

# *Brandes v. Venezuela*

ICSID Award

**A BRIEF OVERVIEW**

COURSE OF LECTURES ON INTERNATIONAL INVESTMENT LAW

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## Art. 22 of the 1999 Venezuelan Investment Law

“Disputes arising between an international investor, whose country of origin has in effect with Venezuela a treaty or agreement for the promotion and protection of investments, or disputes to which are applicable the provisions of the Multilateral Investment Guarantee Agency (MIGA), or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID), shall be submitted to international arbitration, according to the terms of the respective treaty or agreement, if it so provides, without prejudice to the possibility of using, if appropriate, the dispute resolution means provided for under the Venezuelan legislation in effect, when applicable.”

## Basis for ICSID Jurisdiction

- Art. 22 of the 1999 Venezuelan Investment Promotion Law
- Does this Article contain the Venezuelan consent to ICSID jurisdiction?
- Can the investor's acceptance be made simply by instituting proceedings?

# Approach of the Tribunal

- The grammatical interpretation is unnecessary
- Analysis of the context
- Consideration of other relevant rules of domestic legislation, such as constitutional provisions,
- ... of the historical circumstances related to the enactment of Art. 22
- and of Art. 25 of the Washington Convention

## The claimant's position

- The pressing need to attract FDI = unilateral consent to ICSID arbitration
- The interpretation of Art. 22 should be made according to principles of international law
- The Venezuelan investment law has the typical structure of BITs

# The Position of Venezuela

- Denial that Art. 22 contains its consent to ICSID jurisdiction
- Necessity of an agreement
- The interpretation of Art. 22 should be made according to principles and rules of its domestic law