

# **The Bilateral Investment Treaty between Spain and Venezuela: Legal Framework**

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Francisco José Pascual Vives  
*University of Alicante 2009*

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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 in the host State or control (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.3)
- B) **Disputes** arisen *after* the entry into force of the BIT (Art. II.3)

## 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. XII.2)

### 3. THE DUTIES OF PROMOTION AND PROTECTION

Promotion + Admission  
(general clause)

(according to legislation of the Host State)  
(Arts. II.1 and III.3)



### 3. THE DUTIES OF PROMOTION AND PROTECTION

#### Protection

- A) Fair and Equitable Treatment (Art. IV.1)
- B) National Treatment (Art. IV.2)
- C) Most-Favored Nation Treatment (excludes *Maffezini* effect) (Art. IV.2)

### 3. THE DUTIES OF PROMOTION AND PROTECTION

- D) Discriminatory Expropriation/Nationalization/Measure of equivalent effect (Art. V)
- E) Compensation for losses (Art. VI)
- F) Repatriation of investments (Art. VII)

### 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

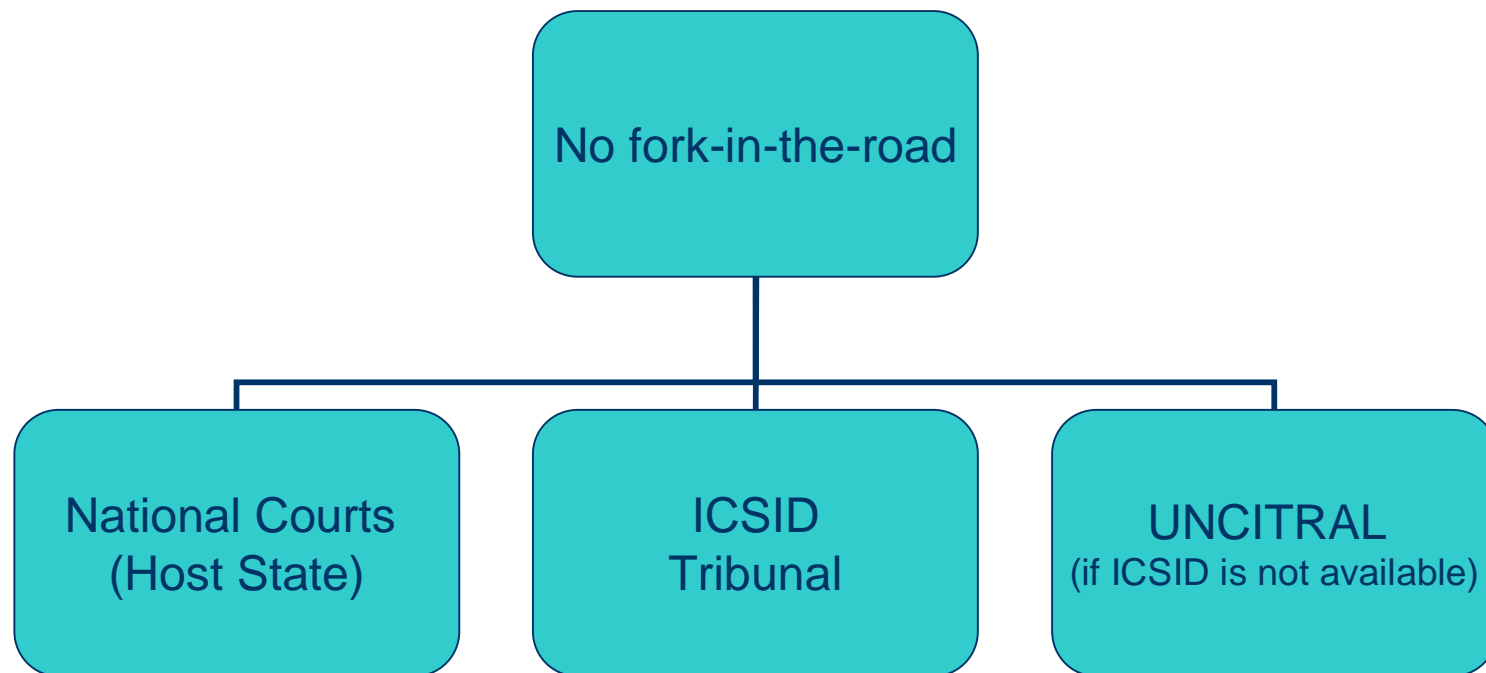
Inter State (Art. X)

Diplomatic Channels

(within 6 months)  
Arbitral Tribunal

## 4. DISPUTE SETTLEMENT

Investor - State (Art. XI)



## 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. IX).

## 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. III.4)

## 5. OTHER PROVISIONS

### *Favor inversionis*

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