



Thailand's Approach to International Investment Agreement Reform

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Structure of Presentation



1. Overall comments regarding Chapter 7 of the report

2. Thailand's efforts towards IIA reform

- Revision of Bilateral Investment Treaty Model 2020
- Revision or termination of existing BITs / issuance a joint interpretative declaration
- Establishment of Committee of the Protection of International Investment
- Actively Engaging in Global Fora (UNCITRAL)



Overall Comments on Chapter 7



A good overview of IIAs landscape and development in Thailand as well as overall picture of latest development in IIAs at the international level

However, there are still discrepancies and some information might not be updated

The Report did not adequately take into account Thailand's ongoing efforts in IIAs reform

NETHERLANDS



Thailand's efforts towards IIA reform



“Thailand is widely seen as a leader in current debates regarding possible reforms for investment treaties.”

- Thailand has been transforming to capital-exporting country. (18th Rank in top FDI Outflow 2019 (UNCTAD World Investment Report 2019))
- 4th Rank for the largest number of BITs in ASEAN (Malaysia 68, Indonesia 59, Vietnam 53)
- Active participation in UNCITRAL Working Group 3 (ISDS reform)
- Revising new BIT Model 2020 to incorporate new development in IIAs
- Established Committee on the Protection of International Investment
- Hosting the IISD 13th Annual Forum for Investment Negotiators (18-20 Feb 2020) – to enhance capacity for investment negotiators and raise awareness for line agencies.



Thailand's efforts towards IIA reform (2)



Revision of Bilateral Investment Treaty Model 2020

1. Revising the broad scope of FET to refer to Customary International Law
2. Prohibition of Frivolous claims / Providing Joint Interpretation
3. Incorporating principle of responsible investment and encourage the engagement of investors in corporate social responsibility (CSR)
4. Providing emergency measures and exception clause for States to regulate
5. Stipulating the impartiality of arbitrator and avoidance of conflict of interest

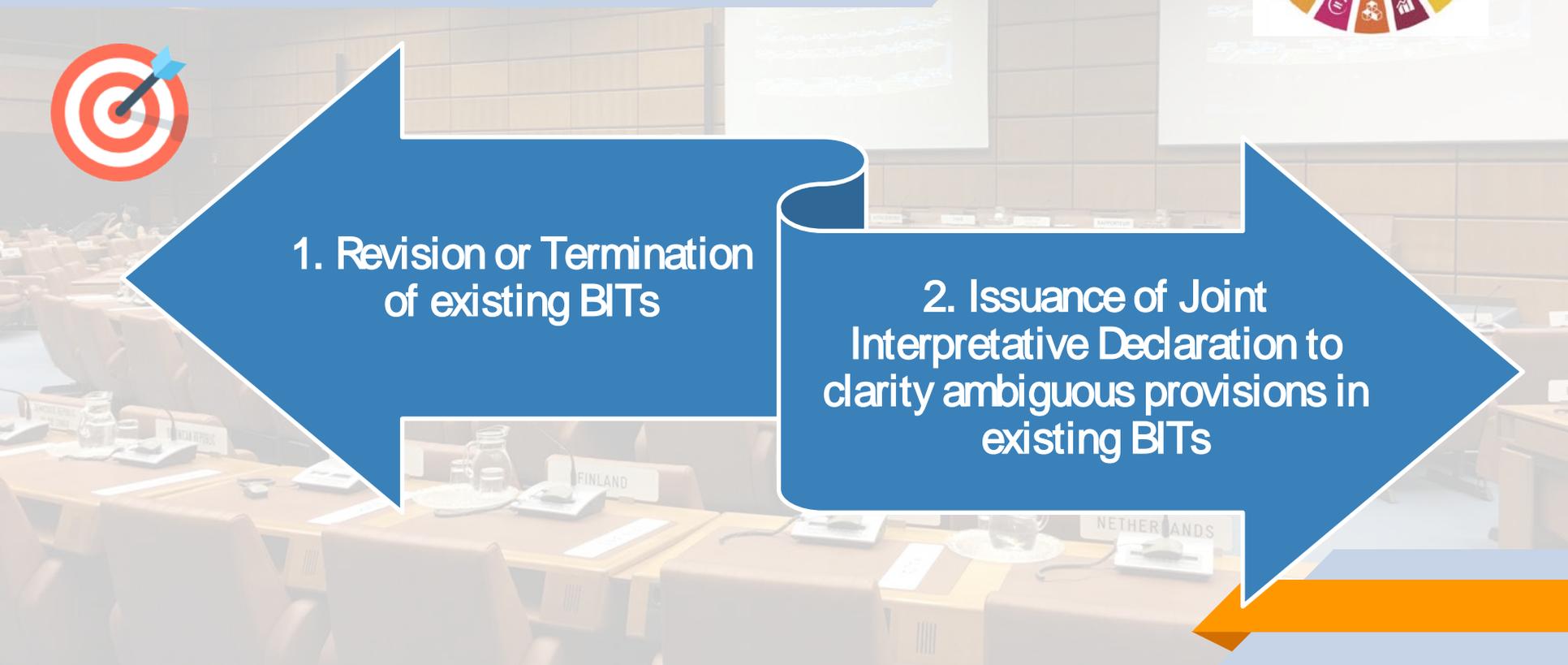


Thailand's efforts towards IIA reform (3)



1. Revision or Termination of existing BITs

2. Issuance of Joint Interpretative Declaration to clarify ambiguous provisions in existing BITs





Thailand's efforts towards IIA reform (4)



Background

- Many government agencies are not aware of the fact that exercising its power could create potential State responsibility under IIAs.
- Lack of consistency in administration of long term concession contract
- Lack of permanent mechanism to formulate policies on the protection and management of international investments as well as the prevention of investment dispute.



Thailand's efforts towards IIA reform (5)



Committee on the Protection of International Investment

the Regulation of the Office of the Prime Minister on Work Relating to the Protection of International Investments B.E. 2562 (2019)

**(1)
Dispute
prevention**

**(2)
IIA management
and overseeing
policies
coherence**

**(3)
Assistance in
International
arbitration
process for
government
agencies**



Actively Engaging in Global Fora (1)



UNCIRAL Working Group III

- At its 50th session in 2017, UNCITRAL entrusted its Working Group III with a mandate to work on the possible reform of the current ISDS procedure.
- Working Group III agreed that reform was desirable in three main areas: (i) inconsistency and incorrectness of arbitral awards; (ii) arbitrators and decision-makers; and (iii) cost and duration of ISDS procedure. (It was later agreed that reform on third-party funding was also desirable)
- Working Group III discussion is currently under Phase III to “develop possible solutions to be recommended to the Commission.”



Actively Engaging in Global Fora (2)



- Thailand's actively participating in the Working Group III
- Thailand submitted its first written submission in April 2018 (<https://undocs.org/en/A/CN.9/WG.III/WP.147>)
- Aiming to identify procedural concerns regarding ISDS, from a developing country's perspective, both as FDI recipient and capital exporter.
- Reiterating that ISDS reform discussion should focus not only on procedural but also substantive matters



Actively Engaging in Global Fora (3)



- Thailand's second submission on March 2019

(<https://undocs.org/en/A/CN.9/WG.III/WP.162>) proposing possible reform options which have been well received and picked up for further deliberation

- Thailand's proposed reform options include:

- (i) Establishing an Advisory Center on International Investment Law
- (ii) New UNCITRAL ISDS Rules specifically designed for ISDS cases, with features such as the use of ADR, principles on allocation of cost and third-party funding, code of conduct for arbitrators, rules for joint interpretation etc.
- (iii) Guidelines on Dispute Prevention
- (iv) Model Clauses on Substantive Provisions



THANK YOU