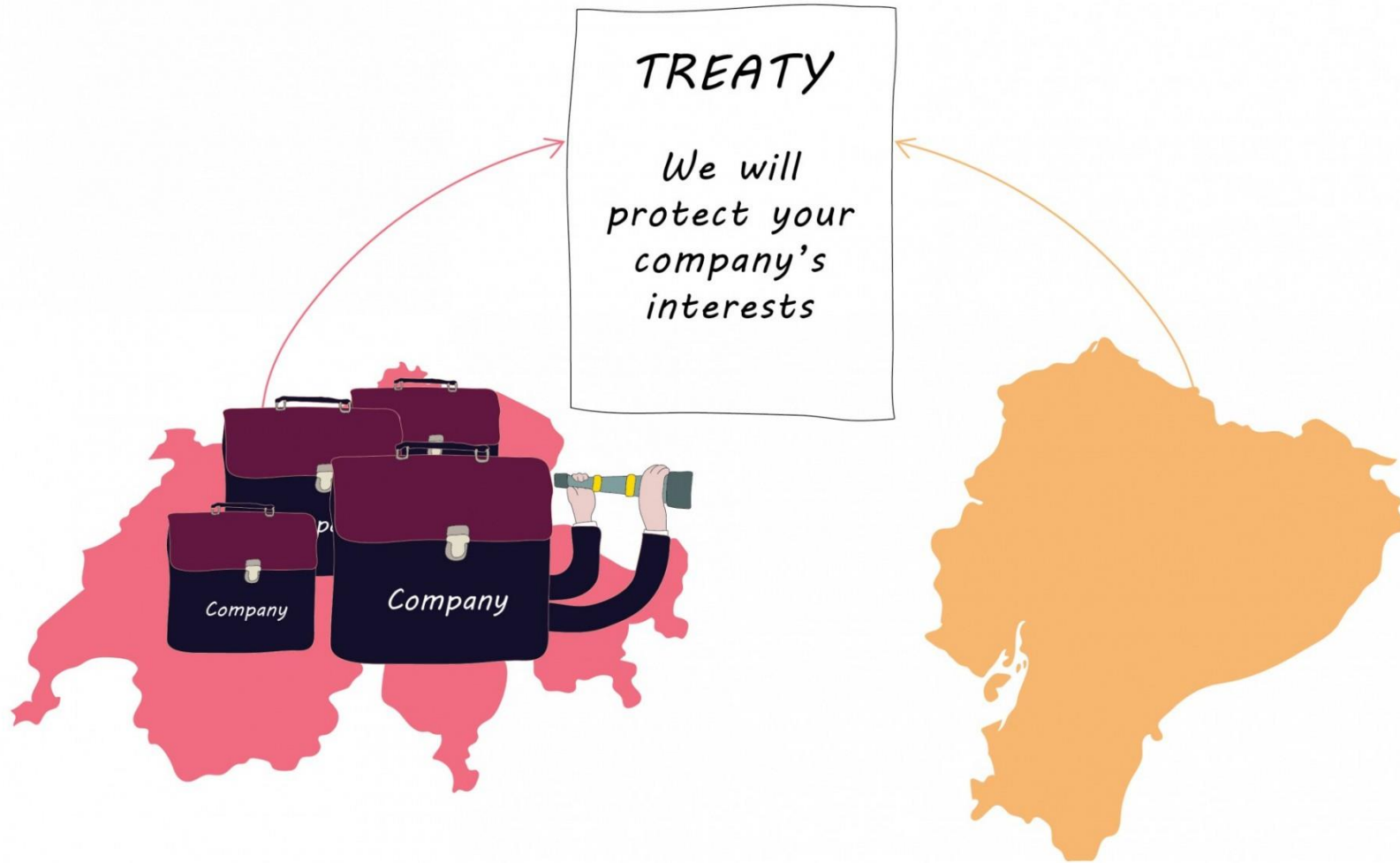


International Investment protection

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What are International Investment Treaties (IITs)?



*Picture Human Rights
Columbia Center on Sustainable Investment*

What Protections?

- *Substantive Protections*
 - *Most favored nation (MFN)*
 - *Conditions to expropriation*
 - *Fair and equitable treatment*
 - *Full protection and security*
 - *Non-discrimination*
- *Dispute Settlement (arbitration, typically ICSID or UNCITRAL)*

The Protections Against Expropriation

Lawful expropriation requires the following elements:

- (a) The expropriation is for a public purpose;
- (b) it is made according to due process of law;
- (c) on a nondiscriminatory basis; and
- (d) against prompt, adequate, and effective compensation.

International protection of UAE investors

- 71 BITs in force (including with the Russian Federation)
- Organisation of Islamic Cooperation Investment Agreement (56 signatories)
- Arab Investment Agreement (20 signatories) (only for investors with 51% Arab ownership)

Jurisdictional requirements for investment protection

1. Ratione personae
 - Foreign control
 - Denial of benefits – substantial business activity test (e.g. under Art. 17(2)(a) ECT)
2. Ratione materiae
 - Control of the investment (*MAKAE v. Saudi Arabia*)
3. Ratione temporis
 - *Pac Rim v. El Salvador*

What is treaty planning?

A concerted effort by the investor to structure its investment so as to enjoy the benefits under an international investment agreement (IIA) that the investor deems appropriate.

[Zuleta – Saldarriaga 2010]



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Treaty shopping – abuse of process?

“The ICSID Convention/BIT system is not deemed to protect economic transactions undertaken and performed with the sole purpose of taking advantage of the rights contained in such instruments, without any significant economic activity, which is the fundamental prerequisite of any investor’s protection. Such transactions must be considered as an abuse of the system.”

[Phoenix v. Czech Republic]

Thank you!

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