



INVESTMENT TREATY ARBITRATION

GENERAL NOTES FOR AUTHORS

Some of the questions and tables require you to identify “issues”. For the purposes of this questionnaire an “issue” is any significant possible pitfall connected to a BIT right (or similar) that an investor should be aware of. It may be a feature of just one treaty, or several. We’d like you to summarise any such issue in keywords in one column, then describe it in 100 words or fewer in the next column.

It’s especially important in these sections to be very clear whether you’re identifying all the BITs affected, or just some. If in doubt, lean on being exhaustive about which treaties are affected. The idea is to save readers time, not force them to research the whole treaty programme from scratch.

We suggest you study the example answers on Australia before embarking on your own. You’ll see the author managed to be pretty complete in many of the answers (eg “Five Australian treaties use [a particular phrase]”).



Please note:

- Please provide your answers in the tables provided in this document.
- *Please note that the text in italics will not appear online and is intended only for the author's information. Please read the guidance notes and explanatory footnotes carefully.*
- Please ensure you provide the author and contact information at the end of the document.
- Your answers should not exceed the word limits given in each table.
- The publication will accommodate footnotes. We invite all authors to include full and accurate referencing for primary and secondary sources, including statistics. Please limit to one or two footnotes per answer.
- Please return the completed questionnaire to Shani.Bans@lbresearch.com by the agreed deadline.

QUESTIONNAIRE

I. OVERVIEW

- 1. What are the key features of the investment treaties to which this country is a party?** *[Investment treaties, comprising bilateral investment treaties (BITs), multilateral investment treaties (MITs) and free trade agreements (FTAs) that include investment chapters, provide substantive protections to qualifying investors and investments, ranging from an obligation to treat investments fairly and equitably to complying with any obligations entered into with an investor (the umbrella clause). These substantive protections can be protected and enforced, typically, through recourse to international arbitration. Two tables are set out below: one for BITs and MITs; the other for FTAs which incorporates an investment chapter]*

BIT Contracting Party or MIT ¹	Substantive Protections					Procedural Rights		
	Fair and Equitable Treatment (FET)	Expropriation	Protection and Security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period ²	Local courts	Arbitration

¹ Please list the treaties in alphabetical order. Please also note the date of entry into force in brackets after each treaty (e.g. “(11 January 1997)”), or, if the treaty is not in force, please note this fact in brackets instead (i.e. “(not in force)”).

² A cooling-off period is one that requires the parties to negotiate for a period of time prior to submitting their dispute to arbitration or litigation. An example is the Luxembourg-Egypt BIT, article 9(2) of which states that “should there be no amicable settlement by direct arrangement between the parties to the dispute or through conciliation by diplomatic means during the six (6) months from the notification thereof, the dispute shall be subject, at the request of one or other of the parties to the dispute, to arbitration...”. In the column designated for cooling-off period in this table, please indicate simply “none” or the length of the cooling-off period (e.g. 6 months in the case of the Luxembourg-Egypt BIT).

Armenia (21 April 2007)	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
Austria (1 May 1996)	Yes	Yes	Yes	Yes	No	3 months	No	Yes
Azerbaijan (10 May 2006)	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
Belarus (21 December 1998)	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes
BENELUX (4 April 1999)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Bulgaria (23 July 2004)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Canada ³ (27 July 1995)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Canada (24 November 2011)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
China People's Republic (1 February 2006)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Croatia (25 May 2005)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Czech Republic (1 August 1995)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Denmark (18 November 1994)	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes

³ Lost force on 24 November 2011 pursuant to entry into force of a new BIT.

Egypt (3 June 1998)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Estonia (23 May 1996)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Finland (7 December 1992)	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes
France (1 October 1994)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Georgia (5 March 2006)	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
Germany (9 June 1996)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Greece (9 February 1998)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Hungary (25 August 2000)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Iceland (1 May 1999)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
India (27 November 2010)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Israel (9 May 1995)	Yes	Yes	Yes	Yes	No	3 months	No	Yes
Italy ⁴ (02 March 1999)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Kazakhstan (21 April 2006)	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
Kirgizstan (11	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes

⁴ Lost force on 2 March 2009.

February 2009)								
Republic of Korea (26 January 1997)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Kuwait (21 March 2004)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Lithuania (23 July 1996)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Moldova (14 April 2000)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Netherlands (1 April 1995)	Yes	Yes	Yes	Yes	Yes	No	No	Yes
Norway (1 December 1992)	Yes	Yes	Yes	Yes	No	3 months	No	yes
Poland (19 July 1993)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Portugal (17 July 1997)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Romania (22 August 2002)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Singapore (18 March 1999)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Slovakia (30 October 1998)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Spain (14 March 1997)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Sweden (6 November 1992)	Yes	Yes	Yes	Yes	No	6 months	No	Yes

Switzerland (16 April 1993)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Taiwan ⁵ (8 October 1993)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Turkey (3 March 1999)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Ukraine (30 December 1997)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
United Kingdom ⁶ (15 February 1995)	Yes	Yes	Yes	Yes	Yes	3 months	No	Yes
USA (26 December 1996)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Uzbekistan (29 January 1997)	Yes	Yes	Yes	Yes	No	No	No	Yes
Vietnam (20 February 1996)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes

Upon accession to the European Union, Latvia has no national free trade agreements (FTA) in force.

NOTE TO AUTHORS REGARDING SECTIONS II, III, and IV.

Although investment treaties typically incorporate many standard provisions, each treaty needs to be considered on its own terms. In the next three segments covering i) qualifying criteria; ii) substantive protections; and iii) procedural rights, we ask you to identify any unique features

⁵ Lost force on 10 March 2005.

⁶ An agreement in respect of applicability of the BIT to the territory of the Isle of Man, Guernsey, and Jersey entered into force on 13 March 2000.



of, and issues raised by, this country's investment treaties. The analysis is not intended to be exhaustive. Rather, identify the kinds of issue that an investor and its advising counsel would need to consider when seeking to invoke the protections afforded by this country's investment treaties – citing obvious examples of treaties that illustrate the issue in practice. (Please see the example chapter on Australia.) NB. Your answers aren't supposed to remove the need for a party to take further advice about whether a particular treaty raises the issue – but to provide an overview of the terrain. Note, in particular, there is no need to comment on every investment treaty individually.

II. QUALIFYING CRITERIA

2. Definition of investor

What are the distinguishing features of the definition of “investor” in this country’s investment treaties?⁷ *[Investment treaties typically bestow protections upon a defined class of “investors” and their “investments”. An “investor” is often defined as a national or citizen of a Contracting Party or a company or other body incorporated according to the laws of a Contracting Party.]*

Issue	Distinguishing features in relation to the definition of “investor”
Seat of the investor/place of business	<p>In most investment treaties for a legal person to qualify as an investor, a simple establishment of the legal person under the laws of the contracting state is required. Rarely it is defined that the investor as a legal person includes also non-profit companies, trusts, joint ventures and other forms of legal persons.</p> <p>Few investment treaties (Germany BIT, Austria BIT, and Egypt BIT) emphasize that in the contracting state there must be a permanent place of business, or a head office. Poland BIT and Switzerland BIT require the legal person not only to have a seat in the contracting state, but also to have “real economic activities” there.</p>

⁷ For example, in the 2004 Canadian Model BIT, investors “who possess the citizenship of Canada” are excluded from seeking BIT protection for investments in Canada (i.e. dual citizens are not protected). Similarly, the 2007 Colombian Model BIT excludes investors who hold the nationality of both contracting parties from seeking protection under the BIT at all. The US Model BIT’s definition of investor includes the condition that “a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality”. The France-Sudan BIT requires that a corporate investor have a “siège social légal” (often interpreted as “registered place of business”) in the territory of the state on whose BIT the investor seeks to rely upon. Other treaties require an investor to have a place of business in the country in which they claim to qualify as an investor, or to demonstrate “real economic activities” therein. Other treaties require an investor to be controlled by a national or citizen of a Contracting Party in order to qualify for protection.

	Some investment treaties (Vietnam BIT, Poland BIT) extend the definition and include also those entities or organisations that are established in accordance with laws of third states but are controlled, directly or indirectly, by nationals of the contracting state. Kuwait BIT and USA BIT explicitly provide that an investor may be a government of a contracting state, or owned or controlled by it.
Permanent residents	As regards natural persons, most of Latvian investment treaties require the person to have the nationality of the contracting state under its laws. Germany BIT and Spain BIT emphasize in respect of natural persons that they must be the permanent residents of Latvia. Canada BIT states that the natural person must either possess the citizenship of Canada or permanently reside in Canada to be protected under the BIT.
Dual nationals	Israel BIT and Canada BIT explicitly exclude dual nationals from protection under the investment treaty.
Non-citizens	Latvian investment treaties that have entered into force after 2004 in the sphere of their protection include also non-citizens of Latvia, a specific category of inhabitants of Latvia who are former citizens of the USSR and who are not citizens of Latvia or any other country but, who in accordance with Latvian law are entitled to certain rights.

3. Definition of investment

What are the distinguishing features of the definition of “investment” in this country’s investment treaties ?⁸ *[The concept of “investment” is typically defined broadly in investment treaties to include “every kind of asset”. Most treaties also provide a non-exhaustive list of examples of assets that qualify as investments.]*

Issue	Distinguishing features in relation to the concept of “investment”
Assets which qualify for protection	<p>Most of the Latvian investment treaties contain the generally accepted definition of investment states that investment is every kind of asset including, but not limited to, shares, stocks or participation, returns reinvested, claims or other rights of financial value, movable and immovable property, copyrights, and business concessions. Spain BIT and Netherlands BIT include also good-will and know-how in the definition, while in few other investment treaties the scope of investment includes also goods under a leasing agreement.</p> <p>Finland BIT and Czech Republic BIT emphasize that investment is any kind of asset connected with economic activities, while Canada BIT states that assets not acquired or used for the purpose of economic benefit or other business purposes are not included in the definition of an investment.</p> <p>Italy BIT applies also to activities connected with an investment which</p>

⁸ For example, the IISD Model International Agreement on Investment for Sustainable Development explicitly excludes from the definition of investment “portfolio investments”, “market share” and debt claims derived from commercial contracts. The Australia-Mexico BIT similarly excludes certain types of loans and claims to money. The Australia-Hong Kong BIT’s definition of “investment” extends to “rights with respect to” trademarks and goodwill, as well as “licenses”. Does the treaty contain an express provision covering indirect investments? Do any of the investment treaties contain an express clause requiring any investments to be in compliance with national law?

	include organisation, control, operation, maintenance of companies, making and performance of contracts etc.
Indirect control of assets	Only in investment treaties with Canada, the USA, and Kuwait the definition of investment has been broadened to include every kind of asset or right that is owned or controlled directly or indirectly by an investor.
Exclusion of certain assets	<p>Only in Canada BIT there is an exemption from the protection of investments, namely, in cultural industries which means natural persons or enterprises engaged in any of the following activities:</p> <p>(a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;</p> <p>(b) the production, distribution, sale or exhibition of film or video recordings;</p> <p>(c) the production, distribution, sale or exhibition of audio or video music recordings;</p> <p>(d) the publication, distribution, sale or exhibition of music in print or machine readable form; or</p> <p>(e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television or cable broadcasting undertakings and all satellite programming and broadcast network services.</p>
Commencement of treaty protection	Generally the protection granted by Latvian investment treaties applies only to investments made after entry of the force of the respective BIT. However, few investment treaties (e.g. Romania BIT and Portugal BIT) apply also to pre-agreement investments, with exception of the dispute

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resolution provisions.

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?⁹ *[While many investment treaties simply provide that “Each Contracting Party shall at all times ensure fair and equitable treatment to investments”, others provide examples of what constitutes unfair or inequitable treatment or seek to limit it to treatment which is required by customary international law.]*

Issue	Distinguishing features of the fair and equitable treatment standard
Illustration of the FET standard	Most Latvian investment treaties state that each contracting state must ensure fair and equitable treatment. Kuwait BIT also states that each contracting state must promptly publish its laws, judicial decisions and international agreements which pertain to or may affect the operation of the provisions of the BIT or investments. The BIT moreover states that the contracting states must effective means of asserting claims and enforcing rights with respect to investments by ensuring right to access the courts etc.
Customary international law	Canada BIT contains a reference that the contracting states must ensure fair and equitable treatment in accordance with principles of public

⁹ For example, the 2004 US Model BIT provides that “fair and equitable treatment” includes the obligation not to “deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world”; the 2006 France Model BIT provides that the parties “shall extend fair and equitable treatment in accordance with the principles of International Law”; the fair and equitable treatment clause in the UK-Belize BIT includes a prohibition on “unreasonable or discriminatory treatment”. The ASEAN-ANZ FTA (2010) provides, at paragraph 4 of chapter 11 (Annex on Expropriation and Compensation) that “[n]on-discriminatory regulatory actions by a Party that are designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety, and the environment do not constitute [indirect] expropriation.”

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international law.

5. Expropriation

What are the distinguishing features of the protection against expropriation standard in this country’s investment treaties?¹⁰ [*A typical expropriation clause in an investment treaty provides that neither party will “nationalise, expropriate or subject to measures having effect equivalent to nationalisation or expropriation the investments of investors of the other Party”, unless certain conditions are fulfilled. These conditions are typically that (i) the expropriation is in the public interest, (ii) the expropriation is not discriminatory, and (iii) the expropriation is accompanied by the payment of prompt, adequate and effective compensation.*¹¹]

Issue	Distinguishing features of the “expropriation” standard
Standard of expropriation	<p>All Latvian investment treaties provide that investments cannot be expropriated or subjected to other measures having similar effect except if: (a) the expropriation is done for public interest, (b) on non-discriminatory basis and under due process of law, and (c) for effective and adequate compensation.</p> <p>Protocol to India BIT provides that the article on expropriation is intended to reflect customary international law concerning the obligation of states with respect of expropriation.</p>
Value of compensation	<p>The Compensation must amount to the market value (or must be at genuine value, see Canada BIT and UK BIT) of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge, and most investment treaties provide that the compensation must include an interest. The interest must usually be at normal commercial rate (Egypt BIT), or LIBOR (Ukraine</p>

¹⁰ For example, some BITs, such as the New Zealand-Argentina BIT, expressly include direct and indirect expropriation and/or define these concepts.

¹¹ Australia – Egypt BIT, article 7(1).

	<p>BIT, Denmark BIT, and Lithuania BIT).</p> <p>The compensation must be effectively realisable – normally within 3 months (Italy BIT, Uzbekistan BIT), and freely transferable.</p> <p>Few investment treaties (Italy BIT, Kuwait BIT) specifically provide that in case of dispute regarding the amount of the compensation, it must be based on the same reference parameters taken into account in the documents for the constitution of the investment, or on equitable principles taking into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the investment, replacement value, appreciation etc.</p> <p>Most Latvian investment treaties provide that the investor is entitled to verify the legitimacy of the expropriation with the authorised governmental agency that has initiated the expropriation process, or with the arbitration court.</p> <p>Italy BIT provides that in case if, after the dispossession as a consequence of expropriation, the assets concerned have not been utilised, wholly or partially, for that purpose, the owner or his assignees are entitled to the repurchasing of the assets at market price.</p>
<p>Indirect expropriation</p>	<p>Latvian investment treaties protect also against indirect expropriation, and few of them tend to provide a more detailed definition of an indirect expropriation. E.g., Italy BIT states that any measure towards an investment which subtracts financial resources or other assets from the investment or causes substantial prejudice to the value of the same investment, as well as any other measure having equivalent effect, will be considered as measure equivalent to expropriation. Canada BIT and India BIT even has a special annex regarding indirect expropriation where the elements for determining indirect expropriation are listed.</p>



Taxation and expropriation

Canada BIT provides that provisions regarding expropriation may be applied to a taxation measure unless the taxation authorities of the contracting states, no later than six months after being notified by an investor that it disputes a taxation measure, jointly determine that the measure is not an expropriation.

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? ¹² *[Investment treaties often require foreign investments to be treated no less favourably than investments made by nationals of the host state (national treatment). In addition, investment treaties often require investments by investors from the other Contracting Party to be treated no less favourably than investments coming from any other country (most-favoured-nation or MFN treatment). There are frequently exceptions to such guarantees. Typical exceptions include that the obligation to provide national treatment is subject to local laws and regulations, and the obligation to provide most-favoured-nation treatment does not extend to the benefits of membership of a customs union, monetary union, free trade area or to the benefits of any agreements on taxation.]*

Issue	Distinguishing features of the “national treatment” and/or “most favoured nation” standard
Scope of MFN treatment	<p>Wording in all Latvian investment treaties is almost similar providing that the treatment must not be less favourable than that granted by each contracting state to investment made in its territory by its own investors, or that granted by each contracting state to investments made in its territory by investors of any third state.</p> <p>USA BIT has a more detailed provision as to what is understood by associated activities to investments which include granting of franchises or rights under licenses, conduct of market studies, marketing of goods and services etc.</p>

¹² *For example, the Papua New Guinea-United Kingdom BIT provides a carve-out to the “most-favoured nation” standard for “special incentives granted by one Contracting Party only to its nationals in order to stimulate the creation of local industries”). The Syria-Czech Republic BIT excludes regional trade agreements and taxation arrangements from the scope of the “most-favoured nation” standard – “The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege, which may be extended by the former Contracting Party by virtue of: (a) any customs union or free trade area... (b) any international agreement or arrangement relating wholly or mainly to taxation.”*

	Sweden BIT states that treatment granted to investment under specific existing agreements does not invoke basis of MFN treatment under the particular BIT.
Common exceptions to MFN treatment	Latvian investment treaties provide that the MFN treatment must not apply to privileges which either contracting state accords to investors of a third state because of its membership in, or association a free trade area, a customs union, common market or organisation for mutual economic assistance or to an existing or future convention on the avoidance of double taxation or an convention on other fiscal matters. Italy BIT provides as exceptions also all the activities related to the procurement, sale and transport of raw and processed materials, energy, fuels and production means, as well as any other kind of operation related to them and linked to investment activities under the BIT.
Exceptions in specific sectors	USA BIT and Canada BIT contain annexes which list specific sectors and matters that are exempted from the MFN treatment. Such sectors and matters include: air transportation; ocean and coastal shipping; banking; insurance; government-grants; government insurance and loan programs; energy and power production; ownership of real property; manufacturing and sale of narcotics, weapons and explosives; gambling etc.

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?¹³ [*Investment treaties often require a host state to provide “protection and security” to qualifying investments.*]

Issue	Distinguishing features of the “protection and security” standard
Scope	Most of Latvian investment treaties provide that each contracting state must accord to investments of investors of the other contracting state full security and protection. Netherlands BIT emphasize that “full physical security” must be provided, while Egypt BIT states that “adequate protection and security” must be provided.
Customary international law on protection and security	Canada BIT contains a clarification that the concept of “full protection and security” does not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

8. Umbrella clause

What are the distinguishing features of the umbrella clauses contained within this country’s investment treaties?¹⁴ [*In investment treaties Contracting Parties sometimes undertake to comply with any obligations, contractual or otherwise, agreed with investors of the other party (umbrella clauses). The Egypt–Algeria BIT for instance provides that “Each of the contracting parties shall at all times ensure compliance with any commitments made to the investors of the other party to the contract.”*]

¹³ For example, the Jordan-Sudan BIT provides that investments should receive “complete and adequate protection and security” rather than “full” protection and security

¹⁴ For example, the Australia-Poland BIT restricts the application of the umbrella clause to written undertakings in the following way, “a Contracting Party shall, subject to its law, do all in its power to ensure that a written undertaking given by a competent authority to a national of the other Contracting Party” is respected.

Issue	Distinguishing features of any “umbrella clause”
Scope	<p>Only about one fourth of Latvian bilateral investment treaties (contain umbrella clauses. Finland BIT and Greece BIT states that each contracting state must observe any obligation it may have entered into with regard to investments of investors of the other contracting state.</p> <p>Korea BIT contains a provision that states that each contracting state must observe any obligation it may have entered into “consistently with this Agreement [BIT]” which, in our opinion, does not qualify as umbrella clause.</p>

9. Other substantive protections

What are the other most important substantive rights provided to qualifying investors in this country’s investment treaties? ¹⁵

[Contracting Parties regularly provide qualifying investors with other substantive rights.]

Issue	Other substantive protections
Free transfer of payments	<p>All Latvian investment treaties provide that each contracting state allows without restrictions or undue delay money transfers in any convertible currency, including profits, dividends, royalties, fees, returns, proceeds from liquidation or sale of any investment etc.</p> <p>Latvian investment treaties with the former USSR countries (Uzbekistan,</p>

¹⁵ For example, the Australia-USA FTA provides that host states are obliged to compensate investors for certain losses occasioned by armed conflict or civil strife; and the Australia-Indonesia BIT provides that in addition to protection and security, a Contracting Party shall not “impair the management, maintenance, use, enjoyment or disposal of investments.”

	<p>Kazakhstan, Azerbaijan, Georgia, Armenia, Kirgizstan), as well as most recent investment treaties with Kuwait and Canada provide an exception of free transfer of payments in cases regarding bankruptcy, insolvency or protection of creditors' rights, criminal or administrative offences etc.</p>
<p>Non-impairment</p>	<p>Many Latvian investment treaties contain also a provision that neither contracting party will in any way impair by unreasonable or discriminatory measures the operation, management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other contracting state.</p> <p>A common provision for Latvian investment treaties is that the contracting states must grant necessary permits in connection with investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance.</p> <p>In many Latvian investment treaties the non-impairment provision is supplemented with an obligation to grant the investors and their employees (in Taiwan BIT – also to family members) permission to enter and remain in the territory for purposes of operation of an investment, or to engage managerial and technical personnel of their choice, regardless of nationality.</p> <p>Italy BIT provides that each contracting state must create and maintain in its territory favourable economic and legal conditions in order to permit investments of investors of the other contracting state in accordance with its legislation, including the compliance, in good faith, of all undertakings assumed with regard to each specific investor.</p>
<p>Armed conflict/civil unrest</p>	<p>All Latvian investment treaties provide that investors of either contracting state who suffer losses of their investments in the territory of other contracting state due to war or armed conflict, a state of national</p>

	<p>emergency, revolt, insurrection or riot, must be accorded a treatment which is not less favourable than that accorded to investors of any third state.</p>
Transparency	<p>On few occasions (Azerbaijan BIT, USA BIT, and Kuwait BIT), the investment treaties provide that each contracting party must ensure that its laws, regulations, procedures, administrative rulings and judicial decisions of general application, as well as international agreements after their entry into force, which may affect the investments of investors of the other contracting state in its territory, are promptly published, or otherwise made publicly available.</p> <p>Canada BIT states that the Contracting Parties must, within a 2-year period, exchange letters listing existing measures that do not conform to certain obligations under the BIT, e.g. regarding the existing national requirement to achieve a given level or percentage of domestic content.</p>
Access to justice	<p>Kuwait BIT and USA BIT provide that in respect to investment, investment agreements and investment authorisations the states must provide effective means of asserting claims and enforcing rights with respect to investments, i.e. to ensure the right of access to its courts of justice, administrative tribunals and agencies etc.</p>
General exceptions	<p>Latvian investment treaties with former USSR countries (e.g. Azerbaijan, Georgia, and Armenia) and with Singapore, USA, and Canada provide that application of prohibitions or restrictions is not limited in cases of protection of the essential security interests, the public health, or prevention of diseases and pests in animals or plants.</p> <p>Kuwait BIT and Canada BIT provide that the contracting states may not impose as a condition for the acquisition, expansion, use, management, conduct or operation of investments by investors mandatory measures,</p>

	<p>which may require or restrict the purchase of materials, energy, fuel or of means of production, transport or operation of any kind etc., or any other measures having the effect of discrimination against investments in favour of investments by its own investors or by investors of third states. Moreover, no requirements to export a given level or percentage of goods, or to achieve a given level or percentage of domestic content, or similar, are allowed.</p>
Tax	<p>USA BIT and Canada BIT explicitly state that nothing under the BIT applies to taxation measures. Moreover, under USA BIT, with respect to its tax policies, each Party should strive to accord fairness and equity in the treatment of investment of nationals and companies of the other Party.</p>

IV. PROCEDURAL RIGHTS

[Investment treaties typically bestow upon qualifying investors a right to enforce the treaty’s substantive protections through an action in the courts of the place of the investment and/or through international arbitration. While there are standard provisions, many treaties have unique provisions in relation to a party’s procedural rights. For instance, do some or all of the treaties incorporate fork-in-the-road provisions?¹⁶ Are investors given a choice of international arbitration fora (ICSID, UNCITRAL or others)? Are there any restrictions on the right to refer matters to arbitration?¹⁷ Are rules stipulated for the conduct of arbitrations under the investment treaty?¹⁸]

¹⁶ A “fork in the road provision” is one that requires an investor to choose either to go down the path of arbitration or the courts. It cannot do both. Recent treaties have expanded such provisions to capture related entities.

¹⁷ For example, some commentators have interpreted China’s BITs (other than the ones recently agreed) as only granting a right to arbitration in relation to disputes regarding the quantification of an expropriation claim. On such a reading, all other claims would have to be referred to the courts of the state hosting the investment.

¹⁸ For example, some BITs prescribe rules for determining the applicable law of the arbitration, for the formation of tribunals and whether arbitration proceedings are to be private and confidential or open to the public.

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

Issue	Procedural Rights
ICSID or ad-hoc arbitration	<p>More than one third of Latvian investment treaties provide dispute resolution by means of <i>ad hoc</i> arbitration or the ICSID arbitration or conciliation. About one third of Latvian investment treaties provide also courts of the host state as forum for dispute resolution.</p> <p>Spain BIT, UK BIT, and Croatia BIT provide also an option to refer to the ICC, Poland BIT – also to the SCC, but Egypt BIT – also to the Regional Centre for International Commercial Arbitration in Cairo.</p> <p>Israel BIT and Kirgizstan BIT provide only <i>ad hoc</i> arbitration as means of dispute resolution, although Israel is a signatory to the ICSID Convention.</p> <p>A significant part of the Latvian investment treaties provide that in case the investor and one of the contracting states have stipulated an investment agreement, the procedure foreseen in such agreement, or a more favourable provision under other international agreement, if any, applies.</p>
Fork-in-the-road	<p>Fork-in-the-road provisions are not a common constituent of Latvian investment treaties. Only India BIT provides that, once local court, <i>ad hoc</i> arbitration, or the ICSID is chosen, it precludes referring to any other forum.</p> <p>Turkey BIT provides that the investor may refer to the ICSID or <i>ad hoc</i> arbitration if it has already referred to a local court and it has not rendered a final award within one year.</p> <p>Three other investment treaties (with China People’s Republic, Georgia, and Armenia) provide that once the dispute is submitted to the court or to</p>

	the ICSID, such choice is final. However, the case from a local court may be withdrawn prior the court renders the judgment on merits, thus allowing the investor to refer to the ICSID.
Exhaustion of local remedies	China People’s Republic BIT requires the investor to exhaust the domestic administrative review procedure before referring to the ICSID. However, China People’s Republic has declared that such a procedure will take a maximum of 3 months. Bulgaria BIT and Iceland BIT provide that certain disputes under the BIT must be referred to local courts, but certain others (e.g. regarding compensation, expropriation, transfers, and subrogation) may be subject only to <i>ad hoc</i> or the ICSID arbitration.
Time limits	Canada BIT states that the investor may not make a claim if more than 3 years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that it has incurred loss or damage.
Applicable law	Most Latvian investment treaties provide that the award of the arbitration court must be based on the investment treaty provisions, national law of the host state, including private international law norms, and the rules and the universally accepted principles of international law.
Preliminary issues	Kuwait BIT, which prescribes <i>ad hoc</i> and ICSID arbitration as means of dispute settlement, explicitly states that the investor may seek an interim injunctive relief, provided it does not include request or payment of any damages.
Confidentiality	Canada BIT states that the arbitration court hearings all arbitration documents are public. In cases where the confidential information must be protected, hearings may be closed, or the information omitted in the documents.

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

(Some countries have indicated that they will not renew their investment treaties or seek to renegotiate them [eg, Indonesia]. Others have indicated they will not agree to investor-state dispute settlement provisions in future investment treaties [eg, Australia] or have renounced their membership of ICSID [eg, Bolivia]).

Most Latvian investment treaties have been concluded for a period of 10 to 30 years with tacit prolongation for the same period or periods, or for a prolongation for an indefinite period. A new, more detailed, investment treaty was concluded with Canada in 2009 replacing the existing treaty of 1995. The treaty with Italy has lost its force on 2 March 2009, and the treaty with Taiwan - on 10 March 2005, and no new treaties have been concluded with these countries. There is no publicly available information as regards the position on Latvia on renewing the existing investment treaties or concluding new ones.

V. PRACTICALITIES (CLAIMS) [Practicalities of commencing an investment treaty claim against this country]

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

Government entity to which claim notices are sent	The notice should be addressed to the Cabinet of Ministers of Latvia, Brīvības bulvāris 36, Riga, LV-1520. The state institution in charge of investment disputes concerning Latvia is the State Chancellery, which is directly subordinated to the Prime Minister.
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13. Which government department or departments (eg, Ministry of Justice, Ministry of Finance and/or the Attorney General) manage investment treaty arbitrations on behalf of this country?

Government department which manages investment treaty	Investment treaty arbitrations are managed by several state institutions
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arbitrations	which include the State Chancellery, the Cabinet of Ministers, the Ministry of Justice, the Ministry of Finance, and the Ministry of Economics. If the arbitration has been initiated due to an allegedly unlawful action of a local self-government, it is also involved in the management of the arbitration. It is Cabinet of Ministers who decides which institution will manage the particular dispute.
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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	Both internal and external counsel are used. In case of internal counsel the case is handled by the State Chancellery. External counsel are hired on basis of a market research which with a respective decision of the Cabinet of Ministers may be exempted from the general procedure of public procurement.
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VI. PRACTICALITIES (ENFORCEMENT) *[Practicalities of enforcing an investment treaty claim against this country]*

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

Washington Convention implementing legislation	Yes. The Washington Convention was ratified by the law of 19 June 1997 ‘On the Convention on the Settlement of Investment Disputes between States and Nationals of Other States’. The Washington Convention is in force regarding Latvia since 8 September 1997. The procedure of recognition and enforcement of foreign arbitral
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	awards is governed by Chapter 78 (Sections 645 – 651) of the Civil Procedure Law of Latvia.
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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	Yes. The New York Convention was ratified by the decision of the Supreme Council of the Republic of Latvia on 11 March 1992. The New York Convention is in force regarding Latvia since 13 July 1992. The procedure of recognition and enforcement of foreign arbitral awards is governed by Chapter 78 (Sections 645 – 651) of the Civil Procedure Law of Latvia.
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17. Does the country have legislation governing non-ICSID investment arbitrations seated within its territory?

Legislation governing non-ICSID arbitrations	Yes, the Law on Arbitration entered into force on 1 January 2015 replacing the existing several chapters of the Civil Procedure Law.
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18. Does the state have a history of voluntary compliance with adverse investment treaty awards; or have additional proceedings been necessary to enforce these against the state? [*Adverse awards -Please comment on the extent to which the country has complied with any adverse investment treaty awards.*¹⁹]

Compliance with adverse awards	According to the publicly available information, Latvia has voluntarily complied with one of its two adverse investment treaty awards. Pursuant to the publicly available information, in its first investment
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¹⁹ For example, Argentina has failed to honour many awards that have been entered against it.

	arbitration case with SwemBalt Latvia requested an interpretation of the award and further challenged it at the Danish Maritime and Commercial Court.
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19. Describe the national government’s attitude towards investment treaty arbitration.²⁰

Attitude of government towards investment treaty arbitration	<p>The State Chancellery is of opinion that it manages the investment disputes well and that its activities for the period 2004 – 2013 have helped to prevent investment arbitrations in the total amount of approx. EUR 710 million.²¹ According to the State Chancellery, since 2004 when it was appointed as the responsible state authority for management of investment disputes, it has concluded 7 settlement agreements without paying any compensations to the investors thus precluding significant investment claims (e.g. with TeliaSonera AB, Metsäliitto Group, and Vitol Group). However, there is no publicly available information if there are settlement agreements with payment of certain amount of compensation to the investors.</p> <p>At the same time in the disputes with Swembalt AB (case was handled by the Ministry of Foreign Affairs without the use of external counsel) and UAB E-Energija (case is managed by the State Chancellery without the use of external counsel) Latvia did not use its rights to</p>
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²⁰ For example, Bolivia, Ecuador and Venezuela have announced their withdrawal from ICSID; Australia has announced that it will not agree to international arbitration provisions in future investment treaties.

²¹ <http://www.delfi.lv/news/comment/comment/ivars-mekons-svarigs-valsts-attistibas-raditajs-operativa-arvalstu-investoru-pieteikto-investiciju-stridu-atrisinasana.d?id=43797026>.

	<p>appoint an arbitrator thus significantly worsening its position. At the end of 2013 the Cabinet of Ministers considered legislative amendments according to which adverse investment arbitration awards would be compensated from the budget of the state institution that has breached the treaty, in particular, from the budget of local self-governments.</p>
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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	Latvian courts have never been called upon to enforce an investment treaty award against Latvia and have never reviewed an investment claim under a BIT. Generally the understanding of substantive protections under BIT as well as enforcement of foreign arbitral awards in Latvia is rather undeveloped. Latvian courts tend to issue contradictory decisions when enforcing foreign arbitral awards, which could be expected also in the context of investment treaty awards.
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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. *[In many countries, national legislation provides a measure of protection for inward foreign investments. ²²We’d like you to explain how that fits in, briefly.]*

There is no national legislation in Latvia that explicitly protects inward foreign investment enacted in this country.

National Legislation	Substantive Protections			Procedural Rights	
	FET	Expropriation	Other	Local courts	Arbitration

²² For example, the Yemen Investment Law 22 of 2002 provides various protections for foreign investments; including article 61 (“... investment disputes relating to the execution of the provisions of this Law arising between the Government and a project may be settled by arbitration...”). Note to rapporteurs: there is no need to discuss tax and customs exemptions offered to foreign investors.

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?²³ 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	Latvia has ratified the Convention establishing the Multilateral Investment Guarantee Agency (MIGA) (Seoul, 11 October 1985). Under the treaty Latvian nationals and corporates are eligible to acquire, for the payment of a premium, political risk insurance from MIGA in respect of investments made in certain developing states provided that certain conditions are met. To be eligible for assistance, the investment must be medium to long term in nature, support the host country's development goals, comply with MIGA's Policy on Social and Environmental Sustainability and anti-corruption and fraud standards, and also be financially viable.

IX. AWARDS

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

Awards
SwemBalt AB, Sweden v. the Republic of Latvia, UNCITRAL. Available at: http://www.italaw.com/cases/1066 and http://www.newyorkconvention1958.org/index.php?lvl=author_see&id=330 . Nykomb Synergetics Technology Holding AB, Stockholm v. the Republic of Latvia. Available at:

²³ For example, Germany's "investment guarantee scheme" (<http://www.agaportal.de/en/dia/index.html>) protects German investments abroad from political and other risks, with financing from the public budget.



<http://www.italaw.com/cases/documents/1277>.

Pending Proceedings

UAB E energija (Lithuania) v. the Republic of Latvia (ICSID Case No. ARB/12/33) (Latvia – Lithuania BIT)



X. READING LIST

24. Please provide a list of any articles or books that discuss this country's investment treaties.

None.

Article/Book

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