ADB International Investment Agreement Tool Kit

A Comparative Approach

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Presentation: Main Findings of the Report

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International Investment Law & Policy

The past 30 years lessons

- Favourable investment climate
- Liberalisation v. scrutiny
- Policy space (or flexibility) v. protections offered to investors

The coming years

- Post Covid-19 pandemic
- New growth areas
Trends in IIAs signed, 1980–2020

Source: UNCTAD, IIA Navigator.
Dealing with the Infinitely Small: Coding 15

IIAS Key Provisions

- Definition Of Investment
- Admission Versus Establishment
- National Treatment
- Most Favored Nation Clause
- Expropriation And Indirect Expropriation
- Fair And Equitable Treatment
- Transfer Of Investment-related Funds Out Of Host State
- Noneconomic Standards
- Public Interest Obligations
- The Umbrella Clause
- Temporal Scope Of Application
- Performance Requirements
- Exception Clause
- Access To Arbitration
- Transparency In Investor–state Arbitration
Example: Fair & Equitable Treatment

The “fair and equitable treatment” standard

• Absolute standard;
• Abundant case-law;
• Consistency, non-arbitrariness, non-discrimination, due process, etc.

Spotting FET

• Macedonia–Kazakhstan BIT (2012). Article 2: “Each Party shall provide to investments and returns of investments of investors of either Party fair and equitable treatment, and also full protection ...”
• Romania–Kazakhstan BIT (2010). Article 3: “Each Contracting Party shall ensure fair and equitable treatment within its territory to investments of the investors of the other Contracting Party ...”

ADB dataset considers two options

• If FET is enshrined = provision is coded as “2” with an assumption of positive effect on FDI.
• If FET is absent = provision is coded as “1”.

05/27/2021  ADB IIA Tool Kit
Using the ADB Toolkit: What It Is, and What It Is Not

What it is NOT

• It is not a ranking of IIA's;
• It is not a rigid tool with only one or few possible uses;
• It is not a tool that replaces and supersedes all the other tools/index ("Heating Map" by http://mappinginvestmenttreaties.com, "EDIT" by WTI/WB; UNCTAD’s Navigator...)

What it is

• It allows for comparisons of provisions and/or treaties which can include hundreds of comparators;
• E.g. Provision Level Indicators, Agreement Level Indicators, etc
## Provision Level Indicators

<table>
<thead>
<tr>
<th>International Investment Agreements (by country pairs)</th>
<th>ADB IIA Toolkit Liberalization Quality Indicator (extensive indicator = 1.5-2; circumscribed indicator = 1-1.5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRC-Singapore, Madagascar-PRC, New Zealand-PRC, Sri Lanka-PRC</td>
<td>1.00</td>
</tr>
<tr>
<td>Belize-PRC, Benin-Germany, Bosnia and Herzegovina-PRC, Brunei Darussalam-PRC, Bulgaria-PRC, Cambodia-PRC, Chile-Germany, China-PRC, PRC-Albanian, PRC-Argentina, PRC-Australia, PRC-Bahrain, PRC-Benin, PRC-Bolivia, PRC-Botswana, PRC-Columbia, PRC-Costa Rica, PRC-Cote D'Ivoire, PRC-Cuba, PRC-Denmark, PRC-Djibouti, PRC-Ecuador, PRC-Egypt, PRC-Estonia, PRC-Ethiopia, PRC-Georgia, PRC-Ghana, PRC-Greece, PRC-Guyana, PRC-Iceland, PRC-India, PRC-Jamaica, PRC-Japan, PRC-Korea, DPR, PRC-Korea, Republic of, PRC-Latvia, PRC-Lebanon, PRC-Lithuania, PRC-Mexico, PRC-Norway, PRC-Pakistan, PRC-Peru, PRC-Poland, PRC-Qatar, PRC-Slovenia, PRC-Sweden, PRC-Switzerland, PRC-Turkey, PRC-Uganda, PRC-Uruguay, Croatia-PRC, Czech Republic-PRC, Germany-Bulgaria, Germany-Congos, Democratic Republic of, Germany-Saint Lucia, Germany-Trinidad and Tobago, Greece-Germany, Hungary-PRC, Iceland-India, India-India, India-India, Iran, India-Mexico, India-Syria Arab Republic, Indonesia-PRC, Iran-PRC, Korea, Republic of-Germany, Kuwait-PRC, Lao PDR-PRC, Lesotho-Germany, Malaysia-India, Mexico-Germany, Mongolia-PRC, Morocco-PRC, Myanmar-PRC, Papua New Guinea-Germany, Philippines-PRC, Poland-Germany, Portugal-PRC, Romania-PRC, Rwanda-Germany, Senegal-Germany, Slovak Republic-India, Slovenia-PRC, Spain-PRC, Swaziland-Germany, Swaziland-PRC, Syria-Germany, Thailand-PRC, Trinidad and Tobago-PRC, Uganda-Germany, UK-PRC, Viet Nam-PRC, Vietnam-Germany, Zimbabwe-Germany</td>
<td>1.33</td>
</tr>
</tbody>
</table>

Source: ADB International Investment Agreements Toolkit.

## Agreement Level Indicators

<table>
<thead>
<tr>
<th>Country Pairs</th>
<th>ADB IIA Toolkit Quality Indicator Average (Low-Quality Indicator 1 or close to 1; High-Quality Indicator 2 and close to 2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Egypt-Belgium-Lux, Egypt-Bulgaria, Egypt-Canada, Egypt-Cyprus, Egypt-Macedonia, FYR, Egypt-Poland, Egypt-Sweden, Egypt-Turkey, Finland-Egypt, Germany-Congo, Democratic Republic of, Germany-Pakistan, Jordan-Egypt, Lebanon-Armenia, Rwanda-Germany</td>
<td>1.55</td>
</tr>
<tr>
<td>Argentina-Croatia, Austria-India, Bangladesh-India, Central African Republic-Germany, Chile-Germany, PRC-Argentina, PRC-Egypt, Congo Republic-Indonesia, Democratic Germany, Egypt-Armenia, Egypt-Czech Republic, Egypt-Italy, Egypt-Portugal, Egypt-Serbia, Egypt-Slovakia, France-India, Germany-Barun, Germany- Chad, Germany-Cote D'Ivoire, Germany-Mauritania, Germany-Saint Lucia, Germany-Saint Lucia, Germany-Siena Leone, Germany-Somalia, Germany-Trinidad and Tobago, Germany-USSR, Russian Federation, Germany-Yemen, Greece-India, Haiti-Germany, India-Armenia, India-Australia, India-Bahrain,</td>
<td>1.82</td>
</tr>
</tbody>
</table>
Conclusion

Scope of the Toolkit

Dataset

Report

Rationale, design and purpose

Report’s applications...

...but virtually unlimited