

# THE INVESTOR-STATE DISPUTE SETTLEMENT MECHANISM UNDER THE CROSS-STRAIT BILATERAL INVESTMENT AGREEMENT TO ADDRESS THE PROTECTION OF PERSONAL FREEDOM AND SAFETY

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## ABSTRACT

*On August 9, 2012, Taiwan and the People's Republic of China (hereinafter PRC) concluded the long-awaited bilateral investment protection and promotion agreement (hereinafter BIA) after the eighth Chen-Jiang meeting. The BIA is virtually indistinguishable from a standard bilateral investment treaty (hereinafter BIT). However, in light of past experiences, the BIA also exhibits a few characteristics that are rather unique in order to address some of the concerns of the parties. Notably, the parties agree explicitly, in addition to the protection implicitly provided in Fair and Equitable Treatment (hereinafter FET) and Full Protection and Security (hereinafter FPS), to protect the personal freedom and safety of investors as well as investments. This explicitly stipulated level of protection is likely higher and more concrete than the standard FET and FPS found in any other BITs. Specifically, it may (1) require affirmative action of the parties to protect investors and related*

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persons; and (2) in a way, “bind” the parties to certain human rights standards.

*On the other hand, due to the sensitivity of the sovereignty issue between the parties, the dispute resolution clause does not include an international arbitration clause.*

*Without allowing injured investors to initiate arbitration against the parties, the BIA in its current state may not provide adequate means of recourse for investors in the event that the parties breach their obligations.*

*This paper sets out to analyze and interpret two of the more unique features of the BIA, the inclusion of the protection of personal safety and its dispute resolution clause. A suggestion on how to proceed in the next rounds of negotiations will be given.*

**KEYWORDS:** *investment arbitration, bilateral investment protection and promotion agreement, Taiwan-China Bilateral Investment Agreement, bilateral investment treaty, full protection and security, fair and equitable treatment*