

The Bilateral Investment Treaty between Spain and Colombia: Legal Framework

Francisco José Pascual Vives
University of Alicante 2009

INDEX (*BOE 12-9-2007*)

1. Investor and Investment Concepts
2. Territorial and Temporal Application
3. The Duties of Promotion and Protection
4. Dispute Settlement
5. Other Provisions

1. INVESTOR AND INVESTMENT CONCEPTS

Investor

A) Individual: national legislation of each Party (Art. 1.1.a)

Double nationality: effective nationality (Arts. 11.4 and 11.5)

B) Legal person: constitution and establishment in the host State (Art. 1.1.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

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. 11.1)
- B) **Disputes** arisen *after* the entry into force of the BIT (Art. 11.1)

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. 13.2)

3. THE DUTIES OF PROMOTION AND PROTECTION

A) Promotion

(general clause) (Art. 2.1)

+

B) Admission

(according to legislation of the Host State) (Art. 2.2)

3. THE DUTIES OF PROMOTION AND PROTECTION

Protection

- A) Fair and Equitable Treatment (Art. 2.3)
- B) National Treatment (Art. 3)
- C) Most-Favored Nation Treatment (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. 3.3)
- B) International taxation agreements (Art. 11.3)
- C) Public order measures (Art. 11.2)

4. DISPUTE SETTLEMENT

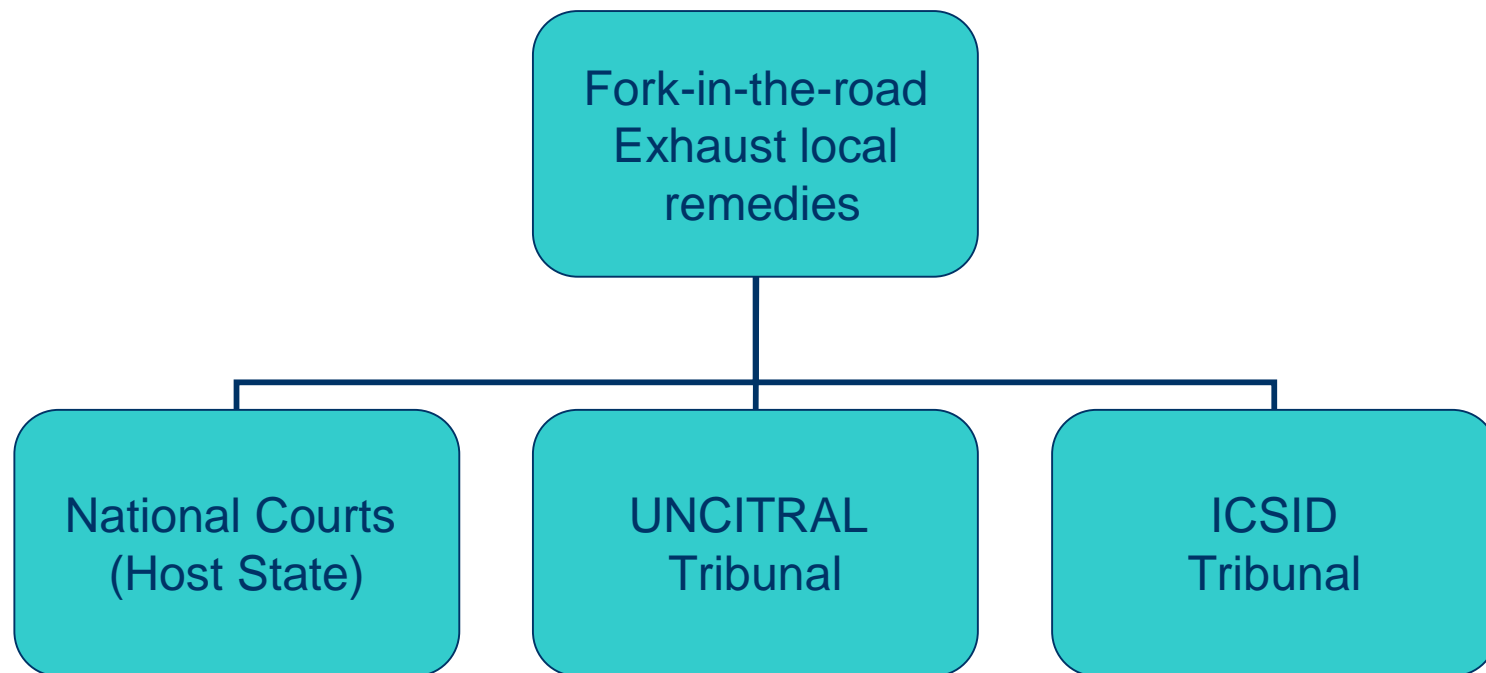
Inter State (Art. 9)

Diplomatic Channels

(within 6 months)
Arbitral Tribunal

4. DISPUTE SETTLEMENT

Investor - State (Art. 10)



4. DISPUTE SETTLEMENT

Investor – State

- A) Consent to arbitration (Art. 10.6)
- B) Host State Responsibility excluded by mutual agreement (Art. 10.7) *but*
- C) States shall avoid diplomatic contacts regarding these disputes (Art. 10.12)

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. 8).

5. OTHER PROVISIONS

Favor inversionis

Any most favorable treatment granted to the investor by International or national Law shall prevail over the BIT (Art. 7)