

## Dispute Resolution provisions in free trade and investment treaties to which New Zealand is a party – as at 5 April 2022 (Annex 1)

Name of Treaty	Parties	Entry into force	ISDS	State-State Dispute
RCEP <sup>1</sup>	New Zealand, Brunei-Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam, Australia, China, Japan, South Korea	01.01.2022	Investment protections outlined in Chapter 10. No ISDS provisions. <sup>2</sup>	Chapter 19
DEPA <sup>3</sup>	New Zealand, Chile, Singapore <sup>4</sup>	07.01.2021	No investment chapter	Module 14
PACER Plus	New Zealand, Australia, Cook Islands, Kiribati, Niue, Samoa, Solomon Islands, Tonga, Signatories that have not ratified: Nauru, Vanuatu, Tuvalu	13.12.2020	Investment protections set out in Chapter 9. There is no ISDS. <sup>5</sup>	Chapter 14 Consultations and Dispute Settlement
CPTPP <sup>6</sup>	New Zealand, Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore, Viet Nam	30.12.2018	Chapter 9 "Investment" but several side letters disapplying ISDS. <sup>7</sup>	Chapter 28 Dispute Settlement
NZ-Korea FTA	New Zealand Korea	20.12.2015	Chapter 10 "Investment" and Article 10.20 contains ISDS.	Chapter 19 Dispute Settlement
NZ-Hong Kong, China CEP	New Zealand Hong Kong	01.2011	No investment chapter.	Chapter 16 Dispute Settlement
NZ-Malaysia FTA	New Zealand Malaysia	08.2010	Chapter 10 Investment and Annex 7 Expropriation. ISDS provisions included. <sup>8</sup>	Chapter 16 Dispute Settlement
AANZFTA <sup>9</sup>	New Zealand, Brunei Darussalam, Cambodia, Indonesia,	27.02.2009	Chapter 11 Investment and ISDS provisions. <sup>10</sup>	Chapter 17 Consultations

<sup>1</sup> Regional Comprehensive Economic Partnership.

<sup>2</sup> The ISDS chapter was removed from the draft agreement in August 2019.

<sup>3</sup> Digital Economy Partnership Agreement.

<sup>4</sup> This is a "living agreement" with Canada and Korea showing interest in joining.

<sup>5</sup> In the event of an expropriation an investor can seek a review of the decision to expropriate by the courts of the *host State* (Chapter 9, Article 13(4)).

<sup>6</sup> Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

<sup>7</sup> Side letters with Australia (see: [mfat.govt.nz/assets/Trade-agreements/CPTPP/New-Zealand-Australia-ISDS-Trade-Remedies-and-Relationship-with-Other-Agreements.pdf](https://mfat.govt.nz/assets/Trade-agreements/CPTPP/New-Zealand-Australia-ISDS-Trade-Remedies-and-Relationship-with-Other-Agreements.pdf).) and Brunei Darussalam, Malaysia, Peru and Viet Nam mean there is no compulsory ISDS.

<sup>8</sup> Investor-state disputes can be referred to a tribunal established under ICSID Convention, an *ad hoc* tribunal applying the UNCITRAL Rules, or a tribunal established under any other institution that the parties agree, including RCAKL.

<sup>9</sup> ASEAN-Australia-New Zealand Free Trade Agreement.

<sup>10</sup> This chapter is currently under review as part of the upgrade of the AANZFTA: [mfat.govt.nz/br/trade/free-trade-agreements/free-trade-agreements-in-force/asean-australia-new-zealand-free-trade-agreement-aanzfta/upgrading-aanzfta/](https://mfat.govt.nz/br/trade/free-trade-agreements/free-trade-agreements-in-force/asean-australia-new-zealand-free-trade-agreement-aanzfta/upgrading-aanzfta/). MFAT currently states on its website that "AANZFTA supports investment in the ASEAN region by ensuring better protection and security through a range of investment protection disciplines and a provision to recourse to binding investor-state arbitration procedures" (as at 22 March 2022).

Name of Treaty	Parties	Entry into force	ISDS	State-State Dispute
	Laos, Malaysia, Myanmar, Singapore, Thailand, Viet Nam, Philippines Australia			and Dispute Settlement
NZ-China FTA	New Zealand China	2008	Chapter 11 and Annex 13 "Expropriation" with detailed ISDS provisions. <sup>11</sup>	Chapter 16 Dispute Settlement
Trans-Pacific Strategic Economic Partnership (P4)	Brunei Darussalam Chile Singapore New Zealand	2006	No investment chapter.	Chapter 15 Dispute Settlement
NZ-Thailand CEP	New Zealand Thailand	07.2005	Chapter 9 sets out investment protections and ISDS provisions. <sup>12</sup>	Chapter 17 Consultations and Dispute Settlement
NZ-Singapore CEP	New Zealand Singapore	2001 (with significant update in January 2020)	Chapter 7 sets out investment protections and ISDS (replaced Part 6 of original treaty).	Chapter 14 Dispute Settlement" (replaced Part 10 of the original treaty)
NZ-Hong Kong BIT	New Zealand Hong Kong	05.08.1995	Yes (Article 9)	Yes (Article 10)
NZ-China BIT	New Zealand China	25.03.1989	Yes (Article 13)	Yes (Article 14)
CER <sup>13</sup>	New Zealand Australia	01.1983	Investment Protocol signed in February 2011 with no ISDS.	No

<sup>11</sup> The ISDS provisions in this treaty do not appear to have been affected by more recent negotiations to upgrade the NZ-China FTA. Those negotiations concluded in 2019.

<sup>12</sup> The wording of Article 9.17 (Chapter 9) is problematic in that it suggests that *both* parties must agree to submit the dispute to arbitration: "*the parties concerned may agree to submit the dispute, for settlement to...*"

<sup>13</sup> NZ-Australia Closer Economic Relations.