

# Dr. Markus Burgstaller

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Dr. Burgstaller has been a Partner in the International Arbitration Practice of Hogan Lovells in London since 2014. Prior to joining Hogan Lovells in 2007, he served as Legal Advisor in the Office of the Austrian Chancellor (*Bundeskanzleramt*) for more than four years.

He combines experience in public international law and EU law at the highest level of government with many years of experience in advising and representing States, international organisations and businesses in private practice.

Dr. Burgstaller acts for investors, States, and international organisations in international disputes, mainly arbitrations under the ICSID and UNCITRAL Arbitration Rules, and in proceedings before the Court of Justice of the European Union.

Recognized as a leading individual in public international law in the UK and globally, Dr. Burgstaller guest lectures at universities such as the University of Cambridge, the London School of Economics and Political Science, and Humboldt University in Berlin.

Dr. Burgstaller has previously served for twelve years on the ICSID Panel of Conciliators nominated by the Austrian Government. He is currently serving on the ICSID Panel of Arbitrators again nominated by the Austrian Government.

## Relevant Experience

Acting for a UK investor in an ICSID arbitration against Romania under the Energy Charter Treaty (*Clara Petroleum Ltd v. Romania*, ICSID Case No. ARB/22/10).

Acting for Ukraine in an ICSID arbitration under a Bilateral Investment Treaty (*Misen Energy AB (publ) and Misen Enterprises AB v. Ukraine*, ICSID Case No. ARB/21/15).

Acting for Irish investors in an ICSID arbitration against the Federal Republic of Germany under the Energy Charter Treaty (*Mainstream Renewable Power Ltd and others v. Federal Republic of Germany*, ICSID Case No. ARB/21/26).

Acting for the Slovak Republic in proceedings to set aside a final award under a Bilateral Investment Treaty before the Frankfurt Court of Appeal, the German Federal Supreme Court (with Gunhild Schäfer), the German Federal Constitutional Court (with Professor Martin Nettesheim), and as lead counsel in the Court of Justice of the European Union (*Slovak Republic v. Achmea*



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## Education

PhD in Public International Law,  
University of Vienna  
MPhil, University of Vienna  
LL.M, New York University  
LL.M, University of Vienna

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## Admissions

New York  
Senior Courts of England and Wales

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## Languages

English  
German

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BV, CJEU Case C-284/16).

Acting for a Belgian investor in an ICSID arbitration against the Republic of Turkey under a Bilateral Investment Treaty (*Cascade Investments NV v. Republic of Turkey*, ICSID Case No. ARB/18/4).

Acting for the Republic of India in an UNCITRAL arbitration under a Bilateral Investment Treaty (*GPIX LLC v. The Republic of India*, PCA Case No. 2020-36).

Acting for a Dutch investor in an ICSID arbitration against the Republic of North Macedonia under a Bilateral Investment Treaty (*Cunico Resources N.V. v. Republic of North Macedonia*, ICSID Case No. ARB/17/46).

Acting for the Socialist Republic of Vietnam in an UNCITRAL arbitration under a Bilateral Investment Treaty (*DialAsie SAS (France) v. The Socialist Republic of Vietnam*, PCA Case No. AA408 (2011-8)).

Acting for an investor in an UNCITRAL arbitration against the Kyrgyz Republic under the Kyrgyz Foreign Investment Law (*Penwell Business Limited (British Virgin Islands) v. The Kyrgyz Republic*, PCA Case No 2017-31).

Acting for the Socialist Republic of Vietnam in an UNCITRAL arbitration under a Bilateral Investment Treaty (*Recofi S.A. (France) v. The Socialist Republic of Vietnam*, PCA Case No. 2014-14).

Acting for UK investors in an ICSID arbitration against the Republic of Mauritius under a Bilateral Investment Treaty (*Thomas Gosling and others v. Republic of Mauritius*, ICSID Case No. ARB/16/32).

Acting for the Socialist Republic of Vietnam under the investment chapter of a Bilateral Trade Agreement (*Michael L. McKenzie (United States of America) v. The Socialist Republic of Vietnam*, PCA Case No. AA410).

Acting for a German investor in an UNCITRAL arbitration against the Kingdom of Thailand under a Bilateral Investment Treaty (*Walter Bau AG (in liquidation) v. The Kingdom of Thailand*, ad hoc).

Acting for the Czech Republic in an UNCITRAL arbitration under a Bilateral Investment Treaty (*Mittal Steel Company N.V. v. Czech Republic*, ad hoc).

Acting for a Turkish investor in an ICSID arbitration against the Republic of Azerbaijan under the Energy Charter Treaty, a Bilateral Investment Treaty, and the Azerbaijan Foreign Investment Law (*Barmek Holding A.S. v. Republic of Azerbaijan*, ICSID Case No. ARB/06/16).

Acting for Mongolia in an UNCITRAL arbitration under the Energy Charter Treaty, the Mongolian Foreign Investment Law and a contractual agreement (*Khan Resources Inc., Khan Resources B.V., CAUC Holding Company Ltd. v. The Government of Mongolia and MonAtom LLC*, PCA Case No. 2011-

09).

Acting for a Russian investor in an UNCITRAL arbitration against Georgia under the Georgian Foreign Investment Law (*Inna Gudavadze v. The Republic of Georgia*, ad hoc).

Advising Ukraine in an SCC arbitration under the Energy Charter Treaty (*Littop Enterprises, Bridgemont Ventures and Bordo Management v Ukraine*, SCC Case No. 2015/092).

Acting for an Austrian investor in a proceeding to set aside an award under a Bilateral Investment Treaty before the Dutch courts (*Adria Beteiligungs GmbH v. The Republic of Croatia*).

### **Relevant Publications**

*Definition of investment in international investment law*, Practical Law Company (online).

*Expropriation in international investment law*, Practical Law Company (online).

*Fair and equitable treatment in international investment law*, Practical Law Company (online).

*Deepfakes in International Arbitration: How Should Tribunals Treat Video Evidence and Allegations of Technological Tampering?*, 22/5-6 *Journal of World Investment & Trade* (2021) (co-author).

*Due Diligence in International Investment Law*, 38/6 *Journal of International Arbitration* (2021) (co-author).

*Commentary to Articles 8.22 and 8.23*, in *CETA Investment Law: Article-by-Article Commentary* (Bungenberg/Reinisch eds. 2021).

*Investment Protection and Sustainable Energy Projects in the Age of Climate Change*, in *Evolution, Evaluation and Future Developments in International Investment Law* (Hobe/Scheu eds. 2021).

*Investitionsschutz im Anlagenbau (Investment Protection in the Construction Sector)*, in *Rechtshandbuch Anlagenbau (Handbook Construction)* (Bock/Zons eds. 2021) (in German) (co-author).

*Effects of Disposal of Investments on Claims in Investment Arbitration*, 36/2 *Journal of International Arbitration* (2019) (co-author).

*Commentary to Articles 254-256 TFEU*, in *TEU and TFEU Commentary* (Jaeger/Stoeger eds. 2018) (in German).

*The Growing Importance Of Investment Arbitration In Relation To Tax Measures In The Energy And Natural Resources Sectors*, 4/1 *Turkish Commercial Law Review* (2018) (co-author).

*Should Expropriation Risk Be Taken into Account in the Assessment of Damages?*, 32/1, ICSID Review - Foreign Investment Law Journal (2017) (co-author).

*Recognition and Enforcement of ICSID Awards: The ICSID Convention and the European Union*, in ICSID Convention after 50 Years (Baltag ed. 2017).

*Possible Ramifications of the UK's EU Referendum on Intra- and Extra-EU BITs*, 33 (Special Issue) Journal of International Arbitration (2016) (co-author).

*Book Review: Philip Strik, Shaping the Single European Market in the Field of Foreign Direct Investment*, 16/3 Journal of World Investment & Trade (2015).

*Dispute Settlement in EU International Investment Agreements with Third States: Three Salient Problems*, 15/3-4 Journal of World Investment & Trade (2014).

*Investor-State Arbitration in EU International Investment Agreements with Third States*, in The Future of ICSID and the Place of Investment Treaties in International Law (Calamita/Earnest/Burgstaller eds. 2013).

*Investment Codes*, in Max Planck Encyclopedia of Public International Law (2012) (co-author).

*Investor-State Arbitration in EU International Investment Agreements with Third States*, 39/2 Legal Issues of Economic Integration (2012).

*Sovereign wealth funds and international investment law*, in Evolution in Investment Treaty Law and Arbitration (Brown/Miles eds. 2011).

*The Energy Charter Treaty as a mixed agreement: a model for future European investment treaties?*, in Energy Dispute Resolution: Investment Protection, Transit and the Energy Charter Treaty (Coop ed. 2011).

*Vertical allocation of competences for investment treaties in the European Union*, in Multilateralism and Regionalism in Global Economic Governance (Nakagawa ed. 2011).

*The Future of Bilateral Investment Treaties of EU Member States*, in European Yearbook of International Economic Law (Herrmann/Terhechte eds. 2011).

*Challenging International Arbitral Awards: To ICSID or not to ICSID?*, 27/1 Arbitration International (2010) (co-author).

*European Law Challenges to Investment Arbitration*, in The Backlash against Investment Arbitration (Waibel et al eds. 2010).

*Les aspects proceduraux de l'arbitrage - Qui es partie? Le role de la*

*Commission européenne*, in *Le droit européen et l'investissement* (Kessedjian/Leben eds. 2009).

*European Law and Investment Treaties*, 26/2 *Journal of International Arbitration* (2009).

*Amenities and Pitfalls of a Reputational Theory of Compliance with International Law*, 76/1 *Nordic Journal of International Law* (2007).

*Nationality of Corporate Investors and International Claims against the Investors Own State*, 7/6 *Journal of World Investment and Trade* (2006).

*Theories of Compliance with International Law* (Martinus Nijhoff 2005).