Some quotes from law firms advising investors on challenging covid-19 measures (Investor-State Dispute Settlement)

• “When the actions of a government – even if nominally well-intentioned – cause injury to a foreign investor or its investment, international investment law provides protection as well as effective means of recourse against the State … When these protections are violated, the investor potentially may bring an international arbitration against the State to vindicate its rights, and may enforce the resulting award against the State’s assets, including assets that are held outside of the country where the investment is located.”


• International investment agreement obligations “apply even when government measures are implemented to respond to national emergencies like COVID-19. For example, foreign investors successfully leveraged bilateral investment treatment to recover losses related to Argentina’s 2001-2003 emergency economic measures.”


• “I definitely think that some states will end up losing cases to investors – notwithstanding the way that it might come across as unfair.”

https://register.gotowebinar.com/recording/viewRecording/1737303544918790668/3344544353965375248/pia@corporateeurope.org?registrantKey=253532248761585708&type=ATTENDEEMAILRECORDINGLINK

• Re ISDS claims for COVID-19 measures: “Where a company prevails in its investment treaty claims, it may be able to recover all the losses that flowed from the government measures that damaged the company. This may extend beyond the amounts initially invested (actual cost) to going concern value, including lost future profits.”

Some quotes from law firms continued & unctad

- **Shareholder claims** are possible for COVID-19 measures: “The directors of companies should also inform their shareholders that the shareholders might have investor-State arbitration claims in their own right, separate from the company. As noted above, any entity in the corporate chain of ownership might have rights to investor-State arbitration claims.”
  

- “Companies should be aware of the potential value of their investor-State arbitration claims whenever they are negotiating with States or State entities. Investor-State arbitration claims (or the threat thereof) can be a useful lever in such negotiations. This is especially true if negotiations concern the re-negotiation of tariff rates or other economic aspects of a contract with a State entity.”
  

- **UNCTAD re COVID-19 measures**: “Although these measures are taken for the protection of the public interest and to mitigate the negative impact of the pandemic on the economy, some of them could, depending on the way they are implemented, expose governments to arbitration proceedings initiated by foreign investors under IIAs and/or investor–State contracts.”