

International Investment Arbitration in the Commonwealth of Independent States: Year in Review 2015

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 Commonwealth of Independent States 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.

The Commonwealth of Independent States (CIS) region saw a weak domestic economic climate in 2015, attributed largely to the continuing strain on Russo/Ukrainian relations, political tensions with the West, falling oil prices and a dramatic drop in the value of the Russian rouble. Since Russia's economy is by far the largest economy in the CIS region, the economic and political challenges faced by Russia have inevitable repercussions on the whole region. Against this background, investment arbitration activity in this region has been relatively slow.

Four new ICSID cases involving the CIS were filed in 2015, bringing the overall total for the region to 53. Two of the 12 cases which were pending in 2014 were concluded in 2015. Of the four new cases brought in 2015, three are currently pending – for a total of 13 pending cases involving the region. One third of the currently pending disputes involve the construction industry, down from 2014 when almost half of the pending disputes were construction disputes. The industry that saw the most new disputes in 2015 was the oil, gas and mining industry, as was the case in 2014. Russia did not see a rise in new cases, and the top three CIS respondent States remained steady (Ukraine, Kazakhstan and Georgia).

Countries in the region have concluded at least 554 investment treaties (including bilateral investment treaties, free trade agreements and other treaties containing investment-related provisions). Just under 10 percent of these investment treaties are intra-regional (a one percent decrease from 2014).

Five investment treaties involving the region were signed in 2015, a decrease from the eight signed in 2014. In May 2015, the United States signed an investment treaty with Armenia, increasing its total number of investment treaties with CIS countries to 14.

For purposes of this review, the CIS region includes participating, associate and former CIS member states: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

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

Tatyana Talyanskaya

Associate, London

+44 (0)20 3207 1264

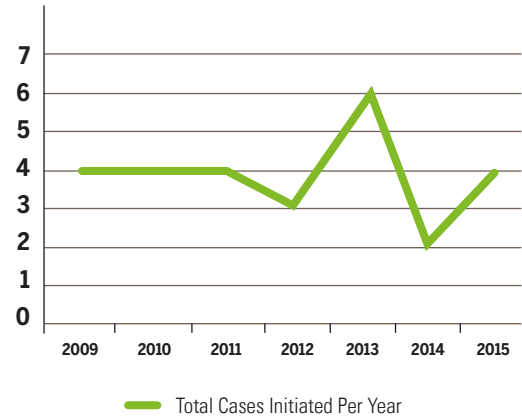
tatyana.talyanskaya@bryancave.com

Investment Arbitration in the Region¹

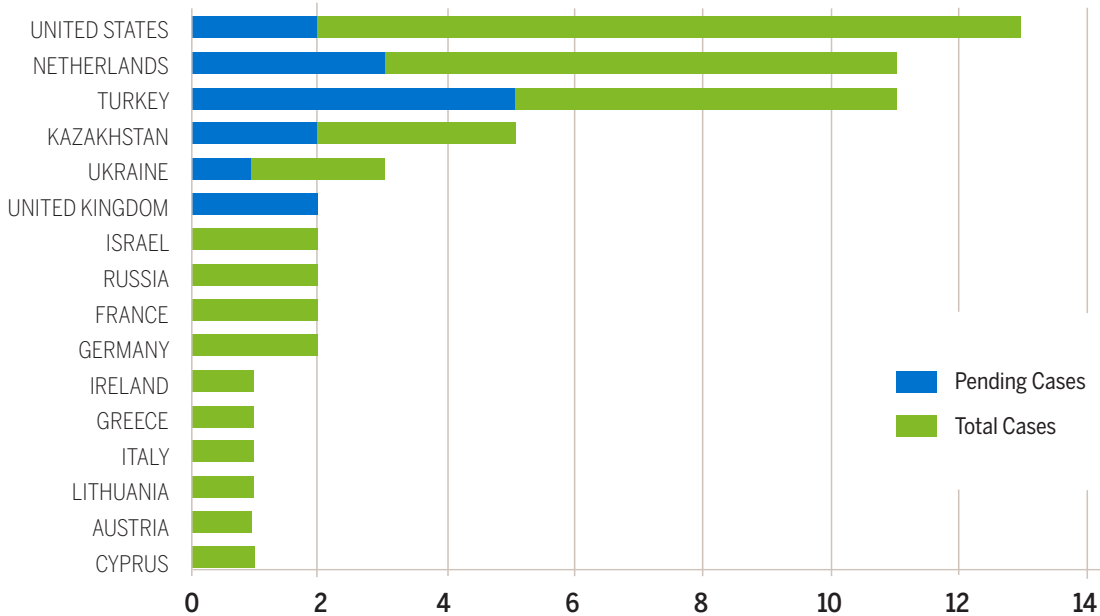
Four new investment arbitrations were brought against CIS States in 2015. Following a drop in new cases in 2012 and 2014 to three and two respectively, the number of new cases filed in 2015 is in line with levels seen between 2009 and 2011, with 2013 having seen the highest number of new cases in recent years.

Claims against CIS countries have been made most frequently by investors from the United States, with the Netherlands and Turkey in second place with 11 cases each brought by their nationals. Of the four new cases initiated in 2015, two were brought by Dutch companies, one by British and U.S. nationals and the remaining one by a Turkish company.

Cases Initiated Per Year



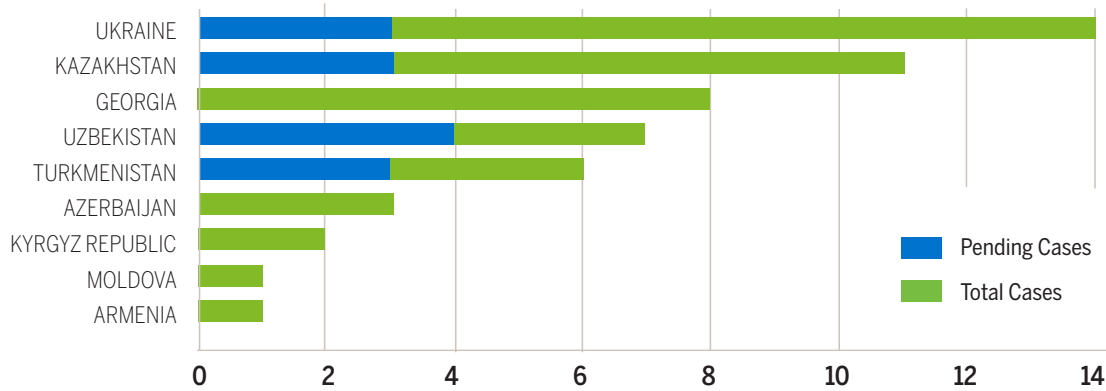
Top Nationalities of Investors



¹ This review considers only investment arbitrations brought under the auspices of ICSID, which constitute the majority of investment arbitrations in the region.

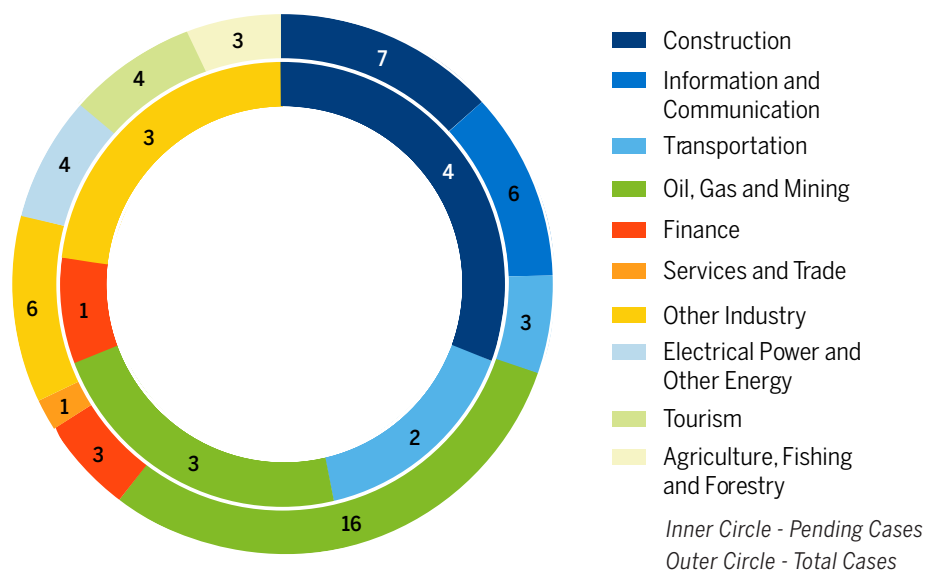
Of the four new claims brought in 2015, two were against Ukraine and the other two against Kazakhstan. As in 2014, the three countries in the region that have faced the most investment claims are Ukraine, Kazakhstan and Georgia.

CIS Countries Facing Investment Claims



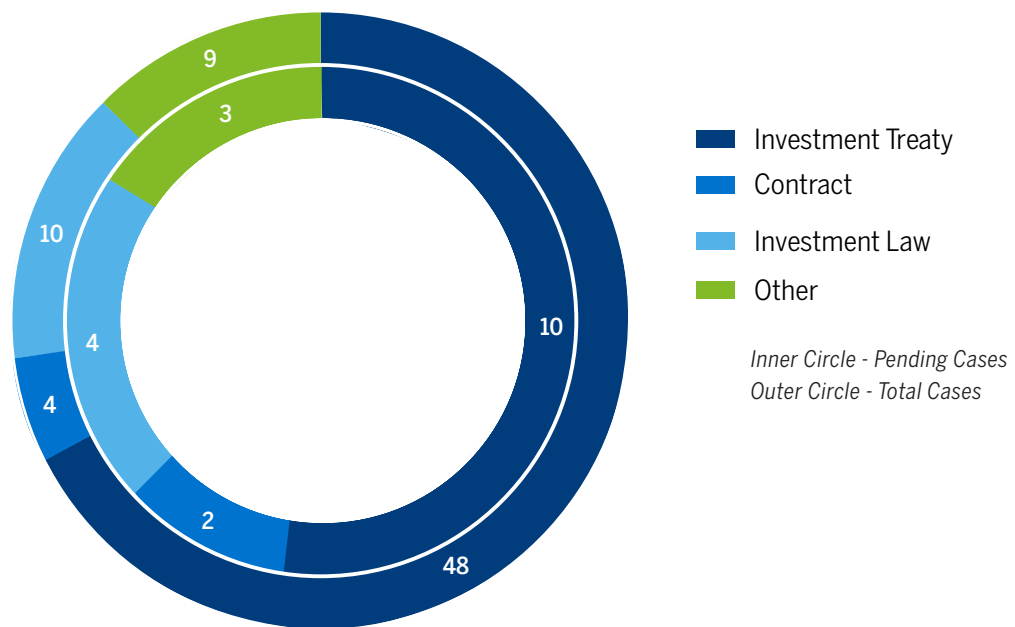
The oil, gas and mining industry continues to be the industry in which investment disputes against CIS countries most frequently arise, followed by the construction industry and the information and communication industry. Of the four cases brought in 2015, two were disputes in the oil, gas and mining industry, one in oil transportation, and one in the pharmaceutical industry.

Investment Cases by Industry



The basis for arbitral jurisdiction in most cases against CIS countries continues to be an investment treaty (the majority of cases are brought pursuant to a bilateral investment treaty). Of the four cases that were brought in 2015, three were brought pursuant to a bilateral investment treaty (the basis for the remaining new case has not been made public).

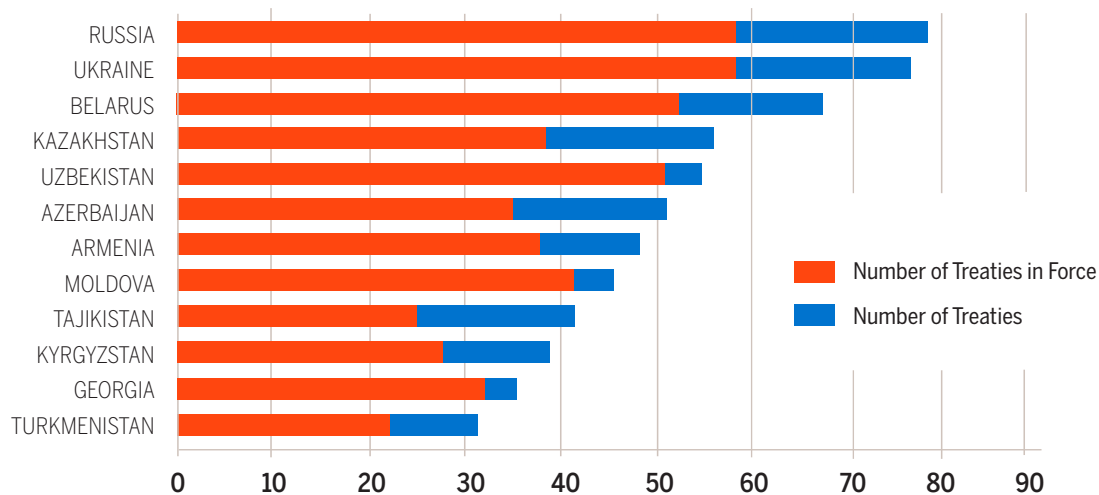
Instrument Invoked to Establish ICSID Jurisdiction



Of the 40 concluded arbitrations involving the CIS region, nine have involved further proceedings to annul the arbitral award, with annulment proceedings commenced in three cases in 2015. The number of cases in which annulment is sought has therefore increased from 16 percent in 2014 to 22.5 percent in 2015. As was the case in 2014, a greater proportion (30 percent) of CIS cases were either settled or discontinued prior to an award.

Investment Treaties Involving CIS Countries

Almost 15 percent of the just over 3,500 investment treaties in existence involve CIS countries, a 1 percent decrease from 2014. Russia has signed the most investment treaties. Russia and Ukraine currently have the same number of treaties in force.



Of the 554 investment treaties concluded by CIS countries, 55 are intra-regional. To date, three cases in the region have been brought pursuant to an intra-regional investment treaty.

Five investment treaties involving the region were signed in 2015: two were bilateral investment treaties (between Russia and Cambodia and between Ukraine and Japan); one was an enhanced partnership and cooperation between Kazakhstan and the European Union; one was a free trade agreement between the Russian Economic Union and Vietnam; and one was a trade and investment framework agreement between Armenia and the United States.

The new United States investment treaty with Armenia brings the total number of investment treaties between the United States and CIS countries to 14 (from 13 in 2014). Ten of these investment treaties are bilateral investment treaties that permit investor-State arbitration (the treaties between the United States and each of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Ukraine and Uzbekistan).

Other Developments in 2015

- ▶ In February 2015, Russia petitioned the District Court of The Hague to set aside the July 2014 award of the arbitral tribunal sitting in The Hague, under the auspices of the Permanent Court of Arbitration, in the arbitration brought against Russia by the majority shareholders of Yukos Oil Company. Having refused to pay the US \$50 billion award which was due by January 15, 2015, Russia mounted its challenge on procedural grounds. On April 20, 2016, the District Court of The Hague overturned the award on jurisdictional grounds, namely that the Energy Charter Treaty, under which the tribunal claimed jurisdiction, had never been ratified by Russia.
- ▶ The bilateral treaty between Georgia and Switzerland entered into force on April 17, 2015, following its signature in June 2009.
- ▶ Ukraine and Uzbekistan (as well as 17 other ICSID Contracting States) made designations to the ICSID Panels of Arbitrators and Conciliators in 2015.

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. © 2016 Bryan Cave LLP. All Rights Reserved.

Authors

Emma Lindsay

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

Tatyana Talyanskaya

Associate, London
+44 (0)20 3207 1264
tatyana.talyanskaya@bryancave.com

Research support and data collection assistance provided by **Wanny Leung**, 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