GAR INVESTMENT TREATY ARBITRATION

Russia

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GAR

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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	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
Abkhazia (9 February 2011)*	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Albania (29 May 1996)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Algeria (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Angola (12 January 2011)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Argentina (20 November 2000)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Armenia (8 February 2006)	No	Yes	Yes	No	No	6 months	Yes	Yes
Austria (1 September 1991)	Yes	Yes	Yes	Yes	No	3 months	No	Yes[1]
Azerbaijan (16 November 2015)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Bahrain (25 December 2015)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Belgium–Luxembourg (18 August 1991)[2]	Yes	Yes	Yes	Yes	No	6 months	No	Yes[3]
Bulgaria (19 December 2005)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Canada (27 June 1991)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Cambodia (7 March 2016)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
China (1 May 2009)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Croatia (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Cuba (8 July 1996)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Cyprus (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Czech Republic (6 June 1996)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Denmark (26 August 1996)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Ecuador (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Energy Charter Treaty (not in force)[4]	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Equatorial Guinea (3 March 2016)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Eurasian Economic Union Treaty (1 January 2015)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Egypt (12 June 2000)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Ethiopia (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Finland (15 August 1991)[5]	Yes	Yes	Yes	Yes	No	3 months	No	Yes[6]
France (18 July 1991)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Germany (5 August 1991)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes[7]
Greece (23 February 1997)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Guatemala (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes

BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Hungary (29 May 1996)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
India (terminated on 27 April 2017)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Indonesia (15 October 2009)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Iran (6 April 2017)	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Italy (7 July 1997)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Japan (27 May 2000)	Yes	Yes	Yes	Yes	No	No	No	Yes
Jordan (17 June 2009)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Kazakhstan (11 February 2000)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Korea (10 July 1991)	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes[8]
Kuwait (30 May 1996)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Laos (22 March 2006)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Lebanon (11 March 2003)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Libya (15 October 2010)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Lithuania (24 May 2004)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Macedonia (9 July 1998)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Moldova (18 July 2001)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Mongolia (26 February 2006)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Morocco (not in force)	No	Yes	Yes	Yes	No	6 months	Yes	Yes
Namibia (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Netherlands (20 July 1991)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes[9]
Nicaragua (3 September 2013)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Nigeria (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
North Korea (9 January 2006)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Norway (21 May 1998)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Palestine (8 November 2017)*	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Philippines (29 November 1998)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Poland (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Portugal (not in force)	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Qatar (4 June 2009)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Romania (20 July 1996)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Serbia (19 July 1996)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Singapore (16 June 2012)	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Slovakia (2 August 1996)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Slovenia (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
South Africa (12 April 2000)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
South Ossetia (10 February 2011)*	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Spain (28 November 1991)	Yes	Yes	Yes	Yes	No	6 months	No	Yes[10]
Sweden (7 July 1996)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Switzerland (26 August 1991)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes[11]
Syria (13 July 2007)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes

BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Tajikistan (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Thailand (not in force)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Turkey (15 May 2000)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Turkmenistan (23 August 2010)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Ukraine (27 January 2000)	No	Yes	Yes	Yes	No	6 months	Yes	Yes
United Arab Emirates (19 August 2013)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
United Kingdom (3 July 1991)	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes[12]
United States of America (not in force)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Uzbekistan (14 January 2014)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Venezuela (26 October 2009)	Yes	Yes	Yes	Yes	No	5 months[13]	Yes	Yes
Eurasian Economic Union – Vietnam (5 October 2016); Protocol No. 1 Between the Russian Federation and the Socialist Republic of Vietnam (5 October 2016); Protocol No. 2 Between the Russian Federation and the Socialist Republic of Vietnam (5 October 2016)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Vietnam (3 July 1996)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Yemen (21 July 2005)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Zimbabwe (10 September 2014)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes

* Territory not recognised as an independent state. We take no view as to its proper status under international law.

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'
Seat of the investor	Most Russian investment treaties, as well as the 2001[14] and the 1992[15] Russian model BITs, provide that a juridical person incorporated or duly organised according to the laws of a contracting party is an 'investor'. However, 18 BITs in force (including treaties with Austria, Belgium/Luxembourg, China, France and others) require that the investor also have its 'seat' within the territory of the relevant contracting party. Additionally, some BITs in force (eg, with Switzerland) require that the investor carry out economic activities in the contracting party in addition to incorporation there.[16] The 2016 Guidelines on the negotiation of BITs[17] stipulate that BITs should require that investors carry out 'substantial economic activity' in the contracting party. Conversely, the Philippines BIT extends protection to companies not incorporated in a contracting party but effectively controlled by nationals or companies of that contracting party.
Legal capacity to invest	Several Russian BITs (including treaties with Argentina, the Czech Republic, Egypt, Spain, Switzerland, Ukraine and Lithuania) stipulate that in order to qualify for protection as an 'investor', a legal person must have the capacity under the laws of its home jurisdiction to invest in the other contracting party.

Issue	Distinguishing features in relation to the definition of 'investor'
Control by a non-national	Most Russian BITs in force extend protection to otherwise-qualifying juridical persons that are owned or controlled by investors of a third party. The exception is the Japan BIT, which in certain circumstances excludes the application of MFN treatment to companies that are under the 'decisive influence' of third-party nationals. The 2016 Guidelines provide for the exclusion of companies owned or controlled by nationals of a third state.
Dual nationals	Russian BITs do not expressly exclude the protection of investments made by dual nationals. The 2016 Guidelines exclude investments made by individuals who are nationals of the host state or were nationals of the host state at the time when the investment was made. The 2016 Guidelines also provide for the exclusion of companies owned or controlled by nationals of the host state. It is notable that on 31 May 2018, Russia enacted amendments to its Foreign Investment Law stipulating, inter alia, that foreign nationals who also have Russian nationality shall not be considered foreign investors in the meaning of the Foreign Investment Law. In light of these, it is expected that future Russian BITs will expressly exclude from protection investments made by dual nationals. It is noteworthy that the tribunal in a recent but yet unpublished award in *Pugachev v Russian Federation* rejected Russia's argument that the Russia-France BIT did not allow claims by dual nationals.
Permanent residents	With respect to natural persons, the concept of 'investor' in Russian BITs is normally limited to citizens or nationals of a contracting party. This is the approach adopted in the 2001 and 1992 model BITs, as well as in the 2016 Guidelines. However, three BITs (with Canada, Germany and Kazakhstan) also extend protection to permanent residents of a contracting party. The Argentina BIT disqualifies Russian citizens who, at the time when the investment was made, had been living in Argentina for more than two years, unless it is proven that the source of the investment was foreign.

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	Russian BITs include a broad, non-exhaustive definition of eligible assets. Typically the definition of investment expressly includes shares and other forms of participation in legal entities. However, the 2016 Guidelines provide that future BITs shall apply only to specific assets listed in an annex to each BIT. The 2016 Guidelines also provide that BITs shall not apply to services 'provided for the purposes of performing state functions by governmental bodies of the state party or legal entities authorised to perform such duties by a state party'. Such services shall include 'services and other types of activities supplied or performed not for the purpose of obtaining profits and in the absence of competition of other commercial entities'. This guideline appears to carve out such sectors as utilities, which in Russia are referred to as 'natural monopolies', from the sphere of application of future BITs.
Indirect control of assets	Neither the 2001 nor the 1992 model BIT specifies whether indirectly controlled investments are protected. The majority of Russian BITs follow this approach, with the exception of six BITs in force (with Belgium/Luxembourg, Canada, France, Kuwait, Sweden and Switzerland), which expressly cover investments made through an intermediary entity incorporated in a third party.[18]
Commencement of coverage	The 1992 and 2001 Russian model BITs, as well as the 2016 Guidelines, restrict the scope of protection to investments made after the BIT's entry into force. However, the majority of Russian BITs (with the exception of several treaties in force, such as treaties with Angola, Armenia, Jordan, Qatar and Syria) do not follow this approach. Typically Russian BITs specify that investments made after a certain date prior to the conclusion of the BIT benefit from protection. For example, the BIT with France applies to investments made since 1 January 1950. Some other treaties stipulate that only disputes arising after the entry of the treaty into force can be brought under the treaty (BITs with China, Indonesia, Kazakhstan, Libya, Lithuania, Singapore and Venezuela). Several BITs do not address the scope of temporal application (those with Cuba, Philippines and Romania).
Accordance with local laws	Most Russian BITs, following the 1992 and 2001 model BITs, stipulate that only investments made in accordance with the law of the host state benefit from BIT protection (with the exception of the BITs with Bulgaria, Canada, Japan, Republic of Korea and Switzerland). The 2016 Guidelines contain a similar provision: however, they also stipulate that this should be without prejudice to the host state's obligations under the relevant BIT.

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
Relationship with customary international law	All Russian BITs in force (with the exception of the treaties with Ukraine and Armenia) include a fair and equitable treatment clause. The wording of the fair and equitable treatment provision in Russian BITs is generally standard. Only a few BITs (eg, the treaties with Canada and France) refer to fair and equitable treatment as being 'in accordance with principles of international law'. In a departure from earlier Russian BIT practice, the 2016 Guidelines do not envisage that future BITs should contain a fair and equitable treatment clause; however, they envisage a prohibition of arbitrary treatment in future BITs, stipulating that laws and other regulations of general application 'shall be applied reasonably, objectively and impartially'.

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
Adequate and effective compensation	Both the 1992 and 2001 model BITs, as well as the 2016 Guidelines, provide that investments may only be nationalised when such a measure is accompanied by prompt, adequate and effective compensation. Most Russian BITs impose this same requirement, with some exceptions. For example, the BIT with Spain refers to 'appropriate' compensation, while the BIT with the Netherlands provides for 'just' compensation, representing the 'real value' of the investment.
Prompt compensation	Both the 1992 and 2001 model BITs provide that compensation for expropriated property shall be paid 'without undue delay'. There is some variation in Russian BIT practice in this regard. While some treaties follow the model approach (eg, the treaty with Spain), most stipulate a specific deadline within which compensation must be paid (eg, two months in the BITs with Canada and Korea; three months in the treaties with Italy, Austria and Finland). The 2016 Guidelines provide that, in the event that such compensation is delayed, investors would be entitled to interest at market rates.
Valuation of the investment for the purposes of compensation	The 2001 Russian model BIT provides that the market value of the investment is to be determined for the purposes of compensation as of the date when it became known that the asset in question would be nationalised, while the 1992 BIT stipulated that market value should be assessed as of the moment immediately prior to the announcement of the nationalisation. The 2016 Guidelines similarly stipulate that the fall in value of the expropriated investments should be taken into account if it took place as a result of the planned or completed expropriation becoming public. These approaches have been followed in several treaties in force (eg, the BITs with Greece, Denmark and Romania follow the 1992 model and the BIT with Armenia follows the 2001 model). Some BITs offer a choice between these two dates (eg, the BIT with the Czech Republic).
Indirect expropriation	Most Russian BITs, in line with the 1992 and 2001 model BITs, expressly prohibit measures tantamount or having an effect equivalent to expropriation (eg, BITs with France, Singapore and the UK). The 2016 Guidelines clarify that the fact that an investment was damaged, including by measures undertaken by the host state, does not automatically mean that such investment was expropriated: BITs should stipulate that, in determining whether expropriation has taken place, the character, nature as well as the achieved and declared aims of the government measures should be taken into account. The impact of the measures on the fair market value of the investments, as well as the duration and consequences of the measures should also be taken into account when determining whether they amount to expropriation. The 2016 Guidelines also specify that the following do not constitute expropriation: interim measures undertaken by the host state's courts, taxation measures (so long as they are not arbitrary or discriminatory based on the origin of capital), customs regulation measures, compulsory IP licences and emergency seizure as a result of natural disasters.
Right to arbitration	A number of Russian BITs only provide a right to arbitration where a dispute relates to the amount of compensation payable as a result of the expropriation of property.

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	While the majority of Russian BITs feature both national treatment and most-favoured-nation clauses, some do not contain either guarantee (eg, the BIT with Armenia). The treaties with Belgium/Luxembourg, Germany, Switzerland and the Netherlands only establish MFN treatment, but not national treatment.
Exceptions to national treatment	The 1992 Russian model BIT reserved the state parties' right to identify industries and spheres of activity in which foreign investment is prohibited or restricted, while the 2001 model gives the state parties even broader discretion to 'apply and introduce exemptions from national treatment with respect to foreign investors and their investments, including reinvested investments'. Most Russian BITs contain similar exceptions to national treatment. Many treaties, including the BITs with Albania, Bahrain, Bulgaria, Cuba, the Czech Republic, Egypt, Hungary, Kazakhstan and Lithuania, follow the 1992 model, and the treaties with Azerbaijan, Cambodia, Denmark, Equatorial Guinea, Greece, Iran, Indonesia, Jordan, Korea, Nicaragua, Singapore, the UAE, Uzbekistan and Zimbabwe follow an approach similar to the 2001 model BIT (some of these latter treaties specify that such exceptions to national treatment will apply only to investments made after entry into force of the exception). Ten BITs (those with Argentina, Austria, Canada, China, Finland, France, Italy, Norway, Spain, and Turkey) contain no such exception.
Exceptions to benefits under certain other treaties	The 1992 model BIT provides that the MFN regime will not apply to benefits under free trade agreements, customs or economic unions, as well as under double-taxation treaties and other fiscal agreements. The 2001 model adds to this list of carve-outs any agreements with former republics of the USSR. It also provides that the contracting parties will accord to each other a regime no more favourable than that imposed by the WTO (see, eg, BITs with Venezuela, Jordan and Singapore). Most Russian BITs contain exceptions along these lines. The 2016 Guidelines specify that an MFN clause cannot be used to import dispute resolution mechanisms from other treaties.

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	Most Russian BITs contain a full protection and security guarantee (with the exception of the BIT with Singapore). However, the precise formulation varies slightly from treaty to treaty. The 1992 model refers to 'full and unconditional protection in accordance with legislation [of the host state]', while the 2001 model BIT stipulates that the host state 'guarantees full protection, in accordance with its legislation, of investments in its territory by investors of the other Contracting Party'. The slightly narrowed protection and security guarantee of the 2001 model has been used in many recent BITs (including those with Armenia, Indonesia, Syria and Zimbabwe), while the somewhat more robust 1992 formulation has been incorporated into older treaties (eg, the BITs with Albania and Slovakia). Some BITs limit the protection guarantee to 'legal protection' (eg, the BIT with Kazakhstan). The 2016 Guidelines do not envisage including the full protection and security guarantee in future BITs.

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

Issue	Distinguishing features of any 'umbrella clause'
Scope	The 1992 and 2001 model BITs, like the majority of Russian BITs, do not include umbrella clauses, and the 2016 Guidelines do not envisage the inclusion of such clauses in Russia's future BITs. Only 12 Russian BITs in force contain umbrella clauses (those with France, China, Germany, Greece, Denmark, Japan, Korea, Kuwait, the Netherlands, Switzerland, Turkey and the UK).
Wording	The few Russian BITs that contain umbrella clauses stipulate that the host state shall observe 'any obligation' it may have 'entered into with regard to' investments of the other contracting party's investors.

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

Issue	Other substantive protections
Armed conflict/civil unrest	The 2001 Russian model BIT, unlike its 1992 predecessor, introduces 'most favoured nation' treatment with respect to compensation paid to local investors or third-party nationals in the case of armed conflict, civil unrest or similar circumstances. This guarantee appears in many of the BITs that the Russian Federation has concluded since 2001 (including treaties with Venezuela, Libya, Syria and Yemen), as well as in certain earlier treaties (such as the BITs with Canada, Italy and the UK). The 2016 Guidelines also recommend that such a provision be included.[19]
Free transfer of payments	The free transfer of payments guarantee is typical of Russian investment treaties, and is found in the 1992 and 2001 model BITs, in the 2016 Guidelines and virtually all Russian BITs in force. The guarantee generally specifies that transfers should be permitted in a convertible currency. This right of the investor is usually subject to the satisfaction of applicable tax requirements. Some BITs also stipulate that the transfer be made in accordance with the exchange regulations in force in the host state (including the BITs with Belgium/Luxembourg and Denmark).

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

Neither the 1992 nor the 2001 Model BIT includes carve-outs, non-precluded measures clauses or denial of benefits clauses. Such provisions are found in some Russian treaties, presumably where the other country signing the treaty envisaged these limitations in its own model.

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
Scope of arbitration clause	A number of Russian BITs concluded in the late 1980s and in the 1990s include an arbitration clause of limited scope, providing consent to resolve only disputes related to the 'amount or mode of payment of compensation for expropriation' (the BITs with Belgium/Luxembourg, Finland and Spain). The scope of the arbitration clause of several other BITs is limited to questions regarding the breach of the free transfer provision, as well as the amount of compensation for expropriation (the BITs with Austria, Germany, Switzerland, Korea, the Netherlands and the UK). Claimants in a number of cases have argued that such apparently narrow arbitration clauses should nevertheless be interpreted to authorise the tribunal to determine whether expropriation has taken place. While this argument was rejected by the tribunal in *Berschader v Russian Federation*,[20] more recently some tribunals have viewed such clauses as sufficiently broad to adjudicate the fact of expropriation as well as appropriate compensation.[21] Claimants have also invoked the most-favoured-nation clauses in Russian treaties to access less restrictive arbitration clauses in other Russian BITs, with varied success.[22] A few Russian BITs have clauses that contain closed lists of issues that can be brought to investor-state arbitration, such as the effects of a measure taken by the host state on the management, use, enjoyment or disposal of an investment (see, eg, BITs with Canada and France). Arbitration clauses in more recent Russian BITs, as well as the 1992 and 2001 model BITs and under the 2016 Guidelines, are broad.
Institutional or ad hoc arbitration	The 1992 model BIT gives the investor the choice between arbitration under the Rules of the Arbitration Institute at the Stockholm Chamber of Commerce (SCC) or ad hoc arbitration under the UNCITRAL Rules. The 2001 model has replaced SCC arbitration with arbitration under the ICSID Convention or the ICSID Additional Facility Rules (in case the ICSID Convention has not entered into force for one or both of the contracting parties when arbitration is initiated). BITs concluded in the 1990s generally provide for SCC arbitration and UNCITRAL ad hoc arbitration (including the BITs with Belgium/Luxembourg, the UK and Spain), while some subsequent BITs provide a choice between ICSID/ICSID Additional Facility arbitration and UNCITRAL ad hoc arbitration (for example, the treaties with Yemen, Syria and Singapore). A number of BITs only provide for ad hoc arbitration: with no rules stipulated (the Netherlands, Switzerland and Germany) or under the UNCITRAL Rules (Canada, France and Egypt). The 2016 Guidelines provide for the possibility of both institutional and ad hoc arbitration, as agreed in future BITs; the Guidelines do not prescribe which institutional rules should be used.

Issue	Procedural rights
Local arbitration as dispute resolution option	Many Russian BITs in force, following the model BITs of 1992 and 2001, include references to a 'competent court of arbitration of the Contracting Party' alongside references to competent state courts as a possible avenue of recourse for the investor (including treaties with Lithuania, the Czech Republic, Italy and South Africa). It is unclear whether this is a reference to the system of Russian state commercial courts (known in Russia for historical reasons as arbitrazh or 'arbitration' courts), or whether this is indeed a submission to the jurisdiction of a local arbitral institution of the host state (such as arbitration under the rules of the Vilnius Court of Commercial Arbitration in the case of the Russian Federation–Lithuania BIT). Given the lack of specificity in indicating the competent local arbitral institution, the better view seems to be that references to a 'competent court of arbitration' of the host state was intended to refer to state economic courts. Furthermore, several BITs (including those with Argentina and Kazakhstan) separately list the option of 'an international arbitration court of one of the chambers of commerce with the consent of both parties to the dispute'.
Cooling-off periods	The 1992 and 2001 model BITs both impose six-month cooling-off periods, and the 2016 Guidelines similarly recommend the inclusion of such a period in Russia's BITs. Most Russian BITs in force contain a six-month cooling-off period, with the exception of the BITs with Austria, Finland, the Republic of Korea and the UK, which provide for a three-month cooling-off period, and the Venezuela BIT, which stipulates a five-month cooling-off period and an additional three-month period from the notice of the dispute for the parties to agree on a dispute resolution procedure. The Japan BIT does not impose a specific cooling-off period. Unusually, the 2016 Guidelines also suggest that future BITs impose a statute of limitations on treaty claims, whereby a notice of dispute cannot be sent more than two years after the investor learnt or should have learnt about the events giving rise to the claim; once a notice has been sent, arbitration would have to be initiated within three years of the notice.
Fork-in-the-road provisions	Fork-in-the-road provisions are uncommon in Russian BITs,[23] although the 2001 model BIT requires that the investor choose between domestic litigation/arbitration and international arbitration (similar provisions are contained in the BITs with Angola, Bulgaria, China, Japan and Nicaragua).
Governing law	The 1992 and 2001 model BITs, as well as the 2016 Guidelines, do not specify what law is to be applied by the arbitral tribunal, and neither do most of Russia's BITs. Several Russian BITs provide that the tribunal should apply, in addition to the treaty itself, the local law of the state parties and general principles of public international law (the treaties with Austria, Belgium and Luxembourg, China and Spain). The BIT with Italy indicates that the tribunal should apply the treaty itself and general principles of international law, while the BIT with the Netherlands stipulates that the tribunal must make its decision 'on the basis of respect for the law'.
Suspension of the arbitration pending state consultations	The 2016 Guidelines recommend that future BITs provide for the possibility of consultations between state parties to the BIT with a view to rendering a binding interpretation of the provisions of the BIT raised in a dispute. Such consultations can be initiated at any time after the host state is notified of the dispute. In a novel development, no arbitration can be commenced pending the outcome of such consultations: if the arbitration has already been commenced it shall be suspended until the consultations have concluded. It remains to be seen whether such provisions will be included in future Russian BITs.

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

The Russian Federation has taken no official position with respect to standing dispute resolution bodies. However, none of its investment treaties envisage such dispute resolution procedures, nor has the Russian Federation been seriously considered as a participant in prominent multilateral conventions that are intended in due course to incorporate them.

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

The Russian government has not indicated that it will not renew its investment treaties or that it will seek to renegotiate them. See also question 21.

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	A notice of dispute against the Russian Federation should be sent to the Ministry of Justice.

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

Government department that manages investment treaty arbitrations	Pursuant to Presidential Order No. 271 dated 28 May 2018, the Ministry of Justice is responsible for representing the Russian Federation in international arbitrations.

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	The Russian government has typically used external counsel in investment treaty arbitrations.[24] As part of a policy for reducing the government's reliance on foreign advisers ('import replacement'), the Russian government sought advice on investment treaty disputes from the government-affiliated International Centre for Legal Defence.[25]

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	Russia signed the Washington Convention on 16 June 1992, but has not ratified it.

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	Russia is a state successor to the USSR, which signed and ratified the New York Convention by Order of the Presidium of the Supreme Council of the USSR of 10 August 1960. The New York Convention is currently implemented by the Law on International Commercial Arbitration, 7 July 1993 (as amended) and the Commercial Arbitrazh Procedure Code, Chapter 31.

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

Legislation governing non-ICSID arbitrations	Russia does not have a law that would specifically govern investment treaty arbitration. Any investment treaty arbitration, whether ICSID or non-ICSID, seated within its territory would be governed by the Law on International Commercial Arbitration, 7 July 1993 (as amended). The applicable legal regime would generally be the same as for commercial arbitration.

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	Russia appears to have failed to honour all of the awards in the public domain that have been rendered against it. It has challenged awards in local courts at the seat of arbitration (eg, in Swedish courts in the case of *RosInvestCo v Russian Federation*),[26] and has vigorously resisted the seizure of its assets by foreign courts pursuant to arbitral awards against it (eg, in German and Swedish courts in the case of *Sedelmayer v Russian Federation*).[27] On 18 July 2014, the Tribunal in the three parallel Yukos arbitrations against Russia brought under the Energy Charter Treaty has rendered the largest ever awards in the history of international arbitration (totalling US$50.2 billion in damages).[28] The Russian government challenged these awards in Dutch courts, The Hague being the seat of those arbitrations. On 20 April 2016, the District Court in The Hague set them aside, holding that the Tribunal could not have established jurisdiction based on the provisional application of the Energy Charter Treaty. Russia has also resisted the enforcement of the Yukos awards in a number of jurisdictions, and the Yukos claimants halted their attempts when The Hague District Court set the awards aside. On 18 February 2020, the Hague Court of Appeal reversed the lower court's judgment and hence reinstated the awards. The Russian Federation has filed an appeal with the Dutch Supreme Court against the Court of Appeal in The Hague's decision; this appeal is currently pending.

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

Attitude of government towards investment treaty arbitration	The attitude of the Russian government towards investment treaty arbitration is complex. On one hand, it has found itself at the receiving end of a number of investment treaty claims, some of particular political sensitivity (such as the multiple claims filed in relation to the Yukos saga or to the expropriation of assets in Crimea).[29] Russian officials have condemned, citing sovereign immunity, the enforcement of such awards against Russian state assets.[30] Most recently, the Russian government has condemned the awards against it in the Yukos-related arbitrations as politically motivated.[31] While the Russian government chose, until recently, not to appear in the arbitrations arising out of the Crimean expropriations, it changed its strategy in mid-2019, appearing in the proceedings that were still pending and seeking the revision or set aside of awards already rendered.[32] It is understood that Russia has refused to ratify the BIT with Cyprus and the Energy Charter Treaty because of the risk of claims under these treaties.[33] The Energy Charter Treaty was signed by the Russian Federation and provisionally applied until 18 October 2009, but it is not currently in force. On the other hand, the government has recognised the importance of investment treaty arbitration in protecting the rights of Russian investors abroad and has continued actively to negotiate robust investment protection treaties with jurisdictions it views as target locations for Russian investment.[34] The 2016 Guidelines prioritise the conclusion of BITs with countries where Russian investors have significant commercial interests.[35]

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	Russian courts have never had to deal with an investment treaty arbitration seated in Russia. On 11 March 2019, the Arbitrazh Court for the Stavropol Region enforced the award in Tatneft v Ukraine against Ukraine's property in that region.[36] This is the first time that a Russian court has been called upon to enforce an investment treaty award. The decision of the Arbitrazh Court for the Stavropol Region followed an initial judgment of the Arbitrazh Court of Moscow which refused Tatneft's enforcement bid, primarily on the grounds of sovereign immunity;[37] however, the latter judgment was overruled by the Moscow circuit court.[38] Russian courts have never been asked to enforce an award against the Russian Federation.

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			Procedural rights	
	FET	Expropriation	Other	Local courts	Arbitration
Federal law of 9 July 1999 No. 160-FZ on foreign investments into the Russian Federation (as amended)	No	Yes[39]	Yes (protection and security; tax stability for up to seven years; free transfer of payments and other protections)	When provided for by law or an international treaty	When provided for by law or an international treaty
Federal law of 1 April 2020 No. 69-FZ on protection and promotion of investments in the Russian Federation	N/A	N/A	The Law provides that Russian organisations implementing investment projects in Russia (including foreign-owned companies) may enter into agreements for the promotion and protection of investments with Russia or its constituent entities. In exchange for the organisation's commitment to invest over a certain threshold, the legal and regulatory regime applicable to such organisations may be stabilised, including in respect of taxes, customs duties and certain regulatory matters.	By default	If agreed between the parties. The arbitration must be seated in Russia and administered by a permanent arbitral institution (as defined in the Russian legislation, ie, an institution holding a special permit from the Russian government or exempted from that requirement).
Federal law of 25 February 1999 No. 39-FZ on investment activity in the Russian Federation in the form of capital investments (as amended)	No	Does not prohibit expropriation, but states that investments can only be nationalised if advance and equivalent compensation is paid.	Yes (national treatment; tax stability for up to seven years)	When provided for by law or an international treaty	When provided for by law or an international treaty

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
Multilateral Investment Guarantee Agency	Russia has ratified the Convention establishing the Multilateral Investment Guarantee Agency (MIGA) (Seoul, 11 October 1985).[40] Under the treaty Russian nationals and corporates are eligible to acquire, for the payment of a premium, political risk insurance from MIGA in respect of investments made in certain developing states provided that certain conditions are met. To be eligible for assistance, the investment must be medium to long term in nature, support the host country's development goals, comply with MIGA's Policy on Social and Environmental Sustainability and anti-corruption and fraud standards, and also be financially viable.

Relevant guarantee scheme	Qualifying criteria, substantive protections provided and practical considerations
The Russian Agency for Export Credit and Investment Insurance (EXIAR)	EXIAR, which was established by Russian Government Decree No. 964 dated 22 November 2011, is the Russian government's export credit agency. It insures exports of Russian goods and services abroad, provides export finance and insures Russian investments overseas. A Russian investor can insure funds invested overseas (such as investments into the statutory capital of local subsidiaries or shareholder loans) as well as an appropriate return on investments against a loss of control and/or ownership over investments or against the impossibility to conduct business activity as a result of political risks in the host state (for example, expropriation, nationalisation, moratorium, embargo, war, military operations, revolution or changes in legislation).

Awards

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

Awards
Sedelmayer v Russian Federation, ad hoc arbitration, Final Award, 7 July 1998.
Iurii Bogdanov, Agurdino-Invest Ltd and Agurdino-Chimia JSC v Republic of Moldova (SCC), Final Award, 22 September 2005.
Berschader and Berschader v Russian Federation, (SCC Case No 080/2004), Final Award, 21 April 2006.
RosInvestCo UK Ltd v Russian Federation (SCC Case No. Abr. V 079/2005), Award on Jurisdiction, 5 October 2007.
TSIKInvest LLC v Moldova (SCC Emergency Arbitration EA 2014/053), Emergency Decision on Interim measures, 29 April 2014.
RosInvestCo UK Ltd v Russian Federation, (SCC Case No. Abr. V 079/2005), Final Award, 12 September 2010.
Region of Kaliningrad v Lithuania (ICC) Final Award, 28 January 2009.
Yukos Universal Ltd v Russian Federation (PCA Case No. AA 227), UNCITRAL ad hoc arbitration, Interim Award on Jurisdiction and Admissibility, 30 November 2009.
Veteran Petroleum Ltd v Russian Federation (PCA Case No. AA 228), UNCITRAL ad hoc arbitration, Interim Award on Jurisdiction and Admissibility, 30 November 2009.
Hulley Enterprises Ltd v Russian Federation (PCA Case No. AA 226), UNCITRAL ad hoc arbitration, Interim Award on Jurisdiction and Admissibility, 30 November 2009.
Renta 4 SVSA and ors v Russian Federation (SCC Case No 24/2007), Award on Preliminary Objections, 20 March 2009.
Quasar de Valores SICA SA (formerly Renta 4) and ors v Russian Federation (SCC Case No 24/2007), Final Award, 20 July 2012.
Yury Bogdanov v Republic of Moldova (SCC Arbitration No. V (114/2009)), Final Award, 30 March 2010
Tatneft v Ukraine, UNCITRAL ad hoc arbitration, Partial Award on Jurisdiction, 28 September 2010 (not public)
Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v The Government of Mongolia, UNCITRAL ad hoc arbitration, Award on Jurisdiction and Liability, 28 April 2011
Cesare Galdabini Spa v Russian Federation, UNCITRAL ad hoc arbitration, Final Award, May 2011 (not public)
Mobile TeleSystems OJSC v Turkmenistan, ICSID Case No. ARB(AF)/11/4, (discontinued on 21 September 2012).
Yuri Bogdanov and Yulia Bogdanova v Moldova, SCC Case No. 091/2012, Final Award, 16 April 2013
Russian Federation v RosInvestCo Ltd, SVEA Court Ruling, 5 September 2013
Yukos Universal Ltd v Russian Federation (PCA Case No. AA 227), UNCITRAL ad hoc arbitration, Final Award, 18 July 2014
Veteran Petroleum Ltd v Russian Federation (PCA Case No. AA 228), UNCITRAL ad hoc arbitration, Final Award, 18 July 2014
Hulley Enterprises Ltd v Russian Federation (PCA Case No. AA 226), UNCITRAL ad hoc arbitration, Final Award, 18 July 2014
Valle Esina SpA v Russian Federation, UNCITRAL ad hoc arbitration, Award, June 2014 (not public)
Gazprom v Lithuania (PCA Case No. 2011-16), UNCITRAL ad hoc arbitration, discontinued in April 2015
Tatneft v Ukraine, UNCITRAL ad hoc arbitration, Award on the merits, 29 July 2014.
Russian Federation v GBI 9000 SICAV SA and ors, Stockholm District Court, Judgment, 11 September 2014
Sana Consulting v Russian Federation, UNCITRAL ad hoc arbitration, Final Award, June 2015 (not public)
Russian Federation v GBI 9000 SICAV SA and ors, Svea Court of Appeal, Judgment, 18 January 201.
Russian Federation v Veteran Petroleum and ors, The Hague District Court, Judgment, 20 April 2016
Russian Federation v Hulley Enterprises Ltd, The Hague District Court, Judgment, 20 April 2016
Russian Federation v Yukos Universal Limited, The Hague District Court, Judgment, 20 April 2016
Evrobalt LLC v Moldova (SCC Emergency Arbitration EA 2016/082), Award on Emergency Measures, 30 May 2016
Kompozit LLC v Moldova (SCC Emergency Arbitration EA 2016/082), Emergency Award on Interim Measures, 14 June 2016.

Awards
Igor Kolomoisky and Aeroport Belbek LLC v Russian Federation, UNCITRAL (PCA Case No. 2015-07), Award on Jurisdiction, 24 February 2017 (not public)
Privatbank and Finance Company Finilon LLC v Russian Federation, UNCITRAL (PCA Case No. 2015-21), Award on Jurisdiction, 24 February 2017.
Everest Estate LLC and others v Russian Federation, UNCITRAL (PCA Case No. 2015-36), Decision on Jurisdiction, 20 March 2017 (not public)
Luxtona Ltd v Russian Federation (UNCITRAL), Award on Jurisdiction, 22 March 2017
Stabil LLC and others v Russian Federation, UNCITRAL (PCA Case No. 2015-35), Award on Jurisdiction, 26 June 2017
PJSC Ukrnafta v Russian Federation, UNCITRAL (PCA Case No. 2015-34), Award on Jurisdiction, 26 June 2017
Evrobalt LLC v Moldova (SCC Emergency Arbitration EA 2016/082), Award, 2017 (not public, exact date unknown).
Kompozit LLC v Moldova (SCC Emergency Arbitration EA 2016/082), Award, 2017 (not public, exact date unknown.
Everest Estate LLC and others v Russian Federation, UNCITRAL (PCA Case No. 2015-36), Final Award, 2 May 2018 (not public)
Russian Federation v GBI 9000 SICAV SA and ors, Svea Court of Appeal, Judgment, 7 June 2018
Everest and os v Russian Federation, Kyiv Court of Appeal, 25 September 2018
Tatneft v Ukraine, Arbitration Court of Moscow City, City of Moscow Case No A40-67511 / 17-29-659
Oschadbank v Russian Federation, (UNCITRAL ad hoc arbitration), Final Award, 26 November 2018
Oschadbank v Russian Federation, Decision of the Kyiv Court of Appeal, 17 July 2019
Russian Federation v Oschadbank, Decision, Paris Court of Appeal, 22 October 2019
Igor Kolomoisky and Aeroport Belbek LLC v Russian Federation, (PCA Case No. 2015-07), Award on liability, jurisdiction and admissibility, 4 February 2019
PJSC Ukrnafta v Russian Federation, (PCA Case No. 2015-34), UNCITRAL ad hoc arbitration, Final Award, 12 April 2019
Russian Federation v PJSC Ukrnafta, Swiss Federal Tribunal, 12 December 2019
Stabil LLC and others v Russian Federation (PCA Case No. 2015-35), Final Award, 12 April 2019
Oleg Deripaska v Montenegro, (PCA Case No. 2017-07), Award on Jurisdiction, 15 October 2019
PJSC Gazprom v Ukraine (PCA Case No 2019-10), Settlement, 30 December 2019
Tenoch Holdings Limited, Mr Maxim Naumchenko and Mr Andrey Poluektov v The Republic of India (PCA Case No 2013-23), Final award, 20 January 2020 (not public)
Veteran Petroleum Ltd and ors v Russian Federation, Decision, Court of Appeal of The Hague, 18 February 2020
Sergei Viktorovich Pugachev v Russian Federation, UNCITRAL ad hoc arbitration, Award on Jurisdiction, 22 June 2020
Privatbank and Finance Company Finilon LLC v Russian Federation (PCA Case No. 2015-21), Award on liability, jurisdiction and admissibility, 4 February 2019
State Development Corporation "VEB.RF" v Ukraine, SCC Case No. 2019/113 and V2019/088, Partial Award on Preliminary Objections, 31 January 2021
OOO Manolium Processing v The Republic of Belarus, PCA Case No. 2018-06, Final Award, 22 June 2021
Yukos Capital SARL v The Russian Federation, PCA Case No. 2013-31, Final Award, 23 July 2021
Hulley Enterprises Limited (Cyprus), Yukos Universal Limited (Isle of Man) and Veteran Petroleum Limited (Cyprus) v Russia, Supreme Court of the Netherlands, 5 November 2021
Sergei Pugachev v Russian Federation, Decision of the Superior Court of Justice of Madrid, 10 November 2021
Fund for the Protection of Investors' Rights in Foreign States v Lithuania, PCA Case No. 2019-48, Award, 1 July 2022 (not public)
RusHydro v Kyrgyz Republic, PCA Case No. 2018-21, Final Award, 18 July 2022 (not public)
Russian Federation v Everest Estate et al, Russian Federation v Naftogaz, Russian Federation v Privatbank, Russian Federation v Aeroport Belbek and Igor Kolomoisky, Decision of the Hague Court of Appeal, 19 July 2022
Pending proceedings
Luxtona Limited v Russian Federation (PCA Case No .2014-09), UNCITRAL ad hoc arbitration.
Igor Kolomoisky and Aeroport Belbek LLC v Russian Federation (PCA Case No. 2015-07).
Privatbank and Finance Company Finilon LLC v Russian Federation (PCA Case No. 2015-21).
Artashes Rafikovich Amalyan v Russian Federation, UNCITRAL ad hoc arbitration.
Limited Liability Company Luzgor and others v Russian Federation (PCA Case No. 2015-29).
Naftogaz and others v Russian Federation (PCA Case No. 2017-16), UNCITRAL ad hoc arbitration.
Igor Boyko v Ukraine (PCA Case No. 2017-23). *Ministry of Land and Property of the Republic of Tatarstan v Ukraine*, UNCITRAL ad hoc arbitration.
GRAND EXPRESS Non-Public Joint Stock Company v. Republic of Belarus, ICSID Case No. ARB(AF)/18/1
Maria Lazareva v The State of Kuwait, UNCITRAL ad hoc arbitration.
Vnesheconombank v Ukraine (SCC arbitration).
PJSC DTEK Krymenergo v Russian Federation, UNCITRAL ad hoc arbitration.
NPC Ukrenergo v Russian Federation, UNCITRAL ad hoc arbitration.
Severgroup and KN-Holdings v France, UNCITRAL ad hoc arbitration.

Reading List

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

N Rubins, A Nazarov, 'Investment Treaties and the Russian Federation: Baiting the Bear?' (2009), *A Liber Amicorum: Thomas Wälde*.
Sergey Ripinsky, 'Russia' in Chester Brown (ed), *Commentaries on Selected Model Investment Treaties* (2013) pp 593–622.
A Crevon, *Bilateral Investment Treaty Overview – Russian Federation* (2008). Available online at http://oxia.ouplaw.com/view/10.1093/law:iic/ov-ru.document.1/law-iic-ov-ru?rskey=V6mV0I&result=340&prd=IC.
OECD Investment Policy Review of the Russian Federation: Enhancing Policy Transparency, Chapter 5 (OECD 2006).
I Farkhutdinov, Foreign Investments in Russia and International Law (2001) (in Russian).
P Dumberry, 'Requiem for Crimea: Why Tribunals Should Have Declined Jurisdiction over the Claims of Ukrainian Investors against Russian under the Ukraine–Russia BIT' (2018) Volume 9, Issue 3 *Journal of International Dispute Settlement*.
T Voon, A Mitchell, 'Ending International Investment Agreements: Russia's Withdrawal from Participation in the Energy Charter Treaty' (2017) Volume 111 *AJIL* Unbound, pp. 461-466.

Notes

1 Scope of arbitration clause limited to "amount or mode of payment of compensation for expropriation".
2 Date as per the ICSID Database of Bilateral Investment Treaties. According to Russian government sources, the treaty entered into force on 18 August 1991.
3 Scope of arbitration clause limited to "amount or mode of payment of compensation for expropriation".
4 The Energy Charter Treaty was signed by the Russian Federation and provisionally applied until 18 October 2009 inclusive. See www.encharter.org/index.php?id=61&L=0.
5 Amended by a Protocol that entered into force on 13 May 1999.
6 Scope of arbitration clause limited to 'amount or mode of payment of compensation for expropriation'.
7 Scope of arbitration clause limited to questions regarding the breach of the free transfer provision, as well as to the amount and procedure of payment of compensation for expropriation.
8 Scope of arbitration clause limited to questions regarding the breach of the free transfer provision, as well as to the amount of compensation for expropriation.
9 Scope of arbitration clause limited to questions regarding the breach of the free transfer provision, as well as to the amount of compensation for expropriation.
10 Scope of arbitration clause limited to amount or mode of payment of compensation for expropriation.
11 Scope of arbitration clause limited to questions regarding the breach of the free transfer provision, as well as to the amount of compensation for expropriation.
12 Scope of arbitration clause limited to questions regarding the breach of the free transfer provision, as well as to the amount of compensation for expropriation.
13 The Venezuela BIT stipulates a five-month cooling-off period and an additional three-month period from a notice for the parties to agree on a dispute resolution procedure.
14 Model BIT, approved by Resolution of the government of the Russian Federation of 9 June 2001 No. 465, as amended on 11 April 2002 and 17 December 2010.
15 Model BIT, approved by Resolution of the government of the Russian Federation of 11 June 1992 No. 395, as amended on 26 June 1995.
16 The Spanish-language version of the BIT with Argentina also contains a requirement of economic activities in the contracting party, while the Russian version merely refers to the investor having its 'seat' there. Both the Spanish and the Russian versions of the treaty have equal force.
17 Adopted by the government of the Russian Federation on 30 September 2016. These Guidelines supersede the 1992 and 2001 model BITs and lay out recommendations as to the contents of future BITs (rather than set out the text of a model BIT). While the 1992 and 2001 model BITs have now been superseded, they are still considered in this chapter as a number of Russia's BITs have been modelled on them.
18 The tribunal in *Berschader* interpreted such a provision of the Belgium/Luxembourg BIT as applying to indirect investments made through intermediary entities incorporated in third states only, not through entities in the host state or the home state in which the investor is a shareholder. *Berschader and Berschader v Russian Federation* (SCC Case No. 080/2004), Award, 21 April 2006, paras 124–150.
19 2016 Guidelines, clause 33.
20 *Berschader and Berschader v Russian Federation* (SCC Case No 080/2004), Award, 21 April 2006, paras 151–158.
21 *Renta 4 SVSA and ors v Russian Federation* (SCC Case No. 24/2007), Award on Preliminary Objections, 20 March 2009, paras 19–67. However, in a ruling dated 18 January 2016, the Svea Court of Appeal issued a declaratory ruling finding that the tribunal had wrongly assumed jurisdiction. See also *European American Investment Bank AG (Austria) v. Slovak Republic* (PCA Case No. 2010-17), Award on Jurisdiction, 22 October 2012, para 385 (interpreting a similar limitation to the arbitration clause in the Austria–Czechoslovakia BIT) and *Tza Yap Shum v Republic of Peru* (ICSID Case No. ARB/07/6), Decision on Jurisdiction and Competence, 19 June 2009, paras 143–188 (interpreting a similar limitation to the arbitration clause in the China–Peru BIT) and *Sanum Investments Limited v Lao People's Democratic Republic*, UNCITRAL ad hoc arbitration, Award on Jurisdiction, 13 December 2013, paras 322–342 (interpreting a similar limitation to the arbitration clause in the China–Laos BIT). The tribunal in Tza Yap Shum rejected Peru's interpretation of the BIT's dispute settlement clause, according to which the only type of dispute that may be

settled by arbitration is that involving the amount of compensation owed to the investor. The tribunal held that "the broadest interpretation" of this clause should be adopted, whereby the BIT's dispute settlement clause would extend to any issues normally inherent to an expropriation, eg, whether the expropriation had taken place, or whether compensation must be paid in relation to an alleged expropriation. Accordingly, the tribunal determined that it was competent to decide the merits of Mr Shum's expropriation claim. The Sanum tribunal cited the Tza Yap Shum decision with approval and adopted the same reasoning. The decision on jurisdiction in Tza Yap Shum was the subject of annulment proceedings, however, the annulment committee refused to overturn it. *Tza Yap Shum v Republic of Peru* (ICSID Case No. ARB/07/6), Decision on Annulment, 12 February 2015. The Sanum decision on jurisdiction has been upheld by the Court of Appeal of Singapore, Case No. [2016] SGCA 57, 29 September 2016 [2016] SGCA 57 (after it had been criticised and set aside by the Singapore High Court, Case No. [2015] SGHC 15, 20 January 2015 [2015] SGHC 15). The tribunal in a recent case under the China – Mongolia BIT, which contains a similar limitation to the arbitration clause, upheld a 'narrow' reading of the BIT's jurisdictional clause – allowing for arbitration only in relation to the amount of compensation due for an established expropriation: *China Heilongjiang International Economic & Technical Cooperative Corp. and others v Republic of Mongolia* (PCA Case No 2010-20), Award, 30 June 2017.

22 The tribunal in a case brought under the UK–Russia BIT used the MFN clause in that treaty to import a more favourable arbitration clause from the Denmark–Russia BIT in *RosInvestCo UK Ltd v Russian Federation* (SCC Case No. Abr. V 079/2005), Award on Jurisdiction, 5 October 2007, paras 73–74; however, in four other cases tribunals rejected the use of the MFN clause to expand the scope of limited arbitration clauses in this way (*Berschader and Berschader v Russian Federation* (SCC Case No. 080/2004), Award, 21 April 2006, paras 159–208; *Renta 4 SVSA and ors v Russian Federation* (SCC Case No. 24/2007), Award on Preliminary Objections, 20 March 2009, paras 68–120; see also *Tza Yap Shum v Republic of Peru* (ICSID Case No. ARB/07/6), Decision on Jurisdiction and Competence, 19 June 2009, paras 193–220, and *Sanum Investments Limited v Lao People's Democratic Republic*, UNCITRAL ad hoc arbitration, Award on Jurisdiction, 13 December 2013, paras 343–358).

23 See *Yuri Bogdanov and Yulia Bogdanova v Moldova* (SCC Case No. 091/2012), Final Award, 16 April 2013, paras 169–176, considering the effect of the absence of a fork-in-the-road provision in the Moldova–Russia BIT.

24 Public procurement law requires that a tender for legal services be carried out for the appointment of external counsel, but allows the government to appoint a 'sole provider' as a result of such a tender. Federal Law on state orders for the supply of goods, performing works and rendering services for state and municipal needs', 21 July 2005 (as amended), articles 10 and 55(2)(17.1). Cleary Gottlieb Steen & Hamilton LLP was appointed in 2010 as the sole provider of legal services to the Russian government in relation to any proceedings against Russia. Government Decree No. 1775-r, 24 November 2009; Letter by the Ministry of Economic Development No. D02-1147, 12 March 2010. After awards were issued against the Russian Federation in three cases related to *Yukos* under the Energy Charter Treaty, the government appears to have returned to its former practice of issuing formal tenders for representation in investment disputes.

25 See 'A united command centre in Russia will fight the Yukos shareholders', 29 October 2015, www.profi-forex.org/novosti-mira/entry1008272770.html.

26 See *Russian Federation v RosInvestCo Ltd.*, No T 10060-10, SVEA Court Ruling, 5 September 2013.

27 'The building of the Russian trade mission in Sweden was sold for debt', *Vedomosti*, 12 September 2014, https://www.vedomosti.ru/realty/articles/2014/09/12/zdanie-torgpredstva-rossii-v-shvecii-prodano-za-dolgi

28 See *Yukos Universal Ltd v Russian Federation* (PCA Case No. AA 227), UNCITRAL ad hoc arbitration, Final Award, 18 July 2014; *Veteran Petroleum Ltd v Russian Federation* (PCA Case No. AA 228), UNCITRAL ad hoc arbitration, Final Award, 18 July 2014; *Hulley Enterprises Ltd v Russian Federation* (PCA Case No. AA 226), UNCITRAL ad hoc arbitration, Final Award, 18 July 2014.

29 See *Yukos Universal Ltd v. Russian Federation* (Case No. 200.197.079/01), The Hague Court of Appeal, Judgment, 18 February 2020.

30 See, eg, Russian government reaction to Mr Sedelmayer attaching Russian government assets in Germany and Sweden: The Ministry of Foreign Affairs of the Russian Federation, Press Release, Russian MFA Spokesman Andrei Nesterenko Response to Media Query on Situation around Russian House Building in Berlin, 22 September 2009; The Ministry of Foreign Affairs of the Russian Federation, Press Release, Swedish Charge d'Affaires Summoned to the Foreign Ministry, 7 July 2011; The Ministry of Foreign Affairs of the Russian Federation, Press Release, On call of the Swedish Ambassador to the Russian Federation to the Russian Ministry of Foreign Affairs, 20 April 2012.

31 'The Ministry of Finance found 13 flaws in the court's decision on Yukos', Vedomosti, 28 July 2014, www.vedomosti.ru/politics/news/2014/07/28/minfin-rossii-nashel-izyany-v-reshenii-suda-po-isku-eks.

32 See Press Release of the Russian Ministry of Justice, 4 June 2019, http://minjust.gov.ru/ru/novosti/rossiyskaya-federaciya-osparivaet-arbitrazhnye-resheniya-po-iskam-kompaniy-ukrnafta-i-stabil.

33 On 20 August 2009, Russia officially informed the Depository of the Energy Charter Treaty that it did not intend to become a contracting party to it. See www.encharter.org/index.php?id=414. See also: 'Russia has protected itself from investors', *Kommersant*, 12 January 2006.

34 See, eg, Press Release by the Ministry of Economic Development, 26 January 2012 (in relation to the signing of a BIT with Nicaragua); 'Protective measures in foreign trade discussed in the Ministry of Economic Development', 28 July 2009.

35 See Guidelines, Enclosure No. 1.

36 *Tatneft v Ukraine*, Case No. A63-15521/2018, Judgment of the Arbitrazh Court for the Stavropol Region, 11 March 2019. Ukraine unsuccessfully sought to appeal this judgment. See *Tatneft v Ukraine*, Case No. A63-15521/2018, Decision of the Arbitrazh Circuit Court for the North Caucasus Region, 21 June 2019.

37 *Tatneft v Ukraine*, Case No. A40-67511/17-29-659, Judgment of the Arbitrazh Court of Moscow, 4 July 2017.

38 *Tatneft v Ukraine*, Case No. A40-67511/2017, Decision of the Arbitrazh Circuit Court for the Moscow Region, 29 August 2017. This decision of the Arbitrazh Circuit Court for the Moscow Region was left untouched by the Russian Supreme Court, which refused to consider Ukraine's appeal on 31 October 2017.

39 The Law on Foreign Investments prohibits forced taking of the property of foreign investors, with the exception of cases when such a taking is allowed by law or international treaty; it provides for the payment of compensation, but does not state that such payment should be prompt.

40 Resolution of the Supreme Council of the Russian Federation N-4186-1, 22 December 1992. The Convention entered into force for Russia on 29 December 1992.

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He specialises in disputes in the former Soviet Union and investment treaty arbitration. In addition to advising clients, Noah has served as arbitrator in more than 40 disputes, conducted under the ICC, ICSID, LCIA, VIAC, ICAC, SCC and UNCITRAL rules.

Noah is widely published in the field of arbitration, and is a frequent conference speaker. He is a lecturer at the University of Dundee, Scotland, and has also served as an adjunct professor of law at Georgetown Law Center in Washington, DC. His most recent publications include the monographs Investment Treaty Arbitration (with Dugan, Wallace and Sabahi), ICSID Decisions 1974–2002 (with Happ), ICSID Decisions 2003–2007 (with Happ), and International Investment, Political Risk and Dispute Resolution: A Practitioner's Guide (with Kinsella).

Noah received a master's degree in dispute resolution and public international law from the Fletcher School of Law and Diplomacy, a JD from Harvard Law School, and a bachelor's degree in international relations from Brown University. He speaks fluent English, French and Russian, and also speaks Spanish, Hebrew and some Turkish.

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Evgeniya Rubinina is a partner at Enyo Law LLP in London. She focuses on investment arbitration, public international law and international commercial arbitration. Her experience includes representing both investors and states in investment treaty arbitrations under bilateral investment treaties, as well as acting in international commercial disputes.

Evgeniya previously practised in the Paris and London offices of Freshfields Bruckhaus Deringer LLP. Prior to joining Freshfields, Evgeniya worked for the World Bank Group's International Centre for Settlement of Investment Disputes, where she served as administrative secretary to arbitral tribunals and assisted with arbitrations under ICSID and UNCITRAL rules. She also worked for the Permanent Court of Arbitration in The Hague and for an international law firm in Moscow. Evgeniya serves on the Peer Review Board of the ICSID Review and of the Cambridge Journal of International and Comparative Law. She has published on topics related to both investment and commercial arbitration.

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Evgeniya speaks English, French and Russian.