



# The concept of investment

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Introduction into Investment Law and  
Arbitration

# A basic distinction

- o ICSID
- o Non-ICSID

# ICSID

- o Art. 25
- o Not too outspoken as to what is investment
- o The tribunals must have add their interpretation of the terms
- o The result: the so-called Salini test

# The Salini test

- o A substantial commitment or contribution
- o Duration
- o Assumption of risk
- o Contribution to economic development
- o Regularity of profit and return



# The rationale behind the Salini criteria?

# The so called double key hole test

- o There must be an investment under:
- o A) BIT
- o B) ICSID

# What is an investment thus?

- o It may be a tangible or intangible asset having economic value connected to the territory of the host state
  - o Examples:
    - o Moveable and immovaeble assets
    - o Shares
    - o Rights to monetary performace
    - o Bonds
    - o Good-will or know-how

# The AAA Ltd case

- o What was the investment according to the tribunal?



# Arbitral award as an investment

- o The seminal case: Saipem v. Bangladesh
- o White v. India
- o ATA v. Jordan