

VIAC – Questionnaire for Arbitrators

1. **Name:** Michele POTESTÀ

2. **Citizenship:** Italian

3. **Contact information:**

Address: LÉVY KAUFMANN-KOHLER
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Switzerland

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E-Mail: michele.potesta@lk-k.com

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LinkedIn: <https://www.linkedin.com/in/michelepotesta/>

4. **Current position:** Attorney-at-law, LÉVY KAUFMANN-KOHLER, Geneva

5. **Education:**

Ph.D., University of Milan, 2011

M.A. in Law (*Laurea Magistrale in Giurisprudenza*), University of Milan, 2007

B.A. in Law (*Laurea in Scienze Giuridiche*), University of Milan, 2005

Visiting Scholar, University of California at Berkeley, 2009

6. **Practiced experience in arbitration**

- How many arbitrations have you participated in (domestic/international); under which Rules?
Approximately 20 international arbitrations, both investment and commercial, under the following Rules: ICC; ICSID; ICSID AF; UNCITRAL; DIAC; DIA; *ad hoc*.
- How often have you acted as Chairman?
N/A
- How often have you acted as Sole Arbitrator?
3 arbitrations as Sole Arbitrator, under the ICC and DIAC Rules.
- How often have you acted as Co-Arbitrator?
1 arbitration as Co-Arbitrator, under the Rules of the Danish Institute of Arbitration.
- How often have you acted as Counsel?
5 arbitrations as Counsel, both in investment and commercial disputes.
- How often have you acted in a different function (e.g. Administrative Secretary)?
Over 10 arbitrations as Secretary or Assistant to the Tribunal, under various Rules (ICSID; ICSID AF; ICC; UNCITRAL), in disputes arising under contract or investment treaties.

7. Publications and other activities in arbitration (e.g. training sessions, seminars, conferences, articles and others):

- **Selected publications**

“Can the Mauritius Convention on Transparency serve as a model for the reform of investor-state arbitration in connection with the introduction of a permanent dispute settlement body or an appeal mechanism?” (with G. Kaufmann-Kohler), Paper prepared for UNCITRAL (available at http://www.uncitral.org/pdf/english/commission/sessions/unc/unc-49/CIDS_Research_Paper_-_Can_the_Mauritius_Convention_serve_as_a_model.pdf)

“Interim Relief under International Investment Agreements”, in *Arbitration under International Investment Agreements: A Guide to the Key Issues* (K. Yannaca-Small ed., OUP, 2017, forthcoming, 2nd ed.) (with G. Kaufmann-Kohler and A. Antonietti)

“Preliminary Objections to Dismiss Claims that are Manifestly without Legal Merit under Rule 41(5) of the ICSID Arbitration Rules” in *ICSID Convention after 50 Years - Unsettled Issues* (C. Baltag ed., Alphen aan den Rijn 2017), pp. 249-271

“Towards a greater role for state-to-state arbitration in the architecture of investment treaties?”, in *The Role of the State in Investor-State Arbitration* (S. Lalani & R. Polanco Lazo eds., 2015) 249-273

“Legitimate expectations in investment treaty law: Understanding the roots and the limits of a controversial concept”, 28 *ICSID Review—Foreign Investment Law Journal* (2013) 88–122

“From mutual supportiveness to mutual enforcement? The contribution of US Preferential Trade and Investment Agreements to the effectiveness of environmental norms”, in *Preferential Trade and Investment Agreements: A New Ordering Paradigm for International Investment Relations?* (R. Hofmann, C. Tams & S. Schill eds., 2013) 167-185

“Mapping Environmental Concerns in International Investment Agreements: How Far Have We Gone?” in *Foreign Investment and Common Concerns: An International Law Perspective* (T. Treves & F. Seatzu eds., 2013) 193-212

“State-to-State Dispute Settlement Pursuant to Bilateral Investment Treaties: Is There Potential?”, in *International Courts and the Development of International Law—Essays in Honour of Tullio Treves* (N. Boschiero & T. Scovazzi eds., 2013) 753-768

“Italy-Cuba, Ad Hoc Arbitration”, 106 *American Journal of International Law* (2012) 341-347

“Frivolous Claims in International Adjudication: A Study of ICSID Rule 41(5) and of Procedures of Other Courts and Tribunals to Dismiss Claims Summarily”, 3 *Journal of International Dispute Settlement* (2012) 137-168 (with M. Sobat)

“The interpretation of consent to ICSID arbitration contained in domestic investment laws”, 27 *Arbitration International* (2011) 149-169 (Gillis Wetter Memorial Prize (LCIA) 2010, awarded second runner-up prize)

“Il consenso all’arbitrato ICSID contenuto in una legge nazionale dello Stato ospite dell’investimento”, *Diritto del commercio internazionale* (2010) 375-396

“State immunity and *jus cogens* violations: The Alien Tort Statute against the backdrop of the latest developments in the ‘law of nations’”, 28 *Berkeley Journal of International Law* (2010) 571-586

“Bilateral Investment Treaties and the European Union. Recent Developments in Arbitration and Before the ECJ”, 8 *The Law and Practice of International Courts and Tribunals* (2009) 225-245

“Il caso Eastern Sugar: accordi bilaterali sugli investimenti, Unione europea e diritto comunitario” 44 *Rivista di diritto internazionale privato e processuale* (2008) 1055-1070

- **Speaking engagements**

“A permanent investment tribunal system?”, 2nd Annual Conference on Energy Arbitration and Dispute Resolution in the Middle East and Africa, London, 16-17 May 2017

“Roadmap for a reform of ISDS”, Joint UNCITRAL-LAC Conference, Ljubljana, 4 April 2017

“The Idea of an International Investment Court: Prospect and Challenges in Times of Legitimacy Crisis”, Institute of State and Law of the Academy of Sciences of the Czech Republic in co-operation with Czech Society of International Law, Prague, 23 March 2017

“Relocating or abandoning investor-state arbitration? Prospects and challenges for the creation of a multilateral investment court”, Vienna Arbitration Days, “Relocating Arbitration”, 24-25 February 2017

“The Benefits of Investment Arbitration in Times of Legitimacy Crisis”, Kosovo Arbitration Days, 22 February 2017

“Emergency Relief and Third Party Funding in International Arbitration: Emerging Issues”, ICDR Young & International/CIDS Conference, Geneva, 26 January 2017 (moderator)

“Early Dismissal Possibilities in Practice: Assessment and Outlook”, ASA Below 40 Fall Seminar, Zurich, 18 November 2016

“Strides in Reforming Investor-State Arbitration”, American University, Washington D.C., 13 October 2016

“Time and Costs Are of the Essence -- Suggested Techniques for Controlling Time and Costs Before and During Arbitral Proceedings”, Geneva Chamber of Commerce, 7 October 2016

Lecturer at the Madrid International Arbitration Summer Course (Madrid-IASC), July 2016

Visiting lecturer at the course “International Arbitration in Switzerland” taught at the University of Geneva, Faculty of Law, 2015-2016; 2016-2017

“Corruption in investment arbitration: What are the available defenses and remedies?”, ICC YAF event on “Tackling Issues and Allegations of Corruption by Arbitral Tribunals”, Moscow, 10 December 2015

“State-to-State Proceedings Under Investment Treaties”, ICC YAF/Ukrainian Arbitration Association/ICDR Young & International, Kiev, 4 November 2015

“Disqualification of Arbitrators in Investment Arbitration”, Arbit meets CEA-40, Rome, 24 October 2015

“Investment Arbitration in Practice: A View from the Inside”, ICC YAF/CIDS, co-organizer of the conference and speaker on the topic “The Tribunal’s Inherent Powers: How Far Do They Stretch?”, Geneva, 26 September 2015

“ICSID Arbitration: Current Issues”, ICDR Y&I, ICCA, Young ICCA, ICC YAF joint conference “The Practice of International Arbitration”, Paphos, Cyprus, 18 September 2015

“Issue conflicts in investment arbitration”, Graduate Institute of International and Development Studies, Geneva, 26 September 2014

“Towards a Greater Role for State-to-State Arbitration in the Architecture of Investment Treaties”, World Trade Institute conference, Bern, 8 November 2013

“Difficulties in enforcing the arbitral award: what next?”, Young ICCA-Milan Chamber of Arbitration seminar, 3 October 2013

“State-to-State Investment Treaty Arbitration: Dead End or New Frontier?”, Columbia Law School, New York, 29 November 2012

“Legitimate Expectations in Investment Treaty Law”, SIEL Biennial Conference, National University, Singapore, 12-14 July 2012

“Mapping Environmental Concerns in International Investment Agreements”, University of Cagliari, Italy, “Foreign Investment and Common Concerns”, 11-12 May 2012

“Interpretation of Consent to ICSID Arbitration Contained in Domestic Investment Laws”, University of Sydney, Law School, International Investment Treaty Law and Arbitration Conference, 19-20 February 2010

- **Academic activities in arbitration**

- Lecturer in international arbitration, Geneva LL.M. in international dispute settlement (MIDS) (2010-2013);
- Senior researcher, Geneva Center for International Dispute Settlement (CIDS) (2015-)

8. Membership in arbitral institutions / functions in arbitral institutions/organizations:

- Kuala Lumpur Regional Centre for Arbitration (KLRC), Panellist (Arbitrators List)
- Member of (*inter alia*) the Swiss Arbitration Association (ASA); Austrian Arbitration Association; Italian Arbitration Association

9. Languages

Mother tongue: **Italian**

Working languages (i.e. languages in which you have both a spoken and written command so that you may conduct arbitral proceedings in this language): **English, French, German**

10. In which legal system have you trained?

Civil law (Italy).

11. What is your main jurisdiction of practice?

Italy and Switzerland.

12. Special expertise or specializations (please list a maximum of three):

Commercial contracts; Oil, gas and energy; Investment disputes.

13. Date of birth: 19 May 1983

I have completed this questionnaire to the above to the best of my knowledge and believe they are accurate. I understand that the above information will be used for VIAC's internal use and may be given to interested persons and may be put on VIAC's website.

Geneva, 27.03.2017

MICHELE POTESTÀ

Curriculum vitae – March 2017

PERSONAL DETAILS

Italian nationality

BAR ADMISSION

Member of the Milan and Geneva (foreign lawyers) Bars

CONTACT DETAILS

3-5, Rue du Conseil-Général, CH – 1205 Genève
Email: michele.potesta@lk-k.com
Tel.: +41 22 809 6200 | + 41 78 799 9453

WORK EXPERIENCE

Sep. 2013 – present

LÉVY KAUFMANN-KOHLER, ATTORNEYS-AT-LAW, Geneva

Attorney-at-law

Areas of practice: international commercial arbitration; international investment arbitration
Experience:

- **As Sole Arbitrator:**
 - Multi-million arbitration under the ICC Rules, involving a Swiss company and two African companies in the pharmaceutical sector (2014-2015) [in English]
 - Arbitration under the Dubai International Arbitration Centre (DIAC) Rules between an Iranian investor and a Dubai corporation relating to a construction project in the United Arab Emirates (2015) [in English]
 - Arbitration under the DIAC Rules between two Dubai entities relating to a Services Contract in the construction industry [in English] (2016-)
- **As Co-arbitrator:**
 - Arbitration under the Danish Institute of Arbitration (DIA) Rules in relation to derivative contracts [in English] (2016-)
- **As Tribunal Secretary/Assistant** in numerous arbitrations under the ICSID, ICSID AF, UNCITRAL, and ICC Rules, including, by way of example, the following:
 - *Crystallex International Corporation v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB(AF)/11/2), an arbitration under the Canada-Venezuela BIT arising out of a dispute relating to a gold mine (2013-2016) [bilingual English-Spanish]
 - *Orascom TMT Investments S.à r.l. v. People's Democratic Republic of Algeria* (ICSID Case No. ARB/12/35), an arbitration under the Belgium/Luxembourg-Algeria BIT arising out of a dispute in the telecommunications industry (2013-) [bilingual English-French]
 - An UNCITRAL arbitration under the ECT involving a group of investors and a European State, relating to changes to the solar energy regulatory framework (2013-) [bilingual English-Spanish]
 - An UNCITRAL arbitration under a BIT arising out of a dispute in the telecommunications industry between a European investor and a South Asian State (2014-) [in English]
 - An ICC arbitration in relation to performance of contracts in the tourism industry (2015-) [in Italian]
- **As Counsel** in commercial arbitrations under various rules and in various sectors (marketing agreements, sports-related commercial disputes, int'l sales, banking, etc.)

2015 – present

CENTER FOR INTERNATIONAL DISPUTE SETTLEMENT (CIDS), Geneva

Senior Researcher on a research project carried out for UNCITRAL on the reform of investor-state dispute settlement (<http://www.cids.ch/research-3/>)

Sep. 2010 – Aug 2013

GRADUATE INSTITUTE OF INTERNATIONAL AND DEVELOPMENT STUDIES, Geneva

Full-time Academic Lecturer at the Geneva LL.M. in International Dispute Settlement (MIDS)

Courses taught: international commercial arbitration; international investment arbitration

Jan. – Nov. 2009

UNIVERSITY OF CALIFORNIA – BERKELEY, SCHOOL OF LAW

Research Assistant to Prof. David D. Caron

Aug. 2007 – Jan. 2009

UGHI E NUNZIANTE STUDIO LEGALE, Milan

Associate

Oct. 2007 – Dec. 2008 **UNIVERSITY OF MILAN**, Italy
Jan. 2010 – Aug. 2010 *Teaching Assistant to Prof. Tullio Treves, International Law Chair*

OTHER MEMBERSHIPS

2015 – present **KUALA LUMPUR REGIONAL CENTRE FOR ARBITRATION (KLRCA)**
Panellist (Arbitrators List)

EDUCATION

DEGREE PROGRAMS

Oct. 2007 – Jan. 2011 **UNIVERSITY OF MILAN**, Italy
Ph.D. in International Law

Sep. 2005 – Jun. 2007 **UNIVERSITY OF MILAN**, Italy
Master in Law, European Law and International Law

Oct. 2002 – Jul. 2005 **UNIVERSITY OF MILAN**, Italy
B.A. in Legal Studies

OTHER EDUCATIONAL EXPERIENCES

Jan. 2009 – Nov. 2009 **UNIVERSITY OF CALIFORNIA – BERKELEY, SCHOOL OF LAW**
Visiting Scholar

Jul. 2007 **HAGUE ACADEMY OF INTERNATIONAL LAW**
Private International Law Course

Jan. 2006 – Jun. 2006 **UNIVERSITY OF CALIFORNIA – BERKELEY, SCHOOL OF LAW**
Exchange student

Sep. 2003 – Feb. 2004 **J.W. GOETHE - UNIVERSITÄT, FRANKFURT A. M., GERMANY**
Erasmus Exchange Student

SPEAKING ENGAGEMENTS

“A permanent investment tribunal system?”, 2nd Annual Conference on Energy Arbitration and Dispute Resolution in the Middle East and Africa, London, 16-17 May 2017

“Roadmap for a reform of ISDS”, Joint UNCITRAL-LAC Conference, Ljubljana, 4 April 2017

“The Idea of an International Investment Court: Prospect and Challenges in Times of Legitimacy Crisis”, Institute of State and Law of the Academy of Sciences of the Czech Republic in co-operation with Czech Society of International Law, Prague, 23 March 2017

“Repositioning or abandoning investor-state arbitration? Prospects and challenges for the creation of a multilateral investment court”, Vienna Arbitration Days, “Repositioning Arbitration”, 24-25 February 2017

“The Benefits of Investment Arbitration in Times of Legitimacy Crisis”, Kosovo Arbitration Days, 22 February 2017

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- “Interpretation of Consent to ICSID Arbitration Contained in Domestic Investment Laws”, University of Sydney, Law School, International Investment Treaty Law and Arbitration Conference, 19-20 February 2010

SELECTED PUBLICATIONS

- JOURNAL ARTICLES** “Legitimate expectations in investment treaty law: Understanding the roots and the limits of a controversial concept”, 28 *ICSID Review—Foreign Investment Law Journal* (2013) 88-122
- “Italy-Cuba, Ad Hoc Arbitration”, 106 *American Journal of International Law* (2012) 341-347
- “Frivolous Claims in International Adjudication: A Study of ICSID Rule 41(5) and of Procedures of Other Courts and Tribunals to Dismiss Claims Summarily”, 3 *Journal of International Dispute Settlement* (2012) 137-168 (with M. Sobat)
- “The interpretation of consent to ICSID arbitration contained in domestic investment laws”, 27 *Arbitration International* (2011) 149-169 (Gillis Wetter Memorial Prize (LCIA) 2010, awarded second runner-up prize)
- “Il consenso all’arbitrato ICSID contenuto in una legge nazionale dello Stato ospite dell’investimento”, *Diritto del commercio internazionale* (2010) 375-396
- “State immunity and *jus cogens* violations: The Alien Tort Statute against the backdrop of the latest developments in the ‘law of nations’”, 28 *Berkeley Journal of International Law* (2010) 571-586
- “Bilateral Investment Treaties and the European Union. Recent Developments in Arbitration and Before the ECJ”, 8 *The Law and Practice of International Courts and Tribunals* (2009) 225-245
- “Il caso Eastern Sugar: accordi bilaterali sugli investimenti, Unione europea e diritto

BOOK CHAPTERS

- “Interim Relief under International Investment Agreements”, in *Arbitration under International Investment Agreements: A Guide to the Key Issues* (K. Yannaca-Small ed., OUP, 2017, forthcoming, 2nd ed.) (with G. Kaufmann-Kohler and A. Antonietti)
- “Preliminary Objections to Dismiss Claims that are Manifestly without Legal Merit under Rule 41(5) of the ICSID Arbitration Rules” in *ICSID Convention after 50 Years - Unsettled Issues* (C. Baltag ed., Alphen aan den Rijn 2017), pp. 249-271
- “Towards a greater role for state-to-state arbitration in the architecture of investment treaties?”, in *The Role of the State in Investor-State Arbitration* (S. Lalani & R. Polanco Lazo eds., 2015) 249-273
- “From mutual supportiveness to mutual enforcement? The contribution of US Preferential Trade and Investment Agreements to the effectiveness of environmental norms”, in *Preferential Trade and Investment Agreements: A New Ordering Paradigm for International Investment Relations?* (R. Hofmann, C. Tams & S. Schill eds., 2013) 167-185
- “Mapping Environmental Concerns in International Investment Agreements: How Far Have We Gone?” in *Foreign Investment and Common Concerns: An International Law Perspective* (T. Treves & F. Seatzu eds., 2013) 193-212
- “State-to-State Dispute Settlement Pursuant to Bilateral Investment Treaties: Is There Potential?”, in *International Courts and the Development of International Law—Essays in Honour of Tullio Treves* (N. Boschiero & T. Scovazzi eds., 2013) 753-768

OTHER PUBLICATIONS

- “Can the Mauritius Convention on Transparency serve as a model for the reform of investor-state arbitration in connection with the introduction of a permanent dispute settlement body or an appeal mechanism?” (with G. Kaufmann-Kohler), Paper prepared for UNCITRAL (available at http://www.uncitral.org/pdf/english/commissionssessions/unc/unc-49/CIDS_Research_Paper_-_Can_the_Mauritius_Convention_serve_as_a_model.pdf)
- “ICCA’s Guide to the Interpretation of the 1958 New York Convention: A Handbook for Judges” (translation into Italian on behalf of ICCA, 2014)

CASE NOTES

- “Mr. Franck Charles Arif v. Republic of Moldova, ICSID Case No. ARB/11/23, Award, 8 April 2013”, 15 *Journal of World Investment & Trade* (2014) 1011-1019
- “La rinuncia preventiva all’impugnabilità del lodo arbitrale è compatibile con la Convenzione europea dei diritti dell’uomo?” (Nota, Tribunale federale svizzero, 4 gennaio 2012, in *Rivista dell’Arbitrato* (2013) 171-185)

ACADEMIC JOURNALS

Nov. 2010 – Aug. 2013

JOURNAL OF INTERNATIONAL DISPUTE SETTLEMENT, Oxford University Press
Assistant Editor

Jan. 2009 – Nov. 2009

BERKELEY JOURNAL OF INTERNATIONAL LAW
Editor

LANGUAGES

Italian, native
English, fluent
German, fluent
French, fluent
Spanish, intermediate