

The Estey

Journal of International Law and Trade Policy

Abstract

Caution Restructuring: The New Restrictive Jurisdictional Approach of ICSID Tribunals

Alexandra Neacsu Monkhouse

Articling student, Davies Ward Philips & Vineberg LLP, Toronto, Canada

International Centre for Settlement of Investment Disputes (ICSID) tribunals have been accused of systemic impartiality and of favouring investors. In response to criticism, a new approach to jurisdiction has emerged. While, initially, tribunals liberally heard investment claims as long as a foreign entity could be identified in the corporate chain of the claimant, now arbitrators use the notions of corporate control and timing of restructuring to determine whether investors may legitimately access international arbitration. In the light of recent decisions, corporate restructuring can no longer be used as a safe method of accessing ICSID jurisdiction. This improves the balance between State and investor interests.

Keywords: *bona fide*, corporate restructuring, corporate veil, ICSID jurisdiction, *Tokios*