



UNCTAD IIA MAPPING PROJECT

<http://investmentpolicyhub.unctad.org/>



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Description of the project

The IIA Mapping Project is a collaborative initiative between UNCTAD and universities worldwide to map the content of international investment agreements (IIAs). The resulting [database](#) serves as a tool for policymakers, researchers and other investment and development stakeholders to understand trends in IIA drafting, assess the prevalence of different policy approaches and identify treaty examples.

Most IIAs are comparable because they have a similar structure and are built of similar elements. At the same time, IIAs often address the same issues in different ways, entailing important differences in legal consequences. Indeed, these differences have been critical to the outcomes of many international [investor-State arbitrations](#).

For the purpose of this project, UNCTAD's IIA Section developed a "mapping structure" consisting of a detailed set of parameters against which each individual IIA is mapped. The full list of parameters includes 100 elements and builds upon UNCTAD's [Investment Policy Framework for Sustainable Development](#).

Mapping involves a careful study of each agreement with a view to identifying legal approaches to the mapped treaty elements. Individual treaties are mapped by law students from participating universities, under the supervision of their professors and with overall guidance and coordination by UNCTAD.

The IIA Mapping Project is an ongoing effort that aims to map all IIAs for which texts are available (about 3,000). Over 2,500 IIAs have been mapped already.

Disclaimer

The mapping results included in the IIA Mapping Project database serve a purely informative purpose. The mapping of treaty provisions is not exhaustive, has no official or legal status, does not affect the rights and obligations of the contracting parties and is not intended to provide any authoritative or official legal interpretation.

While every effort has been made to ensure accuracy, UNCTAD assumes no responsibility for eventual errors or omissions in the mapping data. In the event of doubt regarding the correctness of mapping results, users are kindly asked to contact us via the [online contact form](#).

Participating universities

We thank our partners – students and professors – at more than [45 universities](#) around the globe for their time and efforts in mapping for UNCTAD's IIA Mapping Project.

If you are a university professor and your institution wishes to join the project, please contact us for further information by using the [online contact form](#).

Methodology

Process

Law students from participating universities map individual treaties under the supervision of their professors. UNCTAD's IIA Section guides and coordinates the overall process.

To support students and their supervisors in mapping and to ensure that treaties are mapped uniformly, UNCTAD developed a detailed "Mapping Guide", which is made available to participating universities.

Each treaty is double-mapped to increase the quality and reliability of results, i.e. at least two participants (typically from different universities) map it independently and consolidate the results.

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Mapping description

This description provides a brief explanation of the mapping options available under each mapped element. (The full version of the “Mapping Guide” is available to participating universities.)

In addition to the mapping options specific to each mapped element, all mapped elements have the following two options available (for convenience, they are set out here and not mentioned further):

- **Inconclusive** – marked “Inconclusive” if the relevant part of the treaty is not clear, and the persons mapping the treaty were unable assign any of the mapping options to it.
- **Not applicable** – marked “Not applicable” if an element cannot be mapped because the element is not present in the treaty (e.g. a particular feature of the denial of benefits clause cannot be mapped if the treaty does not include a denial of benefits clause at all).

Preamble

Reference to right to regulate (e.g. regulatory autonomy, policy space, flexibility to introduce new regulations)

Mapping options: Yes/No

Marked “Yes” if the preamble contains a reference to host State’s regulatory prerogatives, such as “right to regulate”, “regulatory autonomy”, “policy space”, “right to introduce new regulations”, “flexibility to safeguard public welfare” and similar statements.

Reference to sustainable development

Mapping options: Yes/No

Marked “Yes” if the preamble contains a reference to the concept of sustainable development.

Reference to social investment aspects (e.g. human rights, labour, health, CSR, poverty reduction)

Mapping options: Yes/No

Marked “Yes” if the preamble contains a reference to any social investment aspects such as poverty reduction, millennium development goals, human rights, labour rights/standards, public health, corporate social responsibility, or other similar concepts.

Reference to environmental aspects (e.g. plant or animal life, biodiversity, climate change)

Mapping options: Yes/No

Marked “Yes” if the preamble contains a reference to any environmental investment aspects or related concepts such as plant life or animal life, biodiversity, climate change or others.

Scope and Definitions

Definition of investment

Type of definition

Mapping options:

Asset-based definition

Marked “Asset-based definition” if the treaty covers “every kind of asset” or “any kind of asset”, accompanied by an open-ended (illustrative) list of assets covered. Such lists usually include five categories of assets: first, movable and immovable property and any related property rights such as mortgages, liens or pledges; second, various types of interests in companies, such as shares, stock, bonds, debentures or any other form of participation in a company, business enterprise or joint venture; third, claims to money and claims under a contract having a financial value and loans directly related to a specific investment; fourth, intellectual property rights; and fifth, business concessions, that is rights conferred by law or under contracts.

Enterprise-based definition

Marked “Enterprise-based definition” if it includes an “enterprise” as one type of asset covered. The enterprise-based definition also often lists other enterprise-related assets (e.g. an equity security of an enterprise, a debt security of an enterprise, a loan to an enterprise, etc.) and other types of asset (unrelated to an enterprise). The list of assets listed may be open-ended or closed.

No definition

Marked “No definition” if the treaty does not define the term “investment”.

Limitations to the definition of investment

Excludes portfolio investment

Mapping options: Yes/No

Marked “Yes” if the treaty excludes “portfolio” investment, i.e. passive holdings of securities such as foreign stocks, bonds, or other financial assets, none of which entail active management or control of the securities’ issuer by the investor. In relation to a company, this is usually to mean that the investor holds less than 10% of company shares. A treaty may exclude portfolio investment indirectly, e.g. if it expressly covers foreign direct investment only.

Excludes other specific assets (e.g. sovereign debt, ordinary commercial transactions, etc.)
Mapping options: Yes/No

Mapped “Yes” if the treaty excludes certain specified assets from the investment definition. Such assets may include, for example:

- claims to money that arise from commercial contracts for the sale of goods or services,
- the extension of credit in connection with a commercial transaction, such as trade financing,
- sovereign debt obligations (public debt securities),
- certain kinds of loans and debt securities (e.g. debts securities with maturity of less than X years, debt securities of a State enterprise, etc.)
- other specified types of assets.

Lists required characteristics of investment
Mapping options: Yes/No

Marked “Yes” if the treaty sets out certain characteristics that an asset/transaction must meet to be considered an investment covered by the treaty. These characteristics often include a contribution of money or other resources, an expectation of profit, and the assumption of risk. Other characteristics (e.g. a certain duration, contribution to the host State’s development) may also be listed.

Contains “in accordance with host State laws” requirement
Mapping options: Yes/No

Marked “Yes” if the treaty specifies that an investment must be made in accordance with domestic/local/national laws of the host State.

Note: A separate provision that contains the Contracting States’ obligation to admit investments “in accordance with their laws and regulations” is not marked “Yes” under this section as such provisions impose an obligation on the contracting parties and do not set forth a compliance requirement for investors.

Sets out closed (exhaustive) list of covered assets
Mapping options: Yes/No

Marked “Yes” if the treaty contains an exhaustive, or closed, list of investments covered.

Marked “No” if the treaty contains an open-ended, or illustrative, list of investments covered. The enumeration is often introduced by a phrase “shall include, in particular, though not exclusively....”.

Definition of investor

Definition included
Mapping options: Yes/No

Marked “Yes” if the treaty defines the term “investor” or terms such as “nationals/natural persons” and “companies”.

Specifying natural persons covered

Includes permanent residents
Mapping options: Yes/No

Marked “Yes” if – in addition to nationals/citizens of the home State – the definition of investor covers permanent residents of the home State or those who have a “right of abode” (or other similar rights) in the home State.

Excludes dual nationals
Mapping options: Yes/No

Marked “Yes” if the treaty excludes holders of more than one nationality from its scope. Such a clause may be found in three places: (1) definition of investor, (2) denial of benefits clause and (3) provisions on investor-State dispute settlement.

Treaties that apply the test of “dominant and effective nationality” to dual nationals are marked as “No”.

Specifying legal entities covered

Includes requirement of substantial business activity
Mapping options: Yes/No

Marked “Yes” if the treaty covers only entities that engage in substantial business activities in the home State, or use similar terms (e.g. real economic activity).

Defines ownership and control of legal entities
Mapping options: Yes/No

Marked “Yes” if the treaty defines the terms “ownership” and/or “control” of an enterprise (or another type of entity).

Denial of benefits (DoB)

DoB clause included
Mapping options: Yes/No

Marked “Yes” if the treaty includes a denial of benefits clause, i.e. a provision that allows a contracting party to deny treaty protection to an otherwise covered investment.

Content of the DoB clause

“Substantive business operations” criterion
Mapping options: Yes/No

Marked “Yes” if the DoB clause denies treaty benefits to investors who do not exercise substantive business operations in the territory of the contracting party whose nationality the investor is claiming.

Applies to investors from States with no diplomatic relations or under economic/trade restrictions
Mapping options: Yes/No

Marked “Yes” if the DoB clause denies treaty benefits to investors from third States, with which the host country of investment controlled by these investors does not maintain diplomatic relations or in relation to which the host country maintains economic/trade restrictions (e.g. sanctions).

Discretionary (“Party may deny”) or mandatory (“benefits shall be denied”)
Mapping options:

Unilaterally discretionary

Marked “Unilaterally discretionary” if the DoB clause allows each contracting party to decide on their own whether the benefit should be granted or denied.

Jointly discretionary

Marked “Jointly discretionary” if the DoB clause requires agreement between all contracting parties to deny treaty benefits.

Mandatory

Marked “Mandatory” if the DoB clause stipulates that “benefits shall be denied”.

Substantive scope of the treaty

Limiting substantive scope of the treaty

Excludes taxation
Mapping options: Yes/No

Marked “Yes” if the treaty excludes taxation matters from the scope of the agreement as a whole or the majority of its provisions. If taxation exclusions are limited to most-favoured-nation treatment (MFN), they are mapped under the MFN provision only (→ see **MFN**).

Excludes subsidies, grants
Mapping options: Yes/No

Marked “Yes” if the treaty excludes subsidies and grants (including *inter alia* government-supported loans, guarantees and insurance) from the scope of the agreement as a whole or from certain provisions such as MFN and national treatment (NT).

Excludes government procurement
Mapping options: Yes/No

Marked “Yes” if the treaty excludes procurement by a contracting party and/or by its State enterprise from the scope of the agreement as a whole or from certain provisions such as MFN and NT.

Excludes other subject matter
Mapping options: Yes/No

Marked “Yes” if the treaty excludes any other subject areas from the scope of the treaty as a whole, e.g. investments in cultural industries, services supplied in the exercise of governmental authority, etc.

Temporal scope of the treaty

Investments covered

Mapping options:

Applies to post-BIT investments only

Marked “Applies to post-BIT investments only” if the treaty applies only to those investments that have been made after the treaty’s entry into force.

Applies to both pre-existing and post-BIT investments

Marked “Applies to both pre-existing and post-BIT investments” if the treaty applies to investments made before or after the entry into force of the treaty.

Not stipulated

Marked “Not stipulated” if the treaty is silent on whether it covers pre- or post-BIT investments.

Disputes covered

Mapping options:

Carves out pre-existing disputes

Marked “Carves out pre-existing disputes” if the treaty precludes claims arising out of disputes and/or measures that occurred before the entry into force of the agreement (various formulations can be used).

Not stipulated

Marked “Not stipulated” if the treaty is silent on the range of disputes covered.

Standards of Treatment

National treatment (NT)

Type of NT clause

Mapping options:

Post-establishment

Marked “Post-establishment” if the NT obligation is limited to the post-establishment phase of the investment, i.e. the obligation does not extend to acquisition and/or establishment of investments. If a treaty contains best-efforts (non-binding) NT commitments regarding the pre-establishment phase, this is being disregarded and the NT obligation is marked as “Post-establishment”.

Pre- and post-establishment

Marked “Pre- and post-establishment” if the NT obligation applies to the full life cycle of an investment, including the investor’s entry and establishment in the host country and its participation in existing enterprises (“establishment, acquisition and expansion” of investments). The obligation also covers the post-establishment phase, i.e. the treatment of the investment after its entry.

Pre-establishment only

Marked “Pre-establishment only” if the NT obligation applies at the pre-establishment phase of investment, and does not apply at the post-establishment phase.

None

Reference to “like circumstances” (or similar)

Mapping options: Yes/No

Marked “Yes” if the NT obligation prohibits discrimination of investors/investments that are “in like circumstances” (other similar language may be used).

Most-favoured-nation (MFN) treatment

Type of MFN clause

Mapping options

Post-establishment

Marked “Post-establishment” if the MFN obligation is limited to the post-establishment phase of the investment, i.e. the obligation does not extend to acquisition and/or establishment of investments. If a treaty contains best-efforts (non-binding) MFN commitments regarding the pre-establishment phase, this is being disregarded and the MFN obligation is marked as “Post-establishment”.

Pre- and post-establishment

Marked “Pre- and post-establishment” if the MFN obligation applies to the full life cycle of an investment, including the investor’s entry and establishment in the host country and its participation in existing enterprises (“establishment, acquisition and expansion” of investments). The obligation also covers the post-establishment phase, i.e. the treatment of the investment after its entry.

Pre-establishment only Marked “Pre-establishment only” if the MFN obligation applies at the pre-establishment phase of investment, and does not apply at the post-establishment phase.

None

Exceptions from MFN obligation

Economic integration agreements
Mapping options: Yes/No

Marked “Yes” if the MFN obligation does not cover advantages accorded to third country investors by virtue of economic integration agreements of various kinds, such as a customs union, economic union, monetary union, free trade agreement, regional integration agreement, etc.

Taxation treaties
Mapping options: Yes/No

Marked “Yes” if the MFN obligation does not cover advantages accorded by either contracting party to investors of a third State by virtue of a double taxation agreement or other agreements on a reciprocal basis regarding tax matters.

If a treaty excludes taxation matters from the entire agreement, this is mapped in the section on “Substantive scope of the treaty”. Such treaties are marked “No” in the “Exceptions from MFN” section.

Procedural issues (ISDS)
Mapping options: Yes/No

Marked “Yes” if the treaty expressly states that the MFN provision does not apply to ISDS provisions found in other treaties (i.e. covered investors cannot invoke the MFN clause to access more “investor-friendly” provisions in IIAs concluded by the host State with third countries).

Fair and equitable treatment (FET)

Type of FET clause

Mapping options:

FET unqualified

Marked “FET unqualified” if the FET clause contains no express reference to international law and no list of the elements of the FET obligation (for the explanation of these two qualifiers → see **FET qualified**).

FET qualified

Marked “FET qualified” if the FET clause is qualified either by reference to international law or by listing the elements of the FET obligation.

None

FET qualified

By reference to international law

Mapping options:

International law / principles of international law

Marked “International law / principles of international law” if the FET obligation refers either to (general) international law or to principles of international law.

- Customary international law (CIL) Marked “Customary international law (CIL)” if the FET obligation refers to customary international law.
- CIL/minimum standard of treatment Marked “CIL/minimum standard of treatment” if the FET obligation refers to the minimum standard of treatment of aliens under customary international law.
- None Marked “None” if none of the above qualifiers is used.

By listing FET elements (exhaustive or indicative list)
Mapping options: Yes/No

Marked “Yes” if the FET obligation includes an indicative or exhaustive list of more specific elements. Examples of such elements may include: denial of justice and flagrant violations of due process; manifestly arbitrary treatment; evident discrimination; manifestly abusive treatment involving continuous, unjustified coercion or harassment; infringement of legitimate expectations.

Note: A prohibition of “unreasonable, arbitrary, discriminatory” measures is a separate obligation and is not marked under this section.

FET modifiers

Mapping options:

- FET combined with NT or MFN Marked “FET combined with NT or MFN” if the FET obligation is linked – in whatever form – to non-discrimination provisions (NT, MFN or both).
- None

Full protection and security

Mapping options:

- Standard Marked “Standard” if the treaty contains an unqualified obligation to provide full protection and security (various formulations may be used including “most constant protection”, “legal protection and security”, etc.).
- With reference to domestic law Marked “With reference to domestic law” if the obligation is qualified by reference to domestic law of the host State, using formulations such as “subject to the laws and regulations”, “under the laws”, etc.
- No clause Marked “No clause” if the treaty does not include an obligation to accord full protection and security to investors/investments.

Prohibition on unreasonable, arbitrary or discriminatory measures

Mapping options: Yes/No

Marked “Yes” if the treaty contains a separate obligation that prohibits impairment of investments by unreasonable and/or arbitrary and/or discriminatory measures.

Expropriation

Scope of measures covered

Mapping options:

Indirect expropriation not mentioned

Marked “Indirect expropriation not mentioned” if the treaty’s expropriation clause does not contain an explicit reference to indirect expropriation.

Indirect expropriation mentioned

Marked “Indirect expropriation mentioned” if the treaty’s expropriation clause includes a reference to indirect expropriation, whatever the formulation used (“measures having effect equivalent to nationalization or expropriation”, measures tantamount to expropriation, *de facto* expropriation).

No expropriation clause

Marked “No expropriation clause” if the treaty does not include a provision that protects foreign investors against uncompensated dispossession of their investments.

Refining expropriation clause

Indirect expropriation defined

Mapping options: Yes/No

Marked “Yes” if the treaty (whether in the main text or in the annex) contains a definition of, or criteria for determining whether an indirect expropriation has occurred.

Carve-out for general regulatory measures

Mapping options: Yes/No

Marked “Yes” if the treaty (whether in the main text or in the annex) carves out from the notion of expropriation regulatory measures of general application undertaken to protect legitimate public welfare objectives (e.g. public health, safety, and the environment). Such a clause is marked “Yes” regardless of whether it is conditioned upon certain circumstances (e.g. good faith, proportionality) and whether it is formulated in a manner that allows for exceptions (e.g. contains the “except in rare circumstances” language).

Note: Common wording of an expropriation clause which refers to “public purpose” as a condition of lawfulness of the expropriation is not marked in this section.

Carve-out for compulsory licenses in conformity with WTO

Mapping options: Yes/No

Marked “Yes” if the treaty carves out from the expropriation-related obligations compulsory licenses granted in relation to intellectual property rights, and/or the revocation, limitation or creation of intellectual property rights to the extent consistent with WTO law.

Protection from strife

Specifications

Relative right to compensation (comparator)

Mapping options:

MFN only

Marked “MFN only” if the protection from strife clause entitles covered investors to the same treatment, as regards restitution, compensation or other settlement, as granted to investors from any third State.

NT only

Marked “NT only” if the clause entitles covered investors to the same treatment, as regards restitution, compensation or other settlement, as granted to domestic investors of the host State.

MFN and NT

Marked “MFN and NT” if the clause offers MFN treatment and national treatment, whichever is more favourable to the covered investor.

Note: If the treaty refers to “nondiscriminatory treatment” or “full nondiscriminatory treatment”, without specifying the comparator, this is marked as “MFN and NT”.

None

Marked “None” if the treaty does not contain a relative right to compensation.

Absolute right to compensation in certain circumstances

Mapping options: Yes/No

Mapped “Yes” if the clause provides for an absolute right to compensation in certain circumstances, regardless of the treatment accorded to domestic investors and investors from third countries. Typically such circumstances cover situations where the losses were caused by the forces or authorities of the host State.

Transfer of funds

Includes transfer of funds

Mapping options: Yes/No

Marked “Yes” if the treaty includes a provision regarding the free transfer of funds relating to investments (covering outward and/or inward transfers).

Exceptions to the transfer of funds obligation

Balance-of-payments exception

Mapping options: Yes/No

Mapped “Yes” if the treaty contains an exception that allows the Parties to derogate from the free transfer obligation if confronted with (serious) balance of payments difficulties or a threat thereof. Also marked “Yes” if the exception refers to “exceptional financial or economic circumstances”, “serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies” or similar circumstances.

Other specific exceptions (e.g. to protect creditors, etc.)
Mapping options: Yes/No

Marked “Yes” if the treaty contains an exception that allows the Parties to derogate from the free transfer obligation in other circumstances (beyond the balance of payments and similar difficulties) and sets out a list of such circumstances. This may include, in particular, enforcement of domestic laws relating to:

- bankruptcy, insolvency, or the protection of the rights of creditors;
- issuing or trading in securities and other stock market instruments;
- criminal offences;
- compliance with orders or judgments in judicial or administrative proceedings;
- compliance with labour or tax obligations;
- and other.

Notes:

- 1) If the free transfer clause conditions the transfer of funds on investor’s compliance with fiscal or tax obligations to the host State, this alone is not marked “Yes” under this section.
- 2) If the free transfer clause contains solely an exception for measures adopted by the economic/monetary union of which the contracting party is a member (frequent in IIAs concluded by European Union and its Member States), this alone is not marked “Yes” under this section.
- 3) Prudential carve-outs are not marked in this section.

Prohibition of performance requirements (PRs)

Includes prohibition of PRs

Mapping options:

Explicit PR clause

Marked “Explicit PR clause” if the treaty includes a provision that restricts the use of performance requirements.

No explicit PR clause

Marked “No explicit PR clause” if the treaty does not include a provision that restricts the use of performance requirements. (Even in the absence of such an explicit provision, certain performance requirements can be prohibited by other international legal instruments, such as the WTO Agreement on Trade-Related Investment Measures.)

Type of PR clause

Mapping options:

TRIMS reference

Marked “TRIMS reference” if the treaty’s PR clause incorporates provisions of the WTO Agreement on Trade-Related Investment Measures (TRIMS) or otherwise refers to or reiterates the Parties’ obligations under that Agreement.

List of prohibited PRs Marked “List of prohibited PRs” if the treaty’s PR clause sets out a list of specific prohibited performance requirements, typically going beyond those that are prohibited under the TRIMS Agreement.

Note: If the list of prohibited PRs set out in the treaty’s PR clause is identical to the one found in the TRIMS Agreement, this is still marked as “List of prohibited PRs”, unless a reference is made specifically to the TRIMS Agreement.

Umbrella clause
Mapping options: Yes/No Marked “Yes” if the treaty includes the so-called “umbrella” clause requiring the Parties to respect or observe any obligation assumed by it with regard to a specific investment, thereby bringing contractual and other obligations under the “umbrella” of the IIA.

Entry and sojourn of personnel (subject to local laws)
Mapping options: Yes/No Marked “Yes” if the treaty contains a provision for the facilitation of entry, sojourn and issuing of visas and work permits for nationals of one Party (or individuals regardless of nationality) in the territory of the other Party for purposes relating to a covered investment, subject to national immigration and other laws of the host State. Such a provision may apply to all personnel, including families, or only senior management and key personnel.

Senior management (nationality)
Mapping options: Yes/No Marked “Yes” if the treaty contains a provision that entitles covered investors to make appointments to senior management positions and/or and members of the board of directors without regard to nationality.

Other Clauses

Transparency

Directed at States (obligation to publish laws and regulations)
Mapping options: Yes/No Marked “Yes” if the treaty requires the contracting parties to publish, make otherwise available and/or notify laws, regulations and/or other measures that affect covered investments and/or the operation of the treaty.

Note: This category should not be confused with transparency in ISDS, which is mapped separately.

Directed at investors
Mapping options: Yes/No Marked “Yes” if the treaty authorizes the host States to collect information from covered investors or potential investors, e.g. information about their corporate governance history and practices (including in its home state), or any other information (including for informational or statistical purposes).

Health and environment (any mentioning in the text, except preamble)

Mapping options: Yes/No

Marked “Yes” if the treaty uses the terms “health” or “environment” and/or related terms “ecological”, “animal” or “plant” in any of its provisions (except the preamble), including general exceptions, reaffirmations of the right to regulate for health and/or environmental purposes, non-binding clauses and any others.

Labour standards (any mentioning in the text, except preamble)

Mapping options: Yes/No

Marked “Yes” if the treaty uses the term “labour standards” in any of its provisions (except the preamble), including the non-lowering-standards clauses, reaffirmations of the right to regulate to maintain labour standards and any others.

Right to regulate (any mentioning in the text of this or similar concepts, except preamble)

Mapping options: Yes/No

Marked “Yes” if the treaty uses the term “right to regulate” (or similar concepts, e.g. the right to introduce new regulations to meet legitimate policy objectives) in any of its provisions (except the preamble).

Corporate social responsibility (any mentioning in the text, except preamble)

Mapping options: Yes/No

Marked “Yes” if the treaty uses the term “corporate social responsibility” in any of its provisions (except the preamble), as well as other similar terms such as “relevant guidelines”, “internationally accepted standards applicable to foreign investors”, principles of corporate stewardship, etc.

Corruption (any mentioning in the text, except preamble)

Mapping options: Yes/No

Marked “Yes” if the treaty uses the term “corruption” (or “anti-corruption”) in any of its provisions (except the preamble).

Not lowering of standards (typically environment and/or labour standards)

Mapping options: Yes/No

Marked “Yes” if the treaty contains a provision prohibiting or discouraging the contracting parties from attracting investment through the relaxation of labour, environmental, health, safety or other domestic standards.

Subrogation clause

Mapping options: Yes/No

Marked “Yes” if the treaty provides for a mechanism of subrogation, which means that if an insurer covers the losses suffered by an investor in the host State, it acquires the investor’s right to bring a claim and may exercise it to the same extent as, previously, the investor.

Non-derogation clause (in case of IIA’s conflict with other norms, more favourable rules apply to investors)

Mapping options: Yes/No

Marked “Yes” if the treaty contains a guarantee that if another international treaty, to which the Contracting States are parties, or national legislation of the host State, provides for more favourable treatment of investors/investments, that other treaty (or national legislation) shall prevail in the relevant part over the provisions of the IIA.

Investment promotion

Reference to specific promotion activities in text of agreement (not preamble)

Mapping options: Yes/No

Marked “Yes” if the treaty sets out specific investment promotion activities aimed at enhancing investment flows between the contracting parties, e.g. one or more of the following:

- Organization of joint investment promotion activities such as exhibitions, conferences, seminars and outreach programmes;
- Exchange of information on investment opportunities;
- Consultations with a view to promote investment opportunities;
- Cooperation with a view to promote investment opportunities;
- Technical assistance programmes to facilitate investment flows;
- Encouragement for home countries to provide outward investment incentives;
- Institutional framework with a view to promote investment opportunities.

Exceptions

Essential security exception

Exception included

Mapping options: Yes/No

Marked “Yes” if the treaty allows the contracting parties to derogate from treaty obligations in order to protect their security interests.

Exception defined (exceptional circumstances described in more detail)

Mapping options: Yes/No

Marked “Yes” if the treaty further details or defines the concept of “security interests” (or essential/national security) and thereby provides an indication of what kind of measures may fall within the scope of the exception, e.g. by reference to “in time of war or armed conflict”, “emergency in international relations”, “relating to the traffic in arms”, etc.

Exception self-judging

Mapping options: Yes/No

Marked “Yes” if the essential security exception is formulated as self-judging, i.e. allows the invoking State to take measures that “it” considers necessary for the protection of relevant interests.

General public policy exceptions

Public health and environment

Mapping options: Yes/No

Marked “Yes” if the treaty allows the contracting parties to derogate from WTO Agreement on Trade-Related Investment Measures treaty obligations in order to protect public health and/or environment (other terms may be used, such as “human, animal or plant life or health”, “conservation of living or non-living exhaustible natural resources”, “prevention of diseases or pests”, etc.)

Note: Treaties that incorporate – directly or by reference – the WTO GATT Article XX or WTO GATS Article XIV are marked “Yes” in this section.

Other public policy exceptions (e.g. cultural heritage, public order, etc.)

Mapping options: Yes/No

Marked “Yes” if the treaty allows the contracting parties to derogate from its treaty obligations in order to achieve other non-economic policy objectives named in the treaty (e.g. to maintain public order, preserve cultural heritage, maintain cultural/linguistic diversity, protect public morals, ensure compliance with laws and regulations that are not inconsistent with the treaty, etc.).

Note: Treaties that incorporate – directly or by reference – the WTO GATT Article XX or WTO GATS Article XIV are marked “Yes” in this section.

Prudential carve-out (concerns financial measures)

Mapping options: Yes/No

Marked “Yes” if the treaty allows the contracting parties to derogate from its treaty obligations for prudential reasons. Prudential measures may be taken for, e.g.:

- the protection of investors, depositors, and financial market participants;
- the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions; and/or
- ensuring the integrity and stability of a contracting party’s financial system.

Scheduling and reservations (in treaty texts and annexes)

Mapping options:

In contrast to exceptions that apply to both/all contracting parties, reservations are unilateral carve-outs from treaty obligations. Reservations can be set out in the treaty’s main text or in annexes.

Positive-list commitments

Marked “Positive-list commitments” if a given treaty obligation or obligations apply only to those sectors/ industries that are specifically inscribed in a Party’s schedule (positive list), *and* the treaty does not employ negative-list reservations under any of its provisions.

Negative-list reservations

Marked “Negative-list reservations” if a given treaty obligation or obligations apply to all sectors/industries and measures, except for those that are explicitly excluded (negative list), *and* the treaty does not employ the positive-list approach under any of its provisions.

- | | |
|---|---|
| <input checked="" type="checkbox"/> Both positive list commitments and negative list reservations | Marked “Both positive list commitments and negative list reservations” if the treaty combines the two approaches, e.g. by employing positive listing for some treaty obligations and negative listing for others. |
| <input checked="" type="checkbox"/> None | Marked “None” if the treaty does not include positive- or negative-list reservations. |

State-State Dispute Settlement (SSDS)

SSDS included
Mapping options: Yes/No

Marked “Yes” if the treaty provides for dispute settlement (e.g. arbitration) between the contracting parties, regardless of the content of this provision.

Investor-State Dispute Settlement (ISDS)

ISDS included
Mapping options: Yes/No

Marked “Yes” if the treaty establishes a mechanism for the settlement of disputes between covered investors and the host State (arbitration and/or domestic courts of the host State).

Alternatives to arbitration

Mapping options:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Voluntary ADR (conciliation / mediation) | Marked “Voluntary ADR (conciliation / mediation)” if the treaty mentions the possibility of such procedures (e.g. “non-binding, third-party procedures”) but does not prescribe them as a necessary step. |
| <input checked="" type="checkbox"/> Compulsory ADR (conciliation / mediation) | Marked “Compulsory ADR (conciliation / mediation)” if the treaty prescribes the use of conciliation or mediation (can be referred to as “non-binding third-party procedures”, or ADR methods) as a mandatory procedure, i.e. that must be resorted to before adjudicatory proceedings (arbitration) can be commenced. |
| <input checked="" type="checkbox"/> None | Marked “None” if the treaty does not refer to alternative means of settling investor-State disputes (conciliation / mediation or similar non-binding procedures). |

Note: A compulsory period for consultations, negotiations or reaching an amicable settlement between the disputing parties, or a mandatory “cooling-off” period, are not considered to be ADR mechanisms in this section. If the treaty provides only for such procedures, it is marked “None”.

Scope and consent

Scope of claims: general approach (chapeau paragraph of ISDS clause)

Mapping options:

Covers any dispute relating to investment

Marked “Covers any dispute relating to investment” if the treaty allows to submit to ISDS “any dispute arising from / connected to / relating to / concerning an investment” or uses similar broad formulations.

Lists specific bases of claim beyond treaty (e.g. contractual disputes)

Marked “Lists specific bases of claim beyond treaty (e.g. contractual disputes)” if the treaty allows to submit to ISDS certain identified types of claim, which go beyond the alleged breaches of the treaty itself but are not as broad as “any dispute”. For example, a treaty may claims arising out of the alleged breach of: (i) treaty obligations, (ii) an investment authorization, or (iii) an investment contract.

Covers treaty claims only

Marked “Covers treaty claims only” if the treaty allows to submit to ISDS only claims alleging a breach of the treaty by the respondent State. Treaties that refer to disputes “concerning interpretation and application of this agreement” also fall into this category.

Other

Marked “Other” if the treaty’s ISDS clause doesn’t fall into any of the above categories.

Limitations to the scope of ISDS

Limitation of provisions subject to ISDS
Mapping options: Yes/No

Marked “Yes” if the treaty provides that not all of its provisions are subject to ISDS. A treaty can do that either (i) by positively identifying those provisions, whose alleged violations can be submitted to ISDS (leaving some substantive provisions out), or (ii) by expressly excluding certain provisions from the scope of ISDS.

Exclusion of policy areas from ISDS
Mapping options: Yes/No

Marked “Yes” if the treaty excludes a particular policy area(s) or certain economic industries/sectors from the ISDS scope. Excluded policy areas and sectors may include, for example, host State’s decisions concerning admission of foreign investments, claims relating investments in real estate, financial institutions, etc.

Special mechanism for taxation or prudential measures
Mapping options: Yes/No

Marked “Yes” if the treaty requires the disputing parties, or the tribunal, to refer certain matters (e.g. those concerning taxation, prudential measures, scheduled reservations) for joint determination by the contracting parties or their joint commission.

Type of consent to arbitration

Mapping options:

Provides express or implied consent

Marked “Provides express or implied consent” if the contracting parties give their prior consent to ISDS (arbitration) for investors’ claims arising under the treaty. Such consent can be (i) express (e.g. “Each Party hereby gives its unconditional consent...”, or (ii) implied (i.e. the text of the treaty is silent on the matter of consent but suggests that an investor does not need to obtain a separate consent to arbitration from the respondent State in order to initiate ISDS proceedings against it).

Requires case-by-case consent

Marked “Requires case-by-case consent” if the contracting parties do not provide their prior consent to ISDS (arbitration) for investors’ claims arising under the treaty. A treaty may contain, for example, an explicit reservation of consent, or provide that the Parties shall give their consent in the future.

Forums

ISDS forum options

Domestic courts of the host State

Mapping options: Yes/No

Marked “Yes” if the treaty explicitly provides an option to submit an investment dispute to the domestic courts of the host State, whether as an option alongside other ISDS forums, or as a mandatory step before submission of a claim to arbitration.

Note: If the treaty refers to only domestic administrative review procedures, this is marked “No” in this section.

ICSID

Mapping options: Yes/No

Marked “Yes” if the treaty provides an option to submit an investment dispute to arbitration under the ICSID Convention.

Note: If the treaty refers only to arbitration under the ICSID Additional Facility Rules, or to conciliation under the ICSID Convention, this is marked “No” in this section.

UNCITRAL

Mapping options: Yes/No

Marked “Yes” if the treaty provides an option to submit an investment dispute to arbitration under the UNCITRAL Arbitration Rules.

Other forums

Mapping options: Yes/No

Marked “Yes” if the treaty provides an option to submit an investment dispute to arbitration under any other arbitral rules: e.g. Stockholm Chamber of Commerce (SCC), International Chamber of Commerce (ICC), Arab Investment Court, Cairo Regional Centre for International Commercial Arbitration, ICSID Additional Facility (if the treaty does not allow arbitration under the ICSID Convention) or other venue or arbitration rules.

Relationship between forums

Mapping options:

No reference

Marked “No reference” if the treaty, which lists more than one ISDS forum, does not contain rules on the relationship between various ISDS forums, i.e. on whether the same dispute can be submitted to several forums, either simultaneously or subsequently.

“Fork in the road”

Marked “Fork in the road” if the treaty contains a “fork-in-the-road” clause, i.e. a provision which requires the investor to choose between the domestic courts and international arbitration at the outset. Once an investor starts the domestic proceedings, it loses the right to resort to arbitration, and vice versa. This category captures any “finality of choice” provision including the selection between two arbitral forums.

“No U turn” (waiver clause)

Marked “No U turn (waiver clause)” if the treaty contains a “no-U-turn” clause, which provides that once the investor has opted for international arbitration, it cannot shift back to domestic courts. It often requires a “waiver” from domestic litigation as a condition of submitting the dispute to arbitration.

Preserving right to arbitration after domestic court proceedings

Marked “Preserving right to arbitration after domestic court proceedings” if the treaty explicitly preserves the right of investors to submit a dispute to arbitration after they have initiated local court proceedings, but before these courts have rendered a judgment.

Local remedies first

Marked “Local remedies first” if a treaty obliges an investor to go through (but not necessarily exhaust) local remedy procedures in the host State, be they of administrative or judicial kind, before submitting a claim to arbitration.

Other specific ISDS features

Limitation period for submission of claims

Mapping options: Yes/No

Marked “Yes” if the treaty prohibits submission to ISDS of the claims that are outside of the limitation period (often 3 or 5 years from the date on which the claimant first acquired, or should have first acquired, knowledge of the treaty breach and damage).

Provisional measures

Mapping options: Yes/No

Marked “Yes” if the treaty provides that arbitral tribunals may order provisional or interim measures in the interest of the investor or of the proceedings, for example to preserve the rights of the disputing investor or to preserve evidence in the possession or control of either of the disputing parties.

Consolidation of claims

Mapping options: Yes/No

Marked “Yes” if the treaty contains a provision regarding consolidation of claims arising out of the same events or circumstances.

**Limited remedies
(specifying available types
of remedies)**

Mapping options: Yes/No

Marked “Yes” if the treaty specifies the types of remedy that a tribunal may award, for example payment of monetary damages and restitution of property (with the right to pay monetary damages in lieu of restitution).

Treaty interpretation

Affirms binding interpretation by contracting parties or their joint committee

Mapping options: Yes/No

Marked “Yes” if the treaty stipulates that the contracting parties, or their joint body, may issue joint interpretations binding on the arbitral tribunal.

Requires certain questions to be submitted to contracting parties (*renvoi*)

Mapping options: Yes/No

Marked “Yes” if the treaty provides for the referral (*renvoi*) of certain questions (explicitly defined in the treaty) to the contracting parties or their joint body for interpretation, which shall be binding on the tribunal. Relevant clauses often provide that failing agreement between the Parties, the tribunal regains the ability to interpret the relevant provisions.

Note: Special mechanisms on taxation or prudential measures that sometimes include a referral of questions to the disputing parties (or their joint bodies) are not marked in this section.

Regulates submissions by non-disputing State party

Mapping options: Yes/No

Marked “Yes” if the treaty entitles a contracting party that is not the respondent State in an ongoing ISDS proceeding to make submissions to the tribunal on questions of treaty interpretation.

Transparency in arbitral proceedings

Requires documents to be made publicly available

Mapping options: Yes/No

Marked “Yes” if the treaty requires that certain ISDS-related documents are made available to the public. Such documents are often listed in the treaty and may include, among others, the notice of arbitration; pleadings and memorials submitted to the tribunal by disputing parties; and orders, awards, and decisions of the tribunal.

Requires hearings to be open to the public

Mapping options: Yes/No

Marked “Yes” if the treaty requires ISDS hearings to be open to the public (usually subject to the protection of sensitive information).

Regulates amicus curiae submissions by third (non-disputing) parties

Mapping options: Yes/No

Marked “Yes” if the treaty lays down rules regarding submissions from third parties not involved in the dispute (*amicus curiae*), including the right of the tribunal to accept and consider such submissions.

Institutional Issues

Mechanism for consultations between State parties

Mapping options: Yes/No

Marked “Yes” if the treaty provides that the Parties may, or shall, hold ad hoc consultations on matters arising out of the treaty.

Notes:

- 1) Institutionalized forms of consultations (e.g. through standing joint committees) are not marked in this section.
- 2) Consultations in the context of State-State dispute settlement are not marked in this section.

Institutional framework (committee)

Mapping options: Yes/No

Marked “Yes” if the treaty sets up an institution (a joint body) as a means of regular consultations and cooperation on matters related to the treaty. Also, consultation provisions that establish an institutional framework are marked “Yes” in this section.

Technical cooperation/capacity building

Mapping options: Yes/No

Marked “Yes” if the treaty provides that a Party may/should/shall assist another Party on matters relating to the implementation of the agreement, e.g. providing support for the private sector; improving the economic environment; transfer of technology; facilitating access to know-how and capital.

Treaty Duration, Amendment and Termination

Treaty duration

Years of initial treaty term

Mapping options:

- Indefinite
- 5 years
- 10 years
- 15 years
- 20 years
- Other

This section records the initial treaty term, i.e. the length of time during which an agreement shall remain in force. The initial treaty term can be fixed (equal to a certain number of years) or indefinite, and is marked accordingly in this section.

Automatic renewal

Mapping options:

- Indefinite term
- 2 years
- 5 years
- 10 years
- 15 years
- 20 years
- Other
- None

This section records whether the treaty provides for an automatic renewal of the treaty term. Automatic renewal means that after the initial treaty term ends, the treaty shall remain in force unless one of the contracting parties notifies the other (or others) of its intention not to renew the treaty. A treaty can be renewed for an indefinite term or for a fixed term, and is marked accordingly.

If the treaty does not provide for automatic renewal (e.g. renewal is only possible with an express consent of both/all contracting parties), this is marked “None”.

Amendment and termination

Unilateral termination

Includes modalities for unilateral termination
Mapping options: Yes/No

Marked “Yes” if the treaty expressly provides that it can be unilaterally terminated by a contracting party, and sets out the procedure for such unilateral termination.

Length of notice period
Mapping options:

- One year prior notice
- Six months prior notice
- Other period
- None

This section records the length of the notice period necessary for a Contracting State to unilaterally denounce the treaty, if the treaty provides for such unilateral termination.

Includes modalities for amendment or renegotiation
Mapping options: Yes/No

Marked “Yes” if the treaty expressly specifies that the contracting parties may agree to amend the agreement.

"Survival"/"sunset" clause length

Mapping options:

- None
- 5 years
- 10 years
- 15 years
- 20 years
- Other

A “survival”/“sunset” clause guarantees that in case of unilateral termination of the treaty, the treaty will remain in effect for a certain number of years following the termination with respect to investments made prior to the termination. This section records such extra treaty duration specified in the “survival” clause.

If the treaty does not include a “survival” clause, this is marked “None”.