

GAR INVESTMENT TREATY ARBITRATION

Kazakhstan

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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
Armenia (1 Aug 2010)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Austria (21 December 2012)	Yes	Yes	Yes	Yes	Yes	60 days, maximum of 5 years (for arbitration only)	Yes	Yes
Azerbaijan (30 April 1998)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Belgium–Luxembourg–Economic Union (6 February 2001)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Bulgaria (20 August 2001)	Yes	Yes	Yes	Yes	No	6 months	Yes	Only for Expropriation claims (other claims – local arbitration)
China (18 August 1994)	Yes	Yes	Yes	Yes	No	No	No	Expropriation only
CIS Investor Rights Convention (16 May 2000)	No	Yes	Yes	Yes	No	No	Yes	No, only state to state arbitration
Czech Republic (2 April 1998)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Egypt (28 March 1997)	Yes	Yes	Yes	Yes	No	No	No	Yes, but expropriation only
Estonia (26 August 2014)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
EU–Kazakhstan EPCA (1 March 2016)	No	No	No	No	No	No	No	No
Eurasian Investment Agreement (11 January 2016)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Treaty on Eurasian Economic Union (1 January 2015)	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Energy Charter Treaty (16 April 1998)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Finland (1 May 2008)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
France (21 August 2000)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Georgia (24 April 1998) (terminated, but its provisions remain effective within 10 years for investments made before 24 April 2013)	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Germany (10 May 1995)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Hungary (3 March 1996)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
India (26 July 2001)	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Iran (3 April 1999)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Israel (19 February 1997)	No	Yes	No	Yes	No	3 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
Italy (18 June 1996) (terminated, but its provisions remain effective within five years for investments made before [18 June 2011])	Yes	Yes	No	Yes	Yes	6 months	Yes	Yes
Japan (25 October 2015)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Jordan (1 July 2008)	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
South Korea (26 December 1996)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Kuwait (1 May 2000)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Kyrgyzstan (1 June 2005)	Yes	Yes	No	Yes	No	6 months	No	Yes
Latvia (21 April 2006)	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
Lithuania (25 May 1995)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Macedonia (21 May 2016)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Malaysia (3 August 1997)	Yes	Yes	Yes	Yes	No	3 months	No	Yes
Mongolia (13 May 1995)	Yes	Yes	No	Yes	No	6 months	No	Yes, only for expropriation (other claims subject to consent)
Netherlands (1 August 2007)	Yes	Yes	Yes	Yes	Yes	No	No	Yes
Pakistan (7 December 2009)	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Poland (25 May 1995)	Yes	Yes	No	Yes	No	6 months	No	Yes, only expropriation claims (other claims subject to consent)
Romania (17 July 2013)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Russian Federation (11 February 2000)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Serbia (7 December 2015)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Slovakia (29 June 2016)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Spain (22 June 1995)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Sweden (1 August 2006)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Switzerland (13 May 1998)	Yes	Yes	Yes	Yes	Yes	12 months	No	Yes
Tajikistan (20 November 2001)	Yes	Yes	No	Yes	No	6 months	No	Only for expropriation claims (other claims – subject to consent)
Turkey (10 August 1995)	No	Yes	No	Yes	No	6 months	No	Yes
Ukraine (4 August 1995)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
United Kingdom (9 January 1997)	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes
United States of America (12 January 1994)	Yes	Yes	Yes	Yes	Yes	6 months (for arbitration only)	Yes	Yes
Uzbekistan (8 September 1997)	Yes	Yes	Yes	Yes	Yes	No	No	Yes
Vietnam (7 April 2014)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes



FTAs/EPAs	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
Belarus-Kazakhstan-Russia Agreement on Services and Investment (1 January 2012) (terminated with the entry into force of the Treaty on the EAEU)	-	-	-	-	-	-	-	-
Common Economic Zone Agreement (20 May 2004)	-	-	-	-	-	-	-	-
Afghanistan (not in force)	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
Canada (not in force)	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
Croatia (not in force)	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
Greece (not in force)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Philippines (not in force)	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
Qatar (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Saudi Arabia (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Singapore (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
United Arab Emirates (not in force)	No	Yes	Yes	Yes	No	6 months	Yes	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’
Non-profit/state-owned companies	Most BITs do not contain specific provision whether non-profit or state-owned companies qualify as investors. However, BITs of the modern era, for example, the Japan BIT, the US BIT and the Austria BIT clarify that state-owned companies as well as non-profit organisations qualify as investors.
Seat of the investor/ place of business	Most BITs define a legal person as an entity that is incorporated or constituted under the laws of one of the contracting parties. Some BITs require significant business activity in the territory of the place of incorporation, for example, the Austria BIT, while others require legal persons to have its seat in the territory of one of the contracting parties (eg, the Germany BIT). Another group of BITs combine both requirements, for example, the Iran BIT.
Legal Persons	Several BITs extend protection to companies directly or indirectly controlled by an investor of one of the contracting states, regardless of the law under which they are constituted (eg, the Netherlands BIT, Tajikistan BIT, Mongolia BIT and the Sweden BIT). Foreign subsidiaries of investors of one of the contracting states are not explicitly mentioned.
Nationals/permanent residents	The majority of Kazakh BITs do not contain a provision for permanent residents of the other contracting party; rather the nationality is the requirement. The Egypt BIT is an exception as it extends its scope to permanent residents of one of the contracting parties.
Dual nationality	Most BITs do not contain provisions on dual nationality. The Egypt BIT contains a somewhat ambiguous wording as it stipulates that investors are natural persons having the nationality of the two contracting parties. There are even some BITs that provide that nationals of one state can in turn not be investors in that state, for example, the Israel BIT.



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’
Assets that qualify for protection	Kazakh BITs follow the international standard of a broad definition of the Term ‘investment’, including shares, mortgages and other forms of corporate participation. Notably, there is some variety among the definitions. For example, the Austria BIT adds the Salini criteria as requirements for protection.
Indirect control	The BITs with Japan, Sweden and Austria explicitly extend protection to indirect investments, while others do not contain an explicit reference to indirect investments.
Domestic Law Clause	The Afghan BIT, Armenian BIT, Bulgarian BIT, Egyptian BIT, Israeli BIT, Swedish BIT, Ukrainian BIT, Jordanian BIT, Slovak BIT, Serbia BIT and Vietnamese BIT, the Eurasian Investment Agreement and the Treaty on the Eurasian Trade Union explicitly provide that investments have to be made in accordance with domestic law to enjoy investment protection.
Commencement of coverage	Some Kazakh BITs extend their scope to investments made before the entry into force of the respective agreement (eg, the Austria BIT, Germany BIT, Israel BIT, Japan BIT, Macedonia BIT, Netherlands BIT, South Korea BIT, Russia BIT). It is noteworthy that the Russian and English versions of the Macedonia BIT differ as the Russian version explicitly states that the treaty only applies to investments made after the coming into force of the treaty, while the English version extends its protection also to investments made before the coming into force of the BIT. The BIT, however, also provides that the English version shall prevail in the case of inconsistencies between the two versions. Others do not contain such a clause (UK BIT) or are explicitly limited to investments made after the entry into force of the respective BIT (US BIT).

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
Relation to customary international law	Most of the Kazakh BITs contain an extensive definition of the term ‘territory’ as relating to the maritime zone, the continental shelf and the Economic Zone (eg, the France BIT, the UK BIT and the Iran BIT).
Relation to customary international law	Modern BITs provide for the right to regulate for public purposes. Most of the Kazakh BITs, however, do not contain any carve outs for the FET standard (eg, the China BIT). The US BIT contains, in accordance with US Model BIT, a reference to the standard of treatment in international law. The Austria BIT provides for the parties’ freedom to act in accordance with the UN Charter and obligations under the European Union. References to international environmental obligations are very rare and more common in modern BITs (eg, the Austria BIT).
Standard of protection	Quite a lot Kazakh BITs adhere to the ‘Gold Standard’ and grant full protection and security as well as fair and equitable treatment (eg, Austria BIT, Germany BIT, Japan BIT, Netherlands BIT, UK BIT, US BIT, Switzerland BIT).

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
Right to regulate for a public purpose	Expropriation under every Kazakh BIT can be justified if certain requirements (adequate and swift compensation, public interest) are met. The BITs do not contain any definitions of ‘public interest’.
Review in courts	Some BITs state that the investor shall have the right to a prompt review or assessment of his investments in accordance with the law of the host state (eg, Germany BIT, Hungary BIT, India BIT, Macedonia BIT and the Japan BIT).
Indirect expropriation	Only a few BITs explicitly mention indirect expropriation (eg, Netherlands BIT). Most BITs refer to measures ‘equivalent to expropriation or nationalisation’ (Japan BIT, Macedonia BIT, Germany BIT). A few BITs mention indirect expropriation and refer to measures ‘equivalent to expropriation and nationalisation’ (eg, Austria BIT and US BIT). The BITs do not provide for a further definition of the term of indirect expropriation.



Issue	Distinguishing features of the ‘expropriation’ standard
Compensation	<p>While all BITs provide for some kind of compensation its calculation and scope differs. Some BITs exclude the payment of interest (eg, Egypt BIT and Iran BIT). While others explicitly oblige the host state to pay interest. For purposes of the calculation of interest, most BITs refer to the normal commercial rate, for example, Austria BIT, Japan BIT, Germany BIT, Greece BIT, Netherlands BIT, US BIT and the UK BIT. Others refer to calculation according to the national legislation of the host state (eg, Macedonia BIT, Pakistan BIT). The calculation of the value of the expropriated investment differs as well. The Egypt BIT provides for the real value, while most provide for the fair market value as calculation method (eg, Greece BIT, Hungary BIT).</p>
Dispute resolution	Like many BITs of former USSR states, some Kazakh BITs only allow recourse to arbitration in the case of an expropriation claim. This issue is dealt with further below.

6 National treatment/most-favoured-nation treatment

What are the distinguishing features of the national treatment/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	<p>The scope of the most favoured nation (MFN) clauses differs significantly from treaty to treaty. Some Kazakh BITs provide that the contracting parties shall treat investments in their respective territory no less favourable than investments of investors of any third country. This MFN clause is limited to the treatment of investments and can be found in the Kuwait BIT, Turkey BIT, Sweden BIT, Switzerland BIT. Several Kazakh BITs extend MFN treatment to investors of the other contracting party (eg, the German BIT, Greece BIT, Hungary BIT, India BIT and UK BIT). Others contain limitations of MFN treatment. The Hungary BIT, Kuwait BIT and South Korea BIT provide that investors of the other contracting state shall be accorded MFN treatment as regards management, maintenance, use, enjoyment or disposal of their investments. The Pakistani BIT limits MFN treatment to the legislation of the host state and excludes administrative actions.</p>
Territorial application	A few BITs limit the application of MFN treatment to investments in the territory of the host state – the Turkey BIT.
Regular exceptions to MFN treatment	<p>The Kazakh BITs provide that the MFN treatment clause does not apply to advantages accorded by either contracting party by virtue of its membership of a customs, economic or monetary union, a common market or a free trade area to investors of a third state, (eg, Romania). Equally, MFN treatment shall not apply to advantages accorded to investors of a third state by virtue of a double taxation agreement or other tax-related, reciprocal agreements (eg, the Romania BIT).</p>
Application to jurisdictional requirements	<p>While most BITs are silent on the question whether the MFN clause applies to jurisdictional requirements, some BITs explicitly provide that the MFN clause shall not be construed to permit access to investor-state dispute settlement other than that provided for in the respective BIT (eg, the Serbia BIT). The Japan BIT, on the other hand, stipulates the exact opposite as it extends the scope of MFN treatment to the access to the courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defence of investor’s rights.</p>
National treatment	National treatment is provided for in nearly every Kazakh BIT, excluding the Egypt BIT, which only provides for MFN treatment.
Exceptions to national treatment	BITs that provide for some degree of discretion when applying national treatment are rare. But there are some BITs that give the contracting parties some wiggle room (eg, the Russia BIT.)

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
Scope of obligations	<p>Several BITs contain the international standard clause and provide for full protection and security (eg, the Germany BIT, Greece BIT, Hungary BIT). However, the wording of the BITs shows several differences. Some BITs are missing the guaranty of full protection while providing for fair and equitable treatment (eg, the Israel BIT and India BIT). Noteworthy in that regard are the Turkish and the Iranian BITs. The Turkish BIT is missing any substantive protection or treatment provision. The Iranian BIT stipulates that full protection is granted as regards legal protection.</p>



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'
Scope	The overwhelming majority of BITs do not contain umbrella clauses. If, indeed, a BIT contains an umbrella clause, its scope is fairly broad and provides that the Host State shall observe any obligation it may have entered into with regards to investments (eg, US BIT, UK BIT, Germany BIT, Netherlands BIT).

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
Compensation in case of force majeure	Kazakh BITs provide for compensation in case of the outbreak of war, for damage caused by civil unrest, national emergency and insurrection in the territory of the host state.
Free transfer of funds	Nearly every Kazakh BIT provides that the investor shall be allowed to transfer funds, returns and proceeds accruing of the investor's activities out of the country without delay and in any freely convertible currency, for example, South Korea BIT. Some BITs contain restrictions on the right of free transfer of funds as they oblige the contracting states to ensure the transfer in accordance with their national laws. For example, the Macedonia BIT provides for several reasons why the host state may be entitled to delay transfer through equitable and non-discriminatory application of its national legislation, inter alia, implementation of tax obligations, criminal or administrative offences and protection of the rights of creditors. The same provisions can be found in the US BIT.

IV Procedural Rights

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

Issue	Procedural Rights
Arbitration proceedings	The first Kazakh BITs concluded in the beginning of the 1990s rarely contain a reference to institutionalised arbitration. The BITs provide for a detailed procedure for initiating arbitration proceedings under UNCITRAL rules. For example, the Iranian BIT requires the investor to appoint its arbitrator in the Request for Arbitration and stipulates that the respondent state has to appoint its arbitrator in the answer to the Request for Arbitration. If the respondent state remains inactive upon receipt, such appointment is referred to the Secretary General of the Permanent Court of Arbitration. Very similar provisions can be found in the Egypt BIT, the Hungary BIT and the India BIT. Notably, this level of detail cannot be found in most BITs concluded after Kazakhstan's accession to the ICSID Convention. An exception is the Japan BIT, which – again – provides for the exact number of arbitrators and the procedure that shall be followed upon failure of one party to appoint its arbitrator. The Japan BIT further states that the party to the dispute are allowed to each indicate three nationalities of which the appointment of arbitrators is unacceptable. The usual arbitration clauses that provide for arbitration under the auspices of, for example, ICSID can be found in the Netherlands BIT, the France BIT, the Germany BIT, the India BIT, Serbia BIT, Sweden BIT and Switzerland BIT. The UK BIT requires an agreement between investor and host state to refer the dispute to arbitration under the ICSID or ICC rules. In the event that such agreement cannot be found, the investor may initiate arbitration proceedings under the UNCITRAL rules.
Counterclaims	While being a rarity in other BITs, the Iran BIT offers the possibility for initiation of arbitration proceedings by one of the contracting parties against the investor. It explicitly states that arbitration proceedings may be initiated upon request by one of the contracting parties or the investor. Similar provisions can be found in the South Korea BIT and US BIT.
Limited access to arbitration	Some BITs limit the access to arbitration to claims arising out of expropriation or the amount of compensation for expropriation (eg, the Bulgaria, China, Egypt, Poland and the Tajikistan BITs). The Mongolia, Poland and the Tajikistan BITs have another twist to them, as for every other claim the state has to explicitly consent to its resolution via arbitration.



Issue	Procedural Rights
Fork in the road	The Japan BIT only allows for arbitration if the investor concerned has not submitted the investment dispute for resolution under the courts of justice or administrative tribunals of the contracting party that is a party to the dispute (eg, Kuwait BIT).
Local courts	Kazakh BITs often mention national courts of the contracting parties as one of many possibilities to settle investor-state disputes. Recourse to national courts shall not be a requirement for initiating arbitration proceedings (eg, Austria BIT, Finland BIT, Greece BIT, South Korea BIT, Macedonia BIT, Romania BIT and Serbia BIT.)
Cooling-off	Every Kazakh BIT contains a cooling-off period, except the Netherlands BIT, the Uzbekistan BIT, the Egypt BIT and the China BIT.
Compensation	The Austrian BIT stipulates that a claimant can request relief in form of restitution in kind provided that the Host state pays pecuniary compensation in lieu thereof.
Time Bar	The Austrian BIT and Japanese BIT provide for a time bar for arbitration claims. The Austrian BIT stipulates that a dispute has to be submitted to arbitration not later than five years from the date the investor first acquired or should have acquired knowledge of the events that gave rise to the dispute.

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

There is no clear intention to withdraw from either ICSID or BITs in general. Instead, Kazakhstan concluded new BITs with, for example, Japan and Kuwait. One can observe that these BITs contain more detailed provision than BITs concluded in the past, which shows that Kazakh diplomats get more experienced in dealing with the issues at hand. Following the accession to the World Trade Organization in 2015, there is no reason to believe that there will be a paradigm shift in the near future.

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	Ministry of Justice, Department for the Protection of the State's Property Rights (DPSPR).
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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	Ministry of Justice, Department for the Protection of the State's Property Rights (DPSPR).
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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	The Republic uses external counsel in every known investment treaty arbitration and usually goes through formal but not public procurement processes.
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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>According to the secretariat of the ICSID, Kazakhstan signed the ICISD Convention on 23 July 1992, ratified it later, and the Convention entered into force on 21 October 2000.</p> <p>Kazakhstan has no special or separate legislative act implementing the Washington Convention. However, apart from the provisions of the Washington Convention, Kazakhstan has general legislation governing arbitration related matters. Such legislation includes the Arbitration Law dated 8 April 2016 and Civil Procedural Code dated 31 October 2015 governing, among other things, the recognition and enforcement of foreign (and local) arbitration awards in Kazakhstan.</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>Kazakhstan acceded to the New York Convention on 18 December 1996. Kazakhstan has not ratified the New York Convention.</p> <p>Under Kazakhstan law, an international treaty acceded to by Kazakhstan is equated with a ratified international treaty in terms of its legal force (ie, prevails over Kazakhstan legislation) provided the accession was carried out by means of a legislative act. Kazakhstan acceded to the New York Convention by means of a presidential decree that does not have the status of a legislative act. Therefore, the New York Convention is not equated with a ratified international treaty in Kazakhstan.</p> <p>Kazakhstan has no special or separate legislative act implementing the New York Convention, but has general legislation on recognition and enforcement of foreign (and local) arbitration awards in Kazakhstan as discussed in the answer to the previous question.</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>Kazakhstan does not have legislation governing non-ICSID investment arbitrations seated within its territory. Kazakhstan adopted the Constitutional Law On International Financial Centre ‘Astana’ on 7 December 2015 that provides for creation of an international arbitration centre in Astana to administer and resolve disputes by means of arbitration. The law is new and remains untested, but, according to its literal interpretation, it does not stipulate that the international centre is established exclusively for settlement of investment disputes.</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>Kazakhstan’s authorities resisted the enforcement of adverse awards numerous times but also showed a great willingness to settle cases later on.</p> <p>Against the enforcement of the AIG Award, Kazakhstan invoked its state immunity as the claimants applied for enforcement against the Kazakh National Bank. The parties then went on to settle the award. The same holds true for the <i>Rumeli</i> case, where Kazakhstan applied to annul the award but then agreed to a settlement.</p> <p>Kazakhstan’s first ever investment arbitration, the <i>Biedermann</i> case, was settled after the award was rendered as well.</p> <p>In <i>Stati</i>, Kazakhstan applied for setting aside the award and resisted enforcement in several jurisdictions. Svea Court of Appeal dismissed Kazakhstan’s action on setting aside the award in 2016. Enforcement proceedings are still pending.</p>
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- 19 Describe the national government’s attitude towards investment treaty arbitration.

Attitude of government towards investment treaty arbitration	<p>Kazakhstan is still a very active player in the field of investment protection. It concluded several new BITs in recent years and with the establishment of a new International Arbitration Centre in Astana, it seems to be sure that investment treaty arbitration will be a factor in Kazakhstan’s future foreign investment policy.</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

In most investment cases only very limited information on enforcement and recognition of the arbitral award are publicly available. Based on the information available, it is not clear whether any of the claimants eventually managed to obtain recourse against the Kazakh government in local courts based on the applicable bilateral investment treaty.

The Arbitration Law dated 8 April 2016 and Civil Procedural Code dated 31 October 2015 are relatively new and remain untested with regard to enforcement of investment treaty arbitration awards. These legislative acts contain provisions that may hinder or complicate recognition and enforcement of arbitral awards (eg, provision providing that Kazakhstan courts may refuse to recognise and enforce an arbitration award if the latter violates Kazakhstan's public policy). We note that, in theory, difficulties may arise with respect to recognition and enforcement of arbitration awards under the New York Convention because it is not a ratified international treaty or a treaty equated with such a treaty.

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
Entrepreneurial Code of 29 October 2015	-	Yes	Full and unconditional protection	Yes	Yes, when agreed by the Parties in a separate contract.

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
	<p>At present, the Kazakhstan legislation provides no relevant guarantee scheme to protect local investors when investing abroad.</p> <p>However, there is joint stock company National Management Holding Baiterek operating in Kazakhstan which was established under the Presidential Order dated 22 May 2013 and the Government Resolution dated 25 May 2013 (the Baiterek Holding). The Baiterek Holding is wholly owned by the Kazakhstan government. One of the key tasks of Baiterek Holding is to facilitate the steady economic development of Kazakhstan by way of financing and supporting the economy's priority sectors and local investors when investing abroad. The Baiterek Holding's strategic development areas lie in facilitating the steady development of Kazakhstan's economy by way of providing financial support to economy's priority sectors, supporting small and medium-sized businesses and promoting Kazakhstan companies' export operations.</p> <p>The Baiterek Holding structure comprises 11 subsidiaries, including Export Insurance Company KazakhExport JSC. Among other things, Insurance Company KazExport JSC deals with insurance of Kazakhstan's investments abroad. For instance, KazExport JSC protects a Kazakhstan investor (both individuals and legal entities) against political risks in the country of investment.</p>



IX Awards

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

Awards

Biedermann International, Inc. v. The Republic of Kazakhstan and The Association for Social and Economic Development of Western Kazakhstan 'Intercaspian', SCC Case No. 97/1996

AlG Capital Partners, Inc. and CJSC Tema Real Estate Company Ltd. v. The Republic of Kazakhstan, ICSID Case No. ARB/01/6

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Dr Patricia Nacimiento is the co-head of the German dispute resolution practice. She has over 20 years of experience as a disputes practitioner. Her practice spans a wide range of disputes work with a special focus on domestic and international arbitration, as well as investor-state disputes. Patricia has significant experience in disputes related to energy, construction and post-M&A. The German government appointed her in 2007 as one of four arbitrators to the panel of arbitrators at the International Centre for Settlement of Investment Disputes (ICSID).

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For years Patricia has been listed as a leading disputes expert in the renowned rankings. She publishes regularly on disputes-related subjects and is co-editor of the leading arbitration manuals *Arbitration in Germany – The Model Law in Practice* (Kluwer 2015) and *The New York Convention – a Global Commentary* (Kluwer 2008).

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