

# Bilateral investment treaties

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Discussions on Bilateral Investment treaties (BIT) have been since the late 1950's. While sweeping classification would contradict the treaties diversity, quite a number of common characteristics have emerged. The distinctive new BIT will include terms geared to offer certain, absolute treatment standards, for example, equitable and fair treatment; protection against nationalization or expropriation; comparative treatment standards; and recourse to settling of disputes (investor to state and state-to-state). Many of the Bilateral Investment Treaties also includes the provisions allowing money transfer and protection against civil disturbance and war (Adlung, Rudolf and Molinuevo, 2008). Usually, provisions of treaties will be applicable to investments upon establishment in the host state.

The central objective of these International investment treaties is the development, and the intentions of the parties, binding such treaties, are relevant for purposes of steering the treaty's legal interpretation. A long-standing justification for investment treaties has been their supposed value in encouraging new flows of investment between the two signatory countries. There are expectations that these treaties will encourage investments between the countries and this, in turn, translates into development of the economic potential of the host country. Most countries enter the bilateral agreements in order to have better assurances for their foreign investments alongside their domestic reforms. BITs are considered as treaties between governments, whereby the state parties who act as the potential host or home governments of the investments, make commitments to the other state's investors (Adlung, Rudolf and Molinuevo, 2008). It involves the direct negotiations between the governments, thereby

establishing the conditions and terms for investment by the nationals and companies of one country onto the jurisdiction of another.

BIT has a number of requirements in the international customary law. Firstly, it requires national treatment of foreign investments in the host country. It must also protect the rights of the contract. It must guarantee the transfer of hard cash to the home country. It must also restrict the use of performance needs; finally, it must provide room for disputes arbitration, which may arise between the investor and the host state.

This could be through the ICSID or the UNCITRAL. The advent of BITs has significantly impacted the practice, principles, notions and rules of the international investment law. There is an ongoing research and a great debate on the viability of the BIT as the codification factor of the customary international law. This implies as to whether the codes and principles apply to all countries. This is referred to as the *lex specialis* in law terms. BITs are never uniform in their language.

The differences lie in the compensation, coverage and the mechanism in settling disputes. BITs have revolutionized the practice of international law (Egger et al, 2004). The BITs govern mostly direct investments. Most countries find necessary to accept the BIT in exchange for proper protection than expected in the normal customary law. It is arguable that the formation of blocs by some countries may help in the production of improved treaty results, but all in all this still remains a dream to pursue.

There is a need to overcome obstacles to bring the different nations to a common business understanding. It may also be cumbersome for some

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states to gain the capital required for the bilateral trade. It may also have some lopsided contracts where one country aims at benefitting over the other. The Governments of the People's Republic of China and the State of Qatar entered into a treaty concerning the Encouragement and Reciprocal Protection of Investments. Investor protection is a vital element to the success and development of many states, since it affects dynamic of investment decisions and plays a critical role in a firm's value determination. The intentions of China and Qatar to create favorable conditions for investments prompted the signing of the Qatar-China treaty.

This was after realizing that investment between the two countries would contribute largely to their economic development. Therefore, the promotion, encouragement and protection of such investment would stimulate businesses and encourage investors, which would increase prosperity. The government of the state of Qatar also signed an agreement with the government of Turkey, to engage in trade activities. The two countries became the contracting parties. The treaty promoted greater economic cooperation, and both sides enjoyed investments in the other's territory.

The two countries, through the treaty, would recognize that there is stimulation in the flow of technology and capital. This would lead to the eventual development of the two countries in a wider perspective than ever before. This treaty similarly, as the one between Qatar and China, would promote the reciprocal encouragements and the protection of investments between the two sides. The treaty also agreed on the fair treatment that would maintain an extremely stable foundation for the investors. This would serve to ensure the maximum utilization of the economic resources. For <https://assignbuster.com/bilateral-investment-treaties/>

purposes of this paper, it is paramount to define and describe some issues and terms that are of relevant importance to the paper.

These definitions bring out the similarity between the two agreements carried out between Qatar and both China and Turkey. The definitions are contained in the article 1 of both the agreements. An investor is the natural individual, who derives his nationality from one of the contracting parties which, in this case, are the countries, in question. An investor could also imply to the corporations, government entities, business associations, and firms that are constituted under the law in either of the contracting parties and, at the same time, having their headquarters in the territory of that other contracting country