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Insights

Litigation & Arbitration Group

Securing International Law Protections Against Geopolitical Risks for Canadian Outbound Investments Through Investment Treaties

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Executive Summary

- Canadian investors are investing significantly outside of Canada, particularly in the Americas and mineral-rich countries.
- Canada has ratified 36 bilateral investment treaties ("BITs") and seven free trade agreements ("FTAs") protecting foreign investments that are in force with other governments.
- BITs protect foreign investors from unlawful actions taken by the host State of the investment (the destination of the outbound FDI).
    a. Unlawful actions include discriminatory treatment; unfair and inequitable treatment of the foreign investor and/or its investments; and expropriation of the investment.
    b. Critically, most BITs allow the foreign investor to arbitrate any disputes arising under the BIT directly against the host State government, taking the dispute out of the local courts that likely would play favorites in favor of the host State government.
- Canadian investors face risks from host States changing laws or failing to uphold agreements, particularly in heavily regulated sectors such as energy and mining.
- Canadian investors have brought arbitration proceedings—often successfully—under investment treaties against host States that reneged on their commitment to protect Canadian investments.
- In addition to the bilateral investment treaties entered into by Canada, Canadian investors currently are able to resort to multilateral instruments such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) to bring claims against Mexico (among other countries). The CPTPP may prove especially helpful for Canadian investors in Canada given that the USMCA, which replaced NAFTA, does not allow for Canadian investors to arbitrate against Mexico for breaches of the USMCA.
- To the extent a Canadian investor makes an investment in a State that does not have a treaty in place with Canada, such investor should consider structuring the investment through an SPV incorporated in an intermediary State that has ratified a BIT with the host State of the target investment.
    a. Some SPVs that are under the control of Canadian investors have initiated arbitrations against host States that have enacted measures impacting their investments. For example, Alhambra Resources brought a claim against Kazakhstan through its Dutch

subsidiary, Alhambra Cooperatief, under the 2002 bilateral investment treaty between Kazakhstan and the Netherlands—and won.[1]

- Not all BITs are equal in terms of the protections and benefits they provide. Additionally, when structuring their investments, Canadian investors should consider both BIT protection as well as double-taxation tax treaties that provide favorable tax treatment. This alert explains the calculus.

Canadian Investors Should Protect Their Outbound Investments Through BITs and FTAs

Canada historically has made significant foreign direct investments ("FDI"), reportedly investing 4% of its GDP outside of Canada. Historically, these outflows have been directed primarily to the United States and Europe, with the remainder invested mainly in "middle income" countries such as Mexico, Peru, Brazil, China, India and Indonesia. Canada also has invested a larger share vis-à-vis other G7 countries of its FDI in Central and South America

To protect Canadian outflows of investment, Canada has signed 46 bilateral investment treaties ("BITs"), 36 of which are currently in force.[2] Canada also has ratified seven free trade agreements, each of which contains a chapter on investment protection.[3]

Canadian investors have successfully held foreign governments accountable through private arbitrations initiated under these investment treaties when those governments have breached their obligations under international law vis-à-vis those investments. High-profile examples include:

- *Crystallex International Corporation v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB(AF)/11/2): an arbitral tribunal constituted under the bilateral investment treaty between Canada and Venezuela found that Venezuela had unlawfully expropriated the mining company's investments to develop the Las Cristinas gold mine in Venezuela by denying a required environmental permit despite prior assurances that the permit would be granted. The investor was awarded over US$1.2 billion in damages.[4]
- *Lion Mexico Consolidated L.P. v. United Mexican States* (ICSID Case No. ARB(AF)/15/2): an arbitral tribunal constituted under the North American Free Trade Agreement ("NAFTA") found that Mexico committed a denial of justice and thus violated its obligation to ensure fair and equitable treatment to Canadian investors when the Mexican judiciary improperly confirmed the cancellation of promissory notes and related mortgages securing loans for the construction of a luxury resort and skyscrapers. The investor was awarded US$47 million in damages.[5]

That being said, Canada as a respondent State has also suffered some losses in arbitrations constituted under investment treaties in which arbitral tribunals have held that Canada breached its obligations under those agreements vis-à-vis foreign investors investing in Canada. High-profile examples include:

- *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Government of Canada* (ICSID Case No. ARB(AF)/07/4): an arbitral tribunal constituted under NAFTA found that Canada violated NAFTA's prohibition on performance requirements due to the promulgation by the authorities of the Newfoundland province of certain guidelines mandating additional research and development expenditures in connection with the exploitation of two oil fields. Canada was found liable to pay CA$17.3 million to the claimant.

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[1] *Alhambra Resources Ltd. and Alhambra Coöperatief U.A. v. Republic of Kazakhstan* (ICSID Case No. ARB/16/12), Award, Nov. 16, 2020 (not public).

[2] Canada's bilateral investment treaties are listed in Annex A.

[3] Canada's free trade agreements which contain a chapter on investment protection are enumerated in Annex A.

[4] *Crystallex International Corporation v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB(AF)/11/2), Award, 4 Apr. 2016, available at https://www.italaw.com/sites/default/files/case-documents/italaw7194.pdf

[5] *Lion Mexico Consolidated L.P. v. United Mexican States* (ICSID Case No. ARB(AF)/15/2), Award, 20 Sept. 2021, available at https://www.italaw.com/sites/default/files/case-documents/italaw16302.pdf

- *Windstream Energy LLC v. The Government of Canada* (PCA Case No. 2013-22): an arbitral tribunal constituted under NAFTA found that Canada violated its obligation to accord fair and equitable treatment ("FET") to Windstream's investments in Canada, following the passage of a moratorium on offshore wind farms which frustrated Windstream's agreement with the Ontario Power Authority to build an offshore wind power farm. Canada was found liable to pay CA$25.2 million to the claimant.

These losses in arbitrations arising out of investment treaties prompted Canada to seek substantive changes in the investment treaties it is now signing and ratifying with other States.[6] For example, the investment chapter in the United States-Mexico-Canada Agreement ("USMCA") no longer allows for the resolution of disputes arising under the investment chapter (Chapter 14) involving Canadian investors as claimants or Canada as a respondent State through private arbitration.[7] This means that Canadian investors investing in Mexico and the United States do not have recourse to arbitration to address Chapter 14 violations by those governments.

This alert discusses how Canadian investors may still be able to use investment treaties to hold foreign governments accountable through private arbitration. For example, since they cannot use the USMCA to initiate private arbitration against Mexico, Canadian investors instead are relying on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP") to bring claims against Mexico. Additionally, Canadian investors may consider (re-) structuring their investments through special purpose vehicles ("SPVs") incorporated in jurisdictions that have executed investment treaties with the host States of the target investments where Canada does not have investment treaties in force directly with those specific States, including the United States.

Background: What Are Investment Treaties?

Investment treaties are legal instruments entered into by two or more States to protect foreign investors possessing the nationality of one of the States and their investments when investing in the territory of the other State (the "host State"). While the content and scope of each investment treaty will vary depending on its specific terms, generally, investment treaties protect:

- Foreign investors, which typically include natural persons holding citizenship in the State of outbound investment as well as companies incorporated or registered in accordance with the laws of that State.
- Investments made by those foreign investors, which often encompass "any kind of assets" held in the host State of the investment (the target of the investment) and, in particular, movable and immovable property, shares, bonds and claims to performance of economic value.

Investment treaties typically provide the following substantive protections to a foreign investor and/or its investments:

- National treatment: foreign investors should be treated no less favorably than domestic investors in like circumstances.
- Most-favored-nation treatment: foreign investors should be treated no less favorably than investors from third states. This protection may be helpful should the government treat third-country investors more favorably by granting their permits on an accelerated basis or by offering their investments better tax or other economic incentives.
- Fair and equitable treatment: the host State should respect the legitimate expectations of foreign investors at the time they made their investments, and should treat foreign investors and their investments transparently, consistently, in a stable manner, and in good faith.

[6] *See* Jessica Vomiero, "Why some experts say scrapping part of NAFTA's Ch. 11 is Canada's biggest win with USMCA", *Global News* (5 October 2018), available at https://globalnews.ca/news/4519161/usmca-chapter-11-investor-state-dispute-settlement/.

[7] *See, e.g.*, Jerry L. Lai, "A Tale of Two Treaties: A Study of NAFTA and the USMCA's Investor-State Dispute Settlement Mechanisms," 35 Emory Int'l L. Rev. 259 (2021), available at https://scholarlycommons.law.emory.edu/eilr/vol35/iss2/3.

- Protection from expropriation: the host State may not expropriate the investment or enact measures tantamount to expropriating the investment unless done for a public purpose, in a non-discriminatory manner, in accordance with due process, and with the payment of prompt, adequate, and effective compensation.
- Free transfer of capital**:** foreign investors are entitled to freely transfer their investments and returns, including profits, dividends, and proceeds from the sale of investments.
- International arbitration: many investment treaties permit private arbitration of disputes between an investor and the host State, thereby taking the dispute out of the national courts, which may play favorites.

Canadian Investors Are Increasingly Exposed to Geopolitical Risk, Especially Investments in Heavily Regulated Sectors

Canadian investors may be exposed to geopolitical risks that could cause the host States of the investments to take measures that impact the value of their investments. This concern is especially significant where the investments are made in sectors subject to heavy regulations, such as natural resources (energy and mining) and banking and financing. These risks are further heightened if the host State displays signs of governmental instability, which could lead to:

- Legal and regulatory uncertainty: frequent changes in government are often associated with shifts in legislation, regulation and policies that are difficult to anticipate. These shifts may impose new requirements or financial burdens on the investor, renege on commitments extended by a previous administration, or even nationalize investments in certain sectors.
- Violence and unrest: political instability may also cause violence and public unrest, which may negatively affect investments, either through direct damage to property or business disruption.
- Currency volatility and restrictions: political instability may make repatriation of profits difficult where the host State's currency becomes volatile, which may cause convertibility issues and/or governmental restrictions aimed at preventing or restricting capital flight.

Extractive Industries. Historically, over 16% of all known treaty-based investor-state arbitrations against host States have concerned investments in extractive industries, making it the most disputed industry as a whole for this category of disputes. These cases usually are brought in response to a host State's decision to develop, modify, or implement laws and policies governing extractive industry investments—whether through legislation, court decisions or administrative actions. They may relate to heightened environmental and social concerns, a desire to capture a greater share of the windfall that an extractive project generates, or simply to nationalize a foreign-owned asset or entire industry.

Additionally, energy and mining Canadian companies direct a significant portion of their outbound FDI towards States such as Burkina Faso, Indonesia, Mexico, Mongolia, Peru, and Tanzania that may be rich in resources but where the governments are in states of transition or have expressly adopted anti-foreigner policies to minimize foreign investments in the extractives sectors.

Investors usually challenge a sovereign's measures pertaining to:

- Revocation or termination of the investor's concession rights.
- Withholding of permits required to operate, often coupled with the enforcement of environmental regulations, such as the requirement to consult with local communities, perform environmental impact assessments, or obtain a "social license."
- Enactment of more stringent environmental regulations.
- Changes to the host State's fiscal regime or targeted imposition of tax-related measures (e.g., windfall taxes) or royalties.
- Termination of investment contracts with investors.

Financial Services. As many states have been adopting more interventionist approaches to their financial sectors in recent past, banks and financial institutions operating abroad have become more exposed to geopolitical risks potentially affecting the value of their investment. By way of examples:

- Argentina's default on its sovereign debt and restructuring in the mid-2000s triggered numerous claims by disgruntled investors, including the first "mass arbitration" involving tens of thousands of Italian retail holders of Argentine sovereign bonds.
- Indonesia's bailout of a bank following the sub-prime crisis, which entitled the government to equity interests in the rescued bank, led to the filing of two ISDS cases by investors diluted by the bailout, the first from a Saudi investor and the second by a British investor.
- The downgrading of Greek debt, adoption of austerity measures and sovereign debt restructuring, caused Slovak bondholders to bring a claim against Greece.
- The Swiss Central Bank's decision in 2015 to abandon exchange rate controls, which resulted in the removal of any caps on the value of the Swiss franc, caused investors to bring a claim against Croatia and another claim against Montenegro following these respective states' decision to compel the conversion of franc-denominated loans into Euros.

Canadian Investors May Be Entitled to Redress under Investment Treaties?

Investors making investments abroad should understand the risk of the host State changing the economic rules of the game over the course of an investment's lifetime, which could adversely impact the return on the investment significantly. It is possible that the host State will enact new laws and regulations, such as new tariffs, taxes, or royalties, that will change the key economic inputs into calculating the investor's returns. Additionally, local authorities might fail to honor their end of the bargain such that a project will not be successful. For example, governmental authorities might not approve permits in a timely manner or deny permits arbitrarily. Canadian investors who find that the governments of the host States of investments have taken measures that impact the value of their investments should consider whether to bring claims under investment treaties challenging those measures.

As set out in Appendix B, Canadian investors have brought claims under investment treaties on many occasions, often successfully.[8] But some changes may need to be made.

Notably, Canadian investors have brought arbitrations against the government of Mexico in six cases under Chapter 11 of NAFTA, one of which was successful (*i.e., Lion Mining*) and three cases remaining pending.[9] However, NAFTA was superseded on July 1, 2020, by the United States-Mexico-Canada Agreement. The USMCA contains investment protections that are typical of investment treaties, such as:

- the prohibition of expropriations without prior and adequate compensation (Article 14.8);
- guarantees regarding applicable standards of treatment accorded to foreign investors (National Treatment (Article 14.4); Most-Favored Nation Treatment (Article 14.5) and Minimum Standard of Treatment (Article 14.6)); and
- free transfer guarantee (Article 14.9).

As regards the ability to commence arbitration for violation of these investment protections, however, the USMCA contains significant limitations as compared to NAFTA. Under the USMCA, qualified investors were still able to commence so-called "legacy" arbitration under NAFTA, but the window for doing so expired on July 1, 2023. Thereafter, only US and Mexican investors are allowed to bring claims against Mexico and

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[8] Investment treaty-based arbitrations brought by Canadian investors are enumerated in Annex B.

[9] *Espíritu Santo Holdings, LP and L1bre Holding, LLC v. United Mexican States* (ICSID Case No. ARB/20/13) (claims arising out of a local government's interference with a concession for digital taximeters and the operation of a mobile taxi application in Mexico City); *Goldgroup Resources, Inc. v. United Mexican States* (ICSID Case No. ARB/23/4) (claims arising out of the alleged failure of Mexican courts to reach a decision on the merits after 10 years of legal disputes regarding the claimant's stake in the San José de Gracia gold mine, thereby allegedly resulting in judicial expropriation of the investment); *First Majestic Silver Corp. v. United Mexican States* (ICSID Case No. ARB/23/28) (claims arising out of the national tax authority's tax reassessments on the company's silver sales, allegedly conducted in disregard of advance pricing agreements).

the United States, respectively, under Annex 14-D of the USMCA,[10] while Canada has opted out of Annex 14-D entirely. As such, Canadian investors are disallowed from bringing claims against Mexico and the United States under the UMSCA, and no claim can be brought against Canada under the USMCA.

Canadian investors may now be empowered to bring arbitration claims against Mexico (among other States)[11] under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP"), which entered into force on December 30, 2018. The CPTPP is a multilateral free trade agreement between 11 States situated around the Pacific Rim, whose economies reportedly make up 13% of world GDP. The CPTPP offers standard key protections to qualified investors, including:

Investment Protection	**Description**
National treatment (Article 9.4, CPTPP)	Foreign investors should be treated no less favorably than domestic investors in like circumstances.
Most-favored-nation treatment (Article 9.5, CPTPP)	Foreign investors should be treated no less favorably than investors from third countries.
Minimum standard of treatment (Article 9.6, CPTPP)	The CPTPP guarantees qualified investors a minimum standard of treatment in accordance with customary international law, which notably prohibits arbitrary or discriminatory government actions. This is viewed as an objective standard, in contrast with the more subjective FET standard which goes a step further as it is aimed at ensuring that qualified investors are treated reasonably and fairly.
Protection from unlawful expropriation (Article 9.8, CPTPP)	The host State may not expropriate the investment or enact measures tantamount to expropriating the investment unless done for a public purpose, in a non-discriminatory manner, in accordance with due process, and with the payment of prompt, adequate, and effective compensation.
Free transfer of capital (Article 9.9, CPTPP)	Foreign investors are entitled to freely transfer their investments and returns, including profits, dividends, and proceeds from the sale of investments.
International arbitration (Article 9.19, CPTPP)	Certain member-parties to the CPTPP have conditioned adoption to the CPTPP's arbitration clause as follows: • A claimant bringing a claim against Chile, Mexico, Peru, or Vietnam must first elect

[10] Claims that American and Mexican investors are permitted to bring are alleged violations of the national treatment, most-favored nation treatment and direct expropriation protections only. They are no longer permitted to bring claims for alleged indirect expropriation or violation of the minimum standard of treatment prevalent under NAFTA.

[11] CPTPP member States comprise Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.

	between domestic litigation in the host State or arbitration—this is typically referred to as a "fork-in-the-road" provision. • New Zealand has concluded bilateral side letters denying or limiting the application of the CPTPP's arbitration provision with Australia (no arbitration permitted), Peru (no arbitration permitted), Brunei, Malaysia, and Vietnam (all three require specific consent to the application of Chapter 9 to the dispute).

Canadian investors have already availed themselves of the CPTPP's protections. By way of example, a Canadian pension fund, the *Caisse de dépôt et placement du Québec*, initiated a proceeding in December 2023, challenging the implementation of new legislation giving priority to the state-owned Federal Electricity Commission for dispatching energy into the Mexican grid that impacts its foreign investment. The CDPQ had invested approximately US$675 million in Tenedora de Energía Renovable Sol y Viento, a portfolio company holding eight Mexican wind and solar assets. The CDPQ's position is that the implementation of the new electricity law would impair the value of its investment in Mexico. The arbitration proceeding was suspended five days after its filing on account of the parties' decision to pursue an amicable settlement.

A pair of Canadian mining investors, Almaden Minerals Ltd and Almadex Minerals Ltd, reported having lodged another claim against Mexico following the rescission of the concession rights that had been granted to the Canadian investors after the Mexican Supreme Court held that the government allegedly had failed to consult with indigenous peoples. The companies allege that Mexico's revocation of their concessions and environmental permits for the project at the Ixtaca gold-silver deposit in Mexico violates the protections guaranteed by the CPTPP. The companies estimate damages of at least USD200 million.

Canadian Investors Should Structure their Outbound Investments to Benefit from the Protections of Investment Treaties, Absent Investment Treaties between Canada and the Host States of the Target Investments

While Canada has ratified investment treaties with a number of States, the coverage for Canadian investors looking to invest globally has gaps. Canadian investors who are making outbound FDI in States that are not covered by a Canadian investment treaty should consider structuring their investments through SPVs incorporated in jurisdictions that have entered into investment treaties with the host State where the investment is being made. In this way, depending on the terms of the specific treaty, the SPV could serve as the claimant in any arbitration against the host State regarding acts that breach the obligations and protections afforded to investors in the treaty.

By way of example, the Calgary-based Alhambra Resources brought a claim against Kazakhstan through its Dutch subsidiary, Alhambra Cooperatief, under the 2002 bilateral investment treaty between Kazakhstan and the Netherlands. Saga Creek Gold Company, the Kazakh company in which Alhambra had invested, held mining rights over the Uzboy gold field in north central Kazakhstan. Alhambra filed for arbitration against Kazakhstan when Saga was driven into bankruptcy following Kazakhstan's decision to withhold the required exploration permit and imposition of significant taxes on Saga. Kazakhstan was eventually found liable, though the amount of damages awarded remains undisclosed to the public.

Often, when structuring their investments, foreign investors involve at least one entity in a tax-friendly jurisdiction that has ratified numerous BITs as well as treaties for the avoidance of double taxation (Double Taxation Treaties or "DTTs"). Examples of such jurisdictions include:

Tax-Friendly Jurisdiction	BITs in force	DTTs in force
Netherlands	74	102
Luxembourg	59	86
Singapore	39	97
United Arab Emirates	74	137
Mauritius	26	46
Switzerland	109	96
Panama	17	15

Not all investment treaties are equal in terms of scope and levels of protections afforded to foreign investors. For example, treaties (and principles of international law governing interpretation and application of treaties may impose restrictions on who may qualify as an investor.

- The definition of the term "investor" may impose the additional obligation that the legal person incorporated in a contracting party also must have its headquarters in that contracting party.
- Treaties may contain "denial-of-benefits" provisions that require an investor to not simply be incorporated in a state but actually do substantial business activity in that jurisdiction.
- It may not be permissible for a foreign investor to avail of the protections of a treaty if it restructured its investments at a time when a dispute with the host State of the investment was underway or was reasonably foreseeable. Such restructuring may be characterized as abusive "treaty shopping." The requirements in a treaty to qualify as an investor and the timing of the structuring of the investment must be considered very carefully.

As such, the corporate structuring of an investment requires a thorough analysis by the Canadian investor to answer these questions when routing investments through a third jurisdiction:

- What is the ultimate target destination (who is the host State)?
- With which third states has the host State ratified investment treaties?
- From that list of investment treaties between the host State and the third State, which third states are tax-advantageous or tax-friendly jurisdictions in which to incorporate an SPV?
- Are the treaty protections in those investment treaties sufficiently robust?

This (re)structuring of the investment should ideally be done up front at the time of the investment. Otherwise, it may end up being too late if not done by the time a dispute materializes.

Annex A: List of Canadian BITs Currently in Force

Instrument – BIT	Date of Entry into Force
Canada - Russian Federation BIT (1989)	27/06/1991
Canada - Poland BIT (1990)	22/11/1990
Canada - Hungary BIT (1991)	21/11/1993
Argentina - Canada BIT (1991)	29/04/1993
Canada - Ukraine BIT (1994)	24/07/1995
Canada - Trinidad and Tobago BIT (1995)	08/07/1996
Canada - Philippines BIT (1995)	13/11/1996
Barbados - Canada BIT (1996)	17/01/1997
Canada - Venezuela BIT (1996)	28/01/1998
Canada - Panama BIT (1996)	13/02/1998
Canada - Egypt BIT (1996)	03/11/1997
Canada - Thailand BIT (1997)	24/09/1998
Canada - Croatia BIT (1997)	30/01/2001
Canada - Lebanon BIT (1997)	19/06/1999
Armenia - Canada BIT (1997)	29/03/1999
Canada - Uruguay BIT (1997)	02/06/1999
Canada - Costa Rica BIT (1998)	29/09/1999
Canada - Peru BIT (2006)	20/06/2007
Canada - Latvia BIT (2009)	24/11/2011
Canada - Czech Republic BIT (2009)	22/01/2012
Canada - Romania BIT (2009)	23/11/2011
Canada - Slovakia BIT (2010)	14/03/2012
Canada - Kuwait BIT (2011)	19/02/2014

Canada - China BIT (2012)	01/10/2014
Benin - Canada BIT (2013)	12/05/2014
Canada - Tanzania BIT (2013)	09/12/2013
Cameroon - Canada BIT (2014)	16/12/2016
Canada - Serbia BIT (2014)	27/04/2015
Canada - Senegal BIT (2014)	05/08/2016
Canada - Mali BIT (2014)	08/06/2016
Canada - Côte d'Ivoire BIT (2014)	14/12/2015
Burkina Faso - Canada BIT (2015)	11/10/2017
Canada - Guinea BIT (2015)	27/03/2017
Canada - Hong Kong, China SAR BIT (2016)	06/09/2016
Canada - Mongolia BIT (2016)	24/02/2017
Canada - Moldova BIT (2018)	23/08/2019

Instrument -- FTA	**Date of Entry into Force**
Canada - Chile FTA (1996)	05/07/1997
Canada - Costa Rica FTA (2001)	01/11/2002
Canada - Peru FTA (2008)	01/08/2009
Canada - Colombia FTA (2008)	15/08/2011
Canada - Panama FTA (2010)	01/04/2013
Canada - Honduras FTA (2013)	01/10/2014
Canada - Republic of Korea FTA (2014)	01/01/2015

Annex B: List of Arbitration Cases Initiated by Canadian Claimant Investors Canadian Investors

Case	Sector	Instrument	Outcome
Air Canada v. Bolivarian Republic of Venezuela (ICSID Case No. ARB(AF)/17/1)	Air transport	Canada - Venezuela, Bolivarian Republic of BIT (1996)	Venezuela found liable for failure to approve the claimant's requests to convert its Bolivar-denominated returns into US dollars for repatriation. The claimant was awarded US$20.80 million
Alhambra Resources Ltd. and Alhambra Coöperatief U.A. v. Republic of Kazakhstan (ICSID Case No. ARB/16/12)	Mining	Kazakhstan - Netherlands BIT (2002)	Kazakhstan was found liable for unlawfully assessing taxes on the claimants' local subsidiary, and for withholding the required mining and financing approvals the combination of which led to the bankruptcy of the local subsidiary. The damages awarded are not publicly disclosed.
Bear Creek Mining Corporation v. Republic of Peru (ICSID Case No. ARB/14/21)	Mining	Canada - Peru FTA (2008)	Peru was found liable for unlawfully expropriating the claimant's investment by revoking a decree that had granted the claimant a mining concession. The investor was awarded US$18.2 million in damages.
Copper Mesa Mining Corporation v. Republic of Ecuador (PCA Case No. 2012-2)	Mining	Canada - Ecuador BIT (1996)	Venezuela was found liable for unlawfully expropriating the claimant's mining concessions in the Ecuadorian areas of Junín, Chaucha and Telinbela. The claimant was awarded over US$19.4 million in damages.

Crystallex International Corporation v. Bolivarian Republic of Venezuela (ICSID Case No. ARB(AF)/11/2)	Mining	Canada - Venezuela, Bolivarian Republic of BIT (1996)	Venezuela was found liable for unlawfully expropriating the mining company's investments to develop the Las Cristinas gold mine in Venezuela by denying a required environmental permit despite prior assurances that the permit would be granted. The investor was awarded over US$1.2 billion in damages.
Gold Reserve v. Venezuela (ICSID Case No. ARB(AF)/09/1)	Mining	Canada - Venezuela, Bolivarian Republic of BIT (1996)	Venezuela was found liable for denial of FET by denying a required environmental permit for the development of the Las Brisas gold mine in Venezuela despite prior assurances that the permit would be granted. The claimant was awarded over US$713 million in damages.
Khan Resources Inc., Khan Resources B.V. and Cauc Holding Company Ltd. v. the Government of Mongolia and Monatom Co., Ltd. (PCA Case No. 2011-09)	Mining	The Energy Charter Treaty (1994)	Mongolia was found liable for unlawfully expropriating claimant's investment following the revocation of mining and exploration licenses for a uranium deposit located in the Dornod province in northeastern Mongolia. The claimant was awarded over US$80 million in damages.
Lion Mexico Consolidated L.P. v. United Mexican States (ICSID Case No. ARB(AF)/15/2)	Construction/Hospitality	NAFTA (1994)	Mexico was found liable for violating its obligation to ensure fair and equitable treatment to Canadian investors when the Mexican judiciary improperly confirmed the cancellation of promissory notes and

			related mortgages securing loans for the construction of a luxury resort and skyscrapers. The investor was awarded US$47 million in damages.
Rand Investments Ltd., Allison Ruth Rand, Kathleen Elizabeth Rand and others v. Republic of Serbia (ICSID Case No. ARB/18/8)	Crop and animal production, hunting and related service activities	Canada - Serbia BIT (2014) and Cyprus - Serbia BIT (2005)	Serbia was found liable for denial of FET following a state agency's termination of a privatization agreement for, and subsequent seizure of majority shares in, a local company. The claimants were awarded US$14.6 million.
Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB(AF)/12/5)	Mining	Canada - Venezuela, Bolivarian Republic of BIT (1996)	Venezuela was found liable for unlawfully nationalizing Rusoro's gold mining assets in Venezuela. The claimant was awarded US$967.8 million.
Stans Energy Corp. and Kutisay Mining LLC v. Kyrgyz Republic	Mining	CIS Investor Rights Convention (1997)	Kyrgyzstan was found liable for expropriating the claimant's investment following a series of measures stifling the claimant's ability to carry out activities on the mineral deposit "Kutessay II" in accordance with the mining license. The claimant was awarded US$117.8 million.

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