

# ICSID OPIC VS. VENEZUELA DISPUTE: A COMMENT ON THE INTERPRETATIVE APPROACH FOR A HOST STATE'S CONSENT TO ARBITRATION THROUGH NATIONAL LEGISLATION

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## ABSTRACT

*On May 28, 2010, a Taiwanese state-owned oil company pursuant to the laws of Panama, OPIC Karimun Corporation (OPIC), sued Venezuela at ICSID for losses incurred due to the nationalization of the Venezuelan oil industry in 2007. In May 2013, the Tribunal awarded that ICSID had no jurisdiction to hear this matter and this Tribunal had no competence to decide the merits of the case.*

*In practice, consent to establish ICSID jurisdiction could be given in direct agreements, bilateral or multilateral treaties and national legislations. However, a host state's legislation might implicate ambiguous words, this Article focuses on the proper approaches of interpretation regarding the consent of host state. It also examines whether Article 22 of the Venezuelan Investment Law did independently give ICSID jurisdiction.*

*By analyzing several ICSID cases and other investment tribunals, this Article considers that it might be useful to put emphasis on the*

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*ILC Guiding Principles as the reasons supportive of the Venezuelan Investment Law to be interpreted on the basis of the spirit of the ICSID Convention or international law. While an offer of consent within national legislation should be given first and foremost in text, this Article argues that it must be interpreted in good faith. Furthermore, the context and circumstances of its legislative stage should also be considered. In this regard, this Article is of the view that Venezuela should bear the negative risk because Venezuela enacted ambiguous and equivocal text. This Article also puts forward some dissenting views on the host state's evidential advantages and the author's personal standpoint in response to the Tribunal's conclusions.*

**KEYWORDS:** *ICSID, consent to arbitration, Venezuela, dispute settlement, national legislation, approach to interpretation*