Investment Protection under the Energy Charter Treaty

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Overall Purpose of ECT Investment Provisions

- Strengthen international energy cooperation through promotion of FDI;
- Promotion, Protection and Treatment of Investments;
- “Win-Win”- Situation for foreign investors and host countries:
  - FDI helps to secure energy supply from energy-rich countries;
  - FDI helps to exploit existing energy resources thus improving security of supply and developing export potential, modernization of energy infrastructure, transfer of know how and technologies, etc.

Creation of “a level playing field of rules to be observed by all participating governments, thus minimising the risks associated with energy related investments and trade”
Strengthen international energy cooperation

The Investment Group of the Energy Charter is subsidiary body for the discussion of all investment-related issues covered by the Treaty. Its main tasks are:

- To provide a policy forum;
- Promote investments through preparation of country reports concerning investment climate and market structure;
- Review exceptions to national treatment principles in order to establish a level playing field for foreign and local investors;
- Share experiences on recent developments in investment-related energy policies of member countries;
Recent review of ECT provisions in promoting low-carbon investments

Preferred policies to facilitate the transition to low-carbon economy

- Improving energy efficiency: 100%
- Increasing share of RE: 79%
- Research and development on low-carbon: 57%
- Other: 7%
Recent review of ECT provisions in promoting low-carbon investments cont.

Preferred investment policies related to promoting low-carbon investments

<table>
<thead>
<tr>
<th>Policy</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Incourage synergies of investment and climate change</td>
<td>93%</td>
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<tr>
<td>Extend ECT investment protection to low-carbon in making investment phase</td>
<td>29%</td>
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<tr>
<td>Promote investment protection to &quot;Charter efficiency projects&quot;</td>
<td>57%</td>
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<td>Removing barriers and promoting access to capital</td>
<td>43%</td>
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<tr>
<td>Removing barriers and promoting technology transfer</td>
<td>57%</td>
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<tr>
<td>Other</td>
<td>7%</td>
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Key ECT provisions concerning investment protection

- **General standards of treatment (after entry)**
  - Fair and equitable treatment in accordance with international law;
  - National treatment – foreign investors must not be treated less favourably than their domestic counterparts;
  - Most favoured nation (MFN) treatment – i.e. non-discrimination among investors of different foreign nationality;

- **Protection of foreign investors**
  - Protection of individual investment contracts;
  - Employment of key personnel;
  - Guarantees of compensation based on international standards;
  - Guarantees of free transfer and repatriation of capital and profits;

- **Dispute settlement**
  - In case of an investment dispute, an investor can submit the dispute for resolution to local courts or international arbitration tribunal.
Conclusions

Investment arbitration as seen from different viewpoints (1)

From the viewpoint of investors:

- Reduces political risk associated with investment in Contracting Parties
- Enables investors to focus on manageable (and bankable) commercial/industrial risk and to evaluate investment opportunities accordingly…
- …hence increasing investors’ willingness to invest
Conclusions

Investment arbitration as seen from different viewpoints (2)

From the viewpoint of States:

- Provides a check on arbitrary exercise of State power

- By increasing investors’ willingness to invest, creates more competition for foreign direct investment opportunities in the host State…

- …thereby enabling the host State to obtain more favourable terms and maximise benefits from national inward investment opportunities
THANK YOU

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