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Centre for Trade and Investment Law

Investment Law

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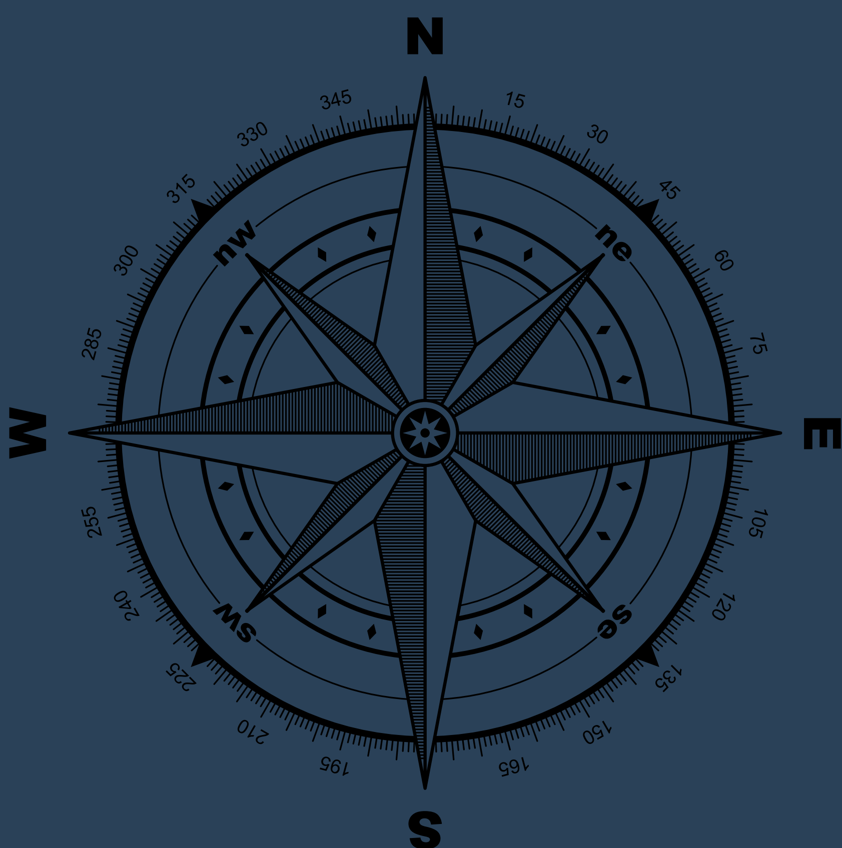

navigating through

GLOBAL INVESTMENT FRAMEWORK

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The Investment Law Compass is CTIL's monthly newsletter on the global investment framework and developments. Our vision is to inform professionals and policy makers on topics related to investment laws and treaty arbitration, thereby fostering informed decision-making.

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The 18th EU Sanctions Package – Combating ISDS

Source: Canva

INTRODUCTION

On 18 July 2025, the European Union adopted its 18th package of sanctions in response to Russia's ongoing aggression against Ukraine. Among the many economic and trade-related measures introduced, the package includes a particularly significant legal step: it prohibits designated Russian individuals and entities from initiating investor-State dispute settlement (ISDS) proceedings against EU member states. Specifically, the new rules prohibit ISDS actions based on bilateral investment treaties (BITs) concluded between EU member states and Russia, as well as those based on multilateral treaties like the Energy Charter Treaty (ECT), when such claims are brought by parties listed in the EU's sanctions regime. This marks the first time that the EU has adopted sanctions directly affecting ISDS rights, and it reflects a broader effort to close off legal avenues that may be used by sanctioned individuals or companies to challenge EU measures or to seek compensation.

The regulation, which came into force on 20 July 2025, goes even further. It not only bars designated Russian parties from bringing new claims, but also obliges EU member states to refuse to recognise or enforce any awards or interim measures rendered in ISDS proceedings initiated by such parties outside the EU. These awards are now considered to be contrary to public policy within the EU. Additionally, EU member states must not provide legal aid, nor cooperate in the enforcement or conduct of such proceedings, including by refraining from transmitting documents, providing court assistance, or participating in discovery. This approach is rooted in Article 75 of the Treaty on the Functioning of the European Union (TFEU), which authorises the EU to adopt restrictive measures to implement sanctions, even if such measures interfere with international agreements. The European Commission has justified the regulation by stating that it is necessary to prevent sanctioned persons from circumventing the impact of EU sanctions through arbitration claims.

One of the most striking aspects of the regulation is that it allows EU member states to pursue counterclaims against sanctioned Russian entities that have initiated or attempted to enforce ISDS claims in violation of the ban. The regulation explicitly permits EU states to seek damages in domestic courts from such entities, particularly in cases where the ISDS claims are considered abusive or obstructive to EU legal processes. These counterclaims must be brought before courts within the EU and are to be adjudicated under EU law and international law. This not only deters sanctioned persons from using arbitration to challenge sanctions, but also provides EU countries with a legal mechanism to recover costs and potentially secure compensation.


Source: Canva

Importantly, the regulation only applies to proceedings involving persons or entities listed under the EU's Russia-related sanctions. It does not affect ISDS claims brought by non-designated parties or those that do not concern EU sanctions. However, the broader implications of this regulation are significant. It introduces, for the first time, a sanctions-related exception to the recognition and enforcement of ISDS awards in the EU, and it creates legal uncertainty for investors who may be affected by future designations. Moreover, it challenges the long-standing principle of investment protection under international law, raising questions about how far the EU and its member states are willing to go in subordinating investment treaty obligations to foreign policy objectives.

The regulation also illustrates how sanctions are evolving beyond traditional economic tools to include procedural and legal instruments. By cutting off access to ISDS and neutralising its enforcement mechanisms, the EU is effectively shielding itself and its member states from legal exposure while reinforcing the integrity of its sanctions regime. This development is particularly relevant for businesses and investors operating in sectors with exposure to Russia or other sanctioned jurisdictions, as it signals a willingness by the EU to override traditional legal protections in favour of strategic policy priorities. As such, compliance with the evolving legal landscape is becoming increasingly complex and demands close attention to both EU sanctions law and international investment treaty frameworks.

SOURCES:

[1] "The EU's 18th sanctions package and its ban on ISDS outside the EU", News and Insights, Noerr, https://www.noerr.com/en/insights/the-eus-18th-sanctions-package-and-its-ban-on-isds-outside-the-eu.

[2] "EU combats ISDS claims over Russia sanctions", Sebastian Perry, Global Arbitration Review, 18 July 2025, https://globalarbitrationreview.com/article/eu-combats-russian-bit-claims-new-sanctions-package.

[3] EU adopts 18th package of sanctions against Russia, Press Release, European Commission, Jul 18, 2025, https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1840.

SANCTIONS & INTERNATIONAL INVESTMENT AGREEMENTS (IIAs)

Bilateral Investment Treaties (BITs) are agreements between countries that aim to protect foreign investments. They guarantee rights like fair and equitable treatment (FET), protection from expropriation (seizing of assets), and non-discrimination. When sanctions hurt foreign investors, by freezing their assets or banning operations, they may argue that these actions violate BIT protections. Some investors have already pursued such claims, arguing that sanctions amounted to indirect expropriation or breached their legitimate expectations under the treaty.

Key Cases and Claims :

Qatar Airways v. Saudi Arabia, UAE, Egypt, and Bahrain (2020–2021)

This case arose from the 2017 diplomatic and economic blockade imposed by Saudi Arabia, the UAE, Egypt, and Bahrain against Qatar. These four countries severed diplomatic relations with Qatar, closed their airspace to all Qatari aircraft, including Qatar Airways and imposed a broader set of unilateral economic measures, including travel and trade restrictions, on the basis of Qatar's alleged support for terrorism. Although these measures were not formally labeled as "sanctions" in a legal sense (i.e., they weren't mandated by the UN Security Council), they functioned de facto as unilateral sanctions—aimed at isolating Qatar economically and diplomatically.

Claims:

Qatar Airways initiated four separate investment arbitrations (one against each of the blockading countries) under bilateral investment treaties (BITs) to which Qatar was a party. The main claims were:

- Expropriation: Denial of airspace access was argued to be a form of indirect expropriation, as Qatar Airways could no longer operate lucrative routes and lost commercial and operational assets associated with those routes.

- Violation of Fair and Equitable Treatment (FET): Qatar Airways claimed the measures were arbitrary, politically motivated, and failed to provide due process or legal remedies—hallmarks of an FET violation.
- Denial of legitimate expectations: As a state-owned flag carrier, Qatar Airways argued that it had legitimate expectations that it would be able to operate in accordance with established air service agreements and bilateral treaties.

Sanction-Related Legal Issue : The case highlights the tension between political/diplomatic sanctions (even if informal) and international investment obligations. One key question raised was can such unilateral sanctions justify measures that harm foreign investors from the targeted state? The blockading states might attempt to defend their actions on grounds of public policy, national security, or even force majeure, although this would be tested against BIT protections.

Mohammad Reza Dayyani and others v. Republic of Korea (I)(II) (PCA Case No. 2022-12)

Source: Daewoo Electronics

This case revolves around a failed acquisition of Daewoo Electronics by a Malaysian-Iranian investor group—the Dayyani family. The deal was entered into with South Korea's state-owned asset manager. However, South Korea terminated the deal, citing concerns related to international sanctions on Iran. The core issue was that the Iranian background of the investor group raised sanctions compliance concerns, particularly in the context of UN Security Council sanctions and U.S. unilateral sanctions in effect at the time.

Claims:

The Dayyani family filed an arbitration under the Iran-South Korea BIT, arguing that:

- South Korea over-interpreted and misapplied the sanctions, and used them as a pretext to renege on the contract.
- This constituted a breach of the FET standard, especially since the investors had already complied with significant procedural steps and commitments.
- South Korea's conduct amounted to unfair treatment and denied legitimate expectations that the transaction would be completed in good faith.

The tribunal reportedly ruled in favor of the investors, finding that the government's reliance on sanctions went beyond what the actual UN sanctions required and thus violated BIT standards.

Sanction-Related Legal Issues :

- The case is significant because it examines a state's discretion in interpreting and applying sanctions, and whether that discretion can justify treaty breaches. It raises the issue of proportionality and due diligence—did the state properly assess whether the investor's activities were actually in breach of sanctions, or did it act overly defensively?
- The decision suggests that compliance with sanctions doesn't give a state an unlimited shield especially when international obligations toward foreign investors are at stake.

Stati and others v. Kazakhstan - Ascom Group S.A., Anatolie Stati, Gabriel Stati and Terra Raf Trans Traiding Ltd. v. Republic of Kazakhstan(SCC Case No. 116/2010)

Source: Canva

This case is not directly about sanctions, but it provides a useful illustration of how sanctions can be introduced into the background of a dispute, particularly in jurisdictional arguments. The Republic of Kazakhstan attempted to challenge the tribunal's jurisdiction by referencing activities by the claimants allegedly linked to violations of sanctions, specifically, they claimed that the Stati family's business dealings in South Sudan breached UN sanctions.

Kazakhstan argued :

- The investors used proceeds from their Kazakhstan investment to finance activities in South Sudan, which was under a UN arms embargo.
- These dealings allegedly rendered the investors unworthy of protection under the Energy Charter Treaty (ECT).
- The state invoked the "clean hands doctrine" and transnational public policy, suggesting that the investors' behavior elsewhere should affect their standing in the arbitration.

Tribunal's Findings :

- The tribunal rejected Kazakhstan's argument, holding that even if the allegations were true, they were not directly related to the investment in Kazakhstan.

- There was no sufficient evidence that the South Sudan conduct tainted the legality of the investment made in Kazakhstan.

Sanction-Related Legal Issues :

- This case illustrates the limits of using sanctions-related misconduct in other jurisdictions to attack the jurisdiction or admissibility of claims in investment arbitration. The tribunal underscored the principle that the legality of the investment at the time and place it was made is what matters not the investor's conduct elsewhere unless there is a direct and serious link.
- It shows that states may try to leverage sanctions rhetoric to bolster jurisdictional defenses, even when the sanctions themselves are not central to the investment dispute.

SOURCES:

[1] Qatar Airways Group Q.C.S.C. v. Kingdom of Saudi Arabia, 2020. https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1057/qatar-airways-v-saudi-arabia

[2] Mohammad Reza Dayyani and others v. Republic of Korea (I)(II) (PCA Case No. 2022-12). https://pca-cpa.org/en/cases/286/

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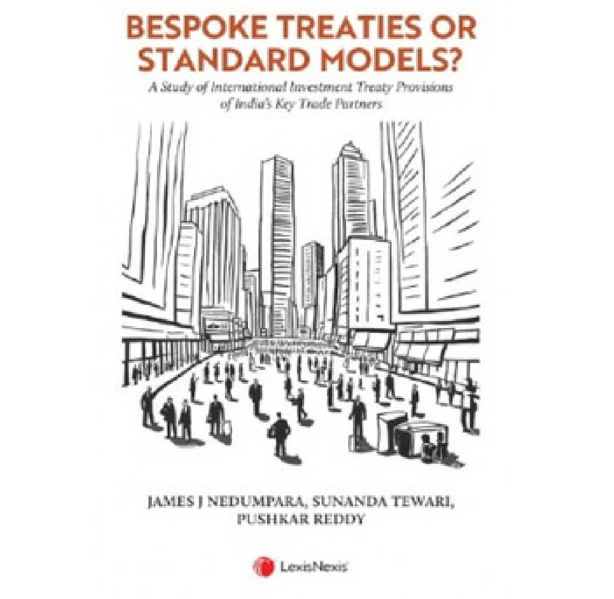
CTIL Launched its Latest Contribution to Investment Law Books - "Bespoke Bespoke Treaties or Standard Models? - A Study of International Investment Treaty Provisions of India's Key Trade Partners



Model Bilateral Investment Treaties (BITs) do not have a centralised framework, however, tailored and country-specific model investment treaties are emerging across the globe. At one point, most countries embarked on drafting and adopting their own Model BITs. CTIL's latest book offers a deep dive into the evolving landscape of international investment law from dissecting the architecture of IIAs and UNCITRAL WG III reforms to a comparative analysis of FTAs across India's key partners. It not only maps India's shifting investment treaty framework but also champions an interest-based approach to guide future negotiations, making it an essential ready reckoner for policymakers and treaty negotiators alike.

The book is authored by Prof. James J Nedumpara, Ms. Sunanda Tewaria and Mr. Pushkar Reddy. In addition, the book also contains chapter contributions by Mr. Virendra Chandel and Mr. Sarthak Raj. The book examines whether it is in India's interest to maintain a single Model BIT along the lines of the 2015 version or to adopt a bespoke model which is tailored to meet the demands and sensitivities of individual negotiating partners. Based on a critical analysis of the treaty texts, negotiation history, and legal scholarship, it explores the substantive elements of investment provisions and their differences across jurisdictions. It highlights the disparate practices among countries, many of which have not adhered to a single Model BIT or standard template.
Ultimately, the work recommends adopting an interest-based approach towards negotiating India's investment provisions.

CALL FOR CONTRIBUTIONS

Are you passionate about international investment law and treaty arbitration? Do you have insights, analyses, or case studies that could enlighten our readers? Investment Law Compass invites you to contribute to our upcoming editions.

We are dedicated to creating a dynamic platform for professionals, scholars, and enthusiasts to share their knowledge and perspectives on the ever-evolving landscape of investment law. By contributing, you'll join a vibrant community of experts committed to fostering a deeper understanding of global investment frameworks.

Submission Guidelines:

- Contributions should focus on investment law, arbitration, policy analysis, or related areas.
- Articles should be between 500-800 words.
- Submissions must be original, well-researched, and properly cited.
- All submissions will undergo editorial review to ensure quality and relevance.

How to Submit: Send your articles to [compass_ctilnewsletter@iift.edu] with the subject line "Newsletter Contribution." Please include a brief bio in your email.

Let's navigate the intricate world of investment law together. We look forward to your insightful contributions.

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