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All correspondence should be addressed to:
Dr. Michael J. Moser
Journal of International Arbitration
c/o Hong Kong International Arbitration Centre
38th Floor, Two Exchange Square, 8 Connaught Place, Hong Kong S.A.R., China
Tel: +852 3512 2398, Fax: +852 2877 0884, Email: editorjoia@kluwerlaw.com
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Investment Arbitration in Costa Rica

Dyalá Jiménez-Figueres & Karina Cherro*

Costa Rica signed most of its investment treaties over the last two decades, providing substantive protection and an international means of dispute resolution to foreign investors of many countries. This article provides an overview of the salient provisions included in those treaties that deal with international arbitration, as well as of the cases in which Costa Rica has acted as respondent, in order to offer an outlook of the investment protection regime in force in this country.

Costa Rica has entered into twenty-five treaties that establish a legal framework for the promotion and protection of foreign investment.[1] Of these, there are seventeen bilateral investment treaties (BITs) and eight free trade agreements (FTAs) that include chapters on the subject. Seven of the seventeen BITs have not yet entered into force.[2] Therefore, there are eighteen treaties in force today to which Costa Rica is a party that provide, directly or indirectly,[3] certain rights to foreign investors. In addition, those treaties grant standing to the foreign investors to bring international claims against the host state in case of alleged violations of the state's obligations under those treaties.

Costa Rica signed most of its BITs with developed countries, having signed only five with developing countries.[4] The first of these agreements was the United

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* Dyalá Jiménez-Figueres, Principal of Chilean-based firm DJ Arbitraje, is arbitrator and consultant on international commercial arbitration-related matters. Karina Cherro is a consultant on international trade-related matters and an associate at DJ Arbitraje.

1 Official information found in www.comex.go.cr. Other unofficial information may be found in www.sice.oas.org/ctyindex/CRI/CRIBITs_e.asp.

2 These agreements are: BIT between the United Kingdom and Costa Rica (signed on Sept. 7, 1982), BIT between Ecuador and Costa Rica (signed on Dec. 6, 2001), BIT between the Czech Republic and Costa Rica (signed on Oct. 28, 1998), BIT between Finland and Costa Rica (signed on 28 Nov. 2001), BIT between The Netherlands and Costa Rica (signed on 21 May 1999), BIT between the Economic Union of Belgium-Luxemburg and Costa Rica (signed in April 2002), and BIT between the People's Republic of China and Costa Rica (signed on Mar. 25, 1999).

3 The three FTAs entered into by Costa Rica with Canada, Chile, and The People's Republic of China incorporate the respective BITs in their chapters dedicated to the promotion and protection of investment. Although the BIT with The People's Republic of China is not in force yet, process is underway in Congress.

4 Argentina, Chile, Ecuador, Paraguay, and Venezuela. Two FTAs to which Costa Rica is a party involve developing countries from Central America and the Caribbean.

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Kingdom-Costa Rica BIT, which was signed in 1982 but is not yet in force. The first agreement that actually entered into force was the France–Costa Rica BIT, in November 1994. As for the FTAs, the first one was signed in 1994, with Mexico, and they have all entered into force within the last ten years.

In this context, there have been a total of six cases brought by foreign investors against Costa Rica, all under the auspices of the International Centre for the Settlement of Investment Disputes (ICSID). The first one was initiated by an investor from the United States in 15 May 1995 on the basis of an agreement specifically entered into for that dispute, while the most recent one was filed in February of this year, on the basis of the Kingdom of Spain-Costa Rica BIT.

The purpose of this article is twofold: to provide an overview of specific aspects related to investment arbitration that are found in the treaties to which Costa Rica is a party[5] (section 1) and to describe the ICSID cases in which Costa Rica has participated as respondents (section 2).

1 INTERNATIONAL LEGAL FRAMEWORK PROVIDED BY COSTA RICA CONCERNING INVESTMENT ARBITRATION

Since there is no special foreign investment law in Costa Rica, the international legal framework that is applied specifically to a foreign investment will be that of the applicable treaty.[6]

All of the treaties entered into by Costa Rica provide that the investor and the host state must attempt to settle the disputes amicably through consultations or negotiations before submitting the disagreement to arbitration. The time limit for such cooling-off period is generally six months.[7]

In general, in the treaties entered into by Costa Rica, disputes between foreign investors and the host state are referred to either local courts or international arbitration.[8] Indeed, they tend to include some version of the so-called 'fork in the road clause', which obliges the investor to choose between the host's state domestic courts or international arbitration before starting the litigation. Many treaties provide that the choice made by the investor between the two procedures is final and those that allow the investor to begin local proceedings, require it to relinquish them before exclusively settling the case

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5 A chart showing the aspects that are relevant to the dispute resolution issues in each of those treaties – and that are discussed presently – is attached as annex to this article.

6 The Costa Rican Constitution, laws and regulations provide for a general framework for the protection of property, the principle of non-discrimination, as well as administrative and judicial proceedings that respect due process, which are applicable in general to all foreign investments.

7 Except the BIT with Chile (five months) and the FTA Central America-Dominican Republic (five months).

8 In the treaties with Korea and Germany, the only forum is international arbitration.

through arbitration. The requirement for that is that the local proceeding be still pending, with no final decision being rendered.[9]

Should investors opt for international arbitration, in all treaties the applicable rules are those of the ICSID. In most treaties, there is a sort of 'cascade' analysis that must be made of the relevant provisions. In this sense, the first choice is the ICSID Rules of Arbitration, in case the signatories are parties to the Convention on the Settlement of Investments Disputes between states and National of Other states (the 'Washington Convention'). As a second choice, which operates in case one of the signatories is not a party to the Washington Convention, the dispute must be referred to the ICSID Additional Facility Rules ('ICSID AF Rules'). This will only be applicable in case the state signing with Costa Rica is not party to the Washington Convention since Costa Rica is a party thereto, since 1993.

Finally, as default, reference is made to the United Nations Commission on International Trade Law Arbitration Rules ('UNCITRAL Rules'). Assuming that Costa Rica will not denounce the Washington Convention any time soon, this set of rules will not be applied to disputes arising from the treaties presently in force for Costa Rica, so in those treaties with the 'cascade' provision, investors are left in practice with either ICSID Rules or ICSID AF Rules.

There are two agreements that give the investor the possibility of choosing between the ICSID Rules and the UNCITRAL Rules, whether the contracting states are parties to the Washington Convention or not: the Argentina-Costa Rica BIT[10] and the Switzerland-Costa Rica BIT.[11] In addition, the FTA among Central America, Dominican Republic and the United States (DR-CAFTA) allows claimant investors to choose among the ICSID Rules (provided that the states involved are parties to the Washington Convention), ICSID AF Rules (provided that at least one of the states involved is a party to the Washington Convention), or UNCITRAL Rules.

In the case of both, the Canada-Costa Rica BIT and the DR-CAFTA, a salient characteristic is that a claimant investor must bring the claim within three years after it has become aware or should have become aware of the alleged violation and the resulting losses or damages.[12]

On the other hand, all but one of the treaties[13] require that the investment be made in accordance with the laws of the host state in order for it to be protected by the respective treaty.

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9 An exception to the fork-in-the-road rule relates to the decision regarding compensation for expropriation. Most treaties allow the investor to review the compensation offered by the host state on account of an expropriation before local courts or administrative authorities.

10 *See* art. 12(5) of the Argentina-Costa Rica BIT.

11 *See* art. 9 of the Switzerland-Costa Rica BIT.

12 *See* art. XII (3)(c) of the Canada-Costa Rica BIT.

13 The Kingdom of Spain-Costa Rica BIT.

In terms of umbrella clauses, it appears that no treaty in force between Costa Rica and other states includes such a clause, although the DR-CAFTA includes 'investment agreements' under the scope of the investment dispute resolution mechanisms.

It is interesting to observe that although Costa Rica has entered into a wide variety of investment-protection treaties, from simple formulas such as the one with Spain, to highly detailed treaties such as the Canada-Costa Rica BIT, they all have basic similarities. It would seem that although there is no 'model Costa Rica BIT', Costa Rica makes an effort to negotiate consistent rules among the various treaties.

Having surveyed the general provisions of the treaties, what follows is a short summary of the cases that have been brought against Costa Rica by foreign investors before the ICSID.

2. ICSID CASES INVOLVING THE REPUBLIC OF COSTA RICA

As mentioned (paragraph 2 *Supra*), there have been six foreign investment arbitration cases brought against Costa Rica. Of those, two have resulted in final awards, one was withdrawn, and three are pending. Of the latter, two are related proceedings governed by the same BIT, with a similar set of facts and identical arbitral tribunals, for which an award is pending. The other was registered as recently as two months ago.

2.1 *Compañía del desarrollo de santa elena s.a. v. republic of costa rica*[14] (the '*santa elena* case')

The first international arbitration claim brought by a foreign investor against Costa Rica is the Santa Elena case, registered by ICSID on 22 March 1996.[15] As mentioned, jurisdiction in this case was not found in a BIT but rather in an agreement between the governments of Costa Rica and the United States set out in respective letters of consent executed by each of the governments during the month of March 1995.[16] Both parties were signatories to the Washington Convention.

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[14] *Compañía del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica*, ICSID Case No. ARB/96/1.

[15] For an analysis of the Santa Elena Case, *see* Alan Redfern et al., *Teoría y Práctica del Arbitraje Internacional*, 658–671 (La Ley ed., Aranzadi 2007).

[16] *See* para. 26 of the Santa Elena case Final Award.

This was a straightforward case in that there were no jurisdictional objections.[17] As to the merits, the case was also relatively simple since the parties agreed that the main issue in dispute was the determination of the compensation that Costa Rica owed to the investor as a result of an undisputed expropriation of certain property.[18]

Compañía del Desarrollo de Santa Elena SA (CDSE) was a Costa Rican company established in 1970 with the main objective of acquiring certain property in Costa Rica and exploiting it for touristic purposes. The majority shareholders of CDSE were United States citizens.[19] On 5 May 1978, Costa Rica expropriated the property by means of an executive decree for conservation purposes. At the time of the expropriation, no premises had been built on the property, but design, financial and projects of other nature had been developed. Costa Rica initially offered USD 1.9 Million as compensation for the expropriation (as established in the mentioned decree), but CDSE requested USD 6.4 Million. Costa Rica later offered USD 4.4 Million as a result of a second appraisal carried out by the government in 1993.[20] In its Memorial, CDSE increased its claimed compensation to an amount of USD 41.2 million,[21] which it revised downward to USD 40.3 million in its Reply.[22] It also indicated a 'worst case scenario' amount of USD 34 million.[23] On its part, Costa Rica indicated that the amount had to lie somewhere between USD 395,000 and USD 10 million.[24]

As mentioned, the 'core issue' that had to be resolved by the arbitral tribunal was the value of the property.[25] The parties' exchanges and the arbitral tribunal's discussion therefore related essentially to this point.[26] The parties agreed that the appropriate standard to be applied was the fair market value, but they did not agree on the date of the valuation nor the value itself of the property.

On the first issue, claimant argued that the appropriate date of valuation should be the 'present day value' (undiminished by the environmental restrictions),

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17 Although Costa Rica initially indicated it might submit jurisdictional objections (para. 11 of the *Santa Elena* case Final Award), none were submitted.

18 *See* paras. 34, 54, and 56 of the Santa Elena case Final Award.

19 *See* para. 1, *id*.

20 Amounts according to the Colón-USD Exchange rate applicable at the relevant times (*see* paras. 17, 19 and 23 of the Santa Elena case Final Award). Amount numbers are rounded.

21 *See* para. 29 of the Santa Elena case Final Award.

22 *See* para. 57, *id*.

23 *See* para. 58, *id*.

24 *See* para. 59, *id*.

25 *See* para. 28, *id*.

26 Notwithstanding, a first decision that the tribunal had to make was that of the applicable law to the merits, since CDSE alleged that Costa Rican law as applicable while Costa Rica invoked international law. The arbitral tribunal found that international law governed the issue in dispute. *See* paras. 64–67 of the Santa Elena case Final Award.

while Costa Rica asserted that it had to be 5 May 1978, the date of the expropriatory decree.[27] The tribunal sided on this point with Costa Rica, since:

> As of that date, the practical and economic use of the Property by the Claimant was irretrievably lost, notwithstanding that CDSE remained in possession of the Property. As of 5 May 1978, Claimant's ownership of Santa Elena was effectively blighted or sterilised because the Property could not, thereafter, be used for the development purposes for which it was originally acquired […] nor did it possess any significant resale value.[28]

On the issue of the value itself, and given the decision cited above, the tribunal assessed the appraisals that the parties made in 1978 (USD 1.9 Million and USD 6.4 Million), without considering appraisals or amounts developed after that date.[29] The tribunal determined that USD 4.15 million was a 'reasonable and fair approximation of the value of the Property at the date of its taking.'[30] The tribunal went on to determine that compound interest was appropriate given the circumstances of the case and ordered Costa Rica to pay a total amount of USD 16 million to CDSE.[31]

2.2 *Alasdair Ross Anderson and others v. Republic of Costa Rica*[32] (the '*Alasdair case*')

The second investment arbitration case against Costa Rica was registered more than a decade later, on 27 March 2007, on the basis of the Canada-Costa Rica BIT. The claim was initially submitted in 2004 by a 'large number of individuals and companies from several different nationalities',[33] but it was ultimately registered on behalf of 137 individual claimants of Canadian nationality.[34] Claimants in the Alasdair case lost moneys they had invested in a business operation that was later found to be a Ponzi scheme by Costa Rican authorities. Claimants alleged that Costa Rica failed to effectively protect their individual investments under several provisions of the Canada-Costa Rica BIT.[35]

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27 *See* para. 75, *id*.
28 *See* para. 81, *id*.
29 *See* para. 90, *id*.
30 *See* para. 95, *id*.
31 *See* paras. 107 and 111(1), *id*.
32 *Alasdair Ross Anderson and others v. Republic of Costa Rica*, ICSID Case No. ARB(AF)/07/3.
33 *See* para. 2 of the Alasdair case Award.
34 *See* para. 3, *id*.
35 In the tribunal's words, '[c]laimants alleged that Costa Rica, by failing to provide proper vigilance and governmental regulatory supervision over the national financial system, had injured their investments in violation of the BIT provisions regarding full protection and security, fair and equitable treatment, due process of law, and protection against expropriation.' *See* para. 16, *id*. Note: Like many BITs, Article VIII of the BIT does not speak of 'protection against expropriation' but rather of the circumstances according to which expropriation, as an exception, is allowed under the treaty. The formula chosen by the tribunal is therefore incorrect but likely to have been used in the interest of synthesis.

The facts of the case relate to a scheme developed in 1996 by two Costa Rican individuals known as 'the Villalobos brothers', according to which they would place their client's money at very high interest rates and would return the principal and/or the interest upon the required notice.[36] Information regarding where the moneys were placed or other relevant matters was not disclosed to the clients, and the business was run in a highly confidential fashion.[37]

The Villalobos brothers operated a parallel lawful money exchange business since at least 1998. This part of their business was carried out by virtue of a license granted by the relevant financial regulators in Costa Rica.[38] Despite periodic controls on the part of Costa Rican authorities and suspicions that an irregular business was taking place, the alternative scheme had not been discovered.[39] However, on 4 and 5 July 2002, thanks to a request from the Canadian government and the ensuing search warrant, Costa Rican authorities raided the Villalobos office and finally uncovered the scheme.[40]

In November of that same year arrest of the brothers was ordered, and in December, the Costa Rican Central Bank cancelled the license for the money exchange operation.[41] In May 2007, one of the brothers was found guilty as charged and sent to imprisonment for eighteen years.[42]

Against this background, the Canadian claimants who lost their monies alleged that Costa Rica, through a series of acts and omissions, failed to protect their investments.

Costa Rica submitted five objections to jurisdiction: (a) that there was no investment under the applicable BIT, (b) that claimants were not investors under the applicable BIT, (c) that the BIT barred claimants from submitting a claim since there had been a local judgment rendered regarding the same issue, (d) the claims were untimely, and (e) that the alleged violations were not covered by the Canada-Costa Rica BIT.[43]

The arbitral tribunal determined that the claimants were foreign nationals but that they did not own or control an 'investment' in accordance with Article 1(g) of the Canada-Costa Rica BIT. The tribunal found that although the monies that were invested by claimants in the Villalobos brothers' scheme were assets, they were not owned or controlled by claimants 'in accordance with the laws' of Costa

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36 *See* paras. 18–21, *id*.
37 *See* paras. 19 and 22, *id*.
38 *See* para. 17, *id*.
39 *See* para. 23, *id*.
40 *See* para 24, *id*.
41 *See* para. 25, *id*.
42 *See* para. 26, *id*. The other Villalobos brother had managed to escape years before and remains a fugitive (*see* para. 26 of the Alasdair case Award).
43 *See* sec. III of the Alasdair case Award.

Rica, which is required by the aforementioned provision.[44] The tribunal emphasized the illegality of the business scheme under the Costa Rican laws and regulations, as well as the fact that claimants did not appear to have acted with the minimum diligence expected of a foreign investor.[45]

Having accepted the objection based on lack of jurisdiction *rationae materiae*, the tribunal did not need to determine the rest of the objections and dismissed the case.

2.3 *Marion unglaube v. republic of costa rica*[46] and *reinhard hans unglaube v. republic of costa rica*[47] (the '*unglaube cases*')

The Unglaube cases are run in parallel by the same arbitral tribunal. The first was registered on 25 January 2008 and the second, on 11 November 2009. Messrs. Unglaube are a married couple of German nationality who own certain property in Costa Rica's National Park Las Baulas for tourism purposes. The Unglaubes seek compensation of USD 20 million for alleged de facto expropriation by Costa Rica. The hearing took place in February 2011, and the award is expected.

2.4 *Quadrant pacific growth fund l.p. and canasco holdings inc. v. republic of costa rica*[48]

This case was also submitted on the basis of the Canada-Costa Rica BIT and was registered on 21 March 2008. It regarded claims of violations of fair and equitable treatment, full protection and security and alleged discrimination with respect to five orange plantations directly or indirectly owned by Canadian claimants in the northern part of Costa Rica. Claimants alleged that the properties had been subject to illegal trespassers and that the Costa Rican authorities had failed to protect them, failure that caused damages to the claimants.

However, there is no decision on this case because in October 2010 the arbitral tribunal declared the discontinuance of the case and ordered claimants to pay the respondent the legal fees incurred. Indeed, after a series of the procedural steps leading towards the hearing had been taken, and on the eve of the date of the hearing, the claimants' counsel announced it would no longer appear on the case. The hearing had to be cancelled and, after further exchanges of communications

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44 *See* paras. 51 et seq., *id*.
45 *See* para. 58, *id*.
46 *Marion Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/08/1.
47 *Reinhard Hans Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/09/20.
48 *Quadrant Pacific Growth Fund L.P. and Canasco Holdings Inc. v. Republic of Costa Rica*, ICSID Case No. ARB(AF)/08/1.

among the arbitral tribunal, the ICSID Secretariat, and the parties – mainly regarding payment of administrative fees – it was evident that the case could not go forward.

2.5 *Supervision y control s.a. v. republic of costa rica*[49]

This case was registered recently, on 9 February 2012, and it is based on a contract between a Spanish company and the government of Costa Rica related to technical vehicle inspection services and facilities.

By way of conclusion, it can be said that Costa Rica has fared well in the ICSID arbitration proceedings so far. It can also be said that the international legal framework governing foreign investment in Costa Rica is quite uniform across the different treaties it has entered into. As with other states, the more recent treaties include more detailed provisions and therefore narrow down the scope of rights and obligations among the signatory states.

[49] *Supervision y Control S.A. v. Republic of Costa Rica*, ICSID Case No. ARB/12/4.

Treaty	Entry into Force	Cooling-Off Period	Fork-in-the-Road	Arbitration Rules	Investment in Accordance with National Laws of Host State	Special Salient Aspects
BIT Argentina	7 March 2001	6 months (Article 12(2))	Yes (Article 12 (4))	Local Courts, ICSID Rules (both countries are parties to the Washington Convention), UNCITRAL Rules (Article 12 (5))	Yes (Articles 1 (1) and 1(2))	In terms of arbitration rules, Article 12(6) provides that, in case the parties do not agree within three months, ICSID Rules will be applied. As regards the concept of 'investor', should a person from a Contracting State reside in the other Contracting State for more than two years, the investment will not be considered foreign unless it originates abroad (Article 1(3)).

Treaty	Entry into Force	Cooling-Off Period	Fork-in-the-Road	Arbitration Rules	Investment in Accordance with National Laws of Host State	Special Salient Aspects
BIT Canada[50]	1 November 2002	6 months (Article XII(2))	Yes. Must waive recourse to local courts or discontinue local court proceedings (Article XII(3)(b)). Available only if no Costa Rican court has determined the issue (Article XII(3)(d)).	ICSID AF (Canada is not an ICSID Contracting State), UNCITRAL Rules (in case the ICSID declines jurisdiction) (Article XII(4))	Yes (Article 1(g))	Three-year statute of limitations (Article XII(3)(c)); in general, highly detailed treaty.

[50] Canada and Costa Rica also entered into an FTA, in force as from Nov. 7, 2002. The 'Services and Investment' Chapter of the FTA is Ch.VIII, in which the parties 'note the existence of the BIT' (art.VIII(2)).

Treaty	Entry into Force	Cooling-Off Period	Fork-in-the-Road	Arbitration Rules	Investment in Accordance with National Laws of Host State	Special Salient Aspects
FTA CARICOM (Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago)	15 November 2005	6 months (Article X.11 (11))	Yes (Article X.11(2))	Local Courts, ICSID Rules, UNCITRAL Rules (only in the case of Antigua and Barbuda, Belize, Dominica, and Suriname) (Article X.11 (2))		

Treaty	Entry into Force	Cooling-Off Period	Fork-in-the-Road	Arbitration Rules	Investment in Accordance with National Laws of Host State	Special Salient Aspects
DR-CAFTA (Central America-Dominican Republic-United States)	1 January 2009	6 months (Article 10.16(3)	Yes (Article 10(18))	ICSID or UNCITRAL Rules (Dominican Republic has not ratified the Washington Convention) (Article 10.16(3))	Yes (Article 10.28)	The investment claims include the breach of (A) an obligation under Section A (Article 10.1) or (B) an investment authorization, or (C) an investment agreement (Article 10.16). No claim may be submitted to arbitration if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach and of the damages incurred (Article 10.18). In general, highly detailed treaty.

Treaty	Entry into Force	Cooling-Off Period	Fork-in-the-Road	Arbitration Rules	Investment in Accordance with National Laws of Host State	Special Salient Aspects
FTA Central America-Dominican Republic (Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua)	7 March 2002	5 months (Article 9.20(2))	Yes (Article 9(20)(2))	Local Courts, Domestic Arbitration, International Arbitration (ICSID or UNCITRAL Rules, as long as Dominican Republic has not ratified the ICSID Convention) (Article 9.20(2))	Yes (Article 9.01)	

Treaty	Entry into Force	Cooling-Off Period	Fork-in-the-Road	Arbitration Rules	Investment in Accordance with National Laws of Host State	Special Salient Aspects
BIT Chile[51]	23 March 1998	5 months (Article IX)	Yes (Article IX.(3))	Local Courts, ICSID Rules (Article IX.(2))	Yes (Article 1(2))	In accordance with Article IX(4), if a company in a Contracting State is local but the majority of its shares are owned by a person of the other Contracting State, it will serve the purposes of Article 25(2)(b) of the Washington Convention.

[51] Chile-Central America (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) signed an FTA in force since February 2002. The FTA incorporates the text of the Chile-Costa Rica BIT (Annex 10.01).

Treaty	Entry into Force	Cooling-Off Period	Fork-in-the-Road	Arbitration Rules	Investment in Accordance with National Laws of Host State	Special Salient Aspects
BIT China[52]	Signed on 24 October 2007 and currently in Congress for entry into force	6 months (Article XI.2)	Yes (Article XI (3))	Local Courts, ICSID Rules (both countries are ICSID Contracting States) (Article XI(2))	Yes (Articles I(1) and I(2))	
BIT France	4 November 1997	6 months (Article 8)		ICSID Rules (Article 8)	Yes (Article 1(1))	

[52] There is an FTA between Costa Rica and the People's Republic of China, in force since 1 Aug. 2011. It was China's first bilateral FTA with a Central American country. The FTA has no special provisions regarding investor-State disputes, but incorporates the commitments under the BIT signed in 2007 (see Art. 89 of the FTA). As mentioned, the BIT is not in force yet but is being processed actively in Congress.

Treaty	Entry into Force	Cooling-Off Period	Fork-in-the-Road	Arbitration Rules	Investment in Accordance with National Laws of Host State	Special Salient Aspects
BIT Germany	5 November 1997	6 months (Article 10(2))		ICSID Rules only (Article 10(2))	Yes (Article 2(2))	The contracting states shall allow foreign investment in conformity with their own laws (Article 2(1)); investments of German nationals with more than 10 years of residence in Costa Rica shall not be covered by the BIT unless the investment originates abroad (Addendum to Article 1)
BIT Korea	7 May 2002	6 months (Article 8(3))		ICSID Rules only (Article 8(3))	Yes (Article 1)	MFN clause regarding dispute settlement (Article 8(2))

Treaty	Entry into Force	Cooling-Off Period	Fork-in-the-Road	Arbitration Rules	Investment in Accordance with National Laws of Host State	Special Salient Aspects
FTA Mexico	1 January 1995	6 months (Article 13(22))	Yes (Article 13(22))	ICSID AF Rules (Mexico is not a party to the Washington Convention)	Yes (Article 13(01))	
FTA Panama-Central America	23 November 2008	6 months (Article 10(21))		ICSID Rules (both are parties to the Washington Convention), UNCITRAL Rules (Article 10(21))	Yes (Article 10(40))	

Treaty	Entry into Force	Cooling-Off Period	Fork-in-the-Road	Arbitration Rules	Investment in Accordance with National Laws of Host State	Special Salient Aspects
BIT Paraguay	25 May 2001	6 months (Article X(2))	Yes (Article X(2) and X(3))	Local Courts, ICSID Rules (both are parties to the Washington Convention) (Article X(2))	Yes (Articles. I(1), I(2), and IV(2))	
BIT Spain	5 June 1999	6 months (Article XI(2))	Investor may invoke Article XI(2) despite local court proceedings, if a) they are still pending and b) takes necessary steps to desist from those proceedings (Article XI(3)).	Local courts, ICSID Rules (both are parties to the Washington Convention (Article XI(2))		Defines 'control' as faculty of appointing a majority of board members or having legal direction of operations (Article XI(2))

Treaty	Entry into Force	Cooling-Off Period	Fork-in-the-Road	Arbitration Rules	Investment in Accordance with National Laws of Host State	Special Salient Aspects
BIT Switzerland	7 May 2002	6 months (Article 9(2))	Yes (Article 9(3))	Local courts, ICSID Rules or UNCITRAL Rules (Article 9(4))	Yes (Article 2)	Ownership of more than 50% of the local company; or able to appoint majority of board members; or otherwise able to direct acts of company (Article 1(1)(c))
BIT Venezuela	2 May 2001	6 months (Article 11(2))	Yes (Article 11(2) and 1(3))	ICSID Rules (both are parties to the Washington Convention) (Article 11(2))	Yes (Article 11(2))	