



Investor-State Dispute Settlement

Background

Investment, both inward and outward, is of critical importance for home and host countries to compete successfully in a globalized economy. These investment flows spur productivity, capital expenditures, research and development, new technology and the creation and maintenance of good-paying jobs. The bottom line is that investment flows result in higher economic development and higher standards of living.

Bilateral investment treaties and trade agreements with robust investment chapters, including investor-state dispute settlement, serve to enhance cross border investment flows and their attendant benefits by promoting a more secure legal environment for investment overseas. Of particular importance are the provisions for investor-state dispute resolution, which support strong legal standards and market-opening provisions.

Prior to the adoption of this tool, investors could seek to address their grievances by going to local courts or seeking a “deal” with the host government. Or investors could try to enlist the services of the government of their home country. But enlisting the services of an investor’s home country is no guarantee that the home country will espouse the investor’s claim. Rather, the home country must take into consideration not only the investor’s interests, but also the interests of the government – both offensively and defensively. From the perspective of investors, relying solely on the government to espouse their claims will most often lead to no claim being brought.

Investor-state dispute settlement eliminates the need to involve the home country government in such matters, leaving them as private, rather than diplomatic, disputes. For host countries, consent to investor-state dispute settlement serves as a signal of the country’s openness to foreign investment. Independent, external accountability inspires confidence for foreign investors. Further, it allows host countries with less political clout a way to avert political pressure from more influential home country governments.

In a broader context, stronger acceptance of the rule of law and investor-state dispute settlement as reflected in BITs helps to foster economic development, as the rule of law is an important condition for long-term, solid economic development.

Benefits of Investor-State Dispute Settlement

1. Provides a neutral forum.
2. Provides investors overseas with ability to seek justice for bad acts by foreign governments.
3. Removes potential distractions from state-to-state relations by promoting a respected and de-politicized arbitration process for investors to resolve disputes with foreign governments (in the absence of which, investors might have no alternative but to seek the assistance of their home governments).
4. Provides investors abroad legal protections similar to those found under advanced legal systems, including due process, fair and non-discriminatory treatment and compensation for expropriation.
5. Strengthens enforcement of foreign governments' commitments by providing a binding, objective dispute resolution mechanism.
6. Promotes investment in developing countries that enter into such agreements, which in turn helps spur economic development, decrease poverty and promote stability and the rule of law.
7. Provides support for market-reform by foreign governments, who want to develop stronger rules of law in their own countries, as well as more transparent and less-corrupt systems. Helps host governments avoid political pressure by providing an internationally-accepted forum for the resolution of disputes.
8. Offers a tool to fend off the rising tide of protectionism arising out of the current economic crisis. If such protectionism continues unabated, it will lengthen and make that crisis more severe.