

Arbitration in Foreign Investment: A Meeting Point between Investor Interest and Social Progress

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This study aims to reflect on the principles to be followed by the concrete weighting of interests of arbitration decisions to resolve disputes between the investor and the host State. Thus, it analyzes the phenomenon of arbitrage as a paradigm in the solution of emerging foreign investment litigation, its benefits and its contribution to greater legal security in economic relations and social progress. Considering the legal concepts and the most relevant problems in the relations between the investor state and the host State, we intend to establish a rationale based on equity, proportionality and the right balance between the interests of the States concerned: a meeting point between the interest of the investor and the social progress of the host state. We follow a strictly conceptual methodology, implementing a comparative law analysis. We will present a review of the national and international literature and a jurisprudential analysis. Globalization imposes new forms of investment protection and recourse to other means of settling disputes, including recourse to investment arbitration. It is intended to avoid the courts of the recipient country, with all resulting problems, e.g. the lack of impartiality and celerity. Arbitration decisions should reflect the interests involved, avoiding a purely economic analysis of the problems. Arbitrage should bear in mind the fact that foreign investment is an engine for social and civilizational progress. International arbitration under the umbrella of ICSID, complemented by bilateral treaties (BIT) and investment contracts, requires an approximation of the two major objectives of foreign investment: efficiency in return of investment and social progress of the host state, making all process and guaranteeing human rights in presence.

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