#### The Bilateral Investment Treaty between Spain and Argentina: Legal Framework

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#### 1. INVESTOR AND INVESTMENT CONCEPTS

#### Investor

#### A) Individual: national legislation of each Party (Art. I.1.a)

B) Legal person: constitution and establishment in the host State (Art. I.1.b)

#### 1. INVESTOR AND INVESTMENT CONCEPTS

#### Investment

Broad definition:

A) Direct investment + Portfolio investment (Art. I.2)

B) Movable and immovable property, mortgages, shares, intellectual property rights...(Art. I.2)

## 2. TERRITORIAL AND TEMPORAL APPLICATION

**Territorial application** 

Bi-dimensional concept (territory and maritime spaces) (Art. I.4)

## 2. TERRITORIAL AND TEMPORAL APPLICATION

**Temporal application** 

A) **Investments** made *before* and *after* the entry into force of the BIT (Art. II.2)

B) **Disputes** arisen *after* the entry into force of the BIT (Art. II.2)

## 2. TERRITORIAL AND TEMPORAL APPLICATION

**Temporal application** 

In case of termination

Investments made during the term of the BIT will be protected 10 additional years (Art. XI.3)

#### Promotion

(investments made according to legislation of the Host State) (Art. II.1)

Protection

A) Fair and Equitable Treatment (Art. IV.1)

B) National Treatment (Art. IV.5)

C) Most-Favored Nation Treatment (allows *Maffezini* effect) (Art. IV.2)

D) Discriminatory Expropriation/Nationalization/Measure of equivalent effect (Art. V)

 E) Repatriation of investments (Art. VI) subject to compliance with the Host State's tax law (Protocol 2.b). Problems with the balance of payments may allow the Host State limit those transfers (Protocol 2.d)

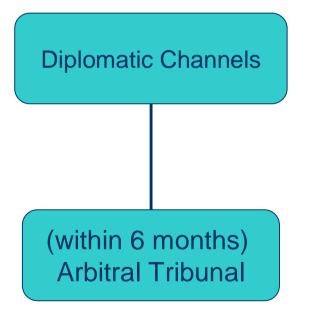
**Exceptions to MF Treatment** 

# A) Any customs union/free trade area (Art. IV.3)

B) International taxation agreements (Art. IV.4)

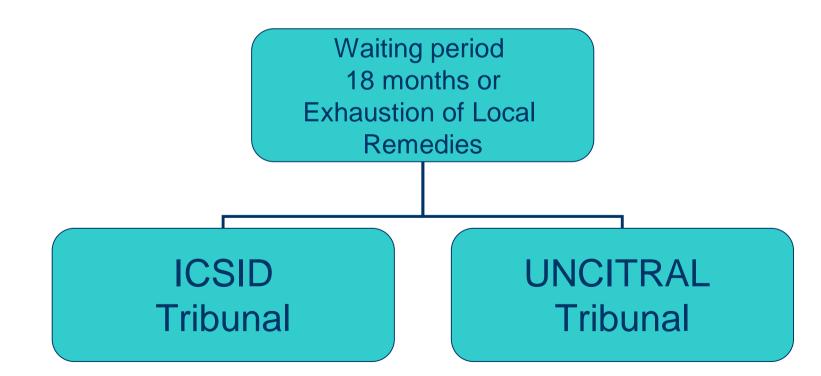
# **4. DISPUTE SETTLEMENT**

#### Inter State (Art. IX)



# **4. DISPUTE SETTLEMENT**





# **5. OTHER PROVISIONS**

#### **Subrogation**

State of origin (or designated Agency) may guarantee and pay their national investors and then claim or exercise rights against the Host State (Art. VIII).

# **5. OTHER PROVISIONS**

#### Umbrella clause

Each Contracting Party shall observe any written contractual obligation it may have entered into with regard to investments of the other Contracting Party (Art. 3.2 *in fine*)

# **5. OTHER PROVISIONS**

#### Favor inversionis

Any most favorable treatment granted to the investor by International or national Law shall prevail over the BIT (Art. VII)