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No. 1

Unpacking National Investment Laws

Dispute settlement function

IISD REPORT

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Unpacking National Investment Laws:
Dispute settlement function

April 2026

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Any remaining errors or omissions are our own.

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Executive Summary

National investment laws are versatile domestic policy instruments that allow governments to align investment policies with national objectives. While international investment treaties have historically dominated policy discussions (Ostřanský & Bonnitcha, 2024), national investment laws have re-emerged as a critical tool for shaping investment life cycles and advancing sustainable development.

This report is part of the International Institute for Sustainable Development's Rethinking International Investment Governance[1] project and provides an in-depth analysis of the dispute settlement element of the broader dispute prevention, management, and settlement (DPMS) function.

It is the first in a series of deep dives into the individual functions of national investment laws, building directly on the 2023 report, *Rethinking National Investment Laws: A Study of Past and Present Laws to Inform Future Policy-Making*.[2] Future publications will address dispute prevention and management, investment incentives, investor obligations and responsibilities, entry and establishment, monitoring and oversight, and other functions. Together, they are designed to equip policy-makers with the analytical tools and comparative knowledge needed to design investment laws that are fit for purpose in the 21st century.

Key Findings on Dispute Settlement

An analysis of 167 national investment laws reveals that the dispute settlement function is a regular feature of national investment laws:

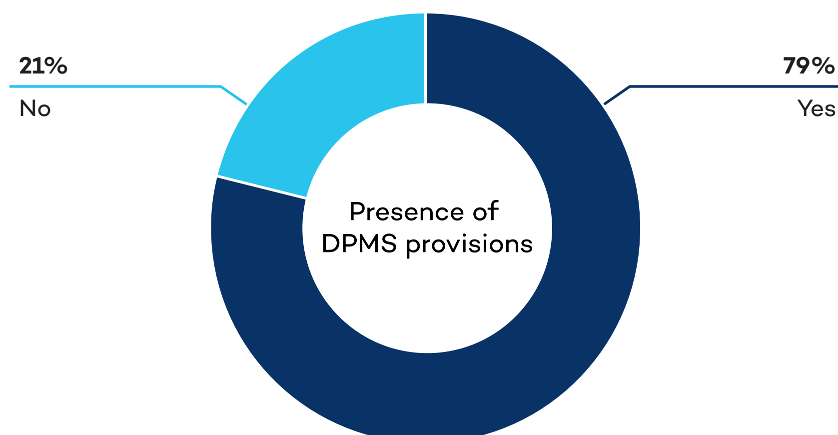
- **Prevalence:** Nearly 79% of reviewed laws contain provisions for DPMS. Inclusion rates are highest in Africa (91%) and Asia (84%).
- **National courts:** Approximately 57% of laws with a DPMS function explicitly mention national courts. While some states require exclusive use of domestic courts, others require the exhaustion of local remedies before seeking alternative resolution.
- **Arbitration:** Reference to arbitration is common (69% of laws with the DPMS function), yet it is never designated as the primary method.
- **Risks of advance consent to arbitration:** Among the laws referring to arbitration, 44% contain "advance consent," with several additional laws open to such an interpretation. Advance consent to arbitration replicates the well-documented, significant financial and regulatory risks of treaty-based investor–state dispute settlement.

[1] See a description of the project here: https://www.iisd.org/projects/rethinking-international-investment-governance?gad_source=1&gad_campaignid=22208053183&gclid=Cj0KCQiA-YvMBhDtARIsAHZuUzJu1rkx45sLY_1_vV3zMQg2xcJnjxsv0W1l1GIPKSPiU9pse39cmr8aAkviEALw_wcB

[2] Access the report on the IISD website: https://www.iisd.org/publications/report/rethinking-national-investment-laws

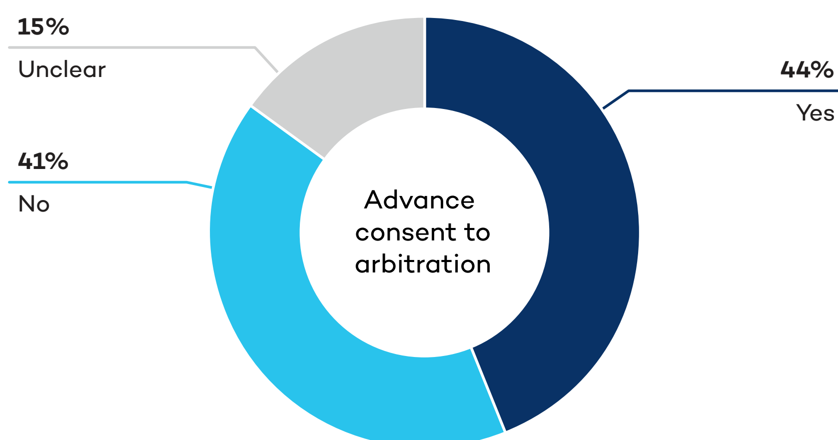
- **Uneven growth of alternative mechanisms:** Non-adjudicative options are emerging but remain less common: 42% allow party-agreed methods (with higher uptake in Africa and Asia), 39% provide for administrative review, and 32% mention amicable settlement (negotiation or mediation).

Figure ES1. Presence of DPMS provisions in national investment laws



Source: Authors, based on the LLM Law Clinic data.

Figure ES2. Advance consent to arbitration in national investment laws



Source: Authors, based on the LLM Law Clinic data.

A Framework for Reform and Design

This report proposes a structured approach for policy-makers to assess whether their national investment law should serve a dispute settlement function and how to design it to minimize risk.

Assessing Existing Landscape

Determine whether and how the existing law regulates investor–state dispute settlement by determining which mechanisms are provided and how they relate to each other.

Identifying Valid Policy Problems

Assess whether a genuine policy problem relating to dispute settlement exists in the national context and whether it is specific to investment disputes or affects the broader justice system. Common issues include

- limited capacity or expertise within national courts,
- a need to harmonize fragmented dispute settlement methods, and
- investors' perceived lack of confidence in the domestic judiciary.

If the general dispute settlement machinery functions adequately, there may be no need for special provisions in an investment law. However, even when there are issues with the existing national court systems, this may not point to either the use of other problematic mechanisms, like arbitration, or to the conclusion that investment law is the right tool for addressing these issues. Choosing the right remedy is the next step.

Selecting the Right Tools

National investment law is not always the best solution to address policy problems of dispute settlement, even if they are valid. Capacity gaps in national courts may be better addressed through judicial capacity building or specialized chambers than through parallel arbitral channels. Creating new dispute settlement mechanisms always diverts resources from the general justice system.

In particular, this report strongly advises states to refrain from including advance consent to international arbitration in their investment laws. Where access to arbitration is considered necessary, laws may recognize it as an available option subject to specific, case-by-case agreement or contractual dealings, without providing unilateral, open-ended advance consent to an undefined class of investors—a practice that exposes states to significant and largely uncontrollable legal and financial risks. Importantly, reform of national investment laws must be aligned with other governance tools, including international treaties and investor–state contracts.

Table of Contents

Executive Summary ..... **iii**

Key Findings on Dispute Settlement iii

A Framework for Reform and Design iv

1.0 Introduction **1**

1.1 Purpose and Rationale of the Series 2

1.2 Structure of the Report 2

2.0 Methodology: Understanding the dispute prevention, management, and settlement function in national investment laws with a focus on dispute settlement **3**

3.0 Analysis: How the dispute settlement function is regulated in investment laws today **5**

3.1 Adjudicative Dispute Settlement Mechanisms in National Investment Laws 6

3.2 Other Dispute Settlement Mechanisms in National Investment Laws 12

3.3 Domestic Institutions: Dispute prevention as a growing trend 17

4.0 Framework for Assessing, Reforming, and Designing the Dispute Settlement Function in National Investment Laws **20**

4.1 Determining Whether and How the Existing National Investment Law Regulates the Dispute Settlement Function 21

4.2 Determining the Policy Problems That Dispute Settlement Function Presents in the Given National Context 22

4.3 Risks Arising From the Use of Arbitration as a Dispute Settlement Mechanism in National Investment Laws 24

References **26**

List of Figures

Figure ES1. Presence of DPMS provisions in national investment laws....iv

Figure ES2. Advance consent to arbitration in national investment laws....iv

Figure 1. Presence of DPMS provisions in national investment laws....5

Figure 2. Reference to national courts in national investment laws....7

Figure 3. Reference to arbitration in national investment laws....9

Figure 4. Arbitration provision in investment laws with dispute provision by continent....9

Figure 5. Types of arbitration provided in national investment laws....10

Figure 6. Advance consent to arbitration in national investment laws....11

Figure 7. Reference to party agreement-based dispute settlement methods in national investment laws....12

Figure 8. Flexible dispute resolution: Laws permitting party-chosen dispute settlement by continent....13

Figure 9. Reference to administrative review in national investment laws....14

Figure 10. Administrative review provisions in national investment laws by continent....15

Figure 11. Amicable settlement in national investment laws....15

Figure 12. Amicable settlement in national investment laws by continent....16

Figure 13. Amicable settlement in national investment laws by level of development....17

Figure 14. Dispute prevention and management institutions in national investment laws....18

Figure 15. Domestic institute provisions in national investment laws by continent....19

List of Tables

Table 1. Presence of dispute settlement provisions in national investment laws by continent....6

List of Boxes

Box 1. Summary of the framework for assessing, reforming, and designing the dispute settlement function in national investment laws....20

1.0 Introduction

National investment laws are versatile instruments used by governments to align investment policy with national objectives. While historically, the main focus of policy and reform discussions have been on investment treaties,[3] national investment laws have re-emerged as an important yet often neglected instrument of investment policy, alongside treaties and contracts (Bonnitcha et al., 2023; del Rosario Lago et al., 2026).

As the 2023 IISD report on *Rethinking National Investment Laws: A Study of Past and Present Laws to Inform Future Policy Making* (Bonnitcha et al., 2023) shows, these laws emerged in the 1950s, particularly in newly independent states. The laws in this era (1950 to 1979) were mostly guided by domestic priorities and were seen as a tool to bring coherence to inherited colonial-era laws, foster more coordination between ministries, and implement a country's development plans. A shift in the 1980s led many developing countries to rewrite their investment laws to reflect international standards found in investment treaties. This resulted in two main changes: investment approval procedures were weakened (or removed) and protection standards earlier offered only to foreign investments were included. Developed countries, by contrast, continued to be motivated by domestic priorities and used investment laws mainly for screening and approval purposes.

Much of the existing literature tends to classify investment laws as aiming to either regulate and control investments or facilitate and promote investments. However, as the 2023 report shows, it is more helpful to take a functional approach (Bonnitcha et al., 2023). Contemporarily, we see that investment laws perform diverse functions that are yet to be comprehensively mapped. Importantly, a national investment law is not always a necessary or useful instrument, especially when other parts of the regulatory framework satisfactorily perform their desired functions.

The functional approach recognizes that while the laws are created to achieve certain high-level policy goals (objectives), they can achieve those goals only when the functions of the law align with those objectives. Therefore, focusing on the functions of an investment law shows how the law operates in practice and reveals how well it supports (or fails to support) its objectives. Such a classification is also useful to better explain the diverse content of these laws. The report identified seven main functions of national investment laws:

1. governing the admission and approval of new foreign investment
2. conferring and administering investment incentives
3. facilitating investment
4. guaranteeing legal protection to investment
5. establishing and/or specifying a system to resolve, prevent, or manage investor–state disputes
6. specifying investors' obligations and responsibilities
7. monitoring and oversight of investment

[3] See Ostřanský & Bonnitcha, 2024 and Ostřanský et al., 2025.

These seven functions highlight a key argument: investment laws govern a myriad of issues arising at various points of the investment life cycle. Within each function, there are cross-cutting questions about how the law fits into the country's wider legal framework. This overarching background is essential for any discussion around re-imagining national investment laws.

1.1 Purpose and Rationale of the Series

Apart from a comprehensive overview of the evolution of investment laws and their main functions, the 2023 report also contained policy considerations for their design and reform, through a step-by-step guide (Bonnitcha et al., 2023). This series complements the 2023 report by offering deep dives into individual national investment law functions. It provides a more detailed and in-depth analysis of how a given function is designed in investment law around the world. Such an overview will assist policy-makers in situating their national approach within broader practices and trends.

Beyond providing a detailed quantitative and qualitative analysis of individual functions that national investment laws serve, this series also provides a framework to guide policy-makers in assessing and deciding whether a particular function should be performed by their investment law. This guidance is designed by considering the specificities of each function, hence enabling informed decision making and design.

1.2 Structure of the Report

Each report in the series starts with a methodological section explaining the approach and methods, main functions and concepts, scope of the analyzed sample of investment laws, and limitations (Section 1). Section 2 provides an overview of main trends regarding a given function in investment laws around the world, providing both qualitative and quantitative analysis. The final section (Section 3) contains a practical guide to design and reform a given function in national investment law.

It is important to highlight that national investment laws do not operate in isolation. Hence, an appropriate approach to their design and reform must be coherent (IISD, 2024), with the approach to reform of other investment tools, such as treaties (Ostřansky & Bonnitcha, 2024) and contracts (del Rosario Lago et al., 2026).

2.0 Methodology: Understanding the dispute prevention, management, and settlement function in national investment laws with a focus on dispute settlement

Since their inception, national investment laws have generally provided frameworks for managing, settling, and preventing investor–state disputes. Almost 70% of the laws reviewed in the 2023 report expressly dealt with settlement of investment disputes, though there was significant variance in the methods chosen (Bonnitcha et al., 2023). In summary, the report found that these investment laws may establish a new national institution to deal with disputes and/or clarify the relationship between domestic courts and international adjudicative processes such as investor–state dispute settlement (ISDS).

A more recent analysis conducted in February and March 2025 looked at 167 national investment laws available in both English and French on the United Nations Trade and Development (UNCTAD) Investment Policy Hub, specifically to understand how these laws provide for dispute prevention, management, and settlement.[4] These terms, while at times overlapping, refer to the following:

- **Dispute prevention** refers to mechanisms, institutions, and processes that are designed to prevent a grievance or disagreement from escalating into a legal dispute, such as mediation, ombudsperson, early warning systems, or grievance mechanisms.
- **Dispute management** refers to a broader category of administrative and strategic handling of a dispute once it surfaces, such as through internal coordination, information gathering, and assessment.
- **Dispute settlement** refers to mechanisms, institutions, and processes that are designed to finally settle a legal dispute. Litigation and arbitration are examples.

The dispute prevention, management, and settlement (DPMS) function in national investment laws is thus understood quite broadly: it balances multiple approaches, from early warnings to amicable settlement to international arbitration, also touching on issues of administrative coordination in the management of disputes, with the specific choice of function often contextualized by regional economic or developmental trends.

[4] The background study was prepared by a team from the LL.M. International Law Clinic from the Graduate Institute Geneva, composed of Gabriel Alencar Rolim França Pinto, Priscilla Kanukwa Waithaka, and Shruti Maheshwari, under the supervision of Prof. Fuad Zarbiyev. First, the analysis was limited to national investment laws available in English and French on UNCTAD's Investment Policy Hub (n.d.) Investment Laws Navigator database. As a result, laws published in other languages or not uploaded to the platform were not included. While the authors of the background study cross-checked on official government websites, there remains a possibility that some recent amendments or unofficial translations were not captured. Second, the review focused on primary investment laws and did not include implementing regulations, sector-specific legislation, or judicial and administrative practices, which could provide additional insight into how disputes are resolved in practice.

Within the DPMS function, dispute settlement deserves particular attention, as the way it is regulated in the law influences the enforcement of rights and responsibilities that arise in the context of foreign investment regulation within that country. This element is also the one that carries the greatest legal and financial risks if not properly designed. Historically, dispute settlement has also been an element that has been more systematically covered in national investment laws (see Bonnitcha et al., 2023) and, as shown below, is also more frequently regulated than dispute prevention and management. As a result, this report focuses specifically on the dispute settlement element of the broader DPMS function.

For clarity, whenever we refer to the DPMS function, we are referring the broader understanding. Whenever we speak of dispute settlement or dispute resolution, we are referring only to the dispute settlement aspect as defined in the above table—that is, mechanisms, institutions, and processes that are designed to finally settle a legal dispute.

Attention was paid to whether these laws refer to national courts or arbitration, and if so, whether the arbitration mechanisms mentioned were domestic or international. The review also compared approaches across different regions and between economies classified as either advanced economies or emerging and developing economies.[5]

Considerations pertaining to dispute prevention and management are reserved for a separate publication and are touched upon only in passing—for instance, when mentioning domestic institutions established by the law (such as ombudspersons or grievance mechanisms).

Note: All the referenced laws are taken from the UNCTAD Investment Policy Hub Investment Laws Navigator (UNCTAD Investment Policy Hub, n.d.). They are identified by the year according to the Navigator and use the English translations uploaded to the Navigator.

[5] While regional and economic classifications enable meaningful comparisons, they may at times mask intra-regional or country-specific nuances that affect how dispute settlement mechanisms are framed or implemented.

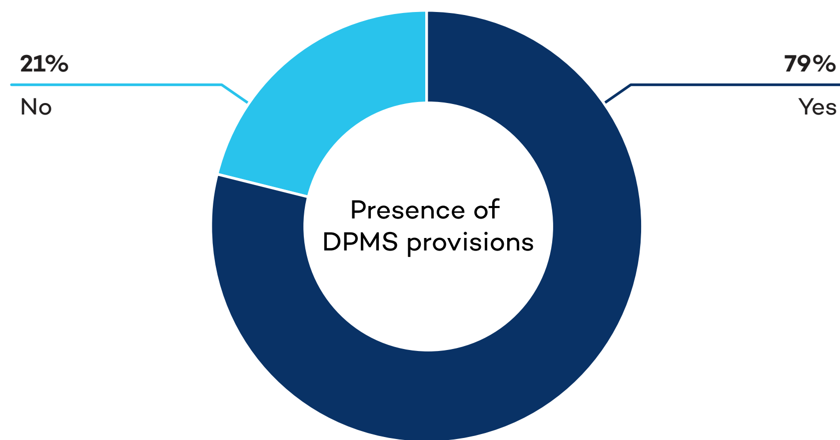
3.0 Analysis: How the dispute settlement function is regulated in investment laws today

This section examines the prevalence of the dispute settlement function in the analyzed national investment laws and how it is incorporated and regulated within them. Overall, the findings show that nearly 79% of these laws contain provisions relating to DPMS, underlining how central this function is to national investment laws: 132 out of 167 reviewed laws regulate this function in one way or another.

Nearly 79% of these laws contain provisions relating to DPMS, underlining how central this function is to national investment laws: 132 out of 167 reviewed laws regulate this function in one way or another.

Data indicates that Africa has the highest inclusion rate of the function in national investment laws (91%), followed by Asia (84%) and Europe (69%). In essence, national investment laws in most regions consider codifying the dispute settlement function important. At the same time, these provisions differ significantly.

Figure 1. Presence of DPMS provisions in national investment laws



Source: Authors, based on the LLM Law Clinic data.

Table 1. Presence of dispute settlement provisions in national investment laws by continent

Continent	Includes dispute settlement provisions		Total national investment laws
	No	Yes	
Africa	5	50	**55**
Asia	7	37	**44**
Europe	14	31	**45**
North America	4	2	**6**
Oceania	3	10	**13**
South America	2	2	**4**
Total	**35**	**132**	**167**

Source: Authors, based on the LLM Law Clinic data.

In regulating the dispute settlement element of the function, national investment laws typically contain specific mechanisms for resolving disputes that may arise in the regulation of foreign investment. These mechanisms include the following:

- Adjudicative dispute settlement mechanisms
    - national courts
    - arbitration (domestic and international).
- Other dispute settlement mechanisms
    - party-agreed solutions
    - administrative review
    - amicable settlement options
- Dispute prevention mechanisms
    - various domestic institutions.

These categories are discussed and defined in the following sections.

3.1 Adjudicative Dispute Settlement Mechanisms in National Investment Laws

Adjudication is the typical way of settling disputes. Under this category, we understand mechanisms that end with a final decision on the legal rights and obligations of the disputing parties. As a result, **national courts and arbitration (both domestic and international) are included under this category.**

It should be noted that two other types of dispute settlement mechanisms may also contain the defining feature of adjudication: party-agreed solutions and administrative review. However, we do not count them under adjudicative mechanisms for several reasons. While parties may agree to litigation or arbitration in national courts as the solution, they may also agree to other mechanisms that do not end with a final legal decision, such as mediation and conciliation.

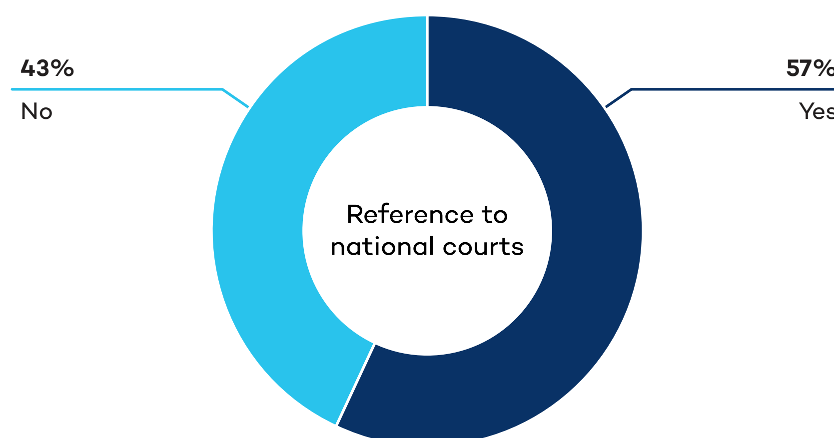
Administrative reviews come in various shapes and forms. A typical example would involve review by a state agency that is not a court but is hierarchically superior to the state agency that issued the reviewed decision. Decisions by the reviewing administrative agency are generally not considered final and can often be subject to judicial review. Similarly, some countries offer reviews through administrative tribunals. Administrative review may overlap with adjudication in national courts in the last two contexts.

The following two sub-sections analyze how litigation in national courts and arbitration are regulated in national investment laws.

National Courts

The review reveals that dispute resolution through national courts is a common option, with 57% of the reviewed laws with DPMS function explicitly mentioning this mechanism (75 out of 132). Developing countries tend to favour the use of national courts for investment disputes, often expressing skepticism toward international arbitration.

Figure 2. Reference to national courts in national investment laws



Source: Authors, based on the LLM Law Clinic data.

Different approaches emerge in these laws relating to the use of national courts.

National Courts as the Sole Mechanism

Some countries require that all investment-related disputes be handled exclusively in domestic courts. Examples include Armenia, El Salvador, and Kenya. For instance, Article 15 of El Salvador's Investment Law (1999) provides as follows (UNCTAD Investment Policy Hub, n.d.):

> Should disputes or differences arise among local and foreign investors and the state regarding the investments made by them in El Salvador, the parties may resort to the corresponding courts of justice, in accordance with existing legislation and legal procedures.

Exhaustion of Local Remedies

In some jurisdictions, including Sierra Leone and Equatorial Guinea, investors are required to exhaust domestic legal remedies, meaning they must first resort to national courts before pursuing international arbitration or other alternative dispute resolution mechanisms (Brauch, 2017). Article 14 of Equatorial Guinea's Investment Law (1992), for example, provides as follows (UNCTAD Investment Policy Hub, n.d.):

> The dispute will be transferred to the Courts and Tribunals of the country; and in case of disagreement of one of the parties and after having exhausted all internal remedies, the dispute may be referred to an Arbitral Tribunal at the request of any of the parties.

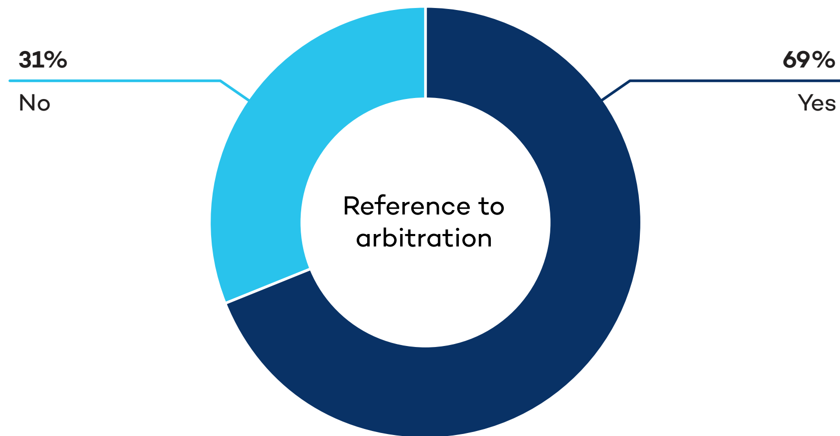
Flexible or Parallel Mechanisms

An increasing number of countries allow a choice between domestic courts and alternative dispute resolution mechanisms without a strict hierarchy. The United Arab Emirates exemplifies this flexible approach. In other instances, national investment laws provide for investors choosing between national courts and international arbitration, ensuring safeguards against parallel claims. Article 28 of Ethiopia's Investment Law (2020), for example, provides as follows: "Where a Foreign investor chooses to submit an investment dispute to a competent body with Judicial Power or arbitration, the choice shall be deemed final to the exclusion of the other" (UNCTAD Investment Policy Hub, n.d.).

Arbitration

A notable percentage of national investment laws incorporate arbitration as a mechanism for resolving disputes between foreign investors and host countries: 69% of the reviewed national investment laws that regulate the DPMS function (91 out of 132). Nevertheless, even though the reference is common, none of these laws designates arbitration as the primary or principal dispute settlement method. While emerging and developing economies tend to include arbitration provisions more frequently than advanced economies, the presence and specifics of arbitration mechanisms vary significantly across different regions.

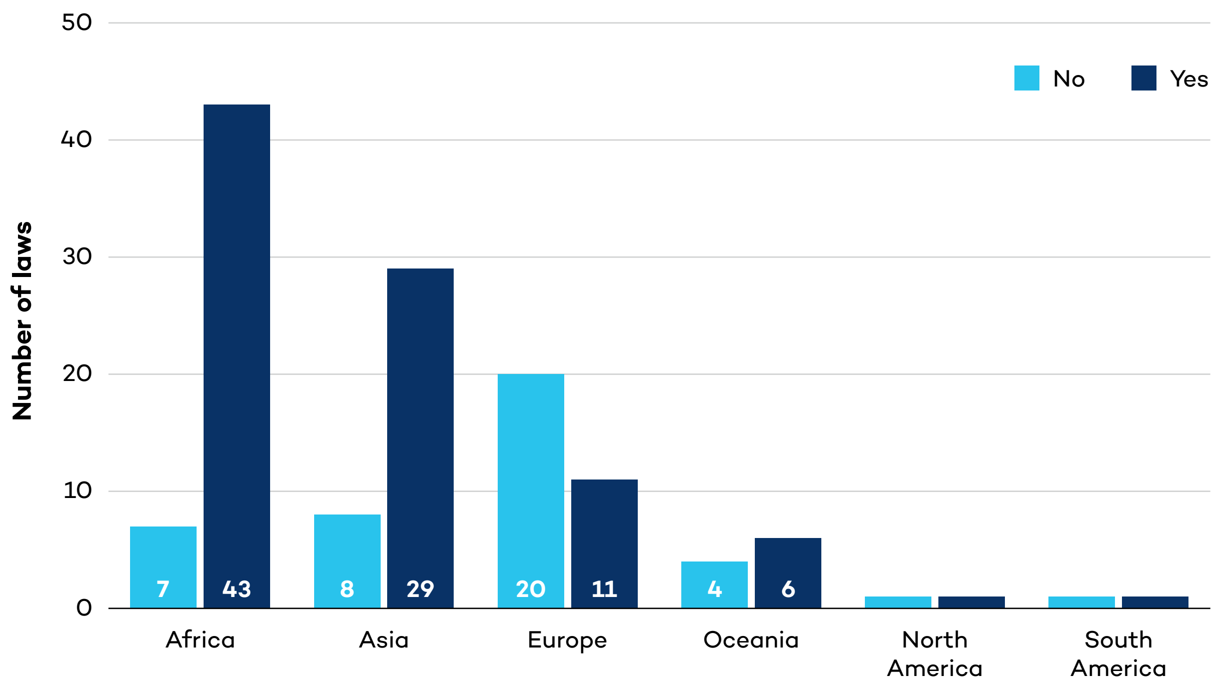
Figure 3. Reference to arbitration in national investment laws



Source: Authors, based on the LLM Law Clinic data.

In Africa, 46.51% of laws mention only international arbitration, whereas in Asia, a mixed approach is seen with 51.72%, allowing for both domestic and international arbitration. European laws are evenly divided, with 54.55% including both types, while Oceania primarily favours international arbitration. North American laws tend to mention arbitration without specifying rules, and South America predominantly provides for international arbitration frameworks.

Figure 4. Arbitration provision in investment laws with dispute provision by continent



Source: Authors, based on the LLM Law Clinic data.

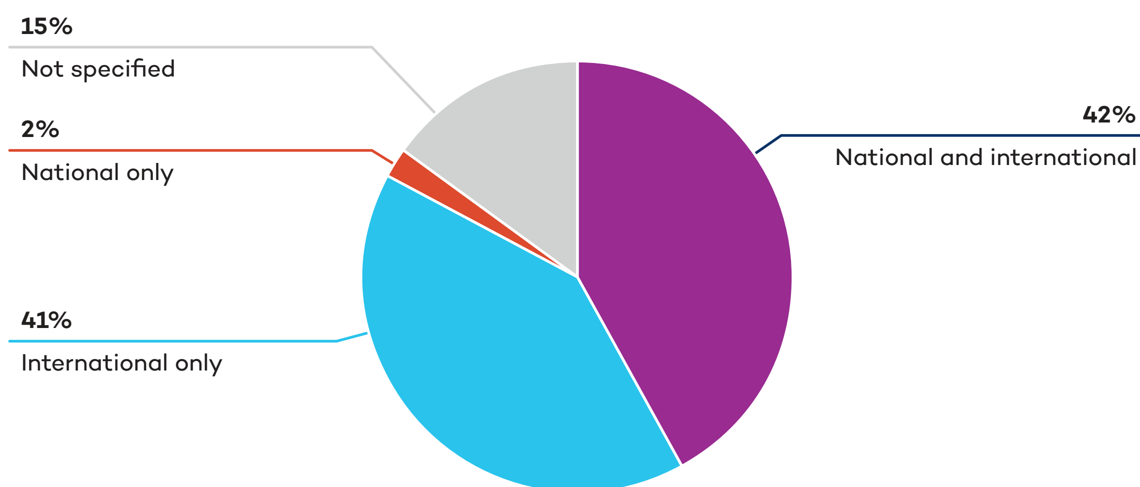
The analysis also shows that only 2% of national investment laws use exclusively domestic arbitration, 40% use exclusively international arbitration, 42% incorporate both, and 16% refer to arbitration without specifying applicable rules.

Some arbitration provisions are broadly general, merely recognizing the ability to arbitrate some investment disputes. For instance, Article 16 of Qatar's Law No. (1) on Regulating Non-Qatari Capital Investment in the Economic Activity (2019) provides as follows: "Unless it is a labor dispute, the Non-Qatari Investor may agree to settle any dispute between them and others through arbitration or any other means of settling disputes in accordance with law" (UNCTAD Investment Policy Hub, n.d.).

Jordan's Investment Environmental Law (2022) is more explicit, although it stops short of giving advance consent. Article 45 provides that disputes arising from investment contracts between the Official Entity (i.e., any ministry, department, commission, council, Amman Municipality, municipality, authority, or public official institution) and **a foreign investor may be resolved through arbitration based on mutually agreed-upon rules.** If no specific rules are outlined, the foreign investor can choose among Jordanian Arbitration Law, the UNCITRAL Arbitration Rules, or the International Chamber of Commerce rules (UNCTAD Investment Policy Hub, n.d.).

Among international arbitration mechanisms, diverse preferences are noted, including various institutional rules alongside the International Centre for Settlement of Investment Disputes, which is more commonly referenced. While arbitration is widely incorporated into national investment laws, its application and prioritization vary across diverse legal landscapes in different regions.

Figure 5. Types of arbitration provided in national investment laws



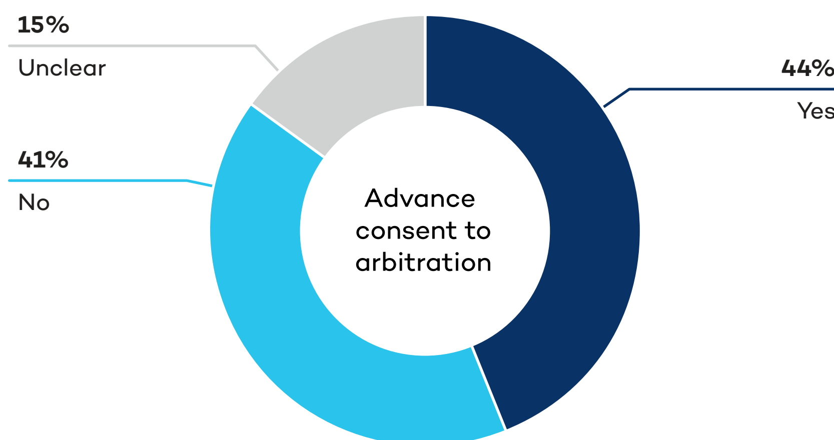
Source: Authors, based on the LLM Law Clinic data.

Advance Consent to Arbitration in Investment Laws

A crucial policy question regarding the inclusion of arbitration in national investment laws is whether the law contains the so-called advance consent to arbitration (Mbengue, 2012). Out

of the 91 laws that refer to arbitration as an available dispute settlement mechanism in our sample, 40 contain advance consent to arbitration (44%), and at least 14 contain provisions that can potentially be interpreted as giving such consent.[6]

Figure 6. Advance consent to arbitration in national investment laws



Source: Authors, based on the LLM Law Clinic data.

ISDS cases based on advance consent under national investment laws are not rare. As recently noted by UNCTAD (2025), there are "99 known international arbitration cases brought by investors against host States in which national investment laws were invoked either exclusively or in combination with other instruments" (p. 2). Thirty-nine of these cases used national investment laws as the sole jurisdictional basis.

Providing consent to arbitration in national investment laws involves all of the same risks that plague ISDS based on treaties (Ostřanský et al., 2025). The most significant among these risks are lengthy and costly proceedings (on average, 3.5 years and around USD 5 million in legal costs for states), the risk of high damages awards (the average ISDS damages award in the decade of 2014 to 2023 was USD 256 million), and inconsistent and unpredictable results. This compounds the risks of regulatory chill and using the threat of an ISDS case to extract undue concessions. UNCTAD notes that in ISDS cases based on national investment laws, investors prevailed in 58% of cases decided on the merits. In these cases, the average award was USD 215 million, with a median of USD 33 million (UNCTAD, 2025).

Overall, dispute resolution through national courts and arbitration is a common way to resolve investment disputes. While there is a clear trend toward prioritizing national courts under national investment laws, many investment laws recognize the possibility of access to international arbitration, especially in Africa and Asia.

[6] An older IISD publication noted a similar pattern looking at a smaller sample of laws: 42 out of 74 national investment laws that refer to arbitration likely contain consent to it (Berge & St John, 2020).

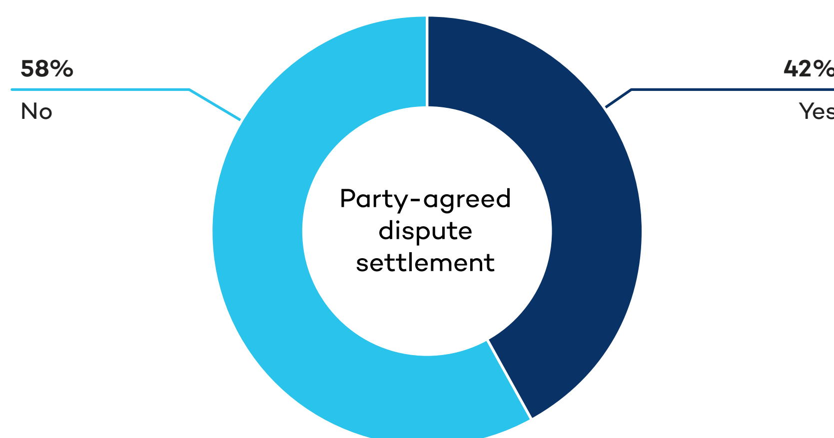
3.2 Other Dispute Settlement Mechanisms in National Investment Laws

Beyond resorting to national courts and arbitration, non-adjudicative mechanisms, such as party-agreed dispute settlement methods, amicable settlement options, and administrative review, are increasingly emerging as alternatives. These methods are analyzed here.

Party Agreement-Based Dispute Settlement

Party agreement-based dispute settlement enables investors and host states to mutually determine the method and forum for the resolution of their disputes. It emphasizes party autonomy and enables flexible dispute resolution mechanisms such as negotiation and mediation. At the same time, allowing party-agreed mechanisms for dispute settlement effectively means allowing "contracting out" of the otherwise applicable national dispute settlement. The party agreement-based method features in about **42% of laws containing dispute settlement provisions (56 out of 132).**

Figure 7. Reference to party agreement-based dispute settlement methods in national investment laws



Source: Authors, based on the LLM Law Clinic data.

For instance, Article 18 of Kyrgyzstan's Law on Investments (2003) provides as follows (UNCTAD Investment Policy Hub, n.d.):

> Investment disputes shall be resolved in accordance with any applicable procedure agreed in advance between an investor and authorized state bodies of the Kyrgyz Republic. This does not exclude the use of other means of legal defense by an investor in accordance with the legislation of the Kyrgyz Republic.

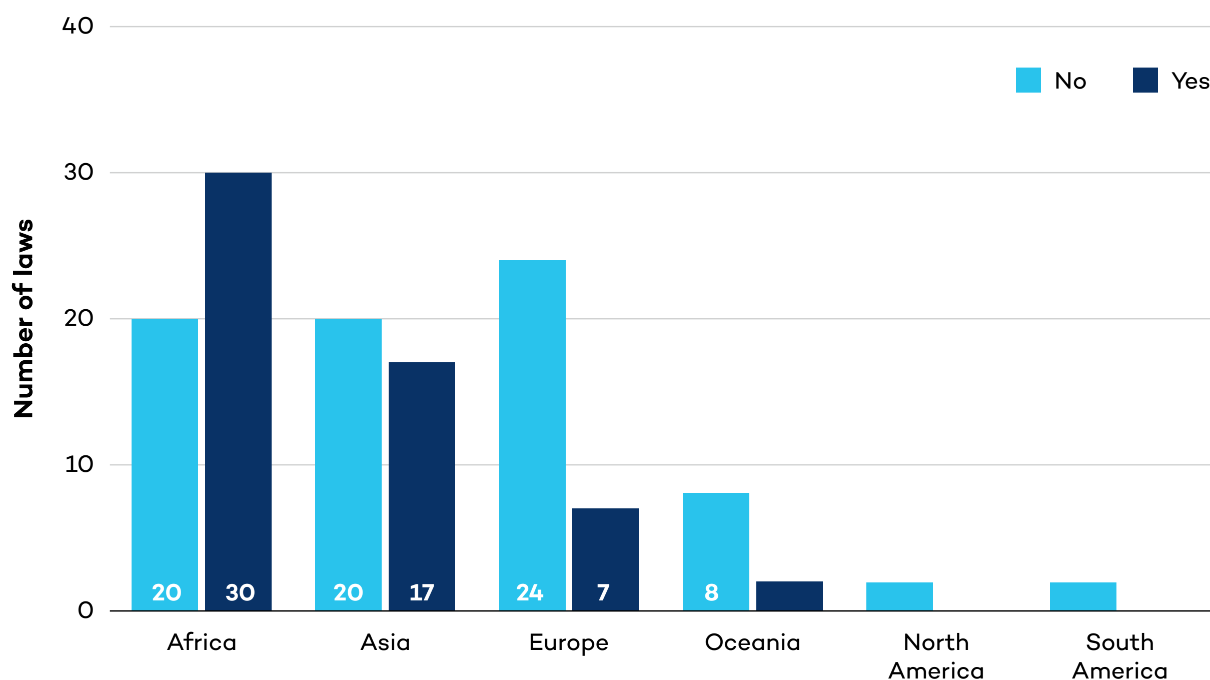
Similar provisions are contained in Article 19 of Belarus' Law No 53-Z on Investments (2013), which states as follows (UNCTAD Investment Policy Hub, n.d.):

> Disputes between an investor and the Republic of Belarus arising in the course of investments shall be settled in a pre-trial procedure by means of negotiations, unless

otherwise established by the legislative acts of the Republic of Belarus or an agreement between the investor and the Republic of Belarus.

Regionally, Africa recognizes party agreement-based dispute mechanisms relatively more often than other regions. Thirty out of 50 countries provide for such provisions. In Asia, 17 out of 37 states offer similar provisions. In contrast, Europe exhibits a different trend, with 24 out of 31 national investment laws failing to include such provisions. Similarly, in Oceania, eight out of 10 national investment laws do not feature such provisions. Neither North nor South America provides for such provisions in their national investment laws. This suggests that while African or Asian countries are more willing to allow investors to "contract out" of their national courts' jurisdictions, countries in Europe or the Americas guard their national courts and administrative jurisdictions more carefully.

Figure 8. Flexible dispute resolution: Laws permitting party-chosen dispute settlement by continent



Source: Authors, based on the LLM Law Clinic data.

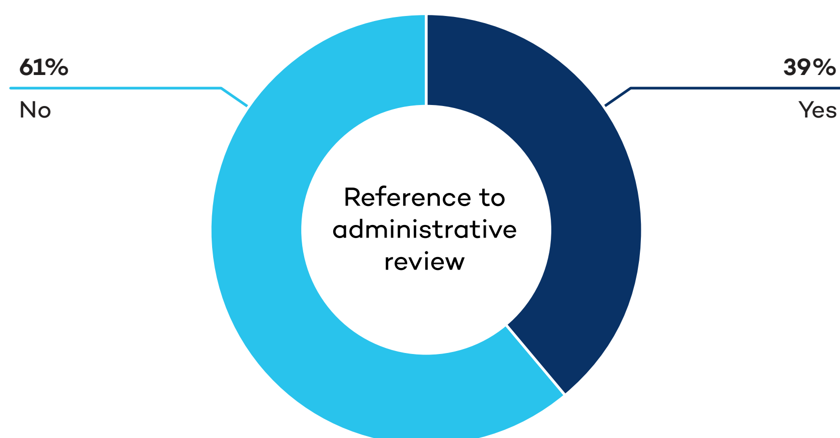
Administrative Review

Administrative review is a vital procedural safeguard in many national investment laws, enabling investors to challenge decisions made by regulatory authorities before resorting to litigation or arbitration. It is regarded as an efficient and accessible alternative to litigation or arbitration, promoting regulatory accountability and the timely resolution of investment grievances. Administrative review mechanisms generally fall into three categories: internal

appeals within regulatory agencies (e.g., Kiribati),[7] ministerial reviews (e.g., Zambia),[8] and administrative tribunals (e.g., Malta).[9]

Out of 132 reviewed national investment laws with a DPMS function, only 52 include provisions for administrative review (39%).

Figure 9. Reference to administrative review in national investment laws



Source: Authors, based on the LLM Law Clinic data.

Overall, national investment laws in advanced economies are more likely to feature administrative review than those in emerging markets. In some instances, like Malawi, administrative review is the only dispute resolution method available,[10] while others, such as Rwanda, provide multiple options, including arbitration and litigation.[11]

[7] Article 28, Foreign Investment Act, Kiribati (2018).

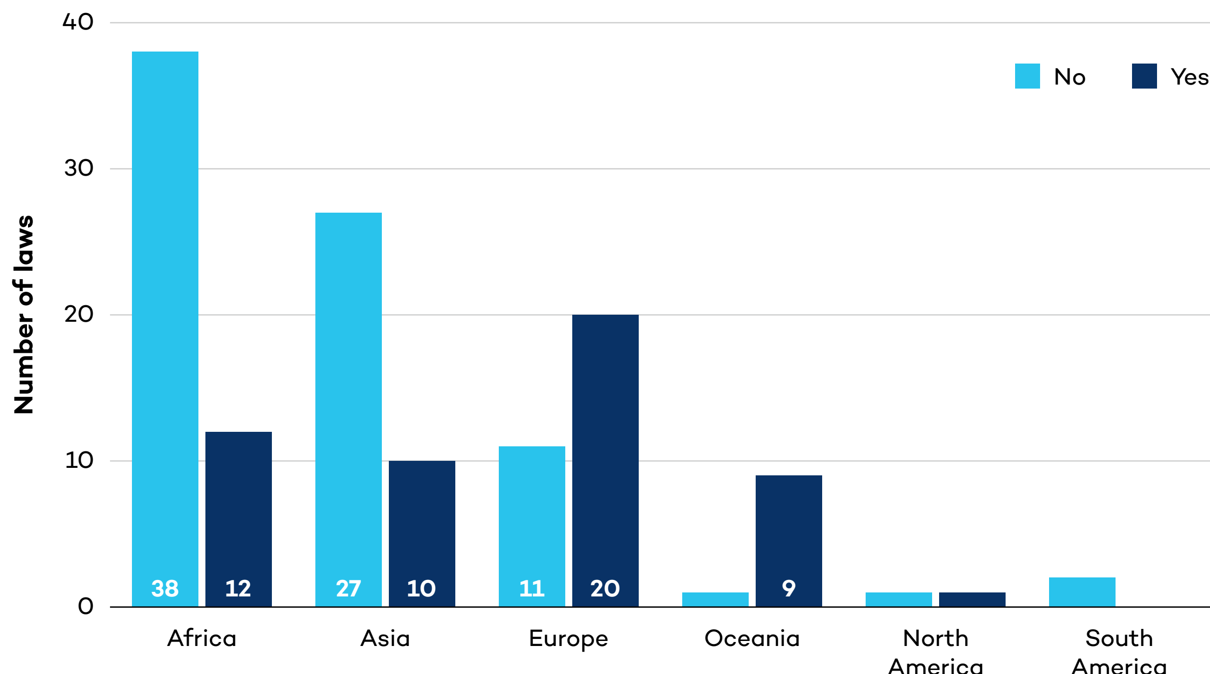
[8] Article 44, Investment, Trade and Business Development No. 18, Zambia (2022).

[9] Article 18, National Foreign Direct Investment Screening Office Act, Malta (2020).

[10] Article 40, Investment and Export Promotion Act, Malawi (2024).

[11] Article 24, Law on Investment Promotion and Facilitation, Rwanda (2021).

Figure 10. Administrative review provisions in national investment laws by continent

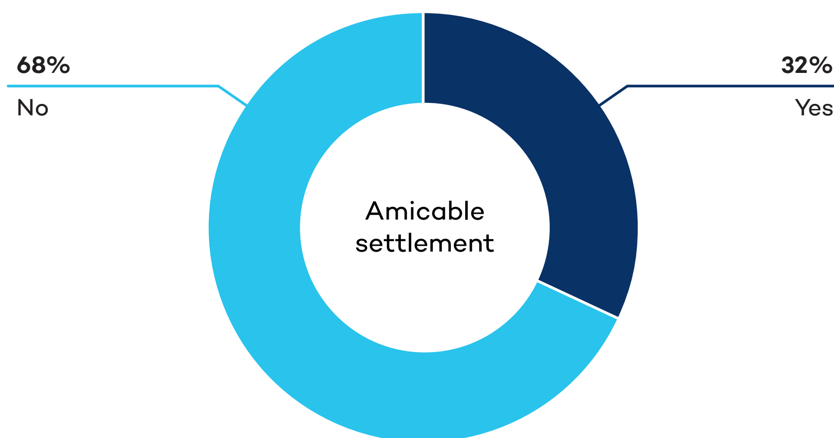


Source: Authors, based on the LLM Law Clinic data.

Amicable Settlement Mechanisms

Amicable settlement mechanisms (ASMs) are crucial in resolving investor–state disputes, as highlighted in the legal frameworks of various countries. ASMs include non-adversarial dispute resolution methods such as negotiation, mediation, and conciliation, with provisions found in 32% of the laws with DPMS functions reviewed (42 out of 132).

Figure 11. Amicable settlement in national investment laws



Source: Authors, based on the LLM Law Clinic data.

Some countries mention ASMs broadly. For example, Article 27 of Yemen's Investment Law (2010) provides that (UNCTAD Investment Policy Hub, n.d.): "In the event any dispute may

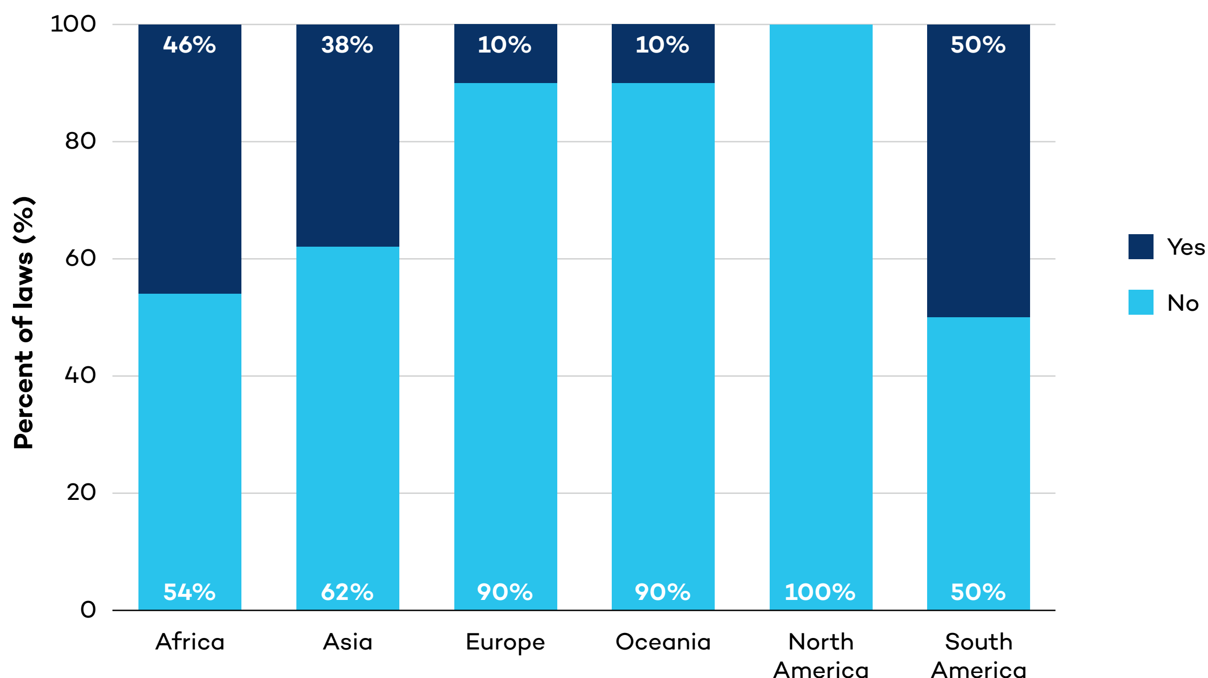
arise between the investor and the government with regard to the project, it may be settled amicably." Other countries specify particular methods, demonstrating a spectrum from flexible to structured approaches. For instance, Article 35 of the Gambia's Investment and Export Promotion Agency Act (2015) provides that if a dispute arises between investors or between an investor and a government, the involved parties should first attempt to resolve the issue amicably through conciliation or mediation. If they cannot reach an agreement, they may then proceed to arbitration (UNCTAD Investment Policy Hub, n.d.).

In a similar vein, Article 33 of Tanzania's Investment Law (2023) provides that in the event of a dispute between an investor and the Tanzanian Investment Centre or the government regarding a business enterprise, efforts should first be made to resolve the issue through negotiations. If these negotiations fail, the dispute can be submitted to arbitration (UNCTAD Investment Policy Hub, n.d.).

Some countries, such as Madagascar and Kazakhstan, provide for the exhaustion of ASMs before litigation or arbitration.[12]

These illustrations also represent a common trend to favour ASMs as a prior step before resorting to adjudication. Regions such as South America, Africa, and Asia exhibit higher ASM adoption rates compared to European and North American countries, which contain ASMs much more rarely.

Figure 12. Amicable settlement in national investment laws by continent

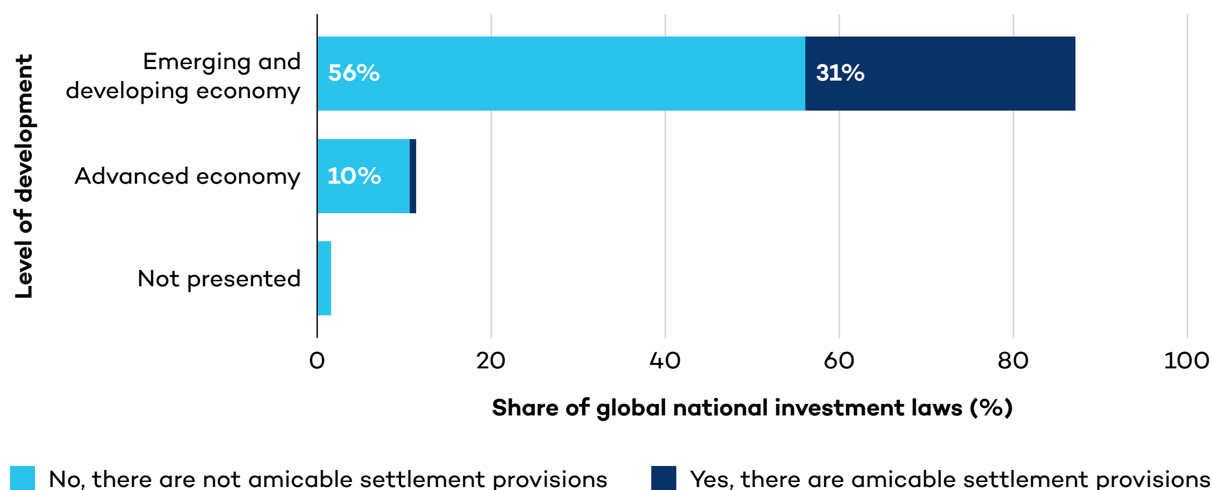


Source: Authors, based on the LLM Law Clinic data.

12 Article 9 of Kazakhstan's Law on Investments (2023) and Article 25 of Madagascar's Law No. 002 on Investments (2023).

Emerging and developing economies generally incorporate ASMs more frequently (31%) to attract foreign investment, whereas advanced economies such as South Korea show limited adoption. A historical perspective reveals that references to ASMs were uncommon before the 1990s but have become more common and detailed since 2000, correlating with the increase in treaty-based ISDS cases.

Figure 13. Amicable settlement in national investment laws by level of development



Source: Authors, based on the LLM Law Clinic data.

3.3 Domestic Institutions: Dispute prevention as a growing trend

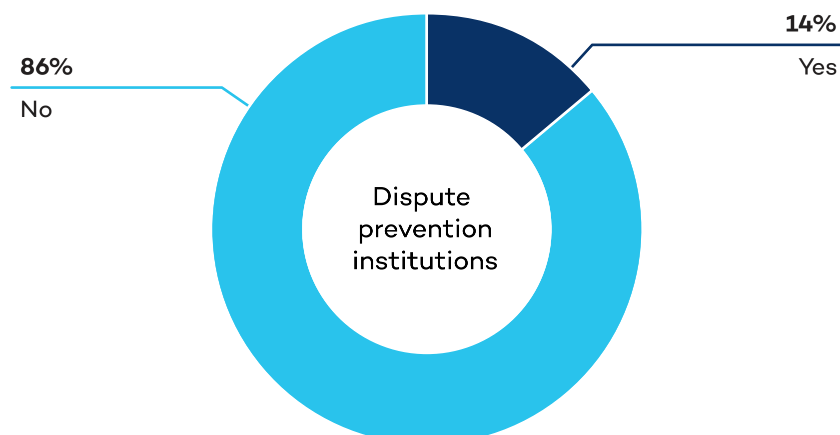
While ASMs have emerged more frequently in the last two decades, dispute prevention has also become an important policy agenda, as evidenced by the analysis of national investment laws. Domestic institutions play an important role in managing foreign investment by preventing disputes between foreign investors and host countries from escalating into costly litigation or arbitration. These institutions vary in their names, structures, and functions, but generally aim to either prevent disputes from escalating or to help manage disputes. Other functions that domestic dispute prevention institutions may serve at times include raising awareness of the possibility of ISDS claims, monitoring and establishing channels of communication, helping ensure treaty compliance, or assisting with post-dispute measures.

This report does not provide a detailed analysis of these functions, as it merely notes when such institutions have been referenced or established in national investment laws; a later report in this series will be dedicated to dispute prevention and will unpack it in more detail.[13]

Only 13.64% of reviewed investment laws establish institutions with dispute prevention and management as a core function (18 out of 132).

[13] For more detailed analysis see, e.g., Sattorova et al., 2021.

Figure 14. Dispute prevention and management institutions in national investment laws



Source: Authors, based on the LLM Law Clinic data.

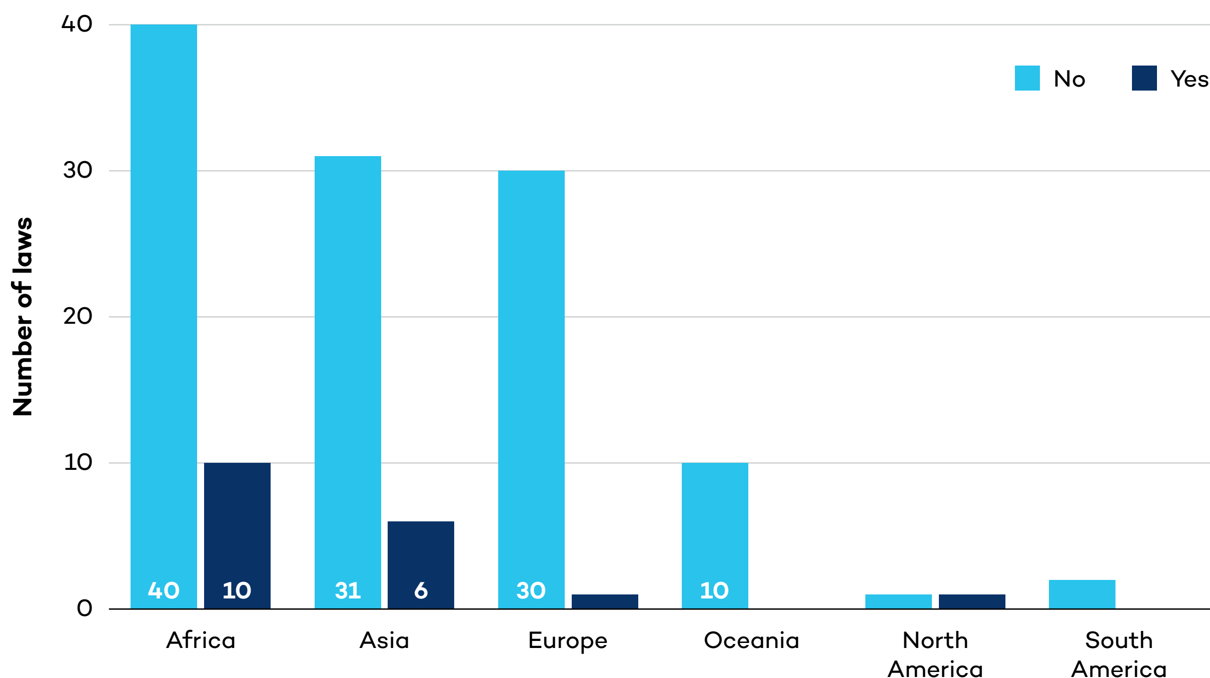
For instance, Cambodia has Municipal Investment Sub-Committees that prioritize reconciliation. Specifically, Article 36 of Cambodia's Law on Investment (2021) provides as follows (UNCTAD Investment Policy Hub, n.d.):

> Disputes between Investors and Investors related to the Investment Project may be resolved by the [Council for the Development of Cambodia] or Municipal-Provincial Investment Sub-Committees through reconciliation in accordance with procedures in force and upon written request to the [Council for the Development of Cambodia] or the Municipal-Provincial Investment Subcommittees by any party to the dispute.

In Myanmar, the domestic institution is referred to as the Myanmar Investment Commission. It takes on a different role, managing a grievance mechanism aimed at both resolving and preventing disputes between investors and the state.[14]

[14] Article 82, Myanmar's Investment Law (2016).

Figure 15. Domestic institute provisions in national investment laws by continent



Source: Source: Authors, based on the LLM Law Clinic data.

Regionally, Africa has the most institutions (10), Asia has six, and Europe and North America each have one, with Oceania and South America lacking any. These domestic institutions often serve as the initial point of contact before resorting to formal adjudicative mechanisms, such as arbitration and litigation.

In the final analysis, well-designed national investment laws are vital for establishing clear rights and obligations in the regulation of foreign investment. To this end, they often encompass the function of preventing, resolving, and managing disputes between foreign investors and host countries. The existence and structure of the DPMS function in national investment laws vary across jurisdictions, influenced by the strength of the legal infrastructure, the capacity of the judiciary, and the overall investment environment in each country. As foreign investment dynamics continue to evolve, the DPMS function is likely to undergo continuous refinement, reflecting the shifting economic, political, and social landscapes that govern the regulation of foreign investment.

4.0 Framework for Assessing, Reforming, and Designing the Dispute Settlement Function in National Investment Laws

Having discussed the various ways in which national investment laws can incorporate the dispute settlement function, it is now necessary to discuss how the function fits into each country's unique context. This section aims to provide a high-level framework for assessing, reforming, and designing the dispute settlement element of the function through a series of questions that policy-makers may want to answer when considering this function for their investment law.[15]

It should be noted that the considerations here are applicable to the dispute settlement function as regulated specifically in national investment laws, not in general. The position of national investment law in the context of a specific country, together with the way ISDS is governed in its legal system, will provide the context and direct the answers to each guiding question.

This framework is not designed to be prescriptive. Rather, it aims to structure an approach for policy-makers and highlight various risks of incorporating certain dispute settlement functions or some of their parameters in national investment laws. The broad contours of the framework are summarized in Box 1.

Box 1. Summary of the framework for assessing, reforming, and designing the dispute settlement function in national investment laws

Assessing the existing investment law

- Determine if the existing investment law regulates dispute settlement, and if so, how.
- Assess whether it serves the stated policy objectives.

Determining the policy problems that the dispute settlement function presents in the given national context

- Are the stated policy objectives still valid?
- Have new policy problems arisen?
- What are the appropriate tools to solve the policy problems arising out of investment dispute settlement?

Special considerations

- Arbitration
- Dispute settlement and prevention agency
- Additional considerations

[15] This framework is further specification of Section 4.3.7, Considerations Relating to the Design and Operation of Investment Laws That Establish Systems for Managing Investment Disputes, in Bonnitcha et al., 2023, pp 50–52.

4.1 Determining Whether and How the Existing National Investment Law Regulates the Dispute Settlement Function

If the country in question has an existing investment law, it is important to consider whether it already provides a way to settle disputes between investors and the state. There are essentially two broad scenarios available: either it does, or it does not. While this determination is relatively straightforward, there are numerous modalities, especially within the affirmative scenario, that policy-makers should carefully assess.

The Existing Investment Law Does Not Regulate the Dispute Settlement Function

As noted in Section 2, around one fifth of national investment laws analyzed do not refer to a dispute settlement function at all. In other words, it is the general machinery of national courts that serves the dispute settlement function, and there is no specific provision in the investment law for investment-related disputes. If this is the scenario applicable in your case, you may proceed directly to sub-section 3.2.

The Existing Investment Law Regulates Dispute Settlement Function

If the investment law contains a provision to resolve investor–state disputes, policy-makers must first understand "how" it regulates it. A series of guiding questions may help policy-makers set their policy-making on a more solid ground.

- Does the existing national investment law refer to adjudicative dispute settlement?
- If yes, which kind is it?
    - Does it refer to national courts? Are these regular national courts of general jurisdiction, administrative tribunals, or specialized investment/commercial tribunals or chambers?
    - Does it refer to arbitration?
    - Or does it refer to both?
- Is there a specific relationship between these adjudicative methods?
    - Does it require that remedies before national courts are exhausted before resorting to arbitration?
    - What happens once the remedies are exhausted?
    - When it comes to arbitration, does the law merely recognize the possibility of agreeing to arbitration?
    - Or does it provide advance consent? If so, are there other conditions before consent is deemed completed?

    - Is there a reference to domestic or international arbitration? Does the law provide for a specific set of arbitration rules?
- Does it refer to other kinds of dispute settlement mechanisms? If yes, which kinds?
    - Does it provide for administrative review? Is this the general national administrative law framework? Or does the law create a new institutional setup for its own review purposes?
    - Does it provide for amicable settlement? If so, is there a prescribed procedure, method, or institutional support?
    - Does it provide for dispute prevention and de-escalation? If so, is there a prescribed procedure, method, or institutional support?
- What is the objective of including these mechanisms?
    - Are they supposed to displace or be an alternative to adjudication?
    - Or are they creating a framework within which adjudication is positioned, e.g., through sequencing and layering?
- What is the role of party autonomy and party-agreed means of dispute resolution? Are they available or recognized? Only within certain limits?

4.2 Determining the Policy Problems That Dispute Settlement Function Presents in the Given National Context

Whether or not the existing national investment law regulates investment-related disputes, it is crucial to determine whether the law should serve this function. The appropriateness of the national investment law performing this function depends on the specific country context and whether a specific policy problem arises regarding the settlement of investment disputes in that country's context. A number of policy issues may arise with respect to investment disputes, but they are only worth considering if policy-makers are confident that some of these issues indeed apply in their national context.

If the existing national investment law does regulate dispute settlement, it is important that policy-makers consider two sequential questions:

- Are the policy problems purportedly addressed by the existing dispute settlement regulation in national investment law still valid?
- If yes, is the existing solution working adequately?

To illustrate this thought process, let us take an example of advance consent to arbitration. Several states included advance consent to arbitration in their national investment laws in the 1990s and early 2000s in accordance with the advice from various international organizations (Berge & St John, 2020). The purported goal was to improve the regulatory environment to make it conducive to the flow of productive private investment. In the current context, however, empirical evidence has been inconclusive regarding whether arbitration contributes

to improving national governance (Ostřanský & Pérez Aznar) or to increasing the inflow of foreign investment (Bonnitcha, 2017). Additionally, ISDS has been recognized for significant regulatory, legal, and financial risks (Ostřanský et al., 2025). In such a context, the policy problem that was perceived as at the core of the inclusion of consent to arbitration in the law is no longer valid.

If, on the other hand, the problem is still applicable and relevant in today's context—for instance, there is a continuing lack of clarity with respect to which courts are competent to hear investment disputes—then, it may be necessary to assess whether the existing regulation has managed to solve the problem or at least contribute substantially to its solution. This assessment will reveal whether the existing system is working optimally or requires reform.

If it is working optimally, it may be left as is, but where there is a need to improve their investment law, policy-makers may consider redesigning the function. This assessment will also allow policy-makers to determine whether any additional reform resources should be spent on improving the existing dispute settlement methods or designing new ones.

Examples of Policy Problems That May Arise in the Context of Dispute Settlement

- Is the problem due to the capacity, resources, or expertise of national courts?
- Is the problem about the need to harmonize and clarify fragmented methods of dispute settlement in the national legal framework?
- Is the problem about de-escalating and preventing disputes?
- Is the problem about addressing investors' perceived lack of confidence in national courts? Is the perception borne out by evidence?
- Is the problem about regulating and clarifying processes and institutions involved in the management of disputes on the government's side?

Determining Appropriate Tools to Solve the Policy Problem Arising From Investment Dispute Settlement

It is important to note that even if there are identified policy issues pertaining to investment dispute settlement in a given context, this does not mean that national investment law is automatically the best tool. **Identifying policy issues relating to investment dispute settlement in a country is independent from determining whether to regulate it in national investment law.** For instance, if the main policy issue related to dispute settlement is about the lack of capacity and expertise, either investing resources into training and building the capacity of judges or streamlining the existing judicial system through specialized chambers may be more appropriate solutions to the problem than outsourcing dispute settlement to international arbitral tribunals or creating additional jurisdictional channels through an investment law.

What is more, even if dispute settlement regulation in a national investment law may add value, it does not automatically mean that a particular element should be applied. For

instance, arbitration should not be an automatic solution, even if the capacity of national courts is a recognized policy issue. In the majority of instances, it is justified to rely on the general jurisdiction of domestic courts and, potentially, on dispute prevention institutions to perform investor–state dispute settlement functions. In other words, regulating dispute settlement in national investment law should be considered only if regulating this function in investment law solves a particular policy problem. If the general dispute settlement machinery of the state works fine, there is no need to create special channels for investors or to regulate it specifically in national investment law.

In this context, policy-makers should consider whether the policy problem is specific to investment disputes or extends beyond them. If it is the latter, the state would be well advised to spend any additional resources to address problem solving that would also benefit its citizens and a greater number of stakeholders. Creating parallel dispute settlement mechanisms, by definition, diverts resources from improving the general regulatory framework of the state. This means that the outcome of this analysis may be that while there are valid policy problems related to dispute settlement, national investment law may not be the right tool to address them.

There are several considerations that policy-makers want to address when choosing the right tools. To name but a few examples:

- Do the courts need additional capacity, support, or resources to carry out this function effectively and expeditiously?
- Should there be training and capacity development for judges in investment law issues or dedicated administrative support for investment disputes?
- Should time frames or targets for the administration and conclusion of investment disputes by the national courts be put in place?

4.3 Risks Arising From the Use of Arbitration as a Dispute Settlement Mechanism in National Investment Laws

Special consideration should be given to arbitration as an option for dispute settlement, especially given the number of acute financial and legal risks that accompany its inclusion in investment laws. As highlighted in Section 2, many countries have chosen this mode of dispute settlement for national and foreign investors, generally upon advice from various international organizations and interest groups in the 1990s and 2000s.[16] Arbitration is often presented as an option to address risks that individual investors seek to avoid. For example, where the domestic courts are viewed as inefficient or biased, arbitration can be seen as providing a potentially faster and more neutral forum for resolving investment disputes. Moreover, with 172 contracting parties, the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) may alleviate investors' enforcement concerns. The parties exercise complete autonomy over the arbitral process, which makes the option attractive to investors.

[16] Bonnitcha et al., 2023, 14–17.

However, international arbitration introduces significant risks, particularly for emerging markets and developing economies. **It may limit the state's ability to bring claims against the investor** (Nikièma & Maina, 2020). International arbitration, which is often decided by arbitral tribunals that are not well versed in local contexts, delocalizes investment disputes and may lead to neglect of important considerations of public interest. Important especially for emerging markets and developing economies, the arbitration process is often lengthy and expensive, with increased demand on states due to inconsistent, unpredictable outcomes and growing cash compensation awards against states (Ostřanský et al., 2025, p. 13). Given the lack of control mechanisms over arbitration outcomes and the emergence of the arbitration industry with a vested interest in promoting arbitration as their business, many actors seek to benefit from the inclusion of arbitration in national investment laws at the expense of the public budget (Ostřanský et al., 2025, p. 13). In addition, arbitration generally remains available to investors through their contractual dealings with the state and old-generation investment treaties with ISDS. While contract-based arbitration presents significant additional issues of transparency, public oversight, and intra-agency coordination, the availability of arbitration in contracts attenuates the need to provide for access to arbitration in national investment laws.

In any case, it is strongly encouraged that states refrain from giving advance consent to such procedures in their national investment laws. National laws may simply recognize arbitration as an available dispute settlement method in principle (see above, Section 2 on party agreement-based dispute resolution), without providing advance consent to an unknown class of investors, which comes with significant legal risks.

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