

COVID-19 and ISDS

In April 2020, Peru was reportedly threatened by an investment claim.

- In Peru, a state of national emergency was declared for a period of fifteen days, and isolation was ordered to be a social obligation, due to the serious circumstances that affect the life of the Nation as a result of the outbreak of COVID-19, in order to prevent its spread.
- Moreover, the Government of Peru wanted all highways to become free of access and most of the companies accepted.

Peru's Congress approved a bill suspending the collection of toll fees on major highways as one of the many means deployed to mitigate the consequences of the COVID-19 pandemic in the country.

- However, President Martín Vizcarra announced that eighteen concessionaires (who are foreign investors) still charged tolls which triggered further political reactions.

These are the eighteen concessionaires are now threatening Peru with initiating investment arbitration proceedings.

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Peru warned of potential ICSID claims over covid-19 measures

Cosmo Sanderson 09 April 2020



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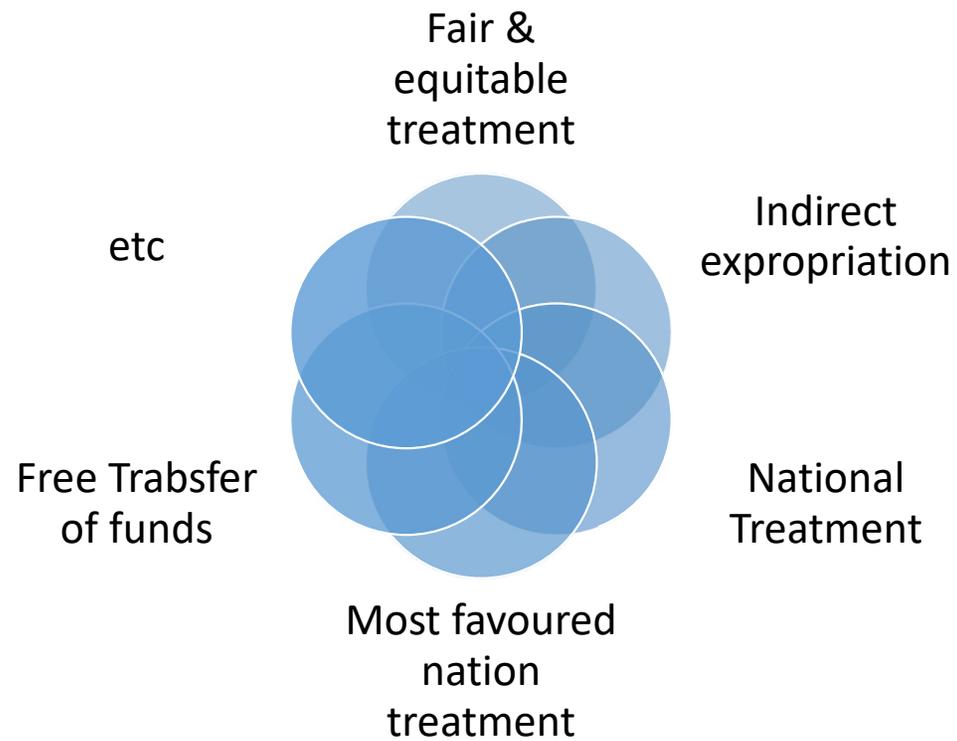
What are the “COVID-19 measures”?

Type of measures	Measures	Description	Key examples	Implementation start date
Foreign Investors Operating Conditions	Suspension of utility payments	<ul style="list-style-type: none"> It refers to the government suspending the bills that one pays for using electricity, water, and gas services. Government is the governing authority over the firms handling such business. 	El Salvador suspended electric, phone and internet bills for three months. They also froze monthly rental payments, mortgages, and loan payments for three months.	March 21, 2020
	Compelling production/supply	<ul style="list-style-type: none"> This refers to government forcing companies to produce what they want. They can order a company making car engines to start production and supply of ventilator, even if they don't have any prior exposure. 	French court order to Amazon to limit its operation to delivering only essential goods while it evaluates workers' risk of coronavirus exposure is a very good and new example of compelling production/supply.	April 24, 2020
	Deliveries/Supplies limitation	<ul style="list-style-type: none"> Measures that imposed limitations on deliveries/supplies 	French court order to Amazon to limit its operation to delivering only essential goods while it evaluates workers' risk of coronavirus exposure is a very good and new example of compelling production/supply.	April 24, 2020
Market Access, Transparency and Fairness in Global Trade	Price controls	<ul style="list-style-type: none"> To ensure that resources remain available, states have strived to regulate the market for medical and household resources by imposing a price floor. Price control refers to regulations put forward by the government, for the goods and services available in the market to control their price from inflating and deflating. 	South Africa government announced emergency price control measures on a list of products. They also imposed a fine of R1 million or 1 year of prison of 10 percent of firm's turnover.	March 19, 2020
	Export controls	<ul style="list-style-type: none"> For availability of supplies, governments have prohibited the exports of necessities needed for everyday survival, such as, medical and household supplies. They are using regulations and laws in which they protect their goods from foreign nationals. 	Australian government has prohibited exports of goods which are essential for preventing Covid-19, like personal protective equipment and hand sanitizers.	March 30, 2020
	Other potentially WTO-inconsistent measures	<ul style="list-style-type: none"> Broadly classified as “Lack of transparency” and “Travel restrictions”. 	France expands its list of drugs that face export restrictions despite repeated requests from the European Union to remove barriers that could trigger scarcity in other countries.	April 2020

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Due Process Issues and Procedural Irregularities	Private property seizure	<ul style="list-style-type: none"> This refers to government seizing/taking over another person/private enterprise to fulfil requirements which the state lacks. 	China’s order to seized hotels, hospitals and cars to fight coronavirus.	March 11, 2020
	Courts closure	<ul style="list-style-type: none"> All over the world many courts are adjusting the way they operate. Each court is making its own modifications under the circumstances and have included, among other things: closing courthouses, restricting courthouse access, continuing trials, cancelling non-case related activities, and rescheduling or permitting videoconferencing of oral arguments. 	The US Supreme Court has announced that it will hear oral arguments remotely in May in relation to a few of the cases that were postponed in March and April. Other appeal courts have introduced different measures. Courts in most states have now suspended or cancelled jury trials.	March 2020
	Extraordinary powers to government	<ul style="list-style-type: none"> Some states can take the chance to enforce arbitrary steps. Unbridled powers can lead to over the counter steps that seriously impact the market operating companies. 	In Hungary, now the Prime Minister is allowed to rule by decree.	March 30, 2020
Other measures with indirect impact	Other Measures with indirect impacts	<ul style="list-style-type: none"> Even though companies are not directly targeted, the state-managed closures have a significant impact on investments in the business sector. 	Argentina’s measure to restricts non-essential workers from leaving their homes apart from buying groceries or medicines.	March 29, 2020
	COVID-19 Tax Measures	<ul style="list-style-type: none"> Tax measures will be vulnerable to investment claims unless earmarked to COVID. 	In Czech Republic, taxpayers would have the option to carry back and claim a tax loss (or a part of a tax loss) against their individual (personal) and corporate income tax base for the prior two taxable periods or to carry forward and claim the loss in the following six years from the year of the loss.	April 24, 2020
	Arbitral Institutions	<ul style="list-style-type: none"> This refers to the effect on proceedings of the arbitral institutions. 	ICSID Made Electronic Filing its Default Procedure.	March 13, 2020

Potential breaches



States' defenses

