

The Bilateral Investment Treaty between Spain and the Dominican Republic: Legal Framework

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1. INVESTOR AND INVESTMENT CONCEPTS

Investor

- A) Individual: Spain (residents) - Dominican Republic (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

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. 2.2)
- 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 5 additional years
(Art. 12.2)

3. THE DUTIES OF PROMOTION AND PROTECTION

Promotion + Admission
(according to legislation of the Host State)
general clause
(Art. 2.1)

3. THE DUTIES OF PROMOTION AND PROTECTION

Protection

- A) Fair and Equitable Treatment (Art. 4.1)
- B) National Treatment (Art. 4.5)
- C) Most-Favored Nation Treatment (excludes *Maffezini* effect) (Art. 4.2)

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. 4.3)

- B) International taxation agreements (Art. 4.4)

4. DISPUTE SETTLEMENT

Inter State (Art. 10)

Diplomatic Channels

(within 6 months)
Arbitral Tribunal

4. DISPUTE SETTLEMENT

Investor - State (Art. 11)

No fork-in-the-road

National Courts
(Host State)

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).

5. OTHER PROVISIONS

Favor inversionis

Any most favorable treatment granted to the investor by International or national Law shall prevail over the BIT (Art. 8)