The Bilateral Investment Treaty between Spain and Russia: Legal Framework

Francisco José Pascual Vives
University of Alicante 2009
INDEX (BOE 17-12-1991)

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: nationality (according to national legislation) (Art. 1.1.A)

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

Broad concept
(any territory subject to the parties’ jurisdiction)
(Art. 2)
2. TERRITORIAL AND TEMPORAL APPLICATION

Territorial application

This treaty was ratified by the USSR, so it is still applicable (treaty succession) to other countries:

Armenia; Azerbaijan; Georgia; Kyrgyzstan; Tajikistan; and Turkmenistan.
2. TERRITORIAL AND TEMPORAL APPLICATION

Temporal application

A) Investments made before and after the entry into force of the BIT (only from 1-1-1971) (Art. 2)

B) Disputes arisen after the entry into force of the BIT (Art. 10)
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. 11.2)
3. THE DUTIES OF PROMOTION AND PROTECTION

Promotion + Admission
(according to legislation of the Host State)
general clause
(Art. 3)
3. THE DUTIES OF PROMOTION AND PROTECTION

Protection

A) Fair and Equitable Treatment (Art. 5.1)

B) National Treatment (Art. 5.4)

C) Most-Favored Nation Treatment (as interpreted by the Case of Renta 4 et all. v. Russia) (Art. 5.2)
3. THE DUTIES OF PROMOTION AND PROTECTION

D) Discriminatory Expropriation/Nationalization/Measure of equivalent effect (Art. 6)

E) Repatriation of investments (Art. 7)
3. THE DUTIES OF PROMOTION AND PROTECTION

Exceptions to MF Treatment

A) Any customs union/free trade area (Art. 5.3)

B) International taxation agreements (Art. 5.3)
4. DISPUTE SETTLEMENT

Inter State (Art. 9)

Diplomatic Channels

(within 6 months)
Arbitral Tribunal
4. DISPUTE SETTLEMENT

Investor - State (Art. 10)

No fork-in-the-road

Stockholm Chamber of Commerce

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. 8).