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AI Data Center Buildout: Managing Sovereign and Regulatory Risk Through Investment Treaties

I. Summary

The global buildout of artificial intelligence data centers has become one of the largest infrastructure investment cycles in modern history. Trillions of dollars are expected to be deployed into facilities that combine long-duration real estate, power, cooling, networking, and compute assets. The capital stack is correspondingly broad – hyperscalers, private equity sponsors, infrastructure funds, sovereign wealth funds, pension funds, private credit providers, bond investors, and structured-finance vehicles are all participating in the buildout.

Most underwriting has focused on construction risk, power availability, GPU supply, technology obsolescence, tenant concentration, and the durability of increasingly complex financing structures. A different risk is receiving less attention: the possibility that a host State changes the regulatory, tax, energy, data-governance, or national-security framework after capital has been committed and the asset can no longer be moved.

That risk is no longer remote. Governments that are currently competing to attract AI investment through tax incentives, permitting support, grid access, and favorable regulatory treatment are also confronting public resistance to data center development, pressure on electricity and water systems, and demands for sovereign control over data, cloud services, and computing capacity. Measures adopted in response may be economy-wide and legitimate. They may also be retroactive, discriminatory, disproportionate, or inconsistent with specific commitments made to investors.

International investment treaties can, in appropriate circumstances, give a qualifying foreign investor a direct claim against the host State for measures that impaired a protected investment. Potentially protected interests may extend beyond equity in a project company to debt instruments, contractual rights, land and leasehold interests, concessions, grid-access rights, permits, licenses, and other assets across the AI data center capital structure. Treaty protection is not automatic, however. It depends on the text of the applicable treaty, the nationality and structure of the claimant, the nature and timing of the investment, and the evidence of the State commitments on which the investor relied.

This note explains why AI data center investments are unusually exposed to sovereign and regulatory risk; identifies the principal forms of State conduct most likely to engage treaty protections; examines the types of equity, debt, contractual, and regulatory interests that may qualify as covered investments; addresses the practical recoverability of awards; and sets out steps that sponsors, lenders, and other capital providers can take before a dispute becomes foreseeable.

II. Introduction: The Next Risk in the AI Infrastructure Investment Cycle

A. Scale, Financing, and Industrial Foundations of AI Compute

The global buildout of artificial intelligence (AI) data centers represents one of the most capital-intensive infrastructure expansions in recent history. Large language models require enormous computing power housed in specialized facilities equipped with graphics processing units (GPUs), advanced cooling infrastructure, high-bandwidth networking, and substantial grid-connected power capacity.

The cost of AI infrastructure needed to meet global demand by the end of the decade has been estimated at USD 5.2 trillion.[1] The scale of that requirement exceeds what even the world's most profitable technology companies can fund from internally generated cash flows.[2]

The sector has therefore turned to public and private debt markets at extraordinary scale. New borrowing in 2025 reached at least USD 200 billion, a figure that likely understates aggregate issuance because many financings are private.[3] One estimate puts the external financing required across the AI ecosystem at approximately USD 1.5 trillion by 2028.[4] Capital is being deployed through corporate bonds, special purpose vehicles (SPVs), securitizations, equipment financing, and GPU-collateralized structures.

The resulting assets are physical, resource-intensive, and difficult to relocate. A modern AI facility may house thousands of GPUs, draw power at industrial scale, require dedicated cooling and water infrastructure, and depend on a small number of grid, fiber, and permitting connections. Facilities expected to come online have been estimated to require power on a scale roughly ten times New York City's summer peak electricity demand.[5]

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[1] McKinsey & Company, The Cost of Compute: A $7 Trillion Race to Scale Data Centers (Apr. 28, 2025), (https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/the-cost-of-compute- a-7-trillion-dollar-race-to-scale-data-centers).

[2] Quinn Emanuel Urquhart & Sullivan, Client Alert: Emerging Litigation Risks in Financing AI Data Centers Boom (Mar. 13, 2026) (noting that the cost of AI infrastructure to meet global demand by the end of the decade is estimated at USD 5.2 trillion), (https://www.quinnemanuel.com/the-firm/publications/client-alert-emerging-litigation-risks-in-financing-ai-data-centers-boom/).

[3] The $3 Trillion AI Data Center Build-Out Becomes All-Consuming for Debt Markets, Bloomberg (Feb. 3, 2026), (noting that the sector has turned to public and private debt markets to finance the data center buildout, with new borrowing in 2025 reaching at least USD 200 billion), (https://www.bloomberg.com/news/articles/2026-02-02/the-3-trillion-ai-data-center-build-out-spurs-a-debt-market-boom).

[4] Paula Seligson et al., How AI Companies Are Keeping Debt Off Their Balance Sheets, Bloomberg (Oct. 31, 2025) (noting that around USD 1.5 trillion in external financing is needed across the AI ecosystem by 2028), (https://www.bloomberg.com/news/articles/2025-10-31/meta-xai-starting-trend-for-billions-in-off-balance-sheet-debt).

[5] Joshua You & David Owen, Scaling Intelligence: The Exponential Growth of AI's Power Needs, at 25-28 (Elec. Power Rsch. Inst. & Epoch AI, White Paper No. 3002033669, Aug. 2025), (describing GPU-intensive facilities requiring dedicated cooling, high-bandwidth networking, and enormous power capacity), (https://www.epri.com/research/products/000000003002033669).

Financing those facilities requires a diverse ecosystem of capital providers: hyperscalers building and occupying their own campuses, neoclouds specializing in GPU capacity, data center developers and operators, private credit funds, and institutional investors holding securitized paper.[6] Several of the largest transactions (including Oracle's Stargate-related financings, Meta's USD 30 billion Hyperion SPV, and the Google-backstopped TeraWulf bond offering) illustrate the scale and structural complexity of the sector.[7]

For financing parties, the critical point is that this is not merely a technology cycle. It is a long-duration infrastructure cycle built around fixed assets, concentrated public-resource dependencies, and project economics that often assume years of stable treatment. Once land is acquired, grid capacity reserved, permits issued, equipment installed, and debt drawn, the investment is substantially exposed to the host jurisdiction.

B. The Globalization of AI Infrastructure Capital

The same financing structures are being deployed globally. In Europe, the European Commission's InvestAI initiative, launched in February 2025, aims to mobilize EUR 200 billion for AI investment across the bloc, including a dedicated EUR 20 billion facility for AI gigafactories designed to house over 100,000 advanced processors.

In the Asia-Pacific region, the buildout is proceeding at comparable scale. The region is projected to account for approximately 40 percent of global data center capacity by 2030. This is underpinned by an estimated USD 800 billion in investment, financed through a combination of project finance facilities, private equity, sovereign wealth co-investment, and green loan structures. Nearly USD 70 billion in private equity have been deployed in the region over the past decade, approximately USD 40 billion of which was invested in the past two years alone.[8]

In Latin America, the Inter-American Development Bank has identified data center investment as a strategic priority for regional competitiveness. The market was valued at approximately USD 5 billion in 2023 and projected to reach USD 10 billion by 2029, led by Brazil, Mexico, and Chile.[9]

These financing initiatives are already translating into hyperscale infrastructure in all principal regions, well beyond the United States.

In the Middle East, the UAE and Saudi Arabia have attracted multi-billion dollar commitments, including Microsoft's USD 15.2 billion investment in UAE AI infrastructure

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6 Quinn Emanuel Urquhart & Sullivan, Client Alert: Emerging Litigation Risks in Financing AI Data Centers Boom (Mar. 13, 2026) (describing SPV financing structures through which over USD 120 billion in data center spending has been moved off balance sheets in approximately 18 months), (https://www.quinnemanuel.com/the-firm/publications/client-alert-emerging-litigation-risks-in-financing-ai-data-centers-boom/).

7 Quinn Emanuel Urquhart & Sullivan, Client Alert: Emerging Litigation Risks in Financing AI Data Centers Boom (Mar. 13, 2026) (describing the Oracle, Meta, and Google/Fluidstack/TeraWulf transactions as illustrative examples of scale and structural complexity), (https://www.quinnemanuel.com/the-firm/publications/client-alert-emerging-litigation-risks-in-financing-ai-data-centers-boom/).

8 Moody's Ratings, APAC Data Centers: An 800bn Dollar Opportunity (Aug. 14, 2025) (projecting that Asia-Pacific data center capacity will more than double by 2030), (https://www.moodys.com/web/en/us/creditview/blog/apac-data-centers-800bn-dollar-opportunity.html); KR Asia, Asia's AI Data Center Financing Gets Complicated (Jan. 20, 2026) (reporting, citing MSCI data, that nearly USD 70 billion in private equity investments have been made in Asia-Pacific data center operators over the past decade, with approximately USD 40 billion deployed in the past two years alone), (https://kr-asia.com/asias-ai-data-center-financing-gets-complicated).

9 IDB Invest, Data Centers and the Future of Competitiveness in Latin America (May 17, 2025) (estimating the Latin American data center market at USD 5 billion in 2023, projected to reach USD 10 billion by 2029), (https://idbinvest.org/en/blog/digital-economy/data-centers-and-future-competitiveness-latin-america).

and xAI's announced 500 MW facility in Saudi Arabia.[10] In Asia-Pacific, India has emerged as the fastest-growing market, with Google committing USD 15 billion to a dedicated AI hub in Visakhapatnam – its largest AI infrastructure investment outside the United States.[11]

The globalization of this capital creates a risk that is distinct from construction, technology, and credit risk. Investors are committing fixed capital in jurisdictions where the rules governing tax incentives, grid access, water use, data localization, foreign ownership, procurement, and national security may look materially different over a ten- or twenty-year underwriting period. The commercial question is not whether governments will continue to regulate. They will. It is whether a later measure crosses the line from legitimate regulation into conduct that violates a treaty commitment owed to a qualifying foreign investor.

This note sets out why AI Data Center investments are particularly exposed to State risk (III.), considers investment arbitration as a political risk protection tool (IV.), considers what may constitute a covered investment (V.), where treaty risk may arise in the AI data center lifecycle (VI.), sets out the recoverability of arbitral awards (VII.), and the steps investors can take to prepare (VIII.).

III. Why AI Data Center Investments Are Particularly Exposed to State Risk

A. Fixed, Capital-Intensive, and Difficult to Relocate

AI data centers combine the sunk-cost profile of heavy infrastructure with the pace and strategic sensitivity of the technology sector. Capital is committed upfront to land, buildings, substations, transmission and interconnection works, cooling systems, fiber, and specialized computing equipment. Much of that expenditure has limited alternative use once installed.

That immobility changes the bargaining position after investment. A software business can move personnel or workloads. A multi-billion-dollar campus tied to a particular grid node, water system, tax arrangement, and permitting regime generally cannot. The host State therefore has greater practical leverage after capital has been deployed than it did when competing to attract the project.

B. Dependence on Governmental Approvals and Public Infrastructure

A data center's economic viability may depend on zoning approvals, building and environmental permits, water rights, grid-connection approvals, transmission capacity, power-pricing arrangements, tax abatements, customs treatment, data-processing authorizations, and access to public roads and communications infrastructure. Delay, withdrawal, or discriminatory administration of any one of these inputs may materially affect completion, utilization, or debt service.

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[10] Microsoft, Microsoft's 15.2 Billion USD Investment in the UAE (Nov. 3,2025), (https://blogs.microsoft.com/on-the-issues/2025/11/03/microsofts-15-2-billion-usd-investment-in-the-uae/); Bloomberg, Musk's xAI to Build 500 Megawatt Data Center in Saudi Arabia (Nov. 19, 2025), (https://www.bloomberg.com/news/articles/2025-11-19/musk-s-xai-to-build-500-megawatt-data-center-in-saudi-arabia).

[11] Google, Our First AI Hub in India, Powered by a USD 15 Billion Investment (Oct. 14, 2025), (https://blog.google/intl/en-in/company-news/our-first-ai-hub-in-india-powered-by-a-15-billion-investment/).

These dependencies frequently span national, state, provincial, and municipal authorities. Community opposition may begin locally, but the treaty question concerns the governmental response: whether authorities administer permits consistently, honor specific commitments, provide due process, and treat foreign-owned projects no less favorably than comparable domestic investments. As a matter of international responsibility, conduct by subnational and municipal organs may be attributable to the host State.

C. Long-Dated Underwriting and Regulatory Assumptions

AI infrastructure investments are commonly underwritten over long horizons. Financial models may assume the continuation of a particular tax regime, access to contracted or regulated power, expansion rights, data-transfer rules, operating permissions, or government incentives for ten, fifteen, or twenty years. Financing documents then convert those assumptions into covenants, coverage ratios, reserve requirements, and valuation conclusions.

Investment treaties do not freeze a host State's laws. But the longer the investment horizon, the greater the chance that a later government will revisit the bargain that induced the original capital commitment. Treaty risk becomes acute when a reversal is retroactive, targeted, discriminatory, disproportionate, or inconsistent with specific assurances on which the investor demonstrably relied.

D. Strategic Infrastructure, Sovereign AI, and National Security

Governments increasingly view compute capacity, cloud infrastructure, advanced chips, and AI systems as strategic assets. Policies described as sovereign AI, cloud sovereignty, data localization, technological autonomy, or national security can influence who may own infrastructure, where data may be processed, which suppliers may serve public-sector customers, and whether foreign-controlled operators may expand.

Many such measures pursue legitimate public objectives. Their treaty significance turns on the applicable text and the manner in which the State acts. A generally applicable, proportionate security measure may be protected by a treaty exception or the State's regulatory powers. A measure that selectively excludes foreign operators, favors a domestic champion, revokes prior approvals without process, or compels a transfer of value presents a different risk profile.

E. Exposure Across the Capital Stack

State action can impair more than sponsor equity. A permit cancellation may destroy collateral value; a grid restriction may prevent a project from achieving commercial operation; a change in tax treatment may weaken debt-service coverage; capital controls may block interest or principal payments; and compelled restructuring may alter the priority or enforceability of finance parties' rights.

Depending on the treaty and the financing instrument, qualifying lenders, bondholders, shareholders, and indirect owners may hold protected investments of their own. But economic exposure alone is not enough. Treaty coverage must be analyzed separately for each relevant entity and instrument, including the fund vehicle, holding companies, project company, operating company, lenders, noteholders, and entities holding critical permits or contracts.

F. Familiar Pattern from Earlier Infrastructure Cycles

The pattern is familiar from renewable energy, mining, transportation, telecommunications, and utilities: governments compete for capital; investors commit on the strength of incentives, approvals, and market-access rules; public priorities shift; and the State later changes the framework governing an immobile asset. AI infrastructure increasingly exhibits the same conditions that have produced major investment treaty disputes in those sectors.

IV. Investment Arbitration as a Political-Risk Protection Tool

International investment arbitration, often referred to as investor-State dispute settlement (ISDS), allows a qualifying foreign investor to bring a direct claim against a host State for breach of an applicable investment treaty. The claim is heard by an international arbitral tribunal rather than being confined to the host State's courts. For investors and financing parties, its significance is practical: it can convert certain forms of sovereign or regulatory interference into an enforceable claim for compensation. UNCTAD's current International Investment Agreements Navigator identifies at least 2,608 IIAs in force.[12] These instruments consist principally of bilateral investment treaties, supplemented by free trade agreements and other treaties containing investment chapters.[13]

ISDS provisions in IIAs enable an aggrieved investor, with an investment located in the territory of a foreign host State, to bring a claim against that State for breach of its investment obligations before an international arbitration tribunal.[14] These arbitrations most commonly take place under the rules of the International Centre for Settlement of Investment Disputes (ICSID), the United Nations Commission on International Trade Law (UNCITRAL), the Permanent Court of Arbitration (PCA), the Stockholm Chamber of Commerce (SCC), or the International Chamber of Commerce (ICC).

Proceedings are typically confidential, and awards are binding. ICSID awards, in particular, are directly enforceable in the domestic courts of all ICSID Member States without requiring recognition proceedings.

Most bilateral investment treaties (BITs) grant covered investments a suite of substantive protections. These typically include:

a) protection against expropriation, both direct and indirect, without prompt, adequate, and effective compensation;

b) fair and equitable treatment (FET), which is argued to (i) protect investors against arbitrary, discriminatory, or non-transparent conduct and (ii) safeguard their legitimate expectations;

c) full protection and security;

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[12] UNCTAD, IIA Issues Note No. 2, October 2024 (reporting that the IIA universe as of end-2023 comprised 3,291 instruments, with at least 2,608 in force), (https://unctad.org/system/files/official-document/diaepcbinf2024d4_en.pdf).

[13] UNCTAD, World Investment Report 2024, ch. II, at p. 1 (noting that as of early 2024 there were 2,429 IIAs in force with substantive investment commitments), (https://unctad.org/system/files/official-document/wir2024_ch02_en.pdf).

[14] Congressional Research Service, Investor-State Dispute Settlement: An Overview (2024), (explaining that ISDS provisions in IIAs enable an aggrieved investor to bring a claim against a host government for breach of an investment agreement before an international arbitration panel), (https://www.congress.gov/crs-product/R43988).

d) national treatment, prohibiting the host State from treating the foreign investor less favorably than domestic investors in like circumstances;

e) most-favored-nation (MFN) treatment; and

f) the free transfer of funds into and out of the host State.[15]

The FET standard is one of the most frequently invoked protections in ISDS practice. Its scope is treaty-specific and fact-dependent, but generally requires that the host State's conduct be transparent, non-arbitrary, free from coercion and harassment, and respectful of the investor's legitimate expectations arising from specific commitments.[16]

Expropriation protections' scope likewise depends on the treaty and facts. They are argued not only to apply to outright physical seizure, but also to extend to indirect measures, including the arbitrary revocation of permits, licenses, or concession agreements, that deprive the investor of the economic value of its investment.[17]

The usual remedy is monetary compensation rather than an order compelling the State to issue a permit or reverse legislation. That distinction matters to financing parties: a treaty claim may preserve or recover investment value after State action, but it is not a substitute for construction, operating, liquidity, or political-risk protections built into the transaction documents.

V. What May Constitute a Covered Investment Across the AI Data Center Capital Stack?

Whether an interest qualifies as a covered investment is a threshold jurisdictional question. Many treaties use broad, non-exhaustive asset-based definitions, but the precise language matters. Coverage may depend on the type of asset, the nationality and corporate form of the owner, the duration and characteristics of the commitment, any territorial nexus, and treaty-specific exclusions for particular categories of debt or claims to money.

A. Equity, Fund Vehicles, and Indirect Ownership

Shares or other equity interests in a project company, operating company, or holding company commonly fall within treaty definitions of investment. Protection may extend through intermediate entities where the treaty covers direct or indirect ownership or control.[18] This can be important in sponsor structures involving fund vehicles, co-investment vehicles, aggregators, regional holding companies, and project-level SPVs.

Treaty protection does not, however, automatically flow to every party with an economic interest in the fund. The identity of the claimant, the nationality test, the ownership chain,

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15 Rudolf Dolzer, Ursula Kriebaum and Christoph Schreuer, *I History, Sources, and Nature of International Investment Law*, in Principles of International Investment Law, 3rd Edition, Oxford University Press, 2022, p. 16.

16 Rudolf Dolzer, Ursula Kriebaum and Christoph Schreuer, VIII Standards of Protection, in Principles of International Investment Law, 3rd Edition, Oxford University Press, 2022, p. 194.

17 Global Arbitration Review, Investment Treaty Arbitration in the Construction Sector (Aug. 12, 2025) (noting that expropriation can arise through arbitrary revocation of necessary permits, licenses or agreements, or the removal or effective termination of contractual rights), (https://globalarbitrationreview.com/guide/the-guide-construction-arbitration/sixth-edition/article/investment-treaty-arbitration-in-the-construction-sector).

18 Rudolf Dolzer, Ursula Kriebaum and Christoph Schreuer, *IV Investment*, in *Principles of International Investment Law*, 3rd Edition, Oxford University Press, 2022, p. 117

and the treaty's treatment of indirect interests must be analyzed entity by entity. Denial-of-benefits provisions, requirements of substantial business activity, and restrictions on dual nationals or locally incorporated companies can change the result.

B. Loans, Bonds, and Other Financing Instruments

Many treaties expressly include loans, bonds, debentures, claims to money, or other debt instruments within the definition of investment. Depending on the treaty, a project loan, private credit facility, bond, note, shareholder loan, equipment financing, guarantee, or security interest may therefore form part of a covered investment.

Coverage for debt is especially treaty-sensitive. Some treaties exclude short-term commercial claims, sovereign debt, ordinary trade finance, or instruments lacking specified maturity or risk characteristics. Others impose additional requirements concerning contribution, duration, or the relationship of the financing to an enterprise in the host State. A lender or noteholder should not assume that treaty protection follows merely because the borrower's project is covered.

C. Project Rights, Permits, and Contractual Assets

At project level, potentially protected assets may include freehold or leasehold interests; easements and rights of way; concession and development agreements; power-purchase and grid-connection rights; water-use and environmental authorizations; tax-incentive agreements; building and operating permits; spectrum, cybersecurity, and data-processing approvals; intellectual property; and contractual rights against State-owned entities or public authorities.

These rights may be as valuable as the physical facility. A completed building without power, water, connectivity, data-processing authority, or an operating permit may have little of its underwritten value. Where a treaty contains an umbrella clause, qualifying contractual commitments by the State may also support a distinct treaty theory, subject to the clause's wording and the identity of the contracting entity.

D. Structure, Substance, and Timing

The central structuring question is not simply whether the overall transaction is foreign-funded. It is whether the particular entity that may need to bring a claim holds or controls a qualifying investment under a treaty in force with the host State. In layered financings, critical rights are often divided among the landowner, development company, project company, operating company, equipment SPV, IP owner, and financing vehicles. Treaty analysis should follow that allocation.

Timing is equally important. A bona fide structure established before a dispute becomes foreseeable may access treaty protection even if treaty planning influenced the choice of jurisdiction. A restructuring undertaken after the relevant dispute is foreseeable may be challenged as an abuse of process. Investors should therefore address treaty coverage during underwriting and documentation, not after the State relationship has deteriorated.

VI. Where Treaty Risk May Arise in the AI Data Center Lifecycle

A. Political and Community Driven Project Interference

The AI data center buildout is already generating significant political resistance. In the United States alone, an estimated USD 64 billion in data center projects were blocked or delayed over the two-year period ending in March 2025, according to research by Data Center Watch. The same analysis identified at least 142 activist groups operating across 24 States campaigning against new developments.[19] A more recent count places the figure at 188 organized opposition groups across 40 States, and reports that at least 48 projects representing USD 156 billion in investment were blocked or stalled by local opposition in 2025 alone, with project cancellations rising from six in 2024 to 25 in 2025.[20]

The concerns driving opposition are commercially significant and politically potent: electricity-rate increases, grid reliability, water consumption, noise, emissions, land use, tax subsidies, and the perception that data centers create relatively few permanent jobs compared with the capital and public resources they consume. Opposition has been bipartisan. A Gallup survey cited in media reports found that 71 percent of Americans would oppose a data center in their locality. Court rulings in Virginia voided project approvals for a proposed 37-building campus near Manassas National Battlefield Park in 2025, with one developer ultimately exiting the project.[21] At least eleven State legislatures have introduced moratorium bills targeting data center construction, while over fifty local moratoriums have been enacted across the United States.[22]

Community opposition of this kind is not unique to digital infrastructure. The extractive sector offers a long track record in which local and indigenous protest against large projects prompted host States to revoke permits or impose moratoria – measures that, in several instances, became the subject of investment treaty claims. In *Bear Creek Mining v. Peru*, sustained community protest led the Peruvian government to revoke the decree underpinning the Santa Ana silver project, which an ICSID tribunal found to constitute an indirect expropriation under the Canada-Peru Free Trade Agreement.[23]

Comparable dynamics may arise where a host State responds to opposition against foreign-owned digital infrastructure. A non-discriminatory pause supported by evidence and accompanied by due process presents a different case from a targeted permit reversal,

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[19] Data Center Watch, USD 64 Billion of Data Center Projects Have Been Blocked or Delayed Amid Local Opposition (May 2025), (cataloguing 142 activist groups operating across 24 U.S. states and an estimated USD 64 billion in projects blocked or delayed), (https://www.datacenterwatch.org/report).

[20] Fortune, Communities Are Blocking Billions in Data Centers (May 18, 2026), (reporting at least 48 data center projects representing USD 156 billion in investment blocked or stalled by local opposition in 2025 alone, with project cancellations rising from six in 2024 to 25 in 2025), (https://fortune.com/2026/05/18/communities-are-blocking-billions-in-data-centers-big-tech-has-wagered-1-trillion-otherwise/).

[21] Data Center Knowledge, Organized Opposition Collides with AI Data Center Growth (May 2026), (noting court rulings in 2025 voided project approvals in Virginia's Prince William County Digital Gateway project and one developer exited the project), (https://www.datacenterknowledge.com/build-design/organized-opposition-collides-with-ai-data-center-growth).

[22] Good Jobs First, Data Center Moratorium Bills Are Spreading in 2026 (Feb. 27, 2026), (noting that moratorium bills targeting data center construction have been introduced in at least eleven state legislatures, while over fifty local moratoriums have been enacted), (https://goodjobsfirst.org/data-center-moratorium-bills-are-spreading-in-2026/).

[23] *Bear Creek Mining Corporation v. Republic of Peru*, ICSID Case No. ARB/14/21, Award, 30 November 2017 (finding an unlawful indirect expropriation of the Santa Ana project following Supreme Decree 032-2011, adopted in response to social unrest in the Puno region), (https://www.italaw.com/cases/2848).

selective grid restriction, or indefinite regulatory limbo imposed after specific approvals were granted. The analysis will turn on treaty text, attribution, comparators, public purpose, proportionality, process, and the State's prior commitments.

There are multiple examples of cases in which such regulatory action has detrimentally affected an investment and thereby violated the investment protection accorded to the foreign investors. In the *LARAH v. Uruguay* case, a tribunal found Uruguay liable for State action that impaired a portfolio company's access to financing and organized a public campaign to discredit its managers.[24] In *Windstream Energy LLC v. Canada*, the Government of Ontario imposed a moratorium on offshore wind development despite a pre-existing Feed-in-Tariff contract with the investor. The tribunal found that the Government had done relatively little to address the scientific uncertainty it had cited as the justification for the moratorium. It further found that the Government had failed to address the legal and contractual limbo in which the investor found itself. On that basis, the tribunal held that Canada had breached the minimum standard of treatment under NAFTA Article 1105 and awarded CAD 25.2 million in compensation.[25]

For sponsors and lenders, the lesson is not that every cancellation or delay creates a treaty claim. It is that State-directed interference with permits, project approvals, financing access, or operational rights can affect the full capital stack and may engage treaty protection where the measure is attributable to the State and crosses the applicable substantive standard.

B. Regulatory Volatility, Incentive Reversal, and Resource Reallocation

A second category of risk is regulatory volatility: the withdrawal of tax incentives, grid access, capacity allocations, permitting pathways, or other elements of the framework on which an investor relied. Treaties do not generally prevent a State from changing policy. The more difficult question is whether the change is prospective and even-handed, or instead retroactive, discriminatory, disproportionate, procedurally unfair, or inconsistent with a specific stabilization or inducement commitment.

1. The Global Regulatory Environment

In the United States, State-level tax incentives for data center development have historically been substantial. Virginia's program now costs an estimated USD 1.6 billion per year in foregone revenue; as of 2025, at least 36 States had one or more targeted incentives for data center or server farm development.[26] That landscape is shifting rapidly. In February 2026, Illinois Governor Pritzker announced a two-year suspension of State tax incentives for new data center developments, effective July 1, 2026.[27] Virginia, Georgia, and Oklahoma are among States proposing to reduce or eliminate existing credits, while more than 300

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[24] *Latin American Regional Aviation Holding S. de S.R.L. v. Oriental Republic of Uruguay,* ICSID Case No. ARB/19/16, Award, 13 February 2024, (https://www.italaw.com/cases/11329).

[25] *Windstream Energy LLC v. Government of Canada*, PCA Case No. 2013-22, Award of 27 September 2016 (Windstream Energy v. Canada (I), Award, 27 Sept 2016), (https://jusmundi.com/en/document/decision/en-windstream-energy-llc-v-the-government-of-canada-award-tuesday-27th-september-2016).

[26] Commonwealth of Virginia, Annual Comprehensive Financial Report for Fiscal Year Ended June 30, 2025, at p. 191 (reporting USD 1.6 billion in abated taxes from data center exemptions in FY2025), (https://www.doa.virginia.gov/reports/ACFReport/2025/2025-ACFReport-for-web-Entire-Report.pdf).

[27] NRDC, Governor Pritzker Announces Two-Year Suspension of State Tax Incentives for New Data Center Developments (Feb. 18, 2026), (https://www.nrdc.org/press-releases/pritzker-announces-two-year-suspension-state-tax-incentives-new-data-center).

State data center legislation bills were filed across 30-plus States in the first six weeks of 2026 alone.[28]

Ireland built one of Europe's most attractive data center ecosystems on the basis of a 12.5% corporate tax rate, later transitioned to 15%. Data centers also benefited from several additional layers of incentives: (i) an Accelerated Capital Allowance (ACA) scheme; (ii) a 35% Research & Development tax credit on qualifying expenditure; and (iii) a Knowledge Development Box offering a 10% effective tax rate on profits from qualifying IP.[29]

In 2021, Ireland's Commission for Regulation of Utilities imposed a moratorium on new data center grid connections in the Dublin region.[30] The moratorium was effectively lifted in December 2025, but only subject to demanding new conditions: new data centers must have on-site dispatchable generation or battery storage matching their import capacity, and must source 80% of their annual demand from renewable energy within a six-year glide path.[31]

Singapore's data center policy trajectory is among the most well-documented examples of a government systematically replacing an open-incentive model with a tightly administered, approval-based system. Prior to 2019, the Singapore Economic Development Board (EDB) offered operators a suite of instruments to attract investment.[32] In 2019, the Singaporean government imposed a moratorium on new data center builds in response to energy consumption concerns, which it partially lifted in phases beginning in 2022. However, new data centers remain subject to stringent efficiency and sustainability requirements, and approvals for new centers remain scarce.

Regulatory volatility also takes the form of emerging sovereignty restrictions in international markets. South Korea's Cloud Security Assurance Program effectively bars foreign cloud service providers from handling certain workloads. Colombia's 2025 public cloud procurement rules award points to suppliers with in-country data centers while imposing data sovereignty requirements that restrict cross-border data flows.[33]

The European Commission's October 2025 Cloud Sovereignty Framework introduced new sovereignty objectives for EU institutions procuring cloud services, creating another layer of potential market access restriction for non-European operators.[34]

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[28] MultiState, State Data Center Legislation in 2026 Tackles Energy and Tax Issues (Mar. 20, 2026), (reporting that in 2026 more than 300 state data center legislation bills have been filed across 30+ states, with Virginia, Georgia, and Oklahoma proposing to reduce or eliminate credits), (https://www.multistate.us/insider/2026/2/20/state-data-center-legislation-in-2026-tackles-energy-and-tax-issues).

[29] PwC, Tax Summaries – Ireland – Corporate Tax Credits and Incentives (March 2026), (https://taxsummaries.pwc.com/ireland/corporate/tax-credits-and-incentives).

[30] Jennifer Duggan, Ireland Ends Moratorium on New Power Links to Data Centers, Data Center Knowledge, 15 December 2025, (https://www.datacenterknowledge.com/regulations/ireland-ends-moratorium-on-new-power-links-to-data-centers).

[31] Large Energy Users Connection Policy, CRU/2025236, Commission for Regulation of Utilities Ireland, 12 December 2025, (https://www.cru.ie/publications/28906/).

[32] PwC, Tax Summaries – Singapore – Corporate Tax Credits and Incentives (April 2026), (https://taxsummaries.pwc.com/singapore/corporate/tax-credits-and-incentives).

[33] Michael Geist, The Global Battle for Data Control: How the 2026 U.S. Report on Trade Barriers Targets Data Sovereignty Worldwide (Apr. 14, 2026), (describing data localization requirements in South Korea, Colombia, and the EU that restrict foreign cloud and data center operators), (https://www.michaelgeist.ca/2026/04/the-global-battle-for-data-control-how-the-2026-u-s-report-on-trade-barriers-targets-data-sovereignty-worldwide/).

[34] European Commission, Directorate-General for Digital Services, Cloud Sovereignty Framework (Version 1.2.1, October 2025), pp. 2–6, (https://commission.europa.eu/document/download/09579818-64a6-4dd5-9577-446ab6219113_en?filename=Cloud-Sovereignty-Framework.pdf).

2. When Regulatory Change Becomes Treaty-Relevant

A regulatory change is most likely to become treaty-relevant where the investor made a substantial commitment in reliance on a specific representation or legal assurance: a written tax-incentive agreement, a concession, a stabilization clause, a named-project decree, a binding permit, a capacity allocation, or an individualized undertaking by an authorized State official. General promotional statements and the mere existence of favorable legislation ordinarily provide a weaker foundation.

The analysis is contextual. Tribunals consider the precision and authority of the State's commitment; the investor's knowledge of regulatory risk; whether the investor actually relied on the assurance; the magnitude and retroactivity of the change; the public purpose; the availability of transition measures; and whether the burden imposed on the investor was proportionate. A treaty is not a stabilization clause unless its text and the facts support that result.

The so-called "Spanish renewables saga" illustrates this distinction in practice. Beginning in the early 2000s, Spain developed a legislative framework to attract foreign capital into renewable energy, culminating in Royal Decree 661/2007, which guaranteed producers a fixed feed-in tariff for the operational life of their installations alongside defined rates of return. The program attracted an estimated EUR 13 billion in foreign investment; by 2008, Spain accounted for approximately half of global new solar photovoltaic installations that year.[35]

Faced with an unsustainable tariff deficit following the 2008 financial crisis, successive governments introduced a series of retroactive regulatory reforms between 2010 and 2014. These ultimately replaced the feed-in tariff system with a remuneration model fixing returns at a regulator-determined rate and effectively dismantling the economic basis on which foreign investors had committed capital.[36]

Investors responded by initiating proceedings under the Energy Charter Treaty (ECT). Spain has faced more than fifty ECT arbitration proceedings with aggregate claims exceeding USD 10 billion; of the awards issued as of the date of this note, a substantial majority were decided in favor of investors.[37]

Where investors relied solely on a general legislative scheme applicable to the market as a whole, tribunals were more willing to find that no specific stabilization commitment had been made and to rule in Spain's favor.[38] Investors who could instead demonstrate reliance on more individualized representations, such as a specific decree applicable to a

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[35] Arbitration Monitor, Spain's Renewable Energy Reckoning: A Case Study in Non-Compliance with Investment Treaty Awards (Oct. 2025), (noting that Spain's renewable energy incentive framework attracted an estimated EUR 13 billion in foreign investment), (https://arbitrationmonitor.com/spains-renewable-energy-reckoning-a-case-study-in-non-compliance-with-investment-treaty-awards).

[36] QIL-QDI, op. cit.; IISD Investment Treaty News, Spain's Renewable Energy Saga: Lessons for International Investment Law and Sustainable Development (June 27, 2019 (summarizing Spain's successive regulatory reforms between 2010 and 2014 and their impact on the renewable energy incentive regime), (https://www.iisd.org/itn/2019/06/27/spains-renewable-energy-saga-lessons-for-international-investment-law-and-sustainable-development-isabella-reynoso/).

[37] UNCTAD Investment Dispute Settlement Navigator, Spain – Respondent State, (figures current as of date of publication), (https://investmentpolicy.unctad.org/investment-dispute-settlement/countries/196/spain-as-respondent).

[38] *Charanne B.V. and Construction Investments S.à.r.l. v. Kingdom of Spain*, SCC Case No. 062/2012, Award of 21 January 2016, (https://jusmundi.com/en/document/decision/en-charanne-b-v-and-construction-investments-s-a-r-l-v-spain-final-award-thursday-21st-january-2016); *Isolux Infrastructure Netherlands B.V. v. Kingdom of Spain*, SCC Case No. V2013/153, Award of 12 July 2016, (https://jusmundi.com/en/document/decision/es-isolux-infrastructure-netherlands-b-v-c-reino-de-espana-laudo-sunday-17th-july-2016).

named facility or a government undertaking as to applicable tariff rates, recovered. Tribunals found violations of the fair and equitable treatment standard and awarded substantial compensation, as illustrated by *Infrastructure Services Luxembourg v. Spain* and *E.ON v. Spain*.[39]

Beginning in 2005, Italy introduced a similar program, the *Conto Energia* program, offering foreign investors feed-in tariffs guaranteed for twenty years through individual contracts with the national grid operator. The program attracted significant capital into the Italian photovoltaic sector. By 2014, Italy had become the second largest photovoltaic market in Europe, with solar installations covering more than seven percent of national electricity demand.[40]

In 2013 and 2014, Italy enacted the *Destinazione Italia* Decree and the *Spalma-incentivi* Decree, retroactively reducing guaranteed tariffs by between seventeen and twenty-five percent for existing installations and abrogating a minimum guaranteed price scheme. These measures generated a wave of ECT arbitration proceedings; as of the date of this note, at least six awards have been rendered on the merits, with outcomes divided between investors and the State.[41]

C. Sovereign AI and State Action Directed at Foreign-Owned Digital Infrastructure

1. The Rise of Sovereign AI and Digital-Industrial Policy

A third and increasingly salient category of risk concerns State action directed at foreign-owned digital infrastructure. Governments are investing in national compute capacity, supporting domestic cloud and AI champions, and treating data centers as components of critical infrastructure. As a result, market access may increasingly depend on ownership, nationality, security clearance, domestic supply chains, and the location or control of data and technology.

The 2026 U.S. National Trade Estimate Report documents measures across multiple jurisdictions that affect foreign-owned operators, including data-localization mandates, procurement preferences for domestic cloud providers, nationality restrictions on personnel, and requirements to use domestic encryption or network infrastructure.[42]

These policies are often described as digital sovereignty, cloud sovereignty, or national security rather than conventional economic regulation. That characterization may be

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[39] *Infrastructure Services Luxembourg S.à.r.l. and Energia Termosolar B.V. v. Kingdom of Spain*, ICSID Case No. ARB/13/31, Award of 15 June 2018 (EUR 101 million awarded; annulment application rejected by ICSID ad hoc Committee, July 2021; award upheld by Court of Appeal of England and Wales, [2024] EWCA Civ 1257), (https://jusmundi.com/fr/document/decision/en-antin-infrastructure-services-luxembourg-s-a-r-l-and-antin-energia-termosolar-b-v-v-kingdom-of-spain-award-friday-15th-june-2018); *E.ON SE, E.ON Iberia Holding GmbH and E.ON Finanzanlagen GmbH v. Kingdom of Spain,* ICSID Case No. ARB/15/35, Award of 18 January 2024 (EUR 300 million awarded; ICSID annulment proceedings pending), (https://jusmundi.com/en/document/decision/en-e-on-se-e-on-finanzanlagen-gmbh-and-e-on-iberia-holding-gmbh-v-kingdom-of-spain-final-award-thursday-18th-january-2024).

[40] *Encavis AG and Others v. Italian Republic*, ICSID Case No. ARB/20/39, Award of 11 March 2024, para. 101, (https://jusmundi.com/en/document/decision/en-encavis-and-others-v-italian-republic-award-monday-11th-march-2024).

[41] Kluwer Arbitration Blog, Encavis AG and Others v. Italy — Yet Another Award in the Italian Renewable Energy Saga (2024), (https://legalblogs.wolterskluwer.com/arbitration-blog/encavis-ag-and-others-v-italy-yet-another-award-in-the-italian-renewable-energy-saga/).

[42] Office of the United States Trade Representative, 2026 National Trade Estimate Report on Foreign Trade Barriers, 31 March 2026, (https://ustr.gov/sites/default/files/files/Press/Releases/2026/National%20Trade%20Estimate%20Report%202026.pdf).

accurate and legally significant. It does not, however, end the treaty analysis. The questions remain whether the measure falls within an applicable exception; whether any exception is self-judging; whether the State acted in good faith; and whether the measure was applied in an arbitrary, discriminatory, or pretextual manner.

2. Forms of State Interference

At the extreme end of the spectrum, State action may take the form of nationalization or direct expropriation of a facility, grid asset, or operating business. That scenario is unusual in established markets but cannot be dismissed in jurisdictions with a history of infrastructure nationalization or emergency intervention.

More commonly, interference is indirect: discriminatory limits on grid access or capacity expansion; refusal to renew indispensable permits; mandatory localization of data, personnel, equipment, or ownership; exclusion from public procurement; compelled technology transfer; currency or capital controls; restrictions on repatriating revenues; or pressure to sell to a domestic entity as a condition of continued operation.[43]

3. Treaty Boundaries: Security Exceptions, Police Powers, and Discrimination

Treaty protection must be assessed against the State's right to regulate. Modern treaties often contain exceptions for essential security, public order, privacy, public health, or prudential measures. Some are self-judging; others permit tribunal review. Even without an express exception, tribunals may recognize bona fide, non-discriminatory regulation adopted for a legitimate public purpose.

The strongest claims are therefore unlikely to arise from the mere adoption of a generally applicable cybersecurity or data rule. They are more likely to arise where the State invokes security selectively, reverses project-specific commitments without process, favors a domestic competitor in like circumstances, imposes a measure grossly disproportionate to the stated objective, or uses regulation to force a transfer, restructuring, or loss of control.

4. Arbitral Precedents and the Data Center Analogy

Recent investment treaty arbitrations across the energy, telecommunications, and infrastructure sectors illustrate how tribunals have assessed State interference with foreign-owned infrastructure assets under investment treaties, with implications for the treatment of similar measures affecting digital infrastructure.

The Brookfield arbitration against Peru (a USD 2.7 billion claim filed in 2025 under the Canada-Peru Free Trade Agreement alleging illegal interference with toll road operations) illustrates that investor-State arbitrations arising from infrastructure interference can involve very large sums and complex regulatory backgrounds.[44]

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[43] UNCTAD, Expropriation: A Sequel, UNCTAD Series on Issues in International Investment Agreements II (United Nations, 2012), (analyzing direct and indirect expropriation under international investment law, including revocation of licenses and authorizations), (https://digitallibrary.un.org/record/743676/files/unctaddiaeia2011d7_en.pdf); UNCTAD, International Investment Agreements: Key Issues, vol. II (United Nations, 2004), (analyzing host State operational measures imposed on foreign investors, including conditions on market access), (https://unctad.org/system/files/official-document/iteiit200410v2_en.pdf).

[44] Quinn Emanuel Urquhart & Sullivan, Client Alert: Emerging Litigation Risks in Financing AI Data Centers Boom (Mar. 13, 2026), (describing the Brookfield USD 2.7 billion arbitration against Peru under the Canada-Peru Free Trade Agreement alleging illegal interference with toll road operations), (https://www.quinnemanuel.com/media/4dzkfccz/client-

Vattenfall AB v. Federal Republic of Germany illustrates that even in highly developed jurisdictions, abrupt legislative measures that deprive a foreign investor of the anticipated economic life of a critical energy infrastructure investment can engage treaty liability at scale.

Following Germany's accelerated phase-out of nuclear energy in 2011, Vattenfall – a Swedish state-owned energy company – initiated ICSID proceedings under the Energy Charter Treaty, claiming EUR 4.3 billion for losses arising from the premature closure of two nuclear power plants. The case was resolved by settlement in March 2021, with Germany agreeing to pay EUR 1.425 billion to Vattenfall, demonstrating that the threat of treaty-based arbitration can itself induce compensation for State-directed interference with foreign-owned infrastructure.[45]

The risk of discriminatory State action targeting foreign-owned digital infrastructure is already generating treaty-based investor claims. In *Huawei Technologies Co. Ltd. v. Sweden*, (initiated January 2022, pending), a Chinese telecommunications investor has challenged Sweden's exclusion of its equipment from the Swedish 5G spectrum auction on national security grounds, alleging a violation of the fair and equitable treatment standard under the China-Sweden BIT. The case is among the first investment treaty arbitrations arising directly from State measures targeting a foreign digital infrastructure provider on security grounds.[46]

In the data center context, the most consequential measures are likely to be those that impair the economic value or bankability of the asset: permit reversals preventing operation; discriminatory grid or connectivity access; mandatory localization or ownership rules requiring costly restructuring; procurement exclusions that eliminate the expected customer base; and transfer restrictions preventing interest, principal, dividends, or sale proceeds from leaving the host State. Each can affect equity value, collateral, debt service, and exit assumptions at the same time.

VII. From Award to Recovery: Compliance, Enforcement and Sovereign Immunity

A. State Compliance

An award is only as valuable as the investor's ability to collect on it, and on the whole, voluntary compliance by States have historically been relatively high. In one of the most comprehensive studies on the subject to date, ICSID examined its awards with pecuniary obligations rendered through the end of 2021, most of which award damages against the host State. The study found a roughly 90% rate of voluntary compliance and post-award settlement for damages awards with a known enforcement outcome, with a satisfactory outcome ultimately achieved in the large majority of cases.[47]

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alert-ai-data-center-financing-and-litigation-risks.pdf).

[45] UNCTAD Investment Policy Hub, *Vattenfall AB and others v. Federal Republic of Germany (II)*, ICSID Case No. ARB/12/12, (https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/467/vattenfall-v-germany-ii-).

[46] UNCTAD Investment Policy Hub, *Huawei Technologies Co., Ltd. v. Kingdom of Sweden*, ICSID Case No. ARB/22/2, (https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1208/huawei-v-sweden).

[47] ICSID, Compliance with and Enforcement of ICSID Awards, ICSID Background Paper (June 2024), (analyzing 253 ICSID awards with pecuniary obligations rendered through 31 December 2021 and reporting a 90 percent rate of voluntary compliance and post-award settlement for damages awards with a known enforcement outcome (paras. 28–29), (https://icsid.worldbank.org/sites/default/files/publications/Enforcement_Paper.pdf).

Among the factors that have been cited as incentives for compliance are: the accrual of interest, the risk and disruption of asset seizure, damage to sovereign creditworthiness and credit ratings, and reputational harm that bears directly on the State's ability to attract future foreign investment.[48]

A notable case of State compliance with arbitral awards includes the Czech Republic's payment of the USD 355 million award in *CME v. Czech Republic*, despite the award being among the largest made in arbitral proceedings at the time and reportedly causing issues with the government budget. Similarly, in the *ADC v. Hungary* case, the Government promptly paid a USD 76.2 million award rendered at ICSID in 2006.[49]

However, compliance is not universal, especially among a minority of repeat Respondent States. A recent compliance study tracking the most frequently sued States found that, within a single year, both the number of unpaid awards and the aggregate outstanding compensation had almost doubled.[50] Its accompanying International Law Compliance Index ranked Venezuela, Spain, Russia, and Ukraine as the least compliant, followed by several other EU member States, such as Poland, the Czech Republic, Italy, and Romania.[51]

For the second category of countries, much of this is concentrated in intra-EU energy disputes: as explained above, Spain alone has faced more than fifty intra-EU ECT claims, with damages sought exceeding USD 10 billion, and its tally of unpaid awards rose from eight to fifteen in a single year, leaving at least USD 1.3 billion in outstanding compensation.[52] Italy and Romania followed with the largest numbers of unpaid adverse ECT awards.[53]

B. Enforcement of Awards: ICSID and New York Convention

Where a State declines to pay voluntarily, an investor must seek enforcement through domestic courts. Generally, the enforcement of investor-State arbitration awards falls into two main categories: the enforcement of awards made under the ICSID Convention, and enforcement of non-ICSID awards, which is usually done pursuant to the New York Convention.

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48 ICSID, Compliance with and Enforcement of ICSID Awards, ICSID Background Paper (June 2024), (identifying the accrual of interest, avoidance of enforcement costs and asset seizure, the impact on creditworthiness and credit rating, and the importance of reputation for attracting foreign investment as drivers of voluntary compliance), (https://icsid.worldbank.org/sites/default/files/publications/Enforcement_Paper.pdf).

49 LE. Peterson, How Many States Are Not Paying Awards Under Investment Treaties, IA Reporter, 7 May 2010, (https://www.iareporter.com/articles/how-many-states-are-not-paying-awards-under-investment-treaties/).

50 N. Lavranos, Report on Compliance with Investment Treaty Awards by States (2d updated ed., 2023), summarized in States Comply Less With Investment Treaty Arbitration Awards: Insights From a 2023 Report on Compliance, Kluwer Arbitration Blog (26 November 2023), (reporting that, among the most frequently sued States, the number of unpaid awards and the aggregate outstanding compensation almost doubled between the 2022 and 2023 editions), (https://legalblogs.wolterskluwer.com/arbitration-blog/states-comply-less-with-investment-treaty-arbitration-awards-insights-from-a-2023-report-on-compliance/).

51 N. Lavranos, Report on Compliance with Investment Treaty Awards by States (2d updated ed., 2023), summarized in States Comply Less With Investment Treaty Arbitration Awards: Insights From a 2023 Report on Compliance, Kluwer Arbitration Blog (26 November 2023), (https://legalblogs.wolterskluwer.com/arbitration-blog/states-comply-less-with-investment-treaty-arbitration-awards-insights-from-a-2023-report-on-compliance/).

52 Arbitration Monitor, Spain's Renewable Energy Reckoning : A Case Study in Non-Compliance with Investment Treaty Awards, 24 October 2025, (https://arbitrationmonitor.com/spains-renewable-energy-reckoning-a-case-study-in-non-compliance-with-investment-treaty-awards/).

53 N. Lavranos, Report on Compliance with Investment Treaty Awards by States (2d updated ed., 2023), summarized in States Comply Less With Investment Treaty Arbitration Awards: Insights From a 2023 Report on Compliance, Kluwer Arbitration Blog (26 November 2023), (https://legalblogs.wolterskluwer.com/arbitration-blog/states-comply-less-with-investment-treaty-arbitration-awards-insights-from-a-2023-report-on-compliance/).

The regime for enforcement of ICSID awards is characterized as a self-contained enforcement mechanism. Under Article 54 of the ICSID Convention, awards are to be recognized as binding and their pecuniary obligations are to be enforced like final domestic judgments in all States parties to the Convention.[54] Domestic courts, therefore, may not examine whether the ICSID tribunal had jurisdiction, whether it adhered to the proper procedure or whether the award is substantively correct. It may not even examine whether the award is in conformity with the forum State's *ordre public* (public policy).[55] Review is limited to verifying that the award is authentic. In sum, there is no review of ICSID awards by domestic courts in proceedings for their recognition or enforcement. This is what makes the ICSID ecosystem so attractive to investors.

The enforcement of non-ICSID awards is different. It is subject to the national law of the place of enforcement and generally to the New York Convention. With more than 170 contracting States, the Convention's principal advantage lies in the near-global enforceability it provides to arbitral awards, subject only to limited grounds for refusal. Article V lists those grounds, consisting notably of the invalidity of the arbitration agreement, lack of proper notice of the arbitration proceedings, improper composition of the tribunal, an award that is not yet binding or has been set aside, a subject-matter not capable of settlement by arbitration under the law of the State in which enforcement is sought, and an award that conflicts with the public policy of that State.[56] Parties generally choose to seat their arbitration in a State that is a party to the New York Convention and where assets are located in view of eventual enforcement of the award.[57]

Accordingly, recognition and enforcement may be sought not only in the host State or in the investor's State of nationality, but in any State that is a party to the ICSID Convention (or the NY Convention for non-ICSID awards),[58] even in several States simultaneously. However, the prevailing party pursues enforcement in the State where it seems most promising.

A determinative element in this choice will be the availability of suitable State assets, which itself might be constrained by the rules of State immunity from execution. These rules draw a line between commercial and non-commercial property: execution is generally permitted against State assets used for commercial purposes, but not against property serving official or governmental functions.[59]

The consequence is that an award creditor's success often turns less on the validity of its award than on its ability to locate attachable, commercial State assets in a favorable forum.

C. Post-Award Enforcement: Practical Challenges and Limitations

Creditors holding intra-EU ECT awards have increasingly been compelled to pursue enforcement outside the European Union – in Australia, the United Kingdom, and the United

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[54] Convention on the Settlement of Investment Disputes between States and Nationals of Other States, March 1965, Article 54, (https://icsid.worldbank.org/sites/default/files/ICSID_Convention_EN.pdf).

[55] R. Dolzer, U. Kriebaum and C. Schreuer, XII. Settling Investment Disputes, in Principles of International Investment Law, 3rd Edition, Oxford University Press, 2022, p. 448.

[56] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, Article V, (https://treaties.un.org/doc/Treaties/1959/06/19590607%2009-35%20PM/Ch_XXII_01p.pdf).

[57] T. Charis and K. Mathew, Enforcement of Awards, JusMundi, 23 September 2025, (https://jusmundi.com/en/document/publication/en-enforcement-of-awards).

[58] R. Dolzer, U. Kriebaum and C. Schreuer, *XII.* Settling Investment Disputes, in Principles of International Investment Law, 3rd Edition, Oxford University Press, 2022, p. 447.

[59] K. Gomez and C. Titi, Recognition and Enforcement of ICSID Convention Awards, in The Award in International Investment Arbitration, Oxford (2024), p. 473; *See also*, R. Dolzer, U. Kriebaum and C. Schreuer, *XII.* Settling Investment Disputes, in Principles of International Investment Law, 3rd Edition, Oxford University Press, 2022, p. 449

States – as EU courts have grown hostile to intra-EU claims following the *Achmea* decision. Courts in those jurisdictions have allowed awards holders to enforce against State assets located there.[60]

A State's refusal to comply with an award may operate as a deterrence strategy against investors, as enforcement proceedings often require investors to engage in lengthy and costly court proceedings before being able to recover their awards.

The *Sedelmayer v. Russia* saga is a typical illustration of the difficulties faced by award creditors in enforcing awards against States. After obtaining a favorable award,

Mr. Sedelmayer had to pursue decade-long enforcement proceedings, in several jurisdictions. His efforts were significantly delayed by sovereign immunity objections and by the practical burden placed on award creditors to identify and locate State-owned assets abroad that are both attachable and used for commercial purposes. This gave Russia time to shield, move, or recharacterise assets. Even after years of enforcement litigation, Mr Sedelmayer only managed to recover part of the award.[61]

VIII. How Investors Can Prepare

The practical lesson is that treaty protection must be assessed and structured before a dispute becomes foreseeable. The relevant work belongs in the investment, tax, financing, regulatory, and political risk process, not solely in a disputes workstream after a permit is threatened or a government relationship has broken down.

First, map the treaty and domestic-law protections during underwriting. Identify the treaties in force between the host State and every jurisdiction in the proposed ownership and financing chain, and compare their definitions of investor and investment, substantive standards, consent to arbitration, limitation periods, fork-in-the-road clauses, waiver requirements, local-litigation requirements, and exceptions. UNCTAD;s IIA Navigator provides a useful starting point, but the operative treaty text and current status must be confirmed.[62]

Second, map coverage across the capital stack. Analyze separately the sponsor, fund vehicle, co-investment vehicles, intermediate holding companies, project and operating companies, lenders, noteholders, equipment lessors, guarantors, and entities holding key contracts or approvals. The party bearing economic risk may not be the party holding the covered asset or qualifying nationality.

Third, structure early and with substance. A holding company in a treaty jurisdiction may provide protection for indirect investments, but denial-of-benefits clauses, substantial-

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60 N. Lavranos, Report on Compliance with Investment Treaty Awards by States (2d updated ed., 2023), summarized in States Comply Less With Investment Treaty Arbitration Awards: Insights From a 2023 Report on Compliance, Kluwer Arbitration Blog (26 November 2023), (On the growing practice of enforcing intra-EU ECT awards outside the European Union – including the High Court of Australia's holding that Spain waived its immunity from recognition by ratifying the ICSID Convention, and the UK courts' willingness to permit enforcement against Spanish property in London), (https://legalblogs.wolterskluwer.com/arbitration-blog/states-comply-less-with-investment-treaty-arbitration-awards-insights-from-a-2023-report-on-compliance/).

61 D. Charlotin, Looking Back : German Investor, Franz Sedelmayer, Was Early-Adopter of Investment Treaty Arbitration, But had to Engage In Decade-Long Assets Hunt Against Russia, Investment Arbitration Reporter, 29 August 2017, (https://www.iareporter.com/articles/looking-back-german-investor-franz-sedelmayer-was-early-adopter-of-investment-treaty-arbitration-but-had-to-engage-in-decade-long-assets-hunt/).

62 UNCTAD, International Investment Agreements Navigator (current as of June 2026), (https://investmentpolicy.unctad.org/international-investment-agreements).

business-activity requirements, control tests, and abuse-of-process principles must be considered. Restructuring after a dispute is foreseeable may be ineffective. The investment committee record should document the commercial reasons for the structure and the timing of the decision.

Fourth, place critical project rights in the appropriate entity. Site-control rights, concessions, development agreements, grid and power contracts, water rights, permits, licenses, tax agreements, and government-issued authorizations may each form part of the covered investment.[63] Where rights are divided among affiliates, the structure should be tested against both treaty standing and the finance parties' collateral and enforcement package.

Fifth, review the finance documents through a treaty lens. Consider whether lenders hold direct qualifying investments; whether loans, notes, guarantees, security interests, and intercreditor rights are located in a covered entity; whether assignments or enforcement transfers could alter nationality; and whether step-in rights permit finance parties to preserve key licenses and project contracts. Treaty rights should complement - not substitute for - change-in-law, political-force-majeure, termination-compensation, mandatory-prepayment, and covenant protections.

Sixth, create a contemporaneous record of State commitments and investor reliance. Preserve tax-incentive agreements, capacity allocations, permit correspondence, meeting minutes, statements by authorized officials, environmental approvals, investment-promotion materials, and drafts reflecting negotiated assurances. Investment committee papers and financial models should identify which governmental commitments affected the decision to invest and how their withdrawal would affect value.[64]

Seventh, negotiate contractual protection where leverage permits. Development agreements, concessions, power arrangements, and investment contracts may include stabilization or change-in-law provisions, compensation formulas, cure periods, termination payments, international arbitration clauses, information rights, and waivers of immunity.

Contract claims and treaty claims are distinct, but a carefully documented contractual bargain can strengthen both the economics of the transaction and the evidence of specific State commitments.

Eighth, stress-test treaty exceptions and the regulatory downside. National-security, public-order, privacy, health, financial-stability, and general exceptions vary widely and may materially narrow protection.[65] Underwriting should model measures that may be lawful but still economically damaging – including power rationing, water restrictions, localization mandates, procurement exclusions, and loss of incentives – and allocate those risks through pricing, reserves, insurance, covenants, and political-risk cover.

Ninth, analyze domestic investment statutes and political-risk insurance in parallel. Domestic investment laws may provide arbitration rights, stabilization protections, or

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63 UNCTAD, Scope and Definition: A Sequel, UNCTAD Series on Issues in International Investment Agreements II (United Nations, New York and Geneva, 2011), (analyzing the broad asset-based definition of investment in BITs and covered investments), (https://unctad.org/system/files/official-document/diaeia20102_en.pdf).

64 Rudolf Dolzer, Ursula Kriebaum and Christoph Schreuer, Standards of Protection, in Principles of International Investment Law, 3rd Edition, Oxford University Press, 2022, pp. 194, 209.

65 Quinn Emanuel Urquhart & Sullivan, Client Alert: Emerging Litigation Risks in Financing AI Data Centers Boom (Mar. 13, 2026), (noting that treaty-by-treaty review of exceptions, carve-outs, and denial-of-benefits clauses is required), (https://www.quinnemanuel.com/the-firm/publications/client-alert-emerging-litigation-risks-in-financing-ai-data- centers-boom/).

compensation remedies where treaty coverage is unavailable or narrower than expected.[66] Multilateral or private political-risk insurance may provide additional protection for expropriation, currency inconvertibility, political violence, or breach of contract, subject to its own exclusions and subrogation consequences.

Tenth, plan for evidence preservation and escalation. Establish a protocol for logging material government communications, preserving approvals and project records, coordinating sponsor and lender positions, and obtaining treaty advice before waiving rights, commencing local proceedings, restructuring ownership, assigning claims, or agreeing to a revised regulatory bargain. Procedural choices made during the first weeks of a dispute can affect jurisdiction and recovery years later.

Finally, monitor treaty-horizon and enforcement risk throughout the hold period. States continue to terminate, replace, or renegotiate IIAs, and the Energy Charter Treaty has undergone significant withdrawal and reform following the EU law developments associated with *Achmea*.[67] Investors should track survival clauses, treaty amendments, corporate changes, and the location of potentially attachable State assets as part of ongoing portfolio risk management.

IX. Conclusion

The AI data center investment cycle is reaching the point at which digital infrastructure becomes critical infrastructure. Governments are still competing for capital, but they are also confronting grid constraints, public opposition, water scarcity, digital-sovereignty demands, and national-security concerns. The same project can therefore move, within a single investment horizon, from a favored development to a politically contested asset.

Investment treaties do not prevent governments from regulating and do not insulate investors from ordinary commercial loss. They can, however, provide a meaningful remedy where a host State discriminates against a foreign investor, repudiates a specific commitment, substantially deprives the investment of value, restricts transfers, or otherwise crosses the line drawn by the applicable treaty. For sponsors and financing parties, that protection may reach equity, debt, contractual rights, permits, and other assets whose value depends on the project's continued operation.

The decisive work occurs before the dispute. Treaty nationality, ownership and control, the placement of key rights, lender standing, evidence of reliance, contractual risk allocation, and the timing of any restructuring can determine whether protection exists when it is needed. Once adverse State action is foreseeable, the available options narrow sharply.

In an investment cycle measured in trillions of dollars, treaty planning should sit alongside tax, financing, regulatory, insurance, and exit planning. Investors that address sovereign

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[66] UNCTAD, Investment Laws: A Widespread Tool for the Promotion and Regulation of Foreign Investment (Nov. 2016),(https://investmentpolicy.unctad.org/publications/155/investment-laws-a-widespread-tool-for-the-promotion-and-regulation-of-foreign-investment).

[67] Case C-284/16, *Slowakische Republik v. Achmea BV*, ECLI:EU:C:2018:158 (Court of Justice of the European Union, 6 March 2018), (holding that investor-State arbitration clauses in intra-EU BITs are incompatible with EU law), (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62016CJ0284); Kluwer Arbitration Blog. The Withdrawal by the EU and Some Member States from the Energy Charter Treaty (2024), (documenting mass withdrawals by EU member States from the ECT following *Achmea*), (https://legalblogs.wolterskluwer.com/arbitration-blog/the-withdrawal-by-the-eu-and-some-member-states-from-the-energy-charter-treaty-international-protection-for-energy-investments-and-climate-change-related-carve-outs/).

risk at entry will be better positioned to protect value if the policy environment later shifts against the project.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to reach out to:

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