BUSINESS LAW

Basics of international investment law

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Types of foreign investment

- foreign direct investment (FDI)
  - direct management of the foreign investment
  - it can be in the form of:
    - greenfield investment
    - investing into already existing enterprise
    - joint-venture
- indirect or portfolio investment (e.g. buying foreign shares, bonds)

Importance of foreign investments

- capital
- modernisation, new technologies
- labor force gets more skilled
- more efficient management technics
- foreign markets
- there are also disadvantages as well...

Risks foreign investors might face

- commercial risks
- non-commercial risks:
  - expropriation
  - currency inconvertibility
  - profit repatriation limitations
  - devaluation
  - political instability
  - deterioration of investment environment

Treatment of foreign investors

- „minimum standard” principle
- national treatment principle
- most favored nation treatment principle

Expropriation

- expropriation (individual measure) - the taking by the state of private property for public purposes with compensation
- nationalisation (general)
- creeping expropriation (taking *de facto* control over property rights)

Conditions for lawful expropriation

- public purpuse
- non-discriminatory
- due process of law respected
- compensation
  - Norwegian Shipowners’ case („just” compensation)
  - Chorzow Factory case („fair” comp.)
  - Hull doctrine („promp, adequate, effective”)
  - Calvo doctrine
  - UN („appropriate” comp.)

Instruments for the protection of foreign investments

- domestic legislation
- individual agreements btw the host state and inv.
- bilateral investment treaties (BIT)
- multilateral treaties (ECT, ICSID, NAFTA)
- investment insurance (MIGA)

Bilateral Investment Treaties (BIT)

- duty to provide fair and equitable treatment
- prohibition of discrimination
- conditions for expropriation
- dispute resolution

Thank you!

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