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What is an International Investment Agreement (IIA)?

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Functions and Types of IIAs

Functions

1. Protection of investments
2. Treatment of investors
(including liberalization of investment)

Types

1. Bilateral treaty - investment treaty, Free Trade Agreement (relevant chapter on investment)
2. Multilateral treaty - Energy Charter Treaty

Why Do IIAs Attract Public Attention?

- Rise of number of investor-state arbitration based on IIAs after late-1990s
- Subject matter of investor-state arbitration dispute: investment dispute (expropriation, maltreatment, etc.)
- Applicable law - international law (including IIAs) and national law

What is Arbitration?

- Ad hoc tribunal of three or one arbitrator(s)
- Legal settlement of dispute - arbitration award is legally binding upon parties of dispute
- Awards are enforceable on national law
- Almost all IIA arbitration awards are complied by host states

Effects of IIAs

their *Effectiveness*

- Start of arbitration on initiative of investor - bindingness of its awards
- Clarification of IIAs → “international investment law” - fair and equitable treatment, most-favored-nation treatment

Re-evaluation of IIAs

Government side

- Advanced states (nearly home states)
More positive toward protection functions of IIAs
(particularly Japan)
- Developing states (nearly host states)
More cautious or still positive
↓
- How to make more suitable clause to respond to needs

Re-evaluation of IIAs

Investor side

1. Before Investment
 - **How to hedge political risk:** How to Combine IIAs with other tools such as investment insurance
 - **How to structure investments** - make investment directly, or indirectly via subsidiary in country that has IIA with target country

Re-evaluation of IIAs

Investor side

2. After Investment

- **Better to use IIA arbitration** or other means of handling dispute with host state?
 - bankruptcy case arising from measures of a host state is appropriate
- **What is the best forum to bring the case to?** - ICSID, ICC, UNCITRAL, etc.

Conclusion

- IIA is an effective mechanism to improve investment climate
- IIA arbitration has developed such IIA functions
- Investors are required to have **exact knowledge** to manage their investment
- Governments are required to make IIAs and manage them upon **exact knowledge**

Thank you