



INVESTMENT POLICY MONITOR



UNITED NATIONS
UNCTAD

H I G H L I G H T S

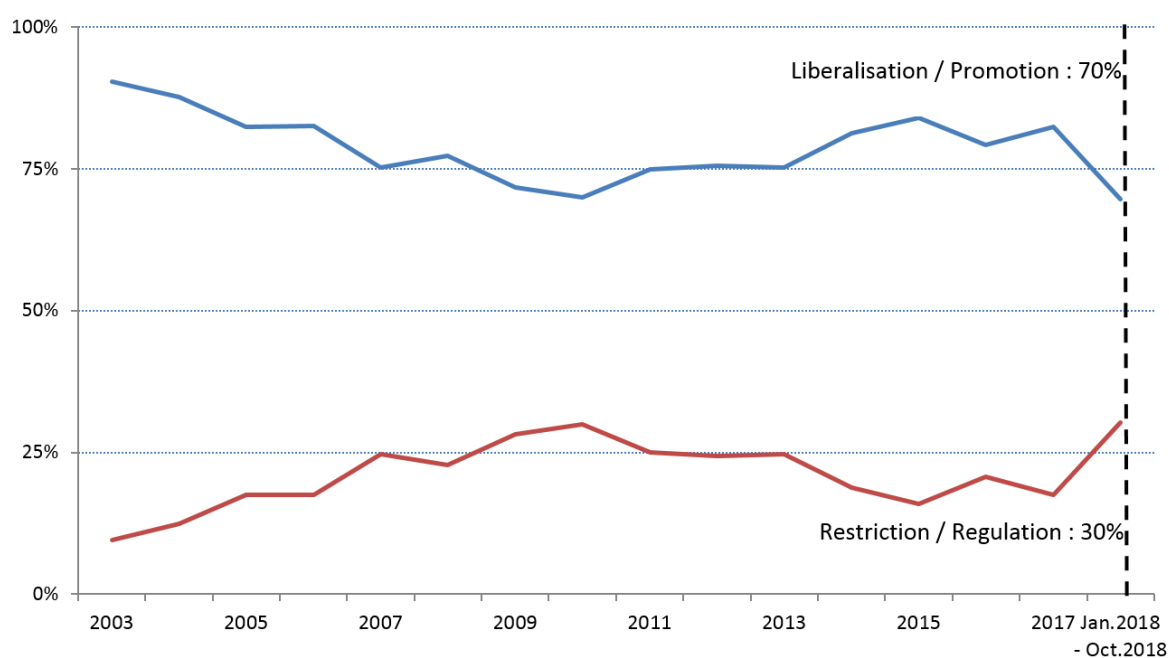
- Twenty-nine countries took 49 national investment policy measures in the review period (May 2018 - October 2018). The ratio of new restrictions or regulations stood at 24 per cent in the reporting period. Over the first ten months of 2018, this ratio was 30 per cent – which is the highest figure since 2010.
- Some countries adopted measures to liberalise foreign investment. Among the most noteworthy measures are liberalisation steps in various industries in Canada, China, Myanmar, Namibia, Saudi Arabia, United Arab Emirates and Viet Nam.
- Efforts to facilitate and promote investment continued in numerous countries. Some countries (e.g. Australia, Indonesia, and United Arab Emirates) took measures to simplify or streamline administrative procedures to invest more easily. Some countries (e.g. Burkina Faso, China, Mauritius, Poland, and Uganda) expanded fiscal benefits for investments.
- New investment restrictions or regulations manifested themselves primarily in national security-related policies. Hungary introduced a national security screening mechanism for foreign investment. Norway adopted a new framework to control acquisitions of businesses. The United Kingdom and the United States expanded the scope of national security-related review mechanisms. Canada blocked an acquisition proposal for Aecon Group Inc. by a Chinese state-owned company due to national security concerns.
- Countries concluded six bilateral investment treaties (BITs) and two treaties with investment provisions (TIPs), bringing the total number of international investment agreements (IIAs) to 3,339. Turkey has been particularly active, concluding four BITs in the reporting period. All new IIAs contain several reform features in line with UNCTAD's Reform Package.
- Among the five reform areas identified by UNCTAD for the First Phase of IIA Reform, new treaties give particular attention to the preservation of the right to regulate (e.g. by clarifying key protection standards) and the improvement of investment dispute settlement. Some new treaties have refined the definition of investment (e.g. by requiring including a requirement to contribute to the economic development of the parties).
- Several developments also implement UNCTAD's 10 Options for the Second Phase of IIA Reform, aimed at tackling challenges from old-generation treaties. For example, the EU-Singapore treaty, once in effect, will replace 12 BITs between Singapore and individual EU member States. Countries are also engaging multilaterally, for example, on topics of ISDS, investor responsibility and investment facilitation.
- Multilateral engagement on Investment policymaking continued in UNCTAD, where the 10th anniversary edition of the World Investment Forum (WIF) drew over 6000 participants from 186 countries, among them 11 Heads of State, 55 Ministers, 70 parliamentarians and over 1700 private sector participants. Key policy developments included collective multi-stakeholder action to stimulate investment for development, including Ministerial deliberations on core elements of sustainable investment policy making in the 21st century, investment policy coordination among ACP countries, a plan of action for Geneva International to support the financing of the SDGs, and the launch of an updated Reform Package for the International Investment Regime.

A. National investment policies

During the review period (May 2018 - October 2018), 29 countries took 49 investment policy measures (table 1). The majority of new investment policy measures continue to be geared towards creating more favourable investment conditions. Investment liberalisation, promotion and facilitation measures were adopted in numerous industries, including retail trade, banking services, energy, mining and transportation with developing and transition economies taking the lead.

The ratio of more restrictive or regulatory investment policy measures which were adopted or took effect during the review period stood at 24 percent. For the period from January to October 2018 this ratio is 30 per cent (figure 1). Compared with previous years, this is the highest ratio since 2010. New investment restrictions or regulations for foreign investors were mainly based on national security concerns about foreign ownership of critical infrastructures, core technologies, sensitive assets or residential property.

Figure 1: Changes in national investment policies, 2003 - October 2018*



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.

Table 1. Summary of national investment policy measures adopted between May 2018 and October 2018

	Entry and establishment (28)	Treatment (4)	Promotion and facilitation (15)	General business climate (8)
Algeria			1	
Angola (*)	1		1	
Australia	2		1	
Burkina Faso (*)	1		1	
Canada	2			
China (*)	2		2	
Ecuador			1	
Ethiopia	2			
Hungary	1			
India		2		
Indonesia			2	

Japan			1	
Mauritius			1	1
Myanmar (*)	5			1
Namibia	1			
New Zealand	1			
Norway	1			
Poland			1	
Rwanda				1
Russian Federation	1			
Saudi Arabia	1			
Singapore	1			
South Africa		1		1
Uganda			1	
United Arab Emirates (*)	1	1	2	
United Kingdom	1			
United Republic of Tanzania				1
United States of America	2			
Viet Nam	2			3

Source: ©UNCTAD.

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

1. Entry/Establishment of investment

Eighteen countries – *Angola, Australia, Burkina Faso, Canada, China, Ethiopia, Hungary, Myanmar, Namibia, New Zealand, Norway, Russian Federation, Saudi Arabia, Singapore, United Arab Emirates, United Kingdom, United States of America, and Viet Nam* – adopted new policy measures relating to the entry and establishment of foreign investors. The majority of them relaxed restrictions on foreign ownership or opened up new business opportunities.

Among the most noteworthy investment liberalisation measures are:

- *Angola* introduced a new Private Investment Law, relaxing restrictions on establishing local entities, and abolishing the local partnership requirement for certain sectors or activities.
- *Canada* extended the foreign ownership ceiling for Canadian air carriers from 25% up to 49%.
- *China* changed its “negative list”, relaxing or removing restrictions on foreign investments in several industries.
- *Ethiopia* set up an Advisory Council to implement the plan to open major state-owned enterprises for private and foreign investors; and opened the logistic industry to foreign investors.
- *Myanmar* allowed 100 per cent foreign ownership of businesses operating in the wholesale and retail sectors; lifted the ban on foreign investment in mining operations; permitted foreign investors to hold up to 35 per cent of shares of domestic company without the company losing its status as domestic company.
- *Namibia* abolished the requirement for companies seeking mining exploration licences to be partly owned and managed by historically disadvantaged Namibians.
- *Saudi Arabia* opened four more sectors to foreign investment – recruitment and employment services, real estate brokerage, audiovisual and media services, and land transport services.
- The *United Arab Emirates* established a framework to permit foreigners to own up to 100 per cent of companies in certain designated sectors that will be identified in a “positive list.”
- *Viet Nam* allowed foreign investors to contribute capital to establish commodity exchanges not exceeding 49 per cent of its charter capital.

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

- *Canada* blocked a proposed \$1.5 billion acquisition of the Canadian construction company Aecon Group Inc. by China Communications Construction Company International Holding Limited due to national security concerns.

- *Hungary* adopted a new law, introducing a foreign investment screening mechanism related to national security.
- *Norway* adopted a national security screening mechanism for foreign investment.
- The *United Kingdom* and the *United States of America* expanded the scope or conditions for application of foreign investment review mechanism for national security.

2. Treatment of established investment

Three countries – *India*, *South Africa*, and *United Arab Emirates* – took measures with respect to the treatment of investors after establishment in the host country.

- The Reserve Bank of *India* instructed all Indian companies and limited liability partnerships retaining foreign investment to report, from 28 June to 12 July 2018, their total foreign investment received.
- In *South Africa*, the new Promotion of Investment Act came into effect, with the objective to substitute investment treaty protection by national legislation.
- The *United Arab Emirates* established a foreign direct investment unit within the Ministry of Economy with the mandate to propose and implement foreign direct investment policies.

3. Promotion/Facilitation of investment

Twelve countries – *Algeria*, *Angola*, *Australia*, *Burkina Faso*, *China*, *Ecuador*, *Indonesia*, *Japan*, *Mauritius*, *Poland*, *Uganda*, and *United Arab Emirates* – adopted measures for the promotion and facilitation of investment. Most of these measures encouraged investment through providing investment incentives or facilitating investment procedures. For instance,

- *Australia* established a new online application portal to facilitate the process of foreign investment applications.
- *Burkina Faso* reduced by one quarter the threshold for incentives to invest in strategic sectors.
- *China* widened income tax benefits for overseas investors, exempting them from withholding income tax on the re-investments of the profits made in China.
- *Ecuador* reformed its investment law establishing new incentives to promote foreign direct investment and providing a new arbitration route for settling disputes arising out of investment agreements.
- *Indonesia* lowered the minimum equity requirement for foreign investment companies to utilize the Online Single Submission portal from IDR 10 billion to IDR 2.5 billion.
- *Mauritius* introduced a 5-year tax holiday for Mauritian companies to collaborate in developing infrastructures in the special economic zones.
- *Poland* extended its fiscal incentive schemes available in special economic zones to the entire country.
- *Uganda* introduced new tax incentives to promote both domestic and foreign investment focusing on industrialization, export promotion, and promotion of tourism.

4. General business climate

Six countries – *Mauritius*, *Myanmar*, *Rwanda*, *South Africa*, *United Republic of Tanzania* and *Viet Nam* – took measures affecting the general business climate.¹ *Mauritius*, and *Rwanda* reformed their taxation regimes related to international companies. The *United Republic of Tanzania* cut the corporate income tax rate from 30 per cent to 20 per cent for new investors in some sectors. *South Africa* introduced a new intellectual property policy for better access to medicine in the country. *Viet Nam* streamlined procedures concerning the implementation of investment under the form of public private partnerships.

¹ The following examples are a non-exhaustive overview.

B. International investment policies

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

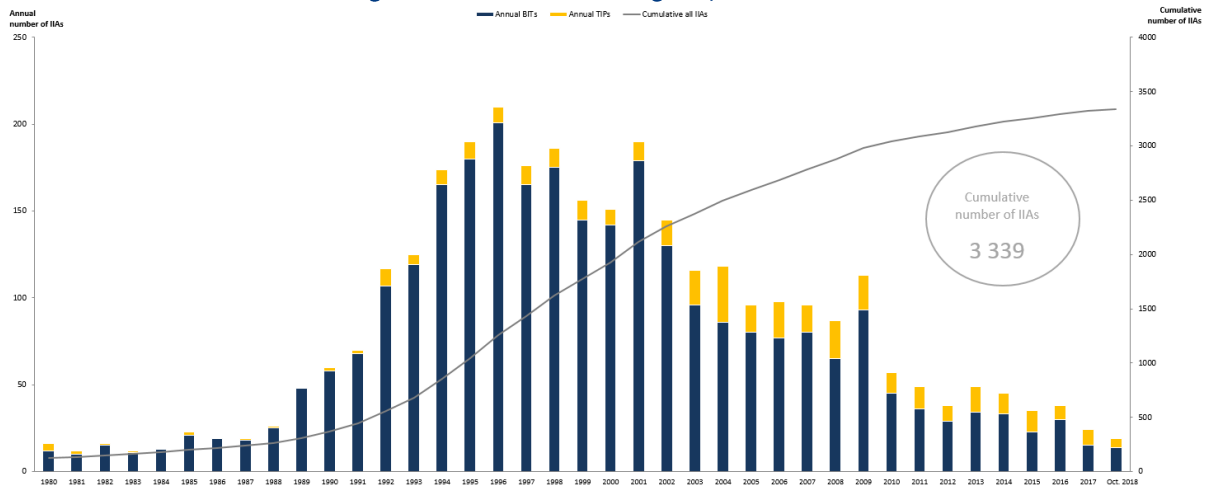
During the reporting period, six bilateral investment treaties (BITs) and two treaties with investment provisions (TIPs)² were signed, bringing the total number of IIAs to 3,339 by the end of October 2018. In addition, at least one IIA entered into force (the BIT between Myanmar and the Republic of Korea, effective 31 October 2018) and at least eleven terminations of BITs took effect (the termination of the BITs concluded by Ecuador with Argentina, France, Germany, Sweden, United Kingdom and United States, effective 18 May 2018, and of the BITs concluded by Ecuador with Bolivia, Canada, Chile, China and Venezuela, effective 19 May 2018). At least one notice of termination was sent (by Poland to Germany, on 17 October 2018, regarding a BIT from 1989).

Table 2. List of IIAs signed between 1 May and 31 October 2018

	Name of the Agreement	Date of signature
1	Cooperation and Facilitation Investment Agreement (CFIA) between Brazil and Suriname ³	2 May 2018
2	Economic Partnership Agreement (EPA) between the European Union (EU) and Japan	17 July 2018
3	BIT between Turkey and Zambia	28 July 2018
4	BIT between Lithuania and Turkey	28 August 2018
5	BIT between State of Palestine and Turkey	5 September 2018
6	BIT between Indonesia and Singapore	11 October 2018
7	Investment Protection Agreement between the EU and Singapore	19 October 2018
8	BIT between Turkey and Cambodia	21 October 2018

Source: ©UNCTAD, IIA Navigator.

Figure 2: Trends in IIAs signed, 1980-2018



Source: ©UNCTAD, IIA Navigator.

Note: Preliminary data for 2018. The cumulative number of all signed IIAs, independently of whether they have entered into force, is 3,339. IIAs for which termination has entered into effect are not included.

A detailed analysis of IIAs signed in 2018, including their content and prevalence of sustainable development features, will be available in the World Investment Report (WIR) 2019 (Chapter III), to be launched in June 2019. The following discussion is based on IIAs for which texts are currently available.

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) and 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 This report counts the CFIA between Brazil and Suriname as a BIT.

The *Brazil-Suriname CFIA*, signed on 5 May 2018, contains a definition of investment which explicitly excludes certain assets from the scope of protection (e.g. portfolio investment).⁴ The CFIA contains “post-establishment” national treatment (NT) and most-favoured nation (MFN) clauses, qualified with a reference to “like circumstances”. It includes a clause on direct expropriation, subject to four conditions for lawful expropriation. The CFIA explicitly excludes (“for greater certainty”) fair and equitable treatment (FET) and full protection and security (FPS), but contains a clause for reasonable, objective and impartial administration of measures due process of law. The CFIA contains a “not lowering of standards” provision (prohibiting parties to lower the standards of their labour, environmental and health legislation to encourage investment), a corporate social responsibility (CSR) provision with a list of principles and standards for responsible business conduct, and a commitment of the parties to fight corruption, money laundering and terrorism financing. It provides provisions for the prevention of disputes and rules on State-State dispute settlement, without providing for investor-State dispute settlement (ISDS). For dispute prevention, the CFIA refers to the establishment of ombudspersons and national focal points whose main task is to support investors of the other party by addressing their requests, enquiries, suggestions and complaints in investment matters. Certain provisions (e.g. security exceptions and CSR) are excluded from State-State dispute settlement.

The *EU-Japan EPA* was signed on 17 July 2018. It contains an investment liberalization section, granting MFN and NT with respect to the establishment and operation of covered investors and investments (“pre-and post-establishment”). At this point, the EPA does not include investment dispute settlement provisions, and it excludes investment dispute settlement provisions contained in other IIAs from the scope of the MFN clause. Negotiations between the EU and Japan continue on investment protection standards and investment dispute settlement.

During the reporting period, **Turkey** signed four BITs for three of which text is available. These are the BITs with **Lithuania** (28 August 2018), **State of Palestine** (5 September 2018), and **Cambodia** (21 October 2018). The three BITs have asset-based definitions of investment. The BIT with Cambodia excludes portfolio investments from the definition. The BITs with Lithuania and Palestine refer to the specific characteristics a covered investment must have, namely the commitment of capital, expectation of gain or profit, the assumption of risk, a certain duration and a contribution to economic development (a “contribution to economy” in the BIT with Lithuania). The BIT with Cambodia requires that the asset in question be “connected with business activities, acquired for the purpose of establishing lasting economic relations” in the host State territory. In all three BITs, the post-establishment NT and MFN provisions apply under conditions of “like circumstances” and contain several carve-outs from the MFN clause, such as ISDS and tax treaties. The BIT with Lithuania also excludes government procurement, subsidies and grants from the MFN clause. All three BITs contain FET provisions; the BITs with Palestine and Cambodia refer to the international law minimum standard of treatment and the BIT with Lithuania sets out an exhaustive list of measures considered to constitute a breach. All BITs contain expropriation clauses covering both direct and indirect expropriation with carve-outs for non-discriminatory public interest regulation. In addition, the BIT with Lithuania clarifies the criteria for a measure to constitute indirect expropriation. All three BITs contain the transfer-of-funds provisions with different exceptions. All three BITs also contain general and essential security exceptions. The BITs with Palestine and Lithuania contain denial-of-benefits clauses. The BIT with Lithuania includes transparency provisions (publication and exchange of information) and a “not lowering of standards” clause for environmental and labour rights and certain corporate governance standards. All three BITs contain ISDS and a “fork in the road” provision. The BIT with Lithuania also contains the possibility of joint interpretation by the Parties which will be binding on the arbitral tribunal.

The *EU-Singapore Investment Protection Agreement* was signed on 10 October 2018. It contains a broad, asset-based definition of investment, specifying the characteristics a covered investment should have (commitment of capital or other resources; expectation of gain or profit; and the assumption of risk or a certain duration). It grants “post-establishment” NT (in “like situations”), subject to certain reservations and exceptions, and omits MFN. The agreement contains a provision on FET and FPS and defines exhaustively the measures considered to constitute a breach of FET (denial of justice in criminal, civil or administrative proceedings; a fundamental breach of due process; harassment, coercion, abuse of power or similar bad faith conduct). The expropriation provision includes both direct and indirect expropriation, clarifies the criteria for a measure to constitute an indirect expropriation and carves out non-discriminatory public interest regulation. The agreement provides for investor-State arbitration and voluntary

⁴ The CFIA also requires that the investment allows the investor to “exert control or significant degree of influence over the management of the production of goods or provision of services” in the territory of the host State.

recourse to mediation or other forms of alternative dispute resolution at any moment and, importantly, establishes an appeal tribunal. The parties also pledge to pursue the establishment of a multilateral dispute settlement mechanism. The agreement includes a clause on third-party funding, detailed provisions on transparency of proceedings and a Code of Conduct for the members of the tribunal, the appeal tribunal and mediators. It will, upon entry into force, replace 12 existing BITs between Singapore and EU member States.

2. Selected IIA negotiations that were concluded, are ongoing or were announced

Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

The CPTPP is set to enter into effect on 30 December 2018, after Australia, Canada, Japan, Mexico, New Zealand, Singapore and Viet Nam ratified the agreement (the CPTPP enters into force 60 days after ratification by six countries).⁵ Following the United States' withdrawal from the Trans-Pacific Partnership (TPP) agreement in January 2017, the 11 parties to the TPP⁶ agreed in November 2017 on the core elements for a CPTPP.⁷ Annexes set out TPP treaty provisions that will be maintained in the CPTPP and those that will be suspended. With respect to investment (in Chapter 9), the parties agreed to suspend the application of the provisions related to an "investment agreement" (investor-State contract) and an "investment authorization", including for the submission of ISDS claims (i.e. limiting the submission of claims to the breach of the treaty obligation). Multiple side letters were signed on a bilateral basis between participating countries, among others, to terminate existing BITs, to exclude the application of ISDS provisions or provide for tailored ISDS arrangements.⁸

Regional Comprehensive Economic Partnership (RCEP)

The 5th intersessional ministerial meeting of RCEP was held on 1 July 2018 in Tokyo, Japan, and the 6th intersessional ministerial meeting was held on 13 October 2018 in Singapore.⁹ At the meetings, ministers reaffirmed their resolve to work together and see through the RCEP negotiations towards conclusion, and to achieve an agreement that would allow economies of different levels of development to actively participate in and benefit from an open and inclusive regional economic integration.¹⁰

North American Free Trade Agreement (NAFTA)/United States-Mexico-Canada Agreement (USMCA)

On 30 September 2018, Canada announced that it agreed to join the United States and Mexico in replacing NAFTA, which the latter two countries had agreed on a month earlier. The treaty is now called the "United States-Mexico-Canada Agreement", or USMCA. The substantive obligations of the USMCA investment chapter (now Chapter 14) have been mostly replicated from Chapter 11 of NAFTA, with some provisions having been amended (e.g. minimum standard of treatment) or expanded (e.g. performance requirements). New is a clause on CSR. Important changes are found with respect to the ISDS provisions. ISDS claims based on NAFTA ("legacy investments") will be phased out after three years after entry into force of the USMCA. For ISDS claims based on the USMCA, ISDS will be available only for the relationship between Mexico and the United States (not covering the relationships between Canada-Mexico and Canada-United States). Between Mexico and the United States, the grounds for bringing an ISDS claim will be restricted to NT and MFN (excluding establishment and acquisition) and expropriation and compensation (excluding indirect expropriation). Moreover, the claimant must first resort to local remedies, with time limitations applying.¹¹

China-EU Investment Agreement

The 17th round of negotiations took place on 22-24 May 2018 in Beijing, China, covering expropriation, NT and related issues such as general exceptions, special formalities and information requirements, FET, dispute settlement and sustainable development.¹² The 18th round of negotiations took place on 12 and 13 July 2018 in

⁵ <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/cptpp/explaining-cptpp-2/>.

⁶ Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Viet Nam.

⁷ See UNCTAD (2018). World Investment Report 2018: Investment and New Industrial Policies. United Nations. New York and Geneva. P. 90 and p. 100.

⁸ For example, the Australia-Mexico BIT (2005) will be terminated upon the CPTPP's entry into force; transitional arrangements will apply for a limited period. The CPTPP's ISDS provisions do not apply between Australia and New Zealand. A specific arrangement was reached between Brunei and New Zealand concerning investor-State disputes.

⁹ RCEP negotiations are being held among ten member states of the Association of Southeast Asian Nations (ASEAN) (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Vietnam) and the six Asia-Pacific states with which ASEAN has existing FTAs (Australia, China, India, Japan, South Korea and New Zealand).

¹⁰ <https://asean.org/storage/2018/07/5iSSL-MM-Joint-Media-Statement-FINAL-1July2018.pdf>; <https://asean.org/6-th-regional-comprehensive-economic-partnership-rcep-intersessional-ministerial-meeting/>. Outside of the reporting period, the second RCEP Leaders' Summit was held in 14 November 2018 in Singapore.

¹¹ The claimant must have either obtained a final decision from a court of last resort, or alternatively 30 months must have elapsed from the date of initiation of local proceedings, but not more than 4 years since the claimant acquired, or should have acquired, knowledge of the breach alleged.

¹² http://trade.ec.europa.eu/doclib/docs/2018/june/tradoc_156920.pdf.

Brussels, Belgium, focusing on expropriation, sustainable development, NT and FET.¹³ The 19th round of negotiations took place on 29 and 30 October 2018 in Beijing, China, with more progress made on investment protection-related provisions.¹⁴

EU-Mexico Free Trade Agreement (FTA)

On 23 April 2018, the EU and Mexico reached an “agreement in principle” on the trade part of a modernized EU-Mexico Global Agreement.¹⁵ Since then, discussions have been focusing on completing the technical details of the agreement, and negotiators expect to have a final text in late 2018 before starting the legal revision of the agreement’s text.¹⁶ The text negotiated so far contains investment protection provisions (non-discrimination, no expropriation without compensation, FET and physical security) as well as the establishment of a tribunal for dispute settlement and an appeal mechanism.¹⁷

Japan-Turkey EPA

The 10th round of negotiations for a Japan-Turkey EPA was held on 11-13 June 2018 in Ankara, Turkey, followed by the 11th round of negotiations held on 4-7 September 2018 in Tokyo, Japan. At the meetings, discussions focused on areas including trade in goods, trade in services, investment, sanitary and phytosanitary measures, rules of origin, technical barriers to trade, intellectual property, e-commerce, government procurement, customs procedures and trade facilitation, among others.¹⁸

Australia-Indonesia Comprehensive Economic Partnership Agreement (IA-CEPA)

On 31 August 2018, Australia and Indonesia announced the conclusion of negotiations of the IA-CEPA.¹⁹ The partnership agreement contains commitments on investment,²⁰ providing for exceptions that preserve policy flexibility in areas such as health, social services, culture, indigenous policy and marine transport, and a framework for trade and investment-related cooperation.²¹

Australia-Hong Kong, China (SAR) Free Trade Agreement (A-HKFTA)

On 15 November 2018, Australia and Hong Kong, China (SAR) announced the conclusion of negotiations of the A-HKFTA which covers investment provisions.²² The parties will now move to the legal verification process to finalize the agreement.²³

United States’ announcement of its intent to negotiate trade agreements with Japan, the EU, sub-Saharan Africa and the United Kingdom

On 16 October 2018, the United States Trade Representative (USTR) announced that the administration intends to negotiate three separate trade and investment agreements with Japan, the EU and the United Kingdom.²⁴ In accordance with US legislation, USTR will publish objectives for the negotiations at least 30 days before formal trade negotiations begins. During the 17th African Growth and Opportunity Act (AGOA) Forum held in Washington D.C., United States, from 9-12 July 2018, the United States announced that it intends to negotiate an FTA with sub-Saharan African countries.²⁵

Canada public consultation on foreign investment promotion and protection agreements (FIPAs)

¹³ http://trade.ec.europa.eu/doclib/docs/2018/july/tradoc_157143.pdf.

¹⁴ http://trade.ec.europa.eu/doclib/docs/2018/november/tradoc_157495...pdf

¹⁵ <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1830>.

¹⁶ <http://ec.europa.eu/trade/policy/countries-and-regions/countries/mexico/>.

¹⁷ http://trade.ec.europa.eu/doclib/docs/2018/april/tradoc_156791.pdf.

¹⁸ https://www.mofa.go.jp/press/release/press4e_002154.html.

¹⁹ <https://dfat.gov.au/trade/agreements/not-yet-in-force/iacepa/Pages/indonesia-australia-comprehensive-economic-partnership-agreement.aspx>.

²⁰ Information based on fact sheet; no legal text available.

²¹ <https://dfat.gov.au/trade/agreements/not-yet-in-force/iacepa/Pages/ia-cepa-key-outcomes-for-australia.aspx>.

²² Information based on fact sheet; no legal text available. The fifth and sixth round of negotiations were held in Hong Kong, China (SAR), on 8-10 May and in Sydney, Australia, on 17-19 July 2018.

²³ <https://dfat.gov.au/trade/agreements/not-yet-in-force/a-hkfta/Pages/default.aspx>.

²⁴ <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/october/trump-administration-announces>.

²⁵ The theme of the meeting was “Forging New Strategies for US–Africa Trade and Investment”.

<https://agoa.info/news/article/15483-us-state-dept-forging-new-strategies-for-us-africa-trade-and-investment.html>

<https://agoa.info/news/article/15470-statement-of-ustr-robert-lighthizer-at-the-opening-plenary-of-the-2018.html>

On 14 August 2018, Canada announced the launch of its first public consultation on FIPAs under Canada's progressive trade agenda for better reflection of the views of Canadians. The consultation was open to the public until 28 October 2018.²⁶

3. Other developments in international investment policies

In addition to the conclusion, termination and negotiation of IIAs, there were several other important developments related to international investment policies. The following is a non-exhaustive overview.

Developments in investment dispute settlement

ICSID Proposals for Amendment of its Rules

On 3 August 2018, the International Centre for Settlement of Investment Disputes (ICSID) proposed comprehensive changes to modernize its rules for resolving disputes between foreign investors and States. According to the "Backgrounder"²⁷ published by ICSID, the proposed amendments offer States and investors a range of effective dispute settlement mechanisms, including arbitration, conciliation, mediation and fact-finding. States and the public are invited to submit written comments on the proposals until 28 December 2018.

UNCITRAL Working Group III Discussions on Possible Reform of Investor-State Dispute Settlement

United Nations Commission on International Trade Law (UNCITRAL)'s Working Group III held its 2nd and 3rd meetings on ISDS reform on 23-27 April 2018 in New York, United States, and on 29 October-2 November 2018 in Vienna, Austria. In Vienna, delegates completed the review of the three broad categories of concerns with respect to ISDS, namely 1) inconsistency and incorrectness of arbitral rulings, 2) concerns about arbitrators and decision makers who currently resolve disputes, and 3) concerns about the cost and duration of the process. Delegates agreed on the desirability of developing reforms in UNCITRAL with respect to those concerns. The next meeting of the Working Group will take place on 1-5 April 2019 in New York, United States.²⁸

Developments in Europe

European Commission communication on protection of intra-EU investment

On 19 July 2018, a communication to the European Parliament and the Council of the European Union entitled "Protection of intra-EU investment" was published by the European Commission.²⁹ In this communication, the Commission reiterates its view on incompatibility of the intra-EU BITs with EU law and refers to the intensified dialogue with the member States following the judgement of the Court of Justice of the European Union (CJEU) related to the Achmea case. By applying the same reasoning of the Achmea judgment to the investor-State arbitration mechanism established under the Energy Charter Treaty (ECT) in intra-EU relations, the Commission considers the ECT ISDS mechanism as incompatible with EU law and thus inapplicable. The communication then describes the investment protection mechanisms provided by EU law to reaffirm the Commission's position on inapplicability and unnecessary of the intra-EU BITs.

New Model Investment Agreement for the Netherlands

On 19 October 2018, the Dutch Parliament adopted the new model investment agreement for the Netherlands.³⁰ The new model is intended to replace the 2004 model BIT and to be used for renegotiation of the 79 existing Dutch BITs with non-EU countries and for the negotiation of future agreements (subject to the European Commission authorizing individual negotiations). The model has several reform-oriented features. As part of the objective to create favourable conditions for investment, the model makes reference to the G20 Guiding Principles for Global Investment Policymaking. With the aim of excluding mailbox companies, it requires the investor to have substantial business activities (SBA) in its home State and provides indicators to consider when determining the existence of

²⁶ <https://www.canada.ca/en/global-affairs/news/2018/08/minister-carr-launches-public-consultation-on-foreign-investment-promotion-and-protection-agreements.html>

<https://www.placespeak.com/en/topic/5788-public-consultation-canadas-international-investment-agreements-fipas/#overview>

²⁷ https://icsid.worldbank.org/en/Documents/Amendment_Backgrounder.pdf

²⁸ On 30 October 2018, in a joint letter addressed to member governments attending the UNCITRAL meetings, more than 300 civil society groups and trade unions called for fundamental reform of the ISDS system, <https://www.epso.org/article/more-300-civil-society-organizations-73-countries-urge-real-reform-united-nations>.

²⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0547&from=EN>

³⁰ <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/publicaties/2018/10/26/modeltekst-voor-bilaterale-investeringsakkoorden/modeltekst-voor-bilaterale-investeringsakkoorden.pdf>

SBA. The model provides among others for NT and MFN (“in like situations”), excluding from the latter substantive obligations and dispute settlement provisions in other international agreements. It has an FET clause (clarified with an exhaustive list of measures considered to constitute breaches) and a clause offering protection in case of expropriation (refined through a detailed clarification for indirect expropriation and the exclusion of non-discriminatory, public interest regulation). To promote responsible business conduct, the model contains commitments to further sustainable development and CSR, including provisions on investor obligations to conduct due diligence and on investor liability in its home State in case of significant damage, personal injury or loss of life in the host State. Also, in a tribunal’s decision on the amount of compensation in a dispute, an investor’s non-compliance with the UN Guiding Principles on Business and Human Rights or the OECD Guidelines for Multinational Enterprises may now be explicitly taken into account by a tribunal. As for dispute settlement, the model provides for a mandatory 6-months consultations period and the abolishment of party-appointed arbitrators (all arbitrators will be appointed by the Secretary-General of either ICSID or the Permanent Court of Arbitration). Also, upon entry into force between the Contracting Parties of an international agreement providing for a multilateral investment court, the relevant provisions on ISDS in the model will cease to apply.

German Federal Court of Justice Decision to Set Aside Award in Intra-EU BIT Case

Based on a judgment of the CJEU earlier this year, the German Federal Court of Justice (Bundesgerichtshof) set aside a final award rendered against Slovakia in a long-running investment arbitration under the Netherlands–Slovakia BIT (1991). The decision of the German Federal Court of Justice, issued on 31 October 2018, found that no valid arbitration agreement existed between the parties in the *Achmea v. Slovakia* (I) case.³¹ An arbitral tribunal decided in favour of the Dutch claimant in 2012, after having assumed jurisdiction over the claims in a 2010 decision.³² Slovakia sought to set aside the arbitral decisions before German courts, contending that the arbitration clause in the invoked intra-EU BIT was contrary to several provisions of the Treaty on the Functioning of the European Union. The German Federal Court of Justice, hearing Slovakia’s appeal case, submitted the request for a preliminary ruling to the CJEU. The CJEU’s judgment of 6 March 2018 found that provisions in intra-EU BITs such as the arbitration clause in the Netherlands–Slovakia BIT (1991) were incompatible with EU law.³³

Regional and plurilateral developments

African Continental Free Trade Area Agreement (AfCFTA)

During the 31st Ordinary Session of the African Union Assembly in Mauritania on 1 July 2018, five additional countries signed the AfCFTA (Burundi, Lesotho, Namibia, Sierra Leone and South Africa), bringing the total number of signatories to 49 countries. Six countries (Chad, Eswatini (former Swaziland), Ghana, Kenya, Niger and Rwanda) have so far deposited their instruments of ratification, while four more (Guinea, Sierra Leone, South Africa and Uganda) have received parliamentary approval for ratification, bringing the total number of (deposited and pending) ratifications to ten.³⁴ Twenty-two ratifications are needed for AfCFTA to enter into force. Negotiations are ongoing on Phase II issues (investment, competition and intellectual property).

EU-African Caribbean Pacific (ACP) Countries Post-2020 Cotonou Negotiations

On 28 September 2018, at the margins of the United Nations General Assembly in New York, the EU and 79 countries members of the ACP Group of States began negotiations on the future of their cooperation after 2020. The new agreement needs to be both finalized and approved by 29 February 2020 when the Cotonou Agreement (signed in 2000) expires.

EU ongoing negotiations

Aside from the negotiations with China and Mexico, the EU continued its negotiations on investment and trade agreements with a number of countries (e.g. Australia, Chile, Indonesia, Malaysia, Myanmar, New Zealand and Philippines).³⁵

G20 Trade and Investment Working Group (TIWG)

³¹ Available at <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=2018-10&nr=89393&pos=0&anz=110>.

³² *Achmea B.V. (formerly Eureko B.V.) v. The Slovak Republic* (I) (PCA Case No. 2008 -13), Award on Jurisdiction, Arbitrability and Suspension, 26 October 2010; Final Award, 7 December 2012.

³³ CJEU, *Slovak Republic v. Achmea BV* (Case C-284/16), Judgment, 6 March 2018.

³⁴ <https://www.tralac.org/resources/by-region/cfta.html>.

³⁵ http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf.

Under the Argentine presidency, the TIWG held two meetings during the reporting period (on 7-8 May 2018 in Buenos Aires, Argentina and on 12-13 September 2018 in Mar del Plata, Argentina), followed by a Trade and Investment Ministerial Meeting (on 14 September 2018 in Mar del Plata, Argentina).³⁶ The Ministerial Declaration shows the commitment of G20 members to work together to boost growth, keep markets open, address development and reinvigorate the international trading system. The G20 ministers highlighted the relevance of the other issues proposed by the Argentine presidency (for example agro-food's global value chains) to achieve a sustainable food future and an inclusive future of work. They also drew special attention to the particular situation of micro, small and medium-sized enterprises, developing countries and women. The Ministerial Declaration does not refer to investment.

Developments in multilateral fora

WTO Structured Discussions on Investment Facilitation

In the framework of the "Structured Discussions with the aim of developing a multilateral framework on investment facilitation", several meetings took place at the WTO during the reporting period: on 23 July 2018 on the theme of "Streamlining and speeding up administrative procedures and requirements", on 25 September 2018 on the theme of "Enhancing international cooperation, information sharing, the exchange of best practices, and relations with relevant stakeholders, including dispute prevention" and on 26 October 2018 on the theme of "Facilitating greater developing and least-developed Member participation in global investment flows". An intersessional meeting on 16 November further discussed single-window mechanisms. The next meeting will take place on 6 December 2018 with the purpose to take stock of progress made and discuss next steps in 2019.

Organization for Economic Co-operation and Development (OECD) Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("Multilateral Instrument" or "MLI"), adopted in November 2016 under the auspices of the OECD, entered into effect on 1 July 2018. The aim of the MLI is to swiftly implement a series of tax treaty measures to update international tax rules and lessen the opportunity for tax avoidance by multinational enterprises. The MLI already covers over 75 jurisdictions, and signatories include jurisdictions from all continents and all levels of development.

Fourth Open-Ended Intergovernmental Working Group on Transnational Corporations and other Business Enterprises with respect to Human Rights

Held on 15-19 October 2018 in Geneva, Switzerland, the fourth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG) discussed a zero draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, as well as a zero draft optional protocol annexed to the instrument. The Working Group released the zero draft in July 2018 and the zero draft for the optional protocol in September 2018. The fifth session of the OEIGWG is scheduled for October 2019.³⁷

UNCTAD World Investment Forum (WIF) 2018

Multilateral engagement on Investment policymaking continued in UNCTAD, where the 10th anniversary edition of the World Investment Forum (WIF) drew over 6000 participants from 186 countries, among them 11 Heads of State, 55 Ministers, 70 parliamentarians and over 1700 private sector participants. Key policy developments included collective multi-stakeholder action to stimulate investment for development, including Ministerial deliberations on core elements of sustainable investment policy making in the 21st century, investment policy coordination among ACP countries, a plan of action for Geneva International to support the financing of the SDGs, and the launch of an updated Reform Package for the International Investment Regime.

The High-level IIA Conference discussed progress that has been made on different reform areas, the modernization of old-generation treaties, countries' priorities for the third phase of reform and the ways to improve overall investment policy coherence. The event launched the updated version of UNCTAD's Reform Package for the International Investment Regime, which combines the research and policy analysis from the [World Investment Report 2015](#) (the Road Map for IIA Reform), the [World Investment Report 2017](#) (the 10 Options for Phase 2 of IIA

³⁶ <https://www.g20.org/en/g20-argentina/work-streams/trade-and-investment>.

³⁷ <https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session4/Pages/Session4.aspx>.

Reform) and the [World Investment Report 2018](#) (the guidance for Phase 3 of IIA Reform) into one comprehensive, sequenced and user-friendly document.

These, as well as the 60-plus other, WIF events confirmed UNCTAD's central role in supporting and facilitating multilateral engagement on international investment policymaking for sustainable development.

ANNEX. Investment policy measures taken between May 2018 and October 2018

	Description of Measure	Date	Source
Algeria			
Promotion and facilitation	The Complemental Financial Law 2018, adopted on 11 July 2018, repeals a provision of Law No. 16-09 related to the promotion of investment that had authorized the national investment council to grant, in accordance with conditions fixed by regulation and for a period not surpassing five years, exemptions or reductions of duties and taxes, including the value added tax applied to prices of goods produced as part of the emerging industrial activities.	11 July 2018	Ministry of Finance, Official Gazette, Loi n° 18-13 du 27 Chaoual 1439 correspondant au 11 juillet 2018 portant loi de finances complémentaire pour 2018 (in French), 15 July 2018 KPMG, "Algeria - Complementary Financial Law 2018 - Main Measures", 19 July 2018
Angola			
Entry / Promotion and facilitation	The new Private Investment Law was approved by Law No. 10/2018, of 26 June 2018, revoking the former Law No. 14/15. It introduced the following changes, among others: <ul style="list-style-type: none"> •A minimum investment amount for access to tax benefits and incentives is no longer required; •The local partnership requirement previously established for certain sectors of activity has been abolished; •Numerous priority sectors have been designated, including e.g. agriculture, textile, tourism and infrastructure development. 	26 June 2018	Lexology, "New private investment law and regulatory investment agency", 4 July 2018
Australia			
Entry	Some Australian states introduced or increased surcharges on foreign owners and acquirers of residential real estate. In the reporting period, changes came into force for the Australian Capital Territory (ACT), Queensland and Tasmania: <ul style="list-style-type: none"> •Effective 1 July 2018, a land tax surcharge of 0.75% on assets located in ACT is applicable to foreigners – individuals who are not nationals or permanent residents of Australia. •Queensland increased the 'Additional Foreign Acquirer Duty' for foreign real estate acquirers to 7% as of 1 July 2018, up from 3% previously. •Tasmania introduced a 3% foreign investor duty surcharge for foreign real estate acquirers as of 1 July 2018. 	1 July 2018	(Regarding ACT) Land Tax Amendment Act 2018, 12 April 2018. (Regarding Queensland) Revenue Legislation Amendment Act 2018, 21 June 2018. (Regarding Tasmania) Duties Act 2001, 1 July 2018
Promotion and facilitation	The Foreign Investment Review Board (FIRB) Application Portal has opened on 2 July 2018. All non-residential applications for foreign investment must now be lodged through this Portal (https://portal.firb.gov.au/).	2 July 2018	Foreign Investment Review Board (Media Release), "New FIRB Application Portal", 2 July 2018
Entry	On 25 September 2018, the Australian government issued revised guidelines on the application of the requirement for an open and transparent sale process for foreign purchases of agricultural land, a requirement that had been made explicit on 1 February 2018. The requirement has been refined	25 September 2018	Foreign Investment Review Board (Media Release), "Revised guidance – open and transparent sale process requirement", 26 September 2018

to only apply to sales of agricultural land that are intended to be used for a primary production business or residential development. The revised guidelines also introduced further exceptions, including leasehold interests or licenses – except where they have freehold characteristics, and allows for alternative means to ensure participation by Australian bidders in land sales.

Burkina Faso

Entry / Promotion and facilitation	The Law on Investment was adopted on 30 October 2018. Its scope has been extended to clean and renewable energy actors, as well as to the protection of the environment. Investment in strategic y sectors such as green energy, renewable energies and handicrafts is promoted by reducing the criteria of the investment threshold and the number of jobs to be created by one quarter.	30 October 2018	l'Economiste du Faso, "Promotion des investissements: le Burkina dispose d'un nouveau Code" (in French), 12 November 2018
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Canada

Entry	On 23 May 2018, the Canadian government blocked a proposed \$1.5 billion acquisition of the Canadian construction company Aecon Group Inc. (Aecon), by China Communications Construction Company International Holding Limited (CCCI), a Chinese state-owned company and one of the world's largest engineering and construction firms. In his statement, the Minister of Innovation, Science and Economic Development stated that "In accordance with the Investment Canada Act, the Government of Canada reviewed the proposed acquisition of Aecon by CCCI. (...) Based on the findings, in order to protect national security, we ordered CCCI not to implement the proposed investment." He also stated that "Our government is open to international investment that creates jobs and increases prosperity, but not at the expense of national security."	23 May 2018	Government of Canada (Media Release), "Minister Bains statement on CCCI's proposed acquisition of Aecon", 23 May 2018
Entry	On 23 May 2018, the Transportation Modernization Act received royal assent. Effective 27 June 2018, it amends the Canada Transportation Act and its rules on Canadian ownership and control in fact for Canadian air carriers. Henceforth, the ceiling for foreign ownership has been set at 49%, up from 25%, subject to restrictions: a single foreigner may not own or control more than 25% of the voting interests in a Canadian air carrier, and foreign air carriers may not own more than 25% of the voting interest in a Canadian carrier. The Canadian Minister of Transport had announced the planned change in November 2016.	23 May 2018	Office of Minister of Transport, "Minister Garneau's statement on the Transportation Modernization Act receiving Royal Assent", 23 May 2018.

China

Entry	On 28 July 2018, the Special Administrative Measures for Foreign Investment (Negative List) (2018 Edition), issued by the Ministry of Commerce and the National Development and Reform Commission ("NDRC") came into effect, replacing sections of the 2017 Catalogue of Industries for Guiding Foreign Investment, which	28 July 2018	Ministry of Commerce, "Order of the National Development and Reform Commission of the People's Republic of China and the Ministry of Commerce of the People's Republic of China No.18 of 2018
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	<p>was promulgated on 28 June 2017. Compared to the 2017 entries, the 2018 list relaxes or removes restrictions on foreign investments in several areas. The document also sets out plans and timelines for planned further relaxations of rules on foreign investment in specific sectors such as vehicle manufacturing, securities and futures.</p>		<p>on Special Administrative Measure”, 30 June 2018.</p>
<p>Entry / Promotion and facilitation</p>	<p>A new negative list for foreign investment in China's currently 11 Pilot Free Trade Zones became effective on 30 July 2018. The list, issued by NDRC and the Ministry of Commerce, further reduces the number of sectors in which restrictions for foreign investors apply. The document, officially called “Special Administrative Measures for Foreign Investment Access in the Pilot Free Trade Zone (Negative List) (2018 Edition)”, allows broader foreign access in sectors such as the seed industry, oil and gas, mineral resources, value-added telecommunications, and culture. New measures on value-added telecommunications had been trialled in the Shanghai Pilot FTZ prior to being applied more broadly to all PFTZs.</p>	<p>30 July 2018</p>	<p>Ministry of Commerce, “Order of the NDRC and MOFCOM of the People's Republic of China No.19 on Special Administrative Measures for Foreign Investment Access in Pilot Free Trade Zones (2018 Edition)”, 30 June 2018</p>
<p>Promotion and facilitation</p>	<p>On 30 September 2018, the Ministry of Finance and three other government departments jointly announced a circular, which has widened the policy exempting overseas investors from withholding income tax on the re-investments made in the country. The exemption is effective from 1 January 2018, meaning taxes already paid this year will be refunded. The scope of the tax exemption has been expanded to all sectors where foreign investment is no longer prohibited. Reinvestment of the profits does not include purchases of listed companies' shares, except qualified strategic investments.</p>	<p>30 September 2018</p>	<p>Reuters, “China widens income tax exemption for foreign investors”, 30 September 2018</p>
<p>Ethiopia</p>			
<p>Entry</p>	<p>The Prime Minister of Ethiopia has set up in August 2018 an Advisory Council, which oversees the process of privatizing large state-owned enterprises. The establishment of the Council aims to implement the decision of the Executive Committee of the government in June 2018 to open major state-owned enterprises for private and foreign investors. The decision includes to partially or fully transferring the shares of companies such as railways, industrial parks, hotels, sugar and manufacturing industries. The Committee also decided to sell minority shareholdings in some other state companies, including Ethiopian Airlines, Ethio Telecom, as well as the Ethiopian Shipping & Logistics Services Enterprise.</p>	<p>3 August 2018</p>	<p>Ethiopian News Agency, “Advisory Council on Privatization of State-owned Companies Established”, 4 August 2018</p>
<p>Entry</p>	<p>The Ethiopian Investment Board has decided to lift the investment restriction in the logistic industry, which was exclusively reserved for Ethiopian nationals.</p>	<p>4 September 2018</p>	<p>Ethiopian Investment Commission, “The Ethiopian Investment Board delivered a decision relating to improving the logistics industry in Ethiopia”, 4 September 2018</p>
<p>Ecuador</p>			

Promotion and facilitation	<p>On 21 August 2018, the Government of Ecuador approved the Productive Promotion and Attraction of Foreign Investment Law establishing new incentives to promote foreign direct investment. The law also provides that disputes arising out of investment agreements are to be resolved through arbitration, and arbitral awards arising therefrom are immediately enforceable in Ecuador, without the need for any further recognition by the courts.</p>	21 August 2018	<p>DLA Piper, "Ecuador reforms investment law", 24 September 2018 BIZLATIN HUB, "Ecuador Welcoming Foreign Investment Through New Legislation", 1 Oct 2018</p>
Hungary			
Entry	<p>On 11 October 2018, the Law on the Control of Investments Detrimental to the Interests of Hungarian National Security has been published in the official Hungarian bulletin. It introduces a national security screening mechanism for foreign investment in "sensitive activities." "Sensitive activities" include the following: defence, dual use products, cryptography, utilities (gas, water, electricity), financial sector, electronic communication and public communication systems.</p> <p>Prior ministerial approval is required, when:</p> <ul style="list-style-type: none"> • 25% of shares (10% in publicly traded companies) are acquired in companies important to the national security; • dominant influence over such companies is acquired; • a branch office is established in Hungary, or • a right to use/operate an infrastructure or assets that are indispensable for carrying out "sensitive activities" is acquired. <p>The new law only applies to ultimate owners registered outside the EU, EEA, or Switzerland. The law will enter into force on 1 January 2019.</p>	11 October 2018	<p>Allen and Overy, "New Hungarian legislation on national security vetting of foreign investors to apply from 1 January 2019", 12 October 2018</p>
India			
Treatment	<p>As officially announced on 5 April 2018, all Indian companies and limited liability partnerships that have existing foreign investment are supposed to report in the period from 28 June to 12 July 2018 their total foreign investment received. This reporting precedes the planned introduction of a "Single Master Form" by the Reserve Bank of India. Its objective is to integrate the existing reporting structures of various types of foreign investment into one single online document.</p>	7 June 2018	<p>Reserve Bank of India, "Foreign Investment in India-Reporting in Single Master Form", 7 June 2018</p>
Treatment	<p>On 20 June 2018, India issued clarifications on FDI in food product retail trading by requiring that the business of food product retailing be kept distinct and separate from other businesses of the investee company.</p>	20 June 2018	<p>Ministry of Commerce and Industry (Media Release), "FDI Policy Clarification on Food Product Retail Trading", 20 June 2018.</p>
Indonesia			
Promotion and facilitation	<p>On 21 June 2018, Indonesia issued Government Regulation No. 24 of 2018 on Electronic Integrated Business Licensing Services (GR No. 24/2018). The change abolishes the approval requirement from BKPM (Badan Koordinasi Penanaman Modal, Indonesian Investment Coordination Board) for many corporate actions involving a foreign investment company (e.g. change of shareholders, change of</p>	21 June 2018	<p>Badan Koordinasi Penanaman Modal, Pernyataan Pers Menteri Koordinator Bidang Perekonomian RI: Kini, Izin Baru Akan Diproses Melalui OSS (In Indonesian) , 21 June 2018. Assegaf Hamzah & Partners, "The Online Single Submission:</p>

	capital structure and/or conversion of a domestic company into a foreign investment company).		Indonesia's Latest Effort to Improve the Ease of Doing Business", 12 July 2018.
Promotion and facilitation	The minimum equity requirement for foreign investment companies to register on and use the Online Single Submission (OSS) portal, which used to be IDR 10 billion, has been reduced to IDR 2.5 billion reportedly as of 10 September 2018, effective immediately. The OSS portal is an online platform that integrates the process of applying for multiple regulatory permissions in one place.	10 September 2018	ABNR, "Minimum Equity Requirement for Foreign Investors Wishing to Use OSS System Reduced to IDR 2.5 Billion", 10 September 2018
Japan			
Promotion and facilitation	On 17 May 2018, the Council for Promotion of Foreign Direct Investment launched the Support Program for Regional Foreign Direct Investment in Japan. It recommends that local governments formulate a Plan to Attract Foreign Companies that leverages their distinctive regional aspects. The program provides the following types of support: (1) One-stop support to local governments formulating a plan based on their distinctive regional aspects and working to revitalize the region; (2) Support for matching foreign companies to companies and local governments in a particular region; (3) Support for the effective use of measures implemented by related ministries and agencies that contribute to attracting foreign companies; (4) Advising foreign companies and local governments on regulations and administrative procedures.	17 May 2018	Council for Promotion of Foreign Direct Investment, "Support Program for Regional Foreign Direct Investment in Japan", 17 May 2018
Mauritius			
General business climate	The Budget Speech for 2019 presented in June 2018 introduces reforms in the taxation regime of Global Business Companies. Amongst others, a partial exemption regime will replace the deemed foreign tax credit system as from 1 January 2019.	14 June 2018	Ministry of Finance and Economic Development, Mauritius 2018-19 Budget Speech, 14 June 2018
Promotion and facilitation	The Budget Speech for 2018- 2019 presented on 14 June 2018 introduces a 5-year tax holiday for Mauritian companies collaborating with the Mauritius Africa Fund for the development of infrastructure in the Special Economic Zones. The tax holiday will cover investments in SEZ infrastructure development and will benefit two eligible categories of firms: project developers and project financing institutions.	14 June 2018	Ministry of Finance and Economic Development, Budget Speech 2018-2019, 14 June 2018
Myanmar			
Entry	On 9 May 2018, the Ministry of Commerce issued Notification 25/2018, which allows 100 per cent foreign ownership of businesses operating in the wholesale and retail sectors (other than "small" convenience stores). However, foreign companies must meet initial investment requirements to carry out wholesale and retail trading.	9 May 2018	Ministry of Commerce (Media Release), Notification 25-2018 (Whole Sale & Retail) (in Burmese), 9 May 2018 Allen & Overy, "Myanmar opens up the wholesale and retail sector to foreign investment", 21 May 2018

Entry	Starting from 26 July 2018, local and foreign investment in mining operations in Myanmar will be permitted, following an assessment of the industry's environmental impacts. However, investors are required to seek permission from the relevant ministry.	26 July 2018	Mining Technology, "Myanmar permits local and foreign investment in mining", 16 July 2018
Entry	The Central Bank of Myanmar (CBM) gave clearance to 13 foreign banks seeking to provide import financing services.	1 August 2018	Asian Banking & Finance, "Myanmar to allow 13 foreign banks to offer import financing services", 1 August 2018
Entry	The new Myanmar Companies Act, which the President approved on 6 December 2017, took effect on 1 August 2018. Under the new Act, foreign investors are allowed to hold up to 35 per cent of shares in a domestic company without the company losing its status as 'Myanmar company'. The new Act has also abolished the mandated system of submitting an authorized capital as well as the requirement of an article of association and a memorandum of association previously prescribed.	1 August 2018	Berwin Leighton Paisner, Guide to the Myanmar Company Law, 31 December 2017
Entry / General business climate	Along with the enactment of the new Myanmar Companies Law, the Myanmar Investment Commission asked all companies in the country to re-register within six months from the date when the law takes effect on 1 August 2018. This move, partly aimed at attracting foreign investment, will allow the companies to benefit from the new Myanmar Companies Law.	1 August 2018	Xinhua, "Myanmar takes new measures to promote foreign investment", 1 July 2018
Namibia			
Entry	Namibia scrapped in October 2018 a requirement for companies seeking mining exploration licenses to be partly owned and managed by historically disadvantaged Namibians.	26 October 2018	The Economist Intelligence Unit, "Empowerment criteria scrapped for mining exploration", 6 November 2018
New Zealand			
Entry	The Overseas Investment Amendment Act 2018, which was to amend the Overseas Investment Act 2007, came into force on 22 October 2018. The changes prevent certain overseas people from buying residential property in New Zealand. With some exceptions for Australian and Singaporean citizens, anyone who is not a New Zealand citizen or is not 'ordinarily resident' in New Zealand, is an overseas person.	22 October 2018	Land Information, "Overseas Investment Amendment Act 2018", 25 October 2018
Norway			
Entry	The new National Security Law has been adopted in June 2018. The law enables government and business to safeguard key national interests against threats and risks. The interaction between government agencies and business is being strengthened, so that preventive security efforts against terror, sabotage are more efficient and sound across all business sectors. The law ensures that security measures are implemented in accordance with the fundamental	1 June 2018	Stortinget, Decree on the National Security Act (Security Act) (in Norwegian), 1 June 2018

<p>principles and values of a democratic society including that necessary privacy concerns are safeguarded.</p>			
<p>Poland</p>			
<p>Promotion and facilitation</p>	<p>A new law on the promotion of investments has been adopted by the Parliament and signed by the President, as an implementation of the Strategy on the Responsible Development of Poland. Its main goal is to substitute the existing incentive schemes available in SEZs and extend it over the territory of the entire country. An income tax exemption shall be available for a period between 10 to 15 years for greenfield projects as well as brownfield projects aimed at increasing production capacities, production diversification or substantial change in the production processes.</p>	<p>10 May 2018</p>	<p>Ministry of Entrepreneurship and Technology (Media Release), "Ustawa o Specjalnych Strefach Ekonomicznych podpisana przez Prezydenta" (in Polish), 6 June 2018 Noerr, "Poland: New regulation in state aid law", 6 March 2018</p>
<p>Rwanda</p>			
<p>General business climate</p>	<p>The income tax law, enacted by Parliament on 13 April 2018 to replace the 2005 income tax law, has come into force on 16 April 2018. The new law stipulates that capital gains from the sale or transfer of shares on the capital market and the sale or transfer of units of collective investment schemes, are exempted from Capital Gain Tax. The law also introduces some new taxes.</p>	<p>16 April 2018</p>	<p>Official Gazette, n°16 of 16/04/2018, 13 April 2018 New Times, "New income tax law comes into force", 23 May 2018</p>
<p>Russian Federation</p>			
<p>Entry</p>	<p>On 12 June 2018, the Federal Law of 31 May 2018 N 122-FZ "On Amendments to Certain Legislative Acts of the Russian Federation regarding the clarification of the concept 'foreign investor' came into effect. The new rules reframe the application of rules under which foreign investment in certain sectors is subject to review, set out in the Law on the Procedure for Foreign Investment in Business Entities of Strategic Importance for National Defence and State Security. Nominally foreign entities controlled by Russian residents will no longer be considered as foreign investors, and review procedures and restrictions have been relaxed provided that the acquirer of an asset discloses their beneficial ownership.</p>	<p>12 June 2018</p>	<p>President of Russia (Media Release), "Amendments to certain legislative acts to specify term Foreign Investor", 1 June 2018.</p>
<p>Saudi Arabia</p>			
<p>Entry</p>	<p>The Council of Ministers decided to open four more sectors to foreign investment: (1) Recruitment and employment services; (2) Real estate brokerage; (3) Audiovisual and media services; and (4) Land transport services. The changes are effective as of 23 October 2018.</p>	<p>23 October 2018</p>	<p>Saudi Gazette, "Foreign investment allowed in 4 key sectors", 23 October 2018</p>
<p>Singapore</p>			
<p>Entry</p>	<p>Effective 6 July 2018, Singapore changed the Additional Buyer's Stamp Duty (ABSD) levied on the occasion of the acquisition of residential property in</p>	<p>6 July 2018</p>	<p>Inland Revenue Authority of Singapore, Additional Buyer's Stamp Duty, 6 July 2018</p>

	<p>Singapore. The amount of the ABSD is calculated on the value of the property, and the rates depend on nationality and residency status of the acquirer. The rate applicable to non-resident foreigners is henceforth set at 20% of the property value, up from 15% since January 2013. Resident foreigners and Singapore citizens also pay ABSD under certain conditions.</p>		
South Africa			
General business climate	<p>In May 2018, South Africa's Cabinet decided to approve the first phase of a new intellectual property policy that paves the way to better access to medicine. The purpose of the IP policy is to guide policy makers on how to use intellectual property to promote certain domestic development objectives, such as innovation, technology transfer and industrial development. South Africa had identified the local pharmaceutical industry as a priority sector for the country's industrial development. The policy is in line with international practices and seeks to strike a fair balance between incentives for innovation and the need to promote generic competition and access to medicines.</p>	23 May 2018	UNCTAD, "South Africa adopts new IP policy improving access to medicine", 31 May 2018
Treatment	<p>On 13 July 2018, the Protection of Investment Act came into effect with the publication of the presidential proclamation on the commencement of the Act. The Act, which had been adopted and assented to in 2015, has been passed following the termination by South Africa of a series of investment treaties that the country had concluded in the mid-1990s.</p>	13 July 2018	Republic of South Africa (Government Gazette), Protection of Investment Act, 2015, 12 December 2015.
Uganda			
Promotion and facilitation	<p>To promote both domestic and foreign investment, the Government has introduced incentives focusing on industrialization with the objective of job creation, value addition to local raw materials, export promotion, and promotion of tourism. Among others, these include incentives for investments in the development of industrial parks or free zones, establishment of new factories, and development of hotels and tourist facilities.</p>	1 June 2018	Ministry of Finance, Budget Speech for Fiscal Year 2018/2019, 14 June 2018
United Arab Emirates			
Promotion and facilitation	<p>On 6 June 2018, the Dubai Executive Council approved a stimulus plan to reduce the cost of doing business. The new policy aims to slash "market fees" imposed by Dubai Municipality from 5 per cent to 2.5 per cent, in addition to scrapping 19 fees related to the aviation industry, as Dubai aims to attract foreign investments worth more than AED 1 billion in the aviation sector. The Council also directed the Land Department to waive late payment fees on property registration imposed by the Dubai Land Department for 60 days - which used to be 4 per cent.</p>	6 June 2018	Emirates News Agency (WAM), "Hamdan bin Mohammed chairs Executive Council meeting, approves series of economic stimulus", 7 June 2018

Entry	The President of UAE, Shaikh Khalifa Bin Zayed Al Nahyan, has issued Decree No.19 of 2018 on Foreign Direct Investment. The new FDI law provides a framework for the UAE Cabinet to permit foreign shareholders to own up to 100 per cent of companies in certain designated sectors up from the current 49% foreign ownership ceiling. The designated sectors will be included in a "positive list," which still needs to be developed. In addition, the law includes a "negative list" with the sectors where foreign investment is prohibited.	23 September 2018	Dentons, "New Foreign Direct Investment Law for the UAE", 13 November 2018
Treatment / Promotion and facilitation	The President of the UAE, Shaikh Khalifa Bin Zayed Al Nahyan, has issued Decree No.19 of 2018 on Foreign Direct Investment. According to the law, a Foreign Direct Investment Unit is to be established in the Ministry of Economy, which is responsible for proposing foreign direct investment policies in the UAE and determining its priorities, setting up associated plans and programs and work on their implementation following their approval by the UAE Cabinet.	23 September 2018	Gulf News, "President issues decree on foreign direct investment", 30 October 2018
United Kingdom			
Entry	<p>On 11 June 2018, the United Kingdom brought two amendments to the Enterprise Act 2002 into force. These amendments change the conditions for the application of the UK's reviews of inward investment to manage national security concerns. The changes lower the turnover test threshold for mergers and acquisitions from GBP 70 million to GBP 1 million in three sectors:</p> <ul style="list-style-type: none"> •the development or production of items for military or military and civilian use ('dual use'); •the design and maintenance of aspects of computing hardware; and •the development and production of quantum technology. <p>The share of supply test – an alternative criterion that could trigger a review – was likewise amended to also cover situations where the acquisition target already supplies 25% of the UK market in its sector; previously, only situations where the acquisition created a 25% supply position or led to an increase of the market share in the sector in the UK was covered.</p>	11 June 2018	<p>Secretary of State, "The Enterprise Act 2002 (Turnover Test) (Amendment) Order 2018", 14 May 2018</p> <p>Secretary of State, "The Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018, 14 May 2018</p> <p>Department for Business, Energy and Industrial Strategy (Media Release), "Government upgrades national security investment powers", 24 July 2018</p>
United Republic of Tanzania			
General business climate	The Government decided to cut the corporate income tax rate from 30 per cent to 20 per cent for new investors in the pharmaceutical and leather industries. The tax cut will last for the next five years starting from the 2018/19 financial year.	14 June 2018	Allafrica, "Corporate Tax Cut to 20% in New Budget", 14 June 2018
United States of America			
Entry	On 13 August 2018 changes to the foreign investment review process under the Committee for Foreign Investment in the United States (CFIUS) came into effect. The changes, set out in sections 1701 and following of the Foreign Investment Risk Review	13 August 2018	United States Government Publishing Office, "John S. McCain National Defense Authorization Act for Fiscal Year 2019", 19 June 2018

Modernization Act (FIRRMA) expand the scope of covered transactions to address growing national security concerns and extend the timeline for CFIUS reviews. On 11 October 2018, an Interim Rule brought further clarifications on the process and procedures. Further changes – such as the expansion of CFIUS jurisdiction and filing obligations – will come into effect when implementing regulations have been adopted or within 18 months from the entry into force of FIRRMA.

Viet Nam

Entry	Foreign investors have been allowed to contribute capital to establish commodity exchanges in Viet Nam as per Decree No. 51/2018/ND-CP, which took effect from 1 June 2018. However, their ownership share in the exchange should not exceed 49 per cent of the charter capital. Foreign investors are also permitted to trade goods on the commodity exchange as clients and can become members of the exchange (brokers or traders) without ownership restraint.	1 June 2018	Ministry of Justice (Media Release), "New legal documents come into effect as from June 2018", 4 June 2018
General business climate	A new Decree (No. 63/2018/ND-CP) took effect from 19 June 2018, which stipulates the areas, conditions, sequence, and procedures concerning the implementation of investment under the form of Public Private Partnerships (PPP).	19 June 2018	Ministry of Justice (Media Release), "New legal documents come into effect as from June 2018", 4 June 2018
Entry	In early June 2018, the Government issued a decree (No.86/2018/ND-CP) on regulating foreign cooperation and investment in education, including education linkages with foreign partners. Specifically, private kindergartens and schools in Viet Nam may link up with legal and accredited educational establishments abroad.	1 August 2018	VietnamPlus (Viet Nam News Agency), "Gov't issues decree on education linkage with foreign partners", 16 June 2018
General business climate	The new Law on Competition was passed on 12 June 2018. It enables antitrust investigations even for economic concentration deals conducted overseas that impact the domestic market, while the old Law on Competition 2004 had limited the ability to investigate overseas deals. The Law also helps to have better control over economic concentration deals.	26 September 2018	Viet Nam News, "New competition law to better manage economic concentration Read", 18 September 2018
General business climate	The Viet Nam government has issued Decree 128/2018, which lifts several business conditions of firms active in inland waterway transportation.	28 September 2018	Intellasia, "Removal of business conditions facilitates inland waterway transport", 28 September 2018



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