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Who is a foreign investor? Natural persons as protected investors in international investment law

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Citation

Soloveva, K. (2026, June 17). *Who is a foreign investor?: Natural persons as protected investors in international investment law. Meijers-reeks*. Retrieved from <https://hdl.handle.net/1887/4306763>

Version: Publisher's Version

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Note: To cite this publication please use the final published version (if applicable).



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464

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Who is a foreign investor?

This dissertation examines who qualifies as a protected foreign investor under international investment law, with a focus on natural persons. It analyses the evolving role of nationality as the central criterion for investor protection, demonstrating that contemporary treaty practice increasingly introduces alternative links, such as permanent residence. Special attention is devoted to dual nationals, especially those holding the nationality of both the home and host States. In the absence of clear treaty guidance, arbitral tribunals have adopted divergent approaches. The dissertation contends that in such cases, subject to treaty language, the dominant and effective nationality test should inform treaty interpretation.

This dissertation further explores procedural aspects of determining investor's status, including the proof of nationality and the discretion exercised by arbitral tribunals in assessing evidence. It further considers the limits of protection through the application of the doctrine of abuse of process, focusing on 'nationality planning' by natural persons. While changes of nationality are not inherently illegitimate, this dissertation discusses how protection may be denied where such changes are abusively undertaken to gain access to arbitration.

This analysis ultimately exposes the need to strike a balance between traditional international investment law and progressive approaches that foster the field's further development.

This is a volume in the series of the Meijers Research Institute and Graduate School of the Leiden Law School of Leiden University. This study is part of the Law School's research programme 'Exploring the Frontiers of International Law'.



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