

GAR INVESTMENT TREATY ARBITRATION

Maldives

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Contents

I	Overview	
1	What are the key features of the investment treaties to which this country is a party?	3
II	Qualifying Criteria	
2	Definition of investor	3
3	Definition of investment	3
III	Substantive Protections	
4	Fair and equitable treatment	3
5	Expropriation	3
6	National treatment/most-favoured-nation treatment	3
7	Protection and security	4
8	Umbrella clause	4
9	Other substantive protections	4
IV	Procedural Rights	
10	Are there any relevant issues related to procedural rights in this country's investment treaties?	4
11	What is the status of this country's investment treaties?	4
V	Practicalities (Claims)	
12	To which governmental entity should notice of a dispute against this country under an investment treaty be sent? Is there a particular person or office to whom a dispute notice against this country should be addressed?	4
13	Which government department or departments manage investment treaty arbitrations on behalf of this country?	4
14	Are internal or external counsel used, or expected to be used, by the state in investment treaty arbitrations? If external counsel are used, does the state normally go through a formal public procurement process when hiring them?	5
VI	Practicalities (Enforcement)	
15	Has the country signed and ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965)? Please identify any legislation implementing the Washington Convention.	5
16	Has the country signed and ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (the New York Convention)? Please identify any legislation implementing the New York Convention.	5
17	Does the country have legislation governing non-ICSID investment arbitrations seated within its territory?	5
18	Does the state have a history of voluntary compliance with adverse investment treaty awards; or have additional proceedings been necessary to enforce these against the state?	5
19	Describe the national government's attitude towards investment treaty arbitration.	5
20	To what extent have local courts been supportive and respectful of investment treaty arbitration, including the enforcement of awards?	5
VII	National Legislation Protecting Inward Investment	
21	Is there any national legislation that protects inward foreign investment enacted in this country? Describe the content.	6
VIII	National Legislation Protecting Outgoing Foreign Investment	
22	Does the country have an investment guarantee scheme or offer political risk insurance that protects local investors when investing abroad? If so, what are the qualifying criteria, substantive protections provided and the means by which an investor can invoke the protections?	6
IX	Awards	
23	Please provide a list of any available arbitration awards or cases initiated involving this country's investment treaties	6
	Reading list	6
	Author and firm details	8



I Overview

1 What are the key features of the investment treaties to which this country is a party?

BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
BIT - None ¹ MIT - None ²								

FTAs/EPAs	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
None ³								

II Qualifying Criteria

2 Definition of investor

What are the distinguishing features of the definition of 'investor' in this country's investment treaties?

N/A.⁴

3 Definition of investment

What are the distinguishing features of the definition of 'investment' in this country's investment treaties?

N/A.⁵

III Substantive Protections

4 Fair and equitable treatment

What are the distinguishing features of the fair and equitable treatment standard in this country's investment treaties?

N/A

5 Expropriation

What are the distinguishing features of the protection against expropriation standard in this country's investment treaties?

N/A

6 National treatment/most-favoured-nation treatment

What are the distinguishing features of the national treatment/most favoured nation treatment standard in this country's investment treaties?

N/A



7 Protection and security

What are the distinguishing features of the obligation to provide protection and security to qualifying investments in this country's investment treaties?

N/A

8 Umbrella clause

What are the distinguishing features of the umbrella clauses contained within this country's investment treaties?

N/A

9 Other substantive protections

What are the other most important substantive rights provided to qualifying investors in this country's investment treaties?

N/A

IV Procedural Rights

10 Are there any relevant issues related to procedural rights in this country's investment treaties?

N/A

11 What is the status of this country's investment treaties?

Maldives is not a party to any investment treaty.

V Practicalities (Claims)

12 To which governmental entity should notice of a dispute against this country under an investment treaty be sent? Is there a particular person or office to whom a dispute notice against this country should be addressed?

Government entity to which claim notices are sent

The Office of the Attorney General is generally responsible for representing the government in international arbitrations. The focal ministry for all matters pertaining to foreign investment in the tourism sector is Ministry of Tourism and for all other sectors it is the Ministry of Economic Development & Trade.⁶

13 Which government department or departments manage investment treaty arbitrations on behalf of this country?

Government department that manages investment treaty arbitrations

See question 12.



- 14 Are internal or external counsel used, or expected to be used, by the state in investment treaty arbitrations? If external counsel are used, does the state normally go through a formal public procurement process when hiring them?

Internal/external counsel	The Attorney General of Maldives is the government's chief legal advisor on all matters, including matters involving foreign investment, and is responsible for representing the government in international arbitrations. The Office of the Attorney General played a key role in the cancellation of two high-profile concessions awarded and the disputes that ensued. However, for various aspects of these disputes that have followed, external counsel have been engaged. It is unclear if there was a formal public procurement process, though the likelihood is that there wasn't.
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VI Practicalities (Enforcement)

- 15 Has the country signed and ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965)? Please identify any legislation implementing the Washington Convention.

Washington Convention implementing legislation	Not a signatory.
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- 16 Has the country signed and ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (the New York Convention)? Please identify any legislation implementing the New York Convention.

New York Convention implementing legislation	The Maldives acceded formally to the New York Convention on 17 September 2019, which came into force for the Maldives on 16 December 2019. The Maldives has not made any declarations, notifications or reservations regarding the application of the New York Convention.
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- 17 Does the country have legislation governing non-ICSID investment arbitrations seated within its territory?

Legislation governing non-ICSID arbitrations	Maldives enacted its first arbitration law, Arbitration Act (Law No. 10.2013) in July 2013, largely modelled on the UNCITRAL model law.
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- 18 Does the state have a history of voluntary compliance with adverse investment treaty awards; or have additional proceedings been necessary to enforce these against the state?

Compliance with adverse awards	Maldives does not have investment treaty awards registered against it. ⁷
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- 19 Describe the national government's attitude towards investment treaty arbitration.

Attitude of government towards investment treaty arbitration	Successive governments have made efforts to make Maldives attractive for foreign investment. As per the World Bank's Doing Business Index, Maldives operates a fairly liberal investment regime. However, successive governments have shown little, or no, willingness to engage investors by entering into BITs or MITs.
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- 20 To what extent have local courts been supportive and respectful of investment treaty arbitration, including the enforcement of awards?

Attitude of local courts towards investment treaty arbitration	Owing to the absence of an investment treaty regime involving Maldives, local courts have never been called upon to support investment treaty arbitration.
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VII National Legislation Protecting Inward Investment

21 Is there any national legislation that protects inward foreign investment enacted in this country? Describe the content.

National legislation	Substantive protections			Procedural rights	
	FET	Expropriation	Other	Local courts	Arbitration
Law on Foreign Investments in the Republic of Maldives (Law No. 25/79) ⁸	No	Yes ⁹	No	N/A	N/A

VIII National Legislation Protecting Outgoing Foreign Investment

22 Does the country have an investment guarantee scheme or offer political risk insurance that protects local investors when investing abroad? If so, what are the qualifying criteria, substantive protections provided and the means by which an investor can invoke the protections?

Relevant guarantee scheme	Qualifying criteria, substantive protections provided and practical considerations
Multilateral Investment Guarantee Agency (MIGA)	Maldives has ratified the Convention establishing the Multilateral Investment Guarantee Agency (MIGA). MIGA provides non-commercial guarantees (insurance) for cross-border investments into certain developing countries. MIGA's guarantees protect investors against the risks of transfer restriction (including inconvertibility), expropriation, war and civil disturbance, breach of contract and non-honouring of financial obligations. Investors who are citizens of or entities that are incorporated in MIGA member countries, other than the host country, are eligible for MIGA guarantees. However, MIGA can insure an investment made by a national of a host country if the funds to be invested come from outside the country and the application for coverage is made jointly by the investor and the host country. To be eligible for assistance, the investment must be medium to long term in nature (usually between three and 15 years), support the host country's development goals, comply with MIGA's Policy on Social and Environmental Sustainability and anti-corruption and fraud standards, and also be financially viable.

IX Awards

23 Please provide a list of any available arbitration awards or cases initiated involving this country's investment treaties

Awards
None.
Pending proceedings
None.

Reading list

N/A.



Notes

- 1 Maldives signed its first BIT with United Arab Emirates on 17 October 2017. The BIT is yet to come in force. United Arab Emirates issued Federal Decree No. (64) of 2018 ratifying the BIT.
- 2 Maldives is a member of the Organization of Islamic Conference (OIC). The member states of OIC, at the Twelfth Islamic Conference held in Baghdad (Iraq) on 1-5 June 1981, established an Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organization of the Islamic Conference (23 September 1986). However, Maldives has not, to date, signed or ratified the Agreement.
- 3 Maldives is a party to the Agreement on the South Asian Free Trade Area (SAFTA, 1 January 2006), which does not include an investment chapter.
Maldives signed an FTA with the People's Republic of China on 7 December 2017; it is not yet in effect. Recent press reports suggest the legislature is unlikely to enact the domestic legislation required to give effect to the FTA. Further, while Maldives has signed and ratified the Framework Agreement of the Trade Preferential System of the Organization of the Islamic Conference (TPS-OIC), it is yet to sign the Protocol on the Preferential Tariff Scheme (PRETAS) and Rules of Origin that, together with the Framework Agreement, form the legal framework of the Trade Preferential System.
- 4 Maldives does not have an investment treaty regime. Thus for a definition of 'investor', Maldives' domestic investment regime must be consulted.
- 5 Maldives does not have an investment treaty regime. Thus for a definition of 'investment', Maldives' domestic investment regime must be consulted. An important aspect of the domestic regime is that 100 per cent foreign investment is permitted and foreign investment is permitted in all sectors of the economy, provided a prior approval has been given by the government.
- 6 The Mandate of the Office of the Attorney General (<http://agoffice.gov.mv/en/mandate-2/>). The Law No. 25/79, Law on Foreign Investments in the Republic of Maldives (section 3).
- 7 While there have been no investment treaty awards against the Maldives, it has faced several commercial claims (whether directly or through state-owned corporations). For example: in 2016 an UNCITRAL tribunal ordered Maldives to pay US\$270 million to Indian infrastructure group GMR for cancelling a concession to modernise the country's largest international airport. Also in 2016, Nexbis (now Platinum Blackstone) was awarded US\$20 million by a SIAC tribunal against the Maldives arising from Maldives' alleged non-payments relating to an immigration border control system that gave rise to allegations of corruption. It is also understood that the Maldives paid US\$55 million to settle two claims at the Permanent Court of Arbitration brought by a Liechtenstein-registered developer: <https://globalarbitrationreview.com/article/1209507/maldives-settles-dispute-with-island-developer>.
- 8 Protections available to an investor must be provided for in the agreement with the government. The agreement in respect of the investment sets out the terms and conditions and the manner of implementation of the investment scheme and programme. According to the Law on Foreign Investment, the government would facilitate all investments which are compliant with the Law on Foreign Investment. A separate legislation, the Law on Doing Business in the Maldives by Foreign Nationals (Law No. 4/79), covers foreign investment in trade (imports and exports) and related services. This also covers the operation of a foreign party or joint venture in wholesale and retail activities.
- 9 Private property is 'inviolable' under the Constitution, and can only be compulsorily acquired by the State under legislation for public benefit and on payment of 'just compensation'. According to the Law on Foreign Investment, the government may, with or without notice, suspend an investment, either where the investor indulges in an act detrimental to the security of the country or where temporary closure is necessary for national security. If, after due investigation, it cannot be concluded within 60 days of the temporary closure that the foreign investor had indulged in activity detrimental to the security of Maldives, then the government will pay compensation. Capital belonging to an investment that is terminated for the above reasons may be taken out of the country in a manner agreed on by the parties.





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Salah is an English qualified associate based in Stephenson Harwood's London office and a member of the firm's international arbitration and commercial litigation groups. His practice focuses on international arbitration and complex multi-jurisdictional litigation.

Salah advises and represents states, state entities and multi-national corporations in international arbitrations under the rules of the major arbitral institutions, including the LCIA, ICC, SCAI and ICSID with seats in London, Zurich, Paris, the DIFC and Washington, DC. He has also advised and represented clients before the High Court and Court of Appeal of England and Wales, the Supreme Court of the United Kingdom and the Judicial Committee of the Privy Council. Salah also currently serves as Tribunal Secretary.

Salah is a native Arabic speaker and his practice often involves Arab legal systems and parties based in the Middle East.

Prior to joining Stephenson Harwood, Salah worked as a consultant to a Prime Minister of the Hashemite Kingdom of Jordan, and also spent time at the Jordanian Ministry of Foreign Affairs and Expatriates. He has spoken on an ICC Young Arbitrators Forum (YAF) panel, is an executive committee member of the Arab Legal Forum (ALF) and contributes to Practical Law's arbitration blog and case updates.



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Afolarin Awosika is a member of Stephenson Harwood's international arbitration and commercial litigation practice groups. He has represented states, state entities and large multinational companies in international arbitrations conducted under the rules of the major arbitral institutions, including the LCIA, ICSID and ICC, in disputes arising from a range of industries including oil and gas, construction and telecommunications.

He has also advised clients in English High Court proceedings, particularly in relation to obtaining interim injunctions in support of foreign and arbitral proceedings.

Afolarin was seconded to the firm's Dubai office, where he advised clients in the energy industry on international sanctions compliance and represented a client in DIFC Court of Appeal proceedings.

Afolarin has contributed to publications on arbitration in Africa as well as *Practical Law's* arbitration case updates.

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