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# Investment Protection in Africa

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The *risks and rewards of investing in an* ***African*** country understandably have a significant influence over exactly where and when foreign investors choose to invest and over evaluations of ongoing investments. The host countries in which foreign investors do invest must similarly consider the risks of hosting foreign investment, some of which may come in the form of transactional or political costs, as they weigh against the myriad benefits that follow. Foreign investors seek new markets and resources. The potential to achieve growth by reaching new consumers or engaging a new source of skilled labor is a compelling and real motivation to invest in a foreign country. Host governments seek economic growth, and foreign investment in greater volume and sophistication often contributes to that goal. Countries benefit from the injections of capital and the opportunities for their citizens that it often brings. They can also face risks such as those mentioned above. Perhaps the predominant method for addressing these risks in order to streamline such mutually beneficial foreign investment today is the *bilateral investment treaty, or BIT*.

A BIT is a treaty agreement entered by two countries that establishes a legal regime for investment between them. Most BITs contain provisions concerning transfers of currency, host governments' fair and equal treatment of investors, expropriation, and dispute resolution, among many others. As of 2011, the United Nations approximated the number of BITs worldwide at roughly 2,800. This number continues to increase. And yet the dispute resolution terms commonly found in most BITs have drawn some controversy in recent years.

Standard BIT dispute resolution clauses typically provide for binding arbitration between the host government and the investor itself, often at the ***International Centre for Settlement of Investment Disputes (ICSID)*** in Washington, D.C. or at least under the rules established by the ICSID Convention. Some countries decry this practice as an affront to their sovereignty, arguing that their domestic courts ought to have jurisdiction of any such disputes. In one notable instance, investors filed an ICSID claim alleging that provisions of South Africa's Minerals and Petroleum Resources Development Act that served to promote the country's social equality goals amounted to a prohibited expropriation of their investments. The government of South Africa resisted this challenge to its internal legislative priorities and eventually prevailed in arbitration; yet it has since revised its foreign investment approach as a result.

Investors, on the other hand, express concerns about receiving fair treatment in the local courts of their hosts, particularly in countries where the rule of law and judicial independence are still developing. This debate continues today, it has influenced the composition of newer BITs and the actions of states and investors alike, and there are alternatives to resolving disputes through international arbitration. Yet overall, and especially in Africa, the number and importance of BITs continues to increase.

Many African countries continue to grow at impressive rates, and a portion of such growth very likely results from foreign investment. In general, local laws implementing the standard pro-investment provisions often required by BITs correlate strongly with higher levels of foreign investment. Studies show that foreign investors are actually willing to pay more to acquire assets in countries that offer the protection of international investment agreements such as BITs. And so while the economies of countries such as South Africa continue to grow and their governments evaluate their terms for hosting foreign investment, investment protection principles as promoted by investment treaties such as BITs remain important fixtures in the investment landscape throughout Africa.