

VAN BAEL & BELLIS



**THE EU-CHILE ADVANCED FRAMEWORK
AGREEMENT:**

**A BRIEF ANALYSIS OF THE INVESTMENT
PROTECTION PROVISIONS**

| 2 March 2023

On 9 December 2022, the European Union (the *EU*) and Chile (the *Parties*) announced the conclusion of the negotiations of the [EU-Chile Advanced Framework Agreement](#) (the *Advanced Framework Agreement*). The Advanced Framework Agreement includes both a “Political and Cooperation pillar” and a “Trade and Investment pillar”. The Trade and Investment pillar includes investment protection provisions.

Although the text of the Advanced Framework Agreement will not be finalised and ready for adoption until Autumn 2023, the European Commission has, for transparency purposes, published the [preliminary texts of the Interim Trade Agreement](#) (which will apply before the Advanced Framework Agreement enters into force) and certain draft texts of the Advanced Framework Agreement, including the investment chapter.

This Client Alert considers and analyses the investment protection provisions of the Advanced Framework Agreement in its current form.

INVESTMENT PROTECTION

The Advanced Framework Agreement’s investment protection provisions include many of the substantive obligations that are common in IIAs, including protection against expropriation and guarantees of full protection and security and fair and equitable treatment (*FET*).

As in other IIAs negotiated by the EU, the agreement itself defines the content of the FET standard of treatment, and provides interpretative guidance to assess a potential breach of the standard. Notably, such guidance is linked to the minimum standard of treatment under customary international law.

INVESTOR-STATE DISPUTE SETTLEMENT

Under the Advanced Framework Agreement, disputes arising from alleged breaches of the Agreement’s substantive investment protection obligations, causing loss or damage to the investor or its locally established company, are to be resolved through mediation, consultations or by way of an investment court.

Based upon the EU’s model of a permanent court system with two levels of decision making, the Advanced Framework Agreement envisages that disputes would be resolved by a Tribunal of First Instance (composed of nine judges) and an Appeal Tribunal (composed of six members). The Tribunal of First Instance would deliver a provisional award that could be appealed before the Appeal Tribunal. The provisional award would become final and binding if not appealed within the stipulated time or if the Appeal Tribunal rejects the appeal.

Notably, the Advanced Framework Agreement’s provisions on the Investment Court System also commit the Parties to cooperate with a view to establishing a multilateral investment tribunal and appellate mechanism for the resolution of investment disputes that will eventually replace the investment court established under the Advanced Framework Agreement. This is in line with the EU’s broader goal of creating a [multilateral investment court](#).

IMPACT ON FOREIGN INVESTORS

Once the Advanced Framework Agreement enters into force, subject to specific termination clauses, the 15 applicable BITs between 16 EU Member States and Chile will cease to apply and EU investors in Chile and Chilean investors in the EU will need to rely on the investment protection provisions set out in the Advanced Framework Agreement not only in relation to the standards of treatment to be expected but also in relation the way in which investment disputes are resolved. Whilst there are some revisions to the standards of treatment to be expected, the real innovation in the Advanced Framework Agreement is the introduction, in line with the EU's approach in other new investment agreements, of an investment court system in place of *ad hoc* investment arbitration.

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