



INVESTMENT POLICY MONITOR



UNITED NATIONS
UNCTAD

H I G H L I G H T S

- Thirty-five countries took 42 national investment policy measures in the review period (November 2018 - February 2019). The percentage of new investment restrictions or regulations reached 34 per cent – which is almost 50 per cent higher than in the previous reporting period (May - October 2018), 24.0 per cent. This number is the highest figure since 2003.
- Numerous countries liberalised foreign investment or promoted and facilitated investment otherwise. Among the most noteworthy measures are liberalisation steps in various industries in Brazil, China, India, Philippines, Qatar, and the United Republic of Tanzania. Some countries (e.g. China, Kazakhstan, and Myanmar) reformed administrative framework with the aim of improving the investment environments, and some other countries (e.g. Cameroon, Côte d'Ivoire, Guatemala, Peru, and Poland) expanded fiscal benefits for investments.
- Continuing a trend already observed in the previous reporting period, several developed countries (e.g. Belgium, France, Germany, and the United States of America) reinforced their national security review processes for foreign investments. Australia also prevented CK Group from having sole ownership over the gas transmission business due to national security concerns. In addition, some developing countries (Senegal and South Africa) also heightened their efforts to protect their national security in relation to foreign takeovers.
- During the reporting period, six bilateral investment treaties (BITs) and two treaties with investment provisions (TIPs) were signed, bringing the total number of IIAs to 3,318 by the end of February 2019. At least five terminations entered into effect. All new treaties contain some elements of sustainable development-oriented reform in line with UNCTAD's Reform Package for the International Investment Regime. While numerous recent IIAs have referred to sustainable development-related concepts, the EFTA-Indonesia CEPA is the second treaty (following the EU-Canada CETA) to make an explicit reference to the UN Sustainable Development Goals (SDGs).
- Sustainable development-oriented reform elements are also included in other investment policy-related developments. These include at the national level (adoption of model IIAs and investment guiding principles); at the regional level (termination of intra-EU BITs and the draft Investment Protocol of the AfCFTA); and at the multilateral level.

A. National investment policies

During the review period (November 2018 - February 2019), 35 countries took 42 investment policy measures (table 1). In their majority, these measures continue to be geared towards creating more favourable investment conditions. Investment liberalisation, promotion and facilitation measures were adopted in numerous industries, including mining, energy, manufacturing, banking service, air transportation, tourism, and internet business with developing and transition economies taking the lead.

Table 1. Summary of national investment policy measures adopted between November 2018 and February 2019

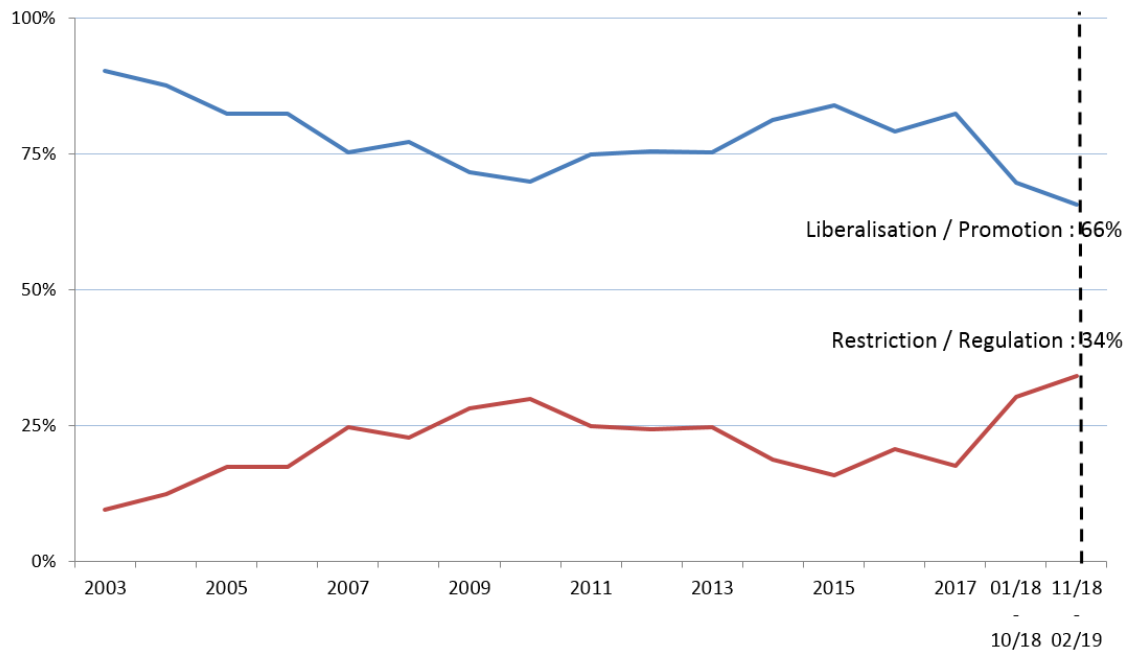
	Entry and establishment (15)	Treatment (9)	Promotion and facilitation (16)	General business climate (5)
Algeria				1
Australia	1			
Barbados				1
Belgium	1			
Brazil	1			
Cameroon			1	
China	1		1	
Côte d'Ivoire			1	
Ecuador			1	
Egypt		1		
France	1			
Germany	1			
Guatemala			1	
India	1	1		
Italy			1	
Kazakhstan		1		
Korea, Republic of			1	
Kuwait	1			
Mexico			1	
Myanmar		1	1	
Panama	1		1	
Peru (*)			1	1
Philippines	1			
Poland			1	
Qatar (*)	1		1	
Romania				1
Rwanda				1
Senegal		1		
South Africa (*)	1	2		
United Arab Emirates		1	1	
United Republic of Tanzania	1			
United States of America	1			
Uruguay			1	
Uzbekistan		1	1	
Viet Nam	1			

Source: ©UNCTAD.

* Measures are double-counted because they related to more than one type.

The ratio of newly adopted restrictive or regulatory investment policy measures stood at 34 percent – an increase of almost 50 per cent compared to the previous reporting period (May – October 2018), 24.0 per cent (figure 1). Compared with previous years, this is the highest ratio since 2003. New investment restrictions or regulations for foreign investors were mainly based on national security concerns about foreign ownership of critical infrastructures, core technologies, defence sector or sensitive assets.

Figure 1: Changes in national investment policies, 2003 - February 2019*



Source: ©UNCTAD.

* The data in the figure do not include measures related to the general business climate, such as corporate taxation, environmental or labor legislation.

1. Entry/Establishment of investment

Fifteen countries – *Australia, Belgium, Brazil, China, France, Germany, India, Kuwait, Panama, Philippines, Qatar, South Africa, United Republic of Tanzania, United States of America, and Viet Nam* – adopted new policy measures relating to the entry and establishment of foreign investors. While in their majority they relaxed restrictions on foreign ownership or opened up new business opportunities, not a few countries adopted regulatory or restrictive investment policy measures.

Among the most noteworthy investment liberalisation measures are:

- *Brazil* issued a temporary decree lifting the previous 20 per cent limit on foreign investment in Brazilian airlines allowing 100 per cent participation of foreign capital.
- *China* released its “negative list for market entrance of 2018” by which the Government loosened its restrictions on certain resource-related industries. This negative list applies to all kinds of companies regardless of whether they are foreign companies or Chinese companies
- *Kuwait* allowed foreign investors to own and trade in Kuwaiti banks’ shares within a five per cent limitation.
- *Philippines* relaxed the foreign ownership cap in a variety of industries and abolished it in several other sectors including internet business.
- *Qatar* permitted, in principle, 100 per cent foreign ownership in all economic sectors except some businesses such as banking and insurance.
- The *United Republic of Tanzania* relaxed the foreign ownership limitation in the mining sector.

New regulatory or restrictive investment policy measures relate particularly to national security concerns:

- *Australia* blocked a \$13 billion bid for the largest domestic gas transmission system owner by a foreign company group due to national security concerns.
- The *Government of Flanders (Belgium)* established a new mechanism to intervene in foreign acquisitions under certain conditions.

- *France* extended the scope of foreign investment screening to several new strategic technology sectors.
- *Germany* expanded the scope of its foreign direct investment screening mechanism for non-EU / non-EFTA investors, lowering the foreign ownership threshold for transactions in the defence / IT security sectors, critical infrastructure and media.
- The *United States of America* issued a temporary pilot program, pursuant to the Foreign Investment Risk Review Modernisation Act, to protect critical American technology and intellectual property from potentially harmful foreign acquisitions.

2. Treatment of established investment

Nine countries – *Egypt, India, Kazakhstan, Myanmar, Senegal, South Africa, United Arab Emirates* and *Uzbekistan* – took measures with respect to the treatment of investors after establishment in the host country:

- *Egypt* relieved limited liability companies from the requirement to appoint Egyptian managers;
- *Kazakhstan* liberalized the arbitration framework allowing for choosing a foreign law in a dispute involving the state and bringing enforcement provisions in line with the New York Convention;
- *Myanmar* allowed all branches of foreign banks to provide commercial services; and
- The *United Arab Emirates* and *Uzbekistan* relaxed measures related to employment of foreign specialists.

By contrast,

- *India* introduced several restrictive changes in its FDI policy for e-commerce;
- *Senegal* changed the petroleum code to reinforce the preservation of its national interests; and
- *South Africa* introduced a 60 per cent local content requirement for the defence sector.

3. Promotion/Facilitation of investment

Sixteen countries – *Cameroon, China, Côte d'Ivoire, Ecuador, Guatemala, Italy, Republic of Korea, Mexico, Myanmar, Panama, Peru, Poland, Qatar, United Arab Emirates, Uruguay, Uzbekistan* – adopted measures related to the promotion and facilitation of investment. Most of these measures encourage investment through providing investment incentives or facilitating investment procedures. For instance,

- *China* reformed measures for improving the investment environment, trade facilitation, and financial innovation among others.
- *Côte d'Ivoire* organized the approval process for investment applications and determined the sectors benefiting from tax credits.
- *Ecuador* introduced new regulations to clarify the Productive Development Law, to simplify environmental rules and to provide additional tax incentives.
- *Cameroon, Guatemala, Italy, Panama, Peru, and Poland* introduced new tax incentives for certain sectors / areas or revised existing incentive mechanisms for the purpose of attracting more investment.

4. General business climate

Five countries – *Algeria, Barbados, Peru, Romania, and Rwanda* – took measures affecting the general business climate.¹ *Algeria* took measures to increase fiscal revenues and *Romania* introduced new corporate taxes for certain sectors while *Barbados* and *Peru* reformed their taxation regimes which may affect investments. *Rwanda* introduced new requirements for financial institutions. These measures apply for both domestic and foreign businesses.

¹ The following examples are a non-exhaustive overview.

B. International investment policies

1. International investment agreements (IIAs) signed, terminated and entered into force

During the reporting period, six bilateral investment treaties (BITs) and two treaties with investment provisions (TIPs)² were signed, bringing the total number of IIAs to 3,318 by the end of February 2019.³ In addition, at least two IIAs entered into force (the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), effective 30 December 2018;⁴ and the EU–Japan Economic Partnership Agreement, effective 1 February 2019).⁵ A Protocol with investment provisions was signed between China and Singapore on 12 November 2018, amending the 2008 Free Trade Agreement (FTA) between the Parties.⁶

At least five terminations of BITs took effect. Terminations include the BITs concluded by Poland with Denmark (effective 14 February 2019) and with Latvia (effective 19 January 2019); the terminations of the BITs concluded by Australia with Viet Nam (effective 14 February 2019) and with Mexico (effective 30 December 2018); and the BIT concluded between Italy and Syria (effective 13 November 2018).

Table 2. List of IIAs signed between 1 November 2018 and 28 February 2019

	Name of the Agreement	Date of signature
1	Comprehensive Economic Partnership Agreement between the Republic of Indonesia and the EFTA States	16 December 2018
2	Cooperation and Facilitation Investment Agreement (CFIA) between Brazil and Guyana ⁷	13 December 2018
3	BIT between Argentina and Japan	1 December 2018
4	Agreement between the United States of America, the United Mexican States, and Canada (USMCA)	30 November 2018
5	BIT between Japan and Jordan	27 November 2018
6	BIT between Azerbaijan and Turkmenistan	22 November 2018
7	BIT between Kazakhstan and Singapore	21 November 2018
8	FTA between Brazil and Chile	21 November 2018
9	BIT between Qatar and Rwanda	15 November 2018

Source: UNCTAD, IIA Navigator.

Figure 2. Trends in IIAs signed, 1980–2018

² Treaties with investment provisions encompass economic agreements other than BITs that include investment-related provisions (e.g. investment chapters in economic partnership agreements (EPAs), free trade agreements (FTAs), regional investment agreements and framework agreements on economic cooperation). Four main types of TIPs can be distinguished: (i) TIPs that include obligations commonly found in BITs, including substantive standards of investment protection and investor-State dispute settlement (ISDS); (ii) TIPs that include limited investment provisions (e.g. national treatment (NT) and most favoured nation (MFN) treatment with regard to the right of establishment of companies, or provisions on free movement of capital relating to direct investments); (iii) TIPs with investment provisions emphasizing investment promotion and facilitation while also containing a number of investment protection provisions, although no ISDS clause; and (iv) TIPs that establish an institutional framework between the Parties to promote and cooperate on investment.

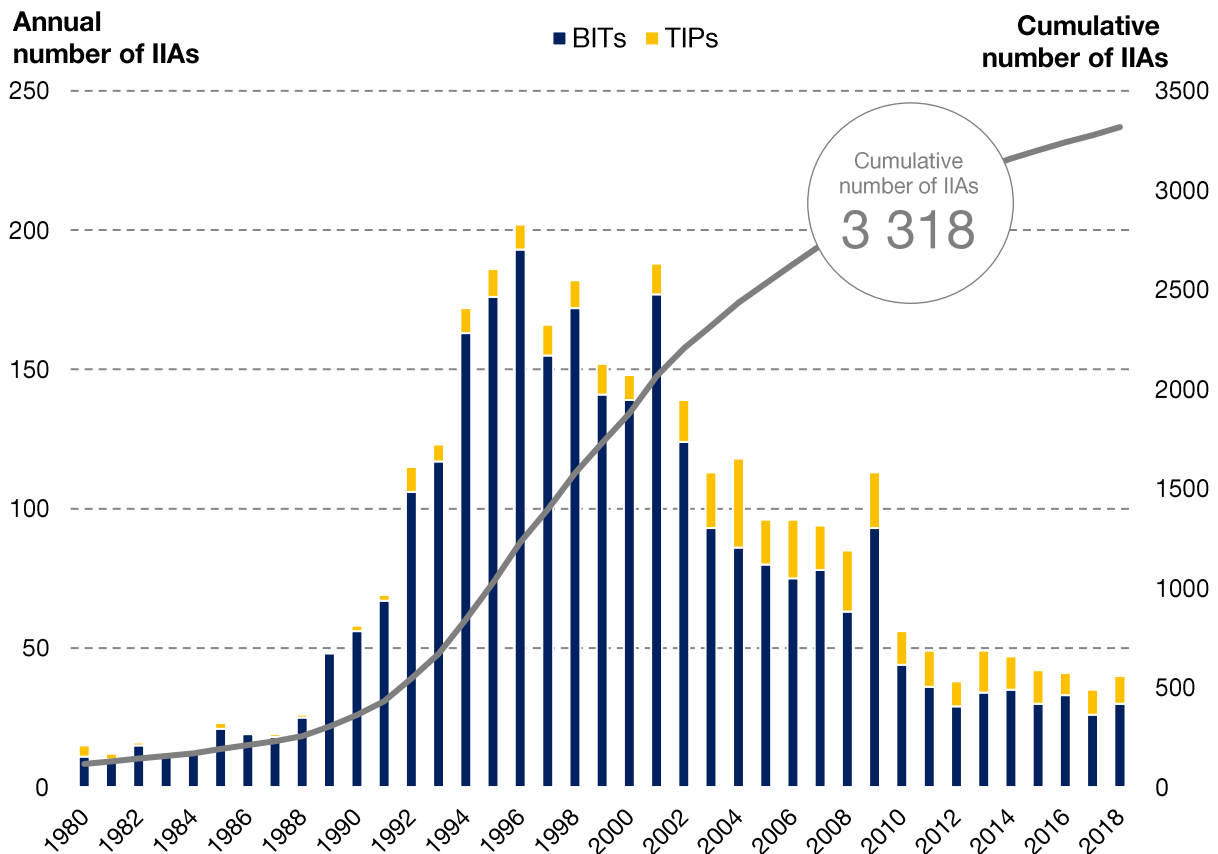
³ 3,318 refers to the total number of IIAs, independently of whether they have entered into force. IIAs for which termination has entered into effect are not included. Despite the conclusion of at least nine new treaties, the total number of IIAs reported declined as compared to the previous IPM. This is because several treaty terminations had taken effect during 2018 and early 2019 as well as a continuous revision of the total number of IIAs, resulting from retroactive adjustments to UNCTAD's database IIAs. Readers are invited to visit UNCTAD's IIA Navigator which offers a number of user-friendly search options (<https://investmentpolicyhub.unctad.org/IIA>).

⁴ While the agreement has entered into force, several signatories have not yet ratified the agreement (and are therefore not bound by it).

⁵ The EU–Japan EPA does not contain provisions on investment protection. The Parties are currently conducting negotiations on investment protection.

⁶ Outside of the reporting period but still of relevance are the signatures of the Protocol to Amend the ASEAN–Japan CEPA (2 March 2019) and the Indonesia–Australia CEPA (4 March 2019). The Australia–Hong Kong FTA was concluded on 15 November 2018 and the Parties now await signature.

⁷ Following past practice, this report counts the CFIA between Brazil and Guyana as a BIT.



Source: UNCTAD, IIA Navigator.

Note: The cumulative number of all signed IIAs, independently of whether they have entered into force, is 3,318. IIAs for which termination has entered into effect are not included.

The following review is based on IIAs concluded during the reporting period, for which texts are currently available.⁸ It focusses on the extent to which sustainable development-oriented reform elements are included in the treaties.

The *Brazil–Chile FTA* (21 November 2018) contains a definition of investment which excludes certain assets from the scope of the treaty (e.g. portfolio investment and public debt instruments). No fair and equitable treatment (FET) clause is included. The FTA contains “post-establishment” national treatment and most favoured nation (MFN) clauses, qualified with a reference to “similar circumstances”. It clarifies that whether treatment is accorded in “similar circumstances” under the FTA depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives. The treaty clarifies that the MFN clause cannot be invoked for more favourable treatment granted to third-country investors under ISDS clauses. The FTA includes a clause on direct expropriation, subject to four conditions for lawful expropriation. It also contains a free-transfer-of-funds clause subject to detailed exceptions, a prudential carve out and a clause on national security exceptions. Tax issues are excluded from the treaty. The treaty includes a provision on combatting corruption and on the social responsibility of investors, which refers to the OECD Guidelines for Multinational Enterprises, and a not-lowering standards clause. The treaty provides provisions for the prevention of disputes and for State-State dispute settlement, without providing for investor-State dispute settlement (ISDS). The FTA refers to the establishment of national focal points and ombudsmen whose main task is to support investors of the other Party by addressing their requests, enquiries and complaints. Finally, the treaty includes a provision mandating an established Joint Committee between the Parties to develop and discuss an agenda for further cooperation on investment facilitation. The Joint Committee is also tasked to conduct a general review of the application of the investment chapter and make any recommendations that may be necessary.

The *Kazakhstan–Singapore BIT* (21 November 2018) contains a broad, asset-based definition of investment with certain exclusions. The agreement includes a FET provision with specific clarifications (including the obligation not

⁸ An analysis of all IIAs signed in 2018, for which texts are available, including their content and prevalence of sustainable development-oriented reform features, will be available in the World Investment Report (WIR) 2019 (Chapter III), to be launched in June 2019.

to deny justice in criminal, civil or administrative adjudicatory proceedings) and links it to customary international law. The BIT provides “post-establishment” national treatment and maintains the right of the Parties to exclude “sensitive” industries from the national treatment scope. The treaty also includes a “post-establishment” MFN clause, which is circumscribed by a reference to “like circumstances”, but without clarification of how to determine “like circumstances”. The treaty includes a provision on direct and indirect expropriation, recognizing that non-discriminatory regulatory actions in the areas of public health, safety and the environment are not expropriation absent rare circumstances. The transfer-of-funds provisions are subject to a list of exceptions (e.g. bankruptcy and securities trading). A list of general exceptions is included along with a separate provision on national security exceptions (self-judging). The treaty contains an ISDS mechanism where investors must file claims within a three-year time period. The tobacco industry is excluded from the ISDS scope. A “fork in the road” provision is included, preventing an investor from beginning litigation in a second forum after a first forum is selected to resolve the dispute.

The *Japan–Jordan BIT* (27 November 2018) contains a preamble that recognizes investment attraction can be achieved without relaxing health, safety or environmental measures. The BIT contains an asset-based definition of investment that excludes certain assets (e.g. public debt). There is no explicit exclusion for portfolio investments. “Post establishment” national treatment, and MFN are provided. National treatment and MFN are tied to “like circumstances”, but without clarifications of how to determine “like circumstances”. The treaty provides for FET in accordance with customary international law. Direct and indirect expropriation are covered but without any clarifications of what does and does not constitute indirect expropriation. The treaty includes a transfer-of-funds provision, subject to some exceptions (e.g. bankruptcy and securities trading). The agreement includes a general exceptions clause as well as a separate exception for measures taken for national security reasons (self-judging). It also explicitly recognizes that relaxing health, safety and environmental regulation to encourage investment is inappropriate. The treaty includes a provision asserting the Parties’ commitment to prevent and combat corruption. The treaty also includes a provision facilitating the entry and sojourn of employees connected to an investment. ISDS is provided and includes a three-year time limitation for filing a claim. A “fork in the road” provision is included. Both countries agreed to establish a joint committee to exchange investment information and improve the investment climates.

The *USMCA* (1 December 2018) contains a preamble that recognizes States’ right to regulate in areas such as health, safety and the environment. It limits the definition of investment to assets with the characteristics of an investment (including commitment of capital or other resources, the expectation of gain or profit or the assumption of risk) and provides explicit exclusions (e.g. judicial awards). “Pre- and post-establishment” national treatment and “pre-and post-establishment” MFN are provided, with a clarification for how to determine “like circumstances” (i.e. totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives). FET is provided and circumscribed through a reference to customary international law and a specific definition (including the obligation not to deny justice in criminal, civil or administrative proceedings in accordance with due process). Direct and indirect expropriation are covered, with a specific definition on what does and does not constitute indirect expropriation in an annex. The treaty includes a transfer-of-funds provision subject to exceptions. The treaty includes a provision prohibiting the Parties from imposing performance requirements subject to public policy exceptions. A security exception is included (self-judging). In addition to the reference in the preamble, the treaty text specifically recognizes States’ right to regulate in the areas of environment, health, safety and other objectives. The Parties reaffirm in the treaty the importance of corporate social responsibility guidelines.

Most significantly, ISDS is removed except for disputes between the United States and Mexico (i.e. ISDS does not cover the relationship between Canada and the United States). Furthermore, indirect expropriation and FET cannot be litigated in ISDS unless relating to a government contract. Only national treatment (excluding “pre-establishment”), MFN (excluding “pre-establishment”) and direct expropriation can be litigated generally in ISDS. The ISDS provisions include time limitations for filing claims (four-year or three-year filing requirements), rules on claim consolidation, amicus curiae submissions and transparency requirements. Claimants must first go through domestic court systems and obtain a final decision from a court of last resort or spend time litigating in domestic courts for a significant amount of time (30 months) before initiating ISDS. Finally, a joint committee is established to facilitate investment between the signatory countries.

The *Argentina–Japan BIT* (1 December 2018) discourages relaxation of health, safety and environmental regulations to promote investment in its preamble. The treaty provides a definition of investment limited to assets

with the characteristics of an investment. The agreement provides “pre- and post-establishment” national treatment and MFN based on “like circumstances” requirements. It provides a definition for “like circumstances” (i.e. totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives). “Pre-establishment” is excluded from the scope of ISDS. The treaty also provides an FET provision that is specifically defined (including the obligation not to deny justice in criminal, civil or administrative proceedings in accordance with due process) and circumscribed by a reference to customary international law. The treaty includes entry and sojourn for personnel who seek to enter and remain in a Party for the purpose of investment activities, subject to domestic law. It also contains provisions on direct and indirect expropriation, providing specific definitions and limitations on what does and does not constitute indirect expropriation. There is a transfer-of-funds clause, including a list of exceptions (e.g. bankruptcy and trading in securities). In addition to the preamble, Parties explicitly recognize in the treaty text that it is inappropriate to lower health, safety or environmental regulations for the purpose of attracting investment. Parties reaffirm the importance of corporate social responsibility guidelines and assert their commitment to prevent and combat corruption. The agreement incorporates GATT Article XX and GATS Article XIV as general exceptions. It also provides an exception for security measures (self-judging). The treaty provides for ISDS, with a three-year time limitation to file claims. It provides for consolidation of claims, amicus curiae in proceedings and a “fork in the road” provision. Finally, a joint committee is established to encourage investment and share information between the two countries.

The *Brazil–Guyana BIT* (13 December 2018) contains a reference to sustainable development and reaffirms Parties’ right to regulate in its preamble. The agreement provides an asset-based definition of investment, explicitly excluding certain assets from the scope of coverage (e.g. portfolio investment and debt securities). The agreement provides a list of specific treatment rights such as due process, but specifically excludes FET and full protection and security. It provides “pre- and post-establishment” national treatment and “pre- and post-establishment” MFN and specifically enumerates the analysis to determine “like circumstances” (i.e. totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives). The agreement covers direct expropriation and explicitly excludes indirect expropriation. A security exception is included (not self-judging). Beyond this, it acknowledges States’ right to regulate in labour, health and environmental spheres and discourages lowering standards to attract investment in the treaty text. It contains a corporate social responsibility provision with a list of principles and standards for responsible business conduct. Parties also agreed to commitments to fight corruption, money laundering and terrorism financing. The treaty omits the ISDS mechanism, providing for a dispute prevention mechanism and State-State disputes settlement. The treaty establishes a joint committee, ombudspersons and national contact points to oversee investment cooperation and information exchange. They also serve to support investors by addressing requests, enquiries, suggestions and complaints.

The *EFTA States–Indonesia Comprehensive Economic Partnership Agreement (CEPA)* (16 December 2018) contains several references to sustainable development objectives in its preamble and throughout the text. Specifically, the agreement refers to the Universal Declaration of Human Rights, the U.N. 2030 Agenda for Sustainable Development (including Goal 8)⁹ and environmental, health and safety protections. The investment chapter applies to commercial presence in all sectors and explicitly excludes investment protection. The treaty provides national treatment with regards to commercial presence, subject to schedules and specific exclusions. National treatment is limited to “like situations”, but without a specific definition of what this entails. The CEPA text asserts Parties’ right to regulate and states that the Parties should not derogate from health, safety and environmental regulations to attract investment. The agreement incorporates GATS Article XIV [General Exceptions] and GATS Article XIV *bis* [Security Exception]. The agreement includes a provision on entry and sojourn of key employees connected with commercial presence, subject to domestic law. It also includes a transfer-of-funds provision, subject to restrictions to safeguard the balance of payments. No ISDS mechanism is included.

Two other agreements were signed but the text was not available to UNCTAD. These are the *Qatar–Rwanda BIT* (15 November 2018) and the *Azerbaijan–Turkmenistan BIT* (22 November 2018).

⁹ For example, Art 8.1.1 “Context, Objectives, and Scope” refers to “. . .the UN Sustainable Development Summit Outcomes Document ‘Transforming Our World: the 2030 Agenda for Sustainable Development’ . . .” Art 8.1.7 states, “The reference to labour in this Chapter includes the objective to promote inclusive and sustainable economic growth, employment and decent work for all as stipulated in Goal 8 of the 2030 Sustainable Development Agenda and issues relevant to Decent Work Agenda as agreed in the ILO”. Art 8.6.2. states “The Parties reaffirm their commitment, under the Sustainable Development Goal number 8 as well as the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, to recognise full and productive employment and decent work for all as a key element of sustainable development for all countries and as a priority objective of international cooperation and to promoting the development of international trade in a way that is conducive to full and productive employment and decent work for all”.

2. Other developments in international investment policymaking

Developments at the national level

Saudi Arabia's Guiding Principles for Investment Policymaking

On 22 January 2019, Saudi Arabia approved a set of investment policy principles in line with Saudi Arabia's Vision 2030. The seven principles, inspired by UNCTAD's Investment Policy Framework for Sustainable Development and the G20 Guiding Principles for Global Investment Policymaking will act as guidelines for current and future investment policies in Saudi Arabia. The principles cover non-discrimination between Saudi and foreign investors; investment protection; enhanced transparency procedures; protection of public policy concerns (social, environmental and health standards); ease of entry for employees and specialized persons related to investment; and the transfer of knowledge and technology from investments.

Saudi Arabia's Model BIT

In December 2018, Saudi Arabia adopted a new Model BIT that aims to balance between investment protection provisions and provisions aimed at ensuring the right to regulate. For example, the new model includes prudential carve-outs, a denial-of-benefits clause, a not-lowering-of-standards clause and a number of refinements to the dispute settlement procedures. The new model benefited from comments provided by UNCTAD in November 2017.

Developments at the regional level

African Continental Free Trade Area (AfCFTA) Investment Protocol

Expert meetings hosted by the African Union Commission (AUC), UNCTAD and the Economic Commission for Africa (ECA) took place (November 2018 and February 2019) to develop a first draft of the Investment Protocol under the second phase of the AfCFTA. The draft Investment Protocol is expected to be submitted to member States in the second half of 2019 for negotiations and adoption.

EU member States declaration on investment protection in the EU

According to the European Commission's long-held position, intra-EU BITs, providing EU investors with access to investor-State arbitration against other EU member States, are incompatible with EU law. This position was confirmed by the CJEU's judgment in the *Achmea* case in March 2018.¹⁰

In a subsequent declaration entitled "On the Legal Consequences of the Judgment of the Court of Justice in *Achmea* and on Investment Protection in the European Union" (published on 15 January 2019), 22 EU member States announced their intention to terminate by 6 December 2019 all BITs concluded between them.¹¹ They also pledged to "request the courts, including in any third country, which are to decide in proceedings relating to an intra-EU investment arbitration award, to set these awards aside or not to enforce them due to a lack of valid consent". The signatories to the declaration further agreed with the EU Commission that the application in intra-EU relations of the ISDS mechanism under the Energy Charter Treaty (ECT)¹² would also be incompatible with EU law.

In a separate declaration published on 16 January 2019, Finland, Luxemburg, Malta, Slovenia and Sweden reaffirmed in essence the declaration by the 22 member States but abstained from expressing any view on the incompatibility with Union law of the intra-EU application of the ECT.¹³ Hungary issued another declaration, explicitly opining that the *Achmea* judgment only concerned intra-EU BITs, not the ECT.¹⁴

Opinion of the Court of Justice of the European Union (CJEU) on compatibility of the Investment Court System (ICS) with EU law

Following a request by Belgium, the comparability with EU law of the new investment tribunal system included in the Canada-EU CETA is currently undergoing a review by the CJEU. In an opinion delivered on 29 January 2019, the CJEU's Advocate General Bot concluded that the mechanism included in CETA is compatible with EU law. The

¹⁰ CJEU, *Slovak Republic v. Achmea BV* (Case C-284/16), Judgment, 6 March 2018. In its judgment, the CJEU examined the investor-State arbitration clause in the Netherlands-Slovakia BIT (1991) and ruled that it was incompatible with the Treaty on the Functioning of the European Union (TFEU). The CJEU's reasoning suggests, more generally, that ISDS provisions in other intra-EU BITs are also incompatible with EU law.

¹¹ See also <http://europa.eu/rapid/midday-express-17-01-2019.htm?locale=en>.

¹² All EU member States are also individually parties to the Energy Charter Treaty, except for Italy which effectively withdrew as of 1 January 2016.

¹³ <https://www.regeringen.se/48ee19/contentassets/d759689c0c804a9ea7af6b2de7320128/achmea-declaration.pdf>

¹⁴ <http://www.kormany.hu/download/5/1b/81000/Hungarys%20Declaration%20on%20Achmea.pdf>.

Advocate General's Opinion is not binding on the Court of Justice. The CJEU's forthcoming opinion on CETA in a full court sitting will have important implications for the EU agreements.

Developments at the multilateral level

UNCITRAL WG III on possible reform of investor-State dispute settlement

During the reporting period, UNCITRAL released two notes as input to support forthcoming discussions in the Working Group III, scheduled for 1-5 April 2019 in New York, United States. The notes are entitled "Third-Party Funding" (24 January 2019) and "Information on Options for Implementing a Workplan" (25 January 2019). UNCITRAL Working Group III was tasked to identify and consider concerns regarding ISDS, to consider whether ISDS reform was desirable and to develop any relevant solutions to be recommended to the Commission. Three Working Group meetings took place since 2017. At the second (23-27 April) and the third (29 October-2 November) meetings in 2018, the UNCITRAL Working Group identified concerns in a framework for discussion, including through a table of options. It agreed on the desirability of developing reforms at UNCITRAL with respect to these concerns. Deliberations at the forthcoming April meeting are expected to focus on the development of relevant solutions.

On 7 March 2019, several independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues published a letter in anticipation of the April meeting. It outlined concerns and called upon members of the Working Group III to take these concerns into account.¹⁵ Among others, the letter notes that the current reform proposals do not go far enough to effectively address the deep-rooted deficiencies of the ISDS system. The letter suggests considering issues such as "access to remedy and participation of affected parties" in the deliberations.

Subsequently, a letter signed by 65 leading scholars in the field of international investment law and policy was sent to the chair of WG III on 26 March.¹⁶ The open letter calls on States and the UNCITRAL Working Group III to include the asymmetry in ISDS as one of the concerns to be addressed in the current UNCITRAL reform efforts. In so doing, the letter concludes that "States and UNCITRAL WG III would show commitment to shaping the international economic order so that it protects the common interest of all instead of a narrow and particular group of interests".

World Trade Organization's (WTO) structured discussions on investment facilitation for development

In November 2018, a number of WTO Members engaged in a further session of the structured discussions (following earlier sessions in April, June and September). The session aimed at identifying possible "elements" of a multilateral framework on investment facilitation. Possible "elements" identified by participating Members have been reflected and organized in a "Checklist of Issues raised by Members". Members who participated in a December 2018 "stock-take and next-steps" meeting decided to focus the next phase of discussions on developing the possible elements of the multilateral framework on investment facilitation through example-based discussions and using the checklist as a basis. Examples submitted by participating Members will be complemented as necessary by the Coordinator (Ambassador Juan Carlos González, from Colombia). In January 2019, Members participating in the debate endorsed the suggestion to invite experts from relevant international organizations as observers during this next phase of the discussions.

¹⁵ https://www.ohchr.org/Documents/Issues/Development/IFDebt/OL_ARM_07.03.19_1.2019.pdf

¹⁶ <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:f165cc95-6957-4e12-a042-9ec43387725e>

ANNEX. Investment policy measures taken between November 2018 and February 2019

	Description of Measure	Date	Source
Algeria			
General business climate	<p>The Finance Act introduced (and amends) several measures targeting increased fiscal revenues through expanded tax bases and tighter control mechanisms. Article 2 of the Act limits deductibility of costs related to technical assistance provided by foreign suppliers. Also, deductibility of interest on loans paid to shareholders or related companies is limited at the average effective interest rate established by the Bank of Algeria.</p> <p>The Finance Act was adopted on 27 December 2018 and came into force as of 1 January 2019.</p>	27 December 2018	Official Gazette, Loi n° 18-18 du 19 Rabie Ethani 1440 correspondant, au 27 décembre 2018 portant loi de finances pour 2019), 30 December 2018; EY, "Algeria's 2019 Finance Bill introduces new tax measures", 23 January 2019
Australia			
Entry	<p>CK Group's A\$13 billion bid for gas pipeline operator APA Group was knocked back by Australia's Government on national security concerns, announced by Treasurer Josh Frydenberg on 20 November 2018. Mr. Frydenberg said he rejected the deal because it would result in a single foreign company group having sole ownership and control over Australia's most significant gas transmission business.</p>	20 November 2018	Treasurer of the commonwealth of Australia, "Final decision on the proposed acquisition of APA", 21 November 2018
Barbados			
General business climate	<p>On 21 November 2018, the Government announced a cut in the corporate tax rate for local businesses, while increasing taxes for the offshore sector. Local companies previously paid rates from 5% to 25%, with the top rate increasing to 30%. International business companies, which were taxed at between 0.25% and 2.5% of declared profits, will pay more than before at the new rates.</p>	21 November 2018	EIU, "Corporate tax rate slashed", 19 December 2018
Belgium			
Entry	<p>On 5 December 2018, the Flemish Parliament approved the new version of the Administrative Decree containing a new section titled "Safeguarding the strategic interests of the Flemish Community and the Flemish Region". The new provisions allow the Government of Flanders to intervene in foreign acquisitions resulting in gaining control or decision-making powers over public or semi-public entities servicing needs of general interests (including those financed or supervised by public authorities), if such a foreign acquisition threatens the strategic interests of the Flemish Community or the Flemish Region. The Decree further specifies that this may be the case, if either the continuity of vital processes is compromised, or certain strategic or sensitive knowledge threatens to fall into foreign hands, or the strategic independence of the Flemish Community or the Flemish Region is compromised. Once this</p>	5 December 2018	Bestuursdecreet, Belgisch Staatsblad, 19 December 2018; Baker McKenzie, "Screening of foreign investments in Flanders' strategic (semi-) public assets", 20 February 2019

	<p> criterion is met, the Government should seek to reach an agreement aimed at mitigating the risks posed by the transaction. If it is not feasible, it may prohibit the acquisition. The new screening mechanism may also apply 'ex post', i.e. after the transaction has been made. </p>		
Brazil			
Entry	<p> On 13 December 2018, Brazil adopted a temporary decree allowing Brazilian airlines to have 100 per cent participation of foreign capital. This lifted the previous 20 per cent limit on foreign investment in Brazilian airlines. </p>	13 December 2018	<p> Planalto (Media Release), "Medida provisória autoriza 100% de capital estrangeiro em companhias aéreas", 13 December 2018; Reuters, "Brazil allows 100 pct foreign investment in domestic airlines – decree", 13 December 2018 </p>
Cameroon			
Promotion and facilitation	<p> The 2019 Finance Law, which was enacted on 11 December 2018 as Law No.2018/022, includes the following tax regulations, among others: </p> <ul style="list-style-type: none"> • Reduction of the withholding tax due on capital gains earned on the disposal of real property from 10% to 5%. • Introduction of the investor obligation to use raw materials produced in an economic disaster area in order to benefit from tax incentives granted for the rehabilitation of the said area. • Introduction of a tax credit of 30% for enterprises that invest in the reconstruction of their production facilities in an economic disaster area. • Introduction of a super reduced rate of Special Income Tax (SIT) of 2% applicable on remunerations paid by Cameroonian shipping companies to foreign companies for vessel rentals and charter, space rentals in foreign vessels, as well as commissions paid to foreign port agents. <p> The provisions of the 2019 Finance Law are applicable as from 1 January 2019. </p>	1 January 2019	<p> Ministry of Finance, Finance Law of the Republic of Cameroon for the 2019 Financial Year, Law No.2018/022, 11 December 2018; EY, "Cameroon enacts 2019 Finance Law", 25 January 2019 </p>
China			
Promotion and facilitation	<p> On 23 November 2018, the State Council rolled out a series of measures to support the further reform of pilot free trade zones (FTZ). The circular includes 53 measures for improving the investment environment, trade facilitation, financial innovation, and the human resources sector. To improve the business environment, the ratio requirement for foreign technical personnel in foreign-invested construction and engineering design enterprises, as well as restrictions on recruitment agencies, will be relaxed. Also, land use for pilot FTZs in some provinces and municipalities should be given priority in the overall layout. The circular also stresses financial innovation to serve the real economy. Efforts should be made to simplify administrative approval procedures for insurance branches and establish and improve the information sharing system about enterprises' demand for insurance in pilot FTZs. Pilot practices in </p>	23 November 2018	<p> State Council of PRC, "Measures rolled out for further reform, innovation in pilot FTZs", 23 November 2018 </p>

Entry	<p>the human resources sector were also encouraged. The authority to approve Sino-foreign joint ventures and wholly foreign-owned agencies with talent intermediary service in pilot FTZs will be delegated to local authorities in the zones.</p> <p>The circular also urges local Governments and all related departments to put importance on improving construction and management of pilot FTZs and to promote implementation of those measures.</p> <p>On 25 December 2018, China released a new “negative list for market entrance of 2018”, which contains 151 items that companies are banned from accessing or need to acquire a license beforehand, marking the first time China introduced the negative list on a nationwide level.</p> <p>In the new list released by the National Development and Reform Commission (NDRC), the Government slightly loosened its grip on certain resource-related industries such as coal and nonferrous metals.</p> <p>China has piloted the negative list scheme in about 15 cities and provinces since 2016. Compared with the 2016 version, the new list is simplified, cutting 177 items in its main body but detailing the restrictive areas in an attached file.</p> <p>The new list is made up of two categories: industries which companies are not allowed to enter and industries where firms must gain certification before conducting relevant business.</p> <p>The banned industries include sectors where Chinese laws prohibit companies from participating, projects that are banned from investment under the Catalogue for Guiding Industry Restructuring, illegal financial activities and illegal internet-related businesses.</p> <p>The industries whose entry requires approval involve 18 industries including manufacturing, transportation and storage, retail and wholesale, finance as well as culture, sports and entertainment.</p> <p>The new list works for all kinds of companies regardless of whether they are State-owned enterprises or private firms, Chinese companies or foreign companies, big or small companies. Foreign companies are still subject to the new negative list for foreign investment which took effect in July 2018.</p>	25 December 2018	Belt and Road Portal, “China releases downsized negative list for market access of 2018”, 26 December 2018
Côte d'Ivoire			
Promotion and facilitation	<p>On 18 December 2018, the Council of Ministers adopted two decrees pursuant to Ordinance No. 2018-646 of 1 August 2018 on the Investment Code.</p> <ul style="list-style-type: none"> • The first decree organizes the functioning of the Accreditation Committee responsible for examining the applications for approval of investors. The committee includes four national experts from the Administration of the Promotion of Industry, Investments, Budget and Finance. • The second decree grants the benefit of an additional 2% tax credit to companies in the agriculture, agribusiness, health and hotel sectors, as well as to all companies operating in other sectors of activity, excluding those in the commercial and professional sectors, the banking and financial sectors 	18 December 2018	Official Portal of the Government of Ivory Coast, Communiqué du Conseil des Ministres du mardi 18 décembre 2018

and the non-industrial building sector. The tax benefit is only available to companies in the said sectors of activity that open at least 15% of their capital to Ivorian nationals.

Ecuador

Promotion and facilitation	On 10 January 2019 the President announced the introduction of new regulations clarifying the application of the Productive Development Law (LFP), originally enacted in August 2018 to encourage investment and generate employment. The new regulations, which target sectors such as export-oriented businesses, manufacturing and tourism, are an attempt to ease Ecuador's dependence on public investment and further facilitate private sector investment. In addition to clarifying existing laws, the new regulations simplify environmental regulations and provide additional tax incentives. They also include new processes intended to eliminate delays in the issuance of mining licences, streamline customs procedures and guarantee exporter liquidity.	10 January 2019	EIU, "Moreno introduces new regulations to promote investment", 16 January 2019
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Egypt

Treatment	Decree No. 256 of 23 December 2018 (which amends Article 281 of the executive resolution of the Companies' Law No. 159 for year 1981) relieves limited liability companies in Egypt from the requirement to appoint Egyptian managers.	23 December 2018	PWC, "Limited Liability Companies are not restricted by the nationality of the manager", 15 January 2019
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France

Entry	<p>By Decree No. 2018-1057 of 29 November 2018 on Foreign Investments Subject to Prior Authorization, the French Government extended the scope of foreign investment screening to cover several new strategic technology sectors (the so called 'sectors of the future').</p> <p>These include:</p> <ul style="list-style-type: none"> • space operations; • cybersecurity; • artificial intelligence; • robotics; • semiconductors and additive manufacturing; • data hosting; • systems utilized for capturing computer data or intercepting correspondence; • IT systems for public authorities in the field of national security; • information systems utilized in crucial industries; • research and development of dual-use goods and technologies. <p>In addition, under the new law, not only an investor, but also a company being targeted may apply for a relevant authorization. Furthermore, the authorization may contain certain conditions imposed on an investor in relation to guaranteeing the durability of technologies or data protection.</p>	29 November 2018	Legifrance, Décret n° 2018-1057 du 29 novembre 2018 relatif aux investissements étrangers soumis à autorisation préalable; Freshfields Bruckhaus Deringer LLP, "French State looking to intensify its control on foreign investment", 21 December 2018
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Germany			
Entry	On 19 December 2018, the German Government amended the Foreign Trade and Payments Ordinance in order to expand the scope of its FDI screening mechanism for non-EU / non-EFTA investors. Firstly, the amendment lowers the foreign ownership threshold from 25% to 10% in the following sectors: military equipment, crypto-technology and IT security, critical infrastructure and software operating the latter. Secondly, the screening mechanism now also applies to the news and media companies critical for "public opinion formation", including those involved in broadcasting, TV and print media.	19 December 2018	Federal Ministry for Economic Affairs and Energy, Zwölfte Verordnung zur Änderung der Außenwirtschaftsverordnung, 19 December 2018; Freshfields Bruckhaus Deringer LLP, "Minority acquisitions targeted by new German foreign investment rules", 29 December 2018
Guatemala			
Promotion and facilitation	The regulation for Special Public Economic Development Zones, which came into effect on 4 February 2019, establishes fiscal incentives for companies operating under this scheme. Among the tax benefits provided by the Law are the full exemption for 10 years of income tax, as well as the temporary suspension of taxes associated with imports. Companies that may be eligible under this format are those engaged in production, manufacturing, transformation, assembly, marketing, distribution, storage, conservation, fractionating, repackaging, packaging, handling, classification, cleaning and any other operation of goods owned or imported and exported.	4 February 2019	Central America Data, "Tax Benefits for Companies in Special Zones", 5 February 2019
India			
Entry	According to the notification by the Reserve Bank of India (RBI) on 21 January 2019, foreign companies in defence, telecom, information and broadcasting, and private security sectors will not require the RBI's approval to open branch offices, provided that they have an approval of the regulator and the ministry concerned.	21 January 2019	Reserve Bank of India, Notification No. FEMA 22 (R)/(2)/2019-RB, 21 January 2019
Treatment	Effective from 1 February 2019, the Government of India introduced several restrictive changes in its FDI policy for e-commerce. The new rules are reported to aim at safeguarding the interests of offline retailers. The key changes, among others, are: <ul style="list-style-type: none"> • Marketplace entities (entities providing information technology platforms to act as a facilitator between buyers and sellers) cannot buy more than 25% from a single vendor; • Entities in which there is equity participation by the marketplace entities or having control on its inventory by marketplace entities cannot sell their products on the platform run by the marketplace entities; • Marketplace entities cannot mandate any seller to sell any product exclusively on its platform; and • Marketplace entities are required to submit a compliance report to the Reserve Bank of India (RBI) by 30 September every year. 	1 February 2019	Ministry of Commerce & Industry, "Review of the policy on Foreign Direct Investment (FDI) in e-commerce", 26 December 2018;

Italy			
Promotion and facilitation	The 2019 Budget law, published on 31 December 2018, contains several measures related to tax incentives, including changes to the research and development (R&D) tax credit rules. In addition, a reduced tax rate is introduced for profits reinvested to acquire new assets or to increase employment; the national interest deduction (ACE) is abolished and the tax credit for training under the "National Industry 4.0" plan is extended.	31 December 2018	Deloitte, "Changes to tax incentives under 2019 budget law", 15 January 2019
Kazakhstan			
Treatment	A recent law adopted on 21 January 2019 liberalizes the arbitration framework of Kazakhstan and harmonizes it with relevant international conventions and standards. Among others, it now permits that foreign law can apply to a dispute involving the state. Furthermore, grounds for refusing the recognition and enforcement of a foreign arbitral award have been brought in line with the New York Convention.	21 January 2019	Dentons, "Significant amendments to the Law on Arbitration have been adopted in Kazakhstan", 1 March 2019
Korea, Republic of			
Promotion and facilitation	Certain tax incentives, which were available for foreign investments have been abolished, effective from 1 January 2019. Previously, foreign direct investments enjoyed up to seven years tax reduction on their income tax or corporate tax on condition that the investments were targeted on specified new growth engine industries, or that the investments occurred in the free economic zones, foreign investment zones, or free trade zones. Provided that the investment occurred before the end of 2018, it can still enjoy the tax benefits.	1 January 2019	National Assembly, Revision on the Special Tax Treatment Control Law, 24 December 2018
Kuwait			
Entry	On 15 December 2018, the Kuwaiti Ministry of Commerce and Industry issued a decision allowing foreign investors to own and trade in Kuwaiti banks' shares. The decision states that ownership rights of foreign investors in any Kuwaiti bank shall not exceed five percent, whether directly or indirectly. Approval of the Central Bank of Kuwait (CBK) needs to be obtained, if the foreign ownership share exceeds five percent of the bank's capital.	15 December 2018	Kuwait News Agency (KUNA), "Kuwaiti Commerce Min.: Foreign investors can own, trade in local bank shares", 15 December 2018
Mexico			
Promotion and facilitation	On 31 December 2018, the Government published a Decree on tax incentives for businesses operating in the northern border zone of Mexico for 2019 and 2020. These incentives include tax credits, which effectively reduce the income tax rate from 30% to 20% for legal entities, and a reduced value added tax (VAT) rate of 8%. The Decree applies to qualified legal entities, individuals and branches of foreign entities, and includes various administrative requirements to take advantage of the incentives.	31 December 2018	EY, "Mexico issues special tax incentives for businesses in border zone", 9 January 2019

Myanmar			
Treatment	According to notification No. 6/2018 released on 8 November 2018, the Central Bank of Myanmar allowed all branches of foreign banks to provide commercial services such as financing and other banking services to local businesses.	8 November 2018	THAIBIZ, "According to the notification No.6/2018 released on 8 November 2018, Central Bank of Myanmar allowed all branch of foreign banks to provide commercial services to local businesses", 13 November 2018
Promotion and facilitation	The Union Assembly, on 19 November 2018, approved the formation of a new ministry called the Ministry of Investment and Foreign Economic Relations. The new ministry is expected to promote local and foreign investment, protect the environment and society, and promote responsible investment.	19 November 2018	Myanmar Business Today, "Myanmar establishes new investment ministry", 26 November 2018
Panama			
Entry	The Government, with a view to enhancing the advantages offered to multinational headquarters for establishing and operating offices inside the national territory, has enacted Law no. 57 of 2018, amending the Special Regime for the establishment and operations of offices of multinational headquarters. The amendments consist in adding several provisions enhancing the scope of their activities and making their operations more competitive and attractive. The amendments took effect as from 1 January 2019.	1 January 2019	Quijano, "Panama's National Assembly approves bill to amend Multinational Headquarters regime", 8 November 2018
Promotion and facilitation	According to the Law Project 696 of 2018, approved on 4 February 2019, Panama modified tax incentives related to the tourism sector as established under Law 80 of 8 November 2012. The tourism sector will get tax incentives until 2025 to promote a competitive offer for investors in hotels and recreation activities.	4 February 2019	Asamblea Nacional de Panamá, "Por Medio del Cual se Modifican los Incentivos Fiscales y se Disponen Otras Obligaciones Tributarias a la Ley 80 de 8 de Noviembre de 2012", 5 February 2019
Peru			
Promotion and facilitation / General business climate	Effective 1 January 2019, specific rules on tax credits were introduced for domiciled entities. They will be able to deduct various income taxes paid as credit (specific requirements will apply). A special deduction regime has been established for projects related to scientific research, technological development, and technological innovation. Taxpayers investing in these activities will be able to deduct 175% or 150% of the expenses incurred in them.	20 December 2018	PWC, "Peru: Corporate tax credits and incentives", 20 December 2018
Philippines			
Entry	Under a new version of the Government's "negative list", published on 30 October 2018, foreigners are now allowed to invest up to 40 percent of equity in contracts for the construction and repair of locally-funded public-work projects, up from 25 percent. The cap on foreign ownership of private radio communications networks has also been raised from 20 percent to 40 percent. The updated list also allows full foreign ownership of the following businesses: internet businesses, teaching at higher education	15 November 2018	Malacanán Palace, Executive Order No.65, 30 October 2018

	<p>levels, training centers, adjustment, lending and financing companies, investment houses and wellness centers. This new rule took effect on 15 November 2018.</p>		
Poland			
Promotion and facilitation	<p>On 11 February 2019, the Act on Financial Support for Audiovisual Production entered into force. It introduced financial incentives aimed at boosting the Polish audiovisual industry. Although the programme is not directed only to foreign investors, its explicit goals are, among others, to create an attractive environment for investing foreign capital in audiovisual productions in Poland and to facilitate cooperation between national and foreign producers.</p> <p>Under the new law, producers are entitled to a reimbursement of production costs incurred in Poland in the amount of 30% of Polish eligible expenditures. A qualification test applies to all applications, which takes into account the following criteria: use in the audiovisual work of Polish or European cultural heritage; location of the audiovisual work on the territory of Poland; realization of an audiovisual work on the territory of Poland; participation in the audiovisual production of Polish artists, crews and service providers; and use of Polish film infrastructure.</p>	11 February 2019	<p>Polish Parliament, Ustawa z dnia 9 listopada 2018 r. o finansowym wspieraniu produkcji audiowizualnej, 11 February 2019; Film Commission Poland, "INCENTIVES", 2 February 2019</p>
Qatar			
Entry / Promotion and facilitation	<p>On 7 January 2019, Law No.1 of 2019 regulating the investment of non-Qatari capital in economic activity became effective, repealing Law No. 13 of 2000. Key aspects of the new law, among others, are the following:</p> <ul style="list-style-type: none"> • Foreign investment up to 100 percent ownership is permitted in all economic sectors subject to specific legislation regarding commercial activities carried out by Non-Qataris and as determined by the executive regulations of the New Law. • Certain activities remain excluded - namely banking and insurance (unless exempted by a Council of Ministers' decision), commercial agencies and other sectors as decided by the Council of Ministers. • Foreign ownership limits in listed companies on Qatar Exchange have been increased to a maximum of 49 percent, subject to the approval of the Ministry of Commerce and Industry. This percentage can be further increased subject to approval by the Council of Ministers upon recommendation of the Minister of Commerce and Industry. • Most of the incentives previously granted under the Repealed Law remain the same, with a few changes. • Except for labor disputes, foreign investors have the right to refer their disputes to international arbitration or alternative dispute resolution processes. <p>The new law does not apply to the following entities: 1) companies and individuals who are assigned to extract or manage natural resources under concession or special contract, to the extent the provisions of such</p>	7 January 2019	<p>Eversheds Sutherland, "The Foreign Investment Law: the first law in Qatar in 2019", 9 January 2019</p>

	<p>contract do not contradict the provisions of the new law;</p> <p>2) companies set up by the Government and public institutions or in which they participate and companies in which the Government participates in partnership with foreign investors in a percentage of no less than 51 percent in accordance with the Commercial Companies Law; and</p> <p>3) corporate or natural persons licensed by Qatar Petroleum to carry out any petroleum activities or which aim to invest in the oil and gas and petrochemical sector.</p>		
Romania			
General business climate	<p>On 29 December 2018, new corporate taxes were introduced that target the banking, energy and telecommunications sectors. More specifically, the Ordinance requires companies to pay a tax on their financial assets conditional on the level of the three-months and six-months Romanian Interbank Offer Rate. Also, it imposes on energy companies operating in the natural gas and electricity markets a new 2% tax rate on turnover. Further, it requires telecom companies to pay a turnover tax rate of 3%.</p>	29 December 2018	EIU, "Romania economy: New corporate taxes introduced", 11 January 2019
Rwanda			
General business climate	<p>Effective 7 January 2019, the Central Bank introduced new requirements for licensing financial institutions. The newly required paid-up capital for Commercial Banks is Rwf20 Billion and Rwf50 Billion for Development Banks. The Paid-up Capital for the new categories of cooperative and Mortgage Banks is set at Rwf10 Billion.</p>	7 January 2019	Official Gazette no. 01 of 07/01/2019, 7 January 2019; Rwanda News Agency, "Central Bank introduces new requirements for licensing financial institutions", 21 December 2018
Senegal			
Treatment	<p>The Petroleum Code, which was adopted on 24 January 2019 as Law No. 01/2019, aims to reinforce the preservation of national interests and local content. It includes several key points: Royalties are calculated on gross production and the Société des Pétroles du Sénégal's (PETROSEN) has a ten percent stake in all contracts, which can be increased to 40 percent in specific situations. PETROSEN also has to participate in project expenditure in the same way as other operating companies. According to the code, no tax holiday can be applied from now on and international companies will have to take into account several local content policies.</p>	24 January 2019	Ministère du Pétrole et des Energies, "Loi n°2019-04 du 24 janvier 2019 relative au contenu local dans le secteur des hydrocarbures", 24 January 2019; Africa Oil and Power, "Senegal approves new petroleum code", 25 January 2019
South Africa			
Entry / Treatment	<p>The Defence Sector Code was gazetted by the Minister of Trade and Industry on 9 November 2018. It stipulates that companies must procure at least 60% of defence materials produced locally, as well as locally produced technologies. The other key highlight is that the black ownership target has been increased</p>	9 November 2018	Department of Trade and Industry, "Codes of Good Practice on Broad Based Black Economic Empowerment, 9 November 2018; South African Government News Agency, "B-BBEE defence sector

	to 30%, which is higher than the 25% benchmark of the generic codes.		codes gazetted", 13 November 2018
Treatment	On 5 December 2018, the Parliament adopted a resolution to amend Section 25 of the South African Constitution to make expropriation of land without compensation more explicit. This means that a Bill can now be introduced according to the procedures in Section 74 of the Constitution.	5 December 2018	Parliament of South Africa, "Parliament approves recommendation to amend Section 25 of Constitution", 5 December 2018
United Arab Emirates			
Promotion and facilitation	On 7 February 2019, the President, His Highness Sheikh Khalifa bin Zayed Al Nahyan, issued Law No.1 on the establishment of an Abu Dhabi Investment Office (ADIO) and Law No.2 on regulating partnerships between public and private sectors. The Abu Dhabi Investment Office will be responsible for executing a comprehensive strategy to increase foreign direct investment to Abu Dhabi. As part of the Emirate's Ghadan 21 programme, ADIO's activities will expand to include key levers to accelerate economic growth, such as Public-Private Partnerships (PPP) and targeted incentives for Abu Dhabi's priority sectors, such as technology, tourism, and advanced manufacturing.	7 February 2019	Emirates News Agency, "President issues two laws to formally establish Abu Dhabi Investment Office", 7 February 2019
Treatment	On 24 November 2018, the UAE Cabinet approved a long-term visa system for investors, entrepreneurs, specialized talents and researchers in the fields of science, knowledge and outstanding students to facilitate business and create an attractive and encouraging investment environment.	24 November 2018	Government of Dubai Media Office, "UAE Cabinet approves comprehensive long-term visa system for investors, entrepreneurs, specialised talents and outstanding students", 7 December 2018
United Republic of Tanzania			
Entry	The Mining (Local Content) Regulations, which were passed on 8 February 2019, amend the existing rules in the following ways, among others: <ul style="list-style-type: none"> • While the "old" Local Content Regulations required an indigenous Tanzanian company to have at least 51% of its equity owned by Tanzanian citizens, the new rules reduce this share to 20%. • The review period by the Local Content Committee for the local content plan has been extended to 60 working days (from 25 working days previously). After receipt of the recommendations from the Local Content Committee, the Mining Commission shall communicate its decision whether or not to approve the plan to the applicant within 30 working days instead of 7 days previously. 	8 February 2019	Lexology, "Regulatory changes in Tanzania's mining sector", 4 March 2019
United States of America			
Entry	The U.S. Department of the Treasury, as chair of the Committee on Foreign Investment in the United States (CFIUS), issued a pilot program pursuant to the Foreign Investment Risk Review Modernization Act (FIRRMA), which came into effect on 10 November 2018. The pilot program is a temporary regulation to protect	10 November 2018	U.S. Department of The Treasury, "Critical Technology Pilot Program", 11 November 2018

critical American technology and intellectual property from potentially harmful foreign acquisitions.

The pilot program expands CFIUS jurisdiction to include certain non-controlling investments by foreign investors in a U.S. business that produces, designs, tests, manufactures, fabricates or develops one or more critical technologies that are either utilized in connection with the U.S. business' activity, or designed by the U.S.

CFIUS has developed a list of 27 industries for which certain strategically motivated investments could pose a threat to U.S. technological superiority and national security, including aviation, defence, semiconductors, telecommunications, batteries, biotech, nanotechnology - among other strategic industries where the U.S. wants to keep its technological edge.

Uruguay

Promotion and facilitation	Uruguay's Ministry of Finance issued a decree (Decree No. 405/018) on 6 December 2018 that modifies the rules governing free zones (FZ). The amendments are intended to improve the operation of FZ based on discussions between the Government, FZ users and the tax authorities, while also aligning the regime with international standards for the prevention of harmful tax practices, particularly the recommendations of action 5 of the OECD/G20 BEPS project.	6 December 2018	Deloitte, "Requirements relating to free zones modified", 6 December 2018
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Uzbekistan

Treatment	Regulations on measures to create favorable conditions for labor activities in the territory of the Republic of Uzbekistan by qualified specialists from foreign countries entered into force on 1 December 2018. Highly qualified specialists do not need a special permit, but only a unified confirmation of their right to work. Also, lower rates for issuance of such a confirmation were introduced (1 and 2 minimum wages, instead of the current 10). In addition, only 50 percent of the established rate of personal income tax will be applicable to highly qualified specialists. Finally, the Ministry for Development of Information Technologies and Communication is to develop a special information portal available in several languages to provide information on visas, residence permits, registrations, tax mechanisms and other aspects of labor relations, benefits and preferences for foreign citizens, as well as recommendations for finding work and housing.	1 December 2018	Dentons, "Uzbekistan simplifies the process to obtain work permits for foreigners", 23 November 2018
Promotion and facilitation	The Regulation on Measures for the Fundamental Improvement and Integrated Development of the Building Material Industry was signed by the President of Uzbekistan on 20 February 2019. It provides a list of 275 deposits (plots) of non-metallic minerals for industrial development, in respect of which investment, including foreign investment, is attracted to develop these deposits. Furthermore, the time frame for obtaining a license for the use of a subsoil block containing nonmetallic minerals has been shortened to 10 days starting from 1 April 2019.	20 February 2019	Dentons, "Uzbekistan introduces changes to the mining industry", 26 February 2019

Viet Nam

Entry	On 1 February 2019, the Vietnamese Government issued a series of conditions for setting up foreign-invested vocational training institutions in Vietnam, expected to take effect from 20 March 2019. The conditions were itemized in Decree 15/2019/ND-CP, which contains detailed instructions on the implementation of the law on vocational training.	1 February 2019	Viet Nam News, " Decree sets requirements for foreign-invested vocational training institutions", 18 February 2019
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