

# BRICS

REPORT

## **MUTUAL PROTECTION OF FOREIGN INVESTMENTS IN BRICS MEMBER STATES**

# 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.<sup>1</sup> 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 Arabia, and the United Arab Emirates ("UAE"). Saudi Arabia reportedly accepted the invitation to join the bloc and attends its summits, but has not formally acceded to BRICS. The Kingdom is, nevertheless, included in this Report to provide a more comprehensive view of investment-protection developments involving key economies. Indonesia officially joined BRICS on 1 January 2025, further expanding the group. Brazil assumed the presidency in BRICS in 2025. In 2026, the presidency will pass on to India.

## BRICS:

# 2010

Brazil  
China  
India  
Russia  
South Africa

# 2024 - 2025

Egypt  
Iran  
Saudi Arabia  
Ethiopia  
UAE  
Indonesia

AFTER

# 2025

Possible  
new  
members



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

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.<sup>2</sup> It's important to note that this data does not cover the states that joined BRICS in 2024 and 2025.

Again, according to UNCTAD, in 2024, the total FDI inflows in the extended BRICS states accounted for around 23.5% of global FDI, and the outflows accounted for ~15%.<sup>3</sup> The combined GDP of the BRICS states is projected to account for 40,7% of global GDP in 2025.<sup>4</sup>

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

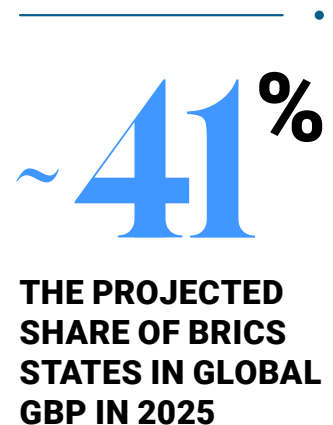
At present, BRICS does not have a comprehensive public study outlining the principles or standards for protecting foreign investment among its member states, together with a framework for settlement of disputes between the states and foreign investors. As an informal alliance, BRICS lacks a unified agreement 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.<sup>5</sup>

This 2025 Report (Report as of 1 October 2024 is available here<sup>6</sup>) 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.

The Report does not aim to propose models for standard regulation at the BRICS level. However, considering the growing consensus on the need for harmonisation



<sup>2</sup> BRICS Investment Report (2022). P. 10. URL: [https://unctad.org/system/files/official-document/diae2023d1\\_en.pdf](https://unctad.org/system/files/official-document/diae2023d1_en.pdf).

<sup>3</sup> Based on Annex table 1 to the UNCTAD report "World Investment Report 2024: Investment Facilitation and Digital Government". The data on FDI outflows do not include Ethiopia, as information for this country is not available. URL: <https://unctad.org/topic/investment/world-investment-report>.

<sup>4</sup> Concept Note and Programme of High-Level Panel Discussion on BRICS Summit Outcome (2023). URL: [https://unctad.org/system/files/information-document/gds\\_ecidc\\_2023d01-bricscn\\_en.pdf](https://unctad.org/system/files/information-document/gds_ecidc_2023d01-bricscn_en.pdf).

<sup>5</sup> For the purposes of the Report, information current as of early October 2024 has been used.

<sup>6</sup> Mutual Protection of Foreign Investments in BRICS Member States. URL: [https://brevia.legal/upload/iblock/390/xa56yemd4f1pdbyhp9y2ze4fbb2vh60/ic\\_jus-mundi-2025-brics-report.pdf](https://brevia.legal/upload/iblock/390/xa56yemd4f1pdbyhp9y2ze4fbb2vh60/ic_jus-mundi-2025-brics-report.pdf).

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 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.<sup>7</sup>

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.

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 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.

<sup>7</sup> 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.

# Contents

Introduction .....	2
<b>I. Executive Summary .....</b>	<b>6</b>
<hr/>	
<b>II. Overview of Investment Treaties among BRICS Member States .....</b>	<b>10</b>
A. Bilateral Investment Treaties .....	11
B. Multilateral Investment Treaties Involving BRICS States .....	15
C. BRICS Foreign Investment Initiatives .....	16
<hr/>	
<b>III. General Policy of BRICS States as related to Entering into Bilateral Investment Treaties .....</b>	<b>17</b>
A. Generations of BITs .....	21
B. Model BITs .....	22
C. Review of Approaches to the Earlier Signed BITs .....	23
<hr/>	
<b>IV. General Terms and Standards for Protection of Foreign Investments under BITs between BRICS States .....</b>	<b>27</b>
A. General Terms .....	28
B. Investment Protection Standards .....	37
<hr/>	
<b>V. Investor State Dispute Settlement .....</b>	<b>48</b>
A. Overview of International Fora and Terms for Investment Arbitration .....	52
B. State-to-State Investment Arbitration in Support of Investors .....	61
C. Specifics of Dispute Resolution under Multilateral Treaties .....	62
<hr/>	
<b>VI. Overview of BRICS States' BITs with Partner Countries .....</b>	<b>65</b>

# **I. EXECUTIVE SUMMARY**

For more than 45 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 Islamic 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 entered into in 2024 between Egypt and Saudi Arabia.

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.

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 October 2025, there are 23 BITs in force between BRICS states, most (16) 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.<sup>8</sup> Egypt and Iran have concluded 5 BITs, 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 signing of BITs) and India have just 1 BIT currently in force each.

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.

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**23**  
BITs  
**ARE IN FORCE  
AMONG BRICS  
STATES**

<sup>8</sup> 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.

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 on toward participating in BITs.

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 its treaty with the UAE (the only BIT it has in force with a BRICS country), only the investor's home state can initiate legal action against another state on behalf of the investor, rather than the investor bringing the claim directly.

However, some old-generation treaties, signed decades ago, also limit investors' ability to submit disputes with a host state to international arbitration. For instance, most of China's BRICS treaties contain a limited arbitration clause that only allows for arbitration of disputes over amounts of compensation, rather than over whether a 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 the 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, as well as the Egypt-Ethiopia (2006) BIT) 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**

<p>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</p> <p>Specific circumstances under which protection is not granted. For instance, the UAE-India BIT does not safeguard against taxes</p>	<p>The potential for restructuring or using alternative options to safeguard assets if state policies change, leading to the agreement termination</p> <p>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</p>
<p>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</p>	<p>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</p>
<p>Guidelines for calculating damages for expropriation. Most BITs among BRICS member states employ fair market value as the standard</p>	<p>Case law and the interpretations rendered by arbitral tribunals with respect to particular BITs</p>

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:

23

A

**Bilateral investment treaties and bilateral trade agreements<sup>9</sup>**



B

**Several multilateral treaties between Islamic 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.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> The majority of the BITs worldwide were concluded between the 1990s and the 2010s.<sup>13</sup>

Within the current BRICS framework, as of 1 October 2025, **37** BITs have been signed, with **23** in effect, **6** signed but not yet in force, and **8** terminated.<sup>14</sup>

The first BIT currently in force was entered into in 1993 between China and the UAE, while the most recent one was signed in 2024 between Egypt and Saudi Arabia.<sup>15</sup>

### BITs IN FORCE

CHINA – UAE  
**1993**

**FIRST**

EGYPT – SAUDI ARABIA  
**2024**

**MOST RECENT**

<sup>9</sup> As of the end of 2024, there were at least 2,625 active BITs and trade agreements worldwide that include provisions for the protection of foreign investments. Source: World Investment Report 2025: International Investment in the Digital Economy. Chapter II. C. 104. URL: <https://unctad.org/publication/world-investment-report-2025>.

<sup>10</sup> UNCTAD/ITE/IIT/7. Bilateral investment treaties in the mid-1990s. P. 8. URL: <https://digitallibrary.un.org/record/264901?v=pdf>.

<sup>11</sup> Vandeveld 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](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1478757).

<sup>12</sup> Ibid. P. 182.

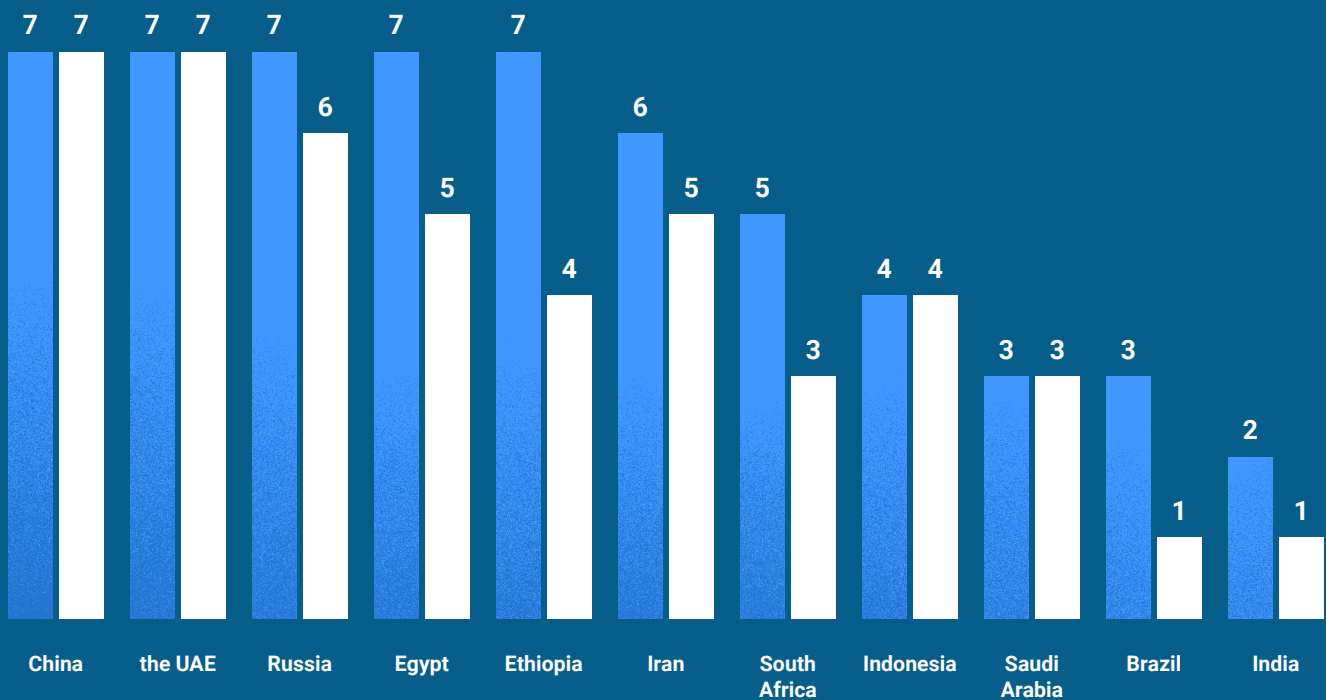
<sup>13</sup> IIA Issues Note: Recent developments in the IIA regime: accelerating IIA reform (UNCTAD). 2021, Issue 3. P. 1. URL: [https://unctad.org/system/files/official-document/diaepcbinf2021d6\\_en.pdf](https://unctad.org/system/files/official-document/diaepcbinf2021d6_en.pdf).

<sup>14</sup> To demonstrate the overall coverage of the BITs between BRICS member states as of 1 October 2025, this statistic excludes treaties that have been replaced by those currently in force, namely China-Russia (1990), Egypt-UAE (1988), India-UAE (2013). Apart from that, we have not counted the recently signed BIT between China and Russia that will replace the 2006 BIT between these states, since the 2006 BIT is still in force. For the sake of clarity, in this Report, the China-Russia BIT that is currently in force is referred to as "the China-Russia 2006 BIT", and the recently signed one - as "the China-Russia 2025 BIT".

<sup>15</sup> 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

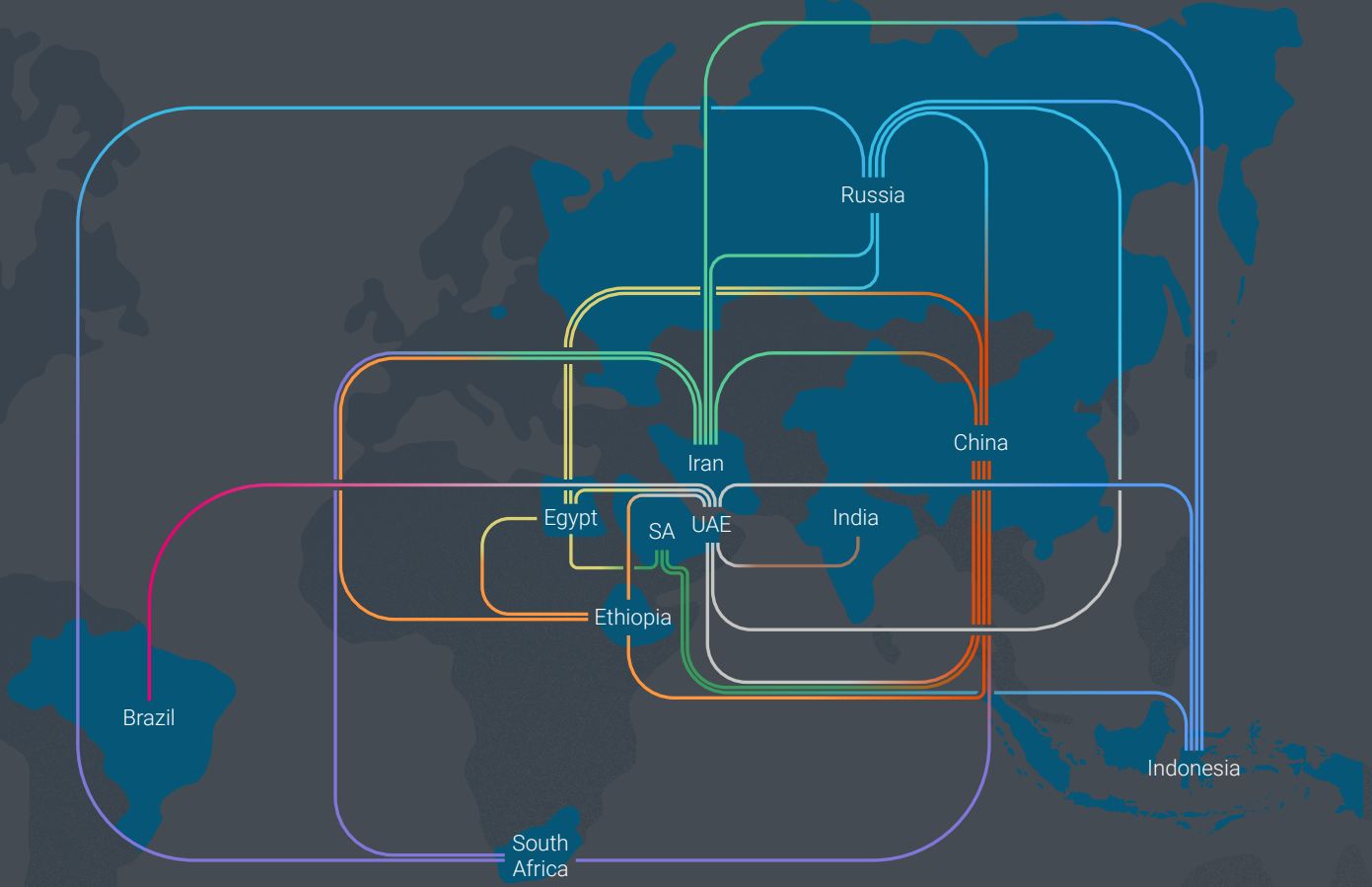
China and the UAE currently have the highest number of BITs in force: covering relationships with 7 states. However, China does not have a treaty with Brazil, China's BITs with India and Indonesia were terminated, and the UAE do not have BITs with Iran and Saudi Arabia. Russia has 6 treaties in force. 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 number of treaties in force are Brazil<sup>16</sup> and India, with 1 agreement each.

In comparison, prior to the accession of new members in 2024 and 2025, only 6 BITs were signed among BRICS states, with 3 currently in force (China-Russia (2006), China-South Africa (1997), and Russia-South Africa (1998)). Two treaties were terminated in 2017 and 2018 (India's treaties with Russia and China, respectively). The Brazil-India BIT, signed in 2020, has not yet entered into force. 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 have terminated treaties with other alliance members. India terminated 6 BITs with China, Egypt, Ethiopia, Indonesia, Russia, and Saudi Arabia. The India-UAE BIT (2014) expired, but it was replaced by a new treaty in 2024, which has already entered into force on 31 August 2024 according to UNCTAD. Indonesia terminated 2 BITs with China and Egypt (in addition to the BIT terminated by India). Neither of them was replaced by a new treaty.

<sup>16</sup> 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"



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

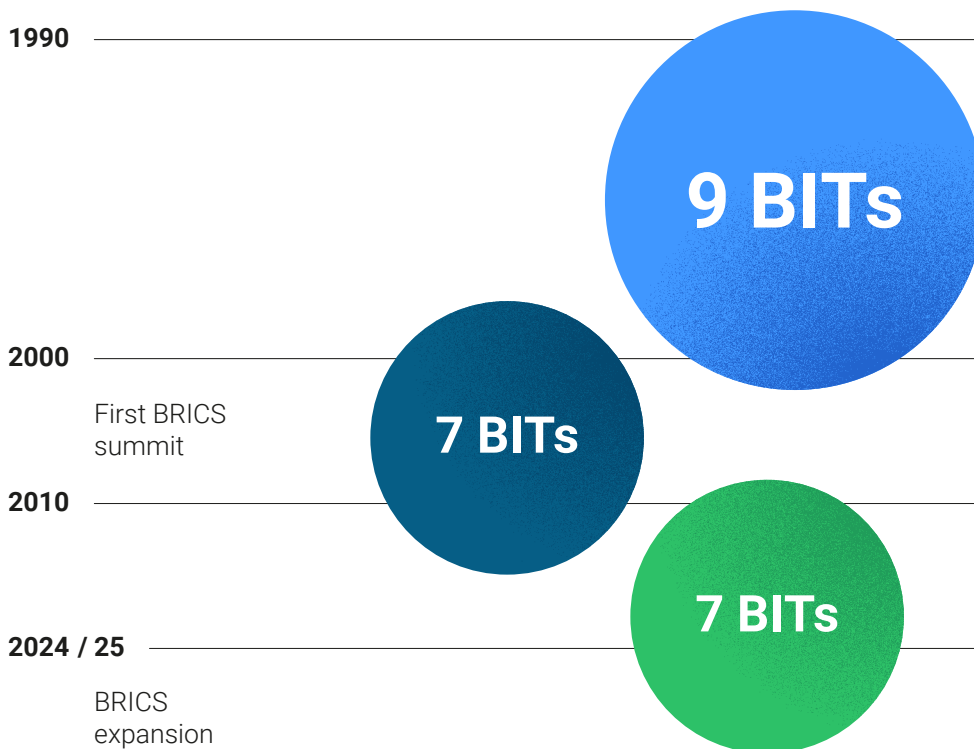
Nine of the effective bilateral agreements between BRICS states were entered into over 20 years ago, during the 1990s, and do not reflect recent practices. Most of these older treaties (5 out of 9) are attributed to China. Conversely, the remaining 14 agreements came into existence in the 21st century.

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 of such UAE's treaties are in effect: with Brazil, Ethiopia, India and Indonesia. Brazil has BITs with Ethiopia, India, and the UAE, but only the treaty with the UAE is currently in force.

## UAE & BRAZIL

**ARE THE MOST ACTIVE IN SIGNING NEW BITs**

### 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 the:

- 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.

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 Islamic states (Egypt, 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 association<sup>17</sup>

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

<sup>17</sup> 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





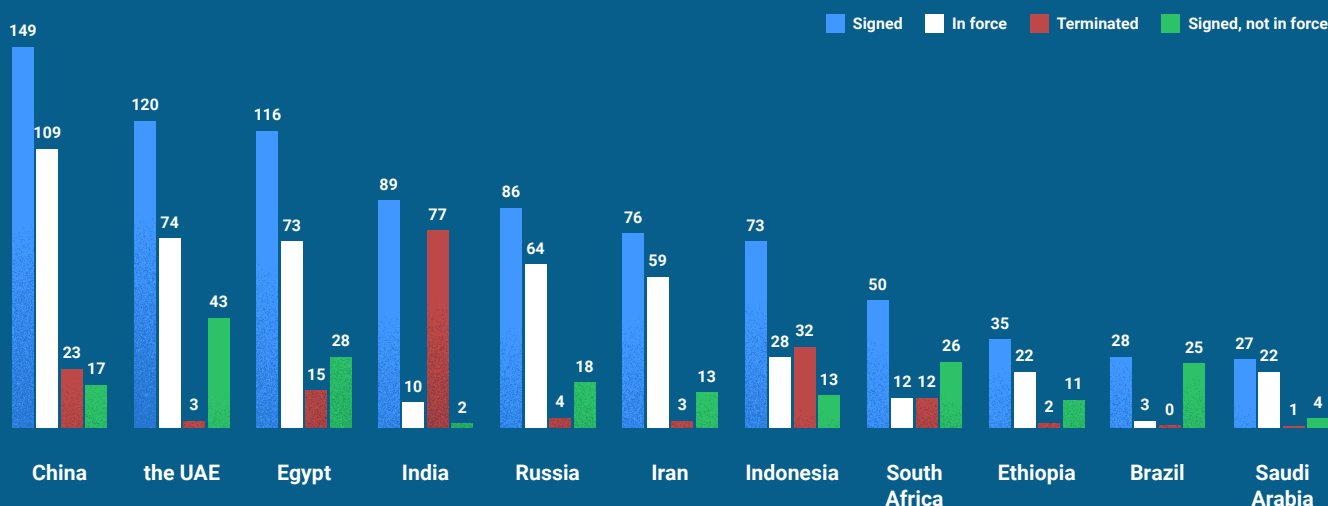
**III. GENERAL POLICY  
OF BRICS STATES  
AS RELATED TO ENTERING  
INTO BILATERAL  
INVESTMENT TREATIES**

The pattern of bilateral investment agreements between BRICS countries and with external partners can help illustrate and contextualize 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 27 BITs and Brazil entering into 28 BITs.<sup>18</sup>

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 74 and Egypt with 73. China also boasts the highest percentage of signed BITs in force at 90%.<sup>19</sup> Brazil, India, and South Africa each have fewer than 15 BITs in force (3, 10, and 12, respectively).

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,

# 109

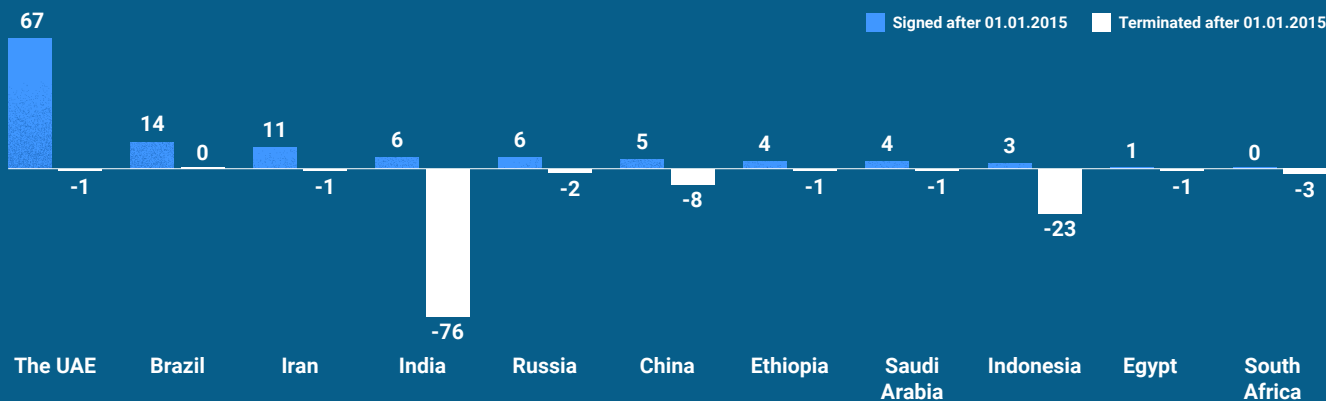
**CHINA'S BITS  
ARE IN FORCE**

<sup>18</sup> 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/investitsionnye\\_soglasheniya/perechen\\_soglasheniy\\_mezhdu\\_pravitelstvom\\_rf\\_i\\_pravitelstvami\\_inostrannykh\\_gosudarstv\\_o\\_pooshchrenii\\_i\\_vzaimnoy\\_zashchite\\_kapitalovlozheniy/](https://www.economy.gov.ru/material/departments/d11/investitsionnye_soglasheniya/perechen_soglasheniy_mezhdu_pravitelstvom_rf_i_pravitelstvami_inostrannykh_gosudarstv_o_pooshchrenii_i_vzaimnoy_zashchite_kapitalovlozheniy/). We have also taken into account BIT between Russia and Myanmar, signed in 2025, but not yet entered into force. URL: [https://www.economy.gov.ru/material/news/rossiya\\_i\\_myanmar\\_podpisali\\_soglashenie\\_o\\_pooshchrenii\\_i\\_zashchite\\_investitsiy.html?ysclid=mfwhuxyd4i776783226](https://www.economy.gov.ru/material/news/rossiya_i_myanmar_podpisali_soglashenie_o_pooshchrenii_i_zashchite_investitsiy.html?ysclid=mfwhuxyd4i776783226) as well as the agreement between Russia and China signed in 2025 and also not yet in force. URL: [https://www.mid.ru/foreign\\_policy/international\\_contracts/international\\_contracts/2\\_contract/62838/](https://www.mid.ru/foreign_policy/international_contracts/international_contracts/2_contract/62838/). To ensure consistency in application of criteria across all countries the following adjustments were made to the dataset: (1) 3 signed BITs that had ceased to be in effect (including those for which the sunset clause had expired) were added: with China, Turkey, and Uzbekistan; (2) the multilateral agreement of the Eurasian Economic Union was excluded.

<sup>19</sup> 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 172.

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 2024, the state remained the top FDI recipient among BRICS countries, with inflows reaching USD 116.2 billion.

Over the past decade, the UAE has been the most active state in entering into BITs: 67 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, which has not yet entered into force, but which will replace the BIT of 2006 once it is ratified by the states. For the sake of completeness, we will provide the overview of the provisions of this BIT in the subsequent sections.

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 2024, 592 agreements had been terminated, with about 70% of these terminations occurring between 2014 and 2024.<sup>20</sup> According to UNCTAD, the termination of agreements since 2012 has affected approximately 13% of foreign direct investment globally.<sup>21</sup>

<sup>20</sup> World Investment Report 2025: International Investment in the Digital Economy. Chapter II. P. 105. URL: <https://unctad.org/publication/world-investment-report-2025>.

<sup>21</sup> 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 to distinguishing the following generations of BITs:

Before 2012

## Old-generation<sup>22</sup>

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

WITH A LIMITED ARBITRATION CLAUSE<sup>23</sup>









**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)

### 12 BITs

-  China –  Iran
-  China –  Russia
-  China –  South Africa
-  Egypt –  Russia
-  Egypt –  UAE
-  Iran –  Ethiopia
-  Iran –  Russia
-  Iran –  South Africa
-  Russia –  South Africa
-  Indonesia –  Iran
-  Indonesia –  Russia
-  Indonesia –  Saudi Arabia

### 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

### 7 BITs

-  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 China's, Iran's, South Africa's, virtually all of 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 the only effective treaties of Brazil and India, both with the UAE.

<sup>22</sup> 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 (2010).

<sup>23</sup> UNCTAD, International Investment Agreements Reform Accelerator, 2020. P. 2. URL: [https://unctad.org/system/files/official-document/diaepcbinf2020d8\\_en.pdf](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.

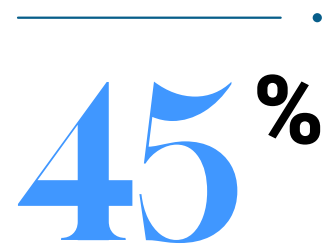
Reforming investment treaties and replacing old-generation treaties with new-generation treaties is widely discussed in global fora. The focus is on reclaiming by states of their regulatory space, imposing restrictions and adjustments on investor protection standards. States also tend to be more cautious about dispute resolution mechanisms.<sup>24</sup> For example, 45% of all treaties concluded in the last five years do not contain any provisions on investor-state arbitration dispute settlement.<sup>25</sup>

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. The new-generation treaties cover only 16% of investments, and 35% remain without treaty protection.<sup>26</sup>

In 2020, in anticipation of forthcoming changes, UNCTAD introduced the International Investment Agreements Reform Accelerator ("Reform Accelerator").<sup>27</sup> 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.<sup>28</sup>

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 49](#)).

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.



**OF TREATIES IN  
THE LAST 5 YEARS  
DO NOT CONTAIN  
ANY PROVISION  
ON ISDS**

<sup>24</sup> World Investment Report 2025: International Investment in the Digital Economy. Chapter II. P. 106. URL: <https://unctad.org/publication/world-investment-report-2025>.

<sup>25</sup> Ibid. P. 110.

<sup>26</sup> World Investment Report 2024: Investment facilitation and digital government. Chapter II. P. 2. URL: <https://unctad.org/publication/world-investment-report-2024>.

<sup>27</sup> UNCTAD, International Investment Agreements Reform Accelerator, 2020. URL: [https://unctad.org/system/files/official-document/djaepcbinf2020d8\\_en.pdf](https://unctad.org/system/files/official-document/djaepcbinf2020d8_en.pdf)

<sup>28</sup> Ibid. P. 2.

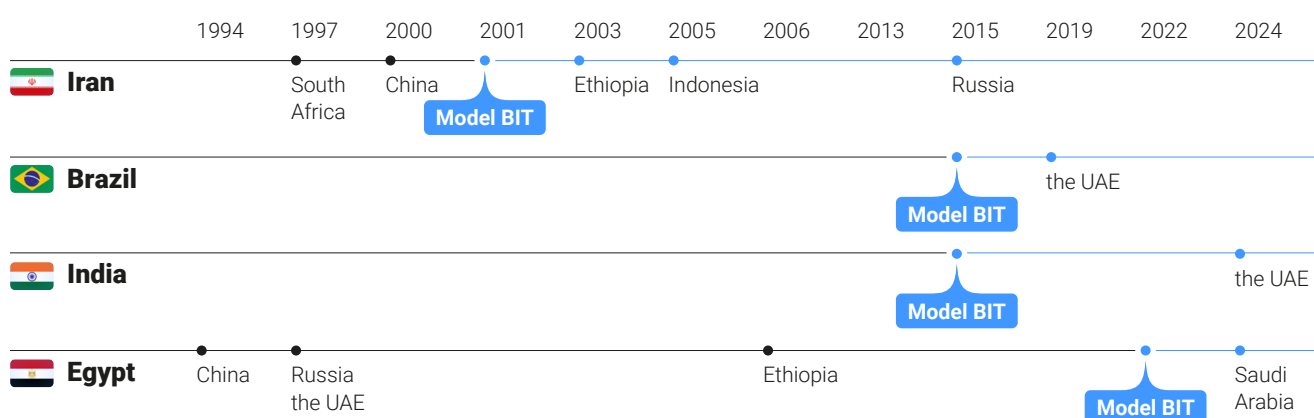
## B. Model BITs

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 (2001), 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 25](#)). Egypt's Model BIT is not available in English, so it is not addressed in the Report;
- Notably, only 6 out of 23 BITs currently in force between BRICS states were signed after at least one of the parties had adopted a model agreement: Ethiopia-Iran (2003), Indonesia-Iran (2005), Iran-Russia (2015), Brazil-UAE (2019), 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."<sup>29</sup>

<sup>29</sup> Official website of the Ministry of Economic Development of the Russian Federation. URL: [https://www.economy.gov.ru/material/departments/d11/investicionnye\\_soglasheniya/](https://www.economy.gov.ru/material/departments/d11/investicionnye_soglasheniya/).

Russia's principal approaches to new BITs are set out in Governmental Decree No. 992 "On Entering into Russian Federation's International Treaties on Promotion and Protection of Investments" dated 30 September 2016. 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 provide 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.<sup>30</sup> Brazil has signed a total of 28 BITs but has not ratified most of them. Only 3 BITs are currently in force: with Angola, 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 2024 with FDI inflows of \$59.2 billion. While its FDI inflows have fluctuated over the years, Brazil has consistently maintained one of the top positions within BRICS.

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CFIA

**INSTEAD OF  
A TRADITIONAL  
BIT IN BRAZIL**

<sup>30</sup> 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>.

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 using this model: with Ethiopia (2018), the UAE (2019), and India (2020), of which only the UAE treaty is in force. 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.

## 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.

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 program, including the 2003 model treaty, and to the renegotiation of existing treaties.<sup>31</sup>

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## ARBITRATION

### BETWEEN BRAZIL AND INVESTOR'S HOME STATE

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# 77

### INDIA'S BITS WERE TERMINATED

<sup>31</sup> 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/>.

The 2015 Model India 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);
- 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 10 are in force (with Bangladesh, Belarus, Colombia, 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 except for the BIT with Israel have entered into force).<sup>32</sup> Notably, out of 6 BITs signed after 2016, 3 are with BRICS members and 2 – with BRICS partner countries.

## Indonesia

In 2014, Indonesia announced its plans to terminate more than 60 BITs, expressing dissatisfaction with the investor-state dispute settlement system.<sup>33</sup> 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.<sup>34</sup> 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.

<sup>32</sup> 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.

<sup>33</sup> Financial Times, 'Indonesia to terminate more than 60 bilateral investment treaties'. URL: <https://www.ft.com/content/3755c1b2-b4e2-11e3-af92-00144feabdc0>.

<sup>34</sup> 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.

In 2009, the South African Department of Trade and Industry studied the state's BITs entered into since 1994.<sup>35</sup> According to the study, as in the case of India, arbitration proceedings against South Africa were a prerequisite 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, to change 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.

## • **ARBITRATION**

### **BETWEEN SOUTH AFRICA AND INVESTOR'S HOME STATE**

<sup>35</sup> Bilateral Investment Treaty Policy Framework Review: Government Position Paper. 2009. URL: <https://pmg.org.za/policy-document/161/>.



**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 (1997).

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; the new 2025 BIT between those states specifies the same requirement, however, adds a condition that an investment should exist in the territory of China or Russia as of the date of entry into force of the new 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 (2006) 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 came into force. Such restrictions can be found in the Brazil-UAE, China-Ethiopia, China-South Africa, Ethiopia-Iran, Ethiopia-UAE, Egypt-Saudi Arabia, India-UAE, Iran-South Africa BITs, as well as all but one Indonesian BITs with other BRICS members (with exclusion of 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 (both current agreement and the one signed in 2025), Indonesia, Iran, and the UAE include both conditions.

The most recent 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 (2006/2025)  China – South Africa  Egypt – Saudi Arabia  Russia – Indonesia	 Iran – Ethiopia  Iran – Indonesia  Iran – Russia  Iran – South Africa	 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;
- Complex event, parts of which occurred before the BIT entered into force;
- Subsequent events directly related to the events 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 treaties with India and Indonesia, as well as the Egypt-Saudi Arabia BIT 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.

✘ **Brazil-UAE BIT**

Issuance of compulsory licences granted in relation to intellectual property rights in accordance with the Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization (TRIPS Agreement) or to the revocation, limitation, or creation of intellectual property rights to the extent it is consistent with the TRIPS Agreement

An order or judgment issued as a result of a lawsuit or an administrative process

Portfolio investments and several monetary claims (e.g., that arise solely from commercial contracts for the sale of goods)

Loans granted from one state to another

Investments in natural resources in the case of the UAE\*

Bonds, debentures, loans, or other debt instruments of a state-owned enterprise that is considered to be public debt under the legislation of that state

Debt securities issued by a state

Pre-investment activity

✘ **Egypt-Saudi Arabia BIT**

Portfolio investments, sovereign debt instruments, or guarantees and debt securities issued by the government or a project owned or controlled by the government, or loans, grants, or subsidies provided or granted to the government or a project owned or controlled by the government

Any judicial, administrative, or arbitral order, judgement, or decision

Real estate or any other property, whether tangible or intangible, that is used, acquired, or expected to be used for personal purposes or for non-economic or non-commercial activities

Financial claims arising solely from commercial contracts for the sale of goods or services or provision of credit related to commercial transactions, such as commercial financing

Intellectual property rights that are not protected under the laws of the host state

Shares of companies listed on the stock markets of either state

Pre-investment activity

✘ **Indonesia-UAE BIT**

Commercial contracts for sale of goods or services

Natural resources in the case of Indonesia (unless specifically decided by the Indonesian Government) and the UAE\*

Goodwill, market share or other similar intangible rights

Concessions to search for, explore, extract or exploit natural resources

Extension of credit in connection with commercial transaction, such as trade financing

Any arbitration award or any order or judgement rendered with regard to the investment

✘ **Brazil-India BIT (not in force)**

Excludes similar investments and goodwill, brand value, market share, or similar intangible rights

✘ **India-UAE BIT**

Excludes similar investments as the Brazil-India BIT

✘ **Brazil-Ethiopia BIT (not in force)**

Excludes similar investments as the Brazil-UAE BIT above, except for pre-investment activity and protection of IP rights from issuance of compulsory licenses under the TRIPS Agreement

✘ **China-Russia 2025 BIT (not in force)**

An order or judgement in any judicial, administrative or arbitral proceedings

Claims to money that arise solely from commercial contracts for the sale or lease of goods or services

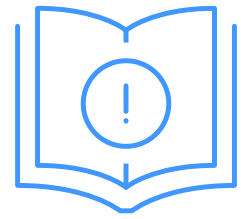
Claims to money that arise solely from the extension of credit in connection with a commercial transaction, such as financing

Sectors of services or other types of activities supplied or performed neither on a commercial basis nor in competition with one or more persons engaged in the same type of activities

\* Natural resource concessions are also not protected under the UAE's recent treaties with Turkey, Hungary, and Israel (the prohibition applies to both states, unlike the Brazil-UAE BIT).

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The definition of "investment" is among the areas to be reformed in new-generation treaties, according to UNCTAD (see page 21 above). The states are invited to:<sup>36</sup>



- 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 2025 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 fulfill 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 China-Russia 2025 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, for example, in the Australia-China Free Trade Agreement (2015) ("Australia-China FTA").

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## 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-UAE BIT

Permanent residents

<sup>36</sup> UNCTAD, International Investment Agreements Reform Accelerator, 2020. Pp. 10-12. URL: [https://unctad.org/system/files/official-document/diaepcbinf2020d8\\_en.pdf](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. The Brazil-UAE BIT also extends protection to persons holding permanent residence permits.

Almost all treaties, except the UAE 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 most recent 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.<sup>37</sup>

## 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.

<sup>37</sup> 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

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

\* 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 investors.

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 2025 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 34). 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 of company of a third state, if host state does not maintain diplomatic relations with that third state.

## Additional Criteria for Individuals

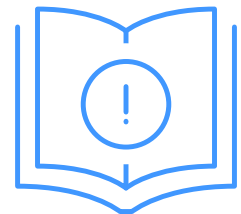
As stated above, it is typical that individual investors must be nationals of the home state. The issue of whether investors holding dual nationality (in both the home state and the host state) can be considered foreign investors warrants special consideration:

- 17 out of 23 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,<sup>38</sup> others employ the "dominant and effective" nationality test,<sup>39</sup> others deny protection to such investors;<sup>40</sup>
- The Iran-Russia and Iran-South Africa BITs as well as Egypt treaty with Saudi Arabia explicitly state that dual nationals are not entitled to protection. The same approach is used in the China-Russia 2025 BIT, which (as well as the Egypt-Saudi Arabia BIT) further clarifies that investments are not protected both when an individual holds a dual nationality at the current moment, or held on the date when such investment was made;
- The UAE 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".

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UNCTAD has proposed several measures (see page 21 above) regarding the definition of the "investor":<sup>41</sup>

- To exclude certain categories of natural or legal persons from treaty coverage, such as dual nationals (as implemented in 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,



<sup>38</sup> 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 Olguín 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.

<sup>39</sup> 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.

<sup>40</sup> 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.

<sup>41</sup> UNCTAD, International Investment Agreements Reform Accelerator, 2020. Pp. 13-15. URL: [https://unctad.org/system/files/official-document/diaepcbinf2020d8\\_en.pdf](https://unctad.org/system/files/official-document/diaepcbinf2020d8_en.pdf).

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 clause is present in the China-South Korea Free Trade Agreement (FTA) (2015), the Canada-EU CETA, and the CPTPP.

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## Public Investors

Public investors, which include state authorities and companies that are majority-owned by the state, are explicitly protected in 7 BITs within BRICS, all of which involve Arab countries and the China-Russia 2025 BIT, which is not yet in force. Multilateral Treaties also explicitly allow public investment. However, even in the absence of such a clause, arbitral jurisprudence recognizes that, for example, state-owned companies may act as investors.<sup>42</sup>

### Public investor is explicitly allowed in 7 BITs:

 <b>China</b> –  <b>UAE</b>	The federal government of the UAE, as well as local governments and their local and financial institutions
 <b>Egypt</b> –  <b>Ethiopia</b>	Public enterprises
 <b>UAE</b> –  <b>Egypt</b>	Government of any of the contracting states
 <b>UAE</b> –  <b>India</b>	Legal entities, corporations, limited partnerships, trusts, or beneficiaries of trusts that are owned or controlled (directly or indirectly) by the state
 <b>Saudi Arabia</b> –  <b>China</b>	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
 <b>Saudi Arabia</b> –  <b>Indonesia</b>	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
 <b>Saudi Arabia</b> –  <b>Egypt</b>	Investor can be governmentally owned or controlled

<sup>42</sup> 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 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 5 to 20 years.

The Indonesia-UAE BIT does not contain a "sunset clause".

### Investment protection period after the termination of the BIT

(sunset clause)

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# 20 YEARS

 Egypt –  UAE  
 Ethiopia –  Iran  
 Indonesia –  Saudi Arabia

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# 15 YEARS

 Russia –  South Africa  
 Russia –  UAE

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# 10 YEARS

 China –  Ethiopia  
 China –  Russia (2006 and 2025)  
 China –  Saudi Arabia  
 China –  South Africa  
 China –  UAE  
 Egypt –  China  
 Egypt –  Russia  
 India –  UAE  
 Iran –  China  
 Iran –  Russia  
 Iran –  South Africa  
 Indonesia –  Iran  
 Indonesia –  Russia

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# 5 YEARS

 Egypt –  Ethiopia  
 Egypt –  Saudi Arabia  
 UAE –  Ethiopia  
 UAE –  Brazil

# 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 23 treaties in force between BRICS countries: the Egypt-UAE BIT and 4 BITs of China, with Egypt, Russia (2006 and 2025), 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 BITs with Brazil, Ethiopia, India, Indonesia and the Egypt-Saudi Arabia BIT;
- 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;
- Government procurements are excluded in the Egypt-Saudi Arabia and the Indonesia-UAE BIT as well as in the China-Russia 2025 BIT;
- The Indonesia-UAE BIT excludes services supplied in the exercise of governmental authority;
- The Egypt-Saudi Arabia and the 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.

In addition, certain treaties limit the territory where investments are protected. For example, the Protocol to the China-Russia 2006 BIT excludes the administrative regions of Hong Kong and Macao from the treaty's scope. New 2025 BIT does not contain such restriction.

## Full Protection and Security

Most BRICS treaties provide for full protection and security standard.<sup>43</sup> 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 operation<sup>44</sup> or failed to protect an investment, where a hotel has been taken over by its employees,<sup>45</sup> etc.

New China-Russia 2025 BIT provides only for the full protection standard, omitting the "security limb".

The Brazil-UAE BIT expressly excludes the obligation of full protection and security and states that it cannot be used for the purpose of interpretation of the treaty.

The BITs of the UAE 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.

<sup>43</sup> Specific wording may differ, but this typically does not affect the interpretation of the standard.

<sup>44</sup> Asian Agricultural Products Ltd. (AAPL) v. Republic of Sri Lanka, ICSID Case No. ARB/87/3, Award, 27 June 1990.

<sup>45</sup> Wena Hotels Limited v. Arab Republic of Egypt, ICSID Case No. ARB/98/4, Award, 8 December 2000.

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UNCTAD's proposals for states (see page 21 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.<sup>46</sup> Among the BRICS countries, this approach is used in the India-UAE BIT and the 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).



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## Fair and Equitable Treatment

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

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

<sup>46</sup> UNCTAD, International Investment Agreements Reform Accelerator, 2020. P. 23. URL: [https://unctad.org/system/files/official-document/diaepcbinf2020d8\\_en.pdf](https://unctad.org/system/files/official-document/diaepcbinf2020d8_en.pdf).

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.<sup>47</sup>

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UNCTAD invites states to adjust and limit the FET standard through several approaches ([see page 21 above](#)):<sup>48</sup>

- 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, provide that determination that there has been a breach of another provision of a 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, 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.



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## 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 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". However, under the UAE BITs with Brazil, India, Indonesia and the Egypt-Saudi Arabia BIT circumstances will not be considered "like" if the differences in treatment arise from legitimate public aims. In addition, the Brazil-UAE BIT explicitly excludes 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,

<sup>47</sup> Ibid. P. 20.

<sup>48</sup> Ibid. P. 20-22.

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 the national treatment.

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For new treaties, UNCTAD suggests (see page 21 above):<sup>49</sup>

- Include criteria for determining "like circumstances" for national treatment. Among the BRICS countries, for example, this approach is implemented in the UAE treaties with Indonesia and Uruguay, as well as in the Egypt 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.



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## Most-Favoured Nation Treatment

The most-favoured nation ("MFN") standard is included in all BRICS treaties, except for the India-UAE BIT.

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);

<sup>49</sup> Ibid. Pp. 15-17.

- **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 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 2025 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;
- **Egypt-Saudi Arabia BIT** refers to any BIT or multilateral agreement in force or signed before the BIT entered into force.

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, the China-Saudi Arabia, the Indonesia-UAE, the Indonesia-Saudi Arabia, and the 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 the 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 in their recent BIT.

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.

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For new agreements, UNCTAD (see page 21 above) suggests similar options for restricting the MFN standard:<sup>50</sup>



- 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.

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## 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-UAE treaty expressly excludes indirect expropriation from its scope. The UAE's 4 other treaties – with Egypt, Ethiopia, India and Indonesia – and the BIT between 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 BITs<sup>51</sup>, as well as the BIT between Egypt and Saudi Arabia.

### Approaches to defining the boundaries of indirect expropriation

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 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.

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 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.

<sup>50</sup> Ibid. Pp. 18-20.

<sup>51</sup> 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.

 UAE –  India  
 Egypt –  SA

**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  
2025  
 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.

Moreover, treaties sometimes provide explicit exceptions to protection from unlawful expropriation. For example, the Ethiopia-UAE and Egypt-Saudi Arabia BITs stipulates that interference with intellectual property rights, such as granting of compulsory licences, is not protected. The same provision is contained in the China-Russia 2025 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.

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.<sup>52</sup> UNCTAD suggests that states should limit the standard or explicitly exclude indirect expropriation.<sup>53</sup> This is the approach taken in the Brazil-India BIT.

## 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 the 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.

<sup>52</sup> UNCTAD, International Investment Agreements Reform Accelerator, 2020. P. 24. URL: [https://unctad.org/system/files/official-document/diaepcbinf2020d8\\_en.pdf](https://unctad.org/system/files/official-document/diaepcbinf2020d8_en.pdf)

<sup>53</sup> Ibid. Pp. 24-25.

Under the Brazil-UAE BIT, this method of determining the value of the assets applies only to direct expropriation.

The UAE's BITs with China, Ethiopia, and Russia, as well as the China-Russia 2006 BIT, permit the application of other universally recognised valuation standards along with the market value. The UAE BIT with Indonesia encompasses that for the cases when fair market value cannot be ascertained, the compensation shall be determined in 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.

## 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. Same provision is encompassed in Egypt-Saudi Arabia BIT as well as China-Russia 2025 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 China-South Africa BITs, 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 of related to investment funds abroad. 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, and treaties of Indonesia 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;
- A provision for transfers without delay (only the China-Egypt and the 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) and Egypt BIT with Saudi Arabia expressly permit to limit this guarantee. The BITs with Brazil, Ethiopia, and India 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 BITs with Brazil and India, and the Egypt-Saudi Arabia BIT 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 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 Organization of the Islamic Conference (1981) ("OIC Agreement"), allows states to prohibit transfers abroad of more than 50% of salaries and fees.

## Public Policy Exceptions

Six treaties between BRICS states refer to situations where the investor 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.

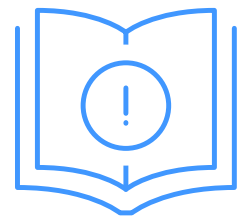
Four of the UAE's BITs – with Brazil, Ethiopia, India and Indonesia – contain a separate provision enlisting exceptional measures. Moreover, the Ethiopia-UAE

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 Egypt-Saudi Arabia BIT includes 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 regards to maintenance or restoration of international peace and security, protection of national security, protection of its essential security interests, or handling a national crisis).

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UNCTAD also invites ([see page 21 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.<sup>54</sup> 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, 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.

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## Stating Special Objectives in the Preamble

In certain cases, states delineate special objectives in the BIT's preamble to emphasize 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 Egypt-Saudi Arabia BIT.

<sup>54</sup> Ibid. Pp. 26-28.



# **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 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 the Brazil-UAE BIT 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**

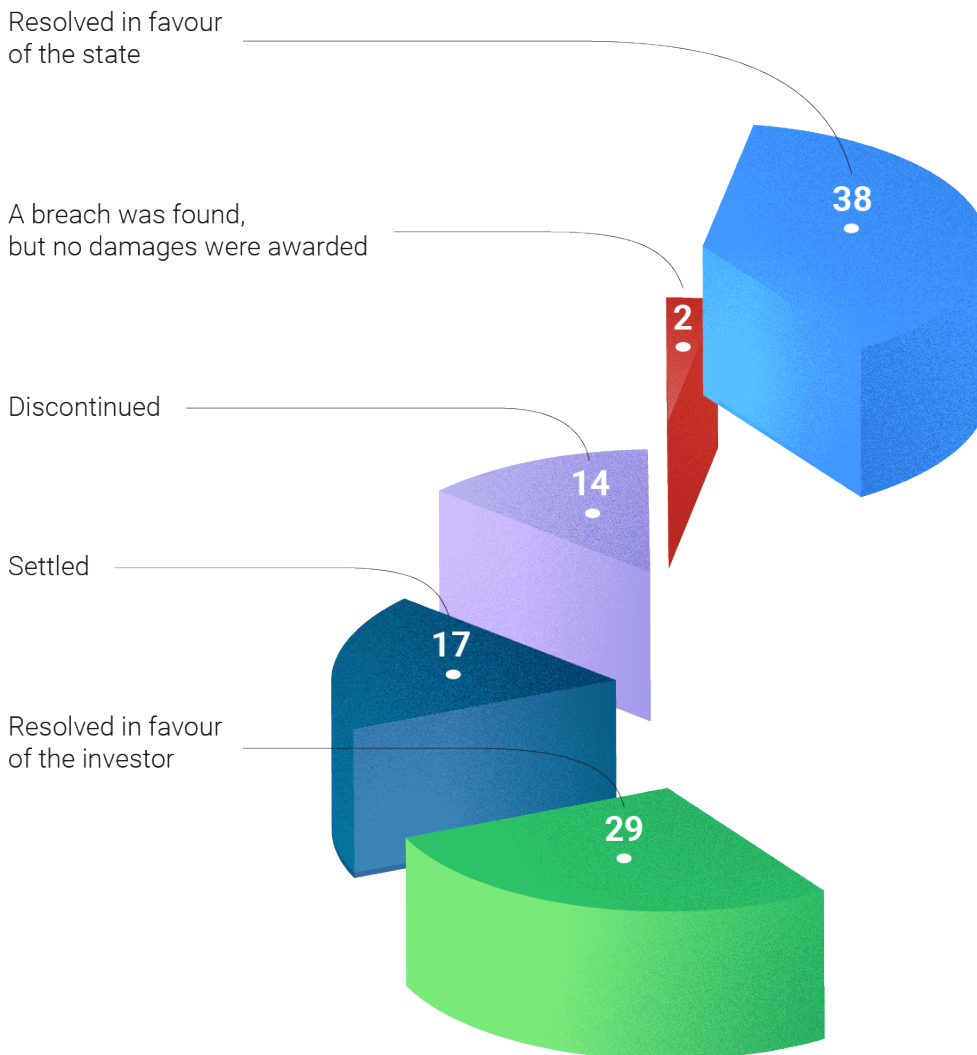
**AGAINST  
SAUDI ARABIA**

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 India and 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.<sup>55</sup>

Out of the 13 cases, 5 are still pending, 1 has been settled, and in 6 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 2023, 38% of publicly available cases were decided in favour of the state, 29% – in favour of the investor, and 17% were settled.<sup>56</sup>

### Global investment dispute settlement statistics 1987-2023 (%)



<sup>55</sup> Trafo Tech and Cynosure Agro-Processing PLC v. Federal Democratic Republic of Ethiopia.

<sup>56</sup> World Investment Report 2024: 2025: International investment in the digital economy. Chapter II. P. 121. URL: <https://unctad.org/publication/world-investment-report-2025.pdf>.

## Investment arbitration proceedings among BRICS investors and member states

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

# A. Overview of International Fora and Terms for Investment Arbitration

All effective bilateral investment treaties within BRICS, except the Brazil-UAE BIT, 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, Egypt-Saudi Arabia, Indonesia-Iran, and China-Russia 2025 BIT, 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 BITs with Russia, of 2006 and 2025, 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.<sup>57</sup>

Five BRICS states joined ICSID:<sup>58</sup> 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 rights of not submitting 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."**

<sup>57</sup> According to Article 52 of the ICSID 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.

<sup>58</sup> 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 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 52](#), under the Egypt-UAE and Saudi Arabia 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 10 treaties: China-Russia (2006), 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 2 Russia BITs with China (only 2006, but not 2025) and Indonesia, as well as Egypt 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 in at least two international investment cases administering disputes under the Egypt-Lebanon BIT (investor was Egyptian) and 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 2025 BIT), with the exception of the Egypt-UAE BIT, which provides for a three-month period, and the Egypt-Saudi Arabia BIT establishing 18 months 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 61](#)), 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.

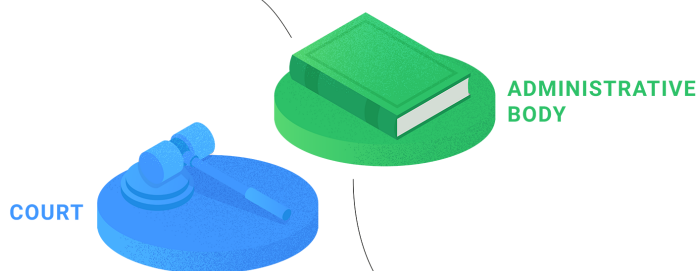
The Joint Committee's aim is to achieve the mutually agreed solution. If such solution is reached, the decision of the Committee is final and binding, and the investor will not have the right to submit the dispute to any other forum. In the event the Joint Committee fails to issue the decision within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

Proceedings before the national authorities (exhaustion of local remedies rule) are available in three variations:

### 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.<sup>59</sup>

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.<sup>60</sup>

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.<sup>61</sup>

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;

<sup>59</sup> 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.

<sup>60</sup> *AsiaPhos Limited and Norwest Chemicals Pte Ltd v. People's Republic of China*, ICSID Case No. ADM/21/1, Award of 16 February 2023.

<sup>61</sup> *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.

- China-Russia 2025 BIT excludes the disputes concerning obligations to aspire to create favorable 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, authorization procedures, and review and approval.

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 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 China-Russia and Indonesia-Saudi Arabia BITs entitle 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. Recent China-Russia 2025 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 having 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 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 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

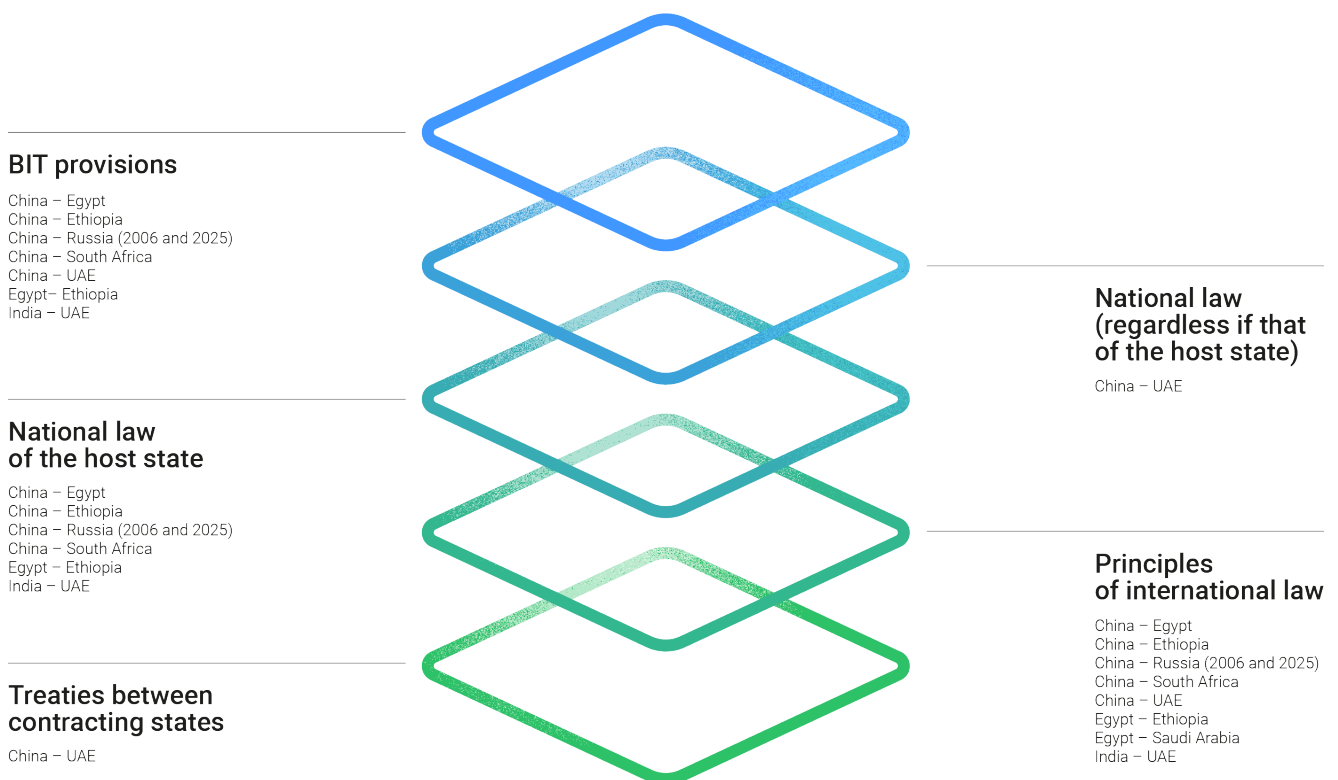
for 3 years. China-Russia 2025 BIT also provides for the 3 years limitation period further clarifying that the dispute cannot proceed to arbitration after 3 years from the date of the request for consultation.

The treaties of the UAE with India and Indonesia as well as 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 the 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:**



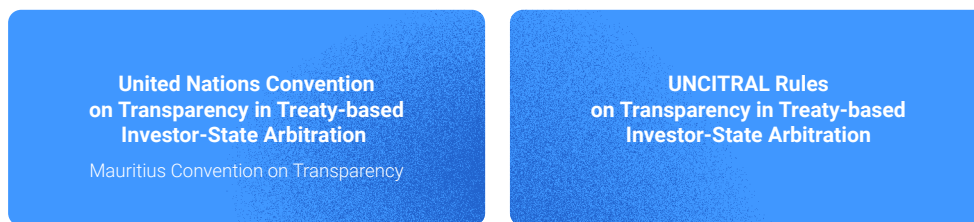
As a default rule, it is up to the arbitral tribunal to **allocate the arbitration costs** in its award. However, almost one third of the BITs of the BRICS states (7 BITs) incorporate a predetermined cost allocation mechanism.

As with the applicable law, the majority of these treaties are with China (except for its BITs with Russia (both 2006 and 2025) 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").<sup>62</sup>

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). Neither 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 BIT, refer to UNCITRAL Arbitration Rules of 2010, thereby excluding the application of the Rules on Transparency.<sup>63</sup> New 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.

<sup>62</sup> According to the UN data, as of now, 24 states have signed the Convention, and 9 have ratified it.

<sup>63</sup> Note by the Secretariat of Working Group II for 73<sup>rd</sup> 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>.

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, the option for the parties to establish an appellate body. The same is valid for the Egypt-Saudi Arabia BIT, that provides for the disclosure of third party funding and prohibition to award punitive and moral damages.

Reflecting recent developments and challenges in investment treaty practice, some agreements also further particularize procedural rules. China-Russia 2025 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;
- 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

The Brazil-UAE BIT does not provide for investment arbitration; instead, it establishes its own dispute resolution framework. A key feature under this BIT 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 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.

The Brazil-UAE BIT delineates more detailed provisions for the constitution of the arbitral tribunal, which is generally required to render an award within 9 months. Unlike most other treaties, this BIT stipulates requirements for arbitrators, including expertise or experience in public international law, international investment rules or international trade, or investment dispute resolution.

Notably, the tribunal's mandate under the treaty is confined to assessing whether state measures breach the 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 arbitral tribunal, or when the investor has withdrawn the respective claims from domestic authorities.

Certain provisions of the treaty 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 the BIT came into force cannot be submitted to arbitration. The BIT 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 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.<sup>64</sup>

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 authorized 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,<sup>65</sup> yet, there are no such examples among the treaties entered into between BRICS states.

<sup>64</sup> 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/>.

<sup>65</sup> For instance, the Algeria-UAE BIT (Article 9).

The first dispute was referred to the Court only in 2003, more than 20 years after signing of the Arab Investment Agreement: the dispute was initiated by an investor from Saudi Arabia against Tunisia and the case was decided in favor of the state.<sup>66</sup>

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.
- **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 decided by the AIC. Information on other 4 cases remains publicly unavailable.

## OIC Agreement

The 1981 Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organization 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: Organization 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.<sup>67</sup>

<sup>66</sup> 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?utm\\_source=chatgpt.com](https://www.oecd.org/content/dam/oecd/en/publications/reports/2012/09/oecd-investment-policy-reviews-tunisia-2012-g1g1ef4d/9789264179172-en.pdf?utm_source=chatgpt.com)

<sup>67</sup> 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>.

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 3, respectively. Investors from other states include Qatar (7), Jordan (1), the UAE (1), Lebanon (1), Tunisia (1), and Turkey (1). The nationality of the investor in one case remains undisclosed.
- **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 7 cases: 2 cases were decided in favor of the investor, 4 cases – in favor of the state, 1 case was discontinued. 9 cases remain pending.
- In 8 cases PCA was the **administering institution**, in 1 – ICSID. In 2 cases there was no administering institution. Information regarding 11 cases is unavailable.

At a practical level, the resort to the OIC Agreement may be complicated by the particularities of the procedure for 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 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), at least in 6 cases, the OIC Secretary General failed to make such appointments.<sup>68</sup> 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 *Saudi Arabia-Austria BIT* under the MFN clause of the OIC Agreement.<sup>69</sup>

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* Geneva court has not rejected the application of the MFN clause to import procedural provisions from other treaties,<sup>70</sup> and Paris court reached the opposite conclusion in the case *DS Construction FZCO v. Libya*.<sup>71</sup>

<sup>68</sup> Global Arbitration Review. Cocoricol – French approach to the OIC Treaty gives cause to crow. 21 February 2020. URL: <https://globalarbitrationreview.com/article/cocoricol-french-approach-the-oic-treaty-gives-cause-crow>.

<sup>69</sup> *beIN Corporation v Saudi Arabia*, Notice of Arbitration dated 1 October 2018, URL: <https://www.italaw.com/sites/default/files/case-documents/italaw9976.pdf>.

<sup>70</sup> URL: <https://globalarbitrationreview.com/peacepalace.idm.oclc.org/article/libya-loses-challenge-oic-award-in-switzerland>.

<sup>71</sup> 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".<sup>72</sup> 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.<sup>73</sup> 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, the BRICS decided to invite 14 states to join the BRICS as partner countries.<sup>74</sup>

10 states have accepted the invitation to enter the 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 57: 38 of these treaties are in effect, 12 have not entered into force, and 7 have been terminated.<sup>75</sup> The majority of the effective treaties (22) were concluded in the 20th century, 8 were concluded between 2000 and 2010, and only 6 BITs – between 2010 and 2025.

Among the BRICS members, China ranks first in terms of the number of effective BITs with partner countries (8 BITs), followed by Egypt (6 BITs), and Iran (5 BITs). Russia and the UAE share 4th place (4 BITs each), 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 point of the BRICS partner countries, Uzbekistan leads in the number of effective BITs with members of the organization (8 BITs). Belarus and Malaysia are in second place (6 BITs each), and Cuba, Kazakhstan, Thailand, and Vietnam share third place (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.

<sup>72</sup> 16th BRICS Summit Kazan Declaration 2024. URL: <https://bricsthinktankscouncil.org/knowledge-base/16th-brics-summit-kazan-declaration-2024/>.

<sup>73</sup> 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>.

<sup>74</sup> 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>.

<sup>75</sup> To demonstrate the overall coverage of the BITs between BRICS member states and partner countries as of 1 October 2025, 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'

<b>Belarus</b>		1993	1997				2018 2002 2017 ✕	1995		2009	2000	
<b>Bolivia</b>		1992 2014 ✕										
<b>Cuba</b>	1997 ●	1995				1997		1993			1995	
<b>Kazakhstan</b>		1992	1993				1996 2017 ✕	1996	1998			2018 ●
<b>Malaysia</b>		1988	1997	1998			1995 2017 ✕	1994 2015 ✕	2002		2000	1991
<b>Nigeria</b>		2011 1997 2010 ✕	2000 ●	2004 ●						2009 ●	2000	2016 ●
<b>Thailand</b>		1985	2000				2000 2017 ✕	1998		2002 ●		2015
<b>Uganda</b>		2004 ●	1995 ●								2000 ●	2017 ●
<b>Uzbekistan</b>		2011 1992 2011 ✕	1992				2024 1999 2017 ✕	1996	2000	2013 1997 2014 ✕	2011	2007
<b>Vietnam</b>		1992	1997				1997 2017 ✕	1991 2016 ✕	2009	1994		2009 ●

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