



APEC-UNCTAD REGIONAL TRAINING COURSE ON THE CORE ELEMENTS OF INTERNATIONAL INVESTMENT AGREEMENTS IN THE APEC REGION

Presentations

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Peruvian Investment Disputes Coordination System

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Peruvian Investment Disputes Coordination System

- Previous situation
- Current situation: Law 28933
- Regional actions or projects

Previous Situation - 1

Context:

Liberalization and attraction of FDI (from 90's)

- Disputes arise and there was not an institutional structure
 - Representation of the Peruvian State was taken over by the Ministry of Foreign Affairs, that oversaw the coordination of the defense and hired international lawyers to represent us in ICSID. (Compañía Minera Internacional, Lucchetti SA)

Previous situation



Previous Situation - 2

- Ad hoc Committees were created in order to optimize the coordination and response of the Peruvian State in the arbitration proceedings (Aguaytía Energy; Duke Energy cases)
- Ad hoc Committees were chaired by the Ministry of Economy and Finance, but the representation and the recruitment of international lawyers continued to fall on the Ministry of Foreign Affairs.

Current Situation: Law 28933

- Law 28933 created the Investment Disputes Coordination System with the following objectives:
 - a) Improve the response and coordination within the public sector in order to face International Investment Disputes, enabling a timely and appropriate care.
 - b) Collecting the information of the agreements and investment treaties (BITs FTAs) that refer to international investment dispute settlement mechanisms.
 - c) Establishing a mechanism to alert the arising of any International Controversy Investment.
 - d) Centralizing the information regarding the International Investment Disputes

Application of the Investment Disputes Coordination System (Law 28933)



- Enacting a legal framework allowing a timely and effective care of the investment disputes that arise out between investors and the Peruvian State, providing an adequate level of coordination between relevant sectors, organizations and institutions.
- Establishing roles and competences for each of them within their functional capabilities and allocating resources that are necessary for these purposes.
- Establish a clear mechanism for registration and updating of the commitments made by the State in signing treaties or agreements on investment that refers to international mechanisms for dispute settlement.

Application of the Investment Disputes Coordination System (Law 28933)



- Provides a mechanism for alerting in order to get the appropriate and organized attention of the State when such conflicts arise.
- Establishes the composition of a multisectoral commission, with participation of Ministry of Justice, Ministry of Foreign Affairs and Ministry of Economy and Finance, and the various public entities involved, which may participate in the negotiations and in planning the defense strategy.
- Assign the responsibility of hiring lawyers and other professionals needed in cases that require the legal defense of the State in international investment disputes and provides budgetary mechanisms for the expenses arising from it.

Alert Mechanism



Legal Advisory Centre on Investor – State Disputes project



- Reasons for creating the Centre:
 - The exponential growth of agreements (BITs and FTAs) and the disputes arising from them.
 - Obstacles for the majority of developing countries in order to address the procedures of the ISDS:
 - Lack of permanent professionals in order to deal with defense
 - High costs of the State's defense in arbitration proceedings
- Objective of the Centre:
 - Enhance the capability of the States in order to face international investment disputes (prevention, advisory, representation, capacity building)

Legal Advisory Centre on Investor – State Disputes



- Characteristics
 - Intergovernmental
 - Independent
 - Legal and financially efficient in terms of cost - benefit.
- Services of the Centre
 - It should provide high quality professional services in the same way that most recognized lawyers do.

The Centre should provide a variety of services according to its budget and experience. Could be developed gradually services, defense equipment and training to Local defense.

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2 Centres?



- The UNASUR project
- The Central American countries and Colombia project