GAR INVESTMENT TREATY ARBITRATION

Belgium and Luxembourg

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

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?

21. Describe the national government’s attitude towards investment treaty arbitration.

22. To what extent have local courts been supportive and respectful of investment treaty arbitration, including the enforcement of awards?

**National legislation protecting inward investments**

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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?

**Awards**

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

**Reading List**

26. Please provide a list of any articles or books that discuss this country’s investment treaties.
## Overview of investment treaty programme

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

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Qualifying criteria – any unique or distinguishing features?

2 What are the distinguishing features of the definition of “investor” in this country’s investment treaties?

Article 1 of the 2002 BLEU (Belgium-Luxembourg Economic Union) Model BIT (2002 Model BIT) defines ‘investors’ as including [i] ‘nationals’, ie, any natural person that is considered according to the legislation of the contracting parties as a ‘citizen’ of Belgium and Luxembourg, as well as [ii] ‘companies’, ie, any legal person incorporated in Belgium or Luxembourg and having its ‘registered office’ in that country. The 2019 BLEU Model BIT (2019 Model BIT) changed the definition of investors as ‘legal persons’ to include that a legal person must have its ‘headquarters’ or its real economic activities in Belgium or Luxembourg.

Moreover, according to the 2019 Model BIT, ‘enterprises’ incorporated in Belgium or Luxembourg but ‘effectively controlled, directly or indirectly, by nationals or enterprises of the other Contracting Party’ constitute enterprises of the latter.

The BLEU has not signed any BITs since 2010. Therefore, none of Belgium’s or Luxembourg’s existing BITs are based on the 2019 Model BIT.

<table>
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<th>BIT contracting party</th>
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The information contained in this table is publicly available at the following sources: UNCTAD Investment Policy Hub (investmentpolicy.unctad.org) accessed 20 June 2022; ICSID (icsid.worldbank.org) accessed 20 June 2022; the treaty database of the Belgian Ministry of Foreign Affairs (diplomatie.belgium.be/fr/traites/base-de-donnees-des-traites); the Official Journal of the Grand Duchy of Luxembourg (legilux.public.lu).
### Issue | Distinguishing features in relation to the definition of ‘investor’
--- | ---
**The scope of ‘legal person’ as investor** | BLEU BITs normally require that Belgian and Luxembourg legal persons be incorporated in accordance with the laws of their home state and have their seat or registered office in Belgium or Luxembourg. Notable exceptions are the Chile, Colombia, Congo and Croatia BITs. These BITs require that the legal persons also pursue real, effective or substantial economic or business activities in Belgium or Luxembourg.

**Corporate forms of a ‘legal person’ as investor** | BLEU BITs do not explicitly list the types of legal persons qualifying as investors. The Korea, Kuwait, Pakistan and Singapore BITs provide a non-exhaustive list. The Costa Rica BIT explicitly includes non-profit organisations. The Kuwait, Qatar and UAE BITs explicitly include the state, governmental agencies and state-owned entities of Belgium and Luxembourg in the definition of ‘investor’.

**Investor’s control in a third-party company** | The China, Kazakhstan, Morocco, Mozambique, Pakistan, Peru, Romania, Russia, Serbia, Slovenia and Thailand BITs explicitly provide protection to investments where the Belgian or Luxembourg investor holds and controls its investment through a company incorporated in a country non-party to the BIT. This benefit is, however, subject to conditions in some of these BITs. The Barbados BIT treats companies incorporated under Belgian or Luxembourg law but effectively controlled by Barbados nationals as investors of Barbados. The ECT contains a denial-of-benefits clause that allows Belgium and Luxembourg to deny, under certain conditions, the benefits of the ECT to entities and investments owned by nationals of countries that are not parties to the ECT.

**Restrictions to multiple treaty claims** | Only some BITs (eg, the Morocco and Slovenia BITs) explicitly preclude investors from bringing certain claims under the BIT insofar as they have brought the same claim under the BIT of another country.

### 3 What are the distinguishing features of the definition of “investment” in this country’s investment treaties?

The 2002 Model BIT contains a broad definition of ‘investments’ as ‘any kind of assets and any direct or indirect contributions in cash, in kind or in services, invested or reinvested in any sector of economic activity’. The definition is complemented by a non-exhaustive list of protected investments followed by a clarification according to which ‘[c]hanges in the legal form in which assets and capital have been invested or reinvested shall not affect their designation as “investments”’.

The 2019 Model BIT provides a narrower definition of ‘investment’. The investment must be made for ‘a certain duration’ and comprise a ‘commitment of capital or other resources’, the ‘expectation of gain or profit’ or the ‘assumption of risk’. The definition is followed by a more precise non-exhaustive list of investments as well as an exhaustive list of claims to money that do not constitute investments.

The 2002 Model BIT does not include a condition regarding the legality of the investment in the definition. It provides that contracting parties shall accept investments ‘in accordance with its legislation’.

By contrast, the 2019 Model BIT defines protected or ‘covered’ investments as investments that, inter alia, have been ‘made in accordance with applicable laws at the time the investment [was] made’.

### Issue | Distinguishing features in relation to the concept of ‘investment’
--- | ---
**Scope of ‘assets’** | Typically, BLEU BITs provide a broad definition of an investment that refers to ‘every kind of asset’. More recent BITs define investments as assets and contributions to investments made into ‘any sector of economic activity’ (eg, Benin, Bosnia and Herzegovina, Botswana, Brazil, Costa Rica, Madagascar, Uzbekistan, Venezuela or Vietnam BITs). Some BITs require investments to be made ‘in view of establishing sustainable economic links’ (Mexico BIT), as medium or long-term contributions intended for the development of economic activity acknowledged to be in the national interest (Rwanda BIT), or as requiring the assumption of reasonable risk (Colombia BIT).

Few BITs also provide for the law of the host state to determine the ‘content and scope of rights’ of the assets listed as qualified investments (eg, the Argentina and Gabon BITs). The Sri Lanka BIT protects only investments made in Sri Lanka that have been ‘specifically approved in writing’ by Sri Lanka.

**Exclusion of certain assets** | Only a few BLEU BITs explicitly exclude certain assets from their scope (Mexico and Peru BITs). The Colombia BIT explicitly excludes investments made with ‘capital or assets derived from illegal activities’.

**Change of legal form after the initial investment** | BLEU BITs usually contain a provision explicitly granting protection to an investment despite its change of form after the initial investment. BLEU BITs without such a provision are rare (eg, the Bangladesh BIT). Several BITs only extend the protection to those investments provided that the change of form is not contrary to the law of the host state or has been approved by the relevant authorities (eg, the Colombia, Liberia, Madagascar, Malaysia, Oman, Pakistan, Tunisia and UAE BITs).

**Legality of investment** | Several BLEU BITs contain provisions limiting protection only to lawful investments. Those provisions are often explicitly included within the definition of ‘investment’ itself (eg, Albania, Argentina, China (2005), Colombia, Costa Rica, Egypt, Liberia, Malaysia, Mongolia, Morocco, North Macedonia, Oman, Philippines, Rwanda (1983), Saudi Arabia, Serbia and Yemen BITs).
GAR Investment Treaty Arbitration – Belgium and Luxembourg

<table>
<thead>
<tr>
<th>Issue</th>
<th>Distinguishing features in relation to the concept of ‘investment’</th>
</tr>
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<tr>
<td>Commencement of coverage</td>
<td>BLEU BITs usually contain a provision granting protection to investments made prior to the entry into force of the BIT or the retroactive beginning of the investment protection. In several instances, such protection is subject to a condition regarding the investment’s legality (eg, Azerbaijan, Benin, Georgia, Lebanon, Malaysia, Pakistan, Peru, Philippines and Qatar BITs). Several BITs, however, do not apply to disputes that arose prior to the BIT’s entry into force (eg, Egypt, Guatemala, Peru and Zambia BITs).</td>
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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?

The 2002 Model BIT does not define ‘fair and equitable treatment’, providing, in article 3(1) that ‘[a]ll investments, whether direct or indirect, made by investors of one Contracting Party shall enjoy fair and equitable treatment in the territory of the other Contracting Party’.

The 2019 Model BIT provides in article 4(2) that ‘[i]nvestments made by investors of one Contracting Party in the territory of the other Contracting Party shall at all times be accorded fair and equitable treatment [...]’.

Article 4(3) further specifies that the FET standard is breached when a measure or series of measures constitutes: (i) ‘denial of justice in criminal, civil or administrative proceedings’; (ii) a ‘fundamental breach of due process, including a fundamental breach of transparency and obstacles to effective access to justice, in judicial or administrative proceedings’; (iii) ‘manifest arbitrariness’; (iv) ‘targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief’; or (v) ‘harassment, coercion, abuse of power or similar bad faith conduct’.

Article 4(4) provides that, in assessing whether the FET standard has been breached, a tribunal may take into account whether a contracting party made ‘a specific representation to an investor to induce a covered investment, that created a legitimate expectation, and upon which the investor relied in deciding to make or maintain the covered investment, but [which] the Party subsequently frustrated’.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Distinguishing features of the fair and equitable treatment standard</th>
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</thead>
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<tr>
<td>Illustration of the FET standard</td>
<td>The vast majority of the BLEU BITs and the ECT provide that investments made by investors of a contracting party on the territory of the other contracting party shall be accorded ‘fair and equitable treatment’, without any definition being given. A majority of such treaties also provide that this treatment shall not be less favourable than that accorded to investors of any third state/of the most favoured nation and, in no case, less favourable than the treatment ‘recognized under international law’. Some such treaties (eg, the Albania, Brazil, Burundi and Chile BITs) add that the treatment cannot be less favourable than that accorded to the host state’s own investors.</td>
</tr>
</tbody>
</table>
| International law/Customary international law | Some of the BLEU BITs define the FET standard by reference to international law or customary international law. For instance
- The Colombia BIT provides that investments shall ‘enjoy at all times, in accordance with customary international law, fair and equitable treatment’. It also clarifies, ‘for greater certainty’, that the concept of FET does not require ‘additional treatment to that required under the minimum standard of treatment of aliens in accordance with the standard of customary international law and general principles of law embodied in the main legal systems of the world’.
- The Kuwait BIT provides that investment shall be accorded FET ‘in accordance with principles of international law and the provisions of this Agreement’.
- The Liberia BIT provides that FET shall be ‘in accordance with the principles of international law’.
- The Pakistan BIT provides that FET ‘shall be consistent with the universally recognised principles of international law’.
- The Peru BIT provides that FET shall be ‘in accordance with customary international law’.
- The Turkey BIT provides that FET shall be ‘in accordance with international law principles’.
- The Venezuela BIT provides that FET shall be ‘according to international law’.

Additional clarifications | Some BITs provide clarifications as to the substantive content of the FET standard:
- The BITs with Bulgaria, Cuba, Hungary, Poland, Russia and Singapore provide that investments will benefit from FET, precluding any illegitimate or unjustified or discriminatory measures that may hinder their management, maintenance, use, enjoyment or disposal. |
Distinguishing features of the fair and equitable treatment standard

Most BLEU BITs provide that the protections encompassed under the FET standard do not cover the rights and privileges that a contracting party (the BLEU) accords to investors of a third state as a result of its participation in, or association with, a free trade zone, a customs union, a common market or other regional economic organisation.12 Some BITs (eg, the Albania, Bolivia, Brazil, Bulgaria, Chile and Cyprus BITs) also provide that the protections provided under the FET standard do not apply to tax matters. The Rwanda BIT provides that the FET standard does not extend to benefits that may be conferred by a contracting party on a neighbouring country or a third developing country.

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

Article 5[2] of the 2002 Model BIT provides that investments may be expropriated only if required by ‘reasons of public purpose, security or national interest’, and if: (i) the measures are taken under due process of law; (ii) the measures are not discriminatory or contrary to any specific commitments; and (iii) the measures are accompanied by provisions for the payment of adequate and effective compensation. The compensation shall amount to the ‘actual value’ of the investments the day before the measures were taken or became public, shall be paid without delay and be freely transferable. It shall also bear interest at a normal commercial rate from the date of determination until payment.

Article 5[5] of the 2002 Model BIT also provides that ‘[i]n respect of matters dealt with in this Article’, investors of a Contracting Party shall be granted treatment that is equal to that accorded to investors of the most-favoured-nation, and in no case less favourable than that recognised under international law.

Article 7 of the 2019 Model BIT provides that the contracting parties will not ‘nationalize or expropriate’ an investment ‘either directly or indirectly through measures having an effect equivalent to nationalisation or expropriation’ except: (i) for a public purpose; (ii) under due process of law; (iii) in a non-discriminatory manner; and (iv) against payment of prompt, adequate and effective compensation.

Article 8[1][a] of the 2019 Model BIT defines direct expropriation to refer to situations when the investment ‘is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure’. Indirect expropriation refers to situations where ‘a measure or series of measures by a Contracting Party has an effect equivalent to direct expropriation’: ‘it substantially deprives the investor of the fundamental attributes of property in its investment, including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure’. Article 8[2] provides that, in order to determine if a measure or series of measures constitutes an indirect expropriation, a fact based inquiry must be conducted and the tribunal must take into consideration the following factors: (i) the economic impact of the measure or series of measures; (ii) their duration; (iii) the extent to which the measure[s] interfered with the investor’s legitimate expectations; and (iv) the object, context and intent of the measure[s].

The compensation to be paid for expropriation must amount to ‘the fair market value of the investment at the time immediately before the expropriation or the impending expropriation became public knowledge, whichever is earlier, plus interest at a normal commercial rate, from the date of expropriation until the date of payment’. The compensation must be effectively realisable and freely transferable, made without delay, and the investor must have the right to the prompt review of its claim and of the valuation of its investment by a judicial or other independent authority of the contracting party.

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

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<td>Many of the BLEU BITs (eg, Cuba, Estonia and Lebanon BITs) provide that, for matters dealt with in the respective article regarding expropriation, investors shall be granted treatment no less favourable than that accorded to investors of any third state, and not lower than that recognised under international law.</td>
</tr>
<tr>
<td>Expropriation for a public purpose</td>
<td>Most of the BLEU BITs provide that expropriation is only possible for a public purpose, for national security or national interest, or, more generally, in the public interest. The Bangladesh, Hong Kong, Kuwait and South Africa BITs require that the public purpose be related to the internal needs of that contracting party. However, a few BITs do not refer to a public purpose at all when setting out the conditions for a lawful expropriation (eg, the Czech Republic, Slovakia and Liberia BITs).</td>
</tr>
<tr>
<td>Valuation date for lawful expropriations</td>
<td>Most of the BLEU BITs provide that the valuation date for purposes of calculating compensation is the date before the expropriatory measures were taken or were otherwise made public. However, some BITs provide that the valuation date is the date of the actual expropriation or when the expropriation was made public (the Bangladesh, Romania, and Singapore BITs) or during the ‘period’ immediately preceding the measure (the Mexico BIT).</td>
</tr>
</tbody>
</table>

Exclusions

The Rwanda BIT provides that expropriation is possible only for a public purpose, and excludes the exceptions provided for in Article 5 of the 2002 Model BIT. Article 5 of the 2019 Model BIT also provides that investors of a Contracting Party shall be granted treatment that is equal to that accorded to investors of the most-favoured-nation, and in no case less favourable than that recognised under international law.
### Issue: Distinguishing features of the ‘expropriation’ standard

The BLEU BITs and the ECT provide that compensation shall be equal to the ‘actual’ (e.g., the Botswana BIT), ‘real’ (e.g., the Chile BIT), ‘effective’ (e.g., the Cuba BIT), ‘full’ (e.g., the Bangladesh BIT), ‘commercial’ (e.g., the Albania BIT), ‘market’ (e.g., the Colombia BIT) or ‘fair market’ value (e.g., the ECT) of the expropriated investment.

Interest is usually set at a normal commercial rate. However, some BITs contain specific provisions regarding the level of interest:

- The Algeria BIT provides that interest shall be equal to the official rate for the Special Drawing Rights, as set by the IMF; and
- The Brazil, Lithuania and North Macedonia BITs refer to LIBOR

The Costa Rica, Hong Kong, Mexico, Kuwait, Oman and UAE BITs contain detailed provisions on the valuation of the lawfully expropriated investment and the calculation of compensation.

### Calculation of compensation

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<td>Refer to LIBOR</td>
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</tbody>
</table>

### Protection of minority shareholders

Many of the BLEU BITs (e.g., Hong Kong, India, Kuwait, Malaysia BITs) provide that the provisions on expropriation apply by analogy to situations where a contracting party expropriates the assets of a company established in that state and in which investors of the other contracting party own shares. This is usually for the purpose, and to the extent necessary, to ensure just and equitable compensation.

### Indirect expropriation

The Colombia BIT defines indirect expropriation as resulting from a measure or series of measures having an equivalent effect to direct expropriation without formal transfer of title or outright seizure. It also provides criteria for determining whether a measure or series of measures constitute indirect expropriation.

Article IX(3)(c) of the Colombia BIT codifies the contracting parties’ right to regulate in the public interest, providing that: ‘except in rare circumstances, such as when a measure or series of measures are so severe in the light of their purpose that they cannot be reasonably viewed as having been adopted and applied in good faith, non-discriminatory measures of a Party that are designed and applied for public purposes or with objectives such as public health, safety and environment protection, do not constitute indirect expropriation’.

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

Article 4(1) of the 2002 Model BIT provides that ‘[i]n all matters relating to the treatment of investments’, the investors of one contracting party would enjoy national treatment and most-favoured-nation treatment in the territory of the other contracting party. The article expressly excluded privileges resulting from a free trade zone, customs union, common market and tax matters, from its sphere of application. The 2002 Model BIT also included distinct NT/MFN treatment clauses, as applied to specific treaty protections (e.g., expropriation, transfers).

Article 5 of the 2019 Model BIT (National Treatment) and article 6 (Most Favoured Nation Treatment) entitle covered investors and covered investments to ‘treatment no less favourable than the treatment [accorded], in like situations’ to that contracting party’s own investors and investments or to investors and investments of a third country as regards the ‘establishment, acquisition, expansion, conduct, operation, management, maintenance, use, enjoyment and sale of disposal’ of the investment.

Article 6(3) sets out that, in determining whether an investment or an investor is in comparable situations for purpose of article 6, an assessment of the totality of circumstances must be made, including: [i] the effect of the investment on the local community where it is located and on the environment; [ii] the character of the measure [its nature, purpose, duration and rationale]; and [iii] the regulations that apply to investments or investors.

Article 6(4) clarifies that it is not applicable to: (i) treatment by the contracting party under a bilateral or multilateral international agreement; (ii) treatment by the contracting party pursuant to: (a) a bilateral or multilateral agreement pertaining to a free trade area, customs union, common market; (b) an investment contract concluded by the contracting party and an investor; or (c) the provisions of investor-state dispute settlement in the Model BIT.

Article 6(5) further clarifies that article 6 does not apply to subsidies or grants provided by a contracting party.
Distinguishing features of the 'national treatment' and/or 'most favoured nation' standard

Scope

All of the BLEU BITs and the ECT contain national treatment and MFN clauses:
- some BITs contain both general MFN clauses as well as MFN clauses that apply to specific standards of treatment (eg, the Algeria BIT contains MFN clauses that apply to the FET and FPS standards, to the expropriation standard, to the provisions on transfers, as well as a general MFN clause that applies to all matters relating to the treatment of investments);
- other BITs contain only MFN clauses that apply to specific standards of treatment but no general MFN clause (eg, the Albania BIT contains MFN clauses that apply to the FET and FPS standard, the expropriation standard, the provisions on free transfers and as regards exchange rates for transfers, but no generally applicable MFN clause); and
- few BITs contain only general MFN clauses that apply to the entire treaty (eg, the Russia BIT contains an MFN clause that applies in all matters governed by this Agreement).

The scope of the clauses is relatively varied. They apply to investments (eg, Albania and Algeria BITs), investors (eg, Argentina, Armenia and Mongolia BITs), investors as regards the management, maintenance, use, enjoyment or disposal of their investments (eg, Armenia, Mauritius and Panama BITs) or to returns of investors (eg, Barbados, Hong Kong and Oman BITs).

Some clauses require that the investment or investor be situated in 'like circumstances' with the national or third state investment or investor in order for the better treatment to be accorded (eg, the Colombia and Kuwait BITs).

Common limitations

Most BLEU BITs (eg, the Korea, Lebanon and Mauritius BITs) provide that the protections encompassed under the national treatment and/or most-favoured nation treatment clauses or, more generally, under the BITs, do not cover the rights and privileges that a contracting party (the BLEU) accords to investors of a third state as a result of its participation in, or association with, a free trade zone, a customs union, a common market or other regional economic organisation.

Limitation on NT and MFN obligations

Some BITs (eg, the Argentina, Armenia and Bahrain BITs) also provide that the protections provided under the NT/MFN clauses do not apply to tax matters.

The Rwanda BIT provides that the MFN clause does not extend to benefits that may be conferred by a contracting party on a neighbouring country or a third developing country.

The Botswana BIT carves out from the national treatment and most-favoured nation treatment clause any 'incentives, treatment, preferences or privileges through special policies or measures' that a contracting party may grant to its nationals only for the purpose of promoting small and medium-sized enterprises and infant industries.

The ECT carves out the protection of intellectual property from the scope of application of these clauses.

Extensions to the whole treaty

Very few BITs expressly define the scope of application of national treatment and/or most-favoured nation treatment clauses. However, the Barbados BIT provides that the clauses apply to articles 1 to 15 of the BIT (investor-state dispute settlement being provided at article 8).

Some BITs include MFN or NT clauses with a very large scope of application:
- 'in all matters relating to the treatment of investments' (eg, the Algeria, Armenia, Bahrain, Burkina Faso, El Salvador and North Macedonia BITs); and
- 'all issues dealt with in this Agreement' (eg, the Argentina, Gabon and Georgia BITs).

7 What are the distinguishing features of the obligation to provide protection and security to qualifying investments in this country’s investment treaties?

Article 3(2) of the 2002 Model BIT provides: 'Except for measures required to maintain public order, such investments shall enjoy continuous protection and security, i.e. excluding any unjustified or discriminatory measure which could hinder, either in law or in practice, the management, maintenance, use, possession or liquidation thereof.'

Article 4(2) of the 2019 Model BIT provides that investments 'shall enjoy full protection and security'. Article 4(5) clarifies the meaning of the standard in the following terms: '[f]or greater certainty, 'full protection and security' refers to the contracting party’s obligations relating to physical security of investors and covered investments.'

The protection and security standard is included in most of the BLEU BITs and the ECT. There are, however, some exceptions (eg, Cuba, India and Romania BITs).

There is considerable divergence in the language employed in these treaties as regards this standard. The more commonly used expressions of the standard are 'continuous protection and security' (as in the 2002 Model BIT) or 'constant protection and security'. There are, however, a limited number of treaties where the phrase 'full protection and security' is used (eg, Bangladesh, Barbados, Oman, Mozambique, Hong Kong and Croatia BITs).

Most treaties follow the 2002 Model BIT and have a carve-out for 'measures required to maintain public order'. They also expand on the meaning of the standard by suggesting that it excludes 'any unjustified or discriminatory measure which could hinder, either in law or in practice, the management, maintenance, use, possession or liquidation thereof.'
### Issue: Distinguishing features of the ‘protection and security’ standard

In the BLEU BITs, the ‘protection and security’ standard is not generally linked to international law or other standards under the treaty. There are, however, some exceptions where the ‘protection and security’ standard is linked to one or more other standards as below:

- Some BITs (e.g., the Colombia and Peru BITs) equate the ‘protection and security’ standard with customary international law.
- Some BITs (e.g., the Sri Lanka and Bulgaria BITs) link the ‘protection and security’ standard to the standard enjoyed by investments belonging to the most favoured nation investors.
- Some BITs (e.g., the Azerbaijan, Bahrain, Guatemala and Uruguay BITs) provide that the protection offered shall at least be equal to that enjoyed by investors of a third State and shall in no case be less favourable than those recognised under international law.
- Some BITs (e.g., the Thailand and North Macedonia BITs) require the contracting party to accord at least the same security and protection that it gives to its own nationals or legal persons of any third state. However, in no case can the treatment be less favourable than that recognised by international law.

It is noteworthy that in instances where the ‘protection and security’ standard is linked to the most favoured nation standard, some treaties (e.g., the Bulgaria, Azerbaijan, Bahrain, and North Macedonia BITs) provide that such protection shall not cover the privileges granted by one contracting party to the investors of a third state pursuant to its participation in or association with a free trade zone, a customs union, a common market or any other form of regional economic organisation.

### Issue: Links to other standards

- Some BITs (e.g., the Colombia and Peru BITs) equate the ‘protection and security’ standard with customary international law.
- Some BITs (e.g., the Sri Lanka and Bulgaria BITs) link the ‘protection and security’ standard to the standard enjoyed by investments belonging to the most favoured nation investors.
- Some BITs (e.g., the Azerbaijan, Bahrain, Guatemala and Uruguay BITs) provide that the protection offered shall at least be equal to that enjoyed by investors of a third State and shall in no case be less favourable than those recognised under international law.
- Some BITs (e.g., the Thailand and North Macedonia BITs) require the contracting party to accord at least the same security and protection that it gives to its own nationals or legal persons of any third state. However, in no case can the treatment be less favourable than that recognised by international law.

### Issue: What are the distinguishing features of the umbrella clauses contained within this country’s investment treaties?

Article 9(2) of the 2002 Model BIT provides: ‘Each Contracting Party undertakes to ensure at all times that the commitments it has entered into vis-à-vis investors of the other Contracting Party shall be observed.’

Article 12(1) of the 2019 BLEU Model BIT states: ‘Where a Contracting Party, either itself or through any entity […] has entered into any contractual written commitment with investors of the other Contracting Party or with their covered investments, that Contracting Party shall not, either itself or through any such entity, breach the said commitment through the exercise of governmental authority.’

### Issue: Distinguishing features of any ‘umbrella clause’

#### Scope

Most of the BLEU BITs contain an umbrella clause. There is, however, a sizeable minority of treaties (e.g., the Ethiopia, Colombia, Sri Lanka and Singapore BITs) that do not contain an umbrella clause.

The umbrella clauses in the BLEUs BITs are formulated differently. In majority of the BITs, the contracting party ‘undertakes to ensure at all times that the commitments it has entered into vis-à-vis investors of the other Contracting Party shall be observed’. In some BITs (e.g., the Thailand, Mozambique Hong Kong and Korea BITs), the obligation to observe any obligation is limited to those made with regard to investments made by investors of the other contracting party.

Some treaties provide for different dispute resolution mechanisms when the umbrella clause is invoked. The ECT allows contracting states to withhold unconditional consent to arbitration in respect of a dispute arising in respect of the umbrella clause. The India BIT provides that the investor-state dispute settlement procedure under the treaty will apply only in the absence of ordinary domestic legal remedies. The Mexico BIT provides that disputes resulting from the umbrella clause obligations will be settled in accordance with the provisions of the specific agreement on which the said obligations are based.
### Other substantive protections

**Free transfer of payments**

Both the 2002 and 2019 Model BITs have provisions on the free transfer of payments.

Article 6(1) of the 2002 BLEU Model BIT ‘guarantees’ to investors the free transfer of all payments relating to an investment. This includes:

- a) amounts necessary for establishing, maintaining or expanding the investment;
- b) amounts necessary for payments under a contract [...];
- c) returns from investments;
- d) proceeds from the total or partial liquidation of investments [...];
- e) compensation paid pursuant to Article 5 (the provision related to expropriation).

Article 6(2) grants working nationals of the other contracting party the right to transfer ‘an appropriate portion of their earnings to their country of origin’.

Article 6(3) requires the transfers to be in ‘freely convertible currency at the rate applicable on the day transfers are made to spot transactions in the currency used’.

Article 6(4) requires contracting parties to ‘issue the authorisations required to ensure that the transfers can be made without undue delay’.

Finally, article 6(5) provides that the guarantees referred to in article 6 shall ‘at least be equal to those granted to the investors of the most favoured nation’.

Article 10 of the 2019 BLEU Model BIT, dealing with transfers, is more comprehensive than the above provision. It, however, contains a carve-out in article 10(5), which provides:

‘Notwithstanding the above paragraphs of this article, nothing in this Article shall be construed to prevent the Contracting Party from applying in an equitable and non-discriminatory manner its laws relating to:

- bankruptcy, insolvency or the protection of the rights of creditors;
- issuing, trading or dealing in securities;
- criminal or penal offences;
- financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- social security, public retirement and compulsory savings programmes; or
- ensuring the satisfaction of judgments in adjudicatory proceedings.’

**Protection against unreasonable/arbitrary measures, non-impairment**

There is no separate non-impairment provision in either the 2002 or 2019 Model BIT.

Most of the BLEU BITs and the ECT contain a provision requiring the contracting parties to permit investors to freely transfer investments and investment returns.

In some of the treaties, this protection is subject to the host state’s right to adopt measures (i) to regulate balance of payments difficulties; (ii) when the movement of capital causes or could cause serious difficulties in macroeconomic management, particularly in terms of the monetary and exchange rate policy; (iii) in the event of bankruptcy or to protect the rights of creditors; (iv) to ensure compliance with laws on the issuing, trading and dealing in securities; (v) to ensure the satisfaction of judgements in civil, administrative and criminal adjudicatory proceedings; and (vi) to ensure compliance with tax and labour laws. The Argentina, Chile, Sri Lanka, Madagascar, Colombia BITs and the ECT are some examples with one or more of the above-mentioned carveouts.

Some treaties (eg, the Armenia, Bosnia and Herzegovina and Comoros BITs) provide that the ‘guarantees’ in the ‘free transfer of payments’ provision ‘shall at least be equal to those granted to investors of the most favoured nation’.

Others (eg, the Albania, Algeria, Bangladesh, Bolivia, Cameroon, Sri Lanka and Paraguay BITs) provide that the ‘guarantees’ in the ‘free transfer of payments’ provision shall at least be equal to those granted to investors of the most favoured nation in a similar situation.

In some instances (eg, the Bolivia, Argentina and Cameroon BITs), the treaty also provides that the exchange rate at which the transfer takes place shall be ‘fair and equitable’ and no less favourable than those granted to investors of the most-favoured nation.

A limited number of BLEU BITs (eg, the Hong Kong, Barbados and Bangladesh BITs and the ECT) include a separate obligation not to impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, expansion, sale or liquidation of investments of nationals or companies of the other contracting party. The Hong Kong and Bangladesh BITs, as well as the ECT, use the expression ‘unreasonable or discriminatory’ measures. The Barbados BIT uses the expression ‘arbitrary or discriminatory’ measures. It also has a carve-out for ‘measures required to maintain public order or public safety’.

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### Table: Other substantive rights

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### Issue

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<th>Armed conflict /civil unrest</th>
<th>Other substantive protections</th>
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</table>

Article 5(4) of the 2002 Model BIT obliges a contracting party to grant investors whose investments have suffered losses owing to 'war or other armed conflict, revolution, a state of national emergency or revolt in the territory of the other Contracting Party' treatment, as 'regards restitution, indemnification, compensation or other settlement' equal to that which the contracting party 'grants to the investors of the most favoured nation'.

In contrast, the 2019 Model BIT is more comprehensive.

Article 9(1) of the 2019 Model BIT contains a provision similar to article 5(4) referred to above. What is noteworthy, however, is that it provides for treatment ‘no less favourable than that accorded to its own investors or to investors of any third country, whichever is more favourable to the investor concerned’.

Article 9(2) elaborates that ‘[n]otwithstanding paragraph 1’ if an investor suffers a loss in the territory of the host contracting party due to (a) requisitioning of its investment or part thereof by the latter’s forces or authorities; or (b) destruction of its investment or part thereof by the latter’s forces or authorities, which was not required by the necessity of the situation’ then the host contracting party shall provide the investor restitution or compensation which shall be ‘prompt, appropriate and effective and paid without undue delay’.

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

The 2002 Model BIT does not contain any general exclusions of liability. This approach has, however, changed in the 2019 Model BIT. The 2019 Model BIT contains several carveouts for liability. For instance, article 3(3) of the 2019 Model BIT contains a right to regulate provision, which states:

‘Nothing in this Agreement shall in any way be construed as limiting the right of the Contracting Parties or any of their competent authorities to adopt, maintain and enforce measures, apply prohibitions or restrictions of any kind or take any other action directed to pursue legitimate policy objectives, such as the protection of public health, environment and public morals; the promotion of security and safety; the achievement of the sustainable development goals; social or consumer protection; the protection of labour standards; the integrity and stability of the financial system or the promotion and protection of cultural diversity.’

The 2019 Model BIT contains a similar provision in article 3(4) for ‘measures adopted by any Contracting Party, in accordance with its law, with respect to the financial sector for prudential reasons […] and a similar provision in article 15(1) with respect to ‘sustainable development policies and priorities’ and labour and environmental standards.

Very few of the BLEU BITs, however, contain exclusions of liability similar to that of the 2019 Model BIT. The Colombia, Mauritius and India BITs and the ECT contain an ‘essential security interest’ exception. The Colombia BIT also has exclusions of liability for environmental and labour reasons and for measures adopted with respect to the financial sector. The Bangladesh BIT and ECT are examples of BIT that have an exclusion with respect to taxation.

Moreover, although the 2019 Model BIT contains a denial of benefits clause in article 13, such provisions are not typical of BLEU BITs. The ECT is a notable exception.

#### Procedural rights in this country’s investment treaties

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

The ISDS provisions of most BLEU BITs follow the ISDS provision of the 2002 Model BIT. An investor must normally provide written notice of the dispute, triggering a six-month cooling-off period during which the parties to the dispute should try to settle the dispute amicably. After the expiry of the cooling-off period, the investor has the option to submit the dispute to the courts or to international arbitration. In the latter case, the state party to the dispute agrees to waive its right to demand the exhaustion of local remedies. According to the 2002 Model BIT, the investor can submit the dispute to ad hoc arbitration pursuant to the UNCITRAL rules, ICSID arbitration (including the Additional Facility), and arbitration pursuant to the rules of the International Chamber of Commerce (ICC) or the Stockholm Chamber of Commerce (SCC). The 2002 Model BIT precludes states from objecting to claims brought by investors on the basis that the investor has received total or partial compensation for its losses pursuant to an insurance policy or from its home state. The arbitral tribunal must decide on the basis of the national law of the state party to the dispute (including its rules relating to conflict of laws), the provisions of the BIT, the terms of any specific agreement concluded with respect to the investment, and the principles of international law. The award rendered ‘shall be final and binding to the parties in the dispute and be executed in accordance with [the host State’s] national legislation’.
The ISDS provision contained in Chapter IV of the 2019 Model BIT is inspired by section F (Resolution of investment disputes between investors and states) of Chapter 8 ‘Investment’ of the EU-Canada Comprehensive Economic and Trade Agreement (CETA). As such, it differs significantly from the ISDS provision of the 2002 Model BIT. It provides that upon the establishment of the Multilateral Investment Court and an appellate mechanism, the relevant parts of the BIT shall cease to apply. In the interim period, the 2019 Model BIT allows the disputing parties to appoint the members of the arbitral tribunal. In the case of failure to appoint any of the arbitrators within 90 days, the Secretary-General of ICSID shall appoint the remaining arbitrators from a list to be established according to the criteria set out in the BIT. The contracting parties grant their advance consent to arbitration pursuant to the ICSID Convention, the ICSID Additional Facility Rules (where the ICSID Convention does not apply), the UNCITRAL arbitration rules, and any other arbitration rules agreed upon by the disputing parties. The place of arbitration must be in the territory of a party to the 1958 New York Convention. The arbitral tribunal shall apply the provisions of the BIT as interpreted in accordance with rules laid down in the Vienna Convention on the Law of Treaties and other rules and principles of international law applicable between the contracting parties.

The BLEU has not concluded any BITs since 2010. Therefore, the 2019 Model BIT has not been used yet.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Procedural rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cooling-off period</td>
<td>Typically, BLEU BITs provide for a cooling-off period of six months (sometimes three months but rarely more) before an investor can bring its claim to the local courts or to international arbitration.</td>
</tr>
<tr>
<td>Choice of arbitration institutions</td>
<td>As indicated above, most BLEU BITs provide for a choice of arbitration institutions and rules. With few exceptions (eg, the Hong Kong BIT), arbitration pursuant to the ICSID Convention and Rules is a standard feature of the BLEU BITs. Rarely, however, is ICSID arbitration the only available option (eg, the Bangladesh BIT). Occasionally, options include arbitration pursuant to the rules of a local or regional institution (eg, the Colombia, Egypt, and Oman BITs), or regional international institutions such as the OHADA Common Court of Justice and Arbitration (Togo BIT) or the Arab Investment Tribunal (Oman BIT). In addition to ICSID and ad hoc UNCITRAL arbitration, the Kuwait BIT allows the parties to select any arbitration rules that they can agree upon.</td>
</tr>
<tr>
<td>Applicable law and seat of arbitration</td>
<td>Typically, the arbitral tribunal should decide on the basis of the national law, including the rules relating to conflicts of law, of the state party to the dispute, the provisions of the BIT, the terms of a specific agreement that may have been entered into regarding the investment, and the principles of international law. The 2019 Model BIT and some BITs, (eg, the Barbados, Colombia, Kuwait, Mexico, Mozambique, and Thailand BITs) require with respect to arbitrations, other than arbitration pursuant to the ICSID Rules, that the seat be situated in the territory of a party to the 1958 New York Convention.</td>
</tr>
<tr>
<td>Consolidation of pending proceedings</td>
<td>The 2019 Model BIT and the Mexico and Peru BITs provide, in some circumstances, a procedure for the consolidation two or more related pending arbitration proceedings.</td>
</tr>
<tr>
<td>Restrictions on right to refer to arbitration</td>
<td>Several BITs require the investor to resort to local courts for a certain amount of time before international arbitration becomes available (eg, the Argentina, Rwanda (1983) and Uruguay BITs (all 18 months), the Botswana BIT (six months), the Romania BIT of 1980 (two years), the UAE BIT (15 months, or six months if both parties to the dispute agree to proceed to arbitration). Only a few BITs require the exhaustion of local remedies. Thus, the 2005 China BIT requires BLEU investors in China to exhaust a specific local non-judicial remedy before resorting to international arbitration. China declared that the relevant procedure will not exceed three months. The Colombia BIT requires investors of both parties to exhaust local administrative remedies prior to resorting to arbitration. However, the procedure cannot exceed six months. Some BITs offer the option for the investor to pursue its claim before the courts and in international arbitration consecutively. If that option is exercised, the investor is required to pursue the court proceedings for a certain amount of time, eg, 18 months in the case of the Chile and Paraguay BITs. Furthermore, some BITs exclude some matters from arbitration, such as taxation (eg, the Bangladesh BIT). Some BITs with socialist countries confer jurisdiction to arbitral tribunals only with respect to disputes regarding expropriations or the amount of compensation for expropriations (eg, the Bulgaria, China (1984), Hungary, Poland, Romania (1978) and Russia BITs).</td>
</tr>
<tr>
<td>Fork-in-the-road provisions</td>
<td>BLEU BITs normally provide for the submission of investor-state disputes to the local courts or to international arbitration. Several BITs include explicit fork-in-the-road provisions (eg, the China (2005), Costa Rica, India, Mexico, Oman, the Philippines, Tunisia, Turkey and Venezuela BITs. Some BITs allow investors to submit a dispute to international arbitration where it has initiated proceedings before the courts, provided that the court has not ruled on the merits and the investors withdraws its claim (eg, the Brazil and Mexico BITs). The South Korea and Kuwait BITs explicitly allow investors to pursue summary relief orders, excluding damages, in local courts in parallel to arbitration proceedings. By contrast, other BITs such as the Rwanda (1983), Argentina and Uruguay BITs, require both parties to the dispute to take all necessary steps to withdraw any legal proceedings pending before the courts.</td>
</tr>
<tr>
<td>Limitation periods</td>
<td>Only exceptionally do BLEU BITs include a time limitation period for investors to initiate proceedings. Such limitation periods typically range from three years (Mexico and Peru BITs) to five years (Colombia and South Korea BITs) from the moment the claimant became aware or ought to have become aware of the facts giving rise to the dispute.</td>
</tr>
</tbody>
</table>
12 What is the approach taken in this country’s investment treaties to standing dispute resolution bodies, bilateral or multilateral?

Belgium and Luxembourg’s approach to standing (permanent) dispute resolution bodies follows the EU’s policy on this matter. Both countries support the establishment of the Multilateral Investment Court. Hence, article 21 of the 2019 Model BIT provides that upon the establishment of the said Court, the ISDS provisions will cease to apply.

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

The BLEU is committed to international investment protection and to maintaining its BITs with non-EU countries. Following the transfer of competence in matters of foreign direct investment to the EU, Belgium and Luxembourg must seek the EU Commission’s authorisation to enter into negotiations to conclude new BITs or to renegotiate existing ones, pursuant to the procedures laid down in Regulation (EU) No. 1219/2012. Existing BLEU BITs with third countries are also safeguarded by the said Regulation. In 2020, Belgium and Luxembourg signed the Agreement for the termination of Bilateral Investment Treaties between the member states of the European Union and ratified it in 2022. Although Belgium and Luxembourg supported the agreement in principle regarding the ECT’s modernisation reached by the ECT contracting parties in June 2022, the European Commission has recently proposed the coordinated withdrawal of both the EU and its member states from the ECT. Luxembourg withdrew from the ECT with effect from 17 June 2024.13

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?

Belgium

<table>
<thead>
<tr>
<th>Government entity to which claim notices are sent</th>
</tr>
</thead>
<tbody>
<tr>
<td>No entity is specified in most BLEU BITs. The Colombia BIT specifies that a notice of dispute is to be addressed to: Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation Service of Economic Interests 15, Rue de Petits Carmes B-1000 Brussels – Belgium. Arbitral practice, however, has shown that one can serve the Ambassador of Belgium in the relevant country as well.</td>
</tr>
</tbody>
</table>

Luxembourg

<table>
<thead>
<tr>
<th>Government entity to which claim notices are sent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministère des Affaires étrangères et européennes Direction des affaires européennes et des relations économiques internationales 9, rue du Palais de Justice L-1841 Luxembourg Luxembourg</td>
</tr>
</tbody>
</table>

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

Belgium

<table>
<thead>
<tr>
<th>Government department that manages investment treaty arbitrations</th>
</tr>
</thead>
<tbody>
<tr>
<td>It appears that investment treaty arbitrations on behalf of Belgium are managed by the Directorate-General of Legal Affairs, which falls under the purview of the Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation.</td>
</tr>
</tbody>
</table>

Luxembourg

<table>
<thead>
<tr>
<th>Government department that manages investment treaty arbitrations</th>
</tr>
</thead>
<tbody>
<tr>
<td>To our knowledge, Luxembourg has never been a respondent to an investment treaty claim. Therefore, there is no relevant government practice. However, should this change, the Ministry of Foreign Affairs is likely to be involved and coordinate with other concerned government departments.</td>
</tr>
</tbody>
</table>
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?

Belgium

**Internal/external counsel**
In the two known claims, external counsel was used.

Luxembourg

**Internal/external counsel**
Luxembourg has never been a respondent to investment treaty claims. There is no specific formal public procurement process in place.

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**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.

Belgium

**Washington Convention implementing legislation**

Luxembourg

**Washington Convention implementing legislation**


Belgium

**New York Convention implementing legislation**

Luxembourg

**New York Convention implementing legislation**

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

Belgium

**Legislation governing non-ICSID arbitrations**
The Belgian law on arbitration included as Title VI in the Belgian Judicial Code.
Luxembourg

**Legislation governing non-ICSID arbitrations**

Articles 1224 to 1249 of the New Code of Civil Procedure are applicable. The Luxembourg Parliament has adopted a law which entered into force on 25 April 2023 and reformed Luxembourg arbitration law. The reform is inspired by French arbitration law as well as the UNCITRAL Model Law.

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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?

Belgium

**Compliance with adverse awards**

No publicly available awards have been rendered against Belgium as yet.

Luxembourg

**Compliance with adverse awards**

Not applicable as Luxembourg has never been a respondent in an investment treaty claim.

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21 Describe the national government’s attitude towards investment treaty arbitration.

**Attitude of government towards investment treaty arbitration**

The Belgian federal government and the Luxembourg government generally have a favourable approach toward investment treaty arbitration. This is evidenced by the fact that they have entered into over 100 BITs and the ECT with other states, which typically offer investors an opportunity to enforce their treaty rights through investment treaty arbitration. That being said, the Belgian and Luxembourg governments (in alignment with the EU) are in favour of ISDS reform and the creation of a Multilateral Investment Court. This can be seen, for instance, in article 21 of the 2019 Model BIT. Both Belgium and Luxembourg have signed (but not ratified) the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (Mauritius Convention on Transparency), which is designed to make public information on investor-state arbitrations arising under investment treaties. The Convention entered into force on 18 October 2017.

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22 To what extent have local courts been supportive and respectful of investment treaty arbitration, including the enforcement of awards?

Belgium

**Attitude of local courts towards investment treaty arbitration**

To date, there has been only one instance where a Belgian court has set aside an investment treaty award. This was in Republic of Poland v. Manchester Securities Corp. In this decision, the Brussels Court of First Instance found that the arbitral tribunal had violated Belgium’s international public policy in finding that Poland had failed to guarantee a fair and equitable treatment (FET) to an investor because the Polish Supreme Court had denied justice through an arbitrary and discriminatory decision. The court reached this conclusion because the arbitral tribunal had, in its award, acted as an appeal court to the Polish Supreme Court. It appears that this decision has been appealed to the Belgian Court of Cassation. The proceedings are pending at the time of publication.

As for enforcement, Belgium is generally seen as an enforcement-friendly jurisdiction. There are limited instances where enforcement is refused. One such example is in the Republic of Kazakhstan v. Stati & Ors. In this decision, the Court of Appeal in Brussels refused enforcement of an ECT award against Kazakhstan finding that the award had been obtained through fraud. In this regard, the court noted that it was not bound by a foreign decision rejecting the annulment of the same award. Instead, it retained the power to review whether the award and/or its enforcement was contrary to public policy, especially when they were new factual elements after the award that were unknown to the arbitrators at the relevant time.
Luxembourg

To our knowledge, no investment treaty arbitration had its seat or place of arbitration in Luxembourg. Therefore, the attitude and supportive role of the local courts towards investment treaty arbitration is limited to the enforcement stage. Given that Luxembourg is party to the ICSID Convention, the courts distinguish between ICSID and non-ICSID awards for the purposes of enforcement. Generally, Luxembourg is seen as an enforcement-friendly jurisdiction subject to the following remarks regarding Luxembourg court practice.

In Bolivarian Republic of Venezuela v Gold Reserve, the Luxembourg courts held that the existence of annulment proceedings before the courts of the seat are grounds to stay enforcement proceedings in Luxembourg. Luxembourg being an EU member state, the courts are bound by EU law. In the most advanced intra-EU arbitration-related case (Romania v Micula), the Court of Cassation held that the enforcement of the award would be contrary to EU law and Romania's immunity from jurisdiction. It therefore reversed the lower courts' decision to enforce the award. Finally, in Republic of Kazakhstan v Stati & Ors, the Luxembourg courts stayed enforcement proceedings as long as a local criminal investigation was pending, directly targeting fraud and corruption allegations linked to the arbitration proceeding itself.

National legislation protecting inward investments

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

Belgium

There is no specific national legislation that protects foreign investment in Belgium. Belgian law does not distinguish between domestic and foreign investments.

A new FDI screening legislation, however, entered into force on 1 July 2023. Pursuant to this legislation, FDI in strategic sectors (which are predefined) is reviewed prior to the investment being made and is subject to increased compliance and reporting requirements. Belgian law protects against unlawful expropriation without compensation and provides judicial review of government decisions.

Luxembourg

To our knowledge, there is no legislation specifically protecting inward foreign investment. Investments and property are protected in Luxembourg pursuant to the provisions of Luxembourg law, regardless of their origin.

However, a new law regarding the screening of inward foreign direct investments will enter into force on 1 September 2023.

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?

Belgium

<table>
<thead>
<tr>
<th>Relevant guarantee scheme</th>
<th>Qualifying criteria, substantive protections provided and practical considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credendo</td>
<td>Credendo is Belgium’s official export credit agency (<a href="https://credendo.com/en">https://credendo.com/en</a>). It provides assistance to exporters and investors, principally in the form of insurance to Belgian exporters against non-payment by overseas buyers or political/commercial risk insurance to local investors investing abroad.</td>
</tr>
<tr>
<td>Multilateral Investment Guarantee Agency (MIGA)</td>
<td>Since 18 September 1992, Belgium has been a member of the MIGA, one of the five institutions of the World Bank Group, and the only universal system of investment guarantees to cover nationals of a contracting state investing into a developing state, listed by the MIGA. To be eligible, the investment, besides being economically viable, must be made in a middle or long-term intent, should help develop the host country and comply with certain social, anticorruption, and environmental standards. The insurance policies tend to cover risks of the outward transfer of the benefits of the investment, the risks of expropriation and the risks of war or civil disturbance. Breach of contract is also covered, provided the investor has no access to any judicial remedy.</td>
</tr>
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</table>
Luxembourg

<table>
<thead>
<tr>
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<th>Qualifying criteria, substantive protections provided and practical considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Luxembourg Export Credit Agency - Office du Ducroire Luxembourg (ODL)</td>
<td>Created in 1961, the ODL is a public institution whose mission is to promote international economic and financial relations in the interest of Luxembourg, mainly through the acceptance of risks in the field of exports, imports and international investments. As such, the ODL offers foreign investment insurance guarantees to an exporting investor against events that may occur in the investment’s host country, such as expropriation, war, transfer restrictions, and certain breaches of contract. Among other things, insurance policies can cover equity creation and participation in a company, as well as investment loans with long-term repayment terms. Furthermore, to qualify for compensation, the sustained loss must be final and irreversible.</td>
</tr>
<tr>
<td>Multilateral Investment Guarantee Agency (MIGA)</td>
<td>Since 1991, Luxembourg has been a member of the MIGA, one of the five institutions of the World Bank Group, and the only universal system of investment guarantees to cover nationals of a contracting state investing into a developing state, listed by the MIGA. To be eligible, the investment, besides being economically viable, must be made in a middle or long-term intent, should help develop the host country and comply with certain social, anticorruption, and environmental standards. The insurance policies tend to cover risks of the outward transfer of the benefits of the investment, the risks of expropriation and the risks of war or civil disturbance. Breach of contract is also covered, provided the investor has no access to any judicial remedy.</td>
</tr>
</tbody>
</table>

Awards

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

Belgium

<table>
<thead>
<tr>
<th>Awards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vladimir Berschader and Moïse Berschader v The Russian Federation, SCC Case No. 08/2004</td>
</tr>
<tr>
<td>Cascade Investments NV v Republic of Turkey (ICSID Case No. ARB/18/4)</td>
</tr>
<tr>
<td>Kimberly-Clark Dutch Holdings, BV, Kimberly-Clark SLU, and Kimberly-Clark BVBA v Bolivarian Republic of Venezuela (ICSID Case No. ARB(AF)/18/3)</td>
</tr>
<tr>
<td>Peter De Sutter, Kristof De Sutter, DS 2 S.A. and Polo Garments Majunga S.A.R.L. v Republic of Madagascar (ICC)</td>
</tr>
<tr>
<td>[DS]2, SA, Peter de Sutter and Kristof De Sutter v Republic of Madagascar (ICSID Case No. ARB/17/18)</td>
</tr>
<tr>
<td>Tariq Bashir and SA Interpétrol Burundi v Republic of Burundi (ICSID Case No. ARB/14/31)</td>
</tr>
<tr>
<td>Zelena NV and Energo-Zelena doo Indija v Republic of Serbia (ICSID Case No. ARB/14/27)</td>
</tr>
<tr>
<td>Biusun SA, Jean-Pierre Lecorcier and Michael Stein v Italian Republic (ICSID Case No. ARB/14/3)</td>
</tr>
<tr>
<td>Lieven J van Riet, Chantal C van Riet and Christopher van Riet v Republic of Croatia (ICSID Case No. ARB/13/12)</td>
</tr>
<tr>
<td>Joseph Houben v Republic of Burundi (ICSID Case No. ARB/13/7) [BLEU–Burundi BIT]</td>
</tr>
<tr>
<td>Baggerwerken Decloedt En Zoon NV v Republic of the Philippines (ICSID Case No. ARB/11/27)</td>
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<tr>
<td>Electrabel SA v Hungary (ICSID Case No. ARB/07/19)</td>
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<tr>
<td>Jan de Nul NV and Dredging International NV v Arab Republic of Egypt (ICSID Case No. ARB/04/13)</td>
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<tr>
<td>Antoine Goetz and others v Republic of Burundi (ICSID Case No. ARB/01/2)</td>
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<td>Philippe Gruslin v Malaysia (ICSID Case No. ARB/99/3)</td>
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<tr>
<td>Antoine Goetz and others v Republic of Burundi (ICSID Case No. ARB/95/3)</td>
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<tr>
<td>Philippe Gruslin v Malaysia (ICSID Case No. ARB/94/1)</td>
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<tr>
<td>Ping An Life Insurance Company of China, Limited and Ping An Insurance [Group] Company of China, Limited v Kingdom of Belgium (ICSID Case No. ARB/12/29)</td>
</tr>
<tr>
<td>LSF-KEB Holdings SCA and others v Republic of Korea (ICSID Case No. ARB/12/37)</td>
</tr>
</tbody>
</table>

Pending proceedings

| SREW NV v Ukraine (ICSID Case No. ARB/21/52) |
| Sapec SA v Kingdom of Spain (ICSID Case No. ARB/19/23) |
| DP World Limited v Kingdom of Belgium (ICSID Case No. ARB/17/21) |
## Luxembourg

### Awards

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</thead>
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<td>(ICSID Case No. ARB/17/18)</td>
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<tr>
<td>Sun Reserve Luxco Holdings SRL v Italian Republic</td>
<td>(SCC Case No. 132/2016)</td>
</tr>
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<td>9REN Holding Sàrl v Kingdom of Spain</td>
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<td>Belenergia SA v Italian Republic</td>
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<tr>
<td>Capital Financial Holdings Luxembourg SA v Republic of Cameroon</td>
<td>(ICSID Case No. ARB/15/18)</td>
</tr>
<tr>
<td>Cube Infrastructure Fund SICAV and others v Kingdom of Spain</td>
<td>(ICSID Case No. ARB/15/20)</td>
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<tr>
<td>Hydro Energy I Sàrl. and Hydroxana Sweden AB v Kingdom of Spain</td>
<td>(ICSID Case No. ARB/15/42)</td>
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<td>Novenergia II - Energy &amp; Environment SICAR v Kingdom of Spain</td>
<td>(SCC Case No. 063/2015)</td>
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<td>Watkins Holdings Sàrl. and others v Kingdom of Spain</td>
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<tr>
<td>GPF GP Sàrl v Poland</td>
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<tr>
<td>PL Holdings Sar. v Poland</td>
<td>(SCC Case No. 2014/163)</td>
</tr>
<tr>
<td>Kristof De Sutter, Peter De Sutter, DS 2 SA and Polo Garments Majunga Sàrl v Republic of Madagascar (II)</td>
<td></td>
</tr>
<tr>
<td>Infrastructure Services Luxembourg Sàrl and Energia Termosolar BV (formerly Antin Infrastructure Services Luxembourg Sàrl and Antin Energia Termosolar BV) v Kingdom of Spain</td>
<td>(ICSID Case No. ARB/13/31)</td>
</tr>
<tr>
<td>RREEF Infrastructure (GP) Limited and RREEF Pan-European Infrastructure Two Lux Sàrl v Kingdom of Spain</td>
<td>(ICSID Case No. ARB/13/30)</td>
</tr>
<tr>
<td>Charanne BV and Construction Investments Sàrl v Kingdom of Spain</td>
<td>(SCC Case No. 062/2012)</td>
</tr>
<tr>
<td>Orascom TMT Investments Sàrl v People’s Democratic Republic of Algeria</td>
<td>(ICSID Case No. ARB/12/35)</td>
</tr>
<tr>
<td>Tenaris SA and Talta - Trading e Marketing Sociedade Unipessoal Lda v Bolivarian Republic of Venezuela (II)</td>
<td>(ICSID Case No. ARB/12/23)</td>
</tr>
<tr>
<td>Tenaris SA and Talta - Trading e Marketing Sociedade Unipessoal Lda v Bolivarian Republic of Venezuela (II)</td>
<td>(ICSID Case No. ARB/11/26)</td>
</tr>
<tr>
<td>The PV Investors v Kingdom of Spain</td>
<td>(PCA Case No. 2012-14)</td>
</tr>
<tr>
<td>European Media Ventures SA v The Czech Republic, UNCITRAL</td>
<td></td>
</tr>
<tr>
<td>LSF-KEB Holdings SCA and others v Republic of Korea</td>
<td>(ICSID Case No. ARB/12/37)</td>
</tr>
<tr>
<td>Yokos Capital Sàrl v The Russian Federation</td>
<td>(PCA Case No. 2013-31)</td>
</tr>
<tr>
<td>CSP Equity Investment Sàrl v Kingdom of Spain</td>
<td>(SCC Case No. 094/2013)</td>
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<td>(ICSID Case No. ARB/22/33)</td>
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<td>Eiser Infrastructure Limited and Energia Solar Luxembourg Sàrl v Kingdom of Spain</td>
<td>(ICSID Case No ARB/13/36)</td>
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<td>BRIF TRES doo Beograd and BRIF-TC doo Beograd v Republic of Serbia</td>
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<td>FinDoc Srl, Domenica Gazio, EnDoc Srl and others v Romania</td>
<td>(ICSID Case No. ARB/20/35)</td>
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<td>Odebrecht LatinInvest Sàrl v Republic of Peru</td>
<td>(ICSID Case No. ARB/20/4)</td>
</tr>
<tr>
<td>Canepa Green Energy Opportunities I, Sàrl and Canepa Green Energy Opportunities II, Sàrl v Kingdom of Spain</td>
<td>(ICSID Case No. ARB/19/4)</td>
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<td>Puma Energy Holdings SARL v the Republic of Benin</td>
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<td>Triodos SICAV II v Kingdom of Spain</td>
<td>(SCC Case No. 2017-194)</td>
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<tr>
<td>CIC Renewable Energies Italy GmbH, Enernovum Asset 1 GmbH &amp; Co KG, Enernovum GmbH &amp; Co KG and others v Italian Republic</td>
<td>(ICSID Case No. ARB/16/39)</td>
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<tr>
<td>Infracapital F1 Sàrl and Infracapital Solar BV v Kingdom of Spain</td>
<td>(ICSID Case No. ARB/16/18)</td>
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<tr>
<td>Theodoros Adamakopoulos, Ilektra Adamantidou, Vasileios Adamopoulos and others v Republic of Cyprus</td>
<td>(ICSID Case No. ARB/15/49)</td>
</tr>
<tr>
<td>RENERGY Sàrl v Kingdom of Spain</td>
<td>(ICSID Case No. ARB/14/18)</td>
</tr>
</tbody>
</table>
Reading List

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

<table>
<thead>
<tr>
<th>Article/Book</th>
</tr>
</thead>
<tbody>
<tr>
<td>Willem Van de Voorde, ‘Belgian Bilateral Investment Treaties as a Means for Promoting And Protecting Foreign Investment’ (1991) 44(1) Studia Diplomatica 87-112</td>
</tr>
</tbody>
</table>

Notes

1 This includes MFN clauses, regardless of their scope of application (e.g., all matters concerning the treatment of investments or specific substantive obligations).

2 In addition to the seven-month cooling-off period, the Colombia BIT requires investors to notify the contracting party of their intention to submit a claim to arbitration in writing 180 days in advance.

3 This BIT was concluded between the BLEU and the Czechoslovak Socialist Republic.

4 Ethiopia and the BLEU have signed two BITs, in 2003 and 2006. Neither has entered into force.

5 The text of the BIT is not publicly available.

6 The Mexico BIT provides that investors’ claims can be submitted to arbitration provided that six months have passed since the moment when the relevant events took place and the investor has notified its intent to submit the claim to arbitration at least 60 days in advance.

7 Poland terminated the BIT unilaterally on 19 July 2018. The termination entered into force on 1 August 2021. The BIT is also subject to bilateral termination, including with respect to the effects of the sunset clause, by virtue of the Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union signed in Brussels on 5 May 2020. As noted below, Belgium and Luxembourg ratified the Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union on 27 July 2022 and it entered into force vis-à-vis Belgium and Luxembourg on 26 August 2022.

8 This BIT was concluded with the Union of Soviet Socialist Republics (USSR). The BIT continues to bind the Russian Federation as the continuation of the USSR for public international law purposes. Insofar as the relevant requirements of international law are met, the BIT may also bind the USSR’s successor states with which there is no BLEU BIT in force, namely Belarus, Kyrgyzstan, Tajikistan and Turkmenistan.

9 To be terminated upon the entry into force of the EU–Singapore Investment Protection Agreement.

10 This BIT was concluded between the BLEU and the Czechoslovak Socialist Republic.

11 To be terminated upon the entry into force of the EU–Vietnam Investment Protection Agreement.

12 Other BITs include similar exclusions as a general exclusion and/or with respect to the national treatment/most-favoured-nation clauses.


14 Accord de coopération du 30 novembre 2022 visant à instaurer un mécanisme de filtrage des investissements directs étrangers entre l’État fédéral, la Région flamande, la Région wallonne, la Région de Bruxelles-Capitale, la Communauté flamande, la Communauté française, la Communauté germanophone, la Commission communautaire française et la Commission communautaire commune”, Belgian Official Gazette, 7 June 2023.

15 A411 Act of 14 July 2023 regarding the establishment of a national mechanism for the screening for foreign direct investments capable of threatening security or public order in implementation of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union, as modified.

16 In addition to the cases listed, some media reports suggest that there are negotiations ongoing between Belgium and the Libyan Investment Authority in relation to a dispute under the BLEU–Libya BIT. See for instance, ‘Libya’s Investment Authority Invokes BIT with Belgium in row over Frozen Funds’, IA Reporter, available at [https://www.iareporter.com/articles/libyas-investment-authority-invokes-bit-with-belgium-in-row-over-frozen-funds/](https://www.iareporter.com/articles/libyas-investment-authority-invokes-bit-with-belgium-in-row-over-frozen-funds/).

** On 7 July 2023, the European Commission proposed that the EU and its member states withdraw from the ECT.

* This treaty was to be terminated pursuant to the Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union signed in Brussels on 5 May 2020. Belgium and Luxembourg ratified the Agreement for the termination of BITs on 27 July 2022 and it entered into force vis-à-vis Belgium and Luxembourg on 26 August 2022.
Iuliana Iancu
Hanotiau & van den Berg

Iuliana Iancu has over 13 years of experience in international arbitration. She has acted as arbitrator, counsel and tribunal secretary. Her experience includes several dozen high-stakes, high-value and complex international commercial and investment arbitrations, both ad hoc and under a variety of arbitration rules (ICC, CEPANI, ICSID, UNCITRAL, NAII). These spanned various industry sectors, such as banking, telecommunications, insurance, energy, infrastructure, information technology, construction, mining, distribution, luxury and pharmaceuticals. Ms Iancu’s arbitration experience includes disputes involving both states and private parties, as well as various procedural and substantive laws. Some of her recent work includes acting as counsel in arbitration proceedings concerning the wrongful termination of a distribution agreement governed by Belgian law; acting as sole arbitrator in a dispute concerning a cultural event in an Eastern European state; acting as sole arbitrator in a dispute concerning a licence agreement for the exploitation of various intellectual property rights. Ms Iancu is also a lecturer at the University of Bucharest’s International Arbitration LLM, teaching comparative international commercial arbitration.

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Shyam Balakrishnan has been an associate at Hanotiau & van den Berg since 2020. He acts as tribunal secretary in complex international commercial and investment arbitrations, both ad hoc and under a variety of arbitration rules, spanning various industry sectors.

Shyam holds a law degree from the National University of Juridical Sciences, Kolkata (India) and obtained his LLM in international dispute settlement (MIDS) from the Graduate Institute of International and Development Studies and the University of Geneva in 2019.

Hanotiau & van den Berg

Hanotiau & van den Berg’s lawyers regularly act as arbitrator or counsel in some of the world’s most high value, complex and innovative international arbitrations. Their wealth of experience in the field of international arbitration is considered to be unparalleled. The firm has vast experience in handling cases under all major institutional rules and on an ad hoc basis, spanning the governmental and private sectors and numerous industries. With its recent presence in Singapore, the firm has further expanded its global reach towards South-East Asia. The firm’s practice also includes domestic arbitration and litigation as well as advice on non-contentious matters. It is one of the very few firms able to provide representation before the Belgian Supreme Court. The firm’s size and independence enables it to avoid conflicts of interest while maintaining a truly international reach. Another key factor in its success is the diversity of its lawyers’ legal expertise. It is home to lawyers from a wide variety of common law and civil law backgrounds, able to provide advice in a number of languages.

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Paschalis is included in the Panel of Arbitrators of the Shenzhen Court of International Arbitration and the EU’s list of candidates suitable for appointment as arbitrators under trade and investment agreements to which the EU is a party.

Paschalis formerly served as référendaire at the Court of Justice of the European Union, where he assisted First Advocate General Melchior Wathelet. Paschalis is an associate professor of law at the University Lyon III “Jean Moulin” where he teaches EU and international investment law.

Paschalis is admitted to the Bars of Luxembourg and Thessaloniki and is a board member of the Luxembourg Arbitration Association and the Benelux CIArb chapter. He holds a Magister Juris (MJur) in law from the University of Oxford as well as a master’s and doctorate of Philosophy (DPhil) in law from the University of Oxford.

Gil Bové is an associate in the litigation and dispute resolution practice of Arendt & Medernach where he practises in commercial and international litigation, enforcement of foreign judgments and awards as well as in international commercial and investment treaty arbitration.

He studied law at the University of Paris 1 ‘Panthéon-Sorbonne’, at the University of Ottawa, as well as at the University of Melbourne. He holds a master’s degree in global business law and governance as well as a master’s in international trade law and arbitration from the University of Paris 1 ‘Panthéon-Sorbonne’.

Gil is admitted to the Bar of Luxembourg since 2021. He speaks Luxembourgish, French, German and English.