

EIRA

ENERGY INVESTMENT RISK ASSESSMENT



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INTERNATIONAL ENERGY CHARTER

| 1991 European Energy Charter – political declaration

| 1994 Energy Charter Treaty (ECT) – international law

Only multilateral legally binding Treaty on energy.

Broad constituency of energy consuming, producing and transit countries.

| 2015 International Energy Charter – political declaration

| Energy Charter Conference – intergovernmental decision-making body

| Energy Charter Secretariat – Brussels



ENERGY CHARTER PROCESS CHART as of 15 March 2018

as of 15 March 2018

MEMBERS (54)

Yig	Rat	EEC	IEC	Country
2007	2013	2006	2015	Afghanistan
1994	1994	1997	2015	Albania
1994	1997	1991	2015	Armenia
1994				Australia
1994	1997	1991	2015	Austria
1994	1997	1991	2015	Azerbaijan
1994				Belarus
1994	1998	1991	2015	Belgium
1995	2001	1995	2015	Bosnia and Herzegovina
1994	1996	1991	2015	Bulgaria
1994	1997	1993	2015	Croatia
1994	1998	1991	2015	Cyprus
1995	1996	1993	2015	Czech Republic
1994	1997	1991	2015	Denmark
1994	1998	1992	2015	Estonia
1994	1998	1991	2015	European Union
1994	1998	1991	2015	EURATOM
1994	1997	1991	2015	Finland
1994	1999	1991	2015	France
1994	1995	1991	2015	Georgia
1994	1997	1991	2015	Germany
1994	1997	1991	2015	Greece
1995	1998	1991	2015	Hungary
1994	2015	1991	2015	Iceland
1994	1999	1991	2015	Ireland
1995	2002	1991	2015	Japan
1994	1995	1991	2015	Kazakhstan
1994	1997	1992	2015	Kyrgyzstan
1994	1995	1991	2015	Latvia
1994	1997	1991	2015	Liechtenstein
1995	1998	1992	2015	Lithuania
1994	1997	1991	2015	Luxembourg
1994	2001	1991	2015	Malta
1994	1996	1992	2015	Moldova
1998	1999	1997	2015	Mongolia
2013	2015	2012	2015	Montenegro
1994	1997	1991	2015	Netherlands
1995		1991	2015	Norway
1994	2000	1991	2015	Poland
1994	1997	1991	2015	Portugal
1994	1996	1991	2015	Romania
1994				Russian Federation
1994	1995	1993	2015	Slovakia
1994	1997	1992	2015	Slovenia
1994	1997	1991	2015	Spain
1994	1997	1991	2015	Sweden
1994	1996	1991	2015	Switzerland
1994	1997	1991	2015	Tajikistan
1997	1998	1996	2015	The FYR Macedonia
1994	2001	1991	2015	Turkey
1994	1997	1991	2015	Turkmenistan
1994	1998	1991	2015	Ukraine
1994	1996	1991	2015	United Kingdom
1995	1995	1991	2015	Uzbekistan

INTERNATIONAL ENERGY CHARTER 2015 (88)

EUROPEAN ENERGY CHARTER 1991 (69)

ENERGY CHARTER TREATY 1994 (54)

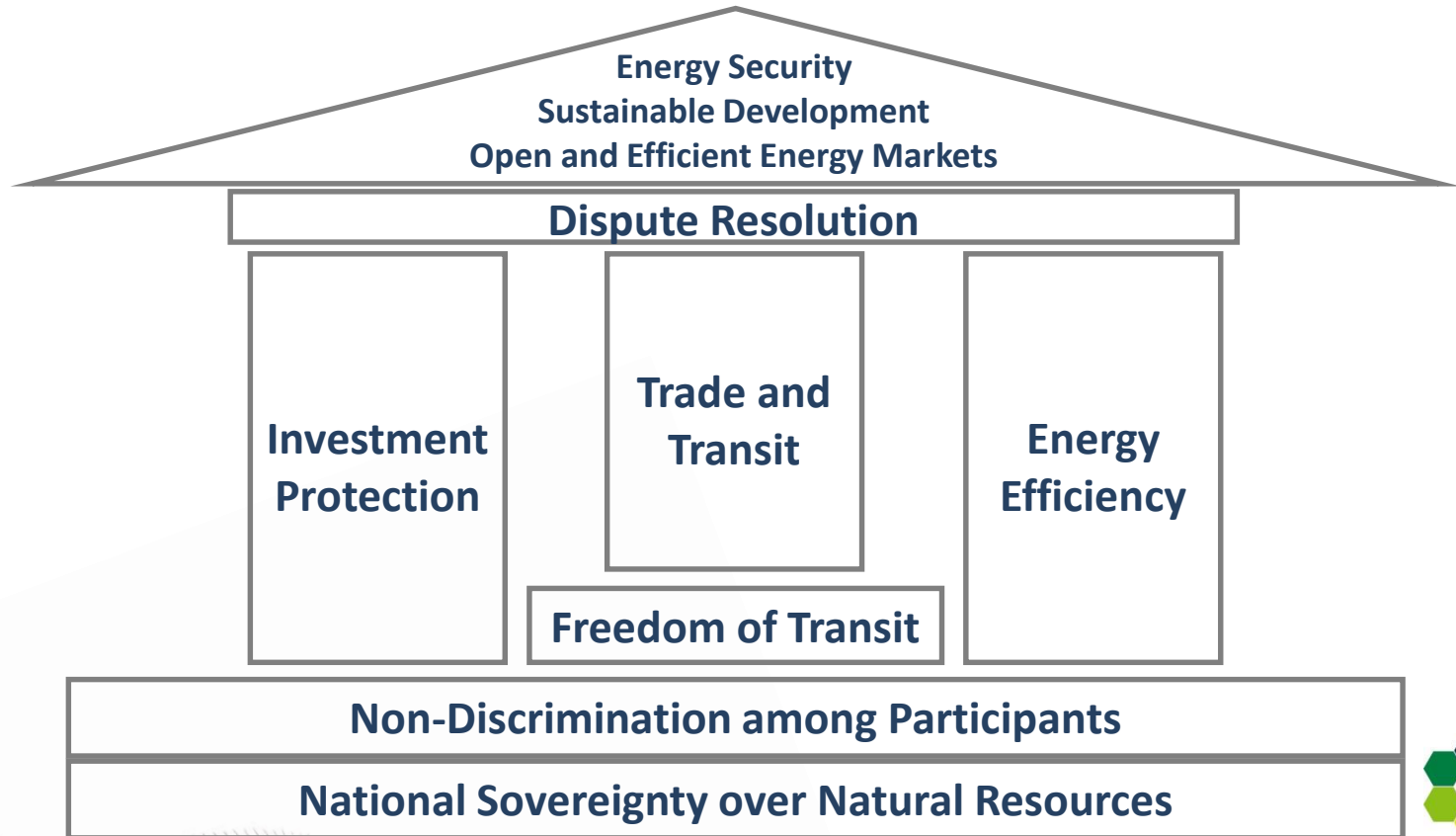
OBSERVERS (41)

Country	EFC	IFC
Bangladesh		2015
Benin		2015
Burkina Faso		2017
Burundi	2015	2015
Cambodia		2015
Canada	1991	
Chad	2015	2015
China		2015
Colombia		2015
EAC		2014
ECOWAS		2014
GS South Africa		2014
Ghana		2014
Guatemala		2016
Indonesia	2009	
Iran		2014
Iraq		2016
Italy	1991	2015
Jordan	2007	2015
Kenya		2017
Mali		2017
Mauritania		2014
Morocco	2012	2015
Niger	2015	2015
Nigeria		2017
Pakistan	2005	2015
Palestine	2014	2015
Panama		2014
Rwanda		2016
Samuel		2014
Saudi	2001	2015
South Korea		2015
Swaziland		2015
Syria	2010	
Tanzania		2015
UAE		2017
Uganda		2015
USA	1991	2015
Yemen	2014	2015

INTERNATIONAL ORGANISATIONS WITH OBSERVER STATUS
(by decision of the Energy Charter Conference):



ENERGY CHARTER TREATY



VOLUNTARY INSTRUMENTS

- | Conflict Resolution Centre – for mediation and assistance**
- | Guide on investment mediation – to promote amicable dispute settlement**
- | Early-warning mechanism**
- | Investment facilitation toolbox – on removing barriers to energy investment**
- | Handbook on General Provisions Applicable to Investment Agreements**
- | Energy Investment Risk Assessment – or EIRA – publication which aims to assist governments to improve investment conditions in the energy sector**

ENERGY INVESTMENT RISK ASSESSMENT – EIRA

- | **Assesses specific policy, legal and regulatory risks to energy investment**
- | **Targeted at policy-makers and investors**
- | **Participation by 30 member and observer countries in 2018**
- | **Participation by 37 member and observer countries in 2019**

WHAT DOES EIRA NOT INCLUDE?

- | **Economic, geopolitical & technological risks**
- | **Does not rank countries**

PARTICIPATING COUNTRIES #EIRA2019

Afghanistan

Albania

Armenia

Bangladesh

Belarus

Benin*

Bosnia and Herzegovina

Bulgaria*

Burkina Faso*

Chad

Croatia

Czech Republic*

Eswatini

The Gambia

Georgia

Greece

Guatemala*

Jordan

Kazakhstan

Kenya

Kyrgyzstan

Liechtenstein

Moldova

Mongolia

Montenegro

Morocco*

Nigeria

Palestine*

Panama*

Romania

Rwanda

Senegal

Slovakia

Uganda

Ukraine

Uzbekistan*

Viet Nam*

Status 3 May 2019

***New in #EIRA2019**



PARTICIPATING AFRICAN COUNTRIES

2017 – 2 countries

Mauritania

Nigeria

2018 – 8 countries

Chad

Eswatini

The Gambia

Kenya

Nigeria

Rwanda

Senegal

Uganda

2019 – 12 countries

Benin*

Burkina Faso*

Burundi*

Chad

Eswatini

The Gambia

Kenya

Morocco*

Nigeria

Rwanda

Senegal

Uganda

Status 3 May 2019

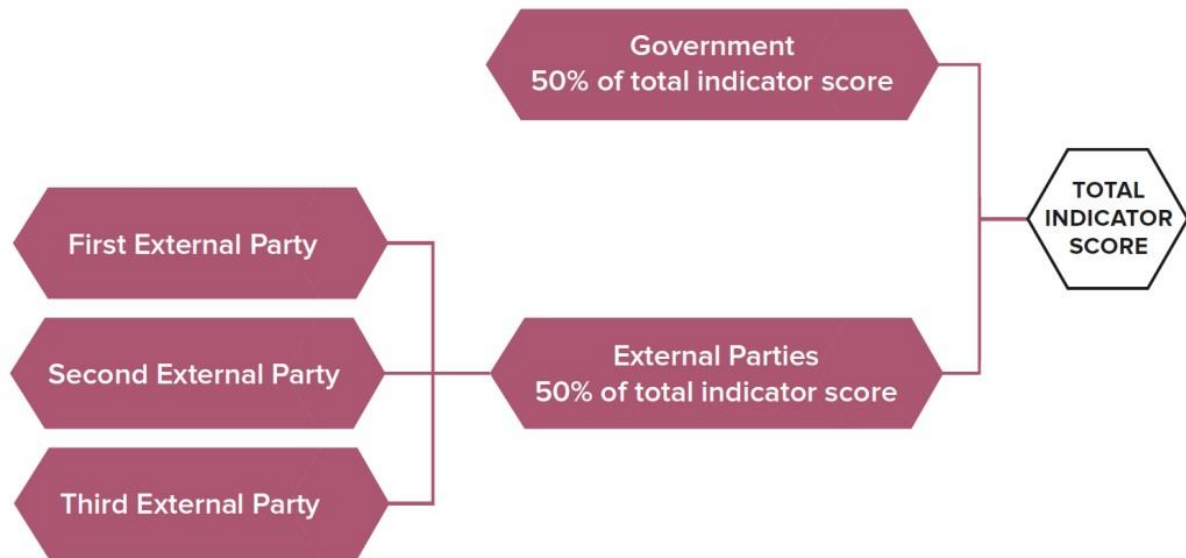
***New in #EIRA2019**

EIRA RISKS AND INDICATORS

RISK AREAS	INDICATORS			
	Foresight of policy and regulatory change	Management of decision-making processes	Regulatory environment and investment conditions	Rule of law
Unpredictable policy and regulatory change	✓	✓		✓
Discrimination between domestic and foreign investors		✓	✓	✓
Breach of State obligations				✓

SCORING SYSTEM

Total score for an indicator



COUNTRY PROFILES



Neutralia

Population ¹	163,000,000
Area (km ²)	923,768
GDP per capita (USD)	2177.99
TFPS (Moore)	139.37
Energy intensity (toe/10 ³ 2010 USD)	0.302
CO ₂ emissions - energy (MTCO ₂ e)	-64.44

Sources:
 1. The World Bank, World Development Indicators
 2. UNCTAD/TRA 2017, www.unctad.org

INDICATOR 1 Foresight of policy and regulatory change

56

INDICATOR 2 Management of decision-making processes

65

overall risk level against the assessed areas is **moderate**.

Among the three risk areas that define the overall risk level, unpredictable policy and regulatory change and discrimination between foreign and domestic investors are lower compared to the breach of state obligations.

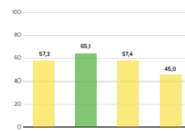
performance against ERA's four indicators is also moderate. It has received a good score (65) on the indicator management of decision-making processes. Two indicators, namely foresight of policy and regulatory change and regulatory environment and investment conditions, are at 57. The indicator score for Rule of Law is 45.

At the more detailed level, the performance on most sub-indicators is good. The highest scoring ERA sub-indicator for is transparency with 67 points. The performance on the sub-indicator management and settlement of investor-state disputes is also good with a score of 65. On regulatory effectiveness and communication of vision and policies the score stands at 64, closely followed by institutional governance at 62. A moderate score of 50 has been obtained on the sub-indicators robustness of goals and restrictions on FDI respectively. Performance on the respect for property rights sub-indicator is at 25 points.

In order to improve investor confidence, measures need to be taken to strengthen the performance across all indicators and underlying sub-indicators with particular attention to respect for property rights. Detailed analysis on the key strengths and areas for improvement is provided in the next sections.



INDICATOR PERFORMANCE



SUB-INDICATOR PERFORMANCE



INDICATOR 3 Regulatory environment and investment conditions

58

INDICATOR 4 Rule of law

45

QUICK FACTS

The Energy Regulatory Commission (Commission) regulates the electricity, natural gas, and petroleum sub-sectors. The Commission falls under the authority of the Ministry of Power, Energy and Mineral Resources.

The Atomic Energy Commission regulates the nuclear sector for certain issues. The Foreign Private Investment (Promotion & Protection) Act 1980 was enacted to protect foreign investment.

STRENGTHS

The Commission is a statutory body. Its existence, composition and powers can be altered only by extending the governing law, the Act of 2003. The Chairman and the members are appointed based on professional competence and integrity. The Commission enjoys functional independence and is entitled to adopt its personal policy, management rules, and salary structure. In terms of accountability, the Commission is responsible to the Comptroller & Auditor General and the Parliament.

The legislative framework generally supports foreign investment. The Foreign Private Investment (Promotion and Protection) Act grants for and equitable treatment to foreign investors. FDI is encouraged in all activities except in reserved industries such as nuclear energy. There are no restrictions on foreign ownership in energy projects. Full repatriation of capital invested through foreign sources is permitted.

AREAS OF IMPROVEMENT

Functions of the Commission and other regulatory bodies (such as the Competition Commission) and the Commission should be streamlined to avoid overlaps in decision making and operations.

Policies and actions must focus on empowering the to improve outcomes. The Commission Chairperson and members should be appointed without delay. This will ensure seamless leadership within the Commission. Additionally, measures may be taken to increase the share of operating revenue in the fund and to reduce reliance on government resources and loans.

Mandatory screening procedures for controlled sectors can be lowered in the coming years. Moreover, the government may consider reducing in time certain restrictions, such as those imposed on the number of foreign employees.

In practical terms, foreign investors frequently find it necessary to have a local partner even though this requirement may not be statutorily defined. More access to information on how local business is conducted and on the various investment procedures can help to reduce this perception.

QUICK FACTS

Access to arbitration is provided in the Arbitration Act of 2001.

has ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Provisions against expropriation of immovable property are stated in the Acquisition and Requirement of Immovable Property Act 2017.

STRENGTHS

Enforcement of foreign arbitral awards by domestic courts is efficient. Local courts enforce foreign judgements from reciprocating territories such as

and Voluntary mediation and conciliation are available as part of the code of civil procedure. The government has not made any retroactive changes to its laws in the last few years. Investors must be aware that while national laws do not require the exhaustion of local judicial remedies, in some cases this may be mandated under a contract.

Expropriation on the grounds of public interest is only permitted as an extreme measure declared by law and ordered by a court. Compensation for acquisition of immovable property must be paid within 60 working days. Some BITs, such as the one with, also provide a time-frame within which compensation for expropriation must be provided to investors. There are several bills in place for protecting intellectual property rights. BITs with and define "investment" to include intellectual property. In general, there are no statutory provisions restricting technology transfer.

AREAS OF IMPROVEMENT

Systemised and effective case management measures need to be in place. Timelines for domestic courts to render decisions should be stated in the law.

A formal investment ombudsman or similar institution may be established for resolving conflicts between investors and public authorities. The International Arbitration Centre at times helps settle issues for investors, but its scope is mostly based on capacity building for the country's arbitration sector.

A definition of the phrase "public purpose or in the public interest" can be incorporated in the Acquisition and Requirement of Immovable Property Act 2017.

Explicit provisions for the conditions of expropriation are needed in national law. Usually, parties consult independent auditors for determining the fair value of an expropriated or nationalised investment. This may be made a statutory requirement rather than a market practice. Provision may be made in the domestic law for granting protection to intangible property such as equity, shares and intellectual property.

RAISING INVESTMENT TO ALLEVIATE ENERGY POVERTY

- | Create essential pre-conditions for investment, by policy, by (international) law and by regulations – ‘license to operate’**
- | Establish open market conditions, based on non-discrimination**
- | Energy & investment policies: clear ST/MT/L goals and implementing plans**
- | Transparent and inclusive law and decision-making processes**
- | Independent regulation of tariffs and licenses**
- | Accessible judiciary for the energy sector**

THANK YOU

**Contact the EIRA team:
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