

# INTERNATIONAL ARBITRATION UNDER ICSID, BITS, NAFTA, AND OTHER INVESTMENT REGIMES

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## ABSTRACT

*Investment arbitration is another kind of adjudication that has been developing progressively since the 1950s, when the states began concluding a network of bilateral and multilateral investments treaties. Over the course of time these treaties have come to address significant investment disputes through arbitration.*

Keywords: Investment arbitration, Investment Disputes.

## INTRODUCTION

The International Centre for Settlement of Investment Disputes (hereinafter referred as ICSID), 1965 is central to investment arbitration regime. With 146 contracting states to the Convention, “it established a basic legal framework for the arbitration of investment disputes arising between contracting state and foreign investors who are nationals of another contracting state. Following either an investment agreement or a Bilateral Investment Treaty (hereinafter referred as BIT), a arbitration under the ICSID Convention is available to a contracting state and foreign investor submits to its jurisdiction.[1]

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Generally BITs guarantee protection to foreign investors on their investments, along with dispute resolution provisions which allow foreign investors to opt for “arbitration without privity” as a traditional arbitration agreement is absent. The investors can on the basis of the BIT move on with arbitration of a particular category of investment dispute with the host state, including claims against expropriation, national treatment etc. It seemed more feasible for states to adopt a number of individual BITs with individual states as it allowed methods of dispute resolution and

investment protection provisions to be customised in a more pragmatic manner as per the need of the investment made. The efforts to develop a multilateral investment was made by developing as well as developed states which could not become a reality pertaining to differing views about the levels of investor protection.[2]

There does exist a number of region specific or industrial sector multilateral treaties that provide for arbitration of international investment disputes like Chapter 11 of North American Free Trade Agreement (NAFTA), the Energy Charter Treaty 1994, and the Association of Southeast Asian Nations (ASEAN) Comprehensive Investment Agreement. These treaties/agreements allow foreign investors for arbitration disputes settlement with host states, even if a separate arbitration clause might be absent. International commercial arbitration rules double as the ICSID Convention and ICSID Arbitration Rules and act as a model for investment arbitration in practices like number and selection of arbitrators, presentation of evidence, conducting hearings, presenting awards etc.

When compared with traditional first generation tribunals, awards passed in investment arbitration tribunals are voluntarily complied with by the parties. As provided by the ICSID Convention and its Rules, arbitration shall continue when a state respondent does not participate in proceedings, or in other words defaults proceedings. The awards passed even in such proceedings shall be final and binding on parties. The contracting states to ICSID Convention are obligated to enforce the pecuniary obligations imposed by such awards, which has been given effect in many jurisdictions by implementing national legislations to enforce ICSID awards against states and their commercial property. Similarly, most of the BIT awards rendered pursuant to the ICSID Convention are subject to ICSID's enforcement provisions, and non ICSID BIT awards are governed by the New York Convention and/or national implementing legislation.[3]

## CONCLUSION

It is an independent choice for every state whether to commit to BITs or not, or to commit to any form of investment agreements. Although some states forbid from entering into such agreements but to attract foreign investment into the country a substantial pressure is felt by them to enter into such agreements. In most contemporary discussions of international dispute resolution, investment arbitration is yet to find a place for itself. The various forms of investment arbitration is the new face of international dispute adjudication that previously would have to be resolved through the

use of organised force, or political means. There has been a robust growth of investment arbitration over the first decade of the 21st Century. Apart from proceedings including large pecuniary claims, ICSID proceedings also have had to deal with important issues of International law. The same is also the reflection of NAFTA cases which also deals with significant cases of national regulatory competence.

## REFERENCES

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