

Bilateral Investment Treaties and Investor Protection
(CBIC Series A: The Future Cross Border Corporate Landscape)

Date: May 8, 2015, Friday
Time: 08:30 to 10:00/(30 min. break)/10:30 to 12:00
Duration: 180 minutes
Venue: Theater 1
Committees: Cross Border Investment Committee with the International Trade Committee
(Joint session)

Synopsis: The rapid growth of foreign direct investment has been accompanied by proliferation of bilateral investment treaties (“BITs”) and claims by investors under them. According to UNCTAD, in early 2014, there were 2,787 BITs and investors had filed 568 cases under them. Each country represented at IPBA through its membership, for instance, is a party to one or more BITs. Investors entering into contracts with countries that are contracting parties under a BIT should be mindful of the available opportunities in negotiation, drafting and protection and planning. This session will sample the experience of the panellists and the countries represented by them in the use of contractual clauses in agreements made under a BIT. Examples of such clauses include investor indemnification against adverse changes to laws, grandfathering of investor contracts from the application of new laws that adversely affect them, defining as to who is an investor for purposes of application of a BIT, dispute resolution and choice of law and venue, etc. The session will also look into threshold planning issues such as the choice of jurisdiction through which an investor routes investment into a country based on the availability of a favourable bilateral or multilateral investment treaty.

Reference will also be made to the increasing role that international trade agreements (*i.e.*, FTAs, PTAs, RTAs, etc.) play in providing investor protection and ISDS mechanisms. The different approaches under a number of key agreements (*i.e.*, TPP, TTIP, CETA, etc.), with particular *focus* on the controversial proposals for ISDS sectoral carve-outs, the possibility of appeal systems, the complexities deriving from the ‘*spaghetti-bowl*’ effect of overlapping BITs and FTAs, etc., will also be discussed.

The workshop-type session hopes to develop a useful checklist on BIT investor protection issues and concerns.

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