GAR INVESTMENT TREATY ARBITRATION

Germany

Susanne Schwalb, Vincent Voerster and Vladyslav Kurylko
CMS Germany

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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[1]	Substantive protections					Procedural rights		
	Fair and Equitable Treatment (FET)	Expropriation	Protection and Security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period[2]	Local courts	Arbitration
Afghanistan (12 October 2007)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Albania (18 August 1995)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Algeria (30 May 2002)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Angola (1 March 2007)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Antigua and Barbuda (28 February 2001)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Argentina (8 November 1993)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Armenia (8 November 1993)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Azerbaijan (29 July 1998)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Bahrain (27 May 2010)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Bangladesh (14 September 1986)	Yes	Yes	Yes	Yes	Yes	No	No	No
Barbados (11 May 2002)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Benin (18 July 1985)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Bosnia and Herzegovina (11 November 2007)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Botswana (6 August 2007)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Brunei Darussalam (15 June 2004)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Belarus (23 September 1996)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Burkina Faso (21 November 2009)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Burundi (9 December 1987)	Yes	Yes	Yes	Yes	Yes	No	No	No
Cambodia (14 April 2002)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Cameroon (21 November 1963)	Yes	Yes	Yes	Yes	Yes	No	No	No
Cape Verde (15 December 1993)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Central African Republic (21 January 1968)	Yes	Yes	Yes	Yes	Yes	No	No	No
Chad (23 November 1968)	Yes	Yes	Yes	Yes	Yes	No	No	No
Chile (8 May 1999)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
China (11 November 2005)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Congo, Democratic Republic of (22 July 1971)	Yes	Yes	Yes	Yes	Yes	No	No	No
Republic of the Congo (14 October 1967)	Yes	Yes	Yes	Yes	Yes	No	No	No

BIT Contracting Party or MIT[1]	Substantive protections					Procedural rights		
	Fair and Equitable Treatment (FET)	Expropriation	Protection and Security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period[2]	Local courts	Arbitration
Costa Rica (24 April 1998)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Cote d'Ivoire (10 June 1968)	Yes	Yes	Yes	Yes	Yes	No	No	No
Cuba (22 November 1998)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Dominica (11 May 1986)	Yes	Yes	Yes	Yes	Yes	No	No	No
Egypt (22 November 2009)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
El Salvador (15 April 2001)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Ethiopia (4 May 2006)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Gabon (4 July 2007)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Georgia (27 September 1998)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Ghana (23 November 1998)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Guatemala (29 October 2006)	No	Yes	Yes	Yes	Yes	No	No	
Guinea (14 August 2014)	Yes	Yes	Yes	Yes	Yes	6 month	Yes	Yes
Guyana (6 December 1989 provisionally)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Haiti (1 December 1975)	Yes	Yes	Yes	Yes	Yes	No	No	No
Honduras (27 May 1998)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Hong Kong, China (19 February 1998)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Iran, Islamic Republic (23 June 2005)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Jamaica (29 May 1996)	Yes	Yes	Yes	Yes	Yes	12 months	No	Yes
Jordan (28 August 2010)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Kazakhstan (10 May 1995)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Kyrgyzstan (16 April 2006)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Kenya (7 December 2000)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Korea (15 January 1967)	Yes	Yes	Yes	Yes	Yes	No	No	No
Kuwait (15 November 1997)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Lao People's Democratic Republic (24 March 1999)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Lebanon (25 March 1999)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Lesotho (17 August 1985)	Yes	Yes	Yes	Yes	Yes	No	No	No
Liberia (22 October 1967)	Yes	Yes	Yes	Yes	Yes	No	No	No
Macedonia (17 September 2000)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Madagascar (17 October 2005)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Malaysia (6 July 1963)	Yes	Yes	Yes	Yes	Yes	No	No	No
Mali (28 June 1977 provisionally)	Yes	Yes	Yes	Yes	Yes	No	No	No

BIT Contracting Party or MIT[1]	Substantive protections					Procedural rights		
	Fair and Equitable Treatment (FET)	Expropriation	Protection and Security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period[2]	Local courts	Arbitration
Mauritania (26 April 1986)	Yes	Yes	Yes	Yes	Yes	No	No	No
Mauritius (27 August 1973)	Yes	Yes	Yes	Yes	Yes	No	No	No
Mexico (23 February 2001)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Moldova (15 June 2006)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Mongolia (23 June 1996)	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Morocco (12 April 2008)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Mozambique (15 September 2007)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Namibia (21 December 1997)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Nepal (7 July 1988)	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes
Nicaragua (19 January 2001)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Niger (10 January 1966)	Yes	Yes	Yes	Yes	Yes	No	No	No
Nigeria (20 September 2007)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Oman (4 April 2010)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Pakistan (28 April 1962)	No	Yes	Yes	No	Yes	No	No	No
Panama (10 March 1989)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Papua New Guinea (3 November 1983)	Yes	Yes	Yes	Yes	Yes	No	No	No
Paraguay (3 July 1998)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Peru (1 May 1997)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Philippines (1 February 2000)	Yes	Yes	No	Yes	Yes	6 months	Yes	Yes
Qatar (19 January 1999)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Rwanda (28 February 1969)	Yes	Yes	Yes	Yes	Yes	No	No	No
Saint Lucia (22 July 1987)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Saint Vincent (8 January 1989)	Yes	Yes	Yes	Yes	Yes	No	No	No
Saudi Arabia (9 January 1999)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Senegal (16 January 1966)	Yes	Yes	Yes	Yes	Yes	No	No	No
Sierra Leone (10 December 1966)	Yes	Yes	Yes	Yes	Yes	No	No	No
Singapore (3 October 1973 provisionally)	Yes	Yes	Yes	Yes	Yes	No	No	No
Somalia (15 February 1985)	Yes	Yes	Yes	Yes	Yes	No	No	No
South Africa (10 April 1998)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Sri Lanka (16 January 2004)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Sudan (24 November 1967)	Yes	Yes	Yes	Yes	Yes	No	No	No
Swaziland (7 August 1995)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Syrian Arab Republic (20 April 1980)	Yes	Yes	Yes	Yes	Yes	No	No	No

BIT Contracting Party or MIT[1]	Substantive protections					Procedural rights		
	Fair and Equitable Treatment (FET)	Expropriation	Protection and Security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period[2]	Local courts	Arbitration
Tajikistan (25 May 2006)	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Tanzania, United Republic of (12 July 1968)	Yes	Yes	Yes	Yes	Yes	No	No	No
Thailand (20 October 2004)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Togo (21 December 1964)	Yes	Yes	Yes	Yes	Yes	No	No	No
Trinidad and Tobago (17 April 2010)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Tunisia (6 February 1966)	Yes	Yes	Yes	Yes	Yes	No	No	No
Turkey (5 December 1965)	Yes	Yes	Yes	Yes	Yes	No	No	No
Turkmenistan (19 February 2001)	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Uganda (19 August 1968)	Yes	Yes	Yes	Yes	Yes	No	No	No
Ukraine (29 June 1996)	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
United Arab Emirates (2 July 1999)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Uruguay (29 June 1990)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Russian Federation (5 August 1991)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Venezuela (16 October 1998)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Vietnam (19 September 1998)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Yemen (28 March 2008)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Yugoslavia (ie, still applicable to Serbia, Montenegro and Kosovo) (25 October 1990)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Zambia (25 Aug 1972)	Yes	Yes	Yes	Yes	Yes	No	No	No
Zimbabwe (14 Apr 2000)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Energy Charter Treaty	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes

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'
Approach to definition of investors	As a matter of treaty drafting techniques used in the majority of German investment treaties (including the 1991, 1998 and 2008 versions of the German Model BIT), the drafters mostly chose to have a split definition of 'investor' in the treaties. In particular, most German investment treaties contain two separate definitions of investor: one definition for legal entities and individuals from Germany, and the second definition for legal entities and individuals from the other contracting state (eg, Germany–Bahrain, Germany–Cambodia BITs). The main reason for this split is a particularity arising from EU law pursuant to which EU nationals who, within the context of freedom of establishment under EU law, are established in Germany must be treated like German nationals.

Types of legal entities	German investment treaties generally employ broad definitions of legal entities that qualify as investors using umbrella terms like 'any juridical person' or 'any legal entity'. Most German investment treaties also expressly confer the status of investor on German entities that do not possess legal personality. In that context, the tribunal in *JSW Solar and Wirtgen v Czech Republic* found that a German *Kommanditgesellschaft* qualified as an investor under relevant BIT even though under German law this type of entity did not possess distinct legal personality. Similarly to the criterion of 'legal personality', many German investment treaties expressly provide that a German entity would qualify as an investor even if its activities are not directed at profit, as well as regardless of whether the entity's founders bear limited or unlimited liability.
Nationality of legal entities	The most common criterion used in German investment treaties to establish German nationality of legal entities is the 'seat' in Germany. This approach is reminiscent of the widespread treaty practice of other civil law jurisdictions in Europe that also use the requirement of 'seat' (sometimes in conjunction with other criteria) to determine the nationality of a legal entity (eg, France and Spain). At the same time, most German investment treaties do not list specific criteria that the term 'seat' encompasses, nor do they usually contain an express *renvoi* to German law to determine that term's meaning. This leaves open a debate on whether the requirement of 'seat' requires a closer connection to a jurisdiction rather than mere incorporation in it. The tribunal in *AMF Aircraftleasing v Czech Republic* interpreted the term 'seat' as referring to an effective place of management and central administration of a company's business activities. In the tribunal's view, unless the relevant treaty contained a specific reference to domestic law for the purpose of interpretation of the term 'seat', that term had to be interpreted autonomously under international law. As for the criteria of nationality used for legal entities from the other contracting states German investment treaties employ a plethora of different approaches, ranging from mere incorporation to more substantive tests, such as place of business, place of management, place where the economic activity of the entity is conducted, etc. For example, the Germany–Bahrain BIT requires legal entities to have their head office in Bahrain to qualify as Bahraini investors; the Germany–Jordan BIT requires legal entities incorporated in Jordan to also conduct 'effective economic activity' there; the Germany–Namibia BIT requires Namibian companies to be beneficially controlled by Namibian nationals and have their principal place of business in that country. In turn, the Germany–Singapore BIT excludes from its scope legal entities that, among others, have their 'seat' in any third state.
State entities	Notably, some German investment treaties also expressly address the question of whether state or state agencies may qualify as investors. In particular, the Germany–Qatar BIT lists the government of Qatar as a protected investor under BIT; the Germany–UAE BIT also lists the government of UAE acting directly or indirectly through its financial institutions, development funds, agencies or similar institutions as a type of investor. In turn, the Germany–Panama BIT excludes Panama's state-owned entities from the scope of protected investors.
Individuals	The majority of German investment treaties determine nationality of individuals – investors from each state with reference to the respective domestic legislation. A number of German investment treaties require individuals to have actual residence in the relevant state to enjoy protection under the respective treaty. In particular, the Germany–Bosnia and Herzegovina BIT requires Bosnian nationals to also have permanent residence in Bosnia to qualify as investors under the treaty. Another example is Germany's investment treaty with the former Yugoslavia, which confers status of a German investor on individuals having domicile (*Wohnsitz*) in Germany. In turn, the Germany–Russia BIT (ie, the former Germany–USSR BIT) requires individuals from either state to hold permanent residence (*ständiger Wohnsitz*) in the respective state. In general, German investment treaties do not address dual nationality or the situations where a national of one contracting state also holds permanent residence in the other contracting state. There are notable exceptions though, such as the Protocol to the Germany–Costa Rica BIT, which provides that German nationals who have permanently resided for over 10 years in Costa Rica should be denied protection under the treaty. Faced with the issue of allegedly conflicting residences of an investor, the tribunal in *Binder v Czech Republic* concluded that the term 'residence' had to be interpreted autonomously under international law. The tribunal's understanding of place of 'residence' in that case was the state to which investor had 'strong attachment', in particular private and family life rather than professional and commercial activities.

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'
Types of assets	German investment treaties generally define 'investments' broadly as 'every kind of asset' and provide a non-exhaustive list of forms of investments that expressly enjoy protection under the relevant treaty. In line with the global treaty practice, that list is usually grouped into several asset classes, in particular (i) movable and immovable property, as well as property rights (mortgages, liens, pledges, etc); (ii) shares and other forms of interest in companies; (iii) claims to money or other performance having an economic value; (iv) intellectual property (copyrights, patents, utility designs, trademarks, goodwill, etc); (v) public rights and concessions (eg, rights to exploration and extraction of natural resources). The precise language used to define each specific category of assets in the definition of 'investment' varies from treaty to treaty. For instance, the Germany–Afghanistan BIT provides that in order to qualify as 'investment', claims to money must have been used to 'create an economic value', while claims to performance having an economic value must arise 'under contract or by concession'. In turn, the Germany–China BIT requires that claims to money or economic performance must be 'associated with an investment'. The Germany–Hong-Kong BIT expressly lists 'minority participation' in a company as a form of investment, whereas the Germany–Yemen BIT lists among the permissible investments other rights 'given by law, by contract or by decision of the authority' in accordance with the host state's legislation.
Compliance with host state's legislation	A significant body of German investment treaties contain a requirement that in order to enjoy protection under the respective treaty, investments must be made in accordance with the host state's laws and regulations. Examples include the Germany–Philippines BIT, the Germany–Kuwait BIT and the Germany–Bahrain BIT.
Indirect investments	A number of German investment treaties expressly specify that both direct and indirect investments state enjoy treaty protection. Examples include the Germany–China BIT, the Germany–Iran BIT and the Germany–Jordan BIT. The Germany–Iran BIT also contains a definition of 'indirect' investments – investments made through a company having its seat in the territory of the other contracting state, which is fully or partially owned by the investor. The 2008 version of Germany's Model BIT also touches upon the definition of 'indirect' investments, specifying that 'indirect' investments mean investments, which the investor implements via a company situated in the other contracting state.
Modification of the form of investment	Most German investment treaties contain provisions establishing that the alteration of the form of the assets invested by investors occurring after making of the investment do not affect their classification under the treaty as protected 'investments'. Several treaties (eg, the Germany–Tanzania BIT and the Germany–Qatar BIT) also provide that such alteration must not be in conflict with the legislation of the host country or previously issued approvals.
Prior authorization and excluded assets	Several German investment treaties specify that in certain cases, securing a relevant approval for investment is necessary to extend the treaty protection to such investments (eg, the Germany–Haiti BIT and the Germany–Mali BIT). Such provisions generally apply to investments made by German investors in the territory of the other contracting state. The specific language of this requirement varies from treaty to treaty. For instance, the Germany–Mali BIT specifies that only those investments that 'received written approval in accordance with the laws and regulations [on] foreign investments' qualify as 'investments' under the treaty, whereas the Germany–Singapore BIT states that the treaty extends to investments made in Singapore and 'approved in writing' by Singapore's government. A number of German investment treaties contain express restrictions on specific categories of assets that would be considered as investments. For instance, the Germany–Mexico BIT expressly excludes certain sale and financial contracts with a duration of less than three years from the scope of protected investments and envisages specific criteria where such transactions would otherwise qualify as protected 'investments' (eg, longer duration, purpose, risk, etc). Another example is the Germany–Liberia BIT, which excludes land assets in Liberia from the scope of protected investments. Similarly, the Germany–Oman BIT excludes 'ownership of land and real estate' in Oman from the scope of the treaty's provisions on national treatment and most-favoured nation treatment.

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
FET standard	Most German investment treaties explicitly provide for an obligation of contracting states to treat investors fairly and equitably. At the same time, German investment treaties generally do not list specific duties that states might owe to investors under the rubric of fair and equitable treatment, such as prohibition of denial of justice, effective means of protection of rights, etc. In some treaties, the obligation of fair and equitable treatment is grouped together with the obligation of protection and security (eg, the Germany–Nigeria BIT).
FET and minimum standard	Most German investment treaties do not expressly address the relationship between fair and equitable treatment standard and the minimum standard under customary international law. At the same time, the Germany–Qatar BIT deviates from this practice and specifies that the states should accord investments fair and equitable treatment 'in accordance with the principles of international law'.

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
Direct and indirect expropriation	Some German investment treaties (in particular, older BITs) specifically define what is understood by 'expropriation' in the treaty. For instance, the Germany–Sierra Leone BIT defines 'expropriation' as the 'taking away or restricting of any property right which in itself or in conjunction with other rights constitutes an investment'. Many BITs also employ the term 'nationalisation' alongside 'expropriation' in the context of taking of investments by states (eg, the Germany–Nepal BIT). Several BITs expressly state that investors enjoy protection from both direct and 'indirect' expropriation (eg, the Germany–Afghanistan BIT and the Germany–Angola BIT). The same formulations are used in the 1998 and 2008 versions of German Model BITs. At the same time, the majority of German investment treaties provide that investments should not be subjected to other measures, the effect of which would be tantamount to expropriation (eg, the Germany–Barbados BIT and the Germany–Kenya BIT). Several German investment treaties also describe in more detail what form 'expropriation' may take when applied to investments in the form of shares in companies. For instance, the Germany–Saint Vincent and Grenadines BIT states that expropriation covers situations where the economic substance of a company in which an investment was made is severely impaired. By the same token, the Germany–Russia BIT provides that expropriation also occurs where state measures adversely impact the economic activity of the company invested in, provided such impact causes substantial harm to the investment.
Criteria for lawful expropriation	The majority of German investment treaties set forward three principal requirement for lawful expropriation: (i) expropriation must be conducted for public benefit, (ii) expropriation must be followed by compensation and (iii) the expropriating state must ensure the possibility for an investor to have the legality of the expropriation and the amount of compensation reviewed in accordance with the principle of due process (eg, Germany–Afghanistan BIT and Germany–Egypt BIT, see also German Model BIT 2008). The precise formulation of the 'public benefit' requirement varies from treaty to treaty; it is sometimes referred to as 'public utility' (eg, the Germany–Guinea BIT) or 'general good' (eg, the Germany–Mozambique BIT). Similarly, the specific formulation of the 'due process' requirement varies in different treaties. For instance, the Germany–Tanzania BIT requires that expropriation should be subject to 'review by due process of law' (see also German Model BIT 2008), the Germany–Guinea BIT in turn requires that expropriation must be capable of being 'verified by ordinary proceedings'. The Germany–Kuwait BIT requires that expropriation be conducted 'in accordance with domestic laws of general application'.

Issue	Distinguishing features of the 'expropriation' standard
Compensation standard	Most German investment treaties focus on the following aspects of compensation for expropriated investments: • the amount of compensation should correspond to the value of the investment before the expropriation occurs or is announced; • compensation must be paid without delay and must be freely transferable; • the state should take steps to determine the amount of compensation and pay it before or on the date of expropriation. This approach is expressly followed in 1991, 1998 and 2008 versions of the German Model BIT. Some German investment treaties in their text also expressly incorporate the Hull formula of 'prompt, adequate and just' compensation (eg, the Germany–Kuwait BIT). Several treaties contain different wording when it comes to valuation standards for the purpose of compensation, eg, the Germany–Bosnia and Herzegovina BIT requires that the compensation correspond to the 'market value' of the investment; the Germany–Liberia BIT refers in this context to 'fair value', while other treaties refer simply to 'value' (eg, the Germany–Kenya BIT) or 'full value' (eg, the Germany–Turkey BIT). The Germany–Kuwait BIT is particularly noticeable as it contains detailed requirements as to the assessment of the value of compensation, referring to 'recognised principles of valuation' as well as such valuation and accounting concepts as 'capital invested', 'replacement value', 'appreciation' and 'current returns'. Another example is the Germany–Jamaica BIT, which also requires that the assessment of the amount of compensation include all relevant factors, including 'public knowledge' about expropriation that may affect the value of the investment. The requirement that compensation must be 'realisable' and 'transferable' is also common to many German treaties (eg, the Germany–Oman BIT). The Germany–Tanzania BIT contains an exception to this rule by providing that based on considerations of 'national reconstruction', each state may deny the investor the right to transfer compensation out of the country and may demand from the investor that the received compensation is reinvested. Finally, many German treaties also require that the compensation be provided to the investor 'without delay' (eg, the Germany–Nepal BIT), whereas the Germany–Iran BIT also requires the state to compensate any related costs in case of the delay in making compensation for expropriated assets.
Interest on compensation	Many German investment treaties mention that the amount of compensation should factor in relevant interest payable until the investor receives the compensation. The majority of those treaties refer to the 'usual bank interest' (eg, the Germany–Barbados BIT and the Germany–Jamaica BIT), while several treaties contain references to particular benchmark rates such as Euribor (eg, the Germany–Oman BIT) or 'prevailing commercial rate, however, in no event less than the current LIBOR' (eg, the Germany–Kuwait BIT).

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 'protection and security' standard
Full protection and security	The majority of German investment treaties envisage obligations by states to ensure protection and security for investments by investors. The precise language used by investment treaties varies from treaty to treaty. For instance, the Germany–China BIT refers to 'constant protection and security', whereas the Germany–Benin BIT refers to 'full protection and security in accordance with the principles of international law'.

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
1. Extent of obligation	The formulation of the obligation to provide "protection and security" in Germany's investment treaties is not uniform. Most BITs provide for "*full* protection and security"[83], others simply "protection and security"[84] or "full protection".[85] The Germany-Liberia and Germany-Venezuela BITs provide for "full protection and security of the law".[86]
2. Customary international law	A few treaties specify that the covered investments shall enjoy full protection and security "in accordance with the principles of international law"[87] or "in accordance with customary international law".[88]

83 *See eg,* Germany-Barbados BIT, at article 4(1); Germany-China BIT, at article 4(1); Germany-Bahrain BIT, at article 4(1).
84 *See eg,* Germany-Turkey BIT, at article 3(1).
85 *See eg,* Germany-USSR BIT, at article 2(2).
86 Germany-Liberia BIT, at article 3(1); Germany-Venezuela BIT, at article 4(1).
87 Germany-Benin BIT, at article 3(1).
88 Germany-Pakistan BIT, at article 2(2).

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

Issue	Distinguishing features of any 'umbrella clause'
Sources of commitments	The majority of German investment treaties contain a formulation that the host state should observe any obligations it assumes in connection with investments in its territory made by investors from the other contracting state. Treaties refer in this context to 'obligations' (eg, the Germany–Yemen BIT), 'commitments' (eg, the Germany–Oman BIT) or 'obligation deriving from a written commitment' (eg, the Germany–Ethiopia BIT) undertaken by states towards the investors. In the majority of cases, German investment treaties are silent on the form in which such obligations can be assumed by the state, however there are some exceptions. In particular, the Germany–Nepal BIT refers to obligations entered into by the state 'by agreement'; the Germany–Mexico BIT refers to 'obligation in writing'; the Germany–Qatar BIT refers to 'any contractual obligation' and the Germany–Swaziland BIT mentions obligations 'under any agreement'.
Content of commitments	It is rather unusual for German investment treaties to set out specific rules on the contents of obligations protected under umbrella clauses. An exception here is the Germany–Oman BIT, which provides that if the content of a particular obligation assumed by the state towards the investor is different from the rules of the treaty, the terms of the obligation shall prevail to the extent they are more favourable to the investor.

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

Issue	Other substantive protections
Free transfer	Most German investment treaties contain provisions ensuring free transfer/repatriation of payments in connection with the investment. The types of payments that are usually captured by these provisions include returns on investment, repayment of loans, the proceeds from investment's liquidation or sale, as well as amount of compensation for expropriated investments (eg, the Germany–Jordan BIT and the Germany–Oman BIT). The Germany–Guinea and the Germany–Bahrain BIT, for instance, also extend the free transfer provision to the capital and additional financing necessary to maintain investments. A rather typical requirement for the freedom of transfer obligation that is commonly found in German investment treaties is that such transfers must be allowed 'without delay'. Some treaties such as the Germany–Oman BIT clarify that 'without delay' means the period normally required for transfer formalities, but not exceeding two months since the date of request for such transfer. The Germany–Trinidad and Tobago BIT also separately mentions in the context of freedom of transfer the obligation for states to ensure execution of court cases in civil, administrative and criminal cases through equitable, non-discriminatory and good faith application of their laws. Most German investment treaties also envisage a scenario where the exchange rate for certain currencies is unavailable, providing that in such scenario, the applicable exchange rate shall be the cross-rate applied by the International Monetary Fund for conversion of relevant currencies into special drawing rights.
Wars and conflicts	Most German investment treaties contain guarantees for the investors that in case of losses suffered as the result of wars, conflicts, revolutions and national emergencies the foreign investors shall receive equal treatment in terms of their right to compensation on par with investors from that state or third states (eg, the Germany–Oman BIT). The general feature of such an obligation is that it usually envisages freedom of transfer of any such compensation in the majority of investment treaties (eg, the Germany–Bahrain BIT).
Movement of personnel and goods	Another typical feature included in the majority of German investment treaties is the guarantees granted by states concerning the movement of goods and persons in connection with the investment. For instance, the Germany–Tajikistan BIT provides that the states should abstain from hindering movement of goods directly intended for the investment, as well as the goods ordered by the company that is the subject matter of investment in the territory of that state or third states.
Non-impairment	Many German investment treaties contain non-impairment provisions, requiring states not to impair investments by arbitrary or discriminatory measures.

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
Limitations of state's obligations	Many German investment treaties contain provisions aimed at limiting the obligations of states under a treaty in connection with measures taken to protect public order, public health or public morals. The majority of these exceptions are mentioned in connection with the national treatment and most-favoured nation treatment obligations (eg, the Germany–Jordan BIT). Yet, some treaties contain more elaborate provisions limiting states' obligations for certain actions. For instance, the Germany–Botswana BIT prescribes limitations on the application of the treaty in connection with Botswana's financial assistance programmes aimed at developing local industries to the extent such programmes do not significantly impair investments by German investors. In turn, the Germany–Oman BIT limits Oman's obligations to accord NT and MFN to German investors in connection with 'grants and soft loans in connection with specific development and social programs'. Denial-of-benefits clauses are not common in German BITs; however, such provisions can be found in some of the multilateral treaties to which Germany is a party, such as article 17(1) of the Energy Charter Treaty.

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 clauses and parallel proceedings	Some German investment treaties envisage provisions aimed at reducing the risk of parallel proceedings in domestic courts and arbitration. For instance, the Germany–Mexico BIT contains a fork-in-the-road provision barring a German investor who already submitted the matter to arbitration from referring the same matter to Mexico's domestic courts (and vice versa). A number of German investment treaties also contain provisions preventing submission of the dispute to arbitration if the domestic court has not reached the judgement in the same case (eg, the Germany–Angola BIT). Further, some investment treaties prevent the home state of the investor from pursuing diplomatic protection of that investor until proceedings in arbitration were concluded or unless the respondent state failed to comply with the award (eg, the Germany–UAE BIT). In addition, several German investment treaties also expressly deal with the risk of parallel proceedings in the fora envisaged by the investment treaty and the fora prescribed in the investment contract between the investor and the host state. In particular, the Germany–Mexico BIT provides that a dispute arising from an obligation assumed by the state and protected by the BIT's umbrella clause shall only be settled under the terms of the respective obligation. In turn, the Germany–Ethiopia BIT provides that if an investor invokes the dispute settlement mechanism envisaged under an investment contract concluded with the host state, the dispute resolution mechanism prescribed in the treaty can only be invoked if the competent body under the investment contract fails to reach the decision within the 18-months term or if such body 'disregards the provisions of the treaty'.
Exhaustion of local remedies	Several German investment treaties contain provisions establishing the requirement of exhaustion of local remedies. For instance, the Germany–Peru BIT and the Germany–Uruguay BIT provide that the dispute between the investor and the host state should first be submitted to the domestic courts of the host state and may only be submitted to arbitration once the domestic courts have reached their decision or if no such decision has been reached within 18 months.
Applicable law	Provisions expressly addressing the matter of the law that the investment tribunal should apply to the substance of the dispute are not very common in German investment treaties, however there are several treaties that do contain such guidance. In particular, the Germany–Argentina BIT and the Germany–Peru BIT provide that the arbitral tribunal should decide the dispute on the basis of the respective investment treaty, other applicable international treaties, domestic law of the host state (including its conflict of law rules) and general principles of international law. The tribunal in *Deutsche Telekom v India* clarified that the decision which law, domestic or international, governs a specific issue in investment arbitration needs to be determined in each case depending on the nature of the issue.
Cooling-off period	Many German investment treaties contain provisions requiring the investor and the host state to seek an amicable solution to the dispute within some time period (cooling-off period). Examples of such treaties include the Germany–UAE BIT, the Germany–Angola BIT and the Germany–Kuwait BIT. The most often used time period prescribed in German treaties for the cooling-off negotiations is six months.

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

Germany's policy in relation to the creation of a permanent investment dispute body is aligned with the wider EU policy aimed at reforming the current ISDS system and transition to a permanent dispute resolution forum for investor-state disputes. In particular, the EU's current view is that only the establishment of a permanent multilateral investment court would be able to address the (perceived) flaws of the current ISDS system. In particular, provisions envisaging the possibility of resolving investment disputes through a permanent investment court system were included in the text of EU–Vietnam Investment Protection Agreement and the EU–Canada Comprehensive Economic and Trade Agreement (CETA).

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

Germany has not generally changed its positive perception of the role and importance of investment treaties, which it historically held. At the same time, due to the EU-wide shift in legal treatment of investment protection treaties following the 2018 judgment of the Court of Justice of the European Union in the *Achmea* case, Germany's approach aligns with the EU's modern policy trends in relation to effective legal mechanisms for the protection of foreign investments. For example, on 5 May 2020, Germany along with the majority of other EU member states signed the Agreement for the Termination of Bilateral Investment Treaties Between the Member States of the European Union as a result of which the bulk of intra-EU bilateral investment treaties were terminated. The EU is planning to devise a new system of investment protection instead of the terminated intra-EU BITs.

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	Federal Ministry for Economic Affairs and Climate Action

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

Government department that manages investment treaty arbitrations	Federal Ministry for Economic Affairs and Climate Action

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	Generally, external counsel are used. To the best of our knowledge, Germany usually does not use a formal public procurement process but it does request offers from several law firms before retaining counsel for its defence against investment treaty claims.

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	Germany has signed and ratified the Washington Convention. The Convention entered into force for Germany on 18 May 1969. The relevant law passed for the purpose of implementing the Convention in Germany is the Law on the Convention of 18 March 1965 on the Settlement of Investment Disputes Between States and Nationals of Other States (Gesetz zu dem Übereinkommen vom 18. März 1965 zur Beilegung von Investitionsstreitigkeiten zwischen Staaten und Angehörigen anderer Staaten (InvStreitÜbkG)).

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	Germany has ratified the New York Convention on 30 June 1961. The relevant law implementing the Convention in Germany is the Law on the Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (Gesetz zu dem Übereinkommen vom 10. Juni 1958 über die Anerkennung und Vollstreckung ausländischer Schiedssprüche).

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

Legislation governing non-ICSID arbitrations	Non-ICSID arbitrations seated in Germany are governed in the same manner as other arbitrations (ie, by the provisions in Book 10 of Germany's Code of Civil Procedure).

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	As of the date of preparation of this guide, Germany has not been a party to an adverse investment treaty award.

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

Attitude of government towards investment treaty arbitration	Germany historically has maintained a positive attitude to investment arbitration from being a pioneer of bilateral investment treaties (the first bilateral investment treaty was concluded in 1959 between Germany and Pakistan) to having one of the widest networks of bilateral investment treaties up to this date.

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	German courts are generally supportive of enforcement of investment arbitration awards, as well as of investor-state arbitration proceedings. For instance, in its recent judgment, the Higher Regional Court of Berlin reportedly rejected Germany's application to declare inadmissible under article 1032 of the German Civil Procedure Code the *Mainstream Renewable Power Ltd et al. v Germany* arbitration that is currently pending before an ICSID tribunal on the ground of its intra-EU nature. The court reportedly affirmed that the dispute resolution mechanism established under Washington Convention is a self-contained legal regime and found that the challenge of arbitration's admissibility under article 1032 of the German Civil Procedure Code was inapplicable to ICSID arbitrations.

National legislation protecting inward investments

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

Germany does not have special legislation protecting inward foreign investments in the same manner as investment treaties (ie, there is no so-called 'investment code' as is common in certain jurisdictions).

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 scheme overseen by the Federal Ministry of Economy and Climate Action	Germany's investment guarantee scheme overseen by the Federal Ministry of Economy and Climate Action offers a wide range of foreign investment guarantee options for German investors. The investment guarantees usually cover the capital invested by the investor in a foreign country, but may also extend to the returns on such investments (eg, in the form of interest or dividends). The guarantee scheme generally accepts for coverage investments in the form of equity (whether acquired upon company's creation or purchased from former shareholders), as well as shareholder loans and commercial loans on conditions that are similar to equity investments; investments structured through holding companies; rights under concessions and product sharing agreements, etc. The requirements posed to the German outward investments that intend to benefit from the German government's investment guarantees include: • long-term character; • pursuance of German national interests; • economic viability and entrepreneurial character; • positive impact in the host country and Germany; and • presence of legal instruments bestowing legal protection on such investments (eg, investment treaties or local legislation). The guarantees scheme can cover the following risks incurred by investors: • expropriation of investment;breach of contract; • war risks; • payment embargoes and moratoriums; and • capital transfer and currency convertibility risks. The general period of duration of investment guarantees offered by the German government is 15 years.

Awards

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

Awards

- *Nordzucker v Poland*
- *BayWa r.e. Renewable Energy GmbH and BayWa r.e. Asset Holding GmbH v Spain, ICSID* (Case No. ARB/15/16)
- *Aharon Naftali Biram, Gilatz Spain SL, Redmill Holdings Ltd and Sun-Flower Olmeda GmbH v Kingdom of Spain* (ICSID Case No. ARB/16/17)
- *Deutsche Bank AG v Democratic Socialist Republic of Sri Lanka* (ICSID Case No. ARB/09/2)
- *Deutsche Telekom AG v The Republic of India* (PCA Case No. 2014-10)
- *Adem Dogan v Turkmenistan* (ICSID Case No. ARB/09/9)
- *ESPF Beteiligungs GmbH, ESPF Nr. 2 Austria Beteiligungs GmbH, and InfraClass Energie 5 GmbH & Co.KG v Italian Republic* (ICSID Case No. ARB/16/5)
- *HOCHTIEF Aktiengesellschaft v Argentine Republic* (ICSID Case No. ARB/07/31)
- *Inmaris Perestroika Sailing Maritime Services GmbH and others v Ukraine* (ICSID Case No. ARB/08/8)
- *Marion Unglaube v.Republic of Costa Rica* (ICSID Case No. ARB/08/1)
- *RWE Innogy GmbH and RWE Innogy Aersa S.A.U. v Kingdom of Spain* (ICSID Case No. ARB/14/34)
- *Saar Papier Vertriebs GmbH v. Republic of Poland* (I)
- *Mr. Franz Sedelmayer v The Russian Federation*
- *Siemens AG v The Argentine Republic* (ICSID Case No. ARB/02/8)
- *SolEs Badajoz GmbH v Kingdom of Spain* (ICSID Case No. ARB/15/38)
- *STEAG GmbH v Kingdom of Spain* (ICSID Case No. ARB/15/4)
- *The PV Investors v Spain* (PCA Case No. 2012-14)
- *Bernhard von Pezold and others v. Republic of Zimbabwe* (ICSID Case No. ARB/10/15)
- *Werner Schneider (Walter Bau Ag) v The Kingdom of Thailand*
- *A.M.F. Aircraftleasing Meier & Fischer GmbH & Co KG v Czech Republic* (PCA Case No. 2017-15)
- *Antaris Solar GmbH and Dr. Michael Göde v The Czech Republic* (PCA Case No. 2014-01)
- *Rupert Joseph Binder v Czech Republic*
- *Blusun SA. Jean-Pierre Lecorcier and Michael Stein v Italian Republic* (ICSID Case No. ARB/14/3)
- *Daimler Financial Services AG v Argentine Republic* (ICSID Case No. ARB/05/1)
- *ECE Projektmanagement International GmbH and Kommanditgesellschaft PANTA Achtungsechzigste Grundstücksgesellschaft mbH & Co v The Czech Republic* (PCA Case No. 2010-5)
- *Fraport AG Frankfurt Airport Services Worldwide v.Republic of the Philippines (I)* (ICSID Case No. ARB/03/25)
- *Fraport AG Frankfurt Airport Services Worldwide v Republic of the Philippines (II)* (ICSID Case No. ARB/11/12)
- *GEA Group Aktiengesellschaft v Ukraine* (ICSID Case No. ARB/08/16)
- *Gustav F W Hamester GmbH & Co KG v Republic of Ghana* (ICSID Case No. ARB/07/24)
- *Enrique Heemsen and Jorge Heemsen v. Bolivarian Republic of Venezuela* (PCA Case No. 2017-18)
- *InterTrade Holding GmbH v The Czech Republic* (PCA Case No. 2009-12)
- *JSW Solar (zwei) GmbH & Co.KG, Gisela Wirtgen, Jürgen Wirtgen, and Stefan Wirtgen v Czech Republic* (PCA Case No. 2014-03)
- *Photovoltaik Knopf Betriebs-GmbH v The Czech Republic* (PCA Case No. 2014-21)
- *Reinhard Hans Unglaube v Republic of Costa Rica* (ICSID Case No. ARB/09/20)
- *Saar Papier Vertriebs GmbH v Republic of Poland (II)*
- *Sana Consulting & Management GmbH v The Russian Federation*
- *ST-AD GmbH v The Republic of Bulgaria* (PCA Case No. 2011-06)
- *Stadtwerke München GmbH and others v Kingdom of Spain* (ICSID Case No. ARB/15/1)
- *TRACO Deutsche Travertin Werke GmbH v The Republic of Poland*
- *Peter Franz Vöcklinghaus v Czech Republic*
- *Voltaic Network GmbH v The Czech Republic* (PCA Case No. 2014-20)
- *Wintershall Aktiengesellschaft v Argentine Republic* (ICSID Case No. ARB/04/14)

Pending proceedings
• *Mainstream Renewable and others v Germany*
• *Strabag and others v Germany*
• *AHG v Iraq*
• *CIC Renewable and others v Italy*
• *DCM Energy and others v Spain*
• *E.ON SE and others v Spain*
• *El Jaouni v Lebanon*
• *Encavis and others v Italy*
• *Fin.Doc and others v Romania*
• *Ghenia v Libya*
• *Hamburg Commercial Bank v Italy*
• *HeidelbergCement and others v Egypt*
• *Hela Schwarz v China*
• *Kruck and others v Spain*
• *KS and TLS Invest v Spain*
• *Landesbank Baden-Württemberg and others v. Spain*
• *LSG Building Solutions and others v Romania*
• *Mihaljevic v Croatia*
• *Portigon v Spain*
• *RWE v Netherlands*
• *Scholz Holding v Morocco*
• *TS Villalba and others v. Spain*
• *Unionmatex v Turkmenistan*
• *Uniper v Netherlands*
• *VM Solar Jerez and others v Spain*

Reading List

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

Article/Book
Rudolf Dolzer/Yun-I Kim, *Commentaries on Selected Model Investment Treaties* (2013), chapter on Germany Stefan Huber/Christoph Benicke (eds), Linking Private and Public International Law: The Example of Determining Corporate Nationality in Germany's Investment Treaty Network, Amsterdam Center for International Law, No. 2020-07 Karl-Heinz Böckstiegel, Stefan Kröll, Patricia Nacimento (eds), *Arbitration in Germany, The Model Law in Practice*, second edition (2015), chapter on Investment Arbitration and the Participation of State Parties in Germany. See also: https://www.bmwk.de/Navigation/DE/Service/Investitionsschutzvertraege/investitionsschutzvertraege.html https://www.bmwk.de/Redaktion/DE/Artikel/Aussenwirtschaft/investitionsschutz.html https://publishup.uni-potsdam.de/opus4-ubp/frontdoor/deliver/index/docId/540/file/BITSStudie.pdf.

Susanne Schwalb

CMS Germany

Susanne Schwalb primarily advises and represents clients in international arbitration proceedings. She has a focus on international commercial arbitration and the protection of foreign investments where she advises both on the structuring of investments and in contentious proceedings. Susanne also has extensive practical experience in third-party funding.

In commercial arbitration, Susanne particularly represents clients in shareholder and post-M&A disputes as well as in disputes concerning failed (large-scale) projects. When it comes to the protection of foreign investments, Susanne provides advice on the planning and implementation of investments as well as during the investment period. She also represents clients in investor-state arbitration proceedings and related domestic court proceedings. Susanne has many years of experience acting as party representative and as secretary/assistant to the arbitral tribunal in a large number of commercial arbitrations, including under the ICC, DIS, Swiss, LCIA, HKIAC and JCAA Rules as well as in more than 15 investor-state arbitrations under the ICSID Convention, UNCITRAL and SCC Rules. Susanne also regularly acts as arbitrator.

In addition, Susanne has negotiated comprehensive third-party funding agreements for several domestic as well as international arbitration proceedings and can therefore draw on extensive practical experience in the evaluation of the commercial and legal funding terms as well as the day-to-day handling of funded arbitration and court proceedings.

Susanne joined CMS in 2014 and became partner in 2022.

Vincent Voerster

CMS Germany

Vincent Voerster studied law at Ludwig-Maximilians-Universität in Munich and Université Pantéon-Assas in Paris. He passed his First State Exam in 2022 and is currently working as a Research Associate in the international arbitration team at CMS Germany in Munich.

Vladyslav Kurylko

CMS Germany

Vladyslav Kurylko is an international arbitrational lawyer advising clients (corporates, individuals, quasi-sovereigns and sovereigns) in international commercial and investment arbitrations. Vladyslav's experience includes advising clients in connection with all aspects of international investment arbitrations, such as investment structuring, pre-arbitration negotiations/ settlements, arbitration proceedings and enforcement of investor-state awards. Vladyslav's experience in commercial arbitration includes mandates in post-M&A, banking & finance, energy and construction disputes. Vladyslav has significant experience with different arbitration rules and regimes, including LCIA, SCC, ICC, UNCITRAL and ICSID.

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Nymphenburger Street 12
Munich 80335
Germany
Tel: +49 89 23807 0

https://cms.law/en/deu/

Susanne Schwalb
susanne.schwalb@cms-hs.com

Vincent Voerster
vincent.voerster@cms-hs.com

Vladyslav Kurylko
vladyslav.kurylko@cms-hs.com