

The Bilateral Investment Treaty between Spain and China: Legal Framework

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University of Alicante 2009

INDEX (*BOE 8-7-2008*)

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1. INVESTOR AND INVESTMENT CONCEPTS

Investor

- A) Individual: national legislation of each Party (Art. 1.2.a)

- B) Legal person: constitution and establishment in the host State (Art. 1.2.b)

1. INVESTOR AND INVESTMENT CONCEPTS

Investment

Broad definition:

- A) Direct investment + Portfolio investment (Art. 1.1)

- B) Movable and immovable property, mortgages, shares, intellectual property rights...(Art. 1.1)

2. TERRITORIAL AND TEMPORAL APPLICATION

Territorial application

Three-dimensional concept
(territory, air 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. 11)
- B) **Disputes** arisen *after* the entry into force of the BIT (Art. 12.2)

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. 14.4)

3. THE DUTIES OF PROMOTION AND PROTECTION

Admission:

According to legislation
of the Host State
(Art. 2.1)

3. THE DUTIES OF PROMOTION AND PROTECTION

Protection

- A) Fair and Equitable Treatment (Art. 3.1)
- B) National Treatment (only to investment) (Art. 3)
- C) Most-Favored Nation Treatment (only to investment and excludes *Maffezini* effect) (Art. 3)

3. THE DUTIES OF PROMOTION AND PROTECTION

D) Discriminatory
Expropriation/Nationalization/Measure of
equivalent effect (Art. 4)

E) Compensation for losses (Art. 5)

F) Repatriation of investments (Art. 6)

3. THE DUTIES OF PROMOTION AND PROTECTION

Exceptions to MF Treatment

- A) Any customs union/free trade area
(Art. 3.4.a)

- B) International taxation agreements (Art. 3.4.b)

3. THE DUTIES OF PROMOTION AND PROTECTION

Specific exceptions regarding any non-conforming Chinese measures:

A) Discrimination (Art. 2.3)

B) National Treatment (Art. 3.2)

4. DISPUTE SETTLEMENT

Inter State (Art. 10)

Diplomatic Channels

(within 6 months)
Arbitral Tribunal

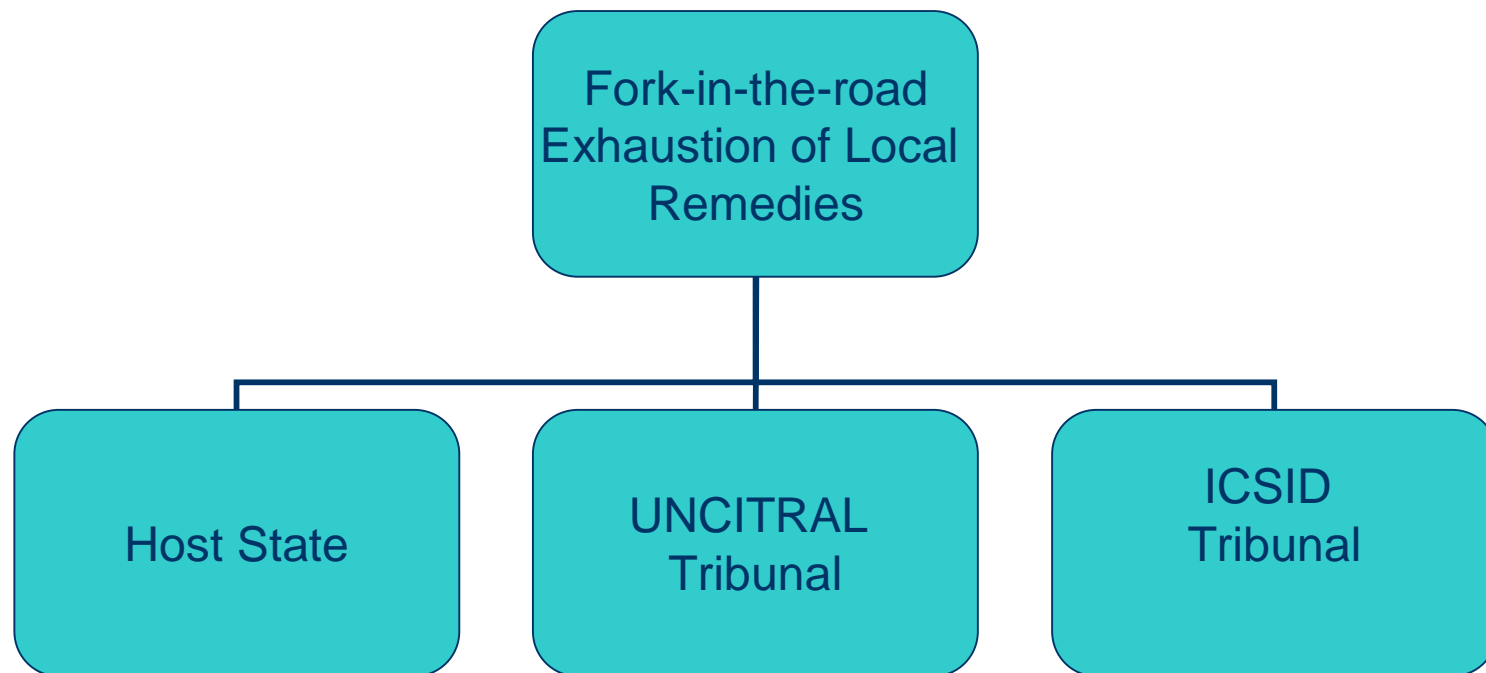
4. DISPUTE SETTLEMENT

Inter State

The Parties may request bilateral Consultations on the application and the interpretation of the BIT (Art. 13)

4. DISPUTE SETTLEMENT

Investor - State (Art. 9)



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. 7).

5. OTHER PROVISIONS

Umbrella clause

Each Contracting Party shall observe any written obligation it may have entered into with regard to investments of the other Contracting Party (Art. 10.2)

5. OTHER PROVISIONS

Favor inversionis

Any most favorable treatment granted to the investor by International or national Law shall prevail over the BIT (Art. 10.1)