

# **Investment Treaties: Policy Goals and Public Support**

A Conference hosted by the  
Freedom of Investment Roundtable

## **Agenda**

**16 March 2015**  
OECD Conference Centre  
Paris, France

## Objectives of the Conference

Through panel discussions, the Conference will assess opportunities and challenges associated with investment treaties and how these treaties can be improved.

Building on OECD analysis, main topics will cover:

1. Why do we have investment treaties, what changes are we making to them and how do we manage change?
2. The scope of investment treaty protection: What shareholder losses should be covered?
3. Strengthening public confidence in investment treaties: Improvements to Investor-State Dispute Settlement (ISDS)

A concluding session will consider the scope for improved management of the large network of investment treaties and how the OECD, working with other international organisations, can support constructive improvement and modernisation of the treaty system.

## A Conference for exchanges between governments, international organisations, the private sector, civil society and academic experts

Since 2011, governments have been evaluating key aspects of investment treaties at regular meetings of the OECD-hosted Freedom of Investment (FOI) Roundtable. The FOI Roundtable is an inter-governmental forum that helps governments to preserve and expand an open international investment system while also implementing effective policies that address public concerns that may be raised by international investment, e.g. managing security risks associated with such investment.

This Conference will gather senior policy-makers and investment treaty negotiators from the 54 OECD and non-OECD countries participating in the Roundtable for exchanges with leading representatives of business, civil society and academia, as well as international organisations.

## About the OECD

The OECD is a forum in which governments can work together to share experiences and seek solutions to common problems, identify good practices in light of emerging challenges, and promote decisions and recommendations to produce better policies for better lives. The OECD's mission is to promote policies that improve economic and social well-being of people around the world.

## AGENDA

8:00 - 9:00 *Registration*

09:00 - 09:15 **Welcoming Remarks by the OECD**

**Gabriela RAMOS**, Chief of Staff and Sherpa to the G20, OECD

09:15 - 11:15 **Why do we have investment treaties, how do they perform, what changes are we making to them, and how do we manage change?**  
**Governments speak out**

**OBJECTIVES**

With the exception of a few countries, governments have rarely sought to encourage public discussions about the merits and design of investment treaties. With the growing public debate about treaties, governments are now more frequently called on to explain their policy choices. In this session, investment policy-makers from countries representing different geographical regions will present their country's policies on treaties. Experts from business, civil society, academia and international organisations will respond.

**CHAIR**

**Gabriel DUQUE**, Ambassador, Permanent Representative of Colombia to the WTO

**PANELLISTS**

- **Murat ALICI**, Deputy General Director, General Directorate of Investment Incentives and Foreign Direct Investment, Ministry of Economy, Turkey
- **Lisa KUBISKE**, Deputy Assistant Secretary of State for International Finance and Development, United States
- **Xavier CARIM**, Ambassador, Permanent Representative of South Africa to the WTO
- **TIAN Ya**, Deputy Director, Department of Treaty and Law, Ministry of Commerce, P.R. China
- **José-Antonio ZAMORA**, Deputy Director General for Trade in Services and Investment, Ministry of Economy, Spain
- **Natalia PORRAS**, Coordinator for Services and Investment, General Directorate for Foreign Trade, Ministry of Foreign Trade, Costa Rica
- **Saurabh GARG**, Joint Secretary (Investment), Department of Economic Affairs, Ministry of Finance, India
- **Seiichiro TAKAHASHI**, Director of the OECD Division, Ministry of Foreign Affairs, Japan
- **Winand QUAEDVLIEG**, Chair of the Investment Committee of the Business and Industry Advisory Committee to the OECD (BIAC)
- **Thea LEE**, Deputy Chief of Staff, AFL-CIO (Trade Union Advisory Committee to the OECD (TUAC))
- **Nathalie BERNASCONI-OSTERWALDER**, Group Director, International Treaties, International Institute for Sustainable Development (IISD)
- **Jan WOUTERS**, Professor, University of Leuven, Belgium

11:15 - 11:45 *Coffee Break*

11:45 - 13:00

## The scope of investment treaty protection

### Case study: What shareholder losses should be covered?

#### OBJECTIVES

Under many investment treaties, as a result of the interpretation of the treaty definition of investment, shareholders are protected from reflective losses. (Shareholders' reflective losses are incurred as a result of injury to "their" company, typically a loss in value of their shares; they are generally contrasted with direct injury to shareholder rights, such as interference with shareholder voting rights.) This contrasts with advanced systems of domestic corporate law, which generally apply a "no reflective loss" principle to shareholders. Only the directly injured company can recover the loss.

This session considers issues raised by the current approach in investment treaties; views on the optimal scope of protection of shareholders and companies; and how treaties limit duplicative claims and double recovery.

#### CHAIR

**Eilís FERRAN**, Dean of the Faculty of Law, Cambridge University

#### PANELLISTS

- **David GAUKRODGER**, Investment Division, OECD
- **Manfred SCHEKULIN**, Director for Export and Investment Policy, Federal Ministry of Science, Research and Economics, Austria, Chairman of the OECD-Investment Committee
- **Rodrigo MONARDES**, Head of Services, Investment and Air Transport Department, General Directorate for International Economic Relations, Ministry of Foreign Affairs, Chile
- **Colin BROWN**, Directorate for Trade, European Commission
- **Mathias WOLKEWITZ**, General Counsel Legal, Tax, Insurance, and Vice President, Wintershall Holding GmbH
- **Stanimir ALEXANDROV**, Co-chair, Sidley Austin LLP International Arbitration practice

#### REFERENCE DOCUMENTS

Investment treaties as corporate law: Shareholder claims and issues of consistency, 2013

Prof. Eilís Ferran, Presentation to FOI Roundtable 19 on Reflective Loss

Summary of Discussion of FOI Roundtable 19 (Oct. 2013).

Investment treaties and shareholder claims for reflective loss: insights from advanced systems of corporate law, 2014

Investment treaties and shareholder claims: analysis of treaty practice, 2014

13:00 - 14:30

*Lunch Break*

**14:30 - 16:00**      **Strengthening public confidence in investment treaties**  
**Improvements to Investor-State Dispute Settlement**

**OBJECTIVES**

Recently, there has been considerable questioning of ISDS in public and parliamentary debates. Governments need to ensure that the public has a high level of confidence in ISDS. This session will focus on ISDS including some recent reforms in some treaties and their potential impact. It will also consider whether possible additional reforms could strengthen public confidence. Issues will include the interaction of ISDS with domestic law and institutions, transparency in dispute resolution, the role of governments in treaty interpretation, the selection and regulation of arbitrators, and appellate review.

**CHAIR**

**Meg KINNEAR**, Secretary-General, International Centre for Settlement of Investment Disputes (ICSID)

**PANELLISTS**

- **Kathryn GORDON**, OECD
- **Karin KIZER**, Attorney-Adviser, Office of Economic and Business Affairs, Department of State, United States
- **Saurabh GARG**, Joint Secretary (Investment), Department of Economic Affairs, Ministry of Finance, India
- **Andre VON WALTER**, Directorate General for Trade, EU
- **Renaud SORIEUL**, Secretary of UNCITRAL, Director of the International Trade Law Division, Office of Legal Affairs, United Nations
- **Garth SCHOFIELD**, Senior Legal Counsel, Permanent Court of Arbitration
- **Barton LEGUM**, Partner, Dentons
- **Anna JOUBIN-BRET**, Avocat à la Cour, Cabinet Joubin-Bret, Paris
- **Lauge N. Skovgaard POULSEN**, Lecturer, University College London

**REFERENCE DOCUMENTS**

Investor-state dispute settlement: A scoping paper for the investment policy community, 2012

Dispute settlement provisions in international investment agreements: A large sample survey, 2012

Public consultation on the ISDS scoping paper, 2012

**16:00 - 16:30**

**Coffee Break**

16:30 - 18:00

## Improving investment treaties

Where should investment treaties go from here and how can the OECD help?

### OBJECTIVES

Two main questions will guide the closing discussion: What scope is there to improve the management of the large network of investment treaties? Issues may include the promotion of better understanding of treaty obligations, capacity building on the management of investment disputes, the sharing of good practices and addressing older treaties.

Second, how can the OECD, working with other international organisations, support constructive improvement and modernization of investment treaties?

Panellists from government, civil society, academia, arbitration and international organizations will be invited to speak for 5 minutes each on avenues for improvement.

### CHAIR

**Ana NOVIK**, Head of Investment Division, OECD

### KEYNOTE

- **Manfred SCHEKULIN**, Director for Export and Investment Policy, Federal Ministry of Science, Research and Economics, Austria, Chairman of the OECD-Investment Committee
- **Maria ÅSENIUS**, Head of Cabinet of EU Trade Commissioner Cecilia Malmström, European Commission

### PANELLISTS

- **Rodrigo MONARDES**, Head of Services, Investment and Air Transport Department, General Directorate for International Economic Relations, Ministry of Foreign Affairs, Chile
- **TIAN Ya**, Deputy Director, Department of Treaty and Law, Ministry of Commerce, P.R. China
- **Lisa KUBISKE**, Deputy Assistant Secretary of State for International Finance and Development, United States
- **James ZHAN**, Director, Division on Investment and Enterprise, UNCTAD
- **Winand QUAEDVLIEG**, Chair of the Investment Committee of the Business and Industry Advisory Committee to the OECD (BIAC)
- **Thea LEE**, Deputy Chief of Staff, AFL-CIO (TUAC)
- **Nathalie BERNASCONI-OSTERWALDER**, Group Director, International Treaties, International Institute for Sustainable Development (IISD)
- **Jan KLEINHEISTERKAMP**, Associate Professor, London School of Economics, United Kingdom

18:00

*Cocktail*

## Notes

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## Background Reading

[The growing pains of investment treaties, 2014](#)

[Investment treaties over time: treaty practice and interpretation in a changing world, 2015](#)

[Investment treaties and shareholder claims: analysis of treaty practice, 2014](#)

[Investment treaties and shareholder claims for reflective loss: insights from advanced systems of corporate law, 2014](#)

[Investment treaty law, sustainable development and responsible business conduct: a fact finding survey, 2014](#)

[Temporal validity of international investment agreements: a large sample survey of treaty provisions, 2013](#)

[Investment treaties as corporate law: Shareholder claims and issues of consistency, 2013](#)

[Investor-state dispute settlement: A scoping paper for the investment policy community, 2012](#)

[Dispute settlement provisions in international investment agreements: A large sample survey, 2012](#)