

INTERNATIONAL
ARBITRATION
TEAM

For questions about international investment arbitration, please contact a member of our International Arbitration Team, or the authors of this review:

Authors:**Emma Lindsay**

Counsel, New York
+1 212 541 2121
emma.lindsay@bryancave.com

Claire Morel de Westgaver

Associate, London
+44 (0)20 3207 1253
claire.morel@bryancave.com

International Investment Arbitration in the Middle East: Year in Review 2016

International investment arbitration – also known as investment treaty arbitration or investor-State arbitration – is a procedure whereby foreign investors may seek a binding adjudication of claims against host States that have either violated investment protection treaty obligations or, in some circumstances, breached their contractual commitments or their national foreign investment law. The countries of the Middle East are party to numerous bilateral and multilateral investment treaties which are intended to promote investment by ensuring fair treatment of foreign investors and which permit arbitration of investor claims before the International Centre for Settlement of Investment Disputes (ICSID) or similar fora.

Arbitration in the Middle East has a diverse and complex history. Certain areas of the Middle East have been adversely affected by armed conflicts resulting in socio-political instability. In recent years however, significant advances have occurred across arbitration regimes in the Middle East. This is a reflection of Middle Eastern governments' recognition that a modern approach to dispute resolution is an essential element for attracting investors to the region, something which is increasingly more pressing in light of falling oil prices. For example, the year of 2015 saw Iraq's noteworthy ratification of the ICSID Convention¹ and the year of 2016 saw the inauguration of Saudi Arabia's first international arbitration institution, illustrating a willingness for nations in the Middle East to align to the needs of international business stakeholders.

Countries in the region have concluded at least 638 investment treaties (including bilateral investment treaties, free trade agreements and other treaties containing investment-related provisions), with 7.5 percent of the region's investment treaties being intraregional.

A total of 29 ICSID cases have involved Middle Eastern parties as either claimant investors, respondent states or both, with seven cases (24 percent) being intraregional. The first arbitration brought against a Middle Eastern country was filed in 2001 by an Italian investor against the United Arab Emirates. The first exclusively intraregional arbitration was filed in 2005 by an Omani investor against Yemen. Of the 23 concluded arbitrations involving the region, six cases (just under 26 percent) have involved further proceedings seeking to annul the arbitral award and eight cases (35 percent) were settled or discontinued.

Of the six pending cases involving the region, two were brought in 2016—a decrease from 2015. No ICSID awards were rendered in 2016 and two ICSID claims were discontinued (between a Qatari investor against Jordan and between a French investor against Jordan).

For purposes of this review, the Middle East comprises 14 countries: Bahrain, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Palestine, Qatar, Saudi Arabia, Syrian Arab Republic, Turkey, United Arab Emirates and Yemen.²

¹ It has been brought to the authors' attention that Iraq is now facing its first ICSID claim. This new claim is reported to have been filed by a Kuwaiti investor on 9 February 2017.

² All of these countries are signatories to the ICSID Convention except for Palestine.

Investment Arbitration in the Region³

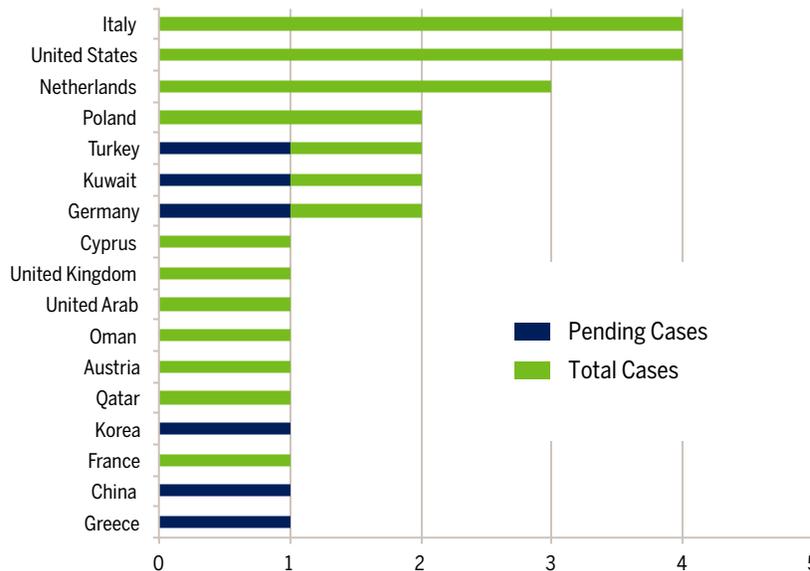
There was a decrease in the number of new investment arbitrations in the Middle East in 2016 compared to 2015.

Total Cases Initiated Per Year



Claims against Middle Eastern countries have been made most frequently by investors from Italy and the United States with four claims brought by each country’s nationals against countries from the region. The Netherlands is in third place with three claims by its nationals. Greece featured among the home states of investors for the first time in 2016, with a claim brought by a Greek investor against Lebanon.

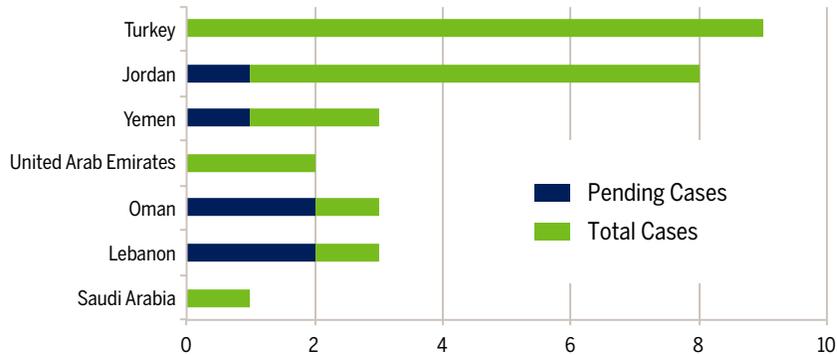
Top Nationalities of Investors with ICSID Arbitrations in the Middle East



³ This review considers only investment arbitrations brought under the auspices of ICSID, which constitute the majority of investment arbitrations.

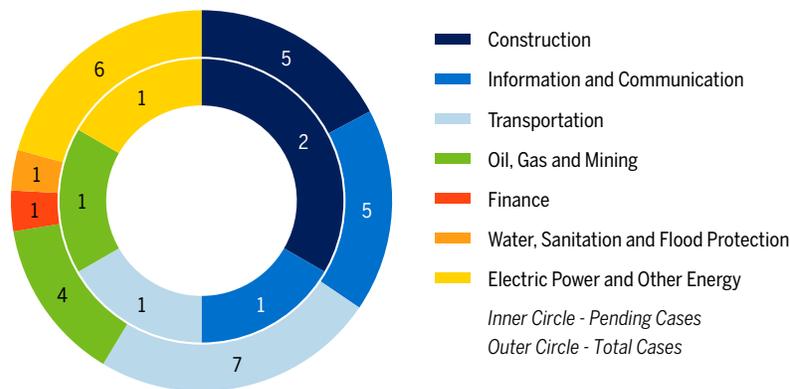
The country in the region that has faced the highest number of investment claims is Turkey with nine of the region’s 29 claims (31 percent). Jordan follows closely behind with eight claims against it (just under 28 percent). The other countries in the region against which investment claims have been brought are Yemen, Lebanon and Oman with three claims each (10 percent per country); and Saudi Arabia with one claim (3.5 percent).

Middle Eastern Countries Facing Investment Claims



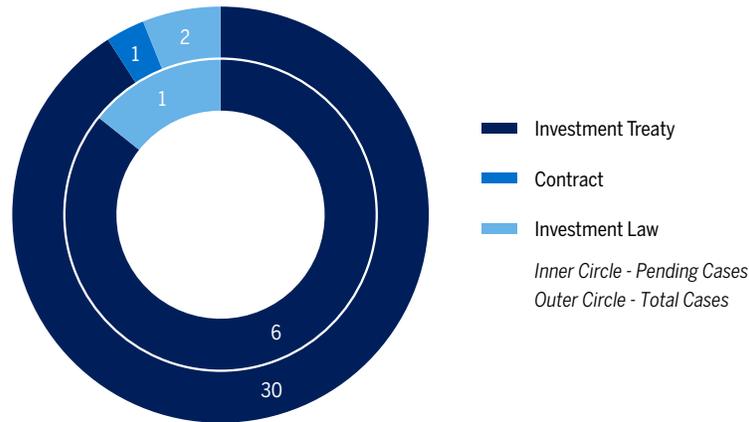
Historically, investment disputes against Middle Eastern countries have arisen most frequently in three industries – transportation, construction, and information and communication. However, the two cases initiated in 2016 arose in the electrical power and other energy and the oil, gas and mining industries.

Investment Cases by Industry



The basis for arbitral jurisdiction in cases against Middle Eastern countries has most often been an investment treaty and this continued to be the case in 2016. In previous years claims have also been made pursuant to national investment laws and, in one instance, a contract.

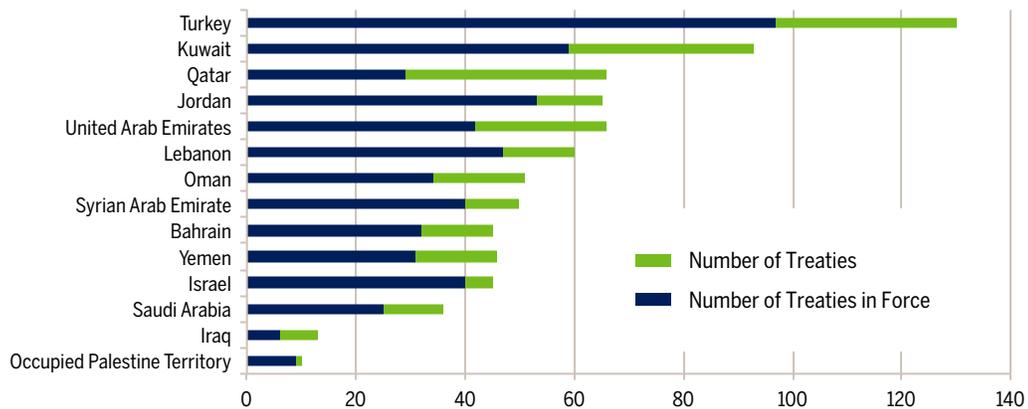
Instrument Invoked to Establish ICSID Jurisdiction



Approximately 18 percent of the just over 3,500 investment treaties currently in existence involve Middle Eastern countries. Turkey, Kuwait and Qatar have signed the most investment treaties and Turkey has the greatest number in force.

Turkey has faced nine ICSID arbitration cases whereas neither Kuwait nor Qatar has ever faced any ICSID arbitration claim despite being signatories to the ICSID Convention since 1978 and 2010 respectively. Jordan, the United Arab Emirates and Lebanon, which are the next most active treaty makers in the region, have all faced ICSID claims.

Investment Treaties Involving Middle Eastern Countries



Of the 638 investment treaties signed by Middle Eastern countries, just under 8 percent of treaties signed by Middle Eastern countries are intraregional treaties whereas 34 percent of ICSID cases involving the region are intraregional cases.

The United States has signed 20 investment treaties with Middle Eastern countries, only three of which permit investor-State arbitration (the treaties between the United States and Turkey, Bahrain and Jordan respectively).

Six investment treaties involving the region were signed in 2016, all of which were bilateral investment treaties. These were signed between (i) Qatar and Argentina; (ii) Turkey and Georgia; (iii) Turkey and Ghana; (iv) Turkey and the Ivory Coast; (v) Turkey and Somalia; and (vi) the United Arab Emirates and Ethiopia.

Other Developments in 2016

- ICSID began the process of reviewing and amending its rules and regulations in an attempt to improve the efficiency of proceedings. A public consultation exercise is expected this coming year.
- Signature of the Euro-Mediterranean Association Agreement between the European Union and the Syrian Arab Republic remains on hold.
- Following Iraq’s ratification of the ICSID Convention on November 17 2015, the arbitration community is hopeful the country will become a member of the New York Convention in due course.
- The preparatory process for launching negotiations of a Deep and Comprehensive Free Trade Area between the European Union and Jordan has been ongoing since 2011.
- The Dubai International Finance Centre (DIFC) Court of Appeal held an arbitral award enforceable even where the signatory to the arbitration agreement lacked actual authority from its board of directors to enter into the arbitration agreement—it was nevertheless deemed binding under the principles of apparent authority. This shows the courts in the United Arab Emirates to be increasingly supportive of arbitration practice.
- In Qatar (a country which is a signatory to the New York Convention), the Court of Cassation upheld the enforcement of a foreign arbitral award in Qatar in a step towards presenting itself as an arbitration-friendly jurisdiction.
- The Saudi Arabian Administrative Court of Appeal in Dammam appointed a female arbitrator, Ms Shaima Aljubran, for the first time in the commercial disputes arena in May 2016.
- Saudi Arabia inaugurated its first international arbitration institution, the Saudi Center for Commercial Arbitration (SCCA), in October 2016 and two cases have since been registered with the SCCA.
- The Penal Code in the United Arab Emirates has been amended to make it a criminal offence for arbitrators to fail to maintain the requirements of integrity and impartiality and it carries a possible sentence of temporary imprisonment and a ban on re-assignment to the role of arbitrator. The new law has already resulted in a number of arbitrators resigning from tribunals or turning down appointments to tribunals seated in the United Arab Emirates.

Critical Times to Consult Counsel

INVESTORS:

- At the outset – when structuring an investment and negotiating project contracts
- As soon as difficulties arise – when facing operational, regulatory or other issues in the host country
- In discussions with the host country – when trying to resolve difficulties amicably
- Before commencing a claim – when deciding whether and how to make a claim against the host country
- In post-award proceedings – when seeking to collect on an award or reach a settlement with the host country
- In getting the business relationship back on track – when moving forward in the wake of a dispute

STATES:

- At the outset – when negotiating and drafting investment treaties and national investment laws
- In the pre-investment process – when inviting and accepting foreign investment
- In the investment phase – when negotiating project contracts
- As soon as notice of a dispute is given – when consulting with an investor about a potential investment arbitration claim
- Upon receipt of a claim – when formulating an arbitral strategy in the initial stages of a dispute
- In implementing or challenging an award – when considering next steps after the arbitration concludes

About Our Team

Bryan Cave's **International Arbitration Team** provides a comprehensive service to clients around the world embracing all aspects of international dispute resolution. With offices in the most popular seats of arbitration, including London, Paris, Hong Kong, Singapore and New York, we handle a broad range of matters, including international commercial and investment arbitration, public international law and complex commercial litigation, for a wide variety of business, financial, institutional and individual clients, including publicly-held multinational corporations, large and mid-sized privately-held companies, partnerships and emerging enterprises. We also advise sovereign clients with regard to their particular complex legal, regulatory and commercial challenges.

Recognized by *Global Arbitration Review* in its GAR 100, our team features many practitioners who serve as both counsel and arbitrator and draws on the full range of subject-matter and industry experience across the firm, including in construction, energy, finance, manufacturing, mining and natural resources, pharmaceuticals, technology, telecommunications, tourism, transportation and many other sectors. Combining the common law and civil law traditions, members of our team are admitted to practice in many jurisdictions across the globe and speak a variety of languages. In addition, we work with an established network of local counsel in places where we do not have a direct presence, ensuring our strong market knowledge and quality of service on matters worldwide.

This Review is published for the clients and friends of Bryan Cave LLP for informational purposes only and to provide a general understanding of the laws in different jurisdictions. The statements made in this publication are for general educational purposes only. Information contained herein is not to be considered as legal advice. You are urged to seek the advice of your legal counsel if you have any specific questions as to the application of the law. The receipt of this publication does not create any attorney-client relationship between you and Bryan Cave LLP. Bryan Cave is not necessarily licensed to practice in the jurisdiction or jurisdictions referred to in the Review. However, Bryan Cave works regularly with local counsel in relevant jurisdictions to arrange advice for clients on specific issues. A list of jurisdictions in which Bryan Cave has offices are as follows: America: Atlanta, Boulder, Charlotte, Chicago, Colorado Springs, Dallas, Denver, Irvine, Jefferson City, Kansas City, Los Angeles, Miami, New York, Phoenix, San Francisco, St. Louis, Washington, D.C. Europe: Frankfurt, Hamburg, London, Paris, Milan (Affiliated Firm). Asia: Hong Kong, Shanghai, Singapore. Under the ethics rules of certain bar associations, this review may be construed as an advertisement or solicitation. © 2017 Bryan Cave LLP. All Rights Reserved.

Authors

Emma Lindsay

Counsel, New York
+1 212 541 2121
emma.lindsay@bryancave.com

Claire Morel de Westgaver

Associate, London
+44 (0)20 3207 1253
claire.morel@bryancave.com

Research support and data collection assistance provided by **Millie Evans**, *Trainee Solicitor*, London

Additional Contacts

Pedro J. Martinez-Fraga

Partner, Miami
+1 786 322 7373
pedro.martinezfraga@bryancave.com
Co-Leader of the International Arbitration Team

Mathew Rea

Partner, London
+44 (0)20 3207 1203
mathew.rea@bryancave.com
Co-Leader of the International Arbitration Team

Constantin Achillas

Partner, Paris
+33 1 44 17 77 34
constantin.achillas@bryancave.com

Nigel Binnersley

Partner, Hong Kong
+852 3588 9110
nigel.binnersley@bryancave.com

Rodney Page

Partner, Washington, D.C.
+1 202 508 6002
rodney.page@bryancave.com