

Mena Chambers

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The Kingdom of Bahrain & BITS An overview

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BCDR Conference on International Investment Arbitration in the
MENA Region

COUNTRY	DATE OF SIGNATURE	ENTERED INTO FORCE	LAW OR DECREE	DATE OF PUBLICATION IN OFFICIAL GAZETTE	OFFICIAL GAZETTE
ALGERIA	11.06.2000	19.07.2000	<i>LEGISLATIVE DECREE NUMBER (17) OF THE YEAR 2000</i>	19.07.2000	2434
BANGLADESH	22.12.2015	NOT IN FORCE			
BELARUS	26.10.2002	19.08.2004	<i>LAW NUMBER (18) OF THE YEAR 2004</i>	18.08.2004	2648
BELGIUM-LUXEMBOURG	11.07.2006	29.06.2007	<i>LAW NUMBER (8) OF THE YEAR 2007</i>	28.06.2007	2797
BRUNEI	14.01.2008	22.05.2009	<i>LAW NUMBER (18) OF THE YEAR 2009</i>	21.05.2009	2896
BULGARIA	26.06.2009	26.03.2010	<i>LAW NUMBER (12) OF THE YEAR 2010</i>	25.03.2010	2940
CHINA	17.06.1999	14.07.1999	<i>LEGISLATIVE DECREE NUMBER (29) OF THE YEAR 1999</i>	14.07.1999	2381
CZECH REPUBLIC	15.10.2007	01.05.2009	<i>LAW NUMBER (10) OF THE YEAR 2009</i>	30.04.2009	2893

COUNTRY	DATE OF SIGNATURE	ENTERED INTO FORCE	LAW OR DECREE	DATE OF PUBLICATION	NUMBER OF OFFICIAL GAZETTE
EGYPT	17.09.1997	01.10.1997	LEGISLATIVE DECREE NUMBER (16) OF THE YEAR 1997	1.10.1997	2288
FRANCE	24.02.2004	16.12.2004	LAW NUMBER (23) OF THE YEAR 2004	15.12.2004	2665
GERMANY	05.02.2007	05.06.2009	LAW NUMBER (22) OF THE YEAR 2009	04.06.2009	2898
INDIA	13.01.2004	20.10.2006	LAW NUMBER (71) OF THE YEAR 2006	19.10.2006	2761
IRAN	19.10.2002	23.10.2002	LEGISLATIVE DECREE NUMBER (52) OF THE YEAR 2002	23.10.2002	2553
ITALY	29.10.2006	20.07.2007	LAW NUMBER (9) OF THE YEAR 2007	19.07.2007	2800
JORDAN	08.02.2002	16.02.2000	LEGISLATIVE DECREE NUMBER (1) OF THE YEAR 2000	16.02.2000	2412
LEBANON	07.08.2003	12.05.2005	LAW NUMBER (5) OF THE YEAR 2005	11.05.2005	2686
MALAYSIA	15.06.1999	04.08.1999	LEGISLATIVE DECREE NUMBER (31) OF THE YEAR 1999	04.08.1999	2384

COUNTRY	DATE OF SIGNATURE	ENTERED INTO FORCE	LAW OR DECREE	DATE OF PUBLICATION	OFFICIAL GAZETTE
MEXICO	29.11.2012	26.07.2013	LAW NUMBER (19) OF THE YEAR 2013	25.07.2013	3114
MOROCCO	07.04.2000	31.01.2001	LEGISLATIVE DECREE NUMBER (7) OF THE YEAR 2001	31.01.2001	2462
NETHERLANDS	05.02.2007	01.05.2009	LAW NUMBER (12) OF THE YEAR 2009	30.04.2009	2893
PAKISTAN	18.03.2014	16.07.2015	LAW NUMBER (13) OF THE YEAR 2015	16.07.2015	3218
PHILIPPINES	07.11.2001	19.12.2001	LEGISLATIVE DECREE NUMBER (33) OF THE YEAR 2001	19.12.2001	2508
RUSSIA	29.04.2014	NOT IN FORCE			

COUNTRY	DATE OF SIGNATURE	INTO FORCE	LAW OR DECREE	DATE OF PUBLICATION	NUMBER OF OFFICIAL GAZETTE
SINGAPORE	27.10.2003	16.12.2004	LAW NUMBER (21) OF THE YEAR 2004	15.12.2004	2665
SPAIN	22.05.2008	29.06.2012	LAW NUMBER (30) OF THE YEAR 2012	28.06.2012	3058
SUDAN	22.03.2006	24.07.2009	LAW NUMBER (43) OF THE YEAR 2009	23.07.2009	2905
SYRIA	20.09.2000	18.10.2000	LEGISLATIVE DECREE NUMBER (27) OF THE YEAR 2000	18.10.2000	2447
TAJIKISTAN	28.05.2014	NOT YET IN FORCE			
THAILAND	21.05.2002	17.07.2002	LEGISLATIVE DECREE NUMBER (11) OF THE YEAR 2002	19.06.2002	2508
TURKEY	15.02.2006	07.08.2014	LAW NUMBER (29) OF THE YEAR 2014	7.08.2014	3168
TURKMENISTAN	09.02.2011	02.03.2012	LAW NUMBER (9) OF THE YEAR 2012	01.03.2012	3041

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UNITED KINGDOM	30.10.1991	30.10.1991	<i>LEGISLATIVE DECREE NUMBER (17) OF THE YEAR 1991</i>	11.12.1991	1985
UNITED STATES OF AMERICA	29.09.1999	17.11.1999	<i>LAW NUMBER (37) OF THE YEAR 1999</i>	17.11.1999	2399
UZBEKISTAN	16.11.2009	11.06.2010	<i>LAW NUMBER (18) OF THE YEAR 2010</i>	10.06.2010	2951
YEMEN	28.12.2002	03.06.2004	<i>LAW NUMBER (5) OF THE YEAR 2004</i>	02.04.2004	2637

Bahrain BITs, so far ...

TOTAL

35

Bahrain BITs by Region

- MENA 8
- EUROPE 9
- EURASIA 8 (3 YET NOT IN FORCE:
BANGLADESH, RUSSIA AND TAJIKISTAN)
- FAR EAST 8
- THE AMERICAS 2

Salient Features

- **Broad Definition of Investment**—*ALL KIND OF ASSETS*
- **Main Substantive Provisions:**
 - ✓ ACCORD FAIR AND EQUITABLE TREATMENT
 - ✓ NATIONAL TREATMENT AND MFN OBLIGATION
 - ✓ FULL PROTECTION AND SECURITY
 - ✓ UNDERTAKING TO OBSERVE OBLIGATION ENTERED INTO (UMBRELLA CLAUSE)
 - ✓ EXPROPRIATION
 - ✓ COMPENSATION FOR LOSS
 - ✓ FREE TRANSFER
 - ✓ SUBROGATION

Salient Features, continued...

- A common provision: *(Application of other rules)*

“IF THE PROVISION OF LAW OF EITHER CONTRACTING PARTY OR OBLIGATION UNDER INTERNATIONAL LAW EXISTING AT PRESENT OR ESTABLISHED HEREAFTER BETWEEN THE CONTRACTING PARTIES IN ADDITION TO THE PRESENT AGREEMENT **CONTAIN RULES, WHETHER GENERAL OR SPECIFIC, ENTITLING INVESTMENTS BY INVESTORS OF THE OTHER CONTRACTING PARTY TO A TREATMENT MORE FAVORABLE THAN IS PROVIDED FOR BY THE PRESENT AGREEMENT, SUCH RULES SHALL TO THE EXTENT THAT THEY ARE MORE FAVORABLE PREVAIL OVER THE PRESENT AGREEMENT.**”

Unique Provisions

Agreement Between The Government of the Kingdom of Bahrain and the Belgium-Luxembourg Economic Union for the Reciprocal Promotion and Protection of Investments

(2007)

- Article 5: ENVIRONMENT
- Article 6: LABOUR

Settlement of Disputes

- **Between an Investor and the Host State**
 - ✓ First amicable settlement (cooling-off period—varies: 3, 4, 5, 6 months)
 - ✓ Some BITs contain “fork in the road” provision
- **Between the Contracting Parties to a BIT (i.e., Bahrain and the other State)**

Applicable Law in Case of Disputes Between Investor and Contracting State

Either:

- Non-existent, **or**
- Common clause:

“The arbitration shall be based on the provisions of this Agreement, the national law of the Contracting Party in whose territory the investment was made, including principles of international law as may be applicable.”

Dispute Settlement Provisions

- The Shortest: Bahrain-UK (1991); Bahrain-Egypt (1997);
- The Longest: Bahrain-Mexico (2013);
- The Messiest: Bahrain-Pakistan (2015);
- The Confused: Bahrain-India (2006).

Serious Problem

- Not uncommon to find a bad Arabic translation of the Treaty.
- However, BITs entered into with a non-Arab country contain a provision providing that in case of divergent interpretation the English text prevails.

Arbitration Venues

- AD HOC: UNCITRAL
- ICSID, and ICSID Facilities
- Arab Investment Court (only for BITs with other Arab countries but not all—see for example, **Egypt** (ad hoc UNCITRAL))



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