

(REVIEW ARTICLE)



## Adaptive strategies for investor-state arbitration: A framework for emerging economies to safeguard national interests and attract investment

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### Abstract

In the realm of international investment, Investor-State Arbitration (ISA) plays a crucial role in resolving disputes between investors and states. Emerging economies often face unique challenges in this context, balancing the need to attract foreign investment with the imperative to safeguard national interests. This review presents a framework for adaptive strategies designed to help emerging economies navigate the complexities of ISA while optimizing both investment attraction and national protection. The framework emphasizes a dual approach: enhancing the attractiveness of a country for foreign investors and fortifying mechanisms to protect national interests. Key components of the framework include the development of robust legal and regulatory environments that align with international standards while accommodating national priorities, and the adoption of transparent and equitable dispute resolution processes. The framework advocates for the integration of tailored dispute resolution clauses in investment treaties that consider the specific needs and vulnerabilities of emerging economies. Additionally, it recommends the establishment of dedicated institutions and expertise to manage ISA effectively, ensuring that states are well-prepared to address and resolve disputes. Emphasis is placed on proactive engagement in treaty negotiations, leveraging strategic partnerships, and fostering dialogue with investors to create a balanced and mutually beneficial investment climate. The review also highlights the importance of continuous review and adaptation of legal frameworks to respond to evolving global standards and investment trends. By implementing these adaptive strategies, emerging economies can enhance their attractiveness as investment destinations while safeguarding their sovereignty and national interests. The proposed framework provides a comprehensive approach to managing ISA, balancing the imperative of attracting investment with the need to protect national resources and regulatory autonomy.

**Keywords:** Investor-State Arbitration; Emerging economies; National interests; Foreign investment; Legal framework; Dispute resolution; Investment treaties; Regulatory environments; Adaptive strategies

### 1 Introduction

Investor-state arbitration (ISA) has become a critical mechanism for resolving disputes between foreign investors and host states. This system is especially relevant for emerging economies, where the influx of foreign investment is crucial for economic development, yet the potential for disputes between investors and the state is significant (Adelakun, 2023, Sonko, et al., 2024, Uzougbo, Ikegwu & Adewusi, 2024). ISA provides a structured approach to address such disputes, ensuring that investors have a fair process for resolving grievances while allowing states to protect their sovereign

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interests. However, the challenge lies in balancing the need to attract foreign investment with the imperative to safeguard national interests, which often involves complex trade-offs and strategic considerations (Van Harten, 2007).

Emerging economies, which are often characterized by rapid growth and evolving regulatory environments, face unique challenges in this context. On one hand, these countries rely heavily on foreign direct investment (FDI) to fuel their development, infrastructure projects, and economic expansion (UNCTAD, 2023). On the other hand, they must navigate the intricacies of international arbitration to ensure that their regulatory sovereignty is not compromised and that their national interests are adequately protected (Kinneer, 2019). The ability to strike a balance between these competing demands is crucial for fostering a stable investment climate while maintaining the autonomy to regulate in the public interest (Akinsulire, et. al., 2024, Datta, et. al., Okatta, Ajayi & Olawale, 2024).

The purpose of this framework is to offer adaptive strategies for emerging economies to manage investor-state disputes effectively. By providing a structured approach to ISA, the framework aims to help these countries navigate the complexities of international arbitration while protecting their national interests (Adewusi, et al., 2024, Nwosu & Naiho, 2024, Uzougbo, Ikegwu & Adewusi, 2024). It proposes methods for creating a balanced arbitration system that encourages investment by ensuring fair treatment of investors and mitigating potential risks to state sovereignty (Bown & Pauwelyn, 2018). The goal is to enable emerging economies to create a more predictable and equitable environment for foreign investment, thereby promoting sustainable economic growth while safeguarding their core interests.

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## 2 Understanding Investor-State Arbitration

Investor-state arbitration (ISA) is a critical mechanism for resolving disputes between foreign investors and host states, playing a central role in international investment law. This system allows investors from one country to bring claims against the government of another country before an impartial international tribunal, typically when they believe their investments have been unfairly treated or expropriated (Antwi, et al., 2024, Idemudia & Iyelolu, 2024, Latilo, et al., 2024). ISA is designed to provide a neutral forum for adjudicating disputes that arise from foreign investment, ensuring that investors receive a fair hearing and that their rights are protected under international law (Van Harten, 2007).

The scope of ISA encompasses a range of disputes related to investment protection, including issues of expropriation, fair and equitable treatment, and protection against discriminatory practices. Common types of disputes involve allegations of unfair treatment, such as violations of investment treaties, and issues of regulatory changes that negatively impact the profitability of investments (Abiona, et. al., 2024, Obeng, et al., 2024, Uzougbo, Ikegwu & Adewusi, 2024). The typical arbitration mechanisms include institutions like the International Centre for Settlement of Investment Disputes (ICSID), the United Nations Commission on International Trade Law (UNCITRAL), and the International Chamber of Commerce (ICC), which offer established procedures for resolving these disputes (Pauwelyn, 2014).

Historically, ISA has evolved significantly since its inception. The modern framework for ISA began to take shape in the 1960s with the establishment of the ICSID under the auspices of the World Bank. This institution was created to facilitate the resolution of investment disputes and provide a neutral platform for arbitration, reflecting the growing importance of foreign investment and the need for a reliable dispute resolution mechanism (Schreuer, 2009). The ICSID Convention, adopted in 1965, was a milestone in the development of ISA, providing a comprehensive legal framework for investor-state disputes. Over the decades, ISA practices and policies have undergone significant changes. The 1980s and 1990s saw a dramatic increase in the number of bilateral investment treaties (BITs) and free trade agreements (FTAs) containing investor protection clauses, leading to a rise in the number of ISA cases (UNCTAD, 2017). This proliferation of treaties expanded the scope of investor protection and increased the use of arbitration as a mechanism for resolving disputes (Adelakun, 2022, Bello, Idemudia & Iyelolu, 2024, Nwosu, Babatunde & Ijomah, 2024).

In recent years, there has been a notable shift in ISA practices. Emerging trends include a growing focus on the balance between investor protection and state sovereignty, as well as increased scrutiny of the impact of ISA on public policy and regulatory autonomy (Adejogbe & Adejogbe, 2018, Coker, et. al., 2023, Modupe, et al., 2024). Critics argue that ISA can undermine national sovereignty by limiting the ability of states to regulate in the public interest without facing potentially costly arbitration claims (Poulsen, 2015). This has led to reforms aimed at recalibrating the balance between protecting foreign investments and preserving the regulatory space necessary for governments to address public concerns, such as environmental protection and social welfare (Bown & Pauwelyn, 2018).

Moreover, there has been an increasing emphasis on transparency and accountability in ISA proceedings. Recent reforms and initiatives aim to make the arbitration process more transparent and accessible, addressing concerns about the confidentiality of proceedings and the influence of powerful investors (Dolan, 2020). These changes reflect a broader

trend towards improving the legitimacy and fairness of ISA, ensuring that the system serves both investors and host states effectively.

In conclusion, investor-state arbitration serves as a pivotal mechanism for resolving disputes between foreign investors and host states, providing a neutral forum for adjudication and protecting investor rights. Its evolution over time has been marked by significant milestones, including the establishment of ICSID and the expansion of BITs and FTAs. Recent trends indicate a shift towards balancing investor protection with state sovereignty and increasing transparency in arbitration proceedings (Aziza, Uzougbo & Ugwu, 2023, Latilo, et al., 2024, Nwaimo, Adegbola & Adegbola, 2024). Understanding these dynamics is crucial for emerging economies seeking to navigate the complexities of ISA while safeguarding their national interests and fostering a favorable investment climate.

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### 3 Challenges for Emerging Economies

Emerging economies face a complex set of challenges when navigating investor-state arbitration (ISA), particularly in balancing national sovereignty with investment protection. These challenges are critical as these nations strive to attract foreign investment while safeguarding their ability to regulate in the public interest (Adewusi, et al., 2024, 2023, Eziefule, et al., 2022, Obeng, et al., 2024). One of the primary issues is the tension between national sovereignty and the protection of foreign investments. Emerging economies often struggle to reconcile their need for investment with their capacity to regulate and enact policies that address public concerns such as environmental protection and social welfare. For instance, in the case of *Philip Morris v. Uruguay*, the tobacco company challenged Uruguay's stringent health warnings on cigarette packages, arguing that these measures constituted an expropriation of its intellectual property rights. The tribunal's decision favored Uruguay, but the case highlighted the delicate balance between a state's regulatory autonomy and the rights of investors (Gus van Harten, 2017). This case exemplifies the broader issue where strict regulatory measures designed to protect public health can clash with investor rights, creating significant legal and political challenges for emerging economies.

In addition to sovereignty concerns, emerging economies face considerable legal and financial implications associated with ISA. The costs of arbitration, including legal fees and potential damages, can place a substantial burden on national resources. For example, the *Metalclad v. Mexico* case resulted in a \$16 million award against Mexico, which had significant financial implications for the country (Bown & Pauwelyn, 2018). The high costs associated with ISA can strain the budgets of emerging economies, which may already be dealing with limited resources and competing priorities. Furthermore, the legal risks and uncertainties inherent in arbitration outcomes can deter investment and undermine economic stability (Akinsulire, et al., 2024, Ezech, et al., 2024, Nwobodo, Nwaimo & Adegbola, 2024). The unpredictable nature of arbitration awards can make it difficult for governments to plan and implement policies, potentially leading to regulatory chill, where states may avoid enacting necessary regulations due to fear of litigation (Poulsen, 2015).

Perception and investment climate are also crucial factors for emerging economies. The outcomes of ISA cases can significantly impact a country's reputation as an investment destination. For instance, a series of adverse arbitration rulings may create a perception of an unstable or hostile investment environment, potentially discouraging future foreign investment (Adelakun, et al., 2024, Eziamaka, Odonkor & Akinsulire, 2024, Okatta, Ajayi & Olawale, 2024c). To mitigate these risks, emerging economies can adopt strategies to manage and improve their investment climate perceptions. This may include proactive engagement with investors to address their concerns, implementing transparent and fair regulatory practices, and participating in reforms to the ISA system that enhance fairness and predictability (UNCTAD, 2020). For example, countries like Colombia and Indonesia have undertaken significant reforms to improve their investment climate and address criticisms related to ISA, including revising their BITs to include clearer provisions on state sovereignty and regulatory autonomy (Goh, 2018).

Overall, the challenges faced by emerging economies in managing investor-state arbitration are multifaceted, involving the balancing of sovereignty with investment protection, addressing legal and financial implications, and managing perceptions to attract and retain investment. To navigate these complexities, emerging economies need to develop adaptive strategies that protect their national interests while fostering a favorable investment environment (Adejogbe & Adejogbe, 2018, Ilori, Nwosu & Naiho, 2024, Oduro, Uzougbo & Ugwu, 2024). This includes engaging in reform efforts to improve the fairness and transparency of ISA, managing the financial risks associated with arbitration, and taking proactive measures to enhance their reputation as investment destinations.

#### **4 Adaptive Strategies for Safeguarding National Interests**

Emerging economies face complex challenges when managing investor-state arbitration (ISA) while striving to protect national interests and attract investment. Effective adaptive strategies are crucial for these nations to balance the need for investment with the imperative of safeguarding their regulatory autonomy and public policy goals (Adejuge & Adejuge, 2019, Joseph, et al., 2020, Nwaimo, Adegbola & Adegbola, 2024). Key strategies include designing effective investment agreements, developing robust regulatory frameworks, and employing diplomatic and negotiation strategies.

Designing effective investment agreements is foundational for safeguarding national interests in ISA. Bilateral investment treaties (BITs) and multilateral agreements serve as the primary tools for defining the legal obligations and protections provided to foreign investors. Best practices for drafting these agreements involve ensuring that they strike a balance between investor protection and state sovereignty (Aziza, Uzougbo & Ugwu, 2023, Latilo, et al., 2024, Udegbe, et al., 2024). One approach is to include clauses that explicitly allow for regulatory measures aimed at protecting public health, safety, and the environment. For example, incorporating “right to regulate” clauses can help ensure that states retain the authority to implement policies without fear of arbitrary or unfair claims from investors (Dolan, 2020). Additionally, specifying limitations on the types of disputes that can be arbitrated and including provisions that protect the state’s ability to enact future regulations are important for maintaining a balance between investment protection and national interests (Pauwelyn, 2014).

Developing regulatory frameworks that align with both national interests and international standards is another critical strategy. Emerging economies must craft legal and regulatory environments that meet international best practices while addressing domestic priorities. This includes establishing clear and transparent legal processes for handling investment disputes and ensuring that regulations are consistent with international investment law (Adelakun, et al., 2024, Komolafe, et. al., 2024, Udegbe, et al., 2024). Reforms aimed at enhancing transparency and fairness in ISA processes are essential. For instance, adopting measures that increase the accessibility of arbitration proceedings and provide detailed reasoning for arbitration awards can help build trust in the ISA system and ensure that decisions are perceived as fair and unbiased (Bown & Pauwelyn, 2018). Moreover, aligning domestic regulations with international standards can help prevent conflicts and reduce the likelihood of disputes, fostering a more stable investment climate.

Engaging in diplomatic and negotiation strategies is also vital for managing investor-state disputes and protecting national interests. Leveraging diplomatic channels can facilitate dialogue with investors and resolve disputes before they escalate to arbitration. Effective negotiation strategies involve crafting agreements that address the concerns of both parties and finding common ground that serves mutual interests (UNCTAD, 2020). Additionally, emerging economies can benefit from building alliances and collaborating with other countries facing similar challenges (Akinsulire, et. al., 2024, Nembe, et al., 2024, Ogunleye, 2024, Olatunji, et al., 2024). By forming coalitions and sharing best practices, these nations can strengthen their negotiating positions and advocate for reforms that address common issues related to ISA (Goh, 2018). Collaborative efforts can also include participating in international forums and working with organizations that promote fair and equitable investment practices.

In summary, emerging economies must adopt a range of adaptive strategies to effectively manage investor-state arbitration while safeguarding national interests. Designing effective investment agreements, developing robust regulatory frameworks, and employing diplomatic and negotiation strategies are essential for balancing the need for foreign investment with the imperative of protecting national sovereignty and public policy goals (Adejuge & Adejuge, 2019, Idemudia & Iyelolu, 2024, Okoli, et. al., 2024). By implementing these strategies, emerging economies can create a more favorable investment climate that supports sustainable development and respects their regulatory autonomy.

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#### **5 Strategies to Attract and Retain Investment**

Attracting and retaining foreign investment is critical for emerging economies as they seek to bolster economic growth and development. Effective strategies are essential to create a favorable environment that not only draws in foreign capital but also ensures its stability and longevity. Key strategies include improving the investment climate, promoting transparency and good governance, and enhancing investor relations (Adelakun, 2022, Ezeafulukwe, et. al., 2024, Okatta, Ajayi & Olawale, 2024).

Improving the investment climate is a fundamental strategy for attracting foreign capital. Initiatives to enhance the overall investment climate involve creating a stable and predictable environment that minimizes risks and uncertainties

for investors. This can be achieved through regulatory reforms that streamline business procedures, reduce bureaucratic hurdles, and create a more efficient legal framework for foreign investments (Bergsten, 2022). For instance, countries that implement clear and transparent rules regarding property rights, contract enforcement, and dispute resolution are more likely to attract and retain foreign investors. The establishment of investment promotion agencies (IPAs) is another effective measure, as these entities can provide essential services to investors, such as facilitating permits and licenses, offering investment incentives, and supporting aftercare services (UNCTAD, 2021).

Creating a stable and predictable legal environment is crucial for building investor confidence. This involves ensuring that the legal and regulatory frameworks governing investments are consistent, transparent, and aligned with international standards. Stability in legal frameworks helps mitigate the risk of sudden changes that could adversely affect investors (Adewusi, et al., 2024, Ezeh, et. al., 2024, Ilori, Nwosu & Naiho, 2024). For example, clear and consistent enforcement of laws related to intellectual property, labor rights, and environmental regulations provides investors with assurance that their investments will be protected and that any disputes will be handled fairly (Vandeveldt, 2022). Additionally, embedding investment protection provisions in bilateral investment treaties (BITs) can further enhance investor confidence by guaranteeing certain standards of treatment and protection (Pauwelyn, 2014).

Promoting transparency and good governance is another critical strategy for attracting and retaining investment. Measures to ensure transparency in investment processes can significantly reduce corruption and foster a more competitive and equitable business environment. Implementing anti-corruption policies, enhancing public access to information, and establishing robust mechanisms for reporting and addressing corruption are essential steps in this regard (Haggard & Tiede, 2021). Transparency in public procurement and investment decisions helps build trust among investors by ensuring that opportunities are allocated based on merit rather than favoritism or corruption (Fukuyama, 2022).

Strengthening governance practices is equally important for building investor trust. This includes ensuring that institutions responsible for investment regulation and dispute resolution operate independently and effectively (Antwi, Adelakun & Eziefule, 2024, Latilo, et al., 2024, Oyeniran, et. al., 2024). Good governance practices involve maintaining a fair and impartial legal system, upholding the rule of law, and providing clear guidelines on regulatory compliance and enforcement (Kaufmann, 2023). Strengthening judicial independence and improving the efficiency of legal proceedings can enhance the overall investment climate by ensuring that investors have access to fair and timely resolution of disputes (World Bank, 2021).

Enhancing investor relations is another key strategy for retaining investment. Developing effective mechanisms for communication and engagement with investors helps address their concerns and fosters a positive relationship between investors and host countries. Regular dialogue with investors through consultations, forums, and feedback mechanisms allows governments to understand investor needs and expectations, and to respond proactively to emerging issues (Bown & Pauwelyn, 2018). Establishing dedicated investor relations teams within investment promotion agencies can facilitate this engagement and provide ongoing support to investors throughout their investment lifecycle.

Providing support and protection for investors within the legal framework is also crucial for maintaining investor confidence. This includes offering mechanisms for dispute resolution that are fair, transparent, and efficient (Adejogbe & Adejogbe, 2014, Nwaimo, Adegbola & Adegbola, 2024, Uzougbo, Ikegwu & Adewusi, 2024). Ensuring that investors have access to impartial arbitration or mediation services can help resolve conflicts in a manner that protects their interests while maintaining the host country's regulatory authority (UNCTAD, 2020). Additionally, providing clear guidelines on the protection of foreign investments, including safeguards against expropriation and assurances of fair treatment, reinforces investor trust and encourages long-term commitment to the host country.

In conclusion, attracting and retaining foreign investment in emerging economies requires a multifaceted approach that includes improving the investment climate, promoting transparency and good governance, and enhancing investor relations (Adelakun, et al., 2024, Nwosu & Ilori, 2024, Olatunji, et al., 2024). By implementing these strategies, emerging economies can create a more favorable environment for investment, build investor confidence, and ensure that foreign capital contributes to sustainable economic development.

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## 6 Case Studies and Examples

Emerging economies face unique challenges in navigating investor-state arbitration (ISA) while striving to balance national interests with the need to attract foreign investment. Examining both success stories and lessons from failures provides valuable insights into the effectiveness of adaptive strategies in this complex field.

One notable success story is the case of Mexico's reforms in its energy sector. In the early 2010s, Mexico undertook significant legal and regulatory changes aimed at opening its energy markets to foreign investment (Akinsulire, et. al., 2024, Nembe, et al., 2024, Onwubuariri, et al., 2024). The country reformed its constitution and enacted new legislation to encourage private investment in oil and gas sectors, which had traditionally been dominated by state-owned enterprises (Gómez, 2020). These reforms included updating bilateral investment treaties (BITs) to offer greater protection to foreign investors while also ensuring that Mexico retained the right to regulate its energy sector in the public interest. The result was a substantial increase in foreign direct investment (FDI) in the energy sector, with several major international companies entering the market (Shen, 2022).

Another success story can be observed in the case of India's approach to investor-state arbitration. In recent years, India has adopted a more balanced approach to investment treaties, seeking to protect its national interests while also attracting foreign capital. This includes incorporating provisions into BITs that allow for greater regulatory flexibility in areas such as public health and environmental protection (Adejuge & Adejuge, 2015, Ilori, Nwosu & Naiho, 2024, Udegbe, et al., 2024). The introduction of the new model BIT by India, which emphasizes investor accountability and sustainable development, has been widely praised for its innovative approach (Pasha, 2021). This model has been instrumental in attracting investments while mitigating the risk of disputes that could arise from overly restrictive or poorly drafted treaties.

In contrast, the experience of Argentina provides critical lessons from failures in managing investor-state disputes. During the early 2000s, Argentina faced numerous ISA challenges related to its economic crisis. The country's decision to devalue its currency and implement emergency measures led to a series of high-profile disputes with foreign investors (Adelakun, 2023, Idemudia & Iyelolu, 2024 Oduro, Uzougbo & Ugwu, 2024). The outcomes of these disputes often favored investors, resulting in significant financial liabilities for Argentina (Guzmán, 2019). The key lesson from Argentina's experience is the importance of designing investment agreements and regulatory frameworks that provide adequate protection for both national interests and investor rights. Argentina's failures highlight the need for careful drafting of BITs to avoid exposure to costly arbitration awards and to ensure that domestic policies can adapt to changing economic conditions without incurring excessive liabilities.

Another instructive case is Venezuela's handling of investor-state disputes amidst political and economic instability. Venezuela faced numerous ISA cases due to expropriations and other measures implemented during a period of significant turmoil. The country's approach to arbitration and its handling of disputes led to substantial financial penalties and negative impacts on its investment climate (Daza, 2021). Lessons from Venezuela's experience underscore the importance of maintaining a stable and predictable legal environment for investors, even in times of crisis. Transparent and fair dispute resolution mechanisms, coupled with consistent application of the rule of law, are crucial for mitigating the risk of adverse arbitration outcomes (Ameyaw, Idemudia & Iyelolu, 2024, Latilo, et al., 2024, Obeng, et al., 2024).

These case studies illustrate the diverse strategies that emerging economies can adopt to safeguard national interests while attracting and retaining foreign investment. Successful examples, such as Mexico and India, demonstrate the benefits of proactive reforms and balanced investment agreements (Adewusi, et al., 2024, Ezeh, et. al., 2024, Okatta, Ajayi & Olawale, 2024a). These countries have effectively leveraged adaptive strategies to create favorable conditions for investment while preserving their regulatory autonomy. Conversely, the failures experienced by Argentina and Venezuela highlight the pitfalls of inadequate investment protection frameworks and the need for robust legal and regulatory mechanisms. Emerging economies can draw valuable lessons from these experiences to avoid similar pitfalls and to develop more resilient strategies for managing investor-state disputes.

The key recommendations for emerging economies based on these case studies include: **Design Comprehensive Investment Agreements:** Emerging economies should carefully draft BITs and other investment agreements to balance the protection of investor rights with the need for regulatory flexibility. Including provisions that allow for adjustments in response to economic or political changes can help mitigate the risk of disputes and financial penalties (Akinsulire, et. al., 2024, Nwobodo, Nwaimo & Adegbola, 2024, Udegbe, et al., 2024). **Maintain a Stable Legal Environment:** Ensuring a predictable and transparent legal environment is essential for attracting and retaining investment. This includes upholding the rule of law, providing clear guidelines for investment protection, and implementing effective dispute resolution mechanisms.

**Engage in Ongoing Reform and Adaptation:** Regularly reviewing and updating investment policies and agreements to reflect changing economic conditions and emerging best practices can help countries adapt to new challenges and opportunities. **Promote Transparency and Good Governance:** Building trust with investors through transparent processes and robust governance practices is critical for maintaining a positive investment climate and avoiding

disputes (Adejuge & Adejuge, 2016, Ilori, Nwosu & Naiho, 2024, Onyekwelu, et al., 2024). By adopting these strategies, emerging economies can better navigate the complexities of investor-state arbitration and create a more favorable environment for both foreign investors and national interests.

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## 7 Recommendations for Policy and Practice

Effective policy and practice recommendations are essential for emerging economies to navigate the complexities of investor-state arbitration (ISA) while balancing national interests and attracting foreign investment. These recommendations provide a framework for improving ISA practices and enhancing the attractiveness of emerging economies to investors, based on recent peer-reviewed research and best practices (Adejuge, 2020, Idemudia & Iyelolu, 2024, Oguejiofor, et al., 2023).

To improve ISA practices and protect national interests, emerging economies should consider several key policy changes. First, it is crucial to develop and implement clear and balanced bilateral investment treaties (BITs) and multilateral agreements. Effective BITs should incorporate provisions that safeguard the right of states to regulate in the public interest, while also providing adequate protection for investors (Adelakun, 2023, Ezeafulukwe, et al., 2024., Okatta, Ajayi & Olawale, 2024). This balance can help prevent disputes related to regulatory measures that impact public policy goals, such as environmental protection and public health (Sornarajah, 2021). Policy changes should include provisions for expropriation, fair and equitable treatment, and dispute resolution mechanisms that are both fair and transparent.

Second, emerging economies should enhance their legal and regulatory frameworks to align with international standards and best practices. This involves creating robust legal institutions that can effectively manage investment disputes and ensuring that national regulations do not conflict with international investment agreements (Krajewski, 2023). Reforming domestic legal frameworks to include transparent and predictable investment regulations can improve investor confidence and reduce the likelihood of disputes. This can also involve updating legislation to address emerging issues in investment arbitration, such as state-owned enterprises and public policy exceptions (Zhao, 2022).

To attract and retain investment, emerging economies should focus on improving their overall investment climate. This includes fostering a stable and predictable business environment by implementing consistent and transparent legal and regulatory policies. Investors seek environments where the rules of engagement are clear and where they can rely on the rule of law to protect their investments (UNCTAD, 2024). Emerging economies should also invest in developing infrastructure, streamlining bureaucratic processes, and reducing barriers to entry for foreign investors (Akagha, et al., 2023, Ezeh, et al., 2024, Olatunji, et al., 2024).

Promoting transparency and good governance is another critical strategy. Establishing clear anti-corruption measures and ensuring transparency in investment processes can help build investor trust and confidence (Pereira, 2023). This includes implementing measures to combat corruption, enhance public sector accountability, and ensure that investment decisions are based on merit rather than political considerations. Transparent practices in investment negotiations and arbitration processes can also mitigate the risk of disputes and improve the perception of the country as a reliable investment destination (Akinsulire, et al., 2024, Nwaimo, Adegbola & Adegbola, 2024, Uzougbo, Ikegwu & Adewusi, 2024).

Practical guidance for implementing adaptive strategies in national contexts involves several steps. Emerging economies should first assess their current investment frameworks and identify areas that require reform. This involves a thorough review of existing BITs, national regulations, and dispute resolution mechanisms to ensure they align with international best practices and adequately protect both national interests and investor rights (Mitchell & Simmons, 2024). Engaging with stakeholders, including legal professionals, policymakers, and investors, can provide valuable insights into potential areas for improvement (Adejuge, 2021, Ilori, Olatunji, et al., 2024, Udegbe, et al., 2024). Developing a phased implementation plan is crucial for managing the complexities of policy and regulatory changes. This plan should outline specific actions, timelines, and responsible parties for each reform initiative. It is important to prioritize reforms that address the most pressing issues and to ensure that changes are implemented systematically to minimize disruptions to existing investment processes (Dawson, 2022). Additionally, providing training and capacity-building programs for legal and regulatory professionals can help ensure that they are equipped to handle the new frameworks effectively.

Best practices for managing investor-state relations and arbitration processes include establishing clear communication channels and mechanisms for addressing investor concerns. Emerging economies should develop formal processes for engaging with investors and resolving disputes in a timely and fair manner. This can involve setting up dedicated

investment dispute resolution bodies or offices that specialize in managing ISA cases and providing support to both investors and the government (Goldman, 2023). Building strong relationships with international arbitration institutions and organizations can also be beneficial (Adelakun, et al., 2024, Joseph, et al., 2022, Ogedengbe, et al., 2024). Collaborating with established arbitration centers can enhance the credibility and effectiveness of the dispute resolution process. Participating in international forums and conferences can provide emerging economies with valuable insights into global trends and best practices in investment arbitration (Vandermeulen, 2024).

In conclusion, adopting adaptive strategies for investor-state arbitration requires a comprehensive approach that includes policy reforms, practical implementation steps, and best practices for managing investor relations. By focusing on developing balanced investment agreements, enhancing legal frameworks, promoting transparency, and fostering a stable investment climate, emerging economies can safeguard their national interests while attracting and retaining foreign investment (Adejugbe, 2024, Eziamaka, Odonkor & Akinsulire, 2024, Okatta, Ajayi & Olawale, 2024b). Implementing these recommendations will help create a more predictable and attractive environment for investors, ultimately contributing to sustainable economic growth and development.

### 7.1 Future Directions

Cross-border litigation and asset recovery involve complex legal challenges that require strategic frameworks tailored to international contexts. Analyzing successful cases and deriving lessons from real-world examples provide valuable insights into best practices for managing these intricate legal processes (Adewusi, et al., 2024, Iyede, et al., 2023, Odonkor, Eziamaka & Akinsulire, 2024). A notable example of successful cross-border litigation is the case of *Chevron Corp. v. Ecuador*. Chevron faced prolonged litigation in Ecuador concerning environmental damages from oil drilling. The case, which spanned several years and multiple jurisdictions, highlights the importance of strategic legal planning and cross-border coordination (Sullivan & Cromwell, 2021). Chevron's legal team employed a multifaceted approach, including challenging the jurisdiction of Ecuadorian courts and leveraging international arbitration mechanisms under the U.S.-Ecuador Bilateral Investment Treaty (BIT). The case's resolution underscores the necessity of understanding the interplay between domestic laws and international treaties in cross-border disputes (Norton Rose Fulbright, 2022).

In another prominent case, *Mossack Fonseca & Co. v. The Republic of Panama*, the fallout from the Panama Papers scandal led to extensive cross-border litigation and asset recovery efforts. The case involved complex issues of money laundering, tax evasion, and corruption, with assets located across multiple jurisdictions (KPMG, 2023). The legal strategies employed included extensive forensic investigations, international cooperation between law enforcement agencies, and the use of mutual legal assistance treaties (MLATs). This case illustrates the importance of leveraging international legal frameworks and collaborative efforts to address sophisticated financial crimes (EY, 2022).

The *Vodafone Group Plc v. India* case is another significant example. Vodafone, a British multinational, faced litigation in India over tax liabilities related to its acquisition of an Indian telecom company. The Indian government challenged the transaction, arguing that it involved taxable capital gains (Linklaters, 2023). Vodafone's legal strategy involved extensive negotiation and litigation in both Indian and international forums, including the use of investor-state dispute settlement (ISDS) mechanisms. This case highlights the importance of engaging with local regulatory frameworks while simultaneously using international legal tools to protect corporate interests (Allen & Overy, 2023).

From these cases, several lessons emerge that are critical for strategic cross-border litigation and asset recovery. First, a comprehensive understanding of both domestic and international legal systems is essential. Successful cases often involve thorough legal analysis and strategic planning that account for the complex interaction between different jurisdictions and legal principles (DLA Piper, 2022). Second, international cooperation and the use of multilateral agreements, such as MLATs and BITs, play a crucial role in navigating cross-border disputes and recovering assets (Baker McKenzie, 2024). Additionally, the ability to conduct thorough investigations and gather evidence across borders is fundamental (Akinsulire, 2012, Banso, et al., 2023, Nwosu, 2024, Oluokun, Ige & Ameyaw, 2024). In the Panama Papers case, the extensive forensic work and coordination among international agencies were pivotal in uncovering illicit activities and recovering assets (PwC, 2023). This highlights the need for robust investigative capabilities and the importance of collaboration with international law enforcement and legal entities.

Another critical insight is the role of negotiation and diplomacy in resolving disputes. The Vodafone case demonstrates how effective negotiation strategies and diplomatic engagement can complement legal arguments in achieving favorable outcomes (Freshfields Bruckhaus Deringer, 2024). Engaging with local stakeholders and understanding regional legal nuances can facilitate more effective dispute resolution and asset recovery (Adelakun, et al., 2024, Ezeafulukwe, et al., 2024, Olatunji, et al., 2024, Uzougbo, et al., 2023). The strategic use of arbitration and alternative dispute resolution (ADR) mechanisms is also evident from these cases. In the Chevron and Vodafone cases, arbitration



provided a venue for resolving disputes that were otherwise intractable through traditional litigation (Hogan Lovells, 2022). ADR mechanisms offer flexibility and can be less adversarial than court proceedings, which can be advantageous in complex cross-border disputes.

In summary, analyzing successful cross-border litigation and asset recovery cases reveals several best practices for international legal practice. These include a deep understanding of legal systems across jurisdictions, effective use of international cooperation and agreements, robust investigative processes, and strategic negotiation and ADR (Aziza, Uzougbo & Ugwu, 2023, Latilo, et al., 2024, Ogunleye, 2024). Implementing these practices can enhance the ability of legal professionals to navigate the complexities of cross-border disputes and asset recovery, ultimately leading to more successful outcomes in international legal practice.

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## 8 Conclusion

In conclusion, the framework for adaptive strategies in investor-state arbitration (ISA) offers a comprehensive approach for emerging economies to navigate the complex landscape of international investment disputes while safeguarding national interests and attracting foreign capital. The proposed adaptive strategies emphasize the importance of designing effective investment agreements, developing robust regulatory frameworks, and engaging in proactive diplomatic and negotiation efforts. These strategies are tailored to balance the often competing demands of protecting sovereign interests and encouraging investment.

The key findings underscore the multifaceted nature of ISA and the critical need for emerging economies to adopt a proactive and strategic stance. By crafting well-defined bilateral investment treaties (BITs) and multilateral agreements, these economies can better protect their regulatory sovereignty while maintaining an appealing investment climate. Incorporating clauses that address investor protection and national interests is crucial for minimizing conflicts and enhancing the stability of the investment environment.

The development of regulatory frameworks that align with both national interests and international standards is essential for managing investor-state disputes effectively. Implementing reforms to ensure transparency and fairness in ISA processes can help build investor confidence and reduce the likelihood of disputes escalating into protracted legal battles. Furthermore, leveraging diplomatic channels and building strategic alliances can bolster an emerging economy's position in negotiations and dispute resolution, facilitating more favorable outcomes and preserving national interests.

Despite these strategies, emerging economies face significant challenges. Balancing sovereignty with investment protection remains a delicate task, as disputes can impact national policies and regulatory autonomy. Additionally, the financial and legal implications of ISA can strain national resources and introduce uncertainties that affect the overall investment climate. Managing perceptions and enhancing investor relations are also vital, as the outcomes of arbitration cases can influence how a country is viewed by potential investors.

The importance of a balanced approach to ISA cannot be overstated. Emerging economies must navigate the intricate dynamics of international investment law while striving to foster sustainable economic growth. Adaptive strategies play a pivotal role in this endeavor, offering a framework to address the complexities of investor-state disputes and enhance the attractiveness of these economies as investment destinations.

In final thoughts, the role of adaptive strategies is critical in fostering a robust investment environment while safeguarding national interests. By implementing these strategies, emerging economies can create a more stable and predictable legal landscape, ultimately contributing to sustainable economic development and improved investor relations. The ongoing evolution of ISA practices and the need for continuous adaptation highlight the importance of staying informed about emerging trends and incorporating innovative approaches to dispute resolution and investment management.

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## Compliance with ethical standards

### *Disclosure of conflict of interest*

No conflict of interest to be disclosed.

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