


GAR INVESTMENT TREATY ARBITRATION

Turkey

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I Overview

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

BIT contracting party or MIT ¹	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET) ²	Expropriation	Protection and security ³	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period ⁴	Local courts ⁵	Arbitration
Afghanistan (19 July 2005)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Albania (26 December 1996)	No	Yes	No	Yes	No	6 months	Yes	Yes
Algeria (signed on 3 June 1998, not in force)	No	Yes	No	Yes	No	6 months	Yes	Yes
Argentina (1 May 1995)	Yes	Yes	Yes ⁶	Yes	No	6 months	Yes	Yes
Australia (29 June 2009)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Austria (1 January 1992)	Yes	Yes	Yes	Yes	Yes	1 year ⁷	Yes	Yes
Azerbaijan (13 May 2013)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Bahrain (15 November 2014)	Yes	Yes	No	Yes	No	6 months	No	Yes
Bangladesh (21 June 1990, replaced by Bangladesh 2019 BIT)	No	Yes	No	Yes	No	1 year ⁸	No	Yes
Bangladesh (20 May 2019) ⁹	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Belarus (20 February 1997)	No	Yes	No	Yes	No	6 months	Yes	Yes
Belarus (signed on 14 February 2018, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes ¹⁰
Benin (signed on 11 December 2013, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
BLEU (4 May 1990)	Yes	Yes	Yes	Yes	No	1 year ¹¹	Yes	Yes
Bosnia and Herzegovina (29 January 2002)	No	Yes	No	Yes	No	6 months	Yes	Yes
Bulgaria (18 September 1997)	No	Yes	No	Yes	No	6 months	Yes	Yes
Burkina Faso ¹² (signed on 11 April 2019, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Burundi (signed on 14 June 2017, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Cambodia (signed on 21 October 2018, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Cameroon (signed on 24 April 2012, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Chad (signed on 26 December 2017, not in force, text not publicly available)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Chile (signed on 21 August 1998, not in force)	Yes	Yes	No	Yes	No	3 months	Yes	Yes
China (20 August 1994)	No	Yes	No	Yes	No	1 year ¹³	Yes	Yes
China ¹⁴ (signed on 29 July 2015, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Colombia (signed on 28 July 2014, not in force)	Yes	Yes	Yes	Yes	No	6 months ¹⁵	Yes	Yes
Côte d'Ivoire (signed on 29 February 2016, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes



BIT contracting party or MIT ¹	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET) ²	Expropriation	Protection and security ³	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period ⁴	Local courts ⁵	Arbitration
Croatia (21 April 1998) (as amended with an additional protocol dated 18 February 2009 and entered into force on 17 July 2013)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Cuba (23 October 1999)	No	Yes	No	Yes	No	6 months	Yes	Yes
Czech Republic (18 March 2012)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Denmark (1 August 1992)	Yes	Yes	Yes	Yes	Yes	1 year ¹⁶	Yes	Yes
Djibouti (signed on 25 September 2013, not in force) ¹⁷	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
ECO Investment Agreement (signed on 17 July 2005, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Energy Charter Treaty (ECT) (4 July 2001)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes ¹⁸
Egypt (31 July 2002)	No	Yes	No	Yes	No	6 months	Yes	Yes
Estonia (29 April 1999)	No	Yes	No	Yes	No	6 months	Yes	Yes
Ethiopia (10 March 2005)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Finland (23 April 1995)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
France (3 August 2009)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Gabon (signed on 18 July 2012, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Gambia (signed on 12 March 2013, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Georgia (28 July 1995)	No	Yes	No	Yes	No	6 months	Yes	Yes
Georgia ¹⁹ (signed on 19 July 2016, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Germany (5 December 1965)	Yes	Yes	Yes	Yes	Yes	No	No	No
Ghana (signed on 1 March 2016, not in force) ²⁰	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Greece (24 November 2001)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Guatemala ²¹ (19 October 2017)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Guinea (29 August 2019) ²²	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Hungary (22 February 1995)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
India (18 October 2007)	No	Yes	No	Yes	No	6 months	Yes	Yes
Iran (13 April 2005)	Yes ²³	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Israel (27 August 1998)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Italy (2 March 2004)	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Japan (12 March 1993)	No	Yes	Yes	Yes	No	No	Yes	No ²⁴
Jordan (23 January 2006)	No	Yes	No	Yes	No	6 months	Yes	Yes
Jordan (signed on 27 March 2016, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Kazakhstan (10 August 1995)	No	Yes	No	Yes	No	6 months	Yes	Yes
Kenya (signed on 8 April 2014, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Korea ²⁵ (4 June 1994)	Yes	Yes	Yes	Yes	Yes	1 year ²⁶	Yes	Yes
Kosovo (15 October 2015)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Kuwait (8 May 2013)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes



BIT contracting party or MIT ¹	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET) ²	Expropriation	Protection and security ³	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period ⁴	Local courts ⁵	Arbitration
Kyrgyzstan (31 October 1996)	No	Yes	No	Yes	No	6 months	Yes	Yes
Kyrgyzstan (18 March 2020)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Latvia (3 March 1999)	No	Yes	No	Yes	No	6 months	Yes	Yes
Lebanon (4 January 2006)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Libya (22 April 2011)	Yes	Yes	Yes	Yes	No	90 days	Yes	Yes
Lithuania (7 July 1997)	No	Yes	No	Yes	No	6 months	Yes	Yes
Lithuania (signed on 28 August 2018, not in force, text not publicly available)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Macedonia (27 October 1997)	No	Yes	No	Yes	No	6 months	Yes	Yes
Malaysia (9 September 2000)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Mali (signed on 2 March 2018, not in force) ²⁷	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Malta (14 July 2004)	No	Yes	No	Yes	No	6 months	No	Yes
Mauritania (signed on 28 February 2018, not in force, text not publicly available)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Mauritius (30 May 2016)	Yes	Yes	Yes	Yes	No	6 months	No ²⁸	Yes
Mexico (17 December 2017)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Moldova (16 May 1997)	No	Yes	No	Yes	No	6 months	Yes	Yes
Moldova (signed on 16 December 2016, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Mongolia (22 May 2000)	No	Yes	No	Yes	No	6 months	Yes	Yes
Montenegro (signed on 14 March 2012, not in force) ²⁹	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Morocco (31 May 2004)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Mozambique (signed on 24 January 2017, not in force, text not publicly available)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Netherlands (1 November 1989)	Yes	Yes	Yes	Yes	Yes	1 year ³⁰	Yes	Yes
Nigeria (signed on 2 February 2011, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Nigeria (signed on 8 October 1996, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Organisation of Islamic Conference (OIC) Investment Agreement (ratified by Turkey on 9 February 1991)	No	Yes	Yes	Yes	No	Yes	Yes	Yes
Oman (15 March 2010)	No	Yes	No	Yes	No	6 months	Yes	Yes
Pakistan (3 September 1997)	No	Yes	No	Yes	No	6 months	Yes	Yes
Pakistan (signed on 22 May 2012, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Philippines (17 February 2006)	Yes ³¹	Yes	Yes ³²	Yes	No	3 months	No	Yes
Poland (19 August 1994)	Yes	Yes	Yes	Yes	Yes	12 months	No	No ³³
Portugal (19 January 2004)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes



BIT contracting party or MIT ¹	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET) ²	Expropriation	Protection and security ³	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period ⁴	Local courts ⁵	Arbitration
Qatar (12 February 2008)	No	Yes	No	Yes	No	6 months	Yes	Yes
Romania (8 July 2010)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Russia (17 May 2000)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Rwanda (signed on 3 November 2016, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Saudi Arabia (5 February 2010)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Senegal (17 July 2012)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Serbia (10 November 2003)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Serbia (signed on 30 January 2018, not in force, text not publicly available)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Singapore ³⁴ (27 March 2010, replaced by Singapore FTA)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Slovakia (11 December 2013)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Slovenia (19 June 2006)	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
Somalia (signed on 3 June 2016, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
South Africa (signed on 23 June 2000, not in force)	No	Yes	No	Yes	No	6 months	No	Yes
Spain (3 March 1998)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
State of Palestine (signed on 5 September 2018, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Sudan (signed on 19 December 1999, not in force)	No	Yes	No	Yes	No	6 months	Yes	Yes
Sudan (signed on 30 April 2014, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Sweden (8 October 1998)	Yes	Yes	Yes	Yes	No	6 months ³⁵	Yes	Yes
Switzerland (21 February 1990)	Yes	Yes	Yes	Yes	Yes	12 months	Yes	Yes
Syrian Arab Republic (3 January 2006)	Yes	Yes	Yes	Yes	No	6 months ³⁶	Yes	Yes
Tajikistan (24 July 1998)	No	Yes	No	Yes	No	6 months ³⁷	Yes	Yes
Tanzania (3 January 2017)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Thailand (21 July 2010)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Tunisia (28 April 1994)	No	Yes	No	Yes	No	1 year ³⁸	Yes	Yes
Tunisia (signed on 27 December 2017, not in force, text not publicly available)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Turkmenistan (13 March 1997)	No	Yes	No	Yes	No	6 months	Yes	Yes
Ukraine (21 May 1998)	No	Yes	No	Yes	No	6 months	No	Yes
Ukraine ³⁹ (signed on 9 October 2017, not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
United Arab Emirates (24 July 2011)	No	Yes	Yes	Yes	Yes	6 months	Yes	Yes
United Kingdom (22 October 1996)	Yes	Yes	Yes	Yes	Yes	1 year	Yes	Yes ⁴⁰



BIT contracting party or MIT ¹	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET) ²	Expropriation	Protection and security ³	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period ⁴	Local courts ⁵	Arbitration
United States of America (18 May 1990)	Yes	Yes	Yes	Yes	Yes	1 year ⁴¹	Yes	Yes
Uzbekistan (18 May 1995)	No	Yes	No	Yes	No	6 months	Yes	Yes
Uzbekistan (signed on 25 October 2017, not in force) ⁴²	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Vietnam (19 June 2017)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Yemen (31 March 2011)	No	Yes	No	Yes	No	6 months	No	Yes
Zambia (6 May 2020)	Yes	Yes	Yes	Yes	No	6 months	No	Yes

FTAs ⁴³	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
Korea (Investment chapter's entry into force, 1 August 2018)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Lebanon (signed on 24 November 2010, not in force, text not publicly available)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Singapore (1 October 2017)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes ⁴⁴
Sudan (signed on 27 December 2017, not in force, text not publicly available)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

II Qualifying Criteria

2 Definition of investor

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

Issue	Distinguishing features in relation to the definition of 'investor'
Broad definition	Generally, the standard formulation of the investor reflects the relevant provision in Turkey's Model BITs covering both natural persons and legal persons. The 2009 Model BIT of Turkey, different from the 2000 Model BIT, requires a legal person or natural person to have made an investment in the territory of a contracting party in order for such person to fall within the investor definition. Treaties executed after 2011 generally follow the 2009 Model BIT's formulation (eg, Benin and Cameroon).
Natural persons	In the Model BITs of Turkey (2000 and 2009): natural person is defined as 'natural persons deriving their status as nationals of either party' (a contracting party in Model BIT 2009) (according to its applicable law in Model BIT 2000). Some treaties, instead of providing 'natural persons' wording or any other general wording or definition, specifically refer to investor's nationality or residency, such as 'citizens of Turkey' or 'permanent residents of Australia' (Australia), 'Turkish national', 'Cuban citizen' (Cuba), 'physical persons' (Denmark). The ECT defines 'natural person investor' as (i) 'having citizenship', (ii) 'having nationality', or (iii) 'who is permanently residing in that contracting party'. The Belarus (2018) BIT exceptionally provides a detailed explanation for a natural person who possesses a 'dual nationality'. Accordingly, such person shall be deemed to possess exclusively the nationality of the state of his or her 'dominant and effective nationality'.



Issue	Distinguishing features in relation to the definition of ‘investor’
Legal persons	<p>The 2000 Model BIT defines legal persons as ‘corporations, firms or business associations incorporated or constituted under the law in force of either of the parties and having their headquarters in the territory of that party’, and Turkey’s treaties executed before 2011 generally follow this definition (eg, Croatia, Denmark), although there are certain exceptions requiring the investor to have business activities (eg, India) or commercial and/or investment activities (eg, Malaysia), or to have made an investment (eg, Morocco) in the host state.</p> <p>Turkey’s BITs that are executed after 2011 generally follow the legal person investor definition provided in the 2009 Model BIT; however, there are variations from the 2009 Model BIT’s formulation. Legal persons are defined as ‘corporations, firms, business partnerships incorporated or constituted under the law in force of a contracting party and having their registered offices together with substantial business activities in the territory of that contracting party’ in the 2009 Model BIT, however, in some treaties, legal person definitions include ‘privately or governmentally owned or controlled legal entities (eg Benin, Kuwait, UAE), legal entities with the exception of non-profit organisations (eg, Kenya, Bosnia and Herzegovina), any juridical person incorporated or constituted (eg, Estonia) or a company or other organisation (the ECT) wordings. Some treaties also require investment intention in the definition as ‘provided that they invested or intending to invest’ (Albania). Some others require the legal person to ‘have effective economic activities’ (eg, Chile). Also, a few BITs provide that the legal person investor may also be a legal person having its ‘seat [...] in a third country with predominant interest of an investor of other contracting party’ (eg, Finland, Sweden). The Finland BIT also provides that purely contractual relations alone do not constitute a predominant interest.</p> <p>A few other BITs, while requiring the investment to have been made in the host state, also seek for this investment to be made in accordance with the host state’s legislation (eg, Romania (2010)) or legal person to be competent to make investments as per host state’s legislation (eg, Russia).</p> <p>There are other variations from Turkey’s Model BITs. As an example, the Lebanon BIT includes holding and offshore companies into the investor definition, while the Malta BIT specifically excludes branch, liaison and representative offices from the investor definition.</p>
Permanent residents	<p>Under some of Turkey’s treaties (eg, Australia, the ECT) persons who are permanently residing in the relevant country are also included in the investor definition, although subject to certain exceptions. The Argentina BIT denies providing protection to nationals of a contracting party in the event that they had a permanent residency in the host state for more than two years at the time of making the investment in the host state unless they prove that the investment has been admitted from abroad.</p>
Denial of benefits	<p>A few of Turkey’s treaties (eg, Australia, Azerbaijan, Gabon, Gambia, Pakistan (2012), Rwanda) allow the parties to deny providing benefits set forth in the relevant treaty under certain circumstances. A party may deny to provide benefits under the treaty if the investor of the other party has ‘no substantial business activities in the territory [of such Party]’ (eg, Gabon, Gambia, Pakistan (2012), Rwanda) or is ‘legal person of a Party [that] is owned or controlled by a citizen or a legal person of any third country’ (Australia, Azerbaijan, US). In that case, the relevant party needs to notify the other party for the denial of benefits (eg, Gabon, Gambia, Pakistan (2012), Rwanda).</p>

3 Definition of investment

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

Issue	Distinguishing features in relation to the concept of ‘investment’
Broad definition	<p>Investment definitions in Turkey’s BITs are generally broad, asset based and mostly include ‘every kind of/all type of assets including but not exclusively/limited to’ wording by listing different asset types as examples. Recent Turkish treaties, however, tend to define investment more narrowly and tend to specify what is and what is not an investment (eg, Mexico, Uzbekistan (2017)).</p>
Direct or indirect investment	<p>Although most of the treaties generally refer to investments without specifying whether they are direct or indirect investments, some treaties emphasise that they cover direct investments (eg, Spain, Qatar, South Africa, Tajikistan, Denmark).</p>
Control of assets	<p>Some of Turkey’s BITs extend the investment definitions to the assets controlled by the investors (eg, Bangladesh (1990), Sweden, Finland and US). In some of these BITs, indirect control is specifically mentioned (eg, Singapore FTA, Finland and Sweden), while in some others, the control is not specified as being direct or indirect (eg, India). Control or ownership through an affiliate or a subsidiary is also referred in some of these treaties. As an example; the Singapore FTA and Jordan (2016) BITs refer to assets owned or controlled by an investor, while the Netherlands, Finland, Bangladesh (1990), Sweden and US BITs apply to investments owned or controlled by the investor through subsidiaries or affiliates, wherever located.</p>



Issue	Distinguishing features in relation to the concept of ‘investment’
Alteration of form of the assets	A number of Turkey’s BITs provide that any alteration of (or change in) the form in which the assets are invested (and reinvested) shall not affect their qualification as investments (eg, Australia, China (1994) and South Africa). Some BITs require that such alteration should be in line with or subject to the laws of the host state (eg, Israel, Saudi Arabia), and some of them provide certain other requirements, such as alteration being in line with investment approval granted for original investment (eg, Malaysia) or being comprised within the investment definition provided in the treaty. In some others, it is provided that extensions, alterations or changes in an investment made according to law and regulations will be considered as a new investment (eg, Morocco).
Compliance with the local laws	A number of treaties specify that the investment must be made in accordance with the laws of the host state (eg, Greece, Israel and Libya).
Commencement of treaty protection	A vast number of treaties specify that the treaty protects investments made both before or after the entry into force of the treaty (eg, Qatar, Oman, BLEU). Some treaties specifically provide that they will be applicable to investments made or acquired after the treaty’s entry into force (eg, Bosnia and Herzegovina). Some treaties cover investments made after a specific date (eg, Bulgaria).
Minimum shareholding threshold	In the recent BITs, especially in the treaties signed after 2011 (most of them are not in force yet), there is a trend to limit coverage as to investments in the nature of acquisition of shares or voting power, through stock exchanges, with a certain equity percentage, which is mostly foreseen as 10 per cent (eg, Azerbaijan, Kuwait, Bangladesh (2019), Libya and Pakistan (2012)).
Business activity related investment	Most of the recent BITs signed after 2011 (most of them are not in force yet) provide that an asset should be connected to business activities and acquired for the purpose of establishing lasting economic relations in the territory of a contracting party to be considered as an investment (eg, Azerbaijan and Colombia). Also, the Mexico and China (2015) BITs require that asset should be connected to business activities, and the Poland BIT refers to ‘assets connected with economic activities’.
Certain characteristics (similar to Salini test)	Some of the recent BITs of Turkey require an asset to carry certain characteristics in order to fall within the investment definition, such as expectation of (steady) gain and profit, commitment of capital or other resources, assumption of risk, significance for the development of the host state. For example, the Colombia, Georgia (2016) BITs, and Korea and Singapore FTAs seek for most or at least some of these characteristics.
Exclusion of certain assets	Under certain new treaties of Turkey all or certain loan agreements (eg, Uzbekistan (2017), Ghana), claim to money arising from certain type of commercial contracts (eg, Ghana) (although subject to different conditions in different treaties), certain types of debts (eg, Mexico) or public debt operations (eg, Colombia and Ghana) are excluded from the investment definition.
Admission/approval of an investment	Some treaties of Turkey require the investment to be admitted by the host state subject to its laws and investment policies to benefit from treaty protections (eg, Australia, Chile).

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?

Issue	Distinguishing features of the fair and equitable treatment standard
Fair and Equitable Treatment (FET) Standard	Generally, Turkey’s treaties grant investments FET standard (see the chart above). Both the 2000 and 2009 Turkey Model BITs provide that the parties ‘shall at all times be accorded fair and equitable treatment’. Usually the Turkey’s treaties include the same wording as the Model BITs. A number of Turkey’s treaties (eg, Korea FTA, Singapore FTA and Colombia BIT) provide a definition of FET by stating what constitutes or does not constitute FET.
Treaties not including Fair and Equitable Treatment	The treaties that do not include such provision are usually signed before 2011. Even though some of these BITs include that ‘fair and equitable treatment is desirable’ in the preamble section of the treaties (eg, Egypt, Macedonia, Mongolia and Rwanda), they miss such treatment in the treaty scope.
Minimum Standard of Treatment	Certain BITs of Turkey (eg, Cameroon, Bangladesh (2019), Azerbaijan) link the FET standard with the customary international law minimum standard of treatment of aliens.



5 Expropriation

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

Issue	Distinguishing features of the 'expropriation' standard
Scope of protection against expropriation	Turkey's BITs provide protection against expropriation. In almost all the BITs, this protection includes protection against expropriation, nationalisation, direct and indirect measures having equivalent effect of nationalisation or expropriation. The Netherlands and Philippines BITs do not specifically state the wording 'expropriation' or 'nationalisation' but refer to 'any measure depriving, directly or indirectly an investor [...] of their investments'. Exceptionally, UAE BIT states that the investments shall not be 'frozen, blocked or sequestered'.
Criteria for such protection	Almost all of the Turkey's BITs and the ECT provide that the investments can be expropriated for 'public purposes', in 'a non-discriminatory manner', 'in accordance with due process of law' and 'in accordance with the general principles of treatment provided' in the article relating to 'Promotion and Protection of Investment' as stated in both 2000 and 2009 Model BITs. The Australia BIT narrows down the public purpose criteria by stating that it will be related to the 'internal needs' of the relevant party.
Compensation	All Turkey's treaties, subject to few exceptions and conditions, allow expropriation upon prompt, full, effective, adequate or just compensation. Some of Turkey's treaties require that compensation be equivalent to either of genuine, true or market value or real market value, as the case may be, when the expropriation is made or when it is publicly known (eg, UK, Algeria, Bangladesh (2019)). In some of the treaties, it is stated that the compensation must be paid without delay and include interest (eg, Korea FTA).
Valuation	None of Turkey's Model BITs foresee valuation of the compensation, they rather link the value to market value or real market value in majority of cases. A few of the BITs (eg, Australia, Oman and Rwanda) foresee details for the valuation.
Interest	Some of Turkey's treaties (eg, Australia, France, Italy, Japan, the ECT) provide that compensation owing to expropriation and/or nationalisation, shall include interest.
Review	A number of Turkey's BITs (eg, Austria, Chile, Denmark, Ghana, Philippines and Thailand) include the provision that the expropriation and the amount of expropriation can be subjected to review by the relevant authorities such as judicial, administrative, independent authorities. The ECT states that the affected investor shall have the right to 'a prompt review, under the law [...] by a judicial or other competent and independent authority', and the OIC Investment Agreement sets forth that 'investor shall have the right to contest the measure of expropriation in the competent court of the host state'.

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?

Issue	Distinguishing features of the 'national treatment' and/or 'most favoured nation' standard
Scope of national and most favoured nation (MFN) treatments	Most of Turkey's BITs include both of NT and MFN treatment standards. The Model BITs of Turkey dated 2000 and 2009 require investments to be permitted or admitted, in similar or like circumstances, no less favourable than investments of investors of a third country; and for the investments that are established, treatment no less favourable than investments of Turkey's investors, in similar or like circumstances have been provided. However, some BITs also include limitation to such scope, which are mentioned below.
Limitation to the standard	<p>There are some BITs only providing MFN treatment and national treatment protection to the investors, once the investment is established, as to the management, maintenance, use, enjoyment or disposal of their investments (eg, Mexico).</p> <p>Some of Turkey's treaties signed before 2011 include carve-outs from the MFN and/or national treatment standards mostly with regard to existing or future agreements regarding custom union, free trade, economic integration, bilateral tax treaties (eg, Morocco, Nigeria (1996), Oman and Romania). Some of the treaties signed after 2011, however, extend the carve-outs to procedural issues such as dispute resolution clauses (eg, Mauritius, Rwanda, Nigeria (2011) and Pakistan (2012)). The ECT aberrantly regulates that the contracting parties endeavour to limit national treatment and MFN treatment exceptions to the minimum.</p> <p>A limitation on national treatment is included in a few BITs, such as the Vietnam and Uzbekistan (2017) BITs, which limit the application of national treatment after the establishment if the treatment relates to the acquisition of land and real estates, and real rights upon them.</p>



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?

Issue	Distinguishing features of the 'protection and security' standard
Formulations of the standard	A majority of Turkey's BITs include protection and security standard (see the chart above). They generally use the standard wording of 'full protection and security', while some BITs diverge from the standard formula. For instance, Montenegro, Kuwait, Libya and Sweden BITs only provide 'full protection', the Switzerland BIT only provides that the contracting parties will 'protect' the investments, Slovenia BIT only provides 'full and constant protection', while the ECT provides the 'most constant protection'. The Serbia BIT (2003) exceptionally provides 'legal protection' only, and the OIC Investment Agreement foresees the obligation to provide 'adequate' protection and security.
Treaties not including protection and security standard	The treaties that do not include such provision are usually signed before 2011. Some treaties, such as the Egypt, Jordan (2006), Macedonia and Malta BITs, do not include provisions regarding the protection and security in their text but do include it in their preambles.
Limitations to the standard	Turkey's BITs generally provide protection and security without referring to specifics. Some BITs (eg, Tanzania, Ukraine (2017)) link the protection and security to customary international law minimum standard of treatment of aliens. There are certain other exemptions to this standard. As an example, the ECT provides that treatment shall not be 'less favourable than that required by international law, including treaty obligations', and the BLEU BIT includes an exception in a manner that taking 'measures required to maintain public order' shall not constitute a breach of host state's obligation to provide protection and security. A number of Turkey's treaties (eg, Korea FTA, Singapore FTA and Colombia BIT) provide a definition of 'full protection and security'.

8 Umbrella clause

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

Issue	Distinguishing features of any 'umbrella clause'
Formulations of the standard	Turkey's BITs rarely include umbrella clauses (eg, Denmark, Germany, US, Netherlands). None of the treaties signed after 2011 (mostly not in force yet) include an umbrella clause. The umbrella clauses present in Turkey's BITs are generally formulated as 'observance of any obligation or commitment that the contracting parties may have entered into with regards to investments of investors of the other contracting party'.

9 Other substantive protections

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

Issue	Other substantive protections
Non-impairment	Most of Turkey's treaties, including the ECT include a provision prohibiting contracting parties from impairing, by unreasonable or discriminatory measures, the management, maintenance, use, enjoyment or disposal of investments (eg, Ghana, Afghanistan, Azerbaijan). The wording of such provision varies but the general formulation of the provision is similar.
State of emergency/ conflict/civil unrest	Most of Turkey's BITs provide a right to compensation for investors in the event of emergency, conflict, civil unrest (eg, Australia, Bahrain, Cuba, Iran, Kuwait, Portugal). Such right for compensation is either provided under the provision of expropriation (eg, Bahrain, Cuba, Croatia) or a separate provision stipulated for compensation for losses (eg, Australia, Iran, Kuwait, Portugal). Almost in all of the treaties including such provision, the provision accords that the investor that suffers loss owing to such extraordinary situations shall be accorded MFN treatment. Some BITs (eg, China (2015), Denmark, Macedonia) exceptionally provide that, in addition to MFN treatment, the investors shall also be accorded national treatment.
Compensation for losses	As stated in the above section, an obligation to compensate the losses born by the investor due to a state of emergency or conflict or civil unrest are foreseen in some of Turkey's treaties. Some of Turkey's BITs (eg, Austria, Albania and Finland) only foresee compensation resulting from expropriation, nationalisation or similar measures; majority of Turkey's treaties rather foresee MFN treatment in the case of losses incurred owing to extraordinary circumstances.



Issue	Other substantive protections
General exceptions and scope of application	Some of Turkey's treaties, mostly recent treaties signed after 2011 (mostly not in force) (eg, Azerbaijan, Finland, Israel) and the ECT include general exceptions to which the relevant treaty or certain provisions of treaty will not apply. These specific circumstances generally include measures relating to security interests, public order, human, animal and plant life, protection of environment and conservation of natural resources. In addition, some of the treaties (eg, Egypt, Kazakhstan and Thailand) provide that the treaty shall not apply to taxation measures. A few of Turkey's treaties, mostly recent treaties signed after 2011, tend to exclude certain matters from the scope of application of the treaty, such as investments arising out of criminal activities, adopted measures with respect to the financial sector (eg, Colombia), 'subsidies or grants provided by a Contracting Party or state enterprise of the contracting party including, government supported loans, guarantees and insurance' (eg, Zambia).

IV Procedural Rights

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

Issue	Procedural rights
Scope of disputes	Scope of disputes in Turkey's treaties is generally provided broadly. Turkey's Model BITs of 2000 and 2009 (although there are certain carve-outs in the 2009 Model BIT, as explained below) refer to disputes between the investor and the host state in connection with investor's investment. Most of Turkey's BITs include the same or similar wordings. Treaties that do not follow the Model BITs' wordings, also cover a broad range of disputes.
Limitations on the scope	<p>Although the scope of disputes in Turkey's treaties is generally provided broadly, some of Turkey's BITs limit such a scope. Turkey's Model BIT of 2009 provides that the disputes can be submitted to ICSID or other international dispute settlement mechanism provided that the dispute is (i) arising directly out of investments activities, (ii) which have obtained necessary permission, if any, (iii) in conformity with the relevant legislation of Turkey on foreign capital and that (iv) effectively started. Some treaties include all of these limitations (ie, limitations listed above as (i), (ii), (iii) and (iv)) (eg, Azerbaijan, Colombia, Pakistan (2012)), while there are also other treaties including not all but a few of these criteria (eg, Uzbekistan (2017) Georgia (2016)). Some treaties include such limitation only for ICSID arbitration (eg, Moldova (2016)).</p> <p>Turkey's Model BIT of 2009 also provides that disputes related to property or real rights upon real estates cannot be submitted to international dispute settlement mechanism or ICSID. This carve-out generally included in treaties signed after 2011 (eg, Gabon, Pakistan (2012)).</p> <p>There are other limitations in Turkey's certain BITs: Some of Turkey's BITs, especially treaties executed after 2011, limit their application to disputes related to certain matters or provisions of the treaty (eg, Colombia, Poland BITs and Singapore FTA), or they simply define the disputes falling under the scope of the treaty (eg, Netherlands). A few of BITs regulate that if an investment in the form of acquisition of shares or voting power represents less than 10 per cent of the company, then disputes arising out thereof cannot be submitted to (international) arbitration (eg, Australia, Kenya, Cameroon). There are also a few other treaties requiring investment, inter alia, to be legally admitted (eg, Oman), while some other treaties require that the dispute is in connection with a treaty breach and that the investor has incurred loss or damages arising out there, for arbitration to be applicable to such dispute (eg, Colombia, Guatemala). Under Qatar BIT, only disputes arising directly out of an investment may be subjected to arbitration.</p> <p>In addition, although some of Turkey's treaties provide that they are applicable to the investments made prior to or after the entry into force of the treaty, they also specifically provide that, the treaty will not be applicable to the disputes arose before the entry into force of the treaty (eg, Colombia, Cambodia).</p>
Limitations as to MFN standard	Some of the BITs signed after 2011 specifically prohibit the right to import more favourable dispute resolution clauses from other treaties by using MFN treatment standards to dispute resolution clauses (eg, Mauritius, Ukraine (2017), Nigeria (2011)).
ICSID arbitration	Except for a few examples (eg, Russia, Iran and Cuba), almost all Turkey's BITs (that are publicly available) allow ICSID arbitration. Some of them specifically mention that it will be available if both states are party to the Washington Convention (eg, Egypt and China (1994)).



Issue	Procedural rights
Ad hoc arbitration	Most of the treaties also allow investors to pursue an arbitration claim through UNCITRAL arbitration and/or any other arbitration institution or rules as is mutually agreed by the disputed parties (eg, Mexico, Ghana, Guatemala). Noticeably, Iran BIT and ECO Investment Agreement only refer to UNCITRAL rules. A few treaties limit application of UNCITRAL rules with disputes arising out of certain matters or provisions of the treaty (eg, Bulgaria and China (1994)). There are some other treaties referring to specific arbitration institutions, such as the Stockholm Chamber of Commerce (eg, Russia BIT and the ECT), ICC (eg, Croatia, Jordan (2006) and Greece), ISTAC (eg, Ukraine (2017)), generally in addition to ICSID arbitration. A few of Turkey's BITs (eg, Austria, Finland, UK) only refer to ICSID, while OIC Investment Agreement only refers to ad hoc arbitration without referring to any institutional arbitral rules.
Host state's consent to arbitrate	A few of Turkey's BITs expressly include host state's consent to arbitrate (eg, Greece), while wording of a few others may be interpreted as the host state's consent to arbitrate is to be sought before the initiation of arbitration (eg, Japan, Poland and Singapore FTA). Additionally, Turkey's consent under the ECT is conditional regarding the disputes, previously submitted to dispute resolution mechanisms provided under the ECT.
ICSID conciliation/ additional facility	Some of Turkey's BITs refer to ICSID Additional Facility Rules (as an alternative to ICSID arbitration where both contracting parties are not party to the Washington Convention) or ICSID conciliation (eg, Finland, Israel, Sweden).
Notice requirement	Most of Turkey's treaties include a general notice requirement to be issued before or for the initiation of amicable settlement procedure, while some others specifically require a notice of intent for arbitration (eg, Mexico and Colombia). Some of those treaties also specify what should be indicated in the notice.
Problematic wording	Some of Turkey's treaties (eg, Turkmenistan, Uzbekistan (1995), Kazakhstan and Kyrgyzstan) include a problematic wording as to whether recourse to local courts is mandatory or optional. Accordingly, after regulating the right to resort to arbitration, they set forth 'provided that, if the investor concerned has brought the dispute before the courts of justice of the party that is a party to the dispute and a final award has not been rendered within one year' or a similar wording. In Turkish versions of the Kyrgyzstan, Uzbekistan (1995), Kazakhstan and Turkmenistan BITs, it is formulated as if the recourse to local courts is mandatory, while in Turkish versions of some other treaties with the same or similar wording (eg, Netherlands), it is as if the recourse to local courts is optional.
Recourse to local remedies	Turkey's BITs generally do not include mandatory recourse to local courts or other remedies before going to arbitration. They rather provide the investors with a right to choose between bringing the claim to local courts or investment arbitration. Some of Turkey's BITs provide that arbitration may be initiated if the investor did not bring the dispute before local courts, and if did, award is not rendered within a certain period of time (eg, Finland, Sweden), or arbitration cannot be initiated during the term that the case is pending (eg, Iran BIT and ECO investment agreement; however, the latter also provides that the parties may agree otherwise). Iran BIT and ECO investment agreement further provide that in the event that a final judgment is rendered by the host state's courts, the investor cannot resort to arbitration. Spain BIT allows investor to withdraw its claim that was previously submitted to national court, and then submit it to arbitration. The wording of some BITs (eg, Denmark and Austria) also provide that, the investor may resort to arbitration provided that there has not been rendered a final award (if the investor concerned has brought the dispute before the host state's courts). A few of Turkey's treaties require the investor to submit the dispute to administrative review in accordance with applicable law if there is such a requirement in applicable law, for a specific period of time, as a condition for being entitled to submit the dispute to arbitration (eg, China (2015), Ghana and Colombia).
Fork-in-the-road and no-U-turn (waiver) clauses	Some of Turkey's BITs, especially the recent ones signed after 2011, include fork-in-the-road provisions such that choice of forum will be final. Fork-in-the-road provisions in some BITs adopt slightly different approach. Accordingly, they provide that if the dispute is resorted to the local courts, the investor cannot at the same time resort to arbitration (eg, Oman, Mexico). The Singapore BIT provides that either party may refer the dispute to competent courts or arbitral tribunals as provided in the treaty; however, the investor's choice of forum will prevail. Turkey's BITs rarely envisage no-U-turn clauses, and if envisaged, they are generally together with fork-in-the-road provision (eg, Guatemala, Georgia (2016)). There are a few exceptional treaties having no-U-turn clauses without fork-in-the-road provision (eg, Australia) as well.
Cooling-off periods	Almost all of Turkey's treaties that are in force include a cooling-off period during which the amicable settlement will be sought, and such a period is generally is six months. Exceptions to this rule are limited: only 12 treaties (see above chart) provide a one-year or a 12-month cooling-off period (see also footnotes related with these exceptional cool-off periods, added to the chart), while Israel, Chile and Slovenia BITs and the ECT prescribe it as a three-month period. Libya BIT uncommonly prescribes a 90-day period. The OIC Investment Agreement does provide a compulsory conciliation but does not prescribe a cooling-off period. The Japan BIT does not prescribe a specific cooling-off period either. A few BITs provide the cooling-off period without directly linking it to amicable settlement methods but rather as a period before which the investor cannot submit the dispute to arbitration (eg, China (1994), Austria).



Issue	Procedural rights
Amicable settlement	Almost all of Turkey's treaties require for an amicable settlement method to be applied. The most common methods are negotiation and consultation; however, third party procedures are also mentioned in some BITs, time to time, as a procedure to follow if negotiations or consultations fail (eg, Austria, BLEU and China (1994)).
Time limits	Several BITs of Turkey require a claim to be commenced within a specified time, varying from three years to six years (eg, China (2015), Colombia, Georgia (2016)). Belarus BIT (2018) provides this limitation as if it is a condition to the host state's consent to arbitrate.
Special procedural rules	Some of Turkey's treaties provide special procedural rights within the treaty as to number, selection and eligibility criteria of arbitrators, consolidation procedure, admissibility and competence review procedures, distribution of costs. Mexico, Guatemala, Australia, Colombia BITs and Singapore FTA, as an example, regulate some or all of the above-mentioned matters.
Restrictions on using diplomatic channels	A number of Turkey's treaties restrict pursuing matters related to disputes through diplomatic channels, except for certain circumstances (eg, Australia, Colombia, Portugal).
Applicable law	Some of Turkey's treaties, especially the ones signed after 2011, (eg, Croatia, China (2015), Georgia (2016), Mexico) provide the applicable law that will be applied in the case of a dispute. This provision stipulates which sources of law (eg, provisions of the treaty, national laws and regulations, principles of international law, special agreements relating to the investment) shall be taken into consideration in case of a settlement of a dispute. Exceptionally a few treaties also state which order shall take into consideration when applying such sources of law (eg, Romania).
Others	Exceptionally, Colombia BIT specifically regulates that mediation and conciliation may be sought parallel to arbitration by the mutual agreement of the parties. A few of Turkey's treaties restrict the right to apply treaty's dispute resolution clause if the international arbitration has been sought for the same dispute (eg, Kuwait). A few others, on the other hand, limit the remedies to which arbitral tribunal can decide on with the award (eg, China (2015), Colombia and Mexico), while some others limit the host state claims (eg, Australia, Kuwait and Oman). A few others authorise arbitral tribunals to decide on certain types of reliefs (eg, Mexico and Ghana). A small number of BITs provide that the insurer can also benefit from the dispute resolution clause (eg, Bulgaria). A small number of others provide that although the legal person is located in the host state, if the majority shareholders of such a legal person are nationals or companies of the other contracting party, then this legal person may benefit from the dispute resolution clause (eg, Sweden and Finland).

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

Starting from 2011, Turkey has been following the trend of new generation BITs. Turkey has a vast number of BITs that are signed but not yet in force. Fifteen of these treaties are signed with states with which Turkey already has a BIT in force (namely Bangladesh, Belarus, China, Georgia, Jordan, Tunisia, Nigeria, Sudan, Kyrgyzstan, Lithuania, Moldova, Pakistan, Serbia, Ukraine and Uzbekistan).

In such recent treaties, investment definitions are narrower. Treaty scope is limited with general exceptions such as human rights and environment-related measures. Umbrella clause is omitted. Although Turkey continues to provide investor-state dispute settlement provisions in the recent treaties, such treaties expand exceptions of MFN treatment to procedural issues such as dispute resolution clause.

Turkey has recently signed several FTAs; however, they are either not in force or their texts are not publicly available. There are also other FTAs that are currently under negotiation. Whether they include or will include an investment protection chapter is unknown.

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	In the case of a dispute against Turkey, initially the claim notices are sent to Presidency of Republic of Turkey. The Presidency direct the claim notices to the relevant Ministries.
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- 13 Which government department or departments manage investment treaty arbitrations on behalf of this country?

Government department that manages investment treaty arbitrations	The government department that initially manages such investment treaty arbitrations is the Presidency of Republic of Turkey. In practice, the Presidency authorises and directs the investment treaty arbitrations to the relevant ministries.
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- 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	Depending on the sector of the dispute, the relevant ministries in Turkey use their internal counsels. However, if needed, they resort to external counsel. Legal services to be procured by Turkish government or administrations for international arbitration proceedings are regulated under Public Procurement Law No. 4734. The relevant provision of the said law sets forth that these services can directly procured without a tender, from Turkish or foreign lawyers or attorney partnerships.
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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	The Washington Convention was entered into force for Turkey on 2 April 1989. Legislation implementing the Washington Convention is the Law No. 3460 and dated 27 May 1988, and Council of Minister's Decision No. 88/13325 and dated 7 October 1988. Turkey has ratified the Washington Convention with a reservation limiting ICSID's jurisdiction as to certain type of disputes, and a declaration regarding the settlement of disputes related to interpretation and application of the Washington Convention.
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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 New York Convention (NYC) was entered into force for Turkey on 30 September 1992. Legislation implementing the NYC is the Law No. 3731 and dated 8 May 1991, and Council of Minister's Decision No. 91/2151 and dated 15 August 1991. Turkey has ratified the NYC with two reservations. One of those reservations is a reciprocity reservation and the other one is a commercial transactions reservation, according to which Turkey will apply the NYC only to the disputes of a commercial nature as per Turkish laws.
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- 17 Does the country have legislation governing non-ICSID investment arbitrations seated within its territory?

Legislation governing non-ICSID arbitrations	Non-ICSID arbitrations seated in Turkey are subject to (i) International Arbitration Law No. 4686 (IAL), provided that the dispute bears the foreign element as defined under the said law, (ii) Civil Procedure Law No. 6100 if the dispute does not bear foreign element as defined under the IAL.
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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	To the best of our knowledge, Turkey has no history of non-compliance with adverse awards.
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19 Describe the national government's attitude towards investment treaty arbitration.

Attitude of government towards investment treaty arbitration	Signing of its first BIT in 1962 and having over 120 BITs that are signed, all with investment treaty arbitration clauses, Turkey has created a wide-reaching web of BITs with an objective of encouraging foreign investments in Turkey. Turkey also executed several MITs and FTAs including investment protection clauses with such an aim. Turkey's approach to the investment treaty claims is, so far, cooperative.
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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	Turkey has promptly honoured the awards rendered in favour of the investors; therefore, to date no investment treaty awards have been sought to be enforced against Turkey in local courts to the best of our knowledge.
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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
Foreign Direct Investment Law No. 4875 (FDIL) ⁴⁵	No	Yes – foreign direct investments cannot be expropriated or nationalised unless the public interest requires otherwise, and a consideration thereof is paid.	Yes – right to employ foreign personnel and open liaison offices, right to transfer funds, freedom to invest and national treatment.	Yes	Yes ⁴⁶

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)	Turkey is a member of MIGA. MIGA provides political risk insurances, against certain risks such as expropriation, damages due to war and civil disturbances, host countries' breach of contract or failure to honour financial obligations, etc, to investors from a member country for their qualifying investments in another member country.
The Islamic Corporation for the Insurance of Investment and Export Credit (ICIEC)	Turkey is one of the members of Islamic Development Bank and ICIEC, which provides foreign investors in member countries investment insurances against country risks, mainly risks of exchange transfer restrictions, expropriation, war and civil disturbance and breach of contract by the host government and eligibility criteria for investments that are not prohibited by Sharia. It also provides certain other insurances to export credit agencies and insurers, as well as banks and financial institutions.



IX Awards

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

Awards

Alapli Elektrik BV v Republic of Turkey, ICSID Case No. ARB/08/13, Award, 16 July 2012

Aktau Petrol Ticaret AS v Republic of Kazakhstan, ICSID Case No. ARB/15/8, Award, 13 November 2017

Aktau Petrol Ticaret AS v Republic of Kazakhstan, ICSID Case No. ARB/15/8, 21 June 2019 – The ad hoc committee issues its decision on annulment

ATA Construction, Industrial and Trading Company v Hashemite Kingdom of Jordan, ICSID Case No. ARB/08/2 – the ad hoc committee issued a procedural order taking note of the discontinuance of the annulment proceeding, 2011

Bayındır İnşaat Turizm Ticaret ve Sanayi AŞ v Islamic Republic of Pakistan, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005

Bayındır İnşaat Turizm Ticaret ve Sanayi AŞ v Islamic Republic of Pakistan, ICSID Case No. ARB/03/29, Award, 27 August 2009

Baymina Enerji Anonim Şirketi v Boru Hatları ile Petrol Taşıma Anonim Şirketi, ICSID Case No. ARB/14/35 – decision on jurisdiction 2016

Baymina Enerji Anonim Şirketi v Boru Hatları ile Petrol Taşıma Anonim Şirketi, ICSID Case No. ARB/14/35, Award, 18 March 2019

Barmek Holding AS v Republic of Azerbaijan, ICSID Case No. ARB/06/16, Decision on Provisional Measures, 29 August 2007 – settled

Bozbey İnşaat Sanayi ve Ticaret and Ömer Faruk Bozbey v Turkmenistan, UNCITRAL, Discontinuance, 16 August 2013 – discontinued

Cem Uzan v Republic of Turkey, SCC Case No. 2014/023, Award on Respondent's Bifurcated Preliminary Objection, 20 April 2016

Cementownia 'Nowa Huta' SA v Republic of Turkey, ICSID Case No. ARB(AF)/06/2, Award, 17 September 2009

Cengiz İnşaat Sanayi ve Ticaret AŞ v Libya, ICC Arbitration, Award, 3 December 2018

Erbil Serter v French Republic, ICSID Case No. ARB/13/22, Award – discontinued

Erhas and Others v Turkmenistan, UNCITRAL, Award, 8 June 2015

Europe Cement Investment and Trade SA v Republic of Turkey, ICSID Case No. ARB(AF)/07/2

Görkem İnşaat Sanayi ve Ticaret Limited Şirketi v Turkmenistan, ICSID Case No. ARB/16/30 – discontinued

İçkale İnşaat Limited Şirketi v Turkmenistan, ICSID Case No. ARB/10/24, Award, 2016

Libananco Holdings Co Limited v Republic of Turkey, ICSID Case No. ARB/06/8, Award, 2 September 2011

Ömer Dede and Serdar Elhüseyni v Romania, ICSID Case No. ARB/10/22, Award, 5 September 2013

Karmer Marble Tourism Construction Industry and Commerce Limited Liability Company v Georgia, ICSID Case No. ARB/08/19 – the Secretary-General issued a procedural order taking note of the discontinuance of the annulment proceeding, 2015

Kılıç İnşaat İthalat İhracat Sanayi ve Ticaret Anonim Şirketi v Turkmenistan, ICSID Case No. ARB/10/1 – the ad hoc committee's decision on annulment, 2015

Mağdenli Yer Hizmetleri ve Taşıma Anonim Şirketi v Kazakhstan, ICC Arbitration, Award, 8 November 2018

Motorola Credit Corporation, Inc v Republic of Turkey, ICSID Case No. ARB/04/21 – settled

PSEG Global Inc and Konya İlgin Elektrik Üretim ve Ticaret Limited Sirketi v Republic of Turkey, ICSID Case No. ARB/02/5, Award, 19 January 2004

Nabucco Gas Pipeline International GmbH in Liqu v Republic of Turkey, ICSID Case No. ARB/15/26 – discontinued

PSEG Global Inc. and Konya İlgin Elektrik Üretim ve Ticaret Limited Sirketi v Republic of Turkey, ICSID Case No. ARB/02/5, Award, 4 June 2004 – Decision on jurisdiction (attached to the Award), 2004

Rumeli Telekom AŞ and Telsim Mobil Telekomünikasyon Hizmetleri AŞ v Republic of Kazakhstan, ICSID Case No. ARB/05/16, Decision of the ad hoc Committee on the Stay of Enforcement, 19 March 2009

Rumeli Telekom AŞ and Telsim Mobil Telekomünikasyon Hizmetleri AŞ v Republic of Kazakhstan, ICSID Case No. ARB/05/16, Award, 29 July 2018, The ad hoc committee issued a Decision on the Application for Annulment

Saba Fakes v Republic of Turkey, ICSID Case No. ARB/07/20, Award, 14 July 2010

Sistem Mühendislik İnşaat Sanayi ve Ticaret AŞ v Kyrgyz Republic, ICSID Case No. ARB(AF)/06/1, Decision on Jurisdiction, 13 September 2007

Sistem Mühendislik İnşaat Sanayi ve Ticaret AŞ v Kyrgyz Republic, ICSID Case No. ARB(AF)/06/1, Award, 9 September 2009

Türkiye Petrolleri Anonim Ortaklığı v Republic of Kazakhstan, ICSID Case No. ARB/11/2, Award (embodying the parties' settlement agreement), 18 August 2014

Tulip Real Estate Investment and Development Netherlands BV v Republic of Turkey, ICSID Case No. ARB/11/28, Award, 10 March 2014



Turkcell İletişim Hizmetleri AŞ v The Islamic Republic of Iran, UNCITRAL, Award, 15 October 2014

Cem Selçuk Ersoy v Republic of Azerbaijan, ICSID Case No. ARB/18/6 – discontinued

Etrak İnşaat Taahut ve Ticaret Anonim Şirketi v Libya, ICC Arbitration

Federal Elektrik Yatırım ve Ticaret AŞ and Others v Republic of Uzbekistan, ICSID Case No. ARB/13/9 – decision on jurisdiction 2018

Gürüş İnşaat ve Mühendislik AŞ v Libya, ICC Arbitration

Güneş Tekstil Konfeksiyon Sanayi ve Ticaret Limited Şirketi and Others v Republic of Uzbekistan, ICSID Case No. ARB/13/19, Award, October 2019

Karkey Karadeniz Elektrik Üretim AŞ v Islamic Republic of Pakistan, ICSID Case No. ARB/13/1, Award, 22 August 2017 (revision proceedings continues)

Lotus Holding Anonim Şirketi v Turkmenistan, ICSID Case No. ARB/17/30, Award, 6 April 2020

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BM Mühendislik ve İnşaat AŞ v United Arab Emirates, ICSID Case No. ARB/17/20

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Reading list

Boden, D. (2010). Investment Arbitration and Sovereignty from a Turkish Law Perspective. *Ankara Bar Review*, 3(7). Retrieved from <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ankar3÷=25&id=&page=>

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Çal, S. (2009). Reciprocity and Provisional Application under the Energy Charter Treaty: Legal Aspects, *European Energy Law Report VI* (Eds. M. Roggenkamp ve U. Hammer), Intersentia. Pages 189–226.



Notes

- 1 The information as to the entry into force given herein is based on the list published by the Ministry of Industry and Technology of Republic of Turkey, which is available at <https://www.sanayi.gov.tr/assets/doc/anlasma-listesi.docx>. The signing date of the BITs and MITs that have yet to enter into force, however, is based on the date stated as the signing date within the text of the relevant treaty, if the treaty is publicly available; otherwise, signing date given in the above-mentioned list is taken into account.
- 2 If FET treatment is included in the preamble of a treaty, but not within its body, it is indicated as not including a FET clause.
- 3 If protection and security treatment is included in the preamble of a treaty, but not within its body, it is indicated as not including a protection and security clause. Please note that some of Turkey's BITs differ from standard formulation and only provide 'protection'. Such treaties only covering protection also indicated as 'yes' herein.
- 4 If the treaty in question specifically refers to a time period for amicable settlements, this period is considered as a cooling-off period. A few of the Turkey's treaties provide solely a time period before starting arbitration (without referring to any amicable settlement period or method), or provide such a time period along with the time period for amicable settlement. In case of a BIT or MIT providing such a period along with the time period for amicable settlement, the time period for amicable settlement is referred in the list as cooling-off period. In case of having solely a time period to be exhausted before starting arbitration in a BIT or MIT, however, such time period is referred as cooling-off period for such BITs or MITs.
- 5 The answer 'yes' indicates that the treaty in question grants the investors with the right to bring a dispute under the treaty before local courts. Please also note that Turkey's treaties do not contain restrictions/prohibitions on access to the local courts of the host state. However, certain treaties do not explicitly list the right to bring a dispute before local courts as an option. The answer 'no' indicates that the treaty in question does not implicitly or explicitly or through by reference to domestic law list the right to bring a dispute under the treaty before local courts as an option for settlement of disputes between investors and the contracting state.
- 6 Argentina BIT envisages a slightly different formulation of the standard by only providing legal protection and does not include other wording for 'protection and security'.
- 7 Austria BIT does not provide a specific cooling-off period for amicable dispute settlement, but a one year time period before starting arbitration as a cooling-off period.
- 8 Bangladesh (1990) BIT does not provide a specific cooling-off period for amicable dispute settlement, but a one year time period before starting arbitration as a cooling-off period.
- 9 Although Bangladesh (2019) BIT is not marked as in force in the list published by the Ministry of Industry and Technology of Republic of Turkey mentioned in footnote 1, Presidential Decision determining its entry into force date is published in the Official Gazette of Turkey dated 25 July 2019.
- 10 Belarus (2018) BIT provides that it consents to arbitration but its consent is 'conditional upon the submission of the dispute to... arbitration taking place within five years of the time at which the claimant became aware, or should reasonably have become aware, of a breach of an obligation under this Agreement causing loss or damage to the claimant or its investment'.
- 11 BLEU BIT does not provide a specific cooling-off period for amicable dispute settlement, but a one year time period before starting arbitration as a cooling-off period.
- 12 The review has been made from the French version, as the English version is not publicly available, although it provides that in case of divergence of interpretation the English version prevails.
- 13 China (1994) BIT's article VII (dispute resolution) does not provide a specific cooling-off period for amicable dispute settlement, but a one year time period before starting ad-hoc arbitration as a cooling-off period. However, the clause also provides ICSID arbitration without referring to any cooling-off period.
- 14 The review has been made from the Turkish version, as the English version is not publicly available, although it provides that in case of divergence of interpretation the English version prevails.
- 15 This term may be extended by mutual agreement of parties as per article 12 (3). It is also provided in article 12(5) that after such term has elapsed, a notice of intent is to be submitted to the contracting party; only after 90 days lapse from the notice of intent, then the investor may resort to arbitration.
- 16 Denmark BIT does not provide a specific cooling-off period for amicable dispute settlement, but a one-year time period before starting arbitration as a cooling-off period.
- 17 A Presidential Decision ratifying Djibouti BIT is published in the Official Gazette dated 5 March 2020; however, we could not confirm from the relevant governmental authorities whether or not it is ratified by Djibouti and/or entered into force.
- 18 The ECT provides that contracting parties listed in Annex ID choose not to give unconditional consent to international arbitration for disputes that have been previously submitted to a national court or tribunal or to a previously agreed procedure, and Turkey is one of the contracting parties listed Annex ID.
- 19 The review has been made from the Turkish version, as the English version is not publicly available, although it provides that in case of divergence of interpretation the English version prevails.
- 20 A Presidential Decision ratifying Ghana BIT is published in the Official Gazette dated 4 April 2020; however, we could not confirm from the relevant governmental authorities whether or not it is ratified by Ghana and/or entered into force.
- 21 The review has been made from the Turkish version, although it provides that in case of divergence of interpretation the English version prevails, as the English version is not available.
- 22 Although Guinea BIT is not marked as in force in the list published by the Ministry of Industry and Technology of Republic of Turkey mentioned in footnote 1, Presidential Decision determining its entry into force date is published in the Official Gazette of Turkey dated 31 December 2019.
- 23 Iran BIT states a slightly different formulation of the standard by only providing fair treatment which excludes the equitable treatment.
- 24 Although article 11 of Japan BIT refers to ICSID arbitration, it states that '[...]Contracting Party shall consent to ... arbitration at the request of such national or company in accordance with the provisions of the ICSID Convention[...]: Therefore, we understand that consent condition for ICSID arbitration would not be met unless the contracting party consents upon request for arbitration of the investor.
- 25 Korea BIT has been replaced by the investment chapter included in the Korean FTA; nevertheless, the relevant investment chapter provides that it "does not bind the parties in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of [the Korea FTA]".
- 26 Different than many BITs of Turkey, Korea BIT provides that the investor may bring the dispute before ICSID 'at any time after one year from the date upon which the dispute arose provided that the investor concerned has brought the dispute before the courts of justice of the Contracting Party that is a party to the dispute and there has not been rendered a final award'.
- 27 A Presidential Decision ratifying Mali BIT is published in the Official Gazette dated 4 April 2020; however, we could not confirm from the relevant governmental authorities whether or not it is ratified by Mali and/or entered into force.
- 28 Mauritius BIT does not grant the investor the right to bring the dispute to the local court, it provides three forums for arbitration, and provides that in case of election of one of these forums, the choice is final.
- 29 A Presidential Decision ratifying Montenegro BIT is published in the Official Gazette dated 5 March 2020; however, we could not confirm from the relevant governmental authorities whether or not it is ratified by Montenegro and/or entered into force.



- 30 Netherlands BIT does not provide a specific cooling-off period for amicable dispute settlement, but a one year time period before starting arbitration as a cooling-off period.
- 31 Philippines BIT envisages a slightly different formulation of the standard and provides that a 'fair and reasonable' treatment shall be accorded.
- 32 Philippines BIT envisages a slightly different formulation of the standard by only providing 'protection'.
- 33 Although article 8 of Poland BIT refers to ICSID and UNCITRAL arbitration, it states that the investor and the contracting party 'shall agree to refer the dispute' to arbitration. Therefore, we understand that consent condition for arbitration would not be met unless the contracting party consents upon request for arbitration of the investor.
- 34 Singapore BIT has been replaced by Singapore FTA, however, as Singapore FTA provides that all investments made pursuant to Singapore BIT will be governed by Singapore BIT, and the investors may submit an arbitration claim under Singapore BIT regarding any matter arising while Singapore BIT is in force, provided that no more than three years have elapsed since the date of entry into force of Singapore FTA, we have also reviewed Singapore BIT.
- 35 Sweden BIT does not provide a specific cooling-off period for amicable dispute settlement, but a six-month time period before starting arbitration as a cooling-off period.
- 36 Although there is a six-month cooling-off period in Syria BIT, there is also a one-year period as the period within which no final court decision is rendered and which is a condition for recourse to arbitration.
- 37 Although there is a six-months cooling-off period in the Tajikistan BIT, there is also a one-year period as the period within which no final court decision is rendered and which is a condition for recourse to arbitration.
- 38 Tunisia (1994) BIT does not provide a specific cooling-off period for amicable dispute settlement, but a one-year time period before starting arbitration as a cooling-off period.
- 39 The review has been made from the Turkish version, as the English version is not publicly available, although it provides that in case of divergence of interpretation the English version prevails.
- 40 We believe that the wording of 'through the pursuit of local remedies or otherwise' in article 8/2 of UK BIT creates confusion whether it covers the local courts or not. In addition, the Turkish version of the BIT does not cover the wording 'otherwise'.
- 41 US BIT does not provide a specific cooling-off period for amicable dispute settlement, but a one year time period before starting arbitration as a cooling-off period.
- 42 A presidential decision ratifying the Uzbekistan (2107) BIT was published in the Official Gazette dated 2 April 2020; however, we could not confirm from the relevant government authorities whether or not it has been ratified by Uzbekistan and/or entered into force.
- 43 Turkey currently has more than 20 FTAs in force; however, aside from the ones specified in this section as publicly available, they do not include an investment chapter. Additionally, there is no information as to whether not-in force FTAs (texts of which are not publicly available) include investment chapters.
- 44 Singapore FTA provides the consent to arbitration as conditional upon certain actions of the claimant.
- 45 FDI, while determining its scope of application envisages foreign investor and foreign direct investment definitions. Accordingly, foreign investor is defined as '(i) real persons who possess foreign nationality and Turkish nationals resident abroad, and (ii) foreign legal entities established under the laws of foreign countries and international institutions, who make foreign direct investment in Turkey'. Foreign direct investment, on the other hand, is defined as:
- '(i) Establishing a new company or branch of a foreign company by foreign investor,
 - (ii) Share acquisitions of a company established in Turkey (any percentage of shares acquired outside the stock exchange or 10 per cent or more of the shares or voting power of a company acquired through the stock exchange) by means of, but not limited to the following economic assets:
 - 1) Assets acquired from abroad by the foreign investor:
 - Capital in cash in the form of convertible currency bought and sold by the Central Bank of the Republic of Turkey,
 - Stocks and bonds of foreign companies (excluding government bonds),
 - Machinery and equipment,
 - Industrial and intellectual property rights,
 - 2) Assets acquired from Turkey by foreign investor:
 - Reinvested earnings, revenues, financial claims, or any other investment-related rights of financial value, Commercial rights for the exploration and extraction of natural resources.'
- For an investor or investment to benefit from FDI's provisions, they should be falling under these definitions.
- 46 FDI does not directly stipulate an arbitration clause but enables the foreign investor to have one in their contracts. It provides that, for the disputes arising out of investment agreements subject to private law or concession agreements signed by foreign investors (as defined in FDIL) with Turkish administrative authorities, subject to parties' agreement and conditions set forth in the relevant legislation are fulfilled, arbitration may be resorted in addition to local courts.





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BODEN LAW

Boden Law is a top tier law firm based in Istanbul that provides advice and representation particularly with respect to cross-border transactions, project development and finance transactions, mergers and acquisitions, joint ventures, alliances and dispute resolution with special emphasis on arbitration, and restructuring and creditor rights. Energy, infrastructure and mining and metals are the core industries that the firm is focused on. The firm differentiates itself with its industry specific expertise in energy, infrastructure and mining sectors. With the understanding complex dependencies between and within the energy and natural resources sectors, the firm offers a unique energy practice.

Clients of the firm include Turkish and international energy companies, banks, financial institutions (including investment banks and hedge funds) and private equity investors. Energy corporations constitute a large portion of Boden Law's clientele: the firm has advised public and private utility companies and independent power generators mining companies, developers, industrial and commercial customers, equipment suppliers, commodity traders, brokerage and exchange firms, electronic exchanges and clearing organisations or trade associations.

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