

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. 1.2)

- B) Movable and immovable property, mortgages, shares, intellectual property rights...(Art. 1.2)

2. TERRITORIAL AND TEMPORAL APPLICATION

Territorial application

Bi-dimensional concept
(territory and maritime spaces)
(Art. 1.4)

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)

3. THE DUTIES OF PROMOTION AND PROTECTION

Promotion

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

3. THE DUTIES OF PROMOTION AND PROTECTION

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)

3. THE DUTIES OF PROMOTION AND PROTECTION

- 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)

3. THE DUTIES OF PROMOTION AND PROTECTION

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)

Diplomatic Channels

(within 6 months)
Arbitral Tribunal

4. DISPUTE SETTLEMENT

Investor - State (Art. 11)

Waiting period
18 months or
Exhaustion of Local
Remedies

ICSID
Tribunal

UNCITRAL
Tribunal

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)