



OFFICE OF THE GENERAL COUNSEL

LAW AND POLICY REFORM PROGRAM

RCI-POD series

BILATERAL INVESTMENT TREATIES AND FOREIGN DIRECT INVESTMENT IN ASIA – LEGAL ASPECTS

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Recent Developments in Investor-State Dispute Settlement

1. Transparency (UNCITRAL Rules on Transparency, Mauritius Convention on Transparency, ICSID Rules Amendment)
2. ISDS Reform at UNCITRAL Working Group III (Structural Reform v. Incremental Reform)
3. Structural Reform (i.e. EU Multilateral Investment Court)
4. Incremental Reform (creation of an advisory centre, treaty parties' involvement and control mechanism on treaty interpretation, the creation of a dispute prevention and mitigation mechanism and arbitrators' appointment methods and ethics)
5. Draft Code of Conduct for Adjudicators (published by UNCITRAL Working Group III and ICSID in May 2020)

Public Interest Provisions in Investment Treaties *Evolving International Law*

1. Types of Public Interest Provisions – *i.e. health, environment, climate change, Sustainable Development Goals*
2. Covid-19 Measures – *i.e. lockdowns, shutdowns of ports and airports, closure of businesses, price controls*
3. State's Defenses/Counterclaims - *i.e. permitted regulation, exceptions such as necessity*

Discussions on Investment Treaties in the Context of Covid-19 Pandemic

1. ISDS Moratorium During COVID-19 Crisis and Response *(similar to G20's call on standstill on sovereign debt servicing)*
2. State's Right to Regulate for Public Interest v. Need for Investment Protection

What Can Be Done?

- ✓ Awareness-Raising
- ✓ Strengthen “Early Warning Systems” for Potential Disputes with Investors
- ✓ Dispute Avoidance/Mitigation
- ✓ Dispute Management
- ✓ Treaty Termination/Renegotiation
- ✓ Technical Assistance