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# The Asia-Pacific Arbitration Review

2026

## The pursuit of investment treaty arbitration by Asia-Pacific investors

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# The pursuit of investment treaty arbitration by Asia-Pacific investors

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## Summary

## SUMMARY

In this article, we survey the manner in which Asia-Pacific investors have been increasingly turning to investment treaty arbitration to seek remedies for their foreign investment losses. We identify the nationality of Asia-Pacific investors that have pursued claims, the industries concerned, the states targeted, the treaties utilised, the impugned state actions and the outcomes of claims. As we illustrate, a diverse range of Asia-Pacific investors have now pursued investment treaty claims against states worldwide across a variety of industries. Despite the increased use of investment treaty arbitration by Asia-Pacific investors, they have brought a disproportionately low number of investment claims, with almost half of cases targeted against Asia-Pacific states.


## DISCUSSION POINTS

- At least 95 investment treaty arbitrations have been pursued by Asia-Pacific investors against 53 states worldwide.
- 81 investment treaties have been utilised by Asia-Pacific investors across these 95 investment treaty arbitrations.
- The highest number of investment treaty arbitrations have been pursued by investors from China, Australia, India, Malaysia and Singapore. No investment treaty arbitrations have been pursued by investors from several of the region's major developing economies, including Indonesia, Thailand and Vietnam.
- Claims relating to investments in the construction, energy, mining and financial services sectors have been most frequently pursued by Asia-Pacific investors.

## REFERENCED IN THIS ARTICLE

- *JGC Holdings Corporation (formerly JGC Corporation) v Kingdom of Spain*
- *Itochu Corporation v Kingdom of Spain*
- *Mitsui & Co, Ltd v Kingdom of Spain*
- *Nissan Motor Co, Ltd v Republic of India*
- *Macro Trading Co, Ltd v People's Republic of China*
- *MTD Equity Sdn Bhd and MTD Chile SA v Chile*
- *Kenon Holdings Ltd and IC Power Ltd v Republic of Peru*
- *White Industries Australia Limited v The Republic of India*
- *Ping An Life Insurance Company of China, Limited and Ping An Insurance (Group) Company of China, Limited v Kingdom of Belgium*
- *Riversdale Resources Pty Ltd and Hancock Prospecting Pty Ltd v Canada*

## INTRODUCTION

After a slow start, Asia-Pacific investors have brought steadily increasing numbers of investment treaty claims. Foreign direct investment (FDI) has played an instrumental role for economic development in the Asia-Pacific region. In a bid to attract FDI, Asia-Pacific states have modernised their laws and policies governing foreign investment. This has included embracing bilateral investment treaties (BITs) as well as multilateral instruments, which are intended to encourage cross-border investment by extending various protections to foreign investments. These protections include promises of non-discrimination, fair and equitable treatment, security and protections against expropriation. Typically, these BITs (and many multilateral treaties) grant foreign investors the right to bring their claims directly against host states through investor-state dispute settlement (ISDS) mechanisms.[1]

Over time, the rising global economic prominence of the Asia-Pacific region has also seen the region emerge as a major source of outbound FDI.[2] Several Asia-Pacific states are now significant capital exporters, with China and Japan the second and third largest exporters globally. BITs and multilateral arrangements entered into by Asia-Pacific states are aimed not only at enticing inbound FDI, but also at protecting outbound FDI by protecting the foreign investments of their nationals. Inevitably, this has led to Asia-Pacific investors invoking ISDS, when available as a dispute resolution mechanism, to seek remedies in respect of investment losses suffered in host states.

In this article, we survey trends in the manner in which Asia-Pacific investors have been increasingly turning to investment treaty arbitration to seek relief in respect of their foreign investments. We identify the nationalities of Asia-Pacific investors that have pursued claims, the industries concerned, the states targeted, the treaties utilised, the impugned state actions and the outcomes of claims. We also note the increasing role played by multilateral agreements.

The statistics are striking. A diverse range of Asia-Pacific investors have now pursued investment treaty claims across a variety of industries, and against states worldwide. However, and despite the increased use of investment treaty arbitration by Asia-Pacific investors, they have brought a disproportionately low number of investment treaty arbitrations as compared to investors from other regions.

We base our analysis on the Investment Dispute Settlement Navigator repository, which was first released by UN Trade and Development in February 2021 and contains data up to July 2024.[3] This useful resource contains a wealth of information on all known treaty-based investor–state arbitrations. As some of these arbitrations can be kept fully confidential, there are likely to be other treaty-based investor–state arbitrations commenced by Asia-Pacific investors that are not included in the repository and, therefore, not identified in our analysis.[4]

## THE 2024 UPDATE

We begin updating this article by considering statistics regarding investment treaty claims brought by investors from the Asia-Pacific region in the past year.[5]

Eleven new investment treaty arbitrations have been brought by Asia-Pacific investors,[6] with five of these brought against new states (Poland (two cases), South Sudan, Honduras and Canada).[7]

Consistent with past trends, almost half of the new arbitrations were brought by investors involved in mining (five cases). The remainder of the investors' industries were construction

(one case), manufacturing (one case), oil and gas (one case), real estate (one case), telecommunications (one case) and transport and storage (one case).

These new investment treaty arbitrations were brought by investors from Australia (four cases), Malaysia (three cases), the Philippines (two cases), Singapore (one case) and China (one case, brought jointly with investors from the UK).

We have also seen a number of investment treaties invoked for the first time by investors from the Asia-Pacific region, including, most notably, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, the Argentina–Malaysia BIT, the Australia–Philippines BIT, the Honduras Investment Law, the Singapore–Myanmar BIT, the Philippines–Spain BIT and the South Sudan Investment Law.

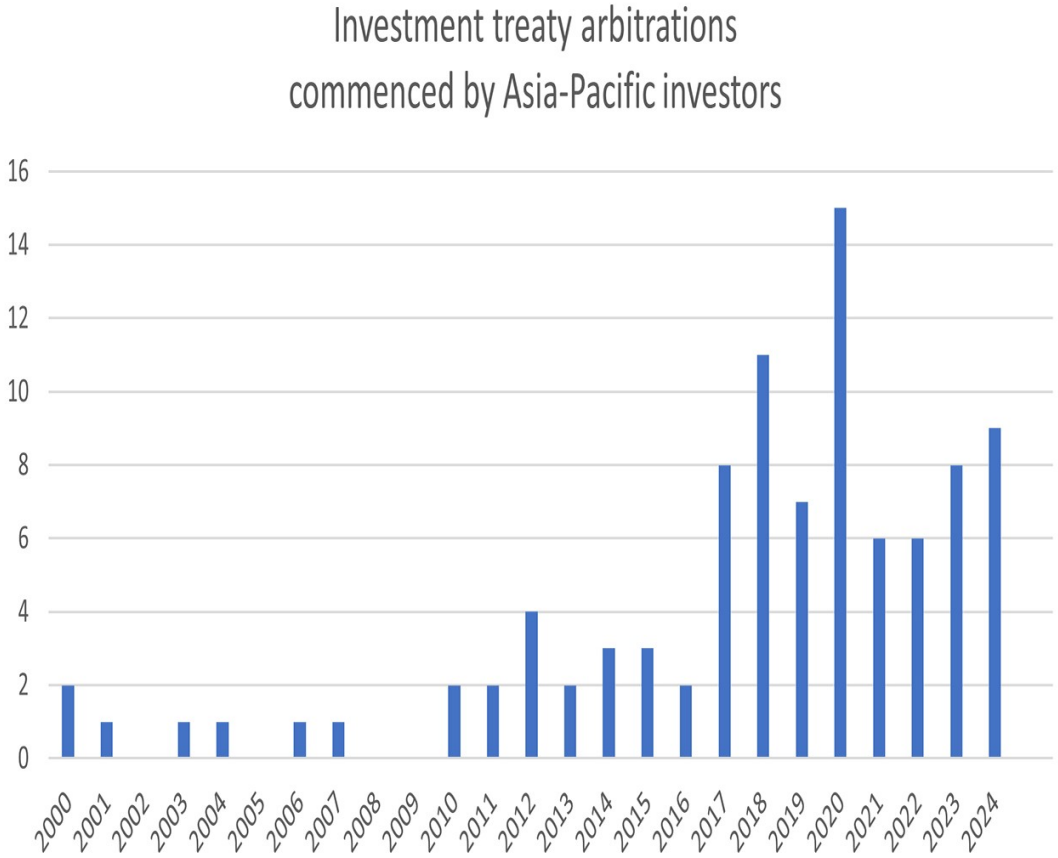
Also consistent with past trends, most of these arbitrations were brought on the basis of a revocation of or failure to grant or renew licences, concessions or permits (seven cases). One arbitration was brought over contractual issues, and another on the basis of denial of justice.

## ASIA-PACIFIC INVESTORS PURSUING INVESTMENT TREATY ARBITRATION

In this section, we consider the trends regarding investment treaty claims brought by investors from the Asia-Pacific region.

Table 1 sets out the number of investment treaty arbitrations commenced by investors from the Asia-Pacific region from 1 January 2000 until 31 July 2024.[8]

**Table 1: Investment Treaty Arbitrations Commenced By Asia-Pacific Investors (2000–2024)**



Following the commencement of the first-ever investment treaty arbitration by a Hong Kong investor in 1987,[9] no investment treaty arbitrations were commenced by Asia-Pacific investors between 1987 and 1999. Despite a global increase in investment treaty arbitrations during the 1990s, with investors commencing a total of 43 investment treaty arbitrations, no arbitrations were brought by investors from the Asia-Pacific region.[10] Malaysia was the only Asia-Pacific state to face investment treaty arbitrations during the 1990s, both of which were pursued by the same investor.[11]

Between 2000 and 2016, a steady trickle of cases was brought by Asia-Pacific investors, averaging just 1.5 cases a year. A leap occurred in 2017 and 2018, which saw 8 and 11 cases respectively. In 2020, the number of investment treaty arbitrations commenced by Asia-Pacific investors peaked with a record 15 cases.

At the time of publication of last year's edition, there had been six cases in each year from 2021 to 2023. It appeared that the 15 cases brought in 2020 might represent a high watermark of investment treaty arbitrations brought by Asia-Pacific investors. However, the updated data shows that eight cases were brought in 2023 in total, and nine cases have been brought in the first seven months of 2024. This is fewer than the high-water mark of 15 cases brought in 2020, but the trend now appears to be upward once again.

Nevertheless, the claims lodged by investors from the Asia-Pacific region do not make up a large proportion of global cases. As of 31 July 2024, 1,368 (known) investment treaty arbitrations had been commenced, with only 95 brought by Asia-Pacific investors. This means that Asia-Pacific investors have commenced just under 7 per cent of the total number of known investment treaty arbitrations worldwide. This is a greater portion than in 2023. However, 51 per cent of global outward FDI was contributed by Asia-Pacific investors in 2023.[12] Asia-Pacific investors continue to bring a disproportionately low number of investment treaty arbitrations.

Table 2 sets out the nationalities of the Asia-Pacific investors that brought investment treaty claims between 2000 and 2024.

**Table 2: Investment Treaty Arbitrations By Nationality Of Investor (2023–2024)**

| Nationality of investor | Number of arbitrations | |
|---|---|---|
| 2023 | 2024 | |
| China | 21 | 22[[13]] |
| Australia | 10 | 14[[14]] |
| India | 12 | 12 |
| Malaysia | 10 | 12 |
| Singapore | 12 | 12[[15]] |
| South Korea | 11 | 11 |
| Japan | 6 | 6 |
| Hong Kong | 3 | 3 |
| The Philippines | 0 | 2 |

| | | |
|---|---|---|
| Macao | 1 | 1 |

Chinese investors remain the most frequent claimants (with 22 cases). This is now followed by claims brought by Australian investors (14 cases), with Indian investors, Malaysian investors and Singaporean investors joint-third (12 cases).

China is one of the highest sources of global FDI outflows. In 2023, China was the source of the second largest global FDI outflows, with FDI totaling US$185.3 billion.[16] However, it is notable that Japanese investors, who were responsible for the third-largest value of global FDI outflows in 2023 of US$184 billion, only initiated six cases.[17]

Australian investors have targeted India[18] and Poland twice[19] and pursued individual claims against Canada,[20] Egypt,[21] Georgia,[22] Indonesia,[23] Mongolia,[24] Pakistan,[25] Papua New Guinea,[26] the Philippines,[27] Sweden[28] and Thailand.[29]

Claims brought by Singaporean investors have been slightly more concentrated, with investment treaty arbitrations twice pursued against Australia,[30] China,[31] Myanmar [32] and Indonesia,[33] and single cases pursued against Mexico,[34] Peru,[35] Taiwan[36] and Turkey.[37]

Malaysian investors targeted Chile,[38] Ghana,[39] China,[40] Sri Lanka,[41] South Korea,[42] the Philippines,[43] India,[44] Sudan,[45] Bahrain,[46] Poland,[47] South Sudan[48] and Argentina.-[49] Two of these arbitrations were brought by the same investor, PETRONAS International Corporation Ltd against Sudan and South Sudan. Similarly, Indian investors have twice pursued claims against Bosnia and Herzegovina[50] and North Macedonia,[51] with single cases pursued against Germany,[52] Indonesia,[53] Libya,[54] Mauritius,[55] Mozambique,[56] Poland,[57] Saudi Arabia[58] and the United Kingdom.[59]

A survey of the various states targeted by investors from these five Asia-Pacific states reveals that claims by these investors have not been concentrated against any single state, with no state being targeted more than twice. With the exceptions of Vietnam (against which two separate cases were commenced by the same Chinese investors)[60] and Mexico (of which one of the two cases was jointly commenced by UK and Chinese investors),[61] all other states have only been targeted by Chinese investors once to date. These states are Belgium,-[62] Cambodia,[63] the Democratic Republic of the Congo,[64] Ecuador,[65] Finland,[66] Ghana,[67] Greece,[68] South Korea,[69] Laos,[70] Malta,[71] Mongolia,[72] Nigeria,[73] Peru,[74] Saudi Arabia,-[75] Sweden,[76] Trinidad and Tobago,[77] Ukraine[78] and Yemen.[79] This wide range of states across Africa, the Asia-Pacific, Europe and North and South America is illustrative of the breadth of FDI outflows from the Asia-Pacific globally.

In contrast, and in the light of Japan's very substantial FDI outflows, it is notable that Japanese investors have only pursued six known investment treaty arbitrations, with none brought in the past year. All of the cases that reached award have ended favourably for the investors. The first arbitration, brought in 2015, resulted in JGC Holdings Corporation prevailing in claims against Spain following the government's imposition of measures affecting the renewables sectors, including a tax on power generators' revenues and a reduction in subsidiaries for renewable energy producers.[80] Similarly, in 2016, Eurus Energy Holdings Corporation brought and ultimately succeeded in claims against Spain arising out of the same measures.[81] In 2018, Itochu Corporation also commenced a case against Spain in respect of these measures, with the tribunal finding in favour of the investor.[82] Of the remaining cases, a 2017 claim brought by Nissan against India for non-payment of incentives

promised under an agreement for the building of a car plant was ultimately settled, while Macro Trading Co Ltd's claim against China filed in 2020 was discontinued for unknown reasons. This leaves as the sole pending case Mitsui's 2020 claim against Spain in relation to a solar power project, alleging that Spain's new renewables incentives regime violates the Energy Charter Treaty.[83]

Investors from developing economies of the Asia-Pacific region do not typically pursue investment treaty claims. No known claims have been pursued by investors from significant developing economies in the region, including Indonesia, Thailand and Vietnam. The explanation for this (at least in part) is likely that net FDI outflows for each of these states are (comparatively speaking) significantly lower than many states whose investors have pursued investment treaty claims.[84] It is worth noting that the past year has seen two claims brought by investors from the Philippines, which had previously fallen in this category.[85]

Table 3 sets out the industries of the Asia-Pacific investors behind the 95 investment treaty arbitrations commenced between 2000 and 2024.

**Table 3: Investment Treaty Arbitrations By Industry Of Investor (2023–2024)**

| Industry of investor | Number of arbitrations | |
|---|---|---|
| 2023 | 2024 | |
| Mining | 13 | 18 |
| Construction | 14 | 14 |
| N/A (Individuals) | 13 | 14 |
| Financial and insurance services | 11 | 11 |
| Energy | 9 | 10 |
| Unknown | 7 | 7 |
| Manufacturing | 5 | 6 |
| Information and communications | 5 | 5 |
| Real estate | 3 | 3 |
| Professional, scientific and technical activities | 3 | 3 |
| Transport and storage | 1 | 2 |
| Automotives | 1 | 1 |
| Retail | 1 | 1 |

As Table 3 reveals, investors from a variety of industries have commenced investment treaty arbitrations. The highest concentrations of investors are from the mining sector (18 per cent), construction sector (15 per cent), financial services sector (12 per cent) and

energy sector (8 per cent). These figures bear some similarity to the global data,[86] with the highest number of investment treaty arbitrations worldwide brought by investors from the energy sector (18 per cent), mining sector (18 per cent), manufacturing sector (16 per cent) and construction sector (12 per cent). Combined, investors from the mining, energy, manufacturing and construction sectors have pursued the majority of cases (64 per cent globally and 50 per cent in the Asia-Pacific region).

**STATES TARGETED AND TREATIES INVOKED BY ASIA-PACIFIC INVESTORS**

The statistics reveal that Asia-Pacific investors most frequently target Asia-Pacific states. Of investment treaty arbitrations commenced by Asia-Pacific investors, approximately 42 per cent have been targeted against Asia-Pacific states. Four of the top five states targeted were Asia-Pacific states, namely China (five cases),[87] India (five cases),[88] Indonesia (four cases)[89] and Vietnam (four cases).[90] Spain was the joint most-targeted state (five cases),-[91] though four of these cases concerned claims pursued by Japanese investors following the change in Spain's renewables tariff policy.[92]

Other Asia-Pacific states targeted by Asia-Pacific investors include Laos[93] and Australia[94] (three cases each), South Korea,[95] the Philippines,[96] Myanmar[97] and Mongolia[98] (two cases each) and a single case against each of Cambodia,[99] Japan,[100] Kyrgyzstan,[101] Pakistan,[102] Papua New Guinea,[103] Sri Lanka,[104] Taiwan[105] and Thailand.[106]

In an earlier study, we surveyed all investment treaty arbitrations commenced against Asia-Pacific states (by investors worldwide) between 1987 (when the first-ever investment treaty arbitration was commenced) and mid-2022.[107]

We noted that many states across the Asia-Pacific region had faced investment treaty arbitration. This included India (29 cases), Kyrgyzstan (18 cases), Pakistan (12 cases), South Korea (10 cases), Vietnam (nine cases), China (eight cases), Indonesia (eight cases), Mongolia (six cases), the Philippines (six cases), Sri Lanka (five cases), Laos (four cases), Malaysia (three cases), Australia (two cases), Thailand (two cases) and a single case faced by each of Bangladesh, Cambodia, Japan, Myanmar, Nepal, Papua New Guinea and Taiwan.-[108] Only a minority of Asia-Pacific states had not yet faced any investment arbitrations including, most prominently, New Zealand and Singapore. Since then, only Vietnam (four new cases), China (one new case), the Philippines (one new case), Australia (two new cases) and Myanmar (one new case) have seen new cases brought against them.[109] This represents a total of nine cases out of the 138 cases brought since 31 July 2022, or less than 7 per cent of new cases.

The Asia-Pacific region accounts for 60 per cent of the world's population,[110] and its share of global gross domestic product has continued to grow, representing 70.1 per cent of global GDP growth for the past decade, with the region now accounting for 54.8 per cent of global GDP (10 per cent more than in 2022).[111] Asia-Pacific states have entered into over 700 BITs. Seen in this light, the fact that less than 7 per cent of new cases have been brought against Asia-Pacific states reflects that they have faced a disproportionately low number of investment treaty arbitrations.

Equally notable is that, of the 95 known investment treaty arbitrations pursued by Asia-Pacific investors to date, a total of 79 investment treaties have been invoked. The Energy Charter Treaty has been most frequently invoked (eight times).[112] This is in line with the broader global trend, with 168 cases brought under the Energy Charter Treaty (ECT).[113]

Other treaties that have been invoked on more than one occasion by Asia-Pacific investors are the China–Laos BIT (three times),[114] China–Singapore BIT,[115] ASEAN Investment Agreement,[116] India–North Macedonia IIA,[117] Bosnia and Herzegovina–India BIT,[118] China–Republic of Korea BIT,[119]ASEAN–China Investment Agreement,[120] Australia–India BIT[121]and Australia–Poland BIT[122] (each of which have been invoked on two occasions).

## STATE ACTION LEADING TO INVESTMENT TREATY ARBITRATION

Table 5 sets out the most common state actions giving rise to investment treaty claims by Asia-Pacific investors.

**Table 4: Investment Treaty Arbitrations By Type Of State Action (2023–2024)**

| Type of state action | Number of arbitrations | |
|---|---|---|
| 2023 | 2024 | |
| Revocation of or failure to grant or renew licence, concessions or permits | 23 | 30 |
| Contract breach, modification or cancellation | 13 | 14 |
| Judicial process | 7 | 9 |
| Nationalisation | 6 | 6 |
| Tax measures | 6 | 6 |
| Social protests/civil unrest | 4 | 4 |
| Others | 8 | 10 |
| Unknown | 16 | 16 |

Evidently, a wide range of state measures have been challenged by Asia-Pacific investors. We set out below examples of the five categories of state action that have given rise to the highest number of investment treaty arbitrations.

- Revocation of or failure to grant or renew licence, concessions or permits: ***MTD v Chile***,[123] which was brought by a Malaysian investor against Chile under the Chile–Malaysia BIT, is a case reflective of a fact pattern that often arises in revocation or failed licence cases. Chile had assured the investors that the land secured by them for an investment project (the development of a satellite city) would be rezoned to permit the development to proceed. However, the relevant Chilean governmental agency subsequently refused to rezone the land. The tribunal found that this represented a breach of Chile's fair and equitable treatment (FET) obligation (where it had created and encouraged expectations that the project would be implemented in the proposed location). The tribunal awarded damages to the investors on the basis of expenditures made in relation to the investment.
- Contract breach, modification or cancellation: ***Kenon and IC Power v Peru***[124] was brought by two Singaporean investors who indirectly owned and operated power

plants in Peru. They pursued claims under the free trade agreement (FTA) between Singapore and Peru relating to the modification of a contract by a resolution adopted by the Peruvian regulator of the energy sector. The investors contended that the resolution adopted by the Peruvian regulator fundamentally altered the terms of a tender awarded to their Peruvian subsidiary, causing losses to their investment that they claimed breached the FET and full protection and security standards in the FTA. The tribunal held that the adoption of the resolution was manifestly arbitrary and breached the FET standard, and awarded the investors damages for the losses caused by the issuance of the resolution.

- Nationalisation: there has not yet been a successful claim brought on the basis of nationalisation by an Asia-Pacific investor. There have been two cases in which such claims have been pursued, namely ***Ping An v Belgium***[125] and ***AsiaPhos Limited and Norwest Chemicals Pte Ltd v China***.[126]Both cases were dismissed on jurisdictional grounds. ***Ping An v Belgium*** was brought by two Chinese investors under the 2009 BIT between the Belgium–Luxembourg Economic Union and China. The investors had jointly become the largest shareholder of the Fortis group. Following the 2008 financial crisis, the Belgian government implemented a series of measures that effectively nationalised the Belgian subsidiary of the group, diluting the investors' interest in Fortis. The Belgian subsidiary was eventually sold, which the investors alleged resulted in significant loss to their investment. The tribunal declined jurisdiction on the basis that the 2009 BIT did not cover disputes that arose before the BIT entered into force.
- Judicial process: in ***White Industries v India***,[127] judicial delays that left the investor, an Australian mining company, unable to enforce an ICC award for nine years were found to be in breach of India's obligations in the Australia–India BIT. The tribunal awarded the investor damages, which included the full amount of the underlying ICC award and legal fees incurred in the ICC and subsequent court proceedings.
- Tax measures: ***Eurus Energy v Spain***[128] was brought by a Japanese investor against Spain under the Energy Charter Treaty in response to reforms to Spain's renewables incentive regime. The investor submitted that the reforms reduced subsidies and imposed a 7 per cent tax on the revenue of renewable power generators, which had the indirect effect of retroactively clawing back subsidies received in the past. The tribunal found that the reforms breached the investor's legitimate expectation that the subsidies would have continued (in some form) over the lifetime of the wind power projects, and that clawback of the subsidies breached the Energy Charter Treaty's stability principle.

## OUTCOME OF INVESTMENT TREATY ARBITRATIONS PURSUED BY ASIA-PACIFIC INVESTORS

Table 6 sets out the status and outcome of the 95 known investment treaty arbitrations commenced by Asia-Pacific investors between 2000 and 2024.

**Table 5: Status Of Investment Treaty Arbitrations (2023–2024)**

| Type of government action | Number of arbitrations | |
|---|---|---|
| 2023 | 2024 | |
| Pending | 40 | 44 |

| | | |
|---|---|---|
| State succeeded | 12 (including 8 on jurisdiction) | 14 (including 8 on jurisdiction) |
| Investor succeeded | 11 | 12 |
| Settled | 9 | 10 |
| Discontinued for unknown reasons | 7 | 9 |
| Discontinued as claimant failed to pay required advances for costs | 3 | 3 |
| Content of award undisclosed | 2 | 3 |

As Table 5 demonstrates, almost half of the arbitrations brought by Asia-Pacific investors are still pending. This reflects the very recent increase in the number of investment treaty arbitrations commenced by Asia-Pacific investors (as set out in Table 1).

In cases that have concluded, the host state has succeeded in 14 cases, whereas the investor has succeeded in 12, with the remainder either settled or discontinued (including because the investor failed to pay the required advances for costs).

Of the determined cases where states succeeded, over half were based on jurisdictional grounds. It is commonplace for states to raise jurisdictional objections to investment treaty claims. Often, proceedings are bifurcated, with a separate jurisdictional phase taking place before the tribunal determines whether the investor's claims should be heard on the merits. When determining jurisdiction, tribunals will consider whether they have subject matter, personal and temporal jurisdiction. Tribunals need to establish the consent of the host state to submit the dispute to arbitration. The investor must also qualify as a protected investor under the treaty. Its investment must likewise qualify as a protected investment under the treaty and must have been protected at the time of the host state's alleged breaches of its obligations. The high number of claims dismissed on jurisdictional grounds highlights the importance of thoroughly assessing jurisdictional arguments before commencing an investment treaty arbitration.

Of the 18 cases determined on the merits, 12 were determined in favour of the investor, revealing that a significant proportion of the cases that cleared the requisite jurisdictional hurdles were judged to be sufficiently meritorious. Where the investor succeeded, awards ranged from US$0.78 million to US$6 billion, with the median value of award in the US$50 million–US$100 million range. In three cases, investors were awarded over US$1 billion.[129]

**THE CHANGING FORTUNES OF MULTILATERAL TREATIES**

One trend to watch in the coming years will be the role played by multilateral agreements in driving increases in the number of investment treaty arbitrations brought by investors in the Asia-Pacific. In particular, the coming years are likely to see an increase in the number of investment treaty arbitrations brought under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and in contrast a possible decrease in the number of arbitrations brought by Asian investors under the ECT.

In recent years, Asia-Pacific states have been focused on developing free trade agreements and multilateral pacts.[130] The CPTPP is one of the most prominent of these, and provides for ISDS as its chosen dispute settlement mechanism. While it remains in its infancy, the CPTPP has already seen at least three claims, one of which has been brought by an investor from the Asia-Pacific region.[131] The other two claims are pursued against Mexico.[132] The first of these claims was brought in 2023, with the other two brought in 2024. Further, the CPTPP is likely to see more members join the current 12, with several other countries having applied to join. While it remains to be seen whether the popularity of the ISDS provisions of the CPTPP among investors will continue to grow, the large number of cases brought under other similar multilateral treaties, including the ECT and NAFTA, suggests the CPTPP is likely to rise in prominence.

On the other hand, the ECT has seen a contrasting change in fortunes, with an increasing number of withdrawals by many states.[133] This is significant because the ECT is the investment treaty under which investors from the Asia-Pacific have commenced arbitrations most (seven cases, which is four more than the China–Laos BIT in second place with three cases). These withdrawals may not, by themselves, decrease the number of arbitrations brought by Asia-Pacific investors for a few years because the sunset clause in the ECT allows investors to continue to bring investment treaty arbitrations in respect of investments made before withdrawal for up to 20 years after a state's withdrawal.[134]

However, what may well lead to a decrease in the number of arbitrations brought by Asia-Pacific investors under the ECT in the near future are the amendments to the existing ISDS provisions under the ECT that take effect (provisionally) in September 2025.[135] These amendments to the ECT narrow the definitions of protected investments and investors, and limit the scope of substantive protections to just the FET and the full protection and security standards.[136] They also provide that non-discriminatory measures designed and applied to protect legitimate policy objectives (including health, safety and the environment) do not constitute indirect expropriation unless the measure is manifestly excessive.[137] The narrowing of protections under the ECT may lead investors to bring claims under other investment treaties that have broader investment protections. While five ECT claims have still been brought globally in the past year,[138] none of these have been brought by Asia-Pacific investors, and the reduced protections under the modernised ECT could see that trend continue in the coming years after the amendments to the ECT take effect.

## CONCLUSION

The past year has seen an Asia-Pacific investor bring an arbitration under the CPTPP (which counts seven Asia-Pacific states as members). One trend to watch will be whether others follow suit, and whether the CPTPP will drive an increase in claims brought by Asia-Pacific investors. However, it is likely that it will take time for the CPTPP to see the case numbers brought under the ECT (168 in total globally) given the vastly different number of signatory states for each of these multilateral arrangements. Conversely, it remains to be seen if the state-to-state dispute settlement mechanism under the RCEP will gain any traction, which could in turn see decreasing numbers of investment treaty claims.

The rise in the use of investment treaty arbitration has not been driven by Asia-Pacific investors, who have commenced only around 7 per cent of the total number of known investment treaty arbitrations worldwide.[139] This is despite Asia-Pacific investors now contributing over half of global outward FDI. Of particular note are the relatively small number

of arbitrations brought by Chinese and Japanese investors given the significant FDI outflows from China and Japan. Although the number of arbitrations brought by Asia-Pacific investors has been increasing, it seems unlikely that their share of the global total of these disputes will reflect their contribution to FDI exports for many years to come.

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## Endnotes

**1** Kenneth J Vandevelde, 'A Brief History of International Investment Agreements', 12 UC Davis J Int'l L & Pol'y 157, 171 (2005). ^ Back to section

**2** World Bank, 'Foreign direct investment, net outflows (% of GDP) - East Asia & Pacific', The World Bank: Data. https://data.worldbank.org/indicator/BX.KLT.DINV.WD.GD.ZS?locations=Z4. ^ Back to section

**3** The Investment Dispute Settlement (ISDS) Navigator is available on UN Trade and Development's (UNCTAD) website. Its content is currently accurate to 31 July 2024. ^ Back to section

**4** We have also supplemented our analysis with additional cases not included in the UNCTAD ISDS Navigator identified from IA Reporter, Jus Mundi and ICSID. ^ Back to section

**5** Including the new and updated case data from the UNCTAD ISDS Navigator between 1 August 2023 to 31 July 2024. ^ Back to section

**6** *Telenor South East Asia Investment Pte Ltd v Myanmar* (2023); *Nurhima Kiram Fornan et al. v Spain* (ICSID Case No. ARB/24/45); *Balamara Resources Limited v Poland* (2024); *Yaw Chee Siew v Poland* (2024); *TMA Australia et al. v Philippines* (ICSID Case No. ARB/24/41); *Indo Gold Pty Limited v Republic of India* (PCA Case No. 2024-51); *Riversdale Resources Pty Ltd and Hancock Prospecting Pty Ltd v Canada* (ICSID Case No. ARB/24/50); *PETRONAS International Corporation Ltd v Republic of South Sudan* (ICSID Case No. ARB/24/36); *International Container Terminal Services Inc v Republic of Honduras* (ICSID Case No. ARB/24/34); *Bacanora Lithium Limited, Sonora Lithium Ltd, and Ganfeng International Trading (Shanghai) Co Ltd v United Mexican States* (ICSID Case No. ARB/24/21); *IJM Corporation Berhad v Argentine Republic* (ICSID Case No. ARB/23/52). ^ Back to section

**7** *Balamara Resources Limited v Poland* (2024); *Yaw Chee Siew v Poland* (2024); *Riversdale Resources Pty Ltd and Hancock Prospecting Pty Ltd v Canada* (ICSID Case No. ARB/24/50);*PETRONAS International Corporation Ltd v Republic of South Sudan* (ICSID Case No. ARB/24/36); *International Container Terminal Services Inc v Republic of Honduras* (ICSID Case No. ARB/24/34). ^ Back to section

**8** At the time of publication, data for 1 August 2024 to 31 December 2024 was not yet available on the UNCTAD ISDS Navigator. ^ Back to section

**9** International Centre for Settlement of Investment Disputes (ICSID) Case No. ARB/87/3. ^ Back to section

**10** UNCTAD ISDS Navigator ( https://investmentpolicy.unctad.org/investment-dispute-settlement). ^ Back to section

**11** ***Philippe Gruslin v Malaysia (I)*** (ICSID Case No. ARB/94/1); ***Philippe Gruslin v Malaysia (II)*** (ICSID Case No. ARB/99/3). ^ Back to section

**12** The World Bank 'Foreign direct investment, net outflows (BoP, current US$)'. https://data.worldbank.org/indicator/BM.KLT.DINV.CD.WD?end=2022&most_recent_value_desc=false&start=2022&view=bar. ^ Back to section

**13** Including a claim brought jointly by Chinese and United Kingdom investors: see ***Bacanora Lithium Limited, Sonora Lithium Ltd., and Ganfeng International Trading (Shanghai) Co. Ltd. v United Mexican States*** (ICSID Case No. ARB/24/21). ^ Back to section

**14** Including a claim brought by a dual Australia-United Kingdom national: see ***Mohammed Munshi v Mongolia*** and a claim brought by an Australia-United Kingdom company: see ***Churchill Mining and Planet Mining Pty Ltd v Republic of Indonesia*** (ICSID Case No. ARB/12/40 and 12/14). ^ Back to section

**15** Including a claim brought by a dual Singapore and Dutch Investor: see ***Akfel Commodities Pte Ltd and I-Systems Global BV v Republic of Turkey*** (ICSID Case No. ARB/20/36). ^ Back to section

**16** OECD 'FDI in Figures'. Accessible at www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/fdi/FDI-in-Figures-January-2025.xlsx/_jcr_content/renditions/original./FDI-in-Figures-January-2025.xlsx. ^ Back to section

**17** OECD 'FDI in Figures'. Accessible at www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/fdi/FDI-in-Figures-January-2025.xlsx/_jcr_content/renditions/original./FDI-in-Figures-January-2025.xlsx. ^ Back to section

**18** ***White Industries Australia Limited v The Republic of India*** (2010) (UNCITRAL); ***Indo Gold Pty Limited v Republic of India*** (PCA Case No. 2024-51). ^ Back to section

**19** ***GreenX (Formerly Prairie Mining Limited v Republic of Poland (I)*** (PCA Case No. 2020-52); ***Balamara Resources Limited (in liquidation) v Republic of Poland*** (2024). ^ Back to section

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**32** *Yaung Chi OO Trading Pte Ltd v Government of the Union of Myanmar* (ASEAN I.D. Case No. ARB/01/1); *Telenor South East Asia Investment Pte Ltd v Myanmar* (2023). ^ Back to section

**33** *Cemex Asia Holdings Ltd v Indonesia* (ICSID Case No. ARB/04/3); *Oleovest Pte Ltd v Republic of Indonesia* (ICSID Case No. ARB/16/26). ^ Back to section

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**61** *Bacanora Lithium Limited, Sonora Lithium Ltd, and Ganfeng International Trading (Shanghai) Co Ltd v United Mexican States* (ICSID Case No. ARB/24/21); *Jinlong Dongli Minera Internacional SA de CV v United Mexican States* (2018). ^ Back to section

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**72** *Beijing Shougang Mining Investment Company Ltd, China Heilongjiang International Economic & Technical Cooperative Corp, and Qinhuangdaoshi Qinlong International Industrial Co Ltd v Mongolia* (PCA Case No. 2010-20). ^ Back to section

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**84** World bank data. See: the World Bank 'Foreign direct investment, net outflows (BoP, current US$)'. https://data.worldbank.org/indicator/BM.KLT.DINV.CD.WD?end=2022&most_recent_value_desc=false&start=2022&view=bar. ^ Back to section

**85** *International Container Terminal Services Inc. v Republic of Honduras* (ICSID Case No. ARB/24/34)*; Nurhima Kiram Fornan et al. v Spain* (ICSID Case No. ARB/24/45). ^ Back to section

**86** Also taken from the UNCTAD ISDS Navigator. ^ Back to section

**87** *Ekran Berhad v People's Republic of China* (ICSID Case No. ARB/11/15); ***Ansung Housing Co, Ltd v People's Republic of China*** (ICSID Case No. ARB/14/25); ***Macro Trading Co, Ltd v People's Republic of China*** (ICSID Case No. ARB/20/22); ***Goh Chin Soon v People's Republic of China*** (formerly ICSID Case No. ARB/20/34) (PCA Case No. 2021-30); ***AsiaPhos Limited and Norwest Chemicals Pte Ltd v People's Republic of China*** (ICSID Case No. ADM/21/1). ^ Back to section

**88** *White Industries Australia Limited v The Republic of India* (2010) (UNCITRAL); ***Nissan Motor Co, Ltd v Republic of India*** (PCA Case No. 2017-37); ***Korea Western Power Company Limited v India*** (PCA Case No. 2020-06);***Maxis Communications Berhad and Global Communications Services Holdings Limited v Republic of India*** (PCA Case No. 2021-38); ***Indo Gold Pty Limited v Republic of India*** (PCA Case No. 2024-51). ^ Back to section

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**90** *Shin Dong Baig v Socialist Republic of Viet Nam* (ICSID Case No. ARB(AF)/18/2); ***PowerChina HuaDong Engineering Corporation and China Railway 18th Bureau Group Company Ltd v Socialist Republic of Viet Nam (I)*** (ICSID Case No. ARB(AF)/22/7); ***PowerChina HuaDong Engineering Corporation and China Railway 18th Bureau Group Company Ltd v Socialist Republic of Viet Nam (II)*** (ICSID Case No. ADM/23/1); ***DWS Star Bridge LLC v Socialist Republic of Vietnam*** (2020). ^ Back to section

**91** *JGC Holdings Corporation (formerly JGC Corporation) v Kingdom of Spain* (ICSID Case No. ARB/15/27); ***Eurus Energy Holdings Corporation v Kingdom of Spain*** (ICSID Case No. ARB/16/4); ***Itochu Corporation v Kingdom of Spain*** (ICSID Case No. ARB/18/25); ***Mitsui & Co, Ltd v Kingdom of Spain*** (ICSID Case No. ARB/20/47); ***Nurhima Kiram Fornan et al v Spain*** (ICSID Case No. ARB/24/45). ^ Back to section

**92** See above. ^ Back to section

**93** *Sanum Investments Limited v Lao People's Democratic Republic (II)* (ICSID Case No. ADHOC/17/1); ***Sanum Investments v Lao People's Democratic Republic (I)*** (PCA Case No. 2013-13); ***Byrich Holdings Limited v Laos*** (2022). ^ Back to section

**94** *Philip Morris Asia Limited v The Commonwealth of Australia* (PCA Case No. 2012-12); ***Zeph Investments Pte Ltd v The Commonwealth of Australia (I)*** (PCA Case No. 2023-40)-***; Zeph Investments Pte Ltd v The Commonwealth of Australia (II)*** (PCA Case No. 2023-67). ^ Back to section

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**98** *Beijing Shougang Mining Investment Company Ltd, China Heilongjiang International Economic & Technical Cooperative Corp, and Qinhuangdaoshi Qinlong International Industrial Co Ltd v Mongolia* (PCA Case No. 2010-20); *Mohammed Munshi v Mongolia* (SCC Case No. EA 2018/007). ^ Back to section

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**107** T Dymond, C Sim and L Wong, The state of play of investment treaty arbitration in the Asia-Pacific (GAR, 2023). ^ Back to section

**108** T Dymond, C Sim and L Wong, The state of play of investment treaty arbitration in the Asia-Pacific (GAR, 2023), p. 53. ^ Back to section

**109** *PowerChina HuaDong Engineering Corporation and China Railway 18th Bureau Group Company Ltd v Socialist Republic of Viet Nam (II)* (ICSID Case No. ADM/23/1); *Tan Tao Investment & Industry Corporation and Maya Dangelas v Socialist Republic of Vietnam* (2023); *Immobilien Partner, Goe Engenharias & Mekolor v Vietnam et al,* ICC Case No. 27503/XZG; *PowerChina HuaDong Engineering Corporation and China Railway 18th Bureau Group Company Ltd v Socialist Republic of Viet Nam* (ICSID Case No. ARB(AF)/22/7); *Eugenio Montenero v People's Republic of China* (2021); *TMA Australia et al v Philippines* (ICSID Case No. ARB/24/41); *Zeph Investments Pte Ltd v The Commonwealth of Australia (I)* (PCA Case No. 2023-40); *Zeph Investments Pte Ltd v The Commonwealth of Australia (II)* (PCA Case No. 2023-67); *Telenor South East Asia Investment Pte Ltd v Myanmar* (2023). ^ Back to section

**110** United Nations Population Fund, 'Asia and the Pacific: Population trends' (accessed on 26 February 2025): https://asiapacific.unfpa.org/en/topics/population-trends-9. ^ Back to section

**111** World Economics, 'Asia-Pacific' https://www.worldeconomics.com/Regions/Asia-Pacific/. ^ Back to section

**112** *JGC Holdings Corporation (formerly JGC Corporation) v Kingdom of Spain* (ICSID Case No. ARB/15/27); *Eurus Energy Holdings Corporation v Kingdom of Spain* (ICSID Case No. ARB/16/4); *Mohammed Munshi v Mongolia, Itochu Corporation v Kingdom of Spain* (ICSID Case No. ARB/18/25); *Range Resources Limited v Georgia, Mitsui & Co, Ltd v Kingdom of Spain* (ICSID Case No. ARB/20/47); *Aura Energy Limited v Sweden* (2019); *Balamara Resources Limited v Poland* (2024). ^ Back to section

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**118** *Naveen Aggarwal, Neete Gupta, and Usha Industries, Inc v Bosnia and Herzegovina* (PCA Case No. 2018-03); *Pramod Mittal, Sangeeta Mittal, Vartika Mittal, Shristi Mittal and Divyesh Mittal v Bosnia and Herzegovina* (2023) (UNCITRAL). ^ Back to section

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**130** Claudia T Salomon & Sandra Friedrich, 'Investment in East Asia and in the Pacific', 16 J World Inv & Trade 800, 808 and Chart B.1 (2015). ^ Back to section

**131** *Riversdale Resources Pty Ltd and Hancock Prospecting Pty Ltd v Canada* (ICSID Case No. ARB/24/50). ^ Back to section

**132** *Caisse de dépôt et placement du Québec and CDP Groupe Infrastructures Inc v United Mexican States* (ICSID Case No. ARB/23/53); *Almaden Minerals Ltd. and Almadex Minerals Ltd v United Mexican States* (ICSID Case No. ARB/24/23). ^ Back to section

**133** See, European Parliament Briefing, 'EU withdrawal from the Energy Charter Treaty'. Accessible at https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/754632/EPRS_BRI(2023)754632_EN.pdf. ^ Back to section

**134** The International Energy Charter Consolidated Energy Charter Treaty (ECT), article 47(3). ^ Back to section

**135** On 3 December 2024, the Energy Charter Conference adopted and approved the decisions on the modernisation of the ECT. The amendments to the ECT are set to take effect provisionally from 3 September 2025 (although countries may opt out of the provisional application by 3 March 2025). ^ Back to section

**136** Energy Charter Secretariat, Decision of the Energy Charter Conference dated 3 December 2024, article 4. ^ Back to section

**137** Energy Charter Secretariat, Decision of the Energy Charter Conference dated 3 December 2024, article 4. ^ Back to section

**138** ***Berkeley Exploration Ltd v Kingdom of Spain*** (ICSID Case No. ARB/24/22); ***Lotus Proje Akaryakıt Enerji Madencilik Telekominikasyon İnşaat Sanayi Taah Ve Tic AŞ v Turkmenistan (II)*** (ICSID Case No. ARB/24/13); ***MOL Hungarian Oil and Gas Public Limited Company v Republic of Croatia (II)*** (ICSID Case No. ARB/24/19); ***Mondi Investments Limited v Republic of Poland*** (ICSID Case No. ARB(AF)/24/1); ***Stratius Investments Limited v Hungary*** (ICSID Case No. ARB/24/6). ^ Back to section

**139** Investors from the Asia-Pacific have brought at least 95 arbitrations, against the 1368 arbitrations listed in the UNCTAD ISDS Navigator. ^ Back to section


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