

GAR INVESTMENT TREATY ARBITRATION

Norway

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Overview of investment treaty programme

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

(a) BITs/MITs

BIT Contracting Party or MIT ^[JA1] [1]	Substantive protections					Procedural rights			
	Fair and Equitable Treatment (FET)	Expropriation	Protection and Security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period ^[JA2]	Local courts	Arbitration	
Chile [7 September 1994]	Yes Article 4(1)	Yes Article 6(1)(c)	Yes Article 3	Yes Article 4(1)	No	6 months Article 8(2)	Yes Article 8(2)	Yes Article 8(2)	
China [10 July 1985]	Yes Article 3	Yes Article V	Yes Article 3	Yes Article IV 1	No	6 Yes Protocol section 2 iii	Yes[2] Protocol section 3	Yes[3] Protocol section 2	
Czech Republic [1 January 1993]	Yes Article 2	Yes Article V	Yes Article II	Yes Article III	No	3 Yes Article VIII	Yes Article VIII a	Yes Article VIII b and c	
Estonia [15 June 1992]	Yes Article III	Yes Article VI	Yes Article III	Yes Article IV	No	6 Yes Article IX (2)	No	Yes Article IX (2)	
Hungary [4 December 1992]	Yes Article III	Yes Article VI	Yes Article III	Yes Article IV	No	3 Yes Article XI 2	No	Yes Article XI 2	
Latvia [1 December 1992]	Yes Article III	Yes Article VI	Yes Article III	Yes Article IV	No	3 Yes Article IX 2	No	Yes Article IX 2 a and b	
Lithuania [19 December 1992]	Yes Article III	Yes Article VI	Yes Article III	Yes Article IV	No	3 Yes Article IX 2	No	Yes Article IX 2 a and b	
Madagascar [28 September 1967]	Yes Article VI	Yes Article VI	No	Yes Article VI and II	No	N/A	No	No	
Peru [9 May 1995]	Yes Article 4 (1)	Yes Article 6	Yes Article 3	Yes Article 12	No	6 Yes Article 9 (2)	No	Yes Article 9 (2)	
Poland [24 October 1990]	Yes Article III	Yes Article VI	Yes Article III	Yes Article IV	No	6 Yes Article X	No	Yes Article X	
Romania [23 March 1992]	Yes Article II (3)	Yes Article IV	Yes Article II	Yes Article III	Yes Article III (4)	3 Yes Article VIII (2)	Yes Article VIII (2) (a)	Yes Article VIII (2) (b)	
Russia [21 May 1998]	Yes Article 3	Yes Article 5	Yes Article II	Yes Article 3 (2) and 12	No	6 Yes Article 8 (2)	No	Yes Article 8 (2)	
Slovakia [1 January 1993]	Yes Article II	Yes Article V	Yes Article II	Yes Article III	No	3 Yes Article VIII	Yes Article VIII a	Yes Article VIII b and c	
Sri Lanka [13 June 1985]	Yes Article 3 (2)	Yes Article 6	Yes Article 3	Yes Article 4	No	12 Yes Article 9 (2)	Yes Article 9 (2)	Yes Article 9 (2)	
Energy Charter Treaty (signed 17 December 1991, not ratified)	Yes Article 10(1)	Yes Article 13	Yes Article 10	Yes Article 10(3)	Yes Article 10 (1)	3 Yes Article 26 (2)	Yes Article 26 (2)(a)	Yes Article 26 (2)(b)	

FTAs	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
N/A								

[1] Norway is also party to 30 treaties with investment provisions as a result of its membership in the European Free Trade Association (EFTA). A total of 28 of these treaties are currently in force. A list of these investments instruments can be found here: <https://investmentpolicy.unctad.org/international-investment-agreements/countries/157/norway>.

[2] Recourse to local courts only if the dispute concerns whether the expropriation conforms with the law of the contracting party.

[3] Recourse to arbitration only if the dispute concerns the amount of compensation due from expropriation.

Qualifying criteria - any unique or distinguishing features?

2 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’
Covered persons and entities	<p>The Norwegian BITs generally apply to both natural persons and legal persons, such as corporations or other business enterprises. Natural persons are covered by the treaties to the extent that they are ‘nationals’ of the treaty parties. The term ‘company’ is defined broadly encompassing any legal person incorporated or constituted under the laws of the contracting party.</p> <p>For example, under the Norway–Latvia BIT an ‘investor’ covered by the treaty is either a natural person having status as a national of that contracting party in accordance with its laws, or any legal person such as any corporation, company, firm, enterprise, organisation or association incorporated or constituted under the law in force in the territory of that contracting party.</p>
Link between investor and country	<p>The Norwegian BITs have various requirements concerning the link between the investor and the country. The majority of the treaties require the enterprise to be incorporated or constituted under the laws of the home state. Some BITs require an additional link, for instance, by having ‘a seat in its territory’. See, for example, the Norway–Chile BIT.</p>
Dual citizenship	<p>The Norwegian BITs currently in force do not contain provisions disqualifying investors with dual citizenship. The 2015 Norwegian draft model BIT is similarly silent in this regard. As such, dual nationals enjoy protection under the Norwegian BIT agreements.</p>
Substantive business operations of legal persons	<p>The 2015 Norwegian draft model BIT applies to both natural persons and legal entities. To qualify as a legal person the entity must be established in accordance with, and recognised as a legal person by, the law of the home state. Pursuant to Norwegian law, an enterprise must have its head office in Norway or on the Norwegian continental shelf and is required to be registered in Norway. Further, the model BIT requires that the entity has substantive business operations in the home country. The latter requirement has been included to prevent ‘letterbox companies’ from receiving protection under the agreement.</p>

3 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	<p>Norwegian BITs generally use a broad definition of investment, including every kind of asset invested in the territory of a contracting party. With some minor variations they state that investment shall mean in particular, but not limited to:</p> <ul style="list-style-type: none"> • Movable and immovable property and other property rights such as mortgages, liens, pledges and similar rights; • shares, debentures or any other forms of participation in companies; • claims to money that has been used to create an economic value or claims to any performance under contract having an economic value; • industrial and intellectual property rights, such as technology, know-how, trademarks and goodwill; and • business concessions conferred by law or under contract including concessions to search for, cultivate, extract and exploit natural resources. <p>Some of the agreements also include ‘[g]oods that under a leasing agreement are placed at the disposal of a lessee in the territory of one contracting party by a lessor having status as a national of the other contracting party or a legal person incorporated or constituted under the laws in force in the territory of that contracting party, shall be treated not less favourably than an investment’. See, for example, the Norway–Latvia BIT.</p>
Accordance with local laws	<p>All of the Norwegian BITs currently in force explicitly require the investments to be in accordance with the respective laws and regulations of each contracting party.</p>
Indirect investments	<p>None of the Norwegian BITs currently in force explicitly refer to indirect investments. However, the non-exhaustive list of different assets considered to constitute investments found both in the existing Norwegian BITs and in the 2015 Norwegian draft model BIT includes both direct and indirect investments. As such indirect investments enjoy protection by the Norwegian BITs.</p>
Control of assets	<p>There is in general no reference to control of assets in the Norwegian BITs currently in force. The only exception is the Norway–China BIT. However, the 2015 Norwegian draft model BIT explicitly refers to ‘[e]very kind of assets owned or controlled, directly or indirectly’.</p>

Issue	Distinguishing features in relation to the concept of 'investment'
Characteristics of an investment	The 2015 Norwegian draft model BIT further provides that to qualify as an investment an asset must have the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. This definition now expressly includes the so-called Salini factors. Notably absent from the list is the Salini factor of an economic benefit to the host state from the investment.
Exclusion of assets	The Norwegian BITs currently in force do not exclude certain types of assets from the definition of investment. In the 2015 Norwegian draft model BIT, the final paragraph of the definition relating to the characteristics of an investment limits the scope of the investment definition to 'real' investments. However, there is no requirement that an investment must be made with the aim of making money. The definition thus includes, for example, an investment in a holiday property for personal use.

Substantive protections - any unique or distinguishing features?

4 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
The fair and equitable treatment standard (FET)	All the Norwegian BITs currently in force have a fair and equitable treatment standard. The standard is formulated in broad language, and there are two prevalent wordings, either 'fair and equitable treatment' or 'equitable and reasonable treatment'. In contrast to the non-discrimination provisions, the FET standard is not linked to how nationals and enterprises are treated by the host state but rather whether official actions of the host state are in conformity with the reasonableness standard.
Customary international law	The Norwegian BITs do not explicitly provide that the FET standard shall be equated with customary international law as a minimum standard. The provision may therefore be interpreted as an autonomous reasonableness standard. Arbitration case law has previously shown a tendency towards such an interpretation, although recent cases have displayed a more restrictive approach. In the 2015 Norwegian draft model BIT, however, the fair and equitable treatment clause includes a reference to customary international law thus eliminating any uncertainty in this regard.

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

Issue	Distinguishing features of the 'expropriation' standard
General conditions for expropriation	All Norwegian BITs currently in force include protection against expropriation. The Norwegian BITs furthermore provide that the parties will not nationalise or expropriate covered investments, unless: <ul style="list-style-type: none"> the expropriation is for a public purpose and under due process of law; the expropriation is not discriminatory; and the expropriation is done against prompt, adequate and effective compensation.
Indirect expropriation	Some of the Norwegian BITs explicitly refers to 'indirect expropriation' (see the Norway–Chile BIT and the Norway–Madagascar BIT), whereas others simply refer to 'expropriation'. The 2015 Norwegian draft model BIT does not include a reference to direct or indirect expropriation.
Compensation	Most expropriation clauses in Norwegian BITs regulate the calculation of compensation and interest. The Norway–Chile BIT also gives the investor right to immediate investigation of the legality of the measure and to determine the value of the investment. Norwegian treaty practice, with respect to compensation, is consistent with general treaty practice. It is, however, less precise than other treaty programmes both in its definition of value and in its definition of when payment starts to become due. The Norwegian BIT programme does not expressly speak of fair market value but refers instead to value and by that leaving some room for argument about what 'value' is intended to denote. In practice, it is likely that the Norwegian BIT programme will be treated in the same manner as the large majority of BITs deploying a more detailed regulation. This wording may have an impact on ultimate valuation decisions in the future, although the extent of the impact remains as of yet unclear. In the 2015 Norwegian draft model BIT, the provision regarding expropriation is regulated in more detail to reflect the level of protection under Norwegian law. The draft provision regulates, inter alia, when expropriation is allowable, the procedure which must be followed, the scale of compensation, and the procedure for determining the amount of compensation.

Issue	Distinguishing features of the 'expropriation' standard
Restrictions on use/disposal	Norwegian law draws a clear line between expropriation and restrictions on use or disposal. An unconditional right to full compensation is only granted to persons affected by expropriation, whereas restrictions on use/disposal do not generally trigger entitlement to compensation. In the 2015 Norwegian draft model BIT, the expropriation provision, therefore, contains a narrower delimitation than what traditionally is found in bilateral investment agreements with respect to the types of decision that confer a right to compensation.
Recourse to local courts and the right to arbitration	In the Norway–China BIT the right to bring a claim for review by local courts or the right to pursue arbitration is limited to instances concerning disputes regarding the legality of the expropriatory measures or the amount of compensation to be paid due to an expropriation.

6 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
Scope of the most favoured nation-clause (MFN) and the national treatment-clause (NT)	<p>Norwegian BITs include a most-favoured-nation clause (MFN). Under this standard, the host state may provide treatment no less favourable than that accorded to investments made by investors of any third state.</p> <p>The Norwegian BITs with Russia and Peru includes national treatment (NT) provisions whereby each contracting party shall, subject to its national legislation, accord to investments made by investors of the other contracting party treatment no less favourable than that it accords to investments by its own investors.</p> <p>The 2015 Norwegian draft model BIT also includes a national treatment provision. This will apply in connection with establishment, for example, when licences or concessions are awarded, and once an investment has been made. It is, however, stated in the Ministry's comments to the draft that the provision is unlikely to go beyond the Norwegian authorities' obligations under Norwegian law and general administrative law principles regarding equal treatment and the prohibition of unjustifiable differential treatment.</p>
Exceptions	<p>The MFN clause in the Norwegian BITs include exceptions for advantages accorded by certain types of agreements. Typical exceptions include rights under other free trade agreements, customs unions, double taxation agreement or domestic legislation relating to taxation. The 2015 Norwegian draft model BIT also includes an MFN clause with exceptions along the same lines as described above. The draft provision further includes a provision giving the other party, upon request, an opportunity to renegotiate the existing investment agreement with the aim of securing corresponding rights. Further, the draft specifically states that the MFN clause does not apply to dispute settlement clauses.</p> <p>Although not expressly stated in the text, the NF provision covers both legal and actual, ie, 'de facto' or 'indirect' differential treatment. Pursuant to Norwegian law, only differential treatment that lacks a justifiable basis, is disproportionate or has a highly unreasonable effect is prohibited. If the state can document that there are objective grounds for the differential treatment there will be no breach of the provision.</p>

7 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 obligations	<p>The only Norwegian BIT containing a full protection and security clause is the Norway–Sri Lanka BIT. In all the other Norwegian BITs the wording of the protection and security clauses differ from the wording typically found in bilateral investment agreements. In these provisions it is stated that the contracting party shall promote and encourage investments of investors and accord them reasonable treatment and protection. There is no specific reference to 'security'.</p> <p>In the 2015 Norwegian draft model BIT it is proposed to include a reference to 'full protection and security' in the general treatment and protection provision.</p>

8 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 in one Norwegian BIT	Only one of the Norwegian BITs currently in force contains an umbrella clause. The Norway–Romania BIT provides that '[e]ach contracting party shall observe all other obligations entered into with regard to investors of the other contracting party, their investments and profits.' The 2015 Norwegian draft model BIT does not contain umbrella clauses.

9 What are the other most important substantive rights provided to qualifying investors in this country?

Issue	Other substantive protections
Free transfer of funds	Norwegian BITs provide for free transfer of payments. The wording of these clauses varies. The broadest exceptions state that the right to transfers only applies 'to the extent permitted by [the host State's] laws and regulations' (the BITs with Poland, Czech Republic and Slovakia). The states enjoy a broad margin of appreciation provided that restrictions are applied according to domestic rules. Other BITs state that the right to transfers is 'subject to' national laws and regulations (the BITs with China, Sri Lanka, Romania, Hungary, Latvia and Estonia). These provisions give the states regulatory freedom, but cannot be regarded as giving the states full freedom to introduce restrictions on transfers. The extent to which states are free to restrict transfers under these provisions must be determined on a case-by-case basis. The 2015 Norwegian draft model BIT likewise contains a provision on the transfer of funds. Restrictions may be placed on free transfer of capital in connection with bankruptcy, insolvency, the protection of creditors' rights, criminal offences, the enforcement of liability for the remediation of environmental damage, penalties for environmental offences and accrued enforcement charges pursuant to the Pollution Control Act and the Product Control Act or in connection with execution of a judgment. Further, the provision is not intended to prevent the performance of obligations under tax legislation or in connection with welfare policy and pension schemes.
Armed conflict and civil unrest	Most of the Norwegian BITs include a provision regarding compensation for losses due to armed conflict, internal disorder, etc. These provisions provide for most-favoured-nation treatment, see for example the Norway–Czech Republic BIT. The 2015 draft model BIT likewise includes a provision for compensation of losses suffered by investors due to armed conflict or civil strife. The provision provides national treatment as well as most favoured nation treatment as regards restitution, indemnification, compensation or any other settlement it adopts or maintains relating to such losses.
Subrogation	All the Norwegian BITs, as well as the 2015 Norwegian draft model BIT, include a subrogation clause.
Transparency	None of the Norwegian BITs include any specific provisions with regard to the investor's transparency obligations. The 2015 Norwegian draft model BIT, however, includes provisions aiming at an open and legitimate dispute settlement process, with the possibility of third-party participation. There is a large degree of concurrence between the model BIT and the UNCITRAL Rules. Where substantive differences exist, these are due to the model BIT going further to promote transparency than the UNCITRAL Rules.
Corporate social responsibility	None of the Norwegian BITs currently in force contain any provision regarding corporate social responsibility. The 2015 Norwegian draft model BIT includes a provision establishing that the parties to the agreement shall seek to ensure that their investors comply with the OECD Guidelines for Multinational Enterprises, and participate in the United Nations Global Compact. The obligation to comply with the OECD guidelines applies primarily to countries outside the OECD area, since all OECD members as well as Argentina, Chile, Brazil and Slovakia have committed themselves to doing so. Norway has committed itself to making the guidelines known among Norwegian businesses and to establishing a point of contact for the review of complaints concerning alleged breaches of these guidelines by Norwegian companies.

10 Do this country's investment treaties exclude liability through carve-outs, non-precluded measures clauses, or denial of benefits clauses?

Issue	Other substantive protections
Taxation exemptions	All but one Norwegian BIT contain an exemption for agreements relating to taxation under the MFN or NT provisions. The typical exemption includes 'a double taxation agreement or other agreements regarding matters of taxation or any domestic legislation relating to taxation'. The Norway–Madagascar BIT, however, does not include such an exemption. In article 2 taxation is explicitly stated as being covered by the most favoured nation-treatment.

Issue	Other substantive protections
Restrictions on arbitrable matters	Most Norwegian BITs allow for the parties to bring disputes under the agreement between the state and an investor to arbitration, subject to various cooling-off periods. In the Norway–China BIT, however, there is a restriction on arbitrable matters between the state and an investor whereby only matters related to the compensation to be paid due to expropriation can be subject to arbitration. The Norway–Madagascar BIT does not regulate investor-state disputes.

Procedural rights in this country's investment treaties

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

Issue	Procedural rights
Fork in the road	Most of the Norwegian BITs contain a fork in the road provision. The most common provision gives the parties recourse only to arbitration (the BITs with Estonia, Latvia, Lithuania, Peru, Poland, Russia). Some BITs allow the parties to choose either local courts or arbitration (the BITs with Chile, Slovakia, Czech Republic and Romania).
Failure to litigate or conciliate	None of the Norwegian BITs require local remedies to be exhausted in order to submit the dispute to arbitration. Only two of the Norwegian BITs refer to conciliation. In the Hungary and Sri Lanka BITs, the parties can choose to submit the dispute for conciliation or arbitration. There is no need to go to conciliation in order to submit the dispute to arbitration. In the 2015 Norwegian draft model BIT, a party and an investor of the other party may agree to non-binding procedures including good offices, conciliation or mediation.
Transparency	There are no express provisions promoting transparency in the Norwegian BITs currently in force. In contrast, the 2015 Norwegian draft model BIT includes numerous provisions aiming at increased transparency. The model BIT provides that the home state shall be allowed to participate in the proceedings and be given access to the pleadings of the parties and other available documents and minutes or transcript of tribunal hearings. The home state shall also be able to participate as a third party and other stakeholders will be permitted to make written submissions (<i>amicus curiae</i>) and the tribunal's decision must reflect such submissions. Further, the case documents and decisions of the arbitration tribunal, as well as any minutes or transcripts of hearings, shall be made publicly available and the public shall have the right to follow the proceedings unless there are specific grounds for limiting public access.

12 What is the approach taken in this country's investment treaties to standing dispute resolution bodies, bilateral or multilateral?

The 2015 Norwegian draft model BIT proposes that arbitration between two states shall be referred to the Permanent Court of Arbitration (PCA). Hearings will then be public, and all case documents and decisions will be published. It is also proposed that *amicus curiae* submissions be permitted in disputes between the states.

In disputes between a party and an investor of the other party, the model BIT provides that dispute settlement through ICSID (or the ICSID Additional Facility) should in principle be the only alternative. However, the ICSID will only be applicable if both countries being party to the agreement are also party to the ICSID Convention. In the case that the other party has not ratified the ICSID Convention, the ICSID Additional Facility, 16, adopted in 1978 to apply precisely to such instances, will be employed. A third alternative would be to establish arrangements for resolving purely commercial disputes, for example through the International Court of Arbitration of the International Chamber of Commerce (ICC), the Stockholm Chamber of Commerce and the London Court of International Arbitration (LCIA), etc. Fourthly, the parties could decide to employ ad hoc solutions.

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

At present, there are 14 Norwegian BITs in force.

A Norwegian draft model BIT was submitted for public review in 2015. The government has, however, not followed up the draft by finalising a new model BIT nor with any new investment agreements. In light of the recent change of government (in 2021), it is unlikely that a final draft or any new agreements will come into place in the near future.

Practicalities of commencing an investment treaty claim against this country

- 14 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

Pursuant to Norwegian law, the Norwegian state is one legal entity, but the procedural rights are exercised by the various ministries. In the case of a notice of dispute under an investment treaty, this should be sent to the Ministry of Foreign Affairs.
Postboks 8114 Dep.
NO-0032 Oslo
Norway

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

Government department that manages investment treaty arbitrations

The Ministry of Trade, Industry and Fisheries is responsible for the investment agreements on behalf of Norway. However, based on the limited experience Norway has had with disputes against the Norwegian state, it is the Ministry of Foreign Affairs that has managed investment treaty arbitrations on behalf of Norway.

- 16 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

Norway is for the first time a respondent in the ongoing investment arbitration proceedings between *Peteris Pildegovics and SIA North Star vs. Kingdom of Norway* (ICSID Case No. ARB/20/11). External counsel from the UK and France has been appointed to represent Norway in this case, and Wikborg Rein acts as local counsel for the state.
The Norwegian state is subject to mandatory public procurement rules.

Practicalities of enforcing an investment treaty claim against this country

- 17 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

Norway has signed and ratified the Washington Convention with effect from 15 September 1967. Norway has a dualistic legal system, in which national and international law are two different and separate legal systems. Consequently, international law must be incorporated into national legislation before it can be applied by the Norwegian courts.
The Washington Convention has been incorporated into domestic law through the Act on the Settlement of Investment Disputes.

- 18 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**

Norway has signed and ratified the New York Convention with effect from 11 June 1961. Upon accession, the Norwegian government made two reservations; that the convention will only be applied to recognition and enforcement of awards made in the territory of another contracting state and that Norway will not apply the rules of the convention where the subject matter of the proceedings is immovable property situated in Norway, or a right in or to such property.

Norway has a dualistic legal system, in which national and international law are two different and separate legal systems. Consequently, international law must be incorporated into national legislation before it can be applied by the Norwegian courts. The New York Convention has been incorporated into domestic law through the Norwegian Arbitration Act pursuant to which international arbitral awards will be recognised and enforceable in Norway, subject to the reservations described above.

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

**Legislation governing
non-ICSID arbitrations**

The Norwegian Arbitration Act applies to all arbitrations that take place in Norway.

- 20 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

No publicly available award has been rendered against Norway yet (2022).

- 21 Describe the national government's attitude towards investment treaty arbitration

**Attitude of government towards
investment treaty arbitration**

The Norwegian government's current political platform states that the government will work towards protecting the national and local democracy and the use of natural resources through trade and investment agreements. Norway has not concluded any BITs since the mid-1990s, and in light of the current government's standpoint (2021) it is unlikely that this will change in the near future.

- 22 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**

Not applicable as there are no examples.

National legislation protecting inward investments

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

National legislation	Substantive protections
n/a	<p>There are no national legislation particularly <i>protecting</i> inward foreign investment, but the Norwegian Security Act in force from 2019 introduced a new investment screening regime that applies to all investors, both foreign and national investors regardless of sector. The act introduced a mechanism for ownership control enabling the authorities to prevent an acquisition of a company if the acquisition causes a 'not insignificant' risk to national security interests. The regime grants the authorities power to <i>block</i> acquisitions in respect of any company that:</p> <ul style="list-style-type: none"> • handle classified information; • control information, information systems, objects or infrastructure which are of vital importance to fundamental national functions; or • engage in activities which are of vital importance to fundamental national functions.

National legislation protecting outgoing foreign investment

24 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
Investment guarantee (Eksfin)	<p>Eksfin, a Norwegian governmental financial enterprise, offers investment guarantees to facilitate Norwegian investment in countries with high political risk. The guarantee may cover either equity or loans and can be issued to an investor who wants to invest in a subsidiary abroad, or to a lender that provides a loan for the same investment. The guarantee applies only to political risk, typically such risks as expropriation, civil unrest and new foreign exchange restrictions. After a detailed risk assessment, Eksfin may guarantee up to 90 per cent of the investment or loan for up to 20 years. Eksfin charges a premium upon issuing a guarantee, the amount of which is determined based on the repayment period and the political conditions in the buyer's country.</p>

Awards

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

Awards
<ul style="list-style-type: none"> • ARB/16/38 <i>Staur Eiendom AS, EBO Invest AS and Rox Holding AS vs Republic of Latvia</i> • ARB/06/12 <i>Scancem International ANS vs Republic of Congo</i> • ARB/05/8 <i>Parkerings-Compagniet AS vs Republic of Lithuania</i> • ARB/04/15 <i>Telenor Mobile Communications AS vs Republic of Hungary</i> • ARB/84/1 <i>Atlantic Triton Company Limited vs People's Revolutionary Republic of Guinea</i> • PCA Case No. 2015-13 <i>Almås v Poland (Mr. Kristian Almås and Mr. Geir Almås v The Republic of Poland)</i>
Pending proceedings
<ul style="list-style-type: none"> • In 2019 the music streaming company Tidal threatened Norway with the first known investment treaty arbitration claim under the Norway-Poland BIT from 1990. The claim stemmed from the Norwegian state's conduct in a criminal investigation into allegedly falsified streaming figures (https://www.dn.no/jus/innlegg-sma-sjanser-for-tidal-grep/2-1-661361) • ARB/20/11 <i>Peteris Pildegovics and SIA North Star vs. Kingdom of Norway</i>

Reading List

26 Please provide a list of any articles or books that discuss this country's investment treaties.

Article/book

Are L. Brautaset, "Behov for bilateral investeringsavtaler", in "Lov og Rett" Nr. 7, 2012

Ole Christian Fauchald and Kjersti Schoitz Thorud, "Protection of investors against expropriation – Norway's obligations under investment treaties", in Fauchald, Jakhell and Syse (eds.) "Festskrift til Carl August Fleischer - dog Fred er ei det Bedste ...", Universitetsforlaget, Oslo, 2006

Heidi Lundberg, Helene Bank and Marte Dæhlen, "Bak lukkede dører", Handelskampanjen, 2011

Bjørn Løtveit, "Investeringsbegrepet i Norges bilaterale investeringsavtaler", Master thesis at the University of Tromsø, 2013

Jon Christian F. Nordrum, "Suverenitet og internasjonale investeringsavtaler", in, "Forhandlingene ved Det 38. nordiske Juristmøde i København, 21.-23. august 2008. Bind 1.", Copenhagen, 2010

Per Christian Nordtømme, "Folkerettens regler om beskyttelse av utenlandske investeringer", Published in "Industribygging og Rettsutvikling, Juridisk festskrift i anledning Hydros 100-årsjubileum", Fagbokforlaget, Oslo, 2005

Arne Næss-Holm, "Innføringshefte om bilaterale investeringsavtaler", Forum for Utvikling og Miljø, 2008

Elisabeth Grøvan Ruud, "Ikke et verktøy for utvikling – Et innspill i debatten om bilaterale investeringsavtaler", Changemaker, 2013

Ivar Alvik, "Contracting with sovereignty: the structure of commitment in international investment arbitration", PhD from the University of Oslo, 2006



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Kaare Andreas Shetelig is a partner at Wikborg Rein's Oslo office and is the head of the firm's industry, dispute resolution & public sector group. His practice encompasses dispute resolution and mediation, inter alia in tax and VAT cases, professional liability cases, company law cases as well as general contract law and tort law cases. Shetelig is also an expert in administrative law issues and has handled various regulatory and environmental law cases, both vis a vis governmental bodies and in court proceedings.

He has extensively pleaded cases before Norwegian courts at all levels, including a number of cases before the Norwegian Supreme Court, as well as ad hoc arbitration under the Norwegian Arbitration Act. In addition, he has

experience as arbitrator under Norwegian law.

Shetelig has extensive experience with international arbitration, including cases under the ICC Rules of Arbitration and the SCC Rules. He has successfully advised and/or represented a number of buyers of natural gas in price review disputes under long-term gas sales agreements. He has also international experience in representing parties in post M&A disputes (both under share purchase agreements (SPA) and business combination agreements (BCA)) as well as parties in disputes under shareholder agreements.

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