



## Foreign Investment Protection in the Wine Sector

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# Roadmap

- Using Investment Treaties to Achieve International Protection of Investments in the Wine Sector
- Resolving Investment Disputes relating to the Wine Sector
- Conclusion

# PART I – INTERNATIONAL INVESTMENT TREATIES

1. What Are They?
2. How Can They Be Used By Wine Sector Actors?

# International Investment Treaties

- What? Bilateral or Multilateral
- Why? Protection of “Foreign Investment”
  - Can an investment in a Wine Enterprise be considered a protected “Investment”?
- Who? “investor”
- How? Different types of Protection
- When? Before investing

## Examples of Treatments (1)

Swiss-China BIT (2010) – Article 4(2)

- (2) Each Contracting Party shall in its territory accord investments or returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments or returns of its own investors (national treatment) or to investments or returns of investors of any third State (MFN treatment), whichever is more favourable to the investor concerned.

## Examples of Treatments (2)

Swiss-China BIT (2010) – Article 4(1)

### **Article 4**

#### **Protection, treatment**

- (1) Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension or disposal of such investments.

## Examples of Treatments (3)

Swiss-China BIT (2010) – Article 6

### **Article 6**

#### **Expropriation, compensation**

- (1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party, unless the measures are taken in the public interest, on a non-discriminatory basis and provided that provisions be made for compensation. Such compensation shall amount to the market value of the

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## PART II – INTERNATIONAL INVESTMENT DISPUTES

1. What Is An International Investment Dispute?
2. Real Life Examples Of Disputes Which Could Happen In The Wine Sector

# International Investment Disputes (1)

- What? “Investment Disputes”
- Who? Between an Investor and a State
- Can an investment in a Wine Operation give rise to an “investment disputes”?
- How? Mediation, Courts, Arbitration
  - Swiss-China BIT (2010)
    - 6 months cooling off period – NEGOTIATIONS
    - Courts; or (i.e. either or or)
    - Arbitration (ICSID or UNCITRAL)

## International Investment Disputes (2)

- Examples:
  - *VPB v. Zimbabwe*:
    - Dutch investors acquired multiple farms in Zimbabwe
    - Legislative reform regarding the ownership of agricultural land (1992)
    - Willing buyer – willing seller – State looked to acquire for fair and prompt compensation then in 2005, compulsory acquisition without compensation and removal of right to challenge acquisition
    - Invasion of farms and *de facto* expropriation – absence of police protection
    - Dutch farmers sought compensation before two arbitral tribunals for their ventures
    - Result – over USD 300 million in compensation for all the estates expropriated + USD 2 million in moral damages

## International Investment Disputes (2)

- Examples:
  - *Micula et. al v. Romania*
    - Swedish investors developed a spirits business in Romania – invested around EUR 2.5 billion, allegedly
    - Complaining about black market (starts in 2004) and failure to police it by the State (tags, investigations, or means are not put in place to curb that issue, they allege)
    - Detrimental effect on their revenues and profits
    - Filed for arbitration in October 2014
    - Seeking compensation for loss of revenue/profit

# Conclusion

- Concluding remarks
  - If you want to be protected, better think about the protection before making the investment
  - There is almost always a recourse against unjustified measures which prove detrimental to your business
  - Since 1950's, 30 cases to date at ICSID relating to F&B investments
  - Wine and spirits sector would benefit from protecting international investments using these mechanisms, because it is a sector at the hand of the regulator(s).

# Thank You!

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