

Structuring for Brexit: The Achmea Decision

By Robert Blackett | November 29, 2018

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Any business which is planning to invest either in Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia or Slovenia, or in the energy sector anywhere the UK or EU, should consider whether its investment might have to be structured differently, because of the combined effect of the UK's planned withdrawal from the EU and a surprise ECJ decision from March 2018.

BITs

Some EU Member States are party to "*bilateral investment treaties*" ("BITs") with other EU Member States.

States which are party to BITs agree to treat investments by one another's investors to a certain standard. Typically each state agrees:

- (a) To accord investments by the other state's nationals or companies:
 - (i) The most favourable treatment that it accords to investments by its own, or any third country's, nationals or companies
 - (ii) "*Fair and equitable treatment*"
 - (iii) "*Full protection and security*"
- (b) To pay compensation in the event that it expropriates investments belonging to the other state's nationals or companies
- (c) That the investors may bring claims against the host state for breach of the treaty by way of binding international arbitration, instead of through the host state's domestic courts

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