

Brevia

BRICS

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2026 EDITION

Mutual Protection of Foreign Investments in BRICS Member States

Brevia

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Introduction

The Report covers the international cooperation among BRICS states in protecting foreign investment.

BRICS is a group of states focused, inter alia, on strengthening trade and investment ties and promoting cooperation between companies from member states.¹ However, BRICS currently lacks unified rules or standards for protecting foreign investments.

As of 1 January 2024, BRICS has expanded beyond its original five members – Brazil, China, India, Russia, and South Africa – to include five new members: Egypt, Ethiopia, Iran, Saudi Arabia², and the United Arab Emirates ("UAE"). Indonesia officially joined BRICS on 1 January 2025, further expanding the group. In 2026, India assumed the presidency in BRICS. In 2027, the presidency will pass on to China.

BRICS:

2010

25%

World GDP (PPP)



2026

40%

World GDP (PPP)



In 2022, during China's presidency, the United Nations Conference on Trade and Development ("UNCTAD") issued a report noting that the total inward foreign direct investment ("FDI") stock among BRICS states increased more than sixfold between 2010 and 2020 — from \$27 billion to \$167 billion.³ It's important to note that this data does not cover the states that joined BRICS in 2024 and 2025.

¹ The BRICS Economic Partnership Strategy until 2025. URL: <https://www.economy.gov.ru/material/file/636aa3edbc0dcc2356ebb6f8d594ccb0/1148133.pdf>.

² Although, reportedly, Saudi Arabia has not accepted the invitation to join the bloc, it is listed as a BRICS member on the official BRICS India 2026 website. URL: <https://www.brics2026.gov.in/about-us/>. Therefore, it is included in the scope of the Report.

³ BRICS Investment Report (2022). P. 10. URL: https://unctad.org/system/files/official-document/diae2023d1_en.pdf.

In 2026, UNCTAD published a report on trends, patterns, and policies in Intra-BRICS trade covering over a twenty-year time frame, from 2003 to 2024.⁴ UNCTAD data demonstrate that BRICS member states' share of global GDP rose by 11.2 percentage points, from 15.7% to 26.9%. In purchasing power parity terms, figures increased by 15 percentage points, with the bloc's share of global GDP reaching 39% in 2024. BRICS per capita GDP represents approximately 60% of the world average in the same year. Economic growth in BRICS Member States outpaced the world's average more than twice (3% world average vs. 6.2% in BRICS member states).

Annual FDI inflows into BRICS economies surged from \$84 billion in 2003 to \$331 billion by 2024, with their share of the global total rising from 15.2% to 21.9%.⁵ Again, according to UNCTAD, in 2025, total FDI inflows into the extended BRICS states accounted for around 22.6% of global FDI, and the outflows accounted for around 18.6%.⁶

In 2025, BRICS introduced a new category of states known as a Partner Country. States granted this status include Belarus, Bolivia, Cuba, Kazakhstan, Malaysia, Nigeria, Thailand, Uganda, Uzbekistan, and Vietnam (see Section VI for further details).

At present, BRICS does not have a comprehensive public study outlining the principles or standards for protecting foreign investment among its member states, together with a framework for settlement of disputes between the states and foreign investors. As an informal alliance, BRICS lacks a unified agreement or set of regulations governing cross-border investments.

However, there are over 25 existing treaties among its members establishing various standards and levels of foreign investment protection.⁷

This 2026 Report is the third edition of the study (Report as of 1 October 2024 is available here⁸, Report as of 1 October 2025 is available here⁹) and aims to analyse the policies that BRICS states use to protect the rights of investors from other BRICS states, drawing on existing treaties. It will cover the following issues:

- Investments between which states are protected under those treaties;
- How such treaties define the rights and obligations of investors and states;
- What mechanisms are in place for resolving investor-state disputes.

The Report will be valuable for experts, businesses looking to make new investments or structure existing ones, and governments seeking to review investment policies and develop frameworks for cooperation.

⁴ Two Decades of Intra-BRICS Trade. URL: https://unctad.org/system/files/official-document/tcsgdsinf2025d2_en.pdf. This Report does not take into account Saudi Arabia as a BRICS Member State.

⁵ Ibid., p. 2.

⁶ Based on Annex table 1 to the UNCTAD report "World Investment Report 2026: International Investment in a Turbulent Era". The data on FDI outflows does not include Ethiopia, as information for this country is not available. The data on Ethiopia FDI inflows and on Iran are estimates. URL: https://unctad.org/system/files/official-document/wir2026_en.pdf. Pp. 203-206.

⁷ For the purposes of the Report, information current as of early July 2026 has been used.

⁸ Mutual Protection of Foreign Investments in BRICS Member States. URL: https://brevia.legal/upload/iblock/390/xa56yemd4f1pdyhp9y2ze4flbb2vh60/ic_jus-mundi-2025-brics-report.pdf.

⁹ Mutual Protection of Foreign Investments in BRICS Member States. URL: https://brevia.legal/upload/iblock/918/e3587ysi7xf08jcsziwld5gf3h058hym/2025_Brevia%20brochure%20ENG_digital.pdf. Since the latest version of this Report, two agreements have entered into force: China-Russia 2006 BIT was replaced by China-Russia 2025 BIT, while Brazil-India BIT, signed in 2020, entered into force.

The Report does not aim to propose models for standard regulation at the BRICS level. However, considering the growing consensus on the need for harmonization or the establishment of unified rules governing the protection of foreign investments as well as the settlement of investment disputes at the global level — and in light of the approaches currently being discussed within the United Nations Commission on International Trade Law ("UNCITRAL") — cooperation among BRICS members in this area could be pursued through two main approaches:

- Entering into a multilateral international treaty that establishes common investment protection standards within BRICS. However, this may prove challenging at this stage, as it would require consensus among member states that hold different political, economic, and legal views on the terms they are willing to extend to foreign investors and on the modes for settlement of investment disputes they are willing to accept;
- Signing a framework agreement among the BRICS states that sets out fundamental principles and offers options on certain matters for the states to choose from. This agreement may establish a matrix of terms, fostering regulatory convergence, and include protocols for settlement of investment disputes, including by way of third-party adjudication. For instance, member states could be given the flexibility to select either investor-state arbitration or state-to-state arbitration as the method for resolving investment disputes. States could also reserve the right to exclude specific areas from investor protection. This approach should promote mutually advantageous cooperation aligning with the unique perspectives of BRICS member states.¹⁰

Meanwhile, the approximation of domestic regulations on foreign investment could provide an alternative or interim solution, potentially paving the way for a multilateral international treaty. Engaging in such dialogue may also facilitate the gradual alignment of key provisions across BRICS states' bilateral investment treaties as they undergo renegotiation.

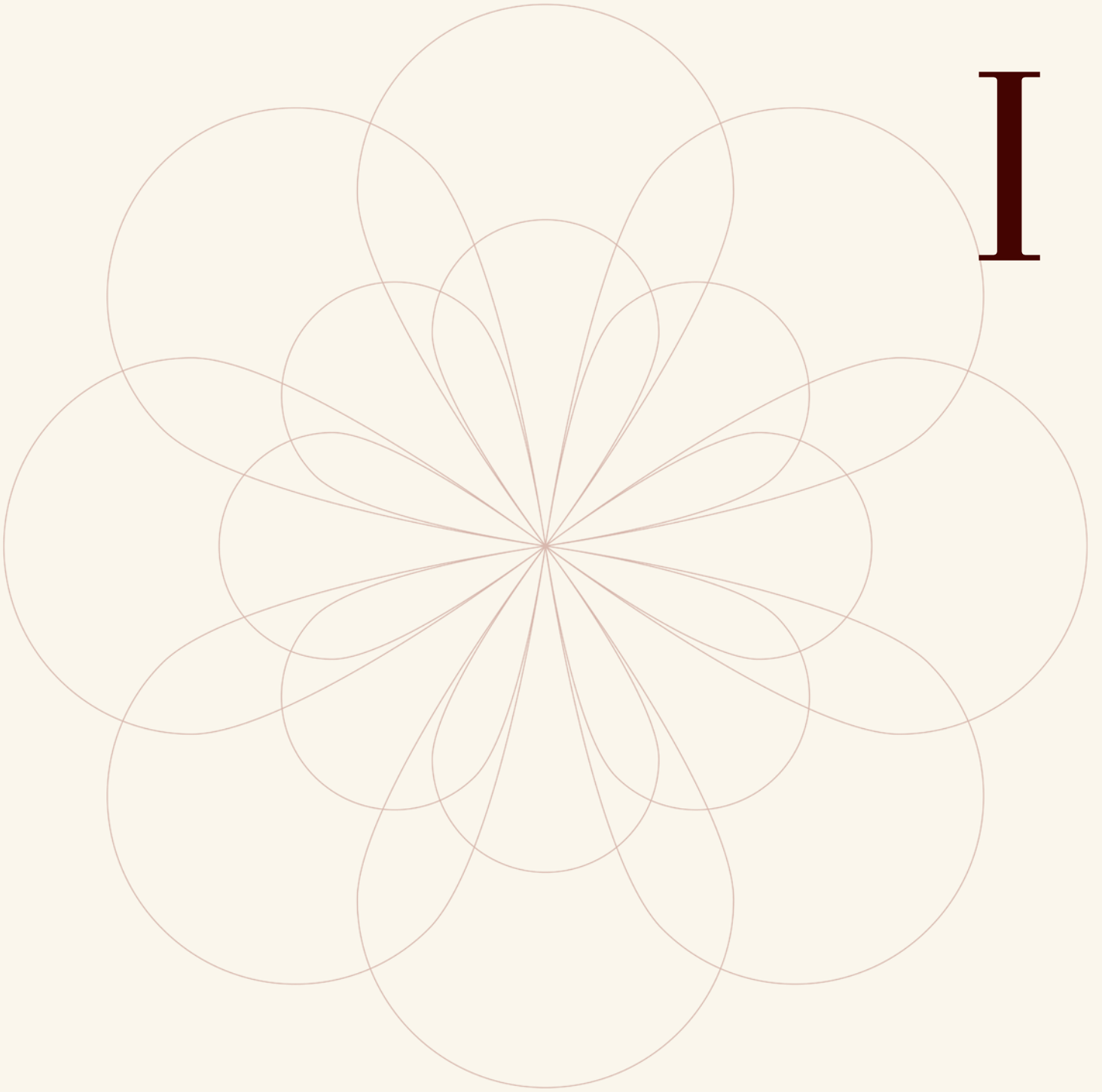
This year's edition is unique in that it combines the broad BRICS-level analysis with insightful country-specific contributions from renowned law firms practicing in BRICS countries, giving the reader the opportunity to gauge the current state and emerging trends of protection and promotion of foreign investments within BRICS as well as the individual trajectories of BRICS members.

The Report is structured as follows: Section I provides an executive summary of the study; Section II offers an overview of foreign investment protection agreements among the BRICS states; Section III addresses the general policies of BRICS states concerning the conclusion of bilateral investment treaties; Sections IV and V examine the key investor protection standards and mechanisms provided by the treaties between BRICS states. Section VI provides a brief overview of the investment protection treaties in the expanded BRICS framework, taking into account member and partner states. The Report is followed by BRICS Country-Specific Q&A on Protection of Foreign Investments.

¹⁰ The second approach is currently on the agenda of the UNCITRAL Working Group III (Investor-State Dispute Settlement Reform) charged with formulating a multilateral instrument addressing problematic areas of the current system of settlement of investment disputes, including issues of arbitral/judicial procedure, creation of a standing mechanism for dispute settlement, etc. Under the proposed approach, the multilateral instrument does not impose legal obligations but rather lays out a framework of procedural and other rules as well as founding documents for international institutions in the format of protocols, which state parties may choose from and accede to by means of submitting declarations and instruments of ratification. See A/CN.9/WG.III/WP.246.

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I

Executive Summary

For almost 50 years, international cooperation among current BRICS members regarding investment protection has been evolving through the conclusion of international investment treaties. Bilateral investment treaties ("BITs") and various trade agreements serve as the primary means of safeguarding foreign investments among BRICS members. Additionally, several multilateral investment treaties exist among Muslim-majority states.

Egypt and Iran signed the first BIT between current BRICS members in 1977. However, it has never entered into force.

As for the BITs currently in force, the first was signed in 1993 between China and the UAE, while the most recent one was signed in 2025 between China and Russia.

The key feature of such treaties is that they constitute agreements between two or more sovereign states, and individual investors are not parties to them. Nonetheless, in the event of a dispute with a host state, foreign investors typically have recourse to an international mechanism allowing them to initiate proceedings before an international forum. This enables them to seek compensation for violations of the protection standards delineated in the treaty between their home state and the host state.

24^{BITs}
**ARE IN FORCE
AMONG BRICS
STATES**

While there are no reliable statistics demonstrating the correlation between the number of BITs and foreign investment stock, it is widely believed that the existence of a BIT enhances the state's appeal for investment and indicates a certain level of investment climate. However, it is important to note that BITs represent just one factor, and their mere existence does not necessarily reflect the actual level of foreign investment protection in a country.

As of 1 July 2026, there are 24 BITs in force between BRICS states, most (15) of which were concluded before the first BRICS summit. Consequently, these treaties do not necessarily reflect current practices spanning the past 15+ years. Over the past decade, Brazil and the UAE have been the most active in entering into bilateral investment treaties.

The number of BITs currently in force between a particular BRICS state and other BRICS member states varies. China and the UAE each have the highest number of BITs, with 7 in force each, followed by Russia with 6.¹¹ Egypt and Iran have concluded 5 BITs that are effective now, while Ethiopia and Indonesia each have 4 BITs. Saudi Arabia and South Africa each have 3 treaties. Meanwhile, Brazil (despite the country's recent active engagement in the signing of BITs) and India each have 2 BITs currently in force.

BRICS states have adopted diverse approaches to extending guarantees for foreign investors. Most BITs are categorised as old-generation treaties, characterised by expansive language favouring investors and offering robust protection standards.

As dispute settlement practice evolves, however, these standards may be reinterpreted by international tribunals in ways that the contracting states did not foresee at the time of conclusion. This, in turn, has prompted some states to reconsider their policies towards participating in BITs.

¹¹ Russia has BITs with the following BRICS countries: China, Egypt, Indonesia, Iran, South Africa, and the UAE. There are currently no effective BITs with Brazil, Ethiopia, India, and Saudi Arabia.

In recent years, there has been a discernible global trend towards an increased emphasis on the public interests of states. Among BRICS states, this shift is notably pronounced within the policies of Brazil, India, Indonesia, and South Africa towards BITs.

For instance, the shift can be observed in the procedural options available to investors in the event of a dispute with a foreign state. Without such mechanisms, enforcing protection guarantees under a BIT can be quite challenging. Some states are transitioning from offering investors recourse to dispute resolution mechanisms to a model where only the investor's home state has access to such mechanisms. Brazil is a good example of this shift, as it has moved away from the traditional investment arbitration model where investors could bring claims directly against the state in international arbitration. Under Brazil's treaties with the UAE and India (the only BITs it has in force with BRICS countries), only the investor's home state can initiate legal action against another state to protect the investor's interests, rather than the investor bringing the claim directly.

However, some old-generation treaties, signed decades ago, also limit investors' ability to submit disputes against a host state to international arbitration. For instance, most of China's BRICS treaties contain a limited arbitration clause that allows for arbitration only of disputes over the amount of compensation, rather than over whether the state has breached its obligations under the BIT. Consequently, foreign investors are often left with no alternative but to pursue claims in the national courts of the respective state to establish a breach of the BIT.

In terms of substantive investment protection standards, the so-called new-generation treaties signed in the past 10+ years (such as the UAE's treaties with Brazil, Ethiopia, India, Indonesia, and Russia) contain more precise language that either limits or clarifies investor rights. For example:

- The state's responsibility may be excluded under specific circumstances, such as when it implements non-discriminatory measures to accomplish significant public goals;
- Certain protection standards (e.g., full protection and security, fair and equitable treatment) are completely excluded, particularly those leading to conflicting interpretations stemming from the case law of arbitral tribunals.

Nevertheless, the states already have common approaches on several key issues. For instance, the majority of BITs between BRICS states do not confine investments to specific assets; instead, they broadly define investments as any contribution made by an investor in a foreign country. Furthermore, BITs generally set forth identical protection standards. Nearly all of them allow investors to bring claims without a limitation period and grant access to investment arbitration.

Given global trends, BRICS treaties are anticipated to undergo revisions, with departures from the broad guarantees afforded to investors and potential adjustments to the procedures for investor-state dispute resolution.

When planning international projects, investors may find it beneficial to assess whether their home state has an agreement with the states in which they intend to invest and also review the specific provisions of those agreements. Additionally, one may choose to explore alternative investment options, such as partnering with investors in states that already have such treaties.

Even if the agreement is in force, investors may consider the following aspects

01 The definitions of "investment" and "investor" within the agreement and supplementary requirements for the protection of investments, such as approval from a specific authority, as exemplified in the case of Iran Specific circumstances under which protection is not granted. For instance, the India-UAE BIT does not safeguard against taxes	02 The potential for restructuring or using alternative options to safeguard assets if state policies change, leading to the agreement termination The period during which an investor can file a claim after the BIT termination ("survival clause") ranges from 5 years in the Ethiopia-Egypt BIT to 20 years in the Ethiopia-Iran BIT
03 The right of investors to bring claims against a state in investment arbitration, and if so, a limitation period. For example, under the UAE-India BIT, the limitation period is 5 years, while under the UAE-Ethiopia and Egypt-Saudi Arabia BITs – 3 years from the date the investor becomes aware or should have been aware of the breach by the state	04 The extent of protection provided, particularly whether the agreement includes a broad standard of fair and equitable treatment for investors, encompassing various scenarios where investor's rights under the BIT may be considered violated, including denial of justice
05 Guidelines for calculating damages for expropriation. Most BITs among BRICS member states employ fair market value as the standard	06 Case law and the interpretations rendered by arbitral tribunals with respect to particular BITs

The suggested list is not intended to be exhaustive and should not serve as a substitute for a thorough analysis of economic, legal, and political factors influencing investment opportunities and the broader investment climate. Nevertheless, it offers valuable guidelines for structuring investments and assessing risks, taking into account the specifics of various international treaties.



II

Overview of Investment Treaties Among BRICS Member States

BRICS states have the following treaties currently in force:

24

A

Bilateral investment treaties¹²



B

Several multilateral treaties between Muslim-majority states



C

Common guidelines for investment cooperation developed by the BRICS members

A. Bilateral Investment Treaties

BITs, in the modern sense, began to take shape following World War II. The first treaties were signed in 1959 by the Federal Republic of Germany with Pakistan and the Dominican Republic to protect German investments overseas.¹³ Subsequently, other nations, including France, Switzerland, and the Netherlands, followed suit. The increasing popularity of BITs during this period can largely be ascribed to the willingness of the developed states to protect their investors in the developing states.¹⁴

The late 1980s marked the beginning of the next period identified as the "global era" prompting both developed and developing states to protect investments through BITs. This shift occurred as the distinction between capital-exporting and capital-importing states gradually dissipated.¹⁵ The majority of the BITs worldwide were concluded between the 1990s and the 2010s.¹⁶

Within the current BRICS framework, as of 1 July 2026, **37** BITs have been signed, with **24** in effect, **5** signed but not yet in force, and **8** terminated.¹⁷

The first BIT currently in force was entered into in 1993 between China and the UAE, while the most recent one was signed in 2025 between China and Russia.¹⁸

BITs IN FORCE

CHINA — UAE

1993

FIRST

CHINA — RUSSIA

2025

MOST RECENT

¹² As of the end of 2025, there were at least 2,661 active BITs and trade agreements worldwide that include provisions for the protection of foreign investments. Source: World Investment Report 2026: International Investment in a Turbulent Era. Chapter II. P. 89. URL: https://unctad.org/system/files/official-document/wir2026_en.pdf.

¹³ UNCTAD/ITE/IIT/7. Bilateral investment treaties in the mid-1990s. P. 8. URL: <https://digitallibrary.un.org/record/264901?v=pdf>.

¹⁴ Vandevelde K. J. A Brief History of International Investment Agreements. Davis Journal of International Law & Policy, 2005, 157. Pp. 170-171. URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1478757.

¹⁵ Ibid. P. 182.

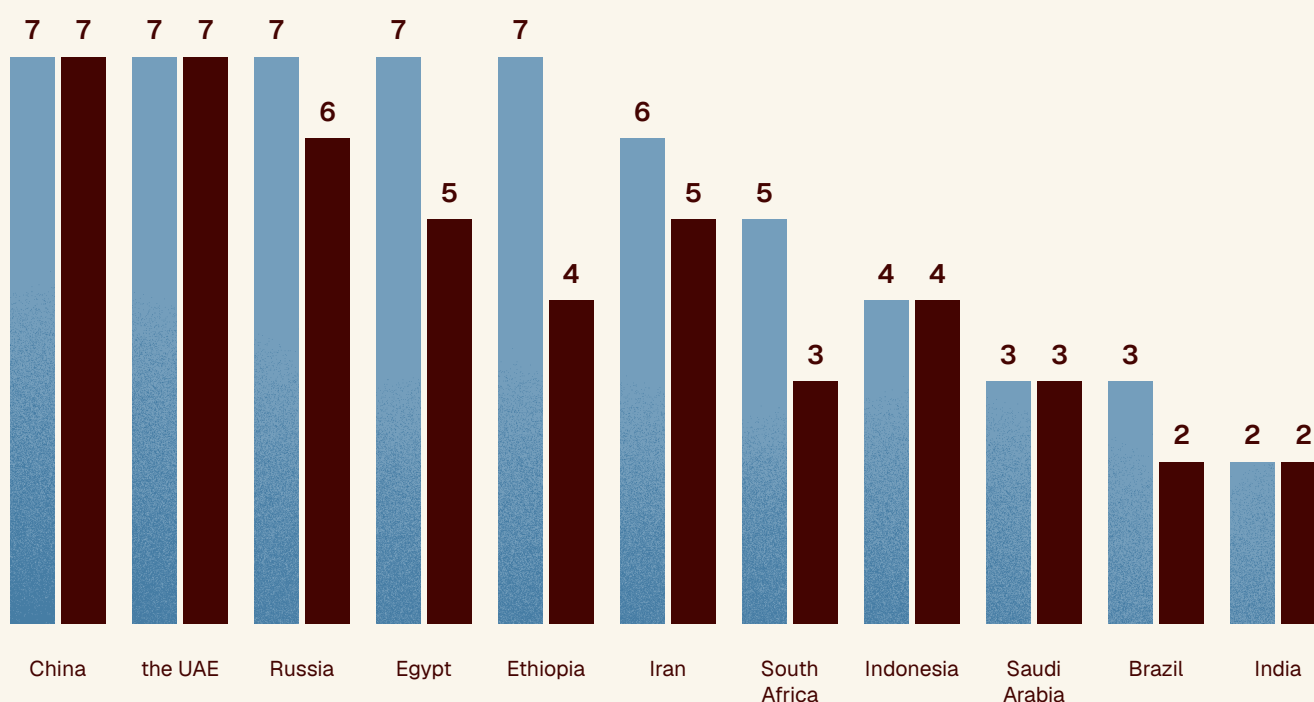
¹⁶ IIA Issues Note: Recent developments in the IIA regime: accelerating IIA reform (UNCTAD). 2021, Issue 3. P. 1. URL: https://unctad.org/system/files/official-document/diaepcbinf2021d6_en.pdf.

¹⁷ To demonstrate the overall coverage of the BITs between BRICS member states as of 1 July 2026, this statistic excludes treaties that have been replaced by those currently in force, namely China-Russia (1990 and 2006), Egypt-UAE (1988), India-UAE (2013).

¹⁸ Egypt and Iran signed the first BIT within the BRICS framework in 1977; however, it has never come into force.

BIT statistics within BRICS

■ Signed* ■ In force



* Terminated treaties are not taken into account

China and the UAE currently have the highest number of BITs in force, covering relationships with 7 states. However, China does not have a treaty with Brazil, China's BITs with India and Indonesia were terminated, and the UAE does not have BITs with Iran, Saudi Arabia, and South Africa. Russia has 6 treaties in force. Egypt and Iran have 5 BITs in force each, Ethiopia and Indonesia – 4 BITs, and Saudi Arabia and South Africa – 3 BITs. The states with the fewest treaties in force are Brazil¹⁹ and India, with 2 agreements each, including the Brazil-India BIT, signed in 2020, which entered into force in late December 2025.

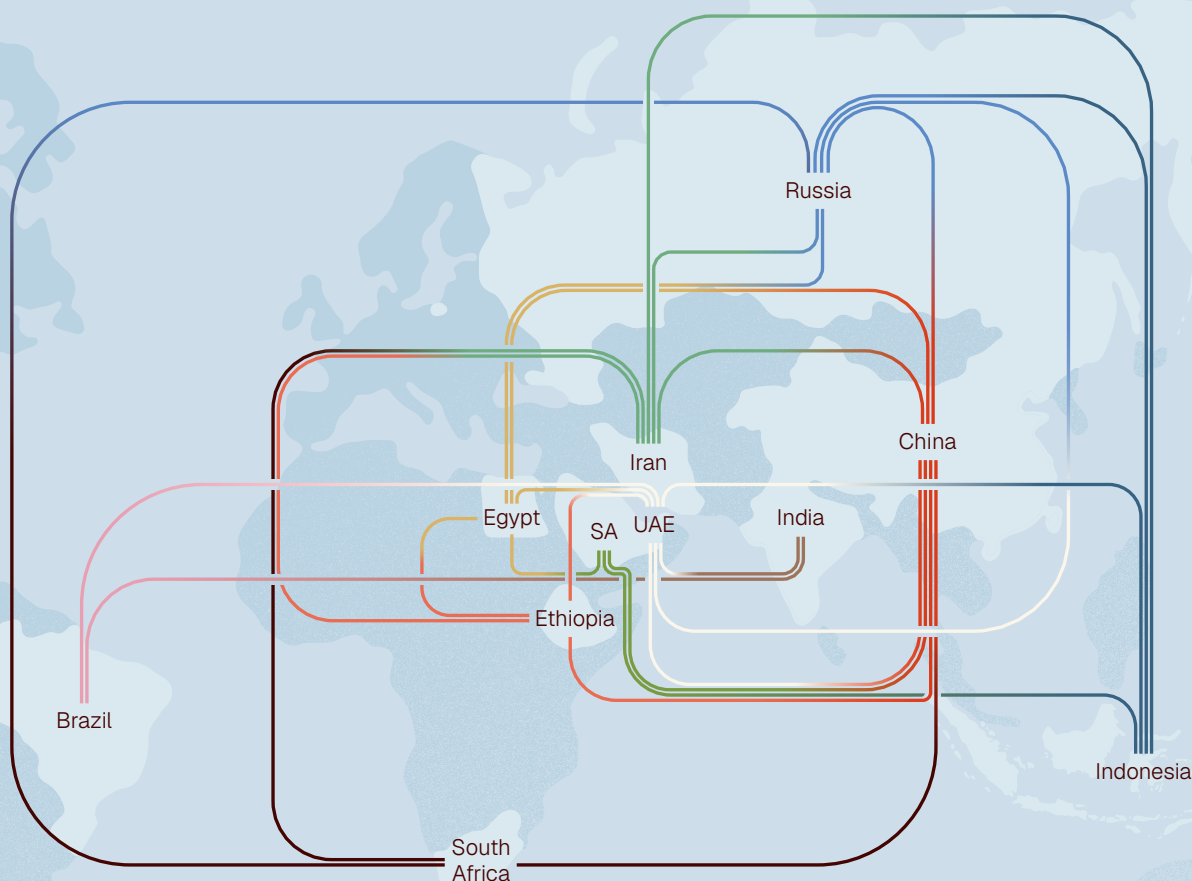
In comparison, prior to the accession of new members in 2024 and 2025, only 6 BITs had been signed among BRICS states, with 3 currently in force (Brazil-India (2020), China-South Africa (1997), and Russia-South Africa (1998)). Two treaties of India were terminated in 2017 and 2018 (with Russia and China, respectively), while the China-Russia (2006) BIT was replaced by the new-generation China-Russia (2025) BIT. The expansion of BRICS has contributed to a renewed spectrum of approaches to international investment protection.

Among the BRICS member states, only India and Indonesia tend to terminate treaties with other alliance members without entering into replacement treaties. India terminated 6 BITs with China, Egypt, Ethiopia, Indonesia, Russia, and Saudi Arabia. The India-UAE BIT (2013) expired, but it was replaced by a new treaty in 2024, which entered into force on 31 August 2024. Indonesia terminated 2 BITs with China and Egypt (in addition to the India-Indonesia BIT, which was terminated by India).

Russia and China have signed three BITs since 1990, with each subsequent BIT replacing the one signed before.

¹⁹ In some academic commentaries, Brazil's agreements are not regarded as BITs in the traditional sense, but for the purposes of the report, this distinction is not material.

Bilateral investment treaties of BRICS members



Years of signing BITs

● BIT is signed but has not yet entered into force

◆ BIT does not allow for investor-state arbitration

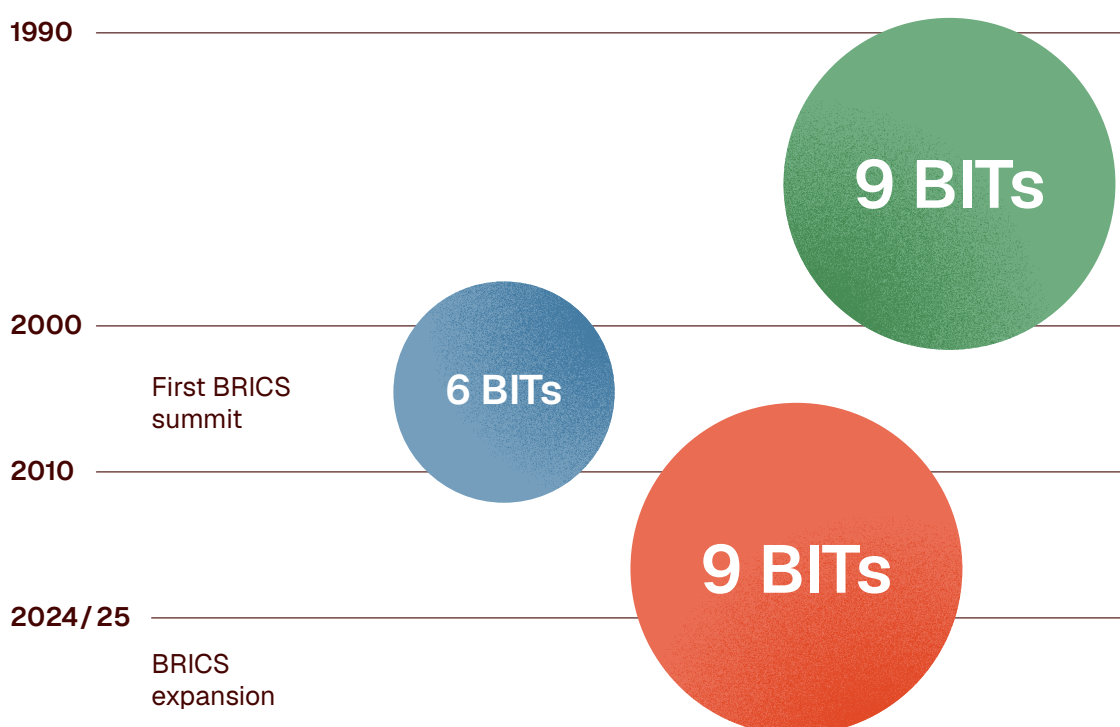
✕ Terminated BIT. May provide protection by "sunset clause"

Brazil				2018 ●	2020 ◆						2019 ◆
China			1994	1998	✕	✕	2000	2025 2006 ✕ 1990 ✕	1996	1997	1993
Egypt		1994		2006	✕	✕	1977 ●	1997	2024	1998 ●	1997 1988 ✕
Ethiopia	2018 ●	1998	2006		✕		2003	2000 ●		2008 ●	2016
India	2020 ◆	✕	✕	✕		✕		✕	✕		2024 2013 ✕
Indonesia		✕	✕		✕		2005	2007	2003		2019
Iran		2000	1977 ●	2003		2005		2015		1997	
Russia		2025 2006 ✕ 1990 ✕	1997	2000 ●	✕	2007	2015			1998	2010
Saudi Arabia		1996	2024		✕	2003					
South Africa		1997	1998 ●	2008 ●			1997	1998			
the UAE	2019 ◆	1993	1997 1988 ✕	2016	2024 2013 ✕	2019		2010			

Nine of the effective bilateral agreements between BRICS states were entered into over 20 years ago, during the 1990s, and do not reflect recent practices. Most of these older treaties (5 out of 9) are attributed to China. Conversely, the remaining 15 agreements came into existence in the 21st century.

Over the past decade, the UAE and Brazil have been the most active in concluding BITs, with 4 and 3 treaties concluded with other BRICS members, respectively. Presently, all such treaties of the UAE are in effect: with Brazil, Ethiopia, India, and Indonesia. Brazil has BITs with Ethiopia (signed, but not in force), India, and the UAE.

Signing of the BITs currently in force between BRICS members:



The BRICS member states have also entered into bilateral trade agreements which are currently in force, such as:

- Comprehensive Economic Partnership Agreement between India and the UAE in 2022;
- Agreement on Economic, Commercial, Investment, and Technical Cooperation between Egypt and Saudi Arabia in 1990; and
- Services and Investment Trade Agreement between the Russian Federation and the UAE in 2025, notably, providing for the parties' agreement to improve the BIT concluded in 2010. This agreement enters into force in late August 2026.

While these agreements encompass general obligations for states in the area of international trade, they do not allow investors to file claims against states in international fora. Therefore, these agreements are not covered in this Report.

B. Multilateral Investment Treaties Involving BRICS States

Investment protection within BRICS is ensured not only through bilateral treaties but also within the framework of regional associations.

Several multilateral treaties are in force among the BRICS Muslim-majority states (Egypt, Indonesia, Iran, Saudi Arabia, and the UAE), including those of the League of Arab States and the Organisation of Islamic Cooperation ("the OIC").

Two of these treaties are worth mentioning in the Report ("the Multilateral Treaties"):

Unified Agreement for the Investment of Arab Capital in the Arab States



Noteworthy as it establishes an international investment court vested with authority to resolve disputes arising not only under its own framework, but also under investment protection treaties among League members insofar as such treaties provide for dispute resolution through international arbitration or an international court

Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organisation of the Islamic Conference



Noteworthy because a dispute has arisen within its framework between an investor from a BRICS country and a member state of the association²⁰

Currently, the Egypt-UAE BIT (1997), Indonesia's BITs with Saudi Arabia (2003), Iran (2005) and the UAE (2019), the Egypt-Saudi Arabia BIT (2024), as well as the trade agreement (1990) between these states coexist with the Multilateral Treaties.

²⁰ For more detail, see below, Section V, p. 51.

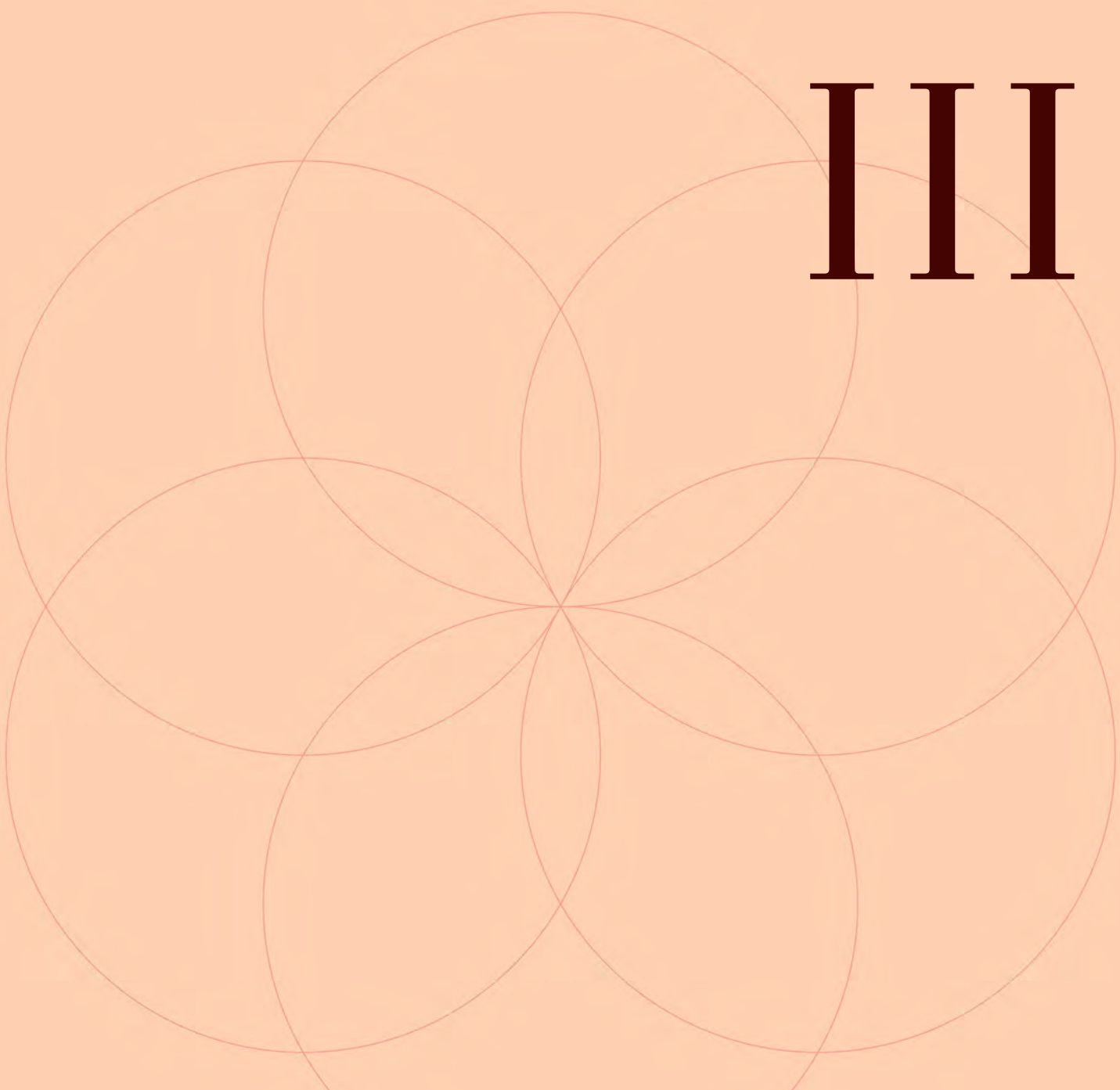
C. BRICS Foreign Investment Initiatives

In the previous decade, BRICS has introduced several initiatives to promote and harmonise investment among its member states. These initiatives involve a diverse set of tools that establish a common framework for cooperation between the states. One important objective is the establishment of a joint mechanism to bolster investment within BRICS.

However, all of these initiatives are political in nature and pertain to the advancement of new investments rather than the protection of existing ones, so they are not addressed in detail in the Report.

Investment promotion within BRICS





III

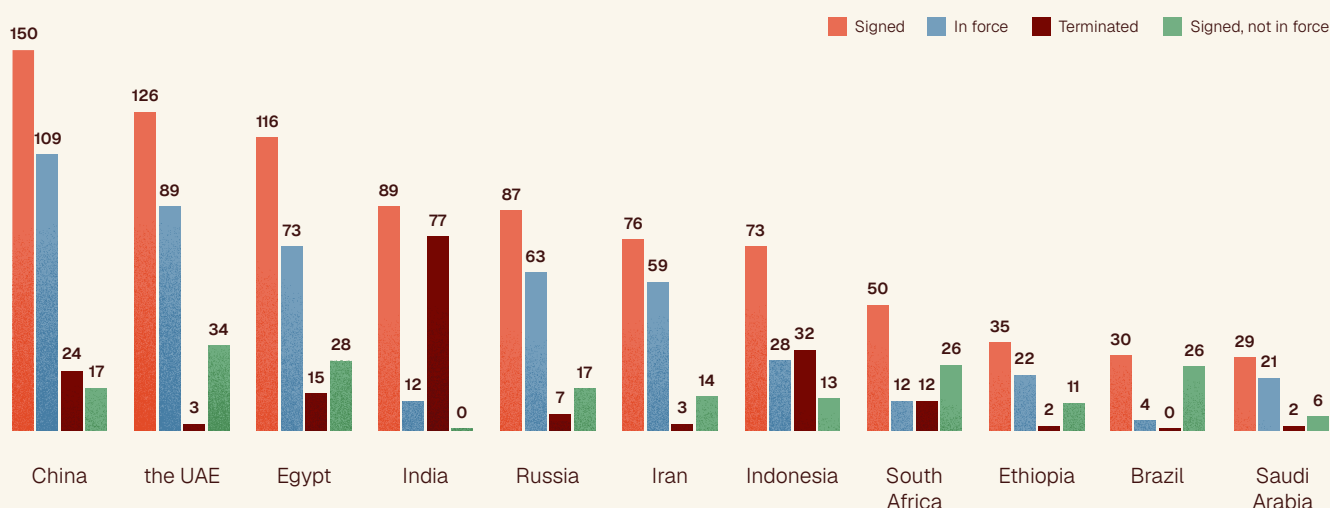
General Policy of BRICS States as Related to Entering into Bilateral Investment Treaties

The pattern of bilateral investment agreements between BRICS countries and with external partners can help illustrate and contextualise their general approach toward investment protection.

The BRICS states have taken different approaches to signing BITs. As shown in the charts below, some states like China, Egypt, and the UAE have entered into over 100 BITs while others have participated in far fewer, with Saudi Arabia signing 29 BITs and Brazil entering into 30 BITs.²¹

However, on average, only around half of the BITs ever signed by BRICS members, either among themselves or with third countries, are currently in force.

Statistics of BRICS member states BITs



China holds the record for the highest number of BITs in force, with 109, followed by the UAE with 89 and Egypt with 73. China also boasts the highest percentage of signed BITs in force at 90%.²² Brazil, India, and South Africa each have fewer than 15 BITs in force (4, 12, and 12, respectively).

109
CHINA'S BITs
ARE IN FORCE

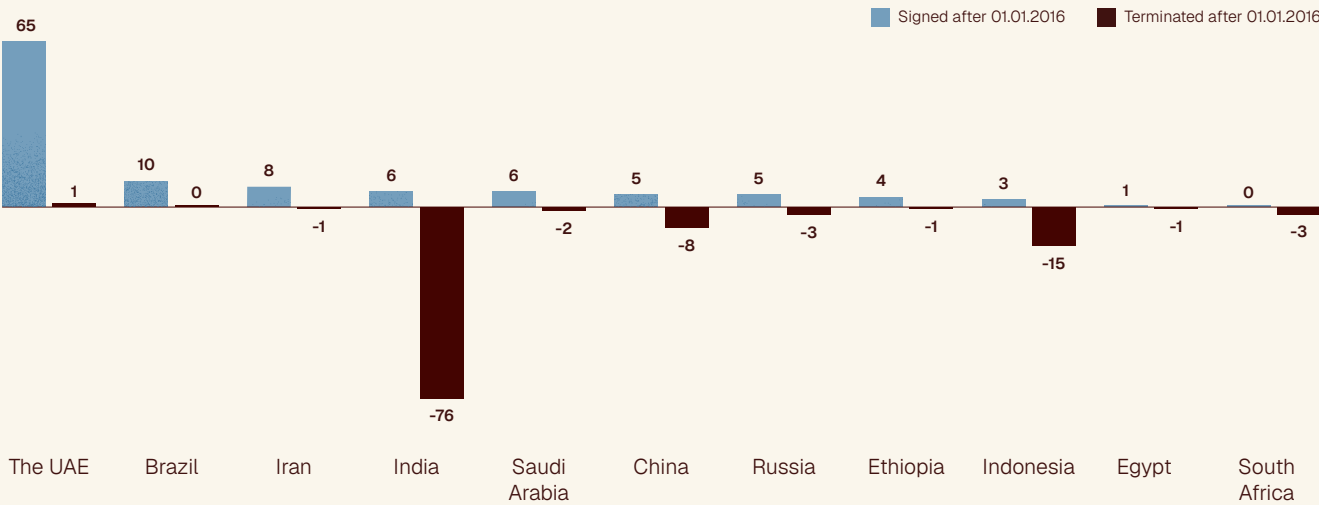
The correlation between BITs and foreign direct investment (FDI) has long been the subject of research and debate, particularly regarding the extent to which such treaties stimulate investment flows. In this context, China's case offers an example of how an extensive treaty network can coincide with sustained investment performance. Since the establishment of BRICS in 2009,

²¹ Data on signed BITs and their current status for all countries, with the exception of Russia, were sourced from the UNCTAD International Investment Agreements Navigator; URL: <https://investmentpolicy.unctad.org/international-investment-agreements>. As for Russia, data were obtained from the official website of the Ministry of Economic Development of the Russian Federation; URL: https://www.economy.gov.ru/material/departments/d11/investicionnye_soglasheniya/perechen_soglasheniy_mezhdu_pravitelstvom_rf_i_pravitelstvami_inostrannykh_gosudarstv_o_pooshchrenii_i_vzaimnoy_zashchite_kapitalovlozheniy/. To ensure consistency in application of criteria across all countries the following adjustments were made to the dataset: (1) 7 signed BITs that had ceased to be in effect (including those for which the sunset clause had expired) were added: with China (1990 and 2006), India (1994), Lithuania (1999), Turkey (1990), Ukraine (1998) and Uzbekistan (1997); (2) the multilateral agreement of the Eurasian Economic Union was excluded.

²² In the calculations, terminated BITs were not considered (approximately 20% of the total number of signed BITs among BRICS countries). India has the largest number of the terminated BITs, 77 out of 177.

China – possessing the largest number of BITs among member states – has consistently attracted the highest levels of FDI, maintaining a significant lead each year. In 2025, the state remained the top FDI recipient among BRICS countries, with inflows reaching USD 104.7 billion.²³

Over the past decade, the UAE has been the most active state in entering into BITs: 65 BITs have been signed, and over half are in force. This aligns with the UAE’s proactive approach to entering into agreements with other BRICS states.



Since 2014, some states, including China, India, and Russia, have undertaken the renegotiation of several BITs, replacing them with more advanced, new-generation treaties that seek to balance the interests of states and investors in line with global trends (see subsection A below). For example, China and Russia signed a new BIT in May 2025, that entered into force on 1 December 2025, replacing the BIT of 2006.

Over recent years, some BRICS states, such as India, Indonesia and South Africa, have terminated a significant portion of their BITs without signing a new treaty due to changes in their policies in this area (see subsection C below for details). Generally, states have become more inclined to terminate investment protection agreements (not only BITs but also trade agreements containing investment protection provisions) over the past decade. By the end of 2025, at least 600 agreements had been terminated.²⁴ According to UNCTAD, by 2024 the termination of agreements since 2012 has affected approximately 13% of foreign direct investment globally.²⁵

²³ World Investment Report 2026: International Investment in Turbulent Era. Annex 1. URL: https://unctad.org/system/files/official-document/wir2026_en.pdf.
²⁴ Ibid. Chapter II. P. 89
²⁵ World Investment Report 2024: Investment facilitation and digital government. Chapter II. P. 25. URL: <https://unctad.org/publication/world-investment-report-2024>.

For the purposes of the Report, it is worth distinguishing the following generations of BITs:

Before 2012

Old-generation²⁶

WITH A STANDARD ARBITRATION CLAUSE

The general and broad language of foreign investor protection standards

More favourable to investors, less to states

Arbitration is allowed for any disputes arising from the BIT

11 BITs

 China —  Iran
 China —  South Africa
 Egypt —  Russia
 Egypt —  UAE
 Iran —  Ethiopia
 Iran —  Russia
 Iran —  South Africa
 Russia —  South Africa
 Indonesia —  Iran
 Indonesia —  Russia
 Indonesia —  Saudi Arabia

WITH A LIMITED ARBITRATION CLAUSE²⁷

All the characteristics of the old-generation agreements but:

Investment arbitration is available only for claims in relation to the amount of compensation (i.e., the tribunal may decide that the fact of infringement itself must be established by a state court)

4 BITs

 China —  Egypt
 China —  Ethiopia
 China —  Saudi Arabia
 China —  UAE

After 2012

New-generation

More specific and investor-restrictive wording of protection standards, for instance:

Exclude certain investor protection standards (full protection and security, fair and equitable treatment, and others)

Include conditions under which a state may be deemed not to be in breach of the BIT (e.g., if it adopts non-discriminatory measures aimed at achieving the public good)

The right to use arbitration to resolve a dispute and/or an arbitration clause from another BIT is limited

9 BITs

 China —  Russia
 Brazil —  India
 Egypt —  Saudi Arabia
 Egypt —  Ethiopia
 UAE —  Brazil
 UAE —  Ethiopia
 UAE —  India
 UAE —  Russia
 UAE —  Indonesia

The majority of the BRICS members' BITs are old-generation treaties. This includes all of Iran's, South Africa's, virtually all of China's, Egypt's, Indonesia's, Russia's, Saudi Arabia's and half of Ethiopia's treaties.

However, most of the UAE treaties (5 out of 7) pertain to new-generation agreements, as are two effective treaties of Brazil and India.

²⁶ Treaties concluded even after 2012 can still fall under the definition of old-generation treaties, for example, the old-generation BIT between Russia and Iran was signed in 2015. Treaties with the elements of new-generation treaties, in their turn, may have been concluded before 2012, e.g., the Egypt-Ethiopia BIT (2006), the Russia-UAE BIT (2010). BITs may contain a combination of "old-generation" and "new-generation" provisions. For example, the 2025 China-Russia BIT retains certain provisions of the 2006 BIT, while also incorporating a number of "new-generation" provisions.

²⁷ UNCTAD, International Investment Agreements Reform Accelerator, 2020. P. 2. URL: https://unctad.org/system/files/official-document/diaepcbinf2020d8_en.pdf.

A. Generations of BITs

The approaches to investor protection and standards that states include in their BITs have evolved alongside the development of investment arbitration. Proceedings against states have prompted them to incorporate more detailed and balanced provisions in treaties.

BITs are commonly categorised into different generations that share comparable elements of protection. This classification is conventional and does not impose a set of "mandatory" conditions for a treaty to be assigned to a particular generation. Instead, it aims to reflect general patterns in states' practice and international investment law.

Reforming investment treaties and replacing old-generation treaties with new-generation treaties is widely discussed in global fora. The focus is on reclaiming by states of their regulatory space, imposing restrictions and adjustments on investor protection standards. States also tend to be more cautious about dispute resolution mechanisms.²⁸ For example, 42% of all recent treaties do not contain any provisions on investor-state dispute settlement.²⁹

Nevertheless, the process of updating treaties is not quick. Statistics indicate that approximately half of global investments continue to be protected under the old-generation treaties, and the BRICS is no exception. As of the end of 2024, the new-generation treaties cover only 16% of investments, and 35% remain without treaty protection.³⁰

In 2020, in anticipation of forthcoming changes, UNCTAD introduced the International Investment Agreements Reform Accelerator ("Reform Accelerator").³¹ This initiative delineates options for amending the 8 investment treaty provisions as most in need of reform. UNCTAD asserts that one of the objectives of the reform is to reduce the risk of disputes against states arising from the implementation of legitimate public policy objectives.³²

The proposals relate to the definition of areas and standards of protection but do not address dispute settlement (this reform is being discussed separately in UNCITRAL Working Group III, see below, [Section V, page 50](#)). They are addressed in the Report because they reflect recent global trends in the execution of the new BITs. They give an idea of the extent to which current BRICS treaties protect investors against the background of recent treaties executed by other countries and general trends. Therefore, the Report refers to certain proposals explaining where they have been used.

In 2023, UNCTAD also announced the launch of the Multi-Stakeholder Platform on the international investment agreements reform, which is an informal group of experts.³³ The Platform identified concrete impediments to the reform, and has been reportedly developing the Guiding Principles for the reform.³⁴

42%
OF RECENT
TREATIES DO
NOT CONTAIN
ANY PROVISION
ON ISDS

²⁸ World Investment Report 2025: International Investment in the Digital Economy. Chapter II. P. 106. URL: https://unctad.org/system/files/official-document/wir2025_en.pdf

²⁹ Ibid. P. 110.

³⁰ World Investment Report 2024: Investment facilitation and digital government. Chapter II. P. 2. URL: https://unctad.org/system/files/official-document/wir2024_en.pdf

³¹ UNCTAD, International Investment Agreements Reform Accelerator, 2020. URL: https://unctad.org/system/files/official-document/diaepcbinf2020d8_en.pdf.

³² Ibid. P. 2.

³³ Multi-Stakeholder Platform on IIA Reform. URL: <https://investmentpolicy.unctad.org/pages/1074/multi-stakeholder-platform-on-ii-a-reform>.

³⁴ Multi-stakeholder platform discusses guiding principles for IIA reform. URL: <https://investmentpolicy.unctad.org/news/hub/1776/20251001-multi-stakeholder-platform-discusses-guiding-principles-for-ii-a-reform>.

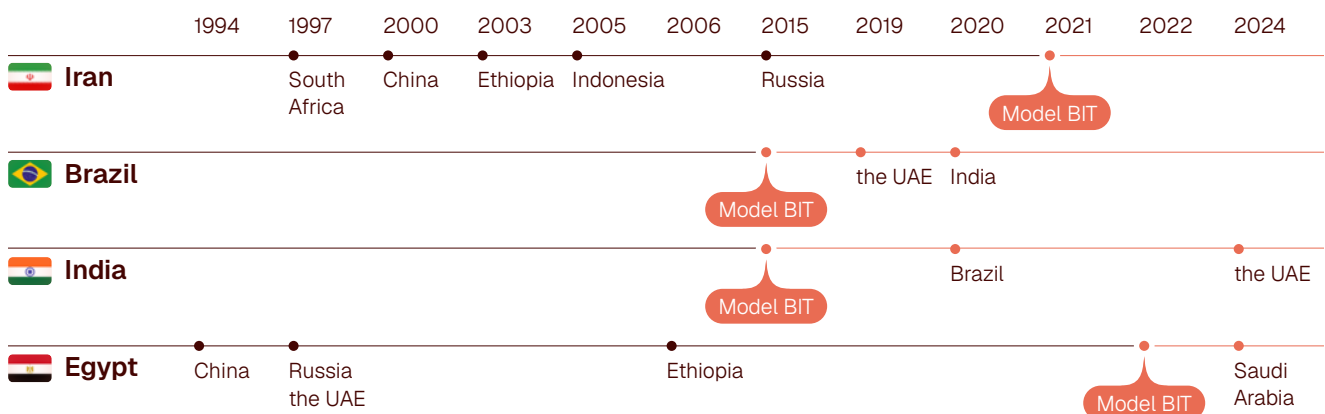
B. Model BITs

States often outline their approaches to international treaties in special instruments known as Model BITs. These are national acts that establish standards for protecting foreign investors and provisions for dispute resolution that a particular state adheres to when entering into a BIT.

Among the BRICS member states, 5 out of 11 have model BITs: Iran (2021), Brazil (2015), India (2015), Egypt (2022), and South Africa (1998):

- Brazil's and India's Model BITs incorporate elements of new-generation treaties;
- South Africa's Model BIT, issued in 1998, is not illustrative as it does not reflect the changes in the state's investor dispute resolution policy, which were a result of the 2009 study. This study found that the BITs primarily protected investors and did not adequately address South Africa's interests ([see more below, page 27](#)). Egypt's and Iran's Model BITs are not publicly available, so they are not addressed in the Report;
- Notably, only 4 out of 24 BITs currently in force between BRICS states were signed after at least one of the parties had adopted a model agreement: Brazil-UAE (2019), Brazil-India (2020), Egypt-Saudi Arabia (2024), and India-UAE (2024).

Most of the BRICS treaties are not based on the Model BITs



On the other hand, China, Ethiopia, Indonesia, Russia, Saudi Arabia, and the UAE do not have Model BITs. The approach taken by Russia is of particular interest: the state once maintained but later abandoned the concept of a model BIT. The Ministry of Economic Development asserts that "investment agreements should be entered into on the basis of economic feasibility and specifics of regulation of investment matters in each particular market."³⁵

Russia's principal approaches to new BITs are set out in Governmental Resolution No.992 "On Conclusion of Russian Federation's International Treaties on Promotion and Protection of Investments" dated 30 September 2016.

³⁵ Official website of the Ministry of Economic Development of the Russian Federation. URL: https://www.economy.gov.ru/material/departments/d11/investicionnye_soglasheniya/.

Among other things, this decree clarifies certain investment protection standards (for example, when defining indirect expropriation, it is proposed to take into account the nature, character, as well as the achieved and declared objectives of the state measures, as well as their impact on the market value of the investment) and provides guidance on when state liability shall be excluded (for example, when protecting essential security interests). In terms of dispute resolution, the decree suggests resorting to a state court, ad hoc arbitration under UNCITRAL rules, or a permanent arbitration institution.

C. Review of Approaches to the Earlier Signed BITs

Over the past 15 years, the policies of four BRICS states, namely Brazil, India, Indonesia and South Africa, have undergone significant changes, leading to the revision of earlier signed treaties. These changes have shifted the focus away from enhanced investor protection standards.

These revisions resulted in the termination of BITs under the old-generation model (India, Indonesia and South Africa) or the non-entry into force of old-generation BITs previously signed (Brazil).

The distinct features of the policies employed by these four countries are described below as an example of the most significant changes. Other countries do not terminate most of their treaties but still periodically update some of them.

Brazil

Brazil has never been part of the traditional ecosystem of international treaties protecting foreign investment, considering that it significantly limits state autonomy.³⁶ Brazil has signed a total of 30 BITs but has not ratified most of them. Only 4 BITs are currently in force: with Angola, India, Mexico, and the UAE

However, Brazil's experience demonstrates that the country's BIT policy may not be illustrative of its capacity to attract foreign investment. Despite having the lowest number of effective BITs within BRICS, Brazil ranked second in 2025 with FDI inflows of \$76.9 billion.³⁷ While its FDI inflows have fluctuated over the years, Brazil has consistently maintained one of the top positions within BRICS.

Brazil's Model Agreement, Cooperation and Facilitation Investment Agreement (CFIA), introduces an alternative to the existing system of investor protection. Brazil has 3 treaties with BRICS states following this model: with Ethiopia (signed in 2018, but not yet in force), the UAE (2019), and India (2020).

CFIA
INSTEAD OF
A TRADITIONAL
BIT IN BRAZIL

³⁶ Baltag C., Joshi R., et Duggal K. Recent Trends in Investment Arbitration on the Right to Regulate, Environment, Health and Corporate Social Responsibility: Too Much or Too Little? ICSID Review - Foreign Investment Law Journal. 2023. Vol. 38. Issue 2. Pp. 418-419. URL: <https://doi.org/10.1093/icsidreview/siac031>.

³⁷ World Investment Report 2026: International Investment in Turbulent Era. Annex 1. URL: https://unctad.org/system/files/official-document/wir2026_en.pdf.

These treaties have the following features:

- **A special procedure for investment cooperation between states:** a joint committee shall be established to administer the treaty, and an ombudsman shall be appointed to deal with complaints from investors about the actions of another state;
- **Replacing the investor-state arbitration with the state-to-state dispute settlement** where a state acts in defence of "its" investor and the investor is engaged in the proceedings as a stakeholder rather than a party. Disputes under Brazil's BITs shall be resolved in ad hoc arbitration, and their subject matter can be either the interpretation of a BIT (the standard subject matter of inter-state disputes) or compliance by one state with the terms of the treaty (i.e., disputes over violation of a particular investor's rights);
- **Limiting the possibility for an arbitral tribunal to award monetary compensation to the investor:**
 - Under the Brazil-India BIT, the arbitral tribunal shall only decide on its jurisdiction and whether there has been a breach of the BIT by the state but shall not consider issues related to compensation;
 - Under the Brazil-UAE and Brazil-Ethiopia BITs, the arbitral tribunal shall consider compensation matters only if the parties expressly agree to it.

ARBITRATION
BETWEEN
BRAZIL AND
INVESTOR'S
HOME STATE

India

Since 2016, India has been actively terminating BITs. By 2019, it had terminated treaties with 6 BRICS states, namely China, Egypt, Ethiopia, Indonesia, Russia, and Saudi Arabia. The treaty with the UAE expired, but on 31 August 2024, a new BIT between India and the UAE entered into force. Most recently, on 21 December 2025, the Brazil-India BIT, signed in 2020, entered into force as well.

The termination of India's BITs primarily stems from the historical dynamics of the state's involvement in investment disputes. India had not been a respondent in investment arbitration for a long time. According to public sources, the first award against it was issued in 2011 (*White Industries v. India*): the tribunal found that delays by local courts in enforcing the arbitration award violated India's international treaty obligations. The award was criticised and reportedly contributed to the revision of the state's BIT programme, including the 2003 model treaty, and to the renegotiation of existing treaties.³⁸

77
INDIA'S
BITS WERE
TERMINATED

The 2015 Model India BIT is based on the new-generation model and contains the following provisions:

- Submission of investor claims to the host state authorities (exhaustion of local remedies);

³⁸ Pathak H., Singh S. Deconstructing India's Evolving Approach Toward International Investment Agreements. URL: <https://www.iisd.org/itn/en/2023/07/01/deconstructing-indias-evolving-approach-toward-international-investment-agreements/>.

- Limitation period for referring a dispute to arbitration (12 months after the end of proceedings in the national court / administrative body);
- Obligation of investors to comply with corporate social responsibility standards.

Out of the 89 BITs signed by India, only 12 are in force (with Bangladesh, Belarus, Brazil, Colombia, Israel, Kyrgyzstan, Lithuania, Libya, Senegal, the Philippines, the UAE, and Uzbekistan). The renegotiation of BITs with states is not quick: only 4 treaties have been renegotiated, with Belarus, Israel, Kyrgyzstan, and Uzbekistan (all of which have entered into force).³⁹ Notably, out of 6 BITs signed after 2016, 3 are with BRICS members and 2 – with BRICS partner countries.

As part of its renegotiation policy, India has signed a Joint Interpretative Declaration with some states, e.g. Colombia (2018), clarifying certain definitions and standards, such as the application of the treaty to dual nationals and the limits of the fair and equitable treatment standard.

Indonesia

In 2014, Indonesia announced its plans to terminate more than 60 BITs, expressing dissatisfaction with the investor-state dispute settlement system.⁴⁰ As reported by UNCTAD, since then the state terminated almost half (24) of them.

Among BRICS jurisdictions, Indonesia has terminated BITs only with China and Egypt, whereas the BITs with Iran, Russia and Saudi Arabia, pertaining to the old-generation, remained intact. In 2019, Indonesia also signed the new-generation BIT with the UAE.

Similarly to the experience of India, the renegotiation of BITs by Indonesia is not very quick. Out of 24 BITs terminated since 2014, only 2 – with Singapore and Switzerland – were replaced with new ones.

In 2015, when the renegotiations were announced, the government officials declared that Indonesia might seek to limit the access to the investor-state dispute resolution to cases of the state's express consent to arbitrate with a particular investor.⁴¹

However, none of the new-generation BITs concluded since (with Singapore, Switzerland and the UAE) introduced such a condition. Notably, the BITs with Singapore and Switzerland contain detailed provisions on the investor-state arbitration with provisions on limitation period, third-party funding, security for costs, code of conduct for arbitrators, etc.

³⁹ The India-UAE BIT of 2013 has not been taken into account, as it was replaced by the BIT of 2024. This sentence refers to the replacement of old-generation agreements with new-generation treaties, whereas the India-UAE agreement of 2013 already belongs to the new-generation.

⁴⁰ Financial Times, 'Indonesia to terminate more than 60 bilateral investment treaties'. URL: <https://www.ft.com/content/3755c1b2-b4e2-11e3-af92-00144feabdc0>.

⁴¹ The Jakarta Post, 'Govt revises investment treaties'. URL: <http://www.thejakartapost.com/news/2015/05/12/govt-revises-investment-treaties.html>.

South Africa

Regarding South Africa's policy on bilateral investment treaties:

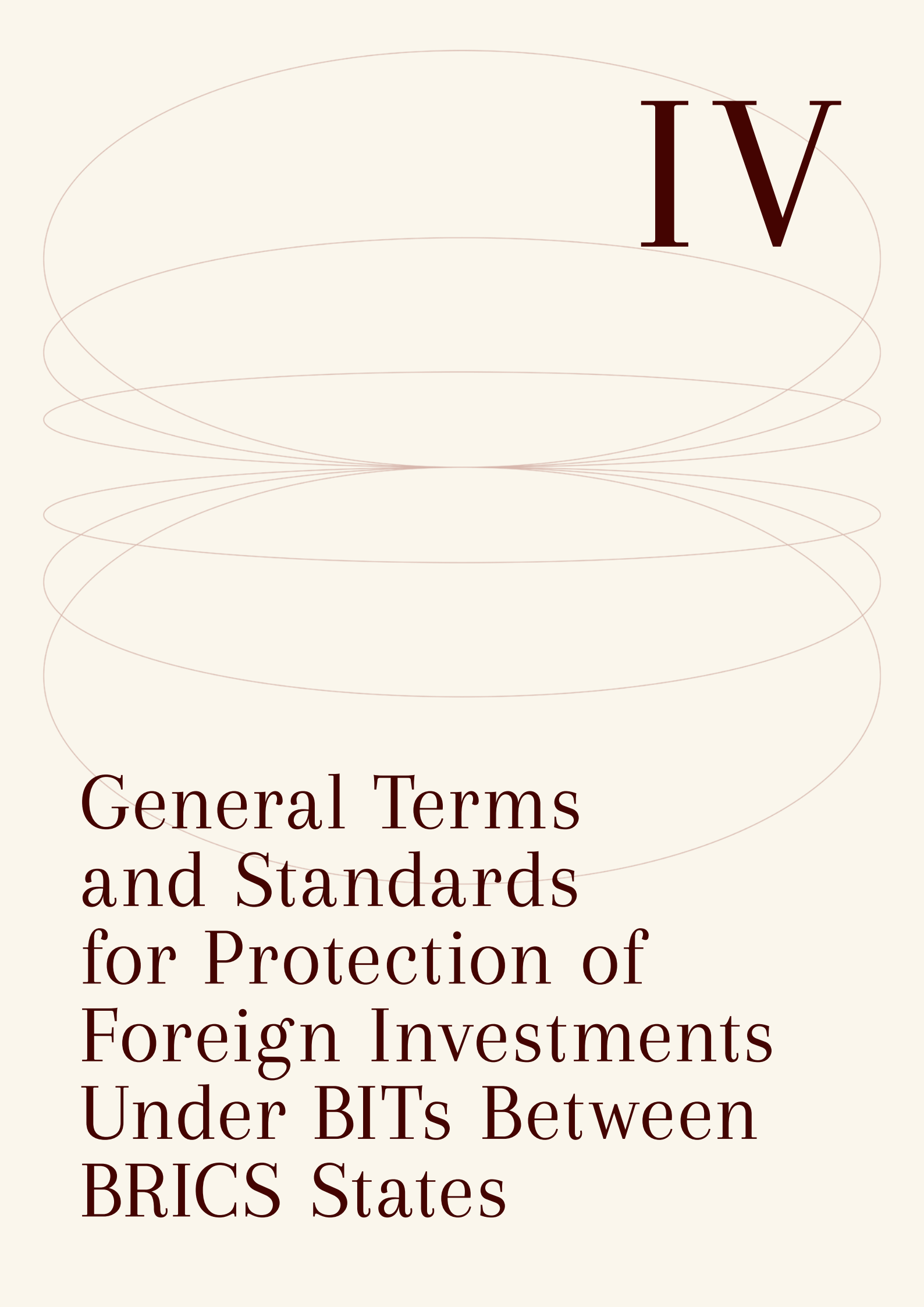
- Among the 50 BITs that have been entered into, only 12 are in force (including 3 treaties with BRICS countries: China, Iran, and Russia);
- Among the treaties entered into in the 21st century, only the 2009 and the 2000 treaties with Nigeria and Zimbabwe, respectively, are effective. South Africa has not signed any new BITs since 2009; between 2000 and 2008, South Africa signed 21 BITs (only one with a BRICS state, Ethiopia), of which only the treaty with Nigeria is currently effective;
- 12 treaties were terminated between 2013 and 2020, most of them unilaterally, and in 2014; no treaties with BRICS countries have been terminated.

ARBITRATION
BETWEEN
SOUTH AFRICA
AND
INVESTOR'S
HOME STATE

In 2009, the South African Department of Trade and Industry studied the state's BITs entered into since 1994.⁴² According to the study, as in the case of India, arbitration proceedings against South Africa served as a key trigger for this review. The study found that many BITs contained provisions that largely served the interests of investors without considering the need to retain flexibility on key policy issues. As a result, in 2015 the state published South Africa's Protection of Investment Act (which came into force in 2018), which is aimed, among other things, at changing the mechanism for resolving investment disputes, focusing on mediation and national fora as an alternative to arbitration. Arbitration remains available but only for disputes between South Africa and the investor's state and is subject to South Africa's consent.

Therefore, in contrast to South Africa's current approach, its effective treaties with BRICS members, all of which were concluded in 1997 and 1998, i.e., before the reform, provide enhanced foreign investment protection by allowing the investors to resort directly to investment arbitration.

⁴² Bilateral Investment Treaty Policy Framework Review: Government Position Paper. 2009. URL: <https://static.pmg.org.za/docs/090626trade-bi-lateralpolicy.pdf>



IV

General Terms and Standards for Protection of Foreign Investments Under BITs Between BRICS States

A. General Terms

When Should an Investment Be Made so that It Could Be Protected by a BIT?

Protection under a BIT may be subject to temporal restrictions depending on the date on which (1) the investment was made or (2) the dispute arose.

Certain BITs of BRICS states do not impose such restrictions: 4 China's BITs (with Egypt, Iran, Saudi Arabia, and the UAE), Indonesia's BIT with Saudi Arabia and the Egypt-UAE BIT.

In general, treaties of BRICS states tend not to condition protection **upon the date of investment**. Thus, protection typically extends to investments made both before and after the entry into force of the respective BIT. Exceptions to this rule:

- Russia's BITs provide protection only for investments made after a specific date, which is expressly set out in the treaty and is not contingent on the time of its signing or entry into force. As a rule, this date is around or just after the dissolution of the Soviet Union, on 1 January (i) 1985 under the BIT with China provided that an investment existed in the territory of China or Russia as of the date of entry into force of the BIT; (ii) 1987 under the BITs with Egypt, South Africa, and the UAE; (iii) 1991 under the BIT with Indonesia; or (iv) 1992 under the BIT with Iran;
- The Egypt-Ethiopia BIT only protects those investments that were made after the treaty entered into force.

Where a restriction is placed **on the commencement date of the dispute**, the BIT provides protection only for state actions taken after the treaty entered into force.

Such restrictions can be found in Brazil's treaties with India and the UAE, the China-Ethiopia, China-South Africa, Ethiopia-Iran, Ethiopia-UAE, Egypt-Saudi Arabia, India-UAE, Iran-South Africa BITs, as well as all but one of Indonesia's BITs with other BRICS members (except the BIT with Saudi Arabia).

Restrictions on the commencement date of the dispute may apply jointly with restrictions on the date of investment. Russia's BITs with China, Indonesia, Iran, and the UAE include both conditions.

The BIT between Egypt and Saudi Arabia provides the additional restrictions with respect to the date of commencement of the dispute.

Temporal restrictions for investment protection

Only the investments made after a specific date are protected	 Russia —  Iran  Russia —  South Africa	 Russia —  China  Russia —  Egypt	 UAE —  Russia
The investments are protected only against the states' actions performed after the BIT came into force	 China —  Ethiopia  China —  Russia  China —  South Africa  Egypt —  Saudi Arabia  Russia —  Indonesia	 Iran —  Ethiopia  Iran —  Indonesia  Iran —  Russia  Iran —  South Africa  Brazil —  India	 UAE —  Brazil  UAE —  Ethiopia  UAE —  India  UAE —  Indonesia  UAE —  Russia
Only the investments made after the BIT came into force are protected	 Egypt —  Ethiopia		

The Egypt-Saudi Arabia BIT does not cover claims or disputes that may arise after the BIT entered into force if they relate to:

- Events that occurred before the BIT entered into force even if they have continuing effect;
- A complex event, parts of which occurred before the BIT's entry into force;
- Subsequent events directly related to the events that occurred before BITs entry into force.

What Investment Shall Be Protected under BITs?

Most BRICS treaties do not contain any provisions excluding certain assets from protected investments. By default, an investment is broadly defined as any contribution made by an investor in a foreign state.

So far, only Brazil's BITs and the UAE's treaties with India and Indonesia, as well as the China-Russia and Egypt-Saudi Arabia BITs impose restrictions on the types of protected investments.

Additionally, Iran's treaties with China, Ethiopia, and South Africa with respect to investments in Iran protect only investments that have been approved by a specialised body, the Organisation for Investment, Economic and Technical Assistance of Iran, or its successor. The same approach applies to investments in South Africa, but no particular body is designated. However, investments in China and Ethiopia do not require additional approval to be protected. Indonesia's BIT with Iran requires admission or approval of investments in accordance with laws and regulations of each respective contracting party, stipulating the exact legal acts referred to in this provision. Indonesia's BIT with the UAE provides for the same condition without referring to particular legal acts.

Notably, the treaty between Iran and Russia contains no such restrictions.

Type of unprotected assets / BIT

 Brazil
 UAE

 Brazil
 India

 UAE
 India

 Egypt
 Saudi Arabia

 UAE
 Indonesia

 China
 Russia

Excluded from the notion of investment

Orders and judgments resulting from a lawsuit or administrative process



Sovereign debt, e.g.

- state debt securities, loans, bonds, debentures
- state-owned enterprise's debt securities, loans, etc.



Portfolio investments



Ordinary commercial claims, e.g.

- claims to money that arise solely from:
 - commercial contracts for the sale of goods or services, or
 - from the extension of credit in connection with any commercial transaction
- any other claims that do not involve the kind of interests as set out in the definition of investment



Goodwill, brand value, market share or similar intangible rights



Pre-operation expenditures



Non-commercial activities



Shares of companies listed on the stock market



IP rights not protected by laws of host country



Excluded from the overall scope of BIT [\(see also pages 38-39 for more details\)](#)

Pre-investment activity



Compulsory licenses granted in relation to intellectual property rights in accordance with states' obligations under the aegis of the WTO (such as under the TRIPS Agreement)



Natural resources (including concessions)



only in the case of the UAE

in the case of Indonesia: excluded unless the Government decided otherwise

The definition of "investment" is among the areas to be reformed in new-generation treaties, according to UNCTAD (see page 22 above). The states are invited to:⁴³



- Exclude specific types of assets from the definition of investment. This recommendation addressed the practice of arbitral tribunals that have recognised a wide range of contributions as protected investments, including government bonds and commercial contracts for the sale of goods and services. In addition to the UAE treaties with Brazil, India and Indonesia, the Egypt-Saudi Arabia BIT, and the China-Russia BIT, such exceptions are found, for example, in the Canada-EU Comprehensive Economic and Trade Agreement (2016) ("Canada-EU CETA") and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (2018) ("CPTPP");
- Require investments to fulfil specific characteristics to be covered by the treaty (e.g., a certain duration, contribution to sustainable development, etc.). This option is used in the UAE BITs with India and Indonesia, the Brazil-India BIT (commitment of capital, objective of establishing a lasting interest, expectation of gain or profit and assumption of risk), the China-Russia BIT (contribution of capital or other resources, expectation of profit or income, acceptance of risk), the Egypt-Saudi Arabia BIT (its use for an economic purpose or activity, duration, commitment of capital or other economic resources, the expectation of gain or profit, the assumption of risk and contribution to economic and sustainable development) and, outside the BRICS context, in the Australia-China Free Trade Agreement (2015) ("Australia-China FTA").

Who is Eligible to be an Investor?

Default rule

Nationals of the home state or companies registered in accordance with the laws of the home state



Brazil-India BIT
Brazil-UAE BIT

Permanent residents

⁴³ UNCTAD, International Investment Agreements Reform Accelerator, 2020. Pp. 10-12. URL: https://unctad.org/system/files/official-document/diaepcbinf2020d8_en.pdf

Typically, protection is granted to nationals of the home state or companies registered under its laws. Brazil's BITs with India and the UAE also extend protection to persons holding permanent residence permits.

Almost all treaties, except the UAE's BITs with Egypt and India, do not explicitly allow claims by a "local" company that has a majority of foreign participation (i.e., those registered in the host state). This presents a compelling issue in practice, as foreign investors frequently structure the investment through local entities. In the absence of provisions in the BIT allowing claims by local companies, only a foreign company or national can act as an investor (claimant) under a BIT.

For example:

Investments of a third-country national who was not a national of the home state at the time but later acquired such nationality may not be protected.

All the BITs in force, except Egypt's treaty with the UAE, specify that only investments that were "made by investors" are protected. This language could be interpreted by arbitral tribunals as protecting only those investors who met the BIT criteria not only at the time when the dispute arose and the claim was brought, but also when they originally invested in the host state.

It should be noted that in certain new-generation treaties the state may deny protection under a BIT (denial of benefits). Among the BITs of BRICS states, this applies only to the UAE treaties with Ethiopia, India, and Indonesia, and the BIT between Egypt and Saudi Arabia: the state may deny protection if the investment is actually owned or controlled by an investor from a third state.

The specifics of the Arab League Agreement deserve particular attention: this treaty does not apply to investments involving (directly or indirectly) non-Arab investors. The provision was modified by the 2013 amendments, which lowered the required threshold for Arab investor participation to 51%. However, according to public sources, only 8 out of 22 states have ratified the amendments.⁴⁴

Additional Criteria for Companies

Several treaties provide for additional conditions that a foreign corporate investor must satisfy for its investment to be protected. These generally include the requirement of proof of the investor's legal and/or economic ties to its home state.

Less than half of the treaties do not contain such criteria. The domicile requirement in the China-UAE BIT (1993) applies exclusively to Chinese investors and does not extend to investors from the UAE. The China-Saudi Arabia BIT (1996) contains different criteria for investors from each country.

⁴⁴ Mohamed Abdel Wahab, Kabir Duggal. *The Resurgence of the Unified Arab Investment Agreement and the Organisation for Islamic Cooperation Investment Agreement: A Dawn of a New Chapter on Investment Protection?* / Brill, 2022.

Additional criteria for companies

Having the right to invest in a foreign state (host state) under the laws of the home state Egypt – Russia	01	Seat and economic activity in the home state Egypt – Ethiopia	02
Domicile in home state China – Egypt China – Ethiopia China – UAE (applies to investors from China)	03	Seat in the home state Indonesia – Russia India – UAE* China – Saudi Arabia (applies to investors from China)	04
Head office located in the home state Indonesia – Saudi Arabia China – Saudi Arabia (for Saudi Arabian investors)	05	Substantial economic activity and domicile in the home state Ethiopia – UAE	06
Engaged in substantive business operations in the territory of home state Indonesia – UAE China – Russia Brazil – India**	07	Head office or real economic activities in the home state Indonesia – Iran	08

* The India-UAE BIT establishes several alternative criteria in addition to the location and subjection to the laws of the home state:

- Substantial business activity in the home state, or
- Such activity is absent, but the direct or indirect owner is (1) a national of that state, (2) a legal entity conducting substantial business activity in the home state; or (3) the state itself.

Moreover, the India-UAE BIT expressly excludes branches and representative offices from the definition of an investor.

**The Brazil-India BIT expressly excludes branches from the definition of an "investor".

Notably, the most recent BIT between Egypt and Saudi Arabia provides for the criteria of determination of the real economic activity, including location of activities, number and qualification of employees, amount of revenue generated in the home state, duration of activities, etc.

The China-Russia BIT sets out direct exceptions to the eligibility of the companies as opposed to the more common limitation through the denial of benefits clause (apart from the dual nationals restriction, [which is addressed below, page 35](#)).

Companies cannot be considered an investor if they are:

- Owned or controlled by a person of the other contracting state;
- Not engaged in substantive business operations in the territory of the home state, including when they are controlled by a person of a third state;
- Owned or controlled by a third state, individual or company of a third state, if the host state does not maintain diplomatic relations with that third state.

Additional Criteria for Individuals

As stated above, it is typical that individual investors must be nationals of the home state. The issue of whether investors holding dual nationality (in both the home state and the host state) can be considered foreign investors warrants special consideration:

- 17 out of 24 BITs in force do not contain a dual nationality clause; in that case, jurisprudence of investment tribunals is controversial: certain tribunals grant protection to the claims of dual nationals,⁴⁵ others employ the "dominant and effective" nationality test,⁴⁶ others deny protection to such investors;⁴⁷
- The Iran-Russia and Iran-South Africa BITs as well as Egypt's treaty with Saudi Arabia explicitly state that dual nationals are not entitled to protection. The same approach is used in the China-Russia and the Egypt-Saudi Arabia BITs, which further clarify that investments are not protected both when an individual holds dual nationality at the current moment, or held on the date when such investment was made;
- The UAE's BITs with India and Indonesia do not preclude the protection of investors with dual citizenship but stipulate that the citizenship should be determined on the basis of "the most effective nationality" test (for BIT with India) or should depend on where the investment is located (for BIT with Indonesia). Notably, under the Indonesia-UAE BIT this test only applies to Indonesia.
- The Egypt-Saudi Arabia BIT does not protect nationals of the home state with multiple nationalities when the home state nationality does not satisfy the test of "effective nationality".

UNCTAD has proposed several measures (see page 22 above) regarding the definition of the "investor".⁴⁸



- To exclude certain categories of natural or legal persons from treaty coverage, such as dual nationals (as implemented in the Iran-Russia and Iran-South Africa BITs), as well as companies that are not engaged in real economic activities in the home state. This is the approach taken in the Egypt-Ethiopia, Ethiopia-UAE, India-UAE, Indonesia-UAE, and Indonesia-Iran BITs, and, for example, by the Egypt-Mauritius BIT (2014) and the EU-Singapore Investment Protection Agreement (2018);
- Include a denial of benefits clause, which is found, for example, in the Ethiopia-UAE BIT. As another example, a state may deny protection to investors with which it does not maintain diplomatic relations. Such a clause is present in the China-Russia BIT, China-South Korea Free Trade Agreement (FTA) (2015), the Canada-EU CETA, and the CPTPP.

⁴⁵ For instance, *Serafin García Armas and Karina García Gruber v. The Bolivarian Republic of Venezuela*, PCA Case No. 2013-03, Decision on Jurisdiction, 15 December 2014; *Eudoro Armando Olguin v. Republic of Paraguay*, ICSID Case No. ARB/98/5, Decision on Jurisdiction, 8 August 2000; *Sergei Viktorovich Pugachev v. The Russian Federation*, Award on Jurisdiction, 18 June 2020.

⁴⁶ *Michael Ballantine and Lisa Ballantine v. The Dominican Republic*, PCA Case No. 2016-17, Final Award, 3 September 2019; *Antonio del Valle Ruiz et al. v. Kingdom of Spain*, PCA Case No. 2019-17, Final Award, 13 March 2023.

⁴⁷ *Domingo García Armas, Manuel García Armas, Pedro García Armas and others v. Bolivarian Republic of Venezuela*, PCA Case No. 2016-08, Award on Jurisdiction, 13 December 2019; 1. *Enrique Heemsen and 2. Jorge Heemsen v. the Bolivarian Republic of Venezuela*, PCA Case No. 2017-18, Award on Jurisdiction, 29 October 2019.

⁴⁸ UNCTAD, *International Investment Agreements Reform Accelerator*, 2020. Pp. 13-15. URL: https://unctad.org/system/files/official-document/diaepcbinf2020d8_en.pdf.

Public Investors

Public investors, which include state authorities and companies that are majority-owned by the state, are explicitly protected in 8 BITs within BRICS, 7 of them involving Arab countries and the China-Russia BIT. Multilateral Treaties also explicitly allow public investment. However, even in the absence of such a clause, arbitral jurisprudence recognises that, for example, state-owned companies may act as investors.⁴⁹

Public investor is explicitly allowed in 8 BITs:

 China —  UAE	The federal government of the UAE, as well as local governments and their local and financial institutions
 Egypt —  Ethiopia	Public enterprises
 UAE —  Egypt	Government of any of the contracting states
 UAE —  India	Legal entities, corporations, limited partnerships, trusts, or beneficiaries of trusts that are owned or controlled (directly or indirectly) by the state
 Saudi Arabia —  China	Institutions and authorities such as the Saudi Arabian Monetary Agency, Public Funds, Development Agencies and other similar governmental institutions having their head offices in Saudi Arabia
 Saudi Arabia —  Indonesia	Saudi Arabia: the Government and its financial institutions and authorities such as the Saudi Arabian Monetary Agency, public funds and other similar governmental institutions Indonesia: Government and non-Government agencies
 Saudi Arabia —  Egypt	Investor can be governmentally owned or controlled
 China —  Russia	Legal persons can act as investors irrespective of whether they are publicly- or privately-owned

⁴⁹ State Development Corporation "VEB.RF" v. Ukraine, SCC Case No. 2019/113 and V2019/088, Partial Award on Preliminary Objections (Case No. V2019/088), 31 January 2021; Ceskoslovenska Obchodni Banka, a.s. v. The Slovak Republic, ICSID Case No. ARB/97/4, Decision of the Tribunal on Objections to Jurisdiction, 24 May 1999.

What happens to the investor's rights if the BIT is terminated?

Almost all BITs within BRICS feature a "sunset clause", enabling investors to retain protection for a certain period following the termination of the agreement.

As illustrated in the graph below, the period may vary from 3 to 20 years. The Indonesia-UAE BIT does not contain a "sunset clause". Notably, while China-Russia 2006 BIT established a 10-year sunset clause, the newly signed BIT limits it to 3 years.

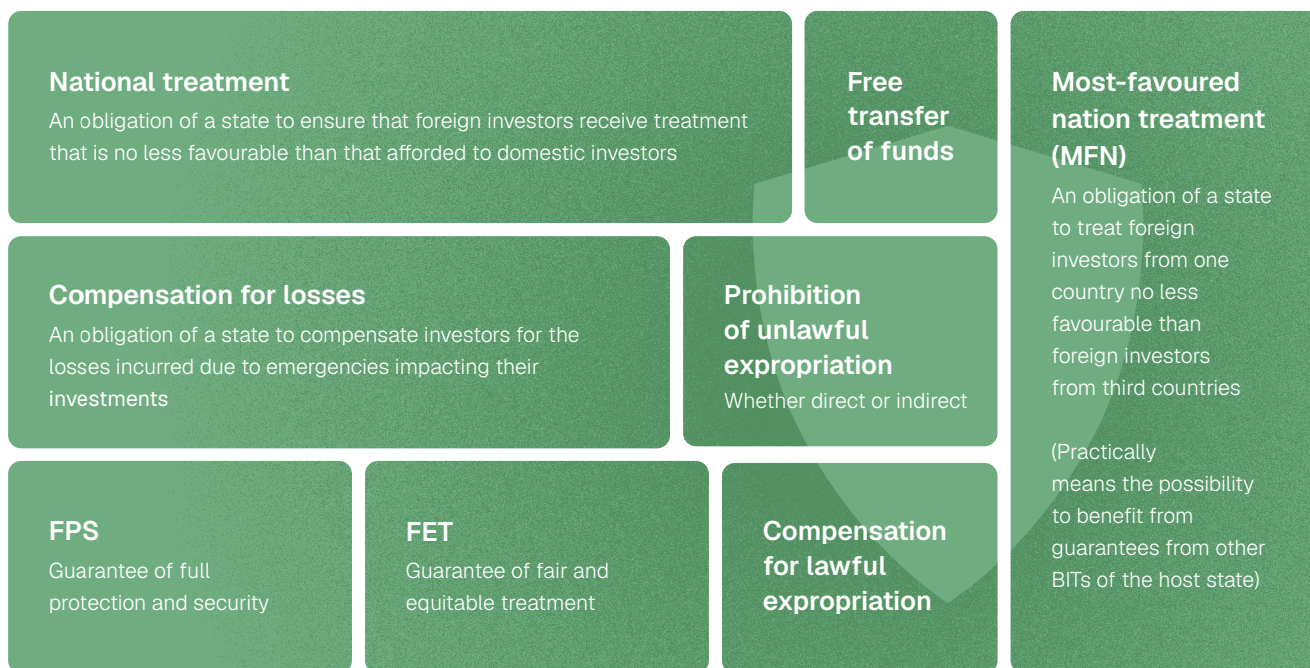
Investment protection period after the termination of the BIT (sunset clause)



B. Investment Protection Standards

Traditionally, states have assumed various obligations to protect foreign investment, which include the following key investment protection standards:

Key investment protection standards



If the state breaches any of these standards, investors may initiate proceedings against the state, asserting that their rights under the treaty have been infringed. They may seek damages along with accrued interest.

Investors should pay particular attention to umbrella clauses in BITs. These clauses extend protection to any obligations that the state has towards investors, beyond those explicitly detailed in the BIT. For example, an umbrella clause allows investors to pursue claims against a state in international arbitration for breaches of a commercial contract, subject to specific exceptions. In other words, this mechanism elevates individual contractual violations to the level of international treaty protection. The umbrella clause is found in 5 out of 24 treaties in force between BRICS countries: the Egypt-UAE BIT and 4 BITs of China, with Egypt, Russia, South Africa, and the UAE.

Certain BITs, on the other hand, limit or exclude the application of the treaty under specific circumstances. Specifically:

- Governmental measures related to taxes are not covered under the UAE's BITs with Brazil, Ethiopia, India, Indonesia, the Brazil-India and the Egypt-Saudi Arabia BITs;
- Migration laws are excluded in the Ethiopia-UAE BIT;
- The India-UAE BIT does not extend protection with respect to measures taken by local governments or related to public procurement;

- The Brazil-India BIT does not cover any measures of local governments provided that such measures are consistent with national treatment;
- Government procurements are excluded in the Brazil-India, Egypt-Saudi Arabia, and Indonesia-UAE BITs as well as in the China-Russia BIT;
- The Brazil-India and Indonesia-UAE BITs exclude services supplied in the exercise of governmental authority;
- The Brazil-India, Egypt-Saudi Arabia, and Indonesia-UAE treaties exclude subsidies or grants, provided by authorities;
- The Egypt-Saudi Arabia BIT also excludes from protection activities prohibited for foreign investors, preferential measures for support of small and medium-sized enterprises, restructuring of public debt and investments to the special body named General Investment Fund and entities owned by it.

Full Protection and Security

Most BRICS treaties provide for the full protection and security standard.⁵⁰ Iran's BITs stand out: its treaty with Russia lacks this guarantee, while the agreements with China, Indonesia and South Africa encompass a variation of the standard, namely "full legal protection". This may be interpreted as a waiver of the physical protection of investments as provided under the regular standard of full protection and security. For example, tribunals have found a breach of physical protection guarantee in cases when a state law enforcement agency harmed an investment during a counter-guerrilla operation⁵¹ or failed to protect an investment, where a hotel has been taken over by its employees,⁵² etc.

Brazil's treaty with India does not mention this standard, although it does not explicitly exclude it either.

The China-Russia BIT provides only for the full protection standard, omitting the "security limb".

The UAE's BITs expressly exclude the obligation of full protection and security and state that it cannot be used for the purpose of interpretation of the treaty.

The UAE's BITs with India and Indonesia explicitly stipulate that the standard pertains only to physical protection and does not exceed the minimum standard of protection for foreigners under customary international law (India) or to the nationals and foreigners provided by the state (Indonesia). The Egypt-Saudi Arabia BIT also guarantees only physical protection and security and does not extend its application to the exercise of the state's regulatory rights.

UNCTAD's proposals for states ([see page 22 above](#)) advocate for the reform of the FPS standard by explicitly linking it to customary international law and clarifying that the FPS standard refers to physical protection.⁵³ Among the BRICS countries, this approach



⁵⁰ Specific wording may differ, but this typically does not affect the interpretation of the standard.

⁵¹ Asian Agricultural Products Ltd. (AAPL) v. Republic of Sri Lanka, ICSID Case No. ARB/87/3, Award, 27 June 1990.

⁵² Wena Hotels Limited v. Arab Republic of Egypt, ICSID Case No. ARB/98/4, Award, 8 December 2000.

⁵³ UNCTAD, International Investment Agreements Reform Accelerator, 2020. P. 23. URL: https://unctad.org/system/files/official-document/diaepcbinf2020d8_en.pdf.

is used in the India-UAE BIT and India's Model BIT. It is also used in several agreements outside BRICS, including the Canada-EU CETA, the CPTPP, and the Armenia-Singapore Agreement on Trade in Services and Investment (2019).

Fair and Equitable Treatment

The guarantee of fair and equitable treatment ("FET") is provided in all BRICS treaties, save for the UAE's BITs with Brazil and India, the Brazil-India BIT as well as Egypt's BIT with Saudi Arabia.

The difference lies in whether the standard is interpreted broadly, without specifying its particular scope, or with certain restrictions.

In BRICS BITs, the state's obligation to ensure fair and equitable treatment of investments is constrained in two principal ways:

- First, by listing the types of investor activities covered by the guarantee;
- Second, by explicitly identifying the situations covered by the standard (e.g., protection against discrimination or due process guarantees).

Moreover, some treaties articulate that certain actions of the state are deemed unacceptable, thereby providing additional safeguards for the investor.

The UAE's BITs with Brazil, India and Indonesia as well as the Brazil-India BIT stand apart. The parties explicitly listed the obligations typically associated with the fair and equitable treatment standard, including prohibitions on denial of justice, breach of due process, or targeted discrimination, etc. However:

- In the Brazil-UAE BIT, the parties have clarified that the international law FET is not covered and shall not be used as an interpretative standard in dispute settlement procedures;
- In the India-UAE BIT, the parties have not referred to the FET standard at all, instead just listed the specific obligations (such as denial of justice, targeted discrimination, etc). The same approach is taken in the Egypt-Saudi Arabia BIT and the Brazil-India BIT.

Indonesia's BIT with Iran provides only for the guarantee of fair treatment, not equitable.

This approach may reflect the states' intention to avoid a broad interpretation of the standard in light of the investment arbitration case law.

The fair and equitable treatment standard is the most frequently invoked in practice: investors have relied on it in 80% of all known disputes.⁵⁴

⁵⁴ Ibid. P. 20.

UNCTAD invites states to adjust and limit the FET standard through several approaches (see page 22 above).⁵⁵



- Replace it with an exhaustive list of state obligations, for example, denial of justice. This is the approach taken in the India-UAE, Indonesia-UAE, Egypt-Saudi Arabia BITs and India's Model BIT. Examples from countries outside BRICS: the Canada-EU CETA and the EU-Vietnam Investment Protection Agreement (2019);
- Clarify the standard, for example, by providing that a determination that there has been a breach of another provision of the treaty does not establish that there has been a breach of FET. Among the BRICS countries, this approach is taken, for example, in the Egypt-Saudi Arabia BIT, the Brazil-India BIT, by the UAE in its treaty with Uruguay and by China in its FTA with the Republic of Korea;
- Entirely omit the standard, as in the Australia-China FTA (2015) and Brazil's Model BIT.

National Treatment

Almost all BRICS treaties guarantee national treatment of foreign investments with a standard disclaimer: laws of the host state may provide for exemptions and designate certain sectors of the economy in which national treatment may not apply to foreign investments.

The China-Iran, Brazil-India, and Egypt-Saudi Arabia BITs as well as the UAE's treaties with Brazil, Ethiopia, India and Indonesia clarify that national treatment applies only in "like circumstances". Under the UAE's BITs with Brazil, India, and Indonesia, as well as under the Brazil-India and Egypt-Saudi Arabia BITs, circumstances will not be considered "like" if the differences in treatment arise from legitimate public aims. In addition, Brazil's BITs with India and the UAE explicitly exclude compensation for different treatment that results from the inherent competitive advantages of domestic investors over foreign investors.

The Ethiopia-UAE BIT defines "like circumstances" to include factors such as the environmental impact of the investment, the economic sector involved, and the aim of the laws and regulations affecting the investment in a manner that does not apply similarly to local investors.

Under the Russia-South Africa BIT, the state is allowed not to grant the same benefits to the other party's investors as it accords to development finance institutions with international participation.

Only the China-Ethiopia, China-UAE, Egypt-Ethiopia, and Indonesia-Iran BITs do not provide for national treatment.

⁵⁵ Ibid. P. 20-22.

For new treaties, UNCTAD suggests (see page 22 above):⁵⁶



- Include criteria for determining "like circumstances" for national treatment. Among the BRICS countries, for example, this approach is implemented in the UAE's treaties with Indonesia and Uruguay, as well as in Egypt's BIT with Saudi Arabia. Examples outside BRICS include the CPTPP;
- Subordinate the right of national treatment to a host country's domestic laws. This option is also implemented in the UAE-Uruguay BIT;
- Include reservations to national treatment, e.g., in cases of government procurement, subsidies and grants, taxes, etc. This approach is used in the UAE-Uruguay BIT, as well as in the Australia-China FTA, the Canada-EU CETA, and the CPTPP.

Most-Favoured Nation Treatment

The most-favoured nation ("MFN") standard is included in all BRICS treaties, except for India's treaties with Brazil and the UAE.

MFN traditionally encompasses exceptions pertaining to double taxation treaties or other tax treaties related to participation in a free trade zone, customs union, or economic union. Furthermore, some BITs provide that MFN shall not apply to benefits provided under certain agreements:

- **Russia's BITs** generally refer to the treaties between the Russian Federation and other former Soviet states;
- **The UAE's BITs** may contain a clause related to participation in the Gulf Cooperation Council (the Russia-UAE BIT) and the Arab League Agreement (the Egypt-UAE BIT);
- **The Russia-South Africa BIT** specifies that investors shall not refer to South African laws, the purpose of which is to promote the achievement of equality in its territory, or which are designed to protect or advance natural or legal persons, or categories thereof, disadvantaged by unfair discrimination in its territory.
- **The Indonesia-Russia BIT and China-Russia BIT** provide that the treatment provided under MFN cannot be more favourable than the treatment granted by each Contracting Party in the framework of the World Trade Organisation;
- **The Egypt-Saudi Arabia BIT** refers to any BIT or multilateral agreement in force or signed before the BIT entered into force.

⁵⁶ Ibid. Pp. 15-17.

There are four types of restrictions in BRICS BITs, which may be combined:

- **By investor's activities benefitting from the MFN.**
This includes the Egypt-Ethiopia, China-Saudi Arabia, Indonesia-UAE, Indonesia-Saudi Arabia, and Brazil-UAE BITs (applies to ownership, use, and disposal of investments but does not extend to the fiscal policy);
- **By guarantees that may be covered by the MFN.**
In the Russia-UAE BIT, the treatment shall apply only to fair and equitable treatment; in the Indonesia-Iran BIT – only to full legal protection and fair treatment;
- **By guarantees that cannot be invoked through the MFN.**
This includes a prohibition to apply procedural or jurisdictional guarantees from BITs with other states, which has become rather popular in recent treaties (the UAE's 4 BITs: Brazil, Ethiopia, Indonesia and Russia, as well as in the Egypt-Saudi Arabia BIT). The exceptions for the BIT with Ethiopia and the Egypt-Saudi Arabia BIT go further and prohibit the invocation of any standards from previously signed treaties, while Saudi Arabia's BITs with Indonesia and Egypt exclude application of MFN to tax measures;
- **By restriction of MFN application to "like circumstances".**
This includes the BITs restricting the national treatment, namely by the UAE with Brazil, Ethiopia, Indonesia and by Iran with China and Indonesia and by Egypt and Saudi Arabia.

Multilateral Treaties are distinguished in that they stipulate that MFN does not apply to any privileged treatment accorded by the host state in specific projects of particular importance to that state.

For new agreements, UNCTAD ([see page 22 above](#)) suggests similar options for restricting the MFN standard:⁵⁷

- Include criteria for determining "like circumstances". In addition to the above treaties, this approach is used, for example, in the UAE-Uruguay BIT and the CPTPP;
- Circumscribe the scope of the MFN clause, e.g., restricting its application with respect to double taxation treaties, economic integration treaties, dispute settlement clauses from other treaties, etc. For example, the Australia-China FTA, the Canada-EU CETA, and the EU-Vietnam Investment Protection Agreement do not allow referring to investor-state dispute settlement mechanisms from other agreements.



⁵⁷ Ibid. Pp. 18-20.

No Unlawful Expropriation

With respect to expropriation, the notion of indirect expropriation warrants particular attention as opposed to direct expropriation which normally occurs as a result of express measures adopted by the host state. It is commonly understood as measures depriving an investor of the ability to use the investment and generate profits. The Brazil treaties with India and the UAE explicitly exclude indirect expropriation from their scope. The UAE's 4 other treaties – with Egypt, Ethiopia, India and Indonesia – and the BITs between China and Russia, Egypt and Saudi Arabia provide the criteria for indirect expropriation. Other treaties employ standard wording of expropriation measures but do not define the concept.

As illustrated in the graph below, the approaches to defining the boundaries of indirect expropriation differ across the 4 UAE BITs⁵⁸, as well as the China-Russia and Egypt-Saudi Arabia BITs.

Approaches to defining the boundaries of indirect expropriation

 UAE —  Ethiopia
 UAE —  India

By contrast, a measure is not expropriatory if it is aimed at the ordinary regulation of public relations (i.e., it excludes the possibility of indirect expropriation in relation to non-discriminatory state measures aimed at protecting and securing legitimate public welfare objectives).

The India-UAE BIT also provides examples of such welfare purposes: public health, safety, and environmental protection.

 UAE —  Egypt

By outlining measures that may affect the investments: expropriatory measures include, for example, measures that partially or completely deprive the investor of its fundamental rights, prevent the investor from exercising its rights with respect to the asset.

 UAE —  India
 Egypt —  Saudi Arabia

By identifying possible measures and including criteria for their evaluation: to be considered an expropriation the impact of the measure should be assessed: the measure must deprive the investor of its rights with respect to the asset, either wholly or indefinitely. To determine this, consideration must be given to the economic impact of the measure on the investment, the duration of the measure, its purpose, the context and intent of the state in adopting the measure, and whether there has been a breach of the state's written obligation to the investor.

 UAE —  Indonesia
 China —  Russia

By identifying criteria for a case-by-case assessment: The determination of whether an action or series of actions by a Contracting Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

- The economic impact of the government action, although the fact that an action or series of actions by a Contracting Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
- The extent to which the government action interferes with distinct, reasonable investment backed expectations arising out of the Contracting Party's prior binding written commitment to the investor;
- The character of the government action.

⁵⁸ In the BITs with Egypt and Ethiopia, as well as in the BIT between China and Russia 2025, the term 'indirect expropriation' is not used; however, the application of the mentioned approaches specifically to indirect rather than direct expropriation can be inferred from the meaning of the limitations. Nevertheless, their application to direct expropriation cannot be ruled out.

Moreover, treaties sometimes provide explicit exceptions to protection from unlawful expropriation. For example, the Ethiopia-UAE and Egypt-Saudi Arabia BITs stipulate that interference with intellectual property rights, such as the granting of compulsory licences, is not protected. The same provision is contained in the China-Russia BIT: this treaty also excludes delay, suspension or termination of payments by a state under agreements with participation of a state, measures to address financial or economic crisis, absence of renewal, modification or reduction of a subsidy or other form of state or municipal support. In a similar vein, the India-UAE BIT does not protect actions committed by the state in its private capacity. The Brazil-India treaty stipulates that regulatory measures and acts of judicial bodies that are designed and applied to protect legitimate public interest or public purpose objectives shall not constitute expropriation.

Indirect expropriation, along with the fair and equitable treatment, is one of the most common claims investors invoke against states appearing in 70% of disputes.⁵⁹ UNCTAD suggests that states should limit the standard or explicitly exclude indirect expropriation.⁶⁰

Compensation for Lawful Expropriation

Generally, expropriation is deemed lawful if it complies with the following principles: public purpose, non-discrimination (which is absent from the India-UAE BIT), due process, and prompt and adequate compensation.

There are various methodologies to determine the amount of compensation due. Most BRICS BITs employ market value as a standard. For example, the UAE BITs with Brazil, India, and Indonesia refer to the market value of the property on the date immediately preceding the expropriation, same as the Indonesia-Russia BIT.

The Egypt-Saudi Arabia BIT contains a list of specific valuation criteria, such as the declared tax value of tangible assets, and circumstances that may be taken into account, e.g. use of the property, date of acquisition of ownership, etc. The Brazil-India BIT follows the same approach, naming, *inter alia*, going concern value, asset value, including the declared tax value of tangible property.

Under Brazil's BITs with India and the UAE, this method of determining the value of the assets applies only to direct expropriation.

The UAE's BITs with China, Ethiopia, and Russia permit the application of other universally recognised valuation standards along with the market value. The UAE's BIT with Indonesia provides that where fair market value cannot be ascertained, the compensation shall be determined in an equitable manner taking into account certain factors, such as the capital invested, the nature and duration of the investment, replacement, and book value.

A significant number of BITs refer to the investment value without criteria for its assessment. The Egypt-Ethiopia BIT refers to adequate indemnity but does not specify a precise definition.

⁵⁹ UNCTAD, International Investment Agreements Reform Accelerator, 2020. P. 24. URL: https://unctad.org/system/files/official-document/diaepcbinf2020d8_en.pdf.

⁶⁰ *Ibid.* Pp. 24-25.

Compensation for Losses

All the BITs reviewed contain obligations for states to compensate investors for losses incurred in specific circumstances.

Seventeen BRICS BITs in force incorporate a standard clause ensuring that investors receive treatment no less favourable than that accorded to other investors (whether from a third state or the host state) in the event of losses resulting from hostilities, civil unrest, and analogous events. The same provision is encompassed in the Egypt-Saudi Arabia BIT as well as the China-Russia BIT, limiting application of the standard by "like circumstances". The India-UAE BIT guarantees investors a non-discriminatory regime in such circumstances without specifying that it must be no less favourable than that granted to other investors.

The Brazil-India treaty provides that compensation for losses should be implemented on the basis of national treatment or treatment accorded to investors of a third party, whichever is more favourable to a foreign investor.

The China-South Africa BIT, 4 of the UAE's BITs (with Brazil, China, Egypt, and Indonesia), and the Ethiopia-Iran BIT further clarify in what cases the investor shall have the right to compensation. In scenarios where property has been damaged or requisitioned by the state without necessity, compensation is mandated even if such compensation would not be extended to investors from any third state or, in certain treaties, domestic investors.

Free Transfer of Funds

All BITs between BRICS states guarantee the free transfer abroad of funds related to investment. This standard provision typically encompasses:

- A non-exhaustive list of types of funds, the transfer of which is guaranteed (though there are certain exceptions, for example, in the China treaties with Iran and the UAE, Indonesia's treaties with these two states, as well as the BIT between Egypt and Saudi Arabia provide for the exhaustive list of types of funds);
- Reference to the applicable rate of exchange (either prevailing or market one) to a freely convertible currency (however, there are some exceptions, e.g. Brazil-India treaty does not refer to the applicable rate);
- A provision for transfers without delay (only the Brazil-India, China-Egypt, and China-Ethiopia BITs lack such a clause while the Indonesia-Saudi Arabia BIT sets a maximum period for transfer of one month);
- Compliance with the laws of that state, generally inclusive of tax regulations (except the Egypt-UAE BIT).

However, 5 of the UAE's BITs (with Brazil, China, Ethiopia, India, and Indonesia), as well as Brazil-India and Egypt-Saudi Arabia BITs expressly permit states to limit this guarantee. The UAE BITs with Brazil, Ethiopia, and India as well as Brazil-India treaty allow for the restriction of transfers to protect the rights of creditors, in cases of crimes, cooperation with law enforcement agencies, and enforcement of judicial decisions. The UAE BIT with Indonesia and the Egypt agreement with Saudi Arabia limit the guarantee in the cases of bankruptcy, insolvency, or the protection of the rights of creditors, issuing, trading, or dealing in securities, criminal and penal offences, etc.

The UAE's BITs with Brazil and India, the Brazil-India and Egypt-Saudi Arabia BITs further clarify that the states are not prohibited from adopting non-discriminatory temporary restrictions in situations of financial difficulty, such as a balance of payments crisis. The Brazil-India BIT also limits this standard in the situations where the state has obligations as a member of the International Monetary Fund. The China-UAE BIT allows for reasonable restrictions in addition to standard foreign exchange laws for a certain period in a situation of fundamental economic disequilibrium, but the restriction cannot affect more than 50% of the investor's funds.

One of the Multilateral Treaties, the Agreement on Promotion, Protection and Guarantee of Investments amongst the Member States of the Organisation of the Islamic Conference (1981) ("OIC Agreement"), allows states to prohibit transfers abroad of more than 50% of salaries and fees.

Public Policy Exceptions

Seven treaties between BRICS states refer to situations where the investor protection guarantees will not be applicable, thereby exempting the state from liability for breaches. These exemptions are generally associated with certain specific state needs that compel the adoption of measures potentially infringing upon the investors' rights.

In the Egypt-Ethiopia BIT, for example, such situations include the preservation and promotion of cultural and linguistic diversity. Domestic regulatory measures taken for this purpose will not violate the agreement. The same exception is present in the Egypt-Saudi Arabia BIT.

Four of the UAE's BITs – with Brazil, Ethiopia, India and Indonesia, as well as the Brazil-India BIT – contain a separate provision enlisting exceptional measures. Moreover, the Ethiopia-UAE BIT expressly exempts contracting states from liability for measures taken to fulfil another international obligation, reinforcing the state's compliance with its obligations under international law.

The Brazil-India and Egypt-Saudi Arabia BITs include both the general exceptions from liability (maintenance of public order, protection of human life or health, environment protection, ensuring compliance with legislation) and security exceptions (to carry out obligations under the UN Charter with regard to maintenance or restoration of international peace and security, protection of national security, protection of its essential security interests, or handling a national crisis).

UNCTAD also invites (see [page 22 above](#)) states to include exceptions for domestic regulatory measures in pursuit of circumscribed policy objectives, e.g., the need to preserve public order, objects of cultural or historical significance, etc.⁶¹ These limitations are provided for in, for example, the UAE's BIT with Uruguay and Egypt's BIT with Mauritius, the Australia-China FTA, the Canada-EU CETA and the EU-Vietnam Agreements.



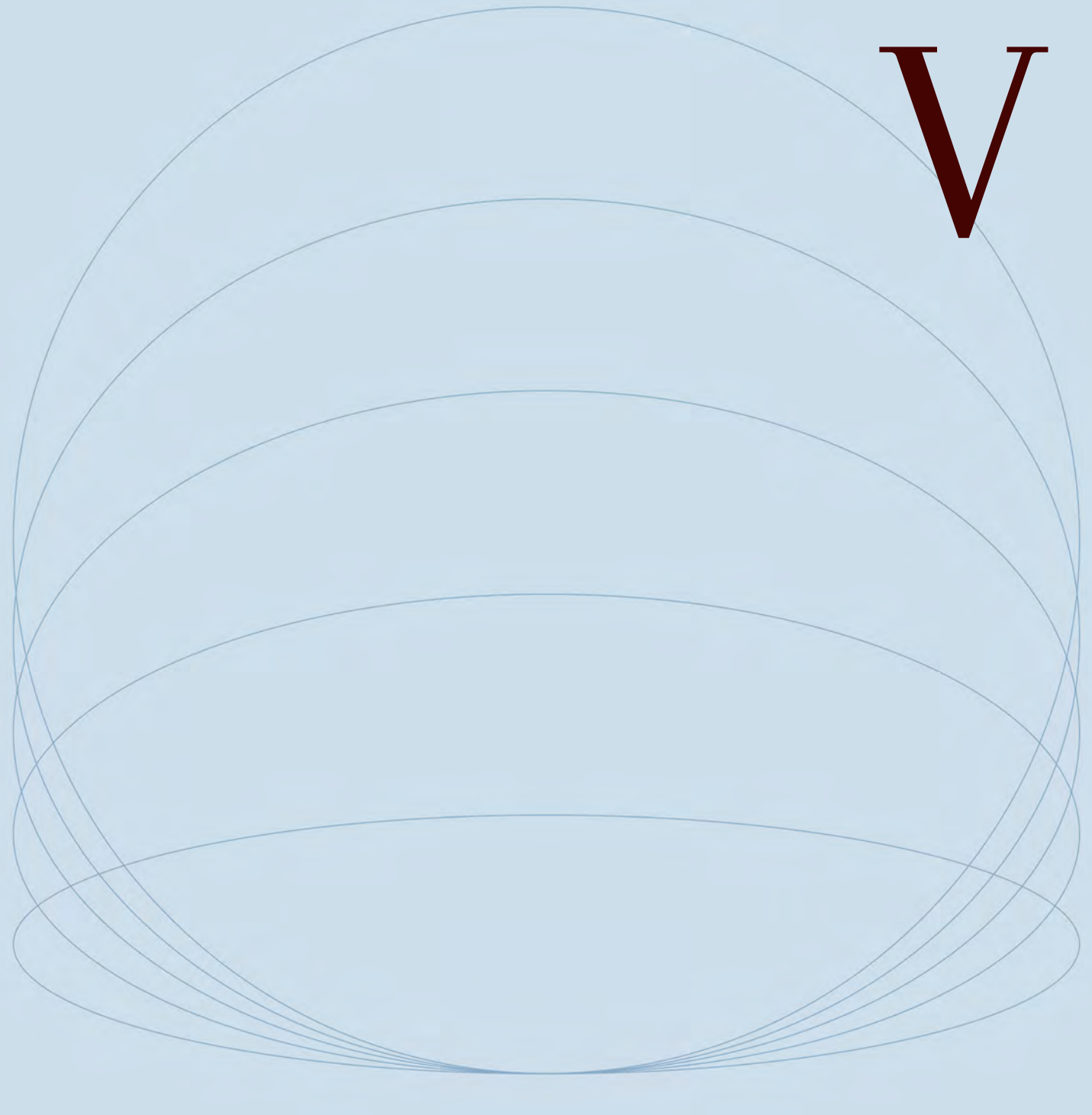
UNCTAD proposes to prevent abuse of the exceptions by the host States. This prohibition is provided in Brazil's Model BIT, as well as in the Egypt-Mauritius, the UAE-Uruguay BITs and the Australia-China FTA.

Stating Special Objectives in the Preamble

In certain cases, states delineate special objectives in the BIT's preamble to emphasise the importance of achieving these aims through the application of the BIT. Those are normally in addition to the objectives of mutually beneficial cooperation and the creation of favourable conditions for investment. In the event of a dispute, states may take these objectives into account when interpreting their obligations. For example, should a state enact regulatory measures to pursue objectives specified in the preamble, this may serve as an additional argument against expropriation.

Among the BITs between BRICS states, the Ethiopia-UAE treaty stands out for its distinct objectives. This treaty refers to the importance of investment for sustainable economic growth and development and the parties' intention to support investments aimed at the sustainable development of states. In addition, the treaty explicitly affirms the right of states to regulate investment in their territories to achieve domestic policy objectives. Similar objectives are set out in the UAE's BITs with Brazil, India and Indonesia, as well as the Brazil-India and Egypt-Saudi Arabia BITs.

⁶¹ Ibid. Pp. 26-28.

A series of concentric blue arcs, resembling a stylized globe or a series of overlapping circles, centered on the page.

V

Investor-State Dispute Settlement

Disputes between investors and host states may be resolved both through the national authorities of that state (which are not always favourable to the investor) and in international fora. The conventional forum for the resolution of disputes arising out of the BITs is international investment arbitration: the investor has the right to bring a claim against the state if the treaty between the investor’s state and the host state provides for such an option.

Investment arbitration case law is important as it affects the interpretation of treaties and, as a result, future disputes arising from them. When considering a case, arbitrators are typically not bound by previous arbitral awards, leading to potentially divergent interpretations of the same treaties or rules and, consequently, a lack of a common view on certain matters. Yet, as a matter of practice, the existing interpretation of a particular BIT is usually taken into account in the awards.

In certain cases, case law can also impact state policies on the termination of existing treaties and approaches to execution of the new ones ([see Section III above](#)) to the point of excluding the investor’s right to resort to arbitration. Among the existing BRICS treaties, only investors under Brazil’s treaties with India and the UAE do not have this right. Globally, there is an ongoing debate on the need for reform in the investor-state dispute settlement, with states actively considering various options under the auspices of UNCITRAL Working Group III in an attempt to improve the system or create alternative fora, including a permanent international investment court.

International proceedings initiated to resolve the disputes between BRICS investors and BRICS member states are scarce.

As of the date of the Report, there are thirteen known proceedings; see the table below:

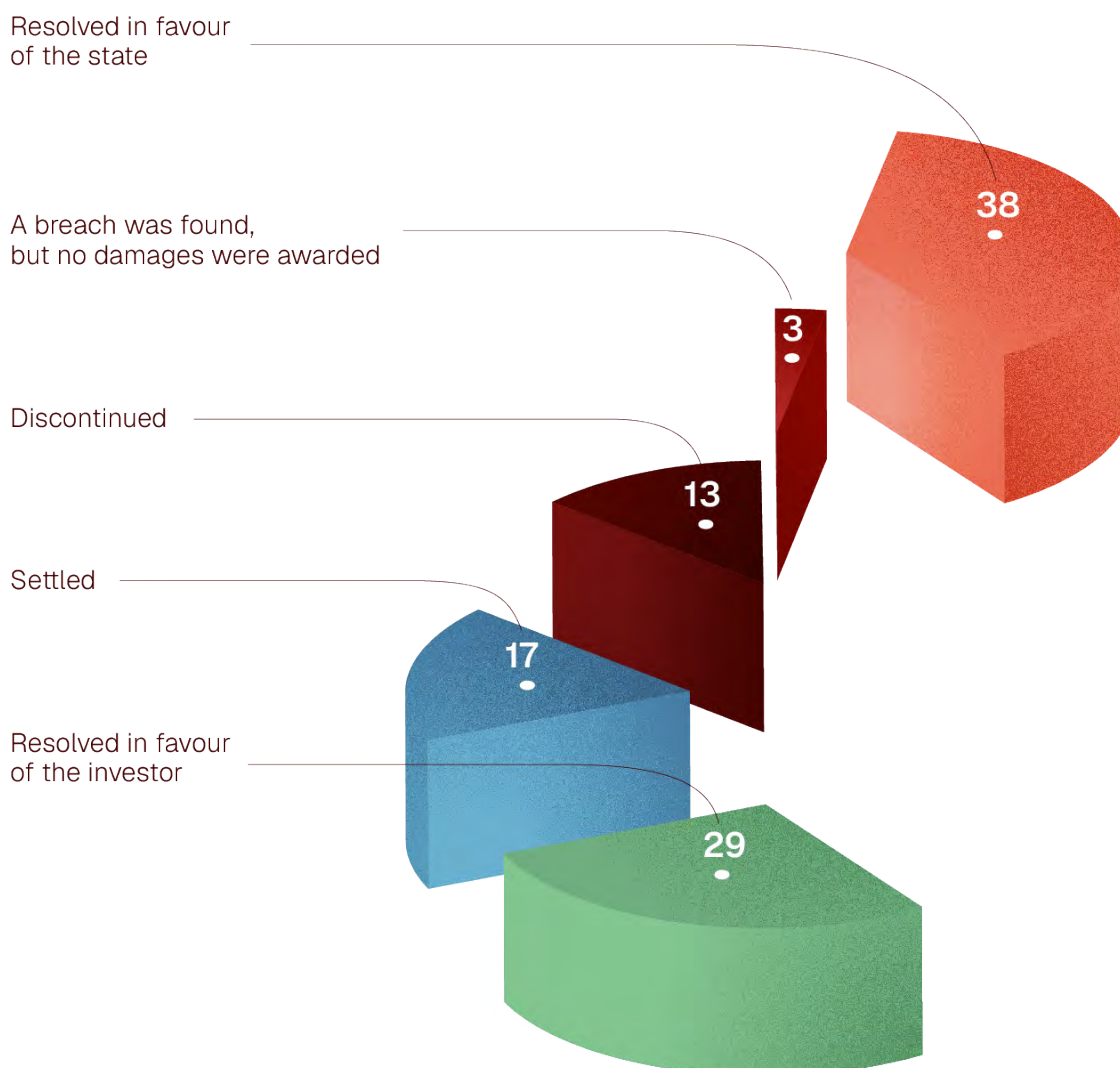
6 AGAINST EGYPT	3 AGAINST INDIA	2 AGAINST INDONESIA	2 AGAINST SAUDI ARABIA
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Five of them were initiated by the UAE investors prior to the state's accession to BRICS. The disputes primarily arose in the sectors of transportation and storage, real estate, information and communications, as well as manufacturing.

Investors from Russia and the UAE have filed claims against Egypt and India and investors from China and India against Saudi Arabia under the respective BITs. One dispute was initiated by an investor from Saudi Arabia against Egypt under the 1981 Agreement on Promotion, Protection and Guarantee of Investments among Member States of the OIC. Similarly, an investor from Saudi Arabia initiated proceedings against Indonesia under the same multilateral treaty. In addition to these proceedings, Egyptian investors filed a notice of intention to initiate proceedings against Ethiopia in 2021, although no public data is available on whether a claim has subsequently been filed.⁶²

Out of the 13 cases, 4 are still pending, 1 has been settled, and in 7 cases, tribunals have ruled in favour of the states, and in 1 case liability was found but no damages awarded. The greater number of decisions in favour of states aligns with global statistics: from 1987 to 2025, 38% of publicly available cases were decided in favour of the state, 29% — in favour of the investor, and 17% were settled.⁶³

Global investment dispute settlement statistics 1987-2025 (%)



⁶² Trafo Tech and Cynosure Agro-Processing PLC v. Federal Democratic Republic of Ethiopia.

⁶³ World Investment Report 2026: International investment in a Turbulent Era. Chapter II. P. 102. URL: https://unctad.org/system/files/official-document/wir2026_en.pdf

Investment arbitration proceedings among BRICS investors and member states

Case	Rules	Arbitration centre	Sector	Outcome	
 UAE —  Egypt					2011
 National Gas v. Egypt	ICSID Rules	ICSID	Transportation and storage	 Award in favour of the state	2011
 Sajwani, D v. Egypt	ICSID Rules	ICSID	Real estate	 Settled	2019
 CTIP Oil & Gas v. Egypt	ICSID Rules	ICSID	Transportation and storage	 Award in favour of the state	
 UAE —  India					2016
 Strategic Infrasol and Thakur Family Trust v. India	UNCITRAL Arbitration Rules	Ad hoc	Real estate	 Pending	2016
 RAKIA v. India	UNCITRAL Arbitration Rules	Data not available	Manufacturing	 Award in favour of the state Set aside, currently under appeal	
 Russia —  India					2012
 Naumchenko and others, v. India	UNCITRAL Arbitration Rules	PCA	Information and communications	 Award in favour of the state	
 Russia —  Egypt					2017
 MetroJet v. Egypt	UNCITRAL Arbitration Rules	PCA	Transportation and storage	 Award in favour of the state	
 India —  Saudi Arabia					2018
 Khadamat v. Saudi Arabia	UNCITRAL Arbitration Rules	PCA	Data not available	 Award in favour of the state	
 India —  Indonesia (terminated)					2015
 Indian Metals & Ferro Alloys Ltd v. Republic of Indonesia	UNCITRAL Arbitration Rules	PCA	Mining and quarrying	 Award in favour of the state	
 OIC Agreement					2011
 Al Warraq v. Indonesia	UNCITRAL Arbitration Rules	Data not available	Financial and insurance activities	 Liability found but no damages awarded	2018
 Al Mehdar v. Egypt (I)	Data not available	Data not available	Data not available	 Pending	2023
 Al Mehdar v. Egypt (II)	UNCITRAL Arbitration Rules	PCA	Construction	 Pending	
 China —  Saudi Arabia					2022
 PCCW v. Saudi Arabia	ICSID Rules	ICSID	Information and communications	 Pending	

A. Overview of International Fora and Terms for Investment Arbitration

All effective bilateral investment treaties within BRICS, except Brazil's BITs with India and the UAE, which will be discussed separately, provide for investment arbitration.

The main distinctions lie in:

- The scope of arbitrators' jurisdiction (e.g., whether it is limited only to cases of compensation for expropriation);
- Applicable procedural rules and administration of the proceedings by an arbitration centre;
- Obligation to exhaust local remedies; and
- Presence of a limitation period.

In the existing BITs, BRICS states allow investors to resort to institutional arbitration (under the rules of the International Centre for Settlement of Investment Disputes ("ICSID"), the Arbitration Institute of the Stockholm Chamber of Commerce ("SCC"), the International Chamber of Commerce ("ICC") and Cairo Regional Centre for Commercial Arbitration ("CRCICA") subject to the consent of both parties to the dispute) and ad hoc arbitration, i.e., not administered by an arbitration centre. Most BITs allow the claimant to choose from multiple forum options. Several treaties, namely, the Egypt-Saudi Arabia, Indonesia-Iran, and China-Russia BITs, explicitly provide that the disputing parties may also agree on any arbitration centre and applicable procedural rules other than those which are indicated in the respective treaty texts.

Ad hoc Arbitration

Almost all existing BITs between BRICS states allow ad hoc arbitration, except for the Egypt-UAE and the treaties of Saudi Arabia with China and Indonesia, which provide for arbitration in ICSID only, as well as the Brazil-UAE BIT, which does not grant investors the right to resort to investment arbitration directly.

There are different approaches to the rules applicable to ad hoc proceedings, although in practice these are rarely fundamentally different once a tribunal has been formed:

- The tribunal shall determine the rules of procedure under 6 treaties, 5 of which involve China (in the BIT with Russia, China agreed to arbitration under the UNCITRAL rules). Such treaties may be divided into three groups
 - The tribunal may be guided by the ICSID Arbitration Rules: China-Egypt, China-Ethiopia, and China-South Africa;

- The tribunal shall define the rules of procedure but choose between the UNCITRAL and the ICSID Arbitration Rules: China-UAE;
- The tribunal has no guidance as to what applicable rules shall be chosen: China-Iran, Iran-South Africa;
- The UNCITRAL Arbitration Rules apply under 13 treaties: China-Russia, Egypt-Ethiopia, Egypt-Russia, Egypt-Saudi Arabia, Ethiopia-Iran, Ethiopia-UAE, India-UAE, Indonesia-Iran, Indonesia-Russia, Indonesia-UAE, Iran-Russia, Russia-South Africa, Russia-UAE.

In previous disputes arising from BRICS states' BITs, cases have been administered by the Permanent Court of Arbitration ("PCA") almost in all cases, where the UNCITRAL Rules were applied, reflecting standard practice.

International Centre for Settlement of Investment Disputes (ICSID)

Proceedings under the ICSID rules have two important distinguishing features. First, the arbitral awards issued in ICSID cases cannot be set aside in a national court and are directly enforceable in the states that are parties to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965) ("Washington Convention") (i.e., the countries that have joined ICSID). Otherwise, the award may be challenged in a national court of the state where the seat of arbitration is located. Enforcement of an arbitral award against a state is a separate matter, which often determines the actual outcome of a dispute.

Second, unlike other arbitration centres, at ICSID, the parties may request annulment by a three-person ad hoc committee formed by the Secretary General of ICSID and further review of the award.⁶⁴

Five BRICS states joined ICSID:⁶⁵ Indonesia joined in 1968, Egypt in 1972, Saudi Arabia in 1980, the UAE in 1982, and China in 1993. Three of these states have made reservations with respect to the scope of application of the Washington Convention.

In 1980

Saudi Arabia reserved the right not to submit all questions pertaining to oil and to acts of sovereignty to ICSID

In 1993

China agreed to consider submitting to ICSID only the disputes over compensation resulting from expropriation and nationalization

In 2012

Indonesia informed that it "would not consider submitting to the jurisdiction of ICSID class of dispute arising from the administrative decision issued by the Regency Governments within the Republic of Indonesia."

⁶⁴ According to Article 52 of the Washington Convention, annulment of the award may be requested on one or more of the following grounds:

a) that the Tribunal was not properly constituted;
b) that the Tribunal has manifestly exceeded its powers;
c) that there was corruption on the part of a member of the Tribunal;
d) that there has been a serious departure from a fundamental rule of procedure; or
e) that the award has failed to state the reasons on which it is based.

⁶⁵ ICSID official website. URL: <https://icsid.worldbank.org/about/member-states>.

Ethiopia and Russia signed (in 1965 and 1992, respectively) but have never ratified the Washington Convention. Brazil, India, Iran, and South Africa have not signed the Washington Convention.

Yet, only the disputes under 5 treaties between BRICS states (namely, the UAE's BITs with Egypt and Indonesia, as well as treaties of Saudi Arabia with China, Egypt and Indonesia) can be referred to ICSID. As stated above, [page 53](#), under the Egypt-UAE BIT and Saudi Arabia's BITs with China and Indonesia ICSID is the only forum available for investor-state arbitration. The Egypt-UAE BIT provides that ICSID proceedings shall be the second stage of dispute settlement after proceedings before a national court. The China-Saudi Arabia BIT allows only disputes over the amount of compensation to be referred to ICSID, with national courts retaining jurisdiction over all other matters. There is no public information on whether Chinese and Emirati investors in the above investment arbitrations have brought claims arising from these 2 BITs before the national courts in Egypt and Saudi Arabia.

In addition to ICSID:

- Under **the Indonesia-Saudi Arabia BIT** national courts are an alternative dispute resolution forum for any disputes;
- The same approach is envisaged in the **Indonesia-UAE and Egypt-Saudi Arabia BITs**, which also provide for alternative forums in arbitration: ad hoc arbitration under the UNCITRAL Arbitration Rules and Additional Facility Rules of ICSID in case one member state is not a member of ICSID.

Notably, the treaty between China and Egypt, signed after both states had acceded to the Washington Convention, provides only for ad hoc arbitration but not for ICSID proceedings.

Several treaties allow disputes to be submitted to ICSID, but only if both contracting states become parties to the Washington Convention, which has not happened to date. Such provision can be found in 9 treaties: China-Ethiopia, Egypt-Ethiopia, Ethiopia-Iran, Ethiopia-UAE (subject to the consent of both parties to the dispute), India-UAE, Indonesia-Iran, Indonesia-Russia, Iran-Russia, and Russia-UAE.

The China-UAE treaty stipulates that the states will discuss the possibility to submit disputes to ICSID when they become parties to the Washington Convention. However, for China and the UAE, the Washington Convention had entered into force before they signed the BIT.

Four UAE treaties, with Ethiopia, India, Indonesia and Russia, and Russia's BIT with Indonesia, as well as Egypt's BIT with Saudi Arabia allow disputes to be referred to arbitration under the ICSID Additional Facility Rules, which apply in situations where the host state and/or the investor state are not parties to the Washington Convention, i.e., where the dispute cannot be referred to ICSID. However, in this case, the above features of the ICSID proceedings (annulment and direct enforcement with no possibility to set the award aside in a national court) will not apply to the proceedings.

Other Arbitration Centres

The Ethiopia-UAE treaty permits disputes to be referred to arbitration under the ICC rules but only with the mutual consent of the involved parties. Absent such consent, the investor may pursue ad hoc arbitration under UNCITRAL rules.

The Russia-South Africa BIT contains an arbitration clause under the SCC rules. However, this treaty, along with some others, offers an alternative to national court and international arbitration, by allowing arbitration **in the host state**, often without specifying applicable rules or the administering arbitration centre, potentially leading to uncertainty in practice. Other examples of such treaties include the Ethiopia-Iran BIT and Russia's treaties with Egypt and the UAE.

In addition, under the Egypt-UAE BIT, disputes may be referred to the CRCICA if both parties to the dispute have agreed to it. Notably, this centre has experience administering at least two international investment cases: one under the Egypt-Lebanon BIT (investor was Egyptian) and another under multilateral Arab Investment Agreement initiated by a Kuwaiti investor against Libya (awards rendered in 2002 and 2013 respectively).

Opting for arbitration in the host state (i.e., the respondent state) is uncommon within the current BIT investor-state dispute resolution system, as neutrality of arbitral seat has traditionally been considered a key advantage of the existing regime.

Indeed, the primary concern is not the arbitration centre that administers the proceedings but the legal seat of arbitration. It is understood to be a city, and in international disputes the seat is not considered to be linked to the state where the arbitration centre is located. The seat of arbitration is crucial as national courts of that state may set aside the award upon the application of the losing party.

Unless the treaty specifies the seat of arbitration (city), or it is defined by the applicable rules or agreed upon by the parties to the proceedings, it will be determined by the tribunal or the administering centre. For example, the China-UAE BIT refers to Stockholm as the default seat of arbitration, unless the disputing parties jointly agree on a different seat.

Additional Terms

The treaties discussed in this section all incorporate a **cooling-off period**, which denotes the mandatory timeframe for negotiations between the investor's submission of a notice of dispute and the initiation of arbitration. Across all treaties, this period spans 6 months (180 days in the China-Russia BIT), with the exception of the Egypt-UAE BIT, which provides for a three-month period, and the Egypt-Saudi Arabia BIT establishing an 18-month period for negotiations. The India-UAE and Egypt-Saudi Arabia BITs additionally mandate the submission of the notice of intention to commence arbitration 90 days in advance, and this period may run concurrently with the cooling-off period.

Certain treaties provide for an additional stage before arbitration, which can be:

- proceedings before the joint committee co-chaired by senior officials from both contracting parties; or
- proceedings before the authorities of the host state.

Among BRICS BITs, recourse to the Joint Committee is only available under the Indonesia-UAE BIT. Unlike the Joint Committee for Administration of the Treaty under the Brazil-UAE BIT, which is a "state-to-state" dispute resolution mechanism (discussed separately below, page 62), the Joint Committee under the Indonesia-UAE BIT requires the presence of the disputing investor or its designee along with the senior officials from both states.

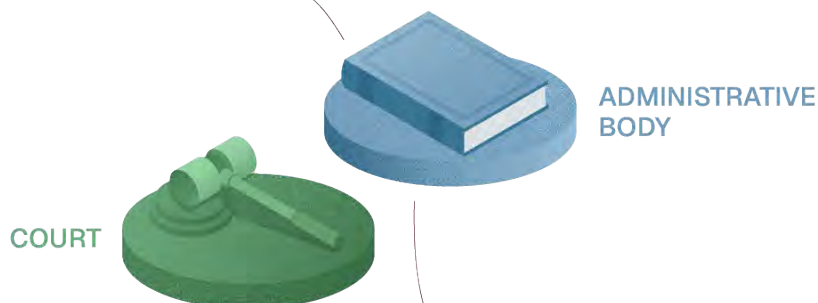
The Joint Committee's aim is to achieve a mutually agreed solution. If such solution is reached, the decision of the Committee is final and binding, and the investor will not have the right to submit the dispute to any other forum. In the event the Joint Committee fails to issue the decision within 6 months, the disputing investor may submit the dispute either to the competent court of the host state or to international arbitration.

There are three variations of proceedings before national authorities (exhaustion of local remedies rule).

Exhaustion of local remedies

Option 1

BIT Egypt – UAE



Option 2

BIT China – South Africa (at the discretion of the state)
BIT Russia – UAE (mandatory)

Option 3

BIT UAE – China
BIT UAE – Ethiopia
BIT UAE – India

In practice, exhaustion of local remedies rule before arbitration is not always complied with, and in certain instances, arbitral tribunals have acknowledged that a claim may bypass domestic authorities and proceed directly to arbitration, depending on the circumstances.⁶⁶

⁶⁶ BG Group Plc v. The Republic of Argentina, Final Award of 24 December 2007, Ambiente Ufficio S.P.A. and others and the Argentine Republic, ICSID Case No. ARB/08/9, Decision on Jurisdiction and Admissibility of 08 February 2013.

However, in certain cases, recourse to a local court may be the sole option for an investor. For example, some states have agreed to **arbitration solely on specific matters**, such as the amount of compensation. This is typical for old-generation treaties containing limited arbitration clauses. In the event of a dispute arising from such agreements, the investor faces the risk that the arbitral tribunal declines jurisdiction and decides that the state's breach of the BIT itself has to be resolved in a domestic court.⁶⁷

An example of a treaty providing for limited jurisdiction of the arbitral tribunal is the China-UAE BIT. Arbitration is allowed solely for disputes relating to the amount of compensation for expropriation, as well as for damages or losses resulting from certain actions of the state (requisition and destruction of an investment or property), and for other disputes, but only in case of the parties' express agreement.

Certain agreements permit arbitration only with respect to disputes related to the amount of compensation for expropriation, as evidenced in China's BITs with Egypt, Ethiopia, and Saudi Arabia. Moreover, the China-Egypt and China-Ethiopia BITs permit such recourse only if the investor has not previously brought the dispute before a local court. In practice, this may lead to uncertainty about the investor's rights to international protection. On the one hand, it may be construed that the state's breach must be established in a local court before resorting to arbitration on the amount of compensation. On the other hand, when applying to a domestic court, the investor may be deemed to have completely waived the right to recourse to arbitration, and the matter of compensation will be adjudicated through proceedings in national courts. Certain arbitral tribunals have permitted investors to proceed directly to arbitration in such cases, as failure to do so would deprive the investor of the right to defence, and because the phrase "disputes involving the amount of compensation" may encompass not only claims over the amount of compensation but also disputes over breach of the BIT.⁶⁸

Several treaties explicitly prohibit recourse to arbitration with respect to the disputes concerning certain subject-matters:

- The India-UAE investment treaty explicitly excludes recourse to arbitration with respect to certain state obligations under the treaty, such as the entry and sojourn of personnel and transparency;
- Under the Egypt-Saudi Arabia BIT the tribunal shall refrain from hearing the dispute if it is found that the investment was established by means of fraud, administrative corruption, or any other unlawful act;
- The China-Russia BIT excludes the disputes concerning obligations to aspire to create favourable conditions, granting visas and working permits, endeavor to promote investments, assisting investors to amicably resolve complaints or grievances with government bodies, transparency obligations, and provisions on administrative proceedings, authorisation procedures, and review and approval.

⁶⁷ AsiaPhos Limited and Norwest Chemicals Pte Ltd v. People's Republic of China, ICSID Case No. ADM/21/1, Award of 16 February 2023.

⁶⁸ Beijing Urban Construction Group Co. Ltd. v. Republic of Yemen, ICSID Case No. ARB/14/30, decision on jurisdiction of 31.05.2017; Sanum Investments Limited v. Lao People's Democratic Republic, UNCITRAL, PCA Case No. 2013-13, award on jurisdiction of 13.12.2013.

Some states have endeavoured to **avoid parallel proceedings** before national courts and international arbitration. In addition to those described above, several treaties, such as China's BITs with Egypt (unless the parties have agreed otherwise), Ethiopia (only with respect to the amount of compensation), Iran, and South Africa, as well as the UAE's BITs with Egypt and Indonesia, prohibit the submission of a dispute to arbitration if the investor has already commenced proceedings before a local court. However, 2 of Iran's BITs, with China and South Africa, deprive local courts of jurisdiction over disputes that have already been submitted to international arbitration under the BIT. The Indonesia-Saudi Arabia BIT entitles the investor to choose between a domestic court and international arbitration but once the investor has approached one of these fora, this choice is deemed final. The China-Russia BIT provides for the possibility to terminate the proceedings in local courts and proceed with arbitration if local legislation of the host state so provides. However, once the investor submits the dispute to arbitration, this choice is considered final. The Egypt-Saudi Arabia BIT provides that the choice of the investor between arbitration mechanisms stipulated in the treaty is final and binding, and the investor is considered to have waived its right to initiate proceedings before the local courts.

Notably, the Egypt-Saudi Arabia BIT provides for additional safeguards against parallel proceedings prohibiting recourse to arbitration:

- if the investor or any person owning or controlling the investor or any person controlled by the investor has previously submitted a claim relating to the same facts that are the subject of the investment dispute before any court or arbitral tribunal under another international agreement signed by Egypt and Saudi Arabia relating to the promotion and protection of investments;
- if the investor has submitted a written waiver of its right to initiate a dispute over the same facts that are the subject of the investment dispute before any court or arbitral tribunal constituted under another bilateral or multilateral international agreement signed by Egypt and Saudi Arabia relating to the promotion and protection of investments.

Most treaties in force do not stipulate a **limitation period**, except the India-UAE BIT, which provides for 5 years from the date on which the investor first knew or should have known of the measure in question and the incurred loss or damage, or a 12-month period from the conclusion of domestic proceedings (with 1-year limitation period to submit the dispute to local instances) and the UAE treaties with Ethiopia and Indonesia as well as Egypt-Saudi Arabia BIT providing for 3 years. The China-Russia BIT also provides for the 3 years limitation period further clarifying that the dispute cannot proceed to arbitration after 3 years from the date of the request for consultation.

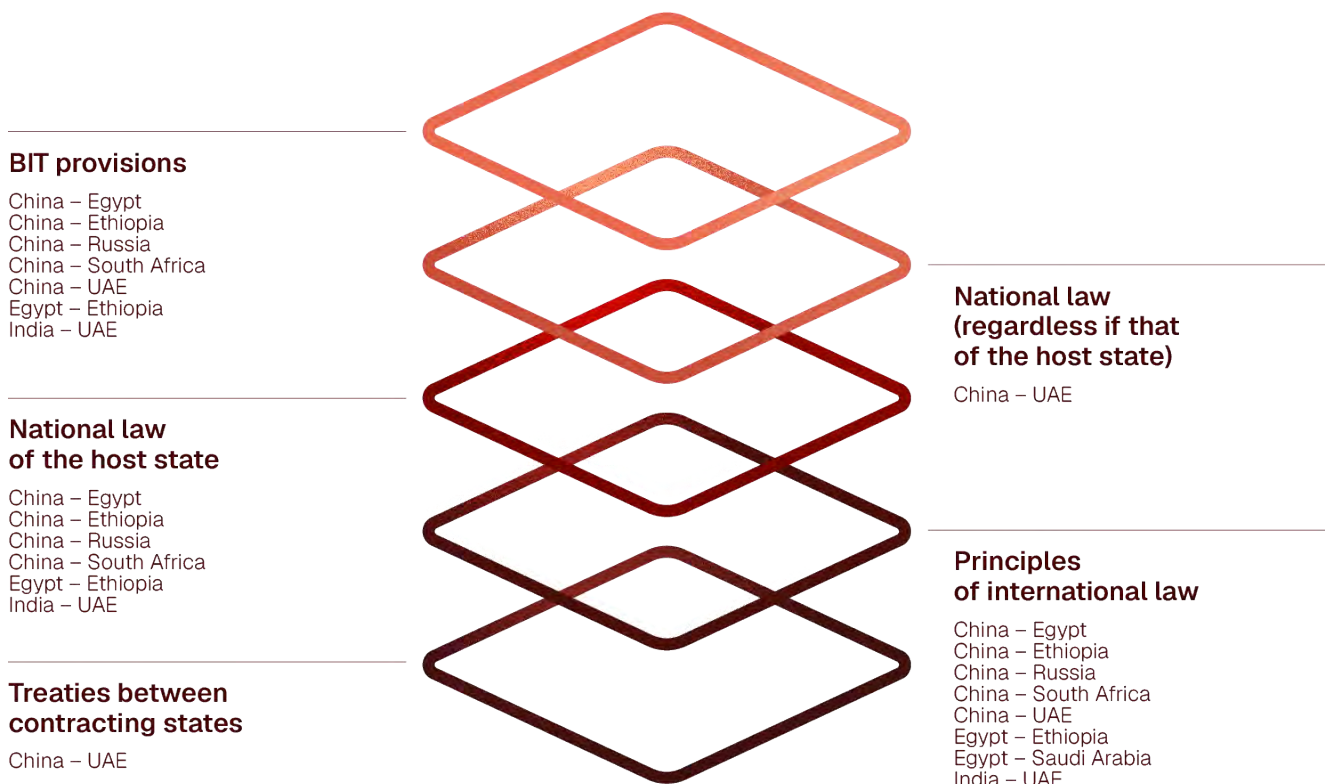
The treaties of the UAE with India and Indonesia as well as the BIT between Egypt and Saudi Arabia are also noteworthy in that they accord priority to a direct contract between an investor and the host state over the BIT: if such a contract exists, the dispute can only be resolved as per the procedure set out therein, implying that the arbitration clause under the BIT may not be applicable in this case.

The issue of **a state's ability to sue an investor** under a BIT in international arbitration is controversial in practice. This primarily pertains to counterclaims

when the investor commences the proceedings against the state, thereby accepting jurisdiction under a BIT to which the investor is not a party. Certain BITs, for example, the one between Iran and South Africa, allow "either party" to apply to the competent forum in the event of a dispute. In practice, state claims under BITs are extremely rare.

Almost one third of the treaties analysed here (8 BITs) specifically define the **applicable law**. Most of them (5) are China's treaties: with Egypt, Ethiopia, Russia, South Africa, and the UAE, as well as the Egypt-Ethiopia and India-UAE BITs. Only 2 out of 7 China's BITs with BRICS countries do not define the applicable law: with Iran and Saudi Arabia. Most often, in addition to the BIT provisions, treaties refer to relevant national law and generally recognised principles of international law.

Applicable law in BITs is determined as follows:



As a default rule, it is up to the arbitral tribunal to **allocate the arbitration costs** in its award. However, almost one third of the BITs of the BRICS states (7 BITs) incorporate a predetermined cost allocation mechanism.

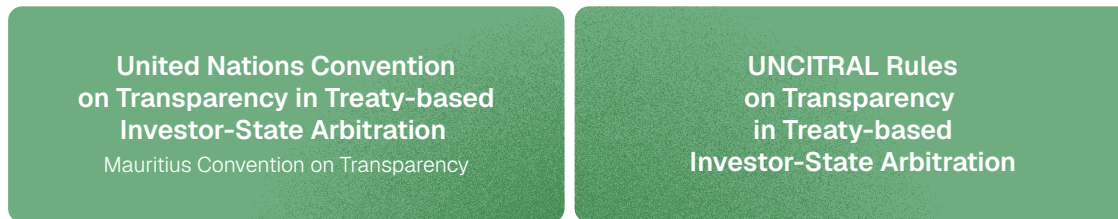
As with the applicable law, the majority of these treaties are with China (except for its BITs with Russia and Saudi Arabia). In these treaties, each party is responsible for its own costs and the fees of its appointed arbitrator, while the president's fees and other costs are to be shared equally. Under China's treaties with Iran and South Africa, the tribunal may allocate costs differently.

The UAE's treaty with Ethiopia compels the parties to share all costs equally, except for expenses for legal representation, which shall be borne by each party.

Finally, it should be taken into account that **investment arbitration proceedings are not always confidential**. In practice, this means that some of the materials, as well

as the award and other information regarding the case, may become public. This can occur, for example, if transparency rules apply, or if such a requirement is provided by the respective treaty.

The two main international instruments relating to the rules on transparency are:



To date, none of the BRICS states has signed the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (2014) ("Mauritius Convention on Transparency").⁶⁹

The UNCITRAL Rules on Transparency apply by default to arbitrations under the UNCITRAL Rules commenced under the treaties entered into after 1 April 2014 (parties may also agree to apply the Rules to a dispute arising from earlier treaties). Three effective BITs between BRICS states have been entered into after this date: Iran-Russia (2015), Ethiopia-UAE (2016), and India-UAE (2024). None of them expressly excludes the UNCITRAL Rules on Transparency, thereby making them applicable. Two BITs concluded after 1 April 2014, the Indonesia-UAE and Egypt-Saudi Arabia BITs, refer to UNCITRAL Arbitration Rules of 2010, thereby excluding the application of the Rules on Transparency.⁷⁰ The BIT between China and Russia expressly excludes the application of the UNCITRAL Rules on Transparency.

The India-UAE Treaty explicitly indicates that with the mutual agreement of the disputing parties, the state shall, to the extent possible, make available to the public the notice of dispute and notice of arbitration, pleadings and other written submissions, transcripts of hearings, decisions, orders, and awards issued by the tribunal.

In addition, the India-UAE treaty, which entered into force in August 2024, contains several procedural features inherent in the new-generation BITs, including the criteria for arbitrators, a prohibition on third-party funding, provisions for early dismissal of claims, and the option for the parties to establish an appellate body. The same applies to the Egypt-Saudi Arabia BIT, which provides for the disclosure of third-party funding and prohibits the awarding of punitive and moral damages.

Reflecting recent developments and challenges in investment treaty practice, some agreements also further particularise procedural rules. The China-Russia BIT stipulates, for example, that:

- joint interpretations of the Contracting Parties shall be binding for the arbitral tribunals and can be requested by the respondent state during the proceedings;

⁶⁹ According to the UN data, as of now, 24 states have signed the Convention, and 9 have ratified it.

⁷⁰ Note by the Secretariat of Working Group II for 73rd session: Compilation of comments on the application of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration to expedited arbitration A/CN.9/783, para. 31). URL: <https://docs.un.org/en/A/CN.9/WG.II/WP.217>.

- the tribunal should first deliver its decision on jurisdictional objection as a preliminary question;
- certain rules on procedure from the BIT prevail under the arbitration rules of any other institution chosen by the parties to a dispute.

B. State-to-State Investment Arbitration in Support of Investors

Brazil's BITs with India and the UAE do not provide for investment arbitration; instead, they establish a specific dispute resolution framework. A key feature under these BITs is that only the investor's home state, rather than the investor individually, can bring a claim against the host state.

Prior to resorting to arbitration, the state must apply **to the Joint Committee for the Administration of the Agreement**. The treaty also designates a position of an ombudsperson in each state (i.e., the Brazilian ombudsperson in Brazil to assist investors from India and the UAE and vice versa), who shall be authorised to deal with various investor requests.

If the pre-arbitration stage does not lead to a settlement, any state may initiate ad hoc arbitration or apply to a permanent arbitration institution.

Brazil's BITs delineate more detailed provisions for the constitution of the arbitral tribunal: unlike most other treaties, these BITs stipulate requirements for arbitrators, including expertise or experience in public international law, international investment rules or international trade, or investment dispute resolution. Under the Brazil-UAE BIT a tribunal is generally required to render an award within 9 months following the appointment of the Chairperson.

Notably, the tribunal's mandate under the treaties is confined to assessing whether state measures breach the BIT. Under the Brazil-India BIT a tribunal shall not award compensation. Under the Brazil-UAE BIT the arbitrators can only decide on damages if the parties have signed a separate arbitration agreement, and only if the investor has neither resorted to a local court nor to an arbitral tribunal, or when the investor has withdrawn the respective claims from domestic authorities.

Certain provisions of the treaties cannot be subject to arbitration, such as corporate social responsibility, combating corruption and illegality, environmental, labour and health provisions, investment compliance with domestic laws, and security exceptions. In addition, disputes over facts or measures that had occurred before these BITs came into force cannot be submitted to arbitration. The Brazil treaty with the UAE also provides for a limitation period of 5 years from the date on which a party knew or should have known of the facts giving rise to the dispute.

C. Specifics of Dispute Resolution under Multilateral Treaties

Arab Investment Agreement

The 1980 Arab Investment Agreement provides three methods for settling a dispute: conciliation, ad hoc arbitration, and recourse to the Arab Investment Court (AIC).

Conciliation provides for the engagement of a third party agreed by the parties to the dispute or selected by the Secretary-General of the League of Arab States at the parties' request. Moreover, such a third party is supposed to formulate specific proposals to settle the dispute.

The AIC is the first international court to handle investment disputes. It started operating 20 years after the 1980 Agreement was signed. According to publicly available data, the Court delivered 20 judgments by the end of 2020.⁷¹

Notably, the AIC also has jurisdiction over disputes arising from other international treaties between the members of the League of Arab States if (i) the treaty authorises disputes to be referred to international arbitration or an international court, and (ii) the parties to the dispute agree to such referral. The AIC shall be authorised to issue legal opinions on matters within its competence.

In practice, Arab countries sometimes provide for potential dispute resolution in the AIC in their BITs,⁷² yet, there are no such examples among the treaties entered into between BRICS states.

The first dispute was referred to the Court only in 2003, more than 20 years after the signing of the Arab Investment Agreement: the dispute was initiated by an investor from Saudi Arabia against Tunisia and the case was decided in favour of the state.⁷³

According to the public information, in total, 7 cases arose from the Arab Investment Agreement:

- Only one **investor** from a BRICS member state initiated the arbitration pursuant to the Arab Investment Agreement. The investor was from Saudi Arabia, and the proceedings represented the first case under this multilateral treaty. Investors from beyond BRICS include those from Qatar (5) and Kuwait (1).
- Investment claims under the Arab Investment Agreement were filed against 3 **respondent states** from BRICS, and each of them acted as a respondent only once. These are Egypt, Saudi Arabia and the UAE. Other respondent states include Bahrain, Jordan, Libya, and Tunisia.

⁷¹ Farchakh M. The Arab Investment Court and Intra-Arab BITs: a Potential New Frontier. URL: <https://arbitrationblog.kluwerarbitration.com/2020/12/29/the-arab-investment-court-and-intra-arab-bits-a-potential-new-frontier/>.

⁷² For instance, the Algeria-UAE BIT (Article 9).

⁷³ OECD Investment Policy Reviews: Tunisia 2012. URL: <https://www.oecd.org/content/dam/oecd/en/publications/reports/2012/09/oecd-investment-policy-reviews-tunisia-2012-g1g1ef4d/9789264179172-en.pdf>

- The **information about the outcome** is available only with respect to 2 cases: 1 was decided in favor of the investor, 1 – in favor of the state.
- CRCICA and ICSID were the **administering institutions** in 1 case each. One case was administered by the AIC. Information on the other 4 cases remains publicly unavailable.

OIC Agreement

The 1981 Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organisation of the Islamic Conference ("OIC") provides for the establishment of a special organ for the settlement of disputes arising under the agreement. As of now, no such organ has been formed.

The OIC Agreement stipulates that before the establishment of an organ, the parties may resort to conciliation and request the Secretary General of the OIC to choose the third party and initiate ad hoc arbitration, thereby underlining the temporary character of the arbitration and conciliation as methods of dispute resolution.

In 2019, the Islamic Chamber of Commerce, Industry and Agriculture (ICCIA), an affiliate of OIC, established the arbitration centre in Istanbul: Organisation of Islamic Cooperation Arbitration Centre (OIC-AC). However, this centre "does not automatically have jurisdiction over OIC investor-state cases" given that the OIC Agreement fails to designate OIC-AC as a forum for the resolution of investor-state disputes.⁷⁴

According to publicly available information, in total 22 cases arose from the OIC Agreement:

- **Investors** from BRICS member states, Saudi Arabia and the UAE, initiated almost half of the disputes under the OIC Agreement – 7 and 4, respectively. Investors from other states include Qatar (7), Jordan (2), Lebanon (2), Tunisia (1), and Turkey (1).
- **Respondent states** also include BRICS members: Egypt and Saudi Arabia acted as respondent states on 3 occasions each, Indonesia and the UAE – once. Other respondent states include Libya (4), Gabon (2), Iraq (2), Bahrain (1), Jordan (1), Lebanon (1), Oman (1), Pakistan (1), Qatar (1).
- **The information about the outcome** is available only with respect to 9 cases: 3 cases were decided in favour of the investor, 4 cases – in favour of the state, in 1 case liability was found, but no damages were awarded, 1 case was discontinued. 8 cases remain pending.
- At least in half of all cases (11), PCA was the **administering institution**, ICSID and ICC in 1 case each. In 2 cases there was no administering institution. Information regarding 7 cases is unavailable.

⁷⁴ Global Arbitral Review. Carlevaris leads international board at OIC centre in Istanbul. 13 May 2025. URL: <https://globalarbitrationreview.com/article/carlevaris-leads-international-board-oic-centre-in-istanbul>.

At a practical level, the resort to the OIC Agreement may be complicated by the particularities of the procedure for the appointment of arbitrators. Article 17 of the Agreement provides that in case a party does not appoint an arbitrator, either party may request the Secretary General of the OIC to complete the composition of the tribunal. Other mechanisms are not stipulated: the Agreement does not contain any clause on any other appointing authority. According to Global Arbitration Review (GAR), in at least 6 cases, the OIC Secretary General failed to make such appointments.⁷⁵ For instance, in *beIN Corporation v Saudi Arabia*, *beIN Corporation* stated in its notice of dispute that the OIC Secretary General failed on multiple occasions to appoint arbitrators. Therefore, *beIN* argued that it should be entitled to benefit from the dispute resolution clause in the Saudi Arabia-Austria BIT under the MFN clause of the OIC Agreement.⁷⁶

This resulted in the parties requesting the PCA to designate the appointing authority in at least 3 cases. State courts have taken opposite approaches on whether such recourse is admissible. In the case *Gargour Family v. Libya* the Geneva court has not rejected the application of the MFN clause to import procedural provisions from other treaties,⁷⁷ and the Paris court reached the opposite conclusion in the case *DS Construction FZCO v. Libya*.⁷⁸

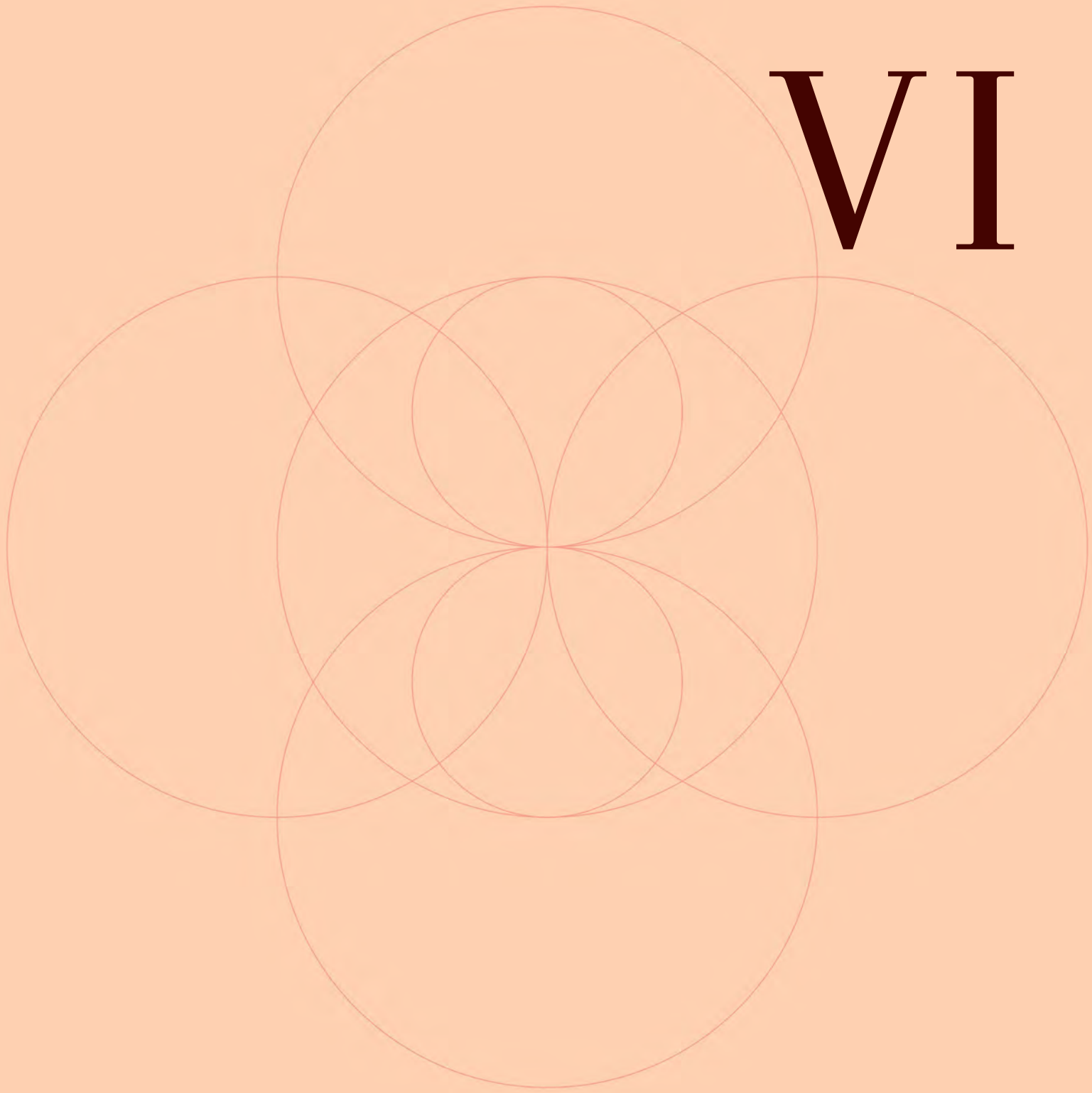
⁷⁵ Global Arbitration Review. Cocorico! – French approach to the OIC Treaty gives cause to crow. 21 February 2020. URL: <https://globalarbitrationreview.com/article/cocorico-french-approach-the-oic-treaty-gives-cause-crow>.

⁷⁶ *beIN Corporation v Saudi Arabia*, Notice of Arbitration dated 1 October 2018, URL: <https://www.italaw.com/sites/default/files/case-documents/italaw9976.pdf>.

⁷⁷ Global Arbitration Review. Libya loses challenge to OIC award in Switzerland. URL: <https://globalarbitrationreview-com.peacepalace.idm.oclc.org/article/libya-loses-challenge-oic-award-in-switzerland>.

⁷⁸ Linklaters. Paris Court sets aside partial award on tribunal constitution in OIC investment arbitration against Libya. URL: <https://www.linklaters.com/en/insights/blogs/arbitrationlinks/2021/april/paris-court-sets-aside-partial-award-on-tribunal-constitution-in-oic-investment-arbitration>.

VI



Overview of BRICS States' BITs with Partner Countries

In 2024, during the 16th BRICS Summit in Kazan, Russia, the bloc introduced a new partner country category, welcoming "the considerable interest by countries of the Global South in BRICS".⁷⁹ This category is distinct from full membership and reflects a semi-integrative role for states with shared interests.

A partner country may attend BRICS summits, participate in dialogues and working groups, and engage in cooperative initiatives, but it does not hold the voting power or an equal voice in the bloc's institutional decision-making.⁸⁰ After informal consultations following the criteria of geographic balance, maintenance of good diplomatic relations with all members of the group, and a decision by consensus, among others, BRICS decided to invite 14 states to join BRICS as partner countries.⁸¹

10 states have accepted the invitation to enter BRICS as partners: Belarus, Bolivia, Cuba, Kazakhstan, Malaysia, Nigeria, Thailand, Uganda, Uzbekistan, and Vietnam. The total number of BITs between BRICS Member States and Partner States is 59: 40 of these treaties are in effect, 12 have not entered into force, and 7 have been terminated.⁸² The majority of the effective treaties (22) were concluded in the 20th century, 10 were concluded between 2000 and 2010, and only 8 BITs – between 2010 and 2026.

Among the BRICS members, China ranks first in terms of the number of effective BITs with partner countries (8 BITs), followed by Egypt and the UAE (6 BITs each), Iran (5 BITs). Russia is in 4th place (4 BITs), and Saudi Arabia and Indonesia have 3 BITs with partner states each. Next are India and South Africa (2 BITs each), and Ethiopia (1 BIT). Brazil currently has no BITs with BRICS Partner Countries; however, it has signed the agreement with Cuba in 1997, which has never entered into effect. India has the highest number of terminated BITs (4 BITs; apart from that, 2 terminated BITs, with Belarus and Uzbekistan, were later replaced with new agreements currently in force). From the perspective of the BRICS partner countries, Uzbekistan leads in the number of effective BITs with members of the organisation (8 BITs). Belarus and Malaysia are in second place (6 BITs each), and Cuba and Kazakhstan share the third place (5 BITs each), followed by Thailand and Vietnam (4 BITs each). Next is Nigeria (2 BITs). Uganda and Bolivia have no such agreements. However, Uganda has signed 4 BITs: with Egypt in 1995, South Africa in 2000, China in 2004, and the UAE in 2017, none of which have become effective.

In terms of the Multilateral Agreements, Malaysia, Nigeria, and Uganda are the Member States of the OIC Agreement, however, none of the partner countries are members of the Arab Investment Agreement.

We provide below the map of the BITs between BRICS member states and BRICS partner countries.

⁷⁹ 16th BRICS Summit Kazan Declaration 2024. URL: <https://bricsthinktankscouncil.org/knowledge-base/16th-brics-summit-kazan-declaration-2024/>.

⁸⁰ What is the difference between a full member and a partner member of BRICS? // FOCUS Malaysia URL: <https://focusmalaysia.my/what-is-the-difference-between-a-full-member-and-a-partner-member-of-brics/>; What Is the BRICS Group and Why Is It Expanding? // Council on Foreign Relations. URL: <https://www.cfr.org/backgrounder/what-brics-group-and-why-it-expanding>.

⁸¹ Frequently Asked Questions about the BRICS // BRICS. URL: <https://brics.br/en/about-the-brics/frequently-asked-questions-about-the-brics?activeAccordion=8d36f8fe-39ee-4e6a-93d3-e4b3a7f08a74>.

⁸² To demonstrate the overall coverage of the BITs between BRICS member states and partner countries as of 1 July 2026, this statistic excludes treaties that have been replaced by those currently in force, namely Indian BITs with Belarus and Uzbekistan, China BITs with Nigeria, Uzbekistan and Russia's agreement with Uzbekistan.

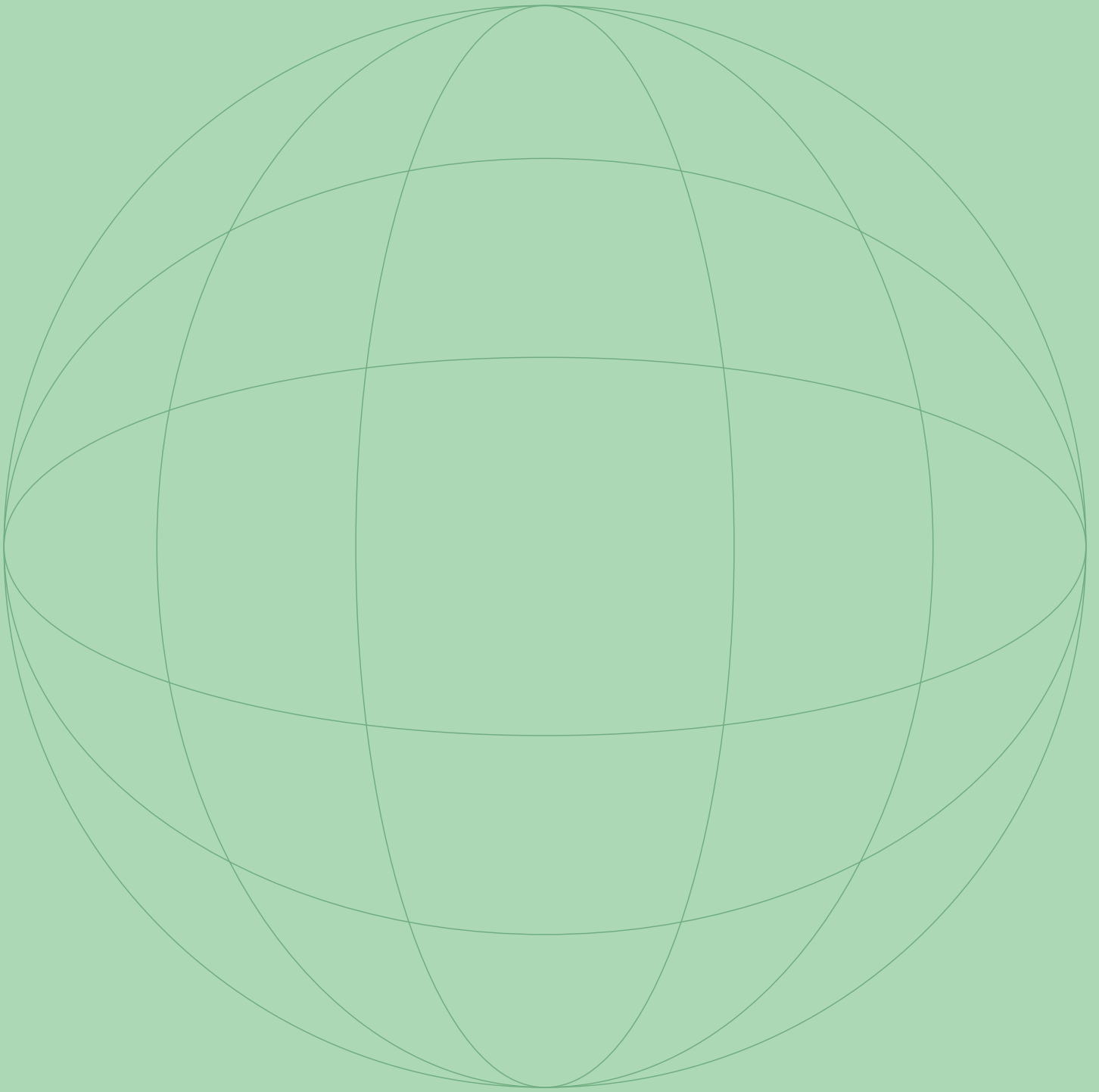


Years of signing BITs

● BIT is signed but has not yet entered into force

✕ Terminated BIT. May provide protection by "sunset clause"

Belarus		1993	1997		2018 2002✕		1995		2009		2000	
Bolivia		1992 ✕										
Cuba	1997 ●	1995			1997		1993		1995		2023	
Kazakhstan		1992 2025 ●	1993		1996 ✕		1996	1998			2018	
Malaysia		1988	1997	1998	1995 ✕	1994 ✕	2002		2000		1991	
Nigeria		2011 1997 ✕	2000 ●	2004 ●				2009 ●		2000	2016 ●	
Thailand		1985	2000		2000 ✕	1998		2002 ●			2015	
Uganda		2004 ●	1995 ●								2000 ●	2017 ●
Uzbekistan		2011 1992 ✕	1992		2024 1999 ✕	1996	2000	2013 1997 ✕	2011		2007	
Vietnam		1992	1997		1997 ✕	1991 ✕	2009	1994			2009 ●	



BRICS Country-Specific Q&A on Protection of Foreign Investments



Brazil

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GENERAL QUESTIONS

1. What are the FDI statistics?

Brazil attracts very large FDI without BITs, without investor-state arbitration, and without ICSID membership. This supports the view that treaty protection is not decisive for attracting capital.¹

FDI INFLOW IN 2025

USD 76.9 billion a 22.9% increase compared to 2024

Brazil's inward flows were about USD 76.9 billion in 2025, a 22.9% increase compared to 2024, and the inward stock was at about USD 1.15 trillion. By region, Europe holds 59.1% of the stock and North America 26.1%. The United States is the largest single source, on an ultimate ownership basis between a fifth and a third of the total. Within another important bloc of which Brazil is a member, MERCOSUR, the Brazilian Central Bank ("BCB") identified Uruguay at USD 58.3 billion (6%) by ultimate controller but only USD 7.1 billion by immediate investor at end-2024, indicating routed capital; Argentina and Paraguay were not among its selected largest sources.²

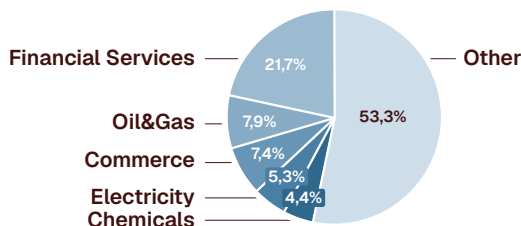
China holds USD 40.3 billion (4%) by ultimate control, against only USD 6.2 billion by immediate country, because Chinese capital routes through intermediaries. India, Russia, and South Africa are minor and do not appear among the major investing countries. The group now also includes Egypt, Ethiopia, Iran, the UAE and Indonesia; official BRICS materials also list Saudi Arabia. Brazil's Ministry of Finance reported USD 2.1 billion of UAE FDI stock in 2024.³ Chinese investment reached USD 6.1 billion across a record 52 projects in 2025, up 45% on 2024 and the highest since 2017. Brazil was the top destination for Chinese investment worldwide in 2025, taking 10.9% of China's outward value, ahead of the United States. Since 2007 China has committed USD 85.5 billion across 355 projects, concentrated in electricity, oil, manufacturing, and mining.⁴

Brazil's outward FDI is far smaller than its inward FDI. The outward stock was about USD 336 billion in 2025, against USD 1.15 trillion inward. On the BCB's immediate-destination basis, the end-2024 position was USD 504 billion, led by the Netherlands (about 20.3%), British Virgin Islands (16.7%), Cayman Islands (14.6%), Bahamas (11.8%), Luxembourg (7.1%), Switzerland (3.3%), the United Kingdom (2.3%), Austria (1.9%) and Spain (1.7%). South America accounted for USD 24 billion, or 4.8%; the immediate holding location may differ from the final operating country.⁵ The UNCTAD end-2025 and BCB end-2024 figures use different years and measurement concepts and should therefore be read as complementary rather than directly comparable.

2. Which sectors receive the most FDI?

Financial services, including investment funds, hold the largest share of the stock, at 21.7% of the inward position in 2024, about USD 191.6 billion. Oil & Gas follows at 7.9%, then commerce at 7.4%, electricity at 5.3%, chemicals at 4.4%, motor vehicles at 4.1%, IT services at 3.8%, beverages at 3.6%, and food at 3.2%.⁶

Inward FDI by sector (2024)



Recent greenfield activity is strong in energy transition, data centres, and infrastructure concessions. This overlaps with government promotion of automotive, oil and gas, mining, transport infrastructure, renewable energy and life sciences. Renewable energy already receives material FDI: Chinese investment in electricity reached about USD 1.79 billion in 2025 and included renewable generation and transmission⁷. Life sciences also attracts foreign capital; in 2025, Novo Nordisk announced a USD 1.2 billion expansion of its Minas Gerais manufacturing site.⁸ These are established but still promoted sectors rather than sectors awaiting their first FDI inflow.

3. Which sectors are restricted for foreign investors?

The baseline in Brazil is equal treatment of domestic and foreign investors.⁹ There are a few exceptions.

- Rural land: acquisition and lease by foreigners is capped and needs authorisation.¹⁰
- Borders: some investments and activities within 150 km of the land border, including certain rural-property and mining transactions, require prior National Defence Council assent.¹¹
- Media: at least 70% of the total and voting capital of journalistic and broadcasting companies must be held, directly or indirectly, by native-born Brazilians or persons naturalised for more than ten years.¹²
- Health: foreign participation is broadly permitted by law in hospitals, clinics, laboratories and diagnostic services, subject to statutory and regulatory conditions.¹³

¹ Martins V. Brazil's Cooperation and Facilitation Investment Agreements (CFIA) and Recent Developments. Investment Treaty News (12 June 2017). URL: <https://www.iisd.org/itn/2017/06/12/brazils-cooperation-facilitation-investment-agreements-cfia-recent-developments-jose-henrique-vieira-martins/>; Bellak C., Leibrecht M. Do the New Brazilian Agreements on Cooperation and Facilitation of Investment Promote Outward FDI? (2024). 25 Journal of World Investment & Trade, 535.

² UNCTAD. World Investment Report (2026). Brazil country fact sheet; URL: https://unctad.org/system/files/non-official-document/wir_fs_br_en.pdf; Banco Central do Brasil. Direct Investment Report 2025 (positions to end 2024). URL: https://www.bcb.gov.br/content/publications/directinvestmentreport/2024/DIR_2025.pdf; US Department of State. 2025 Investment Climate Statement: Brazil. URL: <https://www.state.gov/reports/2025-investment-climate-statements/brazil>.

³ Banco Central do Brasil. Direct Investment Report (2025); Brazilian Ministry of Finance. Brazil Macro Monitor, 6th ed. (March 2026).

⁴ Brazil-China Business Council. Chinese Investments in Brazil – 2025: Mining, Electric Mobility and Renewables. URL: <https://www.cebc.org.br/2026/01/29/reportagem-brazil-is-chinas-most-important-partner-in-the-americas-why/>.

⁵ UNCTAD. World Investment Report (2026). Brazil fact sheet; Banco Central do Brasil. Direct Investment Report 2025 (Brazilian outward direct-investment position at end-2024).

⁶ Banco Central do Brasil. Direct Investment Report 2025.

⁷ CEBC. Chinese Investments in Brazil 2025. URL: <https://www.cebc.org.br/download/16702/?tmstv=1780321478>.

⁸ Novo Nordisk. Novo Nordisk announces 8 billion DKK investment in expansion of production facilities in Montes Claros, Brazil. (7 April 2025). URL: <https://www.novonordisk.com/news-and-media/latest-news/production-expansion-montes-claros-brazil.html>.

⁹ Constitution of the Federative Republic of Brazil 1988, Article 172.

¹⁰ Law No. 5,709 of 7 October 1971.

¹¹ Constitution of Brazil (1988), Article 20(2), and Law No. 6,634 (2 May 1979).

¹² Constitution of Brazil (1988), Article 222.

¹³ Constitution of Brazil (1988), Article 199(3); Law No. 13,097 (19 January 2015).

- Mining and hydropower: reserved for Brazilians or companies incorporated in Brazil with headquarters and administration in the country.¹⁴
- Oil and gas: the Union (the domestic legal person for the federal government) owns the resources and monopolises some activities, but legislation allows contracts with state-owned or private companies. Nuclear activities are subject to a stricter Union monopoly, with narrow radioisotope exceptions.¹⁵
- Cabotage and shipping: reserved for authorised Brazilian shipping companies, eased by the BR do Mar (Sea Road maritime programme launched by the Brazilian Government) cabotage development programme.¹⁶
- Financial services: the BCB authorises banks, finance companies, foreign-exchange brokers, securities brokers and distributors, including relevant control changes. The CVM (Securities and Exchange Commission) regulates securities-market activities and registrations, while SUSEP (The Superintendence of Private Insurance) authorises insurers, local reinsurers, capitalisation companies and open private-pension entities.¹⁷

Market entry or change of control in sectors such as banking, insurance, aviation and telecoms may require approval from the regulator. Public bidding is relevant when the State awards a concession or public resource, not for every foreign acquisition.¹⁸

4. What are the top three risks for foreign investors?

- 1 Tax and regulatory complexity. Brazil layers many federal, state, and municipal taxes and changes rules often, so compliance is costly. Consumption-tax reform entered a testing and compliance phase in 2026; the federal Contribution on Goods and Services (CBS) and selective tax are scheduled to begin in 2027, while the state and municipal IBS (Tax on Goods and Services) is phased in through 2033.¹⁹
- 2 Litigation and enforcement timelines. Courts are slow and outcomes can be hard to predict,²⁰ despite efforts since 2015 towards a greater use of binding precedent. Arbitration is reliable and widely used, with support from courts and a thriving international and domestic dispute resolution market.²¹
- 3 Currency. The Brazilian real (BRL) is volatile, and foreign-exchange transactions must be conducted through authorised institutions and are subject to CBS reporting rules; separate Electronic Declaratory Registration-Foreign Direct Investment (SCE-IED) declarations apply only to defined investment events and thresholds.²² Shifts in policy across electoral cycles add to this.²³

5. What key measures have been adopted to attract FDI?

Brazil ran a liberalisation agenda.

- The Economic Freedom Law introduced risk-based licensing. Qualifying low-risk activities need no operating licence

or similar public release; medium-risk activities may begin under provisional or automatic licensing and later inspection. The federal list covers around 300 activities, particularly routine retail, business and digital services, but local classifications and zoning, sanitary, environmental and fire-safety rules remain applicable.²⁴

- A new foreign exchange and capital framework modernised remittances and allowed foreign-currency accounts in the cases permitted by BCB regulation.²⁵
- The opening of airline capital to foreign investors. Prior to 2019, the government maintained a 20% cap on foreign voting capital, which has been removed, and foreign investors now may hold up to 100% of the voting capital in airline companies.²⁶
- A sanitation regulatory framework opened water and sewage to private and foreign operators.²⁷
- The New Gas Law liberalised the market through authorisations, third-party infrastructure access and unbundling on nationality-neutral terms; it did not create a special foreign-investor exception. BR do Mar allows authorised Brazilian shipping companies to charter foreign vessels more broadly, creating opportunities for foreign shipowners and investors while retaining the Brazilian-operator framework.²⁸
- The 2021 Public Procurement Law facilitates international tenders and participation by foreign bidders where the notice so provides, while retaining documentation rules and possible preference margins for qualifying Brazilian goods and services. It modernised procedure rather than opening procurement or concessions to foreign investors for the first time. The startups framework created a route for public bodies to test innovative solutions.²⁹

These sit alongside efforts toward OECD and WTO/GPA accession, largely stalled since 2023, and the tax reform. Brazil has no general screening regime or blanket preference for domestic investors.

Equal treatment remains the general rule, subject to sector restrictions, local-incorporation requirements and procurement preference margins for qualifying Brazilian goods and services³⁰

6. Is there a “one-stop shop” for foreign investors?

ApexBrasil is the trade and investment promotion agency. It promotes opportunities and assists foreign investors with market intelligence, site selection and connections to public bodies; it supports Brazilian companies seeking exports, internationalisation or foreign partners. Its services are free. It attracts and supports investment but does not have power to grant approvals, which stay with sector regulators or other regulatory agencies.³¹

The Direct Investments Ombudsman, or OI, is the federal single window within the Chamber of Foreign Trade, CAMEX. It receives

¹⁴ Constitution of Brazil (1988), Article 176.

¹⁵ Constitution of Brazil (1988), Articles 177.

¹⁶ Law No. 9,432 (8 January 1997); Law No. 14,301 (7 January 2022).

¹⁷ Constitution of Brazil (1988), Article 192, and Act of Transitory Constitutional Provisions, Article 52; National Monetary Council Resolution No. 5, 105/2023.

¹⁸ US Department of State, 2025 Investment Climate Statement: Brazil.

¹⁹ US Department of State, 2025 Investment Climate Statement: Brazil; Constitutional Amendment No. 132 (20 December 2023) and implementing legislation.

²⁰ US Department of State, 2025 Investment Climate Statement: Brazil.

²¹ IBA Arbitration Committee. Arbitration Guide: Brazil (updated November 2024). URL: <https://www.ibanet.org/document?id=Brazil-arbitration-guideline-2024>.

²² Law No. 14,286 (29 December 2021).

²³ US Department of State. 2025 Investment Climate Statement: Brazil.

²⁴ Law No. 13,874 (20 September 2019), Article 3(I); Committee for the Management of the National Network for the Simplification of Business Registration and Legalization Resolution No. 51/2019, as amended.

²⁵ Law No. 14,286/2021 and Central Bank implementing regulations.

²⁶ Law No. 13,842/2019.

²⁷ Law No. 14,026 (15 July 2020).

²⁸ Law No. 14,134 (8 April 2021) and Decree No. 10,712/2021; Law No. 14,301/2022 and Decree No. 12,555/2025.

²⁹ Law No. 14,133 of 1 April 2021, Articles 26 and 52; Complementary Law No. 182 (1 June 2021).

³⁰ Constitutional Amendment No. 132/2023; US Department of State, 2025 Investment Climate Statement: Brazil; Constitution of Brazil (1988), Article 172; Law No. 14,133/2021, Article 26.

³¹ Law No. 10,668 (14 May 2003); US Department of State, 2025 Investment Climate Statement: Brazil.

queries from external investors concerning investment in Brazil and coordinates answers through a network of focal points. It also assists Brazilian investors concerning investments abroad, especially in countries with an investment agreement in force.³²

ApexBrasil is the front door for entry, and **Direct Investments Ombudsman** handles administrative bottlenecks and information requests³³

7. What are the current trends in BIT drafting?

The trend is to consolidate and export the CFIA model. Brazil keeps signing CFIAs and bringing older ones into force. As of August 2026, Siscomex (Integrated Foreign Trade System) lists bilateral CFIAs with Angola, the UAE, Ecuador, India, Morocco and Mexico in force, together with the Intra-MERCOSUR Investment Facilitation Protocol. Negotiations with Cabo Verde, Colombia, Ethiopia, Guyana, Malawi, Mozambique, Panama, São Tomé and Príncipe, and Suriname are recorded as concluded but not yet in force.³⁴

Brazil regionalised the model through the Intra-MERCOSUR Investment Facilitation Protocol and supports the WTO Investment Facilitation for Development Agreement. As of August 2026, participating members were still seeking its incorporation into the WTO legal framework.³⁵ The EU-MERCOSUR instruments add market-access and regulatory disciplines but do not replace the CFIA model with investor-state arbitration.³⁶

Drafting keeps adding facilitation content and public policy carve-outs, for example exceptions for human, animal, and plant health, while holding the no investor-state arbitration line.³⁷

8. Which government bodies negotiate and draft BITs?

Negotiation is a joint effort across ministries. The lead bodies are the Ministry of Finance, the Ministry of Foreign Affairs, known as Itamaraty, and the Ministry of Development, Industry, Trade and Services. They coordinate through the Chamber of Foreign Trade and its Executive Secretariat, which also hosts the Ombudsman. The model was built in consultation with the private sector and industry coalitions. Business associations may identify obstacles, provide sector evidence and comment in consultations, but they do not hold a formal negotiating mandate or bind the government.³⁸

9. Which government bodies handle investment disputes?

Prevention of the disputes:

Direct Investments Ombudsman and the Joint Committee for cooperation and dispute prevention

State's Representation: Attorney General's Office

There is no investor-state arbitration to administer, so Brazil has no dedicated ISDS or investment-claim authority.

Under the CFIA model, prevention runs through the Ombudsman or Focal Point and the Joint Committee. In Brazil the Ombudsman sits in CAMEX, the same structure that coordinates treaty

negotiation, so the negotiating and prevention roles overlap.

Steps before any arbitration bring in the government entity and sector regulatory agency involved in the prospective complaint, through the focal point network, and the Joint Committee where two states are involved.

If a state-to-state claim arose, Brazil would be represented by the Attorney General's Office, the Advocacia-Geral da União, in coordination with the Ministry of Foreign Affairs and the competent policy bodies.³⁹

Under certain treaties, the investor may be heard, or its representatives may participate in bilateral consultations. This provision does not in itself allow the investor to become a party to the inter-State process or to bring claims directly against the host State. Where a treaty-specific monetary mandate exists and an award is made, the breaching host State is the payer; the claimant home State may receive and transfer the amount after costs or request direct payment to the investor. That mechanism does not make the home State liable to compensate its investor.⁴⁰

10. How are investment awards enforced by the state?

No publicly reported state-to-state award or compensation payment under a Brazilian CFIA as of August 2026

With regard to commercial awards (since Brazil faces no treaty-based investor claims) enforcement is reliable because Brazil is a party to the 1958 New York Convention and applies the Arbitration Act.⁴¹

11. Do pre-arbitration negotiations lead to resolution of disputes?

The CFIA prevention stage and the OID exist for this. The OID channels questions and investor concerns to the competent authorities, coordinates responses and seeks administrative solutions. Published case-level outcomes are limited, because the process is administrative and confidential.

The key factors reported are early engagement, a single point of contact, and follow-up across ministries before a grievance hardens into a dispute.⁴²

On the commercial side, mediation and negotiated settlement are common and often close disputes before or during arbitration.⁴³

JURISDICTION-SPECIFIC QUESTIONS

12. Do you see any particular reason for a big share of BITs remaining not ratified?

Brazil signed 14 BITs between 1994 and 1999. None was approved by the National Congress. Congress objected to investor-state arbitration. It reads the mechanism as limiting the state's right to regulate, and as giving foreign investors extraordinary benefits that discriminated against domestic investors. For the same reasons Brazil never joined the ICSID Convention. Those old BITs are not in force.

³² Decree No. 8,863 (2016) (establishing the Direct Investments Ombudsman and the National Investment Committee within CAMEX); Decree No. 9,770 (22 April 2019) (extending the Ombudsman's scope to external investors in Brazil and Brazilian investors regarding investments abroad); US Department of State. 2025 Investment Climate Statement: Brazil; UNCTAD Investment Policy Monitor. Brazil: Expands ombudsman services to all investors (22 April 2019). URL: <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/4840/brazil-expands-ombudsman-services-to-all-investors>.

³⁴ Brazil-India CFIA, Decree No. 12,666/2025; UNCTAD, International Investment Agreements Navigator: Brazil. URL: <https://investmentpolicy.unctad.org/international-investment-agreements/countries/27/brazil>; Cooperation and Investment Facilitation Agreements (official status list). URL: <https://www.gov.br/siscomex/pt-br/acordos-comerciais/acfi>.

³⁵ WTO. Investment Facilitation for Development Agreement. URL: https://www.wto.org/english/tratop_e/invfac_public_e/invfac_intro_e.htm.

³⁶ UNCTAD. Intra-Mercosur Cooperation and Facilitation Investment Protocol (2017), promulgated for Brazil by Decree No. 10,027 (25 September 2019); UNCTAD, International Investment Agreements Navigator: Brazil; Decree No. 10,027/2019.

³⁷ Martins V. Brazil's Cooperation and Facilitation Investment Agreements (CFIA) and Recent Developments.

³⁸ Ibid.; Decree No. 8,863 (2016).

³⁹ Constitution of Brazil (1988), Article 131; AGU. Integrated Management Report 2024. URL: <https://www.gov.br/agu/pt-br/acesso-a-informacao/auditorias/processo-de-contas-anuais/processos-de-contas-anuais-2024>.

⁴⁰ Brazil-São Tomé and Príncipe (2023); Brazil-India CFIA (2025), Articles 18.3 and 19.2; Brazil-Ecuador (2019), Articles 24.3(c) and 25.13; Brazil-United Arab Emirates (2019), Article 25(13)(c); Brazil-Guyana (2018); Brazil-Suriname (2018); Brazil-Ethiopia (2018); Brazil-Colombia (2015). All CFIAs are available at URL: <https://www.gov.br/siscomex/pt-br/acordos-comerciais/acfi>.

⁴¹ Decree No. 4,311 (23 July 2002) (promulgating the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards); Arbitration Act, Law No. 9,307 (23 September 1996), as amended by Law No. 13,129 (26 May 2015).

⁴² Droubi S. Investment Facilitation Mechanisms and Access to Justice in Brazilian Investment Agreements. ASIL Insights, Vol 24. Issue 9 (6 May 2020); Martins V. Brazil's Cooperation and Facilitation Investment Agreements (CFIA) and Recent Developments.

⁴³ IBA Arbitration Committee. Arbitration Guide: Brazil (updated November 2024).

The CFIAs use prevention and state-to-state mechanisms instead. Ratification remains treaty-specific: signature or a concluded negotiation does not itself create an agreement in force.

The relative lack of Brazilian companies with outward FDI and the ISDS repercussions of the Argentine crisis of the early 2000s contributed to Brazil's position against BITs

13. What are the key features of Brazil's Model CFIA?

Brazil does not use the classic BIT model. Its instrument is the Cooperation and Facilitation Investment Agreement, the CFIA developed from 2015. Four features define it.

First, scope: it covers direct investment only, and excludes portfolio investment.

Second, standards: national treatment, most-favoured nation, transparency, and free transfers, with a narrow expropriation clause that covers direct expropriation only and leaves out indirect expropriation. It adds corporate social responsibility principles, often informed by internationally recognised standards, and anti-corruption clauses.

Third, governance: each state sets up an Ombudsman or Focal Point to answer investor demands, plus a Joint Committee for cooperation and dispute prevention.

Fourth, dispute settlement: there is no investor-state arbitration. If prevention fails, only a State may commence arbitration against the other State. The tribunal normally interprets the agreement, determines compliance and may issue a binding award requiring State compliance. Monetary compensation is not a uniform CFIA remedy: the India agreement bars it, while the Ecuador, Mexico and UAE agreements allow the States to give the tribunal a specific compensation mandate. Where compensation is awarded, the breaching host State is the payer; the claimant home State may receive and transfer the amount to the investor after costs or request direct payment. The home State is therefore a claimant or conduit, not the party compensating its own investor.⁴⁴

Additionally, Brazil is exporting its model, which shaped the Mercosur protocol and is in line with the WTO facilitation agenda.⁴⁵ For an investor, the working protections are the domestic legal framework, a strong commercial arbitration regime, and contract design, supported by the OID. OECD accession, the tax reform, and the modernised foreign exchange law should improve the climate further.

14. In practice, do investors rely on CFIA mechanisms? Are there situations where CFIA protections have been successfully invoked or tested?

Reliance is still limited. Few CFIAs are in force, and most are recent. As of August 2026, bilateral CFIAs with Angola, Ecuador, India, Mexico, Morocco and the UAE are in force, together with the Intra-MERCOSUR Investment Facilitation Protocol.

The facilitation and prevention side, the Ombudsman and Focal Point, is used for queries and administrative issues. The dispute side has not been tested.

No state-to-state arbitration under a Brazilian CFIA is publicly known. No merits award or compensation payment was identified in the public record as of August 2026. The protections have not been invoked in a contested proceeding. Their value so far is preventive and facilitative.⁴⁶

15. Do investors typically rely more on contractual arbitration clauses than treaty-based protections?

Brazil offers no investor-state arbitration, so foreign investors do not rely on treaty protection. They rely on contract.⁴⁷ Commercial arbitration is mature and trusted in Brazil, seated locally or abroad through Brazilian chambers such as the CAM-CCBC or international ones such as ICC, AAA-ICDR, LCIA, SIAC and others.

ICC has had an office in Brazil since 2017 and provides services in Portuguese and with payment in local currency.

Awards enforce well under the Arbitration Act and the New York Convention. A domestic award is an enforceable title and needs no confirmation. Awards rendered in Brazil do not require recognition, even when the subject matter or the parties involved are international, and are enforced directly before federal or state courts. If the debtor is a public-law entity, payment may follow the constitutional precatório regime. An SOE does not automatically fall within that regime: under the STF's test, it applies only to an entity that cumulatively provides an essential public service, operates without competition and lacks a primary profit-distribution purpose; competitive SOEs follow ordinary enforcement.⁴⁸

A foreign award must first be recognised by the Superior Court of Justice, the STJ, under Article 105 of the Constitution, then enforced in the federal courts. The STJ is consistently pro-enforcement. It refuses recognition only for a breach of due process or public policy, and it does not review the merits. Most awards are complied with voluntarily, and contested enforcement is the exception.⁴⁹

For most investors the real protection is the contract and its arbitration clause, not any treaty.

16. How effective is the Investment Ombudsman (OID) in resolving investor grievances?

The OID is a facilitation and coordination body, not an adjudicator. It gives investors a single window and routes queries to the right agency through the focal point network. A decree extended its scope to external investors concerning investments in Brazil and to Brazilian investors concerning investments abroad, particularly in countries with an investment agreement in force. It is useful for information, licensing bottlenecks, and administrative friction. It cannot bind an agency or grant a remedy, so it does not settle hard legal disputes.⁵¹ Public data on caseload and outcomes is thin, which makes effectiveness hard to measure.

Investment Ombudsman cannot bind an agency or grant a remedy, so it works best as an early, preventive channel

⁴⁴ See, e.g., Brazil-India CFIA (2025); Martins V. Brazil's Cooperation and Facilitation Investment Agreements (CFIA) and Recent Developments.

⁴⁵ Martins V. Brazil's Cooperation and Facilitation Investment Agreements (CFIA) and Recent Developments; Intra-Mercosur Protocol, Decree No. 10,027/2019.

⁴⁶ Droubi S. Investment Facilitation Mechanisms and Access to Justice in Brazilian Investment Agreements; Martins V. Brazil's Cooperation and Facilitation Investment Agreements (CFIA) and Recent Developments; UNCTAD, International Investment Agreements Navigator: Brazil.

⁴⁷ Pereira C., Souza-McMurtrie L. Bramia. An Alternative to ISDS (5 December 2023). URL: <https://legalblogs.wolterskluwer.com/arbitration-blog/bramia-an-alternative-to-isds>.

⁴⁸ IBA Arbitration Committee. Arbitration Guide: Brazil (updated November 2024); Arbitration Act, Law No. 9,307/1996; Decree No. 4,311 (23 July 2002) (promulgating the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards); Pereira C. Recognition of Foreign Judgments and Awards, in Marçal Justen Filho, Cesar Pereira & Maria Augusta Rost (eds.) Brazil Infrastructure Law (Eleven Publishing, 2016); Quintão L. Brazilian government debt and the precatórios regime: a brief summary for foreign commercial creditors. Macau Journal of Brazilian Studies, Vol. 7, Issue II, October 2024.

⁴⁹ Constitution of Brazil (1988), Article 105, I, 'I' (STJ competence to recognise foreign judgments and awards); IBA Arbitration Committee. Arbitration Guide: Brazil (updated November 2024); Law No. 9,307/1996, Articles 34-40.

⁵⁰ Decree No. 9,770/2019.

⁵¹ Droubi S. Investment Facilitation Mechanisms and Access to Justice in Brazilian Investment Agreements.

GENERAL QUESTIONS

1. What are the FDI statistics?

According to the National Bureau of Statistics, in 2024 the top 5 source economies of the FDI actually utilised by China (apart from offshore jurisdictions, such as Cayman Islands and BVI) were Hong Kong, Singapore, the US, South Korea and Japan.¹ The top 5 destinations for outward FDI flows in 2024 (apart from offshore jurisdictions) are Hong Kong, Singapore, the USA, Indonesia and Thailand.

FDI inflows and outflows for BRICS member states:

State	Inflow (2024), USD	Outflow (2024) ² , USD
Brazil	21.21 million	416.42 million
India	2.15 million	(98.51 million)
Russia	349.94 million	4.27 billion
South Africa	2.43 million	594.55 million
Egypt	Not individually accounted for	93.03 million
Iran	No statistics available	643.08 million
Ethiopia	2.55 million	(193.34 million)
UAE	711.73 million	770.11 million
Indonesia	84.8 million	4.59 billion
Saudi Arabia	206.93 million	664.65 million

Other than those from Russia and Saudi Arabia, FDI flows to China are trending down from 2023 to 2024. This trend is consistent with global FDI flows to China (in “realized FDI value”) for 2024, which amounted to USD 116.24 billion,³ a decrease from the figure for 2023 at USD 163.25 billion.⁴ In 2025, the figure further decreased to USD 106.92 billion.⁵

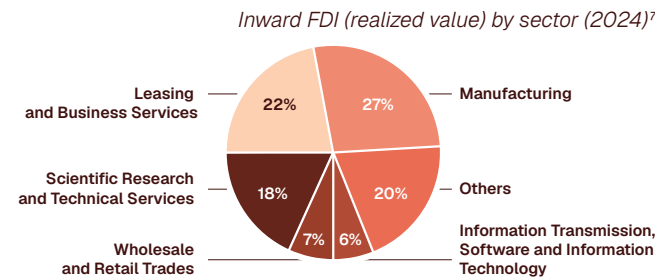
FDI flows from BRICS states to China account for only a very small amount of China’s global FDI inbound flows – ca. 1.2%. Moreover, according to the “Statistical Bulletin of FDI in China, 2024”: “Realized FDI from other BRICS countries was US\$70 million, accounting for 0.04% of the national total.” Since 2010, the proportion of BRICS countries realized FDI out of all other countries has never exceeded 0.2% of the total, peaking in 2017 at USD 290 million.

China’s outward FDI flows to BRICS states are significantly greater than BRICS states FDI inflows to China (USD 11.76 bn vs. ca. USD 1.38 bn respectively in 2024). China’s outward FDI flows to Russia, South Africa and Indonesia have all seen significant increases, whilst the outward FDI flows from China to India and Brazil decreased in 2024 compared with 2023.

The FDI outflow to BRICS states accounted for 6.1% of China’s global FDI in 2024. Indonesia and Russia are the only two BRICS states within the “Top 20” outward FDI flow destinations from China for 2024, with Indonesia ranking as the 5th and Russia as the 7th on the list.

On outward FDI stock value,⁶ as at 2024 year-end, among the BRICS states, Indonesia has the largest accumulated China outward FDI stock, at USD 25.48 billion (Top 9 among recipients of China FDI stock). This is followed by Russia, at USD 15.75 billion (Top 16) and by the UAE at USD 9.49 billion (Top 20).

2. Which sectors receive the most FDI?



In 2023, the top 5 sectors with the largest amount of BRICS FDI in China were manufacturing; wholesale and retailing; scientific research and technical services; transportation, warehousing and postal services; leasing and business services (with realized FDI reaching 99.1% of the total).⁸

3. Which sectors are restricted for foreign investors?

The Chinese Government maintains the “Special Administrative Measures for Foreign Investment Access” (Negative List). This list sets out special administrative measures prohibiting or restricting foreign investment in certain sectors to ensure equity between domestic and foreign capital. The current Negative List (2024) contains 29 broad types of economic activities across 11 main industries.⁹

Sectors that are prohibited under the Negative List (2024) for foreign investors include tobacco/cigarettes, publishing, audio-visual products, coastal and inland fishing, internet services, genetic modification of agricultural products, postal companies, etc.¹⁰

Sectors that are partially restricted for foreign investors under the Negative List (2024) include nuclear energy, operation of civil airports, market surveys, and education (pre-school through higher education). Many of them require controlling shareholding or interest to be owned by a Chinese party.¹¹

In 2025 and 2026 the Negative List was relaxed, whether at a “pilot scale” or more comprehensively

¹ National Bureau of Statistics of China. National Data. URL: <https://data.stats.gov.cn/dq/website/page.html#pc/national/en/yearData>.

² Ministry of Commerce of the People’s Republic of China, the PRC National Bureau of Statistics and the PRC State Administration of Foreign Exchange. 2024 Statistical Bulletin of China’s Outward Foreign Direct Investment. URL: https://www.mofcom.gov.cn/cms_files/filemanager/1077459795/attach/20255.pdf.

³ National Bureau of Statistics of China. China Statistical Yearbook 2025. Section 11-13 (Foreign Direct Investment). URL: <https://www.stats.gov.cn/sj/ndsj/2025/indexeh.htm>.

⁴ Ministry of Commerce of the People’s Republic of China. Statistical Bulletin of FDI In China 2024. URL: <https://fdi.mofcom.gov.cn/resource/pdf/2025/01/15/14608cd66d5b4ba38ae03aada5fba1b9.pdf>.

⁵ The State Council of the People’s Republic of China. Number of new foreign-invested firms in China up 19.1 pct in 2025. URL: https://english.www.gov.cn/archive/statistics/202601/23/content_WS69737bf4c6d00ca5f9a08bd4.html.

⁶ As opposed to “inflow” and “outflow” value.

⁷ National Bureau of Statistics of China. China Statistical Yearbook 2025. Section 11-15 (Foreign Direct Investment by Sector (2024)). URL: <https://www.stats.gov.cn/sj/ndsj/2025/indexeh.htm>.

⁸ Ministry of Commerce of the People’s Republic of China, the PRC National Bureau of Statistics and the PRC State Administration of Foreign Exchange. 2024 Statistical Bulletin of China’s Outward Foreign Direct Investment.

⁹ The PRC National Development and Reform Commission and Ministry of Commerce of the People’s Republic of China. Special Administrative Measures (Negative List) for Foreign Investment Access (6 September 2024). URL: https://fi.mofcom.gov.cn/cms_files/filemanager/1162448699/attach/202411/751a935e56e34f9782a057bec8ba3339.pdf?fileName=Negative%20list%20for%20foreign%20investment%282024%29.pdf.

¹⁰ Ibid.

¹¹ Ibid.

4. What are the top three risks for foreign investors?

- 1 Unexpected policy and legal/regulatory shifts**
Sector-specific restrictions, cybersecurity and data localisation requirements under the PRC Data Security Law and PRC Personal Information Protection Law, and an intensifying foreign investment security review regime¹² can drastically change the risks associated with a particular investment (take Meta's acquisition of Manus, which was recently ordered to be unwound by the Chinese authorities, for example).
- 2 Geopolitical and Supply-Chain Exposure**
Sanctions, export restrictions on critical technologies, and evolving outbound investment screening regimes in the US, EU, and other jurisdictions can restrict capital flows, technology transfers, and supplier relationships vis-à-vis China. Within China itself, counter-measures—including the Unreliable Entity List and blocking statutes (such as the PRC Anti-Foreign Sanctions Law) —may place foreign-invested enterprises in a position of conflicting legal obligations.
- 3 Macroeconomic Headwinds and Market Viability**
Persistent slowness in domestic consumption growth, a protracted correction in the property sector, and deflationary pressures have dampened revenue prospects across consumer-facing and real estate-adjacent industries. While China's market scale remains attractive, foreign investors should stress-test financial projections against a prolonged lower-growth scenario.

5. What key measures have been adopted to attract FDI?

Such measures are regarded by some to be (i) the introduction of the unified Market Access Negative List in 2018, (ii) the promulgation of the PRC Foreign Investment Law¹³ (FIL), coming into effect in 2020, and (iii) the introduction (and then continuously shrinking) of the national Negative List for foreign investment access.

The national Negative List shrank from 93 items in 2017 (when first introduced) to 29 items only (in the latest 2024 edition).

The FIL provides a unified legal framework designed to enhance investment protection for foreign businesses by ensuring equal domestic treatment, safeguarding intellectual property, and establishing clear statutory remedies against local administrative overreach.

The unified Market Access Negative List (applicable to both domestic and foreign investment) was also revised in 2025 to ease restrictions (e.g. lifting approval requirements for activities in agriculture, education, broadcasting, etc.)¹⁴

Moreover, through the 2026 “action plan to stabilize and optimize foreign investment utilization” unveiled in June 2026, which elaborated upon the “2025 Action Plan for Stabilizing Foreign Investment”, China completely eliminated all (remaining) restrictions on manufacturing sector access. The 2025 Action Plan itself provided for measures and policies including: (i) the expansion of pilot programmes in the telecommunications, healthcare, and education sectors, (ii) the further development of the brand of “Invest in China” and its promotion program, (iii) intensifying investment attraction in key service sectors such as elderly care, tourism, and sports; and (iv) broadening financing channels for foreign-invested enterprises.

6. Is there a “one-stop shop” for foreign investors?

Two platforms where investors can receive guidance: Invest in China¹⁸, run by the Investment Promotion Agency¹⁷ and Invest China¹⁹, run by the China Council for the Promotion of International Trade

In practice, Investment Promotion Agency (CIPA) of Ministry of Commerce (MOFCOM) combines national-level strategic industry matchmaking with localized “one-stop shops” often found at the local level or in special economic development zones. CIPA generally covers the following main functions:

- **Industry matchmaking:** CIPA operates specialized industry departments (covering sectors like IT, Smart Manufacturing, and Healthcare), connecting foreign firms directly with local industrial clusters, domestic supply chains, and potential joint-venture partners.
- **Assisting with policy navigation and clarifying information:** CIPA and the Invest in China platform compile national and regional investment policies, detail local competitive advantages, and clarify sector-specific criteria (such as identifying fields where market access is encouraged or restricted).
- **Grievance Resolution:** CIPA actively manages the National Center for Complaints of Foreign-Invested Enterprises, where foreign-invested enterprises may reach out regarding disputes over, e.g. regional protectionism, intellectual property, or unfair administrative treatment, in which case CIPA can serve as an escalation point to resolve disputes across different provincial or ministerial jurisdictions.

7. What are the current trends in BIT drafting?

In the latest generation (from the 2010s onward), China's approach to BIT drafting and negotiation features more precise definitions of “investor” and “investment,” explicit limitations on fair and equitable treatment to the customary international law minimum standard (including by listing typical FET violations), more (developed) denial of benefits clauses/mechanisms and the exclusion of dispute settlement from MFN treatment, etc. Provisions are also becoming more balanced, and ISDS mechanisms are becoming more developed than the old-generation BITs.

Reflecting global reform trends, China's modern treaties increasingly incorporate carve-outs affirming the host state's right to regulate for public policy objectives and clarify that non-discriminatory regulatory measures do not constitute indirect expropriation.

China's participation in the RCEP investment chapter²⁰ — which introduced pre-establishment national treatment with negative lists and provisions on investment facilitation across the region — signals China's willingness to engage with multilateral investment frameworks.

8. Which government bodies negotiate and draft BITs?

For China, primarily the following economic and investment government agencies take part in BIT negotiation/drafting:

Ministry of Commerce is primarily responsible for negotiating, drafting, and implementing BITs

¹² The review regime is primarily grounded in the PRC Foreign Investment Law and the PRC National Security Law, with its core provisions set out in the Measures for the Security Review of Foreign Investment, jointly promulgated by the NDRC and MOFCOM on 19 December 2020.

¹³ Law of the People's Republic of China on Foreign Investment. URL: http://www.npc.gov.cn/englishnpc/c2759/c23934/202012/t20201222_384049.html.

¹⁴ UNCTAD Investment Policy Hub. China - Reduces restricted activities in market access negative list (16 April 2025). URL: <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/5070/china-reduces-restricted-activities-in-market-access-negative-list>.

¹⁵ Ministry of Commerce of the People's Republic of China. 2025 Action Plan for Stabilizing Foreign Investment (21 February 2025). URL: https://english.mofcom.gov.cn/Policies/ForeignInvestmentAdministration/art_c7fc241d17f42768849fc2837cd3715.html.

¹⁶ English.Gov.Cn. China unveils action plan to better utilize foreign investment (22 June 2026). URL: https://english.www.gov.cn/news/202606/22/content_WS6a38e97dc6d00ca5f9a0bb55.html#:~:

¹⁷ Ministry of Commerce of the People's Republic of China, Invest in China. Function of Investment Promotion Agency of Ministry of Commerce. URL: <https://fdi.mofcom.gov.cn/EN/aboutMe.html>.

¹⁸ Ministry of Commerce of the People's Republic of China, Invest in China. URL: <https://fdi.mofcom.gov.cn/EN/>.

¹⁹ Invest China. About INVESTCHINA. URL: <https://www.investchinaccpit.com/en/CCPITAbout2>.

²⁰ Regional Comprehensive Economic Partnership Agreement, Chapter 10. URL: <https://asean.org/our-communities/economic-community/integration-with-global-economy/regional-comprehensive-economic-partnership-rcep/>.

Within MOFCOM, the Department of Treaty and Law takes the lead. MOFCOM formulates China's draft BITs, draft treaty text, and manages the international negotiation process.

As China's macroeconomic planning body, NDRC coordinates closely with MOFCOM to ensure that any market access commitments, "negative lists," or investment protections negotiated in a BIT align with China's broader national industrial policies, five-year plans, and economic security targets.

The Ministry of Foreign Affairs (MFA) manages the overarching diplomatic framework of the treaty, ensuring that the BIT aligns with China's broader geopolitical objectives, foreign policy, and bilateral relations with the partner state.

Domestic and international business associations do not have a direct say in China's BIT strategy, but there are mechanisms for them to voice their views:

- **MOFCOM Foreign Enterprise Roundtable System** - MOFCOM hosts structured, recurring institutional mechanisms known as Roundtable Sessions for Foreign-Invested Enterprises. High-level officials (such as Deputy Commerce Ministers) regularly meet with major international chambers.
- **Public and Closed-Door Consultative Periods** - Before implementing updated legal frameworks that feed into BIT strategies—such as revisions to the Foreign Investment Access Negative List—the Chinese Government releases drafts for public comment.
- **Domestic associations** (the China Council for the Promotion of International Trade (CCPIT) and Industry Chambers) act as a conduit to collect and present views and comments.

9. Which government bodies handle investment disputes?

Ministry of Commerce is responsible for handling the investor-state disputes

The following bodies may also be involved in pre-arbitration negotiations, depending primarily on the nature, details and complexity of the grievance/dispute(s) in question.

MOFCOM (Department of Treaty and Law) receives the formal Notice of Dispute or Intent to Submit a Claim. It is also the body that leads the legal strategy and coordinates China's response.

MOFCOM's CIPA-operated National Complaint Center for Foreign Enterprises handles administrative coordination and bridges communications when investors seek an early administrative remedy before elevating to international tribunals.

China also manages a centralized, state-led grievance system designed to de-escalate investor conflicts (**The Foreign Investment Complaints Mechanism (MOFCOM Decree No. 3)**). This framework is understood to have helped resolve hundreds of domestic and provincial administrative disputes (such as environmental compliance shutdowns, zoning shifts, and regulatory fine disagreements). It is understood that by utilizing this channel, investors have successfully reversed or altered local administrative penalties, therefore dispensing with the need to resort to international treaty dispute resolution.

If the dispute stems from a local measure (such as a local environmental shutdown or municipal land expropriation), the relevant provincial or municipal government agency may join the negotiations to provide localized factual evidence and participate in potential settlement terms.

Depending on the industry where the dispute arises, specific state regulators (such as the Ministry of Natural Resources or NDRC) may take part as required.

10. How are investment awards enforced by the state?

China is an ICSID Contracting State. If it is a Washington Award, Article 54 of the Washington Convention requires a contracting state to treat an ICSID award as a final domestic judgment. The application for recognition and enforcement shall be made to the Beijing No. 4 Intermediate People's Court.

If it is an ad hoc investment arbitral award, it should be recognized and enforced as a "New York Convention Award", if applicable. However, it should be noted that, when acceding to the New York Convention, China made a "commercial reservation". Therefore, there exists some uncertainty as to whether a Chinese court would accept the relationship between a foreign investor and the host state/country as being "commercial" necessarily. If it does not, it appears that the relevant Chinese enforcement court would not be obligated to (and would therefore be free not to) recognize and enforce the award.²¹

When it comes to voluntary compliance with a substantive investment arbitral award,²² it is difficult to speculate what China will do. We understand that China settled or won the vast majority of investment treaty claims brought against it (such as *Ansung Housing v. China*²³). China's decision as to whether to voluntarily comply with PCA's Final Award in *Jason Yu Song v. China*²⁴ will likely be of much interest.

11. Do pre-arbitration negotiations lead to resolution of disputes?

As mentioned above, whilst we are aware of cases against China which have been settled or discontinued by agreement²⁵, we do not have details of the precise context and background against which the private investor and China concluded a settlement agreement or an agreement to discontinue. We are therefore unable to comment on what the keys to those successful negotiations were or might have been. Likewise, even though we understand that, reportedly, many disputes have been resolved as a result of the MOFCOM Foreign Investment Complaints Mechanism or during administrative proceedings or associated negotiations, there is insufficient information about these resolved disputes available for us to comment on their precise factors for successful resolution.

Reportedly, many disputes have been resolved as a result of the MOFCOM Foreign Investment Complaints Mechanism

JURISDICTION-SPECIFIC QUESTIONS

12. What are key features of investment protection under the Foreign Investment Law of the People's Republic of China compared to classical BIT-based systems?

While classical BITs focus on hard, neutral international enforcement to protect property rights, the FIL emphasizes domestic administrative efficiency, equal market access, and state-facilitated dispute coordination.

There are some key differences/shifts in protection mechanics, for example:

- 1 Expropriation is permitted only in the public interest with "prompt, adequate, and effective" compensation under classical BIT-based systems. Under FIL, it is permitted under special circumstances with compensation, but relies on domestic valuation standards;

²¹ It should be further noted that, in China, a lower court's decision not to recognize or enforce a "New York Convention Award" will have to be reported to its supervisory court for endorsement, until endorsement or clearance is obtained from China's highest court, the PRC Supreme People's Court.

²² Excluding an order for costs or administrative fee payment.

²³ *Ansung Housing Co., Ltd. v. People's Republic of China*, ICSID Case No. ARB/14/25.

²⁴ *Jason Yu Song v. People's Republic of China*, PCA Case No. 2019-39, final award rendered in January 2025.

²⁵ This includes the case of *Ekran Berhad v. China* (ICSID Case No. ARB/05/20), which was the first-ever known treaty-based ISDS case brought against China. Shortly after the international tribunal was constituted, the investor and China mutually agreed to suspend the case. The dispute was then successfully resolved through parallel domestic negotiations. No substantive final award was made in that case against China.

2 Transfer of capital: under classical BIT-based systems it is a strict, treaty-guaranteed right to freely transfer capital and profits abroad. FIL provides for this guarantee in principle, but it is explicitly subject to domestic foreign exchange control laws.

3 From Compensation to Prevention: Classical BITs assume disputes will happen and outline financial remedies. The FIL seeks to prevent disputes from escalating by using a top-down administrative complaint system to check local government overreach.

4 **From Defensive to Promotional:**
BITs are defensive shields against state interference
The FIL functions as an investment promotion tool

Since the Negative List explicitly outlines activities that are restricted in China, industries not on the list are legally guaranteed market treatment equal to domestic firms. Similarly, the Negative List outlines which sectors require joint ventures (such as telecommunications), making it clear to the ordinary investor that sectors that are not on the list allow investors to establish wholly foreign-owned enterprises (WFOEs) directly.

Given that the Negative List continues to be updated (every 1-2 years) by the Chinese Government, investors need to be adaptive and vigilant to ensure that their investment continues to abide by regulations. However, the recent trend has been to reduce the restrictions within the Negative List rather than add to them, which operates to ease the constraints placed on foreign investment even further.

13. How would you assess the role of the Negative List system?

The Negative List mechanism under the FIL acts as a foundational, legally binding baseline that shapes investment protection by shifting the legal framework from a generic "approval-based system" to a "pre-establishment national treatment plus negative list" standard. It marks a shift from a case-by-case approval process to a "prohibiting the few, permitting the many" model. It serves as the primary mechanism for regulating market entry for foreign capital.



Egypt

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GENERAL QUESTIONS

1. What are the FDI statistics?

According to the Egyptian General Authority for Investment & Free Zones (GAFI), total net FDI was valued at USD 12.2 billion in FY2024-2025, with the first half of FY2025-2026 valued at USD 5.8 billion, excluding a USD 3.5 billion investment in the Alam El Roum deal, a USD 29.7 billion real estate and tourism partnership signed in November 2025 between Egypt and the real estate arm of Qatar's sovereign wealth fund.¹

Data published by the Central Bank of Egypt (CBE) does not separately aggregate FDI coming from BRICS countries. Available figures evaluate inflows on a country-by-country basis.

While BRICS-linked net inflows accounted for 1-3% of total FDI in the mid-2000s, this figure reached 21-83% between FY2021-2022 and FY2024-2025. This expansion is largely attributable to capital inflows from the UAE, namely the FY2023-2024 USD 37.6 billion Ras El Hekma Development Agreement. Excluding the UAE, combined net FDI from the founding BRICS members has historically remained below 2% of yearly total net FDI. China reached a peak of USD 748.3 million (1.6% of the total amount) net in FY2022-2023 before declining to USD 168.4 million (approximately 1.4% of the total) in FY2024-25, Russia maintained a stable but modest annual inflow ranging from USD 34 million to USD 123 million, India and South Africa both recorded negligible or negative net annual contributions.²

21-83% 2021-2024 share of FDI inflow from BRICS out of total FDI

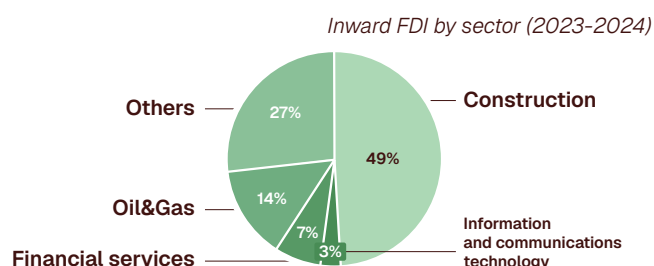
No Egyptian domestic regulatory body tracks outbound investment categorised by destination or jurisdiction. Moreover, the data provided by the IMF does not cover the UAE, the main partner economy. Consequently, reciprocal outbound figures to BRICS states cannot be statistically determined.

2. Which sectors receive the most FDI?

Regarding the sectoral concentration of FDI in Egypt, the hydrocarbon sector has historically absorbed the vast majority of foreign investment. However, its relative share has moderated as major infrastructure projects and non-oil commercial sectors have expanded in Egypt. CBE data reported by the OECD indicates that oil and gas accounted for 71.7% of gross FDI inflows in FY2013-2014, 58.4% in FY2014-2015 and 53.5% in FY2015-16. Manufacturing, construction, real estate, financial services, and tourism each represented minor percentages during that period.³

In recent years, FDI inflows have concentrated in construction, energy (including renewable energy and green hydrogen), manufacturing, and financial services. According to OECD figures for 2023-2024, construction represented approximately 49% of total FDI inflows, followed by oil and gas (14%), financial

services (7%), and information and communications technology (3%). All data provided by the Egyptian GAFI point towards the main sectors of focus for FDI in Egypt being agriculture and land reclamation, communication and information technology, education, financial and insurance services, food processing, health care, mining, oil and gas, pharmaceuticals and medical industries, real estate and construction, textile production, and tourism.



3. Which sectors are restricted for foreign investors?

Under Investment Law No. 72 of 2017, Egypt generally follows a liberal investment framework. Foreign nationals and foreign-owned entities may establish, own and operate companies on substantially equal terms with Egyptian investors across most sectors. A local joint venture partner is not generally required, and wholly foreign-owned companies are permitted in most commercial, industrial and service activities. The investment framework also protects investors against discrimination and confirms their right to transfer profits and capital, subject to generally applicable laws and banking procedures.

Sectoral restrictions are now relatively limited. Import activities, which were previously reserved to Egyptian nationals or Egyptian-majority companies, have been liberalised by amendments to Law No. 121 of 1982, including Law No. 7 of 2017 and Law No. 173 of 2023. These reforms removed the former minimum 51% Egyptian ownership requirement for several company forms, provided that registration, capital, experience and other statutory and regulatory conditions are satisfied.

The main remaining restrictions are geographical rather than sectoral, especially in the Sinai Peninsula

Law No. 14 of 2012 continues to limit foreign ownership of real property in Sinai. Foreign investors and dual nationals may generally rely instead on long-term usufruct rights, usually for 30 to 50 years and capped at 75 years, or invest through Egyptian joint-stock companies with at least 55% Egyptian ownership, subject to prior governmental, defence and security clearances. Presidential Decree No. 128 of 2022 eased certain limits for companies operating in designated South Sinai tourism zones, including Sharm El-Sheikh and Dahab. However, property transactions in these areas remain closely regulated and may require approvals related to national security, location and project purpose. Accordingly, Egypt does not impose

¹ Egypt Is Paving the Way. GAFI. URL: <https://gafi.gov.eg/en>.

² Central Bank of Egypt. Net Foreign Direct Investment. URL: <https://www.cbe.org.eg/en/economic-research/time-series/downloadlist?category=623F34508AE148C1969795A8F78FDA49>.

³ OECD. OECD Review of Foreign Direct Investment Statistics: Egypt (2020). URL: www.oecd.org/investment/OECD-Review-of-Foreign-Direct-Investment-Statistics-Egypt.pdf.

broad foreign-ownership restrictions across the economy, but investors should review sector-specific licensing rules and landholding limits before structuring an acquisition or change of control.

4. What are the top three risks for foreign investors?

Egypt remains one of the largest recipients of FDI in Africa and the Middle East. However, three top practical risks include issues relating to:

- 1 foreign exchange liquidity and profit repatriation; Investment Law No. 72 of 2017 guarantees the right to repatriate profits and capital freely, however periodic macroeconomic adjustments have occasionally created administrative or operational delays in accessing foreign currency at commercial financial institutions. This issue was due to a temporary dip in the Egyptian Net International Reserves (NIR) in 2022-2023,⁴ which has largely been resolved, with NIR almost doubling to an estimated \$56.29 billion in 2026.⁵
- 2 regulatory clearance; and
- 3 vetting procedures.

Foreign investors from certain foreign jurisdictions may experience longer timelines during incorporation, corporate restructuring, or share transfers. This is due to administrative, KYC, and security clearance reviews conducted by GAFI and competent authorities.⁶

Egyptian authorities and legislature have proven sensitive to these issues and have implemented a number of measures to streamline clearance, one example of which is the Golden Licence – a fast-track authorisation system for strategic economic projects available for local as well as foreign investors.

5. What key measures have been adopted to attract FDI?

The principal statutory and regulatory measure taken in this context has been the adoption of Investment Law No. 72 of 2017 and its Executive Regulations. The statute introduces comprehensive investor guarantees, expands fiscal incentives,⁷ establishes the Investor Service Center (ISC) through GAFI, and introduces streamlined licensing mechanisms. Complementary measures include Industrial Permits Acts, administrative digitalisation, and Prime Minister Decree No. 2307 of 2022 establishing the Golden Licence. As of June 2026, 54 Golden Licences had been issued with an expected increase in number and frequency of issuance.⁸

In addition, the 2022 State Ownership Policy Document articulates a clear directive to reduce state participation in selected sectors, encouraging private capital deployment through Public-Private Partnerships, privatisation programmes, and direct foreign investment in renewable energy, logistics and digital infrastructure. On 17 June 2026, the Draft for the 2026 State Ownership Policy Document was made public, with a final version expected to be published by 30 September 2026. The draft reaffirms the importance given to the private sector's role in the Egyptian economy, emphasising, "the private

sector's role as a key partner and participant in the economy's development".¹⁰ According to the Minister of Planning, Economic Development and International Cooperation, Dr. Rania Al-Mashat, by 2030, 70% of total investment will come from the private sector rather than public funds.¹¹

By 2030, 70% of total investment is expected to come from the private sector rather than public funds

Official state policy demonstrates no statutory or administrative preference for domestic investors over foreign entities. Rather, state initiatives aim to integrate domestic small and medium enterprises into global supply chains established by incoming FDI.¹²

6. Is there a "one-stop shop" for foreign investors?

GAFI is Egypt's principal investment promotion agency and the main statutory gateway for foreign investors. It functions as a "one-stop shop" by guiding investors through market entry, company incorporation, licensing requirements, investment incentives and post-establishment support. In practice, GAFI does not replace every sector regulator, but it centralises the investment process and coordinates with the public authorities whose approvals may be required.

National one-stop shop: Egyptian General Authority for Investment & Free Zones (GAFI)
Specific one-stop shop: Suez Canal Economic Zone (SCZONE) has a separate one-stop shop

GAFI's ISC brings together representatives from relevant governmental bodies to handle core establishment procedures, issue or coordinate statutory approvals, allocate incentives, and provide practical regulatory guidance. Its role is therefore both administrative and promotional: it assists investors in navigating Egyptian legislation, facilitates communication with ministries and authorities, publishes information on the investment environment, and supports implementation of Egypt's FDI strategy. For specialised sectors, such as financial services, energy, telecommunications or regulated infrastructure, investors may still need approvals from the competent technical regulator. However, GAFI remains the central liaison point and aftercare body, helping reduce fragmentation and administrative delay.

A parallel one-stop shop model operates in the Suez Canal Economic Zone (SCZONE), established under Law No. 83 (2002), as amended by Law No. 27 (2015). The SCZONE authority has dedicated powers within the Zone and provides investors with services including company registration, licensing, work permits, customs and tax guidance, and support in resolving administrative or commercial issues. This is particularly important given the Suez Canal's role in logistics, manufacturing, maritime services and international trade. Accordingly, Egypt offers both a national investment gateway through GAFI and a zone-specific facilitation mechanism through SCZONE. In practice, these bodies make investment procedures more accessible, but investors should still anticipate sector-specific approvals and, where relevant, security or land-related clearances.

⁴ Central Bank of Egypt. International Reserves (noting that the reserves had dipped to USD 34 billion in 2022). URL: <https://www.cbe.org.eg/en/markets/international-reserves>.

⁵ Central Bank of Egypt. Net International Reserves reached USD 56,293.9 mln at the end of July 2026 (Provisional). URL: <https://www.cbe.org.eg/en/news-publications/news/2026/08/05/07/21/net-international-reserves-at-the-end-of-july-2026>.

⁶ OECD. OECD Economic Surveys: Egypt (2024). OECD Publishing, Paris, pp. 90-91.

⁷ Investment Law No. 72 (2017), Articles 4-8.

⁸ Investment Law No. 72 (2017), Articles 10-13.

⁹ Invest in Egypt. Speech of Dr. Iman Mansour, GAFI Deputy CEO, during the "Golden Triangle" Conference (10 June 2026). URL: <https://www.investinegypt.gov.eg/English/NewsAndEvents/News/Pages/GAFI-Participates-in-the-Golden-Triangle-Conference.aspx>.

¹⁰ Ahram Online. Abdelhamid N. Egypt unveils [sic] 2nd State ownership Policy document, sets Sept. deadline for final version (18 June 2026). URL: <https://english.ahram.org.eg/UIL/Front/Inner.aspx?NewsContentID=571134>.

¹¹ Ministry of Planning and Economic Development. H.E. Dr. Rania Al-Mashat, Minister of Planning, Economic Development and International Cooperation, in Expanded Dialogues with Regional Media during WEF Davos Forum (27 January 2026). URL: <https://mped.gov.eg/singlenews?id=6943&type=next&lang=en>.

¹² For a comprehensive study of the method of said integration, its advantages and limitations, see OECD. FDI Qualities Review of Egypt: Connecting Foreign and Domestic Firms for Productivity and Better Jobs (2026), OECD Publishing, Paris. URL: https://www.oecd.org/en/publications/fdi-qualities-review-of-egypt_04ed341a-en.html.

7. What are the current trends in BIT drafting?

Observable Egyptian regulatory trends suggest that since 2022 the country is prioritising a balance between legal certainty and the preservation of its regulatory sovereignty.

This shift can, once again, be studied through the lens of the 2022 Model BIT. According to the OECD survey, this substantive shift is also accompanied by a policy shift, as Egypt appears to now prioritise consistency in its investment treaty practice, rather than widening its network.

8. Which government bodies negotiate and draft BITs?

The negotiation and drafting of BITs are led by the Ministry of Investment and Foreign Trade, in close coordination with the GAFI and the relevant ministries, such as the Ministry of Foreign Affairs or the Ministry of Justice.

Pursuant to Article 151 of the Egyptian Constitution, international treaties negotiated by the executive branch are signed by the President of the Republic after legislative approval, barring exceptions related to treaties “related to making peace and alliance, and those related to the rights of sovereignty”. Naturally, most BITs would fall within the general rule, meaning that in addition to GAFI and the relevant ministries, the President of the Republic plays a role in the process of adopting a new BIT.

Regarding business associations, domestic or international, they do not hold a statutory role in treaty negotiations. Nevertheless, GAFI and the Ministry of Investment and Foreign Trade have periodically engaged in consultative dialogues with local chambers of commerce, actors in the private sector, and relevant stakeholders during public policy reviews. This reflects the declared broader strategy adopted by the State of aligning its investment treaties with its national investment and sustainable development objectives. However, this does not equate to a truly formal role for the private sector in treaty negotiation or approval.

9. Which government bodies handle investment disputes?

The Ministry of Investment and Foreign Trade leads BIT negotiations, and it also plays a role in the administrative management of the State dispute resolution efforts, though the State Lawsuit Authority retains its function as representative of the State in these disputes.¹³

State Lawsuit Authority is in charge of investment disputes
Domestic Investment Law establishes numerous non-judicial domestic avenues for dispute prevention

One strong advantage within the Egyptian investment landscape is that Investment Law No. 72 (2017) provides for numerous non-judicial domestic avenues, in order to prevent dispute escalation. The law provides for a specialised administrative mechanism, which aims to streamline dispute resolution. In principle, the Ministerial Committee on Investment Contract Disputes is specially tasked with resolving investor-state disputes. It works alongside the Grievance Committee(s) which reviews challenges related to the implementation of Investment Law No. 72 (2017), and under the review of the Committee for the Resolution of Investment Disputes.¹⁴ An explanation of this process can be found in the answer to question 12.

It must, however, be noted that Investment Law No. 72 (2017) recognises investors’ right to choose their preferred method of dispute resolution,¹⁵ including

recourse to judicial institutions or to arbitration pursuant to the provisions of the Egyptian Arbitration Law No. 27 (1994).

Should all judicial and extrajudicial domestic avenues prove insufficient for the settlement of an investor-state dispute, then the State Lawsuit Authority reclaims its role as representative of the State in the ensuing international proceedings.

10. How are investment awards enforced by the state?

Egypt ratified the Washington Convention in 1971. According to empirical analyses,¹⁶ Egypt maintains a strong record of voluntary compliance with final arbitral awards relative to other frequently respondent states. We specify here that the award must be final and not subject to pending annulment proceedings, as is the case, at the time of drafting this article for the Unión Fenosa Gas case, which became the subject of extensive ICSID annulment proceedings before the proceedings were finally discontinued.¹⁷

Egypt has voluntarily satisfied 4 out of 5 adverse awards rendered against it prior to 2018

In addition to this tendency to voluntarily satisfy awards, Egypt routinely engages in post-filing negotiations to achieve amicable settlements prior to an award being rendered. Examples of such practice include *Al Jazeera Media Network v. Egypt*¹⁸ and *Gesenu S.p.A v. Egypt*.¹⁹

11. Do pre-arbitration negotiations lead to resolution of disputes?

As stated in previous answers, Egypt has a streamlined pre-arbitration dispute resolution mechanism, as part of its general policy to further encourage international investment. This allows for a number of pre-arbitration and mid-arbitration dispute resolutions. Key drivers for facilitating this amicable resolution include the institutional mechanisms such as the Ministerial Committee on Investment Contract Disputes which is authorised to execute binding settlement agreements on behalf of state entities. Also, the adoption of mandatory negotiation windows within BITs enables state representatives to evaluate exposure and negotiate terms before a dispute escalates to international arbitral proceedings.

Moreover, the State has a practice of engaging experienced arbitration counsel, knowledgeable in domestic administrative law and international arbitral practice. Finally, the applicable domestic regulatory framework elevates settlement authority to inter-ministerial committees and executive officials empowered to bind state organs, which allows for a more definitive and efficient handling of the dispute once it comes to the State’s attention.

JURISDICTION-SPECIFIC QUESTIONS

12. What measures has Egypt adopted to prevent investor-state disputes?

Egypt has implemented several proactive dispute-prevention mechanisms within its legal framework, as explained in the answer to question 9. The most effective of these are the GAFI Grievances Committees established by Article 83 of Investment Law No. 72 (2017). These committees function as an internal administrative review mechanism to resolve investor grievances prior to any formal escalation of the dispute.

Another such mechanism is the establishment of the Ministerial Dispute Resolution Committees, empowered to review agency

¹³ Constitution of Egypt, Article 196; Law No. 75 (1963), as amended by Law No. 10 (1986), Article 1.

¹⁴ Investment Law No. 72 (2017), Articles 82–94.

¹⁵ Arab Republic of Egypt, Court of Cassation, Civil Circuit, Commercial and Economic Circuit, Appeal No. 5317 of Judicial Year 91, Judgment of 28 December 2021 (unpublished).

¹⁶ Gaillard E. & Penushliski I.M. State Compliance with Investment Awards. ICSID Review – Foreign Investment Law Journal, vol. 35, Issue 3 (2020), pp. 540–594; Farag S.A. International Arbitration in Investment Disputes – Case study of Egypt. Review of Economics and Political Science, vol. 8, Issue 6 (2020), pp. 427–447.

¹⁷ Unión Fenosa Gas, SA v. Arab Republic of Egypt, ICSID Case No. ARB/14/4.

¹⁸ Al Jazeera Media Network v. Arab Republic of Egypt, ICSID Case No. ARB/16/1.

¹⁹ Gesenu SpA v. Arab Republic of Egypt, ICSID Case No. ARB/20/45.

decisions, conclude binding pre-arbitration settlements, and promote mediation in partnership with regional institutions such as the CRCICA.

These efforts have resulted in Egypt being considered one of the few states that have effectively been involved “in a number of successful settlement discussions”,²⁰ as previously stated in question 10.

13. What additional aspects of Egypt’s Model BIT should be noted, beyond those mentioned in Section III. B of the Report?

Egypt’s international investment agreement practice underwent significant modernisation with the introduction of its 2022 Model BIT. Earlier treaties were modelled after classic 1980s and 1990s European investment agreement templates.²¹

However, as can be seen globally, the 2022 Model BIT aims to reach a more balanced approach between protecting State and investor interests. It provides more precise legal definitions, such as incorporating explicit reservations regarding the State’s right to regulate in the public interest and providing for procedural limits on ISDS. The 2022 Model BIT also introduces provisions that mirror current international legal practice, specifically mentioning sustainable development, corporate social responsibility, transparency and authoritative treaty interpretation.

The 2022 Model BIT also favours tightening procedural and substantive investor protections, restricting the expansive interpretation of FET provisions, excluding dispute resolution mechanisms from the scope of MFN clauses, and safeguarding state regulatory discretion across public health, environmental, and fiscal domains in light of the emphasis put on sustainable development and responsible investment.

This evolution reflects two strong tendencies within the Egyptian regulatory environment.

- 1. Egypt intends to continue attracting foreign investment**
- 2. Egypt firmly supports the international trend to reduce treaty ambiguity and limit unjustified exposure to investor-state arbitration**

²⁰ Kessedjian C. et al. Mediation in Future Investor-State Dispute Settlement. *Journal of International Dispute Settlement*, vol. 14, Issue 2 (2023), p. 204.

²¹ For instance, Egypt-Libya BIT.



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GENERAL QUESTIONS

1. What are the FDI statistics?

The Ethiopian Investment Commission (EIC) announced that Ethiopia's FDI inflow for the fiscal year 2025/2026 is USD 4.32 billion, which makes Ethiopia one of the top investment destinations in Africa.¹ Between 2010 and 2021, Ethiopia attracted USD 27.76 billion in FDI with the peak annual inflow in 2021, USD 4.26 billion.

USD 27.76 billion FDI attracted in 2010-2021

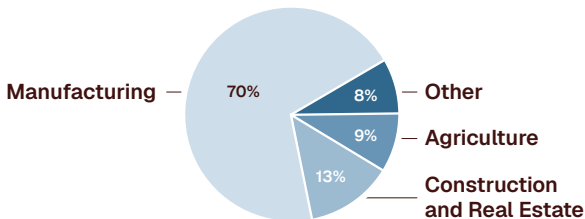
There is no segmented data focused on BRICS investment inflow or outflow. However, China remains the largest source of FDI, and between 2018 and 2022, China was the source of over 60% of new FDI projects permitted in Ethiopia.² The Netherlands ranks second with the FDI amount from the jurisdiction being about half that from China. According to International Monetary Fund statistics, BRICS investors from India and South Africa are also present. With limited data available, we can make no observations on other BRICS jurisdictions such as the UAE, Brazil or Russia.

As it relates to investment outflows, Ethiopia restricts capital outflows to protect its foreign exchange reserves, for two main reasons. First, the National Bank of Ethiopia (NBE) enforces strict regulatory limits on outbound investment flows specifically to preserve the state's foreign exchange reserves. Second, the NBE prioritizes the limited foreign currency which it allocates toward essentials like servicing sovereign external debt and importing critical industrial inputs and fuel. That said, the framework has loosened somewhat: under Article 4 of Foreign Exchange Directive 04/2026, Ethiopian entities can now pursue outward investment on a case-by-case basis with NBE approval — a shift from the prior regime, which barred outward investment except in narrow, specifically defined circumstances.

2. Which sectors receive the most FDI?

The primary sector attracting FDI in 1992-2021 is manufacturing with over 70% of the FDI capital flowing into the sector. The second most attractive sector is construction, particularly real estate, machinery and equipment rental (13%). The third sector is agriculture (9%).³

Inward FDI by sector (1992-2021)



In 2020, the sectors that garnered the biggest shares of investment were manufacturing, agriculture, and hospitality, which is not that different from the historical trend. In the coming

years, however, this trend may change for multiple reasons. Firstly, the liberalization of the telecommunication sector, which was previously under state monopoly, and the market entry of Safaricom, a major East African telecommunications company, which is expected to spend close to USD 8 billion over the next 10 years. Secondly, the liberalization of the financial sector in 2024, allowing for foreign banks and investors to set up offices or branches in Ethiopia and/or acquire shares in local banks. Lastly, the renewable energy sector is expected to attract more foreign investment with the inauguration of the Grand Ethiopian Renaissance Dam (GERD) and large investments such as the Aysha Wind Project, which is estimated at USD 600 million.

3. Which sectors are restricted for foreign investors?

Although Ethiopia has recently liberalized its economy to foreign investors, certain restrictions remain. These restrictions are reflected in both the Ethiopian Investment Proclamation No. 1180/2020 and the Ethiopian Investment Regulation 474/2020. Specifically, Ethiopia has partially and completely restricted certain areas in the financial, trade, and hospitality sectors. Although hospitality was partially restricted to foreign investors, it still attracted a significant share of FDI because it remained one of the few service sectors open to foreign participation, while many other service industries were either restricted or closed.

Foreign investors seeking opportunities in Ethiopia's service sector concentrated their investments in hospitality sector

Fully restricted areas include primary security and defense services, transmission of electrical energy through the integrated national grid system, domestic broadcast media, primary and middle level health services, trade of petroleum and fertilizers and export trade of raw coffee, khat, oil seeds, pulses, minerals, hides and skins, products of natural forest, chicken and livestock.

This is only an illustrative list and does not reflect the complete set of sectors reserved for domestic investors.

Partially restricted areas include sectors that require foreign investors to partner with domestic investors or the Government.

Sectors reserved for investment with domestic investors include banking and financial services: equity ownership by a foreign investor is at 40%, large-scale retail; import business of general goods (except strategic imports such as petrol and fertilizers that are restricted for foreign investors), telecommunications.

Sectors reserved for joint venture with the Government include production of weapons, import and export of electrical energy and international air transport services.

4. What are the top three risks for foreign investors?

- 1 Repatriation of profits. Although Ethiopia's monetary structure has changed, a floating exchange rate still constitutes a risk of a shortage of foreign exchange. The Investment Proclamation No. 1180/2020 allows for repatriation of local profits; however, the illiquidity may still lead to a backlog in converting local profits into foreign currency for repatriation purposes.

¹ Ethiopian News Agency, Ethiopia Attracts Record 4.32 Billion USD in FDI in 2025/26 Fiscal Year (9 July 2026). URL: https://www.ena.et/web/eng/w/eng_9189864.

² Ashline S. Assessment of foreign direct investment inflows into Ethiopia in light of peace and security challenges from 2018 to 2022. Cogent Economics & Finance, Vol. 12. Issue 1 (1 March 2024). URL: <https://www.tandfonline.com/doi/full/10.1080/23322039.2024.2308670>.

³ Ibid.

- 2 Local currency fluctuation. While the Ethiopian Birr exchange rate against foreign currency has stabilized post-currency flotation, it remains vulnerable to macroeconomic pressures.
- 3 Logistics disruption. Due to its landlocked geography, Ethiopia brings in 90-95% of its import and export trade through a single route via the port of Djibouti. While integrated, having all imports going through one route could cause real delays and backlogs.

To help protect foreign investors from these risks, the NBE has issued a series of directives covering foreign exchange and foreign investment. Among other things, these set out clear rules for how profit repatriation and similar requests from foreign investors are prioritized and handled.

5. What key measures have been adopted to attract FDI?

Over the past ten years, Ethiopia has rolled out legal reforms designed to open the market to foreign and domestic investors and pull the country further into the global economy. The most significant are outlined below.

The Investment Proclamation No. 1180/2020 was a turning point. It opened sectors previously reserved for domestic investors and lowered minimum capital thresholds for foreign investors:

Minimum capital thresholds for foreign investors:
USD 200,000 for a wholly foreign-owned project,
USD 150,000 for a joint venture with a domestic partner,
USD 100,000 solo and USD 50,000 in partnership —
 for entering architectural or engineering work, technical consultancy, technical testing and analysis, or publishing

The Investment Regulation No. 474/2020 built on this by spelling out, sector by sector, where foreign investors could operate freely, where they needed a government partner, and where they needed a private domestic one. This ended the long-standing domestic monopoly over import and export trade, opening that market to foreign participation.

More recently, the Banking Business Proclamation No. 1360/2025 allowed foreign banks to enter Ethiopia's financial sector, setting conditions and ownership caps while permitting qualifying foreign banks to establish subsidiaries, representative offices, and branches, or take shareholding in local banks. Alongside this, the establishment of Ethiopian Securities Exchange and Ethiopian Capital Market Authority marks another deliberate step toward modernizing the economy.

Taken together, these reforms show the Government is serious about growing foreign investment. That said, a tendency to shield domestic investors persists (see above, certain sectors are restricted for foreign investors; there are minimum capital requirements in some sectors as well). In practice, this reflects a deliberate balancing act: Ethiopia is opening its doors to foreign capital while still carving out space to protect its own investors and businesses.

6. Is there a “one-stop shop” for foreign investors?

The EIC, established by the Investment Proclamation No. 1180/2020, is a highly centralized agency serving as a one-stop shop for foreign investors consolidating various services and integrating other services and representatives for major agencies like the ministry of revenues and immigration service.

Ethiopian Investment Commission is a one-stop shop for foreign investors

The EIC performs various services including:

- Licensing and permits: issuance, renewal, amendment and cancellation of business and investment licences and permits;
- Acquisition of commercial certificate;

- Issuance of Tax Identification number;
- Registration of technological transfer agreement;
- Facilitating acquisition of land;
- Verification and authorization of duty-free importation;
- Processing of tax holidays and exemptions for priority sectors and
- Provision of data on minimum capital requirements, joint venture regulation, and restricted areas.

7. What are the current trends in BIT drafting?

Most of Ethiopia's BITs are with European nations and relate to the old generation, encompassing broad and unrestrictive provisions for fair and equitable treatment (FET), most-favoured nations (MFN) and national treatment (NT).

The last year in which Ethiopia signed a bilateral investment treaty was 2018 – no BITs were signed for the past 8 years. The reason for this large gap is Ethiopia's reconsideration of its traditional treaties, similar to other nations that have amended their BITs such as India and South Africa.

Although it is difficult to ascertain upcoming changes, we can predict that Ethiopia is looking to make certain amendments addressing the issues by looking at international trends towards renewing BITs to balance the rights of investors and protect state's autonomy.

8. Which government bodies negotiate and draft BITs?

The EIC is the only investment agency that takes part in negotiating and drafting BITs in Ethiopia. Article 38(9) of the Investment Proclamation gives the EIC power to negotiate and sign bilateral investment promotion and protection treaties. This power is not unlimited, though the EIC must follow Proclamation No. 1024/2017, the applicable law on international treaty making. Under it, the EIC consults the Ministry of Foreign Affairs and other concerned organs, submits an explanatory note on the draft BIT's obligations and benefits, and secures approval from the Council of Ministers.

The EIC then submits the approved draft to the Ministry of Foreign Affairs, which sends it to the counterparty and prepares it for signature. Once signed, the EIC submits a copy along with supporting documents to the Council of Ministers, which, if it approves, forwards the treaty to the House of Peoples' Representatives for ratification.

Business associations do have one avenue for input: Article 10 of Proclamation No. 1024/2017 requires that the explanatory note submitted for ratification include stakeholder comments on the draft agreement, and such associations can be considered relevant stakeholders whose views may be sought before Council of Ministers' approval.

9. Which government bodies handle investment disputes?

The Ministry of Justice is responsible for investor-state disputes

This responsibility is stipulated in the former Federal Attorney General Establishment Proclamation No. 943/2016 and continues under Article 40(1) of the Definition of Powers and Duties of the Executive Organs Proclamation No. 1263/2021, which assigns to the Ministry the powers and duties previously exercised by the Federal Attorney General. Accordingly, the law stipulates that the Ministry of Justice is responsible for representing the Government in litigation in consultation with concerned bodies at international judicial or quasi-judicial bodies where the Ethiopian Government sues or is sued.

The law further provides that the Ministry is also responsible for representing the Government in conducting negotiations in consultation with other concerned bodies before these

international fora. Hence, the law provides that the Ministry of Justice may consult other bodies, but it remains the responsible government body in conducting pre-arbitration negotiations as well. This, therefore, means that the EIC, i.e. the government entity which negotiates BITs, may take part in consulting the Ministry of Justice in these proceedings.

10. How are investment awards enforced by the state?

In practice, investment arbitral awards in Ethiopia may be annulled or their enforcement stayed by domestic courts where the award has a sufficient connection to the country and there are sufficient grounds. In the Consta JV, Ethio-Djibouti Railway case, lawyers for Ethio-Djibouti Railway petitioned the Court of Cassation of the Federal Supreme Court to review a EUR 20 million arbitral award rendered in the Hague, arguing a fundamental error of law. Although the PCA administered the arbitration, the legal seat was Addis Ababa and Ethiopian law governed the underlying railway rehabilitation contract. The Court of Cassation admitted the claim and stayed execution of the award pending review.

In other instances, investment arbitration claims are discontinued before a final award is issued, as with Israeli fertilizer company Israel Chemicals Ltd. (ICL). In 2017, ICL filed a claim against the Ethiopian Government before the PCA, alleging Ethiopia had impaired its investment through a disputed tax claim and seeking USD 198 million. The claim was brought under the UNCITRAL Arbitration Rules with the PCA administering, but ICL later dropped it.

Overall, Ethiopia appears to have successfully defended most investment-related arbitration claims, and no full awards have generally been rendered against it, though some cases have produced partial awards. In the LCIA arbitration brought by Turkish company Yapi Merkezi İnşaat against the Ethiopian Railway Corporation over the Awash-Kombolcha-Woldia-Hara Gebeya railway project, the tribunal dismissed most of the USD 979.9 million claim, leaving certain compensation claims for an independent expert's assessment. Similarly, in the PCA case brought by Akgün İnşaat over the Ethio-Turkish International Industrial Village project, the tribunal reportedly rejected most of the company's multi-billion-dollar demands, limiting Ethiopia's liability to sunk costs for design, studies, and preliminary preparations.

There are no records showing these partial awards were enforced through Ethiopian courts; enforcement may have occurred voluntarily or through proceedings abroad where the state holds assets.

11. Do pre-arbitration negotiations lead to resolution of disputes?

Information on whether pre-arbitration negotiations, court or administrative proceedings have led to the resolution of disputes is highly confidential and not publicly available. Accordingly, we cannot provide an answer to this question.

JURISDICTION-SPECIFIC QUESTIONS

12. How effective are Ethiopia's industrial parks in attracting and retaining foreign investors, particularly in manufacturing sectors? What are the FDI statistics?

Ethiopia's industrial parks are designated manufacturing zones offering dedicated infrastructure, simplified administrative procedures, and preferential tax treatment. Ethiopian investment laws provide a range of incentives for park developers and the enterprises operating within them, including fiscal incentives unavailable to investors outside these zones.

Industrial park developers benefit from 10 to 15 years of income tax exemption depending on location - 10 years in Addis Ababa or the Special Zones of Oromia surrounding it, and 15 years elsewhere

Enterprises within the parks benefit from up to 10 years of income tax exemption, depending on sector and export performance.

Ethiopia's first industrial park, the Eastern Industrial Park, was developed by a private investor in 2007 on 233 hectares. Per a February 2026 diagnostic study by the Ethiopian Policy Studies Institute, there are now 24 industrial parks nationwide, public and private.⁴ The Ethiopian Investment Board has designated 10 public parks as special economic zones, one free trade zone, and two previously established parks – together covering 4,635 hectares, originally built for textiles and garments but later expanded to chemicals, construction, and other sectors. Four integrated agro-processing industrial parks also operate around the country.

A 2022 World Bank report found that Ethiopia's industrial park structure, legal framework, and regulations create a highly competitive investment marketplace with efficient procedures and investor safeguards – basic infrastructure, aftercare services, and easier land access – while liberalizing the market, boosting trade, and enabling a one-stop system.⁵

One gauge of the parks' effectiveness in attracting and retaining foreign investment is how long companies stay domiciled there. The same 2026 diagnostic study found firms in industrial parks are, on average, 6.4 years old, with the oldest dating to the park's founding.⁶ Textiles remain the leading manufacturing export, accounting for about 48% of exports over the six years to fiscal year 2024–2025, pointing to strong attraction and retention in manufacturing. Hawassa and Bole Lemi were the top-performing parks and major contributors to manufacturing exports between 2021 and 2024, success largely attributed to favourable legislation, improved infrastructure, and competitive industries.

13. Do industrial parks provide meaningful protection against regulatory and operational risks compared to investing outside such zones?

Investors in industrial parks are eligible for many incentives which provide operational ease and risk mitigation such as:

- Ownership rights of Immovable Property where a foreign investor can own fixed property necessary for its investment;
- Protection Against Expropriation in which there is no nationalization unless enough compensation is provided in accordance with the law and upon payment of adequate compensation based on the current market value;
- Guarantees For the Remittance of Funds in which a foreign investor can freely repatriate in convertible foreign currency profits and dividends, principal and interest payments on external loans, proceeds from the sale or liquidation of an enterprise as well as compensation paid to an investor.
- One-Stop Shop Services provided at industrial parks including renewal of all licences issued at the EIC; visa and work permit renewal, duty-free grant for capital goods, construction materials, spare parts, accessories and different types of vehicles; customs clearance; and banking services;

⁴ Mekonnen A. et al. Development of Industrial Parks (Special Economic Zones) in Ethiopia (2026). URL: <https://psi.org.et/index.php/research-reports-2/file/213-development-of-industrial-parks-special-economic-zones-in-ethiopia-performance-and-policy-implications?tmpl=component>.

⁵ World Bank. On the Path to Industrialization: A Review of Industrial Parks in Ethiopia (2022). URL: <https://documents1.worldbank.org/curated/en/09935001132228872/pdf/P1741950a12ef10560af5008750d1393b7c.pdf>.

⁶ Mekonnen A. et al. Development of Industrial Parks (Special Economic Zones) in Ethiopia (2026).

- Customs Facilitation such as transport of imported raw materials straight from customs post to factory through bonded warehouse or voucher scheme;
- Expedited Visa Procedures such as expedited procedure of securing entry, work permit and certificate of residency for expatriate personnel working in industrial parks and their dependents. Better visa terms for investors in industrial parks include multiple-entry visas of up to five years.

14. Do you see any particular reason for a big share of BITs remaining not ratified?

Ethiopia signed 35 BITs, of which 22 are in force; the rest are terminated or signed but not yet in force—including those with Brazil, Qatar, South Africa, BLEU, Morocco, the UK, Equatorial Guinea, Spain, Nigeria, and Russia.

As explained above, the signing of BITs involves multiple steps which require approval from different government organs. Based on an interview from a legal drafting director at the Ministry of Justice in 2018, this treaty-making process

involves the problems of lack of professionals who can examine the conformity of BITs with our domestic laws which can be considered as a reason why BITs don't reach the final step of ratification.

Agreement establishing the African Continental Free Trade Area (AfCFTA) entered into force for 49 states
Investment Protocol requires termination of intra-member BITs

The other potential justification for the non-ratification of the BITs from other African countries in the future is the creation of the African Continental Free Trade Area (AfCFTA). The agreement establishing the AfCFTA has entered into force with 49 out of 54 member states having ratified it. The Investment Protocol, which was adopted in February 2023 but is yet to enter into force, requires Member States who have concluded BITs with other Member States to terminate them within 5 years from the entry into force of the protocol. The potential entry into force of the Investment Protocol could then be a deterrent to ratifying these BITs.



GENERAL QUESTIONS

1. What are the FDI statistics?

The Department for Promotion of Industry and Internal Trade (DPIIT) publishes periodic data on FDI inflow into India. The data relates to FDI equity inflow – i.e. investment coming into India in the form of equity capital investment in an Indian entity.¹

The break-up of the FDI equity inflow from BRICS member states from January 2000 to March 2026 is tabulated below:

FDI equity from BRICS states (January 2000 – March 2026)

State	Overall Rank	Equity FDI from 01.2000 till 03.2026 (in USD million)	% of India's total cumulative FDI equity inflow
 UAE	7	25,586.17	~3.24%
 Saudi Arabia	20	3,315.83	~0.42%
 China	23	2,512.60	~0.32%
 Russia	31	1,361.55	~0.17%
 Indonesia	37	669.14	~0.08%
 South Africa	38	646.38	~0.08%
 Brazil	65	58.21	~0.007%
 Egypt	89	11.50	~0.001%
 Iran	127	1.00	~0.0001%
 Ethiopia	166	0.005	~0.0000006%

A comparison of FDI inflows from BRICS and non-BRICS countries reveals several notable trends:

- The aggregate FDI equity inflow from BRICS member states to India has nominally increased in recent years, but this increase is entirely a function of UAE-driven flows and year-to-year volatility — not broad-based BRICS investment growth. UAE alone contributes USD 25,586.17 million — representing 74.98% of the entire BRICS bloc's inflow and ranking 7th globally. Other BRICS states together account for approximately 1.08% of total FDI equity inflow.
- The BRICS member states collectively account for approximately 4.32% of India's total cumulative FDI equity inflow from April 2000 to March 2026. By contrast, the top two non-BRICS countries – Singapore and Mauritius – account for nearly 49% of the same total.
- The decline of FDI from China, from an annual average of approximately USD 112 million in 2000-2022 and USD 42 million in 2023, to a near-negligible USD 0.06 million in Q1 2026 is attributable to India's foreign investment

screening regime under the Press Note 3 (2020) (PN3) — requiring government approval for FDI from countries sharing a land border with India — combined with broader Sino-Indian geopolitical tensions.

Of India's cumulative overseas (outward) foreign direct investment (OFDI) from 2000 to 2026,² capturing not only equity investments but also loans and guarantees extended, only the UAE and Russia feature among the top ten destination countries within the BRICS. The UAE ranks sixth (6% of total OFDI) while Russia ranks seventh (4% of total OFDI). The remaining BRICS member states attract an insignificant amount of India's OFDI.

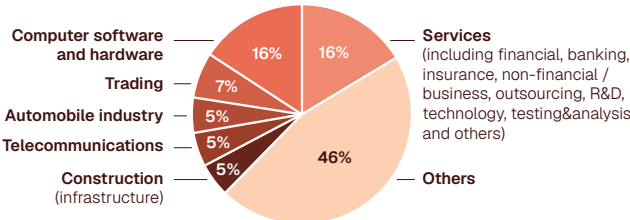
2. Which sectors receive the most FDI?

FDI has been concentrated in two sectors: (a) services, and (b) computer software & hardware, which account for roughly a third of the cumulative FDI equity inflow into India since 2000.

The standout development is the sharp rise of the computer software and hardware sector, which has now overtaken the services sector as the single largest sector for FY 2025-2026. After remaining largely flat for two consecutive years (2023-2024 and 2024-2025), inflows into this sector rose by approximately 79% year-on-year to USD 13.95 billion in 2025-2026 (24% of the total FDI equity inflow).

As per data released by the Indian Government, the sectors inviting the highest FDI equity inflow into India are:³

Inward FDI by sector (April 2000 to March 2026)



3. Which sectors are restricted for foreign investors?

India operates a negative-list FDI framework under which the majority of sectors are open to 100% FDI under the automatic route, but a defined set of sectors are either prohibited, subject to equity caps, restricted to the government approval route, or subject to sector-regulator conditions.

The governing instruments are the Consolidated FDI Policy Circular of 2020, the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (NDI Rules) notified by the Department of Economic Affairs, and sector-specific legislation and regulatory conditions.

Sectors where FDI is entirely prohibited are lottery business; gambling and betting, including casinos; chit funds; nidhi companies;⁴ trading in transferable development rights;

¹ FDI equity inflow means the amount of foreign direct investment that comes into India in the form of equity capital investment in an Indian entity — i.e., money invested by a non-resident to acquire shares or other equity instruments of an Indian company.

² Department of Economic Affairs, Monthly Fact Sheet for March 2026, Overseas Direct Investment. Data from April 2000 to March 2026. URL: https://dea.gov.in/files/overseas_direct_investment_documents/Draft%20Factsheet%20of%20March%202026.pdf

³ Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry. Quarterly Fact Sheet, Fact Sheet on Foreign Direct Investment. Inflow from April 2000 to March 2026. URL: <https://www.dpiit.gov.in/static/uploads/2026/06/41192ca92c1de34eb064800fbffa0379.pdf>

⁴ A Nidhi company is a type of non-banking financial institution formed to promote savings and lend money exclusively among its members.

real estate business⁵ or construction of farmhouses; manufacturing of cigars, cheroots, cigarillos and cigarettes using tobacco or tobacco substitutes; atomic energy and railway operations; and foreign technology collaborations in any form, including licensing of a franchise, trademark, brand name, management contract are also prohibited for lottery business and gambling and betting activities.

For permissible FDI, there are two routes. The 'automatic route' permits investment by a foreign resident without the prior approval of the Government. In contrast, under the 'government route', investment by a foreign resident requires prior Governmental approval. Foreign investment in certain sectors, including defence, broadcasting and pharmaceuticals, is subject to the sectoral cap and conditionalities specified against such sector in Schedule I of the NDI Rules.⁶ In sectors or activities not listed in the sector-wise table or not prohibited, foreign investment is permitted up to 100% on the automatic route, subject to applicable laws or regulations, security and other conditionalities.

4. What are the top three risks for foreign investors?

The top three practical risks are:

- 1 There are restrictions on entities incorporated in the countries which share a land border with India, and amongst the BRICS members they impact China.

Under PN3, entities from countries sharing a land border with India, or whose beneficial owners are based in or citizens of such countries, may invest only through the Government route

On 17 April 2020, the Indian Government introduced PN3⁷ under its foreign exchange regulations. Any transfer of ownership of existing and future FDI in an Indian entity — directly or indirectly — resulting in the beneficial ownership falling within the restricted category will also require prior Government approval. Further clarity was provided in Press Note 2 (2026) (PN2)⁸, under which the concept of beneficial owner was aligned with the framework under the Prevention of Money Laundering Act, 2002.

- 2 Foreign investors must navigate mandatory pricing disciplines that govern both the entry and exit of investments in Indian companies.

Under the NDI Rules, the pricing framework operates as a two-sided protection:

- Price Floor (on acquisition): Where a non-resident investor acquires shares of an Indian company from an Indian resident, the consideration payable cannot be less than the fair market value of such securities. This protects against undervalued transfers out of India.
- Price Ceiling (on exit): Where a non-resident investor sells securities of an Indian company to an Indian resident, the consideration receivable cannot exceed the fair market value of such securities. This prevents the repatriation of disproportionate value abroad.

- 3 Taxation risk.

Foreign investors should carefully evaluate the impact of Indian tax laws, especially where investments are routed through offshore holding jurisdictions.

5. What key measures have been adopted to attract FDI?

Significant regulatory measures targeted at promoting foreign and domestic investment over the last decade include:

- To promote FDI, since 2015, the Government has progressively increased sectoral caps and expanded the scope of the automatic route across several sectors, more recently in defence, insurance and telecom. Most sectors — except for certain strategically important sectors such as satellites, print media, broadcasting — are open for 100% FDI under the automatic route.⁹
- The Reserve Bank of India has, with effect from 1 July 2026, issued a framework for financing of acquisitions of shares by banks in India. A key outcome of these amendments is the introduction of a structured and permissive framework for acquisition finance by banks operating in India, marking a clear departure from the Reserve Bank of India's long-standing restrictions on bank funding of corporate acquisitions. Under this regime, acquisition financing may be availed of by Indian companies to acquire control in domestic or foreign non-financial companies (subject to FEMA and downstream investment restrictions).
- Gujarat International Finance Tec-City (GIFT City), near Gandhinagar, is India's first and only International Financial Services Centre (IFSC). It provides incentives, such as tax holidays, liberalised foreign exchange operations and simplified compliance.
- The Government has decriminalised 183 provisions across 42 national acts to enhance the ease of living and ease of doing business in India.¹⁰
- In 2020, India notified the UAE as a reciprocating territory under Section 44A of the Code of Civil Procedure, 1908, allowing for decrees of notified UAE courts to be executed directly in India.¹¹ This, however, does not extend to arbitral awards rendered in the UAE.
- Adoption of the Insolvency and Bankruptcy Code, 2016 for the streamlined resolution of distressed assets.

6. Is there a "one-stop shop" for foreign investors?

Several national and regional (state)-level institutions facilitate foreign investment and simplify the approvals process.

Foreign Investment Facilitation Portal serves as online one-stop shop for facilitation Government approvals
Invest India is a national investment promotion and facilitation agency
Regional one-stop shops

- DPIIT within the Ministry of Commerce and Industry is the principal department responsible for India's FDI policy framework. It also administers the Foreign Investment Facilitation Portal (FIFP), which is the Government's online single-point interface for facilitating FDI proposals that require government approval.
- Invest India is a national investment promotion and facilitation agency under DPIIT. It acts as a first point of reference for global and domestic investors and provides facilitation support across the investment lifecycle. Invest India also supports the National Single Window System (NSWS) — an online platform through which investors can identify, apply for and track approvals from

⁵ The term does not include development of townships, construction of residential or commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014.

⁶ Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, Schedule-I. URL: https://rbi.org.in/scripts/bs_viewcontent.aspx?ld=5083#S1.

⁷ Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry. Press Note 3 (2020 Series). URL: <https://www.dpiit.gov.in/static/uploads/2025/07/c7586a2dee61bf88f73512a46d8a9ab1.pdf>.

⁸ Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry. Press Note 2 (2026 Series). URL: <https://www.dpiit.gov.in/static/uploads/2026/03/b9da5830b052c2f2d788593e97d07c63.pdf>.

⁹ For further information on the sector: <https://www.makeinindia.com/policy/foreign-direct-investment>.

¹⁰ Press Information Bureau, Ministry of Commerce & Industry. Government initiatives to improve Ease of Doing Business (11 February 2025). URL: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2101785®=48&lang=2>.

¹¹ Ministry of Law and Justice. Notification (17 January 2020). URL: <https://egazette.gov.in/WriteReadData/2020/215535.pdf>.

multiple national Ministries / Departments and regional (state) Governments. Unlike FIFP, which is focused on processing FDI applications requiring Government approval, NSW provides broader investor facilitation across multiple specific approvals.

- Several regions (states) have also established their own investment promotion agencies or single-window facilitation portals to assist investors with regional (state)-specific approvals, land allocation, incentives and local regulatory requirements. These include Guidance Tamil Nadu, Karnataka Udyog Mitra, Industrial Extension Bureau (iNDEXTb) - Gujarat, Invest Punjab and Invest UP.

7. What are the current trends in BIT drafting?

India's approach to drafting BITs is in a transitional phase, with BIT negotiations calibrated to the trade partner. According to media reports, India is considering a departure from the Model BIT 2016 approach for "strategically important countries" with which India is seeking closer economic integration.¹²

Recent treaties offer the best available signal of India's possible direction:

- Most notable is India's insistence on decoupling foreign investment protections from foreign trade, restricting FTAs to the legalisation of international trade relations and issues related to trade. For instance, the UK-India Comprehensive Economic and Trade Agreement (CETA), which entered into force on 15 July 2026, does not contain a comprehensive investment protection chapter. Instead, the UK and India have agreed to continue discussions for a separate BIT to replace the 1994 UK-India BIT that India terminated in 2017.
- India also remains keen on preserving regulatory discretion. This is clear from the India-UAE BIT, with no fair and equitable treatment and most-favoured nation clauses, a robust carve-out for tax measures,¹³ and the right of the State to regulate.¹⁴ In the same vein, the India-Kyrgyzstan and India-Uzbekistan BITs are closer to India's Model BIT 2016.
- On dispute resolution, across its new trade agreements, India has continued to exclude investor-state arbitration, channeling any disputes through state-to-state mechanisms.
- In contrast, on the BIT front, the India-UAE BIT and India-Israel BIT retain investor-state dispute settlement mechanisms with several important adjustments, including restricting the period for exhaustion of local remedies to three years. However, BITs entered into with Belarus and Kyrgyzstan retain India's Model BIT 2016's core five-year local-remedies requirement.¹⁵

India appears to be approaching BIT drafting cautiously, with an emphasis on ensuring that investment protection frameworks create a balanced, mutually beneficial outcome

8. Which government bodies negotiate and draft BITs?

Several governmental agencies are involved in the process of negotiating and drafting BITs:

- The negotiation and drafting of BITs are led by the International Investment Treaties & Framework Section of the Investment Division of the Department of Economic Affairs (DEA), Ministry of Finance. This section is responsible for negotiations, inter-ministerial coordination and conclusion of BITs.¹⁶

- The DEA also consults other departments such as the Department of Legal Affairs, Ministry of Law & Justice and the Ministry of External Affairs (MEA) during such negotiations. The Legal and Treaties Division of the MEA renders legal opinions on all international law issues, and, in its capacity as legal advisors, is also a part of the delegation negotiating BITs.
- Correspondence about BITs with other States is routed through the MEA's Economic Diplomacy Division.

While business associations do not have a formal negotiating seat, they can meaningfully contribute through public consultations on model treaty texts and written submissions to the DEA or the MEA. Additionally, chambers and associations like the Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce and Industry (FICCI), Associated Chambers of Commerce and Industry of India (ASSOCHAM), and law firms may give opinions to the government in relation to BITs.

9. Which government bodies handle investment disputes?

Handling of disputes arising out of BITs or multilateral investment agreements requires coordination amongst several ministries, departments and agencies of the Indian Government.

An Inter-Ministerial Group (IMG) is constituted to handle each investment treaty dispute and is typically chaired by the Ministry to which the dispute pertains¹⁷

The MEA handles and assists the Government on aspects of international law and forms a part of the IMG. The International Investment Treaties & Framework Section of the Investment Division of the DEA, Ministry of Finance and the Department of Legal Affairs, Ministry of Law & Justice also play a crucial role in handling investment disputes.

10. How are investment awards enforced by the state?

There currently exists a regulatory lacuna in India for enforcement of investment treaty arbitral awards. The uncertainty stems from four key factors:

- India is not a party to the Washington Convention, and therefore the automatic recognition and enforcement provided in Article 54 of the Washington Convention is not available in India.
- The Indian Arbitration Act only deals with enforcement of international commercial arbitration and does not provide for awards arising out of international investment arbitration.
- India has adopted the New York Convention subject to a commercial reservation. As a result, in India, the New York Convention enforcement is available only for awards arising out of legal relationships considered "commercial" under Indian law.

Indian courts noted that investment treaty arbitrations are not "commercial" arbitrations governed by the Indian Arbitration Act

Indian courts have noted, in proceedings seeking anti-arbitration injunctions against an investment treaty arbitration, that investment treaty arbitrations are not "commercial" arbitrations governed by the Indian Arbitration Act because they emanate from treaties and not from

¹² Mishra R. India may drop local remedies clause in new BITs as UK trade pact nears (24 October 2023). URL: <https://www.livemint.com/news/india/india-shifts-stance-in-bit-talks-with-uk-seeks-faster-investor-state-dispute-resolution-in-new-treaty-11698164336568.html>. At the speech of the Union Budget 2025–26, India's Minister of Finance said that "[t]o encourage sustained foreign investment and in the spirit of 'first develop India', the current Model BIT will be revamped and made more investor-friendly." Ministry of Finance. Budget 2025–2026: Speech of Nirmala Sitharaman, Minister of Finance (1 February 2025), p. 17, para. 102. URL: https://www.indiabudget.gov.in/doc/bspeech/bs2025_26.pdf.

¹³ India-UAE BIT, Article 2.4(ii).

¹⁴ India-UAE BIT, Article 2.

¹⁵ India-Belarus BIT, Article 15.2; India-Kyrgyzstan BIT, Article 15.2.

¹⁶ Department of Economic Affairs, Ministry of Finance. Investment Division. URL: <https://dea.gov.in/our-organizations/investment-digital-economy-division>.

¹⁷ Ministry of External Affairs. Tenth Report of the Committee on External Affairs. India and Bilateral Investment Treaties (10 September 2021), para. 2.6. URL: <https://elibrary.sansad.in/server/api/core/bitstreams/8cdf7a1e-5095-486b-b948-c72e2d2a93e1/view>.

a commercial contract. Although, in those cases, it has also been held that Indian civil courts may exercise jurisdiction under the Code of Civil Procedure, 1908 in rare and compelling cases especially where the cause of action has a real nexus to the territory of India.¹⁸

As the issue has not arisen for consideration before Indian courts, it remains to be seen whether Indian courts would entertain enforcement of an investment arbitration award.

That said, some headway on this issue has been made in India's Model BIT 2016,¹⁹ which provides that a claim submitted to arbitration under the treaty shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention. This drafting may be relied on to preclude Indian courts from refusing to treat investment treaty awards, rendered pursuant to such treaties, as a "commercial" award. The India-UAE BIT, India-Kyrgyzstan BIT, India-Uzbekistan BIT and India-Belarus BIT have adopted this specific treaty language.²⁰

India is reported to have voluntarily complied with the White Industries award – which was the first adverse award against the country.

11. Do pre-arbitration negotiations lead to resolution of disputes?

There is no publicly available information on pre-arbitration negotiations with investors. That said, there have been instances where, although the investors issued notices of disputes, they did not ultimately proceed to arbitration.

There have been publicly reported instances of settlement following an unfavourable arbitral award against India, as was the case in Nissan, Vedanta, Vodafone and Cairn. While the settlement agreements are not publicly available, certain information has been published by the investors regarding settlement pursuant to the Taxation Laws (Amendment) Rules, 2021:

- Vedanta Resources Ltd. reported that it filed an application seeking withdrawal of the claim and termination of the arbitral proceedings pending before the Permanent Court of Arbitration, in PCA Case No 2016-05, pursuant to the legislation nullifying the retrospective income tax.²¹
- Vodafone noted that it had reached a final agreement with the Indian Government and its demands for outstanding tax (including interest and penalties) have been withdrawn in full.²²
- In November 2021, Capricorn (previously Cairn) entered statutory undertakings with the Government of India enabling the refund of retrospective taxes collected from Capricorn in India.²³

Of the 31 disputes that proceeded to arbitration against India to date, 2 have been discontinued, 5 are pending, 11 have been settled, while 13 have resulted in an award.

JURISDICTION-SPECIFIC QUESTIONS

12. What other reasons, beyond those mentioned in the Report, led India to terminate so many BITs?

The Report captures India's primary reasons for terminating its BITs. In addition to those, India's decision was motivated by balancing investment protection with India's regulatory powers, and the deficiencies in the old generation BITs that necessitated a relook.

Fundamentally, the old generation BITs and their jurisprudential development were viewed as encroaching on India's policy space and sovereign rights, particularly on taxation matters.

A core structural concern behind India's decision to terminate BITs was the way arbitral tribunals interpreted broadly drafted substantive clauses in investment treaties

Particularly, arbitral tribunals interpreting FET clauses consistently read into them a legitimate expectations doctrine, holding that changes to a regulatory or legal framework could constitute a breach — irrespective of public interest justification. The removal of unqualified FET in India's Model BIT 2016 and its replacement with a narrowly defined customary international law minimum standard (limited to denial of justice, fundamental breach of due process, targeted discrimination, and manifestly abusive treatment) was a direct response to this jurisprudential risk.

An underappreciated structural reason is India's growing role as an outward investor. India's outbound foreign investment has consistently grown. The earlier generation BITs were negotiated when India was largely a capital-importing state. India's termination of its old generation BITs was coupled with a request to renegotiate, now from a position of greater economic strength and its growing position as a capital exporter. At the same time, India remains a major recipient of foreign investment and a rapidly growing economy. Against this backdrop, India's Model BIT 2016 and India's newer BITs appear to recalibrate, rather than eliminate, investor protection by placing greater emphasis on preserving the State's regulatory space while continuing to offer investors a defined, albeit narrower, set of substantive protections.

13. Has India's policy affected FDI inflows in practice?

There does not appear to be a direct causal relationship between India's Model BIT 2016 and FDI inflow into the country. India is a complex economy, and in practice, investment decisions depend on a wide variety of factors. An isolated factor is not sufficient to draw conclusions on foreign investment practices in general.

Overall, India's gross FDI inflows have increased in the post-Model BIT 2016 period: from approximately USD 55.56 billion in FY 2015-2016 to USD 80.61 billion in FY 2024-2025, although the rate of growth has been uneven. The implication is that India's Model BIT 2016 may matter less as a standalone instrument and more as part of a broader signalling framework.

In February 2025, the Indian Government confirmed that it is in the process of revamping the Model BIT 2016 to make it more investor-friendly and attract foreign players.

¹⁸ Union of India v. Vodafone Group Plc United Kingdom & Anr., 2018 SCC OnLine Del 8842 ¶¶90-91; Union of India v. Khaitan Holdings (Mauritius) Ltd. & Ors., 2019 SCC OnLine Del 6755 ¶¶28, 29, 35-36.

¹⁹ India's Model BIT 2016, Article 27.5.

²⁰ India-UAE BIT, Article 28.5; India-Kyrgyzstan BIT, Article 27.5; India-Uzbekistan BIT, Article 29.5; India-Belarus BIT, Article 27.5.

²¹ Vedanta Resources Limited. Vedanta Takes Steps to Settle All Disputes Related to Imposition of Retrospective Tax (15 December 2021). URL: <https://www.vedantaresources.com/uploads/investor-overview/circulars-and-prospectus/retrospective-tax-related-disputes-settlement-15-dec-2021.pdf>.

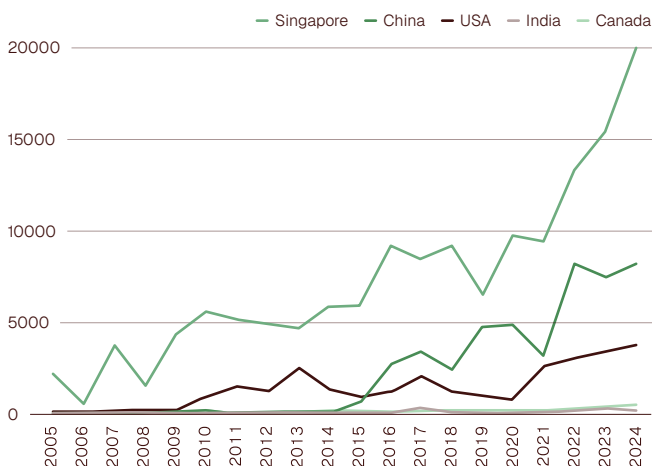
²² Vodafone Group Plc. Supplementary Prospectus – €30,000,000,000 Euro Medium Term Note Programme (22 May 2023). URL: https://investors.vodafone.com/~/_media/Files/VV/Vodafone-IR/documents/debt-investor/bonds-outstanding/vg-plc-emtn-fy23-prospectus-supplement.pdf.

²³ Capricorn Energy PLC. Full Year Results Announcement for the year ended 31 December 2021 (8 March 2022). URL: <https://www.capricornenergy.com/media/rc0fu1ec/full-year-results-final.pdf>.

GENERAL QUESTIONS

1. What are the FDI statistics?

Indonesia's Badan Pusat Statistik (BPS) publishes data on realisation of inward FDI by country, where yearly inward FDI from China and India are reported,¹ however, it does not detail inward FDI from all BRICS member states. For a better illustration, we have rendered data of inward investment from China, India, United States, Canada, and Singapore, from 2004-2025:²



From this chart, it is visible that from 2004 to 2025, inward investment from India has been consistently present, and the country's FDI to Indonesia doubled in 2024 compared with its 2022 level. However, numbers are generally quite low compared to other, non-BRICS countries. Investment from China started showing significant numbers since 2016, even rivalling that of the United States. Despite this, inward flows from partners such as Singapore are consistently more significant.

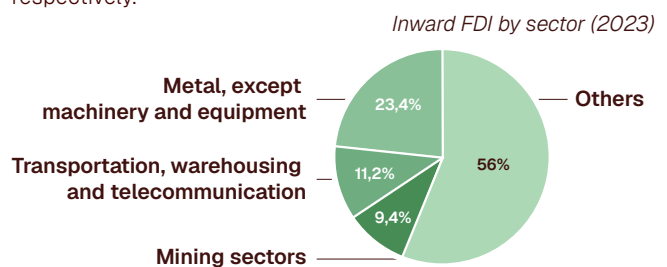
The International Monetary Fund provides details on the inward FDI to Indonesia from fellow BRICS countries for 2018-2024.⁴ The figures demonstrate the predominant role of China throughout the years with the corresponding FDI reaching an impressive 97% of BRICS-sourced total in 2021. India ranks second, and the other BRICS countries together account for less than 1%.⁵

BPS provides no data on outflows of FDI from Indonesia specifically to BRICS member states. However, the fragmented statistics published by IMF further confirm the leading

role of China and India as BRICS active partner countries to Indonesia. Brazil received a significant amount of Indonesian FDI in 2019, but there was no reliable data after this year. Generally, statistics on outflows are total net FDI from Indonesia to all countries. There are private studies on Indonesia's trade value with BRICS member states, such as that in 2022 Indonesia's exports to BRICS countries reached USD 93.16 billion, however such data does not reflect FDI.

2. Which sectors receive the most FDI?

According to BPS, inward FDI between 2019 and 2023 was concentrated in the (1) metal (except machinery and equipment), (2) transportation, warehousing and telecommunication, and (3) mining sector.⁷ In 2023, these sectors accounted for approximately 23.4%, 11.2%, and 9.4% of total inward FDI, respectively.⁸



The sectoral distribution reported by the Ministry of Investment and Downstreaming Industry / Investment Coordinating Board (Badan Koordinasi Penanaman Modal); (Ministry of Investment/BKPM) is broadly consistent with the BPS data, although Ministry of Investment/BKPM applies a more aggregated classification. Using Ministry of Investment/BKPM's classification, inward FDI during 2019 to early 2023 was primarily directed to the manufacturing sector (54.1% of total investment), followed by the services sector (36.4%) and the mining sector (5.4%).⁹

The sectors that Indonesia seeks to prioritize for inward FDI (eligible for incentives) are outlined in the Presidential Regulation No. 10 of 2021 on Investment Business Fields as amended by Presidential Regulation No. 49 of 2021 (Amended Presidential Regulation 10/2021), such as agriculture, forestry, mining, and the manufacturing industry.

3. Which sectors are restricted for foreign investors?

According to Article 12(2) of Law No. 25 of 2007 on Investment as amended by Article 2(2) Amended Presidential Regulation

¹ Badan Pusat Statistik. Investment Realization Foreign Investment by Country - Statistical Data. URL: <https://www.bps.go.id/en/statistics-table/2/MTqOMyMy/investment-realization-foreign-investment-by-country.html>.

² Ibid.

³ Ibid.

⁴ International Monetary Fund. IMF Data Explorer. URL: [https://data.imf.org/en/Data-Explorer?datasetUrn=IMFSTA:DIP\(12.0.1\)](https://data.imf.org/en/Data-Explorer?datasetUrn=IMFSTA:DIP(12.0.1)).

⁵ Ibid.

⁶ Ghifari D. BRICS Entails Opportunities, Risks for Indonesia (22 August 2023). URL: <https://www.thejakartapost.com/paper/2023/08/22/benefits-of-joining-brics-could-come-at-political-cost-for-ri-experts>; Naim C. & Hasanah F. Deconstructing the Empire: BRICS and the Rise of a Multipolar World. Andalas Journal of International Studies, Vol. 13. Issue 1 (2024); Setiawan A. Indonesia's Joins BRICS: Balancing Economic Opportunities and Geopolitical Challenges in a Multipolar World. Journal of Law, Politic and Humanities, Vol. 5. Issue 1 (2025). URL: <https://www.das-institute.com/journal/index.php/citizen-journal/article/view/1025>.

⁷ The statistics excluded oil & gas, banking, non-bank financial institutions, insurance, leasing, investment for which licences are issued by technical or sectoral agency, portfolio as well as household investment. Badan Pusat Statistik. Foreign Direct Investment Realization by Economic Sector (23 Sectors). URL: <https://www.bps.go.id/en/statistics-table/2/MTqZOSMy/foreign-direct-investment-realization-by-economic-sector--23-sectors.html>.

⁸ Ibid.

⁹ Indonesian Ministry of Investment. Investment Realization FDI & DDI Quarter I (January-March) 2023 (28 April 2023). URL: <https://www.bkpm.go.id/storage/file/pdf/1682655133.pdf>.

10/2021, fully closed sectors for all investment include all forms of gambling and/or casino activities; capture of fish species listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); utilization or extraction of coral and reef materials from nature for use as construction materials, lime/calcium, aquariums, souvenirs, or jewelry, as well as the collection of live coral or dead coral (recently deceased coral) from natural habitats; industrial chemical manufacturing involving ozone-depleting substances and industries producing ozone-depleting substances; alcoholic beverage manufacturing industry, including wine; and malt beverage industry.

Further, a category of business that can only be done by the Central Indonesian Government is also closed from investment, described as services or activities relating to defense and security that are of a strategic nature and cannot be performed or operated by, or in cooperation with, any other party.¹⁰

Appendix III of Amended Presidential Regulation 10/2021 further lists out specific businesses fully or partially closed to foreign investment. Some businesses such as traditional ship, cosmetic, and medicine manufacturing, cap batik manufacturing, and art studios (sanggar seni), require 100% local shareholding and are therefore closed to foreign investment. Other businesses such as weapon and ammunition industry, warship industry, cruise ship industry, and courier activities, allow foreign investment, but restrict foreign shareholding to a maximum of 49%.

4. What are the top three risks for foreign investors?

Indonesia's top practical risks may be narrowed down to legal and compliance risks.

- 1 Indonesia has faced shifting regulations, causing changing compliance obligations or overlapping licensing requirements.¹¹

2

Non-compliance may lead to criminal sanctions

While in recent years Indonesia tried to address such compliance risk through an integrated licensing system, the Online Single Submission – Risk Based Approach (OSS-RBA),¹² observers note that the OSS-RBA licensing sequence can be incomplete, leading to some unlicensed operation.¹³ In a worst-case scenario, compliance risks might lead to criminal sanctions either through the newly enacted Criminal Code of 2023 or sectoral regulations. Under the Criminal Code of 2023, any unlawful act that causes state loss can be alleged as corruption.

5. What key measures have been adopted to attract FDI?

Two of the most significant regulatory measures include the enactment of Law No. 11 of 2020 on Job Creation and the narrowing down of the Negative Investment List.

In 2020, the Indonesian government enacted Law No. 11 of 2020 on Job Creation in the hope of creating a more stable and harmonized legal investment landscape. Today, the law became Government Regulation in lieu of Law No. 2 of 2022 on Job Creation. The regulation amended and harmonized multiple sectoral regulations, added provisions leading to increased

legal certainty such as in outsourcing and minimum wage employment regulations, as well as clarified several licensing obligations for businesses.¹⁴

In 2021, Indonesia then enacted Presidential Regulation 10/2021 which narrowed down business sectors that are either completely closed or conditionally open to foreign investment under Presidential Regulation No. 46 of 2016 on List of Business Fields Closed to Investment and Business Fields Open to Investment Subject to Conditions. For example, warehousing business or telecommunication network provider (fixed, mobile, integrated with telecommunication services) services initially limited foreign shareholding to 67%, and such limitation is removed under Amended Presidential Regulation 10/2021. Oil and gas support service was also previously closed for foreign investment, such restriction was notably lifted through Amended Presidential Regulation 10/2021.

As to promotion of domestic investment, apart from the fact that Indonesia maintains the requirement for several businesses to retain local shareholding and closes several businesses to foreign investment, there are no further policies that seem to prioritize domestic investment over foreign investment.

6. Is there a “one-stop shop” for foreign investors?

Ministry of Investment/BKPM provides a consultation service on guidance to local investment regulations. **Relevant ministries** generally provide consultations regarding sector-specific regulations under their authority.

For instance, the Ministry of Energy and Mineral Resources (MEMR) may provide guidance on regulatory matters relating to the oil and gas sector and other industries under its supervision. However, it should be said that these consultations are always given with the asterisks that they are not legal advice and cannot be treated as such. Further, as consultation services are generally provided in Indonesian and investment queries tend to overreach to multiple ministries, an experienced local legal counsel remain impertinent to be engaged for advice on particularities of Indonesian local legislation.

7. What are the current trends in BIT drafting?

Indonesia is looking for more favourable BIT provisions which provide balanced protection to investors without eroding the autonomy of the host country (Indonesia). Indonesia particularly looks to find a more balanced approach towards ISDS. There are prominent critics showing that BITs were asymmetrically drafted and there is a need to negotiate protection terms in general to achieve more symmetrical protection of all involved parties.¹⁵ Overall, the approach to drafting is to enhance the State's capacity to defend against claims while rebalancing the parties' existing rights and obligations.¹⁶ This may be reflected, for example, in provisions addressing contributory fault (investor's own conduct contributed to its loss), duty to mitigate, necessity of state measures, and security exceptions.¹⁷

8. Which government bodies negotiate and draft BITs?

By function, the body in charge is the Director General for Legal Affairs and International Treaties under the Ministry of Foreign Affairs. According to Minister of Foreign Affairs Regulation of the Republic of Indonesia Number 4 of 2025 concerning the Organization and Work Procedures of the Ministry of Foreign

¹⁰ Amended Presidential Regulation 10/2021, Article 2(3).

¹¹ Polii Y. et al. Assessing Indonesia's Prospects as the Next Big Thing: Legal Uncertainty and Investment Challenges in the Indonesian Capital Market. Integrative Perspectives of Social and Science Journal, Vol. 3. Issue 3 (2026). URL: <https://ipssi.com/index.php/ojs/article/view/1236>.

¹² Meliala A. et al. Narrating the Effective Law for Foreign Direct Investment. Indonesian Journal of International Law, Vol. 21. Issue 5 (2024). URL: <https://scholarhub.ui.ac.id/ijil/vol21/iss5/5>.

¹³ Hwang J. Indonesia: Foreign Direct Investment in Indonesia – Sectors, Structures, and What Investors Need to Know (24 August 2026). URL: <https://www.dfdl.com/insights/content-hub/articles/foreign-direct-investment-in-indonesia/>.

¹⁴ Assegaf Hamzah & Partners. Dissecting the Amendment to the Omnibus Law: Which Sectors Are Affected and How? (20 January 2023). URL: <https://www.ahp.id/clientalert/AHPClientUpdate-20January2023.pdf>.

¹⁵ Price D. Indonesia's Bold Strategy on Bilateral Investment Treaties: Seeking an Equitable Climate for Investment? Asian Journal of International Law, Vol 7. Issue 1 (11 January 2016). URL: <https://www.cambridge.org/core/journals/asian-journal-of-international-law/article/indonesias-bold-strategy-on-bilateral-investment-treaties-seeking-an-equitable-climate-for-investment/2B196186FE7A415E60E84D57E169803D>. Examples of asymmetrical clauses include sunset clauses, in which BIT protections continue to be effective for another 10-15 years after termination.

¹⁶ Adiwidagdo S. Contributory Fault, Mitigation and Other Defences to Damages (21 July 2023). URL: <https://www.lexology.com/library/detail.aspx?g=11a44559-a566-46e9-af83-bbd4fcdc9908>.

¹⁷ Ibid.; Pejovic C. & Pardede J. Revising Bilateral Investment Treaties as a New Tendency in Foreign Investment Law: India and Indonesia in the Focus. Indonesian Journal of International Law, Vol 17. Issue 2 (2020). URL: <https://scholarhub.ui.ac.id/ijil/vol17/iss2/8/>.

Affairs, the Directorate serves the function of “formulation of policies ... and foreign policy in relation to the development and refinement of national legal norms and international treaties.”

In practice, BIT negotiations are generally conducted through an inter-agency mechanism. Depending on the subject matter of the treaty, the Ministry of Investment/BKPM and other relevant agencies would be involved. For example, when Indonesia was negotiating its BIT with the United Arab Emirates, MEMR joined the discussion, as investments were projected towards the energy sector.¹⁸ Generally, however, there is no formal mechanism for business associations to provide comments on the state's approach.

9. Which government bodies handle investment disputes?

There is no specific department that manages an investment dispute.

The notice of dispute would be served on the Indonesian President

The President, as the absolute authority representing the state, will involve relevant ministries and government agencies whose actions, regulations, or sectors are the subject of the dispute. For example, in the case of Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia, ICSID Case No. ARB/12/14 and 12/40, the President through Presidential Regulation No. 78 of 2012 assigned the Minister of Law and Human Rights, the Minister of Home Affairs, the Attorney General, and the Head of the Investment Coordinating Board as Legal Counsel to the President.

10. How are investment awards enforced by the state?

Investment arbitral awards are enforced through Indonesia's foreign arbitral awards recognition and enforcement mechanism under Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. Foreign arbitral awards, including investment awards, are recognized and enforced through the Central Jakarta District Court.¹⁹ Recognition and enforcement are only granted if the award originates in a country that has a treaty relationship with Indonesia regarding the recognition and enforcement of arbitral awards, concern a commercial matter, and do not contravene Indonesian public policy (ketertiban umum). The enforcing party must then apply for an exequatur (writ of enforcement), which confirms that the award is enforceable in Indonesia. Where the Republic of Indonesia is a party to the arbitration, the exequatur is issued by the Supreme Court before being delegated to the Central Jakarta District Court for enforcement.²⁰

In practice, Indonesia has seen a potential enforcement in relation to the Churchill Mining and Planet Mining Pty Ltd v. Republic of Indonesia, ICSID Case No. ARB/12/14 and 12/40, however, such enforcement faces a bottleneck in terms of tracing assets of Churchill Mining and Planet Mining Pty Ltd.²¹

11. Do pre-arbitration negotiations lead to resolution of disputes?

There have been cases on settlement at the pre-arbitration stage, but details about these cases are not publicly available.

Several cases were resolved during arbitration by settlement

In the Nusa Tenggara Partnership B.V. and PT Newmont Nusa Tenggara v. Republic of Indonesia, ICSID Case No. ARB/14/15, PT Newmont Nusa Tenggara had commenced arbitration due to the implementation of a new law causing an increase of export duty and a ban on export of copper concentrate.²²

PT Newmont Nusa Tenggara then withdrew the case after the Indonesian government provided an exemption from the new law, however, the negotiations were not transparent for observation.²³

Indonesia also settled the Cemex Asia Holdings Ltd v. Indonesia, ICSID Case No. ARB/04/3, however, negotiations were also closed to public. In this case, the Indonesian government decided to settle and agreed to pay Cemex Asia Holdings Ltd USD 337 million from the USD 400 million claimed.²⁴

JURISDICTION-SPECIFIC QUESTIONS

12. Is Indonesia moving toward a “new model BIT” similar to India?

It is difficult to conclude definitively that Indonesia is moving toward a “new model BIT” similar to India's approach, although some similarities might be observed.

Under the “new model”, India seemingly terminated a significant number of its BITs to address concerns regarding ISDS mechanisms while preserving the State's regulatory autonomy and maintaining an attractive investment climate.²⁵ India has since excluded provisions on investor-state arbitration in recent trade agreements and while it maintained ISDS in the 2024 India–UAE BIT,²⁶ India added six additional conditions to be satisfied before a claim to arbitration can be made under the BIT.

Some parallels may be drawn with Indonesia's approach. Following concerns expressed in 2014 regarding the operation of ISDS provisions, Indonesia undertook a review of its BITs and terminated 25 BITs by 2022.²⁷

The objective behind termination of the BITs by Indonesia was not to eliminate ISDS altogether but rather to pursue a more balanced and equitable ISDS framework

Such an objective is seemingly reflected in the 2018 Indonesia–Singapore BIT, which showed a stricter approach to ISDS, obligating parties to settle disputes through consultations from six months to a year before pursuing an arbitration claim.²⁸

¹⁸ CNN Indonesia. Pemerintah Negosiasi Perjanjian Investasi Dengan UEA (9 July 2017). URL: <https://www.cnnindonesia.com/ekonomi/20170709112853-92-226590/pemerintah-negosiasi-perjanjian-investasi-dengan-uea>.

¹⁹ Law No. 30 on Arbitration and Alternative Dispute Resolution (1999), Article 65.

²⁰ Law No. 30 on Arbitration and Alternative Dispute Resolution (1999), Article 66.

²¹ Huzaini M. Pemerintah Kesulitan Eksekusi Putusan ICSID (6 July 2019). URL: <https://www.hukumonline.com/berita/a/pemerintah-kesulitan-eksekusi-putusan-icsid-lt5d201ff26079b/>.

²² UNCTAD Investment Policy Hub. Nusa Tenggara v. Indonesia. URL: <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/584/nusa-tenggara-v-indonesia>.

²³ Bilaterals.org. Netherlands–Indonesia Bilateral Investment Treaty Rolls Back Implementation of New Indonesian Mining Law Briefing. URL: <https://bilaterals.org/newmont-mining-vs-indonesia>.

²⁴ UNCTAD Investment Policy Hub. Cemex Asia Holdings Ltd v. Indonesia. URL: <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/171/cemex-v-indonesia>.

²⁵ Bhat R. India's Investment Treaty Landscape In 2026 (16 March 2026). URL: <http://freshfields.com/en/our-thinking/blogs/risk-and-compliance/indias-investment-treaty-landscape-in-2026-102mmwp>; Investment Treaty News. India Moves to Revise Its Model Bilateral Investment Treaty – Investment Treaty News (19 January 2026). URL: <https://www.iisd.org/itn/2026/01/19/india-moves-to-revise-its-model-bilateral-investment-treaty/>.

²⁶ Ibid.

²⁷ Wong L. Indonesia's Termination Of Bilateral Investment Treaties. SMU ASEAN Perspectives, Vol. 1 (2022). URL: <https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=1000&context=ccla>.

²⁸ Ibid.



Iran

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GENERAL QUESTIONS

1. What are the FDI statistics?

Investment statistics in Iran are rarely published and, if published, are in aggregate form rather than separated by the nationality of investors. Accordingly, official statistics identifying FDI by country of origin are not available. The information below has been compiled from official publications of the Organization for Investment, Economic and Technical Assistance of Iran (OIETAI) and other publicly available sources.

According to the OIETAI, foreign direct and portfolio investments totalling USD 617 million have been approved from the beginning of the current Iranian year (21 March 2026 to 6 June 2026).¹ However, portfolio investments are extremely rare, and the figure should almost entirely represent FDI.

USD 617 mln inward FDI amount approved from 21 March 2026 to 6 June 2026

Based on OIETAI statistics and our discussions with them, foreign investment in Iran has declined substantially over the past five years. While detailed country-specific data is not officially published, the majority of recent investments have reportedly originated from China, Russia, Turkey, and the UAE. It was further indicated that many UAE- and Turkey-based investments have involved companies with Iranian shareholders or beneficial ownership. Indian and South African companies are also among the investors, with significantly smaller yet considerable investments. Overall, the limited official information indicates that a significant proportion of current foreign investors originate from BRICS member states.

Official Iranian authorities do not publish comprehensive statistics on outward foreign direct investment. According to the United Nations Conference on Trade and Development (UNCTAD), however, Iran's outward FDI amounted to USD 104 million in 2025, representing a modest increase compared to USD 89 million in 2024.

2. Which sectors receive the most FDI?

The majority of FDI from BRICS countries in the past 10 years has been concentrated in the oil and gas and energy sectors

For the current Iranian year (as of 20 March 2026), the focus has been on renewable energy production and the establishment of solar power plants, food, pharmaceuticals, and hygiene industries, rail and maritime transport, textiles, and services.²

3. Which sectors are restricted for foreign investors?

There are several restrictions affecting foreign investors, which could be legal or practical in nature. The most important are listed below:

- **Restrictions on ownership of land** – The ownership of real property by foreigners is generally prohibited, and is possible only with the approval of the Ministry of Foreign Affairs.³ Receiving such approval is extremely onerous. Nevertheless,

it is possible to register a local company wholly owned by foreign persons, as such a company would be considered Iranian. However, the government has started suspending registration of the companies whose sole purpose is to own land. For this reason, it would be prudent to secure an investment licence (FIPPA Licence) under the Foreign Investment Protection and Promotion Act 2002 (FIPPA) for an intended project, as FIPPA allows the ownership of real estate required for the project through a locally registered company.

- **Legal restrictions on the private sector** – Private ownership in certain major industries is prohibited,⁴ including oil and gas, large-scale mining, central banking, and core national infrastructure which are exclusively state-owned and operated. These restrictions apply irrespective of the nationality of the investor. The private sector is not necessarily barred from participating, but it can only proceed through contractual arrangements (buy-back, civil partnership, BOT) rather than direct equity ownership.
- **Legal restrictions on foreign investors** – Foreign involvement in certain sectors is restricted, including insurance, banking, AI services, media, defence and security industries, transport, etc. The restrictions could be limitations on equity participation and/or involvement in the management. In practice, the government has at times prevented the involvement of foreign investors in sectors it considers strategic. The two sectors in which the government has most notably intervened are civil aviation and telecommunications.

Restrictions apply to foreign investors on land ownership, investing in oil and gas upstream, insurance, banking, media, defence and security industries, transport, etc.

4. What are the top three risks for foreign investors?

The top three practical risks include the following:

- 1 Iran has been subject to United Nations, United States, and European Union sanctions over the last 47 years. Such sanctions have been tightened in recent years, and some have far-reaching and extraterritorial effects. The sanctions imposed by the United States, for example, can inadvertently cause the investor to breach US laws or can impact the business of the investor in the United States.
- 2 The difficulties in transferring funds to and from Iran put at risk the investment and make it difficult to fund the venture and to repatriate the proceeds of the investment. These difficulties are caused in part by sanctions but primarily due to other factors, including the refusal of correspondent banks to deal with Iran-related transactions (even though the transaction may be perfectly legal), as well as Iranian foreign exchange restrictions. We consider these risks to be separate from the risks imposed by the sanctions directly.
- 3 The recent regional conflict puts at risk any investment made or to be made in Iran.

¹ Tasnim News Agency, Approval of USD 617 Million in Foreign Investment in 1405 (6 June 2026) (reporting on second meeting of the Foreign Investment Board held in the Iranian year 1405 [corresponding to 21 March 2026 to 20 March 2027]).

² Ibid

³ Law on Immovable Property of Foreign Nationals (1310/1931), as amended.

⁴ Constitution of Iran, Article 44.

5. What key measures have been adopted to attract FDI?

There is a growing tendency to attract foreign investors. The most important recent regulations are listed below.

- **New BITs and bilateral treaties:** e.g. BIT with Oman.
- **Establishment of Foreign Investment Attraction Agencies:** The private sector – which offers greater efficiency – is increasingly engaged in attracting investors.
- **Facilitation of entry of foreign capital into Iran:** As an alternative to banking routes, the foreign capital could enter Iran through cash (foreign currency notes)⁵, goods, gold,⁶ cryptocurrency⁷ and barter mechanisms.⁸
- **Ratifying FATF standards:** Iran ratified the United Nations Convention against Transnational Organized Crime, to improve the foreign investment climate.
- **Development of foreign investment projects:** Government agencies and administrations are obliged to identify and structure investment projects.
- **Comprehensive Investment Database:** A database has been launched presenting investment opportunities⁹ (<https://investiniran.ir/en/opportunities>).
- **Access to the capital market:** Foreign investors are permitted to conduct transactions in the Securities, Mercantile and Energy Exchanges.¹⁰
- **State guarantees:** Subject to legal requirements, the government may provide state guarantees for foreign counterparties participating in financing arrangements or joint projects with the Iranian private sector.¹¹
- **Increase in tax exemptions and incentives:** Tax exemption periods have been increased.¹²

6. Is there a “one-stop shop” for foreign investors?

Organization for Investment, Economic and Technical Assistance of Iran serves as a one-stop shop

The OIETAI is the agency affiliated with the Ministry of Economic Affairs and Finance and acts as a “one-stop shop” for foreign investors. This is the main official body responsible for promotion and protection of foreign investment in Iran. OIETAI:

- Receives and processes the investment applications and issues the investment licences;
- Provides protection against expropriation, guarantees transfer of capital and profits abroad, and access to dispute-referral mechanisms;
- Facilitates visas, residency and work permits;
- Assists, coordinates, and facilitates matters for the investor throughout the life of the investment;
- Approves and oversees Iranian investments made abroad; and
- Conducts negotiations on behalf of the government/state-owned companies for loan and credit agreements and manages payment-guarantee arrangements.

“Investment Attraction Agencies” have recently been introduced by the government.¹³ These are locally registered private entities licensed by the OIETAI to provide the following services to foreign investors:

- Financial, tax, commercial, and legal advisory services;
- Organising investment tours for on-site visits of opportunities;
- Submitting and following up investment licence applications;
- Assisting incorporation of project companies and registration of subsequent corporate changes;
- Obtaining the licences and permits required for the specific activities;
- Submitting and following up applications for visas, residence permits, and work permits;
- Following up customs formalities for importation of foreign investors’ non-cash capital;
- Providing alternative dispute resolution services, including non-judicial mechanisms for disputes related to foreign investment;
- Conducting feasibility assessments for projects requiring foreign financing;
- Facilitating connections between prospective investors and investees; and
- Producing promotional and educational materials as well as holding training programs.

It is not mandatory for foreign investors to use the services of such agencies. At this moment, no licence has yet been issued to these agencies, and their exact role is unclear.

7. What are the current trends in BIT drafting?

The drafting of model BITs is the responsibility of the Legal Deputyship of the Office of the Presidency. The current Model BIT was prepared in 2021. We expect that BITs signed by Iran are based on this Model BIT, although with slight variances. The BITs signed since have the usual provisions in them, including:

- Definitions — investor, investment, territory;
- Scope of application — what/who is covered;
- Admission of investment — conditions for entry (often subject to host-state law);
- National treatment — no less favourable treatment than of domestic investors;
- MFN — no less favourable treatment than of other foreign investors;
- FET;
- Full protection and security;
- Expropriation — protection against direct/indirect expropriation, prompt/adequate/effective compensation;
- Free transfer of funds — capital, profits, dividends, proceeds;
- Compensation for losses — war, civil unrest, etc.;
- Umbrella clause — host state to honour specific investment obligations;
- Subrogation — insurer/guarantor step into investor's rights;
- Dispute settlement (investor-state) — arbitration (often ICSID, UNCITRAL, or ad hoc);
- Dispute settlement (state-state);

⁵ Regulation Facilitating Entry of Foreign Capital (30 April 2025).

⁶ Approval of the Council of Ministers (21 September 2025).

⁷ Act on Financing Production and Infrastructure (10 March 2024), Article 29(e).

⁸ Regulation Facilitating Entry of Foreign Capital (30 April 2025).

⁹ Executive Regulation on Article 25 of the Act on Financing Production and Infrastructure (19 February 2025).

¹⁰ Criteria for Granting Securities Trading Licences to Foreign Investors (amended on 28 August 2023) and Executive Guidelines for the Regulation on Foreign Investment in Stock Exchanges and Over-the-Counter Markets (amended on 16 July 2019). There are a few exceptions.

¹¹ Historically, state guarantees have been in the form of payment guarantees issued by the Ministry of Economic Affairs and Finance by virtue of which the payment obligations of state-owned off-takers were guaranteed.

¹² Direct Taxation Act (amended on 21 April 2015), Article 132.

¹³ Regulation and Instruction on Establishment of Investment Attraction Agencies and Brokers approved by the Council of Ministers on 23 April 2025.

- Duration and termination — including survival/sunset clause for existing investments.

Not all BITs in place have all of the above provisions. One feature of the BITs which exists in nearly all is the requirement for the investment being made in Iran to be approved by the relevant authority dealing with foreign investments. This provision is clearly a reference to (and is sometimes an explicit reference to) the requirement to obtain the FIPPA Licence covering the investment. This is often overlooked. In the way it is drafted, it would be impossible for any investment arbitration award under a BIT to be enforced in Iran unless the foreign investor has the benefit of a FIPPA Licence.

Nearly all BITs protect only the investments that are covered by a licence under the Foreign Investment Protection and Promotion Act

8. Which government bodies negotiate and draft BITs?

The President or their legal representative has the authority to sign treaties and bilateral agreements with other states.¹⁴ Moreover, any bilateral and multilateral treaties and agreements require the approval of the Parliament.¹⁵

In order to ease the provisional signature of treaties and agreements, the "Regulations on the Procedure for Drafting and Concluding International Agreements (3 May 1992)" were approved and provide the following:

- The Council of Ministers authorises a ministry to negotiate and provisionally sign agreements. For BITs, in practice, the Ministry of Economic Affairs and Finance is assigned as the primary authority to negotiate and sign the BITs, in coordination with the Ministry of Foreign Affairs and the Legal Deputyship of the Office of the Presidency.
- The BITs are concluded in compliance with the template prepared by the "Commission for the Review of International Agreements", which operates under the supervision of the Legal Deputyship of the Office of the Presidency.
- Any amendments to a draft agreement that deviate from the template require prior approval by the Commission.
- After the provisional signature of BITs, the document is sent by the Council of Ministers to Parliament for final approval.

In practice and by law, the Office of the Presidency and the Ministry of Economic Affairs are the main bodies for drafting and negotiating BITs. No legal mechanism has been included for participation by the private sector (whether foreign or local) in drafting or amending BITs.

9. How are investment awards enforced by the state?

The Center for International Legal Affairs of the Presidency, known as CILA, is in charge of managing disputes initiated by or against the Iranian government, government agencies and public institutions, including those related to foreign investment. This is different and separate from the government bodies negotiating the BITs.

The body for negotiations prior to referral to the dispute settlement mechanism would be the OIETAI in coordination with any other respective government body that is involved in the dispute.

10. Which government bodies handle investment disputes?

Investment arbitral awards are enforced in the same manner as any other award.

The main concern regarding the issuance and enforcement of investment arbitral awards in Iran is Article 139 of the Iranian Constitution, which provides as follows:

"The settlement of claims relating to public and state property or the referral thereof to arbitration is in every case dependent on the approval of the Council of Ministers, and the Parliament must be informed of these matters. In cases where one party to the dispute is a foreign person, as well as in important cases that are purely domestic, the approval of the Parliament must also be obtained. Law will specify the important cases intended here."

The settlement of claims and the referral of disputes to arbitration involving foreign persons and concerning public and state property require the approval of the Council of Ministers and the Parliament

For claims under the BIT, it must be noted that almost all BITs approved by the Iranian Parliament have been approved subject to compliance with Article 139 of the Iranian Constitution. Therefore, under almost all BITs, amicable settlement and referral to arbitration of any disputes concerning public and state property require prior approval of the Council of Ministers and the Parliament. Such approvals are not easy to receive.

There have been very few treaty disputes involving Iran over the years and none (to our knowledge) that have required enforcement in Iran. It is, however, the policy of the Iranian government to voluntarily comply with international arbitration awards where the award is against the state or a major state company.

11. Do pre-arbitration negotiations lead to resolution of disputes?

We are not aware of such negotiations having taken place.

JURISDICTION-SPECIFIC QUESTIONS

12. What additional aspects of Iran's Model BIT should be noted, beyond those mentioned in Section III.B of the Report?

The Iranian Model BIT was last revised on 3 August 2021. Although the updated Model BIT was not made publicly available, its principal features can be inferred from recently concluded investment treaties, such as the Iran–Oman BIT (2025) and the Protocol amending the Iran–Croatia BIT. Based on these instruments, the following are among the important amendments introduced:

- Exclusion of tax matters from the scope of the treaties.
- Express exceptions to the MFN obligation, providing that MFN treatment does not extend to advantages arising from participation in customs unions, economic or monetary unions, common markets, free zones, or international tax treaties and arrangements.
- Express recognition of the state's right to regulate in pursuit of legitimate public policy objectives, including the application of non-discriminatory laws relating to, inter alia, bankruptcy, financial reporting, securities regulation, criminal offences, and the protection of creditors.
- Expansion of the general and security exceptions, expressly preserving each state's right to adopt prudential measures in the banking and financial sectors, measures necessary to protect its essential security interests, public order, public health, the environment, and other legitimate public interests.
- A corporate social responsibility provision, encouraging investors to voluntarily observe internationally recognised standards of responsible business conduct.
- A definition for "freely convertible currency", thereby providing greater certainty regarding the transfer of funds.

Recent Iranian Model BIT introduced CSR provisions and exceptions from MFN treatment, and expanded the states' right to introduce public policy measures

¹⁴ Constitution of Iran, Article 125.

¹⁵ Constitution of Iran, Article 77.

GENERAL QUESTIONS

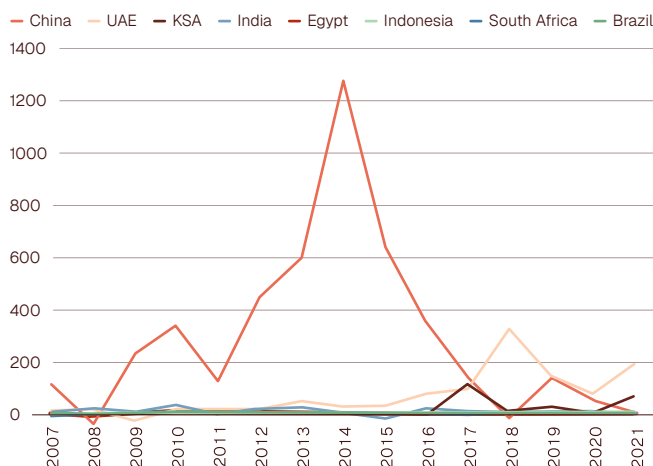
1. What are the FDI statistics?

Until 2022, the Central Bank of Russia (CBR) published official statistics demonstrating geographic and sectoral diversification of FDI in Russia. Since then, the data has been fragmented; however, one can still make certain observations based on analytical reports published by various think tanks.

In 2010-2021, offshore and tax-efficient jurisdictions remained the main source of inward FDI to Russia – these were allegedly, for the most part, domestic investments structured through holdings abroad.¹ Despite the massive exit of foreign investors starting in 2022, FDI stock still reflects these mechanics with Cyprus (accounting for around 37% of the total FDI stock in 2025), Switzerland and the Netherlands remaining at the top of the list.²

However, this trend started to change well before 2022. In 2015-2016, the UAE and Saudi Arabia emerged as important sources of FDI, with Qatar, Singapore and Hong Kong following shortly thereafter. Interestingly, FDI inflows from China, India and South Africa decreased dramatically over approximately the same period.³ Despite that, Russia ranked third among BRICS countries (before the expansion) by intra-BRICS inward FDI stock in 2010-2020.⁴ In 2021, BRICS-originated inward FDI amounted to approximately 0.7% of total inward FDI in Russia.

Inward FDI to Russia from BRICS states (as of 2026), 2007-2021



After 2022, these structural changes became more visible, with the growing role of Central Asian countries (Kazakhstan, Uzbekistan, and others⁵) and an even greater increase in FDI from the Gulf Cooperation Council jurisdictions.⁶ The partnership with China has strengthened, and in 2023 resulted in Chinese investments accounting for 24% of all inward FDI.⁷

The outward FDI diversification presents a similar picture with a few Western European countries among the top 10 destinations by 2021. BRICS countries (as per 2026 membership) received about 12% of the total Russian outward FDI in 2021.

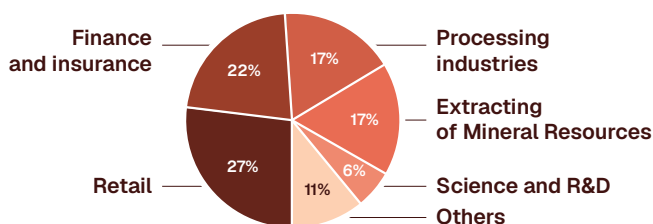
Among BRICS countries, FDI from Russia to Brazil demonstrated steady growth in 2015-2021.

For greenfield outward FDI, Russian investors tend to invest in neighboring Commonwealth of Independent States (CIS) jurisdictions⁸ owing to Russia's long-standing economic, infrastructural, political and cultural ties with the region.

2. Which sectors receive the most FDI?

Extraction of mineral resources, financing and insurance, and the retail and wholesale sectors remained the most attractive for foreign investors in 2010-2021 (the last year in which the CBR published detailed statistics), with the financial sector booming in 2021 (accounting for 71% of the total net FDI). The industrial sector was also among the top 5 in 2021, with a particular focus on metals, FMCG and chemicals. The science and R&D sectors have seen the most dramatic decline in FDI in recent years.

Inward FDI by sector (2021)



3. Which sectors are restricted for foreign investors?

Generally, Russia does not require foreign investors to involve a local shareholder. Under Federal Law No. 160-FZ "On Foreign Investments in the Russian Federation" dated 9 July 1999, foreign investors are entitled to national treatment and may establish wholly owned subsidiaries or acquire Russian companies.

That said, certain sectors of the economy are subject to statutory restrictions, including direct limits on the size of shareholdings permitted for foreign investors (for example, in the media and aviation sectors) and prohibitions on the acquisition of certain assets by foreign persons (for example, agricultural land).

Since 2008, Russia has established a screening mechanism for foreign investment in a limited number (50 as of 2026) of strategic sectors of the economy, including subsoil use, fisheries, energy and the defence industry

¹ Central Bank of the Russian Federation. External Sector Statistics. URL: https://www.cbr.ru/statistics/macro_itm/external_sector/di/.

² Vedomosti. Vedomosti Calculations: Offshore Control over Businesses in Russia Has Halved (8 April 2026). URL: <https://www.vedomosti.ru/economics/articles/2026/04/08/1188681-podschety-vedomosti-ofshornii-kontrol-nad-rossiiskim-biznesom-sokratilsya>.

³ BRICS Expert Counsel. BRICS Cooperation progress according to the BITTC indication system (May 2026). URL: <https://admin.bricscouncil.ru/assets/6f9cf0bf-5b01-4fbf-b31a-f10ccd32e5ee>.

⁴ BRICS Investment Report (2023). URL: https://unctad.org/system/files/official-document/diae2023d1_en.pdf.

⁵ Eurasian Development Bank. Investment Cooperation in the Eurasian Region based on EDB Monitoring of Mutual Investments (2025). URL: https://eabr.org/upload/iblock/1bd/5hca9iy8kc3vjgib3kgidwse7fh284qp/EDB_2025_MMI_Eurasian-Region_Report_EN.pdf.

⁶ BRICS Expert Counsel. Dichotomy of trade and investments in BRICS (11 June 2024). URL: <https://bricscouncil.ru/ru/analytics/chrome-extension-efaidnbmnnpbpcapicplclefindmkaj-https-cdn-brics-russia2024-ru-upload-docs-d0-91-d0-a0-d0-98-d0-9-a-d0-a1-2024-pdf-17187894874060127>.

⁷ Lloyds. Foreign direct investment (FDI) in Russia. URL: <https://www.lloydsbanktrade.com/en/market-potential/russia/investment>.

⁸ Deconomus Economic Research Foundation. Changes in Russian capital investment by destination country between 1992 and 2024. URL: <https://www.oekonomus.hu/en/analyses/changes-in-russian-capital-investment-by-destination-country-between-1992-and-2024/>.

Acquisition of control by foreign investors over such companies and their assets requires prior approval the Government from Commission pursuant to Federal Law No. 57-FZ "On Procedures for Foreign Investments in the Business Entities of Strategic Importance for Russian National Defense and State Security" dated 29 April 2008, as well as notification of the acquisition of minority stakes.

In response to sanctions imposed by foreign states, Russia has introduced a counter-sanctions regime requiring special regulatory approvals by the Government Commission for transactions involving securities, shares, other financial instruments and real estate.

Obtaining the relevant approvals requires disclosure of the purpose of the transaction and the ultimate beneficial owner, and the process may take up to six months. Breach of the prohibitions and restrictions described above may result in the transaction being declared void.

Investors are therefore advised to carry out a detailed review of the applicable regulatory framework and assess whether regulatory approvals are required before making an investment.

4. What are the top three risks for foreign investors?

- 1 The regulatory framework represents a key practical factor for investors from BRICS states.

In addition to the regulatory approvals described in the answer to question 3 above, in practice, investors must take into account the legislation on data protection (including with respect to data localisation), employment and taxation. Certain activities require a licence, together with compliance with industry-specific requirements and standards.

- 2 The disconnection of Russian banks from SWIFT and sanctions restrictions complicate direct transfers of funds to Russian banks.

Investors should therefore identify in advance the most cost-effective yet compliant means of transferring funds to and from Russia, as any transfer to Russia from a non-resident is subject to currency control requirements.

- 3 Engagement with certain economic sectors or participants in the Russian market may be restricted by foreign sanctions, which can extend to shareholders and members of the governing bodies of investors from BRICS countries.

To minimise the risk, it is advisable to conduct sanctions and counter-sanctions due diligence on the proposed investment.

5. What key measures have been adopted to attract FDI?

Russia has strengthened economic cooperation with BRICS countries by expanding trade and investment, concluding new bilateral agreements and promoting business cooperation through BRICS institutional platforms, including the BRICS Business Council and the BRICS Business Forum.

A significant step forward was the conclusion of the Services and Investment Trade Agreement (entered into force on 23 August 2026) aimed at liberalizing market access (including investing) in services sector and streamlining investment procedures, as well as the Double Taxation Agreement with the United Arab Emirates (entered into force on 1 January 2026), which introduces preferential tax rates for foreign investors.

Russia continues to promote both domestic and foreign investment. At the same time, recent policy has placed greater emphasis on projects contributing to localisation, technological development and long-term economic cooperation, while investors from "friendly" jurisdictions, particularly BRICS countries, may become increasingly important participants in cross-border investment projects.

6. Is there a "one-stop shop" for foreign investors?

Russia does not have a single investment promotion agency or "one-stop shop" that guides foreign investors through all legal, regulatory and administrative procedures. Investors typically interact with various federal and regional authorities depending on the industry and location.

Russia maintains an extensive network of Trade Representations under the Ministry of Industry and Trade, operating in foreign jurisdictions, including BRICS countries. Their role is to promote bilateral trade and investment, provide information on Russian and local business regulations, monitor market developments, identify business opportunities, facilitate contacts with public authorities and business partners, and support trade and investment projects.

Trade Representations under the Ministry of Industry and Trade in foreign states promote bilateral trade and investment and provide information on relevant business regulations

In practice, Russia also promotes investment through international business platforms rather than a centralised agency. These include the St. Petersburg International Economic Forum, the Eastern Economic Forum, the BRICS Business Forum, bilateral business councils and country-specific business forums, which facilitate dialogue between governments, investors and businesses and often serve as platforms for announcing investment projects and cooperation agreements.

At the regional level, most constituent entities of Russia have regional investment development agencies or investment support centres that assist investors with project implementation, available incentives and interaction with local authorities.

In practice, these institutions facilitate market entry and government engagement but do not replace the need to obtain independent legal, tax and regulatory advice.

7. What are the current trends in BIT drafting?

Russia's principal approach to BITs is set out in the Resolution of the Government of the Russian Federation No. 992 of 30 September 2016 "On the Conclusion of the Russian Federation's International Treaties on Promotion and Protection of Investments", covered in the Report.

From November 2016 until May 2025, Russia did not enter into any new BITs. In 2025, Russia entered into three new BITs: one with China, a BRICS state covered in detail in this Report, as well as BITs with Congo (not yet in force) and Myanmar (entered into force in April 2026) (both are covered in question 12 below).

8. Which government bodies negotiate and draft BITs?

The negotiation and drafting of Russia's BITs is regulated by Resolution of the Government of the Russian Federation No. 992 of 30 September 2016 "On the Conclusion of International Treaties of the Russian Federation on Promotion and Protection of Investments".

The Resolution designates the Ministry of Economic Development as the lead negotiating authority. Specifically, the Ministry of Economic Development (Department of Trade Negotiations) conducts negotiations with the participation of the Ministry of Foreign Affairs, the Ministry of Finance, other relevant federal executive authorities, and, following the 2022 amendments, the General Prosecutor's Office.

Ministry of Economic Development (Department of Trade Negotiations) leads the negotiation and drafting of the BITs

The Ministry of Economic Development (Department of Trade Negotiations) maintains an up-to-date database on Russian BITs on its official website (www.economy.gov.ru), where agreement texts as well as other relevant documents are accessible.

Russian law does not establish a formal consultation mechanism through which domestic or foreign business associations may participate in the drafting or negotiation of BITs. However, business interest in the conclusion of BITs with particular countries (demonstrated in the form of appeals to the Ministry of Economic Development) is a key factor in the choice of negotiation partners.

Business interests may also influence the Government's broader investment policy through informal and advisory channels. The most prominent of these is the Russian Union of Industrialists and Entrepreneurs (RSPP), whose International Council for Cooperation and Investment serves as a platform for dialogue between Russian and foreign businesses and public authorities on investment-related issues.

9. Which government bodies handle investment disputes?

The General Prosecutor's Office represents Russia in investment arbitrations proceedings

10. How are investment awards enforced by the state?

The enforcement of investment arbitration awards by Russian courts is governed by the same legal framework as applies to foreign-seated commercial awards, namely the 1958 New York Convention and internal legislation (Law No. 5338-I "On International Commercial Arbitration" dated 7 July 1993).

11. Do pre-arbitration negotiations lead to resolution of disputes?

There is no publicly available information on pre-arbitration consultations that have resulted in the resolution of a dispute.

There are, however, instances in which arbitral proceedings have been resolved by settlement. For example, according to UNCTAD, UK Bank v. Russian Federation (SCC) (under the USSR-UK BIT) was discontinued following a settlement between the parties, but there are no publicly available details on the case.

JURISDICTION-SPECIFIC QUESTIONS

12. What are the distinctive features of the most recent Russian BITs?

Russia has signed 87 bilateral investment treaties (BITs). Since 2025 Russia signed three new BITs:

- With China (signed in May 2025 and entered into force in December 2025),
- Myanmar (signed in June 2025 and entered into force in April 2026),
- The Republic of the Congo (signed in October 2025 and not yet in force).

Russian new treaties signed in 2025 reflect the shift towards new-generation BITs

Comparing to the BITs signed before November 2016, new treaties reflect Russia's shift towards "new-generation" BITs, with more detailed provisions on the scope of protected investments, standards for determining expropriation, and procedural requirements for investor-State disputes, including notice of dispute requirements. The Russia–China BIT is addressed separately in this Report, so it will not be covered in this Q&A.

The Russia–Congo and Russia–Myanmar BITs contain several notable features with respect to investor-State dispute settlement:

- The Russia–Congo BIT provides for arbitration at the Dubai International Arbitration Center (DIAC) under DIAC Rules 2022 or ad hoc arbitration under UNCITRAL Arbitration Rules administered by DIAC, and expressly designates Dubai as the legal seat of arbitration.
- The Russia–Myanmar BIT provides for arbitration at the Hong Kong International Arbitration Center (HKIAC), as well as for more common avenues (for Russian BITs), including proceedings before competent courts and ad hoc arbitration under the UNCITRAL Arbitration Rules, as well as any other arbitration institution or under any other arbitration rules, if the disputing parties agree.
- Both BITs introduce a two-tier limitation period: (i) pre-arbitration consultations must be initiated within 2 years of when the investor became, or when it should have become, aware of the alleged breach; and (ii) arbitration must be commenced within 3 years from the initiation of such negotiations.



Saudi Arabia

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GENERAL QUESTIONS

1. What are the FDI statistics?

In 2024, according to the General Authority for Statistics (GASTAT), Saudi Arabia's inward FDI stock reached approximately SAR 977 billion (USD 260.5 billion), while annual FDI inflows reached approximately SAR 119 billion (USD 31.7 billion). The UAE recorded the largest inward FDI stock at approximately SAR 161 billion (USD 42.9 billion), followed by Luxembourg at SAR 101 billion (USD 26.9 billion) and France at SAR 69 billion (USD 18.4 billion).

USD 31.7 billion FDI inflow in 2024

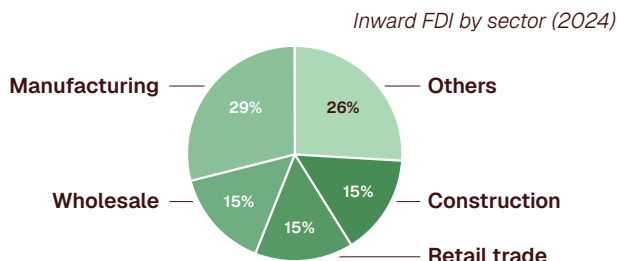
Investment relations with other BRICS economies - particularly China and India - have become increasingly significant over the past decade. Among the original BRICS members, China has emerged as the most significant investor, particularly in manufacturing, logistics, renewable energy, technology, infrastructure, and industrial projects. In relation to India, official Saudi bilateral data show that Indian FDI stock in the Kingdom increased to SAR 12.1 billion (USD 3.23 billion) in 2024, approximately 17.5% above 2023, although net FDI inflow from India decreased by approximately 8.8% year-on-year to SAR 1.8 billion (USD 480 million). By contrast, Brazil, Russia, South Africa, and Indonesia maintain comparatively limited direct investment presence in the Kingdom.¹

The UAE ranked second, after Germany, among the destinations for Saudi Arabia's outward FDI in 2024, accounting for 23% of total outward investment. Among the other BRICS economies, China followed with 3%, while Egypt accounted for 2%. The remaining BRICS countries represented comparatively small shares.²

2. Which sectors receive the most FDI?

Foreign direct investment in Saudi Arabia has increasingly concentrated in sectors supporting economic diversification under Vision 2030.

In 2024, manufacturing was the largest recipient of FDI inflows, receiving approximately SAR 35 billion (USD 9.3 billion), or 29% of total inflows. Wholesale and retail trade and construction each received approximately SAR 18 billion (USD 4.8 billion), representing approximately 15% each.



In terms of FDI stock, manufacturing represented approximately

SAR 277 billion (USD 73.8 billion), followed by wholesale and retail trade at SAR 150 billion (USD 40 billion) and financial and insurance activities at SAR 126 billion (USD 33.6 billion).³ Logistics and transportation remain strategic investment priorities under Vision 2030.

Large-scale projects such as NEOM, Diriyah Gate, the Red Sea Project, Qiddiya, and King Salman International Airport have attracted substantial foreign participation through engineering, construction, project management, infrastructure, and technology investments.

Technology-related investment has expanded significantly (threefold from 2020 to 2026 in the Information and Communication sector and an overwhelming three-hundred-fold growth in the Professional, Scientific and Technical Activities sector). International technology companies have established regional operations and cloud infrastructure within the Kingdom, supporting Saudi Arabia's objective of becoming a regional digital hub.

Mining has also emerged as a strategic investment sector following reforms under the Mining Investment Law adopted in 2020 under Royal Decree No. M/140, which entered into force 180 days following its publication in the Official Gazette, after seeing a dramatic decrease in FDI inflow from 2018-2020. Similarly, renewable energy projects, including solar, wind, and green hydrogen developments, have attracted increasing levels of foreign capital as part of the Kingdom's broader sustainability objectives.⁴

3. Which sectors are restricted for foreign investors?

Although Saudi Arabia permits 100% foreign ownership across many sectors, certain activities remain restricted or subject to regulatory approvals. Saudi Arabia follows a negative list approach under which foreign investment is generally permitted unless specifically restricted by law or regulation.

Certain strategic sectors remain closed to foreign investment, most notably upstream oil exploration and production

Additional restrictions may apply to activities connected with national security, defence, and certain religious services associated with Hajj and Umrah.

Several sectors are open to foreign investment but require approvals from sector-specific regulators. These include banking, insurance, capital markets, telecommunications, healthcare, mining, education, aviation, and defence-related industries. Approvals may be required from authorities such as the Saudi Central Bank (SAMA), Capital Market Authority (CMA), Communications, Space and Technology Commission (CST), Ministry of Industry and Mineral Resources, or other competent regulators.

Foreign ownership of listed companies is also subject to capital market regulations. Under the current framework, a non-resident foreign investor (other than a Foreign Strategic Investor) may not own 10% or more of the shares of any listed issuer, while

¹ General Authority for Statistics. Foreign Direct Investment Report 2024. URL: <https://www.stats.gov.sa/documents/20117/2435267/Foreign+Direct+Investment+2024+EN.pdf/b4ded07c-d433-6503-abc7-6b1dccc3bcb8?t=1756979660331>.

² General Authority for Statistics. Foreign Direct Investment by Economic Activity and Country. URL: <https://datasource.kapsarc.org/explore/assets/foreign-direct-investment/view/>.

³ General Authority for Statistics. Foreign Direct Investment Report 2024. URL: <https://www.stats.gov.sa/documents/20117/2435267/Foreign+Direct+Investment+2024+EN.pdf/b4ded07c-d433-6503-abc7-6b1dccc3bcb8?t=1756979660331>; General Authority for Statistics. Foreign Direct Investment by Economic Activity and Country. URL: <https://datasource.kapsarc.org/explore/assets/foreign-direct-investment/view/>.

⁴ King Abdullah Petroleum Studies and Research Center. Foreign Direct Investment by Economic Activity and Country. URL: <https://datasource.kapsarc.org/explore/dataset/foreign-direct-investment/?flg=en-gb>; Ministry of Investment Authority, Updated Investment Law. URL: <https://misa.gov.sa/activities/laws-regulations-copy/>.

aggregate foreign ownership is generally capped at 49%, subject to applicable exemptions and strategic-investor rules.⁵

Real estate ownership has been liberalised under the Law of Real Estate Ownership and Investment by Non-Saudis (2025). Restrictions remain in Makkah and Madinah and in certain strategically sensitive locations. In addition, acquisitions resulting in a change of control may require merger-control clearance from the General Authority for Competition (GAC) and approvals from relevant sector regulators.⁶

4. What are the top three risks for foreign investors?

Saudi Arabia has significantly improved its investment environment through legislative and regulatory reforms, including the Investment Law (Royal Decree No. M/19 of 2024), the Civil Transactions Law (Royal Decree No. M/191 of 2023), and the Companies Law (Royal Decree No. M/132 of 2022).⁷

Nevertheless, foreign investors should carefully consider three practical risks.

1 Regulatory and compliance complexity. While market entry has become more accessible, many sectors require approvals from multiple authorities in addition to the Ministry of Investment of Saudi Arabia (MISA). Investors frequently need to coordinate with municipal authorities, sector regulators, tax authorities, and licensing bodies, which can affect implementation timelines and increase compliance obligations.

2 Workforce localisation requirements. Under the Nitaqat programme and related labour market policies⁸ compliance requirements vary by sector and business activity and may affect recruitment, workforce planning, and operational costs, particularly in highly specialised industries.

Employers must maintain prescribed levels of Saudi nationals among employees

3 Tax compliance and regulatory enforcement. The Zakat, Tax and Customs Authority (ZATCA) has expanded enforcement activities in areas such as transfer pricing, withholding tax, value-added tax (VAT), and cross-border transactions.⁹

5. What key measures have been adopted to attract FDI?

Saudi Arabia has implemented extensive legal and regulatory reforms over the past decade to increase the amount of both domestic and foreign investment as part of Vision 2030. Among the most significant developments is the Investment Law introduced on 22 July 2024 (Royal Decree No. M/19 of 2024), which replaced the former Foreign Investment Law and introduced principles of investor protection, equal treatment, protection against expropriation, and freedom to transfer capital and profits.¹⁰

Other important reforms include the Companies Law (Royal Decree No. M/132 of 2022), which modernised corporate governance and company formation procedures,¹¹ and the Civil Transactions Law (Royal Decree No. M/191 of 2023), which

codified key contractual and commercial principles, increasing legal certainty for investors.¹²

Saudi Arabia has also liberalised its capital markets through reforms introduced by the Capital Market Authority (CMA), expanded foreign access to listed securities, and introduced significant real estate reforms permitting broader foreign ownership rights. Institutional initiatives such as the Regional Headquarters (RHQ) Programme, Special Economic Zones (SEZs), and the National Investment Strategy have further strengthened the investment environment.¹³

Businesses operating in the Kingdom are subject to localisation policies. “Saudisation” refers principally to requirements for employing Saudi nationals, including the Nitaqat programme and sector- and profession-specific localisation requirements. “Local content” policies are broader and seek to increase the proportion of economic value retained in the Kingdom through Saudi workforce participation, locally sourced goods and services, and local capabilities and supply chains.¹⁴

6. Is there a “one-stop shop” for foreign investors?

MISA serves as the Kingdom’s principal investment promotion agency and functions as the primary point of contact for foreign investors. Through the Invest Saudi platform, MISA provides information on investment opportunities, market entry requirements, sector-specific regulations, licensing procedures, and government incentive programmes.¹⁵

The Ministry of Investment is the primary point of contact for foreign investors

MISA facilitates investment registration, assists investors in identifying applicable regulatory requirements, coordinates with other government authorities, and supports investors throughout the establishment process. MISA also administers strategic investment initiatives, including the Regional Headquarters (RHQ) Programme and aspects of the National Investment Strategy.

MISA does not replace sector-specific regulators. Through its Comprehensive Service Center, MISA may receive applications for licences, permits and other legal approvals and coordinate them with the competent authority responsible for issuing the relevant approval (SAMA, CMA, CST, the Ministry of Industry and Mineral Resources or another competent regulator).

For foreign investors unfamiliar with the Saudi market, MISA plays a significant role in reducing administrative complexity and facilitating market entry.¹⁶

7. What are the current trends in BIT drafting?

Saudi Arabia continues to support bilateral investment treaties (BITs) as an important tool for promoting and protecting cross-border investment. However, recent developments suggest a shift towards more modern and balanced treaty drafting that reflects both international reform trends and the Kingdom’s evolving domestic investment framework.

A key trend is the use of more precisely defined investment protections. Saudi Arabia’s recent treaty practice should

⁵ Ministry of Investment of Saudi Arabia. Updated Investment Law Profile (1446H – 2024G). URL: <http://misa.gov.sa/app/uploads/2024/08/Saudi-Investment-Law-Profile-En.pdf>; Decision No. 1/28/1428 on Activities Excluded from Foreign Investment (24 March 2007); Saudi Exchange. Foreign Investors. URL: https://www.saudiexchange.sa/wps/portal/saudiexchange/trading/investing-trading/foreign_investors?locale=en

⁶ Law of Real Estate Ownership and Investment by Non-Saudis (2025). URL: <https://rega.gov.sa/en/laws-and-decisions/regulations-and-by-laws/rules/law-of-real-estate-ownership-and-investment-by-non-saudis/>

⁷ Investment Law (Royal Decree No. M/19 of 2024); Civil Transactions Law (Royal Decree No. M/191 of 2023); Companies Law (Royal Decree No. M/132 of 2022).

⁸ See, e.g., Ministry of Human Resources and Social Development. Ministry of Human Resources Announces the Launch of a New Phase of the Nitaqat Mutawar Program (19 February 2026). URL: <https://www.hrsd.gov.sa/en/media-center/news>

⁹ See Zakat, Tax and Customs Authority. Guidelines and Manuals. URL: <https://zatca.gov.sa/en/HelpCenter/guidelines/Pages/default.aspx>

¹⁰ Investment Law (Royal Decree No. M/19 of 2024).

¹¹ Companies Law (Royal Decree No. M/132 of 2022).

¹² Civil Transactions Law (Royal Decree No. M/191 of 2023)

¹³ Ministry of Investment. National Investment Strategy. URL: <https://misa.gov.sa/activities/national-investment-strategy/>

¹⁴ Ministry of Investment. Regional Headquarters Programme. URL: <https://eservices.misa.gov.sa/en/rhq>; Vision 2030. Kingdom of Saudi Arabia. URL: https://www.vision2030.gov.sa/media/rc0b5oy1/saudi_vision2030.pdf

¹⁵ Ministry of Investment of Saudi Arabia. Invest Saudi Platform. URL: <https://investsaudi.sa/>

¹⁶ Investment Law (Royal Decree No. M/19 of 2024); National Investment Strategy; Regional Headquarters Programme.

be viewed against the broader international trend toward investment treaties that seek to balance investor protection with the State's regulatory autonomy. This is reflected, for example, in the Saudi Arabia-Switzerland BIT signed in 2026, which combines conventional investment protections and investor-state arbitration with express provisions concerning state regulatory powers, corporate social responsibility and anti-corruption.¹⁷

The Investment Law indicates a preference for clearly defined investor protections aligned with domestic law¹⁸

Another important development is the preservation of the State's regulatory autonomy. Future treaty drafting is likely to include stronger provisions safeguarding the government's ability to regulate in areas such as public health, environmental protection, taxation, labour policy, competition law, cybersecurity, and national security.

Finally, treaty drafting is likely to continue incorporating structured dispute resolution mechanisms, including consultation periods, amicable settlement procedures, and investor-state arbitration provisions designed to balance investor protection with regulatory sovereignty.

8. Which government bodies negotiate and draft BITs?

The negotiation and drafting of bilateral investment treaties in Saudi Arabia is primarily a government-led process involving several ministries and regulatory bodies. MISA plays a central role in investment policy and international investment agreements, while the Ministry of Foreign Affairs is typically involved in diplomatic coordination and treaty negotiations.

Other governmental stakeholders may participate depending on the subject matter of the treaty. These can include the Bureau of Experts at the Council of Ministers, the Ministry of Commerce, the Saudi Central Bank (SAMA), the Capital Market Authority (CMA), the Zakat, Tax and Customs Authority (ZATCA), and sector-specific regulators where relevant.

Although treaty negotiations remain a sovereign function, business stakeholders may influence policy indirectly through consultation mechanisms and industry engagement. The Federation of Saudi Chambers, local chambers of commerce, bilateral business councils, and international business associations operating in Saudi Arabia regularly engage with government authorities on investment-related issues.

Additionally, the Istitlaa public consultation platform allows businesses and stakeholders to provide comments on draft laws and regulations affecting investment and commercial activity. While BITs themselves are not typically subject to public consultation, these mechanisms allow private sector participants to contribute to the broader regulatory and policy framework that may inform Saudi Arabia's treaty positions.

9. Which government bodies handle investment disputes?

Saudi Arabia does not appear to have a single publicly identified authority responsible for all investment disputes. MISA may play an important role where the dispute concerns investment registration, licensing, investor treatment, or rights under the Investment Law.

No designated body to handle the disputes, the responsible body depends on the nature of dispute

Pre-arbitration negotiations may involve MISA, the relevant ministry or regulator, the Ministry of Finance where fiscal exposure is involved, the Ministry of Foreign Affairs where treaty issues arise, and legal representatives appointed by the State. Where the dispute concerns a regulated sector, the relevant regulator may also participate, such as SAMA, CMA, ZATCA, CST, or the General Authority for Competition. The Investment Law provides mechanisms for foreign investors to resolve disputes with the state through international arbitration or local specialized administrative courts.

The Investment Law and its implementing framework also emphasise dispute resolution and investor grievance mechanisms, suggesting a preference for resolving disputes through consultation or administrative channels before escalation to arbitration.¹⁹

10. How are investment awards enforced by the state?

Saudi Arabia is a party to both the Washington Convention and the New York Convention. For awards rendered under the Washington Convention, Saudi Arabia has designated the Court of Grievances as the competent authority for the purposes of Article 54(2) of the Convention. For non-ICSID investment awards, recognition and enforcement will depend on the applicable treaty, arbitral regime, Saudi enforcement law and, where applicable, the New York Convention.

The Saudi Arbitration Law (Royal Decree No. M/34 of 2012) and Enforcement Law (Royal Decree No. M/53 of 2012) provide the principal domestic framework.²⁰ In practice, enforcement courts may examine whether the award satisfies procedural requirements, whether the arbitration agreement is valid, and whether enforcement would conflict with Saudi public policy or Sharia principles. The courts do not generally re-examine the merits of the dispute.

Publicly available information on voluntary compliance with investment treaty awards is limited. However, the legal route for compulsory enforcement remains available where voluntary compliance does not occur.²¹

11. Do pre-arbitration negotiations lead to resolution of disputes?

Publicly available information on Saudi investment disputes resolved through pre-arbitration negotiations is limited, as many settlements are confidential.

The Investment Law and its implementing regulations provide for dispute-resolution mechanisms and investor grievance channels. In practice, early engagement with MISA, the relevant sector regulator, or the government authority responsible for the challenged measure may help resolve disputes involving licensing, regulatory approvals, administrative delays, investment registration, or sector-specific compliance issues.²²

The key factors for successful pre-arbitration resolution are usually practical rather than purely legal. Investors are more likely to achieve an effective outcome where they: identify the correct decision-making authority; present a clear legal and factual record; demonstrate compliance with licensing, tax, labour, and sectoral requirements; quantify the commercial impact of the disputed measure; and propose workable remedies that allow the government authority to correct or reconsider its position without formal escalation.

Administrative proceedings may also assist where the dispute concerns tax assessments, regulatory penalties, competition

¹⁷ State Secretariat for Economic Affairs (the Swiss Confederation). Signing of an investment protection agreement with Saudi Arabia (23 April 2026). URL: https://www.seco.admin.ch/en/news/rzszot_v790-RedOEI5Kq.

¹⁸ Investment Law (Royal Decree No. M/19 of 2024).

¹⁹ Investment Law (Royal Decree No. M/19 of 2024); Ministry of Investment. Investment Law Implementing Regulations; Saudi Arbitration Law (Royal Decree No. M/34 of 2012).

²⁰ Saudi Arbitration Law (Royal Decree No. M/34 of 2012); Saudi Enforcement Law (Royal Decree No. M/53 of 2012).

²¹ Saudi Ministry of Justice. Enforcement Courts And Panels. URL: <https://www.moj.gov.sa/English/Ministry/Courts/Pages/EnforcementCourtsAndPanels.aspx>.

²² Investment Law (Royal Decree No. M/19 of 2024); Ministry of Investment. Investment Law Implementing Regulations.

²³ Investment Law (Royal Decree No. M/19 of 2024); Ministry of Investment. Investment Law Implementing Regulations; UNCTAD Investment Policy Hub. Saudi Arabia. URL: <https://investmentpolicy.unctad.org/international-investment-agreements/countries/185/saudi-arabia>.

decisions, or licensing decisions. In such cases, specialised administrative committees or appeal mechanisms may provide a route to resolution before arbitration becomes necessary.²³

JURISDICTION-SPECIFIC QUESTIONS

12. Has Saudi Arabia's Vision 2030 affected FDI?

Vision 2030 has significantly reshaped Saudi Arabia's investment landscape by shifting the Kingdom's economic policy from reliance on hydrocarbons toward diversification, private-sector participation, and foreign investment in strategic sectors.

Sectoral priorities now include manufacturing, mining, logistics, tourism, renewable energy, green hydrogen, financial services, digital infrastructure, artificial intelligence, healthcare, and real estate development. Large-scale projects such as NEOM, the Red Sea Project, Diriyah Gate, Qiddiya, and major transport and logistics initiatives have created substantial opportunities for foreign investors, contractors, technology providers, financiers, and strategic partners.²⁴

Vision 2030 has also driven major regulatory reforms. These include the Investment Law (Royal Decree No. M/19 of 2024), Companies Law (Royal Decree No. M/132 of 2022), Civil Transactions Law (Royal Decree No. M/191 of 2023), capital market reforms, real estate ownership reforms, Special Economic Zones, and the Regional Headquarters Programme. Together, these measures seek to increase legal certainty, attract foreign capital, and integrate Saudi Arabia more deeply into global investment flows.²⁵

Under Vision 2030 foreign investors are expected to play a practical role beyond capital contribution

In many sectors, the policy objective is to attract technology transfer, operational expertise, local supply-chain development, employment, training, and long-term industrial capability. This is particularly relevant in mining, defence, renewable energy, manufacturing, logistics, and digital infrastructure.

²⁴ Vision 2030; National Investment Strategy.

²⁵ Investment Law (Royal Decree No. M/19 of 2024), Companies Law (Royal Decree No. M/132 of 2022); Civil Transactions Law (Royal Decree No. M/191 of 2023).

GENERAL QUESTIONS

1. What are the FDI statistics?

South Africa's foreign direct investment (FDI) inflows have averaged less than 1.5% of GDP during the post-apartheid period. In 2023, South Africa attracted approximately ZAR 100 billion (USD 5.2 billion) in FDI, equivalent to

1.4% of GDP accounted for FDI in 2023

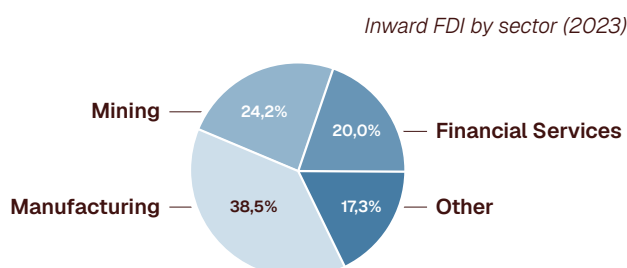
South Africa remains one of Africa's leading investment destinations.¹

South Africa's largest sources of FDI continue to be from the United Kingdom, the Netherlands, Belgium, Germany and Luxembourg, together with the United States, Japan and Australia.² Among BRICS members, China has emerged as South Africa's most significant investment partner. China represents approximately 3-4% of South Africa's total inward FDI stock. While this is a modest share relative to South Africa's largest traditional investment partners, China's investment is strategically important, with approximately USD 5.8 billion in BRICS-aligned investment strategy concentrated in sectors including banking, mining, manufacturing, infrastructure and renewable energy; prominent investments include Industrial and Commercial Bank of China's (ICBC) 20% stake in Standard Bank.³

South African companies are significant outward investors across Africa and increasingly engage with BRICS markets such as China, India and Brazil, although comprehensive statistics on South African investment outflows specifically to BRICS member states remain limited.

2. Which sectors receive the most FDI?

FDI into South Africa has traditionally been concentrated in the manufacturing, mining, financial services, transportation and retail sectors. According to South African Reserve Bank data, the manufacturing sector accounts for the largest share of FDI liabilities (38.5%), followed by mining (24.2%) and financial services (20.0%).⁴



South Africa's well-developed manufacturing base continues to attract investment from major multinational companies, particularly in the automotive, food processing and building materials industries.

In recent years, investment has increasingly expanded into renewable energy and the green hydrogen sector, driven by South Africa's abundant natural resources and energy

transition initiatives. In 2024, three energy producers announced separate green hydrogen projects with a combined value of approximately USD 7.1 billion, highlighting growing investor interest in the country's green energy sector.⁵

3. Which sectors are restricted for foreign investors?

South Africa does not have a single, comprehensive foreign investment screening regime. Instead, restrictions on foreign investment are imposed on a sector-specific basis through licensing requirements, empowerment legislation, prudential regulation and competition law.

The most significant cross-sector requirement is the Broad-Based Black Economic Empowerment (B-BBEE) framework established under the Broad-Based Black Economic Empowerment Act 53 of 2003.

The most significant cross-sector requirement is the Broad-Based Black Economic Empowerment (B-BBEE) framework

While foreign investors are generally permitted to invest, compliance with B-BBEE is often commercially important, particularly when doing business with government or in regulated industries. For example, the Mining Charter requires mining companies to achieve a minimum of 30% ownership by historically disadvantaged South Africans, while in telecommunications, the Electronic Communications Act requires individual licensees to maintain a minimum of 30% equity ownership by historically disadvantaged groups. The Financial Sector Code similarly prescribes ownership targets for banks, insurers and other financial services providers.

Multinational companies whose global policies or corporate structures prevent them from selling or diluting equity in their local South African subsidiaries may apply for Equity Equivalent Investment Programmes (EEIPs). EEIPs allow qualifying multinationals to earn B-BBEE ownership points by making non-recoverable contributions to enterprise development, skills development and supplier development initiatives in lieu of direct equity transfer. EEIPs are approved by the Minister of Trade, Industry and Competition and are subject to ongoing monitoring and evaluation by the Department of Trade, Industry and Competition (DTIC). Approval of an EEIP does not exempt the company from complying with other elements of the B-BBEE scorecard (such as management control, skills development and enterprise development); it provides an alternative means of satisfying the ownership element specifically.

Certain sectors have additional requirements. In the mining and petroleum sectors, legislation requires black economic participation, local content compliance and varying degrees of state participation. In telecommunications, the Independent Communications Authority of South Africa (ICASA) imposes ownership and empowerment requirements for licence holders. In addition, the Competition Amendment Act 18 of 2018 allows mergers involving foreign investors to be assessed on public interest grounds by the Competition Commission and the Competition Tribunal. In addition, the 2018 amendments introduced a mechanism for National Executive intervention in mergers that affect the national security interests

¹ BRICS Investment Report (2023). URL: https://unctad.org/system/files/official-document/diae2023d1_en.pdf.

² Department of Trade and Industry. The Bilateral Investment Treaty Policy Framework Review Government Position Paper (2009). URL: <https://static.pmg.org.za/docs/090626trade-bi-lateralpolicy.pdf>.

³ Standard Bank Group Limited is a South African banking and financial services group headquartered in Johannesburg, South Africa.

⁴ Strategy&. South Africa Economic Outlook (April 2024). URL: <https://www.strategyand.pwc.com/a1/en/press-release/south-africa-economic-outlook-april-2024.html>.

⁵ UNCTAD. World Investment Report (2024). URL: <https://unctad.org/publication/world-investment-report-2024>.

of South Africa, with the President empowered to constitute a committee of Cabinet members to make such a determination.

Overall, South Africa remains open to foreign investment, although investors in strategic and regulated sectors must comply with sector-specific ownership, empowerment and regulatory requirements.

4. What are the top three risks for foreign investors?

Investors should:

- 1 Familiarise themselves with South Africa's investment protection framework. The expiry and policy non-renewal of most BITs and the introduction of the Protection of Investment Act 22 of 2015 (effective from 2018) mean that investor protection now relies primarily on domestic legislation and South African courts rather than international investment treaties. Understanding this legal framework is important when assessing investment risk.

Investor protection now relies primarily on domestic legislation and South African courts rather than international investment treaties

- 2 Consider the practical implications of Broad-Based Black Economic Empowerment (B-BBEE). Although B-BBEE does not generally restrict foreign ownership, compliance is often commercially important, particularly for government procurement, licensing and participation in regulated sectors.⁶ Early planning can help foreign investors structure their investments effectively and maximise commercial opportunities.
- 3 Take account of infrastructure and operational challenges, including energy supply constraints and logistics bottlenecks at ports and rail. While these factors may increase the cost and complexity of doing business, ongoing public and private sector reforms are aimed at improving infrastructure, energy security and operational efficiency, supporting South Africa's long-term investment attractiveness.

5. What key measures have been adopted to attract FDI?

Over the past decade, South Africa has introduced several measures aimed at promoting both foreign and domestic investment. The Protection of Investment Act 22 of 2015 provides a domestic legal framework for investor protection following the termination of most bilateral investment treaties.⁷ InvestSA, established within the DTIC, has strengthened investment facilitation through its One Stop Shop, which assists investors with regulatory approvals and government engagement. The annual Presidential Investment Conference, launched in 2018, has also demonstrated a sustained commitment to attracting investment and has secured significant investment pledges. More recently, structural reform initiatives such as Operation Vulindlela have focused on improving the business environment by addressing constraints in sectors such as energy, transport, telecommunications and water.

Overall, South Africa does not necessarily prioritise domestic investment over foreign investment. Rather, its policy framework seeks to encourage both while ensuring that investment contributes to constitutional objectives such as inclusive growth, transformation and economic development.⁸ Foreign investors are generally afforded the same legal protections as domestic investors, although investment in certain sectors is subject to empowerment, public interest and sector-specific regulatory requirements.

6. Is there a "one-stop shop" for foreign investors?

InvestSA, established on 1 April 2016 within the DTIC, serves as South Africa's national investment promotion agency. Its mandate is to facilitate FDI, promote domestic investment and provide investor aftercare services.

In practice, InvestSA operates a One Stop Shop, which acts as a central point of contact for investors. It assists businesses by coordinating with government departments on regulatory approvals, business registration, permits and licensing, helping to reduce administrative delays and improve the ease of doing business. InvestSA also provides information on investment opportunities, sector-specific incentives and the regulatory framework, while offering ongoing support to investors after their investments have been established.

InvestSA operates a One Stop Shop

In addition to InvestSA's services, the Government engages directly with local and international investors through initiatives such as the Presidential Investment Conference, which showcases investment opportunities and reinforces South Africa's commitment to investment promotion.

7. What are the current trends in BIT drafting?

South Africa's approach to BITs has changed significantly over the past two decades. Following investment treaty disputes, including *Piero Foresti, Laura de Carli & Others v Republic of South Africa*,⁹ the DTIC undertook a comprehensive review of the country's BIT policy between 2007 and 2010. The review concluded that many of South Africa's earlier BITs reflected an outdated model that did not sufficiently accommodate the country's constitutional, developmental and transformation objectives.

As a result, South Africa terminated a number of BITs with European and other developed countries and introduced the Protection of Investment Act 22 of 2015, which provides investment protection through domestic legislation rather than treaty-based investor protections.¹⁰ However, several BITs remain in force, including those with China and Russia, and South Africa continues to negotiate and maintain investment agreements where they align with its policy objectives.

The current trend is towards an investment protection framework that balances investor rights with the state's constitutional mandate to regulate in the public interest. Consistent with this approach, South Africa has moved away from investor-state arbitration in favour of resolving investment disputes through domestic courts or, where provided for in an international agreement, state-to-state arbitration under section 13(5) of the Protection of Investment Act.¹¹ This statutory provision permits the South African government to consent to international arbitration between the Republic and the investor's home state, but only after domestic remedies have been exhausted.

8. Which government bodies negotiate and draft BITs?

The DTIC is the lead government department responsible for developing South Africa's investment policy and was responsible for negotiating BITs before the implementation of South Africa's new investment policies. Within the DTIC, the International Trade and Economic Development Division is primarily responsible for trade and investment policy, international negotiations and the drafting of investment agreements. Depending on the subject matter of a treaty, other government departments

⁶ Broad-based Black Economic Empowerment Act 53 (2003).

⁷ The Protection of Investment Act 22 (2015), Section 4.

⁸ Ibid.

⁹ *Piero Foresti, Laura de Carli & Others v The Republic of South Africa* (ICSID Case No. ARB(AF)/07/01).

¹⁰ The Protection of Investment Act 22 (2015).

¹¹ The Protection of Investment Act 22 (2015), Section 13.

and the Department of International Relations and Cooperation (DIRCO) may also be consulted (however, South Africa is gradually opting out of the BIT regime).

9. Which government bodies handle investment disputes?

Under the Protection of Investment Act 22 of 2015, the DTIC is the primary government body responsible for facilitating the resolution of investment disputes and is also the department responsible for negotiating South Africa's BITs. Accordingly, the same department is responsible for both investment policy and dispute facilitation.¹²

Department of Trade, industry and Competition is in charge of investment disputes against the state

Section 13 of the Act provides that an investor who has a dispute arising from government action affecting an investment may, within six months of becoming aware of the dispute, request the DTIC to facilitate its resolution through mediation. In practice, the DTIC coordinates the pre-dispute process and engages with the relevant government departments or public bodies involved in the underlying dispute.

If the dispute is not resolved, investors may refer the matter to a competent South African court, independent tribunal or other statutory body, consistent with section 34 of the Constitution.¹³ The Act does not provide for direct investor-state arbitration. International arbitration is only possible where domestic remedies have been exhausted and both South Africa and the investor's home state consent, making it an exceptional, state-to-state mechanism rather than the default means of dispute resolution.¹⁴

It is important to distinguish between treaty-based investment arbitration and contract-based commercial arbitration. The Protection of Investment Act governs investment disputes arising from government action affecting investments and channels these through domestic courts as the primary forum. However, the Act does not prohibit the South African government from entering into contracts with investors that contain international commercial arbitration clauses for disputes arising from the contractual relationship itself. The International Arbitration Act 15 of 2017 expressly applies to international commercial arbitration and binds public bodies, subject to section 13 of the Protection of Investment Act. Accordingly, contract-based arbitration remains available for disputes of a commercial or contractual nature, while investment disputes involving government regulatory or policy measures are subject to the Act's framework requiring the exhaustion of domestic remedies before international arbitration can be considered on a state-to-state basis.

10. How are investment awards enforced by the state?

South Africa has a well-established framework for the recognition and enforcement of foreign arbitral awards. South Africa acceded to the New York Convention in 1976 without reservations, including without a commercial-relationship reservation, and the Convention is given effect through the International Arbitration Act 15 of 2017, which is based on the UNCITRAL Model Law. Accordingly, the Convention is not, in principle, limited to awards arising

from commercial disputes. The International Arbitration Act implements the Convention without imposing a commercial-relationship restriction on the recognition or enforcement of foreign arbitral awards. Investment-treaty awards therefore do not fall outside the scope of the New York Convention merely because they arise from an investment treaty.

There is no reported South African case law that has directly addressed whether an investment-treaty award should be refused enforcement on the basis that it falls outside the scope of the New York Convention. The prevailing international view, however, is that investment-treaty awards may fall within the scope of the Convention and may therefore be recognised and enforced in a Contracting State where the applicable requirements for enforcement are satisfied.

The position in relation to awards rendered under the ICSID Convention requires separate consideration, however, given that South Africa is not a party to the ICSID Convention and the International Arbitration Act does not adopt or give effect to the ICSID Convention. Accordingly, ICSID awards cannot benefit from the self-contained enforcement mechanism in South Africa. This does not, however, render ICSID awards unenforceable in South Africa. Rather, an ICSID award may be recognised and enforced under the International Arbitration Act, provided that the requirements applicable to the recognition and enforcement of foreign arbitral awards are satisfied. In this respect, an ICSID award is treated in the same manner as any other foreign arbitral award.

In practice, South African courts have become increasingly supportive of arbitration, with the Supreme Court of Appeal and Constitutional Court confirming that court interference should be restricted.¹⁵

Enforcement requires the award creditor to apply to the High Court and provide the original arbitration agreement and award (or certified copies), together with an English translation where necessary. The court may refuse enforcement only on the limited grounds set out in the New York Convention.¹⁶ South African courts have generally adopted a pro-enforcement approach and interpret these refusal grounds narrowly.¹⁷

Where an award debtor is a foreign party with no presence but with assets in South Africa, the creditor must seek attachment of commercial assets located in South Africa.¹⁸ This requirement serves to establish the court's jurisdiction in the enforcement proceedings and preserve assets against which the award may ultimately be enforced.

Publicly available examples of voluntary compliance with investment arbitral awards by South Africa are limited. The Piero Foresti ICSID proceedings did not result in an award against South Africa,¹⁹ as the arbitration was discontinued and the Swiss Investor v. Republic of South Africa arbitration proceedings were conducted confidentially, and no arbitral award has been made public.²⁰

South Africa has complied with adverse international obligations where applicable, and there have been no widely reported enforcement disputes involving investment treaty awards against the state

¹² The Protection of Investment Act 22 (2015), Section 13(1).

¹³ The Protection of Investment Act 22 (2015), Section 13(4).

¹⁴ The Protection of Investment Act 22 (2015), Section 13(5).

¹⁵ Industrial Development Corporation of South Africa Limited and Another v Kalagadi Manganese (Pty) Ltd 2025 (6) SA 401 (SCA).

¹⁶ The Protection of Investment Act 22 (2015), Section 18.

¹⁷ Longman Distillers v Drop Inn Group 1990 (2) SA 906 (AD).

¹⁸ Tsung v Industrial Development Corporation 2006 (4) SA 177 (SCA).

¹⁹ Piero Foresti, Laura de Carli & Others v The Republic of South Africa (ICSID Case No. ARB(AF)/07/01).

²⁰ Swiss Investor v. Republic of South Africa, UNCITRAL, Partial Award (2003).

11. Do pre-arbitration negotiations lead to resolution of disputes?

The Protection of Investment Act introduced a structured mediation framework,²¹ allowing investors to request that the DTIC facilitate the resolution of investment disputes through mediation. However, as the Act only came into effect in July 2018, there is limited publicly available evidence of cases where this mechanism has resulted in a successful resolution.

In practice, successful pre-arbitration resolution is likely to depend on early engagement between investors and relevant government authorities, a clear understanding of the regulatory framework, and effective communication of the investor's concerns. Where disputes are resolved, practical solutions are generally supported by thorough preparation, cooperation between the parties and a willingness to identify commercially and legally workable outcomes.

Engagement through platforms such as InvestSA may also assist in resolving administrative issues before they escalate into formal disputes

JURISDICTION-SPECIFIC QUESTIONS

12. What other reasons, beyond those mentioned in the Report, led South Africa to terminate so many BITs?

South Africa's decision not to renew many of its BITs formed part of a broader review of its investment policy rather than a rejection of foreign investment. The DTIC concluded that many of the older BITs had been negotiated in the post-apartheid period using models that afforded extensive protections to foreign investors but placed limited emphasis on the state's ability to regulate in the public interest.²²

The *Piero Foresti, Laura de Carli & Others v Republic of South Africa* arbitration was a significant catalyst for this review.²³ The dispute arose after European (Italian and Luxembourgian) mining investors claimed that the requirement under the Mineral and Petroleum Resources Development Act²⁴ to transfer 26% ownership of their mining interests to historically disadvantaged South Africans as part of South Africa's B-BBEE framework amounted to an expropriation in breach of the applicable bilateral investment treaties. Although the arbitration was discontinued and the arbitral tribunal ordered the claimants to pay part of South Africa's legal costs, the case reinforced the Government's concern that investor-state arbitration could be used to challenge legitimate public policy measures aimed at advancing constitutional objectives such as transformation and redress.

The *Swiss Investor v. Republic of South Africa* arbitration²⁵ also contributed to South Africa's investment policy review. The matter involved a Swiss investor who had acquired land in Acornhoek, near a game reserve, to develop a game lodge and conference centre, and who brought a claim against South Africa, alleging that the state had failed to provide the full protection and security required under the applicable BIT. The proceedings were conducted confidentially, and no arbitral award has been made public. The existence of the claim and the fact that it was brought under the South Africa-

Switzerland BIT were matters of public record and prompted concerns relating to investor-state arbitration challenges to legitimate government public policies.

The Government also observed that a number of countries were contemporaneously reassessing their investment treaty programmes. In particular, Bolivia (which withdrew from ICSID in 2007 and terminated several BITs), Ecuador (which withdrew from ICSID in 2009 and terminated several BITs), India (which issued termination notices for 58 BITs and adopted a new Model BIT in 2015), and Indonesia (which allowed numerous BITs to lapse from 2014) were prominent examples of states taking similar steps. Additionally, the United States and the United Kingdom initiated reviews of their own BIT models in the late 2000s. South Africa's policy objective was therefore to establish an investment framework that balances investor protection with the state's constitutional mandate to pursue inclusive economic development, transformation and regulatory autonomy.

13. Has South Africa's policy with respect to the BITs affected FDI inflows in practice?

The available evidence suggests that

The shift from BIT protections to the Protection of Investment Act has not resulted in a significant decline in FDI inflows

South Africa continues to attract substantial levels of foreign investment and remains one of Africa's leading FDI destinations, receiving approximately ZAR 100 billion (USD 5.2 billion) in FDI in 2023.²⁶

While the transition from BITs may have influenced investor perceptions, it is difficult to attribute changes in FDI levels solely to this policy shift. Investment decisions are influenced by a range of factors, including energy supply, logistics performance, broader economic reforms and global economic conditions. The IMF has emphasised that continued structural reforms will be important in strengthening investor confidence and supporting future FDI growth.²⁷

The policy change also has implications for South African companies investing abroad. As significant investors across Africa, these companies may in certain cases no longer benefit from protections previously available under some BITs and may instead need to rely on the domestic investment laws of host states, which differ in the level of protection they provide.

Ultimately, the longer-term impact of the Protection of Investment Act will depend on its practical application and interpretation by South African courts. As the Act has not yet been extensively tested through litigation, the development of case law will provide greater clarity on its effectiveness in balancing investor protection with South Africa's constitutional and developmental objectives.

²¹ The Protection of Investment Act 22 (2015), Section 13(1)-(2).

²² M. Qumba. *South Africa's Move Away from International Investor-State Dispute: a breakthrough or bad omen for investment in the developing world* (2019). De Jure.

²³ *Piero Foresti, Laura de Carli & Others v The Republic of South Africa* (ICSID Case No. ARB(AF)/07/01).

²⁴ Mineral and Petroleum Resources Development Act 28 (2002).

²⁵ *Swiss Investor v. Republic of South Africa*, UNCITRAL, Partial Award (2003).

²⁶ International Monetary Fund. *South Africa: 2023 Article IV Consultation-Press Release; Staff Report; and Statement by the Executive Director for South Africa* (6 June 2023); UNCTAD. *World Investment Report* (2024).

²⁷ International Monetary Fund. *South Africa: 2023 Article IV Consultation-Press Release; Staff Report; and Statement by the Executive Director for South Africa* (6 June 2023).

GENERAL QUESTIONS

1. What are the FDI statistics?

According to the UAE Ministry of Investment's Foreign Direct Investment Report 2026, over 2015-2025, the UAE's inward FDI stock more than doubled from USD 110 billion to USD 318.9 billion, driven by structural legal reforms, most notably full foreign ownership under the FDI Law regime and targeted tax incentives.

Total FDI inflows rose 6% year-on-year to USD 48.3 billion, positioning the UAE at No. 9 globally in FDI inflows. Concurrently, total accumulated inward FDI stock expanded to USD 319.9 billion, demonstrating a 24% CAGR from 2021 to 2025. While annual inflows remained moderate between USD 8.6 billion and USD 10.4 billion from 2015 through 2018, inflow expansion accelerated rapidly post-2020, rising from USD 19.9 billion in 2020 to USD 30.688 billion in 2023, before reaching its 2025 peak.

USD 48.3 bn total FDI inward amount in 2025

In tandem with inward flows, UAE outward investment expanded substantially via sovereign wealth vehicles and institutional entities, marked by major cross-border allocations such as the landmark USD 24 billion investment in Egypt's Ras El-Hekma development project. Egypt is the top destination of the UAE's recent outward greenfield investment (16.7% of the total cumulative greenfield outward FDI in 2021-2025). Here, the BRICS partnership shows its strength with South Africa, India and Saudi Arabia also entering the top 10.¹

Following its formal entry into the BRICS alliance, capital alignments show that China commands 4.8% of total inward FDI stock by 2026, India ranks No. 2 globally by greenfield project FDI numbers in 2025 (1,081 projects, 51% Capex), and Saudi Arabia holds 2.9% of the stock while standing as the No. 7 source country for greenfield capital injections (7.6% Capex). This intra-BRICS capital co-exists beside traditional Western allocators like the UK (11.9% stock) and the US (8.1% stock), balancing the UAE's distributed matrix of global sovereign wealth.²

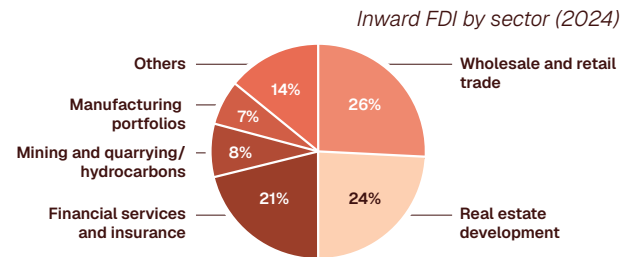
2. Which sectors receive the most FDI?

Recent economic cycles demonstrate that FDI in the UAE is concentrated in advanced knowledge economies, moving beyond legacy hydrocarbon reliance:

- Advanced Digital Infrastructure & FinTech: Major cloud data centers and regulatory sandboxes across the emirates.
- Renewable Energy Generation: Strategic green hydrogen and utility-scale solar projects.
- Financial and Corporate Services: Dominated by institutional investment into the UAE's specialised financial free zones.
- Advanced Property & Logistics Infrastructure
- High-value logistics nodes and real estate development portfolios.

Recent metrics from the Ministry of Investment showcase a dual-track concentration split between legacy foundations and future-facing greenfield segments:

- Cumulative Inward FDI Stock (2024): Dominated by Wholesale and retail trade (26%), Real estate development (24%), Financial services and insurance (21%), Mining and quarrying/hydrocarbons (8%), and Manufacturing (7%).³



- Newly Announced Greenfield Projects (2025): Automotive OEM (30.3% Capex), Communications (29.1%), Real Estate (7%), Business Services (5.5%), Transportation and Warehouses (4.5%), Software and IT services (ICT) captured 2.7% of projects.⁴

3. Which sectors are restricted for foreign investors?

The classic paradigm of local corporate control was fundamentally restructured via Federal Decree-Law No. 32 of 2021 on Commercial Companies, allowing 100% foreign ownership across onshore mainland commercial entities.⁵ However, strict limitations remain active under the Strategic Effect doctrine, requiring specialised administrative clearances or minimum domestic equity joint ventures in sectors such as central banking / sovereign monetary services, defense logistics / military manufacturing, and sovereign energy / heavy utilities (companies in these sectors are not permitted to be 100% foreign-owned).⁶

The state channels international capital into ring-fenced regulatory hubs allowing to take into account specificity of a particular sector

Financial projects are directed to the common law frameworks of the DIFC and ADGM, while advanced aerospace and defense assembly projects operate inside specialised manufacturing clusters like Khalifa Economic Zones Abu Dhabi (KEZAD) and Dubai Industrial City (DIC).⁷

4. What are the top three risks for foreign investors?

Despite advanced statutory ease of business, foreign investors must assess three fundamental practical risks under the newly established framework:

- 1 Navigating the local regulatory tax realignment: transitioning from a zero-tax environment to a highly regulated compliance landscape featuring a mandatory 9% flat corporate tax on net profits exceeding approximately USD 102,000.

¹ Ministry of Investment. UAE Foreign Direct Investment Report (2026). URL: <https://www.invest.gov.ae/storage/post/4ojk7z8lWho73U9R38Sg5P4K1SIhyWsb1aTFI7h.pdf>.

² Ministry of Investment. UAE Foreign Direct Investment Report (2025). URL: <https://www.invest.gov.ae/storage/post/PwRqf03MgwYOpMmGW7Gkfz3fGfINoKWxkuPJ71R.pdf>.

³ Ibid.

⁴ Ministry of Investment. UAE Foreign Direct Investment Report (2026). URL: <https://www.invest.gov.ae/storage/post/4ojk7z8lWho73U9R38Sg5P4K1SIhyWsb1aTFI7h.pdf>.

⁵ Federal Decree-Law No. 32 on Commercial Companies (2021).

⁶ Cabinet Resolution No. 55 on the Determination of the List of Strategic Effect Activities (2021).

⁷ Ibid.

- 2 Overlapping free zone vs. mainland jurisdictions: evaluating boundaries between civil law mainland structures and English common law options across more than 45 multidisciplinary free zones.
- 3 Cross-border asset structuring amid global fragmentation: managing complex, fragmented compliance demands and friendshoring adjustments while navigating the UAE Dirham's fixed peg to the US Dollar alongside growing alignments with emerging currencies within the BRICS network.

5. What key measures have been adopted to attract FDI?

To maximize capital returns and eliminate operational friction, the UAE implemented an extensive legislative suite: full 100% corporate ownership via Decree-Law No. 32 of 2021 (details are provided below), alignment of onshore arbitration with UNCITRAL models via Federal Law No. 6 of 2018, and the introduction of a new 30% to 50% refundable R&D tax credit (details are provided below).⁸ This is paired with strategic VAT rationalizations (zero-tax status on key imports/exports and financial transactions), the human capital Golden Visa program, and Ministry of Human Resources fee waivers for factories achieving high In-Country Value (ICV) scores.

• Full 100% corporate ownership

The enactment of Federal Decree-Law No. 32 of 2021 represents a foundational shift in the UAE's commercial architecture by dismantling the historic requirement under Article 10 of the Commercial Companies Law, which mandated a minimum 51% Emirati shareholding for all mainland enterprises. Under the new framework, foreign investors and corporate entities can establish, capitalise, and retain 100% equity ownership in onshore Limited Liability Companies (LLCs) and Public Joint Stock Companies (PJSCs) across more than 1,000 commercial, industrial, and service activities (activities not permitted for 100% foreign ownership include security, defense, military activities, banking, insurance, currency printing, and telecommunications). Crucially, the reform eliminates the mandatory requirement to appoint a Local Service Agent (LSA) or a national sponsor, granting foreign investors complete operational control and full entitlement to financial distributions.

Foreign investors are now allowed to own 100% in mainland companies.

• R&D Tax Incentives Regime

The UAE's Research & Development (R&D) Tax Credit regime, enacted under Cabinet Decision No. 215 of 2025 and Ministerial Decision No. 24 of 2026, serves as a government-backed incentive programme designed to encourage innovation and attract knowledge-intensive foreign investment. It is effective for tax periods starting on or after 1 January 2026. To participate, businesses must secure project-level pre-approval from the Emirates Research and Development Council and meet a minimum spend threshold of AED 500,000 per project per tax period.

While early market summaries frequently described the measure broadly as a "30% to 50% R&D tax credit", the statutory framework structures the incentive as a non-refundable, progressive tax credit ranging up to 50%. Under the current "Phase 1" implementation, the credit functions as a direct offset against corporate tax liabilities (at the 9% standard rate) and Pillar Two Domestic Minimum Top-Up Tax (DMTT) liabilities.

The 2025 Ministry of Investment figures confirm there is no policy preference prioritising domestic investment over foreign capital. Instead, the National Investment Strategy 2031 sets

a unified, non-discriminatory roadmap aiming to double annual FDI inflows to USD 65 billion and push total inward stock to USD 600 billion by 2031.⁹

6. Is there a "one-stop shop" for foreign investors?

The federal promotion engine is led by the Ministry of Investment (Mol), established under Federal Decree-Law No. 17 of 2023 to spearhead national strategies.¹⁰ This work is supported by unified, digitally integrated corporate registries functioning as highly efficient "one-stop shops": for example, the Abu Dhabi Registration Authority (ADRA) as a single digital ledger combining all municipal licensing and touchpoints; the Emirates Drug Establishment (EDE) as the sole federal regulator for fast-tracking medical products; and Ras Al Khaimah's Digital Assets Oasis (RAK DAO) offering bespoke Web3 regulations and 100% foreign ownership.

**Ministry of Investment is the federal promotion engine
Corporate registries function as one-stop shops**

7. What are the current trends in BIT drafting?

The UAE oversees a world-class network consisting of more than 120 BITs and 21 active Comprehensive Economic Partnership Agreements (CEPAs). Current policy prioritises second-generation BITs, which shift away from asymmetric investor privileges toward a balanced framework that explicitly preserves host state regulatory sovereignty regarding public health, environment, and tax compliance.¹¹ Within the BRICS alignment, the UAE emphasises treaty metrics supporting advanced, non-equity investment structures (such as long-term technology licensing, management contracts, and complex public-private partnerships without equity participation).

8. Which government bodies negotiate and draft BITs?

The negotiation and drafting of BITs are driven primarily by the Ministry of Finance (MoF), working in conjunction with the Ministry of Investment (Mol) and the Ministry of Foreign Affairs (MoFA). To reflect market realities, the state maintains joint consultations with domestic chambers of commerce and major sovereign wealth entities like Mubadala and ADQ (Abu Dhabi Developmental Holding Company PJSC), giving international and domestic business coalitions a consultative voice in shaping treaty mandates.

9. Which government bodies handle investment disputes?

**The Ministry of Justice represents the state
in investor-state disputes**

The official representation of the state in formal international investment disputes falls under the authority of the Ministry of Justice (MoJ), frequently coordinating with specialised departments within the MoF.

While the MoJ holds formal legal carriage for foreign claims, operational management relies heavily on inter-ministerial ad hoc working groups and institutional interfaces. The MoF maintains primary oversight of treaty policy and financial exposure, while the Mol handles front-line investor grievances and operational friction. Serving formal notice to the MoJ satisfies statutory requirements; however, effective dispute resolution requires early notification to the MoF and Mol, as pre-arbitration negotiations are typically routed through ad hoc inter-ministerial settlement boards engineered to leverage cooling-off windows for structured, confidential mediation before a dispute escalates to international tribunals.

⁸ Ibid. See also Article 10, UAE Federal Decree-Law No. 32 on Commercial Companies (2021) and Federal Law No. 6 on Arbitration (2018) (aligning domestic procedures with the UNCITRAL Model Law).

⁹ Ministry of Investment. Why the UAE. URL: <https://www.invest.gov.ae/en/why-the-uae>.

¹⁰ Federal Decree-Law No. 17 (2023).

¹¹ See OECD. Investment Policy Perspectives in the United Arab Emirates. URL: https://www.oecd.org/en/publications/investment-policy-perspectives-in-the-united-arab-emirates_d83cbff3-en/full-report/modernising-the-uae-s-investment-treaties_9e9e5ec7.html.

10. How are investment awards enforced by the state?

The UAE has an established framework for the recognition and enforcement of both commercial and investment arbitral awards, although the applicable regime differs depending on the nature of the award:

- **ICSID Awards Recognition and Enforcement:** The UAE is a Contracting State to the Washington Convention. The UAE has not enacted a separate domestic procedural regime specifically for the recognition and enforcement of ICSID awards. However, it is worth noting that Article 242 of Federal Decree Law No. 42 of 2022 of the Civil Procedures Code, differentiates between an asset, public property and assets of foreign embassies and diplomatic bodies that enjoy diplomatic immunity on condition of reciprocity, this clause states that "Without prejudice to the provisions of any other law, the following items may not be attached".¹²
- **The New York Convention:** As a Contracting State to the New York Convention (ratified via Federal Decree No. 43 of 2006), the UAE civil judiciary enforces foreign awards systematically, limiting refusals to strict, narrow public policy exceptions.¹³
- **Domestic Mechanics:** Under the Federal Arbitration Law (2018), mechanisms for execution via the Federal and Local Courts of Appeal are fully optimised. Voluntary compliance by state-backed entities is standard practice to preserve the country's global financial standing.

The DIFC and ADGM Common Law Courts provide reliable channels for validating and executing international awards¹⁴

11. Do pre-arbitration negotiations lead to resolution of disputes?

Mandatory cooling-off periods embedded within UAE BITs ought to lead to successful pre-arbitration settlements due to the commercial pragmatism of the UAE government, which prioritises long-term economic development and public-private cooperation over protected legal standoffs. This is explicitly evident in high-profile cross-border partnerships, such as Microsoft's USD 1.5 billion strategic investment in G42,¹⁵ or the joint venture between Space42 and Finland's ICEYE to manufacture Synthetic Aperture Radar (SAR) satellites locally in Abu Dhabi.¹⁶ Far from involving public legal disputes or arbitral claims, these complex high-tech transactions demonstrate how potential commercial, regulatory, and national security friction, such as cross-border technology transfers and supply-chain oversight, is proactively negotiated and mitigated through structured inter-governmental and corporate governance frameworks rather than formal investor-state litigation.

JURISDICTION-SPECIFIC QUESTIONS

12. Do you see any particular reason for a big share of BITs remaining not ratified?

Signed but unratified treaties are typically a result of extended domestic constitutional alignment processes required across counterparty jurisdictions. Furthermore, the UAE frequently fast-tracks its landmark overarching CEPA trade agreements, such as those signed with India, South Korea, Turkey, and Colombia, which can absorb or supersede standalone BIT guidelines to accelerate active cross-border trade.¹⁷

¹² Mackenzie A. et al. Enforcing ICSID Convention arbitration awards in the UAE: overview. Practice note: overview Middle East, United Arab Emirates (1 November 2024). [https://anzlaw.thomsonreuters.com/w-044-7282?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://anzlaw.thomsonreuters.com/w-044-7282?transitionType=Default&contextData=(sc.Default)&firstPage=true).

¹³ Federal Decree No. 43 on the Accession of the UAE to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (2006).

¹⁴ Dubai Law No. 12 (2004), Article 7.

¹⁵ G42 Official Website. URL: <https://www.g42.ai/>.

¹⁶ ICEYE. Space42 and ICEYE Announce Joint Venture to Bring Satellite Manufacturing to the UAE (9 December 2024). URL: <https://www.iceye.com/newsroom/press-releases/space42-and-iceye-announce-joint-venture-to-bring-satellite-manufacturing-to-the-uae>.

¹⁷ See, e.g., Ministry of Economy and Tourism. UAE- Korea Comprehensive Economic Partnership Agreement. URL: <https://www.moet.gov.ae/en/uae-korea-comprehensive-economic-partnership-agreement>.