Review of Australia's Bilateral Investment Treaties

Australian Government | Department of Foreign Affairs and Trade

30 September 2020

Baker McKenzie.

1. Introduction

1.1 The Australian Government is reviewing the bilateral investment treaties (**Review BITs**) to which Australia is a party as outlined in the discussion paper (**Discussion Paper**) issued by the Department of Foreign Affairs and Trade (**DFAT**).

1.2 In recent years, Australia has entered into a number of bilateral and multilateral free trade agreements (**FTAs**), many of which include investment chapters. Those investment chapters often include investment protections such as fair and equitable treatment (**FET**), national treatment, most-favoured nation treatment (**MFN Treatment**) and restrictions on expropriation of investments.

1.3 Australia has terminated a number of BITs, some of which have been replaced by investment chapters in FTAs. The Discussion Paper refers to the termination of BITs with Mexico, Vietnam, Hong Kong, Peru and Indonesia.

1.4 Australia has 15 bilateral investment treaties (**BITs**) in force with countries from Asia, Europe, the Middle East and South America. DFAT is considering whether to terminate these BITs. In some cases, the BIT may be replaced by an investment chapter in an FTA. As the Review BITs cover a diverse range of countries, there will be different considerations to take into account for each BIT.

1.5 In this submission, we consider:

(a) a brief overview of the growth of investment arbitrations (also referred to as ISDS cases);

(b) some of the benefits of the Review BITs to Australian investors;

(c) the potential impact of investment treaties on the flow of foreign direct investment;

(d) the impact of existing FTAs and FTAs being negotiated on the Review BITs; and

(e) concerns and/or proposed changes to some of the Review BITs.

1.6 In preparing this submission we have taken into account our experience during the past 20 years as counsel representing private parties and States in a number of investment arbitrations and potential investment treaty cases relating to investments made in Europe, the Middle East, South America and the Asia Pacific.

1.7 We trust that this submission provides DFAT with another view point on the benefits and disadvantages of investment treaties. We welcome the opportunity to discuss these views with you further.

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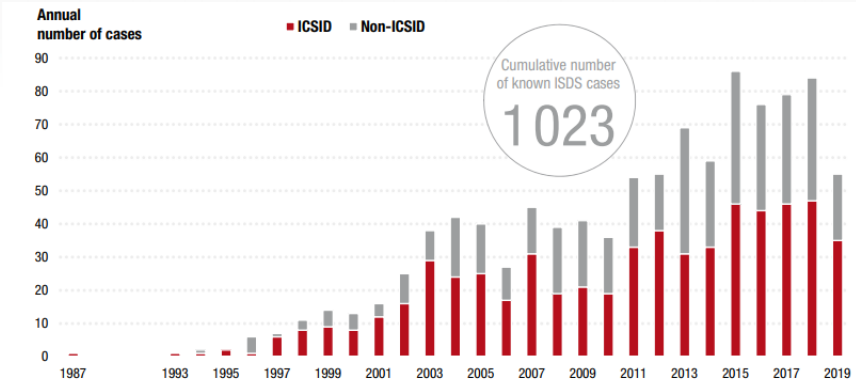
2. Overview of the growth of investment arbitrations

2.1 The number of investment treaty cases have been growing steadily for the past 30 years. In the recent IIA Issues Note published by UNCTAD in July 2020, it was reported that the number of known ISDS cases reached 1,023 as of 1 January 2020 (as indicated by the diagram below):[1]

Figure 1. Trends in known treaty-based ISDS cases, 1987–2019



Source: UNCTAD, ISDS Navigator.
Note: Information has been compiled from public sources, including specialized reporting services. UNCTAD's statistics do not cover investor–State cases that are based exclusively on investment contracts (State contracts) or national investment laws, or cases in which a party has signaled its intention to submit a claim to ISDS but has not commenced the arbitration. Annual and cumulative case numbers are continually adjusted as a result of verification processes and may not match exactly case numbers reported in previous years.

2.2 Since 1 January 2020, 42 investment arbitrations have been registered with ICSID, including three cases under the UNCITRAL Rules and two cases under the ICSID Additional Facility.

2.3 UNCTAD has analysed the outcomes of the known ISDS cases. Of the 674 ISDS cases concluded by the end of 2019:

(a) 37% were decided in favour of the State (i.e. claims were dismissed either at the jurisdictional or merits phase);

(b) 29% were decided in favour of the investor with damages awarded;

(c) 21% were settled; and

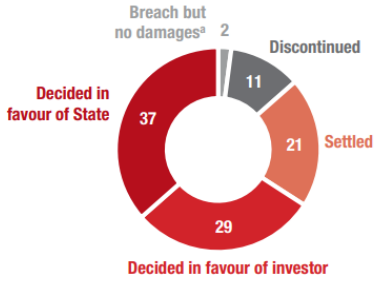
(d) the remaining cases were discontinued or a treaty breach was founded with no damages award.

2.4 These outcomes are summarised in the diagrams below:[2]

[1] UNCTAD, IIA Issues Note: Investor-State Dispute Settlement Cases Pass the 1,000 Mark: Cases and Outcomes in 2019, Issue 2, July 2020, page 1: https://unctad.org/en/PublicationsLibrary/diaepcbinf2020d6.pdf

[2] UNCTAD, IIA Issues Note: Investor-State Dispute Settlement Cases Pass the 1,000 Mark: Cases and Outcomes in 2019, Issue 2, July 2020, page 5: https://unctad.org/en/PublicationsLibrary/diaepcbinf2020d6.pdf

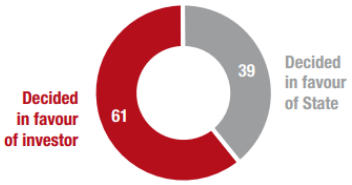
Figure 5. Results of concluded cases, 1987–2019 (Per cent)



Source: UNCTAD, ISDS Navigator.

[a] Decided in favour of neither party (liability found but no damages awarded).

Figure 6. Results of decisions on the merits, 1987–2019 (Per cent)



Source: UNCTAD, ISDS Navigator.

Note: Excludes cases (i) dismissed by tribunals for lack of jurisdiction, (ii) settled, (iii) discontinued for reasons other than settlement (or for unknown reasons) and (iv) decided in favour of neither party (liability found but no damages awarded).

2.5 These statistics indicate that overall, the result of investment arbitrations has been positive for investors. Of all concluded cases, 50% have resulted in a positive outcome, i.e. a decision in favour of the investor or a settlement with the State. Of all decisions on the merits, the investor has been successful in 61% of cases.

2.6 Whether or not an investor is successful will depend on the specific facts and the evidence supporting those facts and the terms of the relevant investment treaty. It does mean, however, that in circumstances where a host State has unreasonably or unjustifiably interfered with an investment, there is an option available to the investor to remedy the State's conduct or measures.

2.7 There is a concern that there may be an increase in ISDS cases following government measures taken in response to the Covid-19 pandemic.[3] In some cases, it may be that the government measures taken will fall into one of the exceptions as they were taken in the public interest to protect public health and to address economic and social consequences of the pandemic. A State may also be able to invoke the defences of necessity, force majeure or distress.

2.8 In any event, it is likely that the number of ISDS cases will continue to grow in the coming years.

[3] UNCTAD, IIA Issues Note: Investor-State Dispute Settlement Cases Pass the 1,000 Mark: Cases and Outcomes in 2019, Issue 2, July 2020, page 6: https://unctad.org/en/PublicationsLibrary/diaepcbinf2020d6.pdf

3. Benefits of the Review BITs to Australian investors

3.1 The Review BITs do provide significant benefits to Australian investors investing in foreign jurisdictions, particularly in jurisdictions where there are likely to be changes to the political and/or legal framework which are, for example, uncertain, unpredictable or not transparent.

Cases brought against States party to the Review BITs

3.2 Indeed, four of the 12 most frequent respondent States between 1987 and 2019 (as identified by UNCTAD), are party to one of the Review BITs. These States are:[4]

(a) Argentina (62 cases);

(b) the Czech Republic (40 cases);

(c) Egypt (37 cases); and

(d) Poland (30 cases).

3.3 The total number of cases brought by investors (not only Australian investors) against the other States who are party to the Review BITs is summarised below:

(a) Romania (17 cases);

(b) Hungary (16 cases);

(c) Turkey (14 cases);

(d) Pakistan (10 cases);

(e) Lithuania (7 cases);

(f) Philippines (6 cases);

(g) Papua New Guinea (5 cases);

(h) Sri Lanka (5 cases);

(i) Uruguay (5 cases);

(j) Laos (4 cases); and

(k) China (3 cases).

3.4 The number of cases that have been brought against some of these States may indicate that there is a need to provide investment protections for Australia investors investing in these States. These States are referred to as the **host States** in this submission.

[4] UNCTAD, IIA Issues Note: Investor-State Dispute Settlement Cases Pass the 1,000 Mark: Cases and Outcomes in 2019, Issue 2, July 2020, page 2: https://unctad.org/en/PublicationsLibrary/diaepcbinf2020d6.pdf

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Investment protections in the Review BITs

3.5 The Review BITs provide Australian investors with certain investment protections. Each of the Review BITs provide that:

(a) the host State is to provide Australian investors with FET;

(b) the host State must not subject Australian investors to, directly or indirectly, any measure of nationalisation or expropriation except:

(i) for a public purpose and an undue process of law;

(ii) where the expropriation is non-discriminatory; and

(iii) where accompanied by prompt, adequate and effective compensation.

3.6 Some of the Review BITs also provide the following investment protections to Australian investors:

(a) full protection and security (eg Argentina, Pakistan, Lithuania, Papua New Guinea, Turkey, Sri Lanka and Uruguay BITs);

(b) national treatment (eg China and Sri Lanka BITs); and

(c) most favoured nation treatment (eg Argentina, Poland, Hungary, Pakistan, Lithuania, Egypt, the Philippines, Lao, Czech Republic, Romania, Papua New Guinea, Turkey and Sri Lanka BITs).

3.7 The Review BITs also provide that the investor may bring its claim in relation to State conduct or measures that may be in breach of, or contrary to, the investment protections in the BIT. The Review BITs provide that such claims may be brought in local court proceedings or in international arbitration. The dispute settlement provisions are discussed further below in section 6.

3.8 When representing investors in investment arbitrations, the two most important investment protections relied upon by investors are FET and the restrictions on expropriation. Most investor claims that have been successful for the investor have involved a breach of FET and/or a claim for expropriation. The tribunal has found that one or both of those breaches occurred and ordered damages to be paid by the host State to the investor.

3.9 Most of the Review BITs provide investment protections relating to FET and expropriation to Australian investors. They also provide that an investor may bring a claim in international arbitration in relation to State conduct or measures that are contrary to FET and/or the restrictions on expropriation (though note the comments made in section 6 with respect to the rights for Australian investors to bring a claim in arbitration under the China BIT).

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Investment arbitrations commenced by Australian investors under the Review BITs

3.10 Indeed, Australian investors have utilised the investment protections in the Review BITs and their right to bring a claim in international arbitration for breaches of these protections. For example, Australian investors have recently been, or are currently, involved in the following claims against States under one of the Review BITs:

(a) ***Tethyan Copper Company Pty Limited v Pakistan*** **ICSID Case No. ARB/12/1**

Tethyan Copper Company Pty Limited, an Australian investor commenced ICSID arbitration under the Australian-Pakistan BIT. The arbitration related to claims arising out of the decision by the Pakistani province of Balochistan to refuse the application by the claimant's local operating subsidiary for a mining lease in respect of the Reko Diq gold and copper site. The investor has been awarded US$5.9 billion (including US$ 4 billion in damages and US$1.7 billion in interest).

(b) ***Emerge Gaming and Tantalum International v Egypt*** **ICSID Case No. ARB/18/22**

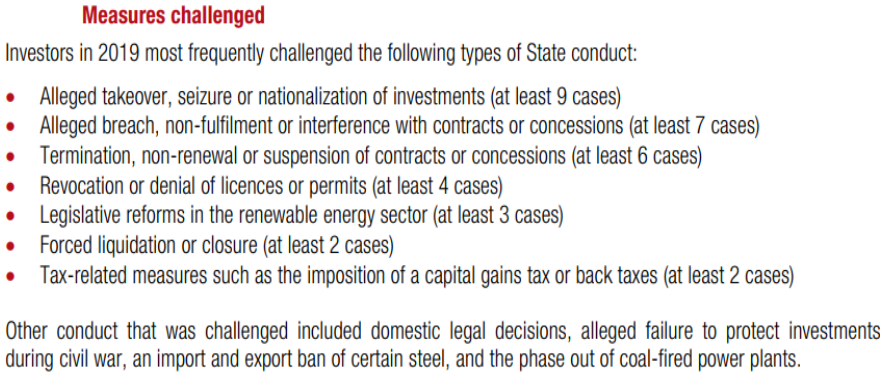
In this case, the claimants are Australian investors who have brought a claim under the Australian-Egypt BIT. The claimants have a 50% shareholding in Tantalum Egypt JSC, an Egyptian company that held the mining rights to the Abu Dabbab mine. The claim relates to measures that the Egyptian authorities allegedly took to gain control of the Claimant's licences for the exploitation of a tantalum and tin mine. This claim is pending.

(c) ***Barrick (PD) Australia Pty Limited v Papua New Guinea*** **ICSID Case No. ARB/20/27**

An Australian subsidiary of Barrick Gold has recently commenced an ICSID claim against Papua New Guinea under the Australia - Papua New Guinea BIT. The claim relates to the State's refusal to extend a mining lease for the Porgera gold mine, one of the largest gold mines in the world. Barrick Niugini is a joint venture between Barrick and Zijn Mining (China). Each party owns 47.5% of the operation with state-owned Mineral Resources Enga retains a 5% interest in the project. Barrick Niugini held a 20 year mining lease for Porgera which expired in August 2019. The JV applied for an extension. The extension was refused in April 2020. PNG's Mining Advisory Committee has claimed that there are environmental and social problems at Porgera. Landowners and residents have claimed that the mine is polluting the local water supply. Barrick Niugini has also commenced an ICSID conciliation process with Papua New Guinea in an attempt to try to resolve the dispute.

3.11 Australian investors have also brought cases against India, Indonesia, Thailand and Mongolia. Many of these cases have related to mining and resources projects.

3.12 The types of measures complained of in these three examples come within the list of measures most frequently challenged by investors in 2019, as identified by UNCTAD. These measures are:



Measures challenged

Investors in 2019 most frequently challenged the following types of State conduct:

- Alleged takeover, seizure or nationalization of investments (at least 9 cases)
- Alleged breach, non-fulfilment or interference with contracts or concessions (at least 7 cases)
- Termination, non-renewal or suspension of contracts or concessions (at least 6 cases)
- Revocation or denial of licences or permits (at least 4 cases)
- Legislative reforms in the renewable energy sector (at least 3 cases)
- Forced liquidation or closure (at least 2 cases)
- Tax-related measures such as the imposition of a capital gains tax or back taxes (at least 2 cases)

Other conduct that was challenged included domestic legal decisions, alleged failure to protect investments during civil war, an import and export ban of certain steel, and the phase out of coal-fired power plants.

3.13 None of the claims identified in the three examples above could have been brought by these Australia investors if these BITs were terminated and the investment protections were not included in another treaty (such as an FTA) with these States. It is likely to be very difficult for the Australian investor to bring a claim before the local courts of these host States that would enable the investor to recover damages for loss suffered as a result of the host States' actions (provided that the investor is able to prove its claim).

3.14 It may be in the future that Australia enters into treaties with some or all of these States that provide the same or similar investment protections to Australian investors. For example, Australia is currently negotiating an FTA with the European Union. If this FTA includes an investment chapter then it may be that the BITs with the Czech Republic, Hungary, Lithuania, Poland and Romania can be terminated, as discussed further in section 5 below.

3.15 However, there is one further point that must be considered if the investment protections in these BITs are replaced by protections in other investment treaties, that is the timing of the protections provided. Investment treaties typically provide protections to home investors for investments that are in place from the date that the treaty enters into force.

3.16 Depending on the timing of the new treaty coming into force and the timing of the BIT being terminated, consideration may need to be given as to whether there is any need for overlap of the investment protections to ensure that the investment continues to be protected. We note that this issue was taken into account in, for example, the Australia - Hong Kong FTA that replaced the Hong Kong BIT.

3.17 The terms of the termination may also be relevant to this consideration. Each of the Review BITs include sunset provisions which means that the investment protections in the BIT will continue for a period of 10 or 15 years after the termination of the BIT for investments made before the date of termination. This means that the investor continues to be protected for this period of time provided that the investment was made before the date of termination. The investor may still bring a claim in arbitration for a breach of the BIT during this sunset clause period.

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4. Potential impact on the flow of foreign direct investment

4.1 As arbitration lawyers, we have limited exposure to the economic impact of investment treaties and whether they have a positive impact on the flow of foreign direct investment (**FDI**). Some studies have found that there is a positive impact and other studies have found that there is no or a neutral impact on FDI.[5]

4.2 However, we are regularly requested to provide advice to clients on investment protection planning (not dissimilar from requests for advice for tax planning). In England, this type of advice has been provided to clients for more than 15 years. We do receive regular requests for this type of advice in Australia but it is less common than in England. This may be due to a lack of awareness of the benefit of investment treaties for Australian investors.

4.3 For investment protection planning we may be asked to consider and analyse the investment protections that may or may not be available for certain projects in certain countries. For example, we may be asked to consider:

(a) the investment treaties to which the host State (i.e. the State in which the investment is being made) is a party;

(b) the definition of investor in the investment treaty, including requirements such as having substantial business operations in the place of incorporation;

(c) whether there is a denial of benefits clause (and the circumstances in which that clause may apply);

(d) the definition of investment and whether the planned investment would be covered;

(e) the investment protections in those treaties and a comparison of those protections to identify the treaties that provide the highest and the lowest level of protection; and

(f) the rights to bring a claim for breach of an investment protection including:

(i) the available forums for that claim (e.g. whether the claim is to be brought before the local courts or whether an ICSID arbitration or UNCITRAL arbitration can be commenced);

(ii) whether there is a cooling off period for negotiations and the length of that period (eg. 3, 6, 9, 12 or more months); and

(iii) whether there are any other limitations or restrictions on bringing a claim such as a limitation period.

4.4 The investor may then consider the options available when considering how to make its investment in the host State. Whilst we may consider and advise the investor on potential investment protections and rights that may be available, the investor will then often make its own risk benefit analysis to determine whether or not to make its investment and the manner in which to do so.

[5] See, for example, L.E. Sachs and K. P. Sauvant, "BITs, DTTs, and FDI flows: An Overview" in *The Effect of Treaties on Foreign Direct Investment*, OUP 2009: http://ccsi.columbia.edu/files/2014/01/Overview-SachsSauvant-Final.pdf

5. Impact of existing FTAs and FTAs being negotiated

5.1 In determining whether to terminate all or some of the Review BITs, DFAT should consider whether there is an existing FTA that already provides investment protections to Australian investors or whether an FTA is being negotiated that would provide investment protections. If there is no existing FTA or no FTA being negotiated, then DFAT should consider keeping the existing BIT in place to ensure that Australian investors continue to receive at least some investment protections.

AANZFTA

5.2 For example, Australian investors investing in the Philippines and Lao are given the same or similar investment protections in the ASEAN - Australia - New Zealand FTA (**AANZFTA**). In particular, AANZFTA provides for:

(a) fair and equitable treatment, including no denial of justice;

(b) full protection and security, which requires the host State to take such measures as may be reasonably necessary to ensure the protection and security of the covered investment;

(c) national treatment and MFN treatment; and

(d) no expropriation unless it is for a public purpose, in a non-discriminatory manner, on payment of prompt, adequate and effective compensation and in accordance with due process of law.

5.3 However, there are some additional requirements and some limitations on the rights and protections in the investment chapter in AANZFTA. For example:

(a) the FET and full protection and security clauses "do not require treatment in addition to or beyond that which is required under customary international law, and do not create additional substantive rights". Such treatment may provide more limited protection to Australian investors than the broad FET provision in the Philippines and Lao BITs;

(b) the denial of benefits clause denies the investment protections to an investor of a State if an investor of a State that is not party to AANZFTA owns or controls the investor and the investor has no substantive business operations in the territory of the investor's State;

(c) the Philippines may deny the investment protections to an investor of a State party where the investor has made an investment in breach of the Commonwealth Act No. 108 entitled "An Act to Punish Acts of Evasion of Laws on the Nationalization of Certain Rights, Franchises or Privileges", as amended by Presidential Decree No. 715, otherwise known as "The Anti-Dummy Law";

(d) there are restrictions on national treatment;

(e) the provisions on prohibition of performance requirements do not apply to Lao;

(f) principles of transparency apply in certain circumstances and thus, certain aspects of the arbitration are to be public;

(g) the process for the commencement of consultations and the commencement of arbitrations is set out in detail with time frames;

(h) a dispute must be referred to arbitration within three years of the time when the investor became aware or should reasonably have become aware of a breach of an investment protection; and

(i) there are detailed provisions for the conduct of the arbitration.

5.4 Even though there may be more restrictions on the investment protections and/or the ability for Australian investors to bring a claim in international arbitration, AANZFTA does provide Australian investors with similar investment protections and does give Australian investors the right to bring a claim in ICSID arbitration, an arbitration under the ICSID Additional Facility or the UNCITRAL Rules in the event that measures or conduct by a state body in the Philippines or Lao interfered with an investment made by an Australian investor.

ChAFTA

5.5 Another FTA to consider is the FTA between Australia and China (**ChAFTA**), which entered into force on 20 December 2015. ChAFTA includes an investment chapter, which provides for ISDS.

5.6 However, the investment protections in ChAFTA are limited to national treatment and MFN, i.e. a claim may only be brought if the investor is treated differently to national investors or other foreign investors. There are also a number of carve outs, including for the protection of public health and the environment.

5.7 Australia and China agreed to reconsider the investment protections three years after ChAFTA entered into force.

5.8 On 24 March 2017, Australia and China announced a Declaration of Intent to review the investment chapter and the chapter on trade in services. However, it is understood that that review is ongoing.

5.9 In contrast to ChAFTA, the Australia-China BIT provides for:

(a) protection for FET;

(b) protection against discrimination;

(c) national treatment;

(d) restrictions on expropriation; and

(e) a right to commence ICSID arbitration (or ad hoc arbitration where the parties agree or in relation to a claim for compensation in the event that there is an expropriation as discussed further in section 6).

5.10 Hence, we would suggest that the Australia-China BIT not be terminated in order to ensure that Australian investors are given investment protections for their investments in China. Whilst very few cases had been brought against China until recently, two cases have been commenced against China this year.

Australia - EU FTA

5.11 The second consideration is whether Australia is negotiating an FTA or similar agreement that will provide investment protections to Australian investors. For example, Australia has been negotiating an FTA with the EU since June 2018.

5.12 If this FTA includes an investment chapter that provides investment protections for Australian investors and ISDS, then Australia may want to consider terminating the BITs with the following countries as they are part of the EU:

(a) the Czech Republic;

(b) Hungary;

(c) Lithuania;

(d) Poland; and

(e) Romania.

5.13 However, in order to ensure continuity of the rights and protections in the BITs with these States (particularly given the number of cases that have been commenced against some of these States), those BITs should not be terminated unless and until the EU FTA is finalised, signed and has entered into force.

Other Review BITs should remain in place

5.14 For the other Review BITs, it seems that there are no existing FTAs nor any FTA being negotiated that would provide investment protections to Australian investors in the following countries:

(a) Argentina;

(b) Egypt;

(c) Pakistan;

(d) Papua New Guinea;

(e) Sri Lanka;

(f) Turkey; and

(g) Uruguay.

5.15 Accordingly, we would recommend that these BITs remain in place unless and until they are replaced by another investment treaty or FTA with an investment chapter.

6. Concerns and/or proposed changes to the Review BITs

6.1 One concern with the Review BITs is that the provisions relating to arbitration are limited when compared to other investment treaties.

6.2 Most of the Review BITs provide that an Australian investor may bring a claim for breach of the BIT by commencing:

(a) local court proceedings; or

(b) international arbitration (usually ICSID arbitration or ad hoc arbitration).

6.3 All of the Review BITs provide for ICSID arbitration. This option may be sufficient for most of the Review BITs as Australia and most of the host States are parties to ICSID. However, Lao and Poland are not parties to ICSID and hence Australian investors will not be able to invoke ICSID arbitration under these BITs.

6.4 Most of the Review BITs provide for ad hoc arbitration pursuant to terms set out in the BIT or an annexure to the BIT (Annex B).

6.5 Only the following BITs provide additional options for arbitration:

(a) the Uruguay BIT provides for ICSID arbitration, arbitration under the ICSID Additional Facility or the UNCITRAL Arbitration Rules or ad hoc arbitration;

(b) the Turkey BIT provides for ICSID arbitration or arbitration under the UNCITRAL Arbitration Rules; and

(c) the Argentine BIT provides for ICSID arbitration or arbitration under the UNCITRAL Arbitration Rules.

6.6 Some of the BITs limit or may limit the types of disputes that may be referred to international arbitration. For example:

(a) the Argentine BIT expressly states that the investor must choose between commencing local proceedings or arbitration (often referred to as a "fork in the road" provision);

(b) the Hungary and Poland BITs provide that:

(i) a dispute relating to expropriation may be referred to ICSID arbitration or ad hoc arbitration (pursuant to Annex B) regardless of the status of local remedies; and

(ii) a dispute relating to other investment protections may be referred to ICSID arbitration or ad hoc arbitration if and when local remedies have been exhausted, provided the host State consents in writing to submission of the dispute to ICSID within 30 days of receiving the request from an investor.

6.7 The China BIT may also provide some limitations on arbitration though this is less clear from the express terms of the BIT. The China BIT provides that if a dispute between an investor and China is not settled within 3 months of notice of the dispute:

(a) either the investor or China may refer the dispute to the local courts;

(b) either the Investor or China may refer the dispute to ad hoc arbitration where the parties agree or where the dispute relates to the amount of compensation for expropriation; or

(c) if both Australia and China are parties to the ICSID Convention (which they are), a dispute may be referred to ICSID for resolution by way of conciliation or arbitration.

6.8 Hence, it seems that a dispute relating to a breach of FET, national treatment or the prohibition on discrimination or expropriation could be referred to ICSID arbitration.

6.9 As arbitration practitioners involved in investment arbitrations for many years, we have concerns about the ad hoc arbitration process that is provided for in most of the BITs (except where the BIT refers to the UNCITRAL Arbitration Rules, such as the Argentine and Turkey BITs).

6.10 Whilst there is no express reference to arbitration rules that are to apply (such as the UNCITRAL Arbitration Rules), it seems that the ad hoc process incorporates by reference some of the procedures in the ICSID Convention. For example, the ad hoc process refers to:

(a) a default process for the appointment of the arbitrators with the Secretary-General of the ICSID acting as the appointing authority; and

(b) the arbitral tribunal determining the procedure by reference to the ICSID Convention.

6.11 It may be argued that the ICSID Arbitration Rules will also apply through article 44 of the ICSID Convention.

6.12 However, it is not evident how this process will work in practice. In particular, it is not clear whether the arbitral tribunal will apply the ICSID Convention and the ICSID Arbitration Rules or whether the Tribunal would refer to other arbitration rules or procedures as appropriate.

6.13 From the point of view of an arbitration practitioner, there would be more clarity and transparency if the BITs only provided for ICSID arbitration and arbitration under the UNCITRAL Arbitration Rules as an alternative.

7. Conclusion

7.1 We would welcome the opportunity to provide further assistance or to respond to any questions that may arise from this submission.

7.2 We also refer you to some of our recent publications on investment treaties that may be useful for your investigations.

https://www.bakermckenzie.com/en/insight/publications/2020/04/global-nationalization-risk

https://www.biicl.org/documents/89_biicl-baker-mckenzie-corporate-restructuring-and-investment-treaty-protections-2020.pdf

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