Dispute Prevention Policies - Lessons Learned from the Dominican Republic

Submitted by: Dominican Republic
Dispute Prevention Policies

Lessons Learned from the Dominican Republic

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### Dollars & Sense

Approximate total amount for which investors have sued in the cases that have been concluded:  
US$ 7,352,512,225  

Approximate total amount that has actually been awarded by the arbitral tribunals:  
US$ 1,293,302,727  

Approximate total amount for which investors have sued in pending cases:  
US$ 11,430,791,000

Keep in mind that these are just the award amounts...we still have to pay the lawyers and costs related to the arbitral proceedings!!!

### Prevention: Ways forward

Why are we signing BITs???

a. To attract investment into our country  
b. To protect the existing ones  
c. To push our government into a more transparent with best practices
Prevention: Ways forward

1. **Stop Signing BITs**

   - Examine the reasons why your country would want to sign a BIT with another country (i.e. most BITs were signed during formal State visits and were not carefully reviewed and/or studied).

   - Review the actual investment flows between both signatories, to determine if the agreement will really have a *raison d'être*. Do they really foster/promote a larger investment flow?

   - Analyze your country’s legal and institutional framework/situation and determine if foreign investments/investors are duly protected. (If they are, then there is no reason to sign a BIT; since the main purpose of the agreement is to PROTECT).

2. **Comprehensive Review of BITs in force**

   - Revise thoroughly the BITs your country is signatory to, and understand the obligations that to which the State is bound.

   - Denounce BITs that do not fulfill the expectations in which the Agreement was signed, or do not satisfy your country’s needs.

   i.e. Ecuador had a comprehensive review of all their IIAs and decided to denounce all those agreements that were not beneficial for their national interests. The Dominican Rep. – Ecuador Agreement was denounced in 2008 and in 2013 it will finalize.
Prevention: Ways forward

3. After Care Department
   - Divided into sectors
   - Create a network with the investors
   - Conduct a survey
   
   \[\text{Matrix sent to Trade & Investment Policy Department}\]

Prevention: As we see it in CEI-RD

1. Investor has grievances/problems with a government entity.
2. Investor communicates problems.
3. Aftercare Dept. identifies specific investment bottlenecks that affect foreign investors.

\[\text{Trade & Investment Policy Department}\]

\[\text{Government Entity}\]

4. T&IPD works the specific policy issues that need tending to, and/or liaises with government entities to mediate.
3. **Inter-institutional Prevention Efforts**

   - Create a public sector inter-institutional team that can work with investor grievances and has mandate to act fast and efficiently. This team ideally would be made up a coordinating agency, IPA, Foreign Trade Office, Attorney General, National Competitiveness Council, representatives of the Dispute-Prone sectors, Ministry of Foreign Affairs, among others. Other countries have established specific entities that solely work on this. (i.e. South Korea instituted the Investment Ombudsman Office where 80% of investor’s grievances are solved). **Leading Agency - Mandate**

   - Create Awareness of the international obligations, to which the State is bound to, across all levels of Government. Most investor-State Disputes are originated at a municipal or lower level of government, and these entities must be made aware of the consequence of any arbitrary action.

   - Create a Network

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3. **Inter-institutional Prevention Efforts**

   - **Investment Cabinet**
     - President
     - Minister of Foreign Affairs
     - Minister of Trade
     - Minister of Economy and Planning
     - Treasury Minister
     - IPA
     - Related Ministry
What can CEI-RD do now?

“Sitting down, does not mean settling down” – Engage in Conciliation.
Do not resist negotiations, sitting down with the investor is the perfect opportunity to solve in a amicable manner any grievance.

Mediation: Mediator must have
• Great reputation
• Honorable
• Transparent
• Impartial
• Great access to government officials and the President or Prime Minister
• Great impact on investors

UNCTAD
IIA Section

THANK YOU FOR YOUR TIME.

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