Czech Experience with Investor-State Arbitration and Its Evolving Investment Treaty Policy

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General information

- Over 90 bilateral investment agreements in force
- 23 amending protocols
- 1 multilateral agreement (Energy Charter Treaty)
- More than 27 investment disputes
BITs in 1990s

- First BIT signed in 1989 with Belgium – Luxembourg Economic Union

- BITs concluded primarily with developed countries

- Main aim to attract foreign investors
Investment arbitrations

- First investment arbitration initiated in 1999
- Mainly under BITs concluded in 1990s
- The most frequent BITs - BITs with EU countries
Current negotiations of BITs

• New BITs
  • Concluded with developing countries to protect Czech investors
  • More than 30 ongoing and over 10 new negotiations

• Renegotiation of existing BITs
  • Inconsistency with EU law
  • 31 BITs to be renegotiated
New Czech model BIT

- Precise definition of investment
  - The criteria of the Salini test
  - Every kind of asset invested directly

- Precise definition of investor
  - Dual citizenship (Natural Person)
  - Substantive business operations of company (Juridical Person)
New Czech model BIT

• Denial of Benefits
  • Investors who has not owned or controlled the investment at the time of the alleged breach of an obligation under BIT

• Right to regulate
  • Measures necessary to pursue legitimate public policy objectives, such as social, environmental, security, cultural diversity, public health and safety

• Expropriation
  • Definition of indirect expropriation
New Czech model BIT

- **Transfers**
  - Restriction of transfers in case of a balance-of-payments difficulty

- **Investor-State Dispute Settlement**
  - Time limits
  - Rules on cost allocation
  - Normative sources which the tribunal shall apply
  - Rules on third party funding
  - Costs deposit
Thank you for your attention!

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