


GAR INVESTMENT TREATY ARBITRATION

Egypt

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SEPTEMBER 2020

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I Overview

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

BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Albania (6 April 1994)	No	Yes	Yes	Yes	No	6 months	No	Yes
Algeria (3 May 2000)	Yes	Yes	Yes	Yes	Inconclusive	6 months	Yes	Yes
Argentina (3 December 1993)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Armenia (1 March 2006)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Australia (5 September 2002)	Yes	Yes	Yes	Yes	No	Yes (not specified)	Yes	Yes
Austria (29 April 2002)	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes
Azerbaijan (signed on 24 October 2002, but not in force) ¹								
Bahrain (11 January 1999)	Yes	Yes	Yes	Yes	Yes	Yes (not specified)	No	Yes
Belarus (18 January 1999)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Belgium–Luxembourg (old BIT – 20 September 1978) Terminated on 24 May 2002	Yes	Yes	Yes	Yes	No	No	No	Yes
Belgium–Luxembourg (24 May 2002)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Bosnia and Herzegovina (29 October 2001)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Botswana (signed on 2 July 2003, but not in force) ²								
Bulgaria (8 June 2000) ³	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
Burundi (signed on 13 May 2012, but not in force) ⁴								
Cameroon (signed on 24 October 2000, but not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Canada (3 November 1997)	Yes	Yes	Yes	Yes	No	6 months	No	Yes ⁵
Central African Republic (signed on 7 February 2000, but not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Chad (signed on 14 March 1998, but not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Chile (signed on 5 August 1999, but not in force)	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
China (1 April 1996)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes ⁶
Comoros (27 February 2000)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Democratic Republic of Congo (signed on 18 December 1998, but not in force)	Yes	Yes	Yes	No	No	6 months	Yes	Yes
Croatia (2 May 1999)	Yes	Yes	No	Yes	No	6 months	Yes ⁷	Yes
Cyprus (11 May 1999)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Czech Republic (4 June 1994)	Yes	Yes	Yes	Yes	No	6 months	No	Yes



BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Denmark (29 October 2000)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Djibouti (signed on 21 July 1998, but not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Ethiopia (27 May 2010)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Finland (old BIT – 22 January 1982) Terminated on 5 February 2005	Yes	Yes	No	Yes	No	Yes (not specified)	Yes	Yes
Finland (5 February 2005)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
France (1 October 1975)	Yes	Yes	No	Yes	Inconclusive	3 months	No	Yes
Gabon (signed on 22 December 1997, but not in force)	Yes	Yes	Yes	Yes	Yes	12 months	Yes	Yes
Georgia (signed on 3 June 1999, but not in force)	No	Yes	No	Yes	No	6 months	Yes ⁸	Yes
Germany (old BIT – 5 July 1974) Terminated on 22 November 2009	Yes	Yes	Yes	Yes	No	Yes (not specified)	Yes	Yes
Germany (22 November 2009)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Ghana (signed on 11 March 1998, but not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Greece (old BIT – 3 February 1977) Terminated	Yes	Yes	Yes	Yes	No	Yes (not specified)	Yes	Yes ⁹
Greece (6 April 1995)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Guinea (signed on 6 March 1998, but not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Hungary (21 August 1997)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Iceland (15 June 2009)	Yes	Yes	Yes	Yes	No	Yes (not specified)	Yes	Yes
India (22 November 2000) Terminated on 29 March 2016	Yes	Yes	No	Yes	No	6 months	Yes	Yes ¹⁰
Indonesia (29 November 1994) Terminated on 30 November 2014	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Islamic Republic of Iran (signed on 25 May 1977, but not in force) ¹¹	No	Yes	Yes	Yes	Yes	2 months	No	Yes
Italy (old BIT – 30 October 1981) Terminated	Yes	Yes	Yes	Yes	No	Yes (not specified)	Yes ¹²	Yes
Italy (1 May 1994)	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Jamaica (signed on 10 February 1999, but not in force)	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Japan (14 January 1978)	No	Yes	Yes	Yes	No	No	No	Yes
Jordan (11 April 1998)	Yes	Yes	Yes	Yes	No	No	Yes	Yes
Kazakhstan (8 August 1996)	Yes	Yes	No	Yes	No	No	No	Yes
Kuwait (old BIT – 9 August 1966) Terminated on 26 April 2002	Yes	Yes	Yes	No	No	Yes (not specified)	No	Yes
Kuwait (26 April 2002)	Yes	Yes	Yes	Yes	No	6 months	Yes ¹³	Yes
Latvia (3 June 1998)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes



BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Lebanon (2 June 1997)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Libya (4 July 1991)	No	Yes	Inconclusive	Yes	No	Yes (not specified)	Yes	Yes
Macedonia (signed on 22 November 1999, but not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Malawi (7 September 1999)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Malaysia (3 February 2000)	Yes	Yes	Yes	Yes	No	3 months	No	Yes
Mali (7 July 2000)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Malta (17 July 2000)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Mauritius (17 October 2014)	Yes	Yes	Yes	Yes	No	12 months	Yes	Yes
Mongolia (25 January 2005)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Morocco (old BIT) (7 September 1978) Terminated on 1 July 1998	Yes	Yes	Yes	Yes	No	No	Yes	Yes
Morocco (1 July 1998)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Mozambique (signed on 8 December 1998, but not in force) ¹⁴								
Netherlands (old BIT – 1 January 1978) Terminated on 1 March 1998	Yes	Yes	Yes	Yes	No	Yes (reasonable time)	No	Yes
Netherlands (1 March 1998)	Yes	Yes	Yes	Yes	No	No	No	Yes
Niger (signed on 4 March 1998, but not in force)	Yes	Yes	Yes	No	No	No	No	No
Nigeria (signed on 20 June 2000, but not in force)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
North Korea (12 January 2000)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Oman (old BIT – 9 October 1985) Terminated on 3 March 2000	Yes	Yes	Yes	No	No	No	No	Yes
Oman (3 March 2000)	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Palestine Liberation Organization (19 June 1999)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Pakistan (signed on 16 April 2000, but not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Poland (17 January 1998)	Yes	Yes	No	Yes	No	6 months	No	Yes
Portugal (23 December 2000)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Qatar (old BIT – 20 August 1990) Terminated	Yes	Yes	Yes	Yes	No	No	Yes	Yes
Qatar (14 July 2006)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Romania (old BIT – 10 May 1976) Terminated	No	Yes	No	Yes	Yes	No	Yes	Yes ¹⁵
Romania (3 April 1996)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Russian Federation (12 June 2000)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Senegal (signed on 5 March 1998, but not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes



BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Serbia-Montenegro (old BIT – 20 March 1979) Terminated on 20 March 2006 ¹⁶								
Serbia-Montenegro (20 March 2006)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Seychelles (signed on 22 January 2002, but not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Singapore (20 March 2002)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Slovakia (1 January 2000)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Slovenia (7 February 2000)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Somalia (16 April 1983)	Yes	Yes	Yes	Yes	No	No	No	Yes
South Africa (signed on 28 October 1998, but not in force)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
South Korea (25 May 1997)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Spain (26 April 1994)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Sri Lanka (10 March 1998)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Sudan (old BIT – 14 March 1978) Terminated	Yes	No	Yes	Yes	No	Yes (not specified)	No	Yes
Sudan (1 April 2003)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Swaziland (Eswatini) (signed on 18 July 2000, but not in force)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Sweden (29 January 1979)	Yes	Yes	No	Yes	No	No	No	Yes
Switzerland (old BIT – 4 June 1974) Terminated on 15 May 2012	Yes	Yes	No	Yes	No	Yes (not specified)	Yes	Yes
Switzerland (15 May 2012)	Yes	Yes	Yes	Yes	Yes	6 months ¹⁷	Yes	Yes
Syria (5 October 1998)	Yes	Yes	No	No	No	No	Yes	Yes
Tanzania (signed on 30 April 1997, but not in force) ¹⁸								
Thailand (27 February 2002)	Yes	Yes	Yes (legal protection)	Yes	No	6 months	Yes	Yes
Tunisia (2 January 1991)	Yes	Yes	Yes	No	No	No	Yes	Yes
Turkey (31 July 2002)	Yes	Yes	No	Yes	Inconclusive	6 months	No	Yes
Turkmenistan (28 February 1996)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
United Arab Emirates (old BIT – 2 March 1998) Terminated	No	Yes	No	No	No	No	No	Yes
United Arab Emirates (11 January 1999)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Uganda (signed on 4 November 1995, but not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
United Kingdom and North Ireland (24 February 1976)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes ¹⁹
Ukraine (10 October 1993)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
United States (27 June 1992)	No	Yes	Yes	Yes	No	6 months	Yes	Yes
Uzbekistan (08 February 1994) ²⁰	No	Yes	Yes	No	No	Yes (not specified)	Yes	Yes



BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Vietnam (4 March 2002)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Yemen (old BIT – 3 March 1990) Terminated	No	No	No	No	No	No	No	No
Yemen (10 April 1998)	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Zambia (signed on 28 April 2000, but not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Zimbabwe (signed on 2 June 1999, but not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
The Agreement for The Encouragement and Protection of Investment Between The OPEC Fund for International Development and The Arab Republic of Egypt (6 July 2001)	Yes	Yes	Yes	Yes	Yes	Yes (Not Specified)	No	Yes
The Unified Agreement for The Investment of Arab Capital in The Arab States (7 September 1981; entered into force on 22 February 1988) ²¹	No	Yes	Yes	Yes	No	No	Yes	Yes ²²
The Agreement On The Promotion, Protection And Guarantee Of Investments among Member States of The Organization of Islamic Cooperation ²³ (23 September 1986)	No	Yes	Yes	Yes	No	No	Yes	Yes ²⁴
The Agreement On Investment and Free Movement of Arab Capital Among Arab Countries (29 August 1970) ²⁵ Amended by Resolution 648 of 3 December 1973	No	Yes	No	Yes	No	No	No	No

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’
Definition of ‘companies/enterprises’ as investors	The definition of ‘companies/enterprises as investors’ usually comprises different forms of legal entities (juridical persons). Depending on the wording of each BIT, the definition may refer to legal entities such as companies, corporations, public enterprises, foundations, firms, organisations and business associations as long as they are incorporated, constituted, established or duly organised in accordance with Egyptian laws. Sometimes having the entity’s headquarters or economic activities in Egypt is an additional requirement for the qualification of a protected investor.
The contracting state as investor	Some BITs entered into by Egypt include the Government of one of the contracting states in the definition of the protected investor (eg, Italy, Kuwait, Netherlands, Qatar, UAE and Zambia).
Requirement of ‘real economic activity’	In some cases, BITs require, in addition to the usual requirements for an investor to qualify, that the legal entity is pursuing ‘real’ or ‘actual’ economic activities in the territory of the host state (eg, Bosnia and Herzegovina, Chile, Croatia, Ethiopia, Georgia, Lebanon and Morocco).



Issue	Distinguishing features in relation to the definition of ‘investor’
Permanent resident	Some of the BITs signed by Egypt extend their protection to the investments made by a natural person who is a permanent resident in its territory (eg, Australia, Denmark, Jordan, Malaysia) others extend the protection only to juridical persons with permanent residency in Egypt (eg, the Czech Republic, Ghana, Latvia, Sri Lanka and Zambia). A third category encompasses both natural and juridical persons having permanent residence in Egypt (eg, Canada).

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’
Eligible assets	The definition is usually broad and includes ‘every kind of assets’ or similar language.
Explicit exclusion	In addition, among oft-named examples of assets, we find movable and immovable property, other property rights (mortgage, liens and pledges), shares in and stock of companies, loans, intellectual and industrial property rights, claims to money or to any performance having financial values and business concessions.
Indirect investments	Explicit exclusions of a certain type of investment from the scope of protection are rather rare in the BITs entered into by Egypt. A good example would be the BIT with Zambia provides that investment does not include claims to money that arises solely from a commercial contract for the sale of goods or services between nationals of the two contracting states or from the extension of credit in connection with a commercial transaction.
Requirement for investment to be ‘in compliance with national law’	In some cases, BITs extend their protection to indirect contributions or investment (eg, Belgium–Luxembourg Economic Union, Central African Republic and Kuwait), or to assets owned or controlled indirectly (eg, Netherlands).
Retroactive effect	Many BITs entered into by Egypt limit the scope of their protection to otherwise qualifying investments to investments made in compliance of the contracting state’s legislation (eg, Algeria, Argentina, Australia, Belarus, Czech Republic, Ethiopia, Indonesia, Italy, Finland, France, Hungary, Oman, Romania, Syria, Turkey and UAE). In some cases, BITs extend their protection to investments made prior to the date of their entry into force (eg, Belarus, Chile, France Jordan, Netherlands and Romania).

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 (FET) treatment standard
Specification of the standard of treatment	Though in most BITs entered into by Egypt, the FET standard is provided in general and concise terms (eg, Czech Republic, Indonesia, Finland and Ukraine), in some cases, BITs have added specific language (eg, the BITs entered into with France and Chile provide that the fair and equitable protection ensures that the investor is not hindered by any obstacles in the exercise of the recognised rights). Additionally, the BIT signed with Canada contains a reference to international law regarding the FET standard. ²⁶ Other BITs use a different wording such as the BIT entered into with Russia, which ensures the ‘just’ and equitable treatment instead of ‘fair’. Other BITs refer to the standard of the FET in the Preamble such as the BIT entered into with Netherlands and Turkey. In some other cases, the BITs contain language that deals with the FET standard together with or in light of other standards such as full protection and security (eg, the BIT entered into with Comoros, ²⁷ the Czech Republic, Hungary, Morocco, Qatar and Ukraine).



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
Compensation at market value/moment of valuation	<p>The protection against Expropriation is guaranteed in almost all BITs entered into by Egypt.</p> <p>Most BITs provide for the payment of an adequate compensation in the case of expropriation of the investment. Depending on the exact wording of the BIT, compensation usually amounts to the real market or economic value of the expropriated investment (assets, rights or interests) immediately before expropriation was initiated, announced or became public knowledge (eg, using comparable or similar language, Belarus, Oman Greece, Indonesia, Czech Republic, Pakistan, Portugal, Qatar, Syria, Turkey and UAE).</p> <p>Other BITs are a bit nuanced or more specific, for example, the date of the evaluation of the compensation in the BIT concluded with Morocco is determined to be the day before the expropriation was taken, while the BIT concluded with France provided for valuation on the same day the expropriation was committed. The BIT concluded with China provided that the compensation shall be 'equivalent to the value of the expropriated investments at the time when expropriated is proclaimed'.</p> <p>In some cases, the BITs provide for the payment of interests in addition to the compensation (eg, Comoros and Malta). Sometimes the BIT emphasises that interest shall be paid at a commercial rate (eg, Canada Jordan, Netherlands and UAE) or in accordance with the rate announced by the Central Bank of the country concerned (eg, Qatar).</p>
Indirect expropriation	<p>Many of the BITs entered into by Egypt extend the guarantees against expropriation to indirect expropriatory measures or measures tantamount to expropriation or having a similar effect (eg, France, Netherlands, United Arab Emirates, the United Kingdom, United States and Yemen).</p>

6 National treatment/most-favoured-nation treatment

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

Issue	Distinguishing features of the 'national treatment' and/or 'most favoured nation' standard
Limitations/exceptions	<p>Most BITs exclude certain agreements entered into by Egypt from the scope of the 'most favoured nation' (MFN) or 'national' clause such as the BIT entered into with Kuwait, Turkey and Jordan that, each depending on their exact wording, exclude agreements relating to any existing or future customs unions, regional economic organisation or similar international agreements as well as those to taxation, whether wholly or mainly. Other BITs assert the same exclusions and add to them, for example, in the BIT entered into with Morocco agreements regarding any governmental aids offered by the country to its own nationals in the context of national developments activities or programmes are excluded. The BIT concluded with Austria adds an exclusion relating to any regulation to facilitate the frontier traffic. In other BITs, the exclusion is either limited to agreements relating to customs unions, common markets and free trade zones without mentioning taxation agreements (eg, France) or completely omitted (eg, the United Kingdom).</p> <p>As for the USA–Egypt BIT, the wording is slightly different providing for 'limited exceptions for the standard of national treatment' that each contracting state is entitled to apply regarding the matters specifically listed in an Annex to the BIT.</p>
The scope	<p>Some BITs combine the MFN clause with the national treatment obligation (eg, Chile, Georgia, Japan, United States). Depending on its exact wording, the comparator used in the BIT will fix the scope of the MFN/national treatment standard. Some BITs identify the investor as a comparator: comparator for the application of the MFN and 'national treatment' standards can be discerned: depending on each BIT's exact wording, the treatment shall not be less favourable than which is accorded to investments by its own investors (nationals or companies) or third state investors or than the treatment accorded to said investors themselves. Some BITs include in the scope of the protection both the investors and the investments (eg, Albania, Austria, Belarus, Central African, the Czech Republic, Japan and Romania). Other BITs guarantee the standard of treatment not only to the investment itself but also to its returns (eg, Georgia, Ukraine).</p> <p>In some BITs, the scope of the MFN and national treatment standards is extended to 'associated activities' of the concerned investment or the activities involved in making the investment (eg, USA, Russian Federation, Germany and Turkey).</p>



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
Extent of obligation/ Language used	The scope of the obligation to provide protection and security to qualified investment will largely depend on the variations in the language used to describe the obligation in each BIT. In some BITs, it is provided that the host state shall provide 'full protection and security' to qualifying investments (eg, Armenia, Canada, Central Africa, Denmark, Greece, United Kingdom, United Arab Emirates, Ukraine). In other BITs, the term 'full' is omitted (eg, Australia) Ethiopia, Pakistan) or replaced with the term 'adequate' (eg, Sri Lanka, Zambia) or 'constant protection and security' (eg, Belgium–Luxembourg Economic Union, China). Sometimes the terms used are more specific, such as in the BIT concluded with Belarus, which provides for full 'legal' protection and security. Other times the standard is explicitly limited to the physical protection and security of the investment (eg, Netherlands). In other instances, only full protection is guaranteed (eg, Italy).
Limitation	Other than the limitations dictated by the scope as above-mentioned, in a limited number of BITs, the obligation to provide protection and security is subject to the host state's national laws (eg, Australia).

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'
Existence	Many BITs signed by the Arab Republic of Egypt contain a provision which may be interpreted as an umbrella clause (eg, Armenia, Finland, Germany, Morocco, Switzerland, South Africa).
Scope/Language used	Subject to the interpretation of a competent tribunal, the language used in potential umbrella clauses is usually not limited to contracts or contractual obligations but rather obligates the state to observe 'obligations entered into' (eg, Armenia, Austria, Greece, South Africa Turkmenistan) or 'assumed' (eg, Germany, Romania, Switzerland). The term 'commitments' is sometimes used to replace obligations (eg, Singapore).

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/ revolution/state of emergency'	Depending on each BIT's exact wording, most BITs signed by Egypt provide for indemnification or compensation for any measures by the contracting state owing to war, armed conflict, revolution, a state of national emergency, revolt, riot, insurrection civil disturbance or other similar events (eg, using similar or identical language Belgium–Luxembourg Economic Union, Jordan, Sri Lanka, UAE and Zambia). Some BITs do not include such a protection (eg, France).

IV Procedural Rights

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

Issue	Procedural Rights
Whether investors are given a choice among multiple arbitration options	The great majority of Egyptian BITs provide for ICSID arbitration. Among these, some provide exclusively for ICSID arbitration (eg, France, Japan, Singapore Sweden and the United Kingdom), while others give the investor a choice between ICSID arbitration and other arbitration venues (eg, Austria, Belarus, Ethiopia, Oman, Netherlands, Spain, Canada, Turkey, Denmark and Italy). The arbitration options, in most cases, include ad hoc arbitration under the UNCITRAL rules or ICC or CRCICA arbitration.
Exhaustion of local remedies	Few BITs provide for a requirement of exhaustion of the local remedies as a condition for initiating arbitration proceedings (eg, Finland (old BIT), Pakistan and Sweden).
Existence of the fork-in- the-road clause	The majority of BITs do not include a fork-in-the-road (FIR) clause (eg, Australia, Germany, Italy, Japan, Kuwait, Portugal, Sweden, United Kingdom, the Netherlands and the Russian Federation). Some BITs contain a FIR clause (eg, Argentina, Canada, China, the United States of America, Qatar and Turkey).



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

Egypt had not stated intent not to renew certain investment treaties and has not renounced or stated its intent to renounce its ratification of the ICSID Convention. In addition, Egypt had not announced that it will not agree to investor-state dispute settlement provisions in future investment treaties and made no official statements about its international law obligations under current or future treaties.

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	<p>By virtue of article 6 of ESLA Law No.73 for the year 1963, a notice of dispute should be addressed to the Egyptian State Lawsuits Authority (ESLA). Within the ESLA, a specialist department, the department of foreign disputes, manages investment disputes and international arbitrations on behalf of Egypt. ESLA's address is at:</p> <p>42 Gameat El Dowal El Arabiya St Mohandeseen Cairo Egypt Tel: +20 2 37617046 Fax: +20 2 37621417</p> <p>In practice, foreign investors also copy the notice of dispute the Egyptian Ambassador in the country of the foreign investor.</p>
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13 Which government department or departments manage investment treaty arbitrations on behalf of this country?

Government department that manages investment treaty arbitrations	<p>Pursuant to article 6 of Law No. 75 of 1963 (Concerning the Organization of the State Lawsuits Authority), ESLA represents the Arab Republic of Egypt in all disputes before any and all judicial bodies, including in international and investment arbitration proceedings. Within the ESLA, a specialist department, the department of foreign disputes, manages investment disputes and international arbitrations on behalf of Egypt.</p>
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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	<p>Usual practice shows that Egypt often hires either a local or a foreign counsel alongside ESLA when representing the Arab Republic of Egypt in investment treaty arbitrations.</p> <p>Often, external counsel is instructed for specific cases. The appointment of external counsel, it is understood, goes through an internal selection process.</p>
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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	<p>The Arab Republic of Egypt signed the ICSID Convention on 11 February 1972 (following accession by Presidential Decree Law No. 90 of 1971), and the Convention entered into force in Egypt on 2 June 1972 (by virtue of the Minister of Foreign Affairs Decree of 1 July 1972).</p>
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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	<p>The Arab Republic of Egypt ratified the New York Convention on 9 March 1959. The Convention entered into force in Egypt on 8 June 1959 by virtue of the Presidential Decree No. 171/1959 and the Decree of the Minister of Foreign Affairs No. 19/1959.</p> <p>NB: Egypt was one of the very early signatories to the New York Convention.</p> <p>There is no legislation explicitly implementing the New York Convention. However, the Egyptian Arbitration Law (EAL) No. 27 for 1994 provides for the explicit primacy of international conventions, while the law's explanatory note refers to the New York Convention. Furthermore, the Court of Cassation affirmed that the provisions of the New York Convention entered into by Egypt have automatically become an intrinsic part of state's domestic laws, even if the said provisions prove to be in contradiction with the provisions of the EAL (see appeal No. 10350 for the Judicial Year No. 65).</p>
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17 Does the country have legislation governing non-ICSID investment arbitrations seated within its territory?

Legislation governing non-ICSID arbitrations	<p>A non-ICSID investment arbitration seated in Egypt would be subject to the EAL (Arbitration Law No. 27 for 1994), in accordance with the territorial scope of the latter (article 1 of the EAL). Consequently, absent a provision in the applicable treaty explicitly dictating rules relating to enforcement, any potential annulment proceedings of the award rendered in Egypt would also be regulated by the EAL.</p>
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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	<p>Considering the pool of ICSID cases that concluded with an award on the merits that was adverse to the Arab Republic of Egypt, the Arab Republic of Egypt has settled some of these cases post-award (ie, consented to pay part of the money award voluntarily). In some cases, settlement and correlative suspension (and ultimately termination) of the proceedings occurred in course of the arbitration. In other cases, the investor has had to seek enforcement in courts.</p>
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19 Describe the national government's attitude towards investment treaty arbitration.

Attitude of government towards investment treaty arbitration²⁸	<p>The 'Arab Spring' or more specifically the Egyptian Revolution of 2011, opened a floodgate of cases against the Egyptian government that was still in a fragile state. This predicament could have easily tempted Egyptian policymakers to follow the example of other states (such as Bolivia, Ecuador and Venezuela) by deciding to withdraw from its international commitments (ie, the ICSID Convention or the BITs entered into by Egypt). However, that was not the case. Egypt has been and continues to be praised for its stance in that particular moment in time even if, arguably, the outcome was detrimental to its economy as the claims put forth amounted to billions of dollars. Egypt managed to create a reputation within the international community that it is a state that does not disengage from its obligations when the latter prove to be against its best interest.s</p> <p>To mitigate the financial burden of international arbitration, Egypt exerted noticeable efforts to accommodate the investors' claims while avoiding costly and time-consuming proceedings. Indeed, Egypt successfully concluded 14 settlements in the period between 1992–2020. Interestingly, 11 of the settlements were concluded during the period between 2014 and 2020, this concentration of successful settlement is largely due to the establishment of the Committee for the Settlement of Investment Contracts Disputes, created as an alternative to litigation or arbitration proceedings, or both.²⁹</p> <p>In 2010, Egypt signed a new BIT with Switzerland, replacing the old one (signed on 25 July 1973). The new BIT provides for modern investor–state dispute settlement through arbitration, which was not there in the old BIT. In 2012, Egypt signed another BIT with Burundi, which was followed by a BIT signed with Mauritius in 2014.</p>
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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

Although, in the aftermath of the Revolution, Egyptian courts (in particular, the administrative courts) have, in some cases, stated (though not necessarily in dispositive parts of their decisions), and in a pre-emptive fashion, that the investor (against whom the decision was rendered) would have no recourse or right to start ICSID or international arbitration, for example, because the transaction is purportedly tainted with corruption, this is not the rule but only an exception confirming the rule. The vast majority of local courts support and are respectful of investment treaty arbitration, especially in the recent years. An administrative court decision issued on 6 July 2008, refused to re-examine a dispute that was settled by an ICSID award and affirmed the *res judicata* effect of such award, despite the fact that the award was issued in favour of the investor and ordered the Egyptian government to pay compensation to the Greek investor (see judgment No. 12663 for 59).

In terms of enforcement, non-ICSID investment awards are subject to the New York Convention entered into force in Egypt in 8 June 1959. In that regard, on 1 March 1999, the Egyptian Court of Cassation explicitly supported and underlined the eminence of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, within the Egyptian legal system. The Court of Cassation affirmed that, according to article 301 of the CCCP, the provisions of the New York Convention entered into by Egypt have automatically become an intrinsic part of the state's domestic laws, even if the provisions prove to be in contradiction with the provisions of the EAL. Consequently, the Court of Cassation confirmed a lower court's refusal to apply article 43 of the EAL when ruling on the recognition of a foreign arbitral award based on the fact that the provision or a similar provision to that same effect are not included in the New York Convention (see appeal No. 10350 for the Judicial Year No. 65). Moreover, on 10 January 2005, the Egyptian Court of Cassation reiterated the decision and deemed the Convention to be applicable even if its provisions are in contradiction with the CCCP or any other Egyptian laws, in deciding on the enforcement of a foreign arbitral award (see appeal No. 966 for the Judicial Year No. 73). It can hence be concluded that the enforcement of the awards is shielded from the application of Egyptian national laws, whenever the provisions of the New York Convention are less stringent, and benefit from the enforcement proceedings of the New York Convention, which are highly respected in Egyptian case law.

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
Law No. 72 of 2017 Promulgating the Investment Law	Yes	Yes		No	No

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
	Egypt has signed more than 100 BITs (which, when ratified, also form part of Egyptian law). They provide the main framework of protection for Egyptian investors investing abroad.



IX Awards

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

Awards

Southern Pacific Properties (Middle East) Limited v Arab Republic of Egypt (ICSID Case No. ARB/84/3), Award of 20 May 1992 (state consent was based on national law).

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

Middle East Cement Shipping and Handling Co SA v Arab Republic of Egypt (ICSID Case No. ARB/99/6), Award of 12 April 2002.

Champion Trading Company and Ameritrade International, Inc v Arab Republic of Egypt (ICSID Case No. ARB/02/9), Award of 27 October 2006.

Ahmonseto, Inc and others v Arab Republic of Egypt (ICSID Case No. ARB/02/15), Award of 18 June 2007.

Joy Mining Machinery Limited v Arab Republic of Egypt (ICSID Case No. ARB/03/11), Award of 6 August 2004.

Jan de Nul NV and Dredging International NV v Arab Republic of Egypt (ICSID Case No. ARB/04/13), Award of 6 November 2008.

Waguih Elie George Siag and Clorinda Vecchi v Arab Republic of Egypt (ICSID Case No. ARB/05/15), Award of 10 July 2009.

Helnan International Hotels A/S v Arab Republic of Egypt (ICSID Case No. ARB/05/19), Award of 3 July 2008.

Malicorp Limited v Arab Republic of Egypt (ICSID Case No. ARB/08/18), Award of 7 February 2011.

National Gas SAE v Arab Republic of Egypt (ICSID Case No. ARB/11/7), Award of 3 April 2014.

H&H Enterprises Investments, Inc v Arab Republic of Egypt (ICSID Case No. ARB/09/15), Award of 6 May 2014.

Veolia Propreté v Arab Republic of Egypt (ICSID Case No. ARB/12/15), Award of 25 May 2018.

Unión Fenosa Gas, SA v Arab Republic of Egypt (ICSID Case No. ARB/14/4), Award of 31 August 2018.

Pending proceedings

Ampal-American Israel Corporation and Others v Arab Republic of Egypt (ICSID Case No. ARB/12/11).

Cementos La Union SA and Aridos Jativa S.L.U v Arab Republic of Egypt (ICSID Case No. ARB/13/29).

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

Champion Holding Company & Others v Arab Republic of Egypt (Case No. ARB/16/2).

International Holding Project Group and others v Arab Republic of Egypt (ICSID Case No. ARB/18/31).

Tantalum International Ltd and Emerge Gaming Ltd v Arab Republic of Egypt (ICSID Case No. ARB/18/22).

Future Pipe International BV v Arab Republic of Egypt (ICSID Case No. ARB/17/31).

Yosef Maiman, Merhav (MNF), Merhav-Ampal Group, Merhav-Ampal Energy Holdings v Arab Republic of Egypt (PCA Case No. 2012/26).

Nile Douma Holding v Arab Republic of Egypt, UNCITRAL.

Mohamed Abdel Raouf Bahgat v Arab Republic of Egypt (PCA Case No. 2012-07).

Petroceltic Holdings Limited and Petroceltic Resources Limited v Egypt (ICSID Case No. ARB/19/7).

CTIP Oil & Gas International Limited v Arab Republic of Egypt (ICSID Case No. ARB/19/27).

Proceedings concluded without final award

Manufacturers Hanover Trust Company v Arab Republic of Egypt and General Authority for Investment and Free Zones (ICSID Case No. ARB/89/1).

Hussain Sajwani, Damac Park Avenue for Real Estate Development SAE, and Damac Gamsha Bay for Development SAE v Arab Republic of Egypt (ICSID Case No. ARB/11/16).

Indorama International Finance Limited v Arab Republic of Egypt (ICSID Case No. ARB/11/32).

Ossama Al Sharif v Arab Republic of Egypt (ICSID Case No. ARB/13/5).

Ossama Al Sharif v Arab Republic of Egypt (ICSID Case No. ARB/13/4).

Ossama Al Sharif v Arab Republic of Egypt (ICSID Case No. ARB/13/3).

ASA International SPA v Arab Republic of Egypt (ICSID Case No. ARB/13/23).

Bawabet Al Kuwait Holding Company v Arab Republic of Egypt (ICSID Case No. ARB/11/06).

Utsch M.O.V.E.R.S. International GmbH, Erich Utsch Aktiengesellschaft, and Mr. Helmut Jungbluth v Arab Republic of Egypt (ICSID Case No. ARB/13/37).

ArcelorMittal SA v Arab Republic of Egypt (ICSID Case No. ARB/15/47).

LP Egypt Holdings I, LLC, Fund III Egypt, LLC and OMLP Egypt Holdings I, LLC v Arab Republic of Egypt (ICSID Case No. ARB/16/37).



Reading list

N/A.

Notes

- 1 The official text of this treaty is not readily available on public sources.
- 2 The official text of this treaty is not readily available on public sources.
- 3 As amended in 14 April 2008 for the purpose of the adhesion of Bulgaria to the European Union. The amendment entered into force on 11 February 2009.
- 4 The official text of this treaty is not readily available on public sources.
- 5 The investor can only initiate arbitration if he waives its right to resort to the host state's courts.
- 6 The investor can only initiate arbitration if the dispute relates to compensation for expropriation and if the investor decides not to resort to the host state's courts.
- 7 Only Egyptian investors investing in Croatia can resort to the host state's Courts while Croatian investors investing in Egypt can only resort to Arbitration before the Cairo Regional Center for International Commercial Arbitration (CRCICA), ad hoc arbitration or ICSID.
- 8 Available only for Egyptian investors in Georgia.
- 9 Recourse to arbitration is subject to the exhaustion of the local remedies.
- 10 The parties may resort to arbitration only if the dispute is not settled first through court proceedings or conciliation.
- 11 The official text of this treaty is not readily available on public sources.
- 12 Investors shall exhaust local remedies before initiating arbitration proceedings.
- 13 If the investor chooses to resort to arbitration, he shall submit a written request to submit the dispute to conciliation.
- 14 The official text of this treaty is not readily available on public sources.
- 15 The arbitration route is open only pending a final decision of local courts.
- 16 The official text of this treaty is not readily available on public sources.
- 17 The investor may resort to the local courts of the host state in parallel to negotiating for amicable settlement.
- 18 The official text of this treaty is not readily available on public sources.
- 19 The investor may only resort to arbitration if it fails to reach a settlement within three months through the pursuit of local remedies.
- 20 The official text of this treaty is not readily available on public sources.
- 21 This Agreement was signed on 26 November 1980 in Amman, Jordan during the Eleventh Arab Summit Conference. It entered into force on 7 September 1981. Egypt acceded to the Agreement on 6 February 1992 and it entered into force on 19 July 1992. At the time Egypt acceded to the Agreement, the State members were: Jordan, UAE, Bahrain, Tunisia, Algeria, Djibouti, Saudi Arabia, Sudan, Syria, Somalia, Iraq, Oman, Palestine, Qatar, Kuwait, Lebanon, Libya, Morocco, Mauritania and Yemen.
- 22 Article 25 of the Agreement provides: 'Disputes arising out of the application of this Convention shall be settled by way of mediation or arbitration or by resorting to the Arab Investment Court.' Article 26 of the Agreement provides: 'Mediation or arbitration shall be in accordance with the rules and procedures set out in the Annex to the Agreement which is an integral part thereof.'
- 23 The Agreement was approved by Resolution 7/12-E of the 12th Islamic Conference of Foreign Ministers held in Baghdad, Iraq, between 1 June and 5 June 1981. It entered into force five years after it was signed, on 23 September 1986.
- 24 Resort to arbitration is available only if dispute settlement through conciliation fails.
- 25 The Agreement was signed on 29 August 1970 by the state members of the Agreement of Arab Economic Unity, and entered into force on 28 August 1973.
- 26 Article 2(a) of Egypt-Canada BIT provides that:
*"Each Contracting Party shall accord investments or returns of investors of the other Contracting Party
(a) fair and equitable treatment in accordance with principles of international law (...)"*
- 27 Article 2(2) of the Comoros BIT provides: 'The investments by investors of a Contracting State enjoy a fair treatment equal to similar investments with respect to the security and full protection in the territory of the other Contracting State' (unofficial translation).
- 28 For example, Bolivia, Ecuador and Venezuela have announced their withdrawal from ICSID; Australia has announced that it will not agree to international arbitration provisions in future investment treaties.
- 29 'After 48 Years at ICSID (1972–2020): An Overview of the Status of Egypt in ICSID Arbitrations', Ahmed Bakry (Egyptian Ministry of Justice).





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Dr Karim A. Youssef is the managing partner and head of international arbitration and international law practices at Youssef & Partners in Cairo, Egypt. His practice focuses on commercial arbitration, investment treaty arbitration and international law.

Karim has acted as counsel, party-appointed or presiding arbitrator in over 85 international arbitrations under a variety of rules, including the ICC, CRCICA, DIAC, LCIA, UNCITRAL and ICSID. He has also acted in ad hoc arbitrations governed by national laws. Karim represents regional and international clients in high-profile local and regional disputes and large-value claims, across a wide array of industries and key sectors.

Highlights of Karim's counsel work include representing investors in investment treaty claims, including in *Cementos*

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Karim also acts as counsel or arbitrator in some of the largest commercial claims arising from the Arab Spring, including in disputes concerning the post-2011 unwinding of Mubarak-era privatisation transactions.

He holds rankings on *Chambers Global*, Egypt – Dispute Resolution (Band 1), and Who's Who Legal International Commercial Arbitration – Egypt (2014–2018).

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