

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

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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

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. 13)
- B) **Disputes** arisen *after* the entry into force of the BIT (Art. 11)

## 2. TERRITORIAL AND TEMPORAL APPLICATION

Temporal application

*In case of termination*

Investments made during the term of the BIT  
will be protected 15 additional years  
(Art. 14.3)

### 3. THE DUTIES OF PROMOTION AND PROTECTION

Promotion + Admission  
(according to legislation of the Host State)

general clause  
(Art. 2)



### 3. THE DUTIES OF PROMOTION AND PROTECTION

#### Protection

- A) Fair and Equitable Treatment (Art. 3.1)
- B) National Treatment (Art. 4)
- C) Most-Favored Nation Treatment (excludes *Maffezini* effect) (Art. 4)

### 3. THE DUTIES OF PROMOTION AND PROTECTION

D) Discriminatory  
Expropriation/Nationalization/Measure of  
equivalent effect (Art. 5)

E) Compensation for losses (Art. 6)

F) Repatriation of investments (Art. 7)

### 3. THE DUTIES OF PROMOTION AND PROTECTION

#### Exceptions to MF Treatment

- A) Any customs union/free trade area  
(Art. 4.2)
  
- B) International taxation agreements (Art. 4.2)

## 4. DISPUTE SETTLEMENT

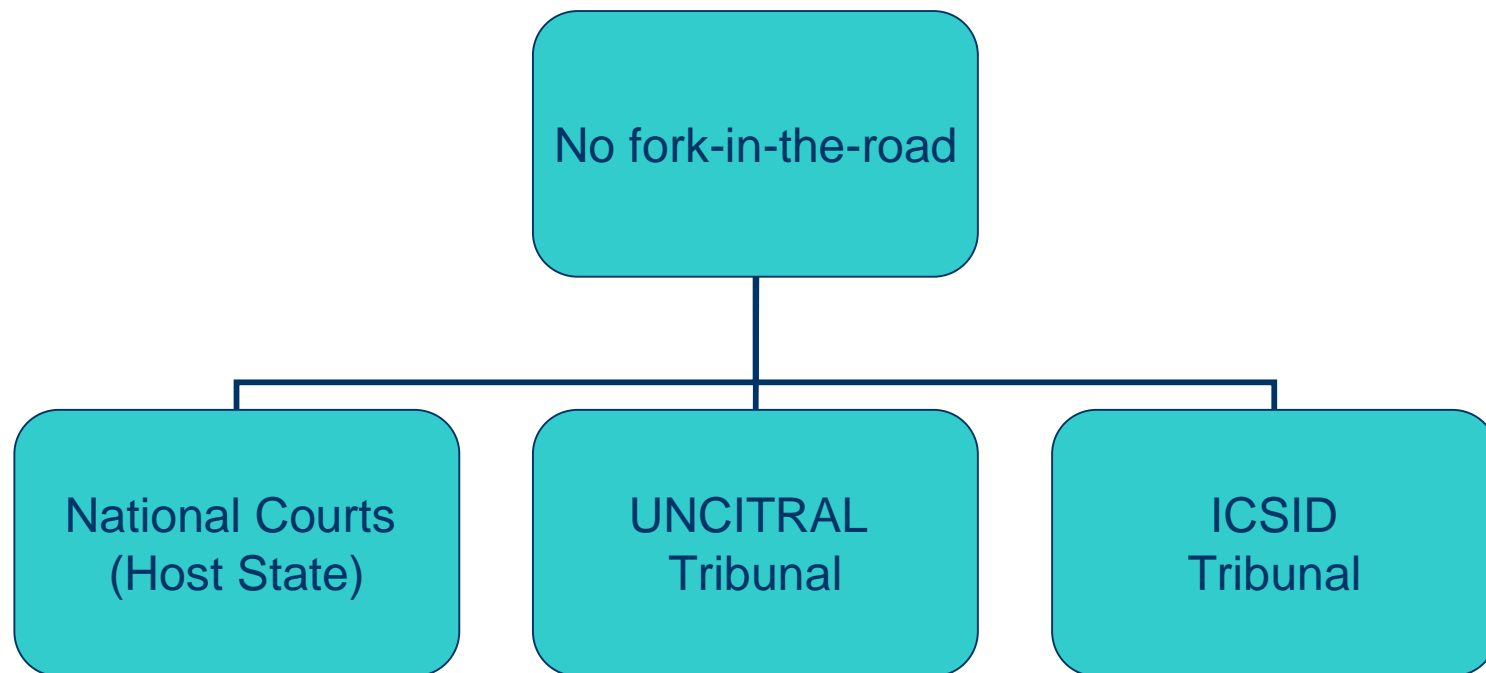
Inter State (Art. 12)

Diplomatic Channels

(within 6 months)  
Arbitral Tribunal

## 4. DISPUTE SETTLEMENT

Investor - State (Art. 11)



## 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

### Umbrella clause

Each Contracting Party shall observe any 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 (Arts. 9 and 10)