

# SUPPLEMENTARY MATERIAL

## REVIEW OF ISDS DECISIONS IN 2018: SELECTED IIA REFORM ISSUES (IIA ISSUES NOTE, NO. 4, JULY 2019)

### Case-by-case tables on key issues addressed by ISDS tribunals in 2018

These case-by-case tables give an overview of key issues addressed by ISDS tribunals in 2018. The tables summarize 24 ISDS decisions that were publicly available as of January 2019.<sup>1</sup> The arbitral decisions and more detailed information on each case are available at <https://investmentpolicy.unctad.org/investment-dispute-settlement/>.

Most arbitral decisions in 2018 relied on provisions in old-generation treaties. A factual summary of the questions addressed by ISDS tribunals in publicly available awards and decisions can be a useful source for learning how IIA provisions work in practice and which areas are most in need of improvement.

Selected issues and cases of relevance for treaty drafting and IIA reform are highlighted in the IIA Issues Note “Review of ISDS Decisions in 2018: Selected IIA Reform Issues” (No. 4, July 2019), available at <https://investmentpolicy.unctad.org/publications/series/2/international-investment-agreements>.

#### Abbreviations

BIT	Bilateral investment treaty
CAFTA-DR	Dominican Republic–Central America Free Trade Agreement
CJEU	Court of Justice of the European Union
ECT	Energy Charter Treaty
EU	European Union
FET	Fair and equitable treatment
FPS	Full protection and security
MST	Minimum standard of treatment
NAFTA	North American Free Trade Agreement
NT	National treatment

Reference to “dollars” (\$) means United States dollars, unless otherwise indicated. Amounts awarded, where indicated, do not include interest or legal costs, and some decisions may be subject to set-aside or annulment proceedings.

#### Acknowledgements

This supplementary material relates to IIA Issues Note No. 4, July 2019, prepared by UNCTAD’s IIA team led by Elisabeth Tuerk, under the supervision of Joerg Weber and the overall guidance of James Zhan. It is based on research conducted by Sergey Ripinsky (main author), with contributions provided by Diana Rosert and comments by Hamed El Kady. Amrit Onkar Bhatia provided helpful edits and inputs.

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<sup>1</sup> This number includes decisions (awards) on jurisdiction and awards on liability and damages (partial and final). The five publicly available decisions rendered in ICSID annulment proceedings in 2018 are not covered.

## Decisions on jurisdiction

(Decisions on jurisdiction and “jurisdictional issues” may also include issues of admissibility.)

### A. Decisions upholding jurisdiction (at least in part) (without examining the merits)

Table 1.	Decisions upholding jurisdiction (at least in part) (without examining the merits)	
Case details	Case summary	Key issues and tribunals' findings
<p><b>Casinos Austria v. Argentina</b></p> <p><i>Casinos Austria International GmbH and Casinos Austria Aktiengesellschaft v. Argentine Republic</i> (ICSID Case No. ARB/14/32)</p> <p>Argentina–Austria BIT (1992)</p> <p>Decision on Jurisdiction, 29 June 2018</p> <p><b>Arbitrators:</b></p> <ul style="list-style-type: none"> <li>• van Houtte, H. (President)</li> <li>• Schill, S.</li> <li>• Torres Bernárdez, S. (Dissenting opinion)</li> </ul>	<p><b>Disputed measure(s):</b> Revocation by an Argentinean province of a license to operate games of chance and lottery held by claimants' local subsidiary under alleged concerns of money laundering.</p> <p><b>Investment at issue:</b> Rights under a gambling license granted by the Government of Salta province in Argentina to claimants' local subsidiary, Entretenimientos y Juegos de Azar S.A. (ENJASA).</p>	<p>Jurisdictional issues:</p> <ul style="list-style-type: none"> <li>• Whether assets owed by Claimants' local subsidiary were part of investment (→NO; but Claimants' shareholder rights may be impacted by interference with those assets)</li> <li>• Whether Claimants' shares in local subsidiary qualified as investment under ICSID Convention (→YES; investment met all <i>Salini</i> criteria)</li> <li>• Whether Claimants established prima facie claims for jurisdictional purposes (→YES – BY MAJORITY; facts alleged by Claimants (without determining their veracity) are capable of constituting breach of BIT)</li> <li>• Whether Claimants' claims may be properly characterized as treaty claims (as opposed to contract claims) (→YES – BY MAJORITY; Claimants advanced treaty claims; Respondent itself was not party to relevant contracts)</li> <li>• Whether Claimants complied with BIT requirement to pursue local remedies for at least 18 months (relevant local proceedings were pending for less than 18 months at the time of commencement of arbitration) (→YES – BY MAJORITY; as pre-arbitral requirements in BIT do not constitute conditions precedent to State's consent to arbitration, they can be fulfilled until decision on jurisdiction is taken)</li> <li>• Whether Claimants breached BIT requirement to terminate local proceedings upon commencement of arbitration (→NO – BY MAJORITY; if Claimants were required to withdraw domestic proceedings prior to tribunal's decision on jurisdiction, they could be left without any remedy (justice would be denied) if tribunal declined jurisdiction)</li> </ul> <p>Other issues:</p> <ul style="list-style-type: none"> <li>• Whether Tribunal may rely on legal arguments and authorities not submitted by parties (→YES; <i>maxim iura novit curia</i> enables tribunal to apply law on its own motion, provided parties are given opportunity to comment)</li> </ul>

Table 1. Decisions upholding jurisdiction (at least in part) (without examining the merits)		
Case details	Case summary	Key issues and tribunals' findings
<p><b><i>Lion v. Mexico</i></b></p> <p><i>Lion Mexico Consolidated L.P. v. United Mexican States</i> (ICSID Case No. ARB(AF)/15/2)</p> <p>NAFTA (1992)</p> <p>Decision on Jurisdiction, 30 July 2018</p> <p><b>Arbitrators:</b></p> <ul style="list-style-type: none"> <li>• Fernández-Armesto, J. (President)</li> <li>• Cairns, D. J. A.</li> <li>• Boisson de Chazournes, L.</li> </ul>	<p><b>Disputed measure(s):</b> Mexican authorities' cancellation of promissory notes held by the claimant and mortgages to which the claimant was a beneficiary.</p> <p><b>Investment at issue:</b> Promissory notes and mortgages over three properties located in Mexico.</p>	<p>Jurisdictional issues:</p> <ul style="list-style-type: none"> <li>• Whether non-negotiable promissory notes, linked to a loan of less than three-year maturity, qualify as investments under NAFTA (→NO; promissory notes are intrinsically bound to loans and therefore do not meet three-year maturity test in NAFTA Article 1139(d)(ii); promissory notes do not qualify as "debt securities" under NAFTA Article 1139(c) because they are not tradeable)</li> <li>• Whether mortgages used to secure a loan of less than three-year maturity qualify as investments under NAFTA (→YES; under Mexican law, mortgages qualify as "intangible real estate" used for economic benefit and therefore fit category of investment in NAFTA Article 1139(g))</li> </ul>
<p><b><i>Mera Investment v. Serbia</i></b></p> <p><i>Mera Investment Fund Limited v. Republic of Serbia</i> (ICSID Case No. ARB/17/2)</p> <p>Cyprus–Serbia BIT (2005)</p> <p>Decision on Jurisdiction, 30 November 2018</p> <p><b>Arbitrators:</b></p> <ul style="list-style-type: none"> <li>• von Segesser, G. (President)</li> <li>• Fortier, L. Y.</li> <li>• Cremades, B. M.</li> </ul>	<p><b>Disputed measure(s):</b> Government's alleged harmful measures against Mera Invest, the claimant's local subsidiary, including the freezing of its assets, fabrication of tax claims, blocking of its bank accounts and accounts of related entities.</p> <p><b>Investment at issue:</b> Ownership of a locally incorporated investment fund, Mera Invest d.o.o., holding shares in a construction company in Southeastern Serbia and local banks.</p>	<p>Jurisdictional issues:</p> <ul style="list-style-type: none"> <li>• Whether Claimant was properly incorporated in Cyprus and had registered office there (→YES)</li> <li>• Whether Claimant had its corporate seat in Cyprus (→YES; under Cypriot law, term "seat" requires maintaining registered office and does not require effective management to be located in Cyprus)</li> <li>• Whether Claimant could be considered as making investments in Serbia (investments had been made before company was registered in Cyprus) (→YES; making investment includes not only funding and acquisition of investments, but also "holding and management" of investments)</li> <li>• Whether assets held by Claimant indirectly through local company constituted investments protected by BIT (→YES; BIT's object and purpose ("broad investment protection") and broad definition of investment confirm that indirect investments are covered)</li> <li>• Whether granting jurisdiction goes against object and purpose of BIT and ICSID Convention (investment was ultimately owned by host State nationals; invested capital originated in host State) (→NO; BIT and ICSID Convention do not require foreign origin of capital or foreign effective control of investment)</li> </ul>

Table 1.	Decisions upholding jurisdiction (at least in part) (without examining the merits)	
Case details	Case summary	Key issues and tribunals' findings
<p><b><i>Mobil v. Canada (II)</i></b></p> <p><i>Mobil Investments Canada Inc. v. Canada (II)</i> (ICSID Case No. ARB/15/6)</p> <p>NAFTA (1992)</p> <p>Decision on Jurisdiction and Admissibility, 13 July 2018</p> <p><b>Arbitrators:</b></p> <ul style="list-style-type: none"> <li>• Greenwood, C. (President)</li> <li>• Rowley, J. W.</li> <li>• Griffith, G.</li> </ul>	<p><b>Disputed measure(s):</b> Government's continued enforcement of the 2004 Guidelines for Research and Development Expenditures, which allegedly resulted in expenditures incurred by the claimant in 2012-2015. A previous tribunal, <i>Mobil and Murphy v. Canada</i>, found the Guidelines to violate NAFTA and awarded the claimants a portion of the damages sought.</p> <p><b>Investment at issue:</b> Indirect controlling shareholding in two companies, Hibernia Management and Development Co. and Terra Nova Oil Development Project, engaged in two petroleum development projects off the coast of the Province of Newfoundland and Labrador in Canada.</p>	<p>Jurisdictional issues:</p> <ul style="list-style-type: none"> <li>• Whether limitation period starts running again in case a contracting party continues to enforce measure held to be in breach of treaty by an earlier decision of another ISDS tribunal (→YES; Canada's decision to continue enforcing 2004 Guidelines notwithstanding decision of <i>Mobil I</i> Tribunal is an act separate and distinct from promulgation of 2004 Guidelines and their enforcement until that date)</li> <li>• Whether Tribunal had jurisdiction to decide a claim previously considered by another ISDS tribunal that had found it to be not "ripe for determination" (Respondent argued that earlier tribunal had considered same claim for damages) (→YES; for res judicata to apply, previous tribunal must have decided a question; barring Claimant from bringing claim previously considered not "ripe for determination" would create injustice)</li> </ul> <p>Other issues:</p> <ul style="list-style-type: none"> <li>• Whether prior submissions of treaty parties to other ISDS tribunals applying same treaty affect treaty interpretation (→YES; treaty parties' subsequent practice establishing their agreement regarding interpretation should be accorded considerable weight, even if does not take form of Free Trade Commission's decision)</li> <li>• Whether treaty party is obliged to cease wrongful act previously found in breach of NAFTA (→YES; under general international law, State responsible for internationally wrongful act of continuing nature is under obligation to cease that act)</li> </ul>
<p><b><i>Resolute Forest v. Canada</i></b></p> <p><i>Resolute Forest Products Inc. v. Canada</i> (PCA Case No. 2016-13)</p> <p>NAFTA (1992)</p> <p>Decision on Jurisdiction and Admissibility, 30 January 2018</p> <p><b>Arbitrators:</b></p> <ul style="list-style-type: none"> <li>• Crawford, J. R. (President)</li> <li>• Cass, R. A.</li> <li>• Lévesque, C.</li> </ul>	<p><b>Disputed measure(s):</b> Measures taken by the provincial Government in Nova Scotia and the Government of Canada, which allegedly discriminated in favour of the competitor's Port Hawkesbury paper mill and resulted, among other damages, in the closing of claimant's Laurentide paper mill in October 2014.</p> <p><b>Investment at issue:</b> Ownership of Laurentide paper mill.</p>	<p>Jurisdictional issues:</p> <ul style="list-style-type: none"> <li>• Whether claim is time-barred if challenged measures are outside limitation period, but Claimant acquired knowledge of loss incurred within limitation period (→NO; NAFTA requires that certain conditions must be fulfilled for limitation period to apply: the alleged breach must actually have occurred, the resulting damage must actually have been incurred, and claimant must know, or should have known, of these facts)</li> <li>• Whether measures not directed at Claimant's investment may be considered as "relating to" investment if they have economic impact on it (→YES; "legally significant connection" must exist between measure and investment but it is not necessary that measure targets Claimant's investment; however, "a measure which adversely affected the claimant in a tangential or merely consequential way will not suffice for this purpose")</li> <li>• Whether measure by regional government that affects investment located outside this region is capable of constituting violation of NAFTA NT obligation (→YES; scope of NT obligation is not limited to investments located within particular province; whether breach occurred is to be established at merits stage)</li> </ul>

Table 1. Decisions upholding jurisdiction (at least in part) (without examining the merits)		
Case details	Case summary	Key issues and tribunals' findings
<p><b>Salini Impregilo v. Argentina</b></p> <p><i>Salini Impregilo S.p.A. v. Argentine Republic</i> (ICSID Case No. ARB/15/39)</p> <p>Argentina–Italy BIT (1990)</p> <p>Decision on Jurisdiction and Admissibility, 23 February 2018</p> <p><b>Arbitrators:</b></p> <ul style="list-style-type: none"> <li>• Crawford, J. R. (President)</li> <li>• Hobér, K.</li> <li>• Kurtz, J.</li> </ul>	<p><b>Disputed measure(s):</b> Government's alleged failure to pay state subsidies provided for under a highway construction concession, the enactment of emergency legislation that affected the project's toll revenue and economic viability as well as delays in completing the renegotiation of the concession contract as mandated by this legislation. According to the claimant, the alleged measures ultimately resulted in the bankruptcy of the local concessionaire, the termination of the concession contract by the Government and its reassignment to a third party.</p> <p><b>Investment at issue:</b> 26% interest in a local company, Puentes del Litoral S.A., that held a 25-year concession contract for the construction, operation and maintenance of a bridge and toll road in Argentina.</p>	<p>Jurisdictional issues:</p> <ul style="list-style-type: none"> <li>• Whether claims were time-barred (challenged measures had been adopted more than 10 years before commencement of arbitration) (→NO; BIT does not contain limitation period; international law does not lay down any general time limit for bringing claims)</li> <li>• Whether Claimant complied with BIT requirement to pursue local remedies for at least 18 months (relevant local proceedings were initiated by different party and under different legal instruments; domestic court action was pending for less than 18 months at the time of commencement of arbitration) (→YES; “substantive underpinnings” of dispute are the same)</li> <li>• Whether Tribunal should apply <i>forum non conveniens</i> doctrine and decline jurisdiction because Argentine courts are the most appropriate forum for Claimant's claims (→NO; no ISDS tribunal has ever relied on <i>forum non conveniens</i> doctrine; no grounds to rely on it in this case either)</li> <li>• Whether Claimant, as shareholder in project company, has standing to bring BIT claims in relation to project company's rights (→YES; BIT's broad definition of investment covers shareholdings, including minority ones)</li> </ul>

Source: UNCTAD.

## B. Decisions rejecting jurisdiction (in toto), including rulings on preliminary objections

Table 2.	Decisions rejecting jurisdiction (in toto), including rulings on preliminary objections	
Case details	Case summary	Key issues and tribunals' findings
<p><b>Cortec Mining v. Kenya</b></p> <p><i>Cortec Mining Kenya Limited, Cortec (Pty) Limited and Stirling Capital Limited v. Republic of Kenya</i> (ICSID Case No. ARB/15/29)</p> <p>Kenya–United Kingdom BIT (1999)</p> <p>Award, 22 October 2018</p> <p><b>Arbitrators:</b></p> <ul style="list-style-type: none"> <li>• Binnie, I. (President)</li> <li>• Dharmananda, K.</li> <li>• Stern, B.</li> </ul>	<p><b>Disputed measure(s):</b> Government's allegedly unlawful revocation of claimant's mining license, following the discovery of new rare earths deposits by the claimant.</p> <p><b>Investment at issue:</b> Investments in the Kenyan mining sector, including a 21-year mining license for the extraction of rare earths at the Mrima Hill project in the southern part of the country.</p>	<p>Jurisdictional issues:</p> <ul style="list-style-type: none"> <li>• Whether Claimants qualified for BIT protection (Respondent alleged that they were “shell” companies from the United Kingdom, with ultimate investors having third-party nationality) (→YES; origin of funds is irrelevant under BIT)</li> <li>• Whether Claimants made an investment in host State (Respondent alleged that Claimants had not made any financial contribution) (→YES; Claimants' investment (shares in project company) met <i>Salini</i> criteria)</li> <li>• Whether Claimant committed serious violation of host State law when making investment, by obtaining mining license without required environmental impact assessment (→YES; BIT protects only lawful investments even if it does not explicitly say so; violation must be sufficiently serious so that denial of treaty protection is proportionate response)</li> </ul>
<p><b>Rawat v. Mauritius</b></p> <p><i>Dawood Rawat v. Republic of Mauritius</i> (PCA Case No. 2016-20)</p> <p>France–Mauritius BIT (1973)</p> <p>Award on Jurisdiction, 6 April 2018</p> <p><b>Arbitrators:</b></p> <ul style="list-style-type: none"> <li>• Reed, L. (President)</li> <li>• Honlet, J.-C.</li> <li>• Lowe, V.</li> </ul>	<p><b>Disputed measure(s):</b> A series of measures taken by the government of Mauritius, allegedly including the illegal appointment of special administrators who took control over two insurance and banking companies as well as related companies in which the claimant held interests, and the subsequent transfer or sale of their assets to State-owned companies and third parties.</p> <p><b>Investment at issue:</b> Indirect controlling shareholding in an investment holding company (British American Investment Co. (Mtius) Ltd) with a subsidiary life insurance company (British American Insurance Company Ltd) and a bank (Bramer Banking Corporation Ltd).</p>	<p>Jurisdictional issues:</p> <ul style="list-style-type: none"> <li>• Whether Claimant, dual Mauritian-French national, is eligible for BIT protection (→NO; BIT does not expressly exclude dual nationals from definition of investor, but specific treaty context suggests that they are not covered)</li> </ul>

## Decisions on the merits

(Decisions on the merits may include findings on jurisdiction.)

### C. Decisions finding State's liability for IIA breaches (at least in part)

Table 3.	Decisions finding State's liability for IIA breaches (at least in part)	
Case details	Case summary	Key issues and tribunals' findings
<p><b><i>Antin v. Spain</i></b></p> <p><i>Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V. v. Kingdom of Spain</i> (ICSID Case No. ARB/13/31)</p> <p>ECT (1994)</p> <p>Award, 15 June 2018</p> <p><b>Arbitrators:</b></p> <ul style="list-style-type: none"> <li>• Zuleta, E. (President)</li> <li>• Reichert, K.</li> <li>• Thomas, J. C.</li> </ul>	<p><b>Disputed measure(s):</b> A series of energy reforms undertaken by the Government affecting the renewable energy sector, including a 7 per cent tax on power generators' revenues and a reduction in subsidies for renewable energy producers.</p> <p><b>Investment at issue:</b> Direct and indirect shareholding in two solar thermo plants in Andalucía, Spain.</p>	<p>Jurisdictional issues:</p> <ul style="list-style-type: none"> <li>• Whether ECT applies to intra-EU disputes (→YES)</li> <li>• Whether certain assets were "directly and indirectly owned" by Claimants and related claims can be submitted to arbitration, despite ultimate ownership by third party (→YES; ECT covers indirect investments, protects intermediary companies)</li> <li>• Whether Tribunal had jurisdiction in respect of Law 15/2012 that introduced tax on production of electricity (→NO; ECT carves out taxation measures from its scope)</li> <li>• Whether Claimants complied with 3-month cooling-off period prescribed by ECT (Claimants challenged inter alia measures introduced after they sent their notice of dispute to Government) (→YES; there was "inseparable relationship" between initial and further measures; they were part of single dispute)</li> </ul> <p>Merits issues:</p> <ul style="list-style-type: none"> <li>• Whether Respondent – through its general acts and regulations – had created legitimate expectation that legal framework for concentrated solar power (CSP) plants would remain stable (→YES)</li> <li>• Whether ECT precludes States from exercising regulatory powers in public interest (→NO)</li> <li>• Whether Respondent may radically alter regulatory regime specifically created to induce investments (→NO)</li> <li>• Whether Respondent breached FET by frustrating Claimants' legitimate expectations (→YES)</li> </ul> <p>Awarded: approx. \$131.2 million (€112 million)</p>
<p><b><i>Chevron and TexPet v. Ecuador (II)</i></b></p> <p><i>Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador (II)</i> (PCA Case No. 2009-23)</p>	<p><b>Disputed measure(s):</b> Texaco's historical activities under oil concession contracts, and the Government's alleged misconduct in subsequent domestic litigation against Texaco for environmental remediation (in the so-called "Lago Agrio" judgment of 2012, the Ecuadorian court ordered Chevron and TexPet to pay \$9.5 billion for environmental damage).</p>	<p>Jurisdictional issues:</p> <ul style="list-style-type: none"> <li>• Whether Chevron's indirect investment in Ecuador (through its stake in TexPet) qualified for BIT protection (→YES; BIT did not require investment to be direct)</li> <li>• Whether Claimants' failure to exhaust all local judicial remedies in Ecuador precluded Tribunal's jurisdiction over denial of justice claim (→NO; by time of arbitral award Ecuador's Constitutional Court had ruled on Claimants' appeal)</li> <li>• Whether Claimants may add new claims after filing notice of arbitration (after filing arbitration in 2009, Claimants added denial of justice and umbrella clause claims in 2012) (→YES; amendments were justified by new factual developments, Ecuador had full opportunity to defend against new claims)</li> </ul>



Table 3. Decisions finding State's liability for IIA breaches (at least in part)		
Case details	Case summary	Key issues and tribunals' findings
<p>Ecuador–United States of America BIT (1993)</p> <p>Second Partial Award on Track II, 30 August 2018</p> <p><b>Arbitrators:</b></p> <ul style="list-style-type: none"> <li>• Veeder, V. V. (President)</li> <li>• Grigera Naón, H. A.</li> <li>• Lowe, V.</li> </ul>	<p><b>Investment at issue:</b> Oil exploration and production rights in Ecuador's Amazon region through concession contracts concluded with the Government.</p>	<p>Merits issues:</p> <ul style="list-style-type: none"> <li>• Whether Lago Agrio judgment failed to respect 1995 settlement agreement between Claimants and Ecuador, which protected Claimants from liability for environmental harm, and thereby breached BIT's umbrella clause (→YES)</li> <li>• Whether various actions attributed to Ecuador (acceptance of bribe by first-instance judge; allowing his judgment to be "ghostwritten"; failure of appeal courts to address judicial misconduct) constituted denial of justice (→YES)</li> <li>• Whether Respondent must suspend enforceability of Lago Agrio judgment and take steps to preclude all third parties and States from enforcing the ruling (→YES)</li> </ul> <p>(Case proceeded to damages phase)</p>
<p><b><i>Foresight and others v. Spain</i></b></p> <p><i>Foresight Luxembourg Solar 1 S.Á.R.L., Foresight Luxembourg Solar 2 S.Á.R.L., Greentech Energy System A/S, GWM Renewable Energy I S.P.A and GWM Renewable Energy II S.P.A v. Kingdom of Spain</i> (SCC Case No. 2015/150)</p> <p>ECT (1994)</p>	<p><b>Disputed measure(s):</b> A series of energy reforms undertaken by the Government affecting the renewable energy sector, including a 7 per cent tax on power generators' revenues and a reduction in subsidies for renewable energy producers.</p> <p><b>Investment at issue:</b> Investments in three solar photovoltaic facilities (the Madrideojos, La Castilleja and Fotocampillos plants).</p>	<p>Jurisdictional issues:</p> <ul style="list-style-type: none"> <li>• Whether ECT applies to disputes involving intra-EU investments (→YES)</li> <li>• Whether CJEU's decision in <i>Achmea v. Slovakia (I)</i> (2018) precluded Tribunal's jurisdiction (→NO; CJEU decision concerned BITs, not ECT)</li> <li>• Whether Tribunal had jurisdiction in respect of Law 15/2012 that introduced tax on production of electricity (→NO; ECT carves out taxation measures from its scope)</li> </ul> <p>Merits issues:</p> <ul style="list-style-type: none"> <li>• Whether Respondent – through its acts of general application – created legitimate expectation that regulatory framework existing at the time of investment would not be fundamentally and abruptly changed (→YES)</li> <li>• Whether Claimants carried out sufficient legal due diligence when making investment (→YES – BY MAJORITY)</li> <li>• Whether enactment of new regulatory regime breached FFT standard by frustrating Claimants' legitimate</li> </ul>

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