for good reason, because for a claimant at least, the damages are the arbitration’s very raison d’être.**” Prof. Loukas Mistelis, Queen Mary College University of London

“Damages” are the principal remedy in international business, in particular, with respect to complex long-term contracts such as turnkey construction projects, public-private partnerships, concessions, oil & gas projects, and also as regards less complex contractual relationships such as international sales contracts where specific performance is often not available under the applicable law, or simply not practical.

The objective of this seminar is to introduce the participants into the damages doctrine under different rules of law including international law and guide them on how to structure a damages claim or to reason a damages award, using actual and hypothetical cases. International sales, turnkey construction contracts, joint venture agreements, post M&A disputes, PPPs, oil & gas projects and other income generating contracts and investments will be used for case analysis. The seminar is directed to counsel, arbitrators, mediators, government officials, claim managers, project directors, CFOs, project finance lawyers and economic and financial experts, academics and postgraduate students, involved or interested in commercial and investment arbitration. The case studies are directly related to the topics analysed.

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## Speakers

**Lic. Adriana San Román**, M.A. in Finance & Investment (Exeter), Wöss & Partners, Mexico City – Washington DC, is an attorney at law, international damages expert, and financial analyst with a vast experience in the preparation of damages claims and expert opinions covering both legal aspects and their quantification. She was Ford foundation scholar of the University of Exeter where she studied for an M.A. in Finance & Investment and as lawyer of first profession also passed the first level of the Chartered Financial Analyst exam of the CFA Institute in New York. She is a member of the *ICCA-ASIL* Task Force on Damages and frequently acts as damages consultant & expert in int arbitrations/litigations. She is also a researcher for comparative damages law at the *Wirtschaftsuniversität* Vienna.

**Mag. Dr. Lic. Herfried Wöss**, LL.M. (Exeter), Wöss & Partners, Mexico City – Washington DC, is an int arbitrator, counsel and damages consultant in complex damages arbitrations. He has trained and worked in Austria, the Legal Service of the European Commission, the UK and Mexico and has extensive experience in arbitration under the ICC, UNCITRAL, ICDR, LCIA, ICSID and various local arbitration rules both as arbitrator & as counsel, in particular in major infrastructure projects and project agreements with state entities in emerging markets and developing countries. He is listed in the International Who's Who of Commercial Arbitration and *GAR ART*. He is a co-founder of the Investment Arbitration Forum, member of the ICC Arbitration Commission, Executive Board Member of the North America Branch of the Chartered Institute of Arbitrators, and country representative of the Dispute Resolution Board Foundation and member of its banking committee. He was visiting scholar at the Georgetown University Law Center and is researcher for comparative damages law at the *Wirtschaftsuniversität* Vienna.

## Moderators

**RA Dr. Christian Dorda** is a founding Partner of Dorda Brugger Jordis, Vienna, is a highly experienced arbitrator. He is Vice President of ICC Austria, member of the ICC Commission on Arbitration and ADR, member emeritus of the ICC International Court of Arbitration, member of the Board of Trustees of the American Chamber of Commerce in Austria, Permanent Counsel to the French-Austrian Chamber of Commerce and Past Chairman of the M&A Commission of the Union Internationale des Avocats.

**Anne-Karin Grill** is an Austria qualified attorney and specializes in international dispute resolution and alternative dispute resolution (ADR). She advises clients in both commercial litigation and arbitration proceedings (ICC, VIAC, LCIA, DIS, Swiss Chambers, etc), and has built an excellent track-record in advising international clients in investor-state arbitrations conducted under both the ICSID and UNCITRAL Rules. In addition, she regularly sits as (sole) arbitrator in multi-jurisdictional arbitrations and acts as a CEDR accredited mediator in domestic and international commercial disputes. She earned her law degree from the University of Vienna and holds a Master's Degree from Georgetown University. Anne-Karin Grill serves as a lecturer at the University of Vienna and is a regular speaker on dispute resolution topics. She is also the author of numerous publications on the subject.

**RA Dr. Gerold Zeiler** is an expert in commercial and investment arbitration and a graduate of the University of Vienna (Mag.iur. 1988; Dr.iur. 1996) and the Washington University (LL.M. 2016) and Fellow of the Chartered Institute of Arbitrators (FCIArb.). Gerold Zeiler is regularly involved as counsel or arbitrator in national and international arbitration proceedings – over 200 at the last count. He is the co-editor of the Austrian Yearbook on International Arbitration, the author of a comprehensive commentary on Austrian arbitration law and a former president of the Austrian Arbitration Association.

**Simon Rainey QC** is one of the best-known and most highly regarded practitioners at the Commercial Bar in England. He has established a broad commercial advisory and advocacy practice spanning substantial commercial contractual disputes, international trade and commodities, shipping and maritime law in all its aspects, energy and natural resources and insurance and reinsurance. He appears in the Commercial Court and Court of Appeal and also the Supreme Court. He particularly relishes complicated legal disputes and also cross-examination, especially in cases involving heavy expert evidence, of both technical disciplines and foreign law. He is frequently appointed as arbitrator (LCIA, ICC, LMAA, SIAC, UNCITRAL and ad hoc, sitting both sole and as co-arbitrator) and has given expert evidence of English law to courts in several countries. He also sits as a Recorder in the Crown Court and as a Deputy High Court Judge (Queen's Bench and Commercial Court).

## Programme

### DAY 1 – 24 May: 2.00 pm – 6.00 pm

- General legal principles applicable to the claim of damages regarding commercial arbitration and investment arbitration.
- The principle of full compensation and its historical, ethical, legal-philosophical and economic foundations.
- Measure of damages: *Damnum Emergens* and *Lucrum Cessans* v. expectation interest (positive) and reliance interest (negative). Chorzów and Fair Market Value.
- Requisites for the claim of damages in international arbitration.
- Measure of damages in synallagmatic contracts and synallagmatic triallagmas.
- Causation and its limitations: mitigation, contributory negligence and foreseeability.
- The but-for premise and its relevance for the valuation of damages.
- Application of the but-for premise in different types of contracts.

### DAY 2 – 25 May: 9.00 am – 5.00 pm

- Valuation of damages: date of the breach v. date of the award.
- Interest rates for the valuation of damages.
- Measures to avoid under compensation and over compensation.
- The issue of consequential damages
- Related topics:
  - Distinction between the concepts of lost profits v. loss-of-a-chance.
  - Distinction between the concepts of lost profits v. unjust enrichment.
  - Relevance of the available evidence.
  - Reasonable certainty of the loss of income.
- Liquidated Damages Clauses
  - How to defend against a damages claim?
  - The importance of liquidated damages clauses and damages formulas in complex contracts
  - The validity and effect of liquidated damages clauses under different rules of law
  - The relevance of contractual liquidated damages clauses in international investment protection law

## Publications

Publ. Nr.	Lang.	Titel	US\$
[+]	En	Herfried Wöss, Adriana San Román Rivera, Pablo T. Spiller, Santiago Dellepiane, <i>Damages in International Arbitration under Complex Long-term Contracts</i> (Oxford University Press, 2014)	260,00

# Registration Form

Mail or Fax to:

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**ICC Austria**

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*further ICC Austria conferences and courses:*

- **9<sup>th</sup> Investment Arbitration Forum**

26. May 2018, Vienna

- **ICC Austria Trade Finance Week**

18-22 June 2018, Vienna [www.tradefinanceweek.org](http://www.tradefinanceweek.org)

For further details please visit: [www.icc-austria.org](http://www.icc-austria.org)

## Participant Information

Mr.     Mrs.

Family Name: ..... First Name: .....

Organisation / Company: .....

Address: .....

City, Postal code: ..... Country: .....

Telephone: ..... Fax: .....

E-Mail: ..... Job Title / Position: .....

## Invoice data

Organisation / Company: .....

VAT Number:\* .....

Address: .....

City, Postal code: ..... Country: .....

\* Obligatory for invoicing participants from EU member states

## Registration – closing date 11 May 2018

	24 + 25 May 2018	24 May 2018
<b>I want to register for:</b>	<b>Advanced Seminar on Damages in International Arbitration</b> <input type="checkbox"/>	<b>Cocktail / Networking Event</b> 6 – 8pm <input type="checkbox"/>
<b>Regular Fee</b>	<b>EUR 990,--</b> (plus 20% VAT)	<b>EUR 45,--</b> (plus 20% VAT)
<b>Reduced Fee ICC Austria member only</b>	<b>EUR 790,--</b> (plus 20% VAT)	<b>EUR 45,--</b> (plus 20% VAT)

After receiving the registration, we will sent a confirmation with the invoice attached - please transfer the course fees - free of charges for ICC Austria - via banktransfer. **We do not accept payments by credit card.** In exceptional cases, a payment in cash is possible on site.

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.....  
 Date

.....  
 Signature