

United States – Mexico – Canada Agreement (USMCA)

Investment and Investor-State Dispute Settlement Mechanism

The objective of the chapter is to improve the content and scope of **foreign investment protection** in terms of **arbitration and negotiation of agreements**, as well as to maintain a **modern Investor-State Dispute Settlement mechanism** with **clear procedural rules that provide certainty**.

General provisions

- NAFTA includes numerous substantive State obligations granted to investment and foreign investors. In addition, it contains an arbitration resource that establishes **binational panels for the resolution of Investor-State disputes**.
- USMCA maintains the same substantive obligations and the **arbitration resource for government covered investments contracts** in the following sectors: **oil and gas, power generation, telecommunications, transportation and infrastructure projects**.
- For other **sectors** (without contracts), the causes that receive this treatment are reduced to three main areas: **National Treatment; Most-Favored-Nation Treatment and Direct Expropriation**. To start a dispute against the State in these sectors, it is mandatory to go first to national courts and wait at least 30 months from the date the proceeding was initiated.
- **Violation of contracts as a matter of arbitration was eliminated**.
- Any **violation of the other disciplines** provided for in the Investment Chapter **may be appealed in the State - State dispute resolution procedure**.
- To be able to resort to the mechanism, the investor must have a **contract signed by the authorities** of the State receiving the Investment. The contract is only the "**access key**" to arbitration. The **provisions of the contract** itself may **not be arbitrated** under the Treaty.
- The Investor-State Dispute Settlement mechanism between Mexico and the United States has two modalities:
 - I. Violation of the obligations of National Treatment, Most-Favored-Nation Treatment and Direct Expropriation; and
 - II. Violation of any breach of the Investment Chapter.
- It was agreed that the **Investor-State Dispute Settlement** mechanism will **not apply to Canada**.