Options for mitigating treaty based ISDS risk to COVID-19 measures

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Putting the options in context

Reform
- long term options

Defense
- permission
- exception

Avoiding Claims
- preventing disputes
- barring claims
Avoiding COVID-19 related ISDS claims: considerations

**Practical**
- How broad or how narrow should response be?
- What options can be operationalized quickly?

**Legal**
- What options are most legally sound?
  - At domestic and regional law
  - At international law

**Institutional**
- At what level could the options be implemented?
  - Multilateral level
  - Regional level
  - Bilateral level
  - Combinations of the above
Avoiding COVID-19 related ISDS claims:
Four options

- Termination
- Amendment
- Joint Interpretation
- Suspension
Focus on suspension

A suspension agreement could:

- Suspend ISDS in treaties between signatories for COVID measures
- Define ‘COVID-19 related measures’ (self-judging)
- Cover multiple treaties in one instrument, but allow carve outs
- Set a time for the suspension to end: fixed or periodic ‘rendez-vous’

Some advantages

- Targets ISDS but leaves other clauses intact, making negotiation simpler.
- Bars ISDS claims without needing to move to the merits stage.
- Quickly comes into effect where domestic ratification is not required.

N.B. All 4 options are

- Legally sound.
- Do not bar access to justice to foreign investors.
Useful resources for more details

Click each image to view the document

Language for a suspension agreement available [here](#) (EN/FR/ES)