GAR INVESTMENT TREATY ARBITRATION

Canada

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Contents

I Overview

1 What are the key features of the investment treaties to which this country is a party?

BIT (FIPPA), MIT, FTA contracting parties[1]	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period[2]	Local courts[3]	Arbitration
Argentina (29 April 1993)	Yes	Yes	Yes	Yes	No	18-month domestic litigation requirement[4]	Unrestricted	Yes
Armenia (29 March 1999)	Yes	Yes	Yes	Yes	No	6 months	Limited	Yes
Barbados (17 January 1997)	Yes	Yes	Yes	Yes	No	6 months	Limited	Yes
Benin (12 May 2014)	Yes	Yes	Yes	Yes	No	90 days	Limited	Yes
Burkina Faso (11 October 2017)	Yes	Yes	Yes	Yes	No	180 days	Limited except declaratory relief	Yes
Cameroon (16 December 2016)	Yes	Yes	Yes	Yes	No	90 days	Limited except declaratory relief	Yes
Canada–United States-Mexico Agreement (CUSMA) (1 July 2020)	Yes	Yes	Yes	Yes	No	90 days	Limited except declaratory relief	Only as between the United States and Mexico
CETA (EU) (took provisional effect 21 September 2017 but investment protection provisions excluded))	Idiosyncratic	Yes	Yes	Yes	No	180 days	Limited	Yes
Chile FTA (5 July 1997) (Amendment 0 Feb 2019)	Yes	Yes	Yes	Yes	No	180 days	Limited except declaratory relief	Yes
China (1 October 2014)	Yes	Yes	Yes	Yes	No	Idiosyncratic[5]	Limited[6]	Yes
Colombia FTA (15 August 2011)	Yes	Yes	Yes	Yes	No[7]	6 months	Limited except declaratory relief	Yes
Costa Rica (29 September 1999)[8]	Yes	Yes	Yes	Yes	No	6 months	Limited	Yes
Croatia (30 January 2001)	Yes	Yes	Yes	Yes	No	6 months	Limited	Yes
Czech Republic (22 January 2012)	Yes	Yes	Yes	Yes	No	6 months	Limited except declaratory relief	Yes
Ecuador (6 June 1997)[9]	Yes	Yes	Yes	Yes	No	6 months	Limited	Yes
Egypt (3 November 1997)	Yes	Yes	Yes	Yes	No	6 months	Limited	Yes
Guinea (27 March 2017)	Yes	Yes	Yes	Yes	No	90 days	Limited except declaratory relief	Yes
Honduras FTA (1 October 2014)	Yes	Yes	Yes	Yes	No	6 months	Limited except declaratory relief	Yes
Hong Kong (6 September 2016)	Yes	Yes	Yes	Yes	No	90 days	Limited except declaratory relief	Yes
Hungary (21 November 1993)	Yes	Yes	Yes	Yes	No	6 months	Unrestricted	Yes[10]
Ivory Coast (14 December 2015)	Yes	Yes	Yes	Yes	Yes	90 days	Limited except declaratory relief	Yes
Jordan (14 December 2009)[11]	Yes	Yes	Yes	Yes	No	90 days	Limited except declaratory relief	Yes
Korea FTA (1 January 2015)	Yes	Yes	Yes	Yes	No	90 days	Limited except declaratory relief	Yes
Kosovo (19 December 2018)	Yes	Yes	Yes	Yes	No	90 days	Limited except declaratory relief	Yes
Kuwait (19 February 2014)	Yes	Yes	Yes	Yes	No	90 days	Limited except declaratory relief	Yes
Latvia (24 November 2011)	Yes	Yes	Yes	Yes	No	6 months	Limited	Yes

BIT (FIPPA), MIT, FTA contracting parties[1]	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period[2]	Local courts[3]	Arbitration
Lebanon (19 June 1999)	Yes	Yes	Yes	Yes	No	6 months	Limited	Yes
Mali (8 June 2016)	Yes	Yes	Yes	Yes	No	90 days	Limited except declaratory relief	Yes
Moldova (23 August 2019)	Yes	Yes	Yes	Yes	No	90 days	Limited except declaratory relief	Yes
Mongolia (24 February 2017)	Yes	Yes	Yes	Yes	No	90 days	Limited except declaratory relief	Yes
NAFTA (United States and Mexico) (1 January 1994)	Yes	Yes	Yes	Yes	No	90 days	Limited except declaratory relief	Yes (sunsets in accordance with CUSMA)
Nigeria (signed, not in force)	Yes	Yes	Yes	Yes	No	90 days	Limited except declaratory relief	Yes
Panama FTA (1 April 2013)	Yes	Yes	Yes	Yes	No	90 days	Limited except declaratory relief	Yes
Panama (13 February 1998)	Yes	Yes	Yes	Yes	No	6 months	Limited	Yes
Peru (20 June 2007)[12]	Yes	Yes	Yes	Yes	No	90 days	Limited except declaratory relief	Yes
Peru FTA (1 August 2009)	Yes	Yes	Yes	Yes	No	6 months	Limited except declaratory relief	Yes
Philippines (13 November 1996)	Yes	Yes	Yes	Yes	No	6 months	Limited	Yes
Poland (22 November 1990)	Yes	Yes	Yes	Yes	No	6 months	Unrestricted	Yes
Romania (23 November 2011)	Yes	Yes	Yes	Yes	No	6 months	Limited	Yes
Russia (27 June 1991)[13]	Yes	Yes	Yes	Yes	No	6 months	Unrestricted	Yes
Senegal (5 August 2016)	Yes	Yes	Yes	Yes	No	90 days	Limited except declaratory relief	Yes
Republic of Serbia (27 April 2015)	Yes	Yes	Yes	Yes	No	90 days	Limited except declaratory relief	Yes
Slovak Republic (14 March 2012)	Yes	Yes	Yes	Yes	No	6 months	Limited except declaratory relief	Yes
South Africa (not in force)[14]	Yes	Yes	Yes	Yes	No	6 months	Limited	Yes
Tanzania (9 December 2013)	Yes	Yes	Yes	Yes	No	180 days	Limited except declaratory relief	Yes
Thailand (24 September 1998)	Yes	Yes	Yes	Yes	No	6 months	Limited	Yes
Trinidad and Tobago (8 July 1996)	Yes	Yes	Yes	Yes	No	6 months	Limited	Yes
Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (30 December 2018)	Yes	Yes	Yes	Yes	No (provisions on submission of a claim to arbitration in relation to an investment authorisation or investment agreement are suspended)	6 months	Limited except declaratory relief	Yes
Ukraine (24 July 1995)	Yes	Yes	Yes	Yes	No	6 months	Limited	Yes
Uruguay (2 June 1999)	Yes	Yes	Yes	Yes	No	6 months	Limited	Yes
Venezuela (28 January 1998)	Yes	Yes	Yes	Yes	No	6 months	Limited	Yes

II Qualifying Criteria

2 Definition of investor

What are the distinguishing features of the definition of 'investor' in this country's investment treaties?

Issue	Distinguishing features in relation to the definition of 'investor'
Dual citizenship	No mention of dual citizenship: Argentina, the Czech Republic, Hungary (consultation in case of investor nationality dispute), Kuwait, Poland, Romania, Russia, Slovak Republic, Czech Republic, Tanzania, CPTPP, Panama, Chile, NAFTA, Ukraine and Cameroon. Investors of the following states cannot hold the citizenship of Canada (no mutual restriction for Canadian investors holding the citizenship): Armenia, Ecuador, Egypt (an Egyptian 'natural person' cannot possess the citizenship of Canada, but it does not apply to an Egyptian 'judicial person'), Latvia, Panama, the Philippines, Thailand and Ukraine. Mutual restriction (an investor cannot possess the citizenship of the other state): Barbados, China, Costa Rica, South Africa, Trinidad and Tobago, Uruguay and Venezuela. Effective and dominant citizenship: • Lebanon (dual citizens are considered Canadian citizens in Canada and Lebanese citizens in Lebanon); • Burkina Faso, Comprehensive Economic and Trade Agreement (CETA), Ivory Coast, United States-Mexico-Canada Agreement (CUSMA), Guinea, Kosovo, Mali, Moldova, Nigeria, Senegal, Peru and Serbia (a dual citizen shall be deemed to be exclusively a citizen of the state of his or her dominant and effective citizenship); and • Korea, Honduras, Benin, Colombia, Burkina Faso, CETA, Ivory Coast, Guinea, Hong Kong, Mali, Nigeria, Senegal and Serbia (dominant and effective citizenship assumed; a citizen of one country who also happens to be a permanent resident of the other country shall be deemed to be exclusively a national of the country of citizenship).

3 Definition of investment

What are the distinguishing features of the definition of 'investment' in this country's investment treaties?

Issue	Distinguishing features in relation to the concept of 'investment'
Direct or indirect investment	All of Canada's investment treaties define an 'investment' with some variations, such as describing what constitutes a qualifying indirect investment (eg, '…any kind of asset owned or controlled either directly, or indirectly…')
Exclusion of certain assets	Certain Canadian investment treaties exclude certain types of assets from the definition of 'investment', including: • Certain claims to money in the treaties with Benin, CETA, China, CUSMA, Jordan, Kosovo, Kuwait, Moldova, Tanzania, Chile, Colombia, NAFTA, Panama, Peru, Cameroon, Serbia, Honduras, Burkina Faso, Ivory Coast, Guinea, Hong Kong, Mali, Nigeria and Senegal; • goodwill in the treaties with Argentina, Columbia, the Czech Republic, Hungary, NAFTA, Peru and the Slovak Republic; • property not acquired in the expectation or used for the purpose of economic benefit or other business purposes in the treaties with Croatia, Ecuador, Egypt, Latvia, Lebanon, Panama, Romania, South Africa, Thailand, Trinidad and Tobago, Ukraine, Uruguay and Venezuela; • order or judgment entered in a judicial or administrative action in CUSMA or Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP); • certain enterprises in the treaties with China, Peru, Chile, NAFTA, Jordan, Colombia and Panama; and • a state enterprise debt security or loan in the NAFTA, Chile, Peru and Honduras treaties.
Indirect control	Certain Canadian treaties specifically address the issue of whether an enterprise that the investor indirectly controls is covered by the treaty: • investment is covered if an investor controls the enterprise that owns the investment in the treaties with Benin, CETA, Ivory Coast, Croatia, CUSMA, Guinea, Honduras, Hong Kong, El Salvador, Korea, Kosovo, Kuwait, Lebanon, Mali, Moldova, Nigeria, Senegal, Serbia, Uruguay and Cameroon; and • investments made through an investor of a third State are covered in the treaties with China, Peru, Slovak Republic, Poland and Hungary (only if the investor does not invoke a dispute resolution mechanism of another treaty) and in the case of the Costa Rica treaty only if the investment is controlled through an enterprise or natural person of a third state.

Issue	Distinguishing features in relation to the concept of 'investment'
Specified inclusions and peculiarities	Some Canadian treaties contain more unique provisions relating to qualifying investments, including: • investments related to financial institutions in the treaty with Peru; • investments relating to a loan to an enterprise in the treaties with Benin, CETA, China, Kosovo, Kuwait, Moldova, Peru, Tanzania, Chile, Mongolia, NAFTA, Jordan, Colombia, Serbia, Panama, Burkina Faso, Ivory Coast, Guinea, Hong Kong, Mali, Nigeria and Senegal; • loan or debt security issued by a financial institution that is treated as regulatory capital by the Party in whose territory the financial institution is located, such as treaties with Burkina Faso, China, Ivory Coast, Guinea, Hong Kong, Kosovo, Mali, Moldova, Nigeria, Senegal, Serbia and CPTPP. • investments as loans directly related to a specific investment in the treaty with Argentina; • investments that have changed in form must be approved locally in the treaty with Thailand; and • investments relating to intellectual property rights are specifically listed in the treaties with Argentina, Benin, CETA, Chile, China, Columbia, CUSMA, Czech Republic, Hungary, Kosovo, Kuwait, Moldova, Mongolia, NAFTA, Peru, Poland, Russia, Tanzania, Slovak Republic, Serbia, Cameroon, Korea, Burkina Faso, Ivory Coast, Guinea, Hong Kong, Mali, Nigeria, Senegal and CPTPP.

III Substantive Protections

4 Fair and equitable treatment

What are the distinguishing features of the fair and equitable treatment standard in this country's investment treaties?

Issue	Distinguishing features of the fair and equitable treatment standard
Principles of international law	Several of Canada's treaties differ with respect to the application of the principles of international law in determining the scope of the FET standard, including: • no reference to principles of international law at all in the treaty with Hungary; • no stated requirement that FET treatment be 'in accordance with principles of international law' in the treaties with the Czech Republic, CETA, Peru, Romania, Slovak Republic, Colombia, Chile and Panama; and • FET standard treatment limited to that required by the customary international law minimum standard of treatment of aliens in the treaties with the Benin, Chile, Czech Republic, Jordan, Kosovo, Kuwait, Latvia, Moldova, Peru, Romania, Slovak Republic, Tanzania, Chile, Colombia, Mongolia, NAFTA, Cameroon, Korea, Serbia, Honduras, Burkina Faso, China, Ivory Coast, Guinea, Hong Kong, Mali, Nigeria, Serbia, Senegal and CUSMA and CPTPP. Specific content of the minimum standard may be subject to debate.
Due process	FET includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process in the treaty with Chile, Colombia, CETA, CUSMA, CPTPP and Korea.
Constrained Standard	Contrary to the common wording of many Freedom of Information and Protection of Privacy Act (FIPPAs), the CETA contains a list of six grounds that would constitute a breach of the obligation of fair and equitable treatment: '(a) denial of justice in criminal, civil or administrative proceedings; (b) fundamental breach of due process, including a fundamental breach of transparency, in judicial and administrative proceedings; (c) manifest arbitrariness; (d) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief; (e) abusive treatment of investors, such as coercion, duress and harassment; or (f) a breach of any further elements of the fair and equitable treatment obligation adopted by the Parties in accordance with paragraph 3 of [article 8.10].'

5 Expropriation

What are the distinguishing features of the protection against expropriation standard in this country's investment treaties?

Issue	Distinguishing features of the 'expropriation' standard
Calculation of compensation	Canada's treaties use different language with respect to the calculation of compensation, including: Fair market value • China, Philippines, Thailand, Korea, CUSMA and CPTPP; • In the treaties with Barbados, Benin, Burkina Faso, Cameroon, Chile, Colombia, CETA, Costa Rica, Croatia, Guinea, Honduras, Ivory Coast, Jordan, Lebanon, Kosovo, Kuwait, Mali, Moldova, Mongolia, NAFTA, Nigeria, Panama, Peru, Senegal, Serbia, Tanzania, Trinidad and Tobago, and Uruguay, to determine fair market value, the valuation of an expropriated investment includes going concern value, asset value including declared tax value of tangible property and other criteria, as appropriate. **Market value**: Hungary **Genuine value**: Argentina, Armenia, Ecuador, Egypt, Latvia, Panama, Romania, South Africa, Ukraine, Venezuela. **Real value**: Czech Republic, Poland, Russia, Slovak Republic and Hong Kong.
Compensation payable (interest and applicable period)	Canada's treaties have varied approaches regarding interest as it applies to compensation owed for the expropriation of an investment, including: • Costa Rica: in Canada, from the date of expropriation at a normal commercial rate; in Costa Rica, from the date of dispossession in accordance with article 11 of its Expropriation Act, with interest at the average deposit rate prevailing in the national banking system; • Lebanon: interest rate equivalent to the rate paid by the government of the territory where expropriation took place in its general borrowing; • Philippines: no mention of the applicable interest rate until payment; • Poland: payment shall be made within two months of the date of expropriation, after which an agreed interest rate (no less than LIBOR) applies; • Russia: compensation shall be made within two months of the date of expropriation; • Thailand: in Canada, from the date of expropriation at a normal commercial rate; in Thailand, the date determined by the committee established under article 23 of its Immovable Property Expropriation Act for immovable property at the highest rate of interest for the fixed deposit of the Government Savings Bank for immovable property; for movable property, in accordance with its Civil and Commercial Code; • Chile and NAFTA: commercially reasonable rate for the currency if paid in a G7 currency; if made in a non-G7 currency, the amount converted on the date of payment should be equivalent to the amount converted to a G7 currency on the date of expropriation at a commercially reasonable rate for that G7 currency; • Benin, Jordan, Kosovo, Kuwait, Moldova, Peru, Tanzania, Chile, Colombia, Panama, Cameroon, Honduras, Korea, Burkina Faso, Ivory Coast, Guinea, Hong Kong, Mali, Nigeria and Senegal: commercially reasonable rate for the currency; • Serbia: appropriate commercial rate for that currency accrued; • China and CETA: a normal commercial rate until the date of payment; and • CUSMA and CPTPP: a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.
Conditions for expropriation	While most Canadian treaties provide that expropriation must be under 'due process of law', etc, certain treaties have unique provisions, including expropriation under 'domestic due procedures of law' instead of under due process of law in the treaty with China.
Exceptions to expropriation	Certain Canadian treaties also include exceptions to expropriation, including: • intellectual property rights related measures that are consistent with an international agreement to which both contracting parties are signatories are excluded in the treaty with China; • intellectual property rights related measures that are consistent with World Trade Organization are excluded in the treaties with Benin, Jordan, Kosovo, Kuwait, Moldova, Peru, Tanzania, Chile, Colombia, Panama, NAFTA, Honduras, and Cameroon, Burkina Faso, Ivory Coast, Guinea, Hong Kong, Mali, Nigeria, Senegal and Serbia; and • Issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement in the CUSMA and CPTPP.
Indirect expropriation	Most of Canada's treaties cover 'indirect expropriation' by prohibiting measures tantamount to expropriation, but certain treaties include an explicit reference to 'indirect expropriation' (eg: in the treaties with the Benin, CETA, CPTPP, CUSMA, Czech Republic, Jordan, Kosovo, Kuwait, Latvia, Peru, Romania, Tanzania, Chile, Colombia, NAFTA, Panama, Honduras, Cameroon, Korea, Burkina Faso, Ivory Coast, Guinea, Hong Kong, Mali, Moldova, Nigeria, Senegal and Serbia).

Issue	Distinguishing features of the 'expropriation' standard
Judicial authority	In Canada, a judicial authority that reviews an investor's claim shall include any other competent administrative or quasi-judicial authority in the treaty with Panama, Honduras, Cameroon and Korea. The treaties with Burkina Faso, China, Ivory Coast, Guinea, Hong Kong, Kosovo, Mali, Moldova, Nigeria, Senegal and Serbia are examples of treaties that grant an affected investor the right to a prompt review by a judicial or other independent authority of the party making the expropriation.
Taxation	No mention of taxation and no separate taxation provisions are contained in the Argentina, CETA, CPTPP, CUSMA, Chile, Czech Republic, Hungary, Poland, Russia, Slovak Republic treaties and specific conditions for bringing expropriation claims for taxation measures are set out in certain treaties, such as those with Burkina Faso, China, Ivory Coast, Guinea, Hong Kong, Kosovo, Mali, Moldova, Nigeria, Senegal and Serbia.

6 National treatment/most-favoured-nation treatment

What are the distinguishing features of the national treatment or most favoured nation (MFN) treatment standard in this country's investment treaties?

Issue	Distinguishing features of the 'national treatment' and/or 'most favoured nation' standard
Scope of MFN treatment	Generally, Canadian treaties limit the scope of MFN or national treatment to claims regarding the management, use, enjoyment or disposal of investments and returns.
Common exceptions to MFN and national treatment	Several Canadian treaties contain common exceptions to MFN treatment (including regarding sectors, such as aviation or telecommunications sectors, and in respect of treaties signed after a certain date), such as those with Armenia, Barbados, China, CETA, CUSMA, Czech Republic, Ecuador, Egypt, Kosovo, Latvia, Panama, Slovak Republic, South Africa, Trinidad and Tobago, Ukraine, Uruguay, Venezuela, Cameroon, Burkina Faso, Ivory Coast, Guinea, Hong Kong, Mali, Nigeria, Senegal and Serbia. Given the breadth of application, these common exceptions are set out in detail with reference to the Armenia treaty, as follows: • Excludes MFN treatment to any existing or future bilateral or multilateral agreement: (a) establishing, strengthening or expanding a free trade area or customs union; (b) negotiated within the framework of the General Agreement on Tariffs and Trade or its successor organisation and liberalising trade in services; or (c) relating to: (i) aviation; (ii) telecommunications transport networks and telecommunications transport services; (iii) fisheries; (iv) maritime matters, including salvage; or (v) financial services; and • Excludes national treatment to (a)(i) any existing non-conforming measures maintained within the territory of a contracting party; and (ii) any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition of a government's equity interests in, or the assets of, an existing state enterprise or an existing governmental entity, prohibits or imposes limitations on the ownership of equity interests or assets or imposes nationality requirements relating to senior management or members of the board of directors; (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); (c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with those obligations; (d) the right of each contracting party to make or maintain exceptions within the sectors or matters listed in the Annex to this Agreement.
Other specified MFN and national treatment exceptions	Certain Canadian treaties contain other specific exceptions to MFN and national treatment, including: • any agreements that (a) establish a free trade area or customs union; (b) liberalise trade in services; (c) for mutual economic assistance, integration or cooperation; (d) relating to taxation in the treaties with Armenia, Argentina, Hungary, Poland, Romania, Russia and Cameroon; • with respect to NAFTA, any measure that is an exception to, or derogation from, the obligations under NAFTA article 1703; any measure that a party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II of NAFTA; • with respect to CETA, (a) procurement by a party of a good or service purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is 'covered procurement' within the meaning of article 19.2 (Scope and coverage); or (b) subsidies, or government support relating to trade in services, provided by a party; • with respect to CPTPP, any treatment referred to does not encompass international dispute resolution procedures or mechanisms, such as those included Investor-State Dispute Settlement; • with respect to CUSMA, any measure that is an exception to, or derogation from, the obligations under CUSMA article 14.12; any measure that a party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex I or II of CUSMA. • bilateral economic cooperation agreements with Italy (10 December 1987) and Spain (3 June 1988) in the treaty with Argentina;

Issue	Distinguishing features of the 'national treatment' and/or 'most favoured nation' standard
	• certain measures do not give rise to national treatment in the treaties with Lebanon, Romania and South Africa through reservations recorded by those parties; • civil aviation, real property, customs brokers, customs clerks, gambling, betting and lotteries in the treaty with Trinidad and Tobago; • existing non-conforming measures in the treaties with Benin, Jordan, Kuwait, Tanzania, Burkina Faso, Guinea, Hong Kong, Ivory Coast, Kosovo, Mali, Moldova, Nigeria, Senegal and Serbia; • NAFTA and the G-3 Agreement are not to be imported for the purposes of the treaty with Venezuela; • in the treaty with China, any measures that either party reserved the right to adopt or maintain in its schedule in respect of investors or investments of investors of Peru. • procurements, grants and subsidies in the treaties with Benin, China, Jordan, Kuwait, Tanzania, Chile, Colombia, NAFTA, Panama (FTA, not in force), Peru, Cameroon, Burkina Faso, Ivory Coast, Guinea, Hong Kong, Mali, Nigeria, Senegal and Serbia; • review decision under the Investment Canada Act excluded from dispute settlement in the treaties with Benin, Chile, Kuwait, Tanzania, Cameroon, Honduras and Korea; • concessions in the maritime land zone and export promotion programme in the treaty with Costa Rica; • carriage of passengers by vessel in relation to exploration, exploitation or transportation of non-living natural resources in the treaty with Nigeria; • measures relating to (i) public law enforcement, ambulance services, correctional services and fire-fighting, rescue services, and (ii) health, education, housing, training, transport, social security and social welfare, to the extent they are social services established for public purpose in the treaty with Hong Kong. • the rights or preferences provided to aboriginal peoples in the treaties with Burkina Faso, Guinea, Hong Kong, Ivory Coast, Kosovo, Mali, Moldova, Nigeria, Senegal and Serbia; • adopting or maintaining non-conforming measures with respect to: maritime cabotage; licensing fishing or fishing-related activities including entry of foreign fishing vessels to Canada's exclusive economic zone, territorial sea, internal waters or ports, and use of any services therein, in treaties with Burkina Faso, Ivory Coast, Guinea, Hong Kong, Mali, Nigeria, Senegal and Serbia.
Specified exceptions related only to MFN treatment	In addition to the example set out in item 2 above, certain Canadian treaties contain other specific exceptions relating only to MFN treatment, including: • MFN does not permit the importation of dispute resolution mechanisms in another treaty for the purposes of the treaties with Cameroon, China and Peru; • aviation, fisheries and maritime matters including salvage and any bilateral or multilateral agreement in force prior to 1 January 1994 in the treaties with Benin, Kuwait, Tanzania, Peru (FTA) and China; • financial services in the treaty with Benin, Burkina Faso, Cameroon, Ivory Coast, Guinea, Nigeria, Mali, Senegal and Serbia; • ownership of real estate by nationals of Arab states and to any measure where there has been the exercise of discretion by competent authorities of the contracting parties in respect of establishing financial services in the treaty with Lebanon; • taxation in the treaty with Thailand; • MFN does not apply to a current and future technical assistance and development aid programmes under any bilateral and multilateral agreements in the treaty with Mongolia; • with respect to CPTPP, MFN does not apply to any measure that falls within article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations that are imposed by: (i) article 18.8 (National Treatment); or (ii) article 4 of the TRIPS Agreement; • with respect to CUSMA, MFN does not apply to any measure that falls within article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations that are imposed by: (i) article 20.8 (National Treatment); or (ii) article 4 of the TRIPS Agreement. • MFN treatment does not encompass international dispute resolution procedures or substantive obligations in other treaties under the treaty with Chile; • MFN does not apply to an existing or future bilateral or multilateral agreement relating to road, rail and inland waterway transportation in the treaty with Mali; and • MFN does not apply to bilateral or multilateral international agreements in force or signed, for Canada, prior to 1 January 1994, and prior to 1 January 1960 for Nigeria in the treaty with Nigeria. A similar exception relating to treatment under previously agreed treaties appears in treaties with Burkina Faso, Ivory Coast, Guinea, Hong Kong, Mali, Senegal and Serbia. See also the Schedule(s) of Canada (or the parties), which include further detailed reservations and exceptions in respect of certain protections.

Issue	Distinguishing features of the 'national treatment' and/or 'most favoured nation' standard
Specified exceptions related only to national treatment	Certain Canadian treaties contain other specific exceptions relating only to national treatment, including: • acquisition of real estate situated within ten kilometres of the borders; retail trade; provision of postal and telegraphic services; fishing for domestic sale; and broadcasting in the treaty with Panama; • atomic agency; air transportation; overseas and coastal shipping; telephone or telegraph services; submarine cable services in the treaty with Croatia. • business in agriculture, commerce and service as well as building construction and business in industry and handicrafts in the treaty with Thailand; • with respect to coastal fishing, small-scale commerce, exercise of notarial activities, acquisition of rural real estate for non-industrial use, and minimum capital amount in the treaty with El Salvador; • with respect to enterprises in industries including nuclear, maritime, air transport, state budget financed sectors, salt extraction, rare earths extraction, television/radio and land in the treaty with the Ukraine (with certain time-limited restrictions); • with respect to mass media, practice of licensed profession, small-scale retail trade, cooperative enterprises, private security agencies, small-scale mining, marine resources utilisation and trading in rice and corn in the treaty with the Philippines; • adopting or maintaining non-conforming measures with respect to: the rights or preferences provided to socially or economically disadvantaged minorities, residency requirements for ownership of oceanfront land, government securities (ie, acquisition, sale or other disposition by nationals of the other party of bonds, treasury bills or other kinds of debt securities issued by the government of Canada, a province or local government), telecommunications services and the establishment or acquisition in Canada of an investment in the services sector in treaties with Burkina Faso, Ivory Coast, Guinea, Hong Kong, Mali, Nigeria, Senegal and Serbia; • with respect to CPTPP, national treatment does not apply to any measure that falls within an exception to, or derogation from, the obligations that are imposed by: (i) article 18.8 (National Treatment); or (ii) article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 18 (Intellectual Property); and • with respect to CUSMA, national treatment does not apply to any measure that falls within an exception to, or derogation from, the obligations that are imposed by: (i) article 20.8 (National Treatment); or (ii) article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 20 (Intellectual Property Rights).
Specified inclusions related to MFN and national treatment	Certain Canadian treaties contain specific inclusions for national and MFN treatment, including: • the better of the treatment required under the Decree Law 600 of 1974 or the Chile treaty in the treaty with Chile; and • an expansion of national treatment only with respect to the expansion, management, conduct, operation and sale or other disposition of investment, not acquisition and new investment and only to sectors that do not require prior approval and subject to prescribed formalities and other information requirements, and intellectual property is included as long as it is consistent with international agreements that both contracting states are parties in the treaty with China.

7 Protection and security

What are the distinguishing features of the obligation to provide protection and security to qualifying investments in this country's investment treaties?

Issue	Distinguishing features of the 'protection and security' standard
Full protection and security	All of Canada's investment treaties feature 'full protection and security'.

8 Umbrella clause

What are the distinguishing features of the umbrella clauses contained within this country's investment treaties?

Issue	Distinguishing features of any 'umbrella clause'
Umbrella clause	Canada's investment treaties do not contain umbrella clauses.

9 Other substantive protections

What are the other most important substantive rights provided to qualifying investors in this country's investment treaties?

Issue	Other substantive protections
Armed conflict/civil unrest	All of Canada's treaties provide protection against armed conflict or civil unrest. Examples of aspects of this protection, as specifically addressed in certain treaties, include: • Argentina: revolution and civil strife; • Benin: national emergency omitted; • Burkina Faso: armed conflict, civil strife; • Cameroon: armed conflict, civil strife or natural disaster; • CETA: armed conflict, civil strife, state of emergency or natural disaster; • China: natural disaster omitted; insurrection and riot included; • Chile: civil strife added but not national emergency and natural disaster; • Colombia: civil strife added but national emergency and natural disaster omitted; • CUSMA: armed conflict, civil strife; • Czech Republic: civil disturbance added; natural disaster omitted; • Guinea: armed conflict, civil strife or natural disaster; • Honduras: armed conflict and civil strife; • Hong Kong: armed conflict, revolution, revolt, insurrection, riot, civil strife, a state of national emergency, or natural disaster; • Hungary: natural disaster omitted; • Ivory Coast: armed conflict, civil strife or natural disaster; • Jordan: civil strife added but national emergency omitted; • Korea: armed conflict, civil strife. • Kosovo: armed conflict, civil strife or natural disaster; • Kuwait: national emergency omitted; • Mali: armed conflict, civil strife or natural disaster; • Moldova: armed conflict, civil strife or natural disaster; • Mongolia: armed conflict, civil strife or natural disaster; • Nigeria: armed conflict, civil strife or natural disaster; • Panama: civil strife added but national emergency and natural disaster omitted; • Peru: civil strife added but national emergency omitted; • Philippines: natural disaster omitted; • Poland: natural disaster omitted; • Russia: natural disaster omitted; • Slovak Republic: civil disturbance added but natural disaster omitted; • Senegal: armed conflict, civil strife or natural disaster; • Serbia: armed conflict, civil strife or state of emergency, including as a result of a natural disaster; • Tanzania: war, state of national emergency, revolt, insurrection or riot; and • CPTPP: armed conflict or civil strife.

IV Procedural Rights

10 Are there any relevant issues related to procedural rights in this country's investment treaties?

Issue	Procedural Rights
Fork in the road	Canada's treaties do not contain pure fork-in-the-road provisions. As noted in relation to the designations used in the Table at section I above, Canada's earliest treaties contain no restrictions on access to the local courts of the host state and are thus shown as 'Unrestricted'. Canada's second generation of treaties typically provide that '[a]n investor may submit a dispute as referred to in paragraph (1) to arbitration in accordance with paragraph (4) only if: (b) the investor has waived its right to initiate or continue any other proceedings in relation to the measure that is alleged to be in breach of this Agreement before the courts or tribunals of the Contracting Party concerned or in a dispute settlement procedure of any kind'. An analogous requirement usually exists for cases where the claim is brought on behalf of an enterprise owned or controlled by the claimant investor that is incorporated under the law of the respondent state. These treaties are shown as 'Limited'. Most of Canada's recent treaties contain a similar provision but permit the claimant investor to initiate or continue proceedings for 'injunctive, declaratory or other extraordinary relief, not involving the payment of damages'. These are shown as 'Limited except for declaratory relief'.

Issue	Procedural Rights
Arbitrator appointment	Certain Canadian treaties explicitly specify the procedure for arbitrator appointment: Benin, Burkina Faso, CETA, Jordan, Kosovo, Kuwait, Peru, Tanzania, Chile, China, Colombia, CUSMA, Ivory Coast, NAFTA, Panama, Peru, Mali, Korea, Guinea, Hong Kong, Moldova, Nigeria, Senegal, Cameroon, Serbia, CPTPP and Honduras.
Choice of forum	Most of Canada's investment treaties provide for ICSID (including Additional Facility) or UNCITRAL ad hoc arbitration, at the election of the disputing investor with the following exceptions: • Hungary: ICSID Additional Facility option not provided; • Jordan and Peru: any other body of rules approved by the Commission (defined in article 51) as available for arbitrations under section C; • Kuwait, Burkina Faso, Ivory Coast: in addition to ICSID (including Additional Facility) and UNCITRAL ad hoc arbitration, the treaty permits any other instrument that allows the arbitration procedure to be conducted in accordance with the treaty and that is adopted by the national or regional arbitration centre proposed by the investor, provided the disputing parties agree; and • Russia, Hong Kong: only UNCITRAL arbitration provided.
Domestic requirement	The Costa Rica treaty provides that where Costa Rica is a respondent there should be no prior judgment on the subject matter of the dispute rendered by a Costa Rican court. The China–Canada FIPPA provides two conditions precedent for submitting a claim to arbitration, where the claim concerns a measure in China. 1. Upon receipt of the notice of intent or at any time prior, China shall require that an investor make use of the domestic administrative reconsideration procedure. If the investor considers that the dispute still exists for four months after the investor has applied for the administrative reconsideration, or where no such remedies are available, the investor may submit a claim to arbitration. 2. An investor who has initiated proceedings before any court of China with respect to a measure alleged to be a breach of an obligation under Part B (which relates to substantive obligations) may only submit a claim to arbitration if the investor has withdrawn the case from the national court before judgment has been made in the dispute. This requirement does not apply to the domestic administrative reconsideration procedure referred to in paragraph 1. Conditions precedent based on timing, notice and filing requirements exist in various other treaties, such as the treaties with Burkina Faso, Ivory Coast, Guinea, Hong Kong, Mali, Nigeria, Senegal and Serbia.
Notice periods	The majority of Canada's treaties require advance notice or consultations prior to the submission of a claim to arbitration. There are several variations of this requirement, the details of which are reflected in the Table in question 1.
Mandatory commencement	The Argentina treaty is the only treaty that has a mandatory commencement provision that triggers three months after written notification is issued using the UNCITRAL Rules.
Restriction on arbitrable matters	Certain Canadian treaties contain restrictions on arbitrable matters including: • Canada's treaties typically exclude claims in respect of cultural industries. Four of Canada's treaties do not explicitly purport to exclude such claims: Argentina, Hungary, Poland, Russia and Cameroon; • claims brought by financial institutions are restricted in various ways in the treaties with Benin, Burkina Faso, China, Czech Republic, Guinea, Ivory Coast, Jordan, Kosovo, Kuwait, Hong Kong, Latvia, Mali, Moldova, Mongolia, Nigeria, Peru, Romania, Serbia, Senegal, Slovak Republic and Tanzania; • claims based on new business enterprise permit decisions or on acquisition (or share) of an existing enterprise in the treaties with Costa Rica and Croatia; and • certain claims relating to whether to permit an acquisition (or, in certain cases, 'investment') that is subject to review (eg, see Canada's treaties with Chile, China, Colombia, Panama, Peru, NAFTA and Cameroon).
Restriction on the type and timing of award	Canada's treaties generally address the type and timing of awards, including as follows: • awards are generally restricted to covering issues of liability, the quantum of monetary damages and restitution of property, and the time limit for rendering an award is generally three years; • punitive damages, although generally not considered recoverable, are expressly prohibited in the treaties with Benin, Burkina Faso, CETA, China, Ivory Coast, Guinea, Hong Kong, Jordan, Kosovo, Kuwait, Mali, Moldova, Mongolia, Nigeria, Peru, Senegal, Serbia, Tanzania, Chile, Colombia, NAFTA, Panama, Honduras, Korea, CPTPP and Cameroon; • two of Canada's treaties do not state any restriction on the type of award: Czech Republic, Slovak Republic; • the following Canada's treaties do not mention timing for issuing an award: Argentina, Benin, Hungary, Kosovo, Kuwait, Moldova, Poland, Russia, Tanzania and CPTPP; • CETA requires final award be issued within 24 months of the date the claim is submitted to the Tribunal; and • Two of Canada's treaties provide for 39 months for issuing an award: Colombia and Peru.

Issue	Procedural Rights
Waiver clause	Canadian treaties generally contain a waiver clause excluding the right to initiate or continue parallel proceedings before the court or tribunal of a contracting party except with respect to injunctive, declaratory or other extraordinary relief.

11 What is the status of this country's investment treaties?

Canada continues to build its investment treaty network.

Since August 2017, the following FIPPAs entered into force: Canada-Burkina Faso, Canada–Kosovo and Canada-Moldova.

As at August 2020:

- a FIPPA between Canada and Nigeria has been signed but is not in force.
- Canada has concluded negotiations regarding a new FIPPA with five states (Albania, Bahrain, Madagascar, UAE, Zambia).
- Canada is continuing negotiations with 14 states (Democratic Republic of Congo, Gabon, Georgia, Ghana, India, Kazakhstan, Kenya, Macedonia, Mozambique, Mauritania, Pakistan, Qatar, Rwanda and Tunisia).

In addition, the following new free trade agreements (FTAs) that contain material investment provisions entered into force since August 2017: CPTPP, CETA and CUSMA. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership Agreement (CPTPP), which incorporates most of the Trans-Pacific Partnership (TPP) by reference, entered into force on 30 December 2018. However, certain provisions of the CPTPP investment chapter are currently suspended. Similarly, the CETA took provisional effect as of 21 September 2017; however, the investment arbitration provisions of the CETA are excluded from the provisional effect. The CUSMA (Canada–United States–Mexico Agreement), which replaces the NAFTA, entered into force on 1 July 2020.

Following the CUSMA's coming into force, as of 1 July 2020, investor-state dispute settlement under the NAFTA will no longer be available for new investments. For claims involving investments that made while the NAFTA was in force, investor-state dispute settlement is available for up to three years from the coming into force of the CUSMA.

V Practicalities (Claims)

12 To which governmental entity should notice of a dispute against this country under an investment treaty be sent? Is there a particular person or office to whom a dispute notice against this country should be addressed?

Government entity to which claim notices are sent	Office of the Deputy Attorney General of Canada Justice Building 284 Wellington Street Ottawa, Ontario K1A 0H8 Canada

13 Which government department or departments manage investment treaty arbitrations on behalf of this country?

Government department that manages investment treaty arbitrations	Global Affairs Canada and Justice Canada

14 Are internal or external counsel used, or expected to be used, by the state in investment treaty arbitrations? If external counsel are used, does the state normally go through a formal public procurement process when hiring them?

Internal/External counsel	Internal counsel: Trade Law Bureau (JLT), Global Affairs Canada and Justice Canada; external counsel are generally not used.

VI Practicalities (Enforcement)

15 Has the country signed and ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965)? Please identify any legislation implementing the Washington Convention.

Washington Convention implementing legislation	Canada signed the ICSID Convention on 15 December 2006. The Canadian federal government passed the Settlement of International Investment Disputes Act, S.C. 2008, c.8 to ratify the ICSID Convention in March 2008. On 1 November 2013, Canada ratified the Convention and it entered into force on 1 December 2013. Quebec is the only province that has not adopted specific implementing legislation.

16 Has the country signed and ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (the New York Convention)? Please identify any legislation implementing the New York Convention.

New York Convention implementing legislation	The New York Convention came into force in Canada on 10 August 1986 (ratified 12 May, 1986) via the United Nations Foreign Arbitral Awards Convention Act, R.S.C., 1985, c. 16 (2nd Supp.). Canada declared, however, that the Convention applies only to differences arising out of commercial legal relationships, whether contractual or not. Each province and territory has separately enacted legislation adopting the Convention except Quebec, although Quebec's Code of Civil Procedure 25.01 article 652 allows consideration of the New York Convention.

17 Does the country have legislation governing non-ICSID investment arbitrations seated within its territory?

Legislation governing non ICSID arbitrations	Federally, article 5(4) of the Commercial Arbitration Act, R.S.C., 1985, c. 17 (2nd Supp.) provides that Canada interprets the expression 'commercial arbitration' in article 1(1) of the attached Commercial Arbitration Code (based on the UNCITRAL Model Law) to include investment dispute claims under certain of its Free Trade Agreements (Colombia, Chile, NAFTA and Peru). Each provincial/territorial jurisdiction, with the exception of Quebec (although Quebec's Code of Civil Procedure 25.01 article 649 allows consideration of the Model Law), has enacted legislation adopting the UNCITRAL Model Law (eg, British Columbia's International Commercial Arbitration Act, R.S.B.C. 1996, c. 55). In March 2014, the Uniform Law Conference of Canada (ULCC) finalised a new Uniform International Commercial Arbitration Act, which the Provinces have been asked to consider adopting. The ULCC adopted the act on 1 December 2016 as the Uniform Arbitration Act (2016).

18 Does the state have a history of voluntary compliance with adverse investment treaty awards; or have additional proceedings been necessary to enforce these against the state?

Compliance with adverse awards	Generally, Canada is compliant. Canada unsuccessfully sought to set aside an adverse award made in favour of *SD Myers Inc*, pursuant to NAFTA Chapter 11 (Decision of the Federal Court rendered on 13 January 2004). On 2 May 2018, the Federal Court of Canada denied Canada's application for the set aside of the Tribunal's award in *Bilcon of Delaware et al v Government of Canada*, PCA Case No. 2009-04, issued on 17 March 2015. More recently, the Government of Canada unsuccessfully attempted to set aside the final award in this case in *Canada (Attorney General) v Clayton*, 2018 FC 436.

19 Describe the national government's attitude towards investment treaty arbitration.

Attitude of government towards investment treaty arbitration	The government of Canada's current attitude toward investment arbitration can best be described as ambivalent. Canada continues to negotiate with certain developing countries, particularly where Canadian natural resource companies are active, on investment treaties that provide for investment arbitration. However, senior ministers in the government have been critical of investment arbitration and Canada agreed with the United States in the CUSMA to eliminate it as between the two countries (investment arbitration remains available under the CPTPP agreement in disputes involving Mexico and Mexican investors). Canada also agreed in the CETA with the European Union to replace traditional investment arbitration with a new model that features a standing 'investment court' rather than ad hoc tribunals, although these provisions of the CETA have yet to come into force.

20 To what extent have local courts been supportive and respectful of investment treaty arbitration, including the enforcement of awards?

Attitude of local courts towards investment treaty arbitration	Canadian courts generally recognise and enforce investment arbitration awards, including when the application for review is made by the government of Canada (*SD Myers Inc and Bilcon*). Canadian provincial courts have reviewed applications to set aside investment arbitration awards and ruled according to the criteria set out in provincial legislation that implemented the New York Convention or the UNCITRAL Model Law, or both. In Quebec, where there is no provincial Commercial Arbitration Act, the Code of Civil Procedure applies (by way of a motion for homologation to the court). The Courts of British Columbia partially set aside an award in *Metalclad v Mexico*, affecting the date for calculation of pre-award interest. The Ontario courts have dismissed applications to set aside the award in *Bayview v Mexico* and the respondent's application to set aside in *Cargill v Mexico* and *Feldman v Mexico*; the same courts have ordered enforcement of the award in *Sistem v Kyrgyzstan*. In *Popack v Lipszyc*, the Ontario Court of Appeal concluded that the Court may refuse to set aside an award even if one or more of the grounds set out in the UNCITRAL Model Law are established. Similarly, in *Consolidated Contractors Group SAL (Offshore) v Ambatovy Minerals*, the Ontario Superior Court confirmed that there is only a narrow discretion for a court to set aside an award even if a ground for doing so is established. More recently, large awards issued against states have been enforced in Ontario, including a C$1.2 billion award in favour of Crystallex International Corporation against the government of Venezuela, although the application at the Superior Court level was unopposed by Venezuela. In *Sociedade de Fomento Industrial Private Limited v. Pakistan Steel Mills Corporation (Private) Ltd*, the Court of Appeal in British Columbia addressed the rights of creditors to obtain interim relief in aid of arbitration, and confirmed that under the New York Convention a claimant is not obligated to seek enforcement of an award in the debtor's home country before seeking enforcement in a foreign jurisdiction. The British Columbia Supreme Court also granted a worldwide *Mareva* injunction in *CE International Resources Holdings LLC v Yeap, SA Minerals Ltd Partnership and Tantalum Technology Inc* as an interim measure to allow the claimant time to seek substantially the same relief from the arbitrator presiding over the dispute in New York. CEIR was thereby able to secure exigible assets owned by the rogue defendant in British Columbia. In *China Citic Bank Corporation Limited v Yan*, the British Columbia Supreme Court found that China Citic Bank did not make full and frank disclosure when the *Mareva* injunction was first granted to ensure meaningful enforcement of an arbitration award obtained in China. Yet, the Court held that the injunction should nevertheless not be set aside. In *Stans Energy Corp v The Kyrgyz Republic*, the Ontario Divisional Court set aside a previously granted *Mareva* injunction on the basis that the arbitral award had been set aside by the supervisory courts in the seat of the arbitration and that counsel did not make full and frank disclosure when requesting the injunction. Specifically, counsel failed to properly disclosure new developments in the proceedings including that the arbitral panel had been found not to have jurisdiction over the dispute. In *Belokon v Kyrgyz Republic*, the applicants sought a declaration that the Kyrgyz Republic had an ownership interest in shares of Centerra Gold Inc, a Canadian company, that are registered in the name of the Republic's wholly owned subsidiary Kyrgyzaltyn JSC. The Ontario Superior Court and the Court of Appeal both found that Kyrgyzaltyn and the Kyrgyz Republic are separate legal entities, which frustrated the attempt to seize the Republic's interest in Centerra Gold. In *United Mexican States v Burr*, Mexico sought the set aside of an award on jurisdiction issued by a tribunal constituted under the ICSID AF Rules before the Ontario courts on two grounds: the failure to deliver a notice of intent under article 1119 and wait at least 90 days before submitting a request for arbitration and the failure to deliver a written consent to arbitrate under article 1121. The Ontario court applied a standard of 'correctness' in reviewing the jurisdiction of the tribunal and dismissed the application.

VII National Legislation Protecting Inward Investment

21 Is there any national legislation that protects inward foreign investment enacted in this country? Describe the content.

National legislation	Substantive protections			Procedural rights	
	FET	Expropriation	Other	Local courts	Arbitration
N/A					

VIII National Legislation Protecting Outgoing Foreign Investment

22 Does the country have an investment guarantee scheme or offer political risk insurance that protects local investors when investing abroad? If so, what are the qualifying criteria, substantive protections provided and the means by which an investor can invoke the protections?

Relevant guarantee scheme	Qualifying criteria, substantive protections provided and practical considerations
Export Development Canada (EDC)	EDC is Canada's export credit agency supporting and developing export trade by providing insurance, among other services, to Canadian companies. Political risk insurance can cover up to 90 per cent of losses to investments caused by a broad range of risks resulting from unpredictable events (eg, breach of contract, creeping or outright expropriation, political violence, currency conversion or transfer, repossession, non-payment by a government).
Multilateral Investment Guarantee Agency (MIGA)	Canada is one of the 29 original members of MIGA. The MIGA Convention was ratified through the Bretton Woods and Related Agreements Act, R.S.C., 1985, B-7 (Schedule V) in Canada. With this multilateral political risk insurance for medium or long-term investments, Canadian citizens and entities may benefit from MIGA's protection against the risks of transfer restriction (including inconvertibility), expropriation, war and civil disturbance, breach of contract and non-honouring of sovereign financial obligations. MIGA can also insure Canadian-funded investment through an investor of the host country.

IX Awards

23 Please provide a list of any available arbitration awards or cases initiated involving this country's investment treaties

Awards
Peter A. Allard (Canada) v The Government of Barbados (Barbados-Canada FIPPA, UNCITRAL) – Award, 27 June 2016
Abitibi Bowater Inc v The Government of Canada (NAFTA, UNCITRAL) – Consent Award, 15 December 2010
ADF Group Inc v United States of America (NAFTA, ICSID Additional Facility) – Award, 9 January 2003
Alasdair Ross Anderson and others v Republic of Costa Rica (Canada–Costa Rica FIPPA, ICSID Additional Facility) – Award, 19 May 2010
Apotex Holdings Incand Apotex Inc v United States of America (NAFTA, ICSID Additional Facility) – Award, 25 August 2014
Apotex Inc v United States of America (NAFTA, UNCITRAL) – Award on jurisdiction and admissibility, 14 June 2013
Bear Creek Mining Corporation v Republic of Peru (Canada–Peru FTA, ICSID) – Award, 30 November 2017
Bilcon of Delaware et al v The Government of Canada (NAFTA, PCA Case No. 2009-04) – Award on Jurisdiction and Liability, 17 March 2015; Award set-aside application denied by Federal Court on 2 May 2018; Award on damages, 10 January 2019
Canfor Corporation v United States of America, Tembec et al v United States of America and Terminal Forest Products Ltd v United States of America (NAFTA, UNCITRAL) – Joint Order of the Costs of Arbitration and for the Termination of Certain Arbitral Proceedings, 19 July 2007
The Canadian Cattlemen for Fair Trade v United States of America (NAFTA, UNCITRAL) – Award on Jurisdiction, 28 January 2008
Chemtura Corporation v The Government of Canada (NAFTA, UNCITRAL) – Award, 2 August 2010
Copper Mesa Mining Corporation v Republic of Ecuador (Canada–Ecuador FIPPA, UNCITRAL) – Redacted Award 15 March 2016
Crystallex International Corporation v Bolivarian Republic of Venezuela (Canada–Venezuela FIPPA, ICSID Additional Facility) – Award, 4 April 2016
Detroit International Bridge Company v The Government of Canada (NAFTA, UNCITRAL) – Award on jurisdiction 2 April 2015; Award on costs 17 August 2015
Dow Agro Sciences LLC v The Government of Canada (NAFTA, UNCITRAL) – Settled on 25 May 2011
Eli Lilly and Company v The Government of Canada (NAFTA, UNCITRAL) – Award, 16 March 2017
EnCana Corporation v Republic of Ecuador (Canada–Ecuador FIPPA, UNCITRAL, Administered by LCIA) – Award, 3 February 2006
Ethyl Corporation v The Government of Canada (NAFTA, UNCTIRAL) – Award on Jurisdiction, 24 June 1998, settled
EuroGas Inc. and Belmont Resources Inc v Slovak Republic (Canada–Slovak Republic FIPPA, ICSID Case No. ARB/14/14) – Award, 18 August 2017
Frontier Petroleum Services Ltd v Czech Republic (Canada–Czech and Slovak Federal Republic FIPPA, UNCITRAL) – Award 12 November 2010

Awards
Glamis Gold Ltd V United States of America (NAFTA, UNCITRAL) – Award, 8 June 2009
Global Telecom Holding SAE v Canada (Canada-Egypt FIPPA, ICSID Case No. ARB/16/16) – Award 27 March 2020
Gold Reserve Inc v Bolivarian Republic of Venezuela (Canada – Venezuela FIPPA, ICSID Additional Facility) – Award, 22 September 2014; Decision issued on request for correction, 15 December 2014
Grand River Enterprises Six Nations Ltd, et al v United States of America (NAFTA, UNCITRAL) – Award, 12 January 2011
Hussein Nuaman Soufraki v United Arab Emirates (Italy – United Arab Emirates FIPPA, ICSID) – Annulment of Award, 5 June 2007
JML Heirs LLC and JM Longyear LLC v Canada (NAFTA) – Discontinued 26 June 2015
The Loewen Group Inc and Raymond L Loewen v United States of America (NAFTA, ICSID Additional Facility) – Award, 26 June 2003; Supplementary Decision issued 13 September 2004
Melvin J Howard, Centurion Health Corp & Howard Family Trust v. The Government of Canada (NAFTA, UNCITRAL) – Order For the Termination of the Proceedings and Award on Costs, 2 August 2010; Correction issued 9 August 2010
Mercer International Inc v Canada (NAFTA, ICSID) – Award, 6 March 2018; Decision on request for supplementary decision, 10 December 2018
Merrill & Ring Forestry LP v The Government of Canada (NAFTA, UNCITRAL) – Award, 31 March 2010
Mesa Power Group LLC v The Government of Canada (NAFTA, UNCITRAL) – Award, 24 March 2016; Correction to award, 1 June 2016; Decision of US Court for District of Columbia denying Mesa Power's petition to vacate the award
Methanex Corporation v United States of America (NAFTA, UNCITRAL) – Award, 3 August 2005
Mobil Investments Inc and Murphy Oil Corporation v The Government of Canada (NAFTA, ICSID Case No. ARB(AF)/07/4) – Award, 20 February 2015
Mobil Investments Canada Inc and Murphy Oil Corporation v The Government of Canada (NAFTA, No. ARB/15/6) – Award, 4 February 2020
Mondev International Ltd v United States of America (NAFTA, ICSID Additional Facility) – Award, October 11, 2002
Nova Scotia Power Incorporated v Bolivian Republic of Venezuela (Canada–Venezuela FIPPA, ICSID Additional Facility) – Partial Award on Jurisdiction, 22 April 2010; Award, 30 April 2014
Pope & Talbot Inc v The Government of Canada (NAFTA, UNCITRAL) – Award, 31 May 2002 (on damages), 26 November 2002 (on costs)
Quadrant Pacific Growth Fund L.P. and Canasco Holdings Inc v Republic of Costa Rica (Canada-Costa Rica FIPPA, ICSID Additional Facility) – Discontinued, 27 October 2010
Rusoro Mining Ltd v Bolivarian Republic of Venezuela (Canada–Venezuela FIPPA, ICSID Additional Facility) – Award, 22 August 2016
SD Myers, Inc v The Government of Canada (NAFTA, UNCITRAL) – Partial Award (13 November 2000); Final Award, 30 December 2002
Saint Marys VCNA, LLC v Government of Canada (NAFTA) – Consent Award, 29 March 2013
TransCanada Corporation and TransCanada PipeLines Limited v The United States of America (NAFTA) – Discontinued, 24 March 2017
United Parcel Service of America Inc v The Government of Canada (NAFTA, UNCITRAL) – Award, June 11, 2007
Vannessa Ventures Ltd v Bolivarian Republic of Venezuela (Canada-Venezuela FIPPA, ICSID Additional Facility) – Award, 16 January 2013
Vito G Gallo v The Government of Canada (NAFTA, UNCITRAL) – Award, 15 September 2011
WalAm Energy Inc v Republic of Kenya (ICSID, ARB/15/7)
Windstream Energy LLC v The Government of Canada (NAFTA, UNCITRAL) – Award, 27 September 2016
Pending proceedings
Air Canada v. Bolivarian Republic of Venezuela (Canada–Venezuela FIPPA, ICSID Additional Facility Case No. ARB(AF)/17/1)
Carlos Sastre and others Eco Oro Minerals Corp v Republic of Colombia (Canada-Colombia FTA United Mexican States (NAFTA, ICSID Case No. ARB/16/41UNCT/20/2)
Eco Oro Minerals Corp v Republic of Colombia (Canada–Colombia FTA, ICSID Case No. ARB/16/41)
Espiritu Santo Holdings, LP v United Mexican States (NAFTA, ICSID Case No. ARB/20/13)
Gabriel Resources Ltd and Gabriel Resources (Jersey) v. Romania (Canada–Romania FIPPA, ICSID Case No. ARB/15/31)
Galway Gold Inc v Republic of Colombia (Canada–Colombia FTA, ICSID Case No. ARB/18/13)
Geophysical Service Inc v Canada (NAFTA, UNCITRAL), Notice of Arbitration 18 April 2019
Gran Colombia Gold Corp v Republic of Colombia (Canada–Colombia FTA, ICSID Case No. Arb/18/23)
Infinito Gold Ltd v Republic of Costa Rica (Canada–Costa Rica FIPPA, ICSID Case No. ARB/14/5)
Lion Mexico Consolidated LP v United Mexican States (NAFTA, ICSID Case No. ARB(AF)/15/2)
Lone Pine Resources Inc v The Government of Canada (NAFTA, UNCITRAL, ICSID Case No. UNCT/15/2)

Pending proceedings
Rand Investments Ltd and others v Republic of Serbia (Canada-Serbia FIPPA, ICSID Case No. ARB/18/8)
Red Eagle Exploration Limited v Republic of Colombia (Canada-Colombia FTA, ICSID Case No. ARB/18/12)
Resolute Forest Products Inc v The Government of Canada (NAFTA, UNCITRAL, PCA Case No. 2016-13)
Tennant Energy, LLC v The Government of Canada (NAFTA, UNCITRAL, PCA Case No. 2018-54)
CEN Biotech IncMercer International Inc v The Government of Canada (NAFTA)
Winshear Gold Corp v United Republic of Tanzania (ICSID Case No. ARB/20/25)
Westmoreland Mining Holdings LLC v Canada (ICSID Case No. UNCT/20/3)
Resolute Forest Products Inc v Government of Canada (UNCITRAL)
WalAm Energy Inc v Republic of Kenya (ICSID)

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- Tim Kennish, 'NAFTA and Investment – A Canadian Perspective' in Seymour J Rubin & Dean C Alexander (Eds.), *NAFTA and Investment* (Unknown: Kluwer Law International, 1995) at 1 – provides the Canadian understanding of the NAFTA
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Notes

1 The majority of Canada's bilateral investment treaties (BITs) are known as Foreign Investment Promotion and Protection Agreements (FIPPAs). Canada is also party to a number of free trade agreements (FTAs) that include investment protections and provide for investor-state dispute settlement, including the North American Free Trade Agreement (NAFTA), the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and the Canada-European Union Comprehensive Economic and Trade Agreement (CETA). However, while most of the CETA is provisionally in effect, its investment protection and investor-state dispute settlement provisions are not. In addition to the treaties listed on its website as being in force or signed (but not yet in force), Canada has concluded negotiations of FIPPAs with Albania, Bahrain, Madagascar, Moldova, the United Arab Emirates and Zambia. It is also engaged in ongoing FIPPA and FTA negotiations, some of which are more active than others, with a variety of countries.

A current list of Canada's treaties in force, signed, or for which negotiations are concluded or ongoing negotiation is available at: Government of Canada – Trade and Investment Agreements.

Certain treaties, such as the Canada – Israel Free Trade Agreement (CIFTA) and the Canada-European Free Trade Association (EFTA) FTA, do not contain investment protection provisions and are not included in the table.

2 Canada's second generation treaties typically provide for a waiting period of six months from the date the dispute was first initiated. Canada's FTAs and more recent FIPPAs typically provide a notice period of 90 days (four months in the case of China) plus a requirement for the passage of six months from the occurrence of the events giving rise to the claim before it can be submitted to arbitration. The 'cooling-off period' shown here is the prescribed waiting period following the initiation of a dispute or giving notice of intent to submit a claim to arbitration, as the case may be, but practitioners should be mindful of other conditions precedent to submission of a claim.

3 Canada's earliest treaties contain no restrictions on access to the local courts of the host state and are thus shown as 'Unrestricted'. Canada's second generation of treaties typically provide that 'An investor may submit a dispute as referred to in paragraph (1) to arbitration in accordance with para-graph (4) only if: […] (b) the investor has waived its right to initiate or continue any other proceedings in relation to the measure that is alleged to be in breach of this Agreement before the courts or tribunals of the Contracting Party concerned or in a dispute settlement procedure of any kind'. An analogous requirement usually exists for cases where the claim is brought on behalf of an enterprise owned or controlled by the claimant investor that is incorporated under the law of the respondent state. These treaties are shown as 'Limited'. Most of Canada's recent treaties contain a similar provision but permit the claimant investor to initiate or continue proceedings for 'injunctive, declaratory or other extraordinary relief, not involving the payment of damages'. These are shown as 'Limited except for declaratory relief'.

4 Article X(3) of the treaty provides that: 'The aforementioned disputes may be submitted to international arbitration by one of the parties to the dispute in one of the following circumstances: (i) where the Contracting Party and the investor have so agreed; (ii) where, after a period of eighteen months has elapsed from the moment when the dispute was submitted to the competent tribunal of the Contracting Party in whose territory the investment was made, the said tribunal has not given its final decision; (iii) where the final decision of the aforementioned tribunal has been made but the Parties are still in dispute.'

5 The Canada–China FIPPA contains a detailed set of requirements for initiating arbitration. Among these requirements is a 30-day cooling-off period for consultation after the delivery of a notice of intent to commence arbitration. However, this is only one of several procedural prerequisites to filing an arbitration claim, with others set out in article 21 of the FIPPA.

6 Article 21(2)(e) of the treaty requires the claimant investor to waive its right to initiate or continue dispute settlement proceedings under any agreement between a third state and the respondent host state in relation to the measure(s) at issue. Annex C. 21(2) provides that 'An investor who has initiated proceedings before any court of China with respect to the measure of China alleged to be a breach of an obligation under Part B may only submit a claim to arbitration under Article 20 if the investor has withdrawn the case from the national court before judgment has been made on the dispute. This requirement does not apply to the domestic administrative reconsideration procedure referred to in paragraph 1'.

7 Section D of the treaty includes special provisions regarding arbitration for disputes arising from juridical stability contracts.

8 Canada and Costa Rica are also parties to an FTA of 1 November 2002, which refers to the earlier FIPPA with respect to investment protection. There were discussions in an effort to broaden and modernise the FTA with Costa Rica. However, Global Affairs Canada's website no longer includes Costa Rica as a party to any ongoing or exploratory negotiations. Therefore, it is unclear if the modernisation of the FTA will come to fruition.

9 On 19 May 2017, Canada received a notice by the government of Ecuador terminating the Canada–Ecuador FIPPA.

10 Article IX(2) of the treaty provides: 'Any dispute that may arise under this

Agreement between one Contracting Party and an investor of the other contracting Party, other than a dispute mentioned in paragraph (1) of this Article [ie, expropriation], shall, to the extent possible, be settled amicably. If the dispute has not been settled amicably within a period of six months from the date on which the dispute was initiated, it shall be submitted to arbitration in accordance with paragraph (3) of this article, upon agreement between that Contracting Party and the investor.'

11 The Canada–Jordan FTA was brought into force on 1 October 2012, but contains no investment chapter. The 2009 FIPPA still applies.

12 The 2007 FIPPA was superseded by the investment chapter in the Canada-Peru FTA (1 August 2009), but remains in force with respect to measures occurring prior to the entry in force of the FTA (see Canada–Peru FTA article 801(2)).

13 Further to the dissolution of the USSR in 1991, the treaty now binds Russia as the continuing state.

14 Global Affairs Canada's website no longer includes this treaty in its list of FIPPAs for which negotiations have been concluded. There is therefore no expectation that it will enter into force in the foreseeable future.

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