

### ***MTD Equity v Chile (Malaysia-Chile BIT)***

AREAS OF POLICY AFFECTED: land use planning (residential development), local government (urban planning).

CASE SUMMARY: The lawsuit was brought after Chile's Ministry of Housing and Urban Development refused to re-zone land near the city of Santiago. The re-zoning was required to permit construction of a planned community by the claimant in an area that was zoned for agricultural use.

The corporate claimant made its investment after receiving approval from Chile's Foreign Investment Commission. The claimant was apparently aware that a zoning change was required from the Ministry and local Mayor in order for the project to proceed. Re-zoning was refused by the Ministry on the basis that urban development was planned for the north of Santiago rather than the south, where the project was located. The essence of the claim was an objection to the application of urban planning and development processes to the claimant after its investment has been approved by the Foreign Investment Commission.

The tribunal decided that Chile violated the investment treaty and awarded about U.S. \$6 million (plus interest) against Chile. Arbitration costs were split between the claimant and Chile.

COMMENT: The case demonstrates how policy decisions on urban planning may trigger claims by foreign-owned developers. It shows also how an approval granted by one arm of government may be taken by an investment treaty tribunal to bind, in effect, other arms of government.

Source: [www.iiapp.org](http://www.iiapp.org) (February 2011), based on information in publicly-available awards and materials in known investment arbitrations (for texts of awards, see [www.italaw.com](http://www.italaw.com)). This report was produced by a research team coordinated by professor Gus Van Harten ([gvanharten@osgoode.yorku.ca](mailto:gvanharten@osgoode.yorku.ca)) of Osgoode Hall Law School of York University in Toronto, Canada. Please see the disclaimer and statement on terms of use available at [www.iiapp.org](http://www.iiapp.org). © Gus Van Harten 2011. *You may forward or re-publish the information in this report with attribution to [www.iiapp.org](http://www.iiapp.org).*