

# ISSUES AND FUNDAMENTAL CONCEPTS OF INTERNATIONAL INVESTMENT AGREEMENTS

ESCAP/ITD/WTO Capacity Building Programme on Trade in Services and  
Investment Liberalization Negotiations  
27-30 March 2012

A/Professor Michael Ewing-Chow,  
WTO Chair and Head, Trade/Investment Law & Policy  
& Geraldine R Fischer, Research Fellow



# Scope of an IIA

- Matter Coverage: what is protected?
- Subject Coverage: who is protected?
- Geographical Coverage: which territory does the treaty apply to?
- Temporal Coverage: when does the IIA apply and for how long?
- Dispute Settlement Mechanism?

**WHAT “INVESTMENTS”?**

# Malaysian Historical Salvors

- Per Michael Hwang, SC as Sole Arbitrator at para 55 and 147-
- The Claimant must establish that the Contract:
  - a) falls within the definition of investment as provided under the BIT; and
  - b) is an “investment” within the meaning of Article 25(1) of the ICSID Convention.

# UK-Malaysia BIT

- Article 1 Definition
- For the purposes of this Agreement
- (1) (a) “investment” means every kind of asset and in particular, though not exclusively, includes:
- (iii) claims to money or to any performance under contract, having a financial value;
- (v) business concessions conferred by the law or under contract, including concessions to search for, cultivate, extract or exploit natural resources
- (b) The said term [i.e. investment] shall refer:
- (ii) in respect of investments in the territory of Malaysia, to all investments made in projects classified by the appropriate Ministry of Malaysia in accordance with its legislation and administrative practice as an “approved project.”

# Definition of “Investments”

- Asset based definition
- Closed positive list (exhaustive)
- Exclusion negative list (exhaustive)
- Enterprise-based definition
- Economic definition

# ICSID Convention Art 25

- (1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and **a national of another Contracting State**, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

# enna Convention on Treaties

## *interpretation*

l be interpreted in good faith in accordance with the  
ing to be given to the terms of the treaty in their context  
of its object and purpose.

## *means of interpretation*

be had to supplementary means of interpretation, including  
y work of the treaty and the circumstances of its  
order to confirm the meaning resulting from the application  
to determine the meaning when the interpretation  
ticle 31:

*meaning ambiguous or obscure; or  
result which is manifestly absurd or unreasonable.*

[https://www.yunbaogao.cn/report/index/report?reportId=5\\_7714](https://www.yunbaogao.cn/report/index/report?reportId=5_7714)

预览已结束，完整报告链接和二维码如下：

