

Insight

Corporate Social Responsibility under international investment treaties

With the world awaiting the decisions coming out of COP26, responsibility, accountability and international co-operation are fast becoming the new direction of travel. This movement is also affecting international investment treaties, where a shift towards greater scrutiny of investors' commitment to CSR principles is changing the symmetry of such agreements.

In the past 10 years, at least 65 multilateral international investment agreements (“IIAs”) have included references to principles of corporate social responsibility (“CSR”) and human rights. Of these, nearly 30 were concluded in the past 3 years.

Investors should take note, since these developments are altering the balance of IIAs and thus have implications for disputes.

- Increasing references to CSR principles in IIAs evidence a desire on the part of States for tribunals to consider such principles when assessing investment claims.
- Some IIAs call on arbitral tribunals to consider the investor's violation of CSR principles when determining the amount of compensation for a breach of the IIA.
- It may become increasingly difficult for investors who have failed to comply with CSR principles to successfully file claims against foreign States.

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